

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.

JURISDICTION AND VENUE

3. 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.

4. Plaintiff originally filed a Complaint with this Court on November 11, 2009. By agreement of the Parties, the Complaint was voluntarily dismissed without prejudice on January 28, 2010, in order for Plaintiff to submit his case before the TSA office of Civil Rights for administrative review. By agreed Order, Plaintiff maintained a right to re-

file suit after one hundred eighty days (180) of assignment to an TSA Civil Rights investigator if the case was not resolved administratively.

5. Plaintiff re-submitted a Formal EEO complaint with the TSA Office of Civil Rights which was accepted for investigation on February 1, 2010. On June 7, 2010, Plaintiff's complaint alleging Retaliation for participating as a witness in a protected EEOC activity was assigned to an investigator. On September 14, 2010, TSA Civil Rights concluded its investigation and Plaintiff requested via certified mail a Final Agency Determination on September 22, 2010.

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 submitted to a TSA Civil Rights investigator.

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 Leidner¹ highly contentious EEO complaint and voluntarily submitted to an interview where he confirmed facts in the other FAM's EEO complaint.

10. After giving his statement regarding Fam Leidner's EEO case to a TSA investigator, Plaintiff Salyers was notified on April 16, 2008, that he was being

¹ Eastern District Court Case No: 07-cv-197-DLB

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, after which Plaintiff was released to work without restrictions.

12. During this time period of medical leave, while Plaintiff was at home from mid February to mid April, Plaintiff was placed under Surveillance by the TSA Cincinnati Field Office Management. TSA FAMS parked cars outside Plaintiff's house and placed Plaintiff and his wife, and other family members visiting Plaintiff's home, under constant surveillance.

13. 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.

14. During the remainder of the year 2008, Plaintiff was placed under an ongoing investigation without his knowledge.

15. 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 advised at any point prior to that date that he was being investigated criminally.

16. 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.

17. 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”).

18. On January 5, 2009, Plaintiff was placed on probation for sick leave use via a memo for allegedly abusing sick leave policy. Plaintiff presented proof that some leave was used for bereavement leave for his Grandmother and other proof that his time was not used in a pattern that was in conjunction with his scheduled days off.

19. On January 5, 2009, Plaintiff, a certified EMT-Paramedic, was verbally informed that his Medical Officer Status would no longer 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.”

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

21. On February 9, 2009, a day after contacting TSA office of Civil Rights, Plaintiff was required to meet with his Supervisors upon reporting to the Cincinnati Field Office and was informed that he being placed under an Ethics Investigation for his recent conduct. He was ordered to turn in his Firearm and law enforcement credentials.

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

23. 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 until his Medical retirement in February, 2010.

24. 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, any advanced leave or permission to obtain outside, non-law enforcement related employment. Said denial to Plaintiff to make any outside income while on leave is contrary to TSA policy when the outside employment is not related Plaintiff's position as a FAM.

25. On June 11, the Field Office Assistant to the Special Agent ("ASAC"), who Plaintiff Salyers had identified in his recent EEO complaint as the instigator of the retaliatory action, intervened in Plaintiff 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 Plaintiff's pending Workers' Compensation claim.

26. Plaintiff had a pending EEO Claim filed against his ASAC which the ASAC was fully aware of, yet the ASAC stated in writing that he not been "notified by Mr. Salyers of any detrimental work factors," which negatively effected Plaintiff's claim and his ability to qualify for Workers' Compensation.

27. Further, Plaintiff's ASAC 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.

28. Said statement of ASAC was slanderous and inaccurate as Plaintiff has filed all appropriate medical documentation through his treating physician.

29. 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

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

31. 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 another FAM’s EEO investigation in February, 2008. 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.

32. Immediately after given a statement in an EEO investigation that supported allegations of another FAM, Plaintiff was suspended for two days and subject to continuous and ongoing pattern of retaliation.

33. Immediately after giving his statement in an EEO investigation that supported allegations of another FAM, Plaintiff was on medical leave was placed under

surveillance along with his Spouse by Cincinnati Field Officer supervisors during the month of February, 2008.

34. 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.

35. As a direct and proximate result of the Defendant's 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 other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

36. 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.

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.

COUNT II

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

39. On January 5, 2009, the Plaintiff was verbally informed that his medical officers status would not be recognized. Plaintiff, a certified EMT and Paramedic, was informed that his continuing medical training costs would not be reimbursed by TSA, and he would be required to use personal days to keep up certifications.

40. This retaliatory action would cost Plaintiff thousands of dollars in expenses to maintain his EMT and Paramedic certifications that he was required to upkeep for TSA.

41. This denial of funds for Plaintiff's medical certifications was a violation of 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", and was a willful and wanton act of Retaliation against the Plaintiff.

COUNT III
RETALIATION

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

43. On February 9, 2009, the day after contacting TSA Civil Rights to file request EEO counseling, Plaintiff was notified that he was under an Ethics investigation and ordered to turn over his firearm and law enforcement credentials.

44. Plaintiff was placed on Leave without Pay on March 12, 2009 a month after he requested EEO counseling, and has remained on that status until his medical retirement in February, 2010. Plaintiff was been denied any opportunity to make supplemental income while his employment status remains in indefinite limbo.

45. 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
RETALIATION

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

47. On June 11, Plaintiff's ASAC retaliated against him by his intervention 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. Salyer's pending WC claim.

48. 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.

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. A permanent injunction against any future acts of retaliation against the Plaintiff by Cincinnati Field Office Management;

4. Trial by jury on all issues so triable;
5. Costs expended herein, including reasonable attorneys' fees;
6. Pre-judgment and post-judgment Interest; and
7. Any and all other relief to which he may be entitled.

Respectfully submitted,

s/Shane C. Sidebottom_____

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