

Written Testimony
To the
COMMISSION
ON THE
NATIONAL GUARD AND RESERVES

Submitted By
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17 May 2007

Chairman Punaro and distinguished members of the Commission on the National Guard and Reserves, thank you for the opportunity to appear before you and submit this written testimony relative to issue pertaining to employers of reservists and employees who are reservists. Your invitation encouraged me to address the following issues. What have been the principle problems, including those caused by either federal regulation or law, when a reservist is activated and must leave his/her civilian job? What does the employer do for continued health care, income replacement, and so on for the reserve component members who are mobilized and deployed? Many reserve component members possess many unique skills important to both their military and civilian career. Those skills are not easily replaced when they are called to active duty for a substantial period of time. How do businesses deal with the loss of a particular skill set? Have employers of mobilized reserve component members found any congressional efforts, as of the 110th congress, to be helpful in alleviating the stress placed on them. Could the business owner suggest changes in either law or policy that the Commission might recommend that would help? I am honored for the opportunity and respectfully submit this testimony to the Commission.

When I was born in 1962 my father was the First Sergeant and my mother was the administrative secretary of the 304th Air Rescue Squadron. I retired from this Squadron 42 years later. Before I could shave I enlisted in the United States Marine Corps. I am unique as I am a Marine, a Shellback, a Soldier, and an Airmen. My military career was 22 years of contiguous service – 4 years active duty in the Marine Corps, 12 years in the Army National Guard, and 6 years in the Air Force Reserve. During the Reserve Component years I was both an Employee and Employer in the civilian sector.

The principle problems when a Reservist is activated and must leave his/her civilian job are in the scheduling, notification, and understanding of responsibilities for both the Reservist and the Employer. Scheduling is a function of primarily two active duty situations. One in which the reservist attends qualification training and the other is deployment or mobilization. Often the reservist that attends qualification training is offered a short fall course as slots for training are limited. In this case there is limited time available. This situation needs to be addressed separately and perhaps with special rules, policies, and application of the Law. The other situation is one in which the reservist is mobilized and deployed. This is normally a scheduled event which provides for planning, notification, and time for adjustment for the reservists family and employer.

The United States of America maintains the finest military in the world with an all volunteer force. Reservists are volunteers and their employers frequently have issues regarding their status as volunteers, therefore assume the reservist asked for the deployment or training. The fact is the

entire United States Military is a volunteer force and each and every citizen has the right to contribute. Many times in my career I have observed this issue come between a reservist and his/her employer. Employers need to understand that it is their responsibility to make the transition of their reservist to and from activation as easy as possible. This is a substantial way that an employer can contribute.

The Veterans Employment and Training Service and Employer Support of the Guard and Reserve Program make a reasonable attempt at educating reservists through their mobilization training events, however, employer training and/or public awareness of employer responsibilities is lacking. I believe more focus regarding employer responsibilities and requirements needs to be provided.

What employers do for continued health care, income replacement for reserve component members who are activated or mobilized is not standard. Government employers perhaps lead the way in military leave and re-instatement; however, I have limited experience with actual compensation packages in that sector. I can only say that if National Standards for Reservists on active duty could be established, then perhaps the government sector employers could contribute significantly toward developing those standards. From 1986 through becoming self-employed in 1996 I received very poor treatment as a reservist from my civilian employers. As a reservist working in the civilian sector, I was fired once, had my career ladder shortened once, and more than once considered a less than desirable employee for attending active duty for training tours, because after all, I volunteered to defend our nation. In 1989 I received assistance from the Veteran Employment and Training Service and the DOJ Solicitor accepted my case. After a 2 year legal battle pursuing servicemember rights, the end result, I was not reinstated to the position I had before active duty. Throughout that process my family suffered as the result of my service and commitment to the Army National Guard. Employer's responsibilities as they pertain to the activation of reservists needs to be trained and clarified. I recommend that a National Standard be established for the treatment of reservists activated and reemployment rights laws be strengthened with a private cause of action for reservists to pursue legal support and remedies if required. Additionally, a National Campaign for employer's education, training, and public awareness be initiated.

What I have done at JL Aviation is to keep my reservists on full pay and benefits while they performing reserve duties. It matters not how many training periods they attend or how often, rather I feel as an employer I have a responsibility to the reservist to ensure that their service to the Nation is honored and their family will be taken care of. In essence they double dip while they are away. This directly benefits the reservist and indirectly benefits the company. In the immediate term there are additional expenses for an employee that is unavailable, but in long

term, my fully trained employee returns from active duty motivated and appreciative for the company commitment. Historically the returning reservist more than makes up for their lost time. This philosophy is in the long term best interest of all concerned and a small part for JL Aviation to contribute to a servicemember participating in the National Defense. I recommend as the Commission works for ways to improve the benefits and compensation for both reservists and their respective employers that the absolute core value adopted is – **RESERVISTS AND THEIR FAMILY MEMBERS BENEFIT DIRECTLY AND EMPLOYERS BENEFIT INDIRECTLY** – this core value will strengthen the Reserve Family and provide the maximum indirect benefit to employers. For example, if there was a benefit to employers with reservists in their organization, and that employer adopted the National Standards for benefits and pay for reservists, at the end of each year, the reservist could submit to the employer a copy of their annual retirement point summary and the employer could receive incentives for actual performance. Directly the reservist and his/her family would benefit, indirectly the employer benefits from supporting actual performance and the reservist family members. This is vague, as there are no National Standards that exist, but I submit to this Commission that the recommended National Standard were developed and implemented, it would significantly enhance the current programs and benefits.

Many reserve component members possess many unique skills important to their military and civilian careers. Those skills are not easily replaceable when they are called to active duty for a sustained period of time. How do businesses deal with the loss of a particular skill set? As a Nation we encourage men and women to join the armed forces to learn, grow, and develop. We recruit and promote the program through their military service the individual will receive valuable training and skills. I am living proof – the US Military made me the man I am. What we have done at JL Aviation is to hire a retired military member to job shadow with our active reserve member. This has made a great combination. I am continually seeking additional reservist that perhaps could job share with each other. I think that this concept could be integral in making the reservist and their individual mobilizations work in concert with civilian employers. The concept I am pursuing is one in which a two members of the reserve who can contribute significantly at their respective organizations can be on a rotation basis in which they can be in essence both employed in the same capacity, only one will be gone at a time. I think there is a substantial direct benefit to the reservists and if I can achieve this, there would be an even more substantial indirect benefit to JL Aviation. Throughout my reserve career, mobilization training and preparation was our mission. I believe that the mobilization process could easily be adapted to include the reservist civilian job skills set and their employer information. A think at some level, the system could be established to match Servicemembers

scheduled deployment rotations with those returning and seeking employment. Through this process employers would receive short lists of like skilled reservists returning home seeking work. This would directly benefit the reservist and indirectly benefit the employer by shorting the hiring process by providing a pool of employees who could work in their reservist's absence.

Have employers of mobilized reserve component members found any congressional efforts, as of the 110th congress, to be helpful in alleviating the stress placed on them? From 1996 through 2004 I was an active reservist and business owner. During these years I achieved over 134 retirement points a year in the reserve system and made multiple deployments, including two tours to Operation Northern Watch. As we look to the 110th Congress to strengthen our Total Force I believe there are some significant issues before this Commission. If a servicemember is required to pursue legal action to enforce the rights conferred on the servicemember by Congress through the SCRA there is no provision for recovery of the expense of the attorneys he must hire to attain relief. To preserve the protections of the act Congress should consider incorporate some attorney fee provision similar to those under the Civil Rights Act. This change would be applicable if after a servicemember provided suitable notice and an action must be brought. Also important would be a private right of action similar to that recognized by the Cathey court as implied in the Act. The think the rights provided by the SCRA are just as important as the civil rights provided by the Civil Rights Act.

