

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

THE TOWN OF CLARKSVILLE,
INDIANA

Defendant,

Cause No. 4:22-cv-00056-TWP-DML

CONSENT DECREE

I. Introduction

1. This Consent Decree resolves the above-captioned civil action brought by Plaintiff United States of America (the “United States”) against Defendant Town of Clarksville, Indiana (“Clarksville” or “Defendant”) (collectively the “parties”), under Title I of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12111-12117, as amended, and its implementing regulation, 29 C.F.R. Part 1630.
2. The United States’ lawsuit alleges that Defendant Clarksville discriminated against Complainant in violation of 42 U.S.C. § 12112(a) and 29 C.F.R. § 1630.4 by withdrawing Complainant’s conditional offer of employment as a police officer on the basis of his disability, Human Immunodeficiency Virus (“HIV”). The United States also alleges that Complainant is a qualified individual with a disability within the meaning of the ADA who during all relevant time periods could perform the essential functions of a police officer.
3. This matter arose out of a timely discrimination charge filed by Complainant with the United States Equal Employment Opportunity Commission (“EEOC”). The EEOC investigated the charge and found reasonable cause to believe that disability discrimination occurred. After conciliation failed, the EEOC referred the charge to the United States Department of Justice.
4. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms. Accordingly, the parties agree to entry of this Consent Decree without trial or further adjudication of any issues of fact or law raised in the United States’ Complaint.

The parties hereby agree and the Court hereby APPROVES, ENTERS, AND ORDERS the following:

II. Jurisdiction and Venue

5. This Court has jurisdiction of this action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331 and 1345.
6. Venue is appropriate pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3) because Defendant is located in the Southern District of Indiana and all of the events or omissions giving rise to this action occurred in the Southern District of Indiana.
7. This Court has authority to grant a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and authority to grant equitable relief and monetary damages pursuant to 42 U.S.C. § 12117.
8. The Town of Clarksville, Indiana is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a); an employer within the meaning of 42 U.S.C. § 12111(5) and 42 U.S.C. § 2000e(b); and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2(b).

III. General Injunctive Relief

9. Defendant by and through its officials, agents, legal representatives, employees, and contractors will not discriminate against any employee or applicant for employment on the basis of disability, actual or perceived, under Title I of the ADA and its implementing regulation.
10. Defendant by and through its officials, agents, legal representatives, employees, and contractors, will not withdraw a conditional offer of employment based on the results of a post-offer pre-employment medical examination or inquiry unless a post-offer pre-employment medical examination or inquiry identifies objective medical evidence that the applicant is not qualified for the job, with or without a reasonable accommodation, or that the applicant poses a direct threat.
11. Within thirty (30) days of entry of this Consent Decree, Defendant will make any necessary revisions to its policies and procedures for employment related medical examinations and inquiries to ensure they comply with Title I of the ADA and this Consent Decree and then will send its revised policies to the United States for approval. The United States may review and propose additional revisions to Defendant's policies. Within fifteen (15) days of receiving the United States' revisions, Defendant must adopt the revisions and implement the policies.
12. After entry of this Consent Decree, Defendant will provide live (in person or remote) training on the requirements of Title I of the ADA to: (i) all employees who

participate in making personnel decisions related to the Police Department, including hiring or promoting employees, within ninety (90) days; and (ii) all new supervisors, whether by hire or promotion, within sixty (60) days of the start of their employment as supervisors.

13. All trainings must be conducted by trainers knowledgeable about Title I of the ADA whom the United States has approved. Defendant will notify the United States of its proposed trainer at least thirty (30) days before conducting such training. If the United States does not approve of the trainer, Defendant must select a different trainer who is pre-approved by the United States. Defendant will maintain attendance logs of all employees who attend training and submit these to the United States, as required by paragraph 15 below.
14. During the term of this Consent Decree, Defendant will ensure that all of its existing and future contracts with any medical examiners (or entities providing medical examiners) require that examinations be conducted in accordance with Title I of the ADA.

IV. Reporting Requirements

15. Six (6) months after the entry of this Consent Decree, and every six (6) months thereafter during the term of this Consent Decree, Defendant will provide a written report ("Report") to the United States on its compliance with this Consent Decree. All reports required by this Consent Decree shall be sent by email to the undersigned counsel or as otherwise directed by the United States. The Report will include, for the preceding six-month period:
 - a. A specific acknowledgment that Defendant has, for the instant reporting period, complied with the requirements of the Consent Decree, including paragraphs 11-14 and the training requirements specified in paragraphs 12 and 13 above;
 - b. Notification of any lawsuit, written complaint, charge, or grievance alleging Defendant has violated Title I of the ADA. This notice will include the name and contact information of the individual alleging discrimination, a description of the allegation(s), and all documentation possessed by Defendant relevant to the allegation(s).
16. During the term of this Consent Decree, Defendant will notify the United States in writing whenever it decides to withdraw a conditional offer of employment based on the results of a post-offer pre-employment medical examination or inquiry. Defendant's written notice must include the contact information for the applicant; the date that the employment offer was withdrawn; a description of the circumstances surrounding the decision (including any medical report generated); and an explanation of why Defendant decided withdrawal was justified. Defendant must send this notice to the United States no more than ten (10) days after notifying an applicant of its decision to withdraw a conditional offer.

