

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ANDREW GROSS,)	
10805 Green View Way)	
Columbia, MD 21044)	
Howard County)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY,)	
110 North Calvert Street)	JURY TRIAL DEMAND
Baltimore, MD 21202)	
Baltimore City)	
)	
and)	
)	
THE MAYOR AND CITY COUNCIL OF BALTIMORE,)	
Mayor and City Council of Baltimore)	
City Hall)	
100 N. Holliday Street)	
Baltimore MD 21202)	
Baltimore City)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff, by his undersigned attorneys Steven D. Silverman, Andrew C. White, William N. Sinclair and Silverman, Thompson, Slutkin & White, LLC, files this Complaint against Defendants the Office of the State's Attorney for Baltimore City and The Mayor and City Council of Baltimore (collectively, "Defendants") and in support thereof alleges as follows:

INTRODUCTION

1. This action for damages arises from Defendants' decision to terminate Plaintiff's employment and/or refusal for hire or rehire in violation of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), as amended, 38 U.S.C. §§ 4301 et seq., including Plaintiff's right to be free from discrimination because of active duty military service in the United States Army Reserve ("Army Reserve") and/or his right to reclaim his employment after being absent due to his service to country. In addition, this action arises under Md. Code Ann., State Pers. & Pens. §§ 2-701 et seq., which likewise prohibits discrimination because of service in the Army Reserve and otherwise entitles reservists like Plaintiff to reclaim his employment after being absent due to military service or training.

2. The United States Department of Labor, the entity charged with promulgating USERRA's implementing regulations, has stated that USERRA and its regulations are "to be liberally construed for the benefit of those who left private life to serve their country." 70 Fed. Reg. 75246 (Dec. 19, 2005).

PARTIES

3. Plaintiff is an individual residing in Howard County, Maryland. Plaintiff is an officer in the United States Army Judge Advocate General Corps, a member of the "uniformed services" of the United States' armed forces as that term has been defined under USERRA and a "returning veteran" as that term has been defined under Md. Code Ann., State Pers. & Pens. § 2-701.

4. Defendant Mayor and City Council of Baltimore (the "City") is a municipal corporation or political body vested with authority over the City of Baltimore, located in this federal jurisdiction, which may sue and be sued.

5. Defendant Office of the State's Attorney for Baltimore City ("SAO") is a subdivision of the City's executive branch and is located in this federal jurisdiction.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b)(3). Pursuant to 28 U.S.C. § 1367, this court has supplemental jurisdiction over Plaintiff's claims arising under Md. Code Ann., State Pers. & Pens. § 2-701 et seq., as well as any common-law wrongful discharge, failure to hire, or failure to rehire claim derived from the public policy underlying that statute.

7. This Court is the proper venue for this matter pursuant to 28 U.S.C. §§ 1391(b) and (c) and 38 U.S.C. § 4323(c)(2).

8. Pursuant to 38 U.S.C. § 4323(h), Plaintiff is entitled to file this Complaint without the necessity of paying a filing fee or other court costs.

FACTUAL ALLEGATIONS

9. In July 2007, SAO hired Plaintiff as a law clerk while he was a law student at the University of Baltimore School of Law. Plaintiff's duties as a law clerk included assisting prosecutors with all phases of trial, conducting research, and various office tasks as needed. At the time, it was a generally accepted practice that service as a law clerk would lead to a permanent position as an assistant State's Attorney ("ASA") after passing the bar.

10. Plaintiff graduated from law school in 2008 and took and passed the 2008 Maryland bar exam. In November 2008, he informed SAO that he had passed the bar.

11. On December 8, 2008, Deputy State's Attorney Kim Morton ("DASA Morton") held a meeting with those clerks (including Plaintiff) who passed the bar. At that meeting, she informed the clerks that the City had instituted an indefinite hiring freeze for ASA positions.

She also told them that there was an opening to serve as an ASA in the District Drug Treatment Court (“Drug Court”) for which they could apply, though that position was contingent on continued funding.

12. At the time of the December 8, 2008 meeting, Plaintiff was seventh in the promotion queue, which was based solely on hiring order. In March 2009, he applied for the Drug Court position. After a successful interview with DASA Morton, the SAO hired Plaintiff for the Drug Court position in March 2009 at a salary of \$72,000.00 per year.

13. Around the same time, Plaintiff decided to serve his country and applied to become a Judge Advocate Officer in the Army Reserve. Military service in the Army Reserve generally requires reservists to dedicate one weekend per month and two weeks per year for training, although occasionally opportunities for more training arise. However, during times of war and national emergency, or at any other time when authorized by the President of the United States, reservists may be required to mobilize and serve on active duty according to the country’s needs.

14. On April 21 2009, Plaintiff received a commission from the President of the United States to become a First Lieutenant in the Army Reserve.

