

To: The Hon. Johnny Isakson, Chairman
Senate C'tee on Veterans Affairs
Room 412, Russell Senate Office Bldg
Washington, D.C. 20510

To: The Hon. Phil Roe, Chairman
House C'tee on Veterans Affairs
Room 335, Cannon House Office Bldg
Washington, DC 20515

To: The Hon. Jon Tester, Ranking Member
Senate Committee on Veterans Affairs
Room 311, Hart Senate Office Bldg
Washington, DC 20510

To: The Hon. Tim Walz, Ranking Member
House C'tee on Veterans Affairs
Room 333, Cannon House Office Bldg
Washington, DC 20515

Dear Chairmen and Ranking Members:

Attached is a "Loss of Confidence" statement that was sent on September 18, 2017 to Secretary of Veterans Affairs David Shulkin concerning gross mismanagement and waste of government resources at the Board of Veterans' Appeals. The statement was signed by almost 100 of the Board's attorneys.

I would be glad to answer any questions you may have on this matter. Thank you for your attention.

Most respectfully,

A handwritten signature in cursive script that reads "Douglas Massey". The signature is written in black ink and is positioned above the typed name and contact information.

Douglas E. Massey, Esq.
Counsel, Board of Veterans' Appeals
President, AFGE Local 17
Douglas.Massey@va.gov
(202) 361-3017

Douglas E. Massey, Esq.
Counsel, Board of Veterans' Appeals
President, AFGE Local 17
Department of Veterans Affairs
(202) 361-3017

September 18, 2017

Dear Secretary Shulkin:

Attached is a statement submitted by attorneys at the Board of Veterans' Appeals (Board) declaring their loss of confidence in the Board's current leadership. The Board has been grossly mismanaged since the departure of Executive-in-Charge (EIC) Carol DiBattiste in January 2017, which is undermining the attorneys' ability to fulfill the Board's statutory mission of deciding appeals in a timely manner based on a review of the entire record. The attorneys therefore petition the Secretary of the Department of Veterans Affairs to replace the current leadership in order to restore the integrity of the Board for our nation's Veterans.

An award of service connection by the Board entitles a Veteran access to free health care and compensation benefits. Claims for increased ratings, education benefits, death benefits, and pension benefits are also important matters under the Board's jurisdiction. Unfortunately, several senior officials are undermining the attorneys' ability to fulfill the Board's statutory mission of properly adjudicating these appeals. Gross mismanagement by senior officials is reflected by their plan to effectively eliminate *de novo* review, their failure to adequately train hundreds of new attorneys, and their refusal to provide the necessary systems and equipment necessary to do our jobs. As a result, Veterans are receiving inaccurate decisions and waiting longer for health care and compensation benefits to which they are entitled. The attorneys who draft these appellate decisions find this unacceptable.

The law requires the Board to decide appeals based on a *de novo* review of the record.¹ This standard of review is essential because many claims for VA benefits are incorrectly denied at the regional offices. Reviewing the entire record, therefore, ensures accuracy. EIC David Spickler, however, is intent on interfering with the Board's ability to review the entire record by imposing a production quota on attorneys he knows is unattainable unless *de novo* review is abandoned. In effect, EIC Spickler will render the Board meaningless. The result will be a short-term, artificial increase in the Board's overall output in an effort to maintain EIC Spickler's position at the expense of the Board's integrity and the Veterans we serve. In the long-run, this shortsighted policy will only increase the Board's backlog because inaccurate decisions result in more unnecessary remands to the regional offices and appeals to the U.S. Court of Appeals for Veterans Claims, many of which will come back to the Board for additional review.

Senior officials have further undermined the attorneys' ability to fulfill the Board's mission by inadequately training 300 new attorneys hired in the past year. Comprehensive training is essential because attorneys must apply rapidly changing regulations, statutes, and case law to

¹ Final decisions on such appeals are made by the Board based on the entire record in the proceeding and upon consideration of all evidence and applicable provisions of law and regulation. 38 U.S.C. §7104(a).

complex medical issues. Former Chief Veterans Law Judge Constance Tobias estimated that training a new attorney costs approximately \$100,000. Therefore, investing in a new attorney through comprehensive training is essential to fulfilling the Board's mission and protecting taxpayers' money. The Board's current leadership, though, is failing in this regard.

