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Description of document: Closing documents for nineteen (19) Pension Benefit Guaranty Corporation (PBGC) Office of Inspector General, (OIG) investigations, 2014-2016

Requested date: 16-June-2018

Release date: 28-September-2018

Posted date: 25-February-2019

Note: See release letter for list of included records

Source of document: FOIA Request
Disclosure Officer
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Suite 11123
Washington, D.C. 20005
Fax: (202) 326-4042 (Attn: Disclosure Officer)
Email: disclosure@pbgc.gov

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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

PBGC-2018-001245

September 28, 2018

Re: Request for Office Inspector General (OIG) Investigations

I am responding to your letter submitted to the Disclosure Division of the Pension Benefit Guaranty Corporation (PBGC) via email on June 16, 2018. You requested 49 investigations for which you requested in any of the following formats from 2008 to 2017: final report, Report of Investigation, closing memo or report, or other concluding document.¹ Your request excluded attachments, enclosures, appendices, and exhibits, and you agreed to pay fees in the amount of \$25.00. We processed your request in accordance with the Privacy Act of 1974 (as amended), the Freedom of Information Act (FOIA), and the PBGC's implementing regulation.

The information you requested, concerning OIG investigations, is contained in a system of records protected by the Privacy Act of 1974, as amended, 5 U.S.C § 552a, and the PBGC's implementing regulation. The system of records, Office of Inspector General Investigative File System, PBGC-17, is exempt from the general access and notification procedures of the Privacy Act for individuals covered by the system in accordance with exemptions (j) and (k). See 5 U.S.C. §§ 552a(j), (k); 29 C.F.R. § 4902.11. After consultation with the OIG, the Disclosure Officer has determined that eighty-two pages may be partially released to you:

- 1) Close-Out Memorandum, Case Number 12-0004-I (4 pages);
- 2) Close-Out Memorandum, Case Number 12-0009-I (13 pages);
- 3) Report of Investigation, Case Number 14-0019-I (8 pages);
- 4) Close-Out Memorandum, Case Number 14-0081-C / 14-0016-I (4 pages);
- 5) Report of Investigation, Case Number 14-0090-C / 15-0030-I (7 pages);
- 6) Close-Out Memorandum, Case Number 15-0002-C / 15-0011-I (4 pages);
- 7) Special Report, Case Number 15-0010-I (13 pages);
- 8) Close-Out Memorandum, Case Number 15-0019-I (2 pages);
- 9) Close-Out Memorandum, Case Number 15-0020-I (2 pages);
- 10) Close-Out Memorandum, Case Number 15-0021-I (4 pages);
- 11) Close-Out Memorandum, Case Number 15-0027-C / 15-0022-I (3 pages);
- 12) Close-Out Memorandum, Case Number 15-0027-I (2 pages);

¹ You requested the following investigation reports: 08-00023-I; 12-004-I; 12-0009-I; 14-0016-I; 14-0019-I; 14-0075-C; 14-0090-C; 14-0098-C; 15-0002-C; 15-0006-C; 15-0008-C; 15-0010-I; 15-0011-I; 15-0019-I; 15-0020-I; 15-0021-I; 15-0022-I; 15-0025-C; 15-0025-I; 15-0027-C; 15-0029-I; 15-0030; 15-0032-I; 15-0034; 15-0036-C; 15-0037-C; 15-0039-C; 15-0040-C; 15-0042-C; 15-0052-C; 16-0002-I; 16-0003-I; 16-0004-C; 16-0005-C; 16-0006-I; 16-0010-C; 16-0011-C; 16-0019-C; 16-0023-C; 16-0024-C; 16-0026-C; 16-0074-C; 16-0076-C; 16-0117-C; 16-0118-C; 16-0121-C; 16-0124-C; and 17-0005-C.

- 13) Close-Out Memorandum, Case Number 15-0029-I (2 pages);
- 14) Referral Memorandum, Case Number 15-0032-I (1 page);
- 15) Close-Out Memorandum, Case Number 15-0036-C 0 15-0025-I (4 pages);
- 16) Memorandum, Case Number 16-0002-I (1 page);
- 17) Final Investigative Report, Case Number 16-0003-I (4 pages);
- 18) Close-Out Memorandum, Case Number 16-0006-I (2 pages); and
- 19) Close-Out Memorandum, Case Number 16-0023-I (2 pages).

Unfortunately, the OIG did not locate a final report, closing memo, referral memo, referral letter or Report of Investigation for the following cases:

- | | | | |
|--------------|---------------|---------------|---------------|
| 1) 08-0023-I | 8) 15-0037-C | 15) 16-0010-C | 22) 16-0117-C |
| 2) 14-0075-C | 9) 15-0039-C | 16) 16-0011-C | 23) 16-0118-C |
| 3) 14-0098-C | 10) 15-0040-C | 17) 16-0019-C | 24) 16-0121-C |
| 4) 15-0006-C | 11) 15-0042-C | 18) 16-0024-I | 25) 16-0124-C |
| 5) 15-0008-C | 12) 15-0052-C | 19) 16-0026-C | 26) 17-0005-C |
| 6) 15-0025-C | 13) 16-0004-C | 20) 16-0074-C | |
| 7) 15-0034-C | 14) 16-0005-C | 21) 16-0076-C | |

Per the OIG, “case numbers ending in “C” are complaints or preliminary inquiries. Those matters may, under certain circumstances, be closed without a formal report or memo.” For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA, See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Disclosure Determination

The Privacy Act provides that the agency will provide access to records on individuals within its possession unless one of ten exemptions applies. I have determined that portions of the above-mentioned reports must be partially withheld pursuant to Privacy Act Exemptions (d)(5), (j) and (k). I have also considered release of the afore-mentioned pages pursuant to the FOIA. I have determined these pages must be withheld pursuant to FOIA Exemptions (b)(4), (b)(5), (b)(6), (b)(7)(C), (b)(7)(D), and (b)(7)(E). As such, I am withholding portions of these records, consisting of names, personal identifiers, addresses, phone numbers, inter/intra-agency communications, opinions, compilation of witness statements, drafts, attorney-client and/or attorney-work product information. The PBGC reasonably foresees that disclosure of information contained within these records would harm interests that are protected by the Privacy Act and the FOIA. I have relied on three Privacy Act Exemptions and six FOIA Exemptions to withhold this information.

Privacy Act Exemptions

The first applicable Privacy Act Exemption, 5 U.S.C. § 552a (d)(5) allows an agency to withhold from release to the subject individual all records created in reasonable anticipation of a civil action or proceeding, which includes administrative proceedings. I have determined the 14 pages, withheld from disclosure, were created in reasonable anticipation of a civil action or an administrative hearing, and therefore exempt from disclosure.

The second applicable Privacy Act Exemption, 5 U.S.C. § 552a (j)(2) protects “information maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce

crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.”

The third applicable Privacy Act Exemption, 5 U.S.C. § 552a (k)(2) protects “investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.”

FOIA Exemptions

The first applicable FOIA exemption, 5 U.S.C. § 552(b)(4), permits the exemption from disclosure of matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The records you have requested contain "commercial or financial information" within the meaning of the above cited statutory language and the PBGC's regulation 29 C.F.R. § 4901.21(b)(2) and, therefore, I have determined these records are exempt from disclosure.

The second applicable FOIA exemption, 5 U.S.C. § 552(b)(5), deals with internal documents: inter-agency or intra-agency memoranda or letters consisting of judgments, opinions, advice or recommendations which would not be available by law to a party other than an agency in litigation with the Pension Benefit Guaranty Corporation (PBGC) and as such are not required to be disclosed under 5 U.S.C. § 552(b)(5). This exemption also protects from disclosure attorney client communications and the agency's deliberative processes. I have determined that the disclosure of this material would not further the public interest at this time and would impede the operations of the PBGC.

The third applicable FOIA exemption, 5 U.S.C. § 552(b)(6), exempts from required public disclosure, “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Some of the records that you have requested contain “similar files” within the meaning of the above cited statutory language and the PBGC implementing regulation (29 C.F.R. § 4901.21(b)(4)). In applying Exemption 6, a balancing test was conducted, weighing the privacy interests of the individuals named in a document against the public interest in disclosure of the information. The public interest in disclosure is one that “sheds light on an agency's performance of its statutory duties.” *Dep't of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). I have determined that disclosure of this information would constitute a clearly unwarranted invasion of an individual's personal privacy.

The fourth applicable FOIA exemption, 5 U.S.C. § 552(b)(7), exempts from disclosure any “records compiled for law enforcement purposes” when disclosure would be detrimental to such purposes. FOIA Exemption (b)(7)(C) prohibits disclosure of information if it could reasonably be expected to constitute an unwarranted invasion of personal privacy. The FOIA requires agencies to

conduct a balancing test when invoking this exemption. In applying Exemption 7(C), I conducted a balancing test, weighing the privacy interests of the individuals named within these documents against the public interest in disclosure of the information. The public interest in disclosure is one that will “shed light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). I have determined that the disclosure of names and other personal privacy information, within these documents, would not further the public interest at this time and would impede the operation of the PBGC.

The fifth applicable exemption, 5 U.S.C. § 552(b)(7)(d), provide protection for those “records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.” *See, e.g. Ortiz v. HHS*, 70 F.3d 729, 732 (2d Cir. 1995). As such, I have determined that disclosure of this information could reasonably be expected to disclose the identity of a confidential informant.

The sixth applicable FOIA exemption, 5 U.S.C. § 552(b)(7)(E), permits the exemption from disclosure of “records or information compiled for law enforcement purposes . . . [that] would disclose techniques and procedures for law enforcement investigations or prosecutions.” Accordingly, § 552(b)(7)(E), protects records or information that could interfere with enforcement proceedings and disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could circumvention of the law. Some of the records responsive to your request contain information which falls within the meaning of the above-cited statutory language. *See, e.g., Catledge v. Mueller*, No. 08-3550, 2009 WL 1025980, at *2 (7th Cir. Apr. 17, 2009). I have determined disclosure of the information could reasonably create a risk of circumvention of the law.

Appeal Rights

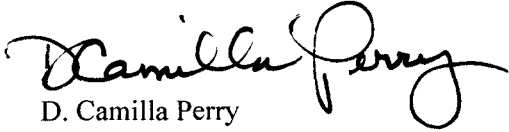
This response constitutes a partial denial of your records request. I am providing you your administrative appeal rights in the event you wish to avail yourself of this process. The FOIA provides at 5 U.S.C. § 552(a)(6)(A)(i) (2014) amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 that if a disclosure request is denied in whole or in part by the Disclosure Officer, the requester may file a written appeal within 90 days from the date of the denial or, if later (in the case of a partial denial), 90 days from the date the requester receives the disclosed material. The PBGC’s FOIA regulation provides at 29 C.F.R. § 4901.15 (2017) that the appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Attention: Disclosure Division, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005. To expedite processing, the words “FOIA Appeal” should appear on the letter and prominently on the envelope.

In the alternative, you may contact the Disclosure Division’s Public Liaison at 202-326-4040 for further assistance and to discuss any aspect of your request. You also have the option to contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about their FOIA mediation services. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

This completes processing of your request. Your request was categorized as "Other." Under this category, requesters are subject to search² and duplication costs.³ Since processing costs were assessed below our nominal fee of \$25.00, I have not charged fees for processing this request.

You may submit future requests for PBGC records by accessing FOIAonline, our electronic FOIA processing system, at: <https://foiaonline.gov>, or by e-mail at Disclosure@pbgc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Camilla Perry". The signature is fluid and cursive, with the first name "Camilla" written in a larger, more prominent script than the last name "Perry".

D. Camilla Perry
Disclosure Officer
Office of the General Counsel
General Law and Operations Department

Enclosures

² The FOIA Improvement Act of 2016 precludes an agency from charging search fees to a FOIA requester if the agency does not meet the FOIA's twenty-day time limit. As such, we did not assess search fees for this request.

³ See 5 U.S.C. § 552(a)(4)(ii) (1).



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

December 30, 2014

Title (b)(4)
Investigator (b)(6), (b)(7)(c)
Subject Close-Out Memorandum
Investigation # 12-0004-I

INTRODUCTION:

This investigation was kept open pending the outcome of the related (b)(6) investigation (Case 12-0009-I). The (b)(6) investigation commenced while the close-out memorandum for this investigation was under review. Therefore, the following information is largely as was originally written. The conclusion has been amended to reflect that the separate investigation of (b)(6) produced no additional evidence in support of the allegations in (b)(4).

ALLEGATION:

In July 2011, a confidential informant (CI) alleged that (b)(6) might have received kickbacks from the PBGC contractor who does scripts for eDiscovery, a database used by (b)(6) to respond to Freedom of Information Act (FOIA) requests. The kickbacks were alleged to have been paid by the sole contract employee working on the eFOIA contract. The contract employee was thought by the complainant to have been making as much as \$400,000 per year on the contract. The complaint came in through a phone call to the PBGC OIG Assistant Inspector General for Investigations (AIGI) (b)(6), (b)(7)(c).

Note: PBGC OIG Special SA (SA) (b)(6), (b)(7)(c) was not informed as to the identity of the CI by PBGC OIG management until the end of the (b)(6) investigation. AIGI (b)(6), (b)(7)(c) disclosed the CI as (b)(6), (b)(7)(d) and informed SA (b)(6), (b)(7)(c) not to reveal that he was aware that (b)(6) was the informant. Prior to AIGI (b)(6), (b)(7)(c)'s disclosure of (b)(6), (b)(7)(c) identity, SA (b)(6), (b)(7)(c) had already asked (b)(6) if (b)(6) had referred any issues regarding (b)(4) to the OIG and (b)(6) denied ever doing so. This is mentioned at the inception of this report to explain why certain steps were taken in the course of the investigation by SA (b)(6), (b)(7)(c).

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(d)

(b)(6), (b)(7)(d)

ACTIONS TAKEN:

SA (b)(6), (b)(7)(C) determined the eFOIA contractor to be (b)(4) (Contract #DO-(b)(4)) under the leadership of (b)(6). An analysis of 2009 through May 2011 eFOIA invoices and PBGC payments clearly indicated that the CI's initial complaint was inaccurate (Attachment 1). Five contract employees worked on the eFOIA contract and PBGC did not pay anything close to \$400,000 per year to any one individual, as was initially communicated by the CI. Therefore, additional information was solicited from the CI by SA (b)(6), (b)(7)(C) via AIGI (b)(6), (b)(7)(C). The CI then produced more information suggesting that this may be a case of contract fraud with (b)(4) overbilling for labor hours on multiple contracts. Also, the CI stated that (b)(4) employees (b)(6) and (b)(6) are often not available when needed.

Due to the analysis of the eFOIA contract and the additional information provided by the CI, the focus of the OIG investigation was broadened from an investigation of (b)(6) and (b)(6) to an investigation into potential overbilling of labor hours by (b)(4) through their multiple contracts with PBGC.

PBGC Procurement Department (PD) was asked to provide all (b)(4) contract files for contracts in effect anytime during Jan 2009 through Aug 2011. PD produced 44 files encompassing the IDIQ contract, and eleven task order contracts written against the IDIQ contract, as well as modifications to all (Attachment 2). (b)(4) competed with (b)(4) and (b)(4) for the task orders. All three contractors had their own IDIQ contracts from which they were solicited by PBGC to bid on task orders.

(b)(4) had many of its own employees and well as many sub-contracted employees working on the task orders. SA (b)(6), (b)(7)(C) was asked by management to limit the scope of the investigation to the monthly hours billed by (b)(4) for just the work performed by (b)(6), (b)(6), and (b)(6) on each contract.

SA (b)(6), (b)(7)(C) requested from the PBGC Financial Operations Division (FOD) General Accounting Branch (GAB) all Jan 2009 through Aug 2011 invoices and supporting documentation for the (b)(4) contracts that were identified by PD. GAB provided invoices for all of the contracts. However, only the invoices for the four Cost Plus Fixed Fee (CPFF) contracts with (b)(4) had supporting documentation attached to the invoices. These documents showed the specific number of hours billed for each employee on the contracts.

Supporting documentation for the invoices was not submitted to GAB for (b)(4)' seven Firm Fixed Price (FFP) contracts, as there were no provisions to do so in the contracts. FFP contracts usually require the same monthly payment amount regardless of the hours that the contractor spends on the contracts. Therefore, SA (b)(6), (b)(7)(C) obtained all available Deltek electronic Employee Timesheets from the last Contracting Officer Representative (COR) assigned to each of the FFP contract.

Deltek electronic Employee Timesheets are a product commonly used by contractors. It provides an allocation of an employee's hours for a pay period. In (b)(4)'s case, the

Deltek timesheets showed the time allocated for each employee to each PBGC contract for which they performed services. Additionally, the timesheets showed each employee's time allocated to such items as labor services overhead, holiday, sick leave, B&P services, labor-service division G&A, and etceteras.

The invoices and supporting documentation, including the Deltek Employee Timesheets, were analyzed by SA (b)(6), (b)(7)(c). The results of the analysis were then input onto spreadsheets by SA (b)(6), (b)(7)(c) with assistance from Investigative Assistant (b)(6), (b)(7)(c). The spreadsheets show the daily, monthly, and annual hours allocated by (b)(4) to (b)(6), (b)(6), and (b)(6) for the period of Jan 2009 through Sept 2011 for all eleven (b)(4) contracts (Attachments 3,4, & 5).

In November 2011, SA (b)(6), (b)(7)(c) met with PBGC Contracts and Controls Review Department (CCRD) Team Lead (b)(6) to discuss verification of contractor hours. (b)(6) acknowledged that there was no way to positively verify that the hours stated in Deltek timesheets are accurate, particularly in the case of an employee whose time is spread across multiple contracts, some of which are FFP. SA (b)(6), (b)(7)(c) presented a draft spreadsheet summarizing (b)(6)'s hours to (b)(6) for his inspection. The spreadsheet did not raise any immediate concerns to (b)(6) and he thought that the hours could be accurate. (b)(6) stated that he may have had concerns if fewer hours had been allocated to the FFP contracts, as it could be a sign that (b)(6) was shifting hours to the CPFF contracts and getting paid twice (Attachment 6).

A review of the summary spreadsheet for (b)(6)'s hours indicates that most of his time was charged to the eFOIA contract. The spreadsheet indicates that (b)(6) worked full time on the eFOIA contract from October 2010 through April 2011. (b)(6) appears to have transitioned from working on the eFOIA contract to working on the CPRS and BCRV contracts in May 2011.

A review of the summary spreadsheet for (b)(6)'s hours indicates that he worked most of his hours on the CPFF eFOIA contract, and worked fewer hours on the FFP AVS contract. The AVS COR, (b)(6), agreed that (b)(6)'s primary assignment was the eFOIA contract and that the AVS contract was a much smaller part of (b)(6)'s work at PBGC. While (b)(6) thought that (b)(6)'s hours allocated to the AVS contract seemed high, for the period of June 2011 through August 2011, (b)(6) did not have any way to accurately verify the hours (Attachment 7).

CONCLUSION:

A regular 40 hour workweek equates to approximately 173 regular hours of work per month (52wks divided 12mos = 4.33wks/mos times 40hrs). A review of the right most columns of the spreadsheets for (b)(6), (b)(6), and (b)(6) shows that (b)(4) usually allocated 180 hours or less per month to each of them. On only 9 out of 69 months, in which hours were allocated to either (b)(6), (b)(6), or (b)(6), did (b)(4)'s monthly allocation of hours exceed 180. Based on this analysis, it does not appear that (b)(4) billed PBGC for an unusual amount of hours.

Additionally, (b)(6)'s allocation of hours did not appear suspicious to (b)(6). (b)(6)'s hours per month were not unusual and the spreadsheet shows that hours were not allocated to the eFOIA contract at the same time that they were allocated to the CPRS and BCRV

contracts. AVS COR (b)(6) confirmed that (b)(6) worked predominantly on the eFOIA contract and also worked on the AVS contract. This is consistent with the spreadsheet for (b)(6). The actual hours that (b)(6) spent on the AVS contract could not be verified.

POSITIVE IMPACT OF INVESTIGATION:

On October 27, 2011, SA (b)(6), (b)(7)(c) was contacted by PBGC Contracting Officer (b)(6), as a result of SA (b)(6), (b)(7)(c) request for supporting documentation for (b)(4) invoices. (b)(6) stated that after he became aware of the document requests, he started reviewing the invoice language contained in the contracts for both (b)(4) and (b)(4) contracts. Upon review, he decided that the contract language was vague, somewhat misleading, and in need of improvement (Attachment 8).

On January 11, 2011, (b)(6) elevated his concerns about the current invoice language to PBGC PD PCAD (b)(6). The net result was that PD would revise their contract language pertaining to submission of invoices (Attachment 9). Also on January 13, 2012, (b)(6) emailed the new language to all PD employees. (b)(6)'s email instructed the employees to ensure any documents, awards, or solicitations are updated. This new language came about as a direct result of this investigation. (b)(6) emailed this new language to PD along with other new language requiring all vendors to submit their invoices to PBGC by email (Attachment 10).

The most significant changes were to the boilerplate language for CPFF contracts (PBGC-32-003). PD took out inappropriate labor-hour language that was confusing and over burdensome to contractors and replaced it with language requiring contractors to submit a detailed cost breakdown by cost element (aka cost build-up). Additionally, PD reworded the boilerplate language contained in (b)(4) for clarity.

Per (b)(6), these changes to the (b)(4) and (b)(4) invoice boilerplates make them more consistent with the government procurement industry. Therefore, many contractors will find the requirements contained therein to be clearer and less burdensome. Many contractors have already done cost build-ups for their own internal cost accounting systems, because they are required by the Defense Contract Audit Agency (DCAA). Per (b)(6), the new language will make PBGC COR and CCRD invoice reviews easier, too.

RECOMMENDATION:

(b)(5) No evidence of criminal violations was found. Additionally, no evidence was found to support the allegations in this case while conducting the separate investigation of (b)(6) (Case 12-0009-I). PD has already taken steps to improve the invoicing language they insert into CPFF and other contracts.

CONCURRENCE:



Peter P. Paradis
Assistant Inspector General for Investigations

Date



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

September 2, 2014

Title (b)(6)
Investigator (b)(6), (b)(7)(C)
Subject Close-Out Memorandum
Investigation # 12-0009-I

INITIAL ALLEGATION:

On March 26, 2012, (b)(4) President (b)(6) notified PBGC Contracting Officer (b)(6) that (b)(4) V.P. (b)(6) may have inadvertently provided confidential, proprietary, and/or procurement sensitive information to (b)(4). Almost immediately, (b)(4) voluntarily removed (b)(6) from his duties overseeing several contracts at PBGC for (b)(4). At that time, (b)(4) and (b)(4) were potential teaming partners on an upcoming PBGC IT Infrastructure Operations Services and Support (ITIOSS) Program procurement valued at \$140,000,000. On March 26, 2012, (b)(4) V.P. (b)(6) contacted PBGC Contracting Officer (b)(6) regarding the data, as well.

On March 27, 2012, PBGC met with (b)(4) to discuss the information disclosure. At the meeting, (b)(4) stated that (b)(6) had provided a compact disc (CD) with documents to (b)(4) in preparation for the ITIOSS solicitation. Some of the documents were marked "confidential," "proprietary," or "procurement sensitive." On April 2, 2012, Office of the General Counsel (OGC) Attorney (b)(6) informed OIG Acting Assistant Inspector General for Investigations (AIGI) (b)(6), (b)(7)(c) of the situation. On April 4, 2012, OIG Special Agent (SA) (b)(6), (b)(7)(c) was assigned the complaint.

SECOND ALLEGATION:

(b)(6), (b)(7)(c) interviewed (b)(6) and he confirmed the initial allegation provided by (b)(6). (b)(6) added a second allegation against (b)(6), (b)(6) and (b)(4) employee (b)(6). They were asked by (b)(6) to submit a Freedom of Information Act (FOIA) request for PBGC's current contract with (b)(4). (b)(6) said they should get (b)(4) employee (b)(6) to use his own personal LLC to make the FOIA request. (b)(6) told (b)(6) and (b)(6) that (b)(4) had an electronic FOIA (eFOIA) contract with PBGC and that he (b)(6) could then pull the unredacted contract, and (b)(6) and (b)(6) would get the redacted version of the contract. (b)(6) told (b)(6) not to bring the suggestion up again.

Privacy Act Exemptions J and K applied to this page

(b)(6) later followed up on the matter with (b)(6). According to a March 16, 2012 (b)(6) email to (b)(6), presented to Agent (b)(6), (b)(7)(F) during the (b)(6) interview, (b)(6) asked, "Did you guys request a foia from pbgc on the (b)(4) sow and proposal?" The "sow" is (b)(6)'s email is in reference to (b)(4)'s Statement of Work and "proposal" is in reference to (b)(4)'s proposal to the legacy contract being replaced by the ITIOSS contract. DD is required to redact certain information when responding to FOIA requests for documents. Additionally, (b)(4) would be permitted to redact sensitive and proprietary information subject to the FOIA rules. Per (b)(6) and (b)(6), (b)(6) was attempting to obtain unredacted (b)(4) contract information to which they were not entitled, for use in preparing a winning bid for the ITIOSS opportunity.

THIRD ALLEGATION:

A third allegation against (b)(6) arose when (b)(4) (b)(6) Systems Engineer (b)(6) came to OIG with information concerning (b)(6) (b)(4) subcontracts on (b)(4)'s IT support contract, which is to be replaced with the ITIOSS contract. In 2011, (b)(4) and (b)(4) set out to team together in a proposal to bid on the ITIOSS contract. Together they were looking to join forces with another company, who would be the prime contractor for the opportunity. (b)(6) and (b)(4) 60% owner (b)(6) had a meeting with (b)(4)'s (b)(6), (b)(6) and (b)(6). (b)(6) told (b)(6) and the other (b)(4) employees that (b)(4)'s overhead expenses and labor rates were low. However, (b)(4)'s labor rates were high. (b)(6) explained how (b)(6), (b)(6) could lower their labor rates by setting up labor pools for their employees, which would help them (b)(4) get their labor rates lower and therefore more competitive for their upcoming ITIOSS proposal. (b)(6) responded by smiling and saying that they (b)(4) did not have to worry about (b)(4)'s rates. (b)(6) and (b)(6) smiled as well.

In April 2012, after (b)(4) and (b)(4) teamed with (b)(4) as the prime contractor for the ITIOSS contract, (b)(6) told (b)(6) about a conversation that he had with (b)(6). (b)(6) stated that (b)(6) told him that he (b)(6) had everyone's labor rates that are in the Primavera system. (b)(6) stated that it was just he and (b)(6) present when (b)(6) made the comment. (b)(6) told (b)(6) that (b)(6) had made the same statement to him (b)(6). This occurred approximately one week before (b)(6) was removed from PBGC.

Per (b)(6), (b)(4) and their subcontractor (b)(4) have access to Primavera through (b)(4)'s End of Service Life (EOSL) contract with PBGC. PBGC's Primavera system has two parts to it. The P6 part of Primavera is a project management scheduling tool. The timekeeping part of Primavera allows PBGC's IT vendors to input their hours and rates. EOSL involves the migration of old PBGC Windows and UNIX based system applications to new systems. (b)(6) described to SA (b)(6), (b)(7)(F) a complex EOSL upgrade process, in order to demonstrate how and when (b)(4) could access the Primavera system to obtain IT contractor's labor rates and hours. These rates would be very valuable to any vendor submitting IT contract proposals to PBGC, including ITIOSS contract proposals.

ACTIONS TAKEN:

Securing PBGC Information

After assignment of the case on April 4, 2012, SA (b)(6), (b)(7)(C) spoke with the PBGC IT Help Desk and obtained verification that (b)(6)'s access to the PBGC Production Server (PROD) had been disabled on April 3, 2012. SA (b)(6), (b)(7)(C) contacted the PBGC Facilities and Services Department (FASD) to determine if (b)(6)'s access to PBGC facilities had been cut off. Per FASD, (b)(6)'s access pass was still active and his last use was on March 26, 2012. SA (b)(6), (b)(7)(C) had FASD terminate (b)(6)'s building access.

Referral to US Attorney's Office

SA (b)(6), (b)(7)(C) referred the case to the Washington DC United States Attorney's Office for potential criminal violations. The case was accepted and assigned to Assistant United States Attorney (b)(6).

Initial Allegation (b)(6) CD)

*Procurement Integrity Act
41 USC 423(a) and (b)*

Criminal penalties for violations of the Procurement Integrity Act, which prohibits individuals from knowingly disclosing contractor bid or proposal information or source selection information before award of a Federal contract to which the information relates, were considered. However, the information on the (b)(6) CD did not meet the statute's definitions of contractor bid or proposal information or source selection information.

*Privacy Act of 1974
5 USC 552a*

Criminal penalties for violations of the Privacy Act were considered. However, the documents on the (b)(6) CD did not fit the definition of a "system of records" necessary for the documents to fall under the Privacy Act of 1974.

*Embezzlement or Theft
18 USC 641*

ELEMENTS

- Sold, conveyed or disposed of
- Property belonging to the United States
- Without authority to do so
- With knowledge that he did not have authority to do so.
- (The government does NOT have to show that the property was stolen from the United States)

Privacy Act Exemptions J and K applied to this page

The AUSA stated that there may be a way to show that the value of the information on the [b](6) CD was greater than \$1,000. Alternatively, it would be easier to show that the value of the information on the [b](6) CD was \$1,000 or less. Therefore, a misdemeanor count appeared available, if the felony (over \$1,000 per the statute) cannot be proven.

Value of stolen goods - SA [b](6), [b](7)(C) counted the pages of information on the CD and came up with a very conservative document cost figure, had the documents been available via a FOIA request. The FOIA copying fee excluding any research fee would be well below the \$1,000 threshold for a felony charge.

Computer Crime for Accessing Portal and Putting Files on CD
18 USC 1030(a)(2)(B)

ELEMENTS

- Without authorization, the defendant accessed a computer (*or* accessed a computer with authorization, but exceeded his authority in accessing the information in question);
- The defendant acted intentionally; and
- The defendant obtained information contained in a financial record of a financial institution, or contained in a file of a consumer reporting agency on a consumer (*or* information from any department or agency of the United States *or* information from any protected computer).

(*If applicable*: Fourth, that the defendant acted for the purpose of commercial advantage or private financial gain (*or* the offense was committed in furtherance of [identify criminal or tortious act] *or* the value of the information obtained was greater than \$5,000)

Based on the elements of the offense, proof of computer crimes would require establishing that [b](6) accessed the PBGC Portal or exceeded his authority in accessing the files on the Portal which he saved onto the CD. The Portal is a system of servers and software for storing and organizing documents used by IT to share information on a need to know basis. The AUSA was not interested in pursuing this charge unless there was proof that [b](6) actually did access the Portal to get the files. Although [b](6) admitted to obtaining the files on the CD from the Portal, through his attorney's response to a proposed debarment, [b](6) did not directly state so himself. The AUSA wanted direct evidence that [b](6) accessed PBGC files to get them onto the CD. SA [b](6), [b](7)(C) contacted each PBGC employee who might know of a possible way to obtain direct evidence of [b](6)'s accesses. However, all but one individual familiar with the Portal, [b](6),

stated that the internal controls were so weak at PBGC that there was likely no way to trace the accesses.

(b)(6) Interview

PBGC IT Manager **(b)(6)** stated that his office could "possibly" track down who had obtained the **(b)(6)** CD documents from the Portal. However, a project to try to determine if **(b)(6)** "actually" accessed the files could cost \$100,000 and take six months.

(b)(6) Interview

SA **(b)(6), (b)(7)(C)** met with PBGC IT Division Manager **(b)(6)** who had reviewed the **(b)(6)** CD prior to assignment of the case to SA **(b)(6), (b)(7)(C)**. **(b)(6)** had created a spreadsheet listing the 30 documents contained on the CD and listing possible location(s) on the Portal where **(b)(6)** may have found then copied each document to the CD. Additionally, **(b)(6)**'s spreadsheet contained **(b)(6)**'s comments on each document, including whether they included Personally Identifiable Information (PII) or information that could create an Organizational Conflict of Interest (OCI). **(b)(6)** stated that many of the documents could only have been obtained by drilling down in the Portal files. However, in many instances, **(b)(6)** was defensive of **(b)(6)** and stated that much of the information in the documents may be made available to vendors interested in submitting proposals for the ITIOSS contract. Additionally, **(b)(6)** stated that some of the documents inappropriately contained **(b)(4)** Proprietary non-disclosure statements. Because PBGC was the rightful owner of the documents, **(b)(4)** should not have flagged many of the documents as containing **(b)(4)** proprietary information.

(b)(6) Interview

SA **(b)(6), (b)(7)(C)** met with the ITIOSS Contracting Officer Representative (COR) **(b)(6)**. As the COR for ITIOSS, **(b)(6)** worked on the Performance Work Statement (PWS) for the ITIOSS contract. Per **(b)(6)**, best practices are to give electronic files names that allow users to recognize the contents of the electronic files by their filenames. SA **(b)(6), (b)(7)(C)** had **(b)(6)** open a copy of the **(b)(6)** CD and asked him, one by one, if he recognized the contents of each file by its filename, only. After recording **(b)(6)**'s answers on a spreadsheet, SA **(b)(6), (b)(7)(C)** had **(b)(6)** open each individual document and comment on the substance, sensitivity, and value of each document to prospective vendors. Agent **(b)(6), (b)(7)(C)** recorded **(b)(6)**'s comments on a spreadsheet. **(b)(6)**'s had much more to say about the substance, sensitivity, and value of each document to prospective vendors than did **(b)(6)**.

After **(b)(6)** finished commenting on each individual document on the **(b)(6)** CD, SA **(b)(6), (b)(7)(C)** asked **(b)(6)** if **(b)(6)** had exceeded his authorization for using the Portal when he went in and copied the files to the CD. **(b)(6)** stated that had **(b)(6)** had a business purpose to access the files in his capacity as a program manager for **(b)(4)**'s contracts with PBGC, he would say the answer is "no." However, since **(b)(6)** accessed the documents for the purpose of copying them to a CD and using them for a contract

procurement opportunity with another vendor, (b)(6) stated that (b)(6) definitely exceeded his authorization.

Per (b)(6), PBGC set up a physical reading room for vendors to come in and look at documents regarding the ITIOSS Request for Proposals (RFP). The purpose for the RR was to help vendors to understand PBGC's wants and needs in considering submission of proposals for the ITIOSS contract.

Vendors had to schedule appointments to avail themselves of the documents in the RR. PBGC employees monitored the vendors while they used the RR. The vendors were not permitted to take photographs of any of the RR documents, which were available as "read only" files on computers set up in the RR. (b)(6) unilaterally made most of the decisions as to the documents provided in the RR. Any document containing a PBGC IP address was excluded. (b)(6) did consult with PBGC IT Department Information Security Representative (b)(6) in instances where he was not sure if a document should be included in the RR.

(b)(6) provided all of the RR documents and the RR appointment schedule to SA (b)(6), (b)(7)(c). SA (b)(6), (b)(7)(c) did a side by side comparison of the (b)(6) CD files and the RR files. The review showed that none of the files on the (b)(6) CD were put in the PBGC RR for other vendors to see.

(b)(6) Interview

SA (b)(6), (b)(7)(c) met with PBGC IT Specialist (b)(6) regarding her knowledge of (b)(6)'s unauthorized disclosure of PBGC documents to (b)(4), (b)(6) was the COR for (b)(4) contract (b)(6) with PBGC. A dozen or more separate task order (TO) contracts had been awarded to (b)(4) under the (b)(4) contract. (b)(4) and (b)(4) also have (b)(4) contracts with PBGC and they compete with (b)(4) for the TO contracts. Although (b)(6) is the COR for the (b)(4) contract, separate CORs are assigned to each of (b)(4)'s TO contracts that are awarded under the (b)(4) contract.

(b)(6) sat in on OGC's separate interviews of (b)(6)'s attorney and of (b)(6)'s President (b)(6) (including (b)(4)'s counsel). She had been requested to do so by OGC due to her technical knowledge of IT and of (b)(6).

SA (b)(6), (b)(7)(c) asked (b)(6) about her knowledge of (b)(6) giving PBGC information to (b)(4). She stated that it was a really stupid thing to do and had no explanation for his actions. (b)(6) stated that she had known (b)(6) for many years and he is definitely a smart person. (b)(6) described her relationship with (b)(6) as business professional. (b)(6) stated that she reviewed the "list" of files that (b)(6) gave to (b)(4) and could tell by just the filenames that (b)(6) had no business giving them to anyone outside of PBGC. She had no doubts that (b)(6) was well aware that this was unethical and against regulations, as well.

(b)(6) explained that PBGC contracts warn against making such unauthorized disclosures and (b)(6) had been intricately involved with (b)(4)'s contracts with PBGC. (b)(6) was the project manager overseeing all of the (b)(4) TOs for (b)(4). Furthermore, (b)(6) had heard (b)(6) citing Federal Acquisition Regulations (FAR) during contract discussions in the past. She stated that the information (b)(6) gave to (b)(4) was not available on the PBGC Intranet and that (b)(6) had to dig for the information through the Portal which was only open to certain employees. The Portal was not open to PBGC or to the general public.

(b)(6) Interview

SA (b)(6), (b)(7)(C) met with (b)(6) about the possibility of obtaining (b)(6)'s actual IT accesses. (b)(6) thought that it might not be possible to prove that specific files were accessed on the PBGC Portal in March 2012. (b)(6) stated that the Portal files were probably first saved onto hard or portable memory at PBGC and then burned to the CD. He stated that external devices hooked to PBGC hardware should leave a footprint. (b)(6) checked with PBGC IT Specialist (b)(6) and learned that logs of external devices being attached to PBGC workstations are only maintained for 30 days. The 30 day window had since past at this point in the investigation.

SA (b)(6), (b)(7)(C) obtained (b)(6)'s IT Help Desk requests and noted that (b)(6) had submitted a Portal "How To Do Question" on March 13, 2012, a few days before the CD issue surfaced. SA (b)(6), (b)(7)(C) also obtained all available PBGC IT system access requests for (b)(6). Per (b)(6), the "OIT LAN" request was actually just an umbrella term under which specific accesses are requested. The "I: (b)(4)" request would provide access limited to the (b)(4) folder on the PBGC "I drive." (b)(6) had previously worked with (b)(6) on and off at PBGC. (b)(6) stated that (b)(6) had very good IT security awareness and knew the do's and don'ts. Additionally, (b)(6) was technically good with IT.

Email Review

A review of (b)(6)'s email for the year prior to his PBGC departure did not reveal any direct evidence of the allegations. On March 19, 2012, (b)(6) emailed (b)(6) and others a draft letter to the PBGC Procurement Department (PD). (b)(6) points out that (b)(4) another vendor pursuing the ITIOSS contract, may have a conflict of interest due to their access to procurement information via their (b)(4) support contract in the PD. This (b)(6) email goes toward (b)(6)'s knowledge of procurement sensitive information. Additionally, there were emails from (b)(6) to (b)(4) employees reminding them to take their mandatory information security awareness briefings.

Suspension and Debarment

(b)(6)'s action of preparing the CD was enough for the OGC to propose that (b)(6) be suspended and debarred from federal contract work. After meeting with (b)(6)'s attorney, the PBGC Suspending and Debarment Official (SDO) Attorney Judith Starr and (b)(6)

agreed to an 18 month debarment of (b)(6) (b)(4) agreed to take remedial steps to insure no similar actions by (b)(4) employees occur. (b)(4) was permitted to continue their contract work with PBGC.

Second Allegation (FOIA Request)

Computer Crime for Accessing Unredacted Contract Documents

18 USC 1030(a)(2)(B)

Conspiracy

18 USC 371

Per the AUSA, no crime was committed by (b)(6) unless he personally accessed the unredacted contract documents in the DD electronic file for the (b)(6) FOIA request, or directed someone else to do it.

Embezzlement or Theft

18 USC 641

Theft Conspiracy

18 USC 371

The AUSA was interested in seeing if the OIG could obtain verification of the retrieval of unredacted files from the electronic FOIA files for the (b)(6) request. Surreptitious access and obtainment of unredacted contract files would need to be proven to charge either theft of conspiracy to commit theft.

Per the AUSA, the value of unredacted contracts may be able to be shown by analysis of other (b)(4) contract awards. Some of the (b)(4) contract files were awarded under (b)(4) IDIQ. They compete with (b)(4) and (b)(4) for these task order contracts.

FOIA Requests by David Wolf & Kris Hillstrom

SA (b)(6), (b)(7)(c) obtained FOIA requests from Disclosure Division (DD) (b)(6) that had been made directly by (b)(6). However, they were from years prior to the allegation made by (b)(6). SA (b)(6), (b)(7)(c) had DD Analyst (b)(6) search for and pull all requests categorized as "contracts" and "proposals" for the period of January 1, 2011 through the present. Additionally, SA (b)(6), (b)(7)(c) asked for all FOIA requests from Kris Hillstrom and New Century, an LLC owned by Hillstrom, to determine if (b)(6) had used Hillstrom and/or New Century to obtain prior contract files. The search produced an April 2010 request by Hillstrom for contract files related to BAH, (b)(4) (b)(4) (b)(4) for PBGC contract awards.

(b)(6) Interview

SA (b)(6), (b)(7)(c) interviewed (b)(6). He stated that he had submitted the April 2010 FOIA request at the direction of (b)(6) and received redacted contract files from the DD. However, (b)(6) denied any knowledge of (b)(6) also obtaining unredacted contract files from the DD. (b)(6) stated it is not out of the ordinary for competing vendors to

request contracts of competitors through FOIA requests and for them to insulate their identity by having third parties make the requests. This statement was corroborated by SA (b)(6), (b)(7)(c) by his review of the other FOIA requests for the contracts and proposals. They showed that most such requests are made by third party companies that appear to specialize in making FOIA requests.

(b)(6) *Electronic FOIA Case File Access*

SA (b)(6), (b)(7)(c) obtained records of DD employees who participated in responding to the (b)(6) FOIA request. All those identified appeared to have legitimate reasons for accessing the DD case file for the (b)(6) request, with the exception of PBGC contract FOIA Analyst (b)(6).

(b)(6) *Interview*

SA (b)(6), (b)(7)(c) interviewed (b)(6) concerning her DD duties. At first (b)(6) denied ever accessing any FOIA case file containing contract information. After SA (b)(6), (b)(7)(c) demonstrated to her that there was an electronic record of her accessing the (b)(6) file, she recollected that she had entered the file system at the request of (b)(6), for the purpose of preparing a status update letter to (b)(6). Per (b)(6), (b)(6) had her prepare the letter, rather than FOIA Analyst (b)(6) who was assigned to the request, because (b)(6) was not in the office at the time. (b)(6) claimed that she did not access any actual contract files within the (b)(6) electronic case file.

(b)(6) later provided SA (b)(6), (b)(7)(c) with a May 4, 2010, letter to (b)(6) and stated it was the letter (b)(6) had her prepare. (b)(6) could not explain why her name appeared on the electronic case file record as having accessed the (b)(6) file on October 5, 2010, rather than May 4, 2010.

(b)(6) *Interview*

SA (b)(6), (b)(7)(c) met with (b)(6). (b)(6)'s leave records did not show her to be on leave on May 4, 2010. (b)(6) stated that she was not teleworking during that time frame, either.

Collateral Request to OGC for (b)(6) FOIA File Metadata

(b)(6) of the Office of the General Counsel's Legal Technology and Administration Division data mined all accesses to the (b)(6) electronic FOIA file in response to a collateral request from SA (b)(6), (b)(7)(c). The results showed the specific files accessed by (b)(6) on October 5, 2010, as well as two documents she printed that day. OIG was in the process of obtaining the specific files accessed and documents printed by (b)(6) when an administrative decision was made by OIG management

that the (b)(6) case was too old, lacked merit, and needed to be closed. By that point in time, the assigned AUSA had left for a different agency and other aspects of the case against (b)(6) had weaknesses.

Third Allegation (Accessing Labor Rate via Primavera and (b)(4) Contracts)

Embezzlement or Theft

18 USC 641

Theft Conspiracy

18 USC 371

See Initial Allegation ((b)(6) CD) section above for the elements of the offense. To charge this offense, proof would be needed that (b)(6) or someone acting on his behalf accessed labor rates for other than official government business. Proof of conveyance of the information would be necessary, as well.

Computer Crime for Unauthorized Access of Vendor Labor Rates

18 USC 1030(a)(2)(B)

Conspiracy

18 USC 371

To charge this offense, proof would be needed that (b)(6) or someone acting on his behalf accessed labor rates for other than official government business.

(b)(6) Interview

(b)(6) suggested that SA (b)(6), (b)(7)(C) talk to (b)(6) about (b)(4) (b)(4) contract to determine if there was ever a window of opportunity for (b)(6) or (b)(4) to access other company's live data (including labor rates) in the Primavera system. Primavera was one of many systems that underwent an (b)(4) upgrade. (b)(6) stated that PBGC has not been very good about using "sample" data, rather than "live" data during the testing phase of system upgrades.

(b)(6) Interview

SA (b)(6), (b)(7)(C) met with PBGC IT Specialist (b)(6) to identify the retrieval of live data from the Primavera system during the (b)(4) upgrade. (b)(6) consulted with PBGC IT Business Manager (b)(6) about (b)(4) upgrade from a Microsoft Windows 2003 server to a Microsoft Windows 2008 R2 server, specifically as it pertained to the Primavera Program. (b)(6) told (b)(6) that there was no live Primavera data on the old or the new servers. The data resides on an Oracle database which in runs with a Sun Solaris operating system. (b)(6) was the project manager of the MS Windows 2008 R2 server upgrade and he became the project manager of the Sun Solaris system when (b)(6) left PBGC. (b)(6) and (b)(6) had years earlier worked together for a PBGC contractor named (b)(4).

Regarding (b)(4) upgrade of Primavera, when it came time to test the Primavera system with live data, (b)(6) stated the standard procedure would be for a PBGC or contract employee in the Primavera production area to test the new server with live data. (b)(6) should not have access during this phase where live Primavera data is accessible. (b)(6) recommended (b)(6) as a good source of information regarding the (b)(4) project.

(b)(6) Interview

SA (b)(6), (b)(7)(C) met with (b)(4) employee (b)(6) to ask him about (b)(6) and potential IT data security weaknesses at PBGC. (b)(6) joined (b)(4) in February or March 2010 to work as the project manager on (b)(4) TO awarded to (b)(4) under (b)(4) IDIQ contract with PBGC. Per (b)(6), (b)(6) was the head of (b)(4)'s services division, including all PBGC work, until (b)(6) was let go by (b)(4). (b)(6) was aware that (b)(6) was removed from PBGC due to information (b)(6) disclosed to (b)(4) on a CD and that the disclosed information had come from the PBGC Portal.

According to (b)(6), by the time (b)(4) entered into an administrative agreement with PBGC enabling them to continue doing business with PBGC after the (b)(6) disclosure, time was too short for (b)(4) to team with another vendor to submit a proposal for the ITIOSS contract. Per (b)(6), all IT artifacts and deliverables are saved to the Portal. It is used by all employees working in the Office of IT. Parts of the Portal can be set up to restrict access. However, the Portal was mainly unrestricted until after the (b)(6) disclosure.

(b)(6) stated that the Portal is a Plum Tree product that is now unsupported and obsolete. PBGC is gradually switching from Portal to SharePoint via the (b)(4) contract and other projects. Since the (b)(6) incident, access to Portal has been made more restrictive. When asked about the vulnerability of the Portal, (b)(6) stated that administrative privileges and access control had been delegated down to too many individuals who may or may not have been adequately trained in safeguarding PII and other sensitive and proprietary information. (b)(6) indicated that he (b)(6) is very well versed in IT security.

Per (b)(6), (b)(4) uses Primavera but is not the system administrator. (b)(6) said that the administrator is probably (b)(4). (b)(4) creates the ability for vendors to set up their contracts on Primavera. (b)(6) stated that he can only see (b)(4) information on Primavera and he thinks other vendors can only see their own information. (b)(6) stated that he does not know what information would be of interest to another vendor as there is no PII on the system. Aside from the situation with (b)(6) and the CD, (b)(6) stated that he is not aware of any other improper accesses of PBGC information by anyone. According to (b)(6), (b)(6) never asked him to make any inappropriate accesses.

Consensually Monitored Phone Call

(b)(6) agreed to make a monitored phone call to (b)(6). The purpose was to electronically record additional statement from (b)(6) regarding the obtainment of vendor labor rates from Primavera via (b)(4) contract. Two attempts were made by (b)(6) to reach (b)(6) on his cell phone, but both times there was no answer.

(b)(6) Interview

SA (b)(6), (b)(7)(C) met with (b)(6) to obtain information about the Primavera system and (b)(4) contract, and the possibility of obtaining documentation of the unauthorized obtainment of PBGC vendor labor rates via Primavera and (b)(4). (b)(6) identified the Primavera COR as (b)(6) and project manager as (b)(6).

(b)(6) stated that since Primavera live data (e.g. labor rates) resides on an Oracle server, in all likelihood, (b)(4) would not have had access to it during the Primavera upgrade process. (b)(6) at first opined that (b)(4) could have more easily obtained data from PBGC's Windows based file systems, since (b)(4) had full access to them as the (b)(4) contractor. After further discussion, (b)(6) stated that using the Primavera system would be a "clever" way to obtain vendor data from one place, rather than having to go separately through multiple vendor files.

SA (b)(6), (b)(7)(C) had (b)(6) review and comment on any LAN access requests for (b)(6) that appeared unusual or improper. (b)(6) identified the Primavera Project Management eLAN access request to the "Development" environment as improper. (b)(4) should only have access to the Primavera "Production" environment, for the purpose of using Primavera as a tool for their (b)(4)'s own IT contracts. Additionally, the reason given for the access, "Need to access Primavera Project Management to update (b)(4) projects" should have been specific to (b)(4) projects." As worded, the access could permit (b)(6) access to all (b)(4) projects, including those belonging to (b)(4) competitors' (b)(4) and (b)(4). (b)(6) stated that the Primavera application owner (b)(6) should have caught these errors before signing the request. However, (b)(6) stated without additional facts, he would consider the act a mistake by (b)(6) and not a "smoking gun."

SA (b)(6), (b)(7)(C) provided (b)(6) with printouts of (b)(6)'s "help desk" request records and asked him to determine any that appeared inappropriate. (b)(6) identified the first request, stating that (b)(6) needs access to UNIX servers (root privileges), as very odd. (b)(6) stated that these privileges would have given (b)(6) an "extremely high level of access" to UNIX. (b)(6) should not have needed these privileges.

(b)(6) stated that there might be access logs at the application level for the development and test environments. (b)(6) stated that (b)(6) would be the one to talk with about this. If logs are available, they will show what user identity was used to access live vendor data for nefarious purposes during the (b)(4) upgrades. However, user identities were not difficult to borrow/steal during the time-period when (b)(6) was at PBGC. Therefore, (b)(6) stated that anyone could defend himself by explaining that PBGC

system access control weaknesses provided numerous individuals the ability to use someone else's identity.

(b)(6) stated that there have been findings of systemic problems in the PBGC IT department and IT has responded as follows:

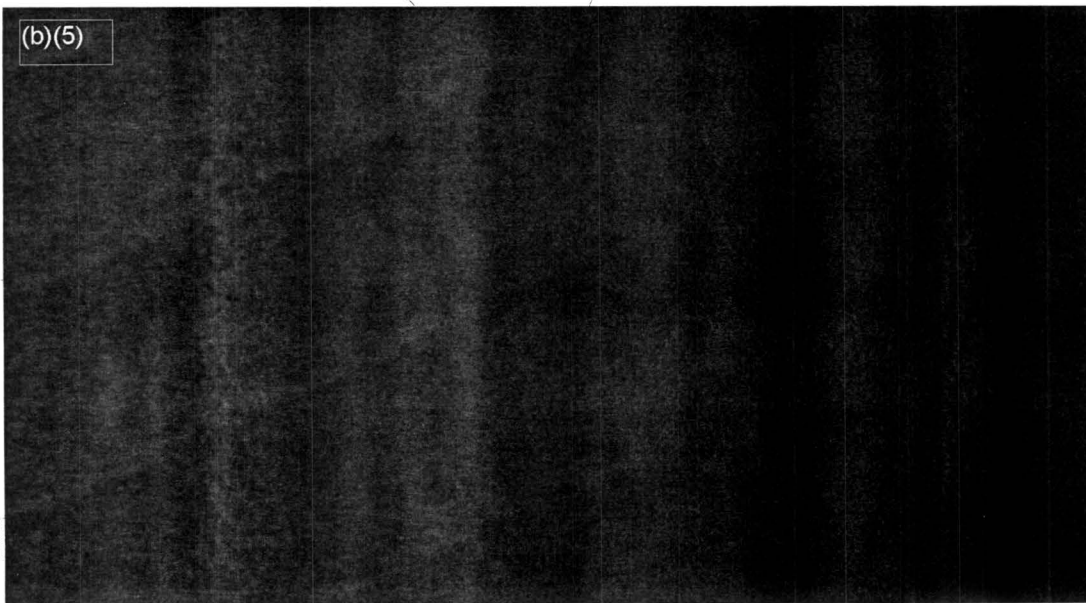
- Efforts are underway to mask live and sensitive data in the development and test environments.
- Efforts are underway to institute a centralized audit logging system that will allow long-term storage of system accesses.
- Tighter controls over development and test accounts have been put in place.

CONCLUSION:

(b)(6)

(b)(6)

(b)(5)



(b)(6), (b)(7)(c)

(b)(6)

(b)(6), (b)(7)(c)


RECOMMENDATION:

(b)(5)

DISPOSITION:

Close out case with no additional referral(s).

CONCUR:


Peter P. Paradis
Assistant Inspector General
For Investigations

08/05/2015
Date

REPORT OF INVESTIGATION



Pension Benefit Guaranty Corporation

Office of Inspector General

1200 K Street, N.W., Washington, D.C. 20005-4026

| | |
|------------------------------|---|
| <i>Investigation Number:</i> | 14-0019-I |
| <i>Investigation Title:</i> | (b)(6) GS-12 (b)(5) Office of Inspector General Washington, DC |
| <i>Report Status:</i> | Final |
| <i>Alleged Violation(s):</i> | Computer Crimes: Misuse of Government Computers / Software Violations (Not Internet / Email) |

INVESTIGATIVE SUMMARY

This investigation was initiated on April 21, 2014, based upon the allegation (b)(6) (b)(7)(c), Office of Inspector General (OIG), Pension Benefit Guaranty Corporation (PBGC), Washington, DC may have misused US Government computer

| | | | |
|---|--------------------------------------|----------------------|--|
| Reporting Agent | | <i>Distribution:</i> | |
| Name: (b)(6), (b)(7)(c) | Signature: for: (b)(6), (b)(7)(c) | | |
| Technical Reviewing Official | | | |
| Name: | Signature: | | |
| Title: | Date: | | |
| Approving Official | | | |
| Name: | Signature: | | |
| Title: | Date: | | |
| Concurring Official | | | |
| Name: Peter P. Paradis, Sr. | Signature: | | |
| Title: Assistant Inspector General for Investigations | Date: 06/23/2015 | | |

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REPORT OF INVESTIGATION

systems, software and workspace to operate a personally-owned tax preparation business. The suspected violation was reported by the (b)(6), (b)(7)(c)

PBGC Office of Inspector General engaged the electronic computer forensic expertise of the United States Postal Service (USPS) OIG, who then conducted a forensic analysis of the US Government laptop computer hard drive issued to (b)(6) in an effort to determine and archive misuse of the US Government property. No forensic evidence was developed to support the allegation made by the complainant.

The matter was not presented to the U.S. Attorney's Office, Washington, DC, based upon the fact there was no evidence discovered to substantiate the allegation.

Based on the above, the allegation is deemed "unsubstantiated." No further criminal investigation is warranted at this time. This report will be referred to the Assistant Inspector General for Audit.

INTRODUCTION

On April 21, 2014, an investigative inquiry was initiated based on a complaint (14-0094-C) received from PBGC OIG (b)(6), (b)(7)(c). According to (b)(6), (b)(7)(c) former PBGC OIG (b)(6) was suspected to have conducted some independent tax preparation business using PBGC OIG equipment [i.e. Information Technology (IT) hardware and software, to wit: a laptop computer] and workspace. This suspicion was based upon (b)(6), (b)(7)(c) significant feedback to (b)(6) with respect to his work and the continued poor quality of (b)(6)'s work products. This initial inquiry involved an investigative review of (b)(6)'s web log activity, computer hard drive (Seagate Barracuda 7200.12 250GB hard drive s/n 5VM1TEDG) and an inspection of his workspace.

INVESTIGATIVE ACTIVITY

On April 21, 2014, the reporting agent contacted PBGC Information Technology Security Specialist (ITSS) (b)(6) at her place of employment within the Office of Chief Information Officer (CIO), PBGC to acquire "bluecoat" web activity tracking data associated with the PBGC username of "(b)(6)" assigned to (b)(6). In addition, the reporting agent conducted web based research to identify any indicators to support the allegation that (b)(6) was operating a (b)(6) business. The search found that

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(b)(6) was registered as a (b)(6) for H&R Block and listed a work location address as (b)(6).

On April 26, 2014, the reporting agent met with PBGC ITSS (b)(6) concerning this matter. ITSS (b)(6) advised the reporting agent that PBGC does not in any manner monitor the web use activity of PBGC OIG employees due to the independent nature of the PBGC OIG. As a result, no "bluecoat" web log data was available in connection with (b)(6)'s username (b)(6).

On May 12, 2014, the reporting agent contacted USPS OIG (b)(6), (b)(7)(c) to request assistance for an independent investigative forensic review of (b)(6) official business hours web activity, computer hard drive and keyword searches in an attempt to determine if (b)(6) web activities during the workday substantiated the allegation of misuse of Government computers and software systems.

On May 14, 2014, the reporting agent received a text file of (b)(6) web log activity for the period of January 1, 2014 through April 30, 2014, inclusive, from former OIG IT contractor (b)(6). A review of (b)(6) web log activity by the reporting agent identified visits to social media site Facebook, online tax preparation service H&R Block, banking institutions, federal government site IRS.gov to access information on tax professionals and enrolled agents, and external email addresses of (b)(6)@msn.com and (b)(6)@gmail.com. In addition, the review found that (b)(6), (b)(7) used web browsers chrome and internet explorer 10 to conduct searches and surf the internet.

Furthermore, the reporting agent reviewed the web logs to determine the number of occurrences involving a web visit to the hrblock.com site as well as hrblock.com login activity using search terms "Authn/UserPassword" and "login". The reporting agent analyzed blocks of time based on (b)(6) hrblock.com activity by viewing the uninterrupted timeframes in the web logs as associated activities based on the continuity of the details. The methodology also involved assessing the amount of time (b)(6) spent at the hrblock.com site.

Based on the analytical methodology applied, the reporting agent was initially able to conclude that (b)(6) did, between January 1, 2014 and April 30, 2014, visit www.hrblock.com website 10 times and successfully logged in seven (7) times, and where three (3) of those seven (7) logins exceeded a 10 minute timeframe as detailed in the table below:

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| DATE | START ASSOCIATED ACTIVITY | END ASSOCIATED ACTIVITY | TOTAL TIME </> 10 minutes | NOTES |
|-------------|---------------------------------|-------------------------------|------------------------------------|---|
| Feb 7 2014 | 9:28:13 AM | 9:36:12 AM | < | User signed into hrblock.com |
| Feb 23 2014 | 7:22:55 PM | 8:02:31 PM | > | No indication from web log user signed (timeframe outside of normal business hours) |
| Feb 24 2014 | 1:33:04 PM | Unknown | | No indication from web log user signed |
| Feb 27 2014 | 1:30:03 PM | 1:36:09 PM | < | User reset H&R Block password during signed in period |
| Feb 28 2014 | 9:31:13 AM | 9:31:30 AM | < | User signed into hrblock.com |
| Mar 5 2014 | 9:06:24 AM | 9:06:54 AM | < | User signed into hrblock.com |
| Mar 24 2014 | 1:05:24 PM | 3:20:01 PM | > | No indication from web log user signed. During this block of time the user visited social media sites, online newspapers and visited sites dealing with computer virus'/malware |
| Mar 25 2014 | 1:48:17 PM | 1:48:34 PM | < | User signed into hrblock.com |
| Apr 1 2014 | 3:17:38 PM | 3:18:25 PM | < | User signed into hrblock.com |
| Apr 22 2014 | 1:41:26 PM | 1:43:04 PM | < | User signed into hrblock.com |

Based on the weblog review, the reporting agent concluded that (b)(6) activities may involve the unauthorized use of PBGC OIG hardware and information systems to operate a tax business, thus warranting more in depth forensic analysis.

On May 14, 2014 the reporting agent delivered a Seagate Barracuda 7200.12 250GB hard drive s/n 5VM1TEDG (previously installed in (b)(6) assigned government computer), and (b)(6) associated web log activity text file, to the USPS OIG computer crimes unit

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REPORT OF INVESTIGATION

for independent keyword searches (using search terms HR, BLOCK, TAX, SHIBBOLETH) and analysis.

On June 25, 2014, USPS OIG Assistant Special Agent in Charge (b)(6), (b)(7)(c) emailed the reporting agent that the preliminary results of (b)(6) hard drive and web activity analysis reflected "no evidence was found relating to tax preparation documents on the government computer."

On July 15, 2014, USPS OIG computer forensic examiner (b)(6), (b)(7)(c) delivered a DVD to the reporting agent containing the final forensic analysis report for (b)(6) hard drive and web activity. The reporting agent reviewed the USPS OIG report and the supporting documents for the analysis performed and noted the USPS OIG's forensic analysis had been complete in its execution.

APPLICABLE REGULATORY REQUIREMENT

Standards of Ethical Conduct for Employees of the Executive Branch
5 C.F.R. 2635, Subpart G – Misuse of Position

- Section 2635.704 Use of Government Property
 - (a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.
 - (b) Definitions. For purposes of this section:
 - (1) *Government property* includes any form of real or personal property in which the Government has an ownership interest...The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities...

PBGC's Ethics Handbook

Section V. Misuse of Position, subsection C. Use of Government Property (p 24)

You are authorized, *limited* personal use of office, library, and other electronic equipment for during your non-work time (*e.g. during a lunch break or after work*) that involves little or no additional expense for the agency. Personal use is any activity not to accomplish official PBGC business. You are not, however, authorized to use PBGC equipment for private business matters (*e.g., dealings with customers or clients associated with an outside business*).

