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INSIGHT

BY MIKE CAUSEY

Whistle While You Work

This is about a guy who once brought his Colt .45 to a one-on-one meeting with me. And about another visitor who wore an aluminum foil helmet—to prevent the CIA from knowing what he was thinking—while we talked. But first, this:



Remember the old adage: “Be careful what you want because you may get it”? It’s true. Sometimes.

And feds know it better than most, because of the relative transparency of government compared to most private operations, including the news media. Compared to some corporations, much of the government is an open book. Consider:

Curious, intelligent Americans have—or can find out—some idea of how federal programs operate. When they run into a roadblock, they can file a Freedom of Information Act (FOIA) request and, more often than not, the government will tell them much if not all of what they want to know. But it is not a two-way street.

Try, as an individual, filing a FOIA-like request with a Wall Street corporation. Or a big-time Washington law or lobbying outfit. Or even a major media outlet. Ask about the salaries of their employees

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Report: Agencies Vary in Managing Aging Workforce

A new government report sheds additional light on the growing proportion of the federal workforce approaching retirement—and the variety of ways agencies are trying to retain and make better use of older employees’ decades of collective know-how.

The Government Accountability Office (GAO) report released Feb. 24 focuses on four federal agencies representative of the aging federal workforce. The report examines age and retirement trends at the four departments and makes recommendations on how agencies can improve management of the challenges presented by the aging workforce.

The four agencies—the U.S. Agency for International Development (USAID), the Department of Housing and Urban Development (HUD), the Small Business Administration, and the Department of Transportation—will see nearly one-half, about 46 percent, of their employees become eligible for retirement by 2012, according to the report.

Across all agencies of the federal government, the portion of employees who will be retirement-eligible in 2012 is also significant, but lower—33 percent. Government-wide among senior executives and supervisors, however, the proportion is higher—64 percent of senior executives and 45 percent of supervisors will be retirement-eligible within five years.

“Current employment conditions aside, hiring and retaining older, experi-

enced workers could be part of a longer-term national strategy to ensure an adequate workforce as an aging population, coupled with slow labor growth, poses economic challenges to the nation,” the report said. “Many experts maintain that older workers offer competitive advantages to employers because they often possess management and organizational skills that can be used in a variety of settings, and they bring to the job knowledge, experience, and productive work habits.”

GAO and government agencies can draw some comfort from the fact that in the past decade, approximately 40 percent of federal workers have chosen to remain at their jobs at least five years past their retirement eligibility date. Nonetheless, the report notes that, to date, agency efforts at gaining older employees—and the work habits and knowledge advantages they offer—have been “focused more on hiring new workers than on rehiring annuitants.”

GAO noted that labor force growth at all ages is slowing significantly, which puts pressure on agencies to use resources they already have creatively—including human resources.

In general, the report concluded, “as with private sector employers, efforts directed at recruiting, engaging, and retaining a diverse workforce, including

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and executives. Or their sources. You will be stonewalled.

The difference between government and nongovernment operations is one reason whistleblowers do better in one environment than the other.

I mention this because Congress—at least some important members of the House and Senate—are pushing through legislation that would give federal whistleblowers more incentive to sound off, and more protections when they do. Sounds great. And yet...

Whistleblowers can be saints or sinners, depending upon whom they blow the whistle on. And if the media embraces them.

Whistleblowers are so rare and unsuccessful in the private sector, that when one wins out (and happens to be smart and very photogenic) they make it into a movie. Can you say Erin Brockovich?

If you can, she's probably the only nongovernmental whistleblower that many people know about.

In government, to be a whistleblower, all one needs is a cast-iron hide, nerves of steel and a friend at *The New York Times* or on a Senate committee. Reputations can be made, and prizes won, if a whistleblower has information that catches the public's attention.

But experience has shown that in many cases, whistleblowers often point out the warts (and worse) of the administration in power. The loyal opposition tends to love whistleblowers because they make the insiders look bad.

