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OVERVIEW OF THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) AND SUMMARY OF RECENT CASE LAW INTERPRETING USERRA

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A. WHAT IS USERRA ANYWAY?

Many of you are probably asking yourselves, "What is USERRA, and why do I need to know about it?" USERRA is the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301-4334, enacted by Congress in 1994 as a replacement for the old 1940's Veterans' Reemployment Rights (VRR) act. USERRA is intended to protect the employment rights of those service members who work for businesses, such as your firm or your client's business when they, typically Reservists and Guardsmen, return from a call to military duty.

You need to be aware of and understand USERRA to ensure compliance by your firm and your clients' businesses. USERRA is not widely understood even by some attorneys who practice in the area of employment law and is often violated by otherwise well-meaning employers. I hope this article will shed some light on the topic and provide you with a helpful overview should you or a client encounter issues that arise with a returning employee who is entitled to the USERRA protections.

B. THE THREE-FOLD PURPOSE OF USERRA

The three-fold purpose of USERRA can be found in 38 USC § 4301 which identifies the purposes as:

(1) to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees,

and their communities, by providing for the prompt reemployment of such persons upon their completion of such service, and

(3) to prohibit discrimination against persons because of their service in the uniformed services.

C. TO WHOM DOES USERRA APPLY

USERRA provides rights and protections to employees, not spouses or family members, who leave their civilian job, either voluntarily or involuntarily for service in the armed forces for a period up to five years. The individual need not be a "permanent" employee or "other than temporary" employee to have the rights and protections of the act. USERRA applies to brand new employees, probationary employees, and other "at will" employees. The act even applies to employees who have been "laid off" if there is some possibility the individual may be recalled to work.

1. PREREQUISTITES FOR USERRA ELIGIBILITY – 38 U.SC. §4312

There are five eligibility requirements one must meet to be qualified for USERRA rights and protections. The five requirements are:

a. The employee left his/her position of employment for the purpose of service;
b. The employee gave prior oral or written notice to the employer;
c. The employee has not exceeded the cumulative five-year limit;
d. The employee served "honorably," meaning the employee is entitled to the protections unless he/she was "dishonorably" discharged or received an "other then honorable" discharge; and
e. The employee returned to work or submitted an application for reemployment in a timely manner, which varies between a few hours to 90 days depending on the length of service.

If an employee meets these five requirements, then he or she is entitled to the protections and rights proscribed by USERRA with limited exceptions. USERRA applies to most but not all employers. Although, there are some affirmative defenses an employer can raise.

2. WHICH EMPLOYERS MUST COMPLY WITH USERRA

USERRA defines "employer" very broadly in 38 U.S.C. § 4303(4). Essentially, USERRA applies to almost all employers in the country, regardless of size, including the federal government, state governments, and private employers, with the exception of religious institutions and Indian tribes. However, if an employer can establish:

- the employer's circumstances have changed, and it would be "unreasonable" to reemploy the employee;
- reemployment would impose and "undue hardship" on the employer, which is defined in 38 U.S.C. § 4303(15); or
- the pre-service employment was brief, and the employee had no expectation that the employment would last indefinitely,

then the employer may not be required to comply with the protections afforded employees under the act. However, the employer has the burden of proving one of these conditions exists. 38 U.S.C. § 4312(d)

D. THE SEVEN MAIN USERRA PROTECTIONS FOR EMPLOYEES 38 U.S.C. §§ 4311-4318

The primary entitlements for an employee upon return from a call to duty are:

1. **Prompt reinstatement –** 38 U.S.C. § 4313(a) provides, in relevant part, "a person entitled to reemployment under section 4312 . . . shall be promptly reemployed in a 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 in a position of like seniority, status and pay . . ."

This "prompt reinstatement" requirement applies even if there is no open position for the employee. An employer will be required to terminate or lay off another employee to provide a position for a returning service member/employee.

2. **Rate of pay upon reemployment** – As mandated by 38 U.S.C. § 4313(a), the employee must be reemployed in a position of similar seniority, status, and pay.

