

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit
2005-3380

DOMENIC L. AMATO,

Petitioner,

v.

DEPARTMENT OF THE ARMY,

Respondent.

ON MOTION

Before SCHALL, GAJARSA, and LINN, Circuit Judges.

PER CURIAM

ORDER

The Department of the Army moves without opposition to remand Domenic L. Amato's petition for review of a decision of the Merit Systems Protection Board.

Amato filed a complaint alleging that the Department discriminated against him based on his military service in violation of the Uniform Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301 (2000). The Board held that Amato had not stated a claim upon which the Board could grant relief. Accordingly, the Board dismissed the complaint without granting Amato's request for a hearing. Amato appealed.

On March 7, 2007, we issued our decision in Kirkendall v. Army, 479 F.3d 830 (Fed. Cir. 2007) (en banc). Kirkendall held in relevant part that USERRA requires that

“any veteran who requests a hearing shall receive one.” Id. at 844. Because Amato was denied his requested hearing, we remand for further proceedings in light of Kirkendall.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted.
- (2) All sides shall bear their own costs.

FOR THE COURT

June 6, 2007
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Domenic L. Amato
Robert C. Bigler, Esq.

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ISSUED AS A MANDATE: _____ June 6, 2007