

## LAW REVIEW 127

### Review of 2002-03 USERRA Cases

By CAPT Samuel F. Wright, JAGC, USNR\*

I have reviewed the 2002–03 reported (published) cases under the Uniformed Services Employment and Reemployment Rights Act (USERRA). I found 11 such cases, some of which resulted in more than one published opinion. For purposes of this count, I have excluded cases that were only unofficially published with “do not cite as precedent” warnings. I also excluded cases that mentioned USERRA but were not really about USERRA.

In six of the 11 cases, the employee or former employee claiming USERRA rights won, predominantly or entirely. Those cases are *Lapine v. Town of Wellesley*, 304 F.3d 90 (1st Cir. 2002); *Akhdary v. City of Chattanooga*, 2002 U.S. Dist. LEXIS 26898 (E.D. Tenn. 2002); *Gillie-Harp v. Cardinal Health, Inc.*, 249 F. Supp. 2d 1113 (W.D. Wis. 2003); *Jordan v. Air Products & Chemicals, Inc.*, 225 F. Supp. 2d 1206 (C.D. Calif. 2002); *Rogers v. City of San Antonio*, 211 F. Supp. 2d 829 (W.D. Texas 2002); and *Schmauch v. Honda of America Manufacturing, Inc.*, 2003 U.S. Dist. LEXIS 24015 (S.D. Ohio 2003).

In four cases, the employer predominantly or entirely won. Those cases are *Miller v. City of Indianapolis*, 281 F.3d 648 (7th Cir. 2002); *Leisek v. Brightwood Corp.*, 278 F.3d 895 (9th Cir. 2002); *Clune v. Desmond's Formal Wear, Inc.*, 2003 U.S. Dist. LEXIS 14634 (N.D. Ind. 2003) and *Smith v. School Board of Polk County, Florida*, 205 F. Supp. 2d 1308 (M.D. Fla. 2002). In the final case, it is hard to say who has won—that is still up in the air. That case is *Gagnon v. Sprint Corp.*, 284 F.3d 839 (8th Cir. 2002).

In six of the cases, the defendant was a private employer; in the other five cases, the defendant was a political subdivision of a state. There were no published USERRA cases against a state or the federal government in 2002 or 2003.

In all 11 of these cases, the person claiming USERRA rights was represented by private counsel, not the Department of Justice (DOJ). I contacted each of these private attorneys, to ask whether the plaintiff had ever requested the assistance of the Department of Labor (DOL) and DOJ. I learned that only two of the plaintiffs had requested DOL assistance. Those two plaintiffs are Gary Lapine (*Lapine v. Town of Wellesley*) and Marc Schmauch (*Schmauch v. Honda of America Manufacturing, Inc.*).

\*Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government. The best way to reach Captain Wright is by e-mail, at samwright50@yahoo.com.