

# Department of Veterans Affairs

# Memorandum

Date: September 28, 2016

From: Assistant Inspector General for Investigation (51)

Subj: Administrative Investigation – Alleged Misuse of Travel Funds, Misconduct, and False Statements, Office of Intergovernmental Affairs, VACO (2015-03474-IQ-0172)

To: Assistant Secretary for Public Affairs

## Purpose

The VA Office of Inspector General (OIG) Administrative Investigations Division received an allegation that Mr. David Montoya (SES), former (resigned) Deputy Assistant Secretary (DAS) for Intergovernmental Affairs, improperly received \$1,800 in mileage reimbursement to drive from New Mexico to Washington, DC, after visiting his home for “the Christmas and New Year’s” holidays. He also allegedly created fictitious travel to Texas in early 2015 to pick up his children and return with them to Washington, DC, for their spring break. Separately, VA OIG received an allegation from an attorney representing a non-VA individual concerning Mr. Montoya’s conduct at a non-VA event.

## Objective, Scope, and Methodology

To assess the allegations we reviewed email, travel, and personnel records as well as relevant Federal laws, regulations, and VA policy. Personnel records reflected that Mr. Montoya began his VA employment on August 8, 2014, and he resigned effective May 20, 2015.

Federal Travel Regulations state an agency is required to limit the payment to “only those expenses essential to the transaction of official business.” Employees are charged with “exercise[ing] the same care in incurring expenses that a prudent person would exercise if traveling on personal business.” They also state “You are responsible for expenses over the reimbursement limits established in this chapter. Your agency will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business.” 41 CFR §§ 301-2.2, 301-2.3, and 301-2.4.

With regard to reimbursements for Privately-Owned-Vehicles (POVs), Federal Travel Regulations specifically state that the following expenses are included in the mileage allowance and are thus not reimbursable: repairs, depreciation, replacements, grease, oil, antifreeze, towing and similar speculative expenses, gasoline, insurance, and State and Federal taxes. 41 CFR § 301-10.304.

Federal Travel Regulations state, with regards to taking an indirect route, the reimbursement is limited to the cost of travel by a direct route or on an uninterrupted basis. The employee is responsible for any additional costs. 41 CFR § 301-10.8.

VA Travel Policy states that all employees, supervisors and approving officials are responsible for ensuring they follow VA travel policy and Federal Travel Regulations for official travel. It also states that the traveler's claim for reimbursement will accurately reflect the facts involved in every instance so that the traveler avoids any violation or apparent violation of applicable regulations. Department of Veterans Affairs Travel Administration, Volume XIV, Chapter 1, Sections 010201 and 010205. (May 2013).

With regard to reimbursement for the use of a POV on official travel, VA Travel Policy states that VA will reimburse the lesser of either the constructive travel costs of the authorized transportation or the actual transportation costs incurred. Id., at Section 030207.03. It also states that constructive travel considers only the en route portion of travel, which includes the following travel segments: travel from trip start location to first TDY location; travel from one TDY location to another; or travel from last TDY location to trip end location. The traveler should enter the preferred mode(s) of travel on the authorization and enter the standard travel costs on a constructive travel worksheet. This may then be attached to the travel document. Id., at Appendix F.

## **Investigative Results**

### *Misuse of VA Travel Funds*

In reference to an allegation that Mr. Montoya received improper mileage reimbursement for traveling back to Washington, DC, after a visit home for the 2014 Christmas and New Year's holidays, travel records reflected that he was on official travel from January 3 to January 9, 2015. There was no record of outbound travel from Washington, DC, but records reflected a one-way return trip from Austin, TX, to Washington, DC, via Tulsa, OK; Nashville, TN; and Knoxville, TN, for "scheduled meeting and site visits to State and Tribal Government Officials en route to DC."

In a December 30, 2014, email to Mr. Curtis Carie, Deputy Director of the Midwest District, Mr. Montoya cited the following itinerary for this travel:

- Sunday – Drive to Austin [.]
- Monday – Meetings with State Director of Veterans Affairs, Republic of TX Palladino[.] Additional VBA meetings related to State Strike Force Deployed to help Benefits Backlog. Community organization meetings with Homeless advocates[.]

- Tuesday – AM Drive to OK and afternoon Meetings with State Veterans Department, Tribal Meetings[.]
- Wednesday – Drive to TN[.]
- Thursday – Meet with State Director of Veterans Affairs, State Cemetery tour, State home visit pm drive to VA[.]
- Friday – Friday Afternoon meeting in Richmond with State Director of Veterans affairs. Homeless Veteran community organization meetings. Late [F]riday MC Washington DC.

From his travel records, it was unclear where Mr. Montoya began this trip. However, intermingled with his travel receipts was a receipt for a gasoline purchase on Sunday, January 4, 2015, in his home state of New Mexico, as well as a receipt for a hotel located in Austin, TX, dated the same day. For this travel, Mr. Montoya used his POV, and his travel voucher reflected that he was reimbursed \$1,482.93 for mileage. The total cost of the travel was \$2,941.39.

Although travel records reflected that Mr. Montoya was approved for the use of a rental car, they also reflected that it was later cancelled and he instead used his POV. In justifying Mr. Montoya's use of a POV, an OPIA Program Assistant told Mr. Carie in a January 15, 2015, email, that she compared the POV mileage cost to what it would cost for Mr. Montoya to rent a car. Mr. Montoya's travel records contained no documentation that he completed a constructive travel worksheet prior to this travel to determine if taking a POV was the most cost-effective transportation. VA Travel Policy states that if the cost of the actual POV travel performed exceeds the total constructive cost, reimbursement is limited to the constructive cost of the common carrier air travel. Department of Veterans Affairs Transportation Expenses, Volume XIV, Chapter 3, Appendix G (August 2011).

