

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FL

FILED

BLAINE LAMBERT,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

Case No. 8:17-CV-1129-7-20-JSS

COMPLAINT FOR VIOLATIONS OF THE
UNIFORMED SERVICES EMPLOYMENT
AND REEMPLOYMENT RIGHTS ACT,
DEMAND FOR DAMAGES, REQUEST
FOR INJUNCTIVE RELIEF AND
DEMAND FOR JURY TRIAL

EXEMPT FROM FILING FEES
PURSUANT TO 38 U.S.C. § 4323(h)(1)

Plaintiff, Blaine Lambert, by and through his undersigned attorneys, brings this Complaint against United Parcel Service, Inc. (“UPS”), and alleges as follows:

NATURE OF THE CASE

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 (“USERRA”) challenging Defendant’s violations of his rights as a veteran returning from military service, including by failing to promptly and properly reemploy him following his honorable discharge from active duty with the United States Army.

2. Mr. Lambert seeks all relief available under USERRA, including his lost wages and benefits as well as liquidated damages for Defendant’s willful violation of USERRA.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).

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4. The United States District Court for the Middle District of Florida (Tampa Division) is a proper venue for this action under 38 U.S.C. § 4323(c)(2), because Defendant UPS is a company that maintains a place of business in this judicial district. Additionally, venue is proper under 28 U.S.C. § 1391(b) because all or a substantial part of the events giving rise to this action occurred in this district.

PARTIES

5. Plaintiff Blaine Lambert is a current resident of Port Charlotte, Florida. With the exception of the time Mr. Lambert served in the United States Army, he has resided in the Tampa Bay or Southwest area of Florida his entire life, including when he worked at the UPS facility in Sarasota, Florida.

6. Defendant United Parcel Service, Inc. (“UPS”) is the world's largest package delivery company and a provider of supply chain management solutions. UPS is headquartered in the city of Sandy Springs, Georgia, United States, which is a part of the greater Atlanta metropolitan area. Defendant UPS maintains numerous places of business within this District, including the Sarasota facility where Plaintiff was employed. Defendant UPS is an employer for the purposes of USERRA, 38 U.S.C. § 4303(4), because UPS employed, managed and controlled Mr. Lambert’s daily activities throughout his employment with UPS.

FACTS

7. Mr. Lambert started work at UPS on or about September 20, 2005, and worked as an ECS Clerk at UPS’s Sarasota, Florida, facility until he joined the United States Army.

8. On or about March 27, 2008, Mr. Lambert joined the United States Army.

9. Before entering the Army, Mr. Lambert informed his supervisor of his pending military leave and his desire to continue working for UPS upon the completion of his military service.

10. On or about March 18, 2011, Mr. Lambert's supervisor, Michael Hathcock, wrote a letter (on Mr. Lambert's behalf) to a prospective lender stating, in full:

Blaine Lambert is an employee at United Parcel Service in good standing since September 20, 2005. He is currently on military leave. When he returns from his service to our country he will still have his job waiting for him. When he returns he will have his previous job position as well as his prior rate of pay, which was \$12.99 per hour. If you have any further questions do not hesitate to call me at 941-364-2070.

11. While serving in the Army, Mr. Lambert incurred injury to his knee. The injury led to Mr. Lambert's release from military duty on or about July 12, 2011, and, ultimately, his honorable discharge from the Army.

12. On July 29, 2011, the Army issued a certificate that honorably discharged Mr. Lambert as of September 27, 2011, for retirement due to disability.

13. Beginning in early August 2011 Mr. Lambert notified UPS of his intent to return to work.

14. As part of the process of informing UPS of his intent to return to work, Mr. Lambert informed UPS of his service-connected disability.

15. After Mr. Lambert informed UPS of his service-connected disability, UPS employee, Keith Waters, informed Mr. Lambert that he was required (on his own time, at his own expense, and as a condition of returning to work) to obtain medical clearance *before* Mr. Lambert could return to work.

16. Even though USERRA prohibits such a pre-condition, Mr. Lambert duly followed UPS's instructions, and on or about August 17, 2011, attended a medical examination with U.S.

HealthWorks. U.S. HealthWorks cleared Mr. Lambert to return to work subject to two accommodations: no stairs and no ladders.

17. Mr. Lambert informed UPS of the U.S. HealthWorks' examination result and further requested to return to work following his release from military duty.

18. The Army honorably discharged Mr. Lambert on September 27, 2011.

19. Approximately one week after his September 27, 2011 discharge, Mr. Lambert again requested that UPS re-employ him.

20. Mr. Lambert, in October 2011, again requested that UPS re-employ him.

21. Despite these repeated requests, UPS did not re-employ Mr. Lambert following his 2011 discharge from the Army.

22. Notwithstanding UPS's attempts to suggest that medical clearance was a necessity for Mr. Lambert's reemployment, UPS employed a wheelchair-bound employee in the position of Internationals Clerk at the UPS's Sarasota facility where Mr. Lambert had worked before his military leave. On information and belief, the wheelchair-bound employee had not been absent from employment with UPS to perform military service.

