



CONGRESSIONAL TESTIMONY

STATEMENT BY

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BEFORE

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

ON

“PENDING LEGISLATION”

JULY 10, 2024

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

Thank you for inviting the American Federation of Government Employees (AFGE) and its National Veterans Affairs Council (NVAC) to participate in today's Subcommittee Hearing on "Pending Legislation." My name is Nicholas Keogh, and I currently serve as the Second Vice President for AFGE Local 17 which represents employees at the Board of Veterans Appeals (the Board), and as a National Representative for the NVAC. I have also proudly served as an attorney at the VA's Board of Veterans Appeals for seven years.

On behalf of AFGE and the NVAC, representing over 750,000 Federal and District of Columbia Government workers, including 304,000 employees at the Department of Veterans Affairs, it is a privilege to offer insights to the Disability Assistance and Memorial Affairs (DAMA) Subcommittee on several of the bills it is considering today with a focus on draft legislation, the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act," and several other bills that directly affect the VA workforce.

H.R. X, the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act"

The primary reason I come before the committee today is to express AFGE's strong endorsement of draft legislation known as the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act." This legislation, authored by Rep. Morgan McGarvey (D-KY) will help the Board with retention of its attorney workforce, by making the full performance level for non-supervisory Board staff attorneys Grade 15 on the General Schedule (GS-15).

As AFGE Local President Doug Massey testified to the DAMA Subcommittee in November 2023, for many decades, the Board has had a GS-14 career path for attorneys. However, in November 2021, 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 from choosing to stay long-term. Instead of attempting to remain minimally competitive with the private sector, Board management has effectively lowered the career path salary for attorneys, widening the pay gap faced by public employees. AFGE firmly believes that this Committee shares our commitment to ensuring that disability claims for veterans and their families receive the highest level of attention, and that this policy change is contrary to that goal.

At the same hearing, Mr. Massey provided additional testimony outlining the extraordinary and uncredited work that senior non-supervisory Board Attorneys take upon themselves to train newer attorneys in the absence of suitable training from Board leadership, which has helped dozens of employees improve and now thrive at the Board.

From this testimony and additional conversations with subcommittee members and staff, it is clear that members of the subcommittee do not agree with Board Leadership's penny-wise and pound-foolish treatment of board attorneys, especially considering the critical role the Board plays for veterans, the relatively small size of the Board, and the nuanced expertise required of Board attorneys. To help reverse this trend, AFGE applauds Rep. McGarvey for drafting the "Board of Veterans' Appeals Attorney Retention and Backlog Reduction Act." If enacted this bill will authorize the Board to promote non-supervisory attorneys to the GS-15 level, when appropriate. With this authority, the Board can fulfill the committee's goal of retaining senior attorneys at the Board who have institutional knowledge of the Board and expertise in veterans law. This will encourage senior attorneys to stay at the Board and not look for other GS-15 jobs elsewhere within the government, including within the VA Office of General Counsel where these jobs do exist, and potentially delay retirement. Furthermore, by making the full performance level for Board attorneys GS-15, it will also undo the Board's promotional cap on new attorneys at GS-13 and allow attorneys who meet qualifications to be eligible for promotion to GS-14. This increased retention will also benefit the Board financially by reducing expenditures on recruitment of new attorneys by reducing turnover. Most importantly, this will

help keep the most experienced and productive Board Attorneys at the Board to continue serving veterans.

In 1994, Congress took legislative action to place Board Members/Veterans Law Judges on the Administrative Law Judge pay scale. By enhancing the compensation levels of the adjudicators signing Board decisions, retention levels for Board Members significantly increased and the issue was resolved. Today, this legislation could also resolve the retention issues caused by highly qualified decision writing attorneys leaving the Board for the VA Office of General Counsel and to other agencies for greater compensation and a better work environment. The latest Best Places to Work in the Federal Government rankings issued by the Partnership for Public Service and Boston Consulting Group, released in May 2024, have the Board of Veterans' Appeals ranked at 444 out of 459 federal agency subcomponents. The Board is by far the worst rated component at all of VA. No other agency subcomponent of VA is ranked worse than 256. The VA Office of General Counsel is rated at 81. The dismal ranking at the Board reflects rock-bottom morale for Board attorneys due to unreasonable workloads, pay that is not commensurate with the complexity of veterans' law, and a disengaged and incompetent senior management team. Indeed, while the Board's ranking is 444, the effectiveness of Board senior leadership was ranked an abysmal 447 out of 458 subcomponents.

This legislation, by establishing a career path to GS 15, will fix the compensation issues which have made recruitment and retention such a challenge at the Board and will accordingly help reduce the more than 200,000 case backlog by incentivizing highly proficient and productive attorneys to stay at Board rather than leave for better opportunities.

H.R. 2971, the "Veterans Claims Education Act of 2023"

H.R. 2971, the "Veterans Claims Education Act of 2023" is legislation introduced by Rep. Peters (D-CA) that will raise awareness among veterans of the resources available to them to assist in the preparation of their claims. In particular, the bill will highlight Veteran Service Organizations which may represent claimants at no charge to help navigate the complex veterans

claims process. AFGE supports this bill and wants to highlight that the assistance VSOs provide helps veterans receive the benefits they have earned and assists VBA claims processors and Board of Veterans Appeals attorneys to be more efficient in their work. Simply put, more complete and accurate claims mean fewer deferrals, appeals, and remands.

H.R. 8874, the “Modernizing All Veterans and Survivors’ Claims Processing Act”

H.R. 8874, the “Modernizing All Veterans and Survivors’ Claims Processing Act” introduced by Rep. Valadao (R-CA) is legislation designed to expand the use of automation tools used at the Veterans Benefits Administration (VBA) and the Board of Veterans Appeals. AFGE is proud to represent employees at VBA and the Board who dedicate their careers to serving veterans and ensuring they receive the benefits they have earned. AFGE also understands the critical role that technology plays in allowing VA employees, including those at VBA and the Board of Veterans Appeals, to more accurately and efficiently serve veterans, and the technologies discussed in this bill can help achieve this goal. As this committee has over the last several years authorized the expanded use of automation tools at VBA, AFGE has urged guardrails to protect the integrity of VA’s work. Specifically, AFGE agrees with the “Sense of Congress” adopted by the whole House in H.R. 7153 of the 117th Congress, the “Department of Veterans Affairs Principles of Benefits Automation Act” introduced by then-Ranking Member Bost, stating that “Automation of claims processing should not eliminate or reduce the Veterans Benefits Administration workforce.” In turn, as the subcommittee considers this legislation today, AFGE urges that the subcommittee ensures that this technology continues to supplement and not supplant the critical VA workforce and that frontline workers receive sufficient training to learn how to use any new technological tools.

H.R. 8879, the “Improving VA Training for Military Sexual Trauma Claims Act”

H.R. 8879, the “Improving VA Training for Military Sexual Trauma Claims Act” is legislation introduced by Rep. Kim (R-CA) that will improve training to VA Claims Processors and Contract Compensation and Pension Examiners related to Military Sexual Trauma (MST). AFGE supports the intent of this legislation and has suggestions and comments that we hope are considered by the committee.

AFGE strongly supports Section 5 of the bill, which requires training for claims processors working on MST claims. MST claims are nuanced and highly sensitive and require the utmost care and understanding of both the veterans’ needs and VBA’s internal processes. However, as AFGE has previously noted to the subcommittee, VBA seldom if ever considers frontline claims processors’ input when designing such training. AFGE hopes that the subcommittee uses this legislation as an opportunity to mandate that VBA consult with AFGE, as the union representative of claims processors, to identify common problems that workers have encountered while working MST claims, how to address these issues, and to recommend best practices for claims processors who get assigned to the MST Special Operations Center. Absent that, AFGE believes that VBA will again create training that meets its bare legal obligations but does not meet the intent of Rep. Kim and the subcommittee.

AFGE also understands the intent of Sections 2 and 4 to train contract disability examiners conducting MST examinations to improve sensitivity and quality and prevent additional trauma. If contractors are going to perform these exams, veterans will benefit from this training. Over 90% of disability exams are currently performed by contractors. Exams performed by contractors cost more than exams performed by VA employees, and the

contractors, irrespective of additional training, do not have the same familiarity and understanding of veterans and their specific needs as do VA employees. Considering the sensitive nature of MST claims and exams, AFGE would urge the committee that disability exams, particularly specialty exams such as MST exams, should be performed exclusively by VA examiners, which will also reduce the number of remands due to inadequate medical opinions provided by contracted examiners.

H.R. X, the “Rural Veterans” Improved Access to Benefits Act of 2024”

The “Rural Veterans Improved Access to Benefits Act of 2024” is draft legislation that proposes several changes to the VA’s authorities related to contracted disability exams. AFGE is proud to represent the VA’s inhouse disability examiners and has comments on several of the provisions in this legislation.

Sections 2 and 3 of the bill make permanent the pilot program that has authorized contract disability exams. As this pilot program has been in existence since 1996, and been unrestrained since 2017, officially ending the pilot program and making this authority permanent appears as a pro forma move, notwithstanding any budgetary effects. Regardless of whether this program continues as a pilot or is made permanent, AFGE opposes the VA’s continual shifting of disability exams away from VA employees to more expensive and less qualified contract examiners. Furthermore, in this bill, the cost of funding contract examiners continues to come from the VBA’s budget (as it does under the current pilot program). AFGE feels this structure undermines VA’s internal exam capacity, by cynically encouraging VHA to stop investing in inhouse employee examiners. Under current law, when a veteran needs an exam, VBA first checks if VHA has an examiner available. If VHA does not have an available examiner, VBA

uses a contractor. However, as VHA pays for the in-house examiners and VBA pays for the contractors, VHA has little incentive to use its budget to hire examiners if it knows that VBA will pick up the cost of the contract exam. This structure promotes outsourcing and ends up costing the taxpayers far more than simply investing in VHA's inhouse exam capacity. AFGE recommends that this bill be coordinated with Section 3 of the Tester-Tillis-King "Medical Disability Exams Improvement Act" (S. 2718). Specifically, Section 3 of the bill moves the funding of VHA inhouse examiners to VBA's budget. By making this change, VBA would then have the incentive to hire more internal disability examiners, lessening VBA's reliance and expenditures on more costly contract examiners. AFGE believes the draft bill should not advance without this additional language.

Section 2 of the legislation also addresses the eligibility of personnel who may perform contract disability exams for veterans. AFGE is concerned that the bill uses an expanded definition of the medical that could be used beyond the bill's intent of allowing specific professionals who are currently ineligible to perform exams eligible in the future. AFGE urges that the committee ensure that appropriate oversight is used on these contractors to ensure that contractors meet these obligations and have the correct medical professionals performing the exams veterans require, and clearly report this information to the committee as the bill requires.

Thank you for the opportunity to testify today and present AFGE's views on these bills. I look forward to answering your questions.