LAW REVIEW[1] 24052
November 2024
Enforcing USERRA against a Federal Employer.

By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]

1.1.1.8—USERRA applies to the Federal Government
1.4—USERRA enforcement

The Uniformed Services Employment and Reemployment Rights Act (USERRA)[3] applies with special force to the Federal Government as an employer. USERRA's first section states: "It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter."[4]

---

[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

[2] BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 45 years, I have collaborated with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 38 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at mailto:swright@roa.org.

[3] 38 U.S.C. §§ 4301-35.

[4] 38 U.S.C. § 4301(b).

Federal Executive Branch

USERRA applies to the Executive Branch, the Legislative Branch, and the Judicial Branch of the Federal Government, but this article deals with the enforcement of USERRA with respect to federal agencies in the Executive Branch. I will address the Legislative Branch and the Judicial Branch in Law Review 24053, the next article in this "Law Review" series.

USERRA's definitions section includes the following provision: "The term 'Federal Government' includes any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States."[5]

USERRA's definitions section defines the term "Federal executive agency" broadly.[6] The definition includes the United States Postal Service and the Postal Regulatory Commission. The definition also includes any Executive agency as defined in section 105 of title 5 and any military department (Department of the Army, Department of the Air Force, and Department of the Navy).[7]

Despite the clear congressional intent that the Federal Government should be a model employer with respect to USERRA compliance, some federal agencies have been frequent scofflaws of this important law. The Senate Veterans' Affairs Committee and House Veterans' Affairs Committee have held multiple hearings about the failure of federal agencies to comply with USERRA, and in 2008 Congress amended

[5] 38 U.S.C. § 4303(6).
[6] 38 U.S.C. § 4303(5).
[7] Id.

USERRA, adding a requirement that federal human resources personnel get training on USERRA:

> **(a) Training required.** The head of each Federal executive agency shall provide training for the human resources personnel of such agency on the following:
>
> **(1)** The rights, benefits, and obligations of members of the uniformed services under this chapter.
>
> **(2)** The application and administration of the requirements of this chapter by such agency with respect to such members.
>
> **(b) Consultation.** The training provided under subsection (a) shall be developed and provided in consultation with the Director of the Office of Personnel Management.
>
> **(c) Frequency.** The training under subsection (a) shall be provided with such frequency as the Director of the Office of Personnel Management shall specify in order to ensure that the human resources personnel of Federal executive agencies are kept fully and currently informed of the matters covered by the training.
>
> **(d) Human resources personnel defined.** In this section, the term "human resources personnel", in the case of a Federal executive agency, means any personnel of the agency who are authorized to recommend, take, or approve any personnel action that is subject to the requirements of this chapter with respect to employees of the agency.[8]

Congress added section 4335 to USERRA in 2008.[9] The legislative history of this 2008 amendment is as follows:

---

[8] 38 U.S.C. § 4335.
[9] Public Law 110-389, Title III, § 313(a), Oct. 10, 2008, 122 Stat. 4166.

Section 304 of the Committee [Senate Veterans' Affairs Committee] bill would require human resources personnel employed by Federal executive agencies to receive training regarding USERRA. Background. USERRA, which is codified in chapter 43 of title 38, United States Code, protects public and private sector civilian job rights and benefits of veterans and members of the Armed Forces, including National Guard and Reserve members. USERRA also prohibits employer discrimination due to military obligations and provides reemployment rights to returning servicemembers.

In October 2007, the Committee conducted an oversight hearing regarding USERRA. According to testimony provided at that hearing, when Federal executive agencies violate USERRA, it is often due to a lack of knowledge or understanding about the law. In fact, The Honorable Charles Ciccolella, Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, testified that "about half the [USERRA] cases we do in the Federal Government is where the Federal hiring manager just doesn't understand the law or the [Office of Personnel Management] regulations that spell out how to implement the law."

Committee Bill. Section 304 of the Committee bill would amend chapter 43 of title 38 to add a new section 4335, which would require the head of each Federal executive agency to provide training for human resources personnel on the rights, benefits, and obligations of members of the Armed Forces under USERRA and the administration of USERRA by Federal executive agencies. It would require that the training be developed and provided in consultation with the Office of Personnel Management. The training would be provided as often as specified by the Director of the Office of Personnel Management in order to ensure that the human resources personnel are kept fully and currently informed about USERRA.[10]

Enforcing USERRA against federal executive agencies.

Section 4324 of USERRA provides for enforcement of USERRA against federal executive agencies as employers:

(a)

(1) A person who receives from the Secretary [of Labor] a notification pursuant to section 4322(e) may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. Not later than 60 days after the date the Secretary receives such a request, the Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

(2)

(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and

[10] 2008 Amendments, Senate Committee Report, September 9, 2008, S. Rep. 110-449, 2008 WL 4149915, 2008 U.S.C.C.A.N. 1722 (Leg. History). The text of this committee report can be found in Appendix E-4 of *The USERRA Manual,* by Kathryn Piscitelli and Edward Still. In the 2023 edition of the *Manual,* the quoted paragraphs can be found on pages 857-58.

initiate an action regarding such complaint before the Merit Systems Protection Board.

(B) Not later than 60 days after the date the Special Counsel receives a referral under paragraph (1), the Special Counsel shall—

(i) make a decision whether to represent a person before the Merit Systems Protection Board under subparagraph (A); and

(ii) notify such person in writing of such decision.

(b) A person may submit a complaint against a Federal executive agency or the Office of Personnel Management under this subchapter directly to the Merit Systems Protection Board if that person—

(1) has chosen not to apply to the Secretary for assistance under section 4322(a);

(2) has received a notification from the Secretary under section 4322(e);

(3) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or

(4) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B) declining to initiate an action and represent the person before the Merit Systems Protection Board.

(c)

(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b), without regard as to whether the complaint accrued before, on, or after October 13, 1994. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

(2) If the Board determines that a Federal executive agency or the Office of Personnel Management has not complied with the provisions of this chapter relating to the employment or reemployment of a

person by the agency, the Board shall enter an order requiring the agency or Office to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

(3) Any compensation received by a person pursuant to an order under paragraph (2) shall be in addition to any other right or benefit provided for by this chapter [38 USCS §§ 4301 et seq.] and shall not diminish any such right or benefit.

(4) If the Board determines as a result of a hearing or adjudication conducted pursuant to a complaint submitted by a person directly to the Board pursuant to subsection (b) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.

(d)

(1) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.

> **(2)** Such person may be represented in the Federal Circuit proceeding by the Special Counsel unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.[11]

The great bulk of the MSPB caseload consists of hearing and judging appeals from federal employees who have been fired. If a federal civil service employee has completed his or her initial probationary period and is later fired, he or she can appeal the firing to the MSPB. But the jurisdiction of the MSPB under USERRA is considerably broader than the general MSPB jurisdiction. Several kinds of USERRA cases can be brought to the MSPB that are beyond the standard MSPB jurisdiction.

Q: Who can bring an action in the MSPB alleging that his or her USERRA rights have been violated by a federal executive agency?

A: *Any person* who claims that he or she has rights under USERRA and that an employer (federal, state, local, or private sector) has failed or refused to comply with USERRA or is about to fail or refuse to comply with USERRA can file a USERRA complaint with the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS).[12] Upon receipt of such a complaint, DOL-VETS is required to investigate the complaint.[13] If the investigation shows that the complaint has probable merit, DOL-VETS is required to "attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter [USERRA]."[14]

---

[11] 38 U.S.C. § 4324.
[12] 38 U.S.C. § 4322(a).
[13] 38 U.S.C. § 4322(d).
[14] Id.

If the DOL-VETS investigation does not result in a resolution of the complaint, the agency is required to notify the complainant of the results of the investigation and of the complainant's right to proceed under the enforcement of rights provisions of section 4323 or 4324 of USERRA.[15] If the complainant is asserting that a federal executive agency (as defined above) has violated the complainant's USERRA rights, the complainant can request that DOL-VETS refer the complaint to the United States Office of Special Counsel (OSC).[16] Upon receipt of such a request, DOL-VETS is required to refer the complaint to OSC within 60 days.[17] If OSC is reasonably satisfied that the complainant is entitled to the USERRA benefits that he or she seeks, OSC may initiate an action in the MSPB, on behalf of the complainant, and may appear and act as attorney for the complainant in prosecuting the action in the MSPB.[18]

If OSC declines the complainant's request for representation, the complainant may initiate an MSPB action on his or her own behalf through private counsel that he or she retains.[19] Alternatively, the complainant can elect to proceed on his or her own, in the MSPB, upon receiving the DOL-VETS report of the results of the investigation.[20] In still another option, the complainant can bypass DOL-VETS altogether and initiate an enforcement action in the MSPB without ever filing a complaint with DOL-VETS.[21]

Any person who is making a nonfrivolous claim that a federal executive agency has violated the person's USERRA rights is entitled to bring an action in the MSPB to enforce the person's USERRA rights against the

[15] 38 U.S.C. § 4322(e).
[16] 38 U.S.C. § 4324(a)(1).
[17] Id.
[18] 38 U.S.C. § 4324(a)(2)(A).
[19] 38 U.S.C. § 4324(b)(4).
[20] 38 U.S.C. § 4324(b)(3).
[21] 38 U.S.C. § 4324(b)(1).

federal executive agency. It does not matter whether the person is represented by OSC or by private counsel or even if the person is representing himself or herself. Any such person is entitled to an MSPB hearing and adjudication of the person's USERRA complaint against a federal executive agency.

A person who has been fired by a federal executive agency, or who has been suspended without pay for 15 days or more, can appeal the firing or suspension to the MSPB *only if the person meets the title 5 definition of "employee" for this purpose.* That definition is as follows:

> (a) For the purpose of this subchapter [5 USCS §§ 7511 et seq.]—
>
> (1) "employee" means—
>
> (A) an individual in the competitive service—
>
> (i) who is not serving a probationary or trial period under an initial appointment; or
>
> (ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;
>
> (B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—
>
> (i) in an Executive agency; or
>
> (ii) in the United States Postal Service or Postal Regulatory Commission; and
>
> (C) an individual in the excepted service (other than a preference eligible)—
>
> (i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

> (ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.[22]

Hearing and adjudicating employee appeals from firings and suspensions, from federal employees who have completed the initial probationary period before the firing or suspension, accounts for the great majority of the MSPB's caseload, *but if the individual is making a nonfrivolous complaint that the firing, suspension, failure to hire, failure to promote, failure to reemploy, or other adverse employment action violated USERRA, the individual is entitled to an MSPB hearing an adjudication even if he or she does not meet this limited definition of "employee" for general MSPB appeal purposes.*

Among the categories of persons who can initiate and prosecute MSPB actions although they do not meet the general MSPB appeal criteria are the following"

> **Complaints by federal employees who were fired during the probationary period if they have non-frivolous claims that the firing violated USERRA.**

Joe Smith, a Marine Corps Reservist, was hired by a federal executive agency and fired 11 months later, before Joe completed his initial probationary period. Joe is making a nonfrivolous complaint that the firing was motivated by his supervisors' annoyance with him for his USERRA-protected absences from work for Marine Corps Reserve training and service and that the firing violated section 4311 of USERRA.[23] Although Joe did not complete the initial probationary period before he was fired, he is entitled to receive an MSPB hearing and adjudication of his USERRA complaint.

[22] 5 U.S.C. § 7511(a)(1).
[23] 38 U.S.C. § 4311.

The fact that a federal employee was still in his or her initial probationary period, as a new federal employee, when he or she was fired does not insulate the employer's action from review under USERRA. The Department of Labor (DOL) USERRA regulation provides:

> **Does an employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?**
>
> USERRA rights are not diminished because an employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employer is not required to reemploy an employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employer bears the burden of proving this affirmative defense.[24]

Complaints by persons who were denied initial hiring by a federal executive agency.

Mary Smith is a member of the Army National Guard. She has never been a federal civilian employee in the traditional sense, but she unsuccessfully applied for a federal civilian position and was one of five candidates who were interviewed by a panel of three supervisors. During the interview, one of the supervisors asked Mary about her Army National Guard service and about the likelihood that she might be

[24] 20 C.F.R. § 1002.41 (bold question in original). *See also* Law Review 17009 (February 2017).

called to active duty. The supervisor also asked her if she would be willing to resign from the National Guard if she were selected for the federal civilian position. The candidate who was selected is not a serving member of a Reserve Component of the armed forces.

Section 4311 of USERRA[25] forbids discrimination in initial hiring as well as discrimination against those who are already employed. Mary is entitled to an MSPB hearing and adjudication of her complaint that she was denied hiring because of her membership in the Army National Guard and the obligations that her membership entails.

USERRA complaints by persons who were denied reemployment by a federal executive agency although they met the five USERRA conditions for reemployment.

Alex Adams was hired by a federal executive agency in 2018 and worked there until 2019, when he enlisted in the Regular Army. He gave notice to the agency that he had enlisted and that he would be leaving his federal civilian job to perform service in the uniformed services. He served on active duty for four years, from December 2019 until December 2023, when he was released from active duty at the end of his initial active service obligation.

Alex met the five USERRA conditions for reemployment. He left his civilian job to perform uniformed service, and he gave his civilian employer prior notice. He did not exceed the five-year limit on the duration of the period of service. He served honorably and did not receive a disqualifying bad discharge from the Army. After he was

[25] 38 U.S.C. § 4311.

released from active duty, he made a timely application for reemployment, well within the 90-day deadline for doing so.

Although Alex was entitled to reemployment under USERRA, the federal executive agency failed or refused to reemploy him. Alex is entitled to an MSPB hearing and adjudication of his USERRA rights.

Under section 4313(a)(2)(A) of USERRA,[26] Alex was entitled to be reemployed "in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform." Let us assume that Alex was reemployed in the exact position that he left in 2019, but Alex contends that if he had been continuously employed by the federal executive agency he would have been promoted to a position of greater pay and status. Alex is entitled to an MSPB hearing and adjudication of his claim that he was insufficiently reemployed.

Claims by federal employees to paid military leave under section 6323 of title 5 of the United States Code.

***Butterbaugh v. Department of Justice,* 336 F.3rd 1332 (Fed. Cir. 2003).**

Section 6323(a)(1) of title 5 of the United States Code[27] gives federal employees who also serve part-time in the Reserve Components of the armed forces 15 days of paid military leave per federal fiscal year. In 2000, Congress amended the statute, making clear that a federal

[26] 38 U.S.C. § 4313(a)(2)(A).
[27] 5 U.S.C. § 6323(a)(1).

employee should not be charged for a day of paid military leave for a day (like a Saturday, Sunday, or federal legal holiday) that he or she would not otherwise have been required to work.

Prior to 2000, the statute was ambiguous. It could be interpreted as meaning that the employee should be charged a day of paid military leave for each day when the employee was performing military training, including days when the employee otherwise would not have worked at the federal civilian job. The MSPB, reversing the decision of the MSPB Administrative Judge, held that paid military leave was a "benefit of employment" for the federal employee who also served in a Reserve Component and that depriving the employee of the benefit violated section 4311 of USERRA.[28] The MSPB held, and the Federal Circuit panel agreed, that the MSPB was the appropriate forum for interpreting the words of the statute, section 6323(a)(1), subject to de novo (as of new) review by the Federal Circuit.[29]

The Federal Circuit panel reviewed de novo the MSPB's interpretation of section 6323(a)(1) and reversed the MSPB's interpretation. The Federal Circuit held:

> For the reasons set forth above, we conclude that 5 U.S.C. § 6323(a)(1) cannot be interpreted to require federal employees to expend military leave days for reserve training days on which they were not required to work. Accordingly, the full Board should have granted the petition for review on the ground that the decision of the administrative judge was based on an erroneous

[28] 38 U.S.C. § 4311.
[29] *Butterbaugh,* 336 F.3rd at 1336.

interpretation of the statute. We therefore reverse the decision of the Board and remand the case for further proceedings.[30]

USERRA complaints by employees of nonappropriated fund instrumentalities.

