

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

Civil Action No. 15-cv-00165-RPM

EMILIAN WOJCIK,

Plaintiff,

v.

UNITED STATES OF AMERICA and
MELANIE BLIM,

Defendants.

ORDER OF DISMISSAL AS TO DEFENDANT UNITED STATES OF AMERICA

This civil action was first filed on March 3, 2014, in the District Court, El Paso County, Colorado, naming Aaron Blim and Melanie Blim as defendants on claims of defamation. They answered on July 22, 2014.

On January 23, 2015, the United States Attorney for the District of Colorado filed a Notice of Removal asserting that Aaron Blim is a Staff Sergeant on active duty and as a federal employee of the United States Army was acting within the scope of his employment in connection with the acts alleged in the complaint. Attached is a Certification of Scope of Employment by the United States Attorney that "on the basis of information now available" Sgt Blim was acting within the scope of his employment, pursuant to 28 U.S.C. § 2679(d) and the delegation of authority in 28 C.F.R. § 15.3.

The United States was substituted for Sgt. Blim as defendant and it filed a motion to dismiss on February 13, 2015. [Doc. 20].

The plaintiff responded with a Motion to Review of Certification of Scope of Employment pursuant to 28 U.S.C. § 2679(d)(2). [Doc. 24]. He also responded to the motion to dismiss. [Doc. 25]. The plaintiff requested an evidentiary hearing on the issue of whether Sgt. Blim's conduct was within the scope of his employment by the Army.

The Government filed Opposition to the Plaintiff's Motion for Review on May 7, 2015, [Doc. 29], attaching declarations from David Rothman and Master Sergeant William Hanes and a copy of a protective order motion filed by the plaintiff's wife in El Paso County. The plaintiff filed a reply on June 1, 2015. [Doc. 33].

A hearing was held on June 9, 2015, at which Assistant U.S. Attorney Ian J. Kellogg explained the information forming the basis for the certification. The Court directed Mr. Kellogg to provide plaintiff's counsel with the documents relating to the investigation and disciplinary action.

On September 24, 2015, plaintiff's counsel filed an Updated States Report [Doc. 41], acknowledging receipt of 984 pages produced by the defendant and elected not to file any supplemental brief with the court.

Accordingly, the plaintiff has failed to show any factual basis to show that the alleged conduct of Sgt. Blim was outside the scope of his employment and this Court must accept the certification. The motion to dismiss by the Government correctly contends that the United States is not liable for the alleged conduct under the Federal Tort Claims Act. It also appears that the allegations against defendant Melanie Blim are insufficient to state a claim for relief. It is now

ORDERED, that this civil action is dismissed with prejudice as to the defendant United States of America and it is

FURTHER ORDERED, that the plaintiff shall have until October 15, 2015, within which to show cause why this action should not be dismissed as to Melanie Blim pursuant to Fed.R.Civ.P. 12(b)(6).

Dated: September 29th, 2015

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge