

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No. 217-2021-CV-00052

Nathan Buell  
236 Tolend Road  
Barrington, NH 03825

v.

State of New Hampshire,  
Department of Safety  
Division of State Police  
33 Hazen Drive  
Concord, NH 03305

and

Nathan A. Noyes,  
Colonel of the New Hampshire State Police  
In His Official and Personal Capacity  
Department of Safety  
33 Hazen Drive  
Concord, NH 03305

**COMPLAINT**

**PLAINTIFF DEMANDS A TRIAL BY JURY**

Nathan Buell enters this Complaint against the State of New Hampshire,  
Department of Safety Division of State Police and Colonel Nathan A. Noyes, Colonel of  
the New Hampshire State Police, in his official and personal capacity, alleging as  
follows:

## **PARTIES**

1. Plaintiff, Nathan Buell ("Mr. Buell") is an individual residing at 236 Tolend Road, Barrington, New Hampshire, 03825.

2. Defendant, State of New Hampshire, Department of Safety Division of State Police ("the State") is the highest degree of law enforcement for the State of New Hampshire and is located at 33 Hazen Drive, Concord, New Hampshire 03305.

3. Defendant, Colonel Nathan A. Noyes is the successor to Christopher Wagner, Colonel of the New Hampshire State Police and is named herein in his personal and official capacity ("Col. Noyes").

4. Col. Noyes and the State are jointly referred to herein as "Defendants."

## **BRIEF SUMMARY OF CASE**

5. Nathan Buell was hired by the State in July 2018. He was forced to submit his resignation on June 3, 2019 for allegedly lying. This was a pretext. The evidence supports the fact that he was terminated when his superior discovered his disability application for mental health issues arising from his service in the United States Navy. Such termination was in violation of Mr. Buell's rights under the American with Disabilities Act (42 U.S.C. §12101), the Rehabilitation act of 1973 (29 U.S.C. §701), state law (NH RSA 354-A) and was generally a wrongful termination under common law. Mr. Buell was also wrongfully placed on the Exculpatory Evidence Schedule and seeks his removal from such Schedule and damages under 42 U.S.C. §1983 for violation of his rights in placing him on the Exculpatory Evidence Schedule without due process.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the parties and the subject matter of this action as Mr. Buell is a New Hampshire citizen.

7. At all times relevant to this matter, the State of New Hampshire was an employer under the relevant laws referenced herein.

8. On or around October 22, 2019, Mr. Buell filed a Charge of Discrimination and Retaliation (“Charge”) against the Defendants with the New Hampshire Commission for Human Rights (“NHCHR”) and the United States Equal Employment Opportunity Commission (“EEOC”), attached hereto as Exhibit A. Mr. Buell filed the Charge within 180 days after the unlawful employment acts were committed.

9. On or about February 6, 2020, the State filed a verified responsive pleading to the Charge.

10. On or about September 2, 2020, Mr. Buell notified the EEOC and the NHCHR that he planned to file a complaint in civil court, pursuant to RSA 354-A:21-a I & II, and requested a right to sue letter.

11. On or about September 21, 2020, EEOC and the NHCHR issued dismissal and right to sue documentation attached hereto as Exhibit B.

12. Venue is proper as the State of New Hampshire, Department of Safety Division of State Police and Col. Noyes as both are located in Concord, New Hampshire.

## **FACTS**

### **A. Service In the Navy in Afghanistan**

13. Prior to his hiring with the State, Mr. Buell was on active duty with the United States Navy as a Hospital Corpsman. He served tours in Afghanistan (2013-2014) and Iraq (2015).

14. While serving in the Navy, Mr. Buell experienced many traumatic experiences and to this day still recalls the smell of burning flesh and the sights of exposed bone. A brief summary of Mr. Buell’s experiences is attached hereto as Exhibit C. In summary, Mr. Buell was part of a mission in January 2014 to a local market in Afghanistan when pressure-plate improvised explosive devices (IED) exploded injuring one British soldier. Mr. Buell treated the soldier and made the decision to enter a building to get an injured soldier to safety and thus caused another fellow service member to trigger a pressure-plate IED in the building, losing his leg and fingers. He

applied lifesaving treatment and assisted in transporting both the soldier and marine to safety. He also treated local residents in Afghanistan, including a child who died from a gunshot wound.

15. During his service, Mr. Buell was awarded with the Navy and Marine Corps Achievement Medal (with Combat Distinguishing Device) by the Secretary of the Navy for his heroic actions from January 28, 2014 to January 30, 2014.

16. Mr. Buell was honorably discharged from the United States Navy.

#### **B. Hiring by the State**

17. On or about July 25, 2018, Mr. Buell was hired by the State of New Hampshire, Department of Safety as a Trooper I in the State Police, E Troop and was given an appointment as a State Police Probationary Trooper.

18. As part of the hiring process, Mr. Buell completed a psychological evaluation. During the evaluation, Mr. Buell disclosed that the military had diagnosed him with an undefined anxiety disorder. At the time, Mr. Buell had not yet been diagnosed with Post-Traumatic Stress Disorder ("PTSD"). There was discussion about his combat experience during the evaluation/pre-hiring process and the psychologist prepared a written report of the evaluation.

19. In August 2018, Mr. Buell completed the new hire pre-academy training. During this training, no issues were raised regarding his conduct. He was sworn into the State Police on Friday, August 3, 2018.

20. Col. Wagner was the commanding officer of the State Police during all relevant times hereto. Col Noyes is the successor to Col. Wagner.

#### **C. Performance**

21. Sergeant Nick Levesque completed a Performance Summary Form for Mr. Buell on or about March 23, 2019. In all areas on which Mr. Buell was evaluated, he met expectations.

22. While at work on April 5, 2019, Mr. Buell used a Department of Safety scanner to scan documents to himself because he did not have a scanner at home. The documents were needed to obtain disability benefits through the U.S. Department of Veterans Affairs. The documents included two narrative statements regarding Mr. Buell's service in Iraq and Afghanistan, and its impact on him.

23. These required documents were submitted in support of the disability benefits of Mr. Buell currently receives based first on a generalized diagnosis of anxiety and later a diagnosis of Post Traumatic Stress Disorder.

24. Upon information and belief, the documents were saved to a temporary scan file and seen by Sergeant Kevin Macaione, who (unbeknownst to Mr. Buell) forwarded them up the chain of command to his supervisors, including to Col. Wagner.

25. In the normal course of duties, in the middle of May 2019, there was an inspection of Mr. Buell's gun and cruiser. It was his second such inspection. In the first inspection of his gun and cruiser, the inspection was not very rigorous and Mr. Buell completed the forms and passed with no questions.

26. Prior to this second inspection, Mr. Buell used a machine to clean his gun, being instructed by another trooper on how to use the machine. Mr. Buell realized that the machine did not work so well, but given the experience of his first inspection, he did not take further steps to clean the gun.

27. During the second inspection, Mr. Buell was found to have not properly cleaned his cruiser or gun. Specifically, the inspection revealed that a suspect had hidden some drugs wrapped in a bill concealed beneath the seat of the cruiser. Mr. Buell signed an inspection form that he did not pass his cruiser and gun inspection, it was not a disciplinary action or written warning. Mr. Buell had cleaned both the cruiser and gun, just not as thorough as necessary.

28. At this same time, after having found his cruiser and gun not properly cleaned, Mr. Buell was asked whether he tried on his vest. Mr. Buell became flustered when he was asked if he had tried on his safety vest and given the timing of the question, after the cruiser and gun inspection, and the minor nature of the question and

his nervousness, he stated that he had, when he had not. Mr. Buell corrected his statement immediately. Again, there was no written discipline regarding the safety vest issue and there was no harm to anybody.

29. Prior to this time, there was also an issue of polishing his brass and Mr. Buell was spoken to about not having polished brass. Again, there was no written warning or discipline associated with this action. Mr. Buell did his best to comply with all the standards imposed by the Department of Safety.

30. There are no written disciplinary documents regarding the cruiser inspection, firearm cleaning standards, brass polishing or the safety vest question contained within Mr. Buell's personnel file.

#### **D. Forced Resignation**

31. On June 3, 2019, Mr. Buell was forced to resign and effectively terminated. Mr. Buell was informed that his supervisor, Col. Wagner, intended to submit his name for inclusion on the State's Exculpatory Evidence Schedule ("EES"). The EES is a list of over 200 law enforcement officers whose credibility has been called into question due to misconduct. In effect, being placed on the EES is like being placed on a blacklist. It is fatal to an officer's ability to serve as a witness in court, and therefore, thwarts his ability to perform his job and obtain work in law enforcement.

32. Mr. Buell was not told that he was being placed on the EES until after he had been forced to resign and had thereafter had to meet Lt. Davey and Lt. Fogerty to obtain the paperwork on being placed on the EES.

33. Mr. Buell is not aware of any New Hampshire trooper who has been terminated or forced to resign for minor procedural issues, including improperly answering insignificant questions on attire, not having a clean cruiser, less than polished brass or questions on cleaning his/her firearm.

**E. Evidence of Forced Resignation Based on Mental Disability/Perception of Mental Disability**

34. On or about June 3, 2019, Mr. Buell informed his father, Allan Buell, about being placed on the EES. In response, Allan Buell had opportunity to speak with New Hampshire Governor Christopher Sununu and asked him to look into why his son was terminated.

35. Two days later, on June 5, 2019, Allan Buell, received a follow up call from Governor Sununu. See signed statement of Allan Buell attached within Exhibit A.

36. During this conversation, Governor Sununu stated that when Nathan finished his field training ("FT"), that some concern came up about his mental stability, probably stemming from his time in the military, and was what ultimately led to his termination

37. Governor Sununu also told Allan Buell that he had looked into Nathan Buell's employment with the State Police and stated that the feedback was very positive and that he passed the physiological evaluation and polygraph with flying colors during the hiring process. Governor Sununu mentioned that Nathan did well in the Police Academy training and even on his FT.

38. Governor Sununu further stated that he was aware of Nathan's service and also that he was a war hero with a medal of valor.

39. At no time after Mr. Buell completed his FT, was he informed of any concerns related to his mental stability.

**F. Post Termination Meeting with Col. Wagner**

40. After learning he was going to be placed on the EES, Mr. Buell, through counsel, requested a meeting with Col. Wagner. That meeting occurred on July 8, 2019 and was attended by Col. Wagner, Lt. John Mullen, Mr. Buell, and Mr. Buell's attorney, John Krupski, Esq.

41. During the July 8, 2019 meeting, Col. Wagner stated that he intended to place Mr. Buell on the EES because Mr. Buell had deliberately withheld information

about his mental health that may have been considered when he was hired, and because he had lied to a supervisor about shining his brass, cleaning his rifle, and trying on an issued detail vest. Col. Wagner also stated during this meeting that the statements that he had seen regarding Mr. Buell's service in the military, were indicative of somebody needing major mental health help.

42. In response to Col. Wagner, Mr. Buell stated that he had answered all questions truthfully during his psychological evaluation and that the undisclosed anxiety disorder had been raised. Col. Wagner subsequently accepted Mr. Buell's explanation that he was forthright with the psychologist during the examination.

43. Further, during the July 8, 2019 meeting, Mr. Buell denied allegations that he had been misleading about cleaning his firearm and polishing his brass. However, he admitted that he had not tried on his detail vest, despite telling a Sergeant Macaione otherwise. Mr. Buell also confirmed that he had apologized to Sergeant Macaione later that day.

44. Nearly two months after the meeting, Col. Wagner drafted a letter dated August 29, 2019 summarizing his recollection of their discussion and sent it to Mr. Buell. See copy of letter included within Exhibit A. Col. Wagner's letter confirmed that Mr. Buell was going to be placed on the EES.

45. Mr. Buell was not given any due process to contest being placed on the EES by a neutral fact finder.

46. Upon information and belief, Mr. Buell is currently on the EES.

#### **G. Work Search After Termination**

47. After being forced to resign from the State Police, Mr. Buell looked for work.

48. Upon information and belief, Mr. Buell's listing on the EES has hindered his ability to find work in law enforcement positions. Mr. Buell was offered a position with the Wakefield Police Department in June 2019, prior to his placement on the EES list. The job was not a good fit for Mr. Buell's family given the commute and salary.



Mr. Buell was then offered part time position with Ossipee Police Department, but only if he was not placed on the EES list, which was pending at the time of the offer. In addition, at the time, Mr. Buell was pursuing and being considered for a position with the New Hampshire Fish & Game. Mr. Buell was not offered a position with New Hampshire Fish & Game and upon information and belief, it was because of the EES list.

49. Mr. Buell continued to look for a job, but was unable to find one.

50. Since September 2019, Mr. Buell has been enrolled as a full-time college student through the Servicemen's Readjustment Act of 1944 (colloquially the "G.I. bill"). The G.I. bill pays for his tuition and provides a \$2,200/month stipend. Mr. Buell was receiving a stipend of \$1,800/month when he was a probationary State Trooper I.

51. Mr. Buell has been a full-time student at UNH since February 2020. He is currently taking 20 hours of course work, which starts in person February 1, 2021. He applied for and received a para-educator certificate through the State of New Hampshire Department of Education.

52. Mr. Buell has taken on childcare responsibilities while he goes to school and his wife started working full time after termination from the State Police.

53. Given the loss of income and his wife's need to find employment, Mr. Buell and his family relocated and moved to the southern part of the State to allow his wife to find work.

54. Mr. Buell is entitled to injunctive relief on a preliminary basis as he and his family have suffered and will suffer harm and damages due to the severity of his being placed on the EES list.

55. Mr. Buell seeks a removal order requiring his name to be removed from the EES list to allow him to pursue future employment opportunities.

**COUNT I - Liability for Disability Discrimination**

**The Americans with Disabilities Act of 1990 ("ADA") (42 U.S.C. § 12102),**

**Rehabilitation Act of 1973 (29 U.S.C. §701), and NH RSA 354-A**

56. Mr. Buell incorporates the preceding paragraphs as if fully stated herein.

57. The ADA, the Rehabilitation Act, and NH RSA 354-A prohibit an employer from discriminating against an individual on the basis of that physical or mental impairment that substantially limits one or more major life activities. In addition, these statutes further include disability to include having "a record of having an impairment" and being "regarded as having such an impairment."

58. The State Police is an employer subject to RSA 354-A and a "covered entity" as defined by the ADA. The State Police receive federal funding and thus are subject to the Rehabilitation Act.

59. Mr. Buell is a person with an impairment which substantially limits one or more major life activity. He is or was a person with a record of an impairment and he was regarded by the Defendants as having such impairment. Mr. Buell is an individual with a disability as defined under the ADA, RSA 354-A and the Rehabilitation Act.

60. Mr. Buell satisfied the requisite skill, experience, education, training and other job-related requirements of his former position and with or without reasonable accommodation could perform the essential functions of the positions as a State Trooper. Mr. Buell is therefore a qualified individual with a disability as that term is defined by the above-reference state and federal disability discrimination laws.

61. The reason for the termination of Mr. Buell's employment was discrimination based upon his disability or perceived disability status and his need or perceived need for accommodation.

62. As a direct and proximate result of the Defendants' discriminatory conduct directed to Mr. Buell, i.e. the illegal forced resignation and thus wrongful termination of his employment, in violation of RSA 354-A, the ADA and the Rehabilitation Act, Mr. Buell has suffered damages which include injuries to his

physical, mental and emotional health, stigmatizing damage to his reputation, consequential, compensatory and incidental damages, loss of his employment, lost of past and future wages, lost past and future benefits, and diminished earnings.

63. Mr. Buell is entitled to recovery of these damages, injunctive and declaratory relief requiring the Defendants to remove him from the EES list and other obligations as well as an award of his attorney's fees and costs, litigation expenses and any pre and/or post judgment interest.

