

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

EUGENE ANDERSON,	:	
	:	
Plaintiff,	:	Civil Action File No.:
	:	
vs.	:	<u>Jury Trial Demanded</u>
	:	
THE BOARD OF REGENTS of the	:	
STATE OF GEORGIA	:	
(Georgia Southern University), in their individual	:	
and official capacities, BRUCE GRUBE,	:	
President of Georgia Southern University, in his	:	
individual and official capacity, RONALD CORE,	:	
former Vice-President of Georgia Southern	:	
University, in his individual capacity,	:	
and KEN BROWN, Director of Public	:	
Safety at Georgia Southern University, in his	:	
individual and official capacity,	:	
	:	
Defendants.	:	

VERIFIED COMPLAINT

COMES NOW **EUGENE ANDERSON**, Plaintiff, by and through counsel, and hereby shows this Honorable Court the following:

JURISDICTION AND VENUE

1.

This is a civil action arising under O.C.G.A. §§ 45-22-10, 45-22-11, 45-1-4(d), Article 1, Section 1, paragraphs 2 and 5 of the Georgia Constitution, 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the United States Constitution.

2.

Venue is proper because the Board of Regents of the State of Georgia is located in Atlanta, Fulton County, Georgia which is located in the Atlanta Judicial Circuit.

PARTIES

3.

Plaintiff Eugene Anderson is a resident of Bulloch County, Georgia. During all times relevant to this Complaint, Plaintiff was an employee of Georgia Southern University, and served as Safety Engineering Manager.

4.

Defendant THE BOARD OF REGENTS OF THE STATE OF GEORGIA (Georgia Southern University), is an entity of the State of Georgia pursuant to O.C.G.A. § 20-3-50, O.C.G.A. § 20-3-20, and by Article 8, Section 4, paragraph 1 of the Georgia Constitution. The members of the Board of Regents are sued in their individual and official capacities. The University System of Georgia, and the Board of Regents of the State of Georgia, are located at 270 Washington Street, Atlanta, Fulton County, Georgia 30334 and are subject to the jurisdiction of this Court.

5.

Defendant BRUCE GRUBE is President of Georgia Southern University (“GSU”). He is sued individually and in his official capacity under federal law, and individually under Georgia law. He resides in Statesboro, Bulloch County, Georgia, and is subject to the jurisdiction of this Court.

6.

Defendant RONALD CORE was Vice-President of GSU at all times relevant to this Complaint. He is sued individually and in his former official capacity under federal law, and individually under Georgia law. Defendant Core's residence is unknown at this time.

7.

Defendant KEN BROWN is Director of Public Safety at GSU. He is sued individually and in his official capacity under federal law, and individually under Georgia law. He resides in Statesboro, Bulloch County, Georgia, and is subject to the jurisdiction of this Court.

FACTUAL ALLEGATIONS

8.

Plaintiff was a Safety Engineering Manager at Georgia Southern University ("GSU") from September 1995 to September 2002.

9.

As Safety Engineering Manager, Plaintiff was responsible for (a) addressing safety concerns related to all hazardous materials; (b) reviewing inspection reports, complaints, and recommendations and ensuring that corrective action took place; and (c) developing, maintaining, and reviewing compliance with Employee Right-to-Know laws concerning exposure of hazardous materials.

10.

In October 2001, Plaintiff requested funding from Defendant Brown in order to properly manage and handle hazardous waste materials at GSU.

11.

In November 2001, the Georgia Environmental Protection Division (the “EPD”) conducted a Compliance Evaluation Inspection at GSU. During the inspection, the EPD discovered that GSU was in violation of several federal and state environmental regulations.

12.

On or about April 16, 2002, Plaintiff informed Defendant Core, in a memorandum, that GSU was not in compliance with the University’s own plan for spill prevention, control and countermeasures (“SPCC” plan). See Ex. A. Plaintiff sent a copy of this memorandum to Demyanek and Owens.

13.

After numerous verbal requests for funding, Plaintiff informed Defendant Core, in a memorandum dated April 15, 2002, that GSU was not in compliance with federal and state environmental regulations. See Ex. B. In the memorandum, Plaintiff again requested funding in order to achieve environmental compliance. Plaintiff sent a copy of this memorandum to Mark Demyanek, Director of Environmental Affairs for the Board of Regents, and Jeff Owens, Demyanek’s assistant.

