LAW REVIEW 150

Protection from Discrimination—Continued

By CAPT Samuel F. Wright, JAGC, USNR*

Q: I am employed in a manufacturing plant, and I am a member of the Marine Corps Reserve. Five weeks ago, I noticed a beat-up old worktable that had apparently been discarded, and I asked my supervisor for permission to take it home. He said "sure" and I took it home. Nothing further was said about the matter. Two days ago, I informed my supervisor that I am being called to active duty, and I gave him a copy of my mobilization orders. Yesterday, the supervisor asked me about the table, so I returned it from home. I put it in the storeroom, right next to a very similar table that had been marked "scrap." This morning, I received written notice that I am being fired for "stealing" this table.

What gives? I think that I am being set up! Nothing was said about that old table until after I told the employer that I was about to be mobilized. The company is just going to discard the table anyway.

A: Can you spell "pretext"? I agree with you that the timing of the firing is highly suspicious—coming the day after you notified the employer of the impending mobilization and more than one month after the alleged offense. Even if you were guilty of some misconduct, it is unlawful for the employer to treat you more harshly *because of your service.* If the employer's normal sanction for similar misconduct is a warning or a two-week suspension, but you are being fired because you are a Reservist about to be called to active duty, the employer has violated title 38, United States Code, section 4311(a) [38 U.S.C. 4311(a)].

But having said that, let me quickly add that, as a Reservist, you should make a special effort to keep on the "straight and narrow." More than 400,000 National Guard and Reserve members have been mobilized since September 2001, some more than once. Employers are complaining and are looking for ways to rid themselves of this "problem." *If the employer is looking for an excuse to fire you, the last thing you want to do is to give the employer any such excuse.* So you should try to dot every "i" and cross every "t."