



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of the Counselor to the Inspector General

Summary of Internal
Investigations regarding
Misconduct by a Former VA
OIG Special Agent in Charge



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Introduction

The Department of Veterans Affairs Office of Inspector General (OIG) conducted two related investigations following several allegations that a then special agent in charge (hereafter, the “subject”) who worked in the OIG’s Office of Investigations engaged in inappropriate conduct or sexual harassment toward other employees, which two leaders in his directorate allegedly knew about and which allegedly contributed to a hostile work environment.¹ Attorneys within the Office of the Counselor to the Inspector General (the counselor’s office) carried out the investigation and prepared a report on the evidence.

The investigations substantiated some of the allegations, as outlined in the following sections. OIG leaders then initiated a disciplinary process that adhered to the adverse action procedures outlined in 5 U.S.C. Chapter 75.² Those procedures include having a proposing official recommend appropriate administrative action to address the subject’s misconduct after reviewing the relevant facts and evidence. A deciding official then can either uphold the proposed action or mitigate the action to a less severe penalty after considering the employee’s oral and/or written response to the proposed action.

In reviewing the behavior documented in the report of investigation, OIG disciplinary officials considered whether it met the specific elements of sexual harassment and, if not, whether it was consistent with other forms of misconduct or created a hostile workplace. In this case, the proposing official determined that based on the facts, the subject engaged in misconduct consistent with a charge of “conduct unbecoming” and that the appropriate penalty for the misconduct should be removal from federal service. An agency’s conduct unbecoming charge “may be proven by evidence that the employee engaged in the conduct as described in the charge and that such conduct was improper, unsuitable, or detracted from his character or reputation.”³ After considering the subject’s responses to the proposal, the deciding official agreed that the misconduct occurred as charged and that removal from federal service was warranted. Prior to the OIG being able to effect the removal, the subject retired during the 30-day advance notice period between the proposal and completion of a serious adverse action required under federal regulations.⁴

¹ The investigations involved an examination of documentary evidence, such as texts and Skype messages, as well as testimony from interviews.

² 5 U.S.C. § 7513.

³ In federal civilian cases, the Merit Systems Protection Board defines “conduct unbecoming” as behavior that is “unattractive; unsuitable ...; detracting from one’s ... character, or reputation; creating an unfavorable impression.” *Miles v. Department of the Army*, 55 M.S.P.R. 633, 637 (1992); *see also* *Canada v. Department of Homeland Security*, 113 M.S.P.R. 509 (2010).

⁴ As stated in the OIG’s decision to remove the subject, and pursuant to 5 C.F.R. 75 § 752.404(b) (2022), the effective date of the subject’s removal was January 2, 2021, which was 30 days after the proposal but after his December 31, 2020, retirement.

Separately, a different proposing official reviewing the conduct of the subject's senior leaders in the Office of Investigations determined the evidence did not support that those leaders knew of these behaviors and failed to take appropriate action nor that the criteria for a hostile work environment were met.

Following the investigations, the OIG also took action to update and implement internal policies and supports to further ensure the safety of all employees in the workplace.

Chronology

The special agent in charge who was the subject of the two investigations had been employed in the OIG's Office of Investigations since 2000, when he was hired as a special agent. Over the next 21 years, he was promoted first to an assistant special agent in charge and later to the special agent in charge position he held when OIG leaders learned of the complaints.

On or about November 19, 2019, a staff-level (nonsupervisory) employee reported unwanted contact and sexual advances to a supervisor. The allegation included that the subject imposed unwanted sexual attention on the employee by sending flirtatious and suggestive text and Skype messages, engaged in physical touching, visited the staff-level employee's work area for no legitimate purpose, and sent a picture of himself in his underwear using his personal cell phone. Neither the staff-level employee nor the employee's supervisor worked in the Office of Investigations. The supervisor contacted the assistant inspector general for her directorate, who directed her to raise the allegations to the OIG counselor. The supervisor met with the counselor the following day. In a subsequent discussion, the supervisor also informed the then assistant inspector general for management and administration of the allegations involving the subject.