3. **Seniority credit for military service time** – 38 U.S.C. § 4316(a) codified what is commonly referred to as the "escalator theory," because it states that a returning employee is to be treated as if he/she was continuously employed by the employer during the period of service.

   38 U.S.C. § 4316 (a) states specifically, "A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed."

   The U. S. Supreme Court addressed this theory almost 60 years ago in *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946), in which it held, "[T]he returning veteran does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war." *Id.*, at 284-285.

4. **Status upon returning to work** – 38 U.S.C. § 4313 essentially permits a returning employee to object if the position does not offer the same "status" as the previous employment position. Changing the location of the position, changing the shift, or the title of the position, even if these positions have the same rate of pay as a higher "status" position, can be challenged by the employee as failing to meet the similar "status" protection under the act.

5. **Reinstatement of civilian health insurance coverage** – This benefit must occur immediately upon return with no waiting period and no exclusion of pre-existing conditions. 38 U.S.C. § 4317(b).

6. **Protection from discharge after reemployment** – A returning employee must not be discharged, except for cause, for a period of time after returning from service. If the employee's period of service was greater than 180 days, then there is a presumption that any discharge that occurs with one year of return to work was a result of military service, and the employer will be presumed to have violated USERRA. It is the employer's burden to show that the discharge was for cause within this time period. 30 U.S.C. § 4316(c).

7. **Training, retraining, and other accommodations, including for returning disabled veterans –** If an employee returns with a service-connected disability, the employer must make "reasonable efforts" to enable the employee to perform his/her duties of the position he/she would have attained if he/she had been continuously employed during the period of military service. "Reasonable efforts" are defined in 38 U.S.C. § 4303(10) as "actions, including training provided by an employer, that do not place an undue hardship on the employer."

   "Reasonable efforts" are those that do not cause "undue hardship" for the employer. Moreover, 38 U.S.C. § 4303(15) defines "undue hardship" as actions requiring significant difficulty or expense, when considered primarily in light of the employer's overall financial resources. This portion of the act is similar to the language of the Americans with Disabilities Act.

   If the employer cannot make reasonable accommodations for that position, then the employer must reemploy the employee in some other equivalent position for which the employee is qualified, even if it means providing the employee with the necessary training to perform the duties of that position.

E. MONITARY REMEDIES FOR USERRA VIOLATIONS

38 U.S.C. § 4323(d) states that a court may require the employer to compensate the employee for lost wages and benefits. Although USERRA does not provide for punitive damages, if the court finds the employer's violation of USERRA was "willful," then the court may order the employer to pay an additional amount up to the lost wages and benefits as

liquidated damages. Essentially a willful violation or reckless disregard can cost the employer double the employee's lost wages and benefits. *See also* 20 C.F.R. § 1002.312 (2006).

Not only are employees who prevail on their claims entitled to reemployment and compensation for lost wages and benefits, but, pursuant to 20 C.F.R. § 1002.310 (2006), a court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

F. OVERVIEW OF RECENT COURT INTREPRETATIONS OF USERRA

In light of the constant stream of deployments and returning service members since the events of 9/11, there has been increased interest in USERRA and increasing numbers of cases involving USERRA violations.

Although USERRA claims are frequently resolved prior to litigation, some important rulings and decisions interpreting USERRA arose in the 4th Circuit in 2006. I will discuss some of those rulings within the 4th Circuit below that are important to understand should you encounter any USERRA claims in your practice.

The following decisions involve court interpretations and rulings regarding various provisions of USERRA:

1. *Baylor v. General Anesthesia Services*, No. 2:04-CV-01265 (S.D.W.Va. Aug. 8, 2006) 2006 WL 2290707. (Memorandum and Opinion Order)

2. *Francis v. Booz, Allen & Hamilton, Inc.* 452 F.3d 299, 179 L.R.R.M. (BNA) 3094, 88 Empl. Prac. Dec. P 42, 422, 152 Lab.Cas. P 10,682. (C.A.4 (Va.) (June 22, 2006)

