

**In the United States District Court  
for the Southern District of Indiana  
Indianapolis Division**

United States of America,

Civil Action No. \_\_\_\_\_

Plaintiff

JURY DEMAND

v.

Indiana Department of Correction,

Defendant.

**COMPLAINT**

Plaintiff, the United States, by its undersigned attorneys, makes the following averments:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 ("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 district under 38 U.S.C. § 4323(c)(1) and 28 U.S.C. § 1391(b).

4. The Indiana Department of Correction maintains a prison facility in Edinburgh, Indiana. Edinburgh is in Johnson County. The Indiana Department of Correction is headquartered in Indianapolis, Indiana. Indianapolis is in Marion County. Both Johnson County and Marion County are within the jurisdiction of this Court.

**CLAIM FOR RELIEF**

5. James Lowell AmRhein ("AmRhein") enlisted in the United States Army in 1966. He was honorably discharged in 1972. On or about 1980, AmRhein joined the Army Reserve.

6. On or about February 22, 1999, AmRhein commenced employment with the Indiana Department of Correction at its Atterbury Correctional Facility in Edinburgh, Indiana, as a Correctional Officer.

7. AmRhein was a member of the Army Reserve at the time he was hired as a Correctional Officer.

8. AmRhein was notified by the Department of the Army that he was to report to Fort Benning, Georgia,

on August 1, 2003, for active duty military training.

9. AmRhein gave notice to his employer, the Indiana Department of Correction, that he was going on the active duty military training referred to in paragraph 8, above, before he departed for that training. AmRhein reported for duty at Fort Benning, Georgia, and fulfilled his military obligations.

10. Upon the completion of his active duty military training, AmRhein had his written orders signed by a superior military officer. AmRhein then submitted his signed and written orders to his employer, the Indiana Department of Correction.

11. On August 25, 2003, approximately two or three days after AmRhein reported back to work at the Indiana DOC from his military training, AmRhein was notified in writing that he was being charged with violating the Indiana DOC's leave policy by failing to submit a request for military leave prior to his departure for active military training and with insubordination for disregarding a written request requiring that, prior to military leave, military orders or an official letter stating that duty orders will be forthcoming be presented to the Indiana DOC.

12. On August 27, 2003, the Indiana Department of Correction suspended AmRhein from employment for thirty days, effective immediately, and on August 28, 2003, the Indiana Department of Correction notified AmRhein in writing that he was terminated from employment, effective October 2, 2003.

13. On September 18, 2003, AmRhein filed a USERRA complaint against the Indiana Department of Correction with the United States Department of Labor, Veterans' Employment and Training Service, which opened an investigation of the complaint on October 8, 2003.

14. On November 19, 2003, AmRhein was notified by the Indiana Department of Correction that his previous position as a Correctional Officer at the Atterbury Correctional Facility was being made available to him, effective November 30, 2003. Due to days off for the bracket to which AmRhein was assigned, AmRhein began working again for the Indiana Department of Correction at the Atterbury Correctional Facility on December 2, 2003.

15. The Indiana Department of Correction has failed and refused to pay AmRhein for the period he was not allowed to work due to his termination from on or about October 2, 2003, to on or about December 2, 2003, or to give AmRhein full seniority and related benefits that he lost as a result of his termination.

16. The Indiana Department of Correction has violated USERRA, among other ways, by:

(a) instead of allowing AmRhein, when he returned from active military training, reemployment rights and benefits and other employment benefits protected by USERRA, (i) suspending him from employment, and (ii) terminating him from employment with loss of pay and loss of seniority and related benefits; and

(b) failing and refusing to take appropriate action to remedy the effects of the violations described in 16 (a) above, including failing and refusing to pay AmRhein for the period he was not allowed to work due to his termination, i.e., from on or about October 2, 2003, to on or about December 2, 2003, or to give AmRhein full seniority and related benefits that he lost as a result of his termination.

#### **PRAYER FOR RELIEF**

WHEREFORE, AmRhein prays that the Court enter judgment against the Indiana Department of

Correction, its officers, agents, employees, successors and all persons in active concert or participation with it, as follows:

A. Declare that the Indiana Department of Correction's failure and refusal to allow AmRhein reemployment rights and benefits and other employment benefits protected by USERRA was unlawful and in violation of USERRA;

B. Require that the Indiana Department of Correction fully comply with the provisions of USERRA by giving AmRhein the level of seniority, status and compensation he would have enjoyed had he remained employed continuously with the Indiana Department of Correction, and by paying AmRhein for his loss of wages and other benefits suffered by reason of the Indiana Department of Correction's failure or refusal to comply with the provisions of this law;

C. Enjoin the Indiana Department of Correction from taking any action against AmRhein that fails to comply with the provisions of USERRA;

D. Award AmRhein prejudgment interest on the amount of lost wages found due; and

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

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