

**The Commonwealth of Massachusetts
Commission Against Discrimination
The Springfield State Office Building
436 Dwight Street, Rm. 220, Springfield, MA 01103
Phone: (413) 739-2145 Fax: (413) 784-1056**

MCAD DOCKET NUMBER: 19SEM03213
FILING DATE: 11/12/19

EEOC/HUD CHARGE NUMBER: 16C-2020-00291
VIOLATION DATE: 07/31/19

Name of Aggrieved Person or Organization:

Scott McGowan
C/o David A. Russcol, Esq.
Zalkind, Duncan, & Bernstein, LLP
65A Atlantic Avenue
Boston, MA 02110
Primary Phone: (617)742-6020 ext. _____

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

Mass-C Town of Williamstown
Human Resources/Legal Department
31 North Street
Williamstown, MA 01267
Primary Phone: (413)458-3500 ext. _____

Jason Hoch
C/o Mass-C Town of Williamstown
31 North Street
Williamstown, MA 01267
Primary Phone: (413)458-3500 ext. _____

Chief Kyle Johnson
C/o Mass-C Town of Williamstown
825 Simonds Road
Williamstown, MA 01267
Primary Phone: (413)458-3500 ext. _____

No. of Employees: 25+

Work Location: Williamstown, MA

Cause of Discrimination based on:

Disability and Retaliation

The particulars are:

I, Scott McGowan, the Complainant, believe Mass-C Town of Williamstown, Chief Kyle Johnson, and Jason Hoch, the Respondents, discriminated against me on the basis of my Disability and in Retaliation for opposing discriminatory practices. This is in violation of M.G.L. 151B, Section 4, Paragraphs 4, 16, Title VII, and the ADA.

See Attached for Particulars.

I hereby verify, under the pains and penalties of perjury that I have read this complaint and the allegations contained herein are true to the best of my knowledge.

(Signature of Complainant)

CHARGE OF DISCRIMINATION

ENTER CHARGE NUMBER

This form is affected by the Privacy Act of 1974; see Privacy Act Statement before completing this form.

FEPA 198EMD3213
 EEOC 16C-2020-00291

Massachusetts Commission Against Discrimination and EEOC
State or Local Agency, if any

NAME (Indicate Mr., Ms., Mrs.)
Mr. Scott McGowan

HOME TELEPHONE (Include Area Code)
G.L.c. 4, § 7(26)(c)

STREET ADDRESS
G.L.c. 4, § 7(26)(c)

CITY, STATE AND ZIP CODE
G.L.c. 4, § 7(26)(c)

DATE OF BIRTH
G.L.c. 4, § 7(26)(c)

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (if more than one list below.)

NAME
Town of Williamstown

NUMBER OF EMPLOYEES, MEMBERS
Over 100

TELEPHONE (Indicate Area Code)
413-458-3500

STREET ADDRESS
31 North St

CITY, STATE AND ZIP CODE
Williamstown, MA 01267

COUNTY
Berkshire

NAME
Jason Hoch

TELEPHONE (Indicate Area Code)
413-458-3500

STREET ADDRESS
31 North St

CITY, STATE AND ZIP CODE
Williamstown, MA 01267

COUNTY
Berkshire

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))
 RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST LATEST
January 2018 August 1, 2018
2007 PRESENT
 CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Additional respondent: Kyle Johnson, 413-458-5733, 825 Simonds Road, Williamstown, MA 01267, Berkshire County.

See attached.

RECEIVED

NOV 12 2019

VCAD
BOSTON

I want this charge filed with both the EEOC and the State or Local Agency, if any, I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

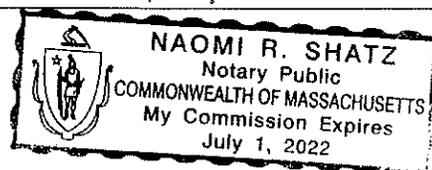
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

Date 11/12/2019 Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year) 11/12/19



MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

SCOTT MCGOWAN,)
Complainant,)
v.) Docket Number:
TOWN OF WILLIAMSTOWN,)
JASON HOCH, and)
KYLE JOHNSON,)
Respondents.)

