



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Special Reviews

OFFICE OF GENERAL COUNSEL

Alleged Improper Locality
Pay for Teleworking
Employee

ADMINISTRATIVE
INVESTIGATION

REPORT #18-03251-88

FEBRUARY 18, 2020



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Executive Summary

The VA Office of Inspector General (OIG) investigated an allegation that an employee in the VA Office of General Counsel's District Contracting National Practice Group was approved to move his/her office from Pittsburgh to Altoona, Pennsylvania, but continued to improperly receive the higher locality pay for the Pittsburgh area. The OIG substantiated that the employee's telework agreement did not comply with applicable regulations, which require an employee to report to his or her official worksite twice per pay period when the employee is not in a permanent telework arrangement. In this instance, the employee's official worksite was Pittsburgh and the employee's supervisor had approved an exception to accommodate the employee's caregiving needs for a family member. This approval occurred in 2008, and the telework arrangement remained in effect through at least November 2017. Although exceptions can be granted on a temporary basis, there is no discretion to grant a permanent exception to the requirement that a teleworking employee report to his or her official worksite twice per pay period. There was no evidence that the employee's supervisors ever reassessed the telework arrangement to determine whether it continued to be appropriate.

The OIG determined that the employee and the employee's supervisors took appropriate corrective action once the issue became known in November 2017, prior to the initiation of the OIG's investigation. The OIG did not identify any evidence to suggest that the failure to reassess the employee's telework circumstances was the result of an intentional effort to improperly impact the employee's locality pay. Accordingly, the OIG did not substantiate misconduct.

The OIG makes one recommendation relating to the need to clarify the authority and obligations of telework-approving supervisors within the Office of General Counsel.

A handwritten signature in black ink that reads "R. James Mitchell".

R. JAMES MITCHELL, ESQ.
Acting Executive Director
for the Office of Special Reviews

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Background and Relevant Legal Authority

In March 2018, the VA Office of Inspector General (OIG) investigated an allegation that an employee in the VA Office of General Counsel’s District Contracting National Practice Group moved his/her office from Pittsburgh to Altoona, Pennsylvania, but continued to improperly receive the higher locality pay for the Pittsburgh area.¹ To assess the allegation, the OIG interviewed the employee, the employee’s supervisors, and other VA employees with relevant knowledge or information.² The OIG reviewed emails, personnel records, the employee’s telework agreement, federal regulations and guidance, and VA policies.

A federal employee may receive locality pay, an amount above the employee’s prescribed salary, based on the geographic location to which he or she is assigned.³ Federal regulations state that an agency determines an employee’s locality rate by

1. Determining the employee’s official worksite,
2. Determining the locality pay area for the employee’s official worksite,
3. Identifying the locality pay percentage in effect in the locality pay area, and
4. Increasing the employee’s annual rate of pay by the applicable locality pay percentage.⁴

An employee’s official worksite is “the location of an employee’s position of record where the employee regularly performs his or her duties.”⁵ Federal regulations also provide that

if the employee’s work involves recurring travel or the employee’s work location varies on a recurring basis, the official worksite is the location where the work activities of the employee’s position of record are based, as determined by the employing agency, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work.⁶

¹ As part of an organizational realignment, the staff of the OIG’s former Administrative Investigations Division have been merged with staff from the Office of Special Reviews, which has assumed responsibility for supervising and publishing the results of the Administrative Investigation Division’s pending cases.

² The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency’s *Quality Standards for Investigations*.

³ 5 C.F.R. § 531.204(b); 5 C.F.R. § 531.603(a).

⁴ 5 C.F.R. § 531.604(b).

⁵ 5 C.F.R. § 531.605(a)(1).

⁶ 5 C.F.R. § 531.605(a)(2).

