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Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments, and Comments of the Special Counsel

OSC File No. DI-08-2238

Summary

The whistleblower, Monica Roy[1], a former Sales Clerk, disclosed to the Office of Special Counsel (OSC) that employees at the Department of Veterans Affairs (VA), VA Medical Center, VA Canteen Service (Canteen), Cincinnati, Ohio, were improperly required to use annual leave because the Canteen supervisor often closed operations early once a week for personal reasons.

The former Secretary, VA, tasked Joseph R. Tober, Chief Operating Officer, Canteen, with conducting an internal investigation into the whistleblower's allegation. In its Internal Inquiry Report the agency states the results and findings of the investigation. As a result of the investigation, Ms. Roy's allegation was substantiated. OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblower's Disclosures

Ms. Roy disclosed that during her tenure as a full-time Canteen employee, from March 2004 to April 2007, her supervisor, Gary Slucher, Service Chief, Canteen, closed the Canteen early nearly every Friday for three years. The official business hours of the Canteen were from 7:30 a.m. – 3:45 p.m., Monday – Friday. However, Mr. Slucher would often shut down the operations around 3:15 p.m. or 3:30 p.m. Ms. Roy asserted that there were no legitimate business purposes for the closings, but were because Mr. Slucher wanted to leave early for personal reasons. Ms. Roy protested and stated that her tour of duty did not end until 4:00 p.m. In response, Mr. Slucher informed Ms. Roy and her co-workers that they must use their annual leave to compensate for the time difference if they wanted to receive a full paycheck. This caused Ms. Roy to use nearly half of the annual leave she accrued each month to account for the early closings. Ms. Roy provided our office with a copy of her leave records during her employment at the Canteen. This information demonstrated that for approximately three years Ms. Roy repeatedly used between 0.25 - 0.75 hours of annual leave almost every Friday in order to receive pay for her full 80 hour tour of duty.

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[1] Ms. Roy is currently employed as a Supply Technician, Veterans Affairs Medical Center, Cincinnati, Ohio.

As a result, the Acting Special Counsel concluded that there was a substantial likelihood that the information provided by the whistleblower disclosed a violation of law, rule, or regulation and an abuse of authority. Mr. Slucher's requirement that his employees use their annual leave to accommodate his schedule circumvents the intent and purpose of annual leave, which the United States Office of Personnel Management (OPM) has stated is for "vacations, rest and relaxation, and personal business or emergencies." *See* OPM, Leave Administration, Annual Leave, http://www.opm.gov/oca/leave/html/annual.asp. This matter was referred to the Secretary of the VA because the information provided by Ms. Roy signified that Mr. Slucher's actions were in contradiction to these guidelines.

The Agency's Investigation and Report

In order to determine whether Canteen employees were wrongly required to use annual leave, the agency's investigators conducted an unannounced, on-site inspection of the Canteen's operation, analyzed the time and attendance records of employees assigned to the Canteen between January 2004, and November 7, 2008, interviewed and held briefings with VA management officials and other staff. The investigators also reviewed OPM and VA regulations governing employee leave procedures, VA time and attendance procedures, and Canteen operating policies regarding leave and compensatory time-off procedures.

As a result, it was found that time and attendance reports demonstrated a pattern of employees being charged annual leave between twenty-five and forty-five minutes on Friday afternoons. It was confirmed that the Canteen has been closed early on Fridays for at least fifteen years. A total of thirteen employees were affected and seven of those employees are still employed at the VA. It was also found that Mr. Slucher left early on Fridays in order to offset some of the additional hours he worked during the week beyond his scheduled tour of duty. In Mr. Slucher's absence on Friday afternoons, Assistant Managers Emily Sexton or Hank Gieseler, were in charge at the Canteen and they determined whether there would be early dismissals on Fridays. On at least two occasions, Desiree James, former Canteen employee, challenged the early dismissal practice and addressed this issue with Ms. Sexton. Ms. James informed Ms. Sexton that she preferred to complete her tour of duty rather than use annual leave. In response, Ms. Sexton temporarily terminated the early dismissal policy, but allowed the practice to resume again after receiving complaints from employees. Although Mr. Slucher knew about the early dismissal policy, the assistant managers did not inform him about Ms. James' complaints or that there were leave issues.

In light of these findings, the VA concluded that Ms. Roy's allegation was substantiated. Canteen management officials violated OPM and VA rules regarding the administration of leave because the affected employees were not afforded the option of completing their tour of duty or requesting annual leave. Canteen management officials also failed to respond appropriately and implement adequate corrective action in response to Ms. James' complaints. Specifically, Ms. Sexton and Mr. Gieseler "failed to follow and/or ensure leave requesting procedures were executed." Furthermore, although Mr. Slucher's "practice of leaving early on Friday afternoons was not an attempt to defraud VCS/VA," he should have followed proper procedures for recording and using compensatory time-off for additional hours worked.

As part of the corrective action resulting from the investigation, all annual leave "taken as mandated by management for affected employees, [including the whistleblower], will be restored." As of November 7, 2008, the Canteen's retail operating hours have been changed to reflect a 3:45 p.m. closing time and employees will no longer be allowed to leave early without adhering to proper leave procedures. Furthermore, the VA notified our office that disciplinary action, including a five day suspension and a letter of reprimand, have been proposed for Mr. Slucher and Ms. Sexton, respectively. Moreover, all Canteen employees and managers will receive additional training on the proper procedures for requesting and securing leave, as well as time and attendance reporting procedures.

The Whistleblower's Comments

Ms. Roy declined to submit written comments and stated that she was satisfied with the outcome and results of the investigation.

Conclusion

Based on my review of the original disclosures and the agency's report, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.