



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

NATIONAL VETERANS AFFAIRS COUNCIL

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

7S/00372049

NATIONAL GRIEVANCE

NG-8/22/17

Date: August 22, 2017

To: Kimberly McLeod
Acting Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
kimberly.mcleod@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 in the matter of the Department of Veterans Affairs system’s
flaw that charges an additional day of LWOP when an employee is on unpaid leave
immediately preceding or following a federal holiday

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 (“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 (“Agency”) for unlawfully charging an additional day of Leave Without Pay (“LWOP”) when a bargaining unit employee (“BUE”) is on authorized unpaid leave on the days immediately preceding or following a federal holiday.

The Agency, by and through its representatives and/or agents, has unlawfully charged BUEs with “an additional day of LWOP” if employees were in an unpaid leave status on the days surrounding a federal holiday. Specifically, the VA Time & Attendance System (“VATAS”) is incapable of coding a non-paid holiday when an employee is on authorized LWOP on the days immediately preceding and following a federal holiday. For example, if an employee is in a non-paid leave status on Monday, July 3, 2017 and Wednesday, July 5, 2017, the VATAS system does not record Independence Day as a “holiday;” rather, it records July 4th as LWOP. To date, the Agency has failed to remedy this violation. Thus, the Agency violated, and continues to violate, OPM’s leave regulations, Articles 2 and 35 of the MCBA, VA



Handbook 5011, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

VA Policy provides that employees must be in paid or a paid-time-off status on scheduled workdays immediately before or after a federal holiday to be entitled to pay for that day. *See* VA Handbook 5011, Part II, chapter 2. However, a VATAS system's flaw subjects employees to additional losses if they are instead in a non-paid status on both days surrounding the holiday. The Agency's administration of leave in this instance is contrary to its own policy that provides that holidays are not charged to leave. *Id.* at Part III, chapter 3. Indeed, Amanda Baty, Supervisory Systems & Procedures Analyst in the Agency's Financial Services Center admitted that "LWOP" is the only code available in VATAS capable of capturing a non-paid holiday. She further admitted it is the Agency's policy to charge BUE an "additional day of LWOP" if they are in a non-paid status on both days immediately surrounding a federal holiday (*see* Baty email, attached).

OPM Regulations provide that "[a]ny holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the 12-week entitlement to family and medical leave." 5 CFR 630.1203(e).

Article 2 of the MCBA sets forth the requirement that the Agency comply with federal law. Article 35 of the MCBA establishes that employees will accrue and use leave in accordance with applicable statutes, OPM regulations and the MCBA. Section 16 specifically provides that BUE are entitled to 16 weeks (*viz.*, 640 hours) of LWOP during any 12-month period for certain reasons covered by the Family and Medical Leave Act ("FMLA" or the "Act"). Under the Act, only the amount of leave *actually* taken may be counted against an employee's FMLA entitlement. Notably, federal holidays do not count toward an employee's entitlement to FMLA. 5 CFR 630.1203(e).

Moreover, the Agency-wide system's flaw, and the resulting "additional day of LWOP" impacts AFGE's entire bargaining unit with regard to the accrual of creditable service and other benefits. For example, 5 USC § 8332(f) provides that an aggregate non-pay status of greater than 6 months in any calendar year is not creditable service for purposes of retirement benefits.

Violation

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

- OPM's government-wide regulations concerning the administration of leave policies and programs for VA employees;
- Article 2 of the MCBA: requiring the Agency to comply with federal law and regulations;
- Article 35 of the MCBA: entitling employees to 16 weeks of LWOP under FMLA;
- VA Handbook 5011: prohibiting the Agency from counting federal holidays against leave;
- And any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedy Requested

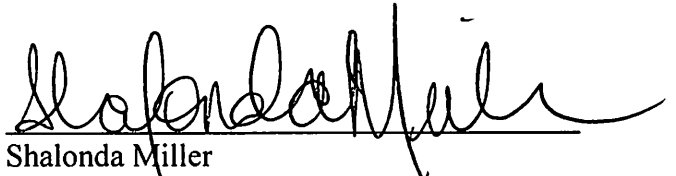
The Union asks that, to remedy the above situation, the Agency agree to the following:

- To immediately cease charging BUEs an extra day of LWOP on federal holidays;
- To collaborate with the Union to develop a mitigation plan to address the system's flaw in VATAS;
- To make whole any impacted BUE;
- To fully comply with its contractual obligations under Articles 2 and 35 of the MCBA, VA Handbook 5011, and its regulatory obligations under 5 CFR Part 630.1203; and
- To agree to any and all other remedies appropriate in this matter.

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 contact the undersigned.

Submitted by,



Shalonda Miller
Staff Counsel, National VA Council
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
shalonda.miller@afge.org

cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC

Attachment

From: Baty, Amanda
Sent: Tuesday, April 04, 2017 10:46 AM
To: Thomas Dargon
Cc: Burke, Mary-Jean
Subject: RE: Need some clarification from VATAS peeps

LWOP is the only code for no pay, and they technically are charged an additional day of LWOP as that is policy.

Amanda Baty
Supervisory Systems & Procedures Analyst
VATAS Tier 1 Support
Financial Service Center
Phone: 512-460-5569
Fax: 512-460-5507
Amanda.Baty2@va.gov



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From: Thomas Dargon [<mailto:Thomas.Dargon@afge.org>]
Sent: Tuesday, April 04, 2017 9:30 AM
To: Baty, Amanda
Cc: Burke, Mary-Jean
Subject: [EXTERNAL] RE: Need some clarification from VATAS peeps

To clarify, we are not disputing the employee's entitlement to pay on the holiday.

As I understand it, if the employee is coded in VATAS as LWOP on the day immediately prior to the holiday and the day immediately following the holiday, the employee will not receive payment for the holiday. Therefore, why would an employee also have to enter LWOP for the actual holiday? It seems like the employee is being unnecessarily charged for an extra day of LWOP.

--

Thomas Dargon, Jr.
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
thomas.dargon@afge.org

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From: Baty, Amanda [<mailto:Amanda.Baty2@va.gov>]
Sent: Tuesday, April 4, 2017 10:26 AM
To: Thomas Dargon <Thomas.Dargon@afge.org>
Cc: Burke, Mary-Jean <Mary-Jean.Burke@va.gov>
Subject: RE: Need some clarification from VATAS peeps

Thomas, I am sorry for the delay. That is the policy, that if an employee is in a LWOP status surrounding the holiday, the holiday is not entitled to pay as well so it is coded to LWOP.

Amanda Baty
Supervisory Systems & Procedures Analyst
VATAS Tier 1 Support
Financial Service Center
Phone: 512-460-5569
Fax: 512-460-5507
Amanda.Baty2@va.gov



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From: Thomas Dargon [<mailto:Thomas.Dargon@afge.org>]
Sent: Tuesday, April 04, 2017 9:05 AM
To: Baty, Amanda
Cc: Burke, Mary-Jean
Subject: [EXTERNAL] RE: Need some clarification from VATAS peeps

Amanda,

I am following-up on my 3/15 and 3/20 emails below. If I should direct further questions to another representative at FSC, please provide their contact information.

Thomas

--

Thomas Dargon, Jr.
Staff Counsel, National VA Council
Office of the General Counsel
American Federation of Government Employees, AFL-CIO
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Washington, DC 20001
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From: Thomas Dargon
Sent: Monday, March 20, 2017 11:21 AM
To: Baty, Amanda <Amanda.Baty2@va.gov>
Cc: Burke, Mary-Jean <Mary-Jean.Burke@va.gov>
Subject: RE: Need some clarification from VATAS peeps

Amanda,

I am following-up on my 3/15 email below. Please let me know if that understanding is correct.

Thomas

--

Thomas Dargon, Jr.
Staff Counsel, National VA Council
Office of the General Counsel
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From: Thomas Dargon
Sent: Wednesday, March 15, 2017 8:39 AM
To: 'Baty, Amanda' <Amanda.Baty2@va.gov>
Cc: Burke, Mary-Jean <Mary-Jean.Burke@va.gov>
Subject: RE: Need some clarification from VATAS peeps

Okay, so even though the employee is not on "leave" on a federal holiday, the VA payroll system requires that they enter LWOP that day to ensure that they remain in a non-pay status and that they do not get paid for the holiday. Is that correct?

--

Thomas Dargon, Jr.
Staff Counsel, National VA Council
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From: Baty, Amanda [<mailto:Amanda.Baty2@va.gov>]
Sent: Tuesday, March 14, 2017 3:52 PM
To: Thomas Dargon <Thomas.Dargon@afge.org>
Cc: Burke, Mary-Jean <Mary-Jean.Burke@va.gov>
Subject: RE: Need some clarification from VATAS peeps

It is not really a workaround, it is more policy. The employee is not entitled to pay during the holiday so therefore it is coded to Leave without pay. LWOP is the code that is used when an employee does not have leave available and or not entitled to pay on a particularly scheduled day. I hope that helps.

Amanda Baty
Supervisory Systems & Procedures Analyst
VATAS Tier 1 Support
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Phone: 512-460-5569
Fax: 512-460-5507
Amanda.Baty2@va.gov



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From: Thomas Dargon [<mailto:Thomas.Dargon@afge.org>]
Sent: Tuesday, March 14, 2017 2:40 PM
To: Baty, Amanda
Cc: Burke, Mary-Jean
Subject: [EXTERNAL] RE: Need some clarification from VATAS peeps

Amanda,

I do not believe that we are disputing whether the employee is entitled to holiday pay or not. Instead, the dispute is whether the employee has to enter 8 hours of LWOP on the holiday even though they are not actually taking "leave" that day because it is a federal holiday, and therefore, the VA is closed. In other words, is requiring the employee to enter 8 hours of LWOP on the federal holiday merely a payroll system "workaround" in VATAS to ensure that the employee does not get paid for the holiday?

