

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EDWARD CANCELLA,

Plaintiff,

v.

NATIONAL TECHNOLOGY AND
ENGINEERING SOLUTIONS OF SANDIA,
LLC d/b/a SANDIA NATIONAL
LABORATORIES,

Defendant.

Civil Action No. _____

Jury Trial Demanded

COMPLAINT

Plaintiff, Edward Cancilla (“Mr. Cancilla”), by and through his undersigned attorneys, brings this Complaint against National Technology & Engineering Solutions of Sandia, LLC (“Sandia”) and alleges as follows:

I. NATURE OF THIS ACTION

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”). Defendant willfully violated Mr. Cancilla’s USERRA rights by failing to promptly return him to work after he completed his military duty.

II. JURISDICTION AND VENUE

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

3. The United States District Court for the District of New Mexico is a proper venue for this action under 38 U.S.C. § 4323(c)(2) because Defendant 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.

III. PARTIES

4. Defendant National Technology and Engineering Solutions of Sandia, LLC d/b/a Sandia National Laboratories (Sandia), is a foreign corporation foreign corporation formed in Delaware and conducting business in Bernalillo County, New Mexico which is within the jurisdiction of this Court. Sandia employed, managed and controlled Mr. Cancilla's daily activities throughout his employment with Sandia. For the purposes of 38 U.S.C. § 4303(4) of USERRA, Sandia is a private employer.

5. Mr. Cancilla worked at Sandia from November 1, 2010 to February 8, 2018 in Albuquerque, New Mexico and worked from February 9, 2018 to March 15, 2018 at Sandia, in its Livermore, California location. At all times relevant to this lawsuit Mr. Cancilla was a member of the U.S. Navy Reserves.

IV. FACTS

6. On or about August 30, 2010, Sandia hired Mr. Cancilla as an Imagery Analyst; Principal Laboratory Staff.

7. On or about October 2, 2013, Mr. Cancilla informed his supervisor, Rich Neiser, that he would be going on active-duty military orders with the U.S. Navy Reserves.

8. Mr. Cancilla's military leave began on or about October 14, 2013.

9. Mr. Cancilla's military leave lasted less than five years.

10. Mr. Cancilla was honorably discharged following his release from active duty service with the U.S. Navy.

11. On or about December 7, 2016, Mr. Cancilla contacted Mr. Neiser and requested to return to work at the end of 2016.

12. That same day Mr. Neiser told Mr. Cancilla, in writing that the “ideal” time for him to return to work would be just before June 2017 given the upcoming retirement of one of Mr. Cancilla’s co-workers. Mr. Neiser also informed Mr. Cancilla that returning to work in the latter part of 2016 was not possible given the fact that Sandia was “in the final stages of hiring a replacement” for one of Mr. Cancilla’s other co-workers who had recently retired.

13. On December 8, 2016, Mr. Cancilla called Mr. Neiser. During that conversation Mr. Cancilla again requested to return to work at the end of 2016 to which Mr. Neiser informed Mr. Cancilla that he would begin to “review the process” and would “get back to” Mr. Cancilla in a few weeks.

14. Mr. Neiser did not “get back to” Mr. Cancilla.

15. On or about January 15, 2017, Mr. Cancilla left Mr. Neiser a voicemail in which he again, requested to return to work at Sandia. On or about February 15, 2017, Mr. Cancilla left a voicemail in which he again, requested to return to work at Sandia.

16. Since Defendant did not give Mr. Cancilla his job back immediately, or identify a timeframe in which Mr. Cancilla could return, Mr. Cancilla had no choice but continue to remain on active-duty military orders to maintain a financial income.

17. On or about March 2, 2017, Mr. Cancilla left Mr. Neiser a voicemail in which he, again, requested to return to work. Mr. Cancilla left Mr. Neiser another voicemail on March 3, 2017, and another voicemail on March 7, 2017. Mr. Neiser did not return Mr. Cancilla’s phone call until three months later.

18. On or about June 26, 2017, Mr. Neiser told Mr. Cancilla that he could not return to work in June 2017 because Mr. Cancilla's position had been "backfilled."

19. Mr. Neiser did, however, tell Mr. Cancilla that he would look for other positions or opportunities that might be available at Sandia and would get back to Mr. Cancilla.

20. From July – August 2017 Mr. Cancilla left Mr. Neiser three voicemails and one email and again requested to return to work.

