

**STATEMENT OF MR. BRUCE GIPE
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DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION
U.S. HOUSE OF REPRESENTATIVES**

**"TRUST IN TRANSPARENCY: HOLDING VA ACCOUNTABLE AND PROTECTING
WHISTLEBLOWERS"**

OCTOBER 19, 2023

Good Morning Chairwoman Kiggans, Ranking Member Mrvan and distinguished Members of the Sub-Committee on Oversight and Investigations, thank you for the opportunity to provide testimony on the Office of Accountability and Whistleblower Protection (OAWP). Accompanying me are Mr. Ted Radway, Executive Director, Investigations and Acting Executive Director, Compliance and Oversight, and Mr. Eric Calhoun, Director, Investigations Division. OAWP appreciates Congress' longstanding support and unwavering dedication to strengthening VA's workforce. As you know, protecting VA whistleblowers is paramount, not only to the integrity of this Department, but to the health and wellbeing of the Veterans we serve. We thank Congress for continuing to extend opportunities to partner in our shared goal of maintaining an accountable and safe environment for VA employees.

The 2017 statute establishing OAWP gave VA critical tools to build an office of highly specialized employees to investigate senior leader misconduct and whistleblower retaliation by supervisors, receive and refer whistleblower disclosures within the Department, advise the Secretary on matters of accountability, track and confirm implementation of audits and much more. Today, VA is proud to share the significant strides OAWP has made over these last few years to operationalize the statute and bring value to VA. OAWP continues to improve upon its execution of these important accountability tools given by Congress.

1. Intake and Referral Division

OAWP's Intake and Referral Division (IRD) receives all disclosures and complaints filed with OAWP. In the last fiscal year, IRD reviewed over 2,700 submissions. In September 2023, OAWP completed a refresh to the online complaint form that focused on improving the end-user experience and reducing redundancies in the form.

Complainants are contacted within 3 days of receipt to initiate development of their disclosure. Veteran complainants seeking assistance with health care or benefits receive a direct referral to the client relations team of either the Veterans Health

Administration (VHA) or the Veterans Benefits Administration (VBA). In the last year, IRD assisted over 180 Veterans by referring their patient care and benefits concerns. Because IRD is the frontline for receiving Veteran complaints and there are times when Veterans may be in crisis when communicating with IRD staff, IRD has partnered with the Veterans Crisis Line office to obtain first-hand Suicide Prevention training. This comprehensive training has improved IRD staff's abilities to be better prepared to recognize and assist Veterans in crisis for the purpose of referring the caller to the Crisis Line.

IRD works with a complainant to fully develop their disclosure and to determine if the matter is appropriate to refer to an Administration or Staff Office for action or if it falls within the scope of OAWP's investigative authority. In the last year, IRD transmitted 552 submissions that were outside of OAWP's scope (for example, criminal matters or health care concerns) to the Office of the Inspector General (OIG), Office of the Medical Inspector (OMI) and VA Administrations and Program Offices.

Whistleblower disclosures received by OAWP that do not involve allegations of whistleblower retaliation by a supervisor or senior leader misconduct are developed by the IRD and referred to the appropriate VA Administration for investigation. There were 663 whistleblower disclosure allegations referred in the last fiscal, and 174 allegations were substantiated by the VA Administration that conducted the investigation. Of the referred substantiated whistleblower disclosures, 86% involved violations of law, rule, regulation. IRD closed a total of 299 whistleblower disclosure cases last year within an average of 115 days from the date the disclosure was filed with OAWP. Disclosure referrals are closed when OAWP receives a satisfactory response from the Administration or Program Office, which includes a plan for addressing the merits of the disclosure with appropriate remedial actions.

IRD is responsible for the preliminary review of all matters that involve whistleblower retaliation or senior leader misconduct or poor performance allegations. We receive these matters directly from VA employees, applicants, Veterans, concerned citizens and other entities. When IRD receives matters that are within OAWP's investigative scope, the case is quickly transferred to the Investigations Division on average within 9 days. In the last fiscal year, IRD transferred 775 cases involving allegations of whistleblower retaliation or senior leader misconduct or poor performance to the Investigation Division for further review.

2. Investigations

OAWP's investigations of senior leader misconduct, poor performance, and whistleblower retaliation; reports of investigation; and disciplinary recommendations have improved immensely in recent years. These improvements include more timely investigations and higher quality reports of investigations and disciplinary recommendations, resulting in OAWP's disciplinary recommendations being accepted by management in a far greater percentage of cases than in recent years.

In Fiscal Year (FY) 2021, OAWP investigations took, on average, 251 days from the date of case receipt to the date of case conclusion, and for cases resulting in a report of investigation the average was 496 days to case conclusion. For FY 2023, OAWP's investigations took an average of 82 days from the date of case receipt to the case date of conclusion, and for cases resulting in a report of investigation the average was 180 days.

<u>OAWP</u>	<u>FY 2021 Investigations Averages</u>	<u>FY 2023 Investigations Averages</u>
Days from date of case receipt to date of case conclusion	251	82
Days for cases resulting in a report of investigation	496	180

In fiscal year (YY) 2021, OAWP disciplinary recommendations were not implemented in 32% of cases, but in calendar year 2023, some form of disciplinary action (or voluntary retirement prior to discipline being taken) was taken in 100% of cases in which OAWP made a disciplinary recommendation. In some of those cases the recommended discipline was modified because the deciding official considered the Douglas Factors, which are mitigating and aggravating factors established by the Merit Systems Protection Board that must be considered by the deciding official when determining the appropriate disciplinary action, but which are not taken into consideration when OAWP makes a disciplinary recommendation.

	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>CY 2023</u>
Implemented in full or part // Left VA prior to discipline	49 (68%)	22 (73%)	24 (92%)	19 (100%)
Not Implemented	23 (32%)	8 (27%)	2 (8%)	0 (0%)
Total	72	30	26	19

There are many reasons for the improvement in OAWP's investigations and disciplinary recommendations, including:

- Development of standard operating procedures based on the Council of the Inspectors General on Integrity and Efficiency quality standards for investigations;
- System enhancement to provide efficiencies and automation in support of the investigative workflow;
- Development and implementation of standardized basic training and advanced training for all OAWP investigators;
- Staffing and structuring the Investigations Division to meet the workload; and

- Strengthened reports of investigation which are more informative and educational to management.

3. Investigative Attorneys Division

OAWP's independence is crucial to avoiding a conflict of interest, or the appearance of one, in VA investigations. OAWP was founded on these principles to ensure that whistleblower and senior leader misconduct and poor performance investigations are not led by VA Medical Center or Program Office leadership, who may have a conflict of interest in the investigations. To help ensure independence, in 2022 OAWP created the Investigative Attorneys Division (IAD), which is comprised of attorneys highly skilled in whistleblower and/or Federal personnel law. IAD reports to OAWP's Assistant Secretary, through the Executive Director for Investigations, and its attorneys are independent of VA's Office of General Counsel. IAD assists investigators in allegation reviews, investigative planning and in the drafting and finalization of investigative reports and recommendations. OAWP's use of specialized attorneys to assist the investigators throughout the investigations has led to more properly scoped, efficient and timely investigations, and has contributed to the greater adoption of OAWP's disciplinary recommendations in FY 2023.

VA recognizes and respects the independent authorities of OAWP. OAWP is not subordinate to VA's Office of General Counsel. OAWP relies on IAD for investigative support and legal sufficiency review of its investigations, and the Office of General Counsel does not participate in OAWP's investigations or in discussions on case-specific disciplinary recommendations.

4. Alternative Dispute Resolution Pilot and Section 2302(c) Certification Program

VA is excited to share that beginning in October of 2023, OAWP [is launching] an Alternative Dispute Resolution (ADR) Pilot Program. The initial focus of this pilot ADR program will be both on whistleblower retaliation cases and cases involving allegations of senior leader misconduct or poor performance, which will allow for potential corrective action to be addressed upfront via a binding settlement agreement. If mediation is not successful, the case returns to OAWP for investigation. All mediation cases will be subject to an accountability review after a successful mediation.

This year, VA became re-certified under the U.S. Office of Special Counsel's (OSC) 5 U.S.C. § 2302(c) certification program. OAWP obtained this certification for VA and continues to ensure the annual requirements of 2302(c) certification are met. OSC's 2302(c) Certification Program allows Federal agencies to show that they meet the statutory obligation of informing their workforce about the rights and remedies available to them under the Civil Service Reform Act, the Whistleblower Protection Act, the Whistleblower Protection Enhancement Act, the new requirements of the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and other related laws.

5. Training and Outreach

Under 38 U.S.C. § 733, VA is required to provide training to employees on whistleblower rights and protections. In FY 2023, approximately 405,154 VA employees and 43,771 supervisors were compliant with OAWP's mandatory education on whistleblower rights and protections provided through our online education platform (Talent Management System).

In addition to the online training, OAWP also provided live, supplemental training to the employees of VA. In FY 2021, OAWP provided live, supplemental training on whistleblower rights and protections to 1,535 employees. Just two years later, in FY 2023, OAWP provided 169 sessions of this live, supplemental training to 13,210 employees, an 861% increase. Additionally, in April 2023, OAWP started conducting in-person supplemental training sessions for supervisors in VA. OAWP conducted 18 sessions across the country and reached over 1,700 supervisors in-person.

At the start of FY 2023, OAWP established a new position, the Whistleblower Navigator, that is designed to assist whistleblowers navigate the myriad of entities who have investigative authority. The Whistleblower Navigator provides direct information on OAWP's processes, procedures and practices, and helps to identify relevant laws and policies that may affect whistleblowers.

