

2470.24

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KENNETH SNYDER)	
Plaintiff,)	
)	
)	Case No.: 12-cv-2723 JAR/DJW
vs.)	
)	
WILLIAM JOHNSON, et al,)	
)	
Defendants.)	

DEFENDANT ERIC CLARK’S ANSWER TO PLAINTIFF’S COMPLAINT

COMES NOW Defendant Eric Clark (“Clark” or “Defendant”), by and through his attorneys at McAnany, Van Cleave & Phillips, PA, and submits his answer to Plaintiff’s Complaint as follows:¹

I. COMPLAINT

This paragraph of Plaintiff’s Complaint contains no factual allegations to which a response is required.

II. INTRODUCTION

It is Defendant’s belief and understanding that Plaintiff applied and interviewed for a job with Defendant Board of Public Utilities (“BPU”) as a traffic signal technician, that Plaintiff was offered the position, and Plaintiff accepted BPU’s offer of employment. Defendant is without sufficient knowledge to admit or deny the allegations concerning the reasons Plaintiff left his previous employment and therefore denies the same.

¹ In filing this answer Defendant does not waive the arguments set forth in Defendants’ Motion to Dismiss (Dkt. #8) and Memorandum of Support of Defendants’ Motion to Dismiss (Dkt. #9).

Defendant denies all other allegations contained in the Introduction to Plaintiff's Complaint.

III. PARTIES

1. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore denies them.

2. Paragraph 2 of Plaintiff's Complaint contains no allegations against this answering Defendant. To the extent that a response is required, it is Defendant's belief and understanding that BPU is an administrative agency of the Unified Government of Wyandotte County/Kansas City, Kansas, with its principal place of business at 540 Minnesota Avenue, Kansas City, Kansas.

3. Paragraph 3 of Plaintiff's Complaint contains no allegations against this answering Defendant. To the extent a response is required, it is Defendant's belief and understanding that Defendant Eric Clark is a resident of the state of Kansas. Defendant admits that Defendant Eric Clark was Plaintiff's supervisor and a decision-maker in Plaintiff's termination. Plaintiff's allegation that Defendant Clark is an "employer" as defined in 38 U.S.C. § 4303 is a legal conclusion to which no response is required. Assuming a response is required, Defendant denies the allegation. Defendant denies all other allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. Paragraph 3 of Plaintiff's Complaint contains no allegations against this answering Defendant. To the extent a response is required, it is Defendant's belief and understanding that Defendant William Johnson is a resident of the state of Kansas. Defendant admits that Defendant William Johnson was Plaintiff's supervisor and a decision-maker in Plaintiff's termination. Plaintiff's allegation that Defendant William

Johnson is an “employer” as defined in 38 U.S.C. § 4303 is a legal conclusion to which no response is required. Assuming a response is required, Defendant denies the allegation. Defendant denies all other allegations contained in Paragraph 4 of Plaintiff’s Complaint.

IV. JURISDICTION AND VENUE

5. Defendant admits that jurisdiction and venue are proper. As to any remaining allegations contained in Paragraph 5, Defendant denies the same.

V. STATEMENT OF FACTS

6. It is Defendant’s belief and understanding that on or about September 21, 2009, Plaintiff submitted an application to Defendant BPU for a position as traffic signal technician. As to any remaining allegations contained in Paragraph 6, Defendant is without sufficient information to admit or deny and therefore denies the same.

7. It is Defendant’s belief and understanding that in October 2009, Plaintiff participated in an interview with Defendant BPU. As to any remaining allegations contained in Paragraph 7, Defendant is without sufficient information to admit or deny and therefore denies the same.

8. It is Defendant’s belief and understanding that upon Plaintiff informing Defendant BPU that he was being deployed, Sam DeLeon, Director Human Resources, assured Plaintiff that his employment would not be affected by said deployment. As to any remaining allegations contained in Paragraph 8 of Plaintiff’s Complaint, Defendant is without sufficient information to admit or deny and therefore denies the same.

