

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

DARYL SALYERS

PLAINTIFF,

vs.

JANET NAPOLITANO

Secretary, Department of Homeland
Security, And Individually, Defendants

AND

TRACE BRITSCH, Individually

Serve Janet Napolitano

Via Certified Mail:

*U.S. Attorney General
555 4th Street, N.W.
Washington, D.C. 20530*

And

*James Zerhusen, US Attorney
Eastern District of Kentucky
110 West Vine St., Suite 400
Lexington, KY 40507-1671*

Serve Britsch

Via County Sheriff at:

*Federal Air Marshal Service
4243 Olympic Blvd., Suite 200
Erlanger, KY 41018*

DEFENDANTS

)
) JURY TRIAL DEMANDED
)
) CIVIL ACTION NO. _____
)

) **ELECTRONICALLY FILED**

COMPLAINT WITH JURY DEMAND

Comes the Plaintiff, Daryl Salyers for his Complaint against the Defendants, Janet Napolitano, Secretary, Department of Homeland Security (herein “DHS”), and Trace Britsch, Individually, and hereby states as follows:

PARTIES

1. Plaintiff, is a resident of Clermont County, Ohio, is, and has been a Federal Air Marshal (“FAM”) with the Transportation Security Administration (“TSA”) of DHS since June, 2002, during the relevant time period and was a permanent employee with the Cincinnati Field Office of the Federal Air Marshal Service, a division of the Transportation Security Administration under the United States Department of Homeland Security.

2. At all times pertinent, Plaintiffs’ employer, pursuant to Title VII of the Civil Rights Act of 1964 (as amended), 42 U.S.C. sec 2000e-16 (et. seq), is the Cincinnati Field Office of the Federal Air Marshal Service, a division of the Transportation Security Administration, under the Department of Homeland Security, Janet Napolitano, Secretary.

3. At all times pertinent, Plaintiffs’ supervisor under Title VII of the Civil Rights Act of 1964 (as amended), 42 U.S.C sec 2000e(et. seq), is acting Assistant Special Agent In Charge (ASAC) of the Cincinnati Field Office of the Federal Air Marshal Service, Individually named Defendant, Trace Britsch.

JURISDICTION AND VENUE

4. This Court has original Jurisdiction in this action pursuant to 28 U.S.C. Sections 1331 and 1343 and 42 U.S.C. Section 2000e-5 and e-16, inasmuch as the matter in controversy is brought pursuant to Title VII of the Civil Rights Act of 1964,

42 U.S.C. Section 2000e et seq. and the regulations governing federal employees, 29 USC 621, seq., 29 C.F.R. §1614.407. This District possesses venue of this matter pursuant to 42 U.S.C. Section 2000e-5(f). The jurisdiction of this Court is invoked to secure protection and redress deprivation of rights guaranteed by federal law, which rights provide for injunctive relief and other relief for illegal employment discrimination. The amount in controversy in this action exceeds the jurisdictional limits of this Court. This Court has pendant jurisdiction over State claims pursuant to 28 USC 1367.

5. Plaintiff filed a complaint via certified mail on March 27, 2009 with the TSA Office of Civil Rights (“EEOC”) alleging violations of Title VII of the Civil Rights Act of 1964, including Retaliation for participating as a witness in a protected EEOC activity. On May 28, 2009, Plaintiff filed via certified mail his first Notice of Retaliation with the TSA Office of Civil Rights. On June 25, 2009, Plaintiff filed a second Notice of Retaliation with the TSA Office of Civil Rights.

6. Pursuant to 29 C.F.R. Sec. 1614.107(a)(3) seq., Plaintiff has received no official notification from the TSA Office of Civil Rights regarding his original Complaint, although one hundred eighty (180) days have elapsed since Plaintiff’s original EEO Civil Rights complaint was filed.

GENERAL FACTUAL ALLEGATIONS

7. Prior to his position as a Federal Air Marshal (Herein “FAM”), Plaintiff had four (4) years of Federal Law Enforcement with the Federal Bureau of Prisons.

8. Plaintiff began his tenure in the Cincinnati Field Office in June 2002 and regularly was awarded bonuses and positive evaluations until the Spring of 2008.

9. In February, 2008, Plaintiff was notified that he was to be a witness in FAM Nancy Leidner highly contentious EEO complaint and voluntarily submitted to an interview where he confirmed facts in the other FAM's EEO complaint. FAM Leidner's case is now before this Court in Case No. 07-CV-197-DLB.

10. After giving his statement regarding Fam Leidner's EEO case to a TSA investigator, Plaintiff Saylers was notified on April 16, 2008, that he was being suspended two days for unprofessional behavior that allegedly occurred five months earlier. Plaintiff served his two day suspension on May 12 and 13th, 2008.

11. During the months of February and March, 2008, Plaintiff was on medical leave for a work related shoulder injury, and was placed on light duty by his treating physician from January 12, 2008, until July 7, 2008, when Plaintiff was released to work without restrictions. During this time period, while Plaintiff was at home on medical leave from mid February to mid April, Plaintiff was placed under Surveillance by the TSA Cincinnati Field Office and TSA FAMS parked cars outside Plaintiff's house and followed Plaintiff and his wife around in public.

12. During this time period referred to in paragraph 11, Plaintiff's treating Physician, Dr. Mark Galloway, was contacted multiple times by phone and was approached by TSA officials at his medical office on or about March 14, 2008. Dr. Galloway was presented FAM badges and was ordered to release medical information about Plaintiff's condition without Plaintiff's authorization or consent. Plaintiff's physician refused to release any information without Plaintiff's authorization.

13. During the remainder of the year 2008, Plaintiff was placed under an Investigation without his knowledge.

14. On December 14, 2008, Plaintiff was informed by a TSA Agent that he had been under criminal investigation for several months for allegedly falsifying medical documentation related to his work related injury. Although Plaintiff was interviewed several times during this alleged criminal investigation, Plaintiff was never given a *Garrity* advisement or advised at any point prior to that date that he was being investigated criminally.

15. Cincinnati TSA FAM Supervisors began to take more serious retaliatory action against Plaintiff after he was informed that he was cleared of the criminal investigation.

16. On December 26, 2008, while working in Atlanta, Plaintiff became ill and requested a return flight to Cincinnati as allowed by Standard Operating Procedures (“SOP”) but was denied his request by his Assistant To Special Agent In Charge (herein “ATSAC”).

17. On January 5, 2009, Plaintiff was placed on probation for sick leave use via a memo for allegedly abusing sick leave policy despite his medical documentation that proved his leave was due to a work related injury.

18. On January 5, 2009, Plaintiff, a certified EMT and Paramedic, was verbally informed that his Medical Officer Status would not be recognized. Plaintiff was informed that he would be required to continue his medical certifications on his personal time which is in violation of Federal policy (TSA OPT 3914), which states that the “Field Offices **SHALL** use professional development funds to pay the costs of recertification and skills maintenance training for OLE/EMTs and/or Paramedics.”

19. On February 8, 2009, Plaintiff submitted a Request for EEO counseling due to retaliation that he was receiving from Cincinnati Field Office Supervisors.

20. On February 9, 2009, Plaintiff was required to meet with his Supervisors upon reporting to the Cincinnati Field Office and was informed that he was now under an Ethics Investigation for his recent conduct and was required to turn in his Firearm and law enforcement credentials.

21. On March 9, 2009, Plaintiff advised Federal Air Marshal Medical Offices of a change in medication.

22. On March 12, 2009, Plaintiff was notified that he was being placed on indefinite Leave without pay by his Supervisors and denied the opportunity to seek other employment while his status was reviewed. Plaintiff remains on Leave Without Pay status and has derived no income for over 8 months at the time of this Complaint.

23. Although medically cleared by his physician, Plaintiff Salyers remained in Leave without pay status and was denied via an e-mail on May 21, 2009, permission to obtain outside employment. Plaintiff remains on Leave Without Pay status and has derived no income for over 8 months at the time of this Complaint.

24. On June 11, Defendant Britsch, who Plaintiff Salyers had named as the instigator of his EEO retaliation Complaint filed just several weeks earlier, intervened in Mr. Salyers Worker's Compensation Claim and filed with TSA Workers' Compensation Office a letter containing false information about Plaintiff in order to aid in a denial of Mr. Salyer's pending Workers' Compensation claim.

25. Plaintiff had a pending EEO Claim filed against Defendant Britsch which Defendant Britsch was aware of, yet ASAC Britsch stated in writing that he not been "notified by Mr. Salyers of any detrimental work factors," which effected Plaintiff's claim.

26. Further, Defendant Britsch wrote on an official TSA memo that Plaintiff was in “violation of Title 18, USCS & 1920 False statement or fraud to obtain Federal Compensation.” Said statement falsely accused Plaintiff of engaging in violations of Law and was without merit or any foundation.

27. Said statement of Defendant Britsch is slanderous and inaccurate as Plaintiff has filed all appropriate medical documentation through his treating physician, Dr. Marc Galloway.

28. The Management at the TSA Cincinnati Field office has routinely retaliated against any FAM that participated in an EEO investigation as a witness by disciplining those participants or placing them under suspect, frivolous investigations in an attempt to discourage their continued participation in the EEO investigative process.

COUNT I
RETALIATION

29. Plaintiff incorporates as if fully restated all of the allegations previously written.

30. As herein alleged, the Defendant, by and through its officers, managing agents and/or its supervisors, illegally retaliated against Plaintiff by unjustly subjecting him to unjust scrutiny, false allegations of misconduct and unwelcome and derisive comments, denial of work accommodations, suspensions from his employment, solely because he had participated as a corroborating witness in an EEOC investigation in February, 2008, of another FAM. Defendants had no legitimate reasons for any such act. Each said act of retaliation is in violation of Title VII of the Civil Rights Act of 1964, specifically, 42 USC 2000e-3.

31. Plaintiff is informed and believes, and based thereon alleges, that in addition to the practices enumerated above, the Defendants may have engaged in other

discriminatory practices against him which are not yet fully known. At such time as such discriminatory practices become known, Plaintiff will seek leave of Court to amend this Complaint in that regard.

32. As a direct and proximate result of the Defendants willful, knowing, and intentional discrimination and retaliation against Plaintiff, Plaintiff has suffered and will continue to suffer pain, humiliation and emotional distress. Plaintiff has suffered and will continue to suffer a loss of earnings and othis employment benefits and job opportunities. Plaintiff is thisby entitled to general and compensatory damages in amounts to be proven at trial.

33. As a further direct and proximate result of Defendant's violation of Title VII of the Civil Rights Act of 1964, as described, Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with the Defendant and has thereby incurred and will continue to incur legal fees and costs, the full nature and extent of which are presently unknown to Plaintiff.

34. Plaintiff is informed and believes, and based thereon alleges, that the Defendant's conduct as described above was willful, wanton, malicious, and done in reckless disregard for the safety and well-being of Plaintiff.

COUNT II
RETALIATION

35. Plaintiff incorporates as if fully restated all of the allegations previously written.

36. Plaintiff was placed on Leave without Pay on March 12, 2009 a month after he requested EEO counseling, and has remained on that status since. Plaintiff has been

denied any opportunity to make supplemental income while his employment status remains in indefinite limbo.

37. Plaintiff is informed and believes, and based thereon alleges, that the Defendant's conduct as described above was willful, wanton, malicious, and done in reckless disregard for the safety and well-being of Plaintiff and is in violation of Title VII Civil Rights act of 1964, specifically 42 USC 2000-3.

COUNT III
RETALIATION

38. Plaintiff incorporates as if fully restated all of the allegations previously written.

39. On June 11, Defendant Britsch intervened in Plaintiff's Workers' Compensation Claim and filed with TSA Workers' Compensation Office a letter containing false information about Plaintiff in order to aid in a denial of Mr. Saylor's pending WC claim.

40. Plaintiff is informed and believes, and based thereon alleges, that the Defendant's conduct as described above was willful, wanton, malicious, and done in reckless disregard for the safety and well-being of Plaintiff and is in violation of Title VII Civil Rights act of 1964, specifically 42 USC 2000-3.

COUNT IV
DEFAMATION

41. Plaintiff incorporates as if fully restated all of the allegations previously written.

42. On June 11, 2009, Defendant Britsch intervened in Plaintiff's Workers' Compensation Claim and filed with TSA Workers' Compensation Office an official letter containing false information about Plaintiff in order to aid in a denial of Mr. Saylor's pending Workers' Compensation claim.

43. Said written memorandum by Defendant Britsch was published to third parties, was false and known to be false by Defendant Britsch, and was intentionally published to discredit Plaintiff's employment record and deny Plaintiff's financial compensation to which he was entitled.

44. The Plaintiff further states that said words were and are utterly false, malicious and slanderous, and were published with malice and in retaliation for bringing an EEOC complaint against Defendant Britsch.

WHEREFORE, Plaintiff, Daryl Salyers, demands judgment against the Defendants, in an amount which will compensate his him for:

1. Violation of his rights under Title VII of the Civil Rights Act of 1964;
2. Compensatory damages including lost wages, past and future and/or impairment of power to earn money; emotional distress and humiliation, past and future; and past and any future medical expenses;
3. Punitive damages to punish Defendant Britsch for his willful, wanton, oppressive, malicious, and/or grossly negligent conduct;
4. A permanent injunction against any future acts of retaliation against the Plaintiff by Cincinnati Field Office Management;
5. Trial by jury on all issues so triable;
6. Costs expended herein, including reasonable attorneys' fees;
7. Pre-judgment and post-judgment Interest; and
8. Any and all other relief to which he may be entitled.

Respectfully submitted,

s/Shane C. Sidebottom
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