

Appendix A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean M. Donahue,

Petitioner

v.

Pennsylvania Department of
Labor and Industry and
The Governor of Pennsylvania,

Respondents

No. 529 M.D. 2018

OPINION NOT REPORTED

MEMORANDUM OPINION

PER CURIAM

Filed: December 27, 2018

Before the Court are preliminary objections filed by the Pennsylvania Department of Labor and Industry (Department) and the Governor of Pennsylvania (Governor) (collectively, Respondents) demurring to the Petition for Review filed by Sean M. Donahue (Petitioner). The Court sustains Respondents' first preliminary objection and dismisses the Petition for Review.

On July 31, 2018, Petitioner filed a Petition for Review in this Court's original jurisdiction alleging that the Department has continually refused to include Petitioner's name on the "Veterans Priority Job Referral List," a list which purportedly distributes veterans' names to potential public and private employers. Petitioner submits that the Department's failure to include his name on such list amounts to a violation of the "Jobs for Veterans Act, the Hire our Heroes Act, the Workforce Innovation and Opportunities Act, and all other related state and federal acts." Petition for Review at 2. Petitioner makes similar complaints against the Governor, arguing that the "Governor's policy for the Pennsylvania State labor department explicitly entitles Petitioner to the priority job referrals he is requesting." *Id.*

On August 30, 2018, Respondents filed three preliminary objections demurring to the Petition for Review. Respondents assert the Petition for Review must be dismissed because it: (1) seeks relief that is not cognizable as a matter of law; (2) names Respondents, who are not proper parties; and (3) fails to conform to law or rule of court. The parties submitted briefs on the preliminary objections and the matter is now ready for disposition.

This Court's review of preliminary objections is limited to the pleadings. *Pa State Lodge, Fraternal Order of Police v. Dep't of Conservation and Nat. Res.*, 909 A.2d 413, 415 (Pa. Cmwlth. 2006).

[This Court is] required to accept as true the well-pled averments set forth in the ... complaint, and all inferences reasonably deducible therefrom. Moreover, the [C]ourt need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections.

Id. at 415-16 (citations omitted).

In the first preliminary objection, Respondents contend the Petition for Review must be dismissed because it seeks relief that is not cognizable as a matter of law. Respondents state that they do not generate or maintain a Veterans Priority Job Referral List, nor are they required to do so by any law named in the Petition for Review. While Respondents recognize that some of the laws Petitioner mentions, specifically the Jobs for Veterans Act, 38 U.S.C. §§4100-4115, and the Workforce Innovation and Opportunities Act, 29 U.S.C. §§3101-3361, exist, nothing therein mentions a Veterans Priority Job Referral List or grants Respondents the duty or

authority to create one.¹ While Petitioner complains generally that the Department must maintain such list, and that his name must be placed thereon, he has failed to set forth any supporting legal theories and has likewise failed to identify a single cause of action.

This Court agrees with Respondents. Our review of the Petition for Review reveals that although Petitioner has listed titles of certain federal laws, he has failed to point to any authority therein to support his argument that Respondents must generate and maintain a Veterans Priority Job Referral List. Instead, the Petition for Review is replete with legal conclusions and argumentative allegations, neither of which this Court must accept as true. *Pa. State Lodge*, 909 A.2d at 415-16. Moreover, as the Petition for Review does not include a single citation to law, it is unclear what legal theories Petitioner raises and what relief he seeks. For these reasons, Respondents' first preliminary objection is sustained, and the Petition for Review is dismissed.²

¹ Petitioner also asserts a violation of the "Hire our Heroes Act," but provides no citation to the same. Petition for Review at 2. While we acknowledge that there exists a "VOW to Hire Heroes Act of 2011," Pub. L. No. 112-56, §§ 201-265, 125 Stat. 712-733, the Court will not deduce that such is the law in which Petitioner is referring.

² Based on our disposition of Respondents' first preliminary objection, the Court need not address Respondents' remaining preliminary objections to the Petition for Review.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean M. Donahue,	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Department of	:	
Labor and Industry and	:	
The Governor of Pennsylvania,	:	
Respondents	:	No. 529 M.D. 2018

PER CURIAM

ORDER

NOW, December 27, 2018, upon consideration of the Pennsylvania Department of Labor and Industry's and the Governor of Pennsylvania's (Respondents) preliminary objections, it is hereby ordered as follows:

- I. Respondents' preliminary objection I is **SUSTAINED**;
- II. Sean M. Donahue's Petition for Review is **DISMISSED**; and
- III. Respondents' preliminary objections II and III are **DISMISSED** as moot.

Certified from the Record

DEC 27 2018

And Order Exit

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 529 MD 2018

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March 31, 2019



CAPTION

Sean M. Donahue,
Petitioner
v.
Pennsylvania Department of
Labor and Industry
and
The Governor of Pennsylvania,
Respondents

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Closed

Case Processing Status: December 27, 2018 Completed

Journal Number:

Case Category: Miscellaneous Case Type(s): Mandamus, Writ of

CONSOLIDATED CASES

RELATED CASES

Docket No / Reason	Type
976 CD 2012 Similar Issue(s)	Related
977 CD 2012 Similar Issue(s)	Related
1066 CD 2012 Similar Issue(s)	Related
376 MD 2012 Similar Issue(s)	Related
2086 CD 2013 Similar Issue(s)	Related
56 CD 2014 Similar Issue(s)	Related
447 CD 2014 Similar Issue(s)	Related
1957 CD 2014 Similar Issue(s)	Related
2268 CD 2014 Similar Issue(s)	Related
621 CD 2015 Similar Issue(s)	Related
752 CD 2015 Similar Issue(s)	Related
753 CD 2015 Similar Issue(s)	Related
983 CD 2018 Similar Issue(s)	Related

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 529 MD 2018

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RELATED CASES

Docket No / Reason Type

COUNSEL INFORMATION

Petitioner Donahue, Sean M.

Pro Se: Yes

IFP Status: Yes

Pro Se: Sean M. Donahue
 Address: 625 Cleveland Street
 Hazleton, PA 18201
 Phone No: (570) 454-5367

Fax No:

Respondent The Governor of Pennsylvania

Pro Se: No

IFP Status:

Attorney: Cornick, Anne Gingrich
 Law Firm: Governor's Office of General Counsel
 Address: Governor's Ofc Of General Counsel
 333 Market St Fl 17
 Harrisburg, PA 17101
 Phone No: (717) 783-6563

Fax No:

Attorney: Neary, Keli Marie
 Law Firm: Pennsylvania Office of Attorney General
 Address: Pa Attorney General Civil Law
 Strawberry Sq Fl 15
 Harrisburg, PA 17120-0001
 Phone No: (717) 787-1180

Fax No:

Attorney: Enerson, Caleb Curtis
 Law Firm: Pennsylvania Office of the Attorney General
 Address: Pa Office Of Attorney General
 Strawberry Sq Fl 15
 Harrisburg, PA 17120
 Phone No: (717) 705-5774

Fax No:

Attorney: Boland, Nicole Jeanne
 Law Firm: Pennsylvania Office of the Attorney General
 Address: Pa Office Of Attorney General
 15TH Fl Strawberry Sq
 Harrisburg, PA 17120
 Phone No: (717) 783-3146

Fax No:

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

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March 31, 2019



COUNSEL INFORMATION

Respondent Pennsylvania Department of Labor and Industry

Pro Se: No

IFP Status:

Attorney: Sajer, Marsha Anne
 Law Firm: Pennsylvania Department of Labor & Industry UCBR Referee Office in Kink of Prussia
 Address: Pa Dept Labor & Industry
 651 Boas St 10th Fl
 Harrisburg, PA 17121
 Phone No: (717) 787-4186 Fax No:

Attorney: Neary, Keli Marie
 Law Firm: Pennsylvania Office of Attorney General
 Address: Pa Attorney General Civil Law
 Strawberry Sq 15th Fl
 Harrisburg, PA 17120-0001
 Phone No: (717) 787-1180 Fax No:

Attorney: Enerson, Caleb Curtis
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 Harrisburg, PA 17120
 Phone No: (717) 783-3146 Fax No:

AGENCY/TRIAL COURT INFORMATION

Order Appealed From: Notice of Appeal Filed:

Order Type:

Documents Received: July 31, 2018

Court Below:

County:

Division:

Judge:

OTN:

Docket Number:

Judicial District:

ORIGINAL RECORD CONTENT

Original Record Item

Filed Date

Content Description

Date of Remand of Record:

BRIEFING SCHEDULE

Petitioner

Respondent

Donahue, Sean M.

