

2013 MAR -4 AM 10:36

IN THE COURT OF CLAIMS OF OHIO

WILLIAM RUSSELL,
627 Mariner Village
Huron, OH 44839

Plaintiff,

vs.

CLEVELAND STATE UNIVERSITY,
2121 Euclid Avenue
Cleveland, Ohio 44115,

Defendant.

Case No.: 2013-00138

JUDGE

COMPLAINT

ORIGINAL

JURISDICTION & VENUE

1. Plaintiff William Russell (“Russell”) brings this action for damages against Defendant Cleveland State University (“CSU”) for violations of Ohio Rev. Code § 4112.02 (Age and Disability Discrimination) and Ohio Rev. Code § 4112.02(I) (Retaliation).
2. This action also asserts claims against CSU for violations of 29 U.S.C. § 2611 *et seq.* (Family and Medical Leave Act), 29 U.S.C. § 621 *et seq.*, (Age Discrimination in Employment Act, as amended) and will, upon amendment of the complaint at a later date, assert claims under 42 U.S.C. § 12101 *et seq.*, (Americans with Disabilities Act, as amended).¹
3. All administrative prerequisites have been met.
4. Russell is a citizen of the United States and a resident of Erie County, Ohio.
5. CSU is a state university located in Cuyahoga County, Ohio, and is an agent or instrumentality of the State of Ohio.

¹ The federal claim under 42 U.S.C. § 12101 *et seq.*, is hereby reserved and not asserted at this time but subject to addition by way of an amendment to this Complaint once the claim is perfected following the issuance of a “Notice Right-to-Sue” by the U.S. Equal Employment Opportunity Commission.

ON COMPUTER

6. This Court has original jurisdiction of the claims asserted herein pursuant to Ohio Rev. Code § 2743.02. This matter is timely filed, and jurisdiction and venue are proper.

PARTIES

7. Russell was employed by CSU, until his termination on or around September 5, 2012.
8. Russell is a “person,” “individual” and “employee” within the meaning of Ohio Rev. Code § 4112 *et seq*, 29 U.S.C. § 2611 *et seq*, and 29 U.S.C. § 621 *et seq*.
9. CSU is a “person,” an “individual” and an “employer” within the meaning of Ohio Rev. Code § 4112 *et seq*, 29 U.S.C. § 2611 *et seq*, and 29 U.S.C. § 621 *et seq*.

FIRST CAUSE OF ACTION

(Age Discrimination in Violation of O.R.C. § 4112 and ADEA)

10. Russell incorporates by reference the previous paragraphs as if fully re-alleged herein.
11. Russell is an individual who is over the age of 40 and was so at all times relevant to the activities which are the subject of this Complaint.
12. Russell was qualified for the position(s) in which he was employed by CSU and the positions for which he applied, was considered, or was eligible.
13. Russell successfully performed the duties and responsibilities of the position he held.
14. On or around September 5, 2012, CSU terminated Russell from his employment because of his age.
15. CSU refused to promote, reinstate, rehire, transfer or reassign Russell for available positions for which he was qualified.
16. CSU did not terminate Russell’s employment for any reasons related to his qualifications, work performance, behavior, or adherence to policy or procedure.
17. CSU replaced Russell with a substantially younger employee, and promoted and retained substantially younger employees in positions for which Russell was more qualified.

18. CSU has a pattern and practice of making employment decisions, such as hiring, promotion, transfer and termination decisions, on the basis of age.
19. CSU discriminated against Russell on the basis of age with respect to the terms, conditions and privileges of employment in violation of Ohio Rev. Code § 4112 *et seq.* and the ADEA, including by: making age-related comments; subjecting him and older employees to unfair scrutiny, pay and discipline; terminating his employment; retaining, hiring, and promoting substantially younger employees; and refusing to rehire, recall, transfer or reassign Russell to his former position or to other open positions for which he was qualified.
20. As a direct and proximate result of CSU's unlawful conduct, Russell suffered and will continue to suffer economic and non-economic damages, including but not limited to pain and suffering, the loss of salary and benefits, and other privileges and conditions of employment.
21. CSU's discriminatory actions against Russell in violation of the ADEA and Ohio Rev. Code §§ 4112.02(A) and (N) were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable for past and future economic and non-economic compensatory pursuant to Ohio Rev. Code § 4112.99 and 29 U.S.C. § 626(b), liquidated damages,² attorneys' fees and costs,³ and any other legal or equitable relief that this Court deems appropriate.

