



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Improper Time and Attendance and Preferential Treatment Center of Excellence, VISN 17 Waco, Texas

Redacted

Results

Issue 1: Whether Dr. Gulliver Improperly Approved Authorized Absences and Engaged in a Conflict of Interest

Federal law states that fulltime employees shall not work less than 80 hours biweekly and that they may not perform professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both. 38 USC § 7423. Federal regulations state that employees shall not use public office for private gain and prohibit employees from engaging in outside employment or in any other outside activity that conflicts with their official duties. 5 CFR § 2635.101(b) and .802. Federal regulations further state that when an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a person with whom she has a covered relationship, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question her impartiality in the matter, the employee should not participate in the matter unless she has informed the agency designee of the appearance problem and received authorization. *Id.*, at .502(a). Further, regulations state that an employee shall use official time in an honest effort to perform official duties and that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties. *Id.*, at .705.

VA policy requires all employees to be on duty during the full period of their tour of duty and to observe the opening and closing hours established for the tour of duty, unless on approved leave. VA Handbook 5011, Part II, Chapter 2, Paragraph 1(a)(7), (April 15, 2002). Policy provides for flexitime schedules, which are limited to flexitour, modified flexitour, and gliding flexitour, as defined in paragraph 11c of this VA policy. It states that a flexible work schedule and a compressed workweek may not be simultaneously established in the same work unit and that credit hours may be earned at the option of employees with supervisory approval. However, it states that employees do not receive overtime pay for credit hours and fulltime employees may carry over no more than 24 credit hours into the next pay period. *Id.*, at Paragraph 11f, (February 13, 2007).

VA policy states that the minimum charge for leave for a title 5 employee will be a quarter hour (15 minutes). VA Handbook 5011, Part III, Chapter 2, Paragraph 2 (June 16, 2004). It further states that authorized absences may be given without charge to leave when the activity: (1) is considered to be of substantial benefit to VA in accomplishing its general mission or one of its specific functions; (2) will clearly enhance an employee's ability to perform the duties of the position presently occupied or may be expected to prospectively occupy, or; (3) the basis for excusing the employee is fairly consistent with prevailing practices of other Federal establishments in the area concerning the same or similar activities. *Id.*, at Paragraph 12a (April 15, 2002). However, Federal law prohibits

any salary or supplementation of salary for services as an employee of the executive branch of the United States Government from any source other than the Government of the United States. 18 USC § 209(a).

Dr. Gulliver told us that she was the Principal Investigator for a grant funded by the National Institute of Health (NIH) and administered through TAMU. She said that as the COE Director, she approved authorized absences so that her VA subordinates could work on the TAMU grant during their VA duty hours. She also said that they received remuneration for their work on the grant. Dr. Gulliver said that Dr. Wendell Jones, Chief Medical Officer, approved her authorized absences. Initially, Dr. Jones told us that he approved Dr. Gulliver's authorized absences because the research was relevant to veterans and beneficial to VA. However, he later told us, in the same interview, that he did not approve her absences, because he said that Dr. Gulliver's timecards were not maintained at the VISN. Time and attendance records reflected that Dr. Gulliver's supervisor approved her authorized absences; however, the records did not reflect the name of the approving supervisor. Dr. Jones told us that he was unaware that Dr. Gulliver received compensation for her work on the TAMU grant, but we found that his approval signature appeared on her JEA. (7)(c)

Dr. Gulliver, [REDACTED] and [REDACTED] signed JEAs that reflected that both VA and TAMU paid them a salary; however, the JEAs reflected that they certified that "there is no dual compensation [sic] from these two sources for the same work." The JEAs also reflected that Dr. Gulliver recommended approval of the agreements signed by [REDACTED] dated September 1, 2010, and by [REDACTED] dated August 1, 2010. Dr. Gulliver signed but did not indicate her approval or disapproval on the JEAs for [REDACTED] and for herself. Further, the JEAs reflected that Drs. Gulliver, [REDACTED] and [REDACTED] were required to work 40 hours per week for VA and 10 hours per week for TAMU and that [REDACTED] was required to work 40 hours per week for VA and 14 hours per week for TAMU. VA electronic time and attendance records reflected that their VA tours of duty were from 8:00 a.m. to 4:30 p.m., Monday through Friday.

