

U.S. Department of Labor


Office of the Assistant Secretary for
Veterans Employment and Training

PO Box 8849
Lacey, WA 98503
(360)407-4631



November 22, 2017



Re: Brett Gailey, WA-2018-00003-20-R
UPS Tracking: 



This office is responsible for seeking compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as codified at 38 U.S.C. Section, Chapter 43, 4301-4333. Based on the information that this office has received thus far, we are concluding that City of Everett, Police Department violated Mr. Gailey's USERRA Rights.

USERRA Law states in section 4311 (a), when Mr. Gailey was passed over for promotion to sergeant in January of 2017 and again in April of 2017, his military service appears to be a motivating factor. Based on the past history of Chief Templeman following the sergeant's promotion list and never going out of order till Mr. Gailey, it appears to this office that Mr. Gailey is being discriminated against due to his military service. It appears Mr. Gailey has had past issues with his military service and had enlisted the help of the Employer Support for the Guard and Reserve (ESGR), based on this it appears Mr. Gailey continues to be discriminated against and has now been passed over on the promotion list twice which is an unusual pattern for Chief Templeman.

38 U.S.C. Section 4311: Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

- (a) A 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 shall not be denied initial 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.*
- (b) 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. The prohibition in this subsection shall*

apply with respect to a person regardless of whether that person has performed service in the uniformed services.

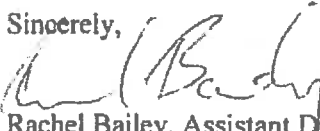
- (c) An employer shall be considered to have engaged in actions prohibited-*
(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service.

In compliance with USERRA Regulations, we are seeking promotion to sergeant back dated to January 2017 and lost wages and benefits to make Mr. Gailey whole under the USERRA Law.

If a settlement cannot be reached in this matter, Mr. Gailey can request that his claim be referred to the Attorney General's Office, where he may be awarded an amount exceeding his initial request.

Please contact this office at (360) 407-4634 if you have any questions regarding this letter, or would like to discuss resolution of this claim. A response by December 5, 2017 would be appreciated.

Sincerely,



Rachel Bailey, Assistant Director/Investigator
Veterans' Employment and Training service
U.S. Department of Labor
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