

LAW REVIEW 1031

DOJ Files and Settles on the Same Day, Again

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

1.2—USERRA-Discrimination Prohibited

1.4—USERRA Enforcement

On April 21, 2010, the Department of Justice (DOJ) filed suit against Troy University of Montgomery, Alabama, in the United States District Court for the Middle District of Alabama. Later that same day, DOJ and Troy entered into a consent decree to resolve the case. This is yet another example showing that employers don't want to tangle with DOJ.

Ms. Cleopatra Jones, a reservist (component not stated in the DOJ press release), worked for the university's human relations department when she was called to active duty. While she was away, the university unlawfully terminated her employment. When she returned from active duty, the university unlawfully denied her timely application for reemployment. The consent decree requires the university to pay Ms. Jones \$36,960 in monetary relief, and the decree enjoins the university from committing future USERRA violations, with respect to Ms. Jones or other employees or potential employees.

A consent decree is an injunction, enforceable through the court's contempt powers. A consent decree is just as enforceable as an injunction entered over a party's objection.

It is fortunate that DOJ brought this lawsuit, because Troy University is a state university and is considered to be part of the state government. The 11th Amendment of the United States Constitution precludes a federal court lawsuit against a state by an individual, and in Alabama (under the state constitution) the state is exempt from lawsuits in state court. In situations like this, if DOJ does not bring the lawsuit the claimant will likely be left without a remedy. Please see Law Review 89 (Sept. 2003) and Law Review 1014 (Feb. 2010). You can find more than 600 articles at www.roa.org/law_review.

The Honorable Thomas Perez, DOJ's Assistant Attorney General for Civil Rights, stated, "By enacting USERRA, Congress recognized the importance of protecting the employment rights of the men and women who serve our country in uniform. The department commends Troy University for working cooperatively with us to resolve this matter without the need for contested litigation."

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.