

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-00052-RPM

TIMOTHY NORWOOD,

Plaintiff,

v.

ITT SYSTEMS AND SCIENCES CORP.,

Defendant.

ORDER ON DEFENDANT'S MOTION TO DISMISS

In this civil action, filed in the District Court, County of El Paso, State of Colorado, and removed to this court by the defendant, the plaintiff claims that as an employee of the defendant working in Afghanistan and Kuwait, he reported a violation of a potential serious security breach by co-employees and that he was terminated from employment in retaliation for that report. The first claim for relief in the complaint sought recovery for a First Amendment violation under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The second claim for relief alleged tortious discharge in violation of the public policy of Colorado and the third claim for relief alleges punitive damages.

The defendant filed a motion to dismiss under Fed.R.Civ.P. 12(b)(6) and the plaintiff filed a response to that motion. The plaintiff has conceded that the *Bivens* claim must be dismissed.

The defendant asserts that Colorado law is not applicable in this case because

the plaintiff's at-will employment was in Afghanistan and Kuwait. The headquarters of the defendant is in Colorado Springs, Colorado. The law of Colorado on which the plaintiff relies is best expressed in *Martin Marietta Corporation v. Lorenz*, 823 P.2d 100, 113 (Colo. 1992). In that case, the Colorado Supreme Court declared

There is no question that the manifest public policy of this state is that neither an employer nor an employee should be permitted to knowingly perpetrate a fraud or deception on the federal or state government. A corollary of this policy is that an employee, whether at-will or otherwise, should not be put to the choice of either obeying an employer's order to violate the law or losing his or her job.

Id. at 113.

The defendant relies on *Boone v. MVM, Inc.*, 572 F.3d 809, 812 (10th Cir. 2009) in support of the contention that Colorado law is not applicable. The plaintiff correctly observes that the cited Tenth Circuit case relates to a choice of law issue and is not determinative.

While the defendant has not filed a reply because the time for reply has not expired, this Court is fully persuaded that as a Colorado employer, ITT Systems and Sciences Corp. is subject to the public policy of Colorado. Accepting the allegations of the complaint as true, the second claim for relief is viable and may be pursued in this court under diversity jurisdiction.

The third claim for relief, alleging punitive damages, is not itself a separate claim for relief.

Upon the foregoing, it is

ORDERED that the first and third claims for relief of the complaint are dismissed

and the defendant's motion to dismiss the second claim for relief is denied.

DATED: February 10th, 2010

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge