

[REDACTED]
Fleet Coordinator/Whistleblower
[REDACTED]

May 23, 2017

Subj: OSC File No. DI-16-5838

To whom it may concern:

I received and reviewed the report of investigation by the Department of Veterans Affairs (DVA), Office of Capital Asset Management Engineering and Support (OCAMES) team. According to the response letter signed by Ms. Vivieca Wright Simpson, DVA Chief of Staff the team substantiated one allegation and partially substantiated three allegations of misuse of a GOV.

I will be the first to admit I am no legal expert by any means, but in any case, appeal, or hearing I have ever witnessed the burden of proof shows the charges are either substantiated or not substantiated. I have never heard of partially substantiated. After 15 years of federal service, I have learned when it comes to law, discipline, etc. the rules and regulations are black and white, there is no gray area.

Although it seems in this "investigation" the DVA and the OCAMES inspectors are allowing gray area. According to the DVA policy (VA Handbook 0637) a first time offense for misuse of a GOV is subject to suspension of at least 1 month. Admittedly [REDACTED] informed the investigators that [REDACTED] was punished for "violation of policy and failure to follow instructions" instead of misuse of a GOV. Oh, I forgot it is recommended that the VISN 17 office review whether the disciplinary action taken against him was appropriate. I can tell you it was not appropriate and had it been any other employee they would have been removed.

This investigation was almost meaningless and conducted very loosely. My interview began at 9am and ended at 12:15pm. [REDACTED] was waiting to be interviewed when I finished, I saw him again at approximately 12:45pm when he was done with his interview. The local policy the investigators want reviewed and changed was put into place before I was the Fleet Coordinator

It is this kind of thinking, lack of investigation, and lack of responsibility that has gotten the VA the bad reputation it has. For the OCAMES team to state (OSC Report Pg 11): "**he did violate VA and station policies** by his use of a GOV in part for personal convenience" then come back afterwards (OSC Report Pg 13) and state: **VA did not substantiate that [REDACTED] misused a GOV.** Again this is not speculative, this is either a violation or not. They substantiated that he ***did not appropriately*** use a GOV. It is either a violation or it isn't!

Many times in the DVA's report it states: "[REDACTED] *As both the Chief Engineer of the facility and the Fleet Manager, he is not only responsible to be knowledgeable of VA and WTVAHCS fleet policies, but also accountable in ensuring uniform compliance; not utilizing his*

unique position at the facility to utilize a GOV without being cleared by HRMS for authorization as a driver."

Although being an "authorized driver" is a big issue in this case it is shallow in comparison to the actual facts of the case. When you look at the track record, the pattern of behavior, the misconduct and the vulnerabilities that should have been exposed in the investigation, well this report is misleading and misleading in a very deliberate fashion. That is what is most disturbing from a factual basis and is deeply corrosive to the DVA if exposed.

As [REDACTED] stated in her summary letter, there was a violation of policy, not just local policy, DVA and national policy. Contrary to what [REDACTED] states, "partially substantiates" is not element of the violation. This is a false argument, either there was a violation or there was not. Yes or no, it is not what did [REDACTED] intend to do, it's not subject to interpretation or speculative, is there a violation? Yes or no, it is that simple.

Where there may be some confusion and where I feel DVA is drawing a line is in the definition of who is a "driver". There are Wage-grade drivers as defined by OPM, who have a primary assignment of driving motor vehicles and incidental drivers, who do not drive as their primary assignment but may periodically transport patients in the course of their work.

Neither of these definitions applies to [REDACTED] yet they also do not apply to our other hybrid positions that do drive and have a secondary assignment to drive a GOV. We have providers (nurses, physicians, dieticians, etc) in our Home Based Primary Care (HBPC), Social Workers, Emergency Management personnel, Law Enforcement, etc. that one of their assignments is to be assigned to a GOV, drive on a daily basis, for hours at a time, all over the community and in our catchment area.

These drivers all meet the criteria and standards as defined in several Federal, DVA, and local policy. Yet the OCAMES inspector's state: "*VA substantiated that [REDACTED] is being treated for narcolepsy. Although, substantiated, this in itself is not a violation of Federal law or VA policy. VA was not able to substantiate whether or not [REDACTED] would meet the minimum requirements to be authorized to drive a GOV.*"

VA Handbook 5019 Employee Occupational Health Service, Part II, Appendices II-A which applies to "drivers" states: "*Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.*" How the DVA could not substantiate the minimum requirements out of their own policy is beyond me.

Although I made more than 4 allegations, it seems DVA only picked 4. Allegation 1 – [REDACTED] improperly operated a GOV notwithstanding his failure to demonstrate that he met the minimum qualifications of possessing a valid driver's license, a safe driving record, and no medical impairments.

There are two issues with [REDACTED] producing "*a Texas driver's license with no restrictions*" as the OCAMES investigators mention. First, in the state of Texas if an individual has restrictions or "loses" their license due to violations, the State of Texas does not physically repossess the license. Anyone can produce a license on request if they physically have it.

Unless you are a Law Enforcement Official or have a recent copy of the drivers driving record, there is no way you would know if they had a current, unrestricted, and valid license.

Second, the State of Texas has no mandatory reporting of medical conditions to TXDPS. Neither [REDACTED] nor DVA are obligated to report his condition, although there are steps in place to evaluate individuals with these diagnoses. After the OCAMES investigators interviewed me I shared with them via email the State of Texas Department of Public Safety (TXDPS) medical requirements for keeping a Texas driver's license.

[REDACTED] as a resident of Texas has a Texas Driver's License. Since [REDACTED] verbally told me about his narcolepsy, I was concerned with him frequently using GOV's. Especially after we had a report from a citizen that reported he had almost been driven off the road by what we later found out was [REDACTED]. In my opinion this posed huge legal and ethical issues for the DVA.

Also [REDACTED] stated he was diagnosed and receiving treatment from his VA doctor who is a General Practitioner here at the facility. Although according to VA Handbook 5019 Part II, Appendix A (Dated March 27, 2015) "*When the EOH determines that the incumbent has conditions present that warrant more frequent examination, the incumbent will follow those recommendations. Prior to undergoing these examinations, the employee must sign an authorization to release information form and be made aware that results of the examination may be shared with Human Resources Management or others with a need to know.*"

In conclusion let me say, I have no vendetta or personal motives for any of these allegations against [REDACTED]. For the most part we have had a good working relationship. My allegations would be the same for any employee of the DVA. I have seen how some employees have been held to higher standards than other employees. This investigation and its report make it hard for me to say there is justice at the DVA.

As a Veteran of the U.S. Army and an employee I have lost confidence in the DVA and it's so called policies. To many times have I seen good employees trying to do the right thing punished and employees that abuse the system and have influence get away with misconduct. The policies are clear and for them to be muddied by investigations like this is ridiculous.

[REDACTED]

May 23, 2017
Date