

**Memorandum to the File
Case Closure**

Alleged Prohibited Personnel Practices, Misuse of Position, and Hiring Irregularities
Veterans Health Administration, Department of Veterans Affairs
Overton Brooks VA Medical Center, Shreveport, Louisiana
2013-00784-IQ-0007

The VA Office of Inspector General Administrative Investigations Division received allegations that (b) (7)(C) [REDACTED], Overton Brooks VA Medical Center (OBVAMC) Shreveport, Louisiana engaged in preferential treatment and misused her public office for private gain when she removed employees from positions to create vacancies, hired friends, former co-workers, and their spouses, and authorized unnecessary recruitment and relocation incentives for various appointments. Also OBVAMC [REDACTED] [REDACTED] allegedly advocated for hiring her spouse and circumvented HR policy and procedure to hire a pre-selected candidate of her choice. To assess these allegations, we prepared an investigation plan, conducted research and determined the standards against which these allegations would be measured. The allegations were subsequently returned to VA OIG hotline for administrative disposition and reissuance to the Department for internal review.

Standards

The following Federal and VA regulations, statutes and guidelines were determined to apply to the allegations:

Preferential Treatment

Federal ethics regulations require employees to act impartially and not give preferential treatment to any private organization or individual. 5 C.F.R. §2635.101

Prohibited Personnel Practices

Federal law requires that Federal Government employees be selected and advanced solely on the basis of relative ability, knowledge, and skills, and unless otherwise by law exempted, after fair and open competition. 5 U.S.C. §2301 (b) (1). The law also prohibits an employee from granting an unauthorized preference or advantage to improve or injure the employment prospects of any particular person. 5 U.S.C. §2302 (b) (6). and 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. 5 USC § 2302 (b) (12).

Abuse of Authority

The Merit System Protection Board has 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).

Recruitment and Relocation Incentives

VA regulation allows for a recruitment bonus of up to 25 percent of the rate of basic pay and may be authorized, provided the approving official determines that it would not be possible to fill the position with a high quality candidate without the bonus. Recruitment bonuses may be used in combination with certain other allowances and authorities. They are not, however, to be given as substitutes for payment of moving expenses.

Regulation also allows a relocation bonus of up to 25 percent of the rate of basic pay to be authorized for an eligible Federal employee who must physically relocate and change duty stations to accept a position in a different commuting area provided that the approving official determines that without the bonus, it would not be possible to fill the position with a high quality candidate. Each bonus shall be reviewed and approved by a VA official higher than the recommending official, unless there is no higher official in the Department. Approvals will be documented in writing and will be based on established criteria. Determinations to pay these bonuses may take into consideration the occupation or type of position for which VA historically has experienced difficulty filling, or geographic areas that traditionally have been considered to be less desirable. However, any decision to pay a recruitment or relocation bonus must be made in a fair and equitable manner on a case-by-case basis for each employee.

Incentives may be authorized if, without them, VA is unable to attract the kind or quality of applicant needed for the position. In determining the amount and whether a bonus or incentive should be authorized various economic, recruitment, housing, geographic location, employee experience and other factors will be considered, and all efforts to fill the position must be fully documented. *VA Handbook 5007 PART VI Chapter 2, 1 and 2.*

Nepotism

Federal law states that a public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual. An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced. "Relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew,

niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. 5 USC § 3110.

VA policy states that extreme care must be taken to avoid any possibility or likelihood that the nepotism law may be violated in an employment action. Management officials will take appropriate actions to avoid situations which have the potential for, or appearance of, being in violation of nepotism requirements. As a minimum, management officials and HRM Officers will identify and document those instances in which relatives are employed, or are being considered for employment, in the same organizational element or in positions within the same chain of command. These officials will review all proposed personnel actions affecting relatives of employees to assure that there is no violation of merit principles and that the requirements contained in 5 U.S.C. 2302 and 5 U.S.C. 3110 have been met. VA Handbook 5025, Part VII, Paragraph 3 (c).

Case Activity

December 3, 2012 Case received from Hotline
December 10, 2012 Case Assigned to Investigator
January 8, 2013 IQ number assigned in MCI
January 9, 2013 Investigative Plan initiated and approved
January 16, 2013 Case hold placed while investigator assigned to priority case
January 28, 2013 Subject inquiry received regarding Departmental award – case returned to Hotline for re-assignment to VA for internal review of allegations

Conclusion

To administratively close case number 2013-00253-IQ-0004 because of a Departmental inquiry pertaining to a prospective award for Ms. (b) (7)(C) Allegations of Prohibited Personnel Practices, Misuse of Position and Hiring Irregularities engaged in by (b) (7)(C) and (b) (7)(C) were not investigated pursuant to the decision to return the matter to Hotline for issuance back to VA for internal review. We are therefore closing these allegations without a formal report or memorandum.

Prepared By: (b) (7)(C)

January 30, 2013
Date

Approved By: (b) (7)(C)

2/4/13
Date