

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-cv-00493-RPM

EUGENE HOWARD,

Plaintiff,

v.

CITY OF FORT COLLINS and KATHLEEN WALKER,

Defendants.

SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL**

The Scheduling/Planning Conference took place on July 11, 2017 at 10:00 a.m. in the conference room, Second Floor, Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado. Appearances of counsel were as follows:

For the Plaintiff: Mark S. Bove
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For the Defendants: Cathy Havener Greer
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1700 Broadway, Suite 1020
Denver, CO 80290
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cgreer@warllc.com

Jenny Lopez Filkins
Assistant City Attorney
City of Fort Collins
Fort Collins, CO 80522
Phone: 970-416-2284
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2. STATEMENT OF JURISDICTION

This is an action brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and under 42 U.S.C. § 1981 and 42 U.S.C. § 1983. Jurisdiction is based on 28 U.S.C. § 1331, 28 U.S.C. § 1343 and 42 U.S.C. § 2000e-5. Jurisdiction is admitted.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff:

Mr. Howard was employed as a Bus Operator by the City of Fort Collins, beginning on August 4, 2014. He fully performed his job duties in a satisfactory manner, passed his introductory period in the position, and received pay raises and commendations regarding the quality of his work. During his tenure, there were virtually no other African-American persons employed as bus operators by the City of Fort Collins, and he was aware of only one other black bus operator who worked during his tenure, out of approximately ninety operators employed at any given time. No one in Mr. Howard's line of authority was black or African-American.

On January 11, 2015, a white female alleged that Mr. Howard improperly touched her, but these allegations were completely false and were never corroborated by any physical evidence or any evidence of any kind. The allegations were based on racially discriminatory stereotyping. The Larimer County Sheriff's Department nevertheless arrested and jailed Mr.

Howard. Once Mr. Howard retained counsel it was established that he was not guilty of the charges or any misconduct involving the accuser, and the District Attorney moved to dismiss all charges against Mr. Howard due to insufficient evidence, a motion which was granted by the Court.

Meanwhile, on the day Mr. Howard was seeking release from jail, his wife, who also worked for the City of Fort Collins, contacted his supervisor to advise of his absence. The supervisor granted Mr. Howard a one week leave of absence. Near the end of that one week period, Mr. Howard came in to meet with Defendant Walker and another manager regarding his return to work. Mr. Howard explained the criminal charge against him, explained the racially discriminatory aspects of it and the baseless nature of the allegations. Ms. Walker and the City refused to allow Mr. Howard to return to work, and placed him on administrative leave without pay. They called him in to a meeting several weeks later and terminated him. The Notice of Termination alleged that Mr. Howard had failed to report the criminal charges against him, which was untrue, and had engaged in off duty misconduct relating to the accuser's allegations, which was also untrue. Mr. Howard was provided with no written notice of the proposed termination, no pre-termination right to be heard, no appeal rights and no other procedural protections, including those provided for by the City's own Personnel Policies and Procedures.

Mr. Howard therefore has asserted claims for race discrimination pursuant to Title VII of the Civil Rights Act of 1964, denial of the same rights as enjoyed by white citizens to make and enforce contracts, pursuant to 42 U.S.C. § 1981, and denial of his rights to due process of law and equal protection of the laws under the Fourteenth Amendment and pursuant to 42 U.S.C. §

1983. He seeks injunctive relief, back pay, compensatory and punitive damages, interest, attorney's fees and costs.

Defendants:

Neither the City nor Ms. Walker discriminated against Plaintiff because of his race or for any other illegal reason. Defendants did not violate Title VII of the Civil Rights Act of 1964, as amended, nor did they violate 42 U.S.C. 1981, nor did they violate any due process or equal protection rights of the U.S. Constitution.

Plaintiff was hired as a bus operator for the City on August 4, 2014 and was terminated from employment by the City effective April 6, 2015. The position of bus operator was a safety-sensitive position and a position of trust. Plaintiff interacted with bus passengers of all demographic categories, including youth and potentially vulnerable populations, without supervision.

On March 10, 2015, Plaintiff was arrested and charged criminally by the Larimer County Sheriff's Department with felony sexual assault for an incident that allegedly occurred on January 11, 2015. In violation of City policy, Plaintiff failed to inform his supervisor that he had been arrested and charged with a felony offense. Due to the seriousness of the criminal charges and subsequent arrest, and the fact that Plaintiff violated City policy by neglecting to inform his supervisor of the arrest or the fact that he had been criminally charged, Defendant Walker terminated Plaintiff's employment. Plaintiff was not terminated because of his race or for any other illegal reason. Defendant Walker is entitled to qualified immunity as to Plaintiff's claims against her.

Defendants incorporate their Answer and the defenses and affirmative defenses contained therein.

4. STIPULATIONS OF FACTS

The following facts are undisputed and are stipulated:

1. Plaintiff, Eugene Howard, is a citizen of the United States, and a resident and citizen of the State and District of Colorado.
2. Mr. Howard is an African-American.
3. Defendant City of Fort Collins is a home rule city, municipal corporation and a political subdivision of the State of Colorado.
4. Defendant City of Fort Collins is an employer within the meaning of 42 U.S.C. § 2000e, *et seq.*
5. Defendant Kathleen Walker was, at pertinent times, the Operations Manager of Transport, the public transportation agency of the City of Fort Collins.
6. Defendant Kathleen Walker, at all pertinent times, had authority to make personnel decisions concerning Mr. Howard's employment, including termination of his employment.

