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H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

930 2061

CIVIL ACTION NO.

JUDGE JUDGE LINDBERG

MAGISTRATE
MAGISTRATE JUDGE ROSEMOND

JURY TRIAL DEMANDED

JULIE A. THURBER,)
)
 Plaintiff,)
)
)
 v.)
)
 CAROL M. BROWNER, Administrator,)
 United States Environmental)
 Protection Agency, and)
 UNITED STATES ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Defendants.)

COMPLAINT

Plaintiff Julie A, Thurber, as and for her complaint for declaratory, injunctive, and other relief against defendants, Carol M. Browner, Administrator, United States Environmental Protection Agency, and the United States Environmental Protection Agency, states and alleges the following:

THE PARTIES

1. Plaintiff Julie A. Thurber ("Ms. Thurber") is an operating accountant, employed by the United States Environmental Protection Agency, Superfund Accounting Section, Financial Management Branch, Region 5, located in the Ralph Metcalfe Building, 77 West Jackson Boulevard, Chicago, Illinois (the "Metcalfe Building"). Ms. Thurbar has been employed in this capacity since 1988.

2. Defendant Carol M. Browner is Administrator of the United States Environmental Protection Agency, and defendant United States Environmental Protection Agency is a federal agency of the United States of America (both defendants are hereinafter collectively referred to as the "EPA").

JURISDICTION & VENUE

3. Ms. Thurber's claim arises under Sections 501 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 791 & 794 and Sections 101 and 102 of the Civil Rights Act of 1991, 42 U.S.C. §§ 1981 & 1981a. Jurisdiction is therefore conferred on this Court by 28 U.S.C. § 1331.

4. Declaratory, injunctive and other appropriate equitable relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2) & (e)(3).

THE FACTUAL ALLEGATIONS

6. Since June of 1984, Ms. Thurber has suffered from a post-traumatic seizure disorder (epilepsy) as a result of head injuries sustained in an automobile accident, Ms. Thurber is a handicapped person as defined by the Rehabilitation Act of 1973.

7. A person with epilepsy suffering a seizure generally experiences an unpredictable loss of control, loss of awareness, unconsciousness, and is at risk of suffering broken bones and brain damage, among other severely detrimental physical and emotional effects.

8. Ms. Thurber has been under medical care since 1985, During this time, Ms. Thurber's seizures have been adequately controlled through the use of various anti-seizure medications.

9. During the summer of 1991, Ms. Thurber, along with the rest of her work division, moved into the Metcalfe Building. The Metcalfe Building is a federal building that houses offices of the EPA, the Social Security Administration, and the Department of Agriculture, among other federal agencies and offices that are frequently visited by members of the public.

10. On October 30, 1991, the Metcalfe Building had in place a stroboscopic light fire alarm system which, when activated, flashes at approximately 1 Hz, has an 12,000 peak candela power intensity, and uses pure white light bulbs. The lights are unsynchronized, and, on information and belief, are placed every 6 to 9 feet (the "System"). The System continues to be in place.

11. On October 30, 1991, as the newly installed System was activated during a test run, Ms. Thurber suffered a seizure precipitated by the System, was taken to the nurse's station in the Metcalfe Building, and had to be picked up by her boyfriend and assisted home. Approximately five to six hours later that same day, Ms. Thurber suffered a second seizure.

12. On the afternoon of October 30, 1991, or early morning of October 31, 1991, Ms. Thurber's supervisor, and other responsible EPA employees, were informed about Ms. Thurber's two seizures.

13. When Ms. Thurber returned to work the following day, October 31, 1991, she was informed by one of her supervisors that she had been reassigned to the 14th floor of the John C. Kluczynski Federal Building, located at 230 South Dearborn, Chicago, Illinois (the "Kluczynski Building").

14. Ms. Thurber remained on the 14th floor of the Kluczynski Building until early December 1991, when she was moved to the 16th floor of the Kluczynski Building.

15. In January of 1992, Ms. Thurber was moved to the 7th floor of the 111 West Jackson Building, located at 111 West Jackson Boulevard, Chicago, Illinois.

16. At the beginning of April 1992, Ms. Thurber was moved for the fourth time in less than six months to the 8th floor of the 111 West Jackson Building, where she has remained to this date,

17. During this period of repeated moving, Ms. Thurber has been removed from the mainstream of both her job duties and professional society.

18. Ms. Thurber has repeatedly requested the EPA to modify the System so that she would be able to enter and work at the Metcalfe Building without great risk to her personal wellbeing.

19. The EPA has failed to show that the System cannot be modified to accommodate persons with epilepsy without adversely affecting the benefits of the System for persons with severe auditory impairments. Nonetheless, the EPA has failed to design and/or implement any appropriate modifications.

20. As a temporary accommodation, Ms. Thurber has repeatedly requested to the EPA that she be allowed to work at her home. This request has also been, and continues to be, unreasonably denied by the EPA.

21. The System, as it presently operates, poses a substantial, unreasonable health risk to Ms. Thurber, as well as to all other persons with epilepsy who might happen to be in the Metcalfe Building during an activation of the System.

22. Since her initial move from the Metcalfe Building, and as a direct result of the EPA's continuing discriminatory refusal to accommodate Ms. Thurber's handicap, she has experienced, and continues to experience, great stress and a sense of significant isolation from her supervisor, coworkers and needed work materials. Ms. Thurber's continuing stress has negatively affected her personal relationships and health, as well as increased her risk of sustaining future seizures.

23. Ms. Thurber has exhausted her administrative remedies and has timely filed this Complaint as required by 29 C.F.R. § 1614.

COUNT I
Violation of Sections 501 and 504 of
The Rehabilitation Act of 1973 and
Sections 101 and 102 of the Civil Rights Act of 1991
(all defendants)

24. Ms. Thurber realleges paragraphs 6-23 of this Complaint as if fully set forth herein.

25. Up until the date of her initial transfer, Ms. Thurber received excellent performance evaluations from her

supervisors. With or without reasonable accommodation by the EPA, Ms. Thurber can perform the essential functions of her position as an operating accountant and, therefore, she is qualified for her position. With reasonable accommodation, Ms. Thurber can perform such functions at the Metcalfe Building.

26. By failing to modify the System, the EPA has failed, and continues to fail, to reasonably accommodate Ms. Thurber's handicap.

27. The foregoing constitutes a clear violation of Sections 501 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 791 & 794 and Sections 101 and 102 of the Civil Rights Act of 1991, 42 U.S.C. §§ 1981 & 1981a.

COUNT II

Violation of Sections 501 and 504 of
The Rehabilitation Act of 1973 and
Sections 101 and 102 of the Civil Rights Act of 1991
(all defendants)

28. Ms. Thurber realleges paragraphs 6-23 and 25 of this Complaint as if fully set forth herein.

29. By denying, and continuing to deny, Ms. Thurber's request to **work** at home as a temporary accommodation until a permanent solution is implemented, the **EPA** has failed, and continues to fail, to reasonably accommodate Ms. Thurber's handicap.

30. The foregoing constitutes a clear violation of Sections 501 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 791 & 794 and Sections 101 and 102 of the Civil Rights Act of 1991, 42 U.S.C. §§ 1981 & 1981a.

31. Ms. Thurber has no plain, adequate or complete remedy at law to redress the wrongs alleged in this Complaint, and this action is her only means of securing adequate relief. Ms. Thurber is now suffering and will continue to suffer irreparable injury if no relief is granted against the EPA's continued unlawful acts, policies and practices as set forth herein.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Julie A. Thurber prays that this Honorable Court:

(a) Declare that the **EPA's** conduct has violated, and continues to violate, Ms. Thurber's right to not be discriminated against by her employer on the basis of her handicap secured by Sections 501 and **504** of the Rehabilitation Act of 1973, **29 U.S.C. §§ 791 & 794** and Sections 101 and 102 of the Civil Rights Act of 1991, **42 U.S.C. §§ 1981 & 1981a.**

(b) Enjoin the **EPA** from continuing to discriminatingly refuse to accommodate Ms. Thurber's handicap.

(c) Order the **EPA** to empanel a technical advisory committee to evaluate the photosensitive environmental consequences of the System and on the basis of the committee's final report and recommendations, make such modifications to the System as **is** necessary to render the Metcalfe Building safe for persons with epilepsy.

(d) Order the **EPA** to allow **Ms.** Thurber to perform **her** job functions at her home until the required modifications are completed.

(e) Order the EPA to reassign Ms. Thurber to the Metcalfe Building after the required modifications are completed.

(f) Award Ms. Thurber compensatory damages in an amount to be determined upon trial.

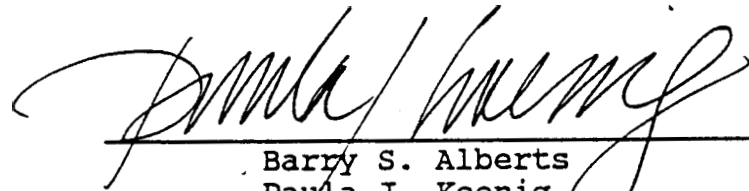
(g) Award Ms. Thurber her reasonable costs and attorneys' fees in an amount to be determined upon trial.

(h) Grant Ms. Thurber such other relief as this Honorable Court deem just and proper.

JURY DEMAND

32. Ms. Thurber respectfully demands a trial by jury.

Dated: April 6, 1993



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