IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO. 93-K-2263

JACK L. DAVOLL; DEBORAH A. CLAIR; and PAUL L. ESCOBEDO; on behalf of themselves and a class of persons similarly situated;

Plaintiffs,

v.

WELLINGTON WEBB, in his capacity as the Mayor of the City and County of Denver; THE CITY AND COUNTY OF DENVER; DAVID L. MICHAUD, in his capacity as the Chief of the Denver Police Department; ELIZABETH H. McCANN, in her capacity as the Manager of Safety for the City and County of Denver; and THE CIVIL SERVICE COMMISSION, for the City and County of Denver;

Defendants.

UNITED STATES' MEMORANDUM AS AMICUS CURIAE
OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiffs Jack L. Davoll, Deborah A. Clair and Paul L. Escobedo are former police officers with the Denver Police Department ("DPD") who were forced to retire from their positions when each became disabled. They were forced to retire on disability because the DPD denied their requests for reassignment to vacant positions located within the DPD or elsewhere in the City and County Government. Thereafter, plaintiffs brought this

action alleging that defendants'[1] policy of refusing to reassign disabled police officers violates the reasonable accommodation provision of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12111 et seq.[2] Plaintiffs rely on a key ADA provision which states that "reasonable accommodation" may include "reassignment to a vacant position." 42 U.S.C. § 12111(9)(B).

Defendants have filed a motion for summary judgment arguing, inter alia, that the reassignment sought by plaintiffs is not a reasonable accommodation under the ADA.[3] First, defendants claim that plaintiffs are ineligible for reassignment because they are "not qualified individuals with disabilities." Second, they contend that even if the plaintiffs were so qualified, the City of Denver's Charter bars the transfer or reassignment of police

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[1] Defendants are Wellington Webb, in his capacity as the Mayor of the City and County of Denver; the City and County of Denver; David L. Michaud, in his capacity as the Chief of the Denver Police Department; Elizabeth H. McCann, in her capacity as the Manager of Safety for the City and County of Denver; and the Civil Service Commission, for the City and County of Denver. They are referred to throughout as "defendants."

[2] Title I of the ADA prohibits employment discrimination on the basis of disability by public and private employers alike. 42 U.S.C. § 12111 et seq. Title II prohibits discrimination on the basis of disability in all services, programs or activities of state and local governmental entities. 42 U.S.C. § 12131 et seq. Thus, while title II also prohibits employment discrimination, title II regulations adopt title I standards for review of employment claims against public entities such as the defendants. 28 C.F.R. § 35.140. Accordingly, citations hereafter are to title I and the title I regulations promulgated by the Equal Employment Opportunity Commission ("EEOC") at 29 C.F.R. § 1630 et seq.

[3] Defendants raise a number of issues in their motion. The United States addresses only defendants' arguments regarding whether reasonable accommodation includes reassignment into a vacant position.

officers to non-police officer or civilian vacancies. Defendants' Opening Brief in Support of Motion for Summary Judgment ("Defs.' Brief") at 11.

As we discuss below, defendants' argument misconstrues the "reasonable accommodation" provision of the ADA and, in particular, the "reassignment" requirement. Accordingly, the United States urges this Court to deny defendants' motion for summary judgment on this basis.

II. THE ADA REQUIRES REASSIGNMENT AS A REASONABLE ACCOMMODATION FOR EMPLOYEES WITH DISABILITIES

A. Disabled Police Officers with Disabilities Are Entitled To Be Considered For Any Vacancy For Which They Are Qualified

To establish a prima facie case of discrimination under the ADA, a plaintiff must show that he or she: (1) is a person with a disability as defined by the ADA; (2) is qualified for the position and can perform the essential functions of the position with or without reasonable accommodation; and (3) was denied the position. See White v. York Int'l. Corp., 45 F.3d 357, 360-61 (10th Cir. 1995); Hogue v. MQS Inspection, Inc., 875 F. Supp. 714, 720 (D. Colo. 1995); cf. Mason v. Frank, 32 F.3d 315, 318-19 (8th Cir. 1994) (same under the Rehabilitation Act[4]). Failure to make a reasonable accommodation such as reassignment to a vacant position violates the ADA unless the accommodation in question would impose an undue hardship on the employer or pose a direct

[4] 29 U.S.C. §§ 791, 793, 794 (1988).

threat to the health and safety of others.[5] 42 U.S.C. §§ 12112(b)(5)(A) and 12111(9)(B). The facts show that neither is the case here.

