

# Exhibit 3

## Frequently Asked Questions

## **FREQUENTLY ASKED QUESTIONS**

### ARBITRATION AWARD CONCERNING PERFORMANCE IMPROVEMENT PLANS

*AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs,  
FMCS Case No. 181117-01691*

**NOTE: These FAQs only apply to employees who received an Employee Notification from the Department of Veterans Affairs.**

#### **Q1: I received a notice from the Department of Veterans Affairs (VA), what is this about?**

A: When VA implemented the VA Accountability and Whistleblower Protection Act of 2017, it interpreted the Act to supersede its contractual requirement to provide performance improvement plans (PIPs) before taking adverse actions against AFGE bargaining unit employees. The collective bargaining agreement between VA and AFGE (2011 Master Agreement) requires VA to provide PIPs before taking performance-based adverse actions. AFGE filed a national grievance (National Grievance) over the violation and an arbitrator and the Federal Labor Relations Authority (FLRA) ruled in favor of AFGE. You received the Employee Notification because the Arbitrator required VA to rescind any adverse action taken against AFGE bargaining unit employees in violation of the collective bargaining agreement and to reinstate, and/or make whole any such employee.

#### **Q2: What is an AFGE bargaining unit employee?**

A: An AFGE bargaining unit employee is an employee serving at VA in a job position covered by AFGE's nationwide bargaining unit. For more information, visit [www.afge.org](http://www.afge.org).

#### **Q3: What are "adverse actions" for the purposes of this case?**

A: For the purposes of this case, adverse actions are performance-based removals/terminations, demotions, and suspensions over 14 days.

#### **Q4: Who is receiving this Employee Notification?**

A: This Employee Notification is only for AFGE bargaining unit employees who were subject to an adverse action based on performance without first receiving a PIP in accordance with Article 27, Section 10 of the 2011 Master Agreement.

- If you received a PIP in accordance with Article 27, Section 10 of the 2011 Master Agreement, then you are not entitled to relief under the arbitration award.
- If you were not in the AFGE bargaining unit at the time of the adverse action, then you are not entitled to relief under the arbitration award.
- If you did not receive a notice of proposed performance-based adverse action, then you are not entitled to relief under the arbitration award.

#### **Q5: Why am I receiving this now?**

A: AFGE filed the National Grievance on September 27, 2017. On August 23, 2018, the Arbitrator issued his award granting the National Grievance; however, VA filed an appeal to the award with the FLRA. An arbitration award is not final and binding while an appeal is pending with the FLRA. On November 16, 2020, the FLRA denied VA's appeal, making the Arbitrator's award final. VA then requested the FLRA reconsider its decision, and the FLRA denied VA's request on December 8, 2020. You are receiving this Employee Notification as part of VA's compliance with

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the award and a Settlement Agreement executed by VA and AFGE, which you can access at [www.afge.org/VAPIPsettlement](http://www.afge.org/VAPIPsettlement).

#### **Q6: What does “make whole” mean?**

A: The purpose of make-whole relief is to place individuals who have been adversely affected by an improper action in the situation where they would have been if the improper action had not occurred. Make-whole relief includes back pay and may include other forms of relief, such as restoration of leave, retirement and insurance benefit contributions, step and grade increases, and payment for missed opportunities for overtime depending on the specific circumstances of the affected employee.

#### **Q7: What does “back pay” mean?**

A: For this matter, back pay is the amount of pay, allowances, or differentials you would have received if VA had not taken an adverse action against you. You are deemed to have performed service for VA during the period covered by the Arbitrator's award. Back pay includes pay, benefits, crediting of leave that would have been earned, and interest.

#### **Q8: What offsets and deductions from my back pay are required?**

A: Pursuant to 5 C.F.R. § 550.805(e), a federal agency must make the following offsets and deductions from the gross back pay award:

1. any earnings that replaced your previous VA employment (“replacement earnings”). This does not include earnings from employment you may have had while working for VA, e.g., “moonlighting.”
2. any erroneous payment received because of the unjustified adverse action you received, e.g., lump sum payment for annual leave, retirement annuity payments, etc.
3. deductions that would have been made from your pay had VA not taken the unjustified adverse action you received. This includes retirement contributions, social security taxes and Medicare taxes, health benefits premiums (if coverage continued during a period of erroneous retirement or employee elects to retroactively reinstate it), life insurance premiums, federal tax withholdings, and dues deductions when the employee has previously elected to pay such dues.

#### **Q9: What about unemployment compensation paid to me?**

A. Some states have laws that require VA to either notify the responsible state agency of the back payment to an employee OR offset the back payment and remit that to the responsible state agency. If you reside in one of these states, VA will need information and documentation about your unemployment compensation to comply with these state laws. You will be provided a form to provide this information and documentation by the Defense Finance and Accounting Service (DFAS) on behalf of VA. Failure to provide the requested information and documentation may result in a debt owed to VA that may be recouped from you.

