

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

FILED  
SEP 25 2008  
CLERK OF COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO

REBECCA DEAN,  
  
Plaintiff,  
  
v.  
  
DAVITA, INCORPORATED,  
  
Defendant.

Civil Action No. *Lo. 08 CV-1656 ORL-22-KRS*

**COMPLAINT**

Plaintiff, Rebecca Dean, by the undersigned attorneys, makes the following allegations:

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, DaVita, Incorporated, maintains a place of business and is located in this judicial district. Additionally, venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims in this Complaint occurred in this district.

**PARTIES**

4. Plaintiff, Rebecca Dean ("Dean"), resides in Volusia County, Florida, within the jurisdiction of this Court.

5. Defendant, DaVita, Incorporated ("DaVita"), is a corporation headquartered in California and maintains a place of business within this district. Defendant DaVita is an

employer within the meaning of 38 U.S.C. § 4303(4)(A).

**COUNT I**  
**PROMPT REEMPLOYMENT**

6. DaVita manages over 1,300 outpatient medical dialysis facilities and acute care units in over 700 hospitals located in 43 states and the District of Columbia, employing approximately 29,000 persons and serving more than 103,000 patients.

7. In 2001, Dean began her employment with DaVita as a Customer Support Representative (“CSR”) at DaVita’s Deland, Florida office.

8. As a CSR, Dean worked in an office with approximately ten other employees who answered calls from nurses and staff in DaVita facilities.

9. In February 2002, Dean enlisted in the United States Air Force (“USAF”).

10. In February 2002, before her departure from DaVita to serve in the USAF, Dean orally informed her supervisor, as well as an employee in DaVita’s human resources department, that she was resigning from DaVita to serve in the USAF, and that she desired to be reemployed with DaVita when she was discharged from the USAF.

11. Dean served in the USAF from February 2002 until August 2006. She completed her basic training at Lackland Air Force Base, in Lackland, Texas. She was stationed first at Wright Patterson Air Force Base, outside Dayton, Ohio, then abroad in Jordan, and finally at MacDill Air Force Base, in Tampa, Florida. From approximately January until May 2003, Dean served in Jordan in support of the United States’ war against terror. Dean worked in a military hospital providing a full range of care to U.S. and allied troops as well as medical and dental care to local individuals.

12. From May through July 2006 and while still in the USAF, Dean contacted DaVita

requesting reemployment upon her discharge from the USAF in August 2006.

13. DaVita did not offer Dean reemployment and, instead, directed Dean to apply for a position as a new applicant using DaVita's online application system.

14. In July 2006, Dean applied to DaVita for an open CSR position.

15. In Dean's July 2006 application, Dean listed her prior employment, her military service and her request for reemployment.

16. DaVita did not hire Dean for the open CSR position.

17. On August 18, 2006, after serving four years and six months in the USAF, the USAF discharged Dean with an honorable discharge.

18. In August 2006, Dean applied for four additional open positions with DaVita. DaVita did not hire Dean for any of these four positions.

19. Between August and October 2006, DaVita did not contact Dean to offer her a position.

20. In October 2006, Dean applied for two additional open positions with DaVita – Accessioner and Appeals Specialist – and was hired as an Appeals Specialist.

21. On October 17, 2006, Dean began work for DaVita as an Appeals Specialist.

22. DaVita violated USERRA, 38 U.S.C. §§ 4312 and 4313, by failing to promptly reemploy Dean upon her return from military service and timely request for reemployment.

23. Because of DaVita's conduct, Dean has suffered substantial lost earnings and other benefits of employment in an amount to be proven at trial.

**COUNT II**  
**REEMPLOYMENT IN A POSITION OF**  
**LIKE SENIORITY, STATUS AND PAY**

24. The United States hereby incorporates paragraphs 1 through 23 above as if fully set forth in this count.

25. DaVita hired Dean in October 2006 as a new employee and required Dean to complete a 90-day probationary period.

26. Dean was paid at a rate of \$10.50 per hour, while the other Appeals Specialists in Dean's department at DaVita were paid at a rate of \$12.30 per hour.

27. Dean discussed her pay disparity with her supervisor at DaVita. At that time, DaVita did not raise Dean's salary.

28. At the end of Dean's 90-day probation period, Dean received an acceptable review and a salary raise to \$12.30 per hour.

