



Written Testimony

of

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on

**Exploring the challenges facing self-employed reserve  
component members and the employers (small, medium, and  
large businesses) of reserve component members**

to

**The Commission on the National Guard and Reserve**

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Sheraton National Hotel

900 South Orme Street

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## **EXECUTIVE SUMMARY**

There are significant challenges facing self employed National Guard and Reserve component members and the companies who employ these dedicated men and women.

For the self-employed members, they are not receiving the financial assistance necessary to keep their businesses afloat while being called to active duty. This is a disservice both to the member of the National Guard and Reserve and their families, to the financial institution where they bank, to their customers, and the community they serve.

Employers of members of the National Guard and Reserve are bearing huge financial burdens. Employers have no legal or financial recourse to compensate them for their losses when their employee(s) is called to active service.

Returning members of the National Guard and Reserve are increasingly finding it difficult to obtain meaningful employment equal to their education and experience due to a perceived and real bias by employers who are concerned about the uncertainty of the time their employee will be gone from potential recall. They have learned that their active participation in the National Guard and Reserve works against them for re-employment, promotions and earnings capabilities. These inequities need to be addressed or the National Guard and Reserve, who are facing short falls in recruiting, will have a difficult time reaching and sustaining necessary manning levels. Most employers understand the consequences of USERRA and work hard to be in compliance, but this is an underlying consequence.

The testimony that follows gives a history of how the National Guard and Reserve have reached a difficult state of affairs vis-à-vis civilian employers.

The testimony then addresses the following three issues:

- As facilitators between the federal government and the reserve component member or between the employer and the employee, what do these governmental and quasi-governmental organizations do to ensure that the relationship between reserve component employee and employer stays strong?
- What current programs could be improved to keep employers apprised of federal laws and regulations concerning reserve component member employment?
- What can be done to lessen the impact on a small business of the mobilization of a reserve component employee?

The testimony concludes with viable suggestions for action to resolve these issues. This information is both timely and important to the future of the National Guard and Reserve.

## WRITTEN TESTIMONY

### Introduction

Good morning Chairman Punaro and members of the Congressional independent Commission on the National Guard and Reserve. Let me first thank you for the opportunity to come before the Commission today to share with you information that is relevant to the Commission's discussions on the challenges facing self-employed reserve component members and the employers (small, medium, and large businesses) of National Guard and Reserve component members.

It is an honor to be here.

VetJobs has a unique vantage point on these discussions since VetJobs deals with National Guard and Reserve members seeking civilian employment and businesses who employ and want to employ members of the National Guard and Reserve and their family members on a regular basis.

The mission of VetJobs is to assist veterans, their spouses and dependents to find quality jobs with employers worldwide. Since our launch on Veterans Day in 1999, VetJobs has assisted over fifty thousand veterans and their family members meet the recruiting needs of thousands of companies. As we speak today, there are over 20,000 jobs on the VetJobs site from hundreds of patriotic companies who want to hire transitioning military, veterans and their family members.

VetJobs is a small disabled veteran owned business staffed by veterans or military family members and is recognized as the leading military related job board on the Internet.

VetJobs is sponsored and partially owned by the Veterans of Foreign Wars. VetJobs has been endorsed by various veteran service organizations (VSOs) including the Naval Reserve Association (NRA) and the Vietnam Veterans of America (VVA). The VVA endorsement was important since over 50% of the veterans currently in the workforce are Vietnam Era veterans.

For four years in a row VetJobs has been voted to the WEDDLE's User's Choice Award. Only fourteen job boards out of over 40,000 on the Internet have received this distinction four years in a row. VetJobs is the only military related job board to be so recognized.

The written invitation asked that I address the following issues:

1. As facilitators between the federal government and the reserve component member or between the employer and the employee, what do these governmental

- and quasi-governmental organizations do to ensure that the relationship between reserve component employee and employer stays strong?
2. What current programs could be improved to keep employers apprised of federal laws and regulations concerning reserve component member employment?
  3. What can be done to lessen the impact on a small business of the mobilization of a reserve component employee?

As a former drilling Navy reservist who retired after 30 years of active and reserve service, and as a businessman with 27 years of significant senior level civilian work experience, I feel I bring a unique perspective to your deliberations. I have had the advantage of seeing these issues from the perspective of a reserve component member trying to balance a civilian career with my military obligation and as an employer.

What follows is a discussion of my observations as a businessman and former drilling Navy Reservist who interacts with federal agencies and civilian corporations, including veteran owned businesses, and transitioning military, veterans and their family members who are seeking work.

To fully understand why relations between employers and the Department of Defense (DOD), and in particular members of the National Guard and Reserve, are strained, it helps to understand the history that has brought us to the point where this Commission is considering the above three issues.

This testimony will look at the history of how we have come to be here and then give direct suggestions to each of the three discussion points.

## **History**

Historically, National Guard and Reserve members have been serving two masters – their military organization and their civilian employer. This system has worked for nearly a century, mainly because of the outstanding support of patriotic civilian employers and the dedicated men and women of the National Guard and Reserve. But that support has reached a breaking point and is rapidly eroding due to deleterious DOD policies that do not recognize the impact on employers and their employees who are members of the National Guard and Reserve.

I want to emphasize in this presentation that for the most part, civilian employers are very patriotic. Civilian employers understand probably better than most politicians the importance of having a strong military that protects their ability to conduct business from a free market economy and society on a world wide basis.

