



INVESTIGATIVE REPORT

U.S. Patent and Trademark Office

Time and Attendance Abuse by
Patent Examiner A

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*COVER: Detail of fisheries pediment,
U.S. Department of Commerce headquarters,
by sculptor James Earle Fraser, 1934*

Chapter I: Introduction

I. Background on Examiner A and USPTO's Telework Program

In August 2014, two supervisory patent examiners at the U.S. Patent and Trademark Office (USPTO) walked in to their offices and found copies of the same anonymous letter.¹ The letter alleged that an examiner (Examiner A)² “never shows up to work” and “seems to get away with anything.” The note stated that Examiner A came in to the office only at the “end of each quarter” to submit work and described Examiner A’s work product as “garbage.” The note questioned how the supervisors could “allow this type of behavior” to occur and why Examiner A had not “been fired by now for performance.” After receiving the anonymous letter, both supervisors brought the document to the attention of their manager.³ Their manager subsequently contacted the USPTO’s Employee Relations Division (ER), who then conducted an analysis of the data related to Examiner A. ER discovered hundreds of hours of apparent time and attendance abuse by Examiner A and contacted the Office of the Inspector General (OIG) of the United States Department of Commerce concerning the magnitude of Examiner A’s suspected abuse. The OIG consequently initiated this investigation.

Full-time federal employees are generally required to work at least 80 hours during a two-week period, commonly referred to as a biweek, and must certify their hours in a timekeeping system at the end of each biweek. When employees work fewer than their required hours, but certify that they performed the required hours, the employees engage in “time and attendance abuse.”

Examiner A’s first-level supervisor (Supervisor I), who was responsible for managing Examiner A’s day-to-day work activity, told the OIG that he never suspected that Examiner A engaged in time and attendance abuse prior to receiving the anonymous note. Supervisor I stated further that “it’s hard to tell whether someone has got a time [and attendance] issue” since many patent examiners have flexible work schedules that allow them to work early mornings, late nights, and on weekends.⁴ In addition, Supervisor I stated that he was responsible for managing approximately ■ examiners. Of those ■ examiners, Examiner A and ■ others were permanently stationed at the USPTO’s headquarters in Alexandria, VA, and the remaining ■ examiners teleworked from home on a full- or part-time basis.⁵ Moreover, when the letters were discovered, Supervisor I himself was teleworking from home more than 30 hours per week.

¹ A redacted version of the note appears in Appendix A, *infra*.

² The names of individuals referenced in this report are masked to protect their privacy.

³ A few weeks after the anonymous letter was received, a third supervisor noticed that Examiner A claimed time for days that he knew Examiner A was not in the office and reported his suspicion to USPTO’s Employee Relations Division.

⁴ Employees are not required to work the same schedule week to week, and patent examiners belonging to the Patent Office Professional Association are not required to notify their supervisors of the specific hours they plan to work each day.

⁵ Full-time USPTO telework employees are commonly referred to as “hotelers.”

The OIG's primary goal in conducting this review was to determine whether the evidence supported a finding that Examiner A engaged in time and attendance abuse, and if so, the extent of that abuse. The OIG also sought to understand how such abuse could occur and whether the USPTO's internal controls were effective in monitoring and preventing time and attendance abuse.

While this report presents a case study of only one individual's time and attendance abuse at USPTO, it illustrates the difficulties in preventing and detecting such activity in USPTO's geographically dispersed workforce. According to public information, as of fiscal year (FY) 2014, over 9,400 USPTO employees were "working from home at least one day a week," and approximately 5,000 were "working from home" four or five days per week. Although the USPTO has touted the benefits of its telework program, such as a reduction in rent, increases in employee satisfaction and retention, and a workforce much less affected by severe weather and traffic, this and other OIG efforts show that these programs also carry risks for abuse.

II. Executive Summary

In 2008, Examiner A joined the USPTO as a patent examiner and worked on patent applications. He appeared to perform adequately for his first four years with the agency. In 2012, however, his performance declined dramatically, and he received the lowest possible performance rating for three consecutive years. During that time, his failure to produce an acceptable level of work also elicited nine oral and written warnings. In addition, the OIG identified numerous complaints from patent applicants and their representatives, who communicated to the USPTO management and complained [REDACTED] that Examiner A was not responsive to e-mails or phone calls.

