

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff United States of America, by the undersigned attorneys, makes the following averments:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 ("USERRA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(a).
3. Venue is proper in this district under 38 U.S.C. § 4323(c)(1) and 28 U.S.C. § 1391(b) because defendant New York State Department of Correctional Services ("NYSDOCS") maintains a place of business in this judicial district at State Office Building Campus, Building 2, Albany, New York 12226-2050.

CLAIM FOR RELIEF

4. Patrick Anson ("Anson") is an employee of NYSDOCS, and has continuously been an employee of NYSDOCS since June 13, 1988.
5. Anson is a reservist in the New York Air National Guard, and has continuously been a reservist in the New York Air National Guard since 1997.
6. Anson was called to active duty on September 11, 2001, served on active duty until May 19, 2005, and returned to work at NYSDOCS on May 23, 2005.
7. Anson had been scheduled to take the written examination for promotion to Correction Sergeant that was administered on October 3, 2001, but he was unable to take that examination because it was administered while he was on active duty.
8. On January 10, 2004, Anson took a make-up examination for the Correction Sergeant examination that had been administered on October 3, 2001, and he received a grade of 92.5 on that make-up examination.
9. Had Anson taken the October 3, 2001 Correction Sergeant examination and received a grade of 92.5 on that examination, he would have been promoted to Correction Sergeant on July 15, 2002.
10. NYSDOCS promoted Anson to Correction Sergeant on March 8, 2004, but failed or refused to credit him with Correction Sergeant seniority, status and compensation dating back to July 15, 2002.
11. Had NYSDOCS credited Anson with seniority back to July 15, 2002 when NYSDOCS promoted him to Correction Sergeant, Anson would have been eligible to take, and would have taken, a make-up examination for the Correction Lieutenant examination that had

been administered on June 14, 2003.

12. In October 2007, NYSDOCS corrected Anson's seniority date to reflect a promotion date to Correction Sergeant of July 15, 2002.
13. NYSDOCS violated Sections 4312, 4313 and 4316 of the USERRA by:
 - (a) failing or refusing to credit Anson with Correction Sergeant seniority, status and compensation dating back to July 15, 2002 when NYSDOCS promoted Anson to Correction Sergeant on March 8, 2004; and
 - (b) concomitant with its failure or refusal set forth in Paragraph 13(a), above, failing or refusing to provide Anson with the opportunity to take a make-up examination for the Correction Lieutenant examination administered on June 14, 2003.
14. As a result of NYSDOCS' violations of USERRA, Anson has suffered a substantial loss of earnings and other benefits of employment including, but not limited to, the opportunity to have taken a make-up examination for the Correction Lieutenant examination that was administered by NYSDOCS on June 14, 2003.

PRAYER FOR RELIEF

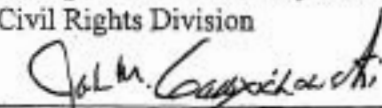
WHEREFORE, the United States prays that the Court enter judgment against NYSDOCS, its officers, agents, employees, successors, and all persons in active concert or participation with it, as follows:


15. Declare that NYSDOCS' actions, as described above, were unlawful and in violation of USERRA;
16. Order that NYSDOCS fully comply with the provisions of USERRA by administering to Anson a make-up Correction Lieutenant written examination, promptly scoring that

- examination, and, if merited by Anson's score on that examination, promoting Anson to Correction Lieutenant and granting Anson the Correction Lieutenant seniority, status and compensation that he would have received had NYSDOCS provided him the opportunity to take a make-up Correction Lieutenant examination;
17. Award Anson prejudgment interest in the amount of lost compensation found due;
 18. Enjoin NYSDOCS from taking any action against Anson that fails to comply with the provisions of USERRA; and
 19. Grant such other and further relief as may be just and proper, together with the costs and disbursements of this lawsuit.

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