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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 FREDRICK GENTRY,)

10 Plaintiff,)

11 vs.)

12 BARBARA BARRETT, in her official)
13 capacity as the Secretary of the United)
14 States Air Force,)

15 Defendant.)

NO. _____

COMPLAINT

JURY DEMANDED

16
17 **I. PARTIES, JURISDICTION, & VENUE**

18 1. Plaintiff Fredrick Gentry (“Plaintiff” or “Mr. Gentry”) is a resident of
19 the State of Washington. Mr. Gentry worked as a civilian employee of the U.S. Air
20 Force during all times relevant to this lawsuit.

1 2. Defendant Barbara Barrett is the Secretary of the United States Air
2 Force. She is sued in her official capacity only. For ease of reading, the Defendant
3 is referred to interchangeably as the Joint Personnel Recovery Agency (JPRA) or
4 the Agency.

5 3. This action arises under the Rehabilitation Act. This Court has
6 jurisdiction pursuant to 28 U.S.C. §1331.

7 4. Mr. Gentry satisfied all administrative prerequisites before filing this
8 lawsuit. First, Mr. Gentry properly initiated contact with the Defendant's EO office
9 on May 30, 2018, less than 45 days of Defendant's May 15, 2018, decision to
10 terminate Mr. Gentry's employment because of his disability. Second, on July 11,
11 2018, Mr. Gentry filed a formal complaint of disability discrimination and did so
12 within 15 days of July 3, 2018, the date Mr. Gentry received notification of his
13 right to file a formal complaint of discrimination. Third, over 180 days have passed
14 since the July 11, 2018, filing of Mr. Gentry's individual complaint, and the
15 Defendant has not taken a final action nor has an appeal been filed. 29 C.F.R. §
16 1614.407(b).

17 5. Additionally, the Agency issued its Final Agency Decision (FAD) on
18 January 17, 2020, and Mr. Gentry has filed suit within 30 days of his having
19 received the FAD.
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1 9. And not only must federal agencies, like the JPRA, serve as model
2 employers of employees with disabilities, federal regulations provide for, in
3 relevant part:

4 *Nondiscrimination.* Federal agencies shall not discriminate on the
5 basis of disability in regard to the hiring, advancement or discharge of
6 employees, employee compensation, job training, or other terms,
7 conditions, and privileges of employment. The standards used to
8 determine whether Section 501 has been violated in a complaint
alleging employment discrimination under this part shall be the
standards applied under the ADA. 29 C.F.R. §1614.203(b).

9 10. Mr. Gentry joined the U.S. Air Force in 1982, served for over 20
10 years before retiring in 2002 at the rank of Master Sergeant.

11 11. Following his honorable discharge from the Air Force, Mr. Gentry
12 began working for TATE, Inc. TATE, Inc. was a federal government contractor
13 that the JPRA utilized to perform services at the JPRA's facility located in
14 Spokane County, Washington.

15 12. From 2002 to 2005 TATE employed Mr. Gentry as a training officer
16 and training resistance training (RT) instructor.

17 13. From 2005-2011 TATE employed Mr. Gentry as an instructor for the
18 Joint Resistance Training Instructor Course (JRTIC, also referred to as SERE
19 260/360).
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1 14. On or about January 1, 2011, the JPRA hired Mr. Gentry as a GG-12,
2 made him a Program Manager for the JRTIC program, and tasked him with
3 supervising six instructors.

4 15. On or about October 1, 2015, the JPRA moved the JRTIC instructor
5 cadre from its own separate work-center to a work-center under the Agency's
6 Training Operations programs. The JPRA still employed Mr. Gentry as its JRTIC
7 PM but removed Mr. Gentry's permanent staff. Mr. Gentry reported to Scott
8 Whannell, a GG-12 Program Manager.
9

10 16. The Air Force's version of a job description is called a "core
11 professional document" or "CPD."

