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Report No. 11-119768-306

July 17, 2012

# Inspector General

United States  
Department of Defense



## REPORT OF INVESTIGATION:

Ms. Diana J. Ohman,

Former Director, DoD Dependents Schools - Pacific/  
Domestic Dependent Elementary and Secondary  
Schools - Guam, DoD Education Activity

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REPORT OF INVESTIGATION:  
MS. DIANA J. OHMAN, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address an allegation that Ms. Diana J. Ohman, while serving as Director, Department of Defense Dependents Schools (DoDDS) - Pacific/Domestic Dependent Elementary and Secondary Schools (DDESS) - Guam, Department of Defense Education Activity (DoDEA), used her official position to induce the (b)(6) (b)(7) (c) of a subordinate to exchange the wheels and tires of his car with the wheels of Ms. Ohman's car in order for her car to pass a mandatory vehicle safety inspection.<sup>1</sup>

We conclude that in May 2010, Ms. Ohman violated applicable standards of the Joint Ethics Regulation (JER); Title 5, Code of Federal Regulations (CFR), Section 735.203; the United States Forces Japan (USFJ) Status of Forces Agreement (SOFA); and USFJ regulations when she arranged for the (b)(6) (b)(7) (c) of a subordinate to exchange the wheels of her car in order to pass the mandatory safety inspection under the Japanese Safety Regulations for Road Vehicles law. We determined that Ms. Ohman compensated the (b)(6) (b)(7) (c) for his services. Accordingly, such arrangement did not constitute an improper gift under the JER.

By letter dated May 21, 2012, we provided Ms. Ohman the opportunity to comment on the initial results of our investigation. In her response dated June 4, 2012, Ms. Ohman agreed with the conclusion and with the determination that the service of exchanging the wheels did not constitute a gift to her. She stated that she was sorry that she did not respect the vehicle safety inspection law of Japan and that the action created the appearance of violating that law. She also stated that she was sorry that she acted in a manner inconsistent with DoD ethical values.

This report sets forth our findings and conclusion based on a preponderance of the evidence.

II. BACKGROUND

Ms. Ohman, a member of the Senior Executive Service (SES) and a career educator, assumed duties as Director, DoDDS - Pacific/DDESS - Guam, in July 2009. She previously served as the Area Director, DoDEA - Europe, from 1999 - 2009. As Director, DoDDS - Pacific/DDESS - Guam, Ms. Ohman reported directly to the Director, DoDEA.

As Director, DoDDS-Pacific/DDESS-Guam, Ms. Ohman was directly responsible for 24,000 students, 3,100 full-time employees, and 48 schools geographically organized into four districts within the Pacific theater: Guam, Japan, Okinawa, and South Korea. She also supervised an annual budget of approximately \$395 million and a non-DoD schools program with a budget of \$13.5 million that served eligible students in over 20 countries where DoD schools are unavailable.

<sup>1</sup> In this report, for simplicity, we use the term "wheel" to refer to the combined wheel and tire unit exchanged between the vehicles. Where we use the term "tire," we refer only to the vehicles' tires.

On May 26, 2011, the DoDEA Office of Compliance and Assistance forwarded to us a portion of an Equal Employment Opportunity (EEO) complaint against non-senior officials. The complaint contained a separate allegation of misconduct by Ms. Ohman alleging that she induced the (b)(6) (b)(7) of one of her subordinates to switch the wheels on his BMW automobile with those of Ms. Ohman's vehicle so her vehicle would pass the mandatory vehicle inspection. Under the USFJ SOFA, all privately owned vehicles must obtain an inspection certificate every 2 years and maintain Japanese Compulsory Insurance (JCI).

We determined that the alleged misconduct, if substantiated, might violate Japanese criminal law against obtaining an insurance liability certificate by fraudulent means. The U.S. Air Force Office of Special Investigations (AFOSI) has jurisdiction at Kadena Air Base. Accordingly, we referred the matter to the Secretary of the Air Force, Office of Inspector General (Special Investigations Directorate) for possible criminal investigation. AFOSI declined to investigate the allegation.

Ms. Ohman terminated her employment with DoDEA on November 18, 2011, and, as of November 20, 2011, was employed in an SES position within the Department of Veterans Affairs in Indianapolis, Indiana.

### III. SCOPE

We interviewed the complainant, Ms. Ohman, and (b)(6) (b)(7) witnesses with knowledge of the matters under investigation. Additionally, we reviewed applicable standards, regulations, emails, and personal documents provided by Ms. Ohman pertaining to her vehicle.

### IV. FINDINGS AND ANALYSIS

Did Ms. Ohman improperly arrange for the wheels of her car to be exchanged in order to pass the Japanese mandatory vehicle safety inspection?

#### Standards

DoD Regulation 5500.7-R, "JER," dated August 30, 1993, including changes 1-6 (March 23, 2006)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates 5 CFR 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

#### 5 CFR 2635:

Subpart A, "General Provisions," "Basic obligation of public service." Section 2635.101(b)(1) states: "Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain."

5 CFR 2635.101(b)(7) states: "Employees shall not use public office for private gain."

5 CFR 2635.101(b)(14) states: "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. . ."

#### **5 CFR 735.203, "Conduct Prejudicial to the Government"**

5 CFR 735.203 states that an employee shall not engage in "dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

#### **USFJ SOFA**

The USFJ SOFA provides rights, privileges, and special protections to USFJ military personnel, civilian employees, and their respective dependants, who are in turn obligated to respect the laws of Japan and to abstain from any activity inconsistent with the spirit of the SOFA.

A SOFA is an agreement that establishes the framework under which armed forces operate within a foreign country. The agreement provides for rights and privileges of covered individuals while in the foreign jurisdiction, addressing how the domestic laws of the foreign jurisdiction shall be applied to U.S. personnel while in that country. U.S. personnel may include U.S. armed forces personnel, Department of Defense civilian employees, and/or contractors working for the Department of Defense.

#### **USFJ Instruction 51-701, "Japanese Laws and You," dated June 1, 2001**

While in Japan, all military members, civilian employees, and their respective dependants are subject to both United States (US) laws and military regulations and Japanese laws and regulations.

#### **USFJ Instruction 31-205, "Motor Vehicle Operations and Traffic Supervision," dated April 5, 2004**

US forces personnel will obey Government of Japan traffic laws and regulations.

All privately owned vehicles must pass a safety inspection and have a valid inspection certificate.

JCI coverage is required for the inspection period.

#### **Japanese "Safety Regulations for Road Vehicles" within the "Road Vehicles Act"**

"Vehicle Inspection" is the process which allows the government to confirm that each individual vehicle complies with the regulations and that each user is conducting the vehicle maintenance properly.

Renewal inspection, or "shaken" in Japanese, is a periodic inspection undertaken after the expiration of the valid term of the initial motor vehicle inspection certificate. For private passenger motor vehicles, the valid term of the inspection certificate is 2 years.

### Facts

The USFJ SOFA requires DoD civilian employees and military personnel stationed in Japan to respect Japanese laws. Japanese law requires that automobiles undergo a safety inspection every 2 years.

In May 2010, Ms. Ohman's personal vehicle, a 1998 BMW Z3, failed the mandatory inspection because of a missing tail light and the tires protruded about a quarter inch beyond the wheel well.

(b)(6) (b)(7)(C) testified that during either the week of May 3 or May 10, 2010, (b)(6) (b)(7)(C) informed her that Ms. Ohman's vehicle failed its JCI inspection.<sup>2</sup> (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) asked her, "You know, her tires didn't pass, and we were thinking, since, you know, (b)(6) (b)(7)(C) has the same car, can we use his vehicle, his tires?" (b)(6) (b)(7)(C) also testified that (b)(6) (b)(7)(C) called (b)(6) (b)(7)(C) from her office, discussed the situation, and arranged to meet him later that day. (b)(6) (b)(7)(C) testified that later that day (b)(6) (b)(7)(C) met with (b)(6) (b)(7)(C) and Ms. Ohman at the DoDDS-Pacific headquarters to discuss the wheel exchange.

(b)(6) (b)(7)(C) testified that (b)(6) (b)(7)(C) told her about the meeting and that he had agreed to switch the wheels from his vehicle with those of Ms. Ohman's. (b)(6) (b)(7)(C) further testified that (b)(6) (b)(7)(C) subsequently switched the wheels of the two vehicles so that Ms. Ohman's vehicle would pass the inspection.

(b)(6) (b)(7)(C) testified Ms. Ohman later put a \$400 check on (b)(6) (b)(7)(C) desk for other work (b)(6) (b)(7)(C) performed on Ms. Ohman's car. She stated that she did not think that Ms. Ohman compensated (b)(6) (b)(7)(C) for changing the wheels.

(b)(6) (b)(7)(C) testified that after (b)(6) (b)(7)(C) informed him that Ms. Ohman's car failed the JCI he "spoke to the officers concerned" who told him that Ms. Ohman's vehicle failed because of incorrect wheel fit. He stated that he spoke to (b)(6) (b)(7)(C) on the phone about exchanging the wheels. He also testified that, in addition to himself, Ms. Ohman, (b)(6) (b)(7)(C), and (b)(6) (b)(7)(C), met to discuss the wheel exchange. (b)(6) (b)(7)(C) testified that during the meeting Ms. Ohman "concurred with the wheel exchange."

