

**Memorandum to the File
Case Closure**

Alleged Misuse of Position and Improper Pay
VA Great Lakes Health Care System, Hines, Illinois
(2011-04502-IQ-0049)

The VA Office of Inspector General (OIG) Administrative Investigations Division investigated allegations that [REDACTED] VA Great Lakes Health Care System (VISN 12), misused his public office for the private gain of friends by giving them preferential treatment in employment. In addition, [REDACTED] allegedly improperly received a higher physician's salary even though he encumbered a [REDACTED] position. He allegedly had a pay agreement that required him to spend 30 percent of his time providing patient care; however, he did not provide patient care services for more than 6 months and continued to receive the higher physician's pay. To assess the allegations, we interviewed the complainant and a former VA physician from whom the complainant gained the information. We also interviewed [REDACTED] and reviewed recruitment, personnel, and email records, and applicable Federal law, regulations, and VA policy.

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Background

In an August 3, 2011, letter to OIG, the complainant enumerated 25 issues alleging prohibited personnel practices and mismanagement of VHA resources contributing to patient care concerns. We determined that nineteen of these were patient care related, and we referred them back to OIG Hotline for appropriate review, action, or disposition by OIG Office of Healthcare Inspections. We investigated the remaining allegations.

The complainant told us that he had no firsthand knowledge of the allegations he enumerated in his August 3, 2011, letter and that he did not possess any records or other evidence supporting those allegations. He said that [REDACTED] VA physician at [REDACTED] related all of the issues to him at a time when [REDACTED] was facing an adverse action by VA and that [REDACTED] was eventually removed from Federal service. However, other than making broad and imprecise assertions of wrongdoing by [REDACTED] and insisting that he was a victim of whistleblower retaliation, [REDACTED] would not, after repeated requests, provide specific and detailed information about the allegations in the letter.

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[REDACTED] told us that he had documentation showing [REDACTED]'s improper hiring activities and a copy of a pay agreement between VA and [REDACTED] reflecting that [REDACTED] was required to spend 30 percent of his official time providing patient care services in return for receiving a physician's salary rather than a lower SES salary. Our request of [REDACTED] to provide us copies of the documents went unanswered.

Although the complainant requested confidentiality, he also sent [REDACTED] (b) (7)(C) and two members of Congress. In addition, [REDACTED] told us that the complainant, whom [REDACTED] knew and referred to by name, also provided a copy of [REDACTED] to the Oscar G. Johnson VA Medical Center Director in Iron Mountain, Michigan, and that the letter was eventually forwarded to [REDACTED]

Standards

Federal 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). Federal regulations prohibit an employee from using his public office for private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity. 5 CFR § 2635.702.

VA policy requires a position to be designated as a Senior Executive Service (SES) position when it is: (1) not specifically excepted by statute or by the President; (2) not required to be filled by a Presidential appointment by and with the advice and consent of the Senate; (3) classifiable above the GS-15 level of the General Schedule or an equivalent position; (4) not above Executive Level IV of the Executive Schedule; and (5) held by an individual who: (a) directs the work of an organizational unit; (b) is held accountable for the success of one or more specific programs or projects; (c) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals; (d) supervises the work of employees other than personal assistants; or (e) otherwise exercises important policy-making, policy-determining or other executive functions. VA Directive 5027, Paragraph 2(a), (April 15, 2002). It further provides that an SES position whose incumbent is a title 38 physician is excluded from SES except for Performance Appraisals and Awards. *Id.*, Paragraph 2(b)(1). The Network Director position description reflected that the position was classified above the GS-15 level of the General Schedule, met the managerial criteria in section 3132(a)(2) of Title 5, United States Code, and otherwise met the criteria for an SES position found in VA Directive 5027, Paragraph 2(a). Federal law provides that a VA physician's pay consist of base pay, market pay, and performance pay. 38 USC § 7431(a).

