BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR HUMAN RIGHTS, MARTI BUSCAGLIA, EXECUTIVE DIRECTOR, ex rel. MICHAEL CHIESA, Complainant,


CITY OF KODIAK, KODIAK POLICE DEPT., Respondent.

ACCUSATION

Marti Buscaglia, Executive Director of the Alaska State Commission for Human Rights, ex rel. Michael Chiesa, hereby alleges the following against Respondent City of Kodiak, Kodiak Police Department:

1. Michael Chiesa was hired as a police officer by the City of Kodiak in January 2011 and was promoted to the position of Sergeant in August 2013.

2. Throughout his employment with the City of Kodiak, Mr. Chiesa was rated as primarily outstanding or above average on his performance evaluations.

3. On September 18, 2014, Mr. Chiesa injured both of his knees and a shoulder while on duty when he fell through the flooring of a porch at a house where he was sent to answer a call.
4. Mr. Chiesa's required two surgeries to repair his knees and shoulder and was unable to return to his position as a police officer until he had recovered from the surgeries.

5. Mr. Chiesa and his physician promptly established a medical plan, setting the date of the first surgery for October 14, 2014.

6. Because Mr. Chiesa's injuries occurred while he was working, the City of Kodiak's workers' compensation insurance covered the cost of Mr. Chiesa's medical care for the injuries.

7. The City of Kodiak's workers' compensation insurance carrier denied preauthorization of Mr. Chiesa's surgeries and required an Independent Medical Examination (IME) to determine if they would be authorized.

8. The IME was not scheduled to occur until December 2014. Consequently, Mr. Chiesa elected to pay for his first surgery with his personal medical insurance rather than wait for the IME.

9. Mr. Chiesa notified the City of Kodiak of his intent to pay for the first surgery with his own insurance so as not to cause unnecessary delay in his ability to return to work.

10. Mr. Chiesa attended the IME appointment in December 2014, after which the City of Kodiak's workers' compensation insurance carrier approved the medical plan that Mr. Chiesa's physician initially recommended.
11. After the workers’ compensation insurance carrier approved the medical plan that Mr. Chiesa’s physician initially recommended, Mr. Chiesa scheduled his second surgery for January 22, 2015.

12. On January 16, 2015, the City of Kodiak notified Mr. Chiesa that his leave entitlement under the Family Medical Leave Act would expire on January 21, 2015.

13. Mr. Chiesa wrote to the City of Kodiak requesting an extension of his leave, explaining his medical plan and reiterating his intent to return to full duty status.

14. Mr. Chiesa underwent his second surgery on January 22, 2015, and notified the City of Kodiak that he had a post-operative check-up appointment scheduled for February 28, 2015.

15. The City of Kodiak did not respond to Mr. Chiesa’s January 16, 2015 written request until February 12, 2015, when it advised Mr. Chiesa that his leave was extended to February 27, 2015, and that if he could not return to full duty status on February 28, 2015 his employment would be terminated.

16. On February 17, 2015, Mr. Chiesa sent a formal letter to the City of Kodiak’s city manager and chief of police, explaining in great detail his medical situation and requesting a light duty assignment or an extension of his leave to April 7, 2015, when he was expected to be fully recovered and able to resume his duties as a police officer.

17. The City of Kodiak did not respond to Mr. Chiesa’s February 17 letter.
18. On February 27, 2017, an attorney for the Disability Law Center of Alaska sent a letter to the City of Kodiak on behalf of Mr. Chiesa, requesting again that Mr. Chiesa be given a reasonable accommodation and asking that the City respond to Mr. Chiesa’s accommodation requests. The City of Kodiak did not respond to this letter.

19. On February 28, 2015, the City of Kodiak delivered a letter to Mr. Chiesa stating that his employment was terminated.

20. On March 3, 2015, the City of Kodiak placed a document titled “Noted Oral Warning—Counseling Statement” in Mr. Chiesa’s personnel file, which asserts that Mr. Chiesa took an “unreasonably long time period to complete two assigned investigations,” failed “to submit required documents” and mishandled evidence in several cases to which he was assigned in 2013 and 2014.

21. The City of Kodiak compiled much of the information contained in this document after Mr. Chiesa’s employment was terminated, and placed the document in Mr. Chiesa’s file without notifying or reviewing it with Mr. Chiesa.

22. Mr. Chiesa was unaware that the document had been placed in his personnel file until October 10, 2016, when he was told about by a Commission investigator.

FIRST CAUSE OF ACTION
TERMINATION BECAUSE OF DISABILITY
FAILURE TO PROVIDE REASONABLE ACCOMMODATION
A VIOLATION OF AS 18.80.220(a)

23. Paragraphs 1-22 above are realleged and incorporated herein.
24. During the time period relevant to the events described in this Accusation, Michael Chiesa was a person with a disability as that term is defined in AS 18.80.300.

25. Mr. Chiesa was employed by Respondent City of Kodiak.

26. Mr. Chiesa was qualified to perform all of the essential functions of his job with the City of Kodiak with an accommodation.

27. The City of Kodiak was aware that Mr. Chiesa required a reasonable accommodation to perform his job.

28. The City of Kodiak refused to provide Mr. Chiesa with a reasonable accommodation.

29. Instead of providing Mr. Chiesa with a reasonable accommodation that would have allowed him to perform his job, the City of Kodiak terminated Mr. Chiesa’s employment.

30. The City of Kodiak’s termination of Mr. Chiesa’s employment constitutes a violation of AS 18.80.220(a).

31. As a result of the City of Kodiak’s termination of Mr. Chiesa’s employment, Mr. Chiesa has suffered harm in the form of lost wages and remuneration and out-of-pocket expenses.

SECOND CAUSE OF ACTION
RETAIILATION FOR REQUESTING A REASONABLE ACCOMMODATION
A VIOLATION OF AS 18.80.220(a)(4)

32. Paragraphs 1-22 above are realleged and incorporated herein.
33. On February 17 and 27, 2015, and several times before these dates, Michael Chiesa requested that the City of Kodiak provide him with a reasonable accommodation for his disability.

34. The City of Kodiak did not respond to Mr. Chiesa's requests for reasonable accommodation.

35. On February 28, 2015, the City of Kodiak terminated Mr. Chiesa's employment.

36. On March 3, 2015, the City of Kodiak disciplined Mr. Chiesa without his knowledge and in his absence after his employment had been terminated.

37. The City of Kodiak's termination of Mr. Chiesa's employment, and its imposition of discipline on Mr. Chiesa, constitute violations of AS 18.80.220(a)(4).

PRAYER FOR RELIEF

Wherefore the Executive Director asks for the following relief:

1. That the Commission issue an order declaring that the City of Kodiak violated AS 18.80.220(a) by discriminating against Michael Chiesa because of disability by refusing to provide Mr. Chiesa with a reasonable accommodation and by terminating Mr. Chiesa's employment.

2. That the Commission issue an order declaring that the City of Kodiak violated AS 18.80.220(a)(4) by retaliating against Michael Chiesa because he requested a reasonable accommodation.

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3. That the Commission order the City of Kodiak to adopt and disseminate a policy of nondiscrimination under the Alaska Human Rights Law.

4. That the Commission order the City of Kodiak to obtain training of at least six hours in length for its managers and supervisors on the provisions of the Alaska Human Rights Law that prohibit discrimination in employment, with an emphasis on the prohibition against discrimination based on disability and the requirement to provide reasonable accommodations to persons with disabilities.

5. That the Commission order Respondent to eliminate from any of Mr. Chiesa’s personnel records all documents and entries relating to the facts and circumstances that led to Mr. Chiesa’s filing of the above-captioned charge and any of the related events occurring thereafter.

6. That the Commission order the City of Kodiak to refrain from penalizing Mr. Chiesa in any way in future considerations for employment and, if rehired, for transfers, promotions, or upgrading because Mr. Chiesa filed a complaint with the Commission.

7. That the Commission order the City of Kodiak to refrain from advising or informing any other employer or potential employer of Mr. Chiesa of the facts or circumstances involved in this case.

8. That the Commission order the City of Kodiak to pay back wages, including any lost benefits, and out-of-pocket expenses to Mr. Chiesa plus interest at the applicable legal rate, the exact amount of which will be proven at hearing.
9. That the Commission order the City of Kodiak to immediately reinstate Mr. Chiesa to the position of police officer from which he was terminated on February 27, 2015, with full benefits and seniority consistent with his original date of hire.

10. That the Commission order the City of Kodiak to pay front pay to Mr. Chiesa until he is fully reinstated.

Dated this 27th day of October 2017 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

Signature Redacted

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Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070