

District of Pennsylvania.

PARTIES

4. Plaintiff, Bryan N. Kubic, is a 23-year veteran of the United States Army, who, during all relevant times, held the rank of Master Sergeant in the Army Reserves.¹ Master Sergeant Kubic was an infantry soldier who honorably served to protect the United States' interests around the world, and who was awarded the Combat Infantry Badge while serving in Iraq. Master Sergeant Kubic is a disabled veteran who served honorably in the United States military in a reserve status. Recently, due to the bias of persons employed by the Pennsylvania Department of Corrections ("DOC") against the United States Military, Master Sergeant Kubic was forced to defend himself against false criminal charges filed by the DOC's own law enforcement division. The filing of these false criminal charges then served as the basis for the DOC Defendants to unlawfully terminate Master Sergeant Kubic's employment. While the false criminal charges were ultimately dismissed, the criminal charges serve as an indictment of the United States Military by persons employed by the DOC. Moreover, the damage has been done. Master Sergeant Kubic remains unemployed and his reputation tarnished. Master Sergeant Kubic currently resides in Manchester, PA 17345.

¹ As a result of the incidents discussed herein, effective May 31, 2012, Master Sergeant Kubic was forced to retire from the reserves.

5. Defendant, Stephen C. Allen, is an adult individual, who, during all relevant times, was employed by the DOC, as an Investigator, in the Office of Special Investigations and Intelligence (“OSII”). Mr. Allen was authorized by law to file criminal charges on behalf of the Commonwealth of Pennsylvania. All of Investigator Allen’s actions or inactions were taken under color of state law. He is sued in his individual capacity.

6. Defendant, John Biondo, is an adult individual, who, during all relevant times, was employed by the DOC, as a Human Resources Analyst, in the Labor Relations Division. All of Mr. Biondo’s actions or inactions were taken under color of state law. He is sued in his individual capacity.

7. Defendant, Tammy Ferguson, is an adult individual, who, during all relevant times, was employed by the DOC, as the Chief of Security, in the Department Security Division. All of Tammy Ferguson’s actions or inactions were taken under color of state law. She is sued in her individual capacity.

8. The Pennsylvania Department of Corrections is an agency of the Commonwealth of Pennsylvania, with an address at 2520 Lisburn Road, PO Box 598, Camp Hill, PA 17001-0598.

FACTUAL BACKGROUND

9. The Pennsylvania Department of Corrections (“DOC”) has a military

leave policy, which is contained in DOC Management Directive 530.26, a copy of which is attached at **Exhibit A**.

10. Directive 530.26 provides in relevant part the following: “Documentation is required to determine eligibility for the use of paid leave, continuation of benefits, payment of a monthly stipend and the right to return to work within the time frames allowed by the Uniformed Services Employment and Reemployment Rights Act (USERRA).”

11. Directive 530.26 further provides in relevant part the following: “Documentation may be provided in the form of military orders, written communication from the employee’s military unit or Form DD-214.”

12. Finally, DOC Directive 530.26 provides in relevant part the following: “Documentation supporting military leaves of absence is to be maintained permanently in Official Personnel Folders.”

13. At all times while employed by the DOC, Master Sergeant Kubic complied with Directive 530.26 and provided the DOC Defendants with the required documentation.

14. On or about 2010, Tammy Ferguson became Master Sergeant Kubic’s supervisor at the DOC.

15. Ms. Ferguson is a former member of the United States military.

16. However, Ms. Ferguson harbors ill will toward the military because, while she was a member of the military, she did not enjoy the same level of respect and career opportunities that male members of the military received.

17. As a result, Ms. Ferguson implemented a policy and practice of harassing military personnel.²

18. Therefore, in January of 2011, Master Sergeant Kubic requested to be transferred back to his original position at the DOC Training Academy, as he was on detached duty status in his current position at the DOC's Central Office.

19. Within minutes of submitting his transfer request, Ms. Ferguson called Master Sergeant Kubic into her office, called him a "coward" for requesting the transfer, and denied his transfer request.

20. In addition, Ms. Ferguson stated something to the effect of "if you keep bugging me about this military stuff, I will send you to the Camp Hill Prison. You've been out of jail too long; you need some jail time."

21. Ms. Ferguson told Master Sergeant Kubic that the United States Military does not trump the DOC.

22. Ms. Ferguson routinely told Master Sergeant Kubic that his military

² Three DOC employees will verify Ms. Ferguson's policies and practices. In addition, a former employee will testify that he retired because of Ms. Ferguson's policies and practices. Finally, a present employee will testify that he transferred to another assignment because of Ms. Ferguson's policies and practices.

leave requests were not approved, forcing him to have to re-explain the DOC's military leave policy.

23. On one particular instance, when Master Sergeant Kubic was informed by the United States Military on a Friday that he was to report for military duty on the following Monday, he promptly requested military leave in accordance with the DOC's written policy.

24. Ms. Ferguson, however, denied the military leave request because she wanted additional documentation that DOC Directive 530.26 did not require.

25. Despite the fact that it violated DOC policy for an individual in Ms. Ferguson's employment position to call the United States Military to question the military about specific military duties performed by Master Sergeant Kubic, she did so anyway.

26. When asked by Master Sergeant Kubic why she called his military unit, Ms. Ferguson told Master Sergeant Kubic, that "I'll call whoever I want to".

27. Sometime around or after June 2011, DOC HR Analyst Amy Gephart Emailed Master Sergeant Kubic demanding proof of his upcoming military duties in order to approve Master Sergeant Kubic's leave request.

28. Master Sergeant Kubic responded by Email and explained that the DOC is not following its own official policies in this regard because the official

policies do not require proof prior to granting leave in all circumstances.

29. Concerned about the DOC's treatment of all military personnel in its employ, Master Sergeant Kubic also complained to the DOC that the DOC's military leave policies and practices violated USERRA.

30. Immediately thereafter, in retaliation for speaking out on matters of public concern, years after military leave had been approved by the DOC and provided to Master Sergeant Kubic, Ms. Ferguson initiated an investigation into Master Sergeant Kubic's prior use of military leave.

31. When Ms. Ferguson's investigation did not reveal a misuse of military leave, Ms. Ferguson expanded the scope of the investigation and obtained DOC approval to refer the investigation to DOC Investigator Stephen Allen.

32. On July 15, 2011, Investigator Stephen Allen advised Master Sergeant Kubic that Ms. Ferguson requested that he conduct a criminal investigation of Master Sergeant Kubic's use of military leave.

33. Master Sergeant Kubic signed a waiver of the Miranda Warnings and submitted to an interrogation conducted by Investigator Allen.

34. Investigator Allen prepared notes of his interrogation of Master Sergeant Kubic but then destroyed his notes.

35. On August 16, 2011, Investigator Allen criminally charged Master

Sergeant Kubic with Theft by Deception in violation of 18 Pa. C.S.A. § 3922(a)(1) and Receiving Stolen Property in violation of 18 Pa. C.S.A. § 3925(a); both felonies of the third degree.

36. The sole basis for the criminal charges was the fact that the DOC's record of Master Sergeant Kubic's military leave use did not match the United States Military's pay records for Master Sergeant Kubic.

37. Probable cause did not exist for the crimes charged or for any other crime.

38. Moreover, the affidavit of probable cause attached to the Criminal Complaint (**Exhibit B**) for these charges omitted material facts and contained false statements.

39. Specifically, the affidavit of probable cause contained the following false statements:

- a. "According to Staff Administrator Robert Tramposch's statement to OSII investigators on 07/14/2011, as well as supporting information, these unpaid instances reflect that no military duty or training was performed by Lieutenant Kubic."
- b. "During a 07/15/2011 OSII interview, Lieutenant Kubic stated that he did not attend military training or service for the dates in question during 2008, 2009, 2010, and 2011 because he had authorization from Lieutenant Colonel Scott Giacobbi to attend VA medical appointments at the Lebanon Veteran's Medical Center."
- c. "Lieutenant Kubic refused to produce the medical dates of his alleged

VA medical appointments, and he refused to sign a medical waiver form to enable OSII to verify the appointment dates”

40. Specifically, the affidavit of probable cause failed to disclose the following material facts:

- a. Pursuant to DOC Directive 530.26, the DOC is required to maintain all documents submitted in support of military leave requests in the employee’s personnel folder.
- b. The affidavit of probable cause failed to either state that the DOC failed to maintain the documents in question or identify the documents in question.
- c. The affidavit failed to state that Master Sergeant Kubic told Investigator Allen that “He said he would have documents . . . to show that he was performing military duty **or** was at VA medical appointments” (as Investigator Allen admitted under oath during a UC hearing).
- d. The affidavit of probable cause failed to state that records obtained from the Veteran’s Administration (VA) by the DOC Defendants via subpoena established that on at least two of the dates in question, Master Sergeant Kubic attended VA appointments (as authorized).
- e. The affidavit of probable cause failed to state that Lieutenant Colonel (“LTC”) Scott Giacobbi, Master Sergeant Kubic’s Commanding Officer in the United States Army, told Investigator Allen that Master Sergeant Kubic had performed military duty on all dates that he received military leave from the DOC.
- f. The affidavit of probable cause failed to explain that Robert Tramposh’s responsibility in the military is limited to compensation matters and that he was not Master Sergeant Kubic’s supervisor and was not privy to Master Sergeant Kubic’s military duties.
- g. The affidavit of probable cause failed to identify the “military

information” that OSII investigators indicated supported the criminal charges in question.

41. If the false statements are removed from the affidavit of probable cause, and the missing material facts were added into the affidavit of probable cause, the affidavit of probable cause would not establish that probable cause existed for the crimes charged, or for any other crimes.

42. Investigator Allen signed the arrest warrant admitting that he took Master Sergeant Kubic into custody pursuant to the arrest warrant. See Arrest Warrant, attached at **Exhibit C**.

43. On August 16, 2011, using the filing of the criminal charges as a justification, Ms. Ferguson suspended Master Sergeant Kubic’s employment with the DOC.

44. On September 28, 2011, a preliminary hearing was conducted.

45. At the preliminary hearing, Investigator Allen dropped a bombshell when he admitted under oath that he had no evidence to establish that Master Sergeant Kubic was not performing military duty on the dates in question.

46. Despite this admission, which definitively established that the criminal charges were not supported by the requisite probable cause, the district justice erroneously only dismissed one of the two criminal charges – the charge of receiving stolen property (an error that was corrected on February 20, 2012, when

the Commonwealth dismissed the final criminal charge in response to a Petition for Writ of Habeas Corpus).

47. In further retaliation for Master Sergeant Kubic speaking out on matters of public concern and for exposing the complete incompetence of the DOC personnel involved, the DOC Defendants continued to pursue the frivolous criminal charges leveled against Master Sergeant Kubic.

48. In this regard, on October 14, 2011, at Ms. Ferguson's request, DOC Human Resources Analyst, John Biondo, agreed to participate in Ms. Ferguson's vindictive campaign against Master Sergeant Kubic's military service and conducted a Pre-Disciplinary Conference ("PDC") hearing.

49. At the PDC, Master Sergeant Kubic was not given a complete explanation of the evidence supporting the charges leveled against him.

50. Rather, at the PDC, Master Sergeant Kubic was asked to provide evidence that he did not commit the offenses with which he was charged.

51. Moreover, when attempting to present his case, Master Sergeant Kubic was interrupted and not allowed to finish his statements numerous times.

52. Additionally, Master Sergeant Kubic's witnesses were cut off and not allowed to finish their statements.

53. At the PDC, Master Sergeant Kubic provided an affidavit, attached at

Exhibit D,³ from his Army superior, Command Sergeant Major (“CSM”) Kelly, explaining that Master Sergeant Kubic had performed military duties on all of the dates in question.

54. In addition, LTC Giacobbi testified that he had personally verified that Master Sergeant Kubic had conducted military duties on the dates in question.

55. The PDC was audio recorded.

56. DOC policy provides that upon request, an employee is permitted to receive a copy of the PDC audio.

57. After receiving repeated written requests, attached at **Exhibit E**, from Master Sergeant Kubic for a copy of the Conference audiotape, Mr. Biondo erased the tape.

58. On or about October 18, 2011, Master Sergeant Kubic provided the DOC Defendants with a letter from LTC Giacobbi, attached at **Exhibit F**, which again provided that Master Sergeant Kubic had performed military duties on all of the dates in question.

59. The letter from LTC Giacobbi further explained that Master Sergeant Kubic may have performed military duty on certain dates for which he was paid by the military on different dates.

³ The Affidavit contains an incorrect date of November 14, 2011. The correct date is October 14, 2011.

60. Pursuant to DOC Directive 530.26, this additional but not required documentation and information should have ended the inquiry into Master Sergeant Kubic's use of military leave.

61. Again, it did not.

62. In this regard, Mr. Biondo, as the head of the PDC panel, recommended to Ms. Ferguson that Master Sergeant's employment be terminated.⁴

63. Regardless, Ms. Ferguson testified under oath that she made the ultimate decision to terminate Master Sergeant Kubic's employment.

64. Ms. Ferguson further admitted under oath that before terminating Master Sergeant Kubic's employment with the DOC:

- a. She received the synopsis of the Pre-Disciplinary hearing, uncertified PDC minutes, and the communications from CSM Kelly and LTC Giacobbi.
- b. She had no idea if the PDC minutes that she relied on were true and correct.
- c. She never asked to see any documents from Mr. Kubic's personnel file.
- d. The file received from the PDC committee contained evidence that supported the conclusion that Mr. Kubic performed military duty on all of the dates in question.

65. On November 28, 2011, Master Sergeant Kubic received a letter from

⁴ It is believed that the PDC panel issued this recommendation despite the fact that Sheila Moore, Bureau of Standards & Security; and Steve Davy, Director of Bureau Correction Education did not agree with the recommendation.

the DOC informing him that his employment with the DOC was terminated.

66. The DOC Defendants relied upon, took into account, or considered, Master Sergeant Kubic's military service with respect to each adverse employment actions taken against Master Sergeant Kubic.

67. Master Sergeant Kubic's military status was the sole motivating factor in the DOC Defendants' plan and decision to wrongfully terminate Master Sergeant Kubic's employment.

68. The DOC Defendants caused the director of the DOC Training Academy to send an email to all Training Academy personnel advising of Master Sergeant Kubic's employment suspension and advising that his presence on the grounds should be reported to a manager.

69. These photos and orders continued to be posted even after the criminal charges were dismissed.

70. In addition, after Master Sergeant Kubic's employment was suspended and terminated, the DOC posted pictures of Master Sergeant Kubic on the wall of the entrance areas to the DOC central offices in Camp Hill and Mechanicsburg, Pennsylvania, and at the Training Academy, in Elizabethtown, Pennsylvania, along with orders that his presence on the grounds should be reported to a manager.

71. On January 6, 2012, in light of the fact that the Commonwealth had no evidence to support the remaining criminal charge against him, Master Sergeant Kubic filed a Petition for Writ of Habeas Corpus, requesting that the Commonwealth dismiss the remaining criminal charge.

72. On February 20, 2012, the Commonwealth of Pennsylvania dismissed the remaining criminal charge.

73. The DOC, however, continues to investigate Master Sergeant Kubic for no valid or lawful reason but rather to continue to retaliate against him for speaking out on matters of public concern and for exposing the DOC's mismanagement.

74. Specifically, on March 9, 2012, despite the fact that the criminal charges against Master Sergeant Kubic were dismissed, investigators from the OSII contacted LTC Giacobbi and interviewed him again.

75. Master Sergeant Kubic now is unemployed and his reputation is tarnished.

76. These events and the need to defend against baseless criminal charges have caused Master Sergeant Kubic to suffer significant financial hardship, embarrassment, humiliation, physical and mental injury, and the denial of applications for new employment.

COUNT I

Plaintiff v. Defendants First Amendment – Retaliation Pursuant to 42 U.S.C. § 1983

77. Paragraphs 1-76 are stated herein by reference.

78. Master Sergeant Kubic engaged in constitutionally protected speech by speaking out on an issue of public concern when he complained to the DOC Defendants that the DOC was operating in violation of USERRA.

79. The DOC Defendants undertook retaliatory action against Master Sergeant Kubic sufficient to deter a person of ordinary firmness from exercising his/her constitutional rights.

80. Specifically, the DOC Defendants initiated false criminal charges against Master Sergeant Kubic and terminated his employment with the DOC.

81. The DOC Defendants' actions were motivated by Master Sergeant Kubic's protected speech.

82. As a direct and proximate result of this retaliatory action, Master Sergeant Kubic suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

83. As a direct and proximate result of this retaliatory action, Master

Sergeant Kubic has incurred attorneys' fees and other costs associated with his defense.

COUNT II

Plaintiff v. Defendants Fourth Amendment – False Arrest Pursuant to 42 U.S.C. § 1983

84. Paragraphs 1-83 are stated herein by reference.

85. Pursuant to the Fourth Amendment to the Federal Constitution, it is clearly established law that an arrest is unlawful when it is not supported by probable cause.

86. At the direction of Tammy Ferguson, DOC Investigator Stephen Allen filed criminal charges against Master Sergeant Kubic without the requisite probable cause.

87. The affidavit of probable cause omitted relevant, material, and exculpatory facts, and contained false statements.

88. Investigator Allen knowingly and purposefully obtained a defective arrest warrant.

89. No objectively reasonable police officer, under similar circumstances, would have believed that probable cause existed for the crimes charged.

90. While Investigator Allen consulted with the Cumberland County

District Attorney's Office prior to filing the criminal charges, he misled the DA by omitting relevant, material, exculpatory facts from both his discussion with the DA and the affidavit of probable cause.

91. No objectively reasonable police officer, under similar circumstances, would have relied on the district attorney's authorization to file criminal charges.

92. As a direct and proximate result of the false arrest, Master Sergeant Kubic suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

93. As a direct and proximate result of the false arrest of Master Sergeant Kubic has incurred attorneys' fees and other costs associated with his defense.

COUNT III

**Plaintiff v. Defendants
Fourth Amendment – Malicious Prosecution
Pursuant to 42 U.S.C. § 1983**

94. Paragraphs 1-93 are stated herein by reference.

95. Military leave results in a significant disruption in manpower and increased costs to the DOC.

96. Ms. Ferguson initiated a criminal investigation against Master Sergeant Kubic and terminated his employment in furtherance of the DOC's anti

military bias and in furtherance of her own anti military bias.

97. Investigator Allen filed criminal charges against Master Sergeant Kubic that were not supported by the requisite probable cause.

98. Investigator Allen never spoke with CSM Kelly or LTC Giacobbi (after he submitted his affidavit) to investigate the truth of Master Sergeant Kubic's claims.

99. While Investigator Allen consulted with the Cumberland County District Attorney's Office prior to filing criminal charges against Master Sergeant Kubic, he failed to bring exculpatory and contradictory evidence to the attention of the DA.

100. Moreover, Investigator Allen knowingly submitted an affidavit of probable cause to the district justice that contained false information and failed to include material exculpatory information.

101. Investigator Allen admitted under oath that he filed criminal charges against Master Sergeant Kubic despite the fact that he had no evidence to support the conclusion that Master Sergeant Kubic was not performing military duty on the dates in question.

102. In so stating, Investigator Allen admitted that the criminal charges were not supported by the requisite probable cause.

103. Investigator Allen destroyed his investigation notes thereby prejudicing Master Sergeant Kubic's ability to defend himself against the crimes charged.

104. Furthermore, Investigator Allen failed to prevent the destruction of relevant evidence in the care, custody, and control, of the DOC.

105. By way of example, Mr. Biondo was permitted to destroy an audiotape of a DOC PDC hearing.

106. The DOC Defendants maliciously initiated and participated in the prosecution of the criminal charges, which were filed for a purpose other than to bring Master Sergeant Kubic to justice.

107. As a result of the charges being filed, an arrest warrant was issued for Master Sergeant Kubic.

108. On August 16, 2011, Investigator Allen admitted that he took Master Sergeant Kubic into custody, as evidenced by the signed arrest warrant stating same.

109. After submitting to custody, Master Sergeant Kubic suffered the humiliation of being forced to be fingerprinted at the Cumberland County jail by an officer who he had instructed at the training academy.

110. As a result, Master Sergeant Kubic suffered a "deprivation of liberty

consistent with the concept of seizure as a consequence of a legal proceeding.”

111. All criminal charges against Master Sergeant Kubic have been dismissed, and the criminal proceedings have therefore been terminated in his favor.

112. As a direct and proximate result of the malicious prosecution, Master Sergeant Kubic suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

113. As a direct and proximate result of the malicious prosecution of Master Sergeant Kubic, he has incurred attorneys’ fees and other costs associated with his defense.

COUNT IV

**Plaintiff v. Defendants
Violation of the Uniformed Services Employment
and Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4311**

114. Paragraphs 1-113 are stated herein by reference.

115. The USERRA provides that employers shall not take action against employees and employees shall not be denied retention in their employment because of their military status.

116. Master Sergeant Kubic’s military status was the sole motivating factor

in the DOC Defendants' plan and decision to wrongfully terminate Master Sergeant Kubic's employment.

117. In violation of the USERRA, the DOC Defendants implemented a policy and practice whereby the DOC would not approve requests for military leave unless the United States military provided a written detailed explanation of the specific military duties that were, or would be, performed during the military leave.

118. The DOC Defendants either did not retain or destroyed exculpatory military leave related documentation that pursuant to DOC Directive 530.26 had to be maintained in Master Sergeant Kubic's personnel folder forever.

119. Investigator Allen intentionally destroyed his criminal investigation notes.

120. After receiving numerous written requests for a copy of same, in violation of DOC written policy, Mr. Biondo intentionally destroyed the PDC audiotape.

121. Investigator Allen falsely testified during an unemployment compensation hearing that after meeting with LTC Giacobbi, he was never provided with records to establish that Master Sergeant Kubic attended VA appointments in lieu of military duty.

122. Mr. Biondo falsely testified during an unemployment compensation hearing that his investigation panel never received evidence from the military that Master Sergeant Kubic performed military duties on the dates in question.

123. Master Sergeant Kubic's employment was terminated despite the fact that pursuant to the USERRA and DOC Directive 530.26, he submitted the requisite documentation to support his requests for military leave.

124. All of these unlawful and malicious actions were taken against Master Sergeant Kubic because of his military status.

125. As a direct and proximate result of the USERRA violations, Master Sergeant Kubic suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

126. As a direct and proximate result of the USERRA violations, Master Sergeant Kubic has incurred attorneys' fees and other costs associated with his defense.

COUNT V

Plaintiff v. Defendants

Retaliation - Violation of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. § 4311

127. Paragraphs 1-126 are stated herein by reference.

128. USERRA provides that employers shall not take any adverse employment action against employees for attempting to enforce a protection provided by USERRA or exercising a right provided by USERRA.

129. Master Sergeant Kubic attempted to enforce USERRA's protection for himself and others and attempted to exercise his rights to be employed under USERRA.

130. Master Sergeant Kubic's actions in this regard were a motivating factor in Defendants' actions taken against him to strip him of his employment.

131. The DOC Defendants retaliated against Master Sergeant Kubic for his attempt to enforce his rights under USERRA.

132. Specifically, they caused false criminal charges to be leveled against Master Sergeant Kubic, destroyed exculpatory evidence, and terminated Master Sergeant Kubic's employment.

