

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

BRENDON K. MCKEAGE

Plaintiff,

v.

Civil Action No. 1:07-cv-76-PB

Jury Trial Demanded

TOWN OF STEWARTSTOWN

Defendant.

COMPLAINT

Plaintiff Brendon McKeage (“McKeage”), by undersigned counsel, makes the following statement:

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, the Town of Stewartstown, maintains a place of business in this judicial district.

4. All statutory conditions precedent to the institution of this lawsuit have been fulfilled.

PARTIES

5. McKeage resides in Pittsburg, New Hampshire, which is within the jurisdiction of this Court.

6. The Town of Stewartstown is a corporate governmental body and a political subdivision of the State of New Hampshire located within the jurisdiction of this Court.

CLAIM FOR RELIEF

7. McKeage has been a member of New Hampshire National Guard since 1995.

8. In 1999, McKeage commenced part-time employment with the Town of Stewartstown police department.

9. At the time McKeage was hired by Stewartstown, he held several other jobs, including full-time employment at the Coos County Jail. Stewartstown was aware of McKeage's outside employment obligations when he was hired.

10. In April 2003, Stewartstown promoted McKeage to part-time police chief.

11. On or about December 2003, McKeage received orders that the National Guard Unit to which he was assigned was being deployed to Iraq. McKeage immediately notified Stewartstown, who told McKeage to try and stop his deployment.

12. At Stewartstown's urging, McKeage wrote to United States Senator John E. Sununu seeking to be relieved from his military obligation. In response, Senator Sununu's office sought to initiate an investigation. McKeage decided that he could not go along with the investigation and withdrew his request to be relieved from military service.

13. McKeage was deployed on January 5, 2004, and remained on active duty until March 2005. Prior to his departure, McKeage discussed with Stewartstown hiring a full-time officer so that McKeage could focus exclusively on police chief tasks upon his return from Iraq. The Town agreed that it would raise the hiring of a full-time officer at the next annual town meeting.

14. In March 2004, two months after McKeage's deployment, the annual town meeting took place and the citizens of Stewartstown voted to add a full-time officer to the police force. The citizens did not vote to eliminate McKeage's position as part-time police chief or replace the police chief with the full-time officer. Nonetheless, defendant sent McKeage a letter while he was serving in Iraq notifying him that Stewartstown had hired an Officer in Charge to whom all police department employees now reported, and that McKeage was no longer employed as police chief. McKeage was told that he could apply for a demoted part-time patrolman position if he passed an interview.

15. In March 2005, the citizens of Stewartstown learned about defendant's treatment of McKeage and voted to censure defendant for its "outrageous and illegal conduct.

16. McKeage was honorably discharged from active duty on March 2, 2005 and, in compliance with USERRA, notified defendant by letter dated March 4, 2005, that he was requesting reemployment as part-time police chief.

17. Defendant refused to reemploy McKeage as part-time police chief. Instead, on March 31, 2005, defendant made a disingenuous offer to reemploy McKeage as a full-time police chief — a position that defendant knew McKeage could not accept because he already worked full-time at the Coos County Jail.

18. Although defendant has since made an offer to reemploy McKeage as a part-time police chief, it has placed a number of new and unacceptable conditions on his reemployment. On information and belief, these conditions have not been equally applied or enforced against members of the Stewartstown police department who did not serve in the military.

19. Defendant has violated Sections 4311 and 4312 of USERRA by denying McKeage reemployment and discriminating against McKeage for his obligation to perform military service.

20. As a result of defendant's unlawful conduct, McKeage has suffered, and continues to suffer, loss of earnings and other benefits of employment.

REQUEST FOR RELIEF

THEREFORE, McKeage requests that the Court enter judgment against defendant, its officers, agents, employees, successors, and all persons in active concert or participation with it, as follows:

A. Declare that defendant's refusal to reemploy McKeage as part-time police chief under the same terms and conditions that were in place prior to his deployment was unlawful and in violation of USERRA;

B. Order that defendant fully comply with the provisions of USERRA, and pay McKeage for his loss of earnings suffered by reason of defendant's failure or refusal to comply with the provisions of this law;

C. Declare that defendant's violations were willful;

D. Order that defendant pay McKeage as liquidated damages an amount equal to the amount of his lost compensation and other benefits suffered by reason of their willful violations of USERRA;

E. Award McKeage prejudgment interest on the amount of lost compensation found due;
and

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

WAN J. KIM
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BY:

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