Thomas

--

Thomas Dargon, Jr.
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From: Baty, Amanda [<mailto:Amanda.Baty2@va.gov>]
Sent: Tuesday, March 14, 2017 3:26 PM
To: Thomas Dargon <Thomas.Dargon@afge.org>
Cc: Burke, Mary-Jean <Mary-Jean.Burke@va.gov>
Subject: RE: Need some clarification from VATAS peeps

Hi Thomas,

I have attached the policy below. Employees are not entitled to holiday pay when it is surrounded by non pay status, and at that time should just be coded as LWOP they would not have to code it as FMLA-LWOP but rather LWOP is fine.

e. Holiday Benefits in Connection with Absence in Non-pay Status

(1) Employees (except full-time nurses and nurse anesthetists on the Baylor Plan) are entitled to payment for the holiday if they are absent in a non-pay status (including LWOP or AWOL) on the day immediately following the holiday, provided they were in a pay status (duty or leave) the day preceding the holiday, and provided the holiday was not included within the period of non-pay status. If the holiday was included within the period of non-pay status, payment for the holiday will not be made. Wherever possible, periods of LWOP should not be scheduled so as to begin or end on a holiday.

(2) Employees (except full-time nurses and nurse anesthetists on the Baylor Plan) in a non-pay status (including LWOP or AWOL) the day preceding the holiday will receive payment for the holiday, provided they are in a pay status (duty or leave) the next regularly scheduled workday immediately following the holiday, and provided the holiday was not included within the period of non-pay status.

(3) The provisions of subparagraphs e(1) and (2) [] also apply to in-lieu days granted to full-time non-physician facility directors, physicians, dentists, podiatrists, [chiropractors,] and optometrists.

Amanda Baty
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From: Thomas Dargon [<mailto:Thomas.Dargon@afge.org>]
Sent: Tuesday, March 14, 2017 2:02 PM
To: Baty, Amanda
Cc: Burke, Mary-Jean
Subject: [EXTERNAL] RE: Need some clarification from VATAS peeps

Amanda,

We met at the NVAC Convention in San Jose, CA back in November 2016. I received the below email from MJ Burke and had a couple of follow-up questions for you. I tried calling your office phone but could not get through, so I figured I would send a quick email.

To clarify, this employee is on LWOP for FMLA leave after the birth of a child. Is VA requiring that the employee enter LWOP on a federal holiday simply as a "payroll workaround" in VATAS to ensure that the employee does not receive holiday pay? If the employee was in a pay status, they obviously would not have to enter leave for a federal holiday, and federal holidays do not count toward entitlements for FMLA leave. In essence, it seems this employee is being required to take an additional 8 hours of LWOP that she would not otherwise have to take if she was in a pay status. If you could please provide some clarification on this issue, that would be very helpful.

Thomas

--

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From: Baty, Amanda
Sent: Tuesday, March 14, 2017 2:05 PM
To: Larkins, Leroy; Burke, Mary-Jean
Subject: RE: Need some clarification from VATAS peeps

Good afternoon Mary-Jean,

It is correct that if an employee is on LWOP (for FMLA or other) on both sides of the holiday the holiday is then also LWOP. If they have LWOP on just one side of the holiday and either regular time or type of paid leave on the other side then they can get the holiday pay. Please let me know if you have any additional questions.

Amanda Baty
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From: Larkins, Leroy
Sent: Tuesday, March 14, 2017 12:58 PM
To: Baty, Amanda
Subject: FW: Need some clarification from VATAS peeps

Can you assist with this? Thanks.

Leroy Larkins
ADAS, Financial Process Improvement & Audit Readiness
Office of Finance
Department of Veterans Affairs

-----Original Message-----

From: Burke, Mary-Jean
Sent: Tuesday, March 14, 2017 01:52 PM Eastern Standard Time
To: Larkins, Leroy
Subject: Need some clarification from VATAS peeps

Leroy

This is Mj from AFGE. I got a question from the field in regards to the VATAS program and folks with approved LWOP and holiday while on FMLA---

This is what the payroll person noted in HEC---The way I am understanding the employee was using LWOP for FMLA. The issue is what happens on the holiday ---they are forced to make it LWOP?!?--- I saw this was the case for AWOL, but, unsure why it would be the case for a HEX---

From: Jackson, Lelanie, HRC
Sent: Friday, March 03, 2017 3:52 PM
To: Frost, Autumn, HRC
Subject: RE: 2/20/17

Hi Autumn,

The easiest way I can explain is if you have LWOP on both sides of the Holiday, the Holiday is LWOP. Can you please update as timekeeping is waiting to certify.

Thank you,

*Lelanie Jackson
Supervisory Management Analyst, Health Eligibility Center – Enrollment and Case
Management
Member Services
Veteran Health Administration
Tele: 785-350-1852
Email: Lelanie.Jackson@va.gov*

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So, basically, the day is counted as LWOP day--rather than holiday excused (paid)- It should not.

I saw this in FSC comments—in regards to AWOL—attached.

Can you please give insight- as you know a holiday should not be counted against the employee entitlement under FMLA?