Department of Veterans Affairs

Memorandum

Date: April 18, 2017

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Alleged Improper Collection of Funds, Misuse of Government Property, and Preferential Treatment, Buffalo Regional Benefit Office, Buffalo, NY (2016-02435-IQ-0004)

To: North Atlantic District Director

Purpose

The VA Office of Inspector General (OIG) Administrative Investigations Division received allegations that Ms. Donna Mallia, Director, Buffalo Regional Office (RO), improperly collected funds from a core group of RO employees to finance the Division Chief Fund; misused VA promotional items; and engaged in preferential treatment in filling the Chief of Support Services Division position. During the course of our investigation, we received an allegation that Ms. Mallia and her Assistant Director improperly accepted cash gifts from subordinates.

Objective, Scope, and Methodology

To assess the allegations, we interviewed Ms. Mallia; Ms. Lillie Nuble, Assistant Director; Ms. [redacted] (b) (6) [redacted] (b) (6), Administrative Assistant; Ms. [redacted] (b) (6) [redacted] (b) (6), Support Services Division Chief; and other VA employees. We also reviewed email and personnel records, as well as relevant Federal laws and regulations and VA policy.

Investigative Results

Collection of Funds

Standards of Ethical Conduct for Employees of the Executive Branch state that Voluntary Contribution means a contribution given freely, without pressure or coercion. 5 CFR § 2635.303(f).

Ms. Mallia said she served as the RO Director since December 2004. She told us the Division Chief fund existed prior to her arrival, and she continued the practice. She said, "We have a fund that's used to pay for employee events. We realized early on that the limitations of our funding did not allow us to fund a lot of the events we wanted to have for our employees." She said, "I don't know of any regulation that permits it, nor do I know of a regulation that prohibits it." Ms. Nuble said, "This is my first time ever, you know, being involved with a division chief fund, but when I got to Buffalo 6 years ago, I thought it was a great idea personally." Ms. Mallia said the fund contributors consisted of the Division Chiefs, Assistant Chiefs, and any non-bargaining unit employee in the Office of the Director. Ms. Mallia said no consequence existed if someone chose not to contribute to the fund. Ms. Nuble said no one was forced to pay; it was voluntary, and the money was used to purchase items such as coffee and donuts, to observe military branch birthdays, to recognize employees, or to hold office luncheons, because Government funds could not be used. She said the premise of the fund was that each employee in the Office of the Director paid $5 every pay period into the fund.

We interviewed the fund contributors, and some of their interpretations about the fund differed from that of Ms. Mallia and/or Ms. Nuble. For example, Ms. [redacted], Vocational Rehabilitation & Employment Officer, said, "It's not voluntary because I don't have the option to contribute or not to contribute." Ms. [redacted] said the RO recently went to voluntary participation, and she elected not to participate. However, she said it was uncomfortable sitting in meetings with colleagues who continue to participate in the fund; particularly when they discuss the low balance available to fund activities. Ms. [redacted], Assistant Vocational Rehabilitation & Employment Officer, said, "I felt it was something that I had to do." However, she said she remained unaware of any consequence for not paying towards the fund, and was comfortable paying towards it. Mr. [redacted], Service Center Manager, said he never felt forced or compelled to participate; however, he said, "I felt that if I wasn't a part of it [fund], it would have been, you know, here is the new guy going against what we've been doing all along." Ms. [redacted], Training Manager, said, "I don't know that I have an option to say I don't want to partake in it."

Division Chief Fund expenditure records reflected that as of February 2016, the balance stood at almost $440 with an annual income of $1,560. Expenditure records identified the 13 employees in the Office of the Director who contributed. The following are examples of expenses the Division Chief Fund covered:

- Supervisor Training - $31 (cookies, muffins and water)
- Army Birthday - $53 (cake)
- CFC Kick Off - $54 (stamps and envelopes)
- Employee Appreciation - $123 (ice cream, cookies)
- EEO Training - $160 (pizza, salad and drinks)
- Donna Mallia's 50th Birthday- $157 (cake, party supplies, lunch from Pano's)
- Lillie Nuble's 50th Birthday Celebration - $182 (catered lunch)

Use of Government Property

Federal Regulations state that an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

In 2012, the Chief of Staff issued a memorandum that addressed promotional item (SWAG) purchases, and stated it was not permissible to purchase promotional items (mementos, gifts, keepsakes, reminders, prize items, VA “logo” or “message” items) for distribution to VA and other Federal employees. Promotional items previously purchased and on-hand may be distributed until exhausted, but should not be replenished. VA Memorandum – Spending for Food or Refreshments and Gifts or Mementos (May 2012).