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1. *Baylor v. General Anesthesia Services*, No. 2:04-CV-01265 (S.D.W.Va. Aug. 8, 2006) 2006 WL 2290707. (Memorandum and Opinion Order)

The plaintiff in this case, Dr. Baylor, was an anesthesiologist who had signed an employment agreement on June 18, 2002, with his prior employer, General Anesthesia Services, Inc. (hereinafter GAS). Dr. Baylor provided pain management services for GAS through December 31, 2003. The complaint alleges that in June of 2003, Dr. Baylor advised GAS about his pending military deployment. Dr. Baylor also claims that on the following day GAS advised him his services were no longer needed because GAS could not employ pain management physicians who could not be counted on to work full-time.

On November 30, 2004, Dr. Baylor filed a three-count complaint against GAS. Count I alleged GAS violated USERRA, and Counts II and III were unrelated to USERRA. For the purposes of this article, I will only address those portions of Judge Goodwin's Memorandum and Opinion and Order pertaining to the USERRA claim.

More specifically, Count I of Dr. Baylor's Complaint alleged that GAS had violated USERRA when GAS informed him his services were no longer needed immediately prior to him taking a leave of absence to serve as a reserve member in the U.S. military. Dr. Baylor claimed GAS's statement that it could not retain him if he could not be counted on to work full-time was made just one day after receiving notice of his pending military deployment.

The parties came before the Court based on their respective motions for summary judgment. The plaintiff was seeking summary judgment with regard to the non-USERRA claims, and the defendants were seeking summary judgment with regarding to all three claims.

The Court granted summary judgment for the defendants on the non-USERRA claims but denied summary judgment for the defendants on the plaintiff's USERRA claims.

GAS claimed it was entitled to summary judgment with regard to Dr. Baylor's USERRA violation claim by arguing GAS did not make the decision to part ways with Dr. Baylor because of his military service obligation. GAS further argued there was no evidence to demonstrate GAS's decision was motivated by Dr. Baylor's participation in the military. The Court rejected this argument and denied GAS' motion for summary judgment concerning the alleged USERRA violation.

In the Court's ruling, it pointed to 38 U.S.C. § 4311(a), which states:

> 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.

Although the court did not specifically articulate so, it appears the Court denied GAS' motion for summary judgment based on 38 U.S.C. § 4311(a)'s provision that a service member "shall not be denied . . . retention in employment . . . by an employer"" based upon a service member's obligation to perform service.

The Court found Dr. Baylor met his burden of establishing the presence of genuine issues of material fact regarding his alleged USERRA violation in Count I and denied the defendant's motion for summary judgment as to this count.

2. *Francis v. Booz, Allen & Hamilton, Inc.* 452 F.3d 299, 179 L.R.R.M. (BNA) 3094, 88 Empl. Prac. Dec. P 42, 422, 152 Lab.Cas. P 10,682. (C.A.4 (Va.) (June 22, 2006)

This case involves several alleged violations of USERRA and a thorough analysis of several sections of USERRA in relation to the facts of the case. It also establishes that, despite the fact USERRA provides protections against improper termination based on military service, when employees are legitimately terminated from employment for other non-discriminatory reasons, even if the termination occurs in close proximity to a service member's period of deployment, that the proper termination will be upheld when there is evidence to support the fact the termination was not for discriminatory reasons. This decision is encouraging for employers who encounter an employee who returns from service and fails to adequately perform his/her job simply due to a lack of motivation and misguided reliance on USERRA. The courts will uphold terminations when the employer overcomes the burden and establishes a proper, non-discriminatory reason for the termination.

In this case, the plaintiff, Francis, began working for Booz, Allen & Hamilton (hereinafter "BAH") in 1996 and was promoted to a position as a Level II Senior Consultant in 2000. Until March 2003, Francis worked as a computer technician pursuant to a contract with one of BAH's clients, the Office of Solid Waste and Emergency Response ("OSWER") of the Environmental Protection Agency ("EPA"). Francis performed a variety of functions as required by OSWER, categorized by BAH as Tier I, Tier II, or Tier III. Tier I was less complicated and could be performed from her desk. Tiers II and III typically involved work at the client's office. The plaintiff typically worked 8:00 a.m. to 4:30 p.m., but she sometimes

worked, without objection, 10:00 a.m. to 6:30 p.m., as needed by the client. During this time, Francis engaged in some conduct that BAH found unprofessional for which she was formally reprimanded several times in 2002, prior to her deployment on active duty.

