

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

Z. SIERKS)
605 W State Route A)
Archie, MO 64725)

Plaintiff,)

v.)

Case No.

PRAIRIE TOWNSHIP FIRE)
PROTECTION DISTRICT)
11010 Milton Thompson Road)
Lee's Summit, MO 64086)

JURY TRIAL DEMANDED

Serve: Ken Barnes)
919 W. 47th Street)
Kansas City, Missouri)

The Board of Directors, OF PRAIRIE)
TOWNSHIP FIRE PROTECTION)
DISTRICT,)

Through its members:)

MIKE BOINSKI, in his official capacity)
as a member of the Board of Directors)
of Prairie Township Fire Protection)
District;)

Serve: Ken Barnes)
919 W. 47th Street)
Kansas City, Missouri)

BERRY JENNINGS, in his official capacity)
as a member of the Board of Directors)
of Prairie Township Fire Protection)
District;)

Serve: Ken Barnes)
919 W. 47th Street)
Kansas City, Missouri)

SALLY HAYNES, in her official capacity)
as a member of the Board of Directors)

of Prairie Township Fire Protection)
District;)
)
Serve: Ken Barnes)
919 W. 47th Street)
Kansas City, Missouri)
)
Defendants.)

COMPLAINT

COMES NOW Plaintiff, Z. Sierks, by and through his attorneys, and alleges the following against Defendant:

I. NATURE OF THE CLAIM

1. The claims Plaintiff alleges herein arise out of his employment with Defendant Prairie Township Fire Protection District and its Board of Directors are hereinafter referred to as “Defendants”, which Plaintiff alleges was passed over for a promotion because of his service in the uniformed services and because he reported for active duty and insisted that his job be held for him while he was deployed, in compliance with the law.

2. Plaintiff prays for legal and equitable relief for violations of the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), which is codified at 38 U.S.C. §§ 4301 – 4335 and 20 CFR 1002. Plaintiff alleges he was discriminated and/or retaliated against based on his service in the uniformed services.

II. PARTIES

- 3. Plaintiff Z. Sierks is a citizen and resident of the state of Missouri.
- 4. At all times relevant herein, Plaintiff was an “employee” of Defendants as that term is defined in 38 U.S.C. § 4303(3).
- 5. At all times relevant herein, Plaintiff was an employee of Defendants pursuant to the common law of Missouri.

6. Plaintiff was compensated for the labor he performed for the benefit of Defendants.
7. Defendants retained control over every material aspect of Plaintiff's employment.
8. Defendants are a governmental entity that is controlled by a board of directors, resulting in said board also being named Defendants.
9. Defendants are an "employer" as defined at 38 U.S.C. § 4303(4).
10. Defendants, at all times relevant to this Complaint, paid other persons salaries and wages for work performed and maintained control over the persons it paid for said work.
11. Defendants maintain a facility located at 11010 Milton Thompson Road Lee's Summit, MO, 64086.

III. JURISDICTION AND VENUE

12. Pursuant to 28 U.S.C. § 1331, this Court has subject matter jurisdiction over this Complaint because Plaintiff's claims arise under federal law and present a substantial federal question; to wit, whether Defendants treatment of Plaintiff's employment violated USERRA and the applicable federal regulations.

13. This court has jurisdiction over Plaintiff's USERRA claims pursuant to 38U.S.C. § 4323(a)(3) because this is an action by a person against a private employer.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

15. Defendant conducts ongoing and continuous business in Missouri.

16. Defendant committed acts which are alleged herein to be unlawful and tortious, which occurred within Missouri.

IV. FACTUAL ALLEGATIONS

17. Plaintiff is a member of the U.S. Air Force Reserves and has been throughout his employment with Defendants.

18. Plaintiff is a resident of Archie, MO, approximately 35 miles from the Prairie Township Fire Protection District.

19. On or about March 17th, 2020, Captain Carpenter turned his notice in to step down from Captain to Engineer.

20. Asst. Chief Wilson then expressed his desire to step down to fill the Captain position.

21. Fire Chief Bill Large then asked Plaintiff his opinion on the situation, to which Plaintiff told Chief Large that he and James Rennolds were interested in filling the Asst. Chief position.

22. On or about April 13th, 2020, Plaintiff was working at the Pleasant Hill Fire Protection District when an employee asked to meet with Plaintiff in private.

23. Employee told Plaintiff that James Rennolds had spoken to him and told the employee that Plaintiff was not being considered for the Asst. Chief position **due to his upcoming deployment** and current address.

24. James Rennolds told the employee the position was already unofficially his.

25. On or about April 16th, 2020, Plaintiff showed up to work before the Captain Assessment to discuss the Asst. Chief position with Chief Large.

26. Plaintiff informed Chief Large of the rumor he had heard from the employee, to which Chief Large denied the rumor and said that conversation would be illegal.

