Department of
Veterans Affairs

Office of Inspector General

ADMINISTRATIVE INVESTIGATION

REPRISAL ISSUES
VA GREAT LAKES HEALTH CARE SYSTEM
HINES, ILLINOIS

Report No. 99-00875-58
Date: April 18, 2000

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Department of Veterans Affairs

Memorandum

Date: April 18, 2000

From: Assistant Inspector General for Investigations (51)

Subj: Administrative Investigation – Reprisal Issues, VA Great Lakes Health Care System, Hines, Illinois, Report No. 99-00875-58 (Case IQ-0033)

To: Chief Network Officer (10N)

1. Attached is our final report of an administrative investigation into allegations that Dr. Joan Cummings, Director of the VA Great Lakes Health Care System (Veterans Integrated Service Network, VISN, 12) in Hines, Illinois, reprised against two subordinate medical center directors for engaging in protected activities. We did not substantiate the allegations.

2. The complainant alleged that Dr. Cummings gave Mr. John DeNardo, Director of the Edward Hines, Jr. VA Hospital, and Mr. Alfred Pate, Director of the North Chicago VA Medical Center, lower than expected annual appraisals in November 1999 because they engaged in protected activities. According to the complainant, these two Directors refused to carry out orders that would have required them to violate a law, made protected disclosures, and provided information to the Office of Inspector General. We found that Mr. DeNardo and Mr. Pate did engage in one or more protected activities that, due to the timing of events, may have been contributing factors in their annual ratings. However, in both instances, we concluded that Dr. Cummings had clear and convincing evidence that she would have rated them the same even had they not engaged in protected activities.

3. We are making no recommendations regarding this issue, and consider the matter resolved. I appreciate the cooperation the VISN 12 staff and others gave us during the course of this investigation.

(original signed by Michael P. Stephens for:)
THOMAS J. WILLIAMS

Attachment

ADMINISTRATIVE INVESTIGATION

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HINES, ILLINOIS

REPORT NO. 99-00875-58
(CASE IQ-0033)

INTRODUCTION

Purpose

The Department of Veterans Affairs (VA) Office of Inspector General (OIG), Administrative Investigations Division, investigated allegations that Dr. Joan E. Cummings, Director of the VA Great Lakes Health Care System, located in Hines, Illinois, reprised against two subordinate medical center directors for engaging in protected activities. The purpose of our investigation was to determine whether the allegations were valid.

Background

In the early 1990s, Dr. Cummings was Director of the Edward Hines, Jr. VA Hospital (Hines Hospital). In October 1995, she was reassigned to the position of Director, Great Lakes Health Care System (Veterans Integrated Service Network, VISN, 12). At the time our investigation began, Mr. John DeNardo was Director of the Hines Hospital, where the VISN office is located. *(b)(6)* Mr. Alfred S. Pate is Director at the North Chicago VA Medical Center, another VISN facility. Dr. Cummings, as VISN Director, was the first level supervisor for Messrs. DeNardo and Pate.

The Office of Special Counsel evaluated similar allegations concerning Mr. DeNardo and Mr. Pate during 1999, and closed the cases without finding reprisal. Regarding Mr. DeNardo, the Office of Special Counsel found no personnel action had been taken or threatened against him at the time of its review, and closed his case in July 1999. Regarding Mr. Pate, the Office of Special Counsel concluded that the information he provided pertaining to a 1996 incident did not suggest Dr. Cummings reprised against him. The Office did not investigate more recent incidents because Dr. Cummings had not taken or threatened a personnel action against Mr. Pate at the time of its review.

Scope

To assess the validity of the allegations, we obtained sworn, taped testimony from Dr. Cummings, facility directors, service chiefs, and staff employees. We also reviewed pertinent documentation, including official personnel files, testimony, and relevant laws, regulations, and policies.

RESULTS OF INVESTIGATION

Issue:	**Whether Dr. Cummings reprised against Mr. DeNardo and Mr. Pate for engaging in protected activities**

We did not substantiate that Dr. Cummings reprised against Mr. DeNardo. According to the complainant, in November 1999, Dr. Cummings gave Mr. DeNardo a lower than expected annual appraisal because he refused to carry out an order that would have required him to violate a law, because he made protected disclosures to officials in a national veterans service organization and VA Central Office, and because he provided information to the OIG.

