

VA Leaders: Please Take Whistleblowers Seriously. Please Act Promptly To Address the Problems they Bring to Light. Do not Retaliate against Whistleblowers.

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

Update on Sam Wright

11.0—Veterans' Claims

On October 13, 2016, the United States Office of Special Counsel (OSC) sent out a press release about its findings concerning deficiencies of the United States Department of Veterans Affairs (VA), specifically at the Veterans Affairs Regional Office in Oakland, California. You can find a copy of that press release at the end of this article.

A very serious problem in the VA is that supervisors try to “kill the messenger.” Instead of taking whistleblowers seriously and acting expeditiously to correct the problems that whistleblowers have brought to light, VA supervisors all too often try to retaliate against the whistleblower, even trying to get the whistleblower fired. There will not be significant improvements at the VA until supervisors learn to control the retaliatory instinct.

I invite the reader's attention to Law Review 14097 (December 2014), Law Review 13123 (September 2013), Law Review 13055 (April 2013), and Law Review 13040 (March 2013). Those articles are about dirty and dangerous conditions in the Veterans' Health Administration (VHA), the VA segment that is responsible for providing medical care to millions of American veterans, and about the brave VHA whistleblowers who brought those dangerous conditions to light, at the risk of their own jobs and careers.

¹ I invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1500 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1300 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For six years (2009-15), I was the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA. Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. Although I am no longer employed by ROA, I have continued writing new “Law Review” articles as a volunteer and ROA member. I am available by e-mail at SWright@roa.org or by telephone at (800) 809-9448, extension 730.

It appears that the situation is no better in the Veterans Benefits Administration, the VA segment that is responsible for adjudicating veterans' claims for benefits. The OSC press release deals with the VBA in Oakland, California. Here is the OSC press release:

Whistleblowers Reveal Deficient VA Benefit Claims Processing in Oakland

FOR IMMEDIATE RELEASE

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In a [letter](#) sent to the White House and Congress today, the U.S. Office of Special Counsel (OSC) reported that the Veterans Affairs Regional Office (VARO) in Oakland, California, failed to process veterans' benefits claims accurately and in a timely manner. This delayed the accurate payment of benefits to veterans and their dependents, in some cases by years. Three Oakland VARO whistleblowers came to OSC with disclosures of the Oakland VARO's deficiencies, prompting an investigation. Those whistleblowers are Rustyann Brown, a former claims assistant, Roselyn Tolliver, a veterans service representative, and Lydia Cheney, a veterans service representative.

According to the Department of Veterans Affairs' (VA) investigative [report](#) into the whistleblower allegations, Oakland VARO managers did not provide adequate oversight to ensure timely and accurate processing of informal benefit claims. The report noted that VARO employees did not process fifteen percent of files selected for an audit in an appropriate amount of time. Of the sixty files selected for the audit, nine featured significant delays in processing, ranging from five to more than seven years. While the nine affected veterans eventually received retroactive payments, they waited on average six and a half years for benefits. In the case with the most significant delay, VARO received an application in February 2006 from a veteran with Post-Traumatic Stress Disorder (PTSD), which was not correctly processed for seven years and eight months.

In addition, the Oakland VARO's recordkeeping was so poor that investigators could not find logs or spreadsheets tracking the number of unprocessed claims, thus hampering their ability to fully investigate the scope of the whistleblowers' allegations. However, another recent VA investigation confirmed that Oakland VARO staff had not processed a "substantial amount" of claims dating back to the mid-1990s.

While the VA has proposed more training and quality assurance reviews to remedy the problems uncovered, the VA's investigation did not recommend discipline against VARO

managers. After reviewing the whistleblowers' comments, which called attention to the lack of management accountability, Special Counsel Carolyn Lerner found the VA's proposed corrective actions unreasonable (the comments for each whistleblower can be found at this [link](#), this [link](#), and this [link](#)). The VA's proposed actions do not go far enough to address the systemic problems discovered at this facility. The Special Counsel also urged the VA to expand on its audit of claim files.

"The whistleblowers performed a public service by bringing to light the severe delays in processing veterans benefit claims and deserve our gratitude," said Special Counsel Carolyn Lerner. "No veteran should have to wait years before receiving the benefits they are owed for their service to this nation."

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.

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