The OIG investigated the time and attendance allegations by interviewing witnesses, reviewing the hours Examiner A claimed to have worked in fiscal year (FY) 2014,⁶ and cross-referencing those hours with multiple USPTO databases: controlled-access turnstile records; secured virtual private network (VPN) access records; and laptop activity records. Generally speaking, the OIG interpreted the data in the light most favorable to Examiner A, giving him credit for hours he certified, unless there was evidence to the contrary.

The OIG's investigation substantiated that Examiner A committed at least 730 hours of time and attendance abuse, resulting in the payment of approximately \$25,500 for hours not worked in FY 2014 alone. The number of Examiner A's unsupported hours in FY 2014 amounted to approximately 43 percent of the total hours he certified for the fiscal year. Considering that Examiner A was given the benefit of the doubt, our analysis likely gave him credit for many hours that he did not work.

The OIG found that 613 of the 730 unsupported hours claimed by Examiner A (85 percent) stemmed from days where there was no evidence that he visited his USPTO campus, connected to the USPTO network from off campus, or performed any work on his government-issued laptop when connected to the network.

⁶ The OIG was unable to investigate prior fiscal years because USPTO keeps certain data necessary for a time and attendance analysis for a period of only one year due to space limitations on their servers.

The remaining 117 unsupported hours stemmed from days in which Examiner A appeared to visit the USPTO campus or logged in to the VPN—but only for a limited amount of time. The OIG also reviewed Examiner A’s official USPTO e-mail and instant messages (IMs) to determine how long he worked on certain days with limited data. In several instances, Examiner A informed colleagues that he was leaving work to hit golf balls at Golf Bar,⁷ play pool, or socialize at restaurants, though he certified a full day in the time and attendance management system. For example, on one such occasion, Examiner A appeared to leave work after spending less than three hours at the USPTO campus, telling a co-worker at USPTO:

Examiner A [12:57 PM]: ok, did u wanna [hit golf balls at Golf Bar] today at all?

Examiner Y [12:58 PM]: actually yeah, let's just go there now?

Examiner A [12:58 PM]: yeah i'm down,

Examiner Y [12:58 PM]: aright cool, like now now? my car's in front of [a building on the USPTO campus]

Examiner A [12:59 PM]: i'll walk over lemme just hit the restroom

Examiner Y [12:59 PM]: aright, see ya out there

The OIG did not identify any other data that would indicate work took place after the IM conversation, yet Examiner A certified a full day of work.

In light of the evidence obtained over the course of the investigation, the OIG concluded that there was sufficient evidence to support a finding that Examiner A violated 18 U.S.C. §§ 287, 641, and 1001, 5 C.F.R. § 2635.101, and the USPTO’s policy on work schedules. The OIG referred the case to the U.S. Attorney’s Office, Eastern District of Virginia, which declined to pursue the matter.

Examiner A resigned from his position immediately prior to a scheduled interview with OIG investigators. In an IM to a co-worker on the day of his resignation, Examiner A stated that the Patent Office Professional Association (POPA), the union representing patent examiners, advised him that he could keep his official personnel file free of any derogatory information if he resigned before the OIG interview. At the conclusion of the investigation, Examiner A declined an opportunity to review the draft report and provide comments.

The evidence regarding Examiner A’s actions raise concerns about whether the agency’s internal controls to prevent such misconduct are adequate and function properly. Despite numerous red flags and the USPTO’s internal controls, the agency did not review Examiner A’s time and attendance records to determine if he was claiming time for work he did not perform. According to the evidence, Examiner A received payment for over 18 full weeks of work, in aggregate, that he did not actually work. Ultimately, USPTO management’s system of internal controls did not detect Examiner A’s time and attendance abuse; to the contrary, these issues

⁷ Golf Bar is a pseudonym for a driving range amusement and bar complex.

did not come to light until a whistleblower submitted anonymous notes to the examiner's supervisor and another manager.

In light of Examiner A's egregious time and attendance abuse, the OIG is recommending that the USPTO consider legal avenues to recover approximately \$25,500 paid to Examiner A as a result of his time and attendance abuse in FY 2014, review Examiner A's records for fiscal year 2015, and recover any funds improperly paid to Examiner A for FY 2015 as well. The OIG further recommends that the USPTO (I) review its policies to determine whether adequate controls are in place to monitor the time and attendance of its employees and ensure the controls are functioning properly, and (II) review the related policies that currently inhibit its ability to pursue time and attendance abuse.

