

Robert C. Krannig  
Field Examiner (FE)  
Veterans Administration Regional Office 341  
Western Area Fiduciary Hub  
Salt Lake City, UT

Date: November 21, 2013

The Honorable Carolyn N. Lerner  
Special Council  
U.S. Office of Special Council  
1730 M Street, NW, Suite 300  
Washington, DC 20036

RE: OSC File No. DI-12-4026  
My response to the investigation From the Secretary of the VA dated Aug 2, 2013.

REFFRENCES:

- (A) Title 38 U.S.C.
- (B) Colorado Revised Statues (C.R.S. 28-5-215 )
- (C) VA Manuel M21-1MR, Part XI
- (D) Virtual VA Automated PGF File System (VVA)
- (E) VA Form 21P-4703
- (F) Title 38 C.F.R. Part 13

Attachments

- (1) Position Description for Field Examiner Position GS - 11
- (2) Position Description for Legal Instrument Examiner GS-9

In my 25 Years of U.S. government employment, 11 of which I have been a Field Examiner (FE), I have served Four different VACO Fiduciary Chief's, Four VARO Service Center Manager's and Six VARO Fiduciary Coaches. I have completed more than 4,950 Field Exams Satisfactorily and obtained more than 880 hours of FE Training.

I take great exception to the implication that I do not know my job. The Laws and Regulations are clear and cannot be changed by myself or any other VA employee.

The following statements are clarification of the misinterpretations or omissions of law, Regulation and Policy as stated in the Team Investigation. I will take each item of the report that the Secretary of the VA relied upon for his decision that have statements contradictory to my extensive training in the job of an FE in the VA.

It is noticed that in the report of investigation that only the Legal Instrument Examiner (LIE) instructions and related Job duties are referenced in the report. That it makes no reference to the FE duties in its structure. See Reference (C) Section B,5 and 7, and Attachments (1) and (2).

It is also noticed that the Team of Investigators are made up of Management personnel that are in charge of two other HUB facilities that have only been in existence for one year. It is well known that the WAFH SLC is the MODEL Manager for all six HUB facilities. I am unsure as to why the VA OIG was NOT part of this team selected to provide the investigation asked for by the Secretary of the VA in this case.

### **Background:**

#### **Under the subject of Background**

**In the first two sentences it states that the VA Form (21P-4703) "This form was not in use at the time of the cases addressed in Mr. Krannigs allegation's and this report.**

This is incorrect; the form is dated as published April 2012 and is still in use today in the automated field exam used by all Field Examiner's across the United States. My report of misuse in Allegation 3 and 4 is dated July 2012.

In the forms mentioned VA form (21-4703) and (27-4703) there are only 2 pages to the forms (The second page of those forms are not in the attachments of this investigation), however through each update page 2 of these forms was never changed and the same Fiduciary Instructions on these forms is now the 4<sup>th</sup> page of VA Form 21P-4703.

The actual Verbiage reads as follows:

**"RESTRICTED USE OF VA FUNDS. The VA-derived funds you receive under this agreement are not for your personal use. You will receive these funds as a federal fiduciary, which means that you use the funds exclusively for the beneficiary and his or her VA-recognized dependents, if any, and as specifically authorized by VA. You may not mix the beneficiary's funds with your own personal funds."**

**\*None of the instructions in use by the fiduciary activity make any distinction that a fiduciary may disregard the instructions above.**

The next quote is if "A beneficiary wishes to Gift Funds, and a fiduciary determines that he has sufficient funds under management for the gift."

**\* None of the current or past laws allow fiduciaries or the VA this Discretion.**

There was not a Field Exam done to verify the accuracy of any evidence to support any gift in either case prior to the Gifts.

See Reference (C), chapter 3.D.17 (in its entirety) and Attachment (2) legal Instrument Examiners (LIE) do not have authority to grant use of funds or budget.

The rest of the background shows that there were no policies in place at the time of the WAFH decision to give the fiduciary permission to Gift Large unusual sums of the beneficiaries VA estates. In both cases this was done without regard to the beneficiary's protection of misuse, and without the intervention of a face to face Field Exam by a qualified FE, before allowing such sums to be gifted.

See Attachment (1) for the duties of an FE.

As to the continued Reference used by the Team of Management, so used by the investigation author: (C) Part XI, chapter 3.D.17.g: This reference is not meant for the consent or disapproval of permissions given for use of funds by a fiduciary, but for the review of annual accountings which is a situation after the fact for allowing gifts to be overlooked by the Legal Instrument Examiner (LIE).

Here are some of the omissions by the team of (C), Part XI, chapter 3.D.17 :

17. Introduction:

This topic contains information on the responsibilities of the LIE with respect to verification of income and expenditures. It includes information on:

- Reviewing any unusual or inappropriate expenditure and taking necessary action, when appropriate.

e. Unusual or Inappropriate Expenditures

Each transaction in an accounting must be reviewed in the context of the beneficiary's unique circumstances. Question any expenditure that may seem unusual or inappropriate, and document the PGF with any pertinent information to support your decision to approve the expense. Some examples of unusual or inappropriate expenditures requiring clarification include:

- the purchase of an automobile for an unlicensed beneficiary
- The scheduling of a field examination for clarification.

Note: Even after approving an accounting, the LIE must refer large or unusual expenses to a Field Examiner (FE) to be verified during the next regularly scheduled field examination.

\*\*Here is the actual reference used in the Team investigation:

(C), chapter 3.D.17, g. Gifts From Estates of Incompetents

Question any expenditure made for gifts from the incompetent's funds. While gifts from the estates of incompetent veterans are not to be encouraged, they may be allowed subject to the following:

- The needs of the veteran and the veteran's dependents have been met,
- The gift is one that the beneficiary had been in the habit of giving or is one that he or she probably would have given had he or she been competent,
- The gift is made from surplus income, (i.e. income in excess of the amount required for the care, support and maintenance of the incompetent and his or her dependents),
- The amount is reasonable considering his or her circumstances, and

- **\*\*A court order is obtained if**
  - ☐ Required under state law, (See Reference (B))
  - ☐ The gift is for something other than that which he or she had been giving, or (Neither case had gifted prior to the date of misuse)
  - ☐ The amount is substantial. (See Reference (B))

As with any large expenditure, the fiduciary should seek approval prior to gifting from the beneficiary's estate.

**\*\*These actions happened in the State of Colorado, so State law is as follows:\*\***

**Colorado UNIFORM VETERANS' GUARDIANSHIP LAW**

**C.R.S. 28-5-215)**

**28-5-215. Maintenance and support**

**A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the veteran's administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading.**

**Allegation 1**

As for the statement that the WAFH reviewed the Motion to the Court of jurisdiction for the beneficiaries request on 07-28-2009. Please see documentation on file in Reference:(D) VVA: that the Motion to the court was drafted and submitted to the court after this date 08-03-2009. The WAFH reviewed a request for a Gift not a motion to the court which was not reviewed by Regional Council on or before 07-28-2009.

See the Request for the gift of a Car in VVA, permission to gift the funds was granted by an LIE. See Reference (C), chapter 3.D.17, and Attachment 2. There is no evidence that an LIE has the authority to approve use of funds.

Also see that the LIE had a responsibility to get a Field Exam prior to the permission of gifted Funds, which did not happen. It is my understanding and training that LIE personnel do not have the training or experience to judge whether or not an expense can be denied or approved.

See Reference (C), chapter 1, section B, j for your convenience Below:

**j. Requesting Field Examinations**

The LIE is responsible for requesting field examinations for estate administration problems and benefit issues.

This did not happen in either case. Also See Attachment 1.

Allegation 2:

Same case, same situation as Allegation 1

The interesting part of this misuse was the reasoning that the beneficiary's gift of the car (Allegation 1) somehow obligated the beneficiary to repair it when the Niece damaged it. And there are no Manuel references as to how the beneficiary is liable to insure the vehicle. But once again the same logic as the previous gift to assist the niece was approved by the WAFH, but not by the court of Colorado as instructed to do in reference (C), chapter 3.D.17, g.

Also other Directions under Reference (C), chapter 3.D.17, and Attachment 2 were not followed.

Allegation 3:

As reported at the time the funds were mismanaged the VA policy required the Fiduciary to obtain prior permission to Spend Any VA funds over \$1000.00 U.S. dollars from VACO Fast letter 09-042. This is the point in which an unauthorized person (gr) (See authorization letter in VVA file) allowed more than one third of this beneficiary's VA estate or RETRO funds to be depleted by the judgment of the fiduciary request alone by a NON LIE. The fiduciary misuse in My investigation was the evidence that the fiduciary PV used the \$1000.00 dollar rule as a tool to write \$1000.00 checks for gifts. However he wrote 13 of those checks on the same day to 13 different relatives including himself. This was a violation of the fiduciary rule at that time and therefor I performed my job as instructed for the last 11 years and proposed removal of the fiduciary for alleged misuse for not obtaining prior approval when he wrote the checks on 03-01-2012.

The fiduciary in this case had also violated the Law for investing the remainder of the VA funds in a non- government protected financial Vehicle. See Reference (E) page 4:

From Reference (E) Page 4 for your convenience:

AUTHORIZED INVESTMENTS FOR SURPLUS VA FUNDS. A legal custodian may only place VA funds not needed by the beneficiary in specific investments. These funds may be placed in U.S. savings bonds or in interest or, dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Excess funds in a checking account should be placed in a higher earning account; for example, a savings account. Legal custodians may also use a beneficiary's surplus VA funds for purchase a pre-need burial plan or burial insurance on behalf of the beneficiary.

The fiduciary in this case also endangered the Saved funds by investing in NON- State or Federally insured institutions. This is also a violation of Colorado State law see Reference (B):

28-5-214. Investments (from Reference (B))

Every guardian shall invest the surplus funds of his or her ward's estate in such securities or property as authorized under the laws of this state, but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the VA, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account. Also see Reference (B).

The fiduciary and his wife were collecting room, board, and care payments since 2001 from the beneficiaries Pension funds. There is no documentation of any Debt that the beneficiary owed anyone retroactively in his family.

AS to the statement by MY Coach at the time, Mr. Van Berckelaer concurred that he asked me to remove my field exam from the VVA file, "because it was not the proper procedure to report Misuse." (See Attachment 1), a Field Exam Report is the only procedure for reporting any situation with regard to a face to face investigation, which is what I did, and yes I refused to falsify my report by removing any of it.

#### Allegation 4

From Reference (E), Page 4:

RESTRICTED USE OF VA FUNDS. The VA-derived funds you receive under this agreement are not for your personal use. You will receive these funds as a federal fiduciary, which means that you use the funds exclusively for the beneficiary and his or her VA-recognized dependents, if any, and as specifically authorized by VA. (See Attachment 1 that shows the FE is responsible to give Specific Authorization) You may not mix the beneficiary's funds with your own personal funds.

There is no Documentation in the Laws, i.e.: References (A)(B)(F), that the VA specifically can allow gifting.

The specific Sections of Reference (F) are:

13.102,b

13.103,a

13.105,a

13.106

**Errors of the Attachments List of the team investigation documents are:**

**#1b and #1c:**

**In the forms mentioned VA form (21-4703) and (27-4703) there are only 2 pages to the forms (The second page of those forms are not in the attachments of this investigation), however through each update page 2 of these forms was never changed and the same Fiduciary Instructions on these forms is now the 4<sup>th</sup> page of VA Form 21P-4703.**

**#3 Fast letter 12-013 is not in the file I received.**

**#20 – Notice the date of this SOP was written after Allegation 1 had happened, SOP Dated 10-22-2009. In the MSPB Hearing of 12-09-2011 the Manager Franco Fritz under oath, stated that this procedure was in place prior to 07-01-2009.**

**Respectfully submitted 11-21, 2013**

**Robert C. Krannig FE**