

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON, TEXAS DIVISION

United States District Court
Southern District of Texas
FILED

OCT 08 2010

David J. Bradley, Clerk of Court

VIVIAN F. CHISHOLM
Plaintiff

Versus

UNITED STATES OF AMERICA

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CIVIL ACTION NO _____

PLAINTIFF'S ORIGINAL COMPLAINT

Pro se Plaintiff, Vivian F. Chisholm, brings this action against the United States of America under the Federal Tort Claims act 28 U.S.C. 1346(b), and 28 U.S.C. 2402. Plaintiff has filed this case in the place where the acts occurred causing Intentional Infliction of Emotional Distress.

I. SUBJECT MATTER JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the subject matter of this action pursuant to 28 USC §§ 1331, and 28 U.S.C. 1346(b) and 28 U.S.C. 2402.

1.2 Venue is proper in this court pursuant to 28 USC §1391 (b) and (e) because the United States is a Defendant, and all of the facts giving rise to this cause of action occurred in this district.

II. PERSONAL JURISDICTION

2.1 This Court has personal jurisdiction over the Defendant because the Defendant is the United States of America.

III. PARTIES

3.1 Plaintiff, Vivian Chisholm, is an individual residing in Caldwell County, Texas.

3.2 Defendant is the United States Government, and may be served with process by serving the United States Attorney General, Department of Justice 10th and Constitution Ave., N.W. Washington, DC 20530

IV. FACTS

4.1 Claim form SF 95 was filed on October 6, 2009 by Plaintiff for Intentional Infliction of Emotional Distress (IIED)

4.2 Plaintiff received Final Denial Letter on May 25, 2010.

4.3 Plaintiff has suffered and continues to suffer emotional pain, fear, worry, severe anxiety, crying episodes, anger, bouts of depression, sleeplessness, grief, humiliation, intimidation, terror, degradation caused by the intentional conduct of Petty Officer Lancelot C. Coley.

4.4 Plaintiff has suffered from vulgar remarks through the humiliation, embarrassment, and degradation caused by the conduct of Chief Petty Officer Steve Crawford.

4.5 Plaintiff has suffered and continues to suffer from the Reckless Inflection of Emotional Distress (RIED) caused by Petty Officer Richard Martin through his conscious disregard for the conduct of Petty Officer Lancelot C. Coley and allowed the extreme and outrageous conduct to continue without notification of his supervisors to intervene. This occurred when Petty Officer Richard Martin sat at his desk, listened, and observed the extreme and outrageous conduct of Petty Officer Lancelot C. Coley.

4.6 Through the psychiatric evaluation of Dr. Richard McCall (practicing psychiatrist) that Plaintiff suffers from Major Depressive Disorder, Single Episode,

Severe, as well as Generalized Anxiety Disorder, and that Plaintiff suffers to the point of severe restriction of her daily activities from the threats and conduct of Petty Officer Lancelot C. Coley.

V. CAUSES OF ACTION

A. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

5.1 Plaintiff seeks damages for the intentional infliction of emotional distress by the officers described below, who at all relevant times were acting in the course and scope of their duties as officers and agents of the United States Government.

5.2 In approximately, July 2007, Plaintiff's granddaughter was enrolled into the Delayed Entry Program, without Parental Authority by Petty Officer Richard Martin. Plaintiff's granddaughter was a High School Student and under the Texas Education Code Chapter 26 Section 26.011 thru Section 26.013 a child of Divorce or Legal Separation remains a minor until completion of High School and Secondary. Plaintiff's granddaughter on or around December 2007 expressed her regrets of signing the Delayed Entry Program Papers and submitted "request for separation". Petty Officer Lancelot C. Coley failed to honor the proper request for separation. Petty Officer Lancelot C. Coley screamed verbal threats to Plaintiff's granddaughter that he would stamp his name across her Social Security Card to prevent her from working at any City, County, State, Federal Employment position. Petty Officer Lancelot C. Coley screamed verbal threats to Plaintiff granddaughter that he would have her arrested for Breach of Government Contract. Petty Officer Lancelot C. Coley further threatened to have Plaintiff's granddaughter listed as Absent Without Leave (AWOL). Plaintiff's granddaughter was intimidated, and terrified of being arrested for Breach of Government Contract, and being listed as AWOL. Plaintiff's granddaughter asked her

mother if she would speak with Petty Officer Lancelot C. Coley in order to obtain the legal request of separation. Plaintiff daughter called Petty Officer Lancelot Coley regarding her daughter's legal request for separation. Petty Officer Lancelot C. Coley was aware that Plaintiff's daughter was undergoing Cancer treatments. Petty Officer Lancelot C. Coley repeatedly used verbal threats, yelling and hostile screaming confirming that he was not going to honor the request for separation. Plaintiff was then contacted by Plaintiff's daughter asking for Plaintiff to obtain the request for separation. Plaintiff called Senator Glen Hager's Office asking about the rules, regulations, forms, etc regarding the request for separation. Plaintiff then called Petty Officer Lancelot C. Coley on March 6, 2008 explaining to him that Plaintiff's granddaughter was legally entitled to the separation from all the gathered information that Plaintiff had received. Petty Officer Lancelot C. Coley called Plaintiff a liar and demanded the phone number to Senator Hager's Office. Plaintiff gave Petty Officer Lancelot C. Coley the phone number to Senator Hager's Office. Petty Officer Lancelot C. Coley vehemently denied all knowledge of any United States Navy Separation forms, or procedures. Plaintiff tried to explain to Petty Officer Lancelot C. Coley that Plaintiff's granddaughter wanted to further her Higher Education independently with the Thousand Dollar (\$1,000.00) scholarship when she graduated from High School. Plaintiff tried to explain her granddaughter's interest in a Degree in Wildlife Biology. Petty Office Lancelot C. Coley became very irate at Plaintiff and began yelling, screaming at Plaintiff that she did not know the cost of a college degree, and that a Thousand Dollar Scholarship would not pay for a college education. Petty Officer Lancelot C. Coley yelled that the United States Navy had the best Wildlife Biology courses in the world. Petty Officer Lancelot C. Coley screamed that he was not going to honor the request by the Plaintiff's

granddaughter. Petty Officer Lancelot C. Coley was yelling verbal threats that he was going to file dishonorable discharge, charges of failure to fulfill a governmental contract, and would disable Plaintiff's granddaughter from working in any field and blemish her record for life. Petty Officer Lancelot Coley yelled at Plaintiff that due to the privacy act he would no longer discuss anything else with Plaintiff and hung up the phone. Petty Officer Lancelot C. Coley called Plaintiff's granddaughter screaming and yelling while haranguing and reprimanding her for having her grandmother and Senators calling him and wasting his time that she knew better. Plaintiff's daughter was sitting close by in the room and could clearly hear every word that Petty Officer Lancelot C. Coley was yelling and screaming. Every time Plaintiff's granddaughter would try to respond, Petty Officer Lancelot C. Coley would angrily order her to shut up and listen that she had better call him later and schedule an appointment with him. Petty Officer Lancelot C. Coley yelled that your grandmother better not show up with you. Plaintiff's daughter called the GI Rights automated hotline answering system and left her name and number. Approximately, Monday or Tuesday, Plaintiff's granddaughter was scheduled by Petty Officer Lancelot C. Coley to be in his Office March 13, 2008 at 5:00 pm and again, angrily demanded that Plaintiff not attend under any circumstances as he did not need all her family calling him. Plaintiff's granddaughter faxed Petty Officer Lancelot C. Coley the March 12, 2008 notification of entry-level separation and dismissal from reporting date of July 7, 2008. Upon receiving fax Petty Officer Lancelot C. Coley called Plaintiff's daughter on her cell phone. Plaintiff's daughter was having her Cancer treatments and explained that she would call him back later. Petty Officer Lancelot C. Coley yelled that he had received a fax and he had some questions and left his cell phone number. Plaintiff's daughter called Plaintiff

expressing she did not feel well and if Plaintiff would speak with Petty Officer Lancelot C. Coley on a three way conversation, due to Petty Officer unprofessional behavior and his expressive command for Plaintiff's daughter not to call him and waste his time.

Plaintiff professionally requested the name and telephone number of Petty Officer Lancelot C. Coley's Supervisor. Petty Officer Lancelot C. Coley immediately yelled the refusal and demanded that Plaintiff explain the reason to him. Plaintiff explained that she did not wish to express any reason for wanting to speak with his supervisor and it was Plaintiff constitutional rights to request the name and telephone number of his supervisor. Plaintiff repeated several times asking for the name and telephone number of his supervisor. Plaintiff got down on her knees and fervently begged Petty Officer Lancelot C. Coley for his supervisor's name and phone number for several minutes. Petty Officer Lancelot C. Coley provided Plaintiff with the requested information only after his ego was satisfied.

5.2 On March 13, 2008 Plaintiff and Plaintiff's daughter on a three-way conference called Chief Petty Officer Steve Crawford. Plaintiff explained to him that she wanted to file a complaint against Petty Officer Lancelot C. Coley regarding his unprofessional code of conduct towards Plaintiff and Plaintiff's family regarding the legal request for entry-level separation, and the refusal/denial of Plaintiff's appearance at the 5:00 pm meeting. Plaintiff asked Chief Petty Officer Steve Crawford to be present at this meeting to prevent Petty Officer Lancelot C. Coley yelling and screaming at Plaintiff's granddaughter. Chief Petty Officer Steve Crawford refused to take any type of complaint regarding Petty Officer Lancelot C. Coley. Chief Petty Officer Steve Crawford became angry and yelled that he was not going to be at the meeting. Chief Petty Officer Steve Crawford became vulgar, rude, and disrespectful, by using a vulgar

comment to Plaintiff. In shock Plaintiff said “excuse me what did you say”?

Chief Petty Officer Steve Crawford proudly repeated the vulgar comment. Plaintiff then informed Chief Petty Officer Steve Crawford that Plaintiff had not used any vulgarity, curse words, any type of profane language to Chief Petty Officer Steve Crawford.

Plaintiff advised Chief Petty Officer Steve Crawford that she would not be spoken to in that manner, nor would she listen to anything in that manner and Plaintiff hung up the phone. Plaintiff’s daughter could not believe her ears and advised Plaintiff to call back to the Humble Recruiting Officer and ask for Chief Petty Officer Steve Crawford’s supervisor.

5.3 Plaintiff and Plaintiff’s daughter on a three way called the Humble Recruiting Office and Petty Officer Richard Martin answered the phone. Plaintiff then asked for the name and telephone number of Chief Petty Officer Steve Crawford Supervisor.

Petty Officer Richard Martin transferred Plaintiff to Petty Officer Lancelot C. Coley.

5.4 Plaintiff requested the name and telephone number of Chief Petty Officer Steve Crawford’s Supervisor. Petty Officer Lancelot C. Coley screamed at Plaintiff accusing Plaintiff of telephone harassment and verbally threatened that he was going to have Plaintiff arrested by Humble Police Department. Plaintiff tried to explain to Petty Officer Lancelot C. Coley that she was not harassing him that she only wanted to speak with someone with the authority regarding the entry level separating. Petty Officer Lancelot C. Coley screamed that he was going to place a warrant out for Plaintiff by the Montgomery Sheriff’s Department. Plaintiff advised Petty Officer Lancelot that requesting information regarding an entry level separation is not telephone harassment. Petty Officer Lancelot C. Coley became very angry and screamed to Plaintiff “Stand by I am going to have you arrested by Homeland Security as a Terrorist”! Petty Officer

Lancelot C. Coley hung up the phone. Plaintiff and Plaintiff's daughter was in shock, terrified with disbelief. Plaintiff called the Austin, Texas Navy Office and spoke with Chief Redding that Plaintiff wanted to file a complaint on the navy officers at the Humble, Texas Recruiting Office in Humble, Texas for vulgar language, rude behavior, and disrespect to a civilian. Chief Redding gave Plaintiff the name and telephone number of Master Chief Rodriguez in San Antonio, Texas.

5.5 On March 13, 2008, Plaintiff called Master Chief Rodriguez and explained in detail what Plaintiff and Plaintiff's family had been through by just trying to submit an entry-level separation. Master Chief Rodriguez advised Plaintiff not to worry that he would take care of the matter at hand.

5.6 Petty Officer Lancelot C. Coley called Plaintiff's daughter and told her to tell plaintiff not to call him anymore. Petty Officer Lancelot C. Coley said that he had listed Plaintiff with Homeland Security as a Terrorist and Plaintiff would be arrested. Plaintiff's daughter tried to explain to Petty Officer Lancelot C. Coley that Plaintiff was not a terrorist and asked him not to call Homeland Security and list Plaintiff as a Terrorist that Plaintiff would lose her position, lose her federal and state permits, and how it would destroy over 19 years of achievements. Petty Officer Lancelot C. Coley screamed that Plaintiff was going to be arrested by Homeland Security and he was not going to remove Plaintiff from the Terrorist List and hung up the phone.

5.7 Plaintiff's daughter was in a physically compromised condition from her Cancer treatment earlier that day and was so distraught from the conversation with Petty Officer Lancelot C. Coley that she called her husband home from work early. Her husband called Plaintiff around 10:00 pm advising Plaintiff that he was unable to console her or ease her fears and would Plaintiff come and be with her.

5.8 Plaintiff drove three and a half hours to get to Plaintiff's daughter. Plaintiff eventually was able to calm her down. By 9:00 am Plaintiff e-mailed Master Chief Rodriguez regarding the retaliation of the warrants with Humble Police, Montgomery Sheriff Department, and now with Homeland Security as a Terrorist. The e-mail also detailed the retaliation against Plaintiff's daughter committed by Petty Officer Lancelot C. Coley in response to Plaintiff filing a complaint with Master Chief Rodriguez. Plaintiff explained in the e-mail to Master Chief Rodriguez that Petty Officer Lancelot C. Coley refused to acknowledge or follow any order originating from outside his direct chain of command. This e-mail also detailed how Petty Officer Lancelot C. Coley was continuing his rain of terror upon Plaintiff and Plaintiff's family. March 14, 2008 Plaintiff did not hear from Master Chief Rodriguez nor was Plaintiff unable to contact Master Chief Rodriguez by telephone. Later in the afternoon on March 14, 2008 Master Chief Rodriguez called and spoke to Plaintiff and promised that he would forward the complaint to Master Chief Erivin.

5.9 March 14, 2008 Master Chief Erivin called plaintiff and sincerely apologized for what Plaintiff and Plaintiff's family had been through. Master Chief Erivin claimed that such conduct was not the conduct of the United States Navy. Master Chief Erivin was out of state and would be back in Texas this weekend and speak to Petty Officer Lancelot C. Coley and Chief Petty Officer Steve Crawford.

5.10 March 14, 2008 Petty Officer Lancelot C. Coley called Plaintiff to maliciously confirm the listing with Homeland Security as a Terrorist and that under no circumstances would Plaintiff be removed from the Terrorist List. Again, on March 15, 2008 Plaintiff received a call from Petty Officer Lancelot C. Coley stating that

Homeland Security would arrest Plaintiff as a Terrorist then abruptly hung up the phone. Plaintiff left a message for Master Chief Erivin to call as soon as possible.

5.11 On March 19, 2008, Master Chief Erivin called Plaintiff's cell phone around 9:30 pm and explained that Plaintiff's granddaughter would receive the discharge letter in the mail no later than two weeks. Master Chief Erivin explained that she would try to get the letter sooner if possible. Master Chief Erivin explained that an investigation on Petty Officer Lancelot C. Coley and Chief Petty Officer Crawford would be conducted.

5.12 On March 24, 2008, Plaintiff granddaughter had not received the discharge papers. Plaintiff and Plaintiff's daughter on a three-way conversation called Master Chief Erivin. Master Chief Erivin explained that Lt. Thornton was in charge of the case. Master Chief Erivin said she would have Lt. Thornton to call. Lt. Thornton never called Plaintiff.

5.13 March 25, 2008 Plaintiff called the Inspector General's Office of the United States Navy and spoke to Miss Mann who obtained the phone numbers for Master Chief Rodriguez, Master Chief Erivin and Lt. Thornton. Miss Mann also asked to e-mail her Plaintiff's complaint.

5.14 March 26, 2008 Plaintiff called Lt. Thornton and left message. Plaintiff called Master Chief Rodriguez and was advised that Commander O'Brien was now in charged. Plaintiff called Commander O'Brien and explained that Lt. Thornton would not return any phone calls. Commander O'Brien asked Plaintiff to e-mail the complaint to her.

5.15 March 27, 2008, Miss Mann called Plaintiff to advise that the Inspector General had ordered an official investigation and that Lt. Vernon would be contacting Plaintiff.

5.16 April 11, 2008 Lt. Vernon contacted Plaintiff and set appointment to meet with Plaintiff and Plaintiff's family on April 15, 2008 Lt. Vernon advised that a letter from the Naval Inspector General would notify Plaintiff when the investigation was completed.

5.17 On July 18, 2008 Plaintiff received letter from the Department of the Navy Naval Inspector General that the allegations were substantiated and corrective actions has been taken.

5.18 Defendant's conduct has caused the following physical manifestations of severe emotional distress: Plaintiff's symptoms are sleepless nights, short term memory loss, depression, anxiety, lack of focus, purposelessness, crying, anger, grief, worry of being arrested by Homeland Security, nightmares of being arrested by Homeland Security and placed in a cell with actual terrorists, fear of going to any airport or any Federal Landmark, Plaintiff is worried and fearful about visiting her husband's grave at the Fort Sam National Cemetery that she will be arrested. Plaintiff will not go anywhere without either her son or daughter. Plaintiff will sometimes stay indoors or in bed. Plaintiff is under the care of a counselor for her severe emotional distress. Plaintiff is taking anti-depressants as perscribed.

B. DECLARATORY JUDGMENT

5.19 Pursuant to the Declaratory Judgments Act, Plaintiff also seeks a judicial declaration that she is not a terrorist.

5.20 Plaintiff also requests an injunction ordering The Office of Homeland Security to remove her name from the "terrorist watch list."

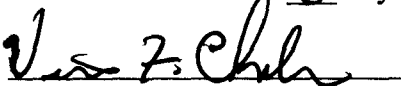
VI. PRAYER FOR RELIEF

6.1 Plaintiff requests actual and consequential damages in an amount above the minimum jurisdictional limits of this court, which shall be determined by the Court.

6.2 Plaintiff requests A Declaratory Judgment that she is not a terrorist, and an injunction ordering The Office of Homeland Security to remove her name from the “terrorist watch list.”

6.3 Plaintiff also seeks all further relief at law or equity to which she is allowed.

Signed and Executed this 8 day of 2010

By: 

Vivian Chisholm

8736 F. M 672 Dale, Texas 78616

512 601 1314

E-mail: sissywolves@aol.com