

MSPB Orders USPS to Reinstate Highly Decorated Green Beret Sergeant Major Unlawfully Removed in 2000

7 Years of Litigation Poised to Yield 14 Years of Back Pay, Benefits, Attorney Fees, and Retirement Enhancements

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The

Merit Systems Protection Board (MSPB) on Tuesday refused to let the U.S. Postal Service (USPS) wiggle out of a Judge's December 2012 order to

retroactively reinstate and provide 14 years of back pay and benefits to one of the highest ranking Army Special Forces (commonly called "Green Berets") Non Commissioned Officers, whom the Postal Service unlawfully removed in 2000 solely because of his military service and in violation of the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA). In denying the Postal Service's appeal, the Board dismissed their argument that the highly decorated veteran should not be entitled to reinstatement as relief for the agency's discriminatory firing of him because of his courageous military service. The Board noted that the Post Office was wrong in its interpretation of USERRA, and by correctly providing full relief to Sergeant Major Richard Erickson it has bolstered the foundation for what will likely be one of the of the largest awards in an employment discrimination case against the Postal Service and the federal government. The Board's latest decision

in *Erickson v. U.S. Postal Service*

centered on service members' protections against discrimination based on military duty under USERRA. It marked another victory for Sergeant Major Erickson, whose service in Afghanistan earned him three medals for combat distinguished valor and the Purple Heart for combat injuries. With this latest decision, he stands to receive millions of dollars in back pay, benefits, attorney fees, and retirement enhancements. Since 2007, MSPB administrative judges have twice ruled on the case (2007, 2012) and Tuesday's decision marked the Board's third ruling (2008

, 2010

, 2013

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, 2011

) making this one of the most litigated cases of military discrimination in federal government history. More than 2,650 days – or more than seven years and three months – have passed since Sergeant Major Erickson filed his initial appeal with the MSPB in September 2006. Throughout that time, Tully Rinckey PLLC, a service-disabled, veteran-owned small business, has not asked for nor received a penny from Sergeant Major Erickson for its representation of him despite incurring hundreds of thousands of dollars in legal and litigation costs. In this latest victory for Erickson, the Post Office filed a petition for review (PFR) in January 2013 about a December 2012 Judge's decision in Erickson's favor. In the PFR, the Post Office opposed Sergeant Major Erickson's reinstatement based upon a flawed interpretation of USERRA according to the final MSPB decision. The Board gave the Postal Service 20 days to reinstate Sergeant Major Erickson and 60 days to provide him with back pay and benefits, which is long overdue to right a wrong that occurred nearly 14 years ago. "It has been a long, hard fight for Sergeant Major Erickson to get to this point but we are very pleased that the Board has finally granted him the remedy that he justly deserves. The final step now is for the Postal Service to do the right thing by complying with the Board's decision so we can avoid additional appeals or subsequent litigation regarding the Postal Service's compliance. The Postal Service had voiced its concern regarding the cost of additional litigation in this matter, including as a basis for not reinstating Sergeant Major Erickson after the administrative judge's decision a year ago, and we hope that concern will be reflected in their efforts to fully and promptly comply with the Board's decision and the law." said Tully Rinckey PLLC Senior Associate Matthew D. Estes, who represented Sergeant Major Erickson before the Board during the most recent legal victory. To speak with Mr. Estes, or for more information, please contact Shaun May at (202) 375-2238 or at smay@fedattorney.com