On November 25, 2019, Inspector General Michael Missal was briefed, via email, by the then assistant inspector general for management and administration on the allegations. The inspector general directed on that same day that an investigation into the allegations be conducted. Given the subject's long tenure with the Office of Investigations and his relationship with internal investigators in that office, the inspector general directed attorneys in the counselor's office to investigate the allegations and report the progress and findings to Deputy Inspector General David Case.⁵

On July 1, 2020, before administrative action was taken on the results of the initial investigation, the OIG hotline staff received an anonymous complaint alleging that the subject engaged in sexual misconduct, to include making advances toward women in the office, sending provocative text messages, and making sexual remarks resulting in a hostile work environment that had been

⁵ The Office of Professional Responsibility (OPR) within the Office of Investigations is typically tasked with undertaking internal OIG investigations. However, given the subject's senior position in the Office of Investigations and his close working relationships with OPR agents, the inspector general assigned the investigation to the Office of the Counselor to avoid even the potential appearance of any conflict of interest.

ongoing for 10 years. The complainant, who listed the names of several alleged victims, asserted that OIG senior leaders in the Office of Investigations were aware of the allegations but failed to address the misconduct.⁶ Inspector General Missal directed the counselor's office to investigate the claims in the second complaint as well.⁷

Following the second inquiry, which demonstrated a pattern of unprofessional conduct by the subject, the OIG proposing official issued the subject a notice of proposed removal based on eight specifications of conduct unbecoming. After receiving the subject's written reply to the notice of proposed removal, the OIG deciding official sustained all eight specifications, and ultimately decided to remove the subject from federal service. However, before the OIG could execute the removal, the subject voluntarily retired at the end of 2020. Separately, the OIG investigative report of the subject was considered as a basis for further administrative action involving other OIG staff, which was not resolved until late in 2022.

Findings and Analysis

The first investigation found that from September 2019 through November 2019, the subject engaged in what began as mutually flirtatious written communications, including text messages, with a staff-level employee who worked outside the Office of Investigations. Some of the text messages, shared through personal cell phones, included pictures of the subject only partially clothed. The text messages also described a consensual physical encounter between the subject and the staff-level employee that occurred away from the office and in a public setting. Additional evidence uncovered during the investigation showed the subject sent some of the flirtatious written communications while on duty using his government-issued computer. In one such communication, the subject advised the staff-level employee to delete the communications because he did not "want to get fired."

The evidence revealed by the first investigation supported a finding of conduct unbecoming but did not support that the subject engaged in sexual harassment of the staff-level employee. Nor did the evidence reveal any continued misconduct after the investigation began.⁸ While the staff-level employee denied interest in a romantic relationship with the subject, evidence uncovered during the investigation supported the subject's contention that the two "flirted with one another." Although the allegations considered during this first investigation were serious (as

⁶ Additionally, the complainant claimed that an executive assistant in the Office of Investigations inappropriately spread rumors in the workplace concerning the alleged misconduct. The complainant asserted that the executive assistant, who was not part of the management team, should not have been privy to the information that was disclosed to others.

⁷ No additional allegations concerning the then special agent in charge were received following the July 1, 2020, complaint.

⁸ Although the investigation could not substantiate the harassment allegations, it raised concerns about the special agent's behavior because the subject engaged in flirtatious written communication, which included comments about the staff-level employee's physical appearance, while he was on duty and using his government-issued computer.

were those in the second investigation below), neither investigation revealed evidence reflecting a hostile work environment by sexual harassment, which requires, among other evidence, a showing that the harassment was so severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment.⁹

Specifically, while the second investigation developed evidence of multiple incidents of inappropriate conduct by the subject directed toward several OIG employees, the investigation did not develop sufficient evidence of continued conduct directed at any single OIG employee to determine the subject altered an OIG employee's conditions of employment.¹⁰

When interviewed during the first investigation, the staff-level employee reported being propositioned for sex and that the subject had expressed a desire to become "friends with benefits." The staff-level employee also told investigators of a separate occasion outside the workplace, in which the subject asked about going to his apartment for sex.

During his interview, the subject denied propositioning the employee but acknowledged stating that he wanted to be "friends with benefits." According to the subject, the employee later became upset with him after learning of his recent marriage. The subject further stated that if he believed the interactions troubled the staff-level employee, he would not have continued them.

In contrast, the staff-level employee stated that the subject made unwanted sexual advances and engaged in other inappropriate behavior and that she told him to stop contacting her. The employee, however, explained not wanting to report the behavior for several reasons, including that the subject was well liked within the OIG. The employee also expressed concern that others would learn what previously occurred between them.

The subject acknowledged receiving a Skype message from the employee on November 21, 2019, to refrain from further touching, or communications other than for official OIG business reasons. The subject further acknowledged receiving an order from the OIG assistant inspector general for investigations on or about December 5, 2019, to stay away from the employee.¹¹

Second Investigation

Based on evidence developed during the second investigation, the proposing official determined that the subject frequently hugged female employees in the workplace, made inappropriate remarks, and commented on the physical appearance of a female special agent. The evidence

⁹ 29 C.F.R. § 1604.11(a) (2022); Equal Employment Opportunity Commission, *Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors*, June 18, 1999.