21. On August 4, 2017, Mr. Cancilla again phoned Mr. Neiser. Mr. Neiser asked Mr. Cancilla to re-explain his skillsets and expertise, inquired about Mr. Cancilla's possible employment interests, and asked for Mr. Cancilla to forward a resume to his attention.

22. On or about August 7, 2017, Mr. Cancilla emailed an updated resume to Mr. Neiser for his review.

23. On August 8, 2017, and August 22, 2017, Mr. Cancilla left Mr. Neiser two more voicemails.

24. On or about August 15, 2017, Mr. Cancilla contacted, John Paulson, Dennis Baker, and Carrie Colvin (Sandia employees/supervisors located in Livermore, CA), inquired about possible openings, but was informed nothing was available.

25. On August 22, 2017, Mr. Cancilla applied for five externally advertised positions with Sandia to which Mr. Cancilla received no response in the form of an offer of re-employment.

26. On August 23, 2017, Mr. Neiser told Mr. Cancilla that there "might" be a position but that Mr. Neiser was going on vacation and work travel for the next three weeks so the search for a replacement position for Mr. Cancilla would be placed on hold. That was the last time Mr. Cancilla heard from Mr. Neiser.

27. On, or about, September 18, 2017, Mr. Cancilla left another voicemail with Mr. Neiser.

28. On September 20, 2017, Mr. Cancilla left another voicemail with Mr. Neiser.

29. On September 27, 2017, Mr. Cancilla left another voicemail with Mr. Neiser.

30. On, or about, September 30, 2017, Mr. Cancilla left another voicemail with Mr. Neiser.

31. On September 30, 2017, Mr. Cancilla's active-duty military orders ended.

32. On October 10, 2017, Mr. Cancilla left another voicemail with Mr. Neiser.

33. On October 12, 2017, Mr. Cancilla contacted Sandia Human Resources and (again) requested to return to work. "Again" is used because Mr. Cancilla had contacted Sandia Supervisor, Mr. Neiser, approximately 21 times to request his return to work since December 7, 2016.

34. Mr. Cancilla's October 12, 2017, call to HR proved just as futile as his prior attempts to work with Mr. Neiser in returning to work as Defendant still did not re-employ Mr. Cancilla.

35. Having failed to convince Sandia to give him his job back, Mr. Cancilla, on October 18, 2017, filed a complaint, Case#1739864, with the Employer Support for Guard and Reserve (ESGR) in which Mr. Cancilla accused Sandia of violating the Uniformed Services Employment and Re-employment Rights Act (USERRA).

36. The ESGR representative, Mr. Brandon Richardson, told Mr. Cancilla, that he attempted to communicate with Sandia HR point-of-contact, Mr. Robert Franco, on four occasions and received no response.

37. Mr. Cancilla remained unemployed from October 1, 2017, through February 08, 2018.

38. On or about December 5, 2017, Mr. Cancilla, communicated with additional Sandia National Laboratories' managers, past Sandia associates (Eric Sorenson and Brian Deuel) at Sandia California Livermore, explaining his military leave of absence and effort to find a possible re-employment opportunity with Sandia as Mr. Cancilla had been unemployed for three months.

39. On or about February 6, 2018, Defendant, through Robert Franco, required Mr. Cancilla to participate in phone interviews for three new positions located at Sandia's California Livermore facility.

40. On or about February 8, 2018, Sandia offered Mr. Cancilla a transfer from Sandia New Mexico (Albuquerque) to Sandia California (Livermore) and an Engineering System Integration position; Principal Laboratory Staff role in Livermore, California.

41. Mr. Cancilla accepted the Sandia CA job offer after 15 months from the initial request to return from his Military Leave of Absence and 4.5 months of no financial income.

42. On or about February 9, 2018, Mr. Cancilla asked Sandia's HR Representative (Mia Scofield) and his new Sandia manager (Eric Sorenson) about his retirement/401k benefits. Those individuals instructed Mr. Cancilla to work with Reuben Trujillo located at Sandia's New Mexico facility.

43. Mr. Cancilla engaged in repeated email and phone communication with Mr. Trujillo (and Sandia's Benefits Manager, Leah Barker) from February 12, 2018, through March 15, 2018, and was not able to reach a resolution of the retirement benefits identified for

returning members from military leave of absences over 90 days as detailed in USERRA and in accordance with Sandia's NTESS Savings and Income Plan Summary Plan Description.