² 29 U.S.C. § 626(b).

³ 29 U.S.C. § 626(b), *incorporating* 29 U.S.C. § 216(b) ("The court in such action **shall**, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.") (emphasis added). Additionally, notwithstanding *Drain v. Kosydar*, Franklin App. 79AP-78, 1979 Ohio App. LEXIS 10929 (10th Dist., July 31, 1979); a defendant may be liable for the plaintiff's attorney's fees and costs regardless of statutory authority upon a finding of bad-faith, malicious purpose, or wanton and reckless behavior. See *Sturm v. Sturm*, 63 Ohio St. 3d 671, 675 (1992), *citing Sorin v. Board of Education*, 46 Ohio St. 2d 177, 183 (1976).

SECOND CAUSE OF ACTION
(Disability Discrimination in Violation of O.R.C. § 4112)

22. Russell incorporates by reference the previous paragraphs as if fully re-alleged herein.
23. At all times relevant to this complaint, Russell had a record of and suffered from physical impairments which substantially limited one or more life activities, including having a heart attack and having shoulder problems which required major surgery.
24. Russell is a qualified individual with a disability within the meaning of Chapter 4112 of the Ohio Revised Code.
25. CSU was aware that Russell had a record of and suffered from physical impairments which substantially limited one or more life activities, and that he required medical treatment.
26. On or around September 5, 2012, CSU refused to accommodate Russell and terminated him from his employment because he had or was regarded as having a disability.
27. CSU replaced Russell with an employee who did not have and were not regarded as having a disability, and promoted and retained non-disabled employees into positions for which Russell was more qualified.
28. CSU has a pattern and practice of making employment decisions, such as hiring, promotion, transfer and termination decisions, on the basis of disability.
29. CSU discriminated against Russell on the basis of disability with respect to the terms, conditions and privileges of employment in violation of Ohio Rev. Code § 4112 *et seq.*, including by: making disability-related comments; subjecting him to unfair scrutiny, pay and discipline; terminating his employment; retaining, hiring, and promoting non-disabled employees; and refusing to rehire, recall, transfer or reassign Russell to his former position or to other open positions for which he was qualified.

30. As a direct and proximate result of CSU's unlawful conduct, Russell suffered and will continue to suffer economic and non-economic damages, including but not limited to pain and suffering, the loss of salary and benefits, and other privileges and conditions of employment.
31. CSU's discriminatory actions against Russell in violation of Ohio Rev. Code §§ 4112.02(A) were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable for past and future economic and non-economic compensatory pursuant to Ohio Rev. Code § 4112.99, as well as attorneys' fees,⁴ costs and any other legal or equitable relief that this Court deems appropriate.

THIRD CAUSE OF ACTION
(Retaliation in Violation of O.R.C. § 4112 and ADEA)

32. Russell incorporates by reference the previous paragraphs as if fully re-alleged herein.
33. Russell engaged in protected activity by complaining of discrimination and harassment on the basis of age and disability to CSU.
34. CSU failed to take prompt, remedial, and appropriate steps to address the unlawful discriminatory treatment of Russell and older workers.
35. CSU retaliated against Russell because he opposed discriminatory conduct in violation of § 4112 *et seq.* of the Ohio Revised Code, including by: unfairly changing the terms, conditions and privileges of employment; subjecting to unfair scrutiny, pay and discipline; denying him promotional opportunities given to candidates who did not engage in protected activity; terminating his employment; retaining, hiring, and promoting employees who did not engage in protected activity; and refusing to rehire,

⁴ See Footnote 1 and 3, *supra*; see also 42 U.S.C. § 1981a.

recall, transfer or reassign Russell to his former position or to other open positions for which he was qualified.

36. As a direct and proximate result of CSU's unlawful conduct, Russell suffered and will continue to suffer economic and non-economic damages, including but not limited to pain and suffering, the loss of salary and benefits, and other privileges and conditions of employment.
37. CSU's discriminatory actions against Russell in violation of Ohio Rev. Code §§ 4112.02(I) and 29 U.S.C. § 623 were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable for past and future economic and non-economic compensatory pursuant to Ohio Rev. Code § 4112.99 and 29 U.S.C. § 626(b), liquidated damages,⁵ attorneys' fees and costs,⁶ and any other legal or equitable relief that this Court deems appropriate.

FOURTH CAUSE OF ACTION
(FMLA Interference and Retaliation)

38. Russell incorporates by reference the previous paragraphs as if fully re-alleged herein.
39. CSU was aware of Russell's serious health conditions and the medical necessity of Russell taking leave for treatment.
40. Russell was entitled to a period of leave under the FMLA, 29 U.S.C. §§ 2611, *et seq.*
41. Russell provided CSU with such notice of his need for leave as was practicable under the circumstances.
42. CSU terminated Russell's employment because he took or attempted to take a period of leave to which he was entitled under the FMLA, 29 U.S.C. §§ 2611, *et seq.*

⁵ 29 U.S.C. § 626(b).

⁶ See Footnote 3, *supra*.

43. CSU refused to consider Russell for reinstatement to her former position because took or attempted to take a period of leave to which he was entitled under the FMLA, 29 U.S.C. §§ 2611, *et seq.*
44. CSU interfered with and retaliated against Russell because he sought to exercise or attempted to exercise his FMLA rights, in violation of 29 U.S.C. § 2695; including by: unfairly changing the terms, conditions and privileges of employment; subjecting him to unfair scrutiny, pay and discipline; terminating his employment; retaining, hiring, and promoting employees who did not engage in protected activity; and refusing to rehire, recall, transfer or reassign Russell to his former position or to other open positions for which he was qualified.
45. CSU failed to take prompt, remedial, and appropriate steps to address the unlawful discrimination, interference, and retaliation.
46. As a direct and proximate result of CSU's unlawful conduct, Russell suffered and will continue to suffer economic and non-economic damages, including but not limited to pain and suffering, the loss of salary and benefits, and other privileges and conditions of employment.
47. CSU's discriminatory actions against Russell in violation of FMLA, 29 U.S.C. § 2615 *et seq.*, were willful, in bad faith, conducted with malicious purpose, or conducted in a wanton or reckless manner. CSU is liable under 29 U.S.C. § 2617 for interest on the amount of losses described in the preceding Paragraph, liquidated damages, all fees and costs including but not limited to reasonable attorney's fees,⁷ expert fees, and costs, and

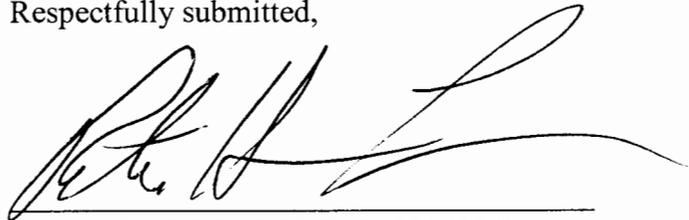
⁷ 29 U.S.C. § 2617(a)(3) ("The court in such an action **shall**, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.") (emphasis added).

any equitable relief that this Court deems appropriate including but not limited to front pay, employment, reinstatement, and promotion.

CONCLUSION

Plaintiff William Russell seeks an amount in excess of \$25,000 to fully, fairly and justly compensate him for injury, damage and loss, and respectfully prays that this Court enter judgment in his favor and award him past and future economic and non-economic compensatory damages, fringe benefits, consequential damages, incidental damages, liquidated damages, interest, attorneys' fees, all fees and costs, and any additional equitable relief that it deems appropriate, including but not limited to back pay, front pay, employment, reinstatement and promotion.

Respectfully submitted,



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THORMAN HARDIN-LEVINE

March 1, 2013

Via Overnight UPS Delivery

The Ohio Judicial Center
Court of Claims of Ohio
65 South Front Street
Third Floor
Columbus, OH 43215

FILED
COURT OF CLAIMS
OF OHIO
2013 MAR -4 AM 10:35

Re: *Russell v. Cleveland State University*

2013-00138

Dear Sir/Madam:

I enclose the original and three copies of a Complaint in reference to the above-captioned matter. The first copy is for service on Defendant Cleveland State University, the second copy is for the Attorney General and the third copy we would like to have time-stamped. I have also enclosed a check for \$25.00 for the filing fee. Please file the Complaint in your usual manner and return the time-stamped copy and receipt to me in the self-addressed postage-prepaid envelope.

Thank you for your attention to this matter. Please do not hesitate to call me should you have any questions.

Sincerely,

Lesa Liston
Paralegal
lleston@thllaw.com

Enclosures

ON COMPUTER