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Attorneys for Kevin T. Bower

UNITED STATES DISTRICT COURT

THE DISTRICT OF OREGON

CV '06 282 hu

KEVIN T. BOWER,

Civil Case No. _____

Plaintiff,

COMPLAINT

v.

Uniformed Services Employment
and Reemployment Rights Act of
1994, 38 U.S.C. §§ 4301 - 4333

ROADWAY EXPRESS, INC.,

Defendant

DEMAND FOR JURY TRIAL

Kevin T. Bower alleges:

JURISDICTION AND VENUE

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").

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)(2) and 28 U.S.C. § 1391(b) because Defendant Roadway Express, Inc. ("Roadway"), maintains a place of business in this judicial district.

PARTIES

4. Plaintiff Bower resides in Battleground, Washington.

5. Roadway maintains a place of business at 6845 N. Cutter Circle, Portland, Oregon 97217, within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

6. On or about April 27, 1998, Bower commenced full-time employment as a truck driver/dock worker with Roadway.

7. On May 17, 1999, Bower enlisted in the United States Army and notified Roadway in writing of his enlistment in the Army.

8. Immediately after Bower notified Roadway of his enlistment in the U.S. Army, Roadway demanded Bower's resignation, but Bower did not resign.

9. Bower went on active duty on May 27, 1999. He completed two months of basic training in July 1999.

10. While on active duty, Bower received a flu shot. On December 16, 2000, several days after Bower received the flu shot, he contracted a staph infection, endocarditis, and a vertebral bone infection that rendered him disabled. Due to this disability, the Army honorably discharged him on December 9, 2001.

11. On November 30, 2001, Bower gave Roadway notice of his intention to return to work.

12. Upon Bower's return from active duty, Roadway falsely advised him that he was not entitled to the protections of USERRA because he had voluntarily enlisted in the Army. Roadway falsely informed Bower that only reservists had rights under USERRA.

13. Roadway required Bower to take and pass a fit-for-duty medical examination before he could return to work.

14. Dr. Sterling Piepgrass, a Roadway-paid physician, examined Bower on December 19, 2001. Dr. Piepgrass found that although Bower's injury during active military duty made him unable to work in his previous position of truck driver/dock worker, Bower could adequately perform the tasks required of a dispatcher, dock foreman, or office worker employed at Roadway.

15. On March 4, 2002, Roadway informed Bower that because he was not physically fit to return to perform his duties as a truck driver/dock worker, Roadway would not return him to work.

16. Roadway never offered any form of accommodation to Bower, as required by USERRA.

17. Roadway never discussed or offered Bower any other position of equivalent seniority, status, and pay, as required by USERRA.

18. Roadway never discussed or offered any equivalent positions in the nearest approximation in terms of seniority, status, and pay consistent with Bower's circumstances, as required by USERRA.

USERRA CLAIMS

19. Roadway violated 38 U.S.C. § 4311 of USERRA, among other ways, by discriminating against Bower, denying him re-employment and other employment benefits, and discriminating against him (a) because of his membership, service, or obligation to perform service in, the uniformed services, and/or (b) because he took action to enforce a protection afforded him under USERRA or to exercise a right provided for in USERRA.

20. Roadway violated 38 U.S.C. §§ 4312 and 4313 of USERRA, among other ways, by failing or refusing to:

- (a) re-employ Bower;
- (b) provide any form of accommodation for Bower;
- (c) find alternative positions equivalent in Bower's seniority, status, or pay, or offer a position in the nearest approximation in terms of seniority, status, and pay consistent with the Bower's circumstances.

21. Roadway's violations of USERRA were willful, because Roadway knew or perceived the risk that its failure to properly reinstate Bower's employment violated that statute, or Roadway showed reckless disregard for the matter of whether its failure to properly reinstate Bower's employment was prohibited by that statute.

22. As a result of Roadway's unlawful conduct, Bower has suffered a substantial loss of earnings and other benefits of employment as a result of Roadway's unlawful discrimination

and denial of the rights under USERRA.

PRAYER FOR RELIEF

WHEREFORE, Bower prays that the Court enter judgment against Roadway, its officers, agents, employees, successors and all persons in active concert or participation with it, as follows:

23. Declare that Roadway's unlawful discrimination, denial of the right to re-employment and denial of the right to benefits of employment were unlawful and in violation of USERRA;

24. Order that Roadway fully comply with the provisions of USERRA by reinstating Bower to a position at the level of seniority, status and compensation that he would have enjoyed had he remained employed continuously with Roadway, or if Bower is not qualified due to his disability incurred in military service, by re-employing Bower in any other position which is equivalent or in nearest approximation in seniority, status and pay, and by paying Bower for his loss of wages and other benefits suffered by reason of Roadway's failure or refusal to comply with the provisions of this law;

25. Order that Roadway pay Bower as liquidated damages an amount equal to the amount of his lost wages and other benefits suffered by reason of Roadway's willful failure or refusal to comply with the provisions of USERRA;

26. Enjoin Roadway from taking any action against Bower that fails to comply with the provisions of USERRA;

27. Award Bower prejudgment interest on the amount of lost wages found due; and

28. Grant such other and further relief as may be just and proper together with the

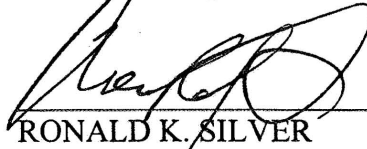
costs and disbursements of this lawsuit.

Dated this 19 day of March, 2006.

Respectfully Submitted,

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