

IN THE UNITED STATES DISTRICT COURT IN THE DISTRICT OF KANSAS,
AT KANSAS CITY, KANSAS

KENNETH SNYDER,)
Plaintiff,)

vs.)

Case No. 12-cv-2723 JAR/DJW

WILLIAM JOHNSON, individually;)
ERIC CLARK, individually; and)
UNITED GOVERNMENT OF WYANDOTTE)
COUNTY/ KANSAS CITY d/b/a BOARD OF)
PUBLIC UTILITIES,)
504 Minnesota Ave.)
Kansas City, KS 66101)

SERVE: Bridgette D. Cobbins)
Wyandotte County Clerk)
701 N. 7th St., Ste. 323)
Kansas City, KS 66101)

Defendant.)

_____)

I. COMPLAINT

Plaintiff, Kenneth Snyder, brings this action against the above named Defendants for violations of his rights under the Uniform Services Employment and Re-employment Rights Act (“USERRA”), 38 U.S.C. §§4301 to 4333.

II. INTRODUCTION

For nine years, Staff Sgt. Kenneth Snyder has been a member of the United States Air National Guard (“Guard”). For 26 years he held the same job working as an avionics mechanic. But when his employer announced plans to move its operations out of state, it became clear to Snyder that he would have to relocate if he wanted to keep his job. So Snyder applied and interviewed for a job in Kansas City, as a traffic signal technician for the Board of Public Utilities (BPU). One day, shortly after his interview, BPU called Snyder and offered him the

position. He immediately accepted the offer and gave notice to his former employer. He thought this was his lucky day.

But Snyder's luck would be short lived — just 168 days to be exact. BPU fired Snyder about a week after he returned from active duty with the Guard — and about five months after he returned from a two month deployment. When Snyder applied for his job at BPU, neither he nor the Defendants knew that very shortly Snyder would be deployed overseas in support of Operation Enduring Freedom. But it did not take long for the Defendants to decide that Snyder, with his deployments and military training obligations, was an inconvenience.

To deal with the “problem,” they made up a flimsy excuse, and they disposed of him. Snyder brings this action seeking relief from the Defendants' unlawful actions which were based on his service to the military.

III. PARTIES

1. Plaintiff, Staff Sgt. Kenneth Snyder, is a citizen of the State of Kansas and resident of Wyandotte County. As an employee, and a person performing non-career service in the uniformed services of the United States, namely, the United States Air National Guard (“Guard”), Snyder is entitled to the benefits and protections of USERRA and submits himself to the jurisdiction of this Court.

2. Defendant, Unified Government of Wyandotte County/Kansas City is a Kansas Municipality and maintains an office for the conduct of its business at 701 N. 7th Street, Kansas City, Kansas. The Board of Public Utilities (Wyandotte County/Kansas City and The Board of Public Utilities will be referred to collectively as “BPU”) is an administrative agency of Wyandotte County, with its principal place of business at 540 Minnesota Avenue, Kansas City, Kansas. BPU is doing business in the state of Kansas. BPU is, and was, at all times relevant, an “employer” as that term is defined in Title 38 U.S.C. §4303, and may be served by delivering

process to its registered agent Bridgette D. Cobbins, Wyandotte County Clerk, 701 N. 7th St., Ste. 323, Kansas City, KS 66101.

3. Defendant Eric Clark is, and for all times relevant to this action was, a resident of the State of Kansas. He was Snyder's direct supervisor and a decision maker in Snyder's termination. Clark had control over Snyder's employment opportunities and is an employer as that term is defined under USERRA. Personal service may be made upon Clark at his place of employment, The Board of Public Utilities, 540 Minnesota Avenue, Kansas City, Kansas.

4. Defendant William Johnson, is, and for all times relevant to this action was, a resident of the State of Kansas. He was Snyder's supervisor and a decision maker in Snyder's termination. Johnson had control over Snyder's employment opportunities and is an employer as that term is defined under USERRA. Personal service may be made upon Johnson at his place of employment, The Board of Public Utilities, 540 Minnesota Avenue, Kansas City, Kansas.

IV. JURISDICTION AND VENUE

5. This Court has jurisdiction under 38 U.S.C. (sec) 4301 et seq. ("USERRA"), 28 U.S.C. 1331 and 1343(a)(4), and 28 U.S.C. 2201 and 2202. Venue is proper pursuant to 28 U.S.C. 1391, because Defendants conduct business/live in the State of Kansas and their unlawful actions, as alleged in this complaint, were committed within this jurisdiction.