29. Upon information and belief, DaVita provides an educational program whereby it reimburses employees for tuition, fees and expenses to attend school.

30. DaVita violated USERRA, 38 U.S.C. §§ 4312 and 4313, by failing to employ Dean in a position of like seniority, status and pay.

31. Because of DaVita's conduct, Dean has suffered substantial lost earnings and other benefits of employment in an amount to be proven at trial.

**COUNT III**  
**TERMINATION**

32. The United States hereby incorporates paragraphs 1 through 31 above as if fully set forth in this count.

33. Upon information and belief, DaVita's personnel policies are contained within a

document entitled Teammate Guidelines.

34. Upon information and belief, DaVita's personnel policies, including the Teammate Guidelines, do not contain a policy that if a person does not call in to inform a supervisor of the person's absence from work and does not show up for work then that person will be terminated from DaVita (an alleged "no call/no show/no job" policy).

35. Upon information and belief, DaVita's personnel policies provide for a progressive discipline system.

36. On Monday, March 5, 2007, Dean was ill and left work early.

37. On Tuesday and Wednesday, March 6 and 7, 2007, Dean contacted DaVita, informed her supervisor that she would be absent from work due to illness and that she expected to be absent the remainder of the work week.

38. On Thursday, March 8, 2007, Dean did not call in to DaVita regarding her absence from work.

39. Also on March 8, 2007, Dean's supervisor contacted Dean by telephone and learned that Dean would be absent from work that day. During this telephone call, Dean's supervisor informed Dean for the first time of DaVita's alleged "no show/no call/no job" policy regarding absences.

40. On March 14, 2007, Dean's supervisor again spoke with Dean regarding DaVita's alleged "no show/no call/no job" policy regarding absences.

41. On Friday, March 30, 2007, Dean informed her supervisor that she (Dean) would not be at work on the morning of Monday, April 2, 2007, because of medical appointments at the United States Veteran's Administration ("VA").

42. Dean was excused from work for the morning of April 2, 2007, until her arrival, due to the medical appointments.

43. On April 2, 2007, Dean's medical appointments were rescheduled from the morning to the afternoon. Dean did not report to work or call her supervisor regarding her afternoon absence.

44. On April 3, 2007, DaVita terminated Dean for violating DaVita's alleged "no call/no show/no job" policy.

45. DaVita terminated Dean without reasonable cause.

46. DaVita violated USERRA, 38 U.S.C. § 4316, by terminating Dean without cause on April 3, 2007, less than one year after her October 17, 2006 reemployment.

47. Because of DaVita's conduct, since April 2007, Dean has suffered substantial lost earnings and other benefits of employment in an amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Dean prays that the Court enter judgment against DaVita and, further, that the Court:

48. Declare that DaVita's refusal to reemploy Dean promptly was a violation of USERRA, 38 U.S.C. §§ 4312 and 4313;

49. Declare that DaVita's reemployment of Dean on probationary status and at a lower wage than the wage she would have received had she been continuously employed by DaVita and had not served in the USAF, was a violation of USERRA, 38 U.S.C. § 4313;

50. Declare that DaVita's termination of Dean was a violation of USERRA, 38 U.S.C. § 4316(c)(1).

51. Require that DaVita fully comply with the provisions of USERRA by offering to reemploy Dean in a position of like pay, status and benefits to the position she would have, if she had been continuously employed by DaVita and had not served in the USAF;

52. Require that DaVita fully comply with the provisions of USERRA by paying Dean all amounts due to her for her loss of wages, lost benefits and lost opportunities caused by DaVita's failure or refusal to comply with the provisions of USERRA;

53. Enjoin DaVita from taking any action against Dean that fails to comply with the provisions of USERRA;

54. Award Dean prejudgment interest on the amount of lost wages and benefits found due; and

55. Grant such other and further relief as may be just and proper.

Dated: September 24, 2008

GRACE CHUNG BECKER  
Acting Assistant Attorney General  
Civil Rights Division

BY:



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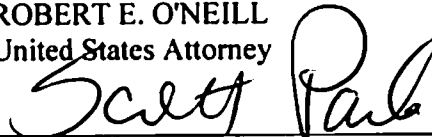
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