As I travel the country, I find overwhelmingly that employers want to support their employees who are active members of the National Guard and Reserve. But employers

feel the rules have been changed to a point of causing significant business interruptions. Many employers, mostly in the small to medium size, have concluded that the civilian component of DOD does not understand the strain that the new DOD policies are placing on their companies. They feel they had no input to the changes, particularly in the last decade, as to the use of their human capital that is so important to the survival of their companies.

This is particularly true of local municipal and state governments. Fire departments, police departments, healthcare and municipal governments have a disproportionate number of participants in the National Guard and Reserve. These organizations suffer greatly under the strain of trying to fill spots with temporary help left vacant from call-ups.

Keep in mind that overwhelmingly, members of the National Guard and Reserve are employed by the small to medium sized company. And members of the National Guard and Reserve tend to cluster together in these companies.

Additionally, when considering the above three issues, one must understand that executives of companies have a fiduciary responsibility to their shareholders or owners to run an efficient and profitable operation. Companies can not do so if they can not count on having their employees, their all important human capital, readily available to meet their business needs.

While for anyone who has been in civilian management or has been responsible for running a company this is just common sense. However, those making the decisions in DOD on how to utilize the National Guard and Reserve seem to have missed what Corporate America has been subtly saying, particularly the small and medium sized employers. These are the employers who are often the ones most affected by the multiple call-ups of National Guard and Reserve component members.

#### How did we get to this state of affairs?

Historically, the National Guard and Reserve system as it is used in the United States has been very effective. It has worked in large part due to the outstanding support by the employers of Corporate America, municipal and state governments and small business owners. But that support has been strained as a result of the many call-ups of the National Guard and Reserve over recent years in support of overseas operations.

Employers are growing more and more uncomfortable since long periods of employee absences are not what they had anticipated or had been accustomed to in the past hundred years. Employers have endured watching their National Guard and Reserve employee's call-up times move from 30 days, to 60 days, to 90 days, to six months and then to one year. With each move, DOD said that it would not exceed those limits. And every time those DOD statements did not hold. Now employers face losing their employees for up to two years at a time. The bottom line is that many employers no longer trust what the

civilian side of DOD says. Past actions have caused a major trust issue between DOD and employers. .

The employer's playing field over the last several years has changed with regard to DOD's use of the employers National Guard and Reserve employees. They watched the concept of the National Guard and Reserve be moved from a Strategic Reserve as mandated in Title 10 US Code, to an Operational Reserve (with no change in Title 10). To many, this is viewed as using military personnel to fight a war that does not have the financial commitment by the Government to appropriately finance the war.

As was found in the Defense Advisory Committee on Military Compensation in 2006, the current use of National Guard and Reserve as an operational reserve versus a strategic reserve argues for greater symmetry in active/reserve compensation programs and leads to questions about the size of the National Guard and Reserve. Many of the recommendations of that committee have yet to be implemented, and could conceivably assist in relations with employers, particularly as regards healthcare benefits.

Employers feel disenfranchised since as employers they had no input on the new uses of their National Guard and Reserve employees which they rightfully consider to be their human capital, not DOD's human capital. When an employer's human capital is called away for duty in the National Guard and Reserve, the employer has no practical ability to replace the absent employee who is called up for long periods of time, especially in the existing tight labor market.

Yet the employer is mandated by law through the Uniformed Services Employment and Reemployment Rights Act (USERRA) to provide certain types of support and promotions at the employer's expense. This is especially burdensome to small and medium sized employers who have little wiggle room to move jobs around to accommodate their business needs. This naturally will affect an employer's perspective on the use of the National Guard and Reserve. These burdensome costs directly affect an employer's attitude as to whether they want to continue to hire active members of the National Guard and Reserve.

Please keep in mind that well over 60% of the participants in the National Guard and Reserve come from rural areas. When they are called to active duty and leave their job, it is hard for employers to find replacements. If the position is a critical technical position or a senior management or executive position, the situation is exacerbated.

In looking at the history of the National Guard and Reserve, they had been nationally activated only twice from inception until 1991. There was a full call-up during World War II and a partial call-up during the Korean War. The 30,000 plus National Guard and Reserve personnel who served during the Vietnam War for the most part were volunteers who asked to be sent to the war zone. There were a few selected call-ups totaling a few hundred personnel used for training, but few were actually sent to Vietnam. The limited combat activities between the Vietnam War and the Gulf War were for the most part fought with active duty troops.

However, since the 1990-1991 Gulf War there have been nearly twenty full call-ups of the National Guard and Reserve. This has put a tremendous strain on the National Guard and Reserve system, their ability to recruit and the relations of those military component participants with their employers

In addition to call-ups to support overseas actions, there has been an increase in the traditional uses of the National Guard here at home for emergencies. Examples include Hurricane Katrina, Hurricane Rita, border operations against illegal immigrants and removing snow from avalanches in the western states. While in the past many western states regularly counted on their National Guard units to help fight fires each summer, the use of the National Guard to fight fires and other natural disasters is becoming a national issue. The ability by states to use their National Guard units in their traditional roles has been disrupted with the many call-ups for Afghanistan, Iraq and other overseas assignments. And the equipment that historically had been used to fight the fires is no longer available as the equipment has been used for combat in Afghanistan and Iraq. Combat use has destroyed much of the National Guard's equipment. The open press is replete with articles about how the National Guard is short on equipment and personnel to meet the security needs of their states.

While there has been much political bantering from some state governors who have been using the issues facing their National Guard for political ends, the equipment shortages and repeated deployments facing many National Guard units is real and taking a serious toll.

This higher pace of activity has put a tremendous strain on the National Guard and Reserve citizen soldier system and the relations of those military participants with their civilian employers. This has placed a significant number of National Guard and Reserve members in the tenuous position of literally trying to serve two masters at the same time.

#### Unintended consequences

The result of all these call-ups has had some unintended consequences that are not favorable for National Guard and Reserve employees or their civilian employers.

Business & Legal Reports ([www.BLR.com](http://www.BLR.com)) conducted its annual Survey of Employee Benefits in late 2004 and found that the percentage of employers paying full salaries to their National Guard or Reserve employees on active duty had plummeted in just two years. In 2003, 33% of employers paid exempt employees their full salary while on military leave; this had dropped to 15% in 2005. Meanwhile, the number of employers who paid nothing to their active duty employees had increased from 31% in 2003 to 50% in 2005. Many companies were still willing to make up the difference between what employees earn during military service and their normal wages, 36% in 2003, declining slightly to an estimated 34% in 2005.

The results of BLR's 2007 Survey of Employee Benefits show that the number of employers maintaining full pay for employees serving the National Guard or Reserve had increased since 2005, but still had not returned to the percent of employers offering paid leave reported in 2003. In 2007, 21% of respondents to the survey reported that they would pay employees on military leave full pay during such leave. Similarly, the number of employers that paid the difference between military pay and an exempt employee's salary rose from 34% in 2005 to 43% in 2007. The number of employers that do not pay exempt employees on military leave decreased from 50% in 2005 to 36% in 2007. The results of the 2007 BLR Survey of Employee Benefits is heartening and shows that some employers are providing full or differential pay out of patriotic duty.

However, the bottom line of the several BLR surveys is emphasized very well by Susan Schoenfeld, BLR's senior compensation editor, when she said: "The changes in salary payments to active duty reservists and guard members represent a landmark shift. This unintended consequence of extended active duty tours in Iraq and Afghanistan is severely affecting employers – and the nation's citizen soldiers."

A survey conducted by the Society of Human Resource Management (SHRM), the largest human resource organization in the world and an extremely reliable source, in July of 2006 found some other disturbing trends. The survey was a follow-on survey to one that was conducted in 2004. The 2006 survey found the primary concern among employers was uncertainty about how long employees would be away from their jobs due to National Guard and Reserve activation, which moved from 86% in 2004 to 79% in 2006.

The other concerns in descending order were:

- the burden on remaining employees to cover for open positions - 52% to 60%
- continuation costs for employees (and their families) called to active duty – 32% to 35%
- loss of productivity – 16% to 25%
- effect on active duty employee's family members (COBRA, etc.) – 24% both years
- finding temporary workers to fill open positions – 19% to 23 %
- temporary worker costs for open positions – 13% to 17%
- and finding a comparable job for returning employees – 16% to 15%

The problem of National Guard and Reserve employees is considered to be a major issue by SHRM. That is why they are currently in the process of conducting a third survey to measure employer support or non-support towards National Guard and Reserve participation by employees.

What the BLR and SHRM surveys reveal is that support for employees who are active in the National Guard and Reserve by employers is declining. There is a limit to what employers will tolerate. It should be noted that these polls were taken before the announcement about the new call-up policy of January 11, 2007.



## Recent events and polls

During a press conference on January 11, Secretary of Defense Robert Gates and General Peter Pace, Chairman of the Joint Chiefs of Staff announced that the policy on the use of the National Guard and Reserve was changing. The Pentagon's policy on the National Guard and Reserve was that members' cumulative time on active duty for the Iraq or Afghan wars could not exceed 24 months. That cumulative limit is now lifted; the remaining limit is on the length of any single mobilization, which may not exceed 24 consecutive months. What this means is a National Guard or Reserve member could be mobilized for a 24-month tour in Iraq or Afghanistan, be demobilized and allowed to return to a civilian working life, only to be mobilized a second time for as much as an additional 24 months for a total of 48 months in any 60 month period.

The Associated Press release of the DOD press conference was titled Pentagon Abandons Active-Duty Time Limit. The Associated Press quotes Dr. David Chu, the Under Secretary of Defense for Personnel and Readiness, as saying: The fact that some with previous Iraq experience will end up spending more than 24 months on active duty is no "big deal." With all due respect to Dr. Chu, it is a big deal. And one that employers will not support.

This new policy will have long term negative consequences for members of the National Guard and Reserve, the DOD and employer support for the National Guard and Reserve which is needed to make the system work.

More recent evidence that there is a trend in declining support by employers for an employee who participates in the National Guard and Reserve comes from Workforce Management ([www.workforce.com](http://www.workforce.com)) in polls taken just before and after the now DOD policy announced on January 11, 2007. The readership of Workforce Management is primarily corporate executives and members of the Human Resource profession.

Workforce Management has conducted two polls of its readers regarding the hardships that are being imposed on employers who want to support their National Guard and Reserve participating employees. The first question that was posted the week of January 8 asked:

**Does your company have employees deployed in Iraq, and is this a hardship for your business?**

The answers from 335 executive and human resource managers are disturbing.

