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SHP-15C 08/02

**MISSOURI STATE HIGHWAY PATROL**

**Date** : October 29, 2014

**Subject** : Americans with Disabilities Act, and Veteran Status Discrimination Investigation

**To** : Colonel Ronald K. Replogle

**From** : Lieutenant Roger D. Whittler

On October 25, 2014, I was notified of an allegation of discrimination filed by Sergeant Henry J. Folsom, of the Missouri State Highway Patrol Division of Drug and Crime Control. An Interdepartmental Communication from the Director of the Missouri State Highway Patrol Professional Standards Division indicated that on October 22, 2014, Sergeant Folsom made allegations that his commander, Captain Sarah L. Eberhard of the Division of Drug and Crime Control, had treated him in such a way that prevented him from returning to work after an absence due to Post Traumatic Stress Disorder (PTSD). Sergeant Folsom asserts that his diagnosis was first established as a result of his service in the military.

The allegations brought forth by Sergeant Folsom are covered by the Americans with Disabilities Act of 1990 (42-U.S.C. 12102).

Under this act, the term disability is defined as:

1. A physical or mental impairment that substantially limits one or more major life activities of such individual.
2. having a record of such impairment or
3. being regarded as having such impairment

This law prohibits discrimination in employment decisions based on a person's disability. Sergeant Folsom did not provide evidence of a military service related disability, nor did he provide evidence that he suffered from PTSD prior to the period immediately after the officer involved shooting that occurred on September 11, 2012. Based on the information that is available, the following is a timeline of Sergeant Henry J. Folsom's work history since September 11, 2012.

4. On September 11, 2012, Sergeant Folsom was on duty, and was involved in an officer involved shooting.
5. On October 19, 2012, Sergeant Folsom worked in an on duty status at the Patrol.
6. On October 20, 2014, Sergeant Folsom began a lengthy period of extended leave for PTSD.
7. October 17, 2014, Sergeant Folsom applied for long term disability benefits through the Missouri Department of Transportation.

October 29, 2014

Americans with Disabilities Act, and Veteran Status Discrimination Investigation

-2

On October 29, 2014, at 1444 hours, I interviewed Sergeant Folsom. The interview was conducted in a private conference room located in the Missouri Department of Transportation Maintenance Building located in Lebanon, Missouri. Also present during the interview was Lieutenant Julie A. Kerr of the Human Resources Division. The interview was audio recorded.

Sergeant Folsom was informed that we were there to investigate allegations of an Equal Employment Opportunity investigation. Sergeant Folsom was asked to explain the information that he thought was discriminatory. Sergeant Folsom began by saying that in 2012, he was assigned to investigate a case involving Jeffrey Winehouse. At the time Sergeant Folsom was assigned investigator with the Missouri State Highway Patrol Division of Drug and Crime Control Troop I Unit. Sergeant Folsom served in the unit with two other officers, Sergeant Dorothy E. Taylor, and Corporal Scott E. Mertens. Sergeant Folsom served as the supervisor. Sergeant Folsom said he later became involved in a shooting with Winehouse.

On September 11, 2012, as part of his investigation Sergeant Folsom arranged a meeting with the suspect, Jeffrey Winehouse. During his contact with Winehouse on September 11, 2012, Sergeant Folsom was involved in an officer involved shooting with Winehouse. On September 12, 2012, Sergeant Folsom was on administrative leave from duty. He returned to work on September 13, 2012.

Sergeant Folsom said he was subjected to retaliation because he did not agree with the manner which the Patrol staff chose to proceed with the investigation of the officer involved shooting, and the subsequent decision not to prosecute Winehouse for the charges that Sergeant Folsom was seeking as part of his investigation. Sergeant Folsom said after the investigation of the shooting, he revealed to his commander Sarah Eberhard, he suffered from PTSD, and that is when he started to be subjected to discrimination.