23. After UPS failed to promptly and properly re-employ him, Mr. Lambert found alternate work, albeit with less pay and benefits. Since at least 2012, Mr. Lambert has been employed in Port Charlotte, Florida -- a location approximately 50 miles from Sarasota.

24. Upon information and belief, there is reasonable certainty Mr. Lambert would have been promoted to a Driver position with UPS had his employment with UPS not been interrupted by his absence for military service.

25. On or about July 7, 2015, Mr. Lambert's then-attorney sent a letter to Teri McClure, General Counsel of UPS, informing UPS that Mr. Lambert had been and still was

entitled to be reemployed by UPS following his honorable discharge, and that the failure to re-employ by UPS was in violation of USERRA's requirements.

26. Thomas Acquaviva, UPS's Division Manager, , sent a letter to Mr. Lambert dated August 28, 2015 that stated as follows:

It has been brought to my attention by your manager that you are on an unauthorized leave.

THIS IS YOUR FINAL WARNING!

If you do not report to work within 48 hours from receipt of this letter, your employment with UPS will be terminated.

27. Contrary to the August 28, 2015 letter, Mr. Lambert was not on unauthorized leave; UPS had repeatedly failed to re-employ him as requested. Despite the letter claiming to be a "FINAL WARNING!" Mr. Lambert had never received any prior warning or notice by UPS claiming that it considered him to be on authorized leave.

28. In response to the August 28, 2015 letter, Mr. Lambert promptly called Tom Acquaviva to inform UPS that he could not simply abandon his current job in Port Charlotte – i.e., the alternative employment he obtained after UPS's failure to promptly re-employ him – to report to UPS in Sarasota within 48 hours. Nonetheless, Mr. Lambert expressed interest in returning to work at UPS, including by working at a UPS facility in Port Charlotte.

29. By no later than the time that UPS received the letter from Mr. Lambert's attorney in July 2015, UPS had actual notice of its rights and responsibilities under USERRA, including its obligation to promptly re-employ a returning veteran and do so without conditioning that re-employment on the returning veteran passing a pre-return-to-work medical screening. From that date forward, if not before—given Mr. Lambert's repeated requests in 2011, UPS's actions of

discrimination, retaliation and failure to re-employ Mr. Lambert were willful; and, as such, Mr. Lambert is entitled to liquidated damages under 38 U.S.C. § 4323(d) of USERRA

30. At all relevant times UPS maintained, at all its places of business, all of the USERRA rights postings required by 38 U.S.C. § 4334.

31. UPS had actual knowledge of its reemployment obligations under USERRA, including its obligation to promptly reemploy employees returning from military service, and its obligation not to impose any prerequisite for reemployment additional to USERRA's reemployment prerequisites. Actual knowledge is evidenced by, among others, the fact that UPS and Mr. Acquaviva have been involved in other USERRA litigation.

COUNT I
(Violations of USERRA 38 U.S.C. § 4302(b))

32. Plaintiff repeats and realleges the allegations in paragraphs 1 through 31, as if fully set forth herein.

33. USERRA § 4302(b) provides in relevant part that any contract, agreement, policy, plan or practice or other matter that reduces limits, or eliminates in any manner any right or benefit provided under USERRA, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.

34. By conditioning Plaintiff's reemployment on obtaining medical clearance, UPS violated USERRA 38 U.S.C. § 4302(b) which prohibits employers from imposing prerequisites to reemployment in excess of those established by the USERRA.

35. By conditioning Plaintiff's reemployment on his "report[ing] to work within 48 hours from receipt of th[e August 28, 2015] letter from Tom Acquaviva" after Plaintiff had sought to return to work for more than four years, violated USERRA 38 U.S.C. § 4302(b), which

prohibits employers from imposing prerequisites to reemployment in excess of those established by the USERRA.

36. As a result, Defendant's additional conditions to obtain re-employment should be declared void under USERRA.

COUNT II
(Violations of USERRA 38 U.S.C. §§ 4312 & 4313)

37. Plaintiff repeats and realleges the allegations in paragraphs 1 through 31, as if fully set forth herein.

38. Pursuant to USERRA, 38 U.S.C. § 4312, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits under USERRA so long as: (1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer; (2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; (3) the person serves honorably; and (4) with exceptions not applicable here, the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

39. Plaintiff provided appropriate advance notice to his immediate supervisor, of his service in the military.

40. Plaintiff promptly requested re-employment both before and after the end of his military service.

41. Plaintiff's total leave of absence for service in the military between 2008 and 2011 was less than 5 years and Plaintiff was honorably discharged following completion of his military service.

42. Plaintiff was denied reemployment and was never re-employed by UPS nor provided duties to perform following his military service.

43. Because Plaintiff satisfied the requirements of USERRA 38 U.S.C. § 4312, he was entitled to be reemployed by UPS in 2011.

