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BEFORE
THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON SES BONUSES AND OTHER ADMINISTRATIVE ACTIONS
ON
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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss several issues that were the subject of two recent Office of Inspector General (OIG) reports, *Administrative Investigation – Misuse of Position, Abuse of Authority, and Prohibited Personnel Practices Office of Information & Technology, Washington, DC, and Administrative Investigation – Nepotism, Abuse of Authority, Misuse of Position, Improper Hiring, and Improperly Administered Awards, OI&T, Washington, DC*. I am accompanied by Mr. Joseph G. Sullivan, Jr., Deputy Assistant Inspector General for Investigations, and Mr. Michael R. Bennett, Attorney Advisor.

While the reports deal with different VA officials, many of the same issues are contained in both reports. In keeping with the Subcommittee's instructions, we will discuss the issues related to the hiring process and other administrative actions, which include: nepotism, misuse of position, prohibited personnel practices, misuse of hiring authorities, improper funding of academic degrees, and improper administration of awards.

NEPOTISM

Federal law states that a public official may not appoint, employ, promote, advance, or advocate for the appointment, employment, promotion, or advancement, in or to a civilian position any person who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative. It further states that money shall not be paid from the Treasury as pay to an individual appointed, employed, promoted, or advanced in violation of this section.

The Standards of Ethical Conduct for employees of the Executive Branch prohibit an employee from using his or her public office for the private gain of relatives and prohibits the use of his or her Government position or title or any authority associated with his or her public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself, to friends, or to relatives.

VA policy mandates that the restrictions on the employment of relatives apply to all VA employees; that public officials may not recommend or refer a relative for consideration

by a public official standing lower in the chain of command; and that "extreme care must be taken to avoid any possibility of likelihood that the nepotism law may be violated in an employment action." The policy further requires that management officials "take appropriate actions to avoid situations which have the potential for, or appearance of, being a violation of nepotism requirements" and at a minimum, document cases where relatives are employed or being considered for employment in the same organizational element or chain of command.

One of the reports details the actions of a former VA official who was involved in the hiring of two family members through the Federal Career Intern Program (FCIP). In fact, the former VA official advocated for the hiring of one family member on two separate occasions for two different positions. However, her improper actions were not limited to the hiring of the family members but also included hiring friends, involving herself in a change of work schedule for her relative, checking on the status of a cash award for the family member, and authorizing expenditures for graduate courses for family member. This former VA official also helped put a family member's application package together, and she told a subordinate that the family member was qualified for a GS-5 position and submitted arguments and documents in an effort to advocate for her assertion that the family member was, in fact, qualified. Further, she asked the selecting official to interview her family member, and instructed a subordinate, to "push" the family member's application as an FCIP candidate.

We found it problematic that the former VA official's relative, after being hired as a part-time intern trainee, was able to convert to a full-time position working a part-time schedule from a remote location over 500 miles away from the relative's managers and duty station. We found no plausible rationale supporting any aspect of this peculiar arrangement.

MISUSE OF POSITION

The Standards of Ethical Conduct for Employees of the Executive Branch state that public service is a public trust; that each employee has a responsibility to place loyalty to the Constitution, laws, and ethical principles above private gain; and that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. The Standards also state that an employee shall not use his public office for his own private gain or for the private gain of friends or persons with whom the employee is affiliated in a nongovernmental capacity, and they prohibit an employee engaged in a financial transaction from using nonpublic information or allowing the improper use of nonpublic information to further his own private interest or that of another, whether through advice, recommendation, or by unauthorized disclosure. Also, Federal Acquisition Regulations state that Government business must be conducted in a manner above reproach and with complete impartiality and with preferential treatment for none.

We found that a VA official misused her official position for the personal gain of a friend when she told a potential VA contractor that they should consider hiring a long time friend of the VA official and provided that friend's resume to the contractor. While the

contractor was never told to hire the friend, the contractor did ask the friend to help them put together their proposal and offered her full-time employment should VA award them the contract. While there may not have been an expressed *quid pro quo*, the VA official clearly and improperly pressured the contractor to hire the friend while the VA official was involved in setting up a VA contract.

We found that the same VA official violated Federal acquisition regulations when she shared nonpublic VA procurement information with her friend by telling her that VA planned to issue a request for proposal, that a certain contractor was a potential vendor, and suggested that her friend contact the contractor for employment, resulting in a personal gain for her friend. We found it problematic that the VA official also shared nonpublic VA information with another friend who was not employed by VA or the contractor, and allowed him to act as an emissary for a VA procurement. This gave the friend an opportunity to exploit the situation for his own personal gain and possible employment with the contractor, and it also gave the contractor a significant advantage in obtaining a VA contract.