An agency must document an employee's official worksite on his or her Notification of Personnel Action.⁷

Federal regulations provide that if an employee is covered by a telework agreement and "is scheduled to work at least twice each biweekly pay period on a regular and recurring basis at the regular worksite for the employee's position of record," the employee's official worksite remains the location where the work activities of the employee's position of record are based.⁸

Additionally, an employee is not required to report to the regular worksite at least twice each biweekly pay period if the employee's work location varies on a recurring basis and "the employee is regularly performing work within the locality pay area for that worksite."⁹

However, if the employee does not meet either of these requirements, federal regulations dictate that "the employee's official worksite is the location of the employee's telework site."¹⁰

Determination of a telework employee's official worksite "is within the sole and exclusive discretion of the authorized agency official, subject only to OPM [U.S. Office of Personnel Management] review and oversight."¹¹

Investigative Results

After applying the relevant regulations to the evidentiary record developed in the investigation, the OIG made the following conclusions:

1. In 2008, the employee began working as a General Attorney for the VA Office of General Counsel (OGC), Office of Regional Counsel in Pittsburgh. In 2015, the employee joined the District Contracting Law National Practice Group, a subgroup within OGC that provides regionally-based legal services pertaining to VA contracts, sharing agreements, and leases arising in geographic locations other than the VA central office.
2. In 2008, after the onset of a family medical situation, the employee's former supervisor approved the employee to telework from a VA location in Altoona, closer to the employee's home, and work at the Pittsburgh OGC office on an as-needed basis, rather than a twice-per-pay-period basis as required by applicable regulation. In 2008, the employee's official worksite was Pittsburgh. Although federal regulations require teleworkers to report to a worksite at least twice in each biweekly pay period, agencies may make an exception under certain

⁷ 5 C.F.R. § 531.605(a)(3).

⁸ 5 C.F.R. § 531.605(d)(1).

⁹ 5 C.F.R. § 531.605(d)(1).

¹⁰ 5 C.F.R. § 531.605(d)(3).

¹¹ 5 C.F.R. § 531.605(d)(4).

circumstances, including “emergency situations.”¹² Determinations concerning exceptions to the requirement to report twice in a biweekly pay period are “within the sole and exclusive discretion of the authorized agency official, subject only to OPM review and oversight.”¹³ According to VA policy, such decisions are made by the employee’s supervisor.¹⁴ Neither VA policy nor federal regulations grant a supervisor the authority to grant a permanent exception to the requirement that an employee report to his or her worksite twice in a pay period. OPM Regulations only allow temporary exceptions to the twice-per-pay-period requirement.¹⁵

3. The 2008 telework arrangement remained in effect through March 6, 2018. During this time period the employee’s worksite continued to be Pittsburgh, although the employee did not report to the Pittsburgh Regional Counsel’s Office on a twice-per-pay-period basis. Instead the employee regularly teleworked from locations in Johnstown and Altoona.¹⁶ The employee and the employee’s supervisors told OIG investigators that the employee’s work could be completed in any location, and that it was not essential for the employee to be physically present in Pittsburgh to fully perform assigned duties. The employee’s supervisors did not raise any concerns with the OIG regarding the employee’s job performance.
4. The OIG did not identify any evidence suggesting that the employee’s telework arrangement was ever reassessed to determine whether the employee’s emergent circumstances had ended. The OIG also did not identify any evidence to suggest that the failure to reassess the employee’s telework circumstances was the result of an intentional effort to improperly impact the employee’s locality pay.
5. In November 2017, a Veterans Health Administration service center supervisory human resources specialist identified a discrepancy between the duty location on the employee’s annual performance appraisal, which reflected Altoona, and the worksite associated with the employee’s payroll documentation, which reflected Pittsburgh. The employee’s supervisors were notified of the discrepancy on November 28, 2017. In response, the employee’s supervisors rescinded the prior as-needed reporting arrangement and began requiring the employee to report to

¹² 5 C.F.R. § 531.605(d)(2).

¹³ 5 C.F.R. § 531.605(d)(4).

¹⁴ VA Handbook 5011, *Hours of Duty and Leave*, Part II, Ch. 4, Sec. 7(g).

¹⁵ 5 C.F.R. § 531.605(d).

¹⁶ Johnstown and Altoona are both part of the “Rest of U.S.” locality pay area, while Pittsburgh is part of the Pittsburgh-New Castle-Weirton, PA-OH-WV locality pay area. See OPM 2017 Locality Pay Area Definitions. In 2017, the employee’s salary was \$121,191 versus \$118,312 without the increase from the Pittsburgh-New Castle-Weirton, PA-OH-WV locality pay.

the Pittsburgh Regional Counsel's office twice per pay period. The employee has complied.

