

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

COURTNEY EGGERS,

Plaintiff,

v.

**SIXTH JUDICIAL DISTRICT
DEPARTMENT OF CORRECTIONAL
SERVICES, STATE OF IOWA
DEPARTMENT OF CORRECTIONS, and
DAMON ROBINSON, DAVE GARNER,
AND BRUCE VANDER SANDEN,
Individually and in their Official Capacities,**

Defendants.

Case No. _____

**PETITION AT LAW
AND JURY DEMAND**

COMES NOW the Plaintiff, Courtney Eggers, by and through her undersigned

counsel, and for her cause of action against Defendants Sixth Judicial District Department of Correctional Services, State of Iowa Department of Corrections, and Damon Robinson, Dave Garner and Bruce Vander Sanden, Individually and in their Official Capacities, states as follows:

VENUE & JURISDICTION

1. Defendant Sixth Judicial District Department of Correctional Services is a political subdivision of the State of Iowa Department of Corrections, which is an agency of the State of Iowa headquartered in Des Moines, Polk County, Iowa.
2. The amount in controversy exceeds the jurisdictional requirements of the Iowa District Court in and for Polk County.

PARTIES

3. Plaintiff Courtney Eggers (“Eggers”) is and was at all times material hereto a citizen and resident of Hiawatha, Linn County, Iowa.

4. Upon information and belief, Defendant Darron Robinson is and was at all times material hereto a citizen and resident of Linn County, Iowa and a supervisory or managerial employee of the Sixth Judicial District Department of Correctional Services who personally participated in the unlawful employment actions set forth herein.

5. Upon information and belief, Defendant Dave Garner is and was at all times material hereto a citizen and resident of Linn County, Iowa and a supervisory or managerial employee of the Sixth Judicial District Department of Correctional Services who personally participated in the unlawful employment actions set forth herein.

6. Upon information and belief, Defendant Bruce Vander Sanden is and was at all times material hereto a citizen and resident of Linn County, Iowa and a supervisory or managerial employee of the Sixth Judicial District Department of Correctional Services who personally participated in the unlawful employment actions set forth herein.

CONDITIONS PRECEDENT

7. Within 300 days of the date of the discriminatory actions described herein, Eggers filed charges of discrimination and retaliation against Defendants with the Iowa Civil Rights Commission, which was cross-filed with the Equal Employment Opportunity Commission ("EEOC"). A copy of said charge is attached hereto as Exhibit A and its contents are incorporated as if fully set forth herein.

8. On October 12, 2017, Eggers filed an Amendment to her Iowa Civil Rights Complaint, a copy of which is attached hereto as Exhibit B, and the contents of which are incorporated as if fully set forth herein.

9. On November 9, 2017, the Iowa Civil Rights Commission issued an Administrative Release (letter of right-to-sue) to Plaintiff, a copy of which is attached hereto as Exhibit C.

10. Plaintiff has complied with all conditions precedent to the filing of this cause of action.

FACTS COMMON TO ALL COUNTS

11. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

12. Since May 2014, Eggers has been employed by Defendant Sixth Judicial District Department of Correctional Services as a Residential Officer.

13. In August 2015, Defendant Damon Robinson (“Robinson”) became Eggers’ supervisor.

14. On approximately February 18, 2016, after Robinson saw Eggers pick up her cell phone, Robinson said to Eggers, “You grabbed your phone quick. Whatcha got there, nudies?”

15. When Eggers responded that she did not have any nude photos on her phone, Robinson said to her, “I bet you do. You look like that kind of girl.”

16. On another occasion during the same approximate time period, Robinson was walking behind Eggers and had a piece of paper rolled up in his hand. Robinson said to Eggers, “I could slap your butt right now, but I decided against it.”

17. In approximately the fall of 2016, Robinson asked Eggers five or six times during a single conversation if she was going to get married. Robinson persisted in asking her about her marriage plans even after she became upset, told him she was not getting married, and repeatedly told him to stop.

18. On approximately January 12, 2017, Robinson made comments to Eggers that he had been sleeping better since his doctor prescribed him a CPAP machine, that he was having vivid dreams, and “I’m even having wet dreams, which at my age is pretty great.”

19. Eggers responded, "Time out! You're my supervisor, right?" To which Robinson responded that he should not have made the comment and told Eggers not to tell anyone about it.

20. Eggers was offended and upset by each of Robinson's harassing comments, and they were unwelcome.

21. In late January 2017, Eggers sought counseling through the agency's Employee Assistance Program for stress and anxiety related to her work environment and Robinson's harassment of her.

22. On January 26, 2017, Eggers' counselor recommended that she not return to work at that time for medical reasons.

23. On February 6, 2017, Eggers filed a grievance with Defendant Sixth Judicial District Department of Correctional Services complaining of Robinson's harassing conduct toward her.

