

5/26/15
Anitra Jones

NATIONAL GRIEVANCE
NG-05/26/15

Date: May 26, 2015

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’s failure to follow its own policy and the Master Agreement and its failure to promote qualified Licensed Practical Nurse (“LPN”) and Licensed Vocational Nurse (“LVN”) employees to the positions’ full performance level of GS-06 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 LPNs and LVNs according to its own policies and according to the MCBA and its misapplication of law, rule, or regulation affecting conditions of employment.

Specifically, continuing up to and through the day that this National Grievance is filed and thereafter, the VA, by and through its representatives and/or agents:

- (1) Failed to notify appropriate officials that LPN and LVN employees, GS-0620, were eligible for promotion consideration to the employees’ positions’ full performance level of GS-06.
- (2) Failed to notify LPN and LVN employees, GS-0620, of their eligibility for promotion consideration to the employees’ positions’ full performance level of GS-06, and for their required self-assessment.
- (3) Failed to recommend for promotion LPN and LVN employees, GS-0620, eligible for promotion consideration to the employees’ positions’ full performance level of GS-06.

- (4) Failed to approve for promotion LPN and LVN employees, GS-0620, eligible for promotion consideration to the employees' positions' full performance level of GS-06.
- (4) Failed to promote LPN and LVN employees, GS-0620, to the employees' positions' full performance level of GS-06 when the employees became eligible for promotion.
- (5) Failed to provide written reasoning as to why the LPN and LVN employees, GS-0620, were not promoted to the employees' positions' full performance level of GS-06 when the employees became eligible for promotion and why the employees did not meet the criteria for promotion.
- (6) Failed to advise employees in writing of any decision not to promote them, of the reason(s) for the decision, of their right to request reconsideration, and that reconsideration must be preceded by an informal discussion with their supervisor.
- (7) Failed to provide a retroactive promotion with back pay to LPN and LVN employees, GS-0620, who were subsequently found eligible for promotion to GS-06 at the time of the employees' actual eligibility.

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

- (1) Article 56, Section 1, 2, 3, and 5;
- (2) VA Handbook 5005/58, Part III, Chapter 4, Section B;
- (3) VA Handbook 5005/58, Part III, Appendix O;
- (4) 38 U.S.C. § 7403;
- (5) 5 U.S.C. § 5596;
- (6) All other provisions which may become apparent during the processing of this grievance, up to and including arbitration.

STATEMENT OF THE CASE

I. Background

VA Employees in the LPN and LVN, GS-0620, positions across the country are not being promoted to the employees' positions' full performance level of GS-06. For example, Ms. Michelle Jackson was hired in March, 2008, as a Grade 5, Step 10, LPN in Northport New York. While assigned to work as an LPN in a Nursing Home at the facility, she repeatedly asked her Supervisor, the Head Nurse for her unit, to be considered for a promotion to GS-06. She was not considered for a promotion to her full performance level of GS-06, nor was she provided any

written documentation explaining why she was not considered. In October, 2013, Ms. Jackson relocated to Unit 34, a telemetry unit at the Northport VA. Upon arrival, she asked her new Supervisor, the Head Nurse for her new unit, when she would be considered for a promotion to GS-06. Her new Supervisor informed her that, since she was new to the Unit, she would have to wait long enough for her Supervisor to analyze and report on Ms. Jackson's performance. After more time passed, Ms. Jackson was informed that the Department Manager for Nursing had decided that they would not be "giving out sixes to LPNs at this time." To date, Ms. Jackson remains at a Grade 05, Step 10, her initial hire grade and step from 2008.

The VA Handbook 5005 Staffing, contains guidance on hiring, placing, and promoting employees. Part III. Internal, Change in Assignment Placement and Promotion, Chapter 4. Title 38 and Hybrid Title 38 Promotions and Internal Placements, Section B. Promotion and Internal Placement of Hybrid Title 38 Employees pertains specifically to the promotion and placement of Title 38 hybrid employees. Subsection 5. Promotion Consideration states that, "employees shall be considered periodically for promotion in their current occupation." It further states that an employee must meet the full administrative requirements in order to be promoted. This Handbook requires Human Resources ("HR") to notify the facility 60 days prior to the date the employee becomes eligible for promotion within his or her performance band by meeting the time in grade requirement. HR is also responsible for including in the notification whether the employee has a current satisfactory performance rating. The employee must also be made aware of the employee's eligibility for promotion consideration.

Once the supervisor and the employee have been notified that the employee is eligible for promotion consideration, the employee has 30 days to provide his or her supervisor with a self-assessment of the employee's qualifications for promotion consideration. In cases of an employee eligible for promotion to a grade at or below the full performance level of the employee's position, the supervisor will make a recommendation on promotion within 30 days of receipt of the employee's self assessment. If the supervisor determines that the employee has demonstrated the capability to successfully perform at the next higher grade level, the supervisor will recommend the employee for promotion, which will take affect soon thereafter. If the supervisor determines that the employee has not demonstrated the capability to successfully perform at the next higher grade level, the supervisor will inform the employee in writing that the employee is not being recommended for a promotion. The supervisor will include in the written notice the reason(s) why the employee does not meet the criteria for promotion and, where appropriate, how the employee can improve his or her likelihood of meeting the criteria in the future.

