



# Department of Veterans Affairs Office of Inspector General

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## **Veterans Benefits Administration Administrative Investigation Alleged Preferential Treatment and Potential Misuse of Travel Funds**

**Redacted**

# Department of Veterans Affairs

# Memorandum

Date: June 1, 2016

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Preferential Treatment and Potential Misuse of Travel Funds, Veterans Benefits Administration (VBA), VA Central Office, Washington, DC (2015-02997-IQ-0171)

To: VA Chief of Staff

## Purpose

In March 2015, the VA Office of Inspector General (OIG) received requests from the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs to review allegations concerning improprieties with the relocation of a Veterans Benefits Administration employee.<sup>1</sup> Additionally, the request from the Chairman of the House Committee on Veterans' Affairs asked that the VA OIG investigate allegations that [REDACTED], the former Assistant Director of the Veterans Benefits Management System (VBMS) Program Management Office (PMO), was given preferential treatment through an alleged promotion and subsequent virtual reassignment and that she misused VA travel funds to commute to and from VA Central Office (VACO). (b)(7)(C)

## Objective, Scope, and Methodology

To assess the allegations we interviewed [REDACTED] and current and former VBMS PMO employees: the VBMS PMO Director; the Assistant Director of Business Testing; a former Supervisory Program Analyst and currently the Acting National Cemetery Administration (NCA) Director; a former Program Analyst and currently a contractor employee; a VBMS Supervisory Program Analyst; the Assistant Director of Business Requirements; the Assistant Director of Program Management; a former Program Analyst and current Information Technology (IT) Specialist; the VBMS PMO Deputy Director; and a Program Analyst. We also reviewed personnel, email, relocation, and travel records, as well as Federal laws and regulations and VA policy. (b)(7)(C)

Federal regulations state:

Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. 5 CFR § 2635.101(a)

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<sup>1</sup> The results of this investigation are published in our report, *Administrative Investigation, Inappropriate Use of Position and Misuse of Relocation Program and Incentives in VBA* (Report Number 15-02997-526, September 28, 2015).

Federal regulations state:

General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper. 5 CFR § 2635.101(b).

Employees shall act impartially and not give preferential treatment to any private organization or individual. Id., at § 2635.101(b)(8).

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. Id., at § 2635.101(b)(14).

Federal travel regulations state:

What travel expenses may my agency pay? Your agency may pay only those expenses essential to the transaction of official business. 41 CFR § 301-2.2.

What standard of care must I use in incurring travel expenses? You must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. 41 CFR § 301-2.3.

For what travel expenses am I responsible? You are responsible for expenses over the reimbursement limits established in this chapter. Your agency will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business. 41 CFR § 301-2.4.

The General Services Board of Contract Appeals (GSBCA) has held that an employee who is engaged in commuting between his residence and official duty station is not entitled to commuting expenses between the employee's home and his duty station. An employee commuting between home and the employee's office is not traveling on official business away from the designated post of duty. *Freddie G. Fenton*, GSBCA 13638-TRAV, 97-1 BCA 28,712 (1996).

## Results

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### Issue 1: Did [REDACTED] Receive Preferential Treatment When She Obtained a Virtual Reassignment?

On May 5, 2013, [REDACTED] was promoted into a GS-15 Program Management Officer position, selected from a competitive certificate dated March 19, 2013. In May 2014, she was voluntarily downgraded to a GS-14 position so that she could relocate for personal

convenience from Washington, DC, to Philadelphia, PA, and work as a virtual employee. Relocation expenses were neither offered nor paid by VA for the purpose of [REDACTED] voluntary relocation to Philadelphia, PA.<sup>2</sup> Her downgrade to a non-supervisory GS-14 Program Analyst was effective July 27, 2014.

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The VBMS PMO Director told us that she met [REDACTED] in 2008 when she began working at VA and that they became friends through their work in VBMS PMO. [REDACTED] also told us that she and the VBMS PMO Director were friends and that their friendship included carpooling, mutual home visits, and pet care.

#### *VA and VBMS PMO Telework Policy*

VA telework policy states that supervisors are responsible for determining position and employee suitability for telework arrangements, to include obtaining an executed User's Remote Computing Security Agreement with the employee. "They must also ensure adequate coverage during public business hours, that operations continue to be carried out in an efficient and economical manner, and that participating and non-participating employees are treated equitably." A virtual office is defined as:

A work environment in which employees work cooperatively from different locations using a computer network (in lieu of a single building or other single physical location) to perform work-related duties. As opposed to a single location site (facility) where workers are housed, the virtual office is typically a collaborative computer network where workers gather electronically to collaborate and/or carry out other work-related activities. The actual physical locations of the employees working in a virtual office can be temporary or permanent and can be nearly anywhere, such as their homes, satellite offices, hotel rooms...airports, airplanes, or trains. VA Handbook 5011/26, Part II, Chapter 4 (August 9, 2013).

