

LAW REVIEW¹ 25043

November 2025

NJ Army National Guard Soldier Sues the City of Bergenfield and Recovers \$190,000 in Emotional Distress Damages and \$318,000 in Punitive Damages. How Is that Possible?

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

1.4—USERRA enforcement.

1.8—Relationship between USERRA and other laws/policies.

Q: I am Captain Henry E. Plimack, USCG (Ret.). I am a life member of the Reserve Organization of America (ROA), and I currently serve as ROA's Vice President for Naval Services. I have read with great interest many of your "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "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 Spouses' 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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

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 45 years, I have collaborated 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 38 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 <mailto:swright@roa.org>.

other laws that are especially pertinent to those who serve our country in uniform.

I have also read with great interest that NJ Army National Guard (ARNG) soldier Jessica Hunter, a police officer for Bergenfield, NJ, sued her employer in state court and was awarded \$190,000 in emotional distress damages and \$318,000 in punitive damages because of the harassment and discrimination that she suffered, at the hands of her civilian supervisors, because they were annoyed with her absences from work to perform training and service in the ARNG.³

I do not understand how this is possible. In Law Review 12067 (July 2012), you stated that USERRA provides for pecuniary damages, such as back pay, and that punitive damages are limited to a doubling of the pecuniary damages if the court determines that the USERRA violation was willful. Does this case cause you to reconsider what you wrote in Law Review 12067?

Answer, bottom line up front!

Yes. Whenever a new case is decided, I always consider the possibility that I should revise what I have written in previous “Law Review” articles.

Explanation

First, I want to congratulate attorney Kevin E. Barber of Morristown, NJ for his imaginative, diligent, and successful (at least so far) representation of ARNG soldier Jessica Hunter. Mr. Barber chose to sue Bergenfield in state court instead of federal court and relied primarily

³ See <https://www.nj.com/bergen/2025/03/cop-awarded-500k-after-being-discriminated-against-for-being-in-the-national-guard.html>.

on NJ state law rather than USERRA. The favorable result validates his strategy.

Q: What is the relationship between USERRA and state laws?

A: USERRA is *a floor and not a ceiling* on the employment rights of service members and veterans. USERRA does not supersede or override a state law that provides greater or additional rights. USERRA provides:

- (a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.
- (b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the enjoyment of any such benefit.⁴

USERRA does not provide for emotional distress damages or punitive damages, but USERRA does not supersede a state law that provides greater or additional rights.

Q: Is this case over?

A: No. It is likely that the City of Bergenfield will appeal. We will keep the readers informed of developments in this interesting and important case.

⁴ 38 U.S.C. § 4302.

Please join or support ROA.

This article is one of 2,300-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. We add new articles each month.

ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).⁵

ROA is more than a century old. On 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide adequate national defense. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and

⁵ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight⁶ uniformed services, you are eligible for membership in ROA,⁷ and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at <https://www.roa.org/page/memberoptions> or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

⁶ Congress recently established the United States Space Force as the eighth uniformed service.

⁷ Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join. The ROA Constitution was recently amended. Ancestors and lineal descendants of past or present members of the United States armed forces are now also eligible to join ROA.

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⁸ You can also contribute on-line at www.roa.org.