

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

DARRIN J. GUZZARDO

Plaintiff,

v.

**ST. TAMMANY PARISH FIRE
PROTECTION DISTRICT NO. 12**

Defendant.

CIVIL NO. 2:20-CV-78

COMPLAINT

Plaintiff Darrin J. Guzzardo asserts his causes of action against defendant St. Tammany Parish Fire Protection District No. 12 as follows:

THE PARTIES

1. Plaintiff is Darrin J. Guzzardo, a person of age and majority, a Louisiana citizen, and a resident of St. Tammany Parish.
2. Defendant is St. Tammany Parish Fire Protection District No. 12 (“District 12”), a “fire protection district” created pursuant to La. Rev. Stat. Ann. § 40:1491 *et seq.*, and a political subdivision of the state of Louisiana with the power to sue and be sued (*see* La. Rev. Stat. Ann. §§ 40:1492(C) and 13:5102(B)(1) defining the fire protection districts as political subdivisions *and also* 40:1500(A) authorizing each fire protection district to sue and be sued in its own name).

JURISDICTION AND VENUE

3. The Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 42 U.S.C. § 12101 *et seq.* (the Americans with Disabilities Act as amended), as more particularly set-out herein.
4. The Court has personal jurisdiction over District 12 as it is a political subdivision of state

of Louisiana and is therefore present within Louisiana for purposes of personal jurisdiction.

5. Venue is proper in this Court pursuant to 42 U.S.C. § 12117 (incorporating Title VII's venue provision in ADA cases) and 42 U.S.C. § 2000e-5(f)(3) (the Title VII venue provision) because (1) the unlawful employment practices alleged herein were committed in Louisiana within this judicial district (specifically, Covington in the Parish of St. Tammany), (2) upon information and belief the employment records relevant to this action are found within this judicial district (the same), and (3) but for the unlawful employment practice, Mr. Guzzardo would have continued to have been employed in this district (the same).

PROCEDURAL AND STATUTORY REQUIREMENTS

6. At all relevant times, District 12 employed more than 100 full-time employees.
7. On or about November 10, 1997, District 12 hired Mr. Guzzardo as a full-time, hourly employee in the position of a firefighter at its Covington, Louisiana fire station.
8. On or about June 30, 2018, District 12 terminated Mr. Guzzardo's employment.
9. Mr. Guzzardo alleges District 12 discriminated against him based on his disability, or because District 12 regarded Mr. Guzzardo as disabled, or because District 12 failed to reasonably accommodate Mr. Guzzardo's disability or engage in the interactive process to determine a reasonable accommodation, and because of this animus District 12 unlawfully terminated Mr. Guzzardo's employment on June 30, 2018 in violation of the Americans with Disabilities Act (as amended).
10. On or about April 23, 2019, within 300 days of his termination and last adverse employment action, Mr. Guzzardo timely filed an EEOC Charge of Discrimination with the EEOC New Orleans Field Office (which, because of work-sharing agreement with the Louisiana Commission on Human Rights, was automatically accepted for filing with the LCHR, terminated,

and referred to the EEOC for processing) alleging that District 12 unlawfully discriminated against and terminated Mr. Guzzardo in violation of the Americans with Disabilities Act (as amended) (EEOC No. 461-2019-01522).

11. Ultimately, the EEOC referred Mr. Guzzardo's complaint to the United States Department of Justice, and the USDOJ first issued its Notice of Right to sue in this matter on October 10, 2019.

12. That Notice of Right to Sue was never delivered to either Mr. Guzzardo or his attorney in this case.

13. Thereafter, the USDOJ issued another Notice of Right to Sue on November 27, 2019.

14. The November 27, 2019 Right to Sue letter was received by Mr. Guzzardo's counsel in this matter on or about December 9, 2019.

15. Mr. Guzzardo timely filed this complaint within 90 days of receiving the EEOC's Notice of Right to Sue letter.

FACTS

A. The Plaintiff – Darrin Guzzardo

16. Darrin Guzzardo is a 49-year-old man who lives in Bush, Louisiana with his wife, son, and daughter.

17. Mr. Guzzardo has spent his entire, adult life working as a firefighter at District 12 protecting the citizens and property of St. Tammany Parish.

18. At all relevant times in this case, Mr. Guzzardo was a permanent, classified employed in the Louisiana Fire & Police Civil Service system.

19. At all relevant times in this case, Mr. Guzzardo was employed by District 12.

20. Mr. Guzzardo excelled in his career as a firefighter, and at the time District 12 terminated his employment, Mr. Guzzardo had been promoted and served in the rank of captain.

