

INSPECTOR GENERAL

Legal Review of Report of Investigation

This responds to your request for our review of the subject Report of Investigation (ROI), completed in October 2013. The allegation against Subject was found by the investigating officer (IO) to be substantiated. We concur with his findings and find that the ROI and underlying investigation are legally sufficient. The case may be processed for closure in accordance with AFI 90-301, *Inspector General Complaints Resolution*.

This investigation was initiated in response to an anonymous complaint filed on 23 Mar 13 with the MAJCOM Inspector General (IG) against Subject, Director, MAJCOM Strategic Plans, Programs and Analyses, Base X.¹ The complainant alleged that on 26 Sep 12, Subject showed favoritism to contractors by publicly presenting government-procured coins to government contractors at the conclusion of Wargame 2012. The contractors to whom it was alleged Subject gave coins included individuals from USFalcon, LinQuest, Lockheed Martin, and others.²

Because Subject is a senior official, MAJCOM/IG forwarded the case to SAF/IGS. SAF/IGS conducted a complaint analysis, during which it was determined that *prima facie* evidence supported that Subject violated Air Force guidance in the presentation of government-procured organizational coins to individuals not authorized to receive such coins. The IO noted during the complaint analysis that there was no evidence that indicated favoritism on the part of Subject in presenting the coins to contractors.

BACKGROUND

MAJCOM conducts a Wargame approximately every two years, most recently in 2012 at Base Y.³ It is held in two parts, and the second part of Wargame 2012 was conducted in mid-September 2012.⁴ Wargame 2012 was designed and set up by the Innovation Development Center (IDC), located at Base Z.⁵ The IDC has an umbrella contract with USFalcon, a company that provides wargame technical support.⁶ Lockheed Martin was a subcontractor for USFalcon.⁷ LinQuest and other contractors also supported Wargame 2012.⁸

In June 2012, MAJCOM/A8X authorized the purchase of MAJCOM/A8/9 directorate coins with appropriated funds with a government purchase card (GPC).⁹ On or about 14 Aug 12, MAJCOM/A8/9 Executive Officer completed the purchase of the MAJCOM/A8/9 directorate

¹ ROI, Ex 1

² ROI, Ex 1

³ ROI, Ex 24:3

⁴ ROI, Ex 26:2

⁵ ROI, Ex 24:2

⁶ *Id.*

⁷ *Id.* The IO states that LinQuest was also a subcontractor of USFalcon; however, that assertion is not supported by the evidence. It does appear that LinQuest had a supporting role in Wargame 2012. (See ROI, Ex 19)

⁸ ROI, Ex 19

⁹ ROI, Ex 23:5-7

coins from Lucas Promotional Products.¹⁰ In addition to the coins procured with government money, Subject also had access to coins that had been procured with personal funds.¹¹ The Executive Officer was in charge of the government-procured coins and maintained an excel spreadsheet with the names of everyone who received coins and the number given to each person.¹²

Subject became the Director of MAJCOM/A8/9 on 27 Aug 12. On 12 Sep 12, Subject traveled to Base Y to participate in Wargame 2012, which concluded on 20 Sep 12. The Executive Officer provided to Subject approximately 25 government-procured MAJCOM/A8/9 coins for his use at Wargame 2012.¹³

On or about 26 Sep 12, at the conclusion of Wargame 2012, Subject presented government-procured MAJCOM/A8/9 coins to several individuals that he identified as “professional performers” who made “significant contributions to the success of the wargame.”¹⁴ Of those professional performers who received a government-procured MAJCOM/A8/9 coin, eight were contractors from USFalcon, Lockheed Martin, LinQuest, and other unidentified companies.¹⁵

On or about 20 Dec 12, Subject presided over the promotion ceremony of Lt Col JW to the rank of colonel. At some point during the ceremony, Subject gave government-procured MAJCOM/A8/9 coins to Col JW and members of Col JW’s family.¹⁶

ANALYSIS

The standard of proof for substantiating allegations investigated by the Inspector General is a preponderance of the evidence – a determination, considering all of the evidence gathered, that it is more likely than not that events have occurred as alleged.¹⁷

ALLEGATION. That Subject, beginning on or about 4 Sep 12 to the present, improperly presented organizational coins purchased by government funds to recipients, in violation of MAJCOM Supplement, dated 23 Dec 10 (Incorporating Change 1, 29 Jun 12), to AFI 36-2805, *Special Trophies and Awards*, 29 Jun 01.

Standards

AFI 65-601, Volume 1, *Budget Guidance and Procedures*, 16 Aug 12, states in pertinent part:

¹⁰ ROI, Ex 8; 23:5-9

¹¹ ROI, Ex 20:6, 9-12

¹² ROI, Ex 5; 20:6

¹³ ROI, Ex 5:2-3; 26:4, 8; 27:6

¹⁴ ROI, Ex 27:5

¹⁵ ROI, Ex 19; 26:5-6

¹⁶ ROI, Ex 5:3; 22:3-6; 27:7-8

¹⁷ AFI 90-301, para 3.48; Atch 1

4.31. Awards and Gifts. Do not use appropriated funds to purchase gifts for military members, employees, or private citizens unless specifically authorized by law. . . . Commanders may authorize the use of appropriated funds to make cash and non-monetary awards to military members and appropriated fund employees in accordance with the provisions of this section, AFPD 36-28, *Awards and Decorations Programs*, and its implementing instructions, and AFI 36-1004, *The Air Force Civilian Recognition Program*, for civilian performance awards. . . .

...

4.31.2. Mission Accomplishment Awards. Air Force activities may use appropriated funds to purchase special trophies and awards authorized by those AFI 36-XXXX series instructions which pertain to mission accomplishment or a MAJCOM/Base/FOA/DRU supplement thereto. Included are trophies, plaques, emblems, certificates, organizational coins, and similar items that are designed for display purposes. . . .

...

4.31.3. Promotional or Incentive Gifts and Awards:

4.31.3.1. . . . Additionally, there is no authority which allows the use of appropriated funds to procure mementos, i.e., coins or medallions, for Air Force individual military or civilian personnel or units if the reason for presentation is not specifically addressed as a mission accomplishment award published in the Command or Base supplements to AFI 36-XXXX.¹⁸

AFI 36-1004, *The Air Force Civilian Recognition Program*, 3 Dec 09, states in pertinent part:

2.8. Eligibility.

...

2.8.5. Contractors.

2.8.5.1. DoD 1400.25-M, Subsection 451, prohibits awards to individuals or entities in a profit making or commercial relationship with the DoD. Awards may not be created to recognize contractor efforts and contractors are ineligible to participate in Air Force awards program[s] created for Air Force civilian personnel. (Note: Contractor contributions may be acknowledged ONLY if the contribution is “substantially” beyond the terms of the contract or is in the public interest).¹⁹

¹⁸ ROI, Ex 11:61-63

¹⁹ ROI, Ex 12:10

DoD 1400.25-M, *DoD Civilian Personnel Management System*, December 1996, states in pertinent part:

SC451.15.2.2. Persons or organizations having a commercial or profitmaking relationship with the Department of Defense or with a DoD Component shall not be granted recognition, unless the contribution is substantially beyond that specified or implied within the terms of the contract establishing the relationship, or the recognition is clearly in the public interest.²⁰

AFI 36-2805, *Special Trophies and Awards*, 29 Jun 01, states in pertinent part:

1.4. Establishing Special Trophies and Awards Programs. Commanders at any level may establish special trophies and awards programs to recognize military and civilian members and units or organizations. Include such recognition programs in appropriate base supplements.

...

1.7. Funds. Authorize funds for reasonable costs of trophies, plaques, and so forth for presentation purposes. Do not authorize cash awards.

1.7.1. Use appropriated funds for trophies and awards to recognize mission accomplishment. Such awards include Junior Officer, Noncommissioned Officer (NCO), or Airman of the Quarter or Year, functional work area, and so on. Refer to AFI 65-601, [V]olume 1. This authority does not apply to awards for employees who are paid from nonappropriated funds (NAF) according to policies regarding the use of NAF.²¹

MAJCOM Supplement, 23 Dec 10, Incorporating Change 1, 29 Jun 12, to AFI 36-2805, *Special Trophies and Awards*, 29 Jun 01, states in pertinent part:

1.4.6. (Added-MAJCOM) On-the-Spot Recognition and Appreciation Awards. The MAJCOM Commander, MAJCOM Vice Commander, MAJCOM Command Chief Master Sergeant, Headquarters MAJCOM Directors, Headquarters MAJCOM Communications Support Commander, Headquarters MAJCOM Operations Squadron and the Headquarters MAJCOM Section Commander coins will be presented by the MAJCOM Commander, MAJCOM Vice Commander, MAJCOM Command Chief Master Sergeant, Headquarters MAJCOM Directors, Headquarters MAJCOM Communications Support Commander, Headquarters Operations Squadron and the Headquarters MAJCOM Section Commander respectively, to military and civilian personnel who, by their dedicated individual effort, have facilitated the successful accomplishment of a particular program, function or mission.

²⁰ ROI, Ex 10:15

²¹ ROI, Ex 13:4-6

1.4.6.1 (Added-MAJCOM) Government funds may be used to purchase coins, plaques, pens or similar items if they are used as a form of recognition as stated in paragraph 1.4.6. These items are used to recognize exceptional mission accomplishment. They are not used as mementos or gifts, nor should they be issued simply for being assigned to an organization.²²

Discussion

Although the IO considered the entire MAJCOM A8/9 coin log,²³ he focused on certain government-procured coins, their recipients, and the rationale for their distribution. The IO focused first on the coins which were presented to Wargame 2012 contractors. The standards relied upon by the IO in conducting his analysis make it very clear that the Department of Defense (DoD) prohibits awards or recognition to individuals or entities in a profit-making or commercial relationship with the DoD unless the contribution is substantially beyond that specified or implied within the terms of the contract, or the recognition is clearly in the public interest.²⁴ There was no evidence that either of these criteria was met with regard to any of the coins given to contractor employees after Wargame 2012. MAJCOM Supplement to AFI 36-2805 further restricts the ability of MAJCOM directors to present awards to military and civilian personnel only. The IO found, and we concur, that Subject improperly gave government-procured MAJCOM/A8/9 coins to contractors during the wrap-up to Wargame 2012.

Subject explained that he was unaware that some of the individuals to whom he gave coins were contractors, blaming in part his recent arrival at MAJCOM, the failure of the action officers to properly vet recipients, and a failure to identify recipients as either government civilians or contractors.²⁵ The IO found Subject's excuse to be plausible, but not a legal defense, concluding that the preponderance of the evidence supports that Subject violated MAJCOM, Air Force, and DoD guidance when he gave coins to contractors at the wrap-up to Wargame 2012.

The IO focused next on the eight coins that the coin log indicated were for Col JW's December 2012 promotion ceremony to colonel. The IO found that it was not clear exactly how many government-procured coins Subject actually gave to members of Col JW's family as part of the ceremony. However, he did find that at least Col JW's two children and sister received them.²⁶ In addition, Subject testified that he *absolutely* remembered giving a coin to Col JW's father.²⁷ Again, the standards are clear that government-procured gifts are only appropriate for certain, limited, circumstances. Specifically, Air Force activities are allowed to use appropriated funds for special trophies and awards authorized by AFI 36-XXXX series AFIs that pertain to

²² ROI, Ex 14:7

²³ ROI, Ex 5

²⁴ ROI, Ex 10:15; 12:10

²⁵ ROI, Ex 27:3

²⁶ ROI, Ex 22:3. While the IO found that it was not clear how many coins Subject presented, the coin log shows that eight coins were given to Col JW and his family, there were eight family members (including Col JW) in attendance at his promotion ceremony, and the Executive Officer did not get any coins back from Subject after the ceremony. (See ROI, Ex 5:3; 20:9; 22:5-6)

²⁷ ROI, Ex 27:10. Col JW testified that his father is no longer living. Presumably, Subject gave a coin to Col JW's father-in-law. (See ROI, Ex 22:8)

mission accomplishment.²⁸ MAJCOM Supplement to AFI 36-2805 specifically prohibits the use of government-procured coins as mementos or gifts.²⁹ In addition, AFI 65-601, Volume 1, prohibits the use of appropriated funds to purchase gifts for private citizens unless specifically authorized by law. Such distribution of government-procured coins was in violation of AFI 36-2805 and MAJCOM Supplement to AFI 36-2805, as well as AFI 65-601, Volume 1.

Subject excused his distribution of coins to Col JW's two children as authorized by AFI 65-601 "under recruitment and retention, uh, and, and I have [been brought] up under an Air Force where my children have received coins from senior leaders"³⁰ The IO correctly surmised that Subject's apparent reliance on that particular AFI was incorrect. The IO also looked at AFI 36-2015, *Air Force Recruiting Advertising Program*, 23 May 94, which he noted does not provide authority for individuals to purchase or present promotional or incentive gifts and awards as recruitment incentives. AFI 36-2015 specifically states that "the advertising program is centrally planned and controlled to ensure economical, timely, and coordinated response to Air Force personnel requirements."³¹ The IO found, and we concur, that the preponderance of the evidence establishes that Subject violated Air Force guidance when he gave coins to Col JW's family members as part of Col JW's promotion ceremony.³²

Finally, the IO addressed the appropriateness of other coins noted on the log as handed out by Subject. In his own defense, Subject pointed out what he perceived to be errors or lack of clarity in the coin log.³³ For example, Subject cited coins given to a lieutenant colonel and a master sergeant which were listed on the coin log as a "going away gift."³⁴ In describing why he gave the coins to Lt Col H and MSgt K, Subject stated he gave them "for recognition of a job well done as they departed their directorate. . . . [I]t was simply a recognition in accordance with AFI and Air Force Instruction for significant mission accomplishment."³⁵ He also cited the coin he gave to Lt Col KD, listed as "retirement," as having been given for the same reason.³⁶

Based on Subject's testimony, the IO found that there was no specific indication Subject violated 36-2805 or the MAJCOM supplement when he gave government-procured coins for other occasions since there was no witness testimony to the contrary. We find the evidence indicates that Subject does not have a good understanding of the organizational coin recognition program and therefore engages in an expansive reading of Air Force guidance. MAJCOM Supplement to AFI 36-2805 authorizes Subject to present coins to military and civilian personnel who "facilitated the successful accomplishment of a *particular* program, function, or mission."³⁷ Based on his own testimony and the coin log, the preponderance of the evidence supports that

²⁸ ROI, Ex 11:61-62

²⁹ ROI, Ex 14:7

³⁰ ROI, Ex 27:10

³¹ AFI 36-2015, para 2. The AFI lists five specific Air Force advertising programs for recruiting, of which MAJCOM is not one.

³² The IO did not discuss if it was appropriate for Subject to give a coin to Col JW, but the evidence suggests Subject gave the coin in violation of Air Force guidance, as it was not in recognition of a particular program, function, or mission, or as part of a broader Air Force awards program. (See ROI, Ex 27:8)

³³ ROI, Ex 27:8-11

³⁴ ROI, Ex 5:3; 27:8

³⁵ ROI, Ex 5:3; 27:8

³⁶ *Id.*

³⁷ ROI, Ex 14:7 (emphasis added)

Subject presented government-procured coins for general mission accomplishment, as opposed to the successful accomplishment of a particular mission, and to individuals not authorized to receive such coins. In addition to the instances noted above, another example of this is the Executive Officer's farewell, where Subject provided a coin to the Executive Officer "for his outstanding contributions to the unit" and to the Executive Officer's wife "for her outstanding contributions to our unit, and as both the key spouse, as well as her outstanding support."³⁸

Conclusion

The preponderance of the evidence establishes that Subject gave government-procured coins to contractors; that Subject gave government-procured coins to multiple members of a colonel's family as part of promotion festivities; and that Subject gave government-procured coins to military members at their farewells for general contributions to the unit and to a member's wife for the same reason. In each of these instances, Subject did not give the coins to permissible recipients and/or under permissible circumstances.

We concur that the allegation that Subject, beginning on or about 4 Sep 12 to the present, improperly presented organizational coins purchased by government funds to recipients, in violation of MAJCOM Supplement, dated 23 Dec 10 (Incorporating Change 1, 29 Jun 12), AFI 36-2805, *Special Trophies and Awards*, 29 Jun 01, was **SUBSTANTIATED**.

SUMMARY

The ROI and underlying investigation comply with the requirements of AFI 90-301, *Inspector General Complaints Resolution*. The framed allegation has been addressed; the allegation asserts a violation of law or regulation; the IO reasonably applied the preponderance of the evidence standard in arriving at the findings; the IO's conclusions are supported by and consistent with the findings; and the investigation complies with all applicable legal and administrative requirements. As such, we concur with the IO's findings that the allegation is **SUBSTANTIATED**. The ROI is legally sufficient and the case may be closed in accordance with AFI 90-301.

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³⁸ ROI, Ex 5:4; 27:9. Subject also cited the Executive Officer's wife's support to the A8/9 family in her job at the base clinic. (See ROI, Ex 27:9) A check of the Air Force Global Address List revealed one female with the surname of "B" working within the XXst Medical Group: Ms. VB, who is presumably the Executive Officer's wife, is a contractor.