

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

BRIAN J. MURPHY

Plaintiff,

vs.

THE CITY OF JACKSONVILLE and  
JAMES MCMILLAN, as Sheriff  
of Duval County, Florida,

Defendants.

86-1123-CV-J-12

COMPLAINT - JURY TRIAL SOUGHT

BRIAN J. MURPHY, plaintiff, **sues** the defendants, CITY OF JACKSONVILLE, and JAMES MCMILLAN, Sheriff of Duval County and alleges the following:

NATURE OF ACTION

1. This is an action for injunctive relief and monetary damages arising from the defendants' unlawful discrimination by the termination of plaintiff's employment due to a physical handicap. This action also challenges the defendants' violation of plaintiff's rights to equal protection guaranteed under the Fourteenth Amendment to the United States Constitution, as secured by 42 U.S.C. §1983.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 2201 and 2202 and the principles of pendent

jurisdiction. The substantive statutory rights to be vindicated herein arise pursuant to 29 U.S.C. §§793 and 794 and §760.10, Florida Statutes (1985).

VENUE

3. Venue is proper pursuant to 28 U.S.C. §1391(e)(1),(2) and (4).

PARTIES

4. Plaintiff is a citizen of the United States and a resident of Duval County, Florida. He suffers from a seizure disorder, a physical disability.

5. Defendant, THE CITY OF JACKSONVILLE, is a local governmental entity and a political subdivision of the State of Florida. It employed plaintiff from September 8, 1980 until January 31, 1986, when it terminated plaintiff from employment.

6. The defendant, JAMES MCMILLAN, is the Sheriff of Duval County, Florida, charged with the responsibility of establishing, administering and implementing policies, programs, plans and practices of the Jacksonville Sheriff's office regarding the employment of law enforcement personnel. He is sued in his official capacity only.

~~FACTS~~

7. Plaintiff was employed as a correctional officer by defendants on September 8, 1980, until he was transferred to the Police Academy for training as a police officer. At all times during the course of his employment with defendants, plaintiff

performed all duties assigned in a competent and professional manner. On September 3, 1985, after completing his training, plaintiff was employed by defendants as a police officer. He remained in that position until January 31, 1986, when he was terminated as an employee, when it was learned that he had a

8. Defendants were advised that the plaintiff's disorder could be controlled by medication and his disorder has, in fact,

aware of plaintiff's seizure at the jail, but nevertheless offered him employment as a police officer.

11. While employed as a police officer, although not while on duty as a patrolman, plaintiff suffered two seizures. Due to the isolated nature of his previous seizures, he was not taking medication to control these seizures.

12. Upon learning of the need for medication, plaintiff sought the advice of a neurologist and commenced taking medication. He has suffered from no seizures since December of 1985.

13. Plaintiff was terminated from employment by the defendants solely because of his physical handicap of epilepsy.

COUNT I

14. The paragraphs above are hereby realleged in full and incorporated by this reference.

15. Plaintiff is a handicapped individual within the definition of 29 U.S.C. §706(7)(A) and (B). *Sub Act*

16. The City of Jacksonville and the Jacksonville Sheriff's Office has entered into contracts in excess of \$2,500.00 with a federal department or agency as provided in 29 U.S.C. §793(a).

17. Defendants violated 29 U.S.C. 5793 in that they discriminated against plaintiff by terminating him from employment solely by reason of his handicap.

COUNT II

18. The paragraphs above are hereby realleged in full and incorporated by this reference.

19. Plaintiff is a handicapped individual within the definition of 29 U.S.C. §706(7)(A) and (B).

20. The City of Jacksonville and the Jacksonville Sheriff's Office is a program or activity receiving federal financial assistance as defined by 29 U.S.C. §794.

21. Defendants violated 29 U.S.C. 5794 in that they discriminated against plaintiff by terminating him from employment solely by reason of his handicap.

COUNT III

22. The paragraphs above are hereby realleged in full and incorporated by this reference.

23. Plaintiff has been, terminated from employment with the Jacksonville Sheriff's Office solely on the basis of a controllable seizure disorder.

24. Plaintiff, by reason of his membership in a class of applicants with seizure disorders or a history of seizure disorders, has been and is being denied equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution, as secured by 42 U.S.C. §1983, by being terminated from employment by defendants.

#### COUNT IV

25. The paragraphs above are realleged in full and incorporated by this reference.

26. The actions of the defendants, in firing plaintiff solely because of his physical handicap, without affording the opportunity to demonstrate that he could perform the functions of a police officer, denied plaintiff his due process rights, in violation of the Fourteenth Amendment to the United States Constitution.

#### COUNT V

27. The paragraphs above are realleged in full and incorporated by this reference.

28. Plaintiff is a handicapped individual within the definition of §760.10(1) (a), Florida Statutes (1985).

29. Defendants have violated §760.10(1)(a), Florida Statutes (1385) and Article I, §2 of the Florida Constitution in that they have discriminated against plaintiff 'by-terminating' him from employment solely by reason of his handicap.

30. This Court has pendent jurisdiction to consider and resolve Count IV.

#### INJURY

31. As a direct and proximate result of defendants' actions, plaintiff has been deprived of his constitutional and statutory right not to be discriminated against on account of his physical handicap, as well as his right to equal protection under the laws.

#### PRAYER FOR RELIEF

32. Based on the foregoing allegations, the plaintiff requests that this Court order relief in the following terms:

A. An injunction mandating that the defendants reinstate the plaintiff to his former position, or an equivalent one, with full benefits and seniority as though he had never been terminated;

B. A money judgment to compensate the plaintiff for back pay up to and including the date of reinstatement, including interest;

C. A money judgment in excess of \$10,000.00 to compensate the plaintiff for his embarrassment, mental anguish, and lost

opportunity in his chosen profession proximately resulting from the unlawful actions of the defendants, as alleged herein;

D. A judgment awarding the plaintiff his costs of maintaining this action, including a reasonable attorney's fee; and

E. Such other relief as justice and equity require.

**DEMAND FOR JURY TRIAL**

The plaintiff respectfully demands a jury trial on all issues so triable in this action.

Respectfully submitted,

**SHEPPARD AND WHITE, P.A.**

*Elizabeth L. White*  
\_\_\_\_\_  
215 Washington Street  
Jacksonville, Florida 32202  
(904) 356-9661  
**ATTORNEYS FOR PLAINTIFF**

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

JUN 16 9 11 AM '87

BRIAN J. MURPHY,

CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

Plaintiff,

-vs-

Case No. 86-1123-Civ-J-12

THE CITY OF JACKSONVILLE and  
JAMES McMILLAN, Sheriff of Duval  
County, Florida,

Defendants.

---

CIVIL JUDGMENT

An Arbitration Award having been filed on May 26, 1987, and twenty days having elapsed without any party demanding a trial ~~de novo~~, it is hereby

**ORDERED** that pursuant to Local Rule 8.05(b), Civil Judgment is entered as follows:

That Defendants shall reinstate Plaintiff as a Police Officer with tenure, full benefits and seniority as though he had never been terminated. The manner, re-training and conditions of employment shall be reasonably determined by Defendants.

Plaintiff shall recover back pay offset by earned income of approximately \$8,500.00, but not offset by unemployment compensation.

Plaintiff shall not recover any consequential damages.

Plaintiff shall recover his reasonable attorney fees and costs.