In reference to the allegation that he misused travel funds to fly to his hometown in early 2015 to pick up his children and bring them to Washington, DC, for their spring break, we found that travel records reflected he flew from Washington, DC, to Houston, TX, on March 24, 2015, and then to Dallas, TX, on March 26, 2015, but he did not purchase a return ticket. Records reflected that this travel was to meet with local officials and Veteran Service Organizations to "discuss state-specific VA and Veteran issues." Although he said in an April 6, 2015, email that his children would be in Washington, DC, for their spring break, we were unable to determine if there was a connection between his March 24–26, 2015, official travel and his children's visit.

## *Misconduct*

On April 29, 2015, OIG received a complaint from an attorney representing a non-VA individual concerning Mr. Montoya's conduct at a non-VA event. The OIG Criminal Investigations Division contacted the attorney to notify him that the administrative investigation would be closed, due to Mr. Montoya's departure from VA, and asked if the individual wanted to pursue this as a criminal matter. The attorney, after conferring with the individual, said that the individual, his client, did not wish to pursue criminal charges.

## *False Statements on New Entrant Public Financial Disclosure*

During the course of our investigation, we discovered that Mr. Montoya made false statements on his New Entrant Public Financial Disclosure Report, which he signed on January 27, 2015.

When Mr. Montoya began his VA employment, he was required to complete a New Entrant Public Financial Disclosure Report. In an October 2, 2014, email, a Paralegal Specialist/Ethics Program Manager told Mr. Montoya "in accordance with 5 C.F.R. § 2634.202, you are required to file a New Entrant Public Financial Disclosure Report."

He further said:

Filers must submit New Entrant reports no later than 30 days after entering into a filing position (8/8/14). Due to late notification, by CSEMO, your new entrant report must be submitted by November 3, 2014. Failure to submit your report by the deadline could result in administrative action, a \$200 fine, and a criminal referral to the Department of Justice. If you require additional time to complete your report, I may grant an extension only under limited circumstances, and you must request the extension prior to the deadline. I have included a memo from the Designated Agency Ethics Official, a guide to starting your report, and a list of common mistakes. Please review these before completing your report. Additionally, the STOCK Act requires you to report certain financial transactions as they occur throughout year on the OGE 278-T. I have included a memorandum that explains this requirement.

Mr. Montoya's Public Financial Disclosure Report was due on November 3, 2014, but he did not sign the form until January 27, 2015, following one 30-day extension and several warnings that he would be sanctioned with the \$200 fine, if he failed to comply. With his signature, Mr. Montoya certified that the "statements I have made

on this form and all attached schedules are true, complete and correct to the best of my knowledge.” The Report required Mr. Montoya to provide the following information:

- **Schedule C – Liabilities:** Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. The reporting period was for the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule D – Positions held Outside U.S. Government:** Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. The reporting period was for the preceding 2 calendar years and the current calendar year up to the date of filing.

An email, dated August 25, 2014, contained an attachment titled: *Montoya 2014 Resume VA*, which was submitted as part of Mr. Montoya’s SES Onboarding Orientation. The same resume was found in his official personnel folder maintained by the U.S. Office of Personnel Management. This resume reflected that Mr. Montoya was the founder and Chief Executive Officer for Manzano Strategies, LLC (MSL), “an 8(a) Small Disadvantaged and Verified Service Disabled Veteran Owned Business” from 2006 to 2013, and the owner of Financial Services Professional (FSP), New York Life Securities, a “Financial Services Small Business Owner” from 2013 to present.

New Mexico State court records reflected the following civil lawsuit filed against Mr. Montoya and MSL.

- *ABBA Technologies, Inc. v. Manzano Strategies LLC, et al.*  
Case #D-202-CV-201307958
  - October 2, 2013, Complaint for breach of contract, debt and money due, and unjust enrichment
  - March 25, 2014, Default judgment against defendants Manzano Strategies, LLC and David Montoya awarding pl \$61,226.53 plus interest
  - March 12, 2015, Writ of Garnishment issued to Defense Finance and Accounting Service as to DF David Montoya
  - June 9, 2016, Writ of Garnishment issued to DMS Health Technologies as to DF David Montoya
  - July 27, 2016, Satisfaction of Judgment

Mr. Montoya omitted the March 25, 2014, default judgment against him from his Public Financial Disclosure Report, which he signed on January 27, 2015.

Under Schedule C, Mr. Montoya's duty to report liabilities would extend to debts in 2013 and 2014; however, on Schedule C, he did not list the liabilities from the default judgment of \$61,226. On Schedule D, he failed to list his ownership of and positions held with MSL and FSP. In short, his Public Disclosure Form made no mention whatsoever of MSL and FSP.

We referred this matter to the Department of Justice (DOJ) Public Integrity Section, and they declined to prosecute.

## **Conclusion**

With respect to the January 3–9, 2015, trip, because no constructive travel worksheet was completed to determine the total constructive travel costs, we cannot determine what was the most cost-effective for VA and what reimbursement limitations there were for this travel. Further, we were unable to determine if there was a connection between his March 2015 travel and his children's visit to Washington, DC. Additionally, the non-VA individual did not want to pursue a criminal investigation into Mr. Montoya's conduct, and DOJ declined prosecution for his false statements. We are therefore administratively closing these allegations.

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