



# Department of Veterans Affairs Office of Inspector General

---

## Administrative Investigation Improper Locality Pay Office of the General Counsel Phoenix, Arizona



**DEPARTMENT OF VETERANS AFFAIRS**  
**Office of Inspector General**  
**Washington, DC 20420**

**TO:** VA General Counsel

**SUBJECT:** Administrative Investigation – Improper Locality Pay, Office of the General Counsel, Pacific District South, Phoenix, Arizona (2017-02375-IQ-0100)

### **Summary**

On March 2, 2017, the VA Office of Inspector General Administrative Investigations Division received allegations that Ms. [REDACTED], former (resigned) Deputy Counsel, Office of the General Counsel (OGC), improperly received the higher locality pay for Los Angeles, CA, while she lived and worked in Phoenix, AZ. We found that Ms. [REDACTED] received about \$6,500 in Los Angeles locality pay for 6 months while residing and reporting for duty in Phoenix.

### **Introduction**

To assess the allegations, we interviewed Ms. [REDACTED] (GS-15); Mr. Mark Romaneski (SES), Chief Counsel of OGC's Pacific District South; Mr. Michael Hogan (SES), Executive Director, OGC Management, Planning and Analysis; and Ms. [REDACTED] (GS-14), Supervisory Human Resources (HR) Specialist. We also reviewed Ms. [REDACTED]' personnel and travel records and relevant Federal laws and regulations and VA policies.

### **Background:**

In March 2016, OGC initiated an internal hiring effort for the position of Deputy Chief Counsel, Pacific District South, located in Los Angeles. Ms. [REDACTED] was one of four candidates determined to be minimally qualified for the position, and in a May 26, 2016, memorandum, Mr. Romaneski recommended Ms. [REDACTED] for the position. Personnel records reflected that she was promoted to the GS-15 position effective July 10, 2016. Ms. [REDACTED] told us that she was neither offered nor did she accept the promotion until September 2016, but she began receiving the higher GS-15 pay, to include the higher Los Angeles locality pay, on August 11, 2016.

## Findings:

### Ms. [REDACTED] Received Improper Locality Pay

Section 5304 of Title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States. Federal regulations state that an agency determines an employee's locality rate by determining the employee's official worksite and that the official worksite is the location of an employee's position of record where the employee regularly performs their duties. The regulation also provides, if the employee's work involves recurring travel or the employee's work location varies on a recurring basis, the official worksite is the location where the work activities of the employee's position of record are based, as determined by the employing agency, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work. Further, an agency must document an employee's official worksite on an employee's Notification of Personnel Action (Standard Form 50 or equivalent). 5 CFR § 531.605.

Federal regulations state that when an employee's official worksite is changed to a different locality pay area, the employee's entitlement to the locality rate for the new locality pay area begins on the effective date of the change in official worksite. 5 CFR § 531.609. However, the General Services Board of Contract Appeals (predecessor of the Civilian Board of Contract Appeals), has held, "the papers processed by an agency and an agency's statements [are] not conclusive proof of the location of an employee's duty station." In the Matter of Kenneth E. Billings, 00-2 BCA P 30961GSBCA No. 15264-TRAV (May 30, 2000); citing, John P. DeLeo, GSBCA 14042-TRAV, 97-2 BCA (July 29, 1997). The location of an employee's permanent duty station "is a question of fact and is determined by where an employee expects and is expected to spend the greater part of his time." *Id.*

VA policy states that for permanent, long-term telework arrangements (virtual employees), the official worksite will be reassigned to the telework location. The employee whose official worksite is reassigned will receive locality pay for the telework worksite, not the original worksite. *Travel Administration, Volume XIV, Chapter 1, Section 0102, Paragraph C, 3(a)*, (May 2013).

