



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Abuse of Authority, Prohibited Personnel Practices, Failure to Properly Supervise, and a Lack of Candor, Office of Business Oversight, VA Central Office

Redacted



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

TO: Principal Deputy Assistant Secretary for Management (004)

SUBJECT: Administrative Investigation, Abuse of Authority, Prohibited Personnel Practices, Failure to Properly Supervise, and a Lack of Candor, Office of Business Oversight, VA Central Office (2011-02258-IQ-0109)

Summary

We substantiated that Mr. Roger Drye, Director of Internal Controls Service (ICS), Office of Business Oversight (OBO), as part of a recruitment process, attempted to pressure a subordinate into making a false representation concerning an interview score and the proper standing of a preferred job applicant. We made a criminal referral of Mr. Drye's alleged interference with a civil service examination (18 USC § 1917) to the U.S. Department of Justice; however, they declined criminal prosecution in favor of available administrative remedies. We also found that Mr. Joseph Bauernfeind, Director of OBO, failed to properly discharge his duties and responsibilities as Mr. Drye's supervisor when he, after receiving two separate complaints against Mr. Drye alleging serious misconduct, failed in both instances to thoroughly and impartially investigate the allegations and, in one case, failed to take the appropriate corrective action. Finally, we found that both Mr. Drye and Mr. Bauernfeind did not testify freely and honestly in connection with our investigation.

Introduction

The VA Office of Inspector General (OIG) Administrative Investigations Division investigated allegations that Mr. Drye committed a prohibited personnel practice during a recruitment action and sexually harassed female employees in his office. In addition, we investigated Mr. Bauernfeind for failing to properly discharge his duties and responsibilities as a supervisor in his handling of these two complaints. To assess these allegations, we interviewed Mr. Drye, Mr. Bauernfeind, and other OBO staff. We also reviewed personnel, recruitment, and email records and applicable Federal laws, regulations, and VA policy. Although we found that Mr. Drye abused his authority, engaged in a prohibited personnel practice, and interfered with a competitive

examination, we found that the sexual harassment allegation was without merit. We did not substantiate other allegations, and they will not be discussed further in this report.

Background

VA OBO was established in June 2004 and was organizationally located within VA's Office of Management. In its oversight role, OBO performed internal audits and evaluations of VA organizations, ensuring compliance with departmental policies and procedures. OBO was organized into a director's office located in Washington, DC, with three supporting services located in Austin, Texas. Mr. Bauernfeind was the Director of OBO since its inception in 2004; Mr. Drye served as the Director of ICS since October 2006; and [REDACTED] (b)(7c) [REDACTED] who also reported directly to Mr. Bauernfeind. ICS and [REDACTED] were housed on separate floors of the same office building in Austin, Texas.

Issue 1: Whether Mr. Drye Engaged in a Prohibited Personnel Practice and Interfered with a Competitive Examination

Federal law provides penalties for whoever, being a member or employee of the United States Office of Personnel Management (OPM) or an individual in the public service, willfully and corruptly: (1) defeats, deceives, or obstructs an individual in respect of his right of examination according to the rules prescribed by the President under title 5 for the administration of the competitive service and the regulations prescribed by such Office under section 1302(a) of title 5; (2) falsely marks, grades, estimates, or reports on the examination or proper standing of an individual examined; (3) makes a false representation concerning the mark, grade, estimate, or report on the examination or proper standing of an individual examined, or concerning the individual examined; or (4) furnishes to an individual any special or secret information for the purpose of improving or injuring the prospects or chances of an individual examined, or to be examined, being appointed, employed, or promoted. 18 USC § 1917. By reference, a violation of Section 1917 is also a violation of The Standards of Ethical Conduct for Employees of the Executive Branch. 5 CFR § 2635.902(ee).

Federal law also 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). By reference, a violation of Section 2302 is also a violation of The Standards of Ethical Conduct for Employees of the Executive Branch. 5 CFR § 2635.902(dd).

██████████ told us that during a different recruitment action for an ICS lead auditor (b)(7c) position, Mr. Drye assigned ██████████ to examine applicants as a member of an Interview Panel. ██████████ said that prior to the interviews, Mr. Drye spoke to ██████████ and ██████████ Associate Directors about one individual that applied for the lead auditor position in ICS and another position in MQAS. ██████████ said that Mr. Drye said that the individual was ranked number one by the best qualified (BQ) panel and that he (Mr. Drye) had prior experience with the individual. ██████████ said that Mr. Drye told them that the individual was a former OIG employee who was not “particularly friendly,” was not a people person, and did not smile a lot. ██████████ said that Mr. Drye told them that the individual also applied for a position in ██████████ organization and that neither he nor ██████████ wanted to hire ██████████ for either position. ██████████ provided us a memorandum for the record (MFR), dated January 20, 2011, in which ██████████ documented Mr. Drye’s comments. In ██████████ MFR, ██████████ wrote:

What I heard from Roger is: (1) ██████████ is not going to hire ██████████; and (2) ICS will have to hire ██████████ so ██████████ doesn’t have to, or find a reason not to hire ██████████. Roger’s negative remarks about ██████████ indicated to me that he does not want to hire ██████████.

██████████ told us that ██████████ recalled, in reference to the individual, that Mr. Drye said, “Good luck at making ██████████ smile. ██████████ hasn’t smiled in 10 years.” ██████████ said that Mr. Drye told them that the individual was ranked number one by a BQ panel in MQAS but that neither he nor ██████████ wanted to hire ██████████. ██████████

██████████ told us that during a discussion about an unrecalled individual who applied for a GS-14 position, Mr. Drye made a comment that the person was not “very friendly.” However, ██████████ said that ██████████ was not involved in that hiring action and that ██████████ did not pay much attention to what was said.

Mr. Drye told us that he did not tell his staff to not hire the one individual because of ██████████ minority status or for filing past EEO complaints. He said that while reviewing a list of applicant names, he noticed the names of those who applied for past positions, and he said that he commented, “...yep we’ve seen them, we’ve seen them, we’ve seen them.” He said that the one individual applied four separate times; however, he said that he did not tell anyone not to interview the individual. He said that the individual was not ranked high enough on the BQ list to make the cutoff for interviews; however, he said that he did express his frustration that the individual, as well as others who previously applied, once again appeared on the list of applicants. Mr. Drye said:

I’m sure I was frustrated. I didn’t give instructions that anybody should be looked at in any certain way except for they were given generic BQ instructions. I just recall saying we’ve already talked to ██████████ three times. (b)(7c) Now I don’t know if that was an error on my part being taken to think we don’t want to interview ██████████ again but I was frustrated...The frustration was

that we keep communicating with HR that they are not referring the right candidates. They keep sending us people who are not qualified for this job and putting them on our list.

Mr. Drye told us that he did not know the second referenced individual and that he did not recall that individual's name being associated with the lead auditor position. When shown a memorandum that he signed listing the individual as one of the top three applicants, Mr. Drye still said that he was not familiar with, never met, and did not know the individual in question.

Recruitment Action for Systems and Procedures Analyst

Recruitment records reflected that in October 2010, Mr. Drye initiated a competitive recruitment action for an ICS Systems and Procedures Analyst (GS-0501-11/12/13) position. Records further reflected that 21 minimally qualified applicants were identified. One of the minimally qualified applicants was [REDACTED] (b)(7c)

Recruitment records reflected that an ICS BQ panel scored the 21 applications and ranked [REDACTED] number one among the applicants. Records also reflected that Mr. Drye then determined that the top 12 applicants on the BQ list would be interviewed and that an interview panel comprised of two Associate Directors and a Senior Auditor would interview the applicants and submit the top three candidates to Mr. Drye. Interview panel records reflected that [REDACTED] ranked fifth in the interview process and that the panel did not recommend [REDACTED] to Mr. Drye for further consideration. [REDACTED] told us, as well as contemporaneously written memorandums for the record, reflected that on March 10, 2011, Mr. Drye attempted in a coercive and abusive manner to have [REDACTED] score and ranking changed in order for [REDACTED] to be placed among the top three candidates so that Mr. Drye could select [REDACTED] for the competitive promotion.

[REDACTED] told us that [REDACTED] was one of the interview panel members for the staffing action. [REDACTED] said that prior to the interview process taking place, Mr. Drye tried to non-competitively reassign [REDACTED] into one of the three Systems and Procedures Analyst positions; however, Human Resources (HR) did not approve the action, since [REDACTED] already applied under the competitive vacancy announcement. [REDACTED] further said that after the interview panel completed the interviews and sent Mr. Drye the names of the three highest scoring candidates, Mr. Drye met with [REDACTED] and [REDACTED] and questioned them as to why the interview panel did not rank [REDACTED] as the number one candidate. [REDACTED] said that after [REDACTED] told Mr. Drye that the panel's recommendations were final, Mr. Drye told them that he already promised [REDACTED] the job and that if he did not select [REDACTED] for the position, [REDACTED] would file a grievance. (b)(7c)

