

# Department of Veterans Affairs Office of Inspector General

Administrative Investigation
Prohibited Personnel Practices, Abuse of
Authority, Misuse of Position, and False
Statements, Office of Human Resources
and Administration, VA Central Office

## Redacted



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

**TO:** VA Chief of Staff

**SUBJECT:** Administrative Investigation – Prohibited Personnel Practices, Abuse of

Authority, Misuse of Position, and False Statements, Office of Human

Resources and Administration, VACO (2010-0853-IQ-0008)

#### **Summary**

We substantiated that Mr. Willie L. Hensley, Principal Deputy Assistant Secretary, VA Office of Human Resources and Administration (HRA), engaged in prohibited personnel (b)(6)practices, abused his authority, misused his position to appoint two subordinates, and that he made false statements. We also found that Ms. , Management Analyst, Office of Human Resources Management (OHRM), misused her official time and that Management Analyst, OHRM, misrepresented her income to be Ms. appointed at a higher than minimum rate of pay and made false statements. We further , HR Specialist, and a former (retired) Management found that Ms. Analyst engaged in prohibited personnel practices in the appointment of Ms. that a former (retired) Personnel Officer and Director of VA Central Office HR Services failed to follow policy in setting Ms. ' higher than minimum rate of pay.

#### Introduction

The VA Office of Inspector General Administrative Investigations Division investigated allegations that Mr. Hensley engaged in inappropriate relationships with two subordinates that resulted in his giving them preferential treatment with respect to their VA employment. We further investigated whether Ms. misused her official time; was properly hired, qualified for her position, and if her higher (b)(6) and whether Ms. than minimum starting salary was properly set in accordance with VA policy. We also determined that Mr. Hensley and Ms. intentionally and willfully made false Finally, we investigated whether Ms. and a former employee engaged in a prohibited personnel practice and a former employee failed to properly To assess these allegations, we interviewed Mr. Hensley, administer VA policy. , Ms. Ms. , Ms. and Ms. current supervisors, and other current and former VA employees. We reviewed email,

time and attendance, travel, personnel, merit promotion, and telephone records and applicable Federal laws, regulations, and VA policy. In addition, we made a criminal referral for false statements to the U.S. Department of Justice; however, they did not accept the matter for criminal prosecution. We investigated but did not substantiate other allegations, and they will not be discussed further in this report.

#### Background

Mr. Hensley began his Federal service with VA in June 1995. In January 2005, he converted to career Senior Executive Service (SES) and he became the Associate Deputy Assistant Secretary (ADAS) for the Office of Human Resources Management (OHRM). In June 2006, he became the Deputy Assistant Secretary (DAS) for OHRM, and in August 2008, he was appointed as the Principal DAS for HRA, the second highest human resources management position in VA. From August 2008 to May 2009, Mr. Hensley also served as the Acting Assistant Secretary for HRA, and as such, Mr. Hensley was VA's Chief Human Capital Officer and served as the principal advisor to the Secretary, his executive staff, and the Department's human resources managers and practitioners on matters pertaining to human resources, labor-management relations, diversity management and equal employment opportunity, resolution management, employee health and safety, workers' compensation; and VA Central Office administration. Within HRA, Mr. Hensley had authority and oversight of OHRM; the Office of Resolution Management (ORM); and the Offices of Diversity and Inclusion; Administration; and Labor Management Relations.

#### Results

# Issue 1: Whether Mr. Hensley Engaged in a Prohibited Personnel Practice in (b)(6) Reassigning Ms. To OHRM

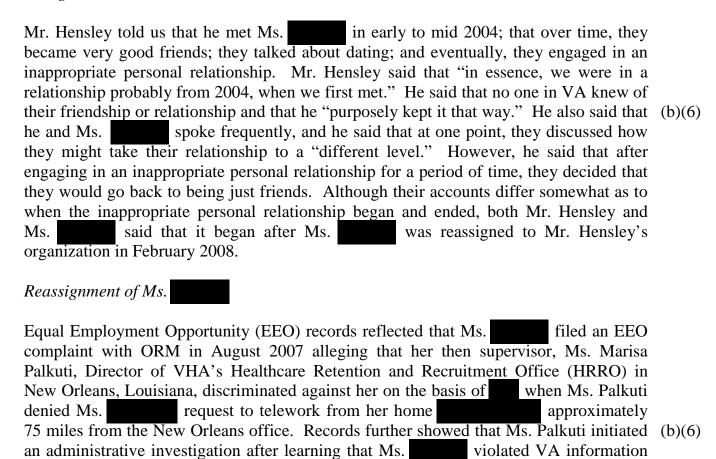
Federal law states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment. 5 USC § 2302(b)(6).

The Standards of Ethical Conduct for Employees of the Executive Branch prohibit an employee from using his public office for his own private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity and prohibit an employee from using his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to themselves or to friends, relatives, or persons with whom the employee is affiliated with in a nongovernmental capacity. 5 CFR § 2635.702.

The Merit Systems 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), *overruled in part on other grounds by Thomas v. Department of the Treasury*, 77 M.S.P.R. 224, 236 n.9 (1998).

In a recent decision involving two HR specialists charged with committing a prohibited personnel practice (5 USC § 2302(b)(6)), the U.S. Merit Systems Protection Board said that the agency must prove a violation of Section 2302(b)(6) by "preponderant evidence." *Special Counsel v. Lee*, 2010 M.S.P.B. 89, 2010 MSPB LEXIS 1851 (May 14, 2010), ¶5. The Board further said that whether a respondent violated Section 2303(b)(6) "turns on whether they intended to afford preferential treatment...," and "An agency may rely upon proper circumstantial evidence to establish intent." <u>Id.</u>, at ¶21 and 24.

#### Background



In November 2007, an Administrative Investigation Board (AIB)

while on annual leave, improperly gave her VA

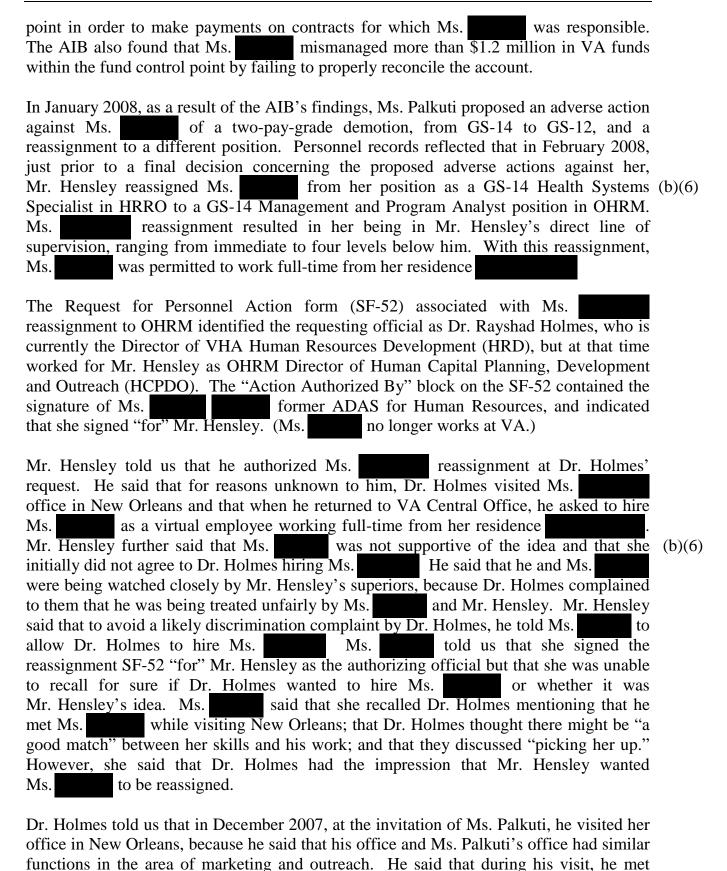
convened by Mr. Nevin Weaver, currently Director of Veterans Integrated Service Network 8, who at the time was the Chief Officer of VHA Workforce Management and

computer passwords and electronic signature to a subordinate to access a fund control

