

Department of Veterans Affairs

Memorandum

Date: August 2, 2016

From: Assistant Inspector General for Investigations

Subj: Administrative Investigation – Alleged Misuse of Sick Leave, Board of Veterans Appeals (BVA), VA Central Office (VACO), Washington, DC
Report No. 15-05252-329 (2015-05252-IQ-0465)

To: BVA Vice Chairman
VA Chief of Staff

Purpose

VA Office of Inspector General Administrative Investigations Division investigated an allegation that Mr. Robert Gingell, former (retired) Supervisory Administrative Service Manager, BVA, worked at his privately-owned small business, Renegade Cycles Northern Virginia (RCNV), while at the same time being on extended sick leave from BVA. We closed the allegation administratively, as Mr. Gingell retired on September 21, 2015.

Objective, Scope, and Methodology

To assess the allegations, we reviewed time and attendance records, Virginia State Corporation Commission (VASCC) records, social media postings, Federal laws and regulations, and VA policy. We also conducted a site visit to RCNV during Mr. Gingell's BVA duty hours and while he was on sick leave.

Background

Personnel records reflected that Mr. Gingell began working for VA in 2011, and he retired on September 21, 2015, a short time after receiving an OIG administrative subpoena. Time and attendance records reflected that he was on sick leave more than 22 weeks between January and August 2015. VASCC records reflected that Ms. Gingell registered RCNV in December 2014, and he was listed as the registered agent.

Issue: Did Mr. Gingell Engage in Outside Employment While on Sick Leave?

In December 2014, the former (retired) Deputy Director, BVA Office of Management, Planning & Analysis, asked for an ethics opinion from the Office of General Counsel (OGC) concerning Mr. Gingell's newly formed small business. In January 2015, the Deputy Ethics Official opined that Mr. Gingell's small business did not appear to conflict with Mr. Gingell's duties, but in his guidance to Mr. Gingell, he told Mr. Gingell to not make "unauthorized use of official time." Mr. Gingell replied in an email that he would follow the listed guidelines.

Email records reflected that Mr. Gingell was in regular contact with the Deputy Director concerning his ongoing medical condition requiring sick leave. In February 2015, he began requesting sick leave, due to a cited medical condition. He submitted several physician notes to justify his prolonged absences. For example, on March 20, 2015, he emailed a note that stated he could not return to work until April 13, 2015. Although the heading on the note reflected a legitimate medical practice, the signature on the note was unrecognizable as either of the named practitioners.

By May 2015, the Deputy Director began to question Mr. Gingell's fitness for duty, and she asked him in an email when he expected to return to work and asked for additional documentation. Mr. Gingell replied, "I'm likely going to either be back in mid-June or after the 4th of July on a limited schedule." Records reflected that Mr. Gingell was not always timely with his sick leave request, and at times, required prompting by the Deputy Director. On June 15, 2015, the Deputy Director asked him in an email if he had medical documentation to cover his absences, and the next day, he emailed another physician's note.

On August 13, 2015, Mr. Gingell emailed the Deputy Director to tell her that his physician gave him a letter asking that he "receive a reasonable accommodation and be allowed to work from home." He said that he forwarded the letter to the BVA Chief of Human Resources (HR) and that since "accommodations take time to process and the letter clearly indicates that I should not be expected to commute I will be using sick leave until the request is acted upon."

On August 18, 2015, the Deputy Director replied to Mr. Gingell, and she told him, "You separately informed me by email that you are requesting sick leave pending a decision on your [reasonable accommodation] request. I can approve your sick leave but I'll need medical documentation to do so." She included attachments for Mr. Gingell to fill out and instructions as to how to proceed with his RA request, including providing medical documentation.

Records reflected that Mr. Gingell failed to provide the Deputy Director and the Chief of HR all the requested information within the Deputy Director's timeline. On September 4, 2015, she told Mr. Gingell in an email "I also asked you for medical documentation for [sick leave]. You did not provide medical documentation, but did submit a doctor's statement that you could not commute. If you are actually incapacitated and requesting continuing [sick leave] independent of any reasonable accommodation request, then you need to tell me that, and you must submit (to [Name] as our Chief, Personnel) medical certification that says that you are incapacitated for work and the dates of incapacitation, as soon as possible and within 15 days after this email." On September 9, Mr. Gingell replied by emailing his sick leave request.

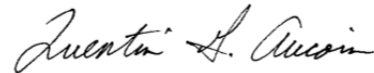
Social media posts reflected that Mr. Gingell worked at RCNV while on sick leave. Mr. Gingell can be seen working on renovations to his shop in preparation for its March 2015 opening and demonstrating products available at RCNV. On August 20, 2015, a BVA employee emailed the Deputy Director an internet link to an RCNV YouTube video titled, *Bob's & Helen's Welcome Video*, which featured Mr. Gingell and his wife discussing the eminent grand opening of RCNV. The video was posted on March 23, 2015, and Mr. Gingell's initial request for sick leave was 5 days prior to this posting.

On September 11, 2015, the Director, Management Planning & Analysis, Board of Veterans' Appeals, told the Deputy Director in an email, "Please be advised that a Board employee reached out to me today and informed me that he (and a few others) visited Bob's motorcycle store today, around 3p. The employee reported that he observed Bob working behind the counter." On a separate occasion, a VA-OIG Investigator observed Mr. Gingell working at RCNV during his duty hours and while on sick leave, engaging him in conversation about specific products in his inventory.

On September 17, 2015, Mr. Gingell emailed an OGC HR Liaison, with the BVA Chief of HR on copy, and said, "I am writing because I intend to retire in the next few months. At this time I would like my retirement to be effective 2-1-16." On Friday, September 18, 2015, Mr. Gingell received our OIG administrative subpoena to produce RCNV business records, and on Monday, September 21, 2015, he appeared at an HR Specialist's office with retirement forms completed and signed, asking that his retirement be effective September 21, 2015.

Conclusion

The evidence substantiated that Mr. Gingell engaged in outside employment while on sick leave. We are administratively closing this allegation, as Mr. Gingell retired from VA effective September 21, 2015.



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