



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Failure to Follow VA Policy VA Medical Center Washington, DC



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

TO: Deputy Under Secretary for Health for Operations and Management

SUBJECT: Administrative Investigation – Failure to Follow VA Policy, VA Medical Center, Washington, DC (2015-01119-IQ-0007)

Purpose, Findings, and Impact

On November 25, 2014, the VA Office of Inspector General (OIG) received an allegation that Mr. Brian Hawkins, Director, VA Medical Center (VAMC), Washington, DC, authorized thousands of dollars of ratings-based monetary awards without performance appraisals reflecting justification for the awards. After we initiated our investigation, we found that Mr. Hawkins already convened an Administrative Investigation Board (AIB) to investigate the improper monetary awards and other allegations listed in a complaint letter sent to VA's Secretary. We received a subsequent allegation that Mr. Hawkins attempted to impede the AIB, and through communications with Mr. Fernando Rivera, the former VA Capital Health Care Network Director; Mr. Joseph Williams, current VA Capital Health Care Network Director; and the Office of General Counsel (OGC), the convening authority for the AIB was ultimately transferred to Mr. Williams. We also found emails containing VA sensitive personnel information that Mr. Hawkins sent from his VA-assigned email account to his and his spouse's private email accounts.

Objective, Scope, and Methodology

To assess the allegations, we interviewed Mr. Hawkins, members of the AIB, and other VA employees. We reviewed personnel and email records, as well as the completed AIB and associated memoranda. When we discovered that Mr. Hawkins forwarded VA sensitive information to his personal email account, we subpoenaed his private email account for all correspondence forwarded from his VA-assigned email, and he provided us numerous emails which he sent using his VA email to his private email account. He, however, refused to provide any email he sent from his VA email to his spouse's private email, as he asserted those were protected as spousal privilege. Despite his refusal, we were able to confirm that he sent VA sensitive information from his VA email account to his spouse's private email account. Since Mr. Hawkins' wife is not a VA employee and had no official need to know VA sensitive information, Mr. Hawkins failed to comply with VA policies for handling VA sensitive information by emailing this information to his spouse. We also reviewed relevant Federal laws, regulations, and VA policies.

Background:

Administrative Investigation Board

On October 29, 2014, Mr. Rivera initiated an AIB to investigate specific allegations; however, after he and Mr. Hawkins discussed the AIB, they agreed that Mr. Hawkins, not Mr. Rivera, would charge the AIB and keep it at the VAMC level. Mr. Rivera told us, “We agreed that it would be a good thing to do, to investigate it and to have, you know, the VISN [Human Resources (HR)] person do it.”

On October 30, 2014, Mr. Hawkins charged the AIB with investigating the following four allegations concerning the VAMC HR Management Service (HRMS): 1) hostile work environment; 2) prohibited personnel practices; 3) violations of the Performance Management System, and; 4) violation of privacy and release of information. The Charge Letter authorized the AIB “to inquire into all aspects of this matter...and to gather other evidence that you determine is necessary and relevant.” Mr. William Coy, former Network HR Officer, was appointed as the AIB Chairperson.

After we began our investigation, we discovered that Mr. Hawkins was the approving official on many of the ratings-based performance awards that were allegedly given without proper justification, so on December 10, 2014, we met with Mr. Rivera and expressed a concern that since the AIB may implicate Mr. Hawkins, as he signed as the approving official on many of the questionable awards, he should not remain as the convening authority. When Mr. Williams replaced Mr. Rivera as the Network Director, we briefed him on our concern with Mr. Hawkins remaining as the AIB convening authority. Mr. Williams told us that he reviewed the matter, discussed it with key staff and OGC, and he decided the AIB would proceed with Mr. Hawkins as the convening authority.

We contacted OGC and expressed our concerns with Mr. Hawkins remaining as the AIB convening authority, as VA Directive 0700, Section 2C states:

The decision whether to convene an investigation should not be made by an official whose own actions (or failure to act) are likely to be a subject of the investigation, or who appears to have a personal bias in the matter to be investigated. In such situations, the official involved shall notify the next higher supervisory convening authority within the VA organization of the nature of the matter, the involvement of the official, and the need for decision-making regarding the investigation. The supervisory authority shall be responsible as convening authority for the matter.

Upon completion of their investigative report, the AIB Chairperson sent us a copy of their report, signed on February 3, 2015. Attached to the report was a note which stated,

“See memo from Mr. Brian Hawkins dated March 4, 2015. He is no longer the convening authority.”

