

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

SEDRIC WARD,)	
)	
Plaintiff,)	
)	Case No. 2:20-cv-02407-JPM-cgc
)	
v.)	
)	
SHELBY COUNTY,)	
)	
Defendant.)	

JURY INSTRUCTIONS

I. INTRODUCTION

Members of the jury, we have now come to the point in the case when it is my duty to instruct you on the rules of law that you must follow and apply in deciding this case.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion for one side or the other.

You must follow the law as I explain it to you whether you agree with it or not. You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all the others.

All of the instructions are equally important. The order in which these instructions are given has no significance. You must follow all of the instructions and not single out some and ignore others.

II. GENERAL INSTRUCTIONS

A. Burden of Proof and Consideration of the Evidence

I will now instruct you with regard to where the law places the burden of making out and supporting the facts necessary to prove the theories in the case.

When a party denies the material allegations of the other party's claims, the law places upon the party bringing a claim the burden of supporting and making out each element of each claim by the greater weight or preponderance of the evidence. Plaintiff, Sedric Ward, has the burden of proof in this case. The Defendant, Shelby County, likewise has a duty to prove or establish every essential element of its defense of failure to mitigate damages by a preponderance of the evidence.

The preponderance of the evidence means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue must fail.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That is a stricter standard, i.e., it requires more proof than a preponderance of the evidence. The reasonable doubt standard does not apply to a civil case and you should therefore put it out of your mind.

Unless otherwise instructed, you must consider all the evidence pertaining to every issue, regardless of which party presented it.

B. Governmental Entity Not to be Prejudiced

In this case, the defendant, Shelby County is a governmental entity. The fact that a party is a governmental entity must not influence you in your deliberations or in your verdict.

You may not discriminate between governmental entities and natural individuals. Each is a person in the eyes of the law, and each is entitled to the same fair and impartial consideration and to justice by the same legal standards.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A governmental entity is entitled to the same fair trial at your hands as a private individual. All persons, including governmental entities, stand equal before the law, and are to be dealt with as equals in a court of justice.

C. Governmental Entities Act Through Designated Employees

While the defendant is a governmental entity, that does not mean that only the actions of one body can be considered by you in determining liability in this case. A governmental entity acts not only through the policies and decisions that it makes, but also through its designated supervisory employees, such as its supervisors, managers, officers, and others designated by the governmental entity to act on its behalf.

Pay attention as you consider the evidence in the case. Remember, at the end of the case you will have to determine whether or not individual government employees were authorized to act on behalf of the governmental entity Shelby County.

D. Credibility and Weighing of Evidence

You, the members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who appears before you and to give the testimony the weight, faith, credit and value to which you think it is entitled.

You should consider the manner and demeanor of each witness while on the stand.

You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood, and whether or not the witness was a frank witness. You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he or she testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks of life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict between the testimony of different witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses that you are not able to reconcile in accordance with these instructions, then you must determine which of the

witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular set of facts. Rather, it depends on the weight, credit and value of the total evidence on either side of the issue, and of this you jurors are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then you must find against the party upon whom the burden of proof has been cast in accordance with these instructions.

Remember, you are the sole and exclusive judges of the credibility or believability of the witnesses who testified in this case.

Ultimately, you must decide which witnesses you believe and how important you think their testimony was. You are not required to accept or reject everything a witness says. You are free to believe all, none, or part of any person's testimony.

E. Impeachment – Inconsistent Statements or Conduct

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe that any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves; you may, of course, accept any part you decide is true. This is all for you, the jury, to decide.

An act or omission is done "knowingly" if committed voluntarily and intentionally, and not because of mistake or accident, or some other innocent reason.

F. Direct and Circumstantial Evidence

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what a witness personally saw, heard or did. Circumstantial evidence is indirect evidence—that is, proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

G. Evidence

You are to decide this case only from the evidence that was received—that is, evidence that was presented for your consideration during the trial. The evidence consists of:

1. The sworn testimony of the witnesses who have testified;
2. The exhibits that were received and marked as evidence;
3. Any facts to which the lawyers for both sides have agreed or stipulated; and
4. Any other matters that I have instructed you to consider as evidence.

H. “Inferences” Defined

Although you are to consider only the evidence in this case, you are not limited to the statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You may draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions that reason and common sense lead you to make from facts established by the evidence in the case.

I. Statements and Arguments of Counsel

You must not consider as evidence any statements of counsel made during the trial.

If, however, counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the Court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked of a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

J. Totality of the Evidence

You should consider all of the evidence admitted in the case. Testimony and documents which the Court allowed into evidence over a hearsay objection may be considered by you as evidence, on the same basis as all other evidence, for the purpose for which it was admitted. For example, matters and things that a decision maker is told may be considered for the purpose of explaining the basis upon which that person acted or made a decision. This, of course, is all for you, the jury, to decide.

K. Juror Notes

If you took notes, please remember that your notes are not evidence. You should keep your notes to yourself. They may only be used to help refresh your personal recollection of the evidence in this case. It is the evidence itself, and not your notes, that you should discuss with the other jurors.

If you cannot recall a particular piece of evidence, you should not be overly influenced by the fact that someone else on the jury appears to have a note regarding that evidence.

Remember, it is your recollection and the collective recollection of all of you upon which you should rely in deciding the facts in the case.

L. Comments by the Court

During the course of this trial, I occasionally asked questions of a witness in order to bring out facts not then fully covered in the testimony. Please do not assume that I hold any opinion on the matters to which my questions may have related. Remember that you, as jurors, are at liberty to disregard all comments of the Court in arriving at your own findings as to the facts.

On the other hand, you are required to follow the Court's instructions on the law, whether you agree with these instructions or no

M. Opinion Testimony

You have heard the testimony of Dr. Stan Smith, who rendered an opinion in this case.

A witness is allowed to express his or her opinion on those matters about which the witness has special knowledge, training or experience. Opinion testimony is presented to you on the theory that someone who is experienced or knowledgeable in a field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing an opinion witness's testimony, you may consider his qualifications, opinions and reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case.

You should not, however, accept a witness's testimony merely because he is an opinion witness. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

III. STATEMENT OF THE CASE AND STIPULATED FACTS

A. Statement of the Case

Before I instruct you on the specific provisions and factors you are to consider under the laws alleged to have been violated in this case, I want to frame the issues that you will be called upon to decide. Plaintiff Sedric Ward alleges that Shelby County suspended him without pay and terminated his employment as a result of a Shelby County investigation of all military service member employees' use of military leave. Plaintiff asserts that the non-discriminatory reasons asserted by Shelby County are a pretext for its real reason of discrimination against Mr. Ward based on his military service. Mr. Ward seeks damages due to his loss of employment.

Defendant Shelby County contends that Plaintiff is not entitled to any damages, as Defendant did not violate USERRA or otherwise discriminate or retaliate against him based upon his military status. In the event that the finder of fact determines that Plaintiff is entitled to any damages, Shelby County contends that those damages should be cut off effective September 16, 2016, as that was the date he was to be reinstated.

B. Stipulated Facts

Before the trial of this case, the parties agreed to the truth of certain facts. As a result of this agreement, Sedric Ward and Shelby County entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without the parties presenting further proof on the matter. This procedure is often followed to save time in establishing facts that are undisputed.

Facts stipulated to by the parties in this case include the following:

1. Mr. Ward was employed by Shelby County Government, specifically in the Shelby County Sheriff's Office.
2. Mr. Ward worked in the Shelby County Jail.
3. At all relevant times, Mr. Ward was a member of the Army Reserve.
4. Shelby County terminated Mr. Ward's employment.
5. Mr. Ward's name was not in the audit.

IV. GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

A. Legal Theories of the Case

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If a lawyer or party has told you that the law is different from what I tell you it is, you must, of course, take the law as I give it to you. That is my duty. But it is your duty, and your duty alone, to determine what the facts are and after you have determined what the facts are, to apply the law to those facts, free from any bias, prejudice or sympathy, either one way or the other.

B. Nature of the Action

Plaintiff Sedric Ward contends that Defendant Shelby County's suspension without pay and termination of his employment was motivated by his military service obligations, in violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). Plaintiff worked for Shelby County as a Jail Deputy and also served in the Army Reserve. Plaintiff's employment with Shelby County was terminated on April 15, 2015. Defendant contends that Plaintiff's military obligations were not part of its decision to suspend Plaintiff without pay and terminate Plaintiff's employment.