14.

On or about April 17, 2002, Plaintiff sent Defendant Core a memorandum regarding an inspection of pest management on GSU’s campus. In the memorandum, Plaintiff detailed the environmental health and safety concerns which were identified in the inspection. Plaintiff sent a copy of this memorandum to Demyanek and Owens.

15.

Defendant Brown met with Plaintiff in April 2002 and instructed Plaintiff not to prepare or distribute any more memoranda regarding GSU's environmental compliance problems.

16.

Plaintiff and Defendant Core met on or about April 23, 2002. At the meeting, Core informed Plaintiff that Core intended to terminate Plaintiff's position. Core also expressed his disapproval that Plaintiff had informed the Board of Regents of GSU's environmental compliance problems.

17.

In May 2002, the EPD informed Defendant Core that GSU was not in compliance with federal and state regulations for the management and disposal of hazardous wastes.

18.

In or about May 2002, Plaintiff and Dr. Haskell Fulmer, Director of the Communication Arts Department at GSU, discussed the serious health problems that several members of Fulmer's staff were experiencing. During that discussion, Plaintiff expressed his concern to Fulmer that the employees' health problems might be related to the environmental health hazards at GSU.

19.

In or about May 2002, Plaintiff and Dr. Lynn Tabor, Director of Health Services at GSU, discussed the serious health problems that several members of Tabor's staff were experiencing. During that discussion, Plaintiff expressed his concern to Tabor that the

employees' health problems might be related to the environmental health hazards at GSU.

20.

In or about May 2002, Plaintiff and Dr. Panther Yates, a GSU professor who suffered from respiratory problems, discussed environmental and occupational health and safety concerns at GSU. During that discussion, Plaintiff expressed his concern that Yates's respiratory problems might be related to the environmental health hazards at GSU.

21.

In or about May 2002, Plaintiff and Susan Cassidy, an employee in GSU's Human Resources Department, discussed environmental and occupational health and safety concerns at GSU.

22.

On May 10, 2002, Demyanek sent an email to Plaintiff, informing Plaintiff that Demyanek had received Plaintiff's memorandum to Defendant Core in which Plaintiff identified some of GSU's environmental compliance problems. See Ex. C.

23.

On May 28, 2002, Demyanek sent an email to Plaintiff, informing Plaintiff that Demyanek had received Plaintiff's memorandum to Defendant Core regarding GSU's failure to comply with the University's SPCC plan. See Ex. D.

24.

Each year, from 1996 until 2001, Plaintiff received a merit pay increase for his position.

25.

GSU originally submitted a request for Plaintiff to receive a merit pay increase for the 2003 fiscal year.

26.

On or about June 7, 2002, Defendant Core reported to the EPD that all incidents regarding GSU's failure to comply with environmental regulations had been corrected. In particular, Core stated that Plaintiff had prepared GSU's response to the Notice of Violation that the EPD issued to GSU. In fact, Plaintiff did not prepare the response to the Notice as Core falsely represented to the EPD.

27.

On or about June 13, 2002, Plaintiff informed the EPD that he had not seen the final copy of any report pertaining to GSU's remediation of any environmental violations. See Ex. E. Plaintiff also stated that he did not agree with the statements in Core's June 7, 2002 letter to the EPD.

28.

On or about June 18, 2002, Kim Thompson, from GSU's Office of the Comptroller, submitted a request to rescind Plaintiff's merit pay increase for the 2003 fiscal year. See Ex. F.

29.

On or about June 27, 2002, Plaintiff was injured on the job by a container of hazardous waste.

30.

On or about July 1, 2002, the University informed Plaintiff that he was going to be placed on leave pursuant to the Family Medical Leave Act (“FMLA”).

31.

On or about July 8, 2002, Plaintiff contacted GSU’s Human Resources department and requested that he not be placed on Family Medical Leave, but that he be placed on “sick leave without pay.”

32.

On or about July 9, 2002, Plaintiff informed GSU’s Division of Public Safety that he did not want to be placed on Family Medical Leave and that he wanted to exhaust his accumulated sick leave, and then be placed on “sick leave without pay.”

