



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of the Counselor to the Inspector General

Summary of Internal
Investigation Regarding
Unauthorized Possession of
OIG-Issued Firearm

INTERNAL
INVESTIGATION

REPORT #22-03477-220

AUGUST 4, 2022



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Abbreviations

AIGI	Assistant Inspector General for Investigations
DAIGI	Deputy Assistant Inspector General for Investigations
HR	human resources
IG Act	Inspector General Act of 1978, as amended
OI	Office of Investigations
OIG	Office of Inspector General
OMA	Office of Management and Administration
SAC	Special Agent in Charge



Introduction

The Department of Veterans Affairs Office of Inspector General (OIG) investigated an allegation that a senior executive in the OIG Office of Investigations (OI) (the Senior Executive) possessed and carried an OIG-issued firearm and special agent credentials without authorization and that certain other senior leaders in OI were aware of this and failed to take appropriate remedial action. In response to the disclosure and after confirming that the Senior Executive was not authorized to possess or carry his OIG-issued firearm, the deputy inspector general directed that the Senior Executive surrender his firearm, which he did, and he was then issued new credentials. The inspector general authorized an investigation into the matter. The resulting investigation substantiated the allegations and led to findings of inadequate actions by other personnel as well. This report is meant to provide a transparent summary of that investigation.

Chronology

At the time the allegation was received, the subject of the allegation, the Senior Executive, was a deputy assistant inspector general for investigations (DAIGI). The Senior Executive had been employed in the OIG's Office of Investigations since 1992 when he was hired as a General Schedule 1811 criminal investigator (i.e., a "special agent").¹ Over the next 25 years, the Senior Executive was promoted to a resident agent in charge, to a special agent in charge (SAC), and then to DAIGI. In January 2017, the Senior Executive became the acting assistant inspector general for investigations (AIGI) and assumed the AIGI position in June 2017. During this entire period, the senior executive was a special agent authorized to carry a firearm.

On April 1, 2018, the Senior Executive was reclassified from the 1811 criminal investigation job series to the 1801 general inspection, investigation, enforcement, and compliance job series.² This reclassification was done in anticipation of the Senior Executive being subject in June 2018 to mandatory retirement under provisions applicable to federal law enforcement officers.³ As a result of this reclassification, the Senior Executive was no longer considered to be a special agent within the OIG. Generally, only special agents are authorized to carry firearms and execute other law enforcement powers. However, the Inspector General Act of 1978, as amended (IG Act), and *Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement*

¹ The 1811 occupational series covers positions that supervise, lead, or perform work involving planning, conducting, or managing investigations related to alleged or suspected criminal violations of federal laws. Office of Personnel Management, *Handbook of Occupational Groups and Families*, p. 109 (Dec. 2018).

² The 1801 occupational series covers positions that supervise, lead, or perform inspection, investigation, enforcement, or compliance work.

³ Federal law allows an agency head to waive the mandatory retirement age for special agents for a limited time. 5 U.S.C. § 8425(b)(1). The inspector general agreed to waive the Senior Executive's mandatory retirement, but the available waiver period ended in June 2018.

Authority (Attorney General Guidelines) provide direct authority to the AIGI to carry a firearm, regardless of job classification.⁴

On October 1, 2018, the Senior Executive relocated away from the Washington, DC, area for personal reasons and was reassigned to the position of DAIGI—a position that did not have direct authority to carry a firearm under the IG Act and *Attorney General Guidelines*.⁵ As DAIGI in the 1801 job series, the Senior Executive was not considered a special agent. Accordingly, he was not permitted to carry a firearm in this position or possess credentials stating that he was authorized to execute law enforcement powers.

