IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE KEYS, ET AL. **Plaintiff,**	**CIVIL ACTION**
	NO. 04-0766
vs.	
CITY OF PHILADELPHIA, ET AL. **Defendant.**	

MEMORANDUM AND ORDER

Tucker, J. **November _____, 2005**

Plaintiffs Lawrence Keys ("Keys"), Melvin McKellar ("McKellar"), Michael Roman ("Roman"), and Joseph Schrank ("Schrank") (collectively the "Plaintiffs") bring this claim pursuant to Titles I and II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12111-12131, *et seq.*; Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 793, *et seq.*; the Pennsylvania Human Relations Act ("PHRA"), 43 PA. STAT. § 951, *et seq.*; the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Section 1983 of the Civil Rights Act of 1871, and 42 U.S.C. § 1983. This action stems from Plaintiffs' termination from their tenured positions as police officers for the City of Philadelphia pursuant to Philadelphia Civil Service Regulation 32 ("Regulation 32") by Defendants the City of Philadelphia ("City"), Philadelphia Police Commissioner Sylvester Johnson ("Johnson"), City of Philadelphia Directors of Personnel Linda Seyda ("Seyda") and Linda Orafanellin ("Orafanellin"), and City Director of Finance Janice Davis ("Davis") (collectively the "Defendants").

Presently before the Court is Plaintiffs' Motion for Partial Summary Judgment (Doc. 18) and Defendants' Motion for Summary Judgment (Doc. 20). Upon consideration of the parties' briefing and oral arguments, the Court will deny Plaintiffs' Motion for Partial Summary Judgment (Doc. 18) and deny Defendants' Motion for Summary Judgment (Doc. 20).

BACKGROUND

Plaintiffs are former Philadelphia Police Officers who sustained service-connected injuries in the line of duty. Pursuant to Regulation 32, Plaintiffs were deemed "permanently and partially disabled" ("PPD") and incapable of performing all the regular and necessary functions of a uniformed patrol officer. As such, Defendants classified Plaintiffs as ineligible for a uniformed job within the Philadelphia Police Department, and terminated their employment.[1]

Regulation 32 was adopted in 1953 to provide employment benefits for uniformed and other municipal employees who suffer a service-incurred disability. Regulation 32 also provides for an employee's termination from employment when he has suffered a service connected injury and is not able to return to and fully perform functions of the pre-injury job within one year of the injury.

In 1973, Lawrence Keys was hired as a police officer for the City of Philadelphia. In March 1997, Keys sustained an injury to his left knee during the course of making an arrest. He was diagnosed with a tear of the medial meniscus and a partial tear of the anterior cruciate ligament ("ACL"). In April 1997, he was assigned to limited light duty work. Defendant City's Medical Director determined that Keys was PPD within the meaning of Regulation 32. Plaintiff claims there were other positions that he was qualified to perform, but was precluded based on the Regulation 32 determination. In August 2001, Keys was terminated.

In 1976, Melvin McKellar was hired as a police officer for the City of Philadelphia. In December 1998, McKellar was transferred to the Narcotics Strike Force as a street supervisor. In

[1] All Plaintiffs were eligible for and are presently receiving disability benefits pursuant to Regulation 32.023 and Regulation 32.0231.

June 2000, while on-duty McKellar was shot in the right groin, right hip, and left calf by a suspect during an altercation. As a result of the injury, McKellar underwent the amputation of his right leg at the knee. In March 2001, he returned to work and was placed on "light active duty." In April 2002, Defendant City's Medical Director determined that McKellar was PPD pursuant to the terms of Regulation 32. In May 2002, McKellar was terminated.

In February 1976, Michael Roman was hired by the Philadelphia Police Department and assigned to the Philadelphia airport. In November 1996, while on-duty, Roman's car was rear-ended. He suffered a hip injury, chronic lower back pain, and neurological and orthopedic impairments in his right hand. Roman returned to limited duty work, performing administrative and clerical tasks. Roman was able to fully perform his duties without accommodation. In July 2002, Defendant City's Medical Director determined that Roman was PPD within the meaning of Regulation 32. In August 2002, Roman was terminated.

In 1974, Joseph Schrank was hired by the Philadelphia Police Department and assigned to the Highway Patrol Division. In May 2000, while on-duty, Schrank was injured when a truck sideswiped his motorcycle. Schrank suffered a bladder rupture, bilateral wrist fracture, pelvic fracture, cerebral concussion, and ventral hernia. He also underwent a tracheotomy. In March 2002, Schrank returned to limited light duty work, performing clerical and administrative work. In July 2002, Plaintiff was informed by Defendants that he was PPD within the meaning of Regulation 32. In August 2002, Schrank was terminated from his employment.

