

# Department of Veterans Affairs

# Memorandum

Date: November 13, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation, Alleged Preferential Treatment and Misuse of Sick Leave, Board of Veterans' Appeals, VACO (2012-00570-IQ-0082)

To: [REDACTED]

1. The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that (b) (7)(C) (b) (7)(C) had an inappropriate relationship with a subordinate, (b) (7)(C) (b) (7)(C) resulting in her receiving preferential treatment. (b) (7)(C) also allegedly misused her sick leave. To assess these allegations, we interviewed (b) (7)(C) (b) (7)(C) and other Board of Veterans' Appeals (BVA) staff. We also reviewed email, personnel, and travel records, Federal regulations, and VA policy.

2. We concluded that Mr. (b) (7)(C)'s close friendship with (b) (7)(C) created an appearance of preferential treatment, but we found no instances of actual preferential treatment. We found that their closer-than-arms-length relationship was problematic when he supervised her, as their friendship created the appearance of preferential treatment when (b) (7)(C) completed her performance appraisals and recommended her for awards. Although (b) (7)(C) was reassigned to another supervisor for oversight on July 5, 2012, we still suggest that you emphasize to (b) (7)(C) that even the appearance of preferential treatment diminishes his position and authority as a senior leader. He is not only held to a higher standard but he sets the tone for subordinates. We also suggest that (b) (7)(C) and (b) (7)(C) take ethics refresher training and that (b) (7)(C) be instructed to recuse himself from any involvement whatsoever in any official VA work-related discussions or decisions concerning (b) (7)(C). We also found that (b) (7)(C) misused her sick leave when she used it numerous times to physically exercise as a personal choice rather than for medical purposes. We suggest that you ensure (b) (7)(C) immediately discontinue this practice, convert the improperly applied sick leave hours to annual leave, and ensure that (b) (7)(C) take VA leave policy refresher training. We are providing you this memorandum for your information, official use, and whatever action you deem appropriate. **No response is necessary.**

3. Standards of Ethical Conduct for Employees of the Executive Branch require employees to act impartially and not give preferential treatment to any individual and to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101(b)(8) and (14).

### ***Alleged Inappropriate Relationship***

4. (b) (7)(C) and (b) (7)(C) told us that they met when (b) (7)(C) began working as an attorney advisor at BVA in Washington, DC, and personnel records reflected that he was appointed to an attorney advisor position on August 22, 2004. (b) (7)(C) and (b) (7)(C) said that they first developed a friendship when they shared an office with another BVA employee. (b) (7)(C) told us that he became (b) (7)(C)'s supervisor when he was promoted to (b) (7)(C), and personnel records reflected that his promotion was effective on September 21, 2007. (b) (7)(C) told us that, "I'm not about to suspend our friendship for the duration of the time I'm her supervisor to avoid some kind of appearance of impropriety and have not done that." (b) (7)(C) and (b) (7)(C) both told us that they considered one another as close friends.

5. Email records reflected that (b) (7)(C) and (b) (7)(C) discussed personal matters, frequently using profanity, and (b) (7)(C) told us that their use of profanity showed their high comfort level with one another. Below are examples of various email exchanges:

- In a May 14, 2010, email, (b) (7)(C) told (b) (7)(C) that, "I hope you are out somewhere getting drunk enough for both of us. When you return to the office, we can have a bitchfest about the shit that people turn into you when you do (b) (7)(C). Seriously, I am beyond annoyed." (b) (7)(C) responded, "Did just that last night but somehow can't sleep now and am responding to work emails. I hear you with the (b) (7)(C) stuff."
- In an October 26, 2010, email, (b) (7)(C) told (b) (7)(C) in regards to annoyance with the performance of other BVA employees, "Un-fucking believable...They had better find a whole new gear pretty damn fast...If we had this level of non-chalance [in] Lit Support, we'd be screwed."
- In a June 28, 2011, email, (b) (7)(C) told (b) (7)(C), "Possibly the bitchiest work email that I have ever sent but I am so sick and tired of her ignoring me."

(b) (7)(C) told us that the use of profanity was not appropriate for official VA emails, stating the "better practice would be not at all" and "something one would want to avoid."

The following are email exchanges that additionally demonstrate a high comfort level between the two:

- In an October 19, 2011, email, (b) (7)(C) told (b) (7)(C) in response to a picture she sent him, "Awwwwwww. That is a great picture. Captain (b) (7)(C) and (b) (7)(C) (b) (7)(C)"
- In a January 11, 2012, email, (b) (7)(C) told (b) (7)(C) ..going to the [Washington Capitals Hockey Team]/[Pittsburg Penguins Hockey Team] game tonight. Wish you were going to be there."



- In a January 10, 2012, email, (b) (7)(C) addressed (b) (7)(C) as (b) (7)(C). A BVA employee told us that (b) (7)(C) was (b) (7)(C)'s "pet name" for (b) (7)(C).

6. (b) (7)(C) told us that (b) (7)(C) gave him a hockey ticket during the 2011-2012 National Hockey League season at no cost. He said that he offered her money for the ticket but that she "did not accept the money." (b) (7)(C) told us that she thought that she sold (b) (7)(C) one ticket at the season ticket holder price, but she could not recall for certain. Team Marketing Report, an online sporting ticket cost index, reflected that the average price for a Washington Capitals Hockey game ticket for the 2011-2012 season was about \$62.42. Standard of Ethical Conduct for Employees of the Executive Branch state that an employee may not directly or indirectly give a gift to a supervisor. 5 CFR § 2635.302. This gift did not fall within any of the limited exceptions, such as nominal or retirement gifts.

