

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DONALD LONSKI,)
) C.A. No. K11C-10-042 JTV
 Plaintiff,)
)
 v.)
)
 THE CITY OF HARRINGTON)
)
 Defendant.)

Submitted: August 15, 2012
Decided: November 28, 2012

Charles E. Whitehurst, Esq., Young, Malmberg & Howard, Dover, Delaware.
Attorney for Plaintiff.

David G. Culley, Esq., and Nicholas M. Tyler, Esq., Tybout, Redfearn & Pell,
Wilmington, Delaware. Attorneys for Defendant.

Upon Consideration of Defendant's
Motion to Dismiss Count IV of the Complaint
GRANTED

VAUGHN, President Judge

ORDER

Upon consideration of the defendant's Motion to Dismiss Pursuant to Rule 12(b)(6), and the record of the case, it appears that:

1. The plaintiff, Donald Lonski, filed a complaint alleging four counts: (I) procedural due process violations; (II) violations of his freedom of speech rights; (III) a constructive discharge claim; and (IV) a claim that he was wrongfully discriminated against due to his status as a member of the military. On December 30, 2011, the defendants, Norman Barlow and the City of Harrington ("the City") filed a Motion to Dismiss pursuant to Superior Court Rule 12(b)(6).¹

2. On June 13, 2012, oral argument was heard, and I reserved decision on the Motion to Dismiss Count IV. This is the Court's ruling on the Motion to Dismiss Count IV.

3. The plaintiff was employed as a police officer with the Harrington Police Department from August 2003 until November 3, 2009. While working as a police officer, he deployed to Iraq with the United States Army from approximately December 2004 through December 2005. He returned to duty with the Harrington Police Department in February 2006. The plaintiff contends that he was discriminated against because of his military service in the following ways: while in Iraq, he was passed over for promotion in favor of a "new officer," which constituted preferential treatment; upon his return from Iraq, he was given less desirable

¹ The defendants moved to dismiss all of the aforementioned counts except for the due process claim that is asserted against the City.

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assignments; he was generally treated differently than other members of the Police Department due to his military service; and he was forced into an involuntary resignation as a result of the wrongful discrimination.

4. The City contends that the plaintiff cites no legal basis for which relief may be granted because he does not allege that he is a member of any legally protected class and does not provide any statutory basis for the claim. Further, the City contends that the complaint does not assert any connection between the allegedly wrongful termination and his military status.

5. “When considering a defendant’s motion to dismiss, a trial court should accept all well-pleaded factual allegations in the complaint as true, accept even vague allegations in the complaint as ‘well-pleaded’ if they provide the defendant notice of the claim, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.”² This is sometimes referred to as the conceivability standard.³

6. At the conclusion of the oral argument on the motion which was held on June 13, 2012 as aforesaid, I gave the plaintiff thirty days to provide the Court with any legal basis for the claim of discrimination on account of military status that could be found in any federal or state statutes or regulations, or in any case authority. The

² *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 536-37 (Del. 2011).

³ *Id.*

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plaintiff has not done so. Because of his inability to support his claim with any reference to any statute, regulation, or case authority, I conclude that the plaintiff has failed to state a claim upon which relief may be granted.

7. For the foregoing reasons, the City's Motion to Dismiss Count IV (wrongful discrimination) of the Complaint is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

cc: Prothonotary
Order Distribution
File