Francis was also a petty officer in the United States Naval Reserve and was deployed on active duty beginning March 16, 2003, after being formally reprimanded for performance issues related to her civilian job. Following her discharge from active duty, Francis resumed her duties at BAH on August 11, 2003, with the same title, salary, consulting engagement, and work location upon her return.

However, upon return to her civilian job, there were some changes in Francis' responsibilities and work schedule. First, she performed almost no Tier III as a result of her client's decision to consolidate its network operations and transfer the maintenance and administration to another vendor. This consolidation was nearly complete, and no one at BAH performed substantial Tier III work at the time of Francis' return from service.

Francis worked her pre-deployment schedule from 8:00 a.m. until 4:30 p.m. with occasional late-shift work on an as-needed basis for the first two and a half weeks after she returned. At that time, BAH informed her that she would be permanently assigned to the late shift. On the following day she informed BAH that she believed her USERRA rights were being violated. Importantly, Francis continued to engage in certain behavior BAH found objectionable, such as leaving work early without authorization, missing a team conference call, and slamming a telephone down following exchanges with customers. Moreover, some of her

co-workers lodged complaints with the Department Project Manager regarding her behavior and attendance issues.

BAH believed that Francis' actions violated BAH's policy regarding professional behavior for dealing with clients and colleagues. As a result, Francis was placed on probation on November 14, 2003, and warned that "failure to immediately address these issues would result in termination of . . . employment." BAH claimed its decision to place Francis on probation was based on both pre-deployment and post-deployment conduct. BAH also provided Francis with a plan for improvement along with a warning that unless she displayed "immediate, substantial, and sustained progress ... termination of employment [would] occur."

Less than two weeks after being placed on probation, she left the office without authorization, supposedly to assist at an off-site location. As a result, on December 15, 2003, BAH terminated Francis.

Francis brought suit against BAH, alleging discrimination, wrongful termination, and retaliation in violation of USERRA. The parties filed cross-motions for summary judgment. The United States District Court for the Eastern District of Virginia granted summary judgment to BAH on all counts, denying Francis' motion and dismissing her complaint with prejudice. This decision was upheld by the Fourth Circuit Court of Appeals.

A. Court's analysis of the three (3) alleged USERRA violations

1. Claim One - Discrimination based on 38 U.S.C. §§ 4311 and 4312

Francis first claimed BAH discriminated against her in violation of both §§ 4311(a) and 4312. She claimed BAH denied her "benefits of employment" in violation of § 4311 which essentially provides that a person shall not be denied any "benefit of employment" by an employer because of the person's membership in the armed services. Francis also claimed BAH denied her "reemployment rights" in violation of § 4312, which essentially provides that any person who is absent from a position of employment because of his/her service in the military is entitled to reemployment rights and benefits and other employment benefits.

More specifically, Francis claimed BAH violated USERRA because it changed her work schedule and responsibilities, alleging discrimination under both §§ 4311(a) and 4312.

a. Alleged discrimination pursuant to 38 U.S.C. § 4312

Section 4312 essentially states that 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 of USERRA. Francis argued that § 4312 protected her from discrimination with respect to the terms and conditions of employment after she was rehired. BAH argued the "reemployment" rights protected by §§ 4312 and 4313 apply only at the instant of reemployment, and other sections of USERRA operate to protect employees after they are properly reemployed under §§ 4312 and 4313. The Court agreed with BAH's interpretation finding that:

- § 4312 requires an employer to rehire covered employees;
- § 4311 then operates to prevent employers from treating those employees differently after they are rehired; and
- § 4316 prevents employers from summarily dismissing those employees for a limited period after they are rehired.

The Court held that § 4312 places service members and employers on notice that, upon returning from service, those service members are entitled to their previous positions of employment. After being reemployed, the service members are protected by §§ 4316(c) and 4311.

