

Department of Veterans Affairs

2010-00299-IQ-0175
Memorandum

Date: May 30, 2011

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigations- Prohibited Personnel Practices, Preferential Treatment, Nepotism, Office of Informatics and Analytics, [REDACTED] (2010-00299-IQ-0175)

To: Assistant Deputy Under Secretary for Health for the Office of Informatics and Analytics (10P2)

1. The VA Office of Inspector General Administrative Investigations Division investigated an allegation that [REDACTED] with VHA's Office of Informatics & Analytics (OIA), engaged in a prohibited personnel practice, preferential treatment, and nepotism when she influenced the hiring of her son, [REDACTED] as a [REDACTED] with VHA OIA Healthcare Identity Management team (HIMT). To assess these allegations, we interviewed [REDACTED] Data Quality Program, OIA Health Information Governance (HIG); [REDACTED] OIA HIG; [REDACTED] Program Support Office; other VA employees; and you. We also reviewed personnel records, hiring packages, training materials, relevant Federal regulations, and VA policy. (b) (7)(C)

2. We did not substantiate that [REDACTED] engaged in a prohibited personnel practice, preferential treatment, or nepotism; however, we concluded that her actions resulted in the appearance of violating ethical standards when she signed a Request for Personnel Action, Standard Form (SF) 52, authorizing a recruitment action that was later used to appoint her son, [REDACTED]. VA Office of General Counsel (OGC) was unable to determine whether [REDACTED] actions constituted nepotism, as they said that it was unclear if she qualified as a "public official," and we recognize that her actions may have been ministerial in nature. We suggest that you ensure that [REDACTED] has no future involvement in any personnel actions concerning [REDACTED] to avoid even the appearance of an ethical violation. We are providing this memorandum to you for your information, official use, and whatever action you deem appropriate. **No response is necessary.** (b) (7)(C)

3. Federal law prohibits public officials from appointing, employing, promoting, advancing, or advocating for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which the public official is serving or over which the public official exercises jurisdiction or control any individual who is a relative of the public official. 5 USC § 3110(b). Standards of Ethical Conduct for Employees of the Executive Branch prohibits employees from using their public office for private gain or the private gain of relatives and to ensure that the performance of their official duties does not give rise to the appearance of the use of public office for private gain 5 CFR § 2635.702.

4. Personnel records reflected that between May 2005 and December 2006, [REDACTED] worked as [REDACTED] at the VA Office of Information and Technology (OI&T) Service Desk in [REDACTED]. In January 2007, while still [REDACTED] worked on what today is the HIMT (formerly the Office of Health Data & Informatics, Identity Management Data Quality Team) as a [REDACTED]. [REDACTED] was also employed on the current HIMT, as a [REDACTED] until April 2007, when she accepted a position within OIA's Program Office. We also found that [REDACTED] father, [REDACTED] was previously employed by VA as [REDACTED] within OI&T, until his retirement in 2009; however, we found no evidence that [REDACTED] was involved in his [REDACTED] VA appointments.

(b) (7)(C)

5. Personnel records reflected that VA issued a competitive announcement in 2007 for six [REDACTED] positions at the GS-5/7/9/11/12 grade levels to be located in [REDACTED] and [REDACTED]. (Record retention for this recruitment has since passed, so record availability was limited.) Records reflected that certificate number [REDACTED] dated May [REDACTED] 2007, contained three names with applicants one and two having veterans' preference and [REDACTED] ranked as number three. Records also showed that applicants one and two were selected for positions in [REDACTED] and [REDACTED] respectively, and on May [REDACTED] 2007 [REDACTED] OI&T [REDACTED] selected [REDACTED] for a GS-7 position at the OI&T National Help Desk in [REDACTED]. [REDACTED] appointment was effective June [REDACTED] 2007.

(b) (7)(C)

6. [REDACTED] told us that he started at VA as a GS-7, step 6, a rate of pay above the minimum, after he wrote a letter to the HR Office asking them to match his then salary. In a letter dated May [REDACTED] 2007 [REDACTED] wrote that he had over 1 year and 7 months of experience performing the duties of an [REDACTED] for the VA Service Desk and asked for a salary readjustment to meet his annual salary of \$49,000. [REDACTED] said that in addition to the letter, he also submitted records to document his salary history. In a May [REDACTED] 2007, memorandum, [REDACTED] proposed a GS-7, step 6, rate of pay, based on [REDACTED] qualifications and prior experience as [REDACTED] at the VA Service Desk, and it was approved by [REDACTED]. Record retention for this action has since passed, so record availability was limited. Absence a review of all relevant documents, we could not determine whether [REDACTED] appointment at a rate of pay above the minimum was done properly. 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 and that in determining the rate of pay, an agency may consider one or more factors, including the level, type, or quality of the candidate's skills or competencies or the candidate's existing salary or recent salary history. 5 CFR § 531.212.

(b) (7)(C)

7. [REDACTED] told us that VA issued a competitive announcement in October 2007 for two [REDACTED] vacancies at the GS-11 grade level with one position to be located in [REDACTED] and one in [REDACTED]. Personnel records reflected that certificate number [REDACTED] issued by the Cleveland Business Center HR

(b) (7)(C)

and dated November [redacted] 2007, contained five names, with [redacted] ranked as number two. Records reflected that none of the applicants had veterans' preference; the first applicant declined the position; and on December [redacted] 2007, [redacted] properly selected [redacted] for one of the GS-11 positions. [redacted] told us that all five applicants were interviewed in person and that she selected [redacted] for the [redacted] vacancy based on his previous HIMT experience and training. [redacted] appointment was effective January [redacted] 2008. [redacted] told us that [redacted] had some clerical involvement with the position announcement, as she sent the announcement documents to the Cleveland Business Center HR. She said, however, [redacted] had no involvement in the ranking or selection process for [redacted]. See Figure 1 for a timeline of [redacted] and [redacted] positions.

(b) (7)(C)

[redacted]		Ms. Roberta Blas	
Dates	Position	Dates	Position
5/2005 – 12/2006	[redacted] (Contractor)	9/2005 - 4/2007	(GS-12) [redacted] (HIMT)
1/2007 – 6/2007	[redacted] (Contractor)	4/2007 - Present	(GS-13) [redacted] (OIA)
6/2007 - 1/2008	(GS-7) [redacted] (Federal)		
1/2008 - Present	(GS-11) [redacted] (HIMT) (Federal)		

(b) (7)(C)

Figure 1

8. Personnel records reflected that [redacted] listed [redacted] as the point of contact on the SF 52 that requested a GS-11 recruitment, effective December [redacted] 2007, and on June [redacted] 2007, signed "for" her supervisor as the authorizing official for this action. It also reflected that the position filled by [redacted] was the one left vacant by his mother when she was selected for her current job, a position with greater promotional potential. We found no evidence that [redacted] vacated the position for her son. [redacted] told us that she signed "for" her supervisor "a bunch" and that sometimes the [redacted] also signed for her supervisor. In a July [redacted] 2007, memorandum, you gave [redacted] and three other employees the authority to sign on your behalf when you were "unavailable but have verbally indicated support or initiated the action."

(b) (7)(C)

9. [redacted] told us that when she authorized the action, no name or employee data appeared on the SF 52. She said that program staff entered information such as cost center, location, title of position, etc., on the form and that information pertaining to the appointed employee was left blank. She said that this was due to not yet knowing who would be selected for the position. [redacted] who is [redacted] supervisor, told us that

(b) (7)(C)

once a selection was made, a Cleveland HR Specialist entered [REDACTED] name on the form. Other program office employees told us that it was a standard practice to not enter employee information on recruitment action forms when the action was initiated, and in other investigations, we found this was a standard administrative practice in other offices as well. An OIG forensic laboratory examination report reflected that there was some evidence to indicate that [REDACTED] did not write her son's name on the form. The report also noted that [REDACTED] signature on the form was probably a genuine signature; however, it was unclear when the signature was applied to the document.

(b) (7)(C)

10. OGC was unable to determine whether [REDACTED] action constituted nepotism, because they said that it was unclear if [REDACTED] qualified as a "public official." They said that she would be a public official "if she was delegated the authority to appoint, employ, promote, or advance individuals, or to recommend such actions." [REDACTED] told us that [REDACTED] was not a supervisor and did not have any selection authority. OGC also said that if the Delegation of Authority memorandum existed prior to July 2, 2007, anyone who signed for [REDACTED] in such a situation was acting as a mere proxy for [REDACTED] and was signing only, in the words of the delegation memo, to "maintain the continuity of workflow without undue interruption." They said that if [REDACTED] authority was not limited to merely signing "for" and at the direction of [REDACTED] her actions could constitute nepotism. Standards of Ethical Conduct for Employees of the Executive Branch reflect that employees shall avoid any actions creating the appearance that they are violating the law or ethical standards. It also states that it "shall be determined from the perspective of a reasonable person with knowledge of the relevant facts." 5 CFR § 2635.101 (b) (14).

(b) (7)(C)

11. [REDACTED] told us that [REDACTED] was not a supervisor and that she did not have the authority to select or recommend employees. She said that [REDACTED] prepared position descriptions and recruitment packages for recruiting supervisors with their approval, and [REDACTED] told us that she processed this recruitment as she did all the others. [REDACTED] told us that [REDACTED] was the Cleveland Business Center HR liaison but that [REDACTED] had no involvement in the selection of [REDACTED]. She said that [REDACTED] role was to receive the certificate and give it to the manager. You told us that [REDACTED] only signed for you with your approval but that you did not recall this particular instance. You said that, in your opinion, you would have preferred that [REDACTED] not be the one signing the forms for this personnel action, since the applicant being appointed was [REDACTED] son.

(b) (7)(C)

12. We did not substantiate that [REDACTED] engaged in a prohibited personnel practice, preferential treatment, or nepotism; however we concluded that her actions resulted in the appearance of violating ethical standards when she signed an SF 52 authorizing a recruitment action that was later used to appoint her son, [REDACTED]. OGC was unable to determine whether [REDACTED] actions constituted nepotism, as they said that it was unclear if she qualified as a "public official," and we recognize that her actions may have been ministerial in nature. Further, [REDACTED]'s jump from a GS-7 to a GS-11 position can be explained by his applying for each position through the competitive process and qualifying based on his past experience as a contract employee. The first was an [REDACTED]

(b) (7)(C)

[REDACTED] and the second was a [REDACTED] which require differing skills and abilities. We suggest that you ensure that [REDACTED] has no future involvement in any personnel actions concerning [REDACTED] to avoid even the appearance of an ethical violation.

(b) (7)(C)

13. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with [REDACTED] and she may have a copy of the redacted version, within the bounds of the Privacy Act. The unredacted version may not be released to her. If you have any questions, please call [REDACTED]

[REDACTED]