

Response to OSC File number DI-16-3277

Response date: December 6, 2016

The Agency response admits there were violations of both policy (VA Handbook 5005, Part I, Chapter 1) and regulation (5 CFR 338, Qualification Requirements); however the Agency asserts it was able to put into place training and quality assurance measures to ensure there was no substantial risk public health and safety.

After reviewing the Agency response there appears to be a contradiction. The Agency admits there were employees manning the crisis line who did not meet the Office of Personnel Management (OPM) established qualification standards. The Agency claims they are utilizing specific HR flexibilities established by OPM to regulate the appointments. However, this ignores the fact the OPM qualification standards require employees working in the series the position is classified in to possess certain education and experience which those employees do not possess. There are questions as to the Agencies ability to appropriately apply these OPM flexibilities given the material facts of the case.

The Agency claims no substantial threat to public health and safety

The Agency concedes there was a misapplication of the qualification requirements established by regulation. The error was discovered in September 2014 and appears to go back as far as appointments made in 2008. When the error was discovered, it was self-reported by the servicing HR Office and was reviewed by a range of HR professionals. The HR professionals reviewing the case started at the Canandaigua Medical Center, then proceeded to VISN HR Officials, then to WMC and VHA HR Officials and ultimately went up to the highest ranking HR Office within VA. Through all of these reviews, no HR professional could come up with a viable solution. The case was not submitted to OPM until April 2016. This represents 19 months from discovery to OPM submission.

The Agency admits there were 32 individuals who did not meet the qualification standards. Further the Agency indicates 3 employees were removed from the crisis line due to their subpar efforts. The Agency admits there were internal discussions amongst Mental Health professionals and Human Resources revolving around removing individuals from the crisis lines. The Agency opined, "To limit the interruption to VCL service and to *avoid mass terminations of VCL staff*, [leadership] recommended to the Deputy Secretary the HSS's continue to perform their duties while HR actively worked to find a solution". This represents the Agency willfully allowing employee who did not meet the qualification requirements to be actively involved in crisis line activities.

The Agency defends the determination by saying, "Due to the extensive training that each VCL responder undergoes and the continued quality assurance monitoring, VA determined that there was no substantial or specific danger to public health and safety by allowing these responders to continue to perform their duties." However, this statement seems to be contradicted by the determinations of the VA Inspector General. In OIG Report No. 14-03540-123 dated February 11, 2016, OIG found:

We identified gaps in the VCL quality assurance process. These gaps included an insufficient number of required staff supervision reviews, inconsistent tracking and resolution of VCL quality assurance issues, and a lack of collection and analysis of backup center data, including incomplete caller outcome or disposition information from backup center staff. We determined that a contributing factor for the lack of organized VCL quality assurance processes was the absence of a Veterans Health Administration (VHA) directive or handbook to provide guidance for VCL quality assurance and other processes and procedures.

Issue 5: QA Program

We found that the VCL did not meet the intent and goals of QA procedures and processes. Specifically, VCL supervisory staff did not complete the required number of supervision tasks associated with the quality of call responses by VCL responders; QA issues were not tracked to resolution; and VCL management did not collect, analyze, track, and trend backup center and other available data to ascertain whether QA system issues existed.

The issue identified is that the Agency has individuals manning the lines who do not possess the required education or experience required by regulation. To this end, OIG found:

Responder orientation generally requires 40 hours of training, which includes classroom attendance for specific courses, supervisory monitoring such as observation and listening to calls, and on the job training with experienced staff. Responders must also take a pre and post-test.

Issue 3: VCL Responder Training

We requested the orientation checklists for responders hired in FY 2014. Of the 33 hired during that time, we found that 6 (18 percent) did not have orientation checklists. The 27 responders who had checklists had completed training modules related to call center rescues and consult resources. However, 24 of the 27 (89 percent) orientation checklists did not have all of the checklist items marked as completed and/or were not signed or dated by the responders' supervisors. We also found no evidence that 18 of the 33 (55 percent) responders had taken a post-orientation test. When we interviewed responders, they told us that the training, including both classroom time and several weeks of observation, was adequate.

During an interview, one responder expressed the belief that additional ongoing training would be beneficial.

OIG's findings seems to call into question the VA's ability to provide appropriate quality assurance and consistent training, which is the basis of their decision to keep otherwise unqualified employees actively involved in the crisis line. It would appear the conclusion there was not a substantial threat to health and public safety was based solely on the VA's own internal quality assurance controls and training which OIG found to be insufficient.

Discussion on the technical HR issues presented as a solution

From the information provided, it appears as if the direction the Agency is heading with respect to Human Resources corrective action is incompatible with the actual issue identified. There are also historical issues with the decisions that have been made to get to this point.

Shift from positions appointed under 38 USC 7401 to positions in the competitive service (5 CFR 315)

The Agency response states, "Originally, VCL was staffed by social workers, psychologists, addiction therapists, and registered nurses. In an effort to consolidate each of these positions under one position description, they were converted to the Health Science Specialist (HSS), GS-0601-9/11 position in October 2008."

An internal Issue Brief dated September 26, 2014 from the Canandaigua HR Office states, "Originally, all of the VCL employees were hired as Social Workers, Registered Nurses, Psychologists, and Addiction Therapists. Due to difficulties scheduling all of these professions to maintain adequate coverage in a 24/7 call center, an HSS position description (PD) was created and all VCL employees were ultimately converted to this PD."

The internal issue brief clearly states the rationale for moving from clinical occupations to a more generalized Title 5 (administrative) occupation was to alleviate the coverage concerns created by having multiple occupations. It would appear the actual duties performed by the individuals working on the crisis line did not change and the apparent scheduling issues drove the change in series. However, if the individuals were indeed continuing to perform the same, clinical duties, this would represent a violation of VA Policy. VA Handbook 5005, Part III, Appendix N specifically prohibits the Agency from taking these specific actions by stating:

b. Network directors, facility directors, and officials in VHA Central Office cannot:

(1) Assign title 5 employees, or former title 38 employees who have converted to title 5 positions, any clinical responsibilities associated with a title 38 occupation. Such responsibilities can only be assigned to employees appointed under title 38.

(2) Convert title 38 employees to title 5 positions to avoid pay limitations, required waivers of qualification standards, competitive civil service procedures, credentialing requirements, or to circumvent provider-patient ratios.

Selective Placement Factors Point to Clinical Requirements

A review of postings for Veterans Crisis Line positions over the last year shows a potential misuse of Selective Placement Factors (SPF's) which ultimately modify the OPM issued qualification requirement for Title 5 positions.

SPF's are to be outlined in the Job Analysis which should be reviewed against appropriate series definitions, found in OPM's classification handbook, to ensure the SPF is not a crossing over into a different series.

VA Handbook 5005, Part III, Chapter 2 says the following about selective placement factors:

Selective placement factors are to be used only when they have been determined, through an appropriate job analysis, to be critical to the performance of the job.

When there are special placement factors which are not adequately covered by the minimum qualification standard and which were identified by a job analysis as essential to successful performance in the position to be filled, they become selective placement factors and, as such, constitute a part of the minimum requirements for the particular position. Licensure, registration, certification or organization membership which is not required by the appropriate qualification standard will not be used as selective placement factors.

The VCL positions have been posted as Health Science Specialists at the GS-9 and GS-11 levels¹ and had consistent language about both SFP's and Quality Ranking Factors (QRF's) which are designed to indicate highly qualified candidates. The announcements specifically stated:

This position includes a **Selective Placement Factor** (skill, knowledge, ability or other worker characteristic basic to - and essential for - satisfactory performance of the job). Selective Placement Factors are a prerequisite to appointment and represent minimum requirements for a position. *Applicants who do not meet them are ineligible for further consideration.*

***The Selective Placement Factor for this position:** (GS-11 only) Experience providing supportive counseling to those actively experiencing crisis situations.

Quality Ranking Factors have been requested by the facility to help determine which of the basically qualified applicants are likely to be better qualified for a position. Quality Ranking Factors are skills, knowledge, abilities, or other worker characteristics which could be expected to result in superior performance on the job. Quality ranking factors *will not be used for screening*, but may be used as ranking criteria. Applicants with higher proficiency levels may rank above those with lower proficiency levels on a quality ranking factor.

***The quality ranking factors for this position are:**

1. (GS-9) Experience providing supportive counseling to those actively experiencing crisis situations.
2. (GS-11) Certification(s) or licensure in the mental health, social work or healthcare fields related to mental health counseling, such as Certified AAS (American Association of Suicidology), Crisis Worker Certification; or, a certification or license in a mental health, social services or nursing related field, such as Credentialed Alcoholism & Substance Abuse Counselor (CASAC).

¹ See announcement numbers: ANS-16-LMP-1804921-BU-VCL, ANS-16-LMP-1804921-BU-VCL, ANS-16-LMP-1789363-BU-VCL, ANS-16-LMP-1749493-BU-VCL, ANS-16-NDG-1748242-VCL-BU, ANS-16-LMP-1745911-BU-VCL, ANS-16-LMP-1721099-BU-VCL, ANS-16-LMP-1680908-BU-VCL, ANS-16-LMP-1637029-BU, ANS-16-NDG-1621703-VCL-BU

The above SPF would mean in order for an applicant to meet the minimum qualification requirement for the position they would have to have provided “supportive” counseling. The utilization of the term “supportive” is called into question because there are two occupations covered under Title 38 which allow individuals to provide mental health counseling – Social Workers and Licensed Mental Health Counselors. Both of these occupations have an education and licensure requirement to provide direct patient care.

Additionally, the above QRF gives a more clear indication the position is most appropriately filled by a clinical professional covered under Title 38. The QRF is essentially outlining clinical requirements for a number of Title 38 occupations which would directly coincide with the positions the employees occupied prior to being moved onto the generic Title 5 Health Science Specialist position description.

