

OIG

Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Social Security Administration
Employees in the Military

A-01-13-13083 | September 2013

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: September 23, 2013

Refer To:

To: The Commissioner

From: Inspector General

Subject: Social Security Administration Employees in the Military (A-01-13-13083)

The attached final report presents the results of our audit. Our objective was to gather information on the *Uniformed Services Employment and Reemployment Rights Act of 1994* violations at the Social Security Administration (SSA) and determine how SSA employees with military leave viewed SSA as an employer.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.



Patrick P. O'Carroll, Jr.

Attachment

Objective

To gather information on the *Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA) violations at the Social Security Administration (SSA) and determine how SSA employees with military leave viewed SSA as an employer.

Background

Congress enacted USERRA to protect the employment and reemployment rights of Federal and non-Federal employees when they leave their employment to perform military or other uniformed service and return to civilian employment after service. In general, the protected person is entitled to reemployment with the same status, seniority, and rate of pay as if continuously employed during the period of service. Additionally, Congress believes the Government should be a model employer in carrying out the USERRA provisions.

To conduct our review, we obtained information on the number of Federal USERRA claims related to SSA for Fiscal Years (FY) 2009 through 2012. Additionally, we obtained data from SSA's Mainframe Time and Attendance System as of March 2011 and identified 50 individuals who had military leave.

Our Conclusions

The data we obtained showed that, for FYs 2009 through 2012, the U.S. Department of Labor's Veterans' Employment and Training Services (VETS) and the U.S. Office of Special Counsel (OSC) reviewed 935 Federal USERRA claims. Of these 935 claims, 17 (2 percent) involved SSA employees and/or applicants. Furthermore, of these 17 claims, VETS and OSC determined that 4 had merit.

Additionally, of the 50 SSA employees we identified who had military leave, we received feedback from 27. The majority of responses showed these individuals had no concerns regarding their USERRA rights. Specifically, of the 50 SSA employees in our review,

- 21 provided favorable feedback about working for SSA as they had no concerns regarding their USERRA rights;
- 6 provided less than favorable feedback about working for SSA, of which 1 filed a USERRA claim in 2007 that was found to have no merit; and
- 23 (17 current and 6 former SSA employees) did not provide any feedback of their experience working for SSA and having military leave.

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ABBREVIATIONS

DoL	Department of Labor
ESGR	Employer Support for the Guard and Reserve
FY	Fiscal Year
MSPB	Merit Systems Protection Board
MTAS	Mainframe Time and Attendance System
OIG	Office of the Inspector General
OSC	Office of Special Counsel
Pub. L. No.	Public Law Number
SSA	Social Security Administration
U.S.C.	United States Code
USERRA	<i>Uniformed Services Employment and Reemployment Rights Act of 1994</i>
VETS	Veterans' Employment and Training Services

OBJECTIVE

Our objective was to gather information on the *Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA) violations at the Social Security Administration (SSA) and determine how SSA employees with military leave viewed SSA as an employer.

BACKGROUND

Congress enacted USERRA to protect the employment and reemployment rights of Federal and non-Federal employees when they leave their employment to perform military or other uniformed service and return to civilian employment after service.¹ In general, the protected person is entitled to reemployment with the same status, seniority, and rate of pay as if continuously employed during the period of service. Additionally, Congress believes the Government should be a model employer in carrying out the USERRA provisions.²

Under USERRA, an employee or applicant for employment who believes his/her USERRA rights have been violated may file a claim with the Department of Labor's (DoL) Veterans' Employment and Training Services (VETS), which investigates and attempts to resolve the claim. If DoL's VETS cannot resolve the claim and the service member is a Federal employee or applicant for a Federal job, DoL informs the claimant of the right to have his/her claim referred to the Office of Special Counsel (OSC).³ OSC will further review the claim and possibly represent the claimant before the Merit Systems Protection Board (MSPB). The applicant may also file a complaint directly with MSPB.⁴

In February 2012, the *Washington Post* reported that, in Fiscal Year (FY) 2011, more than 18 percent of the 1,548 complaints of USERRA violations involved Federal agencies. The article included an example of a former SSA employee.⁵

To conduct our review, we obtained information from VETS and OSC concerning the number of Federal USERRA claims for FYs 2009 through 2012 relating to SSA. Additionally, we obtained data from SSA's Mainframe Time and Attendance System as of March 2011 and identified 50 individuals who had military leave. As of February 2013, with assistance from SSA, we determined 44 individuals were current SSA employees, and 6 were former SSA employees. We attempted to contact all 50 individuals via email, mail, and telephone to obtain their feedback on how they felt SSA treated them as a result of their military leave and determine whether they felt

¹ Pub. L. No. 103-353, 108 Stat. 3149, 38 U.S.C. §§ 4301-4335 (1994).