The term "Federal executive agency" also includes "any nonappropriated fund instrumentality of the United States."[31] The term "nonappropriated fund instrumentality employee" (NAFI employee) is defined in the United States Code as follows:

> The term "nonappropriated fund instrumentality employee" means a civilian employee who is paid from nonappropriated funds of the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces. Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.[32]

In Law Review 08013 (April 2008), I wrote:

---

[30] *Butterbaugh,* 336 F.3rd at 1343.
[31] 38 U.S.C. § 4303(5)(A)(iii).
[32] 10 U.S.C. § 1587(a)(1). The Army and Air Force Exchange Service (AAFES) is the largest NAFI, with 28,700 employees. *See* https://en.wikipedia.org/wiki/Army_%26_Air_Force_Exchange_Service.

I worked for the United States Department of Labor (DOL) as an attorney for a decade. … In the late 1980s, while I worked for DOL, the agency had a whole series of VRRA[33] cases with AAFES.[34] We contacted the AAFES headquarters, and the AAFES management made it clear that they had no intention of complying with the VRRA. Their attitude that accommodating the military schedules of National Guard and Reserve personnel was inconvenient, and DOL could not do anything about it [the AAFES flouting of the VRRA].

I recall drafting a letter that Assistant Secretary of Labor (Veterans' Employment and Training) Donald Shasteen sent to Assistant Secretary of Defense (Reserve Affairs) Steve Duncan, alerting the Department of Defense to the problem of getting AAFES to comply with the VRRA. Unfortunately, Assistant Secretary Duncan was unable to get AAFES to "get with the program" [comply with the VRRA] …

When Ms. [Susan] Webman and I drafted the product that later became USERRA, AAFES was very much on our minds. Our intent was that the new reemployment statute and its enforcement mechanism would most definitely apply to AAFES and other NAFIs. …

USERRA's legislative history clearly buttresses the conclusion that Congress intended that AAFES and other NAFIs should be subject to USERRA:

[33] The Veterans' Reemployment Rights Act (VRRA) was the federal reemployment statute that was enacted in 1940 and was replaced by USERRA in 1994. *See* Law Review 15067 (August 2015) and footnote 2 of this article.
[34] AAFES is the Army and Air Force Exchange Service, by far the largest NAFI.

> It is the Committee's [House Veterans' Affairs Committee] intent that the definition of "agency in the Executive Branch" include the United States Postal Service, nonappropriated fund instrumentalities of the United States (e.g., military exchanges and officers' clubs), and other specified entities. The intent is to give employees of these entities the same reemployment rights as those extended to other federal employees.[35]

USERRA complaints by employees of the United States Postal Service.

"The United States Postal Service (USPS) … is an independent agency of the executive branch of the United States federal government responsible for providing postal service in the United States, its insular areas, and its associated states. It is one of the few government agencies explicitly authorized by the Constitution of the United States. As of 2023, the USPS has 525,469 career employees and 114,623 non-career employees."[36]

The USPS has a sordid history of flouting USERRA and the VRRA. USERRA's text and legislative history make it abundantly clear that Congress thought it important to ensure that there would be an effective enforcement mechanism with respect to the USPS as an employer.

---

[35] House Committee Report, April 28, 1993, H.R. Rep. 103-65 (Part 1); 1994 U.S.C.C.A.N. 2449, 1993 WL 235763 (Leg. History). The complete text of this committee report is reprinted in Appendix D-1 of *The USERRA Manual,* by Kathryn Piscitelli and Edward Still. The quoted paragraph can be found on page 694 of the 2023 edition of the *Manual.*

[36] *See* https://en.wikipedia.org/wiki/United_States_Postal_Service.

Federal agencies acting as joint employers of individuals who are directly employed by contractors or other entities.

***Silva v. Department of Homeland Security,* 2009 M.S.P.B. 189 (September 23, 2009).[37]**

From June 2005 until May 2006, Michael Silva was employed by a company called SPS Consulting LLC, a company that had a contract with the United States Department of Homeland Security (DHS). SPS provided employees to fill two positions at the headquarters of a DHS component, United States Customs & Border Protection (CBP). Michael Silva held one of those positions, the Financial Manager (FM) position. In that capacity, he worked at a CBP facility and worked directly with CBP employees. Although he was not a federal employee in the traditional sense, DHS and SPS each had control over important aspects of his employment. In legal parlance, SPS and DHS were his "joint employers."[38]

In February 2006, General Silva was selected to command the 411th Engineers, an Army Reserve engineering unit that was scheduled to mobilize and deploy to Iraq in May 2006. He gave notice to both SPS and DHS of his scheduled mobilization, and he suggested a specific person to fill his civilian job on an interim basis while he served our

---

[37] This is an important precedential decision of the United States Merit Systems Protection Board (MSPB), which is described below. This case was brought by the United States Office of Special Counsel (OSC), which is also described below, on behalf of Brigadier General Michael Silva, who served as the National President of ROA from 2013 until 2015 and who passed away in 2022. Michael Silva had a distinguished career in the Army and Army Reserve, including combat service as a general officer in Iraq. He also served ROA at the chapter, department, and national levels.