¹⁰ 29 C.F.R. § 1604.11(a); Equal Employment Opportunity Commission, *Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors*.

¹¹ On December 5, 2019, the deputy counselor to the inspector general and the investigating attorneys met with the OIG assistant inspector general for investigations to discuss the findings. The deputy counselor advised the assistant inspector general for investigations to instruct the subject to engage in no further contact with the staff-level employee.

revealed by the investigation did not substantiate that the subject sent provocative text messages other than the messages identified during the first investigation, nor did the investigation substantiate the hostile work environment allegation.

Several OIG employees within the Office of Investigations interviewed during the second investigation described their interactions with the subject. One employee stated that he never propositioned her, and she never witnessed him making advances toward female employees. She did, however, recall hearing rumors of the subject “hit[ting] on” women. Another OIG employee also denied any knowledge of the subject engaging in sexual misconduct in the office. However, the employee acknowledged receiving occasional “side hugs” from him. The employee did not find the side hugs unusual, instead describing the interactions as the subject’s expression of gratitude for the work she performed.

Other OIG employees within the Office of Investigations interviewed during the investigation recounted instances when the subject exhibited inappropriate behavior, such as hugging women and complimenting them on their clothing and physical appearance.

Another employee denied that the subject had been sexually inappropriate with her, but described an incident at a training event in which he made her uncomfortable by failing to respect her personal privacy and repeatedly telling her she was “cute.” Another employee stated that the subject tells women they are attractive and hugs them. Recalling an incident in 2019, the employee stated the subject told her he had a crush on her.

A female supervisor in an OIG directorate outside the Office of Investigations recalled that the subject either hugged her or attempted to hug her every time he saw her. The supervisor also recalled that the subject invited her to come to his hotel room when they were both scheduled to attend an off-site meeting. The invitation angered the supervisor, which led to the subject saying he was only kidding and later apologizing for his comment. The supervisor stated that the subject never again made a comment like that to her. The supervisor added, however, that everyone was aware of his behavior, but nothing was done to stop it. She further explained she did not report his misconduct because she was concerned that doing so would affect her job.

When interviewed, a senior executive outside of the Office of Investigations acknowledged the subject gave her side hugs, but only after requesting permission to do so. The senior executive did not consider the side hugs sexual in nature and did not recall the then subject making any inappropriate comments.

Other witnesses recalled learning of the subject’s behavior and stated that the then deputy assistant inspectors general in the Office of Investigations were aware of complaints against the subject. Another OIG assistant special agent in charge recalled in an interview being present when the subject asked a woman working within the OIG for hugs and that some other women

shared that the subject made inappropriate comments to them. The assistant special agent in charge stated that he did not report the behavior to Office of Investigations leaders because he did not believe any action would be taken and he thought doing so would affect his job.

A former OIG special agent interviewed by the investigating attorneys stated he was aware that women complained about the subject, and that a then deputy assistant inspector general in the Office of Investigations informed him of such a complaint. The former special agent also claimed to have informed that same deputy assistant inspector general about an incident when the subject “engaged and hit on” a female special agent, but the deputy assistant inspector general remained silent and then tried to change the topic. Another special agent in charge recalled an occasion when the same deputy assistant inspector general at that time informed him that he heard rumors about the subject engaging in inappropriate conduct. In contrast, the deputy assistant inspector general denied witnessing inappropriate behavior or receiving any complaints or hearing rumors about the subject’s misconduct toward women working within the OIG. He did acknowledge, however, that the subject liked to hug female employees.

When interviewed, the subject acknowledged hugging several female OIG employees identified in the complaint submitted anonymously. However, the subject denied sending the employees provocative text or email messages or making advances toward them. The subject also recalled that a deputy assistant inspector general in the Office of Investigations spoke to him about the inappropriateness of hugging a female OIG employee.

With respect to the role of the senior leaders involved, the evidence demonstrated that a senior leader in the Office of Investigations did take action (in the form of counseling the subject) when an employee complained that the subject hugged her in 2018. In May 2019, while addressing an unrelated matter, the same senior leader also reminded the subject of the 2018 counseling. A May 2019 memorandum prepared by the deputy assistant inspector general included his recollection of telling the subject that he had previously spoken to him about “need[ing] to be careful about what he says regarding female employees.” The deputy assistant inspector general also recalled the subject’s involvement in a consensual relationship with an employee (a reference to the first investigation). The deputy assistant inspector general, however, denied receiving any additional complaints or hearing rumors of the subject making sexual remarks about women.