Politicians, at least some of them, encourage whistleblowers to come forward to expose waste, fraud and abuse. Some of the pols are really serious. Others just want to make a name for themselves and to besmirch the opposition. It's a bipartisan game. Republicans and Democrats are the same. Typically the out-of-power party goes on the attack, as we have seen since at least the 1980s. But there are times when a clever administration, especially if it is favored by the media, can use mistakes made on its watch against the other side.

Whistleblowers, especially in government, play a key role.

Most feds have probably encountered a whistleblower in their careers. If not, you will if you hang around long enough.

Being in this business, I've met more than my share of whistleblowers, or people who considered themselves such. I mean up close and personal. The thing about whistleblowers is that you never really know their motives. That is not always essential, but it would help to know what triggered them to put their jobs—and some will say lives—on the line.

They may be patriots. They may be cranks. Often they are seeking revenge for some slight, whether it is a promotion denied or something very small in the scheme of the cosmos.

Deep Throat, who called many of the shots in the Watergate investigation, turned out to be a high FBI official. He was the ultimate whistleblower. Maybe the best known one in American history.

Many suspected him, but he denied it year after year to friends and family. "Not me," he said. And who could blame him?

But just before he died, he came clean. Why did he do it? Among other things, he was angry because he was passed over for promotion. The implication was that had he gotten the job and another Deep Throat had appeared, he would have used every resource to bring him or her to justice.

Before 9/11, most buildings in Washington—federal and private—were pretty much open. I use to wander the halls of government buildings looking at offices, checking the bulletin boards and eating in the cafeteria. Usually just to get the feel of things, but it often resulted in some interesting, amusing and sometimes important news stories.

The newspaper I worked at was guarded by a series of guards, some of whom could sleep standing up. Security was, shall we say, not tight. Anybody and everybody could wander in off the street. A number of whistleblowers just walked in, with the documents, and away we went. Sometimes they brought information

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older workers, may serve to make the federal government a more competitive and productive employer overall.”

The report also takes the recession into account, stating that “the current economic situation may result in even higher retention rates.”

“They must take into consideration that—because of the economy—even

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that was gold. Sometimes, usually most times, it was not.

The guy with the gun was a case in point. He was an Army civilian who had some dirt on stuff that was going on at the Pentagon. He got my attention when, on his second (and last) visit he brought a shoebox containing a fully-loaded Colt .45 Model 1911 to get my attention. It did. Turns out his tip was useful, even if his idea of how to control a conversation was unorthodox.

Many of the whistleblowers were out for revenge. Some brought in grocery bags full of documents that would blow the lid off a scandal that was “bigger than Watergate.” Mostly the bags contained junk, memos, or things that were useless.

The man with the aluminum foil helmet was perfectly lucid, if you could keep your eyes off the helmet. For all I know, he took it off one day, and walked in to CBS or Fox News and gave them the scoop of the century.

Bottom line: I’m all for whistleblowers. And I respect and admire those who have the guts to do it.

But people who encourage whistleblowers should be aware that gratitude and loyalty to the people helping them isn’t universal or guaranteed in the whistleblower community.

So Congress and the administration may really want to encourage them for the sake of transparency. But they should be aware that the whistleblower may be dead wrong, or have a hidden agenda that caused him or her to bite the hand that made it all possible.



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more employees might be sticking around because their TSP has gone through the floor,” Dan Adcock, legislative director for the National Active and Retired Federal Employees Association (NARFE), told *FEND*.

Adcock agreed that the coming wave of retirements poses potential difficulties, and said changing the laws governing returning retired employees is one way to help agencies retain the expertise of older workers.

“After they retire for a few years, employees often want to come back,” Adcock said. “But often current law is discouraging.” Most punishingly, for now, a returning employee’s salary is offset by their annuity—often removing any significant incentive for returning to work.

NARFE—and the Partnership for Public Service—have endorsed corrective legislation introduced last year by Sen. Susan Collins, R-Maine. That bill would remove the disincentive by doing away with the retirement offset, and instead limit the hours that a reemployed annuitant could work. The changes could encourage agencies to make some new hires—and persuade retiring employees to return to or continue to work.


Related legislation introduced by Sens. George Voinovich, R-Ohio, and Herb Kohl, D-Wis., would correct an anomaly that currently punishes those under the Civil Service Retirement System who might want to switch to part-time work.

“Agencies currently have to go through a whole process with OPM to rehire retirees, and that interferes with the agencies’ ability to deal rapidly with changes to their personnel situations,” Adcock said. “But this proposed legislation would enable them to more easily go out and get people with the skill sets that they need.”

Overall, in FY 2007, federal agencies hired 14,000 new employees who were at least 55 years old, and rehired about 5,400 previous retirees.

“Until this pig in a python”—as Adcock termed the expected massive wave of retirements—“makes its way through the federal workforce and you

have a more predictable situation, it is hard to say where this issue will go.”

For more, go to <http://www.gao.gov/new.items/d09206.pdf>. 

...

Lawmakers Cite Support for Keeping FEMA in DHS

A coalition of first responder organizations and the Department of Homeland Security (DHS) Inspector General (IG) support leaving the Federal Emergency Management Agency (FEMA) within DHS, according to documents posted on the Senate Homeland Security and Governmental Affairs Committee Web site.

Committee Chairman Joe Lieberman, I-Conn., and Ranking Member Susan Collins, R-Maine., on Feb. 17 released the documents—which include a recent IG report and letters from first responders—to help rebut suggestions to move FEMA out of DHS and make it a stand-alone federal agency.

“Moving it out now would weaken FEMA, since the agency would no longer have the same ready access to the resources and expertise of the rest of DHS, and it would be more difficult to coordinate in a disaster,” said Lieberman. A 2006 law reforming FEMA has given it “greater stature and resources, which has significantly contributed to FEMA’s success in responding to recent disasters.”

A product of the Carter administration, FEMA was created in 1979 as an independent agency, consolidating more than 100 programs responsible for all kinds of disasters with those responsible for long-term preparation and quick response. It was folded into DHS when that department began its operations in March 2003.

The debate over making FEMA an independent agency again began anew in December when Rep. James L. Oberstar, D-Minn., chairman of the

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House Committee on Transportation and Infrastructure, submitted a memorandum to the incoming administration to break FEMA free.


Also last year, the U.S. Council of the International Association of Emergency Managers formally adopted the position that FEMA's independent agency status should be restored, with the agency reporting directly to the president, the IG said. The organization further urged that the FEMA director be included as a member of the president's cabinet, the IG said.

However, those supporting the current structure pushed back. Just two days after Oberstar's memo, Rep. Bennie G. Thompson, D-Miss., chairman of the House Homeland Security Committee, recommended that FEMA remain a part of DHS.

Groups supporting the current FEMA/DHS structure include the Congressional Fire Services Institute; International Association of Chiefs of Police; International Association of Fire Chiefs; International Association of Fire Fighters; National Fraternal Order of Police; National Sheriffs' Association; National Troopers Coalition and National Volunteer Fire Council.

In report released in February, the DHS IG concluded that FEMA's past problems are no justification for removing it from the agency. And, the risk of taking FEMA out of DHS when the country is still facing a significant terrorist threat is too great, the IG said. Plus, even when FEMA was an independent agency, it still often performed poorly, the IG report said.

"The success of an organization is often more about the organization's leadership than its structure," the IG said. "Even excellent organizational structure cannot make impetuous or mistaken leaders patient or wise, but poor organizational design can make good leaders less effective."

To see more, go to: http://hsgac.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&Affiliation=C&PressRelease_id=0355d00a-b5e1-4557-8e33-c894d715f2e3&Month=2&Year=2009 or the IG report at, www.dhs.gov/xoig/assets/mgmt/rpts/OIG_09-25_Feb09.pdf. 

