

No Constructive Discharge Under USERRA Where Working Conditions not Objectively Intolerable and Plaintiff Failed to Show Veteran Status Was a Motivating Factor

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An employee who was a paramedic joined the Marines and served three tours of duty in Iraq before being discharged from active duty. The employer allowed the employee to return to work at the same position and rate of pay as before he joined the Marines. Subsequently, the employee and his supervisor got into a verbal confrontation not relating to military service and the employee believed the supervisor treated him “dismissively.” The employee claimed to fear that the supervisor would attack him or find some pretext to fire him, but never reported this fear to anyone. The employee later requested time off pursuant to the Family and Medical Leave Act (FMLA) for treatment of his self-reported post-traumatic stress disorder (PTSD), and his employer granted the request. During his time off, the employee also filed a claim for long-term disability benefits for PTSD, which was denied on the basis that the plan did not cover disabilities caused by acts of war. The employee never returned to work, formally resigning more than a year after requesting time off under the FMLA. The employee later sued his employer and supervisor, alleging workplace discrimination and constructive discharge on the basis of veteran status, in violation of the Uniformed Services Employment and Reemployment Act of 1994 (USERRA). The U.S. Court of Appeals for the Eighth Circuit affirmed the dismissal of the employee’s constructive discharge claims because the employee failed to present a *prima facie* case of constructive discharge. Under USERRA, constructive discharge occurs when an employer deliberately renders an employee’s working conditions intolerable with the intent of forcing the employee to leave the employment. The employee failed to show that the conditions were objectively intolerable or that his status as a veteran was a motivating factor in any constructive discharge. Further, he never gave the employer any opportunity to correct the claimed intolerable condition before he quit; thus, the claim failed as a matter of law. Employers should be mindful that USERRA prohibits discrimination against veterans with respect to any benefit of employment on the basis of their application for membership or their service in the uniformed services, and they should take immediate action to affirmatively address acts of discrimination in the workplace to prevent potential liability under USERRA.

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Topics

FMLA, USERRA, PTSD, Iraq