

**Department of
Veterans Affairs****Memorandum**

Date: August 22, 2012

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Prohibited Personnel Practices, Interference With a Civil Service Examination, and False Statements, VHA Readjustment Counseling Service, Washington, DC (2012-02355-IQ-0088)

To: Principal Deputy Under Secretary for Health (10A)

1. The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that Dr. Alfonso Batres, Chief Officer (SES), Veterans Health Administration (VHA) Readjustment Counseling Service (RCS), engaged in prohibited personnel practices when he defined the requirements of two positions to give a preference or advantage to two applicants with whom he had long-standing relationships. Dr. Batres was alleged to have given preference to his long-time friend, Ms. Sarita Figueroa, when appointing her to a Regional Manager (GS-0101-15) position in Bay Pines, Florida; and to another long-time friend and RCS employee, Mr. (b) (7)(C), when he (Dr. Batres) created a new (b) (7)(C) (GS-0301-13) in Pensacola, Florida specifically for him. We also investigated a third allegation against Dr. Batres involving another newly created position and his alleged pre-selection of another long-time friend. However, we did not find sufficient evidence to substantiate that allegation and we do not discuss it further in this memorandum.

2. In addition, we also investigated whether Dr. Batres' administrative officer, Mr. (b) (7)(C) to whom Dr. Batres granted the authority, including signature authority, to conduct RCS recruitments and effect the appointments through the appropriate human resources servicing offices, also engaged in prohibited personnel practices while acting on behalf of Dr. Batres. Furthermore, we investigated whether Dr. Batres and Mr. (b) (7) intentionally made material false statements to OIG investigators while under oath.

3. We also investigated whether Mr. (b) (7)(C) stationed in Milwaukee, Wisconsin; and Mr. Wayne Davis, the Network Human Resources Officer (GS-0201-15) for the VA Great Lakes Health Care System (VISN 12), also stationed in Milwaukee, engaged in a prohibited personnel practice and interfered with a civil service examination in connection with their involvement in the recruitment for the RCS Regional Manager position.

4. We made criminal referrals of Dr. Batres', Mr. (b) (7)(C) Mr. (b) (7)(C) and Mr. Davis' alleged Interference With A Civil Service Examination (18 USC § 1917); and of Dr. Batres' and Mr. (b) (7) alleged False Statements (18 USC § 1001), to the

U.S. Department of Justice; however, they declined criminal prosecution. To assess these allegations we interviewed Dr. Batres, Mr. (b) (7) Mr. (b) (7)(C) Mr. Davis, and other VA employees. We also reviewed recruitment, email and personnel records, and applicable Federal laws, regulations, and VA policy.

5. We concluded that Dr. Batres, Mr. (b) (7) Mr. (b) (7)(C) and Mr. Davis committed a prohibited personnel practice when they provided Ms. Figueroa with an advantage not afforded to any other applicant. We also found that they interfered with a civil service examination when their collective actions, designed to give Ms. Figueroa an advantage, obstructed another qualified candidate's right to compete for a job through fair and open competition. We found that before the RCS Regional Manager position was announced competitively in September 2011, Dr. Batres and Mr. (b) (7) wanted to appoint Ms. Figueroa to the position. The evidence further reflected that when questioned under oath about their intent to hire Ms. Figueroa, and about the nature of the relationship between Dr. Batres and Ms. Figueroa, both Dr. Batres and Mr. (b) (7) made material false statements to OIG investigators in an effort to cover up their actions. Mr. (b) (7)(C) and Mr. Davis, both senior HR professionals, inappropriately participated as members of an interview panel in connection with the recruitment for the GS-15 Regional Manager position, even though months earlier they provided material assistance to Mr. (b) (7) with finding a way for Ms. Figueroa to qualify for the position.

6. With regard to the (b) (7)(C) position in Pensacola, Florida, at the time OIG received this complaint, RCS Management was in the process of recruiting for the position but had not yet made a selection. However, we found that Mr. (b) (7) had become dissatisfied with his current position within RCS and was planning to retire, and in trying to entice him to stay on at RCS, Dr. Batres suggested to him that a new position was being created which would not require him to move. Although they both testified under oath that they had no contact with Mr. (b) (7) regarding the new (b) (7)(C) position, other than Mr. (b) (7) telling them he was going to apply, we found that Dr. Batres and Mr. (b) (7) did have extensive contact with Mr. (b) (7) about the position before the competitive job announcement was posted.

7. For the issue involving the RCS (b) (7)(C) position in Bay Pines, Florida, we suggest that you take the appropriate administrative action against Dr. Batres, Mr. (b) (7) Mr. (b) (7)(C) and Mr. Davis for committing a prohibited personnel practice and interfering with a civil service examination. For this matter and the matter involving the (b) (7)(C) position, we suggest you take the appropriate administrative action against Dr. Batres and Mr. (b) (7) for failing to testify freely and honestly to OIG investigators while under oath. We are providing this memorandum for your information and official use and whatever action you deem necessary. **No response is necessary.**

Standards

8. Federal law prohibits any employee who has authority to take, direct others to take, recommend, or approve any personnel action, with respect to such authority, from granting any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment. 5 USC § 2302(b)(6). By reference, a violation of Section 2302 is also a violation of The Standards of Ethical Conduct for Employees of the Executive Branch. 5 CFR §§ 2635.901 and 902(dd).

9. Federal law provides criminal penalties upon conviction to whoever, being a member or employee of the United States Office of Personnel Management or an individual in the public service, willfully and corruptly — (1) defeats, deceives, or obstructs an individual in respect of his right of examination according to the rules prescribed by the President under title 5 for the administration of the competitive service and the regulations prescribed by such Office under section 1302(a) of title 5; (2) falsely marks, grades, estimates, or reports on the examination or proper standing of an individual examined; (3) makes a false representation concerning the mark, grade, estimate, or report on the examination or proper standing of an individual examined, or concerning the individual examined; or (4) furnishes to an individual any special or secret information for the purpose of improving or injuring the prospects or chances of an individual examined, or to be examined, being appointed, employed, or promoted. 18 USC § 1917. By reference, a violation of Section 1917 is also violation of the Standards of Ethical Conduct for Employees of the Executive Branch. 5 CFR §§ 2635.901 and 902(ee).

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

11. VA regulations state that employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters and that concealment of material facts or willfully inaccurate testimony in connection with an investigation may be grounds for disciplinary action. 38 CFR § 0.735-12(b). VA policy provides penalties of reprimand to removal for the intentional falsification, misstatement, or concealment of material fact in connection with employment or any investigation, inquiry or proper proceeding. VA Handbook 5021, Part I, Appendix A (April 15, 2002).

