

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

ERNIE BRANDENBURG,
2820 Park Mills Road
Adamstown, MD 21710

Plaintiff,

v.

Civil Action No. 8:18-cv-02583

MONTGOMERY COUNTY
PUBLIC SCHOOLS,
850 Hungerford Drive
Room 156
Rockville, MD 20850

COMPLAINT

JURY TRIAL DEMAND

Defendant.

NATURE OF ACTION

This is an action initiated by Ernie Brandenburg, for himself and others similarly situated, under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634, against their former employer, Montgomery County Public Schools (MCPS), challenging the MCPS Employees' Retirement and Pension System Plan's policy of denying accidental disability retirement benefits to employees, like Brandenburg, who became disabled because of a work-related accident at age 62 or older.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, this being an action to enforce rights guaranteed by federal statutes. This action is authorized and instituted pursuant to sections 7(c) and 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) and 626(c), the former of which incorporates 29 U.S.C.

§ 216(b).

2. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because the discriminatory acts alleged below were committed within the jurisdiction of the U.S. District Court for the District of Maryland, Southern Division.

PARTIES

3. Plaintiff, Ernie Brandenburg, is a resident of Adamstown, Maryland, in Frederick County, which is within the jurisdiction of the U.S. District Court for the District of Maryland, Northern Division. His birth date is October 20, 1951, and he is 66 years old as of the filing of this Complaint.

4. At all relevant times Defendant MCPS has continuously been an employer within the meaning of Section 11(b) of the ADEA, 29 U.S.C. § 630(b).

FACTS

5. MCPS established the MCPS Employees' Retirement and Pension Systems through a series of mergers and consolidations. See page 1 of MCPS Employees' Retirement and Pension Plan attached hereto and marked as Exhibit 1.

6. A member of the MCPS under the age of 62 (which is the normal retirement age) who is awarded a service connected disability retirement receives 2/3 of salary for the rest of his or her life. A member over 62 who is awarded service connected disability retirement only receives an ordinary retirement benefit, which is substantially less. See MCPS Publication "Understanding Your Retirement: Employees' Retirement, Pension, and Reformed Pension System Retirement Benefits and Process," in part, attached hereto and marked as Exhibit 2. Workers over the age of 62 who suffer a service connected disability are ineligible for a service-connected disability retirement solely on the basis of their age.

7. Mr. Brandenburg worked for MCPS for approximately 11 years as a maintenance worker. He was an Auto Tech II. His duties included supervising shifts of mechanics that work on school buses as well as performing mechanics work himself. Mr. Brandenburg sustained an injury arising out of and in the course of performing his work duties. His injury occurred in November 2015, while adjusting a school bus that was not properly secured on a lift saddle. He required medical treatment and ultimately shoulder reconstruction surgery. As a direct result of the accident, Mr. Brandenburg's injury left him unable to perform the requirements of his job.

8. Mr. Brandenburg received a worker's compensation award on February 2, 2017, for the above described accident in which he was awarded both temporary total disability benefits and permanent partial disability benefits. Subsequently, on or about February 21, 2017, Mr. Brandenburg, pro se, prepared an application for regular retirement as of April 1, 2017, because he no longer could perform his job for MCPS. When Mr. Brandenburg went to MCPS to file the application, MCPS personnel told him that he should instead file an application for accidental disability retirement. MCPS did not notify Mr. Brandenburg that he would not get additional benefits from changing his application to an accidental disability retirement application. Further, MCPS did not notify Mr. Brandenburg that by taking an accidental disability retirement that his award of accidental disability retirement benefits would be offset from his worker's compensation award, which would not only eliminate his worker compensation award, but also create an overpayment of \$5,926.27.

9. Mr. Brandenburg, on the advice of MCPS, changed his application to an application for accidental disability retirement which he filed that same day.

10. His application was approved by the Disability Retirement Review Board by decision dated March 13, 2017. Mr. Brandenburg retired on April 1, 2017.

11. Even though the Disability Retirement Review Board approved his accidental disability retirement application, Mr. Brandenburg received an ordinary retirement benefit.

12. The gross monthly amount that Mr. Brandenburg would have received for a service connected accidental disability retirement had he been younger than 62 when he applied for the benefit would have been at least \$4,229.88, which is two-thirds of his last salary. Instead, he receives the gross monthly amount of \$1,325.54, the base pension amount at normal retirement. Mr. Brandenburg will lose approximately \$34,852.08 annually due to this difference.

13. Mr. Brandenburg appealed his award of an ordinary retirement benefit versus the service connected disability monthly retirement for which he applied. On June 13, 2017, MCPS confirmed in writing that because Mr. Brandenburg was over age 62 at the time he had applied for service connected disability retirement benefits, he was not entitled to a higher benefit due to a service-connected disability. *See* June 13, 2017 Letter from Shafeena Yunus, Senior Retirement Specialist with the MCPS Employee and Retiree Service Center in response to a request to review and reconsider Mr. Brandenburg's award to correct his monthly payment amount (with cited code) attached hereto and marked as Exhibit 3.

14. As of the filing of this Complaint, Mr. Brandenburg's retirement benefit remains an ordinary retirement benefit, not a service-connected disability retirement benefit.

CLAIMS FOR RELIEF

Plaintiff incorporates the above paragraphs as if fully rewritten herein.

15. Plaintiff, who is over the age of 40, and all similarly situated individuals, were subjected to adverse employment actions by the Defendant by being denied a service-connected disability retirement solely because of their age.

16. These actions constituted age discrimination in violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Mr. Brandenburg filed a charge of age discrimination with the U.S. Equal Employment Opportunity Commission on December 18, 2017. The charge is attached hereto and marked as Exhibit 4.

18. Through this timely charge of age discrimination which was filed more than sixty days prior to the initiation of this action, Plaintiff has satisfied all administrative prerequisites to this action under the Age Discrimination in Employment Act.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff requests the following relief:

1. A finding that the Plan provision in question facially discriminates against Mr. Brandenburg and all similarly situated individuals;
2. A declaration that the Plan provision in question violates the ADEA;
3. Order that the plan provision be considered null and void;
4. Grant a permanent injunction enjoining Defendant MCPS, its officers, successors assigns and all persons in active concert or participation with it, including the MCPS Employees'

Retirement and Pension Systems, from enforcing the age discriminatory pension provision against Mr. Brandenburg or any other similarly situated individual;

5. Order Defendant MCPS to make whole Ernie Brandenburg and all similarly situated individuals by awarding them a service-connected disability retirement benefits that is calculated and paid the same as for workers under the age of 62, with prejudgment interest and recalculated future benefits, in amounts to be determined at trial;

6. Ancillary relief in the form of the costs of this action including reasonable attorney fees; and

7. Grant such other relief as the Court deems appropriate.

JURY TRIAL DEMAND

Plaintiff and all similarly situated individuals request a jury trial on all questions of fact raised by their Complaint.

Respectfully Submitted,

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