

# LAW REVIEW 849

(October 2008)

1.1 USERRA Coverage

1.17 Discrimination Prohibited

1.19 USERRA Enforcement

## Unlawful to Fire Army Recruit

By CAPT Samuel F. Wright, JAGC, USN (Ret.)

**Q: I was hired by a private employer in November 2007. Early in 2008, I started thinking seriously about joining the Army. I visited a recruiter and signed up. I have orders to report to boot camp in April, and I informed the employer in early March. He thereupon fired me immediately. The firing cost me about \$2,000—representing what I would have earned in my last three weeks working at the civilian job. Does firing me for joining the regular Army (not the Army Reserve or Army National Guard) violate the Uniformed Services Employment and Reemployment Rights Act (USERRA)?**

**A:** Yes. Firing you violated section 4311(a) of USERRA, which provides as follows: “A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.” 38 U.S.C. 4311(a). Contrary to popular misconception, USERRA applies to regular military service as well as National Guard and Reserve service. I invite your attention to Law Review 0719.

USERRA’s legislative history clearly shows that Congress intended that section 4311 would apply to a situation exactly like yours. “If the employee is unlawfully discharged under the terms of this section prior to leaving for military service, such as under the Delayed Entry Program, that employee would be entitled to reinstatement for the remainder of the time the employee would have continued to work plus lost wages. Such a claim can be pursued before or during the employee’s military service, and processing of the claim should not await completion of the service, even if only for lost wages.” House Report No. 103-65, 1994 *United States Code Congressional & Administrative News* 2449, 2456-57.

## **Q: Where should I go for assistance in asserting my USERRA claim?**

**A:** I suggest you contact the U.S. Department of Labor’s Veterans’ Employment and Training Service (DOL-VETS). To file an online complaint with DOL-VETS, go to <https://vets1010.dol.gov/Login.aspx?ReturnUrl=%2default.aspx>. You will need to choose a username and password in order to use this online complaint form. Be sure to fill out all the information that pertains to your situation and provide as much detail as possible. Once you submit this form, the appropriate DOL-VETS investigator will open your form and ask you for a copy of your military orders and other documentation. I also suggest you avoid “burning your bridges” with this civilian employer, regardless of how this case works out now. If you leave active duty at the end of your initial active service obligation and make a timely application for reemployment within 90 days after release, you will have the right to reemployment under USERRA. At that point, you will be entitled to seniority and pension credit with that employer as if you had been continuously employed since November 2007. See 38 U.S.C. 4316(a), 4318 and *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284-85 (1946).