

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MARK T. GREGER,

Plaintiff,

Case No.

v.

KOHLER COMPANY,
444 Highland Drive
Kohler, WI

Defendant.

COMPLAINT

Plaintiff, Mark T. Greger (“Greger”), by his undersigned attorneys, alleges as follows:

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. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b).
4. Defendant Kohler Company (“Kohler”), with its main offices located in the Village of Kohler, Wisconsin, is located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).
5. Plaintiff Greger resides in Sheboygan, Wisconsin, within the jurisdiction of this Court.

CLAIM

6. Greger first joined the United States Air Force in 1989, served on active duty until 1994, and then joined the Air Force Reserve.
7. On or about May 9, 1996, Kohler hired Greger in the Powerhouse Division at its plant at 444 Highland Drive in the Village of Kohler, Wisconsin. By 1998, Greger had become a HVAC (“Heating, Ventilation, and Air Conditioner”) Repairman, a skilled trade position, in the Powerhouse Division for Kohler.
8. Greger re-entered the Air Force in 1999 and served until 2003, after which he re-joined the Air Force Reserve, of which he currently remains a member. Greger has attained the rank of Technical Sergeant. He has served in Operation Northern Watch in the Republic of Turkey, in Operation Enduring Freedom in the United Arab Emirates, and in Operation Iraqi Freedom in several foreign and domestic tours.
9. Returning from a tour in the Republic of Turkey in late 2003, Greger returned to Kohler for reemployment and was informed that neither his HVAC Repairman position nor any other Powerhouse Division positions were available at the company. Kohler did not offer Greger any other skilled trade position at the company.
10. Greger received unemployment compensation for approximately six months, and then accepted a factory production position with Kohler that paid \$3 less per hour than his previous position. After working for one shift at the factory production position, Greger negotiated an agreement with Kohler to take layoff status, which lasted 28 months.
11. On October 1, 2006, Greger was selected for a Powerhouse Utility Repair position with Kohler.

12. Following an AirForce tour in support of Operation Iraqi Freedom, Greger returned to Kohler in May 2009 for reemployment and was notified that he would be laid off after one day. Greger was the only employee in the Powerhouse to be laid off at the time.
13. After volunteering for an additional 6-month deployment to avoid layoff, Greger returned and was reemployed by Kohler in a Powerhouse Utility Repair position in March 2010.
14. Greger was called to perform annual training with his unit in Virginia from October 18, 2010 through November 14, 2010. At the time, Greger was in a Powerhouse Utility Repair position assigned to the 8-hour first shift.
15. Greger timely notified Kohler of his military duty prior to leaving for annual training.
16. On October 25, 2010, while Greger was on military leave for annual military training, a 12-hour third-shift Powerhouse Utility Repair position became available due to a resignation within the department. The 12-hour shift paid more than the 8-hour shift because 12-hour employees earned two hours of scheduled overtime and shift premium pay every shift. Twelve hour shift employees also regularly accrue overtime and shift premium pay for holiday and weekend shifts.
17. In accordance with the collective bargaining agreement covering Kohler employees, the third-shift Powerhouse Utility Repair position was posted within the Powerhouse for a period of five days.
18. Employees assigned to the Powerhouse had first priority over non-Powerhouse employees to bid on the vacancy during the five-day period. If no qualified Powerhouse employees bid on the vacancy in the five-day period, the vacancy would be opened to bidding applicants from outside the Powerhouse, and awarded based on seniority with Kohler.

19. On October 29, 2010, Kohler posted the 12-hour third-shift Powerhouse Utility Repair position outside the Powerhouse. William Mangold (“Mangold”), who was not assigned to the Powerhouse, bid on the vacancy on October 29, 2010.
20. On November 15, 2010, Greger returned from military leave.
21. Within a day of his return to Kohler, Greger informed management of his interest in the 12-hour third-shift Powerhouse Utility Repair position and placed a bid for the shift.
22. Greger, in a Powerhouse Utility Repair position, was qualified for the 12-hour third-shift vacancy and he would have been awarded the position had he applied during the initial five-day bidding period because he was assigned to the Powerhouse.
23. Kohler refused to award the third-shift position to Greger because Greger did not apply within the five-day period during which the vacancy was posted within the Powerhouse.
24. Sometime after Greger bid on the post, Mangold was awarded the 12-hour third-shift Powerhouse Utility Repair position. Mangold accepted the position on November 30, 2010 and began working in the post on December 29, 2010.
25. On February 17, 2011, Greger filed a USERRA complaint with the United States Department of Labor (“DOL”). DOL’s Veterans’ Employment and Training Service conducted an investigation. DOL referred the matter to the Department of Justice pursuant to 38 U.S.C. § 4323(a).
26. Kohler has discriminated against Greger in violation of 38 U.S.C. §§ 4312 and 4313 of USERRA by, *inter alia*, failing to reemploy Greger upon his return from military service in the position of employment he would have held had he been continuously employed, namely, the third-shift Powerhouse Utility Repair position, with all of the seniority, status, and compensation

that flows from such a position.

27. Kohler's violations of USERRA were willful under 38 U.S.C. § 4323(d)(1)(C).

28. Because of Kohler's conduct, Greger has suffered monetary damages, including significant lost wages and benefits, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Mark T. Greger prays that the Court enter judgment against Kohler as follows:

1. Declare that Kohler's failure to reemploy Greger in the proper position following his deployment was unlawful and in violation of USERRA;
2. Order Kohler to award Greger the position of 12-hour third-shift Powerhouse Utility Repair, with retroactive seniority and pay to the date that he would have been awarded the position but for his military service, and to provide him all the seniority, status, and pay and other benefits associated with that third-shift position;
3. Declare that Kohler's violations of USERRA were willful;
4. Award Greger liquidated damages in an amount equal to the amount of lost wages and other benefits suffered by reason of Kohler's willful violation of USERRA, pursuant to 38 U.S.C. § 4323(d)(1)(C);
5. Enjoin Kohler from taking any action against Greger that fails to comply with the provisions of USERRA;
6. Award Greger prejudgment interest on the amount of lost wages found due;
7. Award any such additional relief as justice may require.

Respectfully submitted this ____ day of November, 2011.

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