



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

January 25, 2018

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

VIA ELECTRONIC MAIL

Re: OSC File Nos. DI-14-4602 and DI-17-3402

Dear Mr. President:

Pursuant to 5 U.S.C. §1213(e)(3), I am forwarding reports from the Department of Veterans Affairs (VA) based on disclosures of wrongdoing at the Bedford VA Medical Center (Bedford VAMC), Bedford, Massachusetts. These matters involve serious violations of government ethics and acquisition regulations, inaccurate statements to federal special agents investigating misconduct, and the longstanding failure of the VA to properly address substantiated wrongdoing, even with recently expanded disciplinary authority.

Prior to contacting the Office of Special Counsel (OSC) in 2014, the whistleblower in this matter, Kevin Cornellier, a tool and parts attendant who consented to the release of his name, contacted the local VA Office of Inspector General (OIG) with these concerns four times beginning in 2011, and local VA police. Despite Mr. Cornellier's repeated attempts to bring this misconduct to light, his allegations were never investigated by local authorities. This history sets a troubling background for the subsequent disposition of this matter.

I. Background and Substantiated Wrongdoing

In late 2014, Mr. Cornellier disclosed to OSC that employees at the Bedford VAMC engaged in widespread and serious misconduct in the purchase and acquisition of landscaping and building materials.¹ He originally asserted that purchasing agents made

¹ The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, he is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable.

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suspicious, frequent, and significant purchase orders for landscaping materials, such as rock salt, mulch, and crushed stone. A majority of these orders were never delivered to the facility, despite payment. Mr. Cornellier contended that this was part of a kickback arrangement, whereby purchase orders to local companies were made in exchange for pecuniary benefits to VA employees. OSC found a substantial likelihood of wrongdoing existed based on the information provided by Mr. Cornellier, and referred the matter to former VA Secretary Robert McDonald, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d).

VA's Office of Procurement and Logistics (OPL) investigated the matter, and largely substantiated Mr. Cornellier's allegations. OPL found that at the direction of Dennis J. Garneau, the former Bedford VAMC Maintenance and Grounds supervisor, the unit purchased in excess of \$200,000 for snow removal and grounds keeping materials from Earth Creations Landscaping, a company owned by Mr. Garneau's son. Moreover, Heather Garneau-Harvey, Mr. Garneau's daughter, was directly involved in purchase orders made to Earth Creations Landscaping, as a temporary purchase card holder. The investigation determined this was a violation of VA and government ethics regulations, as Heather and Dennis Garneau were engaged in conduct that had a direct and predictable effect on the financial interest of a family member. *See* 18 U.S.C. § 208 and 5 C.F.R. § 2635.

Further, the investigation found that since fiscal year (FY) 2011, at the direction of Mr. Garneau, Maintenance and Grounds purchasing agents ordered over \$750,000 dollars in landscaping materials, without an appropriate receiving process to verify the delivery of ordered goods. The investigation also determined that fifty percent of all purchase card orders from FY 2011 to FY 2014 lacked supporting documentation, such as an invoice or packing slip, in violation of VA acquisition integrity policies. *See* VA Government Purchase Card, VA Financial Policies and Procedures Volume XVI, Chapter 01, Dec. 2014- 010205; Internal Controls. Mr. Cornellier originally alleged that local private landscaping companies with whom Mr. Garneau maintained an illegal arrangement received these materials instead. Mr. Cornellier asserted that multiple small but recurring purchase card orders were used to conceal the extent of this wrongdoing.

The investigation determined that many of these purchases were in violation of the Federal Acquisition Regulations (FAR), which requires rotating through eligible vendors. *See* FAR Part 13. Finally, the investigation found that Mr. Garneau improperly conveyed VA equipment such as a front-end loader, backhoe, and bobcat to a local towing company in violation of multiple government property disposition regulations.

5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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II. Inaccurate Statements to Federal Special Agents

During the investigation, Ms. Garneau-Harvey provided inaccurate statements to federal special agents concerning this conduct. In June 2016, criminal investigators interviewed Ms. Garneau-Harvey. During this interview, she claimed that she was unaware that her brother owned Earth Creations Landscaping, and noted that she had never discussed the company with family members. Ms. Garneau-Harvey explained she first learned of this association after seeing an Earth Creations truck parked at a residence hosting a Garneau family party in either 2012 or 2013. Subsequently-discovered email communications determined that despite her statements to agents, she corresponded via email with family members about the VA making payments to Earth Creations as early as May 2011.