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REPORT OF INVESTIGATION

Analysis

Forensic analysis conducted by the US Postal Service OIG Computer Crimes Unit failed to identify unauthorized use of PBGC OIG hardware and information systems by (b)(6) to support the allegation that he was operating any personal business.

Referral to the United States Attorney's Office

The matter was not presented to the U.S. Attorney's Office, Washington, DC, for a prosecutorial opinion based upon the fact there was no evidence developed to substantiate the allegation.

CONCLUSION

The investigation did not result in any corroboration of the complaint concerning (b)(6)'s alleged use of US Government computer systems, software and workspace to operate a personally owned tax preparation business, or any other type of personal business, and as such the allegation has been deemed unsubstantiated relative to misconduct at this time.

Based on the analytical methodology applied, the investigative team was able to conclude that despite the fact that (b)(6) did, between January 1, 2014 and April 30, 2014, visit www.hrblock.com website 10 times, no evidence was identified from a forensic capacity to substantiate the allegation (b)(6) engaged in use of government time, equipment and/or space in any way for a personal business venture.

DISPOSITION

This investigation is closed in the OIG's official electronic Case Management and Tracking System and the matter is referred back to AIGA (b)(6) for action as deemed appropriate.

(b)(6), (b)(7)(c)

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REPORT OF INVESTIGATION

EXHIBITS

| <u>NUMBER</u> | <u>DESCRIPTION</u> |
|---------------|--|
| 1 | Computer Forensic Analysis Report (CFR) #14USHQ2652GC11GC (2014-0727), generated by USPS OIG Special Agent (b)(6), (b)(7)(C) [REDACTED], for period May 14, 2014 through May 21, 2014 inclusive, dated July 1, 2014, with attachments 1 - 5. <ul style="list-style-type: none">1.1 PBGC Computer Banner May 20, 20141.2 CFR #14USHQ2652GC11GC (2014-0737) - (b)(6) [REDACTED] - Forensic Imaging 051414, June 20, 2014, with attachments 1 - 4.<ul style="list-style-type: none">1.2.1 Digital Media Collection Worksheet, May 14, 20141.2.2 FTA Imager Report (reacquisition), May 19, 20141.2.3 Evidence Custody Form, May 22, 20141.2.4 PBGC Computer Banner, June 13, 20141.3 Internet Evidence Finder Report, May 21, 2014 (DVD format)1.4 CFR #14USHQ2652GC11GC (2014-0745) - (b)(6) [REDACTED] - Web Log Analysis 051414, June 23, 2014, with attachments 1 - 4.<ul style="list-style-type: none">1.4.1 PBGC Computer Use Agreement, May 30, 20141.4.2 (b)(6) [REDACTED]'s Web Log History, May 14, 2014 (note: Document too large to print. It is embedded electronically in Exhibit 1.4 for display and access)1.4.3 MD5 Hash Values, May 14, 20141.4.4 (b)(6) [REDACTED]'s Keyword Search Results, May 14, 2014 (note: Document too large to print. It is embedded electronically in Exhibit 1.4 for display and access)1.5 FTK hash values of forensic images, May 21, 2014 |

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EXHIBIT 1

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Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

October 9, 2015

TITLE

(b)(6)

Pension Benefit Guaranty Corporation

(b)(6)

SL-00

(b)(6)

Pension Benefit Guaranty Corporation
Washington, DC

INVESTIGATION # 14-0081-C / 14-0016-I

TYPE OF

INVESTIGATION

*Title 5 USC §2301 – Merit System Principles

*Title 5 CFR §4.2 – Prohibition Against Racial, Political and Religious
Discrimination

*Title 5 CFR §2635.101(b)(13) – Basic Obligation of Public Service

INVESTIGATOR

(b)(6), (b)(7)(c)

SUBJECT

Close-Out Memorandum

ALLEGATIONS & FINDINGS

Allegations: On July 3, 2014, an anonymous source contacted the PBGC OIG and alleged that (b)(6)

(b)(6) was, with the assistance of retiring PBGC (b)(6), making efforts to "burrow into" the PBGC as a career competitive federal employee in the position of (b)(6) after the planned departure of (b)(6). According to information received, (b)(6)'s primary position as (b)(6) was being converted by the Human Resources Department (HRD) at (b)(6)'s direction from a (b)(6) back to its original status of "career competitive position" in order to facilitate (b)(6)'s burrowing in (i.e. "hiring"). The complainant alleged (b)(6) was misusing his position to mandate the HRD facilitate the position conversion so (b)(6)

Privacy Act Exemptions J and K applied to this page

could be hired as a full-time federal employee, and therefore [b](6) was politicizing the merit hiring and promotional system by evading the fully competitive application process, violating a November 5, 2009, policy directive from then OPM Director John Berry. The complainant believes there is an abuse of federal hiring practices and that [b](6) is imposing undue pressure on direct report senior staff members to execute his direction. The complainant provided a type-written timeline chronology of significant events associated with this concern. [Exhibit 1]

Laws/Rules/Regulations Implicated: The Federal merit system principles require that all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation (5 USC § 2301(b)(2)). Though the prohibited personnel practices enumerated in section 2302 have limited applicability to PBGC, the merit systems principles do apply.

The Office of Personnel Management (OPM) has issued regulations and policy memoranda to define certain prohibited practices to protect the integrity of the Federal civilian competitive service. One such regulation prohibits discrimination by any person in the executive branch of the Federal Government in favor of or against any applicant for a position in the competitive service because of his political affiliation (5 CFR § 4.2).

In November 2009, then OPM Director John Berry issued a memorandum clarifying OPM's role as "guardian of the merit system [which] is especially important when a Federal agency selects a political appointee for a position in the civil service." He also indicated that "[w]hile political appointees may not be excluded from consideration for Federal jobs because of their political affiliation, they must not be given preference or special advantages." In order to facilitate OPM's oversight role, effective January 1, 2010, "agencies must seek prior approval from OPM before they can appoint a current or recent political appointee to a competitive or non-political excepted service position at any level under the provisions of Title 5, United States Code. OPM will review these proposed appointments to ensure they comply with merit system principles and applicable civil service laws." [Exhibit 2]

The standards of ethical conduct for Federal employees require that they "shall endeavor to avoid any actions creating the appearance that they are violating the law" [5 CFR § 2635.101(b)(13)].

Summary of Findings: In January 2011, [b](6) was hired as [b](6) at PBGC, an excepted service [b](6) position. In the spring of 2013, [b](6) expressed to [b](6) his interest in the vacant PBGC [b](6) position. He held the [b](6) position until July 2013, when he was re-assigned to an alternative [b](6) position within the same component. [Exhibits 4 and 9]

On July 17, 2013, [b](6) initiated a Request for [b](6) Authority through PBGC HRD and OPM, to appoint [b](6) as [b](6). OPM approved the request on August 20, 2013. [Exhibit 4d]

Effective August 25, 2013, (b)(6) was appointed to serve as the (b)(6) as a (b)(6) [Exhibit 8c]

In the spring of 2014, (b)(6) who was serving as the (b)(6) and (b)(6) positions—approached (b)(6) to express his interest in remaining on a long-term basis as an employee of the PBGC. (b)(6) asked (b)(6) how to properly convert from a (b)(6) status to that of a career Federal employee. (b)(6) suggested that (b)(6) contact (b)(6). [Exhibit 7] (b)(6) subsequently contacted (b)(6) to express his interest in converting from a (b)(6) to a career federal employee at PBGC. [Exhibit 3]

In May of 2014, (b)(6) asked (b)(6) to convert the (b)(6) position back to a career, competitive service position and to post, via the Human Resources Department, a vacancy announcement for the open, competitive service (b)(6) position. (b)(6) told (b)(6) he was retiring in (b)(6), and wanted to fill the open career competitive service (b)(6) position prior to his departure to mitigate concerns which may arise in the area of agency communication once he left. According to (b)(6) did not reference (b)(6) in connection with the aforementioned requests. [Exhibits 3 and 7] After less than a two-year period during which (b)(6) served under (b)(6), PBGC converted the position back to the career competitive service on May 7, 2014, [Exhibit 8].

On June 16, 2014, the announcement for the competitive (b)(6) position was opened, with a closing date of June 29, 2014. [Exhibit 4] After all of the applicants were screened, three were placed on the certificate of eligible candidates, including (b)(6) and one each internal and external to PBGC. [Exhibits 3 and 7] After (b)(6) provide the list of eligible candidates for the (b)(6) position to (b)(6) she advised him of the potential negative perception associated with selecting (b)(6) absent any interviews. [Exhibit 3]

In early July 2014, (b)(6) selected (b)(6) for the (b)(6) position, [Exhibit 7] apparently without having conducted any interviews. After the (b)(6) informed him that interviews are normally conducted for senior level positions at PBGC, (b)(6) interviewed only the two PBGC internal candidates. [Exhibit 8]

On August 14, 2014, in accordance with (b)(6)'s direction and OPM procedures, the package for (b)(6)'s appointment to the competitive service, (b)(6) position was sent to OPM for approval. [Exhibits 3 and 7]

On (b)(6) resigned from his PBGC (b)(6)

On September 26, 2014, OPM denied PBGC's request to appoint (b)(6) to the (b)(6) position. Because of the actions that PBGC took, OPM was unable to conclude that the appointment was free of political influence and that it complied with merit principles. [Exhibit 8]

¹ <http://www.pbgc.gov/about/who-we-are/pg/past-pbgc-directors-and-executive-directors.html>, Accessed 9/4/2015.

CONCLUSION

This investigation is closed in light of the fact that (b)(6), and that OPM disapproved (b)(6)'s selection for the competitive service (b)(6) position on September 26, 2014.

DISPOSITION

Investigative Status: This investigation is closed to OIG's official electronic Case Management and Tracking System. There is no further investigative activity required at this time.

Administrative Status: Not Applicable.

Judicial Status: The matter was not presented to the U.S. Attorney's Office, District of Columbia, due to an absence of evidence of any violation.

CONCURRENCE



William Owens
Chief of Staff

10/9/15

Date

REPORT OF INVESTIGATION



Pension Benefit Guaranty Corporation Office of Inspector General 1200 K Street, N.W., Washington, D.C. 20005-4026

| | |
|------------------------------|---|
| <i>Investigation Number:</i> | (14-0090-C) 15-0030-I |
| <i>Investigation Title:</i> | (b)(6) [Redacted] |
| <i>Report Status:</i> | Non-Employee Norristown, PA Final |
| <i>Alleged Violation(s):</i> | PA State statutes: *Title 18 §3921 §§A – Theft by Unlawful Taking – Movable Property *Title 18 §3922 §§A3 – Theft by Deception – Failure to Correct *Title 18 §3925 §§A – Receiving Stolen Property |

INVESTIGATIVE SUMMARY

This investigation was initiated on August 13, 2014, based upon information received at

| | | | |
|---|---|--|-----------------|
| <p style="text-align: center;">Reporting Agent</p> <p>Name: (b)(6), (b)(7)(c) [Redacted] Title: Special Agent in Charge</p> | <p>Signature: (b)(6), (b)(7)(c) [Redacted] Date: 09/10/2015</p> | <p style="text-align: center;">Distribution:</p> <p>PBGC OIG OI</p> | <p>Original</p> |
| <p style="text-align: center;">Technical Reviewing Official</p> <p>Name: Peter P. Paradis, Sr. Title: Assistant Inspector General for Investigations</p> | <p>Signature: [Signature] Date: 09/10/15</p> | | |
| <p style="text-align: center;">Approving Official</p> <p>Name: Peter P. Paradis, Sr. Title: Assistant Inspector General for Investigations</p> | <p>Signature: [Signature] Date: 09/10/15</p> | | |
| <p style="text-align: center;">Concurring Official</p> <p>Name: : Peter P. Paradis, Sr. Title: Assistant Inspector General for Investigations</p> | <p>Signature: [Signature] Date: 09/10/15</p> | | |

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the Pension Benefit Guaranty Corporation (PBGC) Office of the Inspector General (OIG) from Detective (b)(6), (b)(7)(c) of the East Norriton Police Department (610-272-0748 ext. (b)(6), (b)(7)(c) in Pennsylvania regarding an alleged theft of PBGC pension checks. Detective (b)(6), (b)(7)(c) reported (b)(6), PBGC pension benefit payment recipient of the Alan Wood Steel Company and United Steel Workers #2223300, alleged to Detective (b)(6), (b)(7)(c) that his son, (b)(6), has been living in his home ((b)(6) (b)(6) PA) and is stealing and cashing his PBGC pension checks. (b)(6) resides in a nursing home (since February 2011) at (b)(6) PA. (b)(6) thinks his son has been stealing his checks for about 53, collecting approximately \$8,851.53. Detective (b)(6), (b)(7)(c) requested the investigative assistance of the PBGC OIG toward seeking state prosecution of (b)(6) [Exhibit 1]

Such unauthorized is a violation of:

Pennsylvania state statutes:

***Title 18 §3921 §§A – Theft by Unlawful Taking – Movable Property**

(a) Movable property.--A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.

***Title 18 §3922 §§A3 – Theft by Deception – Failure to Correct**

(a) Offense defined.--A person is guilty of theft if he intentionally obtains or withholds property of another by deception. A person deceives if he intentionally:

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

***Title 18 §3925 §§A – Receiving Stolen Property**

(a) Offense defined.--A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

The PBGC OIG initiated Complaint #14-0090-C and subsequent investigation 15-0030-I.

In September of 2014, PBGC OIG agents conducted a review of the State Street Plus system in an effort to further develop investigative leads associated with the 16 cited PBGC pension checks spanning the period April 1, 2013 through August 1, 2014.

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REPORT OF INVESTIGATION

In October of 2014, the PBGC OIG engaged the assistance of State Street Bank officials and identified PNC Bank, National Association (routing number 031000053) in Pittsburgh, PA (1-877-824-5001) as the location where the 16 cited (b)(6) pension benefit checks (April 2013 to August 2014) were negotiated.

On December 30, 2014, (b)(6) was interviewed by law enforcement representatives and confessed to the unauthorized theft and negotiation of approximately \$8,851.53 of his father's PBGC pension benefit payment checks since approximately November of 2009.

On July 9, 2015, (b)(6) was prosecuted by the State of Pennsylvania and pled guilty to two (2) counts of felony Title 18 §3921 §§A – Theft by Unlawful Taking – Movable Property. He was sentenced the same day to serve a term of five (5) years of probation, and pay restitution via payment plan in the total amount of \$8,851.53 to his father, (b)(6).

Based on the above, the allegation is deemed “substantiated.” No further criminal investigation is warranted at this time and the record will be closed in the OIG Case Management and Tracking System.

INTRODUCTION

On August 13, 2014, an investigative inquiry was initiated based on a complaint (14-0090-C) received from Detective (b)(6), (b)(7)(c) of the East Norriton Police Department (610-272-0748 ex (b)(6), (b)(7)(c)) in Pennsylvania. According to Detective (b)(6), (b)(7)(c) filed a police report informing that his son, (b)(6) has been stealing and cashing his PBGC pension benefit payment checks, an activity which has been occurring for up to 53 months. The PBGC OIG initial inquiry involved an investigative review of (b)(6)'s benefit payment history associated with the Alan Wood Steel Company and United Steel Workers pension plan #2223300.

INVESTIGATIVE ACTIVITY

On September 3, 2014, Special Agent (b)(6), (b)(7)(c) conducted a review of the State Street Plus system in an effort to further develop investigative leads associated with 16 cited PBGC pension checks payable to participant (b)(6). The check dates

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REPORT OF INVESTIGATION

spanned the period April 1, 2013 through August 1, 2014, and are further described as follows:

| <u>Check #</u> | <u>Check Date</u> | <u>Check Amount</u> |
|----------------|-------------------|---------------------|
| 691800487 | 04/01/2013 | \$167.01 |
| 701800489 | 05/01/2013 | \$167.01 |
| 711800516 | 06/01/2013 | \$167.01 |
| 721800477 | 07/01/2013 | \$167.01 |
| 731800445 | 08/01/2013 | \$167.01 |
| 741800419 | 09/01/2013 | \$167.01 |
| 751800427 | 10/01/2013 | \$167.01 |
| 761800523 | 11/01/2013 | \$167.01 |
| 771800416 | 12/01/2013 | \$167.01 |
| [Absent] | 01/01/2014 | |
| 791800554 | 02/01/2014 | \$167.01 |
| 801800395 | 03/01/2014 | \$167.01 |
| 811800411 | 04/01/2014 | \$167.01 |
| 821800421 | 05/01/2014 | \$167.01 |
| 831800383 | 06/01/2014 | \$167.01 |
| 841800398 | 07/01/2014 | \$167.01 |
| 851800424 | 08/01/2014 | \$167.01 |

Research revealed the reverse of each of the cited checks bore the semblance of the signature '[b](6)' and was processed through bank routing number 031000053. [Exhibit 2]

On October 15, 2014, SA [b](6), [b](7)(c) corresponded with [b](6), State Street Bank Officer regarding further identification of bank routing number 031000053. [b](6) informed SA [b](6), [b](7)(c) the cited routing number was assigned to a PNC Bank, National Association location in Pittsburg, PA. It was the bank where all 16 cited checks were negotiated. [Exhibit 3]

On October 15, 2014, SA [b](6), [b](7)(c) corresponded with Detective [b](6), [b](7)(c) and sent, via facsimile transmission, copies of the 16 cited negotiated pension checks for further investigative use.

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REPORT OF INVESTIGATION

Between the period October 15, 2014 and December 30, 2014, the PBGC OIG and Detective (b)(6), (b)(7)(c) attempted to locate and interview suspect (b)(6) concerning this matter. Due to operational limitations, the PBGC OIG was not present on December 30, 2014 when Detective (b)(6), (b)(7)(c) located, arrested and interviewed (b)(6). In summary, post Miranda Advise of Rights, (b)(6) confessed to the unauthorized theft and negotiation of approximately \$8,851.53 of his father's PBGC pension benefit payment checks since approximately November of 2009. Detective (b)(6), (b)(7)(c) stated the identification and arrest of (b)(6) was facilitated greatly by the involvement of the PBGC OIG with the financial documentation provided to the investigation. [Exhibit 4]

On August 6, 2015, Special Agent in Charge (b)(6), (b)(7)(c) corresponded with Detective (b)(6), (b)(7)(c) in an effort to ascertain the current status of judicial action against (b)(6). Detective (b)(6), (b)(7)(c) reported all judicial action was completed as of July 9, 2015. Detective (b)(6), (b)(7)(c) emailed SAC (b)(6), (b)(7)(c) the updated Criminal Docket CP-(b)(6) document (see below for additional details). [Exhibit 5]

DISPOSITION

Investigation Status:

This investigation is closed in the OIG's official electronic Case Management and Tracking System with the offender, (b)(6) pleading guilty and being convicted and sentenced on July 9, 2015.

Administrative Status:

Not applicable.

Judicial Status:

- Referral to the United States Attorney's Office:

The matter was not presented to the U.S. Attorney's Office, Eastern District of Pennsylvania, for a prosecutorial opinion based upon the fact the matter was successfully prosecuted at the state level by the Montgomery County District Attorney's Office and due to the low dollar value involved.

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REPORT OF INVESTIGATION

- Referral to the State's Attorney's Office:

On December 22, 2014, the matter was presented by Detective [b)(6), (b)(7)(c)] to the Montgomery County, PA State's Attorney's Office for prosecution. At which time it was accepted.

On December 30, 2104 [b)(6)] was arrested and charged with counts of PA statutes:

*Title 18 §3921 §§A – Theft by Unlawful Taking – Movable Property

*Title 18 §3922 §§A3 – Theft by Deception – Failure to Correct

*Title 18 §3925 §§A – Receiving Stolen Property

On December 31, 2014, [b)(6)] was arraigned.

On July 9, 2015, [b)(6)] entered two (2) pleas of Guilty to violations of PA statute Title 18 section 3921 sub A - Theft by Unlawful Taking / Movable Property. [b)(6)] was sentenced to 5 years of probation and ordered to commence a restitution payment plan for the total amount of \$8,851.53 to his father.

CONCLUSION

The joint investigative did result in corroboration of, and a confession to, the complaint concerning [b)(6)]'s alleged continued theft and negotiation of his father's PBGC pension benefit payment checks, and as such the allegation has been deemed substantiated relative to Theft of pension benefit checks at this time.