44. During one phone call Mr. Trujillo told Mr. Cancilla that this was the first time he dealt with any military related retirement questions due to the transition of this specific new responsibility to his authority after the recent retirement of the former Military Leave of Absence Retirement benefits POC, Robert Martinson, at Sandia New Mexico. Mr. Trujillo expressed to Mr. Cancilla that he had never completed these calculations before and was unfamiliar with the process.

45. Neither Ms. Baker nor Mr. Trujillo answered many of Mr. Cancilla's questions nor did either provide instruction as to what Mr. Cancilla needed to do in order to secure his lost retirement benefits.

46. Mr. Cancilla told Mr. Trujillo and Ms. Baker that he needed information that set out the amount of money he needed to pay (i.e. "employee contribution") in order to obtain his lost retirement benefits.

47. Mr. Cancilla told Mr. Trujillo and Ms. Baker that before going on military orders Robert Martinson (Sandia NM HR) told Mr. Cancilla that he (Cancilla) could designate an employee contribution ranging from 2% to 25% of Mr. Cancilla's monthly pay from Sandia, that Mr. Martinson would then conduct a manual salary calculation for Mr. Cancilla for each year Mr. Cancilla was gone on Military Leave and, in turn, would calculate the company retirement match and the enhanced contribution amounts that Sandia would have provided Mr. Cancilla had Mr. Cancilla not gone on military orders. Mr. Martinson told Mr. Cancilla that the "employee contribution" would then be taken out of Mr. Cancilla's paycheck once Mr. Cancilla returned to work. Mr. Cancilla told Mr. Trujillo and Ms. Baker all of this.

48. Mr. Trujillo and Ms. Baker identified an annual compensation level for each year that Mr. Cancilla was on a military leave but that compensation level did not reflect an annual merit increase in pay as well as annual non-base awards that Mr. Cancilla would have received. Instead, Mr. Trujillo and Ms. Baker identified compensation as only a fixed salary rate for each year that Mr. Cancilla was away from Sandia on a military leave of absence.

49. Mr. Trujillo and Ms. Baker also did not include any company match retirement contributions or any retirement enhanced contributions in calculating “make-up” contributions for which Mr. Cancilla was eligible as clearly identified in Sandia’s corporate policy summary plan description – Sandia National Laboratories NTESS Savings and Income Plan.

50. Mr. Trujillo’s and Ms. Baker’s compensation and retirement benefit assumptions led Mr. Cancilla to assess that Sandia’s failure to adhere to USERRA’s retirement contributions rules would result in Mr. Cancilla losing significant money in retirement contributions depending on a deferred annual salary amount representing the years Mr. Cancilla was on military leave.

51. After four weeks of communicating with Mr. Trujillo and Ms. Baker about the retirement benefits and 401k contributions, Mr. Cancilla began to doubt Sandia’s good faith efforts in accurately accounting the military leave of absence retirement benefits according to established company policy and USERRA statutes and the likelihood of their distribution to Mr. Cancilla’s Sandia retirement accounts.

52. Mr. Cancilla was concerned that the resolution of the Military Leave of Absence retirement compensation was not fully supported by Sandia direct management and would jeopardize his employment status with Sandia National Laboratories.

53. Mr. Cancilla's doubts were well founded: for it took Sandia nearly 15 months to "re-employ" Mr. Cancilla.

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

55. During the December 7, 2016, through March 15, 2018, timeframe Mr. Cancilla told Mr. Neiser, Mr. Trujillo, Ms. Baker, Robert Franco, and others that Sandia was violating USERRA by failing to promptly and properly re-employ him and by failing to properly calculate his retirement benefits.

V. VIOLATIONS OF USERRA

56. Plaintiff re-alleges the above paragraphs.

(Count I – 38 U.S.C. § 4312-4313)

57. In order to enjoy USERRA's re-employment protections, a plaintiff must: (a) be a member of the Armed Forces of the United States; (b) give notice to his employer of the plaintiff's military obligations; (c) serve honorably during the military service period; (d) give timely notification, to the employer, of plaintiff's intent to return to work; and, (e) serve less than five years with the military (absent varied exceptions). 38 U.S.C. § 4312.

58. Mr. Cancilla is a member of the Navy Reserves.

59. Mr. Cancilla gave notice to Defendant of his military mobilization on, or about, October 2, 2013.

60. Mr. Cancilla served honorably during the above-referenced military service obligation.

61. Mr. Cancilla timely and repeatedly applied for re-employment with Sandia beginning on or about December 6, 2016, and continuing through February 7, 2018

62. Upon Mr. Cancilla's *first* request to return to work (i.e. the December 7, 2016 request) Sandia was required to re-employ Mr. Cancilla within 14 days of that request being made. 20 C.F.R. § 1002.181.

