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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. \_\_\_\_\_

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF**

Plaintiff Mervin W. Jones, by and through his undersigned attorneys, brings this Complaint against Defendant Jerome County Sheriff's Office and alleges the following:

**I. NATURE OF THIS ACTION**

1. This is a civil action brought pursuant to the Uniformed Services Employment and Re-employment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 (USERRA).

**II. JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).

3. The United States District Court for the District of Idaho is a proper venue for this action under 38 U.S.C. § 4323(c)(2) because Defendant resides or maintains a place of business in this judicial district. Additionally, venue is proper under 28 U.S.C. § 1391(b) because all or a substantial part of the events giving rise to this action occurred in this district.

4. All statutory conditions precedent to the initiation of this lawsuit have been fulfilled.

**III. PARTIES**

5. Plaintiff is a former employee of the Jerome County Sheriff's Office and resides in Jerome, Idaho.

6. Defendant Jerome County Sheriff's Office maintains a place of business at 300 N. Lincoln, Jerome, Idaho.

7. Defendant is an employer within the meaning of USERRA, 38 U.S.C. § 4303(4)(A), because it employed, managed, and controlled Plaintiff's daily activities and had authority over his employment opportunities while he was employed by the Defendant.

#### IV. FACTS

8. In approximately 2002, Defendant hired Plaintiff as a correctional deputy sheriff. After six months, Plaintiff was promoted to patrol duty. Shortly thereafter, Plaintiff took and passed the state residential Police Officers Standards and Training (POST) exam, and became a certified police officer in March 2003.

9. During his employment with Defendant, Plaintiff was also in the Army National Guard. In 2004 Plaintiff was deployed to Iraq. During his deployment he sustained a knee injury. When he returned from his deployment in 2005, the Defendant reemployed Plaintiff as a patrol deputy sheriff.

10. In approximately July 2007, Plaintiff was promoted to the rank of corporal and became a detective. Plaintiff's position as a detective required him primarily to investigate criminal cases that other deputy sheriffs generated in the field.

11. While he was working as a detective, Plaintiff continued to be a member of the Army National Guard and regularly attended weekend training drills.

12. On or about July 11, 2008, Plaintiff re-injured his knee during a weekend training drill with his Army National Guard unit.

13. On the Monday immediately following his knee injury, Plaintiff returned to his workplace to inform then Sheriff Jim Weaver and then Chief Deputy Sheriff Jocelyne Nunnally of his knee injury. Plaintiff was in substantial pain and had difficulty walking. Weaver and Nunnally recommended that Plaintiff use his accrued sick leave and take time off to recover. Weaver also assured Plaintiff that USERRA applied and that Plaintiff could return to his job when his knee healed.

14. Weaver and Plaintiff agreed that Plaintiff would work limited hours for the next few days to complete the paperwork necessary to transition his cases. At that time, Plaintiff did not yet know the extent of his injury because he had not received a medical evaluation.

15. In August 2008, the Army determined that Plaintiff's knee was injured in the line of duty and in November 2008 the Army paid for Plaintiff to have knee surgery, followed by six

to eight weeks of convalescence and physical therapy. By December 2008, Plaintiff's doctor determined that a second knee surgery would be necessary.

16. In January 2009, a new Sheriff, Doug McFall, took office as Jerome County Sheriff, and Jack Johnson was appointed as his Chief Deputy.

17. On or about January 16, 2009, Plaintiff met with Johnson and explained that he was currently convalescing from a knee injury incurred during military training and that he needed another surgery. Johnson told Plaintiff that the Family Medical Leave Act (FMLA) applied and insisted that Plaintiff complete FMLA paperwork.

18. In February 2009, fearful of running out of FMLA leave before his next knee surgery and losing his job, Plaintiff requested permission from his supervisor, Detective Sergeant Blas Martinez, to return to work in a light duty capacity. Martinez conveyed to Plaintiff that Defendants McFall and Johnson said there were no open positions and that Plaintiff could only return to work if he had no physical limitations.

19. Upon information and belief, there were open positions that Plaintiff could have performed, either with or without accommodation, or with reasonable efforts by Defendant to qualify Plaintiff to perform the duties of those positions.

20. Plaintiff was scheduled for another knee surgery on March 26, 2009. Approximately one week before Plaintiff's surgery, Johnson sent Plaintiff a memorandum by mail requiring that Plaintiff submit to a "Fitness-for-Duty Evaluation" and POST Applicant Physical Fitness Test before the Defendant would reemploy him. The memorandum stated that Plaintiff's FMLA leave would expire on April 6, 2009, and that if he could not meet these requirements before April 6, there would be disciplinary action, up to and including termination of his employment.