C. Brief Statement of the Law

The claim by Sedric Ward against Shelby County is for violation of USERRA. In order to prevail on his claim, Mr. Ward has the burden of proving each of the following facts by a preponderance of the evidence:

1. That Plaintiff suffered an adverse employment action; and
2. Plaintiff's military service or status was a motivating factor for that adverse employment action.

If you find that Plaintiff has met this burden, the Defendant has the burden to prove it would have made the same adverse employment action in the absence of Plaintiff's military service or status

D. The Statute/USERRA

The claim before you is based on 38 U.S.C. § 4311, which is also known as the Uniformed Services Employment and Reemployment Rights Act, or “USERRA.” USERRA prohibits an employer from discriminating against an employee in the terms and conditions of the employee’s employment because the employee is a member of a uniformed service.

In an USERRA discrimination case, the Plaintiff has the burden of proving:

That the Plaintiff in question suffered an adverse employment action and that the Plaintiff’s military service or status was a motivating factor for the adverse employment action. If you find that a plaintiff has proved these elements, then you must also determine if Defendant has proved the following defense:

That the Defendant would have made the same adverse employment decisions in the absence of the plaintiff’s military service or status.

If you find that Plaintiff has proved his military service or status was a motivating factor for an adverse employment action by Defendant, and that Defendant has not proven its defense, then your verdict should be for the Plaintiff on this claim.

If you find that Plaintiff has not proven his military service or status was a motivating factor for an adverse action by Defendant, or that Defendant proved its defense, your verdict should be for Defendant.

E. Motivating Factor

As used in USERRA, a “motivating factor” means that if the employer was asked at the moment of the adverse employment decision what its reasons were, and if it gave a truthful response, one of those reasons would be that the employee’s military position played a part in the decision. Plaintiff’s military status was a motivating factor in the Defendant’s employment decisions if the Defendant relied on, took into account, considered, or conditioned its employment decisions on a Plaintiff’s service in the military. A Plaintiff only has to prove that his military status and/or obligation to perform service in the military played a part in Defendant’s employment decisions, even though other factors may also have motivated Defendant. Plaintiff is not required to prove that his military service was the sole motivation or even the primary motivation for the Defendants’ employment decisions.

This element is contested by the parties in the case and is a factual issue for you the jury to decide.

F. Adverse Employment Action

An adverse employment action is a materially adverse change in the terms or conditions of employment. A materially adverse change in the terms and conditions of employment must be more disruptive than an inconvenience or alteration of job responsibilities. A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation. Negative performance reviews, assignments to administrative leave without pay, suspension, and termination of employment are examples of adverse employment actions.

In this case the parties have stipulated that Mr. Ward was suspended without pay and was terminated and that termination and suspension are an adverse employment actions. Therefore, you can consider that this element of Mr. Ward's claim has been established. This, of course, is all for you the jury to determine.

G. Pretext

Plaintiff claims that Defendant's stated reason(s) for placing him on suspension without pay and Defendant's reason(s) for subsequently terminating him are a pretext.

You may find that the Plaintiff's military service was a motivating factor in Defendant's adverse decisions if it has been proved that Defendant's stated reason(s) for its decision(s) are not the real reason but are a pretext to hide discrimination in this case. Pretext means a false or weak reason or motive advanced to hide the actual reason. It is not Plaintiff's burden to establish the Defendant's reasons for terminating him were a pretext. The burden is on Defendant to prove that the reason(s) it advanced are not a pretext.

H. Willful Violation

If you find for Mr. Ward on his USERRA claim, you must then determine if Defendant's conduct was willful. A violation of USERRA is willful if Defendant knew or showed reckless disregard for whether its conduct violated USERRA. Defendant can be said to have acted recklessly if you find that it was consciously aware that Plaintiff was protected by the statute but was indifferent to the consequences of not following the statute, USERRA.

I. Damages

It is the duty of the Court to instruct you as to the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find in favor of Plaintiff on his claim, then you must award him monetary damages that you find will fairly and justly compensate the Plaintiff for any wages and benefits that you find that Plaintiff sustained as a direct result of Defendant's violation of his USERRA rights—which is the difference between what he would have earned at Shelby County and continuing through the end of this trial, and what he has been paid for other employment during that same period of time.

