

# Court Report

## Misconduct Dooms USERRA Claims

*Francis v. Booz Allen & Hamilton Inc.*, 4th Cir., No. 05-1523 (June 22, 2006).

A Naval Reserve officer's claims of discrimination and retaliation under the Uniformed Services Employment and Reemployment Rights Act (USERRA) relating to a change in work schedule and ultimate termination could not stand in light of the reservist's history of professional misconduct, according to the 4th U.S. Circuit Court of Appeals.

Cheryl Francis worked for Booz Allen & Hamilton Inc. from 1996 to March 2003 as a computer technician. She provided three categories of service to one of Booz Allen's clients, the Environmental Protection Agency (EPA), including Tier III services, which involved more difficult networking assistance.

### Professional Pointer

With so many servicemen and women returning home from active duty, this case serves as a timely reminder that employers should understand their re-employment obligations under USERRA.

Francis also worked as a petty officer in the U.S. Navy Reserve. She was deployed on active duty on March 16, 2003, and returned to work five months later.

Booz Allen reinstated Francis with the same job title, salary, consulting assignment and work location, but she performed almost no Tier III work because the EPA had elected to use another vendor for its networking assistance. Given the change in work assignments, Francis complained to Booz Allen that she felt her USERRA rights were violated.

Both before her deployment and after her return to work, Francis would leave work early without authorization and would slam the telephone down after talking with customers. Several co-workers lodged complaints with managers about Francis' behavior and her attendance issues. Francis missed scheduled conference calls, and her supervisors found her to be evasive, unresponsive and uncommunicative.

Booz Allen gave Francis a probation notice in November 2003 that warned her that a failure to improve her behavior immediately would result in termination. Less than two weeks after receiving this notice, Francis again left work early without authorization, and Booz Allen discharged her.

Francis alleged various USERRA violations. She claimed that Booz Allen did not have the right to change her assignments or schedule on her return to work. She also believed that she was fired without cause and in retaliation for trying to assert her USERRA rights.

The lower court disagreed with Francis and granted summary judgment for Booz Allen. On appeal, the 4th Circuit affirmed, concluding that Francis was not treated differently from other employees and that Booz Allen had reinstated her properly. In addition, it stated that Francis had a "systematic history of professional misconduct," and determined that discharge was reasonable after she had been given fair warning and an opportunity to correct and improve her behavior.

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