Alleged Improper Hiring Informatics Positions and an [REDACTED]

We could not determine whether the allegation that [REDACTED] improperly hired individuals for informatics positions and [REDACTED] "despite" a "hiring freeze for all facilities," as neither the complainant nor [REDACTED] provided any further information regarding these allegations. [REDACTED] told us in very broad, non-specific terms that [REDACTED] and other managers supporting [REDACTED] engaged in nepotism and favoritism in hiring, but he would or could not provide details of any specific occurrence. (b) (7)(C)

Allegation Pertaining to [REDACTED]'s Pay and Patient Care Activities

We did not substantiate the allegation that VA improperly paid [REDACTED] as a physician instead of as an SES or that [REDACTED] had a pay agreement with VA.

[REDACTED] told us that he never had a pay agreement with VA and that his pay was set by a Compensation Panel. He said that when he was first appointed as [REDACTED] he had a verbal understanding with [REDACTED] his supervisor, that he would continue seeing patients on a limited basis so that he could maintain his skills as a clinical provider and also so that he had a better understanding of the "front lines" of patient care. He said that he usually provided patient care to veteran patients 4 to 5 hours a week, typically on Friday mornings. He said that [REDACTED] responsibilities were his priority and that if he could not see patients, another physician on his team covered for him and ensured that patient needs were met. (b) (7)(C)

Records provided by the DUSHOM reflected that [REDACTED] saw patients about 4 hours a week, mostly on Friday mornings, and Compensation Panel records reflected that [REDACTED]'s pay was not tied to his patient care activities. In addition, as part of the DUSHOM's response to our request for records, [REDACTED] to the DUSHOM, certified that a pay agreement between [REDACTED] and VA did not exist. (b) (7)(C)

Allegation Pertaining to Improper Hiring at the Edward Hines Jr. VA Hospital

We did not substantiate the allegation that [REDACTED] attempted to pre-select [REDACTED] position at the Edward Hines Jr. VA Hospital, Hines, Illinois. We also did not substantiate the allegation that after affected stakeholders disagreed with [REDACTED]'s alleged attempt to appoint [REDACTED] to the COS position, [REDACTED] then pre-selected [REDACTED] to the position instead, because he was a supporter of [REDACTED]'s and would "follow all illegal pathways."

Recruitment records associated with the nomination and selection of [REDACTED] position reflected that the process took approximately 18 months and that [REDACTED] twice encouraged the search committee to expand its search for qualified applicants resulting in the applicant pool increasing from 3 to 7 candidates. Records showed that after an extensive and inclusive recruitment and vetting process, [REDACTED] selected [REDACTED] to the position, with [REDACTED] being ranked second overall. Records also reflected why the other candidates were not recommended by the search committee. For [REDACTED] it stated that she lacked administrative experience and that during her interview she acknowledged that even though she had been encouraged to apply for [REDACTED] position, she "lacked the enthusiasm and desire to implement change." It also reflected that [REDACTED]'s supervisory background checks were "not favorable." Records did not reflect that [REDACTED] ever applied or was considered for the position. (b) (7)(C)

██████████ told us that he knew ██████████ on a professional basis and that they never socialized outside of VA. He said that he encouraged ██████████ to apply for ██████████ position but that he also encouraged ██████████ from other facilities to apply as well. ██████████ said that he never pre-selected ██████████ for ██████████ position or otherwise gave her a preference or advantage in her VA employment. ██████████ told us that ██████████ was ██████████ at the Edward Hines Jr. VA Hospital and that he never pre-selected ██████████ for any position.

(b) (7)(C)

Allegation Pertaining to Improper Hiring at Oscar G. Johnson VA Medical Center

We did not substantiate the allegation that ██████████ attempted to circumvent a recruitment action for ██████████ position at the Oscar G. Johnson VA Medical Center, Iron Mountain, Michigan, when he pre-selected ██████████ stopped the recruitment action after ██████████ became ill, and disregarded other well qualified candidates.

██████████ told us that the recruitment action for ██████████ position was still ongoing and that the normal documentation associated with such an action was not available at the time of our request. However, ██████████ told us that in 2011, ██████████ position was advertised twice; once in May and the second time in July; resulting in 13 applications; however, ██████████ never applied for the position. ██████████ said that a job offer was extended to ██████████ the ██████████ but that he had not yet accepted the offer and the staffing action was still ongoing, pending ██████████'s decision.

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Allegation Pertaining to Improper Hiring of the VISN 12 ██████████

We did not substantiate the allegation that ██████████ improperly appointed a friend, ██████████ to the position of VISN 12 ██████████ over other qualified applicants.

Recruitment records associated with the nomination and selection of the VISN 12 ██████████ ██████████ reflected that an extensive and inclusive recruitment and vetting process took place. Records reflected that after announcing the position 3 times, a 4 member review panel conducted interviews of 10 qualified applicants and referred the top 3 candidates to ██████████ for further consideration, with ██████████ being one of the candidates. The 3 candidates were then interviewed by ██████████ and the VISN 12 ██████████ resulting in ██████████ and another applicant being referred to the VHA Executive Resources Board (ERB) for further review and consideration. The ERB then nominated ██████████ for the position. While records did not show who made the final selection, it is reasonable to believe that ██████████ made the final selection as he would with all senior level positions that are centralized to the VA Secretary.

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Allegation Pertaining to VISN 12 Employee Satisfaction Surveys

We could not determine whether the allegation that some VISN 12 employees completed satisfaction surveys more than once to disguise their identities and to protect themselves from retaliation, as neither the complainant nor ██████████ provided any

specific information regarding which surveys were involved, when they were taken, or specifically which employees took the surveys. As such, we were unable to make a reasonable request for documentation and were unable to conduct interviews of employees since we did not know which employees were involved.

However, we reviewed a recent posting from the VISN 12 intranet home page advertising the *Winter "Voice of VA" Survey*. The advertisement announced that the survey was taking place and encouraged employees to take it. The advertisement also highlighted that survey responses were confidential and anonymous, could not be linked to individuals, and that the completed surveys would be sent directly to an outside data collection firm. It further stated that data from groups smaller than 10 employees would not be released and that participation in the survey was voluntary.

Conclusion

We either did not substantiate or could not make a reasonable determination for any of the allegations. The complainant acknowledged that he did not have any firsthand knowledge of the allegations included in his August 3, 2011, letter, nor could he provide us with any documentation or other evidence that supported the allegations. The complainant admitted that the information came from ██████████ who at the time was facing an adverse action by the agency which ultimately resulted in his removal from Federal service. ██████████ would not provide us with specific, detailed information concerning the allegations. Instead, he made broad and imprecise assertions of wrongdoing by ██████████ and claimed that he was the victim of whistleblower retaliation. We therefore told ██████████ that he could contact the U.S. Office of Special Counsel if he wished to make a complaint of whistleblower retaliation.

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Recruitment records reflected that each of the alleged improper staffing actions were proper, using a comprehensive competitive process. Further, we found no evidence that ██████████ unduly influenced the recruitment process or had anything but a professional relationship with all persons identified. In addition, a pay agreement between VA and ██████████ did not exist, and we found no agreement that required ██████████ to provide patient care services. However, he did so voluntarily and with his supervisor's concurrence. ██████████'s pay as a title 38 physician while encumbering ██████████ position was proper and in accordance with VA policy.

Although we were unable to make a reasonable determination regarding employees allegedly taking a satisfaction survey more than once, due to being too broad and non-specific, we found that these surveys are generally voluntary and confidential. Therefore, these allegations are being closed without a formal report or memorandum.

Prepared By



2/17/2012
Date

(b) (7)(C)

Approved:



2/17/2012
Date