Background

12. In 1998, the GS-15 National Director position for RCS was elevated to the Senior Executive Service (SES) level and the position title changed to Chief Officer. However, 7 subordinate GS-14 Regional Manager field positions were never upgraded, even though the level of responsibility and complexity of the RCS mission had increased considerably over time. In a 2010 request to upgrade the 7 GS-14 Regional Manager positions to GS-15, Dr. Batres reported to the VA Executive Resources Board that since 2003, RCS underwent significant growth that accompanied its expansion of services that included providing services to veterans of Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), and bereavement counseling to families of service members who die while on active duty. Dr. Batres further reported that the overall number of staff in RCS increased by approximately 104 percent (from 943 to 1,917) and that each of the 7 GS-14 Regional Manager positions had oversight and direct supervision of an average of 43 Vet Center sites and 274 subordinate staff. In early 2010, the Assistant Secretary for Human Resources and Administration and the Under Secretary for Health, in his capacity as the Chair, Executive Resources Board, approved RCS's request for the upgrade of its 7 GS-14 Regional Manager positions to the GS-15 level.

Recruitment for the RCS Regional Manager Position in Bay Pines, Florida

13. According to merit promotion records, RCS began efforts in December 2010 to fill a vacant GS-14 Regional Manager position for its Southeast Region in Bay Pines, Florida. However, RCS did not exercise its newly obtained authority to upgrade, recruit and hire for the position at the GS-15 level, but instead recruited for it at the GS-14 level. From December 13, 2010, to January 14, 2011, a job vacancy announcement was advertised for the GS-14 RCS Regional Manager position and was opened to all permanent VA employees nationwide. The resulting certificate of eligibles contained 5 candidates; however, records reflected that Dr. Batres did not make a selection from that certificate.

14. Records further showed that a second announcement, again at the GS-14 level, was advertised from March 30 to April 6, 2011, with an expanded area of consideration to include all U.S. Citizens. Once again, Dr. Batres chose not to select from the resulting certificate of eligibles. On July 22, 2011, both GS-14 certificates were returned to the servicing human resources office in Bay Pines without making a selection.

15. Records then showed that on August 4, 2011, RCS Management issued a new position description (PD) for the Regional Manager position in Bay Pines. This new PD upgraded the position from a GS-14 to a GS-15 grade level and changed the management position from being clinical in nature, to being more administrative and managerial in nature. On August 8, 2011, the human resources office in Bay Pines classified and approved the position to the GS-15 level.

16. With the new PD in place, Dr. Batres, through Mr. (b) (7) began recruitment efforts for the upgraded GS-15 Regional Manager position. From September 13 – 20, 2011, a job vacancy announcement was advertised for the position; however, it was opened only to employees of the Veterans Integrated Service Network (VISN) 8; and not all VA employees nationwide, or all U.S. Citizens, as in the first and second GS-14 announcements, respectively. On September 23, the human resources office in Bay Pines issued a certificate of eligibles containing the names of Ms. Figueroa and one other candidate.

17. On October 5, 2011, RCS Management conducted formal interviews of Ms. Figueroa and the one other candidate resulting in Ms. Figueroa being given a total score of 74 out of a possible 75 points, and the other candidate being given a total score of 49. Records then reflected that on October 6, Dr. Batres selected Ms. Figueroa for the position. Ms. Figueroa was already a GS-15 Associate Director at the VA Medical Center in San Juan, Puerto Rico, and the Notification of Personnel Action form SF-50 reflected that her appointment was effected by reassignment to the GS-15 RCS Regional Manager position on November 6, 2011.

18. In addition, records obtained from the VA Office of Resolution Management revealed that on December 20, 2011, one of the applicants who was listed on both of the earlier certificates of eligibles for the GS-14 Regional Manager position in Bay Pines, filed a formal EEO complaint against Dr. Batres. Unlike with our allegation that Dr. Batres gave preferential treatment to a preferred candidate (Figueroa), the EEO complaint alleged that he discriminated against a candidate on the basis of race (black), gender (female), and prior EEO activity. According to the EEO investigative report, the complainant alleged that Dr. Batres had been the responding management official (RMO) in a previous EEO complaint that she filed after not being selected for an RCS Deputy Regional Manager position to which she had applied earlier. The EEO report further reflected that the complainant reiterated throughout her complaint that, "RMO Batres would do anything within his power to prevent her from obtaining a management position, even though she is well qualified." The report further reflected, "She stated that after she qualified on the GS-14 certificate, he [Batres] then upgraded the position to a GS-15 and limited it to VISN 8 personnel only to keep her from qualifying."

19. Personnel records reflected that Ms. Figueroa began her VA employment in 1984 as a GS-5 Clerk-Typist in the Psychology Service at the VA Medical Center in San Juan, Puerto Rico. Records further reflected that in 1993, she was promoted and transferred to the RCS regional office in Bay Pines, Florida, where over the years she advanced to the position of GS-11, Administrative Officer. In 2001, Ms. Figueroa left RCS to take a promotion as a GS-12 Health Systems Specialist at the VA Medical Center in Bay Pines. She continued to advance in her career through the VA Health Care System and on September 12, 2010, she was promoted to GS-15 Associate Director of the VA Medical Center in San Juan, Puerto Rico.

20. Dr. Batres told us that he had known Ms. Figueroa for about 28 years, having first met her at an RCS training event in Puerto Rico, and he described their relationship as being "all work" and as them being "professional acquaintances." When asked about the frequency of his contact with her, he said that in the past, when she worked for RCS, he had contact with her occasionally whenever they both attended the same training events. However, Dr. Batres said that he has had no contact with Ms. Figueroa ever since she left RCS (in 2001) to work for the health care system. When we told him that it had been several years earlier that Ms. Figueroa left RCS, Dr. Batres replied, "I know."

21. Dr. Batres acknowledged that he made the decision not to select from the two previous GS-14 Regional Manager certificates issued in January and April 2011, respectively, and that he knew Mr. (b) (7) had returned both certificates to the human resources office. He further told us that he made the decision in July 2011 to upgrade the Regional Manager position from GS-14 to GS-15 because the region was experiencing various problems and issues that required a more experienced person and that he had already planned to upgrade all 7 Regional Manager positions as they became vacant. However, he denied that his decision to upgrade the position had anything to do with Ms. Figueroa.

22. Dr. Batres denied having any prior communications with Mr. (b) (7) or with Ms. Figueroa herself, about him wanting to hire her for the RCS Regional Manager position. He said he first became aware that Ms. Figueroa was interested in returning to RCS and to the GS-15 RCS Regional Manager position in Bay Pines, after the competitive announcement closed and Mr. (b) (7) informed him that Ms. Figueroa's name appeared on a list of applicants. (This occurred in September 2011.) Furthermore, when shown recruitment records, Dr. Batres said he was unfamiliar with them. He said that he delegated his authority, including signature authority, to Mr. (b) (7) to conduct the recruitment for the Regional Manager position and he referred all of our questions regarding the hiring process to him.

23. Mr. (b) (7) told us that he did not know Ms. Figueroa personally but that he knew "of" her. He said that when they both previously worked for RCS, with her in Florida and he in California, he occasionally saw her at training events, but said, "... we didn't interact that much." Mr. (b) (7) acknowledged that he had conducted the recruitment for the Bay Pines Regional Manager position; however, he denied that he or Dr. Batres had Ms. Figueroa in mind in advance as someone they wanted to hire. Mr. (b) (7) further denied that he had any prior communication with Dr. Batres, or with Ms. Figueroa herself, about hiring her for the position. He further testified that he assembled the interview panel consisting of Mr. (b) (7)(C) Denver office, and the aforementioned senior HR specialists, Mr. (b) (7)(C) and Mr. Davis. Mr. (b) (7) further testified that he did nothing to influence any member of the interview panel in any way.

