

**UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 15-23825-CIV-WILLIAMS

DAVID BALDWIN,

Plaintiff,

v.

ANTHONY FOXX, in his official capacity
as Secretary of The United States
Department of Transportation, and
MICHAEL P. HUERTA, in his
official capacity as Administrator Federal
Aviation Administration,

Defendants.

ANSWER TO AMENDED COMPLAINT

Defendants, Anthony Foxx, in his official capacity as Secretary of the United States Department of Transportation, and Michael P. Huerta, in his official capacity as Administrator of the Federal Aviation Administration (“FAA”), by and through undersigned counsel, answers the Amended Complaint as follows:

Defendants respond to the numbered paragraphs of the Amended Complaint as follows:

INTRODUCTION¹

1. Defendants admit that Plaintiff is a former employee of the FAA. The remainder of paragraph 1 contains Plaintiff’s description of the statutory basis for his case and claim for

¹ In this Answer, Defendants have replicated the headings from Plaintiff’s Amended Complaint to assist the Court in matching Defendants’ responses to Plaintiff’s allegations in the Amended Complaint. To the extent the headings contain any factual allegations, Defendants deny those allegations.

damages, to which no response is required. To the extent that an answer is required to these allegations, they are denied.

2. Paragraph 2 contains Plaintiff's characterization of his claim for relief, to which no response is required. To the extent that an answer is required to these allegations, they are denied.
3. Paragraph 3 contains Plaintiff's characterization of his claim for relief, to which no response is required. To the extent that an answer is required to these allegations, they are denied.
4. Paragraph 4 contains Plaintiff's characterization of his claim for relief, to which no response is required. To the extent that an answer is required to these allegations, they are denied.

JURISDICTION, VENUE AND PARTIES

5. The first sentence in paragraph 5 contains a characterization of this civil action to which no response is required. The second sentence in paragraph 5 is a conclusion of law regarding jurisdiction, to which no response is required. To the extent a response is required, Defendants deny all allegations contained in paragraph 5.
6. Defendants admit that Plaintiff is male and was employed by the FAA. Defendants further admit that Plaintiff filled a temporary Front Line Manager (FLM) position with the FAA at the Miami Tower facility, beginning approximately October 21, 2010. Defendants deny the remaining allegations contained in paragraph 6.
7. Paragraph 7 contains conclusions of law as to venue, to which no responses are required.
8. Defendants admit that Plaintiff was previously employed at the FAA and that he previously filled a temporary FLM position at the FAA.

SATISFACTION OF CONDITIONS PRECEDENT

9. Defendants admit that Plaintiff contacted an EEO counsellor on August 28, 2012, and filed a formal administrative complaint of discrimination on December 21, 2012. Defendants deny the remaining allegations contained in paragraph 9.
10. Defendants admit that, on or about November 17, 2012, Plaintiff filed a complaint with FAA's Accountability Board alleging discrimination. Defendants deny the remaining allegations contained in paragraph 10.
11. Defendants admit that the Department of Transportation (DOT) accepted the complaint for investigation and issued a Final Agency Decision (FAD). Defendants deny the remaining allegations contained in paragraph 11.
12. Defendants admit that the DOT dismissed the claim as untimely. Defendants deny the remaining allegations contained in paragraph 12.
13. Defendants admit that Plaintiff filed an appeal with the EEOC on August 18, 2013. Defendants deny the remaining allegations contained in paragraph 13.
14. Defendants admit that on July 15, 2015, the EEOC remanded the claim for further administrative processing pursuant to 29 C.F.R. § 1614. Defendants deny the remaining allegations contained in paragraph 14.
15. Defendants admit that the EEOC made a preliminary legal finding that a claim of discrimination predicated upon sexual orientation states a claim under Title VII's protection of sex. Defendants deny the remaining allegations contained in paragraph 15.
16. Paragraph 16 contains conclusions of law to which no response is required. If a response is required, denied.

17. Defendants admit that they did not seek reconsideration of the EEOC's July 15, 2015 decision. Defendants deny the remaining allegations contained in paragraph 17.

18. The Defendants admit that the EEOC provided notice to Plaintiff of his options upon receipt of the EEOC decision on his appeal.

19. Paragraph 19 contains conclusions of law to which no response is required. If a response is required, denied.

THE APPLICABLE STATUTES

20. The allegation contained in paragraph 20 is an excerpt from Title VII of the Civil Rights Act and does not require an answer. If a response is required, denied.

FACTS COMMON TO COUNTS I, II & III

21. Paragraph 21 contains a conclusion of law to which no response is required. If a response is required, denied.

22. Admit.

23. Paragraph 23 contains conclusions of law to which no response is required. If a response is required, denied.

24. Admit.

25. Admit.

26. Defendants admit that Juan Fuentes was aware that Plaintiff is a male and identified as gay. Defendants further admit that, as Plaintiff's supervisor, Mr. Fuentes made some decisions regarding the terms of Plaintiff's employment with the FAA. Defendants deny the remaining allegations contained in paragraph 26.

27. Defendants admit that Mark Scott was aware that Plaintiff was male and identified as gay.

Defendants further admit that Scott provided input as to Plaintiff's employment.

Defendants deny the remaining allegations contained in paragraph 27.

28. Denied.

29. Admit.

30. Defendants admit that Juan Fuentes was the selecting official for the vacancy announcement referenced in paragraph 29 of the Amended Complaint.

31. Defendants admit that Mark Scott spoke with Juan Fuentes about the vacancy announcement referenced at paragraph 29. Defendants further admit that all Operations Managers, including Scott, provided input to Fuentes regarding the selection of candidates for positions. Defendants deny the remaining allegations contained in paragraph 31.

32. Admit.

33. Defendants admit that Plaintiff's supervisors were aware that he wanted to convert from a temporary FLM to a permanent FLM position. Defendants deny the remaining allegations contained in paragraph 33.

34. Denied.

35. Denied.

36. Denied.

COUNT I
SEX DISCRIMINATION (SEXUAL ORIENTATION DISCRIMINATION) IN
VIOLATION OF TITLE VII

37. This paragraph incorporates by reference Defendants' responses to paragraphs 1-36.

38. Denied.

39. Denied.

40. Defendants admit that Plaintiff's participation in non-work related conversations in the radar room was a distraction and that Plaintiff was advised of the same. Defendants deny the remaining allegations contained in paragraph 40, including the allegation that the substance of the non-work related conversations had any relevance to the distraction: it was the fact that Plaintiff, while serving in the role of FLM, was not only not preventing non-work related conversations in the radar room, but was participating in those conversations, that caused the distraction.

41. Defendants admit that Plaintiff was advised that non-work related conversations should be conducted outside of the radar room. Defendants deny the remaining allegations contained in paragraph 41.

42. Denied.

43. Defendants admit this allegation but clarify that no employees were subject to a hostile work environment regardless of the sex of their respective partners.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied

50. Denied

51. Paragraph 51 contains conclusions of law to which no response is required. If a response is required, denied.

52. Paragraph 52 contains conclusions of law to which no response is required. If a response is required, denied.

The remaining paragraphs in Count I, beginning with the “WHEREFORE” clause, constitute Plaintiff’s prayer for relief to which no answer is necessary. If an answer is deemed necessary, Defendants deny that Plaintiff is entitled to the relief requested or any relief whatsoever. Any compensatory damages award would be limited by 42 U.S.C. § 1981a, and relief may be further limited by 42 U.S.C. § 2000e-5(g)(2)(B).

COUNT II – HOSTILE WORK ENVIRONMENT IN VIOLATION OF TITLE VII

53. This paragraph incorporates by reference Defendants’ responses to paragraphs 1-36.

54. Denied.

55. Denied.

56. Defendants admit that Plaintiff’s participation in non-work related conversations in the radar room was a distraction and that Plaintiff was advised of the same. Defendants deny the remaining allegations contained in paragraph 56, including the allegation that the substance of the non-work related conversations had any relevance to the distraction: it was the fact that Plaintiff, while serving in the role of FLM, was not only not preventing non-work related conversations in the radar room, but was participating in those conversations, that caused the distraction.

57. Defendants admit that Plaintiff was advised that non-work related conversations should be conducted outside of the radar room. Defendants deny the remaining allegations contained in paragraph 57.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Defendants admit this allegation but clarify that no employees were subject to a hostile work environment regardless of the sex of their respective partners.

64. Denied.

The remaining paragraphs in Count II, beginning with the “WHEREFORE” clause, constitute Plaintiff’s prayer for relief to which no answer is necessary. If an answer is deemed necessary, Defendants deny that Plaintiff is entitled to the relief requested or any relief whatsoever. Any compensatory damages award would be limited by 42 U.S.C. § 1981a, and relief may be further limited by 42 U.S.C. § 2000e-5(g)(2)(B).

COUNT III – RETALIATION IN VIOLATION OF TITLE VII

65. This paragraph incorporates by reference Defendants’ responses to paragraphs 1-36.

66. Paragraph 66 sets forth Plaintiff’s characterization of the legal basis for his claim, to which no response is required. If a response is required, Defendants deny the allegations.

67. Paragraph 67 contains legal conclusions to which no response is required. If a response is required, Defendants deny the allegations.

68. Defendants admit that, on or about November 17, 2012, Plaintiff filed a complaint with FAA’s Accountability Board alleging discrimination. Defendants deny that Plaintiff was subjected to harassment at work due to his sex (sexual orientation).

69. Admit.

70. Denied.

71. Denied.

72. Denied.

73. Paragraph 73 contains legal conclusions to which no response is required. If a response is required, Defendants deny the allegations.

The remaining paragraphs in Count III, beginning with the “WHEREFORE” clause, constitute Plaintiff’s prayer for relief to which no answer is necessary. If an answer is deemed necessary, Defendants deny that Plaintiff is entitled to the relief requested or any relief whatsoever. Any compensatory damages award would be limited by 42 U.S.C. § 1981a, and relief may be further limited by 42 U.S.C. § 2000e-5(g)(2)(B).

JURY TRIAL DEMAND

This paragraph contains Plaintiff’s request for a jury trial, to which no answer is required.

Except for the specific admissions above, Defendants hereby specifically deny all of the allegations of Plaintiff’s Amended Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants had legitimate non-discriminatory reasons for all actions taken with respect to Plaintiff and would have taken the same action regardless of Plaintiff’s alleged protected class.

SECOND AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred to the extent they exceed the scope of the Plaintiff’s administrative claim.

THIRD AFFIRMATIVE DEFENSE

Plaintiff failed to comply with the time limits for filing an administrative claim.

WHEREFORE, having fully answered Plaintiff’s Amended Complaint, Defendants pray that Plaintiff take nothing by way of his Amended Complaint, that the same be dismissed, and

that judgment be awarded in favor of Defendants, together with costs and such other and further relief as the Court deems appropriate in this case.

Respectfully submitted,
WIFREDO A. FERRER
UNITED STATES ATTORNEY

s/Anthony Erickson-Pogorzelski
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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/Anthony Erickson-Pogorzelski
Assistant United States Attorney