In addition to supporting whistleblowers, OAWP recently initiated a senior leader outreach and education program directed at senior leaders in VA facilities across the Nation. These live, in-person presentations include instruction on whistleblower rights and protections and OAWP recommendations. These presentations also provide an opportunity for meaningful discussions with VA leadership on OAWP's investigations and recommendations, management's obligations and ways OAWP can continue to make improvements.

6. Advice to Secretary

Through its Compliance and Oversight Directorate, OAWP provides advice to the Secretary on all matters relating to accountability and similar matters that affect public trust. Under the advice to the Secretary provision, the Directorate also reviews the efficiency and effectiveness of VA programs and operations across the enterprise. In FY 2023, OAWP provided four inaugural reports to the Secretary under this provision. Three reports focused on the critical role of VHA's Military Sexual Trauma (MST) Coordinators, specifically, training of MST Coordinators, resources for and accountability of MST Coordinators, and governance of the MST Coordinator program. The fourth report focused on VBA's use of trauma-informed communications in its claims correspondence with Veterans. VHA and VBA are taking steps to address OAWP's MST recommendations.

7. Climate Review and Tracking Data

In 2023, OAWP conducted its inaugural climate review to evaluate whether VA facilities and Program Offices are fostering an environment where employees feel safe raising concerns. OAWP climate reviews are critical to VA's accountability efforts. When employees feel empowered to blow the whistle on waste and misconduct, their disclosures can lead not only to a more accountable workforce, but to powerful systemic changes that ultimately improve the way VA serves the country's Veterans.

The Compliance and Oversight Directorate is also comprised of a Compliance Analytics and Reporting Division (CARD) that fulfills the statutory mandate to track and record oversight entity recommendations. To date OAWP has tracked and recorded at least 1,369 reports with 7,748 individual recommendations from OIG, OMI, OSC and the U.S. Government Accountability Office (GAO). CARD has begun work on reviewing and confirming implementation of recent recommendations and tracking disciplinary recommendations to identify cases of potential senior leader misconduct within OAWP's authority to investigate. The Directorate is working on operationalizing the statutory requirement to review recommendations by planning performance audits or reviews that would look at whether the VA's implementation of OIG, OMI, OSC and GAO recommendations actually solved the underlying problems identified by those oversight entities, and whether systemic issues need to be addressed.

CARD also produces calendar year and quarterly reports examining trends in OAWP complaints and is creating a real-time dashboard that will be available to the field to identify critical areas/issues (including potential Climate Review sites). The trend analyses can be used to spot burgeoning problems and identify areas where education or focused attention would be productive. At the beginning of FY 2023, CARD presented its inaugural meta-analysis of oversight entities' patient care recommendations across Veterans Integrated Services Networks (VISN), essentially a composite of OIG, OMI and GAO reports on patient care issues, but consolidated by area of health care and VISN. This adds value and drives accountability by giving VISN directors insight into potentially systemic issues across their VISN before they become substantial problems.

CARD is also responsible for tracking whistleblower retaliation settlement agreements. Once the agreements are received from OGC, CARD enters them into its custom database, recording the underlying cases resolved by the settlement and the amount of settlement, among other things. To date over 65 settlements have been recorded. Settlements above a certain financial threshold amount are sent to the Investigative Attorneys Division for an accountability review—to determine if the underlying conduct that gave rise to the settlement needs to be addressed. If so, OAWP would conduct an investigation and make a disciplinary recommendation as appropriate.

Conclusion

OAWP could not have done any of this without our incredible staff. OAWP's ongoing employee engagement efforts aim to create a supportive and fulfilling work environment where employees can thrive personally and professionally. By fostering a culture of active participation, open communication and continuous improvement, we are enhancing employee satisfaction and strengthening our organization's overall health.

OAWP's Employee Engagement and Organizational Health Index (OHI) scores are captured through the VA's annual All Employee Survey (AES). During the 2023 AES (polled in June of 2023), 89% of employees participated in the survey. OAWP received two awards as the highest Organizational Health Index scoring site and the Most Improved site for 2023 for all VA Central Offices. The combined measures of employee engagement and our OHI score are a testament to OAWP's employees and their ongoing commitment to the VA I-CARE values of Integrity, Commitment, Advocacy, Respect and Excellence.

VA is committed to accountability and OAWP employees work hard every day to continue to operationalize the tools provided in the Accountability and Whistleblower Protection Act of 2017 to protect whistleblowers and create a culture of accountability. Because of this hard work, OAWP will continue to add value and serve as an asset to the Department, its whistleblowers and employees, and the Nation's Veterans.

Chairwoman Kiggans, Ranking Member Mrvan and Members of the Sub-Committee on Oversight and Investigations, thank you for allowing VA the opportunity to discuss the progress of OAWP.