The Court held as overbroad Francis' interpretation of § 4312 as requiring BAH to provide "*all* of the rights and benefits afforded to her under USERRA" with no temporal limitation. The Court found that Congress carefully constructed USERRA to provide comprehensive protection to returning veterans, while balancing the legitimate concerns of employers. As a result, the Court refused to "upset that balance by adopting the overly broad interpretation of § 4312," thereby finding that § 4312 applies to protect a covered individual only as to the act of rehiring.

Based upon the Court's above interpretation regarding which sections of USERRA protect the employee at certain stages, the Court examined whether BAH violated § 4312 when it reemployed Francis. The Court held the undisputed evidence demonstrated Francis was rehired with the same title, salary, consulting engagement, and work location upon returning. Francis even testified that her pre-deployment job responsibilities were initially the same. The Court found Francis failed to present any evidence that BAH improperly denied either her

"reemployment rights" or "employment benefits" *at the time it rehired her*, so § 4312 did not provide her with relief on her discrimination claim.

The actions about which Francis complained, her work hours being changed weeks after she returned, occurred significantly *after* her return to BAH in August 2003. Accordingly, the Court found they fell outside the scope of § 4312 and must be examined in light of § 4311 which operates to prevent employers from treating employees differently once they are rehired.

b. Alleged discrimination pursuant to 38 U.S.C. § 4311

The Court then examined whether Francis was entitled to any relief on her discrimination claim pursuant § 4311, which essentially states that a person shall not be denied any "benefit of employment" by an employer on the basis of membership in the armed services. The Court looked 38 U.S.C. § 4303(2) which defines "benefit of employment," in relevant part, as "any advantage, profit, [or] privilege ... that accrues by reason of an employment contract or agreement ... [including] ... the opportunity to select work hours or location of employment."

The Court's analysis of whether Francis was denied a "benefit of employment" was guided by the fact that an employer shall be considered to have engaged in prohibited conduct under § 4311(a) *only if the employee's military status is a "motivating factor*." § 4311 (c)(1).

Francis alleged she was given more Tier I work than she had pre-deployment and was no longer given any Tier III. As a result, even though her job title and salary remained the same, she was effectively demoted. However, Francis' deposition testimony confirmed the reduction of Tier III work began before she was deployed, applied to all employees in her position, and

was a direct result of the client's consolidation of network operations.

The Court found the evidence viewed in the light most favorable to Francis did indicate that the relative amount of Tier I, II, and III work that Francis received post-deployment differed from her pre-deployment workload. However, it found the change in amount was extremely slight and simply a continuation of her pre-deployment work patterns-which always involved a mix of Tier I, II, and III work depending on client needs, as did the responsibilities of other employees. As a result, the Court held that BAH did not deny Francis a benefit of employment by altering the relative amounts of Tier I, II, and III work that she had after her return from deployment.

Francis also alleged BAH denied her a benefit of employment by changing her work schedule. The Court refused to address the issue of whether the two-hour schedule adjustment deprived Francis of a benefit of employment, because "[m]ere conclusory allegations of motivation do not preclude summary judgment," citing *Yarnevic v. Brink's, Inc.,* 102 F.3d 753, 757-58 (4th Cir.1996). In support of its finding, the Court found Francis presented *no* evidence, direct or circumstantial, through which a rational trier of fact could find that BAH was motivated to change her schedule because of her military service. Moreover, to the contrary, the Court found the slight nature of the change and the fact she routinely worked a similar schedule before her deployment was circumstantial evidence supporting the conclusion that BAH's actions were not motivated by Francis' military status. As a result, the Court found Francis had not been denied a "benefit of employment" in violation of § 4311.