On January 29, 1991, plaintiff Jack L. Davoll's[6] police car was struck broadside during a high speed chase. Davoll sustained injuries to his neck, back and shoulder. On May 20, 1992, Davoll returned to work but was restricted, permanently, from any "involvement in resistive activities or altercations." Defs.' Brief, Exhibit A: Affidavit of James E. McKinley, M.D. According to the defendants, those restrictions "precluded" Davoll from "active service" as a police officer in the DPD. Defs.' Brief at 3.

Defendants acknowledge that Davoll is an individual with a disability as defined by the ADA. See Appendix 2, Specific Facts in Support of United States' Memorandum as Amicus Curiae in Opposition to Defendants' Motion for Summary Judgment ("Specific Fact") No. 1. Nonetheless they consistently rejected Davoll's requests for reassignment into a vacant position for which he was

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[5] An employer may shield itself from liability by raising the "direct threat" defense, defined as "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." 29 C.F.R. § 1630.2(r). To prevail, the employer must show that it considered reasonable accommodations to reduce or eliminate such risk and that the qualification standards used to assess that risk are job-related and consistent with business necessity. 42 U.S.C. § 12111(3).

[6] The United States investigated and found merit in plaintiff Davoll's allegations. See Appendix 1, complaint (C.A. No. 96-K-370) filed by the United States on February 15, 1996. We have not yet had the opportunity to assess fully the claims of the remaining two plaintiffs and, therefore, this memorandum is focused on facts surrounding plaintiff Davoll's claims.

qualified. Eventually, recognizing the futility of his efforts, Davoll applied for and was granted a disability retirement on June 23, 1993. Defs.' Brief at 3.

Defendants insist their actions are justified because Davoll's restrictions barred him from firing a weapon and making forcible arrests, two essential functions of a DPD police officer. Defs.' Brief at 9. According to the defendants, an officer who cannot perform these two functions poses a direct threat to the health and safety of others. 42 U.S.C. § 12111(3); 29 C.F.R. § 1630.2(r); see supra note 4. Accordingly, defendants assume that they are relieved of all obligations to provide a reasonable accommodation to Davoll even if he can show he is qualified for a civilian vacancy in the DPD. Defs.' Brief at 10-11. This interpretation of the ADA reflects a fundamental misunderstanding of the statute and regulations.

The ADA defines illegal discrimination to include the failure to make reasonable accommodations to an otherwise qualified employee with a disability, unless the employer can show that the accommodation would impose an undue hardship on the operation of its business. 42 U.S.C. § 12112(b)(5)(A). In its definition of reasonable accommodation, the ADA specifically includes "reassignment to a vacant position" and "modifications of ... policies." 42 U.S.C. § 12111(9)(B). Reassignment need only be to "an equivalent position, in terms of pay, status, ... if the individual is qualified, and if the position is vacant within a reasonable amount of time." 29 C.F.R. pt. 1630, app. at 400.

In enacting the ADA, Congress declared a clear national commitment to emancipate disabled workers and, as one of its framers explained, "to ensure that persons with disabilities are treated as individuals and that the employment decisions are not made on the basis of stereotypes."[7] Reasonable accommodation is one "process in which barriers to a particular individual's employment opportunity are removed."[8] Reassignment is one means of allowing disabled workers to reach the same level of achievement as a non-disabled person with comparable ability.

Indeed, courts have found that "offering an employee a new position without a reduction in pay or benefits is a reasonable accommodation 'virtually as a matter of law.'" Vande Zande v. Wisconsin Dep't of Admin., 851 F. Supp. 353, 361 (W.D. Wis. 1994) (quoting Guice-Mills v. Derwinski, 967 F.2d 794, 798 (2d Cir. 1992)); see Benson v. Northwest Airlines, 62 F.3d 1108, 1114 (8th. Cir. 1995) (reassignment to a vacant position is possible accommodation), Hogue v. MQS Inspection, Inc., 875 F. Supp. 714, 721 (D. Colo. 1995) (recognizing reassignment as reasonable accommodation); Champ v. Baltimore County, 884 F. Supp. 991, 998 (D. Md. 1995) (same).[9]

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[7] 126 Cong. Rec. S10798 (daily ed. Sept. 7, 1989) (statement of Sen. Simon); see also 29 C.F.R. pt. 1630, at 393-94 ("The ADA is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.").

[8] S. Rep. No. 116, 101st Cong., 1st. Sess. 34 (1989).

[9] Under the Rehabilitation Act some courts had determined that "reasonable accommodation" did not include reassignment. See Carter v. Tisch, 822 F.2d 465, 467 (4th Cir. 1987) (employer

The initial burden of showing that accommodation by reassignment is possible rests on the plaintiff. See, e.g., Milton v. Scrivner, 53 F.3d 1118 (10th Cir. 1995) (transfer to other jobs not required as reasonable accommodation where plaintiff "vaguely alludes" to possible jobs, but provides no description of jobs that would accommodate his disability); Lawrence v. IBP, Inc., No. 94-2027-EEO, 1995 WL 261144 (D. Kan. April 21, 1995) (plaintiff must present competent evidence that she is qualified for other available jobs). Here, the facts disclose that during the period Davoll was seeking a reassignment to an alternate position, there were dozens of vacancies within DPD's Classified Service (police and fire personnel system) as well within its Career Service (civilian employee personnel system). Appendix 2, Specific Fact Nos. 2, 3.

Between January 1992 and March 1993, Davoll could have been considered for at least 104 Career Service identifiable vacancies. These vacancies, which do not require the carrying of firearms or making forcible arrests, include: emergency service dispatcher, code investigator, staff probation officer, criminal

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need only accommodate the employee in his current job, Jaseny v. U.S. Postal Serv., 755 F.2d 1244, 1252 (6th Cir. 1985) (reassignment not required if it would usurp the rights of other employees in a collective bargaining agreement); Daubert v. U.S. Postal Serv., 733 F.2d 1367, 1368 (N.D. Tex. 1984) (same).

As one commentator notes, "[i]n enacting the ADA, Congress evidenced its intent to reverse this line of cases." Arlene B. Mayerson, American with Disabilities Act Annotated: Legislative History, Regulations & Commentary, vol. 1, Title I: Employment at 66. That congressional intent is made plain by the explicit inclusion of "reassignment" to the list of accommodations under the ADA. Congress' rationale for including reassignment is to prevent not only the employee's loss of his job, but also the employer's loss of a valuable worker. S. Rep. No. 116, 101st Cong., 1st Sess. 31-32 (1989).

justice technician, senior clerk and specialty clerk, investigator, lab technician, firearm's instructor, or dispatcher. Appendix 2, Specific Facts Nos. 3, 5.[10] Defendants further admit that the "knowledge and experience and training [of] police officers would provide a good background for anyone applying for a Career Service Authority [i.e., civilian] position within the police department." Id. No. 4. Thus, and not surprisingly, defendants do not and cannot deny that specific vacancies existed for which Davoll could have been reassigned given his experience and training in the DPD. Id. Nos. 6, 7.

Instead, defendants argue that plaintiffs' disabilities prevented them from performing the essential functions of the job for which they were originally hired (rather than focusing on the jobs to which they seek reassignment). Defendants reason that plaintiffs are not "qualified individuals with disabilities" and therefore not eligible for reasonable accommodation. Defendants offer nothing more than a tautology: in order to be considered a "qualified individual with a disability" eligible for a reassignment, employees must be able to perform the essential functions of the job for which they were originally hired. But, of course, if they could do so, there would be no need to accommodate them by reassignment. Defendants' interpretation

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[10] Defendants' reliance on Champ v. Baltimore County, 884 F. Supp. 991, 998 (D. Md. 1995) (all police officers are required to fire a weapon and make forcible arrests), is thus inapposite. Defs.' Brief at 11. Unlike Champ, the DPD has several Career Service or civilian jobs where the ability to fire a weapon or make a forcible arrest is not a factor. No such equivalent positions were available in Champ.