A March 4, 2015, memorandum from Mr. Hawkins to Mr. Williams stated, “I believe it prudent and in good faith that a higher convening authority review the aforementioned AIB.” A March 4, 2015, memorandum from Mr. Williams to Mr. Hawkins stated, “As the higher convening authority, I will accept the transfer of convening authority to me, and will review the AIB Report of Investigation.” A March 12, 2015, memorandum from Mr. Williams to the AIB stated, “This memo serves as notification that I accepted the transfer of convening authority to me from the original convening authority of the reference AIB, the DC VAMC Medical Center Director.”

In order to promote economy of investigative resources and since Mr. Williams replaced Mr. Hawkins as the AIB convening authority, OIG determined that we would not duplicate the AIB efforts concerning the original allegation sent to OIG of unjustified ratings-based monetary awards.

Administrative Investigation Board Delays

While we did not substantiate the allegation that Mr. Hawkins impeded the AIB, we found the AIB experienced significant delays due to VAMC personnel failing to timely produce AIB requested documents, which delayed the AIB report. Ms. Christine Miller, Acting Network HR Officer told us, “Mr. Coy [the AIB Chairperson] believed that the investigation was being impeded because of significant delays in getting documentation that we needed.” She said, “this is very unusual, to have this kind of a delay in an AIB...writing the actual report, the AIB report itself, was problematic because of the documents that were missing.” AIB member Ms. Heather Malecki, Physical Therapist-Rehabilitation Coordinator, said, The AIB “was delayed because of the documentations. We could not address the four allegations without the correct information.” Further, Ms. Geraldene Adams, VAMC Director of Quality Management (QM), confirmed that the documents requested by the AIB were significantly delayed. Mr. Coy told us that, “It seems like the AIB was not taken seriously. It seems like it was not something that [Mr. Hawkins] really wanted to happen.” We found a series of email messages concerning the AIB’s request for assistance.

- November 5, 2014 – Mr. Coy emailed Mr. Hawkins and told him that Mr. Rivera “re-emphasized his expectation and direct instructions that this AIB is conducted ‘fast’ and ‘thorough’ and not be delayed any further.” Mr. Hawkins replied, “Please work with QM. Ms. Adams will serve as your POC.” Mr. Coy forwarded Mr. Hawkins reply to Mr. Rivera, and Mr. Rivera responded, “Did Adams clear up?” Mr. Coy replied, “No, Sir.”
- December 3, 2014 – Mr. Coy emailed Mr. Hawkins and told him, “Your QM office is having a significant amount of trouble trying to gather items for the

AIB...could I seek your assistance in this matter?” Mr. Hawkins then forwarded Mr. Coy’s email to Ms. Adams and told her, “Call me.” He replied to Mr. Coy about 6 hours later and said, “Sure.”

- December 9, 2014 – Mr. Coy emailed Mr. Hawkins and told him, “Thank you for your support in this matter. FYI – It has been multiple weeks since the AIB requested these items, and we have not received the items we requested.” Included in the email was a list of items requested and not received.
- December 12, 2014 – Mr. Coy emailed a QM Consultant and said that due to not receiving the requested documents, he could not “move forward in concluding the AIB report by the suspense date of December 15, 2014.” Included in the email was a list of the items requested and not received.
- January 7, 2015 – The QM Consultant emailed Mr. Coy and said, “Ms. Adams, QM Director, has requested that you provide her with a formal letter, requesting an extension for the AIB to be presented for approval. She has requested that the request include a timeline and/or deadline with interest specifying a date for your formal out-briefing to [Mr. Hawkins].” Mr. Coy replied, “I cannot provide you the formal letter and timeline that you seek as I do not know when I will be complete. The AIB is at a standstill. When you can provide to me a timeline of when I will receive the rest of the transcripts, and the documents that I have requested these last couple of months (attached again), I can provide you a timeline.”

On January 16, 2015, Mr. Williams issued Mr. Hawkins a memorandum, Subject: Administrative Investigation Board (AIB) – Human Resource Management Service (HRMS), Washington, DC VAMC. In the memorandum, Mr. Williams stated, “It has come to my attention that the AIB has been delayed due to noncompliance with the collection of documentation. The AIB was authorized to inquire into all aspects related to the matters listed in the AIB charge memo, and required VA employees to cooperate.” The memorandum contained a list of requested documents that mirrored Mr. Coy’s request to Mr. Hawkins on December 9, 2014. Mr. Coy told us that the requested documents, many of which were requested but not delivered in November of 2016, were then delivered to the AIB within 2 weeks. Ms. Adams said HR worked overtime to produce the documents, as “they said they didn’t have those documents, so they went in and they started [reconstructing records] to get everything that was on that list.”

