

LAW REVIEW 17065¹

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Good News for VA Whistleblowers

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

Update on Sam Wright

11.0—Veterans' claims

Senator Marco Rubio of Florida introduced S. 1094, a bill titled the “VA [Department of Veterans Affairs] Accountability and Whistleblower Protection Act of 2017.” The bill moved through Congress at a near record-breaking pace. It passed the Senate and, just days later, passed the House of Representatives, in the same form. The bill is on President Trump’s desk, and he is expected to sign it.

This new bill is intended to make it easier to fire VA employees who are guilty of egregious misconduct or poor performance and to give more protection to VA employees who have the courage to report instances of wrongdoing. This legislation is much needed, and the enactment is much appreciated.

Most readers are familiar with the substantiated reports of dirty and dangerous conditions at VA medical facilities and of lost files and years of delay in processing claims for VA benefits for service-connected disabilities. I have addressed VA whistleblowers in Law Review 13040 (March

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 1500 “Law Review” articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index, 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. I have dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for more than 34 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org or by telephone at 800-809-9448, ext. 730. I will provide up to one hour of information without charge. If you need more than that, I will charge a very reasonable hourly rate. If you need a lawyer, I can suggest several well-qualified USERRA lawyers.

2013), Law Review 13055 (April 2013), Law Review 13123 (September 2013), Law Review 14097 (December 2014), Law Review 16108 (October 2016), and Law Review 16109 (October 2016).

In Law Review 16108, I wrote:

A very serious problem at 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.

In Law Review 16109, I wrote:

Insiders (military personnel and federal civilian employees) have information about fraud, waste, and abuse in federal agencies. It is only when those insiders have the courage to bring this information to the attention of proper authorities (the United States Office of Special Counsel, the agency’s Inspector General, or a Member of Congress, for example) that action can be taken to mitigate the fraud, waste, and abuse and to hold the wrongdoers accountable.

Federal supervisors (especially at the VA) need to be taught and retaught that the proper response to the whistleblower’s disclosure is to thank the whistleblower for his or her courage in coming forward and then to act promptly to investigate the disclosure and to correct any substantiated problems. Federal supervisors must not be permitted to reprise against the brave men and women who risk their own careers to blow the whistle on wrongdoing.

Based on my own military and civilian experience,³ I am firmly convinced that protecting and encouraging whistleblowers is vital in federal agencies. I congratulate Senator Rubio for his leadership in introducing this legislation and seeing it through to enactment.

UPDATE AUGUST 2017

As predicted, President Trump signed the VA Accountability and Whistleblower Protection Act of 2017. This new law is Public Law 115-41, 131 Stat. 3. The citation means that this is the 41st

³ I served on active duty for 20 months, as a Navy Reserve Judge Advocate General’s Corps Captain, at the Office of the Naval Inspector General, from 1996-98. For 14 of those months, I was the Acting Director of the Hotline Investigation Division. I later served two active duty periods at the Office of the Inspector General of Naval Forces Central Command, in Tampa and Bahrain. After I retired from the Navy Reserve, I worked for a time as an attorney for the United States Office of Special Counsel.

new public law during the 115th Congress (2017-18). You can find this public law in Volume 131 of *Statutes at Large*, starting on page 3.