

LAW REVIEW 711
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ESGR Volunteer Recovers \$100,000 for USERRA Claimant

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CATEGORY: USERRA Entitlements

Joe Jones (not his real name) contacted me with an interesting issue involving the Uniformed Services Employment and Reemployment Rights Act (USERRA). I referred him to a volunteer for the National Committee for Employer Support of the Guard and Reserve (ESGR), a Department of Defense (DoD) organization established in 1972. ESGR's mission is to gain and maintain the support of public sector and private sector employers for the men and women of the National Guard and Reserve, working primarily through a network of almost 1,000 well-trained volunteers called "ombudsmen." Over the years, I have made about 25 trips to Denver and other places to train ombudsmen in a three-day course.

Ombudsman Extraordinaire Fred Samuelson (the "Ombudsman of the Year" for 2002, the first year that ESGR named an "Ombudsman of the Year") assisted Mr. Jones. Mr. Samuelson has worked more than 1,000 ombudsman cases for ESGR. He was a great choice for this case because he is a retired Ford dealer, and the case was against Ford. Mr. Samuelson has great contacts at Ford headquarters, and he used those contacts to obtain for Mr. Jones his rightful USERRA entitlements.

Mr. Jones worked for Ford before he was recalled to active duty in 2005. He served in Iraq and made a timely application for reemployment at Ford after he returned from active duty. He met the five eligibility criteria for reemployment under USERRA, but he was unlawfully denied reemployment. He then found another job, with another employer, paying as much as the Ford job. In late 2006, Ford announced a massive downsizing program, with substantial incentives for employees willing to resign from their employment with Ford. The incentives range from \$30,000 to \$140,000, depending on the employee's years of service.

After the incentive program was announced, Mr. Jones applied for the severance payment, but both the personnel office and the union told him he was not entitled to the payment because he was not on the Ford payroll at the time Ford announced the downsizing plan. He called me, and I told him he is entitled to the severance payment under USERRA. I referred him to Mr. Samuelson.

Mr. Samuelson made a few telephone calls, explaining USERRA to Ford management, and they saw the light. Mr. Jones submitted his Ford resignation and collected his severance payment, which for him was \$100,000.

The fact that Mr. Jones had taken a new job with a different employer in no way mooted his

USERRA case or detracted from his right to the severance payment. As I explained in Law Review 206, a veteran who has been unlawfully denied reemployment has a duty to mitigate damages by seeking and taking alternative employment elsewhere. Mr. Jones had fully mitigated Ford's back pay liability, because he had quickly found another job paying as much as the Ford job, but he had certainly not mitigated the loss of the \$100,000 severance payment.

You, as a National Guard or Reserve member, need to be familiar with your rights under USERRA. You need to meet the eligibility criteria, as described in Law Review 77. If the employer's personnel director or corporate counsel says you have no rights under USERRA, do not accept that statement at face value. Remember that the corporate counsel is a lawyer, but he or she is not *your* lawyer. You should avoid being unnecessarily confrontational with the employer, but you should not be bashful about asserting your rights under this important federal law. Remember, "The meek will inherit the earth, but there won't be much left when we lawyers are through with it."

You can contact ESGR at 1-800-336-4590 or DSN 426-1386. The ESGR website is www.esgr.mil.

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