



**Department of Veterans Affairs
Office of Inspector General**

**Administrative Investigation
Abuse of Authority and
Preferential Treatment
Charlie Norwood VA Medical Center
Augusta, Georgia**

Redacted



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

TO: Director, Veterans Integrated Service Network (10N7)

SUBJECT: Administrative Investigation – Abuse of Authority and Preferential Treatment, Charlie Norwood VA Medical Center, Augusta, Georgia (2008-01596-IQ-0024)

Summary

We substantiated that Ms. Rebecca Wiley, Director of the Charlie Norwood VA Medical Center, Augusta, Georgia, abused her authority when she improperly applied a title 38 hiring authority, against the advice of [REDACTED] (b)(6) to appoint a former Congressional staff employee to a VA position. In doing so, Ms. Wiley used improper statutory authority and circumvented the competitive hiring process. In addition, the method and timing of her actions created the appearance of preferential treatment toward a [REDACTED] only days before a public ceremony, attended by Senators, Members of Congress, congressional staff, as well as local and state officials, renaming the Augusta VA Medical Center (VAMC) after the deceased Congressman.

Introduction

The VA Office of The Inspector General, Administrative Investigations Division, (b)(6) investigated an allegation that, as a political favor, Ms. Wiley improperly appointed [REDACTED], a former Congressional staff member, to a position at the Augusta VA Medical Center, which was scheduled to be renamed after [REDACTED], Congressman [REDACTED]. To assess this allegation, we obtained sworn testimony from Ms. Wiley, [REDACTED], Medical Center Quadrad members, Human Resources (HR) personnel, and other VA employees. We reviewed recruitment and personnel records, electronic mail messages, Federal laws and regulations, and VA policy. We investigated but did not substantiate allegations that [REDACTED] abused his time and attendance and that he violated travel regulations, and they will not be discussed further in this report.

Results

Issue: Whether Ms. Wiley Abused Her Authority When She Improperly Applied a Title 38 Hiring Authority to Appoint a [REDACTED] Specialist (b)(6)

Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall act impartially and not give preferential treatment to any individual. 5 CFR § 2635.101 (b)(8). Federal law requires that unless otherwise exempted, personnel recruitment into Federal jobs must be accomplished through fair and open competition in order to ensure that all receive equal opportunity. 5 USC § 2301 (b)(1). Further, the law provides that any employee, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, grant any preference or advantage not authorized by law, and prohibits any such employee from taking or failing to take any personnel action if it violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of Title 5, United States Code. 5 USC § 2302 (b)(6) and (12). VHA policy states that title 38 employees should be assigned duties requiring clinical skills, that the utilization of title 38 employees in competitive civil service positions is prohibited, and that positions which do not require clinical skills should be placed in competitive civil service. VA Handbook 5005, Part III, Appendix N (1), (2), and (3). The Merit System Protection Board defines an “abuse of authority” as an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain to preferred other persons. D’Elia v. Department of the Treasury, 60 M.S.P.R. 226, 232 (1993)

In November 2007, President Bush signed legislation, which was sponsored by most of the Georgia Congressional Delegation, approving the rededication of the Augusta VAMC in the name of deceased Congressman Charlie Norwood. A month later, Ms. Wiley and members of her staff joined [REDACTED], a former [REDACTED] [REDACTED] for a luncheon at The Partridge Inn, “The Grand Hotel of the Classic South.” The VAMC [REDACTED] told us that Ms. Wiley paid for everyone’s meal from her personal funds, to include [REDACTED]. The Coordinator also told us that during this luncheon, [REDACTED] spoke about his experiences in working with Congress and that he was the [REDACTED] for Congressman [REDACTED], Congressman [REDACTED] successor. A week or two after this luncheon, the [REDACTED] sent an electronic mail message to [REDACTED], copying Ms. Wiley on the message, with specific verbiage for Congressman [REDACTED] to use in a letter to terminate [REDACTED] employment. In this same message, the [REDACTED] told [REDACTED] that their goal was to get him reassigned (i.e., appointed to a position with VA) by January 7, 2008. (b)(6)