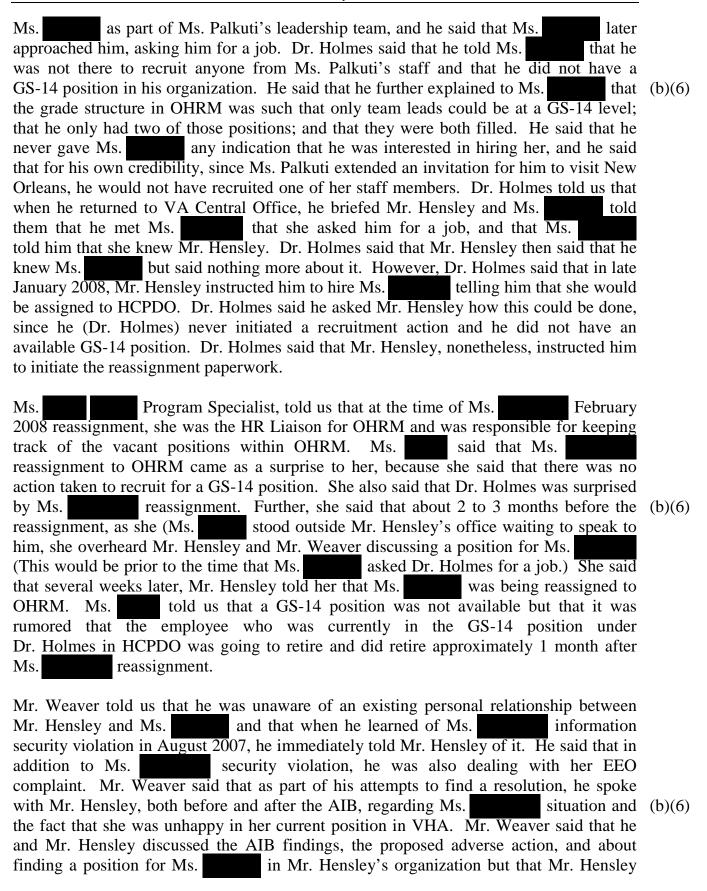
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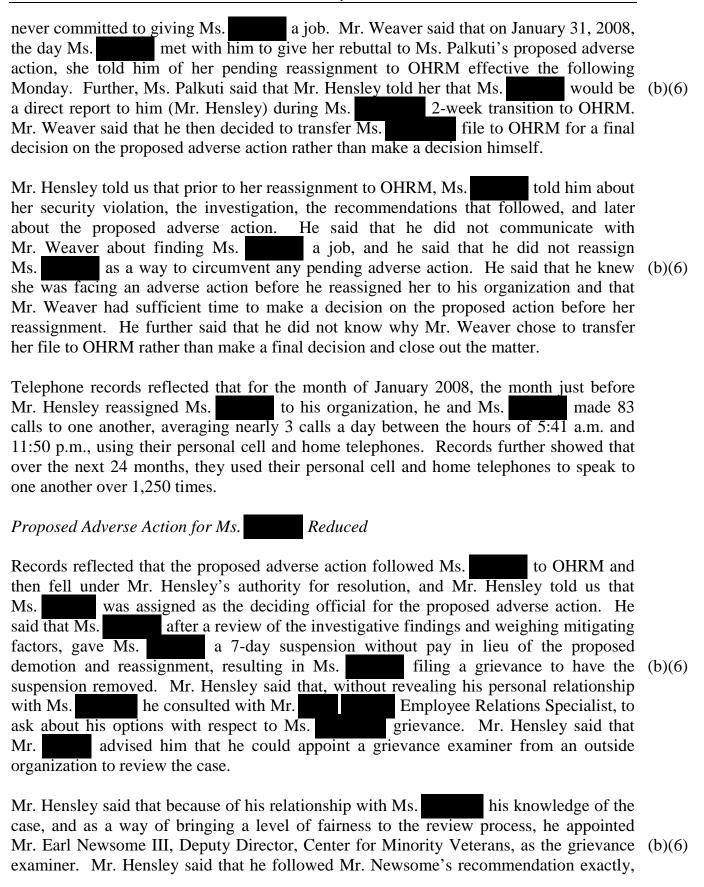
Consulting, found that Ms.

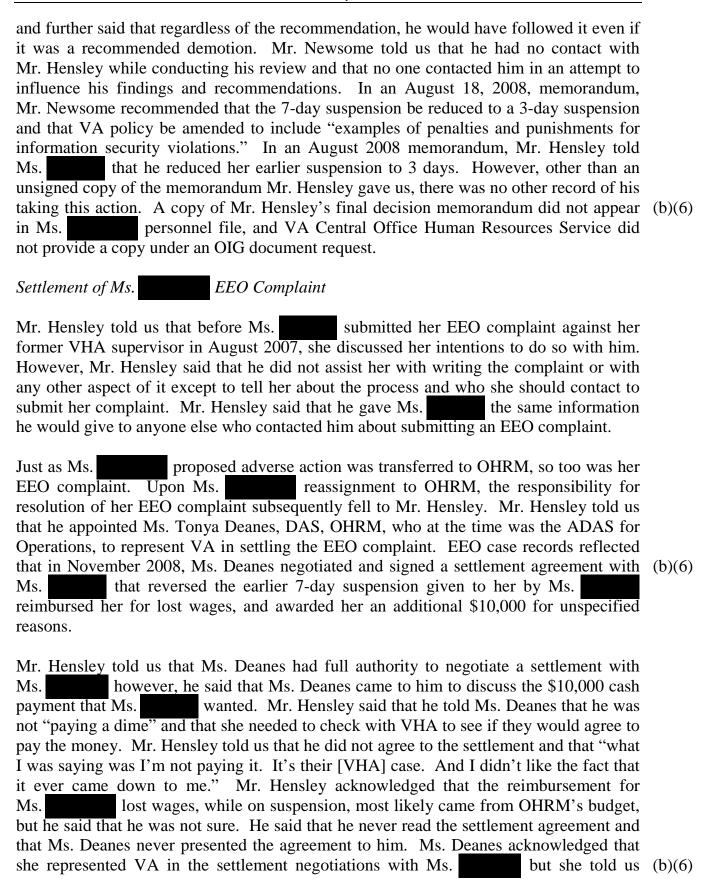
security policy.



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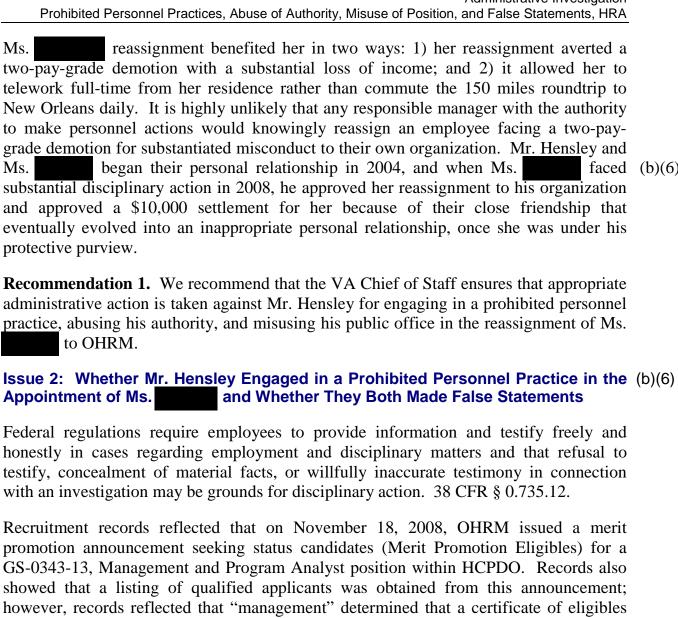
that she took a couple of breaks during the mediation session to speak to Mr. Hensley and Ms. Joleen Clark, Chief Officer, VHA Workforce Management and Consulting. Ms. Deanes said that they asked VHA to pay the \$10,000 award and that she kept Mr. Hensley informed as to Ms. requests in the settlement. She further said (b)(6) that Mr. Hensley was "okay with it or we wouldn't have proceeded" with paying Ms. a \$10,000 settlement.

#### Conclusion

We concluded that Mr. Hensley abused his authority, misused his position, and engaged in a prohibited personnel practice when he used his position and authority to reassign Ms. at a time when he was well aware that she faced an adverse action and intentionally gave her preference for the purpose of improving her prospects for employment. Although Mr. Hensley's and Dr. Holmes' accounts differ sharply as to who reassignment to OHRM, we found that Mr. Hensley was a longinitiated Ms. time close personal friend of Ms. whereas, Dr. Holmes met her only once in late 2007, a little more than 1 month before her reassignment. Mr. Hensley told us that he knew in advance that Ms. faced a disciplinary action; however, we found no evidence that Dr. Holmes knew about her misconduct or the proposed adverse action took advantage of Dr. Holmes' visit to New before her reassignment. Ms. Orleans to ask him for a position within his organization, but Dr. Holmes said that he did (b)(6) not have a position for her and that he was not interested in hiring her. Mr. Hensley, and not Dr. Holmes, had motive, opportunity, and the authority to help Ms. and took extraordinary measures to ensure her reassignment.

In addition, Mr. Weaver told us that he and Mr. Hensley discussed finding Ms. job within Mr. Hensley's organization, both before and after Ms. said that she overheard Mr. Hensley and Mr. Weaver talking about a position Ms. for Ms. 2 to 3 months before Ms. reassignment. Mr. Hensley alone had the final authority to reassign Ms. and telephone records reflected that they spoke on the telephone 83 times in January 2008, the month just prior to Mr. Hensley reassigning her to his organization. Further, Mr. Hensley admitted that he approved reassignment even though Ms. was against it. Even if we accepted Mr. Hensley's claim that he approved the reassignment out of a fear that Dr. Holmes may file a discrimination complaint, this does not justify Mr. Hensley engaging in a prohibited personnel practice or failing to properly discharge the duties of his position.

Furthermore, in January 2008, Ms. Palkuti proposed that Ms. be demoted and reassigned, and that same month, Mr. Hensley told Dr. Holmes to transfer Ms. to (b)(6) his organization. Dr. Holmes said that there was no position for her, and the OHRM HR Liaison said that it came as a surprise, since there was no vacancy to fill. That same year, Mr. Hensley reduced Ms. proposed two-grade demotion to a 3-day suspension and concurred with an EEO settlement of \$10,000 for unspecified reasons.

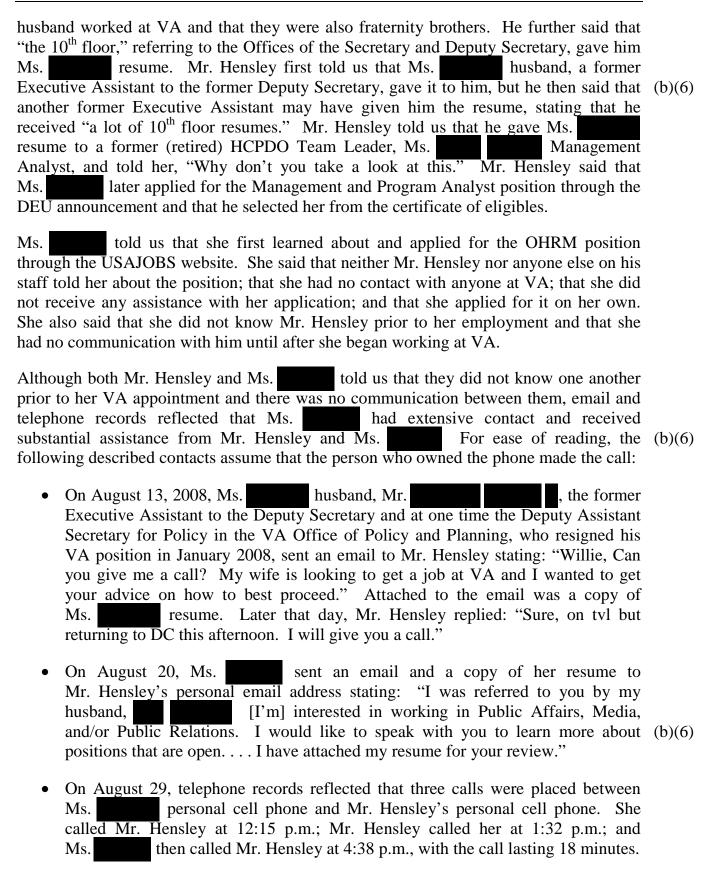


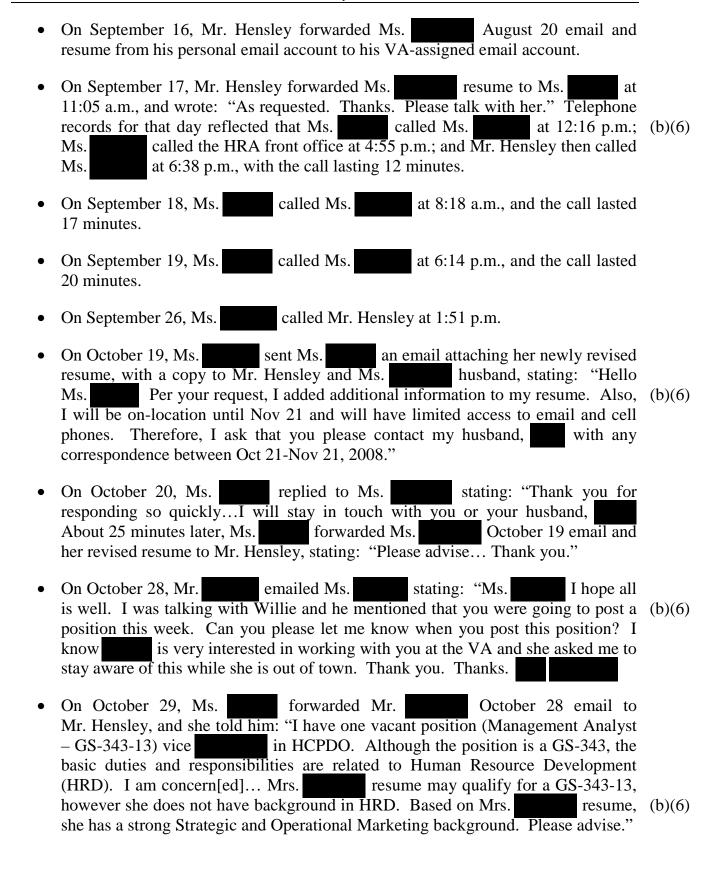
Recruitment records reflected that on November 18, 2008, OHRM issued a merit promotion announcement seeking status candidates (Merit Promotion Eligibles) for a GS-0343-13, Management and Program Analyst position within HCPDO. Records also showed that a listing of qualified applicants was obtained from this announcement; however, records reflected that "management" determined that a certificate of eligibles would not be issued. Further, records showed that 1 month later, on December 19, using a delegated examining unit (DEU), OHRM issued a second vacancy announcement for the same position that was open to all qualified U.S. citizens. From the DEU announcement, a certificate of eligibles was issued initially listing three 10-point veterans as the top three candidates and Ms.

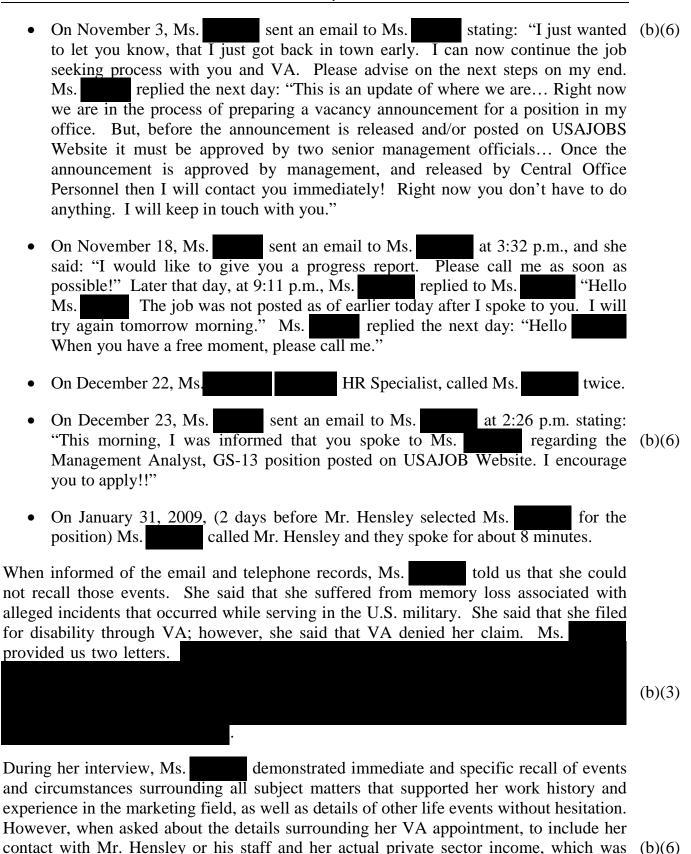
a 5-point veteran, as the fourth. Federal law requires that an appointing authority select from the highest three eligibles on the certificate. 5 USC § 3318(a). The certificate of eligibles reflected that one of the top three 10-point veteran candidates declined to be considered for the position, which in turn placed Ms.

for the position on February 2, 2009, and that her appointment as a (b)(6) Management and Program Analyst was effective February 15.

