

July 13, 2018

Investigations Unit

VA House Oversight Committee

Subject: VA Issue Paper regarding current state of whistleblower protections as interpreted by VA agency leadership, now expanded to other agencies by Executive Order for presentation at the Whistleblower Hearing.

Prior to the Accountability Act of 2015 and the Accountability and Whistleblower Protection Act of 2017, whistleblowers were protected under a myriad of Federal laws including the Whistleblower Protection Act of 2012 and related laws prior stemming from the Civil Service Reform Act of 1978 and beyond. None of these laws have been effective in protecting the employee-whistleblower from leaders who choose to retaliate because leadership is not held accountable. The act passed by Congress in 2015 was for a noble cause, to allow agency leadership (VACO) to fire incompetent and corrupt Senior Executives (Directors) with limited timeframes. Agency leadership, due to lack of HR knowledge wanted unchecked power to fire SES personnel without due process procedures and to do it quickly and often for non-meritorious reasons. A simple embarrassment by a senior leader could often result in removal if the agency headquarters knew how to frame the charges. They did not know how and often began with a cover-up or knee-jerk reaction. There was also a desire to keep SES personnel from organizing themselves into a protective organization as employees did with collective bargaining. A case in point was the Phoenix VA Scandal. The agencies involved spent millions of taxpayer dollars (IG, VA, FBI) for investigations because they wanted to sweep the corruption under the table and to change the public perception of the damages and deaths inflicted on Veterans by local leaders who had no interest in providing quality care to veterans only in their own career progressions and rewards. Employees who vocalized examples of poor care were systematically fired for pretextual reasons and God help the individual who exercised their first amendment rights to speak with the media in an off duty status as the agency leadership quickly moved to end the employees career and licensure/credentials negating any possibility for future employment or meaningful work.

In the Phoenix example, VACO and watchdog groups made every effort to sweep wrongdoing by local leadership to insulate the government against patient malpractice suits and employee settlement claims. Because of the continuing media and public scrutiny did not subside they removed the Director with a felony charge for non-disclosure of gifts (monies and trips) from a contractor and former VACO leader. To do otherwise would have exposed corruption all the way to the Deputy Secretary who was later terminated for covering up facility and patient care issues. Patient claims were quietly settled as were many employee claims under the watchful eye of than Deputy Under-Secretary, David Shulkin. Also to squelch the anger and disdain of employees, patients, Congress and the public, VACO leadership attempted to fire three other leaders at Phoenix, but failed to do so within established regulations and with proper due process procedures. Dr. Shulkin disavowed any wrongdoing to Congress and the media while attempting to proceed quietly with firing of the officials. He also attempted to replace officials at the facility and the VISN with individuals who had worked and or trained with the former Director. These moves were anticipated and exposed on five occasions resulting in the termination of the interim appointee and in one case, the proposed appointee for a VISN Director

position rescinded his application after an article by the Arizona Republic exposed his relationship to the former Phoenix Director. The officials were eventually fired, however, their appeals kept funds needlessly flowing to the officials and the Director's Appeal is still waiting for review. These actions resulted in millions of dollars more of taxpayer monies being wasted. Congress has been made aware of these actions, both republican and democrats, as was President Trump and President Obama. The only action taken was by Congress and President Trump to appoint David Shulkin as Secretary of the VA and to pass the Act of 2015 and 2017. Shulkin next appointed Peter O'Rourke to head the OAWP office in VACO and Steve Young, as the Deputy Under-Secretary. Young was one of the interim appointees at Phoenix who was exposed for his tutelage under the Phoenix Director and his attempts to ignore the real issues at Phoenix and was subsequently terminated.