We found that a former VA official abused her authority and engaged in prohibited personnel practices in the hiring of friends when as the appointing official she gave preference to her two friends when she selected them for positions within the Office of Information & Technology (OI&T). In addition, her selection of three other individuals constituted pre-selection based on a previous relationship.

This same former VA official also improperly appointed her two friends at rates above the minimum salary. Personnel records contain no justification for their appointments at a higher pay rate, and the justification memorandum for one friend's higher salary did not comply with all the requirements outlined in VA policy. It appeared that these appointments at a higher than minimum pay rate were predicated merely on the prior existing relationships between the former VA official and these individuals, since the documentation justifying the benefit is either nonexistent or insufficient.

We found that an OI&T manager misused his position for the private gain of a family member when he helped her obtain employment within OI&T by recommending her to the hiring official. This manager was well aware that the hiring official was desperate for administrative help, and he exploited her need, perceived or otherwise, to the benefit of his family member. In addition, he knew that when he recommended his relative for the position, separate from the competitive review process, he was orchestrating a means for the relative to bypass the competitive process for the position. We also concluded that his relative's appointment did not comply with merit system principles, was made improperly, and his actions led to his relative's appointment to a position for which she was not qualified.

In addition, the same manager misused his public office for the private gain of another family member when he advocated to the Austin Human Resource staff for her appointment and a higher than minimum salary. Furthermore, a former VA official improperly appointed this family member non-competitively under the FCIP at a pay rate

above the minimum salary. We found no documentation to justify the appointment at a rate above the minimum.

PROHIBITED PERSONNEL PRACTICES

Federal law states that recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity. This is the essence of hiring based on merit. The law further provides that any employee, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment, as well as knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement. The Merit Systems Protection Board defines an "abuse of authority" as an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain to preferred other persons.

We found that a VA official abused her authority and engaged in a prohibited personnel practice when she expressed to her subordinates, who were also the rating and selecting officials, that her preference was for them to hire her friend, giving the friend an advantage over other applicants, and when she failed to assure that all applicants received an equal opportunity, in particular those with veterans' preference. The VA official's efforts to hire her friend as her Executive Assistant started when the friend was a contractor employee and the VA official began integrating her into Government day-to-day business. The VA official went to the extent of requesting that a position be re-announced so that her friend had an opportunity to apply; closed out the certificate because her friend could not be hired due to a 10-point veteran blocking her; and then planned to hire her as a Supervisory Information Technology (IT) Specialist so that she could later laterally move her into an Executive Assistant position.

Additionally, the VA official expressed to the selecting official, that she "really wanted her friend to come on board," and they developed a plan to hire the friend into a GS-15 Supervisory IT Specialist position under the selecting official's area of responsibility. The selecting official selected the friend as the best qualified for the position based solely on the VA official's recommendation and desire to get the friend "on board" into Federal service; however an independent review of the applicant packages disclosed that the friend was not the best qualified. The friend even admitted to us that she did not have the technical skills necessary for the position and that it made better sense to put her skills to use as an Executive Assistant. Moreover, the VA official did not comply with VA policy when she requested that the friend be appointed at a rate above the minimum based on her qualifications and private sector salary. The VA official's limited justification did not comply with VA policy requiring her to provide a description of her

recruitment efforts, a comparison of the friend's qualifications to the other applicants, or the reason for the rate instead of a recruitment incentive.

We found that another VA official abused her authority and engaged in prohibited personnel practices when she preselected three other individuals for GS-15 positions. The selecting official selected the individuals from certificates without taking the required steps to determine the best qualified candidate and with a total disregard for fair and open competition in violation of merit systems principles.

We further concluded that three other OI&T employees abused their authority and engaged in prohibited personnel practices when they knowingly failed to properly process applicant packages for four GS-15 positions. Four individuals were preselected for positions, false spreadsheets were created and backdated, and the preferred candidates were listed on top.