### **COUNT II - Wrongful Discharge**

64. Mr. Buell incorporates the preceding paragraphs as if fully stated herein.

65. The Defendants terminated Mr. Buell based on his application for disability benefits and the perception that he was unfit for duty with the State.

66. Mr. Buell's discharge by the Defendants was motivated by the Defendant's bad faith, retaliation and malice. Mr. Buell's service in the Navy and application for disability benefits was an act that public policy would encourage.

67. Mr. Buell was forced to resign.

68. Mr. Buell's forced resignation was wrongful and he has suffered damages because of this forced resignation, including but not limited to injuries to his physical, mental and emotional health, stigmatizing damage to his reputation, consequential, compensatory and incidental damages, loss of his employment, lost of past and future wages, lost past and future benefits, and diminished earnings.

69. Mr. Buell is entitled to recovery of these damages, injunctive and declaratory relief requiring the Defendants to remove him from the EES list and other obligations as well as an award of his attorney's fees and costs, litigation expenses and any pre and/or post judgment interest.

### COUNT III

#### 42 U.S.C. § 1983 - Violations Of Procedural And Substantive Due Process

##### United States And New Hampshire Constitutions

70. Mr. Buell incorporates the preceding paragraphs as if fully stated herein.

71. The Defendants acted under the color of the law in violating Mr. Buell's due process rights under the 14th Amendment of the United States Constitution and Article 2 of the New Hampshire Constitution.

72. The 14th Amendment of the United States Constitution provides that no state shall deprive "any person of life, liberty, or property, without the due process of law."

73. Section 1983 of Title 42 of the U.S. Code provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

74. The New Hampshire Constitution, Part I, article 2 provides "[a]ll men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness."

75. Part I, article 14 of the New Hampshire Constitution provides:

Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to

purchase it; completely, and without any denial;  
promptly, and without delay; conformably to the laws.

76. The Defendants placing of a name on the EES, a list shared with all law enforcement and held by the head of law enforcement, the New Hampshire Attorney General, meets the “stigma plus” test, because the action taken by the state injures the reputation of the person and greatly hinders their ability to obtain employment. *See Hart v. Hillsdale County*, 973 F.3d 627 (6<sup>th</sup> Cir. 2020); *Balentine v. Tremblay*, 554 F. App’x 58, 60 (2d Cir. 2014). When an individual is placed on the EES, he or she suffers a “stigmatizing statement plus a deprivation of a tangible interest.” *Balentine*, 554 F. App’x 58, 60 (2d Cir. 2014).

77. There is no due process in place to afford a person any procedure prior to being placed on EES nor any process to challenge continued designation on the EES. This process is thus procedurally flawed.

78. The Defendants have an obligation to afford a person due process prior to taking away the protected liberty and/or property interest of a person’s right to being placed on EES, that will create stigma plus impact on future employment in law enforcement. *See id.*

79. Due process includes the obligation to provide notice that is “. . . reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action. . .” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

80. The Defendants failed to afford due process to Mr. Buell in placing his name on the EES list for allegedly misstating that he had tried on a safety vest.

81. The Defendants acted knowingly with willful disregard for Mr. Buell’s clearly established constitutional rights.

82. As a direct and proximate result of the Defendants’ actions, Mr. Buell has suffered damages, including but not limited to being unable to secure work in law enforcement in New Hampshire. Mr. Buell further stands to suffer additional damage if the EES is made public.

83. There is no qualified immunity in this matter because the conduct of the Defendants in placing Mr. Buell on the EES with no due process notice violated a clearly established constitutional right of which a reasonable person would have known. See *Hope v. Pelzer*, 536 U.S. 730 (2002).

84. The Defendants' actions were malicious, reckless and/or callously indifferent to Mr. Buell's rights and put him in jeopardy, being unable to find employment in law enforcement. Thus, Mr. Buell is entitled to an award of punitive damages.

85. Pursuant to 42 U.S.C. § 1983, Mr. Buell is entitled to compensation for all damages.

86. Pursuant to 42 U.S.C. § 1988, Mr. Buell is entitled to attorney's fees and costs incurred in bringing this action.

#### **COUNT IV -Injunctive Relief/Declaratory Relief**

87. Mr. Buell incorporates the preceding paragraphs as if fully stated herein.

88. Mr. Buell is currently listed on the EES.

89. There was no due process to place Mr. Buell on the EES.

90. In *NH Center for Public Interest Journalism v. NH DOJ*, No. 2019-0279 (October 30, 2020), the New Hampshire Supreme Court found that to be put on the EES list required the following procedure:

The DOJ asserts that the process for putting a police officer's name on the list is "similar to the county Laurie lists, except that names to be added to the EES come to the DOJ from police chiefs after review of their officers' personnel files." The DOJ contends that only "sustained" findings against an officer warrant placement on the EES, meaning that "the evidence obtained during an investigation was sufficient to prove that the act occurred." According to the DOJ,

an officer may obtain relief from a sustained finding through union grievance procedures, arbitrations, or other appeals provided to police officers in collective bargaining agreements.

91. Mr. Buell, through his union counsel, John Krupski, objected to the decision to place him on the EES which was ignored.

92. There are no actions by Mr. Buell which give the Defendants the right to place Mr. Buell on the EES.

93. Mr. Buell has been harmed by having his name on the EES and has been unable to find employment in a police enforcement area of work.

94. Mr. Buell's seeks an injunction removing his name from the EES list.

#### **PRAYER FOR RELIEF**

Nathan Buell respectfully requests a judgment against the State of New Hampshire, Department of Safety, Division of State Police and Col. Nathan Noyes, Colonel of the New Hampshire State Police, Department of Safety, Division of State Police, in his personal and professional capacity, as he has suffered and continues to suffer damages resulting from the State of New Hampshire's unlawful termination of his employment, disability discrimination, unlawful retaliation, and placement on the EES, including but not limited to lost wages, lost earning capacity, lost employment benefits, emotional distress, humiliation, inconvenience, and loss of enjoyment of life. Mr. Buell seeks attorney's fees, costs and punitive damages, in an amount within the jurisdictional limits of this Court and for such further relief as justice requires.

Respectfully submitted,

NATHAN BUELL

By His Attorneys,

ORR & RENO, P.A.

45 South Main Street

PO Box 3550

Concord, NH 03302-3550

Phone: (603) 224-2381

Fax: (603) 224-2318

Dated: January 25, 2021

By: /s/ James F. Laboe  
James F. Laboe, Esq.  
NH Bar #14571  
[jlaboe@orr-reno.com](mailto:jlaboe@orr-reno.com)

Dated: January 25, 2021

By: /s/ Jennifer A. Eber  
Jennifer A. Eber, Esq.  
NH Bar #8775  
[jeber@orr-reno.com](mailto:jeber@orr-reno.com)



# **EXHIBIT A**

## U.S. Equal Employment Opportunity Commission

COL. CHRISTOPHER WAGNER  
STATE OF NEW HAMPSHIRE  
Dept Of Safety, Division Of State Police  
33 Hazen Drive  
Concord, NH 03305

**COPY**

## PERSON FILING CHARGE

**Nathan Buell**

THIS PERSON (*check one or both*)

- ☒ Claims To Be Aggrieved  
☐ Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

**16D-2020-00015**

FEPA CHARGE NO.

**ED(R) 0019-20**

**NOTICE OF CHARGE OF DISCRIMINATION IN JURISDICTION WHERE A FEP AGENCY WILL INITIALLY PROCESS**

(See the enclosed for additional information)

THIS IS NOTICE THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER

- ☐ Title VII of the Civil Rights Act (Title VII) ☐ The Equal Pay Act (EPA) ☒ The Americans with Disabilities Act (ADA)  
☐ The Age Discrimination in Employment Act (ADEA) ☐ The Genetic Information Nondiscrimination Act (GINA)

HAS BEEN RECEIVED BY

- ☐ The EEOC and sent for initial processing to \_\_\_\_\_  
(FEP Agency)  
☒ The New Hampshire Commission for Human Rights and sent to EEOC for dual filing purposes.  
(FEP Agency)

While EEOC has jurisdiction (upon expiration of any deferral requirement if this is a Title VII, ADA or GINA charge) to investigate this charge, EEOC may suspend its investigation and await the issuance of the Agency's final findings and orders. These findings and orders will be given weight by EEOC in making its own determination as to whether reasonable cause exists to believe that discrimination has occurred.

You are therefore encouraged to cooperate fully with the Agency. All facts and evidence provided by you to the Agency will be considered by EEOC when it reviews the Agency's final findings and orders. In many cases EEOC will take no further action, thereby avoiding the necessity of an investigation by both the Agency and EEOC. This likelihood is increased by your active cooperation with the Agency.

As a party to the charge, you may request that EEOC review the final findings and orders of the above-named Agency. For such a request to be honored, you must notify EEOC in writing within 15 days of your receipt of the Agency's final decision and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by EEOC. Regardless of whether the Agency or EEOC processes the charge, the Recordkeeping and Non-Retaliation provisions of the statutes as explained in the enclosed information sheet apply.

For further correspondence on this matter, please use the charge number(s) shown above.

Enclosure(s): Copy of Charge

**CIRCUMSTANCES OF ALLEGED DISCRIMINATION**

- ☐ Race ☐ Color ☐ Sex ☐ Religion ☐ National Origin ☐ Age ☒ Disability ☒ Retaliation ☐ Genetic Information ☐ Other

See enclosed copy of charge of discrimination.

Date

November 12, 2019

Name / Title of Authorized Official

**Kevin J. Berry,  
District Director**

Signature

## U.S. Equal Employment Opportunity Commission

STATE OF NEW HAMPSHIRE  
Dept Of Safety, Division Of State Police  
33 Hazen Drive  
Concord, NH 03305

**COPY**

## PERSON FILING CHARGE

**Nathan Buell**

## THIS PERSON (check one or both)



Claims To Be Aggrieved



Is Filing on Behalf of Other(s)

## EEOC CHARGE NO.

**16D-2020-00015**

## FEPA CHARGE NO.

**ED(R) 0019-20**

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☐ Race ☐ Color ☐ Sex ☐ Religion ☐ National Origin ☐ Age ☒ Disability ☒ Retaliation ☐ Genetic Information ☐ Other

See enclosed copy of charge of discrimination.

Date

November 12, 2019

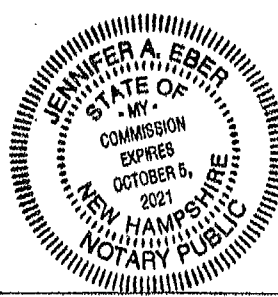
Name / Title of Authorized Official

**Kevin J. Berry,  
District Director**

Signature

# COPY

EEOC Form 9 (1/1/09)

<b>CHARGE OF DISCRIMINATION</b> This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: <input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	Agency(ies) Charge No(s): <b>ED(R) 0019-20</b> <b>16D-2020-00015</b>
New Hampshire Commission for Human Rights and EEOC <small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) <b>Mr. Nathan Buell</b>		Home Phone (Incl. Area Code) <b>(603) 793-4239</b>	Date of Birth <b>8/11/93</b>
Street Address <b>77 McCrills Road</b>		City, State and ZIP Code <b>Notttingham, NH 03290</b>	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two are named, list under PARTICULARS below.)			
Name <b>State of New Hampshire, Department of Safety, Division of State Police</b>		No. Employees, Members <b>greater than 50</b>	Phone No. (Incl. Area Code) <b>(603) 271-3575</b>
Street Address <b>John H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305</b>		City, State and ZIP Code <b>Concord, NH 03305</b>	
Name <b>Col. Christopher Wagner, Director, State of NH, Dept. of Safety, Div. of State Police</b>		No. Employees, Members <b>N/A</b>	Phone No. (Incl. Area Code) <b>(603) 271-3575</b>
Street Address <b>John H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305</b>		City, State and ZIP Code <b>Concord, NH 03305</b>	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)			DATE(S) DISCRIMINATION TOOK PLACE: Earliest    Latest <b>Apr 5, 2019    Jun 5, 2019</b> <input type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s))  <b>See attachment.</b>			
<b>RECEIVED</b> <b>OCT 22 2019</b> <b>NH Commission for Human Rights</b>			
			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State or Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
Date <b>10/18/2019</b>		SIGNATURE OF COMPLAINANT <b>Nathan Buell</b>	
Charging Party Signature <b>Nathan Buell</b>		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) <b>10/18/2019</b>	

**Nathan Buell**

**v.**

**State of New Hampshire**

1. Nathan Buell was hired by the State of New Hampshire, Department of Safety on or about July 25, 2018 as a Trooper I in the State Police, E Troop. Mr. Buell's base rate of pay was \$24.51 hourly and \$50,980.80. In addition to overtime pay, there were also additional benefits provided under the New Hampshire Troopers Association Collective Bargaining Agreement, including health and dental insurance.

2. On or about June 3, 2019, Mr. Buell was terminated from his employment for allegedly withholding information regarding his mental health during the hiring process, and for allegedly misleading a supervisor about shining his brass, cleaning his rifle, and trying on an issued detail vest.

3. Mr. Buell is a United States Navy veteran who honorably served tours in Afghanistan (2013-2014) and Iraq (2015). Mr. Buell served as a Hospital Corpsman in the Navy. During his service, Mr. Buell witnessed significant violence, including numerous deaths and injuries to fellow service-members, Iraqi and Afghan residents and children. Mr. Buell estimates he saw approximately 50 deaths and over 200 wounded in his four months on the Al Taqadum Air base in Iraq in 2015 alone. In recognition of his service, the Secretary of the Navy awarded Mr. Buell with the Navy and Marine Corps Achievement Medal (with Combat Distinguishing Device) for his heroic actions from January 28, 2014 to January 30, 2014 during which Mr. Buell provided critical aid to a British soldier who stepped on an improvised explosive device and then critical aid to a U.S. Marine who stepped on a secondary device resulting in a partial leg and hand amputation, in addition to providing life-saving care to an enemy soldier who had also been severely wounded in the attack (*see* copy of Medal attached as Exhibit 1). The Medal states in part, "Hospital Corpsman Buell's exceptional professionalism, unrelenting perseverance, and loyal devotion to duty reflected credit upon him and were in keeping with the highest traditions of the United States Naval Service."

4. Mr. Buell was given an appointment as a State Police Probationary Trooper (position #40694, State Police Trooper I) on or about July 25, 2018.

5. As part of the application process, Mr. Buell completed a psychological evaluation. This included a pre-evaluation questionnaire. Mr. Buell completed the questionnaire. The psychological evaluation was then conducted as a one-on-one meeting with a psychologist provided by the State. During the evaluation, Mr. Buell disclosed that the military had diagnosed him with an undefined anxiety disorder. At the time, Mr. Buell had not yet been diagnosed with Post-Traumatic Stress Disorder ("PTSD"). Mr. Buell also believes that there was discussion about his combat experience. Upon information and belief, the psychologist prepared a written report of the evaluation.

6. Mr. Buell was hired on July 25, 2018. He completed new hire pre-academy training in August 2018. No issues were raised regarding Mr. Buell's conduct during the training. He was sworn in to the State Police on Friday, August 3, 2018.

7. Sergeant Nick Levesque completed a Performance Summary Form for Mr. Buell on or about March 23, 2019. In all areas on which Mr. Buell was evaluated, he met expectations.

8. While at work on April 5, 2019, Mr. Buell used a Department of Safety scanner to scan documents to himself because he did not have a scanner at home. The documents were needed to obtain disability benefits through the U.S. Department of Veterans Affairs. The documents included two narrative statements regarding Mr. Buell's service in Iraq and Afghanistan, and its impact on him (see copies attached as Exhibits 2-3).

9. Upon information and belief, the documents were saved to a temporary scan file and seen by Sergeant Kevin Macaione, who forwarded them up the chain to Mr. Buell's supervisors, including to Col. Christopher Wagner.

