

U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

'09 JUL -9 A10 32

MICHAEL V. CRIVELLO,

Plaintiff,

v.

CITY OF MILWAUKEE, WISCONSIN,

Defendant.

Civil Action No. _____

JOHN S. SAUNDERS
CLERK
019-0-0673

COMPLAINT

Plaintiff, Michael V. Crivello, alleges:

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").
2. This Court has jurisdiction of the action under 38 U.S.C. § 4323(b)(3).
3. Defendant City of Milwaukee, Wisconsin ("the City" or "Defendant"), is a corporate, governmental body and a political subdivision of the State of Wisconsin, established pursuant to the laws of Wisconsin. The City is located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).
4. Plaintiff Michael V. Crivello resides in Milwaukee, Wisconsin, within the jurisdiction of this Court.
5. Crivello became a member of the Air National Guard in 1986.
6. Crivello began his employment with the City as a police officer recruit in July 1991 and, upon graduation from the police academy, was hired as a police officer in the City's Police Department.

7. Crivello was interested in obtaining a promotion for the position of Detective and, accordingly, took the City's promotional examination for that position in 2001. Crivello passed that examination but the eligibility list that resulted from that examination expired before he was reached for promotion.

8. On or about September 27, 2001, Crivello was called to active duty military service and was deployed overseas.

9. On or about May 31, 2003, while Crivello was serving on active duty with the Air National Guard, the City administered another promotional examination for the position of Detective. The City did not inform Crivello of this examination. The eligibility list for promotion to Detective that resulted from this examination was adopted and posted prior to Crivello's return from active duty military service.

10. On or about September 26, 2003, Crivello was honorably discharged from the military and returned to work with the City as a police officer, the position he held before his call to active duty military service.

11. In approximately December 2004, Crivello learned that another City employee, a Milwaukee Police Department Detective, had been administered a make-up examination after returning from military service and had been retroactively promoted to the position of Lieutenant of Detectives based on the results of that make-up examination.

12. On or about the same day he learned about the other officer's make-up promotional examination and retroactive promotion, Crivello requested a make-up examination for the position of Detective from the supervisor in charge of roll call that day.

13. On or about the same day he learned about the other officer's make-up promotional examination and retroactive promotion, Crivello submitted a written request for a make-up examination to the Milwaukee Police and Fire Commission, the City's personnel office, and his union.

14. All of Crivello's requests for a make-up promotional examination were denied.

15. On or about May 5, 2006, Crivello filed a complaint under USERRA with the United States Department of Labor.

16. The United States Department of Labor's Veterans' Employment and Training Service conducted an investigation and the Department of Labor's Solicitor's Office concluded that Crivello's claim had merit.

17. Crivello took the regularly scheduled promotional examination for the position of Detective in December 2005.

18. Crivello passed the December 2005 examination with a score of 89, was ranked 17th on the promotion eligibility list, and was promoted to Detective on November 5, 2006.

19. The City did not permit Crivello to use the December 2005 examination as a make-up examination for the 2003 examination he missed and, therefore, did not retroactively apply his promotion to the date he likely would have been promoted but for his active duty military service from September 2001 to September 2003.

20. By its conduct, the City has discriminated against Crivello in violation of 38 U.S.C. §§ 4312-13, among other ways, by:

(a) failing to provide Crivello with a make-up examination for the position of Detective, and thereby failing to properly determine Crivello's proper reemployment position as an officer on the 2003 eligibility list for promotion to Detective;

(b) failing to reemploy Crivello with the status on the 2003 eligibility list for promotion to Detective he would have had if he had not been called to active duty military service; and

(c) failing to retroactively adjust Crivello's promotion date to reflect the date he would have been promoted but for his military service, and to provide all the benefits, including seniority, status and compensation that flow from such an adjustment.

21. All conditions precedent to the filing of suit have been performed or have occurred.

PRAYER FOR RELIEF

Crivello prays that the Court grant the following relief:

(a) declare that the City's failure to properly determine Crivello's reemployment status was unlawful and in violation of USERRA;

(b) declare that the City's failure to reemploy Crivello with the proper status was unlawful and in violation of USERRA;

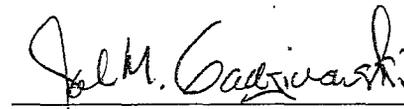
(c) order the City to retroactively adjust Crivello's promotion date to reflect the date he would have been promoted to the position of Detective but for his military service, and to provide all the benefits, including seniority, status and compensation that flow from such an adjustment;

(d) award such additional relief as justice may require, together with the costs and disbursements in this action.

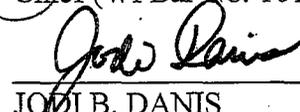
Dated: July 9, 2009

LORETTA KING
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By:



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