Findings:

Mr. Hawkins Failed to Follow VA Policy When He Sent VA Sensitive Information from his VA-assigned Email Account to Non-VA Email Accounts

38 USC § 5723(f) states that users of Department information and information systems are responsible for the following:

- Complying with all Department information security program policies, procedures, and practices.
- Attending security awareness training on at least an annual basis.
- Reporting all security incidents immediately to the Information Security Officer of the system or facility and to their immediate supervisor.
- Complying with orders from the Assistant Secretary for Information and Technology directing specific activities when a security incident occurs.
- Signing an acknowledgment that they have read, understand, and agree to abide by the VA National Rules of Behavior on an annual basis.

VA Policy defines “users” as, Department personnel, employees...who have been authorized by VA to access VA information or information systems. VA Directive 6500, 6500, Appendix A (September 20, 2012).

Sensitive Personal Information (SPI) is defined as any information about an individual maintained by an agency, including education, financial transactions, medical history, criminal or employment history, or information that can be used to distinguish or trace the individual’s identity, including name, social security number, date and place of birth, mother’s maiden name, or biometric records. 38 USC § 5727(19).

“VA sensitive data” is defined as all Department data, on any storage media or in any form or format, which requires protection due to the risk of harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the information and includes information whose improper use or disclosure could adversely affect the ability of an agency to accomplish its mission, proprietary information, and records about individuals requiring protection under applicable confidentiality provisions. 38 USC § 5727(23).

VA policy states that VA electronic mail systems are for official use only by authorized personnel. The information in these systems is Departmental, not personal. Utilization of electronic mail for other than official, authorized purposes is prohibited. No expectation of privacy or confidentiality applies. VA Handbook 6301 (April 24, 1997).

VA's Talent Management System (TMS) records for the required training: *VA Privacy and Information Security Awareness and Rules of Behavior*, reflected that Mr. Hawkins successfully completed the required yearly training module from 2008 to 2013. There were no records reflecting he completed the training after 2013. The course objectives, according to course transcripts, are to:

- Identify the types of VA information and information systems you are required to protect;
- Recall the steps you must take to protect personal privacy, VA sensitive information, and information security;
- Recognize the penalties you may face for failing to protect privacy and security;
- Identify incidents and recall the process for reporting incidents that can compromise or possibly impact privacy and security; and,
- Acknowledge, accept, and comply with the ROB [Rules of Behavior].

The course material states, "Everyone who comes in contact with information and information systems at VA has a duty to protect privacy and ensure information security. This course will help you understand your roles and responsibilities for protecting VA information. You must complete this training to use or gain access to VA information or information systems. To maintain your access, you must complete this training each year." The course clearly defines SPI and VA Sensitive Data, and states that employees "have NO expectation of privacy in any records that I create or in my activities while accessing or using VA information systems."

Further, VA Handbook 6500, Section 6c (September 18, 2007) states that information systems within the Operating Unit will display the following VA approved banner:

This system is intended to be used for [authorized VA network users] for viewing and retrieving information only except as otherwise explicitly authorized. VA information resides on and transmits through computer systems and networks funded by VA; all use is considered to be understanding and acceptance that there is no reasonable expectation of privacy for any data or transmissions on Government Intranet or Extranet (non-public) networks or systems. All transactions that occur on this system and all data transmitted through this system are subject to review and action including (but not limited to) monitoring, recording, retrieving, copying, auditing, inspecting, investigating, restricting access, blocking, tracking, disclosing to authorized personnel, or any other authorized actions by all authorized VA and law enforcement personnel. All use of this

system constitutes understanding and unconditional acceptance of these terms.

We conducted a routine review of VA email records for Brian.Hawkins@va.gov, Mr. Hawkins' VA-assigned email address, while investigating whether he interfered with the AIB he charged. We found a number of emails containing VA sensitive information sent from Mr. Hawkins' VA-assigned email account to his and his spouse's private email accounts. On November 12, 2015, we issued Mr. Hawkins a subpoena to produce any and all emails with content related to VA business or employees sent from his VA-assigned email address to any non-VA email account under his control. While Mr. Hawkins complied with our subpoena for emails sent from his VA email account to his private account, he refused to provide any emails he sent to his spouse's private email account.

In his subpoena response, he said, "I object to information produced by the Office of the Inspector General (OIG) in the form of an email that I sent to my spouse as this is considered Common Law and Statutory Privilege."

The OIG notes that there was no need to consider whether a spousal communications privilege applied or to attempt to compel production of these emails. As noted above, VA Handbook 6301 clearly provides that there is no expectation of privacy or confidentiality in communications made over VA email systems.

