

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MARK E. DECARLO,

Plaintiff,

v.

4:14cv388-WS

CITY OF TALLAHASSEE,

Defendant.

ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Mark E. DeCarlo was hired by the City of Tallahassee as a firefighter in 1997. While employed by the City, DeCarlo was called up three times (in 2000, 2004, and 2009) for temporary active duty (he was a member of the United States Army Georgia National Guard), serving in Bosnia, Iraq, and Afghanistan respectively. On his final mobilization, DeCarlo suffered physical injuries when he fell from a ladder onto rocky terrain. Those injuries resulted in DeCarlo's honorable discharge from the Georgia National Guard and medical retirement from the United States Army.

In June 2010, DeCarlo completed re-orientation and returned to his position as a firefighter with the City of Tallahassee. DeCarlo was promoted from firefighter to engineer in November 2010, received “Consistently Goes Beyond” employment evaluations in 2010–2012, was cleared as being able to perform the essential job functions of a firefighter by the doctor who performed his required annual physical examinations, paid for by the Fire Department, but was suspended and then fired in 2013.

DeCarlo has sued his former employer, alleging unlawful disability discrimination and retaliation. He seeks relief under the Americans with Disabilities Act, the Florida Civil Rights Act, and Florida’s Public Sector Whistleblower’s Act. Before the court at this time is the City’s motion for summary judgment. Doc. 19. DeCarlo has responded (doc. 34) in opposition to the City’s motion,¹ and the parties have been advised (doc. 48) that the motion would be taken under advisement as of a date certain.

Taking the evidence in the light most favorable to DeCarlo, the court finds that there are genuine disputes as to the material facts which preclude a finding

¹ Two days ago, DeCarlo filed a motion (doc. 49) to supplement his response to the City’s motion for summary judgment with newly discovered evidence. The City opposes the motion. Doc. 50. The court has not considered DeCarlo’s motion to supplement—or the exhibit attached thereto—in ruling on the motion for summary judgment.

that the City is entitled to summary judgment. Accordingly, it is ORDERED:

1. The City's motion for summary judgment (doc. 19) is DENIED.
2. The clerk shall set the case for trial.
3. DeCarlo's motion (doc. 49) to supplement his response to the City's motion for summary judgment is DENIED.

DONE AND ORDERED this 18th day of September, 2015.

s/ William Stafford
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE