

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KATE LYNN BLATT,

Plaintiff,

v.

CABELA’S RETAIL, INC ,

Defendant.

CIVIL ACTION NO.: 14-4822

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT AND JURY DEMAND

I. PRELIMINARY STATEMENT:

1. This is an action for an award of damages, declaratory and injunctive relief, attorneys’ fees and other relief on behalf of Plaintiff, Kate Lynn Blatt (“Plaintiff”), a former employee of Defendant, Cabela’s Retail, Inc. (“Defendant”), who has been harmed by the Defendant’s discriminatory employment practices.

2. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e), et seq., as amended by the Civil Rights Act of 1991, at 42 U.S.C. §1981(a) (“Title VII”), and the Americans with Disabilities Act, 42 U.S.C. §12101, et seq. (“ADA”).

II. JURISDICTION AND VENUE:

3. The jurisdiction of this Court is invoked, and venue is proper in this district, pursuant to 28 U.S.C. §§1331 and 1391 as Plaintiff’s claims are substantively based on Title VII and the ADA.

4. All conditions precedent to the institution of this suit have been fulfilled and Plaintiff has satisfied all jurisdictional prerequisites to the maintenance of this action. On May 19, 2014, a Notice of Right to Sue was issued by the Equal Employment Opportunity Commission and this action has been filed within ninety (90) days of receipt of said notice.

III. PARTIES:

5. Plaintiff, Kate Lynn Blatt (“Plaintiff Blatt”), is a female and citizen of the Commonwealth of Pennsylvania, residing therein at 343 Nichols Street, Pottsville, Pennsylvania 17901.

6. Defendant, Cabela’s Retail, Inc. (“Defendant”), is a corporation duly organized and existing under the laws of the State of Nebraska, maintaining a place of business at 100 Cabela Drive, Hamburg, Pennsylvania 19526.

7. At all times relevant hereto, the Defendant was acting through its agents, servants, and employees, who were acting within the scope of their authority, course of their employment, and under the direct control of the Defendant.

8. At all times material herein, the Defendant is and has been a “person” and “employer” as defined under the ADA and Title VII and is accordingly subject to the provisions of each said act.

IV. STATEMENT OF CLAIMS:

9. At the time of her birth, Plaintiff Blatt's sex was designated male and her parents gave her the male name "James." However, Plaintiff Blatt's male gender designation assigned to her at birth does not conform to her female gender identity.

10. In or about October of 2005, Plaintiff Blatt was diagnosed with Gender Dysphoria, also known as Gender Identity Disorder, a medical condition in which a person's gender identity does not match his or her anatomical sex at birth. Said medical condition is a disability within the meaning of the ADA in that it substantially impairs one or more of Plaintiff Blatt's major life activities, including, but not limited to, interacting with others, reproducing, and social and occupational functioning.

11. As a result of her diagnosis, Plaintiff Blatt has taken steps to alter her physical appearance to conform to her female gender identity, including dressing in feminine attire, growing long hair, and engaging in hormone therapy in order to change her physical features. Additionally, Plaintiff Blatt has changed her name from "James" to "Kate Lynn" in order to conform to her correct gender.

12. Plaintiff Blatt was employed by the Defendant from on or about September 17, 2006 until on or about March 1, 2007, the date of her unlawful termination.

13. During the course of her employment with the Defendant, Plaintiff Blatt held the position of Seasonal Stocker, and at all times maintained an excellent job performance rating in said capacity.

14. By way of background, Plaintiff Blatt was excited to begin her employment with the Defendant, as she is an active participant in outdoor sports, and highly

knowledgeable about the same. Plaintiff Blatt felt that employment with Defendant would perfectly fit her skill set, knowledge, and interests.

15. At the commencement of her employment with Defendant, Plaintiff Blatt was required to attend a two (2) to three (3) day orientation. During said orientation, Plaintiff Blatt dressed in female attire and used the female restroom without issue.

16. Immediately subsequent to orientation, Plaintiff Blatt was required to order a uniform, and requested a female uniform as a reasonable accommodation for her disability, as other female employees wore female uniforms. After failing to receive a response from the Defendant regarding the uniform, Plaintiff Blatt ordered and began to wear a female uniform. Additionally, Plaintiff Blatt requested a nametag that displayed her name, "Kate Lynn," as an additional reasonable accommodation for her disability.

17. Shortly thereafter, Sandy Gates ("Gates"), Human Resources Director, denied Plaintiff Blatt's request for a reasonable accommodation in the form of nametag with her name "Kate Lynn."

18. Moreover, in retaliation for requesting said accommodation, Gates forced Plaintiff Blatt to wear a nametag stating that her name was "James," allegedly because employees were prohibited from wearing nametags depicting "fictitious" names. Gates further informed Plaintiff Blatt that she could obtain a nametag reading "Kate Lynn" when her name and gender marker were legally changed, further retaliating against Plaintiff Blatt for requesting an accommodation. Curiously, numerous non-transgendered, male employees wore nametags depicting nicknames, such as "Rocky,"

“Bob,” and “Jim.” Further, Gates required all employees of the Defendant to refer to Plaintiff Blatt as “James” or face termination.

19. Additionally, Gates further denied and retaliated against the Complainant for requesting a reasonable accommodation by prohibiting Plaintiff Blatt from using the female restroom as she previously had until she provided Gates with documentation that her gender marker had been legally changed from male to female. Accordingly, Plaintiff Blatt was required to use the male restroom, a situation that was extremely uncomfortable for her, as she identified as female. Plaintiff Blatt reluctantly agreed, although other female employees were at all times permitted to use the female restroom.

20. In or about early October of 2006, Terry (LNU), Third Shift Manager, abruptly called Plaintiff Blatt into a meeting and accused her of failing to “pull her weight.” Terry further advised Plaintiff Blatt to consider leaving her employment with Defendant. Curiously, at all relevant times, Plaintiff Blatt’s job performance was excellent, and Terry’s critiques were completely unjustified and discriminatory.

21. Immediately thereafter, numerous employees began subjecting Plaintiff Blatt to constant degrading and discriminatory comments on the basis of her sex. By way of example, Plaintiff Blatt was commonly referred to as “he/she,” “ladyboy,” “fag,” “sinner,” and “freak.” Egregiously, Plaintiff Blatt was often additionally subjected to offensive questions, such as “Do you have a penis?”

22. In response, Plaintiff Blatt continually reported the discriminatory conduct, both verbally and in writing, to Lou Bowers (“Bowers”), Supervisor, who upon information and belief reported her complaints to the Defendant’s upper level

management, and to Gates. However, Defendant failed to conduct an investigation or take steps to cause said discriminatory conduct to cease.

23. Additionally, the Defendant treated Plaintiff Blatt significantly differently than other similarly-situated, non-transgendered employees. By way of example, the Defendant required Plaintiff Blatt to remain secluded from other employees in one area of the store. Other Stockers stocked products throughout Defendant's store, while Plaintiff Blatt was required to stock only in Defendant's "Gifts Department." Further, while other Stockers worked in teams, Plaintiff Blatt was consistently required to work by herself. This seclusion Plaintiff Blatt experienced humiliated her and made her feel like a lesser employee.

24. Further, Plaintiff Blatt was required to work on the third shift at all times. It is Plaintiff Blatt's belief that said requirement was enacted in order to keep her out of the sight of Defendant's customers.

25. In or about November of 2006 and continuing throughout the course of her employment, Plaintiff Blatt applied for several promotions with Defendant for which she was well qualified. Although Plaintiff Blatt's job performance was exemplary, Defendant refused to consider her for said positions. Significantly, Bowers informed Plaintiff Blatt that Defendant's corporate office had explicitly instructed him not to promote Plaintiff Blatt, although he felt that she was well-qualified for the positions.

26. After applying for one of the aforesaid promotions, specifically the position of Maintenance Technician, Plaintiff Blatt overheard the current Maintenance Manager state to Bowers, "Can you believe this cross-dressing gay fruit wants a job in my

department? The confused sicko can't figure out that he is gay and admit it. I won't interview him under any circumstances." Although Plaintiff Blatt reported said discriminatory comment to Gates, Defendant failed to take corrective action.

27. On or about January 29, 2007, an Order was entered in the Schuylkill County Court of Common Pleas to both legally change Plaintiff Blatt's name from "James Benjamin Blatt" to "Kate Lynn Blatt," and change her gender designation from male to female.

28. Immediately thereafter, Plaintiff Blatt provided Gates with a copy of documentation of the legal change of both her name and gender designation, and requested the use of the female restroom as reasonable accommodation, as well as a new nametag depicting her legal name. In response, Gates informed Plaintiff Blatt that she would need to send the information to Defendant's corporate office and receive a response before Plaintiff Blatt could start being treated as a woman. Said response came as an unwelcome surprise to Plaintiff Blatt, as Gates had previously assured her that she would be able to change her nametag and use the female restroom as soon as her gender designation was legally changed.

29. Shortly thereafter, Gates blatantly denied Plaintiff Blatt's request to use the female restroom as reasonable accommodation, egregiously noting that because Plaintiff Blatt had not taken any time off from work, she could not have undergone sex reassignment surgery. Accordingly, Gates expressed her completely unfounded concern that because Plaintiff Blatt was not anatomically female, she could potentially rape or

sexually assault a person in the female restroom. Plaintiff Blatt was extremely offended and humiliated by Gates's comments and beliefs.

30. Initially, in retaliation for requesting a reasonable accommodation in the form of a gender-neutral restroom, Bowers informed Plaintiff Blatt that the prevailing idea presented during a staff meeting was to require Plaintiff Blatt to utilize the restroom at a Dunkin Donuts establishment across the street from Respondent's store. Plaintiff Blatt adamantly refused, as said requirement would force her to leave Defendant's store every time she needed to use the restroom, and would subject her to humiliation based on the Defendant's belief that she did not belong in the female restroom. Further, no other non-transgendered, female employees were required to utilize the Dunkin Donuts restroom.

31. As an alternative "solution," Gates reluctantly permitted Plaintiff Blatt to use the unisex "family" restroom in the front of Defendant's store. However, said restroom was located approximately 400 to 500 feet away from Plaintiff Blatt's work area, which was significantly further than the employee restrooms, and was much less clean than the employee restrooms. Further, walking to the family restroom caused Plaintiff Blatt severe embarrassment and feelings of ostracization.

32. Although Defendant did eventually issue Plaintiff Blatt a "Kate Lynn" nametag, Plaintiff Blatt was forced to repeatedly complain to Gates in an effort to attain said nametag. Defendant issued Plaintiff Blatt three (3) nametags with an incorrect name before providing her with a nametag reading "Kate Lynn," which is her legal name, in an attempt to embarrass and degrade her.

33. On or about February 26, 2007, Plaintiff Blatt was involved in an altercation with Mercedes Ramirez (“Ramirez”), Maintenance Technician. During said altercation, Plaintiff Blatt amicably approached Ramirez and asked her a question regarding her cleaning schedule. Ramirez responded by berating Plaintiff Blatt for causing a change in the restroom cleaning schedule, and verbally attacked her by yelling various offensive remarks and obscenities, including, but not limited to, “You’re not a real woman and you never will be!” Plaintiff Blatt was extremely upset and humiliated as a result of said altercation. In response, Plaintiff Blatt immediately reported the incident to Bowers.

34. On or about March 1, 2007, the Defendant abruptly terminated Plaintiff Blatt’s employment with the Respondent, allegedly for threatening Ramirez’s son during the aforementioned altercation. However, Plaintiff Blatt never made any threats toward Ramirez or her son, and in fact, was unaware that Ramirez even had a son.

35. Interestingly, Ramirez was neither terminated nor disciplined for her involvement in said altercation.

36. Plaintiff Blatt believes that Defendant’s articulated reason for her termination was pretextual and that her employment was actually terminated based on her sex, her actual and/or perceived disability and/or record of impairment, and in retaliation for opposing unlawful discrimination in the workplace and requesting a reasonable accommodation for her disability.

COUNT I
(Title VII - Sex Discrimination, Hostile Work Environment)
Plaintiff Blatt v. Defendant

37. Plaintiff Blatt incorporates by reference paragraphs 1 through 37 as though fully set forth at length herein.

38. The Defendant subjected Plaintiff Blatt to a hostile working environment and sex discrimination based on her gender and gender nonconformity, as detailed above.

39. The hostile work environment was severe and pervasive based on the nature of the harassment, including egregious statements made by numerous employees expressing animus towards Plaintiff Blatt's gender and gender nonconformity, the constant and unwavering harassment and derogatory comments towards Plaintiff Blatt based on her gender and gender nonconformity, and Defendant's blatant denial of Plaintiff Blatt's right to use the female restroom, as a female employee, because of her gender and gender nonconformity.

40. Plaintiff Blatt considered the aforementioned conduct to be discriminatory, and reported said discriminatory conduct, both verbally and in writing, to numerous management level employees of Defendant, including, but not limited to, Gates and Bowers.

41. Accordingly, Defendant was fully aware of the hostile work environment. However, despite Plaintiff Blatt's numerous complaints of discrimination, Defendant failed to conduct an investigation or otherwise cause the discriminatory conduct to cease.

42. Rather than cause the discriminatory conduct to cease, Defendant terminated Plaintiff Blatt's employment, allegedly due to an altercation with an

employee. However, Defendant's reason for Plaintiff Blatt's termination is pretextual, and her employment was actually terminated because of her gender and gender nonconformity.

43. Accordingly, Defendant's discriminatory acts have deprived Plaintiff Blatt of equal employment opportunities because of her sex in violation of Title VII.

44. As a direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of Title VII, Plaintiff Blatt sustained permanent and irreparable harm, resulting in the loss of her employment, which caused her to sustain a loss of earnings, plus the value of certain benefits, plus loss of future earning power, plus back pay, and front pay and interest due thereon.

45. As a further direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of Title VII, Plaintiff Blatt suffered severe emotional distress, embarrassment, humiliation, and loss of self-esteem.