On April 26, 2019, a complainant contacted the inspector general and counselor to the inspector general alleging that the Senior Executive possessed special agent credentials and an OIG-issued firearm in violation of applicable law. Inspector General Michael Missal authorized an internal investigation of the allegations.⁶ Deputy Inspector General David Case oversaw the investigation, which was conducted by OIG attorney-advisors.⁷

Findings and Analysis

The OIG internal investigation substantiated the allegation that, as of at least October 1, 2018, the Senior Executive (while serving as an 1801 DAIGI) possessed and carried an OIG-issued firearm and special agent credentials without authorization. The investigation also substantiated the allegation that the then acting AIGI, another DAIGI, and a SAC were aware that the Senior Executive was in possession of both special agent credentials and an agency-issued firearm that were not authorized. The investigation also made two incidental findings concerning individuals within the Operations Division of the OIG's Office of Management and Administration (OMA): (1) they failed to convey relevant information to appropriate individuals in the OIG about the Senior Executive's job reclassification from the special agent 1811 job series to the 1801 job

⁴ 5 U.S.C. app. 3 § 6(f); *Attorney General Guidelines for Offices of Inspectors General with Statutory Law Enforcement Authority* (Dec. 8, 2003).

⁵ Under longstanding VA OIG policy, all assistant inspectors general must work at the headquarters office in Washington, DC. Although the Senior Executive requested a waiver of this requirement, the inspector general did not grant it.

⁶ Allegations made against certain identified senior staff of federal offices of inspectors general are to be referred to the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) if the inspector general “determines that an internal investigation of the matter might not be objective in fact or appearance.” CIGIE Integrity Committee Policies and Procedures, ¶ 5(A)(ii) (2018). The allegation implicated two such senior staff. In this case, the inspector general made the determination that an internal investigation could be objective in fact and appearance. As noted in footnote 8, the report of investigation was sent to the CIGIE Integrity Committee for its consideration.

⁷ To avoid a potential conflict of interest, the inspector general, counselor, and deputy counselor recused themselves from the investigation, as they were potential witnesses.

series, and (2) they failed to ensure that this reclassification would achieve its intended purpose of exempting the Senior Executive from mandatory retirement.⁸

Reclassification of the Senior Executive's Position

The director and deputy director of the OMA Operations Division were responsible for processing the Senior Executive's reclassification from the 1811 to the 1801 job series in coordination with the OIG's human resources (HR) service provider, an external federal government entity. The intended purpose of the reclassification was to address the mandatory retirement provisions for law enforcement officers that would have required the Senior Executive to retire in June 2018.

The OIG internal investigation found that, in both the AIGI and DAIGI positions, the Senior Executive was subject to the mandatory retirement provisions applicable to federal law enforcement officers, regardless of the job series. The individuals responsible for this reclassification did not take the steps necessary to ensure that the reclassification of the Senior Executive from an 1811 to an 1801 job series would achieve their intention to exempt the Senior Executive from the mandatory retirement provisions applicable to federal law enforcement officers.⁹

Under the relevant statute, individuals in both "rigorous" and secondary law enforcement positions are subject to mandatory retirement at age 57 or, with the waiver of an agency head, age 60.¹⁰ The determination of whether a position is a rigorous or secondary law enforcement position depends not on the job series (i.e., 1811 or 1801), but on the requirements of the position.¹¹ A position in the law enforcement field, in an organization with a law enforcement mission, and whose primary duties include being a first-level supervisor of law enforcement officers in rigorous positions, is a secondary law enforcement position, according to applicable regulations.

As such, the investigation found that each of the positions to which the Senior Executive was assigned while occupying an 1801 position satisfied the definition of a secondary law

⁸ Following the conclusion of the investigation, the OIG sent the report of investigation to the Integrity Committee for its consideration. Subsequently, the Office of Special Counsel (OSC) informed the OIG that it was investigating allegations of whistleblower retaliation made by two subjects of the internal investigation. The Integrity Committee did not open an investigation pending the outcome of the OSC investigation. OSC completed its investigation in early 2022. Final resolution of the matters at issue in the OSC investigation remains pending.

⁹ The director and deputy director of the Operations Division said they relied on the OIG's HR service provider to advise them on the implications of the Senior Executive's reassignment. However, the investigation determined such reliance was inappropriate. Among other failings, the director and deputy director did not provide the HR service provider with sufficient information to enable the service provider to furnish an appropriate response. Moreover, they did not consult with the OIG's counselor's office or the US Office of Personnel Management (OPM), including referring to an easily accessible OPM Handbook.

¹⁰ 5 U.S.C. § 8425.

¹¹ 5 C.F.R. § 842.802.

enforcement position because one of the Senior Executive's primary duties was supervising OIG special agents in rigorous law enforcement positions.¹² The Senior Executive transitioned without a break in service to the 1801 AIGI position after occupying a rigorous law enforcement position for at least three years.¹³ Therefore, he was still a law enforcement officer for retirement purposes and remained subject to the applicable mandatory retirement provisions.

The Senior Executive's Continued Possession of a Firearm and Special Agent Credentials

After his reclassification to an 1801 position on April 1, 2018, the Senior Executive remained in possession of and continued to carry his OIG-issued firearm and special agent credentials that stated he was "a duly commissioned Special Agent with the Office of Inspector General, Department of Veterans Affairs, authorized to carry firearms" The IG Act and the *Attorney General Guidelines*, taken together, authorize the inspector general, the AIGI, and any special agents supervised by the AIGI in offices of presidentially appointed inspectors general to exercise law enforcement powers (subject to other training and qualification requirements).¹⁴ Under the VA OIG firearms directive, special agent status is limited to individuals in the 1811 job series. According to the directive, "GS 1811 Criminal Investigators [are] referred to as special agents (SAs)."¹⁵ The directive also states that the IG Act "provides law enforcement authority for VA OIG SAs and the Inspector General."¹⁶ At this time, the Senior Executive was no longer a special agent.

When Operations Division staff were coordinating with the OIG's external HR service provider to prepare a position description for the Senior Executive's 1801 AIGI position, a decision was

¹² Consistent with this finding, the OIG sent a memorandum to OPM on July 22, 2019, designating the 1801 positions as secondary law enforcement positions.

¹³ 5 C.F.R. §§ 842.802–803.

¹⁴ The IG Act allows the inspector general, the AIGI, and any "special agent" supervised by that AIGI to be authorized by the Attorney General to carry a firearm, make arrests, and execute warrants. 5 U.S.C. app. 3 § 6(f)(1). The Act also provides that the Attorney General will promulgate guidelines to govern the exercise of these law enforcement powers. *Id.* at § 6(f)(4). The resulting *Attorney General Guidelines* state that offices of inspectors general with statutory law enforcement powers under the IG Act "must exercise" those authorities in accordance with the guidelines. The investigation did not identify any evidence that the Senior Executive failed to satisfy the training and qualification prerequisites for exercising law enforcement powers set forth in the *Attorney General Guidelines*.

¹⁵ OIG 51 Directive 103, *Firearms and Use of Force* (Oct. 11, 2018). The directive "provides standardized policy, guidelines, and responsibilities for carrying weapons by all GS 1811 Criminal Investigators referred to as special agents (SA)." Although the prior version of the directive did not explicitly define special agents as individuals in the 1811 job series, that is the only reasonable reading of the directive. See also VAOIG Directive 51 307, *Medical Standards and Physical Requirements for Criminal Investigators* (Jan. 31, 2002), setting forth medical standards and physical requirements for employees "serving in Criminal Investigator/Special Agent positions, GS/GM-1811" and Memorandum from the Inspector General (March 14, 2018) (addressed to "[a]ll 1811 personnel" and authorizing Special Agents to carry firearms while in an "off-duty" status).

¹⁶ VA OIG 51 Directive 103 (Oct. 11, 2018). The same language is in the preceding directive.

made that it would not have the possibility of carrying a firearm. The resulting written position description does not authorize the incumbent to carry a firearm. There is no evidence that, in reaching this decision, anyone considered the Senior Executive's authority to carry a firearm as the AIGI under the IG Act and *Attorney General Guidelines*. During the reclassification process, neither the Senior Executive nor the Operations Division director, deputy director, or other staff conveyed relevant information about the Senior Executive's reclassification—including its implications for his ability to carry a firearm or special agent credentials—to individuals within the OIG responsible for firearms and credentials.

For reassignment in October 2018 to the DAIGI position, the Senior Executive was issued new credentials reflecting his change in title from AIGI to DAIGI that continued to purport that he was a special agent authorized to carry a firearm. Because the Operations Division staff did not communicate necessary information, the individual who prepared the new credentials was not aware of the change in the Senior Executive's job classification to 1801. Once the Senior Executive transitioned to the DAIGI position in October 2018, he was clearly no longer authorized under the IG Act, *Attorney General Guidelines*, or the OIG firearms directive to exercise law enforcement powers, including carrying a firearm, because he was neither the AIGI nor a special agent.

After his reassignment, the Senior Executive should have known he was no longer authorized to carry a firearm. The OIG firearms directive applies only to 1811 criminal investigators. As AIGI and DAIGI, the Senior Executive was directly responsible for providing policy guidance and leadership on implementing the OIG firearms directive. Even in his previous role as a special agent, the Senior Executive was responsible for understanding his authority to carry a firearm and for complying with the requirements of the policy as well as the IG Act and *Attorney General Guidelines*. In addition, the Senior Executive's actions (as discussed below) demonstrated he was concerned about his lack of continued authority to possess a firearm.

OI Leaders' Knowledge of the Senior Executive's Status

In November 2018, after his reassignment to the DAIGI position, the Senior Executive reached out to the OIG's National Training Coordinator "seeking [the coordinator's] assistance to get [him] authority to carry a weapon" as an 1801.¹⁷ On November 7, 2018, the coordinator emailed his SAC and the then acting AIGI regarding the call with the Senior Executive. The coordinator suggested providing the Senior Executive with paperwork to obtain credentials that permit certain active and retired law enforcement officers to carry a firearm (known as LEOSA

¹⁷ The National Training Coordinator is responsible for managing, overseeing, and coordinating the daily operation of OI's firearms and use of force training program. OIG 51 Directive 103, 5(c). When he was originally reassigned to the 1801 job series (while still the AIGI), the Senior Executive also had sought guidance from the Maryland State Police, but he never contacted or requested advice from the OIG's counselor's office.

credentials).¹⁸ The SAC replied to the group, “I think it is the only viable option.” After an internal discussion including another DAIGI who was the SAC’s supervisor, OI senior employees decided to send LEOSA paperwork to the Senior Executive. The Senior Executive never completed it.¹⁹

At least as of November 7, 2018, the Senior Executive’s supervisor (the then acting AIGI) was aware that the Senior Executive was in possession of and carrying an OIG-issued firearm and was uncertain about his authority to do so. Although the DAIGI who considered sending the LEOSA paperwork to the Senior Executive was not included on the emails, he told internal investigators that he was involved in the related discussions. At the time, the office within OI responsible for firearms management reported to this DAIGI. Yet, between November 2018 and May 2019, neither of the senior OI leaders (the then acting AIGI and the DAIGI in charge of the firearms program) took any action to take possession of the Senior Executive’s OIG-issued firearm, nor did they instruct anyone else to do so. In interviews during the internal investigation, both senior OI leaders conceded that OIG policy authorizes only the inspector general and 1811s to carry firearms and that—as an 1801 DAIGI—the Senior Executive was not authorized to carry a firearm. The DAIGI involved in these discussions recalled a conversation in which he and the acting AIGI advised the Senior Executive that he was not authorized to carry a firearm in his position, but that was not corroborated by the Senior Executive or the acting AIGI.

The acting AIGI and the DAIGI also reported that they had reached out to the inspector general and the counselor to the inspector general around November or December 2018 to find out if the inspector general could authorize the Senior Executive to carry a firearm as an 1801.²⁰ Although the two senior OI leaders knew at the time that the Senior Executive possessed an OIG firearm improperly and that the inspector general had not authorized the Senior Executive to carry a firearm, they took no action to repossess the Senior Executive’s firearm while purportedly waiting several months for a response.

¹⁸ The Law Enforcement Officer Safety Act of 2004 (LEOSA) permits a “qualified Law Enforcement officer” and a “qualified retired or separated Law Enforcement officer” to carry a concealed firearm in any jurisdiction in the United States or United States Territories, regardless of state or local laws, except in certain circumstances. 18 U.S.C. §§ 926B–926C.

¹⁹ During the investigation, the counselor’s office concluded that the Senior Executive was not eligible for LEOSA credentials in November 2018 because he was not a qualified law enforcement officer and had not been retired or separated as a law enforcement officer. In any event, LEOSA credentials would not authorize the Senior Executive to possess a firearm on the same basis as a special agent. For example, it would not authorize him to carry a firearm in a federal building or on a commercial aircraft or possess an OIG-issued firearm.

²⁰ This assertion runs contrary to the fact that the Senior Executive had reached mandatory retirement age and could no longer be employed as a federal law enforcement officer, which means the inspector general lacked any authority to allow the Senior Executive to carry a firearm or special agent credentials. Neither of the two senior OI leaders pointed to any governing law or other provision that would have given the inspector general such authority to respond to such a request.

No testimony provided during the internal investigation, nor any emails, calendar entries, or other documentation reviewed, supported that the inspector general and counselor knew or understood both that the Senior Executive was no longer a special agent and that he was currently carrying an OIG-issued firearm. The inspector general and the counselor each denied in testimony that they had knowledge of both of these facts. Even by the two senior OI leaders' own accounts, it is unclear that the inspector general and counselor were told and understood the critical facts. Subsequent actions support that the inspector general and the counselor were not aware of these facts. When the inspector general and counselor were made aware by the complainant in an April 2019 email, their response was immediate and decisive. An internal investigation was initiated, and the firearm and special agent credentials were promptly retrieved.

The Senior Executive's supervisor (the then Acting AIGI) conceded that nothing in the firearms directive appears to authorize or allow the wait-and-see approach taken. In any other instance in which an agent is not authorized to carry a firearm—even if temporarily (such as for failure to qualify with the firearm)—the weapon is taken away immediately. The circumstances here were even more clear because the Senior Executive failed to qualify to carry a firearm as a matter of law and could not requalify.²¹ Consistent with the OIG firearm directive, the two OI senior leaders should have made certain that his agency-issued firearm was retrieved, at least until the matter was resolved. This would have protected the OIG and the individual from potentially violating agency policy and state or federal law. However, neither of the OI senior leaders took any steps to retrieve the Senior Executive's firearm or ensure that he did not carry it until the matter was resolved. As a result, the Senior Executive was allowed to remain in possession of his OIG-issued firearm and special agent credentials without authorization for over six months.

Conclusion

The facts developed through this internal investigation support the allegation that the Senior Executive carried and possessed an OIG-issued firearm and special agent credentials without authorization and that this was known to both the acting AIGI, who was the Senior Executive's supervisor at the time, and the DAIGI overseeing the firearms program. The investigation also found that the Senior Executive knew or should have known that he did not have authority to carry a firearm. In addition, individuals within the OIG's Operations Division of OMA who handled the reclassification did not take the steps necessary to ensure that the reclassification would achieve its intended effect or convey relevant information about the reclassification to individuals within the OIG responsible for firearms and credentials. As a result, the Senior Executive was not separated from the agency as required by law and continued to possess and

²¹ As stated earlier, under the IG Act and *Attorney General Guidelines*, the Senior Executive was not authorized to carry a firearm as DAIGI while in the 1801 classification.

carry an OIG-issued firearm and special agent credentials without authorization for more than six months.

The Senior Executive and the director and deputy director of the Operations Division are no longer employed by the OIG. The Senior Executive retired and the director and deputy director resigned from their positions while this investigation was ongoing. The other senior OI officials were the subject of an OIG internal disciplinary process that resulted in one letter of reprimand for the then acting AIGI. In addition, the previously acting AIGI and the DAIGI who oversaw the firearms program at the time of the events described in this report no longer have responsibility for the OIG firearms program.

In response to the findings of the internal investigation, among other corrective actions, the OIG's firearms directive was revised to clarify which positions are authorized to carry a firearm to conform with the requirements and authorities set out in the IG Act and *Attorney General Guidelines*. In addition, OMA updated the OIG's procedures for reassigning employees and is in the process of validating the proper designation of all law enforcement positions as either primary or secondary.

A handwritten signature in cursive script, appearing to read "David T. Case".

DAVID T. CASE
Deputy Inspector General

OIG Contact

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