

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

KRISTIN M. KINGREY,

Plaintiff,

v.

Civil Action No. 2:21-cv-00612

CHRISTINE WORMUTH, SECRETARY
OF THE DEPARTMENT OF THE ARMY;
FRANK KENDALL, SECRETARY OF
THE DEPARTMENT OF THE AIR FORCE

Defendants.

ANSWER OF DEFENDANTS TO PLAINTIFF'S COMPLAINT

Defendants Christine Wormuth, Secretary of the Department of the Army, and Frank Kendall, Secretary of the Department of the Air Force (hereinafter referred to as "defendants") answer and respond to plaintiff's complaint as follows:

FIRST DEFENSE

The complaint fails to state a claim upon which relief may be granted, and, therefore, this civil action should be dismissed.

SECOND DEFENSE

1. For their answer to Paragraphs 1-4 of the complaint, these defendants state that plaintiff has served as a military member of the West Virginia Air National Guard ("WVANG"), a reserve component of the United States Air Force. These defendants deny all other allegation contained in those paragraphs of the complaint.

2. For their answer to Paragraph 5 of the complaint, these defendants state that plaintiff did file an EEO complaint. These defendants deny all other allegations stated in that paragraph of the complaint.

3. For their answer to Paragraph 6 of the complaint, these defendants state that they deny all of the allegations contained in that paragraph of the complaint.

4. For their answer to Paragraph 7 of the complaint, these defendants state that plaintiff was a military member of the WVANG and a military technician (dual status). These defendants further state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and, therefore, demand strict proof thereof.

5. For their answer to Paragraphs 8-11 of the complaint, these defendants state that plaintiff enlisted in the WVANG, a reserve component of the United States Air Force, as an Air Transportation Craftsman. Plaintiff was employed at various times as a military technician (dual status) by the WVANG, where she served as an HR Benefits Specialist, a military technician (dual status) position. These defendants also state that at various times plaintiff was called to active federal service, as a member of the armed forces in the United States Air Force and that she served as an Air Transportation Craftsman while in active federal service. These defendants deny all other allegations contained in those paragraphs of the complaint.

6. For their answer to Paragraph 12 of the complaint, these defendants state that the plaintiff is a female and that they deny all other allegations stated in that paragraph of the complaint.

7. For their answer to Paragraphs 13-15 of the complaint, these defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in those paragraphs of the complaint, and, therefore, demand strict proof thereof.

8. For their answer to Paragraph 16 of the complaint, these defendants state that this paragraph contains plaintiff's assertions of law, and, therefore, these defendants deny those allegations.

9. For their answer to Paragraphs 17-18 (first numbered paragraph 18) of the complaint, these defendants state that they admit the allegations contained in those paragraphs of the complaint.

10. For their answer to Paragraphs 18 (second numbered paragraph 18)-21 of the complaint, these defendants state that these paragraphs contain plaintiff's assertions of law, and, therefore, these defendants deny those allegations.

11. For their answer to Paragraph 22 of the complaint, these defendants state that the plaintiff enlisted as a military member of the armed forces in the WVANG in September of 2007 and that she became a military technician (dual status) in April of 2016. These defendants further state that they deny all other allegations contained in that paragraph of the complaint.

12. For their answer to Paragraph 23 of the complaint, these defendants state that plaintiff was mobilized for active federal service as a military member of the United States Air Force under Title 10 United States Code in August 2018 for duty in Qatar plaintiff remained in a Title 10 active federal service military status until December 2020, at which time plaintiff then returned to her military technician (dual status) position with the WVANG.

13. For their answers to Paragraphs 24-32 of the complaint, these defendants state plaintiff, while in active federal service, applied for a Human Resource Specialist (Human Resource Development) (HRDS) GS-0201-11 (hereinafter "HRDS") military technician (dual status position), that the position was listed as permanent, that she interviewed for that position,

that she was subsequently certified as a grade level GS-0201-11/12 for the HRDS military technician dual status position, and that two persons (plaintiff and another female) were interviewed for that position (the plaintiff was remotely interviewed). The defendants further state that plaintiff was never selected the HRDS position, that the HRDS position was not filled, and that the HRDS position was cancelled due to budgetary concerns. These defendants further state that they deny all other allegations contained in those paragraphs of the complaint.

14. For their answer to Paragraph 33 of the complaint, these defendants state that the plaintiff remained as a military member in active federal status under Title 10 Medical Continuation orders due to an injury sustained in Qatar and was under those orders until those orders were ended in December 2020. These defendants deny all other allegations stated in that paragraph of the complaint.

15. For their answer to Paragraphs 34-39, 41-45, 47-55, 64-69, 75-77, 80-81, 84-89, 91-92, 99-114, and 120-137 of the Complaint, these defendants state that they deny the allegations contained in those paragraphs of the complaint.

16. For their answer to Paragraph 40 of the complaint, these defendants further state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in that paragraph of the complaint, and, therefore, demand strict proof thereof.

17. For their answer to Paragraph 46 of the complaint, these defendants state that Colonel Cadle visited the Joint Force Headquarters from time to time. These defendants deny all other allegations stated in that paragraph of the complaint.