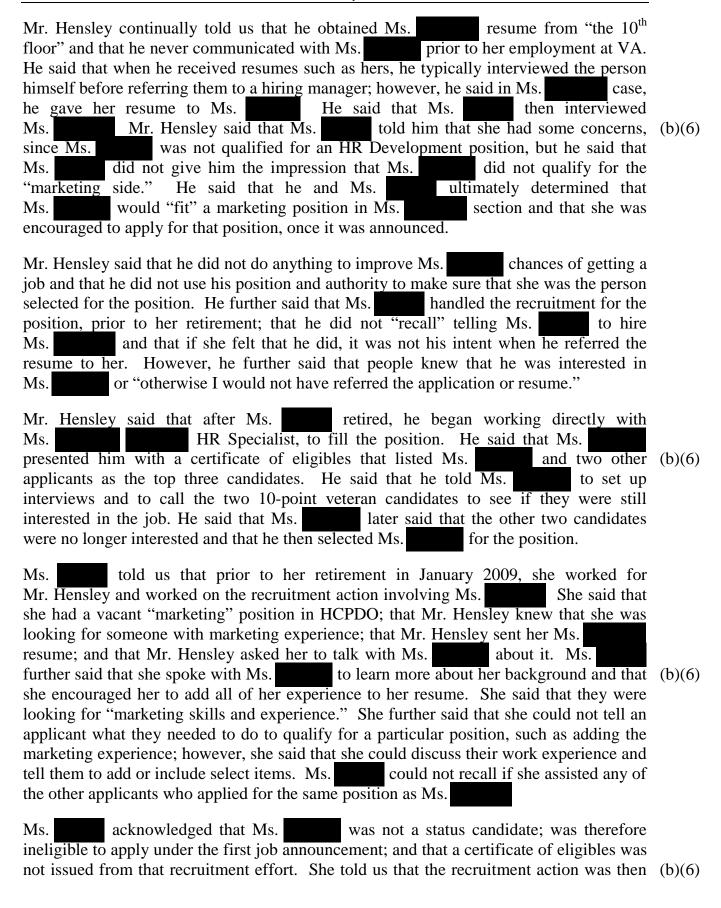
Mr. Hensley told us that he did not meet and did not know Ms. prior to her appointment. He, however, said that he knew Ms. husband from when her







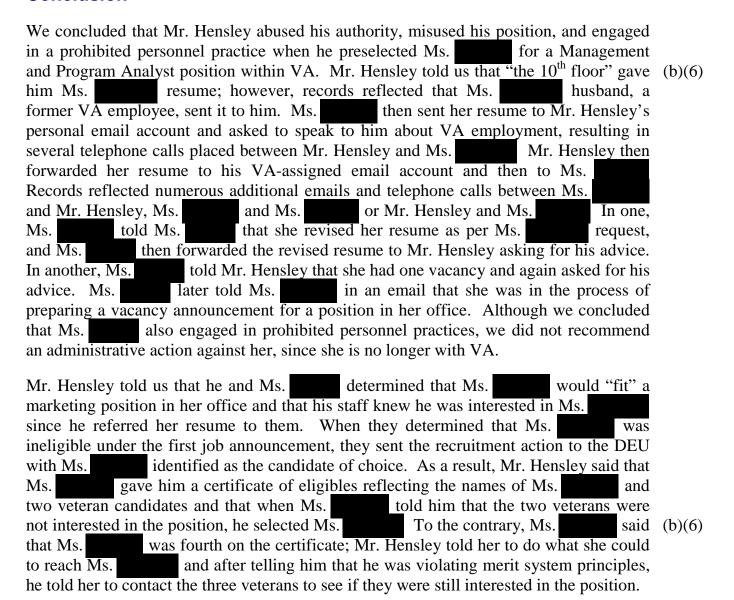
used to justify her higher than minimum rate of pay, she claimed a lapse in memory.

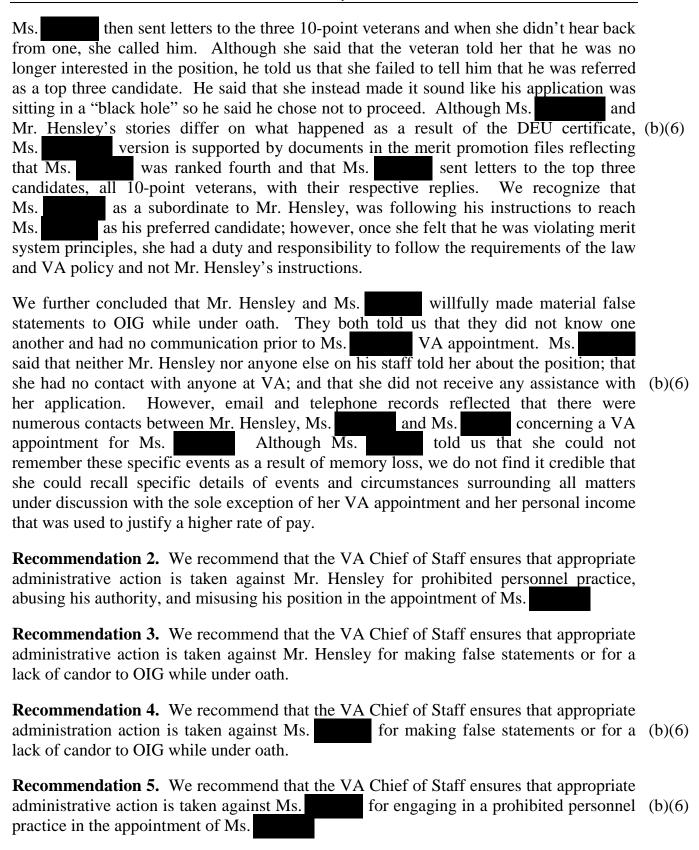


| was identified to the DEU as the candidate of choice. Ms. told us that Ms. and Mr. Hensley were the management staff involved in the recruitment action and that she worked closely with both of them keeping them informed of the progress. She said that Ms. and Mr. Hensley told ner that Ms. was the preferred candidate. Ms. said that Ms. and did not qualify for the position for two reasons. First, the merit promotion announcement was open to status candidates only and since Ms. was never a Federal employee, she was not eligible to apply; and second, Ms. resume, in Ms. professional opinion, did not show that she possessed the experience necessary to meet the requirements of the position.  | (b)(6) |
|--|--------|
| Ms. told us that after the merit promotion announcement closed, her former supervisor Ms. (no longer with VA) instructed her to send the staffing action to the DEU to "see if they could reach" Ms. Ms. said that the reason Mr. Hensley and Ms. wanted to use the DEU was to "change the category as far as who could apply for the position" to allow Ms. to apply. In addition, Ms. said her former supervisor told her to submit Ms. name to the DEU as a "name request," telling the DEU that Ms. was the candidate that management wanted to reach. Ms. identified a VHA Nationwide Recruitment as a "name request." The file also contained a printout from the USA Staffing website listing the names of the applicants who applied under the merit promotion announcement with a hand-written note by Ms. stating, "MFR. 1-5-2009. Management did not want the merit promotion certificate to be issued. DEU, per discussion with ""   | (b)(6) |
| Contrary to Mr. Hensley's claim that Ms. and two 10-point veterans as the top three candidates, Ms. and two 10-point veterans as the top three candidates, Ms. as the top three candidates and Ms. as fourth on the list. Ms. as and that after she showed Mr. Hensley the certificate, he asked her to do what she could to reach Ms. Ms. Ms. as and that she knew what Mr. Hensley meant and that he was said that she knew what Mr. Hensley meant and that he was said that she believed that they were violating merit system principles; however, she said that they both instructed her to contact the top three veterans to see if they were still interested in the position. She said that she then mailed etters of inquiry to the three 10-point veterans, and records in the merit promotion file reflected that two of the three veterans replied that they were still interested in the position. Ms. Said that she called for a position as one of the top three candidates; however, she said that he told her that he accepted a job in Atlanta, Georgia, and that he was not interested in relocating to Washington, DC. | (b)(6) |

The third veteran told us that he could not recall the name of the person who contacted him, but he remembered that the female caller asked if he was still interested in proceeding with his application for a position within VA. He said that he asked the caller if she could provide more information, such as where his application stood or whether they wanted to interview him, but he said that she would not tell him anything. He further said that the caller never told him that he was referred as a top three candidate and that she seemed as though she was not allowed to give him any information. He said that she kept asking him the same thing, "Do you want to proceed?" He said that she left him with the impression that his application was sitting in a "black hole" someplace, and since she would not tell him anything regarding his status and because he applied for other positions elsewhere, he said that he chose not to proceed.

