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International Association of Chiefs of Police



Police Psychological Services Section

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Recent Court Decisions Affecting Police Psychologists

1. Former Officer's Challenges to Psychologist's Methodology Were Insufficient to Overturn His Decision.

[Brown v. Sandy City Appeal Board](#), #20130433-CA, 2014 UT App 158, 330 P.3d 767, 764 Utah Adv. Rep. 4, 2014 Utah App. Lexis 160

The Sandy City Police Department employed Brown as a detective. Although Brown's formal reviews over his seventeen-year career with the department had been exemplary, he also had a history of difficulty getting along with other detectives. On April 24, 2012, the police chief placed Brown on paid administrative leave based upon the chief's perception that Brown was not psychologically fit for duty. This perception arose from Brown's anger toward certain other detectives and his overall volatile and antisocial demeanor. The police chief required Brown to submit to a fitness for duty evaluation as a condition of reinstatement.

Brown underwent an examination by psychologist Dr. Mark Zelig on July 16, 2012. Zelig issued a report concluding that Brown suffered from a personality disorder with prominent paranoid features and that, as a result, he was psychologically unfit for duty under Utah's Peace Officer Standards and Training (POST) requirements. Zelig reached this conclusion, in part, by looking to California's POST standards for guidance regarding police officer personality disorders.

Brown sought and was granted twelve weeks of medical leave to obtain treatment and establish that he was fit for duty. Upon the expiration of the twelve weeks of medical leave, Brown was allowed to use his accrued sick and vacation leave to obtain further time for treatment and reevaluation. Brown depleted his accrued leave on February 4, 2013. The police chief terminated Brown that same day because the chief believed Brown had not provided evidence of rehabilitation sufficient to allow the chief to conclude that Brown had regained his fitness for duty.

Brown asked to be reevaluated by Dr. Lawrence Blum and eventually met with Blum for a two-and-a-half-hour interview on February 7, 2013, three days after Brown's termination. Blum concluded that Brown was fit for duty.

Brown appealed his termination to the Board, which held a two-day hearing. Brown, Zelig, Blum, and other witnesses testified. After the hearing, the Board issued a written decision denying Brown's appeal and upholding his termination. Brown then appealed to the courts and his arguments fell into two general categories.

"First, he raises multiple challenges to the Board's conclusion that he was unfit for duty, and particularly its reliance upon Zelig's report, testimony, and conclusions. Second, Brown argues that the Board should not have upheld his termination in light of the Sandy City Police Department's prior practices involving fitness for duty evaluations and its failure to facilitate his request for a timely reevaluation."

“Brown first argues that the Board erred in relying on Zelig’s logic in concluding that Brown could not meet Utah POST standards. Zelig testified that Brown failed to meet the POST standards because Brown had a mental condition - a personality disorder - that adversely affected the performance of his duties as a police officer.”

“We see no logical problem with Zelig’s diagnosis. Zelig’s conclusions that Brown had a personality disorder and that he was unfit for duty are not inconsistent or otherwise logically flawed merely because both conclusions incorporate the concept of functional impairment. To the contrary, Zelig’s use of functional impairment in his definitions ensures that an officer’s duty rating reflects Zelig’s opinion about whether the officer can functionally perform the duties of a police officer.”

“Second, Brown argues that the Board abused its discretion when it relied on Zelig’s use of California POST standards in his evaluation of Brown’s fitness for duty.” “We readily agree with Brown that Utah law enforcement officers are not required to comply with the POST standards promulgated by other jurisdictions. However, Brown significantly overstates how Zelig used the California standards. As Zelig explained in his report, his opinion of Brown’s fitness for duty “was informed by consulting published standards of psychological competence applicable to peace officers,” and the California standards included certain “dimensions” that applied to Brown’s diagnosis.”

“We view Zelig’s consideration of the California POST standards as analogous to the way that a court might use case law from sister jurisdictions—not as binding authority but as a reference to consider how other courts have analyzed and resolved a particular issue. Here, California and Utah apparently share a common requirement that peace officers be mentally fit for duty.”

