

## **Supreme Court Rules in Favor of Employee in USERRA Discrimination Case**

The United States Supreme Court ruled in favor of an army reservist fired from his job at a hospital because the facts showed that hostility to his military service was a motivating factor in the termination. All eight justices hearing the case (Justice Kagan did not participate) agreed in the ruling. Justice Antonin Scalia wrote the majority opinion and Justice Samuel Alito wrote a concurring opinion. *Staub v. Proctor Hospital*, Docket No. 09-400, March 1, 2011.

Vincent Staub worked as an angiography technician until he was fired in 2004 for violating a corrective action that required him to stay in his work area at all times if he was not with a patient. Staub argued and the jury agreed that his supervisor, Janice Mulally and his supervisor's supervisor, Michael Korenchuk, were hostile to Staub's military obligations which included one weekend a month and two to three weeks per year of training.

Mulally and Korenchuk were openly hostile, complaining that the training was a waste of time and scheduling Staub for additional shifts upon his return so that he would have to make up for inconveniencing other staff members. Mulally told other employees that she wanted to get rid of Staub and Korenchuk testified that he was aware Mulally was "out to get" Staub.

In the events leading up to the termination, Staub was given a "corrective action" after a coworker complained that he was unavailable. The corrective action required him to remain in his work area if he was not with a patient. In April, Korenchuk alleges that Staub left his work area without prior approval in violation of the corrective action. (Staub alleges he left a voicemail message.)

Korenchuk informed Linda Buck, the VP of Human Resources of the violation and after reviewing Staub's personnel file, she decided to fire him. Staub sued arguing that Mulally's and Korenchuk's hostility to his military service was the reason for the firing. Proctor Hospital argued that it could not be liable for Mulally and Korenchuk's actions because Buck was not biased and she was the ultimate decision maker.

In issuing this opinion, the Supreme Court overruled a Seventh Circuit opinion that agreed with Proctor Hospital. The Supreme Court said, "If a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA."

Because Mulally and Korenchuk were hostile to Staub's service and sought to get rid of him and Buck acted on the reports on Mulally and Korenchuk, Proctor Hospital is liable for the violation of USERRA.