21. Likewise, at the time of termination, Mr. Guzzardo had previously qualified under civil service rules for the promoted rank of District Chief.

22. At the time of termination, Mr. Guzzardo possessed promotion seniority for the rank of District Chief over all his peers at District 12.

23. Meaning, to the extent there was an opening for a District Chief position at District 12, Mr. Guzzardo was guaranteed under civil service rules to win the promotion if he applied.

B. The Defendant – St. Tammany Parish Fire Protection District No. 12

24. District 12 is a statutorily authorized “fire protection district” located in St. Tammany Parish that protects approximately 63 square miles of territory, people, and property surrounding the borders of the City of Covington against fires.

25. District 12 maintains five fire stations and six fire apparatuses (e.g., fire engines and similar equipment).

26. Upon information and belief, at all relevant times in this case, District 12 employed more than 100 people.

C. District 12’s Leadership Structure

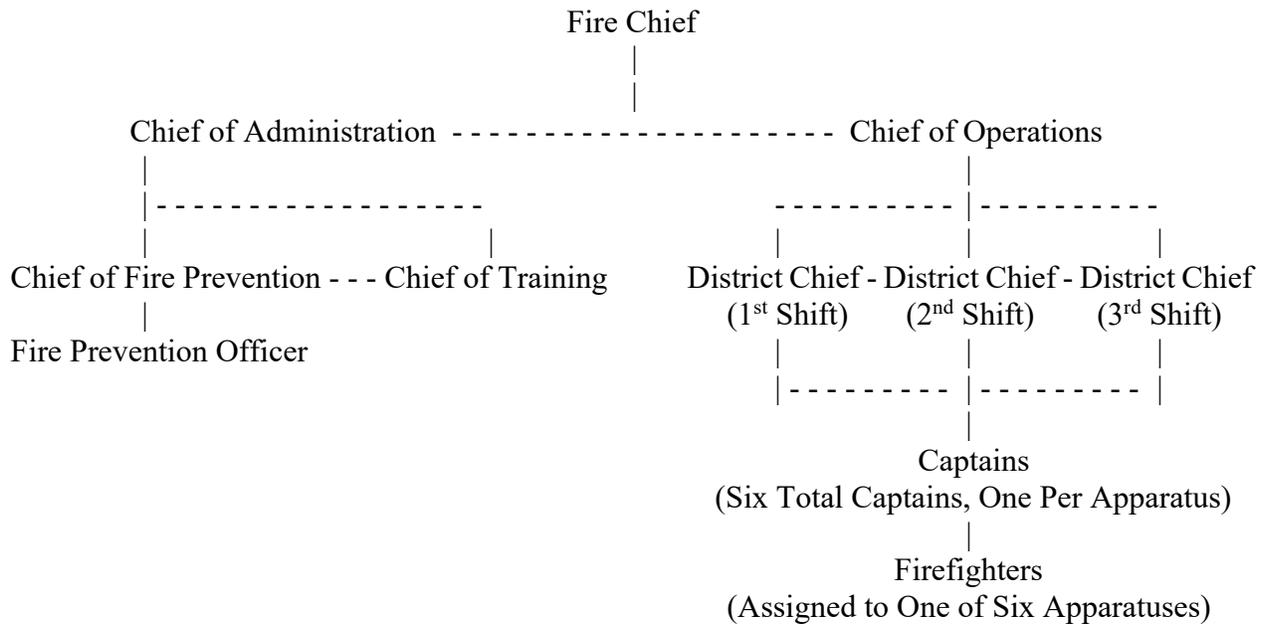
27. District 12 is ultimately governed by a Board of Commissioners (BoC) appointed by the St. Tammany Parish President.

28. In turn, the BoC appoints a Fire Chief who serves as District 12’s chief executive and day-to-day decision-maker over all operational and personnel matters.

29. Consistent with civil service rules (when applicable), the Fire Chief is the decision-maker responsible for hiring, promoting, and terminating the employment of District 12 employees subordinate to him.

30. At all relevant times in this case, at the level of Fire Chief and below, the day-to-day

leadership and organizational hierarchy of District 12 looked like this:



31. At all relevant times in this case, a District 12 firefighter qualified for promotion to any position listed above by completing two requirements.
32. First, the firefighter must pass a promotional test qualifying the candidate for his or her intended promotion.
33. Second, the firefighter must possess sufficient seniority to occupy a vacant, promoted position versus any other interested, qualified applicants.
34. Upon information and belief, at all relevant times during this lawsuit, the duties of the District Chief position were solely administrative and supervisory in nature.
35. Specifically, each District Chief supervised all subordinate captains and firefighters during one of three daily shifts.
36. Upon information and belief, at all relevant times during this lawsuit, none of the duties of a District Chief at District 12 required the incumbent to actually fight fires, and the position constituted either officially or in practical terms “light duty.”

37. Upon information and belief, the physical work required to be performed by any District Chief at District 12 is otherwise considered, either in lay terms or specifically within the District, as “light duty.”

38. Upon information and belief, at all relevant times during this lawsuit, the duties of the Chief of Administration position were solely administrative and supervisory in nature.

39. Specifically, the Chief of Administration supervised the non-operational components of District 12, and reported directly to the head Fire Chief.

40. Upon information and belief, at all relevant times during this lawsuit, none of the duties of a Chief of Administration at District 12 required the incumbent to fight fires, and the position constituted either officially or in practical terms “light duty.”

41. Upon information and belief, at all relevant times during this lawsuit, the duties of the Fire Prevention Officer position were solely professional and administrative in nature.

42. Specifically, each Fire Prevention Officer performed fire inspection duties and reported directly to the Chief of Fire Prevention.

43. Upon information and belief, at all relevant times during this lawsuit, none of the duties of a Fire Prevention Officer at District 12 required the incumbent to fight fires, and the position constituted either officially or in practical terms “light duty.”

44. In contrast, upon information and belief, at all relevant times during this lawsuit, the position of captain was both supervisory and firefighting in nature.

45. Specifically, each captain supervised subordinate firefighters assigned to an “apparatus,” that is to say, firefighting equipment like a fire engine.

46. During Mr. Guzzardo’s employment, the position of captain required the incumbent to engage in the physical work of firefighting.

D. Mr. Guzzardo Is Diagnosed with a Heart Condition and Is Medically Restricted from Fighting Fires

47. Mr. Guzzardo began work at District 12 on or about November 10, 1997.

48. Mr. Guzzardo was originally hired in the position of a firefighter.

49. In 2006, District 12 promoted Mr. Guzzardo to the supervisory position of captain.

50. On April 16, 2017, Mr. Guzzardo was permitted to take sick leave because of a back injury.

51. After Mr. Guzzardo healed from his injury, District 12 required him to undergo a standard physical examination prior to returning to duty.

52. In June 2017, Mr. Guzzardo underwent the examination.

53. Mr. Guzzardo was not cleared to return to work after the examination because, to the best of his understanding, he became too exerted.

54. Mr. Guzzardo began treating with Dr. Georges Antoun, MD regarding the cause of the exertion issue.

55. Ultimately, in April 2018, Mr. Guzzardo was diagnosed with a Partial Anomalous Pulmonary Venous Connection into the Superior Vena Cava.

56. This condition is congenital in nature and ultimately increases the risk of heart failure during periods of intense physical exertion, although Mr. Guzzardo had never actually suffered heart failure.

57. To the best of his understanding, Mr. Guzzardo's condition remains asymptomatic so long as Mr. Guzzardo does not engage in intense, exerting activity.

58. Nevertheless, Dr. Guzzardo's treating physician restricted Mr. Guzzardo from continuing to fight fires – that is, engaging in the intense, physical work attendant to the position of firefighter or captain when the person is engaged in actually responding to and fighting fires.

59. This medical restriction had the practical effect of precluding Mr. Guzzardo from

performing his duties as captain of District 12.

60. Throughout this time – beginning in April 2017 – Mr. Guzzardo continued to remain out on permitted sick leave.

61. In approximately January 2018, District 12 informed Mr. Guzzardo that he was scheduled for termination on June 30, 2018 unless he could obtain medical clearance to perform firefighting duties as a captain.

62. District 12 selected June 30, 2018 as Mr. Guzzardo's termination date because as of that date he would have exhausted his available and accrued sick leave under both FMLA and civil service rules.

E. District 12 Denies Mr. Guzzardo Transfer or Earned Civil Service Promotion to Positions for Which Mr. Guzzardo Is Qualified and Medically Cleared to Work, and Instead Terminates His Employment

63. While Mr. Guzzardo was medically restricted from discharging the duties of captain, he was not restricted from working at District 12 in any other position that did not require fighting fires.