VBMS PMO telework policy, signed by the VBMS PMO Director, requires employees to meet all criteria and requirements of the program, submit a telework request and home safety checklist, obtain supervisory approval, and complete and sign a telework agreement. Further, it outlines procedures, to include work schedule criteria, and prohibits participants from working a compressed work schedule. VBMS PMO Circular No. 20S1-14-03 (Revision) (March 26, 2014).

All PMO employees, to include [REDACTED], completed and signed telework agreements. The use of terms such as telework, virtual, and mobile were used interchangeably by PMO managers and employees. None of the employees we interviewed, to include those in supervisory positions, could produce a written policy applicable only to virtual positions. However, the VBMS PMO Director told us that determining which position would be virtual was on a "case-by-case" basis, and they looked at it from a "workload perspective." She said, as an example, the Stakeholder and Organizational Change Management (SOCM) team had no virtual positions because their training roles and

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<sup>2</sup> Relocation expenses were not paid specific to [REDACTED] voluntary relocation but were included in the relocation expenses, as a dependent, detailed in the above cited report.

responsibilities required their physical presence within the PMO. She also said the decisions that were made were “very position specific...It’s the skill, it’s the activities...it’s not the person in the position” that determines who may or may not work as a virtual employee.

Some current and former VBMS PMO employees believed that [REDACTED] approved request to work virtually represented preferential treatment, since their requests for virtual assignments were denied. However, the Detroit HR Center Director, the office that was responsible for hiring efforts for VBMS PMO, told us that the GS-0343 Program Analyst positions were all virtual-ready when the positions were created and jobs announced. She said that the position descriptions were established and classified between 2010 and 2012, and at that time, the Position Management Committee determined that they were or could be virtual positions. She also said that the Program Analyst position filled by [REDACTED] was a position in which the staff office determined could be filled with an employee who teleworked 100 percent of the time. With the reorganization of VBMS in 2012, employees who already worked virtually were permitted to remain as virtual employees.

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VBMS PMO telework policy stated that it was the policy of VA to provide opportunity for qualified employees to perform their work at an alternative worksite and that all PMO employees were eligible for telework. It also provided exclusions for certain employees, but it stated that employees with exceptional hardship circumstances may submit a written request for an exception to the telework policy. [REDACTED] request for a virtual position was based on her relocation for personal convenience from Washington, DC, to Philadelphia, PA.

The Assistant Director of Business Testing gave us a list of employees who requested to work virtually and had their requests either approved or denied. None of these employees had situations identical to that of [REDACTED] specifically requested downgrade from a supervisory GS-15 to a non-supervisory GS-14. There were other VBMS PMO GS-14 non-supervisory employees working virtually. The list contained the following:

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- Program Analyst, GS-13 – The Assistant Director of Business Testing’s list reflected that the Program Analyst requested her then GS-14 position be designated as virtual due to a personal hardship. Her first level supervisor approved the request, but the VBMS PMO Director denied it. It also reflected that the Program Analyst offered to take a lower graded position to become virtual, which was also denied. To the contrary, the VBMS PMO Director told us that she denied the request because the Program Analyst was a SOCM supervisor and she asked to be a virtual supervisor. The VBMS PMO Director said that the standard practice was not to allow supervisors to be virtual employees. As a result of her request being denied, the Program Analyst accepted a downgraded position in another VA organization so that she could be a virtual employee. Records reflected that she was downgraded from a GS-14 to a GS-13, effective January 23, 2014, and reassigned to VBA’s Office of Business Process Integration, Austin, TX.
- Program Analyst, GS-13 – The Assistant Director of Business Testing’s list reflected that the Program Analyst requested that her position be designated as virtual due to

a personal hardship, and it was denied. The Program Analyst told us that the VBMS PMO Director initially indicated that her working virtually may be approved, but the former (retired) VBMS PMO Director denied it. Email records reflected that the former VBMS PMO Director offered to allow the Program Analyst to work from a local VA facility, but the Program Analyst said she wanted to be full-time virtual. The Program Analyst told us that in April 2012, she left PMO to take a virtual position with VA's Office of Information and Technology (OIT). Personnel records reflected that the Program Analyst transferred to OIT on March 24, 2013.

