

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC

Virginia Division of Human Rights

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Cheri E. Zosh

Home Phone (Incl. Area Code)

703-994-0888

Date of Birth

9-4-70

Street Address

City, State and ZIP Code

10816 James Halley Drive, Fairfax, VA. 22032

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

Fairfax County

No. Employees, Members

15+

Phone No. (Include Area Code)

703-324-7329

Street Address

City, State and ZIP Code

12000 Government Center Parkway, Fairfax, VA 22035

Name

Fairfax County Fire and Rescue Department

No. Employees, Members

15+

Phone No. (Include Area Code)

703-246-2126

Street Address

City, State and ZIP Code

12099 Government Center Parkway, Fairfax, VA 22035

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

7/16

present

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Please see attached Statement of Harm.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

5-22-2015

Date



Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Cheri Zosh v. Fairfax County, et al.
Statement of Harm

1. I am a Battalion Chief (“BC”) with Respondent Fairfax County Fire and Rescue Department (“FRD”), one of just three women out of roughly 30 in that position.

2. My colleagues Kathleen Stanley (“Stanley”) and Edith Eshleman and I are the highest-ranking women in the FRD.

3. FRD hired me as a Firefighter in March 1994.

4. In the 24 years since, I have earned several promotions: EMS Technician (1996); EMS Lieutenant (1999); Fire and EMS Captain I (2003); and Fire Captain II (2006). I was promoted to BC in 2013.

My advocacy on behalf of women in the FRD

5. Following the suicide of firefighter-paramedic Nicole Mittendorff in April 2016 and the issuance of the February 2017 Cultural Assessment Report, I was appointed to serve as Chair of the newly-formed Women’s Initiative Group (“WIG”).

6. FRD consistently thwarted my efforts to fulfill the mandate of the WIG, and eventually resigned in the fall of 2017.

My advocacy on behalf of Firefighter Magaly Hernandez, FRD’s retaliation, and my 2016 lawsuit

7. In the spring of 2014, roughly a year after my promotion to BC, a firefighter named Magaly “Maggie” Hernandez (“Hernandez”) complained to me about harassment by her new direct superior officer – who in turn reported to me – Captain Jon Bruley (“Bruley”).

8. According to Hernandez, Bruley expressed a desire to see her in a bathing suit, asked her about being able to handle a “big hose,” blocked her path in a station hallway, placed

his chin on her shoulder, and positioned his body right up against her, despite Hernandez's expressed discomfort with such close contact.

9. I confronted Bruley directly about his conduct. I also reported it up the chain of command, including to my superior officer, Deputy Chief Richard Roatch ("DC Roatch"), Assistant Chief of Operations – now acting Fire Chief – John Caussin ("AC Caussin"), and then-Fire Chief Richard Bowers ("FC Bowers").

10. Following my complaints, although Bruley's overtly sexual harassment of Hernandez ended, he began a campaign of retaliation against her and against me, which included using FRD equipment to track both of our daily activities and initiating rumors that we were involved romantically. Such involvement not only was false, but if true, would have subjected me to discipline for violation of FRD policy.

11. I reported Bruley's conduct repeatedly to FRD leadership, including DC Roatch, AC Caussin, and FC Bowers. I also reported it to Guy Morgan, FRD's former internal affairs officer – who resigned in 2017 after it was revealed that, among other misconduct, he had posted scores of messages on Facebook conveying intense bias toward women and racial minorities – as well as the FRD Medical Director and the former EEO Officer.

12. Despite confirming that Bruley was tracking my movements, and despite recommendations from the Medical Director that Bruley undergo psychological evaluation, FRD did not take disciplinary action against him beyond oral warnings, and eventually, in March 2015 – approximately one year since it was informed of Bruley's behavior – a written reprimand.

13. Hernandez filed a lawsuit against FRD on May 6, 2016, alleging harassment and retaliation in violation of the Civil Rights Act of 1964, as amended ("Title VII").

14. I filed a lawsuit against Respondent Fairfax County (the “County”) on July 18, 2016 alleging harassment and retaliation, also in violation of Title VII.

15. During discovery in the case, FRD witnesses testified that FRD leadership recently had learned that Bruley had continued to monitor my whereabouts, and that FC Bowers intended to fire Bruley.

16. FC Bowers did not fire Bruley. Instead, Bruley was permitted to retire in September 2016, with no penalty to his right to receive FRD pension benefits.

FRD’s retaliation against me since I filed my 2016 lawsuit

Failures to hire and promote

17. Since filing my lawsuit in June 2016, I have been denied three job opportunities, one of them a promotion.

18. On October 14, 2016, I applied for an open position as the BC for EMS (Emergency Medical Services) Administration. At the time, I had 20 years of experience as a paramedic. I also was the only BC – that is, the only person of the same rank of the vacant position – to apply.