Yes – 67%

No – 31%

I don't know – 2%

Following the results of the January 8 poll and in light of the new DOD policy regarding the National Guard and Reserve announced on January 11, the second poll which ran the week of January 15 asked:

**If you, as an employer, knew that a military reservist or National Guard member could be called up and taken away from their job for an indeterminate amount of time, would you still hire a citizen soldier? (All answers are confidential.)**

The results to this question from 389 respondents are even more disturbing.

Yes – 29%

No – 54%

I don't know – 17%

I suspect that many of the “don’t knows” in the second survey had a patriotic twinge or were concerned about being identified in some way, and chose “don’t know” instead of “no”. They would be rightfully concerned about potential USERRA violations, retributions and being audited by the Department of Labor (DOL). But the fact that there is even one employer who would say no is disturbing.

The two Workforce Management polls definitely indicate there is a rising trend in Corporate America to not support the way the National Guard and Reserve are currently being used. These National Guard and Reserve employees are the vital human capital that a corporation needs to function. The corporate support that has always been present in the past was critical to the success of the National Guard and Reserve programs. These polls indicate that corporate support is now rapidly disappearing.

The problem here is that the citizen soldier concept as practiced in the United States can not function without the support of Corporate America. What I find disturbing is that the civilian side of DOD dismisses these studies as not credible or as anecdotal. The civilian side of DOD appears to not want to admit there is a problem. And ignoring a problem is bad policy, especially in a time of war.

The military side of DOD is very much aware of the problem, particularly the National Guard and Reserve components. The military knows that returning members of the National Guard and Reserve are having civilian re-employment problems. VSOs have been inundated with calls for help from returning National Guard and Reserve personnel who have been having a hard time finding employment due to their continued participation in the National Guard and Reserve.

At VetJobs, we see this issue on a regular basis. VetJobs receives calls daily from veterans seeking assistance in finding employment. Several times a month we get a call from a veteran who has been asked if they intend to affiliate with the National Guard or Reserve, sometimes from brand name companies. We give the veterans counseling on how to handle the situation. While the question is illegal, it is occurring.

With the results of the Workforce poll, it is evident that a comprehensive study needs to be conducted by an independent organization, one like the Society of Human Resource Management. The study should be done with no participation by organizations that might have a vested interest, particularly DOD.

### A disturbing emerging trend

These results are indicative of a trend among companies nationally to not want to hire members of the National Guard and Reserve due to the extended use by the DOD of their National Guard and Reserve employees. The trend to not support National Guard and Reserve employees can be directly correlated to when the term Strategic Reserve was changed to Operational Reserve. If the National Guard and Reserve component members are operational, they are not really a reserve. They are operational combat troops who are underpaid and not getting the same benefits as when they were on active duty, especially when it comes to medical and retirement benefits. This only increases the perception that DOD is trying to fight a war that does not have the commitment of the Government to appropriately finance a war.

I want to again emphasize that most companies are very patriotic and were willing to support employees that were in the National Guard and Reserve in the old system before the extended call-ups of six months and one year started to take place in the early 1990s. Many companies have active military hiring programs and in many cases, encourage managers to hire a veteran, whether the veteran had been transitioning from active duty, retired or a participant in the National Guard or Reserve.

Most companies are aware to some degree of their obligations to support employees who are active in the National Guard or Reserve. This is due in large part to the success of the National Committee for Employer Support of the National Guard and Reserve (ESGR). ESGR has been very active in getting the word out about USERRA. The Veterans' Employment & Training Service (VETS) at DOL has also been very effective in this effort. SHRM, HR.com, Workforce Management and many other human resource organizations have worked closely with ESGR to get the word about USERRA out to employers.

But since the call-up times were moved from a six month to a one year call-up, and as demonstrated by the Workforce Management and SHRM studies, there is evidence indicating employers are not enthusiastic about hiring a new employee who is an active member of the National Guard or Reserve. The new policy of up to two year call-ups will definitely work against members of the National Guard and Reserve who are trying to also have a meaningful civilian career or start a business.

I find it interesting that DOD from a verbal policy standpoint is trying to put a positive spin on the issue, but employers, feeling they were deceived in the past, are reluctant to believe what DOD now has to say.

An example is when Assistant Secretary of Defense for Reserve Affairs Thomas Hall stated: "Our goal is to have our active duty forces rest for two years following a one-year deployment and our Reserve forces return to their employers and family for five years following a one-year mobilization." Shortly after that statement DOD announced a new call-up of 13,000 National Guard and Reserve members, many who had recently returned

from tours in Iraq and Afghanistan. From an employer point of view, the policies stated by DOD do not reflect the actions and reality. It should be noted that many of the National Guard that received notice of the new call-up have been told they will be gone for two years!

#### Employer support is on the wane

There are definite reasons why the support for the National Guard and Reserve system as it is currently operated by the DOD is not receiving support from employers.

Historically, employees participated in a National Guard or Reserve program on weekends and most used two weeks of their vacation time to participate in their active duty for training. But current policies by the DOD is calling National Guard and Reserve personnel from their employers for up to a year a time or longer, and in many cases the employee has been called up several times.