- Program Analyst, GS-14 – The Assistant Director of Business Testing's list reflected that the Program Analyst requested that his position be designated as virtual due to a personal hardship. He competed for a position open only to VBMS PMO employees, was selected, and the position was designed as virtual. Personnel records reflected that the Program Analyst was selected from certificate JZ-15-NMA-06641SO, dated June 12, 2015, for a GS-14 Program Analyst position. The VBMS PMO Director said that the Program Analyst was in a non-supervisory position, and it was determined that the position could be virtual by the nature of the duties.
- Program Analyst, GS-13 – The Assistant Director of Business Testing's list reflected that the Program Analyst requested that her position be designated as virtual due to a personal hardship, which the former VBMS PMO Director denied. He did permit the Program Analyst to relocate and be an out-based employee at another VA facility in that geographical area. The Program Analyst told us that after [REDACTED] was permitted to be full-time virtual, she again asked to be designated as virtual, but the VBMS PMO Director and the VBMS PMO Deputy Director said that she could be virtual only if she gave up her compressed work schedule. She told us that she elected to continue working her compressed schedule rather than be virtual.
- Management Analyst, GS-12 – The Assistant Director of Business Testing's list reflected that the Management Analyst informally asked for a virtual assignment due to a personal hardship and that the former Supervisory Program Analyst told her that it would likely be denied. To the contrary, the former Supervisory Program Analyst told us that the Management Analyst did not ask for a reassignment. Instead, the VBMS PMO Director allowed the Management Analyst to relocate to the Philadelphia VARO, which required her to take a downgraded position. Personnel records reflected that she was downgraded from a GS-13 Program Analyst to a GS-12 Management Analyst effective June 29, 2014.
- Former Program Analyst, GS-13 – The Assistant Director of Business Testing's list reflected that he requested his position be designated as virtual due to personal hardship. The former Program Analyst told us that a colleague, who was virtual and had similar responsibilities, was leaving VA, and he asked to transition into that position. She said that the VBMS PMO Director denied the request and told her that the former Program Analyst would have to "compete for the position." The former Program Analyst left VA and accepted a position with a contractor in the geographic area. The former Program Analyst told us that his virtual request denial and [REDACTED] virtual request approval illustrated a fundamental policy conflict which applied different rules to different employees.

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In reference to the former Program Analyst, the VBMS PMO Director and the VBMS PMO Deputy Director told us that they did not recall the former employee requesting a virtual position, and only vaguely recalled managers discussing the possibility. The VBMS PMO Director said that she did not consider the reassignment, because the former Program Analyst did not directly ask her. However, a February 11, 2015, email chain reflected a communication between the employee's former supervisor and the VBMS PMO Deputy Director, with the VBMS PMO Director on copy, about strategies to retain the employee. The VBMS PMO Deputy Director replied, "Let's talk later...The transfer of [the employee] to an out-based position will need some discussion but is very much worth consideration."

The VBMS PMO Deputy Director told us that she did not receive a formal request from the former Program Analyst for a hardship transfer or to be a virtual employee and that if asked, she would have told him to submit his request in writing. She also said that she was surprised that employees viewed [REDACTED] virtual request approval as giving her a preference. She said she needed to better communicate the specifics of VA's [telework] policy, but she said that the decisions were always on a case-by-case basis, depending on the duties of the position and not individual requests. VBMS PMO's Virtual/Mobile Office Arrangement Request Proposal included paragraphs that made it clear that the agreement was permissible on the grounds that the employee's position was designated suitable for telework and that the employee's past performance warranted being approved for a virtual assignment.

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#### *[REDACTED] Request to Work as a Virtual Employee*

The VBMS PMO Director, who was [REDACTED] second level supervisor, told [REDACTED] what she needed to do in order to relocate. She told her, "We need a memo requesting a voluntary downgrade to a [non-supervisory] GS-14 out-based position to start the process" and "Let me know and we'll energize the paperwork for you." The VBMS PMO Director told us that she told [REDACTED] that she would not permit a GS-15 Associate Director to be in a virtual assignment, and [REDACTED] told us that since VBMS PMO policy precluded out-based supervisors and she wanted to move, she had to take a lower graded non-supervisory position.

Email records reflected that on May 27, 2014, [REDACTED] formally asked the VBMS PMO Director for a virtual reassignment from PMO in Washington, DC, to Philadelphia, PA, and on June 13, 2014, she requested a voluntary downgrade from a supervisory GS-15 to a non-supervisory GS-14 position. The VBMS PMO Director told us that she first assigned [REDACTED] to a GS-14 vacancy in the Program Management Division (PMD), as there was not a vacancy in her then directorate of Business Requirements Division (BRD). When a GS-14 position became vacant in BRD, [REDACTED] was placed into it. The Detroit HR Center Director told us that the PMD vacancy was established and classified on June 9, 2010, and the vacancy occurred as a result of a loss in personnel. She said that it was an existing position, not created specifically for [REDACTED], and these GS-0343 positions were all determined to be eligible for telework 100 percent of the time.

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[REDACTED] told us that she did not know how VA adjusted her salary when downgrading from a GS-15 to a GS-14 but that the action involved "an \$11,000 pay decrease." Personnel records confirmed that [REDACTED] took a reduction in grade and became a

virtual employee effective July 27, 2014. The VBMS PMO Director told us that no one advocated for ██████ reassignment. She said that she did not consult anyone in leadership above her about reassigning ██████ and that she had the authority to approve the transfer.

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## **Issue 2: Did ██████ Misuse Travel Funds to Commute to VA Central Office?**

Personnel records reflected that ██████ was assigned to VBMS, Washington, DC, but her official duty station was Philadelphia, PA, performing duties from her home. OPM's *Guide to Processing Personnel Actions* defines a duty station as "the city/town, county and State in which the employee works," and the location of a worksite as the location of the employee's desk or the place where the employee normally performs her duties. OPM's guidance states that if the employee's work involves recurring travel, the official worksite is the location where the work activities of the employee's position of record are based, as determined by the employing agency. (OPM.gov)

Travel records dated from September 2014 to April 2015 reflected that ██████ spent about 27 percent of her workdays in travel status on official business. The Assistant Director of Business Requirements, ██████ supervisor, told us that although ██████ worked virtually from her home, she, along with the rest of his staff, worked "offsite in Arlington, VA, every 3 weeks." He said that she also traveled "quite often" to Charleston, SC, on official business and that ██████ travel to Washington, DC, was as part of the VBMS Requirements Team, a requirement of her position. One VBMS PMO manager told us that VBA employees familiar with veterans' claim processing traveled to Washington, DC, about once per month to work with the VA contractor and VBMS facilitators, and that the group that traveled to Washington, DC, included ██████. Their mission was to translate employee recommendations into business requirement documents that OIT used to determine the best contracting model to ensure VBMS improvement, development, and success.

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██████ told us that VBMS PMO staff tried remote video teleconferencing to facilitate these sessions when possible, but the meetings required opposing groups to reach a consensus and physical presence usually worked better. The VBMS PMO Director told us that everyone leading the sessions, to include ██████ and out-based employees, traveled to Washington, DC, for the sessions.

In comparing ██████ travel records from September 2014 to April 2015 to those of her colleagues for the same time period, we found that one or more of the employees also in virtual positions traveled to Washington, DC, during the same dates as ██████ to attend the same meetings. There were only two instances when ██████ traveled to Washington, DC, in which her colleagues did not; however, we also found instances in which her colleagues traveled to Washington, DC, and ██████ did not. We also found several instances in which ██████ or her colleagues traveled to Charleston, SC, independent of one another. ██████ travel vouchers reflected that her travel reimbursement claims were consistent and compliant with Federal Travel Regulations.

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## Conclusion

We found that [REDACTED] was competitively selected and promoted into a GS-15 position a year prior to requesting a downgrade to a non-supervisory GS-14. We found no evidence that she received her downgraded GS-14 virtual position as a result of an abuse of position by [REDACTED] or any other VBA senior management officials. A review of the records of the other individuals within VBMS PMO requesting similar treatment revealed no other supervisory GS-15s comparable to [REDACTED]. We note further that, with regard to the other VBMS PMO personnel serving in other grades who also requested to be placed in telework positions, VBMS PMO's record was mixed. In some cases, the individual's position was converted or the person was reassigned to such a position, yet in other cases, it was not. The action for [REDACTED] to become a non-supervisory virtual employee did not violate VBA's policies. Further, we found no evidence that [REDACTED] was treated more favorably by being reassigned to a downgraded, non-supervisory virtual position, as other VBA virtual-based employees worked under the same position description. The VBMS PMO Director also properly reassigned [REDACTED] to an existing vacancy which allowed for 100 percent telework. Staffing and reassigning employees is at management's discretion as to what is best for the organization.

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We also concluded that [REDACTED] did not misuse travel funds to commute back and forth to VA Central Office. Her travel to Washington, DC, was a requirement of her position and others working on the VBMS Requirements team in order to work with VA contractor employees and VBMS facilitators. [REDACTED] supervisor confirmed that her travel was essential to official VA business, and her reimbursement claims were in compliance with Federal Travel Regulations.

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