24. Contrary to Dr. Batres' and Mr. (b) (7) sworn testimony of not having contact with Ms. Figueroa or not wanting to hire her for the RCS Regional Manager position

in advance of the competitive job vacancy announcement being posted, email records reflected that Ms. Figueroa was their preferred candidate. The email records further showed that Dr. Batres and Mr. (b) (7) made material false statements to OIG investigators in an effort to hide the fact that they intended, months in advance of the competitive announcement, to hire Ms. Figueroa into the GS-15 Regional Manager position in Bay Pines.

25. Furthermore, the email records reflected that Dr. Batres did have past contact with Ms. Figueroa and that while they did interact with each other professionally, the tenor and substance of some of the email messages indicated that their relationship was that of being close, personal friends, and of having a deep-felt respect and admiration for one another. For example, on June 25, 2010, after it had been announced that Ms. Figueroa was selected for the GS-15 Associate Director position at the VA Medical Center in San Juan, Puerto Rico, Dr. Batres sent an email to RCS employee, Mr. (b) (7)(C) for the Vet Center in San Juan, Puerto Rico. In this email, Dr. Batres said, "Saludos (b) (7)(C) I am sure that you have heard that Sarita has been selected for the Associate Director position at San Juan....I am very proud of her accomplishments and success after so many years of working under your mentoring. I hope that we can all celebrate her appointment, let me know if you have a way of doing that, gracias, Al." Later the same day, Ms. Figueroa forwarded to Dr. Batres an email she received earlier announcing her selection as Associate Director and extending an invitation for staff to attend an afterhours get-together in celebration of her promotion. In this email, Ms. Figueroa stated, "Oh my god the party started early!!!!" In another example, on April 4, 2011, Dr. Batres sent an email to Ms. Figueroa, stating, "Sarita, hope this finds you and your family doing well. Please let me know when you have some time to catch up, miss you, Al."

26. Email records also reflected that while professional in nature, Mr. (b) (7) was much more familiar with Ms. Figueroa than he initially testified. Email and telephone records both showed that Mr. (b) (7) had considerable contact with Ms. Figueroa, especially during the months between the time the second job vacancy announcement for the GS-14 Regional Manager position closed in April 2011, and the job vacancy announcement for the GS-15 Regional Manager position opened in September 2011. The records further reflected that Mr. (b) (7) gave Ms. Figueroa considerable assistance with reviewing, vetting, and building her job resume and provided her an advance copy of the newly upgraded position description for the GS-15 RCS Regional Manager position, all in advance of the competitive job announcement.

27. In addition to the discovery of numerous email messages between Dr. Batres and Ms. Figueroa pre-dating RCS's efforts to recruit for a Regional Manager in Bay Pines, we found evidence of frequent contacts occurring more contemporaneously to the September 2011 posting of the competitive announcement for the GS-15 Regional Manager position. These contacts were mostly between Ms. Figueroa and Mr. (b) (7) however, some were with Dr. Batres. Furthermore, in addition to the numerous email messages between Ms. Figueroa and Mr. (b) (7) we found that

telephone records from July 2011 to July 2012 evidenced numerous calls being placed between Puerto Rico, where Ms. Figueroa worked at the time, and the RCS office in Washington, DC, where Dr. Batres and Mr. (b) (7) worked. The records showed that calls to or from Puerto Rico originated or ended on telephone lines at the VA Medical Center in San Juan, including Ms. Figueroa's direct office line and her VA issued Blackberry mobile telephone. Calls made to or from the RCS office in Washington, DC originated or ended on RCS's main telephone line, or Mr. (b) (7) direct office line. The telephone records further reflected that after Ms. Figueroa's November 6, 2011, appointment to the GS-15 RCS Regional Manager position, the telephone calls between Puerto Rico and the RCS office stopped.

28. During a second interview with OIG investigators and after being given a Kalkines advisement of rights, Mr. (b) (7) confessed to intentionally providing false testimony during his first interview. Mr. (b) (7) confessed that both he and Dr. Batres had talked with each other about non-competitively hiring Ms. Figueroa for the GS-15 RCS Regional Manager position and that he did not admit to this during his first interview with OIG investigators because he was concerned it would look bad. Mr. (b) (7) admitted to having numerous contacts with Ms. Figueroa leading up to the competitive job vacancy announcement being posted in September 2011. He said that it had been his and Dr. Batres' desire to laterally reassign Ms. Figueroa into the position and that he had vetted her job resume through Mr. (b) (7)(C) and Mr. Davis in order to facilitate her reassignment. Mr. (b) (7) further said that he gave Ms. Figueroa an advance copy of the newly upgraded GS-15 PD to help her qualify for the intended non-competitive lateral reassignment from her GS-15 Associate Director position to the newly upgraded GS-15 RCS Regional Manager position.

29. Mr. (b) (7) further stated that the servicing HR office in Bay Pines was concerned about an EEO issue involving the same RCS Regional Manager position and that they suggested that to avoid any appearance of preferential treatment, that RCS fill the position through a competitive hiring process rather than through a non-competitive reassignment. Ms. (b) (7)(C) (b) (7)(C) who was the (b) (7)(C) from Bay Pines assigned to the recruitment action, told us that she knew about a potential EEO issue concerning the same position. She said the EEO complainant had called her on the telephone about not being selected for the GS-14 RCS Regional Manager position and had stated that she was going to file an EEO complaint. However, Ms. (b) (7)(C) told us that she did not recall ever discussing a potential EEO complaint with Mr. (b) (7) and that at no time was she even aware that Mr. (b) (7) or Dr. Batres had been considering Ms. Figueroa for a non-competitive reassignment.

30. Furthermore, with regard to the job vacancy announcement for the GS-15 RCS Regional Manager position and the area of consideration in the announcement being restricted to employees of VISN 8 only, it was alleged to VA OIG that Dr. Batres restricted the area of consideration as a way of giving Ms. Figueroa a competitive advantage. Mr. (b) (7) and Dr. Batres both denied that the announcement was restricted in this fashion in order to give Ms. Figueroa an advantage. They told us that the servicing HR office in Bay Pines had recommended that the area of

consideration be restricted on the initial posting and then if there were not enough applications received, it could be expanded in subsequent postings. However, email records reflected that Ms. (b) (7)(C) suggested opening the announcement to all RCS or even external applicants, and afterwards Mr. (b) (7) instructed her to restrict the area of consideration to VISN 8 employees. In an email dated September 2, 2011, from Ms. (b) (7)(C) to Mr. (b) (7) Ms. (b) (7)(C) asked, "Just to clarify: posting for 5 days and open to RCS employees only, correct? Or did you want to expand the AOC [area of consideration] to include external applicants?" In his September 6, 2011, reply, Mr. (b) (7) told Ms. (b) (7)(C) "(b) (7)(C) Wanted to open for VISN 8 employees only. Thanks."

