

LAW REVIEW 1027

DOJ Sues Company and Settles the Same Day

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

1.2—USERRA-Discrimination Prohibited

1.4—USERRA Enforcement

On Apr. 16, 2010, the Department of Justice (DOJ) filed suit against Milne Enterprises, Inc., in the United States District Court for the Eastern District of Washington, alleging that Milne had violated the Uniformed Services Employment and Reemployment Rights Act (USERRA) in its treatment of Army National Guard member Robert B. Robinson. Later the same day, Milne resolved the matter by entering into a consent decree with DOJ. Under the decree, Milne is required to pay Mr. Robinson \$13,500 in back pay. Under the decree, Milne is prohibited from retaliating against any person (not just Mr. Robinson) for exercising USERRA rights.

A consent decree is a court order, enforceable through the court's contempt powers. A consent decree is just as enforceable as a decree or injunction that was entered over the party's objections.

Mr. Robinson enlisted in the Army National Guard in Nov. 2006, and he performed his initial active duty training for Mar.-Sept. 2007. Later, he was called to active duty for 15 months, and he was deployed to Iraq for most of that time. Milne failed or refused to reemploy Mr. Robinson promptly after these two military-related absences from work. USERRA gives an individual the right to reemployment after a period of service in the uniformed services, provided the individual meets the USERRA eligibility criteria, which Mr. Robinson did after each period of service.

Milne Enterprises retaliated against Mr. Robinson, after he complained that the company had unlawfully refused to reemploy him after his return from service. The retaliation constituted a separate violation of section 4311(b) of USERRA, which provides: "An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided by this chapter. The prohibition in this subsection shall apply to a person regardless of whether that person has performed service in the uniformed services." 38 U.S.C. 4311(b).

In accordance with standard procedure, Mr. Robinson complained to the Veterans' Employment and Training Service of the U.S. Department of Labor (DOL-VETS), alleging that Milne had violated his USERRA rights. DOL-VETS conducted an investigation, determined Mr. Robinson's complaint to be meritorious, and tried to persuade Milne to come into compliance. After these compliance efforts proved unsuccessful, DOL-VETS referred the case to DOJ, which agreed that the case had merit. Milne apparently decided not to tangle with DOJ and agreed to settle on the same day that DOJ filed the lawsuit.

The Honorable Thomas Perez, DOJ's Assistant Attorney General for Civil Rights, said: "The men and women who put themselves in harm's way to serve our country deserve to know that they are not also losing their jobs when they return home. The department is committed to safeguarding the employment rights of our men and women in uniform."

If you have questions, suggestions, or comments, please contact Captain Samuel F. Wright, JAGC, USN (Ret.) (Director of the Servicemembers' Law Center) at swright@roa.org or 800-809-9448, ext. 730.