



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

REPORT OF INVESTIGATION

SUBJECT		CASE NUMBER	
Unidentified, United States Marshals Service Headquarters Arlington, Virginia		[REDACTED]	
OFFICE CONDUCTING INVESTIGATION		DOJ COMPONENT	
Washington Field Office		United States Marshals Service	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component USMS <input type="checkbox"/> USA <input type="checkbox"/> Other		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

SYNOPSIS

The Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the United States Office of Special Counsel (OSC) on March 24, 2017. The OSC alleged that the United States Marshals Service (USMS) violated three policies in deciding to rescind a proposed removal of Chief Deputy United States Marshal (CDUSM) [REDACTED] and allow him to retire under a settlement agreement.

[REDACTED] had been serving as the CDUSM [REDACTED] when, [REDACTED], he was accused of serious misconduct, resulting in OIG investigation [REDACTED]. During the course of that misconduct investigation, the OIG and the OSC separately initiated concurrent investigations [REDACTED] into allegations of retaliation by [REDACTED] and others against USMS employees in the [REDACTED] who were cooperating with the OIG in the original misconduct investigation.

In [REDACTED] while the retaliation investigations by the OIG and OSC were still ongoing, the OIG completed its first investigation and issued a report to the USMS finding serious misconduct by [REDACTED] including that he engaged in sexual harassment of a subordinate contract employee, misused his USMS cell phone, misused his USMS GOV, gave out inappropriate and offensive awards of a sexual nature at a USMS retreat, and that he lacked candor during an OIG interview. Six months later, in [REDACTED] based on these OIG misconduct findings, the USMS proposed that [REDACTED] be removed from federal service within 30 days and placed him on paid administrative leave. However, rather than being removed within 30 days, the USMS allowed [REDACTED] to remain in paid administrative leave status for about 6 months. Then, in [REDACTED] the USMS entered into a settlement agreement with [REDACTED] that rescinded the

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PREPARED BY SENIOR SPECIAL AGENT	[REDACTED]
DATE September 4, 2018	SIGNATURE
APPROVED BY SPECIAL AGENT IN CHARGE Michael P. Tompkins	Digitally signed by MICHAEL TOMPKINS Date: 2018.09.04 14:43:58 -04'00'



proposed removal penalty, imposed no discipline whatsoever on [REDACTED] for the serious misconduct that both the OIG and USMS had found, and allowed [REDACTED] to use a combination of sick leave, annual leave, and unpaid leave for a period of an additional 9 months until [REDACTED] when he became eligible to retire with a full pension.

In [REDACTED] while [REDACTED] was still employed by the USMS pursuant to the settlement agreement and four months before [REDACTED] retirement date, the OIG issued its investigative report to the USMS regarding the retaliation allegations against [REDACTED]. In this report, the OIG found that [REDACTED] had retaliated against USMS employees who cooperated with the OIG in the OIG's first misconduct investigation. Three months later, [REDACTED] the USMS again proposed that [REDACTED] be removed, this time for his retaliatory conduct against USMS employees. However, the USMS failed to take any action to impose the removal penalty against [REDACTED] and instead allowed [REDACTED] to retire [REDACTED] with his full pension pursuant to the earlier settlement agreement.

The complaint filed by the OSC with the OIG on [REDACTED] included the following three allegations:

1. That the USMS violated Government Accountability Office (GAO) and Merit Systems Protection Board (MSPB) precedents by allowing [REDACTED] to be on paid administrative leave from [REDACTED] following his proposed removal.
2. That the USMS violated 5 C.F.R. § 630.401 (Granting Sick Leave) by allowing [REDACTED] to use his accrued sick leave, pending his retirement.
3. That the USMS violated 5 U.S.C. § 1214(f) (Investigation of Prohibited Personnel Practices) by failing to notify OSC or seek OSC's approval of its decision in [REDACTED] to rescind [REDACTED] proposed removal and allow [REDACTED] to retire with no disciplinary record.

