

LAW REVIEW 15004¹

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EEOC Obtains Great Settlement in ADA Case for Disabled Veteran

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

1.3.2.9—Accommodations for disabled veterans

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In Law Review 14059 (May 2014), I wrote about the lawsuit initiated by the United States Equal Employment Opportunity Commission (EEOC) against Ezeflow USA, Inc., in the United States District Court for the Western District of Pennsylvania, on behalf of Adam Brant, a disabled veteran of the United States Marine Corps. On January 10, 2015, the EEOC announced that it has obtained a great settlement to resolve this case. I am attaching a copy of the EEOC press release below.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) has great provisions for disabled veterans, but those USERRA provisions only apply to a veteran who left a job with a specific civilian employer for military service and who meets the USERRA eligibility criteria³ and who is reemployed by that employer after release from the period of service. USERRA did not help Adam Brant because he did not work for Ezeflow USA, Inc. before he enlisted in the Marine Corps.

The Family Medical Leave Act (FMLA) gives a covered employee of a covered employer the right to up to 12 weeks of job-protected unpaid leave when the employee's serious illness precludes the employee from working until recovered. The FMLA did not help Adam Brant because he was not a covered employee for FMLA purposes. To be a covered employee, one must have

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1,300 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

² Captain Wright is the Director of the Service Members Law Center at the Reserve Officers Association (ROA). He can be reached by telephone at (800) 809-9448, ext. 730. His e-mail is SWright@roa.org.

³ To have the right to reemployment under USERRA, a person must have left a civilian job (federal, state, local, or private sector) for the purpose of performing voluntary or involuntary uniformed service and must have given the employer prior oral or written notice. The individual's cumulative period or periods of uniformed service, relating to that specific employer, must not have exceeded five years, but there are nine exemptions—kinds of service that do not count toward exhausting the individual's five-year limit. Please see Law Review 201 (August 2005). The individual must have been released from the period of service without having received a disqualifying bad discharge from the military. After release, the individual must have made a timely application for reemployment.

worked for the employer for at least one year and must have worked at least 1,250 hours for that employer during the year prior to taking FMLA leave.

Adam Brant enlisted in the Marine Corps and served on active duty for several years, including service in both Iraq and Afghanistan, before he was honorably discharged. Brant was hired by EzeFlow USA, Inc. on September 17, 2012, as a maintenance technician. He suffered several seizures starting on December 4, 2012, just three months after he started his EzeFlow job. The seizures were later determined to be related to Post Traumatic Stress Disorder (PTSD) that resulted from events during his Marine Corps service. Brant requested six weeks of unpaid military leave. EzeFlow denied his request and then fired him.

Brant did not have rights under USERRA or under the FMLA, but he did have rights under the Americans with Disabilities Act (ADA), a law that the EEOC is responsible for enforcing. The ADA is a federal law that requires employers to make reasonable accommodations for disabled persons, including disabled veterans. The EEOC theory (which I strongly endorse) is that granting Brant an unpaid leave of absence to enable him to get treatment for the seizures was a reasonable accommodation that the ADA required EzeFlow to make.

USERRA is a great law for those who are serving or have served our country in uniform, but it is certainly not the only law that may come into play. In advising and assisting veterans (especially disabled veterans), it is necessary to consider USERRA along with other federal and state laws and legal doctrines. The ADA is certainly one of the laws that must be considered.

I congratulate the EEOC for having brought this lawsuit and for the great result.

EEOC press release follows:

EZEFLOW USA, Inc. Settles EEOC Disability Discrimination Lawsuit

Saturday, January 10, 2015 :: [Staff infoZine](#)

Pipe fittings manufacturer fired disabled veteran instead of providing a reasonable accommodation

Pittsburgh, PA - EZEFLOW USA, a pipe fitting manufacturer located in New Castle, Pa., will pay \$65,000 and provide significant equitable relief to resolve a federal disability discrimination lawsuit, the U.S. Equal Employment Opportunity Commission (EEOC) announced today.

The EEOC charged that Iraq and Afghanistan U.S. Marine Corps veteran Adam Brant, who worked as a maintenance technician, requested six weeks of unpaid medical leave when he experienced seizures caused by service-related disabilities. EZEFLOW USA denied the request because Brant was still a probationary employee. Even though EZEFLOW USA maintains a policy of providing up to 26 weeks of paid leave to non-probationary employees, the company refused

to provide Brant with unpaid leave as a reasonable accommodation and fired him because of his disability, according to the lawsuit.



Such alleged conduct violates the Americans with Disabilities Act, as amended (ADA). The EEOC filed suit (EEOC v. EZEFLOW USA, Inc., Civil Action No 02:14-cv-527) in the U.S. District Court for the Western District of Pennsylvania, after first attempting to reach a voluntary pre-litigation settlement through its conciliation process.

In addition to the \$65,000 in monetary relief to Brant, the 28-month consent decree resolving the lawsuit prohibits EZEFLOW USA from engaging in disability discrimination or retaliation. The company will revise its policies to ensure that probationary employees with disabilities are given unpaid leave when needed as a reasonable accommodation. EZEFLOW USA will also provide training on the ADA, report to the EEOC regarding its compliance with the consent decree and post a notice about the settlement.

"This case is significant because it demonstrates that even probationary employees may be entitled to a reasonable accommodation under the ADA," said EEOC Philadelphia District Director Spencer H. Lewis, Jr. "An employer must provide a reasonable accommodation unless it can show that doing so would cause a significant difficulty or expense."

Regional Attorney Debra M. Lawrence of the EEOC's Philadelphia District Office added, "We owe all of our veterans our gratitude for their sacrifices, but especially those with service-related disabilities. Mr. Brant honorably served our country as a Marine and only needed a brief period of unpaid leave to treat his disability and remain employed. I am pleased that EZEFLOW USA worked with us to resolve this lawsuit quickly and that the company will also provide affirmative relief to protect all employees from disability discrimination."

The EEOC has issued two revised publications addressing veterans with disabilities and the ADA. The Guide for Employers explains how protections for veterans with service-connected disabilities differ under the ADA and the Uniformed Services Employment and Reemployment Rights Act (USERRA). It explains how employers can prevent disability-based discrimination and provide reasonable accommodations.

The Guide for Wounded Veterans answers questions that veterans with service-related disabilities may have about the protections available when they seek to return to their former jobs or look for civilian jobs. The publication also explains the kinds of accommodations that may be necessary to help veterans with disabilities obtain and successfully maintain employment.