

1 JOHN M. GADZICHOWSKI
Chief
2 KAREN D. WOODARD
Deputy Chief
3 SHAYNA BLOOM
Trial Attorney
4 U.S. Department of Justice
Civil Rights Division
5 Employment Litigation Section
950 Pennsylvania Avenue, NW
6 PHB Room 4017
Washington, D.C. 20530
7 Telephone: (202) 305-1450
Facsimile: (202) 514-1005
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12 **IN THE UNITED STATES DISTRICT COURT**
FOR THE EASTERN DISTRICT OF CALIFORNIA
13 **SACRAMENTO DIVISION**

14 **UNITED STATES OF AMERICA,**)

15 **Plaintiff,**)

16 **v.**)

17 **CALIFORNIA DEPARTMENT OF**)
18 **CORRECTIONS AND REHABILITATION,**)

19 **Defendant.**)

20 _____
21 **COMPLAINT**

22 Plaintiff, United States of America (“United States”), alleges:

23 1. This action is brought on behalf of the United States to enforce the provisions of
24 the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 - 4333
25 (“USERRA” or “Act”).
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JURISDICTION AND VENUE

2. This Court has jurisdiction of the action under 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(1) and 28 U.S.C. § 1391(b)(2). Defendant California Department of Corrections and Rehabilitation (“CDCR”) is an agency of the State of California and maintains places of business in this district. Additionally, a substantial part of the events giving rise to this action took place in this district.

PARTIES

4. Defendant CDCR is an agency of the State of California and is subject to suit under USERRA by the United States of America. 38 U.S.C. § 4323(a).

5. Defendant CDCR is an employer within the meaning of 38 U.S.C. § 4303(4)(A)(iii).

CLAIM FOR RELIEF

6. Beginning in approximately September 2002, Dany Felix (“Felix”), a resident of Suisun City, California, was employed as a Medical Technical Assistant (“MTA”) with the CDCR.

7. In his capacity as an MTA, Felix performed tasks related to the medical and/or psychiatric care of inmates at the California Medical Facility (“CMF”) in Vacaville, California.

8. When Felix began his employment with the CDCR, he was also a Technical Sergeant in the United States Air Force Reserve, where he worked as an Aeromedical Evacuation Technician.

9. On or about March 15, 2003, Felix received orders indicating that his Air Force Reserve unit had been activated and that he would soon deploy for a tour of duty in the United States and overseas.

10. Within hours of receiving his orders, Felix contacted CMF and notified the senior MTA in the nursing office of his anticipated absence for active duty military service. Felix learned of his orders on a weekend, and that Monday he provided his written orders to the CMF

1 Personnel Office. Felix began his active duty military service on or about March 15, 2003.

2 11. During this tour and while on active military duty, Felix aggravated a pre-existing
3 back injury and developed a new back injury.

4 12. As a result of his injuries, Felix was put on medical orders but remained on active
5 duty with the United States Air Force.

6 13. After learning that he was being declared unfit for duty and would soon be
7 discharged from the military because of his physical condition, on or about August 9, 2006, Felix
8 contacted CMF officials and requested that the CDCR reemploy him as an MTA.

9 14. On or about August 10, 2006, Felix provided the return-to-work nurse at CMF
10 with a statement of his physical limitations which indicated restrictions in the areas of lifting,
11 standing, stooping, bending, and stretching.

12 15. On or about August 13, 2006, Felix was officially released from active duty with
13 the United States Air Force Reserve and received an honorable discharge.

14 16. On or about August 16, 2006, the CDCR informed Felix that it could not
15 reemploy him as an MTA because CDCR could not accommodate his physical limitations. At
16 that time, the CDCR did not offer to reemploy Felix in any position, despite his requests.

17 17. Between August and October 2006, Felix contacted CDCR officials at CMF to
18 inquire about reemployment in a position for which he was qualified.

19 18. On or about October 19, 2006, Felix filed a complaint with the Department of
20 Labor's Veterans' Employment and Training Service ("VETS") and VETS officials informed
21 CDCR officials about Felix's complaint on or about November 15, 2006. In or about November
22 2006, Felix provided a CDCR official with documentation about USERRA.

23 19. Between August 2006 and December 2006, CDCR officials did not offer to
24 reemploy Felix in any position.

25 20. After VETS informed the CDCR of Felix's USERRA complaint, the CDCR
26 required Felix to go through a lengthy return-to-work process that included multiple requests for
27

1 medical documents and employment applications, before it would offer him a reemployment
2 position.

3 21. Between February 2007 and April 2007, the CDCR identified potential
4 reemployment positions for Felix, but none was similar to his pre-service position in both status
5 and pay.

6 22. The CDCR offered Felix a Staff Services Analyst position at its Sacramento or
7 San Quentin facilities. Both positions would have required Felix to commute significantly
8 farther than his pre-service MTA position. The CDCR also offered Felix Office
9 Technician/Assistant positions. These positions paid significantly less than his pre-service MTA
10 position. For these reasons, Felix declined the positions.

11 23. Due to the CDCR's failure to offer Felix a suitable reemployment position, in late
12 April or early May 2007, Felix obtained a position with another employer. Felix resigned his
13 position with the CDCR in June 2007.

14 24. The CDCR did not offer to train Felix for a position similar to his pre-service
15 position in seniority, pay and status until May 2007, approximately nine months after he initially
16 applied for reemployment, and after Felix informed the CDCR that he had obtained a position
17 with another employer.

18 25. In May 2007, the CDCR offered Felix a Staff Services Analyst position at CMF,
19 but Felix declined the position because he had already accepted a position with the other
20 employer.

21 26. The CDCR violated 38 U.S.C. §§ 4312 and 4313 by, among other ways, failing to
22 reemploy Felix promptly upon his return from active service.

23 27. Because of the CDCR's actions in violation of 38 U.S.C. §§ 4312 and 4313, Felix
24 has suffered monetary damages in an amount to be proven at trial.

PRAYER FOR RELIEF


WHEREFORE, plaintiff United States prays that this Court grant the following relief:

- (a) Declare that defendant CDCR's failure or refusal to promptly reemploy Felix was unlawful and in violation of USERRA;
- (b) Enjoin defendant CDCR from taking any action in violation of USERRA;
- (c) Order that defendant CDCR pay Felix for his loss of earnings and other benefits suffered by reason of the CDCR's failure and refusal to comply with the provisions of USERRA;
- (d) Award Felix prejudgment interest on the amount of lost compensation found due; and
- (e) Grant plaintiff United States such additional relief as may be just and proper, together with its costs and disbursements in this action.


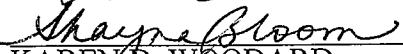
DATE: May 5, 2009

LORETTA KING
Acting Assistant Attorney General
Civil Rights Division

BY:



JOHN M. GADZICHOWSKI
Wisconsin Bar No. 1014294
Chief
Employment Litigation Section

KAREN D. WOODARD
Maryland Bar
Deputy Chief
SHAYNA BLOOM
DC Bar No. 498105
Trial Attorney
U.S. Department of Justice

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