

Court Rules Army Reservist Was Wrongfully Fired

In a decision that could cost the U.S. Postal Service more than \$1 million, a federal appeals court has ruled in favor of an Army Reserve sergeant major who alleges he was fired from his job as a postal worker because of his military career.

The U.S. Court of Appeals for the Federal Circuit on Monday reversed the Merit Systems Protection Board's earlier ruling that Army Sgt. Maj. Richard Erickson of Fort Myers, Fla., had waived his rights under the Uniformed Services Employment and Reemployment Rights Act to serve his country.

Erickson, who was in the Army National Guard for 15 years before transferring to the Army Reserve in 2006, said he hopes his case helps other Guard and Reserve members who have lost or could lose their jobs because of their military service.

"This is not just for me, but for every citizen soldier who has been treated like this," he said. "They fought the Taliban, then came home and had to fight their employers who were supposed to be supportive."

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The Postal Service fired Erickson in 2000 for "excessive use of military leave" in his duties in the Florida National Guard.

"I went from being the best employee in the world to the lowest rated," Erickson said. "The only thing that changed was my dual status as a citizen soldier."

The board previously ruled that Erickson had "abandoned" his career as a postal worker. The appeals court disagreed, saying that Erickson's statement that he liked the military and did not like the way employees were treated in the Postal Service "cannot be regarded as equivalent to an expression of intention to resign from his civilian position."

The Postal Service had said Erickson's absences for military duty exceeded the five-year cumulative time limit in USERRA for being away from a civilian job. But Erickson's time spent in training required for promotion and special skills met the law's requirements to temporarily halt the five-year-clock, the appeals court found.

According to Erickson's attorney, Mathew B. Tully, who also writes a legal column for the Military Times papers, that included attending the Sergeants Major Academy, and language and scuba training.

The decision further clarifies the abandonment principle under USERRA, Tully said, and will help other military members by making it more difficult for public and private employers to use this in firing military members from their civilian jobs.

Erickson has been awarded multiple medals for combat distinguished valor, including two Bronze Stars, and also has a Purple Heart.

He filed a complaint with MSPB after leaving active duty in 2006. The appeals court noted that there is no statute of limitations on filing a USERRA complaint or claim.

Tully said Erickson should be entitled to 11 years of back pay, plus two years of vacation and sick time. The amount will depend on a judge's determination of the seniority Erickson would have achieved after those 11 years.

Erickson said he is still unemployed, although is currently working part-time for a contractor. "When I was fired from the post office, I was red-flagged, so I was blackballed from any other federal agency. I'm limited in what I can apply for here," he said. "Being divorced and raising three daughters, it wasn't easy."