III. Legal and Regulatory Overview

Theft, False Claims and False Statements

All federal employees have a duty to accurately record their time and attendance. Employees are subject to criminal penalties if they fail to uphold that duty by improperly recording their hours in order to receive payment for time not actually worked.⁸ Similar penalties apply to false statements or claims made by employees in furtherance of time and attendance abuse or in an attempt to cover up such abuse.⁹ Federal employees may also be civilly liable for knowingly submitting false claims to the government to be paid for time not actually worked.¹⁰

Standards of Ethical Conduct for Employees of the Executive Branch

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. Pt. 2635, recognize that "[p]ublic service is a public trust" and that each officer or employee of a federal agency "has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain."¹¹ To ensure public confidence in the integrity of the federal government, the Standards of

⁸ See 18 U.S.C. § 641 (Theft of public money, property, or records) ("Whoever . . . steals . . . money, or thing of value of the United States or of any department or agency thereof . . . [s]hall be fined under this title or imprisoned not more than ten years, or both.").

⁹ See 18 U.S.C. § 287 (False, fictitious or fraudulent claims) ("Whoever makes or presents . . . to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title."); 18 U.S.C. § 1001 (False statements or entries) ("[W]hoever, in any matter within the jurisdiction of the executive . . . branch of the Government of the United States, knowingly and willfully . . . makes any materially false, fictitious, or fraudulent statement or representation; or . . . makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined [and] imprisoned not more than 5 years.").

¹⁰ See 31 U.S.C. § 3729 ("In general . . . any person who—(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim . . . is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 . . . plus 3 times the amount of damages which the Government sustains because of the act of that person.").

¹¹ 5 C.F.R. § 2635.101(a).

Ethical Conduct set forth both general principles that government employees are required to adhere to, as well as regulations governing employee conduct in certain specified circumstances.

Section 101(b)(5) of the Standards of Ethical Conduct provides that “[e]mployees shall put forth an honest effort in the performance of their duties.”¹² Section 101(b)(14) sets forth that an “[e]mployee shall endeavor to avoid any actions creating the appearance that they are violating the law” or the Standards of Ethical Conduct.¹³

The USPTO’s Policy on Work Schedules

Section IV.2 of the USPTO’s Policy on Work Schedules requires that “employees are responsible for maintaining and keeping accurate time records of the hours they work and for validating their own time on a biweekly basis.”

¹² 5 C.F.R. § 2635.101(b)(5).

¹³ 5 C.F.R. § 2635.101(b)(5) and (14).

Chapter 2: Background

I. Examiner A's Career at USPTO

Examiner A was hired as a patent examiner by the USPTO in 2008. He was awarded compensation at the GS-5 level, earning an annual salary of more than \$50,000 and also received a recruitment bonus of approximately \$20,000 upon joining the agency. Examiner A received a number of promotions over his first three years of employment with the USPTO. He was promoted from a GS-5 to GS-7 in 2009, to a GS-9 in 2009, and to a GS-11 in 2010.

Examiner A also received time-in-grade step increases in 2010 and 2011, but was denied time-in-grade increases in 2012 and 2013, because of performance issues. Examiner A remained a GS-11 from 2011 until he resigned from the USPTO. His annual salary as of January 2015 was more than \$70,000.

The USPTO conducts annual performance reviews of patent examiners and assigns each examiner a rating between 100 and 500.¹⁴ Examiner A's annual performance reviews indicate that he was an adequate examiner during his early years at the agency, receiving "Fully Successful" ratings each fiscal year from 2008-2010. In FY 2011, Examiner A's performance improved and he received a rating of "Commendable," his highest rating, with a score of 430 out of 500.

Examiner A's performance rating dropped to "Unacceptable" in FYs 2012, 2013, and 2014. During those three years, Examiner A received a performance rating score of 100—the lowest possible score. From FY 2012 until his resignation in 2015, Examiner A also received nine warnings due to his performance falling below certain thresholds.¹⁵ In mid-2014, the USPTO uncovered, and Examiner A later admitted, 13 separate instances of work-related misconduct, commonly referred to as "work credit abuse."¹⁶ These 13 instances of work credit abuse took place in FY 2013 and FY 2014.¹⁷ The OIG also identified multiple complaints submitted in FY 2012-2014 by patent applicants and attorneys, alleging that Examiner A did not respond to their e-mails and phone calls.

