



SPECIAL INVESTIGATION

**Additional Appointments
of
Supervisory and Managerial Employees**

California Department of Veterans Affairs

Prepared By:
State Personnel Board
Compliance Review Division
May 16, 2013

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the board's decisions, rules, policies, and consultation.

In addition, the SPB may review an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. The four major areas of review are examinations, appointments, equal employment opportunity (EEO), and personal services contracts.

The SPB may also conduct special investigations of an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. Special investigations may be initiated in response to a specific request or when SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

In response to a request by the Legislature, the SPB conducted a special investigation into the Department of Veterans Affairs (CalVet)'s personnel policies and practices related to two supervisory and/or managerial employees who held additional appointments in rank-and-file positions on January 11, 2013. On that date, CalVet's records reflect that a full-time permanent Laundry Supervisor I held by way of reinstatement an additional appointment as a rank-and-file permanent intermittent Barbershop Manager. CalVet's records also show that a full-time permanent Chief Physician and Surgeon held by way of reinstatement an additional intermittent appointment to the same managerial class but with the working title of a Physician and Surgeon.

Regardless of whether an appointment is an additional appointment, civil service laws and rules apply to the appointment, unless the appointment is expressly exempted from civil service. Generally, those laws and rules require hiring departments to ensure a competitive and fair selection process that includes advertising for the position;

determining whether an eligible list for the classification of the vacant position exists; collecting applications; and conducting hiring interviews.

In addition, an appointment by way of reinstatement must be determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures assessing job-related qualifications. Selection procedures must be designed and administered to select those individuals who best meet the selection need.

CalVet did not ensure a competitive and fair selection process for the Barbershop Manager and Physician and Surgeon positions that included advertising for the vacancies, determining if eligible lists for classifications existed, or conducting hiring interviews. In addition, CalVet appointed the Laundry Supervisor (who at the time of the intermittent Barbershop Manager appointment held the position of Launderer Assistant) and Chief Physician and Surgeon to the additional appointments without determining their performance in selection procedures.

The additional appointments were thus not in compliance with civil service laws and rules, or merit principles. However, since these appointments have been in place for over one year and no evidence exists that either the employees or the hiring authority acted in bad faith, it is recommended that these appointments stand.

In addition, while departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR's Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that CalVet review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. Further, CalVet should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments.

CalVet must comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

BACKGROUND

Section 350 of the SPB's Personnel Management Policy and Procedures Manual on "Appointments and Status" (300-911 (1/79) Rev. 10/30/86) states, in pertinent part, that an additional appointment is subject to civil service laws and rules, as follows:

Additional appointment is the term used when a State civil service employee is appointed to a second position in State service. The term is descriptive only since the fact that an appointment is held as an additional appointment does not change the civil service law and rule provisions that would otherwise apply to it.

¶...¶

There are no laws or rules that relate specifically to additional appointments. The authorities for making additional appointments are the same as for making any other appointment. These include the provisions on list appointments, transfers, reinstatements, etc. For example, an Office Assistant II who was reachable on the promotional list for Stenographer could receive an additional appointment as a Stenographer in the same manner as any other reachable eligible.

Section 350 also addresses two areas of “particular concern” regarding the good faith of an additional appointment:

1. The intent of the appointment must not be to circumvent the full-time appointment process; for example, making two part-time appointments of an individual who is eligible for part-time, but not full-time employment.
2. The intent of the appointment must not be to circumvent the overtime provisions.

Additionally, to ensure the proper use of additional appointments, Section 350 provides these examples: an additional appointment “to a distinctly different employment situation than the employee’s initial appointment; typically, this would involve appointment to a different class, department or State facility.”

The following departments had supervisors and/or managers who held additional appointments in rank-and-file positions within the same department on January 11, 2013:

Department	Count
California Department of Consumer Affairs	1
California Department of Corrections and Rehabilitation	227
California Department of Education	2
California Department of Food and Agriculture	2
California Department of Forestry and Fire Protection	1

California Department of Motor Vehicles	2
California Department of State Hospitals	173
California Department of Social Services	101
California Public Employees' Retirement System	56
California Department of Veterans Affairs	2
Employment Development Department (CUIAB)	4
Total	571

Source: State Controller's Office

The Legislature requested that SPB and Department of Human Resources (CalHR) review those additional appointments.¹ In order to provide a comprehensive review in the most expeditious manner, CalHR focused on compliance with classification, compensation and labor laws, rules, and policies, while SPB focused on compliance with civil service laws, rules, and policies.

This report contains only the results from the SPB's review.

SCOPE AND METHODOLOGY

The scope of this special investigation involved a review of additional appointments held by CalVet's supervisors and/or managers in rank-and-file positions on January 11, 2013. CalVet's records reflect two additional appointments meeting this criteria: a full-time permanent Laundry Supervisor I who held by way of reinstatement an additional appointment as a rank-and-file permanent intermittent Barbershop Manager; and a full-time permanent Chief Physician and Surgeon who held by way of reinstatement an additional intermittent appointment to the same managerial class but with the working title of Physician and Surgeon.

The primary objective of this review was to determine if the additional appointments complied with state civil service laws, rules, and policies, and to recommend corrective action for any violations identified.

The SPB held an entrance conference with CalVet on March 5, 2013, to explain the special investigation process. On that same date, a material request form was provided

¹ In January 2013, CalHR issued Policy Memo 2013-007 to Personnel Management Liaisons (PML) prohibiting departments from processing any new additional appointments. On April 25, 2013, CalHR issued Policy Memo 2013-015 instructing that effective immediately departments were no longer authorized to make any additional appointments for managers and supervisors. Policy Memo 2013-015 also sets forth options departments can consider in lieu of appointing managers and supervisors to additional positions.

to CalVet requesting the appointment files and other information relating to the additional appointments.

The SPB examined the documentation that CalVet provided, which included duty statements for the Laundry Supervisor I, Barbershop Manager, Chief Physician and Surgeon, and Physician and Surgeon classifications; a CalVet organization chart; an employee-history printout; a request for personnel action; an internal memorandum justifying the additional appointments; and the Notice of Personnel Action (NOPA) effecting the additional appointments. The SPB also interviewed appropriate CalVet staff.

CalVet was provided a copy of the SPB's draft report on April 22, 2013. CalVet was given until April 24, 2013, to submit a written response to the SPB's draft report. On April 24, 2013, the SPB received and carefully reviewed the department's response, which is set forth below.

FINDINGS

In order to be in compliance with the Department of Public Health/Licensure, CalVet must maintain barbering services for its residents. In 2009, the individual in the full-time Barbershop Manager position was scheduled to be out for approximately 30 days due to an illness. As a result, CalVet required coverage for the position. In addition, CalVet determined that backup coverage needed to be provided in the absence of its only barber. Effective on December 1, 2009, CalVet appointed its Laundry Supervisor², who held a barber's license, to an additional appointment as an intermittent Barbershop Manager.

Effective on February 16, 2010, CalVet appointed its permanent full-time Chief Physician and Surgeon to an additional appointment as an intermittent Chief Physician and Surgeon but with the working title of Physician and Surgeon³. The additional appointment was used to cover unstaffed on-call/call back assignments on Tuesdays, vacations, and unexpected absences. Rank-and-file Physicians and Surgeons also provided these on-call/call back assignments.

Departments must have recruitment strategies designed to be "as broad and inclusive as necessary to ensure the identification of an appropriate candidate group." (Merit

² At the time of the additional appointment to the Barbershop Manager position, the employee was in a rank and file Launderer Assistant position. He was subsequently promoted to Laundry Supervisor I, the position he held at the time of this investigation.

³ The Memorandum of Understanding for Bargaining Unit 16 expressly permits "the appointment of eligible permanent full-time employees for additional appointments to fill *advertised* vacancies [emphasis added]." The MOU's authorization of additional appointments does not negate, and in fact, implies, the application of civil service rules in selecting those bargaining unit members for additional appointments.

Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification; determining whether an eligible list is necessary to fill the position; advertising the position, which may include certifying the eligible list; receiving applications, and if no applications are received, re-advertising the position with increased recruitment efforts; screening applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conducting hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

SPB rules require that appointments to positions in state civil service by way of reinstatement be made on the “basis of merit and fitness, defined exclusively as the consideration of each individual’s job-related qualifications for a position...as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job-related qualifications” (Cal. Code Reg., tit. 2, § 250, subd. (a).)

CalVet did not recruit for the Barbershop Manager or Physician and Surgeon positions. CalVet did not post or advertise the Barbershop Manager and Physician and Surgeon positions, clear or certify eligible lists, or collect applications. There were also no screening or rating criteria for the positions, and no other candidates were considered. In addition, CalVet did not appoint the Laundry Supervisor and Chief Physician and Surgeon to the additional appointments by determining their performance in selection procedures. Instead, CalVet merely offered them the additional appointments.

Both additional appointments were funded by a temporary help blanket or budget. However, civil service laws and rules apply to all appointments, unless expressly exempted from civil service, regardless of how the positions are funded (i.e., funded through the department’s regular/on-going position budget or funded through the department’s temporary help position budget). The additional appointments of the Laundry Supervisor and Chief Physician and Surgeon were not exempted from civil service laws and rules.

Thus, the additional appointments of the Laundry Supervisor as a Barbershop Manager and the Chief Physician and Surgeon as an intermittent Chief Physician and Surgeon, with the working title of Physician and Surgeon, violated civil service laws and rules, and the merit principles related to the selection and hiring process.

Relative to the correction of appointments, California Code of Regulations, title 2, section 266 states, in pertinent part:

“When the executive officer determines that an appointment is unlawful, the executive officer shall determine the good faith of the appointing power and the employee under Section 8 and shall take corrective action up to and including voiding the appointment, provided that: (a) No corrective action shall be taken on any appointment which has been in effect for one year or longer if both the appointing power and the employee acted in good faith...”

Given that the additional appointments at issue here have been in place for over one year and no evidence exists that either the employees or the hiring authority acted in bad faith or that the rights of another employee are significantly endangered by the retention of the appointments in question, it is recommended that the appointments stand.

In addition, while departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR’s Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that CalVet review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. Further, CalVet should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments.

DEPARTMENTAL RESPONSE

Below sets forth CalVet’s written response to the SPB’s initial report. CalVet had no additional comments.

Because the DOC and the intermittent Barbershop position were not true vacancies, my understanding is the rule does not apply. On page 7, findings, it states that effective 12/01/09 we appointed our Laundry Supervisor to an additional appointment as an intermittent Barbershop Manager. This is not true, we appointed our Launderer Assistant as the intermittent Barbershop Manager, to fill behind an employee that was out for medical issues and ultimately retired. Mr. X⁴ was NOT a supervisor at the time of his appointment to the additional positions, nor was this a true vacancy as the ee [sic] was still in the position being paid leave credits.

⁴ Name redacted by SPB for purposes of confidentiality.

Dr. Y⁵ was also appointed in an additional position that was not a “true” vacancy. This position is only used for the DOC hours which is similar to an on call position. The P&S’s are available for call from staff and relay phone information, on occasion they may determine they need to return to the facility. These positions are not true vacancies and as such we would not recruit for them outside the department.

We did not recruit as there was no position to recruit for.

Page 8 outlines the steps taken to determine whether there is an eligible list for the classification in which the vacancy exists – there were no vacancies.

SPB REPLY

Both the Barbershop Manager and Physician and Surgeon positions were employment opportunities that were filled by state employees as an additional appointment by way of reinstatement. Civil service laws and rules apply to additional appointments regardless of how the positions are funded, unless the positions are expressly exempt from civil service laws and rules. The Barbershop Manager and Physician and Surgeon classifications are not exempt from civil service laws and rules.

Additionally, civil service laws and the merit principle cannot be avoided because the additional appointment involves the employee working hours that are in addition to the hours he/she works in the primary appointment. That is, for purposes of civil service laws and rules, the additional appointment is not an overtime assignment but an appointment to a classification that has a position number and duties and responsibilities that are separate from the duties and responsibilities of the primary appointment. SPB rules require that appointments by way of reinstatement be made on the “basis of merit and fitness, defined exclusively as the consideration of each individual’s job-related qualifications for a position...as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job-related qualifications” (Cal. Code Reg., tit. 2, § 250, subd. (a).) CalVet did not follow this rule.

The SPB also understands that Mr. X was employed in a different rank-and-file position when the additional appointment to the intermittent rank-and-file position was made and that he was subsequently promoted to a supervisory position. This sequence of appointments, however, does not alter the findings of this report.

⁵ Name redacted by SPB for purposes of confidentiality.

It is further recommended that CalVet comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of CalVet during this special investigation.

**BOARD RESOLUTION ADOPTING
SPECIAL INVESTIGATION REPORT AND FINDINGS BY SPB
COMPLIANCE REVIEW DIVISION OVER ADDITIONAL APPOINTMENTS OF
SUPERVISORIAL AND MANAGERIAL EMPLOYEES IN
THE DEPARTMENT OF VETERANS AFFAIRS**

WHEREAS, the State Personnel Board (SPB or the Board) at its duly noticed meeting of May 16, 2013, carefully reviewed and considered the attached Special Investigation Report submitted by SPB's Compliance Review Division concerning additional appointments of supervisory and managerial employees in the Department of Veterans Affairs.

WHEREAS, the Report was prepared following a special investigation that was conducted in response to the Legislature's request to examine whether the practice of appointing supervisory and/or managerial employees in additional rank-and-file positions within the Department of Veterans Affairs violates civil service laws.

WHEREAS, each Report details the background, scope and methodology of the review, the findings and recommendations, and the affected department's response.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein, and authorizes the issuance of the Report to the Legislature in response to its request for review. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

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Board Resolution Adopting
Special Investigation Report Re
The Department of Veterans Affairs
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The foregoing Board Resolution was made and adopted by the State Personnel Board during its meeting on May 16, 2013, as reflected in the record of the meeting and Board minutes.



SUZANNE M. AMBROSE
Executive Officer