U.S. Department of Labor

Office of the Assistant Secretary for
Veterans' Employment and Training
525 South Griffin Street, Suite 858
Dallas, Texas 75202-5096
Phone: (972) 850-4715
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February 23, 2018

Levi A. Robison
Yellowstone County Attorney's Office
217 N. 27th St, Room 202
P.O. Box 35025
Billings, MT 59101

Via email at lrobison@co.yellowstone.mt.gov

RE: Your FOIA Request, Tracking No. 851368

Dear Mr. Robison:

Enclosed is a copy of the case file documenting the investigation of Adam Chenoweth's Uniformed Services Employment and Reemployment Rights Act complaint number MT-2015-00005-20-G, per your request under the provisions of the Freedom of Information Act.

In accordance with your request, I have enclosed a complete, true, and correct copy of the documents you requested from the case file, excluding specific personal privacy information that was redacted based on the exemptions provided by Title 5, U.S. Code, § 552:

- (b)(7)(C), records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy (redactions noted in text); and
- (b)(7)(D), records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to disclose the identity of a confidential source (5 pages plus redactions noted in text).

Your copy of this case includes about 82 pages of information that could have been withheld under Exemption (b)(5), but were released at the agency's discretion because no foreseeable, substantial harm could reasonably be expected to result from its release. However this does not commit the agency to releasing these documents in the future.

Your copy of this case also includes certain information that would be have been redacted under Exemptions 6 and /or 7C if the request was made by a person or entity who could not reasonably be expected to already have that information. Examples of this type of information include the claimant's home address and Social Security Number.

If you need any further assistance or would like to discuss any aspect of your request, please do not hesitate to contact the analyst who processed your request, Rebekah Haydin, at haydin.rebekah@dol.gov or 972-850-4720.



You may contact the Department of Labor's FOIA Public Liaison, Thomas G. Hicks, Sr. at (202) 693-5427 or *hicks.thomas@dol.gov* for assistance. Additionally, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways to inquiry about their FOIA medication services:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Email: *ogis@nara.gov*
Web: *https://ogis.archives.gov*
Telephone: (202) 741-5770
Fax: (202) 741-5769
Toll-free: 1-877-684-6448

It is important to note that the services offered by OGIS are not an alternative to filing an administrative FOIA appeal.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. The appeal must state in writing the grounds for the appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. The envelope and letter of the appeal should be clearly marked "Freedom of Information Act Appeal." Any amendment to the appeal must be made in writing and received prior to a decision. The appeal should be addressed to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. Appeals may also be submitted by email to foiaappeal@dol.gov. Appeals submitted to any other email address will not be accepted. All appeals and/or future correspondence regarding this request should reference the assigned FOIA tracking number (above).

Sincerely,

Robert H. Creel
Regional Administrator

Enclosure

U.S. Department of Labor

U.S. Department of Labor
Office of the Assistant Secretary for
Veterans' Employment & Training Service
2401 N. Lincoln Blvd
P.O. Box 52003
Oklahoma City, OK 73152-2003
Telephone: (405) 231-5088
Fax: (405) 557-7123

DATE: December 8, 2015

MEMORANDUM FOR: U. S. Attorney General

THROUGH: Robert Creel
Regional Administrator

FROM: Lucius Drawhorn
Assistant State Director

SUBJECT: Memorandum of Referral

Claimant

Adam C. Chenoweth
451 South Lakeview Drive
Billings, MT 59105
Cell Phone: (808) 342-1353

Employer

Yellowstone County Sheriff's Office
217 North 27th Street, Rm 701
Billings, MT 59107
Phone: (406) 371-9995
Fax: (512) 256-2871

Case Number

MT-2015-00005-20-G

Alleged Violations

Title 38 U.S.C. §4311(a); Discriminatory termination

Action Recommended

Litigation is recommended

Extension of Referral: None

Investigation Summary

Mr. Chenoweth began his employment with Yellowstone County Sheriff's Office on June 19, 2014 (Exh. 1, p. 3) and worked as a Deputy Sheriff in the Patrol Division. Mr. Chenoweth is also a member of the Montana Army National Guard and had a military service obligation (MSO) from May 2-7, 2015 (Exh. 54, p. 21). Mr. Chenoweth was terminated during his probationary period on May 1, 2015, which was one day prior to his six day MSO which started on May 2, 2015 (Exh. 25, p. 5).

Claimant and Employer

Mr. Chenoweth worked as a Deputy Sheriff in the Patrol Division with Yellowstone County Sheriff's Office and was informed verbally and via Employment Separation Letter that he was being terminated on May 1, 2015 (Exh. 9, p. 3). Mr. Chenoweth was honorably discharged from the U.S. Army in 2009 and is currently a member of the Montana Army National Guard in Billings, Montana. (Exh. 3, p. 3).

Yellowstone County Sheriff's Office is located in Billings, MT. Yellowstone County Sheriff's Office maintains a law enforcement presence in Yellowstone County, issue weapons permits, maintains the sex and violent offender registry, and animal control within the county. The Sheriff's Office provides Coroner services, Detective services and administrates the County Detention Center. Yellowstone County Sheriff's Office employs approximately 53 sworn deputies including the Sheriff.

The Dispute and Each Party's Position

The issue in this case is whether Mr. Chenoweth was discriminated against because of his MSO and whether or not his MSOs were a motivating factor in the decision to terminate him on May 1, 2015. Yellowstone County Sheriff's Office stated Mr. Chenoweth was terminated due to performance issues (Exh. 25, p. 5, 80).