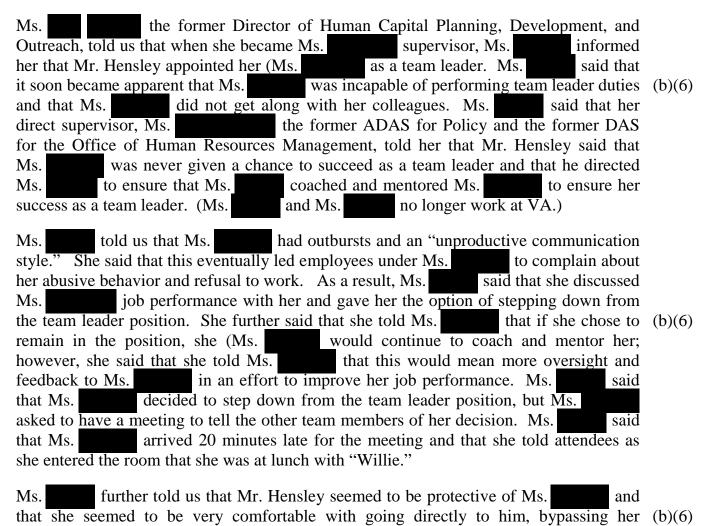
#### **Conclusion**

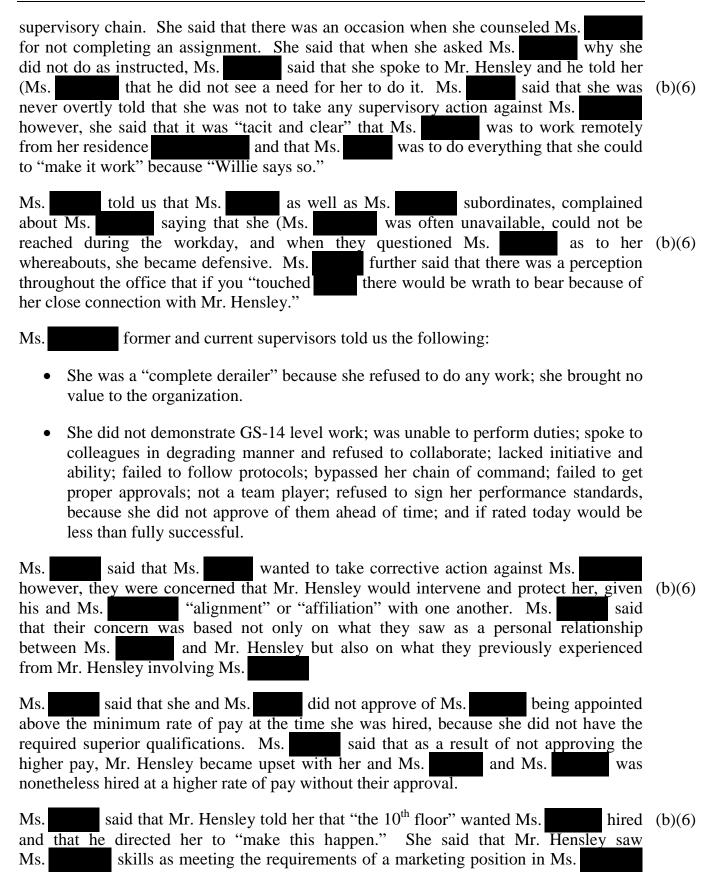




#### Issue 3: Whether Mr. Hensley Failed to Properly Discharge Duties of His Position

Federal regulations state that employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government. 5 CFR § 735.203. Standards of Ethical Conduct for Employees of the Executive Branch require that employees act impartially, disclose abuse to appropriate authorities, not use one's public office for private gain, or use one's Government position to coerce or induce another person to provide any benefit to himself or friends. They also require that employees put forth an honest effort in the performance of their duties and to endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101 and 702. The Office of Personnel Management's *Guide to Senior Executive Service Qualifications*, dated October 2006, states that a fundamental competency of being a member of Senior Executive Service (SES) is behaving in an honest, fair, and ethical manner and model high standards of ethics. VA policy states that a major SES competency is the ability to foster high ethical standards in meeting the organization's vision, mission, and goals. VA Handbook 5027, Part III, Appendix A (April 15, 2002).



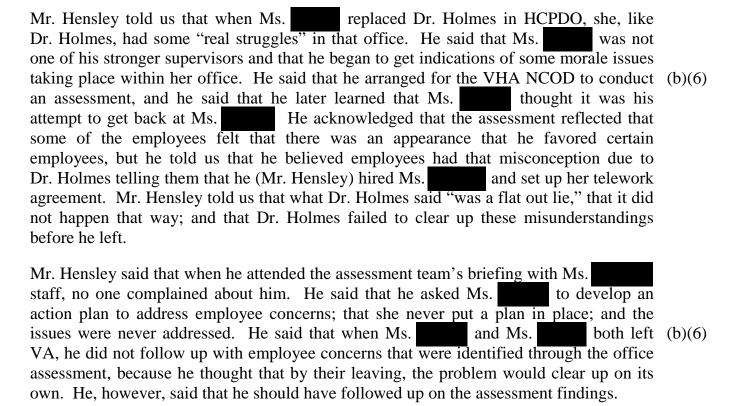


| office and that he wanted her hired for that position. Ms. said that Mr. Hensley also directed her to hire Ms. at a higher than minimum rate of pay; however, Ms. said that after reviewing Ms. resume, she did not believe that her experience was sufficient to justify a higher salary. She said that she then referred the matter to Ms. because she said that ultimately it was Ms. resume, Ms. resume, Ms. replied back in writing that based on the information contained in Ms. resume, she did not meet the superior qualifications required for a higher rate of pay. Ms. said that she supported Ms. decision and that she told Mr. Hensley that the higher salary would not be approved. She said that Mr. Hensley then came to her office and directed that she sign the documents approving Ms. higher rate of pay; however, she said that she refused to sign them. | (b)(6) |
|--|--------|
| Ms. former and current supervisors told us the following:  |        |
| <ul> <li>She bragged to her colleagues that her husband, a former DAS, was "tight" with Mr. Hensley; VA would give her anything she wanted; colleagues should fear her because she could "take care of them;" bragged about her higher than minimum pay rate; and lacked the knowledge of her claimed job experience.</li> <li>She did not have the required technical work knowledge and that when hired she qualified for the position at a GS-11 level not GS-13.</li> </ul>  |        |
| Ms. told us that shortly after Ms. was assigned to Ms. office, someone unknown began informing Mr. Hensley of Ms. management decisions. She said that Mr. Hensley then focused on Ms. and told Ms. that he received employee "feedback" about "things" and that he wanted to assess Ms. office. Ms. said that when the assessment was completed, the assessment team was to first meet with her and Mr. Hensley to provide them their findings and then to follow up with a group meeting of Ms. staff. However, Ms. said that she was never told when this meeting was to take place and that by coincidence while walking down the hall, she saw Mr. Hensley entering a room to meet with the assessment team alone. She said that she then invited herself to the meeting.  | (b)(6) |
| Ms. said that the team reported that Ms. subordinates admired and respected her and that even though she had not been in her position for a very long time, they felt that she was moving the office in a positive direction. Ms. said that the assessment team further said that Ms. subordinates believed that Mr. Hensley was protecting Ms. and Ms. and that the subordinates feared retaliation if they did or said anything or reacted in any way towards Ms. or Ms.   | (b)(6) |
| Ms. said that when the team later met with Ms. staff, Mr. Hensley decided to attend as well. She said that as a result of his attendance, the meeting became very controlled and subordinates did not participate in an open discussion. Ms.   | (b)(6) |

said that afterwards, Mr. Hensley told her that he wanted to have a meeting to discuss the assessment team's findings but that he did not want Ms. to attend. Ms. (b)(6) said that she insisted that Ms. be included in this meeting, since it was her office. She said that Mr. Hensley eventually agreed; however, she said that the meeting was rescheduled several times and never took place.