[38] The Capitol Hill newspaper called *The Hill* has reported that 4.1 million individuals work for the Federal Government as contract employees, on top of the 2.1 million who are traditional federal employees. Kristin Tate, *The sheer size of our government workforce is an alarming problem,* The Hill, April 14, 2019. https://thehill.com/opinion/finance/438242-the-federal-government-is-the-largest-employer-in-the-nation/#:~:text=The%20federal20government%20employs%20nearly%209.1%20million%20workers%2C,personnel%2C%20and%20more%20than%20500%C000%20postal%20service%20employees.

country in Iraq. At the request of DHS, SPS hired the person that Michael Silva had suggested, and the interim fill performed well.

General Silva served on active duty for 15 months, most of that time in combat in Iraq. When he left active duty in August 2007, he met the five USERRA conditions for reemployment.[39] SPS initially offered to reemploy Silva in the FM position, but the DHS Contracting Officer's Technical Representative (COTR) told SPS that the DHS contract with the company would be terminated if SPS reinstated Silva.

If an individual meets the five USERRA criteria, he or she is entitled to *prompt reemployment* in the appropriate position of employment.[40] The fact that reemploying the returning service member in the appropriate position of employment would necessitate laying off another employee does not excuse the employer's failure to reemploy that person as required.

The returning service member or veteran is entitled to reemployment in the position that he or she would have attained if continuously employed, or another position of like seniority, *status,* and pay, *even if that means that another employee must be displaced to make room for*

---

[39] Michael Silva left his civilian job to serve on active duty. 38 U.S.C. § 4312(a). He gave prior notice to his civilian employer. 38 U.S.C. § 4312(b). He did not exceed the cumulative five-year limit on the duration of his periods of uniformed service, relating to his employer relationship with DHS and SPS. 38 U.S.C. § 4312(c). Because he was called to active duty involuntarily, this 15-month period of service did not count toward his five-year limit. *Id.* He served honorably and was released from active duty without receiving a disqualifying bad discharge from the Army. 38 U.S.C. § 4304. After release from active duty, he made a timely application for reemployment with SPS and DHS. 38 U.S.C. § 4312(e)(1)(D). *See Law* Review 15116 (December 2015) for a detailed discussion of the five USERRA conditions for reemployment.

[40] 20 C.F.R. § 1002.180. " 'Prompt reemployment' means as soon as practicable under the circumstances. Absent unusual circumstances, reemployment must occur within two weeks of the employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employer may have to reassign or give notice to another employee who occupied the returning employee's position." 20 C.F.R. § 1002.181.

the service member. The pertinent section in the Department of Labor (DOL) USERRA regulation is as follows:

> Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if the employer establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employer may be excused from reemploying the employee where there has been an intervening reduction in force that would have included that employee. *The employer may not, however, refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee.*[41]

If filling the vacancy defeated the right to reemployment of the returning veteran, USERRA would be of little value. Many old and recent cases show that the veteran's right to prompt reemployment upon returning from service is not contingent on the existence of a vacancy at that time. The United States Court of Appeals for the First Circuit[42] has held:

> Finally, we note that USERRA affords broad remedies to a returning servicemember who is entitled to reemployment. For example, 20 C.F.R. 1002.139 unequivocally states that "the employer may not refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment

[41] 20 C.F.R. § 1002.139(a) (emphasis supplied).

[42] The 1st Circuit is the federal appellate court that sits in Boston and hears appeals from district courts in Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.

position during the employee's absence, even if reemployment might require the termination of that replacement employee."[43]

The United States Court of Appeals for the Federal Circuit[44] has held:

> The department [United States Department of Veterans Affairs, the employer and defendant] first argues that, in this case, Nichols' [Nichols was the returning veteran and plaintiff] former position was "unavailable" because it was occupied by another and thus it was within the department's discretion to place Nichols in an equivalent position. This is incorrect. Nichols' former position is not unavailable because it still exists, even if it is occupied by another. A returning veteran will not be denied his rightful position because the employer will be forced to displace another employee. … Although occupied by Walsh, Nichols' former position is not unavailable and it is irrelevant that the department would be forced to displace Walsh to restore him.[45]

After he was not reemployed, as required by USERRA, Michael Silva made a formal, written USERRA complaint against both SPS and DHS and transmitted that complaint to the Veterans' Employment and

---

[43] *Rivera-Melendez v. Pfizer Pharmaceuticals LLC,* 730 F.3d 49, 55-56 (1st Cir. 2013).

[44] The Federal Circuit is the specialized federal appellate court that sits in our nation's capital and has nationwide jurisdiction over certain kinds of cases, including appeals from the Merit Systems Protection Board.

