

Claims of Interference, And Demand For Transfer

Addendum I



Walter Tuvell

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Document History

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Related Documents

Author	Date	Title
Walter Tuvell	Various (August 2011 - March 2012)	<i>Complaint, Claims of Corporate and Legal Misconduct, Parts I-II and Addenda I-V</i> — Referenced as “Old Complaint”
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17 Executive Summary

This document is Addendum I to my New Complaint (see Related Documents). It documents additions and corrections to the original New Complaint, and logically forms an extension of the original New Complaint itself. This addendum “incorporates the original New Complaint by reference”, including its terminology, Related Documents, numbering scheme, etc.

Hence, hereinafter, the unqualified term “New Complaint” includes the original, plus now this Addendum I, unless otherwise specified. Additional addenda may be published in future as circumstances warrant.

18 Submission Of New Complaint

I filed my New Complaint on January 20 (v. 1.0), and again on January 22 (v 1.1). Appendix O.

19 Re-Application To “Same” Job

After I submitted my New Complaint (Section 18), I re-searched GOM, and re-discovered the “same” job/position,⁸ only now under a new GOM ID number, SWG-0456125. Appendix P (compare to Appendix C). I re-applied for the job, under its new ID number, on Wednesday, January 25.⁹ Appendix Q.

The history of the position/number(s) is this: At the end of the year 2011, the GOM database was purged of “stale” entries, per usual GOM database maintenance schedule. That meant the ID number SWG-0436579, whose underlying position had not yet been filled, became inactive, in the sense that new applications for that ID number became impossible, though my already-in-process application remained active. When I was rejected (Friday, January 6), the number SWG-0436579 remained inactive, but the position itself remained open/vacant (though unregistered in GOM). On Thursday, January 12 (that date being recorded in Appendix P), Chris Kime re-registered the position in GOM, using the same/identical description, at which point the “same” position received its new GOM ID number.

20 Moving Forward

As a consequence of my filing the Complaint and re-applying for the “same” job, it seems IBM now suddenly became motivated to “move forward”. Appendix R.

Apart from the pro forma (automated) response of App. Q, IBM never did respond to this second application. Since I was no longer on STD, this second refusal to consider me for the job was therefore due to some other reason, unrelated to STD. Obviously, that reason was retaliation.

- 8· Strictly speaking, it’s unclear (and almost certainly irrelevant) whether the new entry in GOM should be “language’d” as a “new” entry, or the “old” entry with merely a new GOM ID number. But what is clear is that the underlying job/position *really* is the same (see below), despite the multiple ID number(s) attached to it. This is why we retain quotation marks in the phrase “‘same’ job”.
- 9· I waited until January 25, because that was the first day of my unpaid leave of absence. That way, IBM could no longer use the (illegal) excuse of rejection on the basis of “on STD”.

One immediate thing IBM did (more-or-less “rightly”) was to extend my tenure at IBM, on Monday, January 23, via unpaid leave, so that I could apply for LTD. I took advantage of that, and did file my LTD application papers (to MetLife), on Tuesday, February 7.

More interestingly, on Wednesday, February 15 (Appendix R, 2012-02-15 05:05 PM), John Metzger wrote to me, re-offering the same accommodation proposal Dan had extended to me (and which I’d rejected) earlier, before the filing of the New Complaint (New Complaint, Appendix M, p. 40, 2012-01-20 07:13 AM). John’s offer was of course no more acceptable than it had been when Dan first offered it, so I rejected it again. But in my response letter the next day, I did take the opportunity to mention (in the spirit of continuing “interactive dialog for reasonable accommodation”) transfer to work with Michael Sporer and/or Garth Dickie as a potential alternative.¹⁰

21 Mandel’s Amazing “Multi-Reasons”

IBM “unduly delayed” processing both my New Complaint, and my “same” GOM application, for almost 3 full weeks. Appendix S. There was no reason for this delay, other than IBM’s customary one: extreme reluctance/footdragging with respect to engagement in “interactive dialog” involving ADA reasonable accommodation, and desire to inflict IIED on me (a known PTSD sufferer). Which is illegal, of course.

Mandel broke his silence on Tuesday, February 14 — at which time it became clear why there’d been such a long delay. As documented in this Section 21, he’d cooked up a remarkable new scheme of “multiple reasons for denial-of-transfer”, which hadn’t even been hinted at previously. Appendix T.¹¹

Succinctly, Mandel’s new “multi-reasons (of Mandel-type)” are the following (paraphrased here, since Mandel’s own wording is expressed as amorphously/unaccountably as possible, and he refused to clarify himself; Appendix T):

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- 10· This represented a real, good-faith leap-of-faith on my part. My *hope* was that if the people harassing me didn’t have *control* over me, I’d be able to muddle through. But it wasn’t at all *clear* to me I’d be able to even *step inside* the Netezza building without suffering a PTSD relapse, much less fainting again at the *sight* of Dan, Fritz, John, *et al*.
- 11· In his email of 2012-02-14 01:39 PM, Mandel also mentions “PBC”. But that is a red herring (Mandel doesn’t rely upon PBC at all), so it can/should be ignored for the purposes of the instant New Complaint. IBM had known all along that I hadn’t been exposed to the PBC process by the time I went out on STD, yet they allowed/encouraged me to embark upon the transfer process anyway. And, an employer may not penalize an employee for work missed during leave taken as a reasonable accommodation, such as my STD leave (EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*, question #19; <http://www.eeoc.gov/policy/docs/accommodation.html>). Nevertheless, the following supplies a basic introduction to the “PBC” concept: “PBC” stands for “Personal Business Commitment(s)”. The way it’s supposed to work is that near the beginning of every year, every IBM employee is supposed to work with their manager to produce a PBC document for that employee for that year. Near the end of the year, the employee’s performance for the year is evaluated against the PBC document, and that’s how raises are determined, etc. Now, recall that IBM acquired Netezza near the beginning of 2011, so as part of the acquisition everybody at Netezza had to generate their first PBC document, according to the acquisition time-schedule. At the time I first went out on STD (August 15), the PBC-generation process had not yet been ironed out. In particular, I had not at that time, nor have I at any subsequent, been asked to go through the PBC-generation exercise. Hence the “PBC” concept is inapplicable to me, for the purposes of the instant New Complaint.

- *Performance issues*: The “(alleged) performance issues we discussed previously” would present a problem with my success in the role to be filled. In other words, Mandel “predicts” I would fail to meet the core productive/functional parameters of the position (“couldn’t do the job”) in Kime’s group — despite utter lack of evidence for this prediction, and indeed with obvious/universal/plentiful evidence to the contrary (including the already-successfully-completed interview cycle with Kime and his team. ")"
- *Inability to work with others*: There’s also an issue about my “(alleged) inability to work cohesively with other members of a team”. This seems, perhaps, to be a veiled reference to the “second bullet item (Conduct in workplace …)” of the Formal Warning Letter (Old Complaint, Part II, Appendix AA), though in fact the FWL said nothing about “inability to work with others”.
 - Or maybe this item was supposed to be the *same* as “performance issues”? Mandel’s language is ambiguous, he refuses to clarify, and he seems unsure himself what he means. (In reality, he’s just making up lies on the fly, and having a hard time remaining cogent.)
- *Unprofessional conduct*: In addition, there is an issue about my “(alleged) unprofessional conduct”. This seems to be a veiled reference to the “first bullet item (Unprofessional, disrespectful, …)” of the FWL, i.e., “lazy scandal” 6 (!) different, mutually incompatible

So, the full-blown Kime/Feldman/Mandel matrix of “reasons for rejection” now looks like this:

add Kime's
"concern about
the work being
to your liking"
(New Complaint,
App. L, p. 37)

