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CATEGORY: 8.0-Veterans Preference Act

Veterans' Preference Act Enforcement

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As I explained in Law Review 0721, the Veterans' Preference Act (VPA) is a federal statute enacted in 1944. This law gives eligible veterans a five-point preference in obtaining federal jobs; veterans with service-connected disabilities of 30 percent or more receive ten points. When this law was enacted, the most common way to obtain a federal job was to take a civil service exam. It was a simple matter to add five points or ten points to the applicant's numerical score. Now that civil service exams are rare, federal agencies generally ignore the VPA.

A decade ago, Congress enacted the Veterans' Employment Opportunities Act, an imperfect attempt to put some teeth in the VPA. A preference-eligible veteran who claims that a federal agency has violated his or her VPA rights is now permitted to file a written complaint with the Veterans' Employment & Training Service, U.S. Department of Labor (DOL-VETS). The claimant must file with DOL-VETS within 60 days after the date of the alleged violation. See 5 U.S.C. 3330a(a). DOL-VETS investigates such complaints and has subpoena authority. 5 U.S.C. 3330a(b).

If DOL-VETS concludes, by a preponderance of the evidence, that the VPA complaint has merit, then DOL-VETS "shall attempt to resolve the complaint by making reasonable efforts to ensure that the agency specified in the complaint complies with applicable provisions of statute or regulation relating to veterans' preference." 5 U.S.C. 3330a(c)(1)(A). If DOL-VETS is unable to resolve the complaint, it must then notify the claimant in writing of the results of the DOL-VETS investigation. 5 U.S.C. 3330a(c)(2).

Unlike Uniformed Services Employment and Reemployment Rights Act (USERRA) cases, VPA cases are not referred anywhere by DOL-VETS. If the complainant about agency refuses the DOL-VETS requests that the agency comply with the VPA, as often happens, the claimant still must get a lawyer to initiate an enforcement action in the Merit Systems Protection Board (MSPB) to enforce his or her VPA claim. The MSPB does not give any deference to the DOL-VETS determination that the agency has violated the VPA. Congress should amend the law to provide for DOL-VETS to refer VPA claims to the Office of Special Counsel (OSC), and for OSC to represent VPA claimants in the MSPB.

This enforcement mechanism applies only to the federal VPA. More than 40 states have state veterans' preference laws, pertaining to employment by the states and their political subdivisions. You must look to state law to find the enforcement mechanism for those state veterans' preference laws.