

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

SCOTT MCGOWAN,)
Complainant,)
v.) Docket Number:
TOWN OF WILLIAMSTOWN,)
Respondent.)

COMPLAINT NARRATIVE

Introduction

1. Complainant Scott McGowan (“McGowan”), a Sergeant in the Williamstown Police Department (“Department”) and a longtime member of that force, exercised his lawful rights to file a complaint of discrimination and retaliation with the Massachusetts Commission Against Discrimination (MCAD) and Equal Employment Opportunity Commission (EEOC) in November 2019, and a lawsuit (“Lawsuit”) in United States District Court against Respondent Town of Williamstown (“Williamstown” or “Town”) in August 2020, asserting claims under G.L. c. 151B, Title VII, and the Americans with Disabilities Act, among others. The Lawsuit, and the public reaction to the information contained in the lawsuit, revealed information that was unflattering to some Town officials and members of the Department.

2. In the wake of the Lawsuit, both former Police Chief Kyle Johnson and former Town Manager Jason Hoch announced their departure. In the hope that new leadership within the Town would conduct an appropriate investigation and pave the way for a working and policing environment free from Johnson’s racially and sexually discriminatory and hostile actions, McGowan voluntarily dismissed the Lawsuit without prejudice on December 15, 2020.

3. However, instead of healing and reconciliation, McGowan has been subjected to retaliation by the Town for his actions to expose and address discrimination, retaliation, and other wrongdoing within the Department. After receiving a complaint from other officers filled with bogus and outlandish allegations purportedly saved up over the past 20 years, the Town placed McGowan on administrative leave for months, eventually conducted a biased investigation, and now proposes to terminate McGowan’s employment. This contrasts sharply with the Town’s approach to similar and worse misconduct allegations against Johnson and other officers, which resulted in no period of administrative leave and little or no discipline. McGowan now asks this Commission to order the Town to cease its retaliation against McGowan. Williamstown must face its real

issues with discrimination and retaliation, and not just respond by “shooting the messenger.”

Background

4. On November 12, 2019, McGowan filed a Charge of Discrimination with the MCAD and EEOC, Docket Nos. 19SEM03213 and 16C-2020-00291, which is incorporated herein by reference. The Charge asserted violations of G.L. c. 151B, Title VII, and the ADA.

5. On August 12, 2020, McGowan filed a Complaint in United States District Court for the District of Massachusetts, Docket No. 20-CV-30131-KAR, which is incorporated herein by reference. The Complaint pled claims for violations of G.L. c. 151B, Title VII, the ADA, and the Rehabilitation Act.

6. On December 15, 2020, McGowan voluntarily dismissed the Lawsuit without prejudice.

7. Although McGowan was hopeful that he could work within the Town and the Department to move forward from past conflicts, text messages exchanged between a member of the Williamstown Select Board and another Town official on or about the day of the dismissal of the Lawsuit shows that they expected McGowan to sue the Town again. The Town official stated, “This is just a window before he sues again I’m sure,” and the Select Board member responded, “I have trouble imagining what he could sue about next, but I guess that’s what makes him him and me me.”

Williamstown Officers Make a False and Retaliatory Complaint Against McGowan

8. On or about March 1, 2021, one or more officers in the Department submitted a complaint to the Town, purportedly on behalf of all full-time officers in the Department, containing false and ridiculous allegations of misconduct by McGowan over the course of his nearly 20-year tenure at the Department.

9. The timing of this complaint was not a coincidence. Approximately a week before, McGowan had learned that multiple officers had misused the state Criminal Justice Information Service (CJIS) to access personal information of members of the public, particularly including journalists and public critics of the Department. McGowan opposed this activity and caused it to be brought to the attention of Acting Chief Ziembra and District Attorney Harrington. This misconduct resulted in investigations by Ziembra and state authorities, and led to discipline against multiple officers only days before the complaint was submitted. On information and belief, at least one Department employee observed McGowan looking for CJIS manuals and policies just before the CJIS abuse became public, and other officers soon came to understand that McGowan was responsible for the discovery of the issue.

10. The complaint repeatedly mentions the Lawsuit and criticizes statements McGowan made in the Lawsuit. Among the allegations of supposed misconduct were

that McGowan reported another officer for “trying to intimidate him because he filed a lawsuit.” McGowan’s report of retaliation was protected under G.L. c. 151B.

11. The complaint included allegations that McGowan had stayed at home on his shifts for the previous three years and bragged about not conducting any motor vehicle stops. This was demonstrably false, based on the statistics showing McGowan’s vehicle stops and other activity in line with other members of the Department, on top of his designated role as the Department’s investigator for sexual offenses and other serious crimes. In fact, the Select Board and/or Town Manager had asked Acting Chief Ziemba about a similar allegation only two months earlier, and Ziemba concluded that it was unfounded.

12. The allegation that McGowan did no work for the Department is also inconsistent with other allegations in the complaint that McGowan has created a hostile environment in the police station by raising his voice and engaging in what the complainants termed “bizarre” behavior by trying to discontinue his use of his personal cell phone for Department business, and then changing his mind two months later and resuming use of his cell phone.

13. The complaint additionally indicates that the officers are motivated in part by disability discrimination against McGowan based on their belief, caused by the Town’s prior wrongful and discriminatory acts, that McGowan suffers from a mental health condition. The complaint states, “It is common knowledge that the town had McGowan placed out of duty until a mental health evaluation was done. This has created a hostile and unsafe work place in our minds.” The mental health evaluation referred to, which took place in 2019, was the basis of some of McGowan’s claims in the Lawsuit because the Town insisted on it even after McGowan’s physician declared it medically unnecessary and refused to provide a referral. Once the evaluation took place, it quickly cleared McGowan for duty.

14. In response to this complaint, the Town immediately placed McGowan on paid administrative leave, which has continued to this day. This was a striking departure from past practice because Johnson and others who did not raise issues of discrimination or retaliation had not been placed on administrative leave when they were accused of sexual assault, race and sex discrimination, or violation of other laws and rules. The Town initially gave McGowan no information about why he was being placed on leave, in violation of Department internal affairs regulations, even as the complaint was leaked to the press and multiple current and former officers gave interviews with the press to make false and defamatory allegations against McGowan. Only two months later did the Town make the complaint available to McGowan.

15. On information and belief, one or more Town employees unlawfully leaked the complaint to the media; a reporter for the *Berkshire Eagle* had a copy of it long before McGowan did. On information and belief, one or more officers spoke to the media in violation of Department rules and regulations, as the *Eagle* identified multiple unnamed officers as quoted sources for unfavorable news articles about McGowan. In April 2021, Acting Chief Ziemba conducted an internal affairs investigation into who was responsible for the leak and providing information to the media; however, all officers

denied their involvement. At least some of these denials were false, indicating that some of the full-time officers sought to damage McGowan's reputation and were willing to break the rules to do so and lie about their actions to the police chief. This should call both their motivations and credibility into question.

16. The Town, which had already retained outside investigators to look into some of McGowan's allegations in his prior MCAD charge and Lawsuit, tasked those investigators with looking into the officers' complaint as well. That investigation contained multiple procedural irregularities and displayed the investigators' bias against McGowan. For instance, one of the investigators criticized McGowan for "excessive" use of sick time for a specific period before even asking why McGowan had used sick leave; McGowan had a legitimate reason for his use of sick time, and the investigator subsequently apologized. The investigators purported to be operating under the Department's internal affairs regulations with regard to at least some allegations against McGowan, but did not provide him with the rights to which he would have been entitled under internal affairs procedures. And although the investigators explicitly stated ahead of time that they would allow McGowan to confer privately with counsel during his interview, when he asked to do so, they denied his request.

