

Congress of the United States
Washington, DC 20515

February 7, 2023

The Honorable Denis McDonough
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonough:

Thank you for your recent letter regarding the January 4, 2023, Merit System Protection Board (MSPB) decision impacting the Department of Veterans Affairs (VA). In the decision the Board stated that VA could not rely on 38 U.S.C. § 714 authority to remove certain hybrid employees because nothing in the statutory text or legislative history clearly demonstrated Congress' intent to repeal or disavow existing statutory removal procedures.¹

In 2017, Congress passed the Department of Veterans Affairs Accountability and Whistleblower Protection Act with broad bipartisan support, establishing 38 U.S.C. § 714. Congress wrote Section 714 in a way that clearly lists the specific positions it did not want included in the authority. Title 38 hybrid employees were not excluded from the section. Therefore, Congress intended for Section 714 to apply to all hybrid employees. The House Committee on Veterans' Affairs made that clear in a bill report for substantially similar legislation that passed the House.² However, the MSPB chose to construe the statute in such a way that is incongruent with its structure and prevents VA from using Section 714 to remove, demote, or suspend certain hybrid employees for poor performance or misconduct.

Delivering high quality, timely health care and benefits to veterans must always be our paramount consideration. Congress provided VA this authority to create a more accountable work environment, which empowers employees to deliver on our promise to veterans. Unfortunately, the MSPB disregarded Congress' clear intent and has undermined accountability at VA.

Please inform us as to whether VA and the Biden Administration intend to appeal this decision.

Sincerely,



MIKE BOST
Chairman



DARRELL ISSA
Member of Congress

Cc: The Honorable Mark Takano, Ranking Member

¹ *Richardson v. Department of Veterans Affairs*, Merit Systems Protection Board, Docket No. AT-0714-21-0109-I-1, January 4, 2023.

² "H. Rept. 115-34 - VA ACCOUNTABILITY FIRST ACT OF 2017." *Congress.gov*, Library of Congress, 31 January 2023, <https://www.congress.gov/congressional-report/115th-congress/house-report/34>.