19. Nevertheless, FRD denied me the job, and instead installed John Cheseck (“Cheseck”), a male Captain II who reported to me. The only reason provided by FRD for Cheseck’s promotion over me was that he was “more motivated.”

20. In March 2017, I applied for promotion to Deputy Chief. On information and belief, I was the first woman to apply for the position at FRD since 2005.

21. The County’s promotional process requires applicants to submit their materials through a human resources portal, Neogov.com, that services municipal employers.

22. The Neogov.com system is known by FRD to frequently malfunction. As a consequence, FRD frequently permits applicants to access the system to correct errors and omissions in their submitted materials, even after an application deadline has closed.

23. Knowing the unreliability of the Neogov.com portal, at the time I submitted my application, I also contacted Human Resources Generalist Toni Garcia (“Garcia”) to ask whether there were any deficiencies. Garcia was not responsive.

24. Seeking to confirm that my application was complete, I sought assistance from Stanley, who in turn contacted Assistant Chief for Personnel Services Chuck Ryan (“AC Ryan”). Ryan assured Stanley that my application would be processed.

25. Two days later, hours before the application deadline, Garcia sent a message to my work e-mail address informing me that my application was missing certain materials, all of which I previously had submitted.

26. Because I was not on duty, I did not see this e-mail until the next day, after the application deadline had passed.

27. I was not permitted to correct the error in my application caused by the Neogov.com system, as others have been on occasions when Neogov.com malfunctioned.

28. As a result, my application for DC was treated as invalid, and was not submitted to FRD for consideration.

29. FRD ultimately promoted BC Dan Shaw (“Shaw”) to Deputy Chief. Shaw had featured prominently in the allegations of a lawsuit filed in 2011 by former firefighter Stacy Bailey. In her complaint, Bailey claimed that Shaw, her superior officer, had failed to act to protect her from vicious harassment by coworkers, had contributed to the harassment by denigrating her to her supervisor, and had complained openly about how women and blacks were

ruining the FRD. (FRD settled Bailey's complaint following the federal court's denial of its motion to dismiss the case.)

30. In May 2017, I applied for BC of EMS Training. Again, I was the only person of BC rank to apply.

31. Nevertheless, FRD denied me the job, and promoted Matt Lopez, a male Captain II.

Unwarranted scrutiny, unfounded reprimands, and threatened discipline

32. Based on complaints of retaliation filed against me by Bruley, beginning in 2015 I was subjected to months-long investigations both by the County's Office of Human Rights and Equity Programs ("OHREP") and by FRD's Internal Affairs Bureau. Neither investigation found the complaints to have merit.

33. In or around August 2016, learned that the County's Office of Human Rights and Equity Programs ("OHREP") was opening an investigation into my conduct, based on the complaint of a Master Technician under my command, Leo Sullivan ("Sullivan"). Sullivan claimed that I had had him transferred out of the battalion in retaliation for testimony that he had given during discovery in my lawsuit that was unfavorable to my case.

34. Sullivan's allegation was demonstrably false. Sullivan had not been transferred out of the battalion, by me or by anyone else. The only action I had taken toward Sullivan was to report to DC Cochrane that Sullivan was reported by his station officer to be a "cancer in the station," who treated female firefighters especially poorly. On information and belief, no action was taken in response to my report.

35. Within a few months, OHREP concluded that Sullivan's complaint against me was unfounded. Inexplicably, it did not inform me of this fact until several months later.

36. On February 1, 2017, I learned that OHREP had opened another investigation of me, this time in response to a complaint by a Lieutenant who also claimed that I had retaliated against her for her testimony during my lawsuit. This complaint, too, was concluded to be unfounded.

37. Also in early February 2017, more than 70 members of the FRD responded to a two-alarm fire at the Covanta waste management facility in Lorton, Virginia. Roughly two dozen responders were sickened by the smoke. I was one of them. Virtually unable to breathe, I contacted FRD's medical director, who told me to come in to his office for treatment immediately. After informing DC Cochrane's aide of my need to see the medical director and following procedures for taking my unit out of service, I left the station.

38. The medical director diagnosed me with chemical bronchitis, and I was out of work for roughly 3 weeks.

39. On or about February 23, 2017, DC Cochrane called to reprimand me for allegedly not following procedures before leaving the Covanta fire. He directed me to draft a memo explaining my actions.

40. I submitted the required memo, but to date have not received a response.

41. Also on my return to work on February 23, I discovered that my eyeglasses had been smeared with an unknown substance. I reported the vandalism up my chain of command, and the glasses were retrieved for testing. I never learned the results of this testing. Instead, the only outcome of my reporting the incident was to be chastised by Assistant Chief Reggie Johnson ("AC Johnson") for allegedly not following the proper procedures in doing so.