Training a new attorney traditionally involved assigning him or her an experienced attorney (GS14) as a mentor for six months. The mentor would answer any questions, provide sample decisions, and review and edit the new attorney's draft decisions. Classes on various aspects of Veterans law were also offered. The mentor would often spend at least 20 hours per week training the new attorney for the first three months. This system was effective but has been replaced because senior officials do not want to take experienced attorneys away from producing their own decisions.

The result of this shortsighted approach is an abysmal training program in which quite a number of new attorneys are unable to draft legally sufficient decisions. One new attorney, a fifteen-year Veteran of the Army's Judge Advocate General's (JAG) Corps, said he had no hesitation signing the Loss of Confidence Statement because the training program is "nonexistent" and that he had better working conditions while serving in the desert. Moreover, Judges are now complaining that draft decisions submitted by new attorneys are legally insufficient. Judges are faced with the dilemma of wasting their precious time editing these inadequate decisions or signing them. The Board has yet to release information on the number of new attorneys who have left the Board, either voluntarily or involuntarily, but many believe the number is high. Once again, shortsightedness is undermining the Board's integrity and wasting millions of dollars of taxpayers' money at the expense of Veterans.

These problems are compounded by the Board's failure to provide adequate office space for both new and senior attorneys. New attorneys are crammed into small workstations in overcrowded, noisy offices. In addition, over 100 senior attorneys were recently relocated from the Board's offices, located at 425 I Street, NW, to 1722 I Street NW, where they were unable to work. A senior executive at the Board mismanaged the entire process to the detriment of employees and the Veterans we serve. The senior executive initially created mass confusion by his inability to compile an accurate list of the attorneys moving to 1722 I Street. This senior executive then failed to issue security cards necessary to permit access to the fourth floor where their offices are located; and when attorneys were escorted to the fourth floor by security, they were unable to enter their offices because he failed to provide the four-digit security code to unlock the door. Unable to get to their desks, attorneys lost valuable time and simply went home. When attorneys were finally issued security cards and given the access code, many were unable to access the network. The senior executive also refused to provide telephones and a copy of the current version of Title 38 CFR and Title 38 of USCA, both of which are required for attorneys to adjudicate appeals.

Poor planning by this senior executive is also putting Veterans' personal identifying information (PII) and personal health information (PHI) at risk. Employees asked the senior executive to provide locked shredder bins at the new location, which are generously located on all floors the Board occupies at 425 I Street. These bins are not for the attorneys' convenience but are required pursuant to VA Directive 1605.01 (VA employees must "destroy all documents

containing PHI when no longer needed in accordance with VA Directive 6371”). In violation of this VA Directive, however, the senior executive refused to place a single shredder bin at the new location. His lack of respect for Veterans’ PII and PHI is deeply troubling.

Furthermore, nothing has done more to impede the Board’s productivity than the paperless system known as VBMS (Veterans Benefits Management System). Senior officials are well aware that VBMS is frequently unavailable and highly inefficient, requiring twice as much time to review a file relative to paper format. The Board is currently working on a new system to replace VBMS, but attorneys who participated in a recent pilot program believe the improvements will be marginal. EIC Spickler’s solution is to increase the quota, despite having acknowledged that it is unreasonable, unrealistic, and unattainable, requiring attorneys to submit legally insufficient decisions while frantically working nights and weekends. Consequently, Veterans will not have their appeals decided under the required *de novo* standard to which they are entitled.