Mr. Chenoweth stated upon receiving a short notice of military training he notified his immediate supervisor Sergeant Robert Lester on April 29, 2015. Mr. Chenoweth stated on April 30, 2015 he forwarded a copy of the training memorandum to Lieutenant Roger Bodine, Professional Standards and Training Officer, Yellowstone County Sheriff's Office indicating the days he would be absent due to training (Exh.3, p. 1-3, Exh 54, p. 21-23). Mr. Chenoweth stated on May 1, 2015 he met with Mr. Bodine and Undersheriff, Kevin Evans and was given a letter of termination which outlined eleven reasons for his termination. The letter stated Mr. Chenoweth was untruthful and deceitful regarding his short notice military training (Exh. 9, p. 2-3).

Yellowstone County Sheriff's Office contends Mr. Chenoweth was terminated during his probationary period due to performance issues (Exh. 9, p. 2-3, Exh. 25, p. 81). Mr. Chenoweth's termination letter cited the following reasons for his termination; not receptive to feedback, failure to turn mic pack on during DUI stop, nearly hitting a tree during a pursuit because of his poor decision making, failure to notify supervisor of approved training until the day before training was scheduled to begin which would have put his shift below minimum staffing level, failure to report to work as scheduled, poor time management, not punctual in getting reports in on time, extreme accumulation of overtime, Notice to Appear (NTA) on misdemeanor arrest not submitted timely, questionability in DUI/DRE world as it relates to Horizontal Gaze Nystagmus (HGN) test, has to be told several times to do something like read and sign county handbook, upload videos, clean patrol car and intentional deception and untruthfulness (Exh. 25, p. 4-5).

Investigative Findings of Fact

The substantive facts in this case are undisputed. Those facts conclusively reveal that Mr. Chenoweth's military service was a motivating factor when he was terminated on May 1, 2015 (Exh. 25, p. 4-5).

Wednesday, April 29, 2015 Mr. Chenoweth notified his immediate supervisor, Sgt. Robert Lester of his training commitment via text message. Mr. Chenoweth stated Mr. Lester requested orders from his Training NCO for the training commitment (Exh. 3, p. 1-3)

Thursday, April 30, 2015 Mr. Chenoweth stated he provided a copy of the training memorandum to Lieutenant Roger Bodine, Professional Standards and Training Officer, Yellowstone County Sheriff's Office indicating the dates of the training (Exh. 3,p. 1-3).

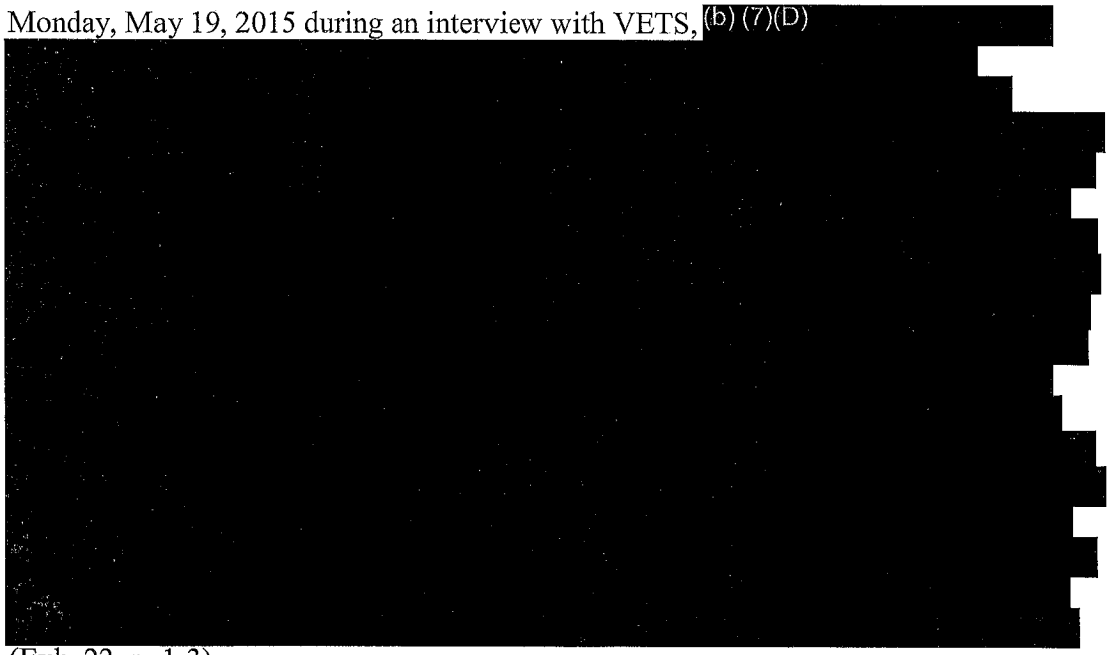
Friday, May 1, 2015 Mr. Chenoweth was terminated during a meeting with Mr. Bodine and Undersheriff Evans and presented a letter citing the eleven reasons for his termination during his probationary period (Exh. 25, p. 5, 80).

Monday, May 18, 2015 during an interview with VETS, Sheriff Evans stated under the authority of the Sheriff he carried out the termination of Mr. Chenoweth due to a slew of sub-par performance issues based on input received from Mr. Chenoweth's immediate supervisor Mr. Robert Lester,.along with input from Mr. Kent O'Donnell, Mr. Shane Skillern, Mr. William Michaelis and Mr. Roger Bodine (Exh. 20,p. 1-2).

