



***United States Attorney
Southern District of New York***

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**UNITED STATES SUES NEW YORK CITY DEPARTMENT OF CORRECTION
FOR VIOLATING U.S. ARMY VETERAN'S CIVIL RIGHTS**

LEV L. DASSIN, Acting United States Attorney for the Southern District of New York, announced today that the United States has filed a lawsuit against the New York City Department of Correction on behalf of United States Army veteran EMILIO PENNES. The New York City Department of Correction is charged with violating PENNES' civil rights under the Uniformed Services Employment and Reemployment Act of 1994 ("USERRA"). According to the Complaint filed in Manhattan federal court:

Since 1987, PENNES has worked for the New York City Department of Correction ("NYCDOC"), where he currently holds the position of Assistant Deputy Warden. PENNES has been a member of the United States Army Reserves since 1985 and currently holds the rank of lieutenant colonel. He has been called to active military duty on multiple occasions, including a one-year period in 2004 and 2005, during which time he served in Iraq, near Tikrit.

On February 6, 2007, the Army ordered PENNES to report to active duty in support of Operation Enduring Freedom, in Orlando, Florida, where he commanded an administrative unit whose purpose was to provide medical and psychological support to soldiers returning from Iraq.

Before PENNES was activated to Florida, he had applied to NYCDOC for a promotion to the position of Deputy Warden. While he was on active duty, NYCDOC contacted him and informed him that he would be interviewed for the position on March 29, 2007. PENNES explained that he was unable to attend an interview on that date because he was on active duty with the military in Florida. Although PENNES offered to do the interview on any date from March 23 to March 26, 2007, or by telephone or videoconference, NYCDOC refused to interview PENNES unless he appeared in person on a date when NYCDOC knew that PENNES' military duties took him out of state.

Consequently, PENNES was not interviewed for the position nor offered a promotion to Deputy Warden, even though a selection memo ranked him first among the thirteen candidates for the position. The Commissioner of the Department instead skipped over PENNES and selected the next seven applicants for the promotion.

The Complaint filed today seeks to require NYCDOC to promote PENNES to the position of Deputy Warden and give him lost wages, benefits and liquidated damages.

USERRA was enacted in 1994 to protect service members from being disadvantaged in their civilian careers due to serving in the uniformed services. Subject to certain limitations, USERRA provides that an employer cannot deny an employee employment benefits, including promotional opportunities, on account of military status.

"Our soldiers who risk their lives to keep us safe deserve every accommodation back home from those they are protecting," said Mr. DASSIN. "We believe New York City's refusal to accommodate Mr. Pennes' military duty by moving a job interview by a few days violated a federal law which protects men and women from being disadvantaged in their civilian careers because of their service in the armed forces."

Assistant United States Attorneys DAVID J. KENNEDY and BRIAN K. MORGAN are in charge of the case.

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