

**IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA**

**LELA ALEXANDER,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.: CV2015-900223**

**THE CITY OF DECATUR, ALABAMA,**

**Defendant.**

**PLAINTIFF'S PRE-TRIAL BRIEF**

This is a workers' compensation case. The plaintiff suffers a debilitating work-related injury which has left her unable to maintain regular, gainful employment. The plaintiff contends she is permanently and totally disabled.

**I. BACKGROUND FACTS**

1. Lela Alexander worked for the defendant City of Decatur ("City") as a police officer. The position required numerous physical abilities including "the ability to exert heavy physical effort," "exposure to adverse environmental conditions," "the ability to operate and control the actions of equipment, machinery, tools, etc.," and "the ability to exercise judgment, decisiveness and creativity in critical and/or unexpected situations." (Def. City's Job Description).

2. Lela Alexander could fully perform all the duties of her employment with defendant City prior to the exposures and reported injury made the subject of this action. (Dep.Corp.Rep., pp. 14-15).

3. Defendant City does not dispute the medical problems Lela Alexander suffered from her employment as a police officer. (Dep.Corp.Rep., pp. 33).

4. Defendant City received notice of plaintiff's accident and injury as required by The Alabama Workers' Compensation Act. (Dep.Corp.Rep., pp. 29-31)

5. At the time of her work-related injury, plaintiff's average weekly wage, excluding the value of fringe benefits, was \$929.20. Plaintiff's average weekly wage, including the value of fringe benefits was \$1,030.99. (Wage Statement and Cost of Fringe Benefit Statement produced by defendant City).

## **II. LELA ALEXANDER'S WORK-RELATED ACCIDENT AND RESULTING TOTAL DISABILITY**

Plaintiff Lela Alexander is presently 53 years old. Lela spent the last 17 years of her work life as a dedicated and decorated police officer for the City. In March 1999, the City hired Lela as a jailer. Within months, the City promoted her to a regular police officer patrol position.

Lela graduated from the police academy. Lela received merit citations and merit raises numerous times over her years of service. During her years as a police officer, Lela Alexander also completed the grueling physical and mental work necessary to become certified as a rape defense instructor for women.

Around 2007, the City promoted Lela Alexander to a detective position. Around 2008, the City entrusted Lela with primary responsibility over the evidence rooms for the police department. Lela served as the primary officer responsible for the evidence rooms throughout the remainder of her career with the City. During this time, she also continued to process crime scenes as a detective.

During her years of exemplary police service, Lela Alexander suffered several minor injuries performing her duties. These were primarily injuries inherent to police officers dealing with hostile or resisting suspects. She recovered fully from all of them.

As noted earlier, Lela Alexander began serving as the police officer responsible for the evidence rooms around 2008. The defendant City maintained its evidence rooms within the confined basement of city hall. The area was closed and not ventilated<sup>1</sup>. Over many years, various water leaks had also impacted the basement. One of the two closed basement rooms had previously served as a gun range and was likely contaminated by significant lead dust. Lela Alexander was the only police officer assigned to the basement as her permanent work area.

When Lela first began working in the unventilated basement, mold was visibly present on the walls. Lela reported the condition and the City simply painted over it. The City did not repair the leaks creating moisture in the enclosed basement.<sup>2</sup>

Lela's work required her to be locked in the basement throughout the day. The air was stale. Soon after starting this position, she began suffering problems. These problems

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1 According to the City's Representative, the only possible outside ventilation could come from a garage door which was kept closed. (Dep. Tammy Robbins, p.34). The door had to be kept closed due to dangerous car exhaust – it was a pull-up area under the building for vehicles.

2 Eventually, in 2014, the City performed an environmental analysis. That analysis contains photographs of significant long-standing water leaks and surfaces contaminated by mold.

included breathing problems and headaches. She constantly suffered sinus and other respiratory issues. Lela began taking aspirin frequently which soon caused additional stomach problems.

Lela worked in the evidence rooms for several years. As she was exposed continuously to the basement air, her problems worsened. During the 2-3 years prior to 2014, she stayed sick almost constantly with breathing problems. She reported the problems many times to the City.

Finally, in January 2014, the City retained Terrell Technical Services to perform an indoor air quality assessment. The test revealed extremely high levels of dangerous mold spores in the basement and on surfaces where Lela Alexander was assigned to work. Lela learned she had been exposed, daily, over the course of 6 years to extremely dangerous mold spores. Within days of the report, Mayor Don Kyle came to the basement evidence room. He confronted the police chief and a captain in front of Lela, demanding they move her from the basement immediately.

After the air test and incident with the Mayor, Lela's superiors in the police department told her they were going to move her office upstairs in city hall. Lela was ecstatic. She had been sick but would now have cleaner air as well as air conditioning and heat. However, that move never came.

Finally, on March 21, 2014, the City moved Lela to a rented space on Central Parkway. She was the only officer assigned this space. Lela was required to move to her new office all the evidence (which was coated with mold spores and lead dust) from the evidence room that had previously been a gun range.

By this point, Lela had been constantly exposed for years. She had been severely sick for the last 2-3 years. Although in an environment with better air (some better but not good since she still had to personally handle contaminated evidence), her condition had worsened to the point where it could not be cured.

Lela spent months in 2014 asking for a doctor who could examine her. She even asked if she could go to the City's doctor at Occupational Health Group (OHG). For months, the City gave her the run-around. She finally had to seek legal counsel.

Eventually, the City allowed Lela Alexander to see the doctor at OHG. She saw OHG physician, Dr. McMurry. The doctor examined her one time and listened to her lungs. Because of her condition, he immediately referred her for specialized pulmonary care. The OHG doctor then completed a form on November 10, 2014 indicating his opinions that her condition was (1) not preexisting; (2) not caused by her prior activities around horses; (3) was caused "at work;" and, (4) had become permanent even if she was

now removed from the source of exposure. (See, November 10, 2014 Assessment of Dr. McMurry).

Afterwards, the City arranged an appointment with a pulmonary specialist at the Kirklin Clinic in Birmingham, Dr. Jack Hasson. Lela first saw Dr. Hasson on February 11, 2015. (Dep. Dr. Hasson, pp.6-7). Dr. Hasson testified Lela had no history of asthma prior to the start of her exposure in the City's basement beginning in 2008. (Dep. Dr. Hasson, p8).<sup>3</sup> She had a six (6) year history of exposure to mold at work. (Dep. Dr. Hasson, pp.8-9).

Dr. Hasson performed a physical examination (as part of a differential diagnosis) which ruled out other possible causes of her condition. Dr. Hasson then performed pulmonary function tests, including a spirometry test of her lung volume and diffusion capacity. (Dep. Dr. Hasson, p11). "[T]he spirometry showed moderate obstruction, that is, the amount of air that she could get out in one second was reduced significantly." (Id.). "So she was moderately impaired related to an obstructive. And that obstructive would be asthma." (Id.).

In his deposition, Dr. Hasson explained restrictive versus obstructive lung diseases.

Q. And correct me, I may be incorrect, so correct me if I am, but when you are looking lung problems, some people have what you would call restrictive lung problems and some have obstructive?

A. That's correct.

Q. And I have always understood restrictive is you don't get enough air into the lungs?

A. Well, restrictive would be, if you think in terms of the lungs as a container, and you have so many liters in that container, if you are restricted, something reduces that volume so you do not have enough volume as compared to what you are supposed to have. That's restriction. An example of that would be pulmonary fibrosis. Somebody with scarring of the lungs, their lungs shrink down, and they're restricted. The flows are okay. The air can get in and out quickly, but it's just the smaller volume that you are moving.

As opposed to asthma where there's an obstruction to airflow and it takes

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<sup>3</sup> Lela had smoked cigarettes but quit years earlier. The doctor did NOT find this significant to her present work-related asthma.

longer to get the air out, the volume may be normal, it just takes longer to get that volume out. And that's obstruction, which we see with asthma, COPD, those kind of diseases.

Q. So obstructive basically you have trouble exhaling?

A. Exhaling the air out. It is slower to get it out. It takes longer to get it out. And that's what this number, the FEV1, the amount of air one can get out in one second is slower in her.

Q. Does that explain why people with obstructive lung disease have exertional problems?

A. Well, that's the one thing that can cause exertional problems. If they have obstruction, they cannot move air in and out as much and so they have trouble going fast because they cannot get the air out, and they have difficulty. So yeah, that would cause shortness of breath with exertion.

(Dep. Dr. Hasson, pp.12-13). Dr. Hasson continued by explaining how x-rays are typically normal for people with obstructive lung disease like Lela Alexander. (Dep. Dr. Hasson, p.14). For obstructive disease, a spirometry test is appropriate.

After completing his initial examination, Dr. Hasson prescribed medications including Advair, a combination inhaled steroid and bronchodilator. Dr. Hasson later testified, "the inhaled steroid treats the inflammation. The bronchodilator treats the spasm that occurs with asthma." He also prescribed Singulair to help with allergic symptoms as well as inflammation and Ventolin (Albuterol) to use as a rescue inhaler when she experienced an asthma attack. (Dep. Dr. Hasson, p.16).

Dr. Hasson explained that Lela would need to carry these inhalers with her because "people once they get asthma can be triggered by a number of things, such as infection, or strong odors or irritants, or temperature changes, those things will also trigger the asthma in addition to their original trigger." (Dep. Dr. Hasson, p.17). The doctor also noted that Lela would have to continue these medications permanently. (Dep. Dr. Hasson, p.19).

Lela could not afford the expensive medications prescribed by Dr. Hasson. She asked her superiors, Lt. Russell and the police chief, if workers' compensation was going to take care of the medicines. They told her they would check on the issue and get back with her. Yet, they never did.

Lela returned to Dr. Hasson as he instructed for her follow-up visit. She drove to Birmingham. When she arrived for the appointment, Dr. Hasson's office told her the

workers' compensation person had called and simply cancelled. Neither the insurance company nor the City had told Lela about their cancellation of the appointment.<sup>4</sup>

Lela was forced to continue with Dr. Hasson at her own expense (through private insurance and out of pocket payments). By the time Lela returned to Dr. Hasson on November 11, 2015, her breathing capacity "was significantly reduced. There was significant obstruction." (Dep. Dr. Hasson, pp.20-23).

Lela's condition continued to worsen. She struggled to breathe. She had little or no energy due her lack of breath. In the Fall of 2015, Lela continued to work. She participated in significant criminal trials requiring her mental skills and evidence expertise. In those last few months of 2015, she was so fatigued due a lack of breath that she would frequently have to put her head down on her desk. She also continued to handle old evidence (still contaminated by mold) which triggered incapacitating asthma attacks.

On December 9, 2015, Lela Alexander's general physician Dr. David Francis completed a disability form for the City. The information indicates:

**In your professional opinion, by reason of the described condition, is the named applicant [Lela Alexander] totally incapacitated for further performance of his/her duty? (Yes or No required) \_\_\_\_\_ Yes \_\_\_\_\_**

**If yes, list in detail the pathophysiologic diagnoses with supporting evidence for the diagnoses that cause the disability:**

Seen by Dr. Hasson at UAB and followed for asthma, now found to have vocal cord dysfunction that complicates same

**In your professional opinion, is the named applicant's disability permanent? (Yes or No required) \_\_\_ Yes \_\_\_**

**List the objective findings that render the applicant permanently incapacitated to perform the normal functions of his/her duty:**

Dyspnea on exertion, worsening of same with

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<sup>4</sup> In deposition, the City's representative admitted the insurance carrier simply denied further treatment. (Dep. Tammy Robbins, pp.47-50).

[illegible word] allergen exposure, not controlled  
despite medical treatment

(Dr. Francis, December 2015 Medical Form).

Lela requested early retirement due to disability solely from her work-related asthma. Her request was granted. She retired on disability due her asthma effective February 1, 2016.<sup>56</sup>

At trial, it is unknown whether Defendant will argue Plaintiff suffers from a concussion. Of course, Plaintiff's work-related asthma need not be the sole cause of her disability but only must be a contributing cause. Plaintiff fell from a horse in the Spring of 2015 and suffered a concussion. As Lela will explain, she was dizzy and fatigued due her ongoing breathing problems and probably should not have been riding that day. She was off work during the Summer of 2015 following the concussion. She subsequently returned to work. And, she will testify she fully recovered from the concussion. When she returned to work, the City fully cleared her to drive a vehicle, use her weapon and work active crime scenes. She did so. She even handled the evidence in high profile cases after returning to work from her concussion. In one subsequent case, she actively handled a difficult crime scene. In another subsequent case, she helped prosecutors with the evidence needed to convict a man for a series of rapes 30 years earlier in Decatur. That cold case was resolved with a conviction in Judge Haddock's court in the Fall of 2015 and Lela Alexander's work was instrumental in achieving the conviction. From a cognitive and mental standpoint, she functioned well. From a breathing and fatigue standpoint due her asthma she functioned very poorly. And, she barely had the energy to attend work.

In the case at bar, Lela Alexander's claim is compensable under both Article 3 of the Act as an accident claim due to cumulative exposure and Article 4 as an occupational disease. Legal and medical causation in this case are both factually undisputed. Here, the evidence of the hazard and its peculiar relationship to Lela Alexander's employment are overwhelming. When she started her position, mold was visible. The confined work area of the basement was the subject of leaks, moisture, no ventilation and poor air. A subsequent air quality study in early 2014 expressly revealed dangerous levels of unhealthy mold in the specific areas where Lela Alexander was confined on a daily and

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<sup>5</sup> Lela was granted disability from the Retirement Systems of Alabama (RSA) based solely on her asthma. Plaintiff anticipates the City will seek an offset or credit at trial based on its percentage of contribution for this disability benefit. The City has the burden in proving its specific offset percentage for the years of contributions. Of course, at the outset, the City's request for an offset requires an admission that the disability payments are specifically for the condition at issue in this case – asthma.

<sup>6</sup> Due her years of service, Lela is automatically entitled to draw her retirement at the age of sixty (60) with no disability. Her early retirement (upon approval that she was disabled from the asthma condition) simply allows her to draw payments for the years prior to age sixty (60).

hourly basis. The City has offered no evidence to dispute the clear exposure peculiar to her specific duties in the evidence rooms.

Medical causation is also factually undisputed. Lela suffered constant exposure to dangerous mold until March 2014. Thereafter, she continued to suffer repetitive exposures to the mold when dealing with old evidence. Lela Alexander has been examined by three (3) separate doctors. All three (3) concur she suffers asthma from her work-related exposure. The first doctor, from OHG, diagnosed her asthma and related it to her employment by a written opinion directly to the insurance carrier. At that point, the claim should have been accepted. A pulmonary specialist who continues to treat Lela Alexander for her condition also attributes the injury to her workplace exposure. (Dep. Dr. Hasson, p.15). That pulmonary specialist performed a differential diagnosis to rule out other possible conditions or causes of her problems. And, Lela Alexander's general physician has provided the employer a written opinion she is disabled from the specific exposure. The evidence of causation is beyond clear and convincing. It is overwhelming and factually undisputed.

How is Lela Alexander now? It is undisputed Lela Alexander medically retired from her work as a police officer specifically due her work-related asthma. At the time she retired, the forms all indicated the problem was asthma. The City agreed. The medical board of the Retirement Systems of Alabama (RSA) concurred and provided early retirement benefits specifically due that condition.

Lela suffers tremendously. She remains permanently on inhalers, including a steroidal inhaler. Lela suffers constant pain in her chest. She describes the pain as feeling like somebody is pushing her ribs into her lungs. Breathing is difficult.

Lela has difficulty sleeping because it is harder to breathe while lying down. She often tries to sleep sitting up. During flare-ups she only sleeps a couple hours a night. Because of fatigue, she has difficulty concentrating. Some days she is not sufficiently alert to function at all.

Lela is clear – horses have been her lifetime passion. During her younger years, she had been a horse trainer. And, in the early 2000s she actually placed 3<sup>rd</sup> in the nation in one category of riding. She loves horses but has been forced to sell many of them. She still tries to take small rides when she is not having a flare-up and with the help of her husband Greg. Greg now handles all the hay, saddles the horse for her and rides with her. Even then, she often cannot sit on the horse because of asthma flare-ups. Lela is determined to ride horses as long as possible.

Dr. Francis provided the form that medically disabled Lela Alexander from being a police officer – even in a desk environment. (See Dr. Francis December 2015 form). The City's attorney directly asked pulmonary specialist Dr. Hasson if Lela Alexander



could work. And, the doctor then listed asthma triggers present in every normal work environment that would absolutely preclude employment.

Q. [By Defense Attorney] Then, Doctor, you are not a vocational expert. I am not asking you to be. But in your opinion, which is based upon the treatment of this individual and medical research and practice, is Ms. Alexander capable of employment?

A. She is capable of employment with certain caveats.

Q. If you can tell me what those caveats are?

A. **Exposure to anything that would trigger her asthma, such as odors, irritants, significant temperature changes, pollution, and of course the mold** which she had a problem with or any type environmental things.

So if she was in an environment that didn't have those things present, there's no reason she couldn't work. But if she has to be in any environment that would be exposing her to triggers, she couldn't do that. Does that answer your question?

(Dep. Dr. Hasson, pp.58-59).

Presently, Lela Alexander suffers triggers which cause asthma attacks several times a month. She is often incapacitated for a couple days at a time during those attacks. With severe attacks, the period of incapacity can be much longer. Her asthma attacks are triggered by everyday exposures such as humidity, dust, certain smells, temperature / weather changes, perfumes, lotions, car exhaust, vacuuming (because it stirs up fine dust), burning or scented candles, and spray cleaners. Lela is not able to attend work regularly and would miss several days a month under perfect workplace conditions. During her time as Dr. Hasson's patient, Lela has experienced severe triggered attacks causing further problems and requiring further care from the doctor.

John McKinney, a vocational counselor, evaluated Lela Alexander. After interviewing Lela, testing her, and evaluating the vocational impact of her injury, Mr. McKinney concluded:

In response to your referral questions, Ms. Alexander developed a severe pulmonary condition secondary to multiple occupational exposures to respiratory irritants she sustained during the course of her employment with the City of Decatur Police Department. Due to her residual concerns, Officer Alexander was forced to seek medical retirement following more

than seventeen years of service, where she consistently received upward promotions and increased work assignments in the department. She has not returned to the labor market in any capacity since January, 2016, and is currently pursuing a claim for Social Security Disability benefits.

Generally, workers in the competitive labor market, especially those initiating employment with a new entity, are not allowed to be absent from work more than 1-2 days each month and effectively retain and maintain employment. Secondary to a combination of the severe medical concerns related to Ms. Alexander's pulmonary concerns, especially those outlined by Dr. Hasson (her treating pulmonologist), it would appear improbable to me Ms. Alexander would be able to avoid pulmonary flare-ups that would allow her to attend any type of competitive employment, even Sedentary work activities, on a routine, consistent, and sustained basis. Therefore, she is considered to be 100% vocationally disabled from substantial gainful employment.

(Report of John McKinney). In the case at bar, the City did not even retain an expert to dispute Lela Alexander's permanent and total vocational disability.

It is clear from the evidence that Plaintiff Lela Alexander is permanently and totally disabled. According to well-established law, the test for total disability is the inability to perform one's trade, and if so unable, then the inability to obtain other reasonably gainful employment. Plaintiff is not required to be completely helpless or to suffer total physical disability. *Asplundh Tree Expert Company, Inc. v. Latham*, 656 So. 2d 839 (Ala.Civ.App. 1995); *Whitsett v. BAMSI, Inc.*, 652 So. 2d 287 (Ala.Civ.App. 1994). The Court stated in the *Whitsett* case as follows:

Our appellate courts have consistently held that "permanent total disability" does not mean absolute helplessness or entire physical disability, but, instead, means the inability to perform one's trade or to obtain reasonably gainful employment. *Wright v. Goodyear Tire & Rubber Company*, 591 So. 2d 518 (Ala.Civ.App. 1991); *W.Y. Shugart and Sons, Inc. v. Cox*, 578 So. 2d 1332 (Ala.Civ.App. 1990). We hold that this well-established principle of law was not changed by the new Act.

652 So. 2d at 294. Based on all the evidence, the undersigned respectfully contends the plaintiff Lela Alexander is permanently and totally vocationally disabled as a result of her work-related accident and injuries.

WHEREFORE, PREMISES CONSIDERED, plaintiff requests this Honorable Court assess workers' compensation benefits for a permanent and total disability.

Respectfully submitted,

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JEFFREY G. BLACKWELL (BLA070)  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon counsel of record on this the 30th day of January, 2017, by hand delivery in open Court.

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OF COUNSEL

