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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____)	
VOLKER KEITH MEINHOLD,)	
)	
Plaintiff,)	
)	
V.)	No. CV-92-6044-TJH (JRX)
)	
UNITED STATES DEPARTMENT)	DATE: November 30, 1992
OF DEFENSE, <u>et al.</u> ,)	TIME: 10:00 A.M.
)	
Defendants.)	
_____)	

DEFENDANTS' STATEMENT OF UNCOTROVERTED FACTS
AND CONCLUSIONS OF LAW

Pursuant to Local Rule 7.14.1, Defendants hereby state that no genuine issue exists as to the following facts material to Defendants' motion for summary judgment:

1. Plaintiff enlisted in the Navy in April 1980. Compl. ¶ 7.

2. By July 1992, Plaintiff had become a first class petty officer in the antisubmarine warfare branch of the Navy and, accordingly, received the rank designation of "AW1." McGuire Decl. ex. 1 at 3.

3. On December 11, 1991, Plaintiff was "counseled" by the Navy about an incident that allegedly had taken place between himself and Antisubmarine Warfare Aviation Apprentice ("AWAA") Barry W. Grabenstein, a student in one of the classes that Plaintiff had been teaching. Id. at 118.

4. According to the Navy's counseling report, the incident had consisted of the following:

After an informal counseling with AWAA Grabenstein[,] P.O. Meinhold made an assumption that the student may have 'mixed sexual orientation' and in an effort to put the student at ease told him he wanted to come over for Thanksgiving dinner along with the rest of the class. At which time he told AWAA Grabenstein that he was gay.

Id.

5. On December 20, 1991, AWAA Grabenstein submitted a class-critique form to the Navy pertaining to the class that Plaintiff had taught. Id. at 116.

6. In the critique form, AWAA Grabenstein said: "I was counseled by a senior petty officer during training in the most irregular and unprofessional way. * * * * I don't understand where any instructor has the authority or audacity to approach a student and ask him over for dinner and make him aware of the fact that his instructor is 'gay.'" Id. ex. 1 at 117.

7. On May 19, 1992, Plaintiff appeared on a broadcast of ABC world News Tonight. Compl. ¶ 28; McGuire Decl. ex. 1 at 33.

8. In the course of his appearance, Plaintiff said: "Yes, I am in fact gay." McGuire Decl. ex. 1 at 33.

9. On May 20, 1992, Plaintiff's commanding officer notified him that he was "being considered for an administrative discharge from the naval service by reason of homosexuality as evidenced by your declaration of being homosexual on or about 19 May 1992." Id. ex. 1 at 5.

10. On June 3, 1992, the commanding officer appointed a three-officer administrative board to hear Plaintiff's case. Id. ex. 1 at 22.

11. On June 29 and 30, 1992, the administrative board conducted its hearing. Id. at 21, 69.

12. The Navy's case-in-chief consisted in its entirety of a videotape of Plaintiff's television appearance. Id. ex. 1 at 33.

13. Plaintiff's case-in-chief consisted of a series of exhibits, an unsworn statement that Plaintiff read to the board, the testimony of four noncommissioned officers who had served with Plaintiff, and the testimony of a psychiatrist who had served as a naval officer. Id. ex. 1 at 48, 51, 55, 58, 63, 68, 69, 80, 84.

14. An additional witness, a professor of psychology at the University of California at Davis, testified for Plaintiff by means of a declaration. Id. at 37.

15. In the course of his testimony, one of Plaintiff's colleagues, Senior Chief Petty Officer Gregory G. Yates, was asked whether he had ever thought that Plaintiff was "a gay man" and whether "any rumors" had ever "circulated in the command as to [Plaintiff's] possible sexual orientation." Id. at 50.

16. Senior Chief Yates said: "There was one situation that came up once, we confronted him, he said he was not, and it was dropped." Id.

17. In addition, Senior Chief Yates was asked whether Plaintiff's retention by the Navy "would frustrate the performance of the command" to which Plaintiff and Senior Chief Yates both belonged, or whether the command would "shut down" or "stop operating." Id. at 51.

18. Senior Chief Yates said:

No I think ah, if he were retained, and put back in instructor duty, we would benefit from his instructor ability, he has some 12 to 14 years of operational ability, and, ah, training. And we benefit from that. Ah, the command, depending on the attitude of the command. Some facts of command may be stymied because of personal opinions and attitudes. Uh, that's something that maybe you would have to get over, or the command would have to direct.

Id.

19. Another of Plaintiff's witnesses, Petty Officer Charles A. Carbajal, was likewise would have an adverse effect on Plaintiff's command. Id. ex. 1 at 56.

20. Acknowledging that "most of the individuals that I come in contact with have been very supportive toward [Plaintiff],**" Petty Officer Carbajal said: "I think that, uh, initially, you would still have some individuals who are against any gays, having a tough time accepting that." Id. at 56.

21. Following the completion of Plaintiff's case-in-chief, the Navy presented its rebuttal case. Id. at 83.

22. In doing so, the Navy asked that the two documents relating to the alleged incident between Plaintiff and AAWA Grabenstein -- the class-critique form that AAWA Grabenstein had completed and the report of Plaintiff's counseling -- be included in the record. Id. ex. 1 at 86, 90.

23. Over Plaintiff's objections, the Grabenstein documents were included in the record. Id. ex. 1 at 90'.

24. In the course of her closing statement, the attorney for the Navy said:

Senior member and members of the Board: Petty Officer Meinhold is being processed today for separation from the Navy for homosexuality, due to his statement that he is a homosexual. Now, although we've all watched the video

where he says "I am gay," today he and his counsel are saying that the Navy can't prove that he is a homosexual. Now members, there is only one person in this room who knows whether or not he is a homosexual. And what he has done today, in his unsworn statement, is simply not to talk about that at all. He has not addressed it before you today, although he addressed it on national television. Thus, we must take his statement, "I am gay" at it's face value, for what it's worth. * * * *

Id., 90'-91.

25. After the parties had completed their closing statements, the board recessed to consider the case. Id. at 95.

26. Thereafter, the board announced the following decision: By a vote of three to zero, the Board finds that AW1 Volker K. Meinhold is a homosexual due to the member's statement that he is a homosexual. By a vote of three to zero, the Board recommends that AW1 Meinhold be separated. By a vote of three to zero, the characterization should be honorable.

Id.; see also id. at 97.

27. By memorandum dated July 17, 1992, Plaintiffs' commanding officer advised the Chief of Naval Personnel that he endorsed the findings and recommendations of the board. Id. at 4.

28. In the aforementioned memorandum, Plaintiff's commanding officer said:

I have reviewed Respondent's Letter of Deficiency * * * and I find no impropriety with the Board's consideration of [one of the Grabenstein exhibits] as proper rebuttal evidence that AW1 Meinhold's sexual orientation has adversely affected his performance of duty and adversely affected good order and discipline. * * * * It is patently clear from the argument [before the board] and the Board's Findings and Report that the Board did not find misconduct nor recommend separation or characterization based upon misconduct. Further I find no merit to the defense's allegation of prejudice raised in the Letter of Deficiency. Therefore, I endorse the findings and recommendations of the Board, and urge separation be approved with a characterization of service as honorable.

Id.

29. On August 12, 1992, Plaintiff was officially separated from the Navy. Compl. ¶ 40.

DATED: November 2, 1992

Respectfully submitted,

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OF COUNSEL:
LIEUTENANT KIRK A. FOSTER
Office of the Judge Advocate General
Department of the Navy

CERTIFICATE OF SERVICE BY MAIL

I, IRENE D. VEJAR, declare:

That I am a citizen of the United States and resident of employed in Los Angeles County, California; that my business address is Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on November 2, 1992, I deposited in the United States mails in the Federal Building at 300 North Los Angeles Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of: DEFENDANTS' STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW.

Addressed to: HARRY G. MELKONIAN, JAY H. GRODIN
CHRISTOPHER L. RUDD, JOHN I MCGUIRE
WHITE & CHASE
633 WEST FIFTH STREET, SUITE 1900
LOS ANGELES, CALIFORNIA 90071-2007
at their last known address, at which place there is a delivery service by United States Mail.

This Certificate is executed on November 2, 1992 at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.


IRENE D. VEJAR