



NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

Out of Many/**One Union**
AFGE NVAC/AFL-CIO

NATIONAL GRIEVANCE

NG-5/17/22

Date: May 17, 2022

To: Denise Biaggi-Ayer
Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
Denise.biaggi-ayer@va.gov
Sent via electronic mail only

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

RE: National Grievance against the Department of Veterans Affairs for denying military leave and official time to NVAC National Representative Anthony McCray

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 officials and/or individuals acting as agents on behalf of the Agency for denying official time and military leave to National Representative Anthony McCray and instead marking him absent without leave (“AWOL”). To date, VA has failed to remedy this violation, and as such, continues to violate the MCBA, VA policy, government-wide rules and regulations, and federal law. The VA’s actions also constitute an unfair labor practice and unlawful union animus in violation of the Federal Service Labor Management Relations Statute (“the Statute”).

Specifically, the VA violated Articles 2, 35 and 48 of the MCBA, 38 U.S.C. § 4301 *et seq.*, 5 CFR 353.208, 5 U.S.C. § 6323, VA Handbook 5011, “Hours of Duty and Leave,” 5 U.S.C. § 7116(a)(1) and (2), and any and all other relevant articles, laws, regulations, and past practices not herein specified. The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

STATEMENT OF THE CASE

Background

Anthony McCray is a duly appointed National Representative of the NVAC, and a full-time VA employee at the Michael E. DeBakey VA Medical Center. Mr. McCray also actively serves in the U.S. Army Reserves. On a continuing and ongoing basis, Mr. McCray serves one week per month in Battle Assembly training for Reserve duty. A Federal employee who is a member of the Reserves is entitled to 15 days (120 hours) of paid military leave pursuant to 5 U.S.C. § 6323(a) each fiscal year for active duty, active duty training, or inactive duty training. An employee on military leave under section 6323(a) receives **his or her full civilian salary, as well as any pay from the armed services**. The statute also provides that such employees are entitled to “leave without loss in pay, time, or performance or efficiency rating” during their time of military service. 5 U.S.C. §6323(a)(1). Military leave accrues at the beginning of each fiscal year. A maximum of 15 days of military leave may be carried over into the next fiscal year.

Further, OPM’s regulations at 5 CFR 353.208, implementing the Uniformed Service Employment and Reemployment Rights Act (“USERRA”), which is codified at 38 U.S.C. §§ 4301 - 4335, state that an employee performing service with the uniformed services **must be permitted**, upon request, to use any accrued annual leave, military leave, earned compensatory time off for travel, or accrued sick during his or her military service.

The NVAC was notified that on a continuing and ongoing basis, the VA has denied Mr. McCray’s requests for military leave and has instead been marking him AWOL for the periods he is required to serve in the Army Reserves. The VA has also denied the 50% official time that Mr. McCray is allocated as a National Representative. *See* MCBA, Article 48, Section 2. These actions constitute unlawful interference and restraint with regard to Mr. McCray’s right to engage in protected union activity.

To date, Mr. McCray has been charged one hundred sixty (160) hours of AWOL, despite currently having two hundred forty (240) hours of accrued military leave and 50% (40) hours of allocated official time per pay period. The VA has provided no reason for the denial of Mr. McCray’s requests for military leave or official time. As these denials are of an ongoing nature, the Union reserves the right to add claims to this grievance as additional information becomes available.

Violations

The VA has violated federal law and regulation, the MCBA, and its own policy. First, USERRA prohibits an employer from denying any benefit of employment to a member of the armed services on the basis of his or her military obligation. 38 U.S.C. § 4311(a). An employer violates this provision if the employee’s obligation for service in the uniformed services is a motivating factor in the employer’s action. 38 U.S.C. § 4311(c)(1). By failing to grant Mr. McCray’s requested leave for his periods of military service, the VA discriminated against him in violation of USERRA.

Next, 5 U.S.C. § 6323 is the statutory authority for granting military leave to Reservists of the uniformed services who are civilian employees of the Federal Government. The statute entitles federal employees to up to 15 days per fiscal year of military leave “without loss in pay...” It is undisputed that Mr. McCray had military leave that would have covered his periods of absence in April and May 2022. The VA unlawfully denied his use of said leave, thereby violating the statute.

Article 2 of the MCBA requires that the VA comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating USERRA and 5 U.S.C. § 6323, the VA also violated Article 2.

And finally, Article 35, Section 13 of the MCBA and VA Handbook 5011 set forth the VA’s obligations pertaining to the processing of employee requests for military leave. Here, as he had done many times previously, Mr. McCray properly submitted his requests for military leave. The VA failed to comply with the MCBA and its own policy by denying his requests.

Notwithstanding the VA’s violations of USERRA, policy, regulations, and the MCBA, the VA’s conduct also constitutes an unfair labor practice in violation of section 7116(a)(1) and (2) of the Statute. Mr. McCray is a long-standing National Officer of the NVAC. Indeed, in October 2021, Alma Lee, NVAC President, sent a letter to VA Central Office confirming Mr. McCray’s designation as a National Union Officer, see attached. By now, management should be well-versed in the processing of his official time. He has also served in the Army Reserves for several years and has ordinarily been granted military leave, until now. The simultaneous denial of both military leave **and** official time have resulted in the denial of an entire month of pay to Mr. McCray and has created a financial hardship. Issuing these denials concurrently, and without reason, is retaliatory. The denial of official time also violates Article 48 of the MCBA and the Statute.

Remedies Requested

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

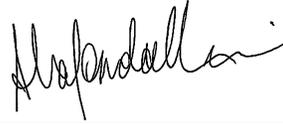
- To immediately rescind 160 hours of AWOL related to the denial of Mr. McCray’s military leave and official time requests;
- To make whole Mr. McCray with regard to any and all lost pay, differentials and benefits arising from the VA’s unlawful actions;
- To pay reasonable attorney’s fees and costs pursuant to section 4324(c)(4) of USERRA;
- To fully comply with its obligations under federal law, regulations, contract, and its own policy regarding an employee’s use of military leave;
- To post a remedial notice, signed by the Medical Center Director, affirming the VA’s obligations to the Union, and acknowledging its violations of the Statute; and,
- To agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance, and the period for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions, please contact the undersigned

at AFGE's Office of the General Counsel. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.

Submitted by,



Shalonda Miller
Staff Counsel, National VA Council
Office of the General Counsel
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001
tel: 202.639.6424
efax: 202.379.2928
shalonda.miller@afge.org

cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Thomas Dargon, Jr., Supervisory Attorney, AFGE/NVAC



**NATIONAL VETERANS
AFFAIRS COUNCIL**
American Federation of Government Employees
AFFILIATED WITH THE AFL-CIO

ALMA L. LEE
President

October 8, 2021

Ms. Ophelia A. Vicks
Acting Executive Director
Labor Management Relations, VACO
810 Vermont Avenue, NW
Washington, DC 20420

Dear Ms. Vicks:

This letter serves as notification that Mr. Anthony McCray from the Michael DeBakey VAMC has served (prior to the Executive Orders) and is still currently serving as a National Representative for the AFGE National VA Council, in accordance with Article 48, Section 2D, of the Master Agreement between the Department of Veterans Affairs and the AFGE National VA Council.

Mr. McCray's mailing address and facility information is

Michael DeBakey VAMC
2002 Holcomb Blvd.
Houston, TX 77030-4298
(713) 794-7779
(281) 658-4753 Mobile

Please notify the appropriate parties of this notification. Should you have any questions and/or concerns, please do not hesitate to contact my office directly at (540) 345-6301.

Sincerely,

Alma L. Lee
President
National Veterans Affairs Council, #53
American Federation of Government Employees, AFL-CIO

ALL/mws

cc: Francisco Vazquez, Director Houston VAMC
Lorrie Ann M. Hawkins, Supervisory MSA
Anthony McCray, NVAC National Representative
Donald Stephens, Office of Labor Management Relations