Accident, collusion or criminal conspiracy? Be advised it is no accident that the federal government attempts to cover-up corruption. As whistleblowers, you have seen their calculated and unchecked efforts to do so. Every effort is made to blame the whistleblower, the attorneys or the media, rather than address leadership accountability. If the regulations and merit principles do not allow the agency leadership or the VACO leaders to take unscrupulous actions devoid of merit, leaders can reorganize. As an example Human Resources which used to be centralized to VACO with a strong allegiance to OPM was de-clawed by agency leadership beginning in 1983 with President Reagan's reduction of OPM staff by 33%. HR has since been bounced around like foster care and relegated to an advisory function only. Initial alignment of EEO, IG and General Counsel also subordinates agency watchdogs to perform as leadership wants, whether leadership is righteous or corrupt. A recent example is O'Rourke's retaliatory message to Michael Missal, Inspector General of the VA as reported by the Washington Post. Missal is attempting to review employee complaints and is being threatened for doing so and for reports he did against Shulkin. Shulkin was O'Rourke's friend and Chief of Staff. He was put in the position to protect Shulkin as was Steve Young. Another example is the role of OSC. Examine their budget and caseload. Too little to carry out their mission. This is purposely done to declaw the OSC. Carol Lerner was an accomplished attorney, but was not reappointed because of her honesty about retaliators/senior leadership. She should have been reconfirmed to her position with OSC.

Collusion is common in VA. Leaders collude frequently to thwart employee attempts to report wrongdoing, retaliation and discrimination. We have repeatedly received information from insiders on how Shulkin and O'Rourke, along with local leadership, colluded to get agency info on employees and had their emissaries, Wells Werden and Brandon Coleman, seek out employee info and then collectively conspire with agency leadership to fire the whistleblower. This occurred at the Marion, Indiana VA (Northern Indiana VA Health Systems) and in the VISN 6 Network Office.

In Marion, the whistleblower (an African- American female Veteran and physician) expressed concerns regarding the excessive prescribing of controlled substances (opiates, benzodiazepines), the repeated VA Choice and non-VA Care consult delays, failures in scheduling, and the cover-up by executive leadership of patient care gaps which eventually resulted in a death of one Veteran and the hemiparesis of another was met by Northern Indiana VA leadership with a brutal campaign to discredit and malign the physician. OAR investigator Wells Werden rubber stamped the VA version of events which allowed Northern Indiana to strip the physician of her job, her retirement, her access to COBRA then reported her to the National Practitioner Data Bank, state medical boards. This dedicated employee was removed from federal service August 30, 2017 and has been unemployed due to Northern Indiana's very long arm of retaliation: providing very negative references, challenging her application for

unemployment benefits, refusing to release her VetPro file to any employer and using the VA's financial position in the community as an endless restrictive covenant which has successfully blocked future employment. These actions were not extended to the physicians whose poor care resulted in the spastic hemiparesis of one Veteran (and current Tort case), the death of another and a prolonged ICU stay for another due to aspiration pneumonia. Corrupt VA leadership frequently tags whistleblowers as poor performers or providers of poor care in order to justify the retaliatory actions.

In VISN 6, the Network Director was retaliating against the Deputy Network Director and used O'Rourke to draft the removal when the local Regional Counsel refused based on lack of evidence. The VISN 6 Network Director also conspired with Steve Young, Deputy Under-Secretary to act as a deciding official in the removal based on the fact she had a pre-existing and longstanding personal relationship with him at work and outside of work. They have since put the action on hold since it was reported to OSC. OAWP did not investigate the claims by employees as empowered to do until after The Network Director visited O'Rourke and confessed. Now OAWP is looking to cover-up the collusion. West LA is another example of abuse by Director, Ann Brown and Scotte Hartronft, Chief of Staff and Peter O'Rourke, Acting VA Secretary. Efforts were made by Brown to retaliate against a former whistleblower and surgeon at West LA, by subjecting him to continued harassment and a sham AIB, staffed with an individual from Phoenix. The board was a bogus sexual Harassment allegation that the agency knew to be bogus. O'Rourke had been hosted at the facility by Brown just prior to the board being convened. In still another matter at West LA, an Associate Director and personal drinking buddy of Ann Brown, blatantly sexually harassed the Chief of Police and Ann Brown failed to act quickly and definitely to stop the harassment. As the facility EEO Officer, she should have advised the employee to contact EEO. She did not. Rather, she contacted OAWP (O'Rourke) and inappropriately asked for an OAWP review of the matter. The OAWP interviewed the victim and harassed the victim to say it was a consensual relationship. After I complained to OAWP, EEO and Ann Brown, the agency removed the Associate Director and then asked the victim to testify for the agency before MSPB.

The newest game put into effect by former Secretary Shulkin and maintained in place by Acting Secretary, Peter O'Rourke, and Deputy Secretary, Steve Young is to limit facilities to \$5000 pay-outs in settlements. Settlements higher than \$5000. Go to VACO to be delayed. Even court ordered settlements are delayed which further prolongs justice under the No Fear Act and violates the Legislative intent of the action. Consolidating power, as has been done under the acts of 2015 and 2017, has only increased VA's ability to further threaten and abuse whistleblowers and is tantamount to providing bank robbers the keys and combinations to banks. Common sense should dictate that you do not provide corrupt leadership in VA, or any other agency, more power to abuse whistleblowers. VA (OAWP) has recently prepared an annual report to Congress (attached). Note that the report does not delineate how many SES personnel were removed for retaliation activities, nor does it signify how many were reassigned to higher level jobs. The report is also silent on how many of the employees removed were whistleblowers. Leaders who are found to have retaliated should be criminally prosecuted, not rewarded with a promotion as was done with Scotte Hartronft, Chief of Staff, West L.A. and considered for promotion as was done with Ann Brown, Director, West L.A. and Kari Blackwell, Associate Director, West L.A. VA's "whack-a-mole" practice of putting corrupt leaders in new, and often, higher positions maintains the status quo of retaliation and corruption in VA. Definitive, decisive and strong action to correct improper actions by leadership is the only way to rid VA of corrupt leadership. That was the original intent of the Accountability Act, as promised by two administrations, but it has been watered down by the 2017 changes and the fact that the

administration of the act was left in the hands of the corrupt few.

The VA administrations have promised veterans better care by private sector entities after much foot-dragging and resistance. They next stone-walled the process by alleging IT issues and tried to get funds reprogrammed from Choice accounts to medical care accounts. The next obstacle created by VA to avoid compliance was not to pay veterans private sector bills timely so private sector facilities would refuse to serve veterans. It was also an attempt to realign veterans to VA where untimely service could now be perceived as better than no service and patient billing and credit issues.

The matters I have used as an example exceed collusion and rise to the level of a criminal conspiracy where they intentionally thwart employees' rights as codified in statute such as Weingarten and employees' constitutional rights to due process and access to evidence, as well as, numerous others such as fabricating evidence and depriving individuals of their property interests in federal employment, levying false and unfounded charges, discrimination and retaliation. These matters should be processed as criminal acts and I have suggested such to U.S. Attorney General Jeffrey Sessions and to VA Inspector General Michael Missal. The result of doing so will insure that leadership is held accountable for criminally conspiring to deprive employees of their legal rights and stop the abuse of the 2015 and 2017 Accountability Acts by VA and the OAWP. Granting authority to leadership to thwart protected union rights, to oversight whistleblowers under EEO, IG, HR and OSC is antithetical to the purpose of oversight functions and allows for greater abuses of authority and will result in greater frequency of occurrences of workplace violence. To further right the above abuses by VA, all investigations, (including AIB'S), settlements and judicial reviews of complaints should be reviewed by the Department of Justice after review by the VA IG. To fund these changes in IG and DOJ, staff funding should be realigned from the Office of General Counsel, VACO Administration and the OAWP. This action will better serve veterans and employees and reduces senior leader's ability to continue to corrupt the VA.

Respectfully,

Original Signature/Roger G. French

Roger G. French Executive Director of Human Resources, VAPSHCS-Retired Consultant FCC  
Consulting/Employee Relations