

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

SEP 18 2009

DAVID CREWS, CLERK
By Deputy
PLAINTIFF

JULIA A. BURGIN

VERSUS

CIVIL ACTION NO. 1:09CV239-BD

LOWNDES COUNTY, MISSISSIPPI
and COLUMBUS/LOWNDES COUNTY
E911 TELECOMMUNICATIONS

DEFENDANTS

JURY TRIAL DEMANDED

COMPLAINT

obtained and posted by:
www.911Dispatch.com

This is an action to recover actual damages for race discrimination and retaliation, and also to recover actual and liquidated damages for age discrimination. The following facts support the action:

I.

Plaintiff, JULIA A. BURGIN, is an adult resident citizen of 2006 Short Main Street, Columbus, Mississippi 39701.

II.

Defendant, LOWNDES COUNTY, MISSISSIPPI, is a political subdivision of the State of Mississippi and may be served with process upon its Chair of the Board of Supervisors, Harry Sanders at County Courthouse, Post Office Box 1364, Columbus, Mississippi 39703-1364.

Defendant, COLUMBUS-LOWNDES COUNTY E-911 TELECOMMUNICATIONS, is Plaintiff's former employer. Defendant is a governmental entity with a principal place of business

at 515 2d Avenue North, Columbus, Mississippi 39701. Defendant may be served with process through its President, Beverly Brooks, President of Board of Commissioners, 515 2d Avenue North, Columbus, Mississippi 39701.

III.

This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343 for a cause of action arising under 42 U.S.C. § 1981, the Civil Rights Act of 1964, and the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq.

IV.

Plaintiff, a 48 year old black female, was employed by Lowndes County E911 for eleven (11) years prior to her termination. In over a decade of employment with Defendant, she had only one reprimand. Plaintiff was an excellent employee.

V.

On January 4, 2009, while Plaintiff was at work, Plaintiff's son went to her home. Upon leaving, he backed over her garbage, causing it to spill in Plaintiff's yard and on the street. Plaintiff's neighbor Richard Kidder, a white male, observed Plaintiff's son run over the garbage and confronted Plaintiff's son demanding that he pick up the garbage and calling him a nigger.

VI.

After being confronted by Mr. Kidder, Plaintiff's son requested that Kidder not speak to him in that tone of voice or manner. Further, Plaintiff's son called Plaintiff at her work to advise her of the situation. At this time, Mr. Kidder called 911 and informed a dispatcher that he was in an altercation with a neighbor and required a police officer on the scene. The 911 dispatcher sent a patrol car to Plaintiff's neighbor's residence.

VII.

While the police officer was on the way to Plaintiff's house, the 911 dispatcher requested the police officer to call into 911 and speak with Plaintiff. When the police officer called in, Plaintiff told the officer that the house was her residence, the individual who ran over her garbage was her son and none of it was Mr. Kidder's business. Further, Plaintiff told the officer that Mr. Kidder should be thankful he did not call her husband or older son a nigger.

VIII.

After the above described incident of January 4, 2009, Plaintiff was terminated, allegedly for her comments to the police officer who responded to her neighbor's residence, on January 14, 2009. At most, according to Defendant's own employee handbook, Plaintiff should have faced no discipline beyond a written reprimand. Nevertheless, Plaintiff was terminated her white supervisor and the majority white E911 board.

IX.

Defendant has taken far more lenient disciplinary measures against white employees who committed more serious infractions. Further, Defendant lowered its requirements for the E911 Director position to hire an unqualified white female for the position, while passing over Plaintiff who was very qualified for the job. Finally, Plaintiff was replaced in her position by an approximately 30 year old white female.

X.

Plaintiff has filed a charge of discrimination with the EEOC; attached hereto as Exhibit "A". Plaintiff has received the right-to-sue letter attached hereto as Exhibit "B".

XI.

Defendant's discrimination against Plaintiff has resulted in her losing income and suffering mental anxiety and stress.

PRAYER

Plaintiff prays for actual and liquidated damages in an amount to be determined by a jury, for reinstatement and for reasonable attorney's fees.

Respectfully submitted,

McBride Law Firm

BY: /s/ W. Brent McBride

W. Brent McBride
Mississippi Bar # 101442

TK Moffett
Mississippi Bar # 3402

McBRIDE LAW FIRM
PO BOX 84
TUPELO, MISSISSIPPI 38802
TELEPHONE: 662/690-9288
FACSIMILE: 662/690-9290

Attorney for Plaintiff

Summary of Claim

I was fired from Lowndes County E911 on January 14, 2009 without any notice or warning. I heard it from a third party who indicated to me that I was going to be fired. The director, Sheri Fancher, neglected to inform me that I was being investigated and that I was going to be fired. I was terminated by the Board President, Beverly Brooks, a white female who is known to dislike blacks. I asked her why I was being terminated, and she told me it was because of the way I spoke to a police officer. According to the E911 Handbook, I should have merely been written up, if even that. In discussing my termination with Mrs. Brooks, I asked her a question, and she told me that she did not have to debate the issue with me.