Thrift Savings Plan Share Prices (As of FEND's deadline)

FUNDS	FEB. 24	MONTH AGO	YEAR AGO
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F Fund	12.4933	12.5207	12.0200
C Fund	8.9765	9.6237	15.3100
S Fund	10.4849	11.2253	18.3900
I Fund	11.5388	12.3497	22.4500
Lifecycle Funds			
L Income	12.4147	12.5586	13.3200
L 2010	13.2328	13.4654	15.0800
L 2020	11.6670	12.1318	15.8800
L 2030	11.2237	11.7711	16.4400
L 2040	10.9060	11.5230	17.0700

For rates of return and other TSP info, go to: www.FederalDaily.com/financial/TSP.htm

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OPM Seeks to Address Veterinarian Shortage

The Office of Personnel Management (OPM) has issued expedited direct hire authority for veterinarian medical officer positions in the wake of a Government Accountability Office (GAO) report showing that veterinarian positions across the federal government are dramatically understaffed.

GAO said government veterinarians are essential for controlling zoonotic diseases—those that spread between animals and humans, such as avian influenza—and form the first line of defense against the intentional cross-border introduction of foreign animal disease.

"Veterinarians play a vital role in the defense against animal diseases—whether naturally or intentionally introduced—and these diseases can cause serious harm to human health and the economy," said the GAO report, released Feb. 18. "However, there is a growing shortage of veterinarians nationwide."

The federal government employs more than 3,000 veterinarians, just a fraction of the overall federal workforce. However, these veterinarians play a crucial role in helping to protect people and the economy from animal diseases, GAO said. More than 2,900 federal veterinarians work for compo-

nent agencies within the Departments of Agriculture (USDA), Defense, and Health and Human Services.

GAO looked at 24 federal entities. Ten of the 17 agencies that auditors surveyed have not assessed their own veterinarian workforce's response to individual outbreaks. Shortages abound. USDA's Agricultural Research Service in Fiscal Year (FY) 2008 fell short of its veterinarian employment goal, filling only 57 out of 65 vacancies.

In FY 2008, the Army was 12 percent short in its veterinarian reserve positions. And USDA Food Safety and Inspection Service (FSIS) officials told GAO they have never been fully staffed with veterinarians. FSIS currently has a goal of hiring 1,134 employees to carry out its mission of ensuring the safety of meat and poultry products. As of the end of FY 2008, it had hired 968 veterinarians, but still was experiencing a 15 percent shortage, the report said.

Despite this documented shortage of veterinarians, GAO said, the federal government does not have a comprehensive understanding of the sufficiency of its veterinarian workforce for routine activities. Specifically, although four of five component agencies GAO reviewed have assessed their veterinarian workforces, little has been done to gain a broader perspective. And, no assessment has been conducted government-wide, GAO said.

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Determining One's Tax Filing Status, Part I

While determining one's tax filing status is an important decision that must be made to prepare one's income tax return, it is also an area of tax law that continues to cause much confusion. The issue of which filing status to use becomes more convoluted when there are different rules that apply to federal tax income returns and to some state income tax returns. The IRS continues to increase its compliance efforts in identifying and adjusting tax returns that use the wrong filing status.

There are five filing statuses for federal tax filing purposes. They are: (1) single; (2) married filing jointly (MFJ); (3) married filing separately (MFS); (4) head of household (HoH); and (5) qualifying widow(er) with a dependent child. One's filing status is determined as of Dec. 31 for the year of filing. For example, if an individual is single on Dec. 31, the individual has a single filing status for the entire year. For widows and widowers, if an individual's spouse died during 2008 and the surviving spouse did not remarry prior to Jan. 1, 2009, then the surviving spouse can still file as MFJ for 2008.

A more confusing filing status is head of household (HoH). In order for an individual to file as HoH, the individual:

- is usually unmarried at the end of the year;
- has paid more than half the cost of maintaining a home for a qualifying child—provided the child is not filing a joint return as a married taxpayer—or a dependent relative for which an exemption can be claimed; and
- is not a nonresident alien.

A married individual who is separated from a spouse could file as HoH if *all* of the following tests are met; (1) the individual files a separate return from his or her spouse; (2) the individual paid more than half the cost of keeping up his or her home for the year; (3) the individual's spouse did not live in the home during the last six months of the tax year; and (4) the individual's home was the main home for more than half the year of a child, step-child, adopted or foster child. The child must be a dependent unless the child's noncustodial parent is allowed the exemption under a decree, agreement or release of exemption.

