

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

**CATHERINE OXLEY,**

**CASE NO.:**

**Plaintiff,**

**v.**

**PETER O'ROURKE, in his official  
Capacity as SECRETARY,  
UNITED STATES DEPARTMENT  
OF VETERAN AFFAIRS,**

**Defendant.**

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**COMPLAINT**

Plaintiff, CATHERINE OXLEY, hereby sues Defendant, PETER O'ROURKE, in his official capacity as SECRETARY, UNITED STATES DEPARTMENT OF VETERAN AFFAIRS, and alleges:

**NATURE OF THE ACTION**

1. This is an action brought under 29 U.S.C. §794 et seq. (the Rehabilitation Act).
2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1331 (federal question jurisdiction).

3. This is an action involving claims which are, individually, in excess of Seventy Five Thousand Dollars (\$75,000.00), exclusive of costs and interest.

**THE PARTIES**

4. At all times pertinent hereto, Plaintiff, CATHERINE OXLEY, has been a resident of the State of Florida and was employed by Defendant. Plaintiff is a member of a protected class because of her actual or perceived disability.

5. At all times pertinent hereto, Defendant, UNITED STATES DEPARTMENT OF VETERAN AFFAIRS, organized and existing under the laws of the United States and doing business under the laws of the United States and the State of Florida.

6. At all times pertinent to this action, Defendant has been an “employer” as that term is used under the applicable laws identified above. Defendant was Plaintiff’s employer as it relates to these claims.

**CONDITIONS PRECEDENT**

5. Plaintiff has satisfied all conditions precedent to bringing this action. This action is timely filed thereafter.

**STATEMENT OF THE ULTIMATE FACTS**

6. Plaintiff began her employment with Defendant in March 2010 and currently holds the position of Licensed Clinical Social Worker, providing mental health services at Defendant's primary care clinic.

7. During Plaintiff's tenure, she received positive performance evaluations, with the 2016 evaluation rated as "exceptional."

8. Prior to becoming an employee with Defendant, Plaintiff experienced issues with her spine. Over the course of several years of doctor visits and testing, in October 2015, Plaintiff was diagnosed with a serious musculoskeletal condition that was exacerbated over a two year period due to Defendant's failure to provide Plaintiff an appropriate accommodation. As a result, due to the serious spinal condition, on October 27, 2015, Plaintiff provided Defendant with a letter from her physician recommending ADA accommodations to varied ergonomics within her workspace, including but not limited to a chair and a stand-up desk.

9. Within a few days of Plaintiff's diagnosis, she attempted to contact Safety Specialist Katherine Langham on several occasions to request a proper work station, but Langham did not respond. Plaintiff then spoke with Linda Burson, a Registered Nurse within Defendant's Occupational Health clinic, to request an ergonomically appropriate office setup. Burson then recommended Plaintiff

contact William Hardy, Defendant's EEO Manager. Shortly thereafter, Plaintiff contacted Hardy to request proper office equipment, but was unable to reach him.

10. After little success, on December 10, 2015, Burson emailed Safety Specialist Katharine Langham on Plaintiff's behalf, to request a new chair with better back support due to her ongoing lower back pain. At some point in late December 2015 or January 2016, Defendant provided Plaintiff with a bariatric chair. Thereafter, Langham then arrived at Plaintiff's office to ensure the chair was set up properly. As Plaintiff and Langham discussed Plaintiff's workstation and an appropriate office setup, specifically the stand-up desk, Langham told Plaintiff there was no money in the budget to purchase her a stand up desk.

11. Plaintiff then discussed the possibility of obtaining another piece of furniture to which she could place her monitor so that it could be at eye level, reducing Plaintiff's need to extend her neck to downward towards the monitor. This caused Plaintiff extreme pain in her neck, which radiated down to her arm.

12. Over the course of the ten to eleven months, Plaintiff was forced to endure pain because she constantly had to sit and could not enjoy the benefits of the stand-up desk; thereby greatly exacerbating her condition.