All of these events stemmed from a call to E911 from a citizen, Richard Kidder, who happens to be my neighbor. Mr. Kidder, a white male, called my son Demetrius Burgin a "nigger" on January 4, 2009 at approximately 7:20 p.m. Demetrius was backing out of my driveway and accidentally hit the garbage sitting on the curb, which caused the garbage to spill in my yard and in the street in front of my house. Mr. Kidder ran down to my property, called my son a "nigger", and demanded that he pick up the garbage. My son requested that he not speak to him in such a manner, and he then called me and told me what was going on. At the same time, Richard Kidder called E911 and told one of the other dispatchers that he was in a dispute with a neighbor. E911 dispatched the police to 2010 Short Main Street in Columbus, Mississippi. While in route to the scene, the police dispatcher asked the officer to give us (E911) a call. He called E911 and spoke with me. I told him that this was my house, my son, and my garbage, and that Richard Kidder had nothing to do with it. I also told him that Richard Kidder had called my son a "nigger". I then told the police officer that Mr. Kidder should be thankful

that he was not speaking to my oldest son, because he would not have let Mr. Kidder speak to him in such a manner.

I was fired from E911 for telling this to the police officer. I believe that I was fired because of my race and in retaliation for this white man. The E911 Board is 99% white and are all known to dislike blacks. There is only one black person on the Board. I also believe that I was fired because I was a threat to the present director, Sheri Fancher, who is also white. I was discriminated against by this same Board when the position of director became available. The job description plainly stated that one should possess a degree and 4-8 years of experience. I have 2 degrees and 10 years of experience. Sheri Fancher holds a GED and 15 years of experience. The Board lowered the standards for the Director job so that Sheri Fancher could be hired for the position.

I also was fired because of my age and race because the Board hired a 30 year old white female named Christy Rowe. The Board is clearly discriminating against me because there is a white male named Jim Crownover who has sexually harassed two black females at E911, and he is still employed. He has also been given the interim position of director while his charge of sexual harassment is pending. Mr. Crownover was also offered the position of director. There is another white female named Joyce who delayed sending an ambulance to a female who had been shot. However, she is still employed. My employer disapproved of my telephone conversation with the police officer called to investigate the disturbance at my home, and they fired me. According to the E911 Handbook, I should have received nothing more than a write-up. I am filing this Charge of Discrimination based upon race, age and retaliation, and I am requesting that the EEOC grant to me the right to file suit against Lowndes County E911 for this discrimination.

DISMISSAL AND NOTICE OF RIGHTS

To: **Julia Burgin**
2006 Short Main Street
Columbus, MS 39701

From: **Jackson Area Office**
100 West Capitol Street
Suite 207
Jackson, MS 39269



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

423-2009-01179

Larry E. Turner,
Investigator

(601) 948-8410**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

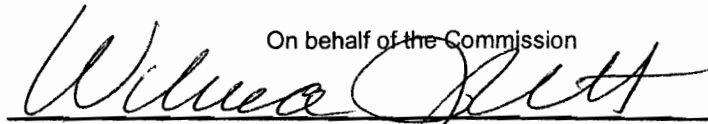
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Wilma Scott,
Director

6/26/09
 (Date Mailed)

Enclosures(s)

cc:

Lowndes County E-911
515 2nd Avenue North
Columbus, MS 39701

Julia
 wa



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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

JULIA BURGIN

PLAINTIFF

VS.

CIVIL ACTION NO. 1:09CV239-B-D

**LOWNDES COUNTY, MISSISSIPPI
and COLUMBUS/LOWNDES COUNTY
E911 TELECOMMUNICATIONS**

DEFENDANTS

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS

Defendants Lowndes County, Mississippi (“Lowndes County”) and Columbus/Lowndes County E911 Telecommunications (“E911”), file this Answer and Affirmative Defenses to Plaintiff’s Complaint.

FIRST DEFENSE AND MOTION TO DISMISS

Plaintiff’s Complaint fails to state a claim against Defendants upon which relief can be granted.

ANSWER

Answering the first, unnumbered paragraph of the Complaint, Defendants admit that Plaintiff filed this action alleging race discrimination and retaliation and age discrimination. Defendants further admit that Plaintiff seeks to recover actual and liquidated damages. Defendants deny all remaining allegations in the paragraph.

1.

Upon information and belief, Defendants admit the allegations of Paragraph I of the Complaint.

2.

Defendants admit the allegations of Paragraph II of the Complaint. Answering further, Defendant Lowndes County would state affirmatively that it is not a proper defendant in this action and should be dismissed.

3.

Defendants admit that this Court has jurisdiction over this lawsuit, but deny any remaining allegations of Paragraph III of the Complaint and deny any liability under the cited statutes.