#### **Q10: If the lump sum payment of annual leave is deducted from my back pay, will I get the annual leave back?**

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A: Yes, if you received a lump sum payment at the time of your removal, that amount is required to be deducted from your back pay amount. The annual leave associated with the lump sum payment will be credited back to you. As part of the backpay, you will also be credited with the annual leave you would have received had the VA not taken the adverse action against you. There are circumstances where the backpay may result in some employees exceeding the carryover amount of annual leave. In that case, Human Resources will instruct the employee on how the leave will be credited and the time limit for its use.

#### **Q11: What happens if I have a pending grievance/appeal at the local level concerning my performance-based adverse action under Section 714?**

A: You are prohibited from obtaining duplicate relief/payment under both the Settlement Agreement executed by AFGE and VA AND any subsequent proceeding for your individual or local grievance/appeal. Please contact your AFGE Local President to further discuss your individual or local grievance/appeal.

#### **Q12: What happens if I do not want to come back to my previous position at VA?**

A: You can identify on the Remedy Election Form that you elect to be made whole without reinstatement. If you choose not to return to work in your previous position at VA, you will still receive the make whole relief for the period from the effective date of the adverse action to the date your election is received by VA. In no case will back pay continue to accrue beyond the 90<sup>th</sup> calendar day following the date of your Employee Notification.

#### **Q13: I do want to come back to my previous position at VA, but I am currently employed at a higher rate of pay than what I earned while working in my previous position at VA. What does that mean for me?**

A: You can identify on the Remedy Election Form that you elect to be made whole with reinstatement. You will receive a return to duty date and the make whole relief for the period from the effective date of the adverse action to the date you return to work. Keep in mind that your replacement earnings will be deducted from your back pay amount. If you received higher pay during your period of removal, the deduction would likely result in little to no back pay. In no case will back pay continue to accrue beyond the 90<sup>th</sup> calendar day following the date of your Employee Notification.

#### **Q14: How will back pay impact my taxes?**

A: Neither AFGE nor VA can provide information or guidance on the taxability of any payments and/or relevant withholdings. Please contact a tax professional to discuss these matters.

#### **Q15: Will the adverse action be removed from my personnel file?**

A: Yes, regardless of whether you elect make whole with reinstatement or make whole without reinstatement, the adverse action will be rescinded and removed from your personnel file.

#### **Q16: What if I want to be reinstated to my previous position at VA, but my previous position no longer exists at VA?**

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A: There may be instances in which the previous position you held is no longer available for various reasons. VA is still required to reinstate you to your previous position or a position that is substantially similar to your previous position, and at the same pay and grade level. If neither your previous position nor a substantially similar position is available, VA will use its best efforts to identify and provide you with a list of available positions at the same grade with the same work shift, geographic location, and bargaining unit. If your previous position is no longer available, please contact AFGE at [714actions@afge.org](mailto:714actions@afge.org).

**Q17: What can I do if I elect to be reinstated, but VA does not provide me with any back pay?**

A: Please email AFGE at [714actions@afge.org](mailto:714actions@afge.org). If you are unable to email, please contact your Local Union representative so that they may email AFGE on your behalf.

**Q18: What do I do if I disagree with the back pay amount VA pays me?**

A: You should contact AFGE at [714actions@afge.org](mailto:714actions@afge.org). If you are unable to email, please contact your Local Union representative so that they may email AFGE on your behalf.

**Q19: I was not removed from VA, so what am I supposed to do?**

A: If you were demoted, you still need to complete the Remedy Election Form to be returned to your previous position/grade. You can also elect to remain in your current position/grade and only receive the make whole relief.

If you were suspended, you do not need to complete the Remedy Election Form. No action is necessary for you to receive the make whole relief.

**Q20: Why must I submit the Remedy Election Form?**

A: VA needs the Remedy Election Form to know how you want to be covered by the award. Please review the Remedy Election Form for important deadlines and information concerning processing of your Remedy Election Form.

**Q21: When must I submit the Remedy Election Form?**

A: You must submit the Remedy Election Form within 150 calendar days of the date of your Employee Notification in order to be eligible for relief. Please note, back pay will stop accruing as of the 90th day following the date of your Employee Notification. Please review the Remedy Election Form for important deadlines and information concerning processing of your Remedy Election Form.

**Q22: What happens if I do not return the Remedy Election Form?**

A: If your Remedy Election Form requires you to return it to VA, and you fail to return the form within 150 days from the date of your Employee Notification, you will not be entitled to relief under the award.