15. USERRA protects the jobs of those who serve in the Army Reserve.

16. Several weeks after Plaintiff was hired as an ASA in the Drug Court position, he was called to active duty training with the Army Reserve beginning July 5, 2009 for a period of approximately six months. Plaintiff informed DASA Morton and his immediate supervisor of the same in writing.

17. On May 28, 2009, Latesha Parks, coordinator for the Drug Court, sent an e-mail to DASA Morton stating in relevant part that the Drug Court had been awarded an amount to

cover Plaintiff's position at Drug Court through June 2010. In that same email, she confirmed that Plaintiff had been called up to active military duty and that he would be leaving Drug Court for this reason in July 2009. She also confirmed that the SAO was well aware of Plaintiff's situation and asked that they replace him with another ASA as soon as possible.

18. On May 29, 2009, DASA Morton responded to Ms. Parks' email that SAO was running an advertisement for Plaintiff's replacement. Ms. Parks replied in an email that Plaintiff's position could be advertised in the Daily Record and asked whether SAO planned to offer him another position when Plaintiff completed his Reserve training (as required by USERRA).

19. Prior to his July 2009 departure for Reserve training, Plaintiff was aware that the SAO had received continued funding for the Drug Court position for the next year.

20. On June 4, 2009, Plaintiff met with SAO employee Yvonne Fisher. At that meeting, Plaintiff and Ms. Fisher discussed that Plaintiff would be taking leave for six months from the SAO to serve in the Army Reserve and comply with his military orders. Plaintiff told Ms. Fisher that his military training would conclude in December 2009 or January 2010, though the possibility of two to three weeks additional training existed.

21. Before departing for his six-month training exercise in accordance with his military orders, Plaintiff also met with DASA Morton and DASA Haven Kodek. DASA Morton told Plaintiff that SAO would try to rehire him even though she believed, albeit incorrectly, that USERRA did not apply because he joined the military after he began working for SAO. When Plaintiff visited DASA Kodek to return his employee badge, the deputy told Plaintiff that SAO would hold open his position as an ASA while he served on active duty.

22. From July 5, 2009 to December 18, 2009, Plaintiff was mobilized and served in the Army Reserve. He trained in Charlottesville, Virginia and Fort Sill, Oklahoma. Plaintiff was released from active duty on December 21, 2009.

23. Upon information and belief, while Plaintiff was participating in the foregoing training, the Drug Court position he had held was occupied by another attorney at the SAO.

24. On December 28, 2009, Plaintiff hand-delivered his resume to SAO with a letter indicating his intent to return.

25. On January 4, 2010, DASA Morton responded to Plaintiff's December 28 letter, stating that SAO gives "hiring priority to current law clerks" and that, while she had "placed [him] above all potential candidates ... not part of our law clerk pool," she would only be able to contact Plaintiff "[w]hen a vacancy for which [Plaintiff was] eligible becomes available." She declined to re-hire Plaintiff as an ASA in the Drug Court, even though that job was still in existence and funded.

26. Upon information and belief, the Drug Court position was occupied at the time of the correspondence by an SAO employee.

27. From January 2010 to March 2010, Plaintiff applied for jobs at numerous private law firms, federal agencies, including the Departments of State, Energy, Environment, Defense, Justice and Commerce, and state and local agencies. Despite Plaintiff's best efforts, the poor job market for attorneys left him unable to find work.

28. In February 2010, less than two months after he returned from his active duty military training, the Drug Court position previously occupied by Plaintiff became available but SAO advertised it on an internal basis only. Plaintiff only learned about the job opening from a friend in the office. SAO never notified Plaintiff of the Drug Court opening.

29. Because he could not find employment, Plaintiff looked to Reserve training to help him make ends meet. Between January and June of 2010, Plaintiff was able to obtain 31 days of active training and 20 days of inactive training.

30. Eventually, Plaintiff was able to secure a one year tour of active duty, and on June 21, 2010, he began that duty.

31. Defendants had notice of Plaintiff's claim, as well as his intent to sue, on or about September 2, 2010. They have resisted all efforts to allow Plaintiff to return to the job he held prior to being ordered to active duty.

COUNT I
DISCRIMINATION AGAINST PERSONS WHO SERVE IN THE UNIFORMED
SERVICES IN VIOLATION OF USERRA

32. Plaintiff re-alleges and incorporates the foregoing paragraphs as if fully set forth herein.

33. Plaintiff is an "employee" and member of the "uniformed services" as those terms are defined under USERRA.

34. Defendants are "employers" as that term is defined under USERRA.

35. In March 2009, Plaintiff began his employment as an ASA in Drug Court.

36. From July to December 2009, Plaintiff was ordered to active military service by the Army Reserve.

37. Prior to leaving for this military duty, Plaintiff gave SAO reasonable notice of his military orders and all parties were aware that funding existed for Plaintiff's Drug Court position for the 2009-10 year.