31. We also confronted Mr. (b) (7) with his selection of Mr. (b) (7)(C) and Mr. Davis to the interview panel, knowing that they were the same HR professionals with whom he independently consulted earlier in trying to find a way for Ms. Figueroa to qualify for the Regional Manager position. Mr. (b) (7) claimed that it was an oversight on his part to use Mr. (b) (7)(C) and Mr. Davis for the interview panel and claimed that he did not intend to give Ms. Figueroa any advantage.

32. Both Mr. (b) (7)(C) and Mr. Davis testified that they did not conspire with Mr. (b) (7) to provide Ms. Figueroa an advantage and they both claimed they scored Ms. Figueroa and the other candidate fairly, according to how they performed during their respective interviews. Mr. (b) (7)(C) steadfastly asserted that his participation on the interview panel, in spite of his early involvement in the vetting of Ms. Figueroa's resume, was appropriate and was not a conflict of interest. Mr. Davis was initially just as steadfast in his assertion that his involvement on the interview panel was appropriate. However, he later said, "I think by my doing that, it could lead to conclusions that the process was not fair and completely in compliance with merit system principals. Although I do not believe my actions were in violation of that, I do appreciate that the appearance of such could be drawn from my involvement in the panel."

33. Dr. Batres said that he first learned that Mr. (b) (7)(C) and Mr. Davis were members of the interview panel when he saw their names on the scoring sheets after the interviews were conducted. Dr. Batres also denied he knew that Ms. Figueroa had given her job resume to Mr. (b) (7) or that Mr. (b) (7) vetted her resume through Mr. (b) (7)(C) and Mr. Davis in advance of the competition. Dr. Batres further denied knowing that Mr. (b) (7) had given Ms. Figueroa an advance copy of the newly upgraded position description.

34. When confronted with the discovery of the numerous email messages between him and Ms. Figueroa and of his alleged false statements regarding his relationship and frequency of contact he had with Ms. Figueroa, Dr. Batres claimed that when questioned about his "contact" with Ms. Figueroa, he understood the question to be asking about face to face, or in person contact. He also said he could not remember events that occurred that long ago but that it was possible he had seen Ms. Figueroa at a conference several years earlier. However, email records reflected that

Dr. Batres and Ms. Figueroa met with each other at a conference in Chicago about one month before the job vacancy announcement for the GS-15 Regional Manager posted. In addition, contrary to Dr. Batres' assertion that he understood the word "contact" strictly to mean face-to-face or in person communication, during that same interview he used the word "contact" when referring to a telephone conversation he had with another person.

35. Moreover, using email, telephone, and recruitment records, a time-line of events was established to show Dr. Batres', Mr. (b) (7) and Ms. Figueroa's activities as they relate to the recruitment for the RCS Regional Manager position in Bay Pines. Beginning from the point in time when the second job vacancy announcement was posted for the GS-14 RCS Regional Manager position, the events were as follows:

3/30/2011	Second job vacancy announcement opened for the GS-14 RCS Regional Manager position in Bay Pines.
4/4/2011	2:14 PM – Batres email to Figueroa, Subject: "Comm": "Sarita, hope this finds you and your family doing well. Please let me know when you have some time to catch up, miss you, Al" 7:49 PM – Figueroa to Batres: "Hola Jefe! You tell me when is the best time and I will call....thanks"
4/5/2011	10:33 AM – Batres reply to Figueroa, re:Comm, "Sarita, si tiene la oportunidad, hableme" (Translation: Sarita, when you get time or an opportunity, give me a call.)
4/6/2011	Second job vacancy announcement for GS-14 Regional Manager position closed.
4/14/2011	6:24 AM – Figueroa email to Batres, Subject: "No luck". "Buenos dias! We have not been able to talk. I called yesterday again and I was told that you are on travel. Not sure when you can, but we may talk right after 5 when business slows down. I look forward to talk to you."
4/18/2011	2:21 PM – Figueroa email to Batres, Subject "Follow up" saying, "I just called and they cannot accept it. Missed the cut off date. Keep me posted. Thanks much.
4/28/2011	11:42 AM – (b) (7) email to Figueroa: "Please call me." 12:19 PM - Figueroa to (b) (7) "I will call after 2pm."
7/7/2011	4:48 PM – Call to RCS main phone line from San Juan VAMC, Puerto Rico (Duration: 00:00:58)
7/11/2011	2:14 PM – Call to RCS main phone line from San Juan VAMC, Puerto Rico (Duration: 00:00:14) 3:01 PM – Call to RCS main phone line from San Juan VAMC, Puerto Rico (Duration: 00:00:35) 3:01 PM – Call to RCS main phone line from San Juan VAMC, Puerto Rico (Duration: 00:04:30)

3:10 PM – Call from (b) (7) direct line to main phone line for San Juan VAMC, Puerto Rico (Duration: 00:01:12)

7/18/2011 9:54 AM – Call from (b) (7) direct line to Associate Director's Office (Figueroa) at San Juan VAMC, Puerto Rico (Duration: 00:09:12)

12:45 PM – Call from (b) (7) direct line to Associate Director's Office (Figueroa) at San Juan VAMC, Puerto Rico (Duration: 00:03:17)

7/18/2011 2:47 PM – Figueroa email to (b) (7) Attached is a copy of Figueroa's job resume.

2:59 PM – (b) (7) email to (b) (7)(C) (b) (7) forwarded Figueroa's job resume to Mr. Denis (b) (7)(C) RCS HR Specialist/Consultant. (b) (7) stated, "For comparison".

3:41 PM - (b) (7)(C) forwarded the resume to Mr. Wayne Davis, GS-15 Human Resources Officer, VISN 12.

[Note: (b) (7)(C) and Davis were not a part of the human resources servicing office in Bay Pines but were HR professionals that Mr. (b) (7) independently consulted with.]

7/19/2011 6:51 AM - Davis forwarded Figueroa's resume to Ms. (b) (7)(C) Milwaukee VAMC. Davis stated: "(b) (7) If you have a moment in the next day or 2 would you look at this PD and this resume and see if you see any problem at all with the individual qualifying. Readjustment Counseling Service in DC wants to reassign her from a VHA position in Puerto Rico to an RCS position in Florida. I think she qualifies no problem but they're worried. Thanks in advance. Wayne"

7/20/2011 8:31 AM – (b) (7) replied to Davis stating, "Wayne, I would not qualify this person for the position of Readjustment Counseling Manager, GS-101 (at any grade level) for the simple fact that the basic requirements of a Social Science Series, GS-0101 is a degree in behavioral or social science; or related disciplines appropriate to the position OR combination of education and experience or experience that demonstrated that the applicant has acquired knowledge of one or more of the behavioral or social sciences equivalent to a major in the field. (OPM Standard)."

8:34 AM - Davis forwarded (b) (7)(C) email to (b) (7)(C) stating, "This surprises me. I'm on the blackberry and may not be able to see the resume but hasn't she held similar jobs in the past? Wayne"

10:10 AM – Figueroa email to (b) (7) Subject: "document," saying, "Did you receive it?"

10:16 AM - (b) (7) replied to Figueroa saying, "Yes, On my

	bb at an offsite meeting. Will try to give you a call at lunch. Its looking positive so far. (b) (7) 10:26 AM - Figueroa reply to (b) (7) saying, "Ok thanks." 10:54 AM - (b) (7)(C) forwarded Davis' and (b) (7)(C) comments to (b) (7) and stated: "Plz check this out. Perhaps there is more work to do on this? Denis"
7/21/2011	1:43 PM - Davis sent a follow-up email to (b) (7)(C) stating, "P.S. Call me when you're around. We can still reassign her we just need a PD in a different series. Wayne"
7/22/2011	9:25 AM - (b) (7)(C) forwarded Davis' follow-up email to (b) (7) and stated: "Wayne is suggesting another alternative. I will talk with him. As for now, I think we are on the right track (b) (7)" 9:56 AM - (b) (7)(C) email to (b) (7) (summarized due to length), Subject: Bay Pines RM Position. (b) (7)(C) stated, "(b) (7) Yesterday's discussion with regards to our short and long term goals for Bay Pines and plans for attaining those goals was insightful. I recognize that we have been searching for a RM [regional manager] in BP [Bay Pines] for some time. However, the plan to reclassify the BP RM position to a 15, gives us opportunity to name a RM with significant experience in resolution of difficult circumstances. So, I agree that we should return the existing cert, reclassify the Bay Pines RM position to a 15 and either open the job under Merit Systems or seek a lateral placement of a top executive to that position.... I would share the plan with Dr. Batres and urge him to accept this course of action.... (b) (7)"
7/22/2011	12:31 PM - (b) (7) email to (b) (7)(C) (b) (7)(C) HR Specialist in Bay Pines HR servicing office, saying, "RCS would like to return both the internal and external certificates for the Readjustment Counseling Regional Manager position in Bay Pines, Florida. RCS is currently exploring the reclassification of the position to a GS-15 so that we can possibly get a RM with significant leadership experience in resolution of difficult circumstances. We believe opening the position to a 15 grade will attract exactly the caliber of leadership that we need. Thanks."
8/2/2011	10:17 AM - Figueroa email to (b) (7) stating, "Hi (b) (7) any update? Thank you."

8/3/2011	10:52 AM - Call from (b) (7) direct line to main phone line for San Juan VAMC, Puerto Rico (Duration: 00:01:34) 10:55 AM - (b) (7) email to Figueroa, stating, "Sarita, Can you please give me a call. I believe this can work. Thanks." 11:22 AM - Call to RCS main phone line from Sarita Figueroa's VA Blackberry (Duration: 00:01:21) 3:50 PM - Call from (b) (7) direct line to Sarita Figueroa's VA Blackberry (Duration: 00:06:12) 3:58 PM - (b) (7) emailed Figueroa an advance copy of the newly upgraded position description (PD) for the GS-15 RCS Regional Manager position in Bay Pines, Florida. 3:59 PM - Figueroa replied to (b) (7) email, saying, "Thanks". 7:54 PM - Figueroa forwarded the new GS-15 PD to her husband's email address at (b) (7)(C).com.
8/4/2011	10:03 AM - Figueroa sent email from her private email account, (b) (7)(C).com, to her VA email account. The Subject line read, "updated document". Attached to the email was a revised copy of her job resume. 10:48 AM - Figueroa emailed her updated job resume to (b) (7) [Note: Analysis of the new GS-15 PD and the initial and updated copies of Ms. Figueroa's job resumes revealed extensive language from the PD was placed into the "updated" resume.] 10:49 AM - (b) (7) forwarded Figueroa's updated resume to (b) (7)(C) (b) (7) signed ("for" Batres) the new position description for the newly upgraded GS-15-RCS Regional Manager position in Bay Pines. The New PD is forwarded to the HR servicing office in Bay Pines for classification and assignment of position number.
8/5/2011	8:48 AM - Figueroa sent email with Subject line "Document" to (b) (7) and said, "Good morning: did you receive the update document?" 8:57 AM - (b) (7) replied to Figueroa and said, "Yes, they are looking at it this afternoon. Thanks!" 12:14 PM - (b) (7)(C) forwarded Figueroa's updated job resume to Davis.
8/8/2011	HR classification specialist in Bay Pines signed off on the newly upgraded GS-15 Regional Manager position description. The PD is ready for use.

8/11/2011	9:04 AM - Figueroa email to Batres, Subject: Senior conf: "Hola! Are you attending this conference next week?" 9:13 AM - Batres email to Figueroa: "Si, nos juntamos!" 9:25 AM - Figueroa email to Batres: "Ok gracias."
8/17/2011	6:40 PM - Figueroa email to Batres, Subject: Conference , saying, "Looking for you." 9:12 PM - Batres email to Figueroa: "So was I...MY BB RAN OUT OF JUICE...CAN YOU DO AN EARLY WALK WITH ME IN THE MORNING...OR MEET NOW...I am in room 1516"
8/18/2011	12:33 AM - Figueroa email reply to Batres, saying, "See you at 7 am?" 6:10 AM - Figueroa email to Batres, saying, "Good morning: please call me at 787 506 8031 Or room ext 1155. Thanks" 6:38 AM - Batres email to Figueroa: "See u 7AM @ Starbucks" 6:40 AM - Figueroa to Batres" "Ok" 10:09 AM - Call to RCS main phone line from Sarita Figueroa's VA Blackberry (Duration: 00:04:37) 11:51 AM - Call to RCS main phone line from Sarita Figueroa's VA Blackberry (Duration: 00:02:04) 12:13 PM - Call to (b) (7) direct line from Sarita Figueroa's VA Blackberry (Duration: 00:00:06) 12:52 PM - Call from (b) (7) direct line to Sarita Figueroa's VA Blackberry (Duration: 00:04:25)
8/19/2011	1:29 PM - Call from (b) (7) direct line to Sarita Figueroa's VA Blackberry (Duration: 00:01:14)
8/22/2011	12:17 PM - (b) (7) email to (b) (7)(C) (b) (7)(C) HR Specialist in Bay Pines, Subject: "Recruitment" with copy of the PD for the newly upgraded GS-15 RCS Regional Manager position attached.
8/23/2011	3:53 PM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line. (Duration: 00:00:05)
8/24/2011	8:48 AM - (b) (7)(C) replied to "Recruitment" email from 8/22 telling (b) (7) "... I'll also send you the draft announcement to review. Do you want to post it VA Nationwide?" 4:07 PM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:09)

