



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

July 12, 2011

Mr. William E. Reukauf
Associate Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: OSC File No. DI-11-1580

Dear Mr. Reukauf:

This replies to your May 13, 2011, letter regarding allegations reported by Wendell R. Bates, a former Administrative Officer, Surgery Service at the Southeast Louisiana Veterans Healthcare System (SLVHCS), New Orleans, Louisiana. Mr. Bates alleged that throughout his tenure, Dr. Mary Fazekas-May, Chief of Surgery, frequently misused official time by either failing to report for work or being extremely tardy for work. He also alleged that Dr. Fazekas-May operated a private practice that attributed to her tardiness or absences.

The Department of Veterans Affairs thoroughly investigated Mr. Bates' allegations. Findings of the review are included in the enclosed Report of Investigation, which details investigations conducted by both a fact-finding team at SLVHCS and the Office of Inspector General, which previously reviewed the same allegations against Dr. Fazekas-May. The evidence does not support the allegations that Dr. Fazekas-May violated 5 C.F.R. § 2635.705.

I have reviewed the report and concur with the conclusion that there is no validity to the allegations.

Thank you for the opportunity to respond to these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric K. Shinseki".

Eric K. Shinseki

Enclosure

I. Summary of Information

An investigation was conducted in response to OSC File No. DI-11-1580 regarding allegations made by Mr. Wendell R. Bates, a former Administrative Officer, Surgery Service at the Southeast Louisiana Veterans Healthcare System (SLVHCS), New Orleans, Louisiana. Mr. Bates alleged that Dr. Mary Fazekas-May, Chief of Surgery Service, frequently misused official time in possible violation of 5 C.F.R. § 2635.705 by either failing to report to work or being extremely tardy for work. Mr. Bates alleged that Dr. Fazekas-May reported to work on average for approximately 15 to 20 hours of her scheduled 40-hour work week. He also alleged that Dr. Fazekas-May operates a more financially lucrative private practice, which Mr. Bates alleged attributed to Dr. Fazekas-May's frequent tardiness and absences in order to meet the demands of the private practice.

II. Conduct of the Investigation

The Department of Veterans Affairs' (VA) Office of Inspector General (OIG) investigated identical allegations against Dr. Fazekas-May in 2010. On October 5, 2010, OIG reported its findings to the SLVHCS Director, noting that it did not substantiate the allegations that Dr. Fazekas-May misused official time, but that SLVHCS personnel failed to accurately account for her time and attendance. OIG thus recommended no administrative action against Dr. Fazekas-May, but recommended that the Director ensure that Dr. Fazekas-May's time and attendance records accurately reflected her tours of duty. After receiving the Office of Special Counsel's May 13, 2011, letter detailing the same allegations, VA convened an Administrative Investigation Board (AIB) comprised of personnel from outside of the SLVHCS. The AIB focused on compliance with all governing laws and regulations by Dr. Fazekas-May, compiled factual information regarding the allegations, and investigated whether there existed corroborating information that supported the allegations. The three members of the AIB were Bryan Matthews, Associate Director, Jack C. Montgomery Veterans Affairs Medical Center, Muskogee, OK; Beverly Shearer, Veterans Integrated Service Network (VISN) 16 HR Manager; and Donna Smith, VISN 16 Payroll and Travel Manager.

The AIB received sworn testimony from surgical staff who would have knowledge or responsibility for annotating, approving, or requesting official time deviations for the period of July 6, 2010, to February 25, 2011. Testimony was provided by Dr. Mary Fazekas-May; Dr. Paul Rosenfeld, Chief of Staff; Ms. Ramona Griffin, Program Assistant and timekeeper for Surgical Service; Ms. Lumena Trufant, Management Analyst Officer and alternate timekeeper, Surgical Service; and Ms. Annette Barnes, Program Support Assistant and alternate timekeeper, Surgical Service. The AIB analyzed Dr. Fazekas-May's time and attendance records, leave requests, tour of duty changes, and clinic and surgical schedules to determine if any improper unscheduled absences occurred.

III. Summary of Evidence

Time cards verify that Dr. Fazekas-May followed VA policy and regulations for requesting and documenting her time and attendance. There was no evidence substantiating the allegation that Dr. Fazekas-May was either tardy or absent without prior approval from her supervisor. Additionally, contrary to Mr. Bates' allegation, Dr. Fazekas-May does not operate a "private practice." Instead, she treats a small number of patients at the Tulane Medical Center on Wednesday mornings through an approved affiliation with the University. The AIB found no evidence supporting the allegation that her work with Tulane patients interferes with her VA work. In short, the AIB found no evidence to substantiate any of Mr. Bates' allegations.

IV. Sustained or Unsustained Violations

The AIB found no evidence to substantiate allegations of misuse of official time or demands of private patients that would interfere with Dr. Fazekas-May's duties and responsibilities to the Veterans in her care. The AIB findings concerning official time concurred with those of the October 5, 2010, OIG report. Therefore, the allegations of violations of 5 C.F.R. § 2635.705 are not substantiated.

V. Action Taken

Based on the OIG report dated October 5, 2010, and the AIB findings, no evidence of any violation of law, rule, or regulation has been found; therefore, no administrative action will occur.