Pennsylvania Department of Labor and Industry

Brief

Brief

Due: November 13, 2018

Filed: November 4, 2018

Due: October 11, 2018

Filed: October 11, 2018

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 529 MD 2018

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BRIEFING SCHEDULE

Respondent

Pennsylvania Department of Labor and Industry

The Governor of Pennsylvania

Brief

Due: October 11, 2018

Filed: October 11, 2018

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
July 31, 2018	Petition for Review Filed Donahue, Sean M.		Petitioner	
July 31, 2018	Application to Proceed In Forma Pauperis Donahue, Sean M.		Petitioner	
August 1, 2018	Notice Exited Commonwealth Court Filing Office			08/01/2018
August 16, 2018	Order Granting Application to Proceed In Forma Pauperis Per Curiam Document Name: IFP is granted.			08/17/2018
August 30, 2018	Entry of Appearance Boland, Nicole Jeanne Boland, Nicole Jeanne	Pennsylvania Department of Labor a Respondent The Governor of Pennsylvania	Respondent Respondent	
August 30, 2018	Preliminary Objections Boland, Nicole Jeanne Boland, Nicole Jeanne Neary, Keli Marie Neary, Keli Marie	Pennsylvania Department of Labor a Respondent The Governor of Pennsylvania The Governor of Pennsylvania Pennsylvania Department of Labor a Respondent	Respondent Respondent Respondent	
September 5, 2018	Praecipe for Withdrawal of Appearance Giunta, Mary Abbegael	The Governor of Pennsylvania	Respondent	
September 5, 2018	Answer Filed Donahue, Sean M. Document Name: Reply to Commonwealth's August 30, 2018 Preliminary Objections		Petitioner	
September 11, 2018	Order Filed Ceisler, Ellen H. Document Name: respondents shall file a brief (2 copies) in support of their preliminary objections on or before Comment: October 11, 2018. Petitioner shall file his brief (2 copies) in opposition to preliminary objections within 30 days of service of respondents' brief. Upon the filing of all briefs, the preliminary objections shall be submitted to a judge of this Court for disposition on the papers filed without oral argument.			09/12/2018
October 11, 2018	Respondent's Brief Filed Boland, Nicole Jeanne Boland, Nicole Jeanne Document Name: In support of P.O.'s	Pennsylvania Department of Labor a Respondent The Governor of Pennsylvania	Respondent Respondent	

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Commonwealth Court of Pennsylvania

Docket Number: 529 MD 2018

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DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
November 4, 2018	Petitioner's Brief Filed Donahue, Sean M.		Petitioner	
	Document Name: Brief in Opposition to POs			
November 4, 2018	Filed - Other Donahue, Sean M.		Petitioner	
November 8, 2018	Entry of Appearance Enerson, Caleb Curtis	Pennsylvania Department of Labor a Respondent		
	Enerson, Caleb Curtis	The Governor of Pennsylvania	Respondent	
December 27, 2018	PO Sus. Compl PR Dis Per Curiam			12/27/2018
	Document Name: Memorandum Opinion (4 pages) : Respondents' PO I is sustained; Sean M. Donahue's PFR is dismissed; Comment: and Respondents' POs II and III are dismissed as moot. See Memorandum Opinion Filed.			
December 30, 2018	Application for Reconsideration/Reargument Donahue, Sean M.		Petitioner	
	Document Name: Application for Argument En Banc			
January 14, 2019	Answer Filed Enerson, Caleb Curtis	Pennsylvania Department of Labor a Respondent		
	Enerson, Caleb Curtis	The Governor of Pennsylvania	Respondent	
	Document Name: Response in Oppostion to Application for Argument En Banc			
January 16, 2019	Order Denying Application for Reconsideration/Reargument Per Curiam			01/17/2019
	Document Name: Having considered petitioner's application for argument en banc and respondents' answer in Comment: response thereto, the application is denied.			
February 17, 2019	Notice of Appeal to PA Supreme Court Filed Donahue, Sean M.		Petitioner	
	Document Name: 83 MT 2019			
February 22, 2019	Notice Supreme Court of Pennsylvania			
	Document Name: 83 MT 2019-Aministrative Closure. Untimely direct appeal.			
February 23, 2019	Notice Donahue, Sean M.		Petitioner	
	Document Name: 16 MM 2019-Pet. for Leave to Appeal Nunc Pro Tunc.			

DISPOSITION INFORMATION

Final Disposition: Yes
 Related Journal No:
 Category: Disposed Before Decision
 Disposition: PO Sus. Compl PR Dis
 Disposition Comment: and Respondents' POs II and III are dismissed as moot. See Memorandum Opinion Filed.
 Disposition Filing: **Memorandum Opinion**
 Filed Date: 12/27/2018 12:00:00AM
 Judgment Date:
 Disposition Author: Per Curiam
 Disposition Date: December 27, 2018
 Filing Author: Per Curiam

1:42 P.M.

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REARGUMENT / RECONSIDERATION / REMITTAL

Filed Date: December 30, 2018
Disposition: Order Denying Application for Reconsideration/Reargument
Disposition Date: January 16, 2019
Record Remittal:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean M. Donahue,	:	
Petitioner	:	
	:	
v.	:	No. 529 M.D. 2018
	:	
Pennsylvania Department of	:	
Labor and Industry	:	
And The Governor of Pennsylvania,	:	
Respondents	:	

ORDER

PER CURIAM

NOW, January 16, 2019, having considered petitioner's application for argument en banc and respondents' answer in response thereto, the application is denied.

Certified from the Record

JAN 17 2019

And Order Exit



Supreme Court of Pennsylvania

Middle District

Amy Dreiselbis, Esq.
Deputy Prothonotary
Elizabeth E. Zisk
Chief Clerk

601 Commonwealth Avenue, Suite 4500
P.O. Box 62575
Harrisburg, PA 17106
(717) 787-6181
www.pacourts.us

February 19, 2019

Sean M. Donahue
625 Cleveland Street
Hazleton, PA 18201

RE: Donahue, S., Appt v. Dept of L&I et al
No. 72 MT 2019
Lower Appellate Court Docket No:
Other Court Docket No: 529 MD 2018

Dear Sean M. Donahue:

This is to acknowledge receipt of the "appeal" which was PACFiled as a Petition for Allowance of Appeal on February 16, 2019. Please be advised that a Petition for Allowance of Appeal is not the proper pleading to appeal the Commonwealth Court's decision in this matter, and that you should be proceeding by filing a Notice of Appeal and Jurisdictional Statement. See Pa.R.A.P. 103, 1112, 901.

Also, please be advised that more than thirty (30) days have elapsed since the final decision of the Commonwealth Court. The proper order from which to file an appeal was the December 27, 2018 order dismissing your Petition for Review. See Pa.R.A.P. 903(a). A request for reconsideration or reargument **cannot extend the time for filing a direct appeal** unless the trial court expressly grants reconsideration. Sidkoff, Pincus, et al. v. Penn Nat'l Mut. Casualty Ins. Co., 555 A.2d 1284 (Pa. 1989). Accordingly, the appeal cannot be accepted for filing and this case has been closed.

Thank you for your attention in this matter.

Very truly yours,
Office of the Prothonotary

/ad

cc: Nicole Jeanne Boland, Esq.
Anne Gingrich Cornick, Esq.
Caleb Curtis Enerson, Esq.
Michael Krimmel, Esq., Chief Clerk of Commonwealth Court
Keli Marie Neary, Esq.
Marsha Anne Sajer, Esq.
Tarah Carraun Toohil, Esq.



Supreme Court of Pennsylvania

Middle District

Amy Dreibellis, Esq.
Deputy Prothonotary
Elizabeth E. Zisk
Chief Clerk

601 Commonwealth Avenue, Suite 4500
P.O. Box 62575
Harrisburg, PA 17106
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www.pacourts.us

February 22, 2019

Sean M. Donahue
625 Cleveland Street
Hazleton, PA 18201

RE: Donahue, S., Pet. v. Dept of L&I et al
No. 83 MT 2019
Lower Appellate Court Docket No:
Other Court Docket No: 529 MD 2018

Dear Sean M. Donahue:

This is to acknowledge receipt of the "Petition for Review of a First Impression Case Under 42 Pa. C.S. §726", which was PACFiled as a Petition for Allowance of Appeal in the above-captioned matter. Please be advised that the petition has not been accepted for filing, as an appeal of the Commonwealth Court matter would have been due on or before January 28, 2019, but was not received in this office via PACFile until February 21, 2019.

Additionally, as you cited 42 Pa.C.S. §726, please be advised that this Court's extraordinary jurisdiction cannot be used to circumvent the appellate process to revive lapsed appeal rights. If you still wish to appeal the Commonwealth Court's December 27, 2018 decision, you are permitted to file a Petition for Leave to Appeal Nunc Pro Tunc. We require an original and one copy, a \$70.25 filing fee or complete information for in forma pauperis status, a proof of service on opposing counsel, and a certificate of compliance with the public access policy.

The petition for leave should address the reasons why you were unable to file a timely appeal and should include reference to any legal authority you are relying on in your request to be permitted to file a late appeal.

The petition for leave is not to go into the merits of your appeal or contain argument as to the alleged errors below. Only if this Court were to grant you leave to file an Appeal Nunc Pro Tunc, would arguments regarding the errors allegedly made below be permitted.

This administrative docket has been closed. Thank you for your attention in this matter.

Very truly yours,
Office of the Prothonotary

/ad

cc: Nicole Jeanne Boland, Esq.
Anne Gingrich Cornick, Esq.
Caleb Curtis Enerson, Esq.
Michael Krimmel, Esq., Chief Clerk of Commonwealth Court
Keli Marie Neary, Esq.
Marsha Anne Sajer, Esq.

Attest: _____
Deputy Prothonotary
Supreme Court of Pennsylvania

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



OCT 19 2018

Sent Via Email: scandonahue630@gmail.com

Sean M. Donahue
625 Cleveland Street
Hazleton, PA 18201

RE: Freedom of Information Act (FOIA) Request
FOIA Tracking No. 867798

Dear Mr. Donahue:

This is in response to your Freedom of Information Act (FOIA) request dated August 30, 2018, and referred to the Employment and Training Administration (ETA), Office of Workforce Investment (OWI) on. On September 19, 2018, your request was assigned FOIA Tracking No 867798. You requested "a copy of any documentation that states that USDOL funded on stop centers (American Job Centers) are obligated to provide priority job referrals for unemployed veterans to both public sector and private sector employers."

We conducted a search and did not locate records specifying who grant recipients and subrecipients must refer to jobs so a "No Records" response is being sent.

However, per 20 CFR 680.650, veterans receive priority of service in all Department of Labor-funded training programs, including the Workforce Innovation and Opportunity Act (WIOA), in accordance with 38 U.S.C. 4215 and 20 CFR part 1010. Specifically, this regulation reads:

§ 680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?

Yes, veterans, as defined under WIOA sec. 3(63)(A) and 38 U.S.C. 101, receive priority of service in all Department of Labor-funded training programs under 38 U.S.C. 4215 and described in 20 CFR part 1010. A veteran still must meet each program's eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income, in accordance with 38 U.S.C. 4213 and § 683.230 of this chapter.

If you need further assistance or would like to discuss any aspect of your request, you may contact Maria Sanders, ETA's FOIA Program Manager at 202-693-3101 or DOL's FOIA Public Liaison:

Mr. Thomas Hicks, Esq.
FOIA Public Liaison
U.S. Department of Labor
Office of the Solicitor

Management and Administrative Legal Services
Office of Information Services
200 Constitution Avenue, N.W.
Room N-2420
Washington, D.C. 20210
Phone: 202-693-5427
Email: Hicks.Thomas@dol.gov

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

If you are not satisfied with the response to this request, you may appeal my decision to the Solicitor of Labor. You may file an appeal of this decision with the Solicitor of Labor within 90 calendar days of the date of this letter. Address your appeal to the following office:

Solicitor of Labor
U.S. Department of Labor
Division of Management and Administrative Legal Services
200 Constitution Avenue, NW.
Room N-2420
Washington, D.C. 20210

Your appeal may also be emailed to FOIAAppeal@dol.gov. Appeals submitted to any other address will not be accepted. Your appeal must state in writing the grounds for the appeal. It should also include a copy of the original request, the response to your request, and any other supporting statement or arguments. The appeal letter, the envelope, and the e-mail subject line, should be clearly marked "**Freedom of Information Act Appeal.**"

Sincerely,



Amanda Ahlstrand
Administrator
Office of Workforce Investment



Sean Donahue <seandonahue630@gmail.com>

Position Statement From US DOL

Wright, Randall - VETS <Wright.Randall@dol.gov>
To: Sean Donahue <seandonahue630@gmail.com>

Sat, Oct 20, 2018 at 7:53 AM

Mr. Donahue

Your concern/issue has been forwarded to my chain of command.

Randy Wright

From: Sean Donahue <seandonahue630@gmail.com>
Sent: Friday, October 19, 2018 7:15:39 PM
To: Wright, Randall - VETS
Subject: Position Statement From US DOL

Dear Mr. Wright,

Please issue a position statement on the below matter.

By now, you have had an ample amount of time to decide whether or not your office agrees with Pennsylvania's position that it is not required by the Jobs for Veterans Act, the Workforce Innovations and Opportunity Act, the Hire our Heroes Act, the policies of the Trump administration and other federal laws to provide veterans priority job referrals to honorably discharged veterans.

Pennsylvania is taking the legal stand merely being a veteran doesn't get you anything. I disagree. my interpretation of the above mentioned laws and the policies of the Trump administration is that veterans are supposed to receive veterans priority job referrals.

Is it the USDOL's position that veterans are not entitled to veterans priority job placement services, which includes referrals? What are veterans priority job placement services and how do you differentiate job training from job placement?

I will be suing to freeze Pennsylvania's access to funding under the above mentioned laws.

Please forward this email to the US Director of VETS, or to whichever US DOL official is ultimately responsible for exercising oversight to ensure that the 50 states and US territories are providing veterans priority job placement services to veterans. I will be sending you response or documentation of your failure to respond to the White House and to media. As a US veteran, I find it very disheartening that you failed to issued a position statement on this matter. I find your individual office to be of no meaningful service to veterans.

Respectfully,
Sean M. Donahue

----- Forwarded message -----
From: Hecker, Patrick - VETS <Hecker.Patrick@dol.gov>
Date: Fri, Oct 12, 2018 at 7:24 AM
Subject: RE: (1 of 3) PA Argues Against Veterans Priority Job Referrals
To: Sean Donahue <seandonahue630@gmail.com>

Dear Mr. Donahue,

Thank you for your four (4) email messages with attachments, and your accompanying request for a position statement from the U.S. Department of Labor, Veterans' Employment and Training Service (VETS) as it relates to your current litigation with the Commonwealth of Pennsylvania.

As you may know, I am the VETS' State Director for the Commonwealth of Virginia, and, as such, may not be the appropriate official from VETS to respond to your request. Accordingly, I have forwarded your messages and request to VETS' Philadelphia Regional and National Offices for response and/or transmittal to the Department's Solicitor's Office, as they deem appropriate and necessary.

Thank you again for your inquiry.

Patrick Hecker

Director - Virginia

Veterans' Employment & Training Service (VETS)

U.S. Department of Labor | <http://www.dol.gov/vets>
703 East Main Street, Room 118

Richmond, Virginia 23219

Office: (202) 306-2566

Fax: (804) 786-4548



VETERANS' EMPLOYMENT AND TRAINING SERVICE
UNITED STATES DEPARTMENT OF LABOR



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From: Sean Donahue <seandonahue630@gmail.com>

Sent: Thursday, October 11, 2018 2:22 PM

To: Hecker, Patrick - VETS <Hecker.Patrick@dol.gov>; katie.branson@mail.house.gov

Cc: Charles Edward Lincoln III <charles.e.lincoln@gmail.com>; Healy, Christian <Chris.Healy@mail.house.gov>; William Johnson <Johnson@loslaw.com>; Bellin, Shana B. (USAPAM) <shana.b.bellin@usdoj.gov>; nboland@attorneygeneral.gov; Sam Lesante, Sr. CEO <sam@ssptv.com>; Maisel, Matt <mmaisel@fox43.com>

Subject: (1 of 3) PA Argues Against Veterans Priority Job Referrals

Dear Mr. Hecker,

I am seeking a position statement from your office. Pennsylvania argues that there is not such thing as a veterans priority job referral to employers with open positions that honorably discharged veterans are entitled to. Pennsylvania claims that only a small number of veterans qualify for job referrals to training programs but there is nothing for job placement services, such as referrals. I disagree. I think the federal law entitles all honorably discharged veterans to veterans priority job referrals.

I will likely be forwarding a copy my argument to the White House General Counsel in search of a political solution as well. I will include this email and your response or acknowledge the absence thereof in my argument.

Please find a copy of Pennsylvania's argument that there is no such thing as veterans priority job referrals. If you prefer to have someone from the USDOL solicitor's office respond, please do.

Once again, my core argument is that the state labor departments are funded to do the following; A veteran informs the local one stop center (unemployment office) that he is interested in jobs. The federally funded state labor department is responsible for referring veterans to employers who have open positions in some formal manner, such as a memo or a veterans priority job referral list. Pennsylvania says; No! It is not funded or required to do so. I disagree.

I believe that we have a question of legislative intent. What do veterans think when legislative candidates and elected presidents say we get priority services? Priority job referrals are one of those services.

I once went to a state job interview and was given an application to fill out. The very first question on the application asked if I had been referred as part of a veterans priority job referral. I know for certain that such things are supposed to exist.

If the law needs to be pinned down more explicitly, then I intend to push for such legislative changes. In the meantime, I intend to petition the courts for the interpretation of the laws that I seek because I think I am right.

In short; What is a job referral? What does the grant funding program under which you are funded do for an unemployed veteran who has a college degree or a masters degree and wants a good job? Do you help or do you say; No. Do you refer the veteran to employers? What are the Trump administration's answer to these questions?

I occurs to me that at some point in either this case or another, it may be beneficial to both myself and the state of Pennsylvania to subpoena you or your supervisor to testify.

Respectfully,

Sean M. Donahue



Sean Donahue <seandonahue630@gmail.com>

(1 of 3) PA Argues Against Veterans Priority Job Referrals

Hecker, Patrick - VETS <Hecker.Patrick@dol.gov>
To: Sean Donahue <seandonahue630@gmail.com>

Fri, Oct 12, 2018 at 7:24 AM

Dear Mr. Donahue,

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Thank you again for your inquiry.

Patrick Hecker

Director - Virginia

Veterans' Employment & Training Service (VETS)

U.S. Department of Labor | <http://www.dol.gov/vets>
703 East Main Street, Room 118

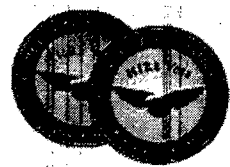
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VETERANS' EMPLOYMENT AND TRAINING SERVICE
UNITED STATES DEPARTMENT OF LABOR



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From: Sean Donahue <seandonahue630@gmail.com>

Sent: Thursday, October 11, 2018 2:22 PM

To: Hecker, Patrick - VETS <Hecker.Patrick@dol.gov>; katie.branson@mail.house.gov

Cc: Charles Edward Lincoln III <charles.e.lincoln@gmail.com>; Healy, Christian <Chris.Healy@mail.house.gov>; William Johnson <Johnson@loslaw.com>; Bellin, Shana B. (USAPAM) <shana.b.bellin@usdoj.gov>;

nboland@attorneygeneral.gov; Sam Lesante, Sr. CEO <sam@ssptv.com>; Maisel, Matt <mmaisel@fox43.com>

Subject: (1 of 3) PA Argues Against Veterans Priority Job Referrals

Dear Mr. Hecker,

I am seeking a position statement from your office. Pennsylvania argues that there is not such thing a veterans priority job referral to employers with open positions that honorably discharged veterans are entitled to. Pennsylvania claims that only a small number of veterans qualify for job referrals to training programs but there is nothing for job placement services, such as referrals. I disagree. I think the federal law entitles all honorably discharged veterans to veterans priority job referrals.

I will likely be forwarding a copy my argument to the White House General Counsel in search of a political solution as well. I will include this email and your response or acknowledge the absence thereof in my argument.

Please find a copy of Pennsylvania's argument that there is no such thing as veterans priority job referrals. If you prefer to have someone from the USDOL solicitor's office respond, please do.

Once again, my core argument is that the state labor departments are funded to do the following: A veteran informs the local one stop center (unemployment office) that he is interested in jobs. The federally funded state labor department is responsible for referring veterans to employers who have open positions in some formal manner, such as a memo or a veterans priority job referral list. Pennsylvania says; No! It is not funded or required to do so. I disagree.

I believe that we have a question of legislative intent. What do veterans think when legislative candidates and elected presidents say we get priority services? Priority job referrals are one of those services.

I once went to a state job interview and was given an application to fill out. The very first question on the application asked if I had been referred as part of a veterans priority job referral. I know for certain that such things are supposed to exist.

If the law needs to be pinned down more explicitly, then I intend to push for such legislative changes. In the meantime, I intend to petition the courts for the interpretation of the laws that I seek because I think I am right.

In short; What is a job referral? What does the grant funding program under which you are funded do for an unemployed veteran who has a college degree or a masters degree and wants a good job? Do you help or do you say; No. Do you refer the veteran to employers? What are the Trump administration's answer to these questions?

3/31/2019

Gmail - (1 of 3) PA Argues Against Veterans Priority Job Referrals

I occurs to me that at some point in either this case or another, it may be beneficial to both myself and the state of Pennsylvania to subpoena you or your supervisor to testify.

Respectfully,

Sean M. Donahue



Sean Donahue <seandonahue630@gmail.com>

Position Statement From US DOL

Karamoko, Arginia - SOL <Karamoko.Arginia@dol.gov>

Wed, Oct 31, 2018 at 3:20 PM

To: Sean Donahue <seandonahue630@gmail.com>, "Buchanan, Richard - SOL" <Buchanan.Richard@dol.gov>, "tammy.aita@mail.house.gov" <tammy.aita@mail.house.gov>, "Bluer, Jennifer L - SOL" <Bluer.Jennifer.l@dol.gov>
Cc: William Johnson <Johnson@loslaw.com>, Charles Edward Lincoln III <charles.e.lincoln@gmail.com>, "Bellin, Shana B. (USAPAM)" <shana.b.bellin@usdoj.gov>, "nboland@attorneygeneral.gov" <nboland@attorneygeneral.gov>, DAVE CAMPBELL <newstip@wnep.com>, "newsdesk@pahomepage.com" <newsdesk@pahomepage.com>, "Maisel, Matt" <mmaisel@fox43.com>, charles marsala <cemarsala@yahoo.com>, "Oliver, Ramona - SOL" <Oliver.Ramona@dol.gov>, "Hicks, Thomas - SOL" <Hicks.Thomas@dol.gov>

Mr. Donahue:

The information on how to properly file a FOIA Appeal with the US Department of Labor is included within your final response letter from ETA. As stated in the letter, appeals to any other address will not be accepted. I am including the contact information and instructions on how to file an appeal below for your convenience.

Mail to:

Attn: Freedom of Information Act Appeal**Solicitor of Labor****U.S. Department of Labor****200 Constitution Ave., NW****Room N-2420,****Washington, D.C. 20210****Email: foiaappeal@dol.gov**

Your appeal should include the initial request number assigned to your request, copies of your initial request, and the response from the disclosure officer. Your letter should explain the reasons for your appeal. Submission of a FOIA appeal must be made within 90 days of the final response.

Sincerely,

Arginia Karamoko

Government Information Specialist, Office of Information Services

Office of the Solicitor | Management & Administrative Legal Services



Sean Donahue <seandonahue630@gmail.com>

Position Statement From US DOL

Crowley, Timothy P - VETS <Crowley.Timothy.P@dol.gov>

Wed, Oct 31, 2018 at 9:53 AM

To: "seandonahue630@gmail.com" <seandonahue630@gmail.com>

Cc: "Wright, Randall - VETS" <Wright.Randall@dol.gov>, "Hecker, Patrick - VETS" <Hecker.Patrick@dol.gov>, "Torrans, William - VETS" <Torrans-William@dol.gov>

Dear Mr. Donahue,

Thank you for your recent inquiry, which was referred to the Philadelphia Regional Office in accordance with Mr. Torrans' email message to you, dated November 2, 2016.

Please be advised that, if you are not satisfied with the response that you received to your Freedom of Information Act (FOIA) request, dated October 19, 2018, you may appeal that decision to the Solicitor of Labor within 90 days of the date of that response as indicated in the attached letter.

Please also be advised that any other demands for information from the Department of Labor for use in private litigation must comply with the Department's *Touhy* regulations at 29 C.F.R. §§ 2.20-2.25. These regulations are patterned after regulations that were at issue, and upheld by the Supreme Court, in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Thank you again for your inquiry, and for your service.

Timothy P. Crowley, Esq.

Regional Administrator

Philadelphia Regional Office

Veterans' Employment & Training Service (VETS)

U.S. Department of Labor

The Curtis Center, Suite 770 West
170 S. Independence Mall West

Philadelphia, PA 19106

(215) 861 – 5385 (w)

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crowley.timothy.p@dol.gov

Appendix F

Public Law 107-288
107th Congress

An Act

To amend title 38, United States Code, to revise and improve employment, training, and placement services furnished to veterans, and for other purposes.

Nov. 7, 2002
[H.R. 4015]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Jobs for Veterans
Act.

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) **SHORT TITLE.**—This Act may be cited as the “Jobs for Veterans Act”. 38 USC 101 note.