Plaintiffs seek declaratory and injunctive relief, including reinstatement of their respective positions, back pay, and compensatory damages against the City. Plaintiffs seek compensatory and punitive damages from Johnson, Seyda, Orafanellin and Davis. Plaintiffs seek

reimbursement for the costs and attorney fees they have and will incur in the prosecution of this action against all Defendants.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56©). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. *Id.*

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis of its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial *Celotex* burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." *Celotex*, 477 U.S. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial." *Id.* That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477

U.S. at 322. "[I]f the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent." *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992). The court must view the evidence presented in the light most favorable to the opposing party. *Anderson*, 477 U.S. at 255.

With respect to summary judgment in discrimination cases, the court's role is "to determine whether, upon reviewing all the facts and inferences to be drawn therefrom in the light most favorable to the plaintiff, there exists sufficient evidence to create a genuine issue of material fact as to whether the employer intentionally discriminated against the plaintiff." *Hankins v. Temple Univ.*, 829 F.2d 437, 440 (3d Cir. 1987).

DISCUSSION

I. Direct Evidence Analysis

The burden-shifting framework of McDonnell Douglas applies to ADA claims when there is no direct evidence of discrimination. *See Walton v. Mental Health Ass'n of Southeastern Pa.*, 168 F.3d 661, 667-68 (3d Cir. 1999) (applying the burden-shifting framework articulated by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-805 (1973)). The McDonnell Douglas burden-shifting test is inapt in this case which involves direct evidence of discrimination. *Healy v. Southwood Psychiatric Hosp.*, 78 F. 3d 128, 131-32 (1996). Defendants terminated Plaintiffs from their positions as police officers for the City of Philadelphia upon determining that Plaintiffs are PPD. Thus, Defendants' actions do not serve as

a pretext for discrimination, but rather as direct evidence of discrimination. Without using the McDonnell Douglas burden-shifting test, Plaintiffs may still establish discrimination based upon their disability under the ADA. *Id.* at 132.

II. Discrimination Under the ADA

To establish a prima facie case of discrimination under the ADA, Plaintiff must show that (1) he is disabled within the meaning of ADA; (2) he is otherwise qualified to perform the essential functions of the job; and (3) he has suffered an adverse employment decision as a result of discrimination. Americans with Disabilities Act of 1990 § 2 *et seq., codified at* 42 U.S.C. § 121 *et seq.*; *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 306 (3d Cir. 1999).

A. Disability

A "disability" is defined by the ADA as: (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 42 U.S.C. § 12102 (2); *See also Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 478 (1998). In this case, Defendants concede that Plaintiffs Keys, McKellar, and Roman are disabled as defined by the ADA. In its Motion for Summary Judgment however, Defendants argue that Plaintiff Schrank's type of limitations do not constitute a disability within the meaning of the ADA because these limitations are not so severe that they substantially impair a major life condition. (Defs.' Mot. Summ. J. 25-30.)

1. Impairment That Substantially Limits a Major Life Activity

The Code of Federal Regulations are instructive as to the meaning of "major life activities" and "substantially limits" with respect to working. The term "major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(I). With respect to the major life activity of working, the term "substantially limits" means:

> significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skill and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

29 C.F.R. 1630.2(j)(3)(I).

The proper inquiry in making this determination requires a court to evaluate "whether the particular impairment constitutes for the particular person a significant barrier to employment." *Mondzelewski v. Pathmark Stores, Inc.*, 162 F.3d 778, 784 (3d Cir. 1998) (quoting *Webb v. Garelick Mfg. Co.*, 94 F.3d 484, 488 (8th Cir. 1996) (citing *Forrisi v. Bowen*, 794 F.2d 931, 933 (4th Cir. 1986)). The Third Circuit has determined that it is necessary to conduct an individualized assessment of the extent to which a plaintiff's alleged condition coupled with his personal characteristics substantially limit his ability to work. Specifically, the Third Circuit stated that because a "person's expertise, background, and job expectations are relevant factors in defining the class of jobs used to determine whether an individual is disabled, *Webb*, 94 F. 3d at 487, the court must consider the effect of the impairment on the employment prospects of that

individual with all of his relevant personal characteristics. *Forrisi*, 794 F.2d at 933. Thus, a substantially limiting impairment for one individual may not be substantially limiting for another individual with different characteristics. *Modzelewski*, 784 F.3d at 784 (citing 29 C.F.R. pt. 1630, app. § 1630.2(j)); *McKay v. Toyota Mfg. U.S.A., Inc.*, 110 F.3d 369 (6th Cir. 1997) (finding plaintiff with carpal tunnel syndrome not disabled because, among other things, she had higher education); *Smith v. Kitterman, Inc.*, 897 F. Supp. 423, 427 (W.D. Mo. 1995) (finding plaintiff with disability had raised material issue of fact because of her limited education, training and employment background.)

Defendants argue that applying these guidelines to Plaintiff Schrank reveals that he is not substantially impaired in the major life activity of working, and therefore not disabled within the meaning of the ADA.[2] Plaintiffs' allege that because Defendants have failed to address either the "record of impairment" or "regarded as" prong as defined by the ADA, Defendants have failed to establish that Plaintiff Schrank does not have an actual disability under the ADA. Thus, the determinative question, whether Plaintiff Schrank's disabilities qualify him as person with a disability under the ADA in the major life activity of working, remains a disputed genuine issue of fact.

B. Qualified to Perform the Essential Job Functions

The second element of Plaintiffs' prima facie case under the ADA requires them to

[2] Defendants argue that Plaintiff Schrank admits to fully recovering from his injuries, except for difficulty flexing his right wrist. (Schrank Dep. 25:18-27:23, Mar. 8, 2005.) Defendants note that Plaintiff Schrank felt that his limitations were largely unknown, was unsure if he could handle himself in a struggle, and admits to having reservations regarding his ability to perform in a full-duty street patrol capacity. (Schrank Dep. 98:12-99:4, Mar. 8, 2005.)

demonstrate that they are qualified individuals under the ADA. The ADA defines a qualified individual as a person"who, with or without reasonable accommodations, can perform the essential functions of the employment position that such individual holds or desires. *See* 42 U.S.C. § 12111(8). Under the Equal Employment Opportunity Commission ("EEOC") interpretive guidelines, this inquiry is divided into two prongs. *See Deane v. Pocono Med. Ctr.*, 142 F.3d 138 (3d Cir. 1998). First, the court must determine whether the plaintiff satisfies the requisite skill, experience, education and other job-related requirements of the employment position that such individual holds or desires. 29 C.F.R. pt. 1630, app. 1630.2(m). Second, it must determine whether the plaintiff, with or without reasonable accommodation, can perform the essential functions of the position held or sought. *See id.*; *see also*, *Deane*, 142 F.3d at 145 (citing *Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 563 (7th Cir. 1996)).

In regards to the first prong, Defendants do not dispute Plaintiffs' initial qualifications as police officers. Thus, the determinative question is whether Plaintiffs, with or without reasonable accommodations,[3] are able to perform the essential functions of the position held or

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[3] "In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities." 29 C.F.R. pt. 1630, app. § 1630 (2)(o)(1). The text of the ADA provides that "reasonable accommodation" may include:

> (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
> (B) job restructuring, part-time or modified work schedules, reassignment to vacant position, acquisition or modifications of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. § 12111(9).

The EEOC Regulations further define "reasonable accommodation" to include:

sought. *See Gaul v. Lucent Techs., Inc.*, 134 F.3d 576, 580 (3d Cir. 1998). In their Motion, Defendants assert that patrol duties and the ability to physically combat crime are essential job functions required of all uniformed members of the Philadelphia Police Department. (Defs.' Mot. Summ. J. 33-40.) In their Response, Plaintiffs dispute Defendants' assertion and allege that pursuant to Federal Rule of Civil Procedure 8©), Defendants' have waived the issue of business necessity by failing to plead it as an affirmative defense. (Pls.' Resp. to Defs.' Mot. Summ. J. 9.)

In regards to Plaintiffs' assertion of Defendants' waiver of the business necessity affirmative defense, the Third Circuit has expressly recognized that the "failure to raise an affirmative defense by responsive pleading does not always result in a waiver." *See United States of America v. Nat'l R.R. Passenger Corp.*, 2004 U.S. Dist. LEXIS 11823 at *9 (E.D. Pa. June 15, 2004); *Int'l Poultry Processors, Inc. v. Wampler Foods, Inc.*, 1999 U.S. Dist. LEXIS 8235 at *8 (E.D. Pa. April 29, 1999); *Mines v. City of Philadelphia*, 1994 U.S. Dist. LEXIS 10109 at *3 (E.D. Pa. July 21, 1994) (citing *Charpentier v. Godsil*, 937 F.2d 859, 863 (3d Cir. 1991). Moreover, Federal Rules of Civil Procedure 15(a) permits a party to amend a responsive pleading by leave of court at any time. *Id.* Such leave "shall be freely given when justice so

