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Employer Support of the Guard and Reserve

Before the

House Committee on Veterans Affairs

Transitional Assistance Program

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Chairwoman Herseth-Sandlin and members of the committee: thank you for the invitation to offer my perspective on issues relating to the Employer Support of the Guard and Reserve (ESGR), as it applies to South Dakota National Guard and Reserve members.

I have volunteered with ESGR since 1996. I served as the Acting State Chairman from May 2005 until the Secretary of Defense appointed me as the State Chairman in October 2005.

The National Committee for Employer Support of the Guard and Reserve was established in 1972 by Presidential proclamation, as an operational committee under the Office of the Secretary of Defense.

The Vietnam War had ended and the all-volunteer military became a reality. In 1978, ESGR was expanded to include a community-based volunteer network. Today, that network has expanded to include more than 4,400 ESGR volunteers in 55 committees – one in each state (California with 2 committees), the Virgin Islands, Puerto Rico, Guam, and the District of Columbia. South Dakota ESGR consists of 40 volunteer members located throughout the state and two paid staff in Rapid City. Our volunteers are leaders in business, government, academia and senior military representatives.

ESGR is a Department of Defense agency that seeks to promote a culture in which all American employers support and value the military service of their employees. ESGR volunteers recognize outstanding employer support, increase awareness of the law, and resolve conflicts through mediation.

The Uniformed Services Employment and Reemployment Rights Act (USERRA), title 38, United States Code, chapter 43, was enacted by Congress and signed into law by President Clinton on October 13, 1994. Congress amended the law in numerous years. Congress enacted USERRA to protect the rights of persons who voluntarily or involuntarily leave employment positions to undertake military service. The law establishes certain rights and benefits for employees and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services.

There are two types of transitions for service members; one when they transition after deployment and the other when the transition after enlistment obligations. I will reference three significant sections of the Federal Regulations for USERRA, 20 CFR Part 1002, that pertain to today's hearing regarding the transition of service members.

The first is 1002.198; what efforts must the employer make to help the employee become qualified for the reemployment position?

The employee must be qualified for the reemployment position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position. These efforts include providing refresher training, and any training necessary to update a returning employee's skills in situations where the employee is no longer qualified due to technological advances.

The second section I will cite is section 1002.225; Is the employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

A disabled Service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employer must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employer to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employer must make reasonable efforts to accommodate the employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

- (a) A position that is equivalent in seniority, status, and pay to the escalator position; or,
- (b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

The last section being referenced is 1002.226; If the employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employer make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the employee be qualified for the reemployment position regardless of any disability. The employer must make reasonable efforts to help the employee to become qualified to perform the duties of this position. The employer is not required to reemploy the employee on his or her return from service if he or she cannot, after reasonable efforts by the employer, qualify for the appropriate reemployment position.

(b) “Qualified” has the same meaning here as in §1002.198, the first section I referenced.

South Dakota ESGR helps to ensure that Service members transitioning from military service back to civilian employment, and the employers that hire them, understand their rights and responsibilities under USERRA. South Dakota ESGR has 16 trained ombudsmen throughout the state. These ombudsmen respond to inquiries and conflicts regarding USERRA presented by employees or employers. Since Oct 1, 2007, South Dakota ombudsmen have fielded 116 information-only cases and mediated 14 USERRA cases. South Dakota has not had a USERRA case go to the United States Department of Labor for the past 18 months.

I hope that I have been able to clarify the role played by the South Dakota ESGR in helping employers and Service members transitioning from military service to civilian employment. Thank you.