10. There are no written disciplinary documents in Mr. Buell's personnel file. In the normal course of duties, in the middle of May 2019, there was a cruiser inspection and Mr. Buell was found to have a dirty car. This did not rise to the level of any written warning. In addition, there was an accusation against Mr. Buell that he stated that he had properly cleaned his firearm when he had not. Mr. Buell denies that he ever lied about cleaning his firearm as he had cleaned it. He, however, admitted at the time that he realized that it was not up to standards. There was no written warning or discipline associated with this action. There was also an issue of polishing his brass and Mr. Buell was talked to about not having polished brass. Again, there was no written warning or discipline associated with this action. Mr. Buell did not lie about any of these issues and did his best to comply with all the standards imposed by the Department of Safety.

11. The one time when Mr. Buell became flustered was when he was asked if he had tried on his safety vest and given the minor nature of the question and his nervousness, he stated that he had, when he had not. Again, there was no written discipline and there was no harm to anybody. Mr. Buell corrected his statement immediately.

12. Mr. Buell is not aware of any New Hampshire trooper who has been terminated or forced to resign for minor procedural issues, including improperly answering insignificant questions on attire, not having a clean cruiser, less than polished brass or questions on cleaning his/her firearm.

13. On June 3, 2019, Mr. Buell was forced to resign and effectively terminated. Mr. Buell was informed that his supervisor, Col. Christopher Wagner, intended to submit his name for inclusion on the State's Exculpatory Evidence Schedule (EES). The EES is a list of over 200 law enforcement officers whose credibility has been called into question due to misconduct. In effect, being placed on the EES is like being placed on a blacklist. It is fatal to an officer's ability to serve as a witness in court, and therefore, thwarts his ability to perform his job.

14. Mr. Buell informed his father, Allan Buell, about being placed on the EES. In response, Allan Buell had opportunity to speak with New Hampshire Governor Christopher Sununu and asked him to look into why his son was terminated.

15. Mr. Buell was not told that he was being placed on the EES until after he had been forced to resign and had thereafter had to meet Lt. Davey and Lt. Fogerty to obtain the paperwork on being placed on the EES.

16. Two days later, on June 5, 2019, Mr. Buell's father, Allan Buell, received a follow up call from Governor Sununu. *See* signed statement of Allan Buell attached as Exhibit 4. The Governor had looked into Nathan Buell's employment with the State Police and stated that the feedback was very positive and that he passed the physiological evaluation and polygraph with flying colors during the hiring process. The Governor mentioned that Nathan did well in the Police Academy training and even on his field training (FTO). The Governor further stated that he was aware of Nathan's service and also that he was a war hero with a medal of valor. However, he went on to say that when Nathan finished his FTO, that some concern came up about his mental stability, probably stemming from the military, and was what ultimately led to his termination. Exhibit 4.

17. After learning he was going to be place on the EES, Mr. Buell, through counsel, requested a meeting with Col. Christopher Wagner. That meeting occurred on July 8, 2019 and was attended by Col. Christopher Wagner, Lt. John Mullen, Mr. Buell, and Mr. Buell's attorney John Krupski, Esq.

18. During that meeting, Col. Wagner stated that he intended to place Mr. Buell on the EES because Mr. Buell had deliberately withheld information about his mental health that may have been considered when he was hired, and because he had lied to a supervisor about shining his brass, cleaning his rifle, and trying on an issued detail vest. Col. Wagner also stated during this meeting that the statements that he had seen regarding Mr. Buell's service in the military, were indicative of somebody needing major mental health help. In response, Mr. Buell stated that he had answered all questions truthfully during his psychological evaluation and that the undisclosed anxiety disorder had been raised. Col. Wagner subsequently accepted Mr. Buell's explanation that he was forthright with the psychologist during the examination. During the meeting, Mr. Buell denied allegations that he had been misleading about cleaning his firearm and polishing his brass. However, he admitted that he had not tried on his detail vest, despite telling a Sergeant Macaione otherwise. Mr. Buell also confirmed that he had apologized to Sergeant Macaione later that day.

19. Nearly two months after the meeting, Col. Wagner drafted a letter summarizing his recollection of their discussion and sent it to Mr. Buell. *See* copy of letter dated August 29, 2019 attached as Exhibit 5. Col. Wagner's letter confirmed that Mr. Buell was going to be placed on the EES.

20. Upon information and belief, Mr. Buell is currently on the EES.

21. Mr. Buell was disabled within the meaning of the American Disability Act of 1990, 42 U.S.C. § 12101 et. seq., and N.H. RSA 354-A.

22. Mr. Buell was qualified, with or without reasonable accommodation, to perform the essential functions of his job with the State Police.

23. The State of New Hampshire knew, or should have known, of Mr. Buell's mental health disability.

24. The State of New Hampshire discriminated against Mr. Buell based on his mental health disability in violation of N.H. RSA 354-A, and the American Disability Act of 1990, 42 U.S.C. § 12101, et. seq. The State's proffered reason for terminating Mr. Buell, i.e. integrity issues, are pretextual.

25. The State of New Hampshire unlawfully retaliated against Mr. Buell, after it became aware of his mental health disability, by terminating him and placing him on the EES.

26. After being forced to resign from the State Police, Mr. Buell looked for work. He was offered a position with the Wakefield Police Department in June 2019, but the job was not a good fit for Mr. Buell's family given the commute and salary. In addition, at the time, Mr. Buell was pursuing and being considered for a position with the New Hampshire Fish & Game. Mr. Buell was not offered a position with New Hampshire Fish & Game.

27. Mr. Buell continued to look for a job, but was unable to find one.

28. Since September 2019, Mr. Buell has been enrolled as a full time college student through the Servicemen's Readjustment Act of 1944 (colloquially the "G.I. bill"). The G.I. bill pays for his tuition and provides a \$2,200/month stipend. Mr. Buell was receiving a stipend of \$1,800/month when he was a probationary State Trooper I.

29. Mr. Buell spends approximately 12 hours/week completing online courses, plus a three-hour in-person class on Thursday nights from 6:30-9:30 p.m. He applied for and received a para-educator certificate through the State of New Hampshire Department of Education.

30. Mr. Buell has taken on child care responsibilities while he goes to school and his wife seeks full time employment.

31. Given the loss of income and his wife's need to find employment, Mr. Buell is in the process of relocating his family and putting his house on the market, moving in with his parents.

32. Mr. Buell receives disability benefits of \$1,290 untaxed per month.

33. Mr. Buell has suffered and continues to suffer damages resulting from the State of New Hampshire's unlawful termination of his employment, disability discrimination and

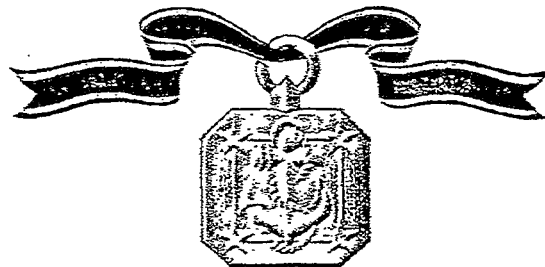


unlawful retaliation, including but not limited to lost wages, lost earning capacity, lost employment benefits, emotional distress, humiliation, inconvenience, and loss of enjoyment of life.

