



The voice of career federal executives since 1980

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July 16, 2019

The Honorable Chris Pappas
Chairman
Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
Washington, DC 20515

The Honorable Jack Bergman
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
Washington, DC 20515

Dear Chairman Pappas, Ranking Member Bergman, and Members of the Subcommittee:

On behalf of the Senior Executives Association (SEA) – which represents the interests of career federal executives in the Senior Executive Service (SES), those in Senior Level (SL), Scientific and Professional (ST) and equivalent positions and other senior career federal leaders, including those at the Department of Veterans Affairs – I write to provide additional information for the Subcommittee on Oversight and Investigations Oversight Hearing: Learning from Whistleblowers at the Department of Veterans Affairs.

It is SEA's firm belief that whistleblowers play a vital role in reducing waste, fraud, and abuse within the civil service, and we have supported every federal whistleblower law since the passage of the original Whistleblower Protection Act of 1989. Ensuring whistleblowers are protected from reprisal and comfortable coming forward has been a priority for this Committee, and SEA applauds this attitude.

Unfortunately, the VA office created to protect whistleblowers, the Office of Accountability and Whistleblower Protection (OAWP), has done the opposite, and laws passed to encourage whistleblowers to step forward have failed some of the Department of Veterans Affairs' most dedicated civil servants. **SEA fears that the behavior of OAWP officials highlighted by the VA senior executive whistleblower disclosures enclosed with this letter represent an endemic problem within OAWP that only Congress can remedy with appropriate oversight and statutory reform.**

As noted in the whistleblower disclosure provided to Committee leadership by SEA member Leslie Wiggins, Network Director of VISN 7, and again via this letter, OAWP conducted five investigations into Wiggins over the course of more than a year and pressured senior management to fire her. VHA Management did not agree with OAWP's recommendation to propose the termination of Ms. Wiggins.

Eventually, after failing to convince VHA management to propose the termination of Wiggins, OAWP convinced Wiggins' boss to propose a 5-day suspension. Wiggins' legal counsel then received a copy of the supporting evidence file which OAWP had provided the Proposing Official in Wiggins' case. Upon review, they realized that the file had clearly been tampered with, a federal criminal violation (18 U.S.C. § 1512, 1519) which carries a twenty-year maximum prison sentence. The tampering was that OAWP officials had removed exculpatory evidence from the evidence file it presented to the Proposing Official.

Wiggins' legal counsel provided the Deciding Official with the *complete* evidence file and informed the Deciding Official of OAWP's apparent criminal conduct. Not surprisingly, the Deciding Official found that the charges against Wiggins were unsubstantiated.

Just days after Wiggins' case was decided and Wiggins reported OAWP's criminal conduct, OAWP notified Wiggins of two more OAWP investigations.

This sequence of events show that the office designed to protect whistleblowers from retaliation acted contrary to the principle of their duty by retaliating against a civil servant who uncovered and disclosed OAWP's own unlawful conduct. OAWP has created a climate in which whistleblowers are meant to fear the office that is meant to make them feel protected.

Wiggins reported OAWP's evidence tampering to Congress on May 10, 2019. In doing so she exposed a significant flaw in the VA Accountability and Whistleblower Protection Act (P.L. 115-41). While the 2017 law extended additional whistleblower protections to career VA employees under 38 U.S.C. 714(e)(1) - (2), it also specifically excluded VA career senior executives like Wiggins, who are instead subject to 38 U.S.C. 713.

Under 38 U.S.C. 714(e)(1) -(2) non-SES employees at the VA are provided with extra protection from investigative entities like the Office of Special Counsel (OSC), OAWP, and the Office of Inspector General. These protections extend beyond the whistleblower protections enjoyed by non-VA career employees under Title 5. With the enactment in 2017 of the new accountability law, when non-SES VA employees make whistleblower disclosures to investigative entities, no adverse or disciplinary action may be taken against those employees until the investigative entity who received the disclosure approves the disciplinary action.

Notably, the 2017 statute specifically excludes all senior executives from these new whistleblower protections, creating two unequal classes of government employees. This exclusion makes VA's senior executives vulnerable to abuse.

Wiggins submitted her disclosure to Congress knowing fully that she remains unprotected under the current law but with a desire to prevent other career senior executives from being targeted and silenced by the OAWP office.

In order for Congress to truly follow through on the mission to protect *all* whistleblowers within the federal government, Congress must address the criminal conduct occurring within the OAWP office, prevent the targeted attacks against executive leadership within the VA, and extend whistleblower protections to VA career executives.

In the past, Members of Congress, and this Committee, have characterized senior executives as the sole perpetrators of corruption and abuse with the VA. This inaccurate broad-brush portrait of the many career executives who have devoted their lives to veterans and to public service denigrates the reputation of all government workers. It also undermines the very principles of public service and the rule of law our veterans fought to defend. Any federal employee can blow the whistle on abuse within their agency and all federal employees should be protected in their mission to honestly serve their agency and their country.

It is for these reasons that we request:

- (1) Congress amend 38 U.S.C. 713 to restore full Merit Systems Protection Board (MSPB) appeal rights to senior executives; and**
- (2) Congress amend 38 U.S.C. 714(h)(1)(A) to include individuals occupying a senior executive position in the definition of a covered employee eligible for whistleblower protection rights.**

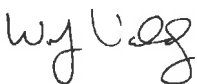
To aid in the Committee's ongoing inquiry into whistleblower issues at the VA, we have included information that provides additional details and context into Ms. Wiggins disclosures of OAWP's unlawful conduct.

1. May 10, 2019 whistleblower disclosure of Leslie Wiggins to HVAC and SVAC disclosing OAWP violations of law and abuses of authority, includes:
 - a. March 29, 2019 letter from Wiggins' counsel to VA CSEMO regarding agency unlawful tactics designed to force executives to resign or retire without any procedural due process
 - b. April 10, 2019 letter from Wiggins' counsel to OAWP Assistant Secretary disclosing OAWP's illegal evidence tampering in OAWP investigation
 - i. Identifies conflicts of interest to investigate the matter within both OAWP and the VA OIG, and requests the matter be referred to the FBI for investigation
 - c. April 26, 2019 letter from OAWP Assistant Secretary to Wiggins' counsel stating the criminal violation has been referred to VA OIG, not the FBI
 - d. May 2, 2019 letter from Wiggins' counsel to OAWP Assistant Secretary disclosing conduct by OAWP employees to interfere with Wiggins' statutory process to respond to proposed disciplinary action
2. May 17, 2019 letter from Wiggins' counsel to VA IG Missal requesting OIG recuse itself from the matter referred by OAWP Assistant Secretary due to conflict of interest within VA OIG
3. June 19, 2019 letter from Wiggins' counsel to VA IG Missal following up on complete non-responsiveness to May 17 letter
4. June 24, 2019 letter from VA IG Missal to Wiggins' counsel rejecting the referral from OAWP Assistant Secretary to investigate evidence tampering.

The information provided in this letter and its attachments demonstrates that VA career senior executives, who presumably have information about the highest stake mission breakdowns, are without any civil service protections. The enactment of the 2017 Accountability Act had the intended effect of taking VA senior executives out of the Title 5 civil service and its whistleblower protections. The 2017 Act itself intentionally excluded VA senior executives from its enhanced protections. Thus without any civil service protections, the message has been made clear to OAWP and to the OIG that VA executives are easy targets for arbitrary, political actions. They have no forum in which to independently prove their innocence and no forum that will protect them if they blow the whistle. This was made clear by VA IG's hostile rejection of the OAWP evidence tampering referral. With no legal protections, and outright hostile rejection by the IG, VA senior executives have no reason to disclose fraud, waste, abuse of authority and violations of law.

SEA looks forward to working with the VA Committees and Congress to close these egregious loopholes in the law. Please have your staff contact SEA Executive Director Jason Briefel (jason.briefel@seniorexecs.org; 202-971-3300) for further information.

Sincerely,



BILL VALDEZ
President

CC: The Honorable Mark Takano, Chairman, House Committee on Veterans' Affairs
The Honorable Dr. Phil Roe, Ranking Member, House Committee on Veterans' Affairs