

Court Rules in Favor of National Guard Vet Fired by Postal Service

A federal court on Feb. 28 ruled in favor of a veteran who was fired by the U.S. Postal Service after he had spent nearly six years on active National Guard duty.

The U.S. Court of Appeals for the Federal Circuit found that the Merit Systems Protection Board had improperly ruled that Richard Erickson had abandoned his postal career and had waived his rights under the Uniformed Services Employment and Reemployment Rights Act. The case will now be sent back to MSPB to be reconsidered.

If MSPB rules for Erickson, he could get his job as a distribution clerk back, and be eligible for more than \$1 million in back pay, benefits and attorney fees.

The key question of the case is whether Erickson had abandoned his job to serve in the military, since USERRA does not protect employees who leave their civilian jobs for military careers. The Postal Service fired Erickson in 2000 after he served several stints in the National Guard. Erickson allegedly told a Postal Service labor relations specialist that "he is staying in the military until his orders expire," according to a court filing. Erickson allegedly said "he likes the military and said that he did not like working for the [Postal Service]. He doesn't care for the way they treat their employees."

Although Erickson told MSPB that he never intended to quit and wanted to stay at the Postal Service, MSPB ruled that his statement — along with the length of his voluntary Guard service and his failure to contest his removal for five years — was evidence that he had abandoned his postal job.

The appeals court ruled that MSPB had not considered all the evidence in Erickson's case. For example, the court said that not all of Erickson's six years of service should have been counted toward USERRA's five-year service cap, after which a service member loses his re-employment rights. Erickson's attorney, Mathew Tully, said Erickson is a National Guard sergeant major in Army special forces and spent several years in training and serving overseas, none of which should have been counted toward the USERRA cap.

The court also ruled that Erickson's statement that he liked the military and not the Postal Service fell short of being a statement of intent that he planned to leave his civilian job.

"This is a man who spent years away from his family so that he could protect and serve his country," Tully said. Tully is a columnist for the Military Times newspapers, which are sister publications of Federal Times. "It is an absolute disgrace that my client has had to endure such hardships."

The Postal Service said it is reviewing the decision to decide if it will appeal.