

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

MATTHEW SCHMITT,

PLAINTIFF,

V.

**CITY OF PENSACOLA,
ASHTON HAYWARD,
ERIC OLSON, and
EDWARD SISSON,**

DEFENDANTS.

CIVIL ACTION NO.:

CV-

JURY DEMAND

COMPLAINT

I. INTRODUCTION

This is an action for declaratory judgment, equitable relief and money damages, instituted to secure the protection of and to redress the deprivation of rights secured through Title VII of the Civil Rights Act of 1964, as amended, including the Civil Rights Act of 1991, and 42 U.S.C. §1981a; and through 42 U.S.C. §1981 (via 42 U.S.C. §1983).

II. JURISDICTION, VENUE AND ADMINISTRATIVE PREREQUISITES

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and 2202. Venue is proper in the Northern District of Florida under 28 U.S.C. § 1391(b).

2. Plaintiff has fulfilled all conditions precedent to the institution of this action under Title VII of the Act of Congress known as the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, and 42 U.S.C. § 2000e *et seq.* Plaintiff timely filed his charge of discrimination within 180 days of the occurrence of the last discriminatory act. Plaintiff also timely filed his lawsuit within 90 days of the receipt of his Right-To-Sue Letters from the EEOC.

III. PARTIES

3. Plaintiff, Matthew Schmitt, is a white male, a citizen of the United States, and a resident of the State of Florida.

4. Defendant City of Pensacola (hereinafter, “City”) is an entity subject to suit under Title VII and 42 U.S.C. § 1981 (via 42 U.S.C. § 1983).

5. Defendant Ashton Hayward (hereinafter “Mayor Hayward”) is the Mayor of the City of Pensacola and is subject to suit in his individual and official capacity under 42 U.S.C. § 1981 (via 42 U.S.C. § 1983).

6. Defendant Eric Olson is the City Administrator for the City of Pensacola and is subject to suit in his individual capacity and official capacity under 42 U.S.C. § 1981 (via 42 U.S.C. § 1983).

7. Defendant Edward Sisson is the Chief Human Resources Officer for the City of Pensacola and is subject to suit in his individual capacity and official capacity under 42 U.S.C. § 1981 (via 42 U.S.C. § 1983).

IV. FACTS

A. Background Information

8. Plaintiff Matthew Schmitt, the Interim Chief of the Pensacola Fire Department, was employed with the Pensacola Fire Department from October 1, 1979 until his termination on or around May 10, 2016.

9. Plaintiff began his career as a fireman and earned promotions until he was appointed as Deputy Fire Chief and ultimately Interim Fire Chief. Plaintiff served as Interim Fire Chief since 2010.

10. In the Interim Fire Chief role, Plaintiff reported directly to the City Administrator, Eric Olson. The Mayor, Ashton Hayward, manages all city employees, including the Plaintiff, and the Chief Human Resources Officer, Ed Sisson, effectuates and manages the employment status of all City of Pensacola employees.

11. On September 3, 2015, Plaintiff attended a meeting with Defendant Olson to discuss raises for exempt employees and non-bargaining unit employees.

12. In this meeting, Plaintiff relayed concerns to Defendant Olson about the racially motivated discrimination that Deputy Fire Chief Joseph Glover (African American) was experiencing from the Chief Human Resources Officer, Defendant Sisson.

13. In this same meeting Plaintiff also relayed concerns to Defendant Olson that Deputy Chief Glover was not being paid appropriately due to similar racial animus on behalf of Defendant Sisson.

14. On September 30, 2015, Plaintiff again met with Defendant Olson and expressed his concerns over the racial discrimination that Deputy Chief Glover was experiencing.

15. Defendant Olson did nothing to address the concerns expressed by Plaintiff in either of the September meetings, stating that Deputy Chief Glover simply needed to move on.

16. On December 4, 2015, Plaintiff submitted paperwork to the City for requested pay increases to eight (8) exempt fire department employees, including himself.

17. On December 7, 2015, Defendant Olson informed Plaintiff that Plaintiff would not receive the requested pay raise.

18. On December 8, 2015, Deputy Chief Glover filed an EEOC charge against the City for racial discrimination.

19. On December 29, 2015, Plaintiff filed his EEOC charge for discrimination and retaliation (Charge # 425-2016-00280).

20. On February 2, 2016, Plaintiff and Deputy Chief Glover were informed by the Assistant City Administrator, Keith Wilkins, and the City of Human Resources Manager, Tracy Walsh, that they both were placed on indefinite administrative leave.

21. On February 2, 2016, both Plaintiff and Deputy Chief Glover requested an administrative appeal to the personnel board.

22. On February 2, 2016, the City removed the section from the Human Resources Manual allowing for administrative appeal to the personnel board.

23. On February 9, 2016, Plaintiff filed another charge (Charge # 425-2016-00455) due to being placed on administrative leave.

24. On February 9, 2016, Defendant Olson stated in an interview with News Radio 1620 that both Plaintiff and Deputy Chief Glover were placed on administrative leave in response to the EEOC complaints they filed.

25. Defendant Olson stated that they did so “to preserve the integrity of the investigation” and that the City was to “retain an outside counsel to conduct an investigation”. Defendant Olson also stated that he did not know if it was standard

practice or not to suspend employees who filed EEOC complaints and could not “cite a specific instance of when [the City last did so]”.

26. In regard to the appeal procedure that changed the day the Fire Chiefs were placed on administrative leave, Defendant Olson stated that the change was made because “Under the new form of government, the mayor is given ultimate authority, and that’s delegated to the city administrator”.

27. Finally, Defendant Olson then inaccurately stated that the removed personnel board appeals process was a “legacy of the old civil service” system and that it was no longer needed. Yet staff analysis from the promulgation of the bill repealing the city’s civil service act explicitly states that “Upon repeal of the Civil Service Act, the City of Pensacola’s human resources office intends to create an Independent Personnel Board”.¹

28. Defendant Olson then concluded that the Fire Chiefs were “not being disciplined and this process is an entirely separate issue”.

29. On February 11, 2016, Plaintiff received a letter from Russell Van Sickle at the law firm of Beggs & Lane RLLP located in Pensacola, Florida, stating that he was to be conducting an investigation of the Fire Chiefs.

30. Yet, this letter from Van Sickle listed a variety of topics he was to be investigating, and specifically stated that “I am setting forth in this letter

¹ See http://podcast.newsradio1620.com/index.php/post/3509/Eric_Olson_-_Pensacola_City_Administrator for a full transcript of the interview with Defendant Olson.

allegations raised as to your management of the Fire Department that could potentially result in a disciplinary action. These allegations were raised by Edward Sisson, Human Resources Administrator”. Only briefly, at the end of the letter, did Van Sickle state “I have been made aware that you have filed an EEOC complaint, about which I would like to hear from you”.

31. Over the course of the next two and a half months, Plaintiff and Deputy Chief Glover cooperated with all requests of the City and its “independent” investigator, Van Sickle.²

32. On April 29, 2016, the City released a copy of Van Sickle’s 132 page report to the media and the City website.

33. On May 10, 2016, Defendant Mayor Hayward and Defendant City of Pensacola terminated the employment of the Plaintiff and Deputy Chief Glover.

34. Plaintiff then initiated the formal, internal appeals process. On June 7, 2016, the City formally denied said appeal and the termination became official.

35. On July 18, 2016, Plaintiff filed his third EEOC charge (charge # 425-2016-01011) related to racial discrimination and retaliation.

36. The failure of the City and the other Defendants to address and rectify the racial discrimination and retaliation that Plaintiff reported multiple times amounts to a violation of Title VII and § 1981.

² The notion that Van Sickle and his law firm conducted an independent investigation is farcical as the law firm of Beggs & Lane have a lengthy history of working with the city on numerous legal matters. See <https://www.scribd.com/document/312773146/B-L-Invoices>

37. The decision by the City and the other Defendants to retaliate against Plaintiff by refusing a pay raise, subjecting him to a frivolous investigation, placing him on administrative leave, changing the appeals process in the HR Manual, and ultimately terminating his employment, amount to violations of Title VII and § 1981.

38. Defendants' retaliatory conduct against Plaintiff has caused him to suffer emotional distress, humiliation, and embarrassment.

39. Defendants have acted with malice and reckless disregard toward Plaintiff and his federally protected rights.

V. CAUSES OF ACTION

A. Count I — Retaliation

40. Plaintiff re-alleges and incorporates by reference paragraphs 1-61 above with the same force and effect as if fully set out in specific detail herein below.

41. Defendant City of Pensacola employed, discriminated, and retaliated against the Plaintiff by failing to rectify the harassment and discrimination complained of, by placing Plaintiff on administrative leave, by changing the appeals process, by subjecting him to an unwarranted and public investigation, by ultimately terminating his employment, and by publicly demeaning his good name and record.

42. Defendant Ashton Hayward employed, discriminated, and retaliated against the Plaintiff by failing to rectify the harassment and discrimination complained of, by placing Plaintiff on administrative leave, by changing the appeals process, by subjecting him to an unwarranted and public investigation, by ultimately terminating his employment, and by publicly demeaning his good name and record.

43. Defendant Eric Olson employed, discriminated, and retaliated against the Plaintiff by failing to rectify the harassment and discrimination complained of, by placing Plaintiff on administrative leave, by changing the appeals process, by subjecting him to an unwarranted and public investigation, by ultimately terminating his employment, and by publicly demeaning his good name and record.

44. Defendant Edward Sisson employed, discriminated, and retaliated against the Plaintiff through his harassing and discriminatory conduct, by placing Plaintiff on administrative leave, by changing the appeals process, by subjecting him to an unwarranted and public investigation, by ultimately terminating his employment, and by publicly demeaning his good name and record.

45. This Count is brought against Defendant City of Pensacola (under Title VII and §1981 via § 1983) and Defendants Hayward, Olson, and Sisson in their individual and official capacities (under § 1981 via § 1983).

46. Plaintiff engaged in protected activity by opposing discrimination and participating in protected activity, by reporting racial discrimination in the workplace, filing EEOC Charges alleging discrimination and retaliation, by highlighting said discrimination and retaliation throughout the investigation, and by refusing to engage in conduct prohibited by Title VII and/or § 1981, and other protected activity.

47. In response to Plaintiff's engagement in protected activity, Defendants retaliated against Plaintiff by failing to address his reports of racial discrimination, placing him on administrative leave, changing the HR Manual, terminating his employment, failing to provide accumulated pay benefits upon termination, and disparaging his name, among other materially adverse employment actions.

48. A casual connection exists between the protected activity and Defendants' adverse actions.

49. Defendants failed to articulate a legitimate non-retaliatory reason for the materially adverse employment actions summarized above.

50. Defendants have no legitimate non-retaliatory reason for their conduct. Said retaliation was done maliciously, willfully, and with reckless disregard for the rights of Plaintiff.

51. Plaintiff suffered severe emotional distress, embarrassment, and humiliation because of Defendants' conduct.

52. Plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for backpay, declaratory judgment, injunctive relief, and compensatory and punitive damages is his only means of securing adequate relief.

53. Plaintiff is now suffering, and will continue to suffer, irreparable injury from Defendant's unlawful conduct as set forth herein unless enjoined by this Court.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court assume jurisdiction of this action and after trial:

1. Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of Defendants violate the rights of Plaintiff secured by Title VII of the Act of Congress known as the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and 42 U.S.C. § 1981 by and through 42 U.S.C. §1983.

2. Grant Plaintiff a permanent injunction enjoining Defendants, its agents, successors, employees, attorneys, and those acting in concert with Defendants and at Defendants' request from continuing to violate Title VII of the Act of Congress known as the Civil Rights Act of 1964, as amended, 42 U.S.C. § 1981 by and through 42 U.S.C. §1983.

3. Enter an Order requiring Defendants to make Plaintiff whole by reinstating him into the position he would have occupied in the absence of retaliation or awarding him front pay, awarding him back-pay (plus interest), nominal damages, lost seniority, benefits, loss of pension, compensatory damages, punitive damages, and post judgment interest.

4. Plaintiff further prays for such other relief and benefits as the cause of justice may require, including, but not limited to, an award of costs, attorneys' fees, and expenses.

PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY

Respectfully submitted,

/s/ Joshua R. Gale

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