CALIFORNIA
STATE PERSONNEL BOARD

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Governor Edmund G. Brown Jr.

BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND FINDINGS BY THE SPB COMPLIANCE REVIEW UNIT OF THE CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of March 3, 2014, carefully reviewed and considered the attached Compliance Review Report of the California Department of Veterans Affairs submitted by SPB's Compliance Review Unit.

WHEREAS, the Report was prepared following a baseline review of the California Department of Veterans Affairs' personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

SUZANNE M. AMBROSE
Executive Officer

STATE PERSONNEL BOARD

COMPLIANCE REVIEW REPORT
CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS
FINDINGS AND RECOMMENDATIONS
MARCH 3, 2014

Examinations

During the period under review, May 1, 2011 through October 31, 2012, the California Department of Veterans Affairs (CalVet) conducted a total of 87 examinations. Eighty-four were for non-CEA classifications, and three were for CEA classifications. The SPB reviewed 15 of these examinations, which are listed below:

Classification Title	Examination Type	Examination Component(s)	No. of Eligibles
CEA II, Assistant Deputy Administrator, Yountville	Supplemental	Statement of Qualifications[1] (SOQ)	6
CEA II, Assistant Deputy Secretary, Human Resources	Supplemental	SOQ	7
CEA III, Director, Healthcare Services	Supplemental	SOQ	2
Certified Nursing Assistant	Open	Training and Experience[2] (T&E)	43
Clinical Social Worker	Open	Qualifications Appraisal Panel[3] (QAP)	9
Clinical Social Worker	Open/Spot	QAP	5
Food Service Technician II	Open	QAP	15

[1] In a Statement of Qualifications (SOQ) examination, applicants submit a written summary of their qualifications and experience related to a published list of Desired Qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

[2] The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values, which are totaled by the online system or a department exam analyst, and then assigned a percentage score.

[3] The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

Graphic Designer	Promotional	Education and Experience[4] (E&E)	4
Housekeeper	Open	QAP	29
Licensed Vocational Nurse	Open	T&E	79
Nurse Instructor	Open	QAP	7
Office Technician (Typing)	Promotional	QAP	9
Pharmacist I	Open/Spot	E&E	7
Supervising Registered Nurse	Open	E&E	16
Supervising Rehabilitation Therapist	Open	QAP	9

FINDING NO. 1 – CalVet Accepted Unsigned Applications from Applicants for Four Examinations

Applicants for examination are required to file and submit a formal signed application to the examining department within a reasonable length of time before the date of examination. (Gov. Code, § 18934.) CalVet accepted unsigned Standard Form 678 (STD 678) applications from applicants for four examinations: Pharmacist I (2 of 7 accepted applications), Nurse Instructor (1 of 7 accepted applications), Licensed Vocational Nurse (1 of 79 accepted applications), and Clinical Social Worker (1 of 5 accepted).

An applicant's signature on the STD 678 indicates his/her certification that all information in the application is "true and complete to the best of [his/her] knowledge." A department which relies upon the truthfulness of the information contained on the form regarding education and work experience may unknowingly test and later hire an individual who has misrepresented his/her background. The signature on the STD 678 provides the department with grounds for employment action if the information is later found to be fraudulent.

Therefore, CalVet must implement formal written procedures to require that all applications for examination be signed by the applicant in order to be accepted for testing and possible placement on a certification list. It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CalVet submit to the Board a written report of compliance.

[4] In an Education and Experience (E&E) examination, one or more raters scores and ranks applicants based upon the applicant's Standard 678 application form. The raters use a predetermined rating scale that includes years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

FINDING NO. 2 – CalVet Accepted Applications That Arrived After the Final Filing Deadline, and Failed to Indicate the Receipt Date of Other Applications

California Code of Regulations, title 2, § 174 states, in pertinent part, "All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement...Filing an application 'within the time' shall mean postmarked by the postal service or date stamped at one of the State Personnel Board offices (or the appropriate office of the agency administering the examination) by the date specified."

One application in five for the Clinical Social Worker exam arrived after the final filing deadline but was accepted by CalVet for examination. In addition, CalVet accepted 3 of 79 applications for the Licensed Vocational Nurse examination without date-stamping them, making it impossible for the SPB to determine whether or not these applications had been submitted by the legal date. By accepting applications that arrive after the final filing deadline without proof of postmark, CalVet makes itself vulnerable to challenge by other candidates who may appeal the impact of late candidates' acceptance on the final examination ranking.

Therefore, the SPB recommends that CalVet implement formal procedures to ensure that appropriate documentation is retained for any applications that are received after an examination's final filing deadline. It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CalVet submit to the Board a written report of compliance.