5. SUMMARY OF DAMAGES CLAIMED

a. Plaintiff:

Damages include back pay and benefits from the date of placement on leave without pay, continuing through the date of discharge, to the present, at the rate of \$19.23 per hour for straight time and \$28.84 per hour for overtime, plus 40 percent allowance for benefits. Mr. Howard was

working an average of 41 hours per week, which is estimated as 40 hours straight time and 1 hour overtime (it appears the hours are not evenly distributed by weeks, so that a full calculation with accurate records will probably result in additional overtime amounts), for a weekly wage amount of \$798.04, plus benefits allowance of \$319.22, for a weekly total of \$1117. The period from March 19, 2015 to June 19, 2017 is 117 weeks, for a total back pay and benefits amount of \$130,689, not including interest. Substitute employment may include work as a driver for Uber, which commenced on August 8, 2016, and totaled \$17,000 in income for 2016. Unemployment benefits, which may or may not be a set off, were received in the amount of approximately \$8000. Compensatory damages pursuant to Title VII of the Civil Rights Act of 1964, as amended, are claimed in an amount to be determined by the trier of fact, subject to the statutory cap of \$300,000. Compensatory and punitive damages under Section 1981 and 1983 are not subject to the Title VII statutory maximum. Attorney's fees and costs to date are approximately \$5,000.

b. Defendant:

Defendant is not claiming any damages from Plaintiff at this time, but reserves the right to seek attorney's fees and costs pursuant to applicable federal law.

**6. REPORT OF PRECONFERENCE DISCOVERY
AND MEETING UNDER FED R. CIV. P. 26(f)**

a. The Rule 26(f) meeting was held on May 16, 2017.

b. Mark S. Bove represented the Plaintiff, Eugene Howard. Cathy Havener Greer and Jenny Lopez Filkins represented the Defendants, City of Fort Collins and Kathleen Walker.

c. Rule 26(a)(1) Initial Disclosures will be made June 5, 2017.

d. The parties do not anticipate that the claims or defenses will involve extensive electronically stored information, nor that a substantial amount of the disclosures or discovery will involve information on records maintained in electronic form.

e. The parties agree to preserve all relevant electronically stored information, and to produce it pursuant to disclosure and discovery obligations.

f. There are no agreements regarding claims of privilege or protection for trial preparation materials involving production of computer-generated records.

7. CASE PLAN AND SCHEDULE

a. The filing of amended and supplemental pleadings will be made pursuant to Fed.R.Civ.P. 15.

b. Discovery Cut-Off: December 22, 2017

c. Dispositive Motion Deadline: January 26, 2018

d. Opinion Witness Disclosures:

(1) Fields of opinion testimony have not been finally determined; however, it is anticipated that they may include the area of emotional or psychological damages.

(2) The parties agree to the limitation of one expert witness per side.

(3) The party bearing the burden of persuasion on the issues for which opinion is to be offered under F.R.E. 702 shall designate the witness and provide opposing counsel with all information specified in Fed.R.Civ.P. 26(a)(2) on or before October 22, 2017.

(4) The parties shall designate all contradicting opinion witnesses and provide opposing counsel with all information specified in Fed. R. Civ. P. 26(a)(2) on or before November 22, 2017.

(5) Any rebuttal opinions will be exchanged on or before December 22, 2017.

e. Deposition Schedule:

(1) All parties to be deposed have not yet been determined; however, it is anticipated that they will include Eugene Howard, 1703 Mars Hill Lane, Wellington CO 80549; Plaintiff's wife Doriane Howard, and, Kathleen Walker, 250 North Mason Street, Fort Collins CO 80524.

(2) The parties do not anticipate deposing any witnesses by written interrogatories under Rule 31.

(3) There are no disputes regarding the number of depositions and length of depositions.

(4) The parties propose the limitations of the Federal Rules of Civil Procedure regarding requests for production of documents and requests for admissions.

f. Written interrogatories may be served any time after completion of the Scheduling/Planning conference. All interrogatories shall be served such that the responses are due prior to discovery cutoff date.

g. Requests for production of documents may be served any time after completion of the Scheduling/Planning conference. All requests for production of documents shall be served such that the responses are due prior to discovery cutoff date.

h. Requests for admissions may be served any time after completion of the Scheduling/Planning conference. All requests for admission shall be served such that the responses are due prior to discovery cutoff date.

i. Other Planning or Discovery Orders: None.

8. SCHEDULING ISSUES

There are no scheduling or discovery issues which counsel have been unable to reach an agreement concerning.

9. TRIAL DATE AND LENGTH OF TRIAL

Trial date and length of trial will be set at the pretrial conference to be scheduled after completion of discovery.

10. AMENDMENTS TO SCHEDULING ORDER

The Scheduling Order may be altered or amended only upon a showing of good cause.

DATED this 11th day of July, 2017.

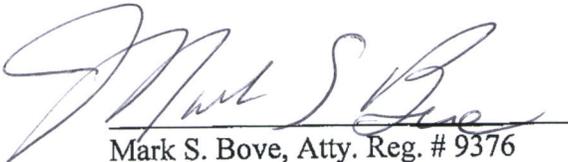
BY THE COURT:



U.S. District Judge

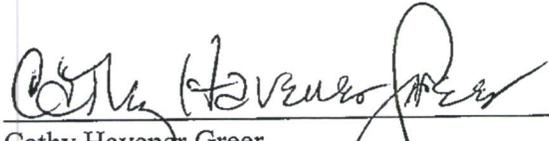
APPROVED AS TO FORM:

MARK S. BOVE, P.C.



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