18. For their answer to Paragraphs 56-63 of the Complaint, these defendants state the

HRDS position was cancelled due to budgetary concerns. Plaintiff was informed that the position had been cancelled. Another HRDS position was re-advertised later in accordance with regulations but that position was indefinite and not permanent and thus did not have the same budgetary concerns which existed with the permanent HRDS position posted in December of 2018. These defendants further state that they deny all other allegations contained in those paragraphs of the complaint.

19. For their answer to Paragraphs 70-74 of the Complaint, these defendants state the plaintiff applied for an HR Specialist (Employee Benefits) position, that she was certified at the GS-11/12 grade level, that she and several other applicants were interviewed, that plaintiff was ranked 4th, and that the applicant with the highest score was selected. These defendants state that they deny all other allegations contained in those paragraphs of the complaint.

20. For their answer to Paragraphs 78 and 79 of the Complaint, these defendants state that Colonel Cadle held, for a period of time, various positions simultaneously, including the position as the Interim Human Resources Officer. These defendants state that they deny all other allegations contained in those paragraphs of the complaint.

21. For their answer to Paragraphs 82 and 83 of the complaint, these defendants state that they admit the allegations contained therein.

22. For their answer to Paragraph 90 of the complaint, these defendants further state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in that paragraph of the complaint, and, therefore, demand strict proof thereof.

23. For their answer to Paragraphs 93-97 of the complaint, these defendants state that

these paragraphs contain plaintiff's assertions of law, and, therefore, these defendants deny those allegations.

24. For their answer to Paragraph 98 of the Complaint, these defendants state that Colonel Cadle held, for a period of time, various positions simultaneously, including the position as the Interim Human Resources Officer. These defendants state that they deny all other allegations contained in that paragraph of the complaint.

25. For their answer to Paragraphs 115-19 of the complaint, these defendants state that the person selected for the HR Specialist (Employee Benefits) position was selected based on that person's interview score, that there was no discrimination in the selection of that applicant for the HR Specialist (Employee Benefits) position, that the successful applicant's sex and sexual orientation played no role in their selection as the successful applicant, and the successful applicant was considered the best qualified for that position. These defendants state that they deny all other allegations contained in those paragraphs of the complaint.

26. To the extent that these defendants have not answered any allegation contained in the complaint, it is hereby denied by these defendants. These defendants further deny that they are liable to the plaintiff, and these defendant demand that this civil action be dismissed with judgment awarded to these defendants.

THIRD DEFENSE

The defendants are not proper parties to this civil action, and, therefore, this civil should be dismissed.

FOURTH DEFENSE

The claims and allegations asserted in the complaint should be dismissed based on the

Feres doctrine.

FIFTH DEFENSE

Plaintiff's claims may be barred in whole or in part by her failure to exhaust her administrative remedies.

SIXTH DEFENSE

Plaintiff's claims for damages may be barred in whole or in part by her failure to mitigate her damages.

SEVENTH DEFENSE

Plaintiff's claims are barred in whole or in part because the alleged acts of discrimination stated in the complaint did not cause her to receive any adverse employment consequences.

EIGHTH DEFENSE

All of the actions taken with regard to plaintiff's employment were taken without discriminatory motive and in good faith, and, therefore, plaintiff's claims asserted in his civil action should be dismissed.

NINTH DEFENSE

Plaintiff's claims fail to the extent that they are barred by the doctrines of acquiescence, consent, waiver, unclean hands, laches, and/or estoppel.

TENTH DEFENSE

This Court lacks subject matter jurisdiction over all or some of the plaintiff's claims asserted in the complaint, and those claims over which this Court lacks subject matter jurisdiction should be dismissed.

ELEVENTH DEFENSE

Any alleged claim of employment discrimination which is beyond the scope of plaintiff's EEO complaint is outside the jurisdiction of this Court and must be dismissed.

TWELFTH DEFENSE

Title VII and certain other federal employment laws are not applicable to this civil action because the alleged acts of discrimination alleged by the plaintiff occurred while she was on active duty in the military and such claims are barred by the sovereign immunity of the United States, the Feres doctrine, and other applicable federal statutory and federal common law. The plaintiff's claims in this civil action are also barred by the Feres doctrine because plaintiff was in a military technician (dual status) position.

THIRTEENTH DEFENSE

There has been inadequate service of process in this civil action, and, therefore, this civil action should be dismissed.

FOURTEENTH DEFENSE

Since the plaintiff has failed to comply with Fed.R.Civ.P. 4(i) and other requirements under federal law for service of process, this Court lacks jurisdiction, and therefore, this civil action should be dismissed.

WHEREFORE, the defendants pray that this Court enter judgment in their favor, dismiss this civil action, and afford the defendants such other and further relief which the Court may deem appropriate.

Respectfully submitted,

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Secretary of the Department of the Army, and Frank

Kendall, Secretary of the Department of the Air

Force

CERTIFICATE OF SERVICE

I, FRED B. WESTFALL, JR., Assistant United States Attorney for the Southern District of West Virginia, hereby certify that on February 14, 2022, I electronically filed the **ANSWER OF DEFENDANTS TO PLAINTIFF'S COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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