¹⁴ The USPTO ratings are as follows: Unacceptable (100-199); Marginal (200-289); Fully Successful (290-379); Commendable (380-459); and Outstanding (439-500).

¹⁵ See App. B, *infra*. Written warnings are the USPTO's version of Performance Improvement Plans for patent examiners.

¹⁶ Work credit abuse, also referred to as mortgaging, is an offense that occurs when an examiner knowingly posts an action for credit that is incomplete in order to improve the score for the production, docket management, or quality elements in the examiner's Performance Appraisal Plan (PAP). In most cases, Examiner A engaged in this abuse in order to avoid written or oral warnings for production or docket management deficiencies, to avoid safety zone notices (*i.e.* notice that an examiner is close to receiving a warning in one of the PAP elements), or to become eligible to receive an award.

¹⁷ There is evidence suggesting that Examiner A had been engaged in this activity since at least 2011.

Table I: Examiner A’s Promotions and Performance Ratings

Fiscal Year	Initial Grade	Promotion/Step Increase (month)	Rating	Score (100-500)	Oral Warnings	Written Warnings
2008	GS-5	--	Fully Successful	--	--	--
2009	GS-5	Promoted to GS-7 Promoted to GS-9	Fully Successful	359	--	--
2010	GS-9	Promoted to GS-11	Fully Successful	340	--	--
2011	GS-11	Step increase awarded	Commendable	430	--	--
2012	GS-11	Step increase denied	Unacceptable	100	2	1
2013	GS-11	Step increase denied	Unacceptable	100	1	--
2014	GS-11	--	Unacceptable	100	3	2

Additionally, numerous patent applicants and their attorneys reached out to Supervisor I and others at USPTO to complain about Examiner A’s lack of responsiveness. For example, on November [REDACTED] 2013, Supervisor I e-mailed Examiner A to explain that an attorney for a patent applicant called because “she has been trying to reach [Examiner A] since October.” On September [REDACTED], 2014, another patent attorney e-mailed Examiner A and copied Supervisor I, explaining that “We have spoken about this many times, the latest being one week ago, and I still have gotten nothing in writing from you, as requested.” Yet another patent attorney complained [REDACTED] that Examiner A’s work products were either improper or that he was unresponsive.

Examiner A’s Work Schedule

Within a few months of his start date, Examiner A began working an Increased Flexitime Program (IFP) work schedule. The IFP schedule allows employees flexibility in achieving their 80-hour requirement every biweek by working Monday through Saturday, between the hours of 5:30 a.m. and 10:00 p.m., rather than a traditional work schedule. Although he was allowed to work a flexible schedule under the IFP, Examiner A was not eligible to telework during these hours as he did not meet grade-level and performance-rating thresholds.

Patent Examiner A’s Ability to Work Off-Campus

In [REDACTED] 2009, Examiner A was approved to participate in a program that permitted certain USPTO employees to work compensated overtime hours outside of the USPTO campus. A laptop and a remote-access device were given to Examiner A, allowing him to log in to the USPTO network from off-site locations. The program changed in late 2013, and Examiner A was no longer allowed to work overtime hours off-campus. Nevertheless, Examiner A’s remote-access device was not deactivated by the employees responsible for administering the agency’s telework program, and he continued to use the device to connect to the network remotely.

ALL WITHHOLDINGS PURSUANT TO EXEMPTIONS (B)(6) & (B)(7)(C)

Examiner A Resigns from the USPTO Immediately Prior to the OIG Interview

The OIG initiated an investigation into Examiner A on [REDACTED] 2014, and found credible evidence that Examiner A had violated federal criminal statutes. We referred this matter to the U.S. Attorney's Office (USAO) for the Eastern District of Virginia for review. The USAO declined to pursue the matter.

On [REDACTED] 2015, the OIG requested a voluntary interview with Examiner A, which Examiner A declined, citing advice he received from POPA. The OIG then scheduled a compelled interview with Examiner A, as authorized by the Department of Commerce Administrative Order DAO-207-10.¹⁸ The OIG informed Examiner A that this interview would explore allegations of work credit abuse, as well as time and attendance issues.¹⁹ Examiner A resigned from the USPTO the following day, [REDACTED], 2015, two hours before his interview with OIG investigators. On the day of his resignation, Examiner A stated in an IM to a co-worker that "popa [Examiner A's patent examiner union] said i should resign today to have a clean slate [with] no conduct or performance record." The OIG provided Examiner A with an opportunity to review and comment on the report, however, Examiner A declined.