Adult children may be eligible for HoH status using a parent as a dependent even if the parent(s) does not live with the adult child. The parent(s) can qualify the adult child for HoH filing status if the child paid more than half the cost of keeping up the home in which the parent(s)



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lives. Costs of maintaining a home include: (1) property taxes; (2) mortgage interest; (3) rent; (4) utilities; (5) repairs and maintenance; (6) insurance; (7) food; and (8) other home-related expenses.

Interestingly, individuals may qualify for HoH status without claiming a dependent on their tax return. Consider the following example:

Michelle is divorced and has a child, Jerry, age 16, who qualifies as a dependent. Carl, Michelle's ex-spouse, claims the dependency exemption for Jerry in 2008. Michelle can file as HoH for 2008 because she paid more than half the cost of keeping a home for the year and Jerry lived with her in the home for seven months during 2008.

It is important to note that two unrelated individuals who are members of the same household for an entire year will not pass the "qualifying relative test." This means that heterosexual and same-sex couples living together cannot qualify for HoH filing status—even if one individual is completely dependent on the other individual for their well-being.

An individual and a qualifying person are considered to have lived together even if one or both is temporarily absent from the home due to special circumstances—including illnesses, education, business, vacations, military service—or as long as there is reasonable assumption that the individual or qualifying person will return from detention in a juvenile facility. The absence will not affect residence requirements for HoH status, as long as the individual continues to maintain the household in anticipation of the return of the absent party. One such example is a qualifying child who attends a college or university away from home for most of the calendar year.

A reason for filing as HoH rather than MFS is that filing as MFS could result in an individual's loss of tax credits, including the child tax credit, the child and dependent care tax credit, the Hope Scholarship and Lifetime Learning tax credits and educational tax deductions. The individual also could be subject to limitations on capital gain losses. The net result could be more federal liability using MFS filing status rather than HoH.

Individuals in particular whose marital circumstances may have changed during 2008 are encouraged to discuss their situation with a tax professional in order to ensure they use the correct filing status when preparing their 2008 tax returns.

Air Force Job Applicant Wins Discrimination Appeal

Eric Williams, an applicant for a GS-1102-7 target 11 Air Force Contract Specialist position, initially failed to win one of several such advertised slots—but recently won an appeal for a reconstruction of the hiring process and reconsideration for the position.

Williams first applied for the job after seeing the position advertised. According to official documents in the case, the Air Force selected applicants for 13 identical positions. The agency filled six of the slots competitively, hiring Administrative Careers with America (ACWA) certified job candidates. And it hired for an additional seven openings by taking Outstanding Scholar Program (OSP) applicants. Williams was not among those selected. Williams appealed to the Merit Systems Protection Board (MSPB). He complained that, as a preference eligible veteran, his right to be preferentially considered—as required under the Veterans Employment Opportunities Act (VEOA) of 1998 and the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994—had been violated.

The board heard the case, *Williams v. Department of the Air Force* (MSPB Docket No. AT-3443-06-0118-I-1, 2008), and found for the appellant. In ruling for Williams, the board noted that the Air Force admitted that “it would have hired the appellant but for its use of the OSP”—indicating that the agency had not considered Williams and his veterans’ rights.

The MSPB then ordered the Air Force to reconstruct the hiring process and reconsider hiring Williams—“in a manner that did not violate these [veterans’ preference] rights,” the documents said. The board also ordered the administrative judge (AJ) with its Atlanta Regional Office to adjudicate the appellant’s additional claims for lost wages, benefits and “liquidated damages.”

The Air Force reconsidered Williams. The agency again decided against hiring the appellant, later claiming that in the second consideration, the agency indeed had reconstructed the hiring process to meet the MSPB order.

Williams, having lost the competition for the GS-07 Contract Specialist position a second time, filed yet another MSPB appeal, pressing a petition for enforcement (PFE) and insisting that the reconstructed process did not comply with MSPB’s directive to avoid discrimination.

The Air Force responded by filing a “detailed explanation” of why it had turned Williams down a second time.