While Under Secretary of Defense for Personnel and Readiness Dr. David Chu maintains that most of those who have been sent for a second or third time are volunteers, I would agree to a point but add that the National Guard and/or Reserve member volunteered for the second or third tour because they could NOT obtain meaningful civilian employment equal to their education and experience due to their continued participation in the National Guard and Reserve. Several cases of this were documented during testimony on January 31, 2007 before the Senate Small Business and Entrepreneurship Committee.

The DOD policies as they apply to National Guard and Reserve employees makes it hard for employers to plan and depend on having their human capital available to fulfill their corporate mission. While large patriotic companies like Wal-Mart, BNSF Railway, Caterpillar, CACI and many utilities and municipalities actively support the call-up of their National Guard and Reserve personnel, it is much harder on smaller firms, especially those firms with less than 200 to 300 employees and companies in rural areas. And an overwhelming percentage of those who participate in the National Guard and Reserve are employed in small to mid-sized companies, many of which are veteran owned.

As mentioned earlier, companies have a fiduciary responsibility to their shareholders to run an efficient and profitable operation. Companies can not do so if they can not count on having their employees, their human capital, available.

Given a company's fiduciary responsibility, the DOD policies regarding the use of the National Guard and Reserve is disturbing to human resource executives as it puts them in a quandary. One senior vice president of human resources of a major company explained it to me this way: If I have three final candidates for a position who are all equally qualified, and one mentions they are active in the National Guard or Reserve, with the new policy (ref January 11) I now have two final candidates, especially if it is for a critical position in the company.

Another senior executive commented that in light of the new policy, they will, under USERRA, continue to support their current employees who are active in the National Guard or Reserve, but they will no longer actively seek out to hire candidates who are active in the National Guard or Reserve.

I have heard this same sentiment from a large number of human resource managers. All these executives were not willing to be quoted publicly due to USERRA and other applicable laws, but they represent a trend that is taking place in Corporate America.

#### The trend is being picked up by the news media

In a December USA Today article titled “More Reservists Feel Slighted,” it was reported that the number of National Guard and Reserve members who say they have been reassigned, lost benefits or been fired from civilian jobs after returning from National Guard or Reserve duty has increased by more than 70% over the past six years. DOL said it handled 1,548 complaints from returning service members in the fiscal year ending September 30, 2006, up from 895 in fiscal year 2001. But those numbers don’t reflect all the servicemen and women with problems. Many of the cases are settled before they get to DOL.

A DOD spokesperson said the Pentagon received more than 8,000 complaints in 2006, nearly double from the previous year. Most of the complaints were resolved without further government action. The complaints ranged from being fired, losing chances for promotion or being reassigned to jobs with less pay or responsibility.

As a former drilling reservist, I am always appalled when the Veterans Administration (VA), the civilian arm of the DOD, the Small Business Administration (SBA) and DOL, has USERRA complaints filed against them. These federal agencies should NEVER have a USERRA complaint!

It is interesting to note that over 500,000 of the 850,000 reservists and National Guard members eligible for duty have been mobilized since late 2001. That represents the largest call-up of part-time troops since the Korean War. Many of the National Guard and Reserve personnel have been called up multiple times, especially if they have high demand security clearances and/or specialized technical skills.

While the Pentagon's stated goal has been to mobilize National Guard and Reserve units no more frequently than one year out of six, the demands of wartime require calling up units more often than that. Army officials had been saying for some time that more frequent mobilizations were necessary because the active-duty force is being stretched too thin. Secretary Gates' announcement on January 11 was the first confirmation of the change.

An important aspect of this issue is the policies of increased use of National Guard and Reserve were never vetted with the employers of the National Guard and Reserve members. Consequently, the employers feel disenfranchised and no longer want to support the system. Recognizing the potential legal implications, the employers are staying under the legal radar, but the trend is occurring all the same.

An example of how the employers are not supporting the multiple call-ups is the recent highly publicized case by Lieutenant Colonel Debra Muhl (Army nurse) against Sutter Health of California for violating USERRA in 2006. The suit alleges the company violated federal law by firing her after she told her supervisor she was being deployed to Iraq for a fourth time. Lieutenant Colonel Muhl had been called up to active duty status several times, including in March 2003 for 10 months and twice in 2005 for military training. Demand for highly skilled nurses is very strong during a time of war, so she has experienced multiple call-ups.

Some DOD officials like to say that National Guard and Reserve who serve more than one call-up do so “voluntarily”. While this is technically true, what is left out by DOD is that a large number of the members who are volunteering do so because they can not find meaningful employment equal to their education and experience. They have found that their active participation in the National Guard or Reserve is working against them in the civilian employment market place.

And the recent announcement of a call-up of 13,000 National Guard personnel shows again that what DOD says does not equate to what DOD does. Many of these National Guard personnel just recently returned from deployments overseas. So much for the DOD policy that a person will be called up only one year in six! Obviously, there is no accountability for statements made by DOD bureaucrats.

### Impact on families

Another aspect to this issue is the impact on families. The two leading reasons why people leave the military are operation tempo and the effect of service on families. Over the last six years the stress on National Guard and Reserve families has been significant. I hear regularly from people leaving the National Guard or Reserve because they do not want to get a divorce. Their spouses are not tolerating the call-ups as if they were still active duty military. Particularly since the National Guard and Reserve do not get the same benefits as an active duty person or access to their retirement upon retiring like an active duty military person, but they are being used as if they were part and parcel of the active duty force.

