

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

<b>MICHAEL J. ELLIS</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-09-562-C</b>
	)	
<b>THE GOODYEAR TIRE &amp; RUBBER</b>	)	
<b>COMPANY</b>	)	
	)	
<b>Defendant.</b>	)	

**CONSENT DECREE**

This matter is before the Court for entry of this judgment by consent of the parties to effectuate a compromise and settlement of all claims which have been or could have been made by Plaintiff Michael J. Ellis (“Ellis”) against Defendant The Goodyear Tire & Rubber Company (“Goodyear”), in the above-captioned case.

1. Ellis commenced this action in the United States District Court for the Western District of Oklahoma, alleging that Goodyear violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (“USERRA”), by failing to promptly reemploy him following his service with the Army Reserve.

2. Goodyear denies that it has violated USERRA and categorically denies Ellis’ claims. Nevertheless, as a result of settlement discussions, Ellis and Goodyear (collectively, the “Parties”) have resolved their dispute and have agreed that this action should be resolved by entry of this Consent Decree (“Decree”). It is the intent of the Parties that this Decree be a final and binding settlement in full disposition of any and all claims which have been or could have been asserted in the Complaint filed in this action based on the complaint Ellis

filed with the U.S. Department of Labor, complaint number OK-2008-00007-10-R. By Ellis' signature to this Decree, Ellis accepts the terms of this Decree and releases all claims against Goodyear which have been or could have been asserted in the Complaint filed in this case based on the complaint Ellis filed with the U.S. Department of Labor, complaint number OK-2008-00007-10-R. By Goodyear's signature, by and through its authorized representative, to this Decree, Goodyear accepts the terms of this Decree.

### **STIPULATED FACTS**

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Western District of Oklahoma over the subject matter of this action and of the Parties to this action for the purpose of entering and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of entering this Decree and any proceedings related to this Decree. Without admitting liability, Goodyear agrees that all conditions precedent to the institution of this action have been fulfilled.

### **FINDINGS**

5. Having examined the provisions of the 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 this Decree are lawful, fair, reasonable, and just. The rights of the Parties are protected adequately by this Decree.

- c. This Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person.
- d. The entry of this Decree will further the objectives of USERRA, and will be in the best interests of the parties.

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

**NON-ADMISSION**

6. This Decree is being entered with the consent of the Parties, and shall not constitute an adjudication or finding on the merits of the action or be construed as an admission by Goodyear of any violations of USERRA, or any other law, rule, or regulation dealing with or in connection with equal employment opportunities.

**NON-RETALIATION**

7. Goodyear's Lawton, Oklahoma, plant shall not take any action against any person, including but not limited to Ellis, that constitutes retaliation for, or interference with, the exercise of such person's rights under USERRA because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this case.

**REMEDIAL REQUIREMENTS**

8. Goodyear shall, within fourteen (14) days from the date of entry of this Decree, pay Ellis by certified check(s) a total monetary award of \$40,000, comprised of \$29,000 in back wages and \$11,000 in other damages. Goodyear shall withhold from the \$29,000 paid to Ellis that is attributable to back wages all employee withholdings and contributions required by law. Goodyear shall pay all monies withheld to the appropriate governmental agencies, and shall issue to Ellis the appropriate Internal Revenue Service tax forms on or before the date they are required by law to be issued. Goodyear shall also separately pay the appropriate employer's contribution to the Social Security fund and any other employer-side taxes due on the back wages portion of the total monetary award, *i.e.*, the employer's contribution shall not be deducted from the \$29,000. Goodyear shall mail the certified check(s) to Ellis at the following address:

Michael J. Ellis  
1802 N.W. 76<sup>th</sup> Street  
Lawton, Oklahoma 73505

Goodyear shall provide documentary evidence of having paid Ellis by mailing a photocopy of the check(s) evidencing payment together with proof of payment to the following address within seven (7) days of payment to Ellis:

John P. Buchko  
Employment Litigation Section  
Civil Rights Division, PHB  
601 D Street, N.W., Fourth Floor  
Washington, D.C. 20579  
Facsimile: (202) 514-1005

9. Within thirty (30 days) of the entry of this Decree by the Court, Goodyear's

Lawton, Oklahoma, plant shall supplement its employment policies and practices to ensure that returning service members are promptly reemployed in accordance with 38 U.S.C. §§ 4312 and 4313. In particular, Goodyear's Lawton, Oklahoma, plant shall supplement its policies and practices as follows:

- a. To assist in determining the appropriate reemployment position for a service member who was on Goodyear's Lawton, Oklahoma, plant Automatic Bidders List when the service member's service-related absence commenced, Goodyear's Lawton, Oklahoma, plant shall take all possible steps to identify vacancies that have occurred during the returning service member's service-related absence, for which the service member would have been eligible and which he or she would have been reasonably certain to obtain based on seniority, attendance, and other factors normally considered with respect to placement of those on the Automatic Bidders List.
- b. In accordance with 38 U.S.C. § 4302(b), Goodyear's Lawton, Oklahoma, plant may not impose any other prerequisite to prompt reemployment of a service member, including a medical examination, except as described in subpart (c) of this paragraph.
- c. With respect to a returning service member who was on medical leave from Goodyear's Lawton, Oklahoma, plant and on the Automatic Bidders List at the time the period of military service commenced, Goodyear's Lawton, Oklahoma, plant shall rely on the results of the

most recent medical examination conducted by or at the behest of Goodyear prior to the service member's deployment in determining the proper reemployment position under the procedures in subpart (a) of this paragraph. If the service member notifies Goodyear's Lawton, Oklahoma, plant upon his or her application for reemployment that his or her physical condition has changed during his or her period of military services, Goodyear's Lawton, Oklahoma, plant may seek the documentation or medical information necessary to determine Goodyear's obligations under USERRA or request that the service member undergo the type of medical examination required of other Goodyear employees, not absent on military leave, for purposes of determining their abilities to perform essential job duties. If a service member is or may no longer be qualified to perform the essential functions of any appropriate reemployment position identified in accordance with subpart (a) of this paragraph due to a disability or injury incurred or aggravated during the period of military service, Goodyear's Lawton, Oklahoma, plant nevertheless may not delay the returning service member's prompt reemployment to a position that the service member is qualified to perform pending the outcome of the medical inquiry necessary to establish an alternate reemployment position or any required accommodation.

