

Court Rules “Excessive” Military Absence no Justification for Firing

The U.S. Postal Service’s decision to fire an Army National Guardsman for “excessive absence due to military service” violated federal laws protecting servicemembers’ civilian jobs, a federal appeals court ruled on Monday.

The decision is the latest victory for former Sgt. Maj. Richard Erickson and could have wide-reaching effects for troops who have struggled in recent years to balance their civilian employment with lengthy deployment and training schedules, according to attorneys involved in the case.

Erickson, who served with the 3rd Special Forces Battalion, 20th Special Forces Group, was hired in 1988 by the Postal Service, but missed 22 months of work due to training between 1991 and 1995, and was in the office for only a few days between 1996 and 2000.

The Postal Service fired him in 2000. This week, the Court of Appeals for the Federal Circuit ruled that the decision to fire Erickson was unlawful despite his numerous absences due to military responsibilities.

Even though in total his absences did not exceed the five-year rule established under the Uniformed Services Employment and Reemployment Rights Act, the agency argued in court that his time away essentially amounted to abandoning his job.

The federal appeals court is the latest to reject that interpretation of the law, saying that “showing a preference for military service” does not amount to forfeiting a civilian job.

Mathew Tully, Erickson’s attorney and a specialist in USERRA law, said that’s an important distinction in light of the back-to-back deployments and time-consuming training requirements. “This should be a case study for human resources managers,” he said. “They need to understand that you can’t explicitly abandon your job just by serving in the military.” The latest court ruling pushes the issue back down to the agency’s Merit Systems Protection Board for a settlement. Department of Justice officials handling the case declined comment. /P.