

LAW REVIEW 17100¹

October 2017

Urban Search and Rescue Personnel

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[Update on Sam Wright](#)

1.1.3.6a—USERRA applies to Urban Search & Rescue personnel

In Law Review 17011 (February 2017), there is a discussion of how the National Urban Search and Rescue Response System Act (NUSRRA) of 2016³ extended reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) to urban search and rescue (US&R) personnel who are appointed into Federal service. This article discusses another very important provision of the NUSRRA: protection under the Federal Employees' Compensation Act (FECA) if the system member suffers personal injury, illness, disability, or death because of a personal injury sustained while acting in the scope of such appointment.⁴

Urban search and rescue involves locating, rescuing (extracting), and providing initial medical stabilization to individuals trapped in collapsed buildings and other confined spaces. Under NUSRRA, an individual can sign up as a “system member” if he or she is not a full-time employee of the Federal Government and if he or she is accepted into a task force or a System management or other technical team.⁵ The Federal Emergency Management Agency (FEMA) can then appoint the individual into Federal service to participate in exercises, pre-incident

¹ The reader is encouraged to visit www.servicemembers-lawcenter.org. You will find more than 1,500 “Law Review” articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997.

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³ Pub. L. 114-326. This bill inserted a new section 327 to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) for matters relating to the National US&R Response System. Section 327 is codified at 42 U.S.C. 5165f.

⁴ Stafford Act § 327(h)(1) (42 U.S.C. 5165f(h)(1)). See also 5 U.S.C. 8101(1)(G), as amended by NUSRRA § 2(b)(1) (inserting US&R System members within the definition of “employee” for coverage under FECA).

⁵ Stafford Act § 327(a)(8) (42 U.S.C. 5165f(a)(8)).

staging, major disaster and emergency response activities, and FEMA-sponsored or sanctioned training events.⁶

Once appointed into Federal service, a system member is covered under FECA, which “provides compensation benefits to civilian employees of the United States for disability due to personal injury ... sustained while in the performance of duty.”⁷ Thus, FECA can be described as the workers’ compensation system for federal employees. FECA’s compensation benefits may include, among other things:

- medical services;⁸
- total disability benefit of monthly monetary compensation at two-thirds of an injured employee’s wage during the disability;⁹
- partial disability benefit of monthly monetary compensation that involves calculation of the injured employee’s wage-earning capacity during the disability;¹⁰
- permanent disability benefit for loss, or loss of use, of a body part or function or for disfigurement as provided by established compensation schedules;¹¹
- death benefit involving monthly compensation to dependents;¹²
- funeral and burial expenses;¹³ and
- vocational rehabilitation services.¹⁴

FECA coverage is not available if injury or death is caused by the employee’s own willful misconduct, caused by the employee’s intention to bring about the injury or death of himself or another, or proximately caused by the intoxication of the injured employee.¹⁵

The US&R system member (or dependent, if applicable) may elect to receive benefits from his or her State or local government instead of under FECA within one year of the date of applicable

⁶ Stafford Act § 327(f)(1) (42 U.S.C. 5165f(f)(1)).

⁷ U.S. Dept. of Labor, Q&A Concerning Benefits of the Federal Employees’ Compensation Act, Question 1, <https://www.dol.gov/owcp/dfec/regs/compliance/feca550q.htm>. See also n. 4 above.

⁸ 5 U.S.C. 8103.

⁹ 5 U.S.C. 8105.

¹⁰ 5 U.S.C. 8106.

¹¹ 5 U.S.C. 8107.

¹² 5 U.S.C. 8133.

¹³ 5 U.S.C. 8134.

¹⁴ 5 U.S.C. 8104.

¹⁵ 5 U.S.C. 8102(a).

personal injury, illness, disability, or death.¹⁶ This election is irrevocable unless otherwise provided by law,¹⁷ so it should be made with careful consideration.

Those who have read Law Review 17011 may remember the example of Gloria Bunker Stivic, who is a bartender at Archie's Bar and Grill in Queens, New York. She is also a US&R technician for a System task force, and when terrorists crash an airplane into the Empire State Building, FEMA appoints her task force to respond.¹⁸ She hangs up her apron and rushes to the site and immediately joins her colleagues in systematically searching for survivors and rescuing them from the rubble. As that article shows, Gloria has the right to reemployment to her job at Archie's whenever her Federal appointment is complete because she met all the relevant conditions of USERRA.

Continuing this example, an unstable part of the debris shifts and collapses on Gloria while she extricates people at the site of the terrorist attack. She sustains major injuries to her right leg and undergoes weeks of medical operations. Fortunately, Gloria has the right to access an array of benefits under FECA because she was injured in the performance of her duties as an employee of the United States. For example, she is entitled to medical services along with a total disability benefit of two-thirds of her monthly compensation at Archie's during her confinement to the hospital. If Gloria had sustained permanent damage to her leg that prevented her from returning to Archie's, then she would have been entitled to either partial disability or continued total disability benefits depending on the severity of the permanent injury. FECA also would have covered any vocational rehabilitation efforts.

Notwithstanding all of the FECA benefits that are available to Gloria, it is important to remember that under USERRA, Archie's must make reasonable efforts to accommodate any disability that Gloria might have incurred during her response at the Empire State Building.¹⁹ If she is unable to return to the position in which she would have been employed if her continuous employment had not been interrupted by her US&R service after the terrorist attack, then Archie's must place her in an equivalent position in terms of seniority, status, and pay for the duties that she is qualified to perform or would become qualified to perform with reasonable efforts by Archie's. Otherwise, Archie's must place Gloria in the nearest approximation to such a position.²⁰

¹⁶ Stafford Act §§ 327(h)(2)(A) and (B) (42 U.S.C. 5165f(h)(2)(A) and (B)). If a system member makes this election, FEMA shall reimburse the State or local government for the value of the benefits except for certain terms and conditions that may be imposed by regulation. Stafford Act § 327(h)(3) (42 U.S.C. 5165f(h)(3)).

¹⁷ Stafford Act § 327(h)(2)(C) (42 U.S.C. 5165f(h)(2)(C)).

¹⁸ It should be noted that FEMA would not activate a US&R task force from within the same state as a disaster unless in response to certain emergencies involving Federal primary responsibility under Stafford Act § 501(b). A governor would usually make such in-state deployments as state assets. Thus, Gloria would most likely be federally appointed if her task force were from another state, such as New Jersey.

¹⁹ 38 U.S.C. 4313(a)(3).

²⁰ Ibid.