(b) **REFERENCES TO TITLE 38, UNITED STATES CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. PRIORITY OF SERVICE FOR VETERANS IN DEPARTMENT OF LABOR JOB TRAINING PROGRAMS.

(a) **VETERANS’ JOB TRAINING ASSISTANCE.**—(1) Chapter 42 is amended by adding at the end the following new section:

“§ 4215. Priority of service for veterans in Department of Labor job training programs

“(a) **DEFINITIONS.**—In this section:

“(1) The term ‘covered person’ means any of the following individuals:

“(A) A veteran.

“(B) The spouse of any of the following individuals:

“(i) Any veteran who died of a service-connected disability.

“(ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days: (I) missing in action, (II) captured in line of duty by a hostile force, or (III) forcibly detained or interned in line of duty by a foreign government or power.

“(iii) Any veteran who has a total disability resulting from a service-connected disability.

“(iv) Any veteran who died while a disability so evaluated was in existence.

“(2) The term ‘qualified job training program’ means any workforce preparation, development, or delivery program or service that is directly funded, in whole or in part, by the Department of Labor and includes the following:

“(A) Any such program or service that uses technology to assist individuals to access workforce development programs (such as job and training opportunities, labor market information, career assessment tools, and related support services).

“(B) Any such program or service under the public employment service system, one-stop career centers, the Workforce Investment Act of 1998, a demonstration or other temporary program, and those programs implemented by States or local service providers based on Federal block grants administered by the Department of Labor.

“(C) Any such program or service that is a workforce development program targeted to specific groups.

“(3) The term ‘priority of service’ means, with respect to any qualified job training program, that a covered person shall be given priority over nonveterans for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of law.

“(b) ENTITLEMENT TO PRIORITY OF SERVICE.—(1) A covered person is entitled to priority of service under any qualified job training program if the person otherwise meets the eligibility requirements for participation in such program.

“(2) The Secretary of Labor may establish priorities among covered persons for purposes of this section to take into account the needs of disabled veterans and special disabled veterans, and such other factors as the Secretary determines appropriate.

“(c) ADMINISTRATION OF PROGRAMS AT STATE AND LOCAL LEVELS.—An entity of a State or a political subdivision of the State that administers or delivers services under a qualified job training program shall—

“(1) provide information and priority of service to covered persons regarding benefits and services that may be obtained through other entities or service providers; and

“(2) ensure that each covered person who applies to or who is assisted by such a program is informed of the employment-related rights and benefits to which the person is entitled under this section.

“(d) ADDITION TO ANNUAL REPORT.—In the annual report required under section 4107(c) of this title for the program year beginning in 2003 and each subsequent program year, the Secretary of Labor shall evaluate whether covered persons are receiving priority of service and are being fully served by qualified job training programs, and whether the representation of veterans in such programs is in proportion to the incidence of representation of veterans in the labor market, including within groups that the Secretary may designate for priority under such programs, if any.”

(2) The table of sections at the beginning of chapter 42 is amended by inserting after the item relating to section 4214 the following new item:

“4215. Priority of service for veterans in Department of Labor job training programs.”

(b) EMPLOYMENT OF VETERANS WITH RESPECT TO FEDERAL CONTRACTS.—(1) Section 4212(a) is amended to read as follows:

“(a)(1) Any contract in the amount of \$100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans. This section applies to any subcontract in the amount of \$100,000 or more entered into by a prime contractor in carrying out any such contract.

“(2) In addition to requiring affirmative action to employ such qualified covered veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the Secretary of Labor shall prescribe regulations requiring that—

Regulations.

“(A) each such contractor for each such contract shall immediately list all of its employment openings with the appropriate employment service delivery system (as defined in section 4101(7) of this title), and may also list such openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America’s Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor), except that the contractor may exclude openings for executive and senior management positions and positions which are to be filled from within the contractor’s organization and positions lasting three days or less;

“(B) each such employment service delivery system shall give such qualified covered veterans priority in referral to such employment openings; and

“(C) each such employment service delivery system shall provide a list of such employment openings to States, political subdivisions of States, or any private entities or organizations under contract to carry out employment, training, and placement services under chapter 41 of this title.

“(3) In this section:

“(A) The term ‘covered veteran’ means any of the following veterans:

“(i) Disabled veterans.

“(ii) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized.

“(iii) Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985 (61 Fed. Reg. 1209).

“(iv) Recently separated veterans.

“(B) The term ‘qualified’, with respect to an employment position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.”

(2)(A) Section 4212(c) is amended—

(i) by striking “suitable”; and

(ii) by striking “subsection (a)(2) of this section” and inserting “subsection (a)(2)(B)”.

(B) Section 4212(d)(1) is amended—

(i) in the matter preceding subparagraph (A), by striking “of this section” after “subsection (a)”; and

(ii) by amending subparagraphs (A) and (B) to read as follows:

“(A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;

“(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and”.

(C) Section 4212(d)(2) is amended by striking “of this subsection” after “paragraph (1)”.

(D) Section 4211(6) is amended by striking “one-year period” and inserting “three-year period”.

Applicability.
Effective date.

(3) The amendments made by this subsection shall apply with respect to contracts entered into on or after the first day of the first month that begins 12 months after the date of the enactment of this Act.

(c) EMPLOYMENT WITHIN THE FEDERAL GOVERNMENT.—(1) Section 4214(a)(1) is amended—

(A) in the first sentence, by striking “life” and all that follows and inserting “life.”; and

(B) in the second sentence, by striking “major” and inserting “uniquely qualified”.

(2) Section 4214(b) is amended—

(A) in paragraph (1), by striking “readjustment” and inserting “recruitment”;

(B) in paragraph (2), by striking “to—” and all that follows through the period at the end and inserting “to qualified covered veterans.”;

(C) in paragraph (3), to read as follows:

“(3) A qualified covered veteran may receive such an appointment at any time.”

(3)(A) Section 4214(a) is amended—

(i) in the third sentence of paragraph (1), by striking “disabled veterans and certain veterans of the Vietnam era and of the post-Vietnam era” and inserting “qualified covered veterans (as defined in paragraph (2)(B))”; and

(ii) in paragraph (2), to read as follows:

“(2) In this section:

“(A) The term ‘agency’ has the meaning given the term ‘department or agency’ in section 4211(5) of this title.

“(B) The term ‘qualified covered veteran’ means a veteran described in section 4212(a)(3) of this title.”

(B) Clause (i) of section 4214(e)(2)(B) is amended by striking “of the Vietnam era”.

(C) Section 4214(g) is amended—

(i) by striking “qualified” the first place it occurs and all that follows through “era” the first place it occurs and inserting “qualified covered veterans”; and

(ii) by striking “under section 1712A of this title” and all that follows and inserting “under section 1712A of this title.”

Applicability.
38 USC 4214
note.

(4) The amendments made by this subsection shall apply to qualified covered veterans without regard to any limitation relating to the date of the veteran’s last discharge or release from active duty that may have otherwise applied under section 4214(b)(3)

as in effect on the date before the date of the enactment of this Act.

SEC. 3. FINANCIAL AND NON-FINANCIAL PERFORMANCE INCENTIVE AWARDS FOR QUALITY VETERANS EMPLOYMENT, TRAINING, AND PLACEMENT SERVICES.

(a) PERFORMANCE INCENTIVE AWARDS FOR QUALITY EMPLOYMENT, TRAINING, AND PLACEMENT SERVICES.—Chapter 41 is amended by adding at the end the following new section:

“§ 4112. Performance incentive awards for quality employment, training, and placement services

“(a) CRITERIA FOR PERFORMANCE INCENTIVE AWARDS.—(1) For purposes of carrying out a program of performance incentive awards under section 4102A(c)(2)(A)(i)(III) of this title, the Secretary, acting through the Assistant Secretary of Labor for Veterans’ Employment and Training, shall establish criteria for performance incentive awards programs to be administered by States to—

“(A) encourage the improvement and modernization of employment, training, and placement services provided under this chapter; and

“(B) recognize eligible employees for excellence in the provision of such services or for having made demonstrable improvements in the provision of such services.

“(2) The Secretary shall establish such criteria in consultation with representatives of States, political subdivisions of States, and other providers of employment, training, and placement services under the Workforce Investment Act of 1998 consistent with the performance measures established under section 4102A(b)(7) of this title.

“(b) FORM OF AWARDS.—Under the criteria established by the Secretary for performance incentive awards to be administered by States, an award under such criteria may be a cash award or such other nonfinancial awards as the Secretary may specify.

“(c) RELATIONSHIP OF AWARD TO GRANT PROGRAM AND EMPLOYEE COMPENSATION.—Performance incentive cash awards under this section—

“(1) shall be made from amounts allocated from the grant or contract amount for a State for a program year under section 4102A(c)(7) of this title; and

“(2) is in addition to the regular pay of the recipient.