V. STATEMENT OF FACTS

BPU offers, and Snyder accepts, employment.

6. On September 21, 2009, Snyder submitted an application to BPU for a position as a traffic signal technician after being advised that the commercial airline, with whom he was employed as an avionics mechanic, was likely closing down its operation in Kansas City.

7. In October 2009, the same month in which Snyder submitted to a job interview with BPU, he received orders from the Guard for a two month overseas deployment as part of Operation Enduring Freedom.

8. In early November 2009, shortly after his job interview, human resources director, Samuel DeLeon, contacted Snyder to tell him that he was hired. Snyder immediately advised the HR director of his upcoming deployment. DeLeon assured Snyder that his new position with BPU was secure and that the deployment would not affect his job status.

9. At the same time, the hiring manager, the department director (William Johnson), and the division manager signed an approval for Snyder's hiring.

Snyder is deployed for two months and returns to BPU.

10. Snyder was deployed from November 10, 2009 until January 19, 2010, when he was released from active military duty under honorable circumstances.

11. Snyder gave notice that he was released and was told to report to work at BPU on January 21, 2010.

12. He reported for work as ordered and commenced learning the duties of his new position of Traffic Signal Technician at BPU.

13. As a member of the Guard, Snyder continued to have responsibilities after his return.

14. In addition to periodic active deployment, the Guard requires Snyder to attend regular training and readiness exercises. These require Snyder to miss a few days each month, and two contiguous weeks every year.

15. They are scheduled in advance, and Snyder always gave BPU sufficient advance notice of the dates of these exercises.

16. Snyder's first such training exercise after his deployment was On February 6 - 7, 2010. This was an Air National Guard Training Assembly, for which he gave BPU proper notice.

17. Again, on March 6 - 7, 2010, Snyder was required to attend another training assembly, for which he gave proper notice.

Snyder is presented with suspect performance evaluations after returning from active duty.

18. On April 1, 2010, Eric Clark became Snyder's new supervisor, replacing retired supervisor, Russell Walters (the supervisor who originally hired Snyder).

19. About a week after Clark took over as his new supervisor, Snyder was again required to attend Air National Guard training, for which he gave proper notice to BPU.

20. About two weeks after returning from that training, on April 27, 2010, Snyder was called into a meeting with Clark and Greg DeGraeve, a working foreman.

21. At this meeting Snyder received two performance evaluations.

22. Clark and DeGraeve told Snyder that the first evaluation, which was dated the month prior [3-26-2010], was for the month of March (attached as Exhibit A).

23. But Snyder's March evaluation was due on March 27th not April 27th.

24. Snyder had never seen this "March evaluation" until Clark and DeGraeve presented it to him on April 27th.

25. Furthermore, Clark claimed to have performed the March evaluation, an evaluation he could not have possibly done. Clark did not work with or supervise Snyder until April.

26. Clark did not sign this evaluation until May. But both he and DeGraeve ordered Snyder to backdate his *own* signature on the document by one month, to March 26th.

27. In any event, the "March evaluation" rated Snyder as "Unsatisfactory" in Productivity, Dependability, and Cooperation. This is not credible. Snyder had no record of

complaints or discipline, and had received positive feedback in regard to his job performance for the March rating period.

28. The second evaluation that Snyder was given at that meeting was his April evaluation (attached as Exhibit B). This one showed him to be satisfactory in all areas.

29. During the meeting, Snyder was uneasy about the odd manner in which his supervisors handled his evaluation process. He was even more puzzled by the “unsatisfactory” ratings because he had never received any negative feedback on his job performance.

30. Snyder was especially uncomfortable with being told by Clark and DeGraeve to backdate his signature on the March evaluation.

Snyder goes away for two weeks active duty and is fired because of bad “trend.”

31. Regardless, Snyder signed the evaluations and returned to work.

32. Snyder received no performance evaluation for May, but things proceeded without incident until active duty responsibilities required him to miss work again.

33. About a month and a half after the evaluation issues discussed above, Snyder was required to miss two weeks of work [starting on June 14th] because of active Guard duty. He returned to BPU on June 28, 2010.

34. About ten days after he returned from this assignment, Snyder was fired.

35. On July 8, 2010, upon arriving to work, Snyder was called into a meeting with his supervisor, Clark, HR Director, DeLeon, and, department director, Johnson.

