

# MAINE/NEW HAMPSHIRE 5 DAY JURY TRIAL

## DrummondWoodsum

ATTORNEYS AT LAW

**A**fter a 5 day jury trial in York County Superior Court, a 9 person jury deliberated for 1 hour and delivered a unanimous defense verdict in the matter of Brian Smith v City of Sanford.

Attorneys Mark Franco and Jeana McCormick from Drummond Woodsum defended the City of Sanford in a disability discrimination case involving a claim by Brian Smith, a captain in the Sanford Fire Department, that his employment was terminated as a result of a diagnosis of a thoracic aortic aneurysm. In early 2014 he received the diagnosis from a cardiologist but did not inform the City until a year later after he went to the ER for what he thought was a cardiac event. After learning of the diagnosis the Fire Chief required Smith to obtain a return to work note from his cardiologist. The cardiologist imposed 40 pound lifting restriction on Smith. The Fire Department required all personnel, including the command staff to be able to work without restriction or to be able to lift/carry up to 100 lbs. Smith found another cardiologist to give him clearance to RTW without restriction. The City was concerned about the conflicting opinions so they scheduled him for a fitness for duty exam with an occupational medicine specialist. That specialist imposed a 75 lb. lifting restriction on Smith.

The Fire Chief and the HR Director met with Smith and informed him that they could not accommodate the lifting restriction imposed by the occupational medicine specialist and recommended that he apply for disability retirement . Smith applied for and was later approved for disability retirement but between the date of application and the date of approval, Smith's employment was terminated. He proceeded to file a grievance with his union and after it as denied he filed suit. Due to the pandemic it took over 4 years for the case to reach trial.

The jury returned a defense verdict after answering "No" to the following question: "Has plaintiff Brian Smith proven that it is more likely than not that he could perform the essential functions of his job as a Captain in the Sanford Fire Department with or without a reasonable accommodation? "

The plaintiff has 30 days to file an appeal from the defense verdict on May 13th 2022.



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