

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

JOSEPH M. ERNEST

Plaintiff,

vs.

LOCKHEED MARTIN CORPORATION

Defendant.

Civil Action No.:

Section:

Mag. Div. ()

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES, **JOSEPH M. ERNEST** ("Ernest"), who for his Complaint respectfully avers that:

1.

Mr. Ernest, plaintiff herein, is a person of the age of majority and domiciled within the County of El Paso, State of Colorado.

2.

Made defendant herein is **LOCKHEED MARTIN CORPORATION** ("Lockheed Martin"), a corporation formed under the laws of the State of Maryland, licensed to and doing business in the State of Colorado with a principal place of business in Bethesda, Maryland, and, with a registered agent in Denver, Colorado.

3.

This Honorable Court has subject matter jurisdiction over this matter pursuant to the Uniformed Services Employment and Reemployment Rights Act ("USERRA") 38 U.S.C. § 4301 et seq., specifically 38 U.S.C. §§ 4312, 4313, 4316(c)(1), 4318 and

4323(b)(3). In addition, This Honorable Court has concurrent and pendant jurisdiction over this matter pursuant to Colorado State law, specifically Colorado Revised Statutes Title 28 Article 3 §§ 101, 506, 610, 610.5, 611 and 612. Alternatively, this Honorable Court has jurisdiction over this claim pursuant to 28 U.S.C. §1331.

4.

Venue is proper in this Honorable Court pursuant to the provisions of USERRA, 38 U.S.C. § 4323(c)(2). Alternatively, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

5.

Lockheed Martin first employed Ernest as a counterintelligence/counter-terrorism and law enforcement analyst on February 2, 2004 in Lockheed Martin's Counter Intelligence Field Activity-West in Colorado Springs, Colorado.

6.

Prior to being employed by Lockheed Martin, Ernest served an active duty enlisted man in the United States Navy from November, 1985 until April 1986. Upon his release from active duty service, Ernest continued his service with the United States Navy Reserve ("USNR"). In May of 1999 Ernest accepted a commission as an Officer in the USNR and continued his reserve service to the nation.

7.

At all times relevant to this action, Ernest was, and remains, a Lieutenant in the United States Navy Reserve.

8.

Ernest received involuntary activation orders first bringing him to an active duty status for service in Operation Iraqi Freedom from March, 6 2006 to February 07, 2007. This period of service included Ernest actually deploying to Baghdad, Iraq and serving as a Staff officer on the Iraqi Ministry of Interior Intelligence Transition Team for approximately nine (9) months.

9.

On 5 February of 2007, Ernest informed Defendant's supervisor Tim Gavaghan that Ernest was desirous of returning to employment with Lockheed Martin in the first week of March 2007 in Lockheed Martin's Colorado Springs office.

10.

While Ernest was still on active duty with the U.S. Navy during February of 2007, he sought reemployment with Lockheed Martin by providing oral notice to Defendant Lockheed Martin of his imminent discharge from active duty and desire for reemployment with the Defendant's Colorado Spring's office.

11.

Following Ernest's demobilization from active duty service on Feb 07, 2007 he was returned to his prior reserve status in the United States Navy Reserve effective Feb 08 2007.

12.

Ernest received an Honorable Discharge from the United States Navy for his nearly one year period of active duty service.

13.

Rather than re-employ Ernest as required by federal statute, Defendant Lockheed Martin put Ernest on multiple days of company vacation leave, five (5) days of bereavement leave and two weeks of overhead leave from February 8th 2007 until the date he was terminated by Lockheed Martin on March 30th 2007.

14.

After Ernest's return from Active Duty and wartime service in Baghdad, Iraq, Defendant made no efforts at re-training, or otherwise, to enable Ernest to qualify for a position that he would be entitled to perform in a re-employed capacity before terminating him.

15.

On March 30th, 2007, just seven weeks after returning from war to a re-employable status with Lockheed Martin, Robin Newman, acting on behalf of Defendant's Corporate Human Resources Department, informed Ernest that his employment at Lockheed Martin was no longer desired and he was being laid off. Ernest understood that to mean he was being terminated and discharged from Lockheed Martin employ.

16.

Ernest's active military service in 2006 and 2007 was, in whole or in part, known and considered by Lockheed Martin prior to his termination and discharge by Defendant Lockheed Martin.

17.

In February 2007, Defendant Lockheed Martin failed to re-employ Ernest to the position of employment in which Ernest would have been employed if the continuous employment of Ernest at Lockheed Martin Corporation had not been interrupted by involuntary active duty and deployment to Baghdad, Iraq with the United States Navy.

18.

In February 2007, Defendant Lockheed Martin failed to re-employ Ernest to a position of like seniority, status and pay in employment duties Ernest would be qualified to perform, either with or without a period of employer sponsored re-training, if the continuous employment of Ernest at Lockheed Martin Corporation had not been interrupted by involuntary active duty and deployment to Baghdad, Iraq with the United States Navy.

19.

In February 2007, Defendant Lockheed Martin failed to re-employ Ernest to the position of employment in which Ernest was actually employed on March 6, 2006, the date of the commencement of involuntary active service in The United States Navy.

20.

In February 2007, Defendant Lockheed Martin failed to re-employ Ernest to a position of like seniority, status and pay in employment duties Ernest would have been qualified to perform only if Ernest had been determined not to be qualified to perform the duties of the employment position he previously held on March 6, 2006 after reasonable efforts by the Defendant to qualify Ernest for his previous employment position if such employment of Ernest at Lockheed Martin Corporation had not been interrupted by involuntary active duty and deployment to Baghdad, Iraq with the United States Navy.

21.

The facts alleged in Paragraphs 1 through 20 constitute a violation of the provisions of USERRA, 38 U.S.C. § 4301 et seq., including, but not limited to, 38 U.S.C. §§ 4312, 4313 4316 and 4318 and Colorado Revised Statutes Annotated Title 28 Article 3 §§101, 506, 610, 610.5, 611 and 612.

22.

Lockheed Martin's actions in this matter were a wilful violation of USERRA such that liquidated damages are legally appropriate under 38 U.S.C. § 4323 (d)(1)(C).

23.

Lockheed Martin either knew or showed reckless disregard for the matter of whether its conduct regarding the failure to re-hire Ernest in accordance with federal law was prohibited by 38 U.S.C. §§ 4312, 4313 and 4316 et seq.

24.

Lockheed Martin's violations of part 6 of Title 28, Colorado Revised Statutes through their non-compliance with Colorado law constitute a misdemeanor under Colorado Law and upon information and belief, subject it to a civil fine not to exceed \$5,000.00, damages, reasonable attorney's fees and other equitable relief as deemed appropriate if found guilty by this Honorable Court.

25.

After being informed that he had been terminated from employment, Ernest informed Lockheed Martin's management that he was protected by USERRA against re-employment discrimination in written correspondence on May 5, 2007.

26.

Plaintiff, Joseph M. Ernest, hereby demands a trial by jury in the above-captioned matter as provided by the Seventh Amendment of the United States Constitution.

WHEREFORE, JOSEPH M. ERNEST prays that due proceedings be had and that there be judgment herein in favor of **JOSEPH M.ERNEST** and against **LOCKHEED MARTIN CORPORATION**, defendant, for such sums as the Court should deem reasonable and proper, including reinstatement to his former position with like seniority, status and pay together with back pay, liquidated damages, restored retirement benefits, reasonable attorneys' fees, pre-judgment interest, post-judgment interest if appropriate, expert witness fees and other litigation expenses, together with appropriate civil fines, damages, reasonable attorney's fees and equitable relief if found guilty of violating Colorado Law Or, back pay, front pay, liquidated damages, a restoration of retirement benefits, reasonable attorneys' fees, pre-judgment interest and other litigation expenses together with appropriate civil fines, damages, reasonable attorney's fees, and equitable relief if found guilty of violating Colorado Law, post judgment interest and legal interest thereon from the date of judicial demand until paid, plus all costs of these proceedings, and for such other legal and equitable relief as the Court shall deem necessary and proper.

Respectfully Submitted,

s/George C. Aucoin

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