27. Chief Large stated he was discussing the situation with Asst. Chief Price prior to the rumors.

28. Chief Large stated his conversation with Asst. Chief Price involved the idea that **it would be too difficult to have Plaintiff in the Asst. Chief position, as they needed someone in the position through the entire Consolidation efforts with LFPD.**

29. At this time, Asst. Chief Large and Asst. Chief Price were aware that Plaintiff was a reserve

member of the Armed Forces and that he was being deployed.

30. Chief Large also stated Plaintiff's residency was discussed, due to Plaintiff's living so far from Defendants.

31. On or about June 9th, 2020, Chief Large sent a text message to Plaintiff and James Rennolds stating "AC testing will be this Thursday at 13:00."

32. On or about June 11th, 2020, Plaintiff arrived at PFTPD for Asst. Chief testing and saw James Rennolds talking to two of the Chiefs that would be interviewing the Asst. Chief candidates.

33. Plaintiff and Rennolds then went to wait in the back room for their interviews when Rennolds asked who the third interviewing Chief was, stating that he personally knew the other two.

34. During Plaintiff's evaluation, there was no test, only a very brief interview, it was clear that the Department had already made the decision not to promote Plaintiff based on his upcoming deployment.

35. On or about June 17th, 2020, Chief Large informed Plaintiff that Rennolds had been offered the Asst. Chief position and accepted it.

36. Chief Large stated that Rennolds had done better in the interview and that Plaintiff would get the next Asst. Chief position.

37. On or about June 29th, 2020, Plaintiff called Defendant's Board President Mike Boinski stating his belief that the process was unacceptable, to which Mike Boinski stated there was nothing he could do about the decision.

V. Causes of Action

COUNT I

**USSERA
38 U.S.C. § 4301 et seq.**

(Against All Defendants)

38. Plaintiff hereby incorporates by reference each and every other allegation made in this Complaint.

39. At all times relevant herein, Plaintiff was an “employee” as defined in 38U.S.C. § 4303(3) because he was employed by employer(s).

40. At all times relevant herein, each Defendant was an “employer” as defined in 38 U.S.C. § 4303(4)(A) because each Defendant paid salary and/or wages for work performed or had control over employment opportunities and/or had been delegated the obligation to perform employment-related responsibilities, such as hiring, firing, maintaining payroll systems for employees, and screening of job applicants.

41. At all times relevant herein, Plaintiff was a member of the “uniformed services.”

42. Plaintiff was called up to provide service, and was thus obligated to perform a service, in the uniformed services.

43. Plaintiff informed Defendants that he was called up for service by the Army, which required him to be absent from his employment for an extended period of time, but less than five years.

44. Plaintiff acted to enforce his rights under USERRA.

45. Plaintiff exercised his USERRA rights.

46. Plaintiff’s membership in the uniformed services, his obligation to perform services in the uniformed service, his acts of enforcing his rights under USERRA, and/or Plaintiff’s exercise of his USERRA rights motivated Defendant to take adverse employment actions against Plaintiff, including: failing to promote Plaintiff and refusing to provide Plaintiff all “rights and benefits” of his employment.

47. Defendants actions have caused Plaintiff to suffer damages, including but not limited to lost wages and benefits.

48. Defendants actions in violation of USERRA were willful, making Defendants liable for liquidated damages in an amount equal to Plaintiff's lost wages and benefits.

WHEREFORE, Plaintiff prays for judgment against all Defendants in such amount as shall be fair and reasonable for, among other things, compensatory damages; liquidated damages; reasonable attorney fees, expert witness fees, costs and other litigation expenses; prejudgment and post judgment interest; and other relief as this Court deems just, proper and equitable.

JURY DEMAND

Plaintiff hereby requests trial by jury.

Respectfully submitted,

BALDWIN & VERNON

By: /s/ Eric E. Vernon

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ATTORNEYS FOR PLAINTIFF

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

Zachariah Sierks ;

County of Residence: Outside This District**Defendant(s):****First Listed Defendant:**

Prairie Township Fire Protection District ;

County of Residence: Outside This District**Additional Defendants(s):**

Mike Boinski ;

Berry Jennings ;

Sally Haynes ;

County Where Claim For Relief Arose: Jackson County**Plaintiff's Attorney(s):**

Charles K Baldwin (Zachariah Sierks)

Baldwin & Vernon

108 S. Pleasant Street

Independence, Missouri 64050

Phone: 8168421102**Fax:****Email:** kevin@bvalaw.net**Defendant's Attorney(s):****Basis of Jurisdiction:** 3. Federal Question (U.S. not a party)**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 440 All Other Civil Rights

Cause of Action: Uniformed Services Employment and Reemployment Rights Act ("USERRA"), which is codified at 38 U.S.C. §§ 4301 – 4335 and 20 CFR 1002. Plaintiff alleges he was discriminated and/or retaliated against based on his service in the uniformed services.

Requested in Complaint**Class Action:** Not filed as a Class Action

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Monetary Demand (in Thousands):

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: C. Kevin Baldwin

Date: 12/17/2020

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.