July 2018

DEPARTMENT OF VETERANS AFFAIRS

Actions Needed to Address Employee Misconduct Process and Ensure Accountability

GAO Highlights

Highlights of GAO-18-137, a report to congressional requesters

Why GAO Did This Study

VA provides services and benefits to veterans through hospitals and other facilities nationwide. Misconduct by VA employees can have serious consequences for some veterans, including poor quality of care. GAO was asked to review employee misconduct across VA. This report reviews the extent to which VA (1) collects reliable information associated with employee misconduct and disciplinary actions, (2) adheres to documentation-retention procedures when adjudicating cases of employee misconduct, (3) ensures allegations of misconduct involving senior officials are reviewed according to VA investigative standards and these officials are held accountable, and (4) has procedures to investigate whistle-blower allegations of misconduct; and the extent to which (5) data and whistle-blower testimony indicate whether retaliation for disclosing misconduct occurs at VA.

GAO analyzed 12 information systems across VA to assess the reliability of misconduct data, examined a stratified random sample of 544 misconduct cases from 2009 through 2015, analyzed data and reviewed cases pertaining to senior officials involved in misconduct, reviewed procedures pertaining to whistle-blower investigations, and examined a nongeneralizable sample of whistle-blower disclosures from 2010 to 2014.

What GAO Recommends

GAO makes numerous recommendations to VA to help enhance its ability to address misconduct issues (several of the recommendations are detailed on the following page).

View GAO-18-137. For more information, contact Kathy Larin at (202) 512-5045 or larink@gao.gov.

What GAO Found

The Department of Veterans Affairs (VA) collects data related to employee misconduct and disciplinary actions, but fragmentation and data-reliability issues impede department-wide analysis of those data. VA maintains six information systems that include partial data related to employee misconduct. For example, VA's Personnel and Accounting Integrated Data system collects information on disciplinary actions that affect employee leave and pay, but the system does not collect information on other types of disciplinary actions. The system also does not collect information such as the offense or date of occurrence. GAO also identified six other information systems that various VA administrations and program offices use to collect specific information regarding their respective employees' misconduct and disciplinary actions. GAO's analysis of all 12 information systems found data-reliability issues—such as missing data, lack of identifiers, and lack of standardization among fields. Without collecting reliable misconduct and disciplinary action data on all cases department-wide, VA's reporting and decision making on misconduct are impaired.

VA inconsistently adhered to its guidance for documentation retention when adjudicating misconduct allegations, based on GAO's review of a generalizable sample of 544 out of 23,622 misconduct case files associated with employee disciplinary actions affecting employee pay. GAO estimates that VA would not be able to account for approximately 1,800 case files. Further, GAO estimates that approximately 3,600 of the files did not contain required documentation that employees were adequately informed of their rights during adjudication procedures—such as their entitlement to be represented by an attorney. The absence of files and associated documentation suggests that individuals may not have always received fair and reasonable due process as allegations of misconduct were adjudicated. Nevertheless, VA's Office of Human Resource Management does not regularly assess the extent to which files and documentation are retained consistently with applicable requirements.

VA did not consistently ensure that allegations of misconduct involving senior officials were reviewed according to investigative standards and these officials were held accountable. For example, based on a review of 23 cases of alleged misconduct by senior officials that the VA Office of Inspector General (OIG) referred to VA facility and program offices for additional investigation, GAO found VA frequently did not include sufficient documentation for its findings, or provide a timely response to the OIG. In addition, VA was unable to produce any documentation used to close 2 cases. Further, OIG policy does not require the OIG to verify the completeness of investigations, which would help ensure that facility and program offices had met the requirements for investigating allegations of misconduct. Regarding senior officials, VA did not always take necessary measures to ensure they were held accountable for substantiated misconduct. As the figure below shows, GAO found that the disciplinary action proposed was not taken for 5 of 17 senior officials with substantiated misconduct.