33.

On or about September 5, 2002, the Director of Human Resources informed Plaintiff that he was entitled to twelve weeks of leave under the FMLA, and that his leave would expire on September 24, 2002.

34.

On or about September 16, 2002, Plaintiff submitted a “Return to Work/School” form to Human Resources. See Ex. G. Plaintiff’s physician, Dr. Kenneth A. Johnson, completed the form and stated that Plaintiff was disabled and that Plaintiff’s health would be reevaluated on September 24, 2002. See id.

35.

On or about September 25, 2002, Plaintiff submitted a “Return to Work/School” form to Human Resources and the Division of Public Safety. According to Dr. Johnson,

who completed the form, Plaintiff was still disabled and Plaintiff's health would be reevaluated on October 15, 2002. See Ex. H.

36.

On or about September 27, 2002, Defendant Brown informed Plaintiff that, because Plaintiff did not return to work on September 25, 2002, and because Plaintiff allegedly failed to provide timely notice of any reasons preventing Plaintiff from reporting to work, Plaintiff would be released from his position. See Ex. I.

37.

On or about October 25, 2002, Plaintiff submitted an employee grievance form, asserting that his termination was wrongful, and that he was fired in retaliation for informing GSU officials and employees about hazardous working conditions at GSU.

38.

On or about December 12, 2002, Defendant Grube informed Plaintiff that the Grievance Committee would not overturn Brown's decision to terminate Plaintiff. Thus, Plaintiff's termination became final.

39.

Throughout Plaintiff's term of employment at GSU, a portion of Plaintiff's salary went into the Teachers Retirement System of Georgia and was also used to cover Plaintiff's medical health insurance, life insurance, and disability insurance.

COUNT ONE

VIOLATION OF O.C.G.A. § 45-1-4

40.

The allegations of paragraphs 1 - 39 are realleged and incorporated herein by reference.

41.

Section 45-1-4(d) of the Georgia Code provides that “[n]o action against any public employee shall be taken or threatened by any public employer who has authority to take, direct others to take, recommend, or approve any personnel action as a reprisal for making a complaint or disclosing information to the public employer” O.C.G.A. § 45-1-4(d).

42.

Plaintiff disclosed information regarding GSU’s failure to comply with environmental regulations to GSU employees, administrators, and the Board of Regents.

43.

Defendants terminated Plaintiff from his position as Safety Engineering Manager after Plaintiff disclosed GSU’s failure to comply with environmental regulations to GSU employees, administrators, and the Board of Regents.

44.

Defendants’ action of terminating Plaintiff was in retaliation for Plaintiff informing GSU employees, administrators, and the Board of Regents of GSU’s failure to comply with environmental regulations.

45.

As a result of Defendants' retaliatory actions, Plaintiff was wrongfully terminated from his position as Safety Engineering Manager, and lost wages and all benefits that he had accrued up until the time of his termination, including retirement, medical health insurance, and life insurance benefits.

COUNT TWO

**VIOLATION OF PUBLIC EMPLOYEE HAZARDOUS
CHEMICAL PROTECTION AND RIGHT TO KNOW ACT OF 1988**

46.

The allegations of paragraphs 1 - 45 are realleged and incorporated herein by reference.

47.

Section 45-22-10 of the Georgia Code provides that: "No person shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against any employee for any of the following reasons: (1) The employee has requested information regarding hazardous chemicals, filed any complaint or action, or has instituted, or caused to be instituted, any proceeding under this chapter; or . . . (3) The employee has exercised any other right afforded pursuant to the provisions of this chapter." O.C.G.A. §§ 45-22-10(1) and (3). Section 45-22-10(b) further states that "[n]o pay, position, seniority, or other benefits shall be lost for exercise of any right provided by this chapter." O.C.G.A. § 45-22-10(b).

48.

On several occasions, Plaintiff requested funding from Defendants Brown and Core in order to properly manage and handle hazardous waste materials at GSU.

49.

Defendants terminated Plaintiff from his position as Safety Engineering Manager after Plaintiff requested funding from Defendants in order to address the environmental compliance problems at GSU, and after Plaintiff disclosed information regarding GSU's failure to comply with environmental regulations to GSU employees, administrators, and the Board of Regents.

50.

As a result of Defendants' retaliatory actions, Plaintiff was wrongfully terminated from his position as Safety Engineering Manager, and lost wages and all benefits that he had accrued up until the time of his termination, including retirement, medical health insurance, and life insurance benefits.

COUNT THREE

**VIOLATION OF RIGHT TO FREE SPEECH
UNDER THE UNITED STATES CONSTITUTION**

51.

The allegations of paragraphs 1 - 50 are realleged and incorporated herein by reference.

52.

Plaintiff disclosed information concerning the presence of hazardous chemicals on GSU's campus, and GSU's failure to comply with environmental regulations to GSU employees, administrators, and the Board of Regents.

53.

Plaintiff's statements regarding the hazardous chemicals on GSU's campus were a matter of public concern and protected speech under the First Amendment of the United States Constitution.

54.

Plaintiff's speech was a substantial motivating factor in the decision of Defendants Grube, Core and Brown to terminate Plaintiff from his position as Safety Engineering Manager.

55.

The Defendants' action of terminating Plaintiff constitutes a violation of the First Amendment to the United States Constitution.

56.

The Defendants' action of terminating Plaintiff was done with malice and/or reckless disregard for Plaintiff's constitutional rights. The Defendants' actions were intentional and taken in bad faith.

57.

As a result of the Defendants' retaliatory actions against Plaintiff for exercising his constitutional rights, Plaintiff has suffered monetary loss, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

COUNT FOUR

**VIOLATION OF RIGHT TO FREE SPEECH
UNDER THE GEORGIA CONSTITUTION**

58.

The allegations of paragraphs 1 - 57 are realleged and incorporated herein by reference.

59.

Plaintiff disclosed information concerning the presence of hazardous chemicals on GSU's campus, and GSU's failure to comply with environmental regulations to GSU employees, administrators, and the Board of Regents.

60.

Plaintiff's statements regarding the hazardous chemicals on GSU's campus were a matter of public concern and protected speech under Article 1, Section 1, paragraph 5 of the Georgia Constitution.

61.

Plaintiff's speech was a substantial motivating factor in Defendants' decision to terminate Plaintiff from his position as Safety Engineering Manager.

62.

The Defendants' action of terminating Plaintiff constitutes violation of the First Amendment to the United States and Georgia Constitutions.

63.

The Defendants' action of terminating Plaintiff was done with malice and/or reckless disregard for Plaintiff's constitutional rights. The Defendants' actions were intentional and taken in bad faith.

64.

As a result of the Defendants' retaliatory actions against Plaintiff for exercising his constitutional rights, Plaintiff has suffered monetary loss, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

COUNT FIVE

VIOLATION OF DUE PROCESS
UNDER THE UNITED STATES CONSTITUTION

65.

The allegations of paragraphs 1 - 64 are realleged and incorporated herein by reference.

66.

GSU's Family Leave Policy states that, "[a]ny faculty and staff member who has been employed on a half-time basis or greater for at least twelve months is eligible upon request to be granted family leave." See Ex. J. (emphasis added). The Policy also requires an employee requesting leave due to a serious health condition to submit a statement from his physician. See id. Furthermore, the Policy does not state that an employee who does not return to work when his leave under the FMLA expires will be terminated. See id.

67.

On or about June 27, 2002, Plaintiff was injured on the job by a container of hazardous waste.

68.

On or about September 16, 2002, Plaintiff submitted a "Return to Work/School" form to Human Resources. Plaintiff's physician, Dr. Kenneth A. Johnson, completed the

form and stated that Plaintiff was disabled and that Plaintiff's health would be reevaluated on September 24, 2002.

69.

On or about September 25, 2002, Plaintiff submitted a "Return to Work/School" form to Human Resources and the Division of Public Safety. According to Dr. Johnson, who completed the form, Plaintiff was still disabled and Plaintiff's health was going to be reevaluated on October 15, 2002.

70.

On or about September 27, 2002, Defendant Brown informed Plaintiff that, because Plaintiff did not return to work on September 25, 2002, and because Plaintiff allegedly failed to provide timely notice of any reasons preventing Plaintiff from reporting to work, Plaintiff would be released from his position.

71.

On or about December 12, 2002, Defendant Grube informed Plaintiff that the Grievance Committee would not overturn Brown's decision to terminate Plaintiff.

72.

The Defendants' action of terminating Plaintiff violated Plaintiff's rights to equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

73.

As a result of the Defendants' wrongful termination of Plaintiff, Plaintiff has suffered monetary loss, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

COUNT SIX
VIOLATION OF DUE PROCESS
UNDER THE GEORGIA CONSTITUTION

74.

The allegations of paragraphs 1 - 73 are realleged and incorporated herein by reference.

75.

GSU's Family Leave Policy states that, "[a]ny faculty and staff member who has been employed on a half-time basis or greater for at least twelve months is eligible upon request to be granted family leave." See Ex. J. (emphasis added). The Policy also requires an employee requesting leave due to a serious health condition to submit a statement from his physician. See id. Furthermore, the Policy does not state that an employee who does not return to work when his leave under the FMLA expires will be terminated. See id.

76.

On or about June 27, 2002, Plaintiff was injured on the job by a container of hazardous waste.

77.

On or about September 16, 2002, Plaintiff submitted a "Return to Work/School" form to Human Resources. Plaintiff's physician, Dr. Kenneth A. Johnson, completed the form and stated that Plaintiff was disabled and that Plaintiff's health would be reevaluated on September 24, 2002.

78.

On or about September 25, 2002, Plaintiff submitted a “Return to Work/School” form to Human Resources and the Division of Public Safety. According to Dr. Johnson, who completed the form, Plaintiff was still disabled and Plaintiff’s health was going to be reevaluated on October 15, 2002.

79.

On or about September 27, 2002, Defendant Brown informed Plaintiff that, because Plaintiff did not return to work on September 25, 2002, and because Plaintiff allegedly failed to provide timely notice of any reasons preventing Plaintiff from reporting to work, Plaintiff would be released from his position.

80.

On or about December 12, 2002, Defendant Grube informed Plaintiff that the Grievance Committee would not overturn Brown’s decision to terminate Plaintiff.

81.

The Defendants’ action of terminating Plaintiff violated Plaintiff’s rights to equal protection of the laws as guaranteed under Article 1, Section 1, paragraph 2 of the Georgia Constitution.

82.

As a result of the Defendants’ wrongful termination of Plaintiff, Plaintiff has suffered monetary loss, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants as follows:

1. Reinstatement to his position as Safety Engineering Manager, or a comparable position;
2. Reinstatement of all benefits that Plaintiff accrued up until his wrongful termination and would have accrued had he not been terminated, including lost wages, medical health insurance, life insurance, and retirement benefits;
3. Compensatory damages against the Defendants in an amount reasonable and commensurate with the emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life imposed upon him by the Defendants' unlawful acts;
4. Punitive damages against Defendants Grube, Core, and Brown in an amount reasonable and commensurate with the emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life imposed upon him by the Defendants' unlawful acts; and calculated to be sufficient to deter the malicious, willful, wanton, and reckless conduct of the Defendants in the future;
5. Trial by jury;
6. Costs of this action, including attorneys' fees; and
7. Such other relief that this Court deems proper and just.

Respectfully submitted,

Attorneys for Plaintiff:

BY: _____
GERALD WEBER, Legal Director
ACLU of Georgia
Ga. Bar No. 744878

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BY: _____
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University, in his individual capacity,	:	
and KEN BROWN, Director of Public	:	
Safety at Georgia Southern University, in his	:	
individual and official capacity,	:	
	:	
Defendants.	:	

Verification of Complaint

I, Eugene Anderson, verify, under penalty of perjury under the laws of the United States and Georgia, that the foregoing complaint is based upon my personal knowledge, and is true to the best of my knowledge, information, and belief.

Dated this the ____ day of September, 2004.

Eugene Anderson, Plaintiff

Sworn to and subscribed before me this the ____ day of September, 2004.

Notary Public

My commission expires:

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and KEN BROWN, Director of Public	:	
Safety at Georgia Southern University, in his	:	
individual and official capacity,	:	
	:	
Defendants.	:	

Certificate of Service

I hereby certify that I have, on this date, served a copy of the foregoing Verified Complaint pursuant to