

- e. They waive any right they may have to challenge or contest the validity of this Stipulation;

2. **Nature of Claim:** While serving as an officer in the USAF, Plaintiff requested and was granted an accommodation based on his religious beliefs that allowed him to perform his assigned missile alert duties while also accommodating his religious beliefs. Plaintiff performed his duties with the accommodation from May 1997 to December 1998 under several different commanders. Citing concerns about unit morale, the USAF revoked Plaintiff's accommodation in December, 1998. Plaintiff subsequently requested a continuation of the religious accommodation, but that request was denied. Plaintiff was not ordered to perform missile alert duties after the accommodation was revoked. Plaintiff later received a referral Officer Performance Report [OPR] for the period from December 30, 1997 to January 31, 1999. Thereafter, Plaintiff requested that the Evaluation Reports Appeal Board [ERAB] and the Air Force Board for Correction of Military Records [AFBCMR] remove the referral OPR from his military records and substitute an administrative filler covering the OPR's period. Although the ERAB approved some correction of the referral OPR, the ERAB did not delete the referral OPR in its entirety from Plaintiff's records. The AFBCMR also denied the requested relief. Plaintiff then filed the present lawsuit seeking: (a) declaratory relief that defendants violated his rights under the Religious Freedom Restoration Act, the Free Exercise and Free Speech clauses of the U.S. Constitution, the Privacy Act, and Air Force Instruction 37-132; (b) an order expunging all false and adverse statements from his USAF records and USAF websites as a result of his request for a religious accommodation; (c) compensatory damages; (d) an award of full costs and attorney fees; and (e) such other relief that the Court may deem just and proper.

3. **Terms Governing Modification of Captain Berry's Military Record:**

Upon execution of this Stipulation by the parties and the Court, Defendants agree to the following:

3a. Removal of the referral OPR for the period from December 30, 1997 through January 31, 1999 from Plaintiff's military records.

3b. In lieu of the referral OPR, insertion of a document in Plaintiff's military records stating that the OPR for the period from December 30, 1997 through January 31, 1999 was deleted for administrative purposes and its deletion is not to be considered adversely to Plaintiff.

3c. Removal of Col. Haeckel's referral OPR memorandum, dated April 11, 1999, from Plaintiff's military records.

3d. Removal of Plaintiff's response to the referral OPR, dated April 27, 1999, with attachments, from Plaintiff's military records.

3e. Removal of AF Form 77, dated July 30, 1999, from Plaintiff's military records.

3f. Removal of all documents pertaining to review by the ERAB and the AFBCMR from Plaintiff's records.

3g. Removal of all references to Plaintiff's alleged refusal to give his full attention and faculties to his missile alert duties from USAF and/or DOD websites.

4. **Attorney's Fees and Costs:** USAF will pay attorney fees to the Plaintiff in the sum of five thousand dollars (\$5,000). The parties will bear their own costs.

5. **Dismissal of Action:** Execution of this Stipulation by Plaintiff, Plaintiffs' counsel, and counsel for Defendants shall constitute a dismissal of this action with prejudice, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, except that the Court shall have jurisdiction to reinstate this action on motion of any party to resolve a claim of noncompliance with the terms of this Stipulation.

6. **Entire Agreement:** The parties agree that this Stipulation constitutes the entire agreement between them and each warrants that they enter into this Stipulation freely.

7. **Severed Provisions:** If any provision of this Stipulation is found to be unenforceable, invalid or void for any reason, such provision shall be severed from this Stipulation and shall not affect the validity or enforceability of the remaining provisions.

8. **Enforcement of Agreement:** Any controversy, dispute or claim between the parties arising out of or relating to any of the terms or provisions contained in this Stipulation may be enforced by the United States District Court for the District of Columbia.

9. This Stipulation shall represent the full and complete satisfaction of each of Plaintiffs' claims arising from the allegations set forth in the complaint filed in this action. The settlement also includes, without limitation, full and complete satisfaction of Plaintiff's claims for costs and attorney's fees that have been, or could be, made in this case, including any and all fees and costs incurred in connection with the administrative process, the District Court litigation process, and any other proceedings involving the claims raised in this action.

10. By this settlement, Plaintiff waives, releases and abandons any and all claims, whether asserted or unasserted, against USAF and DOD or their agents or employees, that arose as a result of entries made to Plaintiff's military record concerning his request for religious accommodation. Such waived, released, and abandoned claims include, but are not limited to, the above-styled litigation and any other complaint or grievance filed or pending in any other forum whatsoever.

11. Execution of this Stipulation shall not constitute a finding by the Court or an admission by Defendants that Defendants violated Plaintiff's rights as alleged in the complaint, or that there was any wrongful conduct whatsoever.

12. The parties agree that this Stipulation will not be used as evidence or otherwise in any pending or future civil or administrative action against USAF and DOD, or any other agency or instrumentality of the United States except in an action to enforce this Stipulation or to establish the terms hereof.


13. This settlement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound,


through their respective counsel of record, have stipulated and agreed to the foregoing

as of the 11th day of June, 2003.

Respectfully submitted,



ROS COE C. HOWARD, JR.,
D.C. Bar # 246470
United States Attorney,


MARK E. NAGLE, D.C. Bar # 416364
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Counsel for Defendant


11 JUNE 2003
RYAN C. BERRY,
Plaintiff


12 June 2003
Derek L. Gaubatz, Esq.
Roman P. Storzer, Esq.
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1350 Connecticut Avenue, N.W.,
Suite 605
Washington, D.C. 20036

Counsel for Plaintiff

SO ORDERED:


UNITED STATES DISTRICT JUDGE

Date: 6/11, 2003.

Copies to:
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