“Third, Brown argues that Zelig’s methodology was flawed because Zelig failed to review Brown’s seventeen year performance history, failed to follow up with officers who had a good working relationship with Brown, and failed to substantiate the facts that Brown cited to explain his feelings of resentment toward a specific coworker. Brown had ample opportunity at his hearing to cast doubts on Zelig’s conclusions by cross-examining him on the alleged flaws in his methodology.”

“Fourth, Brown argues that Zelig’s report could not support a finding of his unfitness because the report stated that Brown could be amiable with his coworkers immediately upon returning to work if his employment was conditioned on it. Brown’s argument is unpersuasive in light of Zelig’s entire analysis of this issue.”

“We conclude that Brown has failed to establish any flaw in Zelig’s methodology or conclusion that would render the Board’s reliance on Zelig’s report an abuse of discretion. We also conclude that Brown has failed to demonstrate any abuse of discretion by the Board resulting from its treatment of his efforts to obtain either reevaluation by Zelig or a second opinion from Blum or another qualified person. For these reasons, we decline to disturb the Board’s decision upholding Brown’s termination from the Sandy City Police Department.”

2. Refusing to Attend a FFDE, Which was Job Related, is Not a Protected Activity Under the ADA.

[Dengel v. Waukesha County](#), #13-CV-484, 2014 U.S. Dist. Lexis 53374 (E.D. Wis. Apr. 17, 2014)

Daniel Dengel, a former employee brought an action against Waukesha County, alleging violations of the Americans with Disabilities Act (ADA). County moved for summary judgment, which was granted.

Daniel Dengel worked for Waukesha County's Department of Emergency preparedness from May 24, 1999, until November 19, 2010. During that time, he served as a Radio Services Technician. That position required him to install, maintain, and repair the County's various radio communication systems. Some of the primary users of those communications systems were emergency services providers: the police, fire, and EMS departments, all of which used the systems for communication, dispatching, and warning siren systems.

Dengel generally received good performance reviews while working in his position. Beginning around August of 2009, Mr. Dengel engaged in a series of behaviors that his supervisors found strange. First, on August 24, 2009, Mr. Dengel sent an email to the County's other Radio Services staff, stating "To Whom It May Concern: Please return the medium point black Sharpie to the pen holder next to my pc ... the one labeled 'Put it back or I'll break your fingers!'"

Next, in September of 2009, Mr. Dengel became concerned with the safety of a van in the County's fleet of vehicles. No one else had such concerns, nonetheless, Mr. Dengel's concern about the van escalated. Even after a dealership inspected the van and found nothing wrong with it, Mr. Dengel contacted a second dealership, whom he asserts told him the van was unsafe.

The third incident occurred over a period from late May through June of 2010. On May 24, 2010, Mr. Dengel told a supervisor that some person had "inhibited" a radio and then "uninhibited" it; in response, the supervisor ordered an investigation. Then, at Mr. Dengel's request, a Human Resources ("HR") agent met with Mr. Dengel to discuss the radio issue. Mr. Dengel apparently believed that a supervisor had, himself, "inhibited" the radio.

At HR's suggestion, Dengel's supervisor investigated further, and ultimately determined that Mr. Dengel's concerns were unfounded. On July 13, 2010, the supervisor wrote a summary and letter to Mr. Dengel, stating that the system log did not show that the radio in question had been inhibited. Dengel, however, was not ready to accept the outcome of that investigation and then spoke with several other persons demanding further investigations be conducted.

The fourth major incident occurred on August 5, 2010. On that day, a cleaning person could not replace paper towels in a paper towel dispenser, because she could not find the dispenser's key. Eventually, she found the key hidden behind the bathroom's mirror. The key was given to another of Mr. Dengel's supervisors for safekeeping. Mr. Dengel then demanded that this supervisor return the key to him and stated that the key was his personal property, and was not the key belonging to the County. Dengel then aggressively informed his supervisor that the supervisor had "no right" to keep the key and "can't control" him.

There were several email communications between Dengel's supervisors and HR expressing concern over his behavior. That prompted the HR department to speak with the County's Employee Assistance Program (EAP) to get some advice on whether EAP could provide assistance in the situation. Employees can self-report to the program or the employer may refer employees to the program; in the latter situation, mandatory referrals are typically made when an employee's work is suffering.