would render the ADA's "reassignment-as-reasonable accommodation" requirement nonsensical.[11]

B. The ADA Requires Defendants To Make Reasonable Changes In Their Regular Reassignment Policies, Practices And Procedures In Order To Provide Equal Opportunities To A Qualified Individual With A Disability

Defendants also insist that the ADA imposes no duty to reassign Davoll to a civilian position absent a similar policy for non-disabled employees. Defs.' Brief at 11. Defendants err. The ADA's unambiguous legislative history indicates the opposite is true. Committee reports describing the final legislation chronicle Congress's steadfast intent to remove barriers confronting the disabled worker:

> Reasonable accommodation may also include reassignment to a vacant position. If an employee, because of disability, can no longer perform the essential functions of a job that she or he has held, a transfer to another vacant job for which the person is qualified may prevent the employee from being out of work and employer from losing a valuable worker.

H.R. Rep. No. 485, 101st Cong., 2d Sess., pt 2, at 63 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 305 (emphasis added).

There is no question that the ADA forces employers to move beyond the traditional analysis used to appraise non-disabled workers and to consider reassignment to a vacant position as a method of enabling a disabled worker to do the job without creating undue hardship. Beck v. University of Wisc. Bd. of Regents, No. 95-2479 1996 WL 29449, at *3 (7th Cir. Jan. 26,

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[11] Defendants' confusion could well have its origins in case law under the Rehabilitation Act. Some courts have confused the inquiry or even relied on the Rehabilitation Act to interpret the ADA's reassignment requirement. See supra note 9. Defendants appear to have committed the same errors here.

1996) (quoting Vande Zande v. Wisconsin Dep't of Admin., 44 F.3d, 538, 543 (7th Cir. 1995)) ("'It is plain enough what "accommodation" means. The employer must be willing to consider making changes in its ordinary work rules, facilities, terms, and conditions in order to enable a disabled individual to work.'").

Reassignment as a means of reasonable accommodation is more than making the usual opportunities available on a nondiscriminatory basis; it requires a change in the usual policy where doing so is "reasonable." Leslie v. St. Vincent New Hope, Inc., No. IP 94-0922-C H/G 1996 WL 69550 (S.D. Ind. Feb. 7, 1996) (the ADA may require reassignment even if the employer does not have a regular policy or practice of permitting non-disabled employees to transfer). If a policy of reassignment was already in place, an employer would have no need to make an "accommodation" for employees with disabilities; they could simply seek out the reassignment opportunities available to all employees. Haysman v. Food Lion Inc., 893 F. Supp. 1092, 1104 (S.D. Ga. 1995) ("reassignment is appropriate when no accommodation would enable the plaintiff to remain in his current position, he is qualified (with or without reasonable accommodation) for another position, and that position is vacant within a reasonable time.").[12]

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[12] To the extent cases interpreting reassignment as outside the range of reasonable accommodations contemplated by the Rehabilitation Act, such cases are not persuasive authority in construing the express duty of reassignment under the ADA. See Emrick v. Libbey-Owens-Ford Co., 875 F. Supp. 393, 396-97 (E.D. Tex. 1995) (cases holding that the Rehabilitation Act does not require reassignment are not relevant for the purpose of interpreting the ADA).

Citing Daugherty v. City of El Paso, 56 F.3d 695 (5th Cir. 1995), defendants argue that the ADA does not obligate them to give "priority" to disabled individuals over those who are not disabled. Defs.' Brief at 12. Defendants' reliance on Daugherty is misplaced. The plaintiff in Daugherty was seeking something more than the typical reassignment required by the ADA. After he was diagnosed as an insulin-using diabetic, Daugherty, a part-time employee, demanded as reasonable accommodation a promotion to a full-time job. Unlike the situation here, Daugherty sought reassignment to a higher status vacancy.

