

Law Review 1144

PTSD, USERRA, and the State of New Mexico

By Rosario Vega Lynn, Esq.[\[1\]](#)

1.1.1.7—USERRA Applicability to State and Local Governments

1.3.2.9—Accommodations for Disabled Veterans

1.4—USERRA Enforcement

1.8—Relationship Between USERRA and other Laws/Policies

I met Sergeant First Class (SFC) Phillip Ramirez Jr. in April 2008. An attorney I knew insisted I meet with SFC Ramirez to discuss concerns about his job. This attorney said he met SFC Ramirez before he was called to Iraq and that SFC Ramirez changed a great deal upon his return and his behavior reminded him of his brother, a Vietnam War veteran, who was plagued with demons.

During our initial meeting, SFC Ramirez seemed ashamed and nervous. I asked him about his job and he replied, “They are trying to get rid of me.” I asked him why he thought that and he didn’t have an answer. As an employment and civil rights attorney, I tailored initial meetings with potential clients to race, age, religion, national origin, sex, or physical or mental handicap real or perceived. This was my first service member case.

I took the case. My client cried with relief. I wrote demand letters to his employer, the New Mexico Children, Youth and Families Department (CYFD), where SFC Ramirez worked as a community support officer in McKinley County (one of the most violent areas in the state) for over 13 years without incident. I was ignored.

I wrote demand letters to the Governor, asking for assistance on behalf of a member of the military. I was ignored. I wrote letters to the New Mexico National Guard asking for advocacy on behalf of one of their soldiers. I was ignored.

My client requested assistance from the United States Department of Labor, Veterans’ Employment and Training Service (DOL-VETS) office but was told the time limit had passed because he returned to work in January 2007.

We filed a charge of discrimination with the New Mexico Human Rights Department for discrimination based on physical or mental handicap. The department found no probable cause.

During this time, the employer was padding SFC Ramirez’s personnel file to include multiple accusations of insubordination. CYFD terminated SFC Ramirez on March 25, 2008 – the day after I requested a reasonable accommodation for his combat-related PTSD to the department secretary.

In May 2008, I sued CYFD and everyone who had anything to do with harassing and terminating SFC Ramirez. Since then, the State of New Mexico has fought us every step of the way, even paying a private defense firm \$423,510.29 to represent CYFD and all individuals in a three week trial in Gallup that began Valentine’s Day 2011.

I told the defense attorney “this isn’t about money.” And the attorney laughed and said, “It’s *always* about money.” After deliberating three hours, the jury found CYFD violated SFC Ramirez’s rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). For the first time in New Mexico, a jury hung USERRA around the State’s neck.

The State is still fighting. First, newly-elected Governor Susana Martinez said she needed time to review the case. (SFC Ramirez escorted Gov. Martinez’s mother from the vehicle to the church door at the Governor’s inauguration

ceremony.) Then they said the trial judge committed multiple errors by not ruling on federal law (yes, we are in state court where federal law doesn't apply). Now they say New Mexico has sufficient protections for its military members and USERRA is not needed.

Ironically, in 2004, the state legislature enacted a law for service members that, "rights, benefits and protections of the federal Uniformed Services Employment and Reemployment Rights Act of 1994 shall apply to a member of the national guard ordered to federal or state active duty for a period of thirty or more consecutive days." What is their argument now? That incorporation by reference is insufficient to waive government immunity.

On June 27, 2011, Governor Martinez deployed the National Guard to assist evacuating residents living near Los Alamos National labs because of the fire danger. SFC Ramirez offered his services but, despite the urgent need for as many hands as possible, his phone is not ringing.

In fact, Gov. Martinez has ordered National Guard troops to action several times since taking office in January 2011: to assist the gas company to turn on pilot lights in northern New Mexico, to assist in fighting the Wallow fire that jumped state lines, and to Ruidoso to assist in restoring water to residents. SFC Ramirez was never called to any of these deployments.

Even with these setbacks and years of fighting, SFC Ramirez is willing to continue the fight for all those servicemen and women who have put on a uniform and fought for their country and we will continue to do what is necessary to force the State to comply with USERRA.

[1] Rosario Vega Lynn is a member of the Bar of New Mexico, the United States Court of Appeals for the 10th Circuit, and the United States Supreme Court. She earned her JD degree from the University of New Mexico in 1998.