13. On December 6, 2016, Plaintiff's office relocated from the Navy Base to a new facility in Panama City Beach, Florida. Once at the new site, while

visiting other employee offices, Langham visited Plaintiff's office. At that time, Plaintiff told Langham that it felt as if something was wrong with her chair. Although it felt as if the chair tilted downward towards the floor with the back of the chair higher than the front portion of the chair. Langham adjusted the chair and told Plaintiff it was just fine. The bottom also appeared to fall out, yet because of Langham's response, Plaintiff continued to sit in the chair. After Langham left Plaintiff's office, Plaintiff called Langham to explain further that the chair still seemed to have issues and was not comfortable. In fact, the more Plaintiff sat in the chair, the more uncomfortable it became. Upon information and belief, Plaintiff believed the chair was broken during the move, consistent with Langham noticing that some of the arms of the chair were seemingly broken. In response, Langham sent Plaintiff YouTube instructions to adjust the chair. Plaintiff and the nurses in her office attempted to follow the instructions; however, they were not successful.

14. On December 9, 2016, after sitting in the broken chair for three (3) days, Plaintiff's pain became excruciatingly worse. Plaintiff borrowed a co-worker's chair, but went to her doctor to seek medical care on the same day.

15. The doctor specifically noted that while at work, Plaintiff had been subjected to additional stress in her spine due to improper posture while in a seated position, placing the stress primarily on her lower back's skeletal system. In order

to minimize said spinal stress, the physician requested that Defendant provide Plaintiff a new chair that had the proper ergonomic curves to protect her spine from additional strain when seated. Also, the physician requested Defendant permit Plaintiff to have a standing work station unit, called the Varidesk, which allowed her the option to easily switch from a seated position to a standing position to achieve spinal strain reduction.

16. On December 12, 2016, Plaintiff filed an Occupational Health Injury/Illness claim with the U.S. Department of Labor (“DOL”). Plaintiff’s claim was denied simply because she submitted medical information from a chiropractor rather than a medical physician. Plaintiff was unaware that the DOL recognized chiropractors marginally and as less credible. Plaintiff filed an appeal of the DOL’s decision and awaited their decision.

17. Plaintiff continued to visit her chiropractor every other day until on December 16, 2016, Langham provided Plaintiff a replacement chair, but the chair did not adequately support her back. In addition, while Plaintiff was out of the office due to the injury, on December 20, 2016, a stand up desk was delivered to her office.

18. Plaintiff periodically remained out of the office for doctor's appointments and treatment. After symptoms did not improve, on January 12, 2017, Plaintiff took extended sick leave.

19. On February 22, 2017, Plaintiff's chiropractor provided Defendant documentation of Plaintiff's ability to return back to work for approximately four (4) to eight (8) hours per day, tapering her back to work slowly to test her tolerance.

20. On February 23, 2017, Plaintiff returned to work with limitations of also having to periodically walk to stretch from a sitting position. Upon Plaintiff's return, she realized that the desk delivered on December 20, 2016, sat on top of her desk, and it was too high for her to access the computer. In order to reach the computer monitor, Plaintiff had to raise the chair to reach the height of the desk. Plaintiff could not lift the chair without extreme pain.

21. On February 28, 2017, Plaintiff informed Langham that the chair did not adequately support her back and that the stand-up desk required her to bend over and extend her body to raise the chair.

22. On March 2, 2017 Langham and Wood visited Plaintiff's work station to identify her needs and to conduct an extensive ergonomic evaluation relative to issues with the chair and desk. Langham told Plaintiff she would order a chair and

a different stand up desk, which should be completed in approximately two (2) weeks.

23. However, on March 14, 2017, when Plaintiff spoke with Ms. Langham to gather an update regarding the chair and desk, she again told Plaintiff that there was “no money” to provide her with the chair she identified from the evaluation nor the stand-up desk recommended by her physician. As a result, Plaintiff continued to perform her essential duties as best as she could, without having the accommodation.

24. While facing the denial of the workers’ compensation injury benefits, Plaintiff was required to use her sick leave and thus became quite concerned about her leave balance since while under the FMLA, this constituted leave with pay.

25. While out on leave under the Family and Medical Leave Act, on March 17, 2017, Plaintiff once again requested an accommodation, verbally through her supervisor Mary Wood and John Mechanic with the Union, for an appropriate chair and a stand up desk that fully adjusted from the floor upwards to any height. Once Plaintiff returned to work on a part time basis, she again made several requests for a supportive office chair and the stand-up desk, both of which were refused. In addition, Plaintiff provided all of the necessary documentation, including but not limited to physical therapy reports, ergonomic evaluations,

FMLA documentation and other medical documentation to explain her work limitations due to the spinal condition.

26. On March 27, 2017, Plaintiff provided another letter from her primary care physician requesting an accommodation. Specifically, the physician stated in part, “She has been struggling with low back pain for the last several months, which has been significantly exacerbated by problems with the ergonomics of her workstation. I am, therefore, writing to request some accommodations with her workstations, particularly the allowance for a desk that has modifiable positions for her to adjust.” In lieu of a response, Langham met with Plaintiff on several occasions and made recommendations for her workstation. Subsequently, Wood suggested Plaintiff visit an Occupational Therapist to determine a specific type of chair Plaintiff required. Thereafter, Plaintiff located an Occupational Therapist at Southern Orthopedics who agreed to perform an evaluation and determined Plaintiff’s exact needs to make the work environment more conducive to supporting her spine.

27. On April 7, 2017, staff attempted to deliver a new stand up desk, but had to return it because the installers did not bring the proper brackets to install the monitor. The installers told Plaintiff they would return to the following week to complete the task.

28. In addition, for safety purposes, Plaintiff had a panic button in her office. However, when Plaintiff could no longer endure her work chair, Patty Langham gave her a back support cushion to put in a regular patient's chair. However, when Plaintiff sat in the patient chair, she was away from the panic button, placing her safety in danger if she needed to access the panic button if one of the patient's became violent or disruptive. In fact, Plaintiff faced a situation where she required assistance with one of her patients.

29. As a result, on April 18, 2017, after repeated denial for accommodations, and concerns for her safety, Plaintiff filed a complaint (#2001-0520-2017103283) with the Equal Employment Opportunity Commission ("EEOC") due to the Defendant's failure to provide a reasonable accommodation. Due to the worsening condition, chronic pain, and Defendant's failure to accommodate Plaintiff, she can no longer work more than five (5) hours per day.

30. On May 11, 2017, the installers returned and properly bracketed the stand-up desk to Plaintiff's desk; however, they installed it in the wrong position on the desk such as when Plaintiff is seated, the monitor was installed directly in front of the filing cabinets attached to the base of the desk. Plaintiff's knees hit the drawers rather fit between the opening of the desk, which caused additional strain on her back.

31. On May 16, 2017, Plaintiff underwent platelet injections to relieve pain in her spine and to help regenerate the muscles in her spine.

32. On May 23, 2017, Plaintiff submitted a written request for an accommodation to Defendant and documented her repeated requests for an accommodation to her supervisor Mary Ann Wood and referenced her April 18-19, 2017 emails to William Hardy, Lead EEO Manager regarding her needs.

33. In June 2017, Plaintiff worked with Hardy to negotiate terms with Defendant regarding her discrimination claim; however, they were only able to agree on working towards a chair and a desk.

34. As Plaintiff became more concerned about her leave balance, on July 14, 2017, when Plaintiff spoke with her Supervisor Wood about the matter, Wood asked Plaintiff how long she had worked for the Department. Plaintiff provided Wood the approximate time frame. Wood responded by telling Plaintiff she should go talk to Human Resources to consider retirement.

