

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning a request to extend the currently approved information collection request. The Department of Labor is particularly interested in comments which:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility and clarity of the information to be collected; and

- * Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval of the extension of the currently approved information collection request in order to carry out its responsibilities to administer and enforce compliance with the contractor reporting requirements under VEVRAA, as amended by the JVA.

Type of Review: Extension without change of currently approved collection.

Agency: Veterans' Employment and Training Service.

Title: Federal Contractor Veterans' Reports VETS-100 and VETS-100A.

OMB Number: 1293-0005.

Affected Public: Government contractors and subcontractors with a contract of \$25,000 or more entered into before December 1, 2003, and Government contractors and subcontractors with a contract of \$100,000 or more entered into or modified on or after December 1, 2003, that are required to comply with the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act.

Total Respondents: 20,700.

Total Annual responses: 387,900.

Average Time per Response:

Electronic Submission—30 minutes;

Paper Submission—one hour.

Total Burden Hours: 202,100.

Frequency: Annually.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0—The information contractors report about their veterans' employment is collected and maintained in the normal course of business. There are no requirements for contractors to have any kind of equipment to be able comply with this collection of information.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

John M. McWilliam,

Deputy Assistant Secretary for Operations and Management, Veterans' Employment and Training.

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DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Rehabilitation Plan and Award (OWCP-16). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 14, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0372, fax (202) 693-1378, E-mail

Alvarez.Vincent@dol.gov. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, and the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* Both of these Acts authorize OWCP to pay for approved vocational rehabilitation services to eligible workers with work-related disabilities. In order to decide whether to approve a rehabilitation plan, OWCP must receive a copy of the plan, supporting vocational testing materials and the estimated cost to implement the plan, broken down to show the fees, supplies, tuition and worker maintenance payments that are contemplated. OWCP also must receive the signatures of the worker and the rehabilitation counselor to show that the worker agrees to follow the proposed plan, and that the proposed plan is appropriate. Form OWCP-16 is the standard format for the collection of this information. The regulations implementing these statutes allow for the collection of information needed for OWCP to determine if a rehabilitation plan should be approved and payment of any related expenses should be authorized. This information collection is currently approved for use through May 31, 2011.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility and clarity of the information to be collected; and

- * Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this currently approved information collection in order to determine if a rehabilitation plan should be approved and payment of any related expenses authorized.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Rehabilitation Plan and Award.

OMB Number: 1240-0045.

Agency Number: OWCP-16.

Affected Public: Individual or households; Businesses or other for-profit.

Total Respondents: 5,500.

Total Responses: 5,500.

Time per Response: 30 minutes.

Estimated Total Burden Hours: 2,750.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$2,585.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 7, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

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MERIT SYSTEMS PROTECTION BOARD

Merit Systems Protection Board (MSPB) Provides Notice of Opportunity To File Amicus Briefs in the Matter of Jeffrey Denton v. Department of Agriculture, MSPB Docket Number DC-3330-09-0696-I-1

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 1204(e)(1)(A), the MSPB has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning an appeal currently pending before the Board, *Jeffrey Denton v. Department of Agriculture*, MSPB Docket Number DC-3330-09-0696-I-1. The MSPB is also providing an opportunity to other interested parties to file amicus briefs concerning the appeal. The legal questions set forth in the *Denton* appeal, which were posed in the request for an advisory opinion to the Director of OPM, are set forth below.

The agency employs the appellant in the position of Animal Health Program Assistant, GS-5. The agency announced the position of Veterinary Program Assistant ("VPA"), GS-0303-5/6/7, under both case exam (announcement 24VS-2009-0130) and merit promotion (announcement 6VS-2009-0132) procedures. The appellant applied under both vacancy announcements and submitted his DD-214, showing his eligibility for veterans' preference. The appellant made the certificate at the GS-7 level on the case exam announcement. The maximum score an applicant could receive was 100, except when veterans' preference points were added. The appellant had 10 points added to his score of 99.68 to reflect his veterans' preference, and he was thus listed on the top of the certificate of 6 candidates with a score of 109.68 as "CPS," which is a 30% or more disabled veteran. The appellant also made the GS-6 level on the merit promotion certificate, and he was referred to the selecting official. The agency made no selection from either the case exam or merit promotion certificate. Rather, the agency cancelled both vacancy announcements and filled the VPA position through an alternative hiring authority, the Student Career Experience Program (SCEP).

The appellant filed a complaint with the Department of Labor (DOL) alleging that his rights to veterans' preference as a 30% disabled veteran were violated because the agency filled the position through SCEP instead of filling the position from either the merit promotion or case exam certificate. The DOL informed the appellant that it had completed its investigation into the appellant's claim and had determined that the evidence did not support a finding that the appellant's veterans' preference rights were violated. The DOL provided the appellant with notice of appeal rights to the MSPB.

After exhausting his remedy with DOL, the appellant timely filed an appeal with the MSPB pursuant to the Veterans Employment Opportunities Act (VEOA) alleging that his veterans' preference rights were violated when the agency used SCEP to fill the VPA position and did not select him for that position. The appellant essentially argued that the agency had engaged in a sham. The assigned administrative judge determined that the MSPB has VEOA jurisdiction over the appeal, but issued an initial decision on the merits finding that the appellant did not establish a VEOA violation.

The appellant filed a petition for review with the MSPB challenging the initial decision of the administrative judge. This appeal raises significant

issues regarding whether the agency's use of SCEP improperly circumvented the competitive examination process, allowing the agency to avoid its obligations regarding veterans' preference and a veteran's right to compete for positions. The material issues are similar in many respects to the issues raised regarding the Federal Career Intern Program (FCIP) in the MSPB's recent decisions in the appeals of *Dean v. Office of Personnel Management*, AT-3330-10-0534-I-1 and *Evans v. Department of Veterans Affairs*, AT-3330-09-0953-I-1, 2010 MSPB 213 (November 2, 2010). The Board determined that appellants Dean and Evans had established the FCIP program as conducted violated their veterans' preference rights because FCIP was inconsistent with 5 U.S.C. 3302(1) by: (1) Allowing agencies to invoke an appointing authority reserved for positions for which it is not practicable to hold a competitive examination after holding a competitive examination yielding highly-qualified preference-eligible candidates; and (2) not requiring agencies to justify placement of positions in the excepted service.

The SCEP program is covered by OPM's regulations at 5 CFR 213.3202(b) and is authorized by Executive Order 12015 (as amended by Executive Order 13024). The FCIP positions are also Schedule B, excepted-service positions but are addressed at 5 CFR 213.3202(o) and Executive Order 13162. The SCEP allows agencies to hire students currently enrolled in specified educational programs in Schedule B, excepted-service positions, and noncompetitively convert them to term, career or career-conditional appointments upon satisfactory completion of the educational program and accumulation of 640 hours of agency work experience.

Questions to be resolved:

1. Does the SCEP program violate veterans' preference rights because it allows agencies to invoke an appointing authority reserved for positions for which it is not practicable to hold a competitive examination after holding a competitive examination yielding highly-qualified preference-eligible candidates?

2. Does the SCEP program violate veterans' preference rights because it does not require agencies to justify placement of positions in Schedule B of the excepted service?

3. What impact, if any, does the Executive Order dated December 27, 2010, entitled "Recruiting and Hiring Students and Recent Graduates," have on the appellant's appeal or any other appeals based on the SCEP hiring