You must determine the amount of any wages and benefits of employment that the Plaintiff would have earned in his employment with Shelby County and subtract the amount of earnings and benefits that the Plaintiff received from other employment during that same time period.

You must not engage in any speculation, guess, or conjecture and you must not award damages under this instruction by way of punishment or through sympathy.

J. Future Damages

You may advise the Court of your opinion as to Plaintiff's future damages.

If you find in favor of Plaintiff on his claim, then the Court may award him monetary damages that will fairly and justly compensate him for any loss of future wages and benefits that you find that he sustained as a direct result of Defendant's violation of his USERRA rights—which is the difference between what he would have earned at Shelby County from the end of trial and continuing for a reasonable amount of time. You may determine the amount of any wages and benefits of employment that Plaintiff would have earned in his employment with Shelby County going forward and subtract the amount of earnings and benefits that Plaintiff is likely to receive from other employment during the same time period.

You may determine the reasonable amount of time that Plaintiff will need to return to a level of income equal to his income while working for Defendant. You may determine the reasonable amount of time in days, months, or years, or a combination of days, months, and years.

You must not engage in any speculation, guess, or conjecture, and you must not award damages under this Instruction by way of punishment or through sympathy.

K. Mitigation of Damages

Mitigation of damages is a legal doctrine that seeks to minimize the economic harm arising from wrongdoing. Specifically, when a party believes they have suffered legal harm, the party has an obligation to use reasonable means under the circumstances to avoid or minimize his or her damages. A party cannot recover for damages that could have been avoided. In the case of a wrongful suspension without pay or wrongful discharge, the victim of wrongdoing must make reasonable efforts to find employment after the suspension or discharge.

It is the Defendant's burden to prove that Plaintiff failed to mitigate his damages. In this case, Defendant argues that Plaintiff is not entitled to any damages past September 16, 2016, when he was offered, and accepted, reinstatement. Plaintiff contends that returning to his work with Shelby County would have been futile.

You can consider his failure to return to work on September 16, 2016 in determining whether or not he mitigated his damages.

L. Additional Instruction

It is up to you as the jury to determine if Plaintiff's reinstatement position was the same as his prior employment with Shelby County or if it was not an equivalent replacement. Plaintiff is not obligated to accept an inferior position but if Shelby County offered a comparable replacement, then at that point Defendant would not be responsible for damages after Plaintiff rejected reinstatement.

If you the jury finds that the offered position for reinstatement did comply with USERRA requirements, you must find that at that point, Defendant no longer had an obligation to Plaintiff. Requirements for reinstatement under USERRA require that the employment be comparable in terms of seniority, status, and pay.

M. Nominal Damages

If you find in favor of Mr. Ward on his claim, but you find that his damages have no monetary value, then you must return a verdict for Mr. Ward in the nominal amount of one dollar.

V. VERDICT

Finally, members of the jury, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form that will reflect your findings. The verdict form reads as follows:

[Read Verdict Form]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign the verdict form.

Each of you should deliberate and vote on each issue to be decided.

Before you return your verdict, however, each of you must agree on the answer to each question so that each of you will be able to state truthfully that the verdict is yours.

The verdict you return to the Court must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to each answer. Your verdict must be unanimous.

It is your duty to consult with one another and to reach an agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is not correct. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case. You may not have seen all of these previously and they will be there for your review and consideration. You

may take a break before you begin deliberating, but do not begin to deliberate and do not discuss the case at any time unless all of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

If a question arises during deliberations and you need further instructions, please write your question on a sheet of paper, knock on the door of the jury room, and give the question to the court security officer.

I will review your question, and after consulting with all counsel in the case, will either respond to your question in writing or have you return to the courtroom for further oral instructions. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, that with regard to any message or question you might send me, you should not tell me your numerical division at the time.

I remind you that you are to decide this case based only on the evidence you have heard in court and on the law I have given you. You are prohibited from considering any other information and you are not to consult any outside sources for information. You must not communicate with or provide any information, photographs, or video to anyone by any means about this case or your deliberations. You may not use any electronic device or media, such as a telephone, cell phone, smart phone or computer; the Internet, any text or instant messaging service; or any chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate with anyone or to conduct any research about this case.