

Department of Veterans Affairs

Memorandum

Date: May 14, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Improper Time and Attendance, Board of
Veterans' Appeals, VA Central Office (2012-00570-1Q-0011)

To: (b) (7)(C)

1. The VA Office of Inspector General Administrative Investigations Division, during another investigation, found that Board of Veterans' Appeals (BVA) employees improperly accumulated and used credit hours while working compressed schedules. We also found that they used an informal, improper time and attendance system to record these credit hours. To assess this, we interviewed Mr. Richard Thrasher, Chief Counsel for Policy and Procedure, and other BVA employees. We also reviewed official and unofficial time and attendance records, as well as relevant Federal laws and regulations and VA policy.

2. We concluded that BVA employees improperly accumulated and used credit hours while working compressed work schedules, because Federal regulations and VA policy do not provide the authority or permit the option to accumulate credit hours while working such a schedule. Mr. Thrasher told us that this method of timekeeping was in use at BVA for many years, and a BVA timekeeper told us that the hours earned and used were not recorded in the electronic time and attendance system (ETA) but instead kept unofficially in emails and notations in each timekeeper's personal calendar. In a May 2, 2012, email, you clarified to your staff the inappropriateness of banking "benefit day" hours and using them outside of the pay period in which they were earned and the inappropriateness of maintaining timekeeping records outside of official timekeeping systems. We recognize that you took immediate corrective action in this matter; however, we suggest that you ensure that BVA employees comply with Federal regulations and VA policy concerning time and attendance and maintaining timekeeping records within ETA. We are providing you this memorandum for your information, official use, and whatever action you deem appropriate. **No response is necessary.**

3. Federal law states that a compressed work schedule, in the case of a full time employee, is an 80-hour biweekly basic work requirement that is scheduled by an agency for fewer than 10 workdays and that a flexible work schedule is an 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by the agency. It also states that credit hours are any hours within a flexible schedule that are in excess of an employee's basic work requirement. 5 USC §§ 6121 and 6122.

4. VA Policy states that credit hours may be earned under flexitime at the option of employees with supervisory approval; employees do not receive overtime pay for credit hours; and, unlike overtime, credit hours are not ordered in advance by management.

Employees on flexible work schedules may work them to shorten the length of another workday or workweek, but they may be used only after approval by an appropriate approving official. It further states that an employee participating in a compressed work schedule may not simultaneously work a flexible schedule. VA Handbook 5011, Part 2, Chapter 2. An Office of Personnel Management (OPM) handbook cites a Comptroller General decision which states that there is no authority to establish hybrid work schedules that borrow selectively from the authority for flexible work schedules and the authority for compressed work schedules in an effort to create a hybrid work schedule program providing unauthorized benefits for employees or agencies. Comptroller General report B-179810, December 4, 1979, and 50 FLRA No. 28, February 23, 1995.

5. VA Policy requires that time worked and absences be accurately recorded each pay period on time and attendance reports (VA Form 5631) or an authorized automated system (ETA), reviewed and certified as accurate, reported for payroll processing, and documented for employment history. It further states that supervisors and other leave-approving officials are accountable for the work time and absence of employees for whom they are responsible, including leave approval and certification of attendance through appropriate time and attendance collection procedures or automated systems, defined as computerized financial systems. VA Directive 4100, Paragraph 2(b)1 and Paragraph 3. It further requires employees to complete a Request for Credit of Compensatory Time Off for Travel (VA Form 0861) to request a credit of travel compensatory time to the appropriate certifying official within 15 calendar days after completion of authorized travel. It requires that timekeepers document this time in an employee's time and attendance record and maintain VA Form 0861 in accordance with payroll office procedures. VA Handbook 5007, Part VIII, Chapter 15, Paragraph 5.

6. Mr. Thrasher told us that he worked a compressed work schedule; however, he said that he also accumulated "banked" hours when he worked on his compressed day off and then used the hours on alternate dates. He told us that "all [banked hour] requests and approvals are handled by email." He said that the "process of switching and moving around benefit day hours" was standard practice and a "process at [BVA] for many years." A BVA timekeeper told us that they considered "banked hours" the same as "credit hours" and not compensatory time and that she and other timekeepers kept personal, notated calendars with each employee's accumulated and used banked hours. She said that the employees then used the banked hours on alternate dates with the approval of their supervisor. She further said that she did not record the credit hours into ETA.

7. VA policy permits employees working compressed work schedules to move their regular day off to an alternate day within the same pay period (VA Directive 5610.3); however, the timekeeper's alternate records reflected that BVA employees used their banked hours piecemeal outside of the original pay period. For example:

- In a January 12, 2010, email, Mr. Thrasher told the timekeeper, "I will be working my upcoming Benefit Day on Tuesday, January 19, and will switch...this day to Friday, February 5. I will use the saved 8 hours of my Benefit Day from Monday, November 9, 2009, on Monday, February 8, plus use 2 hours of Annual Leave."

- In a September 20, 2010, email, Mr. Donnie Hachey, Chief Counsel for Operations, told the timekeeper, "Just as a reminder, I will be out today (Monday) to make up for working my last benefit day. I will return to the office tomorrow. Thanks!" Federal pay calendars reflected that Mr. Hachey used these credit hours outside of the original pay period.
- In a December 1, 2010, email, Ms. Laura Eskenazi, Principal Deputy Vice Chairman, a BVA senior executive service member, told her timekeeper, "I have an old saved benefit day from several weeks ago, and also the hours from this past Monday. I will email you what time I will use later, as I may try to put in a few hours from home, if my son naps." Federal regulations state that members of senior executive service may not accumulate credit hours under an alternative work schedule. 5 CFR § 610.408.

8. We concluded that BVA employees improperly accumulated and used credit hours while working compressed work schedules, and Federal regulations and VA policy do not provide the authority or permit the option to accumulate credit hours while working such a schedule. Mr. Thrasher told us that this method of timekeeping was in use at BVA for many years, and a BVA timekeeper told us that the hours earned and used were not recorded in ETA but instead kept unofficially in emails and notations in each timekeeper's calendar. In a May 2, 2012, email to your staff, you clarified the inappropriateness of banking "benefit day" hours and using them outside of the pay period in which they were earned and the inappropriateness of maintaining timekeeping records outside of official timekeeping systems. We recognize that you took immediate corrective action in this matter; however, we suggest that you ensure that BVA employees comply with Federal regulations and VA policy concerning time and attendance and maintaining timekeeping records within ETA.

9. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. **No response is necessary.** It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with your staff, within the bounds of the Privacy Act; however, it may not be released to them. If you have any questions, please call (b) (7)(C)

(b) (7)(C)

(b) (7)(C)

WARNING
5 U.S.C. §55A, PRIVACY ACT STATEMENT

This memorandum contains information subject to the provisions of the Privacy Act of 1974 (5 U.S.C. §55a). Such information may be disclosed only as authorized by this statute. Questions concerning release of this memorandum should be coordinated with the Department of Veterans Affairs, Office of Inspector General. The contents of this memorandum must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.