42. In late October 2017, my wife, Kelly Joplin – a Master Technician with FRD – and I sought volunteer leave from FRD. Volunteer leave is a program under which the County

permits employees to receive full pay while working on *pro bono* basis to benefit their local community. Kelly and I sought to work on a project clearing a nature trail at a local elementary school.

43. Kelly's direct supervisor, BC JJ Walsh ("BC Walsh"), refused to approve her volunteer leave because she had not provided written proof from the school she would be working on the nature trail. Neither County nor FRD policy contains such a requirement, and during my entire tenure with FRD, I know of no one who has been required to submit such documentation.

44. When Kelly did not immediately comply with his (improper) order – having explained to BC Walsh that we had sought documentation of the project from the sponsor school but had been unable to obtain it – BC Walsh appealed to his supervisor (and mine), DC Cochrane, to seek approval. I later learned that Kelly's and my volunteer leave assignment, and Kelly's purported violation of FRD procedures, was discussed at a meeting of all senior FRD management.

45. Additionally, also contrary to FRD policy, DC Cochrane told me that I could not apply volunteer leave toward the time I spent traveling to and from the school assignment or during my lunch break. I also fielded frequent calls from DC Cochrane, monitoring my reporting of my time.

46. BC Stanley, then the Women's Program Officer, appealed the disparate application of the volunteer leave standards to FC Bowers. Bowers stated his belief that BC Walsh's directive was proper, and that Kelly had been insubordinate.

47. AC Johnson subsequently chided me for having taken my concerns outside the chain of command, and directed me not to speak with BC Stanley.

48. County HR personnel ultimately confirmed that written proof of a volunteer leave assignment was not required by FRD or County policies, and that discipline of either Kelly or me would be inappropriate.

49. I also have been reprimanded for supposed irregularities in paperwork I have submitted in the normal course of business, while similarly-situated officers who have not engaged in protected activity have not been reprimanded.

50. For instance, BCs are required to submit daily logs electronically that catalogue the vehicles and equipment under their command.

51. Because the electronic system does not accurately reflect all of the equipment on the type of vehicles I oversee, I have completed the cataloguing process in hard copy format so as to do so accurately.

52. DC Cochrane reprimanded me for doing so, and ordered me to complete the (incorrect) online log.

53. On information and belief, similarly-situated BCs who have not engaged in protected activity have failed to complete their daily logs altogether and have not received reprimands.

54. In January 2018, after receiving approval for a 24-hour leave, I rescinded the request and sought only a few hours' leave instead. I provided three days' notice of this change, but DC Cochrane still required me to write a memorandum explaining why I had done so.

55. On information and belief, male officers have rescinded their requests for leave with less notice, including on the day they were scheduled to take such time off, and have not been reprimanded or required to prepare a memorandum.

56. On February 13, 2018, two different groups of members of the public toured the firehouse where I was working.

57. DC Cochrane later informed me that “someone said you were unprofessional,” and directed me to write a memorandum describing my actions that day. I objected to the vagueness of the allegation, but DC Cochrane provided no other information.

58. I submitted the memorandum as directed. To date, I have received no response.

Interference with my ability to perform my duties

59. Beginning in the fall 2017, my medic staff began to decline due to personnel actions such as promotion, medical leave, military leave, and termination.

60. By early 2018, I had 4 vacant medic positions in my battalion.

61. I sought assistance from DC Cochrane in remedying this staffing shortage, which has serious implications for FRD’s ability to meet public demand for emergency medical care. Although such requests are routinely made of the DC, DC Cochrane told me that he would not assist me. Instead, he told me I had to locate replacement medics by making my own inquiries throughout the FRD.

62. On information and belief, at least two medics have sought to be transferred to my battalion, but FRD has transferred them elsewhere.

63. To remedy this gap in emergency care to the public, DC Cochrane has directed me to “dual-hat” my officers and drivers, i.e., require them to serve both firefighter and medic functions when responding to an emergency. Dual-hatting requires personnel to decide between combatting an active fire and aiding injured individuals on the scene.

64. Additionally, in December 2017, my privileges to access the FRD's transfer request database suddenly were suspended. As a result, I stopped being able to monitor what personnel might be available for transfer to my battalion to address staffing needs.

65. After multiple appeals, my access to the database finally was reinstated last month.

66. On February 13, 2018, a supervisor in my battalion alerted me that a photograph of a barely-clad woman was displayed on a firehouse locker.