Under the ADA, an employer has no duty to promote a disabled employee as a reasonable accommodation. White v. York Int'l Corp., 45 F.3d 357, 362 (10th Cir. 1995) (the employer is not required to promote an employee as a form of accommodation); accord Leslie v. St. Vincent New Hope, Inc., No. IP 94-0922-C H/G 1996 WL 69550 (S.D. Ind. Feb. 7, 1996). All that the ADA mandates is that the reassignment be to "an equivalent position, in terms of pay, status, etc." if the individual is qualified, and if the position is vacant. Indeed, an employer may reassign an individual to a lower graded job if no equivalent job is available.[13] 29 C.F.R. pt. 1630, app. at 400-02.

Defendants insist that their refusal to reassign Davoll is based on sound policy. Were Davoll reassigned to a police

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[13] To the extent that the Daugherty court suggested that the ADA never requires changes in reassignment policies or procedures, we believe it was wrongly decided. We do note that the Daugherty court ratified the provision of the ADA at issue here: "To be sure, under the ADA a reasonable accommodation may include ...

officer vacancy, they contend, he would pose a direct threat to the health and safety of others. But they offer no similar justification for refusing to reassign Davoll to a civilian vacancy. Defendants have not attempted to (because they cannot) raise an "undue hardship" defense for this decision. 42 U.S.C. § 12111 (10)(A).[14] For instance, in his deposition, Police Chief Michaud testified that reassigning police officers with disabilities like Davoll to Career Service vacancies would not pose an undue hardship:

> Q: Okay. Now, is it your belief that the second option, reassignment or transfer of disabled officers to Career Service Authority positions, would be an undue burden on the police department?
>
> A: It would not be an undue burden on the police department if I think the laws or rules were changed.

See Appendix 2, Specific Fact No. 8.

The "laws or rules" to which Chief Michaud was referring are found in the City of Denver Charter. Their Charter, defendants charge, bars transfers and reassignments between the Classified and the Career Services. Defs.' Brief at 12. But defendants have not identified a specific provision in the Charter which expressly prohibits reassignment between the two personnel services. Even if such a provision exists, however, it would be preempted by the ADA's explicit directive to employers to modify existing practices, policies and procedures which do not conform with the ADA.

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reassignment to a vacant position." Daugherty, 56 F.3d at 698.

[14] An employer is not required to make a reasonable accommodation if such action will result in "undue hardship," defined in the statute as "an action requiring significant difficulty or expense." 42 U.S.C. § 12112(10) et seq.

Even more important, defendants can and have amended the Charter in the past. In his deposition, Chief Michaud testified that at least on two occasions he "asked" for and received at least two "charter changes." Appendix 2, Specific Fact No. 9. Chief Michaud's testimony suggests that revising the Charter is not too burdensome. Therefore, amending the Charter to allow reassignment between the two personnel systems would not create an undue hardship.

Further, defendants' staunch allegiance to their local law ignores the principle of federal preemption. Where a state or local law is inconsistent with the operation of a federal statute it is preempted. The Supremacy Clause of the Constitution, Art. VI, cl. 2, provides that "'the Laws of the United States which shall be made in Pursuance' of the Constitution 'shall be the supreme law of the land.' The phrase 'law of the United States' encompasses both federal statutes themselves and federal regulations that are properly adopted in accordance with statutory authorization." City of New York v. FCC, 486 U.S. 57, 63 (1988). Clearly, the ADA preempts the provisions of the City of Denver's Charter at issue here.

The relative importance to the state or local jurisdiction of its own law is not material "when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." Free v. Bland, 369 U.S. 663, 666 (1962). Thus, any state or local law, however clearly within a jurisdiction's acknowledged power, "which interferes with or is

contrary to federal law, must yield." Id.; see also North Dakota v. United States, 495 U.S. 423, 434 (1990); Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp., 642 F.2d 527 (D.C. Cir. 1980); Beveridge v. Lewis, 939 F.2d 859 (9th Cir. 1991).[15]

III. CONCLUSION

For the foregoing reasons, the United States requests this Court to reject the defendants' argument regarding reassignment as a basis for its summary judgment motion.

Respectfully submitted,
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[15] "Federal regulations have no less preemptive effect than federal statutes" and the inquiry for them is not so much congressional intent, but whether the regulation is within the agency's delegated statutory authority. City of New York v. FCC, 486 U.S. 57, 63-64 (1988). The EEOC regulations regarding reasonable accommodation and reassignment were promulgated pursuant to statutory mandate. 29 C.F.R. § 1630. As such they are entitled to controlling weight. Chevron U.S.A. Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 843 (1984) (legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute).

CERTIFICATE OF SERVICE

I, Eugenia Esch, hereby certify that the foregoing United States' Memorandum as Amicus Curiae Opposing Defendants' Motion for Summary Judgment, was served on February 29, 1996, by U. S. mail, postage pre-paid on the following counsel:

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Defendants.

APPENDICES 1-2 TO PLAINTIFF UNITED STATES' MEMORANDUM AS AMICUS CURIAE OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

APPENDIX 1: Complaint (Civil Action No. 96-K-370), filed February 15, 1996

APPENDIX 2: Specific Facts in Support of the United States' Memorandum as Amicus Curiae Opposing Defendants' Motion for Summary Judgment with the following attachments:

Attachment A: Deposition of Lt. Steven Cooper, dated June 27, 1995

Attachment B: Defendants' First Response to Interrogatories, Requests for Production of Documents and Requests for Admission to Defendants, dated January 18, 1994

Attachment C: Defendants' Second Amended Response to Interrogatories, Requests for Production of Documents and Requests for Admission to Defendants, dated March 28, 1994

Attachment D: Deposition of Chief David L. Michaud, dated October 30, 1995

Attachment E: Defendants' Amended Response to Interrogatories, Requests for Production of Documents and Requests for Admission to Defendants, dated March 2, 1994

Attachment F: Deposition of Jack L. Davoll, dated September 22, 1995

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SPECIFIC FACTS IN SUPPORT OF THE UNITED STATES' MEMORANDUM AS AMICUS CURIAE OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Listed below are the specific facts relied on by the United States in its memorandum opposing defendants' motion for summary judgment.

1. Plaintiff Jack L. Davoll ("Davoll") is a "qualified individual with a disability" under the ADA. Deposition of Lt. Steven Cooper, dated June 27, 1995 (Attachment A) at 135\14-17.

2. The Denver Police Department ("DPD") has employees in both the Classified Service (sworn police and fire personnel) and

in the Career Service (civilian employee personnel). Defendants' First Response to Interrogatories, Requests for Production of Documents and Requests for Admission to Defendants, dated January 18, 1994 (Attachment B), Interrogatories Nos. 10, 13, 15.

3. Between January 1992 and March 1993 at least 104 Career Service vacancies within the DPD and Department of Public Safety including emergency service dispatcher, code investigator, staff probation officer, criminal justice technician, senior clerk and specialty clerk, investigator, lab technician, firearms instructor, or dispatcher. Defendants' Second Amended Response to Interrogatories, Requests for Production of Documents and Requests for Admission to Defendants, dated March 28, 1994 (Attachment C), Interrogatory No. 13.

4. The "knowledge and experience and training [of] police officers would provide a good background for anyone applying for a Career Service Authority [i.e. civilian] position within the police department." Deposition of Chief David L. Michaud, dated October 30, 1995 (Attachment D) at 177/22-178/2.

5. The Career Service positions in the DPD do not require the carrying of firearms or making forcible arrests. Defendants' Amended Response to Interrogatories, Requests for Production of Documents and Requests for Admission to Defendants, dated March 2, 1994 (Attachment E), Interrogatory No. 8.

6. Defendants do not dispute Davoll was able to perform the essential functions of the 104 vacancies between January 1992 and March 1993. Attachment B, Interrogatory No. 14.

7. As a DPD police Officer, Davoll acquired training and experience in both the Classified Service and the Career Service. Deposition of Jack L. Davoll, dated September 22, 1995 (Attachment F) at 89/10-25.

8. The Defendants admit that reassigning disabled police officers, like Davoll, to a Career Service vacancy would not pose an undue hardship. Attachment D at 129/13-19.

9. At least two of Chief David L. Michaud's requests to amend the City of Denver Charter were successful. Attachment D at 60/10-24.