The HR representative met with Mr. Dengel and his supervisors on August 12, 2010. They discussed the issues with Mr. Dengel's behavior and work performance. At the same meeting, the HR representative informed Mr. Dengel that they were referring him to EAP.

Dengel was told to call EAP to set up an appointment within 24 hours and asked him to sign a waiver that would allow EAP to disclose limited information about the sessions to the County; they informed him that the waiver would not allow EAP to discuss any specific topics of conversation of any EAP session with the County. Dengel attended the first scheduled EAP session. The EAP provider also requested that Mr. Dengel sign a waiver that would allow disclosure to the County; when Mr. Dengel objected, the EAP provider informed him that the waiver would not allow disclosure of the contents of any discussion and that it may be possible to remove certain portions of the waiver that made Mr. Dengel uncomfortable.

EAP scheduled another appointment with Mr. Dengel for August 17, 2010 but Mr. Dengel never arrived. Because Mr. Dengel failed to show up for the scheduled EAP session, even after telling the EAP provider that he would do so after stopping at the Sheriff's Department, the EAP provider had to drive to the Radio Services department, where he met with Mr. Dengel and Mr. Dengel's supervisors.

At this meeting, the EAP provider determined that it was necessary to place Mr. Dengel on sick leave. EAP would not allow Mr. Dengel to return to work unless he followed through on EAP's treatment recommendations and received a release to work from either EAP or another appropriate medical provider.

After that meeting, the EAP provider spoke with a deputy sheriff who informed him that Mr. Dengel seemed to be "right on the edge." The EAP provider gave this concern additional credence because of the fact that the deputy sheriff had received specific training to assess individuals who may be a harm to themselves or others. Based upon those concerns, the EAP provider determined that it would be necessary to require Mr. Dengel to undergo a fitness for duty evaluation before he would be allowed to return to work.

HR scheduled a fitness for duty examination for Mr. Dengel to take place on September 27, 2010. Through his lawyer at the time, Mr. Dengel informed the County that he would not participate in the fitness for duty examination and, in fact, Mr. Dengel did not attend the scheduled examination. After that date, the County never again sought a fitness for duty examination. In fact, HR informed EAP that it would not require Mr. Dengel to receive a fitness for duty examination before allowing him to return to work.

Instead, it was determined that Mr. Dengel should be allowed to return to work with only a return to work release, which could be provided by Mr. Dengel's treating psychologist. On October 7, 2010, Mr. Dengel received notification from the County that he needed to submit a return to work authorization from his own psychologist and further that his paid leave days were diminishing. Mr. Dengel responded, stating that he had made an appointment with a counselor and would need to have EAP provide the counselor with information about his employment, but Dengel refused to provide EAP with authorization to release the information he requested.

He was informed that he needed to contact EAP prior to October 28, 2010, and sign any relevant documents, to ensure that EAP could collaborate with his counselor regarding ongoing treatment and disclosure of the return to work authorization. Despite those clear communications from the County, Mr. Dengel did not sign the required waivers. Rather than comply, Mr. Dengel, through counsel, responded by raising questions about the County's requirements. Dengel's attorney requested that the County provide reasons for its concern with Mr. Dengel's mental state.

In response, the County stated that it did not believe Mr. Dengel had a medical issue - merely a behavioral one. It also clarified that it was no longer seeking a fitness for duty evaluation, but that it still needed a return to work release. Dengel's attorney agreed with the County's assessment, however, Dengel did not take his own attorney's advice. Dengel's leave expired without him taking any action, and HR sent him a letter on November 22, 2010, informing him that it viewed him to have voluntarily terminated his employment.

Mr. Dengel thereafter filed for unemployment compensation benefits, which the State of Wisconsin, Department of Workforce Development, denied, finding that Mr. Dengel "was not discharged but quit his employment when he failed to provide his employer with the required medical documentation to return to work...."

Dengel filed a charge of discrimination against the County on December 7, 2010. He received a right to sue letter from EEOC on February 11, 2013, and thereafter filed this suit alleging that the County had violated the ADA by (1) illegally requiring him to undergo a medical evaluation that was neither job-related nor consistent with business necessity; (2) regarding him as disabled and imposed an adverse employment action upon him because of that disability, in spite of the fact that he is qualified to perform the essential functions of the job; and (3) retaliating against him for engaging in protected activity. The County disagreed with all of those arguments, and moved for summary judgment against Mr. Dengel.

As to his claim of his rights being violated by requiring a medical evaluation, the question is whether the examinations were "job-related and consistent with business necessity?" If yes, then the County did not violate the law when it required Mr. Dengel to attend EAP meetings or obtain a work release.

"Inquiries into an employee's psychiatric health are often permissible 'when they reflect concern for the safety of employees and the 'public at large,' especially in jobs affecting public safety."

"Moreover, where there is evidence of instability or potential danger, employers are generally

justified in seeking mental evaluations.” Reviewing all of the County’s concerns, the court said, “Dengel’s behavior and his sensitive position, show that the County’s requirement that Mr. Dengel visit EAP and obtain a return to work authorization were clearly job-related and consistent with a business necessity.”

As to his claim regarding the County discriminating against him, based on their belief that he was disabled, he “has not provided any evidence of a discriminatory animus on the County’s behalf. He has not produced any emails or correspondence that lend any credence to the contention that the County’s employees were hostile to him as a result of a perceived disability. In fact, most of the emails disclosed evince a genuine concern for his well-being. He has not produced any evidence of other disabled employees being treated poorly. Simply put, there is absolutely nothing that could possibly establish discriminatory animus.”

Finally, “Mr. Dengel’s briefing on the retaliation claim is also woefully inadequate. To establish a prima facie case of retaliation under the ADAAA, Mr. Dengel must show that (1) he engaged in protected activity; (2) he suffered an adverse employment action; and (3) there was a causal connection between the protected activity and the adverse employment action.” He has completely failed to meet that burden and “(f)or the reasons discussed above, the Court is obliged to grant the County’s motion for summary judgment in its entirety and to dismiss this action with prejudice.”

3. Employer May Order FFDE After Employee’s Doctor Clears Her to Return Following an FMLA Leave.

[White v. County of Los Angeles](#), 225 Cal. App. 4th 690 (April 15, 2014)

On April 15, 2014, the California Court of Appeal, Second Appellate District, reversed a judgment by the Superior Court of Los Angeles in the case of White v. County of Los Angeles, which held an employer is not permitted to seek a second opinion regarding an employee’s fitness for work *after* restoring the employee to employment. On appeal, the Court reversed, stating an employer *may*, at its own expense, seek its own evaluation of the employee’s fitness *after* reinstating the employee.

“Plaintiff Susan White is employed as a Senior District Attorney Investigator with the Los Angeles County District Attorney’s Office (DA). The essential functions of her job include personally serving arrest warrants, making arrests, interrogating suspects, and booking prisoners. The position requires peace officer status under Government Code section 1031.”

White requested to be placed on medical leave pursuant to the FMLA after experiencing severe psychological and emotional episodes both on and off the job. These episodes caused White to subject herself to compromising situations, in addition to potentially placing her colleagues in harm’s way. The impairments began after her brother’s death in late 2009 and continued until April 2011, at which time she requested the FMLA leave.

On September 6, 2011, White returned to work and was reinstated to full pay pursuant to FMLA. However, she was informed that she would be placed on administrative leave, with pay, and reassigned to her home effective September 7, 2011 pending a FFDE by the employer’s

physician.

White refused to appear for either of the scheduled FFDE physician appointments set by her employer because she believed such a request was in violation of her FMLA rights. Specifically, White argued that requiring her to submit to the medical reevaluation violated her right under FMLA to be restored to employment on her doctor's certification alone.

The Superior Court agreed with White and "concluded that the DA would be legally permitted to order a medical reevaluation of White based on any conduct occurring *after* her return to work, but that her doctor's certification that she was fit for work upon her return from FMLA leave must be accepted as sufficient."

The Court of Appeal stated that the underlying issue for it to decide was "whether, if the employer is not satisfied with the employee's health care provider's certification, the employer may restore the employee to work, but then seek its own evaluation of the employee's fitness for duty at its own expense." The Court concluded that it may.

The Court analyzed the language of the FMLA in conjunction with the ADA and found that *after* reinstatement occurs, the FMLA no longer applies and the ADA becomes the governing law. The ADA states that after an employee returns from FMLA leave, any medical examination requested by the employer's health care provider must be job-related, consistent with business necessity, and be done at the employer's expense.

The Court rejected this argument stating "If a business necessity exists which would permit the employer to order a medical evaluation under the ADA, the employee cannot avoid the evaluation by simply going on FMLA leave and obtaining a medical certification that she may return to work. A certification that an employee may return to work from FMLA leave simply requires the employee be reinstated. It does not erase all the events which occurred before the employee went on FMLA leave."

The Court analyzed the language of the FMLA in conjunction with the ADA and found that *after* reinstatement occurs, the FMLA no longer applies and the ADA becomes the governing law. The ADA states that after an employee returns from FMLA leave, any medical examination requested by the employer's health care provider must be job-related, consistent with business necessity, and be done at the employer's expense.

"Moreover, it is appropriate, and not in violation of the ADA, for a peace officer with mental health issues to be ordered to a FFDE. It is unnecessary for the employer to establish that the employee's job performance has actually suffered in order to require a FFDE, when the employee in question is a peace officer who carries a weapon."

4. Fitness for Duty Evaluation is Not Retaliatory But Must Comply with State Law.

[Anthony v. Village of South Holland](#), #13 C 3068, 2013 WL 5967505, 2013 U.S. Dist. Lexis 159990 (N.D. Ill. Unpublished, Nov. 8, 2013)

Plaintiff Rick Anthony is a police officer in the Village of South Holland, IL. On April 23, 2013,

he sued the Village, alleging unlawful racial discrimination and retaliation. Anthony and moved for a temporary restraining order and preliminary injunction prohibiting the Village from requiring Anthony to submit to a fitness-for-duty psychological examination.

On July 6, 2013, Anthony attended a roll call supervised by Lieutenant James Tavernaro. Several months earlier, Anthony had requested to take a vacation day on the 4th of July. The Village denied his request. At the July 6 roll call, Anthony asked Tavernaro why he had to work on the 4th of July while another officer was allowed to take the day off. Tavernaro told Anthony that he should take the grievance up with the Chief of Police. Anthony told Tavernaro, "This is bullshit." According to Tavernaro, Anthony stated that he knew that the other officer did not have to work because Anthony was "brown" and the other officer was not.

Anthony then threw a cup of coffee toward a wastebasket, but the cup landed on the floor. Tavernaro told Anthony to clean up the coffee. Anthony responded that "the maintenance personnel could clean it up, and [he] was not clearing up shit." Anthony then cleaned up the spill and told Tavernaro that he was experiencing anxiety and requested a personal illness day. Tavernaro asked Anthony if was able to drive home, and Anthony told him that he would sit in his car for a short time and then drive home. According to Tavernaro, Anthony also told him that Anthony was having a panic attack and that he was "liable to hurt someone if he stayed on duty."

The next day, Chief of Police Gregory Baker called Anthony into his office. Baker told Anthony that he had heard about the incident that had occurred the day before and that Anthony would be suspended sixty days without pay until Baker investigated the incident. Baker later ordered Anthony to take a fitness-for-duty psychological examination on September 5, 2013, with Dr. Eric Ostrov.

Before the exam, Anthony was provided with a release authorizing Dr. Ostrov to "fully release any/all conclusion(s) as well as the information upon which the conclusion(s) is/are based that he obtains/concludes as to my psychological fitness...." Anthony's attorney advised Anthony that he believed the release did not comply with the Health Insurance Portability and Accountability Act ("HIPAA"). In light of Anthony's concerns about the release, Dr. Ostrov declined to go forward with the examination.

Baker then ordered Anthony to take the examination with Dr. Sayed I. Ali on September 27, 2013. At that examination, Anthony was provided with a different release. This release stated: *I also understand that the professionals performing the evaluation may communicate with my employer and others involved in processing the consultation. In other words, privileged communication/confidentiality does not apply because examiners will report and discuss any/all information and findings with those who have a need to know.* This time, Anthony signed the release, but wrote below his signature that he reserved the right to challenge the legality of the scope of the release. In light of this reservation, Dr. Ali also declined to go forward with the examination.

Baker then suspended Anthony without pay for insubordination and asked Anthony to explain the basis for his challenge to the medical release. Anthony's attorneys submitted a memorandum to Baker and Village attorney Thomas McGuire explaining Anthony's objections to the release.

At the same time, Anthony provided Baker and Village Attorney Thomas McGuire with an executed release that was satisfactory to Anthony but not to McGuire. McGuire stated that the medical release “must irrevocably authorize the release of Dr. Ali’s report stating whether or not Officer Anthony is fit to perform the duties of a Patrol Officer....”

Anthony moved for a temporary restraining order and preliminary injunction prohibiting the Village from requiring Anthony to submit to the examination and to consent to the Village’s medical release as part of that examination. He claims that the Village has unlawfully retaliated against him in violation of the First Amendment and Title VII, 42 U.S.C. § 2000e, *et seq.* He also claims that the release that the Village has required him to execute violates HIPAA and the [Illinois] Confidentiality Act.

Anthony must show that he was performing his job satisfactorily and that he was treated less favorably than a similarly situated employee who did not complain of discrimination. If Anthony establishes the *prima facie* case under the indirect method, the Village must articulate a nondiscriminatory reason for its action; if it does, the burden remains with Anthony to demonstrate that the Village’s reason is pretextual.

The Village has articulated legitimate reasons for suspending Anthony and requiring him to undergo a fitness-for-duty examination, and Anthony has not shown that these reasons are pretextual. The timing of the suspension cuts in favor of the Village, not Anthony, who filed his complaint on April 23, 2013. The Village took no action against him until July 7, 2013, immediately after Anthony told Tavernaro that he was experiencing anxiety and needed to take a personal illness day. Anthony does not dispute this.

Anthony notes that he has an unblemished record and has received numerous commendations, but he ultimately agrees that there is a strong public interest in assuring that police officers have the psychological ability to perform their duties.

Anthony also requests that if he must undergo a psychological evaluation, that he not be compelled to sign an irrevocable release of his mental health records. The court finds that Anthony is entitled to a preliminary injunction prohibiting the Village from requiring him to “irrevocably” release his mental health records. The [Illinois] Confidentiality Act expressly requires that a consent form must include “the right to revoke the consent at any time.” It also must specify (1) the person or agency to whom disclosure is to be made; (2) the purpose for which disclosure is to be made; (3) the nature of the information to be disclosed; (4) the right to inspect and copy the information to be disclosed; (5) the consequences of a refusal to consent, if any; and (6) the calendar date on which the consent expires.

There can be no serious dispute that the Village’s consent form does not conform to these requirements, and, indeed, the Village does not argue that it does. Anthony has also demonstrated an irreparable injury, given the serious privacy concerns that are at stake. This harm outweighs any harm that would be suffered by the Village, especially because Anthony has agreed that if he is determined to be unfit, this finding may be communicated to the Chief of Police.

5. FFDE Based on Legitimate, Non-discriminatory Reasons, Defeats Claim of Retaliation.

[Franklin v. City of Slidell](#), # 12-1940., 969 F.Supp.2d 644 (E.D. La. Aug. 27, 2013); [prior decision](#) at 928 F. Supp. 874 (Mar. 6, 2013).

Franklin, an African-American employee, a senior corrections officer, brought action against city, alleging that he was required to take a fitness for duty evaluation and was relieved of his duties in retaliation for filing a discrimination complaint and civil lawsuit in violation of Title VII of the Civil Rights Act of 1964, and that he was required to take a medical and psychological fitness for duty evaluation before returning to work from medical leave in violation of the Americans with Disabilities Act (ADA).

On December 10, 2008, at Franklin's request, the City referred him to the Employee Assistance Program for counseling. On April 20, 2009, Plaintiff filed a Charge of Discrimination with the EEOC alleging that he faced racial discrimination and retaliation for opposing practices made illegal under Title VII. On June 15, 2009, at Plaintiff's request, Plaintiff began twelve weeks of paid medical leave under the Family and Medical Leave Act ("FMLA") after providing the City with a note from his physician, Dr. Jose Lefran, diagnosing post-traumatic stress syndrome.

On August 21, 2009, while still on paid medical leave, Plaintiff appeared at the U.S. Attorney's Office at the Federal Courthouse in New Orleans. According to the U.S. Marshal's report of the incident, Plaintiff "wished to report to the USA office issues with his ranking officer/supervisor at the Slidell Police Department making threats against the lives of he and his family ..." Ultimately, the New Orleans Police Department ("NOPD") was contacted and officers escorted Plaintiff to University Hospital for psychiatric evaluation. The U.S. Marshal's report of the incident states that "[Plaintiff] appeared to be emotionally disturbed and was extremely upset."

On September 4, 2009, Plaintiff's FMLA leave ended. On September 21, 2009, Plaintiff's treating psychiatrist, Dr. Larry Warner, advised that Plaintiff was still under his care and receiving treatment for Adjustment Disorder, mixed type, with depression and anxiety along with acute stress disorder.

Plaintiff remained on catastrophic leave for one year, during which time he continued to collect his full salary, benefits, and accrue vacation and sick time. In July 2010, after being on leave for more than a year, Plaintiff sought to return to regular duty. However, before allowing Plaintiff to return to active duty as a senior corrections officer, the Slidell Chief of Police, Randy Smith, requested that Plaintiff undergo a fitness for duty physical and psychological evaluation.

On August 12, 2010, Plaintiff was evaluated by psychologist, Dr. Alan James Klein. *Id.* In a report dated August 20, 2010, Dr. Klein opined that Plaintiff was not fit for duty in a law enforcement agency in any capacity, including as a corrections officer or performing administrative duties.

December 3, 2010, while still on paid sick leave . . . Plaintiff submitted a second Charge of

Discrimination to the Louisiana Commission on Human Rights and EEOC. The EEOC issued a notice of right to sue on April 2, 2012, stating that it was unable to conclude that the information obtained establishes violations of the statutes.

On July 26, 2012, Plaintiff filed the instant suit against the City of Slidell (“the City”), Dr. Klein, and six City employees. On March 27, 2013, the Court issued an Order and Reasons granting the City Defendants’ 12(b)(6) motion in part and dismissing, virtually, all of his claims.

Plaintiff alleges that the City required him to take a fitness for duty examination and ultimately relieved him of his duties with the Slidell Police Department, because he filed an EEOC charge. Although Defendants dispute whether Plaintiff can satisfy the first two elements of a prima facie case of retaliation, it is unnecessary to address those arguments. Even assuming that Plaintiff could produce evidence of a prima facie case of retaliation, the City Defendants have stated legitimate, non-retaliatory reasons for their decision to require Plaintiff to submit to medical and psychological fitness for duty examinations and relieve Plaintiff of his duties with the Slidell Police Department.

“The City’s justifications for requiring Plaintiff to submit to medical and psychological fitness for duty examinations prior to returning to work from sick leave are . . . compelling . . . considering that Plaintiff sought to return to a position as an armed senior corrections officer with responsibility for, among other things, controlling prison inmates, . . .”

Plaintiff engaged in erratic behavior before and during his period of medical leave, including the incident at the United States’ Attorneys’ Office on August 21, 2009, and it was necessary and appropriate to require Plaintiff to pass a fitness for duty examination before resuming his duties as a senior corrections officer in light of the nature of that position and City policies. In light the City’s proffered nondiscriminatory reasons for its actions, the burden shifts to Plaintiff to produce evidence that these proffered reasons are merely pretext for retaliation.” Plaintiff failed to provide such evidence.

“Plaintiff also alleged ADA violations and Defendants argue that Plaintiff cannot make a prima facie ADA claim, because he cannot show that he was qualified for the job in question - senior corrections officer. The Court agrees. [E]ven if Plaintiff could show that he were disabled and qualified for the position of senior corrections officer, his requested accommodation - alteration of his job responsibilities as a senior corrections officer to perform only administrative duties - was not reasonable and, thus, not required under the ADA.”

“(T)he City has presented sufficient evidence that a legitimate, non-discriminatory reason to doubt Plaintiff’s capacity to perform his duties existed at the time that Chief Smith required the fitness for duty examination. Since the City bears the burden of showing business necessity, it must come forward with evidence that would entitle it to a directed verdict if it went uncontroverted at trial. Here, the City has satisfied that burden.”