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REPORT OF INVESTIGATION

EXHIBITS

| <u>NUMBER</u> | <u>DESCRIPTION</u> |
|---------------|--|
| 1 | Memorandum of Activity, Complaint Initiation, August 13, 2014 telephone call from Detective [REDACTED], dated September 8, 2015. |
| 2 | Memorandum of Activity, OIG conducting State Street Plus system research, (with attachments) dated September 3, 2014. |
| 3 | Memorandum of Activity, OIG discussion with State Street Bank official [REDACTED], (with attachments) dated October 14, 2014. |
| 4 | Memorandum of Activity, OIG discussion with Detective [REDACTED] (with attachments) dated March 26, 2015. |
| 5 | Memorandum of Activity, OIG discussion with Detective [REDACTED] (with attachments) dated August 6, 2015. |

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Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

September 3, 2015

TITLE Michael Morano (Deceased Participant) Recovery
of Pension Benefit Overpayment
\$1,830.00

INVESTIGATION# 15-0002-C / 15-0011-I

TYPE OF INVESTIGATION *Title 18 USC §1029 - Fraud and related activity
in connection with access devices

INVESTIGATOR Special Agent (b)(6), (b)(7)(c)

SUBJECT Close-Out Memorandum

ALLEGATIONS & FINDINGS

Allegations: (b)(6) Pension Benefit Guaranty Corporation (PBGC) Benefit Recovery Coordinator, filed a Notification of Possible Fraud, dated October 1, 2014, with the PBGC Office of Inspector General (OIG). The Notice reflected an Amount of Debt in the amount of \$44,686.00 (gross) associated with deceased PBGC pension plan participant Michael Morano (#16920800 - United Merchants and Manufacturers Inc., and Subsidiaries Pension Plan for EES) subsequent to Morano's death on February 29, 2008. Between the period March 1, 2008 through - March 1, 2010, inclusive, 25 pension benefit payments via electronic funds transfer, each in the amount of \$1,787.44 (totaling \$44,686.00), were made by PBGC into the Morano's Citibank checking account (b)(6). The overpaid funds (totaling \$62,560.40 per Citibank records) were subsequently used by Evelyn Morano, despite the fact she was not designated as a surviving beneficiary, until the time of her death on March 29, 2010. Records reflect (b)(6) Power of Attorney, did withdraw approximately \$1,830.00 from the Morano account after Evelyn Morano's death. [Exhibit 1]

Such unauthorized use may have been a violation of:

Title 18 USC §1029 - Fraud and related activity in connection with access devices.

The PBGC OIG initiated Complaint #15-0002-C and subsequent investigation 15-0011-I.

Privacy Act Exemptions J and K applied to this page

Findings: Preliminary investigation confirmed PBGC did between March 1, 2008 and March 1, 2010, inclusive, electronically process 25 pension benefit payments each in the amount of \$1,787.44 into the Citibank account # [b)(6)] of Morano. Citibank reports the total funds deposited from PBGC was \$62,560.40. Citibank also confirmed a withdrawal in the amount of \$1830.00 was made post the date of Evelyn Morano's death (March 29, 2010) by [b)(6)] Power of Attorney for the Moranos.

The PBGC recovered \$16,086.96 from the Citibank account, which equaled 9 monthly benefit payments of \$1,787.44. The PBGC then sent a letter to the Estate of Michael R Morano, C/C [b)(6)], asking for repayment of the unrecovered benefit overpayment of \$46,473.44 (\$62,560.44 - \$16,086.96). [b)(6)] wrote back that since approximately 2005, when [b)(6)] was put in a nursing facility, [b)(6)]'s finances were managed by his second [b)(6)] (i.e. [b)(6)]). Per [b)(6)] [b)(6)] indicated to her, at the time of Michael Morano's passing, that he had no Estate and no assets to be passed on. [b)(6)] identified [b)(6)] as [b)(6)].

The allegations of theft of overpayment of some pension benefit funds was substantiated based upon the fact the participant was deceased at the time the overpaid funds were taken. Based upon the low dollar loss to the PBGC, it is not in the financial interest of the Government to continue this investigation at the PBGC OIG.

INVESTIGATIVE ACTIVITY AND FACTS

On November 4, 2014, PBGC OIG Special Agent [b)(6), (b)(7)(c)] reviewed the bank statements that the PBGC OGC subpoenaed in 2012 for Michael and Evelyn Morano's Citi Bank account [b)(6)], in which [b)(6)] had Power of Attorney. SA [b)(6), (b)(7)(c)] located 34 direct deposit payments in the amount of \$1,787.44 each, in which 25 of the payments were clearly identified as "UMM INC" and "SUBS PN PMTS/BG." The full name of Morano's pension plan was UMM Inc. and Subsidiaries Pension Plan for Employees. [Exhibit 2]

On May 28, 2015, this investigation was transferred to SA [b)(6), (b)(7)(c)].

On May 28, 2015, PBGC OIG Special Agent [b)(6), (b)(7)(c)] reviewed Morano's Image Viewer documents which reflected no continuing benefit payments due to anyone after Michael Morano's death, to include his surviving spouse, [b)(6)].

On May 28, 2015, SA [b)(6), (b)(7)(c)] reviewed data associated with Citibank account [b)(6)] for the period of March 2008 through April 2012, which reflected the following:

1. PBGC checks of \$1,787.44 were deposited monthly for March 2008 through January 2011. There were up to three "Other Credits" to the account monthly ranging from \$1,200 to \$3,400 for the period of October 30, 2008 through March 5, 2010. The Citibank account documents did not identify the source of these other credits.

2. There were regular ATM withdrawals and checks written against the account every month through April 19, 2010. After Evelyn Morano's death on March 29, 2010, there were three cash withdrawals totaling \$1,810 and a check for \$20.00.
3. There were no other debits from the account after April 19, 2010, until PBGC recovered nine (9) payments each of \$1,787.44 totaling \$16,086.96 on April 5, 2012.
4. All checks written against the account show Evelyn Morano's signature. Check dates ranged from February 1, 2008 through March 2, 2010. [Exhibit 3]

On September 3, 2015, based upon the fact it is not cost efficient to the Government to further this investigation, against (b)(6) (b)(7)(C) PBGC Office of Investigations, generated and caused to be dispatched to (b)(6) a Referral Memorandum summarizing the investigative efforts and findings to date, referring the matter back to (b)(6) for whatever continued recoupment action deemed appropriate by PBGC. [Exhibit 4]

CONCLUSION

Investigation confirmed participant Michael Morano died on February 29, 2008 and the PBGC made 25 overpayments each in the amount of \$1,787.44 to his Citibank account. Evelyn Morano continued to receive and expend much of the funds despite the fact she was not entitled to receive them. Evelyn Morano died on March 29, 2010. (b)(6) (b)(6) withdrew approximately \$1,830.00 from the Morano's Citibank Account. PBGC recovered nine (9) payments each of \$1,787.44 totaling \$16,086.96 on April 5, 2012. Due to low dollar loss (i.e. \$1,830.00) this investigation will be closed. This matter has been referred back to PBGC for action they deem appropriate with Citibank and (b)(6) in an effort to recover the \$1,830.00 in overpaid funds.

The allegation of fraud by persons other than the deceased participant was substantiated.

DISPOSITION

Investigation Status:

This investigation is closed in the OIG's official electronic Case Management and Tracking System. It is not cost efficient to pursue the alleged offender due to low dollar loss to PBGC.

Administrative Status:

Not applicable.

Judicial Status - Referral to the United States Attorney's Office:

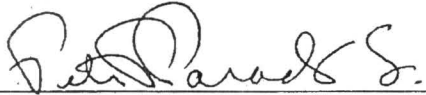
The matter was not presented to the U.S. Attorney's Office, District of Columbia, for a prosecutorial opinion based upon the fact although the allegation of a violation of

criminal law was proved, the dollar value of the potential provable theft by [b](6) appears to be limited to \$1,830, which is below the OIG's threshold for referring the case to the United States Attorney's Office.

RECOMMENDATION

The reporting agent recommends closing this investigation.

CONCURRENCE:



Peter P. Paradis, Sr.
Assistant Inspector General for Investigations

09/03/2015
Date

Exhibits:

1. Memorandum of Activity, Initial Complaint, dated September 3, 2015.
2. Memorandum of Activity, Bank Records Review by Special Agent [b](6), [b](7)(c)]
[b](6), [b](7)(c)], dated November 4, 2014.
3. Memorandum of Activity, Image Viewer and other documents review by SA
[b](6), [b](7)(c)]
[b](6), [b](7)(c)], dated May 28, 2015.
4. Copy of PBGC Office of Investigations Referral Memorandum to [b](6)
PBGC Recovery Coordinator, dated September 3, 2015.



Office of Inspector General
Pension Benefit Guaranty Corporation

August 10, 2016

MEMORANDUM

TO: (b)(6)
Complainant

(b)(6)
(b)(4)

Tom Reeder
PBGC Director

FROM:

(b)(6) (b)(7)(C)
(b)(6)

WARNING PRIVACY ACT STATEMENT. This special report contains information subject to the provisions of the Privacy Act of 1974. Such information may be disclosed only as authorized by this statute. Questions concerning release of this report should be coordinated with the Pension Benefit Guaranty Corporation, Office of Inspector General.

SUBJECT: Special Report: Alleged Whistleblower Reprisal by (b)(4)
Inc., against (b)(6) (Case No. 15-0010-I)

Our office received a complaint from (b)(6) (Complainant) alleging PBGC contractor (b)(4), in violation of 41 U.S.C. § 4712, terminated (b)(6) from (b)(6) pension benefits (b)(6) position as a reprisal for her disclosure of certain information. We obtained documents from the Complainant, (b)(4) and PBGC, and interviewed 17 witnesses, including the Complainant and the (b)(4) official responsible for (b)(6) termination. We also reviewed the applicable statutes and case law. This memorandum is to report our findings, analysis, and conclusion relating to the allegation of whistleblower reprisal. The scope of this special report is limited to the investigation of the allegation of whistleblower reprisal. The merits of any underlying disclosures or other information are not discussed in this report.

Section 4712 requires the Inspector General to investigate a whistleblower reprisal complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the complainant, the contractor, and the PBGC Director. Under the law, no later than 30 days after receiving this report, the PBGC Director is to determine whether there is a sufficient basis to conclude (b)(4) committed whistleblower reprisal and either issue an order denying relief or requiring corrective action. Potential corrective action includes reinstatement with compensatory damages (including back pay) and the reimbursement of all costs reasonably associated with the Complainant's OIG complaint.

Executive Summary

Based upon our evaluation of the facts and applicable law, we are unable to conclude that (b)(4) terminated the Complaint in reprisal for her disclosures. Although the evidence shows that two of the Complainant's disclosures could reasonably be considered protected under Section 4712, we are unable to show they were a contributing factor in her termination. Even if we were able to establish her disclosures were a contributing factor, we find there is reasonable grounds to conclude that (b)(4) can show by clear and convincing evidence that they would have terminated the Complainant on other grounds absent her disclosures. In sum, we have concluded there is insufficient evidence to substantiate the Complainant's allegation that (b)(4) subjected her to a reprisal for whistleblowing.

Background

On August 13, 2009, PBGC entered into a labor hours contract ((b)(4)) with (b)(4) to provide Field Benefit Administration (FBA) services in Sarasota, Florida. An FBA is a field contract office that works with PBGC's Office of Benefits Administration to provide participant and benefit processing services and assistance to case processing. FBAs perform almost 100 percent of the participant administration for PBGC's trustee plans. The work of the FBA typically begins when PBGC recommends a plan for termination. The FBA is responsible for participant administration of the plan from trusteeship until a plan goes to Post Valuation Administration (PVA). In some instances, the FBA also provides services during the PVA phase of processing. The case processing cycle lasts on average 2.5 to 3.5 years. Once the plan has gone through the Plan Closing Process, it is transferred to a PVA center. In 2014, there were four FBA offices and one PVA office.

The August 13, 2009, contract had a base year with a period of performance from August 14, 2009, through August 13, 2010, and four option years concluding August 13, 2014. The total value of the five-year contract award was \$29 million. On September 13, 2014, PBGC entered into another labor hour contract ((b)(4)) with (b)(4) to provide services for the Sarasota FBA. The contract has a base year with a period of performance from September 13, 2014, through September 12, 2015, and four option years concluding September 12, 2019. The total value of the five-year contract award is \$33 million.

On April 7, 2014, (b)(4) hired (b)(6) as a pension benefits supervisor for the Sarasota FBA. A benefits supervisor is responsible for oversight of the plan administration functions, including developing work plans, authorizing benefits payments, and overseeing the issuance of benefit determination letters. At the Sarasota FBA, pension benefits supervisors oversee one

team leader and several senior, junior and entry-level pension administrators. The teams are comprised of about 10 members, including the supervisor.

In 2014 at the Sarasota FBA, the pension benefits supervisors, including the Complainant, reported to the project manager, (b)(6), and the assistant project manager, (b)(6). In 2014, (b)(6) was the PBGC's backup or alternate Contracting Officer's Representative (COR). Her responsibilities included oversight of the (b)(4) contract to provide services for the (b)(6) FBA. (b)(4) (b)(6) terminated the Complainant's employment on October 24, 2014.

Complainant alleges (b)(6) was terminated as reprisal for making disclosures protected under 41 U.S.C. § 4712, the "Pilot program for enhancement of contractor protection from reprisal for disclosure of certain information." Under this statute, a federal contractor may not discharge an employee in reprisal for making certain disclosures to, among others: (1) a Federal employee responsible for contract oversight or management at the relevant agency or (2) a management official of the contractor who has the responsibility to investigate, discover, or address misconduct.

To receive whistleblower protection under this section, a complainant must disclose information she reasonably believes is evidence of: (1) gross mismanagement of a Federal contract or grant; (2) a gross waste of Federal funds; (3) an abuse of authority relating to a Federal contract or grant; (4) a substantial and specific danger to public health or safety; or (5) a violation of law, rule, or regulation related to a federal contract or grant. The legal burdens of proof specified in 5 U.S.C. § 1221(e), the Whistleblower Protection Act, are controlling for the purposes of OIG's investigation. See 41 U.S.C. § 4712(c)(6).

Findings and Analysis

The Evidence Indicates the Complainant Made Six Disclosures; Two of Which About the Failure to Pay Her Overtime Could Reasonably be Considered "Protected."

Based upon our interviews of the Complainant, documents we obtained from her, PBGC, and (b)(4), and our interviews of witnesses, we determined the Complainant made six disclosures. As described below, we conclude four of (b)(6) disclosures were not "protected" disclosures as defined by the statute. (b)(6) third and fourth disclosures about (b)(4)'s failure to pay (b)(6) overtime could reasonably be considered protected.

Special Report

Alleged Whistleblower Reprisal by (b)(4) against (b)(6)

Page 4

First Disclosure - changing expected resolution dates for participant "service requests"

In a May 12, 2014, email to, among others, (b)(4) project manager (b)(6) and assistant project manager (b)(6) the Complainant wrote, in pertinent part:

(b)(6) was handling moving the dates on the CRM report daily to prevent things from going into over-due status up until now. However, to control and know what request we have with our plans on the daily report from (b)(6) and to prevent things from being moved out on the calendar going forward we will handle this within our team.

The Complainant contends (b)(6) email shows that (b)(4) pension benefits supervisors were directed by the project manager and the assistant project manager to change the expected resolution dates for participant "service requests," which includes requests for benefits applications, in the Customer Relationship Management (CRM) system – PBGC's computerized database that tracks the status of the requests. The Complainant did not allege, nor did we find, any evidence the Complainant made a disclosure about this to anyone else at any other time.

The Complainant's email does not say that managers directed the Complainant and other supervisors to change expected resolution dates for participant service requests in the CRM system. Even if we assume, however, the email does show this, this information must constitute wrongdoing covered by Section 4712. Ordering the change of expected resolution dates for participant service requests might, for example, constitute an abuse of authority, that is, an "arbitrary or capricious exercise of power ... that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." *McCorcle v. Department of Agriculture*, 98 M.S.P.R. 363, 375 (2005). (Citation omitted.) However, the email and the Complainant's written explanation of it does not show how changing those dates adversely affected the rights of participants or provided a gain or advantage to anyone at (b)(4). Therefore, we cannot show that this email constitutes a protected disclosure.

Second Disclosure - failure to properly train employees

In a July 2, 2014, email entitled, "The Application Tracking Tool has been updated – PAST DUE," to (b)(4) employee (b)(6) and copied to assistant project manager (b)(6) and project manager (b)(6) the Complainant wrote, in pertinent part:

Just so I make sure that you and (b)(6) and (b)(6) are aware. My Senior staff members told me that they have never been trained on using this tool or even

how to access it. (b)(6) and I and now (b)(6) and (b)(6) are the only people that went to the training provided by (b)(6) right after we started but, at the time I assumed this was something everyone knew about. Especially the tenured people. I will ensure my staff is all trained on using this tool and that we work on getting the past due one's updated but it probably would be adventitious [sic] for all staff members to attend a training with (b)(6)

The Complainant contends that this email evidences a disclosure of (b)(4)'s failure, generally, to properly train all its employees. Such a failure might constitute gross mismanagement of the contract with PBGC to process participant applications. However, the disclosure is limited to the failure to train employees on the application tracking tool. For that failure to constitute gross mismanagement of the contract, it must create a "substantial risk of significant adverse impact on the agency's ability to accomplish its mission." *Swanson v. General Services Administration*, 110 M.S.P.R. 278, 285 (2008). (Citation omitted.) However, the Complainant did not present, nor did we find, evidence that this alleged failure created a "substantial risk of significant adverse impact" on the ability of (b)(4) as a whole to accomplish its mission of processing participant benefits applications. Therefore, we cannot show this email constitutes a protected disclosure.

Third Disclosure – failure to pay overtime

In a September 10, 2014, email, the Complainant told (b)(4)'s human resources director, (b)(6), "I work more than 40 hours on a routine basis and always have to modify that because of unapproved overtime but that is what the job calls for to manage it effectively so I do so without complaint." The Complainant contends this email evidences (b)(4)'s failure to pay her overtime for those hours she elected to work beyond 40. The failure to pay overtime for hours worked over 40 in a workweek might constitute a violation of law, that is, the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et. seq.* Therefore, we find it is reasonable to conclude that this disclosure was protected.

Fourth Disclosure – failure to pay overtime

In a September 15, 2014, email to human resources (b)(6) the Complainant wrote, in pertinent part:

[A]ll other Supervisors were paid time and a half and approved for Overtime BUT me per (b)(6) and (b)(6) I came in and worked straight time to help support the workloads and my peer supervisors and this was fine with (b)(6) and (b)(6) beforehand. It was changed and submitted and then I was asked to initial after

the fact. This is a pattern of timesheet altering and OT manipulation. I have never asked to be compensated even though I understand FLSA.

The Complainant contends this email also evidences (b)(4)'s failure to pay (b)(6) overtime for those hours she elected to work beyond 40. The failure to pay overtime for hours worked over 40 in a workweek might constitute a violation of the FLSA. Also, altering an employee's timesheet to avoid paying overtime might constitute an abuse of authority or a violation of law, rule, or regulation. Therefore, we find it is reasonable to conclude that this disclosure was protected.

Fifth Disclosure – 5,000 overdue service requests

In a September 25, 2014, email to (b)(6) and (b)(4) employee (b)(6) and copied to assistant project manager (b)(6) and (b)(4) employees (b)(6) and (b)(6), the Complainant told them, "The morning reports show over 5,000 overdue SR's." (An "SR" is a service request.) The term service request encompasses a range of actions sought by a participant from pension administrators. A service request includes, among other things, a participant's request for a benefits application, assistance in completing the application, or receipt of an address or telephone number. (b)(4)'s performance on some service requests, for example, "authorization of monthly benefits" and "benefit determination letter processing" are, pursuant to its contract with PBGC, measured.

The Complainant's September 25 email might evidence (b)(4) mismanagement of service requests. Not all mismanagement, however, rises to the level of "gross mismanagement." For example, a disclosure that agency officials failed to assist the appellant in ensuring that contractors were meeting their contractual duties did not rise to the level of "gross," because it failed to disclose a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission. *Lane v. Department of Homeland Security*, 115 M.S.P.R. 342, 351-352 (2010). Further, to be protected "disclosures must be specific and detailed, not vague allegations of wrongdoing regarding broad, imprecise matters." *Kraushaar v. Department of Agriculture*, 87 M.S.P.R. 378, 381 (2000). (Citation omitted.) Here, the Complainant did not present specific and detailed information regarding how the 5,000 overdue service requests presented a substantial risk of significant adverse impact on (b)(4)'s ability to process participant benefits applications. Therefore, we are unable to show this disclosure was protected.

Sixth Disclosure - failure to authorize overtime for all teams and adequately train employees

At an October 23, 2014, meeting regarding pension benefits payment deadlines, the Complainant told PBGC COR (b)(6) that (b)(4) management selected other teams for approval to work overtime, but not (b)(6). The decision not to have every team work overtime, (b)(6) believed, was in part responsible for the backlog of service requests. (b)(6) also said (b)(6) told (b)(6) that (b)(6) believed the inadequacy of employee training at both the entry and managerial level caused the (b)(6) FBA's low "technical skills" and "soft skills" scores. (Scores for technical skills measure knowledge of the benefits application process. Soft skills scores measure the way an employee conducted a telephone conversation with a participant.) Also present at the meeting were project manager (b)(6), assistant project manager (b)(6) and (b)(4) employees (b)(6), and (b)(6).

