

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

TRACEY Y. MARSHALL,

Plaintiff,

v.

PAT FRANK, CLERK OF THE CIRCUIT
COURT FOR HILLSBOROUGH COUNTY (in
her official capacity),

Defendant.

Civil Action No. _____

Jury Trial Demanded

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Tracey Y. Marshall, by the undersigned attorneys, makes the following averments:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 ("USERRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b)(3).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) because Defendant, Pat Frank, Clerk of the Circuit Court for Hillsborough County, is located in this judicial district, and under 28 U.S.C. § 1391(b) because this judicial district is where a substantial part of the events or omissions giving rise to the claims occurred.

PARTIES

4. Plaintiff Tracey Marshall ("Marshall") resides in Hillsborough County, within the jurisdiction of this Court.

5. Defendant Pat Frank, Clerk of the Circuit Court for Hillsborough County ("the Clerk" or "the Clerk's Office"), is an elected official in Hillsborough County. Defendant Pat Frank is sued in her official capacity.

6. Defendant the Clerk has responsibility for heading a public agency or authority that employs several hundred individuals. Defendant the Clerk is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIM FOR RELIEF

7. In 1992, Marshall commenced full-time employment as a clerk in the Clerk's Office.

8. In September 1992, Marshall joined the Army Reserve. Since joining the Army Reserve, Marshall has been activated several times to full-time military duty for varying lengths of time. Marshall currently holds the rank of First Sergeant.

9. In August 2004, Marshall's employment classification in the Clerk's Office was "Court Clerk III." In August 2004, Marshall was assigned to supervise the After Court Entry Section in the Felony Department of the Clerk's Office.

10. In August 2004, Marshall was transferred from the After Court Entry Section to the Court Clerk II Section of the Felony Department of the Clerk's Office. While in the Court Clerk II Section, Marshall supervised that section.

11. In November 2004, Marshall was promoted from Court Clerk III to Senior Court Clerk. Her duties with respect to supervising the Court Clerk II Section did not change upon her promotion.

12. In May 2005, Marshall was notified by the Army Reserve that she would be activated to full time-duty in August 2005. Marshall timely notified her direct supervisor, Director Katherine Regan, of her impending activation.

13. On August 18, 2005, approximately four days before Marshall began full-time military duty, Director Regan sent an email to members of the Felony Department of the Clerk's Office. Director Regan's email stated, "As you know, Tracey is leaving us for a few weeks and I am making some temporary assignments for the duration. Effective Monday, Kendra will be supervising the calendar pod area (pulling files for court) and Todd [Wynne] will be supervising the Court Clerk II's which are currently under Tracey's supervision."

14. The last position Marshall held in the Clerk's Office before commencing full-time military duty in August 2005 was supervisor of the Court Clerk II Section as a Senior Court Clerk.

15. Marshall was on active military duty from approximately August 22, 2005 to October 16, 2005.

16. Upon the completion of her military duties on or about October 16, 2005, Marshall timely applied for reinstatement with the Clerk's Office.

17. On or about October 25, 2005, Marshall met with Director Regan to discuss Marshall's employment status. During the meeting, Director Regan informed Marshall that Marshall would not be reinstated to her former position supervising the Court Clerk II Section. Director Regan informed Marshall that, instead, Marshall would be assigned to supervise the After Court Entry Section. The reason given to Marshall by Director Regan during the meeting for not returning Marshall to her former position supervising the Court Clerk II Section was that Todd Wynne, the person who supervised the Court Clerk II Section in Marshall's absence, had

performed well and that Director Regan saw no need to move Wynne.

18. On October 25, 2005, following her meeting with Marshall, Director Regan sent to employees in the Felony Department of the Clerk's Office an email stating, "Effective Monday, October 31, I will be moving some of the managers around. Todd Wynne will be taking over the CCII's previously supervised by Tracey Marshall. Tracey will be taking over After Court Entry and Debbie Cruz will be taking over Commitments and the Calendar Pod previously managed by Todd."

19. On or about October 25, 2005, Marshall met with the Defendant Clerk to discuss Director Regan's failure to reinstate Marshall to the position Marshall held prior to the commencement of her active military duty in August 2005. During their meeting, the Defendant Clerk told Marshall that the Defendant Clerk would speak to the Clerk's General Counsel regarding Marshall's employment status.

20. On or about October 28, 2005, Marshall contacted the Employer Support of Guard and Reserve ("ESGR") office, a component of the Department of Defense, to inquire about her employment rights. The ESGR representative, Anthony Conboy, told Marshall that he would contact the Clerk's Office and inform appropriate personnel there of Marshall's employment rights.

21. On or about October 31, 2005, Marshall contacted the Clerk's employee relations office and spoke with Vickie Spence, Director of Employee Relations, about the Clerk's failure to reinstate Marshall to the position Marshall held prior to the commencement of her active military service in August 2005 and about the Clerk's obligations under the USERRA to returning service members. Spence concluded that the Clerk was in compliance and ended the conversation with, "what else do you want me to do, we are in the law," or words to that effect.

22. On or about October 31, 2005, Marshall contacted the Florida's Civil Service Department and spoke with a Mr. Zeigler. Zeigler told Marshall that he would look into the situation and get back with her.

23. On or about November 1, 2005, the ESGR contacted the Clerk's General Counsel and advised the General Counsel of Marshall's USERRA rights.

24. On November 2, 2005, Marshall filed a complaint under USERRA with the Veteran's Employment and Training Services Office ("VETS") of the United States Department of Labor ("DOL"). Marshall's November 2005 complaint alleged that the Clerk's Office had failed to properly reinstate her to her former position as supervisor of the Court Clerk II Section following the conclusion of her military service.

25. On or about November 3, 2005, Marshall was contacted by the Defendant Clerk's assistant, Rachel Bonin, and asked to meet with the Defendant Clerk regarding Marshall's assignment to the After Court Entry Section. During the meeting on or about November 3, 2005, the Defendant Clerk told Marshall that Marshall was being transferred to the After Court Entry Section because of Marshall's expertise with the existing computer system and the Defendant Clerk's need to assign Marshall to a technology team tasked with aiding a computer program designer contracted to develop a new computer system for the Clerk's Office.

26. On or about December 8, 2005, Marshall began several weeks of medical leave from the Clerk's Office.

27. On or about January 10, 2006, after investigating Marshall's complaint of November 2005, the DOL official assigned to investigate the complaint delivered to the Clerk's Office an opinion letter stating that he believed Marshall's USERRA complaint had merit and that Marshall should be returned to her former position as supervisor of the Court Clerk II

Section.

28. On or about February 14, 2006, Marshall returned to the Clerk's Office from medical leave.

29. On or about March 10, 2006, the DOL informed the Clerk's Office that Marshall's USERRA complaint of November 2005 was being forwarded to the Regional Solicitor of Labor for referral to the Department of Justice.

30. On or about April 20, 2006, the Defendant Clerk involuntarily transferred Marshall from the Felony Department to the Traffic Department at a lower rate of pay than Marshall was receiving while she was still employed in the Felony Department.

31. The Defendant Clerk violated Sections 4312 and 4313 of USERRA, among other ways, by failing and refusing to reinstate Marshall to the position of employment in which Marshall would have been employed if the continuous employment of Marshall with the Defendant Clerk had not been interrupted by Marshall's military service from August 18, 2005 to October 21, 2005, *i.e.*, to the position of supervisor of the Court Clerk II Section.

32. The Defendant Clerk violated Section 4311 of USERRA by transferring Marshall from the Felony Department to the Traffic Department at a lower rate of pay because Marshall took action to enforce a protection afforded her under USERRA or to exercise a right provided for in USERRA.

33. The Defendant Clerk's violations of USERRA were willful.

34. Marshall has suffered substantial loss of earnings and other benefits of employment as a result of the Defendant Clerk's violations of USERRA.

PRAYER FOR RELIEF

WHEREFORE, Marshall prays that the Court enter judgment as follows:

A. Declare that the Defendant Clerk's denial of reinstatement to Marshall in her pre-military service position as supervisor of the Court Clerk II Section following the completion of her military service in October 2005 and the Defendant Clerk's involuntary transfer of Marshall from the Felony Department to the Traffic Department were unlawful and in violation of USERRA;

B. Declare that the Defendant Clerk's violations of USERRA were willful;

C. Enjoin the Defendant Clerk from failing or refusing to reinstate Marshall to her pre-military service position as supervisor of the Court Clerk II Section with the title of Senior Court Clerk at the level of seniority, status and compensation that she would have enjoyed had she been reinstated to that position upon her return from military service in October 2005 and not been subjected to a subsequent involuntary transfer to the Traffic Department;

D. Enjoin the Defendant Clerk from failing and refusing (a) to provide sufficient monetary relief, including prejudgment interest, to Marshall to make her whole for the monetary loss and related benefits loss she has suffered as a result of the Defendant Clerk's failure or refusal to comply with the provisions of USERRA; and (b) to pay Marshall liquidated damages an amount equal to the amount of her lost salary and related benefits suffered by reason of the Defendant Clerk's willful failure or refusal to comply with the provisions of USERRA; and

E. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

JURY DEMAND

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

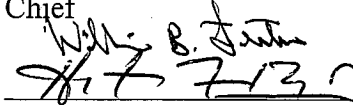
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