



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

www.osc.gov

The Special Counsel

April 13, 2018

The President
The White House
Washington, D.C. 20500

VIA ELECTRONIC MAIL

Re: OSC File No. DI-16-5838

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), I am forwarding to you a report from the Department of Veterans Affairs (VA) based on disclosures of wrongdoing at the West Texas VA Healthcare System (West Texas VAHCS), Big Spring, Texas.¹ I have reviewed the agency report. In accordance with 5 U.S.C. § 1213(e), I provide the following summary of the report, the whistleblower's comments, and my findings.

The whistleblower, [REDACTED] who consented to the disclosure of his name, is the fleet coordinator for the West Texas VAHCS. [REDACTED] alleged that the West Texas VAHCS Engineering Service Chief/Chief Engineer/Fleet Manager [REDACTED] violated federal regulation and VA policy by operating a Government Owned Vehicle (GOV) when he was not an authorized incidental driver and misused GOVs on several occasions. [REDACTED] also alleged that [REDACTED] might not meet the minimum qualifications required to become an authorized incidental GOV driver given [REDACTED] statements concerning his health and driving record.

The agency fully substantiated [REDACTED] primary allegation and found that at the time of the investigation [REDACTED] had not demonstrated the minimum qualifications to become an authorized incidental driver under local policy,² and thus, he was not authorized to drive a GOV. The investigation also found that because [REDACTED]

¹ OSC referred [REDACTED] allegations to former Secretary Robert McDonald for investigation pursuant to 5 U.S.C. § 1213(c). The VA Office of Capital Asset Management Engineering and Support investigated the allegations. Former Chief of Staff Vivieca Wright Simpson submitted the agency's report to OSC on April 28, 2017.

²Local West Texas VAHCS Policy 138-60 requires employees who want to drive a GOV to complete an initial driver's packet by providing Human Resources Management Service (HRMS): a copy of a valid driver's license, proof of current car insurance, and a complete OF 345, Physical Fitness Inquiry for Motor Vehicle Operators. HRMS verifies the information and determines the employee's eligibility to be an authorized driver.

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██████████ had not become an authorized driver, he was not eligible to operate, and should not have been assigned GOVs.

Although the VA substantiated ██████████ medical condition, the investigators found that they did not have all the information needed to determine whether he met the minimum requirements to be an authorized GOV operator. Thus, the report recommended that the West Texas VAHCS ensure that ██████████ did not operate a GOV until he completed, and the facility processed, the initial driver's packet and determined whether he was eligible to operate a GOV. The recommendation indicated that the agency must consider ██████████ statements about his driving ability in relation to his medical condition. In February 2017, ██████████ completed the necessary paperwork, which the facility processed, and the agency cleared him for GOV operation without restriction.

The agency partially substantiated the three allegations concerning whether ██████████ misused GOVs and found that in 2015 and 2016, ██████████ misused GOVs in various ways. The agency observed that, as the facility's chief engineer and fleet manager, ██████████ was responsible for knowing, implementing, and complying with national and local policies concerning GOV fleet operations. The agency further noted that he should not have used his position to operate GOVs without receiving clearance to become an authorized driver. Thus, the report made several recommendations to the West Texas VAHCS, which it completed.

First, the facility reviewed Policy 138-60 in conjunction with VA Directive 0637 and Handbook 0637 and ensured it complied with the national minimum requirements; the facility also completed the recommended "review and risk analysis" of the local requirements that exceeded the national standard and retained the higher local requirements in the updated policy. As recommended, the facility audited its documentation concerning all authorized GOV drivers to ensure it was current and complete. Moving forward, West Texas VAHCS will audit this documentation quarterly. The facility also retrained its employees on Policy 138-60, the local process for requesting a GOV, and the VA's policies regarding the actions that constitute misuse of a GOV. Further, the facility incorporated GOV training into new employee orientation and assigned it to all existing employees in the VA's online training and implemented the recommended vehicle rotation system. The report recommended installing Global Positioning System (GPS) devices on facility GOVs pursuant to VA Directive 0637; and the West Texas VAHCS responded that it is included in the national acquisition plan for GPS devices.

Additionally, the report recommended that the Veterans Integrated Service Network-17 (VISN-17) determine appropriate disciplinary action against ██████████ for his GOV misuse. The facility confirmed that disciplinary action against ██████████ was proposed and sustained. Similarly, the report recommended that VISN-17 determine whether West Texas VAHCS leadership failed to follow-up on the allegations concerning ██████████ conduct when they had initially received them through the chain of

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command. VISN-17 Capital Asset Manager [REDACTED] conducted this assessment and disciplinary action was proposed and sustained where appropriate.

In his comments, [REDACTED] objected to the agency only partially substantiating three of the allegations and contended that, in doing so, the agency equivocated in its findings. He also criticized the investigation, asserting it was not thorough. Further, [REDACTED] took exception to the report's failure to provide a determination as to whether [REDACTED] met the minimum requirements to be an authorized GOV driver. [REDACTED] maintained that the agency possessed sufficient information to determine that [REDACTED] did not meet the minimum requirements under VA policy. Finally, [REDACTED] objected to the disciplinary action taken against [REDACTED] for misusing a GOV. Specifically, he disagreed with management citing "violation of policy" and "failure to follow instructions" as the reasons for the discipline rather than citing misuse of a GOV, which prescribes a suspension of not less than one month as the penalty for unauthorized or willful misuse of a GOV.

I have reviewed the original disclosure, the agency report, and [REDACTED] comments. I have determined that the report meets all statutory requirements and the findings appear reasonable. I sent a copy of this letter, the agency report, and [REDACTED] comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed redacted copies of the letter to the President, the agency report, and [REDACTED] comments in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures