



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Improper Locality Rate of Pay Office of Information & Technology VA Central Office

Redacted



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

TO: Principal Deputy Assistant Secretary for Information & Technology

SUBJECT: Administrative Investigation – Improper Locality Rate of Pay, Office of Information & Technology, VACO (2010-02858-IQ-0178)

Summary

We substantiated that Mr. Charles L. Gephart, Director, IT Field Security Operations, Office of Information & Technology (OI&T), VA Central Office, [REDACTED] worked in the Fayetteville, Arkansas, area while receiving the higher locality rate of pay allocated for employees assigned to the Washington, DC, area, resulting in him receiving over \$41,330 in improper pay for which he was not entitled. (b)(6)

Introduction

While conducting another administrative investigation, we found personnel records reflecting that the former Assistant Secretary for OI&T reassigned Mr. Gephart from a Program Management Officer position in Fayetteville, Arkansas, to a Supervisory Information Technology Specialist position in Washington, DC, [REDACTED] [REDACTED] [REDACTED]; however, all other records reflected that Mr. Gephart continued to [REDACTED] work in Arkansas. To assess this, we reviewed official personnel files, email correspondence, official travel records, public records, Federal laws, regulations, and VA policy. (b)(6)

Results

Issue: Whether Mr. Gephart Received an Improper Locality Rate of Pay

Section 5304 of Title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. Federal regulations state that an agency determines an employee's locality rate by determining the employee's official worksite and that the official worksite is the location of an employee's position of record where the employee regularly performs his duties. 5 CFR §§ 531.604 and 531.605.

VA policy states that retention incentives may be used to retain employees with high or unique qualifications in positions that are likely difficult to fill or whose services are essential to a special VA need and are likely to leave Federal service without an incentive. Individual retention incentives of up to 25 percent of an employee's rate of basic pay in an installment or service period may be authorized based on criteria contained within the policy. VA Handbook 5007/35, Part VI, Chapter 3, Paragraph 1 (November 19, 2009). A locality rate is basic pay for the purpose of computing or applying retention incentives and retirement benefits. 5 CFR § 531.610.

Federal law states that a Government employee, when traveling on official business away from his designated post of duty, is entitled to a per diem allowance, reimbursement of expenses actually and necessarily incurred, or a combination of the two. 5 USC § 5702 (a)(1). Federal travel regulations state that an agency may pay only those expenses essential to the transaction of official business; an employee must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business; and if an employee travels by an indirect route, the reimbursement will be limited to the cost of travel by a direct route and the employee is responsible for any added costs. 41 CFR §§ 301-2.2, -2.3, and -2.4. Regulations further state that an employee on a TDY assignment must travel to the TDY destination by the usually traveled route unless the agency authorizes a different route as officially necessary. *Id.*, at 301-10.7. Although an agency can authorize an employee to fly out of an airport not located near their permanent duty station for personal convenience, it does not have the authority to reimburse the employee for expenses incurred as a result of taking an indirect route for personal convenience. Comptroller General Decision, *Lawrence O. Hatch*, B-211701, Nov. 29, 1983. The General Services Board of Contract Appeals stated that an employee who is engaged in commuting between his residence and official duty station is performing personal business, not official business for the Government, and the employing agency may not pay the transportation costs the employee incurs while commuting. *Freddie G. Fenton*, GSBCA 13638-TRAV, 97-1 BCA 28,712 (1996).

While conducting another administrative investigation, we found personnel records reflecting that the former Assistant Secretary for OI&T reassigned Mr. Gephart from a Program Management Officer position, with an official duty station in Fayetteville, Arkansas, to a Supervisory Information Technology Specialist position, with an official duty station in Washington, DC, [REDACTED]; however, all other records reflected that Mr. Gephart continued to [REDACTED] work in Arkansas. [REDACTED] (b)(6)
[REDACTED], property tax records reflected that Mr. Gephart paid taxes on an owner occupied home in [REDACTED], for tax years 2006 through 2010, and internet telephone records reflected the same residence for his landline telephone service. State records also listed Mr. Gephart as the licensed owner of [REDACTED] licensed in the State of [REDACTED] in October 2009, November 2008, August 2007, September 2005, and September 2004. Furthermore, VA payroll and personnel records listed Mr. Gephart's home of record and mailing address as the same [REDACTED] residence as reflected on the

above noted records, and VA email contact information reflected that Mr. Gephart's VA office was physically located in Fayetteville, Arkansas. An online mapping service calculated that the distance between Mr. Gephart's Arkansas office and his personal residence was about [REDACTED].