We also did not substantiate that Dr. Cummings reprised against Mr. Pate. According to the complainant, in November 1999, Dr. Cummings gave Mr. Pate a lower than expected annual appraisal because he refused to carry out an order that would have required him to violate a law, and because he made protected disclosures to the Office of the Medical Inspector and the Chief Network Officer. Contacting the OIG and the Office of Special Counsel were cited as additional contributing factors in the reprisal.

Standard: Federal law [5 U.S.C. §2302] prohibits management officials from reprising against employees, by taking or threatening a personnel action, because the employee engaged in certain protected activities. Protected activities include refusing to follow an order that would require an employee to violate the law, and contacting or providing information to the OIG or the Office of Special Counsel. Protected activities also include whistleblowing, which is defined as disclosing a matter which the employee reasonably believes to be gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation. The law prohibits management officials from taking, failing to take, threatening to take, or threatening not to take, a personnel action because an employee participated in a protected activity.

Federal law [5 U.S.C. §1221(e)] further provides that corrective action against a management official may be appropriate when a protected disclosure is a "contributing factor" in a personnel action taken against an employee. A contributing factor may be defined through circumstantial evidence that the official taking the action knew of the protected disclosure, and the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action. A personnel action includes an appointment, promotion, disciplinary or adverse action, detail, transfer or reassignment, reinstatement, restoration, reemployment, significant change in duties, or a performance evaluation under the Performance Management System. The law provides that corrective action for reprisal may not be ordered when clear and convincing evidence demonstrates that management would have taken the same personnel action in the absence of the protected activity.

Thus, to determine if reprisal occurred, the following questions must be answered:

- Did the employee engage in a protected activity?
- Subsequent to the protected activity, did a management official take or threaten to take a personnel action?
- Did the management official know about the protected activity before taking or threatening to take the personnel action?
- Was the protected activity a contributing factor in the management official's decision about the personnel action?
- If the protected activity was a contributing factor, can the management official show by clear and convincing evidence that he would have acted as he did even if the employee had not engaged in the protected activity?

Discussion: Alleged Reprisal Against Mr. John DeNardo

Did Mr. DeNardo refuse an order that would have required him to violate a law?

Mr. DeNardo told us that on multiple occasions between December 1998 and May 1999, Dr. Cummings told him he should take action against a certain service chief, including reassigning or removing him. According to Mr. DeNardo, Dr. Cummings wanted him to take action because the service chief was insubordinate, made an unauthorized release of information to a contractor, complained to Veterans Health Administration (VHA) officials in VA Central Office, and provided inaccurate data to an affiliated medical school. Mr. DeNardo told us he refused to remove the service chief, because he did not agree the chief was insubordinate and because, while the chief sometimes acted on misinformation, his actions were generally based on legitimate concerns. Mr. DeNardo said, had he followed Dr. Cummings' directives, he would have violated the chief's employment rights. Although Mr. DeNardo did not specify to which employment rights he was referring, we proceeded to determine whether Dr. Cummings' directives would have required him to violate Federal merit system principles law.

Dr. Cummings confirmed that she and Mr. DeNardo had spoken about the service chief's performance. She testified she was concerned about the chief's ineffective communications, including not keeping his chain of command informed, and releasing information to a contractor without authorization. According to Dr. Cummings, some of these issues dated back three years. She said, as a result, she asked Mr. DeNardo to consider whether the chief should continue in his position. She told us she did not specify what type of action Mr. DeNardo should take. VHA managers are authorized to take prompt and appropriate corrective action when an employee's performance of duty or personal conduct is not satisfactory. At the time of our investigation, no performance, disciplinary, or adverse action had been taken against this individual.

Information from many sources confirmed Dr. Cummings' concern about the chief's communications and adherence to management's objectives. For example, a report of a July 1999 external review noted deficiencies in this service chief's management and

leadership. In an apparent reference to the chief and others, the report stated that the Hines Hospital was in a state of "crises" and had become dysfunctional, in part, because "several service chiefs have embarked on a quest to force their objectives and ideas on top management without compromise." In addition, during the period in question, the service chief maintained a prolific correspondence to VA officials and others about management decisions affecting the internal practices and policies of the Hines Hospital. He contacted VHA officials in VA Central Office about patient care issues, rather than working effectively as a member of the Hines Hospital leadership to verify the alleged incidents and resolve local matters. His occasional use of his VA title and VA letterhead when urging officials at non-VA organizations to oppose internal VA policies, such as budgeting, created the appearance that he misused his position. He repeatedly objected to the VISN's efforts to manage clinical resources, apparently without offering constructive alternatives to meet management's goals. In addition, documents created by the chief confirmed that he sent confidential information to a private consultant without authorization.