From 5 DEC 2002 through 31 July 2003 I was on active duty with the United States Air Force. The nature of this tour of duty was not significantly different from other tours of duty I had completed in my career, however, my company; JL Aviation was nearly destroyed in my absence. The primary causes of damages were violations of the SCRA. Those violations of the SCRA were also the greatest stumbling blocks in rebuilding the company. In this case as the reservist I was both employer and employee. In December of 2002, I initiated protections under the SSCRA. These protections were not obvious to numerous creditors. In February of 2003 I initiated relief under the Military Reservist Economic Injury Disaster Relief Loan (MREIDL) program through the Disaster Branch of the SBA in Sacramento California. Both the SCRA and the MREIDL are vital to reservists on active duty.

It is not obvious to creditors that the SCRA applies to sub-chapter S corporations owned by Servicemembers. This issue is significant and deserves attention. I requested assistance from Senator Wyden regarding my SCRA rights. Senator Wyden was instrumental in assisting me forwarded a letter from DOD JAG stating that DOD had no statutory authority to defend SCRA rights and referred me to the Oregon State Bar. The Oregon State Bar referred me to Michael B. Mendelson. As in Cathey vs. First Republic Bank and continued through the JL Aviation INC,

and Jeffrey Rodman Linscott vs. Vector Aerospace, Acrohelipro Global Services USA, Acrohelipro Global Services INC, Acro Aerospace Incorporated Case No. CV05-682-HU, United States Magistrate Judge Dennis James Hubel issued an Opinion and Order on 31 January 2006 (attachment one) and another Opinion and Order on 12 May 2006 (attachment two) that the SCRA is applicable to a Servicemember's Sub Chapter S Corporation and additionally, to Foreign Corporations doing business in the United States. This is significant in the foundation of protecting Servicemembers who are owners of Sub Charter S Corporations. These opinion and orders were achieved at a cost of \$35,000.00 dollars and the case continues at a current billing of nearly \$70,000.00. At trial in October 2007, the financial burden to realize protections under the SCRA are estimated at \$135,000.00.

The amount most cases at issue in violations of SCRA Rights are insufficient to allow an attorney to precede on a contingency basis for the cost of litigation outweighs the remedies provided in the act. By amending the SCRA Congress can make it enforceable for Servicemembers, thus minimizing damage to reservists while on active duty. In my case it is very much a David vs. Goliath situation. A reservist returning home and having to expend considerable resources to enforce protections under the SCRA. Specifically in my case, the defendant is a DOD Contractor that stated openly that the SCRA did not apply to them. Both Opinion and Orders correct this, however, should Congress further amend the SCRA to include if by a foreign contractor submits to jurisdiction to any United States Court for a violation of the SCRA notwithstanding a form selection clause within the contract agreement with the servicemember it would enhance the provisions and protections for all servicemembers.

In February of 2003 I initiated a MREIDL loan process with the Disaster Area 4 (DA4) of the SBA. The process was cumbersome and ultimately took 18 months for funding to be approved. During the application process DA4 continually placed requirements on a reservist in need of immediate assistance that were not realistic for a reservist on active duty. After many declines from DA4, Mr. James Steiner, Veterans Business Development Officer in Portland Oregon helped me prepare the application package necessary to receive approval from DA4. Senator Ron Wyden was instrumental in appealing to DA4 to re-open my case and review my final application package which subsequently received approval. Once MREIDL funding was received, JL Aviation recover efforts were greatly enhanced and we serve today as a success story. A success story everyone involved in can be proud of. I would recommend the Commission investigate the MREIDL application process and management. I believe the application process can be more reservist friendly. I am not sure the Disaster Branch of the SBA is the best place for the program, rather the Veterans Division of the SBA might be more suited to manage the program. Additionally, pre-mobilization training might include MREIDL instruction to better prepare the reservist for the process should it be necessary.

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I appreciate this opportunity to submit testimony to the Commission On The National Guard and Reserves. I look forward to the opportunity to testify on the 17th of May.

Respectfully Submitted,

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President – JL Aviation, INC

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Attachment One – Opinion and Order 31 January 2006

Attachment Two – Opinion and Order 12 May 2006