Further, Ms. Garneau-Harvey asserted in a February 2015 interview with Office of Procurement and Logistics investigators that she had vetted this business arrangement with local managers and counsel. When interviewed, these individuals denied ever speaking with Ms. Garneau-Harvey concerning these issues.

III. Criminal Investigation into the Allegations

As a result of the investigation, the facility was advised to determine what corrective action should be taken against these employees. Ms. Garneau-Harvey was reassigned to the Environmental Management Service in February 2015, while Mr. Garneau resigned from federal service in early 2015. This evidence compiled by the original administrative investigation was provided to the VA OIG for criminal investigation in the summer of 2015. The matter was ultimately presented by the VA OIG to the United States Attorney for the District of Massachusetts, who declined prosecution in August of 2017.

III. Ongoing Allegations of Gross Mismanagement and Eventual Disciplinary Action

Notwithstanding Ms. Garneau-Harvey's reassignment, in the spring of 2017, Mr. Cornellier provided OSC with information indicating that she remained involved in the operation of the Maintenance and Grounds unit, entering work orders that unit employees were tasked with fulfilling. Mr. Cornellier asserted that the failure to ensure her sequestration from the unit where such significant, substantiated wrongdoing occurred constituted gross mismanagement. In April 2017, OSC referred these allegations for investigation. In its report, the VA determined that Ms. Garneau-Harvey was no longer in a position to influence any agency purchases.

During the two-year period that this matter was under active criminal investigation, Ms. Garneau-Harvey remained in her federal position. After the criminal component of this matter concluded, the VA proposed disciplinary action against her in

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October 2017 under the authority of the recently passed VA Accountability and Whistleblower Protection Act of 2017, which was intended to facilitate the removal, demotion, or suspension of VA employees for misconduct or performance. *See* 38 U.S.C. § 714. VA charged Ms. Garneau-Harvey with lack of candor and conduct unbecoming a VA employee, and demoted her from a GS-12 to a GS-11.

IV. Whistleblowers' Comments

The whistleblowers took issue with the “minor” discipline that Ms. Garneau-Harvey was issued, and questioned why she received such relatively slight punishment for activities that were under extended criminal investigation. Mr. Cornellier stated that this was “totally unacceptable” given the years of substantiated wrongdoing and called attention to the amount of money at issue in this matter, which approached almost \$1 million dollars.

V. Conclusion and the Special Counsel's Findings

I have reviewed the original disclosure, the agency reports, and the whistleblowers' comments. I have determined that while the reports meet the statutory requirements, the report's recommendations, specifically the recommended disciplinary actions, do not appear reasonable. Based on the information adduced in the original investigation, Ms. Garneau-Harvey committed multiple government ethics violations, including what appears to be conduct that potentially violates federal criminal conflict of interest statutes. In addition, she was involved in behavior that violated VA procurement integrity directives, as well as federal acquisition laws. Compounding this confirmed wrongdoing are the numerous inaccurate statements she provided to federal investigators concerning the matter, a violation of federal criminal law. *See* 18 U.S.C. § 1001. These statements included assertions, later proven to be false, that she was unaware that the company at issue was owned by her brother.

Notwithstanding these facts, Ms. Garneau-Harvey remains in federal service. By allowing an employee who engaged in this conduct to remain with the agency, the VA demonstrates a shocking degree of indifference to government ethical standards, procurement regulations, and public integrity. This indifference is particularly disturbing given VA's expanded disciplinary authority under 38 U.S.C. § 714, which is intended to facilitate the removal of individuals who have engaged in serious misconduct. In light of these facts, I strongly urge the VA to ensure that Ms. Garneau-Harvey is removed from any position where she could interact with the Engineering Service or participate in procurement matters. I further encourage the VA to take appropriate measures to ensure that conduct like this does not occur in the future, and to suitably discipline employees who have committed serious wrongdoing.

Mr. Cornellier continually fulfilled his ethical obligations as a federal employee. Despite the repeated rejection of his disclosures by local authorities, who were in a position to stop this wrongdoing several years before he came to OSC, Mr. Cornellier

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persevered and was ultimately successful in stopping serious procurement fraud. He should be commended for his efforts.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, redacted versions of the agency reports, and the whistleblowers' comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed redacted copies of these documents in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in blue ink, appearing to read 'HJK', is positioned above the typed name.

Henry J. Kerner
Special Counsel

Enclosures