Travel records reflected that Mr. Gephart requested and was approved for official travel originating from [REDACTED], to each temporary duty assignment (TDY), seeking reimbursement for transportation, lodging, and per diem, to include any travel to the Washington, DC, area, his purported duty station. For example, in March 2008, March 2009, and March 2010, he traveled to Washington, DC, and sought reimbursement for lodging, meals, transportation, parking, taxes, and fees. Travel records further reflected that over the past year, between August 2009 and July 2010, Mr. Gephart traveled from [REDACTED], to Washington, DC, over 20 times at an average cost of over \$1,800 per trip for lodging, meals, transportation, etc. Several trips were in combination with travel to other locations. Below is a list of Mr. Gephart's direct travel to and from Washington, DC, for a recent 12-month period. (b)(6)

- August 10-14, 2009 – [REDACTED] to Washington, DC – \$1,644.60
- August 17-21, 2009 – [REDACTED] to Washington, DC – \$1,618.10
- August 25-28, 2009 – [REDACTED], to Washington, DC – \$1,368.42 (b)(6)
- September 21-24, 2009 – [REDACTED] to Washington, DC – \$1,612.75
- November 16-20, 2009 – [REDACTED], to Washington, DC – \$1,906.41
- December 6-11, 2009 – [REDACTED], to Washington, DC – \$2,182.68
- December 14-18, 2009 – [REDACTED], to Washington, DC – \$1,901.96
- January 4-8, 2010 – [REDACTED], to Washington, DC – \$1,884.36
- January 11-15, 2010 – [REDACTED], to Washington, DC – \$1,881.61
- January 18-22, 2010 – [REDACTED], to Washington, DC – \$1,859.26 (b)(6)
- February 1-5, 2010 – [REDACTED], to Washington, DC – \$1,885.26
- February 22-26, 2010 – [REDACTED], to Washington, DC – \$1,790.56
- March 15-19, 2010 – [REDACTED], to Washington, DC – \$1,768.21
- March 22-26, 2010 – [REDACTED], to Washington, DC – \$1,970.51

- April 12-16, 2010 – [REDACTED], to Washington, DC – \$1,609.36
- April 19-23, 2010 – [REDACTED], to Washington, DC – \$1,750.06
- June 14-18, 2010 – [REDACTED], to Washington, DC – \$1,913.86 (b)(6)
- June 20-24, 2010 – [REDACTED], to Washington, DC – \$2,130.14
- July 26-30, 2010 – [REDACTED], to Washington, DC – \$1,642.28

In a recent visit to Mr. Gephart's Fayetteville, Arkansas office, we found that he had video conferencing equipment on his desk and capabilities available to him at that location. In addition, personnel records reflected that another senior OI&T official who worked and resided outside the Washington, DC, locality pay area and who traveled to Washington, DC, as often as Mr. Gephart had his duty station listed as the area where he lived and worked, not Washington, DC.

Personnel records reflected that Mr. Gephart began receiving locality pay for the Washington, DC, area on [REDACTED], which at that time was about 5 percent more than the locality pay permitted for the Fayetteville area. In 2007, it was about 6 percent more; in 2008, it was approximately 8 percent; in 2009, it was over 9 percent; and in 2010, it was over 10 percent more than the Fayetteville area. Records also reflected that on [REDACTED], Mr. Gephart began receiving a 25-percent retention incentive, which would be calculated on his annual salary including the Washington, DC, locality pay. In using the U. S. Office of Personnel Management's accepted method of computing hourly rates of pay and calculating the difference between the Fayetteville and Washington, DC, hourly rates of pay, we determined the following:

- 09/03/2006-01/06/2007 – 720 hours X \$2.40/hour = \$1,728 overpaid
- 01/07/2007-05/26/2007 – 800 hours X \$2.92/hour = \$2,336 overpaid
- 05/27/2007- 01/05/2008 – 1280 hours X \$3.65/hour = \$4,672 overpaid
- 01/06/2008-04/12/2008 – 552 hours X \$4.85/hour = \$2,677.20 overpaid
- 04/13/2008-01/04/2009 – 1520 hours X \$4.99/hour = \$7,584.80 overpaid
- 01/05/2009-01/03/2010 – 2080 hours X \$6.16/hour = \$12,812.80 overpaid
- 01/04/2010-04/10/2010 – 560 hours X \$6.80/hour = \$3,808 overpaid
- 04/11/2010-08/31/2010 – 816 hours X \$7.00/hour = \$5,712 overpaid

Based on our review, taking into account Mr. Gephart's within grade, annual cost of living, and yearly locality rate of pay increases, as well as his retention incentive, we determined that between September 3, 2006, and August 31, 2010, Mr. Gephart improperly received \$41,330.80 in pay for which he was not entitled.

