Original

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MICHAEL MCCANE, Plaintiff, v. STATE OF IOWA and IOWA DEPARTMENT OF CORRECTIONS, Defendants.	Case No. LACL152618 **STATEMENT OF THE CASE AND JURY INSTRUCTIONS** **Judge Jeanie K. Vaudt**

Members of the Jury:

STATEMENT OF THE CASE

In this case, Plaintiff Michael McCane (Plaintiff) raises three claims against Defendants the State of Iowa and the Iowa Department of Corrections (together, Defendants) under the Iowa Civil Rights Act (ICRA). First, Plaintiff alleges Defendants violated the ICRA by discriminating against Plaintiff because of Plaintiff's disability. Second, Plaintiff alleges Defendants violated the ICRA by failing to provide Plaintiff a reasonable accommodation for Plaintiff's disability. Third, Plaintiff alleges that Defendants violated the ICRA by terminating Plaintiff's employment as a correctional officer at the Iowa Correctional Institution for Women (ICIW) in retaliation for Plaintiff requesting a reasonable accommodation for his disability.

Defendants deny Plaintiff's claims and deny that any of their actions were unlawful.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will give you now in the Jury Instructions before you retire to begin your deliberations.

INSTRUCTION NO. 1

The parties have agreed to certain facts called "stipulations." You should treat these facts as already proven and conclusively established:

1. Plaintiff was "disabled" as defined by the ICRA.
2. As of March 19, 2021, Plaintiff's hourly rate of pay was $21.50 per hour.
3. Defendants' IPERS contribution was 9.44 percent of Plaintiff's income.
4. Defendants' full-time employees with 1-4 years of service receive 80 hours of vacation annually.
5. Defendants' full-time employees with 5-11 years of service receive 120 hours of vacation annually.
6. Defendants' full-time employees with a sick leave balance of 750 hours or less accrue 12 hours of sick leave per month.
7. In 2021, Defendants paid $715.00 per month toward the health insurance premiums of each employee.
8. In 2021, Defendants paid $31.00 per month toward dental insurance premiums for each employee.
9. Defendants usually provide full-time employees with nine paid holidays (New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, Day after Thanksgiving, and Christmas). In 2021, Defendants also provided full-time employees with an additional paid holiday (New Years Day 2022, which was observed on December 31, 2021).
10. On December 1, 2020, on Plaintiff's behalf, Defendants submitted a workers' compensation claim to their claims handler, Sedgwick Claims Management, Inc. (Sedgwick).
11. Once a claim is submitted to Sedgwick, the state agency employer is not involved in the decision to accept or deny the claim. This responsibility is exclusively held by Sedgwick.
12. On February 25, 2021, Sedgwick denied Plaintiff's workers' compensation claim.
13. The denial of an employee's workers' compensation claim has no bearing on an employer's obligation to provide a reasonable accommodation to a disabled employee, if one is available.

INSTRUCTION NO. 2

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the Instructions together because no one Instruction includes all of the applicable law.

The order in which I give these Instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices, or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just Verdict, based solely on the evidence, your reason and common sense, and these Instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 3

Whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 4

You shall base your Verdict only upon the evidence and these Instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted.

In considering the evidence, you should make deductions and reach conclusions according to reason and common sense. Facts may be proved by direct evidence, circumstantial evidence, or both. Neither party is required to present direct evidence in order to establish a claim or defense.

Direct evidence is evidence from a witness who claims actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is evidence about a chain of facts from which you may draw conclusions and inferences.

You should use reason and common sense to evaluate the evidence regardless of whether it is direct or circumstantial. Both are equally probative. The law makes no distinction between direct and circumstantial evidence. The weight given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;

2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,

3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 6

The fact that Defendants are governmental entities and Plaintiff is a person should not affect your decision. All parties are equal before the law and are entitled to the same fair consideration by you.

In reaching your Verdict, you may not consider how any money damages may be paid.

INSTRUCTION NO. 7

You have heard evidence claiming a witness made statements before this trial which were inconsistent with what the witness said in this trial. If you find these statements were made under oath and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial. If you find these statements were made while the witness was not under oath, then you may use them only to help you decide if you believe the witness.

You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other believable evidence supports it or if for some other reason you believe it.

INSTRUCTION NO. 8

You have heard evidence claiming Plaintiff and employees of Defendants made statements before this trial while under oath and while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if that person had made it under oath during the trial.

If you find such a statement was made and was inconsistent with a person's testimony during the trial, you may also use the statement as a basis for disregarding all or any part of that person's testimony during the trial, but you are not required to do so. You should not disregard a person's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 9

A governmental entity acts only through its agents or employees, and any agent or employee of such an entity may bind that entity by acts and statements made while acting within the scope of the authority delegated to the agent by that entity, or within the scope of his or her duties as an employee of that entity. Entities are also imputed with the knowledge of their employees—in other words, if an entity's employees or agents know something, then the entity knows it.

INSTRUCTION NO. 10

COUNT I – DISABILITY DISCRIMINATION

Plaintiff asserts a disability discrimination claim under the ICRA against Defendants. To succeed on this claim, Plaintiff must prove all of the following elements:

1. At the time of the events in question, Plaintiff had a disability, as stipulated to by the parties in Instruction No. 1.

2. At the time of the events in question, Plaintiff was qualified to perform the "essential functions" of his job position, as defined in Instruction No. 12, with or without reasonable accommodation..

3. Defendants took "adverse action" against Plaintiff, as defined in Instruction No. 11.

4. Plaintiff's disability was a "motivating factor," as defined in Instruction No. 21, in Defendants' decision to take adverse action against Plaintiff.

If Plaintiff has failed to prove any of these elements, Plaintiff is not entitled to damages, and your Verdict on the disability discrimination claim must be in favor of Defendants.

INSTRUCTION NO. 11

For the disability discrimination claim explained in Instruction No. 10, "adverse action" means something that detrimentally affects the terms, conditions, or privileges of someone's employment. An adverse action does not require the employee to suffer economic harm. You should judge the materiality of the alleged adverse action from the perspective of a reasonable person in Plaintiff's position, considering all the circumstances.

INSTRUCTION NO. 12

As used in these Instructions, an employee is "qualified" for a job position if the employee can perform the essential functions of the position with or without a reasonable accommodation, as defined in Instruction No. 15. The "essential functions" of a position as referenced in Instruction No. 14 are those that bear more than a marginal relationship to the job at issue.

The following may be considered in determining the essential functions of a job position:

1. The employer's judgment as to which functions of the job are essential;
2. Written job descriptions;
3. The amount of time spent on the job performing the function in question;
4. Consequences for not requiring the employee to perform the function;
5. The work experience of employees who have held the job;
6. The current work experience of employees in similar jobs;
7. Whether the reason the position exists is to perform the function;
8. Whether there are a limited number of employees available among whom performance of the function can be distributed;
9. Whether the function is highly specialized and the employee in the position was hired for the employee's expertise or ability to perform the function;
10. How Plaintiff actually functioned in the workplace.

No single factor should control your decision. The employer's judgment as to what functions are essential is not conclusive. You should consider all of the evidence in deciding whether a job function is essential.

INSTRUCTION NO. 13

When an employee becomes disabled from any cause during the employee's employment, the employer must make every reasonable effort to continue the employee in the same position or to retain and reassign the employee and assist in the employee's rehabilitation.

INSTRUCTION NO. 14

COUNT II – FAILURE TO PROVIDE REASONABLE ACCOMMODATION CLAIM

Plaintiff asserts a failure to provide reasonable accommodation claim under the ICRA against Defendants. To succeed on this claim, Plaintiff must prove all of the following propositions:

1. At the time of the events in question, Plaintiff had a disability, as stipulated to by the parties in Instruction No. 1.

2. Defendants knew of Plaintiff's disability.

3. Plaintiff could have performed the essential functions of the job of correctional officer at the time Defendants medically separated him from payroll if Plaintiff had been provided with an accommodation of:

   a. Assignment to the master control post with exemption from responding to emergency calls and exemption from engaging in physical enforcement activities with inmates; or

   b. Additional time off without pay.

