



Office of the Inspector General U.S. Department of Justice

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Procedural Reform Recommendation for the U.S. Marshals Service

PROCEDURAL REFORM RECOMMENDATION FOR THE UNITED STATES MARSHALS SERVICE

SYNOPSIS

As a result of related investigations, the Office of the Inspector General (OIG) has concerns that the United States Marshals Service (USMS) does not have effective policies, procedures, and internal controls to ensure that OIG reports of investigation finding serious misconduct by USMS employees are promptly referred for disciplinary action, that disciplinary action is taken in a timely manner, and that the USMS is sufficiently committed to employee accountability for misconduct. Accordingly, the OIG recommends that the USMS implement policies, procedures, and internal controls to address deficiencies in its processing of adverse personnel actions that were exposed in the USMS response to these investigations, and to ensure prompt and effective imposition of appropriate discipline in cases of substantiated employee misconduct.

DETAILS

The Problem

The Subject of an OIG investigation had been serving in a senior level position with the USMS when he was accused of serious misconduct. The OIG opened an investigation. During the course of that misconduct investigation, the OIG and the Office of Special Counsel separately initiated concurrent investigations into allegations of retaliation by the Subject and others against USMS employees who were cooperating with the OIG in the original misconduct investigation.

The OIG issued a report of investigation to the USMS that substantiated serious misconduct by the Subject, including misuse of a government vehicle, conduct unbecoming, failure to properly supervise, interfering with an investigation, misuse of government property, and lack of candor. It took the USMS more than 5 months from its receiving the OIG's investigative report for the USMS to issue its disciplinary proposal to the Subject for this misconduct. This fact, along with the other extended delays in the processing of this adverse action described below, caused the OIG to question whether the USMS maintains a tracking system and has timeliness standards for its handling of employee misconduct matters.

After issuing the removal proposal, the USMS placed the Subject on paid administrative leave pending adjudication of the proposal. The Subject remained on paid administrative leave for an additional 6 months until his removal. However, the next month, the USMS entered into a settlement agreement with the Subject that reversed the Subject's removal and allowed the Subject to use various leave mechanisms including annual leave, sick leave, and leave without pay for about 9 months so that he could reach his eligible law enforcement retirement date. This arrangement constituted "terminal leave," which is inconsistent with Comptroller General guidance. The settlement agreement enabled the Subject to retire more than 19 months after the USMS received the OIG's investigative report, thereby avoiding any

punishment for the serious misconduct substantiated by the OIG's investigation. The lack of employee accountability under the terms of the settlement agreement raised the OIG's concerns as to whether the settlement was approved at an appropriately high level of USMS management in view of the Subject's position, the seriousness of the substantiated misconduct, and the pendency of a second investigation of alleged serious misconduct.

During the period when the Subject was using leave to reach his retirement eligibility, 4 months before his retirement date, the OIG issued a second investigative report to the USMS substantiating that the Subject had retaliated against USMS employees who cooperated with the OIG in the OIG's first investigation of the Subject. It took the USMS 3 months to again propose that the Subject be removed, this time for the retaliatory misconduct. However, the USMS failed to properly serve the Subject with the removal proposal, and another month passed before the USMS provided proper notice of the proposed removal. These facts were again indicative to the OIG that the USMS did not maintain an effective system for tracking adverse action matters. Because the USMS did not provide proper notice to the Subject of his proposed removal until 8 days before the Subject's scheduled retirement, there was insufficient time to afford the Subject the required process to remove him before he retired. Accordingly, even though the OIG substantiated serious misconduct in two separate investigations, the Subject retired without serving any disciplinary penalty, and with his full pension pursuant to the earlier settlement agreement.

The Policy

Prompt disciplinary action in response to substantiated misconduct findings serves several important principles: accountability; deterrence; integrity of the workforce; preservation of resources; and maintaining employee morale. Based on the facts of the above-described case, the OIG has concerns that the USMS does not have effective policies, procedures, and internal controls to ensure that findings of serious misconduct by USMS employees are promptly referred for disciplinary action, that disciplinary action is taken in a timely manner, and that the USMS is sufficiently committed to employee accountability for misconduct.

RECOMMENDATIONS

The OIG recommends that the USMS implement policies, procedures, and internal controls to address deficiencies in its processing of adverse personnel actions that became exposed in this case. The OIG recommends further that the USMS take steps to ensure prompt and effective imposition of appropriate discipline in cases of substantiated employee misconduct. The USMS should assess its existing policies, procedures, and internal controls to consider whether implementing the following would prevent future cases of protracted and ineffectual adverse personnel actions.

1. Maintain a system for tracking employee misconduct matters.
2. Develop timeliness standards for completing adverse action proposals and decisions.

3. Ensure that any settlement agreement entered into by the USMS in adverse personnel action matters adequately accounts for the seriousness of the substantiated employee misconduct, includes a tangible element of employee accountability, and is approved at a level of leadership commensurate with the employee's position, the nature of the substantiated misconduct, and the initially proposed penalty.

4. Develop and implement a "terminal leave" policy that provides that under no circumstances shall a proposed or final determination on a personnel action, whether based on deficient performance or misconduct, be delayed or not taken so that an employee can accumulate service time, whether by remaining on duty, while on administrative leave, while on leave without pay, or while on annual leave, in order to attain eligibility for benefits, including but not limited to retirement benefits.



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