

U.S. DISTRICT COURT
FILED AT WHEELING, WV

NOV 30 2009

NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Martinsburg Division

EUGENE C. BURRESS,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 3:09-CV-76
)	
MASTEC ADVANCED TECHNOLOGIES,)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT

Plaintiff, Eugene C. Burress ("Burress"), 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. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because Defendant MasTec Advanced Technologies ("MasTec") is a Florida corporation that maintains a place of business within this judicial district. Additionally, venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this lawsuit occurred in this judicial district.

PARTIES

4. Burress is an individual domiciled in the State of West Virginia.
5. MasTec is a Florida corporation that maintains a place of business in the State of West Virginia and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIMS FOR RELIEF

6. In March 2006, Burress began employment as a technician for MasTec in Martinsburg, West Virginia.
7. In or around July 2006, Burress was promoted to field technician supervisor.
8. In or around December 2007, Tom Stieringer, the regional manager who supervised MasTec's Martinsburg office, informed Burress that the site manager position at the Martinsburg office would be vacant soon and offered the position to Burress when it became available.
9. In January 2008, Burress was called to active duty in the United States Army ("Army") and notified Stieringer of his upcoming military service.
10. In January 2008, Stieringer again offered the site manager position at a higher salary to Burress, who accepted the position effective upon his return from military service.
11. In July 2008, Burress returned home on a short leave from military service and again discussed the site manager position with Stieringer.
12. Upon information and belief, in July 2008, two MasTec employees overheard Burress and Stieringer discussing an employee who Stieringer stated would be reporting to Burress when he became site manager.

13. Upon information and belief, in or around September 2008, a MasTec employee overheard Stieringer state that he could wait no longer for Burress to return from military service to fill the position.

14. Upon information and belief, in October 2008, MasTec promoted Michael Fiddler, a MasTec employee not engaged in military service, to site manager of the Martinsburg office.

15. In December 2008, Burress returned from military service and subsequently was honorably discharged from the Army.

16. On December 24, 2008, Burress notified Stieringer of his return from military service and requested to return to work; Stieringer informed Burress that he could return to work immediately.

17. Burress returned to work at MasTec as a field technician supervisor with no increase in salary on or about January 15, 2009.

18. On or about February 10, 2009, Burress filed a complaint with the Department of Labor, Veterans' Employment and Training Service, alleging violations of USERRA by MasTec for failing to promote him to site manager of the Martinsburg office.

19. On or about June 27, 2009, Burress's employment with MasTec was terminated.

20. MasTec violated Section 4311 of USERRA by denying Burress a promotion to site manager because of his membership in and/or obligation to perform service in the uniformed services.

21. MasTec violated Sections 4312 and 4313 of USERRA by failing to reemploy Burress 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.

22. MasTec's violations of USERRA were willful.

23. Burress suffered monetary damages, including lost wages and benefits, in an amount to be proven at trial, because of MasTec's conduct.

PRAYER FOR RELIEF

WHEREFORE, Burress prays that this Court enter judgment against MasTec and, further, that the Court:

24. Declare that MasTec's discrimination of Burress was unlawful and in violation of Section 4311 of USERRA;

25. Declare that MasTec's refusal to reemploy Burress in a position of like seniority, status, and pay to the position that he would have held if he had been continuously employed by MasTec and had not served in the Army was a violation of Sections 4312 and 4313 of USERRA;

26. Require that MasTec fully comply with the provisions of USERRA by paying Burress all amounts due to him for his loss of wages and other benefits caused by MasTec's failure or refusal to comply with the provisions of USERRA;

27. Award Burress prejudgment interest on the amount of lost wages and benefits found due;

28. Declare that MasTec's violations of USERRA were willful;

29. Order that MasTec pay Burress liquidated damages in an amount equal to the amount of his lost wages and other benefits suffered by reason of MasTec's willful violations of USERRA;

30. Enjoin MasTec from taking any action against Burress that fails to comply with the provisions of USERRA; and

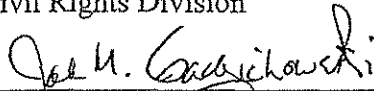
31. Grant such other and further relief as may be just and proper.

JURY TRIAL DEMAND

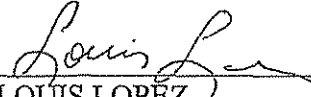
Pursuant to Fed. R. Civ. P. 38, Burress demands a trial by jury of all issues so triable.

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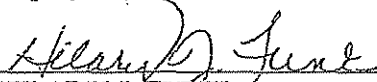
BY:



JOHN M. GADZICHOWSKI
(WI Bar No. 1014294)
Chief



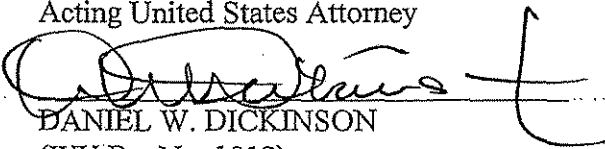
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