

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JASON M. SIMS, SR.

PLAINTIFF

v.

CIVIL ACTION NO.: 4:19cv145-DMB-JMV
JURY TRIAL DEMANDED

COAHOMA COUNTY, MISSISSIPPI

DEFENDANT

COMPLAINT

COMES NOW Plaintiff Jason M. Sims, Sr. (hereinafter "Sims"), by and through his undersigned counsel, and files his Complaint under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* (hereinafter "USERRA"), as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter under to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).
2. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) and (i).
3. A substantial portion of the events giving rise to the claims in this action occurred in Coahoma County, Mississippi ("Coahoma County"). 28 U.S.C. § 1391(b). Coahoma County is a political subdivision of the State of Mississippi and is located in the Greenville Division of the Northern District of Mississippi.

PARTIES

4. Sims resides in Batesville, Panola County, Mississippi. Sims has served in the U.S. military for eighteen years. He is a Sergeant First Class (Paygrade E-7) in the U.S. Army Reserve. Sims is currently performing duties at the U.S. Army Installation at Fort Knox, Kentucky.

5. Coahoma County, in its capacity as a political subdivision of the State of Mississippi, operates and maintains a law enforcement agency known as the Coahoma County Sheriff's Office (hereinafter "Sheriff's Office"). Accordingly, Coahoma County is an "employer" within the meaning of 38 U.S.C. § 4303(4)(A) and is subject to suit under 38 U.S.C. § 4323(a).

FACTUAL ALLEGATIONS

6. In or around October 1, 2014, Sims began his employment with the Sheriff's Office.

7. Sims was a member of the U.S. Army Reserve during the entirety of his employment with the Sheriff's Office.

8. Since late 2014, Sims has served as an instructor for the U.S. Army, teaching leadership, advanced leadership, and senior leadership courses at Fort Knox, Kentucky.

9. Following his 2014 hire, Sims followed a standardized process for notifying the Sheriff's Office of his upcoming military leave. At the beginning of each calendar year, Sims would provide the Sheriff's Office with a complete list of the dates of his known military obligations during that year. Approximately 3-4 weeks before each individual military obligation, he would submit a form requesting military leave from the Sheriff's Office for that obligation.

10. Charles Jones (hereinafter "Jones") is the current Sheriff of the Coahoma County Sheriff's Office and he worked for Coahoma County as Sheriff for the totality of Sims' employment with the Sheriff's Office.

11. As Sheriff, Jones has the sole power to hire or fire any Sheriff's Office employee.

12. During Sims' employment at the Sheriff's Office, Jones and other Sheriff's Office employees subjected Sims to numerous acts that demonstrated disregard for his rights under USERRA and hostility towards his military obligations.

13. The Sheriff's Office demonstrated hostility to Sims' military leave on September 21, 2016, when Sims received his annual performance evaluation from Chief Deputy Fernando Bee (hereinafter "Bee"). The evaluation form contained numerical ratings from 1 (unsatisfactory) to 10 (outstanding) in 34 different categories.

14. Sims' lowest rating on his 2016 evaluation was a "3" under the category of "Leadership Practices/Potential: Prioritization." Bee added a comment to this rating, stating, "Employee should prioritizes (sic) his scheduling better when it comes to his job (Military)."

15. After presenting Sims with his evaluation, Bee discussed the evaluation with him. Bee informed Sims that the Sheriff's Office, through Jones, was upset with Sims' military leave, and that Jones might not retain Sims if his military leave continued.

16. The Sheriff's Office disregarded Sims' USERRA rights when he was scheduled for military duty in Kentucky commencing on October 9, 2016. Sims notified the Sheriff's Office of the obligation in January 2016, and formally submitted his request for leave on September 16, 2016, more than three weeks before his scheduled duty. Despite several inquiries, Bee did not tell Sims until October 8, 2016, the day before the start of Sims' military leave was to begin, that Jones rejected his request for military leave. Sims was already in Kentucky when he learned of Jones' decision.

17. Under threat of military discipline if he failed to show for his military training, Sims reported for duty from October 9, 2016 to October 23, 2016. While away on duty, Sims contacted the Employer Support of the Guard and Reserve (hereinafter "ESGR") for assistance in resolving his military leave issue, and requested information about filing a USERRA complaint in the event that he was disciplined by the Sheriff's Office for taking military leave.

18. On October 27, 2016, during Sims' first shift back following his return from military leave, Bee informed Sims that Jones could terminate Sims if he went forward with a USERRA

complaint. Accordingly, by email dated October 28, 2016, Sims closed the matter with ESGR. Sims' email to ESGR requesting closure stated that Bee "made clear by our conversation that I would be risking termination if ESGR continues to be involved in this situation."

19. Jones' comments regarding Sims' commitment to his military service, and its alleged detrimental effect on the Sheriff's Office, continued throughout 2017 and 2018. Jones regularly complained to Sims directly as well as to other Sheriff's Office employees regarding the amount of time that Sims was away on military leave.

20. The hostility towards Sims' military service leave escalated through the summer of 2018 and resulted in his termination on August 21, 2018.

21. Sims requested leave from the Sheriff's Office in June 2018 for military training that ended on July 2, 2018.

22. On August 1, 2018, Bee issued Sims his annual performance evaluation. As with Sims' 2016 performance evaluation, the 2018 evaluation stated that Sims "needs to be more dependable when consideration comes when scheduling classes with his military job."

23. On August 21, 2018, Sims was fired based on events that occurred during a traffic stop that also involved Sergeant Neal Mitchell (hereinafter "Mitchell") of the Sheriff's Office. The Sheriff's Office alleged that Sims was fired for violations of Sheriff's Office policy and for insubordination.

24. Between August 17, 2018 and August 20, 2018, the Sheriff's Office held a disciplinary hearing on Sims' proposed termination. Despite the employer's stated reasons for firing Sims, outlined in paragraph 25, Bee stated at the disciplinary hearing that the

Sheriff's Office never had a problem with Sims' work, but had issues with his use of military leave, or words to that effect.

25. No disciplinary action was taken against Mitchell, the onsite supervisor, based on the same events at the same traffic stop.

26. Based on information and belief, Mitchell has never requested military leave.

CLAIM FOR RELIEF

27. Sims repeats the factual allegations set forth in Paragraphs 1-26.

28. Under 38 U.S.C. § 4311, USERRA provides in pertinent part that “[a] person who is a member of . . . a uniformed service shall not be denied . . . retention in employment, . . . on the basis of that membership, application for membership, performance of service, application for service, or obligation.”

29. Coahoma County, via the Sheriff's Office, violated USERRA Section 4311 by terminating Sims on the basis of his membership in the U.S. Army Reserve, his absence to perform military service, and/or his military service obligations.

30. Sims meets all prerequisites for filing suit under USERRA.

31. Sims is a member of the U.S. Army Reserve who was employed by Coahoma County from October 1, 2014 to August 21, 2018.

32. There is temporal proximity between Sims' last military leave and his termination 7 weeks later.

33. Coahoma County, through its Sheriff's Office and Jones, displayed repeated hostility and animus towards Sims' military service.

34. Upon information and belief, Sims was treated differently than similarly situated non-service members employed by Coahoma County when he was terminated on August 21, 2018.

35. Sims has suffered a loss of earnings and other benefits in an amount to be proven at trial as a result of Coahoma County's violations of USERRA.

PRAYER FOR RELIEF AND JURY DEMAND

WHEREFORE, PREMISES CONSIDERED, Plaintiff Jason M. Sims, Sr. prays that the Court enter judgment against Coahoma County and grant the following relief:


- a. Declare that Coahoma County's termination of Sims' employment was unlawful and in violation of USERRA;
- b. Order Coahoma County to comply with USERRA by reinstating Sims to a Sergeant position in the Sheriff's Office;
- c. Order Coahoma County to comply with USERRA by paying Sims for his lost wages and other benefits suffered by reason of the County's violation of USERRA;
- d. Enjoin Coahoma County from taking any action with respect to Sims that fails to comply with USERRA; and
- e. Award such additional relief as justice may require, together with the costs and disbursements of this action.

Plaintiff Jason M. Sims, Sr. further demands a trial by jury of all issues so triable pursuant to Fed. Rule Civ. P. 38.


Respectfully submitted, this 30th day of September, 2019.

Eric S. Dreiband
Assistant Attorney General
Civil Rights Division

William C. Lamar
United States Attorney
Northern District of Mississippi

By: 

J. Luke Benedict - MS BAR #102992
Assistant United States Attorney
Northern District of Mississippi
Ethridge Professional Building
900 Jefferson Avenue
Oxford, MS 38655-3608
Telephone: (662) 234-3351
E-Mail: luke.benedict@usdoj.gov



Stuart S. Davis - MS BAR #103224
Assistant United States Attorney
Northern District of Mississippi
Ethridge Professional Building
900 Jefferson Avenue
Oxford, MS 38655-3608
Telephone: (662) 234-3351
E-Mail: stuart.davis@usdoj.gov

Delora L. Kennebrew – GA BAR #424320
Chief

Andrew G. Braniff – IN BAR #23430-71
Special Litigation Counsel

By: /s/ Brian G. McEntire
Brian G. McEntire-VA BAR #48552
Senior Trial Attorney
U.S. Office of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Ave., N.W.
Washington, DC 20579
Telephone: (202) 305-1470
E-Mail: brian.mcentire@usdoj.gov