38. Upon information and belief, after Plaintiff left for training in July 2009, SAO filled the Drug Court position.

39. Upon information and belief, when Plaintiff returned from training in December 2009, the Drug Court position still existed.

40. In February 2010, SAO sought to hire someone for the Drug Court position and did not offer the position to Plaintiff.

41. Plaintiff's absence from his SAO position between July and December 2009 was necessitated by reason of military orders and he was entitled to the rights and benefits thereunder because he gave advance notice of his service; the cumulative absence did not exceed five years; and he re-applied for the position within the 14-day statutory requirement, which applies because the military service at issue was between 31 and 180 days.

42. Plaintiff would have continued to serve as an ASA in the Drug Court position had he not been called to active military duty.

43. Defendants' decision to terminate Plaintiff's employment and/or refusal for hire or rehire violated USERRA, 38 U.S.C. § 4311(a).

44. Defendants willfully violated USERRA because Plaintiff's membership, service, and obligation for service in the uniformed services was a motivating factor in their decision to terminate Plaintiff and/or refusal to hire or rehire Plaintiff and there is no evidence that the termination, refusal to hire, or refusal to rehire would have occurred in the absence of such membership, service, or obligation for service.

45. As a result of Defendants' violation of USERRA, Plaintiff is entitled to damages, including but not limited to back pay, front pay, loss of employment benefits, reasonable attorneys' fees, expert witness' fees, and all litigation costs and if proven that Defendants willfully violated USERRA, Plaintiff is also entitled to additional statutory liquidated damages.

COUNT II
DISCRIMINATION AGAINST PERSONS WHO ARE RETURNING VETERANS IN
VIOLATION OF Md. Code Ann., State Pers. & Pens. § 2-701 et seq.

46. Plaintiff re-alleges and incorporates the foregoing paragraphs as if fully set forth herein.

47. Plaintiff is a “returning veteran” under Md. Code Ann., State Pers. & Pens. § 2-701.

48. Under State Pers. & Pens. § 2-703(c), Plaintiff was eligible for reinstatement because he (1) performed military service of a nature and length that met the requirements of USERRA; (2) was relieved from active duty under honorable conditions; and (3) submitted an application for reinstatement within 90 days after he was relieved from that active duty.

49. Under State Pers. & Pens. § 2-707(a), Plaintiff was eligible for reinstatement rights and benefits specified in §§ 2-705 and 2-706(a),(b), and (c) because Plaintiff is a member of a reserve who (1) performed active duty for training of a nature and length that met the requirements for eligibility under 38 U.S.C. § 4304(c); (2) was released from that duty after satisfactory services; and (3) submitted an application for reinstatement within 31 days after he was released from that duty.

50. Defendants violated State Pers. & Pens. § 2-705(a) because they did not reinstate Plaintiff (1) to the class he previously held within the principal department or other independent unit in which the returning veteran had been employed; or (2) to a position of equal responsibilities, qualifications, and rate of pay.

51. The circumstances at the SAO had not changed to the extent that implementation was impossible or unreasonable because the position was still receiving grant funding when Plaintiff returned from active duty.

52. Pursuant to State Pers. & Pens. § 2-706(a), Plaintiff was entitled to start at the salary and rate of leave accrual he would have attained if his employment had been continuous.

53. Pursuant to State Pers. & Pens. § 2-706(b), Plaintiff is entitled to add seniority, status, and length of employment from the period when he entered military service to the day that he would have been reinstated.

54. Pursuant to State Pers. & Pens. § 2-706(c), Plaintiff is entitled to (1) all benefits and privileges, including rate of pay, that resulted from the additional seniority and status credited under subsection (b) of this section; (2) pension and retirement rights; and (3) any service status that Plaintiff had when he entered military service, with adjustments to reflect the additional seniority credited under subsection (b) of this section.

WHEREFORE, Plaintiff respectfully requests a trial by jury, judgment in his favor in an amount to be determined by the Court, including compensatory, liquidated, and punitive damages, as well as an award of attorney's fees and costs related to this action, including expert witness fees, and all other such relief upon which he may appear to be entitled, even if not specifically requested herein if such relief is supported by sufficient evidence.

Respectfully submitted,

Date: September 19, 2011

/s/

Steven D. Silverman (# 22887)
Andrew C. White (# 08821)
William N. Sinclair (# 28833)
Silverman Thompson Slutkin & White, LLC
201 North Charles Street, 26th Floor
Baltimore, Maryland 21201
Tel.: (410) 385-2225
Fax: (410) 547-2432
ssilverman@mdattorney.com
awhite@mdattorney.com
bsinclair@mdattorney.com

Attorneys for Plaintiff Andrew Gross