The failure to authorize overtime for all teams and adequately train employees might constitute a disclosure of gross mismanagement if those things presented a substantial risk of significant adverse impact on (b)(4)'s ability to process participant benefit applications. However, the Complainant did not present, nor did we find, evidence that these alleged failures had such an impact. What the Complainant said appears to indicate only that she was displeased and disagreed with management's decisions about who received overtime and how much training was sufficient. We found evidence that (b)(4) employees received technical and soft skills training from PBGC and contractor instructors. As such, the disclosures were not protected disclosures of gross mismanagement. *See Downing v. Department of Labor*, 98 M.S.P.R. 64 (2004); *O'Donnell v. Department of Agriculture*, 120 M.S.P.R. 94 (2013), *aff'd*, 561 Fed. Appx. 926 (Fed. Cir. 2014). (Mere differences of opinion between employee and his agency superiors as to proper approach to a particular problem or most appropriate course of action do not rise to level of "gross mismanagement."); *Baker v. Department of Agriculture*, 131 Fed. Appx. 719 (2005), 2005 WL 790636, *rehearing en banc denied*, *cert. denied*, 546 U.S. 987 (2005). (Employee's disclosures to his supervisor that certain methods used in connection with work project were allegedly flawed were not protected, given that employee's disclosures did no more than voice his dissatisfaction with his supervisor's decision.)

The Evidence Does Not Show the Complainant's Disclosures Were a Contributing Factor in Her Termination

Given it appears at least two of the Complainant's disclosures were protected, (b)(6) can demonstrate reprisal by proving a causal connection between her disclosures and (b)(6) October 24, 2014, termination. Section 4712(c)(6) states the OIG must use the burden of proof provided in 5 U.S.C. § 1221(e) to establish such a causal connection. Under Section 1221(e), that burden

of proof requires a showing that a protected disclosure was a “contributing factor” in the personnel action the employee suffered.

According to Section 1221(e)(1), the whistleblower may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, including that the official taking the personnel action knew of the disclosure and the personnel action occurred within a period of time such that a “reasonable person could conclude that the disclosure ... was a contributing factor in the personnel action.” This is known as the “knowledge-timing test” in reprisal for whistleblowing cases. Section 1221(e)(2) adds, however, that corrective action in the matter may not be ordered if, after a finding that a protected disclosure was a contributing factor, the employer demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Evidence of knowledge and timing

To satisfy the first element of the “knowledge-timing test” provided in Section 1221(e)(1), the official responsible for terminating the Complainant, (b)(4) President and CEO (b)(6) must have had knowledge of her protected disclosures. The Complainant did not present nor did we find any evidence, however, that (b)(6) knew of her protected third and fourth disclosures – the September 10 and 15, 2014, emails about her not being paid for overtime work. And, (b)(6) denied having any knowledge that Complainant was not paid for overtime. Nonetheless, if there is evidence (b)(6) was aware of these disclosures, the evidence indicates the Complainant would be able to meet the “timing” part of the “knowledge-timing test.”

The “reasonable time” element of the “knowledge-timing test” is satisfied if the Complainant’s termination occurred within a period of time such that “a reasonable person could conclude that the disclosure was a contributing factor” in the personnel action. Here, the Complainant was terminated on October 24, 2014, approximately six to seven weeks after her disclosures about not being paid overtime. Although section 1221(e)(1) does not state how much time would cause a reasonable person to conclude the disclosure was a contributing factor in the reprisal, courts adjudicating Whistleblower Protection Act cases have established a lengthier reasonable time standard. In *Kewley v. Department of Health and Human Services*, 153 F.3d 1357, 1363 (Fed. Cir. 1998), for example, the Federal Circuit held a reasonable time could normally extend to an action taken within the employee’s same performance evaluation period of one year. September 10 and 15, 2014, disclosures followed by an October 24, 2014, termination, a duration of six or seven weeks, would demonstrate a temporal proximity that supports an inference of reprisal.

Even if we could establish the Complainant's disclosures were a contributing factor in her termination, there is reasonable grounds to conclude that (b)(4) can show by clear and convincing evidence (b)(6) would have terminated her absent those disclosures.

Under Section 1221(e)(2), the presumption of reprisal may be overcome if (b)(4) can demonstrate by clear and convincing evidence it would have discharged the Complainant notwithstanding her disclosures. In Whistleblower Protection Act cases, clear and convincing evidence is "that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established." *Rychen v. Department of the Army*, 51 M.S.P.R. 179, 183 (1991) (citation omitted); 5 C.F.R. § 1209.4(e). It is a higher burden of proof than preponderance of the evidence. 5 C.F.R. § 1209.4(e).

In determining whether employers meet the clear and convincing standard, courts in Whistleblower Protection Act cases consider: (1) the strength of the employer's evidence in support of the termination; (2) the existence and strength of any retaliatory motive by the officials responsible for the termination decision; and (3) evidence concerning the employer's treatment of similarly-situated employees who were not whistleblowers. See *Redschlag v. Department of the Army*, 89 M.S.P.R. 589, 627 (2001); *Carr v. Social Security Administration*, 185 F.3d 1318, 1323 (Fed. Cir. 1999). The Merit Systems Protection Board does not view these factors as discrete elements, each of which the agency must prove by clear and convincing evidence. Rather, the Board will weigh the factors together to determine whether the evidence is clear and convincing as a whole. *Phillips v. Department of Transportation*, 113 M.S.P.R. 73, 77 (2010); *Yunus v. Department of Veterans Affairs*, 84 M.S.P.R. 78 (1999), *aff'd*, 242 F.3d 1367 (Fed. Cir. 2001).

Strength of (b)(4)'s Evidence in Support of the Complainant's Termination

(b)(6) told OIG investigators he terminated the Complainant for (b)(6) "unprofessional behavior that was consistently exhibited towards my client" – PBGC. (b)(6) said he terminated Complainant after being copied on an email dated October 23, 2014, from (b)(6), the backup or alternate PBGC COR, to project manager (b)(6) entitled, "Unacceptable Behavior." In the email, (b)(6) wrote in reference to the Complainant:

Please know that I did not appreciate the rudeness, aggressiveness or unprofessional behavior of one of your Supervisors in the meeting today. (b)(6)'s behavior did not portray a good image of professionalism required from any (b)(4) employee. I was trying to help the contract perform better based on the feedback from some TPDs [Trade Processing Divisions] on processing

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Benefit Applications and Submission cutoff date[s]. (b)(6) did not only twist my word[s], but accused me of setting unrealistic expectation[s] when my message was based on PBGC policies and procedures. (b)(6) got up from my meeting and [was] ready to walk out and I had to tell (b)(6) that (b)(6) has to sit down and listen to my message. I suggested that (b)(6) needs to use (b)(6) listening skills. I informed (b)(6) that I had no control over how much (b)(4) is paying (b)(6) and (b)(6) group. I suggested (b)(6) stops polarizing the office and take (b)(6) grievances to (b)(4). (b)(6) was very aggressive and uncontrollable and (b)(6) thinks (b)(6) is speaking out for (b)(6) group. I informed (b)(6) that there are four groups with Supervisors and other Supervisors are not throwing [a] temper tantrum about [a] raise or overtime to Federal staff. I have been in the office since Monday and have witnessed three outbursts from (b)(6). (b)(6) is not ready to learn this job, but here to foment trouble.

Approximately an hour and half before receiving the email from (b)(6), (b)(6) received an email from (b)(6), a (b)(4) benefits supervisor, entitled, "Unhappy Client." In it, (b)(6) told (b)(6) that (b)(6) and another PBGC employee (who we learned was (b)(6) had approached him:

in reference to (b)(6) and the way (b)(6) represented (b)(4) and the Management Team in Tier One training on [sic] yesterday. They stated that they was [sic] not happy with (b)(6) professionalism and the way (b)(6) conducted (b)(6). (b)(6) asked about incentives, overtime and other things that should be addressed with [the] (b)(4) Management Team only. I apologized to (b)(6) and (b)(6) and informed them that I will report it to the appropriate individuals. I just wanted to give you a heads up.

Within minutes of receipt of the email from (b)(6), (b)(6) emailed (b)(4) human resources manager (b)(6) and project manager (b)(6) about the Complainant. He wrote, "This is a serious offense and must be firmly managed. It's my preference to terminate (b)(6) for (b)(6) unprofessional behavior which is contrary to (b)(4). I say we obtain statements from (b)(6), and anyone else who witnessed the conversation."

(b)(6) provided a written statement. She wrote, in pertinent part:

On October 23, 2014, (b)(6) requested that (b)(6) gather all the supervisors for a quick meeting about the benefit payment deadlines (b)(6) started to speak and before she could finish (b)(6) started to interrupt

(b)(6). Both (b)(6) and I requested that (b)(6) let (b)(6) finish. (b)(6) attempted to interrupt (b)(6) three more times during (b)(6)'s discussion and each time was asked to wait until the end of the discussion. (b)(6) stood up and stated (b)(6) was supposed to be at lunch and was not going to be yelled at. I asked (b)(6) to sit down and listen and (b)(6) [said] I was not supporting the management team against (b)(6) and from a business process we were not being given enough time. ... Both (b)(6) and I expressed to (b)(6) that (b)(6) needs to learn to listen.

(b)(6)'s behavior was disrespectful and argumentative to (b)(6) and her management team. (b)(6) fails to adjust (b)(6) approach for different audiences, does not select the correct forum for discussion issues, and is confrontational to others who do not share (b)(6) views.

(b)(6) and (b)(6) confirmed for us the accuracy of their written statements. Witnesses (b)(6) and (b)(6) did not provide (b)(4) a written statement, but their descriptions to us of (b)(6)'s behavior was consistent with that provided by (b)(6) and (b)(6).

(b)(6) also told us he was aware of previous instances of similar behavior by the Complainant toward a PBGC employee and (b)(4) employees. He told us he perceived these incidents as exhibiting a continuing pattern of misconduct and they factored into his decision to terminate her. He cited the Complainant's conduct toward PBGC employee (b)(6) at an October 21, 2014, training session conducted by (b)(6). (b)(6) confirmed for us that the Complainant had been "very aggressive" in complaining about the timing of the meeting, and described (b)(6) behavior as "rude," and "not professional." (b)(6) also cited Complainant's conduct toward other (b)(4) employees. Human resources manager (b)(6) reported to (b)(6) on October 16, 2014, that the Complainant's team was "very upset by (b)(6) behavior that continues to be an issue everyday."

Given the above, the evidence to support the reason for Complainant's termination appears strong. And, we found no evidence to refute (b)(6)'s reason for terminating (b)(6). Further, the (b)(4) employee handbook, which the Complainant signed, notes the Complainant's employment was "at will." Moreover, according to the handbook, the type of conduct the Complainant reportedly engaged in on October 23 with PBGC's (b)(6), and on October 21 with PBGC's (b)(6), that is, "displaying unprofessional behavior to the client," can be grounds for termination. In terminating the Complainant, (b)(6) said the Complainant's behavior negatively impacted the success of (b)(4)'s relationship with PBGC.

The Merit Systems Protection Board has held that rude and discourteous behavior toward supervisors, coworkers, and non-agency personnel is a proper basis for imposing discipline. *See, e.g., Kirkland-Zuck v. Department of Housing and Urban Development*, 90 M.S.P.R. 12, 18-20 (2001). In Whistleblower Protection Act cases, the MSPB's function is not to displace management's responsibility or to decide what penalty it will impose. Rather, the MSPB must assure that management's judgment has been properly exercised and the penalty selected does not exceed the maximum limits of reasonableness. *Dunn v. Department of the Air Force*, 96 M.S.P.R. 166, 170 (2004). Given the strength of the evidence supporting (b)(6)'s findings of unprofessional conduct, such conduct is a proper basis for imposing discipline, and (b)(4)'s employee handbook notified the Complainant she could be terminated for such behavior, we cannot show her termination exceeded the bounds of reasonableness.

Existence and Strength of Any Retaliatory Motive by (b)(6)

Concerning retaliatory motive, courts in whistleblower retaliation cases have considered, among other things, the effect of the whistleblower's disclosure on those responsible for taking action against the whistleblower. *See, e.g., Whitmore v. Department of Labor*, 680 F.3d 1353, 1370-1372 (Fed. Cir. 2012). The Complainant's protected disclosures about (b)(4)'s failure to pay her overtime essentially accused (b)(6), as (b)(4)'s (b)(6), of violating the law and, as such may have had a motivating effect on him. Nonetheless, even if (b)(6) had a motive to retaliate against the Complainant based on those disclosures, the evidence indicates, on balance, (b)(6)'s primary motive for terminating the Complainant's employment was his concern over her unprofessional conduct rather than any animus or ill will.

Evidence concerning (b)(4)'s treatment of similarly-situated employees

We did not find any evidence that (b)(6) did not terminate another (b)(4) employee who was not a whistleblower for misconduct similar to the Complainant's. We found that (b)(6) terminated another employee (b)(6), for behavior similar to the Complainant's. And, like the Complainant, (b)(6) alleged that she was terminated in reprisal for whistleblowing. OIG previously found, however, there was insufficient evidence to conclude her termination was in reprisal for whistleblowing.

Conclusion

(b)(5)

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Page 13

(b)(5)

In sum, we have concluded there is insufficient evidence to substantiate the Complainant's allegation that (b)(4) subjected the Complainant to a reprisal for whistleblowing.

#



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

December 12, 2015

TITLE [b](6)

INVESTIGATOR [b](6), (b)(7)(c)]

SUBJECT Close-Out Memorandum

Investigation # 15-0019-I

FACTS

On February 13, 2015, the PBGC Office of Inspector General (OIG) received a referral from the PBGC Office of the General Counsel (OGC) regarding a potential 18 USC §207 violation, relating to post employment restrictions, by the former Director of the PBGC [b](6) (Exhibit 1).

The potential violation resulted from a February 3, 2015, email from [b](6) to PBGC Procurement Department (PD) [b](6) in which [b](6) wrote that the PBGC [b](4) exceeded [b](6)'s expectations in terms of knowledge of the business, work, and ability.

18 USC §207(c)(1) restricts former employees from knowingly making, with intent to influence, any communication to or appearance before any officer or employee of the employee's former agency, on behalf of another person, on any matter for which the former employee seeks official action by the former agency. This restriction is known as the "One Year Cooling-Off Period" and applies for one year after the end of the employee's departure from Federal Service. Since [b](6) left PBGC employment on September 19, 2014 and sent the email touting [b](4)'s knowledge, work, and abilities on February 3, 2015, [b](6) was within the One Year Cooling-Off Period when he sent the email.

On September 25, 2014, OGC emailed [b](6) the post-employment restrictions memorandum which included information concerning the One Year Cooling-Off Period. In December 2014, the PBGC Contracting Officer's Representative (COR) for the [b](4) contract issued an interim Contractor Performance Assessment Reporting System (CPARS) evaluation giving [b](4) ratings of "very good" and "satisfactory." [b](4) was dissatisfied with the ratings and contacted [b](6) requesting that [b](6) and former Chief [b](6) be contacted for their input concerning the CPARS rating. When PBGC did not reach out for input from [b](6) and [b](6), [b](4) emailed [b](6) and [b](6) directly and requested input on [b](4)'s performance during the time that [b](6) and [b](6) were employed by PBGC. [b](6)'s February 3, 2015, email to [b](6) was in response to this request.

ACTION TAKEN

On October 5, 2015, the (b)(6) investigation was reassigned to Special Agent (b)(6), (b)(7)(c) (Case Agent) who took the following actions:

- Case Agent referred the issue to the United States Office of Government Ethics (OGE) for their opinion. OGE responded that the inquiry should be directed to the PBGC ethics office.
- Case Agent contacted (b)(6) and a few OGC attorneys to determine if (b)(6) had any contact with PBGC subsequent to his February 3, 2015 email. No further contacts by (b)(6) were found.
- Case Agent discussed the potential 18 USC §207 issue with Washington, DC, United States Attorney's Office (USAO) AUSA (b)(6), sent (b)(6) documents for review, and responded to (b)(6)'s questions.
- Case Agent interviewed (b)(6) (Exhibit 2), who stated that he was not intentionally trying to influence PBGC, but rather was providing an honest assessment of his experience with (b)(4) while at PBGC. Furthermore, (b)(6) stated that he was not employed by (b)(4) at the time of the email to PBGC. Additionally, (b)(6) stated that he received no compensation from (b)(4) for the email to PBGC.
- Case Agent forwarded the MOI of the (b)(6) interview to (b)(6).
- Case Agent and (b)(6) discussed the evidence in detail. (b)(6) also called OGC Attorney (b)(6) with Case Agent's concurrence, for clarification on some points in the referral from the OGC to the OIG.
- On December 7, 2015, (b)(6) emailed Case Agent that the USAO was declining to institute a criminal prosecution in the case.

CONCLUSION

Although (b)(6) appears to have technically violated 18 USC §207(c)(1), the USAO declined criminal prosecution of (b)(6). The case was not referred to the USAO for civil consideration as there does not appear to have been any resulting monetary harm to the government. No further action is deemed warranted regarding this case at this time.

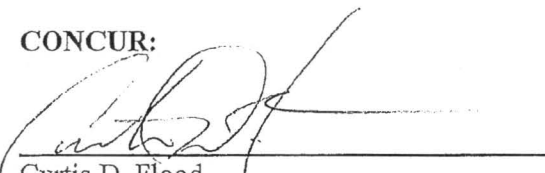
RECOMMENDATION

Case Agent recommends that the case be closed to files.

DISPOSITION

Case Agent emailed OGC Attorney (b)(6) that the case was referred to the USAO for prosecution, but was declined.

CONCUR:


Curtis D. Flood,
Acting Assistant Inspector General
For Investigations
Exhibits:


2/24/16
Date



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

August 28, 2015

TITLE (b)(6); Recovery Case; Hollywood,
FL; \$5,500.00 (gross)

INVESTIGATOR (b)(6), (b)(7)(C)

SUBJECT Close-Out Memorandum

INVESTIGATION # 15-0020-I

FACTS

On March 30, 2015, BAPD Deputy Division Manager (b)(6) referred a payment recovery issue regarding (b)(6) to PBGC OIG for consideration. (b)(6) was identified by BAPD as the person who allegedly received 55 payments for Participant (b)(6) that should have been previously stopped based upon the fact (b)(6) died. Attached to the referral was a letter from (b)(6) to Congresswoman Debbie Wasserman Schultz in which (b)(6) claimed he was the victim of mistaken identity and illegitimate wage garnishment by PBGC.

ACTION TAKEN

OIG conducted an investigation concerning the negotiation of the erroneous pension payments in the name of Participant (b)(6) (deceased) which were mailed to (b)(6). OIG interviewed (b)(6), who stated he has lived with his grandmother at (b)(6) since moving back to the USA from Bogotá, Columbia in August 2011. Per (b)(6), the deceased Participant was his grandfather. According to (b)(6), his grandmother gets the mail and only gives him what is in his name. Therefore, he was not privy to the checks or to the letters PBGC sent out regarding collection of the erroneous overpayments to the deceased Participant.

Per (b)(6), the address on the one February 5, 2014 PBGC letter to the Estate of (b)(6) c/o (b)(6) is (b)(6)'s mother's residence.

A review of the 55 cancelled checks in the name of Participant (available in his Image Viewer file) for the period of January 2009 through July 2013 (totaling approximately \$5,500), showed that many of the checks were deposited into a (b)(6) account at Eastern Financial Federal Credit Union. OIG determined (b)(4) is owned by (b)(6)'s uncle, (b)(6). Investigation revealed (b)(6) is both the business address of

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(b)(6) and the residential address of (b)(6). Also, (b)(6) identified an Internet picture of the owner of (b)(6) as being a picture his uncle (b)(6).

The name of (b)(6)'s grandmother, (b)(6), appears on the back of some of the cancelled checks, as well. (b)(6) identified BrightStar Credit Union, stamped on the back of the October 2011 check to Participant as a financial institution used by his grandmother.

(b)(6) moved to Japan in July 2015, a few weeks after being interviewed by OIG, where he will be teaching English for at least a year. He had hoped to get his garnished wages and tax refund back from PBGC before then and his credit restored. However, PBGC is still working on returning the funds owed back to (b)(6).

Reporting Agent referred the matter against (b)(6) and (b)(6) to the Southern District of Florida for potential criminal theft charges and civil remedies. The Southern District declined to accept both the criminal and civil referrals, based primarily on the low dollar loss.

CONCLUSION

In summary, the OIG investigation exonerated (b)(6) from having participated in the receipt and negotiation of the erroneously paid PBGC checks which were sent to the deceased Participant at (b)(6)'s and (b)(6)'s residence. The documents and testimony obtained during the OIG investigation indicate that (b)(6) and (b)(6) (participant's widow) negotiated the January 2009 through July 2013 pension checks.

RECOMMENDATION

The matter was previously referred back to PBGC on August 7, 2015. (b)(5)

DISPOSITION

On August 7, 2015, OIG referred this matter back to PBGC to be expeditiously handled administratively in a manner deemed appropriate given the information available. (b)(5)

Special Agent (b)(6), (b)(7)(c) and to Congresswoman Debbie Wasserman Schultz's office within 10 business days of receipt of the referral memorandum. (b)(5)

(b)(5) They have not stated if they will attempt recovery from Participant's (b)(6) as well.

CONCUR:



Peter P. Paradis,
Assistant Inspector General
for Investigations

08/28/2015
Date



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

September 16, 2015

TITLE (b)(6) MD)

INVESTIGATION# 15-0021-I

TYPE OF INVESTIGATION Theft or Embezzlement of PBGC Funds

INVESTIGATOR Special Agent in Charge (b)(6), (b)(7)(c)

SUBJECT Close-Out Memorandum

ALLEGATIONS & FINDINGS

Allegations: On June 17, 2014, the OIG received a referral from PBGC (b)(6) regarding an overpayment of \$10,985.40 in pension benefits to William J. Secola post his date of death of July 15, 2011 (**Exhibit 1** – Referral Email.) The referral email included an attached closing memorandum from the PBGC Office of General Counsel (OGC) detailing BAPD's attempts to contact Secola's estate administrator (b)(6).

The memorandum also indicated that it was not clear how BAPD determined (b)(6) handled the distribution of Secola's estate. According to the OGC memorandum, a subpoena issued to SunTrust Bank revealed money was consistently withdrawn from Secola's account using Secola's ATM number post Secola's date of death (**Exhibit 2** – OGC Closing Memorandum).

Findings: An analysis of the SunTrust bank statements revealed ATM withdrawals were made from two branch locations on a daily basis (*Waterview Towne Center Branch, Essex MD and Merritt Blvd Branch Dundalk, MD*) during the period of August 2011 through December 2011. The analysis identified a returned check on January 10, 2012 in the amount of \$169.00 written to an unknown party. The analysis also determined that Secola's account received two separate direct deposits on a monthly basis; one from the US Treasury for social security administration (SSA) benefits and one from PBGC for the trusted Bethlehem Steel benefits (**Exhibit 3** – SunTrust Bank Statements.)

Furthermore, the analysis of the bank statements also revealed that on December 23, 2011, the US Treasury executed an ACH reclaim for SSA benefits in the amount of \$3866.10 from Secola's SunTrust account (**Exhibit 4** – SunTrust Bank Statement January 24, 2012.) Finally, the investigation revealed that (b)(6) was in the custody of the U.S. Federal Bureau of Prisons during the period covering withdrawals made post Secola's date of death of August 2011

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and the final withdrawal made in December 2011 (Exhibit 5 – [REDACTED] Post-BOP Release Documents.)

INVESTIGATIVE ACTIVITY AND FACTS

On July 9, 2015 the reporting agent attempted to locate [REDACTED] at the [REDACTED] Middle River MD address. Current occupants advised that they had been living there for over a year.

On July 9, 2015, the reporting agent attempted to locate [REDACTED] at the [REDACTED] River MD address. Residence appeared to be empty. Case agent left business card with a note to call on the back.

On July 13, 2015, the reporting agent canvassed the Dundalk MD area using MVA and Baltimore County MD moving violations that [REDACTED] received to establish a search grid. In addition, the reporting agent contacted the Baltimore County MD Police Department to determine if there had been any updated address information or if [REDACTED] had any law enforcement contact in the area. Response was negative.

On July 14, 2015, the reporting agent contacted LT. [REDACTED] MVA Maryland State Police and Deputy [REDACTED] Baltimore County Sheriff's Office for assistance identifying addresses and any pending court actions involving [REDACTED]. No new investigative leads resulted from the contact.

On July 16, 2015, the reporting agent telephonically presented the investigation to Baltimore City USAO AUSA Joyce McDonald for prosecutorial consideration. The matter was declined based on the dollar threshold for the office; however McDonald referred the reporting agent to Baltimore County State Prosecutor Andy Lippe.

On July 16, 2015, the reporting agent completed a week of web based research, canvassing of a specific area, surveillance of four associated addresses, with the assistance of the following LE agencies and personnel results detailed below:

Baltimore City PD

Det. [REDACTED] - Provided criminal history report that revealed [REDACTED] has an extensive criminal history for fraud, theft, petty crimes and LEO assault. Requested a Maryland State Wage report so the reporting agent could identify any current employment locations. Report revealed [REDACTED] was not currently employed.

Det. [REDACTED] - Provided liaison assistance with the Regional Auto Task Force to identify areas where [REDACTED]'s license plate may have been picked up by automated license plate readers so the reporting agent could target a specific area for canvassing. No additional leads were gained.

Baltimore County Sheriff's Dept.

Deputy [REDACTED] - Conducted a records check of the Baltimore County Fugitive Warrant Squad to determine if service had been done on [REDACTED] at addresses unknown by the reporting agent. Results were negative.

Maryland State Police

Sgt. [b](6), [b](7)(c)] – Utilized LEO database to provide criminal activity, background, known associates and court cases while providing security for the case agent during residential visits and possible witness contacts.

MVA Police

Lt. [b](6), [b](7)(c)] – Conducted a search of MVA records to determine if [b](6)] had updated his driver's license info from a known bad address to a current address. The result was negative.

Summary

The reporting agent was able to locate moving vehicle citations for [b](6)] in the Dundalk, MD area. From those leads the reporting agent contacted the ticketing officers to determine if they had any additional residential information on [b](6)]. The reporting agent was able to determine through community canvassing, discussions with neighbors, current residents and leasing office staff that [b](6)] did not reside at any of the known associated residential locations.

However, through canvassing the reporting agent was able to locate a business card for a petroleum business that [b](6)] identified himself on as president while canvassing local businesses. The business card revealed that [b](6)] uses "[b](6)]" and goes by his middle name "[b](6)]". The telephone number on the card was disconnected. The business location was listed as a PO Box.

The reporting agent conducted a web based search on the PO Box address and identified a phone number different from the one that appeared on the business card. The reporting agent called the number and a voice message greeting came on for "[b](6)]."

On July 24, 2015, the reporting agent delivered a working folder to Baltimore County Assistant Prosecutor Adam Lippe for review and prosecutorial consideration.

On August 6, 2015, the reporting agent received a voice message from Baltimore County Assistant Prosecutor Susan Cohen stating that she had taken over the [b](6)] investigation from Lippe.

On August 7, 2015, while canvassing the Dundalk, MD area, the reporting agent located [b](6)] at a cigar shop. The reporting agent conducted a field interview of [b](6)]. [b](6)] stated during the field interview that he was in the custody of the US Bureau of Prisons when the withdrawals occurred. **Note: Case agent identified [b](6)] on a YouTube channel advertising petroleum products for sale. Of particular note was [b](6)] smoked a cigar during the presentation.**

On August 10, 2015, the reporting agent meet [b](6)] to review his BOP release documents at the Taco Bell located at 7815 Wise Avenue Dundalk, MD 21222. [b](6)] presented documents that clearly reflected his period of custody occurred within the period that ATM withdrawals were being taken from Secola's SunTrust bank account (**Exhibit 5 – BOP Release Documents**).

On September 1, 2015, the reporting agent contacted [b](6)] of SunTrust bank concerning the possible availability of any video or still photographs from the ATM surveillance footage for

the withdrawal actions on the account as reflected in the account documents provided pursuant to the subpoena. Also if a copy of a returned check identified during the case agents analysis would be available for review to determine who the payee was, as well as to capture handwriting samples for future comparison (**Exhibit 6** – Email to [b](6) [REDACTED])

On September 10, 2015, the reporting agent received a response from [b](6) [REDACTED] of SunTrust concerning the follow up request of September 1, 2015. [b](6) [REDACTED] stated there was no additional information available for review (**Exhibit 7** – Follow up Subpoena Response).

CONCLUSION

The investigation substantiated the allegation that William Secola was overpaid due to direct deposits made after his date of death. The investigation also substantiated that withdrawals from Secola's account were done via ATM at two SunTrust bank locations in the Baltimore County area. The investigation unsubstantiated that [b](6) [REDACTED] was the responsible person for the withdrawals. Finally, the investigation was unable to determine who the responsible party was for the withdrawals due to a lack of available ATM surveillance footage.

DISPOSITION

Investigation Status:

This investigation is closed in the OIG's official electronic Case Management and Tracking System. There is no further investigative activity required.

Administrative Status:

Not applicable.

Judicial Status - Referral to the United States Attorney's Office:

The matter was presented to the U.S. Attorney's Office, Baltimore, MD, for a prosecutorial opinion. The matter was declined for prosecution. The investigation was accepted for prosecution by the Baltimore County States Attorney's Office.

RECOMMENDATION

The reporting agent recommends closing this investigation.

CONCURRENCE:

Peter P. Paradis, Sr
Assistant Inspector General for
Investigations

Date



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

August 6, 2015

TITLE Gladys Brannum (Deceased Participant)
Recovery of Pension Benefit Overpayment
\$1,254.18

INVESTIGATION# 15-0027-C / 15-0022-I

TYPE OF INVESTIGATION *Title 18 USC §1029 - Fraud and related activity in connection with access devices

INVESTIGATOR Special Agent in Charge (b)(6) (b)(7)(C)

SUBJECT Close-Out Memorandum

ALLEGATIONS & FINDINGS

Allegations: (b)(6) Pension Benefit Guaranty Corporation (PBGC) Benefit Recovery Coordinator, filed a Notification of Possible Fraud, dated February 9, 2015, with the PBGC Office of Inspector General (OIG). The Notice reflected an Amount of Debt in the amount of \$1,339.77 associated with deceased PBGC pension plan participant Gladys Brannum (#19660300) subsequent to Brannum's death on June 17, 2014. [It is noted the Amount of Debt cited does NOT match the amount of the single benefit overpayment cited by Smith and M&T Bank.] On July 1, 2014 a single pension benefit payment in the amount of \$1,254.18 was made by PBGC. The overpaid funds were subsequently used by an unidentified individual to make restitution to M&T Bank to satisfy ATM account withdrawals associated with Brannum's account # (b)(6) in July of 2014. [Exhibit I]

Such unauthorized use may have been a violation of:

Title 18 USC §1029 - Fraud and related activity in connection with access devices.

The PBGC OIG initiated Complaint #15-0027-C and subsequent investigation 15-0022-I.

Findings: Preliminary investigation confirmed PBGC did in fact electronically process a single pension benefit payment in the amount of \$1,254.18 into the M&T Bank account (b)(6) of Brannum. M&T Bank absorbed these funds from the account to settle overdraft deficiency in the account resulting from an unknown individual's withdrawal of

monies post the date of death of Brannum.

The allegations of theft of overpayment pension benefit funds was substantiated based upon the fact the participant was deceased at the time the overpaid funds were taken. However, no investigative leads were developed toward the identity of the alleged offender and all investigative leads have been exhausted at this time.

INVESTIGATIVE ACTIVITY AND FACTS

On March 7, 2015, PBGC OIG Special Agent (b)(6) (b)(7)(c) reviewed the M&T Bank statement for the Brannum account (b)(6) and confirmed the records reflected the July 1, 2014 electronic deposit of Brannum's pension benefit payment. This deposit was made post the June 17, 2014 date of Brannum's death. [Exhibit 2]

On March 10, 2015, SA (b)(6) (b)(7)(c) met with M&T Bank Vice President (b)(6) at the Hillendale Branch Office (6889 Loch Raven Blvd., Townson, MD 21286; telephone (b)(6) (b)(6); email: (b)(6) (b)(7)(c)@mtb.com). (b)(6) confirmed the fact the M&T Bank withdrew available funds from the Brannum account in question to satisfy ATM overdraft withdrawals that transpired post the June 17, 2014 date of Brannum's death. Documents were provided by SA (b)(6) (b)(7)(c) to (b)(6), who in turn electronically transmitted them to M&T Bank Legal Department (Buffalo, NY) official (b)(6).

SA (b)(6) (b)(7)(c) telephonically discussed the mechanism by which the PBGC may recoup the \$1,254.18 in question from M&T Bank. (b)(6) informed SA (b)(6) (b)(7)(c) the appropriate PBGC officials should be directed to contact her through Vice President (b)(6) to further discuss such a process. [Exhibit 3]

On March 20, 2015, SA (b)(6) (b)(7)(c) generated email correspondence with (b)(6) PBGC Benefit Recovery Coordinator, providing (b)(6) with an update of her findings as of that date. (b)(6) confirmed the intent of PBGC's actions to recover the overpaid funds.

On August 6, 2015, based upon the fact there are no investigative leads toward the true identity of the individual who purportedly without authorization took funds from the Brannum account in question, Assistant Inspector General Peter Paradis, Sr., PBGC Office of Investigations, generated and caused to be dispatched to (b)(6) a Referral Memorandum summarizing the investigative efforts and findings to date, referring the matter back to (b)(6) for whatever continued recoupment action deemed appropriate by PBGC. [Exhibit 4]

CONCLUSION

Investigation confirmed participant Gladys Brannum died on June 17, 2014 and the PBGC made one (1) overpayment in the amount of \$1,254.18 to her M&T Bank account. An unidentified individual did, post June 17, 2014, withdraw and cause to be deficient Brannum's account, resulting in a loss to the M&T Bank and PBGC. All investigative leads concerning the identification of the alleged offender have been exhausted with no

success. This matter has been referred back to PBGC for action they deem appropriate with M&T Bank in an effort to recover the overpaid funds.

The allegation of fraud by an unidentified individual was substantiated.

DISPOSITION

Investigation Status:

This investigation is closed in the OIG's official electronic Case Management and Tracking System. There are no further investigative leads to assist with the identification of the alleged offender.

Administrative Status:

Not applicable.

Judicial Status - Referral to the United States Attorney's Office:

The matter was not presented to the U.S. Attorney's Office, District of Maryland, for a prosecutorial opinion based upon the fact although the allegation of a violation of criminal law was proved, the identity of the offender could not be confirmed.

RECOMMENDATION

The reporting agent recommends closing this investigation.

CONCURRENCE:



Peter P. Paradis, Sr.
Assistant Inspector General for Investigations

08/06/2015
Date

Exhibits:

1. Memorandum of Activity, Initial Complaint, dated August 6, 2015.
2. Memorandum of Activity, Records Review by Special Agent (b)(6), (b)(7)(C) dated March 7, 2015.
3. Memorandum of Interview of (b)(6), M&T Bank (b)(6) dated March 10, 2015.
4. Copy of PBGC Office of Investigations Referral Memorandum to (b)(6) PBGC (b)(6) dated August 6, 2015.



Office of Inspector General
Pension Benefit Guaranty Corporation

April 7, 2016

Title: (b)(6) Death Match Case

INVESTIGATOR/AUDITOR: (b)(6), (b)(7)(c)

SUBJECT: Close-out Memorandum

Investigation # 15-0027-I

CASE BACKGROUND

On August 29, 2014, the Office of Inspector General (OIG) received a referral from (b)(6). Benefits Recovery referred a death match case to PBGC OIG with an unrecoverable amount of \$2,628.84. PBGC made erroneous payments to the deceased Participant (James Petrisko) totaling \$2,628.84. There were 12 benefit payments of \$219.07 after 9/4/2012; the date of his death. PBGC Benefit Coordinator reviewed the case earlier and referred it to OIG.

Potential Violation – 18 USC 641 – Theft of government property

Case Facts

PBGC OIG auditor (b)(6), (b)(7)(c) reviewed the following information:

- No copies of checks

Accurant research shows that the deceased has no relatives. The deceased had a neighbor living in the same building.

CONCLUSION

Based on the facts to date, the identity of the debtor for the unrecovered amount could not be established. Neither has any evidence of intent to obtain funds fraudulently.

RECOMMENDATION:

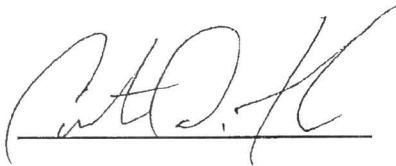
(b)(5)



DISPOSITION

This case is being referred back to PBGC for consideration of collecting the benefit overpayment.

CONCUR:



Curtis D. Flood
Acting Assistance Inspector General
For Investigations

4/7/16

Date



Pension Benefit Guaranty Corporation

Office of Inspector General

1200 K Street, N.W., Washington, D.C. 20005-4026

June 7, 2016

TITLE UFCW 342

INVESTIGATOR (b)(6), (b)(7)(C)

SUBJECT Close-Out Memorandum

Investigation # 15-0029-I

CASE BACKGROUND

On July 20, 2015, MEPD advised the OIG of their intentions to replace the Trustees on one of the UFCW 342 receiving financial assistance. According to MEPD, the Plan became insolvent June 1, 2015 and PBGC will provide roughly \$1million of financial assistance to the plan yearly. The Plan uses an allocation methodology to share cost between the following UFCW Plans:

| Plan | Status |
|---|--|
| Retirement Fund of the Fur Manufacturing Industry | Receiving PBGC Financial Assistance Payments |
| Fur Workers Local 3F Pension Plan | Received PBGC Financial Assistance Payments until closed through annuities in April 2012 |
| UFCW Local 174 Retail Pension Fund | Not yet receiving PBGC Financial Assistance Payments: Terminated 6/30/2007 |
| UFCW Local 174 Pension Fund | Not yet receiving PBGC Financial Assistance Payments |
| UFCW Local 50 Pension Fund | Not yet receiving PBGC Financial Assistance Payments |
| AMC Local 342 Pension Fund | Not yet receiving PBGC Financial Assistance Payments |
| Joint Retirement Fund Local 1 | Not receiving PBGC Financial Assistance Payments: On-going plan |
| UFCW Local 174 Commercial Pension Fund | Not receiving PBGC Financial Assistance Payments: On-going plan |

Privacy Act Exemptions J and K applied to this page

POTENTIAL VIOLATION - 18 USC 641- Theft of government property

CASE FACTS

On November 4, 2015, the case received and reviewed [b)(6)] documents received from Signature Bank. The review of the records did not identify indicators of fraud.

CONCLUSION

No indicators of fraud were identified during the course of the investigative review.

DISPOSITION

This case will be closed.



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

October 28, 2015

Referral Memorandum

TO: Jerome O. Smith
Benefit Recovery Coordinator
Benefits Administration and Payment Department (BAPD)

FROM:

(b)(6), (b)(7)(C)

SUBJECT: Complaint No. 15-0032-I

This memorandum is in response to the recovery case referral pertaining to (b)(6) (b)(6) by the Pension Benefit Guaranty Corporation, Office of Inspector General (PBGC OIG). The OIG conducted an investigation of the over payment of benefits for \$23,439 and the possible withdrawal of the funds by the participant's father William McNally.

The OIG could not establish if McNally was responsible for the withdrawals from (b)(6) account due to McNally's death in 2011. Furthermore, the investigation did not identify previously unknown parties that could be accountable for the withdrawals. The OIG will take no further action regarding this matter.

If you have any questions, please contact me at (202) 326-4000 ext. (b)(6)



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

July 28, 2015

TITLE (b)(5) Employee; PBGC Procurement
(b)(5) Hostile Management

and

(b)(5) Employee; PBGC (b)(5)
(b)(5): Conflict of
Interest

INVESTIGATION# 15-0036-C / 15-0025-I
(b)(5)

TYPE OF INVESTIGATION *PBGC PM-30-01: Disciplinary and Adverse Action Procedures (with noted attachment entitled "Senior Level Conduct and Professionalism" for the Policy on Senior Level Employee Conduct, Professionalism and Discipline)
*PBGC PM-30-02: Professional Courtesy
*Title 5 CFR 2635.101: Standards of Ethical Conduct for Employees of the Executive Branch (with noted Subpart "A")

INVESTIGATOR Assistant Inspector General for Investigations (b)(5), (b)(7)(c)

SUBJECT Close-Out Memorandum

ALLEGATIONS & FINDINGS

Allegations: (b)(5), Office of General Counsel (OGC), Pension Benefit Guaranty Corporation (PBGC) filed a complaint with the PBGC Office of Inspector General (OIG) reporting hostile management practices as exhibited by

(b)(5) Procurement Department (PD), PBGC in violation of:

- *PBGC PM-30-01: Disciplinary and Adverse Action Procedures (with noted attachment entitled "Senior Level Conduct and Professionalism" for the Policy on Senior Level Employee Conduct, Professionalism and Discipline); and
- *PBGC PM-30-02: Professional Courtesy;

and

conflict of interest in the complaint review process as exhibited by (b)(6) (b)(7)(c) Office of the Chief Management Officer (OCMO), PBGC in violation of:

*Title 5 CFR 2635.101: Standards of Ethical Conduct for Employees of the Executive Branch (with noted Subpart "A").

The PBGC OIG initiated Complaint #15-0036-C and subsequent investigation 15-0025-I.

Findings: (b)(6) did interact with members of PBGC (b)(6) during a scheduled March 12, 2015 meeting for which the agenda topics were known in advance by all attendees, including (b)(6). OGC and PD leadership have fundamental disagreements concerning the need for, and application of, OGC Legal Sufficiency Reviews for task orders and call orders generated by PD, and such disagreements serve as the basis for difficult working relationships between OGC and PD leadership. Through the statements of OGC (b)(6) and Attorney (b)(6), OGC staff are working an unusual number of hours (e.g. 100 hours in one week by (b)(6) on the Emerging Markets Equities order) conducting Legal Sufficiency Reviews. These extended work hours may have decreased Attorney (b)(6)'s stress tolerance and heightened her belief (b)(6)'s remarks about OGC's administration of such reviews were personally directed at her. No evidence was identified to support the OGC assertion that (b)(6) is biased and engaged in the exercise of undue influence over CMO component departments (e.g. PD) against the interests of OGC.

The allegations of hostile management practices and conflict of interest in the complaint review process were not substantiated from information obtained, including statements provided by persons with first-hand knowledge of the meeting's events.

INVESTIGATIVE ACTIVITY AND FACTS

On April 30, 2015, Assistant Inspector General for Investigations (AIGI) (b)(6), (b)(7)(c) Sr. Office of the Inspector General (OIG) was contacted by (b)(6) PBGC Office of General Counsel (OGC), (b)(6) who reported she wished to file a complaint with the OIG against two Senior Level PBGC officials (b)(6), PBGC (b)(6) and (b)(6), PBGC (b)(6). (b)(6) asserted (b)(6) engaged in the March 12, 2015 verbally hostile treatment of OGC employee (b)(6) [PBGC OGC, (b)(6)], and (b)(6) failed to recuse himself from adjudication of the matter, in violation of the aforementioned PBGC policy directives and/or US Code title(s). [Exhibit 1]

On April 30, 2015, Assistant Inspector General for Investigations AIGI (b)(6), (b)(7)(c) Sr. interviewed (b)(6) concerning the complaint (b)(6) lodged with the PBGC OIG. (b)(6) provided what she deemed verbal and documentary materials in support of her claims that:

1. (b)(6) engaged in hostile verbal treatment against (b)(6) o/a March 12, 2015;
2. (b)(6) may have served as the catalyst for (b)(6) hostile actions against (b)(6) and should have recused himself from the agency's discipline and adverse action process due to a conflict of interest as (b)(6) supervisor; and
3. The various PBGC sub-components within the Office of CMO receive preferential treatment and favorable consideration from PBGC leadership when it comes to the review and adjudication of concerns raised to agency leadership associated with actions and practices of CMO personnel and components.

A review by this reporting agent of the materials revealed, in summary, there was a March 12, 2015 meeting between PD and OGC representatives which included the topic of Legal Sufficiency Reviews as conducted by OGC staff. Beyond that the materials reflected a collective opinion held by OGC personnel that management of PD is displeased with OGC's conduct of Legal Sufficiency Reviews of PD work products (to wit: task orders and call orders). [Exhibit 2]

On May 7, 2015, (b)(6), (b)(7)(c) met with and interviewed (b)(6) (b)(6) PBGC Human Resources Department (HRD), Management Partnership and Consulting Division] concerning the complaint lodged by (b)(6) (b)(6) presented (b)(6), (b)(7)(c) with copies of documentation associated with his inquiry into this "employee relations" issue involving (b)(6) and (b)(6). Both the verbal and documentary information provided by (b)(6) reflected there was a meeting between PD and OGC representatives on March 12, 2015, and the topic of Legal Sufficiency Reviews as conducted by OGC staff was discussed. (b)(6) a subject matter expert in the field of employee relations, appeared to have conducted a fair and impartial fact finding review of the employee relations matter as lodged by (b)(6) taking into account written statements from PBGC personnel in the OGC and PD components. Beyond that the materials reflect a collective opinion held by PD management that it would be a business efficiency if OGC increased the dollar-value threshold above \$200,000 when determining which task orders and call orders undergo Legal Sufficiency Reviews, as such an increase would result in a decrease in OGC workload on the limited OGC staff and the time required to get replies back to PD.

Relative to the issue of potential conflict of interest for impartiality on the part of (b)(6) (b)(6), (b)(6) engaged in a discussion with (b)(6) concerning (b)(6) knowledge of and/or involvement with the March 12, 2015 meeting. (b)(6) informed this writer he received sufficient explanation from (b)(6) as to (b)(6)'s foreknowledge of the meeting and its agenda to cause (b)(6) to believe (b)(6) was being truthful in his assertion that (b)(6) played no nefarious role in orchestrating the March 12, 2015 meeting, or directing (b)(6) to "verbally attack" OGC staff, and as such was not conflicted in his ability to serve as the Deciding Official in this matter involving direct-report (b)(6).

(b)(6) reduced his recommended courses of action available to (b)(6) regarding (b)(6) to three (3) options. [Exhibit 3]

CONCLUSION

Investigation confirmed a meeting transpired on March 12, 2015 involving senior members of the Office of General Counsel and the Procurement Department. During the meeting an impassioned discussion of varied opinions transpired concerning the topic of OGC's conduct of Legal Sufficiency Reviews of PD work products. No evidence was identified to support the allegations of hostile management practices at the hands of (b)(6) or conflict of interest in the complaint review process at the hands of (b)(6).

DISPOSITION

Investigation Status:

This investigation is closed in the OIG's official electronic Case Management and Tracking System. There is no further investigative activity required.

Administrative Status:

Not applicable.


Judicial Status - Referral to the United States Attorney's Office:

The matter was not presented to the U.S. Attorney's Office, Washington, DC, for a prosecutorial opinion based upon the fact there were no allegations of violations of criminal law.

RECOMMENDATION

The reporting agent recommends closing this investigation.

CONCURRENCE:



Robert A. Westbrook
Inspector General

7/29/2015

Date



Office of Inspector General
Pension Benefit Guaranty Corporation

September 29, 2016

MEMORANDUM

TO: File OIG Case No. 16-0002-I

FROM: [REDACTED]

SUBJECT: [REDACTED] v. [REDACTED] (8:15cv2793 23AEP)

During the investigation (15-0010-I) of a Whistleblower Retaliation (WBR) complaint from [REDACTED], a former pension benefits supervisor of [REDACTED], a PBGC contractor running the Sarasota, Florida Field Benefit Administrator (FBA), the U.S. Attorney's Office (USAO) for the Middle District of Florida forwarded a *qui tam* complaint on June 14, 2016 from [REDACTED] that was filed in December 2015, but not served on the USAO until June 13, 2016. The *qui tam* complaint alleges that [REDACTED] violated the False Claims Act in the performance of its contract with PBGC. Many of the *qui tam* complaint's allegations were also the disclosures contained in [REDACTED]'s WBR complaint.

Investigation of the *qui tam* was coordinated with the WBR case, which we concluded with issuance of a final report on August 10, 2016. We found that [REDACTED] made six separate disclosures. We concluded that four of her disclosures were not "protected" as defined by the Whistleblower Protection Act, but two disclosures about [REDACTED]'s alleged failure to pay her overtime could reasonably be considered protected. However, we were unable to show that [REDACTED] CEO, who terminated her knew of these disclosures. Even if the evidence were to show that the [REDACTED]'s disclosures were a contributing factor in her termination, we found there are reasonable grounds to conclude that [REDACTED] would have terminated her on other grounds absent her disclosures. In sum, we concluded there is insufficient evidence to substantiate [REDACTED]'s allegation that [REDACTED] subjected her to a reprisal for whistleblowing.

Following the conclusion of the WBR case, the USAO attempted to coordinate with [REDACTED]'s attorney to interview her regarding the *qui tam* complaint. On September 6, 2016, [REDACTED]'s attorney advised that she wished to dismiss the complaint. The USAO advised us that they consent to dismissal. On September 13, 2016, PBGC OGC attorney [REDACTED] also consented to dismissal. Given the pending dismissal of the *qui tam* complaint, we are closing this investigation.



Office of Inspector General
Pension Benefit Guaranty Corporation

December 3, 2015

TITLE: (b)(6)
GS-11, (b)(6)
Benefit Payments Division, Office of Benefits Administration

INVESTIGATION
NUMBER: 16-0003-I

TYPE OF
INVESTIGATION: Title 5 C.E.R. § 2635.101 – Standards of Ethical Conduct

INVESTIGATOR: (b)(6), (b)(7)(C)

SUBJECT: Final Investigative Report

Summary

This investigation was based on allegations that (b)(6) (b)(6) Benefit Payments Division, Office of Benefits Administration, participated in a scheme to provide a forged and falsified employment verification form, required by the IRS, for (b)(6) (b)(6), former PBGC OIG employee in connection with her apartment lease. (b)(6) is a tenant who needs to annually recertify her employment information as her apartment manager receives an IRS tax incentive for offering reduced cost rent to low income individuals.

We found no evidence that (b)(6) participated in preparing or submitting the forged employment verification form. However, we found reasonable grounds to conclude that (b)(6) engaged in conduct that created the appearance that she participated in its preparation. Specifically, when the apartment management first contacted her by email about the verification form, (b)(6) replied to them that she "will get the form completed and back to [them] today" instead of advising them she was not the correct point of contact for employment verification.

Rules/Regulations Implicated

The Principles of the Standards of Ethical Conduct for Federal employees are a list of the basic obligations of public service, including a standard that requires employees to endeavor to avoid

December 3, 2015

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any actions creating the appearance that they are violating the law or the standards of ethical conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. (5 C.F.R. § 2635.101(b)(14))(emphasis added)

Title 18 of the U.S. Code makes it a crime to knowingly and willfully make a false writing or document knowing it to contain fraudulent statements. (18 USC § 1001)

PBGC Directive IM-05-04, Use of Information Technology Resources, dated April 26, 2006, Section 5(e) contains the policies related to proper and improper use of PBGC information technology resources. Paragraph 5(e) (1)(a) prohibits conducting illegal activity using IT resources.

Details

This investigation was based on a November 6, 2015, complaint from the Interior Business Center (IBC). (b)(6) a Human Resources Specialist at IBC received a call from (b)(6) at The Courts of Camp Springs, Suitland, MD regarding an improperly completed employment verification for (b)(6). When (b)(6) examined the form she discovered that almost all of the information about (b)(6)'s employment at PBGC was incorrect. For example, the annual salary was incorrect, the pay period was incorrect as (b)(6)'s position at PBGC was terminated effective October 26, 2014. Further, though the form purported to be filled out and signed by (b)(6), she indicates that it definitely was not and that completing employment verification information was not part of her job duties. (Attachment 1)

(b)(6) advised that (b)(6) is a tenant who needs to annually recertify her employment information as the apartment manager (Hallkeen Management) receives a tax break from the IRS for offering reduced cost rent to low income individuals. (b)(6)'s October 6, 2015, employment verification form lists (b)(6) OAB, as a PBGC contact person. Since (b)(6) was listed, (b)(6) attempted to call (b)(6) and received no response. She sent (b)(6) a message to her PBGC email account requesting employment verification on October 9, 2015, and again on November 2, 2015. A couple of days after her second email (on or about November 4, 2015), (b)(6) received a fax in her inbox containing the completed employment verification form. The form purports to be completed and signed by (b)(6), indicating that (b)(6) has been employed by PBGC from October 2011 through present. Because (b)(6) had some questions about the information on the form she called (b)(6) and sent her a copy of the form. (Attachments 2 and 3)

December 3, 2015

Page 3

A review of (b)(6)'s PBGC email reveals that on October 9, 2015, (b)(6) sent an email to (b)(6) with a subject line of "Employment Verification Request." (b)(6)'s email asks (b)(6) to have someone complete "the form" and send it back as soon as possible. (b)(6) also indicates that the information is required by the IRS. Attached to the email is an Employment Verification form in Portable Document Format (PDF), titled "(b)(6).PDF," for (b)(6) listing PBGC as the employer and (b)(6) as the employer contact person. The section titled "THIS SECTION TO BE COMPLETED BY EMPLOYER" is blank. (Attachment 4)

On October 9, 2015, in an email, (b)(6) responded to (b)(6) "I will get the form completed and back to you today." (b)(6) forwarded (b)(6)'s email and the employment verification form titled "(b)(6).PDF" on October 13, 2015, to her personal email address at (b)(6)@gmail.com. The attached form appears the same as in (b)(6)'s October 9, 2015, email.

On November 2, 2015, (b)(6) sent (b)(6) an email asking "is it possible for me to get the employment verification for (b)(6) today? This is very important as it pertains to her housing." No response to this email is found in (b)(6)'s email records.

During an OIG interview, (b)(6) advised that she has known (b)(6) since high school. She knows that (b)(6) formerly worked at PBGC Office of Inspector General but that she separated from the OIG in late 2014. (b)(6) advised that she maintains contact with (b)(6) outside of PBGC, last having seen her over the summer, and having spoken to her over the phone sometime in early November 2015. (Attachment 5)

(b)(6) related that her duties in OBA do not include any human resources related functions nor do they include providing employment verifications.

(b)(6) acknowledged to OIG investigators that she received the October 9, 2015, email from (b)(6) and replied that she would forward the request on to someone in the agency. Even though she responded to (b)(6), she did not know why the verification information was being requested. (b)(6) opened the attachment but told the OIG investigators she did not do anything with it. (b)(6) characterized her response to (b)(6), indicating that she will get the form completed and back to her, as "not politically correct."

(b)(6) acknowledged to OIG investigators that she forwarded (b)(6)'s email to her (b)(6)'s gmail account after (b)(6) left a voice mail, and said she did so as a reminder to ask (b)(6) about it.

(b)(6) told OIG investigators that she spoke with (b)(6) and asked her what she expected her to do with the verification form. (b)(6) also stated that she asked (b)(6) why this request

December 3, 2015

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came to her, to which (b)(6) said that it needed to be forwarded to someone in the agency as she was not sure who was still in the OIG's office. (b)(6) told the OIG investigators that she asked (b)(6) if she was supposed to forward the form to someone in the agency. (b)(6) told her not to worry about it, it is not for her to complete, and (b)(6) advised she would call (b)(6). (b)(6) told the OIG investigators that she also asked (b)(6) to have her name removed from the form. (b)(6) stated she had no prior discussions with (b)(6) about the employment verification prior to having received it from (b)(6).

(b)(6) acknowledged to the OIG investigators that should not have responded to (b)(6).

Attachments

- 1 Signed statement from (b)(6) dated November 10, 2015
- 2 Memorandum of Activity, Record of Conversation with (b)(6) dated November 9, 2015
- 3 Copy of (b)(6)'s Employment Verification Form provided by Interior Business Center
- 4 Memorandum of Activity, Record of Review (b)(6)'s emails, dated November 16, 2015
- 5 Memorandum of Interview, (b)(6), dated November 20, 2015
- 6 Memorandum of Activity, Record of Conversation with (b)(6) dated November 13, 2015



Office of Inspector General
Pension Benefit Guaranty Corporation

September 12, 2016

TO: File, 16-0006-I

FROM:

(b)(6)

(b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

2016.09.12
07:14:33 -04'00'

SUBJECT: Case Closing

This investigation was based on complaints from various individuals within PBGC that (b)(6) (b)(6), former GS-13 (b)(6) in the Office of Information Technology, Resource Management Division, PBGC, Washington DC, was telephoning them and making disturbing comments. These phone calls occurred in late 2015 and continued into early 2016.

(b)(6) started working for PBGC in 1997. In 2009, she began making unusual statements and behaving in an inappropriate manner at work. She was placed on administrative leave and in 2011 removed for failure to follow instructions. She filed several complaints/appeals in connection with the actions that led to her removal from PBGC.

During the period September 2015 through January 2016 (b)(6) called individuals in PBGC 48 times and left voicemail messages. Those messages became increasingly threatening up to the point where she finally made death threats to two PBGC employees.

In January 2016, OIG coordinated with the Prince George's County Police Department (PGCPD) and PG County Crisis Services Center (PGCCSC)—Parker lived in (b)(6). PGCPD dispatched an officer to (b)(6)'s residence, spoke with her for about 10 minutes, and opined that she checked out fine. PGCCSC attempted to contact her on two occasions in late January 2016, but on both occasions (b)(6) was either not at home or did not answer the door.

OIG filed a petition for emergency evaluation with Maryland District Court for PG County. The judge granted the request on February 1, 2016, but the evaluation order was unable to be executed before it expired.

On February 18, 2016, OIG issued a Risk Advisory to the PBGC Director regarding (b)(6)'s threats suggesting that a review of the current building security protocols be performed and that PBGC retain a third party expert to assess the current and future threats. PBGC management implemented both suggestions.

OIG coordinated with the FBI Threat Assessment Task Force and the U.S. Attorney's Office for the District of Columbia. Ultimately, on February 25, 2016, a criminal complaint was issued charging (b)(6) with a misdemeanor of Threats to Do Bodily Harm in violation of 22 DC Section 407 (2001 ed.). Because the charge was a misdemeanor, if arrested in Maryland, (b)(6) could not be extradited to DC, so on February 29, 2016, a second criminal complaint was issued charging (b)(6) with a felony of Threatening to Injure and Kidnap a Person in violation of 22 DC Section 1810 (2001 ed.). A felony warrant was issued, which would allow for (b)(6)'s extradition from Maryland.

On March 7, 2016, the felony warrant was executed by Charles County MD Sheriff's Office and (b)(6) was arraigned in DC Superior Court at which time she was released on her personal recognizance. She failed to appear for her April 8, 2016, initial status hearing and a bench warrant was issued. On April 13, 2016, the U.S. Marshals Service arrested (b)(6) on the bench warrant, the judge ordered (b)(6) to be held, ultimately resulting in her being detained for a competency mental health examination to be conducted at St. Elizabeth's Hospital.

On July 22, 2016, in DC Superior Court, Judge Reid-Winston found Ms. (b)(6) competent. After finding Ms. (b)(6)'s competence restored, Judge Reid-Winston accepted Ms. (b)(6)'s guilty plea to two counts of Attempted Threats. Ms. (b)(6) accepted the terms of a Deferred Sentencing Agreement, and she plans to move to (b)(6), where she can live with her family. The terms of the deferred sentencing are as follows:

- Ms. (b)(6) is required to stay away from, and make no contact with, the PBGC, (b)(6), (b)(6), and (b)(6). The only exception is that Ms. (b)(6)—through her counsel of record—may contact the U.S. Pension Benefit Guaranty Corporation if necessary for pending litigation. Ms. (b)(6) may not—on her own—make contact with the PBGC.
- Ms. (b)(6) is required to stay away from the District of Columbia in its entirety.
- Ms. (b)(6) must complete 48 hours of community service in (b)(6), which must be verified by the Community Service Program at D.C. Superior Court.

If Ms. (b)(6) violates any terms of the Deferred Sentencing Agreement, the Court would sentence Ms. (b)(6) based on her already-accepted guilty pleas. The Deferred Sentencing Agreement will remain in effect for 12 months. If Ms. (b)(6) complies with the terms of the Deferred Sentencing Agreement, after 12 months, the government would dismiss the charges. The Court scheduled the next status hearing for July 21, 2017. Ms. (b)(6) is excused from that hearing if she otherwise complies in full with the terms of the Deferred Sentencing Agreement.

No further action is anticipated in this matter, therefore, this case is closed.



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

September 27, 2016

Title: [b)(6)]

Investigator: [b)(6) (b)(7)(c)]
Assistant Inspector General
for Investigations

Subject: Close-Out Memorandum

Investigation #: 16-0023-I

INVESTIGATIVE INITIATION

In July 2016, the Investigations Division began an inspection to determine whether PBGC employees complied with PBGC policies and directives for the Employee Mass Transit Benefit (EMTB) program, and to assess whether there are adequate internal controls in place for the EMTB program.

According to PBGC Directive GA 10-10, employees participating the EMTB program must commute to and from their permanent duty station via mass public transportation or a vanpool on a regular basis (at least 75 percent of the time). Employees may not receive transit benefits from PBGC if they are also receiving another form of commuter benefit, such as participating in the subsidized parking program. [Exhibit 1]

During the inspection, we received information that [b)(6)] received mass transit benefits and a free parking space at PBGC Headquarters. Additionally, we determined that [b)(6)] did not use mass transit 75% of the time for his commute to and from work. Based upon this information, we initiated an investigation into [b)(6)]'s compliance with PBGC Directive GA 10-10.

ACTION TAKEN

After contacting [b)(6)] to schedule an interview, we learned that the Office of General Counsel (OGC) issued an opinion indicating that it was permissible for him to

Privacy Act Exemptions J and K applied to this page

participate in the EMTB program, while also allowing him to park in an official parking space on the days he did not use public transportation. [Exhibit 2]

On September 2, 2016, (b)(6) was interviewed by Assistant Inspector General for Investigations Conrad Quarles and Special Agent (b)(6), (b)(7)(c) (b)(6) stated that he did not commute to and from work via mass transit 75 percent of the time. [Exhibit 3]

Following our interview, (b)(6) withdrew from the EMTB program and repaid \$155.40 in EMTB funds. [Exhibit 4]

CONCLUSION & RECOMMENDATION

Given OGC's opinion, (b)(6) no longer participating in the EMTB program, and the EMTB funds being repaid to PBGC, this investigation should be closed.

DISPOSITION

Investigation closed.

APPROVED:



Conrad Quarles
Assistant Inspector General for Investigations

9/27/16
Date