“Reason”	Proponent	Date	Comments
“On STD”	Chris Kime	Jan. 6	Kime/team OK’d me; blame for rejection lies with up-line management & HR
“Not right fit”	Dan Feldman	Jan. 16	Kime/team lied, they <i>were</i> to blame (not up-line); and they lied about their reason, too
“Performance issues”	Russell Mandel	Feb. 14	Kime/team, Feldman <i>both</i> lied about reasons (“because” their reasons were illegal)
“Inability to work with others”	Russell Mandel	Feb. 17	Oops, <i>I</i> lied about that; <u>this</u> was the reason, and this time I mean it
“Unprofessional conduct”	Russell Mandel	Feb. 17	Dammit, I meant <u>this</u> “was the ticket” ¹² ... uh, too? And this time, I <u>really do</u> mean it! ☹

There are an *unbelievable number* of problems with this matrix, from IBM’s point of view. So numerous are the insuperable/fatal flaws with IBM’s case-for-legality of denial-of-transfer, it’s literally difficult to count them all (or even document them all legibly, see following layered-bullet-list). The reason for difficulty-of-counting is that *multiple* flaws, *each individually*, suffice to defeat IBM various argument(s)-for-legality:

- Mandel’s newly proffered “(multi-)reasons” for rejection constitute additional, purported-but-unsupported/uncorroborated/undocumented “reasons” for denial-of-transfer — which are *incompatible/irreconcilable/disjoint/contradictory* with the earlier two “reasons” of Kime and Feldman. three

12· Old Complaint, Addendum II, p. 8, fn. 144.

- Which immediately raises the question: How does it come to pass that Mandel now magically knows the “real reasons” for rejection, while Kime/Feldman don’t — even though Kime/Feldman were directly involved in the transfer process, while Mandel wasn’t?
- Not only does Mandel contradict Kime/Feldman. He even “contradicts/corrects” *himself*. Namely, after I proved his “performance issues” “reason” was non-viable (Appendix T, 2012-02-16 08:05 AM), he switched from “performance issues” to “inability to work with others” (Appendix T, 2012-01-17 11:21 AM) — pretending these two “reasons” were somehow interchangeable. Yet, these terms are standard everyday *lingua franca* among both “HR professionals” and employees, and we all know the terms mean very different things. Does Mandel, who self-trumpets himself as “subject matter expert” (Old Complaint, Part II, p. 20, esp. fn. 83), really expect us to believe he could make such an elementary “mis-speak” in the course of his official/solemn duties as trusted-third-party honest-broker of IBM’s Concerns & Appeals process?
- The long-after-the-fact nature of Mandel’s “multi-reasons” — too-far-removed, fully 5½ weeks after the denial-of-transfer itself (January 6) — inescapably leads us to conclude these “multi-reasons” were not really involved in the decision-making process at all, but are “*after-discovered (and hence invalid-for-the-purpose-proffered) ‘facts/evidence’*”. That is, they’re “facts/evidence”¹³ which have been conjured-up just recently, as more-or-less-plausible-looking reasons-for-rejection, pretended to have been involved at-the-time in the decision-making process. But they weren’t actually involved in the decision-making process at-the-time, hence cannot be “reasons” for denial-of-transfer.
- Amazingly, Mandel’s “multi-reasons” are not just “*merely*” *different-in-degree* from Kime/Feldman’s “reasons”. They’re actually *wholly different-in-kind* (“out of right-field”). For, Kime/Feldman’s two “reasons” place the blame (entire decision-making process) for denial-of-transfer squarely *internally* within the Kime/team/up-line camp. But Mandel places the blame in some unspecified *external* “otherwhere”. For, the information at the root of Mandel’s “multi-reasons” did not reside (and could not have been spontaneously generated) internally within the Kime/team/up-line camp. Under Mandel’s scenario, the impetus for denial-of-transfer was an externally driven affair — an infection of the decision-making process with “new and startling” *leaked* information from Netezza. But from whom? Dan? Fritz? John Metzger (the “up-line management connection”)? Diane Adams (the “HR connection”)? Mandel himself? Mandel refuses to tell us.
- Whoever it was, Mandel has exposed their action as sabotage. For, the “damning” information in question (“performance issues”, “inability to work with others”, “unprofessional conduct” — whatever these are supposed to mean) now indicate that I am “*a priori inherently untransferable*” (without possibility or means of “rehabilitation”). Yet the “damning” information in question *long pre-existed (by 4+ months)* my application-for-transfer. *Why did nobody ever bother to advise/warn that I was now untransferable?* Exactly the contrary, I was explicitly invited/encouraged to apply for transfer,¹⁴ and even explicitly “wished

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13. If they’re “factual evidence” at all — but they’re not (see below).

well" on my journey¹⁵ — apparently with full knowledge the the "damning" information would later be injected into the decision-making process, just-in-time to sabotage the decision — *exactly as is now being done*.

- By any "reasonable person" standard (the applicable legal/logical standard), it is intuitively/completely *obvious to the most casual observer* that the only credible — because true — "reason" for rejection is the first one ("on STD"). For, Kime and his team were the only front-line/direct contacts involved, hence unlikely to mis-report their own reasons for rejection. Feldman and Mandel were tenuous/late add-on's, injecting themselves retrospectively/tenuously into the process.¹⁶ In other words, Feldman committed a *cover-up* (of Kime); and Mandel committed a *cover-up-of-cover-up* (of both Feldman and Kime).
- *Note:* Already the "simple"-cover-up (by Dan) is automatically considered, at law, to be evidence/proof of *corrupt bad faith* (*guilty conscience, intentional deceit, sinister purpose, ill will, malice, etc.*). Bad faith evinces, in the eyes of the legal system (reflecting society in general) such unacceptable behavior that it is (more-than-)susceptible to "severe (treble-or-worse) punitive damages" at the remedy stage of legal proceedings. What we have with the instant case is literally a "triple"-cover-up (by Mandel, with even a *self-cover-up* thrown in for good measure). I haven't been able to find a parallel in the published annals of American employment law.
- By "contradicting/correcting" each other, the three proponents are non-tacitly implying that both the other two proponents are *lying* (for unspecified reasons). *In toto*, each proponent is being called a liar *twice* (by the two other proponents).
 - By Dan's "contradiction/correction" of Kime's "reason", he's transparently admitting that "on STD" is an *illegal/discriminatory reason* for denial.
 - Similarly, by Mandel's "contradiction/correction" of Dan's and Kime's "reasons", he's transparently admitting that *both* "on STD" and "not right fit" are *illegal/discriminatory reasons* for denial. all of and "work not to your liking"
- Concerning Mandel's three "multi-reasons" themselves, there is *nothing on-the-record* to substantiate any of them. *Since when are unsubstantiated, nothing-on-the-record anonymous/unattributed/invented accusations sufficient basis for adverse job actions (here, in the context of accusations of age- and disability-discrimination)?*
 - Concerning the "performance issues" "reason", the lack-of-record is proved at Appendix T below, email of 2012-02-16 08:05 AM. (It was my email at Appendix T, 2012-02-16 08:05 AM that "refreshed Mandel's memory", and prompted him to abandon "performance issues" as a "reason", and switch to "inability to work with others" in his email of Appendix T, 2012-02-17 11:21 AM.)

14. Old Complaint, Part II, Appendix Y, p. 126, 06/29/2011 12:03 PM (Due); Old Complaint, Addendum IV, p. 18, 10/10/2011 09:33 AM (Mandel); New Complaint, Appendix A, p. 15, 11/23/2011 06:59 AM (Dan); etc.

15. Mandel: "[P]lease accept my best wishes for the future" (Old Complaint, Addendum V, Appendix AAA, 2011-11-25 11:06 AM). Dan: "Good luck with your transfer" (New Complaint, Appendix D, p. 21, 11/28/2011 03:21 PM); "Sure" (New Complaint, Appendix G, p. 26, 2011-12-05 07:04 AM).

