

THE VOSB SUMMARY: NEWS YOU NEED TO KNOW

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



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Kingdomware is Lucky 1%! S.C. to Hear Vets Case

Every year, the Supreme Court receives about 10,000 writs of certiorari (petitions asking it to hear a case that has been decided by a lower court). Of those, the Supreme Court decides to hear about 80. That means that each case has less than a one percent chance of being heard.

And on June 22, 2015, the Supreme Court decided that *Kingdomware* will be one of them.

Most veteran business owners have heard of *Kingdomware*, but here's the recap:

The *Kingdomware* saga began with a slew of GAO rulings in 2012 that berated the VA for not following its mandate in the Veterans Benefits, Health Care, and Information Technology Act of 2006 (the "Act").

The Act provides that before using Federal Supply Schedule (FSS) procedures, a contracting officer must determine whether he has a reasonable expectation that: 1) two or more service-disabled veteran-owned small businesses (SDVOSBs) will submit offers; and 2) the award can be made at a fair and reasonable price. If the answer is "yes," the award must be set aside for SDVOSBs. (38 U.S.C. 8 127(d)(2006)).

Long story short, the VA decided that despite this provision under the Act, it wasn't required to set aside awards off the FSS for SDVOSBs, awarded to non-SDVOSBs, and got beaten down by the GAO (that's a legal term).

See *Kingdomware Technologies, Inc.*, B-406507 (May 30, 2012); *Aldevra*, B-406331 (April 20, 2012).

The VA won the next battle, staged at the U.S. Court of Federal Claims (CoFC). In November of 2012, the CoFC ruled that the VA acted reasonably in determining that it need not set aside FSS contracts for SDVOSBs. In finding that the VA had not acted "arbitrarily, capriciously, or contrary to law" (another legal term, only this one's real), the CoFC held that the VA had reasonably interpreted its own law in finding that it was not mandated to set aside awards for SDVOSBs. This decision was also affirmed in a federal circuit decision issued in June of 2014.

Not happy with this result, the American Legion and the [National Veteran Small Business Coalition](#) (NVSBC) petitioned the Supreme Court. And now, it's official - they will be heard.

I have to wonder - does timing play a huge role in the Supreme Court's decision? The granting of cert comes very soon after Jan Frye's [explosive memorandum](#) (reporting billions of dollars awarded by the VA in violation of its own procurement policies/laws), the [Phoenix scandal](#) (blatant violation of wait times), and the [Denver disaster](#) (VA medical center construction plagued by delays and huge cost overruns). Among other scandals.

At any rate, they will be heard!



VA ANNOUNCES 2015 AND 2016 NATIONAL CONFERENCE LOCATIONS

The VA has disclosed the location of its next two annual National Veteran Small Business Engagements: Pittsburgh from November 17th through the 19th of 2015, and Minneapolis from November 1st through the 3rd of 2016. This is plenty of time to plan, especially compared with last year - the VA announced Atlanta as the December location only a few months in advance.

The NVSBE offers a wonderful opportunity for veteran business owners to interface with procurement officials, network with prospective teaming partners, attend valuable training sessions (I presented on teaming opportunities at the last conference), and listen to keynote speakers. Also, if you're so inclined, you can rent a booth in the exhibit hall to showcase your company's services and products to the federal marketplace.

A conference is an investment. Decide whether it's worth it to you by visiting the VA's website at: <http://www.nvsbe.com>.

VA Loses One of the Good Ones: Jeff Gault Leaves CVE

As a veterans attorney, I deal with VA employees a lot. In so doing, I have found that there are individuals within the VA that truly care about their mission to help veterans, work long hours, and in general go above and beyond.

The problem is, you don't hear about these individuals. The VA doesn't have an "Employee of the Month." In fact, it's hard to make a difference - the government is all about red tape and bureaucracy. Have a great idea? Write a memo and see where it goes.

One VA employee falls into the category of one of the VA's outstanding folks. And guess what?

He's gone now.

That individual is Jeffrey Gault, who just left his post as Acting Director of the Center

for Verification & Evaluation (CVE) last week. (The CVE is approves veteran-owned businesses eligible for set-aside work with the VA).

A veteran of the U.S. Army who served two deployments in the Middle East, Mr. Gault has spent the last year and a half commuting between his home in Dallas and the CVE in D.C. He will now focus full-time on running a Texas non-profit dedicated to providing college scholarships to children of current and former members of the U.S. Army, and to spouses of currently serving soldiers.

As an attorney who deals with the CVE a lot, I've seen the improvements since Mr. Gault took the helm. For example:

*In general, the process has become more streamlined, and the examiners now make less mistakes due to additional training. That's saved thousands of hours for vets.

*Under Mr. Gault's direction, the pre-decision and pre-determination processes have improved. These replaced the request for reconsideration process, which effectively meant that if you got denied verification, you had the pleasure of a six-month wait.

*Mr. Gault reached out to the veteran community for input into improving the CVE, and has implemented change where possible.

*The CVE was certified by the International Organization for Standardization (ISO) as fully compliant with ISO9001 standards. Very few organizations within the VA meet this standard.

We should always credit those within the VA that make a difference, given that its mission of helping veterans is of such importance.

And especially given that due to the nature of government, going above and beyond isn't often rewarded.

Frye Memo Leaked to Press Gives Dirt on VA Contracting Problems

In a [35-page memorandum addressed to VA Secretary, Robert McDonald](#), the VA's senior official for procurement, Jan Frye, accuses other agency leaders of "gross mismanagement" and making a "mockery" of federal acquisition laws that require competitive bidding and proper contracts.

The result: the wasting of at least \$6 billion *a year* in the federal contract arena.

"Doors are swung wide open for fraud, waste and abuse," Frye writes in the March memo, which was conveniently leaked to the press last month. "I can state without reservation that VA has and continues to waste millions of dollars by paying excessive prices for goods and services due to breaches of Federal laws."

In the memorandum, Frye describes in detail a series of practices that he says run afoul of federal rules, including the widespread use of government purchase cards, which are usually meant as a convenience for minor purchases of up to \$3,000, to buy billions of dollars worth of medical supplies without contracts. In one example, he says that up to \$1.2 billion in prosthetics were bought using purchase cards without contracts during an 18-month period that ended in 2014.

Frye also explains how VA has failed to engage in competitive bidding or sign contracts with outside hospital and health-

care providers that offer medical care for veterans that the agency cannot provide, such as specialized tests and surgeries and other procedures. Frye says the VA has paid at least \$5 billion in such fees, in violation of federal rules that the agency's own general counsel has said since 2009 must be followed.

Frye alleges further violations in the agency's purchase of billions of dollars worth of prosthetics and in the acquisition of a wide range of daily medical and surgical supplies. He says many products are bought without the competitive bidding and contracts essential to ensure quality care, effective use of tight dollars, and proper government oversight.

Further, Frye claims that the small business goal accomplishments reported by the VA are "vastly overstated." Frye noted that the agency purchases millions of dollars in goods and services each year without contracts (often illegally), and these millions of dollars are not reported in the database where all information on federal contracting is stored. As such, what Congress sees in the VA's reporting is not an accurate reflecting of how and where the VA buys.

"Sadly, in my opinion, in addition to our illegal acts, we've duped the veteran-owned business community we are required by law to advocate for," Frye wrote.

As a consequence of the Frye memorandum (which is worth the read, albeit depressing), the House Veterans' Committee is holding a series of hearings to address the

issues raised. An Office of Inspector General investigation is underway, and many VA officials are squirming at the moment because the Frye memorandum was not shy about naming names and identifying facilities.

Speaking of naming facilities, the Frye memorandum listed a Bronx VA hospital as one of the facilities that was illegally splitting purchases. Frye alleged that the Bronx facility spent over \$50 million on prosthetic limbs through purchases made at least 2,000 times. Each purchase totaled \$2,999 - just one dollar below the \$3,000 limit.

The House Veterans Affairs Subcommittee on Oversight and Investigations has called for an investigation, scoffing over the excuse the VA has provided regarding why it has not produced documentation to authenticate its purchases.

The excuse would be laughable if it didn't deal with taxpayer dollars: it's that the documents were destroyed by Hurricane Sandy.

You would think they'd have a better excuse than that. It's only a step above claiming the dog ate your homework. (My dog only eats John Green books - he's jealous of my affection for the man).

At any rate, the Bronx investigation is only the beginning. The public - and Congress - are upset with the VA for multiple reasons at the moment, and the Frye memorandum literally provides them with an outline of who to pursue next.



REPORT REVEALS VA HEALTHCARE WAITS ARE LONGER POST-SCANDAL

According to a *New York Times* report issued on June 21, the number of veterans seeking health care but ending up on waiting lists of one month or more is 50% higher now than it was a year ago. This follows the scandal over wait time manipulation that rocked the VA and resulted in the resignation of former Secretary, Erik Shinseki.

The VA also faces a budget shortfall of nearly \$3 billion, and it is considering furloughs, hiring freezes, and other significant moves to reduce the gap. But these measures have effects other than saving cash: overworked workers underperform.

In the last year, the VA has increased capacity by more than 7 million patient visits per year, which is double what officials originally thought they needed to fix shortcomings. Doctors and nurses have handled more than 2.7 million appointments than in any previous year. It wasn't, and still isn't, enough.

Give Him a Break: The Truth About the VA IG's Retirement

Lately everyone wants to blame the VA. And who to focus on? The folks in the highest positions. Accordingly, nowadays when a higher-up in the VA retires, we assume it's in disgrace. And sometimes that's unfair, as may be the case here.

On July 2, a veteran sent me an article entitled "VA's Top Investigator Retires Amidst Calls for His Dismissal." This was in reference to Mr. Richard Griffen, the head investigator of the VA's Office of Inspector General (OIG) who has retired as of the end of the Fourth of July weekend.

When I examined the article, however, I saw that the "calls for dismissal" were solely from a group called the "Truth Tellers"

that simply wrote a letter to Obama.

Upon further investigation, I found that Mr. Griffen clashed with Congress during a hearing inquiring into the deaths of patients at the Phoenix VA hospital. This hearing was conducted after the Phoenix hospital was put in the hot seat for manipulating wait times. Sadly, one of the whistleblowers was Dr. Sam Foote, who did not reveal that up to 40 vets died waiting for care until after he retired. (He also said that he believes more than 290 veterans died while on unauthorized secret wait lists). A subsequent IG report found instances of poor care and delays, but stopped sort of concluding that the delays caused the deaths.

Here's the situation. The VA has been under a tremendous amount of criticism and strain lately - there's been a new

scandal every week. So much of it is deserved - I'm not arguing that. But point being, I cannot imagine being a hardworking, genuinely caring individual within the VA right now. Accordingly, Mr. Griffen's retirement may reflect nothing but the fact that he is tired (and currently frustrated) after many years of service.

In his announcement, Mr. Griffen cited a long list of his office's accomplishments, including 25 awards for excellence from the Council of Inspectors General, as well as awards and accolades from various other federal agencies, U.S. attorneys, and professional associations.

Ms. Linda Halliday, who has been the department's assistant IG for audits since 2012, will take over for Mr. Griffen as of July 5.



CALAMITY IN COLORADO: VA'S \$100 MILLION (AND COUNTING) BAILOUT

A project dubbed the “biggest construction failure” in the history of the VA - already \$1 billion over budget and more than a year behind schedule - is getting another \$100 million taxpayer bailout.

In late May, Congress approved an additional \$100 million in funding to continue construction on a new veterans medical center in Denver.

Why was this additional funding necessary? Because the project has already ballooned from an initial \$328 million price tag in 2005 to \$1.73 billion (a 427% increase) with year more construction to go.

Also, the VA does not even have an estimate for when construction will be complete. It was once February of 2014, and it is now “unknown.” Yikes.

In June, I received an email from a veteran business owner asking how the VA might be reallocating funds for purposes of the Colorado project. Upon investigation, I discovered a memorandum issued by the VA that list funds identified by the VA that can be reallocated. Access it at: www.scribd.com/doc/267785291/VA-Completion-Plan.

Norfolk Pastor Sentenced for Lying to VA on 90 Claims Forms

This story is sad on a number of levels.

A pastor in Norfolk, Virginia, Mr. Michael Blanchard, was recently sentenced to ten months in prison after pleading guilty in U.S. District Court to one count of making false statements.

According to court documents, Mr. Blanchard filed fraudulent claims for 21 veterans between December 2011 and January 2014.

On each of the 90 forms, Mr. Blanchard forged the veteran's signature and falsely claimed serious maladies, documents said. Mr. Blanchard added that each veteran lived at his address on each of the claims forms.

Court records said none of the veterans asked Mr. Blanchard to complete any forms. In some cases, the veterans had never even met Mr. Blanchard.

There are a number of baffling element about this. First, as anyone who has ever handled a VA disability claim knows, these claims take *years* and involve numerous correspondences with the VA (to include VA exams). Thus, how could this scheme could have worked logistically?

Also, if the payments were to be made by check, how did Mr. Blanchard expect to cash in if the checks arrived, made out in the veterans' name?

Further, investigators first approached Mr. Blanchard in 2013, after he wrote letters to a legislator stating that he was attempting to help former service members and that agents were telling people he was filing false claims. *His own letter* prompted the legislator to

contact the VA, which resulted in the VA launching an internal investigation.

In general, this case was extremely unsettling to read about. As a pastor, Mr. Blanchard is an important (and trusted) member of the Norfolk community. He has no criminal history and a strong background of community service and volunteerism. Not only that, but he gained nothing from his scheme - no checks were ever issued by the VA.

Not only that, but the VA is notorious for being “agent” or “attorney” unfriendly, in terms of its policies limiting the involvement of paid representatives in processing VA claims. I always say that these representatives can serve a valuable role, but this is certainly an argument in the opposite direction!



VETS 15: NVSBC Delivers

Whether a conference is worth attending really comes down to the needs of your business. For veteran-owned small businesses competing in the federal marketplace, in my opinion there are two worth checking out every year: the VA's National Veteran Small Business Engagement (see page 2), and the National Veteran Small Business Coalition's (NVSBC) annual conference each June.

I had the pleasure of attending (and speaking on the VA's VetBiz verification process) at the NVSBC's conference in Norfolk this June (dubbed "VETS 15"). I have to say, there is a reason why I am so involved with the NVSBC: it is truly a wonderful organization, and the conference reflects this. It was well-organized and offered numerous networking opportunities with both procurement officials and prospective teaming partners.

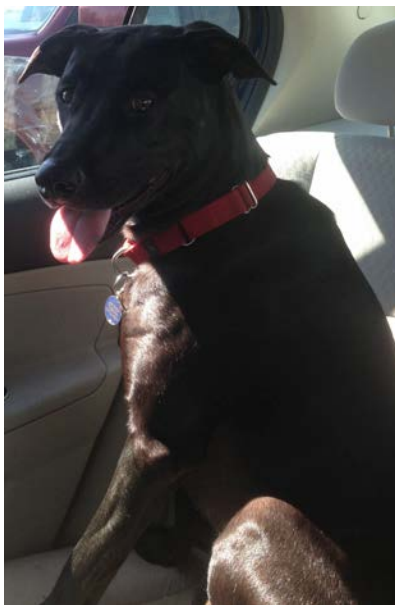
In general, the key to getting value out of a conference is knowing what you want out of it. In this instance, the NVSBC offered a number of training sessions on different topics, and it also offered one-on-ones with various procurement officials. (It was also successful at getting some of the "top dogs" to attend - I had lunch with Tom Leney, the Executive Director of the Office of Small and Disadvantaged Business Utilization). Come to a

conference with an agenda, and you'll maximize the value you get out of it.

Also, I recommended this conference to several veteran business owners, who took me up on this recommendation. Every single individual sought me out after the conference to say it was worthwhile, which was certainly a relief - if I recommend something, I want to be right! I was not, however, too concerned about the NVSBC conference, as I knew it would deliver.

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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