

Suit claims fraud by National Guard pilots

Captain: Flight records were falsified to boost pay

By **BRENDAN KEARNEY**

brendan.kearney@mddailyrecord.com

Fudging flight-training reports to make more money and accrue retirement income is common practice in the **Maryland Air National Guard**, according to a pilot's recently unsealed federal lawsuit against 27 members of his squadron.

The common schemes include claiming payment for training sessions in which the pilots did not fly and claiming payment for two so-called Additional Flying Training Periods in a single day when the pilot had only flown once, according to the lawsuit.

Capt. Robert S. Conover brought the case against his fellow pilots after being cleared of similar accusations of wrongdoing by a military board three years ago. It includes three counts under the False Claims Act, which allows private parties to seek damages on behalf of the government. In addition, the suit seeks an injunction to prevent further retaliation against Conover by the defendants, some of whom are Conover's superiors.

If he succeeds under the False Claims Act, Conover, a Delaware resident who also works as a civilian military

employee at Martin State Airport, stands to gain up to 30 percent of any damages awarded to the government in the case.

But that's not what this is about, his attorney said.

"He thinks what they're doing is wrong," Joseph B. Espo, the lawyer, said Tuesday. "At the same [time] as other members of the National Guard around the United States and the regular military folks are actually fighting ... these guys are figuring out how they can dip into the trough improperly."

Lt. Col. Charles Kohler of the Maryland Air National Guard would not comment on Conover's claims, citing the pending litigation in **U.S. District Court** in Baltimore. However, he noted "people are aware of" the allegations at Warfield Air National Guard Base, which is part of Martin State Airport.

Kohler also said the 104th Fighter Squadron, of which Conover and the defendants are or were members, just returned from Afghanistan.

Conover's whistleblower suit, known as a *qui tam* action, was unsealed last month after the **Office of the U.S. Attorney** declined to intervene in the action.

A spokeswoman for the

U.S. attorney declined to comment on why the government decided not to intervene in Conover's suit, which was filed in February 2009. The government requested two extensions of its right to intervene over the past year. Late last month, it notified the court of its wish to stay out of, but informed about, the case.

Conover gained the records that undergird his case while defending similar allegations against him by at least five of the defendants in late 2003, according to Espo.

Espo attributed the initial accusations against his client to "some personality difficulties" between Conover and others in the unit.

Conover has contended that the defendants taught him the fraudulent techniques by which pilots spend less than the required four hours training. His lawsuit details dates and times when each defendant either did not fly at all or flew for as little as an hour and 15 minutes and reported completing two Additional Flying Training Periods.

Espo said it's not that the defendants, some of whom are commercial airline pilots, are averse to flying.

"I think they love flying. I think they like getting paid

even more," said Espo, an attorney with **Brown, Goldstein & Levy** in Baltimore. "I think this is about getting money."

While the defendants might have only made an extra \$200 per training session, Espo said, they could face damages of \$5,000 to \$10,000 under the False Claims Act.

Conover is seeking injunctive relief, in part, because of the retaliation he alleges he's already suffered.

In February 2006, defendants Guy Walsh and Daniel Marino successfully requested that Conover's security clearance be revoked, according to the suit, which has kept him grounded ever since. He also received poor job performance reviews and was passed over for promotions, according to the suit. In short, certain of the defendants "have ruined Plaintiff's military career," the suit states.

And he still has to work with some of them.

"I think there's already some tension, but I don't think this is going to ease it," Espo said of the suit.