- d. If permitted to require a medical examination of a returning service member pursuant to subpart (c) of this paragraph, Goodyear's Lawton, Oklahoma, plant shall take all reasonable steps to promptly schedule and complete such an examination. Absent unusual circumstances, prompt scheduling and completion of a medical examination shall mean scheduling and completion of the examination within two weeks of the returning service member's application for re-employment.
- e. Goodyear's Lawton, Oklahoma, plant shall provide a copy of any policies or procedures that have been revised, developed, or implemented in accordance with this policy, or other evidence of its compliance with paragraph ten (10) of this Decree, within thirty (30) days from the date of entry of this Decree to Mr. Ellis in care of the United States Department of Justice at the address set forth in paragraph eight (8) of this Decree.

10. For and in consideration of the relief being provided to him as described in paragraph eight (8) of this Decree, Ellis releases and discharges Goodyear from the claims identified in the Complaint filed in this case and the complaint Ellis filed with the U.S. Department of Labor, complaint number OK-2008-00007-10-R. This release and discharge of claims is subject only to Goodyear's compliance with the terms of this Decree.

**DISPUTE RESOLUTION AND COMPLIANCE**

11. The entry of this Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by Ellis in this action. The Court, however, shall retain jurisdiction over this action and shall have all equitable powers, including injunctive relief, to enforce this decree.

12. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The Parties shall engage in good faith efforts to resolve any dispute regarding compliance prior to seeking review by the Court, and shall give notice to each other ten (10) calendar days before moving for review by the Court. The Parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree, or defending against a claim of non-compliance.

13. For the one year term of this Decree, as set forth in paragraph fourteen (14) of this Decree, Goodyear's Lawton, Oklahoma, plant shall submit to the Department of Justice at the address set forth in paragraph eight (8) of this Decree, a Certification of Compliance. The Certification shall list, for each service member seeking, requesting, or applying for reemployment with Goodyear's Lawton, Oklahoma, plant following a service-related absence exceeding thirty (30) days, and which concludes after the date of entry of this Decree:

- a. the service member's name and address; the position and rate of pay held by the service member immediately prior to the commencement of his/her service-related absence ("pre-absence position");



- b. the period of the service member's service-related absence;
- c. the date of the service member's application or request for reemployment;
- d. the position at which the service member was reemployed following the service member's service-related absence; and
- e. to the extent any service member is reemployed in any position or at any rate of pay other than the service member's pre-absence position and rate of pay, the steps taken by Goodyear's Lawton, Oklahoma, plant to determine that such service member was correctly reinstated in that new position and/or rate of pay, pursuant to the requirements of this Decree and USERRA.

Goodyear shall submit such Certification of Compliance in six month intervals during the life of this Decree, starting with the date the Decree is entered by the Court.

#### **EXPIRATION OF THIS DECREE**

14. This Decree shall expire and this action shall be dismissed, without further order of this Court, one year from the date of entry of this Decree by the Court. Either Party may seek an extension of the expiration date of the Decree for good cause shown.

#### **MISCELLANEOUS**

15. The Parties shall bear their own costs and expenses of litigation, including attorneys' fees.

16. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected, and the other provisions shall remain in full force and effect.

17. The terms of this Decree are and shall be binding upon the heirs, successors, and assigns of Ellis, and upon the present and future elected and appointed officials, officers, directors, employees, agents, representatives, successors, and assigns of Goodyear.

18. This Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by Ellis and Goodyear.

19. The effective date of this Decree shall be the date upon which it is entered by the Court.

APPROVED and ORDERED this 2nd day of March, 2010.

  
ROBIN J. CAUTHRON  
United States District Judge

---

MICHAEL J. ELLIS

/s/ John P. Buchko

JOHN M. GADZICHOWSKI

Chief

(WI Bar No. 1014294)

KAREN D. WOODARD

Deputy Chief

MD Bar – no number issued)

JOHN P. BUCHKO

Trial Attorney

(D.C. Bar No. 452745)

DAVID N. REESE

Trial Attorney

(AL Bar No. ASB-0887-I67R)

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section

Patrick Henry Building, Room 4040

950 Pennsylvania Avenue, NW

Washington, DC 20530

Telephone: (202) 305-1528

Facsimile: (202) 514-1005

Email: [John.Buchko@usdoj.gov](mailto:John.Buchko@usdoj.gov)

Attorneys for Plaintiff

/s/ Leonard Court

(signed by filing attorney with consent of  
defendant's attorney)

LEONARD COURT

Crowe & Dunlevy

20 North Broadway, Suite 1800

Oklahoma City, Oklahoma 73102

Telephone: (405) 235-7706

Facsimile: (405) 272-5232

Email: [leonard.court@crowedunlevy.com](mailto:leonard.court@crowedunlevy.com)

Attorney for Defendant