The OIG investigation did not substantiate these three allegations. However, the OIG found that USMS management committed gross mismanagement that resulted in a gross waste of taxpayer funds by: (a) failing to hold [REDACTED] accountable for the sexual harassment, lack of candor, and other serious misconduct as outlined in the OIG's [REDACTED] misconduct report; (b) failing to hold [REDACTED] accountable for his retaliation against USMS employees for cooperating with the OIG investigation as outlined in the OIG's [REDACTED] misconduct report; and (c) entering into a settlement agreement with [REDACTED] that allowed [REDACTED] to avoid any discipline whatsoever for his established serious misconduct, and permitted use of various leave mechanisms that enabled him to reach his full retirement date. Specifically, the USMS:

- took roughly 6 months to determine the appropriate discipline for [REDACTED] for his serious misconduct in connection with the first OIG investigation;
- placed [REDACTED] on paid administrative leave for about six months for the purpose of completing the administrative discipline process in connection with the first OIG investigation;
- failed to timely carry out its proposed removal decision in connection with the first OIG investigation;
- entered into a settlement agreement with [REDACTED] in connection with the first OIG investigation imposing no discipline whatsoever and allowing [REDACTED] to remain in a leave status for 9 months so that he could reach his eligible retirement date [REDACTED];
- took almost 3 months to determine the appropriate discipline for [REDACTED] for retaliating against a USMS employee who cooperated with the first OIG investigation; and

- did not properly serve [REDACTED] with its proposed removal decision for his retaliatory conduct, resulting in [REDACTED] being allowed to retire with no discipline.

Timeline of Events

To assist the reader in following the sequence of significant dates and events, the following timeline was established using actual and approximated dates:

- [REDACTED] The OIG received a misconduct allegation against [REDACTED] and initiated investigation [REDACTED] The OIG notified USMS of the investigation.
- [REDACTED] filed complaint with OSC.
- [REDACTED] The OIG received a retaliation allegation against [REDACTED] and initiated a second investigation of [REDACTED] relating to the alleged retaliation [REDACTED] The OIG notified USMS of the investigation.
- [REDACTED] OSC first informed the USMS [REDACTED] via e-mail that OSC was initiating an "investigation [REDACTED] and requested a POC at USMS.
- [REDACTED] OSC provided an official notice to USMS regarding "an official law enforcement investigation into allegations that the United States Marshals Service (USMS) engaged in one or more prohibited personnel practices." The notice did not specifically name the subjects of the investigation.
- [REDACTED] The OIG issued a Report of Investigation to the USMS in the first misconduct investigation [REDACTED] that substantiated serious misconduct by [REDACTED] including misuse of a government vehicle, conduct unbecoming a CDUSM, failure to properly supervise, interfering with an investigation, misuse of government property, and lack of candor.
- [REDACTED] USMS notified [REDACTED] of his proposed removal within 30 days pursuant to the findings in the OIG investigation [REDACTED] USMS puts [REDACTED] on paid administrative leave. [REDACTED] seeks to appeal the proposed removal to the USMS Deciding Official.
- [REDACTED] USMS informs OSC of [REDACTED] proposed removal as a result of OIG investigation
- [REDACTED] USMS Requests the use of Administrative Leave from JMD.
- [REDACTED] issued the first of three memos granting authorization and subsequent extensions to the USMS to allow USMS to keep [REDACTED] on paid Administrative Leave.
- [REDACTED] Letter #1 [REDACTED] in response to [REDACTED] proposed removal.
- [REDACTED] Oral response from [REDACTED] to proposed removal, and subsequent e-mail from USMS [REDACTED] which appeared to be first proposal to settle the matter.
- [REDACTED] USMS Requests the extension of Administrative Leave from JMD.
- [REDACTED] issued the first of two memos granting extensions to the USMS for [REDACTED] use of Administrative Leave.

- Letter #2 [redacted] in response to [redacted] proposed removal.
- [redacted] USMS Requests the extension of Administrative Leave from JMD. [redacted] issued the second of two memos granting extensions to the USMS for [redacted] use of Administrative Leave.
- [redacted] USMS Deciding Official sustained the removal penalty against [redacted] to be effective [redacted]
- [redacted] sent an e-mail to [redacted] the day before [redacted] removal date, proposing a settlement to avoid [redacted] initiating MSPB litigation. [redacted] proposed that [redacted] use leave without pay (LWOP).
- [redacted] is removed [redacted]
- [redacted] confirms with USMS HR that [redacted]
- [redacted] E-mail from [redacted] noting [redacted] approved [redacted] use of annual leave, but will only approve use of sick leave with proper documentation.
- [redacted]
- [redacted] USMS receives a draft settlement agreement [redacted]
- [redacted] The USMS and [redacted] enter into a Settlement Agreement wherein the removal penalty was rescinded, no discipline was to be imposed on [redacted] and [redacted] was to begin using annual leave, sick leave, and leave without pay until he was eligible to retire in [redacted]
- [redacted] is reinstated, effective [redacted]
- [redacted] The OIG issued a Report of Investigation to the USMS in the retaliation investigation [redacted] substantiating the retaliation allegations against [redacted]
- [redacted] USMS notified OSC that the retaliation case had been referred to the proposing official.
- [redacted] USMS advised OSC that proposed discipline against [redacted] was forthcoming and that [redacted] had submitted his retirement application, [redacted] USMS failed to disclose its settlement agreement with [redacted] to OSC.
- [redacted] OSC advised USMS via e-mail that OSC had “no objection to proposed removal” of [redacted] for substantiated retaliation in OIG investigation [redacted]
- [redacted] USMS [redacted] transmitted a proposal to [redacted] manager that [redacted] be removed from the USMS for retaliating against USMS employees in connection with the prior OIG investigation. However, [redacted] was on leave and was not served.
- [redacted] The USMS issued [redacted] an incomplete proposed removal. Supporting documents were not provided to [redacted]
- [redacted] USMS sent [redacted] complete removal proposal, [redacted]
- [redacted] retired from federal service without any discipline having been imposed.

