

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JENNIFER BOUGHTON,
8028 Chesterfield Drive
West Chester, OH 45241

Plaintiff,

v.

WILLIAM BARR,
ATTORNEY GENERAL
OF THE UNITED STATES,
950 Pennsylvania Avenue, NW
Washington, DC 20530

Defendant.

Case No.: 1:19-cv-154

J. _____

COMPLAINT WITH JURY DEMAND
ENDORSED HEREON

PARTIES

1. Plaintiff Jennifer Boughton is a citizen and resident of the state of Ohio.
2. Attorney General William Barr is named as the Defendant because this case alleges discriminatory and retaliatory actions taken by the Federal Bureau of Investigation, an agency under the jurisdiction of the U.S. Department of Justice.

JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 1331 because Plaintiff's Counts I and III arise under the laws of the United States, namely, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*
4. This Court has supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367 on the grounds that they are so related to the federal claims over which this Court has original jurisdiction that they form part of the same case or controversy.

5. Plaintiff filed timely complaints with the FBI's Office of Equal Employment Opportunity Affairs, and received a Final Agency Decision on November 28, 2018. This complaint is filed within 90 days of the receipt of the Final Agency Decision. Plaintiff has met all procedural and administrative prerequisites for her claim.

6. Venue is proper in the Southern District of Ohio, Western Division, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to these claims occurred in the Southern District of Ohio, Western Division.

FACTUAL ALLEGATIONS

7. Plaintiff began working for the FBI on October 5, 2003.

8. Plaintiff was promoted to the position of Supervisory Investigative Specialist in the Cincinnati Division of the Federal Bureau of Investigation in December 2008.

9. In this role, Plaintiff supervised investigative specialists on the Mobile Surveillance Team ("MST"), which is now known as the Special Surveillance Group.

10. From 2008 to 2014, Plaintiff reported to Supervisory Special Agent Kenneth Wall.

11. In this timeframe, she received no discipline and had no performance issues.

12. In March 2014, Plaintiff began reporting to Supervisory Special Agent Herbert J. Stapleton, who in turn reported to Special Agent in Charge Angela Byers.

13. On October 27, 2014, SSA Stapleton gave Plaintiff her annual Performance and Accountability Report ("PAR") in which he rated her as "Outstanding."

14. On or about November 25, 2014, Plaintiff met with SSA Stapleton and reported her feelings of isolation as the only woman on the team. She disclosed how difficult it was to have male reports who were not accustomed to having a female supervisor, particularly Investigative Specialist Andrew Munafo.

15. Plaintiff also disclosed to SSA Stapleton that some of the male employees on her team, including IS Munafo, were sleeping on duty, not securing covert materials, making false claims about the work they had done, misusing bureau cars, driving a bureau car while under the influence of alcohol, and refusing to follow job duties.

16. Over the course of the next several months, Plaintiff continued to have numerous issues with IS Munafo, including instances that Plaintiff perceived as threatening and insubordinate.

17. In a meeting in late February 2015, SSA Stapleton ominously asked Plaintiff whether she had any experience with the EEO process.

18. Plaintiff subsequently learned that IS Munafo had filed an EEO complaint against her, of which SSA Stapleton was already aware by February.

19. In April 2015, SSA Stapleton initiated an Office of Professional Responsibility (“OPR”) investigation against Plaintiff based on allegations that she possessed Team Leader interview questions and had given them to a team member. A short time later, the agent who made those allegations against Plaintiff was dismissed by the FBI for lying. In response, SSA Stapleton changed the subject of his notice to the OPR to the allegations contained in IS Munafo’s EEO complaint against Plaintiff—despite his knowledge of IS Munafo’s misconduct at the time.

20. Upon information and belief, the FBI did not open OPR investigations into any of the employees against whom Plaintiff later filed EEO complaints, or otherwise discipline them—nor did it discipline any of Plaintiff’s male subordinates for the above-cited instances of misconduct.

21. In her role as Team Leader, Plaintiff had made multiple requests to SSA Stapleton that her Squad Administrative Assistant be allowed to assist with billing and covert administrative duties. SSA Stapleton denied Plaintiff’s request every time.

22. On or about May 11, 2015, the FBI abruptly moved Plaintiff from her position as

the SIS/Team Leader of MST to an assignment on Special Projects.

23. SSA Stapleton explained that Plaintiff was being moved because she was under an OPR investigation, and instructed her not to speak to any members of MST.

