

## AIR FORCE EMPLOYEE LISTED AS AWOL, BUT SHE CLAIMS SHE WAS APPROVED FOR LEAVE



A civilian employee of the Department of the Air Force claimed that her termination was a violation of the FMLA (Family and Medical Leave Act) and further alleged gender and race discrimination. A review board rendered the final judgment with regard to the woman's firing, and both the district and appeals courts agreed – but what was the decision? The woman, an African-American, began working at Oklahoma's Tinker Air Force Base as a computer engineer in 2000. On March 5, 2004, she filed for worker's comp for what she alleged was a work-related injury – “stress and pressure” from her supervisor. She requested and was granted three weeks of leave, a combination of annual and sick leave for the rest of March. By the end of the month, her leave was exhausted. She called her supervisor, but what they spoke about is in dispute – she claims that he approved unpaid leave, but he states that he did not approve additional leave and warned her that she was AWOL. The employee signed in remotely to the leave database on April 1st and saw that the supervisor had designated her as AWOL. She called to say that she had requested unpaid leave, and the supervisor removed the AWOL from the database a week later. On April 14th, the woman sent a letter to her supervisor and said that he had approved unpaid leave on March 31st. He sent back a memo stating that no leave was granted and included a Work Restriction Evaluation form, adding that “sufficient medical evidence” of her condition was required. The woman again explained that she'd requested unpaid leave in a letter to her supervisor and his supervisors. She submitted medical records to HR, with a form dated March 5th indicating that she could return to work without restrictions. She asked that the HR rep not release the records to her supervisor. The woman was later issued a notice of “proposed removal,” which stated that she could reply in 20 days. She did not respond and was accordingly terminated for unauthorized absences. A review board upheld the firing, stating that the FMLA wasn't violated because the woman's medical condition did not prevent her from performing essential functions of her job. Her records also showed that she was released with no restrictions. The board further dismissed the claims of gender, race and disability discrimination, as well as retaliation for filing a complaint with the EEOC (Equal Employment Opportunity Commission). A lawsuit followed, and the district court ruled in favor of the Air Force, concurring with the review board. On appeal, the Air Force noted that it had not waived its sovereign immunity to “freestanding” FMLA retaliation and interference claims. But appellate judges believed that the plaintiff was using her FMLA claims as a defense to her termination. As such, the woman had only a few treatments for anxiety, which was not a “serious health condition.” This negated both an interference claim and one of retaliation. Similarly, although the supervisor reportedly lied to HR about speaking to the woman after she was marked as AWOL, he also seemed willing to grant her requested leave – but the plaintiff didn't provide medical documentation and couldn't show in court that it wasn't the reason for her termination. The district court's ruling was affirmed.