¹⁸ Examiner A asserted his *Weingarten* right to have a union representative present at the interview.

¹⁹ Examiner A raised the issue of work credit abuse during an earlier telephone conversation with the OIG.

Chapter 3: Data Analysis

I. **OIG's Review of Examiner A's Time and Attendance Data**

The OIG examined the following records during the investigation.

- **Time and Attendance Data:** The Department of Commerce maintains a time and attendance system that employees use to report and certify work and leave hours. The OIG reviewed the hours Examiner A certified in the time and attendance system for FY 2014 to determine the amount of work hours Examiner A actually performed each day during the fiscal year.
- **USPTO Turnstile Records:** Controlled-access turnstiles are used to gain entry in to the USPTO campus. The turnstiles can be activated only when an employee swipes a valid USPTO identification badge at the badge reader, which also records the date and time an employee enters a campus building. The USPTO previously recorded the date and time that an employee exited campus buildings, but disabled that function in May 2008.²⁰ As a result, the OIG was able to determine what time Examiner A entered a campus building, but not generally what time he left.²¹
- **Virtual Private Network (VPN) Events:** The USPTO's private network can be accessed securely outside of the USPTO campus using a VPN. The USPTO records the time and type of VPN events, such as when an examiner connects or disconnects to the VPN. This data is recorded regardless of whether the examiner connects to the VPN using a government-issued laptop or a personal computer. For purposes of our analysis, the OIG focused on two VPN data points—the earliest and latest VPN events in any given day—to determine when Examiner A could have performed his duties from somewhere other than his normal place of duty.²² We could not review VPN events prior to FY 2014 because the USPTO retains such data for only one year due to space limitations on their servers.²³
- **Events Performed on Government Computer:** Whenever a government-issued computer is connected to the USPTO network, either at the USPTO headquarters or remotely through the VPN, the network records and preserves the date, time, and numerous computer-related events. Our analysis focused on four events that a user can perform on his or her government-issued computer: (1) logging in to a computer with a username and password; (2) logging off of the computer; (3) locking the computer's

²⁰ See App. C, *infra*.

²¹ On weekdays, the USPTO records when employees exit campus buildings on Monday through Friday between the hours of 10:31 p.m. and 5:29 a.m.

²² In cases when the VPN use was unclear based on the first or last event of the day, the OIG reviewed whether VPN use carried over from a previous day or into the following day.

²³ The OIG requested VPN and computer data as far back as 2012 in order to perform a thorough investigation of Examiner A's time, but the USPTO does not preserve data on their servers longer than one year.

screen to prevent unauthorized access; and (4) unlocking the computer. The OIG reviewed Examiner A's computer event data in order to determine whether the data supports Examiner A's certified work hours. We could not review computer events prior to FY 2014 because the USPTO retains such data for only one year due to space limitations on their servers.

- **E-mails and Instant Messages (IMs):** The OIG reviewed official USPTO e-mails and IMs to corroborate the other data sources noted above.

In general, the OIG interpreted the data in the light most favorable to Examiner A. For instance, the OIG gave Examiner A credit for hours he certified unless there was evidence to the contrary. If the amount of time Examiner A was logged in to his laptop from the time of log in through 10:00 p.m.—the end of Examiner A's workday under his IFP work schedule—was equal to or greater than the amount of hours that he certified for that day, then we presumed that Examiner A worked the entire time certified. We followed the same process regarding VPN records, and when there was a combination of VPN data and turnstile data on a particular day. The exception to this approach was when a laptop or VPN event indicated that Examiner A logged off, shut down his laptop, or disconnected from the VPN, prior to 10:00 p.m. In those instances, we concluded that Examiner A stopped working at the logoff or shut down time. Although Examiner A was neither approved to telework nor work on campus between the hours of 10:01 p.m. and 5:29 a.m., we nevertheless credited him for those hours if it was supported by the data.²⁴ Additionally, we credited Examiner A for all of the hours he certified on days with turnstile data, even when there was little to no additional evidence supporting the certified hours. By interpreting the data in the light most favorable to Examiner A, the OIG's analysis gave him credit for many hours that he likely did not work.²⁵ Our analysis indicates that the total number of unsupported hours in FY 2014 would increase significantly if our approach was less conservative.

By cross-referencing and analyzing the four data sets, the OIG identified Examiner A's unsupported hours and placed them into one of the following two groups:

- **Category 1:** Unsupported certified hours in the time and attendance system on days with no records indicating that Examiner A entered the USPTO building, logged in to his government-issued laptop while connecting to the USPTO network either on-site or remotely, or connected to the VPN using a personal computer.
- **Category 2:** Unsupported hours certified in the time and attendance system on days with limited records.

²⁴ In addition to viewing the data in the light most favorable to Examiner A, our approach did not account for the USPTO requirement that all examiners must take a 30-minute lunch break. Accounting for the 30-minute lunch break would have increased the number of unsupported hours.

²⁵ If the USPTO had required employees to use their badge at the turnstile when exiting the building, we would have been able to verify, to a virtual certainty, whether or not Examiner A was present in his building for the amount of hours he claimed on any given day.

II. Results of the OIG's Data Analysis

Using the above-referenced methodology, the OIG reviewed the approximately 1,700 hours that Examiner A certified to have worked during FY 2014 and identified 730 hours—43 percent of the total hours he certified for FY 2014—for which there was no evidence that he worked. Eighty-three percent of the identified unsupported hours had no corresponding data to indicate that Examiner A was working at all on the days in question. The remaining time discrepancies that we identified had some corresponding records, but those records did not support some or all of time that Examiner A claimed.

Table 2: Summary of OIG's Evaluation of Examiner A's Hours in FY 2014

Category	Number of Unsupported Hours	Amount
Hours on Days with No Records	613	\$21,500
Hours on Days with Limited Records	117	\$4,000
	Total: 730	\$25,500

Category 1: The OIG Identified 613 Unsupported Hours on Days with No Records

The OIG identified 613 hours certified by Examiner A—83 percent of the total number of unsupported hours—with no corresponding evidence to support those claims, including computer login records, remote access records, or building turnstile records. The hours in this category include 58 full work days exceeding eight hours, with no evidence that Examiner A entered his office building, connected to the USPTO VPN, or performed *any* work on his laptop while connected to the USPTO network.

Table 3: Hours on Days with No Records in FY 2014

Unsupported Hours Per Day	Number of Days with Discrepancies
11 hours	2 days
10 hours	51 days
8 hours	5 days
7 hours	1 day
6 hours	5 days
4 hours	1 day
	Total: 65 days

Category 2: The OIG Identified 117 Unsupported Hours on Days with Limited Records

The second category of irregular time included 15 days with some records for Examiner A, but those records did not support 117 hours certified by Examiner A. To determine the number of hours that Examiner A worked on each of these 15 days, the OIG conducted analysis of computer workstation data, VPN data, turnstile data, e-mail and IM records.

Table 4: Hours on Days with Limited Records in FY 2014

Unsupported Hours Per Day	Days with Discrepancies
10 hours	2 days
9.75 hours	3 days
9.5 hours	1 day
8.25 hours	1 day
8 hours	1 day
7.5 hours	1 day
7.25 hours	2 days
6.25 hours	1 day
5.5 hours	1 day
4.75 hours	1 day
3.5 hours	1 day
	Total: 15 days

The days in this category are grouped below based on the relevant evidence: workstation data; VPN data; turnstile data and IMs; and turnstile data only.

Workstation Data (3 of 15 days)

The only support the OIG identified for the certified hours on three of the 15 days in this subgroup of Category 2 were based on user initiated logoff events, which indicate that a user actively logged off of his or her computer while the computer was connected to the USPTO network. For computer logoff events, the OIG presumed that Examiner A worked from midnight until the time of the logoff.²⁶ For example, on February [REDACTED] 2014, Examiner A certified ten hours in the time and attendance system, but the data captured on this date consisted of a single user initiated logoff at 12:17 a.m. Interpreting the data in the light most favorable to the examiner, we presumed that Examiner A signed on to his computer prior to midnight and worked that day from midnight until 12:17 a.m., amounting to .25 hours of work.

