

The Honorable Ronald B. Leighton

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Major Margaret Witt,

Plaintiff,

vs.

United States Department of the Air Force,
et al.,

Defendants.

NO. C06-5195 RBL

PLAINTIFF'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF
LAW

Pursuant to Local Civil Rule 16.1, plaintiff Margaret Witt submits the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff Margaret Witt's sexual orientation has never had any discernible effect on the unit cohesion of the 446th Aeromedical Evacuation Squadron.
2. Her sexual orientation became known to her Wing Commander General Eric Crabtree in the summer of 2004.

PLAINTIFF'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW
(C06-5195 RBL) – 1

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- 1 3. General Crabtree sought and obtained authority from General Robert Duignan to initiate
2 an investigation into the contention that Major Witt had engaged in sexual conduct with
3 another woman.
- 4 4. General Crabtree explained to the squadron commander, Colonel Mary Walker, that he
5 had been directed to initiate separation proceedings against Major Witt.
- 6 5. Colonel Walker followed General Crabtree's orders and initiated a separation proceeding
7 by suspending Major Witt from any further participation in unit activities and by
8 forwarding Witt's case to Air Force Reserve Headquarters for an administrative
9 discharge board hearing pursuant to AFI 36-3209.
- 10 6. A hearing was held before an administrative discharge board of three officers in
11 September of 2006. That Board made findings that Major Witt had engaged in
12 homosexual conduct and recommended that she be discharged by the Secretary of the
13 Air Force with an Honorable Discharge.
- 14 7. By order entered on July 12, 2007, Major Witt was discharged effective October 1, 2007.
- 15 8. No evidence was presented to the administrative discharge board which indicated that
16 Major Witt's sexual orientation ever had a negative effect on the unit cohesion, morale,
17 order, or discipline of the 446th AES.
- 18 9. No credible evidence was presented to this Court which indicated that Major Witt's
19 sexual orientation ever had a negative effect on the unit cohesion, morale, order or
20 discipline of the 446th AES.
- 21 10. No credible evidence was presented to this Court which indicated that reinstatement of
22 Major Witt to the Air Force Reserve would have any negative effect on the unit
23 cohesion, morale, order or discipline of the 446th AES.
- 24 11. No credible evidence was presented to this Court to indicate that reinstatement of Major
25 Witt to the Air Force Reserve would have any negative effect on the unit cohesion,
26 morale, order, or discipline of any unit of the Air Force.

PLAINTIFF'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW
(C06-5195 RBL) – 2

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- 1 12. This Court finds that Major Witt's reinstatement to the Air Force would not have any
2 negative impact on unit cohesion, morale, order, or discipline, of the 446th AES or of any
3 other unit of the Air Force.
- 4 13. While the Court finds that no negative effect would result from Witt's reinstatement to
5 the Air Force, even assuming, hypothetically, that her reinstatement would have some
6 discernible negative effect upon the unit cohesion, morale, order or discipline of the
7 446th, or upon some other unit to which she might be attached or assigned, the Court
8 further finds that the Air Force has failed to show that there are no other means, short of
9 refusing to reinstate her at all, which would prevent such a hypothetical negative impact
10 upon the unit.
- 11 14. The Air Force can order its servicemembers to treat gay and lesbian servicemembers
12 such as Major Witt with respect. The Air Force currently does order servicemembers to
13 treat other servicemembers who are perceived to be gay or lesbian with respect. Air
14 Force servicemembers do presently obey such orders. As professional members of the
15 Armed Forces, even those servicemembers who would rather not serve with another
16 person whom they know to be gay or lesbian, are fully capable of not allowing such
17 personal feelings to undermine unit cohesion or to compromise military effectiveness
18 and readiness. In this respect today's military servicemembers are no different from
19 servicemembers of the past who were ordered to put aside personal biases against
20 serving alongside minority persons, or alongside women.
- 21 15. The Air Force is entirely capable of ordering servicemembers to treat servicemembers of
22 other faiths with respect, and to serve alongside them, notwithstanding the fact that they
23 may harbor personal biases against them. The professional men and women who serve
24 this country in the armed forces are entirely capable and do follow such orders. Even in
25 instances where a servicemember does not want to serve with another servicemember
26 because he or she is, for example, openly Muslim, the armed forces have the means of

1 dealing with this problem effectively, without having to resort to the discharge of all
2 openly Muslim servicemembers, and without compromising the unit cohesion and
3 military effectiveness of our armed forces.

4
5 **CONCLUSIONS OF LAW**

- 6 1. Because it was not necessary to discharge Major Margaret Witt in order to prevent a
7 negative impact on unit cohesion, morale, order or discipline, her discharge violated
8 her substantive due process rights.
- 9 2. Because it is not necessary to deny her reinstatement to the Air Force Reserve in
10 order to prevent a negative impact on unit cohesion, morale, order or discipline, she
11 is constitutionally entitled to reinstatement.
- 12 3. Because there are less restrictive alternative means, short of Witt's discharge, for
13 dealing with any hypothetical negative impact on unit cohesion, morale, order or
14 discipline which might conceivably arise, defendants violated Major Witt's
15 substantive due process rights by discharging her.
- 16 4. Because the investigation into Witt's sexual orientation was not initiated by her
17 immediate squadron commander, that investigation and Witt's subsequent
18 suspension and discharge violated AFI 36-3209, ¶¶ 1.22, 2.33, & Attachment 11.
- 19 5. Because the requirement that any investigation into homosexual conduct be initiated
20 by the immediate squadron commander is intended to be for the benefit and
21 protection of servicemembers like the plaintiff, the violation of this regulation was
22 also a violation of procedural due process. *Sameena v. Air Force*, 147 F.3d 1148,
23 1153 (9th Cir. 1998).
- 24 6. The initiation of the separation investigation in this case, because it did not comply
25 with AFI 36-3209, violated Witt's Fifth Amendment procedural due process rights.
26

- 1 7. Because the defendants have violated Witt's procedural and substantive due process
2 rights, she is constitutionally entitled to reinstatement in the Air Force Reserve.
3 8. Because reinstatement and an award of back pay are equitable remedies, Witt is
4 entitled to both remedies.

5
6 DATED this ____ day of _____, 2010.

7
8 _____
9 Hon. Ronald B. Leighton
United States District Court

10 These proposed findings of fact and conclusions of law are respectfully submitted by
11 undersigned counsel for the plaintiff.

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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