24. On approximately February 14, 2017, Defendant Sixth Judicial District Department of Correctional Services initiated an investigation into Eggers' complaint as set forth in her grievance.

25. On February 23, 2017, Eggers requested from Defendant Bruce Vander Sanden reassignment to an open position Residential Officer position at different work location as an accommodation for her disability.

26. The position at issue had been open since January 2017 and was still available.

27. Vander Sanden refused to reassign Eggers to the open position, claiming reassignment was "outside the scope of FMLA" and that Eggers had not transferred to that position in January when she had the opportunity.

28. Eggers had been reassigned to other positions multiple times throughout her career with Defendants, and the reassignments had not raised any concerns.

29. At the time Eggers requested reassignment to the open position, Defendants were holding that position for a male.

30. The position to which Eggers requested reassignment remained open and was not filled until approximately March 24, 2017 with another candidate.

31. In approximately October 2016, Robinson was observed by Defendant Dave Garner commenting to a female employee that she “has long legs, really long legs.”

32. Garner reported Robinson’s “long legs” comment to Residential Manager Sam Black.

33. Garner and Black agreed that Robinson’s “long legs” comment violated the Department’s harassment policy and that Robinson needed to “watch himself.”

34. Also in approximately October of 2016, Garner notified Black of another incident in which Robinson had made comments to a female secretary about how she had looked “back in the day,” and that she had been very attractive and thin back then.

35. At the time Garner heard Robinson make these comments, Garner told Robinson that his comments to the secretary would be difficult to defend if the Union were to make it an issue.

36. Neither Garner nor Black disciplined Robinson for his “long legs” comments or his comments to the secretary regarding her appearance.

37. Neither Garner nor Black ever disciplined Robinson for violating the agency’s harassment policy.

38. Black disclosed the prior incidents of Robinson’s “long legs” comments, Robinson’s comments to the secretary regarding her appearance, and his own conclusion that Robinson had previously violated the Department’s harassment policy to the

Department's investigators during their investigation into Eggers' complaint of sexual harassment against Robinson.

39. Nonetheless, the Department's investigators concluded Eggers' complaints were "unsubstantiated" and no disciplinary action was taken against Robinson.

COUNT I: SEXUAL HARRASSMENT

Iowa Civil Rights Act, Iowa Code Chapter 216

(Eggers v. Sixth Judicial District Department of Correctional Services, State of Iowa Department of Corrections and Damon Robinson)

40. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

41. Eggers is female.

42. Defendants are "persons" as defined in the Iowa Civil Rights Act, Iowa Code Chapter 216.

43. As Eggers' supervisor, Robinson had the authority to discipline Eggers, including termination, and to direct her job duties.

44. As set forth herein, Robinson sexually harassed Eggers.

45. Because of Robinson's harassment, Eggers experienced stress and anxiety so substantial that she had to take a medical leave from work.

46. Robinson's harassment of Eggers affected a term, condition, or privilege of Eggers' employment.

47. As set forth herein, Robinson discriminated against Eggers because she is a woman.

48. Robinson's conduct toward Eggers was unwelcome.

49. Defendants' discrimination against Eggers because of her sex violated the Iowa Civil Rights Act, Iowa Code Chapter 216.

50. As a proximate cause of Defendants' discriminatory conduct, Eggers has been damaged.

COUNT II: SEX DISCRIMINATION

Iowa Civil Rights Act, Iowa Code Chapter 216
(Eggers v. Sixth Judicial District Department of Correctional Services, State of Iowa Department of Corrections, and Damon Robinson, Dave Garner and Bruce Vander Sanden)

51. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

52. Defendants also discriminated against Eggers because of her sex by refusing to reassign her to an open position because she is a woman.

53. Defendants' discrimination against Eggers because of her sex violated of the Iowa Civil Rights Act, Iowa Code Chapter 216.

54. As a proximate cause of Defendants' discriminatory conduct, Eggers has been damaged.

COUNT III: DISABILITY DISCRIMINATION

Iowa Civil Rights Act, Iowa Code Chapter 216
(Eggers v. Sixth Judicial District Department of Correctional Services, State of Iowa Department of Corrections, and Damon Robinson, Dave Garner and Bruce Vander Sanden)

55. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

56. As a result of Robinson's discriminatory and harassing conduct, Eggers has been diagnosed with a mental impairment of severe stress and anxiety.

57. Eggers' mental impairment substantially limited her in the major life activities of concentrating, sleeping and working.

58. Eggers is a qualified individual with a disability as defined under the Iowa Civil Rights Act, Iowa Code Chapter 216.