MISUSE OF HIRING AUTHORITIES

Federal Career Intern Program

Executive Order 13162, dated July 6, 2000, authorized the establishment of the FCIP to assist agencies in recruiting and attracting exceptional individuals with a variety of experiences, academic disciplines, and competencies necessary for the effective analysis and execution of public programs. Federal regulations provide that appointments made under FCIP expire after 2 years; however, civil service status may be granted to career interns who successfully complete their internships and meet all qualification, suitability, and performance requirements. Regulations further state that agencies are required to provide the career interns with formal training and developmental opportunities to acquire the appropriate agency-identified competencies needed for conversion to permanent Federal employment. The U.S. Office of Personnel Management (OPM) website states that the benefits to using the FCIP program are that there is no requirement to publically announce the positions; it can be used with a targeted recruitment program; it provides flexibility in training; and that after 2 years, the employee can be noncompetitively converted to a permanent appointment.

VA policy requires that any occupation for which a Career Intern Program is established must lend itself to a formal training and development component. Components of a program should include, but are not limited to, individual development plans, performance standards, position descriptions, rotational assignments, specific skills to be acquired, etc. Policy further states that HR personnel, in collaboration with the selecting official/subject matter expert, are required to identify appropriate targeted recruitment sources of candidates with the appropriate background, skills, or education; and develop a career intern formal training and development plan, provided one does not already exist elsewhere within VA for the specific career. Policy also requires HR management officers at local facilities to ensure a Career Intern Program complies with policy.

We identified three specific instances of improper appointments to Management Analyst, GS-5 positions under FCIP. We found no evidence that OI&T established a

Career Intern Program for Management Analysts or that a formal plan existed for trainees to acquire the appropriate agency-identified competencies needed for conversion to permanent employment. Given the scope of recruitment activities that took place as a result of the 2006 OI&T reorganization efforts and other large scale OI&T hiring initiatives, it appears, based on personnel records reviewed, that OI&T hiring officials made additional improper Management Analyst FCIP appointments and subsequently failed to provide the required 2-year formal training program.

Improper Use of Direct-Hire Authority

Federal law provides agencies with the authority to appoint candidates directly to jobs for which OPM determines that there was a severe shortage of candidates or a critical hiring need. OPM's website states that the Direct-Hire Authority (DHA) is an appointment authority that enables an agency to hire, after public notice is given, any qualified applicant without regard to rules requiring competitive rating and ranking, veterans' preference, and "rule of three" procedures.

Federal law permits an agency with delegated examining authority to use DHA for a permanent or non-permanent position or group of positions in the competitive service if OPM determines that there is either a severe shortage of candidates or a critical hiring need for such positions.

We identified four people who were appointed for IT Specialist positions at the GS-5 level under the DHA. However VA's authority for IT Specialists at the GS-5 level expired on June 14, 2004, which was prior to their appointments. We notified VA Central Office's Office of Human Resources of VA's improper use of the DHA to hire these employees. The Director of Central Office Human Resource Service told us that she conferred with the Director of Recruitment and Placement Policy Service, Office of Human Resources Management, and that she verified that VA did not have DHA for any Title 5 positions to include IT Specialists at pay grades below GS-9. We referred the improper use of DHA to the Acting Assistant Secretary for Human Resource and Administration for his immediate review and action.

IMPROPER FUNDING OF ACADEMIC DEGREES

The Homeland Security Act of 2002 amended the Government Employee Training Act of 1958 by expanding an agency's authority to pay or reimburse an employee for the costs of academic degree training. VA employee development policy promulgates this authority and allows an employee to obtain an academic degree at VA expense only when such training contributes to: (1) significantly meeting an identified agency, administration, or staff office training need that is consistent with VA's Strategic Plan; (2) solving an identified agency staffing problem; (3) accomplishing goals in VA's Strategic Human Capital Management Plan; and (4) a planned, systemic, and coordinated program of professional development.

VA training policy stipulates that VA officials exercising this authority must require employees selected to benefit from this provision to sign a continued service agreement prior to training. It also requires that prior to implementing academic degree training,

VA officials in implementing offices are to establish a system of records and develop written plans and procedures for: (1) accounting of funds spent for academic degree training and the number of employees and types of programs enrolled in or completed; (2) ensuring competitive procedures for selecting employees for academic degree training are consistent with the requirements of 5 CFR § 335; (3) ensuring educational institutions awarding an academic degree are accredited by a nationally recognized body, as recognized by the U.S. Department of Education; and (4) certifying how such training will meet VA training needs, resolve an identified VA staffing problem, or accomplish a VA goal in the VA Strategic Human Capital Management Plan. Finally, VA policy provides that employees may take training from non-Government sources if the following conditions are met: (1) adequate training is not reasonably available by, in, or through a Government facility; (2) the training is the most practical and least costly to the Government; and (3) the non-Government facility does not discriminate based on race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent.

We found six instances where OI&T managers as well as approving officials, improperly authorized the expenditure of VA funds to pay for academic degrees for OI&T employees. There was no documentation whatsoever to connect the academic training to the individuals' VA position and justify the training. Furthermore, OI&T managers were fiscally irresponsible when they not only authorized $139,330.88 in improper degree funding, but also by authorizing graduate degree funding at George Washington University (GWU), one of the nation's most expensive private universities. There is no evidence or documentation that would justify a GWU program or degree over those at other universities in Washington, DC.

OI&T did not have a program, as required by law, to allow VA to pay for academic degrees for its employees. In fact, in order to determine how much VA spent on each employee, we had to issue subpoenas to the universities in question. We found no existing OI&T system of records to account for VA funds spent for academic degree training or for the number of employees and types of programs enrolled in or completed. We found no documentation indicating that OI&T had a Masters Degree Program. We also found no records to reflect that funding was dispersed through a competitive process for selecting employees for academic degree training, ensuring that the educational institutions awarding an academic degree were accredited, or how such training would meet VA training needs, resolve an identified VA staffing problem, or accomplish a VA goal in the VA Strategic Human Capital Management Plan. Further, we found no records to indicate that employees sought their training through a Government source or from a source that was the least costly to the Government.

IMPROPER ADMINISTRATION OF AWARDS

Federal regulations require Federal employees to act impartially and to not give preferential treatment to any individual. VA policy authorizes awards to recognize individual employees who make contributions in support of the mission, organizational goals and objectives, and VA's Strategic Plan.

The September 4, 2007, OI&T Delegation of Authority Memorandum delegated award approval authority to the Principal Deputy Assistant Secretary (DAS) and various Deputy Assistant Secretaries, Executive Directors, VACO Service Line Directors, and Regional Directors, as well as first and second line supervisors having the authority to approve performance and special contribution awards. Award limits were defined by management levels and further defined by individual and group amounts. The memorandum did not delegate any authority to approve incentive awards to the Director of the Executive Staff. A subsequent January 10, 2008, memorandum rescinded the earlier one, and it issued new award guidance, including the position, Director of the Executive Staff, as an award approving official. Both the 2007 and 2008 memoranda identified the Principal Deputy Assistant Secretary and Deputy Assistant Secretaries as the only individuals authorized to act as both the recommending and approving officials.

OI&T senior managers recognized that there was an OI&T budgetary shortfall, but OI&T managers still spent over $24 million on awards and retention bonuses in a 2-year time period while working under a deficit. We recognize that OI&T's mass reorganization efforts were the major causes of the deficit; however, we found that not all managers were fiscally responsible when rewarding employees. One former VA official acted as if she was given a blank check book to write unlimited monetary awards. We also found that she failed to properly administer VA awards policy. Prior to the issuance of the September 2007 and January 2008 memoranda re-delegating the authority to approve awards, the former VA official was not authorized to approve awards; however, she improperly approved numerous awards worth tens of thousands of dollars. Additionally, she violated awards policy when she signed as both the recommending and approving official. Although our investigation focused on these specific allegations, we found similar violations of the awards policy by other OI&T managers.

We found four GS-15s who received about $60,000, $73,000, $58,000, and $59,000, respectively, over a 2-year period, with some personnel files containing insufficient or questionable justification. We found that various managers gave a GS-14 about $15,000 within a 9-month time period for the same body of work that was part of his primary job duties. Further, we identified two GS-5s who received 17 percent of the total amount of cash awards given to all GS-5s that year and who received awards for time periods that predated their employment. Additionally, we found a GS-13 employee who within the first 90 days of her employment received a $4,500 performance award from the former VA official who said that she did not even remember her.

A current and former DAS both told us that they were "stunned" by the total amount of appropriated funds that OI&T spent on awards/bonuses. Although we did not find that the dollar amounts given to each employee violated VA policy, we found that the money spent on many of the annual awards we examined were fiscally irresponsible, and in many cases, highly questionable.

CONCLUSION

In the two reports, we made over 40 recommendations to the Assistant Secretary for Information and Technology covering the issues discussed in this statement as well as others. He concurred with all of our recommendations and said that he would confer with the Office of Human Resources and Administration and the Office of General Counsel to ensure that appropriate administrative and corrective actions are taken. We will follow up in accordance with our policy to ensure that the recommendations are fully implemented.

Mr. Chairman, this concludes my statement and we would be pleased to answer any questions that you or other Members of the Subcommittee may have on these issues we have presented.