Finding: Dr. Cummings did not give Mr. DeNardo an order that would have caused him to violate Federal merit system principles law. By virtue of her position, she had the authority to question the service chief's actions and Mr. DeNardo's response to them. She had legitimate concerns with the chief's conduct and performance, and authority to discuss these issues with Mr. DeNardo, including performance, disciplinary, or adverse action, if so warranted. Since the chief's contacts with VHA officials in VA Central Office and with outside parties generally concerned internal practices and policies, rather than protected disclosures, Dr. Cummings' questioning of his actions can not be construed as reprisal.

Did Mr. DeNardo make a protected disclosure to a veterans service organization and, if so, was Dr. Cummings aware of it?

Mr. DeNardo told us he disclosed to a veterans service organization that inadequate nurse staffing in the Hines Hospital Spinal Cord Injury Center posed a risk to patient safety. According to Mr. DeNardo, the disclosure occurred during the veterans service organization's January 1999 inspection of the Center. Mr. DeNardo told us Dr. Cummings learned of his disclosure from a February 1999 letter in which the service organization requested increased nurse staffing at the Center. However, we found that the letter the service organization provided to Dr. Cummings did not attribute a comment on patient safety to Mr. DeNardo. Rather, according to the letter, the organization itself raised the patient safety issue. Mr. DeNardo also told us that Dr. Cummings wanted to take action against him because he refused to support her decision to increase nurse staffing by reassigning employees from other areas in Hines Hospital.

Finding: While we could not confirm Mr. DeNardo made a disclosure about patient safety to the veterans service organization, even if we assume that to be true, the correspondence the organization provided to Dr. Cummings did not attribute any protected disclosure to Mr. DeNardo. Further, Mr. DeNardo's decision to ignore

Dr. Cumming's request to support the VISN's position on staffing was not protected whistleblowing.

Did Mr. DeNardo make a protected disclosure to the Office of the Medical Inspector and the Chief Network Officer and, if so, was Dr. Cummings aware of it?

Mr. DeNardo told us he made protected disclosures to the Medical Inspector in April 1999 that appeared in an Office of the Medical Inspector report. According to the report, Mr. DeNardo told the Medical Inspector he was counseled after refusing to support the VISN's position on nurse staffing in the Spinal Cord Injury Center. The report also documented that Mr. DeNardo said he refused an order to remove a service chief. The Medical Inspector and Dr. Cummings both denied discussing Mr. DeNardo's allegations with one another. However, Dr. Cummings acknowledged she received a copy of the report from the Chief Network Officer on May 14, 1999, and discussed it with him.

Mr. DeNardo also told us he made protected disclosures to the Chief Network Officer. He said he met with the Chief Network Officer on May 28, 1999, and discussed concerns about Dr. Cummings and his contact with the Office of Special Counsel. However, the Chief Network Officer told us he did not recall Mr. DeNardo mentioning any allegations or his contact with the Office of Special Counsel. He said his conversation with Mr. DeNardo was limited to his performance as Director of Hines Hospital. The Chief Network Officer said he told Dr. Cummings he had met with Mr. DeNardo, but that, again, their conversation was limited to Mr. DeNardo's performance as Director of Hines Hospital.

Finding: Although Mr. DeNardo did discuss some concerns with the Medical Inspector, his discussions did not include a protected disclosure, such as a violation of law or a specific and substantial threat to public health or safety. Further, we could not confirm that Mr. DeNardo made protected disclosures to the Chief Network Officer or told him he had contacted the Office of Special Counsel.

Did Mr. DeNardo have a protected contact with the OIG, and, if so, was Dr. Cummings aware of it?

Beginning in May 1999, Mr. DeNardo provided the OIG information regarding alleged improprieties by Dr. Cummings. When we interviewed Dr. Cummings in July and September 1999, we discussed some of Mr. DeNardo's allegations with her, including incidents and conversations that only the two of them could have witnessed. Mr. DeNardo told us he believed Dr. Cummings suspected he provided this information to the OIG, but he did not know how, or when, she became aware of it. However, in December 1999, Dr. Cummings denied to us that she knew Mr. DeNardo provided us information.