██████████ told us that later that same day ██████████ composed an email to Mr. Drye to serve as ██████████ documentation of their conversation during the meeting; however, the email reflected that ██████████ sent the email to ██████████ and not to Mr. Drye. Nonetheless, ██████████ email contemporaneously documented their discussion. In the email, ██████████ wrote that Mr. Drye, while in an agitated state, asked why ██████████ was not selected by the interview panel, since ██████████ was previously ranked number one by a BQ panel. ██████████ further wrote that ██████████ told Mr. Drye that ██████████ believed ██████████ previously scored higher than anyone else, because Mr. Drye instructed panel members to give more points to a GS-11 applicant than to a GS-13 applicant for the same question. ██████████ also wrote that Mr. Drye told them that ██████████ was not happy with the duties of ██████████ position; ██████████ received another job offer in ██████████; he told ██████████ that he would move ██████████ to another associate director's division; and, he wanted to select ██████████ regardless of the recommendation of the interview panel, since ██████████ would file a grievance if he did not. ██████████ concluded ██████████ email by noting that Mr. Drye's attempt to select ██████████ notwithstanding his stated concern that ██████████ would file a grievance, was in ██████████ opinion an attempt to circumvent the competitive process. (b)(7c)

██████████ corroborated what ██████████ told us regarding Mr. Drye's actions during the March 10 meeting, and ██████████ gave us a copy of an MFR that ██████████ wrote. ██████████ told us that during the meeting, Mr. Drye attempted repeatedly to get ██████████ to agree to change ██████████ ranking for the better so that Mr. Drye could select ██████████ for the position. ██████████ described the meeting as a "grilling" that lasted for about an hour, with Mr. Drye arguing his position in several different ways in an attempt to get ██████████ to agree with him. ██████████ said that Mr. Drye's clearly stated goal was to have the interview panel change its position so that ██████████ would be ranked number one or two so that he could pick ██████████ as having been recommended by the interview panel.

██████████ said that ██████████ told Mr. Drye that the conversation made ██████████ uncomfortable and that Mr. Drye replied by saying, "That's tough luck for you. We're going to keep talking about this." ██████████ told us that although ██████████ was not physically prevented from leaving, ██████████ felt that ██████████ attendance was mandatory and that ██████████ could not just get up and walk out of the room while Mr. Drye was talking. In ██████████ MFR, ██████████ wrote, "My concern was that, even after my warning during the meeting, Roger would continue to browbeat us into changing the interview panel's ranking for ██████████" (b)(7c)

Mr. Drye told us that in the March 10 meeting with ██████████ and ██████████ he did not advocate for ██████████ ranking. He said, "No. I was quite clear to them that's not what I was advocating for. I was advocating for fair treatment of the employee." Mr. Drye said that he did not ask anyone to change ██████████ ranking but that ██████████ asserted to him that the BQ process was flawed so he was challenging ██████████ to show him where the numbers were wrong and to explain

why there was such a difference between the BQ and Interview Panel's results. He said (b)(7c) that [REDACTED] assured him that [REDACTED] thought the BQ process was fair. In reference to his assertions that he advocated for fair treatment of [REDACTED] Mr. Drye replied, "I didn't think anything was unfair."

In reference to whether he directed [REDACTED] to reconsider [REDACTED] and to raise [REDACTED] ranking, Mr. Drye said:

No, absolutely not. As a matter of fact we had three vacancies. They [the interview panel] only provided two names. My concern was why wasn't there a third, why wasn't there a third name selected. We've got three vacancies. If you went through a BQ process and you went through an interview process and you told me these were all going to be good candidates why did I only get two names. I want to fill three vacancies. And they said, well, their argument was that there were only two qualified people. They only gave me two names and when I asked them to give me another name, they didn't want to do it. So I already had a way to fill the third vacancy, I thought.

Mr. Drye told us a total of seven times that the interview panel gave him only two names. He said that in the March 10 meeting with [REDACTED] and [REDACTED] the point he argued was that there had to be at least three qualified people. He told us:

And I made no argument but that there were three qualified people at least because we'd already established through our own actions by having asking (b)(7c) me to bring [REDACTED] on [REDACTED] staff, me taking [REDACTED] qualifications in [REDACTED] Master's degree and Bachelor's degree over to HR and saying will [REDACTED] qualify as a 501. [REDACTED] had been a 501 in [REDACTED] last job. Them coming back to me and saying yes. Me saying will you reassign [REDACTED] and me executing that agreement and sending it over to HR. I'd already determined that [REDACTED] was qualified in that position by nature of the reassignment.