In our review of Mr. Hawkins' official VA email records, we uncovered a number of emails where he sent VA sensitive information from his VA-assigned email account to his spouse's, a non-VA employee, email account. Below are some examples of the emails Mr. Hawkins sent from his VA-assigned email account to his spouse's private email account:

- October 30, 2014 – Mr. Hawkins forwarded his spouse an email chain, Subject: FW: Washington DC AIB ([NAME]). The email contained three attachments: 1) Charge Letter.doc; 2) DC VAMC Issue Brief – VISN Response 10-27-14.doc; and 3) [COMPLAINANT'S NAME] Letter to the Under Secretary.pdf. These documents contained the identity of the original complaint against the VAMC, the Issue Brief submitted by Network 5 in response, and the Charge Letter submitted by Mr. Hawkins to convene the AIB. These documents provided Mr. Hawkins' spouse, who does not work for VA and has no official need to know, details of ongoing VA investigations with VA sensitive information into an ongoing AIB.
- January 28, 2014 – Mr. Hawkins forwarded his spouse an email chain, Subject: Secretary Office Action: Report of Illegal recording at DC VAMC. The email chain originated on January 27, 2014, Subject: Illegal recording, from a VA employee to the VA OIG Hotline. In the email, the VA employee alleged that a recording device was found in Police Control, and the VAMC Chief and Deputy

Chiefs of Police violated Federal law and VA policy by video/audio recording employee conversations. The employee indicated that affected employees retained counsel and were in the process of filing formal complaints. The email chain reflected that an investigation into the allegations was underway, and Regional Counsel was contacted. Mr. Hawkins' email to his spouse included several messages that discussed the allegations and steps VA was taking to address them. The name of the employee complainant was not redacted.

- June 4, 2012 – Mr. Hawkins emailed his spouse a document titled: Mike memo.doc. In the body of the email, Mr. Hawkins asked, “How does this read?” The attached memorandum, Subject: Operations oversight and management, was addressed to the Associate VAMC Director. It discussed Mr. Hawkins' disappointment in the Director's performance, a personnel matter. It contained a number of action items for the Director to address, proposed completion dates, and a requirement for the Director to meet with Mr. Hawkins to discuss his progress.

Conclusion

We concluded that Mr. Hawkins violated VA policy by sending VA sensitive information and SPI to his, as well as his spouse's unsecured, private email accounts. Mr. Hawkins confirmed that he used his VA-assigned email account to send VA sensitive information to his spouse on a number of occasions, but he could not recall the exact number of times he did so. When issued a subpoena instructing him to produce communications he sent from his VA-assigned email account to non-VA, private email accounts, Mr. Hawkins refused to produce those he sent to his spouse's private email account. He claimed these emails were protected under spousal privilege. VA policy states that VA email is for official use only and there is no expectation of privacy or confidentiality. It does not contain any communication exclusions, privileged or otherwise.

Recommendation: We recommend that the Deputy Under Secretary for Health for Operations and Management confer with the Offices of Human Resources and General Counsel to determine the appropriate administrative action to take, if any, against Mr. Hawkins.

Comments

The Acting Under Secretary for Health was responsive, and her comments are in Appendix A. We will follow up to ensure the recommendation is fully implemented.



JEFFREY G. HUGHES
Assistant Inspector General for
Investigations

Under Secretary Comments

**Department of
Veterans Affairs**

Memorandum

Date: June 20, 2017

From: Acting Under Secretary for Health (10)

Subject: **Administrative Investigation - Failure to Follow VA Policy, VA Medical Center, Washington, DC**

To: Assistant Inspector General for Investigations (51)

1. Thank you for the opportunity to review the Office of Inspector General draft report, Administrative Investigation Failure to Follow VA Policy, VA Medical Center, Washington, DC. I provide the attached action plan to address this recommendation.
2. If you have any questions, please email Karen Rasmussen, M.D., Director, Management Review Service at VHA10E1DMRSAction@va.gov.



Poonam Alaigh, M.D.

Attachment

Under Secretary's Comments to Office of Inspector General's Report

The following Under Secretary's comments are submitted in response to the recommendation in the Office of Inspector General's Report:

OIG Recommendation

Recommendation: We recommend that the Deputy Under Secretary for Health for Operations and Management confer with the Offices of Human Resources and General Counsel to determine the appropriate administrative action to take, if any, against Mr. Hawkins.

Comments: Upon receipt of the Inspector General's evidence in this case, the Deputy Under Secretary for Health for Operations and Management will confer with the Office of Accountability Review to determine the appropriate adverse action to take, if any, against Mr. Hawkins.

Status: In progress

Target completion date: 90 days after receipt of evidence

OIG Contact and Staff Acknowledgments

OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Linda Fournier, Director Michael Smith, Administrative Investigator Roy Fredrikson, Deputy Counselor Katharine Brown, Attorney Advisor

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