

**STATEMENT OF
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Mr. Chairman and distinguished members of the House Veterans Committee:

Thank you for the opportunity to address you pertaining to my USERRA case. USERRA protection and veterans' employment/re-employment rights are absolutely critical in this time of war with military activations, deployments, and employment returns of Reserve and National Guard military service members.

Background: I am a former Colonel in the United States Air Force Reserve. I joined the Air Force Reserve on August 20, 1990 and was separated from the service on March 31, 2003 by mandatory age mandate. I served 12 ½ years and loved every minute of my military career. I am a disabled veteran resulting from serving during the Gulf War as a battlefield/aeromedical staging nurse. Additionally, I was recalled to active duty to serve post 9/11 for eight months at Keesler Air Force Base in Mississippi. During my service I received many awards including the Meritorious Service Medal and two Air Force Commendation Medals. As a civilian, I am a nurse with a career spanning 37 years including 10 years as a college/university professor, approximately 10 years as a manager/administrator, and the remaining years as an eclectic health/mental health professional. I have been a successful, high performing professional throughout my civilian and military career.

Precipitating situation: On October 26, 1999, I was employed by the Veterans Affairs Medical Center, San Diego as a Title 38, staff nurse/performance improvement consultant, in the Performance Improvement Management Service (PIMS) department. On December 7, 1999, a memo was written for my termination, the day following my presentation of military orders to my supervisor. I was terminated January 14, 2000. This termination was totally unexpected; no verbal nor written warning/counseling was given to me. In essence, six weeks passed between initial employment and termination. The reason given for my termination was "unavailability" – failure to request leave appropriately (military leave) and volunteering for projects without consulting with immediate supervisor (VA choir practice during lunch and offering to teach, if approved by my supervisor, a course entitled "Coping with Grief-Loss-Death, an area in my nationally recognized area of expertise). The reason for my unavailability was military service.

Prior to my employment, my future supervisor and I discussed my military service and obligations. There was a mutual agreement to try to work with the agency regarding my military responsibilities, even though USERRA does not require such an agreement. In a good faith effort on my part, by December 1999, I had begun implementing a transfer to military IMA (Individual Mobility Augmentee) status and was being assigned to Headquarters Air Force (Pentagon), Office of the Surgeon General at Bolling Air Force Base, Washington, D.C. This was done in an attempt to prevent scheduling conflicts

between my military career and my VA employment. This reassignment would remove me from critical mobility status to planned military duty. My supervisor and I discussed, prior to hiring, pending military orders for a national military medical conference that I had already received. We agreed that I would start employment prior to the conference and my supervisor approved the orders and my attendance at the conference. I was eager to start the job because I had searched for an equivalent position for 18 months. Thus, at the beginning of employment, there was one week of military service in which I would be away from the job.

Prior to December, my military and leadership position was at March Air Reserve Base, California and entailed responsibility for the Suicide and Violence Prevention Program and teaching of more than 3,000 Reservists. I attended Reserve training two weekends per month and missed one day from work for preparation and wrap up. This was a bit more mandatory time away from work required until I could transfer my responsibilities to another Reservist; which was projected to take place in January, 2000. We (my supervisor and I) tried to accommodate this scheduling by a compressed work week that did not conflict with military duty.

The incident that triggered my immediate termination was my receipt of orders for an unexpected, critical, and military essential mission in which I was selected to replace an aeromedical staging nurse at Hickam Air Force Base, Hawaii. The orders were from 12 to 18 December 1999. I was a specifically and specially trained skilled nurse and there was no one else available to fill the need. All Reserve ASTS medical units had been asked for a volunteer and there were none. I volunteered, conditional upon my supervisor's approval. I tried to reach her by telephone and she was out of state and unavailable. The decision had to be made by the end of that Reserve duty day. Without further input from me, the Air Force Reserve changed my status from volunteer to mandatory because I was available.

I presented the orders to my supervisor on December 6, 1999. She was furious and told me I could not go, which is in itself a USERRA violation. I called Headquarters to try to revoke the orders. This was my effort at good faith cooperation with my agency. When revocation was not possible, because of criticality of the mission, she approved the leave. However, the next day, December 7, she wrote the memo requesting my termination. This was unfortunate because within a month or so the work/military conflict would have been resolved. Despite the absences, I managed to complete all assignments; often on my own time after work or on weekends. At no time did my quality of work with the agency suffer nor did my quality of service with the Air Force.

The termination was especially tragic because my supervisor was a Navy Reserve Officer. I expected her to have tolerance and understanding of my military responsibilities, call to duty, and mobilization; especially with my intent and subsequent action to transfer from the Ready Reserve to IMA status. This transfer meant a loss of income as well as status, yet I was willing to make the change to save my job.

Upon return from active duty, I was scheduled for immediate surgery due to a life threatening medical condition resulting from my service in the Gulf War. This did not effect the termination decision, it had already been made. The day I returned from surgery rehabilitation, January 10, 2000, I was given my letter of termination. I was terminated on January 14, 2000.

Appeal process. Reservists were given briefings on USERRA and employment rights during military training. Immediately after termination, I contacted our military base JAG officer, and he recommended that I contact the Veterans' Employment and Training Service (VETS) within the Department of Labor. In turn, upon advisement, I filed a complaint on January 26, 2000, which VETS investigated. At the conclusion of the investigation, my package was sent to the Office of Special Counsel with the recommendation to prosecute the case because a violation of USERRA had occurred. I was appointed an attorney from the Office of Special Counsel to represent me. My case has taken 4 years to arrive at this settlement point. The wait has caused me to feel like nothing would ever happen. I, in fact, I had given up hope of any type of recovery or resolution. Equally important in my settlement to the monetary award is the restoration of my personnel record; replacement of the termination with a "resignation" to make me whole again. Currently, I am greatly harmed by the current designation. I am also grateful that there will be USERRA training of all leadership personnel at the VA San Diego so this tragedy will not happen again.

I can only state how helpful the attorney with the Office of Special Counsel, Francisco Ruben, has been throughout this time. He has kept me informed of the progress of my case and provided wise counsel. I can only praise his diligence and persistent effort. I must stress how important it is to have legal support when you know you have been wronged by a Government agency, especially one whose mission is to take care of veterans!

Consequences. I walked into a good job that would have used my education and skills. I was committed to do my very best. I wanted to do the good job I always do. Instead, my career was severely damaged. I lost an excellent job, was degraded and shamed, and my employment record kept me from any consideration for a future Federal Government job. Until recently, I was not able to find an equivalent job; necessitating working night shift or as a per diem staff nurse position. I lost self-confidence and suffered from depression. Fortunately, I began to recover and from 2001-2003, I was employed as an Associate Professor of Nursing at Central Connecticut State University. I am currently unemployed due to a geographic move from Connecticut to Virginia as part of my husband's employment. He, a retired Air Force Colonel, has been outraged at what happened to me. Now, facing job interviewing, I am terrified of finding myself supervised by another person with similar leadership characteristics. Positions similar to the one I lost are extremely difficult to find. I believe have been professionally and personally harmed by this employment situation, outcomes, and the four year period before resolution and closure.

Summary. This was a tragic situation. I lost my career and the VA lost a very qualified and skilled nurse leader and clinician. USERRA was critical in protecting me. Legal precedents such as mine are essential to assure continuing employment rights for our Reserve and National Guard military personnel as they are called to service and return to face employment issues. In closing this statement I would like to quote testimony of the VA San Diego Education Service Specialist in the EEO complaint related to my USERRA case on June 22, 2000: "I believe that Judithe is one of the most quality people that I've been afforded the pleasure of meeting since I've been here in San Diego, and I believe her loss was a loss to the facility as a whole when she left."

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or the members of the committee may have.