However, an email sent a day earlier, March 9, 2011, from [REDACTED] [REDACTED], to Mr. Drye, reflected that the interview panel gave Mr. Drye three, not two names as he told us. In the email, titled "Results of Applicant Review Team," [REDACTED] wrote, "We found three applicants to be exceptionally well qualified, with outstanding experience and solid educational credentials. The team is recommending that you approve the three applicants for selection." [REDACTED] then listed the names of the top three applicants, which did not include [REDACTED], and concluded [REDACTED] email by telling Mr. Drye, "...it was the conclusion of the team that all three would be excellent additions to ICS's staff." [REDACTED] told us that [REDACTED] was disappointed that [REDACTED] did not score any better than [REDACTED] did but that there were other applicants for the Systems and Procedures Analyst position who were more

experienced and better qualified. [REDACTED] said, “I could not, in good conscience, as a member of that panel, rank [REDACTED] any higher than fifth, and would not have under any circumstances. I mean, [REDACTED] just was not competitive on that cert.” (b)(7c)

Mr. Drye told us that in his discussions with [REDACTED] about [REDACTED] career goals, [REDACTED] never told him that [REDACTED] would file a grievance and that he was not concerned that [REDACTED] would. However, he said that [REDACTED] told [REDACTED] that Mr. Drye signed the paperwork; the reassignment was going to happen; and based on that, [REDACTED] turned down the other job offer. Mr. Drye said:

I mean from my perspective I already made a commitment. If we backed off on the commitment, I mean the person, that employee [REDACTED], could file a grievance. I mean, I’m not saying that [REDACTED] ever mentioned at all that [REDACTED] would, but we needed to be cognizant of [as] managers that we can't jerk people around like that. I mean we need to be careful here because we've already made our commitment and I think we doubled up on that commitment when we told [REDACTED] don't take the job in [REDACTED]

[REDACTED] told us that since [REDACTED] started working as a [REDACTED] in August 2010, [REDACTED] found [REDACTED] performing secretarial duties rather than [REDACTED] work and that [REDACTED] work assignments were different than the duties described in the position vacancy announcement. [REDACTED] said that [REDACTED] discussed this with [REDACTED], who at the time was [REDACTED] immediate supervisor, and with Mr. Drye, and that there was an ongoing discussion with both of them regarding a lateral reassignment. [REDACTED] said that [REDACTED] did not want to perform secretarial work and applied for the Systems and Procedures Analyst position as well as other positions elsewhere. [REDACTED] said that [REDACTED] received a job offer in [REDACTED]; however, [REDACTED] said that [REDACTED] decided to turn down that offer, since it would be a large move and [REDACTED] really wanted to be an analyst in ICS. [REDACTED] said that no one promised [REDACTED] that [REDACTED] would be laterally reassigned, but that on [REDACTED] own [REDACTED] decided to “roll the dice” in hopes of being reassigned within ICS. [REDACTED] also said that [REDACTED] never told Mr. Drye or [REDACTED] that [REDACTED] would file a grievance if [REDACTED] was not reassigned.

Conclusion

We concluded that Mr. Drye, as part of a recruitment and competitive examination process, coercively and corruptly attempted to have a subordinate make a false representation concerning the interview score and proper standing of a preferred applicant. We further found that he not only attempted to influence this particular recruitment action but that he established a pattern of this conduct when he made biased personal comments about applicants for previous actions. Mr. Drye abused his authority and position and committed a prohibited personnel practice when he attempted to give [REDACTED] an undue advantage in employment by attempting to have [REDACTED] (b)(7c)

change [REDACTED] interview scores for the better so that he could select [REDACTED] for a promotion. We did not find Mr. Drye's assertions that he did not try to get [REDACTED] scores changed to be credible; that he was advocating for [REDACTED] fair treatment; or that the interview panel provided him only two names of qualified applicants. [REDACTED] email, sent the day before Mr. Drye met with [REDACTED] and [REDACTED] reflected that the interview panel gave Mr. Drye the names of three highly qualified applicants and not two names as he claimed. We further found that Mr. Drye did not testify freely and honestly when he continually asserted that the panel gave him only two names. Evidence reflected that Mr. Drye wanted to promote [REDACTED] to honor a promise he made to [REDACTED] and to avoid a perceived grievance if [REDACTED] did not get the job. (b)(7c)

Recommendation 1. We recommend that the Principal Deputy Assistant Secretary for Management confer with the Office of Human Resources (OHR) and the Office of General Counsel (OGC) to determine the appropriate administrative action to take against Mr. Drye and ensure that action is taken.

Issue 2: Whether Mr. Bauernfeind Failed to Properly Supervise Mr. Drye

VA policy states that the public interest requires the maintenance of high standards of employee integrity, conduct, effectiveness, and service to the public and that when such standards are not met, it is essential that prompt and just corrective action be taken. The policy of VA is to maintain standards of conduct and efficiency that will promote the best interests of the service. VA Handbook 5021/3, Part I, Chapter 1, Paragraph 3(a) (June 1, 2005). VA policy holds supervisors responsible for gathering and analyzing facts concerning each possible disciplinary or adverse action, documenting these facts, and for initiating appropriate and timely disciplinary or adverse actions. *Id.*, at Paragraph 5(c). VA policy also 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). A policy memorandum issued by the Secretary of Veterans Affairs titled *Summary of VA's EEO, Diversity, and No FEAR Policies*, dated February 27, 2009, states, "If an employee brings an issue of harassment to a supervisor's attention, the supervisor must promptly investigate the matter in a thorough and impartial manner and take appropriate and effective corrective action, as necessary."

March 11, 2011, Complaint of Interference with a Competitive Examination

[REDACTED] told us that on March 11, 2011, [REDACTED] and [REDACTED] told Mr. Bauernfeind of the March 10 meeting that they had with Mr. Drye and of his attempts to get them to change [REDACTED] ranking. [REDACTED] said that Mr. Bauernfeind agreed that it sounded like "an issue" and that he told them that he would talk with Mr. Drye. In a March 11 email that Mr. Bauernfeind sent to [REDACTED] and [REDACTED] he wrote, "Thank you for calling me. Whatever is done in OBO must be done totally above board." (b)(7c)

██████████ said that ██████████ documented ██████████ March 11 conversation with Mr. Bauernfeind, and in ██████████ MFR, ██████████ wrote that Mr. Bauernfeind “agreed that coercion to change a competitive ranking was unacceptable.” ██████████ further documented that ██████████ told ██████████ Mr. Bauernfeind the background information about the earlier plan to laterally reassign ██████████ and ██████████ applying competitively under the vacancy announcement, to emphasize to him that “it was the coercion on March 10th in an effort to corrupt a competitive hiring process—not anything else—that was the basis of my concern.” ██████████ told us that during their conversation, Mr. Bauernfeind suggested that Mr. Drye was not trying to change ██████████ ranking but was just asking questions. ██████████ told us that ██████████ told Mr. Bauernfeind, “This was not asking questions...he was basically instructing me to change the ratings.” (b)(7c)

Mr. Bauernfeind told us that the March 10 meeting was never described to him as being contentious or as a “browbeating,” and he said that he thought it lasted only 5 minutes. To the contrary, Mr. Bauernfeind gave us an MFR in which he wrote that ██████████ and ██████████ told him they believed Mr. Drye wanted them to change ██████████ scores so that he could promote ██████████. Mr. Bauernfeind told us that although ██████████ and ██████████ told him this about the meeting, he said that he did not recognize or understand that it was Mr. Drye’s abusive conduct and his attempt to change ██████████ scores that needed to be addressed. Instead, Mr. Bauernfeind said that he thought ██████████ and ██████████’ concerns were whether Mr. Drye could legitimately place ██████████ in the position using a reassignment action versus a competitive selection process. He said that after consulting with HR and being told that a reassignment was an appropriate method of placement for ██████████ under the circumstances, he said that he told ██████████ and ██████████ of this and that both of them agreed and considered the matter settled. Further, Mr. Bauernfeind told us that after talking to Mr. Drye, he believed it to be a “cut and dry issue” that would not cause problems in the business environment.

Records reflected that on March 22, 2011, Mr. Bauernfeind issued an “Open Door Policy” memorandum to all OBO staff. When asked why he issued this memorandum, Mr. Bauernfeind explained that he recognized it was unusual to receive such a complaint from an ██████████ and that he was concerned that “there’s something going on that I can’t assess here from Washington, DC.” He said that he wanted to do something more to ensure that all OBO employees understood that they were free to voice their concerns and had a right to work in an environment free from harassment. (b)(7c)

██████████ documented, in a March 24, 2011, MFR, that ██████████ reminded Mr. Bauernfeind, for a second time, that the issue was Mr. Drye’s coercive conduct and his attempt to change ██████████ scores, and not the reassignment, that was of a concern. In ██████████ MFR, ██████████ wrote:

Joe [Bauernfeind] called me in the morning. There were two major points to his conversation. First, he wanted to make clear to me that it was fine for Roger [Drye] to lateral [REDACTED] and that he himself had contacted H.R. to ensure this was the case. He was concerned that I might interfere in the personnel action. *I hastened to remind Joe of our March 11th conversation, emphasizing again that it was the “locked-room coercion” to change the rankings, not the specific employee or the lateral, which was my concern.* The second point Joe made was that, per [REDACTED] suggestion, he thought taking a survey of ICS would be helpful to identify problems. (Italics added for emphasis.) (b)(7c)

When asked if there were any other complaints made against Mr. Drye, Mr. Bauernfeind did not tell us that at about the same time that [REDACTED] and [REDACTED] made their complaint, he received a sexual harassment complaint against Mr. Drye.

March 14, 2011, Complaint of Sexual Harassment

[REDACTED] told us that Mr. Bauernfeind contacted [REDACTED] on March 14, 2011, and asked whether [REDACTED] knew anything about a complaint alleging that Mr. Drye sexually harassed female employees by showing them certain photographs. [REDACTED] said that [REDACTED] told Mr. Bauernfeind that [REDACTED] was not aware of a complaint but that several weeks earlier a lower-graded female ICS [REDACTED] commented openly to a group of other employees that Mr. Drye showed her a calendar containing photographs of [REDACTED] dressed in a bathing suit top and shorts, or “something similar to that.” [REDACTED] said that the [REDACTED] comments were prompted by [REDACTED] telling the group that [REDACTED] just returned from Washington, DC, and that while there, a senior official approached [REDACTED] and asked if [REDACTED] knew anything about [REDACTED] posing for a calendar. [REDACTED] said that after [REDACTED] made the comment, the [REDACTED] told the group that the calendar photos existed and that Mr. Drye showed them to [REDACTED]. [REDACTED] also noted [REDACTED] conversation with Mr. Bauernfeind in an MFR. (b)(7c)

In an MFR and associated emails in which Mr. Bauernfeind documented his receipt and handling of [REDACTED] and [REDACTED]’ March 11 complaint, we found a second MFR reflecting that Mr. Bauernfeind also documented his receipt and handling of the sexual harassment complaint made against Mr. Drye. The second MFR reflected that on March 14, 2011, Mr. Bauernfeind received a complaint alleging that Mr. Drye sexually harassed female employees in his office. It stated:

Roger Drye, Director of Internal Controls Service at the VA Austin Information Technology Center has allegedly used his work computer to view modeling pictures he has taken of [REDACTED]. Our anonymous source claims that Mr. Drye shares these pictures with his female employees and (b)(7c)

has insinuated that if they want to get promoted, they must allow him to photograph them.

Mr. Bauernfeind's MFR reflected that he limited his inquiry into the sexual harassment complaint by only speaking with Mr. Drye. Mr. Bauernfeind wrote:

I had a VTC conversation with Roger Drye on Monday afternoon (March 14). He denied the allegation. He wasn't sure what was meant about modeling pictures of [REDACTED] (b)(7c) (On Tuesday he told me that his Facebook account had pictures of [REDACTED] with a Porsche on a Porsche calendar.)

Mr. Bauernfeind later told us, in an email, that he forgot to tell us about the sexual harassment complaint. He said that he, however, talked to Mr. Drye about the complaint; Mr. Drye denied the allegation; and the next day, Mr. Drye told him that he had a calendar posted on his Facebook account that contained photos of [REDACTED]. In his email to us, Mr. Bauernfeind made no mention of whether he asked or Mr. Drye admitted to showing the calendar photos to other employees. Mr. Bauernfeind said that he concluded from this limited inquiry that the sexual harassment complaint against Mr. Drye "appeared baseless." He said that he sought advice from a former senior official in the Office of Management who reminded him that it previously came to their attention, before he received the sexual harassment complaint, that there was a calendar posted on the internet containing photos of [REDACTED]. He said that the former senior official reminded him that he (Mr. Bauernfeind) was supposed to talk to [REDACTED] about the inappropriateness of having those type photos on public display given [REDACTED] desire to one day become a member of the Senior Executive Service.

Mr. Bauernfeind also did not tell us that he spoke with [REDACTED] or that [REDACTED] told him of the ICS female [REDACTED] commenting that Mr. Drye showed her a calendar containing photographs of [REDACTED]. He, however, later told us that after initially talking with Mr. Drye on March 14, when Mr. Drye "quibbled" and denied showing photos to employees, Mr. Bauernfeind said that he was not sure if Mr. Drye was completely truthful so he called him again on March 15. He said that during their second conversation, Mr. Drye told him about the calendar on his Facebook page and that he admitted showing the calendar photos to employees in the office.

Mr. Drye told us that Mr. Bauernfeind told him of the complaint that he received alleging that Mr. Drye showed photos of women, whom Mr. Drye called his models, to his female employees, and that he told them that if they wanted to be promoted they would have to let him take their pictures. Mr. Drye said that Mr. Bauernfeind asked him, generally, if anything like that happened, and Mr. Drye said that he told Mr. Bauernfeind that it did not. Mr. Drye further said that he did not remember if he told Mr. Bauernfeind that he showed the photos to the ICS [REDACTED] and he said that Mr. Bauernfeind never administratively questioned him on the sexual harassment matter. (b)(7c)

Mr. Drye said that the calendar photos were posted to his Facebook account for some time, and he said that Mr. Bauernfeind already knew of its existence; something that Mr. Bauernfeind would acknowledge during a later interview. Mr. Drye said that the first conversation occurred when Mr. Bauernfeind first received the allegation (March 14), but that it was he (Mr. Drye) who initiated the second conversation after he and the other OBO service directors received an email telling them that Mr. Bauernfeind was going to issue a “memo about quid pro quos....” Email records reflect that this email was sent to the OBO service directors on March 18, 2011. Mr. Drye said that after getting this email, he called Mr. Bauernfeind and questioned why he was creating a policy memo to stop something that “didn’t happen,” which was contrary to Mr. Bauernfeind’s assertion that he (Mr. Bauernfeind) initiated their second conversation.

Mr. Bauernfeind later told us, which he did not earlier disclose, that as part of his sexual harassment inquiry, he also talked with other ICS employees. He said:

I reached out -- because I didn't document in the MFR, I can't remember exactly who I reached out to. I know I reached out to [REDACTED] I believe I reached out to [REDACTED] And I believe I reached out to [REDACTED], though I'm not certain. I think I -- I'm trying to recall, (b)(7c) but I think I reached out to [REDACTED] directly about this instance. I cannot remember if I directly talked to [REDACTED] about this incident. I know I talked to [REDACTED], and I believe I talked to -- I talked to one or the other, either [REDACTED] I may have talked to both. I did not document it in my MFR, and I can't remember. But I talked to those folks. They said, no, yeah, I saw it, but there was no -- there was nothing as the - as alleged conversation that the IG complaint alleges. There was nothing like that.

To the contrary, [REDACTED] and [REDACTED] told us that Mr. Bauernfeind never asked them anything about the sexual harassment complaint or the calendar photos. Mr. Drye told us that he did not know what Mr. Bauernfeind did or was going to do with regard to the sexual harassment inquiry but that he “hoped that he picked up the phone and talked to the female staff.” [REDACTED] told us that during [REDACTED] conversation with Mr. Drye, he was “pretty upset” that Mr. Bauernfeind did not contact the female employees. [REDACTED] documented in an MFR that Mr. Drye told [REDACTED] that he insisted that Mr. Bauernfeind talk with female employees but that Mr. Bauernfeind refused to do so. [REDACTED] told us that Mr. Drye was “frustrated by Joe’s inaction.”

[REDACTED] told us that some time ago, [REDACTED] and Mr. Drye had an informal conversation in (b)(7c) his office and that Mr. Drye mentioned that [REDACTED] posed for a car calendar and was going to be Miss July. [REDACTED] told us that Mr. Drye then displayed the pictures of [REDACTED] on his computer and allowed [REDACTED] to see them. [REDACTED] said:

██████████ posed with the different red, white and blue cars. Some of the pictures, ██████████ was standing outside of the car. Some of the pictures, she was sitting in the car, and some of them, ██████████ was sitting in the car with her legs out of the car. ██████████ was wearing a bikini bathing suit top with a skirt on the bottom in the different pictures. (b)(7c)

██████████ also corroborated what ██████████ told Mr. Bauernfeind as to how ██████████ learned of the calendar photos, saying that during a group discussion ██████████ mentioned to ██████████, and others that Mr. Drye showed ██████████ the calendar photos of ██████████. However, ██████████ said that at no time did ██████████ speak to Mr. Bauernfeind regarding the photos or about the sexual harassment complaint. ██████████ and ██████████ told us that Mr. Drye never made any untoward comments or insinuations about photographing them to be promoted.