64. For instance, Mr. Guzzardo was not restricted from performing the duties of a mechanic's helper, Fire Prevention Officer, District Chief, or Chief of Administration, because none of those positions required the incumbent to engage in the work of actually fighting fires.

65. To the extent Mr. Guzzardo could gain temporary or permanent reassignment to one of these or any other light duty position at District 12, he would not have been terminated.

66. Accordingly, beginning in February or March 2018, Mr. Guzzardo repeatedly requested transfer or earned civil service promotion to any of several open positions at District 12, each of which Mr. Guzzardo was cleared to perform because the positions did not require firefighting.

67. To the best of his recollection, Mr. Guzzardo directed his requests for transfer or earned

civil service promotion to the District 12 Fire Chief at the time, Michael Haley.

68. In his capacity of official or acting District 12 Fire Chief at the time, Mike Haley possessed final decision-making authority with respect to all hiring, promotion, transfer, and termination decisions at District 12.

69. Prior to his termination on June 30, 2018, Mr. Guzzardo requested that Chief Haley transfer him to an open or otherwise needed position of Fire Prevention Officer or mechanic's helper.

70. Chief Haley denied the requests.

71. Prior to his termination, Mr. Guzzardo also requested that Chief Haley promote Mr. Guzzardo to the position of District Chief when a vacancy for that position was scheduled to become available by the end of July 2018.

72. Mr. Guzzardo possessed the necessary testing qualification to receive the promotion.

73. Mr. Guzzardo was the senior-most captain at District 12 with the required testing qualification.

74. Under civil rules in effect at the time, when the District Chief position became available, Mr. Guzzardo was guaranteed to win the promotion.

75. To the best of his recollection, Mr. Guzzardo possessed at least one month's vacation time at the time of his termination.

76. Mr. Guzzardo requested permission to take use his vacation time to remain employed until the District Chief position officially opened so that Mr. Guzzardo could promote into the position.

77. Alternatively, at least one other District 12 employee, E.R.,¹ volunteered to receive temporary reassignment from his role as District Chief so that Mr. Guzzardo could be temporarily

¹ Plaintiff has abbreviated the names of non-defendant witnesses to protect their privacy in this publicly filed document, but will supplement defendant with the full identity of each person during discovery.

transferred to that position until the permanent District Chief position became available over the new few weeks.

78. Alternatively, upon information and belief, Chief Haley possessed the decision-making authority to simply not terminate Mr. Guzzardo on June 30 and allow him to remain employed – with or without pay in any position whatsoever – until the District Chief position became available in a few weeks.

79. Chief Haley denied all of these requests and insisted on terminating Mr. Guzzardo on June 30.

80. Chief Haley refused to engage in any interactive process with Mr. Guzzardo to determine what, if any, reasonable accommodations could be made in the position of captain or any other position that would have allowed Mr. Guzzardo to remain employed at District 12 in the position of captain or any other position.

81. District 12 had previously engaged in these sorts of personnel accommodations to benefit other District 12 employees who held the rank of captain or firefighter.

82. In approximately 2011 or 2012, District 12 created the new position of Fire Prevention Chief (a light duty position) so that it could transfer District 12 employee K.H. into that position in lieu of termination because he was no longer capable or willing to perform his then-current job responsibilities as captain.

83. District 12 had recently created the new position of Fire Prevention Officer (a light duty position) so that it could transfer District 12 employee C.C. into that position in lieu of termination because he was no longer capable or willing to perform his then-current job responsibilities of firefighter.

84. Nevertheless, District 12 and Chief Haley denied all of Mr. Guzzardo's requests for

permanent or temporary transfer, reassignment, earned civil service promotion, or vacation leave and terminated Mr. Guzzardo's employment on June 30, 2018.

85. Nevertheless, District 12 and Chief Haley denied all of Mr. Guzzardo's requests to engage in the interactive process to determine what, if any, reasonable accommodations could allow Mr. Guzzardo to continue to be employed in the position of captain or any other position and terminated Mr. Guzzardo's employment on June 30, 2018.

86. On June 30, 2018, the same day that Mr. Guzzardo was terminated, an open position existed for Fire Prevention Officer for which Mr. Guzzardo was both qualified and held seniority, but District 12 denied his request for transfer to that position and terminated him.

87. On July 25, 2018, just 25 days after District 12 terminated him, an open position existed for District Chief for which Mr. Guzzardo was both qualified and held promotion seniority, but District 12 denied Mr. Guzzardo's request to either (a) allow him to take his earned vacation pay until the District 12 position opened so that he could promote to it; (b) allow Mr. Guzzardo to temporarily encumber his colleague's position of District Chief until the permanent District Chief position opened so Mr. Guzzardo could promote to it; (c) temporarily transfer Mr. Guzzardo to any other position until the District Chief position opened so Mr. Guzzardo could promote to it; or (d) simply allow Mr. Guzzardo to remain employed as a Captain with or without pay for until the District Chief position opened so Mr. Guzzardo could promote to it, despite the fact that District 12 had engaged in these sorts of personnel accommodations for other District 12 employees in the past who were either incapable or unwilling to perform their then-current job responsibilities.

F. District 12 and Chief Haley Discriminated Against Mr. Guzzardo Because of His Disability, Because Chief Haley Regarded Mr. Guzzardo as Disabled, and Because Chief Haley Thought Mr. Guzzardo Was Going to Spontaneously Die at Work

88. District 12 and Chief Haley discriminated against Mr. Guzzardo, treated him less favorably

than his peers; refused to transfer him to open and available positions; refused to grant Mr. Guzzardo accrued vacation leave, refused to engage in the interactive process with Mr. Guzzardo to determine a reasonable accommodation; and ultimately terminated him was because Chief Haley unreasonably and without any cause whatsoever thought Mr. Guzzardo was going to spontaneously die at work and did not want to work with him specifically because of his disability.

89. In other words, upon information and belief, if Mr. Guzzardo had not been diagnosed with a congenital heart condition, District 12 and Chief Haley would not have terminated Mr. Guzzardo's employment on June 30, but instead would have transferred or promoted Mr. Guzzardo to the open Fire Prevention Officer position, the upcoming District Chief position, or any other position that Chief Haley saw fit.

90. The root of Chief Haley's animus was that he unreasonably and without any medical cause regarded Mr. Guzzardo as more or differently disabled than what he was, and Chief Haley believed that Mr. Guzzardo was going to spontaneously die at work.

91. Because of this, Chief Haley did not want to work around Mr. Guzzardo and believed that his employment created an unacceptable risk of legal liability, financial liability, or would reflect poorly on Chief Haley.

92. Specifically, during a District 12 meeting on or about June 25, 2018, Chief Haley told District 12 employee T.W. along with many other firefighting staff, that Chief Haley had consulted with District 12's attorney or Human Resources contractor, and Chief Haley decided against transferring, promoting, or otherwise keeping Mr. Guzzardo employed specifically because of his "health condition" and disability.

93. Specifically, Chief Haley was in a meeting with District 12 employee T.W. and told him that Mr. Guzzardo "was a ticking time bomb," and that because of his unreasonable fear of Mr.

Guzzardo's disability, Chief Haley refused to transfer Mr. Guzzardo to an available light duty position or to keep him employed for "1 or 2 weeks" until the District Chief position became available.

94. Specifically, Chief Haley spoke privately with District 12 employee E.R. and told him that Chief Haley had spoken with an attorney about Mr. Guzzardo, and Chief Haley was "adamant" that Mr. Guzzardo be terminated because "Guzzardo could die on duty due to overexerting himself." When E.R. responded that, for instance, a District Chief position was not "front line" (meaning, in this context, the position constituted light duty), and that Mr. Guzzardo could also work in Fire Prevention or as a mechanic's helper (both positions also considered light duty), Chief Haley refused to consider the matter and responded "we donot have a position for him."

95. Specifically, Chief Haley told District 12 employee A.S. that Chief Haley was worried, among other things, that Chief Haley "would have to tell Karen [Mr. Guzzardo's wife] if [Mr. Guzzardo] died on duty."

96. Finally, in an email dated June 22, 2018, Chief Haley wrote to Mr. Guzzardo and admitted that he consulted with District 12's Human Resources contractor and an attorney, and was advised "not to make any special arrangement in this matter."

97. Upon information and belief, Chief Haley was biased against Mr. Guzzardo because of his congenital heart disability, and because of that bias Chief Haley refused to transfer, promote, or otherwise retain Mr. Guzzardo, but instead terminated his employment on June 30, 2018. In other words, had Mr. Guzzardo not been disabled, but still could not perform his duties as captain for whatever reason, Chief Haley would not have terminated Mr. Guzzardo's employment.