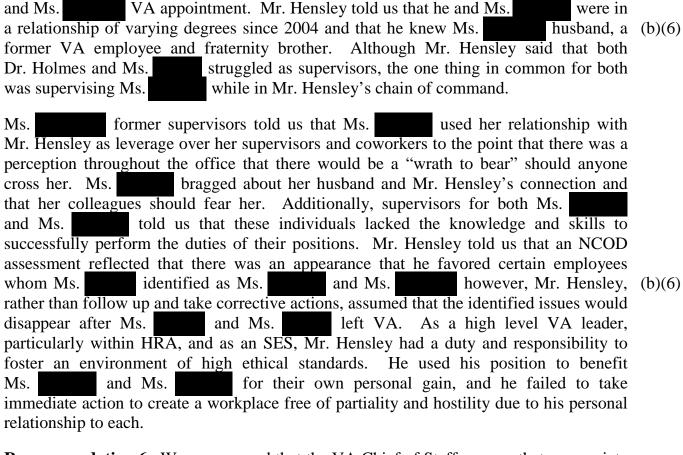
Records of the VHA National Center for Organization Development (NCOD) workplace assessment contained the following examples of weaknesses and desired changes found by the assessment team:

- Fear that the NCOD assessment was a "ploy" for changing leadership
- Lack of psychological safety special relationships and favoritism
- Perceived lack of respect for the chain of command
- Quit "whipping the mules and grazing the ponies"



#### **Conclusion**

We concluded that Mr. Hensley failed to properly discharge the duties of his position. We previously concluded in Issues 1 and 2 that he abused his authority, misused his position, and engaged in prohibited personnel practices in Ms. reassignment (b)(6)



**Recommendation 6.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to properly discharge the duties of his position.

# Issue 4: Whether Ms. Misrepresented Her Salary and a Former Employee (b)(6) Failed to Follow Policy on Pay Setting

Federal regulations state that an agency may make a superior qualifications appointment and set the initial pay at a rate higher than the minimum rate if: (1) the candidate has superior qualifications based on the level, type, or quality of the candidate's skills or competencies demonstrated or obtained through experience and/or education, the quality of the candidate's accomplishments compared to others in the field, or other factors that support a superior qualifications determination. The candidate's skills, competencies, experience, education, and/or accomplishments must be relevant to the requirements of the position to be filled. These qualities must be significantly higher than that needed to be minimally required for the position and/or be of a more specialized quality compared to other candidates; or (2) a candidate fills a special agency need if the type, level, or quality of skills and competencies or other qualities and experiences possessed by the candidate are relevant to the requirements of the position and are essential to accomplishing an important agency mission, goal, or program activity. A candidate also

may meet the special needs criteria by meeting agency workforce needs, as documented in the agency's strategic Human Capital Plan. 5 CFR § 531.212(b).

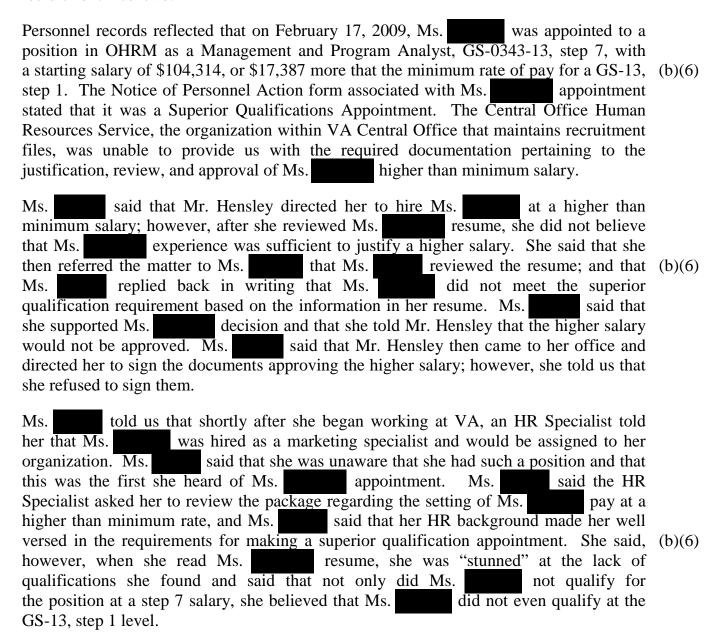
In determining the rate of pay, an agency may consider one or more factors, as applicable to the case at hand, including: (1) The level, type, or quality of the candidate's skills or competencies; (2) The candidate's existing salary, recent salary history, or salary documented in a competing job offer (taking into account the location where the salary was or would be earned and comparing the salary to payable rates of basic pay in the same location); (3) Significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled; (4) Existing labor market conditions and employment trends, including the availability and quality of candidates for the same or similar positions; (5) The success of recent efforts to recruit candidates for the same or similar positions; (6) Recent turnover in the same or similar positions; (7) The importance/criticality of the position to be filled and the effect on the agency if it is not filled or if there is a delay in filling it; (8) The desirability of the geographic location, duties, and/or work environment associated with the position; (9) Agency workforce needs, as documented in the agency's strategic human capital plan; or (10) Other relevant factors. Id., at (c).

In determining whether to use the superior qualifications and special needs pay-setting authority and the level at which the employee's payable rate of basic pay should be set, an agency must consider the possibility of authorizing a recruitment incentive under 5 CFR part 575, subpart A. <u>Id</u>., at (d).

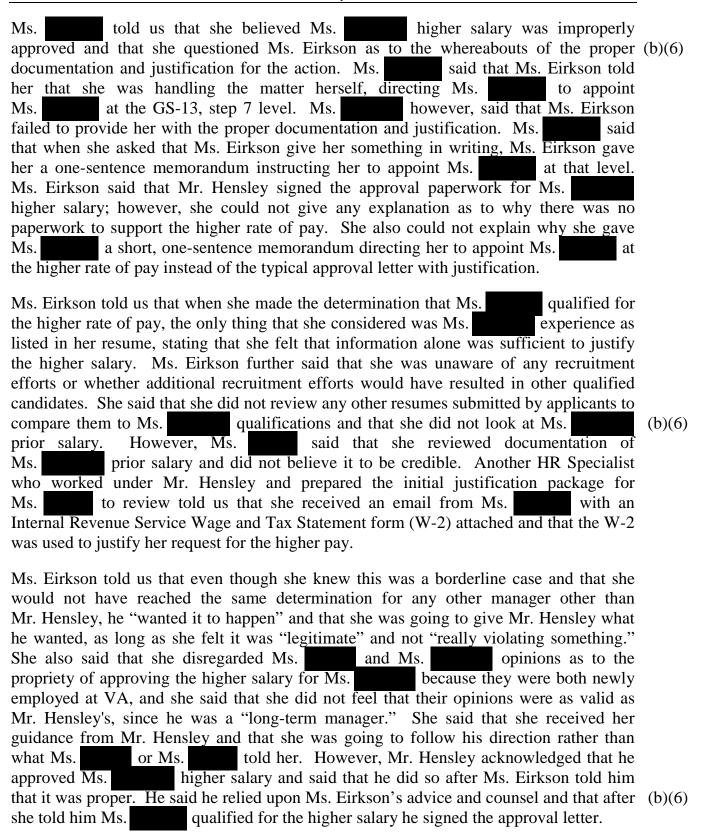
An agency must approve each determination to use the superior qualifications and special needs pay-setting authority prior to the candidate entering on duty. Each determination must be made in writing and reviewed and approved by an official of the agency who is at least one level higher than the employee's supervisor, unless there is no official at a higher level in the agency. An agency must document all of the following for each determination to use the superior qualifications and special needs pay-setting authority sufficient to allow reconstruction of the action taken in each case: (i) The superior qualifications of the candidate under paragraph (b)(1) of this section or the special agency need for the candidate's services under paragraph (b)(2) of this section which justifies a higher than minimum rate; (ii) An explanation of the factor(s) and supporting documentation under paragraph (c) of this section which were used to justify the rate at which the employee's pay is set. The written documentation must explain how the factors directly relate to the rate approved; and (iii) The reasons for authorizing a higher than minimum rate instead of or in addition to a recruitment incentive under 5 CFR part 575, subpart A. Id., at (e).

An agency must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, this section of OPM regulations, and agency policies. Id., at (f).

VA policy states that an appointment at a rate above the minimum salary of a General Schedule grade may be made based on the superior qualifications or the special need for the candidate's skills and that requests for approval will be submitted to Central Office Human Resources for technical review and concurrence prior to submission to the approving official. VA Handbook 5007/30, Part II, Chapter 3, Paragraph 4 and Appendix D (December 6, 2007). Policy further states that the justification must include a description of the recruitment efforts; a description of the candidate's superior qualifications and a comparison of the candidate's skills to those of other available applicants; documentation of existing pay; explanation of how the proposed rate was determined to be appropriate; and reasons for the rate instead of, or in addition to, a recruitment incentive.



| Ms. said that after she told the HR Specialist that she would not approve the request to appoint Ms. at a higher than minimum rate, Ms. Caren Eirkson, former (retired) Personnel Officer and Director of VA Central Office HR Service, contacted her strongly advocating for setting Ms. pay at the step 7 level. She said that Ms. Eirkson argued that the regulations allowed it. Ms. said that Ms. who supervised her (Ms. and Ms. Eirkson, became involved in the debate, and she said that Ms. said that Ms. Eirkson later said that she mistakenly referenced a policy pertaining to pay setting for employees appointed under a title 38 (VA health care providers) and not a title 5 (most civil service employees) authority and that she (Ms. Eirkson) said that she would tell Mr. Hensley that Ms. did not qualify for the higher salary. Ms. further said that a few days later, she learned that Ms. would be starting to work in her office and that she was given the higher pay rate of a step 7. She said that she asked Ms. Eirkson how this happened and that Ms. Eirkson told her "Willie approved it he's comfortable with it." | (b)(6) |
|--|--------|
| Ms. Eirkson told us that Ms. would not accept an appointment at the GS-13, step 1 salary level and that Mr. Hensley asked her to review Ms. resume to determine whether or not she could be appointed at a higher rate of pay. Ms. Eirkson said that Ms. was being appointed to a marketing position and that she (Ms. Eirkson) determined that Ms. past experience in working in that capacity and with "other newspaper stuff could be creditable experience toward the higher level." She said that she had the authority to approve it, but she said that the hiring manager had to support it. She told us that she determined that the setting of Ms. pay at the step 7 was proper, and when Ms. and Ms. disagreed and would not support that determination, the authority to approve rested with Mr. Hensley. Ms. Eirkson said that she "put the paperwork together" and Mr. Hensley signed it.   | (b)(6) |
| Ms. Eirkson said, "I definitely knew that it was something that Willie wanted done." She said that he asked her to look at the regulations, look at Ms. resume, and make a determination if it could be justified. Ms. Eirkson also said that although it was not the "strongest case in the world," she believed she could justify giving Ms. the higher salary. Ms. Eirkson told us that part of her job was to work within the rules and regulations but it was also to support what a manager wanted instead of being "rigid." She said that in this case, she made a determination, based on her judgment, that the rules and regulations allowed her to be flexible in this case. She further said that she recalled a heated discussion with Ms. but she said she recalled that Ms. was not arguing about Ms. qualifications but rather from the standpoint that she did not have any say in the matter of Ms. appointment. Ms. Eirkson said that she told Ms. that "this is the kind of thing that we just have to do sometimes."  | (b)(6) |



Ms. told us that she requested a higher than minimum salary and that she represented her prior annual salary as \$104,000. She said that she submitted a tax form showing the amount she made from her self-employment. However, Ms. admitted that the amount she claimed was actually her gross business income, before expenses, and that it did not accurately reflect her actual salary or personal income from the business. Ms. told us that she did not know the difference between her gross business income and her salary from the business and that she previously represented her personal income as \$104,000, because she did not know the difference. Ms. told us that she estimated that her annual salary, prior to her VA appointment, was between \$35,000 and \$50,000.

#### **Conclusion**

We concluded that both Mr. Hensley and Ms. Eirkson failed to follow Federal regulations and VA policy in setting Ms. pay at a rate higher than minimum rate. (b)(6) Mr. Hensley knew, or should have known, of the requirements to document and justify setting a higher than minimum rate of pay. He told us that he relied on Ms. Eirkson to advise him on matters such as this; however, Ms. Eirkson said that she gave Mr. Hensley whatever he wanted. Furthermore, as someone who advises the Secretary, his Executive Staff, and the Department's human resources managers and practitioners on matters pertaining to human resources, and who has authority and oversight of the VA Central Office Administration and the Office of Human Resources Management, Mr. Hensley should be thoroughly knowledgeable and informed as to the requirements that must be met before pay is set above the minimum rate.

Likewise, Ms. Eirkson, who at the time was the Personnel Officer, failed to follow Federal regulations and VA policy when she made an arbitrary and capricious decision to appoint Ms. at a higher than minimum salary. Ms. Eirkson said that she prepared the documentation to ensure that the pay setting action was properly documented, but she could not explain why it presently does not exist. However, Ms. told us that Ms. Eirkson told her that she (Ms. Eirkson) would handle the pay setting action, would not provide her the proper documentation, and instead gave her (b)(6) a one-line memorandum instructing her to appoint Ms. at a higher rate of pay. Although we concluded that Ms. Eirkson failed to follow Federal regulations and VA policy for superior qualifications appointments and pay setting, we did not recommend an administrative action against her, since she is no longer with VA.

Moreover, Ms. misrepresented her income at the time of her appointment to be double to triple her actual annual income. Ms. assertion that she did not know the difference between gross business income and personal income is not credible, since she would have accounted for each when she filed her Federal and State tax returns. Claiming her gross business income benefited her by exaggerating her personal income to (b)(6) justify a higher rate of pay with her VA appointment.

We also concluded that the level at which Ms. salary was set was not proper given her questioned experience and qualifications and grossly inflated annual income. If (b)(6) Ms. were appointed at the GS-13, step 1 level, and her supervisor concurred with the annual increase, she would presently be at a GS-13, step 2.

**Recommendation 7.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to follow Federal regulations and VA policy for superior qualifications appointments and pay setting.

**Recommendation 8.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. for misrepresenting her annual salary for an appointment at a higher than minimum rate of pay.

**Recommendation 9.** We recommend that the VA Chief of Staff ensures that an assessment is completed to (1) determine whether Ms. should remain employed (b)(6) at VA, due to her improper appointment; (2) determine whether she should retain her improper higher than minimum rate of pay, should she remain employed at VA, and; (3) determine the amount of improper salary paid to her as a step 7, versus a step 1, and issue her a bill of collection to recoup monies paid as a result of her misrepresenting her annual salary.

# Issue 5: Whether Ms. Misused Her Official Time and Whether She was (b)(6) Authorized to Telework

VA policy requires that an employee complete a Telework Proposal; have their supervisor's approval; develop a telework agreement which lists all terms and conditions for the telework arrangement; complete a User's Remote Computer Security Agreement; complete a Telework Self-Certification Safety Checklist to submit it to the immediate supervisor; notify the Information Security Officer (ISO) of the telework arrangement; and obtain ISO certification approving that the appropriate security controls are in place. VA Handbook 5011/5, Part II, Chapter 4 (September 22, 2005). Standards of Ethical Conduct for Employees of the Executive Branch require that an employee use their official time in an honest effort to perform official duties. 5 CFR § 2635.705. VA policy states that all employees are expected to be on duty during the full period of their tours of duty unless absent on approved leave; to observe the opening and closing hours established for the tour of duty; and to adhere to established luncheon periods. VA Handbook 5011, Part II, Chapter 2, Paragraph 1(a)(7) (April 15, 2002).

Personnel records reflected that Ms. was reassigned to OHRM in February 2008 and permitted to work fulltime from her residence. Records also contained a Letter of Alternative Discipline, dated November 18, 2008, which resulted from a previous substantiated misconduct and placed in her file as a part of an EEO settlement. However, OHRM could not provide any documentation authorizing Ms. to (b)(6) telework from her residence. Ms.

| Ms. telework arrangements were dubious and that several employees questioned whether Ms. used her official time properly. She said that although she never caught Ms. misusing her time, she said that she did not know what Ms. did to fill her workday.   | (b)(6) |
|---|--------|
| Ms. Debbie Kolen, Director for Recruitment and Placement Policy, who is Ms. current supervisor, said she has concerns about Ms. telework arrangements and that it was hard to supervise her remotely. She also said that it was more expensive to send her to training from that rural area. Ms. Kolen told us that she thought about conferring with her own supervisors to see if she could require Ms. to work from a nearby VA facility rather than from her residence. She said that on one occasion, while on the phone with Ms. she heard a child yelling in the background but when she asked about the noise, Ms. told her it was her dog. Ms. Kolen said that she did not say anything further to Ms. | (b)(6) |
| Ms. told us that there were times when she kept her at home during the workday, in lieu of daycare, and that there were also times that she left her home to drop off and pick up from school during her duty hours. Ms. also said that she was interested in starting her own business and that she used her official time to communicate with different companies to inquire about business opportunities. Further, she said that she volunteered for a local charitable organization and attended community meetings during her official duty hours.   | (b)(6) |
| Conclusion  |        |
| We concluded that Ms. We also found that OHRM management failed to ensure that VA telework policy and appropriate security measures were followed. There was no documented record of a Telework Proposal or a Telework Self-Certification Safety Checklist forms completed by Ms. and approved by Management. Further, there was no record that OHRM's Information Security Officer was notified of this telework arrangement or that the ISO certified that the appropriate security controls were in place. These failures could put the Department on a destructive path, should there be a loss of VA data as a result of a lack of security controls by OHRM and Ms.                                       | (b)(6) |
| <b>Recommendation 10.</b> We recommend that the VA Chief of Staff ensures that a review is done to determine whether Ms. should continue teleworking from her residence, and if so, that OHRM management and Ms. comply with VA policy.   |        |
| <b>Recommendation 11.</b> We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. for not working her full tours of duty.   | (b)(6) |

#### **Comments**

The Chief of Staff concurred with all our recommendations with the exception of Recommendation 5. We acknowledge the Chief of Staff's comments, but we disagree. Special Counsel v. Lee remains valid MSPB law, issued in May 2010, and it holds that 5 USC § 2302(b)(6) also reaches "conduct that aids and abets another who is violating the statute," and its holding directly applies to two HR Specialists. However, without conceding our conclusion that a prohibited personnel practice has occurred, we accept the Department's commitment to take appropriate administrative action against the HR Specialist as meeting the intent of the recommendation. The Chief of Staff's comments can be found in Appendix A. We will follow up to ensure that the recommendations are fully implemented.

(original signed by:)

JAMES J. O'NEILL

Assistant Inspector General for
Investigations

#### **Chief of Staff Comments**

**Department of Veterans Affairs** 

**Memorandum** 

**Date:** September 15, 2010

**From:** VA Chief of Staff (00A)

**Subject:** Draft Inspector General Report – Administrative

Investigation: Prohibited Personnel Practices, Abuse of Authority, Misuse of Position, and False Statements, Office

of Human Resources and Administration, VACO

**To:** Office of Inspector General (50)

- 1. I have reviewed the Draft Inspector General Report entitled "Administrative Investigation: Prohibited Personnel Practices, Abuse of Authority, Misuse of Position, and False Statements, Office of Human Resources and Administration, VA Central Office." My response to the IG's findings is attached.
- 2. Thank you for the opportunity to review this draft report and comment. Should you need further information, you may reach me at 202-461-4808.

John R. Gingrich

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

#### **OIG Recommendations**

**Recommendation 1.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for engaging in a prohibited personnel practice, abusing his authority, and misusing his public office (b)(6) in the reassignment of Ms.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted and then ensure appropriate action is taken.

**Recommendation 2.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for engaging in a prohibited personnel practice, abusing his authority, misusing his position in the (b)(6) appointment of Ms.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted and then ensure appropriate action is taken.

**Recommendation 3.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for making false statements or for a lack of candor to OIG while under oath.

Concur **Target Completion Date:** December 5, 2010

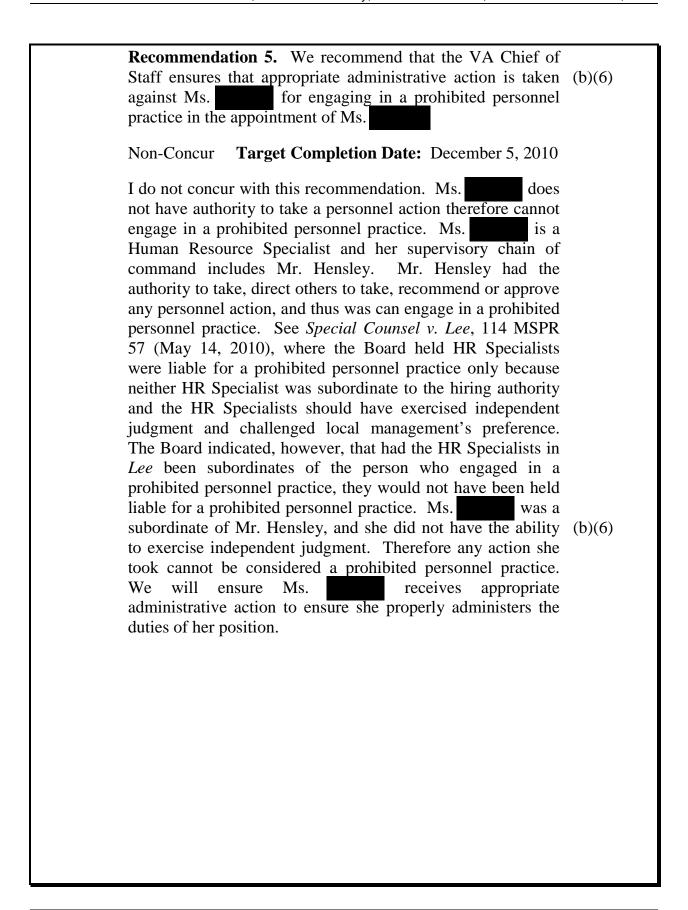
I concur with this recommendation regarding taking appropriate administrative action against Mr. Hensley. I disagree with the characterization that Mr. Hensley made false statements to OIG while under oath, and find instead Mr. Hensley engaged in a lack of candor to OIG officials while under oath. I will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted for lack of candor to OIG officials and then will ensure appropriate action is taken.

**Recommendation 4.** We recommend that the VA Chief of Staff ensures that appropriate administration action is taken (b)(6) against Ms. for making false statements or for a lack of candor to OIG while under oath.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation regarding taking appropriate administrative action against Ms.

I disagree with the characterization that Ms. made false statements to OIG while under oath, and find instead that Ms. engaged in a lack of candor to OIG officials while under oath. I will discuss the matter with (b)(6) Ms. supervisor to determine what corrective action is warranted for lack of candor to OIG officials and then will ensure appropriate action is taken.



**Recommendation 6.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to properly discharge the duties of his position.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation but consider it duplicative of Recommendation 1 and 2. The allegations with regard to Mr. Hensley's failure to act on the recommendations of the NCOD assessment are not clearly supported by the evidence. The other conclusions presented in support of this recommendation are more clearly related to Recommendations 1 and 2. We will ensure action is taken with regards to Recommendation 1 and 2.

**Recommendation 7.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Mr. Hensley for failing to follow Federal regulations and VA policy for superior qualifications appointments and pay setting.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the appropriate Human Resources officials and the General Counsel to determine what corrective action is warranted and then ensure appropriate action is taken.

**Recommendation 8.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken against Ms. for misrepresenting her annual salary for (b)(6) an appointment at a higher than minimum rate of pay.

Concur Target Completion Date: December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 9. We recommend that the VA Chief of Staff ensures that an assessment is completed to (1) determine (b)(6) whether Ms. should remain employed at VA, due to her improper appointment; (2) determine whether she should retain her improper higher than minimum rate of pay, should she remain employed at VA, and; (3) determine the amount of improper salary paid to her as a step 7, versus a step 1, and issue her a bill of collection to recoup monies paid as a result of her misrepresenting her annual salary.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

Recommendation 10. We recommend that the VA Chief of Staff ensures that a review is done to determine whether Ms. should continue teleworking from her residence, and if so, that OHRM management and Ms. comply (b)(6) with VA policy.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

**Recommendation 11.** We recommend that the VA Chief of Staff ensures that appropriate administrative action is taken (b)(6) against Ms. for not working her full tours of duty.

Concur **Target Completion Date:** December 5, 2010

I concur with this recommendation and will discuss the matter with the Assistant Secretary for Human Resources and Administration to determine what corrective action is warranted and then ensure appropriate action is taken.

# **OIG Contact and Staff Acknowledgments**

| OIG Contact     | Linda Fournier (202) 461-4500               |
|-----------------|---|
| Acknowledgments | Charles Millard Charles Knorr Leanne Shelly |

Appendix C

### **Report Distribution**

#### **VA Distribution**

Deputy Secretary (001) Chief of Staff (00A) Executive Secretariat (001B)

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