

Unlawful for Federal Agency to Fire Employee for Contacting Congress

By Nick Schwellenbach¹

3.1—Federal employment

11.0—Veterans claims

The United States Office of Special Counsel (OSC)² found that the Department of Veterans Affairs (VA) fired an employee because he contacted Congress requesting assistance in finding his lost VA benefits claims folder. The employee, Bradie Frink, is a disabled Army veteran who worked at the Baltimore Regional Office (BRO) of the Veterans Benefits Administration. The VA could not make changes to Mr. Frink's service-connected disability payments at his request (such as adding one of his children as a beneficiary) because it could not locate his claims folder. The VA fired Mr. Frink after a congressional office inquired about his lost claims folder. OSC investigated Mr. Frink's allegations and submitted a report to the VA. After receiving OSC's report, the VA settled Mr. Frink's prohibited personnel practice (PPP) claim in August.

OSC found that the VA violated the Civil Service Reform Act when it discharged Mr. Frink for petitioning Congress. The Merit Systems Protection Board has not yet decided a case under 5 U.S.C. 2302(b)(12) involving the termination of an employee for contacting Congress. Mr. Frink was hired as a clerk at the VA's BRO in February 2013. VA policy required the BRO to transfer his claims folder to another VA facility for processing. However, the VA lost Mr. Frink's claims folder. Despite several requests to the VA to locate his claims folder, it remained lost. In frustration, Mr. Frink sent a written complaint to Senator Barbara Mikulski on June 5, 2013; the Senator's office then forwarded it to the BRO on June 10, 2013. During this time, the BRO was under scrutiny for the way it was processing veterans' benefits claims.

Within two weeks of Mr. Frink's complaint to Congress, VA officials began discussing his termination, although no concerns had previously been documented regarding his performance. On July 12, 2013, the VA terminated Mr. Frink during his probationary period. The VA's termination letter stated that he was fired due to alleged misconduct.

¹ Mr. Schwellenbach is a Senior Communications Specialist for the United States Office of Special Counsel (OSC). This article is taken directly, almost word for word, from an OSC press release dated September 8, 2015.

² OSC is an independent federal investigative and prosecutorial agency. Its basic authorities come from four federal statutes: The Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment and Reemployment Rights Act. OSC's primary mission is to safeguard the merit system by protecting federal employees from prohibited personnel practices, especially reprisal for whistleblowing. OSC is headed by the Special Counsel of the United States, who is appointed by the President and confirmed by the Senate, for a five-year term. The current Special Counsel is the Honorable Carolyn Lerner. She took office in June 2011.

OSC's investigation determined that the VA's allegations about Mr. Frink lacked evidentiary support; management's testimony was inconsistent and lacked candor; other witnesses did not corroborate the agency's version of the events; and termination was an excessive penalty for the alleged misconduct. Further, OSC found one of the VA officials involved in Mr. Frink's termination showed animus and all three officials involved had a clear motive to retaliate against him.

The VA provided full corrective action for Mr. Frink, including, among other things, reemployment with the VA, back pay for the months of unemployment, and compensatory damages for emotional distress. He returned to work September 8, 2015. OSC further recommended that the VA consider disciplinary action against two of Mr. Frink's supervisors. "The constitutional right to petition Congress must be guaranteed for all Americans. Federal agencies cannot deny their employees this right even if it leads to scrutiny of their operations," said Special Counsel Carolyn Lerner. "The VA's leadership worked with OSC to resolve this troubling case."