16. In fact, it's not at all clear that Mandel *did* inject himself into the transfer process.

- Concerning the “inability to work with others” and “unprofessional conduct” “reasons,” both of which seem to depend wholly on the Formal Warning Letter, the lack-of-record is proved in full glory at Old Complaint, Addendum V, Section 57.1.
- Mandel speaks of “performance issues we discussed previously”. *What is he talking about?* Mandel himself refuses to clarify.
 - Dan himself, for example, has *never* (not even to the date of this writing) spoken of anything resembling “performance issues”, but only vaguely of things in the nature of “communication gap” and/or “personality conflict/mismatch”.¹⁷
 - In his email at Appendix T, 2012-02-28 06:52 AM, Mandel clarifies that “we discussed previously” is an allusion to “when we closed on your previous investigation”, i.e., to the November 17 phone call (Old Complaint, Addendum V, Section 56). And indeed, that phone call was the *only* occasion when *anything anywhere near the idea of* “performance issues” has *ever* been raised to me by *anyone* (though in fact the actual/direct idea of “performance issues”, in its normal meaning of “ability to meet the core productive/functional parameters of the position”, was certainly *not mentioned*).
 - But, the entirety of the November 17 phone call was *explicitly off-the-record* (“under-the-covers”, “behind-closed-doors”), so cannot reasonable be used in any adverse job action as “evidence against me”. For, not only was the phone call entirely part of my IBM IDR/C&A process (hence off-the-record for that reason), but also I had *requested it to be on-the-record, but was summarily denied by Mandel* (Old Complaint, Addendum V, pp. 59–60, emails of 2011-11-15 03:53 PM and 2011-11-16 12:06 PM). There is, thus, *literally no official/reliable record* of that phone call — by Mandel’s own *order*. (The only extant unofficial record I have of the phone call is at Old Complaint, Addendum V, Section 56; perhaps/probably, Mandel has his own personal notes of the phone call — he was, after all, “reading from a script” — but certainly those are unofficial too.)
 - Further, the November 17 phone call comprised a part of my IDR/C&A over which Mandel himself had *sole* control: he was “reading from a script”, and unilaterally recited his “answers/conclusions” to me, giving me with no real opportunity to confront my accusers, or present rebuttal to his unsupported claims. This was *not* a (*two-sided*) “discussion” as Mandel pretends to portray it — it was a (*one-sided*) *lecture/recital/display*. Any such one-sided recital cannot be invested with any credibility by any “reasonable person”.
 - As shown by my personal notes of that phone call (Old Complaint, Addendum V, Section 56), Mandel did *not* speak of anything that could reasonably be called “performance issues”. Instead, what he did speak of was merely of an ephemeral “lack of support for Fritz” — but, just as Dan had, he *refused* to specify in any way what said “lack of support” was supposed to consist of.¹⁸

17. Indeed, it was in deference these preferred characterizations of Dan’s (first expressed during the Excel graphics episode) that I entitled my June 8 email to Fritz “Comments on some ‘miscommunications’” (Old Complaint, Appendix I.a); and Fritz raised no object to that characterization/title.

18. This is significant (not mere hair-splitting), for at the time of events: (i) I thought/knew Fritz was committing defamation/bullying; (ii) while Dan only ever hinted at “communication gap” and/or “personality conflict/mismatch” — never anything remotely akin to “performance issue” (which means

- dele. "was"
 - So, it is false for Mandel to now speak of “discussion of performance issues”, because no such discussion ever existed. All that ~~was~~ did exist was “discussion of (*alleged*) existence of ‘lack of support for Fritz’”; *not* discussion of “(alleged) existence of ‘performance issues’”, much less discussion of the (alleged) performance issues themselves. (I have *conjectured* [Old Complaint, Addendum V, Section 57.5] that Mandel’s “lack of support” was a reference to the “Excel graphics” and “yelling in public” episodes, but he didn’t say so [unquestionably in service of his obvious intent to keep the November 17 phone call as “*generic*” and *unaccountable* as possible].)
- dele. "of"
 - The upshot for IBM is this: If I’m now being accused of some sort of amorphous “performance issues”, then I must *minimally*: (i) be apprised of what said issues were supposed to consist of; (ii) be afforded the opportunity to “correct” the record (since the issues themselves did not in actually exist [they were false/defamation]); and (iii) be supported in “correcting” the issues themselves (“redeem/rehabilitate” myself). All in the name of normal/accepted HR practice, and simple/obvious justice — and *ADA-required* “*interactive dialog for reasonable accommodation*”.
- *Even if* some/any variation on “multi-reasons of Mandel-type” (“performance issues”, “inability to work with others”, “unprofessional conduct”) had existed at the time of earlier events (May–June), it was/is ***still invalid*** for IBM to raise them now as disqualifying objection to ADA reasonable accommodation (i.e., as reasons for denial-of-transfer), as Mandel does.
- Before even looking at the details, we quote — again! — the relevant EEOC Guidance statement (New Complaint, Section 14, p. 13): “[I]f an employer has a policy prohibiting transfers,¹⁹ it would have to modify that policy in order to re-assign an employee with a disability, unless it could show undue hardship.”
- Now we look at the details. The “problems” alleged by Mandel — to the extent they existed at all — were *caused solely* by Fritz/Dan’s excitation of my PTSD symptoms. I.e., the “problems” had been exhibited/observed *only in the context of “unaccommodated/unmodified/unadjusted work environment”* — as opposed to the modified/adjusted work environment mandated as “reasonable accommodation for qualified disabled individuals under ADA”. It was, after all, the *very purpose* of the transfer/reassignment I sought/seek to remove me from the pernicious influences of abusive people (Fritz and Dan were the only perpetrators at the time), who exacerbated the symptoms of my PTSD (though never to the level of ineffectiveness pretended by Mandel). In consideration (negotiation, interactive dialog) of reasonable accommodation, *any* unmodified/unadjusted-environment behavior of mine (pretended or actual) was *not* relevant to my “qualifications for the essential functions of the job being applied-for, by virtue of education/training/experience/background/skill/ability/feasibility (absent debilitating influences)” — to use the language/concepts of the ADA literature in explication of the ADA standard. In the wording of EEOC v. Humiston-Keeling (quoted at Appendix S, 2012-02-09 09:38 AM, below): *transfer is required as*

“inability/incapacity to accomplish the basic requirements of the job”).

19. Such as “PBC” records, as Mandel started off pretending was a requirement for transfer — much less the sort of “unrecorded records” Mandel is now pretending to rely upon.

reasonable accommodation, so that my disability will not be an impediment to full performance.