COMPLAINT NARRATIVE

Complainant Scott McGowan (“McGowan”), a Sergeant in the Williamstown Police Department (“Department”) and a longtime member of that force, has stood up for himself and other victims of sexual harassment and other unlawful discrimination for many years. Because of this protected opposition, McGowan has been subjected to retaliation in ways both large and small. For instance, in January 2019, he was suddenly placed on administrative leave and Respondent Chief Kyle Johnson (“Johnson”) sent an email to the entire Department falsely suggesting that McGowan was mentally unfit for the job – an action that on its face indicates Johnson regarded him as disabled. And in August 2019, Johnson and Respondent Town Manager Jason Hoch (“Hoch”) chose the only other applicant for a new Lieutenant position even though McGowan had more experience in supervisory roles, more seniority, and was otherwise better qualified. Such retaliation and discrimination should not be permitted, especially by government actors like the Respondents.

Background

McGowan was hired by Respondent Town of Williamstown (“Town”) as a full-time police officer in 2001. In 2004, he was promoted to the rank of Sergeant within the Department, a rank that he has held since then. Since approximately 2007, McGowan has served as the Department’s designated investigator, in which role he has investigated crimes including rape, indecent assault and battery, and sex crimes against children, among many others. McGowan has long been an advocate on behalf of victims of sexual assault and sexual harassment, which Johnson and the Department have understood since at least early 2007.

Johnson has been Chief of the Department since 2004. Hoch has been the Town Manager of Williamstown since 2015.

Johnson Sexually Harassed McGowan And Others, And Retaliated Against McGowan for His Opposition to Harassment

In early 2007, McGowan spoke to Johnson about improving the way that the Department handled charges or investigations of sexual assault. Later that year, in or about June and July 2007, Johnson sexually assaulted McGowan in the police station four times. Specifically, Johnson rubbed his clothed penis up against McGowan's body on four different days – twice on his right arm, once on his left arm, and once on his right hand – while McGowan was sitting in the sergeant's office and trying to work on his computer. Each time, McGowan informed Johnson that his behavior was inexcusable and asked him to stop. In response, Johnson laughed and dared McGowan to write him up. McGowan spoke to others within the Department around that time to express his distaste with Johnson's actions.

McGowan was not the only victim of Johnson's sexual harassment. A male dispatcher wrote a letter to Johnson on August 6, 2007, stating that Johnson had "more than one time... rubbed up against my arm or elbow with your clothed penis. I also told you more than once I was uncomfortable with this action and not to do this..." This dispatcher further wrote that Johnson's response was "a laugh and 'put a complaint into me and I will look into it.'" The dispatcher also complained of other sexual and anti-union harassment and unprofessional conduct by Johnson. The letter specifically referenced G.L. c. 151B and accused Johnson of sexual harassment, and indicated that it would be copied to the then-Town Manager.¹ Only after the dispatcher's letter did Johnson's sexual harassment of both McGowan and the dispatcher cease. On information and belief, Johnson believed that the dispatcher had written the letter at McGowan's insistence.

After the dispatcher's letter, Johnson gradually started reducing McGowan's responsibilities. Before the letter, McGowan was considered the senior sergeant (second in command of the Department), and was responsible for department scheduling and was included in substantial discussions about department operations. After the letter, Johnson removed McGowan's senior standing (making him equal to the two other, recently-promoted sergeants), took away his responsibility for scheduling, and excluded him from discussions about department operations.

McGowan continued to stand up against sexual misconduct but found Johnson unwilling to take strong action. In 2011, McGowan received a report from a female Town resident that Officer G.L. c. 4, § 7(26)(c), a loose acquaintance, had arrived at her house uninvited, appearing to have been drinking. The resident was home alone with her young child. She said that G.L. c. 4, § 7(26)(c) repeatedly asked her if she wanted to have sex, and she said no. The resident stated that G.L. c. 4, § 7(26)(c) exposed himself to her and tried to put her hand on his penis. McGowan reported this incident to Johnson, leading to an investigation by the Massachusetts State Police. Although he initially denied the incident,

¹ On information and belief, the letter was given to Johnson but was not actually sent to the Town Manager.

§ 7(26)(c) admitted this behavior to State Police investigators. In response to the incident, McGowan advocated for § 7(26)(c) termination, arguing that the Department should not tolerate sexual assault by its officers. Johnson disagreed, and disciplined § 7(26)(c) but allowed him to remain on the force, where he works to this day. In the context of Johnson's prior harassment, McGowan saw this decision as further confirmation that sexual assault and harassment would be tolerated in his workplace.

