

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

EDWIN CHAPPABITTY, JR., M.D.,)	
)	
<i>Plaintiff,</i>)	Case No. _____
)	
vs.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
<i>Defendant.</i>)	

**ORIGINAL COMPLAINT FOR DAMAGES
UNDER THE FEDERAL TORT CLAIMS ACT**

Plaintiff CAPT Edwin Chappabitty, Jr., M.D., by and through his attorney, Dennis G. Chappabitty, now comes before this Court and complain of the United States Government, as follows:

I.

JURISDICTION, VENUE, AND CONDITIONS PRECEDENT

1. Plaintiff Chappabitty is a retired federal employee residing at 3115 NE Colonial Dr., Lawton, Oklahoma 73507 and thus is a resident of the Western District of Oklahoma. Dr. Chappabitty was born at the Lawton Indian Hospital and, as a member of the Comanche Tribe of Oklahoma, he made a deep personal and genuine professional commitment to help all tribal members served at the DHHS Lawton Indian Hospital. It was well known that he planned to continue to serve his patients after his retirement as a civil service or contract employee.

2. At the time of his retirement as a United States (U.S.) Public Health Service

Commission Officer on August 1, 2008, Chappabitty had completed a total of 30 years of federal service, including serving 5 years in the U.S. Army with a decorated combat tour in the Republic of Viet-Nam.

3. The claims herein are brought against the U.S. pursuant to the Federal Tort Claims Act (28 U.S.C. §2671, *et seq.*) and 28 U.S.C. §§1346(b)(1), for money damages as compensation for loss of property and personal injuries that were caused by the negligent and wrongful acts and omissions of agents and employees of the United States Government, *inter alia*, negligent investigation, false imprisonment, abuse of process, conversion of property, infliction of emotional distress and interference with a prospective economic opportunity while acting within the scope of their offices and employment, under circumstances where the Defendant U.S., if a private person, would be liable to the Plaintiff in accordance with the laws of the State of Oklahoma.

4. Venue is proper in that all, or a substantial part of the acts and omissions forming the basis of these claims occurred in the Western District of Oklahoma, and arose from the initiation of false charges of unprofessional conduct against Mr. Chappabitty by the Defendant U.S. Government and its employees, maliciously and without probable cause.

5. Plaintiff has fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act.

6. This suit has been timely filed, in that Plaintiff timely served notice of his claim on U.S. Department of Health and Human Services, General Law Division - FTCA Claims Intake, 330 Independence Ave., S.W. Room 4760 Washington, D.C.

20201 in April 2010. Attached hereto and titled "Exhibit 1" is the administrative claim with "attachments".

7. On September 27, 2011, Plaintiff sent a "Notice of Intent to File FTCA Civil Action on November 1, 2011 and Final Settlement Demand in FTCA Claim of Damage and Injury - CAPT Edwin Chappabitty, Jr., M.D. Filed April 29, 2010" to Defendant U.S. Exhibit 2. The Agency did not respond.

II.

EVENTS FORMING THE BASIS OF THE CLAIMS

8. CAPT Chappabitty was employed from July 15, 1983 to July 31, 2008 at the U.S. Department of Health and Human Services (DHHS), Indian Health Service, Lawton Indian Hospital or "Lawton Service Unit", located in Lawton, Oklahoma.

9. CAPT Chappabitty was maliciously prosecuted in a proceeding governed and controlled under federal law and regulation through the collusion, suggestion, direction and instigation of numerous officials and employees of the DHHS, Indian Health Service, including Hickory Starr, Service Unit Director of the Lawton Service Unit.

10. David Thompson, EEO investigator, holds himself as an "investigative or law enforcement officer" within the meaning of 28 U.S.C. §2680(h), and thus, a claim for malicious prosecution may be pursued against the U.S.

11. CAPT Chappabitty would be entitled to pursue these claims under the laws of the State of Oklahoma, including but not necessarily limited to claims in the nature of malicious prosecution, false imprisonment, abuse of process, defamation, intentional infliction of emotional distress, interference with a prospective economic opportunity

and conspiracy.

12. The claims of CAPT Chappabitty are based upon the acts and events set forth below, all of which actions were taken (and events were caused) by investigative officers and other Agency officials and employees of the U.S. Government while acting within the scope of their employment.

