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VA Office of Accountability and Whistleblower Protection (OAWP) Review

May 11, 2018

Introduction:

Whistleblowers of America (WoA) was established as a nonprofit in 2017 to provide peer support and advocacy to whistleblowers suffering the effects of retaliation. Although it receives contacts from various sectors and communities, whistleblowers from the Department of Veterans Affairs (VA) ranks amongst the clear majority. So, issues related to veterans are a priority for WoA. When common concerns were raised by VA employees and veterans about the new Office of Accountability and Whistleblower Protection (OAWP), WoA wanted to develop a more comprehensive understanding of interactions people were having with the OAWP.

Background:

WoA surveyed 23 of them for their feedback and insights into the OAWP based on their previous contacts with WoA. Responses came from 11 current and former staff (some who are also veterans) at VA Central Office, the VA Medical Centers and the VA Regional Offices from around the country. They are medical doctors and other clinical providers, claims representatives, lawyers, law enforcement officers, contracting experts and senior officials.

The following questions were sent out and their answers are imbedded below:

What did you ask OAWP to do on your behalf?

- My case was presented to OAWP for review because I was being retaliated against for disclosing fraud, waste, abuse and substandard care. My law firm on my behalf, requested OAWP to assist with getting the VA to immediately cease and desist reprisal against me. After my case was presented to OAWP, the retaliation intensified and became more frequent.

- I was removed in 2014. I think (*co-worker*¹) had me talk to Brandon (*OAWP staff*)² for some whistleblower Dept in VA that was new and supposedly for whistleblowers. I called him. Spoke more than once. He had me submit a form³ and then some. I tried to follow up a couple of times. I never heard back from him.
- They conducted a full board investigation of me in June 2017 due to an anonymous complaint sent to OIG in 2015. Why it was sat on for 2 years is a mystery to all. Interesting to note it was picked up when Shulkin was SECVA and left alone when Bob (McDonald) was SECVA. Board ruled the complaint was not substantiated. However, they never closed the case with OIG though so I'm still under law enforcement review until they close it. We have members of Congress trying to help. OIG says 10N still has the same open complaint, but they haven't heard from them. I requested documents from OAWP to which the guy called me to complain and amend. I did. No response. FOIA appeal. No response. Requested new FOIA based on additional info. They haven't read it. Will file another FOIA appeal.
- I specifically asked the OAWP to investigate my loss of employment and to review my evidence the VA OIG refused to investigate on failed temperature monitoring systems at the Denver VA facility. I was the Manager of the VA Research Service Temp Trak system since June 28, 2012. I was also the Manager of the VA Research Service "Equipment Program" (July 2005- July 2016). The only contact I ever received was from Mr. Brandon Coleman. Mr. Coleman informed me that Mr. Peter O'Rourke had received all of my information and that they (OAWP) would soon be contacting me. OAWP never requested any of my evidence. I even CC'd Dr. Shulkin, OIG Director Mr. Michael Missal, (*private consultant*) and sent letters of concern to the White House. Never once have I ever received a response. I even attempted to report the "Double Billing of Windows Operating Systems" VA purchases from Dell corporation. Nothing was done

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¹ Parenthesis and italics denotes a person was named that is not a known VA senior official, so their identities are protected.

2

² Brandon Coleman was the addiction counselor at the VAMC in Phoenix who made headlines with his whistleblower retaliation case and was subsequently awarded a high-level position at VACO with the OAWP. Because of his notoriety, many VA whistleblowers reach out to him looking for help.

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³ VA Form 10177

nor was I ever contacted. I can prove this is taking place in less than 10 minutes at your office. This is literally hundreds of millions of dollars of waste taking place each and every year. These includes fabricated lies that VA Leadership provided to the OIG to cover up the abandonment of the VA Research facility (I managed) that resulted in the dismantlement of my Management Position and our local research activities to the Academic Affiliate (3 HVAC hearing have been held on this topic). Evidence that supports a much greater level of corruption that the Denver VA has successfully been allowed to subvert and cover up. The reason I lost my job.

- Investigate the issue I reported of management cancelling Veteran orders for exams, fix the problem and protect me from reprisal.
- 1. Give me unredacted audits (disclosures) of everyone who has accessed &/or queried my C-file, 2. make veterans a watchdog over the C-file by releasing unredacted audits whenever requested and immediately when requested, 3. make reporting privacy violations easy and efficient, 4. make those accountable for violating existing laws
- The Salt Lake City Fiduciary hub regarding the elder abuse case, I informed them that the SLC fiduciary hub was not helping my father who is being financially abused, and that VA officials gave the abuser permission to sell my father's home against his wishes. They said there was nothing that they could do except send a message to have SLC look into it.
- Investigate misconduct and intervene in retaliation. I filed two separate complaints in August 2017, and again in April 2018.
- Investigate misuse of funds by RO senior officials.
- I reached out to three arms of that office. HR and Brandon Coleman. He was useless. I am so dissatisfied and disappointed.
- On August 30, 2017; I submitted per their request an email with my recommendations to improve OAWP. This email was addressed to the vaaccountabilityteam@va.gov. Please be advised that at the time this email distribution was sent to everyone associated with the OAWP, which included every one of the former employees of OAR⁴. After waiting for Brendan Coleman to get settled in to his new position at OAWP, I submitted my Disclosure to him in his formal capacity as a OAWP employee. In summary, I asked them to look into the retaliation against me, allow me to detailed to another facility, request that OIG or OAWP look into the perjurious statements & manufactured documents made against me in order to obstruct any legitimate investigation, request that any denial of my request that justification be provided by Medical Center Director or higher, And since I had been detailed with nothing to do for 6 months pending the outcome of Northern

Indiana's fact finding investigation, that OIG or OAWP conduct an investigation into criminal misconduct by management officials for wasting VA resources & taxpayer's monies based on allegations that they couldn't even prove.

- I didn't go to OAWP. I went to EEO and MSPB. I was retaliated against and terminated by the VA in May '15 for reporting medication mishandling, sterile protocol breaches in surgery (surgeon operating while bleeding), failure to chart medications in the patient EMR, failure to encrypt sensitive patient data for ~ 5 months, gender harassment & discrimination, and a hostile workplace (to name a few) all by the same physician/surgeon, which escalated into a smear campaign to retaliate against me by administrators. I was stalked and devastated financially. My family has been pushed to the brink. I am unemployed currently and just certified to work in the field of addiction medicine and aspire to help mitigate the opioid crisis. Still paying the price for speaking up.
 - I have had no relief of whistleblower retaliation. I asked for them to hold those accountable. I also made them aware there was a possible case for subversion. I was told the reason for the retaliation was because of the new Trump policy by Mr Toriano. I had contacted Dr. Shulkin's office and made contact with the very same secretary that was charged with subversion and fired. They assigned an inhouse investigator to gather some of my documents. I was not allowed to give him all the documents proving whistleblower retaliation due to being arrested⁵. I've been barred from the Cincinnati VAMC and several surrounding VA medical center's. An attempt to contact me by the VAMC appointment scheduler was made Monday which signaled me to check my HealthVet (portal) and in doing so I saw that I was exposed to measles while at the Cincinnati VA. I'm unable to get medical care due to the whistleblower retaliation. My only concern is that I have an 11-month-old child and one on the way. I have court next week (May 17).

Did they help you?

- NO!
- The results of all my work with them was nothing. No one got back to me. No one.
- No Response

⁵ I have contacted DepSec Tom Bowman about this case and Brendan Coleman. VA has gone too far in charging him with "harassment and menacing behavior" after he filed EEOC complaint. He is an OIF disabled Marine Veteran. Coleman gave me a contact for the Veterans Treatment Court, but I have not heard back. VA continues to work on a reassignment for him while still holding charges against him. I've met with Rep. Brad Wenstrup staff on this case.

- I had a private conversation with Peter (O'Rourke) when he first arrived. Offered help with PR and strategic positioning to help develop the office further. Offered to assist on detail. Never heard back. We had a joint call with several WBs and Peter. He said they'd follow up. Never heard back.
- I have contacted the OAWP on repeated occasions since August 4, 2017. Never, not once have I received any correspondence. These including overlapping Whistleblower evidence that the VA OIG has since substantiated to be true. Substantiated evidence that I have further attempted to report to the OAWP.
- Not one bit. They have done nothing whatsoever.
- NO
- Never heard back on the privacy issue requests
- They said they could not in fiduciary cases, even when there is suspected foul play of government officials at the hub.
- No, they have taken no perceivable action.
- No, closed my case with no finding when I gave them ample evidence to have a huge finding related to \$1.5 million in payoffs even though we already had a member of the region counsel, Allison Debes, confirm our allegations. It's a fake office and then they leaked my name to Diana Rubens who then sent harassing emails. You go to them in confidence and they send what you reported to the person you reported.
- There is zero support or outreach to whistleblowers. If you go to them then you are targeted and attacked. I feel the office is not about accountability but firing/targeting the dissidents/whistleblowers. Taxpayers are funding "monster-like" tactics with that office.
- On September 4, 2017; I was contacted by Brendan Coleman asking me to participate in a OAWP listening session conference call on September 13, 2017. The purpose was twofold, first for Mr. Peter O'Rourke to hear from me, along with others, what was going on in our individual retaliation cases. This call also included (*Several Others*). The second, was to give my chain of command notice that I had the interest of the OAWP and provide me a breather from the retaliation. On December 11, 2017; the Northern Indiana VA issued me a proposed removal along with over 1,500 pages of documents that were never seen before & I was given seven days to respond. My attorneys weren't provided copies of this voluminous 'justification' until almost a week later. I was advised on or about December 14, 2017 by Brendan Coleman that the OAWP was going to put a 'delay' on any action against me. The purpose of calling it a 'delay' rather than a hold, is because of legal ramifications & to avoid publicity. Which honestly didn't make any sense. On January 22, 2018; I was offered a 120-day detail to the Puget Sound VA Health Care System to be the Chief of Facilities Management. I contacted the OAWP after the management at Northern Indiana VA refused to release me for the detail. I was contacted by Brendan Coleman and Peter O'Rourke to provide information regarding the detail. In summary, in the most general sense "yes" they did help me.

- I did receive an email from the OAWP. However, (*Consultant*) advised me not to respond and forewarned me that they are an unethical entity. Since I trust his legal advisement, I did not respond. I did not reach out to them first, so I do not know how they got information on my case nor do I know the status on their end.

How did they help you?

- Not applicable.
- They did not. They have done nothing.
- They have not.
- N/A
- In September 2017, they tried to put my chain of command on notice that OAWP was watching. I'm sure it had the effect we hoped. In December 2017, they did 'delay' any adverse personnel actions against me. And in January 2018, I believe Peter O'Rourke tried to get the Northern Indiana VA to release me to go on the detail to Puget Sound.

How long did it take for them to respond to you? (If at all)

- Months
- They have not, ever responded.
- I was contacted after my initial disclosure, after supplying the OAWP with over 1600 pages of documentation of both canceled orders and retaliation paperwork. I NEVER heard from them again.
- I received an email after contacting them several times that was cryptic. I contacted Brandon Coleman who emailed me a form that was supposed to have been given to me several months prior. No response after I submitted the whistleblower form.
- I received only initial acknowledgements that they received the information.
- Because I had a relationship with Brendan Coleman before he started at the OAWP, they were responsive in pumping the breaks on the proposed termination that took Northern Indiana almost a year of me doing nothing before handing me a giant box of manufactured nonsense.

Did they close your case without sharing information with you?

- Yes. I routinely contacted OAWP one time per month for an update. It required a lot of time and effort to get them to respond. And even after they did respond, OAWP refused to

tell me what, if anything, they had done for me. Since my employment was eventually terminated, obviously, OAWP did not help me at all.

- I never heard from any individual at the OAWP regarding any aspect of my reporting to the OAWP (let alone opening a case). I have copies of every correspondence with OAWP. No reply, no response.
- Yes, I have made several attempts to gather more information, but was told due to privacy issues they are unable to give me any information.
- I have no idea what they did.
- Unknown, although their template email response indicates they will not share information.
- They did close my case without informing me. I have no I idea what the OAWP is doing. The only information that I received that the VA was still investigating my claims was while listening to the NPR story about me on April 27, 2018.

