



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Investigations

VETERANS HEALTH ADMINISTRATION

Misuse of Time and
Resources within the
Veterans Engineering
Resource Center in
Indianapolis, Indiana

ADMINISTRATIVE
INVESTIGATION

REPORT #17-04156-234

AUGUST 8, 2018



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Summary

The VA Office of Inspector General (OIG) Administrative Investigations Division received an allegation that Employee 1¹ (GS-13), Supervisory Industrial Engineer, misused time and equipment to start a privately owned business and solicited his subordinate staff to join this business. The OIG found that Employee 1, who worked as a supervisor within the Veterans Health Administration (VHA) Office of Strategic Integration's Veterans Engineering Resource Center (VERC),² misused his VA-assigned email account beginning on November 15, 2016, in communications with his subordinate staff. The email criticized the recent restructuring of the VERC and proposed that they, as a team, use their experience with Integrated Systems Deployment to create a company that offered those services to outside organizations. Employee 1 created [Company 1], Inc. ([Company 1]) in December 2016 in the midst of discussions of potential layoffs within the VERC. He assumed the president position, with Employee 2 (GS-14) as director, and Employee 3 (GS-13) as treasurer. The OIG found that they misused VA resources, including employee time, email, and Lync instant messaging to conduct [Company 1] business during and after their official duty hours. Further, the OIG found that [Company 1], at one point, consisted of up to 43 VA employees. Most of those employees have since left VA as their term appointments ended.³ Term appointments for many others were scheduled to end without extension. The OIG also found that Employee 1 used his VA email on several occasions to manage multiple rental properties that he owned.

Introduction and Background

On June 27, 2017, the OIG received an allegation that Employee 1, a Supervisory Industrial Engineer, misused VA time and equipment to start a privately owned business and solicited his subordinate staff to join this business. To assess this allegation the OIG interviewed Employee 1, Employee 2, Employee 3 and other VERC employees. The OIG reviewed VA personnel and email records; [Company 1] business records; applicable federal laws and regulations; and VA policy.

¹ The subjects were de-identified in this Report after balancing privacy and public interests.

² The VERC applies engineering and improvement methods to healthcare problems to help the VA efficiently and effectively provide high-quality care to veterans. It deploys standardized business processes throughout VHA facilities. The VERC has centers located throughout the country. Within the Indianapolis VERC is the VA Center for Applied Systems Engineering (VA-CASE).

³ A term appointment is an appointment to a position that will last more than one year but not more than four years and that is of a project nature where the job will terminate upon completion of the project. (5 CFR part 316, subpart C). Definition on page 35-15 of "Chapter 35. Glossary of Terms Used in Processing Personnel Actions."

Employee 1

Employee 1 began his VA career in April 2013 as an Industrial Engineer for the VERC in Indianapolis on a term appointment not to exceed May 2014. While the position was located at the Indianapolis VA Medical Center, Employee 1 worked full time as a virtual employee from his home in another state. His term appointment was extended twice and in August 2015, he was converted to a career-conditional appointment, continuing in the role as the Associate Director of the Program Management Office (PMO) reporting to the Indianapolis VERC Director.

Employee 2

Employee 2 began her VA career in April 2015 as a Program Analyst for the VERC at the Indianapolis VA Medical Center on a term appointment not to exceed May 2016. Employee 2 worked full time as a virtual employee from her home in another state and reported directly to Employee 1. Her term was extended in January 2016, not to exceed February 2017, and extended again from February 2017 to February 2018. She was selected for a GS-14 Program Specialist position on November 12, 2017, and converted to a career-conditional appointment.

Employee 3

Employee 3 began her VA career in September 2003 as a Human Resources Specialist at the Indianapolis VA Medical Center. In May 2007, she was reassigned to the Tampa VA Medical Center as a Supervisory Human Resources Specialist, and in October 2008, she was reassigned back to the Indianapolis VA Medical Center as a Supervisory Human Resources Specialist. In October 2014, Employee 3 was assigned to her current position at the Indianapolis VERC as an Associate Director of Operations.

Relevant VA Policy and Legal Authority

Federal regulations, 5 CFR Part 2635, outline the standards for ethical conduct for employees of the Executive branch, which applies to the VA employees investigated for this report. These include an obligation to protect and conserve government property and resources, and to not use such property, or allow its use, for other than authorized purposes.⁴ “[A]n employee shall use official time in an honest effort to perform official duties.”⁵

Among the provisions governing the outside activities of employees, “an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee’s private gain or for the private gain of any person with whom he has employment or business relations or is otherwise affiliated in a nongovernmental capacity.”⁶ Regulations also state that an employee may not use the official time of another employee for anything other than official business.⁷

⁴ 5 CFR § 2635.704(a).

⁵ 5 CFR § 2635.705(a).

⁶ 5 CFR § 2635, Subpart H (2635.801–809).

⁷ 5 CFR § 2635.705(b).

VA policy similarly states that employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities.⁸ VA Directive 6001 also states that VA employees are permitted limited use of government office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the government. This limited personal use of government office equipment should take place during the employee's non-work time. This limited personal use exception, however, does not apply to use for purposes of conducting outside business activities, and such use is prohibited. Misuse or inappropriate use of government office equipment includes "[u]se for commercial purposes or in support of 'for profit' activities or in support of other outside employment or business activity (e.g., consulting for pay, sales or administration of business transactions, sale of goods or services)."⁹

Investigative Results and Recommendations

Finding 1: Employee 1, Employee 2, and Employee 3 Misused Time and Resources for a Privately Owned Business and to Solicit VA Employees to Join the Business

Failure to Seek and/or Follow Ethics Advice

Employee 1 stated that he did not seek advice from ethics officials before starting his business, although he was aware that Employee 2 and Employee 3 had done so. The OIG found that both Employee 2 and Employee 3 sought ethics advice from an Office of General Counsel (OGC) ethics official in mid-December 2016 and January of 2017, respectively, after formation of the company and participating in a number of weekly meetings.

The guidance given by the ethics official stated:

There is no general prohibition on outside employment or activities for federal employees. However, all employees are required to abide by the ethics laws and regulations, which I have excerpted below.

- a. You may not participate personally and substantially in a particular VA matter that will directly affect the financial interest of the outside entity. 18 U.S.C. § 208.
- b. You may not use your public office for the private gain of the outside entity. 5 C.F.R. § 2635.702.
- c. You may not, with or without compensation, represent the outside entity before any Federal agency. 18 U.S.C. §§ 203 and 205.
- d. You may not make unauthorized use of official time or Government property for your activities with the outside entity. 5 C.F.R. §§ 2635.704 and 705.

⁸ VA Handbook 5025, Part IV, Appendix A.

⁹ VA Directive 6001, Para. 2c(7).

e. You may not give the appearance that VA sanctions or endorses the outside entity or your activities with the outside entity. 5 C.F.R. § 2635.702(b) and (c).

f. You may not use or disclose trade secrets and confidential business information. 18 U.S.C. § 1905. You may not disclose or misuse any information that you acquired as part of your official duties and which is not generally available to the public. 5 C.F.R. § 2635.703.

OSI and VERC Merger with Fear of Layoffs

The congressionally appointed VA Commission on Care released a 2016 report with recommendations to better organize VHA and improve veterans' access to care, including the following:

[A] transformation office [must be established] that has appropriate expertise in business process reengineering and is fully funded to conduct this work. Existing offices with the requisite expertise, including the Office of Strategic Integration [OSI] and the Veterans Engineering Resource Center (VERC), should be rolled into the transformation office. This office would oversee transformation and incubate new initiatives with the goal of incorporating them into regular work of other program offices once the new initiative is established.

As a result, the OSI and VERC merger was announced in August 2016 under the leadership of the Executive Director of OSI.

Employee 1 told the OIG that immediately after OSI took the lead of the merged group in August 2016, talk of layoffs began at monthly meetings. He said that they were repeatedly told that since most of the employees of the VERC were term employees, there should “be no expectation of jobs at the end of their terms.” According to another VERC employee, the OSI Executive Director said that the VERC was going to suffer “significant layoffs” and that term employees “should not have an understanding of any type of continued employment and that terminations were imminent.”

Employee 1 said that after the October monthly town hall, he started hosting calls with his PMO team so that they could vent their frustrations about the potential layoffs. After a town hall on November 15, 2016, Employee 1 said that his team expressed anger and frustration at the uncertainty arising from the merger. In response, on November 15, 2016, he sent a lengthy email at 10:58 p.m. from his VA email account to a number of VA employees referring to the addressees as the “Dream Team.” He referred to this email as his “Midnight Missive.” Employee 1 sent the email with “Do Not Forward” restrictions on it, which is a feature of Microsoft Outlook that restricted the recipients' ability to forward, print, or copy the content of the message. The subject of the email also read, “Please read. DO NOT FORWARD!!!” It was addressed to 41 VERC employees at their VA email addresses, and expressed both his frustration with management and his desire to keep the team together. He proposed the team work together to start a new company.

Formation of [Company 1], Inc.

Because of Employee 1's November 15 email, he and about 16 other VERC employees began discussing future business development ideas. A November 17, 2016, conversation using VA email started with Employee 1 saying to a term employee, "We have a brainstorming call early next week with about 16 of my staff." The term employee responded, "Awesome! My day is wide open too. I [am] happy to brain storm with the Dream Team. I will send out an invite shortly. Feel free to modify it."

Another email Employee 1 sent from his VA email in reply to a subordinate said, "Game on. Be aware. Not everyone on the team got the email. [Employee 1] will share with you the list." On November 18, 2016, Employee 3 sent an email suggesting that they use personal email and correspond about the business after tour of duty hours. However, the OIG found numerous emails and instant messages dated November 21, 2016, between Employee 1, Employee 2, Employee 3, and other VERC employees using their government systems to begin the planning of their startup business.

On December 6, 2016, during official duty hours and using VA email, a VERC employee sent Employee 1 an email describing the process of registering the business and applying for an Employer Identification Number with the IRS. The email also addressed the need to set up a website and suggested a name. On December 8, 2016, Employee 1 consulted with a firm providing registered agent services during his duty hours and using VA email. On December 14, 2016, Employee 1 filed as a domestic corporation, under the name of [Company 1], Inc. He engaged a registered agent and filed in the State of Nevada for tax purposes. He listed himself as the president, Employee 2 as director, and Employee 3 as treasurer. Each owned 26 percent of the company, with the remainder reserved for future investors and employees. Evidence reflected [Company 1] had up to 43 "Teammates" who were also OSI/VERC employees.

Employee 1 and the rest of the [Company 1] team generally held weekly meetings at 6:00 p.m. eastern time, referred to as "[Company 1] weekly tribe calls." When asked how they accounted for the time of employees on the west coast, since the calls were during their official VA time, Employee 3 said she was not sure and Employee 1 said that at almost every weekly call, he reiterated that they were not to conduct [Company 1] business while on VA time.

On December 16, 2016, an email sent to Employee 1 by another VA employee and [Company 1] teammate with the subject "FW: [EXTERNAL] here is another one (partner?)" included a link to a government contract solicitation. When asked if [Company 1] ever bid on a government contract, Employee 1 said that this was the initial intent "but the ethics official said 'you can't do that'." After being told that [Company 1] would be unable to seek government contracts, he said thereafter the group talked about pursuing corporate opportunities.

The [Company 1] team started planning a February 24–27, 2017, face-to-face meeting in Denver. While the OIG was told that attendees paid their own way and took annual leave, if necessary, OIG investigators found that some of the planning took place using government email and during official duty hours. VA email was also used during duty hours to contact [Company 1] counsel and an outside consultant who was assisting with business development ideals. Employee 1 said

that after OSI's timeline for layoffs expanded, employees perceived pursuing [Company 1] as an employment option as less necessary. In June 2017, Employee 2 left [Company 1] and others followed.

In an OIG interview with Employee 3, she told investigators that after Employee 2 left, the company completely disbanded and Employee 1 confirmed that he "shut it down with the IRS." According to testimony of Employee 1 and Employee 3, and consistent with tax records they provided, [Company 1] never procured any contracts or engagements and never generated any revenue or income.

When asked how often he worked on [Company 1] matters during his official workday, Employee 1 asserted that he took phone calls during lunch hours. However, the electronic communications and calendar entries reflected that he worked on [Company 1] matters during his official workday and that other employees in the organization did as well.

Misuse of Time and Government Resources

The OIG found that Employee 1, Employee 2, and Employee 3 used government equipment and/or official time to work on [Company 1] business, contrary to the guidance in the Ethics Opinion, which specifically stated, "You may not make unauthorized use of official time or government property for your activities with the outside entity." 5 C.F.R. §§ 2635.704 and 705. Their use of government office equipment, including information technology, also violated VA Directive 6001, Paragraph 2c(7). Further, they solicited the involvement of other VA employees.

Misuse of Official Position for Private Gain

In addition, marketing materials prepared and shared with teammates via the VA email system contained statements about the accomplishments of the "[Company 1] team" that could lead a reader to conclude inaccurately that [Company 1] provided services to VA, when instead the services were provided by these individuals while in their capacity as VA employees. An email dated May 18, 2017, Subject: Team Slide Deck, contained a [Company 1] PowerPoint presentation. The attached presentation was titled, "Crossover Health Intro," and used previous VERC PMO accomplishments to promote the [Company 1] team's successes.

This [Company 1] presentation stated,

Members of the [Company 1] team were charged with executing the SECVA's 1 priority...Our team was asked to assist with the 2 priority of the Secretary of the VA: Eliminating the Disability Claims Backlog. We continued our excellence by helping improve the Secretary of the VA's 4 priority, hiring and onboarding, to bring in top-notch talent to serve our nation's Veterans.

When asked about the information in the [Company 1] presentation, Employee 1 said, "What I can say about the successes, and because we wanted to be very, very clear about this, we were very clear that [Company 1] did not do these things. What we tried to say was the people who make up [Company 1] had achieved these things in, in their careers."

However, while this information purported to demonstrate the successes of the VERC team, it was not presented in that way and could easily be interpreted to mean that the work was

performed by [Company 1], rather than VA employees. Employee 1, Employee 2, and Employee 3 told OIG investigators that this PowerPoint presentation was never presented to any potential clients.

In addition, Employee 1 reached out to a former VA senior official for a Letter of Endorsement for [Company 1]. VERC employees drafted the letter, and Employee 1 sent it to the former VA senior official to sign, which he did.¹⁰ As this excerpt demonstrates, this endorsement letter also gave the impression that the [Company 1] team provided services to VA:

Thanks to the national and local systems of support developed by the [Company 1] team, MyVA Access resulted in our achievement of same day access to care for Veterans at more than 150 VA Medical Centers across the nation – all in less than one-year's time. This was a critical high-priority mission for the VA, and the [Company 1] team squarely met the challenge. They demonstrated their ability to partner with stakeholders by utilizing a human-centered approach, standardizing products and services, and scaling those innovative standards across the nation's largest healthcare system. Today, VA is growing an organizational culture that focuses on the consistent delivery of value, elimination of waste, and the resolution of bottlenecks that hinder consistent delivery of high quality services and benefits. The innovation-driven energy catalyzed by the [Company 1] team inspired the VA to move towards becoming a culture of high performance and high reliability.

Finding 2: Employee 1 Misused VA Email to Manage Rental Properties

In addition to using his VA email to solicit his subordinates to start a personal business, the OIG found that Employee 1 used his VA email as a contact for correspondence related to multiple rental properties that he owned. Employee 1 told OIG investigators that he had a “handful of rental real estate” and for tax purposes, “they’re all in LLCs [Limited Liability Companies].” During the investigation, OIG investigators found several instances of Employee 1 using his VA email to communicate with the registered agent for his LLCs. The OIG also found several instances of him receiving correspondence and invoices on his VA email. This conduct is also in violation of VA Directive 6001, Paragraph 2c(7) prohibiting the use of VA information technology resources for “commercial purposes or in support of ‘for profit’ activities.” When asked why he used his VA email for his rental real estate, he said that he thought that this use of the VA email system fell within a “limited use” exception. Employee 1 thereafter changed his email address for direct communications about his rental properties to his personal email.

Conclusion

¹⁰ This letter is quoted in the PowerPoint presentation described above. OIG investigators were informed that this letter also was never presented to any potential clients.

The evidence developed during the course of this investigation substantiated that Employee 1 used government resources to start a personal business and solicited his subordinates to join him. The OIG also found that other VERC employees, including Employee 2 and Employee 3, used government resources and/or official duty hours to work on [Company 1] Business and failed to comply with ethics guidance received from the Office of General Counsel. Although Employee 1 told OIG investigators that he made a conscious effort to remind employees not to work on [Company 1] business during their tour of duty or use government equipment, [Company 1] leadership did not take any formal steps to make sure that employees were compliant with government regulations or VA policy. Additionally, the OIG found that Employee 1 improperly used government resources to help manage his privately owned rental properties.

Recommendations 1–5

1. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against Employee 1.
2. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against Employee 2.
3. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against Employee 3.
4. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against other OSI VERC employees identified by the OIG for misusing government time and resources associated with this endeavor.
5. The Principal Deputy Under Secretary assesses the adequacy of oversight and training for OSI VERC employees regarding the appropriate use of VA time and resources and addresses any deficiencies.

Management Comments

The Office of the Under Secretary for Health was responsive and stated a plan of action has been established for recommendations 1–5. Their comments are contained in the Appendix.

OIG Response

The OIG will follow up to ensure recommendations are fully implemented.



JEFFREY G. HUGHES
Assistant Inspector General
for Investigations

Appendix: Office of the Under Secretary for Health Comments

Department of
Veterans Affairs

Memorandum

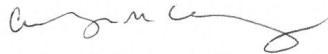
Date: MAY 02 2018

From: Executive in Charge, Office of the Under Secretary for Health (10)

Subj: Administrative Investigation of Misuse of Time and Resources within the Veterans Engineering Resource Center, Indianapolis, Indiana (Draft: 2017-04156-IQ-0316) (VIEWS 0050427)

To: Assistant Inspector General for Investigations (51)

1. Thank you for the opportunity to review the OIG draft report, Administrative Investigation of Misuse of Time and Resources within the Veterans Engineering Resource Center.
2. I also appreciate the Inspector General highlighting the difference between a termⁱ appointment and layoffs of permanent government staff.
3. I have reviewed the draft report and understand the findings, investigative results and recommendations. The plan of action has been established for recommendations 1-5.
4. Thank you for the opportunity to review the draft report. If you have any questions, please email Karen Rasmussen, M.D., Director, Management Review Service at VHA10E1DMRSAction@va.gov.



Carolyn M. Clancy, M.D.

ⁱ Definition of Term Appointment, as per 5 CFR, part 316, subpart C:

§316.301 Purpose and duration.

(a) An agency may make a term appointment for a period of more than 1 year but not more than 4 years to positions where the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. Agencies may extend appointments made for more than 1 year but less than 4 years up to the 4-year limit in increments determined by the agency. The vacancy announcement should state that the agency has the option of extending a term appointment up to the 4-year limit.

Retrieved April 13, 2018 from: <https://www.ecfr.gov/cgi-bin/text-idx?SID=59b2fbc324a1ddc93031477e2b5826bf&mc=true&node=sp5.1.316.c&rgn=div6>

**VETERANS HEALTH ADMINISTRATION (VHA)
Action Plan**

**Office of Inspector General's (OIG) Draft Report
Administrative Investigation of Misuse of Time and Resources within the
Veterans Engineering Resource Center,
Indianapolis, Indiana**

Date of Draft Report: April 5, 2018

| Recommendations/ Actions | Status |
|-------------------------------------|---------------|
|-------------------------------------|---------------|

Recommendation 1. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against Employee 1.

Comments: The Office of the Principal Deputy Under Secretary of Health (PDUSH) has already conferred with the Offices of General Counsel (OGC) and Human Resources (HR) on appropriate action. The Office of Special Counsel (OSC) issued a "hold" on the action pursuant to 38 USC 714(e)(1) and 5 USC 1214(f) pending their review and investigation of the Whistleblower claim Employee 1 filed with OSC. VA is unable to take further action without the approval of the Special Counsel pursuant to 38 USC 714(e)(1).

Status: In Progress

Recommendation 2. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against Employee 2.

Comments: The Office of the PDUSH has already conferred with OGC and HR, and is reviewing the evidence file as it pertains to Employee 2. The Office of the PDUSH will determine the appropriate administrative action, if any, based on the evidence.

Status: In Progress

Recommendation 3. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against Employee 3.

Comments: The Office of the PDUSH has already conferred with OGC and HR, and is reviewing the evidence file as it pertains to Employee 3. The Office of the PDUSH will determine the appropriate administrative action, if any, based on the evidence.

Status: In Progress

Recommendation 4. The Principal Deputy Under Secretary confers with the Offices of General Counsel and Human Resources to determine the appropriate administrative action to take, if any, against other OSI VERC employees identified

Comments: The Office of the PDUSH has already conferred with OGC and HR, and is reviewing the evidence file as it pertains to other current OSI|VERC employees. The Office of the PDUSH will determine the appropriate administrative action, if any, based on the evidence.

Status: In Progress

Recommendation 5. The Principal Deputy Under Secretary assesses the adequacy of oversight and training for OSI VERC employees regarding the Comments: appropriate use of VA time and resources and addresses any deficiencies.

Comments: The Office of the PDUSH will assess the adequacy of oversight and training for OSI|VERC employees regarding the appropriate use of VA time and resources.

As part of the OSI|VERC merger, although not specific to these allegations, OSI|VERC has already taken a series of steps to that will help address part of this recommendation. By November of 2017:

- A new set of supervisors were hired, and all staff from both legacy organizations were reorganized under the new supervisory structure;
- All new supervisors gathered in a face to face meeting to be trained on the new policies, and their oversight role of staff;
- A consistent set of office wide policies were issued and training was conducted for staff.

OSI|VERC will provide documentation of the following actions to the Office of the PDUSH to complete this recommendation:

- The OSI|VERC Executive Director will set the tone for the office and send a memo to all OSI|VERC staff highlighting the importance of the training and ethical conduct in the use of VA time and resources;
- OSI|VERC will work with VA Ethics officials to conduct additional, office specific office-wide ethics training;
- OSI|VERC will actively monitor current TMS training by running and reviewing a monthly report of all OSI|VERC staff progress on the ethical use of VA time and resources training.

Status: In Progress

OIG Contact and Staff Acknowledgments

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| Contact | For more information about this report, please contact the Office of Inspector General at (202) 461-4720. |
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