The [REDACTED] told us that [REDACTED] was a [REDACTED] of hers, and when she learned he was actively seeking employment, she asked him to

send her a resume, which she then gave to Ms. Wiley. Ms. Wiley told us that because she felt that [REDACTED] would be a support to the medical center, she set up a luncheon to “learn more about his talents and skills.” [REDACTED] resume was a one page document reflecting his most recent employment as the [REDACTED] for Georgia’s [REDACTED] Congressional District and [REDACTED] of [REDACTED] for Congress. Ms. Wiley said that she quickly decided to hire [REDACTED] after the luncheon interview. She said that her goal was to hire [REDACTED] without delay, as they were preparing for the medical center renaming ceremony scheduled for January 15. She said that she expected Members of Congress, Senators, congressional staff, as well as local and state officials to attend this ceremony, and she wanted to ensure that [REDACTED] was “highly visible and identifiable” as a VA employee during the ceremony. She further said that as a new director, she previously placed public and [REDACTED] as a lower priority; however, with the renaming ceremony and the medical center being designated for a Fisher House, she felt an urgency to appoint [REDACTED] as a [REDACTED] Specialist. (b)(6)

The [REDACTED] told us that Ms. Wiley appointed [REDACTED] using 38 USC § 7405 (a) (1), which was typically used to hire medical staff, and that [REDACTED] began his VA employment on a Friday in the middle of a pay period, which she said was unusual. She said that 4 days later, in a public ceremony attended by numerous Members of Congress and Senators, the medical center was rededicated as the Charlie Norwood VA Medical Center. She said that [REDACTED] attended the ceremony; he sat with the Guest of Honor, Congressman Norwood’s widow; and that Congressman Deal, Mr. Shaffer’s former employer, was the keynote speaker. (b)(6)

The [REDACTED] said that Ms. Wiley and members of her staff identified the hiring authority that Ms. Wiley would eventually use to appoint [REDACTED]; however the [REDACTED] said that she did not believe this hiring authority was appropriate. She told us that she initially researched appropriate hiring authorities, consulting with a VA Central Office (VACO) HR Specialist. She asked the HR Specialist if the medical center could noncompetitively appoint a displaced Legislative branch employee whose service was ending due to a change in an elected official. The [REDACTED] said that the VACO HR specialist told her that the individual in question must go through a competitive process to be selected for the position, and the [REDACTED] then relayed that information to Ms. Wiley and her staff. The [REDACTED] said that Ms. Wiley was upset by that information, because she thought that the [REDACTED] was putting up barriers to her hiring [REDACTED]. [REDACTED] said that Ms. Wiley told her that she [REDACTED] was “too tied in to technical requirements” and that Ms. Wiley could utilize another HR department, if necessary, to hire [REDACTED]. (b)(6)

Ms. Wiley told us that she sought HR guidance outside of her medical center, because she had no confidence in the experience of her HR staff. She further said that from her own past experience, she knew there were other options available. She said that when the

██████████ could not offer any hiring alternatives, she asked the Assistant Director to contact someone he knew with HR experience. She said that person provided VA policy regarding the use of title 38 for temporary appointments. VA Handbook 5005, Part II, Chapter 3 states that 38 USC § 7405 (a)(1) is primarily used to obtain the services of physicians, dentists, nurses; however, it may be used under certain conditions to obtain the services of medical support personnel. The person contacted by the Assistant Director, an ██████████ at the VA National Center for Health Promotion and Disease Prevention and formerly ██████████ VA Medical Center HR Chief, told us that the Assistant Director sought guidance on appointing a Health System Specialist, and he said that he told the Assistant Director that if the position was related to the delivery of health care, title 38 would be an appropriate hiring authority. He told us that if the Assistant Director had said that the position was for a ██████████ Specialist and not a Health System Specialist he “would not be comfortable” recommending the title 38 hiring authority. He said that it would be “a real leap” to use that authority to hire someone as a ██████████ Specialist. (b)(6)

Ms. Wiley said that the ██████████ was “uncertain” of using title 38; however, the ██████████ told us that she advised Ms. Wiley against using it to appoint ██████████. The ██████████ said that title 38 was typically used to hire direct patient care providers pending professional licensure, permanent part-time and intermittent direct patient care providers, and temporary medical support personnel. Employee pay records disclosed that between June 2006 and June 2008 the medical center hired 170 employees using this title 38 hiring authority, and all the employees were health care providers, such as nurses and physicians, with the exception of ██████████. Of the 170 employees, 4 began working in the middle of a pay period, 3 physicians and ██████████. ██████████ told us that it was extremely rare to hire an employee in the middle of a pay period, citing an example of a cardiologist needed for emergency surgery the following week. (b)(6)

Personnel records contained a Standard Form 52 (SF-52), Request for Personnel Action, signed by Ms. Wiley on January 10, 2008, as the requesting, authorizing, and approving official, appointing ██████████ as a ██████████ Specialist. The SF-52 reflected that this was an excepted service appointment, not to exceed 3 years, using 7405 (a)(1) of title 38. In addition, Ms. Wiley appointed ██████████ as a GS-13, step 10, with an annual salary of \$100,976.00. On the SF-52, Ms. Wiley signed the signature block certifying that the information entered on the form was accurate and that the proposed action was in compliance with statutory and regulatory requirements. However, the ██████████ told us that ██████████ would not sign the SF-52, the commitment letter, or technical review on the minimum justification memorandum, as she did not consider this appointment compliant with statutory and regulatory requirements. Ms. Wiley signed both the SF-52 and the commitment letter, and the ██████████ told us that the ██████████ signed the justification memorandum for Ms. Wiley. Ms. Wiley told us that she signed the SF-52 as the approving official, because she could “legally do so” and that she “interpreted” the hiring authority to be in compliance with (b)(6)

regulations. She also said that she used the appropriate pay structure and that [REDACTED] (b)(6) was qualified at the appropriate grade level, since his qualifications were comparable to those required for competitive service employees performing similar duties.

We sought guidance from three separate HR Specialists concerning the appropriateness of using the title 38 hiring authority to appoint [REDACTED] as a [REDACTED] Specialist. One was the VACO HR Specialist originally contacted by the [REDACTED]. She told us that the use of this authority for a 3-year appointment of a [REDACTED] Specialist did not generally fit the profile of a position that needed to be filled more expeditiously in VA's healthcare system than could have been filled using the normal title 5 competitive process. She also said that VA Handbook 5005 states, "Under no circumstance may this authority be used to circumvent the competitive employment procedures." Further, she questioned the appropriateness of setting [REDACTED] salary at the 10th step of what was already a high grade of GS-13.

Another HR Specialist, an Office of Human Resources Management Director, told us that (b)(6) the position of [REDACTED] Specialist was not covered under title 38; therefore the use of that hiring authority was not appropriate. She also said that the documentation submitted by Ms. Wiley did not fully support or justify the request to hire the candidate above the minimum rate of the GS-13, step 1. Further, she said that specific procedures listed in VA Handbook 5007, Chapter 3, indicate that requests to hire above the minimum rate must be approved prior to the effective date of the appointment and the offer letter to the position of [REDACTED] Specialist, dated January 9, 2008, referenced the position grade and salary. She noted that the offer letter was dated one day before the submission and approval of the request to hire [REDACTED]. She concluded by saying that both requests were inappropriate and did not follow the guidance or procedures listed in regulations and VA policy. Ms. Wiley told us that although the offer letter was dated 1 day before she requested and approved [REDACTED] appointment, he did not receive the offer letter until January 11, 2008, his first day on the job.

A third HR Specialist, a VHA Human Resources Officer, told us that it was inappropriate (b)(6) to use 38 USC § 7405 (a)(1) as a means to appoint an employee to a [REDACTED] Specialist position, because under no circumstances can this authority be used to circumvent competitive employment procedures. He said that this hiring authority should be used to only hire medical support personnel for patient care services. In addition, he said that typically an HR Specialist signed the SF-52 certifying that the action was in compliance with statutory and regulatory requirements. He said that if it was signed by a higher level official, it suggested to him that either HR personnel were "left out of the loop" or that HR personnel refused to sign the form.

Ms. Wiley told us that she did not know Congressman [REDACTED] and that no one (b)(6) asked her to hire [REDACTED]. She said that the medical center had an unprecedented amount of congressional and military interest and oversight, with frequent visits from high ranking military and elected officials, so there was a need for additional expertise to

insure their VA mission was properly conveyed. She further said that the Fisher Foundation approved the medical center for a Fisher House, and this required community fund raising. She said that in the first 10 months of her time at the medical center, there was not an aggressive plan to meet the goal set forth by the Fisher Foundation, due to her onboard staff's inexperience. However, the ██████████ told us that the ██████████ Specialist position filled by ██████████ was formerly held by an employee who retired in September 2006 and that the medical center made no effort to fill the position between then and January 2008. Ms. Wiley said that she previously placed ██████████ as a low priority, but due to the renaming ceremony and increased attention on activities surrounding the Fisher House, she felt an urgency to fill the position. (b)(6)

