

NATIONAL GRIEVANCE  
NG-10/10/12

**Date:** October 10, 2012

**To:** Leslie Wiggins  
Deputy Assistant Secretary,  
Labor – Management Relations  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

**From:** Ibidun Roberts, Attorney, National Veterans Affairs Council (#53) (NVAC), American Federation of Government Employees (AFGE), AFL-CIO

**Subject:** National Grievance in the matter of the Department of Veterans Affairs (VA) failure to comply with 38 U.S.C. 7453 and 7454 and relevant regulations concerning premium pay for Title 38 hybrids and nurses.

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (MCBA), American Federation of Government Employees/National Veterans Affairs Council (Union) is filing this national grievance against you and all other associated Department of Veterans Affairs (“VA”) officials and/or individuals acting as agents on behalf of the VA for violations as it relates to its failure to comply with 38 U.S.C. 7453 and 7454 and relevant regulations concerning premium pay for Title 38 hybrids and nurses.

Specifically, on an ongoing and continuing basis, the VA, by and through its representatives and/or agents, has:

- (1) Failed to pay premium pay in addition to overtime pay to any nurse or Title 38 hybrid for work between midnight Friday and midnight Sunday.
- (2) Failed to provide back pay to those employees entitled to premium pay back to March 15, 2010.

In doing so, the VA has violated the following provisions:

- (1) 38 U.S.C. 7453;
- (2) 38 U.S.C. 7454; and
- (3) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

OCT 17 2012

## STATEMENT OF THE CASE:

### **I. Background**

On May 5, 2010, President Obama signed Public Law 111-163, the Caregivers and Veterans Omnibus Health Services Act of 2010 ("Caregivers Act"), into effect. Among the provisions of that Act was Section 601(k)(1)(C), which amended 38 U.S.C. § 7453(c) concerning the status of work to be compensated as additional pay for nurses. The amendment to Section 7453(c) of Title 38 required that 25% of that employee's hourly rate of basic pay be paid for each hour of service performed between midnight Friday and midnight Sunday. Section 601(k)(1)(C) of the Caregiver Act explicitly removes the requirement that the work be on a "tour of duty." This amendment thereby similarly changed the application to 38 U.S.C. 7401(3) ("Hybrid") employees because Section 7454(b)(2) required additional pay to be administered in the same manner as nurses in "7453(c)."

§7454(c) requires the Secretary to prescribe regulations to carry out the section. Pursuant to that authority, on March 7, 2012, VA issued Handbook 5007/42 implementing the provisions noted above, two years after the execution of the Caregiver Act. It specifically states that provisions of the Caregiver Act eliminate the "'service on a tour of duty' requirement for weekend premium pay for registered nurses, physician assistants, EFDAs and hybrid title 38 employees;" and "Requires overtime to be paid to title 38 registered nurses, physician assistants, EFDAs and hybrid title 38 employees designated to receive premium pay on the same basis as registered nurses..."

Although Handbook 5007/42 was issued on March 7, 2012, Medical Technicians in Detroit (Station # 553) and Registered Nurses in Madison (Station #607) and Little Rock (Station # 598) have not received premium pay as required by the statute. Nurse Assistants in Northern Indiana (Station # 610), whose pay has been corrected, have not received back pay to the date of enactment of the law, which is May 5, 2010.

### **II. Violation**

The VA has unlawfully failed to pay premium pay in addition to overtime pay to registered nurses and hybrid employees as required by 38 U.S.C. §§ 7453 and 7454 and VA's regulations.

The VA has improperly failed to provide backpay to the date of the enactment of the Caregiver Act to those entitled to premium pay.

### **III. Remedy Requested**

The Union asks that to remedy the above situation, the VA agrees to the following:

- (1) To agree to immediately comply with 38 U.S.C. §§ 7453 and 7454;

- (2) To agree to make affected employees whole, including, but not limited to, backpay with interest; and
- (3) To agree to any and all other remedies appropriate in this matter.

#### **IV. Time Frame and Contact**

This is a National Grievance and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions regarding this National Grievance, please feel free to contact me at (202) 480-0064.



Ibidun Roberts  
Attorney  
AFGE/NVAC

Cc: Alma L. Lee, President, AFGE/NVAC  
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC