

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

SEAN K. THORNTON,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

Civil Case No.

6:08-cv-471-Orl-18GJK

Jury Trial Demanded

COMPLAINT

Plaintiff, Sean K. Thornton ("Thornton"), by the undersigned attorneys, makes the following averments:

1. This civil action is 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) because Defendant, Wal-Mart Stores, Inc. ("Wal-Mart"), maintains places of business in this judicial district.

PARTIES

4. Thornton resides at 1269 Polk Avenue, Deltona, Florida, within the jurisdiction of this court.

5. One of the places of business maintained by Wal-Mart within the jurisdiction of this court is Wal-Mart Superstore No. 563, located in Orange City, Florida.

CLAIM FOR RELIEF

6. On or about October 21, 2005, Thornton began work as a cashier at Wal-Mart Superstore No. 563, located in Orange City, Florida.

7. Thornton received pay raises and other benefits due to his good work performance and the length of his employment at Wal-Mart.

8. In or about December 2005, during his employment with Wal-Mart, Thornton committed to join the Air Force as a Basic Airman, E-1. Thornton agreed to serve four years in the Air Force. He was ordered to report for active duty May 30, 2006.

9. On or about May 1, 2006, Thornton provided oral and written notice to Wal-Mart of his plan to serve in the Air Force. Acting on instructions imparted by the Wal-Mart Superstore No. 563 Personnel Manager ("Personnel Manager"), Thornton gave oral notice to one of the store's assistant managers that he was leaving in two weeks to join the Air Force. Thornton also provided written notice by leaving a handwritten note with the Personnel Manager.

10. On or about May 15, 2006, Thornton worked his last day at Wal-Mart prior to joining the Air Force.

11. Thornton reported for active duty and attended basic training from May 30, 2006 to July 25, 2006. On July 25, 2006, less than two months after he joined the Air Force, Thornton received an "uncharacterized" discharge because of a previously undiagnosed medical condition (asthma).

12. On or about July 25, 2006, Thornton visited Wal-Mart Superstore No. 563 and requested reemployment from the Wal-Mart Personnel Manager at that location. He was denied reemployment and advised to "start over."

13. Thornton filed a complaint against Wal-Mart under USERRA with the Veterans' Employment and Training Services ("VETS") of the United States Department of Labor.

14. On August 15, 2006, a VETS investigator contacted Wal-Mart at its Superstore No. 563 with regard to Thornton's USERRA complaint. The Wal-Mart Personnel Manager at that location told the VETS investigator that Thornton had been terminated because he had failed to request a leave of absence, but that he could reapply as a new hire.

15. Wal-Mart did not allow Thornton to return to his cashier position (with seniority and benefits) despite VETS's efforts.

16. Wal-Mart violated Sections 4312 and 4313 of USERRA, among other ways, by denying Thornton reemployment and other employment benefits upon completion of his service in the uniformed services.

17. As a result of Wal-Mart's unlawful denial of reemployment and other employment benefits to Thornton, he has suffered loss of earnings and other benefits of employment.

PRAYER FOR RELIEF

WHEREFORE, Thornton prays that the Court enter judgment against Wal-Mart, its officers, agents, employees, successors and all persons in active concert or participation with it, as follows:

18. Declare that Wal-Mart's denial of reemployment to Thornton was unlawful and in violation of USERRA;

19. Order that Wal-Mart fully comply with the provisions of USERRA by reinstating Thornton at the level of seniority, status and compensation that he would have enjoyed had he remained employed continuously with Wal-Mart, and by paying Thornton for his loss of earnings and other benefits suffered by reason of Wal-Mart's failure or refusal to comply with the provisions of this law;

20. Enjoin Wal-Mart from taking any action against Thornton that fails to comply with the provisions of USERRA;

21. Award Thornton prejudgment interest on the amount of lost compensation found due; and

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


Dated: March 31st, 2008

Respectfully submitted,

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