21. Following Plaintiff's March 26, 2009 surgery, Plaintiff's doctor ordered six to eight weeks of convalescence and physical therapy, rendering Plaintiff incapable of meeting the Defendant's April 6 deadline.

22. On April 6, 2009, Johnson personally served Plaintiff with a Notice of Proposed Termination for job abandonment, and on April 10, 2009, Plaintiff's employment with the defendant was terminated.

23. Within approximately six weeks of Plaintiff's March 26, 2009 knee surgery, Plaintiff's knee had substantially healed and he was fully capable of returning to his position as a Defendant detective, either with or without accommodation, or with reasonable efforts by Defendant to qualify Plaintiff to perform the duties of the position.

24. Despite Plaintiff's attempts to obtain employment in the law enforcement field after his discharge, he was unable to secure such employment.

25. Under Idaho Code § 65-503(c), Defendant's for-cause termination of Plaintiff's employment rendered him unable to use his veteran's preference in an attempt to obtain further public employment. The for-cause termination also entitled public employers to reject his applications for employment.

26. Having been out of law enforcement for more than three years, Plaintiff lost his certification as a law enforcement officer and would have to re-train and pass the POST test to re-gain his certification.

27. As a direct result of Defendant's termination of Plaintiff's employment, Plaintiff has lost substantial wages and benefits, as well as future employment opportunities in his chosen field of law enforcement.

28. As of February 2009, Defendant knew or should have known of its USERRA obligations. A poster describing USERRA's provisions was posted in the Jerome County Sheriff's office.

29. On January 10, 2012, in accordance with Section 4322(a) of USERRA, Plaintiff filed a complaint with the Veterans' Employment and Training Service (VETS) of the United States Department of Labor. VETS conducted an investigation and concluded that Plaintiff's rights were violated under USERRA. The Department of Labor referred Plaintiff's claims to the Department of Justice for litigation with a finding of merit.



**V. USERRA CLAIMS**

30. Plaintiff re-alleges and incorporates Paragraphs 1 through 31 as if fully set forth herein.

31. In January 2009, Defendant violated USERRA by demanding that Plaintiff use FMLA leave despite the two-year period for reporting back to work that is available to service members who are convalescing from injuries incurred during military service.

32. In February 2009, Defendant violated USERRA by failing or refusing to accommodate Plaintiff's disability when he sought reemployment in a light duty position.

33. In March 2009, Defendant violated USERRA by placing unlawful prerequisites on Plaintiff's reemployment, namely, requiring Plaintiff to undergo a "Fitness-for-Duty Evaluation" and pass the POST Applicant Physical Fitness Test before Defendant would consider him for reemployment.

34. In April 2009, Defendant violated USERRA by terminating Plaintiff's employment while plaintiff was within the time period permitted by USERRA to convalesce from injuries incurred during military service. Defendant also violated USERRA by refusing or failing to reemploy Plaintiff following his recovery from his injury in a proper reemployment position, which should have included reasonable accommodations and efforts by Defendant to qualify Plaintiff for such a position.

35. Defendant's violations of USERRA were willful and in reckless disregard of Plaintiff's rights under the statute.

**VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant, as follows:

A. Declare that Defendant's actions were in violation of USERRA's reemployment provisions, 38 U.S.C. § 4312, *et seq.*;

B. Order that Defendant comply with the provisions of USERRA;

C. Order Defendant to pay Plaintiff all amounts due to him for loss of wages, future employment opportunities, and other benefits of employment caused by Defendant's violations of USERRA;

D. Award Plaintiff liquidated damages in an amount equal to the amount of lost wages and other benefits of employment suffered by reason of Defendant's willful violations of USERRA, pursuant to 38 U.S.C. § 4323(d)(1)(C);

E. Award Plaintiff prejudgment interest on the amount of lost wages and benefits due; and

F. Grant such other relief as may be just.

Respectfully submitted this 7th day of January, 2013.

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CERTIFICATE OF SERVICE

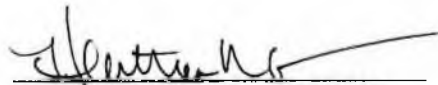
I HEREBY CERTIFY that on 7th day of January 2013, the foregoing **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF** was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following person(s):

N/A

And, I hereby certify that the following listed non-registered CM/ECF participants were served by:

- United States Mail, postage prepaid
- Hand-delivery
- Facsimile transmission (fax)

Mr. Michael Seib  
Jerome County Deputy Prosecutor  
233 West Main  
Jerome ID 83338

  
HEATHER R. CRAWFORD  
Civil Legal Assistant