Through error, HR promoted Ms. [REDACTED] to the GS-15 position effective July 10, 2016, and she began receiving GS-15 pay as of August 2016, which reflect the difference in being officially in the position and receiving her first pay check, even though in error. GSA payroll calendar reflected that pay period 15 began on July 10, 2016. Although the physical location for the position was in Los Angeles, she continued to reside and report for duty in Phoenix from July to December 2016. However, personnel records reflected that her official duty station was changed to Los Angeles at the time of the promotion, and during this time, she was not in a virtual or telework status. For 2016, Los Angeles

had an annual locality pay that was \$12,945 more than Phoenix, so between those dates, she received about \$6,500 in locality pay for which she was not entitled.

In January 2017, Ms. [REDACTED] executed the Permanent Change of Station (PCS) paperwork to relocate to Los Angeles, effective January 9, 2017. Personnel records, at that time, correctly reflected her duty station as Los Angeles, and she received the correct locality pay. Travel records reflected that her last official VA travel from Phoenix to Los Angeles was December 11–15, 2016.

Ms. [REDACTED] told us that the Standard Form (SF) 50 promoting her to GS-15 was “erroneous.” She said, “When I noticed that the SF-50 was put in my eOPF [electronic official personnel folder], I immediately contacted my supervisor, Mark Romaneski.” Ms. [REDACTED] said, per Mr. Romaneski’s instructions, she also contacted Mr. Hogan to tell him that she was promoted without her knowledge and that she did not receive, nor did she accept, an official job offer for the GS-15 position at the time she was promoted.

A U.S. Office of Personnel Management (OPM) Senior HR Specialist told us:

Standard practice is [with] most agencies is that when an employee applies and is selected for a promotion the promotion action is not processed until the employee has accepted the offer for the new position...It is not normal to process a competitive promotion when the employee has not formally accepted an offer of promotion...Generally, if a promotion also includes a physical move management and the employee negotiate a new start date for a position and effect the promotion so it coincides with the employee reporting for duty to the new duty location.

Ms. [REDACTED] told us that she was informally detailed into the Deputy Chief Counsel position in June or July of 2016 when the former Deputy Chief Counsel retired. She said that Mr. Romaneski instructed her to travel to Los Angeles as often as she could to “manage the office in southern California.” Mr. Hogan and Mr. Romaneski told us that Ms. [REDACTED] was already selected for the position, but while they waited for HR to finalize the paperwork, they informally detailed her into the position, once it was vacated. They said the Los Angeles office needed a supervisor, and while detailed, Ms. [REDACTED] performed the duties of the position.

Personnel records reflected that Ms. [REDACTED] did not receive a tentative Offer Letter for the GS-15 position until September 6, 2016. At the time she received the letter, she was already performing the duties and receiving the pay for the position. Ms. [REDACTED] told us that Mr. Hogan told her that she could decline the promotion, which would likely result in a debt to the Government, since she improperly received GS-15 pay, or she could accept the position and continue her role as the Deputy Chief Counsel. Ms. [REDACTED] officially accepted the promotion on September 16, 2016.

Given the evidence reflecting that Ms. [REDACTED] permanent duty station (PDS) between July 2016 and December 2016, was Phoenix, the OIG makes no findings concerning her travel to Los Angeles during this period. However, as explained below, should the Department find that Ms. [REDACTED] PDS was, in fact, Los Angeles, it will need to address the \$10,267.09 that she received for travel between her home and her PDS during this period.

### *Travel to Los Angeles*

Federal travel regulations define the employee's official station, or duty station, as an area that includes the location where the employee regularly performs his or her duties. It states that official travel is travel under an official travel authorization from an employee's official station or other authorized point of departure. 41 CFR § 300-3.1.

In DeLeo, GSBCA specifically held that a Government employee is not eligible for reimbursement for travel between her home and her PDS.

Personnel records reflected Los Angeles as Ms. [REDACTED] duty station, effective July 10, 2016, but travel records and testimony reflected that she continued to reside and report for duty in Phoenix. From July to December 2016, Ms. [REDACTED] traveled from her residence in Phoenix to her duty station in Los Angeles on official travel nine times. The total cost for these nine trips was \$10,267.09.