12 17. The CPD that Mr. Gentry has fulfilled during the timeframe relevant
13 to this lawsuit is a "Program Manager," labeled CPD Number 60319, and contains
14 a "supervisors certification" that reads, in relevant part: "I certify that this CPD is
15 an accurate statement of the major duties, knowledge, skills and abilities,
16 responsibilities, physical and performance requirements of this position and its
17 organizational relationships."
18

19 18. Nowhere does CPD Number 60319 hint, imply, state, or otherwise
20 indicate that an essential function of the Program Manager position that Mr. Gentry
21 occupied involved "role play."
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1 19. Role play, in the context of this lawsuit, describes a JPRA employee
2 pretending to be an enemy combatant (or instructing people on how to be pretend
3 enemy combatants) in order to simulate the environment a U.S. servicemember
4 might experience in enemy captivity.

5 20. As of June 2016, Mr. Gentry's average workday included arriving
6 work at approximately 7 AM. After showing up at work, Mr. Gentry would check
7 his email, check his phone, check in with his boss, and then conduct ongoing
8 course-ware reviews, and read reference material. Mr. Gentry would have lunch
9 around 11 AM. After lunch he would conduct work similar to the work he did in
10 the morning. For the most part, Mr. Gentry sat behind a desk. However, if students
11 were being trained then Mr. Gentry would give the course's introduction and the
12 teach the course's first three lessons. Once complete, Mr. Gentry would then
13 supervise the instructors and ensure that the students were engaged. On rare
14 occasions (every other month) Mr. Gentry would "role play" or teach individuals
15 how to "role play" even though it was not a formal part of his core professional
16 obligations.
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19 21. Throughout Mr. Gentry's contractor and government employee career
20 with JPRA it was common practice for teams of JPRA employees to co-teach
21 certain courses.
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1 22. On June 27, 2016, Mr. Gentry informed Mr. Whannell that he
2 (Gentry) had Post Traumatic Stress Disorder (PTSD). In conjunction with
3 informing Mr. Whannell that he had PTSD, Mr. Gentry asked that Mr. Whannell
4 move him to a position other than the JRTIC Program Manager.

5 23. Mr. Gentry's PTSD stemmed from a training incident that took place
6 approximately 26 years earlier (May 1990) in which a trainee under Mr. Gentry's
7 charge nearly died. During this event Mr. Gentry, while acting as a pretend "bad
8 guy", forced his pretend "good guy" captives to drink excess water. One of his
9 pretend captives "flat lined" due to electrolyte imbalance and nearly died.
10

11 24. Indeed, by June 2016 and to the best of Mr. Gentry's knowledge, he
12 (Gentry) had been one of the longest serving "role playing" instructor-type
13 personnel in Air Force history insofar as he had spent 26 out of his 35 years in
14 military/civilian service wherein he would have to go to work, adopt the
15 personality of a terrorist or other type of captor inflicting physical pain on U.S.
16 servicemembers so as to prepare them for the horrors of enemy captivity, and then
17 return home.
18

19 25. That event (coupled with decades of having to literally create a legally
20 accepted "hostile work environment" for U.S. servicemembers) haunted Mr.
21 Gentry, and by June 2016, and even though his "role playing" role had decreased,
22

1 his PTSD symptoms manifest themselves in such a way that he felt the need to tell
2 his immediate supervisor of that event's impact on his mental health.

3 26. On July 6, 2016, Mr. Gentry - - - for the first time in his career while
4 working with the JPRA in either a contractor or government service capacity
5 and 10 days after first telling Mr. Whannell of his (Gentry's) PTSD - - - was
6 counseled for poor job performance.

7 27. Mr. Whannell was the individual who counseled Mr. Gentry for poor
8 job performance.

9 28. On July 8, 2016, Richard Buchholz, Mr. Gentry's second level
10 supervisor, counseled Mr. Gentry for poor job performance.

11 29. During the fall of 2016 Mr. Gentry's mental health care provider, Dr.
12 John Fishburne, informed the JPRA's in-house psychologist, Dr. Gary Percival,
13 that Mr. Gentry would likely be able to resume directly inflicting duress in a role-
14 play capacity in the future and that nothing forbade Mr. Gentry from conducting
15 role-playing instruction.
16

17 30. After learning that Mr. Gentry's mental health care provider assessed
18 that Mr. Gentry could do role-playing instruction but not directly cause duress in
19 the near term, the Agency, via a November 2016 memorandum, deemed "role
20 playing" as an essential function of Mr. Gentry's job duties.
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1 31. In making “role playing” an essential function of Mr. Gentry’s job,
2 the JPRA did not follow its process in modifying the “core document” associated
3 with Mr. Gentry’s position to include “role playing” but, instead, created a stand-
4 alone document titled “TORS PM Tasks161128.”