- The upshot for IBM is this: *even if* some sort of “multi-problems” *had* existed in the Fritz/Dan environment, IBM was/is *still* — *of course* — obligated to transfer me to a *different/accommodating environment*, for the purpose of removing me from the pernicious conditions exacerbating the disability-caused/related “multi-problems”. Said more starkly: Mandel’s new “multi-reasons” for rejection are ***still illegal*** under ADA. IBM’s persistence in pretending to misapprehend these basic tenets/precepts of ADA, exhibits a *profound/degenerate disinterest/disrespect/antipathy/scorn/hate* for the whole ADA regime.
- Playing this out to its logical conclusion: Suppose that Mandel’s “multi-reasons” (except the first one, “performance issues”, which Mandel switched-out, and which as we’ve seen has never even existed) *were indeed* the reason-for-denial (whether or not the “multi-reasons” really existed [which they didn’t]). In that case, it would mean I was/am now *a priori inherently untransferable* (without possibility or means of rehabilitation), i.e., could never be transferred to *any* position within IBM (or even remain in the same position, I suppose). And not just me — *anybody* whose behavior IBM decided to trump-up in the secrecy of sham/pseudo-“IDR/C&A investigations”. In other words, this secret scheme *denies the possibility of reasonable accommodation under ADA* for any condition IBM “*secretly doesn’t like*”. And it leads to an impossible “Catch-22”: *employee is disabled-by-PTSD, so must transfer; but employee can’t transfer, because disabled-by-PTSD*. The cynicism is breathtaking.
- Come to that, if I’m now such an “incorrigible criminal” (according to Mandel’s “multi-reasons”) that I can’t be transferred, how can it be that I’m still such a “good citizen” that I *can* re-join Dan’s group, as IBM keeps trying to force me to do?
- Of course, *none* of Mandel’s “multi-problems” in truth actually existed. Instead, what did exist was a twisted fabrication of (known) defamation, lies, cover-up, false investigation, etc., by Fritz, Dan and *especially Mandel himself*. Old Complaint, Addendum V, Sections 57.5 -6. This, therefore, now speaks to a charge against Mandel (who was uniquely situated to know about such things) of “(known) inadequate/false investigation, leading directly to (i.e., being relied upon for) “adverse job action” — namely, refusal *even now* to permit my transfer, by denying the “demand for transfer” of my New Complaint.
- And then there’s this line of questioning we must investigate: Assuming Mandel’s “multi-reasons” were indeed the cause of denial-of-transfer (as he claims, but we cannot believe), *how did that information get injected into the transfer-decision-making process?*
- As seen above, the “multi-problems” were only ever raised at *one singular time*, namely, the off-the-record (never-written-down) November 17 phone call. Therefore, no matter how the “multi-problems” eventually ended up with Kime and/or his up-line management/HR, it could only have originated with Mandel himself.

- But, Mandel is certainly not in the normal decision chain for transfers/reassignments. If Mandel somehow got himself specially injected into my particular transfer decision chain, then the process smacks of *(discrimination-)retaliation on the basis of enhanced surveillance*.
- If, instead, Mandel forwarded his “multi-reasons” information to some “sequence-of-somebodies” who ultimately forwarded it to Kime and/or his up-line management/HR, dele. “what” what exactly was the chain-of-custody of the information? In this scenario, Dan would of course be the prime suspect. And if Dan were involved in this way, he would have a very hard time explaining why he forwarded Mandel’s “multi-reasons”, while already knowing they were false (because Dan only ever mentioned “communication gap” and /or “personality conflict/mismatch”, as mentioned above), and pretending to wish me well on my transfer journey.
- Whoever was involved in the chain-of-custody of Mandel’s “multi-reason” information, they were certainly guilty of *reckless and unprivileged — that is, defamatory — publication of anonymous/unattributed secret/unsubstantiated disputed/false scurrilous hearsay, gathered surreptitiously (behind my back) as part of a IDR/C&A complaint/investigation that I myself had initiated*. And, no, the defamers can’t hide behind a facade-of-privilege based on “management-chain need-to-know” (there is such a concept in defamation law, but it doesn’t fit the profile of this case).
- No matter how this line of questioning is answered, the upshot for IBM is this: To be trotting out Mandel’s “multi-reason” information, as “reason for denial-of-transfer” (hence “justification for adverse-job-action”), amounts — in addition to the *defamation* just mentioned — to *(discrimination-)retaliation*.
- As a final exclamation-point to this sordid “multi-reasons” affair, we turn one more time to the concept of *untransferability (without possibility or means of rehabilitation)*. This concept has already been introduced in this bullet-list, above, where it is inexorably observed/concluded that Mandel’s “multi-reasons” forestall any further action on the transfer front for me. And now we ask this question: How does this untransferability conclusion “square” with contradictory *explicit invitations* for me to continue seeking transfer?: “You can continue to look for jobs on GOM” (Dan, New Complaint, Appendix M, p. 38, 01/06/2012 10:26 AM).²⁰ “You can continue to see if there are other opportunities available on GOM” (Dan, New Complaint, Appendix M, p. 42, 01/20/2012 07:13 AM). “[I]nteractive dialogue is ... still open and continuing” (Mandel, Appendix T, 2012-02-28 06:52 AM).
- Answer: IBM *can’t* “square” that circle. Dan and Mandel are lying,²¹ as they have been for months. And we all know it.

20· In that same email, Dan accompanied his invitation with an offer of “help” from Diane “on looking for opportunities on GOM” — which I did avail myself of, but Diane’s “help” was completely useless (New Complaint, Section 13).

21· If the word “lie” is too “candid” for you, feel free to substitute “known-false statement of fact”.

APPENDICES

O Email Chain: New Complaint (Jan. 20-24)

■ From: Walter Tuvell
To: Russell Mandel, Ginni Rometty, Samuel J. Palmisano, Steve Mills, Randy MacDonald, Robert Weber
Cc: Arvind Krishna, Prat Moghue, Daniel Feldman
Date: 2012-01-20 04:41 PM
Subject: New Open Door & Corporate Open Door Complaint

To All -

Pursuant to my best understanding, in good faith, of IBM's Open Door and Corporate Open Door (Concerns & Appeals) policies/processes/procedures, I hereby submit the attached new complaint for your consideration.

I anticipate your timely attention and participation in this matter.

- Walter Tuvell

►Attachment: New Complaint, v. 1.0.◄

■ From: Walter Tuvell
To: Russell Mandel, Ginni Rometty, Samuel J. Palmisano, Steve Mills, Randy MacDonald, Robert Weber
Cc: Arvind Krishna, Prat Moghue, Daniel Feldman
Date: 2012-01-22 08:13 AM
Subject: Re: New Open Door & Corporate Open Door Complaint

To All -

It is necessary for me to re-send this note.

This morning, I checked the upload site for IbmComplaint.zip (<http://www.filedropper.com/ibmcomplaint>), and I discovered it didn't work for some reason (it yields a zero-byte file). I don't know what happened. To the extent I may have made a mistake, please accept my apologies.

Therefore I find it necessary to upload IbmComplaint.zip again, to a new site (http://www.filedropper.com/ibmcomplaint_1). I have now tested this new upload site several times, using several browsers, to make quite sure it is working properly this time.

This meant I had to modify the IbmTransfer.pdf document (to document the new

upload site), creating version 1.1. Since I had to touch the document anyway, I took the opportunity to also fix some typos, and add some additional language for clarification purposes.

The revised document is attached hereto, in two forms: one with change-markup (so you can see what's changed), and one in clean-copy.

- Walt Tuvell

►Attachments: New Complaint, v. 1.1, as well as a marked-up version, showing change-marks from v 1.0.◄

■ From: RUSSELL E MANDEL
To: Walter Tuvell
Date: 01/24/2012 08:43 AM
Subject: Re: New Open Door & Corporate Open Door Complaint

I will look into this issue and get back to you on it.

■ From: Walter Tuvell
To: Russell Mandel
Date: 2012-01-24 10:34 AM
Subject: Re: Subject: Re: New Open Door & Corporate Open Door Complaint

Thank you.

P “Same” Job Description (Jan 21)

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Software Developer

Job ID	SWG-0456125	Job type	Full-time Regular
Work country	USA	Posted	12-Jan-2012
Work city	Littleton, MA	Job category	Software Development & Support
Travel	No travel	Job role	Software Developer
Business unit	App Int SW	Job role skillset	C
HR contact	- -	Workplace	Traditional Office (IBM building)
Department	MQ DEVELOPMENT	Band	07 to 08
Hiring manager	Christopher Kime		
Division	APPLIC INTEG MIDDLEWARE		
Commissionable/Sales-Incentive jobs only	No		

Job description

Our small team develops and supports the industry-leading IBM WebSphere MQ product for the HP NonStop Server platform, and we are gearing up to develop the next major release for this platform.

WMQ for HP NonStop Server is a deep port of the distributed platform code base and function that provides standard function and interfaces while making best use of the underlying platform's capabilities and features such as fault-tolerance, scalability and on-line configurability that the NonStop user community demand.

We are a team that does both development and Level 3 support, as well as a significant amount of direct customer interaction. This arrangement gives even more purpose to your code, and you'll develop your skills better than ever before through the support component. The primary role is for software development activities, but support and consulting directly with customers is a normal and expected secondary role. On our team, the activities being performed at any particular time vary with product lifecycle and business needs.

As a team we are using an Agile development process for our work, and are eagerly embracing short time-boxed iterations, customer feedback, SCRUM techniques and the latest tools to support such an approach.

There are many interesting challenges in designing, implementing and supporting a really great product in this environment.

In addition to the primary required skills, experience with the following is highly desirable in a candidate:

- Pthreads threaded programming and debugging
- Perl scripting
- Design and/or internals of WebSphere MQ on any platform
- Requirements of high availability, parallel and scalable OLTP applications
- Agile development processes
- Experience in a customer facing role such as support or consulting

And experience in the following would also be beneficial for some activities on our team:

- C++ and/or Java programming, debugging and unit testing
- ANT
- Developing, administering or using HP NonStop Server

WebSphere MQ (WMQ) is supported currently in two versions (V5.1 and V5.3.1) and on a total of 3 hardware variants of the HP NonStop range.

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WebSphere MQ provides a universal messaging backbone to connect virtually any commercial IT system reliably and scalably.

On HP NonStop Server, WMQ is heavily used by the finance, manufacturing and retail industry for mission-critical (24x7x365) applications.
Apply today!

Required

- Bachelor's Degree
- At least 3 years experience in 'C' language programming, debugging and unit testing
- At least 1 year experience in Detailed design of software meeting functional, performance, serviceability requirements
- English: Fluent

Preferred

- Information Technology
- At least 3 years experience in Detailed design of software meeting functional, performance, serviceability requirements
- At least 3 years experience in shell scripting or Unix development
- At least 3 years experience in understand, analyze and modify large and complex software components
- At least 2 years experience in WebSphere MQ application development and/or systems administration
- At least 3 years experience in system level software development with Unix system calls and library functions
- At least 3 years experience in demonstrated commitment to high quality, effective and complete verification of software

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Q “Same” Job Application (Jan 25)

■ From: jobs@netmedia1.com
To: Walter Tuvell
Date: 2012-01-25 08:15 AM
Subject: Your IBM Application

Dear Walter Tuvell

Thank you for your application to the position Software Developer SWG-0456125, USA. To view the status of your application at any time, please click on the link below and log in using your User ID and password:

https://bluepages.ibm.com/password/vendor/auth/login.wss?code=hr_globalopp

Yours sincerely,

IBM Recruitment

Please note: this is an auto generated e-mail that cannot receive replies.

Your application will be kept active for 12 months (6 months for Germany and Austria).

This message is sent on behalf of the IBM entity named above; please note however, that if your application results in a offer of employment with IBM, the relevant IBM entity may be a different one and/or based in a different country.

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ibm.com/jobs > Jobs at IBM > My applications Tuvell, Walter

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Date	Job ID	Job title	Country	Status	Action
25-Jan-2012	SWG-0456125 Professional	Software Developer	USA	Under review	View Withdraw
28-Nov-2011	SWG-0436579 Professional	Software Developer (No longer available)	USA	Not selected for position	View

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R Email Chain: Moving Forward (Jan. 23 - Feb. 16)

■ From: Daniel Feldman
To: Walter Tuvell
Cc: Diane Adams
Date: 01/23/2012 01:24 PM
Subject: Moving Forward

Walt:

We're disappointed you will not be coming back to the team. Thanks for confirming that you will not be returning to your role and intend to apply for Long Term Disability (LTD).

Although employees typically commence the LTD application process earlier in their STD leave, IBM is going to provide you with some additional time to apply. Commencing after your STD leave concludes on January 24, you will be placed on a 30 day unpaid LOA to apply for LTD, which will end on February 23. During this leave, you'll be expected to complete the LTD application process. If you apply for LTD during this 30 day period, your unpaid leave will continue until the application is either accepted or denied.

■ From: Daniel Feldman
To: Walter Tuvell
Cc: Diane Adams
Date: 01/24/2012 06:57 AM
Subject: Fw: Moving Forward

Resending as I never received acknowledgement from you.

■ From: Walter Tuvell
To: Daniel Feldman
Cc: Diane Adams
Date: 2012-01-24 10:22 AM
Subject: Re: Fw: Moving Forward

Ack.

■ From: John Metzger
To: Walter Tuvell
Cc: Diane Adams
Subject: Moving forward

Date: 2012-02-15 03:05 PM

I hope you are doing well. I thought I would write to you independently to reiterate the offer Dan Feldman previously made to you in his January 20 email ►*New Complaint, Appendix M, 2012-01-20 07:13 AM.*◄, so that you understand I will be playing a role and am supportive of the proposal.

As was mentioned in the January 20 email, if you are interested in returning to your current job, I would be the one handling formal performance feedback to you, including the PBC review, PBC Checkpoints, Mid-year reviews, etc. We could try this for 6 months to see how it is going. There also would be the ability to attend periodic medical appointments for treatment, if needed.

If you have an interest in this proposal, please let me know by February 17, 2012. If we do not hear back from you by then, we will assume you are not interested in this option.

Thanks for your attention. Let us know if you have any questions about this.

■ From: Walter Tuvell
To: John Metzger
Cc: Diane Adams
Date: 2012-02-16 01:35 PM
Subject: Re: Moving forward

John, I appreciate the gesture, and as you know there was a time last summer when I most definitely welcomed an accommodation along these lines. Complaint, Part II, Appendix X.

Unfortunately, no help was forthcoming at that time, too much of the landscape has changed in the interim, and too much damage has been done, for the suggestion to now be feasible/reasonable. Most significantly during that time, contact with Dan has already seriously injured me. Information about my disability had of course been duly/promptly/consistently imparted to all proper authorities at IBM, beginning last June, per ADA requirements for "known disability", but IBM/HR/IHS persisted in forcing me to work for Dan, despite my many pleas. Any further contact with that exacerbating environment now would put my health unacceptably at further risk. My psychotherapist of long standing has furnished this same information to IBM, as professional medical opinion/advice (and IBM has consistently accepted it as authoritative, never asking for a "second opinion"). For example, she wrote the following as partial justification for STD (in addition to all the MTR medico-technical details she was required to supply): "[Patient] continues to experience intense triggering of symptoms with any reference to work environment & incident of demotion & lack of investigation. ... Symptoms of high reactivity, anxiety and fear resume easily. ... Only modification that would be possible is a change of supervisor & setting." Most recently, she supplied the attached statement to MetLife, in support of my application for LTD. These are medically indicated restrictions I dare not breach, for fear of the consequences to my health. [Yes, I know I'm going

far above-and-beyond the requirements concerning disclosure of confidential medical information, so please keep this information to yourself insofar as possible under the circumstances.]

As is now well-known, the only remaining viable "reasonable accommodation" (under ADA) is the "last resort" accommodation of job transfer (a.k.a. reassignment). Transfer is something I've raised independently many times, but it's always been rejected. For example, I told Michael Sporer last summer I'd like to work for him and Garth Dickie (when he offered me a piece of work), but Dan refused to permit it to happen. (I wonder if Michael/Garth might still be a viable option?) More recently, transfer was finally agreed-to by all parties, and its implementation was all set up, but then at the last moment it was illicitly interfered-with. That's the content of my "New" Complaint. If there's anything you could do to help the transfer process progress towards successful conclusion, I would be eternally grateful.

