



**OFFICIAL STATEMENT OF
COL. GILBERT L. PATTON, U.S. Air Force (Ret.)**

**BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY**

**ON
"EXAMINING THE FUTURE OF WORKFORCE
PROTECTIONS FOR SERVICEMEMBERS"**

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The Reserve Officers Association of the United States, now doing business as the Reserve Organization of America, is a military service organization incorporated under Internal Revenue Service Code section 501(c)(19), and comprising all ranks of servicemembers, veterans, and family members of our nation's eight uniformed services separated under honorable conditions.

ROA was founded in 1922 by General of the Armies John "Black Jack" Pershing, during the drastic reductions of the Army after World War I. It was formed to support a strong national defense and focused on the establishment of a corps of reserve officers who would be the heart of a military expansion in the event of war. Under ROA's 1950 congressional charter, our purpose is unchanged: To promote the development and execution of policies that will provide adequate national defense. We do so by developing and offering expertise on the use and resourcing of America's reserve components.

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DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Reserve Officers Association of the United States, now doing business as the Reserve Organization of America, has not received any grants, contracts, or subcontracts from the federal government in the past three years.

CURRICULUM VITAE

Colonel Gilbert L. Patton retired in May 2019 after 31 years of combined enlisted and commissioned service in the United States Air Force. Colonel Patton most recently served as Vice Commander, 171st Air Refueling Wing, Coraopolis, Pennsylvania. In that leadership role, he expertly assured the readiness and employment of 1,260 Airmen assigned to 19 squadrons within the Wing, the Wing's sixteen KC-135T aircraft, and both fixed and deployable air traffic control facilities at Johnstown-Cambria County Airport. Colonel Patton was commissioned in 1992 from the Academy of Military Science. He completed undergraduate pilot training at Columbus AFB, Mississippi in 1993 and is a distinguished graduate of the KC-135A Combat Crew Training School, Castle AFB, California.

STATEMENT

Chairman Van Orden, Ranking Member Levin, and distinguished members of the House Committee of Veterans' Affairs Economic Opportunity Subcommittee, on behalf of the congressionally chartered Reserve Organization of America (ROA), thank you for the opportunity to participate in this oversight hearing entitled "Examining the Future of Workforce Protections for Servicemembers."

Throughout my 31-year career as an Air Force officer, I have transitioned countless times between several active and inactive duty statuses in service to our nation, both in the homeland and abroad, and in peace and war.

It is a privilege to share not only my insights as a recently former member of the reserve force, but also to emphasize the importance of the Uniformed Services Employment and Reemployment Rights Act in enabling military preparedness, fortifying the integrity of a reserve component member's dual-career path (and by extension, financial readiness), and ensuring national security.

After the Cold War, and even more extensively after September 11, 2001, national security doctrine and military policy shifted away from a strategic reserve force structure in favor of an operational reserve force structure, wherein uniformed members are expected to be "called up" frequently and repeatedly throughout their military reserve careers.

Some low-density, high-demand military capabilities of the past three decades have existed exclusively in the reserve components, either due to their high overhead costs when not needed for deployment and/or because they require skills for which our reserve component members receive much of their specialized training and experience within their civilian-sector careers.

For the nation to maintain military readiness and the sustainability of our operational reserve force, and the ability of reserve component members to rapidly and repeatedly transition in and out of uniform (to fulfill specialized military training and operational requirements), Congress must ensure that the door between each member's military and civilian responsibilities (to both their employers and families) swings both ways.

To that end, in 1994, Congress enacted USERRA to ensure the availability, readiness, and sustainability of the "newly" operationalized reserve force. Further, Congress charged the U.S. Secretary of Labor (through the Veterans Employment and Training Service, DOL VETS) with being the first line of defense to assure that our servicemembers' employment and reemployment rights are investigated and fully provided for in accordance with the law.

But going back to at least 2007, as evidenced by multiple Government Accountability Office investigations and as testified before the Senate Committee on Veterans' Affairs, the Department of Labor has "fail[ed] our service men and women in their administration of USERRA."¹

¹ Senate Committee on Veterans' Affairs Hearing 110-403, p. 57 of transcript

Upon hearing that testimony from GAO, members of that committee concluded that the fundamental failings of DOL VETS are the result of a “cultural” problem that ROA believes still pervades within the agency.²

In addition to ROA’s recent and first-hand experiences in attempting to assist distressed reservists in their often-mishandled USERRA cases, the record would indicate that DOL VETS’ failures in performance are systemic.

As such, in now “Examining the Future of Workforce Protections for Servicemembers,” we must first examine the present. Congress *must* ensure that any enhancements to USERRA are built first upon a foundation on which servicemembers’ rights and protections (under the current law) are being fully and properly pursued and fulfilled. But that foundation is currently broken, and any legislative enhancements built upon it risk the same fate of mediocrity and underperformance.

In fact, during an exit meeting with the outgoing assistant secretary of veterans employment and training (during the final days of the preceding administration), the assistant secretary shared with ROA leadership his concerns that there is still room for improvement in the agency’s culture and accountability in the service of veterans’ USERRA rights.³

A senior Air Force officer once mentored me, “you get what you inspect; you get what you measure.” Therein lies the first substantive solution to addressing the long-term, systemic shortfalls of DOL’s execution and oversight of USERRA.

ENHANCED REPORTING

Current law requires DOL to report the number of USERRA complaints it receives each year, the number of cases it substantiates, and the number of cases that are referred to the U.S. Department of Justice or the Office of Special Counsel, as appropriate.⁴

This data is merely transactional. And while it may serve to demonstrate the task load of USERRA complaints processed by DOL VETS for budgetary purposes, it does not provide any indicators as to the accuracy or the completeness of how the complaints were processed.

Whereas DOL VETS’ own internal *USERRA Operations Manual* establishes procedures for the conduct of closed-case reviews, ROA urges Congress to amend Section 4332 of USERRA to require the Secretary of Labor to additionally report the number of closed-case reviews conducted in each reporting period, the number of disposed cases found to have been originally closed by DOL VETS with substantive errors that affected a veteran’s rights and relief under USERRA, and summaries of every case that DOL VETS disposed of by deeming it without merit, and for which a court or other federal agency subsequently affirmed the merit of the veteran’s complaint.

² Senate Committee on Veterans’ Affairs Hearing 110-403, p. 16 of transcript

³ Comments by then-Assistant Secretary John Lowry, made in person during a December-2020 meeting with key National Staff of the Reserve Organization of America

⁴ 38 U.S.C. § 4332(b)(1)(A)

Further, ROA requests that Congress direct GAO to study DOL VETS' performance of its statutory responsibilities under USERRA, the scope of which should specifically include the previous deficiencies as identified in numerous earlier GAO reports and DOL Office of Inspector General findings.

The desired end state of this study is better measurement of the capability and preparedness of DOL VETS to uphold its statutory obligations to servicemembers under USERRA, identification of potential challenges DOL VETS faces in ensuring compliance with USERRA, and provision of recommendations that would improve USERRA enforcement.

MODERNIZE PERSONNEL MANAGEMENT PRACTICES AND UPDATE REGULATIONS

Whether the role of USERRA investigations remains within DOL VETS or is migrated to another government agency, such as the Department of Veterans Affairs, it *must* be further professionalized.

DOL VETS' USERRA investigators complete three online courses and eight and a half days of classroom training.⁵ DOL's regulations (as outlined under 20 CFR §§ 1002.1 – 1002.314) for implementing USERRA law are the primary bases for training and providing references to DOL investigators (personnel charged with preserving the USERRA rights and benefits of veterans), rather than the USERRA law itself.

However, these regulations (the primary references provided to DOL investigators in the *Manual*) were last promulgated in 2005 and are now ***13 years out of date*** with the most recent amendments to USERRA.

ROA firmly believes DOL should be compelled to update its regulations on a more regular basis to ensure investigators and staff are consistently trained on up-to-date USERRA provisions to completely fulfill their statutory responsibilities under USERRA.

Specifically, DOL's regulations:

- Explicitly contradict current USERRA law in terms of veterans' wage and salary protections.⁶
- Completely omit provisions of USERRA law that were added by Congress in 2010 to protect veterans' jobs and benefits when their employer is succeeded because of a merger that occurs during the veteran's USERRA-protected military service.⁷

⁵ Obtained from DOL VETS National Veterans' Training Institute, March 4, 2023

⁶ 38 U.S.C. § 4302(2) vs. 20 CFR § 1002.5(b)

⁷ 38 U.S.C. § 4303(4) vs. 20 CFR § 1002.5(d)

- Omit numerous statuses of uniformed service for which USERRA has been amended (to include legal protections of employment and benefits as a result of that uniformed service).⁸
- Fail to provide for the protection(s) afforded under USERRA to reservists who are involuntarily ordered to active duty for domestic emergencies.⁹
- Fail to provide the protections of USERRA law to veterans performing involuntary active duty in preparation for planned deployments.¹⁰

And yet, these are the regulations that DOL trains its investigators on and often processes veterans' USERRA complaints in accordance with.

ROA has published nearly 2,000 USERRA law reviews on its Servicemembers Law Center to help educate both servicemembers and employers on the intricacies and practicalities of USERRA. Submitted separately in support of this written statement is Law Review 21033, *DOL USERRA Regulations Need To Be Updated*. The submission describes these regulations in greater detail.

The *Manual* is an overarching compilation of the agency's administrative procedures and standards by which its handling of a USERRA complaint materially affects the proper disposition of a veteran's rights under USERRA.

Under federal FOIA law, each agency of the federal government shall make available for inspection by the public "administrative staff manuals and instructions to staff that affect a member of the public."¹¹

Despite this, the agency has invoked an exemption¹² to avoid the release of the *Manual* (in whole or in part) based on the assertion that the *Manual* is compiled for "law enforcement purposes" and that its release "would disclose guidelines for law enforcement investigations or prosecutions" such that, if disclosed, "could *reasonably* be expected to risk circumvention of the law."

There is nothing known by ROA to be contained within the *Manual* that could remotely (or "reasonably") provide an advantage to any party trying to circumvent a USERRA investigation or the law.

Rather, the *Manual* is the sole standard of administrative procedures by which a member of the public can be assured that DOL VETS and its staff have acted accountably in the performance of their statutory responsibilities under USERRA.

⁸ 38 U.S.C. § 4303(13) vs. 20 CFR § 1002.5(l); 38 U.S.C. § 4303(16) vs. 20 CFR § 1002.5(o); P.L. 116-315, which added protections for National Guard members when performing state active duty, vs. the explicit contradictions of DOL's 20 CFR § 1002.57; P.L. 116-259, which added protections to service in the Commissioned Corps of the National Oceanic and Atmospheric Administration, vs. the explicit contradictions of DOL's 20 CFR § 1002.62

⁹ P.L. 114-92, 129 Stat. 726

¹⁰ 20 CFR § 1002.103 omits the provisions of 38 U.S.C 4312(c), as amended by P.L. 114-92, 129 Stat. 726

¹¹ 5 USC § 552(a)(2)(C). This subsection is part of the Freedom of Information Act (FOIA).

¹² 5 USC § 552(b)(7)(E)

From ROA's perspective, DOL VETS is hiding its administrative procedures behind FOIA exemptions to avoid transparency and accountability. As such, ROA urges DOL VETS to immediately make the *Manual* public in its entirety to ensure its processes and procedures are truly aligned with the text and intent of USERRA.

CONCLUSION

ROA appreciates the opportunity to offer our expertise and insight on how to improve USERRA oversight, execution, and enforcement to protect the employment and re-employment rights of reserve component servicemembers nationwide.

ROA is invested in ensuring the readiness and sustainability of our reserve components, strategic and operational. Congress enacted USERRA to ensure the same outcomes.

ROA believes that a more collaborative and transparent relationship with DOL VETS would better serve reserve component servicemembers and their employers. By addressing the many deficiencies identified herein and, even more fundamentally, the underlying culture that has allowed these deficiencies to become systemic, ROA is confident the integrity of USERRA can be upheld.

All too often military and veterans' law and policy are developed without an understanding of or appreciation for the important distinctions between reserve and active duty service. The members of the Reserve and National Guard invariably lose out. And so, too, their families. That means America's military readiness loses out. *We cannot afford that loss.*

ROA extends its sincerest gratitude for this hearing and stands ready to provide added support on the issues covered in this statement and on other areas of mutual interest.



BIOGRAPHY



UNITED STATES AIR FORCE

COLONEL GILBERT L. PATTON

Colonel Gilbert L. Patton retired in May 2019 after 31 years of combined enlisted and commissioned service in the United States Air Force. Colonel Patton most recently served as Vice Commander, 171st Air Refueling Wing, Coraopolis, Pennsylvania. In that leadership role, he expertly assured the readiness and employment of 1,260 Airmen assigned to 19 squadrons within the Wing, the Wing's sixteen KC-135T aircraft, and both fixed and deployable air traffic control facilities at Johnstown-Cambria County Airport.

Colonel Patton was commissioned in 1992 from the Academy of Military Science. He completed undergraduate pilot training at Columbus AFB, Mississippi in 1993 and is a distinguished graduate of the KC-135A Combat Crew Training School, Castle AFB, California.

Colonel Patton is a Joint Qualified Officer (DOD Level III) who has commanded operational deployments in 109 countries under the control of the Commander, United States Special Operations Command. Additionally, he is appointed by the Secretary of the Air Force as a Regional Affairs Strategist, with designated specialty in Latin America, as well as with substantial experience in the former-Soviet republics of the Caucasus and Central Asia. He has served in joint assignments both as a personnel officer and as a headquarters-level comptroller.



Colonel Patton previously commanded the 171st Operations Group and, while operationally deployed overseas, the 506th Expeditionary Air Refueling Squadron.

EDUCATION

1991 Bachelor of Science, Aeronautical Science, Embry-Riddle Aeronautical University
1993 KC-135A Combat Crew Training School (Distinguished Graduate)
1998 C/KC-135 Central Flight Instructor Course
1998 Master of Science, Management, Embry-Riddle Aeronautical University
2005 Planning, Programming, Budget, & Execution (PPBE) Course, Headquarters USAF
2007 Air Command and Staff College, Air University
2008 Air War College, Air University
2009 Lean Six Sigma Black Belt Course, IBM Corporation
2010 State Partnership Program State Director's Course, Defense Institute of Security Assistance Management
2011 Inter-American Defense College, Organization of American States
2011 Central Asia and Caucasus Regional Course, National War College
2011 Advanced Joint Professional Military Education, Joint Forces Staff College
2012 Master of Defense & Security Strategy, Academia Nacional de Estudios Políticos y Estratégicos, Ministry of National Defense, Republic of Chile
2012 Financial Manager Course, Army National Guard Professional Education Center
2013 Enhanced Defense Financial Management Training, American Society of Military Comptrollers
2015 Safety and Accident Investigation Board President Course, Air Force Safety Center
2015 Senior Officer Legal Orientation Course, The Judge Advocate General's School
2015 United States Air Force Operations Course for Group Commanders
2015 Senior Leader Mission Generation Course, Air University

ASSIGNMENTS

1. August 1987 – May 1990, Enlisted, United States Air Force Reserve
2. August 1991 – April 1992, Pilot Trainee, 170th Air Refueling Group, McGuire AFB, N.J.
3. April 1992 – April 1993, Student, Undergraduate Pilot Training, Columbus AFB, Miss.
4. May 1993 – September 1993, Student, KC-135A Combat Crew Training School, Castle AFB, Calif.
5. September 1993 – August 1995, KC-135E Pilot, 150th Air Refueling Squadron, McGuire AFB, N.J.
6. August 1995 – June 1998, C-135B & KC-135E Aircraft Commander, Detachment 2, 108th Air Refueling Wing, McGuire AFB, N.J.
7. June 1998 – December 2002, C-135B & KC-135E Instructor Aircraft Commander, 150th Air Refueling Squadron, McGuire AFB, N.J.
8. December 2002 – February 2004, Personnel Officer and Reserve Force Officer, Selective Service System (joint assignment), Waterford, Mich.
9. February 2004 – July 2005, Air Tasking Order Coordinator, 112th Air Operations Squadron, State College, Pa.
10. July 2005 – June 2007, Special Operations Forces/Mobility Programmer (and C-32B pilot), Headquarters, United States Air Force, Washington, D.C.
11. June 2007 – July 2010, Chief, Program Integration Branch (ANG) (and C-40C pilot), Headquarters, United States Air Force, Washington, D.C.
12. July 2010 – June 2011, Student, Inter-American Defense College, Fort Lesley J. McNair, Washington, D.C.
13. June 2011 – September 2014, Chief, Resource Oversight Division, Comptroller (joint assignment), National Guard Bureau, Arlington, Va.
14. September 2014 – March 2018, Commander, 171st Operations Group, Coraopolis, Pa. and, while deployed, Commander, 506th Expeditionary Air Refueling Squadron, Andersen AFB, Guam
15. March 2018 – April 2019, Vice Wing Commander, 171st Air Refueling Wing, Coraopolis, Pa.

FLIGHT INFORMATION:

Rating: Command Pilot

Military Flight Hours: More than 10,900

Military Aircraft Flown: C-32B, C-40C, C-135B, KC-135A/E/R/T, T-37B, T-38A

MAJOR AWARDS AND DECORATIONS

Legion of Merit

Defense Meritorious Service Medal

Meritorious Service Medal with one oak leaf cluster

Air Force Commendation Medal with one oak leaf cluster

Joint Service Achievement Medal

Combat Readiness Medal with four oak leaf clusters

National Defense Service Medal with one bronze star

Global War on Terrorism Service Medal

Armed Forces Service Medal with one oak leaf cluster

Humanitarian Service Medal

Nuclear Deterrence Operations Service Medal

Armed Forces Reserve Medal with 'M' Device

Pennsylvania Maj Gen Thomas R. While, Jr. Medal

Pennsylvania Gen Thomas J. Stewart Medal with two oak leaf clusters

New Jersey Commendation Medal

EFFECTIVE DATE OF PROMOTION

Second Lieutenant April 9, 1992

First Lieutenant June 3, 1994

Captain July 12, 1996

Major July 12, 2003

Lieutenant Colonel Nov. 30, 2007

Colonel Dec. 17, 2011