USMS Settlement Agreement With [redacted] and OSC’s Three Allegations

Settlement Agreement with [redacted] Following the First OIG Investigation

On [redacted] based on the facts outlined in OIG investigation [redacted] the USMS substantiated findings of serious misconduct against [redacted] for:



- Misuse of a Government Vehicle, (2) specifications.
- Conduct Unbecoming of a CDUSM, (1) specification
- Failure to Properly Supervise, (1) specification
- Misuse of Government Property (IT System), (2) specifications
- Lack of Candor, (4) specifications

The USMS proposed [REDACTED] for removal from the USMS within 30 days. [REDACTED] appealed the decision and, on [REDACTED] the USMS Deciding Official sustained the removal penalty to be effective [REDACTED]

[REDACTED]

In explaining their rationale for entering into the settlement agreement instead of continuing with removal proceedings, including the above terms, witnesses for the USMS described potential negative outcomes and MSPB appeal litigation obstacles the USMS may have faced had they not entered into the settlement agreement with [REDACTED]. The USMS also believed the MSPB judge would be critical of them for not agreeing to a settlement. The USMS told the OIG they were most concerned that the MSPB could reverse the termination, which would have required the USMS to return [REDACTED] back to federal service with the USMS, possibly to his original position, and would have extended [REDACTED] mandatory retirement date to account for any federal service time he had lost. We were told by USMS officials that this would have been completely unacceptable to the USMS and that this was the motivating factor that led them to enter into the settlement agreement.

OIG and OSC Investigations of Retaliation by [REDACTED]

[REDACTED] prior to the OIG's completion of its first investigation [REDACTED] the OIG opened a second investigation [REDACTED] in response to allegations that [REDACTED] retaliated against USMS witnesses in the first OIG investigation. [REDACTED] the OIG notified the USMS via email of the OIG's retaliation investigation [REDACTED] identifying [REDACTED] and two other DUSMs as subjects for alleged retaliation and other misconduct related to OIG's first investigation.

In approximately the same time frame [REDACTED] OSC received a retaliation complaint [REDACTED] and OSC initiated an investigation. The OIG determined that the OSC informed the USMS of their investigation into "one or more prohibited personnel practices" by sending three letterhead memorandum document requests to the USMS [REDACTED]. The OSC also sent the USMS an e-mail dated [REDACTED] announcing that "OSC is planning to begin an investigation [REDACTED]". The OIG did not find any evidence that the OSC specifically notified the USMS that [REDACTED] was a subject of the OSC investigation.

[REDACTED] the USMS notified OSC of [REDACTED] proposed removal in connection with the findings of the OIG's first, non-retaliation investigation [REDACTED]. The USMS provided this notice in [REDACTED]



response to an OSC document request dated [REDACTED] asking the USMS to identify all cases regarding any USMS [REDACTED] employees disciplined for “providing misleading information” and/or “failure to follow supervisory instructions” [REDACTED]. The USMS did not subsequently notify OSC that it entered into a settlement agreement with [REDACTED] withdrawing the proposed removal, and OSC learned of the settlement agreement on [REDACTED] after requesting an update on [REDACTED] proposed removal.

In [REDACTED] while the OSC retaliation investigation was ongoing, the USMS proposed removal of [REDACTED] related to the second OIG investigation [REDACTED] finding retaliation by [REDACTED] and others. USMS notified OSC of this proposal and OSC informed the USMS that it “consented” to the proposed removal. On [REDACTED] [REDACTED] received a complete removal notification packet from the USMS. However, [REDACTED] retired from federal service on [REDACTED] pursuant to the earlier settlement agreement.