Examiner A certified an additional 9.75 hours for this day, however, the evidence does not support the additional hours. There were no additional user-initiated events to indicate that Examiner A worked on his computer past 12:17 a.m. Had Examiner A used his laptop while it was connected to the USPTO network, his actions would have been captured and recorded as laptop events. There is no evidence to support that Examiner A swiped his government-issued

²⁶ We note that, although this work took place after 10:00 p.m., in violation of Examiner A’s IFP work schedule, we still credited the time in his favor.

identification badge to access the USPTO campus at any point during that day, or that he connected to the VPN.

VPN Data (2 of 15 days)²⁷

The OIG found that two of the 15 days had only a single VPN event: (1) a VPN logoff, which is a user-generated event, or (2) a user idle timeout, which indicates that there was no inter-activity between Examiner A and the VPN connection during the previous 12 hours. On days in which a VPN user idle timeout took place, we concluded that Examiner A was not working during the 12 hours prior to the timeout, unless evidence such as turnstile records proved otherwise.

For instance, on May ■ 2014, Examiner A certified to have worked for ten hours. The sole data point for that day is a VPN user idle timeout at 8:01 a.m. The user idle timeout is evidence that the VPN connection was not active prior to 12:00 a.m. that day. If Examiner A worked on his laptop while connected to the VPN prior to 8:01 a.m., laptop records or VPN events would necessarily reflect some level of activity, indicating that he was either working in the office or teleworking, and a user idle timeout would not have been recorded.²⁸ As a result, there is no evidence to support that he worked the hours certified for that day.

Turnstile Data and Instant Messages (8 of 15 days)

The OIG also found that eight of the 15 days had both turnstile data and IMs to and from Examiner A, but lacked other forms of data. The turnstile data showed that Examiner A entered the office each day, but his IM communications suggest that he stayed only a short time before leaving.²⁹ On some of the days with turnstile data and IMs only, Examiner A appeared to leave the office to hit golf balls at Golf Bar, play pool, or socialize with co-workers at a restaurant. Despite his limited time in the office on these days, Examiner A certified ten or more hours in each instance.

For example, on October ■ 2013, turnstile data indicate that Examiner A entered the USPTO campus at 1:59 p.m. and quickly began instant messaging with USPTO colleagues that he was bored. Shortly after 3:40 p.m., Examiner A informed a co-worker that he was leaving to go play pool and asked if co-worker wanted to join.

Examiner A [3:43 PM]: I'm gonna leave a [sic] play some pool u down?

Examiner X [3:43 PM]: writing up a case. Can try to join later? Where you headed?

Examiner A [3:43 PM]: dunno yet call me later if you wanna chill.

²⁷ Another day in this category had both a user initiated logoff and user idle timeout.

²⁸ Such VPN events include "Session Start," "Session End," "Log Auth Success," "Login I," or "Logout I."

²⁹ The OIG's review of Examiner A's IMs also identified numerous instances where he made inappropriate and insensitive remarks concerning race, gender, and sexual orientation. These statements are unbecoming of a federal employee.

Around the same time, Examiner A asked two other examiners if they wanted to play pool outside of the office. The OIG's review of Examiner A's IMs and e-mails did not identify any other data to support the additional hours certified by Examiner A. The OIG's review of Examiner A's IMs and e-mails confirmed that he sent no messages or e-mails after 3:43 p.m., suggesting that he left the office at that time. Examiner A certified ten hours for this day, however, we credited him only 1.75 hours for his time at the campus.

Furthermore, on October [REDACTED] 2013, turnstile data indicated that Examiner A entered the USPTO campus at 10:33 a.m.; however, his IMs suggest that he left the office around 1:00 p.m. to go to Golf Bar with a colleague.

Examiner A [12:55 PM]: lol, os [sic] u leaving soon?

Examiner Y [12:55 PM]: probably[.] godda go watch walking dead, etc.

Examiner A [12:56 PM]: haha, let me know when u leave i may catch a ride with you if that is ok

Examiner Y [12:56 PM]: ok cool[.] shouldn't be long, within the hour?

Examiner A [12:57 PM]: ok, did u wanna do [Golf Bar] today at all?

Examiner Y [12:58 PM]: actually yeah, let's just go there now?