COUNT II
(Title VII - Retaliation)
Plaintiff Blatt v. Defendant

46. Plaintiff Blatt incorporates by reference paragraphs 1 through 45 as though fully set forth at length herein.

47. The actions of Defendant, through its agents, servants, and employees, in subjecting Plaintiff Blatt to retaliation for opposing unlawful discrimination in the workplace, constituted a violation of Title VII.

48. Defendant terminated Plaintiff Blatt's employment in retaliation for registering numerous complaints of discrimination in the workplace.

49. The reason articulated for Plaintiff Blatt's termination is pretextual, and her employment was actually terminated in retaliation for opposing unlawful discrimination in the workplace.

50. As a direct result of the aforesaid unlawful retaliatory practices engaged in by the Defendant in violation of Title VII, Plaintiff Blatt sustained permanent and irreparable harm, resulting in the loss of her employment, which caused her to sustain a loss of earnings, plus the value of certain benefits, plus loss of future earning power, plus back pay, and front pay and interest due thereon.

51. As a further direct result of the aforesaid unlawful retaliatory employment practices engaged in by the Defendant in violation of Title VII, Plaintiff Blatt suffered severe emotional distress, embarrassment, humiliation, and loss of self-esteem.

COUNT III
(ADA – Disability Discrimination, Failure to Accommodate)
Plaintiff Blatt v. Defendant

52. Plaintiff Blatt incorporates by reference paragraphs 1 through 51 of her Complaint as though fully set forth herein.

53. The actions of the Defendant, through its agents, servants and employees, in discriminating against Plaintiff Blatt on the basis of her actual and/or perceived disabilities and/or record of impairment, and failing to provide reasonable accommodation for her disability, constituted violations of the ADA.

54. As a direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of the ADA, Plaintiff Blatt sustained permanent and irreparable harm, resulting in her termination from employment, which caused her to sustain a loss of earnings, plus the value of certain benefits, plus loss of future earning power, plus back pay, and front pay and interest due thereon.

55. As a further direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of the ADA, Plaintiff Blatt suffered severe emotional distress, embarrassment, humiliation, and loss of self-esteem.

COUNT IV
(ADA - Retaliation)
Plaintiff v. the Defendant

56. Plaintiff incorporates by reference paragraphs 1 through 55 of her Complaint as though fully set forth herein.

57. The actions of the Defendant, through its agents, servants and employees, in retaliating against Plaintiff Blatt for requesting a reasonable accommodation, and for opposing unlawful disability discrimination in the workplace, constituted a violation of the ADA.

58. As a direct result of the aforesaid unlawful retaliatory employment practices engaged in by the Defendant in violation of the ADA, Plaintiff Blatt sustained permanent and irreparable harm resulting in the termination of her employment, which

caused her to sustain a loss of earnings, plus the value of certain benefits, plus loss of future earning power, plus back pay, front pay, and interest due thereon.

59. As a further direct result of the aforesaid unlawful retaliatory employment practices engaged in by the Defendant in violation of the ADA, Plaintiff Blatt suffered severe emotional distress, embarrassment, humiliation, and loss of self-esteem.

PRAYER FOR RELIEF

60. Plaintiff Blatt incorporates by reference paragraphs 1 through 59 of her Complaint as though fully set forth at length herein.

WHEREFORE, Plaintiff Blatt requests that this Court enter judgment in her favor and against the Defendant, and order that:

a. Defendant compensate Plaintiff Blatt with a rate of pay and other benefits and emoluments of employment to which she would have been entitled had she not been subjected to unlawful discrimination.

b. Defendant compensate Plaintiff Blatt with an award of front pay, if appropriate;

c. Defendant pay to Plaintiff Blatt punitive damages, compensatory damages for future pecuniary losses, pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses as allowable;

d. Defendant pay to Plaintiff Blatt, pre and post judgment interest, costs of suit and attorney and expert witness fees as allowed by law;

e. The Court award such other relief as is deemed just and proper.

JURY DEMAND

Plaintiff demands trial by jury.

By: SIDNEY L. GOLD & ASSOC., P.C.
/s/ Sidney L. Gold, Esquire
SIDNEY L. GOLD, ESQUIRE
I.D. No.: 21374
1835 Market Street, Suite 515
Philadelphia, PA 19103
Attorney for Plaintiff

DATE: November 5, 2014

VERIFICATION

I hereby verify that the statements contained in this **Amended Complaint** are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of Title 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

DATE:

11/1/14



KATE LYNN BLATT, Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of Plaintiff's Amended Complaint, filed in response to Defendant's Motion to Dismiss to be served by first class regular mail, postage prepaid and/or via electronic mail (available for viewing on the Court's ecf system) upon the following:

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Dated: November 5, 2014