

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MOHAMED HYATH,

Plaintiff,

v.

CITY OF DECATUR, W.S. RICHARDS,
individually and in his
official capacity as
Lieutenant, T.G. KAROLYI,
individually and in his
official capacity as Corporal,
and M.H. HENSEL, individually
and in his official capacity as
Corporal,

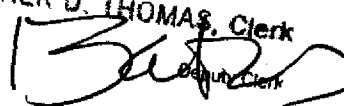
Defendants.

CIVIL ACTION NO.

1:04-CV-1135-JEC

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By: 

ORDER & OPINION

This case is presently before the Court on defendant Richards' Motion for Summary Judgment [29], defendant Hensel's Motion for Summary Judgment [30], defendant Karolyi's Motion for Summary Judgment [31], defendant City of Decatur's Motion for Summary Judgment [33], defendant City of Decatur's Motion for Sanctions [40], plaintiff's Motion for Summary Judgment [44], and defendant City of Decatur's Motion to Strike [69]. The Court has reviewed the record and the arguments of the parties and, for the reasons set out below, concludes that defendant Richards' Motion for Summary Judgment [29]

should be **GRANTED**, defendant Hensel's Motion for Summary Judgment [30] should be **GRANTED**, defendant Karolyi's Motion for Summary Judgment [31] should be **GRANTED**, defendant City of Decatur's Motion for Summary Judgment [33] should be **GRANTED**, defendant City of Decatur's Motion for Sanctions [40] should be **DENIED** as moot, plaintiff's Motion for Summary Judgment [44] should be **DENIED**, and defendant City of Decatur's Motion to Strike [69] should be **DENIED**.

BACKGROUND

This is an employment discrimination case. Plaintiff is a practicing Muslim, of Mauritian origin. (Compl. [1] at ¶ 4.) Defendant City of Decatur ("Decatur" or "the City") hired plaintiff as a police recruit in April, 2002. (Def.'s Statement of Material Facts ("DSMF") [33] at ¶ 1.)¹ Plaintiff spent the first 10 weeks of his employment in a training course at the North Central Police Academy in Austell, Georgia. (*Id.* at ¶ 2.) Following his graduation from the police academy, plaintiff joined the Decatur police department as a probationary officer in the patrol division. (*Id.* at ¶ 4.)

¹ The Court draws the facts from the undisputed facts in Defendant's Statement of Material Facts ("DSMF") [33], Plaintiff's Statement of Material Facts ("PSMF") [46], and Plaintiff's Response to Defendant's Statement of Material Facts [46]. The majority of the facts underlying plaintiff's Complaint are undisputed.

Plaintiff alleges that as soon as he joined the police department, he became the object of "constant taunting and harassment" based on his ethnicity and religion. (Plaintiff's Statement of Material Facts ("PSMF") [46] at ¶ 12.) Plaintiff's fellow officers were aware that he was a practicing Muslim and, because of his ethnicity, perceived him to be from the Middle East. (Pl.'s Mot. for Summ. J. [44] at 19.) Plaintiff contends that, as a result of his religion and ethnicity, officers in the police department frequently referred to him by the nickname "Taliban" or "Al Queada." (*Id.* at 17.) In addition, plaintiff claims that officers teased him about Muslim dress and dietary restrictions, asking plaintiff why he did not eat pork or suggesting that he order the "pork sandwich or hot dog" for lunch. (*Id.* at 2, 21.) In the same vein, plaintiff alleges that defendant Karolyi, who was plaintiff's field training officer and often rode with him in the patrol car, asked plaintiff on several occasions whether women they encountered in traditional Muslim dress were plaintiff's "wife" or "mother." (*Id.* at 2.)

In addition to these general comments, plaintiff asserts two specific incidents of alleged racial harassment by his co-worker, defendant Hensel, and his shift commander and supervisor, defendant Richards. (PSMF [46] at ¶¶ 13-18.) The first incident involved plaintiff's training in the use of oleoresin capsicum, more commonly

known as "OC" or "pepper spray." (*Id.* at ¶ 13.) As part of their training, all new police recruits are exposed to pepper spray for three to five seconds. (*Id.*) Exposure to pepper spray causes an unpleasant reaction, and members of the police department typically gather to watch the new recruits undergo the training. (*Id.*) Plaintiff received pepper spray training in July, 2002. (DSMF [33] at ¶ 6.) Approximately 25 people were present at the training, including defendant Hensel, a Decatur police officer. (*Id.* at ¶ 8.) Plaintiff alleges that after he was exposed to the pepper spray, defendant Hensel stated, "That's what you get for bombing us you damn Taliban." (*Id.* at ¶ 9.)

The second incident involved an altered FBI poster. (DSMF [33] at ¶ 13.) The Decatur police department occasionally receives FBI "Seeking Information" posters requesting information about suspected criminals. (Pl.'s Mot. for Summ. J. [44] at 17.) In August, 2002, the department received a "Seeking Information" poster concerning A.S. Al-Rasheed, a Saudi Arabian suspected of being involved in the September 11, 2001 hijacking. (*Id.*; Richards Aff. [29] at ¶ 15.) Defendant Richards used his computer to superimpose plaintiff's photograph onto the FBI poster, so that the poster depicted plaintiff as a suspected Islamic terrorist. (*Id.*) Richards showed the poster to plaintiff, and then left it in the roll call room for other officers to see. (Pl.'s Mot. for Summ. J. [44] at 18-19.)

Although the City maintains an anti-harassment policy,² plaintiff did not complain about any of these incidents when they occurred.³ (DSMF [33] at ¶ 23.) Neither did plaintiff tell defendants Hensel, Karolyi, or Richards that he found their comments offensive, or ask defendants to stop making the comments. (*Id.* at ¶ 21.)

Plaintiff first complained about the alleged harassment when he contacted Assistant Chief of Police David Junger by telephone on September 11 or 12, 2002, and requested a meeting to discuss his allegations. (DSMF [33] at ¶ 28.) Pursuant to plaintiff's request, Junger scheduled a meeting for September 13, 2002. (*Id.*) In addition to plaintiff and Junger, Director of Public Safety Sherrard White and Assistant Chief of Police William Clark attended the meeting. (*Id.* at ¶ 30.) During the meeting, plaintiff informed White, Junger, and Clark about the alleged harassment. According to

² The policy includes a grievance procedure, which is described in the City's Personnel Rules and Regulations manual. (DSMF [33] at ¶ 27.) Pursuant to the policy, an employee may present a grievance to his or her supervisor within five working days after the employee knew, or in the exercise of due diligence should have known, of the conduct or acts upon which the grievance is based. (*Id.* at ¶ 24.) If the grievance is not resolved by the supervisor, the employee may present it to the head of his department within five working days after the supervisor's response is given or is due. (*Id.*) If the grievance is still not resolved, the employee may present it to the City Manager within five working days after the department head's decision is rendered or due. (*Id.* at ¶ 25.)

³ Plaintiff concedes that he received a copy of the policy along with his offer of employment, and that the City reviewed the policy with plaintiff at an orientation session. (DSMF [33] at ¶ 23.)

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