

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. _____

DWAYNE COFFER,)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	JURY TRIAL
WARREN COUNTY BOARD OF EDUCATION)	DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, Dwayne Coffe (“Coffe”), by the undersigned attorneys, alleges:

1. This civil action is brought under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, et seq. (“USERRA”).

PARTIES

2. Warren County Board of Education (“Warren County”) is a county board of education of Warren County schools that is organized and conducts its business in Warrenton, North Carolina. It has general control and supervision of all matters pertaining to the public schools in Warren County, North Carolina. N.C.G.S. §§ 115C-35, 36. It is an “employer” within the meaning of 38 U.S.C. § 4303(4)(A), and is subject to suit under USERRA, 38 U.S.C. § 4323(a).

3. Coffe was hired by Warren County in August 2006 as an Assistant Principal at Warren County High School.

4. Coffe has been an educator since 1997.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this civil action under 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).

6. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because Defendant Warren County maintains a place of business in this judicial district and is considered a “private employer.” Venue is also proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

FACTUAL ALLEGATIONS

7. Coffey repeats the factual allegations set forth in paragraphs 1-6.

8. Coffey is a Command Sergeant Major in the United States Army Reserves (“the Army Reserves”). Coffey currently serves in the 2nd Battalion, 317th Regiment, based in Lynchburg, Virginia. Coffey has served in the Army Reserves for over 26 years.

9. During the relevant times in the complaint and through present day, Coffey held and still holds a *North Carolina Professional Educator’s School Administrator: Principal* license.

10. Coffey has served in administrator positions since his employment began with Warren County in 2006 as an Assistant Principal.

11. During the 2016-2017 school year, Coffey was employed by Warren County as the Dean of Students at Warren County Middle School. As the Dean of Students, Coffey had high-level administrator responsibilities that he exercised interchangeably with the Assistant Principal and Principal, including making decisions regarding in-school suspensions of students; serving as the administrator representative at the decision-making meeting regarding moving students to the Alternative Program at the Hawkins Campus; responding to requests for an

administrator to address a fight; serving as an administrator representative in conversations with parents; representing the school at sporting events as an administrator; and attending the school accreditation meetings. He also had additional high-level responsibilities as Dean of Students that included reporting all of the in-school suspensions to the North Carolina state system, managing school disciplinary problems, monitoring issues that occurred on school buses, and serving on the school improvement team.

12. In the summer of 2017, Coffey received orders for military service that was to be performed between July 10, 2017 and August 21, 2017.

13. Coffey left for military duty on July 10, 2017. Prior to the commencement of the school year, Coffey gave notice of his military service via email to his supervisor, Principal Noland Hicks, Assistant Principal at Warren County Middle School, Jennifer Wilker, and Secretary Tammie Harmon.

14. On August 8, 2017, during the first day of school for students at Warren County Middle School, and while Coffey was still away on military orders, Coffey received a telephone call from Jamar Perry (“Perry”), the Director of Human Resources for Warren County. During the telephone conversation, Perry informed Coffey that Warren County had eliminated his position as Dean of Students at Warren County Middle School. Perry further informed Coffey that he would be offered reemployment as a Physical Education (“PE”) Teacher at Northside K-8 Elementary School when he returned from military service. Coffey did not receive any prior notice that his position was to be eliminated before his telephone call with Perry. He expressed his shock and disappointment with Warren County’s offer of a PE Teacher position and asked about other, administrator positions to which he could be assigned. Perry told Coffey that,

although there were vacant administrator positions at Warren County schools, it was too late for Coffey to apply for any of them.

15. Coffey has not been a PE Teacher for fifteen years and began his employment with Warren County as an Assistant Principal thirteen years ago. He has never worked as a PE Teacher for Warren County.

16. A PE Teacher position is not equivalent to an administrator position. A PE Teacher position does not have the authority to make in-school suspensions, respond to parent calls for an administrator, represent the school at an accreditation meeting, or engage in decision-making about moving students to the Alternative Program at the Hawkins Campus.

17. Based on Warren County's elimination of his Dean of Students position and offer of reemployment as a PE Teacher, Coffey filed a USERRA claim with the Department of Labor's Veterans' Employment and Training Service ("DOL VETS") which investigated his claim.

18. Human Resources Director Perry told the DOL VETS investigator that he has no knowledge of any other employee at Warren County schools being moved from an administrator role to a schoolteacher role.

19. On August 23, 2017, the DOL VETS investigator spoke with Dr. Ray Spain, the Superintendent of Warren County at the time, and reiterated Coffey's request to be reemployed as Dean of Students with a school or an equivalent position.

20. On or around August 24, 2017, the DOL VETS investigator sent a letter to Dr. Spain reiterating Coffey's request that Warren County "restor[e] him to his past position or a position equivalent to that of the Dean of Students at the Warren County Public School System."

21. On or around April 23, 2018, the DOL VETS investigator sent a letter to Lewis A. Thompson III, the attorney representing Warren County, once more confirming that Coffey sought reemployment in the form of a position as a Dean of Students or an equivalent position.

22. Warren County has never offered to reemploy Coffey as a Dean of Students or an equivalent position.

23. Upon information and belief, there were at least three administrator positions available for the 2017-2018 school year while Coffey was on military leave in 2017 and that Warren County filled in the summer of 2017; two Principal positions and one Assistant Principal position. One of the individuals Warren County hired as a Principal had less seniority, experience, and education than Coffey.

24. Coffey has not received retirement credit from Warren County for the purposes of determining his retirement benefit since July 10, 2017.

25. In order to mitigate his damages, Coffey served in the military from March 24, 2018 to August 22, 2018 and from October 1, 2018 through the present time. Coffey's current orders ended on March 30, 2019.

26. This is the second time that Coffey has filed a USERRA complaint with DOL VETS to enforce his reemployment rights after a return to his employment with Warren County after military service.

27. In March 2008, while employed with Warren County, Coffey left to perform active duty military service as a Sergeant First Class in the Army Reserves. Upon his return in April 2008, Warren County told Coffey his contract was not being renewed.

28. The Department of Justice undertook representation in his USERRA complaint for discriminatory non-retention of employment and retaliation for asserting his USERRA rights

and filed a complaint in the Eastern District of North Carolina on October 19, 2012. Complaint, *Coffer v. Warren County Bd. of Educ.*, No. 5:12-CV-00685-D (E.D.N.C. Oct. 19, 2012), ECF No. 1.

29. One year later, on October 30, 2013, Coffer and Warren County signed a consent agreement that required Warren County to reemploy Coffer as a Lead Teacher/Site Supervisor under an administrator contract and restore his lost pay and benefits. Consent Agreement, *Coffer v. Warren County Bd. of Educ.*, No. 5:12-CV-00685-D (E.D.N.C. Oct. 30, 2013), ECF No. 22.

30. The consent agreement also stated, “Warren County shall comply with all of the provisions of USERRA and shall not take any action against any person, including but not limited to Coffer, that constitutes retaliation or interference with the exercise of such person’s rights under USERRA.” *Id.* ¶8. Pursuant to the consent agreement, in November 2013, Warren County reinstated Coffer as a lead teacher/site supervisor at the Warren County Alternative School.

31. At all relevant times, Coffer had performed less than five years of non-exempt military service during his employment with Warren County.

CLAIMS FOR RELIEF

32. Coffer re-alleges and incorporates by reference all of the foregoing allegations.

33. Coffer meets the requirements for coverage under USERRA. *See* 38 U.S.C. §§ 4303 & 4304.

COUNT I

USERRA, 38 U.S.C. § 4313

Failure to Properly Reemploy in Violation of USERRA

34. USERRA provides that “any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the

reemployment rights and benefits and other employment benefits of this chapter” if that person satisfies USERRA’s notice, service length, and application requirements. 38 U.S.C. § 4312(a).

35. USERRA requires employers to promptly reemploy any person returning from a period of military service, which was for less than 91 days, “in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform.” 38 U.S.C. § 4313(a)(1).

36. Warren County violated USERRA Section 4313 by failing to promptly and properly reemploy Coffey when he returned from active duty. A proper reemployment position would have been a Dean of Students position or equivalent administrator position.

37. Coffey satisfied the notice, service length, and application requirements in USERRA, 38 U.S.C. § 4312.

38. Warren County’s violation of USERRA Section 4313 was willful under 38 U.S.C. § 4323(d)(1)(c) in that Warren County showed a reckless disregard for whether its conduct was prohibited by the provisions of USERRA.

39. Coffey has suffered a substantial loss of earnings and other benefits, including retirement benefits, in an amount to be proven at trial as a result of Warren County’s violations of USERRA.

COUNT II

USERRA, 38 U.S.C. § 4311

Discriminatory Demotion in Violation of USERRA

40. USERRA provides that “[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied . . . any benefit of employment by an employer on the

basis of that membership, application for membership, performance of service, application for service, or obligation.” 38 U.S.C. § 4311(a). An employer violates this prohibition when “a person’s membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating favor in the employer’s action.” 38 U.S.C. § 4311(c).

41. Warren County violated Section 4311 of USERRA by demoting Coffey on the basis of his military service obligations and/or his absence from his civilian job in order to perform military service.

42. Coffey’s military service was a motivating factor in Warren County’s decision to demote Coffey from a position as Dean of Students at a middle school to a PE Teacher at an elementary school.

43. Warren County’s violation of USERRA Section 4311 was willful under 38 U.S.C. § 4323(d)(1)(c) in that Warren County showed a reckless disregard for whether its conduct was prohibited by the provisions of USERRA.

44. Coffey has suffered a substantial loss of earnings and other benefits in an amount to be proven at trial as a result of Warren County’s violations of USERRA.

PRAYER FOR RELIEF

WHEREFORE, Coffey prays that this Court enter judgment against Warren County and grant the following relief:

A. Declare that Warren County’s failure or refusal to properly reemploy Coffey was unlawful and in violation of USERRA Sections 4311 and 4313;

B. Order Warren County to comply fully with the provisions of USERRA by compensating Coffey for his lost wages and other benefits, including retirement benefits, suffered by reason of Warren County's violations of USERRA;

C. Award prejudgment interest to Coffey on the amount of lost wages and benefits due;

D. Direct Warren County to reemploy Coffey into the position he had before he left for military service, or an equivalent position;

E. Enjoin Warren County from taking any action with respect to Coffey that fails to comply with USERRA;

F. Credit Coffey with all time lost due to failure to properly reemploy pursuant to USERRA for retirement benefit purposes;

G. Direct Warren County to apply to the state of North Carolina to renew Coffey's *North Carolina Professional Educator's School Administrator: Principal* license;

H. Declare that Warren County's USERRA violation was willful, and award Coffey liquidated damages in an amount equal to his lost wages; and

I. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

JURY DEMAND

Coffey hereby demands a jury trial under Federal Rule of Civil Procedure 38.

Respectfully submitted this 10th day of April, 2019.

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