



(February 4, 2016)

In order to further improve the lines of communication and to respond to the concerns between the National VA Council and you our members, I have established a National VA Council Briefing. This NVAC Briefing will bring you the latest news and developments within DVA and provide you with the current status of issues this Council is currently addressing. I believe that this NVAC Briefing will greatly enhance the way in which we communicate and the way in which we share new information, keeping you better informed.

Alma L. Lee
National VA Council, President

~~~~~  
**In This Briefing: Reinstated Senior Executives Will Face Some Punishment, Says VA Deputy Secretary**  
~~~~~

Reported By Government Executive

Two Veterans Affairs Department employees who were just reinstated to the Senior Executive Service after being demoted will face some kind of lesser punishment for their poor judgment, said Deputy Secretary Sloan Gibson on Tuesday. In addition, Gibson is launching a one-week investigation of two other high-ranking officials involved in the matter to determine any possible misconduct on their part.

Gibson said during a conference call with reporters that he plans to impose a punishment on Diana Rubens and Kimberly Graves because, even though the Merit Systems Protection Board [reversed the VA's decision to demote them](#), the two judges upheld the department's claim that Rubens and Graves executed poor judgment and created an appearance of impropriety by not recusing themselves from discussions over job reassignments that they both personally gained from. The MSPB decision means the two immediately go back to their SES jobs; Rubens was director of the Veterans Benefits Administration's Philadelphia office, and Graves was director of VBA's St. Paul, Minn., regional office.

"We have charges that have been sustained and no punishment," said Gibson. "I don't think that was the intent of Congress, I don't think that is right for veterans, so I will impose some penalty." In his decision on Rubens, MSPB Chief Administrative Judge William Boulden said that he would have imposed a less severe disciplinary action if that had been allowed by the law.

The 2014 Veterans Access, Choice and Accountability Act doesn't allow for tweaking punishments, which is a tool that MSPB judges can use in other instances. "Because that is not allowed, the only option is to reverse the action [demotion] outright," said the decision.

"The Choice Act created an oddity for VA senior executives where the MSPB judge is restricted to sustaining or reversing an imposed penalty and may not impose a lesser penalty, even when he or she believes a penalty is appropriate," Gibson said. "No other agency functions by these rules. And while the law does not allow the judge to mitigate to a lesser penalty, I am not precluded from doing so, and I intend to consider lesser penalties for both executives."

It's not clear what punishment Gibson will impose, but because of the judges' rulings, he cannot demote Rubens and Graves again – i.e., remove them from the SES. He could, for instance, reassign them to other jobs in the department. But in the meantime, Rubens and Graves head back to their jobs in Philadelphia and St. Paul, respectively.

When asked whether Gibson feared a new proposed penalty for Rubens and Graves could launch more appeals, he said he thought that was "very unlikely."

The two have been at the center of a controversy over the department's use of [relocation incentives and reassignments](#) of career senior executives, sparked by an [inspector general report](#) released in September.

Gibson said he would also look at whether two other officials – Danny Pummill, acting undersecretary for benefits, and Beth McCoy, deputy undersecretary for field operations – should be punished for their respective roles in the saga. The MSPB judges ruled that the VA's decision to demote Rubens and Graves without disciplining others, including Pummill and McCoy, was unfair, amounted to disparate treatment of employees, and therefore was unreasonable.

"I will consider this evidence, and if there is evidence to support misconduct that was not available for my consideration previously, I will take appropriate action," Gibson said, adding that the investigation will be done by Feb. 9, and he will immediately review the findings. Gibson won't make any decisions on Rubens and Graves until he's considered all four cases, he said.

Gibson made clear during the call that he did not believe Pummill or McCoy were guilty of misconduct when he initially reviewed the facts. Pummill, Gibson said, "had no vested interest in these transfers other than to ensure that the right person got into the right job." But Gibson said he was committed to reviewing new evidence that came to light during the legal proceedings for Rubens and Graves. He also reiterated his commitment to making personnel decisions based on evidence and facts -- not pressure from Congress or media reports.

In September, the VA inspector general concluded that Rubens and Graves [improperly helped create vacancies](#) at their respective offices and volunteered to fill them. The two employees occupying the Philadelphia and St. Paul director jobs at the time were relocated to jobs that they did not volunteer for to make room for Rubens and Graves, who were working elsewhere in positions with more responsibility, according to the watchdog. VA paid roughly \$274,000 in relocation expenses for Rubens, and about \$129,000 for Graves, for a total of more than \$400,000.

House Veterans' Affairs Committee Chairman Jeff Miller, R-Fla., said the "real issue VA should be focused on at this point is helping Congress reform the federal government's dysfunctional civil service system, which is at the root of all the department's most serious personnel problems."

Miller sponsored a bill that the [House passed last summer](#) which would make it easier to fire all employees at the VA. Regarding the latest development on the relocation controversy, Miller said "the fact that the department is now scrambling to issue an even weaker slap on the wrist to Rubens and Graves is almost certainly of little comfort to the taxpayers who were forced to fund their more than \$400,000 in scandalous relocation expenses."

On Tuesday, Gibson blasted the IG report, saying that it was "not supported by the evidence" and ignored "a vast amount of exculpatory evidence" to "support a conclusion that they wanted to reach."

He also expressed frustration over how the entire matter has played out in public.

"What has happened here is, we have taken two good people [Rubens and Graves] who made an error in judgment, and the judges have upheld that," Gibson said. "These are good people who can make a difference to the veterans we serve day in and day out, and their reputations have been trashed. There are people who took this IG report and rolled it up and beat everybody over the head with it. This became a media sensation, and quite frankly, I think it's a disgrace to the process that that is allowed to happen."