



U.S. OFFICE OF SPECIAL COUNSEL

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September 23, 2009

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-09-1868

Dear Mr. President:

The Office of Special Counsel received disclosures from Mr. William Schuetz, an employee at the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA) in Washington, D.C. Mr. Schuetz, who consented to the release of his name, alleged that employees at the VA National Cemetery Administration (NCA) consistently failed to notify claimants that they have the right to appeal its decisions regarding burial rights and headstones and markers.

Mr. Schuetz's disclosures were referred to the Honorable Eric K. Shinseki, Secretary of the VA, on April 28, 2009, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Shinseki tasked the Acting Under Secretary for Memorial Affairs (AUSMA) with conducting the investigation. The AUSMA initially requested that the VA Office of the Inspector General (OIG) conduct an investigation; however, the OIG declined to do so. The AUSMA then convened an Administration Investigative Board (AIB) to review and investigate the allegations. We received a report dated August 28, 2009. Mr. Schuetz provided comments on the report to this office pursuant to 5 U.S.C. § 1213(e)(1); his comments are enclosed. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report and Mr. Schuetz's comments to you.

Mr. Schuetz explained that the NCA makes determinations regarding the eligibility of veterans to be buried in VA National Cemeteries and to receive inscribed headstones or grave markers. Pursuant to 38 C.F.R. § 20.101(a)(16), these determinations may be appealed to the Board of Veterans' Appeals. The agency has an affirmative duty to provide notice of this appeal right to claimants under 38 C.F.R. § 19.25. Generally, when the VA makes a determination of benefits, the notice of determination is accompanied by a copy of VA Form 4107, which explains the veteran's right to appeal and the process for initiating an appeal. Mr. Schuetz alleged that, on a nation-wide basis, the NCA does not include this form with its determinations, nor does it verbally inform claimants of their right to appeal its determination.

Furthermore, although 38 U.S.C. § 6303(b) and (c) require that the VA advise eligible veterans and dependents regarding all of the benefits and services that they are entitled to, Mr. Schuetz alleged that the 2008 edition of the VA pamphlet, "Federal Benefits for Veterans and Dependents," omits NCA determinations from its information on appeals. Specifically, Chapter 12 of the pamphlet states that, "Veterans and other claimants for VA benefits have the right to appeal decisions made by a VA regional office or medical center." Mr. Schuetz explained that VA Regional Offices make decisions only on compensation, pensions, education, loan guaranties, vocation rehabilitation, and insurance, while VA medical centers make decisions only on health care. NCA decisions regarding burial and headstone benefits are made by the National Cemeteries and Memorial Program Service processing

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centers, and are therefore not included in the pamphlet's scope of decisions that are appealable. Based upon the foregoing, Mr. Schuetz alleged that information on the right to appeal the NCA's determinations is not being disseminated to eligible claimants by either the NCA or the VA.

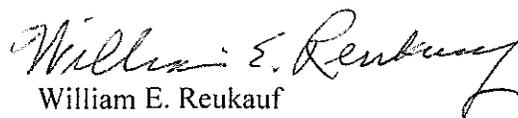
In its report, the agency substantiated Mr. Schuetz's allegations. The AIB confirmed that decisions made by the NCA constituted a benefit under 38 C.F.R. § 19.25 and 38 U.S.C. §§ 5104(a) and 7105. The AIB also confirmed that the NCA was thereby required under 38 C.F.R. § 19.25 to provide claimants with notice of a decision on their claim, an explanation of the process used to make the decision, and notice of the right to appeal. The AIB determined that the current practice of the NCA was to provide claimants with written explanation letters only if the claimant requested additional information, and that although the NCA had previously been directed to notify claimants of their appeal rights in 1989, 2004, and 2005, the NCA failed to develop a procedure for providing claimants with such notice in cases other than those involving capital crimes.

As a result of its investigation, the agency required NCA to immediately begin providing claimants with specific denial letters which are approved by the VA Office of the General Counsel and include a VA Form 4107 explaining appeal rights. The NCA Office of Field Programs is also working with the NCA Training Officer to develop a comprehensive training on appeal rights for NCA benefit processing staff, beginning with an initial training at the NCA annual conference in August 2009. In addition, the NCA is planning to provide all claimants whose applications were denied from March 30, 2009, onward with a written denial letter and Form 4107. The agency plans to update the 2010 version of the VA pamphlet, "Federal Benefits for Veterans, Dependents, and Survivors," and other VA and NCA publications and websites, forms, and information systems. Finally, the NCA Legislative and Regulatory Division will be developing relevant policy guidance documents or regulations, if necessary.

Mr. Schuetz had an opportunity to review the agency report, and he expressed his full satisfaction with the attention it received and the outcome. I have reviewed the original disclosures, the agency's report, and Mr. Schuetz's comments. Based on that review, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the agency report and Mr. Schuetz's comments to the Chairmen and Ranking Members of the Senate Committee on Veterans' Affairs and the House Committee on Veterans' Affairs and to the Secretary of the Department of Veterans Affairs. I have also filed a copy of the report and Mr. Schuetz's comments in our public file and closed the matter.

Respectfully,


William E. Reukauf
Associate Special Counsel

Enclosures