UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

2008 MAY 30 P 2:22

CHERIE EASTERLING, individually and on behalf of all others similarly situated

Plaintiffs,

v.

STATE OF CONNECTICUT DEPARTMENT OF CORRECTION.

Defendant.

CLASS ACTION COMPLAINT
CIVIL ACTION NO. 3:08cv826 (JCH)

May 30, 2008

Individual and Representative Plaintiff Cherie Easterling (hereinafter "Plaintiff" or "Easterling"), on behalf of herself and all others similarly situated, alleges, upon personal knowledge as to herself and upon information and belief as to other matters, as follows:

NATURE OF THE CLAIM

1. Defendant State of Connecticut Department of Correction ("D.O.C.") manages eighteen correctional facilities located throughout the State of Connecticut. The D.O.C. discriminates against female applicants for the position of Corrections Officer ("C.O.") by utilizing a hiring-selection process that has a gender-based adverse impact in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*.

2. In order to secure employment as a C.O. with the D.O.C., applicants are required to pass a written exam, a physical fitness test, a criminal background investigation, and an interview.

3. During the class-liability period, the D.O.C. utilized a four-part physical fitness test that included a sit and reach test, a one-minute sit-up test, a one-minute push up test, and a

timed 1.5-mile run test. In order to pass the physical fitness test ("test"), the D.O.C. required applicants to meet a minimum sex-by-age standard, whereby an applicant's pass/fail status was assessed according to the applicant's sex and age. On average, female applicants for the C.O. position failed the physical fitness test at a rate that was higher than their male counterparts. This observed disparity in pass/fail rates by gender is statistically significant both in the aggregate and for each test administered by the D.O.C.

4. The D.O.C. was aware of this adverse impact as early as September 2004, prior to the administration of the October 2004 exam. The D.O.C. chose to administer the exam and utilize its results for hiring C.O.s, despite its adverse impact on women. Since learning of the test's adverse impact on women, the D.O.C. utilized this physical fitness test on three more occasions, in October 2004, June 2006, and October 2006.

5. Every administration of the test since 2001 has resulted in a disparate impact on women. In 2007, the D.O.C. modified the physical fitness component of its selection process. Instead of a timed 1.5-mile test, the D.O.C. substituted a 300-meter run test. Upon information and belief, the new 300-meter run test does not create an adverse impact on female applicants for the C.O. position.

JURISDICTION AND VENUE

6. Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Plaintiff and members of the class reside in Connecticut and throughout the United States. Defendant D.O.C. is an agency of the State of Connecticut. The acts that gave rise to the claims alleged in this Complaint occurred in Connecticut and in this District.

EXHAUSTION OF ADMINISTRATIVE REQUIREMENT

8. On April 22, 2005, Plaintiff, on behalf of herself and similarly situated individuals, filed administrative charges of discrimination on the basis of her sex with the Connecticut Commission on Human Rights and Opportunities ("CHRO") and with the Equal Employment Opportunity Commission ("EEOC").

9. On February 1, 2008, the CHRO issued a Release of Jurisdiction.

10. On February 4, 2008, the EEOC forwarded Plaintiff's request for a Notice of Right to Sue to the U.S. Department of Justice ("D.O.J."). On March 4, 2008, the D.O.J., Civil Rights Division, issued a Notice of Right to Sue. Plaintiff has fulfilled all administrative prerequisites necessary to maintain this action.

PARTIES

11. Plaintiff Cherie Easterling is a citizen of the United States and a resident of Bloomfield, Connecticut.

12. Plaintiff is female.

13. The D.O.C. is an agency of the State of Connecticut. The D.O.C. engages in business affecting commerce and employs more than 15 employees. At all times relevant to this complaint, the D.O.C. has been an employer within the meaning of Title VII, § 2000e(b).

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this Class Action pursuant to Fed. R. Civ. P. 23(a), and (b)(2) on behalf of a Class of all female applicants who participated in the C.O. selection process and failed the physical fitness test at any time from June 28, 2004 and continuing to the present.

15. Plaintiff is a member of the Class she seeks to represent.

16. The members of the Class identified herein are so numerous that joinder of all members is impracticable. During the class-liability period, there were approximately 353 female applicants for the position of C.O. who took and failed the D.O.C. physical fitness test. Although plaintiffs do not know precisely how many women have failed to receive C.O. positions due to the adverse impact of the physical fitness test, their number is far greater than can be feasibly addressed through joinder.

17. There are questions of law and fact common to the Class, and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether the D.O.C. used a discriminatory employment practice by administering a physical-fitness test that had a disparate impact on female applicants for the C.O. position; (2) whether the D.O.C.'s use of the physical-fitness test was job related for the C.O. position; (3) whether the cut score used by D.O.C. to determine whether an applicant passed or failed the physical-fitness test was a business necessity; 4)) whether the D.O.C.'s polices and/or practices violate Title VII ; and 5) whether equitable and injunctive relief for the Class is warrant.

18. The Representative Plaintiff's claims are typical of the claims of the Class.

19. The Representative Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in complex class actions, employment discrimination litigation, and the intersection thereof.

20. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because the State of Connecticut D.O.C. has acted and/or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and the

Class as a whole. The Class members are entitled to injunctive relief to end the D.O.C.'s common, uniform, unfair, and discriminatory policies and/or practices.

