

## Supreme Court Hears 1st USERRA Case

The Supreme Court earlier this month heard the first case involving the alleged violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA) since it was enacted in 1994. USERRA is a law that prevents employers from discriminating against employees who are members of the Reserve/Guard members.

The Supreme Court heard the case of Army Reserve Sgt. Vincent E. Staub, who claims his rights under USERRA were violated when Proctor Hospital fired him in 2004. Staub was working as an angiography technologist at the Peoria, Ill., hospital when he lost his job. Staub claims he was fired because of his military service. The hospital maintains Staub was fired due to insubordination.

A jury that first heard the case in 2008 sided with Staub. On appeal, an appellate court reversed the decision based on the “cat’s paw theory” of employer liability, which means the official who fired Staub – and subsequently the hospital – is not liable because she did not demonstrate hostility toward Staub’s military service, as did his two immediate supervisors.

Mathew Tully, a military veteran who is now an attorney specializing in USERRA litigation, is watching the Supreme Court case closely. He said the cat’s paw theory should not apply to a USERRA case.

“It is undisputed that people were making fun of him because of his military service,” Tully said. “It’s undisputed that his first-line supervisor told him this is causing trouble in the office, that he basically needed to pick a career. That in and of itself should be actionable.”

Whether or not the official who ultimately decided to fire him was involved in the day-to-day harassment shouldn’t have any bearing on the case, said Tully, who is a founding partner of Tully Rinckey Attorneys and Counselors at Law.

“The guy was still subjected to adverse employment actions – harassment in the office because of his military service,” he said. “But unfortunately the arguments that won at the trial court were reversed at the appellate court, and that’s why it’s before the Supreme Court.” It will be months before the Supreme Court issues a decision, which will affect not only veterans and employers, but also employers and employees subject to other federal anti-discrimination statutes.