Monday, May 18, 2015 during an interview with VETS, Mr. Bodine stated Mr. Chenoweth's termination was a totally performance and ethical issues. Mr. Bodine stated the Mr. Chenoweth lied about being required to attend military training and also may have lied on a report which he is currently investigating. Mr. Bodine stated Mr. Chenoweth provided a two day notice to attend military training which was unusual for the Montana Army National Guard due to their past experience. Mr. Bodine stated he became suspicious after he reviewed the orders and realized the training was almost identical to the training the Sheriff's Office recently denied Mr. Chenoweth the

opportunity to attend due to manpower issues. Mr. Bodine visited Mr. Chenoweth's unit and spoke with Captain Aky who stated it was unusual for the unit to provide a two day notice for training but it does occur. Mr. Bodine informed Captain Aky the Sheriff's Office had no problems with the orders, but he became suspicious when the training was closely related to the training the Sheriff's office provides. Mr. Bodine stated Captain Aky informed him the training isn't mandatory and is offered about six times per year and Mr. Chenoweth could have already attended or can attend anytime in the future. Mr. Bodine stated Captain Aky contacted Sergeant Ryan McNary who signed the order and cancelled the training. Mr. Bodine asked Captain Aky was Mr. Chenoweth the instructor for the training and Captain Aky stated no, he's not an instructor he would be an attendee. Mr. Bodine stated that Mr. Chenoweth performed a DUI stop on his brother and his mic pack was off; therefore, no recording took place until his mother arrived to pick up the underage girl who was with his brother during the DUI stop. Mr. Bodine stated there wasn't a technical issue with the mic because when Mr. Chenoweth's mother arrived to pick up the underage girl the mic pack started recording. Mr. Bodine stated he was currently investigating the DUI stop. Mr. Bodine stated that once an officer has been found guilty of lying they lose their credibility. Mr. Bodine stated when the Mr. Chenoweth was hired they took it under advisement that at one point he was classified as being absent without leave from his military unit and on the verge of being discharged, but he didn't know the outcome of that situation (Exh. 21,p. 1-3).

Monday, May 19, 2015 during an interview with VETS, (b) (7)(D)



(Exh. 22, p. 1-3).

Wednesday, May 27, 2015 during an interview with VETS, Mr. Chenoweth denied Mr. Bodine's allegation that he stated he was the instructor for the military training course he was scheduled to attend May 1-7, 2015 (Exh. 29,p. 3).

Wednesday, May 27, 2015 during an interview with VETS, Mr. Bodine stated, although the DUI stop Mr. Chenoweth made on his brother seemed suspicious he found no evidence of wrongdoing (Exh. 31,p. 3).

Wednesday, May 27, 2015 during an interview with VETS, (b) (7)(D) [redacted] (Exh. 30, p. 1-2)

Thursday, May 28, 2015 during an interview with VETS, Captain Aky stated he notified Mr. Bodine the training wasn't mandatory and Mr. Chenoweth wasn't the instructor. Captain Aky also stated he asked Mr. Chenoweth did he tell his employer he was the instructor for the training course and Mr. Chenoweth denied making the statement (Exh. 32, p. 1-2).

Thursday, May 28, 2015 during an interview with VETS, Sergeant Ryan McNary, Montana Army National Guard, Training NCO stated their unit received several slots for training and was pressured to fill the slots. Mr. McNary stated he sent an email to the Platoon Sergeants asking if anyone was available to attend. Mr. McNary stated Mr. Chenoweth volunteered and was given orders to attend the training. Mr. McNary confirmed the training wasn't mandatory nor was Mr. Chenoweth the instructor (Exh. 33,p. 1-2).

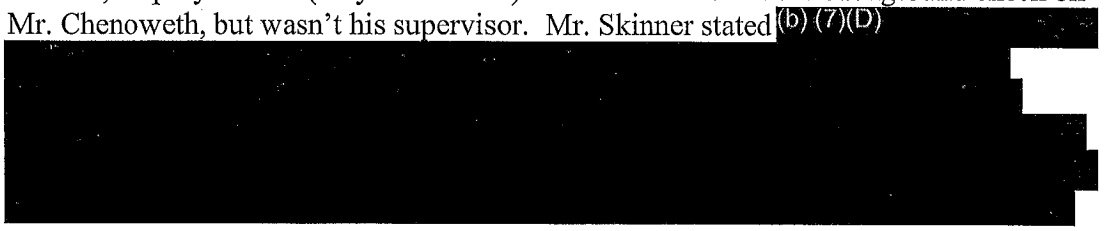
Thursday, May 28, 2015 during an interview with VETS, Andrew Greydanus, Deputy, Yellowstone County Sheriff's Office (b) (7)(D) [redacted]