17. All information provided by Defendant to the United States under this Consent Decree must be sent to the United States by email to Alyse.Bass@usdoj.gov, and Adam.Lewis@usdoj.gov. All correspondence related to this matter should reference Department of Justice complaint number 205-26S-26.

V. Specific Remedial Relief for Complainant

18. Within fifteen (15) days of the Effective Date of this Consent Decree, Defendant shall offer to:

- a. Send Complainant, by Overnight Mail, an Affidavit, on its official letterhead, that states: “[Complainant’s name] is eligible for rehire by the Town of Clarksville Police Department. The Town’s withdrawal of his conditional offer of employment as a Police Officer on 11/18/2015 was unrelated to any action, or lack of qualification on his part.”
- b. Pay complainant \$150,000.00 as compensatory damages. This amount shall not be subject to withholding deductions, and Defendant shall issue an IRS Form 1099 to Complainant for this amount.

Along with the offer, Defendant will send Complainant a copy of this signed Consent Decree, and the Notice Letter and Release of Claims Form attached as Exhibits 1 and 2. Defendant will send the United States copies of the Notice Letter and the Release of Claims Form when they are sent to Complainant.

19. In order to accept the relief offered by Defendant, Complainant must execute and return the Release of Claims (Exhibit 2) to Defendant within thirty (30) days of receiving the Notice Letter (Exhibit 1).

20. If Complainant accepts the relief as described in paragraphs 18-19 above, Defendant must send the Affidavit described in 18a and pay the total monetary amount specified in 18b within fifteen (15) days of receiving Complainant’s signed Release of Claims Form. Within fifteen (15) days of sending the Affidavit to and paying Complainant, Defendant shall send the United States proof of payment, a copy of the Affidavit, and a copy of the Complainant’s signed Release of Claims Form.

VI. Enforcement

21. This Consent Decree constitutes the entire ordered agreement between the parties relating to this action, *United States v. Town of Clarksville, Indiana*, Department of Justice Number 205-26S-26, and EEOC charge number 470-2016-00439. No other statement, promise, or agreement, either written or oral that is not contained in this Consent Decree, including its attachments, will be enforceable.

22. The United States may review Defendant's compliance with this Consent Decree at any time. If the United States believes that the Defendant has violated any portion of this Consent Decree, it will notify the Defendant and attempt to resolve the alleged violations in good faith. If Defendant disagrees with the alleged violation or is unwilling or unable to satisfactorily cure any alleged violations within thirty (30) days of being notified of such allegations, the United States may move the Court to enforce this Consent Decree. In such an event, the United States may move this Court to impose any remedy authorized by law or equity, which may have been occasioned by Defendant's violation or failure to perform.
23. The time frame for completion of any act required by this Consent Decree may be modified with the mutual written consent of the Parties, except that the termination date may be extended only by Order of the Court.
24. If any part of this Consent Decree is found by any Court to be unenforceable, the other parts of the Consent Decree shall nonetheless remain in full force and effect.
25. A signatory to this document in a representative capacity for the Town of Clarksville represents that he or she is authorized to bind the Town of Clarksville to this Consent Decree.
26. This Consent Decree does not remedy any other potential violations of the ADA or any other law that is not specifically addressed herein, nor does it affect Defendant's continuing responsibility to comply with the ADA.
27. Failure by the United States to enforce any provision of this Consent Decree is not a waiver of the United States' right to enforce any provision of this Consent Decree.
28. This Consent Decree will remain in effect for three (3) years from the date of its entry. For the term of this Decree, the Court retains jurisdiction to enforce it.
29. Each party will assume its own costs and expenses, including attorney fees.
30. The Effective Date of this Decree is the date the Court enters the Decree.

SO ORDERED this _____ day of _____, 2022.

District Judge
Southern District of Indiana

AGREED AND CONSENTED TO:

Anne Raish
Acting Chief
Disability Rights Section
Civil Rights Division

/s/ Kevin Baity
Kevin Baity
Town Manager, Clarksville, Indiana

/s/ Alyse Bass
Amanda Maisels, Deputy Chief
Alyse S. Bass, Senior Trial Attorney
Adam Lewis, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
150 M. Street N.E.
Washington, D.C. 20535

Date: 9/15/2022

Zachary A. Myers
United States Attorney

/s/ Jeffrey D Preston
Jeffrey D Preston
Assistant United States Attorney 10
West Market Street, Ste. 2100
Indianapolis, IN 46204

Date: 9/15/2022