



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Prohibited Personnel Practices, Abuse of Authority, Misuse of Position, and False Statements, Office of Human Resources and Administration, VA Central Office

Redacted



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

TO: VA Chief of Staff

SUBJECT: Administrative Investigation – Prohibited Personnel Practices, Abuse of Authority, Misuse of Position, and False Statements, Office of Human Resources and Administration, VACO (2010-0853-IQ-0008)

Summary

We substantiated that Mr. Willie L. Hensley, Principal Deputy Assistant Secretary, VA Office of Human Resources and Administration (HRA), engaged in prohibited personnel practices, abused his authority, misused his position to appoint two subordinates, and that he made false statements. We also found that Ms. [REDACTED], Management Analyst, Office of Human Resources Management (OHRM), misused her official time and that Ms. [REDACTED], Management Analyst, OHRM, misrepresented her income to be appointed at a higher than minimum rate of pay and made false statements. We further found that Ms. [REDACTED], HR Specialist, and a former (retired) Management Analyst engaged in prohibited personnel practices in the appointment of Ms. [REDACTED] and that a former (retired) Personnel Officer and Director of VA Central Office HR Services failed to follow policy in setting Ms. [REDACTED]' higher than minimum rate of pay. (b)(6)

Introduction

The VA Office of Inspector General Administrative Investigations Division investigated allegations that Mr. Hensley engaged in inappropriate relationships with two subordinates that resulted in his giving them preferential treatment with respect to their VA employment. We further investigated whether Ms. [REDACTED] misused her official time; and whether Ms. [REDACTED] was properly hired, qualified for her position, and if her higher than minimum starting salary was properly set in accordance with VA policy. We also determined that Mr. Hensley and Ms. [REDACTED] intentionally and willfully made false statements. Finally, we investigated whether Ms. [REDACTED] and a former employee engaged in a prohibited personnel practice and a former employee failed to properly administer VA policy. To assess these allegations, we interviewed Mr. Hensley, Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] former and current supervisors, and other current and former VA employees. We reviewed email, (b)(6)

time and attendance, travel, personnel, merit promotion, and telephone records and applicable Federal laws, regulations, and VA policy. In addition, we made a criminal referral for false statements to the U.S. Department of Justice; however, they did not accept the matter for criminal prosecution. We investigated but did not substantiate other allegations, and they will not be discussed further in this report.

Background

Mr. Hensley began his Federal service with VA in June 1995. In January 2005, he converted to career Senior Executive Service (SES) and he became the Associate Deputy Assistant Secretary (ADAS) for the Office of Human Resources Management (OHRM). In June 2006, he became the Deputy Assistant Secretary (DAS) for OHRM, and in August 2008, he was appointed as the Principal DAS for HRA, the second highest human resources management position in VA. From August 2008 to May 2009, Mr. Hensley also served as the Acting Assistant Secretary for HRA, and as such, Mr. Hensley was VA's Chief Human Capital Officer and served as the principal advisor to the Secretary, his executive staff, and the Department's human resources managers and practitioners on matters pertaining to human resources, labor-management relations, diversity management and equal employment opportunity, resolution management, employee health and safety, workers' compensation; and VA Central Office administration. Within HRA, Mr. Hensley had authority and oversight of OHRM; the Office of Resolution Management (ORM); and the Offices of Diversity and Inclusion; Administration; and Labor Management Relations.

Results

Issue 1: Whether Mr. Hensley Engaged in a Prohibited Personnel Practice in Reassigning Ms. [REDACTED] to OHRM (b)(6)

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, grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment. 5 USC § 2302(b)(6).

The Standards of Ethical Conduct for Employees of the Executive Branch prohibit an employee from using his public office for his own private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity and prohibit an employee from using his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to themselves or to friends, relatives, or persons with whom the employee is affiliated with in a nongovernmental capacity. 5 CFR § 2635.702.

The Merit Systems Protection Board defines an “abuse of authority” as an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain to preferred other persons. *D’Elia v. Department of the Treasury*, 60 M.S.P.R. 226, 232 (1993), *overruled in part on other grounds by Thomas v. Department of the Treasury*, 77 M.S.P.R. 224, 236 n.9 (1998).

In a recent decision involving two HR specialists charged with committing a prohibited personnel practice (5 USC § 2302(b)(6)), the U.S. Merit Systems Protection Board said that the agency must prove a violation of Section 2302(b)(6) by “preponderant evidence.” *Special Counsel v. Lee*, 2010 M.S.P.B. 89, 2010 MSPB LEXIS 1851 (May 14, 2010), ¶5. The Board further said that whether a respondent violated Section 2303(b)(6) “turns on whether they intended to afford preferential treatment...,” and “An agency may rely upon proper circumstantial evidence to establish intent.” *Id.*, at ¶¶21 and 24.

Background

Mr. Hensley told us that he met Ms. [REDACTED] in early to mid 2004; that over time, they became very good friends; they talked about dating; and eventually, they engaged in an inappropriate personal relationship. Mr. Hensley said that “in essence, we were in a relationship probably from 2004, when we first met.” He said that no one in VA knew of their friendship or relationship and that he “purposely kept it that way.” He also said that he and Ms. [REDACTED] spoke frequently, and he said that at one point, they discussed how they might take their relationship to a “different level.” However, he said that after engaging in an inappropriate personal relationship for a period of time, they decided that they would go back to being just friends. Although their accounts differ somewhat as to when the inappropriate personal relationship began and ended, both Mr. Hensley and Ms. [REDACTED] said that it began after Ms. [REDACTED] was reassigned to Mr. Hensley’s organization in February 2008. (b)(6)

Reassignment of Ms. [REDACTED]

Equal Employment Opportunity (EEO) records reflected that Ms. [REDACTED] filed an EEO complaint with ORM in August 2007 alleging that her then supervisor, Ms. Marisa Palkuti, Director of VHA’s Healthcare Retention and Recruitment Office (HRRO) in New Orleans, Louisiana, discriminated against her on the basis of [REDACTED] when Ms. Palkuti denied Ms. [REDACTED] request to telework from her home [REDACTED] approximately 75 miles from the New Orleans office. Records further showed that Ms. Palkuti initiated an administrative investigation after learning that Ms. [REDACTED] violated VA information security policy. In November 2007, an Administrative Investigation Board (AIB) convened by Mr. Nevin Weaver, currently Director of Veterans Integrated Service Network 8, who at the time was the Chief Officer of VHA Workforce Management and Consulting, found that Ms. [REDACTED] while on annual leave, improperly gave her VA computer passwords and electronic signature to a subordinate to access a fund control (b)(6)

point in order to make payments on contracts for which Ms. [REDACTED] was responsible. The AIB also found that Ms. [REDACTED] mismanaged more than \$1.2 million in VA funds within the fund control point by failing to properly reconcile the account.

In January 2008, as a result of the AIB's findings, Ms. Palkuti proposed an adverse action against Ms. [REDACTED] of a two-pay-grade demotion, from GS-14 to GS-12, and a reassignment to a different position. Personnel records reflected that in February 2008, just prior to a final decision concerning the proposed adverse actions against her, Mr. Hensley reassigned Ms. [REDACTED] from her position as a GS-14 Health Systems Specialist in HRRO to a GS-14 Management and Program Analyst position in OHRM. Ms. [REDACTED] reassignment resulted in her being in Mr. Hensley's direct line of supervision, ranging from immediate to four levels below him. With this reassignment, Ms. [REDACTED] was permitted to work full-time from her residence [REDACTED] (b)(6)

The Request for Personnel Action form (SF-52) associated with Ms. [REDACTED] reassignment to OHRM identified the requesting official as Dr. Rayshad Holmes, who is currently the Director of VHA Human Resources Development (HRD), but at that time worked for Mr. Hensley as OHRM Director of Human Capital Planning, Development and Outreach (HCPDO). The "Action Authorized By" block on the SF-52 contained the signature of Ms. [REDACTED] [REDACTED] former ADAS for Human Resources, and indicated that she signed "for" Mr. Hensley. (Ms. [REDACTED] no longer works at VA.)

Mr. Hensley told us that he authorized Ms. [REDACTED] reassignment at Dr. Holmes' request. He said that for reasons unknown to him, Dr. Holmes visited Ms. [REDACTED] office in New Orleans and that when he returned to VA Central Office, he asked to hire Ms. [REDACTED] as a virtual employee working full-time from her residence [REDACTED]. Mr. Hensley further said that Ms. [REDACTED] was not supportive of the idea and that she initially did not agree to Dr. Holmes hiring Ms. [REDACTED]. He said that he and Ms. [REDACTED] were being watched closely by Mr. Hensley's superiors, because Dr. Holmes complained to them that he was being treated unfairly by Ms. [REDACTED] and Mr. Hensley. Mr. Hensley said that to avoid a likely discrimination complaint by Dr. Holmes, he told Ms. [REDACTED] to allow Dr. Holmes to hire Ms. [REDACTED]. Ms. [REDACTED] told us that she signed the reassignment SF-52 "for" Mr. Hensley as the authorizing official but that she was unable to recall for sure if Dr. Holmes wanted to hire Ms. [REDACTED] or whether it was Mr. Hensley's idea. Ms. [REDACTED] said that she recalled Dr. Holmes mentioning that he met Ms. [REDACTED] while visiting New Orleans; that Dr. Holmes thought there might be "a good match" between her skills and his work; and that they discussed "picking her up." However, she said that Dr. Holmes had the impression that Mr. Hensley wanted Ms. [REDACTED] to be reassigned. (b)(6)

Dr. Holmes told us that in December 2007, at the invitation of Ms. Palkuti, he visited her office in New Orleans, because he said that his office and Ms. Palkuti's office had similar functions in the area of marketing and outreach. He said that during his visit, he met

Ms. [REDACTED] as part of Ms. Palkuti's leadership team, and he said that Ms. [REDACTED] later approached him, asking him for a job. Dr. Holmes said that he told Ms. [REDACTED] that he was not there to recruit anyone from Ms. Palkuti's staff and that he did not have a GS-14 position in his organization. He said that he further explained to Ms. [REDACTED] that the grade structure in OHRM was such that only team leads could be at a GS-14 level; that he only had two of those positions; and that they were both filled. He said that he never gave Ms. [REDACTED] any indication that he was interested in hiring her, and he said that for his own credibility, since Ms. Palkuti extended an invitation for him to visit New Orleans, he would not have recruited one of her staff members. Dr. Holmes told us that when he returned to VA Central Office, he briefed Mr. Hensley and Ms. [REDACTED] told them that he met Ms. [REDACTED] that she asked him for a job, and that Ms. [REDACTED] told him that she knew Mr. Hensley. Dr. Holmes said that Mr. Hensley then said that he knew Ms. [REDACTED] but said nothing more about it. However, Dr. Holmes said that in late January 2008, Mr. Hensley instructed him to hire Ms. [REDACTED] telling him that she would be assigned to HCPDO. Dr. Holmes said he asked Mr. Hensley how this could be done, since he (Dr. Holmes) never initiated a recruitment action and he did not have an available GS-14 position. Dr. Holmes said that Mr. Hensley, nonetheless, instructed him to initiate the reassignment paperwork. (b)(6)

Ms. [REDACTED] [REDACTED] Program Specialist, told us that at the time of Ms. [REDACTED] February 2008 reassignment, she was the HR Liaison for OHRM and was responsible for keeping track of the vacant positions within OHRM. Ms. [REDACTED] said that Ms. [REDACTED] reassignment to OHRM came as a surprise to her, because she said that there was no action taken to recruit for a GS-14 position. She also said that Dr. Holmes was surprised by Ms. [REDACTED] reassignment. Further, she said that about 2 to 3 months before the reassignment, as she (Ms. [REDACTED]) stood outside Mr. Hensley's office waiting to speak to him, she overheard Mr. Hensley and Mr. Weaver discussing a position for Ms. [REDACTED] (This would be prior to the time that Ms. [REDACTED] asked Dr. Holmes for a job.) She said that several weeks later, Mr. Hensley told her that Ms. [REDACTED] was being reassigned to OHRM. Ms. [REDACTED] told us that a GS-14 position was not available but that it was rumored that the employee who was currently in the GS-14 position under Dr. Holmes in HCPDO was going to retire and did retire approximately 1 month after Ms. [REDACTED] reassignment. (b)(6)

Mr. Weaver told us that he was unaware of an existing personal relationship between Mr. Hensley and Ms. [REDACTED] and that when he learned of Ms. [REDACTED] information security violation in August 2007, he immediately told Mr. Hensley of it. He said that in addition to Ms. [REDACTED] security violation, he was also dealing with her EEO complaint. Mr. Weaver said that as part of his attempts to find a resolution, he spoke with Mr. Hensley, both before and after the AIB, regarding Ms. [REDACTED] situation and the fact that she was unhappy in her current position in VHA. Mr. Weaver said that he and Mr. Hensley discussed the AIB findings, the proposed adverse action, and about finding a position for Ms. [REDACTED] in Mr. Hensley's organization but that Mr. Hensley (b)(6)

never committed to giving Ms. [REDACTED] a job. Mr. Weaver said that on January 31, 2008, the day Ms. [REDACTED] met with him to give her rebuttal to Ms. Palkuti's proposed adverse action, she told him of her pending reassignment to OHRM effective the following Monday. Further, Ms. Palkuti said that Mr. Hensley told her that Ms. [REDACTED] would be a direct report to him (Mr. Hensley) during Ms. [REDACTED] 2-week transition to OHRM. Mr. Weaver said that he then decided to transfer Ms. [REDACTED] file to OHRM for a final decision on the proposed adverse action rather than make a decision himself. (b)(6)

Mr. Hensley told us that prior to her reassignment to OHRM, Ms. [REDACTED] told him about her security violation, the investigation, the recommendations that followed, and later about the proposed adverse action. He said that he did not communicate with Mr. Weaver about finding Ms. [REDACTED] a job, and he said that he did not reassign Ms. [REDACTED] as a way to circumvent any pending adverse action. He said that he knew she was facing an adverse action before he reassigned her to his organization and that Mr. Weaver had sufficient time to make a decision on the proposed action before her reassignment. He further said that he did not know why Mr. Weaver chose to transfer her file to OHRM rather than make a final decision and close out the matter. (b)(6)

Telephone records reflected that for the month of January 2008, the month just before Mr. Hensley reassigned Ms. [REDACTED] to his organization, he and Ms. [REDACTED] made 83 calls to one another, averaging nearly 3 calls a day between the hours of 5:41 a.m. and 11:50 p.m., using their personal cell and home telephones. Records further showed that over the next 24 months, they used their personal cell and home telephones to speak to one another over 1,250 times.

Proposed Adverse Action for Ms. [REDACTED] Reduced

Records reflected that the proposed adverse action followed Ms. [REDACTED] to OHRM and then fell under Mr. Hensley's authority for resolution, and Mr. Hensley told us that Ms. [REDACTED] was assigned as the deciding official for the proposed adverse action. He said that Ms. [REDACTED] after a review of the investigative findings and weighing mitigating factors, gave Ms. [REDACTED] a 7-day suspension without pay in lieu of the proposed demotion and reassignment, resulting in Ms. [REDACTED] filing a grievance to have the suspension removed. Mr. Hensley said that, without revealing his personal relationship with Ms. [REDACTED] he consulted with Mr. [REDACTED] Employee Relations Specialist, to ask about his options with respect to Ms. [REDACTED] grievance. Mr. Hensley said that Mr. [REDACTED] advised him that he could appoint a grievance examiner from an outside organization to review the case. (b)(6)

Mr. Hensley said that because of his relationship with Ms. [REDACTED] his knowledge of the case, and as a way of bringing a level of fairness to the review process, he appointed Mr. Earl Newsome III, Deputy Director, Center for Minority Veterans, as the grievance examiner. Mr. Hensley said that he followed Mr. Newsome's recommendation exactly, (b)(6)

and further said that regardless of the recommendation, he would have followed it even if it was a recommended demotion. Mr. Newsome told us that he had no contact with Mr. Hensley while conducting his review and that no one contacted him in an attempt to influence his findings and recommendations. In an August 18, 2008, memorandum, Mr. Newsome recommended that the 7-day suspension be reduced to a 3-day suspension and that VA policy be amended to include “examples of penalties and punishments for information security violations.” In an August 2008 memorandum, Mr. Hensley told Ms. [REDACTED] that he reduced her earlier suspension to 3 days. However, other than an unsigned copy of the memorandum Mr. Hensley gave us, there was no other record of his taking this action. A copy of Mr. Hensley’s final decision memorandum did not appear in Ms. [REDACTED] personnel file, and VA Central Office Human Resources Service did not provide a copy under an OIG document request. (b)(6)

Settlement of Ms. [REDACTED] EEO Complaint

Mr. Hensley told us that before Ms. [REDACTED] submitted her EEO complaint against her former VHA supervisor in August 2007, she discussed her intentions to do so with him. However, Mr. Hensley said that he did not assist her with writing the complaint or with any other aspect of it except to tell her about the process and who she should contact to submit her complaint. Mr. Hensley said that he gave Ms. [REDACTED] the same information he would give to anyone else who contacted him about submitting an EEO complaint.

Just as Ms. [REDACTED] proposed adverse action was transferred to OHRM, so too was her EEO complaint. Upon Ms. [REDACTED] reassignment to OHRM, the responsibility for resolution of her EEO complaint subsequently fell to Mr. Hensley. Mr. Hensley told us that he appointed Ms. Tonya Deanes, DAS, OHRM, who at the time was the ADAS for Operations, to represent VA in settling the EEO complaint. EEO case records reflected that in November 2008, Ms. Deanes negotiated and signed a settlement agreement with Ms. [REDACTED] that reversed the earlier 7-day suspension given to her by Ms. [REDACTED] reimbursed her for lost wages, and awarded her an additional \$10,000 for unspecified reasons. (b)(6)

Mr. Hensley told us that Ms. Deanes had full authority to negotiate a settlement with Ms. [REDACTED] however, he said that Ms. Deanes came to him to discuss the \$10,000 cash payment that Ms. [REDACTED] wanted. Mr. Hensley said that he told Ms. Deanes that he was not “paying a dime” and that she needed to check with VHA to see if they would agree to pay the money. Mr. Hensley told us that he did not agree to the settlement and that “what I was saying was I’m not paying it. It’s their [VHA] case. And I didn’t like the fact that it ever came down to me.” Mr. Hensley acknowledged that the reimbursement for Ms. [REDACTED] lost wages, while on suspension, most likely came from OHRM’s budget, but he said that he was not sure. He said that he never read the settlement agreement and that Ms. Deanes never presented the agreement to him. Ms. Deanes acknowledged that she represented VA in the settlement negotiations with Ms. [REDACTED] but she told us (b)(6)

that she took a couple of breaks during the mediation session to speak to Mr. Hensley and Ms. Joleen Clark, Chief Officer, VHA Workforce Management and Consulting. Ms. Deanes said that they asked VHA to pay the \$10,000 award and that she kept Mr. Hensley informed as to Ms. [REDACTED] requests in the settlement. She further said (b)(6) that Mr. Hensley was “okay with it or we wouldn’t have proceeded” with paying Ms. [REDACTED] a \$10,000 settlement.

Conclusion

We concluded that Mr. Hensley abused his authority, misused his position, and engaged in a prohibited personnel practice when he used his position and authority to reassign Ms. [REDACTED] at a time when he was well aware that she faced an adverse action and intentionally gave her preference for the purpose of improving her prospects for employment. Although Mr. Hensley’s and Dr. Holmes’ accounts differ sharply as to who initiated Ms. [REDACTED] reassignment to OHRM, we found that Mr. Hensley was a long-time close personal friend of Ms. [REDACTED] whereas, Dr. Holmes met her only once in late 2007, a little more than 1 month before her reassignment. Mr. Hensley told us that he knew in advance that Ms. [REDACTED] faced a disciplinary action; however, we found no evidence that Dr. Holmes knew about her misconduct or the proposed adverse action before her reassignment. Ms. [REDACTED] took advantage of Dr. Holmes’ visit to New Orleans to ask him for a position within his organization, but Dr. Holmes said that he did (b)(6) not have a position for her and that he was not interested in hiring her. Mr. Hensley, and not Dr. Holmes, had motive, opportunity, and the authority to help Ms. [REDACTED] and took extraordinary measures to ensure her reassignment.

In addition, Mr. Weaver told us that he and Mr. Hensley discussed finding Ms. [REDACTED] a job within Mr. Hensley’s organization, both before and after Ms. [REDACTED] AIB, and Ms. [REDACTED] said that she overheard Mr. Hensley and Mr. Weaver talking about a position for Ms. [REDACTED] 2 to 3 months before Ms. [REDACTED] reassignment. Mr. Hensley alone had the final authority to reassign Ms. [REDACTED] and telephone records reflected that they spoke on the telephone 83 times in January 2008, the month just prior to Mr. Hensley reassigning her to his organization. Further, Mr. Hensley admitted that he approved Ms. [REDACTED] reassignment even though Ms. [REDACTED] was against it. Even if we accepted Mr. Hensley’s claim that he approved the reassignment out of a fear that Dr. Holmes may file a discrimination complaint, this does not justify Mr. Hensley engaging in a prohibited personnel practice or failing to properly discharge the duties of his position.

Furthermore, in January 2008, Ms. Palkuti proposed that Ms. [REDACTED] be demoted and reassigned, and that same month, Mr. Hensley told Dr. Holmes to transfer Ms. [REDACTED] to (b)(6) his organization. Dr. Holmes said that there was no position for her, and the OHRM HR Liaison said that it came as a surprise, since there was no vacancy to fill. That same year, Mr. Hensley reduced Ms. [REDACTED] proposed two-grade demotion to a 3-day suspension and concurred with an EEO settlement of \$10,000 for unspecified reasons.

Ms. [REDACTED] reassignment benefited her in two ways: 1) her reassignment averted a two-pay-grade demotion with a substantial loss of income; and 2) it allowed her to telework full-time from her residence rather than commute the 150 miles roundtrip to New Orleans daily. It is highly unlikely that any responsible manager with the authority to make personnel actions would knowingly reassign an employee facing a two-pay-grade demotion for substantiated misconduct to their own organization. Mr. Hensley and Ms. [REDACTED] began their personal relationship in 2004, and when Ms. [REDACTED] faced substantial disciplinary action in 2008, he approved her reassignment to his organization and approved a \$10,000 settlement for her because of their close friendship that eventually evolved into an inappropriate personal relationship, once she was under his protective purview. (b)(6)

Recommendation 1. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for engaging in a prohibited personnel practice, abusing his authority, and misusing his public office in the reassignment of Ms. [REDACTED] to OHRM.

Issue 2: Whether Mr. Hensley Engaged in a Prohibited Personnel Practice in the Appointment of Ms. [REDACTED] and Whether They Both Made False Statements (b)(6)

Federal regulations require employees to provide information and testify freely and honestly in cases regarding employment and disciplinary matters and that refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation may be grounds for disciplinary action. 38 CFR § 0.735.12.

Recruitment records reflected that on November 18, 2008, OHRM issued a merit promotion announcement seeking status candidates (Merit Promotion Eligibles) for a GS-0343-13, Management and Program Analyst position within HCPDO. Records also showed that a listing of qualified applicants was obtained from this announcement; however, records reflected that “management” determined that a certificate of eligibles would not be issued. Further, records showed that 1 month later, on December 19, using a delegated examining unit (DEU), OHRM issued a second vacancy announcement for the same position that was open to all qualified U.S. citizens. From the DEU announcement, a certificate of eligibles was issued initially listing three 10-point veterans as the top three candidates and Ms. [REDACTED] a 5-point veteran, as the fourth. Federal law requires that an appointing authority select from the highest three eligibles on the certificate. 5 USC § 3318(a). The certificate of eligibles reflected that one of the top three 10-point veteran candidates declined to be considered for the position, which in turn placed Ms. [REDACTED] into the top three. Records showed that Mr. Hensley then selected Ms. [REDACTED] for the position on February 2, 2009, and that her appointment as a Management and Program Analyst was effective February 15. (b)(6)

Mr. Hensley told us that he did not meet and did not know Ms. [REDACTED] prior to her appointment. He, however, said that he knew Ms. [REDACTED] husband from when her

husband worked at VA and that they were also fraternity brothers. He further said that “the 10th floor,” referring to the Offices of the Secretary and Deputy Secretary, gave him Ms. ██████ resume. Mr. Hensley first told us that Ms. ██████ husband, a former Executive Assistant to the former Deputy Secretary, gave it to him, but he then said that another former Executive Assistant may have given him the resume, stating that he received “a lot of 10th floor resumes.” Mr. Hensley told us that he gave Ms. ██████ resume to a former (retired) HCPDO Team Leader, Ms. ██████ Management Analyst, and told her, “Why don’t you take a look at this.” Mr. Hensley said that Ms. ██████ later applied for the Management and Program Analyst position through the DEU announcement and that he selected her from the certificate of eligibles. (b)(6)

Ms. ██████ told us that she first learned about and applied for the OHRM position through the USAJOBS website. She said that neither Mr. Hensley nor anyone else on his staff told her about the position; that she had no contact with anyone at VA; that she did not receive any assistance with her application; and that she applied for it on her own. She also said that she did not know Mr. Hensley prior to her employment and that she had no communication with him until after she began working at VA.

Although both Mr. Hensley and Ms. ██████ told us that they did not know one another prior to her VA appointment and there was no communication between them, email and telephone records reflected that Ms. ██████ had extensive contact and received substantial assistance from Mr. Hensley and Ms. ██████. For ease of reading, the following described contacts assume that the person who owned the phone made the call: (b)(6)

- On August 13, 2008, Ms. ██████ husband, Mr. ██████, the former Executive Assistant to the Deputy Secretary and at one time the Deputy Assistant Secretary for Policy in the VA Office of Policy and Planning, who resigned his VA position in January 2008, sent an email to Mr. Hensley stating: “Willie, Can you give me a call? My wife is looking to get a job at VA and I wanted to get your advice on how to best proceed.” Attached to the email was a copy of Ms. ██████ resume. Later that day, Mr. Hensley replied: “Sure, on tvl but returning to DC this afternoon. I will give you a call.”
- On August 20, Ms. ██████ sent an email and a copy of her resume to Mr. Hensley’s personal email address stating: “I was referred to you by my husband, ██████ [I’m] interested in working in Public Affairs, Media, and/or Public Relations. I would like to speak with you to learn more about positions that are open. . . . I have attached my resume for your review.” (b)(6)
- On August 29, telephone records reflected that three calls were placed between Ms. ██████ personal cell phone and Mr. Hensley’s personal cell phone. She called Mr. Hensley at 12:15 p.m.; Mr. Hensley called her at 1:32 p.m.; and Ms. ██████ then called Mr. Hensley at 4:38 p.m., with the call lasting 18 minutes.

- On September 16, Mr. Hensley forwarded Ms. [REDACTED] August 20 email and resume from his personal email account to his VA-assigned email account.
- On September 17, Mr. Hensley forwarded Ms. [REDACTED] resume to Ms. [REDACTED] at 11:05 a.m., and wrote: “As requested. Thanks. Please talk with her.” Telephone records for that day reflected that Ms. [REDACTED] called Ms. [REDACTED] at 12:16 p.m.; Ms. [REDACTED] called the HRA front office at 4:55 p.m.; and Mr. Hensley then called Ms. [REDACTED] at 6:38 p.m., with the call lasting 12 minutes. (b)(6)
- On September 18, Ms. [REDACTED] called Ms. [REDACTED] at 8:18 a.m., and the call lasted 17 minutes.
- On September 19, Ms. [REDACTED] called Ms. [REDACTED] at 6:14 p.m., and the call lasted 20 minutes.
- On September 26, Ms. [REDACTED] called Mr. Hensley at 1:51 p.m.
- On October 19, Ms. [REDACTED] sent Ms. [REDACTED] an email attaching her newly revised resume, with a copy to Mr. Hensley and Ms. [REDACTED] husband, stating: “Hello Ms. [REDACTED] Per your request, I added additional information to my resume. Also, I will be on-location until Nov 21 and will have limited access to email and cell phones. Therefore, I ask that you please contact my husband, [REDACTED] with any correspondence between Oct 21-Nov 21, 2008.” (b)(6)
- On October 20, Ms. [REDACTED] replied to Ms. [REDACTED] stating: “Thank you for responding so quickly...I will stay in touch with you or your husband, [REDACTED] About 25 minutes later, Ms. [REDACTED] forwarded Ms. [REDACTED] October 19 email and her revised resume to Mr. Hensley, stating: “Please advise... Thank you.”
- On October 28, Mr. [REDACTED] emailed Ms. [REDACTED] stating: “Ms. [REDACTED] I hope all is well. I was talking with Willie and he mentioned that you were going to post a position this week. Can you please let me know when you post this position? I know [REDACTED] is very interested in working with you at the VA and she asked me to stay aware of this while she is out of town. Thank you. Thanks. [REDACTED] [REDACTED]” (b)(6)
- On October 29, Ms. [REDACTED] forwarded Mr. [REDACTED] October 28 email to Mr. Hensley, and she told him: “I have one vacant position (Management Analyst – GS-343-13) vice [REDACTED] in HCPDO. Although the position is a GS-343, the basic duties and responsibilities are related to Human Resource Development (HRD). I am concern[ed]... Mrs. [REDACTED] resume may qualify for a GS-343-13, however she does not have background in HRD. Based on Mrs. [REDACTED] resume, she has a strong Strategic and Operational Marketing background. Please advise.” (b)(6)

- On November 3, Ms. [REDACTED] sent an email to Ms. [REDACTED] stating: “I just wanted to let you know, that I just got back in town early. I can now continue the job seeking process with you and VA. Please advise on the next steps on my end. Ms. [REDACTED] replied the next day: “This is an update of where we are... Right now we are in the process of preparing a vacancy announcement for a position in my office. But, before the announcement is released and/or posted on USAJOBS Website it must be approved by two senior management officials... Once the announcement is approved by management, and released by Central Office Personnel then I will contact you immediately! Right now you don’t have to do anything. I will keep in touch with you.” (b)(6)
- On November 18, Ms. [REDACTED] sent an email to Ms. [REDACTED] at 3:32 p.m., and she said: “I would like to give you a progress report. Please call me as soon as possible!” Later that day, at 9:11 p.m., Ms. [REDACTED] replied to Ms. [REDACTED] “Hello Ms. [REDACTED] The job was not posted as of earlier today after I spoke to you. I will try again tomorrow morning.” Ms. [REDACTED] replied the next day: “Hello [REDACTED] When you have a free moment, please call me.”
- On December 22, Ms. [REDACTED] [REDACTED] HR Specialist, called Ms. [REDACTED] twice.
- On December 23, Ms. [REDACTED] sent an email to Ms. [REDACTED] at 2:26 p.m. stating: “This morning, I was informed that you spoke to Ms. [REDACTED] regarding the Management Analyst, GS-13 position posted on USAJOB Website. I encourage you to apply!!” (b)(6)
- On January 31, 2009, (2 days before Mr. Hensley selected Ms. [REDACTED] for the position) Ms. [REDACTED] called Mr. Hensley and they spoke for about 8 minutes.

When informed of the email and telephone records, Ms. [REDACTED] told us that she could not recall those events. She said that she suffered from memory loss associated with alleged incidents that occurred while serving in the U.S. military. She said that she filed for disability through VA; however, she said that VA denied her claim. Ms. [REDACTED] provided us two letters.

[REDACTED]

(b)(3)

During her interview, Ms. [REDACTED] demonstrated immediate and specific recall of events and circumstances surrounding all subject matters that supported her work history and experience in the marketing field, as well as details of other life events without hesitation. However, when asked about the details surrounding her VA appointment, to include her contact with Mr. Hensley or his staff and her actual private sector income, which was used to justify her higher than minimum rate of pay, she claimed a lapse in memory. (b)(6)

Mr. Hensley continually told us that he obtained Ms. [REDACTED] resume from “the 10th floor” and that he never communicated with Ms. [REDACTED] prior to her employment at VA. He said that when he received resumes such as hers, he typically interviewed the person himself before referring them to a hiring manager; however, he said in Ms. [REDACTED] case, he gave her resume to Ms. [REDACTED]. He said that Ms. [REDACTED] then interviewed Ms. [REDACTED]. Mr. Hensley said that Ms. [REDACTED] told him that she had some concerns, since Ms. [REDACTED] was not qualified for an HR Development position, but he said that Ms. [REDACTED] did not give him the impression that Ms. [REDACTED] did not qualify for the “marketing side.” He said that he and Ms. [REDACTED] ultimately determined that Ms. [REDACTED] would “fit” a marketing position in Ms. [REDACTED] section and that she was encouraged to apply for that position, once it was announced. (b)(6)

Mr. Hensley said that he did not do anything to improve Ms. [REDACTED] chances of getting a job and that he did not use his position and authority to make sure that she was the person selected for the position. He further said that Ms. [REDACTED] handled the recruitment for the position, prior to her retirement; that he did not “recall” telling Ms. [REDACTED] to hire Ms. [REDACTED] and that if she felt that he did, it was not his intent when he referred the resume to her. However, he further said that people knew that he was interested in Ms. [REDACTED] or “otherwise I would not have referred the application or resume.”

Mr. Hensley said that after Ms. [REDACTED] retired, he began working directly with Ms. [REDACTED] [REDACTED] HR Specialist, to fill the position. He said that Ms. [REDACTED] presented him with a certificate of eligibles that listed Ms. [REDACTED] and two other applicants as the top three candidates. He said that he told Ms. [REDACTED] to set up interviews and to call the two 10-point veteran candidates to see if they were still interested in the job. He said that Ms. [REDACTED] later said that the other two candidates were no longer interested and that he then selected Ms. [REDACTED] for the position. (b)(6)

Ms. [REDACTED] told us that prior to her retirement in January 2009, she worked for Mr. Hensley and worked on the recruitment action involving Ms. [REDACTED]. She said that she had a vacant “marketing” position in HCPDO; that Mr. Hensley knew that she was looking for someone with marketing experience; that Mr. Hensley sent her Ms. [REDACTED] resume; and that Mr. Hensley asked her to talk with Ms. [REDACTED] about it. Ms. [REDACTED] further said that she spoke with Ms. [REDACTED] to learn more about her background and that she encouraged her to add all of her experience to her resume. She said that they were looking for “marketing skills and experience.” She further said that she could not tell an applicant what they needed to do to qualify for a particular position, such as adding the marketing experience; however, she said that she could discuss their work experience and tell them to add or include select items. Ms. [REDACTED] could not recall if she assisted any of the other applicants who applied for the same position as Ms. [REDACTED]. (b)(6)

Ms. [REDACTED] acknowledged that Ms. [REDACTED] was not a status candidate; was therefore ineligible to apply under the first job announcement; and that a certificate of eligibles was not issued from that recruitment effort. She told us that the recruitment action was then (b)(6)

sent to the DEU and that Ms. [REDACTED] was identified to the DEU as the candidate of choice. Ms. [REDACTED] told us that Ms. [REDACTED] and Mr. Hensley were the management staff involved in the recruitment action and that she worked closely with both of them keeping them informed of the progress. She said that Ms. [REDACTED] and Mr. Hensley told her that Ms. [REDACTED] was the preferred candidate. Ms. [REDACTED] said that Ms. [REDACTED] did not qualify for the position for two reasons. First, the merit promotion announcement was open to status candidates only and since Ms. [REDACTED] was never a Federal employee, she was not eligible to apply; and second, Ms. [REDACTED] resume, in Ms. [REDACTED] professional opinion, did not show that she possessed the experience necessary to meet the requirements of the position. (b)(6)

Ms. [REDACTED] told us that after the merit promotion announcement closed, her former supervisor Ms. [REDACTED] (no longer with VA) instructed her to send the staffing action to the DEU to “see if they could reach” Ms. [REDACTED]. Ms. [REDACTED] said that the reason Mr. Hensley and Ms. [REDACTED] wanted to use the DEU was to “change the category as far as who could apply for the position” to allow Ms. [REDACTED] to apply. In addition, Ms. [REDACTED] said her former supervisor told her to submit Ms. [REDACTED] name to the DEU as a “name request,” telling the DEU that Ms. [REDACTED] was the candidate that management wanted to reach. Ms. [REDACTED] identified a VHA Nationwide Recruitment Form maintained in the merit promotion file as the one she used when she requested that the DEU announce the position identifying Ms. [REDACTED] as a “name request.” The file also contained a printout from the USA Staffing website listing the names of the applicants who applied under the merit promotion announcement with a hand-written note by Ms. [REDACTED] stating, “MFR. 1-5-2009. Management did not want the merit promotion certificate to be issued. DEU, per discussion with [REDACTED].” (b)(6)

Contrary to Mr. Hensley’s claim that Ms. [REDACTED] gave him a certificate of eligibles that listed Ms. [REDACTED] and two 10-point veterans as the top three candidates, Ms. [REDACTED] told us that the DEU issued a certificate of eligibles that reflected three 10-point veterans as the top three candidates and Ms. [REDACTED] as fourth on the list. Ms. [REDACTED] said that after she showed Mr. Hensley the certificate, he asked her to do what she could to reach Ms. [REDACTED]. Ms. [REDACTED] said that she knew what Mr. Hensley meant and that he was “still interested in trying to hire Ms. [REDACTED].” Ms. [REDACTED] said that she told Mr. Hensley and her former supervisor that she believed that they were violating merit system principles; however, she said that they both instructed her to contact the top three veterans to see if they were still interested in the position. She said that she then mailed letters of inquiry to the three 10-point veterans, and records in the merit promotion file reflected that two of the three veterans replied that they were still interested in the position. Ms. [REDACTED] said that the third veteran did not reply, so she said that she called him by telephone. She said that she told the third veteran that he was being considered for a position as one of the top three candidates; however, she said that he told her that he accepted a job in Atlanta, Georgia, and that he was not interested in relocating to Washington, DC. (b)(6)

The third veteran told us that he could not recall the name of the person who contacted him, but he remembered that the female caller asked if he was still interested in proceeding with his application for a position within VA. He said that he asked the caller if she could provide more information, such as where his application stood or whether they wanted to interview him, but he said that she would not tell him anything. He further said that the caller never told him that he was referred as a top three candidate and that she seemed as though she was not allowed to give him any information. He said that she kept asking him the same thing, “Do you want to proceed?” He said that she left him with the impression that his application was sitting in a “black hole” someplace, and since she would not tell him anything regarding his status and because he applied for other positions elsewhere, he said that he chose not to proceed.

