



requesting an accommodation and for filing an EEO Complaint. Plaintiff seeks reinstatement, back pay and benefits, compensatory damages, and reasonable attorney fees.

2. This Second Amended Complaint adds allegations and a retaliation cause of action related to Plaintiff's second EEO Complaint, which was recently dismissed by the Equal Opportunity Commission.

## **II. JURISDICTION**

3. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331. This Court may exercise supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

## **III. PARTIES**

4. Plaintiff Joan Fredericks is a citizen of Hamilton County, Ohio and at all relevant times was employed by the United States Postal Service in Cincinnati, Ohio. She is an "individual with a disability" within the meaning of 29 U.S.C. § 705(20)(A).

5. Defendant John E. Potter is the Postmaster General of the United States Postal Service. He is sued as the head of the United States Postal Service.

## **IV. STATEMENT OF FACTS**

6. Plaintiff Joan Fredericks began working for Defendant United States Postal Service in Cincinnati, Ohio, August 29, 1998 as a part-time flex clerk. In November 2003 she became a regular full-time clerk. She was "separated" from service March 4, 2006.

### **Plaintiff Injured Her Knee At Work And Became Disabled**

7. Ms. Fredericks injured her right knee working in a new assignment that caused her to walk up and down stairs all day combined with standing on concrete and lifting 70 pound sacks of mail. After several months of off and on swelling and pain she sought medical

attention. On March 28, 2002, after an MRI, Ms. Fredericks was diagnosed with “chondromalacia patella,” a knee condition which causes the cartilage underneath the kneecap to soften and degenerate.

8. Ms. Fredericks’ knee condition limits her major life activities of working, walking, standing, lifting, sitting, doing household chores, socializing, caring for her family, and living. She is disabled. She has at all times been able to do the essential functions of her job as a USPS clerk with reasonable accommodations.

9. Ms. Fredericks’ doctor permitted her to return to work on April 1, 2002 with restrictions that limited her walking, climbing stairs, kneeling, bending and stooping at work.

#### **Requests for Reasonable Accommodations Denied**

10. On April 8, 2002, Ms. Fredericks returned to work. She requested a limited duty job which allowed her to work within her restrictions. She was assigned to such a job for only four hours a day.

11. However, soon after, on May 17, 2002, Richard Hohenstatt, a USPS manager, informed Ms. Fredericks that the USPS would no longer provide her with work within her restrictions.

12. Mr. Hohenstatt explained that he could not provide her with a job because she could not walk. Ms. Fredericks explained that she could walk and gave him her latest medical restrictions dated May 16, 2002 which stated she could walk four hours a day. He disregarded the medical document and told her he could not provide her with a job.

13. Since the USPS refused to accommodate her disability and Mr. Hohenstatt shut down the interactive process, Ms. Fredericks was off work for five months.

14. At that time, there were positions available at the Post Office that fell within Ms. Fredericks' restrictions.

15. In October 2002, the Post Office, without explanation or discussion about her needs, offered Ms. Fredericks a job. She went back to work October 11, 2002. On November 1, 2002, the Post Office moved her to a job as a loose mail clerk where she could sit and sort and repair loose mail. She was able to perform the essential functions of this job. In fact her doctor noted in January 2003 that she had marked improvement in her need because she had a job where she could sit.

16. In March 2003, the U.S. Department of Labor Office of Worker's Compensation Programs (OWCP) sent Ms. Fredericks to a physician who confirmed her diagnosis of chondromalacia patella, and stated that her work restrictions were permanent. As a result, the OWCP directed the USPS on April 7, 2003 and again on May 9, 2003 to place Ms. Fredericks in a permanent job position that met her restrictions. The USPS did not respond to the OWCP.

17. On October 8, 2003, the USPS, involuntarily reassigned Ms. Fredericks beginning October 18 to third shift, beginning work at 7:00 pm and ending at 3:50 am, thereby taking her off her second shift loose mail clerk job. On October 21, 2003, the USPS offered Ms. Fredericks to a third shift limited duty position which required her to perform tasks that were outside of her restrictions. Ms. Fredericks refused the re-assignment because it required her to climb stairs. In fact, Ms. Fredericks had refused the offer of this same job three times earlier for the same reason. The USPS never offered Ms. Fredericks a job on third shift which would reasonably accommodate her disability, despite their ability to do so. Nor did the USPS accommodate Ms. Fredericks by reassigning her to the loose mail clerk job which did accommodate her disability.

Nor did the USPS make any attempt to engage Ms. Fredericks in the interactive process to discuss her accommodation needs.

18. On October 24, 2003 Ms. Fredericks stopped working. She has not worked since. On February 22, 2004, Ms. Fredericks began receiving worker's compensation benefits at 66% of her regular pay.

### **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

19. While she was on worker's compensation benefits, Ms. Fredericks was obligated to return to suitable work. The OWCP office tried several times to get the USPS to offer Ms. Fredericks a reasonable accommodation, however the USPS refused.