34. Mr. Buell seeks attorney's fees, costs and punitive damages.

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## **EXHIBIT 1**

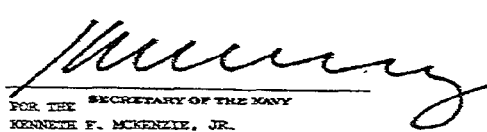


DEPARTMENT OF THE NAVY  
THIS IS TO CERTIFY THAT  
THE SECRETARY OF THE NAVY HAS AWARDED THE  
NAVY AND MARINE CORPS ACHIEVEMENT MEDAL  
(WITH COMBAT DISTINGUISHING DEVICE)  
TO  
HOSPITAL CORPSMAN NATHAN M. BUELL, UNITED STATES NAVY  
FOR

HEROIC ACHIEVEMENT IN THE SUPERIOR PERFORMANCE OF HIS DUTIES WHILE SERVING AS PLATOON CORPSMAN, 1ST PLATOON, COMPANY K, 3D BATTALION, 7TH MARINES, II MARINE EXPEDITIONARY FORCE (FORWARD), FROM 28 JANUARY 2014 TO 30 JANUARY 2014 IN SUPPORT OF OPERATION ENDURING FREEDOM. DURING OPERATION SERIES SWEEP ONE, A BRITISH SOLDIER STEPPED ON AN IMPROVISED EXPLOSIVE DEVICE. WITH TOTAL DISREGARD FOR HIS OWN SAFETY, HOSPITAL CORPSMAN BUELL IMMEDIATELY MANEUVERED TO ASSIST IN RENDERING AID AND MOVED THE CASUALTY TO A COVERED POSITION. AS HE ASSISTED IN THE MOVEMENT OF THE SOLDIER TO A COVERED COMPOUND, A MEMBER OF THE LITTER TEAM STEPPED ON A SECONDARY DEVICE RESULTING IN A PARTIAL LEG AND HAND AMPUTATION. HOSPITAL CORPSMAN BUELL APPLIED A TOURNIQUET TO THE MARINE'S RIGHT LEG, THEREBY STAUNCHING THE BLEEDING AND SAVING THE MARINE'S LIFE. AFTER STABILIZING THE CASUALTY, HE ASSISTED IN PROVIDING THE SAME LEVEL OF MEDICAL CARE TO AN ENEMY SOLDIER WHO HAD BEEN SEVERELY WOUNDED IN THE ATTACK. HOSPITAL CORPSMAN BUELL'S EXCEPTIONAL PROFESSIONALISM, UNRELENTING PERSEVERANCE, AND LOYAL DEVOTION TO DUTY REFLECTED CREDIT UPON HIM AND WERE IN KEEPING WITH THE HIGHEST TRADITIONS OF THE UNITED STATES NAVAL SERVICE.

GIVEN THIS 12TH DAY OF MARCH 2015



  
FOR THE SECRETARY OF THE NAVY  
KENNETH F. MCKENZIE, JR.  
LIEUTENANT GENERAL, U.S. MARINE CORPS  
COMMANDER, U.S. MARINE CORPS FORCES,  
CENTRAL COMMAND

## **EXHIBIT 2**

On January 28<sup>th</sup> 2014 my unit was conducting a raid in southern Helmand Province Afghanistan. I was the Corpsman for Kilo Company 1<sup>st</sup> Platoon in 3<sup>rd</sup> battalion 7<sup>th</sup> Marines. We entered a deserted bazaar that had had a lot of people in it the previous day based on the intel we received. While clearing it one of the British paratroopers named Phillips stepped on a pressure plate. There was a loud explosion and I jumped out of the MRAP vehicle I was in and immediately ran over to assess Phillips. He was on the ground writhing in pain and screaming. He had no amputation but it was clear that his whole foot and part of his lower leg were shattered. We applied a tourniquet because there were some lacerations as well and we wanted to make sure to stop any of the internal bleeding going on inside. I gave him morphine and we put him on a litter. He was still screaming in pain and writhing around. We started taking effective machine gun fire and I made a decision to move into one of the bazaar buildings to continue treatment. I was on the front right handle, another Corpsman was on the front left handle and my friend Lance Corporal Allison was on the back handles. We moved no more than 4-6 feet when Allison stepped on an additional pressure plate causing an even bigger explosion. It threw me and the other Corpsman into the wall and I was dazed for a few moments. My ears were ringing and I didn't really know what happened. We had let go of the litter we were holding and when I looked around Phillips was nowhere to be seen. I learned later that right after the blast another Marine had carried Phillips to the MRAP by helping him hop on his good foot but I have no recollection of this. What I did see when I turned around was Allison trying to crawl out of the small crater where the IED had been. He had an obvious right leg amputation from the knee down and he wasn't making much progress on crawling as he was also missing 3 fingers on his left hand. He had a slab of skin hanging off his left leg where he had some deep avulsions. I started treating immediately applying a tourniquet to his right leg, and his left arm. We were able to control the avulsions with multiple pressure dressings. Allison was screaming and looked incredibly scared. He was clearly in shock but compliant to what we told him. I gave him pain medication and applied a dressing to some of the burns he had on his body. Phillips had received an additional TBI and some shrapnel from the IED but amazingly survived without too many additional injuries. We evacuated them and then I was called to treat a farmer. He had an obvious GSW to the chest and arm and as I applied an occlusive dressing to his chest I realized he had unequal pupil sizes and a severely altered mental status. I then noticed I was kneeling in part of his brain matter and he had an entry hole in the back of his head hidden by lots of hair. I continued to try and treat him until he passed and the family came and retrieved the body. The next day I was called to "treat" a 5 year old girl who had been shot by one of our Cobras. She had a gaping hole in her chest and was clearly already deceased. We continued receiving fire and the occasional RPG's throughout the mission but I did not have to treat any more casualties. The things that bother me most today are that I made the call to move into one of the buildings which caused us to step on a secondary IED, and the smell of burning flesh which I don't believe will ever leave me, and the solid white bone that was left of Allison's tibia sticking out with no flesh around it.

## **EXHIBIT 3**

In Iraq I was stationed on the old Al Taqadum Air base in 2015 currently called Camp Manion. I had to see a lot more death and injury to the Iraqi locals and Iraqi army. Multiple injuries stuck in my head including a man who had 90% third degree burns on his body still alive and running around. He lived 30 minutes before dying. , another in which I tried to conduct a sternum rub on an individual and the skin on his chest started to tear, he was deceased I had multiple children killed including an infant girl and her sister by a mortar strike, those were difficult to deal with and it has only gotten worse as I've had a child of my own. I would say in total I saw about 50 dead and over 200 wounded in my 4 months on the base. During that time we received accurate IDF as well, one landing as close as 20 meters from my position. While no service members were hurt or killed on this deployment it did affect me and did resurface problems arising from my 2013-14 deployment to Afghanistan.

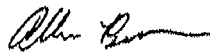
## **EXHIBIT 4**



June 6, 2019 at 10:14am

I received a call from Governor Chris Sununu on Wednesday June 5, 2019 at 7:48 am. The call lasted for 7 minutes. The Governor looked into why my son was forced to resign from the NH State Police. The Governor stated that the feedback about Nathan was very positive and that he was told that Nate passed his Physiological Evaluation and his Polygraph with flying colors during his hiring process. He mentioned that Nathan did well in the Police Academy training and even on his FTO. He stated that he was aware of Nathan's service to his country and also that he was a war hero with a medal with valor. The Governor went on to say that it was when Nathan finished his FTO and went on his own is when some concern about mental stability probably stemming from the military began to concern the state police and ultimately is what led to the termination. The governor stated that based on what he was told he fully supported the decision and that there was programs that could help Nate get better and possible return to law enforcement. The Governor could not share the details as I would expect. He then requested my permission to have the Colonel call me to set up a meeting to discuss what led to Nate's dismissal. I gave permission for that to happen and thanked the Governor for his time but also voiced my concern that I have never witnessed any mental instability from my son and also reminded him that is not what he was terminated for. He was terminated for an "Integrity violation" that stemmed from a cruiser inspection from his Sargent. I asked that if they were worried about a mental health issue you would think that they would have addressed that. We ended the call with me thanking him for looking into it and then me emotionally stating that I was "disgusted" with the state of NH on how they were treating my son.

Allan Buell



6/6/19 10:55 am.

## **EXHIBIT 5**



# State of New Hampshire

## DEPARTMENT OF SAFETY

Robert L. Quinn, Commissioner of Safety

### Division of State Police

James H. Hayes Safety Building, 88 Hazen Drive, Concord, NH 03305



Colonel Christopher J. Wagner  
Director

August 29, 2019

Mr. Nathan Buell,

On June 3, 2019, the day upon which you resigned from the NH State Police, you were served with a letter advising you that I intended to submit your name for inclusion on the Exculpatory Evidence Schedule (EES). As a result of that letter Attorney John Krupski requested a meeting, on your behalf, where you would be provided with an opportunity to refute my belief that your name should be submitted to the EES.

