

Federal Circuit Upholds USERRA Standards for Decade-Old Appeal

THE SITUATION

Anthony Knox, a DEA Agent and military reservist, was called to active duty for Operation Iraqi Freedom. During his deployment, the DEA denied him a step increase, and upon his return, despite receiving a recommendation for promotion, his promotion package was inexplicably delayed. When Knox raised concerns about his non-selection, he was warned that complaining would be detrimental to his career. As a result, Knox remained in a lower-graded position for **14 years**.

Knox filed appeals under the Uniformed Services Employment and Reemployment Rights Act (USERRA), asserting that his military deployment was the basis for these adverse actions. This initiated a complex legal battle that would span multiple years and ultimately reach the Federal Circuit.

OUR APPROACH

Fluet's [Litigation + Investigations Practice](#) developed a comprehensive strategy to address the significant challenges in this case:

Legal Strategies Employed:

- Challenged the Administrative Judge's improper evidentiary standard
- Leveraged USERRA's unique burden-shifting framework
- Applied USERRA's unlimited statute of limitations
- Utilized recent USERRA amendments regarding mandatory attorney's fees

Novel Solutions Developed:

- Demonstrated that "reasonable certainty" of promotion was the proper legal standard
- Established precedent for long-delayed USERRA claims
- Successfully argued for proper application of USERRA's burden-shifting provisions

Timeline Management:

- Navigated three years of administrative litigation
- Persisted through **14 years** of client's career stagnation
- Maintained focus on core legal issues despite procedural complexities

THE OUTCOME

In **February 2025**, the Federal Circuit ruled in Knox's favor, concluding that the Administrative Judge had established an improper standard. The court ordered the case remanded to determine whether Knox had established his promotion was "reasonably certain" and was withheld due to his military status. Before this decision, after years of litigation, the DEA conceded that Knox should have received his step increase.

KEY FACTS

- **Industry/Practice Area:** Federal Employment Law/USERRA
- **Timeline:** 14-year period of employment impact, 3 years of administrative litigation
- **Key Challenges Overcome:** improper evidentiary standard, lengthy administrative process
- **Notable Achievements:** Federal Circuit victory, DEA concession on step increase
- **Attorneys Involved:** [Kevin Byrnes](#) (Partner), [Kelly Dubois](#) (Senior Associate), [Kia Rahanna](#) (Associate)



This case highlights several critical aspects of USERRA that both employers and servicemembers should understand. Unlike many employment laws, USERRA has no statute of limitations, allowing servicemembers to pursue justice even years after adverse actions occur. The law's unique burden-shifting framework properly places responsibility on employers to disprove discrimination, recent amendments ensure prevailing parties receive mandatory attorney's fees, and backpay provisions can apply even to decades-old claims. Both Fluet and I maintain a deep commitment to ensuring employers fully comply with USERRA's Congressional mandate of protecting those who serve in our Armed Forces, without penalty for that commitment and service.

KEVIN BYRNES

Litigation + Investigations Practice Chair