GENERAL POLICIES OR PRACTICES OF DISCRIMINATION

21. In order to obtain a C.O. position with the D.O.C., a candidate must first pass a written test. After a candidate passes the written exam, he or she progresses to the physical fitness test. The physical fitness test consists of four parts; failing any one part leads to failing the entire test. Prior to 2007, these parts were:

(1) A sit and reach test. This test measures the number of inches that an applicant can reach beyond his or her toes from a sitting position.

(2) A one-minute sit-up test. The test measures the number of bent leg sit-ups an applicant can complete in a one-minute period.

(3) A one-minute push up test. The test measures the number of push-ups an applicant can complete in a one-minute period. (Female applicants are permitted to perform modified push-ups.)

(4) A timed 1.5 mile run test. This test measures how long an applicant takes to run/walk 1.5 miles.

22. According to the D.O.C. website from April 2005, the following were the minimum standards for applicants, arranged by gender and age:

FEMALE:	AGE GROUP:			
Exercise	**21-29**	**30-39**	**40-49**	**50+**
Sit and Reach	19.1/4"	18.1/4"	17.1/4"	16.3/4"
1 Minute Sit-Ups	32	25	20	14
1 Minute Push Up (Modified)	23	19	13	12
1.5 Mile Run	14:49	15:25	16:12	17:14

MALE:	AGE GROUP:			
Exercise	**21-29**	**30-39**	**40-49**	**50+**
Sit and Reach	16.1/2"	15.1/2"	14.1/4"	13.1/4"
1 Minute Sit-Ups	38	35	29	24
1 Minute Push Up	29	24	18	13
1.5 Mile Run	12:25	12:51	13:46	14:50

23. Since 1998, the D.O.C. has administered the physical fitness test with the 1.5-mile run a total of nine times. In each of the nine tests, female applicants have failed the physical fitness test at a rate that is materially higher than their male counterparts. The observed gender-based disparities are statistically significant at greater than 2 standard deviations.

24. There is no empirical data demonstrating that the physical fitness test is predictive of or significantly correlated with important elements of job performance. The individual fitness activities tested by the physical fitness test have not been proven to be an underlying factor for performing essential or critical physical functions of the job of C.O. (that is, the physical fitness test does not have demonstrated construct validity).

25. The physical fitness test has not been shown to be predictive of who can and cannot perform the essential or critical physical functions of the job of C.O. (that is, the physical fitness test does not have demonstrated criterion validity.)

26. The physical fitness test has not been scientifically validated as it neither has construct validity, criterion validity nor has been shown to be an accurate and reliable measure of the fitness area tested.

CLAIMS OF REPRESENTATIVE PLAINTIFF

27. Plaintiff applied for the position of C.O. with the State of Connecticut's Department of Correction in 2004.

28. Plaintiff took and passed the written portion of the examination.

29. Plaintiff then took and failed the physical fitness test as part of the examination in October 2004 and was notified of her failure on or about October 28, 2004.

CLAIM FOR RELIEF
(Disparate Impact)
(Title VII of the Civil Rights Act of 1964,
42 U.S.C §§ 2000(e) *et seq.*)
(On Behalf of Plaintiff and the Class)

30. Plaintiffs incorporate by reference the preceding paragraphs as alleged above.

31. This Claim is brought by the Representative Plaintiff on behalf of herself and the Class she represents.

32. Throughout the class-liability period the Defendant used an employment practice that caused a disparate impact on the basis of sex and that was neither job related for the C.O. position, nor consistent with business necessity. The foregoing conduct constitutes unlawful discrimination in violation of 42 U.S.C. §§ 2000 *et seq*.

RELIEF ALLEGATIONS

33. Plaintiff and the Class she seeks to represent have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiff and the Class she seeks to

represent are now suffering, and will continue to suffer, irreparable injury from Defendant's discriminatory acts and omissions.

34. The D.O.C.'s actions have caused and continue to cause Plaintiff and all Class members substantial losses in earnings and other employment benefits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray for relief as follows:

35. Certification of the case as a class action on behalf of the proposed Class;

36. Designation of Representative Plaintiff Cherie Easterling as representative on behalf of the Class;

37. Designation of Representative Plaintiff's counsel of record as Class counsel;

38. A declaratory judgment that the practices complained of herein are unlawful and violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*

39. A preliminary and permanent injunction against the State of Connecticut, Department of Correction and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs and usages set forth herein;

40. An order that the State of Connecticut, Department of Correction institute and carry out policies, practices, and programs that provide equal employment opportunities for all applicants and employees regardless of gender, and that it eradicate the effects of its past and present unlawful employment practices;

41. An order restoring Plaintiff and Class members to their rightful positions at Department of Correction, as applicants or employees, or in lieu of reinstatements, an order for front pay and benefits;

42. Back pay (including interest and benefits) for Plaintiff and Class members;

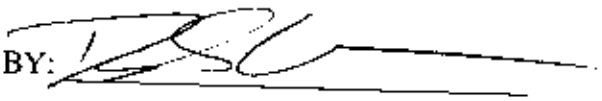
43. Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law;

44. Pre-judgment and post-judgment interest, as provided by law; and

45. Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

Dated: May 30, 2008

Respectfully submitted,

BY: 

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