Friday, May 29, 2015 during an interview with VETS, Robert Lester, Patrol Sergeant, Yellowstone County Sheriff's Office (8 years YCSO) verified he was the claimant's immediate supervisor. Mr. Lester stated he supervises 5-8 deputies and has been Mr. Chenoweth's supervisor since January 2015. Mr. Lester stated he spoke with Mr. Chenoweth about leaving his gear in an unlocked police car, proper maintenance of the car, specifically not greasing the car, a critique of a pursuit, mic pack not being on, not wearing his seatbelt and almost crashing a patrol car during a pursuit. Mr. Lester stated whenever he provided Mr. Chenoweth feedback his response would be I know, I know, I know which he viewed as Mr. Chenoweth trying to justify his actions. Mr. Lester cited Mr. Chenoweth's DUI stop of his brother during which Mr. Chenoweth's mic pack wasn't on as a specific incident to support his allegation that Mr. Chenoweth was not receptive to feedback after being warned. When asked had other officers experienced

technical difficulties with their mic pack, Mr. Lester stated he inform all deputies that if they have trouble with their mci packs to report it to him immediately, and Mr. Chenoweth never notified him of any problems with his mic. Mr. Lester stated he always tells his deputies to ensure their mics are on by looking at the computer screen in their patrol cars because it will show them if the mic is synced or not. Mr. Lester stated it's possible for mics to loose charge and die during a shift which is why deputies are told to keep them charging when not in use and the mic pack will vibrate when it's low and needs to be charged. Mr. Lester stated he has not given any deputy a verbal written warning for not having their mic pack on because he had no problems with the other deputies. Mr. Lester stated every deputy is aware of the importance of mic packs being on because the Attorney's Office has been on the Sheriff's Office for deputies not having their mic packs on during stops. Mr. Lester's statement regarding the District Attorney concerns regarding deputies not having their mic pack support documentation VETS received from the Yellowstone County Sheriff's Office that shows the issues with mic pack was a department wide issue (Exh. 55, p. 87-90). VETS also received documentation which showed the deputy who was called out to assist Mr. Chenoweth during the DUI stop of his brother had issues with his mic during the same DUI stop (Exh. 54, p. 20). Mr. Lester referenced a call Mr. Chenoweth took regarding a domestic disturbance issue where he alleges Mr. Chenoweth failed to secure a witness which led to a police chase during which he lost control of his patrol car and almost hit a tree. Mr. Lester stated Mr. Chenoweth failed to notify him of a training class that he was approved to attend until the day prior to the start of the training. Mr. Lester also stated Mr. Chenoweth attended training February 16-18 and again the 26th-27th and was off on the 28th. Mr. Lester stated he offered Mr. Chenoweth the opportunity to take off March 1, 2015 but he refused stating he would be at work; however; he did not report to work at his normal duty time on March 1, 2015 (Exh. 35, p. 1-3, Exh. 25, p. 56). Mr. Lester stated Mr. Chenoweth's step-father was incorrect regarding when he told VETS Mr. Chenoweth was given off March 1, 2015 (Exh. 30, p. 1-2)

Tuesday, August 4, 2015 during an interview with VETS, Mr. Chenoweth responded to VETS question regarding Notice to Appear (NTA) by stating NTA's regarding traffic tickets are turned in to the secretary working the front desk at the Sheriff's Office and NTA's regarding DUI's are turned in to his supervisor Mr. Lester. Mr. Chenoweth stated he was informed by Mr. Lester that NTA's have gone unprocessed for days but was not notified who was responsible (Exh. 52, p. 1-2). During VETS investigation it was determined that NTA's were not dated; therefore there was no way of determining when the NTA was turned in to the secretary.

Wednesday, September 16, 2015 during an interview with VETS, Derrick Duane Skinner, Deputy Sheriff (17 years YCSO) stated he conducted the background check on Mr. Chenoweth, but wasn't his supervisor. Mr. Skinner stated (b) (7)(D)



(b) (7)(D) [redacted] (Exh. 60,p. 1-2).

Wednesday, September 16, 2015 during an interview with VETS, Jon Matthew Poe, Deputy Sheriff (6 years YCSO) stated [redacted]

Wednesday, September 16, 2015 during an interview with VETS, Mr. Bodine responded to VETS follow-up question regarding mic pack issues by admitting the mic pack issues was a department wide issue. Mr. Bodine stated none of the deputies who experienced mic pack issues including Mr. Chenoweth received a written warning. Mr. Bodine stated they didn't want to write the deputies up for mic pack issues. Mr. Bodine responded to VETS question regarding how the Sheriff's Office handle driving related incidents that didn't result in property or personal damage by stating unless it's an accident action taken varies from a counseling session to a written warning. Mr. Bodine stated Mr. Chenoweth didn't receive a verbal written warning for reckless driving. Mr. Bodine responded to VETS question regarding the protocol used to notify the supervisors of their deputies approved training by stating he sends out an email to the deputies telling them to get with their supervisors to see if they will be able to attend due to manpower issues. Mr. Bodine stated the deputies are responsible for getting with their supervisors. Mr. Bodine responded to VETS statement that the documentation received from the Sheriff's Office showed the supervisors were also cc'd on the email notification by stating although their supervisor's know about the training they have way too many things going on, it's not their fault and it's not their job to babysit deputies and ask if they want to attend the training. Mr. Bodine responded to VETS question regarding the Sheriff's Office policy for handling tardiness by stating if it becomes a problem it's a written verbal warning,