“(d) ELIGIBLE EMPLOYEE DEFINED.—In this section, the term ‘eligible employee’ means any of the following:

“(1) A disabled veterans’ outreach program specialist.

“(2) A local veterans’ employment representative.

“(3) An individual providing employment, training, and placement services to veterans under the Workforce Investment Act of 1998 or through an employment service delivery system (as defined in section 4101(7) of this title).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 41 is amended by adding at the end the following new item:

“4112. Performance incentive awards for quality employment, training, and placement services.”.

SEC. 4. REFINEMENT OF JOB TRAINING AND PLACEMENT FUNCTIONS OF THE DEPARTMENT.

(a) REVISION OF DEPARTMENT LEVEL SENIOR OFFICIALS AND FUNCTIONS.—(1) Sections 4102A and 4103 are amended to read as follows:

“§ 4102A. Assistant Secretary of Labor for Veterans’ Employment and Training; program functions; Regional Administrators

“(a) ESTABLISHMENT OF POSITION OF ASSISTANT SECRETARY OF LABOR FOR VETERANS’ EMPLOYMENT AND TRAINING.—(1) There is established within the Department of Labor an Assistant Secretary of Labor for Veterans’ Employment and Training, appointed by the President by and with the advice and consent of the Senate, who shall formulate and implement all departmental policies and procedures to carry out (A) the purposes of this chapter, chapter 42, and chapter 43 of this title, and (B) all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans.

“(2) The employees of the Department of Labor administering chapter 43 of this title shall be administratively and functionally responsible to the Assistant Secretary of Labor for Veterans’ Employment and Training.

“(3)(A) There shall be within the Department of Labor a Deputy Assistant Secretary of Labor for Veterans’ Employment and Training. The Deputy Assistant Secretary shall perform such functions as the Assistant Secretary of Labor for Veterans’ Employment and Training prescribes.

“(B) No individual may be appointed as a Deputy Assistant Secretary of Labor for Veterans’ Employment and Training unless the individual has at least five years of service in a management position as an employee of the Federal civil service or comparable service in a management position in the Armed Forces. For purposes of determining such service of an individual, there shall be excluded any service described in subparagraphs (A), (B), and (C) of section 308(d)(2) of this title.

“(b) PROGRAM FUNCTIONS.—The Secretary shall carry out the following functions:

“(1) Except as expressly provided otherwise, carry out all provisions of this chapter and chapter 43 of this title through the Assistant Secretary of Labor for Veterans’ Employment and Training and administer through such Assistant Secretary all programs under the jurisdiction of the Secretary for the provision of employment and training services designed to meet the needs of all veterans and persons eligible for services furnished under this chapter.

“(2) In order to make maximum use of available resources in meeting such needs, encourage all such programs, and all grantees and contractors under such programs to enter into cooperative arrangements with private industry and business concerns (including small business concerns owned by veterans

or disabled veterans), educational institutions, trade associations, and labor unions.

“(3) Ensure that maximum effectiveness and efficiency are achieved in providing services and assistance to eligible veterans under all such programs by coordinating and consulting with the Secretary of Veterans Affairs with respect to (A) programs conducted under other provisions of this title, with particular emphasis on coordination of such programs with readjustment counseling activities carried out under section 1712A of this title, apprenticeship or other on-the-job training programs carried out under section 3687 of this title, and rehabilitation and training activities carried out under chapter 31 of this title and (B) determinations covering veteran population in a State.

“(4) Ensure that employment, training, and placement activities are carried out in coordination and cooperation with appropriate State public employment service officials.

“(5) Subject to subsection (c), make available for use in each State by grant or contract such funds as may be necessary to support—

“(A) disabled veterans’ outreach program specialists appointed under section 4103A(a)(1) of this title,

“(B) local veterans’ employment representatives assigned under section 4104(b) of this title, and

“(C) the reasonable expenses of such specialists and representatives described in subparagraphs (A) and (B), respectively, for training, travel, supplies, and other business expenses, including travel expenses and per diem for attendance at the National Veterans’ Employment and Training Services Institute established under section 4109 of this title.

“(6) Monitor and supervise on a continuing basis the distribution and use of funds provided for use in the States under paragraph (5).

“(7) Establish, and update as appropriate, a comprehensive performance accountability system (as described in subsection (f)) and carry out annual performance reviews of veterans employment, training, and placement services provided through employment service delivery systems, including through disabled veterans’ outreach program specialists and through local veterans’ employment representatives in States receiving grants, contracts, or awards under this chapter.

“(c) CONDITIONS FOR RECEIPT OF FUNDS.—(1) The distribution and use of funds under subsection (b)(5) in order to carry out sections 4103A(a) and 4104(a) of this title shall be subject to the continuing supervision and monitoring of the Secretary and shall not be governed by the provisions of any other law, or any regulations prescribed thereunder, that are inconsistent with this section or section 4103A or 4104 of this title.

“(2)(A) A State shall submit to the Secretary an application for a grant or contract under subsection (b)(5). The application shall contain the following information:

“(i) A plan that describes the manner in which the State shall furnish employment, training, and placement services required under this chapter for the program year, including a description of—

“(I) duties assigned by the State to disabled veterans’ outreach program specialists and local veterans’ employment representatives consistent with the requirements of sections 4103A and 4104 of this title;

“(II) the manner in which such specialists and representatives are integrated in the employment service delivery systems in the State; and

“(III) the program of performance incentive awards described in section 4112 of this title in the State for the program year.

“(ii) The veteran population to be served.

“(iii) Such additional information as the Secretary may require to make a determination with respect to awarding a grant or contract to the State.

“(B)(i) Subject to the succeeding provisions of this subparagraph, of the amount available under subsection (b)(5) for a fiscal year, the Secretary shall make available to each State with an application approved by the Secretary an amount of funding in proportion to the number of veterans seeking employment using such criteria as the Secretary may establish in regulation, including civilian labor force and unemployment data, for the State on an annual basis. The proportion of funding shall reflect the ratio of—

“(I) the total number of veterans residing in the State that are seeking employment; to

“(II) the total number of veterans seeking employment in all States.

Effective date.

“(ii) The Secretary shall phase in over the three fiscal-year period that begins on October 1, 2002, the manner in which amounts are made available to States under subsection (b)(5) and this subsection, as amended by the Jobs for Veterans Act.

“(iii) In carrying out this paragraph, the Secretary may establish minimum funding levels and hold-harmless criteria for States.

“(3)(A)(i) As a condition of a grant or contract under this section for a program year, in the case of a State that the Secretary determines has an entered-employment rate for veterans that is deficient for the preceding program year, the State shall develop a corrective action plan to improve that rate for veterans in the State.

“(ii) The State shall submit the corrective action plan to the Secretary for approval, and if approved, shall expeditiously implement the plan.

“(iii) If the Secretary does not approve a corrective action plan submitted by the State under clause (i), the Secretary shall take such steps as may be necessary to implement corrective actions in the State to improve the entered-employment rate for veterans in that State.

Regulations.

“(B) To carry out subparagraph (A), the Secretary shall establish in regulations a uniform national threshold entered-employment rate for veterans for a program year by which determinations of deficiency may be made under subparagraph (A).

“(C) In making a determination with respect to a deficiency under subparagraph (A), the Secretary shall take into account the applicable annual unemployment data for the State and consider other factors, such as prevailing economic conditions, that affect performance of individuals providing employment, training, and placement services in the State.

“(4) In determining the terms and conditions of a grant or contract under which funds are made available to a State in order to carry out section 4103A or 4104 of this title, the Secretary shall take into account—

“(A) the results of reviews, carried out pursuant to subsection (b)(7), of the performance of the employment, training, and placement service delivery system in the State, and

“(B) the monitoring carried out under this section.

“(5) Each grant or contract by which funds are made available to a State shall contain a provision requiring the recipient of the funds—

“(A) to comply with the provisions of this chapter; and

“(B) on an annual basis, to notify the Secretary of, and provide supporting rationale for, each nonveteran who is employed as a disabled veterans’ outreach program specialist and local veterans’ employment representative for a period in excess of 6 months.

“(6) Each State shall coordinate employment, training, and placement services furnished to veterans and eligible persons under this chapter with such services furnished with respect to such veterans and persons under the Workforce Investment Act of 1998 and the Wagner-Peyser Act.

“(7) With respect to program years beginning during or after fiscal year 2004, one percent of the amount of a grant or contract under which funds are made available to a State in order to carry out section 4103A or 4104 of this title for the program year shall be for the purposes of making cash awards under the program of performance incentive awards described in section 4112 of this title in the State.

