

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

RANDALL A. SLOCUM

Plaintiff,

v.

CITY OF IOLA, KANSAS,

Defendant.

Civil No. 08-1409-WEB-DWB

Jury Trial Demanded

COMPLAINT

Plaintiff, Randall A. Slocum ("Slocum"), by the undersigned attorneys, makes the following averments:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 ("USERRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(1) because defendant, the City of Iola, Kansas ("Iola"), exercises authority in Allen County, Kansas, within this judicial district. Additionally, the Court has jurisdiction under 28 U.S.C. § 1391(b) because the events giving rise to this lawsuit occurred in this judicial district.

PARTIES

4. Slocum resides at 996 1400th Street, Iola, Kansas, within the jurisdiction of this Court.

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5. Iola, an incorporated city, is located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIM FOR RELIEF: DISCRIMINATION

6. On or about March 30, 2000, Slocum began work as a firefighter at the Iola Fire Department ("Fire Department") in Iola, Kansas.

7. Slocum enlisted in the Kansas Air National Guard ("Guard") in 1992, attaining the rank of Technical Sergeant. Slocum was a member of Guard when he began working for Iola and has remained a member of the Guard throughout his employment with Iola. He normally performs his Guard duty at Forbes Field ("Forbes Field"), a Guard facility near Topeka, Kansas.

8. On or about November 1, 2004, Slocum provided oral notice to Iola Fire Chief Donald Leapheart ("Leapheart") that he had recently been informed that he would be going on high priority Guard duty beginning November 5, 2004.

9. On or about November 2, 2004, Fire Chief Leapheart and Deputy Fire Chief Kirk Kress ("Kress") drove to Topeka, Kansas to speak with Senior Master Chief John Evans ("Evans"), Slocum's Guard commander. During this meeting, Leapheart and Kress requested that Evans cancel Slocum's upcoming scheduled Guard duty. Evans denied this request.

10. On November 5, 2004, Slocum began his Guard duty.

11. Also, on or about November 5, 2004, Slocum received his written Guard orders and submitted them to Leapheart. The written orders indicated that Slocum was scheduled to be on duty from November 5, 2004 to January 15, 2005.

12. On or about November 7, 2004, Slocum also wrote a memorandum to Leapheart providing additional notice of the date that Slocum estimated that he would finish his Guard

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duty, January 15, 2005.

13. Slocum provided the Fire Department with prior notice of his November 2004 to January 2005 military duty.

14. Slocum returned from Guard duty on or about January 15, 2005, and resumed his normal firefighter duties.

15. On or about March 15, 2005, Leapheart completed a performance evaluation of Slocum. Slocum received the second highest rating of "good" in all categories save dependability. Leapheart gave Slocum an "unsatisfactory" in dependability, citing as the reason Slocum's failure to "provide proper documentation when taking military leave."

16. On or about March 16, 2005, Leapheart issued a "Personnel Violation and Reprimand Report" to Slocum. This document stated that Slocum was being reprimanded, in part, for failing to give his supervisor proper documentation of his Guard duty. A note attached to this reprimand form and signed by Leapheart told Slocum to make sure that he always submitted his "orders or some kind of schedule" regarding his duty and noted that his Guard duty "puts us in a hardship with scheduling and manpower."

17. This letter of reprimand was placed in Slocum's official personnel file and constituted official disciplinary action.

18. Iola uses a progressive disciplinary system, allowing a written reprimand to serve as the basis for more severe disciplinary action in the future.

19. On or about April 7, 2007, Slocum provided oral notice to Leapheart that he would be going on active Guard duty beginning at or about 6:55 a.m. on April 21, 2007.

20. On or about April 18, 2007, Leapheart and Ron Conaway, a Deputy Fire Chief,

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again drove to Topeka, Kansas, to speak with Senior Master Chief Evans to confirm that Slocum was required to perform the upcoming scheduled duty. Evans confirmed the starting date and nature of Slocum's duty.

21. Slocum was scheduled to work at the Fire Department on April 20, 2007 until midnight. Slocum attempted to reschedule this shift to allow him time to arrive adequately rested at his duty station at 6:55 a.m. as required. The Fire Department did not allow Slocum to take the shift off.

22. Slocum provided the Fire Department with prior notice of his April 2007 to June 2007 military duty.

23. Slocum was on active duty with the Guard from April 21, 2007 to June 9, 2007.

24. The Guard did not issue Slocum any written orders regarding this Guard duty until April 30, 2007, after he left to begin the active duty assignment. Slocum submitted these written orders to the Fire Department while he was serving on active duty.

25. Slocum returned to the Fire Department on June 12, 2007 and resumed his normal duties.

26. On or about June 12, 2007, Leapheart informed Slocum that he would be disciplined because he had not submitted copies of his orders before leaving for Guard duty.

27. On or about June 22, 2007, the Fire Department issued a "Personnel Violation and Reprimand Report" to Slocum. The Report stated that Slocum would be suspended for three days and placed on probation for one year.

28. In June 2007, the Fire Department placed Slocum on probation for failing to provide Leapheart with copies of his orders before leaving for Guard duty. In July 2007, the Fire

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Department suspended Slocum without pay for three twenty-four-hour shifts.

29. On or about August 8, 2007, Slocum filed a complaint against Iola under USERRA with the Veterans' Employment and Training Services ("VETS") of the United States Department of Labor.

30. In March 2008, Iola denied Slocum a merit raise because he was on probation.

31. Iola violated Section 4311 of USERRA, among other ways, by discriminating against Slocum by taking disciplinary action against him in March 2005 by issuing him an official letter of reprimand based on his military service and in June 2007 by placing him on probation and suspending him without pay based on his military service.

32. Iola's violations of USERRA were willful. Leapheart was aware of the notice requirements of USERRA. Slocum informed Leapheart in March 2005 that he was not always able to obtain orders before his Guard duty began and informed Leapheart in June 2007 that he could not be required to give his orders before he left for duty.

33. As a result of Iola's unlawful discrimination, Slocum has suffered the loss of earnings and other benefits of employment in an amount to be presented at trial.

PRAYER FOR RELIEF

WHEREFORE, Slocum prays that the Court enter judgment against Iola, its officers, agents, employees, successors and all persons in active concert or participation with it, as follows:

34. Declare that Iola's discrimination against Slocum was unlawful and in violation of USERRA;

35. Order that Iola fully comply with the provisions of USERRA by removing the

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March 16, 2005 and June 22, 2007 disciplinary actions against Slocum from his employment records; by granting Slocum the March 2008 raise and any other pay and benefits that he would have enjoyed had he not been disciplined by Iola; and by paying Slocum for his loss of earnings and other benefits suffered by reason of Iola's failure or refusal to comply with the provisions of USERRA;

36. Declare that Iola's violations of USERRA were willful;

37. Order that Iola pay Slocum as liquidated damages an amount equal to the amount of his lost wages suffered by reason of Iola's willful violations of USERRA, including wages lost because Iola denied Slocum the March 2008 raise;

38. Enjoin Iola from taking any action against Slocum that fails to comply with the provisions of USERRA;


39. Award Slocum prejudgment interest on the amount of lost compensation found due; and

40. Grant such other and further relief as may be just and proper.

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**REQUEST FOR PLACE OF TRIAL**

It is requested that the above-entitled cause be placed on the docket for trial at the City of  
Wichita, Kansas.

**s/Emily B. Metzger**  
EMILY B. METZGER  
Assistant U.S. Attorney