

## **I Want To Sue the Boss Personally!**

By CAPT Samuel F. Wright, JAGC, USNR

I have found another interesting case under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The case is *Morris-Hayes v. Board of Education of the Chester Union Free School District*, 423 F.3d 153 (2d Cir. 2005).

MAJ Jacqueline J. Morris-Hayes, USAR, was a school principal. Her superiors in the school district hierarchy expressed irritation about occasions when she was away from work for military training or service, as permitted by USERRA. The school district eventually fired her, and she filed suit in Federal District Court.

She sued the school district superintendent and the members of the school board, individually, under section 1983 of Title 42, U.S. Code. That section provides, in pertinent part, as follows: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

There is a lot of case law under section 1983. State and local government officials and employees, including police officers, are personally liable (meaning they may have to pay the judgment out of their own pockets, without reimbursement) for clear violations of the rights of individuals under the U.S. Constitution or a federal statute. With regard to rights under a statute, it has been held that section 1983 does not apply if the statute creating the right has its own comprehensive enforcement mechanism.

The federal district court held that section 1983 applied to MAJ Morris-Hayes’ rights under USERRA. The district judge refused to dismiss the suit against the superintendent and board members, and those defendants filed an interlocutory appeal in the court of appeals. An interlocutory appeal is an appeal of a district court action that does not amount to a final disposition of the case. Under most circumstances, it is necessary to wait for final action in the trial court before appealing to the appellate court. In some limited circumstances, interlocutory appeals are permitted, and that includes appeals from findings that individuals are not immune from suit.

The court of appeals held that the suit against the individual defendants should have been dismissed because USERRA provides a comprehensive and effective enforcement mechanism. MAJ Morris-Hayes also sued the school district, as an institution, but the district court dismissed that suit based on the U.S. Constitution’s 11th Amendment, which precludes suits by individuals against states. The Court of Appeals held that it did

not have authority to review that 11th Amendment question in this interlocutory appeal, but the appellate court strongly implied that the district judge got that answer wrong and should reconsider as the case proceeded in the district court.

The district court had held that the school district is an “arm of the state” (of New York), and that the district shares the state’s 11th Amendment immunity. In the appellate court’s view, and in my view, the school district is a political subdivision of the state of New York, and political subdivisions do not have 11th Amendment immunity. See *Hopkins v. Clemson College*, 221 U.S. 636, 645 (1911).

I discuss the 11th Amendment and USERRA in detail in Law Review 89.

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