

NATIONAL GRIEVANCE
NG-12/28/2011

Date: December 28, 2011

To: Leslie Wiggins
Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

From: Ami Pendergrass, Attorney, National Veterans Affairs Council (#53) (NVAC), American Federation of Government Employees (AFGE), AFL-CIO

Subject: National Grievance in the matter of the Department of Veterans Affairs (VA) failure to comply with Articles 9 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees concerning inaccuracy of position descriptions and abuse of management discretion in classification.

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (MCBA), American Federation of Government Employees/National Veterans Affairs Council (Union) is filing this national grievance against you and all other associated Department of Veterans Affairs (“VA”) officials and/or individuals acting as agents on behalf of the VA for violations as it relates to its failure to comply with Article 9 of the MCBA concerning inaccuracy of position descriptions and abuse of management discretion in classification.

Specifically, the VA, by and through its representatives and/or agents, has:

- (1) Since on or about November 28, 2011, and continuously thereafter, representatives at the Salem VA Medical Center (“Salem VAMC”) has a) has failed to classify the Pay Technicians (GS-544-07, now GS-544-06) position correctly; and b) by and through Salem VAMC representative Wendy Purdue, has exercised abuse of discretion by classifying positions based on factors other than those required by OPM and the OPM classifier handbook.
- (2) On an ongoing and continuous basis, representatives at the Central Texas Healthcare System in Temple (“Temple VAMC”) a) has failed and continues to fail to respond to Pay Technicians concerning the submission of a jointly reviewed and management approved position description to replace the current position description which is inaccurate; b) has failed to provide a current and accurate position description; and c) has failed to classify the above named position correctly.

In doing so, the VA has violated the following provisions:

- (1) Article 9 *et al*;
- (2) VA Directive and Handbook 5003; and
- (3) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE:

I. Background

Article 9 of the MCBA requires that all positions covered by the Agreement “must be accurately described in writing and classified to the proper occupational title, series, code and grade.” (Art. 9 §1(A)). Each position description must contain the principal and grade controlling duties, responsibilities, and supervisory relationships of the position and each employee is entitled to be furnished with a current and accurate position description that is both properly classified and properly compensated. (Art. 9, §1(B) and (C)).

If a position description is inaccurate, the employee is instructed to work with supervision to resolve the matter and changes to the position will be incorporated in the position description so a proper classification review can occur. (Art. 9, §1(D)). According to VA Directive 5003 (April 15, 2002), supervisors are responsible for “developing and maintain accurate descriptions for each position under their direction,” (VA Directive 5003, Para. 3(b)(5)(c)). Furthermore, “[w]here ever possible, employees will be afforded the opportunity to assist in the preparation of their position descriptions; however, [ultimately] supervisors and/or managers are responsible for assigning work to positions and insuring that the descriptions are accurate.” (VA Handbook 5003/1, Part 1, Para 5(a)).

Once the position description is deemed accurate and submitted for classification, the position is to be classified by “comparing the duties, responsibilities, and supervisory relationships in the official PD with the appropriate classification and job grading standard.” (Art.9, §2(a)). This requires that those offices providing classification must ensure that “positions will be classified and graded in conformance with the standards and guides issued by the Office of Personnel Management (OPM) and not in comparison with other positions or an employee’s qualifications. Where VA classification and job grading guides or supplements have been developed, they will be used in conjunction with OPM standards to facilitate the proper classification of positions.” (VA Directive 5003, Para 2(a)(2)).

Salem:

On August 23, 2011, Civilian Pay Technicians at the Salem VAMC received official notification that their position description had been rewritten and submitted for review, resulting in a downgrade from GS7 to GS6. The downgrade went into effect on September 13, 2011 with a two year grade and pay retention. The review was done by Wendy Purdue in the VISN office in Salisbury, NC. Employees met with the VISN CFO, who stated that payroll management was fighting the downgrade.

Employees, who had not seen or reviewed the new position description until after the announcement in August, reviewed the position description and found numerous inaccuracies. No desk audit was performed by the Salem VAMC to confirm the new position description. The employees reviewed and drafted a new position description, which was presented to Salem VAMC representative Rick Schroeder on October 3, 2011. Management agreed to a review and the parties met on October 13, 2011. Management presented minor changes but otherwise accepted the new position description to be sent up for reclassification. The position description was sent forth to the classification department in Salisbury on October 19, 2011.

NVAC Attorney Ami Pendergrass followed up by letter, dated November 28, 2011, concerning the status of the review. On the same day, Mr. Schroeder notified the civilian pay technicians by email that the review was completed by Wendy Purdue and that the position was still a downgrade. (See Appendix A). However, upon review, the employees discovered that in the evaluation report which accompanies the classification, Ms. Purdue, under several review factors, stated that though the position description was written at a higher level, she could not substantiate that the number of positions currently employed at the Salem VAMC could be performing the work as written in the position description. Therefore, without providing evidence as to why, she classified the position at a lower point level. In two areas, factors 3 and 4, this reasoning served as either the major or sole reason for the points awarded under classification, though Ms. Purdue acknowledged that the tasks were listed in the position description as the principal and grade controlling duties as presented by the employees' supervisor.

On December 5, 2011, the Pay Technicians contacted Roy Coles regarding the matter and raised issues concerning the actions by the classifier, Ms. Purdue, and how the review was conducted.

Temple:

On December 2010, the Civilian Pay Technicians were officially notified that their position would be downgraded from a GS7 to a GS6. The downgrade took effect 1/11/2011. The pay technicians began a classification appeal and asked for a desk audit to occur, since no one was notified of changes in the position description. However, the employees withdrew their appeal on March 13, 2011, when the employees were told in an email by Temple VAMC representative Patricia Barth (employed at VISN):

I'm sorry but no, we will not conduct a desk audit. This is a result of 4 classification appeal decisions by VACO and thus a desk audit is not warranted. I think you will see that any GS-7 payroll tech positions announced will be pulled by VACO and downgraded. They may file an appeal but I already can tell you that the PD will be found to be at the GS-6 level.

On March 25, 2011, the employees were further told by Temple VAMC Payroll Supervisor, Stephanie Giboney (who is no longer in this position) that all pay technicians were getting downgraded. However, after several months, and continuous notifications from other facilities that positions were, in fact, not being downgraded, the employees, with assistance from Amy Maynard, Chief of Finance, CTVHCS, began a second appeal on September 1, 2011. However, the parties reviewed the position description used for the downgrade and found multiple inaccuracies. Ms. Maynard and the employees drafted a new position description, which was submitted to classification on September 14, 2011 and requested a desk audit again. To date, the VISN has provided no response to the employees or Ms. Maynard concerning the status of the review.

II. Violation

As stated above, Article 9 requires that each employee be provided an accurate position description that is both properly classified and properly compensated. The employees in both Salem and Temple meet their contractual obligation to raise the issue of inaccuracies in the position description, which are a matter of contract and not of classification. Without an accurate position description, a proper classification cannot be performed and employees cannot go to OPM for redress, since, as correctly stated in VA Handbook 5003, it is the supervisor's responsibility and not OPM's to present an accurate position description.

In the case of Salem, local management did work with employees and submitted a jointly agreed upon position description which was submitted for review. However, the classification review itself was flawed and the classifier, who under VA Handbook 5003 and Article 9, is responsible for classifying the position based on the pre-defined guidelines under OPM, instead choose to classify the position based on whether she believed that that many employees in Salem could be performing the work as described in the position description. In the case of Temple, the classifier has simply failed to even respond and based on her position in March, in which she states that any position description submitted will be graded at a GS6, raises serious questions as to whether Temple will, in fact, review the position description accurately or at all.

Both instances raise questions of impropriety by the classifier, whose job is to classify the position as it is written. Accuracy issues or how many employees the supervisor chooses to employee can be addressed through other mechanisms; under no guidance are there rules which say that those internal matters serve as the basis for downgrading or misclassifying an otherwise correct position description.

III. Remedy Requested

The Union asks that to remedy the above situation, the VA agrees to the following:

- (1) To agree to have the position description in both Salem and Temple reviewed by a neutral classifier from central office or from a location mutually agreed to by the parties;
- (2) To agree to perform a desk audit in Salem and Temple of the position in question; and

(3) To agree to any and all other remedies appropriate in this matter.

IV. Time Frame and Contact

This is a National Grievance and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions regarding this National Grievance, please feel free to contact me at (202) 306-3664.

Ami Pendergrass
Attorney
AFGE/NVAC

Cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC

