



Commissioned Officers Association of the U.S. Public Health Service

20 September 2015

The Hon. Teresa Gerton
Acting Assistant Secretary
Office of the Assistant Secretary for Veterans' Employment and Training
U.S. Department of Labor
200 Constitution Avenue, NW, Room S-1325
Washington, DC 20210

Dear Secretary Gerton:

As you might assume from our letterhead, we are the professional organization that represents officers in the Commissioned Corps of the United States Public Health Service, and we have been doing so since 1951. I am writing to you because of discrimination against many of our officers who work in the U.S. Bureau of Prisons (BOP). These officers—871 of them as of today—provide healthcare to federal inmates. Perhaps you are aware of what has happened in some prisons: wardens are discriminating against Public Health Service officers because they are PHS officers and not civilians. Civilians are unionized, and some prison wardens go out of their way to favor the unionized civilians, especially with reference to seniority, which is used to determine shift and other choices. PHS officers are not asking for preference; they simply seek equity. And they are entitled to such under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as two of your officials have recently ruled. These rulings (attached) in cases that originated in New York and North Carolina make it completely clear that the Department of Labor understands that PHS officers are covered by USERRA and that they cannot be discriminated against by any employer—including the federal government—because they are members of a uniformed service. We applaud the Department of Labor for its rulings in these cases.

What we have been told, however, is that certain attorneys within the Bureau of Prisons have stated, essentially, that they are not bound in any respect by these DOL findings, and that every officer in the Public Health Service who works in a federal prison will have to obtain a favorable ruling from the Department of Labor if they want USERRA to be applied in their case. This is a patently absurd interpretation of the DOL rulings in these cases and would lead to an egregious waste and misuse of government resources in responding to additional PHS officer claims. We understand that there is a DOL USERRA investigation pending at the Federal Medical Center Carswell (NM) and that there may be others at other institutions. If these one-by-one cases remain the means by which PHS officers' rights are recognized under USERRA, there is the potential for hundreds of individual cases, which would consume enormous DOL resources.

We therefore request that you inform the U.S. Bureau of Prisons that your rulings on coverage of USPHS officers by USERRA are both consistent and unequivocal, that they apply to all PHS officers similarly situated, and that the BOP should reach out to its wardens and other appropriate personnel and tell them that they are unnecessarily wasting U.S. Government resources by discriminating against PHS officers in areas that are covered by USERRA. Such action on your part would be in the best interests of both the Department of Labor and the Bureau of Prisons, and it would finally and definitively establish the meaning of USERRA as it relates to PHS officers within the BOP. Thank you for your consideration.

Sincerely,

Col. James T. Currie, USA (Ret.), Ph.D.
Executive Director