133. As a direct and proximate result of this retaliatory action prohibited by USERRA, Master Sergeant Kubic suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

134. As a direct and proximate result of this retaliatory action prohibited by USERRA, Master Sergeant Kubic has incurred attorneys' fees and other costs

associated with his defense.

COUNT VI

Plaintiff v. Defendants

Fourteenth Amendment – Procedural Due Process Violation Pursuant to 42 U.S.C. § 1983

135. Paragraphs 1-134 are stated herein by reference.

136. As a civil service employee, Master Sergeant Kubic has a property interest in his employment with the DOC.

137. He was deprived of this property interest without due process of law as guaranteed by the procedural due process protections in the Fourteenth Amendment.

138. Master Sergeant Kubic was deprived of a meaningful opportunity to be heard.

139. Master Sergeant Kubic was never given an explanation of the evidence supporting the charges leveled against him at the PDC.

140. Rather, at the PDC, Master Sergeant Kubic was asked to provide evidence that he did not commit the offenses with which he was charged.

141. Master Sergeant Kubic provided exculpatory evidence to the PDC panel proving his innocence but the Defendants ignored the evidence.

142. Moreover, when attempting to present his case, Master Sergeant

Kubic was interrupted and not permitted to finish his statements.

143. Additionally, Master Sergeant Kubic's witnesses were interrupted and not permitted to finish their statements.

144. The PDC panel failed to consider the fact that they were investigating Master Sergeant Kubic's alleged failure to comply with DOC Directives that the DOC could not establish were ever provided to him.

145. The DOC Defendants failed to implement DOC Directive 530.26 as directed.

146. Moreover, the DOC Defendants implemented and enforced a military leave policy that violated USERRA.

147. The DOC Defendants either failed to review the military related documents contained in Master Sergeant Kubic's personnel folder or failed to investigate the absence of said documents.

148. The DOC Defendants destroyed exculpatory evidence.

149. Specifically, the DOC Defendants permitted the destruction of Investigator Allen's investigation notes and the audiotape of the PDC hearing.

150. The DOC Defendants knowingly relied on an incomplete investigation and an uncertified transcript of the PDC hearing to support and justify the unlawful termination of Master Sergeant Kubic's employment.

151. When Ms. Ferguson decided to terminate Master Sergeant Kubic's employment, she did so knowing that Master Sergeant Kubic never misused DOC military leave and never committed the crimes charged.

152. As a result of Master Sergeant Kubic being deprived of a meaningful opportunity to be heard, the DOC's failure to present the evidence against him, the DOC's destruction of exculpatory evidence, and the DOC institution of a biased process against him, Master Sergeant Kubic was deprived of his (1) property interest in his civil service employment, (2) ability to establish that he is entitled to receive unemployment compensation benefits, and (3) ability to prove that he is entitled to civil service relief.

153. The PDC is not a grievance or arbitration procedure, and as a result of the DOC Defendants' conduct, was a sham process.

154. As a direct and proximate result of the violation of Master Sergeant Kubic's Fourteenth Amendment Due Process rights, Master Sergeant Kubic suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

155. As a direct result of the violation of Master Sergeant Kubic's Fourteenth Amendment Due Process rights, Master Sergeant Kubic has incurred

attorneys' fees and other costs associated with his defense.

COUNT VII

Plaintiff v. Stephen Allen and Tammy Ferguson State Law Claim – Malicious Prosecution

156. Paragraphs 1-155 are stated herein by reference.

157. Investigator Allen filed criminal charges against Master Sergeant Kubic that were not supported by the requisite probable cause.

158. Stephen Allen initiated the investigation that resulted in charges being filed at the direction of Tammy Ferguson.

159. Tammy Ferguson had absolutely no reason to believe Master Sergeant Kubic had committed a crime, but nevertheless directed that he be investigated.