Looking at other VCL announcements it is curious to find the GS-12 supervisory positions² lack the SPF which was in their subordinate announcements. Instead these announcements define the minimum requirement in terms of overseeing what would be indicative of work being performed by clinical title 38 occupations. The specialized experience in the supervisory announcement is:

SPECIALIZED EXPERIENCE: You must have at least one (1) full year of specialized experience (equivalent to at least the GS-11 level in the Federal service) that has equipped you with the particular knowledge, skills, and abilities to successfully perform the duties of a Supervisory Health Science Specialist (Suicide Hotline Responder), and that is typically in or related to the work of this position. Specialized experience includes functioning as a lead or senior specialist, assisting with overseeing the work of others; using questionnaires or other measurement devices to assess emotional, functional and/or psychological conditions; following established procedures to conduct initial screenings of individuals by gathering social, drug, family, and military history; conducting interviews and assisting patients and family members with referrals, benefits and support groups. Applicants must possess experience directly related to assessing and triaging clients in mental health crisis; assessing and recognizing mental health disorders; providing direct advice regarding suicide and/or other mental health crisis.

Move to GS-0101 Social Science Series

The above sections show how moving the VCL responders from the prior Title 38 occupations into a generic Title 5 occupation was a direct violation of the Agency’s own policies. However, the Agency now claims the positions are being moved from one Title 5 occupation (GS-601) to another (GS-101). There are questions as to the appropriateness of this decision.

Classification fundamentals

The law articulates Agencies are to classify positions based on the duties performed and the qualifications required to perform the work successfully:

5 USC 5101 individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades

² See announcement number: ANS-16-NDG-1757513-VCL

5 USC 5106 Each position shall be placed in its appropriate class. The basis for determining the appropriate class is the duties and responsibilities of the position and the qualifications required by the duties and responsibilities.

5 USC 5107 Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management

OPM's Classifier's Handbook TS-107 August 1991, Chapter 4- A position description represents the official record of the duties and responsibilities assigned to a position or group of positions by a supervisor or manager in order to accomplish a specific job. It is the position that is classified, not the person assigned to it. This means that the work to be performed and the requirements to do that work are evaluated.

The agency response indicates there is no tangible difference between the GS-0601 and GS-0101 series except for a degree. Per OPM, all series are grouped into families which indicate similar work. The families are indicated in the first two digits of the series. In this case, there is the original Title 5 series, GS-0600; and then the new series which is in the GS-0100 family. This indicates at their core the positions vastly different. The series definitions from the Handbook of Occupation Groups and Families for each series are below:

0601 – General Health Science Series

This series covers positions that involve research or other professional and scientific work that is specifically health-oriented in character, when the work is of such generalized or miscellaneous specialized nature that the positions are not more appropriately classifiable in any of the existing series in this or any other Group. The work requires a background of knowledge, skills and techniques gained from professional training in a health science or allied scientific field, but has no paramount, rigid or continuing requirement for the knowledge, skills and techniques characterizing any of the established series that reflect one or more of the academic disciplines or recognized professions. Such work may cut across and require understanding of scientific methods and techniques common to several recognized professional fields in the health, medical or allied science ... This series is not intended for use for interdisciplinary professional positions (and the paramount qualification needed to perform the work) that are readily identifiable with existing series.

0101 – Social Science Series

This series covers positions the duties of which are to advise on, administer, supervise or perform research or other professional and scientific work in one or any combination of the social sciences when such work is not classifiable in other series of this occupational group.

The first notable commonality is the requirement that there is not already a series which best describes the work of the positions. Furthermore, there is a stipulation that the GS-0601 should not be used for interdisciplinary professional positions. An interdisciplinary professional position would be one that could be filled by a number of different occupations with similar requirements (for example: and Social

Worker and Licensed Professional Mental Health Counselor). The utilization of the selective placement factors and quality ranking factors in the above referenced announcements would show HR determined there are no other occupations which would fit those requirements. However, in this case, the appropriate series would in fact be title 38 occupations in the excepted service—which is how they were defined prior to 2008.

Postings in the GS-0101 Social Science series

Reviewing the GS-101 Social Science position postings for the VCL, it is interesting to note none of the postings include the SPF. However, the Agency response states these positions perform the same duties without the degree requirement. It would seem reasonable if they were performing the same duties they would have the same SPF. Most of the GS-101 positions were also labeled as “trainers”. One is left to assume a trainer would need to possess the minimum requirements of the position they are training. It is also important to note the GS-101 series is not one which is generally related to training (see the above series definition for the GS-101 series).

Conclusion

In conclusion, it would appear the Agency has failed to accept accountability within their response. There appears to be an effort to speak in gross generalities and utilize semantics to direct attention away from what appears to be a continued effort to hire employees into the VCL who do not possess the appropriate qualification requirements. The move from the Title 38 occupations, to a GS-601 series where there is a degree requirement, to a GS-101 series where there is no degree requirement appears to be a continued watering down of the skills and talents of the staff carrying out the mission of the VCL. This points to a substantial risk to the Veterans the Agency is sworn to serve. It does not appear the Agency is correct in asserting there was no substantial risk to health or public safety. It actually appears as if the risk to health or public safety has become more substantial as the Agency attempts to cover up the wrong doing instead of accepting accountability and ensuring Veterans receive the care they have earned.