13. On May 12, 2008, Plaintiff Chappabitty was ordered by Evaristo Quinones, M.D., Acting Clinical Director, Lawton Service Unit, to report to Dr. John Farris' office on May 14, 2008. Exhibit 1, Attachment A. (Ex. 1, A.) Dr. Farris serves as the Chief Medical Officer Oklahoma City Area Office (OCAO). His office is located at the U.S. Public Health Service, OCAO headquarters, approximately 90 miles from Lawton.

14. Unaware of the reasons why he was ordered to report to OCAO, Dr. Chappabitty was directed into a room and confronted by Dr. Farris, CAPT Kevin Meeks and an EEO investigator, David Thompson, and forced, under protest, to undergo questioning by Thompson, who held himself out to be special agent of federal law enforcement, forcing him to sign a "Federal Employee Warning Form". Meeks is now the Area Director, OCAO, and maintains the rank as "RADM."

15. Hickory Starr, John Farris, RADM Meeks, David Thompson, Evaristo Quinones and Ahmed Abou-Elmagad, Acting Clinical Director on June 19, 2008, were responsible for enforcing the rules, regulations, policies, practices, procedures and/or customs of the Lawton Service Unit in a manner that would not cause damage to Plaintiff's rights and property as set forth in this Complaint.

16. Thompson represented and held out a badge to CAPT Chappabitty and those

present in the interrogation room that he was a certified law enforcement officer authorized to conduct administrative investigations pursuant to DHHS Office of Inspector General, Office of Investigations rules/guidelines.

17. In the presence of RADM Meeks and Dr. Farris, Thompson handed to CAPT Chappabitty a list of 36 questions in the form of a non-standard pre-prepared "Declaration of Edwin Chappabitty" titled "Investigation of patient allegations per Commissioned Corps Personnel Manual Part 4, Chapter CC 46, Subchapter 46.4, Instruction 1." Ex. 1, C. The document noted:

THIS IS AN AGENCY INVESTIGATION/ADMINISTRATIVE INQUIRY AND IS CONFIDENTIAL, AND IS NOT TO BE DISCLOSED TO ANY OTHER EMPLOYEE, NON-EMPLOYEE, OR ANY OTHER PERSON OUTSIDE THIS AGENCY. IF THE AGENCY DETERMINES THAT ANY INFORMATION, QUESTIONS, INCLUDING YOUR RESPONSE, OR ANY OTHER PART OF THIS INVESTIGATION IS DISCLOSED TO PERSON OR PERSONS NOT PART OF THE INDIAN HEALTH SERVICE, THEN CORRECTIVE AND/OR DISCIPLINARY ACTION, INCLUDING SEPARATION/TERMINATION FROM THE FEDERAL SERVICE MAY BE TAKEN.

18. While confined in the interrogation room, CAPT Chappabitty was subjected to coercive and demanding hostile behavior by Thompson and ordered by Meeks and Ferris to respond to questions in his "Declaration" that were based on accusations that he had leveled racist statements, including the term "half-breed", to a patient, Gregory Wheat, and his mother, Sharon Wheat, on May 1, 2008 at the Lawton Service Unit.

19. During the forced interrogation, CAPT Chappabitty was denied the right to review the written accusations made by the Wheats against him that should have been placed in writing on a standard "Patient Complaint Form" that is routinely available

from the Lawton Service Unit. Ex. 1, G.

20. After repeated written demands and Freedom of Information Request to the Agency, CAPT Chappabitty has never seen any written complaints signed by the Wheats to the effect that he made racist statement toward them that included the term “half-breed”.

21. During the time he was interrogated, under protest, by Thompson on May 14, 2008, CAPT Chappabitty was unable to leave the room or facility at risk of disobeying the direct orders of Meeks and Ferris that he answer and otherwise respond to questions directed to him by Thompson.

22. During the time of his interrogation by Thompson and in the presence of Meeks and Ferris, legal counsel for CAPT Chappabitty repeatedly attempted to call him on his cell phone from San Diego, CA and he was not allowed by those present to seek legal counsel to advise him in this unexpected dilemma. To add to the coercive nature of the interrogation, Thompson made a comment that “we know your brother is an attorney and you are prohibited from speaking with him about this matter” and he continued with his questioning.

23. Commissioned Corps Personnel Manual Part 4, Chapter CC 46, Subchapter 46.4, Instruction 1, titled “Disciplinary Action”, authorizes the appointment of a special investigator where allegations of misconduct have been made but are not immediately verifiable. Ex. 1, D., p. 5.

24. Commissioned Corps Personnel Manual Part 4, Chapter CC 46, Subchapter 46.4, Instruction 1, Section F, titled “Investigations” requires the special investigator

to conduct a full and thorough inquiry and prepare a formal written report which shall form the basis for determining whether disciplinary action is warranted.

25. Thompson, Meeks and Ferris were conducting an investigation into alleged misbehavior committed by CAPT Chappabitty pursuant Commission Corps Personnel Manual Part 4. Thus, they were duty bound to restrict their actions to those clearly delineated processes and procedures contained in those regulations.

26. There is no formal written report prepared by Thompson, as required by regulation, in the record of this purported investigation that verifies any alleged misconduct committed by CAPT Chappabitty toward the Wheats on May 1, 2008.

27. Commissioned Corps Personnel Manual Part 4, Chapter CC 46, Subchapter 46.4, Instruction 1 establishes procedures that provide Due Process to a member of the DHHS Commission Corp accused of engaging in action or behavior of a dishonorable nature which reflects discredit upon the officer or both and abusive treatment of patients in their dealings with the Government.

28. On May 20, 2008, Dr. Evaristo Quinones, Clinical Director, Lawton Indian Hospital, summarily and improperly placed CAPT Chappabitty on non-duty status with pay, effective May 21, 2008 and confined to his residence, all without cause and in breach of the Commission Corps Personal Manual. Ex. 1, E.

29. Without following the applicable safeguards titled "Suspensions from Duty", Part 4", there was no finding in the record of "sufficient severity to warrant removal from duty as a precautionary measure pending full investigation of such allegations. . .". Ex. 1, D., Sec. E. 1. C., p. 4.

30. The order placing CAPT Chappabitty on non-duty status with pay was “cancelled” shortly after it was issued stating that “Officer has requested terminal leave through retirement date.” Ex. 1, F.

31. On May 23, 2008, CAPT Chappabitty, through his attorney, wrote to RADM Lawrence Furman, Division of Commissioned Personnel, protesting his placement on Non-Duty Status with Pay Pending Completion of Investigation.” Ex. 1, J.

32. CAPT Chappabitty supplemented his May 23, 2008 “Letter of Protest” on May 28, 2008 when he wrote to RADM Furman detailing the total lack of probable cause subjecting him to embarrassing and humiliating treatment during the illegal investigation and interrogation on May 14, 2008. Ex. 1, K.

33. Sometimes after May 21, 2008 and before June 19, 2008, Hickory Starr, Director, Lawton Service Unit, began a concerted campaign, without probable cause, to harass and humiliate CAPT Chappabitty, causing him extreme emotional distress, by attempting to send him on assignments to other IHS facilities in distance states. Exhibit 1, M-N.

34. As a part of Hickory Starr’s most recent campaign of harassment of CAPT Chappabitty, a personal patient log owned and maintained by Plaintiff was confiscated without probable cause. The illegal confiscation of his personal patient log deprived him of his right to review his own personal observations of May 1, 2008 and refresh his memory on those events that occurred on that day.

35. CAPT Chappabitty is the primary care provider for his elder mother (age 88), who lives with him and had Starr succeeded in forcing his transfer to another IHS

facility, it would have caused extreme, unnecessary and unwarranted disruption to his life and that of his mother imposing a grave hardship.

36. Starr's most recent harassment began when CAPT Chappabitty had only a short period of time, forty (40) days, to prepare for his retirement from federal service. Because of his harassment by IHS officials, including Kevin Meeks, OCAO Director, CAPT Chappabitty was forced to request "terminal leave" while he made preparations to retire. Ex.1, O.

37. Without any action proving that those processes/procedures in Commissioned Corps Personnel Manual Part 4, Chapter CC 46, Subchapter 46.4, Instruction 1 or the Lawton Service Unit Hospital Bylaws were followed, CAPT Chappabitty received a Letter of Reprimand on June 19, 2008. Ex. 1, Q.

38. No reference is made in the Letter of Reprimand to a written and signed "Patient Complaint Form." Ex. 1, Q. Ahmed Abou-Elmagad, Acting Clinical Director, Lawton Indian Hospital, noted in his Reprimand that CAPT Chappabitty could file a grievance over the Letter of Reprimand.