160. Moreover, the records obtained from the Veteran's Administration (VA) and the information and records provided by LTC Giacobbi and CSM Kelly vitiated probable cause.

161. Despite this fact, Investigator Allen never spoke with CSM Kelly or LTC Giacobbi (after he submitted his affidavit) to investigate the truth of Master Sergeant Kubic's claims.

162. While Investigator Allen consulted with the Cumberland County District Attorney's Office prior to filing criminal charges against Master Sergeant Kubic, he failed to bring exculpatory and contradictory evidence to the attention of

the District Attorney.

163. Moreover, Investigator Allen knowingly submitted an affidavit of probable cause to the district justice that contained false information and failed to include exculpatory information.

164. Investigator Allen admitted under oath that he had no evidence that Master Sergeant Kubic was not performing military duty on the dates in question.

165. In so stating, Investigator Allen admitted that the criminal charges were not supported by the requisite probable cause.

166. Investigator Allen destroyed his investigation notes thereby prejudicing Master Sergeant Kubic's ability to defend against the crimes charged.

167. Furthermore, Investigator Allen failed to prevent the destruction of relevant evidence in the care, custody, and control, of the DOC.

168. By way of example, Mr. Biondo was permitted to destroy an audiotape of a DOC PDC hearing.

169. With malice, the DOC Defendants commenced and participated in the prosecution of the criminal charges, which were filed for a purpose other than to bring Master Sergeant Kubic to justice.

170. As a result of the charges being filed, an arrest warrant was issued for Master Sergeant Kubic.

171. On August 16, 2011, Investigator Allen signed an arrest warrant in which he admits that he took Master Sergeant Kubic into custody.

172. After submitting to custody, Master Sergeant Kubic suffered the humiliation of being forced to be fingerprinted at the Cumberland County jail by an officer who he had instructed at the training academy.

173. All criminal charges against Master Sergeant Kubic have been dismissed, and criminal proceedings therefore have terminated in his favor.

174. As a direct and proximate result of the malicious prosecution, Master Sergeant Kubic suffered and will continue to suffer embarrassment, humiliation, financial harm, physical and psychological harm, and pain and suffering, some or all of which may be permanent.

175. As a direct and proximate result of the malicious prosecution of Master Sergeant Kubic, he has suffered injury to his person, property, and reputation.

176. As a direct and proximate result of the malicious prosecution of Master Sergeant Kubic, he has incurred attorneys' fees and other costs associated with his defense.

WHEREFORE, Plaintiff, Bryan N. Kubic, respectfully requests the following relief:

- A. That the Court provide the Plaintiff with a jury trial;
- B. That judgment be entered in favor of the Plaintiff and against the Defendants;
- C. That the Court declare that the DOC Defendants' actions violated the Plaintiff's Federal Constitutional rights and rights afforded to him pursuant to the USERRA;
- D. That the Court enjoin the DOC Defendants from continuing to investigate the Plaintiff's prior use of military leave or to criminally prosecute him for same;
- E. That the Court award the Plaintiff compensatory damages, to include back and front pay, and compensation for lost pension and other fringe benefits;
- F. That the Court award the Plaintiff punitive damages;
- G. That the Court award the Plaintiff reasonable attorney's fees and costs and interest; and
- H. That the Court award such other financial or equitable relief as is reasonable and just.

RESPECTFULLY SUBMITTED,

Dated: June 25, 2012

s/Devon M. Jacob

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRYAN N. KUBIC,
Plaintiff

v.

STEPHEN ALLEN,
JOHN BIONDO, and
TAMMY FERGUSON,
Defendants

: NO.: 1:12-cv-00547-SHR
:
: JUDGE: SYLVIA H. RAMBO
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED
:
: (Electronically Filed)

CERTIFICATE OF SERVICE

I hereby certify that on **June 25, 2012**, a true and correct copy of the **First Amended Complaint** was served via the ECF System upon those person(s) listed below:

Sarah C. Yerger, Esquire
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s/Devon M. Jacob

DEVON M. JACOB, ESQUIRE