59. Eggers requested as a reasonable accommodation for her disability reassignment to an open Residential Officer position at a different location.
60. Eggers was qualified to perform the essential functions of the open Residential Officer position to which she sought reassignment.
61. Eggers' request for reassignment as an accommodation for her disability was reasonable.
62. Defendants refused Eggers' request for reasonable accommodation in the form of reassignment to an open position for which she was qualified.
63. Defendants' refusal to reassign Eggers as a reasonable accommodation for her disability violated the Iowa Civil Rights Act, Iowa Code Chapter 216.
64. As a proximate cause of Defendants' discriminatory conduct, Eggers has been damaged.

COUNT IV: RETALIATION

Iowa Civil Rights Act, Iowa Code Chapter 216

(Eggers v. Sixth Judicial District Department of Correctional Services, State of Iowa Department of Corrections, and Damon Robinson, Dave Garner and Bruce Vander Sanden)

65. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.
66. Defendants refused Eggers' request for reassignment to an open position for which she was qualified in retaliation for her complaints of discrimination and harassment.
67. Defendants' retaliation against Eggers violated the Iowa Civil Rights Act, Iowa Code Chapter 216.
68. As a proximate cause of Defendants' discriminatory conduct, Eggers has been damaged.

COUNT V: NEGLIGENCE

Iowa Civil Rights Act, Iowa Code Chapter 216

(Eggers v. Sixth Judicial District Department of Correctional Services, State of Iowa Department of Corrections, and Damon Robinson, Dave Garner and Bruce Vander Sanden)

69. Plaintiff incorporates by reference all preceding paragraphs as if set forth fully herein.

70. Defendants knew or should have known that in approximately October 2016, Robinson had made remarks to a female employee that she “has long legs, really long legs.”

71. Defendants concluded that Robinson’s conduct in making the “long legs” remarks to a female employee violated the agency’s harassment policy and that Robinson needed to “watch himself.”

72. Defendants knew or should have known that in the summer of 2016, Robinson had also made comments to a female secretary about how she had looked “back in the day,” and that she had been very attractive and thin back then.

73. Defendants understood that Robinson’s comments to the secretary violated the agency’s harassment policy and that it would be difficult to defend if the Union were to make it an issue.

74. Despite their understanding that Robinson had violated the agency harassment policy in his remarks to female employees about their appearance, Defendants did not discipline Robinson for his harassing conduct.

75. Despite having knowledge of Robinson’s prior violations of the Department’s harassment policy, Defendants concluded Eggers’ sexual harassment complaints against him were “unsubstantiated.”

76. Defendants never disciplined Robinson for his harassing conduct toward women in the workplace.

77. Based on Robinson's past behavior toward female employees, it was reasonably foreseeable that Robinson would have engaged in sexually harassing behavior toward Eggers or other female employees.

78. Defendants failed to take reasonable care to train and supervise Robinson to prevent continued sexual harassment toward female employees.

79. Defendants were negligent in supervising or otherwise controlling Robinson's conduct.

80. As a proximate cause of Defendants' failure to take prompt remedial action to stop Robinson's harassing conduct, Eggers has been damaged.

RELIEF REQUESTED

WHEREFORE the Plaintiff, Courtney Eggers, respectfully prays that this Court enter judgment against Defendants Sixth Judicial District Department of Correctional Services, State of Iowa Department of Corrections, and Damon Robinson, Dave Garner and Bruce Vander Sanden, Individually and in their Official Capacities, and award damages, including damages for emotional distress, mental anguish, compensatory relief, attorney fees, and court costs, with interest as provided by law, and such other and further relief as the Court deems just and equitable.

Additionally, Eggers respectfully prays that this Court enter an order requiring the following specific injunctive relief to effectively prevent future discrimination and retaliation at the Sixth Judicial District Department of Correctional Services and Iowa Department of Corrections:

- a. Conduct proper training that includes enforcement of sexual harassment prevention policies and policies promoting equal treatment of women, and provide that such training will occur on an ongoing basis;
- b. Conduct such training on an annual basis for a number of years until a showing can be made to the Court that the ongoing training can be

altered or reduced because it is no longer needed;

- c. Require that any investigations into complaints of discrimination or harassment be conducted by a qualified outside independent investigator who is not an employee of the State of Iowa.

JURY DEMAND

- 81. Plaintiff hereby requests trial by jury in this matter.

Respectfully Submitted,

By /s/ Melissa C. Hasso AT00009833
Melissa C. Hasso
E-mail: mhasso@sherinianlaw.com
SHERINIAN & HASSO LAW FIRM
521 E. Locust St., Suite 300
Des Moines, IA 50309
Telephone (515) 224-2079
Facsimile (515) 224-2321

By /s/ Jill Zwagerman AT0000324
Jill Zwagerman
E-mail: jzwagerman@newkirklaw.com
NEWKIRK ZWAGERMAN
521 E. Locust St., Suite 300
Des Moines, IA 50309
Telephone (515) 883-2000
Facsimile (515) 883-2004

ATTORNEYS FOR PLAINTIFF