



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

# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-3/18/24

**Date:** March 18, 2024

**To:** Denise Biaggi-Ayer  
Executive Director  
Office of Labor Management Relations  
U.S. Department of Veterans Affairs  
Denise.Biaggi-Ayer@va.gov  
*Sent via electronic mail only*

**From:** Sarah Hasan, 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 Failing to Consult the Union Prior to Formulating Regulations and Recommendations on Physician Pay

### STATEMENT OF THE CHARGE

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 (“NVAC” or “the Union”) is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Department of Veterans Affairs (“Department”) for failing to consult the Union prior to formulating regulations and recommendations in the pay administration of physicians, dentists, and podiatrists.

Specifically, the Department violated Articles 2 and 55 of the MCBA; 38 U.S.C. §7433(b) 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**

According to 38 U.S.C. §7431(a), pay for physicians, podiatrists and dentists is comprised of base pay, market pay, and performance pay. Under 38 U.S.C. §7433(a), the Secretary shall prescribe regulations relating pay, and these regulations can be found in VA Handbook 5007, which is updated regularly to reflect changes in VA pay policy. Furthermore,

under 38 U.S.C. §7433(b), the Secretary must take into account the recommendations of the Under Secretary for Health in prescribing these regulations. The Under Secretary “shall request the views of representatives of **labor organizations** that are the exclusive representatives of physicians, podiatrists, and dentists of the Department...” *Id* (emphasis added).

Upon information and belief, the Under Secretary of Health has failed to request the views of AFGE/NVAC in formulating recommendations for the pay administration of physicians, podiatrists, and dentists. Additionally, under 38 U.S.C. §7431(e)(1)(A), the Secretary prescribes minimum and maximum amounts of annual pay for physicians and dentists at least every two years. These amounts were most recently published in the Federal Register, Volume 88, No. 217, effective January 14, 2024. However, VHA failed to provide the Union with the data and other information prepared for the analysis of the biennial review for bargaining unit employees and failed to facilitate a meeting with the Union’s designated representatives to solicit timely comments and input regarding the physician and dentist pay system, as required by Article 55, Section 4 of the MCBA.

In addition to these violations the Department violated Article 2 of the MCBA which requires that the Agency comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA.

### **Violations**

By failing to fulfill its obligations, the Department violated and continues to violate, the following:

- Article 2 of the MCBA: requiring the Department to comply with federal law and regulations;
- Article 55 of the MCBA: requiring the Department to provide data to the Union on biennial physician and dentist pay rates and to meet with the Union to solicit comments and input regarding the physician and dentist pay system;
- 38 U.S.C. §7433: requiring the Department to request the opinions of the Union with respect to the pay regulations for physicians, podiatrists, and dentists;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

### **Remedies Requested**

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

- Fully comply with its statutory obligations under 38 U.S.C. §7433 and its contractual obligation under Articles 2 and 55 of the MCBA by immediately seeking input from the Union with respect to the physician pay regulations and provide data and information to the Union prepared for the analysis of the biennial review of physician, dentists, and podiatrist pay;
- Agree to comply with any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## 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, please contact the undersigned at the AFGE 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,



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cc: Kurt Martin, Deputy Director, OLMR  
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Thomas Dargon, Jr., Deputy General Counsel, AFGE/NVAC