Conclusion

We concluded that Mr. Hensley abused his authority, misused his position, and engaged in a prohibited personnel practice when he preselected Ms. [REDACTED] for a Management and Program Analyst position within VA. Mr. Hensley told us that “the 10th floor” gave him Ms. [REDACTED] resume; however, records reflected that Ms. [REDACTED] husband, a former VA employee, sent it to him. Ms. [REDACTED] then sent her resume to Mr. Hensley’s personal email account and asked to speak to him about VA employment, resulting in several telephone calls placed between Mr. Hensley and Ms. [REDACTED]. Mr. Hensley then forwarded her resume to his VA-assigned email account and then to Ms. [REDACTED]. Records reflected numerous additional emails and telephone calls between Ms. [REDACTED] and Mr. Hensley, Ms. [REDACTED] and Ms. [REDACTED] or Mr. Hensley and Ms. [REDACTED]. In one, Ms. [REDACTED] told Ms. [REDACTED] that she revised her resume as per Ms. [REDACTED] request, and Ms. [REDACTED] then forwarded the revised resume to Mr. Hensley asking for his advice. In another, Ms. [REDACTED] told Mr. Hensley that she had one vacancy and again asked for his advice. Ms. [REDACTED] later told Ms. [REDACTED] in an email that she was in the process of preparing a vacancy announcement for a position in her office. Although we concluded that Ms. [REDACTED] also engaged in prohibited personnel practices, we did not recommend an administrative action against her, since she is no longer with VA. (b)(6)

Mr. Hensley told us that he and Ms. [REDACTED] determined that Ms. [REDACTED] would “fit” a marketing position in her office and that his staff knew he was interested in Ms. [REDACTED] since he referred her resume to them. When they determined that Ms. [REDACTED] was ineligible under the first job announcement, they sent the recruitment action to the DEU with Ms. [REDACTED] identified as the candidate of choice. As a result, Mr. Hensley said that Ms. [REDACTED] gave him a certificate of eligibles reflecting the names of Ms. [REDACTED] and two veteran candidates and that when Ms. [REDACTED] told him that the two veterans were not interested in the position, he selected Ms. [REDACTED]. To the contrary, Ms. [REDACTED] said that Ms. [REDACTED] was fourth on the certificate; Mr. Hensley told her to do what she could to reach Ms. [REDACTED] and after telling him that he was violating merit system principles, he told her to contact the three veterans to see if they were still interested in the position. (b)(6)

Ms. [REDACTED] then sent letters to the three 10-point veterans and when she didn't hear back from one, she called him. Although she said that the veteran told her that he was no longer interested in the position, he told us that she failed to tell him that he was referred as a top three candidate. He said that she instead made it sound like his application was sitting in a "black hole" so he said he chose not to proceed. Although Ms. [REDACTED] and Mr. Hensley's stories differ on what happened as a result of the DEU certificate, Ms. [REDACTED] version is supported by documents in the merit promotion files reflecting that Ms. [REDACTED] was ranked fourth and that Ms. [REDACTED] sent letters to the top three candidates, all 10-point veterans, with their respective replies. We recognize that Ms. [REDACTED] as a subordinate to Mr. Hensley, was following his instructions to reach Ms. [REDACTED] as his preferred candidate; however, once she felt that he was violating merit system principles, she had a duty and responsibility to follow the requirements of the law and VA policy and not Mr. Hensley's instructions. (b)(6)

We further concluded that Mr. Hensley and Ms. [REDACTED] willfully made material false statements to OIG while under oath. They both told us that they did not know one another and had no communication prior to Ms. [REDACTED] VA appointment. Ms. [REDACTED] said that neither Mr. Hensley nor anyone else on his staff told her about the position; that she had no contact with anyone at VA; and that she did not receive any assistance with her application. However, email and telephone records reflected that there were numerous contacts between Mr. Hensley, Ms. [REDACTED] and Ms. [REDACTED] concerning a VA appointment for Ms. [REDACTED]. Although Ms. [REDACTED] told us that she could not remember these specific events as a result of memory loss, we do not find it credible that she could recall specific details of events and circumstances surrounding all matters under discussion with the sole exception of her VA appointment and her personal income that was used to justify a higher rate of pay. (b)(6)

Recommendation 2. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for prohibited personnel practice, abusing his authority, and misusing his position in the appointment of Ms. [REDACTED]

Recommendation 3. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for making false statements or for a lack of candor to OIG while under oath.

Recommendation 4. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. [REDACTED] for making false statements or for a lack of candor to OIG while under oath. (b)(6)

Recommendation 5. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. [REDACTED] for engaging in a prohibited personnel practice in the appointment of Ms. [REDACTED] (b)(6)

Issue 3: Whether Mr. Hensley Failed to Properly Discharge Duties of His Position

Federal regulations state that employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government. 5 CFR § 735.203. Standards of Ethical Conduct for Employees of the Executive Branch require that employees act impartially, disclose abuse to appropriate authorities, not use one's public office for private gain, or use one's Government position to coerce or induce another person to provide any benefit to himself or friends. They also require that employees put forth an honest effort in the performance of their duties and to endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101 and 702. The Office of Personnel Management's *Guide to Senior Executive Service Qualifications*, dated October 2006, states that a fundamental competency of being a member of Senior Executive Service (SES) is behaving in an honest, fair, and ethical manner and model high standards of ethics. VA policy states that a major SES competency is the ability to foster high ethical standards in meeting the organization's vision, mission, and goals. VA Handbook 5027, Part III, Appendix A (April 15, 2002).

Ms. [REDACTED] [REDACTED] the former Director of Human Capital Planning, Development, and Outreach, told us that when she became Ms. [REDACTED] supervisor, Ms. [REDACTED] informed her that Mr. Hensley appointed her (Ms. [REDACTED] as a team leader. Ms. [REDACTED] said that it soon became apparent that Ms. [REDACTED] was incapable of performing team leader duties and that Ms. [REDACTED] did not get along with her colleagues. Ms. [REDACTED] said that her direct supervisor, Ms. [REDACTED] the former ADAS for Policy and the former DAS for the Office of Human Resources Management, told her that Mr. Hensley said that Ms. [REDACTED] was never given a chance to succeed as a team leader and that he directed Ms. [REDACTED] to ensure that Ms. [REDACTED] coached and mentored Ms. [REDACTED] to ensure her success as a team leader. (Ms. [REDACTED] and Ms. [REDACTED] no longer work at VA.) (b)(6)

Ms. [REDACTED] told us that Ms. [REDACTED] had outbursts and an "unproductive communication style." She said that this eventually led employees under Ms. [REDACTED] to complain about her abusive behavior and refusal to work. As a result, Ms. [REDACTED] said that she discussed Ms. [REDACTED] job performance with her and gave her the option of stepping down from the team leader position. She further said that she told Ms. [REDACTED] that if she chose to remain in the position, she (Ms. [REDACTED] would continue to coach and mentor her; however, she said that she told Ms. [REDACTED] that this would mean more oversight and feedback to Ms. [REDACTED] in an effort to improve her job performance. Ms. [REDACTED] said that Ms. [REDACTED] decided to step down from the team leader position, but Ms. [REDACTED] asked to have a meeting to tell the other team members of her decision. Ms. [REDACTED] said that Ms. [REDACTED] arrived 20 minutes late for the meeting and that she told attendees as she entered the room that she was at lunch with "Willie." (b)(6)

Ms. [REDACTED] further told us that Mr. Hensley seemed to be protective of Ms. [REDACTED] and that she seemed to be very comfortable with going directly to him, bypassing her (b)(6)

supervisory chain. She said that there was an occasion when she counseled Ms. [REDACTED] for not completing an assignment. She said that when she asked Ms. [REDACTED] why she did not do as instructed, Ms. [REDACTED] said that she spoke to Mr. Hensley and he told her (Ms. [REDACTED] that he did not see a need for her to do it. Ms. [REDACTED] said that she was never overtly told that she was not to take any supervisory action against Ms. [REDACTED] however, she said that it was “tacit and clear” that Ms. [REDACTED] was to work remotely from her residence [REDACTED] and that Ms. [REDACTED] was to do everything that she could to “make it work” because “Willie says so.” (b)(6)

Ms. [REDACTED] told us that Ms. [REDACTED] as well as Ms. [REDACTED] subordinates, complained about Ms. [REDACTED] saying that she (Ms. [REDACTED] was often unavailable, could not be reached during the workday, and when they questioned Ms. [REDACTED] as to her whereabouts, she became defensive. Ms. [REDACTED] further said that there was a perception throughout the office that if you “touched [REDACTED] there would be wrath to bear because of her close connection with Mr. Hensley.” (b)(6)

Ms. [REDACTED] former and current supervisors told us the following:

- She was a “complete derailer” because she refused to do any work; she brought no value to the organization.
- She did not demonstrate GS-14 level work; was unable to perform duties; spoke to colleagues in degrading manner and refused to collaborate; lacked initiative and ability; failed to follow protocols; bypassed her chain of command; failed to get proper approvals; not a team player; refused to sign her performance standards, because she did not approve of them ahead of time; and if rated today would be less than fully successful.

Ms. [REDACTED] said that Ms. [REDACTED] wanted to take corrective action against Ms. [REDACTED] however, they were concerned that Mr. Hensley would intervene and protect her, given his and Ms. [REDACTED] “alignment” or “affiliation” with one another. Ms. [REDACTED] said that their concern was based not only on what they saw as a personal relationship between Ms. [REDACTED] and Mr. Hensley but also on what they previously experienced from Mr. Hensley involving Ms. [REDACTED] (b)(6)

Ms. [REDACTED] said that she and Ms. [REDACTED] did not approve of Ms. [REDACTED] being appointed above the minimum rate of pay at the time she was hired, because she did not have the required superior qualifications. Ms. [REDACTED] said that as a result of not approving the higher pay, Mr. Hensley became upset with her and Ms. [REDACTED] and Ms. [REDACTED] was nonetheless hired at a higher rate of pay without their approval.

Ms. [REDACTED] said that Mr. Hensley told her that “the 10th floor” wanted Ms. [REDACTED] hired and that he directed her to “make this happen.” She said that Mr. Hensley saw Ms. [REDACTED] skills as meeting the requirements of a marketing position in Ms. [REDACTED] (b)(6)

office and that he wanted her hired for that position. Ms. [REDACTED] said that Mr. Hensley also directed her to hire Ms. [REDACTED] at a higher than minimum rate of pay; however, Ms. [REDACTED] said that after reviewing Ms. [REDACTED] resume, she did not believe that her experience was sufficient to justify a higher salary. She said that she then referred the matter to Ms. [REDACTED] because she said that ultimately it was Ms. [REDACTED] decision. She also said that after Ms. [REDACTED] reviewed Ms. [REDACTED] resume, Ms. [REDACTED] replied back in writing that based on the information contained in Ms. [REDACTED] resume, she did not meet the superior qualifications required for a higher rate of pay. Ms. [REDACTED] said that she supported Ms. [REDACTED] decision and that she told Mr. Hensley that the higher salary would not be approved. She said that Mr. Hensley then came to her office and directed that she sign the documents approving Ms. [REDACTED] higher rate of pay; however, she said that she refused to sign them. (b)(6)

Ms. [REDACTED] former and current supervisors told us the following:

- She bragged to her colleagues that her husband, a former DAS, was “tight” with Mr. Hensley; VA would give her anything she wanted; colleagues should fear her because she could “take care of them;” bragged about her higher than minimum pay rate; and lacked the knowledge of her claimed job experience.
- She did not have the required technical work knowledge and that when hired she qualified for the position at a GS-11 level not GS-13.