20. In November 2003, the Post office contacted the OWCP requesting that the OWCP inform Ms. Fredericks of her responsibility to work. The OWCP responded that the position the USPS offered Ms. Fredericks on third shift was rejected because the position allegedly required her to climb stairs, which she is restricted from doing. The OWCP asked the USPS to explain whether or not the job offered required Ms. Fredericks to climb stairs. The USPS verified the position required Ms. Fredericks to walk up and down 3 steps at least four times a shift (not including restroom breaks). The USPS never offered to accommodate Ms. Fredericks need to avoid stairs.

21. In February 2004 the OWCP told the USPS that the DOL had made several attempts to secure a suitable job with the USPS but had received no response from the USPS. Therefore, Ms. Fredericks would be automatically placed on worker's compensation until the USPS gave her a position within her restrictions. The USPS never offered Ms. Fredericks a position that accommodated her disability either directly or through the OWCP.

22. On January 14, 2005, after over a year of not working, Ms. Fredericks wrote to Joey Bramlage, the “Reasonable Accommodation Coordinator” at the USPS, requesting a reasonable accommodation. In response, the USPS asked for more medical documentation. Ms. Fredericks responded, but the USPS asked for more medical documentation, threatening her that if she failed to comply with this request “it could affect [her] claim and/or employment status.” Following her next doctor’s appointment Ms. Fredericks sent the medical documentation requested on March 21, 2005.

23. Seven months went by without a response from the USPS. On October 25, 2005 Ms. Bramlage asked Ms. Fredericks for additional medical information. Ms. Fredericks promptly supplied this information on November 18, 2005. She was never asked for additional medical information.

24. On January 5, 2006 Ms. Fredericks filed an EEO Complaint of discrimination for failing to accommodate her disability (“first EEO Complaint”). Defendant was aware of the EEO Complaint soon after it was filed.

25. Ms. Bramlage met with Ms. Fredericks on January 20, 2006 to discuss her reasonable accommodation request. Three days later, on January 25, 2006, the USPS denied Ms. Frederick’s request for a reasonable accommodation because she was not a person with a disability as defined by the law. A month later, on February 24, 2006, the USPS separated Ms. Fredericks from work. This separation began on March 4, 2006.

26. Defendant’s denial of Plaintiff’s request for accommodation was pretextual and in retaliation for Plaintiff’s request for an accommodation and her filing her first EEO Complaint. Defendant’s separation of Ms. Fredericks from work was also retaliatory.

27. As a result of Defendant's discriminatory actions, failure to accommodate her, and retaliation, Ms. Fredericks has suffered and will continue to suffer serious mental anguish, humiliation, and serious emotional distress. She has also suffered a loss of wages and benefits.

#### **ADMINISTRATIVE EXHAUSTION AND RETALIATION**

28. On January 5, 2006, Ms. Fredericks filed her first administrative EEO Complaint challenging the decision that she was not offered a reasonable accommodation. Her first EEO Complaint was dismissed and she was issued a right to sue letter. (Ex. A). She timely filed this action on March 2, 2006.

29. On May 12, 2006, Ms. Fredericks filed her second administrative EEO Complaint challenging the decision she was not disabled (and therefore not entitled to a reasonable accommodation) and challenging the USPS decision to separate her from service as retaliation for her having filed the first EEO Complaint. Her second EEO Complaint has been dismissed by the Equal Opportunity Commission (Ex. B) and this Court now has jurisdiction over this second complaint.

#### **V. FIRST CAUSE OF ACTION – REHABILITATION ACT – DISABILITY DISCRIMINATION**

30. Defendant discriminated against Plaintiff on the basis of a perceived or actual disability and failed to reasonably accommodate Plaintiff's disability, as is required by the Rehabilitation Act, 29 U.S.C. § 794.

#### **VI. SECOND CAUSE OF ACTION - REHABILITATION ACT - RETALIATION**

26. Defendant retaliated against Plaintiff for engaging in a statutorily protected activity under the Rehabilitation Act, 29 U.S.C. § 794.

**VII. THIRD CAUSE OF ACTION- INTENTIONAL AND NEGLIGENT  
INFLICTION OF EMOTIONAL DISTRESS**

31. Defendant has intentionally and negligently inflicted serious emotional distress on Plaintiff.

**IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands that the court:

- A. Award plaintiff reinstatement, back pay, all lost benefits, front pay and other equitable relief.
- B. Enjoin Defendant from engaging in additional discrimination and retaliation against Plaintiff.
- C. Award plaintiff compensatory damages in an amount to be determined at trial.
- D. Award plaintiff punitive damages in an amount to be determined at trial.
- E. Award plaintiff prejudgment interest.
- F. Award plaintiff reasonable attorney fees and costs.
- G. Order such other relief as the Court deems appropriate.

/s/ Jennifer L. Branch  
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**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues triable by a jury.

/s/ Jennifer L. Branch

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2007, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

s/ Jennifer L. Branch  
Attorney for Plaintiff