Army Reservist Awarded $2.49M

A Texas jury ruled in favor of an Iraq War veteran in a claim that the state failed to comply with the Uniformed Services Employment and Re-employment Rights Act

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Six years after his original lawsuit against the state of Texas for not following the *Uniformed Services Employment and Re-employment Rights Act (USERRA)*, retired Army Capt. LeRoy Torres was awarded $2.49 million by a Texas jury on Sept. 29.

An Army Reservist who lost his job as a Texas state trooper when he suffered a service-connected disability in the Iraq War, Torres won the lawsuit a year after the U.S. Supreme Court ruled in his favor to sue the state of Texas for alleged discrimination.

“A $2.5 million award is great,” VFW General Counsel John Muckelbauer said. “But it would have been better if Texas had simply followed the law. That way, Torres and his family would not have had to go through all of this.”

In *LeRoy Torres v. Texas Department of Public Safety*, the plaintiff said the state had denied his request to remain on the force in an administrative role that would accommodate his service-related disability. Instead, according to Torres, he was forced to retire and then denied a disability retirement pension from the state.

Initially, the state of Texas claimed “sovereign immunity” to get the case dismissed by the court. The majority opinion of the Supreme Court was that Texas cannot claim such protection from *USERRA*. It was a 5-4 decision that favored the plaintiff.

Then-Supreme Court Justice Stephen Breyer stated Texas agreed that its “domain power” would yield to federal policy to “build and keep a national military.”

Under *USERRA*, veterans have the right to continue working for their former employer if they leave their job to perform military service. If a veteran is eligible, his or her employer must restore his or her job and benefits after a military service-related absence.

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TROOPS HAVE 'THE RIGHT TO REINTEGRATE'

VFW, as well as other veterans' organizations, submitted an *amicus curiae* brief to the Supreme Court that stated Torres was "discriminated against" for having a service-connected disability. An *amicus curiae* — or "friend of the court" — brief is a statement submitted by a third-party entity interested in a case.

The amicus *curiae brief* stated that Torres' case is "not unique" and that about 25 percent of all veterans, including about 40 percent of post-9/11 veterans, have a service-connected disability.

"Veterans with service-related disabilities are more likely to suffer from unemployment and employment discrimination," the brief stated. "Veterans who develop disabling conditions because of their military service have earned the right to reintegrate into the workforce with the dignity and respect they deserve."

'IT WOULD PUT VETERANS AT A DISADVANTAGE'

Muckelbauer said that VFW was interested in the case because it challenged a federal law that was "designed to protect" military service members.

"There are hundreds of thousands of state-employed veterans, Reservists and National Guard troops who are affected by the outcome of this case," Muckelbauer said. "If a state were to not follow *USERRA*, not only would it put veterans at a disadvantage, but it also would be a threat to national security. It would deter those who are serving from continuing their career in the military."

VFW's National Legislative Service Deputy Director Kristina Keenan said she hopes cases such as Torres' will continue to discourage *USERRA* discrimination across the workforce.

"Thankfully, over the years employers have become more aware of *USERRA* and the re-employment rights of veterans," Keenan said. "*USERRA* complaints handled by Department of Labor usually only range in the hundreds each year, and of those that have merit, most are resolved favorably for the veteran without requiring legal action.

Tragically, instances like LeRoy's continue to be some of the most prevalent in *USERRA* cases, where public servants like police officers are among the most common occupations reporting USERRA problems."

TORRES 'JUST WANTED TO WORK'

In 1989, Torres enlisted in the Army Reserve, and in 1998, the state of Texas hired him to be a state trooper. He served in that position until 2007, when the Army called him to serve in the Iraq War. Torres said exposure to burn pits was the norm during his time overseas.

In June 2018 testimony to the House VA Health Subcommittee, Torres said that he had

been to more than 200 medical appointments since returning from Iraq.

Torres said that in 2012, doctors diagnosed him with a debilitating lung condition. Torres added that in May 2018, doctors determined he had a toxic brain injury, which he claimed was "likely" due to burn pit exposure.

"What is striking about this case is that rather than looking into accommodating Torres' request following his military service, the state of Texas expressed it didn't need to follow *USERRA*," Muckelbauer said. "All Torres did was ask for accommodation in a different position because of his disabilities related to toxic exposure. He was not asking for anything unreasonable — he just wanted to work."

Torres' victory is another toward decades of advocacy work for burn pits as a health risk that in August 2022, spearheaded by VFW and with help from many other veterans' organizations, was signed into legislation.

Known as the *Sgt. 1st Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act (PACT Act)*, more than 1 million disability claims have been filed under the PACT Act since it was passed.

This article is featured in the January 2024 issue of VFW magazine, and was written by Ismael Rodriguez Jr., senior writer for VFW magazine.