



# **CONGRESSIONAL TESTIMONY**

**STATEMENT BY**

**MR. DOUGLAS MASSEY  
PRESIDENT, AFGE LOCAL 17  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**BEFORE**

**HOUSE COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS**

**ON**

**“EXAMINING THE VA APPEALS PROCESS: ENSURING HIGH-QUALITY  
DECISION-MAKING FOR VETERANS’ CLAIMS ON APPEAL”**

**NOVEMBER 29, 2023**

Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee:

Thank you for inviting the American Federation of Government Employees (AFGE) to participate in today's Subcommittee Hearing entitled, "Examining the VA Appeals Process: Ensuring High-Quality Decision-Making for Veterans' Claims on Appeal." My name is Douglas Massey, and for the past seven years, I have had the honor of serving as President of AFGE Local 17, representing approximately 900 attorneys and additional support staff at the Board of Veterans' Appeals ("the Board"). On behalf of AFGE, its National Veterans Affairs Council, and AFGE Local 17, it is a privilege to offer insights to the Disability Assistance and Memorial Affairs (DAMA) Subcommittee on ways to enhance the Board's appeals process for the benefit of our nation's veterans.

The foundation of well-informed decisions, whether in the public or private sector, lies in the unique perspectives of those directly engaged in the work. This is where unions such as ours play a crucial role. As frontline employees responsible for adjudicating veterans' claims, we possess a distinct perspective on both the strengths and shortcomings of current Board procedures. My testimony today aims to highlight areas where both Board leadership and this Subcommittee can support the dedicated workforce, focusing on recruitment and retention, training, as well as workload and performance. Addressing these aspects will empower the Board's personnel to fulfill their mission of providing timely resolutions to the claims of our nation's veterans, many of whom have endured lengthy waits for final decisions.

Regrettably, recent leadership changes at the Board have introduced challenges within the organization, contributing to demoralization among our dedicated employees, with some considering leaving. The turmoil arises from decisions made by a relatively new leadership team lacking veterans law experience. These decisions include downgrading the career path for attorneys, appointing Veterans Law Judges (VLJs) lacking any experience in veterans law, providing deficient training and support for our professional staff, and imposing unrealistic quotas hindering thorough evidence examination. This confluence of factors has created a

chaotic work environment, negatively impacting the effectiveness of the Board's operations, to the detriment of the veterans we serve.

### **Downgrade of the Attorney Career Path to GS-13**

For many decades, the Board has had a GS-14 career path for attorneys. Some two years ago, however, Board leadership downgraded the career path to GS-13, which is counterintuitive from a management perspective and does not help the VA's and this subcommittee's goal of recruitment and retention of talent. Any competent executive understands the importance of competitively remunerating the highest qualified candidates for any job based on their work and abilities. Eliminating this level of growth and compensation for attorneys dissuades qualified applicants from joining the Board or choosing to stay long-term. Instead of aligning with the standards of colleagues in private practice, Board management has effectively lowered the salary cap for attorneys, widening the competitive pay gap among attorneys in the public and private sectors. We firmly believe that this Committee shares our commitment to ensuring that disability claims for veterans and their families receive the highest level of attention. We have requested Board leadership and Secretary McDonough to reconsider this shortsighted policy to attract and retain the best candidates to the Board's ranks. Neither responded. Furthermore, while this shortsighted decision only impacts new hires, it sent a strong message to the entire attorney-workforce that they are not valued.

We further propose that the Board take a more comprehensive step by creating a competitive journeyman non-supervisory GS-15 attorney position. Currently, Board attorney grades range from GS-11 to GS-14, with nearly half of decision-writing attorneys at the GS-14 level. While not all attorneys would qualify or choose to advance to a GS-15 position, establishing the possibility for 100 to 200 GS-15 attorneys would significantly contribute to long-term recruitment and retention. It is noteworthy that non-supervisory journeyman GS-15 attorneys exist within the VA Office of General Counsel, setting a precedent. Given that Board

attorneys are in the Excepted Service, it is within the Secretary's discretion to create and fill these new positions. We ask the committee to take legislative action.

### **Inexperienced Veterans Law Judges**

The decision to hire VLJs without any veterans law experience is equally disruptive and detrimental to the Board's mission. Historically, VLJs were required to possess a minimum of seven years of experience in veterans law, acknowledging the intricate nature of the work involving complex legal statutes, evolving caselaw, and nuanced medical terminology in VA disability claims. To our dismay, in February 2020, the longstanding seven-year requirement was abruptly eliminated from the VLJ hiring criteria, opening the door for appointments for those without any veterans law experience. Shockingly, over 85 percent of VLJs hired since the summer of 2021 arrived without this essential expertise, a shift that we believe is detrimental to veterans and taxpayers alike.

The data reveals a stark contrast in decision output between inexperienced VLJs and their seasoned counterparts. From **October 2021 to June 2022**, inexperienced VLJs issued an average of one to six decisions per week, while VLJs with seven or more years of experience issued between 13 and 26 decisions weekly. Extrapolating these data suggests a significant difference in outcomes, with inexperienced VLJs likely issuing approximately 3,432 decisions compared to the 14,872 decisions projected from experienced counterparts, a difference of over 11,000 decisions or more than 10 percent of the Board's annual output.

In addition to fewer decisions, attorneys complain that the inexperienced VLJs struggle with approving quality decisions, requiring that attorneys train the VLJs for whom they work. Similarly, many of the Board's experienced VLJs are now tasked with training their new inexperienced colleagues, which detracts from time they could devote to signing decisions. A VLJ's job is extremely difficult. They are already under immense pressure to review and sign at least 20 decisions per week, conduct numerous hearings, and mentor attorneys. The practice of attorneys training these inexperienced VLJs to whom they report conflicts with the Board's

longstanding policy that VLJs are charged with training and mentoring attorneys. When VLJs lack the knowledge and experience to train their attorney-subordinates, a knowledge gap results in the more junior attorney ranks. This knowledge gap will ultimately reduce the quality of Board decisions and harm veterans. As things stand, a junior attorney cannot rely on the inexperienced VLJ supervisor to answer any questions of law, and more experienced attorneys cannot engage in productive dialogue regarding complex or novel legal issues.

Furthermore, the hiring of inexperienced VLJs has demoralized attorneys because it has foreclosed promotion opportunities to these coveted positions. Some attorneys have indicated they plan on retiring earlier than expected. These complaints are also reflected in an August 2021 survey of over 200 Board attorneys in which 74 percent of respondents agreed with the statement: “The hiring of Veterans Law Judges from outside the Board has discouraged my hope of being promoted to that position.” Only 5.5 percent disagreed. This should cause alarm because more than 400 attorneys and VLJs, including probationary employees, have left the Board in just the past five years. Clearly, the Board’s new hiring practice undermines the goal that the federal government be a model employer by attracting and retaining talent.

Experienced VLJs also feel disheartened, witnessing the erosion of promotion opportunities for highly qualified attorneys they've mentored. A group of experienced VLJs felt compelled to raise awareness about these practices, advising an external law firm specializing in veterans’ benefits litigation, a move that has received coverage in Spectrum News on September 22, 2022.<sup>1</sup> The VA’s press team declined to comment on the story. Perhaps VA leadership can comment on this issue at today’s hearing. AFGE respectfully requests your assistance in resolving this important matter through your oversight and legislative abilities. Indeed, we ask that the seven-year experience requirement for entry-level VLJs be codified into law.

---

<sup>1</sup> See <https://ny1.com/nyc/all-boroughs/politics/2022/09/22/veteran-affairs-comes-under-fire-after-massive-backlog->.

## Training

The Board has also failed to provide sufficient training and support to new and experienced attorneys because of management's singular focus on the Board's overall output while failing to prioritize work product quality. The lack of training at the Board has been so severe that VLJs have reached out to me and my union colleagues for assistance. I can proudly say that for the benefit of veterans in our care, Local 17 has tried to fill the training gap left by management.

In response to a plethora of complaints and inaction by management, Local 17 initiated a special program led by Dr. Benton Komins, a steward aimed at providing tools, support, and efficiency strategies to ensure the success of decision-writing attorneys. Collectively, Dr. Komins and his team of volunteer Local 17 bargaining unit attorneys have offered individualized assistance and training to an average of 50 attorneys per year. While upper management has taken notice of Dr. Komins' successful initiative, there has been no effort whatsoever to institute an analogous program on their part. In contrast to the successful Local 17-initiated assistance project, management offered a total of two hours' mandatory training in the past year regarding the PACT Act. Notably, VBA provided its employees 15 hours of mandatory, time prorated training. The minimal PACT Act training provided by the Board stands in stark contrast to the complexity and breadth of the Act. Unfortunately, and predictably, the impacts of minimal training include decreased quality of decisions. As this subcommittee is well aware, the PACT Act introduced substantial changes to veterans law. With only two hours of training, Board attorneys and VLJs are ill-equipped to understand the nuances of this statute, significantly increasing the risk of errors and inadequate decisions for veterans seeking their rightfully earned benefits. The lack of PACT Act expertise at the Board not only denies justice to our veterans but also burdens the adjudication system with avoidable appeals and re-examinations. It further harms VA's mission by eroding the trust veterans place in VA to adjudicate their claims fairly and capably.

Insufficiently trained attorneys are more likely to require additional time to research and understand the new law, leading to delays in claim processing and a backlog of cases. This inefficiency further delays veterans' access to benefits. Faced with the challenge of applying complex legal changes with minimal training, attorneys may experience moral and professional dilemmas, contributing to the already noted issues of low morale, burnout, and high attrition at the Board.

It is imperative that the Board revises its training protocols either on its own or through a statutory mandate, ensuring that our attorneys are not only well-versed in the intricacies of new legislation but are also fully prepared to uphold the rights and entitlements of our veteran population. When doing so, the Board should also solicit the opinions of Local 17 attorneys who have already showcased an effective training program. Our veterans deserve no less than our best and most informed efforts.

### **Workload and Performance**

In examining the workload and performance of Board attorneys, it is critical to understand the continually evolving quotas and performance metrics Board attorneys face, the obstacles outside of attorneys' control and the differences between "Legacy Claims" and Appeals Modernization Act (AMA) claims, including new PACT Act claims.

The Board has made significant changes over the past several years regarding the number of cases and issues a Board attorney must complete annually. Prior to the implementation of the AMA, Board attorneys were expected to complete 125 cases a year, a pace that averaged 2.4 cases per week. Each case, regardless of the number of issues decided, carried the same weight towards an attorney's production quota. In FY 2018, the Board increased its production standards from 125 to 169 cases per annum, (or 3.25 cases per week), a 35% increase in production requirements which was overwhelming for Board attorneys. In FY 2019, the Board created an alternative measure or track of production for Board attorneys which evaluated the total number of issues decided by an attorney, regardless of the number of cases completed,

setting that number at 510 issues decided. AFGE supports the creation of this alternative metric, as it better accounts for the amount of work required to complete each case. However, we caution that measuring the number of issues can also be manipulated to create unfair metrics. Unfortunately, this manipulation appeared in FY 2020, the first full year the AMA was fully implemented, because while the case quota remained at 169, the issue quota was raised to 566. In FY 2021, the quota was changed to a more manageable but still very difficult 156 cases or 491 issues. This has remained the same through FY 2024, though upper management has actively discouraged attorneys from taking the “issues track” toward completion of the annual quota.

AFGE members and Board attorneys are not afraid of the hard work necessary to satisfy the mission of serving veterans. However, extraordinarily challenging metrics make it more difficult to meet standards, setting attorneys up for failure or forcing them to cut corners in order to meet their production goals. Chairman Jaime Areizaga-Soto recently announced that the Board-wide quota would be increasing from 103,000 appeals annually to 111,000. AFGE strongly urges the Board to lower the quota to allow sufficient time for required *de novo* review of claims files and issuance of quality decisions. The Board should in parallel continue to hire more attorneys to meet the increased production goal. AFGE truly fears that if the current quota remains, many hardworking and successful attorneys will continue to leave the Board either from overwork, inability to meet the quota, or discomfort with being forced to cut corners. Because of this, AFGE also urges this committee to request a Government Accountability Office study on the production standards of Board attorneys to determine what is feasible while retaining high quality standards.

Lastly, beyond the issues surrounding production quotas there are other concerns that should be examined by the DAMA Subcommittee. The first is the requirement that an attorney may only receive credit for a case once a VLJ signs off on the work. While in theory this may sound like a plausible requirement, considering the amount of work and burden already placed upon VLJs, this can severely hinder an attorney’s ability to timely reach his or her quota. These delays are entirely out of the attorney’s control but can prevent an attorney from meeting his/her



quota, qualifying for within grade increases, or meeting requirements for overtime eligibility. Holding attorneys accountable for VLJ-caused delays violates Article 27, Section 8, Subsection E of AFGE's collective bargaining agreement with the VA, which states "When evaluating performance, the Department shall not hold employees accountable for factors which affect performance that are beyond the control of the employee." This requirement that credit can be assigned only after VLJ signature is arbitrary and should be adjusted.

In summary, AFGE members believe that making straightforward changes to Board attorneys' compensation, promotion opportunities, training, and performance measures – together with setting minimum experience levels for VLJs – will greatly benefit the productivity and effectiveness of the Board of Veterans' Appeals. Thank you for giving me the opportunity to testify at today's hearing. I look forward to answering any questions you may have.