6. An alternative solution would have been to change the employee's worksite to match the permanent telework location. The employee's supervisors instead elected to maintain the Pittsburgh duty location and require the employee to report twice per pay period. Although not contemporaneously documented, the employee's supervisors told the OIG that it was preferable to maintain the Pittsburgh duty location because this was where the regional counsel's office was located and all other attorneys in the District Contracting Law National Practice Group were assigned to official worksites in locations where the OGC had a physical presence. The supervisors stated that some of the advantages to this arrangement included better access for the employee to OGC and office resources, and interaction with OGC peers. The determination of the employee's worksite is within management's discretion.

Conclusion

The OIG substantiated that the employee's prior telework arrangement did not comport with applicable regulations. The OIG did not substantiate that this occurred as the result of misconduct. After the employee was notified of the issue by human resources, the employee and his or her supervisors revised the employee's telework arrangement to comply with federal regulations. This corrective action occurred prior to the initiation of the OIG investigation. Temporary exceptions to telework requirements and the designation of an employee's worksite are both matters within an agency's discretion, subject to applicable regulations. Although the OIG did not substantiate any misconduct, one recommendation is made relating to the supervision of telework agreements.

Recommendation

1. The Office of General Counsel communicates to its telework-approving supervisors that they lack authority to grant permanent exceptions to the twice-per-pay-period reporting requirement of 5 C.F.R. § 531.605(d)(1), and that in any instance in which an exception is granted pursuant to 5 C.F.R. § 531.605(d)(2) or any other applicable provision, the supervisor is obligated to periodically reassess the employee's telework arrangement to determine whether a permanent change of official worksite is necessary.

Management Comments

The Acting General Counsel concurred on behalf of VA with the recommendation in this report. Comments related to the recommendation indicate that VA has issued applicable guidance, via email, to all supervisors in the Office of General Counsel.

OIG Response

Based on the information provided, the OIG considers this recommendation closed.

Appendix A: Management Comments

Department of Veterans Affairs Memorandum

Date: December 20, 2019

From: Acting General Counsel (02GL)

Subj: VA OIG Draft Report, Alleged Improper Locality Pay for Teleworking Employee

To: Office of Inspector General (50)

1. I have reviewed the draft report and provide the following general comments and response to the recommendation.
2. In November 2017, a VHA Service Center supervisory human resources specialist identified a discrepancy between the duty location of an OGC employee's annual performance appraisal, which reflected Altoona, and the worksite associated with the employee's payroll documentation, which reflected Pittsburgh. The employee's supervisors were notified of the discrepancy on November 28, 2017. In response, the employee's supervisors rescinded a prior as-needed reporting arrangement based on a compelling, but temporary family need, and began requiring the employee to report to the Pittsburgh Regional Counsel's office twice per pay period as required by 5 C.F.R. 605(d)(1). The employee has complied.
3. Upon receiving your office's draft report, the employee's supervisors contacted the VHA Service Center human resources officials to request correction of the employee's official duty location, which may be listed incorrectly in records from 2008 to 2017, and to initiate any additional, necessary corrective actions, such as an audit of potential overpayments.
4. Recommendation 1: The Office of General Counsel communicates to its telework-approving supervisors that they lack authority to grant permanent exceptions to the twice-per-pay-period reporting requirement of 5 C.F.R. § 531.605(d)(1), and that in any instance in which an exception is granted pursuant to 5 C.F.R. § 531.605(d)(2) or any other applicable provision, the supervisor is obligated to periodically reassess the employees' telework arrangement to determine whether a permanent change of official worksite is necessary.

VA Comment: Concur. While noting that it did not substantiate misconduct in this matter, your office recommended that the Office of General Counsel (OGC) communicate guidance to its supervisors. By email dated December 20, 2019, OGC reminded all of its supervisors that they lack authority to grant permanent exceptions to the twice-per-pay-period reporting requirement of 5 C.F.R. § 531.605(d)(1), and that in any instance in which an exception is granted pursuant to 5 C.F.R. § 531.605(d)(2) or any other applicable provision, the supervisor is obligated to periodically reassess the employees' telework arrangement to determine whether a permanent change of official worksite is necessary. Further, OGC policy requires supervisors to review and update all approved telework agreements for their respective employees at least once per year.

5. Please contact Michael R. Hogan, Deputy General Counsel, General Law, (Michael.hogan@va.gov; 202.461.4995) with any questions regarding this.

(Original signed by:)

William A. Hudson, Jr.

OIG Contact and Staff Acknowledgments

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