On July 8, 2019 at or about 1120, a meeting was held in my office to provide you with such an opportunity. Present for the meeting was you, Atty. John Krupski, Lieutenant John Mullen and me. At the request of Atty. Krupski the meeting was not recorded.

Atty. Krupski began by speaking about how this matter was unique, in that you had not been provided with an explanation outlining the rationale regarding my opinion that your name should be submitted for inclusion on the EES. Atty. Krupski explained that it was his understanding that this matter was about you not polishing your belt buckle and had something to do with a ballistic vest.

I explained that the issues involved the following:

- You deliberately withheld information that may have been considered when you were hired that was related to a possible mental health issue.
- You lied to a supervisor about shinning your brass, cleaning your rifle and about an issued detail vest.

I said you had told a number of lies which lead me to believe you have an integrity issue. I explained that although one may consider these issues to be minor in nature it was my belief that you could not be trusted.

Atty. Krupski spoke about how the current version of the protocol is somewhat subjective. He then spoke of his perception of the EES and the types of "misstatements" that would result in one's name being placed in the EES list. Atty. Krupski referred to the **2017 PROTOCOL FOR IDENTIFYING WITNESSES WITH POTENTIALLY EXCULPATORY EVIDENCE IN THEIR PERSONNEL FILES AND MAINTENANCE OF THE EXCULPATORY EVIDENCE SCHEDULE ("EES")**, Section III Identification of Potentially Exculpatory Materials. Atty. Krupski pointed out that the examples of EES qualifying statements provided in this section of the protocol all involve some sort of official proceeding and that the interactions which I described involving you did not. Atty. Krupski agreed that the list he was referencing was not an

exhaustive list. Atty. Krupski explained that he did not believe that all supervisor/subordinate conversations were IAs as many of those types of interactions are simply conversations.

Based upon the above referenced conversation, it appeared to me that Atty. Krupski was representing that only "lies" made during an official matter should be considered for EES purposes.

I agreed that not all supervisor/subordinate conversations are IAs; however, I said that I do expect every member of the division to be honest when speaking with a supervisor regardless of the context of the conversation.

Atty. Krupski asked if every misrepresentation of fact constituted a lie. Atty. Krupski said that he believed that a lie needed to have some "material significance" to qualify for the EES. Thus Atty. Krupski essentially indicated he did not believe your "lies" as described by me rose to the level of qualifying for the EES.

I pointed out that there was a difference between a mistake and a lie as it seemed to me that Atty. Krupski was representing your statements to be accidental in nature. I repeated that I understood that in Atty. Krupski's opinion, the lies which I had described did not rise to the level of qualifying for the EES. Atty. Krupski agreed, explaining that his perspective is that only bigger lies rise to the level of qualifying for the EES. Atty. Krupski spoke about how in his opinion if a name is placed on the EES then that means that person cannot be believed in the future. Again I pointed out that there was a difference between a mistake and a lie and how I believed your statements were made intentionally and not by mistake.

Atty. Krupski then asked about the reference made earlier to a mental health issue. I explained that the issue had nothing to do with mental health, but instead my concern was focused on how I believed you had intentionally withheld information that may have been considered when you were hired.

You spoke up and said you did not know what I was referring to. I explained that I was referring to the documents which Sgt. Macalone located. You said that you wrote the letters at the advice of other Troopers in regards to filing a claim with the VA. I asked Atty. Krupski if he knew what we were talking about and he did not. I told him about the documents found and how you reportedly told Sgt. Macalone you could not disclose the information contained within the documents until after you were hired.

You continued by telling me that you disclosed everything to the doctor during your examination. I told you that the report which we received simply indicated that you had some sort of unspecified or undisclosed anxiety. I was asked if I had seen the notes from the doctor.

Atty. Krupski proceeded to talk about how there were differences between medical related pre-employment versus post-employment questions and how it is possible that an applicant would not even be required to answer some medical related questions in a pre-employment context.

I explained that we do not receive notes from the doctor, so I did not know exactly what you said, that we simply received a report. I then spoke to how this matter was not an issue from the context of a medical perspective but rather what concerned me was your deliberate attempt to withhold information that I could have considered when you were hired. My concern has nothing to do with a possible medical issue but instead I was focused on the fact that you withheld the information. However, I accept your explanation that you were forthright with the doctor during your examination.

You asked if you could speak. You explained that you wanted me to know that you were never shown how to clean your firearms. I asked if your FTO's had shown you and you said "no." I asked if you told your sergeant you had cleaned your rifle during your inspection. You told me that you did tell the sergeant you cleaned your rifle and that you had done so at home. I then pointed out that according to the sergeant your rifle was broken down and found to be filthy in that it reportedly contained chunks of carbon. You responded by telling me that you had cleaned the rifle but not to the standards of the NH State Police. We discussed this issue briefly and how based upon your experience in the military you were familiar with this type of weapon. You agreed that the weapon was not clean.

In discussing this topic further I told you that according to the sergeant you ended up telling him that you actually did not clean your rifle. You denied saying that to your sergeant.

I asked if you were present at the range with other Division members when your weapons were issued and if you had to break them down and clean them. You said you were at the range with your colleagues, that you were told to breakdown/clean your weapons, you did clean your rifle when it was issued, but you were not actually shown how to do it.

I have learned that between the dates of August 14-23, 2018 you attended the new hire pre-academy range training. It was during this period of time that your weapon systems were issued to you. It is my understanding that after the weapons were issued, that instruction pertaining to assembly, disassembly, and maintenance was provided. I have been advised that you were actually provided with time while at the range to disassemble and clean the weapons. I find it interesting that on the course completion form which you submitted for this training that you wrote, "Received very good training on use of force and how to properly use the M&P .45 pistol, 12 gauge, M4 Carbine and Taser. I also liked the reaction scenarios and the brief on 627.5." Based upon this information I am confident that you were shown how to assemble, disassemble and maintain the weapon systems issued to you.

You told me that based upon your answer you did not think you were untruthful with this response.

I asked you about an interaction with your sergeant where he noticed your brass was not polished and he asked when you last polished it. You responded by telling me that you told the sergeant you had polished your brass 2 days ago. You denied telling the sergeant you polished your brass earlier that morning.

I proceeded by asking about your detail vest. I said that you had been asked by your sergeant if you had tried your detail vest on to ensure that it fit properly. You told the sergeant you had at which point he asked you to try it on for him. You retrieved the vest from your trunk and it was found to be sealed within its original packaging. You very quickly told me that you did lie about that.

I then asked if on the date that you had your equipment inspection (May 12, 2019), did you later approach the sergeant (Macalone), tell him that you were sick to your stomach because of your earlier conversation, and apologize for lying to him? You confirmed that you did do that.

I told you that I would take this matter under advisement and respond back to you.

Atty. Krupski asked if your name had already been submitted for inclusion on the EES and he was told that it had not, as we were awaiting this meeting. Atty. Krupski repeated, for purposes of clarity, that

the lies in question revolved around dirty brass, a dirty firearm, a detail vest and possible an issue with not fully disclosing information when you were hired. I agreed that was accurate

I told you that the bottom line in this matter was that you had lied to a supervisor. I said that we would follow up on Atty. Krupski's opinion that the seriousness of these lies does not rise to the level of requiring inclusion on the EES.

Be advised that follow up was conducted on Atty. Krupski's position that only lies told during some sort of official proceeding warrant a person's name being placed onto the EES. After consultation with the NH Attorney General's Office, I conclude that Atty. Krupski's position that only lies made during the course of some official proceeding/report qualify for inclusion on the EES list, is inconsistent with the EES Protocol.