² Pub. L. No. 103-353, 108 Stat. 3149, 3150, 38 U.S.C. § 4301(b) (1994).

³ OSC is an independent investigative and prosecutorial agency with the primary mission of protecting the employment rights of Federal employees and applicants for Federal employment.

⁴ Pub. L. No. 103-353, 108 Stat. 3149, 3166, 38 U.S.C. § 4324(a)(1) (1994).

⁵ Steve Vogel, *Returning Military Members Allege Job Discrimination*, *Washington Post*, February 19, 2012.

their USERRA rights had been violated. For details about our scope and methodology, see Appendix A.

RESULTS OF REVIEW

The data we obtained showed that, for FYs 2009 through 2012, VETS and OSC reviewed 935 Federal USERRA claims.⁶ Of these 935 claims, 17 (2 percent) involved SSA employees and/or applicants. Furthermore, of these 17 claims, VETS and OSC determined that 4 had merit.⁷

Additionally, of the 50 individuals we attempted to contact who had military leave, we received feedback from 27. The majority of responses showed these individuals had no concerns regarding their USERRA rights. Specifically, of the 50 SSA employees in our review,

- 21 provided favorable feedback about working for SSA as they had no concerns regarding their USERRA rights;
- 6 provided less than favorable feedback about working for SSA, of which 1 filed a USERRA claim in 2007 that was found to have no merit; and
- 23 (17 current and 6 former SSA employees) did not provide any feedback of their experience working for SSA and having military leave.

Federal USERRA Claims

For FYs 2009 through 2012, VETS reviewed 783 Federal USERRA claims. Of these 783 claims, 15 (2 percent) involved SSA employees and/or applicants.⁸ Furthermore, VETS determined only three of the SSA claims had merit. The issues for each of those three claims involved (1) discrimination against a protected service member because of military obligations; (2) failure to provide fringe benefits to which the service member may have been entitled while on military duty; and (3) failure to reinstate an eligible employee to their job. For a complete list of VETS Federal USERRA claims for FYs 2009 through 2012, see Appendix B.

⁶ VETS reviewed 783 claims for FYs 2009 through 2012 while OSC reviewed 152 claims in FY 2012. OSC did not review any unique Federal USERRA claims for FYs 2009 through 2010 because a demonstration project had ended in FY 2008, and a new demonstration project did not begin until August 2011.

⁷ SSA has about 60,000 employees.

⁸ VETS could not release any claimants' names; therefore, we were unable to determine whether any of the 15 claimants were included in our sample. Also, without the claimants' names, we could not confirm with SSA whether SSA took appropriate actions for the three claims VETS determined had merit.

In FY 2012, OSC reviewed 152 Federal USERRA claims,⁹ of which 2 (1 percent) involved SSA employees and/or applicants.¹⁰ Furthermore, OSC determined only one claim—involving paid leave for an employee that resulted in SSA restoring the employee’s leave—had merit.

SSA Employees with No Concerns

The 21 SSA employees who had no concerns regarding their USERRA rights provided favorable feedback on working for SSA while serving in the military. Below are examples of the feedback we received.

- One employee stated when she returned from her military leave, her office welcomed her back with open arms and promoted her several months later. Additionally, she stated her coworkers used her status as a National Guard Member to improve their knowledge of military leave. This employee stated she was thankful she worked in a good environment.
- One employee stated SSA made his transition to and from active duty easy and seamless. While on active duty, he kept in contact with his supervisor at SSA. Additionally, he gave high praise to SSA’s Office of Human Resources for explaining his rights before he left for active duty as well as informing him of his duties and obligations once he was released from active duty.
- One employee stated while on active duty, her office kept her informed about what was going on at her office and of any job opportunities for which she was eligible. After active duty, SSA transitioned her back into her job quickly, and she never felt like she was left out of the loop. She was so appreciative of how seamless her transition returning from active duty to working for SSA that she nominated her office for an Employer Support for the Guard and Reserve (ESGR) award, which her office received.¹¹

SSA Employees with Concerns

For the six SSA employees who had concerns regarding their military leave while working at SSA, three believed they were not promoted because of their military leave, and three believed SSA did not handle their military leave pay correctly.¹² Four of the six SSA employees allowed

⁹ OSC, *FY 2012 Performance and Accountability Report*, page 36.

¹⁰ We were able to determine that neither of the two claims were from individuals in our sample.

¹¹ The ESGR awards program is designed to recognize employers for employment policies and practices that are supportive of their employees’ participation in the Guard and Reserve.

¹² Full-time employees receive 120 hours (15 days) of regular military leave at the beginning of each leave year. In addition to regular military leave, Reservists and National Guardsmen may receive special military leave, which could be up to an additional 22 workdays. *See* SSA, Personnel Policy Manual Chapter S630_8, subsection 3.1.1.1 and 3.1.2.1.

us to share their concerns with SSA's Office of Human Resources. SSA responded to the employees' concerns. Below are examples of the feedback we received.

- One employee filed a USERRA complaint because he believed he was not given a fair chance for a promotion. He was notified by SSA after he filed the complaint that he was responsible for requesting notification of vacancies while he was on military leave. Therefore, when he went on his most recent military assignment, he informed his office that he wanted to be notified of any vacancies. When he returned from active duty, he found five new supervisors had been selected from vacancies of which he had not been notified. This employee did not want us to share his concerns with SSA.
- One employee applied for two promotional vacancies while on active duty. The employee believed the vacancies were filled a few years after he returned to SSA. The employee believed he was more qualified for the promotions than the two individuals who received them. Therefore, he believed his military leave prohibited him from receiving a promotion. We referred this employee's concerns to SSA. According to SSA, it did not find any evidence to support the allegation.
- One employee was injured while on active duty in 2010. He then called his SSA office to request that it process his 15 days of military leave for FY 2010. The employee was informed in December 2010 that SSA could not process his military leave. He did not understand why they could not process his leave because he had military leave processed during a previous active duty tour; therefore, he informed his office he would straighten it out when he returned to work. However, he has not returned to work at SSA as he is still on leave without pay because of uniformed services. He stated that he had not spoken to his SSA office since December 2010. He expressed concern to us as to why SSA could not process his 45 days (15 days per FY) of military leave for FYs 2010 through 2012. We referred this employee's concern to SSA. SSA informed us the employee was granted military leave in FY 2010, and he had not used any military leave for FYs 2011, 2012, or 2013. According to the employee's manager, the employee did not formally submit any requests to use military leave in 2011, 2012, or 2013; therefore, SSA had not granted any military leave for those years.

On June 5, 2013, the employee contacted his SSA office by email and informed his manager that he would like to return to work in August 2013. Additionally, the employee requested his 45 days of military leave for FYs 2011 through 2013. On June 12, 2013, the employee contacted us as he had not received any response from his SSA office concerning his email. We then contacted SSA and informed them of the situation. SSA was able to provide us with a contact at the SSA Regional Office who would be able to help the employee resolve his matter. We then forwarded the contact information to the employee.

SSA informed us that, as of August 10, 2013, it certified the proper amendments to the employee's time and attendance record and properly paid this employee for his military leave.

No Feedback Received

For the 23 individuals for whom we did not receive any feedback,

- 11 did not respond despite numerous attempts to contact them by email, mail, and telephone;¹³
- 7 SSA employees were on military leave;¹⁴
- 4 former employees could not be contacted as their last known addresses in SSA's records were out of date; and
- 1 SSA employee did not wish to participate in our review.

CONCLUSION

SSA has about 60,000 employees, and for FYs 2009 through 2012, there were 17 USERRA claims that involved SSA employees and/or applicants. Furthermore, VETS and OSC determined that, of these 17 claims, 4 had merit.

Additionally, we received feedback from 27 of the 50 individuals in our review, and the majority of responses received indicated SSA as a favorable employer to work for while serving in the military as these individuals had no concerns regarding violations of their USERRA rights.

AGENCY COMMENTS

SSA reviewed the draft report and provided an update on one of the cases in our review; see Appendix C.

¹³ For these 11 individuals, 9 were current SSA employees and 2 were former SSA employees.

¹⁴ We attempted to contact these employees by mail using the last known address on file provided by SSA.

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To conduct our review, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration's (SSA) regulations, policies, and procedures.
- Reviewed the *Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA).¹
- Reviewed reports related to USERRA, which included Government Accountability Office reports and USERRA annual reports to Congress.
- Contacted the Department of Labor's Veterans' Employment and Training Services and the U.S. Office of Special Counsel to request lists of USERRA violations related to SSA for Fiscal Years 2009 through 2012.
- Obtained data from SSA's Mainframe Time and Attendance System (MTAS) as of March 2011 and identified 50 individuals who had military leave.
- Attempted to contact the 50 individuals to obtain their feedback on how they felt they were treated working for SSA while having military leave.

We conducted our review between February and June 2013 in Boston, Massachusetts. The entity audited was the Office of Human Resources under the Office of the Deputy Commissioner for Human Resources. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We tested the MTAS data and concluded they were reliable to meet our audit objective.

¹ Pub. L. No. 103-353, 108 Stat. 3149, 38 U.S.C. §§ 4301-4335 (1994).

Appendix B – VETERANS’ EMPLOYMENT AND TRAINING SERVICES FEDERAL CLAIMS

Under the *Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA), an employee or applicant for employment who believes his/her USERRA rights have been violated may file a claim with the Department of Labor’s (DoL) Veterans’ Employment and Training Services (VETS), which investigates and attempts to resolve the claim. If DoL’s VETS cannot resolve the claim and the uniformed service member is a Federal employee or applicant to a Federal agency, DoL informs the claimant of the right to have his/her claim referred to the Office of Special Counsel (OSC) for further review¹ and possible OSC representation before the Merit Systems Protection Board (MSPB) or they may file a complaint directly with MSPB.²

Table B–1 shows the number of Federal USERRA claims VETS’ received during Fiscal Years (FY) 2009 through 2012. Of the 783 Federal USERRA claims received, 15 (2 percent) related to the Social Security Administration.³

Table B–1: VETS’ Federal USERRA Claims

Federal Agency	FY 2009	FY 2010	FY 2011	FY 2012	Total
ACTION	-	-	1	-	1
Agricultural Research Service	-	-	1	-	1
Air Force Department	10	10	11	5	36
Alcohol, Tobacco and Firearms	1	-	-	1	2
Animal and Plant Health Inspection Service	-	1	1	-	2
Army Department	12	34	37	15	98
Benefits Review Board	-	-	1	-	1
Census Bureau	2	2	-	-	4
Centers for Disease Control	1	-	1	-	2
Central Intelligence Agency	-	1	-	-	1
Comptroller of the Currency	-	1	-	-	1
Consumer Product Safety Commission	-	1	-	-	1
Contract Appeals, Board of	-	1	-	-	1
Defense Contract Audit Agency	-	-	1	1	2
Defense Intelligence Agency	1	1	-	2	4

¹ OSC is an independent investigative and prosecutorial agency with the primary mission of protecting the employment rights of Federal employees and applicants for Federal employment.

² Pub. L. No. 103-353, 108 Stat. 3149, 38 U.S.C. § 4324(a)(1) (1994).

³ OSC did not review any unique Federal USERRA claims for FYs 2009 through 2010 because a demonstration project had ended in FY 2008, and a new demonstration project did not begin until August 2011. Therefore, the only information we could obtain from OSC was the number of USERRA claims for FY 2012 relating to SSA, which was two claims.