9. It is Defendant's belief and understanding that the hiring manager, Defendant William Johnson and the Manager Electric Operations and Technology signed an approval for Plaintiff's hiring.

10. Defendant is without sufficient information to admit or deny the allegations in paragraph 10 of Plaintiff's Complaint and therefore denies the same.

11. It is Defendant's belief and understanding that upon Plaintiff's release from active military, he was told to report for work. As to any remaining allegations contained in Paragraph 11 of Plaintiff's Complaint, Defendant is without sufficient information to admit or deny and therefore denies the same.

12. Defendant admits that upon Plaintiff's release from military duty, Plaintiff reported to work with Defendant. As to any remaining allegations contained in Paragraph 12 of Plaintiff's Complaint, Defendant is without sufficient information to admit or deny and therefore denies the same.

13. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph 13 of Plaintiff's Complaint and therefore denies the same.

14. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph 14 of Plaintiff's Complaint and therefore denies the same.

15. It is Defendant's belief and understanding that Plaintiff gave notice of any leave from work required for military duty. As to any remaining allegations contained in Paragraph 15 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny and therefore denies the same.

16. It is Defendant's belief and understanding that Plaintiff gave notice of any leave from work required for military duty. As to any remaining allegations contained in

Paragraph 16 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny and therefore denies the same.

17. It is Defendant's belief and understanding that Plaintiff gave notice of any leave from work required for military duty. As to any remaining allegations contained in Paragraph 17 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny and therefore denies the same.

18. Defendant admits that on or about April 1, 2010, he became Plaintiff's supervisor, replacing retired supervisor, Russell Walters.

19. It is Defendant's belief and understanding that Plaintiff gave notice of any leave from work required for military duty. As to any remaining allegations contained in Paragraph 19 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny and therefore denies the same.

20. Defendant admits that on or about April 27, 2010, Plaintiff, Defendant and Greg DeGraeve had a meeting.

21. Defendant admits the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22. Defendant admits the allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 23 of Plaintiff's Complaint and therefore denies the same.

24. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 24 of Plaintiff's Complaint and therefore denies the same.

25. Defendant admits that he did not supervise Plaintiff until April. As to any remaining allegations contained in Paragraph 25, Defendant denies such allegations.

26. Defendant admits that he did not sign the March evaluation until May. As to the remaining allegations in Paragraph 26 of Plaintiff's Complaint, Defendant denies the same.

27. Defendant admits that the March 26, 2010 evaluation rated Plaintiff as Unsatisfactory in Productivity, Dependability, and Cooperation. Defendant denies that the March 26, 2010 evaluation is not credible. As to any remaining allegations contained in Paragraph 27 of Plaintiff's Complaint, Defendant is without sufficient information to admit or deny and therefore denies the same.

28. Defendant admits that Plaintiff was given an evaluation dated April 27, 2010, but otherwise denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29. Defendant is without sufficient information to admit or deny the allegations in Paragraph 29 of Plaintiff's Complaint and therefore denies the same.

30. Defendant is without sufficient information to admit or deny the allegations in Paragraph 30 and therefore denies the same.

31. Defendant admits that Plaintiff signed the evaluations and returned to work.

32. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 32 of Plaintiff's Complaint and therefore denies the same.

33. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 33 of Plaintiff's Complaint and therefore denies the same.

34. Defendant admits that Plaintiff's employment was terminated in July 2010.

35. Defendant admits that on or about July 8, 2010, Plaintiff, Defendant Clark, Sam DeLeon, and Defendant William Johnson had a meeting.

36. Defendant admits that Defendant Johnson sent Plaintiff home pending his recommendation of Plaintiff's termination. As to any remaining allegations contained in Paragraph 36 of Plaintiff's Complaint, Defendant is without sufficient information to admit or deny and therefore deny the same.

37. Defendant admits that Defendant Johnson told Plaintiff that he saw a trend and he didn't like what he saw. As to any remaining allegations contained in Paragraph 37 of Plaintiff's Complaint, Defendant denies such allegations.

38. Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39. Defendant does not have sufficient information to admit or deny the allegations in Paragraph 39 of Plaintiff's Complaint and therefore denies the same.

40. Defendant denies the allegations contained in Paragraph 40 of Plaintiff's Complaint.

41. Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42. Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Complaint.

43. Defendant denies the allegations contained in Paragraph 43 of Plaintiff's Complaint.

44. Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

45. Defendant admits that Plaintiff's employment was terminated because he was unable to complete work on jobs and tasks required of the position, he did not pay attention to detail when asked to complete a task, he was not completing tasks in a timely manner, he did not volunteer to work with co-workers on day-to-day operations, and the volume of Plaintiff's personal phone calls during company working hours adversely affected his productivity, dependability, and safety practice. As to any remaining allegations contained in Paragraph 45 of Plaintiff's Complaint, Defendant denies the same.

46. Defendant denies the allegations contained in Paragraph 46 of Plaintiff's Complaint.

47. Defendant denies the allegations contained in Paragraph 47 of Plaintiff's Complaint.

48. Defendant denies the allegations contained in Paragraph 48 of Plaintiff's Complaint.

49. Defendant denies the allegations contained in Paragraph 49 of Plaintiff's Complaint.

VI. CHARGES

50. Defendant incorporates its responses to Paragraphs 1-49 of Plaintiff's Complaint as set forth above.

51. Defendant denies the allegations contained in Paragraph 51 of Plaintiff's Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of Plaintiff's Complaint.

53. Defendant denies the allegations contained in Paragraph 53 of Plaintiff's Complaint.

54. Defendant denies the allegations contained in Paragraph 54 of Plaintiff's Complaint.

55. Defendant denies the allegations contained in Paragraph 55 of Plaintiff's Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of Plaintiff's Complaint.

57. Defendant denies the allegations contained in Paragraph 57 of Plaintiff's Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of Plaintiff's Complaint.

59. Defendant denies the allegations contained in Paragraph 59 of Plaintiff's Complaint.

60. Defendant denies the allegations contained in Paragraph 60 of Plaintiff's Complaint.

61. Defendant denies the allegations contained in Paragraph 61 of Plaintiff's Complaint.

62. Defendant denies the allegations contained in Paragraph 62 of Plaintiff's Complaint.

63.

VII. RELIEF REQUESTED

Defendant denies that Plaintiff is entitled to the relief requested.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff's Complaint fails to state a claim against this answering Defendant upon which relief can be granted because there are no claims available under USERRA against a supervisor of a state employer. 38 U.S.C. § 4301-4333

2. Defendant denies that his conduct has caused Plaintiff any damages.

3. Plaintiff has failed to mitigate his damages, if any.

4. The actions of Defendant were taken for legitimate, non-discriminatory reasons.

5. To the extent Plaintiff makes claims for equitable relief, such claims are barred, in whole or in part, by the existence of an adequate remedy at law.

6. Defendant's conduct was not willful, and Plaintiff is not entitled to liquidated damages against Defendant.

7. Defendant denies all allegations not specifically admitted.

8. Defendant reserves the right to assert additional affirmative defenses and matters in avoidance as may be disclosed during the course of discovery.

WHEREFORE, Defendant William Johnson answers Plaintiff's Complaint, requests that Plaintiff take nothing against him on the claims asserted therein, requests dismissal and entry of judgment against Plaintiff and in favor of Defendant, requests that he be awarded his reasonable attorney fees, costs, and litigation expenses incurred in defense of this civil action, and requests entry of all such other relief that the court may deem just and equitable.

Respectfully submitted,

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By: /s/ Robert J. Wonnell

Robert J. Wonnell #20727
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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Attorney for Plaintiff

/s/ Robert J. Wonnell