

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

RANDALL A. SLOCUM,

Plaintiff,

v.

CITY OF IOLA, KANSAS,

Defendant.

Civil Action No. 08-1409-WEB-DWB

CONSENT DECREE

This matter is before the Court for entry of judgment by consent of the parties to effectuate a compromise and settlement of all claims in the above-captioned case.

1. Plaintiff Randall A. Slocum (“Slocum”) commenced this action in the United States District Court for the District of Kansas, Kansas City Division, alleging that defendant City of Iola, Kansas (“Iola”) violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”) by disciplining Slocum and suspending Slocum without pay because of Slocum’s military service.

2. As a result of settlement discussions, Slocum and Iola (collectively, the “parties”) have resolved their dispute and have agreed that this action should be settled by entry of this Consent Decree (“Decree”). It is the intent of the parties that this Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this action. By Slocum’s signature to both this Decree and the “Release of all Claims” attached hereto as Appendix A, Slocum has indicated his acceptance of the terms of this Decree.

STIPULATIONS

3. The parties acknowledge the jurisdiction of the United States District Court for the District of Kansas, Kansas City Division, over the subject matter of this action and of the parties to this action for the purpose of entering and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of entering this Decree and any proceedings related to this Decree. Iola agrees that all conditions precedent to the institution of this action have been fulfilled.

FINDINGS

5. Having examined the provisions of this Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the parties to this action.
- b. The terms and provisions of this Decree are lawful, fair, reasonable and just. The rights of the parties are adequately protected by this Decree.
- c. This Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of the Decree will further the objectives of USERRA and will be in the best interest of the parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

NON-ADMISSION

6. This Decree is being entered with the consent of the parties, and shall not

constitute an adjudication or finding on the merits of the action or be construed as an admission by Iola of any violations of USERRA.

NON-RETALIATION

7. Iola shall not take any action against any person, including but not limited to Slocum, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this action.

REMEDIAL RELIEF

8. Iola shall, within ten (10) days from the date of entry of this Decree, pay Slocum by certified check a total of \$2,931.10 (comprised as follows: \$1,408.23 in back pay, \$57.32 in interest on the back pay award and \$1,465.55 in liquidated damages), less the required employee withholdings and contributions on the back pay award as required by law. Iola shall pay all monies withheld from this back pay award to the appropriate governmental agencies. Iola shall also separately pay the appropriate employer's contribution to the Social Security fund due on the back pay award, *i.e.*, the employer's contribution shall not be deducted from the back pay award to Slocum. Iola shall mail the certified check to Slocum by overnight delivery service to the following address:

Randall A. Slocum
996 1400th St.
Iola, KS 66749

9. Within ten (10) days from the date of entry of the Decree, Iola shall remove the following from all of Slocum's personnel records maintained by Iola and its agencies:

a. The statement in Iola's March 15, 2005 Performance Evaluation that Slocum "[d]oes not provide proper documentation when taking military leave" and any other references to Slocum's March 2005 unsatisfactory performance rating based on failure to provide documentation for military leave in Iola's records;

b. Slocum's March 16, 2005 written discipline, and any references to that discipline;

c. Slocum's June 2007 written discipline, and any references to that discipline; and

d. Any references to Iola's March 2008 denial of Slocum's merit raise.

Iola shall not consider these prior actions as it relates to any future discipline decisions involving Slocum.

10. Within fourteen (14) days of compliance of paragraphs eight (8) and nine (9) of this Decree, Iola shall provide written confirmation of that fact to the following counsel for Slocum by facsimile and overnight delivery service to:

Karen D. Woodard
Deputy Chief
Joseph J. Sperber IV
Trial Attorney
Employment Litigation Section
Civil Rights Division, PHB
601 'D' Street, N.W., Fourth Floor
Washington, D.C. 20530
Facsimile: (202) 514-1005

**RETENTION OF JURISDICTION,
DISPUTE RESOLUTION AND COMPLIANCE**

11. The entry of this Decree constitutes the entry of final judgment within the

meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by Slocum in this action. The Court, however, shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce this Decree.

12. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to either or both seeking review by the Court. In the event of a dispute, the parties shall give notice to each other fifteen (15) days before moving for review by the Court. The parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree.

EXPIRATION OF THIS DECREE

13. This Decree shall expire and this action shall be dismissed, without further order of this Court, one year from the date of entry hereof, provided that Iola has provided Slocum with the remedial relief to which he is entitled pursuant to this Decree and Iola has otherwise complied with this Decree.

MISCELLANEOUS

14. The parties shall bear their own costs and expenses in this action, including attorneys' fees.

15. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

16. The terms of this Decree are and shall be binding upon the heirs, successors, and

assigns of Slocum and upon the present and future elected and appointed officials, officers, directors, employees, agents, representatives, successors, and assigns of Iola.

17. This Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in writing signed by Slocum and Iola.

18. The effective date of this Decree shall be the date upon which it is entered by the Court.

APPROVED and ORDERED this 3rd day of February, 2009.

s/ Wesley E. Brown
WESLEY E. BROWN
UNITED STATES DISTRICT JUDGE

Agreed and Consented to by and on behalf of Plaintiff:

/s/Randall A. Slocum
Randall A. Slocum
Plaintiff

/s/John M. Gadzichowski
JOHN M. GADZICHOWSKI
Chief
Employment Litigation Section

/s/Karen D. Woodard
KAREN D. WOODARD
Deputy Chief
JOSEPH J. SPERBER IV
Trial Attorney
U.S. Department of Justice
Civil Rights Division, PHB
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950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Telephone: (202) 514-8138
Facsimile: (202) 514-1005
Email: joseph.sperber@usdoj.gov
karen.woodard@usdoj.gov

/s/Emily B. Metzger for
MARIETTA PARKER
Acting United States Attorney
District of Kansas

by: EMILY METZGER
Assistant United States Attorney
Chief, Civil Division
United States Attorney's Office
District of Kansas
1200 Epic Center
301 North Main
Wichita, KS 67202
Telephone: (316) 269-6481
Facsimile: (316) 269-6484

Attorneys for Plaintiff Randall A. Slocum
Agreed and Consented to on behalf of Defendant:

_____/s/Charles H. Apt, III
CHARLES H. APT, III, Esq.
Apt & Johnson Law Offices, P.A.
219 South Street
P.O. Box 328
Iola, KS 66749
Telephone: (620) 365-3161
Facsimile: (620) 365-3162

Attorneys for Defendant City of Iola