24. In August 2015, following Plaintiff's removal as Team Leader, a male was appointed to fill the role. Within days of his appointment, SSA Stapleton granted his request for the Squad Administrative Assistant to help with covert billing and administrative duties.

25. As a result of this involuntary transfer, the FBI reduced Plaintiff's pay, revoked her bureau car privileges, and gave her a more fixed schedule than her previous one that she used to take doctor's appointments.

26. In July 2015, Plaintiff filed an EEO complaint, alleging that her involuntary transfer—essentially, a demotion—was motivated by her sex and/or her prior EEO activity. She named SSA Stapleton and SAC Byers as the Responsible Management Officials.

27. SSA Stapleton and SAC Byers became aware of this EEO complaint in July 2015.

28. Also in July 2015, SSA Stapleton decided to exclude Plaintiff from an award granted to the MST for a successful counterterrorism operation that took place during her tenure with the team. Plaintiff had participated in a substantial amount of the shifts involved in this operation, but SSA Stapleton failed to consider Plaintiff's involvement.

29. On August 20, 2015, SSA Stapleton revoked Plaintiff's access to her program files. These included time and attendance records for Plaintiff and her team, upon which several of the allegations contained in her EEO complaint were based.

30. Defendant excluded Plaintiff in other ways that materially affected the terms and conditions of her employment. Plaintiff was reassigned again to a different squad on September 1, 2015. This was just days after Plaintiff requested permission to attend a Critical Incident Response

Group (“CIRG”) supervisor’s conference on September 2 and CIRG Career Enhancement Training. SSA Stapleton denied both requests, claiming it was “not a good time,” despite allowing a male team member to attend the training.

31. On October 28, 2015, SSA Stapleton delivered to Plaintiff her annual PAR. He had decreased her rating in all but one category from the previous year. Notably, he ranked her “minimally successful” in supervising, a critical element.

32. When Plaintiff asked how he arrived at these ratings, SSA Stapleton admitted that he had consulted with someone outside of the chain of command who was not familiar with her program of work. When Plaintiff contested this, SSA Stapleton told her that she had become “overly emotional” about feedback from her team.

33. As part of the adjudication of Plaintiff’s OPR case, SSA Stapleton was responsible for submitting a *Douglas* factors report. The term “*Douglas* factors” refers to criteria that supervisors must consider in determining an appropriate sanction for employee misconduct in the context of federal employment.

34. SSA Stapleton was the primary person responsible for drafting the *Douglas* factors submission for Plaintiff’s OPR investigation, with some input from SAC Byers.

35. SSA Stapleton submitted the *Douglas* factors report on or about November 1, 2015—the same day that he executed his sworn statement in response to one of the EEO complaints that Plaintiff had made against him, and just a few days after Plaintiff had disputed his assessment of her performance due to suspected sex discrimination and retaliation.

36. On February 2, 2016, Plaintiff was recommended for dismissal. The same day, she was suspended and her clearance revoked. Plaintiff was escorted out of the office.

37. Plaintiff filed a second EEO complaint in February 2016, alleging that her

suspension and recommended dismissal were motivated by her sex and/or prior EEO activity.

38. On June 28, 2016, approximately two weeks before OPR made a final determination in her termination appeal, Defendant posted a job opening for her position.

39. On July 11, 2016, the OPR notified Plaintiff that her appeal had been denied, rendering her termination permanent. In response, she amended her latest EEO complaint to include that her removal from the FBI rolls was retaliatory and/or discriminatory.

40. When Plaintiff learned that her job had been advertised prior to the final disposition of her OPR appeal, she filed a final EEO complaint on October 3, 2016, alleging discrimination and retaliation on the basis of prior EEO activity.

COUNT I
(Sex Discrimination – Title VII)

41. Plaintiff re-alleges the foregoing paragraphs as if fully rewritten herein.

42. Plaintiff was fully qualified for her position at all relevant times.

43. Defendant discriminated against Plaintiff on the basis of her sex by treating her less favorably than similarly situated male employees by, including but not limited to, subjecting her to an OPR investigation as the result of a male employee's EEO complaint and transferring her during its pendency, while at the same time failing to initiate OPR investigations into the male employees implicated in Plaintiff's EEO complaints and failing to discipline them.

44. Defendant treated similarly situated male employees more favorably by crediting their accounts and discounting those of Plaintiff, awarding them for a group project at the same time that it excluded Plaintiff from the award, and dismissing Plaintiff's response to criticism as being "overly emotional."

45. Defendant further discriminated against Plaintiff on the basis of her sex by demoting her, isolating her from other employees, revoking privileges which included the ability to earn premium pay and the use of a bureau vehicle, giving her an unduly negative performance review, dismissing her as “overly emotional” when she contested the review, suspending her, advertising her job as vacant while her appeal was pending, and ultimately terminating her employment.

46. Defendant’s conduct was intentional, willful, wanton, malicious, and in reckless disregard for Plaintiff’s rights.

47. As a direct and proximate result of Defendant’s conduct, Plaintiff has suffered injury and damage for which she is entitled to recovery.

COUNT II
(Sex Discrimination – O.R.C. § 4112)

48. Plaintiff re-alleges the foregoing paragraphs as if fully rewritten herein.

49. Plaintiff was fully qualified for her position at all relevant times.

50. Defendant discriminated against Plaintiff on the basis of her sex by treating her less favorably than similarly situated male employees by, including but not limited to, subjecting her to an OPR investigation as the result of a male employee’s EEO complaint and transferring her during its pendency, while at the same time failing to initiate OPR investigations into the male employees implicated in Plaintiff’s EEO complaints and failing to discipline them.

51. Defendant further discriminated against Plaintiff on the basis of her sex by demoting her, isolating her from other employees, revoking privileges which included the ability to earn premium pay and the use of a bureau vehicle, giving her an unduly negative performance review, dismissing her as “overly emotional” when she contested the review, suspending her, advertising her job as vacant while her appeal was pending, and ultimately terminating her employment.

52. Defendant's conduct was intentional, willful, wanton, malicious, and in reckless disregard for Plaintiff's rights.

53. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered injury and damage for which she is entitled to recovery.

COUNT III
(Retaliation – Title VII)

54. Plaintiff re-alleges the foregoing paragraphs as if fully rewritten herein.

55. Plaintiff engaged in protected activity by filing EEO complaints to oppose the FBI's discriminatory treatment of her.

56. Defendant retaliated against Plaintiff on the basis of her protected activity by giving her a negative performance evaluation, excluding her from a team-wide award, recommending unduly harsh sanctions as a result of the *Douglas* factors report, suspending her, advertising her job as vacant while her appeal was pending, and ultimately terminating her employment.

57. Defendant's actions were willful, wanton, malicious, and/or in reckless disregard of Plaintiff's rights.

58. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has suffered damages and is entitled to recovery.

COUNT IV
(Retaliation – O.R.C. § 4112)

59. Plaintiff re-alleges the foregoing paragraphs as if fully rewritten herein.

60. Plaintiff engaged in protected activity by filing EEO complaints to oppose the FBI's discriminatory treatment of her.

61. Defendant retaliated against Plaintiff on the basis of her protected activity by giving her a negative performance evaluation, excluding her from a team-wide award, recommending

unduly harsh sanctions as a result of the *Douglas* factors report, suspending her, advertising her job as vacant while her appeal was pending, and ultimately terminating her employment.

62. Defendant's actions were willful, wanton, malicious, and/or in reckless disregard of Plaintiff's rights.

63. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has suffered damages and is entitled to recovery.

WHEREFORE, Plaintiff Jennifer Boughton demands judgment against Defendant as follows:

- (a) That Defendant be enjoined from further unlawful conduct as described in the Complaint;
- (b) That Plaintiff be reinstated to her employment with Defendant;
- (c) That Plaintiff be awarded all pay and benefits lost from Defendant;
- (d) That Plaintiff be awarded compensatory damages from Defendant;
- (e) That Plaintiff be awarded punitive damages from Defendant;
- (f) That Plaintiff be awarded pre-judgment interest from Defendant;
- (g) That Plaintiff be awarded reasonable attorneys' fees and costs from Defendant;
- (h) That Plaintiff be compensated for the adverse tax consequences of receiving a lump sum award rather than her compensation over several, separate tax years; and
- (i) That Plaintiff be awarded all other legal and equitable relief to which she may be entitled from Defendant.

Respectfully submitted,

/s/ Elizabeth Asbury Newman

Elizabeth Asbury Newman (0096921)

Jon B. Allison (0073955)

Trial Attorneys for Plaintiff

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

/s/ Elizabeth Asbury Newman