McGowan Stood Up Against the Racially Hostile Environment in the Department, And Faced Further Retaliation As a Result

Sexual harassment was not the only form of discrimination perpetrated and tolerated by Johnson in the Department. McGowan was upset and disgusted by the racial climate on Johnson's watch as well. One particular officer, who will be identified herein as Officer § 7(26)(c) was often a target of scorn from Johnson. § 7(26)(c) has African-American ancestry. From early in Johnson's tenure and for multiple years, Johnson would take newspaper articles that featured pictures of persons of color, both male and female, and circle the pictures with a marker and write § 7(26)(c) initials on them, then put them in § 7(26)(c) Department mailbox. On many other occasions in § 7(26)(c) presence, when Johnson saw a person of color entering the police station, he would rub his eyes, look back and forth between § 7(26)(c) and the other person of color, and appear confused as if § 7(26)(c) were in two places at once. § 7(26)(c) was also passed over for a promotion in favor of white men even though he scored higher on the promotional exam.

In or about 2014, § 7(26)(c) was giving a tour of the police station to an African-American student at Williams College. (Williams College is located in Williamstown.) A white dispatcher, § 7(26)(c), entered the station for his shift and shouted a racial slur (the N-word) to other Department members. § 7(26)(c) and, on information and belief, the student both heard the word, and § 7(26)(c) admitted to Johnson that he had used it. Although § 7(26)(c) reported this incident to Johnson, there was no formal investigation. McGowan recommended that § 7(26)(c) be terminated for his offensive and racist behavior, but Johnson took no official disciplinary action; § 7(26)(c) was removed from a few scheduled shifts and returned to work, where he remains to this day.

In 2016, tired of the negative environment, § 7(26)(c) sought a transfer to a different police force, which was willing to accept him. However, Johnson and Hoch held up the transfer, purportedly based on staffing needs. McGowan, who at that time was the president of the police union, pointed out that personnel turnover is inevitable, that the Department had other staffing issues that were not being addressed, and that the reason for denying the transfer did not stand up to scrutiny.

After Johnson asked why § 7(26)(c) was so anxious to leave, McGowan raised some of the racist incidents and practices described above, as well as other ways in which Johnson treated § 7(26)(c) unfairly. McGowan also pointed out that Officer § 7(26)(c) had a picture of Adolf Hitler in his locker at that time, which both McGowan and § 7(26)(c) (among others) found offensive. § 7(26)(c) had the Hitler photo in his locker until mid-2019.) In response, Johnson denied the allegations and threatened to terminate § 7(26)(c)

for untruthfulness. In response, McGowan offered to testify on [G.L.c. 4, § 7(26)(c)] behalf and confirm these events. Johnson left to meet with Hoch, and within an hour [G.L.c. 4, § 7(26)(c)] transfer was approved. Soon afterwards, Johnson told Department employees that McGowan had accused him of being racist, causing many of them to express disapproval of McGowan's leadership of the union.

After [G.L.c. 4, § 7(26)(c)] transfer, Johnson treated McGowan negatively to the point that McGowan began seeking out other professional opportunities. In February 2017, McGowan spoke with Hoch about the possibility of transferring to another police force. Hoch stated that he would not approve the transfer unless the other force transferred two officers to Williamstown in return. He then questioned McGowan about [G.L.c. 4, § 7(26)(c)] allegations against Johnson. McGowan stated that the allegations were true, and that he had witnessed the behaviors [G.L.c. 4, § 7(26)(c)] described. The transfer did not proceed. Since 2017, Johnson has repeatedly delegated responsibilities to lower-ranking officers instead of McGowan, even when that meant paying other officers overtime when McGowan was available to perform those duties.

Johnson's discriminatory attitudes and practices continued. In January 2018, Johnson and McGowan were discussing whether the Town should leave the state Civil Service system. McGowan praised the Civil Service process of independent testing for promotions rather than leaving full discretion with the Chief. Johnson responded, "Can you imagine if [G.L.c. 4, § 7(26)(c)] passed the promotional exam and was number one on the list and I had to promote her?" [G.L.c. 4, § 7(26)(c)] referred to [G.L.c. 4, § 7(26)(c)], who was and is the only female officer and the only Hispanic officer in the Department. McGowan criticized this statement and told Johnson that the Department was moving backward when it should be moving forward.

