



Army Veteran Who Lost Hand Takes Battle with FBI to Court

By John Diedrich and Gina Barton

As a teenager, Justin Slaby pounded a punching bag in the basement for hours, hitting it so hard he rattled his Oak Creek home and frayed his parents' nerves. Finally, his father had enough. No more heavy bag, Chet Slaby said. Undeterred, the 14-year-old dragged the bag across the street, hung it from a basketball hoop, beat on it there, and hauled it back. Every day. He knew he had to be in shape to achieve his goals: joining the Army and then the FBI. "This kid always knew what he wanted to do," Slaby's father said. "When he was beating that heavy bag, he knew he was going to be an agent." Slaby went on to serve three combat tours in Iraq and Afghanistan. While he was training for a fourth, a defective explosive device blew off his left hand. The injury didn't deter him from his second goal. Slaby, who is now 30, learned how to use a prosthesis, got his college degree, earned the support of agents in Milwaukee, and was accepted into the FBI Academy. Instructors removed him in just a few weeks. Now, a trial is set to begin Monday in Alexandria, Va., on Slaby's federal lawsuit, which claims he was discriminated against because he is disabled. The case is capturing national attention, and brings into sharp focus the challenges faced by an increasing number of combat veterans when they look for civilian jobs. The outcome of the trial could have wide-ranging implications for veterans across the country. "This case will be the talk of the town among employment attorneys and veterans' advocates, probably for years to come," said attorney Jeffrey Hynes, president of the Wisconsin Employment Lawyers Association. "In many ways, this case is a litmus test for whether the laws that protect military veterans from employment discrimination have real teeth or are going to merely provide lip service for those who have served in the military." During the run-up to the trial, the case took a sensational turn. The head of Milwaukee's FBI office told an agent who planned to testify for Slaby that he should "come down on the side of the government." Subpoenaed to explain the conversation, Teresa Carlson invoked her Fifth Amendment right against self-incrimination. She is now the subject of an investigation that could lead to criminal charges and has been transferred from Milwaukee to Washington. An FBI spokesman said only that Carlson is on a temporary assignment. Slaby's attorney, Kathy Butler, said the FBI will not allow her client to speak to the media. The FBI has refused to answer further questions, citing the pending litigation. In court records, the agency contends that despite being given accommodations for his disability, Slaby could not safely perform several tasks required of an agent. "Allowing him to hold the position would pose a significant risk to the safety of others that could not be eliminated by reasonable accommodation," attorneys for the FBI wrote. "More specifically, were his right (dominant) hand to be incapacitated, he would be unable to safely and effectively use his prosthetic to deploy his weapon, resulting in potential risk to himself and others." Retired FBI agents have been buzzing about the case, coming down on both sides. James Lyons served most of his 25 years as an agent in New York, even though his non-shooting hand has been largely useless his entire life. He said agents almost never fire their guns. He fired his once — with his dominant hand. Lyons, retired and living in South Carolina, said odds were slim that any agent would ever even attempt shoot with their "bad" hand. "No way in hell I would ever

fire weak hand in a combat situation. No way," Lyons said. "I would be better off standing up and throwing my gun." A lifelong passion

Growing up in Oak Creek, Slaby was the oldest of three children. He felt drawn to the FBI from an early age. His parents never knew why, other than he wanted to serve. His father suggested he start with a stint in the Army. Slaby was fit and motivated. At 17, he volunteered to run a marathon as a fundraiser for a 6-year-old boy who had leukemia, according to an article from a local Oak Creek paper. Slaby met his future wife, Jenny, at Oak Creek High School, and he enlisted in the Army before graduating. He entered the service at 18, making it into the elite Ranger Regiment, the infantry unit of the Special Operations Command. John Bamford remembers the day Slaby walked into the Rangers' 1st Platoon. He was smart but quiet. Bamford described him as the hardest worker in the platoon, who also was always lifting soldiers' moods and making time to listen. Slaby and Bamford served three combat tours together. Bamford recalled how Slaby reached out to him after a friend was killed in Iraq. "He was always there to make sure you were doing all right," said Bamford, who has since left the Army and works as a paramedic in Kansas City. The unit was preparing to deploy again when Slaby was injured in July 2004. It was just two weeks after his wife delivered their first child. Slaby was in a "shoot house" with other Rangers, practicing clearing rooms, when it happened. Afterward, Slaby hit a rough spot mentally, but it didn't last. In just a couple of weeks he bounced back and regained his drive to become an FBI agent, his father said. "If I get my hand blown off, I am finding something more low-key to do, but not this dude," Chet Slaby said. "It didn't slow him down at all. If anything, it made him more determined." Slaby returned to Wisconsin, where he interviewed with FBI agents in the Milwaukee office in mid-2005. His key question: Would his prosthetic hand prevent him from becoming an agent? He was told he needed a college degree and private-sector experience first. If he passed the background check and physical tests, he could be an agent. A recruiter in the Milwaukee office "looked me in the eye and literally said, 'If you walk in there with that flag on your arm, I don't think you're going to have a problem as long as you're doing what everybody else is doing,'" Slaby said in a deposition. Although shooting with the non-dominant hand is part of the FBI firearms test, the shots do not have to be accurate. It is possible to take a zero on that section and still pass the overall test, the recruiter told Slaby. While raising a family, Slaby worked days at a marketing company in Franklin and earned a degree in business management from Upper Iowa University at night. In less than four years, he was promoted from the warehouse to managing projects. With a strong recommendation from FBI Agent Mark Crider, a firearms instructor in the Milwaukee office, Slaby was hired as an FBI agent trainee and sent to the academy in January 2011. Almost immediately, instructors began pulling him aside for special assessments, asking him to demonstrate tasks he and his classmates had not yet been taught, Slaby said in his deposition. The trainers insisted that he perform the maneuvers exactly as someone with two hands would, even if he could show them a better way, Slaby said. "This felt like I'm under the radar right now. I better just play ball. And I...put on a good front of smiling and trying to be cool and calm, but, I mean, I was freaking out," he said in the deposition. "... And I know from personal experience you can't stop seeing the prosthetic until you're used to me and you see I'm capable of doing things." As for shooting, Slaby is right-handed and passed firearms testing with that hand. But then he was told he had to fire five rounds with his non-dominant hand. Slaby modified his prosthesis to pull the trigger, but was told he had not fired the shots safely. Slaby was removed from the academy, but not fired by the FBI. First, he was offered a job as a janitor at the academy. He eventually became a member of the support staff for the elite hostage rescue team. He cannot carry a weapon. "(I feel) like I'm being held back from being as much of a benefit to the United States as I can," he said in the deposition. "I have so much to offer, and I'm being tied down for no reason."

Impact on future cases

The circumstances of Slaby's life and the facts of his case could result in a landmark decision for veterans with disabilities, according to legal experts. Slaby is an ideal plaintiff for such a

case, Hynes said. "He's a returning veteran who had serious combat injuries...and arguably jumped through every hoop the employer presented, only to have the job ripped right out from under him because of his disability. It's very incendiary," Hynes said. Working in Slaby's favor is that the Americans with Disabilities Act requires employers to cooperate with disabled workers, helping them figure out a way to do their jobs effectively. "If they failed in that duty, then they are in violation of the ADA, and that is the core issue in most of these cases," Hynes said. "What could the employer have done to increase the likelihood that this person can succeed in employment?" Working against Slaby is another part of the law, which says accommodations do not have to be made if they pose a direct threat to safety. Because of that factor, discrimination cases involving law enforcement are among the most difficult, said Monica Molnar, a Washington attorney who specializes in labor issues involving federal employees. "When you're dealing with a law enforcement position, safety and the physical nature of the job comes into play," she said. "His disability could have an impact on the safety of other officers." If Slaby can overcome that hurdle and prevail, the decision could be used by future plaintiffs to bolster their own cases. "This could be a case of first impression in law enforcement as to whether someone with an amputation presents a direct threat in connection with doing the job," Hynes said. Molnar agreed. "It could be a good support for veterans in law enforcement positions — and a lot of veterans do take on law enforcement positions — and in less complicated situations as well," she said. Various factors to consider

One element of the case that could carry weight with the jury is a conversation that Carlson — then special agent in charge of the Milwaukee FBI office — had with Crider, the agent who recommended Slaby to the academy. The conversation, at the FBI's Milwaukee office, occurred in April, after Crider was called to give a deposition in Slaby's case. Carlson brought Crider into her office and told him FBI headquarters was not happy the Milwaukee office had advanced Slaby's application. "She then told me my testimony should support the FBI's position that he should not be an agent and that it would be in my best interest to come down on the side of the FBI," Crider wrote immediately after the meeting. She added that "Slaby should never be an agent since he was handicapped," according to a transcript of Crider's deposition. Crider reported the incident. The result was an investigation into Carlson's behavior by the U.S. Justice Department's Office of the Inspector General. Carlson was called to testify last month; she appeared in court but refused to testify. Last week, the federal judge in Slaby's case sanctioned the government for Carlson's actions and ordered both sides to sign a document detailing Carlson's meeting with Crider, among other things. The document will be given to the jury in Slaby's trial. Such measures are relatively rare, said Molnar, an associate with the law firm of Tully Rickney. "I think the stipulation and sanctions of any nature that are dealing with witness tampering will be evidence in (Slaby's) favor," she said. "The general sense is that if you had nothing to worry about in the first place, you wouldn't be tampering with witnesses." The fact that other disabled veterans have served as agents also could help Slaby's case, she said. Perhaps the most famous wounded veteran to become an FBI agent was Thomas Norris, who lost an eye and part of his skull in a firefight in Vietnam and earned the Congressional Medal of Honor. When Norris asked for a waiver, then-FBI director William Webster told him, "If you can pass the same test as anybody else applying for this organization, I will waive your disabilities." Another injured Vietnam veteran, Herm Groman, was hired as an FBI agent in 1980. Top officials tried to kick him out but a bureau doctor had already found he met the physical requirements, Groman said. He served 25 years as an agent. Injuries to both legs and his right arm — his shooting side — were never a problem, he said. Groman, who lives in Las Vegas, doesn't know Slaby but would be willing to testify on his behalf. "Here is a guy who served three tours for our country, he wanted to do this, it was his dream and he was accepted," he said. "People (in the FBI) made a lot of bad decisions. It is really egregious. They pull him out and subject him to special things no one else has to do? What the hell?"