# SPECIAL ADDITION –
# July 4, 2024 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]


Prof. Bennett and his pet therapy dog, FRYE.

Lawrence T. Bennett, Esq.
Professor-Educator Emeritus
Program Chair, Fire Science & Emergency Management
Cell 513-470-2744
Lawrence.bennett@uc.edu

**JUST UPDATED / FREE ONLINE: 2024 - AMERICAN HISTORY – LEGAL LESSONS LEARNED FOR FIRE & EMS:** View at Scholar@UC

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## U.S. SUP. CT: AGREES TO HEAR FF PARKINSON'S CASE – OCT. 2024 TERM - INSURANCE REDUCED 2-YRS – CIR. SPLIT

On June 24, 2024, in Karyn D. Stanley v. City of Sanford, Florida, the U.S. Supreme Court granted firefighter's petition for writ of certiorari (requires 4 votes of 9 Justices) and will schedule oral arguments during next Term. Lt. Stanley retired on disability in 2018; she then

learned that City in 2003 had reduced free medical insurance for disabled employees to two years coverage (was previously provided until age 65). Her lawsuit was dismissed by U.S. District Court judge, and the dismissal was upheld on Oct. 11, 2023, by a 3-judge panel of 11th Circuit (Atlanta) – their strict review of ADA statute language appears to limit lawsuits to only current employees and applicants. Other federal Circuits (2nd & 3rd Circuits) disagree and have held that retirees can also sue under ADA.

11th CIRCUIT HELD:

> "We believe Gonzales [v. Garner Food Services, Inc., 89 F.3d 1523 (11th Cir. 1996)] is still good law. We thus reaffirm that a Title I plaintiff must 'hold[] or desire[]' an employment position with the defendant at the time of the defendant's allegedly wrongful act. 42 U.S.C. § 12111(8). Because plaintiff Karyn Stanley is suing over the termination of retirement benefits when she neither held nor desired to hold an employment position with her former employer, the City of Sanford, Gonzales bars her claim. We therefore affirm the district court.
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> Title I's anti-discrimination provision is not afflicted with any such ambiguity. There is a clear temporal qualifier in Title I: Only someone 'who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires' is protected from disability discrimination. 42 U.S.C. §§ 12111(8) (emphases added), 12112(a); see also Slomcenski v. Citibank, N.A., 432 F.3d 1271, 1280–81 (11th Cir. 2005). 'Can,' 'holds,' and 'desires' are in the present tense. So, to be a victim of unlawful disability discrimination, the plaintiff must desire or already have a job with the defendant at the time the defendant commits the discriminatory act."

FACTS:

> "Karyn Stanley became a firefighter for the City of Sanford, Florida, in 1999. She served the City in that capacity for about fifteen years until she was diagnosed with Parkinson's disease in 2016. Although she managed to continue working as a firefighter for about two more years, her disease and accompanying physical disabilities eventually left her incapable of performing her job. So, at the age of 47, Stanley took disability retirement on November 1, 2018. When Stanley retired, she continued to receive free health insurance through the City. Under a policy in effect when Stanley first joined the fire department, employees retiring for qualifying disability reasons, such as Stanley's Parkinson's disease, received free health insurance until the age of 65. But, unbeknownst to Stanley, the City changed its benefits plan in 2003. Under the new plan, disability retirees such as Stanley are entitled to the health insurance subsidy for only twenty-four months after retiring. Stanley was thus set to become responsible for her own health insurance premiums beginning on December 1, 2020. She filed this suit in April 2020, seeking to establish her entitlement to the long-term healthcare subsidy."

**Legal Lesson Learned: The U.S. Supreme Court has agreed to hear this case; presumably to resolve the split in Circuit Court decisions on whether ADA protects retired disabled employees when the employer changes pension benefits.**

Note: See these Briefs filed with U.S. Supreme Court:

CITY's BRIEF:

> "Thus, for just one employee like Petitioner retiring early at the age of 47, payment of the subsidy to age 65 would have cost the City over $216,000.00." [City's Brief in Opposition]

LT. STANLEY'S REPLY BRIEF:

> "The City concedes that there is a longstanding 'circuit split" over whether former employees can sue for discrimination with respect to their post-employment benefits under the ADA…. It recognizes the same two-to-four split outlined in the petition: Although the Second and Third Circuits permit former employees to sue with respect to post-employment benefits, the Sixth, Seventh, Ninth, and Eleventh Circuits do not.
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> The City doesn't contest that, when the City offered her the firefighter job, her employment package included a retirement 'health insurance subsidy.' Pet. App. 3a. Nor does it dispute, as the courts below recognized, that this subsidy was 'a stand-alone fringe benefit of employment with [the] Defendant.' Pet. App. 21a. The fringe benefit was thus covered by the ADA as part of the 'terms, conditions, and privileges of [her] employment.' 42 U.S.C. §§ 12111(8), 12112(a). That doesn't mean that on remand the City won't be able to argue that Ms. Stanley's twenty years of service didn't sufficiently 'earn' her the subsidy she was promised. The City can make whatever arguments it wants on remand. But none of that bears on whether litigants in Ms. Stanley's shoes can bring suit under the ADA in the first place." [Plaintiff's Reply Brief]

IAFF AMICUS BRIEF:

> "This amicus brief is submitted in support of the Petition for Certiorari filed by Petitioner, Lt. Karyn D. Stanley (Ret.), who throughout her distinguished fire fighting career has been a member of one IAFF affiliate, the Sanford Professional Firefighters, IAFF Local 3996.
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> Notwithstanding these developments, the federal courts continue to perpetuate unnecessary disparities in fire fighter access to benefits following disability by illness or injury. Too many federal courts – including the Eleventh Circuit in its decision below - have remained closed for decades to claims of unlawful disability discrimination that does not manifest until after disability forces a premature end to the employment relationship. Overly narrow applications of the ADA persist, despite Congress passing legislation amending the statute in response to judicial decisions it criticized for 'unduly restricting the time period in

which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.' Pub. L. 111-2, 123 Stat. 5.

No disabled fire fighter, including Lt. Stanley, should be denied the opportunity to present a well pled complaint that the employer for whom she performed the essential work that likely contributed to her disability has unlawfully discriminated against her on account of that disability.

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After nearly two decades of fire fighting, Parkinsons disease robbed Lt. Stanley of her ability to perform the essential duties of her demanding position at age 47. Pet. App. 2a. But she first suffered discrimination within the purview of the ADA as modified by the Fair Pay Act, when a benefit plan that initially paid a monthly stipend to all service eligible retired employees until age 65 was modified so that employees who retired as a result of disability were only provided the monthly stipend for 24 months after retirement. Pet. App 3a. This benefit plan was unlawfully modified in or around 2003, while Lt. Stanley worked for the City. Id. Thus, she was a 'qualified individual' at the time a "discriminatory compensation decision or other practice is adopted," 42 U.S.C. § 2000e-5(e)(3)(A)." [IAFF Amicus Brief]