

In The
UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Douglas J. Rosinski,)	
Petitioner,)	No. 18-678
)	
v.)	SECOND SOLZE NOTICE OF
)	RELEVANT INFORMATION
Robert L. Wilkie,)	
Secretary of Veterans Affairs,)	
<u> Appellee.</u>)	

Pursuant to *Solze v. Shinseki*, 26 Vet. App. 299, 301 (2013),

Petitioner submits the attached emails for the Court’s consideration in this matter. These emails are potentially relevant to the Court’s consideration of the issues in this case because they document that the Secretary not only selectively allows Veteran Service Officers (“VSOs”) to “review” pre-promulgation rating decisions, he (1) affords VSOs the opportunity to “sign off” on such decisions and (2) *does not promulgate a rating decision until a VSO actually does sign off* on the decision. In all substantive effect, by withholding issuance of a rating decision until a VSO “sign off” is obtained, the Secretary surreptitiously affords VSOs a veto over a rating that would otherwise be promulgated and ready for either (1) the payment of the veteran’s benefits or (2) timely appeal. In either case, this information establishes that the implementation of the Secretary’s discriminatory policy exceeds his authority.

The extent of this ultra vires process was initially disclosed in an unsolicited email from Cari Ann Black of the Pittsburgh regional office to dozens of veterans' representatives, including VSOs and (apparently unwittingly) attorneys. *See* Ex. A.¹ This email stated that the Pittsburgh regional office

currently [has] *83 cases* pending *award* and a large majority are *pending VSO review*. Can you please review your awards. [sic] Also, if you could check several times today it would be greatly appreciated.

Ex. A (emphasis added). The meaning of this email was clarified by an accredited claims agent² after several attorneys on the distribution asked for an explanation of the original email.

VARO Pittsburgh just wanted to make sure that you are signing off on your decision if you have any. *It was the end of the month and Pittsburgh just wanted to clean up loose ends* if possible.

Ex. B (emphasis added). Apparently, this is a routine "clean up."

Undersigned requested additional information on the VSO "sign off" process and a citation to the controlling procedure.

¹ Identifying information for non-VA individuals has been redacted to preserve privacy. The unredacted distribution list can be provided as requested by the Court.

² As stated on their website.

I too am interested in just what “sign off” the VARO is looking for and, apparently, holding up rating decisions while awaiting some action by non-VA parties.

Can someone at the VARO please explain and/or provide the procedure citation for this process??

Ex. C. The only response received was that “This should have gone to *VSOs only, not attorneys.*” Ex. D (emphasis added).

The above communications are relevant to the case at bar because they reveal that not only does the Secretary allow VSOs unique access to rating decision *before* promulgation, the Secretary actually allows VSOs to control *when* decisions are promulgated. Yet, there is no legal basis for *any* representative to have such authority in VA’s adjudicatory process, much less only *selected* representatives.³ Even if such authority existed, it is clear that the VSOs working in Pittsburgh are not timely performing their “sign off” duties and are thus *delaying awards* to their *own* clients – a result was not previously disclosed.

³ Indeed, as the emailer’s website indicates he is an “Accredited Agent” and not a VSO, VA apparently does *not* limit pre-promulgation review only to VSOs, but *also* to non-attorney “agents” as well. This undermines the Secretary’s argument that the “special relationship” with “non-adversarial” VSOs allows him to discriminate against attorneys because such agents are also “paid” by their clients and so are required to be as equally “zealous” advocates as attorneys.

Nor is there legal basis for the Secretary to withhold an “award” for an unreasonable time to allow for unresponsive VSOs to “sign off.” Indeed, the Secretary’s own M21-1MR manual states that the “time limit for VSO review of a newly-created rating decision is *48 hours*.” M21-1MR I.3.B.3.b (emphasis added). It is unclear how a month-end “*clean up*” of “*loose ends*” is needed if the Secretary was complying with the procedure he relied upon in his arguments to this Court.

In sum, the proffered information establishes that not only are attorney-represented veterans unable to access pre-promulgation decisions, they are also denied a “sign off” (i.e., “veto”) as a part of the decision review process. Moreover, the Secretary’s “special” VSO relationship is shown to also harm veterans when – as here – VSOs do not timely “sign off” on awards and VA delays benefits for weeks or months beyond the 48-hour review period. This adverse impact was not previously discussed.