FINDING NO. 3 – CalVet Permitted an Applicant to Retake an Examination Before the Waiting Period Expired, Then Passed and Ranked the Applicant Despite a Failing Score

Examinations must be administered according to the exam announcement, and scored and rated accurately. (Gov. Code, § 18936 and Cal. Code Regs., tit. 2, § 185.) A candidate for the Licensed Vocational Nurse examination submitted the exam's required supplemental application twice within the same 12 month period, and was scored lower than the pass point for the exam both times. CalVet scored the second examination at 70%, a passing score, and the applicant was then ranked with all other applicants who scored 70%. The examination bulletin states "Once you have taken the examination, you may not reapply for twelve (12) months."

As a result, an applicant who should have been eliminated from examination was instead ranked and included on a certification list for the classification, with the potential consequence of an unqualified individual being hired to serve the health care needs of a vulnerable population. Ultimately, the certification list expired before the individual in question was appointed to an open position.

CalVet recognizes this as a mistake due to an oversight and the lack of a proper tracking system for those who apply for examinations. Therefore, CalVet must institute procedures that prevent such an occurrence in the future. It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CalVet submit to the Board a written report of compliance.

Appointments

During the compliance review period, CalVet made a total of 696 appointments. The SPB reviewed 112 of those appointments, which are listed below:

Classification	Appointment Type	No. of Employees
Associate Information Systems Analyst (Specialist)	Certification List	4
Certified Nursing Assistant	Certification List	9
Cook Specialist II	Certification List	6
Food Service Technician I	Certification List	18
Food Service Technician II	Certification List	1
Licensed Vocational Nurse	Certification List	4
Materials and Stores Supervisor	Certification List	1
Office Technician (Typing)	Certification List	3
Pharmacy Technician	Certification List	4
Program Technician II	Certification List	6
Registered Nurse	Certification List	9
Security Guard	Certification List	5
Staff Services Analyst	Certification List	1
Staff Services Manager II/Supervisory	Certification List	1
Staff Services Manager III	Certification List	2
Chief Medical Officer	Mandatory Reinstatement	1
Chief of Plant Operations II	Mandatory Reinstatement	1
Food Services Technician I	Permissive Reinstatement	1

Classification	Appointment Type	No. of Employees
Health and Safety Officer	Permissive Reinstatement	1
Institutional Personnel Officer II	Permissive Reinstatement	1
Security Guard	Permissive Reinstatement	1
Supervising Registered Nurse	Permissive Reinstatement	1
Associate Governmental Program Analyst	Temporary Authorized (TAU)	1
Dentist	TAU	1
Food Manager	TAU	1
Maintenance and Service Occupational Trainee	TAU	1
Physician and Surgeon	TAU	1
Registered Nurse	TAU	1
Accounting Administrator I Supervisory	Transfer	1
Activity Coordinator	Transfer	1
Assistant Hospital Administrator	Transfer	1
Assistant Information Systems Analyst	Transfer	1
Food Service Supervisor I	Transfer	1
Food Service Technician I	Transfer	4
Groundskeeper	Transfer	1
Health and Safety Officer	Transfer	1
Information Officer II	Transfer	1
Library Technical Assistant II	Transfer	1
Licensed Vocational Nurse	Transfer	1
Officer Technician (Typing)	Transfer	2
Private Postsecondary Education Specialist	Transfer	1
Research Program Specialist II	Transfer	1
Senior Personnel Specialist	Transfer	1
Staff Services Analyst	Transfer	5
Standards Compliance Coordinator/ Assistant Hospital Administrator	Transfer	1

FINDING NO. 4 - The CalVet Properly Complied With Civil Service Laws and Board Rules for All the Appointments Made During the Compliance Review Period

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

The CalVet measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best suited candidates. The CalVet made 25 appointments by transfer of employees from other agencies. The CalVet complied with civil service laws and Board rules in making these appointments.

For each of the 74 list appointments, the CalVet ordered a certification list of candidates ranked competitively. After properly clearing the SROA[5] list, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification list. Regarding the transfer appointments, the CalVet verified the transfer eligibility of each candidate to the appointed class. Accordingly, as to those appointments, the CalVet complied with civil service laws and Board rules.

Generally, when no employment list exists from which a position may be filled, an appointing power may fill the position by temporary appointment. (Gov. Code, § 19058.) If fewer than three names of persons willing to accept an appointment are on the open eligible list for the class to which a position belongs and no other employment list for such class is available, a temporary appointment may be allowed. (Cal. Code Regs., tit. 2, § 265) A Temporary Authorization Utilization (TAU) appointment shall not exceed nine months in a 12-month period. (Cal. Const., art. VII, § 5.) In addition, when a

[5] The State Restriction of Appointments (SROA) Program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

temporary appointment is made to a permanent position, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment. (Gov. Code, § 19058.)

CalVet filled six vacancies by means of a TAU appointment. CalVet properly considered all required and applicable recruitment options, including SROA/Surplus lists, transfer lists, and reinstatement lists.

