

VA Office of Inspector General

OFFICE OF INVESTIGATIONS



# Board of Veterans Appeals

Report of  
Administrative Investigation  
Alleged Prohibited  
Personnel Practice

May 17, 2016  
15-02747-314



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

**TO:** VA Deputy Secretary

**SUBJECT:** Administrative Investigation - Alleged Prohibited Personnel Practice,  
Board of Veterans Appeals (BVA), Washington, DC  
(2015-02747-IQ-0013)

### **Results of Investigation**

On March 6, 2015, the OIG Administrative Investigations Division received an allegation that Ms. Laura H. Eskenazi, BVA Executive in Charge and Vice Chairman, engaged in a prohibited personnel practice when she allegedly influenced members of a screening panel so that a favored employee would be promoted to a Veterans Law Judge (VLJ) position. This VLJ recruitment action was a highly sensitive and important matter, since the appointments required the approval of the President of the United States, and it was necessary, due to a shortage of VLJs. We did not substantiate the original allegation that Ms. Eskenazi directed members of the screening panel to increase the applicant pool to include a particular employee or that she favored the employee. We are therefore closing this particular allegation.

During the course of the investigation, we found that members of the screening panel compromised this recruitment action when they disclosed applicant information as well as a request to expand the applicant pool to non-panel members. This caused rumors to spread throughout BVA that falsely accused Ms. Eskenazi of trying to influence the recruitment process to give preference to a specific employee. There was no guidance given to the panel members prohibiting such disclosures, but a subsequent requirement put into place as a result of this compromise provides specific guidance and requires future panel members to sign confidentiality agreements for these recruitment efforts.

### **Objective, Scope, and Methodology**

To assess the allegations, we interviewed Ms. Eskenazi and other VA employees, to include members of the screening panel, human resources (HR) staff, and senior BVA members. We also reviewed VA email, telephone, personnel, recruitment, and contractor records, as well as applicable Federal laws, regulations, and VA policy.

## **Investigative Efforts**

In July 2013, the former VA Secretary approved additional BVA VLJ positions, increasing the total number of VLJ fulltime employees from 64 to 78. Ms. Eskenazi told us that even though past recruitments resulted in several positions being filled, other positions were vacated due to attrition, leaving 14 VLJ vacancies. In November 2014, she authorized a VLJ recruitment action and asked the Principal Deputy Vice Chairman to supervise the recruitment process. Ms. Eskenazi said that she never saw the applications or knew the names of the individuals who applied for the positions. Recruitment records reflected that on November 3, 2014, BVA issued a job vacancy announcement for multiple VLJ positions. A total of 123 applications were received, and 57 met the minimum qualifications for further consideration.

### *VLJ Hiring Effort*

In January 2015, Ms. Eskenazi formed a five-member screening panel, and the Chief of BVA HR met with the panel to provide instructions on their duties and responsibilities as panel members. One panel member told us that the Chief of BVA HR told the panel that they were to keep applicant information confidential, but to the contrary, the Chief of BVA HR said that she did not give those instructions.

On January 28, 2015, the members convened to deliberate and reach consensus on the ranking of the applicants; however, the panel collectively only scored 17 of the 57 applicants. Once they had the list of the top 17 applicants, their next step was to conduct telephone interviews, but when the Chief of BVA HR received the list with only 17 names, she realized that the applicant pool was not large enough to fill 14 VLJ vacancies. The Principal Deputy Vice Chairman and the Chief of BVA HR both agreed that the applicant pool needed to be expanded.

The Chief of BVA HR told the panel members that there was a need to expand the applicant pool, and rumors then began spreading throughout BVA accusing Ms. Eskenazi of trying to improperly influence the recruitment by expanding the applicant pool in order to help a favored employee. A BVA internal policy memorandum, dated September 6, 2012, reminded BVA “employees that starting or spreading rumors or disruptive activity may be a basis for appropriate corrective action whenever it impairs the efficiency of the service, such as by disparaging coworkers regardless of the truth or falsity of a rumor.” It said that spreading rumors or gossiping would “not be tolerated.”

We found no evidence that Ms. Eskenazi gave preference to any employee or attempted to interfere or influence this VLJ hiring effort.

