

**U.S. Department of Labor**

Office of the Assistant Secretary for  
Veterans' Employment and Training  
Room 4513  
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**VIA Email and UPS**

July 10, 2015

Warden Juan Baltazar  
Federal Correctional Institution at Otisville  
P.O. Box 600  
Otisville, NY 10963

RE: **Jayne Vander Hey-Wright**  
**NY-2015-00039-30-V**

Dear Warden Baltazar:

Thank you for taking time to speak with me this afternoon concerning Ms. Vander Hey-Wright's above referenced complaint under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), codified at 38 U.S. Code, Chapter 43 and 5 C.F.R. Part 353. This Agency has concluded our investigation in this matter. We have thoroughly reviewed your agency's position as well as documentation provided by both parties.

Based upon the facts, as determined in our investigation, and the application of the Statute to the facts, it is our finding Ms. Vander Hey-Wright's claim is meritorious and that she is entitled to the remedy sought.

We have found Ms. Vander Hey-Wright's status as a Commissioned Officer of the U.S. Public Health Service (PHS) was a contributing factor in the change of her work-place seniority status. Specifically, we found Ms. Vander Hey-Wright's seniority date at FCI Otisville was previously recognized as the date she was assigned as a PHS Officer, March 5, 1996. We found such seniority was applied for the purpose of selecting work schedules, vacations and days off. We found although PHS Officers are not bargaining unit employees, PHS Officers' seniority is recognized in the current Master Agreement between the Federal Bureau of Prisons (BOP) and Council of Prison Locals, AFGE (the Union) as the date the PHS Officer is assigned to a BOP facility (Article 19, Section e). We found Ms. Vander Hey-Wright, one of three mid-level providers in FCI Otisville's Health Services Unit, had approximately 16 years seniority over the most senior Civil Service mid-level provider. We found in July, 2014, after the Union presented their position PHS Officers should not have seniority over Civil Service employees, an informal

and unwritten policy was agreed to by FCI Otisville's management and union alternating seniority between PHS Officers and Civil Service employees every other year commencing with Civil Service employees having seniority in FY2015. This has resulted in the adverse employment action of Ms. Vander Hey-Wright losing her seniority in FY2015, and potentially in every other subsequent year as a result of her status as a Commissioned Officer of the U.S. Public Health Service.

USERRA, in section 4311 (a) provides:

*(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.*

Corresponding regulations can be found at 5 CFR, Part 353

It is our finding FCI Otisville should come into compliance with USERRA by immediately and retroactively restoring Ms. Vander Hey-Wright's seniority for all purposes governed by seniority as enjoyed by her co-located Civil Service employees.

The United States Department of Labor, Veterans' Employment and Training Service appreciate your cooperation and attention to this matter. We hope that an amicable resolution can be reached. If such resolution cannot be obtained, Ms. Vander Hey-Wright may exercise her rights to refer this complaint to the U.S. Office of Special Counsel for consideration of litigation, or to seek private counsel.

Your written response is respectfully requested no later than July, 23, 2015. If you have any questions please feel free to contact me.

Sincerely,



Daniel A. Friedman  
Assistant Director  
Veterans' Employment and Training

Cc: Jayne A. Vander Hey-Wright  
Assistant Warden Steven Merlak  
HR Manager Darla Schields  
Captain George Durgin, USPHS