

USERRA Does Not Protect the Spouse of a Service Member from Discrimination in her Employment

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[Update on Sam Wright](#)

1.1.3.9—USERRA and military family members

1.2—USERRA forbids discrimination

1.8—Relationship between USERRA and other laws/policies

Singletary v. Prudential Insurance Co. of America, 105 F. Supp. 3d 627 (E.D. La. 2015)

(Singletary I).³

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1600 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1400 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 42 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

³ This is a 2015 decision by Judge Martin L.C. Feldman of the United States District Court for the Eastern District of Louisiana. The citation means that you can find this decision in Volume 105 of *Federal Supplement Third Series*, starting on page 627.

***Singletary v. Prudential Insurance Co. of America*, 2015 U.S. Dist. LEXIS 102510 (E.D. La. August 5, 2015) (Singletary II).**⁴

***Singletary v. United Parcel Service*, 828 F.3d 342 (5th Cir. 2016).**⁵

The plaintiff, Linda Singletary, was a part-time non-union employee of United Parcel Service (UPS). When she was hired, she was offered the opportunity to purchase a life insurance policy on the life of her husband, Timothy Singletary, and she availed herself of that opportunity. On Sunday, 10/21/2012, Timothy Singletary was killed in a motorcycle accident. At the time of his death, Timothy Singletary was an active duty soldier in the United States Army, stationed at Fort Hood in Texas, but he was not on duty at the time of his death (on a Sunday).

Linda Singletary filed a timely claim on the life insurance policy, claiming the death benefit for the death of her husband. Prudential Insurance Company denied the claim based on an exclusion in the policy, to the effect that an active duty member of the armed forces of any nation did not qualify as a “dependent” under the life insurance policy and that no benefits would be paid for the death of an active duty service member even if the cause of death was unrelated to his or her military service. Mrs. Singletary claimed that the exclusion was unfair and unlawful because UPS and Prudential did not notify her of the exclusion at the time she purchased the policy, and she also claimed that the exclusion violated the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Employee Retirement Income Security Act (ERISA), and Louisiana law. After exhausting her administrative appeals within the insurance company, Mrs. Singletary filed suit against both UPS and Prudential in the United States District Court for the Eastern District of Louisiana. The district court rejected all of Mrs. Singletary’s claims, and the United States Court of Appeals for the 5th Circuit affirmed the district court’s decision.

Section 4311 of USERRA provides:

(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that *membership, application for membership, performance of service, application for service, or obligation*.

⁴ This is a follow-up decision by Judge Feldman, later in 2015.

⁵ Mrs. Singletary appealed to the United States Court of Appeals for the 5th Circuit, the federal appellate court that sits in New Orleans and hears appeals from district courts in Louisiana, Mississippi, and Texas. A three-judge panel of the 5th Circuit affirmed Judge Feldman’s disposition of the case. The citation means that you can find the decision in Volume 828 of *Federal Reporter Third Series*, starting on page 342.

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person *(1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter.* The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

(c) An employer shall be considered to have engaged in actions prohibited--

(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title.⁶

Shortly after Mrs. Singletary filed her lawsuit, the defendants (Prudential and UPS) filed a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In ruling on a motion to dismiss, the judge should *assume that all the facts alleged by the plaintiff are true*. If the judge can say that the plaintiff is entitled to no relief that the court can award even if all those facts are true, the judge should dismiss the complaint under Rule 12(b)(6). The judge should consider each count of the plaintiff's complaint separately.

Mrs. Singletary has never served in any one of the uniformed services,⁷ and she has never applied to join a uniformed service. Accordingly, Judge Feldman held that Mrs. Singletary did

⁶ 38 U.S.C. 4311 (emphasis supplied).

⁷ For USERRA purposes, the uniformed services are the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, as well as the commissioned corps of the Public Health Service. 38 U.S.C. 4303(16). The commissioned corps of the National Oceanic & Atmospheric Administration (NOAA) is a uniformed service as

not have a valid claim under section 4311(a), even if all the facts are as alleged in her complaint, and Judge Feldman granted the defendants' motion to dismiss Mrs. Singletary's claim under section 4311(a) of USERRA.⁸

Judge Feldman also considered Mrs. Singletary's claim under section 4311(b) of USERRA. That subsection makes it unlawful for an employer to discriminate against or take an adverse employment action against any person because that person has done one of the following four things:

- a. Taken an action to enforce a protection afforded to any person under USERRA.
- b. Testified or made a statement in connection with any USERRA proceeding.
- c. Assisted or otherwise participated in any USERRA investigation.
- d. Exercised a right conferred by USERRA.⁹

Judge Feldman noted that Mrs. Singletary does not claim to have done any of these four things. Thus, he granted the defendants' motion to dismiss Mrs. Singletary's claim under section 4311(b). He also granted the defendants' motion to dismiss Mrs. Singletary's claims under Louisiana state law, because ERISA preempts state laws as applied to employee benefit programs, like the employee life insurance policy at issue in this case.

Judge Feldman did not dismiss Mrs. Singletary's ERISA claim—he held that it was not impossible that discovery could develop facts that might support that claim. After a brief discovery period, Prudential and UPS filed a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. A judge should grant a motion for summary judgment if he or she can say, after a careful review of the evidence, that there is no evidence (beyond a "mere scintilla") in support of the non-moving party's claim or defense and that no reasonable jury could find for the non-moving party.

Judge Feldman found that the defendants' motion for summary judgment met this high standard, and he granted the motion.¹⁰ Mrs. Singletary appealed to the 5th Circuit, which affirmed Judge Feldman's decision.¹¹ This case is over.

defined by 10 U.S.C. 101(a)(5), but USERRA has its own definition of "uniformed services" and the NOAA Corps is not included. Please see Law Review 15002 (January 2015).

⁸ *Singletary I*.

⁹ 38 U.S.C. 4311(b).

¹⁰ *Singletary II*.

¹¹ *Singletary III*.