“(d) PARTICIPATION IN OTHER FEDERALLY FUNDED JOB TRAINING PROGRAMS.—The Assistant Secretary of Labor for Veterans’ Employment and Training shall promote and monitor participation of qualified veterans and eligible persons in employment and training opportunities under title I of the Workforce Investment Act of 1998 and other federally funded employment and training programs.

“(e) REGIONAL ADMINISTRATORS.—(1) The Secretary shall assign to each region for which the Secretary operates a regional office a representative of the Veterans’ Employment and Training Service to serve as the Regional Administrator for Veterans’ Employment and Training in such region.

“(2) Each such Regional Administrator shall carry out such duties as the Secretary may require to promote veterans employment and reemployment within the region that the Administrator serves.

“(f) ESTABLISHMENT OF PERFORMANCE STANDARDS AND OUTCOMES MEASURES.—(1) By not later than 6 months after the date of the enactment of this section, the Assistant Secretary of Labor for Veterans’ Employment and Training shall establish and implement a comprehensive performance accountability system to measure the performance of employment service delivery systems, including disabled veterans’ outreach program specialists and local veterans’ employment representatives providing employment, training, and placement services under this chapter in a State to provide accountability of that State to the Secretary for purposes of subsection (c).

Deadline.

“(2) Such standards and measures shall—

“(A) be consistent with State performance measures applicable under section 136(b) of the Workforce Investment Act of 1998; and

“(B) be appropriately weighted to provide special consideration for placement of (i) veterans requiring intensive services (as defined in section 4101(9) of this title), such as special disabled veterans and disabled veterans, and (ii) veterans who enroll in readjustment counseling under section 1712A of this title.

“(g) **AUTHORITY TO PROVIDE TECHNICAL ASSISTANCE TO STATES.**—The Secretary may provide such technical assistance as the Secretary determines appropriate to any State that the Secretary determines has, or may have, an entered-employment rate in the State that is deficient, as determined under subsection (c)(3) with respect to a program year, including assistance in the development of a corrective action plan under that subsection.

“§ 4103. Directors and Assistant Directors for Veterans’ Employment and Training; additional Federal personnel

“(a) **DIRECTORS AND ASSISTANT DIRECTORS.**—(1) The Secretary shall assign to each State a representative of the Veterans’ Employment and Training Service to serve as the Director for Veterans’ Employment and Training, and shall assign full-time Federal clerical or other support personnel to each such Director.

“(2) Each Director for Veterans’ Employment and Training for a State shall, at the time of appointment, have been a bona fide resident of the State for at least two years.

“(3) Full-time Federal clerical or other support personnel assigned to Directors for Veterans’ Employment and Training shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

“(b) **ADDITIONAL FEDERAL PERSONNEL.**—The Secretary may also assign as supervisory personnel such representatives of the Veterans’ Employment and Training Service as the Secretary determines appropriate to carry out the employment, training, and placement services required under this chapter, including Assistant Directors for Veterans’ Employment and Training.”

(2) The items relating to sections 4102A and 4103, respectively, in the table of sections at the beginning of chapter 41 are amended to read as follows:

“4102A. Assistant Secretary of Labor for Veterans’ Employment and Training; program functions; Regional Administrators.

“4103. Directors and Assistant Directors for Veterans’ Employment and Training; additional Federal personnel.”

(3)(A)(i) Section 4104A is repealed.

(ii) The table of sections at the beginning of chapter 41 is amended by striking the item relating to section 4104A.

(B) Section 4107(b) is amended by striking “The Secretary shall establish definitive performance standards” and inserting “The Secretary shall apply performance standards established under section 4102A(f) of this title”.

(4) The amendments made by this subsection shall take effect on the date of the enactment of this Act, and apply for program

and fiscal years under chapter 41 of title 38, United States Code, beginning on or after such date.

(b) REVISION OF STATUTORILY DEFINED DUTIES OF DISABLED VETERANS' OUTREACH PROGRAM SPECIALISTS AND LOCAL VETERANS' EMPLOYMENT REPRESENTATIVES.—(1) Section 4103A is amended by striking all after the heading and inserting the following:

“(a) REQUIREMENT FOR EMPLOYMENT BY STATES OF A SUFFICIENT NUMBER OF SPECIALISTS.—(1) Subject to approval by the Secretary, a State shall employ such full- or part-time disabled veterans' outreach program specialists as the State determines appropriate and efficient to carry out intensive services under this chapter to meet the employment needs of eligible veterans with the following priority in the provision of services:

“(A) Special disabled veterans.

“(B) Other disabled veterans.

“(C) Other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title.

“(2) In the provision of services in accordance with this subsection, maximum emphasis in meeting the employment needs of veterans shall be placed on assisting economically or educationally disadvantaged veterans.

“(b) REQUIREMENT FOR QUALIFIED VETERANS.—A State shall, to the maximum extent practicable, employ qualified veterans to carry out the services referred to in subsection (a). Preference shall be given in the appointment of such specialists to qualified disabled veterans.”.

(2) Section 4104 is amended by striking all after the heading and inserting the following:

“(a) REQUIREMENT FOR EMPLOYMENT BY STATES OF A SUFFICIENT NUMBER OF REPRESENTATIVES.—Subject to approval by the Secretary, a State shall employ such full- and part-time local veterans' employment representatives as the State determines appropriate and efficient to carry out employment, training, and placement services under this chapter.

“(b) PRINCIPAL DUTIES.—As principal duties, local veterans' employment representatives shall—

“(1) conduct outreach to employers in the area to assist veterans in gaining employment, including conducting seminars for employers and, in conjunction with employers, conducting job search workshops and establishing job search groups; and

“(2) facilitate employment, training, and placement services furnished to veterans in a State under the applicable State employment service delivery systems.

“(c) REQUIREMENT FOR QUALIFIED VETERANS AND ELIGIBLE PERSONS.—A State shall, to the maximum extent practicable, employ qualified veterans or eligible persons to carry out the services referred to in subsection (a). Preference shall be accorded in the following order:

“(1) To qualified service-connected disabled veterans.

“(2) If no veteran described in paragraph (1) is available, to qualified eligible veterans.

“(3) If no veteran described in paragraph (1) or (2) is available, then to qualified eligible persons.

“(d) REPORTING.—Each local veterans' employment representative shall be administratively responsible to the manager of the

employment service delivery system and shall provide reports, not less frequently than quarterly, to the manager of such office and to the Director for Veterans' Employment and Training for the State regarding compliance with Federal law and regulations with respect to special services and priorities for eligible veterans and eligible persons."

Effective date.
38 USC 4103A
note.

(3) The amendments made by this subsection shall take effect on the date of the enactment of this Act, and apply for program years under chapter 41 of title 38, United States Code, beginning on or after such date.

Deadline.
38 USC 4215
note.

(c) **REQUIREMENT TO PROMPTLY ESTABLISH ONE-STOP EMPLOYMENT SERVICES.**—By not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall provide one-stop services and assistance to covered persons electronically by means of the Internet, as defined in section 231(e)(3) of the Communications Act of 1934, and such other electronic means to enhance the delivery of such services and assistance.

(d) **REQUIREMENT FOR BUDGET LINE ITEM FOR TRAINING SERVICES INSTITUTE.**—(1) The last sentence of section 4106(a) is amended to read as follows: "Each budget submission with respect to such funds shall include a separate listing of the amount for the National Veterans' Employment and Training Services Institute together with information demonstrating the compliance of such budget submission with the funding requirements specified in the preceding sentence."

38 USC 4106
note.

(2) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act, and apply to budget submissions for fiscal year 2004 and each subsequent fiscal year.

(e) **CONFORMING AMENDMENTS.**—(1) Section 4107(c)(5) is amended by striking "(including the need" and all that follows through "representatives)".

(2) Section 3117(a)(2)(B) is amended to read as follows:

"(B) utilization of employment, training, and placement services under chapter 41 of this title; and".

SEC. 5. ADDITIONAL IMPROVEMENTS IN VETERANS EMPLOYMENT AND TRAINING SERVICES.

(a) **INCLUSION OF INTENSIVE SERVICES.**—(1)(A) Section 4101 is amended by adding at the end the following new paragraph:

"(9) The term 'intensive services' means local employment and training services of the type described in section 134(d)(3) of the Workforce Investment Act of 1998."

(B) Section 4102 is amended by striking "job and job training counseling service program," and inserting "job and job training intensive services program,".

(C) Section 4106(a) is amended by striking "proper counseling" and inserting "proper intensive services".

(D) Section 4107(a) is amended by striking "employment counseling services" and inserting "intensive services".

(E) Section 4107(c)(1) is amended by striking "the number counseled" and inserting "the number who received intensive services".

(F) Section 4109(a) is amended by striking "counseling," each place it appears and inserting "intensive services,".

Effective date.
38 USC 4101
note.

(2) The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(b) ADDITIONAL VETS DUTY TO IMPLEMENT TRANSITIONS TO CIVILIAN CAREERS.—(1)(A) Section 4102 is amended by striking the period and inserting “, including programs carried out by the Veterans’ Employment and Training Service to implement all efforts to ease the transition of servicemembers to civilian careers that are consistent with, or an outgrowth of, the military experience of the servicemembers.”.

(B) Such section is further amended by striking “and veterans of the Vietnam era” and inserting “and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized”.

(2) The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(c) MODERNIZATION OF EMPLOYMENT SERVICE DELIVERY POINTS TO INCLUDE TECHNOLOGICAL INNOVATIONS.—(1) Section 4101(7) is amended to read as follows:

“(7) The term ‘employment service delivery system’ means a service delivery system at which or through which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act.”.

(2) The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(d) INCREASE IN ACCURACY OF REPORTING SERVICES FURNISHED TO VETERANS.—(1)(A) Section 4107(c)(1) is amended—

(i) by striking “veterans of the Vietnam era,”; and

(ii) by striking “and eligible persons who registered for assistance with” and inserting “eligible persons, recently separated veterans (as defined in section 4211(6) of this title), and servicemembers transitioning to civilian careers who registered for assistance with, or who are identified as veterans by,”.

(B) Section 4107(c)(2) is amended—

(i) by striking “the job placement rate” the first place it appears and inserting “the rate of entered employment (as determined in a manner consistent with State performance measures applicable under section 136(b) of the Workforce Investment Act of 1998”); and

(ii) by striking “the job placement rate” the second place it appears and inserting “such rate of entered employment (as so determined)”.

(C) Section 4107(c)(4) is amended by striking “sections 4103A and 4104” and inserting “section 4212(d)”.

(D) Section 4107(c) is amended—

(i) by striking “and” at the end of paragraph (4);

(ii) by striking the period at the end of paragraph (5) and inserting “; and”; and

(iii) by adding at the end the following new paragraph:

“(6) a report on the operation during the preceding program year of the program of performance incentive awards for quality employment services under section 4112 of this title.”.

(E) Section 4107(b), as amended by section 4(a)(3)(B), is further amended by striking the second sentence and inserting the following: “Not later than February 1 of each year, the Secretary shall report to the Committees on Veterans’ Affairs of the Senate and the House of Representatives on the performance of States and organizations and entities carrying out employment, training,

Effective date.
38 USC 4102
note.

Effective date.
38 USC 4101
note.

Deadline.
Reports.

and placement services under this chapter, as measured under subsection (b)(7) of section 4102A of this title. In the case of a State that the Secretary determines has not met the minimum standard of performance (established by the Secretary under subsection (f) of such section), the Secretary shall include an analysis of the extent and reasons for the State's failure to meet that minimum standard, together with the State's plan for corrective action during the succeeding year."

Applicability.
38 USC 4107
note.

(2) The amendments made by paragraph (1) shall apply to reports for program years beginning on or after July 1, 2003.

(e) CLARIFICATION OF AUTHORITY OF NVETSI TO PROVIDE TRAINING FOR PERSONNEL OF OTHER DEPARTMENTS AND AGENCIES.—Section 4109 is amended by adding at the end the following new subsection:

"(c)(1) Nothing in this section shall be construed as preventing the Institute to enter into contracts or agreements with departments or agencies of the United States or of a State, or with other organizations, to carry out training of personnel of such departments, agencies, or organizations in the provision of services referred to in subsection (a).

"(2) All proceeds collected by the Institute under a contract or agreement referred to in paragraph (1) shall be applied to the applicable appropriation."

38 USC 4100
note.

SEC. 6. COMMITTEE TO RAISE EMPLOYER AWARENESS OF SKILLS OF VETERANS AND BENEFITS OF HIRING VETERANS.

(a) ESTABLISHMENT OF COMMITTEE.—There is established within the Department of Labor a committee to be known as the President's National Hire Veterans Committee (hereinafter in this section referred to as the "Committee").

(b) DUTIES.—The Committee shall establish and carry out a national program to do the following:

(1) To furnish information to employers with respect to the training and skills of veterans and disabled veterans, and the advantages afforded employers by hiring veterans with such training and skills.

(2) To facilitate employment of veterans and disabled veterans through participation in America's Career Kit national labor exchange, and other means.

(c) MEMBERSHIP.—(1) The Secretary of Labor shall appoint 15 individuals to serve as members of the Committee, of whom one shall be appointed from among representatives nominated by each organization described in subparagraph (A) and of whom eight shall be appointed from among representatives nominated by organizations described in subparagraph (B).

(A) Organizations described in this subparagraph are the following:

- (i) The Ad Council.
- (ii) The National Committee for Employer Support of the Guard and Reserve.
- (iii) Veterans' service organizations that have a national employment program.
- (iv) State employment security agencies.
- (v) One-stop career centers.
- (vi) State departments of veterans affairs.
- (vii) Military service organizations.

(B) Organizations described in this subparagraph are such businesses, small businesses, industries, companies in the private sector that furnish placement services, civic groups, workforce investment boards, and labor unions as the Secretary of Labor determines appropriate.

(2) The following shall be ex officio, nonvoting members of the Committee:

(A) The Secretary of Veterans Affairs.

(B) The Secretary of Defense.

(C) The Assistant Secretary of Labor for Veterans' Employment and Training.

(D) The Administrator of the Small Business Administration.

(E) The Postmaster General.

(F) The Director of the Office of Personnel Management.

(3) A vacancy in the Committee shall be filled in the manner in which the original appointment was made.

(d) ADMINISTRATIVE MATTERS.—(1) The Committee shall meet not less frequently than once each calendar quarter.

(2) The Secretary of Labor shall appoint the chairman of the Committee.

(3)(A) Members of the Committee shall serve without compensation.

(B) Members of the Committee shall be allowed reasonable and necessary travel expenses, including per diem in lieu of subsistence, at rates authorized for persons serving intermittently in the Government service in accordance with the provisions of subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of the responsibilities of the Committee.

(4) The Secretary of Labor shall provide staff and administrative support to the Committee to assist it in carrying out its duties under this section. The Secretary shall assure positions on the staff of the Committee include positions that are filled by individuals that are now, or have ever been, employed as one of the following:

(A) Staff of the Assistant Secretary of Labor for Veterans' Employment and Training under section 4102A of title 38, United States Code as in effect on the date of the enactment of this Act.

(B) Directors for Veterans' Employment and Training under section 4103 of such title as in effect on such date.

(C) Assistant Director for Veterans' Employment and Training under such section as in effect on such date.

(D) Disabled veterans' outreach program specialists under section 4103A of such title as in effect on such date.

(E) Local veterans' employment representatives under section 4104 of such title as in effect on such date.

(5) Upon request of the Committee, the head of any Federal department or agency may detail, on a nonreimbursable basis, any of the personnel of that department or agency to the Committee to assist it in carrying out its duties.

(6) The Committee may contract with and compensate government and private agencies or persons to furnish information to employers under subsection (b)(1) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

Deadlines.

(e) **REPORT.**—Not later than December 31, 2003, 2004, and 2005, the Secretary of Labor shall submit to Congress a report on the activities of the Committee under this section during the previous fiscal year, and shall include in such report data with respect to placement and retention of veterans in jobs attributable to the activities of the Committee.

(f) **TERMINATION.**—The Committee shall terminate 60 days after submitting the report that is due on December 31, 2005.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Labor from the employment security administration account (established in section 901 of the Social Security Act (42 U.S.C. 1101)) in the Unemployment Trust Fund \$3,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

38 USC 4100
note.**SEC. 7. REPORT ON IMPLEMENTATION OF EMPLOYMENT REFORMS.**

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on the implementation by the Secretary of Labor of the provisions of this Act during the program years that begin during fiscal years 2003 and 2004. The study shall include an assessment of the modifications under sections 2 through 5 of this Act of the provisions of title 38, United States Code, and an evaluation of the impact of those modifications, and of the actions of the President's National Hire Veterans Committee under section 6 of this Act, to the provision of employment, training, and placement services provided to veterans under that title.

Deadline.

(b) **REPORT.**—Not later than 6 months after the conclusion of the program year that begins during fiscal year 2004, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a). The report shall include such recommendations as the Comptroller General determines appropriate, including recommendations for legislation or administrative action.

Approved November 7, 2002.

LEGISLATIVE HISTORY—H.R. 4015:

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Oct. 16, House concurred in Senate amendments.