17. On October 6, 2021, McGowan first received notice of disciplinary charges against him, for which the Town had scheduled a hearing "to consider whether or not [McGowan] should be terminated from [his] position as a police officer with the rank of sergeant with the Williamstown Police Department...."

18. The actions of the Town in placing McGowan on extended administrative leave and beginning the civil service process to terminate his employment are material adverse actions affecting the terms and conditions of his employment. *See Fournier v. Commonwealth*, No. 20-2134, slip op. at 8 (1st Cir. Sept. 15, 2021) (under Title VII and Massachusetts Whistleblower Act, "a juror could reasonably conclude that [plaintiff] indeed suffered an adverse employment action when [supervisor] threatened [plaintiff] with termination, demotion, and/or transfer, even though she was not officially terminated... on that day").

19. In addition, the Town has violated civil service law and insisted on an unfair and biased disciplinary process in order to seek McGowan's termination:

- a. Although civil service law requires advance notice of "the specific reason or reasons for" proposed discipline, and a "full hearing" on those issues, G.L. c. 31, § 41, the Town has refused to provide the names of possible witnesses or alleged victims of what the Town alleges are violations of the Department's regulations on professionalism and courtesy, among others. McGowan cannot meaningfully respond to allegations that he was "hostile" towards others in the Department without knowing specifically what he is alleged to have done, or to whom.
- b. The Town knew at least as early as September 10, 2021, that it was going to convene a hearing seeking McGowan's termination, but failed

to provide McGowan formal notice of the allegations against him for over a month, in which McGowan could have investigated and prepared his defense.

- c. The Town received reports from its investigators in early August 2021, but did not provide them to McGowan until October 15, 2021, just ahead of a disciplinary hearing scheduled for October 21, 2021. On information and belief, this delay was intended to deprive McGowan of the ability to present a full and fair defense at the hearing.
- d. Once it did finally provide them, the Town provided McGowan with only heavily redacted versions of its investigative reports, and has refused to disclose the documents and evidence uncovered during its investigation.
- e. Without any legal basis, the Town sought to force McGowan to sign a confidentiality agreement in order to find out what the evidence against him was, despite the fact that McGowan exercised his right to make his disciplinary public. However, the Town never provided McGowan with a draft confidentiality agreement, so he never had a chance to agree or disagree with its proposed terms.

20. These violations of civil service law and other applicable law were also adverse employment acts.

21. The Town was aware that McGowan had engaged in protected activity under G.L. c. 151B, Title VII, and the ADA, including but not limited to filing complaints with the MCAD and the EEOC and filing a Lawsuit against the Town, and reporting retaliation to the Town.

22. On information and belief, the Town engaged in these adverse actions, and others, because of McGowan's protected activity.

23. Additionally and in the alternative, on information and belief, the officers who submitted the complaint against McGowan in March 2021 did so for discriminatory and retaliatory reasons, and the Town engaged in adverse actions based on their discriminatory and retaliatory animus.

Claims

Respondent has unlawfully retaliated against McGowan, and continues to do so, based on his protected activity in filing a charge of discrimination with the MCAD and EEOC, filing the Lawsuit in federal court, and other activities protected from retaliation or interference under G.L. c. 151B, §§ 4(4) and 4(4A), and other state and federal laws. These actions may also constitute discrimination on the basis of perceived disability under G.L. c. 151B and the ADA.

Respondent has also taken adverse employment action against McGowan because of his opposition to officers' unlawful use of CJIS information, in violation of the Massachusetts Whistleblower Act, G.L. c. 149, § 185.

Damages

As a result of Respondents' unlawful acts, McGowan has suffered and continues to suffer lost wages and benefits, reduced future career opportunities, reputational harm, and other damages.

[signature page follows]

I swear or affirm under the pains and penalties of perjury that I have read this Complaint and that the allegations contained therein are true to the best of my knowledge.



Scott McGowan

10/19/21

Date