

## Agencies Split Watch Over Reservist Job Rights

As more federally employed reservists return to their jobs from military duty in Iraq and Afghanistan, there are sure to be more grievances over missed promotions, firings, layoffs and reassignments.

And for at least another year, there will not be an agency solely responsible for handling those grievances.

Since 2005, the job of enforcing the Uniformed Services Employment and Reemployment Rights Act for federally employed reservists has been split between the Labor Department and the Office of Special Counsel. And both are competing to have sole responsibility — and the budget and staffing resources that go with it.

A Government Accountability Office report commissioned to study whether OSC or Labor is better at enforcing the law was inconclusive, says the staff of Sen. Daniel Akaka, D-Hawaii, chairman of the Senate Veterans' Affairs Committee. The committee plans to hold a hearing Oct. 31 to examine how the two agencies have been enforcing the USERRA law.

"The chairman didn't believe that the GAO report gave us sufficient guidance, so we're basically bringing in OSC, Labor and GAO to make their case," said Babette Polver, a committee staff member. Akaka will order a new GAO study that will recommend whether Labor or OSC should take over enforcement. For its part, the Office of Special Counsel says it is quicker and better at handling these cases.

"If we don't fix this rather convoluted system doing claims for service members ... when a lot of troops come home, we are going to have a Walter Reed moment in USERRA," said Jim Mitchell, a spokesman for OSC, referring to last spring's scandal over poor care for wounded veterans at Walter Reed Army Medical Center in Washington. "We are trying to resolve this, get the program passed and streamline. We say give us all of the federal sector and give us resources to do it."

In its July report on the pilot program, GAO said OSC received 269 claims from the start of the project in 2005 through September 2006. Of those, it closed 176, or 65 percent, in an average 115 days per case. The remaining cases are still pending.

Labor officials told GAO that the department had 166 claims from the beginning of the project through fiscal 2006. Of those it closed 155, or 93 percent. The average time for processing claims was likely between 53 and 86 days, GAO said. The department likely overstated how many cases it closed because it did not account for duplicate, reopened or transferred cases, GAO said.

Officials with OSC said their processing time is longer than Labor's because it takes more time to process other prohibited personnel actions, which are included in the majority of the USERRA cases they handle. Labor does not have to examine those issues and can therefore churn out claims faster.

Reservist groups have applauded the OSC's performance so far.

Marshall Hanson, legislative director of the Reserve Officers Association, said in his organizations' experience, OSC resolves cases faster, is more thorough and is easier to work with than Labor. His organization is so concerned by Labor's poor performance in moving cases that it is considering setting up an office to assist members with USERRA complaints, he said.

"We are exploring setting up a USERRA legal center that would counsel Guard, reserve and separated active duty members with hiring problems and train civilian lawyers on how to better handle USERRA cases, as DOL isn't carrying the water," he said.

Mathew Tully, a lawyer specializing in USERRA cases, said he believes enforcement would improve dramatically if it is handed fully to OSC. Tully also is a columnist on USERRA issues for Federal Times, a sister publication of Military Times.

"If you had OSC properly funded, I think there would be a dramatic positive effect," he said. "If they can get renewed [for a year], I think that's a great thing for all veterans."

Under the current demonstration project, OSC and Labor each investigate half of about 500 USERRA complaints filed each year against agencies by reservists who feel they've wrongfully lost a federal job or been demoted as a result of being activated for military service.

Labor's Veterans' Employment and Training Service handles USERRA claims and other veterans' issues. One department official who asked not to be named said the agency's mission is to "serve the workplace needs of separating service members and veterans" and it should have full charge of USERRA enforcement after the pilot ends.

#### Money and staff at stake

The tussle over who gets to enforce USERRA is a skirmish over money and staff, say House and Senate Veterans' Affairs committee staff. If the job moves to OSC, so will some of Labor's funding.

Labor currently employs 189 investigators nationwide with authority to perform USERRA investigations. Of those, 115 are primary investigators; the other 74 are regional administrators and management officials. Labor's fiscal 2007 budget for veteran re-employment rights enforcement was \$13.7 million.

OSC, on the other hand, employs seven people — a unit chief, three investigators and three attorneys — who focus almost solely on USERRA cases. The office would need eight more employees and a doubling of its budget, from \$2.5 million to \$5 million, to investigate all federal claims.

The program splitting the enforcement has already been extended once as part of a continuing resolution funding the government through Nov. 16.

Lawmakers plan to attach the next extension to a veterans' benefits bill that will soon head to the floor.