



October 30, 2017

MEMORANDUM FOR: SAM SHELLENBERGER
Deputy Assistant Secretary
for Veteran's Employment and Training

Elliot P. Lewis

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: VETS Investigated USERRA Claims in Accordance
with the USERRA Manual, but Improvements Can Be
Made; Report No. 06-18-001-02-001

The purpose of this memorandum is to provide the results of our audit of the Veterans' Employment and Training Service's (VETS) investigative process for Uniformed Services Employment and Reemployment Rights Act (USERRA) claims.

When a veteran believes their employer has discriminated against them based on prior military service, current military service, or intent to join a military service, the veteran can file a claim under USERRA, which protects a veteran's rights when required to leave employment to perform military duty or other uniformed service.

VETS is responsible for reviewing USERRA claims and ensuring discrimination did not occur. We conducted a performance audit to determine:

Has VETS adequately investigated USERRA claims?

Overall, VETS adequately investigated USERRA claims in accordance with the USERRA manual; however, it can make some improvements. To answer this question, we reviewed USERRA policies, identified control environment elements, conducted a risk assessment, reviewed a sample of case files in three VETS regional offices, and interviewed VETS personnel in headquarters and the regions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

RESULTS

Although VETS adequately investigated USERRA claims in accordance with the USERRA manual, our review of a sample of cases found VETS could improve the documentation it maintains to support its investigative decisions. Also, VETS needs to ensure the case closure code entered into its tracking system correctly reflects the outcome of the investigation. 38 U.S.C. § 4332(a) requires the Secretary of Labor to prepare and transmit an annual report to Congress containing, among other items, the status of each of the cases reviewed by the Department of Labor. The use of incorrect closing codes affects the accuracy of the claims information VETS includes in its annual report.

During our audit, we performed case file reviews at three VETS regional offices in Atlanta, Chicago, and Dallas. In each region, we randomly selected 25 claims and reviewed them to determine if: (1) investigators complied with the requirements set forth in the USERRA manual; (2) investigators reached proper conclusions; and (3) claim files contained evidence of supervisory review.

We found 4 of the 75 claim files we reviewed lacked the Honorable Discharge form (DD-214). The DD-214 is used to document the claimant's status as an eligible veteran.

Additionally, we identified 3 of 75 claims where the investigator determined the claimant did not have a valid claim, but used the wrong closing code. For example, an investigator closed a claim as withdrawn when both the claimant and employer were non-responsive. The investigator should have used the administrative code to close the claim because the claimant did not request to withdraw the claim. None of these three instances resulted in financial gain or loss for the veterans who filed the claims.

These exceptions occurred because investigators did not follow the USERRA manual instructions and supervisory review did not detect the missing DD-214s or incorrect closure codes. VETS is required to report claim investigative activity annually to Congress, including closed claims and the related final claim determination. If investigators are not using the correct closing codes, VETS could be reporting inaccurate claims data to Congress, who uses this data to make decisions related to the program.

VETS RESPONSE

VETS agreed with our recommendations, and will take appropriate corrective action to address the findings and recommendations outlined in the report. For VETS' full response, please see the attachment.

RECOMMENDATIONS

Given the importance of accurately reviewing USERRA claims, we recommend the Assistant Secretary for Veterans' Employment and Training:

- 1) Revise the USERRA manual to include earlier reviews by supervisors to ensure adequate supporting documentation is obtained.
- 2) Remind investigators of the importance of using the correct case closing code and ensure supervisors indicate their concurrence with the closing code before it is entered into VETS' tracking system.

Attachment

ATTACHMENT

VETS RESPONSE TO DRAFT REPORT


U.S. Department of Labor

Assistant Secretary for
Veterans' Employment and Training
Washington, D.C. 20210



OCT 19 2017

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: J.S. SHELLENBERGER 
Deputy Assistant Secretary

SUBJECT: Response to the Office of Inspector General (OIG) Draft Audit
Report No. 06-18-001-02-001 titled, *VETS' Processing of
USERRA Claims.*

The Veterans' Employment and Training Service's (VETS) offers the following updated response to the subject report. The recommendations of the OIG Draft Audit Report states that VETS should:

- Revise the USERRA Operations Manual to include earlier reviews by supervisors to ensure adequate supporting documentation is obtained; and
- Remind investigators of the importance of using the correct case closing code and ensuring supervisors indicate their concurrence with the closing code before it is entered into VETS' tracking system.

We appreciate OIG offering these recommendations, as they have highlighted important areas for consideration. We intend to address these recommendations within the next 60 days as follows:

With respect to the first recommendation, we recognize the need for supervisors to conduct early reviews of cases in order to ensure that proper documentation is obtained, and that the case investigative plan is properly established and maintained. VETS will issue a Director's Memorandum (DM) reinforcing the requirement to conduct timely reviews. DMs are the means by which VETS distributes formal policy guidance and this DM will be incorporated into the USERRA Operations Manual. Upon issuance of the DM, VETS will provide a copy to your office.

With respect to the second recommendation, we will include in the DM mentioned above guidance clarifying to our investigative staff that in instances in which claimants fail to respond or where there is no valid claim, the appropriate closing code will be used consistent with VETS' policy and with the particular facts and circumstances involved.

As noted, the DM addressing both recommendations above reflects VETS policy that will be institutionalized when included in the Operations Manual during its annual update.

Thank you again for your assistance and for affording us the opportunity to respond to the recommendations of the Subject Draft Report.