

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-02262-JLK-MJW

RENEE ATWELL,

Plaintiff,

v.

DENVER HEALTH AND HOSPITAL AUTHORITY,

Defendant

---

**ANSWER TO FIRST AMENDED COMPLAINT**

---

Defendant, Denver Health and Hospital Authority (“Denver Health”), by its attorneys, submits this Answer to the First Amended Complaint of Plaintiff Renee Atwell (“Atwell”). Numbered paragraphs 1-156 hereof correspond to those numbered paragraphs of the First Amended Complaint. Allegations which have been dismissed by the Court’s Order dated March 31, 2008 are so noted, and therefore no further response is required to those allegations.

1. Admits that Atwell is African American, a licensed clinical psychologist, and a former employee of Denver Health. All remaining allegations in this paragraph have been dismissed.

2. All claims other than Atwell’s claims under 42 U.S.C. §200e, *et seq.* and C.R.S. §24-34-402, *et seq.* have been dismissed. Denies the remaining allegations.

3. All claims against Dr. Gabow have been dismissed.

4. Admits that Denver Health is a political subdivision of the State of Colorado, that it provides health care services in Denver, that it employs in excess of 4,300 persons, and that in

recent years roughly 70% of its patients are non-white. Denies the remaining allegations.

5-7. All claims under this statute have been dismissed.

8-12. All claims against Dr. Gabow have been dismissed.

13. Denies.

14. All claims other than Atwell's claims under 42 U.S.C. §200e, *et seq.* and C.R.S. §24-34-402, *et seq.* have been dismissed. Denies the remaining allegations.

15. Admits that this Court has jurisdiction over Atwell's federal claims.

16. Admits that venue is appropriate in this Court, denies all remaining allegations.

17. Admits that 28 U.S.C. § 1367 governs the issues of supplemental jurisdiction over Atwell's state claim. Denies the remaining allegations.

18. Admits.

19-22. These parties have been dismissed from this action.

23. Incorporates by reference its response to paragraph 4.

24-31. These claims have been dismissed.

32. Incorporates by reference its responses to all previous paragraphs.

33. Admits that Atwell was employed by Denver Health as a psychologist from April 15, 1996, to December 30, 2005.

34. Admits that Atwell had a doctorate degree, was duly licensed by the State of Colorado as a psychologist, and had the qualifications for her job at Denver Health.

35. Admits that Atwell's overall job performance was generally satisfactory, but denies that at all times during her employment Atwell satisfactorily performed all of her duties. Admits that during at least some portion of her employment Atwell's billable service hours were

among the highest of psychologists on Denver Health staff, but is without knowledge sufficient to form a belief as whether that was true during the entire time of her employment by Denver Health.

36. Admits that during at least some portion of her employment Atwell was the only African American psychologist on Denver Health staff, but is without knowledge sufficient to form a belief as whether that was true during the entire time of her employment by Denver Health.

37. Admits that Atwell's job duties included providing counseling services to patients with dual diagnoses of mental illness and drug addiction, otherwise denies that this paragraph accurately characterizes Atwell's job duties, and denies that her duties required her to have an office.

38. Admits that Atwell took several weeks of FMLA leave in 2003 for carpal tunnel surgery, and is without knowledge sufficient to form a belief as to the truth of the remaining allegations.

39. Admits that Atwell was moved from an office to a cubicle in 2004, denies the remaining allegations of this paragraph.

40. Affirmatively alleges that after she was moved to a cubicle, offices were twice offered to Atwell and rejected by her, and that rooms for individual counseling sessions were available to Atwell and other counselors assigned to cubicles. Denies the remaining allegations of this paragraph.

41. Denies that this paragraph accurately describes Atwell's supervision and denies that Atwell's supervision was inappropriate in any way.

42. Admits that Atwell complained about not having an office, incorporates its responses to paragraphs 40 and 45, and denies the remaining allegations.

43. Denies.

44. Denies.

45. Admits that Atwell submitted a written complaint dated August 2, 2005 and signed a written statement dated September 22, 2005, in support of that complaint, affirmatively alleges that those statements speak for themselves, and denies the allegations of this paragraph to the extent they are inconsistent with those documents.

46. Denies.

47. Admits that Atwell took a leave of absence from approximately February 3 through April 26, 2005, for spinal surgery. Is without knowledge sufficient to form a belief as to truth of the remaining allegations of this paragraph.

48. Incorporates its response to paragraph 45.

49. Affirmatively alleges that periodic CPR certification was a requirement for Atwell's job position and all other OBHS positions other than clerical positions, that Atwell and all other non-clerical OBHS staff were advised by email on April 14, 2005 of the requirement for current CPR certification in order to pass their performance reviews, that Atwell had previously completed CPR training in 2002, that Atwell was informed in writing in her performance appraisal in January of 2005 that her CPR requirement would be waived but a doctor's note would be required, that Atwell provided a doctor's note in January excusing her at that time from certain CPR training that she had been scheduled to attend, that a physician's note dated 4/27/05 authorized Atwell to return to work at "full duty," and that by email dated August 2, 2005, When

the OBHS department was preparing for a JCAHO review, Atwell and two other employees were asked by Sharon Connolly to provide copies of their CPR cards. Denies the remaining allegations of this paragraph.

50. Denies.

51. Incorporates its response to paragraph 45.

52. Admits that Atwell's attorney, Anne Sulton, sent a letter to Dr. Gabow on or about August 3 or 4, 2005, and states that the letter speaks for itself.

53. Incorporates its response to paragraph 49 and affirmatively alleges that by emails on August 4, 2005, Atwell replied to Sharon Connolly that she did not have a CPR card due to medical/surgical issues, Atwell was then asked to provide a doctor's note to that effect, Atwell replied that she had requested such a letter, and John Lundin-Martinez responded, "Thanks for following up so quickly, I appreciate it." Denies all remaining allegations.

54. Admits that Atwell provided a letter from her physician dated August 4, 2005, regarding her inability to perform CPR, which letter speaks for itself, incorporates its responses to paragraphs 49 and 53, and denies the remaining allegations.

55. Admits that Denver Health's then Manager of Employee Relations commenced an investigation into the written complaint that Atwell filed on August 2, 2005, affirmatively alleges that the investigation was transferred to an investigator from Mountain States Employers Council, and denies the remaining allegations of this paragraph.

56. Incorporates its response to paragraph 45.

57. Admits that Denver Health requested that an investigator from Mountain States Employers Council complete the investigation which had been commenced by Denver Health's

Manager of Employee Relations, states that the investigator's report speaks for itself, and denies the remaining allegations.

58. Denies, and incorporates by reference its responses to paragraphs 40, 55, and 57. Affirmatively alleges that assignments to offices or cubicles were made on the basis of factors other than race.

59. Denies.

60. Denies.

61. Denies that Atwell was prevented from doing her work in a professional manner, denies that her job required her to be assigned to an office, denies that her supervision was inappropriate, and denies that any reasonable person would find the situation to be intolerable.

62. All claims against Dr. Gabow have been dismissed.

63. Denies.

64. Incorporates its responses to paragraphs 45, 55, and 57, and otherwise denies.

65. Denies.

66. Admits that Atwell submitted her written resignation on November 29, 2005, states that that document speaks for itself, admits that her resignation was effective December 30, 2005, and otherwise denies.

67. Denies.

68-139. These claims have been dismissed.

140. Incorporates its responses to paragraphs 1 through 139.

141-145. To the extent that these allegations relate to plaintiffs other than Atwell, they have been dismissed. To the extent these allegations relate to Atwell, they are denied.

146. Admits that the CCRD issued a right to sue letter to Atwell. Is without knowledge sufficient to form a belief as to truth of the remaining allegations of this paragraph.

147. Denies that Atwell is entitled to any relief on any of her claims.

148. Incorporates its responses to paragraphs 1 through 147.

149-152. To the extent that these allegations relate to plaintiffs other than Atwell or to any purported claim under C.R.S. Section 25-29-107, they have been dismissed. To the extent these allegations relate to Atwell and her claim under C.R.S. Section 24-34-402, they are denied.

153-156. To the extent that these allegations relate to plaintiffs other than Atwell, they have been dismissed. To the extent these allegations relate to Atwell, they are denied.

157. Denver Health denies all allegations in the First Amended Complaint which it has not specifically admitted.

### **DEFENSES**

1. Some or all of Atwell's claims fail to state a claim upon which relief can be granted.

2. Atwell has failed to mitigate her damages.

3. Some or all of Atwell's claims are barred by her failure to timely or fully exhaust her administrative remedies.

4. Denver Health caused an independent investigation to be conducted with respect to Atwell's complaint of alleged racial discrimination and harassment, and the investigation did not find that any such discrimination or harassment had occurred.

5. DHHA had legitimate, non-discriminatory reasons for all actions taken by it with respect to Atwell's employment.

6. Some or all of Atwell's claims are barred by statutes of limitations.

WHEREFORE, Denver Health requests that the Court order that Atwell's First Amended Complaint be dismissed with prejudice, that Atwell take nothing by reason of her First Amended Complaint, that DHHA be awarded its costs and attorney fees incurred in defending against the First Amended Complaint, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 14<sup>th</sup> day of April, 2008.

FAIRFIELD AND WOODS, P.C.

By: s/Brent T. Johnson  
Brent T. Johnson  
1700 Lincoln Street, Suite 2400  
Denver, Colorado 80203  
(303) 830-2400  
Email: [bjohnson@fwlaw.com](mailto:bjohnson@fwlaw.com)

SHERMAN & HOWARD L.L.C.  
Theodore A. Olsen  
Andrew W. Volin  
633 Seventeenth Street, Suite 3000  
Denver, Colorado 80202  
(303) 297-2900  
Email: [tolsen@shermanhoward.com](mailto:tolsen@shermanhoward.com)  
[avolin@shermanhoward.com](mailto:avolin@shermanhoward.com)

ATTORNEYS FOR DEFENDANT