What GAO Recommends

GAO recommends, among other things, that the Secretary of Veterans Affairs

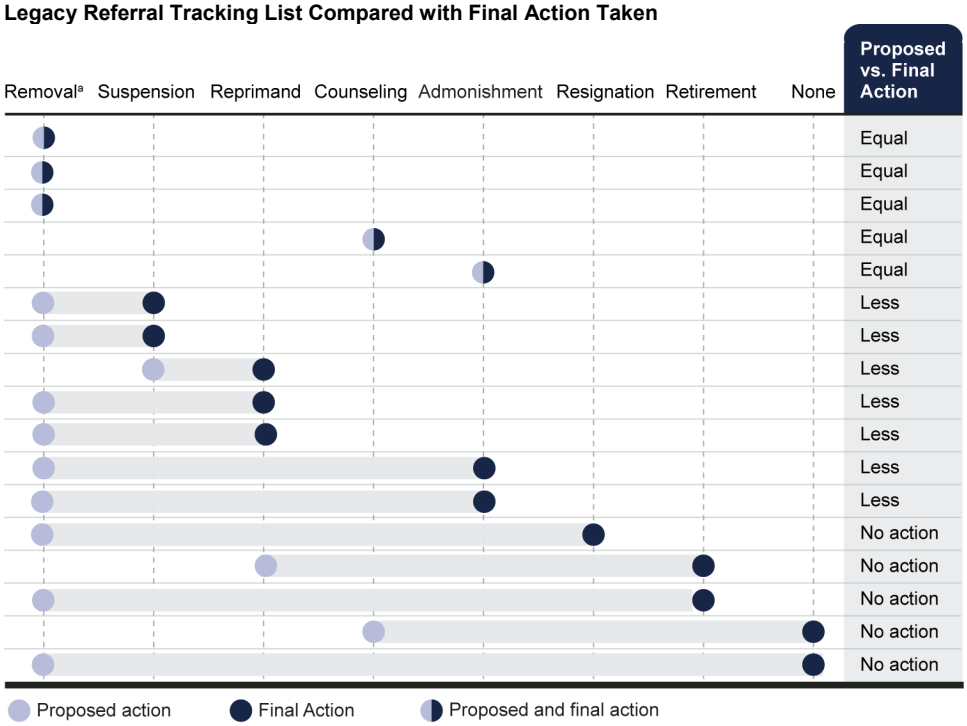
- develop and implement guidance to collect complete and reliable misconduct and disciplinary-action data department-wide; such guidance should include direction and procedures on addressing blank fields, lack of personnel identifiers, and standardization among fields;
- direct applicable facility and program offices to adhere to VA's policies regarding misconduct adjudication documentation;
- direct the Office of Human Resource Management to routinely assess the extent to which misconduct-related files and documents are retained consistently with applicable requirements;
- direct the Office of Accountability and Whistleblower Protection (OAWP) to review responses submitted by facility or program offices to ensure evidence produced in senior-official case referrals demonstrates that the required elements have been addressed;
- direct OAWP to issue written guidance on how OAWP will verify whether appropriate disciplinary action has been implemented; and
- develop procedures to ensure (1) whistle-blower investigations are reviewed by an official independent of and at least one level above the individual involved in the allegation, and (2) VA employees who report wrongdoing are treated fairly and protected against retaliation.

GAO also recommends, among other things, that the VA OIG

- revise its policy and require verification of evidence produced in senior-official case referrals.

VA concurred with nine recommendations and partially concurred with five. In response, GAO modified three of the recommendations. The VA OIG concurred with one recommendation and partially concurred with the other. GAO continues to believe that both are warranted.

Action Proposed in Department of Veterans Affairs (VA) Office of Accountability Review's Legacy Referral Tracking List Compared with Final Action Taken



Source: GAO analysis of VA information. | GAO-18-137

[a]Adverse action.

As a result of June 2017 legislation, a new office within VA—the Office of Accountability and Whistleblower Protection—will be responsible for receiving and investigating allegations of misconduct involving senior officials.

VA has procedures for investigating whistle-blower complaints, but the procedures allow the program office or facility where a whistle-blower has reported misconduct to conduct the investigation. According to the OIG, it has the option of investigating allegations of misconduct, or exercising a "right of first refusal" whereby it refers allegations of misconduct to the VA facility or program office where the allegation originated. VA does not have oversight measures to ensure that all referred allegations of misconduct are investigated by an entity outside the control of the facility or program office involved in the misconduct, to ensure independence. As a result, GAO found instances where managers investigated themselves for misconduct, presenting a conflict of interest.

Data and whistle-blower testimony indicate that retaliation may have occurred at VA. As the table below shows, individuals who filed a disclosure of misconduct with the Office of Special Counsel (OSC) received disciplinary action at a much higher rate than the peer average for the rest of VA in fiscal years 2010–2014.

Comparison of Adverse Disciplinary Action Taken for Nonanonymous Department of Veterans Affairs (VA) Employees Who Reported Wrongdoing and Those Who Did Not, 2010–2014

Employee category	Percentage for whom adverse actions were taken		
	Prior to disclosure	Year of disclosure	Year after disclosure
Individuals who filed a disclosure	2	10	8
Rest of VA	1	1	1

Source: GAO analysis of VA data. | GAO-18-137

Additionally, GAO's interviews with six VA whistle-blowers who claim to have been retaliated against provided anecdotal evidence that retaliation may be occurring. These whistle-blowers alleged that managers in their chain of command took several untraceable actions to retaliate against the whistle-blowers, such as being denied access to computer equipment necessary to complete assignments.