What would you suggest be done to improve the OAWP?

- Immediately close the office. Please note, I did not make that comment to try and be funny. Whistleblowers are under the impression that by contacting OAWP will help stop the retaliation. I'm unsure if there is one whistleblower who has submitted a claim to that office who has actually had the reprisal stopped. In fact, the contrary. It appears as if VA prefers whistleblowers to report to OAWP as opposed to OSC. Furthermore, the VA is utilizing the office to collect information about whistleblowers, so the agency can use the shared information against the whistleblower. **Whistleblowers would be better off if OAWP did not exist because it gives whistleblowers a false sense of security where none exists. And obviously, it wastes taxpayers' money because OAWP is ineffective.**
- Feedback is...needs major work.
- Waste of resources in my opinion and likely more of the David Shulkin show. He did nothing except create shiny new things to brag about to the media.
- Respond to the Whistleblowers. Not "Stone walling" as VA does best.
- As far as I'm concerned, the OAWP is yet another "Whitewash machine" that the VA has successfully constructed as a "False Accounting" system the does not exist. I hope to talk Congressman Jeff Miller soon as he may become our new VA Secretary. He will get the OAWP working as intended.
- My view of the process and the concept does of course come with an understanding that they are a startup organization that may be struggling to find identity. They cannot organizationally depend on the Office of General Counsel (OGC) for legal. OGC is tasked with protecting the agency and defending it in litigation, therefore it is a

conflict. They cannot be transparent with that relationship. I have looked at job postings for OAWP. They hire for job series 0201, Human Resource Specialist. That job series shouldn't be the occupational series for the Investigators in OAWP. Any qualified candidates under the 0201 series will qualify based on HR experience, not necessarily investigative technique skills.

- Find a different group to manage them. An HONEST group.
- Improve communication and actually do something.
- The office needs to purge the corrupt investigators that came from the OAR. I am one of numerous VA employees that have gotten copies of their reports only after the court forced the issue and found that the OAWP had intentionally ignored exculpatory evidence to provide findings that were favorable to the VA as cover in case news reporters started asking questions.

Did another entity act when the OAWP did not?

- OSC completed one investigation and ruled in my favor.
- OIG has been trying to help. And has responded timely to FOIA. GAP is reviewing my case for my defense.
- OSC is still investigating this issue.
- In all fairness, no one has helped me. VA OIG did not return communication and OSC wants me to develop my case, so we meet a threshold for them to ask for an investigation.
- VA OIG said they cannot help in fiduciary cases and referred me to OSC. I am acting as a family member to a veteran in this instance not as an employee. The Justice Department refers people to VA OIG on elder abuse fiduciary cases, but VA OIG refers to OSC or back to the hub.
- I am engaged with OSC for the issues I want to see corrected that affect care.
- I honestly believe that OIG Special Agent Cossairt did try to help me. Unfortunately, because of how the rules are, only OSC can help me. After intense lobby by Tom Devine at GAP, the OSC reopened the investigation into my case. However, the Northern Indiana VA and the OGC Midwest Region keep delaying providing supporting documentation in order to move the investigation along. I do want to say that the OGC is as corrupt as the rest of the VA. The misconduct and obstruction by VA attorneys is criminal.

Summary of Findings:

Although whistleblowers are bringing forward a variety of different issues related to disclosing wrongdoing, the retaliation occurs along similar lines. Whistleblowers report to WoA that they

experience further reprisal in the form of harassment/violence, gaslighting, mobbing, ostracizing, marginalizing and devaluing, double-binding, blackballing and counter accusing.⁶ They describe these conditions as evidence of retaliation in hopes that OAWP will be able to protect and assist them quickly. However, that is often not the case. The OAWP is plagued with deficiencies related to timeliness, process and staffing further effecting outcomes.

Timeliness - The OAWP, which employees perceive as having been created to help them, has caused most of them more harm as evident by some of the comments. Across the board, OAWP does not provide timely responses. When a whistleblower contacts the OAWP, they are assigned a case manager who asks them to fill out the VA Form 10177. Whistleblowers wait several months and are then given “boilerplate” answers. They are told that they will hear back, but then they never do.

Process - Another consistent issue with OAWP is that it appears limited in its protocol for engagement. Because of the language in the VA Form 10177, attorneys have advised clients not to sign it because it creates some conflicts of interest and may be interpreted to waiving certain rights. However, once signed and a case manager assigned, the process entails a report to the OAWP Director, but then the information goes back to the VISN or RO Director, the hospital director and then to the supervisor, who is usually the person reported in the first place. Retaliation increases. This has also involved hospital chiefs of staff sending letters of investigation to license boards and professional association that have career ending implications. OAWP engagement seems limited to “trafficking” the paperwork and monitoring the whistleblowers, but not a lot of advocacy or assistance. They do not appear to have the capability to investigate, mediate, or arbitrate an outcome.

They should also be required to provide case management updates and disclose an outcome. Although privacy of all parties must be respected, the whistleblower should at least be able to receive notice on the section(s) of law reviewed and how it was applied.

Staffing – The one whistleblower who identified the job series issue appears to have hit a key element that is challenging engagement effectiveness. Since the OAWP was created by overtaking the former OAR – an HR function, the staff tends to have that background. Therefore, there is a shortage of the right staffing mix of HR specialists, investigators, mediators/arbitrators and decision makers. The office would benefit from being authorized to engage independent consultants to conduct these investigations and issue reports. This would increase transparency, accountability and confidence in the system.

Performance – The OAWP is reporting accountability and disclosures on their website.⁷ The accountability report (adverse actions) details demotions, suspensions and terminations while the disclosure report identifies the types of whistleblower reports made. However, almost half of those contacting the office were not found to be whistleblowers. This data point is concerning because it either means that employees are not being educated in accordance with the NO FEAR Act or whistleblowers are being unjustly denied. There is also a lack of data on how they are being assisted as described by the WoA respondents. The OAWP needs to open the aperture on how it is defining its whistleblower terms and capturing retaliation (in its many forms) and be able to account for the assistance provided. It should also denote how many of the adverse actions they took involved any whistleblowers.

There is also very limited accountability for when the OIG makes recommendations related to disclosures. Those should be better tracked and reported. There are no mandates to implement an OIG recommendation. Only OSC can mandate any corrective action and rarely do they because they do not have the resources to take cases to that level of litigation and the MSPB has not had a full panel of judges to hear cases in years. According to OSC, about 40% of its cases are VA, so an improved internal VA process could alleviate this burden and increase effectiveness for all federal employees. Respondents demonstrate their reliance on OIG and OSC investigations to support them. Furthermore, managers who were guilty of the wrongdoing or the retaliation are not held accountable – rarely are they even identified. Most of the time, the OIG recommendation is for “further training.” There should be serious penalties for retaliation (fines, demotions, loss of retired pay, etc) to discourage the tactics related to it. Congress could create a fund that requires those identified as engaging in retaliation to contribute fines. Whistleblowers who must defend themselves against retaliation are out-of-pocket – sometimes upward of \$100,000 while the wrongdoer is defended by the government. This is antithetical to common sense, so this fund could be used to offset those costs by being used to retain private sector attorneys chosen by the whistleblower (similar to a risk pool created for insurance coverage) and reduce the burden on the taxpayer when damages are awarded. Plus, the lack of serious accountability furthers a corporate culture that allows retaliation to fester.

Suggested Next Steps:

1. Host a roundtable with whistleblowers to hear firsthand about retaliation at VA
2. Conduct a hearing on Whistleblower Retaliation and the effectiveness of the OAWP

3.Draft legislative requirements for staffing (government and independent) and performance measures (to include timeliness and process outcomes) as described above.

Thank you for considering this information. Please feel free to contact me at 202-309-1870 or jackie@whistleblowersofamerica.org.

Sincerely,

Jacqueline Garrick

Jacqueline Garrick, LCSW-C
Whistleblowers of America, Founder