36. During a brief meeting, Johnson told Snyder he was fired.

37. The only explanation offered to Snyder for being fired was Johnson’s statement that, “I see a trend, and I don’t like what I see.”

38. The only trend that Johnson could have seen was the pattern of absences caused by Snyder’s military obligations.

Defendants come up with new reasons for firing Snyder during VETS investigation.

39. On September 2, 2010, Snyder filed a complaint with Veterans' Employment and Training Service ("VETS").

40. It was not until well into the VETS investigation, that BPU produced for the first time, an evaluation of Snyder which Clark allegedly performed in June, rating Snyder "unsatisfactory" in all areas.

41. Snyder was never given this alleged evaluation during the meeting at which he was fired.

42. Although some "after the fact" documents were produced by BPU to support firing Snyder, none of these were given to him before he was fired.

43. In fact, the "I see a trend [of absences], and I don't like what I see," excuse was the only reason BPU provided to Snyder for firing him.

44. BPU also came up with several new reasons for firing Snyder which it offered for the first time during the VETS investigation.

45. These included allegations that he used his cell phone too much, he was incompetent, uncooperative, and that he wasn't progressing in the job.

46. All of these allegations lack credibility and were manufactured by the defendants.

47. But even if these claims were true and BPU had raised them at the time it fired Snyder, they would still be insufficient reasons because they are pretextual.

48. Snyder will prove that other similarly situated individuals indulged in the same or worse behaviors, yet were not terminated.

49. The Defendants' illegal actions were committed knowingly and willfully.

VI. CHARGES

50. The above paragraphs are re-alleged and incorporated throughout as if fully set forth below.

A. First Cause of action: Violation of the protections afforded by the USERRA.

51. Defendants' actions are in violation of 38U.S.C. §§ 4301-4333.

52. The Defendants, acting through their agents, servants, and employees, fired Snyder without cause within 180 days of his of his two months of active military service.

53. The Defendants, acting through their agents, servants, and employees, terminated Snyder for illegal, discriminatory reasons.

54. The Defendants fired Snyder on the basis of, and because of his membership in, and commitment to, a Uniformed Service and more particularly the Kansas Air National Guard.

55. Snyder's military commitment, status, and membership were substantial and motivating factors in Defendants' decision to fire Snyder.

56. As a direct and proximate cause of the Defendants' conduct and violation of USERRA, Snyder has suffered and continues to suffer injury and damages.

57. Defendants' failure to comply with the provisions of USERRA was willful. Acting through its agents, servants and employees, defendants knew that their conduct was prohibited by USERRA or otherwise showed reckless disregard as to whether their conduct was prohibited by USERRA.

58. As a direct and proximate cause of Defendants' willful violation of USERRA, Snyder has suffered and will continue to suffer loss of employment, lost wages, loss of increased pay, loss of benefits, loss of future income, loss of or reduction in retirement benefits, and other general damages.

59. As a direct and proximate cause of Defendants' willful violation of USERRA, Snyder is entitled to compensatory damages, liquidated and punitive damages, attorneys' fees, costs, pre-judgment and post-judgment interest

B. Second Cause of Action: Retaliation in violation of the USERRA

60. Defendants terminated Snyder in retaliation for asserting his rights under USERRA.

61. As a direct and proximate result of Defendants' retaliation, Snyder has suffered, and will continue to suffer loss of employment, lost wages, loss of increased pay, loss of benefits, loss of future income, loss of or reduction in retirement benefits, and other general damages.

62. As a direct and proximate cause of Defendants' retaliation, Snyder is entitled to compensatory damages, liquidated and punitive damages, attorneys' fees, costs, pre-judgment and post-judgment interest.

VII. RELIEF REQUESTED

Snyder respectfully requests this Court to award Snyder the following:

1. Judgment against the Defendants;
2. Damages in an amount to be proven at trial;
3. Liquidated and punitive damages min an amount to be proven at trial; and
4. Pre-judgment and post-judgment interest on any sums awarded.

In addition Snyder requests:

5. Trial by jury;
6. Attorneys' fees and costs; and
7. Any other relief to which he may appear to be entitled.

VIII. TRIAL LOCATION DESIGNATION

Plaintiff designates Kansas City, Kansas as the location of the trial.

Respectfully submitted,
LEEDS LAW, LLC

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