

**Number 95, October 2003:  
Two Veterans Returning to Same Position**

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Q: XYZ Corporation hired Bill Jones as its information technology manager (ITM) in October 1998. In October 2001, Jones was called to active duty from the Coast Guard Reserve, and I was hired to replace him. I was called to active duty, from the Army Reserve, in October 2002. In June 2003, I was released from active duty, and I returned to work at XYZ as the ITM. Jones was finally released from active duty in September 2003, and he made a timely application for re-employment at XYZ. Jones is demanding that he be returned as the ITM, but the company only needs one ITM, and I don't want to give up the job. The boss has said that I have done a much better job, and I applied for the job three months before Jones. Between the two of us, who gets to keep the ITM job?

A: Jones does. "If two or more persons are entitled to re-employment under section 4312 in the same position of employment and more than one of them has reported for such re-employment, the person who left the position first shall have the prior right to re-employment in that position." 38 U.S.C. 4313(b)(1).

Jones meets the USERRA eligibility criteria, so he is entitled to the ITM job or another job, for which he is qualified, that provides like seniority, status, and rate of pay. 38 U.S.C. 4313(a)(2)(A). There probably is no other position of like status and pay for which Jones is qualified, so he is entitled to the ITM position.

Jones has the superior claim to the ITM position, but you are not without rights in this case. XYZ is required to re-employ you in another position of like seniority, status, and pay, or the "closest approximation" consistent with these unusual circumstances. See 38 U.S.C. 4313(b)(2). ROA

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