Ms. Mallia said SWAG items were purchased many years ago, when such purchases were authorized for employee appreciation, and purchased with appropriated funds per regulation. Ms. [redacted] said the last SWAG was purchased in 2011. Ms. [redacted], Research Education Coordinator, VA Western New York Healthcare System (former Buffalo RO employee), said she first noticed the SWAG in April 2011, and the last time she saw it was just before her departure in January 2016. She said, “We had boxes and boxes and boxes of stuff [SWAG] that, I don’t know why, we were holding onto and weren’t allowed to give out for anything.” She said the SWAG items remained stored in cabinets located within the 8th floor HR conference room.

On May 18, 2016, Ms. Mallia wrote to the Regional Counsel and explained that the Buffalo RO used non-payroll funds to purchase promotional items (water bottles, t-shirts), prior to March 2012, to give employees. She said these items were purchased in accordance with VA’s Office of Finance established policy. She referenced a March 2012, VA’s Chief of Staff Memo that addressed promotional item purchases. She said the memo directed that no funds should be expended for promotional items intended for distribution to employees. She said the promotional items previously purchased and on-hand items may be distributed until exhausted, but should not be replenished. She said the Buffalo RO adhered to this memo and had not purchased any promotional items since March 2012. She planned to distribute these items as follows:

- Distribute the remaining VA promotional items to the 95 employees hired since March 2012. Each of the 95 employees will have the choice of one VA promotional item.

- Any VA promotional items remaining will be distributed to new hires.

On July 28, 2016, an Office of General Counsel (OGC) representative told Ms. Mallia it remained best to use the VA promotional items as informal recognition awards to recognize accomplishments of lesser scope that may otherwise go unrecognized. The OGC representative said the promotional items could also be used to commemorate retirements and length of service anniversaries. It was also mentioned that the items could be distributed to employees or participants at a particular event for the sole purpose of promoting the agency. Furthermore, the OGC representative advised that Ms. Mallia needed to be able to show that the use of the items directly advanced the agency's mission. Otherwise, the items could be considered merely personal gifts, and appropriated funds may not be used for personal gifts absent specific statutory authority. While investigating the SWAG issue, we also reviewed the RO's Wellness is Now (WIN) and Buffalo Bucks Incentives promotional programs. Based on the information we gathered, we did not find that there was a misuse of Government property.

WIN Program

Federal law states that the head of each agency may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees. 5 USC § 7901(a).

VA policy states that health promotion and disease prevention (employee wellness) are strongly encouraged. These services/programs encourage and enable employees to initiate and maintain healthy behavior changes. As resources are available, health promotion programs may include infrastructure, health risk appraisals, and personal wellness profiles. VA Directive 5019 (March 27, 2015).

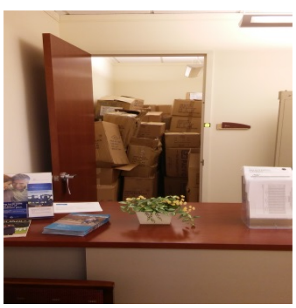
WIN was launched in September 2010, as a Department of Veterans Affairs sponsored program to help all VA employees improve their health. The program offered free personal assistance on the Intranet and through individual and/or group coaching sessions. Ms. [redacted] said she served as the Buffalo RO, WIN Program Coordinator, from August 2011 to January 2016. Ms. [redacted] said, "I kept getting emails, invitations to go on the monthly conference calls, and I asked her [[redacted] [redacted]] what it was, and she said, "Well, we haven't really done much with it, I just don't have time." Ms. Mallia said the VA WIN program was originally established by VA as a contract with Federal Occupational Health (FOH). The FOH website reflected that the VA WIN program provided through a contract was no longer available. Ms. [redacted] believed the WIN program discontinued in either September 2013 or 2014 because the national program did not have a contract, but the Buffalo office was allowed to continue with their own program. She said the WIN program at the national level was reestablished sometime in either 2014 or 2015.

In a February 3, 2015 email, Subject: WIN Incentive Items at the VA Depot, Ms. [redacted] told the former HR liaison and Ms. [redacted], "Do NOT order anymore!!! We have no place to put it." Ms. Mallia said that sometime in 2015 she learned that an HR Assistant contacted someone in the WIN program to obtain an inordinate amount of items. Someone from the program apparently notified the coordinators that the program was going to be discontinued and advised facilities about available WIN items. Ms. [redacted] admitted she ordered a large amount of WIN items in late 2014. Ms. Mallia said at one point, the number of WIN items exceeded the number of employees, and the facility did not get their WIN program off the ground. She said, "We've had some turnover as far as the individuals that were responsible for that, so we really don't have a codified wellness program in the Director's office." She said the facility is trying to go through the items and give them to employees, but without an identified wellness program, it's really haphazard. She said, "I take full responsibility for not having a wellness program." Ms. Mallia said because of the large quantity of WIN items, the facility planned to have its own program to distribute the items to employees. She said in March 2015, the facility appointed a member of her staff as the wellness coordinator. However, she said the staff member left the Office of the Director in January 2016, and the WIN program lost momentum. She said the facility remained in the process to recruit a second HR representative, and the WIN program would be one of the individual's responsibilities.