According to VA Handbook 5005/58, Part III, Appendix O. Full Performance Level for Hybrid Title 38 Positions, Section 2. List of Positions and Full Performance Levels, the full performance level for an LPN or LVN GS-0620 is a Grade 06. Many facilities have failed to promote LPNs and LVNs to their full performance level, holding the employees for multiple years at a GS-05 or GS-04 level without providing any reasoning or written documentation. Additionally, some facilities have recently provided prospective promotions to LPNs and LVNs to full performance GS-06, however the facilities have refused to provide retroactive promotions and back pay to the LPNs and LVNs to the date that the employees were originally eligible for promotion consideration. This National Grievance is filed on behalf of all similarly situated LPN and LVN employees who: the Agency has erroneously failed to promote to the positions'

full performance level; the Agency has erroneously failed to provide written documentation for a denied promotion to the positions' full performance level; the Agency has subsequently promoted after the initial eligibility date without providing a retroactive promotion or backpay.

II. Violation

The Agency violated Article 56, Section 1, 2, and 3 when it failed to notify appropriate officials of LPN and LVN employees eligible for consideration for promotion to the positions' full performance level, when it failed to notify LPN and LVN employees of their eligibility and self-assessment required for consideration for promotion to the positions' full performance level, when failed to recommend LPN and LVN employees for promotion who were eligible for consideration for a promotion to the positions' full performance level, when it failed to approve LPN and LVN employees for promotion who were eligible for consideration for a promotion to the positions' full performance level, when it failed to promote LPN and LVN employees who were eligible for consideration for a promotion to the positions' full performance level and met the required criteria, and when it failed to provide written reasoning as to why the LPN and LVN employees, GS-0620, were not promoted to the employees' positions' full performance level of GS-06 when the employees became eligible for promotion and why the employees did not meet the criteria for promotion.

The Agency violated Article 56, Section 5 when it failed to advise employees in writing of any decision not to promote them, of the reason(s) for the decision, of their right to request reconsideration, and that reconsideration must be preceded by an informal discussion with their supervisor.

The Agency violated VA Handbook 5005/58, Part III, Chapter 4, Section B when it failed to notify appropriate officials of LPN and LVN employees eligible for consideration for promotion to the positions' full performance level, when it failed to notify LPN and LVN employees of their eligibility and self-assessment required for consideration for promotion to the positions' full performance level, when failed to recommend LPN and LVN employees for promotion who were eligible for consideration for a promotion to the positions' full performance level, when it failed to approve LPN and LVN employees for promotion who were eligible for consideration for a promotion to the positions' full performance level, when it failed to promote LPN and LVN employees who were eligible for consideration for a promotion to the positions' full performance level and met the required criteria, and when it failed to provide written reasoning as to why the LPN and LVN employees, GS-0620, were not promoted to the employees' positions' full performance level of GS-06 when the employees became eligible for promotion and why the employees did not meet the criteria for promotion.

The Agency violated VA Handbook 5005/58, Part III, Appendix O when it failed to follow VA Handbook 5005/58 Part III, Chapter 4, Section B and failed to promote LPN and LVN employees, GS-0620, to the enumerated full performance level of GS-06. The Agency violated Title 38 of the United States Code, Section 7403, when it failed to follow VA Handbook 5005/58 Part III, Chapter 4, Section B and failed to promote LPN and LVN employees, GS-0620, according to VA regulations and policies. 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 LPN and LVN employees who were subsequently found eligible for promotion to GS-06 at the time of the employees' actual eligibility.

III. Remedy Requested

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

- (1) Review for promotion all LPN and LVN employees, GS-0620, who have met the required period for promotion consideration and who are not at the positions' full performance level, GS-06.
- (2) Provide all eligible LPN and LVN employees, GS-0620, who have met the required period for promotion consideration and meet the criteria for promotion, a retroactive promotion back to the time of initial eligibility.
- (3) Provide all eligible LPN and LVN employees, GS-0620, who have met the required period for promotion consideration and meet the criteria for promotion, back pay consistent with the employee's retroactive promotion.
- (4) Provide all eligible LPN and LVN employees, GS-0620, who have met the required period for promotion consideration but did not meet the criteria for promotion, written notification that the employee does not meet the criteria, the reason(s) why the employee does not meet the criteria, and, if appropriate, how the employee can improve his or her likelihood of meeting the criteria in the future.
- (5) 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,



April L. Fuller
Staff Attorney
National VA Council
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: (202) 997-9262
Fax: (202) 379-2928
April.Fuller.NVAC@gmail.com