39. The Letter of Reprimand states:

This Letter of Reprimand is being issued to you for misconduct related to discriminatory conduct directed towards patients and coworkers, false statements and lack of candor to investigators of this misconduct. I am taking this action under regulations contained in Book: 1, Chapter 1, Section 1, Instruction: 02) of the Commission Corps Issuance System (eCCIS 11,02) [http://dcp.psc.gov/eCCIS/documents/CCPM 46 4 1.pdf](http://dcp.psc.gov/eCCIS/documents/CCPM_46_4_1.pdf).

....

The finding also appears to show that you lied in his denying using the term half breed, and using the term old white woman or old white man. The evidence appears to show he used "color" or a

patients “lesser degree of Indian Blood” as a basis for proving inappropriate or less than full medical services.

Based on your reluctance to respond to investigators questions and the Acting Area Director having to give him a direct order, and the evidence obtained during the investigation, it appears there is merit to the allegations. Your reluctance to respond, and statements that you did not remember the words or words to that effect, shows that his response was “less or lacked candor” during his interview. Lack of Candor is also a serious offense, which strike at heart of the employer-employee relationship.

I have deemed these infractions as misconduct. Please be advised that your conduct as outlined above is unacceptable.

....

40. Dr. Abou-Elmagad’s findings about CAPT Chappabitty lying, making false statements and lacking candor are baseless, deceitful and without probable cause under the circumstances where he was surprised by the charges, unable to see any written patient complaints and caught totally off guard and overtly accused of making racially derogatory statements to patients that remain undocumented and, thus, unproven. On information and belief, Thompson has engaged in similar baseless characterizations that have resulted in the unjustified removals of Commission Corps members and other DHHS employees from federal service.

41. On June 27, 2008, CAPT Chappabitty sent a “Written Grievance - Letter of Reprimand, dated June 19, 2008, CAPT Edwin Chappabitty, Jr.” to Dr. Abou-Elmagad. Ex. 1, R. No response to this Written Grievance has ever been issued by anyone at the Lawton Indian Hospital or elsewhere within DHHS.

42. No Board of Inquiry was convened as mandated under the Commission Corps Personnel Manual Part 4 and David Thompson never issued a formal written

report citing the basis for determining whether disciplinary action in these specific circumstances was warranted against CAPT Chappabitty.

43. Subsequent investigation provides reason to believe that Sharon K. Wheat is herself a habitual liar who has been convicted of “obtaining cash or merchandise by bogus check/false pretenses.” Ex. 1, S.

44. Because CAPT Chappabitty was “stonewalled” or ignored by the Agency in his efforts to see exactly what the Wheats’ described in their purported complaints against him, he was never given a right to confront his accusers and challenge their truthfulness and credibility.

45. Under the circumstances of this case, the Agency's breach of duty and failure to give CAPT Chappabitty adequately detailed notice prior to the May 14, 2008 of the alleged misconduct prejudiced his ability to mount a meaningful defense and denied him Due Process.

46. Dr. Abou-Elmagad’s and Thompson’s findings about CAPT Chappabitty lying, making false statements and lacking candor when questioned by Thompson and other Agency officials were baseless, deceitful, without probable cause, defamatory, malicious, outrageous and the product of an out-of-control investigation targeting a well-respected American Indian physician only weeks before he retired from federal service.

47. The Lawton Indian Hospital maintains its own “Medical Staff Bylaws, Rules and Regulations, November 2008” that provides for formal discipline of facility medical staff who are alleged to have engaged in professional misconduct that disrupts

clinic/hospital function or engages in behavior that is threatening to patients. The Bylaws give the accused member of the medical staff measures where their right to Due Process is protected by granting them a right to a fair hearing and appeal.

48. Agency officials breached their duty to CAPT Chappabitty by depriving him of his right to confront the alleged charges of professional misconduct purportedly filed against him by the Wheats under those provisions established by the Medical Staff Bylaws, Rules and Regulations.

49. CAPT Chappabitty believes that he was “blacklisted” by Indian Health Service management because he worked diligently to accomplish the DHHS Mission of improving the health care of Indians all without becoming a member of the “good ole boys network” who he believes have achieved their rank by unscrupulous means and manipulation of Agency and Commission Corp regulations.

50. The Letter of Reprimand was issued by Dr. Abou-Elmagad without probable cause and for the purpose of preventing CAPT Chappabitty from returning to the Indian Health Service as a civil service or contract employee after his retirement. In fact, Lawton Indian Hospital has recently hired several contract physicians because there were insufficient physicians providing adequate health care at the facility.

51. The June 19, 2008 Letter of Reprimand stated: “This Letter of Reprimand will be placed in your official personnel file for a period of two years after which it will be removed.”

52. As of June 19, 2010, CAPT Chappabitty has received no official notification from the Indian Health Service that the Letter of Reprimand had been removed from

his official personnel file.

53. CAPT Chappabitty reasonably believed that he would not be favorably considered for contract or civil service employment with the Lawton Service Unit or any other medical facility within the DHHS IHS because of the Letter of Reprimand.

54. The Agency's failure to execute its duty to remove the Letter of Reprimand from his personnel file continues to damage, harm and otherwise deprive CAPT Chappabitty of his federally-protected employment rights all within the statutory time lines defined under the Laws of the State of Oklahoma.

55. Hickory Starr, John Farris, RADM Meeks, David Thompson, Evaristo Quinones and Ahmed Abou-Elmagad breached their respective duties to properly and fairly to enforce the rules, regulations, policies, practices, procedures and/or customs of the Lawton Service Unit, including those policies, practices, procedures, and/or customs not so applied that proximately caused harm to and violated Plaintiff's rights as set forth in this Complaint.

III.

FIRST CLAIM – VIOLATION OF 28 U.S.C. §2680 (h)

1. Plaintiff incorporate by reference herein all allegations set forth above.
2. The acts and events set forth above constitute negligent and wrongful acts and omissions of agents and employees of the U.S. Government, *inter alia*, negligent investigation, false imprisonment, abuse of process, conversion of personal property, infliction of emotional distress and interference with a prospective economic opportunity while acting within the scope of their offices and employment, under

circumstances where the United States, if a private person, would be liable to the Plaintiff in accordance with the laws of the State of Oklahoma.

Because these acts and events were undertaken and caused by investigative and law enforcement agents or persons holding themselves out as law enforcement agents of the Defendant U.S., the U.S. Government is liable for all damages caused by such acts, as provided by 28 U.S.C. §2680(h).

SECOND CLAIM – VIOLATION OF FEDERAL TORT CLAIMS ACT

1. Plaintiff incorporates by reference herein all allegations set forth above.

2. The acts and events set forth above constitute negligent and wrongful acts and omissions of agents and employees of the U.S. Government, *inter alia*, negligent investigation, abuse of process, conversion of personal property, denial of right to legal counsel, infliction of emotional distress and interference with a prospective economic opportunity while acting within the scope of their offices and employment, under circumstances where the Defendant U.S., if a private person, would be liable to the Plaintiff in accordance with the laws of the State of Oklahoma.

IV.

DAMAGES

1. Plaintiff has suffered the following injuries for which they seek full compensation under the law:

a. Costs incurred in defending against the unfounded accusation that Plaintiff made racially derogatory statements to patients;

b. Damages to reputation;

- c. Failure to remove the Letter of Reprimand;
- d. Illegal confiscation of personal medical log;
- e. Emotional distress and humiliation,; and
- f. financial loss of prospective contract or civil service employment at a time when there was and remains a shortage of qualified physicians with Indian Preference.

V.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff CAPT Chappabitty is entitled to damages from the United States, and he does hereby pray that judgement be entered in his favor and against the United States government as follows:

1. Costs incurred in defending against the unfounded accusation that Plaintiff made racially derogatory statements to patients; plus
2. Damage to his reputation in the amount of \$ 800,000.00; plus
3. Damages for the unjustified compensation and wrongful taking of his personal medical log in the amount of \$ 1,000.00; plus
4. Compensation in the amount of \$ 420,00.00 for depriving Plaintiff CAPT Chappabitty of an interference with an economic contract employment or civil service employment opportunity immediately after his retirement as a proximate cause of the unjustified Letter of Reprimand remaining in his official personnel file that prevented his employment with the Indian Health Service.
5. Plaintiff is further are entitled and do hereby seek recovery of all costs and

attorneys fees incurred by Plaintiffs in this civil action, together with for such further and additional relief at law or in equity that this Court may deem appropriate or proper.

Respectfully submitted,

By:

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