Finding: Mr. DeNardo had protected contacts with the OIG beginning in May 1999. Although Dr. Cummings denied she knew Mr. DeNardo spoke to us, we concluded that, based on our discussions with her beginning in July 1999, she likely inferred that we had obtained information from him.

Did Dr. Cummings take or threaten to take a personnel action against Mr. DeNardo?

On November 9, 1999, Dr. Cummings issued to Mr. DeNardo his fiscal year 1999 performance appraisal, rating him "(b)(6) Mr. DeNardo told us the rating was lower than he expected and deserved.

Finding: Dr. Cummings' issuance of a performance appraisal to Mr. DeNardo is a personnel action.

Was Mr. DeNardo's protected activity a contributing factor in the performance appraisal rating given to him?

Finding: Because Dr. Cummings likely learned that Mr. DeNardo contacted the OIG in July 1999, and because she subsequently issued an annual appraisal that was lower than expected in November 1999, we concluded that Mr. DeNardo's contact with the OIG may have been a contributing factor in his annual rating.

Would Dr. Cummings have rated Mr. DeNardo (b)(6) regardless of whether he engaged in a protected activity?

Dr. Cummings told us she did not rate Mr. DeNardo higher than (b)(6) because she had concerns about the general effectiveness of his leadership of the Hines Hospital. Dr. Cummings said she based Mr. DeNardo's appraisal on lower achievement in the "core competencies" factor. She specifically cited the element, "organizational stewardship." The portion of Mr. DeNardo's performance plan describing "organizational stewardship" provides that "the successful executive is sensitive to the needs of individuals and the organization and provides service to both. [He] assumes accountability for self, others, and the organization."

In April 1999, Dr. Cummings expressed concern about Mr. DeNardo's leadership of Hines Hospital (b)(6). In addition, Dr. Cummings identified to us numerous external reviews that independently corroborated her concerns about the overall leadership at Hines Hospital. For example, a mock accreditation survey conducted in April 1999 concluded that communications across the organization were unclear; clinical service chiefs were ineffective leaders; and staffing plans were inadequate. Similarly, an external VHA management review concluded in May 1999 that the management team had not articulated a clear strategic direction for the Medical Center, and that poor communication existed between the Director and the medical staff. Another external review the following month concluded

that “the present Director has been ineffective in leading his organization into the new millennium.”

Mr. DeNardo testified that he should have been recognized for his efforts to keep the hospital from disintegrating in response to Dr. Cummings’ “open hostility.” He said Dr. Cummings misused the results of external reviews to bring punitive action against him. He said that Dr. Cummings overstated the importance of the performance issues she identified and that her real purpose was to retaliate against him. He also said that he was not given a sufficient opportunity to respond to some of the external reviews concerning his facility.

Finding: Dr. Cummings provided clear and convincing evidence that she would have rated Mr. DeNardo **(b)(6)** . . . . even had he not engaged in a protected activity. Dr. Cummings cited specific reasons related to Mr. DeNardo’s performance standards for not rating him higher than **(b)(6)** . . . . The **(b)(6)** . . . . demonstrates she was concerned with his performance before we gave her indications in July 1999 that he provided information to us.

Conclusion: Dr. Cummings did not reprise against Mr. DeNardo for engaging in a protected activity.

Discussion: Alleged Reprisal Against Mr. Alfred Pate

Did Mr. Pate refuse an order that would have required him to violate a law?

On July 2, 1998, an Administrative Board of Investigation recommended administrative action against an employee at the North Chicago Medical Center for his treatment of a subordinate. Mr. Pate testified that on September 10, 1998, Dr. Cummings urged him personally and in writing to take “appropriate administrative action” against the employee. However, he did not tell us Dr. Cummings ordered him to remove the employee. Mr. Pate said that, based on previous misconduct, he thought a removal would have been the next action to take. However, Mr. Pate said he opposed removal because he did not agree with the Board’s conclusion. He held off proposing disciplinary action while consulting with the VISN staff and Regional Counsel. Mr. Pate told us he did not know whether his taking further corrective action against the employee would have violated any specific law.

Dr. Cummings acknowledged that she asked Mr. Pate more than once what corrective action he proposed to take in response to the administrative investigation finding, but she denied ordering Mr. Pate to remove him. VHA managers are authorized to take prompt and appropriate corrective action when an employee’s performance of duty or personal conduct is not satisfactory. The Board’s recommendation to discipline the employee for this incident was not implemented.

Finding: Based on the Board's findings, Dr. Cummings had grounds to urge "appropriate action" against the employee. However, we found no evidence that her discussion of corrective action toward the employee was inappropriate, or would have caused Mr. Pate to violate a law.

Did Mr. Pate make a protected disclosure to the Medical Inspector and the Chief Network Officer, and if so, was Dr. Cummings aware of it?

Mr. Pate told us in April 1999 he complained to the Medical Inspector about ***(b)(6)***..., and about the VISN Director's use of VA funds to support a non-VA activity, in violation of Federal law. According to the Office of the Medical Inspector's report, a local VA medical center director at a facility other than Hines Hospital complained that he was ***(b)(6)***.. Also, according to the report, this same individual discussed with the Medical Inspector that Dr. Cummings had allegedly misused appropriated funds.

Dr. Cummings acknowledged receiving a copy of the Office of the Medical Inspector report on May 14, 1999, and discussing it with the Chief Network Officer several days later. Dr. Cummings testified that she did not know the exact identity of the local medical center director referenced in the report, but that she suspected it was Mr. Pate. When asked whether any other local director ***(b)(6)***.., Dr. Cummings said she could not recall.

Mr. Pate also told us that, during a meeting on May 28, 1999, he disclosed to the Chief Network Officer that there was a pattern of illegal behavior involving Dr. Cummings. According to Mr. Pate's notes from the meeting, the specific actions discussed were Dr. Cummings' ***(b)(6)***..., and her attempts to induce him into removing an employee (as discussed above).

The Chief Network Officer told us that, during his May 28 meeting with Mr. Pate, the Director raised unspecific allegations of illegal activity concerning Dr. Cummings. The Chief Network Officer said he told Mr. Pate that if he received any information suggesting illegal activity by Dr. Cummings, he would ensure it was investigated. The Chief Network Officer told us he advised Dr. Cummings that Mr. Pate said allegations against her were being raised, and that they would have to be reviewed.

Finding: When Mr. Pate informed the Office of the Medical Inspector that Dr. Cummings misused appropriated funds, he made a protected disclosure. Further, because there are few directors in the VISN, and they are ***(b)(6)***..., Dr. Cummings probably believed in May 1999, when she received a copy of the Office of the Medical Inspector report, that Mr. Pate was the Director who disclosed the allegations to that Office. Regarding Mr. Pate's contact with the Chief Network Officer, we could not confirm that he made any specific protected disclosures.

Did Mr. Pate have a protected contact with the OIG and, if so, was Dr. Cummings aware of it?

Mr. Pate initially provided the OIG information on April 20, 1999, regarding his discussions with the Office of the Medical Inspector. He told us both the Office of the Medical Inspector and the Chief Network Officer were aware of his contact with us. The Office of the Medical Inspector report, which Dr. Cummings received in May 1999, did indicate that Office referred a Chicago area medical center director to the OIG, but the report did not name the director or state whether he actually contacted us. The Medical Inspector told us he did not discuss Mr. Pate's concerns with Dr. Cummings. The Chief Network Officer told us that, during discussions with Mr. Pate in May 1999, Mr. Pate mentioned contacting the OIG. The Chief Network Officer said he later discussed with Dr. Cummings the content of this meeting. However, the Chief Network Officer did not specifically recall telling Dr. Cummings that Mr. Pate mentioned contacting us.

Dr. Cummings testified that she knew a director was told he should contact the OIG but she did not know if the contact occurred. We discussed complaints specific to Mr. Pate with Dr. Cummings during an interview on July 13, 1999, including an allegation concerning her decision to ***(b)(6)***. We did not specifically identify Mr. Pate as the source of the allegation. However, on September 9, 1999, pursuant to a release of identity, we told Dr. Cummings that Mr. Pate provided information to us. According to Dr. Cummings, she was unaware of Mr. Pate's contact prior to that time.

Finding: Mr. Pate made a protected contact with the OIG. Based on the Office of the Medical Inspector report and her meeting with the Chief Network Officer, Dr. Cummings had reason to believe Mr. Pate was complaining about her. Mr. Pate, ***(b)(6)***, had knowledge of its occurrence and a motive to complain about it. Thus, it is likely that during our July 13, 1999 interview with Dr. Cummings, when asked about the allegation concerning Mr. Pate, Dr. Cummings believed Mr. Pate contacted or provided information to us. In any case, Dr. Cummings certainly knew that Mr. Pate had contacted us after we told her in September 1999.

Did Mr. Pate have a protected contact with the Office of Special Counsel, and, if so, was Dr. Cummings aware of it?

Mr. Pate filed a reprisal complaint with the Office of Special Counsel in May 1999. The complaint included an incident that occurred in 1996 and the issue, discussed above, regarding Mr. Pate's refusal to remove an employee. Mr. Pate told us he informed the Chief Network Officer in May 1999 that he filed the complaint. The Chief Network Officer told us he recalled Mr. Pate mentioning the Office of Special Counsel during their conversation, but he did not recall Mr. Pate's specific statement. Dr. Cummings denied knowing Mr. Pate filed the complaint.

Finding: Mr. Pate did have a protected contact with the Office of Special Counsel. However, there was insufficient evidence to establish that Dr. Cummings was aware of the contact.

Did Dr. Cummings take or threaten to take a personnel action against Mr. Pate?

On November 10, 1999, Dr. Cummings issued to Mr. Pate his fiscal year 1999 performance appraisal, rating him ***(b)(6)*** According to Mr. Pate, he should have been rated higher.

Finding: Dr. Cummings' issuance of a performance appraisal to Mr. Pate is a personnel action.

Were Mr. Pate's protected activities a contributing factor in the performance appraisal rating given to him?

Finding: We concluded that, due to the timing of events, Mr. Pate's disclosures to the Office of the Medical Inspector and his contact with the OIG were contributing factors in his annual appraisal rating. In May 1999, Dr. Cummings learned that Mr. Pate made a protected disclosure to the Office of the Medical Inspector. Also in May 1999, the Chief Network Officer told Dr. Cummings that Mr. Pate was discussing allegations concerning her. Further, based on our interview with Dr. Cummings in July 1999, when we discussed allegations specific to Mr. Pate, she probably believed he had provided information to us. Certainly, she knew that Mr. Pate contacted us after we told her in September 1999. Dr. Cummings subsequently rated Mr. Pate as ***(b)(6)*** on November 10, 1999.

Would Dr. Cummings have rated Mr. Pate *(b)(6)* regardless of whether he engaged in protected activities?

Dr. Cummings testified that she did not rate Mr. Pate higher than ***(b)(6)*** for fiscal year 1999 because he did not make satisfactory progress to resolve management issues brought to his attention. She said Mr. Pate's lower achievement was reflected in the rating's "core competencies" factor. The specific element cited by Dr. Cummings was "organizational stewardship," which provides "the successful executive is sensitive to the needs of individuals and the organization and provides service to both. [He] assumes accountability for self, others, and the organization."

An external Human Resources Management review, initiated by Dr. Cummings in response to complaint referrals from the OIG, identified management deficiencies at the North Chicago Medical Center. In December 1998, the external review recommended action to resolve issues concerning employees in positions whose grades were no longer supported and to select permanent incumbents for acting positions. The external review concluded that delay in addressing these issues was contributing to organizational confusion. Dr. Cummings directed Mr. Pate to implement the recommendations, and believed the issues were being resolved. In February 1999,

Mr. Pate wrote Dr. Cummings that his facility continued to make progress to implement the recommendations. However, on May 3, 1999, a local union official complained to Dr. Cummings concerning hiring and position management at the Medical Center. In addition to the organizational uncertainty previously identified by the external review, the union also raised issues of fairness relative to grades assigned to supervisory positions.

In June 1999, Dr. Cummings acknowledged to the union that some of its concerns were long-standing and referred them to Mr. Pate. Dr. Cummings established a follow-up deadline for Mr. Pate. Dr. Cummings testified that since he had not made satisfactory progress on these issues, she gave him a mid-year appraisal on August 3, 1999, formally reminding him of the need to address the issues in order to be **(b)(6)**. Dr. Cummings and Mr. Pate continued to communicate on these issues during the remainder of the year. Mr. Pate provided documentation that he addressed some of Dr. Cummings' assignments, but Dr. Cummings' direction to Mr. Pate for a plan to fulfill the position management and staffing recommendations remained unresolved as of November 1999.

Finding: Dr. Cummings provided clear and convincing evidence that she would have rated Mr. Pate **(b)(6)** even had he not engaged in protected activity. She demonstrated that, during most of his rating period, Mr. Pate failed to fully implement certain external review recommendations as he was directed to do.

Conclusion: Dr. Cummings did not reprise against Mr. Pate for engaging in protected activities.

Report Distribution

Chief Network Officer (10N) – original
Management Review Service (105)