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CV '10 - 1523 BR

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOSEPH E. JANSSENS,

Civil No.

Plaintiff,

COMPLAINT

v.

PORTLAND GENERAL ELECTRIC,

Veterans Re-employment Rights Act of 1974
38 U.S.C. §§ 2021, 2022, and 2024

Defendant.

Plaintiff, Joseph E. Janssens ("Janssens"), by the undersigned attorneys from the U.S. Department of Justice pursuant to 38 U.S.C. § 2022, alleges the following:

1. This is a civil action brought pursuant to the Veterans Re-employment Rights Act of 1974, 38 U.S.C. §§ 2021, *et. seq.*, (VRRRA).¹

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 2022.

3. Venue is proper in this district under 38 U.S.C. § 2022 and 28 U.S.C. § 1391(b). Defendant, Portland General Electric ("PGE"), is a company that maintains a place of business in this judicial district. Additionally, a substantial part of the events giving rise to the claim occurred in this district.

PARTIES

4. Janssens is a retired employee of PGE who resides in Bend, Oregon, within the

¹ The VRRRA was the predecessor of the uniformed Services Employment and Re-employment Rights Act of 1993, 38 U.S.C. §§ 4301 - 4305 ("USERRA"). All United States Code Citations cited herein relate to the 1990 United States Code Annotated.

jurisdiction of this Court, and was a member of the Armed Forces of the United States within the meaning of 38 U.S.C. §§ 2021 and 2024.

5. PGE is an Oregon utility company headquartered in Portland, Oregon, that has serviced northwest Oregon since 1889, and has a service area covering 4,000 square miles. PGE is a private employer within the meaning of 38 U.S.C. §§ 2021, 2022, and 2024.

FACTUAL ALLEGATIONS

6. On July 1, 1953, Janssens was initially hired as a Hydro Maintenance Man by PGE in Estacada, Oregon.

7. Between July 1, 1953, and November 30, 1953, Janssens worked a standard 40-hour work week performing various manual labor duties for PGE in Estacada, Oregon.

8. In late November 1953, Janssens was drafted to serve in the United States Army. In answering the call to duty, Janssens enlisted in the United States Marine Corps (hereinafter "Marines), and was activated as a Private in the Marines on December 8, 1953.

9. From December 8, 1953, through December 7, 1955, Janssens served in the Marines, which included time spent serving watch over the 38th parallel in Korea. He was then honorably discharged holding the rank of Corporal, and having received the National Defense Service Medal, Korean Service Medal, and the United Nations Service Medal.

10. Between on or about December 9, 1955, and on or about January 4, 1956, Janssens inquired with PGE in Portland, Oregon, about re-employment. He was rehired by PGE on January 5, 1956 in a position as "holedigger."

11. On or about January 4, 1956, Janssens completed a "WWII and Korean Veteran's Information Questionnaire" for PGE, notifying PGE of his time on active duty and his honorable

discharge from the Marines.

12. Between January 5, 1956, and March 31, 1990, Janssens worked without interruption for PGE. On April 1, 1990 Janssens retired from PGE at age 55.

13. Upon retirement PGE determined that Janssens' creditable service time for his pension began on January 5, 1956, the date of his post-service re-employment.

14. Despite Janssens' oral requests upon retirement to be credited for his pre-service employment, PGE denied his requests. Based on Janssens' selection of a straight-life annuity, PGE calculated his gross monthly annuity as \$1,167.10.

15. In 2000, 2002, 2008, and early 2009, Janssens made additional inquiries with PGE and the Department of Labor's Employee Benefits Security Administration (EBSA) regarding his pension and his break in service during his enlistment. PGE acknowledged these inquiries by letter on December 23, 2008, and provided a conclusive decision on May 29, 2009 that his pre-service employment was not eligible for bridging with his post-service employment for pension credit.

16. On May 8, 2009, Janssens filed a complaint with the United States Department of Labor Veterans' Employment and Training Service ("VETS"), which conducted an investigation between May 13, 2009 and July 10, 2009. VETS determined that PGE had failed to properly credit Janssens' pension, and referred the case for further action.

17. PGE has violated Sections 2021 and 2024 of VRRRA by, *inter alia*, failing to credit Janssens' pension plan for his pre-service employment beginning on July 1, 1953, and failing to credit his years of military service from 1953 through 1955, and for failing to bridge his pre-service employment with his post-service employment in calculating his pension

benefits.

18. Because of PGE's conduct, Janssens has suffered monetary damages, including lost pension benefits, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Janssens prays that the Court enter judgment against PGE as follows:

A. Declare that PGE's failure to promptly and properly calculate Janssens' creditable service for pension benefits is unlawful and in violation of VRRRA.

B. Declare that PGE's method of calculating compensation during Janssens' military service, did not comply with the provisions of VRRRA and did not provide Janssens the appropriate compensation that he would have attained had he remained employed continuously with PGE between July 1, 1953 and March 31, 1990.

C. Order PGE to fully comply with the provisions of VRRRA, by paying Janssens for lost benefits, with interest, suffered by reason of PGE's failure or refusal to comply with VRRRA.

D. Enjoin PGE from failing to comply in the future with all provisions of VRRRA.

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

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Respectfully submitted this 15th day of December 2010.

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