4. The requested accommodation(s) would have been reasonable; and

5. Defendants failed to provide a reasonable accommodation identified by Plaintiff and/or failed to engage in good faith in an interactive process with Plaintiff as described in Instruction No. 17 to provide Plaintiff with any other reasonable accommodation.

If Plaintiff has failed to prove any of these elements, your Verdict on Plaintiff's failure to provide reasonable accommodation claim must be in favor of Defendants. If Plaintiff has proved all of these elements, you shall then consider the defense of undue hardship explained in Instruction No. 18.

INSTRUCTION NO. 15

The law requires that employers provide "reasonable accommodations" to otherwise qualified employees ~~so~~ who have disabilities so that they can continue to work. As used in these Instructions, a "reasonable accommodation" is a modification to the workplace which allows a person with a disability to perform the essential functions of the job or allows a person with a disability to enjoy the same benefits and privileges as an employee without a disability. An accommodation is unreasonable if it imposes an undue hardship on the operation of the employer's business, as defined in Instruction No. 18.

Examples of "reasonable accommodations" may include:

1. Making existing facilities used by employees readily accessible to and usable by Plaintiff;
2. Job restructuring;
3. Assistance from other employees;
4. Part-time or modified work schedules;
5. Reassignment to a vacant position or different location;
6. Acquisition or modifications of equipment or devices;
7. Appropriate adjustment or modifications of examinations, training materials, or policies; and
8. Other similar accommodations for individuals with disabilities.

The employer's obligation is to provide a reasonable accommodation that allows the employee to perform the essential functions of the job, if one exists. It is against the law to require that non-work related injuries be 100 percent healed before providing an accommodation when accommodation is otherwise available.

INSTRUCTION NO. 16

Generally, when a state employee has a work-related injury, the employing agency is required to provide a temporary light-duty work assignment that complies with the employee's medical restrictions. This temporary light-duty work assignment must last for the hourly equivalent of 20 workdays or until the employee is medically released for full duty, whichever is sooner.

INSTRUCTION NO. 17

Employers have an obligation to provide a reasonable accommodation to an employee if one is available, regardless of whether the employee's disability is work related.

When an employer becomes aware that an employee may be disabled and needs an accommodation, the law requires the employer to initiate an informal, interactive process to identify "reasonable accommodations." All that is required to trigger an employer's duty to engage in the interactive process is knowledge (including circumstantial) that the employee may have a condition that may qualify as a disability and result in some limitation that could require an accommodation.

The employee is expected to participate and cooperate. This process is meant to be flexible and interactive. Both the employer and the employee should communicate directly, listen to each other, and exchange essential information. The employee is likely to have greater information about his disability and the employer is likely to be able to identify potential accommodations that the employee would have no way of knowing about.

Neither side is allowed to delay or obstruct the process. The process should identify the limitations caused by the employee's disability, as well as potential "reasonable accommodations" that could overcome those limitations.

The interactive process requires the employer to: (1) communicate directly with the employee to explore various possible accommodations; (2) give good faith consideration to any accommodations suggested by the employee; and (3) offer one or more accommodations that are reasonable and effective, if any exist. The employer is not obligated to offer a requested accommodation if it is unreasonable.

If you find that either Plaintiff or Defendants failed to engage in the interactive process or did not do so in good faith, you may use that as a factor when determining whether Defendants failed to provide Plaintiff with a reasonable accommodation.

INSTRUCTION NO. 18

Defendants are not required to provide an accommodation for Plaintiff if Defendants prove that accommodation would have imposed an undue hardship on the operation of Defendants' business.

