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**NEW YORK CITY DEPARTMENT OF CORRECTION AGREES
TO PROMOTION AND BACK PAY FOR U.S. ARMY VETERAN
IN SETTLEMENT OF CIVIL RIGHTS SUIT**

PREET BHARARA, the United States Attorney for the Southern District of New York, announced that the New York City Department of Correction ("NYCDOC") has agreed to promote and provide back pay to EMILIO PENNES, a United States Army veteran and NYCDOC employee. In settlement of a suit filed by the United States under the Uniformed Services Employment and Reemployment Act of 1994 ("USERRA"), and under the terms approved today by United States District Judge JED S. RAKOFF, NYCDOC has agreed to promote PENNES within 30 days and pay almost three years' worth of back pay.

USERRA was enacted in 1994 to protect service members from being disadvantaged in their civilian careers due to serving in the uniformed services. Subject to certain limitations, USERRA provides that an employer cannot deny an employee employment benefits, including promotional opportunities, on account of military status.

According to the Complaint filed in Manhattan federal court:

PENNES has been a member of the United States Army Reserves since 1985 and has worked for NYDOC since 1987, where he currently holds the position of Assistant Deputy Warden. PENNES has been called to active military duty on multiple occasions, including a one year period in 2004 and 2005, during which time he served in Iraq, near Tikrit.

On February 6, 2007, the Army ordered PENNES to report to active duty in support of Operation Enduring Freedom; he commanded an administrative unit in Orlando, Florida, whose purpose was to provide medical and psychological support to soldiers returning from Iraq.

Before PENNES was activated to Florida, he had applied to NYCDOC for a promotion to the position of Deputy Warden. While he was on active duty, NYCDOC contacted him and informed him that he would be interviewed for the position on March 29, 2007. PENNES explained that he was unable to attend an interview on that date because he was on active duty with the military in Florida. Although PENNES offered to do the interview on any date from March 23 to March 26, 2007, or by telephone or videoconference, NYCDOC refused to interview PENNES unless he appeared in person on March 29, 2007, a date when NYCDOC knew that PENNES' military duties took him out of state.

Consequently, PENNES was not interviewed for the position nor offered a promotion to Deputy Warden, even though a selection memo ranked him first among the 13 candidates for the position prior to the interviews. The Commissioner of the Department instead skipped over PENNES and selected the next seven applicants for the promotion.

Under the terms of today's settlement, NYCDOC agreed to promote PENNES to Deputy Warden within 30 days, with such promotion being retroactive to June 20, 2007, the date he would have become Deputy Warden had he been permitted to interview. In addition, NYCDOC agreed to provide PENNES with the full back pay and benefits that he would have received had he been promoted to Deputy Warden on that date. NYCDOC made the agreement without admitting fault.

"We are pleased that the New York City Department of Correction has recognized the importance of Mr. Pennes' service to his country." Mr. BHARARA said. "A patriot who is willing to risk everything for our safety should not have to worry about losing his or her place in line for opportunities in civilian life. We are committed to redressing discrimination against our nation's veterans, to whom our country owes a deep and lasting debt."

Assistant United States Attorneys DAVID J. KENNEDY and BRIAN K. MORGAN are in charge of the case.

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