
**Kenneth “Gene” Savage
Lieutenant, United States Navy Reserve
Memphis, Tennessee**

**U.S. Senate Committee on the Judiciary Hearing:
“Access to Justice For Those Who Serve”
Wednesday, March 24, 2014
3:00 p.m.**

Good afternoon Chairman Blumenthal, Chairman Leahy, Ranking Member Hatch and other distinguished Members of the Committee. I would like to thank the Committee for the opportunity to share my story here today.

My name is Kenneth Eugene Savage, Jr. My friends and family call me “Gene.” I am proud to tell you that I have served over 24 years in the U.S. Navy. I began serving on active duty in the Navy from February 1990 to November 1998, as an Aircraft Electrician; attaining the rank of 2nd Class Petty Officer. Just a few days after my honorable discharge from active duty, I subsequently enlisted in the Navy Reserve. Whilst serving, I earned a Bachelor of Science in Professional Aeronautics with a Minor in Aviation Business Administration from Embry-Riddle Aeronautical University and then applied for a Direct Commission Officer and was awarded the designation of Aircraft Maintenance Duty Officer. I currently serve as a Lieutenant with VR-54 in New Orleans, LA, as a member of a C-130 unit delivering personnel and cargo around the globe.

I was born in Mobile, Alabama, where my father served as a Seaman in the Coast Guard. I currently live in the Memphis-area with my wife of 10 years, Michelle. I have one son named Quentin, a junior at Fayette Academy, and a step-daughter named Kathryn Luckman, a junior at Austin Peay State University. I have worked in the aviation maintenance industry all of my life.

I began my career at FedEx in 2001, as a junior aircraft maintenance avionics technician, working the graveyard shift. Early on in my career at FedEx, I became aware that the company had policies that discriminated against its employees who were service members like me. In August of 2004, FedEx, in both policy and practice, punitively charged Guardsmen and Reservists for overtime opportunities they were unavailable for because they were completing their required military service. At the same time, non-service member employees who were on vacation, celebrating holidays, on temporary assignments, even doing jury duty, were *never* charged for missing those same overtime opportunities when not available to work at their assigned work centers. And then, because employees with the lowest number of cumulative overtime hours are offered overtime first, service members at FedEx were less likely to be offered overtime opportunities as a result of accumulating overtime hours while performing military service. The cost of this disparate treatment to individual service members had the potential to amount to thousands or even tens of thousands of dollars annually. After working with other service members over the course of 8 months, we were finally able to change this discriminatory policy and end the practice.

FedEx’s contempt towards Guardsmen and Reservists was illustrated again in May 2007, with a policy and practice that placed service members on “Military Leave of Absence” while performing any military duty. “Military Leave of Absence” was the means by which FedEx deprived Guardsmen and Reservists of both seniority and non-seniority based employee benefits. In short, FedEx’s policies and practices surrounding the use of “Military Leave of Absence” deprived service members of things like: participation of work shift

bidding, bidding on training/career development classes, bidding on overtime, scheduling of vacation and holidays, use of company jumpseats, and means of accruing vacation and company scheduled holidays. FedEx corrected some of these individual disparate conditions after the Veterans Employment and Training Service within the Department of Labor (DOL VETS) investigated and determined that the “Military Leave of Absence” policies and practices were in fact discriminatory per USERRA.

In March 2008, fellow FedEx employee, service members and I publicly expressed our concerns about FedEx’s new Portable Pension Account retirement program, as it applied to periods of military service. The Senior VP of Technical Operations at FedEx, Gregory Hall, assured us that the new system would credit service and applicable imputed income when employees return to active employment. He further stated, “Any missed employer matching contributions will be credited monthly in the same amount as if you had been working during the period of military leave.” As far back as 2006, FedEx knew that it had an issue with properly crediting service member’s retirement accounts. In January 2010, FedEx admitted it had failed to make appropriate contributions into a fellow reservist’s 401K account and then made an un-substantiated contribution correction. Finally, in June 2012, I became concerned with apparent discrepancies in my own retirement plans due to my years of military service dating back to the start of my employment with FedEx in August 2001. I again expressed my concerns to the benefits department to include the public announcement made by the Sr. VP in March 2008, but to no avail. Rather than fix the problem with the failed contributions to my pension plan, FedEx sent me bouncing from one department representative to another. Two months later, I was terminated!

It was apparent from my sudden termination that FedEx was upset with my persistence in questioning its policies and practices relating to service members and retaliated against me by falsely accusing me of violating their reduced-rate shipping and FedEx office discount policy. This was a policy that FedEx changed without prior notification to employees only days before my alleged violation. I used FedEx’s appeal process, a three-tier progression that ended with President and CEO, David J. Bronczek, and other Sr. VP’s upholding my termination.

I then filed a complaint with the DOL VETS which, after a thorough investigation, found that FedEx had in fact discriminated and retaliated against me, which led to my wrongful termination. During the course of the investigation, FedEx reinstated my employment but that was short-lived. Four days after I was reinstated, they once again overturned their decision and fired me again. Also, the questions I had about my retirement benefits were discussed at that time. FedEx openly admitted that my retirement accounts were incorrectly credited throughout my entire 11 year career. Apparently, the same error that FedEx made with my retirement account was also made to other service members in their employ. Despite all of this, FedEx refused to reinstate me after the conclusion of the DOL VETS’ investigation in March, 2013, which found my complaint to be meritorious. When I asked my DOL VETS investigator, Wendy Harrison, what stood out in her determination

in my case, she told me that FedEx could not demonstrate to her any other similarly situated employees that were terminated for violating the same policy either in a civilian or military capacity that were not reinstated to their former fulltime position. It was obvious to her that having a strong military voice and expressing my concerns about some of FedEx's policies and practices, especially when I started looking into the retirement issue, was the underlying motivation in FedEx's decision to terminate my employment.

After two failed mediation attempts to correct my missing retirement funds, (based in part on FedEx not providing detailed calculations as to how they derived at the figures they presented), the DOL VETS concluded their attempts to work this out and told me to refer my case to the Department of Justice (DOJ) for legal representation. DOJ declined to take my case, offering no reason or explanation as to why. I then consulted with Captain Sam Wright at the Reserve Officers Association who gave me invaluable advice. I later retained Joe Napiltonia who agreed to take my case on a contingency fee basis and front all of the costs of the litigation, even though the statute does not guarantee that he will even be compensated if we prevail. For some reason the statute states that attorney's fees "may" be awarded to a service member who prevails, but it does not say "shall" like other employment-related litigation.

You're probably thinking, "So why doesn't he just go get another job, he's got all this experience." The short answer is professionally, if I obtain a job with one of the big air-carriers, I would have to start my career all over again. As I mentioned earlier, when I started at FedEx, I worked the graveyard shift for approximately nine years to earn enough seniority to finally obtain a daytime shift so I could spend quality time at home with my family. At FedEx, I earned approximately \$95,000 per year working a straight 40-hour week, not to mention extra pay with overtime.

On a personal note, because of my unwarranted termination, I was in such dire financial straits that my wife and I were forced to sell personal and family belongings and my vehicle to make ends meet. Ten months after my termination, my family was forced into a short-sale of our home of almost 10 years which in turn has negatively impacted both my and my wife's credit. In addition, after my sons 14th birthday, I was granted sole custody of him. A major stipulation in the parenting plan was that he finish school at Fayette Academy, where he has been a student since Pre-K. Being tied to the Memphis-area until June 2015 limits my ability to find another job in the aviation industry. Despite my best efforts, I'm still unemployed. I feel it very important to be with my son during his final years in high school, since he is destined to go to college and then pursue a sound career path, at which time I'll never be able to be as close to him again. If I took a job that placed me out of the Memphis-area, it would severely impact my relationship with him.

Coming here today to testify before this Committee was a perplexing decision. But at the end of the day, the tragedies my family has been put through since my wrongful termination motivated me to do everything I can to make sure this doesn't happen to another fellow service member and their family. I felt it

was my duty as a Naval Officer to speak on behalf of other service members who face discrimination because of their military service.

This doesn't have to be the end of the story. It has become clear to me that certain legislative actions can and must be taken to help protect service members and their families. Service members, American consumers, and even our small businesses should have the SAME access to the justice system as corporations, like FedEx.

In speaking to you, I hope I have been able to shed some light on just how critically important this issue is nationwide. Quoting Theodore Roosevelt: "A man who is good enough to shed his blood for his country is good enough to be given a square deal afterwards."

Please act swiftly to address these issues and know that I look forward to engaging in a meaningful conversation with the Committee members today. Thank you for your time and consideration.