

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

CYNTHIA Y. DAVIS,

Plaintiff,

v.

CITY OF MARION,

Defendant.

Civil Case No. 08-0436- -M

Jury Trial Demanded

COMPLAINT

Plaintiff, Cynthia Y. Davis ("Davis"), 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)(2), because Defendant, the City of Marion ("Marion"), is located and carries out its municipal functions in Perry County, Alabama, which is 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.

4. All conditions precedent to this lawsuit have been fulfilled.

PARTIES

5. Davis resides at 205 Faulk Avenue, Selma, Alabama, within the jurisdiction of this court.
6. Marion is an incorporated city within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIM FOR RELIEF- FAILURE TO REEMPLOY

7. In March 2006, Davis was hired as a dispatcher at the City of Marion Police Department ("Marion Police Department"), and began work in that position on or about March 30, 2006.
8. When Davis was hired as a dispatcher, she requested and was assigned to work the second shift from 2:00 p.m. until 10:00 p.m., Monday through Friday. Davis also occasionally worked Saturdays and Sundays.
9. Davis worked between 40 and 48 hours per week as a dispatcher. Davis accrued vacation and sick pay, and earned overtime pay, during her employment at the Marion Police Department.
10. On or about February 22, 2007, during her employment with the Marion Police Department, Davis enlisted in the Alabama National Guard, and on that same day was ordered to report for active duty (basic training) on March 7, 2007.
11. On or about February 22, 2007, Davis provided oral notice to the Chief of the Marion Police Department, Tony Bufford, and the dispatcher supervisor, Officer Eugene Richards, that she had enlisted in the Alabama National Guard and that she was ordered to report

for basic training on March 7, 2007.

12. At that same time, Chief Bufford informed Davis that, if she wanted, she was entitled to return to her dispatcher position with the Marion Police Department upon returning from basic training.

13. Also, on or about February 22, 2007, Davis asked her supervisor, Officer Richards not to assign her to work any shifts after that week so that she could spend time with her daughter prior to leaving for basic training.

14. On or about February 28, 2007, Davis worked her last day at the Marion Police Department prior to leaving for basic training.

15. Davis reported for active duty and attended basic training from March 7 to August 8, 2007. Davis successfully completed basic training.

16. On or about August 9, 2007, Davis visited the Marion Police Department, met with Chief Bufford and requested reemployment. Davis informed Chief Bufford that she was ready to begin work immediately. Chief Bufford informed Davis that she was entitled to reemployment under federal law, but that she would have to wait until September 2007 to begin work because the August dispatcher schedule had already been prepared. Chief Bufford told Davis to contact Major Alvjetta Coates in late August to obtain a work schedule for September 2007.

17. On or about August 20, 2007, Davis met with Major Coates and requested reemployment as a dispatcher with the same schedule that she had worked prior to leaving her position for basic training. Major Coates told Davis that she (Davis) was no longer a Marion Police Department employee and refused to reemploy her.

18. On that same day, Davis met again with Chief Bufford and informed him that Major Coates had refused to reemploy her. Chief Bufford again said that he knew it was in violation of federal law to deny Davis reemployment with the Marion Police Department and said that he would speak to Major Coates regarding Davis' reemployment.

19. On or about August 24, 2007, Davis met again with Major Coates and requested reemployment as a dispatcher with the same schedule she worked prior to leaving for basic training. Major Coates again refused to reemploy Davis.

20. Davis then filed a USERRA complaint with the Veterans' Employment and Training Services ("VETS") of the United States Department of Labor against Marion.

21. On or about October 5, 2007, the Marion City Clerk submitted a Notice of Claim and Request for Separation Information form to the Alabama Department of Unemployment Benefits and certified that the reason for Davis' separation from her employment with Marion on February 28, 2007, was that "claimant joined the Military Reserve - quit to attend basic training."

22. Marion violated Sections 4312 and 4313 of USERRA, among other ways, by denying Davis reemployment and other employment benefits.

23. Marion's violations of USERRA were willful.

24. As a result of Marion's unlawful failure or refusal to reemploy Davis, she has suffered loss of earnings and other benefits of employment in an amount to be proven at trial.

PRAYER FOR RELIEF

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

25. Declare that Marion's failure or refusal to reemploy Davis was unlawful and in violation of USERRA;

26. Order that Marion fully comply with the provisions of USERRA by reinstating Davis at the level of seniority, status and compensation that she would have enjoyed had she remained employed continuously with Marion, and by paying Davis for her loss of earnings and other benefits suffered by reason of Marion's failure or refusal to comply with the provisions of this law;

27. Enjoin Marion from taking any action against Davis that fails to comply with the provisions of USERRA;

28. Declare that Marion's violation of USERRA was willful;

29. Order that Marion pay Davis as liquidated damages an amount equal to the amount of loss compensation and other benefits suffered by reason of Marion's willful violation of USERRA;

30. Award Davis prejudgment interest on the amount of lost compensation found due; and

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

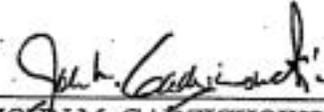
Dated: July 25, 2008

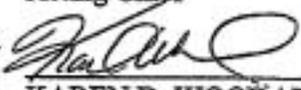
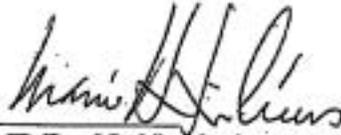
Respectfully submitted,

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BY:

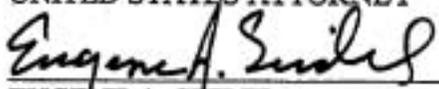

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