8/26/2011	10:56 AM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:44) 11:05 AM - Call from (b) (7) direct line to Sarita Figueroa's VA Blackberry (Duration: 00:00:22) 11:07 AM - Call from (b) (7) direct line to Sarita Figueroa's VA Blackberry (Duration: 00:01:09)
9/1/2011	6:38 AM - Figueroa email to Batres, Subject: Region 3A visiting - "Hola: Today on my calendar the visit of Ms[r]. (b) (7)(C), visiting PR Vet Centers. Have a good day." 7:15 AM - Batres to Figueroa: "Mucho cuidado...looking forward to seeing you, Al" 7:16 AM - Figueroa to Batres: "Si, Claro, Mucho! Me too, I can't wait..."
9/2/2011	8:28 AM - Batres reply email to Figueroa. Subject: Region 3A visiting - "Dios mio! Someone has not clue..." 8:59 AM - Figueroa email to Batres "Amen" 4:42 PM - (b) (7)(C) (HR) email to (b) (7) Subject: "Recruitment", saying, "Just to clarify: posting for 5 days and open to RCS employees only, correct? Or did you want to expand the AOC [area of consideration] to include external applicants?"
9/3/2011	8:32 AM - Figueroa forwarded a copy of her updated resume from her VA email account to her private email account at (b) (7)(C).com.
9/6/2011	7:10 AM - Ms. Figueroa sent email to (b) (7) and said, "Good morning: I have not seen anything online yet. Any update? Thanks". 7:58 AM - (b) (7) replied to (b) (7)(C) 9/2 "Recruitment" email telling her, "(b) (7)(C) Wanted to open for VISN 8 employees only. Thanks."
9/7/2011	2:05 PM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:08) 2:06 PM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:06) 8:24 PM - Figueroa email to (b) (7) saying, "Any update?"
9/8/2011	7:22 AM - (b) (7) replied to Figueroa's September 7 email and said, "Should be opening in the next several days. Will let you know." Figueroa replied back and said, "OK...thanks".

9/10/2011	7:56 AM - Figueroa email to (b) (7) and said, "Not received. Safiro65." (<i>Unknown what Figueroa did not receive or why it would be sent via her private email address.</i>) 5:10 PM - (b) (7) forwarded Figueroa's email to (b) (7). No comments. (<i>Unknown why (b) (7) forwarded email to (b) (7) (b) (7) claimed he did not remember receiving this email from Harms.</i>)
9/13/2011	Job vacancy announcement opened on USAJOBS for the newly upgraded GS-15 RCS Regional Manager in Bay Pines. The announcement stated that only VISN 8 employees were allowed to apply.
9/14/2011	8:41 AM - (b) (7) emailed Figueroa a link to the USAJOBS webpage for the GS-15 RCS Regional Manager job vacancy announcement. 8:48 AM - Figueroa replied to (b) (7) and said, "Saw it last night. Done! Thanks."
9/20/2011	The GS-15 RCS Regional Manager job vacancy announcement closed.
9/21/2011	2:36 PM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:19) 4:30 PM - Figueroa email to (b) (7) Subject: "closing", and said, "Hola: Please let me know next steps of the process. Thanks."
9/22/2011	9:31 AM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:20) 8:10 PM - Figueroa, using her private email account (safiro65@yahoo.com), sent email to (b) (7) Subject: "closed", and said, "I hope all is going well. Did I make the list? What is next?"
9/23/2011	10:42 AM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:10) 1:00 PM - Call from (b) (7) (b) (7) direct line to Associate Director's Office (Figueroa) at San Juan VAMC, Puerto Rico (Duration: 00:00:36) 2:28 PM - Call to (b) (7) (b) (7) direct line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:42)

9/23/2011	4:13 PM - Figueroa received auto-generated email from usastaffingoffice@opm.gov, re: Notification Letter Vacancy ID: 535157. The email stated, "We have reviewed your application and found you qualified for the position listed above. Your name has been referred to the employing agency for consideration." HR servicing office in Bay Pines issued Certificate of Eligibles listing Sarita Figueroa and one other candidate.
9/24/2011	10:42 AM - Figueroa forwarded the usastaffing notification email to (b) (7)(C) and said, "Qualified!! This is great my biggest worry-passed. I should hear next week. And tampa ignoring me. Of My own..." 12:50 PM - (b) (7) replied to Figueroa, "Wow!!!! Te felicito!! Llego un dia mas tarde de lo esperado pero llego. L'ESA posicion esta en el saco. Lo que tienen que hacer es escogerte sin entrevistas o que te lleven un auteurs como para una entrevista de Saint-Pétersbourg. ASI sacas un fin de semana fr tu casa. Si tu fueras el VISN y vieras mi nombre solicitando en Tampa, que tu pensarias?" <i>Microsoft Translator: "I congratulate you! Arrived a day later than expected, but I get. That position this in the bag. They have to do is choose you without interviews or that take you to st petersburg for an interview as a formality. So take a weekend at home. If your you were the VISN and saw my name in Tampa, requesting that your pensarias?"</i>
9/28/2011	10:11 AM - (b) (7) forms and facilitates the interview panel by sending an email to Mr. (b) (7)(C) and to (b) (7)(C). Attached to the email is the certificate of eligibles and the job applications for Figueroa and the other candidate. 3:17 PM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:25) 3:17 PM - Call to RCS main phone line from San Juan VAMC, Puerto Rico main phone line (Duration: 00:00:57) 3:58 PM - (b) (7)(C) forwarded the job applications to Davis, adding him to the interview panel.
10/5/2011	Interview panel members (b) (7) (b) (7)(C) and Davis interviewed Figueroa and the other candidate and scored Figueroa 74 out of 75, and the other candidate 49 out of 75.

10/6/2011

Dr. Batres selected Figueroa for the GS-15 Regional Manager position in Bay Pines and signed the certificate.

11:44 AM - Call from (b) (7) direct line to Associate Director's Office (Figueroa) at San Juan VAMC, Puerto Rico (Duration: 00:00:15)

(b) (7)(C) attempted to contact Figueroa at her office in Puerto Rico to offer the position to her. Figueroa's secretary stated that she was on "travel." (b) (7)(C) testimony)

(b) (7)(C) received phone call from RCS employee wanting to know if Figueroa was selected for Regional Manager position in Bay Pines, and further told (b) (7)(C) that Figueroa had been seen with Batres and (b) (7) at the RCS office in Washington, DC. (b) (7)(C) testimony)

(b) (7)(C) called (b) (7) and questioned whether Figueroa was at RCS office in Washington, DC. (b) (7)(C) said (b) (7) confirmed she had been there but that she was in Washington, DC on other business and just stopped by to say hello. [There are no VA travel records showing that Figueroa traveled on official VA business to Washington, DC or the vicinity during that time.]

11/6/2011

Figueroa is appointed to the GS-15 RCS Regional Manager in Bay Pines, Florida.

Recruitment for the (b) (7)(C) Position in Pensacola, FL

36. It was alleged that Dr. Batres created the (b) (7)(C) position specifically for his long-time friend and RCS employee, Mr. (b) (7). It was also noted that the position was placed in Pensacola, Florida, where Mr. (b) (7) worked and resided.

37. During Dr. Batres' May 2, 2011, interview with OIG, he testified under oath that he had known Mr. (b) (7) since the early 1990's; having first met him when they both were a part of a regional emergency response team working with FEMA in the wake of Hurricane Andrew (1992). He said that his relationship with Mr. (b) (7) had been "strictly work."

38. As with the other recruitments, Dr. Batres said that Mr. (b) (7) handled the details of the recruitment for the (b) (7)(C) position. In addition, Dr. Batres denied that he created the (b) (7)(C) position specifically with Mr. (b) (7) in mind. When asked if he had any discussions with

Mr. (b) (7) regarding him applying for and/or being selected for the position, Dr. Batres said, "He called me and told me he was going to apply for the position. That is the only contact I have had with Mr. (b) (7)(C) (Emphasis added.) We noted that contrary to his aforementioned assertion that he thought the word "contact" meant a face-to-face or in-person meeting with someone; here Dr. Batres used the word "contact" in the context of describing a telephone conversation, which is not a face-to-face or in-person form of communication.

39. Dr. Batres said that the intent from the beginning was to place the (b) (7)(C) position in Pensacola, FL; not to accommodate Mr. (b) (7) who already lived and worked there, but to strategically place the position in an area that would be accessible to where the majority of the natural and manmade disasters occurred in the United States; namely, the Gulf of Mexico coastline.

40. We asked Dr. Batres why, given that the duty station for the position was in Pensacola, Florida, he aligned the position under the supervision of the Regional Manager for RCS's Western-Pacific Region. Dr. Batres said that it was done that way because RCS was a small organization and it was impossible to always place the supervisors directly adjacent to the work site.

41. Mr. (b) (7) told us he assigned the recruitment action to Mr. (b) (7)(C), the (b) (7)(C), because Mr. (b) (7)(C) office had the capability of handling the assignment. He said that Mr. (b) (7)(C) staff was able to create and write the position description and had a good working relationship with their local human resources servicing office. When asked why the position and the recruitment for it was not assigned to the regional office with jurisdiction over the Pensacola area, Mr. (b) (7) said that the regional offices did not have the staff available to conduct the recruitment due to work load requirements.

42. Mr. (b) (7) also denied that the position was created specifically for Mr. (b) (7). When asked if Mr. (b) (7)(C) name ever came up in conversations about who they thought would be good for the position, Mr. (b) (7) said, "The only thing I remember is I know he had called the office and left a message that he had applied for it." Mr. (b) (7) further said that he discussed the position with Mr. (b) (7)(C) and essentially left it up to him to develop and start the recruitment process.

43. Mr. (b) (7) testified that in the spring of 2011, he decided that he was going to retire because he was dissatisfied with his supervisor. He said that after talking with his human resources servicing office, he set his retirement date for March 30, 2012. Mr. (b) (7) further told us that he informed Dr. Batres of his decision to retire and of his dissatisfaction with his supervisor and the direction the RCS program was headed. Mr. (b) (7) said that in or about October or November 2011, Dr. Batres talked with him about staying on in RCS, but in a different position. He said that Dr. Batres suggested several positions for which he could apply; one in Baltimore, Maryland, one in St. Louis, Missouri, and one in another an unrecalled city. Mr. (b) (7) said that he told Dr. Batres that he would not mind if the new position

required him to travel but that he was not interested in moving away from Pensacola. Mr. (b) (7) then told us, "He (Batres) asked that if a position opened that didn't require me to move would I be interested." Mr. (b) (7) said that after discussing it with his wife, he told Dr. Batres that he would be interested in staying in another position for up to 3 years. Mr. (b) (7) said that he believed this was the last contact he had with Dr. Batres, but that he tried a number of times after that to contact Dr. Batres and Mr. (b) (7) trying to get information on the position and its status, but received no reply. Mr. (b) (7) stated further that he knew that he would have to apply for the position, that he would be in competition with others, and that he believed that if Dr. Batres were to be the selecting official, he would select the best-qualified applicant.

44. Travel records showed that Mr. (b) (7) traveled to Washington, DC, in October 2011, to attend an "Emergency Management" meeting with Dr. Batres. Records further showed that Mr. (b) (7) traveled again to Washington, DC, in November 2011, to assist Dr. Batres with Veterans Day activities.

45. Email records reflected that beginning in or about October 2011, Mr. (b) (7) began sending several messages to Dr. Batres and/or Mr. (b) (7) seeking information about the new position. On October 17, right after returning from Washington, DC, Mr. (b) (7) sent an email to Mr. (b) (7) saying, "(b) (7) I talked with (b) (7)(C). Told her that you would probably be getting with her concerning a new position ya'll were thinking about putting in this area that would need classified and posted."

46. On December 5, 2011, Mr. (b) (7) sent an email titled "emergency management" to both Dr. Batres and Mr. (b) (7) and informed them that he had received a job offer at a nearby VA medical center as part of the "mental health component for VISN 16 disaster response team...." Mr. (b) (7) then asked, "I not sure how to respond to him. Any guidance?"

47. On December 12, Mr. (b) (7) sent an email to Dr. Batres, saying, "Good morning Al. It's been a month since we last talked and I have not heard anything concerning the new PD being worked on.... There is a little more than 3 months before my "official" retirement date." A few minutes later, Dr. Batres forwarded this email to Mr. (b) (7). Records showed there were several more emails from Mr. (b) (7) to Mr. (b) (7) asking about the position and when it would be advertised.

48. On January 26, 2012, after receiving an email from Mr. (b) (7) that included a copy of the announcement for the (b) (7)(C) position, Mr. (b) (7) forwarded that email to a friend, saying, "This is the position I am "applying" for. Shhhhhh RMO still doesn't know." In a second email to his friend sent a few minutes later, Mr. (b) (7) said, "Al made me an offer I couldn't refuse. I'll do it for 3 yrs. (b) (7) can retire then and we'll be gone!!"

49. Recruitment records reflected that approximately 150 applications were received from the initial announcement and that Mr. (b) (7) had made the final list of the few applicants who were interviewed. The records further showed that Mr. (b) (7) scored high, overall.

50. In a second interview, Mr. (b) (7) confessed that he had lied to OIG during his first interview about the frequency of contact he had with Mr. (b) (7) concerning the (b) (7)(C) position. However, he denied that he did anything to influence the hiring process itself. Mr. (b) (7) told us that when Mr. (b) (7) first assigned the recruitment action to him, he (Mr. (b) (7)) told him that Mr. (b) (7) was dissatisfied his current job and if he did not get selected for the position, he would retire. Mr. (b) (7) further said that he in turn told his staff this before they scored the applications, including Mr. (b) (7)(C) application. Dr. Batres, when questioned again about this matter, acknowledged having a conversation with Mr. (b) (7) about him wanting to retire and that he (Dr. Batres) had suggested to him that he could apply for other positions. However, Dr. Batres denied that he specifically asked Mr. (b) (7) whether if there were a new position in Pensacola would he stay on at RCS.

Conclusion

51. We have concluded that the evidence, as a whole, shows that Dr. Batres intended to hire Ms. Figueroa for the GS-15 Regional Manager position before the position was announced and that he lied to OIG investigators about his relationship and frequency of contact with Ms. Figueroa in an attempt to cover up his actions. Given the totality of the evidence, it is implausible that Dr. Batres did not know what was occurring with regard to Ms. Figueroa and the recruitment for the GS-15 RCS Regional Manager position.

52. On May 2, 2012, during his interview with OIG investigators, Dr. Batres falsely testified under oath that he had not had any contact with Ms. Figueroa since she left RCS in 2001; yet email records showed at least 19 occasions since March 2011 that the two had contact with each other. There were numerous other contacts between them prior to recruitment efforts for the position. In attempting to explain away his false statements, Dr. Batres contrived the excuse that he understood the meaning of the word "contact" to mean in-person, or face-to-face communication only. Yet in his own testimony, he used the word "contact" in the context of having a telephone conversation with Mr. (b) (7) a form of communication other than in-person or face-to-face. In addition, even though Dr. Batres claimed that he thought the word "contact" meant a face-to-face meeting with someone, he still failed to disclose to us his meeting with Ms. Figueroa, face-to-face, at a Chicago conference, just one month before the job vacancy announcement posted for the GS-15 RCS Regional Manager position.

53. Dr. Batres claimed he did not know Ms. Figueroa was interested in the position until after the competitive job announcement closed and he learned from Mr. (b) (7)

that she had applied. However, on April 4 and 5, 2011, Dr. Batres twice sent an email to Ms. Figueroa asking her to call him. This was two days before the job vacancy announcement for the GS-14 RCS Regional Manager position closed on April 6, 2011. Emails sent later showed that the two eventually talked on or about April 14. Then on April 18, Ms. Figueroa sent another email to Dr. Batres and stated, "I just called and they cannot accept it. Missed the cut off date. Keep me posted. Thanks much." In addition, Mr. (b) (7) eventually confessed that he and Dr. Batres had discussed hiring Ms. Figueroa for the position in advance.

54. Dr. Batres claimed that his relationship with Ms. Figueroa was "all work" and strictly professional. We do not doubt that there were occasions when the work of the VA necessitated them to contact each other. However, the tenor and substance of some of the email messages indicated that their relationship was that of being close, personal friends, and of having a deep-felt respect and admiration for one another. This was quite different from what Dr. Batres lead us to believe.

55. We also concluded that Mr. (b) (7) engaged in prohibited personnel practices while carrying out his and Dr. Batres' desire to hire Ms. Figueroa and that he too lied to us while under oath in an attempt to cover up their scheme. Mr. (b) (7) gave Ms. Figueroa extensive assistance with her job resume including providing her with an advance copy of the newly upgraded position description for the GS-15 RCS Regional Manager position. In addition, while the authority to upgrade the position to the GS-15 level had been obtained in early 2010, Dr. Batres chose to use it only after the two GS-14 certificates were returned and after Mr. (b) (7) had vetted Ms. Figueroa's job resume discovering that she would not qualify for the position, as it existed at the time. A new position description had to be used in order to hire Ms. Figueroa into the position. Mr. (b) (7) implemented it, along with the upgrade of the position to the GS-15 level, with Dr. Batres' knowledge and consent.

56. Furthermore, after it was determined that the position would be announced competitively, Mr. (b) (7) directed the HR office to restrict the area of consideration in the job vacancy announcement to applicants who were already VISN 8 employees. Dr. Batres told us that he was aware this had been done but denied he directed it as a way to give Ms. Figueroa a competitive advantage. Mr. (b) (7) falsely testified that the servicing HR office recommended the area of consideration be restricted to VISN 8 employees. Email records showed he lied to us about this and that it was he who asked the HR office to restrict the area of consideration after being asked by the servicing HR Specialist about using a broader one that included all RCS and VA employees.

57. Wanting to keep his preferential treatment of Ms. Figueroa from becoming known to the servicing HR office in Bay Pines, Mr. (b) (7) consulted with Mr. (b) (7)(C) and Mr. Davis, in determining a way for Ms. Figueroa to qualify for the position. Mr. (b) (7) told them that Ms. Figueroa was the preferred candidate and he provided them with copies of Ms. Figueroa's original and updated resumes. Then, once it was determined that the position would be filled by competitive examination, Mr. (b) (7)

had Mr. (b) (7)(C) and Mr. Davis participate as members of the interview panel knowing full well that they would be biased in favor of Ms. Figueroa due to their earlier involvement with the vetting of her resumes. We do not find Mr. (b) (7) denial that this was the case to be credible. Records reflected that both Mr. (b) (7)(C) and Mr. Davis scored Ms. Figueroa higher in every category, giving her a perfect score in every category except one, for which Mr. Davis scored her 4 out of 5. There was also a noticeable difference in how the third member of the interview panel, Mr. (b) (7) scored both candidates lower overall when compared to the scores given by Mr. (b) (7)(C) and Mr. Davis.

58. Dr. Batres' involvement in this scheme was considerable, and contrary to his assertion that he did not pre-select Ms. Figueroa, the evidence reflected he did. Most notably were the intentional and material false statements Dr. Batres made to us regarding his relationship with Ms. Figueroa and his knowledge of Mr. (b) (7) activities. Dr. Batres claimed he did not know Ms. Figueroa was interested in the position until after the competitive job announcement closed and he learned from Mr. (b) (7) that she had applied. He has also denied that he knew that Mr. (b) (7) Mr. (b) (7)(C) and Mr. Davis had collaborated with each other in vetting Ms. Figueroa's job resume in advance of the competitive announcement. However, by Dr. Batres' own admission, he was kept informed by Mr. (b) (7) of the progress of the recruitment efforts, and the evidence reflects that Dr. Batres knew early on that Ms. Figueroa was interested in working for RCS again and he wanted her for the Regional Manager position.

59. With regard to the (b) (7)(C) position, we do not know whether Dr. Batres intended all along to hire Mr. (b) (7) for the position. However, the evidence does reflect that both he and Mr. (b) (7) failed to testify freely and honestly to OIG investigators regarding communications they both had with Mr. (b) (7) about the position.

60. We included background information about the EEO complaint against Dr. Batres because that allegation dealt with the same recruitment action that our allegation dealt with. In addition, while it is unknown whether the EEO complaint and investigation was a motivating factor in Dr. Batres and Mr. (b) (7) providing false testimony to OIG, the totality of our evidence suggests that it could have been such a motivating factor and was therefore relevant to this investigation.

61. For the issue involving the RCS Regional Manager position in Bay Pines, Florida, we suggest that you take the appropriate administrative action against Dr. Batres, Mr. (b) (7) Mr. (b) (7)(C) and Mr. Davis for committing a prohibited personnel practice and interfering with a civil service examination. In addition, for this issue and the issue involving the (b) (7)(C) position, we suggest you take the appropriate administrative action against Dr. Batres and Mr. (b) (7) for failing to testify freely and honestly to OIG investigators while under oath. We are providing this memorandum for your information and official use and whatever action

you deem necessary. **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 Dr. Batres, Mr. (b) (7) Mr. (b) (7)(C) and Mr. Davis, within the bounds of the Privacy Act; however, it may not be released to them. If you have any questions, please contact [REDACTED]

(b) (7)

CC: Chief of Staff (00A)

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

This memorandum contains information subject to the provisions of the Privacy Act of 1974 (5 U.S.C. §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.