
Nurse Veteran Military

The registered nurse, a Captain in the U.S. Army Reserve, was called up for active duty service during Desert Storm.

Afterward, she was restored to her former civilian nursing position as required by the Veterans Reemployment Rights Act.

The nurse filed an application with her civilian employer for promotion to a more desirable nursing position.

Her civilian employer's evaluation process for promotion included an assessment of a nurse's current skills and past nursing experience.

The nurse's supervisor gave her an unfairly low performance rating.

In the personnel grievance process it came out the supervisor had it in for the nurse because of her absence for military service and did not give full faith and credit to her nursing experience in the military.

The nurse had a valid discrimination claim.

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT (CALIFORNIA), 1997.

The nurse involved in a recent case filed claims of employment discrimination based on her race, on her membership in the U.S. Army Reserve and her active-duty service in Desert Storm.

The U.S. Circuit Court of Appeals for the Ninth Circuit (California) said any nurse has the right, in general, to claim racial discrimination under state and Federal laws, but race was not, in this particular case, the employer's motivating factor.

The nurse was restored to her former civilian nursing position as required by law after her active-duty experience in Desert Storm. That was not an issue.

However, when the nurse applied for promotion, her supervisor gave her a failing score on her assessment of promotability rating. This nurse was the only one of twenty-two applicants to get a failing score.

The nurse's supervisor committed illegal discrimination by penalizing the nurse for her absence from civilian employment for military service, and unfairly discounted her military nursing experience as part of her nursing background.

According to the court, beyond simply giving a veteran his or her civilian job back after military service, it is illegal for a private- or public-sector employer to discriminate in any way against a veteran because of the veteran's military service. Tarin vs. County of Los Angeles, 123 F. 3d 1259 (9th Cir., 1997).

(Editor's Note: The Veterans Reemployment Rights Act was amended by Congress in 1994 and 1996, after the events in this case took place. It is now even more clear than before that any act of employment discrimination against a veteran or current military reserve personnel because of military service will not be tolerated.)

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