

Agent Fired for Disability A Victim of NYPD Bias

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By MARK TOOR | [0 comments](#)

The NYPD violated the Americans with Disabilities Act by failing to properly investigate the case of a Probationary Traffic Enforcement Agent whom it fired because of her disabilities, the U.S. Equal Employment Opportunity Commission has ruled.

The EEOC said the department was incorrect when it determined that Benilda Midence could not perform the duties required by the job.

"It was a shock," Ms. Midence said of the firing during an Aug. 25 interview, explaining she had no warning. "They were having an office party and at the end of the office party, they gave me the papers."

Possible Next Step: Lawsuit

The city rejected an EEOC settlement offer on Aug. 17 under which Ms. Midence would have been rehired and granted back pay, said her attorney, Stuart Lichten. The agency then referred the case to the U.S. Department of Justice, which will determine whether the Federal Government will sue, whether the fired agent can sue, or whether no further action should be taken, Mr. Lichten said.

Ms. Midence began working for the Police Department on Aug. 3, 2009 and three months later was diagnosed with lupus and Raynaud's phenomenon. On Nov. 20, 2009, she requested a temporary reasonable accommodation as required under the ADA in order to get her symptoms under control, according to the EEOC determination in the case.

Raynaud's phenomenon causes the blood vessels that supply the skin to narrow, limiting blood circulation and causing fingers, toes, ears and nose to go numb in cold weather or under stress. Treatments include pharmaceuticals, lifestyle changes and, in severe cases, surgery.

The ailment often appears in conjunction with lupus, a defect of the immune system that causes it to produce antibodies that attack and destroy healthy as well as diseased tissue. This can cause inflammation, pain and damage to organs and other parts of the body. Lupus is treated with a variety of drugs.

Both diseases are chronic and, without proper medical care, can be debilitating.

Ms. Midence asked to work indoors and was allowed to do so, Mr. Lichten said. She was examined by an NYPD physician on Dec. 4, 2009. The doctor extended her indoor assignment until March 2010, she said. She was fired Feb. 3.

'They Didn't Give Me a Chance'

At that point, she said, she had been stabilized by medication and no longer needed the reasonable accommodation. "They just didn't give me the chance," she said.

The NYPD had examined her medical records and determined that she "was unable to fulfill the essential function of her job due to her disabilities," the EEOC determination said. But, the panel found, the department did not request information from Ms. Midence, and did not even tell her about the review.

Ms. Midence's physician told the EEOC that with appropriate treatment "she will be able to work indoors or

outdoors, with or without reasonable accommodation, all year round, throughout any season."

The EEOC concluded that the NYPD "discriminated against [Ms. Midence] because of her disabilities, and failed to engage in an interactive process with [her] in order to make an informed and nondiscriminatory determination regarding her medical condition and therefore never learned that she was now fully able to fulfill the essential functions of her job."

Turned Down 2 Years' Pay

The department offered Ms. Midence two years of pay if she would promise not to challenge the termination, she said, but she turned it down. She remains unemployed, and her unemployment insurance is about to run out. She said she is having trouble finding another job: "It's hard to explain why you got fired by the Police Department." Before the city hired her she was a sales associate at Payless Shoes.

James Huntley, president of Communications Workers of America Local 1182, which represents Traffic Enforcement Agents, said the NYPD should have requested documentation from a physician about the extent of Ms. Midence's disability. Her doctor said she could work a standard tour of duty, he said.

Ms. Midence said the Police Department called her a few days after the decision and suggested she reapply, retake the test and wait to be rehired, although the department would not guarantee her a job. She waited about a year to be hired the first time, she said.

NYPD: 'Acted Reasonably'

NYPD spokesman Paul Browne issued a statement in response to the EEOC decision: "The New York City Police Department acted reasonably and lawfully with regard to Ms. Midence's employment. She could not perform the essential functions of the Traffic Enforcement Agent position. Accordingly, the NYPD disagrees with the U.S. EEOC findings and does not believe the matter warranted forwarding to the Department of Justice."

Government publications about the ADA explain the decision. "A Guide for People with Disabilities Seeking Employment," published by the Justice Department and available on its website, says: "Once you have made a request for a reasonable accommodation, the employer should discuss available options with you. . . You and the employer should work together to determine an appropriate accommodation."

An EEOC pamphlet titled "The ADA: Your Responsibilities as an Employer" states: "It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of your business. Undue hardship means that the accommodation would require significant difficulty or expense."