

USERRA Interpreted Literally

Metro hired Petty as a police officer in 1991. By 2002, Petty had been promoted to patrol sergeant and supervised other officers within the police department. To supplement his income, Petty began serving in the Army National Guard in 1986 and opted into the Army reserve in 1989. In 2003, the Army deployed Petty for service in Operation Iraqi Freedom. Petty's military commitments in that regard forced him to stop working at Metro in November 2003. The Army transferred Petty and his unit to Kuwait around February 2004. While in Kuwait, Petty was caught brewing wine and sharing it with another soldier in violation of military regulations. Facing court-martial charges, Petty resigned his commission in lieu of court-martial.

In February 2005, Petty requested rein-statement as a police officer with Metro. As it did for all police officers returning from an extended leave of absence, Metro subjected Petty to its return-to-work process. This included, among other things, a drug screening, a personal-history-update questionnaire, and a meeting with a Police Department psychologist. Metro relied on this process to test returning officers' continuing fitness to serve in its police department. As a result of this process, Petty was never returned to his pre-deployment position. Instead, he was assigned to a lesser position.

Petty sued in federal district court seeking reinstatement to his patrol sergeant position based upon the Uniformed Services Employment and Reemployment Rights Act (USERRA) which guarantees returning veterans reemployment with their former employers and prohibits employers from discriminating against veterans based on their military service. In *Petty v. Metro. Gov't of Nashville-Davidson Cnty*, 687 F.3d 710 (July 24, 2012), Metro appealed the district court's award to Petty, pursuant to remand, of reinstatement to the patrol sergeant position he held prior to his deployment, and damages.

The Circuit Court noted that USERRA requires an employer to provide a returning veteran reemployment in either the position he would have held absent his departure for military service "or a position of like seniority, status and pay." To establish entitlement to reemployment, veterans need only show that they meet the statute's four prerequisites: proper notice to the employer in advance of departure, a service period of less than five years, a timely request for reemployment accompanied by proper documentation, and a separation from military service under "honorable conditions." If these four prerequisites are met, the employer may not limit or delay reemployment in any way. Petty met all four. Thus, he was entitled to immediate reemployment as a patrol sergeant. The court noted that once properly reemployed, Petty would be subject to termination so long as Metro can show "cause" unrelated to the Petty's military service.

This case demonstrates that any questions regarding an employee's fitness to serve on the job must be resolved after USERRA reemployment rights have been promptly provided.