Conclusion

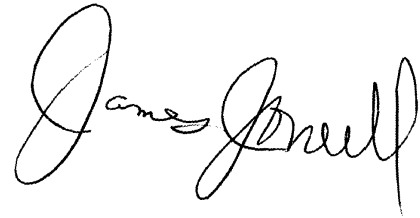
We concluded that Mr. Bauernfeind failed to properly exercise his duties and responsibilities as Mr. Drye's supervisor and that he did not testify freely and honestly in connection with our investigation. VA policy requires Mr. Bauernfeind, as a supervisor, to promptly investigate alleged misconduct in a thorough and impartial manner; to gather and analyze facts; to document those facts; and to initiate appropriate, timely and effective corrective action, as necessary. In a 3-day span, Mr. Bauernfeind received two serious misconduct complaints against Mr. Drye. One alleged abuse of authority, prohibited personnel practice, and interference with a competitive examination. The other one alleged sexual harassment of female subordinate employees. In both cases, Mr. Bauernfeind failed to take the required and appropriate action as a supervisor.

During a competitive examination process, Mr. Drye corruptly attempted to coerce a subordinate into making a false representation concerning the proper ranking of an applicant so that he could select ██████████ for promotion. Mr. Bauernfeind, after being told by two ██████████ of Mr. Drye's actions, failed to recognize or chose to disregard the seriousness of Mr. Drye's conduct and to take appropriate corrective action. Three days later, Mr. Bauernfeind received a sexual harassment complaint against Mr. Drye, and even after ██████████ told him that a female ICS ██████████ told a group of employees that Mr. Drye showed her photos of ██████████ posing for a calendar, Mr. Bauernfeind limited his inquiry to a general conversation with Mr. Drye. He therefore failed to conduct a thorough and impartial investigation into the allegation to determine if it was true or to vindicate Mr. Drye. Moreover, in an effort to make it appear that he did his due diligence and to support his conclusion that the allegation "appeared baseless," Mr. Bauernfeind falsely told us that he spoke to ██████████ employees about the matter. The employees, however, told us that Mr. Bauernfeind did not contact them about the sexual harassment complaint made against Mr. Drye. (b)(7c)

Recommendation 2. We recommend that the Principal Deputy Assistant Secretary for Management confer with OHR and OGC to determine the appropriate administrative action to take against Mr. Bauernfeind and ensure that action is taken.

Comments

The Principal Deputy Assistant Secretary (PDAS) for Management told us that he delegated all PDAS duties to the Executive Director, Operations, Office of Management, while he served as the Office of Management Executive in Charge. The Executive Director was responsive, and her comments are in Appendix A. We will follow up to ensure that the recommendations are fully implemented.

A handwritten signature in black ink, reading "James J. O'Neill". The signature is written in a cursive style with a large, looped initial "J".

JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Executive Director Comments

**Department of
Veterans Affairs**

Memorandum

Date: December 5, 2011

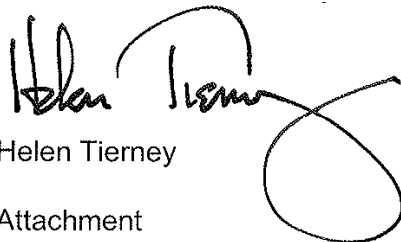
From: Executive Director, Operations (004)

Subject: **Administrative Investigation - Abuse of Authority,
Prohibited Personnel Practice, Failure to Properly
Supervise, and a Lack of Candor, OBO**

To: Office of Inspector General (50)

1. I have reviewed the Draft Inspector General Report entitled "Administrative Investigation: Prohibited Personnel Practices, Abuse of Authority, Failure to Properly Supervise, and a Lack of Candor, Office of Business Oversight, VA Central Office."

2. Thank you for the opportunity to review this draft report and comment. Should you need further information, you may reach me at 202-461-6703.


Helen Tierney
Attachment

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

The following Executive 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 Principal Deputy Assistant Secretary for Management confer with OHR and OGC to determine the appropriate administrative action to take against Mr. Drye and ensure that action is taken.

Comments: I have no comment on the draft report. I will confer with OHR and OGC to review the OIG supporting evidence to determine an appropriate course of action.

Recommendation 2. We recommend that the Principal Deputy Assistant Secretary for Management confer with OHR and OGC to determine the appropriate administrative action to take against Mr. Bauernfeind and ensure that action is taken.

Comments: I have no comment on the draft report. I will confer with OHR and OGC to review the OIG supporting evidence to determine an appropriate course of action.

OIG Contact and Staff Acknowledgments

OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Charles Millard Charles Knorr Leanne Shelly Robert Warren

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