In an email issued on July 31, 2017, EIC Spickler notified all attorneys and Judges that it is now easier to remove employees for poor performance under the VA Accountability and Whistleblower Protection Act. Attorneys and Judges are outraged at this irony, as EIC Spickler, the senior executive in charge of office space, and several other senior officials have grossly mismanaged the Board by proposing to increase the quota to an unattainable level, thereby interfering with *de novo* review; failing to properly train hundreds of new attorneys; putting Veterans’ PII and PHI at risk; and refusing to provide an adequate work environment with the necessary equipment and systems needed for attorneys to fulfill the Board’s mission. The signatory attorneys on the Loss of Confidence Statement respectfully request a thorough investigation of the Board’s practices.


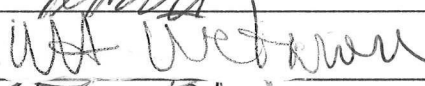



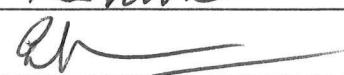

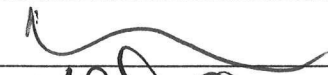

Respectfully,



Douglas E. Massey
Counsel
Board of Veterans’ Appeals
President
AFGE Local 17





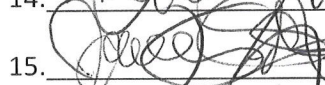


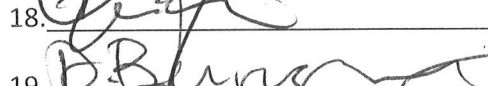
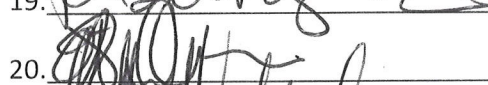


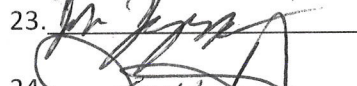





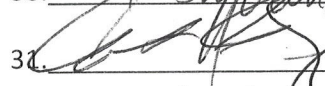






LOSS OF CONFIDENCE STATEMENT

The signatory employees on this statement at the Board of Veterans' Appeals (Board) are concerned with the current lack of leadership. The Board has failed to adequately train hundreds of new attorneys, does not provide employees with adequate office space and equipment required to do their jobs, and has failed to provide necessary systems and processes required to meet their goals. Poor judgment, gross mismanagement, and a lack of transparency by leadership are undermining employees' ability to carry out the Board's mission to conduct hearings and decide appeals properly before the Board in a timely manner. 38 U.S.C. § 7101(a). For these reasons, we employees question their ability to continue as effective managers at the Department of Veterans Affairs.¹

Signatures	Date
1. 	8/10/17
2. 	8/14/17
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9. 	8/10/17

¹ All signatory employees, including probationary employees, are protected from reprisal under the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017. 5 U.S.C 2302(B)(8)

LOSS OF CONFIDENCE STATEMENT

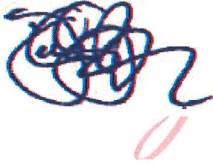


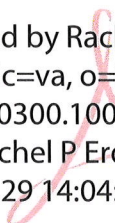


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- 31.  8/10/17
- 32.  8/14/17
- 33.  8/14/17
- 34. 8/15/17





LOSS OF CONFIDENCE STATEMENT

- 35. Julie Ann SEBASTIAN 8/16/17
- 36. ~~KA~~ 8/16/17
- 37. ER Zou 8/17/17
- 38. ~~MINA~~ 8/17/17
- 39. ~~[Signature]~~ 8/17/17
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- 50. ~~[Signature]~~ 8/17/2017
- 51. Steven Najarian 8/17/2017
- 52. ~~[Signature]~~ 8/17/2017
- 53. Stephen Eberman 8/17/2017
- 54. ~~[Signature]~~ 8/18/17
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- 56. ~~[Signature]~~ 8/18/2017
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- 58. ~~[Signature]~~ 8/29/17
- 59. ~~[Signature]~~ 8/29/17

LOSS OF CONFIDENCE STATEMENT

60.	Suzanne Krutson	8/29/17
61.	John	8/29/17
62.	John	8/29/17
63.	Christine Bink	8/29/17
64.	Herbert	08/29/17
65.	John	8/29/17
66.	John	8/29/17
67.	Harold Bell	8-29-17
68.	Arthur P. King	8-29-17
69.	John	8-29-17
70.	Marvin L. Cant	8-29-17
71.	John	8-29-17
72.	John	08/29/17
73.	Paul	08/29/17
74.	John	08/29/17
75.	John	08/29/17
76.	John	8/29/17
77.	John	9.5.2017
78.	Cheryl Handy	9/6/2017
79.	Harold	9-6-2017
80.	John	9/6/17
81.	John	9/6/17
82.	Susan G. Dow	9/6/17
83.	John	9/6/17
84.	John	9/6/17

 <p>Digitally signed by Lila J. Bakke 103019 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=lila.b akke@va.gov, cn=Lila J. Bakke 103019 Date: 2017.08.14 13:18:25 -04'00'</p>	<p>I am unable to sign with a "live" signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>Christopher L Lawson 104049</p>  <p>Digitally signed by Christopher L Lawson 104049 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=christo pher.lawson@va.gov, cn=Christopher L Lawson 104049 Date: 2017.08.21 10:59:41 -06'00'</p>	<p>I am unable to sign with a "live" signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>MARY C BOYD 1441273</p>  <p>Digitally signed by MARY C BOYD 1441273 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=mar y.boyd11@va.gov, cn=MARY C BOYD 1441273 Date: 2017.08.21 13:18:30 -04'00'</p>	<p>I am unable to sign with a "live" signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>Digitally signed by Rachel P Erdheim 111246 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=rachel.erdheim@ va.gov, cn=Rachel P Erdheim 111246 Date: 2017.08.29 14:04:20 -04'00'</p> 	<p>I am unable to sign with a "live" signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>Roya Z Bahrami 723988</p>  <p>Digitally signed by Roya Z Bahrami 723988 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=roya.ba hrami@va.gov, cn=Roya Z Bahrami 723988 Date: 2017.08.29 14:16:24 -04'00'</p>	<p>I am unable to sign with a "live" signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>Lorelle J. Driever 104937</p>  <p>Digitally signed by Lorelle J. Driever 104937 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=lorell e.driever@va.gov, cn=Lorelle J. Driever 104937 Date: 2017.08.30 18:01:11 -04'00'</p>	<p>I am unable to sign with a "live" signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>

<p>AGNIESZKA M LECH- NUNENKAMP 707555</p>  <p>Digitally signed by AGNIESZKA M LECH-NUNENKAMP 707555 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=agnieszk a.lech@va.gov, cn=AGNIESZKA M LECH-NUNENKAMP 707555 Date: 2017.08.30 13:39:30 -04'00'</p>	<p>I am unable to sign with a “live” signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>JENNIFER L. MURRAY 111790</p>  <p>Digitally signed by JENNIFER L. MURRAY 111790 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=jennif er.murray@va.gov, cn=JENNIFER L. MURRAY 111790 Date: 2017.08.30 14:03:03 -04'00'</p>	<p>I am unable to sign with a “live” signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>Heather J. Harter 100389</p>  <p>Digitally signed by Heather J. Harter 100389 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=heath er.harter@va.gov, cn=Heather J. Harter 100389 Date: 2017.09.01 09:30:27 -04'00'</p>	<p>I am unable to sign with a “live” signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
<p>THELMA Y HAWKINS 108027</p>  <p>Digitally signed by THELMA Y HAWKINS 108027 DN: dc=gov, dc=va, o=internal, ou=people, 0.9.2342.19200300.100.1.1=t.yve tte.hawkins@va.gov, cn=THELMA Y HAWKINS 108027 Date: 2017.09.06 10:55:55 -04'00'</p>	<p>I am unable to sign with a “live” signature, as I am (a) a remote worker, or (b) currently on telework or out of the office; however, I am a Board of Veterans Appeals (BVA) employee and am hereby putting my name to the Loss of Confidence Statement being circulated by AFGE Local 17 with respect to BVA management.</p>
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