As discussed earlier, the National Guard and Reserve were created to be strategic reserves. But in today’s world they are being used as an extension of the active duty forces, now called operational reserves. If the members and their families wanted to stay in the active forces, they would not have resigned and joined the National Guard or Reserve. While a National Guard or Reserve participant may be very patriotic and

support the policies of the Pentagon, they also have to pay attention to their families. And spouses carry a lot of weight in these types of decisions.

The family issue is why the National Guard Bureau has created an entire section to tend to family issues and concerns while members are deployed. The active duty forces have also created family support centers to support families.

But spouses carry considerably more sway than commanding officers. Spouses are not keen on seeing the family income drop significantly when a spouse is activated. The impact of repeated call-ups affects families not only economically, but also emotionally. And if the constant extended and repeated deployments are fought by the spouses and families, the member will not stay active in the National Guard or Reserve.

### Perception problems at DOD

With the BLR, Workforce Management and SHRM studies, and the re-employment of National Guard and Reserve personnel concerns being expressed constantly by all the major VSOs and even with the multitude of press articles on the subject, senior level decision makers in the Office of Personnel and Readiness at DOD seem bent on refusing to admit there is a problem. This denial of reality is disturbing.

I have frequently heard members of the Office of Personnel and Readiness say, “there is no credible evidence” or “the evidence is anecdotal.” One member of the office was quoted as saying a survey is not credible unless it takes three years to do and must cost a minimum of one million dollars. Maybe that is what it takes a DOD bureaucrat to do a study, but in the civilian work world the studies conducted by BLR, Workforce Management and SHRM are considered to be very credible.

I can appreciate how this denial comes about. Senior bureaucrats in DOD have to espouse a policy. When facts contradict their stated policy on which they are resting their careers, they use a person in the Defense Reserve Affairs division who has a doctorate to look at the “evidence” and declare it not credible or anecdotal. Denial of the truth is not good policy.

I have had the advantage of dealing with hundreds of senior corporate executives and human resource managers. While some of these executives will say they can live with the current DOD policies (these are generally the very large corporations), many have stated to me in private and with the provision of non-attribution that they will no longer hire active members of the National Guard and Reserve. They would never make such a statement to a senior person at DOD. But it should be noted they will not risk their company’s operations due to deleterious DOD policies.

I had one company president tell me he would love to come forth and say he will no longer hire active National Guard and Reserve candidates with the current DOD policies,

but USERRA and the threat of DOL audits forces him to implement his policy quietly and under the legal radar screen. Having been in his role, I can understand his frustration.

Another example of perception problems is when DOD makes statements that are not credible. For example, when Dr. Chu said the extended call-ups are “no big deal”, he is demonstrating a blinding indifference to the needs of civilian employers. And without the support of civilian employers, the citizen soldier concept will not work.

Another example is when Assistant Secretary of Defense for Reserve Affairs Thomas Hall says the one in six call-up rotation for National Guard and Reserve can not work, but in the same breath says the goal is still one in six. One has to ask what is going on. In the civilian world, if a vice president of sales were to tell a CEO that they will not be able to make a \$20 million dollar sales target, it might be good if they can barely hit \$5 million, but the goal is still \$20 million and then continues to talk as if the \$20 million goal will be reached, the vice president would be given a sterling opportunity to seek alternative forms of employment. They are not being realistic. And in the civilian world of work companies are grounded in realism.

I predict that so long as DOD denies and can not understand that it has a problem, the relationships with civilian employers will only get worse. The rise in USERRA complaints is a definite leading indicator of this trend.

### Results of DOD policies

From all of the above information one can reasonably conclude that there are problems resulting from the way DOD uses the National Guard and Reserve. This commission would not have been established if there was not a problem.

Recruiting is definitely affected. In fiscal year 2006, 23 of the 54 National Guard groups failed to meet their recruiting numbers, the Army Reserve met 95% of its recruiting goal while the Navy Reserve met only 87% of its goal. A policy increasing the call-up time for National Guard and Reserve participants will make it even harder to meet recruiting goals. In April 2007, The Army National Guard achieved only 89% of its goal, the Army Reserve 81%, the Navy Reserve 94%, and the Air National Guard 84%.

More importantly, if an employee is looking at a promotion in a company and senses that their participation in the National Guard or Reserve will work against them, they will quit participating. While speaking at a university I met a Reserve Navy Commander who has 7 years of active duty and the rest in the Navy Reserve for a total of 16 years of service. He asked me if the extended call-ups past a year were real. I told him yes, and pointed out that many of the National Guard personnel who are now being called up are being told to prepare to be gone for two years. He then told me he had heard and read the same thing, and that he was going to resign his commission. He is a financial analyst with a major corporation and is up for a promotion to vice-president. He wants the promotion. But he can not be subject to being called up for two years and still keep his civilian job or get the



promotion. So he is going to quit with 16 years of service! How many millions has DOD invested in this Commander's career, to only have him quit four years from being able to retire? His example is only the tip of the retention iceberg. There will be many more such resignations with current DOD policy.

If a potential National Guard or Reserve candidate in the civilian labor force senses that employers will not support participation in the National Guard and Reserve, they will not join. And word is spreading in many companies that support for active participation in the National Guard or Reserve is not a good thing.

It should be noted that most of the participants in the National Guard and Reserve are natural leaders in their community and companies. They have the very skills needed for the high tech military of today's National Guard and Reserve. Current DOD policy will not encourage the very people we need in the National Guard and Reserve to participate or remain in uniform.

And perhaps most disturbing, as this trend grows, returning National Guard and Reserve personnel – the very people who have been fighting to keep the United States free – will find it harder to obtain meaningful employment equal to their education and experience. The results from the Workforce polls are appalling. But from the standpoint of Corporate America, they are understandable.

I will be interested to see if the Congress and DOD will pay attention to what employers are quietly saying – for now – employers will no longer support the way the National Guard and Reserve are being used.

Without the support of Corporate America, the citizen soldier concept can not work. And to answer Secretary David Chu, that is a “big deal”.

To conclude this discussion of the history that has brought us to this hearing, VetJobs has been receiving calls from veterans and transitioning military who are concerned about employers asking during an interview whether the candidate intends to affiliate with the National Guard or Reserve. While the question is patently illegal, there is no real enforcement. If the candidate files a complaint, it becomes a he-said she-said type of issue. The candidates inherently know that if they say yes to joining or rejoining the National Guard or Reserve, they will not be hired. The fact that some employers are asking this question is disturbing, but as has been discussed above, it is also very understandable. In fact, it is common sense!

## **Discussion Of The Commission's Three Points Of Consideration**

### **1. As facilitators between the federal government and the reserve component member or between the employer and the employee, what do these governmental and quasi-governmental organizations do to ensure that the relationship between reserve component employee and employer stays strong?**

The military, to include the National Guard and Reserve components, are fortunate to have many organizations speaking on their behalf to employers, DOD and members of Congress. It is important to note that deleterious actions by DOD and/or the Congress can directly impact support for the National Guard and Reserve by employers.

I am very pleased to report that from my experience ESGR and VETS have been having successes in educating many employers, primarily large employers, to understand the impact of USERRA. What concerns me is the recent rise of USERRA complaints. This is interpreted as employers resisting the way their human capital is being used.

VSOs can have a direct impact on employer's support of National Guard and Reserve component members. In fact, many VSOs now conduct job fairs to enhance the hiring of returning members of the National Guard and Reserve, transitioning military and veterans. Enlisting more direct support from VSOs will help. This could be done through ESGR.

### **2. What current programs could be improved to keep employers apprised of federal laws and regulations concerning reserve component member employment?**

There are several current programs that could be enhanced to keep employers apprised of federal laws and regulations concerning National Guard and Reserve component member employment.

1. More employers need to be educated to the USERRA law, especially small and medium sized companies. While ESGR and VETS has been successful with the larger corporations, many small and medium sized companies do not have well staffed human resource departments, or in some cases, any human resource department at all. To reach these companies, additional funds should be given to ESGR to reach the small and medium sized employer. This would best be done through the many local chambers of commerce throughout the United States. While a small company may not have an human resource person on staff, they almost all participate in their local chamber of commerce. So providing ESGR the funds needed to reach and provide educational material through the local chambers of commerce is important.

2. Employers for a Stronger America (EUSA), the non-profit that supports ESGR could be used in this effort. As a 501(c)(3) corporation, EUSA can conduct advertising that

ESGR is currently not permitted to do. Funding for EUSA would be necessary to provide the assistance.

3. Enhance the Secretary of Defense's Freedom Award. The Freedom Award is not a well recognized employer award in the business community, particularly as compared to many others business award recognition programs such as Fortune, AARP, etc. There is an opportunity for DOD/ESGR to expand promotion of these awards and recognition of the event. Expansion of the program would benefit of the National Guard and Reserve members it serves, as well as garnishing better support from employers.

For the last four years, the Secretary of Defense has been conspicuously absent for the presentation of the awards. Since it is called the Secretary of Defense's Freedom Award, the Secretary of Defense should be making the presentations.

With proper promotion and the removal of political considerations in choosing the winners, this award could be one of the most coveted by employers.

The 2006 on-line process at the ESGR site was very generic and lacked content. I would recommend looking at the applications of other employer recognition award programs and adopting best practices.

The Freedom Award requires nomination from an employed National Guard or Reserve member at the nominated company. The problem here is that most members of the National Guard and Reserve do not know they can nominate their employer. Funding for ESGR to better promote the Freedom Award to National Guard and Reserve members is needed. The award needs to be promoted beyond just the ESGR website.

Traditionally the Freedom Award has gone to large organizations. There should be tiered categories created for small and medium sized companies as well. Consideration for recognition in certain industries could be added, as well as municipal and government organization tiers.

The lesser ESGR Patriot and the DOD Freedom Award should have a consistent process for nomination and selection.

This award has so much potential to identified best practices of employer support of National Guard and Reserve employees and can motivate other employers to adopt these best practices. All boats rise in performance with this attention and employed National Guard and Reserve members reap the benefits.

4. Run policy changes by DOD on the use of the National Guard and Reserve by a civilian employer review board to get input on how best to make changes and be able to gauge reaction by employers. EUSA could be used for this purpose.

### **3. What can be done to lessen the impact on a small business of the mobilization of a reserve component employee?**

1. While awards like the Freedom Award works well with major employers, the small and medium sized employer is feeling a financial pinch as described above from the call-up of employed members of the National Guard and Reserve. I would suggest that direct cash payments for the purposes of offsetting the lost productivity of called up members and the cost of finding temporary replacements. These cash payments should be realistic in terms of what it is costing the company from which the National Guard or Reserve member has been pulled to be activated. Such a program could be administered through the SBA, VETS or the National Guard Bureau for National Guard call ups and the respective reserve organizations for the federal forces. Funding will need to be provided.
2. Tax incentives for small and medium sized employers of National Guard and Reserve should be considered. In making this suggestion, I would emphasize that the cost to participate in a tax incentive has to be low or non-existent. Many tax incentives currently exist for companies to hire veterans, but they carry such a large compliance cost that most employers have no incentive to participate.
3. Providing year round full health, dental and eye care to participating members and the families of the National Guard and Reserve so the employer is relieved of the costs would be a tremendous benefit for employers who want to hire National Guard and Reserve component members. This would also be a major recruiting tool for the National Guard and Reserve.
4. Create stronger encouragement for companies to hire returning veterans of the recent overseas conflicts. To encourage companies to hire these returning veterans, there should be an incentive program in the form of a targeted job tax break (in addition to the tax break discussed in point 2 above) for hiring low income returning veterans. While there are some programs in place, very few employers take advantage due to the fact that the bureaucratic paperwork and tracking costs far exceed any gain to be realized by hiring a veteran! The current laws need to be changed such that an employer has a TRUE financial incentive to hire veterans, especially disabled veterans

In addition to the above suggestions, to assist returning National Guard and Reserve member's re-entry to the workforce the following should be considered:

1. Restore veteran hiring preference and effect an enforcement mechanism so all federal agencies will provide legitimate veterans preference.
2. Many National Guard and Army Reserve members complain they do not get adequate assistance from the Army Career and Alumni Program (ACAP) as regards assistance in finding a job when they return. While part of this problem is systemic in that the service member is not close to an Army facility, many ACAP offices take the position that they are there only to assist transitioning active duty members, not National Guard and Army Reserve members. This attitude needs to be changed. A quick solution would be the

contracting of an experienced civilian company who has a successful track record in getting jobs for National Guard and Reserve members and is familiar with the problems of transitioning back to civilian employment to assist members of the National Guard and Reserve. This could be accomplished electronically via use of the Internet, supported by customer service representatives to be on call via phone.

To assist small businesses owned by National Guard and Reserve personnel, the following should be considered:

1. The Rule of Two as introduced under PL 108-183 is contained in Part 19 FAR, and the Code of Federal Regulations (CFR) 13 CFR, Part 125. The Rule of Two states if a contracting officer knows of two or more Small Disabled Veteran Owned Businesses (SDVOBs) that can do the work, then the requirement must be competed and a sole source award can not be made. If sole source can not be made, then the requirement may be competed among SDVOBs only under restricted competition.

Federal Government contracting officers are often under pressure to get requirements awarded quickly, and although there is a SDVOB that can do the job, they routinely go to 8(a) sole source, since the Rule of Two will not allow them to deal with the SDVOB on a sole source basis. In these cases, the Government contracting officer does not have time to even consider restricted competition among SDVOBs because of time factors. Thus, the SDVOB suffers and the government agency loses an opportunity to add to its 3% goal under the law. It should be noted that NO federal agency has yet to reach its mandated 3% goal that was made law in 1999.

SBA 8(a) Firms have no such Rule and are awarded single sole source awards for their self marketing activities under part 19 FAR. For SBA 8(a) firms there can be a multitude of 8(a) firms and the Contracting Officer can still elect to sole source to just one without competitive procurement activity. I would suggest to the Commission to consider giving federal contract officers the ability to award contracts on a sole source to SDVOBs and extend the ability to include small veteran owned businesses (SVOBs) the same way the contracting officer can make awards for SBA 8(a) firms. The inclusion of all SVOBs in this provision would create more new jobs in the economy.

2. Alleviate barriers to discrimination and expansion of veteran owned businesses by providing better oversight and frequent monitoring of the implementation of EO 13-360.

3. Provide a Price Evaluation Preference of 10% for veteran owned businesses in acquisitions conducted using full and open competition.

4. Financial assistance to veteran owned businesses by the SBA is not readily available. Part of the problem is the SBA has the financial assistance programs listed under disaster relief, which means a “disaster” has to take place before the called up National Guard or Reserve member can get assistance. In essence, they have to go out of business to qualify. If they go out of business, it is too late. The SBA should implement a realistic loan

program devoid of politics to support the operations of small businesses owned by members of the National Guard and Reserve.

## **CONCLUSION**

When I look at reasons why companies do not want to hire members of the National Guard and Reserve, the reasons discussed above are to some degree self-evident. But I think there is another reason as well.

The lack of military experience or knowledge of the military in the civilian workplace immediately comes to mind. In 1970, one in ten people who worked in the United States had served in the military. Today it is over one in 230 and growing. Having an all volunteer force for 35 years means there are now two generations of Americans who have had no exposure, much less an understanding, of today's military. This lack of understanding only fuels many of the problems faced by members of the National Guard and Reserve.

George Orwell once said, "We sleep safe in our beds because rough men stand ready in the night to visit violence on those who would do us harm." The American public and especially the Congress needs to understand the importance of Orwell's comments in today's world.

It should be incumbent upon DOD to educate the American public to the reasons why the Public and Congress needs to be supporting the National Guard and Reserve. These members are part of our front line of protection against those who would do the United States harm and deserve our full support while on active duty and when they return.

Thank you for your time.

This concludes my testimony.

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