98. Alternatively, upon information and belief, Chief Haley was biased against Mr. Guzzardo because Chief Haley regarded Mr. Guzzardo as more or differently disabled than he actually was,

specifically that Chief Haley unreasonably and without any medical cause believed that Mr. Guzzardo was going to spontaneously die at work, and because of that bias Chief Haley refused to transfer, promote, or otherwise retain Mr. Guzzardo, but instead terminated his employment on June 30, 2018. In other words, had Chief Haley not regarded Mr. Guzzardo as disabled, but Mr. Guzzardo still could not perform his duties as captain for whatever reason, Chief Haley would not have terminated Mr. Guzzardo's employment.

99. Alternatively, upon information and belief, Chief Haley was biased against Mr. Guzzardo because Mr. Guzzardo was disabled, or because Chief Haley regarded Mr. Guzzardo as more or differently disabled than he actually was, specifically that Chief Haley unreasonably and without any medical cause believed that Mr. Guzzardo was going to spontaneously die at work, and because of that bias Chief Haley unlawfully refused to reasonably accommodate Mr. Guzzardo's impairments that prevented him from discharging his duties as captain and likewise refused to engage in the interactive process to determine what reasonable accommodations might exist to accommodate Mr. Guzzardo's disability, the net result being that Chief Haley terminated Mr. Guzzardo's employment on June 30, 2018.

100. At all times Chief Haley took these actions against Mr. Guzzardo, including terminating his employment, in as the bona-fide and official decision-maker for District 12, as District 12's agent, in the regular course and scope of his duties at District 12, and with the apparent full knowledge of District 12 and upon the direction of human resources contractors or attorneys representing District 12.

G. The Aftermath

101. District 12's unlawful termination of Mr. Guzzardo's employment ended his career in firefighting and the Louisiana Fire & Police Civil Service system and cost Mr. Guzzardo

significant lost wages for the rest of his work life.

102. District 12's unlawful termination of Mr. Guzzardo's employment caused him to lose significant future pension value from his firefighter's pension, including participation in the Deferred Retirement Option Plan (the "DROP").

103. District 12's unlawful termination of Mr. Guzzardo's employment caused Mr. Guzzardo significant mental anguish, stress, and related injury.

104. District 12's unlawful termination of Mr. Guzzardo's employment caused him significant loss of enjoyment of life, both in terms of the enjoyment he derived from his career in firefighting and also his personal life attendant to the loss of his work and salary.

105. District 12's unlawful termination of Mr. Guzzardo's employment caused him out-of-pocket losses.

CAUSES OF ACTION

A. Disability Discrimination Under the Americans with Disabilities Act (as Amended)

106. Mr. Guzzardo states a cause of action for disability discrimination under the Americans with Disabilities Act (as amended) against District 12.

107. Pursuant to the Americans with Disabilities Act (as amended), an employer may not discriminate against an employee "on the basis of disability in regard to . . . [the] discharge of employees. . . ." 42 U.S.C. § 12112(a).

108. Relevant here, to make out a prima facie case of disability discrimination, a plaintiff must prove "(1) that he has a disability; (2) that he was qualified for the job; [and] (3) that he was subject to an adverse employment decision on account of his disability." *E.E.O.C. v. LHC Grp., Inc.*, 773 F.3d 688, 697 (5th Cir. 2014). "Disability" means that the plaintiff "is disabled, has a record of having a disability, or is regarded as disabled." *E.E.O.C. v. Chevron Phillips Chem. Co., LP*, 570

F.3d 606, 615 (5th Cir. 2009).

109. In the first instance, a plaintiff is “disabled” if he suffers from “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1). Relevant here, an “impairment” is “[a]ny physiological . . . condition . . . affecting one or more body systems, such as . . . cardiovascular[.]” 29 C.F.R. § 1630.2(h)(1). An impairment is substantially limiting when considering “the ability of an individual to perform a major life activity as compared to most people in the general population.” 29 C.F.R. § 1630.2(j)(1)(ii). “Major life activities” include but are not limited to “performing manual tasks . . . lifting . . . and working.” 29 C.F.R. § 1630.2(i)(1)(i). An impairment is substantially limiting even if it is episodic in nature or in remission, if when the impairment is present it would be substantially limiting. 29 C.F.R. § 1630.2(j)(1)(vii). The determination of whether an impairment is substantially limiting “is made without regard to the ameliorative effects of mitigating measures.” . 29 C.F.R. § 1630.2(j)(1)(vi).