The SPB thus found that all the appointments CalVet made during the compliance review period satisfied civil service laws and Board rules.

Equal Employment Opportunity (EEO)

The SPB reviewed CalVet's EEO program that was in effect during the compliance review period. The SPB found CalVet's EEO policies and programs to be—with the exception of the findings below—in conformance with civil rights laws and regulations. CalVet provided evidence of its efforts to eliminate discrimination in its hiring and employment practices, to increase its hiring of persons with disabilities, and to offer upward mobility opportunities for its entry-level staff. The deficiencies are set forth below.

FINDING NO. 5 – CalVet Did Not Inform Complainants about Reasons for Delay in Discrimination Complaint Resolution

Departments are required to provide a written decision to employees who file complaints of discrimination within 90 days of the original filing. If the department is unable to meet the 90-day resolution, it must inform the complainant in writing before the 90 days as to the reason for the delay. (Cal. Code Regs., tit. 2, § 64.4 (a).) Of the 35 EEO discrimination complaints filed during the compliance review period, two were not resolved within 90 days. CalVet did not inform the complainants regarding the reason(s) it was unable to issue a decision within that time period.

Therefore, the SPB recommends that CalVet institute procedures that ensure written communications are sent to any future complainants whose complaint is not resolved within 90 days. Such communications shall include the reason(s) for the delay in the issuance of the decision. It is thus recommended that within 60 days of the Board's Resolution adopting these findings and recommendations CalVet submit to the Board a written report of compliance.

DEPARTMENTAL RESPONSE

CalVet was provided a copy of the initial report to review. A copy of CalVet's response is attached as Attachment 1.

SPB REPLY

Based upon CalVet's written response, CalVet will update their policies and process for unsigned applications, late applications, examination retake period, and discrimination compliant notification.

It is recommended that CalVet comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of CalVet during this compliance review.

Attachment 1

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

DEPARTMENT OF VETERANS AFFAIRS
Human Resources Division
1227 O Street, Room 404
SACRAMENTO, CALIFORNIA 95814
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November 25, 2013

James L. Murray, Chief
Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

RE: **Compliance Review Draft Report – CalVet – November 2013**

Dear Mr. Murray:

This is in response to the preliminary findings of the SPB Compliance Review Report meeting that was held on November 20, 2013 with SPB and CalVet. CalVet's responses to Findings 1, 2, 3, and 5 are set forth below:

FINDING NO. 1 – CalVet Accepted Unsigned Applications from Applicants for Four Examinations

As of September 2013, the CalVet Examination Unit began utilizing the notification letter available through the CalHR exam system. The letter generated informs exam candidates that they have submitted an unsigned application for the exam and must submit a signed application within 10 days or they will be cancelled from the exam. This procedure has also been added to the exam processing check list to ensure compliance.

FINDING NO. 2 – CalVet Accepted Applications That Arrived After the Final Filing Deadline, and Failed to Indicate the Receipt Date of Other Applications

A new process was implemented in October 2013. The CalVet Exam staff are indicating on the front of the application the postmarked date when envelopes are postmarked by the final filing date, but received and date stamped after the final filing date. Clerical staff that open the mail and exam staff will ensure all applications are date stamped. Envelopes postmarked after the final filing date are kept and stapled to the applications and also date stamped.

FINDING NO. 3 – CalVet Permitted an Applicant to Retake an Examination before the Waiting Period Expired, Then Passed and Ranked the Applicant Despite a Failing Score

While working on continuous exams, CalVet Exam staff will contact the CalHR technician and order a Too Soon Report each time they begin to process new applicants. This will prevent applicants from applying and taking exams more than once in a 12 month period. This procedure has been added to the exam processing check list to ensure compliance.

FINDING NO. 5 – CalVet did not inform complainants about reasons for delay in discrimination complaint resolution

The CalVet EEO Office has instituted the following complaint procedures to remedy its deficiencies, in accordance with CCR, Title 2, Section 64.4: 1) Upon receipt of a complaint, complainants will be notified in writing of the 90-day disposition timeline, and informed that they will be notified in the event the EEO Office is unable to respond to their complaint within that timeframe and the reason for the delay (along with any appeal rights, if applicable); 2) In the event that the EEO Office is unable to dispose of a complaint within the requisite 90 days, complainants will be notified in writing –at approximately 80 days or sooner- and provided with a reason for the delay (along with any appeal rights, if applicable). A "due date" column has been added to the EEO Office Complaint Activity Log for this purpose.

Thank you for the opportunity to provide comments with regard to the preliminary findings. If you have any questions or concerns, please give me a call.

KAREN ESCOBAR
Asst. Deputy Secretary
Human Resources Division
CalVet Headquarters

cc: Michael Wells, Undersecretary
Operations, CalVet
Deborah Harper, Deputy Secretary
Administration