

THE VOSB SUMMARY: NEWS YOU NEED TO KNOW

(A Quarterly Publication for VOSBs: The Fall Edition)*



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VA "House Cleaning" is Light Dusting

On October 7th, the U.S. Department of Veterans Affairs (VA) announced its intentions to fire four senior officials as part of a crackdown following a nationwide scandal over long wait times for veterans needing medical care, and falsified records covering up the delays.

House cleaning? More like a light dusting. Of the rocking chair in the guest bedroom. With a paper towel.

Let's take a look at these four individuals who are being used as examples. One, the director of a medical clinic in Georgia, had already announced his retirement in September. So his "firing" doesn't even affect him.

Another is Susan Taylor, the former deputy chief procurement officer who is accused of steering VA contracts to a specific company.

The third is Terry Wolf, the former director of the Pittsburgh VA Healthcare System. She was placed on paid leave in June shortly after reports that Legionnaires' disease spread through the VA and infected more than 20 veterans.

The fourth is James Talton, the former executive of the Central Alabama Veterans Health Care System, who was accused of lying to Congress about the firings of those involved in the healthcare scandal

These remaining three individuals proposed for firing are safe for now. Being "proposed" for firing means an individual goes through a process that was established by recently passed law. This law

provides that the VA secretary can decide to fire or demote someone by first giving the employee advance notice so they can respond to the charges. After the VA receives the response, if it decides to proceed with the firing, the employee may appeal that decision to the Merit Systems Protection Board. The Board has 21 days to rule on that decision, and failure of the Board to reach a decision makes the secretary's decision final.

Most likely, these employees will get the axe given public outcry. But considering these proposed firings come months and months after their behavior, it seems nonsensical to put a process in place to double-check that lying to government officials and engaging in other shenanigans means you shouldn't be entrusted with protecting our veterans. (It's true, however, that government employees have a constitutional property right to their jobs, but that's a whole other issue).

Why does the VA keep doing this to itself? These employees "proposed" for firing engaged in scandalous behavior that affects the health and welfare of our veterans - how is it that months later they're being "proposed" for removal?

And only four individuals? It takes many, many problems and people to make a system as broken as the VA, and a thorough house cleaning, complete with termite tents and flea bombs, is what we need here.

*Learn more about the VA's 90-day plan for fixing the VA on page 5.



HOUSE MEMBER DENOUNCES MISMANAGEMENT OF VA'S BOARD OF VETERANS' APPEALS

A House member claims that the head of the VA's Board of Veterans' Appeals, Ms. Laura Eskenazi, continues to mismanage the legal office and may have been "untruthful" in sworn congressional testimony last month, which claimed improvements in processing vet appeals.

The BVA is a D.C.- based department within the VA that reviews vet appeals over benefits decisions made at the Regional Office level. Mike Coffman (R-Colo), the chairman of the House Veterans Oversight and Investigations Subcommittee, questioned whether Ms. Eskenazi could perform her job in a letter sent to VA Secretary Bob McDonald on October 1, weeks after a department whistleblower testified before the House about records manipulation and improperly-delayed appeals cases. At present, the BVA has a (growing) backlog of 300,000 cases.

The BVA is currently preparing a response to Mr. Coffman's letter. More details are available at: <http://www.stripes.com/news/lawmaker-questions-va-exec-s-management-of-benefit-appeals-1.307133>.

They Shot the Unicorn! CVE Kills Simplified Renewal (And Other Changes)

If a business wants to do business with the VA, it must be listed in the Center for Verification and Evaluation's (CVE) VetBiz registry. The VetBiz registry is relatively new, and it's still undergoing growing pains. This is evidenced by some of the recent changes that have been implemented.

The biggest change is the CVE's abandonment of simplified renewal, the process by which already-verified companies became reverified at the two-year mark. In this program, if there had been no changes in ownership or control, the company could (simply) certify that no changes had taken place. Renewal for these companies

was supposed to take 7 days.

Simplified renewal was essentially never available because the CVE tweaked its list of required business documents. This meant that businesses going through the process had to engage in a "redo" because since their verification, the CVE had determined that other documents were necessary to determine whether a business was eligible for the VetBiz registry. In fact, I have heard of *no* business that was able to use this process, including single-member limited liability companies that had reported no changes in their business since initial verification.

Now, in recognition that simplified renewal didn't exist anyway, the CVE has killed its unicorn, ending the process and instead posting on its site information about re-

verification that is a more accurate reflection of the requirements.

For those of you preparing for the process, know that you will be required to update all documents, include letters of explanation, and include documents not required during your last verification. **These will include your last three rent checks, 1099 information, and likely certificates of good standing from the states where your business is registered.**

When reverifying, check the required document list to make sure you've uploaded everything! And start early - with recent delays, it might take the full 120 days prior to your expiration to get through the process.

Report Focused On Saving \$ in Paying Vets' Claims Gets Major Heat

In August, the Congressional Budget Office (CBO) released a report regarding the trends and policy options as it relates to providing veterans with their benefits. In general, the report describes an (unsurprising) surge in veterans who are receiving disability compensation benefits - nearly \$54 billion worth in 2013, or about 70% of the Veterans Benefits Administration's (VBA) total mandatory spending. In total, 16% of all veterans in 2013 received VA disability compensation.

The CBO report identifies options for changing the disability compensation program, falling under either modifying the VA's processes for identifying service-connected disabilities or revising compensation by changing payment amounts, changing coordination with other federal benefits, or by changing the tax treatment of payments. The end goal is clear: to reduce the burden to Uncle Sam.

Some of these options are set forth as follows, and forgive my editorializing:

Option #1: Institute a time limit on initial applications. As a veterans advocate who got her start in this field with her father's VA disability claim - over thirty years after his service - I am completely opposed to this. VA disability compensation is an *entitlement*, not a privilege, and if a veteran wants to wait ten years to apply for his

benefits (which would result in the VA not having to pay him for ten years), that's his right.

Option #2: Require the VA to expand its use of reexaminations. When it comes to temporary ratings, these reexaminations are used to ensure that a veteran's disability rating truly reflects the degree of disability. The CBO notes that these reexaminations are not often scheduled or performed as is required.

Option #3: Change the positive-association standard for declaring presumptive conditions. By presuming that certain medical conditions are caused by medical service, this removes from the veteran the burden of establishing the connection between their military service and the onset of a medical condition. However, the issue is that these presumptions are established only after a lengthy process involving medical studies, findings, and regulatory changes that can take years. Doesn't this mean that this is a safe presumption to make? By requiring veterans to present other factors to establish the presumption that a condition is service-connected, this potentially creates unnecessary paperwork. And multiply that additional paperwork by the number of veterans this affects....

Option #4: Restrict individual unemployability benefits to veteran who are younger than the full retirement age for social security. Under this option, the VA would no longer make IU payments to veterans who were past the Social Security's full

retirement age. However, the VA and the Social Security Administration (SSA) are two entirely different federal departments that award compensation based on different sets of criteria. You do not have to be service-disabled in order to receive SSA benefits, but this option essentially cuts off benefits for anyone who is service-disabled by virtue of them becoming eligible to receive a different type of benefit from the SSA. Again, I reiterate - disability compensation because you are wounded in service is an *entitlement*.

Option #5: Tax VA benefits. If VA benefits were treated as income for purposes of individual tax returns, there's no questioning that a significant chunk of money will be paid back into the system. However, for those veterans barely getting by on their VA disability compensation benefits, this type of change could create a catastrophic effect. For those who are TDIU, for example, it's the equivalent of getting a 30% pay cut.

These aren't the only options covered by the CBO report, which is available at: <https://www.cbo.gov/publication/45615>. Upon its publication, it received major criticism for seemingly under-valuing the debt owed to our veterans by cutting corners. In fact, this was my highest-rated blog post ever, and accordingly, I wanted to pass it along in my newsletter to those who might not be signed up for the blog.



REGISTRATION OPEN FOR VA'S ANNUAL CONFERENCE FOR VOSBS

Registration for the VA's annual National Veterans Small Business Engagement, which will be held in Atlanta at the Georgia World Congress Center from December 9 to 11, is now open. Registration is \$290 for a veteran-owned business that takes advantage of the early bird special through October 31. Also, for businesses interested in having an exhibit booth at the conference, the cost ranges between \$550 (tabletop package) and \$1,475 (standard booth).

I attended the conference in St. Louis last year and found it very informative, particularly because of the wide variety of learning sessions. (This year, I'm pleased to report that I will be conducting a session on VOSB strategies and considerations for teaming with large businesses).

For more information about the conference, visit the Va's website at <http://www.nvsbe.com>.

Critical OIG Report/NDAA Bodes Grim for Reverse Auctions

The VA OIG recently issued two scathing reports related to the use of reverse auctions in federal contracting, which are auctions in which sellers compete to obtain business from buyers and prices typically decrease as the sellers undercut one another. These reports might tip the scales to pass a version of the 2015 NDAA that disallows the use of reverse auctions in broadly-defined "covered contracts." The House passed the provision this summer, but the Senate must pass an identical provision for it to become law. And right now, the Senate's version of the NDAA doesn't contain this same language.

According to the first report, which was issued on September, the OIG substantiated that Ms.

Susan Taylor, Deputy Chief Procurement Officer, "engaged in conduct prejudicial to the Government when she pressured contracting staff under her authority to give reference to and award a task order for reverse auction services to [Vienna-based] FedBid," a company that provides reverse auction services. The OIG also found that she engaged in a conflict of interest when she improperly acted as an agent of FedBid in matters before the govt., improperly disclosed non-public VA information, misused her position and VA resources for private gain, and engaged in a prohibited personnel practices.

In the second report, the OIG reviewed the VA's and VHA's use of reverse auctions through FedBid to acquire products and services after receiving complaints and concerns from the Federal Supply Schedule (FSS)

contractors and House and Senate Committee members concerning the appropriateness of VHA's use of reverse auctions.

This second report, also issued on September 26th, concludes that reverse auctions can inadvertently derail federal efforts to properly record contract documentation. The report states that only 16 of the 236 contract files reviewed in the study met the department's documentation requirements. The OIG also asserted that the main purpose of reverse auctions - to save money - is negated by multiple factors including FedBid's fees and the Industrial Funding Fee customers paid to cover the GSA's operation of the FSS program.

Access the VA's OIG reports online at: <http://www.va.gov/oig/pubs/VAOIG-13-03065-304.pdf> and <http://www.va.gov/oig/pubs/VAOIG-13-01408-294.pdf>.



VETERANS' DISABILITY PAYMENTS INCREASED TO MATCH SSA BENEFITS AS OF DECEMBER 1, 2014

On September 26, President Obama signed legislation (S. 2258) to hike veterans' disability compensation starting on December 1 so that the cost-of-living increase would match the rate of Social Security benefits.

The law affects wartime disability compensation, compensation for dependents, clothing allowances, dependency and indemnity compensation to surviving spouses, and dependency and indemnity compensation to children. Expect to see these new dollar amounts published in the Federal Register soon.

Access the new law and its history at: <http://www.govtrackus/congress/bills/113/s2558/text>.

VA Secretary's 90-Day Improvement Plan Suggests Superman Complex

In early September, Robert McDonald, the new Secretary of the VA, announced a 90-day plan for fixing the scandal-tainted agency. As readers know from media coverage, problems involved falsification of scheduling records to hide treatment delays and retaliation against whistleblowers.

During his confirmation hearing, where he repeatedly apologized for the issues with the VA system he had just inherited, Mr. McDonald outlined 9 initiatives as part of the plan:

Data Integrity - McDonald will ensure that the VA can "regularly and accurately produce key data for decision makers and oversight entities."

Whistleblower Records - McDonald will encourage VA employees to report problems, and that he will develop a system to reward whistleblowers for stepping forward with legitimate concerns.

Strategic Plan - McDonald will "renew the department's strategic plan and ensure it is properly deployed." He will visit field offices to determine which processes need to be "reorganized and streamlined."

Better Communication - McDonald will improve communication between the VA's headquarters and the agency's regional and field offices.

Staffing Review - McDonald will review staffing levels and "take advantage of VA's scale to improve productivity and flow more people to work."

Board of Physicians - McDonald will establish a board of physicians to advise him on best

practices for delivering quality care in a timely fashion.

Better Forecasting - Because the VA needs to do a better job of forecasting trends in demand and developing a plan, McDonald will focus on reorganizing the department towards these ends.

Technology Improvements - McDonald promised to expand the use of digital technology to free personnel for focus on veterans.

Data Sharing - McDonald will work to ensure that the VA can create an integrated records system with the DoD.

I don't know about you, but to me this seems like an overly ambitious plan for 90 days. The VA system is broken, and that broken system is composed of many complicated parts in different stages of decay. No one expects the Secretary to fix it immediately, either - we have a new Secretary, not a Superman.

But let's hope this lays the proper groundwork for change.



\$16 Billion VA Health Care Bill to Fix Broken System

In early August, President Obama signed legislation that tries to mend the broken VA system, providing money to improve facilities and hire more medical staff, along with allowing more veterans to use private facilities. The bill is aimed at improving veteran health care and shortening wait times.

Named the Veterans Access, Choice and Accountability Act of 2014, the bill covers ground from expanding survivor benefits and educational opportunities, to improving care for veterans struggling with traumatic brain injury and for victims of sexual assault.

In addition to funding and other changes in the bill, it includes provisions that gives new Secretary, Mr. Bob McDonald, the power to fire senior employees at the VA. Section 713 of the new law provides for the removal of senior executives based on performance or misconduct. However - and this is key - Section 713 allows the Secretary to transfer that individual "from the senior executive position to a General Schedule position at any grade of the General Schedule for which the individual is qualified and that the Secretary determines is appropriate." In other words, even if someone engaged in

gross misconduct in their position with the VA, the only consequence may be a transfer to an office with a different view.

The bill also provides that from 2015 to 2024, the aggregate amount of awards and bonuses to employees cannot exceed \$360,000,000. However, this limitation says nothing about cutting bonuses for poor performance or other measures to incentivize improvements within the VA.

Access the full text of the bill here: <http://www.gpo.gov/fdsys/pkg/BILLS-113hr3230enr/pdf/BILLS-113hr3230enr.pdf>.

THANKS FOR READING!

Below: Archer, the Legal Meets Practical, LLC Mascot



LEGAL MEETS PRACTICAL, LLC

ABOUT

My legal practice, based in the Atlanta area, is designed to help growing VOSBs, particularly with the VetBiz verification process. I come from a family of both veterans and small business owners, and I understand the value in legal counsel who can clearly communicate while providing effective legal solutions. Hiring a lawyer should simplify your life, not complicate it.

MISSION STATEMENT

My mission is to provide accessible, high-quality legal services to small business owners and to veterans.

BLOG

If you found the information in this newsletter helpful, sign up for my weekly blog on veterans issues at: <http://www.legalmeetspractical.com>.

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