

DEC 16 2014
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NATIONAL GRIEVANCE
NG-12/16/14

Date: December 16, 2014

To: Larry Bennett
For the Deputy Assistant Secretary
Labor – Management Relations
Department of Veterans Affairs (VA)
810 Vermont Avenue, NW
Washington, DC 20420

From: April Fuller, Staff Attorney, National Veterans Affairs Council (#53) (“NVAC”),
American Federation of Government Employees, AFL-CIO (“AFGE”)

Subject: National Grievance in the matter of the VA Central Office, for its failure to follow its own policy and its failure to promote qualified Medical Support Assistants (“MSAs”) employees and its misapplication of law, rule, or regulation affecting conditions of employment

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 (“the Union”) is filing this National Grievance against you and all other associated VA officials and/or individuals acting as agents on behalf of the VA for violations as it relates to its failure to promote qualified MSAs according to its own policies and according to the MCBA and its misapplication of law, rule, or regulation affecting conditions of employment.

Specifically, on or about June 11, 2012, and continuing thereafter until November 17, 2014, the VA, by and through its representatives and/or agents:

- (1) Failed to adhere to the boarding process by not having a Professional Standards Board (PSB) review MSAs’, who were converted to hybrid Title 38 employees according to Human Resources Management Letter No. 05-12-06, qualifications,

- experience, duties and responsibilities of their positions and recommend a final grade determination for a noncompetitive promotion to an Advanced MSA, GS-6 position;
- (2) Failed to provide the PSBs' recommendations regarding grade and/or step of the MSAs to the Medical Center Directors for approval;
 - (3) Provided Supervisors with the authority to unilaterally revise functional statements as "appropriate" and recommend promotions of GS-5 MSAs to GS-6 without the review or recommendation of a PSB;
 - (4) Failed to retroactively promote MSAs to July 1 2012, who were qualified for a promotion to Advanced MSA GS-6 during the 2012 boarding process;
 - (5) Failed to retroactively promote MSAs to the first date in which they were qualified for a promotion to Advanced MSA GS-6 after the 2012 boarding process;
 - (6) Failed to compensate MSAs back pay to July 1 2012, who were qualified for a promotion to Advanced MSA GS-6 during the 2012 boarding process;
 - (7) Failed to compensate MSAs back pay to the first date in which they were qualified for a promotion to Advanced MSA GS-6 after the 2012 boarding process;
 - (8) Failed to provide adequate guidance to facilities as to the clinics that they were responsible to review MSAs for potential for the Advanced MSA GS-6 position, instead allowing the facilities discretion to determine what was considered an "interdisciplinary coordinated care delivery model";
 - (9) Failed to provide adequate verbal and/or written reasoning to MSA GS-5 employees who supervisors found did not meet the qualification standards for promotion to the Advanced MSA GS-6 position;
 - (10) Failed to provide employees, who VA Supervisors found ineligible for a promotion to Advanced MSA GS-6 positions, notification of their right to request a reconsideration;
 - (11) Failed to give adequate consideration to the Union's proposals in predecisional involvement.

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

- (1) Article 3, Section 2, 3, 4, and 5;

- (2) Article 23, Section 15;
- (3) Article 43, Section 2;
- (4) Article 56, Section 2, 3, 4, 6, 7
- (5) VA Handbook 5005 Part II, Chapter 3, Section C
- (6) VA Handbook 5005 Part III, Chapter 4, Section B
- (7) VA Handbook 5005, Appendix M
- (8) Department of Veterans Affairs, Office of Human Resources Management, Human Resources Management Letter No. 05-12-06
- (9) 5 U.S.C. § 5596

STATEMENT OF THE CASE

I. Background

On June 11, 2012, the Department of Veterans Affairs, Office of Human Resources Management, issued Human Resources Management Letter No, 05-12-06, Implementation Instructions for Conversion of Medical Support Assistant, GS-679 Occupational Series to Title 38 Hybrid Status (“2012 HRML”). The 2012 HRML effectively converted all MSAs under the GS-679 occupational series to hybrid title 38 status under the authority of 38 U.S.C. 7401(3) for appointments made under 38 U.S.C. 7401(3) or 38 U.S.C. 7405(a)(1)(B). This included MSAs, Advanced MSAs, Lead MSAs, and Supervisory MSAs.

The 2012 HRML directed Human Resources to automate a Notification of Personnel Action form (SF-50) for all affected employees. It stated that “[f]inal conversion, including grade determination, will be completed through the Professional Standards Board (PSB) review process no later than December 31, 2012. Any changes resulting from the PSB review will be retroactive to July 1, 2012.” The 2012 HRML also created an initial boarding requirement for all MSAs converted to hybrid title 38 and all new hires to be completed no later than December 31, 2012. It reiterated that a PSB would be responsible for conducting an initial review to determine the appropriate grade and step based on an established functional statement as compared to the qualifications standard. The PSB would also handle reviewing recommendations for grade and step advancements based on performance and achievement. Lastly, it required the PSB to complete all reviews and make recommendations to the Medical Center Directors by December 31, 2012.

Unfortunately, this initial review did not take place for MSAs at many facilities across the country. On August 15, 2014, the VA informed the NVAC via email that “facilities did not properly identify as many of the MSAs performing duties in the PACT or other Specialty Care units which should have met the GS-6 Advanced MSA Assignment.” To remedy this, the VA was proposing a “special one-time review” of MSAs’ assignments in these areas. The Union responded with questions, which the VA answered. Ms. Alma Lee, President of the NVAC, expressed the Union’s concerns in a letter addressed to Mr. Kent Wellman on August 27, 2014.

On September 16, 2014, the Department of Veterans Affairs, Deputy Assistant Secretary for Human Resources Management, issued Human Resources Management Letter No. 15-14-07, Medical Support Assistant (MSA) One-time Review of Patient Aligned Care Team (PACT) and Specialty Clinic/Area Positions (“2014 HRML”). In the 2014 HRML, the VA admitted that a recent review by the Veterans Health Administration (“VHA”) “indicated that a number of MSAs performing these duties may not have been appropriately boarded at the GS-6 grade level (Advanced MSA).”

The 2014 HRML required facilities to perform a special one-time review of employees performing duties in PACT and Specialty Clinics and provides facilities with a one-time exception to the VA Policy requiring PSB to effect promotions to the GS-6 level. The 2014 HRML also required facilities to create Advanced MSA positions in their organizational charts for any PACT and Specialty Clinic MSAs who meet the qualification standards for the Advanced MSA GS-6 position. Supervisors were then responsible for recommending GS-5 MSAs for promotion, rather than the PSBs. The 2014 HRML then directed the Supervisors to send their recommendations directly to their servicing Human Resources Office for review and processing. The 2014 HRML required that this all be completed, and promotions be effectuated, by November 28, 2014. It did, however, provide an extension to January 16, 2015, for employees who will meet the administrative requirements within 60 days after completion of the review.

The 2014 HRML directed the facilities to make the promotions “no earlier than the beginning of the first pay period following the date the administrative requirements are met.” However, a Frequently Asked Questions, One-Time Review of Medical Support Assistants, GS-0679-05 issued by the VA stated that the effective date of the promotion should be the pay period after the SF-52 was approved. It further stated that no retroactive promotions are authorized.

This unilateral one-time “exception to VA policy and collective bargaining agreements has finally resulted in the promotions of deserving MSAs that, per VA policy, should have been promoted when they were eligible beginning in July, 2012. But-for the VA’s failure to follow the 2012 HRML guidelines, many employees would have been promoted in July, 2012, or at some point after when they became eligible for promotion. Additionally, local facilities interpreted “interdisciplinary coordinated care delivery model” differently, thereby refusing to review deserving MSAs for the Advanced MSA GS-6 position due to the area in which they worked. Lastly, Supervisors, rather than a PSB, had full discretion on whether to promote an

employee, thus producing an unreliable outcome and failing to provide any written reasoning or reconsideration process to employees.

II. Violation

The Agency violated Article 3, Section 2, 3, and 4 when it failed to address or heed the concerns of the NVAC prior to implementing the 2014 HRML. The Agency violated Article 23, Section 15, when it failed to keep the employees informed as to whether they met the qualification requirements and the reasons as to why they were not selected for a promotion. The Agency violated Article 43, Section 2, when it misinterpreted the 2012 HRML and its PSBs failed to review and recommend the appropriate grade for those who met the qualification standards to be promoted to the Advanced MSA, GS-6. The Agency violated Article 56, Section 2, 4, 6, and 7, and VA Handbook 5005 Part II Chapter 3, Part III Chapter 4, and Appendix M when it failed to initiate a PSB to review and recommend the MSAs for correct grading, failed to consider employees for promotion on the first anniversary date of their last promotion, failed to provide, in writing, which aspects of the qualifications standards that the employees allegedly failed to meet, failed to provide, in writing, an explanation that details why the employee is not considered to meet a criterion, and when it failed to provide any reconsideration process for a denied promotion. Lastly, the Agency violated the Federal Back Pay Act, codified in Title 5 of the United States Code, section 5596, when it failed to provide retroactive promotions and back pay to all MSAs who were found eligible for promotion to the GS-6 Advanced MSA position at the time of their actual eligibility.

III. Remedy Requested

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

- (1) Change all MSAs' promotions, who were promoted from the one-time review in the 2014 HRML, to a retroactive promotion beginning on the day that the employee was actually eligible for the GS-6 Advanced MSA promotion, or July 1, 2012 if the employee became eligible prior to the 2012 HRML;
- (2) Pay all MSAs, who were promoted from the one-time review in the 2014 HRML, back pay in accordance with their retroactive promotion;
- (3) Review all current MSAs responsibilities and qualifications and send any eligible MSA to the PSB for possible promotion;
- (4) Provide all MSAs who were reviewed for a promotion under the 2014 HRML but were denied the promotion based on their supervisor's interpretation of the Qualification Standards, written notice as to the aspects of the qualifications standards that were not meant and why the employee is not considered to meet a criterion;

- (5) Provide all MSAs who were reviewed for a promotion under the 2014 HRML but were denied the promotion based on their supervisor's interpretation of the Qualification Standards, a reconsideration process at a PSB;
- (6) Any and all other appropriate remedies to make the aggrieved employees whole.

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) 997-9262.

Sincerely,



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