# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-02605 ANDREW KRUZIC;

Plaintiff,

v.

CITY OF LITTLETON;

Defendant.

# COMPLAINT AND JURY DEMAND

Plaintiff, Andrew Kruzic, by and through his attorney, Zachary Warren of HIGHLANDS LAW FIRM, hereby brings this Complaint and Jury Demand against the City of Littleton (“Littleton”), and states:

# INTRODUCTION

1. Plaintiff worked as a Firefighter for Littleton from April 4, 2016 until November 9, 2016, when he was unceremoniously terminated due to a perceived disability. By all accounts, the Plaintiff excelled when he first began employment with Littleton—successfully completing the rigorous 14-week training Academy, exhibiting an outstanding work ethic, and performing at a very high level. But then something changed.
2. On August 9, 2016, less than a month after graduating from Academy, the Plaintiff suffered a *grand mal* seizure while off-duty. Plaintiff’s treating physician, a Board-certified

Neurologist, examined him and expressed no concerns regarding the Plaintiff’s ability to continue work. Plaintiff was immediately cleared to return to work.

1. On August 10, 2016, the day after his seizure, the Plaintiff reported the incident to his direct supervisor. Unfortunately, the Plaintiff’s statement, given in the spirit of transparency, was met with a campaign of discrimination. Over the ensuing months, supervising officers at Littleton denied the Plaintiff the opportunity to participate in training exercises, imposed “modified duty” in the absence of any medical necessity, openly mocked and humiliated the Plaintiff in front of co-workers, broadcasted the Plaintiff’s private health information without permission, and actively coordinated false and negative performance reviews as a pretext for terminating the Plaintiff from employment.
2. As a result of this illegal disability discrimination, the Plaintiff suffered loss of wages and benefits, loss of employment opportunities, humiliation, severe emotional distress, loss of enjoyment of life, and other significant injuries, damages, and losses.

# JURISDICTION AND VENUE

1. This action arises under certain federal laws, including the Americans with Disabilities Act (the “ADA”), 42 U.S.C. § 12101, *et seq*., as amended, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 701, *et seq*., over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.
2. Venue is proper within the District of Colorado pursuant to 28 U.S.C. § 1391(b) because all events giving rise to the claims in this matter occurred within the District of Colorado.
3. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) and properly exhausted all administrative prerequisites prior to filing this suit.

# PARTIES

1. At all times relevant to this action, Plaintiff Andrew Kruzic was an adult resident of the State of Colorado and citizen of the United States.
2. Littleton is a home rule municipality under Article XX, § 6 of the Colorado Constitution. Littleton Fire Rescue is a department within Littleton. At all times relevant to this matter, officers and personnel of Littleton Fire Rescue and Littleton were acting as agents of Littleton under color of state law.

# FACTUAL ALLEGATIONS

1. Plaintiff is a former college athlete, trained medical professional, and accomplished first responder.
2. Approximately ten years prior to the events underlying this matter, Plaintiff was diagnosed with epilepsy, a neurological disorder, for which he has received consistent treatment and monitoring.
3. At all times relevant to this action, Plaintiff, as a result of his epilepsy, was either a person with a disability, had a record of a disability, or was regarded as having a disability within the meaning of the ADA and Section 504. When active and untreated, epilepsy causes the Plaintiff to be substantially limited in one or more life activities, including, without limitation, causing *petit* and *grand mal* seizures and brief loss of consciousness.
4. However, the Plaintiff’s condition has proven highly receptive to appropriate medication and monitoring, such that Plaintiff was capable of performing all necessary job functions required of a medical professional and first responder, including those specific to working as a firefighter.
5. In fact, prior to the events described in this Complaint and Jury Demand, Plaintiff had suffered only one, single *grand mal* seizure in his entire life.
6. On April 4, 2016, Plaintiff was hired by Littleton as a Firefighter. Immediately upon hire, Plaintiff entered a rigorous 14-week training academy (the “Academy”). Plaintiff excelled during the Academy, graduating with an 89% grade point average, and appeared destined to excel in as a full-fledged Firefighter moving forward.
7. Following successful graduation from the Academy, Plaintiff commenced a series of rotations – called “sets” – which consisted of 48-hour shifts. According to normal policy and practice, each Firefighter could be assigned to various locations for their respective sets, but would ordinarily be placed at only one or two locations during the course of their 1-year probationary period, allowing the Firefighter to have a sense of stability and consistency while furthering their training.
8. During the first several sets, under various supervising officers, Plaintiff received very positive performance reviews, specifically noting:
   * “PFF Kruzic has been a pleasure to work with. He [] possesses a willingness to learn and works well with others on the crew. FF Kruzic receives constructive criticism well as evidenced by his coachin[g] on a crew drill day at LFTC (7/18/16).

. . .”

* + “We tested Andy on finding the equipment on the truck and was satisfactory with being on the Ladder for less than 48 hours. He will continue to learn where and how everything works with time Andy showed over the set that he is able to use his

background and skill set on calls and shall continue to improve through his probationary period. Andy is committed to continuing to learn, train and become a valuable member of LFR. Andy shall remain in good standing of employment with LFR.

1. Plaintiff also received direct positive feedback from direct supervisors, co-workers, and was performing at a high level by all accounts. At this point, the Plaintiff was in excellent

standing regarding his employment with Littleton and his future career prospects seemed very promising.

1. Then, on August 9, 2016, less than a month after his first post-Academy assignment, Plaintiff suffered a *grand mal* seizure while off-duty. This was Plaintiff’s first seizure in almost a decade.
2. Following the seizure, Plaintiff was briefly hospitalized for evaluation and monitoring before being released just a few short hours later.
3. Following his release from the hospital, Plaintiff contacted his regular treating physician, a Board-certified Neurologist, who also conducted an examination and interview of the Plaintiff. Following the examination and interview, Plaintiff was immediately cleared to continue working.
4. In the spirit of total transparency and honesty, and despite assurances from the Plaintiff’s treating physician and other medical providers that his medical condition would in no way affect his work, Plaintiff took the initiative to report his seizure activity to Captain Jason Berglund—his direct supervisor.
5. Plaintiff also immediately provided Littleton with written documentation from his Neurologist that he “has been cleared to return to unrestricted work with the exception of driving. Driving restriction will be cleared in the future.”
6. Plaintiff further informed Littleton that he was prepared to continue working without interruption, that his single break-through seizure was no cause for concern, and that there was absolutely no reason to modify Plaintiff’s work assignment or responsibilities.
7. Following this disclosure, Plaintiff was placed on “modified duty,” against his explicit requests and despite any medical necessity or other appropriate reason, for approximately one month.
8. During this modified duty, Plaintiff was not only relegated to a desk, but he was also expressly prohibited from engaging in any training exercises—voluntary or under the direction of Littleton employees—and denied the opportunity to continue participating during his probationary period.
9. On information and belief, certain management-level agents of Littleton informed the Plaintiff’s co-workers, including those within his cohort from the Academy, that the Plaintiff was unfit for duty because of his seizure disorder, the result of which was to further isolate the Plaintiff and damage his credibility and professional standing among his peers.
10. During the pendency of his modified duty, Plaintiff specifically requested permission for management-level employees of Littleton to participate in both employer- sponsored and voluntary training exercises and was consistently denied.
11. During this time, Plaintiff also requested supervising employees of Littleton to modify any existing policies, procedures, and/or actual practices of prohibiting Firefighters with disabilities from participating in employer-sponsored and voluntary training exercises and was consistently denied.
12. Following the nearly one-month stint of modified duty, Plaintiff was assigned to work under the supervision of Captain Dan Arkin, who humiliated the Plaintiff by literally broadcasting the Plaintiff’s personal health information to over a loud speaker to the Plaintiff’s co- workers, including his most recent seizure, in an attempt to isolate plaintiff and in a manner that was animated by malice and/or deliberate indifference to the Plaintiff’s right to privacy.
13. Captain Dan Arkin also authored periodic performance reviews, acting as Plaintiff’s direct supervisor, that did not accurately portray the Plaintiff’s performance in an effort to ultimately terminate Plaintiff from employment with Littleton on the basis of his real or perceived disability.
14. Captain Dan Arkin also held closed-door meeting with other senior-level employees of Littleton, during which he shared the Plaintiff’s private health information, in an effort to force Plaintiff off the force.
15. These meetings were part of a coordinated effort to terminate the Plaintiff based on myth, fear, and/or stereotype, including but not limited to unfounded concerns regarding safety, insurance, and liability.
16. During the course of his employment, Captain Dan Arkin and certain other management-level employees repeatedly and publicly made reference to the Plaintiff’s medical condition in such a manner as to humiliate and isolate the Plaintiff and to damage his professional reputation amongst his peers.
17. Plaintiff was actively discouraged by senior employees from reporting or otherwise seeking assistance regarding these discriminatory behaviors, stating specifically that Human Resources and other official channels of reporting would only result in further discrimination; indeed, official channels of reporting were effectively unavailable to the Plaintiff.

# CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF**

**Violations of the Americans with Disabilities Act, 42 U.S.C. § 12111, *et seq*.**

1. Plaintiff hereby incorporates by reference all paragraphs of this Complaint and Jury Demand as if fully set forth herein.
2. As a result of Plaintiff’s epilepsy, at all times relevant to this matter, Plaintiff was a qualified person with a disability, had a record of a disability, or was regarded as having a disability within the meaning of the ADA and Section 504. When active and untreated, epilepsy causes the Plaintiff to be substantially limited in one or more life activities, including, without limitation, causing *petit* and *grand mal* seizures and brief loss of consciousness.
3. Plaintiff was qualified for and capable of performing all essential functions of the position of Firefighter with Littleton, and/or Plaintiff was capable of performing all essential functions of the position of Firefighter with reasonable accommodations.
4. Littleton terminated Plaintiff because of his disability.
5. Littleton’s reasons for terminating Plaintiff are merely pretext for illegal disability discrimination; in fact, Plaintiff performed at a high level during his tenure with Littleton and absent the brazen disability discrimination for which the Plaintiff was targeted, his performance would have been reviewed very positively.
6. Littleton terminated the Plaintiff on the basis of his disability with malice and/or reckless indifference to Plaintiff’s federally-protected rights.
7. Littleton is liable for the acts and/or omissions of its agents and employees.
8. As a consequence of Littleton’s illegal conduct, Plaintiff has sustained significant economic, consequential and compensatory damages.
9. Littleton’s illegal conduct was the proximate cause of Plaintiff’s injuries, damages, and losses.

# SECOND CLAIM FOR RELIEF

**Violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq*.**

1. Plaintiff hereby incorporates all other paragraphs of this Complaint and Jury Demand as if set forth fully herein.
2. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), provides in pertinent part:

No otherwise qualified individual with a disability in the United States, as defined in Section 7(20), shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance . . . .

1. At all times relevant to this action, the Plaintiff was qualified individual with one or more disabilities, had a record of a disability, or was regarded as having a disability within the meaning of Section 504.
2. The Plaintiff was qualified to participate in the services, programs, activities, and benefits provided to other individuals employed by Littleton within the meaning of Section 504.
3. At all times relevant to this action, Littleton received and benefitted from direct federal financial assistance.
4. Littleton denied the Plaintiff access to programs, benefits, and services provided to other individuals employed by Littleton, and for which the Plaintiff was qualified, solely on the basis of his disability, record of disability, or perception of disability, thereby violating Section 504.
5. Despite the clear provisions of Section 504, Littleton persisted in actual practices which discriminated against the Plaintiff.
6. As a direct and proximate result of the acts, omissions, and violations alleged above, the Plaintiff suffered damages, injuries, emotional distress, impairment of quality of life, past and future economic losses, including loss of earnings and loss of earning capacity, reasonable and necessary medical and other expenses.

WHEREFORE, Plaintiff respectfully request that this Court enter judgment in his favor and against the Defendant, and award all relief as allowed by law and equity as appropriate, including, without limitation, the following:

1. Declaratory and injunctive relief;
2. Actual economic damages as established at trial;
3. Compensatory damages, including, without limitation, those for past and future pecuniary and non-pecuniary losses, pain and suffering, emotional distress, impairment of quality of life, reasonable and necessary medical and other expenses;
4. Pre- and post-judgment interest at the highest lawful rate;
5. Attorneys’ fees and costs associated with this action; and
6. Such further relief as justice requires.

# PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated this 11th day of October, 2018.

HIGHLANDS LAW FIRM LLC

*/s/ Zachary D. Warren*

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