### *Disclosure of Information*

Two panel members told us that they disclosed, outside of the screening panel process, applicant names and the desire to expand the applicant pool, leading BVA employees to

spread the rumors against Ms. Eskenazi. One VLJ, who was not a panel member, told us that once the applicant names were disclosed, BVA employees began an informal office pool as to who was going to be selected.

VA Handbook 5005, Staffing, prohibits all persons present at promotion panel meetings from revealing information of a confidential or personal nature about any candidate which may be gained during the deliberation process. However, an HR Specialist told us that this policy only applied to Title 5 and not to VLJ recruitments. BVA's standard operating procedures for recruitment of VLJs, at that time, did not contain any language prohibiting the release of applicant names or other information related to the hiring effort.

The Privacy Act, 5 USC § 552a governs the release of information contained within a system of records. It defines a system of records as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual..." In this case, the recruitment and screening committee materials fell under the Office of Personnel Management (OPM) system of records notice, OPM/GOVT-5, *Recruiting, Examining, and Placement Records*, which specifically itemizes the situations under which such recruitment records may be disclosed.

#### *Cancellation of the VLJ Recruitment Action*

On February 6, 2015, the Principal Deputy Vice Chairman sent an email to himself to document Ms. Eskenazi's plan to cancel the recruitment action and irregularities encountered with the screening panel process. He wrote that BVA sought to hire 14 VLJs, but the screening panel only provided the names of 17 applicants. From his past recruitment experience, he believed it was "customary" to interview a ratio of three applicants for each vacancy. Once they sought to expand the list, he learned that the panel did not properly rank all 57 applicants. He wrote:

- Did not follow the written screening instructions to complete the required numeric ranking sheet before selecting those to receive a telephonic interview.
- Did not follow the instructions because the panel did not rank everyone, and that the scores reflected for those besides the top 17 were only [Name's] scores, despite the fact that they all signed [except by one panel member], which implied they all agreed on the scores.
- Appeared to have miscommunicated their intentions when on the scoresheet they signed and turned in, they wrote that applicants who scored "below 28" were "out." However, because applicants who had a score of 28 were not included in the "in" category, it appeared the panel intended those applicants to be "out" also.
- Broke confidentiality and this seriously damaged the process because it caused people to gossip about the interview process.

Ms. Eskenazi told us that although screening panel members were not required to sign a confidentiality agreement, the process should be confidential. She said, “In my mind, four of the folks on the panel were Veterans Law Judges who were appointed with approval of the President. In my mind, it’s understood that you maintain confidentiality.” She said that because applicant names and the number of applicants selected to receive an interview were “floating around” she became “deeply concerned about the fairness and objectivity of the process” and that she “erred on the side of caution in pulling the recruitment.” She said, “I [have] worked at the Board a long time. I know that the Board is an organization very prone to rumors...any type of, uh, sense of a loss of objectivity is too much, and it was not worth trying to remediate at that point. I ordered that the recruitment be closed. It was tainted.”

In a February 5, 2015, email, Ms. Eskenazi told the Assistant Secretary for Human Resources and Administration that she was “pulling the current announcement.” She also sent an email to all BVA employees to tell them that the VLJ recruitment action was cancelled and that future initial screening processes would go through VA’s Corporate Senior Executive Management Office (CSEMO).

The BVA Chief of HR told us that as a result of this particular hiring effort, they put into place, since April 2015, a requirement that panel members review a quick reference guide for BVA ranking and interview panels, read and understand the Merit System Principles, and sign a confidentiality agreement. This agreement states, “I agree to adhere to the strict confidentiality of the ranking and interview process, which includes names of the applicants, ranking spreadsheets or scores...Confidentiality means that after the ranking and/or interview process, there are no discussions about the applicants...” However, she also told us that if someone violated the confidentiality agreement she could not provide a VA policy that could be cited as being violated.

### *Discovery of Inappropriate Emails*

During the course of our investigation, we discovered BVA employees misusing their official VA time and resources to send unprofessional and inappropriate email messages. We referred this matter to VA to investigate and to consult with the Offices of General Counsel and Human Resources Management to take any appropriate action.

## **Conclusion**

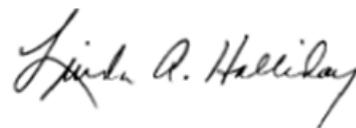
We did not substantiate the allegation that Ms. Eskenazi engaged in a prohibited personnel practice by directing members of a screening panel to increase the applicant pool so a particular employee was interviewed and subsequently appointment as a VLJ. Ms. Eskenazi said that she did not know the names of the applicants or their rankings. The Principal Deputy Vice Chairman and Chief of BVA HR confirmed the applicant pool needed to be expanded, because 17 applicants were not sufficient to fill 14 vacancies. Moreover, the Chief of BVA HR asked the screening panel to expand the applicant pool, not Ms. Eskenazi. We are therefore closing this allegation.

Two panel members admitted to disclosing information on the 17 candidates to other BVA employees outside of the screening panel process. These disclosures triggered untrue rumors that Ms. Eskenazi wanted the list expanded to include a particular employee who she was thought to personally favor. This caused Ms. Eskenazi to shut down this hiring effort, due to her concerns “about the fairness and objectivity of the process.” At that time, there was no guidance in place for panel members to maintain confidentiality, and the panel members would not reasonably know that the recruitment and screening materials fell under the OPM system of records. Although they put corrective actions into place, such as all future VLJ recruitment screening processes going through CSEMO and having panel members sign confidentiality agreements, there was no BVA policy that corresponds to VLJ hiring efforts or that specifically defines confidentiality.

**Recommendation:** We recommend that the VA Deputy Secretary confer with the Offices of General Counsel and Human Resources Management to develop VA policy related to the staffing and recruitment of VLJs, incorporate it into proper guidance and a requirement to sign a confidentiality agreement, provide applicability of the Privacy Act, a clear definition of what is confidential, and ensure that policy is implemented.

### **Comments**

The VA Deputy Secretary was responsive, and his comments are in Appendix A. We will follow up to ensure that the recommendation is fully implemented.



**LINDA A. HALLIDAY**  
**Deputy Inspector General**

**Department of  
Veterans Affairs**

**Memorandum**

**Date:** May 10, 2016

**From:** VA Deputy Secretary

**Subject:** **Administrative Investigation - Alleged Prohibited  
Personnel Practice, BVA, Washington, DC**

**To:** Deputy Inspector General

1. Thank you for the opportunity to review and comment on the Report of Administrative Investigation, Alleged Prohibited Personnel Practice, Board of Veterans Appeals, Washington, DC.
2. We support the findings of the Inspector General, and agree with the requirement to sign a confidentiality agreement when participating in the staffing and recruitment of Veterans Law Judges (VLJs).
3. Though the recommendation is specific to VLJs, VA views this as an opportunity to expand confidentiality agreements to all Executive-level hiring panels.
4. The Corporate Senior Executive Management Office (CSEMO) currently trains Executive Resource Board (ERB) members, those overseeing the merit staffing process for career appointment to Senior Executive Service (not including VLJs), on ERB rules and requirements. By the end of July 2016, this training, to include the requirement of signing a confidentiality agreement, will be expanded to all Executive-level hiring panels.

5. If you have any additional questions, please contact Gina  
Farrisee, Deputy Chief of Staff, by email at  
[Gina.Farrisee@va.gov](mailto:Gina.Farrisee@va.gov).



Sloan D. Gibson

## OIG Contact

---

OIG Contact

For more information about this report, please contact the  
Office of Inspector General at (202) 461-4720

---

## **Report Distribution**

### **VA Distribution**

Office of the Secretary  
Veterans Health Administration  
Veterans Benefits Administration  
National Cemetery Administration  
Assistant Secretaries  
Office of General Counsel

### **Non-VA Distribution**

House Committee on Veterans' Affairs  
House Appropriations Subcommittee on Military Construction, Veterans Affairs, and  
Related Agencies  
House Committee on Oversight and Government Reform  
Senate Committee on Veterans' Affairs  
Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and  
Related Agencies  
Senate Committee on Homeland Security and Governmental Affairs  
National Veterans Service Organizations  
Government Accountability Office  
Office of Management and Budget

### **To Report Suspected Wrongdoing in VA Programs and Operations:**

**Telephone: 1-800-488-8244**

**Email: [vaoighotline@va.gov](mailto:vaoighotline@va.gov)**

**(Hotline Information: [www.va.gov/oig/hotline](http://www.va.gov/oig/hotline))**