4.

Defendants admit the first sentence of Paragraph IV of the Complaint. The remaining allegations of Paragraph IV are denied.

5.

Defendants are without sufficient information to admit or deny the allegations of Paragraph V and, therefore, those allegations are denied.

6.

Defendants admit the fourth sentence of Paragraph VI of the Complaint. Defendants are without sufficient information to admit or deny the remaining allegations of Paragraph VI and, therefore, those allegations are denied.

7.

Defendants are without sufficient information to admit or deny the allegations of Paragraph VII and, therefore, those allegations are denied.

8.

Defendants deny the allegations of Paragraph VIII.

9.

Defendants deny the allegations of Paragraph IX.

10.

Defendants admit the allegations of Paragraph X.

11.

Defendants deny the allegations of Paragraph XI.

12.

Answering the final, unnumbered PRAYER paragraph of the Complaint, Defendants deny that Plaintiff is entitled to the requested relief, and further deny that Plaintiff is entitled to anything whatsoever from the Defendants on account of her claims and averments in this lawsuit.

AND NOW, having answered the paragraphs of the Complaint, Defendants state the following additional affirmative defenses:

AFFIRMATIVE DEFENSES

SECOND DEFENSE

The alleged damages to Plaintiff, if any, were not caused by the Defendants, but were caused by Plaintiff's own acts or omissions.

THIRD DEFENSE

Defendants have at all times acted reasonably and in good faith, and within the scope of their authority in dealings with Plaintiff.

FOURTH DEFENSE

To the extent Plaintiff failed to mitigate her damages, her recovery, if any, must be reduced accordingly.

FIFTH DEFENSE

Legitimate grounds support the Defendants' actions that are the basis of Plaintiff's allegations in her Complaint, both as to her claims of race discrimination and retaliation and age discrimination.

SIXTH DEFENSE

The alleged damages of Plaintiff, if any, occurred during her employment, and any relief to which she may be entitled would be governed by the Mississippi Worker's Compensation Act.

SEVENTH DEFENSE

Plaintiff's claims against Defendants are barred by the defenses of judicial estoppel, equitable estoppel, and collateral estoppel.

EIGHTH DEFENSE

Defendants reserve the right to assert that Plaintiff's claims are barred, in whole or in part, by any applicable statute of limitation.

NINTH DEFENSE

Any injury or damage suffered by Plaintiff as a result of the events complained of were caused solely by reason of the conduct of Plaintiff, and all actions of Defendants were, in every sense, lawful, proper and responsible.

TENTH DEFENSE

The business judgment rule protects Defendants and bars recovery for some or all of the conduct and/or decision of Defendants.

ELEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, for failure to exhaust administrative remedies in a timely manner.

TWELFTH DEFENSE

To the extent Plaintiff has attempted to state a claim or cause of action which is covered by the Mississippi Tort Claims Act, which is denied, Plaintiff has failed to undertake prerequisites to filing suit, and this Court therefore lacks jurisdiction to hear such claims. To the extent state law claims are alleged, Defendants invoke all defenses available to it under Mississippi's Tort Claims Act.

THIRTEENTH DEFENSE

To the extent Plaintiff has attempted to state a claim of discrimination under the civil rights laws and/or age discrimination laws, Plaintiff has failed to undertake the necessary prerequisites to filing suit, and this Court therefore lacks jurisdiction to hear such claims. In any event, legitimate, non-discriminatory ground supports Defendants' decisions that form the basis of Plaintiff's Complaint.

FOURTEENTH DEFENSE

Plaintiff was an at-will employee and her employment was subject to at-will status as provided by the laws of the State of Mississippi.

FIFTEENTH DEFENSE

E911, through its designated officials and board members, acted within the scope of its authority and without bad faith.

SIXTEENTH DEFENSE

Plaintiff is not entitled to injunctive relief as requested.

WHEREFORE, Defendants request judgment in their favor as follows:

- A. That Plaintiff's Complaint be dismissed in its entirety with prejudice, with Plaintiff to take nothing thereby;

- B. That Defendants be awarded costs incurred herein;
- C. That Defendants be awarded reasonable attorneys' fees incurred herein to the full extent permitted by law; and
- D. That Defendants be awarded any further relief that the Court deems just and proper.

This the 21st day of October, 2009.

s/Berkley N. Huskison (MSB #9582)
Attorney for Defendants

Of Counsel

Mitchell, McNutt & Sams, P.A.
Attorneys at Law
Post Office Box 1366
Columbus, Mississippi 39703-1366
(662) 328-2316 – phone
(662) 328-8035 – fax

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2009, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

W. Brent McBride, Esquire
McBride Law Firm, PLLC
Post Office Box 84
Tupelo, MS 38802
mcbridelawfirm@bellsouth.net

This the 21st day of October, 2009.

s/Berkley N. Huskison