After Ms. [REDACTED] notified Mr. Romaneski and Mr. Hogan that she was promoted to the GS-15 position without her knowledge, Mr. Romaneski asked her to continue to travel to Los Angeles as often as possible to manage the office at that location. Ms. [REDACTED] told us, "As all of these things were transpiring, Mark Romaneski was still asking me to go to California as often as I could to manage the office in [the former Deputy Chief Counsel's] absence." Mr. Hogan and Mr. Romaneski confirmed that Ms. [REDACTED] was needed at the Los Angeles office and was asked to fill in for the retired Deputy Chief Counsel on an informal detail.

Mr. Romaneski told us that, in the summer of 2016, he spoke to Mr. Hogan about Ms. [REDACTED] travel to Los Angeles. He and Mr. Hogan agreed, "It was important to send her out there and that if, I ran low on my travel budget as a result of that, he would plus it up." Mr. Hogan said that Ms. [REDACTED] was needed on site at Los Angeles, and he "was supportive of him [Mark Romaneski] sending [Ms. [REDACTED]] since she was our person that we were, uh, processing for promotion and appointment to the position."

Ms. [REDACTED], Mr. Romaneski, and Mr. Hogan all told us that they were not aware Ms. [REDACTED] duty station was incorrectly listed as Los Angeles. Mr. Hogan said, "My understanding, when you're promoted to a position in a different geographic location, you're promoted in place where you are, and then you're moved to the locality pay of the new area." Ms. [REDACTED] told us that she did not notice the improper locality pay, because she was focused on the improper promotion into the GS-15 position.

Mr. Hogan told us that Ms. [REDACTED] resigned from her VA position effective April 29, 2017. He said that in her exit interview, she listed being dissatisfied with VA's Central Office HR Service (COHRS) as one of her reasons for resigning. She, as well as others interviewed, believed COHRS was responsible for improperly promoting Ms. [REDACTED] without her knowledge and for assigning her the improper duty station. We found that the COHRS employee who processed this improper action is no longer with VA. Mr. Hogan told us that Ms. [REDACTED] was "the victim. She did nothing to initiate any of this. She didn't mislead anybody. She didn't falsely fill out forms...she did what was asked of her to meet our need. And she's almost certainly going to wind up with some debt to the Government as a result of doing what was asked of her." Mr. Hogan further advised that he would support any effort on Ms. [REDACTED] part to seek a waiver of repayment, as this was not her fault.

## Conclusion

Ms. [REDACTED] was promoted to GS-15, without her knowledge, effective July 10, 2016, with a new duty station of Los Angeles. She first noticed an increase in her pay in August 2016. When Ms. [REDACTED] became aware of the promotion, she immediately contacted her supervisor, Mr. Romaneski, to make him aware of the situation. Although she was informally detailed into the position and performing the duties associated with it, she was not officially offered the position until September 6, 2016, and she did not accept the offer until September 16, 2016. Ms. [REDACTED], Mr. Romaneski, nor Mr. Hogan were aware that Ms. [REDACTED] duty station was changed in July 2016. Between July 2016 and January 2017, Ms. [REDACTED] true duty station was Phoenix, as that was the location where she actually performed her work. Personnel records reflected that during this period, she was paid about \$6,500 in excess Los Angeles locality pay for which she was not entitled. As Ms. [REDACTED] official work site between July 2016 and January 2017 was actually Phoenix, her travel to Los Angeles during this period was reimbursable.

Mr. Hogan recognized that Ms. [REDACTED] would need to reimburse VA, and he said OGC would support Ms. [REDACTED] in asking that the debt be waived, as none of the debt incurred was the result of any wrongdoing on her part.

The OIG notes that should the Department find that Ms. [REDACTED] PDS between July 2016 and January 2017 was Los Angeles, it will need to address the expenditure of \$10,267.09 for Ms. [REDACTED] travel between her home in Phoenix, AZ, and her PDS in Los Angeles for this period.

**Recommendation 1.** We recommend that the General Counsel determine whether Ms. [REDACTED] official duty station from July 2016 to December 2016 was Phoenix or Los Angeles.

**Recommendation 2.** We recommend that if the General Counsel determines Ms. [REDACTED] official duty station from July 2016 to December 2016 was Phoenix, determine the total

amount of locality pay improperly paid to her, and issue her a bill of collection in that amount.

### **Comments**

VA General Counsel was responsive, and his comments are in Appendix A. We will follow up to ensure the recommendations are fully implemented.



**JEFFREY G. HUGHES**  
**Assistant Inspector General for**  
**Investigations**

## General Counsel Comments

**Department of  
Veterans Affairs**

**Memorandum**

**Date:** October 13, 2017

**From:** General Counsel (026)

**Subject:** **Administrative Investigation - Improper Locality Pay, Office of General Counsel, Pacific District South, Phoenix, Arizona; 2017-02375-IQ-0100**

**To:** Inspector General (50)

1. Your letter dated September 12, 2017, accompanied a draft report on the subject investigation and invited comments about it including its two recommendations.

2. Before I provide my comments, I must emphasize the Office of General Counsel (OGC), and the Department, lost an outstanding employee -who is also a Veteran - due to the VA Central Office Human Resources Service (COHRS) committing errors and mismanaging the promotion and relocation which is at issue in this investigation. The employee, who did nothing wrong, became frustrated and discouraged about how the promotion was handled, and that it led to this investigation and its attendant stigma of wrongdoing, and resigned from her position in April 2017.

3. As noted in the draft report, the COHRS employee erroneously processed the promotion without first making an offer to the employee, unilaterally made the promotion retroactive, and changed the duty station to Los Angeles outside of the normal PCS process.

4. OGC provides the following comments:



Recommendation 1: We recommend that the General Counsel determine whether Ms. [REDACTED] official duty station from July 2016 to December 2016 was Phoenix or Los Angeles.

OGC Response: After consulting with the Permanent Change of Station (PCS) office in Austin, I can confirm the employee's official duty station from July to December 2016 was Phoenix, Arizona.

Recommendation 2: We recommend that if the General Counsel determines Ms. [REDACTED] official duty station from July 2016 to December 2016 was Phoenix, determine the total amount of locality pay improperly paid to her, and issue her a bill of collection in that amount.

OGC Response: OGC will notify its new human resources servicing office, the VHA Service Center, about the Los Angeles locality pay overpayment. This will generate the computation of the overpayment for the bill of collection.

5. I agree with Mr. Hogan's statement in the draft report when he offered support for a waiver of any debt incurred by the employee. While OGC will take the steps necessary to generate the total overpayment amount and a bill of collection for the Los Angeles locality pay the employee received from July to December 2016, it strikes me as manifestly unfair that neither COHRS nor its employee who caused these problems will be held accountable for them, and for the loss of a highly qualified Veteran employee.



James M. Byrne

cc: Director, OIG Administrative Investigations Division

## OIG Contact and Staff Acknowledgments

---

OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Linda Fournier, Director Michael Smith, Administrative Investigator Christopher Dong, Attorney Advisor

---

## **Report Distribution**

### **VA Distribution**

Office of the Secretary  
Veterans Health Administration  
Veterans Benefits Administration  
National Cemetery Administration  
Assistant Secretaries  
Office of General Counsel

### **Non-VA Distribution**

House Committee on Veterans' Affairs  
House Appropriations Subcommittee on Military Construction, Veterans Affairs, and  
Related Agencies  
House Committee on Oversight and Government Reform  
Senate Committee on Veterans' Affairs  
Senate Appropriations Subcommittee on Military Construction, Veterans Affairs, and  
Related Agencies  
Senate Committee on Homeland Security and Governmental Affairs  
National Veterans Service Organizations  
Government Accountability Office  
Office of Management and Budget

**To Report Suspected Wrongdoing in VA Programs and Operations:**

**Telephone: 1-800-488-8244**

**Hotline Information: [www.va.gov/oig/hotline](http://www.va.gov/oig/hotline)**