OSC’s Three Allegations Regarding USMS Handling of [REDACTED] Case

In its first allegation, the OSC alleged that the USMS violated Government Accountability Office (GAO) and MSPB precedent by allowing [REDACTED] to be on paid administrative leave from [REDACTED] following his proposed removal in connection to the OIG’s first misconduct investigation, [REDACTED]. The OIG determined that, consistent with Department procedures, the USMS requested and was twice granted permission by [REDACTED] to extend [REDACTED] paid administrative leave during the resolution of his personnel action. In making this request, the USMS cited to [REDACTED] senior and prominent position in the USMS and a lack of alternative work assignments within the USMS to which they could assign [REDACTED]. The USMS stated further that returning [REDACTED] to USMS service would be unduly disruptive, and not in the interests of the USMS and the DOJ. The USMS request contained relevant facts about the misconduct finding against [REDACTED] detailed in the OIG’s completed investigation, including sexual harassment and misuse of his government vehicle for personal business. The OIG did not find that the USMS requests or the Department’s approvals violated GAO or MSPB precedent, or Department policies and procedures.

In its second allegation, the OSC alleged that the USMS violated 5 C.F.R. § 630.401 (Granting Sick Leave) by allowing [REDACTED] to use his accrued sick leave, pending his retirement. The USMS provided the OIG with a letterhead memorandum statement from [REDACTED] [REDACTED] requested to take sick leave to assist in that care, which is a permissible use of sick leave under federal law and regulations. The OIG therefore determined that [REDACTED] use of sick leave was consistent with the rules set forth in 5 C.F.R. § 630.401(a)(3), which states that an agency must grant sick leave to an employee who provides care for a family member.

In its third allegation, the OSC alleged that the USMS violated 5 U.S.C. § 1214(f) (Investigation of Prohibited Personnel Practices) by failing to notify OSC or seek OSC’s approval of the USMS’s decision to rescind the USMS’s proposed removal of [REDACTED] in connection to the OIG’s initial misconduct investigation [REDACTED] and allow him to retire with no disciplinary record. However, 5 U.S.C. § 1214(f) applies to investigations of prohibited personnel practices and provides that “During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.” As noted above, the USMS settlement agreement with [REDACTED] pertained to the serious misconduct substantiated in OIG investigation [REDACTED] that resulted in [REDACTED] proposed



removal. The settlement agreement did not concern the retaliation allegations against [REDACTED] which the OIG substantiated as the result of a separate investigation and in an OIG report issued in [REDACTED] or the allegations of prohibited personnel practices then under OSC investigation. While we believe the USMS should have notified OSC of its settlement agreement with [REDACTED] on the non-retaliation misconduct findings given it had previously provided OSC with its proposed removal of [REDACTED] for those violations in response to an OSC request related to the OSC's ongoing investigation, we do not find that 5 U.S.C. § 1214(f) required it to do so given the settlement agreement was not in connection with the prohibited personnel practices investigation that the OSC was then investigating.

The USMS Settlement Agreement with [REDACTED] was Gross Mismanagement and Resulted in a Gross Waste of Taxpayer Funds

USMS management failed to timely adjudicate the OIG's findings of serious misconduct by [REDACTED] and failed in its responsibility to hold [REDACTED] accountable for his serious misconduct by entering into a settlement agreement that allowed him to retire without any discipline whatsoever. In doing so, we found that the USMS committed gross mismanagement that resulted in a gross waste of taxpayer funds. While we recognize that DOJ leaders, managers, and lawyers need to assess litigation risks in determining whether and how to settle potential litigation matters, including personnel matters, in doing so they need to act responsibly and consistent with their management responsibility. For the reasons discussed below, we believe the actions of the USMS and the terms of the [REDACTED] settlement agreement were so clearly not reasonable that they amounted to gross mismanagement.

First, the USMS took approximately one year from the date of the first OIG report finding serious misconduct by [REDACTED] to propose that [REDACTED] be removed from federal service and to decide that [REDACTED] appeal should be rejected and that [REDACTED] should be removed from federal service. However, rather than implement the removal penalty, the USMS then took another month before entering into a settlement agreement with [REDACTED] that withdrew the removal penalty and imposed no discipline whatsoever on [REDACTED] for his serious misconduct.

On [REDACTED] the OIG issued a Report of Investigation to the USMS in the first misconduct investigation [REDACTED] that substantiated serious misconduct by [REDACTED] including misuse of a government vehicle, conduct unbecoming a CDUSM, failure to properly supervise, interfering with an investigation, misuse of government property, and lack of candor. It was not until nearly six months later, on [REDACTED] that the USMS notified [REDACTED] of his proposed removal within 30 days pursuant to the findings in the OIG investigation. At that time, the USMS put [REDACTED] on paid administrative leave and [REDACTED] sought to appeal the proposed removal to the USMS Deciding Official. [REDACTED] remained on paid administrative leave for about the next six months, [REDACTED] until his proposed removal date of [REDACTED] for the purpose of completing the administrative discipline process. During that timeframe, the USMS made one initial, and two subsequent extension requests for administrative leave from the Justice Management Division (JMD). Administrative leave was granted on [REDACTED]. The OIG does not believe it was reasonable for the USMS to take approximately 6 months to propose discipline of an employee for sustained serious misconduct and then take another 6 months to consider and reject the employee's appeal of the discipline penalty while the employee is on paid administrative leave. We found the USMS failed to carry out its proposed removal decision in connection with the first OIG investigation in a timely manner resulting in a gross waste of taxpayer funds. We are separately issuing a Procedural Reform Recommendation to the USMS to address this concern.

Second, on [REDACTED] the USMS entered into a settlement agreement with [REDACTED] in connection with the first OIG investigation which imposed no discipline whatsoever on [REDACTED]. The settlement



agreement allowed [REDACTED] to use AL, SL, and LWOP for 9 additional months so that he could reach his eligible law enforcement retirement date in [REDACTED]. [REDACTED] avoided any punishment for his serious misconduct and in some ways fared better than if he had been proposed for a lesser punishment, such as a period of suspension without pay. While [REDACTED] was required to retire as part of the settlement agreement, perhaps earlier than he had originally intended, [REDACTED] was paid his full salary and accrued benefits, including annual leave and sick leave, during an approximately 14 month period, [REDACTED] without doing any work. Indeed, from the time the OIG provided the USMS with its first report of serious misconduct by [REDACTED] in [REDACTED] until the date [REDACTED] retired in [REDACTED] almost 20 months elapsed. We concluded that this was gross mismanagement by the USMS that resulted in a gross waste of taxpayer funds.

Third, in response to the OIG retaliation investigation, it took the USMS almost 3 months to determine the appropriate discipline for [REDACTED] for retaliating against a USMS employee who cooperated with the first OIG investigation. On [REDACTED], the OIG Dallas Field Office issued a Report of Investigation to the USMS in the retaliation investigation [REDACTED] substantiating the retaliation allegations against [REDACTED]. It was not until [REDACTED] that the USMS [REDACTED] transmitted a removal proposal to [REDACTED] manager. However, [REDACTED] was on leave and was not served. On [REDACTED] the USMS issued [REDACTED] an incomplete proposed removal. The USMS failed to provide [REDACTED] with the proper supporting documents at that time. [REDACTED] did not receive a complete removal proposal until [REDACTED]. Eight days later, on [REDACTED] [REDACTED] retired with an immediate and full law enforcement retirement under the terms of the previous settlement. The failure of the USMS to timely and properly handle the disciplinary proceedings for the retaliation finding against [REDACTED] was particularly egregious in light of the nature and seriousness of the misconduct and the USMS's awareness of [REDACTED] prior serious misconduct. We found the USMS's actions to be amount to gross mismanagement.

[REDACTED] walked away from federal service unscathed after two separate investigations determined that [REDACTED] engaged in serious misconduct that warranted his removal from federal service, including:

- Conduct Unbecoming of a CDUSM
- Failure to Properly Supervise
- Misuse of a Government Vehicle
- Misuse of Government Property (IT System)
- Lack of Candor, and
- Retaliation against USMS employees for reporting serious violations

Given the serious nature of the sustained allegations against [REDACTED] and the lack of any suspension or other discipline whatsoever, the OIG determined that the USMS failed to properly hold [REDACTED] accountable for his serious misconduct. Not only did [REDACTED] retire with a full law enforcement pension and no discipline, these management failures and the settlement potentially send a message to USMS employees that senior USMS officials will not be held to account for their serious misconduct, thereby possibly dissuading USMS employees from coming forward to report misconduct by USMS officials. We find this to be wholly unacceptable and antithetical to the interests of accountability for USMS employees.

The OIG has completed its investigation and provided its report to the USMS for its review and to consider whether disciplinary or performance action against the USMS personnel involved in the management failures is appropriate.