In sum, there was insufficient evidence for the proposing official to substantiate the allegation that Office of Investigations senior leaders had direct knowledge of and failed to respond to the incidents of hugging and unprofessional behavior. Although several witnesses stated they believed those senior leaders were aware of the subject’s inappropriate conduct toward women in the workplace, there was insufficient evidence to substantiate the allegation that they had direct knowledge of the alleged incidents but failed to take action. Further, there was insufficient evidence to substantiate the allegation that senior leaders failed to take appropriate remedial action to address a hostile work environment in the Office of Investigations. Although one

witness reported informing a deputy assistant inspector general for investigations about a rumored incident involving the subject that occurred at a work holiday party in 2018 or 2019, the senior leader did not recall receiving specific allegations involving the subject.

Evidence collected during the second investigation also confirmed that the subject hugged female employees in the workplace and revealed that he engaged in a range of other inappropriate behavior. The evidence further supported that a deputy assistant inspector general in the Office of Investigations counseled the subject after touching an employee in a way that made her uncomfortable and instructed him to take care in how he spoke to and about women in the workplace. He also told the subject to stay away from the staff-level employee at the center of the first investigation.

Disciplinary Action

Following the investigations, an independent OIG senior executive reviewed the evidence and proposed to remove the subject from federal service due to “conduct unbecoming.” Supporting the conduct unbecoming charge, the proposing official cited several specifications of misconduct including the following:

- The subject used a government computer to send inappropriate messages to an employee about her appearance.
- The subject made inappropriate physical contact with another employee and inappropriate comments on her appearance, as well as invited her to his hotel room during official travel.
- The subject informed another employee that he had a “crush” on her and made inappropriate comments about her physical appearance.

After reviewing the subject’s written reply to his proposed removal, as well as the evidence file, another independent OIG senior executive serving as the deciding official sustained the charge of conduct unbecoming and upheld the proposed removal. The subject retired from federal service prior to the OIG completing the removal action that could only be executed 30 days following the issued proposal.

Conclusion

The two related investigations revealed facts that led to the proposing official’s determination that the subject engaged in inappropriate workplace conduct that warranted a charge of conduct unbecoming of a federal employee.¹² However, the investigations did not produce evidence to

¹² As stated previously, “conduct unbecoming” is a general misconduct charge recognized by the Merit Systems Protection Board as, “unattractive; unsuitable...; detracting from one’s...character, or reputation; creating an unfavorable impression.” *Miles*, 55 M.S.P.R. at 637–38.

substantiate that the subject's conduct, as described by the witnesses, was so severe or pervasive as to create a hostile work environment under federal law. Furthermore, despite some witnesses' beliefs that the Office of Investigations' senior leaders were aware of but ignored the subject's conduct, evidence supports that a senior leader did counsel the subject about his behavior and directed him to cut off contact with the staff-level employee. The two investigations demonstrated that at least one Office of Investigations senior leader took action when complaints about the subject's conduct were reported. Moreover, there was conflicting evidence about who had direct knowledge of the misconduct.

All OIG employees are required to complete harassment prevention and accountability training annually, including test scenarios on what constitutes harassment and information on whistleblower rights and protections. Supervisory employees must also take annual training on referring allegations of whistleblower reprisal to appropriate authorities. However, the investigations revealed that some witnesses were still reluctant to report instances of inappropriate conduct by the subject.

The OIG is committed to a workplace where all employees feel safe, valued, and engaged. To enhance the OIG culture and environment that supports reporting potential misconduct and to foster a workplace free from harassment, the OIG has implemented OIG Directive 359, *Standards of Conduct*, and updated OIG Directive 301, *OIG Prohibitions Against Nepotism and Romantic Relationships*. OIG Directive 359 specifically address instances of sexual misconduct, including, but not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. OIG Directive 301, updated after the investigations, prohibits agency employees from using positions of authority, or apparent authority, to initiate or further romantic relationships as well. The OIG's strategic plan on diversity, equity, inclusion, and accessibility also calls for the creation of a Women's Liaison Group to serve OIG employees who identify as women. Once launched, the group will help foster professional development and nurture safe spaces while promoting policies, practices, and an organizational culture that empowers these individuals.



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