Mr. Gephart told us that he learned "several years" ago—about the time VA converted his Official Personnel Folder (OPF) to electronic format—that his official duty station was Washington, DC, and that he received DC locality pay. However, he said that he continued [REDACTED] working in Fayetteville, Arkansas, traveling back and forth to DC as required. Personnel records reflected that the OPF conversion was September 16, 2007. (b)(6) Mr. Gephart said that he spoke to the former Deputy Assistant Secretary for Information Protection and Risk Management about whether he would be required to relocate, and he said that she, as well as the former Assistant Secretary for Information and Technology "didn't push it." He further said that he spoke to some of his subordinates and asked them to "research" the matter and that he discussed it "just lightly" with the Associate Deputy Assistant Secretary for Cyber Security "in hopes that it [relocating to DC] would not occur." A U.S. Government Accountability Office decision stated that an employee who is on notice of an overpayment of pay and who thereafter accepts payments known to be erroneous cannot reasonably expect to retain them and should make provision for eventual repayment. *Matter of: Billy P. Clayton*, B-260912, 1995 U.S. Comp. Gen. LEXIS 853, October 17, 1995.

Conclusion

VA is authorized to pay employees a locality rate of pay based on their official worksite. For official travel, VA may only pay for expenses essential to official business; they cannot reimburse employees for expenses incurred as a result of taking an indirect route for personal convenience; and they cannot pay the transportation costs that an employee incurs while commuting between his residence and official duty station. In [REDACTED] [REDACTED], Mr. Gephart's official duty station was designated as Washington, DC, and he began receiving the Washington, DC, locality rate of pay; however, he continued to work [REDACTED] in Arkansas. In addition, he requested, was approved, and received reimbursement for TDY travel originating from [REDACTED], to his purported duty station in Washington, DC, between September 2006 and August 2010. VA does not have the authority to pay Mr. Gephart the Washington, DC, locality rate of pay and also reimburse him for travel expenses to commute to and from his assigned duty station in Washington, DC. Additionally, VA does not have the authority to pay travel expenses associated with Mr. Gephart's indirect travel for personal convenience. Since his official duty station was designated as Washington, DC, all of Mr. Gephart's official travel should have originated from and ended in Washington, DC, not Arkansas. (b)(6)

Recommendation 1. We recommend that the Principal Deputy Assistant Secretary for OI&T determine whether Mr. Gephart's official duty station is Fayetteville, Arkansas, or Washington, DC, and take immediate action to adjust his pay accordingly.

Recommendation 2. We recommend that should the Principal Deputy Assistant Secretary for OI&T determine that Mr. Gephart's official duty station is Fayetteville, Arkansas, that the Principal Deputy Assistant Secretary ensures that Mr. Gephart is issued a bill of collection for \$41,330.80, plus any further improper payments made after August 31, 2010, to recoup monies improperly paid to him. If the Principal Deputy Assistant Secretary decides that Mr. Gephart's official duty station is Washington, DC, that the Principal Deputy Assistant Secretary determine the total amount of money paid to Mr. Gephart for travel to and from [REDACTED], to the Washington, DC, area (b)(6) from September 3, 2006, to present and ensures that Mr. Gephart is issued a bill of collection in that amount to recoup monies improperly paid to him.

Recommendation 3. We recommend that should the Principal Deputy Assistant Secretary for OI&T determine that Mr. Gephart's official duty station is Fayetteville, Arkansas, that the Principal Deputy Assistant Secretary confer with the Office of Human Resources to ensure that Mr. Gephart's official records are adjusted to reflect the lower salary for years 2006 through 2010, adjust any improper payments to his [REDACTED] (b)(6) [REDACTED] contributions, and make any other necessary corrections.

Recommendation 4. We recommend that the Principal Deputy Assistant Secretary for OI&T confer with the Office of Human Resources to determine if there are other VACO OI&T employees with similar situations and take appropriate corrective action to determine their duty stations, recoup any monies improperly paid to them, adjust any improper payments to their retirement annuities and Thrift Savings Plans, and make any other necessary corrections.

