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September 25, 2009 1:47 PM
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U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KING A. GATTEN,

Plaintiff,

v.

KNIGHT PROTECTIVE SERVICE, INC.,

Defendant.

Civil Action No. _____
1:09-cv-879
Gordon J Quist
U.S. District Judge

COMPLAINT

Plaintiff, KING A. GATTEN ("Gatten"), 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, as amended, 38 U.S.C. §§ 4301-4335 ("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).

3. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because defendant, KNIGHT PROTECTIVE SERVICE, INC. ("Knight"), is a Maryland corporation that maintains a place of business within this judicial district. Additionally, the Court has jurisdiction under 28 U.S.C. § 1391(b) because events giving rise to this lawsuit occurred in this judicial district.

PARTIES

4. Gatten is an individual domiciled in the State of Michigan.

5. Knight is a Maryland corporation that maintains a place of business in the State of Michigan, and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIMS FOR RELIEF

6. In September 2002, Gatten began employment as an armed security guard for Unlimited Security at the Hart-Doyle-Inouye Federal Center (the "Federal Center") in Battle Creek, Michigan.

7. Shortly thereafter (sometime in 2003), the government contract for providing armed security services at the Federal Center was rebid and taken over by Knight and, at that time, Gatten became an employee of Knight.

8. From January 2004 to January 2005, Gatten was called to active duty in the United States Army ("Army").

9. Upon Gatten's return in January 2005, he was reemployed by Knight in his full-time position without incident.

10. On or about March 15, 2006, Gatten advised Knight that he would be commencing a period of military service in April 2006.

11. Gatten temporarily left employment with Knight to serve in the Army on March 31, 2006, and advised his supervisor at Knight, Captain Ronald Umbarger ("Umbarger"), of his intent to return to Knight upon discharge from the Army.

12. As of March 31, 2006, Gatten was employed full-time by Knight as a Sergeant with part-time supervisory duties, and he earned an additional One Dollar (\$1.00) per hour for his supervisory hours.

13. Gatten was assigned to active duty as an Ammunition Specialist in the Army from April 6, 2006 until September 23, 2008, when he was honorably discharged from the Army due to permanent disability.

14. Gatten's disability did not render him unable to perform his duties with Knight.

15. Periodically, while on active duty, Gatten spoke with Umbarger and Lieutenant Scott Holmes ("Holmes"), a co-worker at Knight who was promoted to a supervisory position while Gatten was on active duty, and Gatten reiterated his desire to return to Knight when he completed his military service.

16. Upon learning of his impending discharge from the Army, Gatten contacted Holmes by telephone in early September 2008 to advise Knight of his impending discharge.

17. On or about September 17, 2008, Gatten wrote a letter to Umbarger and advised of his intent to return to work at Knight on September 24, 2008 and provided Umbarger with a copy of his Form DD-214.

18. At no time prior to September 17, 2008, was Gatten advised by Knight, Umbarger or Holmes that there would be any delay in his reemployment.

19. On or about September 23, 2008, Gatten was contacted by Holmes and told he needed to re-submit paperwork for a suitability determination and that he must receive a favorable suitability determination prior to reemployment.

20. On or about October 6, 2008, Gatten returned the suitability determination paperwork to Knight and continued to contact Umbarger on a routine basis to inquire as to the status of his reemployment.

21. Upon information and belief, a suitability determination is made and all requirements for employment with Knight are met generally within thirty (30) to sixty (60) days after an offer of employment is made to an individual.

22. Upon information and belief, on or about November 5, 2008, Umbarger was advised by the Department of Homeland Security/Federal Protective Service ("DHS/FPS") that Gatten's suitability determination had expired; however, Umbarger did not relate this information to Gatten.

23. On or about December 23, 2008, DHS/FPS made a favorable final adjudication of Gatten's suitability determination; however, Knight did not relate this information to Gatten during the month of December 2008.

24. On or about January 6, 2009, Gatten filed a complaint with the Department of Labor, Veterans' Employment and Training Service, alleging violations of USERRA by Knight for its failure to reemploy Gatten.

25. Also on or about January 6, 2009, Knight contacted Gatten and advised him that he was required to attend a weapons certification course, a cardiopulmonary resuscitation ("CPR") course and a 40-hour refresher course prior to his reemployment with Knight.

26. Upon information and belief, the weapons certification course, the CPR course and the 40-hour refresher course could have been administered to Gatten at any time upon his

return from the Army and did not require a favorable suitability determination prior to administration.

27. On January 10, 2009, Gatten attended the weapons certification course and on February 15, 2009, Gatten attended the 40-hour refresher course and the CPR certification course.

28. On or about February 22, 2009, Gatten was reemployed by Knight as a part-time security guard with no supervisory duties.

29. On April 6, 2009, Gatten was restored to full-time employment status by Knight, but Gatten continues to be denied his Sergeant position and his part-time supervisory duties and pay.

30. Knight violated Sections 4312 and 4313 of USERRA by failing to promptly and properly reemploy Gatten upon his return from active duty in the position he would have held had his employment not been interrupted by his military service, or in a position of like seniority, status and pay.

31. Knight's violations of USERRA were willful.

32. Because of Knight's conduct, Gatten suffered monetary damages, including lost wages and benefits, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter judgment against Knight and, further, that the Court:

- A. Declare that Knight's refusal to reemploy Gatten promptly was a violation of Sections 4312 and 4313 of USERRA;

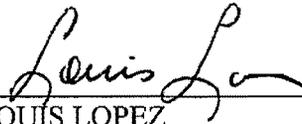
- B. Require that Knight fully comply with the provisions of USERRA by offering to reemploy Gatten in a position of like seniority, status and pay to the position he would have held if he had been continuously employed by Knight and had not served in the Army;
- C. Require that Knight fully comply with the provisions of USERRA by paying Gatten all amounts due to him for his loss of wages, benefits and opportunities caused by Knight's failure or refusal to comply with the provisions of USERRA;
- D. Declare that Knight's violations of USERRA were willful;
- E. Order that Knight pay Gatten as liquidated damages an amount equal to the amount of his lost wages and other benefits suffered by reason of Knight's willful violations of USERRA;
- F. Enjoin Knight from taking any action against Gatten that fails to comply with the provisions of USERRA;
- G. Award Gatten prejudgment interest on the amount of lost wages and benefits found due; and
- H. Grant such other and further relief as may be just and proper.

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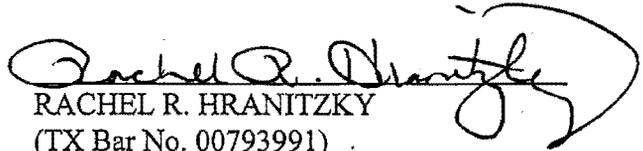
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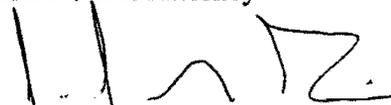
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