110. Alternatively, a plaintiff is disabled when he is “regarded as disabled.” 42 U.S.C. § 12102(1)(c). A person is “regarded as disabled” when he is “subjected to an action prohibited under the ADA because of ‘an actual or perceived’ impairment regardless of whether the impairment is, or is perceived to be, substantially limiting.” *Kennedy v. Parkview Baptist Sch., Inc.*, 13-478, 2014 WL 7366256 at *6 (M.D. La. Dec. 24, 2014) (citing 42 U.S.C. § 12102(3)(A); 29 C.F.R. § 1630.2(l)(1)-(3)). Further, “[t]he effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of [regarded as disabled].” 29 C.F.R. § 1630.2(j)(1)(ix).

111. An employer also discriminates against a disabled employee when the employer refuses to “mak[e] reasonable accommodations to the known physical or mental limitations of an otherwise

qualified individual with a disability . . . unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of [its] business.” *Patton v. Jacobs Eng’g Grp., Inc.*, 874 F.3d 437, 442 (5th Cir. 2017) (citing 42 U.S.C. § 12112(b)(5)(A)). An accommodation is reasonable unless it imposes “undue financial and administrative burdens” on the employer. *See generally Sch. Bd. of Nassau Cty., Fla. v. Arline*, 480 U.S. 273, 288 n.17 (1987). Reasonable accommodation specifically includes “part-time or modified work” and “reassignment to a vacant position.” 29 C.F.R. §1630.2(o)(2)(ii). An employer is required to engage in an “informal, interactive process” to determine “potential reasonable accommodations that could overcome those limitations.” 29 C.F.R. §1630.2(o)(2)(iii).

112. Regarding the health and safety of the employee and his co-workers, an “employer has an obligation to ensure that its applicants are treated as individuals,” and therefore must assess the “reasonableness” of any conclusions regarding the employee’s health, fitness, or possible threat. *Rodriguez v. ConAgra Grocery Products Co.*, 436 F.3d 468, 484 (5th Cir. 2006).

113. An employer who discriminates against a disabled employee by terminating his employment is liable for the employee’s resulting damages, including lost back wages, compensatory damages, litigation costs, and attorney’s fees. An employer who does so intentionally or recklessly is also liable for punitive damages.

114. In this case, Mr. Guzzardo was a lifelong firefighter and top performer at District 12 who had attained the rank of captain. Because of an unrelated workplace injury, Mr. Guzzardo learned that he suffered from a congenital heart defect that his treating physician opined could exacerbate his chances of heart failure if Mr. Guzzardo continued to engage in the sort of intense, physically exerting work attendant to actually fighting fires. Because of this, Mr. Guzzardo’s physician did not medically clear Mr. Guzzardo to fight fires, and Mr. Guzzardo could no longer work as a

captain at District 12 without reasonable accommodation. When Mr. Guzzardo informed District 12 that he suffered from a heart condition, neither District 12 nor Chief Haley ever attempted to engage in an interactive process with Mr. Guzzardo to determine what reasonable accommodations, if any, existed that would have enabled to Mr. Guzzardo to continue working as a captain given his physical limitations.

115. Instead, District 12 informed Mr. Guzzardo that it planned to terminate his employment on June 30, 2018 because he was not medically cleared to perform the duties of captain. In response, Mr. Guzzardo requested on multiple occasions that Chief Haley, the final decision-maker for personnel decisions at District 12, take one of any number of permissible, reasonable, and unburdensome actions that would have allowed Mr. Guzzardo to remain employed at District 12 despite his heart condition. Chief Haley in turn denied every such request.

116. Mr. Guzzardo requested that he be transferred to an open position as a Fire Prevention Officer, and such a vacant position was available as of June 30, 2018. Mr. Guzzardo was qualified for the position and had seniority for the position. Chief Haley denied the request.

117. Mr. Guzzardo requested to take vacation leave until a District Chief position became available, and did actually become available on July 25, 2018. Mr. Guzzardo was qualified for the position and had seniority for the position. Chief Haley denied the request.

118. Fellow District 12 employee E.R. specifically asked Chief Haley to temporarily place Mr. Guzzardo into E.R.'s position of District Chief until the permanent District Chief position opened, and did actually open on July 25. Chief Haley denied the request.

119. Mr. Guzzardo requested that he be transferred to a temporary open position as Chief of Administration, and such a vacant position was available as of June 30, 2018. Mr. Guzzardo was qualified for the position and, upon information and belief, had seniority for the position compared

to those who would have also applied. Chief Haley denied the request.

120. Mr. Guzzardo requested that he simply not be terminated and remain in his position of captain or any other position – with or without pay – for the few weeks until the permanent District Chief position opened, and did actually open on July 25. Chief Haley denied the request.

121. Through repeated and frequent statements to multiple District 12 employees, Chief Haley admitted that he terminated Mr. Guzzardo specifically because of his disability and heart condition because Chief Haley had formed the unreasonable and completely unsupported belief that Mr. Guzzardo was going to spontaneously die at work and that Chief Haley would have to in some sense take blame for Mr. Guzzardo's death. However, there was no medical or any other evidence that Mr. Guzzardo was at risk of heart failure or death from engaging in typical work that did not involve the sort of hyper-intense physical exertion attendant to firefighting. Indeed, both Mr. Guzzardo and fellow District 12 employee E.R. specifically raised this point to Chief Haley, and Haley simply disregarded it and continued to terminate Mr. Guzzardo's employment.

122. Eventually, Chief Haley admitted to both Mr. Guzzardo and others that he had consulted with District 12 human resources contractors and attorneys who had advised Chief Haley against transferring Mr. Guzzardo to any other position, despite the apparent fact that doing so would have meant that Mr. Guzzardo could have continued to perform qualified, safe, valuable work for District 12.

123. Finally, District 12 has a history of accommodating other firefighters, including captains, who for whatever reason could not or would not discharge their duties as firefighters and captains by transferring them into other positions or simply creating new positions all together for them (specifically, in one such instance, the position of Chief of Fire Prevention). In contrast, District 12 and Chief Haley treated Mr. Guzzardo less favorably than his comparators specifically because

of his disability or his being regarded as disabled.

124. Ultimately, as alleged, District 12 terminated Mr. Guzzardo because of his disability and heart condition because Chief Haley and District 12 personnel, contractors, or attorneys did not want to work around him once they learned of his disability.

125. In the alternative, as alleged, District 12 terminated Mr. Guzzardo because of his disability and heart condition rather than reasonably accommodating Mr. Guzzardo's limitations by transferring him to any number of open positions for which he was qualified and possessed seniority.

126. In the alternative, as alleged, District 12 terminated Mr. Guzzardo because of his disability and heart condition rather than engaging with him in the interactive process to determine what reasonable accommodations might exist that would allow Mr. Guzzardo to perform his duties as a captain, or by reasonably accommodating those limitations.

127. In the alternative, as alleged, District 12 terminated Mr. Guzzardo because Chief Haley and District 12 personnel, contractors, or attorneys regarded him as differently or more disabled than he was, specifically, that he would spontaneously die at work regardless of what position he held or work he performed, despite the fact that this belief was both unreasonable and completely unsupported by any medical or other evidence.

128. Accordingly, District 12 is liable to Mr. Guzzardo for all statutory and equitable damages caused by its illegal employment discrimination, including lost back wages, lost future wages, compensatory damages, punitive damages, litigation costs, and reasonable attorney's fees.

JURY DEMAND

Mr. Guzzardo requests a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Darrin J. Guzzardo prays that this complaint be deemed good and sufficient; that it and summons be served upon defendant St. Tammany Parish Fire Protection District No. 12 and, after due proceedings are had, that judgment be entered in favor of plaintiff and against defendant for all damages and equitable relief due to plaintiff, including lost back wages, lost future wages, compensatory damages, punitive damages, litigation costs, reasonable attorney's fees, and legal interest from the date of demand, and for all other general and equitable relief to which plaintiff is entitled.

Respectfully submitted:

/s/ Kevin S. Vogeltanz

Kevin S. Vogeltanz, TA (Bar #32746)
The Law Office of Kevin S. Vogeltanz, LLC
823 Carroll Street, Suite A / Mandeville, LA 70448
Telephone: (504) 275-5149
Facsimile: (504) 910-1704
Email: vogeltanz@gmail.com

Attorney for Darrin J. Guzzardo

Clerk of Court: Please hold summons while plaintiff attempts to secure waiver of service

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DARRIN J. GUZZARDO

(b) County of Residence of First Listed Plaintiff St. Tammany Parish (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Kevin S. Vogeltanz / Law Office of Kevin S. Vogeltanz, LLC 823 Carroll Street, Suite A / Mandeville, LA 70448 (504) 275-5149

DEFENDANTS

ST. TAMMANY PARISH FIRE PROTECTION DISTRICT NO. 12

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): ADA Employment Discrimination -- 42 U.S.C. § 12101 et seq. Brief description of cause: Defendant illegally terminated employee because of disability, regarded as disabled, or failure to accommodate

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/08/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Kevin S. Vogeltanz

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.