

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT COVINGTON

NANCY LEIDNER

PLAINTIFF,

vs.

MICHAEL CHERTOFF,

DEFENDANT

)  
)  
)  
)  
)  
)  
)

JURY TRIAL DEMANDED

CIVIL ACTION NO. 07-CV-197-DLB

**ELECTRONICALLY FILED**

---

**AMENDED COMPLAINT WITH JURY DEMAND**

---

Comes the Plaintiff, Nancy Leidner for her Amended Complaint against the Defendant, Michael Chertoff, Secretary:

**PARTIES**

1. Plaintiff, is a resident of Kenton County, Kentucky, and is a female over the age of forty (40), is, and has been a Federal Air Marshal (“FAM”) with the Transportation Security Administration (“TSA”) of DHS since June, 2002, during the relevant time period and was a permanent employee with the Cincinnati Field Office of the Federal Air Marshal Service, a division of the Transportation Security Administration under the United States Department of Homeland Security.

2. At all times pertinent, Plaintiffs’ employer, pursuant to Title VII of the Civil Rights Act of 1964 (as amended), 42 U.S.C. sec 2000 (et. seq), and the Age Discrimination in Employment Act of 1967(ADEA), is the Cincinnati Field Office of the Federal Air Marshal Service, a division of the Transportation Security

Administration, under the Department of Homeland Security, Michael Chertoff, Secretary.

### **JURISDICTION AND VENUE**

3. This Court has original jurisdiction in this action pursuant to 28 U.S.C. Sections 1331 and 1343 and 42 U.S.C. Section 2000e-5, inasmuch as the matter in controversy is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. and Age Discrimination in Employment Act of 1964 (ADEA), and the regulations governing federal employees, 29 C.F.R. §1614.407. This District possesses venue of this matter pursuant to 42 U.S.C. Section 2000e-5(f). The jurisdiction of this Court is invoked to secure protection and redress deprivation of rights guaranteed by federal law, which rights provide for injunctive relief and other relief for illegal employment discrimination. The amount in controversy in this action exceeds the jurisdictional limits of this Court.

4. Plaintiff filed a complaint on December 28, 2006 with the TSA Office of Civil Rights (“EEOC”) alleging violations of Title VII of the Civil Rights Act of 1964, including violations of sex discrimination, age discrimination and allegations of sexual harassment. On March 14, 2007, Plaintiff filed her first Notice of Retaliation with the TSA Office of Civil Rights. On June 8, 2007, Plaintiff filed a second Notice of Retaliation with the TSA Office of Civil Rights.

5. On September 11, 2007, Tammy H. Whitaker, Equal Employment Opportunity Commission Administrative Law Judge, dismissed Ms. Leidner Complaints without prejudice and remanded them back to the “federal agency for issuance of a final agency decision without a hearing, and also notice of the

Complainant's right to file a civil suit in federal district court. Pursuant to 29 C.F.R. Sec. 1614.107(a)(3), Plaintiff has received no official notification from the TSA Office of Civil Rights although one hundred eighty (180) days have elapsed since Plaintiff has filed her original complaint.

6. Plaintiff filed her original complaint on December 10<sup>th</sup>, 2007.

### **GENERAL FACTUAL ALLEGATIONS**

7. Prior to her position as a Federal Air Marshal (Herein "FAM"), Plaintiff had eight (8) years of Federal Law Enforcement, including two (2) years at a Supervisory Federal level with the Federal Bureau of Prisons, which qualifies Plaintiff for a faster promotion track than FAMs with non-supervisory experience.

8. Plaintiff began her tenure in the Cincinnati Field Office in June 2002, as the only female FAM and is currently the only Female FAM on staff in the office.

9. During Plaintiff's employment she has been the subject of constant rumors of inappropriate sexual activity with co-workers which have directly impacted her ability to obtain promotions and merit raises/bonuses and have severely damaged Plaintiff's reputation with her superiors and co-workers.

10. Beginning in mid-February of 2005, Plaintiff was informed of a slanderous rumor that had been started that she had stripped for a coworker at his FAM going away party.

11. Plaintiff was also continuously the subject of scurrilous rumors that she was engaging in frequent, multiple, inappropriate adulterous affairs with married FAM co-workers. Said rumors were accepted as true by many FAMs in the TSA Cincinnati Field Office.

12. One co-worker, J.R., who had initiated many of the false and slanderous rumors, had made inappropriate and offensive comments to Plaintiff about her anatomy in front of fellow FAMs. FAM J.R. was not disciplined for said comment.

13. The rumors, comments and innuendos progressively became worse and in January, 2006, Plaintiff spoke to then Special Agent in Charge, (“SAC”) J.D. about the need for in house training on ethics and sexual harassment issues. On May 10, 2006, SAC J.D. sent an email to all CVG FAMs discussing the need to observe training on ethics and policy.

14. Plaintiff is not the only female to file complaints with about inappropriate sexual harassment directed towards women in the Cincinnati Field Office. Two other women complained verbally about inappropriate sexual harassment directed towards women in the Cincinnati Field Office.

15. During the time period that Plaintiff notified the Cincinnati Field office of inappropriate behavior, flight attendants from airlines that certain male FAMs were assigned to protect were notifying TSA Cincinnati field office management of inappropriate female harassment activity and filed harassment complaints against some FAMs. Despite the notice of hostile work atmosphere towards females, there was no corrective action taken.

16. On September 6, 2006, Plaintiff spoke with Defendant, (“Assistant Special Agent in Charge”) ATSAC D.C. regarding her cash award or In-band Pay Increase (IPI). ATSAC D.C. informed Plaintiff that she had not made the cut on getting an IPI or cash award for the year and that he reviewed the categories Plaintiff was assessed with different standards than other evaluating ATSACs.

17. AT SAC D.C. stated Plaintiff was rated low on dependability and firearms but was not permitted to review her evaluation because D.C. didn't want "Plaintiff to file on him." D. C. stated only four members from his team received either of these awards and that he rated his team harder than the other two AT SACs in the office rated their people. Said review violated Section 6 of the Policy and Procedures: Performance Agreements and Appraisals.

18. On September 22, 2006, Plaintiff was moved from AT SAC D.C.'s team to another AT SAC team as part of restructuring the command. D.C. and T.B. assigned the Plaintiff and other FAMs having problems with them, were placed on an incoming AT SAC's team.

19. On December 28, 2006, Plaintiff filed her complaint with TSA Office of Civil Rights against Acting SAC T.B. and AT SAC D.C..

20. In her original complaint, Plaintiff notified TSA of continued sexual harassment, a hostile work environment, claims of Age discrimination, and a multiple of issues/instances of Gender Discrimination, and Equal pay.

21. On February 1, 2007, Plaintiff attended a meeting for training where it was announced all FAMs had to stay until 3:00 p.m. on training days because Acting SAC T.B. said EEO complaints were being filed about his office. The next day, Plaintiff was informed by another FAM that Cincinnati Field Office Management was telling Plaintiff's co-workers that FAMs had to stay later on training days because of EEO complaints.

22. During a February 13, 2007, meeting with FAMs and CVG management to discuss new field policy changes, AT SAC S.P, made the statement to Plaintiff in front

of all the other FAMs, “Be careful to what battles you pick. You may win the battle but will lose the war.” and appeared to be holding Plaintiff’s EEO complaint while making the public statement.

23. On February 14, 2007, Plaintiff was approached by another FAM and informed that management was meeting with other FAMs to discuss Plaintiff’s Sexual Harassment and EEO complaints. Plaintiff was informed that Management was publicly warning FAMs that they may be witnesses in Plaintiff’s case, which is in violation of TSA management directive.

24. On February 20, 2007, Defendant T.B. announced an opening via e-mail for a JTTF position but limited it to only FAMs with a certificate from a non-federal law enforcement academy (former police officers), which is not based on any TSA policy, but effectively eliminated Plaintiff’s ability to apply for the position.

25. On March 1 and 2, 2007, Plaintiff was approached by several FAMs and was informed that ATSAC D.C., who she had filed an EEO complaint against, was making derogatory statements to FAMs about Plaintiff. Among the statements were: the TSA Cincinnati Field Office was making unpopular changes to procedures because of the EEO complaints; that to be careful talking to Plaintiff because she was making EEO complaints; and to avoid Plaintiff because she walks around “with a chip on her shoulder.”

26. On March 14, 2007, Plaintiff filed a Notice of Retaliation with the TSA Office of Civil Rights.

27 In early May after Plaintiff was notified an anonymous complaint was filed by a fellow TSA employee against her on February 12, 2007, stating that Plaintiff vehicle

was registered in Montana and that she failed to properly register her vehicle tags on her vehicle in Kentucky. Plaintiff was informed that she was in violation of TSA policy and threatened with disciplinary action by her Supervisor.

28. Plaintiff provided information that proved that the vehicle in question was not hers. No action was taken against the FAM who actually owned the improperly registered vehicle.

**COUNT I**  
**SEXUAL HARASSMENT OF PLAINTIFF NANCY LEIDNER**

29. Plaintiff incorporates as if fully restated all of the allegations previously written.

30. Plaintiff was subjected to unwelcome, offensive and harassing sexually discriminatory conduct during her employment with Defendant DHS which was perpetrated upon her by FAM J.R., and her Supervisors, Acting SAC T.B and ATSAC D.C., and that this conduct was based upon and directed at Plaintiff by reason of her gender.

