

**Memorandum to the File  
Case Closure**

Alleged Prohibited Personnel Practice and Misuse of Government Resources  
Office of Business Oversight, Austin, Texas  
(2011-02258-IQ-0109)

The VA Office of Inspector General Administrative Investigations Division investigated an allegation that (b) (7)(C) (b) (7)(C) and (b) (7)(C) engaged in a prohibited personnel practice involving the transfer of an employee from (b) (7) to (b) (7)(C). (b) (7)(C) also allegedly misused appropriated VA funds to purchase a refrigerator and microwave for the (b) (7) break room. We did not substantiate either allegation.

An allegation that (b) (7)(C) (b) (7) wasted and misused funds through late fiscal year transfers between their Services and for the purchase of unneeded contracting services, were preliminarily reviewed; however, we asked that OIG Hotline refer those allegations to the appropriate VA management office for review and appropriate action.

The Standards of Ethical Conduct for Employees of the Executive Branch require employees to protect and conserve Government property and to not use such property, or allow its use, for other than authorized purposes. 5 CFR § 2635.704. The Standards further require employees to act impartially and not give preferential treatment to any individual. *Id.*, at § 2635.101. Federal law requires that Federal employees be selected and advanced solely on the basis of relative ability, knowledge, and skills, and unless otherwise exempted by law, after fair and open competition. 5 USC § 2301 (b)(1). The law prohibits an employee from granting an unauthorized preference or advantage to improve or injure the employment prospects of any particular person. 5 USC § 2302 (b)(6). It also prohibits an employee who has authority to take, direct others to take, or recommend personnel actions from taking or failing to take any personnel action if it violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of Title 5, United States Code. *Id.*, at § 2302 (b)(12). The Merit System Protection Board (MSPB) defined an "abuse of authority" as the exercise of power in an "arbitrary or capricious manner that adversely affects the rights of any person or that results in personal gain or advantage." *D'Elia v. Department of the Treasury*, 60 M.S.P.R. 226, 232 (1993).

*Allegations Pertaining to Transferring an Employee*

(b) (7)(C) allegedly no longer wanted (b) (7)(C) working for her in (b) (7) and that she and (b) (7)(C) worked out a solution to promote (b) (7)(C) and transfer him to (b) (7) with the intent of later demoting him. (b) (7)(C) and (b) (7)(C) all denied this allegation. They told us that (b) (7)(C) (b) (7) in (b) (7) and that he applied for and was appointed to (b) (7)(C) (b) (7)(C). Then, prior to end of his probationary period and due to

performance issues, (b) (7)(C) voluntarily elected to step down from the (b) (7) (b) (7)(C) into a (b) (7) (b) (7)(C) position.

(b) (7)(C) said that she was surprised when she heard that (b) (7)(C) applied for an (b) (7) position; she liked him as an employee; and she never wanted to get rid of him. She said that (b) (7)(C) (b) (7)(C) spoke very highly of his work and was sorry that he was leaving. (b) (7)(C) told us that (b) (7)(C) team leader gave him a good recommendation and that after going through a competitive recruitment process (b) (7)(C) selected him for the position. (b) (7)(C) said that he discussed (b) (7)(C) with (b) (7)(C), but he said that it had nothing to do with her not wanting (b) (7)(C) to work in (b) (7). (b) (7)(C) also said that (b) (7)(C) never had conduct issues but that he (b) (7)(C) had to address performance issues with (b) (7)(C) after his appointment to the position.

(b) (7)(C) told us that after his (b) (7) appointment, he had difficulty adjusting to (b) (7)(C) management style; the duties of his position were not well defined; and that combined with (b) (7)(C) not providing good direction made it a frustrating and difficult situation. He said that he never really understood what (b) (7)(C) wanted, because he said that (b) (7)(C) expectations were different from what was in his position description. He said that he found his position description to be "generic" and not well defined.

(b) (7)(C) said that just before his 1-year probationary period ended, (b) (7)(C) gave him a memorandum informing him that his performance was less than acceptable; that he missed deadlines; and he was not responding to inquiries in an acceptable manner. (b) (7)(C) said that he and (b) (7)(C) spoke at a later time and that (b) (7)(C) told him that if he (b) (7)(C) remained in his position past the 1-year probationary anniversary date, and if his performance did not improve, he would not be able to remove him without taking "other action." (b) (7)(C) said that he believed that (b) (7)(C) was alluding to a performance improvement plan (PIP). (b) (7)(C) further said that (b) (7)(C) told him that there was a (b) (7)(C) (b) (7) position available and that given his difficulty he had getting used to (b) (7)(C) management style and his belief that (b) (7)(C) would likely place him on a PIP if he stayed in the position, he decided to accept the (b) (7) (b) (7)(C) position. (b) (7)(C) said that he was frustrated and disappointed that the (b) (7)(C) (b) (7)(C) position did not work out and that it was so difficult to work for (b) (7)(C). He, however, said that he had no reason to believe that (b) (7)(C) and (b) (7)(C) conspired with one another to make all of that happen.

*\* Allegation Pertaining to the Purchase of a Refrigerator and Microwave*

(b) (7)(C) allegedly improperly used appropriated funds to purchase a refrigerator and microwave for the employee break room. A GAO Decision was issued on June 25, 2004, which held that appropriated funds could be used to purchase appliances for the common use of all employees. GAO Decision, Use of Appropriated Funds to Purchase Kitchen Appliances, B-302993, June 25, 2004. We found a new refrigerator in use in the employees' break room/kitchen. We also found a second refrigerator that the employees informally told us was purchase several years earlier using employee

donated funds. Purchase records reflected that the cost of the refrigerator was \$654.31 and the cost of the microwave oven was \$384.61.

*Conclusion*

We did not substantiate the allegation that (b) (7)(C) and (b) (7)(C) engaged in a prohibited personnel practice with regard to (b) (7)(C) promotion and subsequent reduction in grade. While (b) (7)(C) management style was questionable, (b) (7)(C) told us that he volunteered for the demotion to a lower grade.

We did not substantiate the allegation that (b) (7)(C) misused appropriated funds to purchase a refrigerator and microwave oven for employee use in the (b) (7)(C) break room. Based on our observations during our site visit, the appliances were being put to good use and given the number of employees we observed who had access to and used the appliances, we did not see an issue with the use of appropriated funds to purchase the refrigerator and microwave oven.

These allegations are being closed without a formal report or memorandum.

Prepared By: (b) (7)(C) 10/25/2011  
Date

Approved: (b) (7)(C) 10/25/2011  
Date