Ms. [REDACTED] told us that shortly after Ms. [REDACTED] was assigned to Ms. [REDACTED] office, someone unknown began informing Mr. Hensley of Ms. [REDACTED] management decisions. She said that Mr. Hensley then focused on Ms. [REDACTED] and told Ms. [REDACTED] that he received employee “feedback” about “things” and that he wanted to assess Ms. [REDACTED] office. Ms. [REDACTED] said that when the assessment was completed, the assessment team was to first meet with her and Mr. Hensley to provide them their findings and then to follow up with a group meeting of Ms. [REDACTED] staff. However, Ms. [REDACTED] said that she was never told when this meeting was to take place and that by coincidence while walking down the hall, she saw Mr. Hensley entering a room to meet with the assessment team alone. She said that she then invited herself to the meeting. (b)(6)

Ms. [REDACTED] said that the team reported that Ms. [REDACTED] subordinates admired and respected her and that even though she had not been in her position for a very long time, they felt that she was moving the office in a positive direction. Ms. [REDACTED] said that the assessment team further said that Ms. [REDACTED] subordinates believed that Mr. Hensley was protecting Ms. [REDACTED] and Ms. [REDACTED] and that the subordinates feared retaliation if they did or said anything or reacted in any way towards Ms. [REDACTED] or Ms. [REDACTED] (b)(6)

Ms. [REDACTED] said that when the team later met with Ms. [REDACTED] staff, Mr. Hensley decided to attend as well. She said that as a result of his attendance, the meeting became very controlled and subordinates did not participate in an open discussion. Ms. [REDACTED] (b)(6)

said that afterwards, Mr. Hensley told her that he wanted to have a meeting to discuss the assessment team's findings but that he did not want Ms. [REDACTED] to attend. Ms. [REDACTED] (b)(6) said that she insisted that Ms. [REDACTED] be included in this meeting, since it was her office. She said that Mr. Hensley eventually agreed; however, she said that the meeting was rescheduled several times and never took place.

Records of the VHA National Center for Organization Development (NCOD) workplace assessment contained the following examples of weaknesses and desired changes found by the assessment team:

- Fear that the NCOD assessment was a “ploy” for changing leadership
- Lack of psychological safety - special relationships and favoritism
- Perceived lack of respect for the chain of command
- Quit “whipping the mules and grazing the ponies”

Mr. Hensley told us that when Ms. [REDACTED] replaced Dr. Holmes in HCPDO, she, like Dr. Holmes, had some “real struggles” in that office. He said that Ms. [REDACTED] was not one of his stronger supervisors and that he began to get indications of some morale issues taking place within her office. He said that he arranged for the VHA NCOD to conduct (b)(6) an assessment, and he said that he later learned that Ms. [REDACTED] thought it was his attempt to get back at Ms. [REDACTED]. He acknowledged that the assessment reflected that some of the employees felt that there was an appearance that he favored certain employees, but he told us that he believed employees had that misconception due to Dr. Holmes telling them that he (Mr. Hensley) hired Ms. [REDACTED] and set up her telework agreement. Mr. Hensley told us that what Dr. Holmes said “was a flat out lie,” that it did not happen that way; and that Dr. Holmes failed to clear up these misunderstandings before he left.

Mr. Hensley said that when he attended the assessment team's briefing with Ms. [REDACTED] staff, no one complained about him. He said that he asked Ms. [REDACTED] to develop an action plan to address employee concerns; that she never put a plan in place; and the issues were never addressed. He said that when Ms. [REDACTED] and Ms. [REDACTED] both left (b)(6) VA, he did not follow up with employee concerns that were identified through the office assessment, because he thought that by their leaving, the problem would clear up on its own. He, however, said that he should have followed up on the assessment findings.

Conclusion

We concluded that Mr. Hensley failed to properly discharge the duties of his position. We previously concluded in Issues 1 and 2 that he abused his authority, misused his position, and engaged in prohibited personnel practices in Ms. [REDACTED] reassignment (b)(6)

and Ms. [REDACTED] VA appointment. Mr. Hensley told us that he and Ms. [REDACTED] were in a relationship of varying degrees since 2004 and that he knew Ms. [REDACTED] husband, a former VA employee and fraternity brother. Although Mr. Hensley said that both Dr. Holmes and Ms. [REDACTED] struggled as supervisors, the one thing in common for both was supervising Ms. [REDACTED] while in Mr. Hensley's chain of command. (b)(6)

Ms. [REDACTED] former supervisors told us that Ms. [REDACTED] used her relationship with Mr. Hensley as leverage over her supervisors and coworkers to the point that there was a perception throughout the office that there would be a "wrath to bear" should anyone cross her. Ms. [REDACTED] bragged about her husband and Mr. Hensley's connection and that her colleagues should fear her. Additionally, supervisors for both Ms. [REDACTED] and Ms. [REDACTED] told us that these individuals lacked the knowledge and skills to successfully perform the duties of their positions. Mr. Hensley told us that an NCOD assessment reflected that there was an appearance that he favored certain employees whom Ms. [REDACTED] identified as Ms. [REDACTED] and Ms. [REDACTED] however, Mr. Hensley, rather than follow up and take corrective actions, assumed that the identified issues would disappear after Ms. [REDACTED] and Ms. [REDACTED] left VA. As a high level VA leader, particularly within HRA, and as an SES, Mr. Hensley had a duty and responsibility to foster an environment of high ethical standards. He used his position to benefit Ms. [REDACTED] and Ms. [REDACTED] for their own personal gain, and he failed to take immediate action to create a workplace free of partiality and hostility due to his personal relationship to each. (b)(6)

Recommendation 6. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to properly discharge the duties of his position.

Issue 4: Whether Ms. [REDACTED] Misrepresented Her Salary and a Former Employee Failed to Follow Policy on Pay Setting (b)(6)

Federal regulations state that an agency may make a superior qualifications appointment and set the initial pay at a rate higher than the minimum rate if: (1) the candidate has superior qualifications based on the level, type, or quality of the candidate's skills or competencies demonstrated or obtained through experience and/or education, the quality of the candidate's accomplishments compared to others in the field, or other factors that support a superior qualifications determination. The candidate's skills, competencies, experience, education, and/or accomplishments must be relevant to the requirements of the position to be filled. These qualities must be significantly higher than that needed to be minimally required for the position and/or be of a more specialized quality compared to other candidates; or (2) a candidate fills a special agency need if the type, level, or quality of skills and competencies or other qualities and experiences possessed by the candidate are relevant to the requirements of the position and are essential to accomplishing an important agency mission, goal, or program activity. A candidate also

may meet the special needs criteria by meeting agency workforce needs, as documented in the agency's strategic Human Capital Plan. 5 CFR § 531.212(b).

In determining the rate of pay, an agency may consider one or more factors, as applicable to the case at hand, including: (1) The level, type, or quality of the candidate's skills or competencies; (2) The candidate's existing salary, recent salary history, or salary documented in a competing job offer (taking into account the location where the salary was or would be earned and comparing the salary to payable rates of basic pay in the same location); (3) Significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled; (4) Existing labor market conditions and employment trends, including the availability and quality of candidates for the same or similar positions; (5) The success of recent efforts to recruit candidates for the same or similar positions; (6) Recent turnover in the same or similar positions; (7) The importance/criticality of the position to be filled and the effect on the agency if it is not filled or if there is a delay in filling it; (8) The desirability of the geographic location, duties, and/or work environment associated with the position; (9) Agency workforce needs, as documented in the agency's strategic human capital plan; or (10) Other relevant factors. Id., at (c).

In determining whether to use the superior qualifications and special needs pay-setting authority and the level at which the employee's payable rate of basic pay should be set, an agency must consider the possibility of authorizing a recruitment incentive under 5 CFR part 575, subpart A. Id., at (d).

An agency must approve each determination to use the superior qualifications and special needs pay-setting authority prior to the candidate entering on duty. Each determination must be made in writing and reviewed and approved by an official of the agency who is at least one level higher than the employee's supervisor, unless there is no official at a higher level in the agency. An agency must document all of the following for each determination to use the superior qualifications and special needs pay-setting authority sufficient to allow reconstruction of the action taken in each case: (i) The superior qualifications of the candidate under paragraph (b)(1) of this section or the special agency need for the candidate's services under paragraph (b)(2) of this section which justifies a higher than minimum rate; (ii) An explanation of the factor(s) and supporting documentation under paragraph (c) of this section which were used to justify the rate at which the employee's pay is set. The written documentation must explain how the factors directly relate to the rate approved; and (iii) The reasons for authorizing a higher than minimum rate instead of or in addition to a recruitment incentive under 5 CFR part 575, subpart A. Id., at (e).

An agency must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, this section of OPM regulations, and agency policies. Id., at (f).

VA policy states that an appointment at a rate above the minimum salary of a General Schedule grade may be made based on the superior qualifications or the special need for the candidate's skills and that requests for approval will be submitted to Central Office Human Resources for technical review and concurrence prior to submission to the approving official. VA Handbook 5007/30, Part II, Chapter 3, Paragraph 4 and Appendix D (December 6, 2007). Policy further states that the justification must include a description of the recruitment efforts; a description of the candidate's superior qualifications and a comparison of the candidate's skills to those of other available applicants; documentation of existing pay; explanation of how the proposed rate was determined to be appropriate; and reasons for the rate instead of, or in addition to, a recruitment incentive.