Dr. Gulliver told us that her official VA duty hours were from 8:00 a.m. to 4:30 p.m. and that she typically worked several hours beyond her tour of duty and on weekends. She said, however, that she did not maintain records of these extra hours, because she said that she and other VA employees working on the TAMU grant did not get compensatory time or overtime. She also said that she did not maintain records to differentiate the time that she spent on VA- or TAMU-related work. She said that it would be near impossible to discern between the day-to-day tasks of each.

VA time and attendance records, dated November 13, 2007, to July 3, 2010, reflected 101 days that Dr. Gulliver was on authorized absences from her VA duty station, and she told us that 32 of those days were associated with the TAMU grant for which she received remuneration. Dr. Gulliver said that she estimated that she spent 58.5 hours within those 32 days on TAMU grant-related work. In an email, she told us that when she took

authorized absences from her VA tour of duty, it was “almost always a little bit related” to the grant. She further said that the travel funded by and associated with the TAMU grant-related work benefited both VA and TAMU, was consistent with the VA’s mission, and she felt that it was thus justified to take authorized absences for it.

VA time and attendance records, dated November 10, 2008, to November 12, 2010, reflected that ██████ took 33 days of authorized absences away from ██████ VA duty station, and ██████ told us that 13 of those days were associated with the TAMU grant. ██████ said that Dr. Gulliver approved these authorized absences and that ██████ estimated that ██████ spent 40.75 hours within those 13 days on TAMU grant-related work. ██████ further said that Dr. Gulliver approved the authorized absences so that ██████ would not have to use ██████ “vacation leave” to do work on the TAMU grant. (7)(c)

VA time and attendance records, dated September 2, 2007, to November 12, 2010, reflected that ██████ took 17 days of authorized absences away from ██████ VA duty station, and ██████ told us that 6 of those days were associated with the TAMU grant. ██████ said that over the 6 days, ██████ conducted 48 hours of grant related work during ██████ VA duty hours. ██████ further said that ██████ entered the time as authorized absence in the electronic VA time and attendance system and that Dr. Gulliver approved it. ██████ told us that although ██████ dedicated these hours to work on the TAMU grant, ██████ said that ██████ also worked additional hours beyond ██████ normal VA tours of duty.

We could not determine whether ██████ performed any work on the grant during ██████ VA tours of duty. Personnel records reflected that ██████ was in a paid capacity as of August 1, 2010, and records showed that prior to that, ██████ was a ██████ ██████ told us that if ██████ did TAMU grant work during ██████ official VA time, ██████ extended ██████ VA work hours or did a “swap around” with ██████ time. ██████ said that employees working on the TAMU grant worked excessive schedules, and ██████ said that they accumulated a “cushion” of time to compensate for whether they conducted VA or grant work during their official VA duty time.

Time and attendance records reflected that Dr. Gulliver and her subordinates were not on approved alternative work schedules. VA policy states that facility directors are responsible for approving flexible and compressed work schedules for employees under their jurisdiction and that arrival and departure times will be recorded for each employee, including supervisors, in any work unit using flexible work schedules. Further, a Time and Attendance Report (VA Form 5631 or an electronic time and attendance system authorized for use in VA) must be used as the official means to record, certify, and report employees' time and attendance, including the accumulation and use of credit hours, if applicable. VA Handbook 5011, Part II, Chapter 2, Para. 11e and f(3), (April 15, 2002).

Dr. Gulliver told us that she did not expect her employees to take leave in order to do TAMU grant-related work during their official VA time. She said that she would not be able to create a system to check or account for that time. She, however, said that VA

Regional Counsel advised her that, “everybody should keep careful records of how much time they’re putting as best they can figure out to each project.” As a result, Dr. Gulliver said that she suggested to her employees that they keep a record of when they worked on the TAMU grant. However, no one working on the TAMU grant could provide us records reflecting which hours they dedicated to VA work, which to TAMU grant work, or how they accounted for any “cushion” of time. VA Policy requires that time worked and absences be accurately recorded each pay period on time and attendance reports (VA Form 5631) or an authorized automated system, reviewed and certified as accurate, reported for payroll processing, and documented for employment history. It further states that supervisors and other leave-approving officials are accountable for the work time and absence of employees for whom they are responsible, including leave approval and certification of attendance through appropriate time and attendance collection procedures or automated systems, defined as computerized financial systems. VA Directive 4100, Paragraph 2(b) and Paragraph 3 (November 9, 1995).

The COE ██████████ told us that they did not keep time and attendance records of employees working on the TAMU grant, at Dr. Gulliver’s request, because (7)(c) Dr. Gulliver said that documenting it “establishes a track record type of trail that can be subpoenaed.” ██████ said that timekeeping and budgetary matters were areas for which Dr. Gulliver did not want records kept. ██████ also said that there were some areas “where she [Dr. Gulliver] has been known to have said many, many times there are some things that we have to look the other way on. The authorized absence on grant travel is just one of those instances.” Further, ██████ told us that ██████ spoke to Dr. Gulliver more than once regarding the inappropriateness of Dr. Gulliver misusing authorized absences and that, to ██████ knowledge, Dr. Gulliver’s supervisors were not aware of this misuse of time.

For another administrative investigation involving similar allegations, an Associate General Counsel for Ethics, Office of General Counsel, told us that “...generally a VA employee should do only VA work on VA time...no employees should conduct outside activities on Government time, unless VA has approved their doing so under applicable policies and laws.” She said that memoranda of understanding (MOU) and timekeeping were mechanisms for the purpose of avoiding salary supplementation. She also said that “if an [authorizing VA official] is an employee of the affiliate, which is likely if there is an MOU governing [her] split in time between the affiliate and VA, under 18 USC 208, [the authorizing VA official] cannot take official action in [her] VA job that would affect the finances of that affiliate.” She said that “an employee who has a conflict should always recuse [herself] to avoid violating the law.”

Conclusion

We concluded that Dr. Gulliver improperly approved authorized absences for her subordinates, as well as took improper authorized absences herself, which led to a misuse of their official VA time to perform work tasks on the TAMU grant for which they also

received remuneration. Dr. Gulliver told us that she did not expect her employees to take leave to do TAMU grant-related work during their official VA time, and although Regional Counsel advised her to “keep careful records” of their time, neither Dr. Gulliver nor her subordinates did so. Instead, according to the COE [REDACTED] (7)(c) Dr. Gulliver did not want to document their time or establish a “track record,” and she permitted the use of authorized absences so that her subordinates would not have to take annual leave to work on the grant during their VA duty hours. Further, Dr. Gulliver and her subordinates did not maintain accurate time and attendance records to reflect specifically what time they spent on VA-related tasks versus TAMU grant work, so we can therefore only use their testimony as to the number of hours that they misused their official VA time to work on the TAMU grant and received an improper salary supplementation. Moreover, a VA employee must be able to account and verify through timekeeping records for every quarter hour of a tour of duty whether they were or were not on the VA clock.

In addition, as the Principal Investigator for the TAMU grant and while receiving salaries from VA and TAMU, Dr. Gulliver should have recused herself from any involvement in the JEAs between herself and TAMU and her subordinates and TAMU to avoid even the appearance of a misuse of her position or a conflict of interest.

Recommendation 1. We recommend that the Network 17 Director confer with the Office of Human Resources (OHR) and the Office of General Counsel (OGC) to determine the appropriate administrative action to take against Dr. Gulliver and ensure that action is taken.

Recommendation 2. We recommend that the Network 17 Director ensure that either (7)(c) bills of collection in the appropriate amounts are issued to Drs. Gulliver, [REDACTED] and [REDACTED] for the hours they received an improper salary supplementation for performing tasks on the TAMU grant during their official VA hours or ensure that the appropriate amount of annual leave is deducted from their leave balances.

Recommendation 3. We recommend that the Network 17 Director ensure that Dr. Gulliver and her subordinates, as required by VA policy, are placed on appropriate work schedules and that they accurately record their time and attendance, to include the accumulation and use of any credit hours.

Recommendation 4. We recommend that the Network 17 Director ensure that the JEAs (7)(c) between VA and TAMU for Drs. Gulliver, [REDACTED] and [REDACTED] are reissued, without Dr. Gulliver’s signature, to avoid even an appearance of a conflict of interest.

Recommendation 5. We recommend that the Network 17 Director ensure that Drs. Gulliver, [REDACTED], and [REDACTED] receive refresher ethics training.

Issue 2: Whether Dr. Gulliver Engaged in Preferential Treatment

Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially and not give preferential treatment to any individual and to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR (7)(c) § 2635.101(b)(8) and (14).

Dr. Gulliver told us that, while in the capacity as [REDACTED] VA supervisor, she gave [REDACTED] an interest-free loan, because as a [REDACTED] [REDACTED] had not yet received compensation for [REDACTED] work on the TAMU grant. She said that the loan was for \$6,000; however, bank records, dated December 1, 2008, reflected that Dr. Gulliver wrote [REDACTED] a personal check for \$7,000. Dr. Gulliver said that “it was very hard to get people hired” and that [REDACTED] “ [REDACTED] ” on the understanding that by the time [REDACTED] arrived they would have the “grant money straightened out.” She said that she told [REDACTED] that if [REDACTED] was “really tight,” she would “advance [REDACTED] the money” that she knew TAMU would pay [REDACTED]. Dr. Gulliver said that she never loaned large sums of money to other VA subordinates. However, she said that in the past a mentor loaned her money when she needed it, so she said that she was paying the good deed forward. Dr. Gulliver told us that the money came from her personal bank account and that [REDACTED] repaid her, once TAMU paid [REDACTED] for [REDACTED] work on the grant.

Several of Dr. Gulliver’s subordinates told us that they learned of this loan through office (7)(c) conversations. [REDACTED] told us that when [REDACTED] began working for Dr. Gulliver, [REDACTED] received [REDACTED] VA pay; however, [REDACTED] said that [REDACTED] did not receive remuneration for [REDACTED] work on the TAMU grant for several months. [REDACTED] said that moving [REDACTED] family to Texas, finding out that [REDACTED] and [REDACTED] created “a real, real financial hardship.” [REDACTED] said that [REDACTED] based on what [REDACTED] believed [REDACTED] would earn from both [REDACTED] VA salary and the TAMU grant. [REDACTED] further said that when [REDACTED] did not receive any payments for [REDACTED] work on the TAMU grant for several months, Dr. Gulliver loaned [REDACTED] an unrecalled sum of money on “faith,” because [REDACTED] said that she felt bad that the TAMU portion of [REDACTED] income “hadn’t worked out” more quickly. [REDACTED] said that Dr. Gulliver wrote [REDACTED] a check from her personal bank account and that [REDACTED] paid her back after 6-7 weeks. Bank records reflected that [REDACTED] withdrew \$7,000 from [REDACTED] personal bank account on February 12, 2009, and [REDACTED] told us that the withdrawal was the result of [REDACTED] writing a check to reimburse Dr. Gulliver for the money she loaned [REDACTED].

Conclusion

We concluded that Dr. Gulliver created the appearance of preferential treatment when she (7)(c) loaned a VA subordinate \$7,000. Dr. Gulliver was not only [REDACTED] VA supervisor, but she also provided oversight for the TAMU grant for which [REDACTED] received remuneration. She loaned [REDACTED] a significant amount of money, interest free, because she “felt bad” that there was a delay in [REDACTED] TAMU compensation. We recognize that there is no specific

policy prohibiting a supervisor from making a personal loan to a subordinate; however, regulations prohibit using public office for personal gain and states that employees are to avoid any actions that create the appearance of preferential treatment. Dr. Gulliver (7)(c) provided [REDACTED] the benefit of an interest free loan, and by her own admission, she did not extend that generous opportunity equally to all of her subordinate VA employees.

Recommendation 6. We recommend that the Network 17 Director confer with OHR and OGC to determine the appropriate administrative action to take against Dr. Gulliver and ensure that action is taken.

Comments

The Director of VA Heart of Texas Health Care Network was responsive, and his comments are in Appendix A. We will follow up to ensure that the recommendations are fully implemented.



JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Network Director Comments

**Department of
Veterans Affairs**

Memorandum

Date: January 20, 2012

From: Director, VA Heart of Texas Health Care Network

Subject: **Administrative Investigation, Improper Time and Attendance and Preferential Treatment, Center of Excellence, VISN 17, Waco, Texas**

To: Office of Inspector General, Office of Investigations, Administrative Investigations Division, Washington, DC

ATTN: Linda Lutes, Linda Fournier

1. Thank you for allowing me to respond to this Administrative Investigation, Improper time and Attendance and Preferential Treatment, Center of Excellence, VISN 17, Waco, Texas.

2. I have taken your recommendations under advisement and will take appropriate action based upon guidance from Regional Counsel and our Office of Workforce Management. If you have further questions regarding this Administrative Investigation, please contact Denise B. Elliott, VISN 17 HSS at 817-385-3734.

(original signed by:)

Lawrence A. Biro
Network Director

Cc: Felicia Stephens

Network Director's Comments to Office of Inspector General's Report

The following Network Director's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommendation 1. We recommend that the Network 17 Director confer with the Office of Human Resources (OHR) and the Office of General Counsel (OGC) to determine the appropriate administrative action to take against Dr. Gulliver and ensure that action is taken.

Comments:

Based on guidance from OHR and Regional Counsel, we will either take appropriate administrative action or will provide rationale as to why this is not possible by March 30, 2012.

Recommendation 2. We recommend that the Network 17 Director ensure that either bills of collection in the (7)(c) appropriate amounts are issued to Drs. Gulliver, [REDACTED], [REDACTED] and [REDACTED] for the hours they received an improper salary supplementation for performing tasks on the TAMU grant during their VA tours of duty or appropriate amount of annual leave is deducted from their leave balances.

Comments:

We are working to have bills of collection issued by February 29, 2012.

Recommendation 3. We recommend that the Network 17 Director ensure that Dr. Gulliver and her subordinates, as required by VA policy, are placed on appropriate work schedules and that they accurately record their time and attendance, to include the accumulation and use of any credit hours.

Comments:

We have taken your recommendations under advisement and will take appropriate action to ensure accurate time-keeping by February 13, 2012.

Recommendation 4. We recommend that the Network 17 Director ensure that the JEAs between VA and TAMU for (7)(c) Drs. Gulliver, [REDACTED], and [REDACTED] are reissued to avoid even an appearance of a conflict of interest.

Comments:

Based on guidance from Regional Counsel, we will either reissue the JEAs or provide rationale as to why this is not possible by March 30, 2012.

Recommendation 5. We recommend that the Network 17 (7)(c) Director ensure that Drs. Gulliver, [REDACTED], and [REDACTED] receive refresher ethics training.

Comments:

We will ensure Drs Gulliver, [REDACTED] and [REDACTED] receive refresher ethics training by February 29, 2012.

Recommendation 6. We recommend that the Network 17 Director confer with OHR and OGC to determine the appropriate administrative action to take against Dr. Gulliver and ensure that action is taken.

Comments:

Based on guidance from OHR and Regional Counsel, we will either take appropriate administrative action or will provide rationale as to why this is not possible by March 30, 2012.

OIG Contact and Staff Acknowledgments

| | |
|-----------------|---|
| OIG Contact | For more information about this report, please contact the Office of Inspector General at (202) 461-4720. |
| Acknowledgments | Christopher Holcombe Charles Knorr |

Report Distribution

VA Distribution

Deputy Secretary (001)
Chief of Staff (00A)
Executive Secretariat (001B)
Under Secretary for Health (10)
Principal Deputy Under Secretary for Health (10A)
Deputy Under Secretary for Health for Operations and Management (10N)
Management Review Service (10B5)
Director, Veterans Integrated Service Network (10N17)

To Report Suspected Wrongdoing in VA Programs and Operations:

Telephone: 1-800-488-8244

E-Mail: vaoighotline@va.gov

(Hotline Information: www.VA.Gov/OIG/Hotline/Default.asp)