44. Pursuant to USERRA, 38 U.S.C. § 4313(a)(2), a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services for more than 90 days, must be promptly (i.e., within 14 days as provided by 20 C.F.R. § 1002.181) reemployed in a position of employment in accordance with the following order of priority:

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

45. Defendant UPS did not reemploy Plaintiff in either position required by USERRA § 4313(a)(2).

46. USERRA § 4313(a)(3) provides that “in the case of a person who has a disability incurred in, or aggravated during, such service, and who (after reasonable efforts by the employer to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service—

(A) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

(B) if not employed under subparagraph (A), in a position which is the nearest approximation to a position referred to in subparagraph (A) in terms of seniority, status, and pay consistent with circumstances of such person’s case.

47. Plaintiff’s disability did not disqualify him from his prior position of employment. Defendant UPS made no efforts to accommodate Plaintiff’s disability.

48. Defendant did not reemploy Plaintiff in either position required by USERRA § 4313(a)(3)

49. Defendant violated 38 U.S.C. § 4312 and 4313 of USERRA, among other ways, by (a) refusing to promptly reemploy Mr. Lambert; (b) refusing to reemploy Mr. Lambert in the position of employment which he would have been employed had his employment with Defendant not been interrupted by military service, or a position of like seniority, status and pay, the duties of which Mr. Lambert was qualified to perform; and(c) requiring Mr. Lambert to conduct pre-reemployment evaluations, applications, and testing without pay or benefits.

COUNT III
(Violation of USERRA 38 U.S.C. § 4311(a))

50. Plaintiff repeats and realleges the allegations in paragraphs 1 through 31, as if fully set forth herein.

51. USERRA, 38 U.S.C. § 4311(a), prohibits an employer from discriminating against any person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service with respect to, among other things, employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

52. Defendant's requirement that Mr. Lambert obtain -- on his own time, at his own expense, and as a condition of returning to work -- medical clearance *before* he could return to work constitutes evidence of discrimination based on his military service.

53. Defendant's failure to re-employ Mr. Lambert even after he received medical clearance to return to work further evidences discrimination based on his military service.

54. UPS's employment of a wheel-chair bound employee as an Internationals Clerk at its Sarasota, Florida facility but its failure to re-employ Mr. Lambert constitutes disparate treatment of Mr. Lambert and belies any claim that UPS needed medical clearance or that UPS could not re-employ Mr. Lambert because of his disability.

55. By taking such actions and failing to employ or re-employ Mr. Lambert, Defendant violated 38 U.S.C. § 4311.

COUNT IV
(Violation of USERRA, 38 U.S.C. § 4311(b))

56. Plaintiff repeats and realleges the allegations in paragraphs 1 through 31, as if fully set forth herein.

57. USERRA, 38 U.S.C. § 4311(b) provides that an employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter.

58. Less than two months after Mr. Lambert's attorney sent a letter dated July 7, 2015 to UPS's general counsel advising that Defendant's failure to re-employ Mr. Lambert was a violation of USERRA, UPS sent a letter to Mr. Lambert dated August 28, 2015 as a "FINAL WARNING" claiming that Mr. Lambert was on authorized leave and threatening his termination if he did not appear for work within 48 hours.

59. As no prior notice or warning had been previously issued, and Mr. Lambert had previously sought to return to work more than three years previously, UPS did not suddenly discover in August 2015 that Mr. Lambert was on "leave." Instead, UPS took this action as a result of and in response to Mr. Lambert's attorney advising UPS that it had failed to properly employ Mr. Lambert pursuant to USERRA.

60. By taking such actions in response to Mr. Lambert's attempt to assert his rights under USERRA, UPS has violated USERRA, 38 U.S.C. § 4311(b).

61. To the extent that Defendant alleges application of any agreement that constitutes any limitation on Mr. Lambert's rights under USERRA, it is illegal, null and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays that judgement be entered against Defendant UPS on all claims and requests that this Court award the following relief:

A. Declare Defendant's additional conditions to obtain re-employment should be void under USERRA, 38 U.S.C. § 4302(b) and enjoin Defendant from imposing such conditions in the future.

B. Declare that Defendant has failed to comply with USERRA, 38 U.S.C. §§ 4311, 4312 and 4313 and require that Defendant comply with each of those sections.

C. Require that Defendant offer reinstatement to Plaintiff and that Defendant compensate Plaintiff for any losses of wages or benefits in the amount to be proven at trial, including back pay, front pay, pre- and post-judgment interest, lost benefits of employment, negative tax consequences of any award, for Defendant's failure to comply with USERRA

D. Require Defendant to pay Plaintiff liquidated damages in amount to be proven at trial.

E. Enjoin Defendant from taking any future retaliatory action against Plaintiff or other servicemembers who attempt to enforce their rights under USERRA.

F. Pursuant to 38 U.S.C. § 4323(h), and as otherwise provided by law. Require Defendant to pay Plaintiff's attorney fees, expert witness fees, litigation expenses and costs to bring this action.

G. Grant such other and further relief as this Court deems just and equitable.

Dated: May 8, 2017

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