Examples of WIN incentive items:

- 50 Steel Water Canisters
- 75 Yoga Mat/Carrying Cases
- 100 Lunch Coolers
- 176 Cookbooks
- 200 Exercise Resistance Bands

Below are photos of the volume of WIN items stored in a *"shelter in place"* closet.



On May 18, 2016, Ms. Mallia explained to Regional Counsel that when she discovered the volume of WIN items requested, she tried to contact the WIN program to return the items; however, she was unable to because the program was discontinued. She said she planned to distribute the items as follows:

- Partner with the Wellness Program Coordinator at VA Western New York Healthcare System to distribute the WIN items to both the Buffalo RO and the Buffalo VAMC employees.

- Have the recently selected HR Specialist, who reports to duty on May 31, 2016, take on the duties to develop the Buffalo RO's employee health and wellness program.

On July 28, 2016, an OGC representative told Ms. Mallia that her proposed plan looked good and suggested that her Wellness Program Coordinator ensure that the items were being distributed per the program.

Buffalo Bucks Incentives

It is VA policy to recognize employees who make noteworthy contributions in support of VA's mission and organizational goals. By regulation, VA is allowed to recognize an employee who by their superior accomplishment or other personal effort contributes to the efficiency, economy, or improvement of government. Public presentation of items such as plaques, certificates, and letters of appreciation are motivational to employees and contribute to employee morale and engagement. For additional information, see VA Memorandum Honor and Non-Monetary Award Programs (May 2014).

An award is a generic reference to the entire range of rewards available to recognize an employee under VA's Employee Recognition and Awards Program including monetary, non-monetary, honorary, and time-off awards. For additional information, see VA Financial Policies and Procedures – Awards, Ceremonies, Food or Refreshments, Gifts or Mementos (December 2013).

Non-monetary awards are becoming one of the more popular types of incentives used in VA. This is because of the nominal cost (generally up to $50) of such items in an era of declining budgets and limits on spending, the ability to have such items on hand to be used to immediately recognize an employee or team efforts, and the variety of items that can be used that provide a unique and different incentive for employees. Types of non-monetary awards that are available using appropriated funds range from a certificate of appreciation, to a gift certificate, to an item the employee can wear such as a T-shirt, jacket or scarf, to an appropriate desk item such as a calculator, pen, clock, or radio. These items can only be procured when used in connection with a formally established award program or to be used in connection with recognition. VA Handbook 5017/12 (December 2013).

A November 8, 2013, Memorandum of Understanding (MOU) signed by Ms. Nuble and a union representative, addressed the implementation of a non-monetary employee recognition program known as "Buffalo Bucks." The MOU defined the program as a non-monetary way for employees and managers to recognize and be recognized for their hard work and dedication. The Buffalo Bucks non-monetary awards consisted of items such as umbrellas, Maglite flashlights, stadium blankets, long sleeve t-shirts, water bottles, travel mugs, candy jars, baseball caps, luggage tags, and paper weights. Ms. Mallia said the source of funds for the program came from the payroll awards funding. In a February 12, 2016 email conversation between Ms. [redacted] and a VA employee, Ms. [redacted] asked, "Hello, do you happen to know where I can find how much you spent for buffalo bucks?" Ms. [redacted] said, "I think it was close to 20K if I remember."

We contacted OGC and asked them to review the Buffalo Bucks Incentive program and determine if the program operated within the "parameters or spirit" of VA rules and/or policies. OGC said after a thorough review of the program, they concluded that while these types of award programs do not conflict with VA's Employee Recognition and Awards policy (Directive/Handbook 5017), OGC believed that the merchandise portions of these programs conflict with VA appropriations restrictions as set forth in a Chief of Staff memo dated March 19, 2012, and Executive Order 13589 that prohibits VA from purchasing gifts, mementos or other items that could be considered "swag" for Government employees.