Conclusion

We concluded that Ms. Wiley, as the Director of the Charlie Norwood VA Medical Center, abused her authority when she circumvented the competitive hiring process by improperly applying a title 38 hiring authority to appoint ██████████, a former Congressional staff employee, as a ██████████ Specialist. Ms. Wiley not only made this selection against the advice of her own ██████████, but chastised her for not offering hiring alternatives and being too tied to "technical requirements." Furthermore, Ms. Wiley certified the proposed hiring action as being compliant with statutory and regulatory requirements; however, three different HR Specialists told us that applying the title 38 hiring authority to appoint a ██████████ Specialist was not proper and two said that there was insufficient justification to appoint ██████████ at the 10th step of a grade 13. Moreover, the ██████████ Specialist position sat vacant for over a year with no urgent need to fill the position, yet Ms. Wiley suddenly felt such an urgent need, after receiving ██████████ resume, that she appointed him to the position so quickly that not only did her staff provide his former employer with instructions on how to release him from service but ██████████ received his VA offer letter on his first day of work, which was 4 days before the renaming ceremony. (b)(6)

Although we were unable to find evidence of Ms. Wiley being unduly influenced in her appointment of ██████████, Ms. Wiley violated Federal law to get the result she desired, an illegal, non-competitive appointment. Ms. Wiley ignored accurate, competent advice from her own Human Resource department and failed to comply with Federal law and VA policy mandating competition for hiring. She not only gave the appearance of partiality, but she displayed a preference for one favored person to the detriment of others who were not given an opportunity to apply and compete for the position. (b)(6)

Recommendation 1. We recommend that the Director, Veterans Integrated Service Network 7, take appropriate administrative action against Ms. Wiley for circumventing competitive hiring processes by improperly applying a title 38 hiring authority to appoint [REDACTED] to a [REDACTED] Specialist position. (b)(6)

Recommendation 2. We recommend that the Director, Veterans Integrated Service Network 7, ensure that immediate corrective action is taken concerning the improper excepted service appointment of [REDACTED] to a [REDACTED] Specialist position.

Comments

The Director, Veterans Integrated Service Network 7, concurred with the recommendations, stating that Ms. Wiley will receive an appropriate administrative action and the improper excepted service appointment will be terminated. The Director's response is in Appendix A. We will follow up to ensure the actions are taken.

(original signed by:)
JAMES J. O'NEILL
Inspector General for
Investigations

Network Director Comments (b)(6)

Department of
Veterans Affairs

Memorandum

Date: December 12, 2008
From: Director, VA Southeast Network (10N7)
Subj: Administrative Investigation – Abuse of Authority and Preferential Treatment, Charlie Norwood VAMC, Augusta, GA
To: VA Inspector General for Investigations
Thru: (10N)

1. I have reviewed the Draft Administrative Investigation and concur with the recommendations. The following actions will be initiated:
 - a. Recommendation 1. – Concur - Appropriate Administrative Action will be initiated against the Director, Augusta VAMC with VHA Management Support guidance with a target completion date of March 1, 2009.
 - b. Recommendation 2. – Concur - The improper excepted service appointment of [REDACTED] will be terminated with a target completion date of January 2, 2009.
2. Please contact Mark Anderson, Deputy Network Director, VISN 7 at 678-924-5722 for further information.



Lawrence A. Biro

Network Director's Comments to Office of Inspector General's Report

The following Network Director's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommendation 1. We recommend that the Director, Veterans Integrated Service Network 7, take appropriate administrative action against Ms. Wiley for circumventing competitive hiring processes by improperly applying a title 38 hiring authority to appoint [REDACTED] to a [REDACTED] Specialist position. (b)(6)

Concur **Target Completion Date:** 03/01/2009

Appropriate Administrative Action will be initiated against the Director, Augusta VAMC with VHA Management Support guidance with a target completion date of March 1, 2009.

Recommendation 2. We recommend that the Director, Veterans Integrated Service Network 7, ensure that immediate corrective action is taken concerning the improper excepted service appointment of [REDACTED] to a [REDACTED] Specialist position. (b)(6)

Concur **Target Completion Date:** 01/02/2009

The improper excepted service appointment of [REDACTED] will be terminated with a target completion date of January 2, 2009.

OIG Contact and Staff Acknowledgments

OIG Contact	Linda Fournier – (202) 461-4500
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Acknowledgments	William A. Tully
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