Comments

The Principal Deputy Assistant Secretary for OI&T was responsive. He concurred with our recommendations, and his comments are 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

Principal Deputy Assistant Secretary Comments

**Department of
Veterans Affairs**

Memorandum

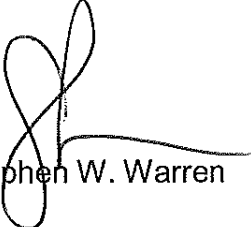
Date: October 4, 2010

From: Principal Deputy Assistant Secretary for OI&T (005A)

Subject: **Administrative Investigation - Improper Locality Rate of Pay, Office of Information & Technology, VACO**

To: Director, Operations Division, Office of Management and Administration (53B)

Thank you for the opportunity to review the Office of Inspector General (OIG) draft report titled, "*Administrative Investigation, Improper Locality Rate of Pay Office of Information & Technology – VA Central Office*". The Office of Information and Technology agrees with OIG's findings and submits the attached written comments for **recommendations 1 through 4**. If you have any questions, please contact Martha Orr, Executive Director for Quality, Performance and Oversight, at (202) 461-6910.



Stephen W. Warren
Attachment

Principal Deputy Assistant Secretary's Comments to Office of Inspector General's Report

The following Principal Deputy Assistant Secretary's comments are submitted in response to the recommendations in the Office of Inspector General's Report:

OIG Recommendations

Recommendation 1. We recommend that the Principal Deputy Assistant Secretary for OI&T determine whether Mr. Gephart's official duty station is Fayetteville, Arkansas, or Washington, DC, and take immediate action to adjust his pay accordingly.

Concur **Target Completion Date:** 09/30/2010

The employee's supervisor has determined that his official duty station is in Fayetteville, Arkansas.

Recommendation 2. We recommend that should the Principal Deputy Assistant Secretary for OI&T determine that Mr. Gephart's official duty station is Fayetteville, Arkansas, that the Principal Deputy Assistant Secretary ensures that Mr. Gephart is issued a bill of collection for \$41,330.80, plus any further improper payments made after August 31, 2010, to recoup monies improperly paid to him. If the Principal Deputy Assistant Secretary decides that Mr. Gephart's official duty station is Washington, DC, that the Principal Deputy Assistant Secretary determine the total amount of money paid to Mr. Gephart for travel to and from [REDACTED] (b)(6) [REDACTED], to the Washington, DC, area from September 3, 2006, to present and ensures that Mr. Gephart is issued a bill of collection in that amount to recoup monies improperly paid to him.

Concur **Target Completion Date:** 10/15/2010

SF-52 will be submitted to correct the duty location back to the original effective date. Once the SF-52 is processed by HR&A, a SF-50 will be generated which will correct the official duty station. This correction will then generate an indebtedness condition in the payroll system, which will result in a collection action. The target completion date reflects the submission of the SF-52, which starts the process.

Recommendation 3. We recommend that should the Principal Deputy Assistant Secretary for OI&T determine that Mr. Gephart's official duty station is Fayetteville, Arkansas, that the Principal Deputy Assistant Secretary confer with the Office of Human Resources to ensure that Mr. Gephart's official records are adjusted to reflect the lower salary for years 2006 through 2010, [REDACTED],

(b)(6)

and make any other necessary corrections.

Concur **Target Completion Date:** 10/15/2010

SF-52 will be submitted to correct the official duty station back to the original effective date. Once the SF-52 is processed by HR&A a SF-50 will be generated, which will correct the official duty station. This correction will then initiate the processes managed and controlled by HR&A, which will cause the necessary corrections to be made. The target completion date reflects the submission of the SF-52 which starts the process.

Recommendation 4. We recommend that the Principal Deputy Assistant Secretary for OI&T confer with the Office of Human Resources to determine if there are other VACO OI&T employees with similar situations and take appropriate corrective action to determine their duty stations, recoup any monies improperly paid to them, adjust any improper payments to their retirement annuities and Thrift Savings Plans, and make any other necessary corrections.

Concur **Target Completion Date:** 12/30/2010

We are requesting the Office of Human Resources and Administration generate a report from their systems that would identify any employee whose official duty station is different from their home address. The targeted completion date reflects when we expect to have a finalized report from the Office of Human Resources and Administration. At that point, if any additional employees are identified that appear to have an incorrect official duty station, we would then pursue the processes identified above: confirm official duty station; if incorrect, submit a correction via SF-52; and then all the normal HR&A and OM processes kick in.

OIG Contact and Staff Acknowledgments

OIG Contact	Linda Fournier
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Acknowledgments	Charles Millard
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