63. Accordingly, within 14 days of December 7, 2016, Sandia was obligated to re-employ Mr. Cancilla in the following "order of priority": (1) the position that the employee would have attained with reasonable certainty if not for the employee's absence due to military service ("the escalator position"); (2) the position that the employee was employed on the date that the period of service began ("the pre-service position"); or (3) if the employee is not qualified for (1) or (2) above, any other position that is the nearest approximation first to (1) and then to (2) ("the nearest-approximation position"). 38 U.S.C. § 4313(a)(2)(A)-(B).

64. Sandia did not re-employ Mr. Cancilla in any of those positions within 14 days of Mr. Cancilla's numerous requests for re-employment spanning the December 2016 – January 2018 timeframe.

65. Sandia's failure to follow USERRA's re-employment provisions caused Mr. Cancilla to be damaged in an amount to be proven at trial.

(Count II – 38 U.S.C. § 4311 - Retaliation)

66. The USERRA's anti-retaliation statute provides, in relevant part, that "[a]n 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." 38 U.S.C. § 4311(b).

67. On or about October 18, 2017, Mr. Cancilla exercised his right to enforce his USERRA rights by contacting the ESGR.

68. Upon information and belief, the ESGR told Sandia that Mr. Cancilla was accusing it of violating USERRA.

69. Additionally, beginning in mid-December 2017 and continuing through March 2018, Mr. Cancilla (as described above) attempted to enforce his USERRA rights by informing Sandia that USERRA required that he be properly and promptly re-employed and that Sandia was required, by law, to make employer matching contributions to his retirement account and to tell him how much money he needed to contribute in order to secure the retirement benefits he would have kept but for his military service.

70. Sandia retaliated against Mr. Cancilla by, *inter alia*, failing to promptly re-employ Mr. Cancilla at the Sandia, New Mexico location he occupied before going on military duty but instead requiring that he (a) re-apply for employment at Sandia and (b) by failing to make employer contributions to his retirement account and by failing to tell him what employee matching contributions he needed to make in order to secure the retirement benefits he would have obtained but for his military service obligation.

71. Sandia's actions caused Mr. Cancilla damages in an amount to be proven at trial.

(Count III – 38 U.S.C. § 4318 – Pension Benefits)

72. Sandia violated 38 U.S.C. § 4318, by (a) failing to make employer contributions to Mr. Cancilla's retirement account upon Mr. Cancilla's return to work, (b) failing to tell Mr. Cancilla the "employee match" contributions that Mr. Cancilla needed to make, and (c) failing to properly incorporate bonuses and pay raises in determining the employer and employee contributions to the pension account.

73. Sandia's violations have caused Mr. Cancilla damages in an amount to be proven at trial.

(Count IV – 38 U.S.C. § 4323 – Claim for Liquidated Damages)

74. Sandia knew that its conduct was prohibited under the provisions of USERRA, and its conduct was willful as defined by 38 U.S.C. § 4323(d), 20 C.F.R. § 1002.312(c), because Mr. Cancilla told Sandia that it was not complying with USERRA and, upon information and belief, the ESGR told Sandia the same thing.

75. To the extent any agreement, contract, practice, or statutory scheme constitutes any limitation on Mr. Cancilla's rights under USERRA, it is illegal, null and void, inapplicable and of no force or effect pursuant to 38 U.S.C. § 4302.

VI. PRAYER FOR RELIEF

Mr. Cancilla respectfully prays for:

A. Compensation for all injury and damages suffered by Mr. Cancilla including, but not limited to, economic damages in the amount to be proven at trial including back pay, pre and post judgment interest, negative tax consequences of any award, and liquidated damages as provided by law.

B. Plaintiff's reasonable attorney, expert fees, and costs, pursuant to 38 U.S.C. § 4323, and as otherwise provided by law.

C. For such other and further relief as this Court deems just and equitable, including injunctive relief to preserve Mr. Cancilla's benefits of employment and to enjoin future violations of the USERRA under 38 U.S.C. § 4323.

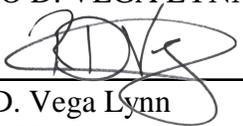
VII. JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure

Respectfully submitted this 17th day of August 2021.

Respectfully submitted,

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