2. Claim Two - Improper Discharge

Francis' second claim alleged improper discharge in violation of § 4316(c) of USERRA, which states in relevant part that "[a] person who is reemployed by an employer under USERRA shall not be discharged from such employment, except for cause . . . ." Francis claimed she presented sufficient evidence to create a dispute over whether BAH discharged her in violation of § 4316(c) rather than "for cause." The Court relied on the newly adopted federal regulations regarding USERRA in recognizing that the employer bears the burden of proof. 20 C.F.R. § 1002.248(a) (2006) addresses what constitutes "cause" for discharge under USERRA. It states, in pertinent part, that:

> In a discharge action based on conduct, the employer bears the burden of proving that it is reasonable to discharge the employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

The Court found Francis had notice that her misconduct would result in her discharge, as was expressly stated in her "Notice of Probation." She was expressly advised to take the matter with extreme seriousness and failure to immediately correct certain specific misconduct, such as failing to display a positive demeanor and respond to simple courtesies by her co-workers, failing to utilize the established process for late arrivals or absences, repeatedly refusing to do work assigned by her managers, storming out of the office after meetings, slamming down the phone on customers, and refusing to let co-workers know, as required by BAH policy, when she was going to be away from her desk, would result in her termination. Additionally, she was advised what remedial actions she could take in order to avoid dismissal. Francis acknowledged

receiving this notice, and the Court found it was sufficient to meet the BAH's burden to provide notice under § 4316(c).

As a result, the Court found there was overwhelming evidence of Francis' misconduct at BAH and the undisputed evidence indicated an extensive pattern and a systemic history of unprofessional misconduct and a refusal to correct the misconduct, taking place over the course of years. The court also found BAH had well documented Francis misconduct that had been reported to BAH management from a wide variety of co-workers and other sources. Therefore, the pattern of misconduct was held to provide a sufficient legal basis to justify Francis' dismissal.

3. Claim Three - Retaliation

Finally, Francis' third claim alleged improper retaliation in violation of § 4311(b) claiming BAH terminated her after she stated she believed her USERRA rights were being violated. 38 U.S.C. § 4311(b) states in pertinent part that an employer is prohibited from taking, "adverse employment action against any person because such person has taken an action to enforce a protection afforded any person . . . under USERRA . . . or has exercised a right provided for in USERRA."

The Court held, pursuant to § 4311(c)(2), that Francis must demonstrate the exercise of her USERRA rights was "a motivating factor" in BAH's action, unless BAH could prove the action would have been taken "in the absence of" Francis' USERRA complaints.

Francis relied exclusively on the "temporal proximity" between her complaint and being placed on probation three months later to prove that her exercise of USERRA rights was "a motivating factor" in the decision to terminate her. The Court found, however, that although temporal proximity between a complaint and an adverse employment action can, in some cases, be used to survive summary judgment, it was insufficient in this case. *See Sheehan v. Dep't of the Navy,* 240 F.3d 1009, 1014 (Fed.Cir.2001) (noting that temporal proximity is one of a "variety of factors" that courts can use to determine improper motivation under USERRA).

The Court relied on the fact that the actions that led to Francis' probation and termination began *before* her protected activity or deployment. "Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise." *Francis, citing, Slattery v. Swiss Reinsurance Am. Corp.,* 248 F.3d 87, 95 (2d Cir.2001); *see also Frazier v. Fairhaven Sch. Comm.,* 276 F.3d 52, 67 (1st Cir.2002) (noting that conduct that occurs both before and after the event leading to the alleged retaliation cannot form the basis of a Title IX retaliation claim).

As a result, the Court of Appeals found the temporal proximity was insufficient to find that Francis' statement that she felt her USERRA rights had been violated was a motivating factor for her termination, in light of the fact the performance issues leading to her probation and termination began before her deployment.

In summary, the Court denied all three of Francis' allegations that BAH violated USERRA. The Court of Appeals found the undisputed evidence demonstrated BAH did not

improperly deny Francis reemployment rights or a benefit of employment. In addition, the Court held BAH dismissed Francis for cause and did not retaliate against her in violation of USERRA.

G. CONCLUSION

In conclusion, USERRA provides important protections for our service men and women and prevents unlawful discrimination based on their willingness to serve in our nation's armed forces. However, employers are not without recourse should they have a valid, non-discriminatory cause for terminating an employee who also just happens to serve in the military.