It is important to note that it has been demonstrated that you did not provide a single lie, but you told a series of lies. I believe the statements which you made, which are referenced in this memo, were made deliberately and intentionally. I am not of the opinion that your statements were made accidentally or by mistake. Although you might believe that these statements taken individually are relatively minor I am ultimately responsible to maintain the integrity of the NH State Police. If I cannot trust you to be truthful when questioned about such mundane issues, I do not see how I can have faith in your integrity when confronted with more serious questions/events.

Therefore, after carefully considering all of the information presented I am not persuaded to change my opinion. I have concluded that your actions necessitate disclosure under the *Exculpatory Evidence Schedule and Protocol* and *NH RSA 105:13-b*. Notification of same will be made to the Department of Safety Prosecution Unit, Belknap County Attorney's Office, Carroll County Attorney's Office and the Attorney General's Office.

Respectfully,

  
Colonel Christopher J. Wagner

## **EXHIBIT B**

# New Hampshire Commission for Human Rights



**COMMISSIONERS**  
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HARVEY KEYE  
NANCY LEROY  
ALEX SAMUEL  
BASRA MOHAMED  
CHRISTIAN KIM

2 INDUSTRIAL PARK DRIVE, BLDG. 1  
CONCORD, NEW HAMPSHIRE 03301  
TEL (603) 271-2767  
TDD Access: Relay NH 1-800-735-2864  
FAX (603) 271-6339  
E-MAIL: [humanrights@nh.gov](mailto:humanrights@nh.gov)  
[www.nh.gov/hrc](http://www.nh.gov/hrc)

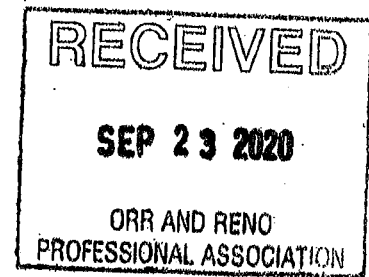
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**INVESTIGATORS**  
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KATE MULLEAVEY  
LURA SEAVEY

September 21, 2020

Jennifer Eber, Esq.  
Orr & Reno  
PO Box 3550  
Concord, NH 03302-3550

Christina M. Wilson, Esq.  
Assistant Attorney General  
NH Department of Justice  
33 Capitol Street  
Concord, NH 03301



RE: Nathan Buell v. State of New Hampshire, Dept. of Safety, Division of State Police  
ED(R) 0019-20 16D-2020-00015

Dear Parties:

The complaining party having provided the Commission with notice of the filing of a civil action in superior court in accordance with NH RSA 354-A:21-a, I & II, the Commission now dismisses this charge without prejudice.

The Commission will now close its file in this matter and take no further action.

Very truly yours,

*Ahni Malachi*  
Ahni Malachi  
Executive Director

AM/kt  
*Enclosure*



**NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS**

FROM: Nathan Buell

TO: New Hampshire Commission for Human Rights  
2 Industrial Park Drive  
Concord, New Hampshire 03301

RE: Nathan Buell v. State of New Hampshire, Department of Safety, Division of State Police  
and Col. Christopher Wagner, Director, State of NH, Dept. of Safety, Div. of State Police  
NHCHR Charge # ED(R) 0019-20 EEOC Charge # EEOC #16D-2020-00015

Dear Executive Director:

I hereby request permission to withdraw my complaint filed with this Commission and if applicable, from the Equal Employment Opportunity Commission, for the following reason:

- ☒ (X) I wish to file a private right of action in civil court.
- ☐ ( ) I have reached a satisfactory settlement with the Respondent.
- ☐ ( ) I no longer intend to pursue this matter at the Commission.

**Certification of Withdrawal By Complainant**

I have been advised that it is unlawful for any person or persons covered by state and/or federal anti-discrimination law to threaten, intimidate or harass me because I filed a complaint. I have not been coerced into requesting this withdrawal.

08/25/2020  
Date

Nathan Buell  
Complainant's signature  
Nathan Buell  
Print Name

**Certification of Authorization to Withdraw by Counsel**

I have been authorized as Counsel of Record for the Complainant and have the authority and permission to sign for the Complainant in this matter. I have advised the Complainant that it is unlawful for any person or persons covered by state and/or federal anti-discrimination law to threaten, intimidate, or harass him/her because s/he filed a complaint. Complainant has represented that s/he has not been coerced into requesting this withdrawal.

9/2/2020  
Date

Jennifer A. Eber / RSC  
Attorney signature  
Jennifer A. Eber, Esq.  
Print Name

## **EXHIBIT C**

On January 28<sup>th</sup> 2014 my unit was conducting a raid in southern Helmand Province Afghanistan. I was the Corpsman for Kilo Company 1<sup>st</sup> Platoon in 3<sup>rd</sup> battalion 7<sup>th</sup> Marines. We entered a deserted bazaar that had had a lot of people in it the previous day based on the intel we received. While clearing it one of the British paratroopers named Phillips stepped on a pressure plate. There was a loud explosion and I jumped out of the MRAP vehicle I was in and immediately ran over to assess Phillips. He was on the ground writhing in pain and screaming. He had no amputation but it was clear that his whole foot and part of his lower leg were shattered. We applied a tourniquet because there were some lacerations as well and we wanted to make sure to stop any of the internal bleeding going on inside. I gave him morphine and we put him on a litter. He was still screaming in pain and writhing around. We started taking effective machine gun fire and I made a decision to move into one of the bazaar buildings to continue treatment. I was on the front right handle, another Corpsman was on the front left handle and my friend Lance Corporal Allison was on the back handles. We moved no more than 4-6 feet when Allison stepped on an additional pressure plate causing an even bigger explosion. It threw me and the other Corpsman into the wall and I was dazed for a few moments. My ears were ringing and I didn't really know what happened. We had let go of the litter we were holding and when I looked around Phillips was nowhere to be seen. I learned later that right after the blast another Marine had carried Phillips to the MRAP by helping him hop on his good foot but I have no recollection of this. What I did see when I turned around was Allison trying to crawl out of the small crater where the IED had been. He had an obvious right leg amputation from the knee down and he wasn't making much progress on crawling as he was also missing 3 fingers on his left hand. He had a slab of skin hanging off his left leg where he had some deep avulsions. I started treating immediately applying a tourniquet to his right leg, and his left arm. We were able to control the avulsions with multiple pressure dressings. Allison was screaming and looked incredibly scared. He was clearly in shock but compliant to what we told him. I gave him pain medication and applied a dressing to some of the burns he had on his body. Phillips had received an additional TBI and some shrapnel from the IED but amazingly survived without too many additional injuries. We evacuated them and then I was called to treat a farmer. He had an obvious GSW to the chest and arm and as I applied an occlusive dressing to his chest I realized he had unequal pupil sizes and a severely altered mental status. I then noticed I was kneeling in part of his brain matter and he had an entry hole in the back of his head hidden by lots of hair. I continued to try and treat him until he passed and the family came and retrieved the body. The next day I was called to "treat" a 5 year old girl who had been shot by one of our Cobras. She had a gaping hole in her chest and was clearly already deceased. We continued receiving fire and the occasional rpg's throughout the mission but I did not have to treat any more casualties. The things that bother me most today are that I made the call to move into one of the buildings which caused us to step on a secondary IED, and the smell of burning flesh which I don't believe will ever leave me, and the solid white bone that was left of Allison's tibia sticking out with no flesh around it.

In Iraq I was stationed on the old Al Taqadum Air base in 2015 currently called Camp Manion. I had to see a lot more death and injury to the Iraqi locals and Iraqi army. Multiple injuries stuck in my head including a man who had 90% third degree burns on his body still alive and running around. He lived 30 minutes before dying. , another in which I tried to conduct a sternum rub on an individual and the skin on his chest started to tear, he was deceased I had multiple children killed including an infant girl and her sister by a mortar strike, those were difficult to deal with and it has only gotten worse as I've had a child of my own. I would say in total I saw about 50 dead and over 200 wounded in my 4 months on the base. During that time we received accurate IDF as well, one landing as close as 20 meters from my position. While no service members were hurt or killed on this deployment it did affect me and did resurface problems arising from my 2013-14 deployment to Afghanistan.