

SETTLEMENT AGREEMENT

This Agreement is entered into by and between the United States Department of Justice and the City of Memphis on this _____ in order to resolve a charge that actions taken by the Memphis City Police Department violated the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

The Parties

1. The parties to this agreement are the City of Memphis and the United States Department of Justice.

2. The City of Memphis is a person within the meaning of 42 USC § 12111(7) and 42 USC § 2000e(a); an employer within the meaning of 42 USC § 12111(5); and a covered entity under 42 USC § 12111(2). The City of Memphis is a public entity within the meaning of 42 USC § 12131(1).

3. The United States Department of Justice ("DOJ") is the federal agency responsible for administering and enforcing Title I (with respect to public employers) of the Americans with Disabilities Act, 42 USC §§ 12111-12117.

Contentions of the Parties

4. This matter was initiated by a complaint filed with the Equal Employment Opportunity Commission under Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§12111-12117 and accompanying regulations at 29 CFR 1630.13. _____, EEOC Charge _____, alleges that she was disqualified from being a police officer when a psychological examination disclosed she had a diagnosis of depression, although her condition was controlled by medication, and two doctors certified her as being qualified.

5. The Charge was forwarded to the Department of Justice after investigation and cause finding by the EEOC.

6. The State of Tennessee enacted a statute – Tennessee Code § 38-8-106 – that excludes all persons who are “not free from apparent mental disorders” from the positions of police officer.

7. The United States alleges, and the City of Memphis admits, that prior to 2001, the Memphis Police Department interpreted Tennessee Code § 38-8-106 to mean it must disqualify candidates for employment as a Police Officer if they have a diagnosis described in the DSM III, including the charging party. The City of Memphis represents that since 2003, it has followed the guidance of the State of Tennessee, as described in paragraph 8.

8. In 2003, pursuant to a Consent Decree in United States v. State of Tennessee, Civil Action 1:98-1357, the State of Tennessee agreed not to enforce Tennessee Code § 38-8-106, and other similar statutes affecting other law enforcement jobs in the State (Tennessee Codes 7-86-201, 41-1-116, 37-5-117). Henceforth, individuals seeking certain state law enforcement positions, will not be disqualified from those positions solely on the basis that they have, or once had, a diagnosis that is in the DSM III. The state of Tennessee has further agreed to implement policies that provide: (a) incumbent employees shall not be subject to a medical examination or inquiry unless such examination or inquiry is shown to be job related and consistent with business necessity. 42 USC § 12112(d)(4), 29 CFR § 1630.14(c); (b) a job applicant or incumbent employee may not be disqualified on the basis of a disability unless, after undertaking an individualized assessment of the individual, an employer determines that: (i) the individual cannot perform the essential functions of the job, with or without accommodation, including, with respect to incumbent employees,

reassignment; and/or (ii) the individual would pose a significant risk to the health or safety of self or others that cannot be reduced or eliminated by reasonable accommodation. Finally, the state of Tennessee has agreed to notify local governments that § 38-8-106 and the other similar statutes are invalid and should not be applied, implemented, or enforced by the counties or municipalities.

9. The United States alleges that § 38-8-106, and the other statutory provisions referenced in paragraph 8, discriminate against individuals with disabilities, in violation of Title I of the Americans with Disabilities Act ("ADA"), 42 § 12111 - 12117, and its implementing regulation, 29 CFR Part 1630. Specifically, this statute and related policies discriminate against individuals on the basis of disability, in violation of 42 USC § 12112(b)(6) and 29 CFR § 1630.10, by using qualifications standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, when the standard, test or other selection criteria, as used by the covered entity, has not been shown to be job related for the position in question and consistent with business necessity.

10. The City of Memphis denies that it has violated the ADA, but admits that the Tennessee statute at issue contains blanket presumptions which may, if applied, and under certain circumstances, violate the ADA and applicable regulations.