Apart from the I've made here, I can think of nothing more at the moment. If you can think of anything further, I'd appreciate hearing about it.

PS. For your convenience, in case you've mislaid any of the relevant materials, you can download my original Complaint from http://www.filedropper.com/ibmcomplaint_1 (it's a .zip archive file), and I've attached my "New" Complaint hereto. (I'm also currently working on additional Addenda to both, but they're not ready yet.)

►Attachment: *New Complaint*.◄

►Attachment: *Psychotherapist's Addendum to MetLife LTD application (included in Appendix S, below)*.◄

S Email: Undue Delay (Feb 9)

■ From: Walter Tuvell
To: Russell Mandel
Cc: Dan Feldman
Date: 2012-02-09 09:38 AM
Subject: LTD

As Dan knows, I filed my LTD application with MetLife on Tuesday (Feb 7). Attached hereto ►*below*◄ is my psychotherapist's addendum to her LTD filing, for your information. This proof of my disability was filed with MetLife, not with IBM, so I am taking this action to guarantee IBM is aware of it. Therefore, this notice now joins the many other proofs of disability that have been proactively supplied to IBM: (i) many notices to Dan, beginning in Dec 2010 (see attached "footnote.png" ►*below*◄, which comes from the current draft of my Complaint Addendum V I'm writing); (ii) many notices to HR, beginning in Jun 2011 (emails); (iii) many notices to IHS, beginning in Aug 2011 (emails from me, and MTRs from my medical caretakers, in support of STDs); (iv) many notices to Corporate Executive Officers (Corporate Open Door IDR/C&A Complaint). IBM's refusal to address these many notices of need for reasonable accommodation comprises illegal violation of ADA law.

In particular, this notice applies to my New Complaint ("Claims of Interference, and Demand for Transfer"). I was denied the transfer to the position in Chris Kime's group, because I was "on STD". I reapplied to that same opening on Jan 25. The position has a new GOM ID number, #SWG-0456125 instead of the former #SWG-0436579, but it's the same opening, for the GOM description is identical, and Larry Bliss (HR Legal) confirmed the position was still open after I was rejected (or alternatively, if it's really a different position, you can now consider me applied for both positions). Note that on Jan 25, I was on unpaid leave, not on STD, so the former (illegal) reason "on STD" cannot be used again (and GOM is indeed available to me while on leave, see attached GOMEligibility.png ►below◄). Therefore, the notice I'm supplying hereto supports my New Complaint and GOM applications. Namely, this notice proves (yet again!) that I am indeed covered by ADA. Therefore that I must be granted the transfer, per ADA reasonable accommodation. If I am rejected again, that rejection will constitute yet an additional "discrete" count of discriminatory adverse job action.

Anent the "must be granted" statement just made in the preceding paragraph: In my New Complaint, I've quoted EEOC Guidance to the effect that "reasons" like "not the right fit" are illegal. But it's worth explicitly pointing out here that same conclusion is supported by all case-law. Namely, no court has ever issued any opinion contradicting the EEOC Guidance. See, e.g., EEOC v. Humiston-Keeling: "The reassignment provision makes clear that the employer must also consider the feasibility of assigning the worker to a different job in which his disability will not be an impediment to full performance, and if the reassignment is feasible and does not require the employer to turn away a superior applicant, the reassignment is mandatory." The clause about "feasible" means "qualified according to education/training/experience", i.e., things like "good fit" can't be used. The clause about turning away a "superior applicant" speaks only to cases where there are multiple simultaneous applicants, but in my case the position was "vacant" under the strict definition, namely, on the 2 days I applied for it, I was the only applicant for it -- that is, IBM cannot simply say "we think we'll sit around for a year to see if anybody with 'better fit' happens to apply for that position".

Finally, it has now been well over 2 weeks since I submitted both my New Complaint, and my new request for transfer (to the new GOM number), but no substantive action/communication has happened during that time. Since the New Complaint relies on a trivially small number of undeniable/irrefutable/proven facts, no "lengthy investigation" is required. Thus the 2-week delay itself amounts to "undue delay" -- i.e., to yet further refusal to engage in ADA-mandated "interactive process" in a timely manner (see also first paragraph, above). IBM has granted me the right to "transfer myself, as reasonable accommodation under ADA". Conversely, IBM has never (not even to the date of this writing) proactively offered me a position to transfer to, even though it is required to do under ADA. I hereby demand prompt action. Please, I hereby beg IBM yet again: for once, Do The Right Thing, by granting me the transfer demanded in my New Complaint. Promptly. Now.

►Attachment: *Psychotherapist's Addendum to MetLife LTD application*:◄

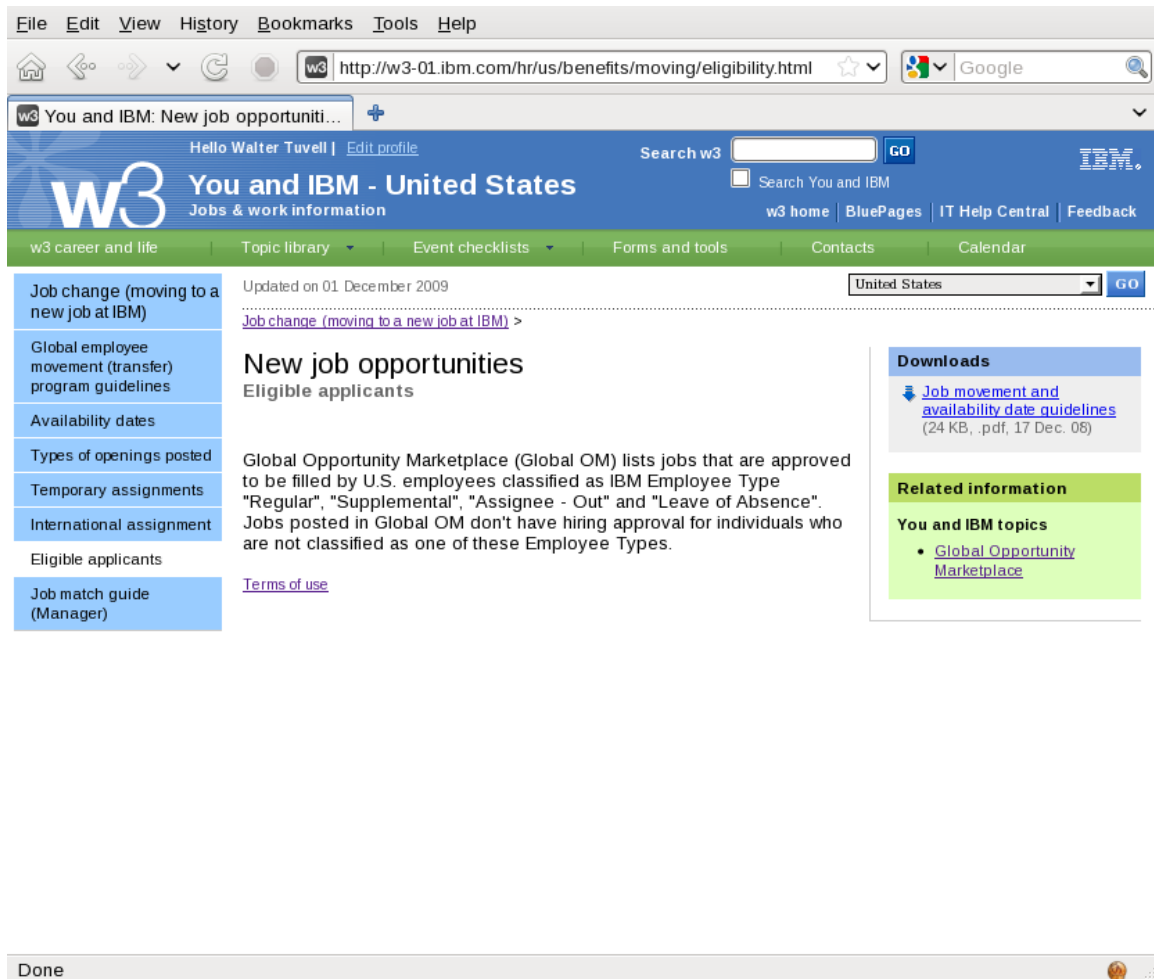
Addendum to Met Life Attending Physician Statement
1/31/2012
Regarding Walter Tuvell 6/19/1947
From Stephanie Ross, LICSW
Psychotherapist, treating clinician

