



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Department of Veterans Affairs Report Substantiates National Cemetery Administration Failed to Provide Veterans with Appeal Rights

FOR IMMEDIATE RELEASE

CONTACT: **Anne Wohlfeld**, 202-254-3614, awohlfeld@osc.gov

WASHINGTON, DC / September 24, 2009—On September 17, 2009, the U.S. Office of Special Counsel (OSC) transmitted to the President and Congressional oversight committees for the Department of Veterans Affairs (VA) findings of a VA investigation confirming that the VA's National Cemetery Administration (NCA) consistently failed to give claimants a legally mandated notice of appeal rights. The NCA makes determinations regarding the eligibility of veterans to be buried in VA National Cemeteries and to receive inscribed headstones or grave markers. The report confirmed that the NCA has consistently failed to provide claimants for these benefits with notice of their right to appeal an adverse benefits determination.

OSC received these allegations from a whistleblower and referred them to the Secretary of the VA for further investigation. The report of that investigation, which was conducted by an Administrative Investigative Board (AIB), confirmed that the NCA has an affirmative duty to provide notice of an appeal right to claimants under 38 C.F.R. § 19.25, as well as written notice of a decision on their claims and an explanation of how the decision was reached. The AIB determined that the NCA failed to meet these obligations despite the fact that it was repeatedly directed to do so in 1989, 2004, and 2005. The report explains that the NCA provided claimants with an explanation of the determination only if the claimant specifically requested more information, and failed to provide claimants with any information regarding their right to appeal in all cases except those involving capital crimes.

A number of corrective measures have been proposed as a result of these findings. The agency has implemented or recommended that 1) NCA must 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; 2) NCA must develop comprehensive training on appeal rights for NCA benefit processing staff; 3) NCA will retroactively provide all claimants whose applications were denied from March 30, 2009, onward with a written denial letter and Form 4107; 4) the agency will 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; and 5) NCA will develop relevant policy guidance documents or regulations, if necessary.

OSC determined that the agency's report contains all the information required by statute and the agency's findings appear reasonable.

.....

The U.S. Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency and operates as a secure channel for disclosures of whistleblower complaints. Its primary mission is to safeguard the merit system in federal employment by protecting federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act. For more information please visit our web site at www.osc.gov or call 1 (800) 872-9855.