31. Plaintiff noticed TSA Cincinnati Field Office Command, which was otherwise aware, of the sexually harassing and discriminatory conduct, but TSA failed to take any appropriate corrective action.

32. This sexually harassing and discriminatory conduct was sufficiently severe and pervasive so as to unreasonably interfere with Plaintiff's physical health, work performance and so as to create an intimidating, hostile and offensive working environment.

33. During the times referenced herein, Plaintiff was the subject of multiple false rumors of having sexual relationships with co-workers, of engaging in striptease acts for

co-workers, and was openly questioned about parts of her body by FAM J.R. in front of other co-workers. No corrective action was ever taken against FAM J.R. for such conduct.

34. Said multiple comments and harassment ruined the reputation and credibility of Plaintiff, the only female FAM in the entire Cincinnati Field Office, and created an atmosphere of hostility which severely damaged the reputation in the eyes of her co-workers and supervisors.

35. Plaintiff was a victim of retaliatory conduct on the part of Defendants. Moreover, this conduct was ongoing and pervasive and constituted a “continuing violation” of Plaintiff’s right. During the course of her employment, Plaintiff was forced to work in a sexual discriminatory and hostile environment. TSA Cincinnati Field Office command was put on notice of the sexually suggestive nature of its employee, FAM J.R., and failed to take immediate corrective action, all to Plaintiff’s detriment.

36. TSA Cincinnati Field Office command was aware of the hostile work environment and acquiesced in the environment. TSA Field Command was even notified by written complaints from Airline flight Attendants that some FAMs were sexually harassing Airline flight attendants while they were on Air Marshal duty, yet no official action was taken to change the atmosphere in the Cincinnati Field office.

37. FAM J.R.’s were open and obvious to other employees, both management and non-management at the Cincinnati Field Office.



38. Other Civilian TSA workers complained to Cincinnati Field Office Management regarding harassing behavior towards women during the times referenced in Plaintiff's complaint yet no corrective action was taken.

39. An independent internal investigation by an outside Cleveland TSA unit substantiated Plaintiff's allegations of sexual harassment in Plaintiff's workplace.

40. As a direct and proximate result of the harassing and hostile sexual environment of FAM J.R, and her Supervisors in the TSA Cincinnati Field Office, and Plaintiff suffered great embarrassment, humiliation and mental and physical anguish.

**COUNT II**  
**SEX DISCRIMINATION**

41. Plaintiff incorporates as if fully restated all of the allegations previously written.

42. During the course of Plaintiff's employment with Defendant, the Defendant, by and through its agents and employees, discriminated against the Plaintiff in the terms, conditions, and privileges of employment in various ways, in substantial part because of her sex, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. Seq.

43. The above-described unwelcome sex discrimination created an intimidating, oppressive, hostile and offensive work environment which interfered with Plaintiff's emotional and physical well-being.

44. As a result of the hostile and offensive work environment perpetrated by Defendant's agent acting SAC T.B. and ATSAC D.C., and maintained by the Defendant DHS, and DHS' failure to protect Plaintiff from such discrimination, the Plaintiff suffered humiliation, emotional distress, and physical pain.

45. Defendant DHS through its agents or supervisors failed to adequately supervise, control, discipline, and/or otherwise penalize the conduct, acts, and failures to act of Acting SAC T.B. and ATSAC D.C. as described above.

46. Defendant DHS failed to take all reasonable and necessary steps to eliminate sex discrimination from the workplace and to prevent it from occurring in the future.

47. As a further direct and proximate result of Defendant's violation of Title VII of the Civil Rights Act of 1964 and KRS 344 et. Seq. as described, Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with DHS and has thereby incurred and will continue to incur legal fees and costs, the full nature and extent of which are presently unknown to Plaintiff.

**COUNT III**  
**SEX DISCRIMINATION**

48. Plaintiff incorporates as if fully restated all of the allegations previously written.

49. By agreeing to recommend for promotion and rewards and thereby promoting and giving rewards to male employees over female employees who met or exceeded FAM expectations, and who possessed equal or greater job experience than those promoted or recommended for promotion or rewards, the Defendants violated the Civil Rights Act(as amended), 42. U.S.C. 2000 (et. seq.)

**COUNT IV**  
**- RETALIATION**

50. Plaintiff incorporates as if fully restated all of the allegations previously written.

51. As herein alleged, the Defendants, by and through its officers, managing agents and/or its supervisors, illegally retaliated against Plaintiff by unjustly subjecting her to unjust scrutiny, false allegations of misconduct and unwelcome and derisive comments solely because she had reported the aforementioned sex discrimination. Defendants had no legitimate reasons for any such act. Each said act of retaliation is in violation of Title VII of the Civil Rights Act of 1964.

52. Plaintiff is informed and believes, and based thereon alleges, that in addition to the practices enumerated above, the Defendant may have engaged in other discriminatory practices against her which are not yet fully known. At such time as such discriminatory practices become known, Plaintiff will seek leave of Court to amend this Complaint in that regard.

53. As a direct and proximate result of the Defendant's willful, knowing, and intentional discrimination and retaliation against Plaintiff, Plaintiff has suffered and will continue to suffer pain, humiliation and emotional distress. Plaintiff has suffered and will continue to suffer a loss of earnings and other employment benefits and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

54. As a further direct and proximate result of Defendant's violation of Title VII of the Civil Rights Act of 1964, as described, Plaintiff has been compelled to retain the services of counsel in an effort to enforce the terms and conditions of the employment relationship with the Defendant and has thereby incurred and will continue to incur legal fees and costs, the full nature and extent of which are presently unknown to Plaintiff.

55. Plaintiff is informed and believes, and based thereon alleges, that the Defendant's conduct as described above was willful, wanton, malicious, and done in reckless disregard for the safety and well-being of Plaintiff. By reason thereof, Plaintiff is entitled to punitive or exemplary damages from the Defendants in a sum according to proof at trial.

**COUNT V**  
**RETALIATION**

56. Plaintiff incorporates as if fully restated all of the allegations previously written.

57. In early May, 2009, Plaintiff was contacted at home and informed that she was being placed on Standby status on Sunday, May 10<sup>th</sup>, and would be taken off the flight schedule for the following Monday through Wednesday.

58. Plaintiff was called into the office and Ordered to meet with Investigators. One Investigator refused to give Plaintiff his current title when asked if he was a Deputy Special Agent in Charge as his credentials stated.

59. Plaintiff was questioned about an alleged travel voucher mishap that occurred nearly three years earlier, and to which Plaintiff was investigated and informed that she was cleared of 13 months earlier. Plaintiff was also informed at that time in April 2008, that she was only a and not the target of the investigation.

60. During this meeting with TSA investigators, Plaintiff was told to sign a Garrity waiver after one investigator informed Plaintiff me that he was doing some "housecleaning" and that he should have Plaintiff sign the Garrity in April 2008. Plaintiff was then was informed that the questions were related to another FAM, not her.

61. During the middle of the interrogation to which she was Ordered to cooperate, Plaintiff was informed that she now was under investigation for the giving a false statement 13 months prior and a second statement that she was instructed to write twice during the recent investigation.

62. During her interrogation, Plaintiff was required to remain in a room in the custody of one investigator while the investigators went back and forth to her Supervisors' office to discuss Plaintiff. These were the same Supervisors that Plaintiff has filed multiple EEO claims against.

63. Plaintiff was finally released from the investigators' custody and informed that she was being turned over to the US Attorney for criminal prosecution.

64. At no point during this investigation, was Plaintiff ever given a Miranda or Garrity warning after being Ordered to cooperate and was not permitted to leave the room unaccompanied.

65. Plaintiff has since been returned to Flight status but has not been cleared of this latest investigation which has intimidated her from pursuing her EEO claims.

**WHEREFORE**, Plaintiff, Nancy Leidner, demands judgment against the Defendants, in an amount which will compensate her for:

1. Violation of her rights under Title VII of the Civil Rights Act of 1964;
2. Compensatory damages including lost wages, past and future and/or impairment of power to earn money; physical pain, emotional distress and humiliation, past and future; and past and future medical expenses;
3. Punitive damages to punish the Defendant for its willful, wanton, oppressive, malicious, and/or grossly negligent conduct;

4. A permanent injunction against future acts of discrimination and harassment against Plaintiff by Cincinnati Field Office Management;
5. Trial by jury on all issues so triable;
6. Costs expended herein, including reasonable attorneys' fees;
7. Pre-judgment and post-judgment interest; and
8. Any and all other relief to which she may be entitled.

Respectfully submitted,

s/Shane C. Sidebottom  
SHANE C. SIDEBOTTOM (# 89046)  
WOLNITZEK & ROWEKAMP, PSC  
502 Greenup Street  
Covington, Kentucky 41011

(859) 491-4444  
[ssidebottom@wrblaw.com](mailto:ssidebottom@wrblaw.com)

*COUNSEL FOR PLAINTIFF*

**CERTIFICATE OF SERVICE**

I hereby certify that on 22<sup>nd</sup> day of May, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Hon. Thomas Lee Gentry.

s/Shane C. Sidebottom  
Shane C. Sidebottom