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> (I) [m]odifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires;
> (ii) [m]odifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
> (iii) [m]odifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

29 C.F.R. 1630.2(o)(1).

requires." *Id.*; Fed. R. Civ. P. 15(a). Consistent with the liberal policy favoring amendments, the Third Circuit has held that a "defendant does not waive an affirmative defense if 'he raised the issue at a pragmatically sufficient time, and [the plaintiff] was not prejudiced in its ability to respond. *Mines*, 1994 U.S. Dist. LEXIS 10109 at *4, *Godsil*, 937 F. 2d at 864. Accordingly, the Court recognizes that Defendants here may raise unpled affirmative defenses in an appropriate motion. *Id*. (citing *Kleinknecht v. Gettysburg C.*, 989 F.2d 1360, 1373 (3d Cir. 1993).

In response to Defendants' essential job function assertion, Plaintiffs testified that active patrol duties were not required in the jobs they held prior to their separation and that they were performing all the essential functions of those positions – even the marginal functions – without accommodations. (Pls.' Resp. to Defs.' Mot. Summ. J. 7, n. 12.) This evidence creates a factual dispute that underlies Defendants' legal argument as to the essential functions of every police officer position in the City of Philadelphia. Accordingly, any determination as to whether it would be an undue burden for Defendants to permit Plaintiffs to continue in their respective administrative positions in spite of their disabilities, or whether permitting Plaintiffs to remain on the job would constitute a "direct threat"[4] to public safety is a triable question of fact currently outside the scope of the Court's determination.

C. Adverse Employment Decision

The final element of Plaintiffs prima facie case under the ADA requires them to demonstrate that they have suffered an adverse employment decision as a result of

[4] A direct threat is defined as a "significant risk to the health or safety of others [or self] that cannot be eliminated by reasonable accommodation." 42 U.S.C. § 12111(3); 29 C.F.R. § 1630.2®).

discrimination. Americans with Disabilities Act of 1990 § 2 *et seq.*, 42 U.S.C. § 121 *et seq.*; *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 306 (3d Cir. 1999). As previously discussed, *McDonnell Douglas*'s inferential burden shifting analysis is inapplicable in a case such as this one where the fact sought to be established – that Defendants discharged the Plaintiffs because of their disabilities – is direct evidence of discrimination without any issue of pretext for discrimination. *Healy*, 78 F. 3d at 131-32.

Furthermore, in their Motion for Summary Judgment, Defendants argue that the evidence of record demonstrates that Defendants undertook every action to restore Plaintiffs to employment and provide Plaintiffs the opportunity to resolve their injuries to the point where they could perform the *essential functions* of their positions. (Defs.' Mot. Summ. J. 44.) Defendants further argue that Plaintiffs did not contest that they could not return to the position of an active duty police officer, but rather asked Defendants to essentially create a new classification for them. *Id.* at 45. Because the essential functions required of a police officer are genuine issues of material fact in this case, determining Defendants' assertion is appropriately left for a jury to determine.

D. Due Process

Finally, Plaintiffs allege that Regulation 32's PPD process violates the Due Process Clause of the Fourteenth Amendment by providing Plaintiffs with no opportunity to have the merits of their dismissal fairly judged, and as a matter of law, they are entitled to summary judgment. (Pls.' Mot. Partial Summ. J. 27.)

In order to assert a due process claim, the plaintiff must first establish that there is a

constitutionally protected property interest. ***E.g. Piecknick v. Pennsylvania***, 36 F.3d 1250 (3d Cir. 1994) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (recognizing no denial of procedural due process when an evidentiary hearing is not granted prior to the termination of Social Security disability benefit payments). In the employment context, the hallmark of a property interest is an entitlement, grounded in state law, that one cannot be removed except "for cause." ***See Logan v. Zimmerman Brush Co.***, 455 U.S. 422, 430-31 (1982). There is no dispute that Plaintiffs had a constitutionally protected interest in their employment as police officers for the City of Philadelphia.[5] Furthermore, the Court recognizes Plaintiffs' uncontested assertion that Defendants are all state actors.[6]

The determinative question, to which the parties disagree, is whether Plaintiffs were afforded constitutionally adequate process permitting the individual about to be deprived of a property interest a realistic opportunity to correct the mistake and prevent the risk of erroneous deprivation. ***Logan v. Zimmerman Brush, Co.***, 455 U.S. 422 (1982); ***Memphis Light, Gas, & Water Div. v. Craft***, 436 U.S. 1 (1978). In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), the Supreme Court held that the Due Process clause requires "some kind of