Sergeant Folsom said that when the investigation started Captain Kyle Marquart was his commander, and later Sarah Eberhard took over on September 1, 2012. Sergeant Folsom said that he requested to be removed from the Winehouse case because Winehouse was a sovereign citizen, but had been denied. Sergeant Folsom said the meeting he arranged with Winehouse was to arrest Winehouse. According to Sergeant Folsom, he was told to arrest Winehouse alone and was not allowed to have backup from other members of his team, Troop C, or Troop I personnel. He later said he had two uniformed officers located nearby, and Corporal Mertens was also at the scene at the time of the encounter with Winehouse.

Sergeant Folsom said he continued over the course of several months to publicly criticize Captain Eberhard and Lieutenant George Knowles regarding how the investigation was handled. Sergeant Folsom said Captain Eberhard and Lieutenant Knowles started an investigation on him by interviewing his co-workers about his ability to get along with other employees. Sergeant Folsom said the internal memorandum completed by Captain Eberhard, with her and Lieutenant Knowles' findings, has been disseminated to his doctors, and other people in the Patrol. Sergeant Folsom said Captain Eberhard also instructed other employees not to have any contact with him. As an example, Sergeant Folsom said Corporal John S. Ashby, Corporal Scott E. Mertens, and Sergeant Dorothy E. Taylor were told not to have any contact with him whatsoever. He said there were several officers in Troop I who were told by Captain Kenley not to contact

October 29, 2014

Americans with Disabilities Act, and Veteran Status Discrimination Investigation

-3

him at all. Sergeant Folsom said his wife is a prosecutor in the county and the alienation by the Patrol are affecting his family. He said Captain Eberhard has not called in two years to check on his condition, but did call to reprimand him for completing his reports from cases that he was previously actively investigating. He said he was also written a counseling statement for not notifying the sheriff when serving a search warrant on Winehouse's home, two days prior to the officer involved shooting.

Sergeant Folsom said some of the symptoms of his diagnosis are that he has angry outbursts. He explained by saying that when he was notified by Captain Eberhard that Winehouse was being released from the hospital where he was as a result of the officer involved shooting, and that Winehouse was not being charged with any crimes, according to Sergeant Folsom, it was at that time that he experienced an angry outburst, and admitted to speaking to his commander, Captain Eberhard in an angry manner. According to Folsom, he spoke to her in a way that was "Turst."

Sergeant Folsom said that he went to Captain Eberhard's office and tried to apologize for speaking to her in the manner he described as "Turst." He said she responded, "to me I don't know what you got going on with this PTSD crap, but I am not going to walk on eggshells with you - just go - get out of my office."

Sergeant Folsom talked at length about threats he receives over the internet as a result of the officer involved shooting, and Captain Eberhard's refusal to take action to investigate the threats. Sergeant Folsom said the reason Captain Eberhard refused to take action to investigate the threats is because he continued to criticize the division staff. He said he deleted his computer files, remove all his files from his office, unhooked his telephone line, refused to accept his subpoenas for him, hid all the keys to filing cabinets, and remove all his reports from the folder where his investigation reports were stored. Sergeant Folsom was off duty for a period of 14 months, did not get any updates on the investigation. Sergeant Folsom said there he learned there was a video that Winehouse made of the shooting. According to Sergeant Folsom, he said that Winehouse had unknown to him, recorded the officer involved shooting through a camera that was contained in Winehouse's watch. Sergeant Folsom said he was not allowed to get a copy of the video, even though other officers had copies of the video.

Sergeant Folsom went on to say that during one of his meetings with Captain Eberhard, she stated "if you ever do come back to the Patrol I am going to bring formal charges on some of the things that came up while you were gone, and the fact you were insubordinate to me." She said all you did by pulling off this little PTSD stunt - is put off what you will have to go through when you get back."

Sergeant Folsom said he has been undergoing treatment for PTSD for eight years, and that he was afraid to report his condition earlier because he feared for his job if he revealed his condition. Sergeant Folsom indicated that he has a great deal of evidence that he cannot release until he is no longer employed by the Patrol.