7. (b) (7)(C) and (b) (7)(C) told us that they spent a weekend together in a cabin, along with the owner of the cabin, who was also a BVA employee and (b) (7)(C)'s subordinate, as well as another BVA employee. The owner of the cabin told us that (b) (7)(C) and (b) (7)(C) stayed in separate rooms and that he did not notice any inappropriate interactions between them.

8. Both (b) (7)(C) and (b) (7)(C) told us that they communicated with one another through personal emails, cellular telephone calls, and text messages. (b) (7)(C) said that communication through personal email was infrequent but that they communicated through cellular telephones, "...more than infrequently." He further said that their text message communication was even more predominant than their telephone calls. (b) (7)(C) told us that they communicated via cellular telephone to coordinate social events such as attending a hockey or baseball game together. She said that their level of communication depended on their social calendar.

#### *Appearance of Preferential Treatment*

9. Personnel records reflected that (b) (7)(C) was reassigned from an (b) (7)(C) position to a supervisory (b) (7)(C) position in May 2011. Records also reflected that the reassignment did not include a salary or grade increase but changed her official title from attorney advisor to supervisory attorney advisor. (b) (7)(C) told us that she became (b) (7)(C) in May 2011. (b) (7)(C) told us that he originally asked (b) (7)(C) to take on the supervisory duties before any reassignment discussions based on the department needs and on her light workload at the time. He said that it was not until later that BVA management decided (b) (7)(C) should remain in the position because of her familiarity with the work requirements.

10. A BVA Human Resources employee told us that (b) (7)(C)'s reassignment into the supervisory role was to properly address additional duties that (b) (7)(C) accrued while still under her previous, non-supervisory attorney advisor position. She said that the supervisory role was not a new position and that the position description was created in August 2003. She said that the reassignment package was sent to VA's Office of Human



Resources to ensure that this reassignment was proper and that you and she were the only BVA management officials involved in the decision to reassign (b) (7)(C). She said that (b) (7)(C) was not involved whatsoever.

11. You told us that you did not see any preferential treatment or inappropriate behavior between (b) (7)(C) and (b) (7)(C) however, you heard rumors that (b) (7)(C) showed her favoritism due to their close relationship. Another BVA senior official told us that she also heard rumors that they had a personal relationship and that she spoke to both (b) (7)(C) and (b) (7)(C) about the matter. Personnel records reflected that (b) (7)(C) was involved with (b) (7)(C)'s performance appraisals when he authored performance appraisal narratives and recommended her performance ratings. You and another BVA senior official told us that (b) (7)(C) rated (b) (7)(C)'s performance and recommended her for awards; however, you told us that you and another senior official reviewed the appraisals and awards for final approval. You later told us that (b) (7)(C) was reassigned to another supervisor for oversight on July 5, 2012.

#### *Misuse of Time and Attendance*

12. Time and attendance records reflected that from October 29, 2007, to March 12, 2012, (b) (7)(C)'s official tour of duty was a compressed work schedule working from 7:30 a.m. to 5:30 p.m. Monday through Thursday with Friday as her regular day off. Records also reflected many days that (b) (7)(C) took sick leave for 1-3 hours at the beginning and end of her workday during this time period. Email records reflected that (b) (7)(C) frequently attended workout sessions at Heavenly Bodies Clinic (HBC) during this leave time. (b) (7)(C) told us that she took sick leave to attend workout sessions as part of her personal health plan. When asked if it was proper to take sick leave for workout sessions, (b) (7)(C) said, "I don't think it can, for a strict workout," and said that she received physical therapy at HBC. However, an HBC representative told us that HBC did not staff licensed physical therapists. (b) (7)(C) later told us that she did not receive a physician's referral for physical therapy nor did she see a licensed physical therapist at HBC. (b) (7)(C) told us that he was not aware that (b) (7)(C) used her sick leave to participate in workouts, as (b) (7)(C) portrayed it to him as physical therapy.

13. We concluded that (b) (7)(C)'s close friendship with (b) (7)(C) created an appearance of preferential treatment, but we found no instances of actual preferential treatment. We found that their closer-than-arms-length relationship was problematic when he supervised her, as their friendship created the appearance of preferential treatment when (b) (7)(C) completed her performance appraisals and recommended her for awards. Although (b) (7)(C) was reassigned to another supervisor for oversight on July 5, 2012, we still suggest that you emphasize to (b) (7)(C) that even the appearance of preferential treatment diminishes his position and authority as a senior leader. He is not only held to a higher standard but he sets the tone for subordinates. We also suggest that (b) (7)(C) and (b) (7)(C) take ethics refresher training and that (b) (7)(C) be instructed to recuse himself from any involvement whatsoever in any official VA work-related discussions or decisions concerning (b) (7)(C). We also found that (b) (7)(C) misused her sick leave when she used it numerous times to physically

exercise as a personal choice rather than for medical purposes. We suggest that you ensure (b) (7)(C) immediately discontinue this practice, convert the improperly applied sick leave hours to annual leave, and ensure that (b) (7)(C) take VA leave policy refresher training.

14. We are providing this memorandum to you for your information and official use and whatever action you deem appropriate. **No response is necessary.** It is subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). You may discuss the contents of this memorandum with (b) (7)(C) and (b) (7)(C) within the bounds of the Privacy Act; however, it may not be released to them. If you have any questions, please call (b) (7)(C)

(b) (7)(C)  
(b) (7)(C)

**WARNING**  
**5 U.S.C. § 552A, PRIVACY ACT STATEMENT**

**This memorandum contains information subject to the provisions of the Privacy Act of 1974 (5 USC § 552a). Such information may be disclosed only as authorized by this statute. Questions concerning release of this memorandum should be coordinated with the Department of Veterans Affairs, Office of Inspector General. The contents of this memorandum must be safeguarded from unauthorized disclosure and may be shared within the Department of Veterans Affairs on a need-to-know basis only.**