The term "undue hardship" means an action requiring significant difficulty or expense. It takes into account the financial realities of the particular employer and refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

The factors you may consider in deciding whether an accommodation would cause undue hardship on the operation of an employer's business include:

1. The overall size of the employer's program with respect to the number of employees, number and type of facilities, and size of budget;

2. The type of the employer's operation, including the composition and structure of the employer's workforce; and

3. The nature and cost of the accommodation needed.

If you find that Defendants have proved that accommodating Plaintiff's restrictions would have caused an undue hardship on the operation of their business, then Defendants have proved the defense of undue hardship, and Plaintiff cannot recover damages on his failure to accommodate claim. If Defendants have failed to prove this defense, Plaintiff is entitled to recover damages in some amount.

INSTRUCTION NO. 19

COUNT III – RETALIATION

Plaintiff asserts a claim of retaliation under the ICRA against Defendants. To succeed on this claim, Plaintiff must prove all of the following elements:

1. Plaintiff engaged in a "protected activity," as defined in Instruction No. 20.
2. Defendants took "adverse action" against Plaintiff, as defined in Instruction No. ~~23~~ 22, and
3. Plaintiff's "protected activity" was a "motivating factor" in Defendants' decision to take adverse employment action, as defined in Instruction No. 21.

If Plaintiff has failed to prove any of these elements, your Verdict must be in favor of Defendants, and you need not proceed further in considering this claim. If Plaintiff has proven all of these elements, then you will consider the "same decision" defense, as explained in Instruction No. 25.

INSTRUCTION NO. 20

Requesting "reasonable accommodations" from an employer is a "protected activity" so long as the employee believed in good faith that the accommodation was appropriate.

INSTRUCTION NO. 21

Plaintiff's disability and/or protected activity was a "motivating factor" as referenced in Instruction No. 19 if it played a part in the "adverse action" taken against Plaintiff. In other words, Plaintiff's disability must have been one of the reasons the "adverse action" as referenced in Instruction No. ~~23~~ 22 JLV 8/20/24 was taken but need not have been the only reason for Defendants' actions.

Defendants' explanation for their actions towards Plaintiff must be specifically stated and nondiscriminatory. The reasonableness of Defendants' explanation may be considered in determining whether the explanation is a pretext or a cover for the alleged illegal conduct.

You may find that Plaintiff's disability was a motivating factor in Defendants' decisions or actions if it has been proved that Defendants' stated reasons for their decisions are not the only or real reasons but are a pretext to hide discrimination based upon Plaintiff's disability, as explained in Instruction No. 24.

INSTRUCTION NO. 22

For the retaliation claim explained in Instruction No. 19, "adverse action" means anything that might have dissuaded a reasonable employee from requesting a reasonable accommodation.

INSTRUCTION NO. 23

Timing alone is not enough evidence to prove Plaintiff's claim of retaliation. However, a showing that an employer takes adverse action against an employee shortly after the employee has engaged in protected activity may be evidence of retaliation.

INSTRUCTION NO. 24

Proof that Defendants' explanation for their decision to take adverse action is not true is one form of evidence that you may find proves discrimination and/or retaliation.

You may find that Plaintiff's disability or protected activity was a motivating factor in Defendants' decision to take adverse action against Plaintiff if it has been proved that Defendants' stated reason for their decisions is not the real reason, but it is pretext to try and hide discrimination or retaliation.

Defendants' stated explanation for refusing to accommodate Plaintiff or for medically separating Plaintiff from employment must be specifically articulated and non-discriminatory. The reasonableness of Defendants' explanation may be considered in determining whether it is a pretext (or cover-up) for disability discrimination or retaliation.

An employer's deviation from its own policies and procedures may indicate it is engaging in discrimination or retaliation.

INSTRUCTION NO. 25

If you find that Plaintiff has proved all of the elements on his claim for retaliation as explained in Instruction No. 19, you must then consider Defendants' defense that they would have made the same decision regardless of whether Plaintiff had engaged in protected activity by requesting reasonable accommodation. If you find that Defendants have proved they would have made the same decision regardless of whether Plaintiff had engaged in protected activity, you shall not award damages to Plaintiff on his claim for retaliation. If you find that Defendants have not proved they would have made the same decision regardless of Plaintiff's protected activity, then you must decide how much Defendants should be ordered to pay in damages for retaliation.

INSTRUCTION NO. 26

You may not return a verdict for Plaintiff just because you might disagree with Defendants' decisions or believe those decisions to be harsh or unreasonable. An employer has the right to make subjective personnel decisions for any reason that is not discriminatory or retaliatory.

INSTRUCTION NO. 27

If you find in favor of Plaintiff on one or more of Plaintiff's claims, then you must determine an amount that is fair compensation for Plaintiff's damages. You may award compensatory damages only for the injuries that Plaintiff proves were caused by the wrongful conduct of Defendants. The damages you award must be fair compensation – no more, no less.

In doing so, you shall consider the following items:

1. The reasonable value of back pay and fringe benefits Plaintiff would have earned from his employment at ICIW from the date of any unlawful conduct by Defendants to the present time if Plaintiff had not been subjected to unlawful conduct.

2. The present value of any front pay and future fringe benefits Plaintiff would have earned from his employment at ICIW from the date of your Verdict into the future if Plaintiff had not been subjected to unlawful conduct.

3. Any emotional distress sustained by Plaintiff caused by the unlawful conduct of Defendants from the date of any such conduct to the present time. Emotional distress includes all highly unpleasant mental reactions, such as mental anguish, fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, and worry.

4. The present value of any future emotional distress sustained by Plaintiff caused by the unlawful conduct of Defendants from the date of your Verdict into the future.

Plaintiff has a duty to mitigate Plaintiff's damages – that is, to exercise reasonable diligence under the circumstances – to minimize Plaintiff's damages. Therefore, if you find Defendants have proved that Plaintiff failed to seek out or take advantage of opportunities that were reasonably available to Plaintiff, you must reduce Plaintiff's damages by the amount that Plaintiff reasonably could have avoided if Plaintiff had sought out or taken advantage of such opportunities.

The amount, if any, you assess for emotional distress in the past and future cannot be measured by any exact or mathematical standard. Further, absolute precision in proving what an employee would have earned if not for Defendants' wrongful conduct is not required. Any uncertainties in computing lost wages should be resolved against Defendants. You must use your

sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against either party. The amount you assess for any item of damage must not exceed the amount caused by the party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the questions contained in the verdict form.

INSTRUCTION NO. 28

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate Plaintiff for future losses.

INSTRUCTION NO. 29

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 30

A Standard Mortality Table indicates the normal remaining life expectancy of people who are the same age as Plaintiff is 36.58 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Plaintiff's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 31

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them and may be inaccurate or incomplete.

Upon reaching a Verdict, leave the notes in the jury room and they will be destroyed.

INSTRUCTION NO. 32

Upon retiring to your deliberation room, you shall select a foreperson. It will be his or her duty to see that (1) discussion is carried on in an orderly fashion, (2) the issues are fully and freely discussed, and (3) each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved, and you may later hesitate to change an announced position even if shown it may be incorrect. Remember, you are not partisans or advocates, but are judges – judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 33

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared these Instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about Instructions can be answered by carefully re-reading them. If, however, any of you feel it necessary to ask a question, you must do so in writing, signed and dated by your foreperson, who shall deliver the question to my court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return them to the court with your Verdict.

The court attendant who has been working with me on this case is in the same position as I am. The court attendant has taken an oath not to communicate with you except to ask if you have agreed upon a Verdict. Please do not put the court attendant on the spot by asking her any questions. You should direct your questions to the court and not to the court attendant.

INSTRUCTION NO. 34

I am giving you one verdict form containing eight questions. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree during the first six hours, then the verdict form must be signed by your foreperson. JKV 8/21/24

After deliberating for six hours from 1:30 p.m. a.m. on August 20, 2024, excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict form must be signed by all seven jurors who agree.

When you have agreed upon a Verdict and appropriately signed the verdict form, please inform my court attendant.

DATED this 20th day of August, 2024.

Jeanie K. Vaudt
JEANIE K. VAUDT, JUDGE
Fifth Judicial District of Iowa