



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Failure to Properly Supervise, Misuse of Official Time and Resources, and Prohibited Personnel Practice VA Center for Innovation VA Central Office

Redacted



DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington, DC 20420

TO: VA Chief of Staff

SUBJECT: Administrative Investigation, Failure to Properly Supervise, Misuse of Official Time and Resources, and Prohibited Personnel Practice, VA Center for Innovation (VACI), VA Central Office (VACO) (2013-01488-IQ-0010)

Summary

We substantiated that Mr. Jonah Czerwinski, former (resigned) Director of VACI and a Senior Advisor to VA's Secretary, failed to properly discharge the duties of his position when he did not properly detail and supervise [REDACTED] formerly a GS-12 Rating Veterans Service Representative (RVSR), Veterans Benefits Administration (VBA), Nashville, TN, which led to [REDACTED] misusing his official time, improperly teleworking, working ad hoc, traveling without authorization, and misusing his position and VA resources. We also found that [REDACTED] downloaded and installed unapproved software to his VA-issued laptop for the purpose of sexting—defined as the sending of sexually explicit photos, images, text messages, or emails using a mobile device. (b)(7)(C)

Further, we found that [REDACTED] at his own expense and without authorization, moved from Nashville to the Washington, DC, area in February 2013 in anticipation of being transferred to VACO, whereas personnel records reflected that his official duty station remained in Nashville. We recognize that there was no prohibition against [REDACTED] choosing to move anywhere at his own expense, but it evidenced his and Mr. Czerwinski's intent, with forethought, to eventually relocate [REDACTED] to VACO. Additionally, we found that Mr. Czerwinski engaged in a prohibited personnel practice when he pressured VBA officials to create a non-competitive GS-13/14 position in VBA's Office of Strategic Planning (OSP) to give preference to, promote, and relocate [REDACTED] for [REDACTED]'s benefit and not that of VA. Moreover, we found that he did not discharge the duties of his position when he intentionally did not inform VBA officials of the OIG investigation of [REDACTED] for misconduct so that VBA officials involved in the selection process could make fully informed decisions. We also found that VBA officials engaged in a prohibited personnel practice when they failed to make proper considerations in their personnel decisions concerning [REDACTED] when they created an OSP position to promote and relocate him to Washington, DC, without (b)(7)(C)

question and solely due to Mr. Czerwinski's request. We did not make any recommendations for administrative actions against Mr. Czerwinski, as he resigned his VA position effective September 30, 2013. We also did not make any recommendations for administrative action against Mr. James Alan Bozeman, VBA Program Director, Veterans Benefits Management System, as he resigned his VA position January 13, 2014. [REDACTED] was promoted into a GS-13 position with a duty station in Washington, DC, on July 14, 2013, about 5 months after his move to the Washington, DC, area. (b)(7)(C)

We further found that Nashville supervisors failed to properly document [REDACTED] VACI detail or properly supervise [REDACTED] which resulted in his unauthorized travel, a misuse of [REDACTED] VA contractor-issued travel card, and misuse of about \$31,000 in travel funds. In addition, we determined that [REDACTED] absence from his Nashville RVSR duties while improperly detailed for a prolonged period of time resulted in an undetermined number of veterans' claims not being reviewed, as required by his position of record. We recognize a need to, at times, detail VA employees; however, detailing employees must be properly documented and comply with VA policy.

Introduction

The VA Office of Inspector General Administrative Investigations Division investigated allegations that [REDACTED] misused his official time and VA resources to frequently travel to Washington, DC, for over a year, and rather than report to his temporary VACO duty station, he teleworked from a hotel room. In addition, Mr. Czerwinski was allegedly not always aware of [REDACTED] location, that he teleworked from a hotel room, and he failed to take the appropriate action to correct this misconduct. To assess these allegations, we interviewed Mr. Czerwinski, [REDACTED] Mr. Bozeman, and other VA employees. We reviewed time and attendance, email, and travel records, travel card activity reports, computer logs, and other relevant documents. We also reviewed Federal laws, regulations, and VA policy.

Background

A February 20, 2013, news release from VA's Office of Public and Intergovernmental Affairs reflected that Secretary Shinseki created VACI based on the success of its predecessor, VA Innovation Initiative (VAi2), launched in 2010. The VACI mission was to transform VA into a 21st century people-centric, results-driven, and forward-looking organization. A VA intranet website reflected that VACI looked to private sector startup companies, industry leaders, academic and research facilities, and VA employees for input. Mr. Czerwinski told us that he headed VACI, and that he staffed it with people from across VA.

Personnel records reflected that VA's Secretary appointed Mr. Czerwinski as a Special Assistant to the Office of the Deputy Secretary, effective February 23, 2009, using a non-competitive Schedule C Appointing Authority. The Office of Personnel Management

(OPM) website (December 31, 2013) reflected that OPM may grant hiring authority under Schedule C on a case-by-case basis in situations for which political appointments are appropriate. Generally, the authority to fill a Schedule C position is revoked when the incumbent leaves and agencies need specific approval from OPM to establish or reestablish the position. In authorizing Mr. Czerwinski's pay rate above the minimum, VA's former Chief of Staff stated that Mr. Czerwinski brought extensive experience in leading people, managing resources, advising top management officials, and strategic communications and that an advanced rate was necessary to provide a pay rate commensurate with the knowledge, skills, and experience Mr. Czerwinski possessed to perform the duties of his position.

██████████ told us that he began his VA career at the VA Regional Office (VARO), Nashville, TN, in May 2007 and that he was detailed to VAI2 (referred to as VACI hereafter in this report) in May 2011. However, personnel records reflected that his RVSR title and position description, as well as the location of his duty station, did not change. The VACI website identified ██████████ as a project manager on a special detail from VBA, and his role was to move industry pilot projects through the VACI process. This website also reflected that prior to his detail to VACI, ██████████ was a Nashville RVSR determining disability compensation levels of claims submitted by Veterans exposed to Agent Orange.

(b)(7)(C)

██████████ RVSR position description stated, "The Rating VSR analyzes claims, applies VA's Schedule for Rating Disabilities (Rating Schedule), and prepares rating decisions informing the VSR [Veterans Service Representative] and/or claimant of the decision, the bases, and the reason for it." ██████████ performance standards reflected that an RVSR was rated on multiple elements, one of which was productivity. As an RVSR, ██████████ was expected to process a minimum cumulative average number of 3.5 weighted cases per day, but due to ██████████ improper and undocumented detail to VACI, he did not review veterans' claims as depicted in his position description, performance plan, or annual appraisal. In the alternative, he did not devote maximum effort during the detail to developing new solutions to the backlog problem.

Results

(b)(7)(C)

Issue 1: Whether ██████████ Was Improperly Detailed to VACI

VA policy states that a formal detail (within VA for 30 days or longer) requires the approval at the service/division chief level or higher. It also states that formal details will be initiated by a Standard Form (SF)-52, Request for Personnel Action, forwarded to the Human Resources (HR) Management Office for action, and another SF-52 will be necessary to extend or to terminate the detail. Employees may be detailed, in 120-day increments, to the same or lower grade positions for up to 1 year. It states that details of 120 days to higher-graded positions may be extended for an additional 120 days (maximum period of 240 days). If a detail of more than 120 days is made to a higher-

graded position, or to a position with known promotion potential, it must be made under competitive promotion procedures. VA Handbook 5005, Part III, Chapter 2, Para. 13 (April 15, 2002). The Director of VBA's HR Office issued a memorandum, dated November 9, 2009, to all Regional Offices, Program, and Staff Office Directors, providing guidance on detailing VBA employees. It stated that formal details were to be initiated by an SF-52, the requesting office was to complete the SF-52 and forward it to their servicing HR center for action, and another SF-52 was needed to extend or terminate the detail.

(b)(7)(C)

██████████ *Reassignment to Fast Track*

Mr. Bozeman told us that Fast Track was an initiative designed in October 2009 by VA's Secretary to make a web-based electronic processing system to allow veterans to file claims and to process those claims for benefits. Mr. Bozeman, who, at that time, was third in ██████████ supervisory chain, told us that he "requested ██████████ to be made available for Fast Track from the Nashville RO." Email records reflected that ██████████ started working on the Fast Track Project on September 12, 2010, and Mr. Bozeman said that ██████████ Fast Track responsibilities were collateral duties of his RVSR position.

Mr. Bozeman told us that ██████████ was initially a tester of the Fast Track Project and that he then "served as a Subject Matter Expert...and eventually was the Fast Track Project Manager after [his] move to DC in May 2011." Mr. Bozeman said that as a tester, ██████████ typically traveled 1 or 2 weeks at a time and that he would then return to his Nashville duty station to perform his RVSR duties. He also said that that once ██████████ became the Project Manager he traveled extensively to Washington, DC. He further said that around April 2011, ██████████ spent 100 percent of his time on the Fast Track Project and that was when ██████████ began operating as an "independent agent" with minimal supervision.

██████████ *Improper Detail to VACI*

Email records reflected that in May 2011, Mr. Bozeman facilitated a meeting between ██████████ and Mr. Czerwinski, and he agreed to let Mr. Czerwinski assign VACI tasks to ██████████. However, Mr. Bozeman told us that he did not have the authority to assign ██████████ to another VA organization to perform duties other than those of a RVSR, since he was not ██████████'s direct supervisor, did not approve his time and attendance, or give ██████████ his performance plan or annual appraisal. Nonetheless, Mr. Czerwinski told us that he assigned ██████████ to work in VACI as of May 22, 2011, but that there was no agreement or SF-52 prepared to officially detail him.

(b)(7)(C)

Mr. Czerwinski told us that originally ██████████'s VACI involvement was "more like a convenience," because VACI needed someone with contracting officer's representative experience to help them with a short-term project. He said that ██████████'s work on Fast Track did not consume all of his official time, so it was "an opportunity" for VACI.

He said that [REDACTED] subsequently “kind of stayed around.” Further, he said that they found [REDACTED] to be a “really great member of the team” and that he “loved to work.” Mr. Czerwinski said that 10 percent of [REDACTED] time became 20 percent and continued to increase until [REDACTED] asked if he could work for VACI full-time. (b)(7)(C)

[REDACTED], [REDACTED], [REDACTED], [REDACTED], told us that she became frustrated by [REDACTED]’s situation because she still had to approve his timecards, and he filled a full-time equivalent (FTE) position that they desperately needed to fill with another rating specialist to help relieve a backlog in rating veterans and getting benefits to them. She said that his absence from the VARO, unfortunately, went “on and on,” which was not helpful to the veterans.

[REDACTED], told us that [REDACTED] reassignment was a “very unique situation,” because he was detailed from VBA to another VA entity for almost 2 years without the proper paperwork. He said that the Nashville VARO staff tried to get [REDACTED] off their books for quite some time, since [REDACTED] was working for VACI and no longer worked for the VARO. He said that if [REDACTED] was properly reassigned, they could have hired someone else to actually work processing veterans’ claims. He also said that Mr. Travis Kraft, Nashville VARO Director, told Nashville managers not to question [REDACTED] on his day-to-day activities or telework, since he was detailed to Washington, DC, on a special project, and any telework agreement would be the responsibility of [REDACTED]’s DC supervisor.

[REDACTED] said that VBA held monthly teleconference meetings for nationwide VARO representatives to have roundtable discussions with the Under Secretary for Benefits, Allison Hickey, and provide feedback about their respective challenges. He said that during the April 23, 2013, teleconference in which Under Secretary Hickey was present, Nashville VARO staff expressed their concerns that numerous raters were detailed to special projects rather than reviewing claims. As an example, they said that [REDACTED] filled one of the Nashville VARO positions, yet he did not perform the functions of that position for 2 years. (b)(7)(C)

Mr. Kraft told us that either Mr. Bozeman or Mr. Czerwinski told him that [REDACTED]’s detail was full-time. He said that Mr. Bozeman would sometimes call him on a Thursday or Friday and say, “Hey, I need [REDACTED] in DC next week,” and Mr. Kraft would say, “Yes, sir.” Mr. Kraft said that the Nashville VARO took national initiatives very seriously and supported any national initiative that came from VACO. He said that there were things that they “obviously could have done much better” but that “the folks here, to include myself, were trying to support a national initiative and maybe had too much trust that we were doing what we thought we were supposed to be doing.”

Conclusion

A formal detail must be initiated, extended, or terminated by the requesting office submitting an SF-52 to HR for action, and an employee may be detailed in 120-day increments to the same grade for no more than 1 year. Mr. Czerwinski not only failed to submit the appropriate SF-52s to initiate and extend a formal detail, but he kept ██████████ in that position for more than 2 years, contrary to VA policy. Further, had Mr. Czerwinski properly reassigned ██████████ to VACI, the VARO could have filled the position with another employee to process veterans' claims to help alleviate the backlog. Although the Nashville managers had some responsibility in this matter, they wanted to be supportive of national initiatives, and they expressed their concerns of not only ██████████'s long detail away from his duty station but of other raters being detailed to "special projects" rather than reviewing veterans' claims as required by their positions. (b)(7)(C)

Recommendation 1. We recommend that the VA Chief of Staff ensure that VBA conducts a review of all RVSRs to ensure that any not performing the functions of their position are either properly detailed or returned to their RVSR duties.

Issue 2: Whether VA Managers Failed to Properly Supervise ██████████

Unauthorized Travel

VA policy states that employees traveling on official business will have approval from direct-line supervisors and, except in emergencies, that approving officials will authorize travel for employees under their jurisdiction in advance of the travel and determine if the travel is essential for the purpose of carrying out the mission of VA. It further states that approving officials will ensure all travel is performed in the most economical and effective manner; examine expense vouchers to ensure the justification, supporting documentation, and receipts are attached; travel expenses for which reimbursement is claimed was performed as authorized; and split-pay was used to pay for all authorized expenses made to the travel card. It states that expense reports will be examined and approved by the approving official having knowledge of the facts involved in the travel and that approval signifies that the travel and expenses are in order and administratively approved for payment. Procedures will be established by each authorizing official to ensure that reimbursement of expenses is properly administered and controlled to prevent abuse and that an appropriate review of the justification for travel on an actual subsistence expense basis will be made. Expenses claimed by an employee will be reviewed by the authorizing official to determine whether the expenses are reasonable, allowable, and necessarily incurred in connection with the travel assignment. VA Travel Administration, Volume XIV, Chapter 1 (February 2011).

██████████ told us that, at his own discretion, he traveled to Washington, DC, about every other week, none with supervisory approval. He said that the way the Nashville VARO was organized, a fiscal officer, not in his supervisory chain, approved his travel expense

reports. He further said that he never communicated with his Nashville supervisor about his travel to Washington, DC, and that no one within his supervisory chain authorized or knew when he was in travel status. He said that he occasionally told Mr. Czerwinski when he traveled to Washington, DC, but that at any given time, Mr. Czerwinski would not know whether he was in Washington, DC, or Nashville.

Mr. Czerwinski told us that he believed that [REDACTED] had two supervisors, himself and Mr. Bozeman, and that it was [REDACTED] responsibility to tell Mr. Bozeman when he needed to travel to Washington, DC, for VACI projects. He said that he did not independently call [REDACTED] Nashville supervisor to see if [REDACTED]'s travel was approved; did not always know [REDACTED]'s whereabouts; and there were occasions when he had to ask [REDACTED] whether he was in Washington, DC, or Nashville. He also said that there was poor management and a lack of oversight on his part and that he wished someone had more constant contact with regard to [REDACTED]'s "travel details." He told us that he thought he had a better "counterpart in Nashville." Mr. Bozeman told us that he did not tell [REDACTED] when to travel; did not authorize any travel for [REDACTED] and [REDACTED] never sought his authorization to travel. (b)(7)(C)

Personnel records reflected that [REDACTED] was a GS-11 when Mr. Bozeman tasked him with running the Fast Track Project in May 2011. Mr. Bozeman told us that [REDACTED] as a GS-11, should not have been given full autonomy to act independently and without adequate supervision, but he (Mr. Bozeman) did not have enough time to run both the Fast Project and the Veterans Benefits Management System programs.

[REDACTED] Improper Performance Plan and Performance Appraisal

VA policy states that the intent of the performance appraisal is to appraise an employee's performance covering an entire rating period. To do so, when an employee changes positions within VA, a performance (summary) rating will be prepared by the Rater, shared with the employee, and forwarded to the servicing HR office or to the gaining organization. If the detail or temporary promotion lasts for [90 days or more], a performance rating will be prepared at the conclusion of the detail or temporary promotion that appraises the employee's performance while in the temporary position. This rating should be shared with the employee and then forwarded to the servicing HR management office or employing organization to consideration at the end of the appraisal period. VA Handbook 5013/1, Part I (November 18, 2003). VA policy states that an employee's performance rating is required when the employee was detailed to another position in VA or served in another employee position on an acting basis for 120 days or longer. In addition, VA policy states that if a detail or acting assignment is expected to last 120 days or longer, a written performance plan will be prepared. This written plan, developed in consultation with the employee, will be provided to the employee no later than 30 days after the beginning of the detail or acting assignment. *Id.*, at Appendix F.

Mr. Bozeman told us that [REDACTED] involvement with Fast Track was not a detailed assignment but a collateral duty of his responsibility as a RVSR. He said that he did not prepare a performance plan for [REDACTED] even when [REDACTED] was expending 100 percent of his time on Fast Track in April of 2011. [REDACTED] immediate supervisor, told us that she prepared, and [REDACTED], approved [REDACTED] performance plan and appraisal for FY 2011 and FY 2012, which covered the period he was detailed to VACI. She said that no one at VACI gave her any input for his performance, and [REDACTED] as her supervisor, told her to write "Detailed special project. No production quality." on [REDACTED] performance appraisal and rate him as [REDACTED]. She complied, and [REDACTED] approved the rating. [REDACTED] also said that other than noting that [REDACTED] was on a "special detail" nothing changed with regards to his performance plan and position description to reflect his VACI duties. (b)(7)(C)

Personnel records reflected that [REDACTED] signed [REDACTED] performance appraisal for FY 2011, rating him as [REDACTED], and [REDACTED] in Nashville, approved it. Records also reflected that [REDACTED] signed [REDACTED] performance plan and appraisal for FY 2012, rating him as [REDACTED], and it was again approved by [REDACTED]

VA policy states that the Rater, defined as the official, usually the immediate supervisor, who is responsible for the development of performance plans and who appraises the employee's performance and recommends an initial summary rating, assess the employee's accomplishment of each established performance requirement, consider the impact of the individual requirements on overall performance of the element, and assign one achievement level for each element. An achievement level must be assigned for each critical and other performance element of the plan unless the employee had insufficient opportunity to demonstrate performance in the element. When an achievement level of fully successful or higher is assigned, the Rater should ensure that documentation of performance accomplishments contained in the individual's self-assessment adequately justify the rating or the Rater must provide supporting justification. VA Handbook 5013/1, Part I, Appendix F, Paragraph 7 (November 18, 2003). (b)(7)(C)

[REDACTED] told us that [REDACTED]'s VACI supervisors provided no input for [REDACTED] performance appraisal. He said that [REDACTED] "was in a unique situation, because he's technically on our rolls but he's really not doing any work for us." He also said that since [REDACTED] was still a Nashville employee, they had "to certify at the end of the year" to their HR Center in Jackson, MS, that the end-of-year appraisals were completed on all employees, including [REDACTED]. He said that since they were not aware of anything negative concerning [REDACTED] they "marked him [REDACTED] on that rationale." VA policy defines a [REDACTED] rating as [REDACTED]

Recommendation 2. We recommend that the VA Chief of Staff confer with the Office of Human Resources and Administration (OHRA) and the Office of General Counsel (OGC) to determine the appropriate administrative action, if any, to take against

(b)(7)(C)

Recommendation 3. We recommend that the VA Chief of Staff confer with the OHRA and OGC to determine the appropriate administrative action, if any, to take against

Recommendation 4. We recommend that the VA Chief of Staff confer with the OHRA and OGC to determine the appropriate administrative action, if any, to take against

Recommendation 5. We recommend that the VA Chief of Staff ensure that and receive appropriate refresher training in supervisory responsibilities for official travel, performance standards, and appraisals.

Issue 3: Whether Misused Official Time and Resources

Federal regulations state that an employee shall not engage in conduct prejudicial to the Government. 5 CFR § 735.203. Standards of Ethical Conduct for Employees of the Executive Branch state that an employee shall not use public office for private gain, use Government property for other than authorized purposes, and must use official time in an honest effort to perform official duties. 5 CFR §§ 2635.101(b)(7), 704(a), and 705(a).

Misuse of Travel Funds

Federal regulations require agencies to pay only travel expenses that are essential to official business, employees to exercise prudence when incurring expenses on official travel, and prohibit the payment of excess costs resulting from circuitous routes or services unnecessary in the performance of official business. 41 CFR § 301-2.2, -2.3, and -2.4. Regulations also state that an agency must determine that use of a rental vehicle is advantageous to the Government and must specifically authorize such use; an agency may pay the fees pertaining to the first checked bag and for subsequent bags when the agency determines those expenses are necessary and in the Government's interest, and employees must provide receipts for lodging and any other expenses costing over \$75. *Id.*, at 301-10.450, -12.2, and -52.4.

VA policy states that employees traveling on official business will have approval from their direct-line supervisors, no VA employee may authorize or approve his own travel, nor may an alternate preparer authorize or approve the travel expenses submitted on behalf of a traveler. It also states that each employee who authorizes, directs, or performs travel will exercise due care and practice economy in all matters involving travel costs. Moreover, it states that travel will be conducted at Government expense in accordance with statutory requirements and VA policy and that an employee will ensure travel is

authorized by the Approving Official prior to departure. VA Travel Administration, Volume XIV, Chapter 1 (February 2011).

(b)(7)(C)

Travel and email records reflected that [REDACTED] traveled frequently to Washington, DC, at Government expense starting in May 2011, and that in February 2013, at his own expense and without approval, he moved to the Washington, DC, metropolitan area, adopting it as his home and duty station. We recognize that there was no prohibition against [REDACTED] choosing to move anywhere at his own expense, but this move evidenced his and Mr. Czerwinski's intent, with forethought, to relocate [REDACTED]'s position and duty station to Washington, DC, as we discuss in Issue 4.

Travel records reflected that during a 20-month period of time, between May 22, 2011, and February 8, 2013, [REDACTED] traveled to Washington, DC, 34 times, once to Newark, NJ, and once to Tampa, FL, at a cost of over \$109,200. [REDACTED] told us that he traveled to Washington, DC, about every 2 weeks at his own discretion; for most of his travel, he did not get supervisory approval prior to traveling; and he directed a Nashville management analyst to prepare his travel based on dates, times and places of departure and return. [REDACTED] told us that he would only tell the analyst "where I needed to be and when I needed to be there," without any supervisory approval or oversight.

At the request of VA OIG, Mr. Czerwinski reviewed the 36 occasions that [REDACTED] traveled while under his lax supervision, and he told us that he would not certify 8 as being mission-essential or financially prudent. Based on Mr. Czerwinski's inability to provide justification or supporting documents for 3 other travel instances, we did not recognize those trips as mission-essential. The amount of funds expended for these 11 unauthorized travel instances was \$28,560.94. We also found other unauthorized travel expenses totaling \$2,429.35, which were detailed in a separate exhibit. Below are just a few examples of [REDACTED]'s unnecessary travel or failure to be prudent while on travel:

(b)(7)(C)

- September 6-11, 2011, Washington, DC: [REDACTED] changed his departure from Reagan National to Dulles International Airport at an additional cost of \$383. He said that it was for personal reasons, as he wanted to attend a horse show near Dulles. An agency can authorize an employee to fly out of an airport not located near their permanent duty station for personal convenience, but it does not have the authority to reimburse the employee for expenses incurred as a result of taking an indirect route for personal convenience. Comptroller General Decision, Matter of: *Lawrence O. Hatch*, B-211701, Nov. 29, 1983.
- November 8-11, 2011, Tampa, FL: [REDACTED] told us that he traveled to Tampa in support of the Fast Track Claims Processing System. He said that Mr. Bozeman or Mr. [REDACTED] requested and approved this trip. Mr. Bozeman said that he did not authorize [REDACTED] to travel to Tampa. Since [REDACTED] was not in [REDACTED] supervisory chain, he did not have the authority to approve this travel, as per VA policy.

- September 2012, Washington, DC: ██████████ extended a trip by 12 days and when he amended his travel authorization, it resulted in a double charge for lodging of \$226. Records reflected that ██████████ was reimbursed for this double charge. Federal regulations state that an agency may pay only those expenses essential to the transaction of official business. 41 CFR § 301-2.2. (b)(7)(C)
- July 1–6, 2012, Washington, DC: ██████████ traveled at a cost of \$2,197 over a holiday week. Mr. Czerwinski did not certify this trip as essential to the VACI mission. Federal regulations state that an agency may pay only those expenses essential to the transaction of official business. 41 CFR § 301-2.2.

Misuse of Government Contractor-Issued Travel Charge Card

Federal regulations require employees to use a Government contractor-issued travel charge card for expenses directly related to their official travel. It also states that employees may not use the Government contractor-issued travel charge card for personal reasons. 41 CFR § 301-51.6 and 301-51.7. Further, it states that employees are required to pay their bill in accordance with their cardholder agreement. Id., at 301-52.24.

VA policy states that a misuse of the contractor-issued charge card and account delinquency are considered misconduct and subject the cardholder to disciplinary actions ranging from a reprimand to removal. VA Government Travel Charge Card, Volume XVI, Chapter 2, (October 2011). The U.S. Bank cardholder guide provides the agreement between the individually billed travel cardholder and U.S. Bank, and states that by activating, signing or using the Travel Card, the cardholder agrees to the terms and if the cardholder did not, they were to cut the Travel Card in half and return the pieces to U.S. Bank. It also states that the amount on the billing statement was due upon receipt and must be paid in full each billing cycle. Agreement Between Individually Billed Travel Cardholder and U.S. Bank, Paragraphs 2 and 8.

VA policy states that cardholders are required to pay the full amount on their statement using personal funds upon receipt, when the statement is due regardless of whether they have been reimbursed. It further states that cardholders may obtain Automated Teller Machine (ATM) withdrawals needed to pay for authorized expenses while on official travel when the vendor does not accept the travel card; however, ATM withdrawals must be noted and approved on all travel authorizations prior to travel. ATM withdrawal amounts are determined by the total meals and incidental expense allowance and any authorized miscellaneous expenses itemized on the travel authorization. VA Travel Charge Card policy, Volume XVI, Chapter 2 (October 2011).

(b)(7)(C)

Training records reflected that ██████████ successfully completed the VA online travel charge card training on October 2012, and ██████████ told us that every year, since 2007, he took the online travel charge card training.

Email records reflected that [REDACTED] while on travel to Washington, DC, made arrangements with his family, who lived in [REDACTED], to pick him up at the Vienna, VA, metro rail station, and Washington Metropolitan Area Transit Authority (WMATA) records reflected that [REDACTED] commuted to the Vienna, VA, metro rail station on multiple occasions. Travel records reflected that [REDACTED] used his travel card to pay for the WMATA transit fare, charging his travel card a total of \$400, for which he was reimbursed. [REDACTED] said this occurred because he did not use a detailed accounting system to separate his personal and business-related use of his WMATA fare card. (b)(7)(C)

Travel card records reflected and [REDACTED] told us that while on travel to Washington, DC, he frequented restaurants accompanied by female companions and used his travel card to pay for these activities. He said that although he used his travel card, he did not seek reimbursement for his personal charges. For example, travel card records reflected that on August 26 and 27, 2012, [REDACTED] used his travel card to charge \$295 for personal expenses at the Mad Hatter and the Dirty Martini restaurants in Washington, DC. Travel records reflected [REDACTED] did not seek reimbursement for these expenses.

Travel card records also reflected that [REDACTED] took cash advances, most associated with travel but not approved prior to or subsequent to his travel. Records reflected that he withdrew over \$11,000 between May 2011 and February 2013. We found two cash withdrawals that were not associated with his travel, one for \$203, on August 23, 2011, and another for \$203 on June 8, 2012. In addition, we found one cash withdrawal for \$103 on July 22, 2011, in New York City, NY, when he was supposedly on travel to Washington, DC. Further, records reflected seven instances, between September 2011 and February 2013, when [REDACTED] did not pay the full amount due on his travel card monthly statement. Records also reflected that his travel card was declined on multiple occasions, as reflected below:

- 31 cash advance attempts, exceeded authorization limit for that period
- 7 cash advance attempts, invalid pin number
- 7 hotel room charges, insufficient funds available
- 1 CVS pharmacy transaction, insufficient funds available

(b)(7)(C)

Records reflected that between May 2011 and February 2013, [REDACTED] used his travel card for improper charges and requested reimbursement. For example:

- Multiple valet hotel parking charges between October 2012 and January 2013, although [REDACTED] did not rent a car during these trips
- WMATA personal charges of \$400

Travel records also reflected that ██████ used his travel card to pay for personal expenses while on travel to Washington, DC, but he did not seek reimbursement for these charges. For example:

- Numerous purchases of alcoholic beverages from his hotel room minibar (b)(7)(C)
- Numerous purchases at area CVS Pharmacy stores totaling over \$390
- A charge of over \$170 at a Target store located halfway between his parents' home and his newly rented apartment

Travel card records also reflected VRE and WMATA charges of \$80 and \$50 occurring on February 1 and February 11, 2013, respectively. ██████ told us that these were personal charges, and travel records reflected he did not seek reimbursement for them.

VA policy states that employees will be knowledgeable of Federal travel regulations, VA travel policy, and any other agency-specific guidance. In addition, employees will minimize costs of official travel by exercising the same care in incurring expenses that a prudent person would exercise if traveling on personal business and expending personal funds. Excess costs, circuitous routes, delays or luxury accommodations and services unnecessary or unjustified in the performance of official business will not be reimbursed and are not acceptable under this standard. It further states that all travel will be coach class unless other-than-coach-class travel is justified in writing, which will include why coach seating will not accommodate the traveler's needs. Coach-class accommodations will be used for all train travel except when VA authorizes first-class service. If something prevents advance authorization, the employee will obtain written approval from the agency head within 7 days of completing travel. If other-than-coach-class travel is not approved after the fact, the employee is responsible for the cost difference between the other-than-coach-class transportation used and the transportation class for which the employee was eligible. VA Transportation Expense Policy, Volume XIV, Chapter 3 (August 2011).

Travel records reflected that on October 13, 2011, ██████ used his travel card to purchase a round-trip coach train ticket to travel to Metro Park, NJ, on October 19, 2011, at a cost of \$148. On October 19, ██████ upgraded his round-trip ticket to business express seating at a cost of \$307, resulting in an additional cost of \$159. In addition, travel records reflected that ██████ improperly claimed this as a WMATA expense on his October 30–November 4, 2011, expense report, rather than for the actual travel event. ██████ said that he forgot to include the receipts for that travel event on the correct travel voucher, so he claimed it on a subsequent one. (b)(7)(C)

██████ told us that on October 19, Mr. Czerwinski asked him to upgrade his round-trip train ticket to business class so that the entire VACI team traveling to NJ could sit together and talk business. We were unable to confirm this with Mr. Czerwinski, who

resigned his VA position, so we did a cursory review of his travel records. We found that he traveled from Washington, DC, to Metro Park, NJ, by train on numerous occasions, and for those travel instances, to include his October 19 trip, Mr. Czerwinski bought and received reimbursement for business-class train tickets at a higher cost and contrary to VA policy. Since Mr. Czerwinski resigned his VA position, we did no further review of his travel records. We determined, in our review of ██████████'s travel records, that he misused a total of \$30,990.29 in travel funds. (b)(7)(C)

Improper Teleworking

VA Telework policy states that for work-at-home Telework Proposal, the employee must complete a Telework Self-Certification Safety Checklist (VA Form 0740b), and submit it to his immediate supervisor. Each teleworker, whether in a telecenter or a home-based office, must sign a telework agreement. The agreement covers the terms and conditions of participation in the telework program, and it must be approved by the employee's immediate supervisor and appropriate approving official. Before approving agreements, supervisors and approving officials must determine the impact the telework arrangement will have on work operations. VA Handbook 5011/5, Part II, Chapter 4, Paragraph 6c and 6g (September 22, 2005).

██████████ told us that at times he teleworked from remote locations, such as hotels in Washington, DC, or while in Nashville without a telework agreement and without supervisory approval. He said that when he traveled to Washington, DC, he teleworked at least weekly from a hotel room or the apartment he rented in the Washington, DC, area in February 2013. Email, computer, and internet service provider records reflected that ██████████ also accessed VA systems and teleworked from his personal residence in Nashville. He said that although he did not have a telework agreement and no one approved his teleworking, he did so whenever he wanted. He said that he did not ask his supervisors for their approval, and they would not know he was teleworking unless they specifically asked him. He further said that when he teleworked, he performed the same work as he did in the office, which he described as reading and responding to emails and making telephone calls; however, he also said that when he teleworked, he could not open encrypted email to read it. ██████████ told us that he was not aware of VA's telework policy and that he never saw a telework agreement. (b)(7)(C)

Mr. Czerwinski told us that ██████████ did not have a telework agreement and that he was unaware ██████████ teleworked from a hotel room when in travel status. He said that when an employee was on travel, teleworking from a hotel room was inappropriate and redundant, as an employee could work from home rather than be in travel status. Mr. Kraft told us that he did not know if ██████████ had a telework agreement with his Nashville supervisor. He said that if ██████████ teleworked when in Nashville, he assumed it was an arrangement he had with VACI, and it was needed for a particular project. ██████████ told us that the only time she knew that ██████████ was teleworking or on travel was via email when ██████████ told her that he was "in Washington this

week or I'm working from home this week." She said that she "was unsure of exactly what was going on" and that "anything about the project or what he was doing" was addressed at a "higher level" and not with her. She said that on multiple occasions, ██████████ told her that ██████████ was on a special project and not reporting to her. (b)(7)(C)

On February 27, 2013, 1 day after we interviewed Mr. Czerwinski, he and ██████████ signed a telework agreement, which stated, "This Agreement [was] in effect for those duties related to ██████████'s work for VACI. If at any time his duties for the Nashville Regional Office must be performed in a telework setting, a separate agreement must be in place with Nashville RO." However, ██████████'s duty station was still officially in Nashville, and he was considered in travel status while in Washington, DC.

Misuse of Official Time

VA policy states that the public interest requires the maintenance of high standards of employee integrity, conduct, effectiveness, and service to the public and that when such standards are not met, it is essential that prompt and just corrective action be taken. VA policy is to maintain standards of conduct and efficiency that will promote the best interests of the service. VA Handbook 5021/3, Part I, Chapter 1, Paragraph 3(a), (June 1, 2005). It also states that sick leave shall be granted to an employee when the employee is incapacitated for the performance of duties for specific identified reasons. VA Handbook 5011, Part III, Chapter 2, Paragraph 4 (December 6, 2006). Further, it states that an absence without leave (AWOL) is an unauthorized absence from duty and an employee receives no pay for the period of time they were absence without authorization. VA Handbook 5011/18, Part III, Chapter 2[15] (October 13, 2011).

Email records reflected that between April and October 2012, ██████████ failed to request the appropriate leave from his Nashville supervisors for the time he did not work during his tours of duty while on travel to Washington, DC. Since they were responsible for his time and attendance, without notifying them, he would not be charged leave. Below are emails reflecting partial or full days that ██████████ was not charged the appropriate leave: (b)(7)(C)

- April 3, 2012 – In an email, Mr. Czerwinski told ██████████ "I understand you're out sick today. Hope you're feeling better ...". ██████████ replied on April 4, "Thanks, I made it into the office this afternoon to make sure my inbox was not exploding. Still don't feel like running a race but I am alive."
- August 3, 2012 – In an August 2 email to VACI staff, ██████████ told them, "I plan on taking a day of leave tomorrow to assist in the setup of an annual charity event in ██████████ for my High School classmates." Mr. Czerwinski replied and asked ██████████ if he needed coverage for August 3, and ██████████ replied that "No coverage required. I will come in and work a few hours in the morning to ensure everything is good to go."

- October 9, 2012 – In an email, ██████ told Mr. Czerwinski that “I caught a chest cold working on my ██████ over the weekend and need to take a day to medicate to ensure it doesn’t settle into a long term thing.” Mr. Czerwinski replied on October 10, “We missed you yesterday...Are you in today.” ██████ answered, “I am back amongst the living but will be working remotely today to ensure I don’t become Typhoid ██████ ...”

(b)(7)(C)

On another occasion, February 27, 2012, ██████ requested that he be granted leave for March 12–14, 2012, but he was never charged for the leave in VA’s electronic time and attendance system. VA policy states that all employees are expected to be on duty during the full period of their tours of duty unless absent on approved leave. VA Handbook 5011, Part II, Chapter 2, Paragraph 1 (June 16, 2004).

██████’s time and attendance records reflected that his scheduled tour of duty was from 6:30 a.m. to 3:00 p.m. ██████ told us that he did his work at his own time and pace. He said that he worked a schedule that allowed him to take care of personal matters during his VA time, completing his VA duties and responsibilities on his own time. He further said that he did not check in with anyone and that he took advantage of the personal freedom he was given. He said that he did not intentionally mislead his supervisors in Nashville and Washington, DC, but he took advantage of the situation.

██████ told us that at least once or twice a month between May 2011 and December 2012 he failed to show up for work, due to his personal activities the previous night. He said that his “absenteeism” and “not being on my game all the time” had a “negative affect” on his performance. He further said that some of the choices he made in his personal life, at times, were directly related to his teleworking or failing to report for duty. He said that he missed work about 15–20 times during that time frame without being charged leave; however, for that 20-month period of time, once a month equated to 20 times. Mr. Czerwinski told us that he did not know when ██████ was on leave. He said that he assumed that ██████ worked a full week when on travel to Washington, DC, but he also said that he never discussed ██████ tour of duty with him while ██████ was detailed to VACI.

(b)(7)(C)

Misuse of Official Resources and Unapproved Software

VA policy states that email shall be used for authorized Government purposes and that users must exercise common sense, good judgment, and propriety in the use of this Government resource; employees will not misuse VA systems or resources; and employees will not download unauthorized applications and/or software. VA Handbook 6500 (September 20, 2012).

In a May 11, 2012, email, Mr. Czerwinski asked a VA Technology Director if he could download Skype—a proprietary software product for voice communications and multimedia sessions over the internet—to his VA-issued computer, and the Director

replied, “Unfortunately not yet,” due to a lack of VA policy. The One-VA Technical Reference website (decision date January 11, 2013) stated that Skype software was not approved for use on VA systems.

(b)(7)(C)

Email records reflected that ██████ used his VA-assigned email account extensively to communicate with personal friends. ██████ told us that from July 2012 to May 2013, he used his VA-assigned email account for his own personal convenience for about 1 hour a day during his duty hours to communicate with friends. Records also reflected, as well as a VA OIG forensic examination of ██████’s VA-assigned laptop, that he used his laptop to video chat, using Skype software. He said that he downloaded the Skype software onto his VA-issued laptop without approval and that he used this software for sexting close personal friends. ██████ told us that he was “out of control” when he downloaded the unauthorized software and misused his VA-issued laptop to engage in this behavior.

Training records reflected that ██████ completed VA’s mandatory privacy and information security awareness and rules of behavior training on October 18, 2012, which state that unauthorized downloading and using VA resources for unauthorized use on VA systems are prohibited. VA policy permits limited personal use of Government office equipment. However, it prohibits the creation, downloading, viewing, storage, copying, or transmission of sexually explicit or sexually oriented materials, or loading personal software. VA Directive 6001 (July 28, 2000).

Conclusion

We found that ██████ traveled without proper authorization or any supervisory oversight for a total cost of over \$109,200. He traveled whenever and wherever he wanted, billing VA for his expenses. He not only traveled to Washington, DC, at will, he took an unnecessary trip to Florida, and in one instance, he withdrew cash from an ATM located in New York City when he was supposedly on travel to Washington, DC. We determined that 11 travel instances, at a cost of \$28,560.94, could not be documented as being mission-essential and additional misuse of travel funds totaling \$2,429.35 brought the total to \$30,990.29.

(b)(7)(C)

We also found that ██████ misused his Government contractor-issued travel charge card for his own personal convenience. For example, he used it to entertain female companions, withdraw cash when not on travel, charge over \$170 at a Target store for personal items, buy liquor from his hotel room minibar, and for his personal commutes to visit family. He also made frequent attempts to use his travel card in which his attempts failed, due to his exceeding his authorized limit or having insufficient funds available. Moreover, there were seven instances in which he failed to pay the full amount due on his travel card monthly statements. We found in one instance that ██████ upgraded to a business-class train ticket at the request of Mr. Czerwinski, and a review of his travel

records reflected that Mr. Czerwinski frequently failed to follow VA travel policy by traveling in business class at a higher cost to VA. (b)(7)(C)

Further, we found that [REDACTED] teleworked as he pleased at least weekly from a hotel room or the apartment he rented in the Washington, DC, metropolitan area when in travel status to Washington, DC, and also when he was in Nashville. He did not have a telework agreement nor had any of his supervisors, whether in Washington, DC, or Nashville, authorized [REDACTED] to telework. He said that he performed the same duties whether teleworking or not; however, he also said that he could not open encrypted email when teleworking, which would significantly impact his ability to perform these tasks. The only way [REDACTED]'s supervisors knew of his teleworking status was if he told them. Mr. Czerwinski was unaware of [REDACTED] teleworking, and he said that it was improper for [REDACTED] to telework while in travel status. However, Mr. Czerwinski subsequently signed a telework agreement with [REDACTED] but it was irrelevant, as [REDACTED] duty station remained Nashville, and he was technically in travel status when in the Washington, DC, area.

We found that [REDACTED] did not follow his scheduled tour of duty and that he worked at his own time and pace. He worked an ad hoc schedule so that he could conduct personal business during his VA workday. By his own admission, he took advantage of the lack of supervision and unlimited freedom given to him. As a result, we determined that [REDACTED] was absent without being charged leave or absent without leave on more than 25 separate occasions. In 5 of those instances, we found that he requested sick or annual leave from his Washington, DC, supervisor; however, he failed to notify his Nashville supervisors so that he was properly charged leave for that time. In at least 20 instances, [REDACTED] was absent without leave during his official tours of duty as a result of his previous night's activities, and [REDACTED] admitted that his misconduct negatively affected his performance. VA policy states that an absence without leave is considered an unauthorized absence from duty and prohibits paying an employee for that time. (b)(7)(C)

Finally, we found that [REDACTED] misused his VA-assigned laptop and email account extensively to communicate with personal friends, to include video chatting with the use of unauthorized Skype software. Although VA OIG did a forensic examination of the laptop, we did not remove any prohibited software or other contents. VA policy permits limited use of VA equipment; however, it prohibits it from being used for the purpose of transmission of sexually explicit or sexually oriented materials or loading personal software. [REDACTED] not only downloaded unauthorized software and used it to engage in prohibited conduct, he did this after taking VA's mandatory privacy and information security awareness training and signing VA's rules of behavior.

Recommendation 6. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

Recommendation 7. We recommend that the VA Chief of Staff ensure that [REDACTED] is issued a bill of collection for \$30,990.29 to reimburse VA for a misuse of travel funds.

Recommendation 8. We recommend that the VA Chief of Staff ensure that [REDACTED]'s time and attendance between March and October 2012 is corrected and that he is charged the appropriate annual and sick leave for that time.

(b)(7)(C)

Recommendation 9. We recommend that the VA Chief of Staff ensure that the total amount paid to [REDACTED] for the 20 instances that he was absent without authorization be determined and that [REDACTED] is issued a bill of collection for that amount, since he cannot receive pay for the time that he was absent without authorization.

Recommendation 10. We recommend that the VA Chief of Staff ensure that the Information Security Officer with oversight for [REDACTED]'s VA-issued equipment, to include his laptop and cellular telephone, examine that equipment to remove any unauthorized software and/or content.

Recommendation 11. We recommend that the VA Chief of Staff ensure that all VACI employees, to include any detailed or assigned to VACI from other organizations, receive refresher training on Federal travel regulations and VA travel policy.

Issue 4: Whether Mr. Czerwinski and VBA Officials Engaged in a Prohibited Personnel Practice

Federal law states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on personal knowledge or records of the person furnishing it and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or an evaluation of the character, loyalty, or suitability of such individual. Further, it prohibits granting any preference or advantage not authorized by law, rule, or regulation to any employee for the purpose of improving or the prospects of any particular person for employment. 5 USC § 2302(b). The Merit Systems Protection Board website www.mspb.gov/ppp/aprppp.htm states, "It is possible to violate section 2302(b)(6) using legally permissible hiring actions if the intent is to afford preferential treatment to an individual."

Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall not use public office for private gain and shall act impartially and not give preference to any individual. 5 CFR § 2635.101(b). VA policy states that all GS-14 VBA positions centralized to the Under Secretary for Benefits require prior approval authority of the Under Secretary for Benefits. VA Handbook 5001, Part II, Paragraph 8b and Appendix C (April 15, 2002).

In a January 11, 2013, email, Mr. Czerwinski asked Mr. Richard Buchanan, Director of the Office of Strategic Planning (OSP), VBA, how to transfer ██████████ from Nashville to Washington, DC. Mr. Czerwinski said:

There is a terrific guy working for the VA innovations team named ██████████ ██████████, who is based out of the Nashville RO and works under Alan Bozeman, started out working part-time on VACI projects last year and has gradually become a very central member of the team. *He wants to move to DC and he wants to stay working for the Innovations team.* I wanted to ask you about how best to achieve this. One option would be to transfer his FTE from Nashville to VBACO and start paying for him out of the GOE portion of the VACI budget. Not sure if it makes sense from where you sit that he be moved to OSP or some other office and I would therefore greatly value your advice about *what would be best for him.*” (Emphasis added) (b)(7)(C)

When we interviewed Mr. Czerwinski in February 2013, we told him of the allegations made against ██████████ and of the extent of the misconduct we found through our investigation. Although we told Mr. Czerwinski that the detailed information we discussed during his interview was confidential, the simple fact that ██████████ was under investigation by OIG was not. However, we discovered that Mr. Czerwinski continued asking Mr. Buchanan, OSP staff, and VBA HR staff to find a way to relocate ██████████ to Washington, DC, without telling them of the ongoing OIG investigation.

In a March 7, 2013, email, Mr. Buchanan told Mr. Czerwinski, “I directed that the Office of Strategic Planning use a GS13/14 billet in the Deputy Director Transformation Initiatives and Future Concepts (DDTIFC) to hire ██████████. Once he is on board he will be assigned to VAI2 to fulfill the billet that you have requested of VBA.” That same day, in another email, Mr. Buchanan directed OSP staff to use a GS13/14 position in DDTIFC to hire ██████████ who would then be assigned to VACI at Mr. Czerwinski’s request. In that same email, Mr. Buchanan directed his HR Coordinator, ██████████ ██████████, VBA OSP Program Specialist, to reach out to ██████████ and work the details/timing of his assignment. Mr. Buchanan told us that Mr. Czerwinski preselected ██████████ for this position before it was even created or announced. He said that Mr. Czerwinski suggested that “the stature of the position deserved a more senior pay grade,” resulting in Mr. Buchanan making this a GS-13 position with promotional potential to a GS-14. He further said that Mr. Czerwinski failed to tell him that ██████████ was under investigation by OIG and that if he (Mr. Buchanan) knew that there was an ongoing OIG investigation, he would have held the hiring process for ██████████ in abeyance. He further said that, in his opinion, Mr. Czerwinski acted improperly by not disclosing this information to him. However, contrary to his assertions, Mr. Buchanan allowed the personnel action he signed converting ██████████ to a career appointment to take effect on August 11, 2013, 4 days after we informed him of the OIG administrative investigation of ██████████ (b)(7)(C)

Email records reflected that Mr. Czerwinski sent numerous emails to Mr. Michael Yaguchi, Deputy Director, OSP, in his efforts to relocate [REDACTED]. For example:

- On March 29, 2013, “Mike—Do you have time to talk today? Phone is not working and I’d like to make sure this duty station transfer effort is closed out. Also want to make sure you are not waiting on anything from me.” (b)(7)(C)
- On April 8, 2013, “Mike—Since we haven’t been able to connect by phone can you tell me whether [REDACTED]’s FTE is now a part of OSP/VBACO with the necessary duty station transfer and paperwork? If not, what can I do to help?”
- On May 31, 2013, “Mike, [REDACTED]—Can you let us know the status of [REDACTED]’s transfer?”
- On June 06, 2013, “Mike—Tomorrow another week will have passed. The ball went back to VBA three weeks ago on May 16th. Dragging this out any longer is unfair to the employee. Can we please close this out today?”

Mr. Yaguchi told us that his involvement with [REDACTED] promotion was limited to helping write the position description (PD), soliciting for the VBA OSP position with the Office of the Undersecretary for Benefits, and talking with the Deputy Chief of Staff, Mr. Christopher Holly. He said that Mr. Czerwinski, Mr. Buchanan, and Mr. Holly told him to make this happen and he just followed orders. Mr. Yaguchi said that he thought the hiring effort was “perfectly legit,” since [REDACTED] was a veteran and already located in the Washington, DC, area.

[REDACTED] told us that Mr. Buchanan directed him to look at [REDACTED]’s background to determine how OSP could hire him. In an April 25, 2013, email, [REDACTED] directed [REDACTED], VBA HR Specialist, to create an SF-52 for a newly created GS-0343-13/14 position so as to relocate [REDACTED] from Nashville to Washington, DC, to be the VBA liaison to VACI. [REDACTED] told us that, at that time, he was unaware that [REDACTED] was the subject of an OIG investigation. (b)(7)(C)

In a May 4, 2013, email, [REDACTED] told [REDACTED] that [REDACTED] was classified as a [REDACTED], and he could be considered non-competitively for a GS-13/14 or a GS-11/12/13 position. He said that to do so would require him to prepare a non-competitive vacancy announcement and send the link only to [REDACTED] so that he could submit an application. He also “strongly suggest[ed]” having a PD for [REDACTED] “rather than just ‘fitting’ him into another PD that doesn’t accurately describe his duties.” In a May 6, 2013, email, [REDACTED] asked Mr. Czerwinski to submit a PD describing the duties and responsibilities for the GS-13/14 position to classify the position. Mr. Czerwinski complied.

Office of Personnel Management (OPM), Veterans Services, Vet Guide, states that an agency may give a non-competitive temporary appointment of more than 60 days or a term appointment to any veteran retired from active military service with a disability rating of 30 percent or more or rated by VA since 1991 or later to include disability determinations from a branch of the Armed Forces at any time, as having a compensable service-connected disability of 30 percent or more. It states that there is no grade level limitation for this authority, but the appointee must meet all qualification requirements. Further, the agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment. 5 USC § 3112; 5 CFR §§ 316.302, 316.402 and 315.707.

(b)(7)(C)

Mr. Holly told us that Mr. Czerwinski asked OSP personnel to hire [REDACTED] so they updated the OSP organization chart on April 1, 2013, to reflect the newly created position to be filled by [REDACTED]. He said that Mr. Czerwinski, on his own initiative, sent various emails to OSP personnel stating, “Hey it has been a month, why haven’t you guys done this,” and complained about how slow the process to hire [REDACTED] moved. Mr. Holly said that these emails were annoying and could be considered pressure from Mr. Czerwinski when OSP staff tried “cleaning up his mess and trying to make it right.”

Mr. Holly told us that OSP staff initially did the work to laterally move [REDACTED] and then they realized that, per Mr. Czerwinski, [REDACTED] was supposed to be promoted to a GS-13. Mr. Holly said that Mr. Czerwinski failed to disclose to him that [REDACTED] was the subject of an OIG investigation, and he felt that this was a violation of the ICARE initiative—Core Values and Characteristics that apply universally across all of VA. Mr. Holly also said that if he knew that [REDACTED] was under investigation, he would have left [REDACTED] in Nashville until the investigation ran its course. He said that he thought Under Secretary Allison Hickey would be “crushed” and “fired up” to know that she signed a congratulatory letter for [REDACTED] not knowing that he was under investigation by OIG. Moreover, he said that with VBA’s backlog in veterans compensation claims, it will be devastating when OIG reports that [REDACTED] was rewarded via a promotion when his improper and extended detail to VACI contributed to the VBA backlog.

(b)(7)(C)

[REDACTED] told us that he and [REDACTED] posted a USAJOBS vacancy announcement for 2 days, for VA employees and for applicants who were non-competitive eligible, such as [REDACTED], eligible under veterans recruitment appointment (VRA), transfer/reinstatement eligible, individuals with disabilities, etc. However, [REDACTED] said that he sent [REDACTED] the internet link (web address) to the vacancy announcement and that [REDACTED] was the only one given access, since Mr. Czerwinski wanted to select [REDACTED] for the position. When asked if someone else searching the USAJOBS website could have found the announcement, [REDACTED] said, “No.” When asked if it was restricted only to an individual given the specific web address, [REDACTED] said, “Yes.” We found that this could be accomplished

by using either a restricted uniform resources locator (URL), also known as a web address, or by the use of an unpublished URL.

(b)(7)(C)

In a July 3, 2013, email, ██████ told ██████ and others that ██████ was selected for the GS-13/14 Program Analyst position (VAIC Liaison), Washington, DC, and that ██████ accepted the formal job offer, effective July 14. Personnel records reflected that Mr. Czerwinski selected ██████ as the best candidate for the position and that on July 2, 2013, Mr. Danny Pummill, Principal Deputy Under Secretary for Benefits, authorized ██████'s selection on behalf of Under Secretary Hickey. Records further reflected that Under Secretary Hickey signed a VBA standard letter congratulating ██████ on his selection and promotion.

Mr. Pummill told us that he did not know, and Mr. Czerwinski failed to tell him, that ██████ was under investigation by OIG when he authorized his selection. He said that because of Mr. Czerwinski's position in VA leadership, OSP staff felt they had no option but to process his request. He further said that Under Secretary Hickey was not aware that OIG was investigating ██████ when she signed the congratulatory letter and that she would be upset once she learned of it. He said that if he knew OIG was investigating ██████ he would not have taken any action until the investigation was completed, and once completed, if favorably, he would consider ██████ for the position. He said that, in his opinion, it was unethical for a senior leader to recommend an employee for transfer or promotion knowing that the employee was under investigation and did not disclose that information to the gaining organization.

Mr. Czerwinski told us that one of the toughest parts of getting ██████ transferred was engaging Mr. Buchanan to act on it. He said that he spoke to Mr. Buchanan about filling a VBA OSP position with ██████ and he initially said that he did not ask that ██████ be promoted. However, he later told us that his rationale behind promoting him was due to ██████'s past performance and the expected increase in duties. He said that his effort to have ██████ promoted to a GS-13/14 and relocated to Washington, DC, could be considered as pressure but that he did not think he misused his position as the VACI Director or Senior Advisor to the Secretary. He also said that he did everything he could to make it happen. Further, Mr. Czerwinski said that he did not know how an OIG investigation would negatively affect promoting an employee and regardless of the investigation he believed ██████ was the right man with the right skillset for the job.

(b)(7)(C)

We told Mr. Czerwinski, in our February 2013 interview, that ██████ told us that he took full responsibility for his misconduct and admitted that he intentionally took advantage of the weaknesses in his supervisory chain and the system for his own personal gain. Mr. Czerwinski told us that even after being fully aware of ██████'s misconduct it was not his responsibility to tell anyone associated with the hiring initiative that ██████ was under investigation by OIG. He said that, in his opinion, an OIG investigation would not compromise ██████'s suitability to perform his VACI duties.

Mr. Czerwinski said that after the completion of the investigation [REDACTED] should be more suitable and have a higher awareness of the guidelines he should follow.

Conclusion

(b)(7)(C)

We concluded that Mr. Czerwinski engaged in a prohibited personnel practice when he, with intent to do so, gave [REDACTED] preferential treatment and provided him an advantage not afforded to other VA employees. He first improperly detailed [REDACTED] for over 2 years into a position with known promotion potential, and he “did everything he could” to create a position at a higher grade for [REDACTED] so that [REDACTED] could relocate to Washington, DC, and continue working for VACI. Mr. Czerwinski began the process in January 2013, and 1 month later, [REDACTED] relocated to the Washington, DC, area, anticipating that his duty station would officially be changed. We also found that Mr. Czerwinski did not discharge the duties of his position when he, with full knowledge of an ongoing OIG administrative investigation and of the extent of [REDACTED]’s misconduct, intentionally did not inform VBA officials of the investigation so that they could make a fully informed decision in the hiring initiative associated with [REDACTED]’s promotion. Most told us that had they known of the OIG investigation they would have made a different decision in this initiative.

We also concluded that Mr. Holly, Mr. Buchanan, [REDACTED] and [REDACTED] engaged in a prohibited personnel practice when they did not make proper considerations in making personnel decisions and with intent to do so, gave [REDACTED] preferential treatment in the creation of a higher-graded position with the intent of promoting [REDACTED] into that position. They, without question, created an OSP position to promote and relocate [REDACTED] to Washington, DC, solely because Mr. Czerwinski asked them to do so. We recognize that VBA officials could have legitimately laterally transferred [REDACTED] into another GS-12 position for which he was qualified, but they chose not to use that option. We also recognize that as a [REDACTED] [REDACTED] could have been appointed, non-competitively, to any grade position. However in this instance, the vacancy announcement was for all VA employees who were non-competitive eligible, yet [REDACTED] being preselected, was the only applicant given access to the vacancy announcement to apply for the position. Moreover, the intent of creating the position and posting the announcement was to give [REDACTED] preference. Mr. Czerwinski, using his stature and position within VA leadership, applied pressure to VBA officials to “make this happen,” and they blindly followed his directive.

(b)(7)(C)

Recommendation 12. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take concerning the prohibited personnel practice and [REDACTED]’s promotion.

Recommendation 13. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against Mr. Holly.

Recommendation 14. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against Mr. Buchanan.

(b)(7)(C)

Recommendation 15. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

Recommendation 16. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

Comments

The VA Chief of Staff was responsive. He asked that we revise or clarify several items in our draft report, which we did. His comments are in Appendix A. We will follow up to ensure that the recommendations are implemented.



JAMES J. O'NEILL
Assistant Inspector General for
Investigations

VA Chief of Staff Comments

**Department of
Veterans Affairs**

Memorandum

Date: February 12, 2014

From: VA Chief of Staff (00A)

Subject: OIG Report – Administrative Investigation, Failure to Properly Supervise, Misuse of Official Time and Resources, and Prohibited Personnel Practice, VACI, VACO

To: Director, Administrative Investigations Division,
Office of Inspector General (51Q)

1. We appreciate the opportunity to review the OIG Report, subject as above.
2. We concur with the revisions made to the report.


Jose D. Riojas

VA Chief of Staff's Comments to Office of Inspector General's Report

The following VA Chief of Staff'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 VA Chief of Staff ensure that VBA conducts a review of all RVSRs to ensure that any not performing the functions of their position are either properly detailed or returned to their RVSR duties.

Comments: See page 26.

Recommendation 2. We recommend that the VA Chief of Staff confer with the OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

Comments: See page 26.

Recommendation 3. We recommend that the VA Chief of Staff confer with the OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

(b)(7)(C)

Comments: See page 26.

Recommendation 4. We recommend that the VA Chief of Staff confer with the OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

Comments: See page 26.

Recommendation 5. We recommend that the VA Chief of Staff ensure that [REDACTED] [REDACTED] and [REDACTED] receive appropriate refresher training in supervisory responsibilities for official travel, performance standards, and appraisals.

Comments: See page 26.

Recommendation 6. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

Comments: See page 26.

Recommendation 7. We recommend that the VA Chief of Staff ensure that [REDACTED] is issued a bill of collection for \$30,990.29 to reimburse VA for a misuse of travel funds.

(b)(7)(C)

Comments: See page 26.

Recommendation 8. We recommend that the VA Chief of Staff ensure that [REDACTED]'s time and attendance between March and October 2012 is corrected and that he is charged the appropriate annual and sick leave for that time.

Comments: See page 26.

Recommendation 9. We recommend that the VA Chief of Staff ensure that the total amount paid to [REDACTED] for the 20 instances that he was absent without authorization be determined and that [REDACTED] is issued a bill of collection for that amount, since he cannot receive pay for the time that he was absent without authorization.

Comments: See page 26.

Recommendation 10. We recommend that the VA Chief of Staff ensure that the Information Security Officer with oversight for [REDACTED]'s VA-issued equipment, to include his laptop and cellular telephone, examine that equipment to remove any unauthorized software and/or content.

Comments: See page 26.

Recommendation 11. We recommend that the VA Chief of Staff ensure that all VACI employees, to include any detailed or assigned to VACI from other organizations, receive refresher training on Federal travel regulations and VA travel policy.

Comments: See page 26.

Recommendation 12. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take concerning the prohibited personnel practice and [REDACTED]'s promotion.

(b)(7)(C)

Comments: See page 26.

Recommendation 13. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against Mr. Holly.

Comments: See page 26.

Recommendation 14. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against Mr. Buchanan.

Comments: See page 26.

Recommendation 15. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

(b)(7)(C)

Comments: See page 26.

Recommendation 16. We recommend that the VA Chief of Staff confer with OHRA and OGC to determine the appropriate administrative action, if any, to take against [REDACTED]

Comments: See page 26.

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	Domingo Alvarez Charles Millard

Report Distribution

VA Distribution

Deputy Secretary (001)
Chief of Staff (00A)
Executive Secretariat (001B)
Under Secretary for Benefits (20)

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