Mr. Tuvell suffers from PTSD and due to his recent re-traumatization at his work place has suffered an exacerbation of many of his symptoms. He suffers sleep disturbance, eating disturbance, anxiety, depression, hypersensitivity and reactivity in social interaction. I recommended his medical leave from this work place as necessary for his recovery and re-stabilization. It was my recommendation that the only course to recovery for Mr. Tuvell required a reassignment by the company. This recommendation has not been heeded. In my opinion a return to this triggering work place would be detrimental to Mr. Tuvell and would inhibit his recovery.

►Attachment: *"footnote.png"*:◄

174. I may not have used "magic words" to inform Dan of my disability, but that's OK (under law — see the paragraph entitled "Notes" in the introductory material at the beginning of Section 59, below). Explicitly, the *first* notice I gave Dan of my disability happened like this: In December, 2010, at a meeting in Dan's office, Ashish Deb (a member of Dan's group, and like me a PhD) mumbled the word "convolution", in the technical/mathematical sense. Dan, being ignorant, asked what it meant. Ashish said he didn't know/remember. I said, "Well the important property you really want is $\mathcal{F}(f*g) = \mathcal{F}(f) \cdot \mathcal{F}(g)$ (up to a normalization factor), where \mathcal{F} denotes Fourier transform and $*$ denotes convolution, right?" Ashish agreed. Later that day, alone with Dan in his office, I told him the convolution is actually defined by the formula $(f*g)(y) = \int_{\mathbb{R}} f(y-x)g(x) dx$. Dan asked me why I hadn't cited this definition during the meeting. I told him I was wary of "showing up" Ashish, and/or being perceived as "showing off" in any way, because I'd been abused/harassed/retaliated upon previously at another company (for such reasons as defamation, and for being "too smart", as I'd explicitly been told), resulting in severe psychological damage (due to pre-existing PTSD), and I strongly wanted to avoid such abuse ever happening to me again. Dan *promised* me that abuse/harassment/retaliation would *never* happen at Netezza, so I should not "hide my light under a bushel." This kind of exchange (my demurring/hesitation/shyness/fear] and Dan's "drawing me out") was repeated multiple times (8-10) during the period December, 2010 – June, 2011.

►Attachment: "GOMEligibility.png":◄



■ ►Concerning "undue delay", see also Appendix T below, email of 2012-02-22 08:32 AM.◄

T Email Chain: Mandel's "Multi-Reasons" (Feb 14-28)

■ From: Russell Mandel
To: Walter Tuvell
Subject: ►*Subject omitted in original.*◄
Date: 2012-02-14 01:39 PM

I have looked into the complaint you made that you were denied an opportunity as a result of being disabled. Having done so, I can advise that the decision was not because of a disability.

To date, there is not yet a PBC for you. Without a PBC, it would be difficult to approve the decision to hire if that was the decision made. Since there was no PBC, there was a need to make an assessment of performance and based on that assessment, the conclusion was that the performance issues we discussed previously would present a problem to your success in the role to be filled.

■ From: Walter Tuvell
To: Russel Mandel
Subject: <subject omitted in original>
Date: 2012-02-16 08:05 AM

I don't understand what you're talking about.

In the first place, I've never even been through the PBC process (hence never been asked to produce a PBC), so that can't be the basis of anything, so it can be ignored altogether (any mention of PBC is unnecessary/useless here).

Turning to the real point of your note, I don't know what "performance issue(s)" you're talking about. I've searched everything I have available to me (including my "complete HR employee file"), and I can find absolutely NOTHING ANYWHERE about any kind of performance issue.

In fact, everything I can find says exactly the opposite. The only formal evaluation I've received (from Dan, dated Feb 22, 2011) shows all performance metrics at-or-above expectation-level. Even so, Dan told me at the time that his grading was misleadingly "low", because the review covered only a few months, so he necessarily couldn't rate me as "high" as I really deserved.

At the time of the interactions with Fritz that I complained to Dan about (Excel graphics, yelling in public), the only thing Dan ever said was that he thought Fritz and I "could no longer work together" (Complaint, Part I, bottom of p. 24). He refused to specify any further details, but merely indicated some kind of vague "communication gap" or "personality conflict/mismatch". As Dan well knew (because I told him so), Fritz's erratic behavior (I called it defamation and bullying) exacerbated-

ed my PTSD symptoms (protected by law, since Dan had ample prior specific knowledge of my PTSD, and of my peculiar susceptibility to both defamation and psychological abuse/bullying), which caused me to immediately complain to Dan about Fritz's behavior. Dan refused my many requests for a 3-way meeting to iron things out, but in no way did Dan at any time ever indicate there was any kind of performance issue involved.

Indeed, the exact opposite is the case. Dan explicitly denied any kind of performance issue existed, when he wrote on June 30 (Complaint, Part II, top of p. 65): "You are not on a performance plan." In the same email, he also outlined 3 projects -- later dropped to 2, by Dan's own initiative, not mine -- that he wanted me to work on, which I did in fact fully complete, on time with quality, by the time I out on STD (Aug 15). One of those projects, "nzVtCapture", I completed with far greater generality and quality than anyone even suspected could be done. The other project, "blktrace", I went above-and-beyond the call-of-duty on, by generating new results and adding them to the project's wiki page even after I went out on STD; but Dan then forbade me from continuing to do that work, so I was forced to stop (Complaint, Addendum I, Appendix II, p. 57). [In fact, as I write this, I have some additional results in a file that I'd planned to add to the wiki, but I cannot do so because of Dan's order, and also because my electronic access to the wiki has been rescinded.]

So, pray tell me, what is this seemingly non-existent "performance issue(s)" of which you speak?

■ From: Russell Mandel
To: Walter Tuvell
Date: 2012-02-17 11:21 AM
Subject: ►*Subject omitted in original.*◄

This is to respond to your inquiry about performance issues. An essential component of any performance assessment includes the ability of the individual to work well with others. The performance issue you and I discussed previously is the inability to work cohesively with other members of a team. In addition to unprofessional conduct, for which you were cited on July 5, 2011, this issue was considered to be a potential obstacle to being successful in the role to be filled.

■ From: Walter Tuvell
To: Russell Mandel
Date: 2012-02-17 12:35 PM
Subject: Re: ►*Subject truncated in original.*◄

Oh? So, now, in addition to "performance issues", you're throwing "inability to work cohesively with others" and "unprofessional conduct"??

Since you cited the July 5, 2011, date I understand the "unprofessional conduct" to

refer to the Formal Warning Letter.

But I still don't understand what "performance issues" and "inability to work cohesively with others" mean. Please be specific, so I know what my problems are, else I won't be able to correct them.

■ From: Walter Tuvell
To: Russell Mandel
Date: 2012-02-17 01:04 PM
Subject: Re: ►*Subject truncated in original.*◄

I wrote too fast. Apart from trivial typos I suppose there's no need to dwell on, I should have mentioned the following:

There's a problem with the July 5 date you cited. Nothing happened on that date. On July 6, the original "lazy scandal" email was sent. However, the Formal Warning Letter cited a different email, on July 20. Please clarify.

Also, it seems you may be trying to equate what you previously called "performance issues" with what you now calling "inability to work cohesively with others". I had thought these were intended to be two different items, because they've such totally different concepts, but upon second glance it seems you might be identifying them. Please clarify this too.

■ From: Walter Tuvell
To: Russell Mandel
Date: 2012-02-22 08:32 AM
Subject Re: ►*Subject truncated in original.*◄

To Russell Mandel -

NOTICE: As I've been doing diligently/continuously since last June, this note represents yet another installment in my "interactive dialog" with you/IBM, in service of my: (i) opposition to IBM's illegal acts (regarding discrimination, discrimination-retaliation, defamation, and IIED); (ii) quest for reasonable accommodation (transfer based upon for well-proven PTSD-induced disability); (iii) pursuit of internal dispute resolution (Open Door, Corporate Open Door, C&A processes, strictly according to all published IBM official policies/procedures/practices).

Last week, I made a simple request to you for clarification of puzzling comments you made. Your response has not been forthcoming. That delay constitutes yet another undue (retaliatory) delay on your part.

So following are some even simpler "process" questions for you. These require no delay whatsoever. I am within my rights to expect very prompt answers to these questions -- and then, responses to the underlying substantive issues represented

by these process questions.

1. Do you plan to ever give me the clarifications I requested? If not, then I'll just accept the ambiguity/inaccuracy, and craft my in-process Addenda (for Old Complaint and New Complaint) on that basis.
2. Do you plan to ever give me a final determination/decision on my New IDR/C&A Complaint? Insofar as I can tell, that has not yet happened.
3. Do you plan to ever give me a final determination/decision on my application to the Littleton transfer I'm applied in GOM for? Insofar as I can tell, that has not yet happened (and it's been a month, far beyond "undue delay" for GOM process, hence discrimination-retaliatory).
4. Do you plan to ever continue interactive dialog for reasonable accommodation (transfer)? If so, then it's "your move".
5. If you are not the right/official person within IBM I should be interacting with for questions such as these, do you plan to ever tell me who those persons are? I've received emails from Dan Feldman and John Metzger, but I don't know what roles they (or Chris Kime) are playing.

- Walter Tuvell

■ From: Russell Mandel
To: Walter Tuvell
Date: 2012-02-28 06:52 AM
Subject: Re: ►*Subject truncated in original.*◄

My answers are provided below in blue.

NOTICE: As I've been doing diligently/continuously since last June, this note represents yet another installment in my "interactive dialog" with you/IBM, in service of my: (i) opposition to IBM's illegal acts (regarding discrimination, discrimination-retaliation, defamation, and IIED); (ii) quest for reasonable accommodation (transfer based upon for well-proven PTSD-induced disability); (iii) pursuit of internal dispute resolution (Open Door, Corporate Open Door, C&A processes, strictly according to all published IBM official policies/procedures/practices).

Last week, I made a simple request to you for clarification of puzzling comments you made. Your response has not been forthcoming. That delay constitutes yet another undue (retaliatory) delay on your part.

So following are some even simpler "process" questions for you. These require no delay whatsoever. I am within my rights to expect very prompt answers to these questions -- and then, responses to the underlying substantive issues represented by these process questions.

1. Do you plan to ever give me the clarifications I requested? If not, then I'll just accept the ambiguity/inaccuracy, and craft my in-process Addenda (for Old Complaint and New Complaint) on that basis.

I believe I have provided sufficient information to respond to all of your concerns and do not agree there is "ambiguity/inaccuracy."

2. Do you plan to ever give me a final determination/decision on my New IDR/C&A Complaint? Insofar as I can tell, that has not yet happened.

If your comment here refers to your complaint sent on January 22 and I agreed to investigate on January 24, the only issue that was eligible for an investigation was whether you were unfairly rejected for the position under Mr. Kime. I have already answered you February 17 and you have now requested further clarification in point #1 (i.e., unprofessional conduct and inability to work cohesively with others). All I can add is that I have already discussed these issues when we closed on your previous investigation and I have nothing to add to that discussion.

3. Do you plan to ever give me a final determination/decision on my application to the Littleton transfer I'm applied in GOM for? Insofar as I can tell, that has not yet happened (and it's been a month, far beyond "undue delay" for GOM process, hence discrimination-retaliatory).

You have already been rejected for that position for the above stated reasons. We've been over this ground before.

4. Do you plan to ever continue interactive dialog for reasonable accommodation (transfer)? If so, then it's "your move".

The interactive dialogue is an ongoing process that is still open and continuing. IBM has been engaging you in an interactive dialogue for several months. Multiple accommodations have been offered. I am aware that John Metzger recently communicated with you to offer reasonable accommodations again, which you rejected because they did not satisfy your particular demands.

5. If you are not the right/official person within IBM I should be interacting with for questions such as these, do you plan to ever tell me who those persons are? I've received emails from Dan Feldman and John Metzger, but I don't know what roles they (or Chris Kime) are playing.

I am the correct person to escalate issues eligible under the Open Door process. You should discuss accommodation requests with Integrated Health Services or your management team.

■ From: Walter Tuvell
To: Russell Mandel
Cc: Kathleen Dean, Al Pfluger, Diane Adams, Chris Kime, Daniel Feldman, John Metzger, Arvind Krishna, Pratyush Moghe, Fritz Knabe, Robert LeBlanc, Steve

Mills, Ginny Rometty, Mathieu Armand, Robert Gilliam, Yvonne Perkins, Beth Smith, Marie Wieck, Zel Hunter, Lydia Campbell, Kyu Rhee, Barbara Brickmeier, Randy MacDonald

Date: 2012-02-28 08:11 AM

Subject: Ongoing "interactive dialog"

To CC's:

The reason you're being copied is for purposes of "interactive dialog for reasonable accommodation for disability, as required by law". Basically, Russell Mandel is now saying YOU are responsible for the interactive dialog, and it's "your move". See below. For background, the core documentation is available at http://www.filedropper.com/ibmcomplaint_1.

To Russell Mandel:

1. See item #2, next.

2. You are now are telling me (for the first time) that you're relying on the contents of our phone call of Nov. 17. But, that phone call was explicitly off-the-record. In fact, I asked you for permission to audio-record it and supply you with a copy of the recording, but you refused me. I did take my own notes of the phone call, but surely you can't assume I was able to take really good notes during that session, and in any case the notes I took can't be considered official in any sense. Finally, I asked you for official written notice of the resolution, but you supplied me with a trivial pro-forma reply (free of substantive content) that said the following:

<quote>

As we discussed, I have investigated your concerns, and determined that management treated you fairly regarding the change in your work assignment, disciplinary actions, project plan request and day-to-day interactions with you. While I know this is not the answer you had hoped, please accept my best wishes for the future.

</quote>

Since when are "adverse job actions" in any honest company or professional HR organization permitted to be based upon unsubstantiated/unrecorded rumor/heresay? That won't stand up in any external investigation that may or may not ensue. Therefore, I say again, please provide me with real, accurate, unambiguous reasons for my rejection for the job transfer to Chris Kime's group.

3. You are wrong, I have not been rejected for my 2nd application for transfer. See the attached screenshot, which I just now took. It shows the application is still "under review".

4. You speak of my "particular demands", but that's a false/misleading characterization. The "demands" come, not from me, from my medical disability, as has been duly reported along official IBM channels (esp. IHS) for many months, by my health care-givers.

5. Mgmt and IHS are duly CC'd hereto.

Finally: I am now well along the path to finishing up my 2 new Addenda (to Old and New Complaints), and should be finished in a matter of days.

►Attachment: JobApplications.png, identical to screenshot included at Appendix Q, above, hence not included here.◄