Sergeant Folsom indicated that specifically - he has been discriminated against because of his disability. To support his allegation he points to the Inter-Office Communication titled "Informal Inquiry into Troop I Investigation Unit." The document is dated October 14, 2012, and is from Captain Sarah L. Eberhard, and addressed to Major Luke Vislay. The document is

October 29, 2014

Americans with Disabilities Act, and Veteran Status Discrimination Investigation

-4

an investigation into the unit supervised by Sergeant Folsom. The document contains written details of interviews with Patrol employees who report that Sergeant Folsom departs from the truth, and subordinates of Sergeant Folsom are intimidated, and suffer low morale due to Sergeant Folsom's quickly changing emotional patterns. The document also details some of Sergeant Folsom's allegations of mishandling of the criminal case against Winehouse by Patrol staff. Sergeant Folsom said the report has been included in his Worker's Compensation packet and disseminated to several medical providers with whom he has had appointments with.

Sergeant Folsom claims the way that Captain Eberhard has treated him since the officer involved shooting has been discriminatory toward him. Sergeant Folsom said it is the totality of the situation that concludes it is discrimination. Sergeant Folsom claims the staff has tried to do anything to get rid of him since he informed them of his disability. He claims the informal investigation conducted by Captain Eberhard has been provided to all the doctors that Sergeant Folsom has obtained treatments from for his disability. Sergeant Folsom feels the investigation was a poorly offered "witch hunt."

In summary, Sergeant Folsom claims he has been discriminated against because of his disability. The following are allegations claimed to have occurred after Sergeant Folsom informed his supervisors about his diagnosis of PTSD. The allegations he feels support this claim are:

8. Alleged comments from Captain Sarah L Eberhard regarding Sergeant Folsom's diagnosis of PTSD.
9. A Missouri State Highway Patrol Inter-Office Communication detailing other's opinion of Sergeant Folsom. The release of the inter-office communication report to medical providers .
10. The lack of updates on cases Sergeant Folsom was investigating prior to his extended leave.
11. Assorted things such as not entitling Sergeant Folsom to a copy of the reports from the Winehouse investigation, employee statements indicating they were directed not to associate with Sergeant Folsom, removing Sergeant Folsom's computer access, removing his floor mats from his patrol car, changing the locks on his former office and filing cabinets, and the lack of telephone calls to check on his health status.
12. Alleged refusal for Sergeant Folsom to get a copy of the video from the watch worn by Winehouse at the time of the officer involved shooting.
13. An alleged threat that Sergeant Folsom will be punished if he were to return to duty.
14. Missouri State Highway Patrol Troop I personnel will not accept subpoenas for him.

Based on my investigation Sergeant Folsom is afforded the protections of the Americans With Disabilities Act as the act relates to employment and reasonable accommodation.

October 29, 2014

Americans with Disabilities Act, and Veteran Status Discrimination Investigation

-5

On November 4, 2014, I interviewed Sergeant Folsom's commander, Captain Sarah L. Eberhard. The interview was conducted at the Missouri State Highway Patrol Division of Drug and Crime Control office in Jefferson City, Missouri. Captain Eberhard recalled that she first learned that Sergeant Folsom suffered from Post Traumatic Stress Disorder, when he notified her during a meeting that occurred several days after the officer involved shooting that occurred September 1, 2012. Captain Eberhard said that there were no decisions she made that were as a result of Sergeant Folsom's illness. Captain Eberhard did not recall any conversation in which she directed him to leave her office. She recalled that Sergeant Folsom had come to her office and wanted to meet with her and Lieutenant Shawn Satterfield. It was at that time Sergeant Folsom said he was a disabled veteran with PTSD. Captain Eberhard said when he left the office they all shook hands and there was no conflict during the meeting. Captain Eberhard said she could not recall ever hearing Sergeant Folsom reference to having "angry outbursts."

Captain Eberhard indicated she did not release the Inter-Office Communication that was considered a preliminary inquiry into Sergeant Folsom and his interactions with other employees in the Division of Drug and Crime Control and employees at Troop I. Captain Eberhard said she never released the report outside of the Patrol. Her understanding was that the Missouri State Highway Patrol Human Resources Division had released the report to medical providers as part of Sergeant Folsom's fitness for duty evaluations.

Captain Eberhard said the preliminary investigation began after she was informed of a warrant that Sergeant Folsom served. **During the course of Serving the warrant, Sergeant Folsom did not notify the sheriff of the warrant as required by policy.** She said prior to that Sergeant Folsom had made allegations against many Patrol staff members, and those claims amounted to allegations of misconduct on the part of Patrol staff. Captain Eberhard said the preliminary investigation was to explain these concerns that Sergeant Folsom felt were real issues. Captain Eberhard indicated there was a volatile climate in Troop I, and the Division of Drug and Crime Control.

Captain Eberhard denied the preliminary investigation had anything to do with Sergeant Folsom's disability. Captain Eberhard said the investigation was prior to her being informed of his disability. Captain Eberhard responded to the many allegations that Sergeant Folsom made. She said Sergeant Folsom did receive all updates up until she stated they started to send updates through his legal counsel because the updates were causing his condition to worsen. Captain Eberhard said the video that was create by the suspect's watch was provided to Sergeant Folsom, and he was not given a copy because no other witness had a copy. She said Sergeant Folsom saw the video the same day that Corporal Mertens saw the video and the rest of staff saw the video.

Captain Eberhard was not aware of the reason why Troop I was not accepting Sergeant Folsom's subpoenas. Captain Eberhard said they have had a meeting amongst Troop I and the Division of Drug and Crime Control and they are now accepting Sergeant Folsom's subpoenas. She said in no way was this related to Sergeant Folsom's disability.

Captain Eberhard recalled Sergeant Folsom wanted to discuss several things before he would consider coming back to work. Captain Eberhard said there was never a threat made by her that if Sergeant Folsom came back to work he would be punished. Captain Eberhard said that none

October 29, 2014

Americans with Disabilities Act, and Veteran Status Discrimination Investigation

-6

of the decisions she has made were influenced by Sergeant Folsom's disability. Captain Eberhard said she was not aware of the locks on the offices, the file cabinets, the floor mats. She said she tried to limit contact with Sergeant Folsom because he became very agitated each time she spoke to him. She said he made it clear that he was not a fan of hers. She said that she communicated with Sergeant Folsom through his lieutenant, Lieutenant George Knowles. She said in no way did his medical condition influence the way she treated him other than the fact the he seemed to become aggravated and attribute much of what happen to him to her. She felt that his beliefs were not true, however, she chose to minimize her contact with him in order to alleviate causing Sergeant Folsom more stress. She said he focused on things that she did and felt her decisions were against him. She said there was never any direction to other employees to limit their contact with Sergeant Folsom.

My investigation indicates that none of the actions taken by Captain Eberhard, or the Patrol were influenced by Sergeant Folsom's disability. Sergeant Folsom has not been demoted, transferred or reassigned, nor has he lost pay or benefits that are otherwise available to similarly situated employees of his classification. My investigation found no evidence that employment decisions were made or influenced by Sergeant Folsom's disability.

ROGER D. WHITTTLER, Lieutenant  
Human Resources Division

RDW:tmb

November 5, 2014

To: Colonel Ronald K. Replogle

I agree with Lieutenant Whittler's findings based on his investigation of Sergeant Folsom's complaint of discrimination based on a disability.

DAVID A. FLANNIGAN, Captain  
Human Resources Division

November 5, 2014

To: Captain David A. Flannigan

This complaint of alleged discrimination should be classified as unfounded. The Missouri State Highway Patrol will continue to monitor Sergeant Folsom's status, and take any steps available to assist him in his recovery.

RONALD K. REPLOGLE, Colonel  
Superintendent

RDW:tmb