11. The Attorney General is authorized, by Section 107(a) of Title I, 42 U.S.C. § 12117(a), to institute a civil action against a state or local government employer when the EEOC has determined that there is reasonable cause to believe that a charge of employment discrimination is true, and the EEOC has been unable to obtain an acceptable conciliation agreement. These preconditions exist as to EEOC Charge . In consideration for the offer of relief to

and other actions by the City of Memphis, as set forth herein, the Attorney General and the

Department of Justice will not institute any civil action alleging employment discrimination on the basis of EEOC Charge against the City of Memphis.

Actions to be Taken by City of Memphis

12. In the interest of resolving this matter without resort to further litigation, and believing that resolution of this matter is in the public interest, the parties hereby agree and stipulate as follows:

13. The parties agree that under the ADA, the City of Memphis may require that a job applicant undergo a medical examination after making an offer of employment conditioned upon the results of the examination, if: (1) all entering employees in that job category are subjected to such an examination; (2) the information obtained regarding the medical condition or history of the applicant is treated confidentially; and (3) the results of the examination are used in accordance with the ADA. 42 USC § 12112(d)(3), 29 CFR § 1630.14(b). A “medical examination” is any procedure or test that seeks information about an individual’s physical or mental impairments or health. Incumbent employees shall not be subject to a medical examination or inquiry unless such examination or inquiry is shown to be job related and consistent with business necessity. 42 USC § 12112(d)(4), 29 CFR § 1630.14(c). A job applicant or incumbent employee may not be disqualified on the basis of a disability unless, after undertaking an individualized assessment of the individual, an employer determines that: (1) the individual cannot perform the essential functions of the job, with or without accommodation, including, with respect to incumbent employees, reassignment; and/or (2) the individual would pose a significant risk to the health or safety of self or others that cannot be reduced or eliminated by reasonable accommodation.

14. The City of Memphis agrees to promulgate new written policies to replace all current

policies that implement Tennessee Statute § 38-8-106 and any of the other statutory provisions referenced in paragraph 8 that pertain to Memphis job classifications. The new policies will comply with the ADA, 42 USC § 12101 et seq., which includes the requirements outlined in paragraphs 8 and 13 above. These policies will be submitted to the Department of Justice on or before March 31, 2006.

15. The City of Memphis agrees not to discriminate against job applicants or employees on the basis of disability in connection with a psychological evaluation.

16. The City of Memphis will provide training to Human Resources personnel in the Police Department and all other personnel involved in the selection process for police officers. It will notify the evaluating professionals in writing of the new standards for psychological evaluations.

17. At the next three postings for vacancies in the Memphis Police Department, the City will include a notice that informs individuals who were disqualified for the position of Police Officer on the basis of their psychological evaluation for the period 1996 - 2001 of their right to reactivate their applications for employment with the Memphis Police Department. Under this procedure, these individuals will not be required to re-take the written qualifying tests known as WRAP or ABLE, but will be required to pass a physical and psychological examination and an updated background check for the period since they were disqualified. The City of Memphis will not retaliate against any individual who seeks re-employment under this Agreement.

Individual Relief for the Charging Party

18. The City of Memphis will pay \$30,000 (Thirty Thousand Dollars) upon execution of the release, attached here as Exhibit A.

19. The City of Memphis will seal any documents in _____ personnel file that pertain to her psychological tests and the decisions to ask her to resign from the Police Academy.

20. The City of Memphis will not retaliate against

Enforcement

21. The United States may review compliance with this Agreement at any time and may enforce this Agreement if the United States believes that it or any requirement thereof has been violated. If the United States believes that the City of Memphis is not in compliance with this Agreement or any portion of it has been violated, it will raise its concerns with the City of Memphis and the parties will attempt to resolve the concerns in good faith. The United States will give the City 30 days from the date it notifies the City of any breach of this Agreement to cure that breach prior to instituting any court action.

22. Failure by the United States to enforce any provision or deadline of this Agreement shall not be construed as a waiver of its right to enforce other provisions or deadlines of this Agreement.

23. This Agreement shall be in full force and effect for a period of three (3) years after the date of execution of this Agreement.

24. This Agreement constitutes the entire agreement between the parties regarding the charges raised in EEOC Charge _____ and no other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Agreement, shall be enforceable.

25. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

26. The individuals signing this Agreement represent that they are authorized to bind the parties to this Agreement.

Agreed to:

Dated: 30 March 2006



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