OGC also believed the merchandise portion of these programs was contrary to several Government Accountability Office (GAO) opinions that prohibit the use of appropriated funds for the purchase of personal items, such as clothing, unless those items are essential to the achievement of an unauthorized purchase. While the purchase of the merchandise portion of the program may not technically violate any statutory authority, because the purchase of non-monetary awards was permissible under the law, OGC stated that they recommended the Buffalo RO immediately end purchasing Buffalo Bucks merchandise, and amend the respective award program to phase out the awarding of these items.

Preferential Treatment

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. For additional information, see 5 CFR §2635.101(b)(8) and (14).

Recruitment records reflected on January 29, 2014, Veterans Benefits Administration issued job vacancy announcement 14-C392-VBA-02-1039778 for one Administrative Officer (Chief, Support Services Division) position. The announcement closed on February 12, 2014, after which records identified the total number of eligibles certified as five. Recruitment records identified Ms. Nuble as the selecting official and Ms. Mallia as the appointing official. The recruitment records reflected that Ms. Nuble and Ms. [redacted], Assistant Education Officer, interviewed each of the five candidates, and Ms. [redacted] was selected and appointed to the position on August 24, 2014. We found no evidence that Ms. Mallia gave preference to Ms. [redacted] or attempted to interfere or influence the hiring effort.

Improper Acceptance of a Gift

Federal law states an employee may not accept a gift from an employee receiving less pay than himself. Each supervising ethics office is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement. 5 USC § 7351.

Standards of Ethical Conduct for Employees of the Executive Branch states on an occasional basis, including any occasion on which gifts are traditionally given or exchanged, items, *other than cash*, with an aggregate market value of $10 or less per occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay. 5 CFR § 2635.304 (a)(b).

Ms. Mallia said Ms. [redacted], Ms. Nuble, and Ms. [redacted] attended her wedding in 2013, and each provided a monetary gift. Based on testimony, each individual confirmed they gave Ms. Mallia a cash gift. Based on a Buffalo RO organization chart, these individuals were subordinate to Ms. Mallia. Ms. Nuble also confirmed that her subordinate, Ms. [redacted], attended her wedding and provided a monetary gift of about $50.

On May 17, 2016, Mr. [redacted] [redacted], Staff Attorney/Deputy Ethics Official, Ethics Specialty Team, VA Office of the General Counsel, responded to Ms. Mallia's inquiry as to whether the cash wedding gifts she received from her subordinates posed any type of ethical concern. Mr. [redacted] responded:

> Cash is allowed to be accepted as a gift from a subordinate for special, infrequent occasions such as weddings, for the reasons below: A supervising VA employee, such as a Director, may accept gifts appropriate to the occasion on special, infrequent occasions of personal significance such as a marriage. 5 CFR 2635.304(b). The regulation is silent as to cash. Because other exceptions specifically prohibit cash (such as the occasional basis exception, 5 CFR 2635.304(a)), the Office of General Counsel interprets the special, infrequent occasions exception to permit cash gifts. Another reason is that the special, infrequent occasions exception is also used for illness or death of a loved one where the recipient may need the cash to help pay for the treatment or funeral. Therefore, the Director may accept cash gifts from her subordinates if appropriate to the occasion. We see no Ethic issues with the Director's cash gifts in these circumstances.

Conclusion

We substantiated that Ms. Mallia allowed for the collection of funds. Although we found no written evidence that she forced anyone to pay towards the Division Chief Fund, some of the contributors felt that was not the case. We suggest that Ms. Mallia confer with the Offices of Human Resources and OGC to determine the fund's practicality and if appropriate to continue. We also suggest that VA OGC offer training to ensure there are no violations of the ethics rules concerning the collection of funds for gifts. The collection of funds was a relatively low financial value and there was no evidence funds were inappropriately used for personal gain.

We did not substantiate that Ms. Mallia misused Government property by maintaining a cache of VA SWAG items. These items were purchased through legitimate and approved means, and the new mechanisms for distributing the SWAG items received approval from OGC. Ms. Mallia acknowledged the Buffalo RO WIN program has been haphazardly managed. Consequently, Ms. Mallia recently submitted a plan of action that was acceptable to her Regional Counsel, so we consider this allegation closed. In regard to the Buffalo Bucks incentives program, OGC stated that the Buffalo RO should end the purchase of the Buffalo Bucks merchandise and amend the respective award program to phase out the awarding of these items. We therefore consider this allegation closed. We found no evidence that Ms. Mallia gave preference to Ms. [redacted] or attempted to interfere with or influence the hiring effort. Lastly, we accept OGC's conclusion that the Director may accept cash gifts from subordinates for special infrequent occasions. Therefore, we are closing these allegations.

JEFFREY G. HUGHES
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