5 32. On or about June 28, 2017, the JPRA denied Mr. Gentry’s June 2016
6 re-assignment request.

7 33. On or about September 30, 2017, the JPRA issued Mr. Gentry his
8 annual performance evaluation. That evaluation provided, in relevant part, that Mr.
9 Gentry had provided “critical support to PRA programs” and “by all accounts he
10 was doing an excellent job supporting these programs.”

11 34. On November 13, 2017, the Agency told Mr. Gentry of its intent to
12 fire him because of his PTSD. The Agency conveyed this information to Mr.
13 Gentry in writing. The Agency’s November 13, 2017, letter offered Mr. Gentry the
14 opportunity to rebut the Agency’s decision to fire him. Consistent with the letter,
15 Mr. Gentry went about preparing the rebuttal.

16 35. On November 21, 2017, Mr. Gentry presented his CPD, performance
17 evaluation, and the November 13, 2017 letter to his psychiatrist, Dr. Jeffrey
18 Schack. Dr. Schack reviewed the documents and concluded that Mr. Gentry was a
19 "paper pushing manager" and that as a "manager" his PTSD could be reasonably
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1 accommodated by having Mr. Gentry "moved to another office" without causing
2 the Agency an undue hardship.

3 36. After receiving the November 3, 2017, letter but before responding to
4 it on December 19, 2017, Lt. Col. David McGraw (the then-JPRA commander)
5 told Mr. Gentry that he (Gentry) *had* to apply for disability retirement.

6 37. Thereafter Mr. Gentry applied for disability retirement and on his
7 disability retirement application made clear that he (Gentry) had asked for
8 accommodations (removal from a position that required role playing) but had been
9 told by the Agency that no positions existed which Mr. Gentry could fill.
10

11 38. On or about December 19, 2017, Mr. Gentry responded to the
12 Agency's November 13, 2017, letter, characterized the Agency's decision as
13 "unfounded," and proposed that he and Mr. Buchholz negotiate a reasonable
14 accommodation.
15

16 39. On May 16, 2018, the Agency terminated Mr. Gentry's employment
17 for "[m]edical inability to perform the essential duties of the position."

18 40. The Agency did not give Mr. Gentry an exit interview in which the
19 Agency asked Mr. Gentry about steps it could use to improve the recruitment,
20 hiring, inclusion, and advancement of individuals with disabilities.
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III. LEGAL CLAIMS

(Cause of Action No. 1 - Violation of the Rehabilitation Act – Disability Discrimination – Actual Disability and Record of Impairment)

41. To state a disability discrimination claim a plaintiff must establish “(1) that [he] is disabled within the meaning of the ADA; (2) that [he] is a qualified individual with a disability; and (3) that [he] was discriminated against because of [his] disability.” *Smith v. Clark Cty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013). The “mixed motive”, as opposed to the “but for” causation standard, applies to Rehabilitation Act discrimination claims involving, as is the case here, federal employees. *Pinkerton v. Spellings*, 529 F.3d 513, 519 (5th Cir. 2008)(conducting extensive analysis of ADA and Rehabilitation Act (and citing 9th Circuit law) before determining that the mixed motive standard applies to Rehabilitation Act discrimination claims).

42. Mr. Gentry is disabled with PTSD.

43. Mr. Gentry was qualified to perform the essential functions as set out in his core document, CPD Number 60319.

44. Alternatively, Mr. Gentry could have been qualified to perform “role play” or “role play instruction” duties with a reasonable accommodation.

45. Mr. Gentry’s employment with the JPRA was terminated on account of his PTSD disability because the JPRA fired him for “[m]edical inability to

1 perform the essential duties of the position” even though the CPD setting out the
2 “essential duties of” Mr. Gentry’s position did not contain any reference to “role
3 play” of any type.

4 46. Additionally, the JPRA, through Mr. Bucholz, discriminated against
5 Mr. Gentry because of Mr. Gentry’s record of impairment, here his record of being
6 diagnosed and treated for PTSD, and assuming, from that record of impairment,
7 that Mr. Gentry’s PTSD was a permanent condition incapable of being corrected
8 which, in turn, would bar him from working in any position at JPRA.
9

10 **(Cause of Action No. 2 – Violation of the Rehabilitation Act – Failure to**
11 **Accommodate)**

12 47. In order to prove a failure to accommodate claim, the plaintiff must
13 show that he is (a) is disabled; (b) qualified for the job in question and/or capable
14 of performing it with reasonable accommodation; (c) the employer had notice of
15 the disability; and (d) the employer failed to reasonably accommodate the
16 disability. *Steenmeyer v. Boeing Co.*, 92 F. Supp. 3d 1024, 1030 (W.D. Wn. 2015).
17

18 48. Mr. Gentry is disabled with PTSD.

19 49. Mr. Gentry was qualified – or could have been qualified with a
20 reasonable accommodation – for the position he occupied as of June 2016.
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1 50. Mr. Gentry was – or could have been qualified with a reasonable
2 accommodation – for the position he occupied from June 2016 through the JPRA’s
3 termination of his employment.

4 51. The JPRA knew of Mr. Gentry’s disability.

5 52. The JPRA failed to accommodate Mr. Gentry’s disability for the
6 following and non-exclusive list of reasons.

7 53. As a starting point, federal regulations provide, in relevant part:
8

9 Reassignment to a vacant position for which an employee is qualified,
10 and not just permission to compete for such position, is a reasonable
11 accommodation, and that the agency must consider providing
12 reassignment to a vacant position as a reasonable accommodation
13 when it determines that no other reasonable accommodation will
14 permit an employee with a disability to perform the essential functions
15 of his or her current position. 29 C.F.R. 1614.203(d)(3)(i)(B).

16 54. Federal regulations further provide:
17

18 The Plan shall require the agency to take specific steps to ensure that
19 requests for reasonable accommodation are not denied for reasons of
20 cost, and that individuals with disabilities are not excluded from
21 employment due to the anticipated cost of a reasonable
22 accommodation, if the resources available to the agency as a whole,
excluding those designated by statute for a specific purpose that does
not include reasonable accommodation, would enable it to provide an
effective reasonable accommodation without undue hardship. Such
steps shall be reasonably designed to, at a minimum—(A) Ensure that
anyone who is authorized to grant or deny requests for reasonable
accommodation or to make hiring decisions is aware that, pursuant to
the regulations implementing the undue hardship defense at 29 CFR
part 1630, all resources available to the agency as a whole, excluding
those designated by statute for a specific purpose that does not include

1 reasonable accommodation, are considered when determining whether
2 a denial of reasonable accommodation based on cost is lawful; and
3 (B) Ensure that anyone authorized to grant or deny requests for
4 reasonable accommodation or to make hiring decisions is aware of,
5 and knows how to arrange for the use of, agency resources available
6 to provide the accommodation, including any centralized fund the
7 agency may have for that purpose. 29 C.F.R. 1614.203(d)(3)(i)(B)

8 55. To determine whether an undue hardship exists, federal regulation
9 requires assessing:

10 (i) The nature and net cost of the accommodation needed under this
11 part, taking into consideration the availability of tax credits and
12 deductions, and/or outside funding;

13 (ii) The overall financial resources of the facility or facilities involved
14 in the provision of the reasonable accommodation, the number of
15 persons employed at such facility, and the effect on expenses and
16 resources;

17 (iii) The overall financial resources of the covered entity, the overall
18 size of the business of the covered entity with respect to the number of
19 its employees, and the number, type and location of its facilities;

20 (iv) The type of operation or operations of the covered entity,
21 including the composition, structure and functions of the workforce of
22 such entity, and the geographic separateness and administrative or
fiscal relationship of the facility or facilities in question to the covered
entity; and

(v) The impact of the accommodation upon the operation of the
facility, including the impact on the ability of other employees to
perform their duties and the impact on the facility's ability to conduct
business. 29 C.F.R. § 1630.2(p).

