MEMORANDUM

Date: 10 February 2014

To: Record

Cc: USB Hickey
    Ross Ogilvie
    Kevin Reed
    Denise Bugaj
    Garry King
    Rick Miller
    Paul Zanger

Subj.: Revocation of Accreditation for Filing Frivolous Claims or Appeals

I am providing this to assist any of you who need to explain to a veteran or service officer why AMVETS does not and will not represent claims or appeals that are not based in fact or law.

In the past, only attorneys and agents could have their accreditation withdrawn for filing frivolous claims or appeals. The Federal Register/Vol. 72, No. 197 / Friday, October 12, 2007 /Rules and Regulations places the representatives of the veteran service organizations (VSO) under the same requirements.

Section 14.633—Suspension of Accreditation

One commenter, national veterans service organization, suggested that VA “better define the circumstances under which accreditation can be suspended” and “describe the maximum length of a suspension and the mechanism for obtaining reinstatement.” We agree.

Section 5904(b) permits VA to suspend or exclude agents and attorneys from practice before VA. VA has interpreted section 5902 and its predecessor, 38 U.S.C. 3402, as similarly authorizing the suspension or exclusion of accredited representatives of recognized service organizations. See 38 CFR 14.627(c) (1965) (suspension or exclusion for cause); see also 38 CFR 14.633(c) (1979) (suspension or exclusion based upon a finding of clear and convincing evidence of proscribed conduct). Moreover, in Public Law 109–461, Congress amended section 5902 to subject accredited representatives to suspension and exclusion from further practice before VA on the same grounds as apply to agents and attorneys as provided for in section 5904(b).

Attached below is the section of 38 CFR, § 14.633 Termination of accreditation or authority to provide representation under §14.630.

If you go to (c) (4) that is highlighted in yellow, this clearly states that one of the reasons for termination of accreditation is for filing “frivolous claim, issue, or argument.”
AMVETS will not wait for the VA’s General Counsel to revoke accreditation for frivolous claims or appeals. This puts the organization’s credibility at risk. If the repetitive filing of frivolous claims/appeals is reported to me, along with proof that this has occurred after being given fair warning, I will revoke the individual’s accreditation and so notify the Office of the General Counsel.

Telling me that that a service officer must submit any and everything a veteran wants because it is SOP, it has always been done like this or they have to do this since the veterans are taxpayers and these pay for their salary carries no weight in this matter.

If you do not have the knowledge, the skills necessary to look up the issue, the ability to explain to a veteran why they will never win their claim/appeal and lastly the ability to tell a veteran that AMVETS is not able to represent the claim and why, then you will not be accredited by AMVETS.

AMVETS has had this policy for many years. It is noted in our SOP that you do not submit an appeal unless you can provide sound argument as to why the appeal should be granted. Appeals will not be based on “. . . “META-EVIDENCE.” Meta-Evidence is evidence that never was, never will be, but, if it were available, the claim could be allowed.” AMVETS will not contribute to the logjam of frivolous claims and appeals that are choking the system.

§ 14.633 Termination of accreditation or authority to provide representation under §14.630.

(a) Accreditation or authority to provide representation on a particular claim under §14.630 may be suspended or canceled at the request of an organization, individual providing representation under §14.630, representative, agent, or attorney. When an organization requests suspension or cancellation of the accreditation of a representative due to misconduct or lack of competence on the part of the representative or because the representative resigned to avoid suspension or cancellation of accreditation for misconduct or lack of competence, the organization shall inform VA of the reason for the request for suspension or cancellation and the facts and circumstances surrounding any incident that led to the request.

(b) Accreditation shall be canceled at such time as a determination is made by the General Counsel that any requirement of §14.629 is no longer met by a representative, agent, or attorney.

(c) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds, by clear and convincing evidence, one or more of the following:
(1) Violation of or refusal to comply with the laws administered by VA or with the regulations governing practice before VA including the standards of conduct in §14.632;

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States, or knowingly providing false information to the United States;

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim;

(4) Knowingly presenting to VA a frivolous claim, issue, or argument. A claim, issue, or argument is frivolous if the individual providing representation under §14.630, representative, agent, or attorney is unable to make a good faith argument on the merits of the position taken or to support the position taken by a good faith argument for an extension, modification, or reversal of existing law;

(5) Suspension or disbarment by any court, bar, or Federal or State agency to which such individual providing representation under §14.630, representative, agent, or attorney was previously admitted to practice, or disqualification from participating in or appearing before any court, bar, or Federal or State agency and lack of subsequent reinstatement;

(6) Charging excessive or unreasonable fees for representation as determined by VA, the Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit; or

(7) Any other unlawful or unethical practice adversely affecting an individual's fitness for practice before VA.

(d) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds that the performance of an individual providing representation under §14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits. A determination that the performance of an individual providing representation under §14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence required to represent claimants before VA will be based upon consideration of the following factors:

(Authority: 38 U.S.C. 501, 5902, 5904)

(The Office of Management and Budget has approved the information collections requirements in this section control number 2900–0018)