35. On July 22, 2017, Dr. Saslo, Defendant's Acting Medical Director visited Plaintiff's office at which time she explained the issues she had with her office environment. He indicated that he would get the matter resolved to move her to a more functioning environment.

36. As of July 24, 2017, Plaintiff still did not have an appropriate chair or stand up desk. She also faced a spinal procedure on July 26, 2017 with two weeks of post procedure recuperation. Thus, Plaintiff submitted an additional written request for an accommodation. While out on leave, Plaintiff spoke with Hardy, the EEO Manager regarding the chair he ordered on Plaintiff's behalf. Plaintiff also requested an ADA accommodation with Hardy, to work five hours per day from August 9, 2017 to October 3, 2017.

37. On August 9, 2017, after Plaintiff returned to work and had not heard from Hardy to determine if the ADA leave request was approved; therefore, she called him and left a message. She then spoke with his assistant to give him the message. After three attempts of trying to reach him, she emailed him to request the accommodation, which he then approved via email, authorizing Plaintiff to work five hours per day until October 3, 2017.

38. On August 24, 2017, Plaintiff emailed Wood to inquire about the chair which he stated he would order. Astonishingly, Wood told Plaintiff that he never told her would order her a chair. He then requested the model of a specific chair and Plaintiff sent information from Ergogenesis, a company that offers ergonomic workplace solutions.

39. On August 30, 2017, after Plaintiff appealed DOL's initial workers compensation decision, the DOL denied Plaintiff's appeal.

40. In September 2017, while performing an MRI for her spine, Plaintiff was diagnosed with a skull based brain tumor and had surgery performed on October 4, 2017.

41. On October 17, 2017, after submitting records from her neurologist, Plaintiff's counsel requested reconsideration of the DOL appeal. However, the request for reconsideration was denied. On March 15, 2018, Plaintiff submitted additional documentation from her neurologist in hopes of gaining reconsideration of the DOL workers' compensation appeal. Plaintiff has not yet received a final decision.

42. However, on March 18, 2018, Plaintiff received the Final Agency Action regarding her employment discrimination claim.

43. Plaintiff is scheduled to have an additional spinal procedure the latter part of June 2018. To date, Plaintiff's stand up desk has not yet been replaced and a supportive chair has not been provided.

44. Defendant took action against Plaintiff because of her actual and/or perceived disability. Defendant further failed to engage in the interactive process.

45. Plaintiff has retained the undersigned to represent her interests in this cause and is obligated to pay a fee for these services. Defendant should be made to pay said fee under the laws cited herein.

**COUNT I**  
**DISABILITY DISCRIMINATION (REHABILITATION ACT)**

46. Paragraphs 1-45 are re-alleged and incorporated herein by reference.

47. This is an action against Defendant for disability discrimination brought under 29 U.S.C. §§794 et seq..

48. Plaintiff has been the victim of discrimination on the basis of her disability and/or perceived disability. During the course of Plaintiff's employment with Defendant, she was treated differently than similarly situated non-disabled/perceived-as-disabled employees.

49. Defendant is liable for the differential treatment of Plaintiff which adversely affected the terms and conditions of Plaintiff's employment with Defendant. It is also liable for the refusal to reasonably accommodate Plaintiff and for its failure to engage in the interactive process with her. Defendant controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

50. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were disability/perceived-disability based and in violation of the laws set forth herein.

51. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant.

52. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon disability or perceived disability and/or her record of having an impairment.

53. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

- (a) that process issue and this Court take jurisdiction over this case;

- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendant and for Plaintiff awarding all legally-available general and compensatory damages and economic loss to Plaintiff from Defendant for Defendant's violations of law enumerated herein;
- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendants from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest where appropriate; and
- (g) grant such other further relief as being just and proper under the circumstances, including but not limited to reinstatement.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury on all issues herein that are so triable.

DATED this 4<sup>th</sup> day of June, 2018.

Respectfully submitted,

/s/ Marie A. Mattox

Marie A. Mattox [FBN 0739685]

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