MSPB reiterated that it had ordered the Air Force, in its second vetting, to make sure its hiring process was “in accordance with veterans’ preference laws”—and that any other appointment made to the GS-7 Contract Specialist slot occurred exclusively as “the result of its fair and lawful consideration of the pool of candidates (including the appellant) under the appropriate and lawful reconstruction.”

The board also noted that, under the law, “preference eli-

gibles who hold the same score as non-preference eligibles are placed ahead of the nonpreference eligibles” in a job competition. Upon considering both sides’ filings, MSPB ruled that the agency did not provide adequate evidence that it had complied with the board’s order. The panel found that “the pass over [failure to hire Williams] was not properly done, that he was entitled to a hearing, that he should have been selected for the position, that the agency was making new arguments in the compliance matter that it did not raise in the initial appeal, and that the administrative judge was biased.” The panel wrote that “the reconstructed selection process does not comply with our Opinion and Order.”

The panel ordered the Air Force “to provide a list of the names of the candidates originally selected for the 13 vacancies, the order in which they were selected, their ACWA or OSP status, and their veterans’ preference status, if applicable.”

Finally, once again, the board ordered the agency to reconstruct the hiring process and reconsider Williams according to the law and its orders.

(Williams v. Department of the Air Force, MSPB Docket No. AT-3443-06-0118-C-1, 2/11/09)

Retired Fed Wins CSRS Recomputation Appeal

Willie L. Lamb, a retired federal employee, won a recent appeal for a recomputation of his Civil Service Retirement System (CSRS) annuity.

On June 24, 2008, the Office of Personnel Management issued a decision ordering a downward recomputation of that annuity, excluding his post-1956 military service.

On Aug. 13, 2008, Lamb appealed that decision to the Merit Systems Protection Board (MSPB)—three weeks after the filing deadline for appeals had passed. The administrative judge (AJ) handling the case directed the appellant to show good cause for his lack of timeliness.

Lamb replied that he had *completed* an electronic filing (“e-filing”) of his appeal just before the deadline, on July 23, but had not *submitted* it because he “was unaware that he could do so without submitting all relevant documentation.” He noted that he had informed an MSPB staff member of the situation and had “waited for further instructions from the board.” In his MSPB appeal, Lamb offered the relevant email documenting the discussion.

The AJ denied Lamb’s appeal, noting he could have filed the additional documentation by “nonelectronic means.” Lamb appealed to the full board. The panel ruled for Lamb, overruling the AJ and finding that the appellant had “exercised due diligence or ordinary prudence under the particular circumstances of the case.” The board remanded the case for readjudication.

(Lamb v. OPM, MSPB Docket No. CH-0831-08-0716-I-1, 2/3/09)

Was Air Force Employee Unfairly Denied Appeal?

“I liked my job with the Air Force—and working for the government, in general—partly because there are so many more laws to protect your rights than there are if you work in the private sector,” declared Reggie Fletcher,* a longtime civilian employee of the service. “Or—so I thought!

“I got injured on the job, and though it was very tough until I recovered, I took comfort in believing that I had the right to regain my job when I got well,” he continued. “Well, the Air Force didn’t agree—my managers didn’t even consider my case. I vowed to take an appeal as far as I can.”

“Mr. Fletcher, by all accounts, was a good worker,” replied Peter Farnsworth, a lawyer for the service. “But, as the Air Force informed him, the service is not required by law to reemploy him—and it made a decision to turn down his request.”

FACTS: Reggie Fletcher worked for many years for the Air Force in the western United States. According to his file, he did a fine job and his managers were generally pleased with him over the course of his career.

In 1998, Fletcher retired from his job and began to draw his government retirement annuity.

In 2002, he decided to return to work for the Air Force. Having returned to work from retirement status, he was classified as a “reemployed annuitant,” meaning that even as he worked and was paid for that work, he also continued to collect his retirement annuity payments.

But—soon after returning to work—Fletcher sustained a serious back injury. Unable to accomplish his duties for a time, he applied for and subsequently received disability benefits from the Office of Workers’ Compensation Programs (OWCP).