Federal Agency	FY 2009	FY 2010	FY 2011	FY 2012	Total
Defense Logistics Agency	2	6	-	4	12
District Court, U.S.	-	1	-	-	1
Drug Enforcement Administration	-	-	5	1	6
Elementary and Secondary Education	-	-	1	-	1
Employment and Training Administration	-	1	-	-	1
Energy	1	2	1	1	5
Engineers, Corps of	-	1	2	-	3
Engraving and Printing	1	-	-	-	1
Environmental Protection Agency	1	-	1	-	2
Equal Employment Opportunity Commission	1	1	-	-	2
Farm Credit Administration	-	-	1	-	1
Federal Acquisition Regulation	1	3	2	-	6
Federal Aviation Administration	4	2	5	4	15
Federal Bureau of Investigations	1	-	1	-	2
Federal Contract Compliance Programs	-	1	-	1	2
Federal Election Commission	-	1	-	-	1
Federal Emergency Management Agency	-	-	3	-	3
Federal Energy Regulatory Commission	-	1	-	-	1
Federal Prison Industries, Inc.	3	2	1	-	6
Federal Property Management Regulations System	-	-	-	1	1
Federal Reserve System	-	-	1	-	1
Fish and Wildlife Service, U.S.	-	-	1	-	1
Food and Drug Administration	-	-	1	-	1
Food Safety and Inspection Service	-	1	-	-	1
Forest Service	2	1	3	4	10
Health Care Financing Administration	-	1	-	-	1
Human Development Services	-	1	-	-	1
Indian Affairs	-	1	1	-	2
Inspector General (Health Care)	-	-	-	1	1
Internal Revenue Service	2	2	2	3	9
International Development, Agency for	-	-	2	-	2
Land Management	-	1	1	-	2
Marine Corps Department	-	2	-	-	2
Mine Safety and Health Administration	-	1	-	-	1
Miscellaneous Agencies	1	-	-	1	2
National Institute of Health	1	1	1	-	3
National Park Service	-	-	-	3	3
National Transportation Safety Board	1	-	-	-	1
Navy Department	9	10	16	6	41

Federal Agency	FY 2009	FY 2010	FY 2011	FY 2012	Total
Occupational Safety and Health Administration	-	-	1	-	1
Office of the Inspector General ⁴	-	1	-	-	1
Postal Service, U.S.	43	40	35	4	122
Prisons	7	6	3	1	17
Public Health Service	-	1	1	-	2
Reclamation	1	-	1	-	2
Secretary	-	-	2	1	3
Secretary of Agriculture	-	2	2	2	6
Secretary of Commerce	1	-	-	-	1
Secretary of Defense	3	4	7	4	18
Secretary of Homeland Security	-	4	9	3	16
Secretary of Labor	1	1	4	-	6
Secretary of State	-	4	3	3	10
Secretary of the Interior	-	-	1	-	1
Secretary of the Treasury	1	-	-	-	1
Secretary of Transportation	-	3	-	-	3
Small Business Administration	-	-	-	1	1
Social Security Administration	3	6	3	3	15
Tennessee Valley Authority	1	3	-	1	5
To Be Determined	7	6	7	-	20
Transportation Security Administration	7	8	12	7	34
U.S. Attorney's Office	2	1	-	-	3
U.S. Citizenship and Immigration Service	5	-	-	2	7
U.S. Coast Guard	-	1	4	-	5
U.S. Customs and Border Protection	3	4	2	4	13
U.S. Immigration and Customs Enforcement	1	2	3	2	8
U.S. Secret Service	1	3	1	-	5
Veterans Affairs Department	40	31	46	21	138
Veterans Employment and Training	-	2	-	1	3
Vocational and Adult Education	-	1	-	-	1
Wage and Hour Division	1	-	-	-	1
Grand Total	186	230	253	114	783

⁴ The data VETS provided did not indicate for which Office of the Inspector General the claimant worked.

Appendix C – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: September 5, 2013 **Refer To:** S1J-3

To: Patrick P. O’Carroll, Jr.
Inspector General

From: Katherine Thornton /s/
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, “Social Security Administration Employees in the Military” (A-01-13-13083)--INFORMATION

Thank you for the opportunity to review the draft report. We offer the following comment.

On page 4, bullet 3, you describe actions that had taken place regarding an employee obtaining credit for military leave. We suggest you update the report to reflect that, as of August 10, 2013, we certified the proper amendments to the employee’s time and attendance record and ensured we properly paid the employee.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Appendix D – MAJOR CONTRIBUTORS

Judith Oliveira, Director, Boston Audit Division

David Mazzola, Audit Manager

Frank Salamone, Senior Auditor

Kevin Joyce, IT Specialist

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