then progresses to counseling, then to a written reprimand. Mr. Bodine responded to VETS question on how Mr. Chenoweth's single absence was handled by stating Mr. Chenoweth probably received a counseling session with his supervisor. Mr. Bodine responded to VETS question regarding the proof he uncovered that Mr. Chenoweth was intentionally deceitful and untruthful by stating he had nothing in writing but Mr. Chenoweth lied to him about teaching the training course. Mr. Bodine stated in their line of work if you lie your reputation is shot and you can't testify in court. Mr. Bodine responded to VETS question that if the Sheriff's Office had no problem with the training why was it cancelled by stating he spoke to Mr. Chenoweth's commander and learned the training he was scheduled to attend was offered through his unit at least six times per year. Mr. Bodine also stated he was informed that short notice orders do sometimes occur but mostly those are sought out by guardsmen. Mr. Bodine stated he didn't find out whether Mr. Chenoweth sought out the training. Mr. Bodine stated they had people coming in on overtime to cover the training. Mr. Bodine verified VETS discovery that the dates of training offered by the Sheriff's Office as April 21-23, 2015 and the dates of training Mr. Chenoweth was scheduled to attend was May 2-7, 2015 (Exh. 54, p. 21). Mr. Bodine responded to VETS question of was there a manpower issues if Mr. Chenoweth's training was scheduled eight (8) days after the Sheriff's Office sponsored training ended by stating the manpower issue was for the second (2^{nd}) and the seventh (7^{th}) of May, which would require them to call someone in on overtime to cover those days (Exh.61,p. 1-3). Mr. Bodine stated had Mr. Chenoweth attended the training via the Sheriff's Office no overtime would be required to cover for the training, but if he attended training via his military orders overtime would be required for someone to cover that training. Mr. Bodine responded to VETS question did he request the training be cancelled by stating when he received Mr. Chenoweth's orders two weeks after he was denied FLETC training he contacted Captain Aky who ask if it would be helpful to send Mr. Chenoweth to another training class, to which he stated, if he could attend another training due to manpower issues it would be helpful, but if not, they would make it work if he couldn't cancel the training (Exh.61, p. 2).. Mr. Bodine stated Captain Aky contacted the training Officer and the training was cancelled. Mr. Bodine responded to VETS question did he or Mr. Lester initiate the termination by stating, Mr. Lester approached him with some concerns about Mr. Chenoweth and he didn't recall if it was before or after he had lied to him about the military training. Mr. Bodine stated he explained to Mr. Lester what he found out from the military and asked Mr. Lester to put his concerns in writing. Mr. Bodine stated all the issue with Mr. Chenoweth occurred within a four month period after he completed his training with his Field Training Officer and was assigned a regular shift. Mr. Bodine responded to VETS question regarding how he handled the rumor about Mr. Chenoweth's behavior when it was alleged he told his commanding officer to "F" off while on a recent MSO that was shared with him via email from Mr. Lester. Mr. Bodine stated they (the Administration) discussed the rumor and agreed that if it occurred it was not a good deal because he represents the Sheriff's Office. Mr. Bodine stated they didn't address it because it was a rumor, but he did look into it by asking Captain Aky who stated he hadn't heard about it and wouldn't tolerate it if it occurred (Exh. 61, p. 2).

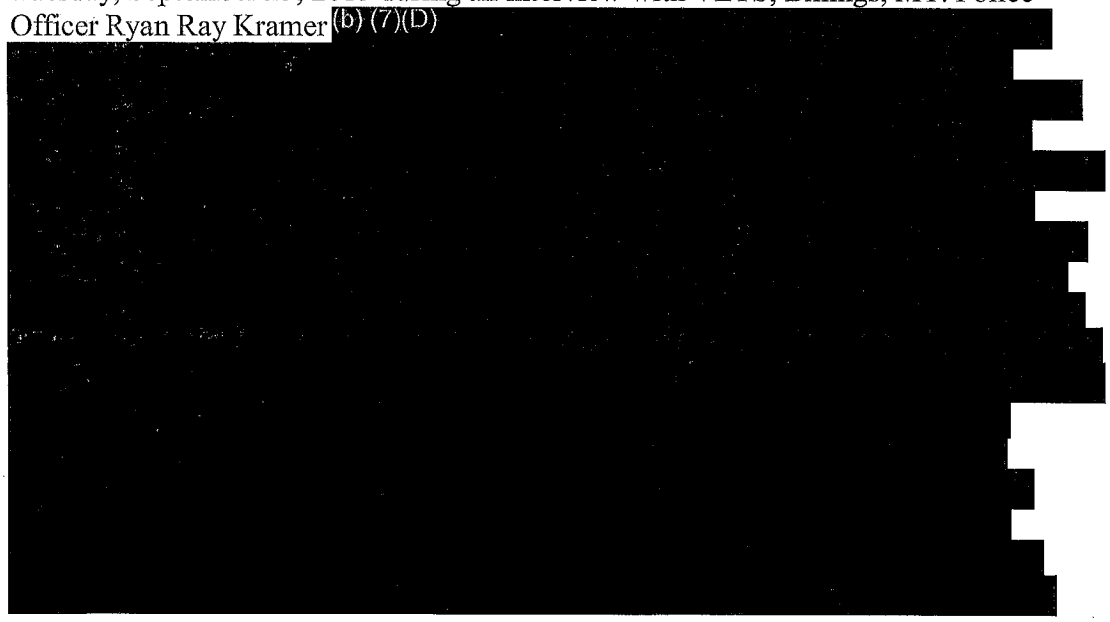
Wednesday, September 16, 2015 during a follow-up interview with Mr. Lester he verified that Mr. Chenoweth never received a verbal or written warning for any issues cited in his termination letter. Mr. Lester also stated supervisors are normally notified when deputies are approved for training but stated he didn't see the email from Mr. Bodine regarding Mr. Chenoweth's training approval for which he said Mr. Chenoweth failed to notify him of until the day before the training was scheduled to begin. Mr. Lester responded to VETS question regarding Mr. Chenoweth poor decision making by stating the policy, practice or procedure for turning in reports depended on the type of report, felony reports must be turned in at the end of the shift, but all reports must be completed by the end of the shift or week. Mr. Lester stated he wanted the reports done during their shift as they go through the night because when Mr. Chenoweth is late turning in his report he, (Mr. Lester) is late getting home. Mr. Lester responded to VETS question regarding why he believed it was important to share the rumor he heard about Mr. Chenoweth's alleged behavior during a recent MSO by stating he didn't know, but he guess he must have thought it was important because he told him about it. Mr. Lester responded to VETS question regarding why Mr. Chenoweth wasn't allowed to transfer to another shift per his request by stating he didn't know, Mr. Bodine didn't' respond to his request (Exh. 62, p. 1-3). .

Tuesday, September 22, 2015 during an interview with VETS, Kent Edward O'Donnell, Lieutenant, Patrol Division (18 years YCSO) stated it wasn't that Mr. Chenoweth wasn't receptive to feedback, he took feedback like on the DUI protocol, but his response would always be yea, yea, yea, and then he would do the same thing over and over. Mr. O'Donnell stated he provided the Undersheriff the feedback he received from Mr. Chenoweth's immediate supervisor Mr. Lester. Mr. O'Donnell stated Mr. Lester talked to him about Mr. Chenoweth's reports and time management. Mr. O'Donnell stated report writing process is challenging for new deputies and if they let their reports get behind it's hard to get caught up. Mr. O'Donnell responded to VETS question regarding report writing issues for new deputies by stating it's a common problem for new deputies; they like to do the physical work but neglect the paperwork. Mr. O'Donnell stated the administration had several problems with Mr. Chenoweth such as lying about his National Guard training but couldn't provide VETS with specifics as to what Mr. Chenoweth lied about, rather stated the administration checked with his unit because his shift was shorthanded (Exh. 61, p. 1-3). Mr. O'Donnell was interviewed because Undersheriff Evans stated he received input from him regarding the terminations of Mr. Chenoweth (Exh. 63, p. 1-3).

Tuesday, September 22, 2015 during an interview with VETS, William Michaelis, Captain, Patrol Supervisor (38 years YCSO) stated Mr. Chenoweth was a little too zealous with the people on the streets and they also believed he was fabricating his reports to fit the offense. When asked for specific incidents, Mr. Michaelis stated during all his DUI stops he always stated the person's nystagmus (Horizontal Gaze Nystagmus) was off or weird but after a Drug Recognition Expert (DRE) was called to check he changed his story. Mr. Michaelis stated they provided constant feedback to Mr. Chenoweth on how to improve his performance and he always responded yea, yea, yea, but would turn around and do the same thing again. Mr. Michaelis stated there was an

incident regarding a theft report where he left out critical information and on another occasion he responded to a domestic dispute and left the suspect outside who eventually took off on a dirt bike and he gave chase with no audio or sirens on. When asked was it normal for new deputies to struggle with reports, Mr. Michaelis stated yes, even after a year on the job, some deputies improve and some will still do it their way. When asked was the mic pack issue a department wide issue, Mr. Michaelis stated yes, however after reviewing videos of Mr. Chenoweth's stops he noticed he wouldn't take the mic out of the crate when he made a stop. Mr. Michaelis stated Mr. Chenoweth wouldn't take the mic out of the crate and turn it on until he knew he had a DUI, but by then a lot of audio was not captured. Mr. Michaelis stated after receiving a notice from the attorney's office he ordered extra mic packs for the patrol officers. When asked approximately how many videos of Mr. Chenoweth had he reviewed that showed proper mic use wasn't performed, Mr. Michaelis stated he view thousands of videos per month but on an average if Mr. Chenoweth made five stops per night at least four of them would not have audio. Mr. Michaelis stated he had no knowledge of Mr. Chenoweth's accumulation of extreme overtime. Mr. Michaelis stated he didn't remember the exact wording but he was informed about Mr. Chenoweth being deceptive and untruthful to the administration which had something to do with him being denied training in Hardin and then telling his supervisor he had military training that required him to be there because he had to teach. Mr. Michaelis stated he was also informed about the rumor regarding Mr. Chenoweth's behavior toward his military unit commander while performing a recent MSO and being considered AWOL (Absent without leave). Mr. Michaelis stated that on April 19, 2015, Mr. Lester told him about the rumor he heard about him being considered AWOL from his military unit by a city police officer and ex-deputy Mr. Ryan Kramer and also about him telling his unit commander to "F" off. Mr. Michaelis stated the feedback he provided the Undersheriff was based on the information he received from Mr. Lester and the feedback he provided Mr. Chenoweth (Exh. 64, p. 1-3). .

Tuesday, September 25, 2015 during an interview with VETS, Billings, MT. Police Officer Ryan Ray Kramer (b) (7)(D)



(b) (7)(D) [redacted] (Exh. 66, p. 1-3).

Evaluation of Alleged USERRA Violation

The facts clearly show that Mr. Chenoweth's military service was a motivating factor when he was terminated from the Yellowstone County Sheriff's Office on May 1, 2015 (Exh.54, p. 21-23, Exh. 21, p. 1-3). The chain of events that led to Mr. Chenoweth's termination began after he provided his employer with a short notice of military training. (Exh. 51, p. 1-3). Mr. Bodine became suspicious when he learned the training was similar to the training offered by the Sheriff's Office to which Mr. Chenoweth was recently denied. The evidence shows Mr. Bodine did not meet with Mr. Chenoweth's commander regarding the frequency or duration of training; instead his inquiry was based on his suspicion regarding the similarity of the military training and the training offered by the Sheriff's Office. The result of his inquiry led to Mr. Chenoweth's military training being cancelled. The evidence shows the short notice training orders were presented to the employer in writing on the unit's letter head, with an explanation of the training, and offered an apology for the short notice and provided the Training Non-Commissioned Officer's (NCO) contact information (Exh. 54, p. 21). Had Mr. Bodine contacted the Training NCO he would have been informed that the unit received short notice orders to fill available training seats and sent an email to all Platoon Sergeants asking who was available to attend, Mr. Chenoweth was available, volunteered and was accepted to attend the course (Exh. 33,p. 2)..

Mr. Bodine's inquiry was also based on the fact that he believed Mr. Chenoweth lied to him about being the instructor for the training. In a statement to VETS, Mr. Bodine stated once an officer has been found guilty of lying they lose their credibility (Exh. 21, p. 2). Mr. Chenoweth denied stating to Mr. Bodine that he was the instructor for the training. The employer provided no evidence to show the claimant was intentionally

deceitful or untruthful regarding his military training which was a reason cited for his termination (Exh. 61, p. 2). Mr. Bodine's final inquiry was about a rumor regarding Mr. Chenoweth's possible misconduct during a recent military service obligation (Exh. 61, p. 2). Mr. Bodine alleged there was a manpower issue that led to his inquiry; however, the evidence shows the military training Mr. Chenoweth was schedule to attend was eight (8) days after the training provided by the Sheriff's Office ended (Exh. 61, p. 2). The employer provided no evidence of a manpower shortage other than Mr. Bodine's statement.

Mr. Chenoweth termination was initiated after a meeting that occurred between Mr. Bodine and Mr. Lester. After Mr. Bodine's meeting with Mr. Chenoweth's Commander, Mr. Lester met with Mr. Bodine and stressed concerns over Mr. Chenoweth's performance and behavior specifically nine of the issues cited as reasons for his termination (Exh. 54, p. 23, p 33-36,). Mr. Bodine requested Mr. Lester provide him a list of issues and proceeded with Mr. Chenoweth's termination.

The evidence reviewed regarding the reasons cited for Mr. Chenoweth's termination showed Mr. Chenoweth's training records which indicated he was receptive to feedback (Exh. 37, p. 1-66). The evidence showed mic pack issues was a department wide which led it being addressed by the Yellow County Attorney's office (Exh. 55, p. 87-90). The evidence showed the second officer who responded to assist with the DUI stop initiated by Mr. Chenoweth on his brother experienced mic issues as well (Exh. 54,p. 20). During an interview with VETS, Mr. Bodine stated, although the DUI stop looked suspicious he didn't find any evidence of wrong doing during his inquiry. The evidence showed the Pursuit Data Report indicated policy wasn't followed and careless driving the vehicle pursuit; however, Mr. Chenoweth wasn't given a written verbal warning for reckless driving or a policy violation (Exh. 55, p. 388-390, Exh. 61, p. 3, Exh. 62, p. 3). The evidence showed that in the past, one deputy was given a verbal warning for careless driving (Exh. 55, p. 86). The evidence showed Mr. Lester was notified by Mr. Bodine via an email cc regarding Mr. Chenoweth's approved training. Mr. Lester denied seeing the email (Exh. 57, p. 3). During an interview with VETS, (b) (7)(D) [redacted] During an interview with VETS, Mr. Bodine stated if tardiness becomes a problem it progress to a verbal warning, counseling, and then a written reprimand (Exh. 61,p. 2). During an interview with VETS, Mr. Lester stated Mr. Chenoweth didn't receive a written warning for being late, they just talked about it and the behavior didn't continue (Exh. 62, p. 2). Kent Edward O'Donnell, Lieutenant, Patrol Division (18 years YCSO) stated all new deputies struggle with reports (Exh.62, p. 2, 63, p. 1). The evidence didn't show what the employer considered as extreme overtime. The evidence did show that in the past one deputy was given a verbal warning for unauthorized overtime (Exh. 55, p. 77). According to YCSO's policy the supervisor is responsible for monitoring the employee's attendance and must approve all overtime (Exh. 54, p 100-108). The evidence showed that Notice to Appear (NTA) was not dated and there was no way of knowing when the deputy turned them in to the secretary who was responsible for the data entry. The evidence didn't show Mr. Chenoweth receive a verbal or written warning for his opinion that HGN's were high

The evidence showed Mr. Chenoweth received one email reminding him and another deputy to sign a new policy (Exh. 57, p. 7). The evidence didn't show disciplinary action taken against the other deputy who was also reminded to read and sign the new policy (Exh. 57, p. 7). The employer provided no evidence to show Mr. Chenoweth was intentionally deceptive or untruthful about his military training (Exh. 61, p. 2).

Evaluation of Damages

Mr. Chenoweth was terminated from his position effective May 1, 2015, one day prior to the beginning of a six day MSO (Exh. 25, p. 5). Mr. Chenoweth's worked 160 hours month at $24.49 per hour. As of December 15, 2015 of this memorandum of referral and based on the hour work monthly, this amounts to the sum of $29, 388 (1200 hours x 24.49 per hour). Mr. Chenoweth has not obtained employment since his termination from Yellowstone County Sheriff's Office on May 1, 2015.

Settlement Posture

Settlement was not an option that Yellowstone County Sheriff's Office was willing to entertain. Their stance is they were justified in terminating Mr. Chenoweth.

Exhibits

1. VETS Form e1010
2. DD214(4)
3. Report of Contact, Adam Chenoweth, May 6, 2015
4. Report of Contact; Adam Chenoweth, May 6, 2015
5. Report of Contact, Mike Linder, May 6, 2015
6. Letter, May 6, 2015, Lucius Drawhorn Jr. to Adam Chenoweth
7. Report of Contact, Kevin Gillen, May 7, 2015
8. Letter, May 7, 2015, Lucius Drawhorn Jr. to Kevin Gillen
9. Report of Contact, Adam Chenoweth, May 8, 2015
10. Report of Contact, Adam Chenoweth, May 11, 2015
11. Report of Contact, Kevin Gillen, May 11, 2015
12. Report of Contact, Adam Chenoweth, May 12, 2015
13. Report of Contact, Adam Chenoweth, May 12, 2015
14. Report of Contact, Kevin Gillen, May 12, 2015
15. Report of Contact, Adam Chenoweth, May 13, 2015
16. Report of Contact, Kevin Gillen, may 14, 2015
17. Report of Contact, Adam Chenoweth, May 14, 2015
18. Report of Contact, Adam Chenoweth, May 14, 2015
19. Report of Contact, Kevin Gillen, May 15, 2015
20. Report of Contact, Kevin Evans, May 18, 2015
21. Report of Contact, Roger Bodine, May 18, 2015
22. Report of Contact, (b) (7)(D) [redacted] May 19, 2015
23. Report of Contact, Kevin Gillen, May 19, 2015

24. Report of Contact, Kevin Gillen, May 19, 2015

25. Report of Contact, Kevin Gillen, May 19, 2015

26. Report of Contact, Adam Chenoweth, May 21, 2015

27. Report of Contact, Kevin Gillen, May 21, 2015

28. Report of Contact, Kevin Gillen, May 27, 2015

29. Report of Contact, Adam Chenoweth, May 27, 2015

30. Report of Contact, (b) (7)(D) [redacted] May 27, 2015

31. Report of Contact, Roger Bodine, May 27, 2015

32. Report of Contact, Peter Aky, May 28, 2015

33. Report of Contact, Ryan McNary, May 28, 2015

34. Report of Contact, Andrew Greydanus, May 28, 2015

35. Report of Contact, Robert Lester, May 29, 2015

36. Report of Contact, Adam Chenoweth, June 2, 2015

37. Report of Contact, Roger Bodine, June 2, 2015

38. Report of Contact, Kevin Gillen, June 4, 2015

39. Report of Contact, Kevin Gillen, June 9, 2015

40. Report of Contact, Kevin Gillen, June 11, 2015

41. Report of Contact, Adam Chenoweth, June 11, 2015

42. Report of Contact, Adam Chenoweth, June 17, 2015

43. Report of Contact, Adam Chenoweth, June 29, 2015

44. Report of Contact, Adam Chenoweth, July 7, 2015

45. Letter, July 15, 2015 Lucius Drawhorn to Kevin Gillen

46. Report of Contact, Kevin Gillen, July 15, 2015

47. Report of Contact, Adam Chenoweth, July 15, 2015

48. Report of Contact, Adam Chenoweth, July 21, 2015

49. Report of Contact, Adam Chenoweth, July 21, 2015

50. Letter, July 23, 2015, Lucius Drawhorn to Adam Chenoweth

51. Report of Contact, Kevin Gillen, July 27, 2015

52. Report of Contact, Adam Chenoweth, August 4, 2015

53. Report of Contact, RSOL Davila, August 11, 2015

54. Report of Contact, RSOL Davila, August 27, 2015

55. Report of Contact, RSOL Davila, September 1, 2015

56. Report of Contact, RSOL Davila, September 3, 2015

57. Report of Contact, RSOL Davila, September 8, 2015

58. Report of Contact, Kevin Gillen, September 10, 2015

59. Report of Contact, Matthew Poe, September 16, 2015

60. Report of Contact, Duane Skinner, September 16, 2015

61. Report of Contact, Roger Bodine, September 16, 2015

62. Report of Contact, Robert Lester, September 16, 2016

63. Report of Contact, Kent O'Donnell, September 22, 2015

64. Report of Contact, William Michaelis, September 23, 2015

65. Report of Contact, Adam Chenoweth, September 25, 2015

66. Report of Contact, Ryan Kramer, September 25, 2015

67. Letter, September 28, 2015, Lucius Drawhorn to Adam Chenoweth

68. Report of Contact, Adam Chenoweth, October 5, 2015

69. Report of Contact, Kevin Gillen, October 5, 2015

70. Report of Contact, Kevin Gillen, October 5, 2015

71. Letter, October 5, 2015, Lucius Drawhorn to Kevin Gillen

72. Report of Contact, Kevin Gillen, October 15, 2015

73. Report of Contact, Kevin Gillen, October 16, 2015

74. Report of Contact Kevin Gillen, October 17, 2015

75. Letter, October 19, 2015, Kevin Gillen to Lucius Drawhorn

76. Report of Contact, Adam Chenoweth, October 19, 2015

77. Letter, October 19, 2015, Lucius Drawhorn to Adam Chenoweth

78. Letter, October 19, 2015, Lucius Drawhorn to Kevin Gillen

79. Referral Letter, December 1, 2015, Adam Chenoweth to Lucius Drawhorn Jr.

80. Report of Contact, Adam Chenoweth, December 3, 2015

81. Report of Contact, Kevin Gillen, December 3, 2015

82. Letter, December 3, 2015, Lucius Drawhorn Jr. to Kevin Gillen