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[5] Plaintiffs' employment entitlement is protected by state statute, Civil Service Regulations, and a collective bargaining agreement. Specifically, 53 PA. STAT. § 12638 provides that "[n]o police officer or fireman, except those dismissed during probationary period, shall be removed or discharged, except for cause, upon written charges, and after an opportunity to be heard in his own defense." The same section provides that a civil servant employed by a municipality may not be "removed, discharged, or reduced in pay or position, except for just cause." *Id.*; *see Dowling v. Pa. Liquor Ctrl Bd.*, 1992 U.S. Dist. LEXIS 17438 at *9 (E.D. Pa. Oct. 27, 1992); *see also Connell v. Higginbotham*, 403 U.S. 207 (1971) (recognizing that there is a property interest in government employment).

[6] The City of Philadelphia is a public municipal authority and all of its actions constitute state action. *Monell v. Dept. of Social Svcs.*, 438 U.S. 658 (1978). Furthermore, the individually named defendants are public officials involved in this matter under color of law.

hearing" prior to the discharge of an employee who has a constitutionally protected party interest. *Id*. at 542. Prior to deprivation "the tenured public employee is entitled to oral and written notice of the charges against him, and explanation of the employer's evidence, and an opportunity to present his side of the story. *Id*. at 546. Additionally, it must provide an opportunity for the employee to "present his case and have its merits fairly judged." *Logan*, 455 U.S. at 433.

Plaintiffs assert that the operation of Regulation 32 is automatic, and precludes Defendants from rendering a decision other than that which is compelled by operation of the specific terms of the regulation. (Plfs.' Resp. to Defs.' Mot. Summ. J. 11.) Plaintiffs allege that according to Defendants' Motion for Summary Judgment (Doc. 20), the only purpose served by meeting with the City's Medical Director is to discuss how the officers will be separated and not accommodated.[7] *Id*. Plaintiffs further allege that they received no hearing because an automatic process which can have only one outcome – dismissal – regardless of what the PPD employee might say about his ability to continue in his job, either with or without accommodation, is unconstitutional. *Id*. at 12.

Defendants argue that the evidence of record establishes that the operation of Regulation 32 is not automatic and that Plaintiffs were all afforded notice and the opportunity to be heard consistent with the requirements of *Loudermill*[8] and all the procedural safeguards required under

[7] Plaintiffs allege that they met with the City's Medical Director after the Department of Risk Management already determined when each individual's last day would be.

[8] In *Loudermill*, the Supreme Court held that when threatened with dismissal, a public employee with a property interest in his job is entitled to a "pretermination opportunity to respond, coupled with post-termination administrative (or judicial) procedures." *Id*. at 547-48. The predeprivation hearing need not be elaborate, but it is necessary, even if extensive post-deprivation remedies are afforded. *Id.* at 545, n.1. Prior to deprivation "the tenured public employee is entitled to notice of the charges against him, and explanation of the employer's

the Fourteenth Amendment. (Defs.' Mot. Summ. J. 45-46.) Defendants point out that each Plaintiff had meetings with his treating physicians where their individual conditions were discussed, and they were told that their disability precluded them from being police officers, necessitating their separation. *Id*. at 46. Defendants also contend that each Plaintiff was given the opportunity to challenge the City's treating physicians' conclusions, but failed to do so. *Id*. Finally, Defendants argue that Plaintiffs' Due Process claims must fail because the Philadelphia Civil Service Regulations provide Plaintiffs with the right to file and appeal the Regulation 32 determination to the Philadelphia Court of Common Pleas if they believed that the City's determination was made in error. *Id*. There remain many disputed material facts on the issue of whether Regulation 32 violates due process, accordingly Plaintiff's Motion for Partial Summary Judgment must be denied.

CONCLUSION

After careful review of the record, for the foregoing reasons, the Court concludes that Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment are both denied. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT

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evidence, and an opportunity to present his side of the story. *Id*.

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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Plaintiffs,	**:**	
	:	**CIVIL ACTION**
v.	**:**	
	:	**NO. 04-0766**
CITY OF PHILADELPHIA, et al.	**:**	
Defendants.	**:**	

ORDER

AND NOW, this _____ day of November, 2005, **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment are both **DENIED**.

BY THE COURT:

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Hon. Petrese B. Tucker, U.S.D.J.