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United States Department of Justice

Civil Rights Division

DELORA KENNEBREW

Chief, Employment Litigation Section

United States Department of Justice

Civil Rights Division

WENDY J. OLSON, IDAHO STATE BAR NO. 7634

UNITED STATES ATTORNEY

AMY S. HOWE, IDAHO STATE BAR NO. 3385

Assistant United States Attorney

District Of Idaho

800 E. Park Blvd., Suite 600

Boise, Idaho 83712-7788

Telephone: (208) 334-1211

Facsimile: (208) 334-1414

ATTORNEYS FOR: MERVIN W. JONES

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

MERVIN W. JONES,

Plaintiff,

vs.

JEROME COUNTY SHERIFF'S OFFICE

Defendant.

) Cv. No. 1:13-CV-00011-EJL

) **CONSENT DECREE**

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)

CONSENT DECREE

1. This settlement agreement and consent decree ("Consent Decree") is made and voluntarily and freely entered into by and between Plaintiff Mervin W. Jones, of Jerome County, Idaho and the Jerome County Sheriff's Department ("Defendant").

2. Plaintiff commenced the above-captioned action ("Complaint") in the United States District Court for the District of Idaho, alleging that Defendant violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by terminating Plaintiff's employment while Plaintiff was within the time period permitted by USERRA to convalesce from injuries incurred during military service. Plaintiff alleged that Defendant also violated USERRA by refusing or failing to accommodate and reemploy him following his recovery from his injury.

3. Defendant denies that it has violated USERRA.

4. Plaintiff and Defendant (collectively the "Parties"), have resolved their differences and have agreed that this action should be resolved by entry of this Consent Decree. The Parties intend that this Consent Decree is a final and binding resolution in full disposition of all claims arising out of the facts as alleged in the Complaint.

Stipulations

5. The Parties acknowledge the jurisdiction of the United States District Court for the District of Idaho over the subject matter and Parties to this case for the purpose of entering into this Consent Decree and, if necessary, enforcing this Consent Decree.

6. Venue is proper in this District for purposes of this Consent Decree and any proceedings relating to this Consent Decree only. The Parties agree that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

Findings

7. Having examined the terms and provisions of the Consent Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of the Consent Decree are fair, reasonable, and just. The rights of the Parties are protected adequately by this Consent Decree.
- c. The Consent Decree conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights and privileges of any person. The entry of the Consent Decree will be in the best interests of the Parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

Non-Admission

8. The Parties enter into this Consent Decree voluntarily. This Consent Decree shall not constitute an adjudication or finding on the merits of the action or be construed as an admission by Defendant of any violations of USERRA.

Non-Retaliation

9. Defendant shall not take any action against any person, including but not limited to Plaintiff Mervin W. Jones, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony, provided assistance or participated in any investigation or proceeding in connection with this action.

CONSENT DECREE 2

Remedial Relief

10. Within 30 business days of the effective date of this Consent Decree, Defendant shall compensate Plaintiff Mervin W. Jones in the gross sum of \$150,000.00 ("the settlement amount")

a. \$75,000 of the settlement amount constitutes back-pay and front pay. Defendant shall deduct from this sum all federal withholding taxes, other deductions required by law, and shall issue Plaintiff an IRS Form W-2 reflecting the payment.

b. \$75,000 of the settlement amount constitutes non-wage damages, which is not subject to wage withholdings, and Defendant shall issue Plaintiff an IRS Form 1099 reflecting the payment.

c. Defendant shall send all payments, plus tax forms, to Amy S. Howe, United States Attorney's Office, 800 Park Blvd, Suite 600, Boise, ID 83712. The United States Attorney's Office shall be responsible for forwarding the settlement amount and tax documents to Plaintiff.

Compliance With USERRA

11. Within 30 days of the effective date of this Consent Decree, Defendant shall request the administrator of the Human Resources Department of the State of Idaho to restore Plaintiff to the eligibility register in compliance with Idaho Administrative Procedures Act ("IDAPA") 15.04.01 Rule 106. ("Upon receiving appropriate evidence, the administrator shall restore the name of an eligible candidate to any eligibility register from which it has been removed for causes enumerated in Rule 104, include Rule 104(i)."). Defendant shall send a copy of this Consent Decree along with a letter on Defendant's letterhead and signed by Sheriff Douglass McFall, to the Administrator of the Idaho Division of Human Resources, Vicki Tokita,

requesting that Plaintiff's name be restored to the eligibility register due to improper dismissal at the following address:

Vicki Tokita
Administrator of the Idaho Division of Human Resources
P.O. Box 83720
Boise, Idaho 83720-0066

12. Within seven days of the issuance of the letter described in Paragraph 11, Defendant shall provide counsel for Plaintiff, Amy Howe, a copy of the letter at the following address:

Amy S. Howe
Assistant United States Attorney
District Of Idaho
800 E. Park Blvd., Suite 600
Boise, Idaho 83712-7788

13. Defendant shall provide to counsel for Plaintiff all return correspondence from the Idaho Division of Human Resources concerning Plaintiff within seven days of receipt. Should the Division of Human Resources require more information to restore Plaintiff's eligibility, Defendant shall provide that information to the Division and send a copy of that correspondence to counsel for Plaintiff within seven days of issuance.

Release of Claims

14. In consideration of the relief provided to Plaintiff pursuant to the provisions of this Consent Decree, and once all relief described in this Consent Decree has been provided, Plaintiff releases and discharges the Defendant of all legal, statutory and equitable claims arising out of the facts as alleged in the Complaint filed in this case and USERA Case No. ID-2012-00002-20-G of the Department of Labor, Veterans Employment and Training Service.

Retention of Jurisdiction, Dispute Resolution, and Compliance

15. The Court shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce the terms of this Consent Decree.

14. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Consent Decree. In the event of a dispute, the Parties shall give notice to each other fifteen (15) days before seeking resolution of the dispute by the Court and may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Consent Decree.

Miscellaneous

15. The Parties shall bear their own costs and expenses in this action, including attorney's fees.

16. This Consent Decree contains the entire agreement between Plaintiff and the Defendant with respect to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. Any modification to the Consent Decree must be mutually agreed upon and memorialized in writing signed by the Parties and entered by this Court.

17. The Parties contemplate that this Consent Decree may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

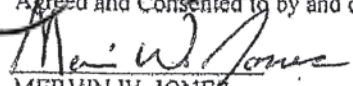
18. The effective date of this Consent Decree shall be the date upon which it is entered by the Court. The Consent Decree shall expire, and this action shall be dismissed without further order of the Court on the later of one year after the date of entry of this Consent Decree or when Defendant has paid the settlement amount to Plaintiff and requested that Plaintiff be reinstated to the State of Idaho eligibility roster pursuant to IDAPA 15.04.01 Rule 106.

19. This Consent Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims that Plaintiff asserted or could have asserted in this action.

APPROVED and ORDERED this 23 day of August, 2013.

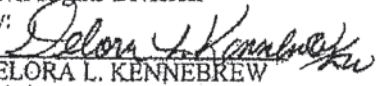

United States District Judge

Agreed and Consented to by and on behalf of Plaintiff MERVIN W. JONES:


MERVIN W. JONES
Plaintiff

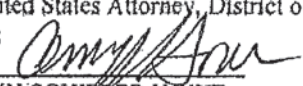
JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

By:


DELORA L. KENNEBREW
Chief
Georgia Bar No. 414320
United States Department of Justice
Civil Rights Division
Employment Litigation Section

WENDY J. OLSON
United States Attorney, District of Idaho

By:


AMY SCHIFFER HOWE
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ATTORNEYS FOR PLAINTIFF MERVIN W. JONES

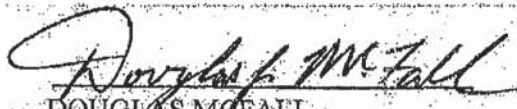
Agreed and Consented to by and on behalf of Defendant JEROME COUNTY SHERIFF'S
DEPARTMENT:


BLAKE G. HALL

Attorney for Defendant Jerome County Sheriff's Department
HALL ANGELL STARNES, LLP
901 Pier View Drive, Suite 203
Idaho Falls, ID 83402
Telephone: (208) 522-3003
Facsimile: (208) 656-7108
Email: bgh@hasattorneys.com

CONSENT DECREE 7

Agreed and Consented to by and on behalf of Defendant Jerome County:



DOUGLAS MCFALL
Sheriff, Jerome County
300 N. Lincoln
Jerome, ID 83338-2344

CONSENT DECREE-8



JEROME COUNTY SHERIFF

Doug McFall, Sheriff

Jack Johnson, Captain

COPY

Vicki Tokita, Administrator
Idaho Division of Human Resources
P.O. Box 83720
Boise, Idaho 83720-0066

Re: Mervin W. Jones

Dear Ms. Tokita:

As a result of a consent decree in reference to the United States District Court for the District of Idaho case Cv. No. 1:13-CV-00011-EJL, I hereby request that Mervin W. Jones be restored to the eligibility register due to improper dismissal.

Sincerely,

Douglas J. McFall
Douglas J. McFall, Sheriff

ORIG. MAILED TO ABOVE 8/13/13

DP