Whatever the full impact of the VSO veto, it is now beyond reasonable doubt that previously undisclosed substantive interactions between “reviewers” and decisionmakers take place during and after the pre-promulgation “review” afforded VSOs (and apparently

Accredited Agents as well). Thus, a “sign off” is something significantly more substantive than the simple “review” represented to this Court. Given this new information, Petitioner respectfully suggests that the Court consider requiring a response from the Secretary explaining the differences in the VSO “sign off” process, including whether Accredited Agents are allowed pre-promulgation review, and his prior representations to the Court.

WHEREFORE, Petitioner provides the Court with information potentially relevant to resolution of this matter discussed above.

Respectfully submitted,

/s/ Douglas J. Rosinski
701 Gervais St., Ste. 150-405
Columbia, SC 29201-3066
803.256.9555 (tel)
888.492.3636 (fax)
djr@djrosinski.com

November 1, 2018

EXHIBIT A

On Oct 31, 2018, at 12:05 PM, Black, Cari Ann, VBAPITT
<CariAnn.Black@va.gov> wrote:

Good Afternoon

We currently have 83 cases pending award and a large majority are pending VSO review. Can you please review your awards. Also, if you could check several times today it would be greatly appreciated.

Thank you for your assistance

Cynthia

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EXHIBIT B

Subject: Re: *EXT* Re: Your assistance is needed

From:

Date: 11/1/18, 11:42 AM

To:

CC: CariAnn.Black@va.gov,

Andrew.Slaughaupt@va.gov,

Charles.Phillipi@va.gov,

djr@djrosinski.com, Edna.Ficerai@va.gov,

Edward.Hajduk@va.gov, Elizabeth.Salvador@va.gov,

Graham.Wieland@va.gov,

Jennifer.Bogus@va.gov,

Jeremy.Yost@va.gov,

John.Thase@va.gov,

Jonathan.Falk@va.gov,

Timothy.Owens2@va.gov,

Cynthia.McJunkin@va.gov

no folks - VARO Pittsburgh just wanted to make sure you are signing off on your decision if you have any. It was the end of the month and Pittsburgh just wanted to clean up loose ends if possible. Stop emailing on this issue or remove my email address.

jim

Subject: Re: *EXT* Re: Your assistance is needed

From: DJR Esq <djr@djrosinski.com>

Date: 11/1/18, 11:56 AM

To:

CC: CariAnn.Black@va.gov,

Andrew.Slaughaupt@va.gov,

Charles.Phillipi@va.gov.

, Edna.Ficerai@va.gov,

Edward.Hajduk@va.gov, Elizabeth.Salvador@va.gov,

Graham.Wieland@va.gov,

Jennifer.Bogus@va.gov,

Jeremy.Yost@va.gov,

John.Thase@va.gov,

Jonathan.Falk@va.gov,

Timothy.Owens2@va.gov,

Cynthia.McJunkin@va.gov

Ms. Black:

I too am interested in just what "sign off" the VARO is looking for and, apparently, holding up rating decisions while awaiting some action by non-VA parties.

Can someone at the VARO please explain and/or provide the procedure citation for this process??

On Oct 31, 2018, at 5:40 PM,

wrote:

Ms. Black,

I, and perhaps the other 70+ recipients would appreciate some clarity on what you are requesting?

Sincerely,

On Oct 31, 2018, at 12:05 PM, Black, Cari Ann, VBAPITT <CariAnn.Black@va.gov> wrote:

Good Afternoon

We currently have 83 cases pending award and a large majority are pending VSO review. Can you please review your awards. Also, if you could check several times today it would be greatly appreciated.

Thank you for your assistance

Cynthia

--
Douglas J. Rosinski, Esq.
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EXHIBIT D

Subject: RE: [EXTERNAL] Re: *EXT* Re: Your assistance is needed
From: "McJunkin, Cynthia, VBAPITT" <Cynthia.McJunkin@va.gov>
Date: 11/1/18, 12:01 PM
To: "djr@djrosinski.com" <djr@djrosinski.com>

This should have gone to VSOs only, not attorneys.

Sorry for the confusion

Cynthia