

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ELIZABETH McKEE,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.
)	
AMITY COMMUNITY VOLUNTEER)	
FIRE DEPARTMENT, INC.,)	
)	
and)	
)	
JACK BROCKMAN, individually, and in)	
his official capacity as Chief of the)	
ACVFD,)	
)	
Defendants.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

I. NATURE OF THE CASE

1. This is an employment discrimination action brought by Plaintiff Elizabeth McKee (“McKee” and/or “Plaintiff”), against Defendant Amity Community Volunteer Fire Department (“the Department” and/or “Defendant”), for unlawfully discriminating against her on the basis of sex, in violation of Title VII of the 1964 Civil Rights Act (“Title VII”), 42 U.S.C. §§ 2000e *et seq.*, as amended, and for civil conversion under Indiana common law. Additionally, McKee sues Defendant Jack Brockman, individually, and in his official capacity as Chief of the Department, for depriving her of her statutorily protected rights under Title VII, pursuant to 42 U.S.C. § 1983.

II. PARTIES

2. McKee is a citizen of the United States and at all time relevant to this lawsuit resided within the geographic boundaries of the Southern District of Indiana.

3. Defendant is an Indiana non-profit corporation, which at all times relevant to this

action has maintained offices and conducted business within the geographic boundaries of the Southern District of Indiana.

4. This action and the claims McKee asserts against Defendant arose within the geographic boundaries of the Southern District of Indiana.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, 42 U.S.C. § 2000e-*et seq.*, and 42 U.S.C. § 1983.

6. Defendant is an “employer” within the meaning of 42 U.S.C. § 2000e(b).

7. McKee is an “employee” within the meaning of 42 U.S.C. § 2000e(f).

8. McKee satisfied her obligation to exhaust administrative remedies, having timely filed Complaint of Discrimination No. 470-2013-01825, alleging discrimination on the basis of sex, receiving her Notice of Right to Sue on February 12, 2014, and by commencing this action within ninety days of the receipt thereof.

9. McKee has complied with the requirements of the Indiana Tort Claims Act, Ind. Code 34-13-3-6, with respect to the alleged violations of Ind. Code 34-24-3-1, by filing a Notice of Tort Claim more than ninety days prior to the filing of this action with the Department, its Board of Directors, and the Indiana Political Subdivision Risk Management Committee.

10. All events, transactions, and occurrences concerning this case have arisen in the geographical environs of the Southern District of Indiana, thus venue is proper in this Court.

IV. FACTUAL ALLEGATIONS

11. McKee is a woman. She joined the Department in December 2009, as an EMT only. At all times relevant to this Complaint, McKee has met or exceeded the Department’s legitimate expectations of job performance.

12. Jack Brockman (“Brockman”), at all times relevant to this Complaint, is and has been the Chief of the Department.

13. The Department provides every member with equipment, including but not limited to the following: a two way radio, a pager, a badge, a bunker coat, bunker pants, a Nomex[®] hood, gloves, a helmet, Department t-shirt, dress uniform shirt, and a station key.

14. Additionally, the Department reimburses its members for fuel and clothing in the amount of \$250 per year. The Department also provides each member with a life insurance policy, and the members are eligible to receive workers’ compensation if they are injured on the job.

15. The Department regularly provides each of its members with a \$100 honorarium each year at Christmas. While the male members regularly receive the honorarium each year, McKee has received it only once during an honorarium only once in her six years with the Department.

16. In October 2013, McKee was assigned to the Department’s “Logistics” position. In this position, she was responsible for: (1) “maintaining and filing all reports of the department including fire and EMS[;]” (2) “making required reporting to the State of Indiana and the Department of Homeland Security of all reports of the department as required[;]” (3) “maintain[ing] contact with the State of Indiana Department of Homeland Security and EMS Commission in order to keep the department within the regulations as required[;]” and (4) “provid[ing] to the Fire Chief a quarterly report of all reported incidents to the State of Indiana.”

17. In October of 2014, Brockman announced the Department was establishing a new position within the Department, that of “EMS Coordinator.” The new position was to fulfill essentially the same functions as the Logistics position. Brockman also announced his intention to eliminate the Logistics position.

18. Although Brockman originally told McKee that she would have the EMS

Coordinator's position, that did not come to pass. Instead, when Brockman eliminated the Logistics position, he told McKee that she was no longer a member of the Department, and demanded that she surrender her keys and radio.

19. The position of EMS Coordinator is currently filled by a male firefighter.

20. Brockman's alleged "removal" of McKee violates the Department's own by-laws, in that it was not ratified by a vote of the Board of Officers.

21. Additionally, McKee was to be paid \$400 per year in her Logistics position. The Department withheld that pay for 2014, allegedly on the ground that Ms. McKee is required to reimburse the Department for the cost of a CPR Primary Instructor's course she took in August of that year.

22. Brockman's alleged "removal" of McKee, his withholding of McKee's 2014 stipend, and his failure to pay McKee the annual honorarium provided to male firefighters, constitute adverse employment actions against McKee, as that term is used in Title VII.

V. CAUSES OF ACTION

A. Federal Causes of Action

Count One: Sex Discrimination (Disparate Treatment)

23. McKee hereby incorporates paragraphs one (1) through twenty-two (22) of her Complaint by reference.

24. The Department discriminated against McKee on the basis of her sex by affording similarly-situated, male members of the Department with substantially more favorable terms and conditions of employment, and by replacing her with a less well-qualified male firefighter.

25. The Department's actions were intentional, willful, and taken with reckless indifference to McKee's rights as protected by Title VII.

26. McKee suffered, and continues to suffer, harm, including but not limited to loss of benefits, emotional distress, embarrassment, humiliation, and damage to her personal and professional reputation, as a result of Defendant's unlawful acts.

**Count Two: Deprivation of Rights Under Color of State Law
by Brockman (42 U.S.C. § 1983)**

27. McKee hereby incorporates paragraphs one (1) through twenty-six (26) of her Complaint by reference.

28. Brockman's actions in providing more favorable terms and conditions of employment to similarly-situated male firefighters than to McKee, and in replacing McKee with a less well-qualified male firefighter, deprived McKee of her federally protected rights to be free from discrimination on the basis of sex, as guaranteed by Title VII of the Civil Rights Act of 1964.

29. Brockman acted under color of state law, in that, at the time of his actions, he was exercising authority conferred upon him by the State of Indiana.

30. Brockman's actions were intentional, willful, and in reckless disregard for McKee's rights.

31. As a result of Brockman's unlawful actions, McKee has suffered damages, including but not limited to, legal expenses, loss of benefits, emotional distress, humiliation, embarrassment, and damage to her reputation.

Count Three: Municipal Liability (42 U.S.C. § 1983) - The Department

32. Plaintiff restates each and every allegation in paragraphs one (1) through thirty-one (31) as though fully set forth herein.

33. At the time of his actions, Brockman was the duly-appointed Chief of the Department, and was the final policy-making authority for the Department.

34. Brockman's actions deprived McKee of her right to be free from discrimination on

the basis of sex, as guaranteed by Title VII.

35. As a result of the deprivation, McKee has suffered damages, including but not limited to, legal expenses, emotional distress, humiliation, embarrassment, and damage to her reputation.

B. State Law Causes of Action

Count Four: Civil Conversion by Brockman

36. McKee restates each and every allegation in paragraphs one through thirty-five (35) as though fully set forth herein.

37. McKee's right to the \$400 stipend for the Logistics position vested not later than October 31, 2014, after which date, the amount of the stipend was McKee's property.

38. By withholding payment of the stipend, Brockman exercised unauthorized control over McKee's property.

39. Brockman acted knowingly and/or intentionally.

40. Brockman's actions constitute conversion, as defined in Ind. Code 35-43-4-3.

41. McKee suffered damages as a result of Brockman's tortious actions, including but not limited to financial loss, attorney fees, and costs.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff Elizabeth McKee respectfully prays that the Court find in her favor and Order the Defendants, jointly and severally, to:

42. Cease all discriminatory actions toward McKee;

43. Reinstate McKee to the position she would have held absent Defendant's unlawful discrimination;

44. Pay McKee a sum to make her whole with respect to the Stipend and honoraria she would have received absent Defendants unlawful and discriminatory actions;

45. Pay to McKee compensatory and punitive damages for their unlawful and discriminatory actions;
46. Pay treble damages to McKee for Brockman's civil conversion of McKee's property;
47. Pay prejudgment and post-judgment interest on all sums recoverable;
48. Defendant to pay McKee's reasonable attorney fees and costs;
49. Provide McKee with all other relief that is just and proper.

DEMAND FOR TRIAL BY JURY

The Plaintiff, Elizabeth McKee, by counsel, requests a trial by jury on all issues so triable.

Respectfully submitted,

s/ Jay Meisenhelder

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