

05-CV-01800-CMP

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

RICHARD H. WHITE,

Plaintiff,

v.

S.O.G. SPECIALTY KNIVES & TOOLS, INC.,

Defendant.

Civil Action No. **CV5 1800P**

JURY DEMAND

COMPLAINT

Plaintiff, Richard H. White ("White"), by the undersigned attorneys, makes the following averments:

1. This is a civil action 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)(2) and 28 U.S.C. § 1391(b) because Defendant, S.O.G. Specialty Knives, Inc. ("SSK"), maintains a place of business in this judicial district, and also because a substantial part of the events giving rise to the claim occurred in this district.

See Warrant (U.S. Gov't) w/ USERRA

PARTIES

4. White resides in Bothell, Washington, within the jurisdiction of this Court.

5. SSK maintains a place of business at 6521 212th Street, Lynnwood, WA, 98036, within the jurisdiction of this Court.

CLAIM FOR RELIEF

6. White joined the United States Coast Guard in 1980. He was honorably released from active duty, and since 1984 has been a member of the Coast Guard Reserves.

7. White served on active duty in the Coast Guard Reserves for approximately one year after the events of September 11, 2001, and was unemployed after he returned from that deployment.

8. Defendant SSK is a manufacturer of tools and military-style knife and blade products. In late November or December 2002, White answered an advertisement Defendant SSK placed in the Seattle Times for a position titled "MarCom [Marketing Communications] manager." The advertisement stated the position would require, among other things, "public relations, media planning and buying, extensive in-house graphic design of promotional materials & website, creative writing, some sales and tradeshow support."

9. White sent his resume to Spencer Frazer, SSK's president. White was hired for the position on or around January 8, 2003, and began work that same day.

10. On or around January 13, 2003, White received orders indicating that he was to be called for duty to serve in Operation Iraqi Freedom/Southern Watch/Enduring Freedom, starting in early February. White immediately notified his immediate supervisor, Scott Sherwood, that he had received orders that he would be deployed overseas in February. Upon information and belief,

Sherwood informed Frazer of White's orders; that same day Frazer called White to his office and informed White that he was discharged from his position.

11. During the conversation informing White of his discharge, Frazer stated that he had not intended to hire White as a "temporary" employee. He suggested that White should call him when he returned from active duty. Frazer soon replaced White with another graphic designer.

12. On January 20, 2003, before his deployment, White emailed an SSK employee to notify SSK of USERRA and its requirements. He asked the employee to forward the information to Sherwood and Frazer, and the employee did so.

13. White was called to active duty on February 8, 2003, deployed to Kuwait on February 17, 2003, and served there and in Iraq until August 28, 2003. White's active service ended in October 2003.

14. Upon information and belief, White contacted Sherwood approximately a week after his return from Iraq, requesting reemployment.

15. Although White did return to work for SSK on or about October 14, 2003, SSK did not return White to his former graphics design-based marketing manager position. Instead, SSK placed White in a newly created "government sales" job. White had no prior interest, experience or qualifications in the field of sales. SSK did not provide any new or additional training to White, nor did the government sales job have any written job description. Sherwood told White to "get on the phone and start calling" military people or the government to try and sell knives.

16. On January 17, 2004, Sherwood told White that his employment at SSK was being discontinued. White asked for the reason, because no one at SSK had ever indicated that White was not adequately performing his duties. During that conversation, White reminded Sherwood of USERRA's reemployment period protections, to which Sherwood responded, "I don't know

anything about USERRA, nor do I care about it," or words to that effect. When White again pressed Sherwood for a reason for the termination, Sherwood replied that under Washington State law, he did not need to provide a reason.

17. As a result of SSK's unlawful failure to properly reemploy White, White has suffered loss of earnings and other benefits of employment.

18. As a result of SSK's unlawful termination of White, White has suffered loss of earnings and other benefits of employment.

PRAYER FOR RELIEF

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

19. Declare that SSK's discharge of White in January 2003 was unlawful and in violation of USERRA, 38 U.S.C. § 4311;

20. Declare that SSK's failure to return White to his prior position as Marketing/Communications Manager was unlawful and in violation of USERRA, 38 U.S.C. §§ 4312 and 4313 (a);

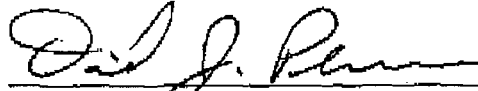
21. Declare that SSK's discharge of White in January 2004 was unlawful and in violation of USERRA, 38 U.S.C. § 4316(c).

22. Require that SSK fully comply with the provisions of USERRA by reinstating White to the Marketing/Communications Manager position at the level of seniority, status and compensation that he would have enjoyed had he remained employed continuously with SSK, and by paying White for his loss of wages and other benefits suffered by reason of SSK's failure or refusal to comply with the provisions of this law;

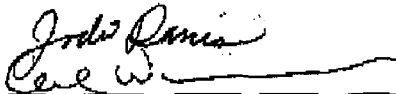
23. Enjoin SSK from taking any action against White that fails to comply with the provisions of USERRA;
24. Award White prejudgment interest on the amount of lost wages found due;
25. Award White liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(c) for SSK's willful violation of USERRA; and
26. Grant such other and further relief as may be just and proper.

BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
Civil Rights Division

BY:



DAVID J. PALMER (DC Bar No. 417834)
Chief



JODI B. DANIS (DC Bar No. 453493)
Deputy Chief

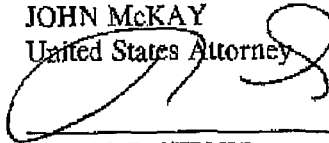
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DATED this 27th day of October, 2005.

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 28, 2005, I served the foregoing Complaint on the following counsel via U.S. first-class mail, postage prepaid, to the following address:

Kenneth S. Kagan, Esq.
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Seattle, WA 98104-5017



CHRISTINE LEININGER
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