(b)(6) (b)(7)(C) testified that he made the wheel exchange at the Air Force car workshop. (b)(6) (b)(7)(C) testified that it took approximately 2 hours to swap the wheels between vehicles. (b)(6) (b)(7)(C) further testified that approximately 10 days after making the initial tire switch and after Ms. Ohman's vehicle passed the second inspection, he did "exactly the reverse of what I did the first time, and returned the wheels to their respective vehicles in the workshop once again."

<sup>2</sup> Although (b)(6) (b)(7)(C) referred to (b)(6) (b)(7)(C) he testified that his name is (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) testified that Ms. Ohman did not pay or otherwise compensate him for any vehicle inspection-related work he performed for her. He testified that he received approximately \$460 from Ms. Ohman for other work he performed on her car, but reiterated that he did not receive compensation for exchanging the wheels, testifying, "I neither requested, asked, applied, or received anything." He testified that he "considered my service as a courtesy, (b)(6) (b)(7)(C) He stated that he did not "wish to be condescending or patronizing," but if a lady owner had a problem with her BMW, (b)(6) (b)(7)(C) would assist in resolving the problem.

When asked what personal or social interactions he had with Ms. Ohman, (b)(6) (b)(7)(C) testified, "Absolutely none." He stated that on one occasion he accompanied (b)(6) (b)(7)(C) to an evening function at a restaurant and had minimal contact with Ms. Ohman for about 5 minutes.

(b)(6) (b)(7)(C) denied telling (b)(6) (b)(7)(C) that Ms. Ohman's car failed the vehicle inspection and testified he did not know who took Ms. Ohman's vehicle in for the initial inspection. He testified that he knew (b)(6) (b)(7)(C) had a vehicle similar to Ms. Ohman's and that (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) stated:

To be completely honest, I was present when (b)(6) (b)(7)(C) just openly said, "Diana, we're all part of the (b)(6) (b)(7)(C). Let me help you with your inspection." And that was the extent of my involvement. I sort of backed out because I knew that this was between two car owners and I had nothing to do with it. So I just moved on and transitioned from that room.

(b)(6) (b)(7)(C) testified that the conversation between Ms. Ohman and (b)(6) (b)(7)(C) about exchanging wheels took place in a meeting room near the Director's office, that it was completely informal, and that the only persons present were (b)(6) (b)(7)(C), Ms. Ohman, and himself. (b)(6) (b)(7)(C) stated that he "was only there by chance. So, I sort of backed out to be polite." (b)(6) (b)(7)(C) testified that he had no direct knowledge of how (b)(6) (b)(7)(C) knew that Ms. Ohman's vehicle failed the JCI inspection. (b)(6) (b)(7)(C) testified that changing wheels just to pass the JCI inspection and then changing them back after the inspection "would not be what I would do as an adult." He also testified that he did not know directly whether the wheels from Ms. Ohman's car were ultimately switched with (b)(6) (b)(7)(C).

(b)(6) (b)(7)(C) testified that he had no knowledge of Ms. Ohman's vehicle failing the safety inspection or of the wheel exchange. Further, (b)(6) (b)(7)(C) denied meeting with Ms. Ohman about the vehicle and denied discussing the wheel exchange with her. He also denied having any discussions with (b)(6) (b)(7)(C) regarding Ms. Ohman's car or meeting him in Ms. Ohman's office.

Ms. Ohman testified that while living in Japan she was the registered owner of a 1998 BMW Z3 automobile. In May 2010 Ms. Ohman took her vehicle to an inspection station at Camp Foster, Japan, for the mandatory JCI inspection. Her vehicle failed the inspection due to, among other things, a missing tail light and the tires of the vehicle protruding "about a quarter inch beyond the wheel well."

Ms. Ohman testified that she knew (b)(6) (b)(7)(C) had the same type of vehicle as hers from a conversation she had with (b)(6) (b)(7)(C) at a social gathering in September 2009. She also

testified that when her car failed the inspection, she talked to (b)(6) (b)(7)(C) about what she should do. Ms. Ohman testified that (b)(6) (b)(7)(C) said, "Well, yours is just exactly like mine. We can just switch the tires." She stated that she and (b)(6) (b)(7)(C) agreed to the switch. Ms. Ohman testified that she did not recall a meeting in her office to discuss switching the wheels.

Ms. Ohman testified that she did not know where or when the wheel exchange took place because she was TDY at the time. Ms. Ohman testified that she received invoices from (b)(6) (b)(7)(C) for work he did on her car. One invoice stated, "Total hours worked, 26 hours at \$15 an hour for \$390." She did not know what part of the labor charge was for the wheel exchange. She testified that the total amount she paid him for his work on her vehicle was \$930, with the difference being for "parts and pieces." When questioned specifically whether any of the \$930 she paid to (b)(6) (b)(7)(C) was for switching the wheels on the two vehicles, she testified:

Yes, as far as I'm concerned because that was our discussion that any time that he put into my vehicle would be paid by me. And obviously, 26 hours and \$390 would indicate that, yes, in my opinion, it was paid.

Ms. Ohman provided us photocopies of the carbon copies of the two checks she wrote to (b)(6) (b)(7)(C) for work he performed on her vehicle. On June 3, 2010, Ms. Ohman wrote check #134 in the amount of \$450, and wrote in the memo line, "Car parts for \$450." On July 30, 2010, Ms. Ohman wrote check #151, in the amount of \$480, and wrote in the memo line, "Work on BMW Z3."

Ms. Ohman testified that she considered buying new tires for her vehicle when it failed inspection, but did not research the price of new tires because, after the discussion with (b)(6) (b)(7)(C), she had a "different option [switching the wheels]" and she chose that option.

Ms. Ohman testified that she did not recall "talking about legality" of what she did and that she chose to switch the wheels "because it needed to get done because I knew I was going TDY. I had to figure out something – and probably because I thought it was going to be a lot cheaper than buying new tires."

With regard to her personal relationship with (b)(6) (b)(7)(C) before he exchanged the wheels on their cars, Ms. Ohman testified:

He stopped by the office infrequently... He and I did exchange some emails in regards to BMWs. (b)(6) (b)(7)(C) and we discussed that... We did talk a couple of times on the phone.

On May 23, 2010, Ms. Ohman sent an email to (b)(6) (b)(7)(C), Subject: "RE: The white 'Baby Z3'." In it, Ms. Ohman wrote:

Oh My My [sic] (b)(6) (b)(7)(C) I doubt that that [sic] this Baby has ever had this kind of care! Thanks for changing wheels with me to get her through the inspection. I know you are glad to have your Baby back to normal.

When asked how she would respond to the allegation that she conspired or induced another person to switch the wheels of his vehicle with hers in order for her vehicle to pass the mandatory JCI inspection, Ms. Ohman testified:

I would never deny that. That is what happened. I did not conspire. It was a mutually agreed upon process. I didn't require him to do anything that he didn't want to do, and we agreed that that's what would happen, and it did.

### Discussion

We conclude that Ms. Ohman violated applicable standards when she arranged for the (b)(6) (b)(7)(C) of a subordinate to exchange the wheels of her car in order to pass the mandatory safety inspection under the Japanese Safety Regulations for Road Vehicles law. We also conclude that (b)(6) (b)(7)(C) service of exchanging the wheels was not a gift to Ms. Ohman.

We found that in May 2010 Ms. Ohman's personal vehicle failed a mandatory safety inspection under Japanese law. She assented to an arrangement wherein (b)(6) (b)(7)(C) switched the wheels and tires of his car with those on Ms. Ohman's car so her car would pass the inspection. Ms. Ohman testified she chose to have (b)(6) (b)(7)(C) exchange the wheels between the vehicles in order to pass the inspection because it was the cheaper course of action and because she was leaving soon on TDY. She stated she did not "talk about" the legality of her actions.

Japanese law mandates that all vehicles pass a safety inspection. The USFJ SOFA requires all DoD civilians to respect the laws of Japan and the USFJ Instructions reemphasize the requirement for a safety inspection. Additionally, the JER outlines the expectation that DoD employees act in an ethical manner and avoid any actions that would create the appearance that they are violating the law.

We conclude that Ms. Ohman's conduct was dishonest and violated the applicable standards. She chose a course of action that brought her personal monetary gain, in the form of money saved by not purchasing new tires for her car. Her decision to switch the tires may also be characterized as a violation of the Japanese Safety regulations in that she used wrongful means to pass a mandatory safety inspection. Further, Ms. Ohman acted in a manner that was inconsistent with DoD ethical values.

We also determined that the wheel exchange did not constitute a gift to Ms. Ohman. Although (b)(6) (b)(7)(C) testified that Ms. Ohman did not compensate him for exchanging her wheels, Ms. Ohman testified that she considered the labor charges billed by (b)(6) (b)(7)(C) included compensation for switching the wheels. We compared the invoice for repair work performed by (b)(6) (b)(7)(C), which included an unattributed total charge for hours of labor, with an estimate of the average labor hours typical for such repairs. Based on that comparison, we determined that it was reasonable to conclude the labor hours charged included compensation for the wheel exchange in addition to the repair work. Accordingly, (b)(6) (b)(7)(C) service of exchanging the wheels was not a gift to Ms. Ohman.



V. CONCLUSION

Ms. Ohman violated applicable standards of the JER, 5 CFR 735.203, the USFJ SOFA, and USFJ regulations by improperly arranging with a subordinate's <sup>(b)(6) (b)(7)</sup><sub>(C)</sub> for the temporary exchange of her wheels in order to pass the mandatory Japanese safety inspection.

VI. RECOMMENDATION

As Ms. Ohman is no longer employed by DoD but is still in the SES, notify the Office of Personnel Management of the substantiated misconduct.

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