Some months later, Fletcher’s doctor deemed that the appellant was well enough to return to work. The doctor provided medical documentation certifying the recovery, which Fletcher used to request restoration. The Air Force, much to Fletcher’s chagrin, “did not respond to his requests for documentation.”

Over several months’ time, Fletcher made repeated requests to be restored to his old position. Finally, the Air Force responded—by formally terminating his employment.

The appellant appealed his termination to the Merit Systems Protection Board (MSPB). He argued that, under the Federal Employees Compensation Act (FECA), 5 U.S.C. Section 8151, he was entitled to restoration. The Air Force countered that, because Fletcher was a reemployed annuitant, he was not a protected employee under FECA.

An administrative judge (AJ) with MSPB agreed with

the Air Force. In the AJ’s reading of the law, Fletcher’s status changed when he was reemployed, and he no longer enjoyed FECA protection. Fletcher appealed again, to the full MSPB—but the panel also sustained the AJ’s ruling, finding that Fletcher did not even have the right of appeal to the board. Fletcher appealed yet again, to the U.S. Court of Appeals for the Federal Circuit.

Was Fletcher unjustly denied his right to appeal his removal?

DECISION: The appeals court agreed to consider Fletcher’s appeal. The panel noted that, in MSPB’s decision, the AJ had stated that “a reemployed annuitant lacks restoration rights.” Following from this reading of the law, the AJ—and later the full board—had judged there is no argument that Fletcher could have presented that would have merited restoration of the appellant to his job.

The appeals court did not agree with this reading. The court accepted that a “reemployed annuitant” is “at-will” and may be terminated with or without cause. But the court said that under the law “this does not mean, however, that reemployed annuitants are wholly without rights.”

Specifically, the court noted in official documents in the case that FECA states that if a covered federal employee suffers a recoverable injury, and if that “injury or disability has been overcome within one year after the date of commencement of [disability] compensation,” the employee is entitled to “the right to resume his former or an equivalent position.”

Next, the appeals court determined that, in its reading of the law, Fletcher met the definition of a covered “employee” under FECA—despite also having been a “reemployed annuitant,” and therefore should have expected to be restored.

Finally, the court found that the Air Force in its argument had erred in stipulating that “at-will” employees have no rights to appeal “separation decisions” before MSPB. The court noted that MSPB precedent (*Boray v. Small Business Administration*, 2005) affirms that such employees do have board appeal rights “in cases where the reemployed annuitant is entitled to restoration rights based upon a compensable injury.”

For these reasons and others, the court remanded the case to MSPB, which was directed to reconsider the case and compel the Air Force to restore Fletcher to his old post or an equivalent one.

(U.S. Court of Appeals for the Federal Circuit, Docket No. 2008-3038, 2/23/09)

* Names and dialogue are fictitious, but details are based on a real case.

continued from page 4

There also seems to be a disconnect between the field offices and headquarters.

For example, FSIS veterinarians working in slaughter plants told auditors that a lack of veterinarians has impaired the agency's ability to meet its food safety responsibilities, but FSIS headquarters officials told GAO this was not the case. Or, FDA officials told GAO the agency has enough veterinarians to meet its responsibilities, despite a recent internal review that found its veterinary workforce lacking and the agency's Center for Veterinary Medicine in a state of crisis.

At the department level, neither USDA nor HHS has assessed its veterinarian workforce to assess trends and shared issues. USDA does not perform such assessments because, according to department-level officials, workforce planning is the responsibility of the component agencies, the report said. Consequently, USDA's agencies compete against one

another for a limited number of veterinarians. According to FSIS officials, USDA's Animal and Plant Health Inspection Services (APHIS) is attracting veterinarians away from FSIS because the work at APHIS is more appealing,

To see more, go to: www.gao.gov/highlights/d09178high.pdf or www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=2005.

Obama Names New FLRA Acting Head

President Obama has named Carol Waller Pope as acting chair of the Federal Labor Relations Authority (FLRA), the body charged with overseeing federal-sector labor-management relations. President Obama named Pope to the acting chair position on Feb. 19. She has been an FLRA member since 2000. To see more, go to: www.flra.gov/news/pr09-02.html or www.nteu.org.



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