

Case Victories

LANDMARK DECISIONS & APPEALS

LEGAL DISCLAIMER: THE RESULTS OF ALL CLIENT MATTERS DEPEND ON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. PAST SUCCESSES DO NOT PREDICT OR GUARANTEE FUTURE SUCCESSES.

Mathew B. Tully

- Jose D. Hernandez v. Dept of the Air Force
- Obtained appeal decision from the Merit Systems Protection Board

that the board should overturn its original decision and could adjudicate claims of USERRA violations prior to the statute's enactment in 1994. Jose D. Hernandez, a retired aircraft mechanic for the Air Force contended he was erroneously charged for leave time from 1980 to 2001. Hernandez was granted the petition and the original decision was vacated.

Mathew B. Tully

- Pucilowski v. Department of Justice
- Alexander F. Pucilowski Jr., a federal corrections officer and federal air marshal contended he was erroneously charge for military leave from 1989 to 2002 while in the National Guard. Court said a series of its recent rulings on military leave pay cases, including Hernandez, has signaled its view that the Uniformed Services Employment and Reemployment Rights Act should be interpreted liberally to the benefit of guardsmen and reservists. This case resulted in more favorable military leave pay determinations by the U.S. Merit Systems Protection Board

toward federal employees who are also in the National Guard or military reserve. "Will expand the time frame for which guard personnel can seek compensation and potentially make their case easier to prove" – Mathew B. Tully

Mathew B. Tully

- Jackson v. United States
- The United States Supreme Court vacated the prior judgment upholding defendant's sentence and remanded the matter to the court for reconsideration of defendant's sentence in light of Booker.

Mathew B. Tully

- State of New York County Court: Orange County - People v Jones

Decision and Order - Client's 9 year sentence and conviction vacated with Appeal victory.

Mathew B. Tully

- Miller v. U.S. Postal Service

- MSPB

said reservists who worked at the Postal Service also eligible for back pay because of an erroneous leave policy.

Mathew B. Tully and Greg T. Rinckey

- Collins v. Department of the Agriculture

- Filed an appeal alleging that while employed by the Department of the Agriculture he was charged military leave even on non-work days which caused him to use annual, sick, or leave without pay to perform military duties from 1989 -2000. Based on USERRA

, the agency was ordered to correct its records and to pay appellant the back pay that was owed.

Greg T. Rinckey

- Garcia v. Department of State Marc

- A. Garcia petitioned for review of an initial decision denying his request for corrective action. Garcia was granted the petition and the original decision was vacated. Held that the board could adjudicate claims of USERRA

violations prior to the statute's enactment.

Greg T. Rinckey

- Savage v. Savage

- Successful Supreme Court appeal in which lower court decision which found client to be in willful violation of a child support order was reversed and reimbursed counsel fees.

Steven L. Herrick

- Darrell Crawford v. Dep't of the Army

- Obtained decision from the Merit Systems Protection Board that the Army violated his rights under the Uniformed Services Employment and Reemployment Rights Act

by failing to reemploy him in a proper position after his return from active military duty.

Steven L. Herrick

- James Townsend v. JP Morgan Chase

- Obtained settlement in which defendant, who had effectively demoted client upon his return from service in violation of USERRA

, reassigned client to the position he occupied before leaving for military service. Defendant also paid client's attorney fees. Due to Tully Rinckey PLLC's aggressive case strategy, the Department of the Army agreed to settle the case and pay the client \$150,000, which included back pay with interest and benefits, plus one year of salary, and full reimbursement of attorneys' fees. Moreover, the Agency agreed to expunge the proposal and decision to remove from the employee's entire record, create a successful rating for the client's 2009 performance evaluation as well as produce a neutral reference for employment purposes.

Steven L. Herrick

- Isabella v. Department of State

- Appellant Isabella applied to the Department of State (DOS) for a Defense Security Service

appointment. DOS refused to hire him because his 37th birthday was approaching before they could get his application processed. He appealed to the MSPB

who rejected the DOS claim due to the law that requires a federal agency to waive the maximum age rule when hiring a veteran unless they can prove that the age limit rule would be essential to the job duties. The MSPB

remanded the case to the Administrative Judge who ruled in favor of DOS. Appellant appealed to the MSPB

again, who reaffirmed its decision that the age rule cannot be applied. MSPB

ordered DOS to process Appellant's application. In this case, the OPM intervened saying that the MSPB's

decision would severely impact civil service law. MSPB

once again reaffirmed its original decision. The Agency originally removed the employee from federal employment due to alleged sexual harassment. However, while deposing the alleged victim, Tully Rinckey PLLC got her to acknowledge that the incident in question could have been unintentional conduct, and the Deciding Official testified that he would not have removed the employee if the alleged conduct was in fact not deliberate. Further, through discovery, Tully Rinckey PLLC was able to establish that the Proposing Official was not a credible person and had ulterior and improper motives for the employee's removal.

Federal Employment Law Case

- Filed an MSPB

appeal after an OPM denied client's claim for a survivor annuity benefit following her ex-husband's death. The divorce settlement agreement, although handwritten and fairly unsophisticated, did express the ex's intent for her to receive the annuity upon his death. OPM rescinded its decision and issued the survivor annuity.

Thomas J. Carr

- Successfully defended U.S. Border Patrol agents Dennis J. Rascoe and Daniel S. Taylor who were justified in shooting Timothy J. Fleury in what authorities call a drug related incident.

Schenectady County SPCA v. Richard Mills

- Won appeal in FOIL request to have information released regarding veterinarians, and veterinarian technicians.

Security Clearance Granted From DOHA

- Tully Rinckey PLLC received notification of a favorable security clearance determination. The hearing for this matter was held before a Defense Office of Hearings & Appeals (DOHA) administrative judge on March 17, 2011 in Arlington, Va. This case involved foreign influence and foreign preference issues pertaining to Guidelines B and C. The government alleged that due to applicant's family living in a South American country and her possession of a foreign passport she was disqualified from holding a security clearance. At the hearing Christopher Graham, of counsel with the firm, adduced testimony and offered documentary evidence to prove that applicant was trustworthy, reliable, and not a risk to national security. The administrative judge found that it was clearly consistent with national interests to grant the applicant's security clearance.

Favorable Decision by WHS PSAB

- In July 2011, Tully Rinckey PLLC received notification of a favorable security clearance

determination by Washington Headquarters Service, Personnel Security Appeal Board (WHS PSAB). The case involved financial issues of a Department Of Defense civilian employee. At a hearing before an administrative judge at the Defense Office of Hearings & Appeals (DOHA), the firm's Of Counsel, Christopher Graham, elicited testimony and offered documentary evidence that mitigated the security concerns about financial considerations of Guideline F. The DOHA administrative judge issued a recommended decision to grant a clearance. WHS PSAB concurred and found it clearly consistent with national interests to grant the appellant's security clearance.

Security Clearance Granted From DOHA

- Tully Rinckey PLLC Law Firm received notification of a favorable security clearance determination. The hearing for this matter was held before a Defense Office of Hearings & Appeals (DOHA) administrative judge on March 24, 2011 in Arlington, Va. This case involved financial considerations to Guideline F. The government alleged that applicant's investments in the options markets yielded unlisted assets of about \$800,000, and alleged failure to timely file income tax returns. At the hearing Christopher Graham, of counsel with the firm, had his client testify that his options trading account never exceeded \$94,000, which he disclosed on his SF 86. This was corroborated by the government's own exhibits. He also offered documentary evidence to prove that applicant's tax returns were timely filed. The administrative judge found that it was clearly consistent with national interests to grant the applicant's security clearance.

Security Clearance Granted From DOHA

- Tully Rinckey PLLC received notification of a favorable security clearance determination after a hearing before a DOHA administrative judge on April 20, 2011 in Arlington, Va. This case involved foreign influence issues pertaining to Guideline B. The government alleged that due to applicant's family living in a foreign country he was disqualified from holding a security clearance. At the hearing Christopher Graham, of counsel with the firm, adduced testimony and offered documentary evidence that applicant had been a U.S. Embassy employee for 28 years before migrating to the United States and becoming a citizen. Applicant's long and dedicated service to the government outweighed the security concerns about family members living in India and proved that applicant was trustworthy, reliable, and not a risk to national security. The administrative judge found that it was clearly consistent with national interests to grant the applicant's security clearance.

DOHA Written Response Successful

- In May 2011, Tully Rinckey PLLC received notification of a favorable security clearance determination. Christopher Graham, of counsel with the firm, prepared and submitted a written response to the Defense Office of Hearings & Appeals (DOHA) on behalf of Applicant and successfully mitigated the government's concerns without the need for a hearing. The government raised security concerns under Guideline G – alcohol abuse. The government allegations against applicant included allegations of alcohol dependence. Mr. Graham submitted a written argument and documentary evidence to prove that the two diagnoses of alcohol dependence were deficient and not made using accepted diagnostic standards. The evidence demonstrated that applicant was trustworthy, reliable and not a risk to national security. Tully Rinckey PLLC prevailed in the written response alone and applicant was found eligible to maintain her security clearance.

Tully Rinckey PLLC

- Hussey v. United States Department of Agriculture
- To date, the U.S. Merit Systems Protection Board (MSPB)

has issued three final decisions awarding the firm over \$45,000 in reasonable attorneys' fees

based upon the successfully enforced settlement of the appellant's removal appeal. In one of those decisions, the Board held that "the appellant met his burden of showing that he is the prevailing party, he incurred attorney fees and that an award of attorneys fees is warranted in the interest of justice." E.g., *Hussey v. United States Department of Agriculture*, MSPB Docket No. DA-0752-10-0130-A-1 (Jan. 6, 2011).