[45] *Nichols v. Department of Veterans Affairs,* 11 F.3d 160, 163 (Fed. Cir. 1993). For other cases holding that the lack of a current vacancy does not excuse the employer's failure to reemploy the returning veteran in the appropriate position, I invite the reader's attention to *Cole v. Swint,* 961 F.2d 58 (5th Cir. 1992); *Goggin v. Lincoln-St. Louis,* 702 F.2d 698, 704 (8th Cir. 1983); *Davis v. Crothall Services Group,* 961 F. Supp. 2d 716, 730-31 (W.D. Pa. 2013); *Serricchio v. Wachovia Securities LLC,* 556 F. Supp. 2d 99, 107 (D. Conn. 2008); *Murphree v. Communication Technologies, Inc.,* 460 F. Supp. 2d 702, 710 (E.D. La. 2006); *Fitz v. Board of Education of the Port Huron Area Schools,* 662 F. Supp. 10 (E.D. Mich. 1985); *Green v. Oktibbeha County Hospital,* 526 F. Supp. 49 (N.D. Miss. 1981); *Hembree v. Georgia Power Co.,* 104 L.R.R.M. (BNA) 2535 (N.D. Ga. 1979), affirmed in part, reversed in part on other grounds, 637 F.2d 423 (5th Cir. 1981); *Jennings v. Illinois Office of Education,* 97 L.R.R.M. (BNA) 3027 (S.D. Ill. 1978, judgment affirmed, 589 F.2d 935 (7th Cir. 1979); and *Muscianese v. U.S. Steel Corp.,* 354 F. Supp. 1394, 1402 (E.D. Pa. 1973).

Training Service of the United States Department of Labor (DOL-VETS). In accordance with section 4323 of USERRA,[46] DOL-VETS investigated the complaint against SPS and found it to have merit. Silva requested that DOL-VETS refer the case file to the United States Department of Justice (DOJ), and the agency complied with that request.

DOJ refused Silva's request for representation and, in accordance with standard DOJ practice, refused to explain the rationale for the declination. General Silva retained attorney Thomas Jarrard[47] and sued SPS in the United States District Court for the Eastern District of Virginia. The case was settled for an undisclosed but substantial amount.

In accordance with a demonstration project that was in effect at the time,[48] Silva's complaint against DHS was transferred to OSC for investigation. OSC investigated the complaint and found it to have merit. OSC then brought an action against DHS in the Merit Systems Protection Board (MSPB), in accordance with section 4324.[49] Like all MSPB cases, this case began before an Administrative Judge (AJ) of the MSPB.

DHS argued to the AJ that the MSPB lacked jurisdiction because Silva was never a federal civilian employee in the traditional sense, and the AJ agreed with that contention and dismissed the case. On behalf of Silva, OSC appealed to the MSPB itself, and prevailed.[50]

---

[46] 38 U.S.C. § 4323.
[47] Thomas Jarrard is an attorney in Spokane, Washington with a nationwide USERRA practice. He is a retired Marine Corps Reserve officer and a life member of ROA. He is one of two lawyers to whom I frequently refer potential USERRA clients.
[48] *See* Law Review 10080 (November 2010).
[49] 38 U.S.C. § 4324.
[50] Bravo Zulu to Joe Scaturo and Patrick Boulay, the two OSC attorneys who represented Silva. They did an excellent job for General Silva. More importantly, they created a great precedent that has helped and continues to

In its scholarly opinion, the MSPB wrote:

> We agree with the appellant that a federal agency could be considered an individual's "employer" under USERRA even when the individual was not appointed in the civil service but instead was formally employed by a government contractor. In so concluding we are mindful of the principle that USERRA should be "broadly construed, and any interpretive doubt should be resolved in the veteran's favor." *Kuykendall v. Department of the Army,* 479 F.3rd 830, 846 (Fed. Cir.), *cert. denied,* 552 U.S. 948 (2007); *see also King v. St. Vincent's Hospital,* 502 U.S. 215, 221 n. 9 (1991) (USERRA's predecessor, the Veterans' Reemployment Rights Act, was broadly interpreted because "provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor"). If, as the Appellant alleges, DHS exercised direct control over SPS Consulting to such an extent that DHS effectively prevented his reemployment, then DHS should be considered to be the appellant's "employer" under USERRA.[51]

The MSPB remanded the case back to the AJ, and the case settled. Silva received an undisclosed but substantial payment. This precedent established a model for a way for similarly situated veterans and service members to enforce USERRA rights agencies federal agencies acting as joint employers.

Q: Section 4324 refers to the "Special Counsel." Who is the Special Counsel?

---

help thousands of veterans and Reserve Component personnel who have left jobs with federal contractors for voluntary or involuntary military service.

[51] *Silva v. Department of Homeland Security,* 2009 M.S.P.B. 189 (September 23, 2009).

A: The Special Counsel is nominated by the President and must be confirmed by the Senate, for a five-year term. The Special Counsel heads up the Office of Special Counsel (OSC). The current Special Counsel is the Honorable Hampton Dellinger, as of March 2024. We are pleased that Mr. Dellinger has committed himself to making effective USERRA enforcement within the Executive Branch of the Federal Government a priority.[52]

On its website, OSC describes itself as follows:

> The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA).
>
> OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. For a description of prohibited personnel practices (PPPs).[53]

On its website, OSC has reported on its favorable resolution of the USERRA claim of a Navy veteran who was unlawfully denied reemployment by the Federal Aviation Administration (FAA):

> The U.S. Office of Special Counsel (OSC) today announced a favorable settlement on behalf of a Navy Veteran wrongfully denied reinstatement as an Air Traffic Controller (ATC) with the

[52] *See* Law Review 24032 (June 2024).
[53] www.osc.gov.

Federal Aviation Administration (FAA). Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), all employers, including the federal government, must restore service members to their jobs promptly after they finish serving their country.

John McFerren was an ATC trainee with the FAA when he left for active duty in the U.S. Navy in March 2010. In January 2015, as his service was ending, he notified his former manager that he wished to return to the FAA and resume his career. After the manager told him she could not assist him, McFerren contacted the FAA's Human Resources, which incorrectly advised him he would have to apply for open positions like any new hire, despite the FAA's obligation to promptly reinstate him under USERRA. Based on that erroneous guidance, McFerren sent several applications to various FAA regions but was not offered a position for over a year. While he was onboarding to his new position, the FAA medically disqualified him, forcing him to work as an Uber driver and in other lower-paying jobs while he appealed his medical disqualification.

In April 2018, McFerren filed a USERRA complaint against the FAA with the U.S. Department of Labor's Veterans Employment and Training Service (VETS). VETS investigated his complaint, found it had merit, and referred it to OSC for enforcement. The FAA subsequently granted McFerren's medical appeal and assigned him to an ATC position in May 2019, but at a significantly lower salary level than he would have attained had he been properly reinstated four years earlier. He also lost out on substantial pay, benefits, and seniority due to the delay, setting his career back and costing him and his family significant income.

OSC negotiated with the FAA on McFerren's behalf, and it agreed to compensate him four years' of lost wages, fully restore his seniority and retirement credit, and raise his pay to reflect reinstatement in May 2015, following his honorable discharge from the Navy.

> "OSC stands ready to enforce the employment rights of veterans and service members who, like Mr. McFerren, serve our country in uniform, "Special Counsel Henry J. Kerner said. "This positive outcome demonstrates how USERRA ensures our servicemen and women get the respect they deserve when they return from service. We appreciate the FAA's willingness to make Mr. McFerren whole."
>
> USERRA is a federal law, passed in 1994, that protects military service members and veterans from employment discrimination and allows them to regain their civilian jobs following periods of uniformed service. It applies to members of the Armed Forces, Reserves, and National Guard, among others, and covers both public and private employers. OSC, in conjunction with the U.S. Department of Labor, enforces USERRA claims involving federal government employers. The U.S. Department of Justice enforces USERRA claims involving private employers as well as state and local governments. More information about USERRA is available at: **https://osc.gov/Services/Pages/USERRA.aspx**.[54]

Q: Section 4324 also mentions the Merit Systems Protection Board (MSPB). What is the MSPB?

A: On its website, the MSPB describes itself as follows:

> The Merit Systems Protection Board is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board was established by Reorganization Plan No. 2 of 1978, which was codified by the Civil

[54] www.osc.gov. (announcement dated 1/25/2022).

Service Reform Act of 1978 (CSRA), Public Law No. 95-454. The CSRA, which became effective January 11, 1979, replaced the Civil Service Commission with three new independent agencies: Office of Personnel Management (OPM), which manages the Federal work force; Federal Labor Relations Authority (FLRA), which oversees Federal labor-management relations; and the Board.

The Board assumed the employee appeals function of the Civil Service Commission and was given new responsibilities to perform merit systems studies and to review the significant actions of OPM. The CSRA also created the Office of Special Counsel (OSC) which investigates allegations of prohibited personnel practices, prosecutes violators of civil service rules and regulations, and enforces the Hatch Act. Although originally established as an office of the Board, the OSC now functions independently as a prosecutor of cases before the Board. (In July 1989, the Office of Special Counsel became an independent Executive branch agency.)

For an explanation of your rights as a Federal employee, and for an in-depth review of the Board's jurisdiction and adjudication process, please review the MSPB publication, An Introduction to the MSPB.

The mission of the MSPB is to "Protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices." MSPB's vision is "A highly qualified, diverse Federal workforce that is fairly and effectively managed, providing excellent service to the American people." MSPB's organizational values are Excellence, Fairness, Timeliness, and Transparency. More about MSPB can be obtained from MSPB's Strategic Plan. MSPB carries out its statutory responsibilities and authorities primarily by adjudicating individual employee appeals and by conducting merit systems studies. In addition, MSPB reviews the significant actions of the Office of Personnel Management (OPM) to assess the degree to which those actions may affect merit.[55]

Section 4324 of USERRA, enacted 10/13/1994, gave the MSPB new authority and responsibility to adjudicate claims that federal executive agencies, acting as employers, have violated USERRA.

Q: I have heard that the MSPB was without a quorum and unable to adjudicate cases. Has that problem been resolved?

A: Yes, as of May 2021, the MSPB is back up to full strength, with three members nominated by President Biden and confirmed by the Senate.

Q: How can a USERRA case against a federal executive agency be initiated?

A: The process of initiating a USERRA case against a federal executive agency is like the process for initiating a USERRA case against a state or local government or private employer. A person who claims that his or her employer, former employer, or prospective employer has violated his or her USERRA rights can file a formal, written complaint against that employer with the Veterans' Employment & Training Service of the United States Department of Labor (DOL-VETS).[56]

DOL-VETS will then investigate the complaint and, upon completing its investigation, will notify the complainant of the results of the investigation.[57] At that point, the complainant may request that DOL-VETS refer the case file to OSC.[58]

---

[55] www.mspb.gov/about.
[56] 38 U.S.C. § 4322(a).
[57] 38 U.S.C. § 4322(d) and (e).
[58] 38 U.S.C. § 4324(a)(1).