Personnel records reflected that on February 17, 2009, Ms. [REDACTED] was appointed to a position in OHRM as a Management and Program Analyst, GS-0343-13, step 7, with a starting salary of \$104,314, or \$17,387 more than the minimum rate of pay for a GS-13, step 1. The Notice of Personnel Action form associated with Ms. [REDACTED] appointment stated that it was a Superior Qualifications Appointment. The Central Office Human Resources Service, the organization within VA Central Office that maintains recruitment files, was unable to provide us with the required documentation pertaining to the justification, review, and approval of Ms. [REDACTED] higher than minimum salary. (b)(6)

Ms. [REDACTED] said that Mr. Hensley directed her to hire Ms. [REDACTED] at a higher than minimum salary; however, after she reviewed Ms. [REDACTED] resume, she did not believe that Ms. [REDACTED] experience was sufficient to justify a higher salary. She said that she then referred the matter to Ms. [REDACTED] that Ms. [REDACTED] reviewed the resume; and that Ms. [REDACTED] replied back in writing that Ms. [REDACTED] did not meet the superior qualification requirement based on the information in her resume. Ms. [REDACTED] said that she supported Ms. [REDACTED] decision and that she told Mr. Hensley that the higher salary would not be approved. Ms. [REDACTED] said that Mr. Hensley then came to her office and directed her to sign the documents approving the higher salary; however, she told us that she refused to sign them. (b)(6)

Ms. [REDACTED] told us that shortly after she began working at VA, an HR Specialist told her that Ms. [REDACTED] was hired as a marketing specialist and would be assigned to her organization. Ms. [REDACTED] said that she was unaware that she had such a position and that this was the first she heard of Ms. [REDACTED] appointment. Ms. [REDACTED] said the HR Specialist asked her to review the package regarding the setting of Ms. [REDACTED] pay at a higher than minimum rate, and Ms. [REDACTED] said that her HR background made her well versed in the requirements for making a superior qualification appointment. She said, however, when she read Ms. [REDACTED] resume, she was "stunned" at the lack of qualifications she found and said that not only did Ms. [REDACTED] not qualify for the position at a step 7 salary, she believed that Ms. [REDACTED] did not even qualify at the GS-13, step 1 level. (b)(6)

Ms. [REDACTED] said that after she told the HR Specialist that she would not approve the request to appoint Ms. [REDACTED] at a higher than minimum rate, Ms. Caren Eirkson, former (retired) Personnel Officer and Director of VA Central Office HR Service, contacted her strongly advocating for setting Ms. [REDACTED] pay at the step 7 level. She said that Ms. Eirkson argued that the regulations allowed it. Ms. [REDACTED] said that Ms. [REDACTED] who supervised her (Ms. [REDACTED] and Ms. Eirkson, became involved in the debate, and she said that Ms. [REDACTED] directed Ms. Eirkson to present the policy that supported her position. Ms. [REDACTED] said that Ms. Eirkson later said that she mistakenly referenced a policy pertaining to pay setting for employees appointed under a title 38 (VA health care providers) and not a title 5 (most civil service employees) authority and that she (Ms. Eirkson) said that she would tell Mr. Hensley that Ms. [REDACTED] did not qualify for the higher salary. Ms. [REDACTED] further said that a few days later, she learned that Ms. [REDACTED] would be starting to work in her office and that she was given the higher pay rate of a step 7. She said that she asked Ms. Eirkson how this happened and that Ms. Eirkson told her “Willie approved it . . . he’s comfortable with it.” (b)(6)

Ms. Eirkson told us that Ms. [REDACTED] would not accept an appointment at the GS-13, step 1 salary level and that Mr. Hensley asked her to review Ms. [REDACTED] resume to determine whether or not she could be appointed at a higher rate of pay. Ms. Eirkson said that Ms. [REDACTED] was being appointed to a marketing position and that she (Ms. Eirkson) determined that Ms. [REDACTED] past experience in working in that capacity and with “other newspaper stuff . . . could be creditable experience toward the higher level.” She said that she had the authority to approve it, but she said that the hiring manager had to support it. She told us that she determined that the setting of Ms. [REDACTED] pay at the step 7 was proper, and when Ms. [REDACTED] and Ms. [REDACTED] disagreed and would not support that determination, the authority to approve rested with Mr. Hensley. Ms. Eirkson said that she “put the paperwork together” and Mr. Hensley signed it. (b)(6)

Ms. Eirkson said, “I definitely knew that it was something that Willie wanted done.” She said that he asked her to look at the regulations, look at Ms. [REDACTED] resume, and make a determination if it could be justified. Ms. Eirkson also said that although it was not the “strongest case in the world,” she believed she could justify giving Ms. [REDACTED] the higher salary. Ms. Eirkson told us that part of her job was to work within the rules and regulations but it was also to support what a manager wanted instead of being “rigid.” She said that in this case, she made a determination, based on her judgment, that the rules and regulations allowed her to be flexible in this case. She further said that she recalled a heated discussion with Ms. [REDACTED] but she said she recalled that Ms. [REDACTED] was not arguing about Ms. [REDACTED] qualifications but rather from the standpoint that she did not have any say in the matter of Ms. [REDACTED] appointment. Ms. Eirkson said that she told Ms. [REDACTED] that “this is the kind of thing that we just have to do sometimes.” (b)(6)

Ms. [REDACTED] told us that she believed Ms. [REDACTED] higher salary was improperly approved and that she questioned Ms. Eirkson as to the whereabouts of the proper documentation and justification for the action. Ms. [REDACTED] said that Ms. Eirkson told her that she was handling the matter herself, directing Ms. [REDACTED] to appoint Ms. [REDACTED] at the GS-13, step 7 level. Ms. [REDACTED] however, said that Ms. Eirkson failed to provide her with the proper documentation and justification. Ms. [REDACTED] said that when she asked that Ms. Eirkson give her something in writing, Ms. Eirkson gave her a one-sentence memorandum instructing her to appoint Ms. [REDACTED] at that level. Ms. Eirkson said that Mr. Hensley signed the approval paperwork for Ms. [REDACTED] higher salary; however, she could not give any explanation as to why there was no paperwork to support the higher rate of pay. She also could not explain why she gave Ms. [REDACTED] a short, one-sentence memorandum directing her to appoint Ms. [REDACTED] at the higher rate of pay instead of the typical approval letter with justification. (b)(6)

Ms. Eirkson told us that when she made the determination that Ms. [REDACTED] qualified for the higher rate of pay, the only thing that she considered was Ms. [REDACTED] experience as listed in her resume, stating that she felt that information alone was sufficient to justify the higher salary. Ms. Eirkson further said that she was unaware of any recruitment efforts or whether additional recruitment efforts would have resulted in other qualified candidates. She said that she did not review any other resumes submitted by applicants to compare them to Ms. [REDACTED] qualifications and that she did not look at Ms. [REDACTED] prior salary. However, Ms. [REDACTED] said that she reviewed documentation of Ms. [REDACTED] prior salary and did not believe it to be credible. Another HR Specialist who worked under Mr. Hensley and prepared the initial justification package for Ms. [REDACTED] to review told us that she received an email from Ms. [REDACTED] with an Internal Revenue Service Wage and Tax Statement form (W-2) attached and that the W-2 was used to justify her request for the higher pay. (b)(6)

Ms. Eirkson told us that even though she knew this was a borderline case and that she would not have reached the same determination for any other manager other than Mr. Hensley, he “wanted it to happen” and that she was going to give Mr. Hensley what he wanted, as long as she felt it was “legitimate” and not “really violating something.” She also said that she disregarded Ms. [REDACTED] and Ms. [REDACTED] opinions as to the propriety of approving the higher salary for Ms. [REDACTED] because they were both newly employed at VA, and she said that she did not feel that their opinions were as valid as Mr. Hensley's, since he was a “long-term manager.” She said that she received her guidance from Mr. Hensley and that she was going to follow his direction rather than what Ms. [REDACTED] or Ms. [REDACTED] told her. However, Mr. Hensley acknowledged that he approved Ms. [REDACTED] higher salary and said that he did so after Ms. Eirkson told him that it was proper. He said he relied upon Ms. Eirkson’s advice and counsel and that after she told him Ms. [REDACTED] qualified for the higher salary he signed the approval letter. (b)(6)

Ms. ██████ told us that she requested a higher than minimum salary and that she represented her prior annual salary as \$104,000. She said that she submitted a tax form showing the amount she made from her self-employment. However, Ms. ██████ admitted that the amount she claimed was actually her gross business income, before expenses, and that it did not accurately reflect her actual salary or personal income from the business. Ms. ██████ told us that she did not know the difference between her gross business income and her salary from the business and that she previously represented her personal income as \$104,000, because she did not know the difference. Ms. ██████ told us that she estimated that her annual salary, prior to her VA appointment, was between \$35,000 and \$50,000. (b)(6)

Conclusion

We concluded that both Mr. Hensley and Ms. Eirkson failed to follow Federal regulations and VA policy in setting Ms. ██████ pay at a rate higher than minimum rate. Mr. Hensley knew, or should have known, of the requirements to document and justify setting a higher than minimum rate of pay. He told us that he relied on Ms. Eirkson to advise him on matters such as this; however, Ms. Eirkson said that she gave Mr. Hensley whatever he wanted. Furthermore, as someone who advises the Secretary, his Executive Staff, and the Department's human resources managers and practitioners on matters pertaining to human resources, and who has authority and oversight of the VA Central Office Administration and the Office of Human Resources Management, Mr. Hensley should be thoroughly knowledgeable and informed as to the requirements that must be met before pay is set above the minimum rate. (b)(6)

Likewise, Ms. Eirkson, who at the time was the Personnel Officer, failed to follow Federal regulations and VA policy when she made an arbitrary and capricious decision to appoint Ms. ██████ at a higher than minimum salary. Ms. Eirkson said that she prepared the documentation to ensure that the pay setting action was properly documented, but she could not explain why it presently does not exist. However, Ms. ██████ told us that Ms. Eirkson told her that she (Ms. Eirkson) would handle the pay setting action, would not provide her the proper documentation, and instead gave her a one-line memorandum instructing her to appoint Ms. ██████ at a higher rate of pay. Although we concluded that Ms. Eirkson failed to follow Federal regulations and VA policy for superior qualifications appointments and pay setting, we did not recommend an administrative action against her, since she is no longer with VA. (b)(6)

Moreover, Ms. ██████ misrepresented her income at the time of her appointment to be double to triple her actual annual income. Ms. ██████ assertion that she did not know the difference between gross business income and personal income is not credible, since she would have accounted for each when she filed her Federal and State tax returns. Claiming her gross business income benefited her by exaggerating her personal income to justify a higher rate of pay with her VA appointment. (b)(6)

We also concluded that the level at which Ms. [REDACTED] salary was set was not proper given her questioned experience and qualifications and grossly inflated annual income. If Ms. [REDACTED] were appointed at the GS-13, step 1 level, and her supervisor concurred with the annual increase, she would presently be at a GS-13, step 2. (b)(6)

Recommendation 7. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to follow Federal regulations and VA policy for superior qualifications appointments and pay setting.

Recommendation 8. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. [REDACTED] for misrepresenting her annual salary for an appointment at a higher than minimum rate of pay.

Recommendation 9. We recommend that the VA Chief of Staff ensures that an assessment is completed to (1) determine whether Ms. [REDACTED] should remain employed at VA, due to her improper appointment; (2) determine whether she should retain her improper higher than minimum rate of pay, should she remain employed at VA, and; (3) determine the amount of improper salary paid to her as a step 7, versus a step 1, and issue her a bill of collection to recoup monies paid as a result of her misrepresenting her annual salary. (b)(6)

Issue 5: Whether Ms. [REDACTED] Misused Her Official Time and Whether She was Authorized to Telework (b)(6)

VA policy requires that an employee complete a Telework Proposal; have their supervisor's approval; develop a telework agreement which lists all terms and conditions for the telework arrangement; complete a User's Remote Computer Security Agreement; complete a Telework Self-Certification Safety Checklist to submit it to the immediate supervisor; notify the Information Security Officer (ISO) of the telework arrangement; and obtain ISO certification approving that the appropriate security controls are in place. VA Handbook 5011/5, Part II, Chapter 4 (September 22, 2005). Standards of Ethical Conduct for Employees of the Executive Branch require that an employee use their official time in an honest effort to perform official duties. 5 CFR § 2635.705. 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; to observe the opening and closing hours established for the tour of duty; and to adhere to established luncheon periods. VA Handbook 5011, Part II, Chapter 2, Paragraph 1(a)(7) (April 15, 2002).

Personnel records reflected that Ms. [REDACTED] was reassigned to OHRM in February 2008 and permitted to work fulltime from her residence [REDACTED]. Records also contained a Letter of Alternative Discipline, dated November 18, 2008, which resulted from a previous substantiated misconduct and placed in her file as a part of an EEO settlement. However, OHRM could not provide any documentation authorizing Ms. [REDACTED] to telework from her residence. Ms. [REDACTED] formerly Ms. [REDACTED] supervisor, told us that (b)(6)

Ms. [REDACTED] telework arrangements were dubious and that several employees questioned whether Ms. [REDACTED] used her official time properly. She said that although she never caught Ms. [REDACTED] misusing her time, she said that she did not know what Ms. [REDACTED] did to fill her workday. (b)(6)

Ms. Debbie Kolen, Director for Recruitment and Placement Policy, who is Ms. [REDACTED] current supervisor, said she has concerns about Ms. [REDACTED] telework arrangements and that it was hard to supervise her remotely. She also said that it was more expensive to send her to training from that rural area. Ms. Kolen told us that she thought about conferring with her own supervisors to see if she could require Ms. [REDACTED] to work from a nearby VA facility rather than from her residence. She said that on one occasion, while on the phone with Ms. [REDACTED] she heard a child yelling in the background but when she asked about the noise, Ms. [REDACTED] told her it was her dog. Ms. Kolen said that she did not say anything further to Ms. [REDACTED] about the matter. (b)(6)

Ms. [REDACTED] told us that there were times when she kept her [REDACTED] at home during the workday, in lieu of daycare, and that there were also times that she left her home to drop [REDACTED] off and pick [REDACTED] up from school during her duty hours. Ms. [REDACTED] also said that she was interested in starting her own business and that she used her official time to communicate with different companies to inquire about business opportunities. Further, she said that she volunteered for a local charitable organization and attended community meetings during her official duty hours. (b)(6)

Conclusion

We concluded that Ms. [REDACTED] misused her official time while teleworking from her residence [REDACTED]. We also found that OHRM management failed to ensure that VA telework policy and appropriate security measures were followed. There was no documented record of a Telework Proposal or a Telework Self-Certification Safety Checklist forms completed by Ms. [REDACTED] and approved by Management. Further, there was no record that OHRM's Information Security Officer was notified of this telework arrangement or that the ISO certified that the appropriate security controls were in place. These failures could put the Department on a destructive path, should there be a loss of VA data as a result of a lack of security controls by OHRM and Ms. [REDACTED]. (b)(6)

Recommendation 10. We recommend that the VA Chief of Staff ensures that a review is done to determine whether Ms. [REDACTED] should continue teleworking from her residence, and if so, that OHRM management and Ms. [REDACTED] comply with VA policy.

Recommendation 11. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. [REDACTED] for not working her full tours of duty. (b)(6)

Comments

The Chief of Staff concurred with all our recommendations with the exception of Recommendation 5. We acknowledge the Chief of Staff's comments, but we disagree. *Special Counsel v. Lee* remains valid MSPB law, issued in May 2010, and it holds that 5 USC § 2302(b)(6) also reaches "conduct that aids and abets another who is violating the statute," and its holding directly applies to two HR Specialists. However, without conceding our conclusion that a prohibited personnel practice has occurred, we accept the Department's commitment to take appropriate administrative action against the HR Specialist as meeting the intent of the recommendation. The Chief of Staff's comments can be found in Appendix A. We will follow up to ensure that the recommendations are fully implemented.

(original signed by:)
JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Chief of Staff Comments

**Department of
Veterans Affairs**

Memorandum

Date: September 15, 2010

From: VA Chief of Staff (00A)

Subject: Draft Inspector General Report – Administrative Investigation: Prohibited Personnel Practices, Abuse of Authority, Misuse of Position, and False Statements, Office of Human Resources and Administration, VACO

To: Office of Inspector General (50)

1. I have reviewed the Draft Inspector General Report entitled “Administrative Investigation: Prohibited Personnel Practices, Abuse of Authority, Misuse of Position, and False Statements, Office of Human Resources and Administration, VA Central Office.” My response to the IG’s findings is attached.

2. Thank you for the opportunity to review this draft report and comment. Should you need further information, you may reach me at 202-461-4808.


John R. Gingrich

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

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

OIG Recommendations

Recommendation 1. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for engaging in a prohibited personnel practice, abusing his authority, and misusing his public office in the reassignment of Ms. [REDACTED] to OHRM. (b)(6)

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 2. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for engaging in a prohibited personnel practice, abusing his authority, misusing his position in the appointment of Ms. [REDACTED]. (b)(6)

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 3. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for making false statements or for a lack of candor to OIG while under oath.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation regarding taking appropriate administrative action against Mr. Hensley. I disagree with the characterization that Mr. Hensley made false statements to OIG while under oath, and find instead Mr. Hensley engaged in a lack of candor to OIG officials while under oath. I will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted for lack of candor to OIG officials and then will ensure appropriate action is taken.

Recommendation 4. We recommend that the VA Chief of Staff ensures that appropriate administration action is taken against Ms. [REDACTED] for making false statements or for a lack of candor to OIG while under oath. (b)(6)

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation regarding taking appropriate administrative action against Ms. [REDACTED]. I disagree with the characterization that Ms. [REDACTED] made false statements to OIG while under oath, and find instead that Ms. [REDACTED] engaged in a lack of candor to OIG officials while under oath. I will discuss the matter with Ms. [REDACTED] supervisor to determine what corrective action is warranted for lack of candor to OIG officials and then will ensure appropriate action is taken. (b)(6)

Recommendation 5. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. [REDACTED] for engaging in a prohibited personnel practice in the appointment of Ms. [REDACTED] (b)(6)

Non-Concur **Target Completion Date:** December 5, 2010

I do not concur with this recommendation. Ms. [REDACTED] does not have authority to take a personnel action therefore cannot engage in a prohibited personnel practice. Ms. [REDACTED] is a Human Resource Specialist and her supervisory chain of command includes Mr. Hensley. Mr. Hensley had the authority to take, direct others to take, recommend or approve any personnel action, and thus was can engage in a prohibited personnel practice. See *Special Counsel v. Lee*, 114 MSPR 57 (May 14, 2010), where the Board held HR Specialists were liable for a prohibited personnel practice only because neither HR Specialist was subordinate to the hiring authority and the HR Specialists should have exercised independent judgment and challenged local management's preference. The Board indicated, however, that had the HR Specialists in *Lee* been subordinates of the person who engaged in a prohibited personnel practice, they would not have been held liable for a prohibited personnel practice. Ms. [REDACTED] was a subordinate of Mr. Hensley, and she did not have the ability to exercise independent judgment. Therefore any action she took cannot be considered a prohibited personnel practice. We will ensure Ms. [REDACTED] receives appropriate administrative action to ensure she properly administers the duties of her position. (b)(6)

Recommendation 6. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to properly discharge the duties of his position.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation but consider it duplicative of Recommendation 1 and 2. The allegations with regard to Mr. Hensley's failure to act on the recommendations of the NCOD assessment are not clearly supported by the evidence. The other conclusions presented in support of this recommendation are more clearly related to Recommendations 1 and 2. We will ensure action is taken with regards to Recommendation 1 and 2.

Recommendation 7. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to follow Federal regulations and VA policy for superior qualifications appointments and pay setting.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 8. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. [REDACTED] for misrepresenting her annual salary for an appointment at a higher than minimum rate of pay. (b)(6)

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 9. We recommend that the VA Chief of Staff ensures that an assessment is completed to (1) determine whether Ms. [REDACTED] should remain employed at VA, due to her improper appointment; (2) determine whether she should retain her improper higher than minimum rate of pay, should she remain employed at VA, and; (3) determine the amount of improper salary paid to her as a step 7, versus a step 1, and issue her a bill of collection to recoup monies paid as a result of her misrepresenting her annual salary. (b)(6)

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 10. We recommend that the VA Chief of Staff ensures that a review is done to determine whether Ms. [REDACTED] should continue teleworking from her residence, and if so, that OHRM management and Ms. [REDACTED] comply with VA policy. (b)(6)

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 11. We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. [REDACTED] for not working her full tours of duty. (b)(6)

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

OIG Contact and Staff Acknowledgments

OIG Contact	Linda Fournier (202) 461-4500
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Acknowledgments	Charles Millard Charles Knorr Leanne Shelly
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