

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
COVINGTON DIVISION

SEAN P. DONELAN,

Plaintiff,

v.

CITY OF HIGHLAND HEIGHTS,

Defendant.

Civil Action No. \_\_\_\_\_

Electronically Filed

Jury Trial Demanded

COMPLAINT

Plaintiff, Sean P. Donelan ("Donelan"), 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) and 28 U.S.C. § 1391(b) because Defendant, City of Highland Heights ("City"), exercises authority and carries out its municipal functions in this judicial district.

PARTIES

4. Plaintiff Donelan resides in Kenton County, Kentucky, within the jurisdiction of this Court.

5. The City of Highland Heights, Kentucky, is a municipality within the jurisdiction

of this Court (Campbell County, Kentucky).

CLAIM FOR RELIEF

6. On June 18, 2001, Donelan began full-time employment as a patrol officer for the City of Highland Heights Police Department ("HHPD").

7. In August 2004, Donelan enlisted in the United States Air Force Reserve, and on August 19, 2004, he submitted a memorandum to Chief Carl Mullen of the HHPD requesting a leave of absence to complete military service.

8. Donelan received written orders to report for Initial Active Duty Training ("IADT") for the U.S. Air Force Reserve from September 20, 2004, until January 4, 2005. Donelan provided notice and copies of his written orders to HHPD.

9. From the time Donelan informed Chief Mullen that he was considering joining the U.S. Air Force Reserve to start his IADT service, Chief Mullen made hostile remarks about Donelan's military service.

10. During Donelan's employment with the HHPD, Chief Mullen made hostile remarks about the military service of another HHPD former employee.

11. Between the time Donelan informed Chief Mullen that he joined the U.S. Air Force Reserve and the start of his IADT service, Chief Mullen exhibited hostility toward Donelan's imminent military service.

12. Donelan completed his IADT and returned to work on or about January 1, 2005, after completing one hundred and three (103) days of military service.

13. Even though there is a Highland Heights City Ordinance which provides for differential pay between a police officer's City wage and military salary, Chief Mullen informed Donelan that he would not be receiving the differential pay, and Donelan has never received this

pay.

14. After Donelan returned from IADT, Chief Mullen changed Donelan's work schedule to a less desirable one than he had before his IADT.

15. After Donelan returned from IADT, he was subjected to disparate treatment in terms of a work assignment.

16. Donelan reported for two weekend Reserve drills while he worked for the City – one in January 2005 and one in February 2005. He provided written notice to Chief Mullen of his Reserve drill dates.

17. Two (2) days after Donelan returned from his February Reserve drill and thirty-eight (38) days after he returned from IADT, Chief Mullen gave Donelan a memorandum, signed by the City's Mayor, terminating Donelan's employment, effective February 8, 2005.

18. The City violated Section 4311 of USERRA, among other ways, by discriminating against Donelan and denying him benefits of employment and retention in employment because of his membership in, performance of service in, obligation to perform service in, or application to perform service in the United States of America's uniformed services.

19. The City violated Section 4316 of USERRA by discharging Donelan without cause on February 8, 2005, less than 180 days after his January 1, 2005 reemployment with the City.

20. The City's violations of USERRA were willful.

21. As a result of the City's unlawful discrimination against Donelan and his discharge, Donelan has suffered substantial loss of earnings and other benefits of employment.

PRAYER FOR RELIEF

WHEREFORE, Donelan prays that the Court enter judgment against the City of Highland Heights as follows:

22. Declare that the City's denial of benefits of employment and retention in employment were unlawful and in violation of USERRA;

23. Declare that the City's discharge of Donelan without cause was unlawful and in violation of USERRA;

24. Order that the City fully comply with USERRA by reinstating Donelan at the level of seniority, status and compensation that he enjoyed at the time of his discharge, or provide appropriate front pay;

25. Order that the City pay appropriate backpay, including but not limited to full pension benefits, and the differential military pay that the City did not pay Donelan during active duty;

26. Find that the City's violations of USERRA were willful;

27. Order that the City pay Donelan as liquidated damages an amount equal to the amount of his lost compensation and other benefits suffered by reason of the City's willful violations of USERRA;

28. Enjoin the City from taking any action against Donelan that fails to comply with the provisions of USERRA;

29. Award Donelan prejudgment interest on the amount of lost compensation found due;

and

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

ALBERTO R. GONZALEZ

Attorney General

Wan J. Kim  
Assistant Attorney General  
Civil Rights Division

BY:

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DAVID J. PALMER  
Chief, Employment Litigation Section

s/ Clare Geller  
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Deputy Chief  
CLARE GELLER  
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# Civil Case Assignment

Case number 2:06CV-225

Assigned : Senior Judge William O. Bertelsman  
Judge Code : 4307

Assigned on 12/21/2006

Request New Judge.....

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Sean P. Donelan

(b) County of Residence of First Listed Plaintiff Kenton County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Clare Geller, 601 D Street, NW, Washington DC 20004

**DEFENDANTS**

City of Highland Heights

County of Residence of First Listed Defendant Campbell County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (if Known)  
Steven Franzen, 319 York Street, Newport, KY 41071

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
38 U.S.C. 4301-4333

Brief description of cause:  
Violation of Uniformed Services Employment and Reemployment Rights Act ("USERRA")

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE  
12/21/2006

SIGNATURE OF ATTORNEY OF RECORD

*Clare Geller*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

CERTIFICATE OF SERVICE

On the 21st day of December 2006, I electronically filed this document through the ECF system, which will send a notice of electronic filing to Steven J. Franzen, Esquire and I mailed Plaintiff Sean P. Donelan's Complaint and a Request for Waiver of Service of Summons and the notice of electronic filing to:

Steven J. Franzen, Esquire  
319 York Street  
Newport, KY 41071

BY:

s/ Clare Geller  
CLARE GELLER  
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