If OSC is reasonably satisfied that the complainant is entitled to the benefits that he or she seeks, OSC may appear and act as attorney for the complainant in filing the case with the MSPB and in prosecuting the case.[59] If OSC decides not to represent the complainant, it must notify the complainant of that decision, in writing, within 60 days after receiving the referral from DOL-VETS.[60] At that point, upon receiving the notice of declination of the request for representation by OSC, the complainant may initiate the case in the MSPB with private counsel that he or she retains.[61]

Alternatively, the complainant can choose not to request that DOL-VETS refer the case file to the OSC, and the complainant can initiate the MSPB USERRA action with private counsel that he or she has retained.[62] The complainant can also bypass DOL-VETS altogether and retain private counsel to initiate the MSPB USERRA case.[63]

Q: Is it possible for me to represent myself in filing and prosecuting an MSPB USERRA case?

A: Yes, but I do not advise that you try to do that.[64] Abraham Lincoln said: A man who represents himself has a fool for a client.[65]

---

[59] 38 U.S.C. § 4324(a)(2)(A).
[60] 38 U.S.C. § 4324(a)(2)(B).
[61] 38 U.S.C. § 4324(b)(4).
[62] 38 U.S.C. § 4324(b)(3).
[63] 38 U.S.C. § 4324(b)(1).
[64] *But see Santos v. National Aeronautics & Space Administration,* 990 F. 3d 1355 (Fed. Cir. 2021). In that case, Navy Reserve Commander Fernando Santos, a member of ROA, represented himself at the Federal Circuit, appealing from an unfavorable MSPB decision, and prevailed. I discuss that case in detail in Law Review 21027 (April 2021).
[65] It is unclear whether Abraham Lincoln ever said this or whether he was the first to say such a thing. *See* https://quoteinvestigator.com/2019/07/30/lawyer/.

Q: If I retain private counsel to represent me in the MSPB, and if I prevail, can the MSPB order the federal agency to pay my attorney fees?

A: Yes.[66]

Q: Once my MSPB USERRA case has been initiated, either by OSC or by a lawyer that I retain, how does the case proceed?

A: Like any MSPB case, an MSPB USERRA case starts before an Administrative Judge (AJ) of the MSPB. The AJ conducts a hearing and makes findings of fact and conclusions of law. After the AJ announces his or her findings and conclusions, either party (you, the complainant, or the federal agency, the defendant) can appeal to the MSPB itself. The deadline for appealing to the MSPB is 35 days after the announcement of the AJ's decision. If neither party appeals, the decision of the AJ becomes the final decision of the MSPB.

Before the AJ's hearing, there is an opportunity for both parties to conduct discovery—to submit interrogatories to the other party, to demand the production of documents and other evidence, to conduct depositions, etc. The MSPB discovery process is very expedited. Your lawyer needs to be prepared to move quickly after filing your case.

Q: If I lose at the MSPB level, can I appeal that decision?

---

[66] *See* 38 U.S.C. § 4324(c)(4).

A: Yes. You can appeal the unfavorable MSPB decision to the United States Court of Appeals for the Federal Circuit.[67]

Q: If I prevail at the MSPB level, can the agency appeal to the Federal Circuit?

A: No.[68]

Q: Can ROA represent me before the MSPB or the Federal Circuit or intervene in my case?

A: No. ROA is not a law firm, and we do not have the authority to represent individuals in courts or administrative bodies like the MSPB, nor do we have the authority to intervene in such cases. We can file an amicus curiae ("friend of the court") brief in an appellate court, and we do that several times per year, occasionally even in the United States Supreme Court.[69]

If you want us to consider filing an amicus brief, you need to have your lawyer contact us sooner, not later. Once your lawyer files his or her appellate brief an amicus brief in support of your position must be filed within one week after your brief.[70]

Q: Are there other sources of definitive information about how to enforce USERRA against the Federal Government as an employer?

---

[67] *See* 38 U.S.C. § 4324(d)(1). The Federal Circuit is the specialized federal appellate court, established in 1982, that sits in our nation's capital and has nationwide jurisdiction over certain kinds of cases, including appeals from MSPB decisions.
[68] Id.
[69] *See* Law Review 22072 (November 2022).
[70] *Federal Rules of Appellate Procedure,* Rule 29(a)(6).

A: Yes. As I have explained in Law Review 16044 (May 2016) and other articles, *The USERRA Manual,* by Kathryn Piscitelli and Edward Still, is the definitive reference on USERRA. The book is published by a publishing company called Thomson Reuters. The book is not cheap, but it is worth the investment for any lawyer who will be overseeing one or more USERRA cases on either side.

Please join or support ROA

This article is one of 2,200-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. We add new articles each month.

ROA is the nation's only national military organization that exclusively and solely supports the nation's reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve 32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).[71]

ROA is more than a century old—on 10/2/1922 a group of veterans of "The Great War," as World War I was then known, founded our organization at a meeting in Washington's historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded "Great War." One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our

[71] *See* https://crsreports.congress.gov/product/pdf/IF/IF10540/. These are the authorized figures as of 9/30/2022.

mission is to advocate for the implementation of policies that provide for adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight[72] uniformed services, you are eligible for membership in ROA,[73] and a one-year membership only costs $20 or $450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at https://www.roa.org/page/memberoptions.

[72] Congress recently established the United States Space Force as the eighth uniformed service.
[73] Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002[74]

[74] You can also contribute on-line at www.roa.org.