McGowan's Continued Opposition to Unlawful Practices Leads to Retaliation

On December 31, 2018, Johnson sent an email to all three sergeants, criticizing them for the limited amount of activity on certain metrics (including parking tickets). McGowan responded on January 4, 2019, asking in an email for a meeting with Johnson. In the email, McGowan pointed out that he was near the top of the Department in incident reports, citations, and arrests over the prior few years, despite the fact that (as the Department's investigator) he had other important duties: "It has always been my position to prioritize felony incidents versus traffic/parking enforcement." McGowan also indicated that he wanted to talk about "countless incidents covering over 12 years, to be a repetitive pattern where I have been the victim of silent punishment from you based on my outspoken critiques." Although he did not specifically use terms like sexual harassment or race discrimination, those were significant components of the critiques McGowan was referring to. McGowan also indicated that he wanted to discuss "physical, emotional and medical setbacks" he experienced due to "the enormous stress I live through as the result of my biased treatment." McGowan noted that he had used sick leave and had sought "professional medical assistance and other professional services in an effort to contend with these challenging conditions."

Johnson responded an hour later that “[t]his has nothing to do with your resume” and that “the only discussion needed” was the low number of service calls and parking checks being carried out by the three sergeants.²

Nearly two weeks later, after McGowan worked numerous duty shifts without incident, Johnson called McGowan into his office to discuss McGowan’s medical condition. McGowan confirmed what he had written in his email, and stated that his increased stress was a result of Johnson’s retaliation against him. In response, Johnson demanded McGowan’s badge and gun, and placed McGowan on paid administrative leave, which was not requested by McGowan and not justified by any legitimate concern that McGowan was unfit for duty. Johnson quoted in a letter that same day McGowan’s references to “physical, emotional and medical setbacks” and use of sick leave. Johnson required McGowan to see his primary care physician within ten days for a physical examination, and to obtain a referral for a clinical psychologist in Pittsfield for a psychological evaluation. Johnson sent an email to the entire Department in which he stated, “Sgt. McGowan will be out for an undetermined length of time on paid Administrative Leave. This is health & wellness related....” Counsel for the union, on McGowan’s behalf, responded, asserting that Johnson’s action violated G.L. c. 150E as well as anti-discrimination laws.

The following week, McGowan met with his primary care physician, who immediately cleared him for duty and refused to refer him to a psychologist because it was medically unnecessary. After McGowan informed the Town of this, the Town arranged a psychological evaluation in Wakefield, at the Town’s expense, which immediately cleared McGowan for duty. McGowan returned to work on February 12, 2019.

Both during and after McGowan’s administrative leave, McGowan heard that Johnson’s actions had spawned rumors both within the Department and in the broader community that McGowan had experienced a significant mental health breakdown, that he might be insane, and that he might be prone to carrying out a workplace shooting. McGowan suffered further stress and reputational damage as a result of these actions.

Johnson’s decisions with respect to McGowan contrasted sharply with how he had treated other members of the Department who had expressed concern for stress or medical conditions in the past. For example, on or about May 30, 2009, Sgt. G.L.c. 4, § 7(26) was scheduled to work a regular shift from 7:00 am to 3:00 pm, and then an overtime patrol under a federally-funded “Click It or Ticket” grant from 3:00 pm to 7:00 pm. During his day shift, G.L.c. 4, § 7(26)(c) made several stops and issued several citations, but did not log them or call them in as Department procedures required. Instead, G.L.c. 4, § 7(26)(c) falsified log entries and called in those stops during his overtime patrol even though he actually did not make any stops or issue any citations during the overtime patrol. After

² Notwithstanding this apparent concern for activity by sergeants, Johnson has approved one of the other sergeants’ regular assignment to dispatch throughout this year, with the result that he continues to have near-zero activity on those same metrics for the first three quarters of 2019.

Johnson learned of this, [G.L.c. 4, § 7(26)(c)] explained to Johnson that he had engaged in this dishonesty because of the stress he felt to meet the number of stops set by the Governor's Highway Safety Bureau. [G.L.c. 4, § 7(26)(c)] was not required to undergo any medical evaluation even though he asserted that stress had caused him to violate the law significantly.³ [G.L.c. 4, § 7(26)(c)] had not engaged in protected activity in opposition to unlawful discrimination or retaliation.

Johnson also handled another medical-related incident differently. In or about 2011, an officer ("Officer [G.L.c. 4, § 7(26)(c)] informed McGowan that, while off duty, he had experienced a cardiac event and been hospitalized. He expressed to McGowan his belief that his medical condition was related to the stress of being an officer in the Department. McGowan and [G.L.c. 4, § 7(26)(c)] met with Johnson, where [G.L.c. 4, § 7(26)(c)] repeated these statements. In response, Johnson offered to remove [G.L.c. 4, § 7(26)(c)] from a specialized assignment and place him on a different shift to ease the stress he was experiencing. Johnson did not ask [G.L.c. 4, § 7(26)(c)] for his gun or badge. Johnson did not place [G.L.c. 4, § 7(26)(c)] on administrative leave or require [G.L.c. 4, § 7(26)(c)] to see a psychologist for a fitness-for-duty examination. On information and belief, Johnson also did not require [G.L.c. 4, § 7(26)(c)] to get a medical fitness-for-duty examination. [G.L.c. 4, § 7(26)(c)] remains on the force. [G.L.c. 4, § 7(26)(c)] also had not engaged in protected activity in opposition to unlawful discrimination or retaliation.

In Further Retaliation, Respondents Passed Over McGowan for Promotion

Since at least 2018, Johnson had been discussing the possibility of creating a Lieutenant position within the Department. (At that point, the next position below Chief was Sergeant.) In or about June 2018, Johnson told McGowan that, if a Lieutenant position was created, Johnson would promote [G.L.c. 4, § 7(26)(c)], a patrol officer, to that position. [G.L.c. 4, § 7(26)(c)] had also been a member of the Department for a long time. [G.L.c. 4, § 7(26)(c)] had not spoken out against discrimination or retaliation. [G.L.c. 4, § 7(26)(c)] also did not have any managerial experience as a superior officer.

On June 14, 2019, counsel for McGowan sent a letter to counsel for the Town, protesting a pattern of discrimination and retaliation by the Town and indicating that McGowan was addressing these matters through a union grievance process but reserved his rights to take individual action.

On June 26, 2019, Johnson posted the position of Lieutenant. There were only two applicants – McGowan and [G.L.c. 4, § 7(26)(c)]. Both underwent in-person testing by a third party contracted by the Town on July 31, 2019. The tests included written exercises, role playing, and an interview, among other things. The third party scored [G.L.c. 4, § 7(26)(c)] higher than McGowan on each of five activities by between 0.6 and 1.8 points out of 100. Purportedly based solely on this assessment, Johnson recommended hiring [G.L.c. 4, § 7(26)(c)] a recommendation that Hoch accepted. [G.L.c. 4, § 7(26)(c)] was promoted to Lieutenant on August 15, 2019, as a result of which he received significant increases in pay, benefits, and responsibilities, beyond those of McGowan as a sergeant.

³ [G.L.c. 4, § 7(26)(c)] eventually received a one-day suspension for the incident, despite McGowan's recommendation that he be terminated for the violations.

However, this assessment process was a sham. All of the measurement categories were subjective, and on information and belief, McGowan's performance was in fact higher than that of [G.L.c. 4, § 7(2b)]. If not for the retaliation and discrimination described above, McGowan would have gotten the promotion. But Johnson had already made up his mind long before McGowan even applied for the position. When the Department moved into a new police station on or about July 9, 2019, [G.L.c. 4, § 7(2b)] moved directly into the office designated for the Lieutenant – more than a month before any decision about the promotion was allegedly made. Johnson gave no indication that this was inappropriate.

Claims

Respondents discriminated against McGowan, caused harm to his reputation, invaded his privacy, and failed to promote him because Respondents regarded him as disabled. *See* Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; G.L. c. 151B, § 4. Respondents also engaged in adverse actions, including some of the same discriminatory acts, in retaliation for McGowan's past opposition to workplace sexual harassment by Johnson and others, opposition to race discrimination, opposition to disability discrimination, and other activities protected from retaliation or interference under G.L. c. 151B, §§ 4(4) and 4(4A), and other state and federal laws.

Damages

As a result of Respondents' unlawful acts, McGowan has suffered lost wages and benefits, reduced future career opportunities, reputational harm, and other damages.

I swear or affirm under the pains and penalties of perjury that I have read this Complaint and that the allegations contained therein are true to the best of my knowledge.



Scott McGowan



Date