

## **Limits on Rights of Disabled Veterans**

By CAPT Samuel F. Wright, JAGC, USNR

Regular readers will recognize that protecting the rights of disabled veterans is an issue near and dear to my heart. I have addressed it in Law Reviews 121, 130, 136, 183, and 199.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) accords important rights to veterans in general and disabled veterans in particular, but there are limits. Some of the limits are illustrated in the recent case of *Bowluds v. General Motors Corp.*, 411 F.3d 808 (7th Cir. 2005).

Lawrence Bowluds was employed by General Motors (GM) from September 1965 until January 1967, when he was drafted. He served in Vietnam and was honorably discharged from the Army in January 1969. He made a timely application for reemployment and was promptly reemployed.

After returning to work, Bowluds developed a serious skin disorder which was deemed to have been caused by his exposure to Agent Orange in Vietnam. On advice from Bowluds' physician, GM put Bowluds on total and permanent disability in August 1977. Bowluds' condition improved over the years, and in October 1983 his physician wrote to GM, saying that Bowluds could return to "clean and dry work." GM did not respond, so the physician wrote again in March 1984. GM again failed to respond. The physician wrote a third time in August 1989, and GM rehired Bowluds as a tow motor operator in September 1989.

Bowluds retired from GM in May 2002. The issue in this case is whether Bowluds is entitled to GM pension credit for the time between August 1977 and September 1989. The district court held that he was not entitled to that credit, and the court of appeals agreed.

As I explained in detail in Law Reviews 104 and 201, Congress enacted USERRA in 1994 as a complete rewrite of the Veterans' Reemployment Rights (VRR) law, which can be traced back to 1940. Bowluds' case is governed by the VRR, not USERRA, because he completed his military service and returned to work prior to October 13, 1994, when President Clinton signed USERRA into law. But in this case there is no significant relevant difference between USERRA and its predecessor—neither law anticipated this sort of situation.

The court of appeals summarized its decision as follows: "Perhaps Congress will amend the VRRA or the USERRA to require employers to reemploy veterans who have recovered from injuries sustained as a result of their military service, even if such injuries occur after the employer has initially reemployed the employee, and several years after the employee has left the military. But this is an issue of public policy, and the onus for a solution lies with Congress, not the courts. Again, although we are sympathetic to Mr. Bowluds and to all veterans put in situations such as his, the VRRA and USERRA as currently drafted offer him no remedy."

*Military title shown for purpose of identification only. The views expressed in this article are the personal views of the author, and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. government.*