

LAW REVIEW¹ 19047

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(Updated August 2019)

DOJ Sues the Warren County Board of Education again

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[Update on Sam Wright](#)

1.3.1.2—Character and duration of service

1.4—USERRA enforcement

I congratulate the United States Department of Justice (DOJ) and the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS) for the lawsuit recently filed against the Warren County Board of Education (North Carolina), on behalf of Army Reserve Command Sergeant Major Dwayne Coffer. Please see the linked article.

In the lawsuit, DOJ alleges that the Board of Education violated the Uniformed Services Employment and Reemployment Rights Act (USERRA) when it downgraded Coffer from the Dean of Students position at a middle school to gym teacher, upon his return from a five-week period of Army active duty. This is not the first time that DOJ has sued this board of education on behalf of this reservist. USERRA provides that when the court finds that the defendant employer has

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1700 "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 1500 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. You can reach me by e-mail at SWright@roa.org.

violated USERRA willfully it is to award double damages.³ This is an appropriate case for awarding double damages.

Coffer was unlawfully denied proper reemployment in August 2017 and has not worked for the board of education since then. To mitigate his lost earnings, he returned to active duty from 3/24/2018 to 8/22/2018 and from 10/1/2018 to the present and continuing. These active duty periods do not count toward his cumulative five-year limit with respect to his employer relationship with the Warren County Board of Education.⁴ In this situation, where the service member returns to active duty to mitigate damages, I have urged that the active duty earnings should not be deducted from the back pay award to the service member.⁵

Warren County is a political subdivision of the State of North Carolina—it is not an arm of the state government. USERRA provides that, for purposes of USERRA enforcement, political subdivisions are treated as private employers.⁶ Accordingly, the named plaintiff in this lawsuit is Dwayne Coffer, not the United States of America, although DOJ is providing free legal representation.⁷

DOJ has asked Congress to amend USERRA to provide that the United States of America would be the named plaintiff in any case brought by DOJ.⁸ I support that proposal. In a case like this, if the named plaintiff were the United States of America it would be possible for DOJ to seek injunctive relief not just for Coffer but for all Warren County Board of Education employees who serve our country in the National Guard or Reserve. It seems clear that this employer is a serial lawbreaker.

Here is the recent article about the Coffer case:

<https://taskandpurpose.com/north-carolina-school-demoted-army-reservist-during-active-duty>

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North Carolina school [reinstates dean demoted to gym teacher](#) after being called to active duty in the Army

³ 38 U.S.C. 4323(d)(1)(C).

⁴ 20 C.F.R. 1002.103(b).

⁵ See Law Review 13032 (February 2013) and Law Review 18045 (May 2018).

⁶ 38 U.S.C. 4323(i).

⁷ In cases brought by DOJ against states, as employers, the named plaintiff is the United States of America. 38 U.S.C. 4323(a)(1) (final sentence).

⁸ Please see Law Review 18074 (August 2018).