67. By e-mail, notified my chain of command about the inappropriate picture. Subsequently, the BC of another shift, BC Sam Gray, obtained a copy of my e-mail, and forwarded it to all 5 firehouses in his command, with a message identifying me as the person who had reported the photograph and stating, "Look at what she's doing to us," or words to that effect.

68. On information and belief, the firefighter who violated FRD policy by posting the picture was not disciplined, and FRD took no action in response to the incident.

Interference with my wife's and my efforts to coordinate work and family obligations

69. On January 29, 2017, the district court granted summary judgment to FRD on Hernandez's complaint.

70. On January 30, 2017, I was transferred from my post at the 2nd Battalion – located 20 minutes from my home – to the 6th Battalion, 40 minutes away.

71. At the time, I had a pending request to transfer to the 7th Battalion, fewer than 2 miles from my home.

72. My desire to work close to home was known to FRD leadership. At the time, I shared custody of my teenaged son and daughter, and they lived with me and my wife every other week.

73. In September 2017, my son moved in with me and my wife full-time. In the fall of 2017, my wife and I each sought hardship transfers in order to work on daytime shifts and assure appropriate supervision of my young teenaged son. (FRD employees typically work 24-hour shifts, 10 days a month; because we both work for FRD, our need for overnight child care was exceptional, and we were unable to secure full coverage.)

74. FRD did not grant these requests, despite routinely assisting other personnel in obtaining assignments that accommodate their scheduling needs.

75. In January 2018, I learned that my longstanding request to transfer out of the 6th Battalion to an assignment closer to my home had been erased in FRD's online transfer request system.

76. Because my access to the transfer request database was suspended at that time, I sought DC Cochrane's assistance in logging a new request, but he claimed he was unable to do so.

77. On information and belief, during the time I inexplicably was denied access to the database, other FRD members were able to log such requests.

78. I remain assigned to the 6th Battalion.

Interference with my ability to receive compensation and treatment for occupational injuries

79. Although medical testing revealed that my lung functioning had been diminished by my exposure to smoke on the February 2017 Covanta fire, FRD contested my application for worker's compensation benefits, necessitating my hiring an attorney.

80. Last month, more than one year after sustaining my injuries, I finally received compensation for the days I missed.

81. In December 2017, I sustained a hip and back injury during a response to a house fire.

82. After trying for a few months to treat my injuries on my own, in April 2018 I reported my injuries and sought treatment. I also requested and received a temporary assignment to light duty.

83. On information and belief, the third-party administrator of FRD's medical benefits, Corvel, makes decisions with respect to occupational injuries in consultation with FRD leadership.

84. Corvel has refused to approve my doctor's prescription for physical therapy and for a consultation with a hip specialist, citing my receipt of worker's compensation benefits more than 20 years ago for a back injury. Accordingly, I again have had to consult an attorney to obtain necessary care.

85. In addition to delaying my needed medical treatment, this delay has consequences for my employment security: according to FRD policy, personnel are entitled to just one year of light duty, leave, or other time off for medical treatment before their job status is in jeopardy. The later I begin my needed treatment, the less time I have to complete it before my one-year deadline to return to full duty or face discharge.

Disparate treatment of my wife, Kelly Joplin

86. As noted above, FRD's retaliation against me has included adverse treatment of my wife.

87. In addition to the actions outlined above, in December 2017, FRD rejected Kelly's request for a transfer to a vacant position at another fire station, telling her she was too late to fill the job. On information and belief, however, FRD continued seeking individuals willing to transfer. Ultimately, it filled the job with a man who had less experience – a Technician so recently promoted he still was on probation, while Kelly had 6 years of experience.

88. Like me, Kelly also is subjected to undue scrutiny in performing her job duties, and frequently required to write memoranda justifying her decisions made in the course of her daily activities.

89. In April 2018, for the first time in her 13-year tenure with the FRD, Kelly received a downgraded performance evaluation. The evaluation was approved by BC Walsh, the supervisor who had interfered with Kelly's ability to complete her volunteer leave, and had threatened her with unwarranted discipline.

90. In April 2018, FC Bowers retired.

91. The County installed as Acting Fire Chief AC Caussin. It was AC Caussin to whom I repeatedly complained about Jon Bruley's escalating harassment and stalking, and whom I identified in my lawsuit as one of the FRD leaders responsible for the department's retaliation against me.

92. As outlined above, Respondents violated Title VII by retaliating against me for filing my lawsuit in 2016, and by continuing to advocate against sex-based bias in the FRD. Such retaliation includes subjecting me to a course of adverse actions that would dissuade a reasonable person from engaging in protected activity.

93. As a result of the retaliation against me by the FRD and the County, I have suffered and continue to suffer harm including emotional distress, humiliation, and embarrassment.