56. For the following reasons, it was not an undue hardship to
accommodate Mr. Gentry's PTSD by assigning him to a position where he was not
exposed to role playing.

1 57. To provide comparators, during the timeframe germane to Mr.
2 Gentry's lawsuit the JPRA allowed (a) Mr. Buchholz, to work from home for an
3 extended period, (b) Ms. Elizabeth Hight, Student Affairs Program Manager, GG-
4 0301-09, to not perform role play, (c) Ms. Cindy Vanhoesen, Program Analyst,
5 GG-0343-12, to not perform role play, (d) Ms. Barbie Satola, Senior Program
6 Manager, GG-0301-13, to work from home for over six months, and (e) Mr.
7 Richard Gusch, Program Manager, GG-0301-12, to move from a role-play position
8 to a position in Urban Navigation.
9

10 58. During the timeframe relevant to Mr. Gentry's lawsuit at least one
11 vacancy (Registrar) existed at the JPRA for which Mr. Gentry was qualified to
12 perform. The Registrar position was vacant as of the date the JPRA terminated
13 Mr. Gentry's employment. Indeed, Mr. Buccholz, in a sworn declaration dated
14 November 14, 2018, admitted that the Registrar position was open the day that the
15 JPRA fired Mr. Gentry.
16

17 59. During the timeframe relevant to Mr. Gentry's lawsuit JPRA Program
18 Manager Barry Leland had work available for Mr. Gentry that involved developing
19 and maintaining courseware.
20

21 60. During the timeframe relevant to Mr. Gentry's lawsuit, Program
22 Manager Thomas Bonsant sought to hire Mr. Gentry for the Leaving Evidence of

1 Presence (LEP) course. Mr. Bonsant asked Senior Program Manager Sam Denardi
2 to place Mr. Gentry into the LEP position whereupon Mr. Denardi said words to
3 the effect of “I don’t want him in that position.”

4 61. Thereafter, Mr. Bonsant asked Mr. Bucholz whether Mr. Gentry
5 could be assigned to the LEP course whereupon Mr. Bucholz said words to the
6 effect of “you just delayed this by 30 days,” the reference to “this” being Mr.
7 Gentry’s termination from the JPRA.
8

9 62. During the timeframe relevant to this lawsuit, JPRA Program
10 Manager JT McHan told Mr. Denardi that he (McHan) had work available for Mr.
11 Gentry but that Mr. Denardi denied Mr. McHan’s request.

12 63. During the timeframe relevant to this lawsuit, JPRA Program
13 Manager Doug Seals had Mr. Gentry work for him from May 2017 to May 2018.
14 Mr. Seals, who knew that Mr. Gentry had PTSD, rated Mr. Gentry’s performance
15 as excellent, found that Mr. Gentry’s disability did not affect his (Gentry’s) work
16 and that he (Seals) also had work for him (Gentry) to do.
17

18 64. At or near the time the Agency fired Mr. Gentry, it had at least 13
19 unfilled positions; yet, the Agency made no attempt to place Mr. Gentry into many,
20 if not all, of those positions.
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1 65. Tellingly, Mr. Buchholz recently and tacitly admitted that the
 2 Agency's actions toward Mr. Gentry were improper.

3 66. During the week of January 13, 2020, Mr. Gentry visited the Walmart
 4 located in Airway Heights, Washington. Mr. Gentry ran into Mr. Buccholz while
 5 shopping at Walmart. They shook hands and engaged in small talk. Mr. Buccholz
 6 ended the conversation by saying to Mr. Gentry, "I'm sorry for the way things
 7 went down."
 8

9 **IV. PRAYER FOR RELIEF**

10 Plaintiff respectfully prays that this Honorable Court enter an Order
 11 providing Mr. Gentry all remedies available to him by law, including, but not
 12 limited, to an award of:

13 (a) actual damages suffered as result of the violation of the Rehabilitation
 14 Act including front pay, back pay, general damages, adverse tax consequences,
 15 prejudgment interest, and all other remedies available under the law,
 16

17 (b) costs and reasonable attorneys' fees incurred with this lawsuit with
 18 interest thereon; and,

19 (c) such other and further relief as the Court deems just or equitable.
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1 DATED this 3rd day of February, 2020.

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