Examiner A [12:58 PM]: yeah i'm down,

Examiner Y [12:58 PM]: aright cool, like now now? my car's in front of [a building on the USPTO campus]

Examiner A [12:59 PM]: i'll walk over lemme just hit the restroom

Examiner Y [12:59 PM]: aright, see ya out there

Within minutes, Examiner A IMs another co-worker saying he is “gonna go to [Golf Bar] with [Examiner Y], then home, work out, maybe come back if u do happy hour.” His co-worker responds:

Examiner W [1:00 PM]: yeah im doing [happy hour.] so far, its me, you, [and other colleagues]

Examiner A [1:00 PM]: k txt me when ur bout to go down [to the restaurant]? kool

According to the evidence established, Examiner A was in the office for only 2.5 hours prior to leaving campus to hit golf balls at Golf Bar, work out, and then attend a social event with his work colleagues—Examiner A certified ten hours of work for this day. The OIG's review of Examiner A's IMs and e-mails did not identify any other data to support the additional hours certified by Examiner A.

ALL WITHHOLDINGS PURSUANT TO EXEMPTIONS (B)(6) & (B)(7)(C)

Additionally, on November █, 2013, Examiner A appeared to leave the USPTO campus after two hours of work to go to a nearby restaurant.

Examiner A [4:06 PM]: ru back? [Golf Bar]?

...

Examiner Y [4:14 PM]: I kind of do [want to go to Golf Bar]

Examiner A [4:14 PM]: lets rol [sic]

Examiner Y [4:14 PM]: but I think I better get back home

Examiner A [4:15 PM]: come on

Examiner Y [4:15 PM]: I still have two nonfinals to turn in before I go

Examiner A [4:15 PM]: do it tmw

Examiner Y [4:15 PM]: and I want to do them today so I know what hours to claim

Examiner A [4:15 PM]: do it tonight at home

Examiner Y [4:15 PM]: I'm like borderline w/ leave, relying on the accumulated while I'm gone just to take the trip[.] oh, actually there's no way I can hit a ball, I got [a medical condition.] however, I will go to [a restaurant] for a bit if you're down

Examiner A [4:17 PM]: eh i could eat lol

Examiner Y [4:17 PM]: ha sweet

Examiner A [4:17 PM]: go now/ ?

Examiner Y [4:17 PM]: I'll see you outside

Examiner A [4:17 PM]: k

Examiner Y [4:17 PM]: bye

Examiner A certified ten hours of work that day, but the evidence indicated that Examiner A was in the office for only two hours. There is no evidence to support any of the hours Examiner A certified after his final IM at approximately 4:17 p.m.³⁰

³⁰ Examiner A received IMs between 4:17 p.m. and 4:23 p.m., but apparently did not respond.

Turnstile Data Only (1 of 15 days)

The OIG identified one day, October ■, 2013, when Examiner A entered the building, but did not appear to use his computer at all. Although Examiner A certified ten hours of work, and turnstile data shows that Examiner A entered the USPTO building that day, the lack of workstation data, e-mails or IMs on that day indicate that Examiner A did not perform any work. Examiner A's second-line supervisor (Supervisor 2) suggested to the OIG that a reasonable interpretation of this data would be that the "individual in that situation swiped in and left." The OIG considered that it is possible for examiners to print out documents and read them offline, but witnesses told the OIG that such an explanation is unlikely. Notably, Supervisor 2 stated that the hours a patent examiner spends reading documents offline "has to be quite small." Supervisor 1 agreed with this principle, stating that the percentage of examiners at a grade of GS-11 and above who print out references for review is low, adding that "it doesn't occur very often."³¹ In consideration of the statements from Examiner A's first- and second-line supervisors, and the lack of any data indicating otherwise, the OIG did not credit the hours Examiner A certified for that day.

The OIG Identified 47 Hours that Examiner A Worked Outside of His Work Schedule

Under Examiner A's IFP work schedule, he was permitted to work between the hours of 5:30 a.m. and 10:00 p.m., Monday through Saturday, to meet his 80-hour work requirement. His work schedule did not permit him to record time in the time and attendance system for work completed outside of those hours. Even when viewing the certified hours in the light most favorable to Examiner A, the OIG identified at least 47 hours with some evidence to support that Examiner A worked outside of his designated work hours, in violation of this policy. These hours were, in theory, time that Examiner A actually worked, and therefore did not fit into either of the two categories discussed above.³² The USPTO considers employees who work outside of their approved work hours to be absent without official leave.

In determining the amount of hours Examiner A worked outside of his approved work hours, the OIG assumed Examiner A worked from the time the turnstile records indicated that he entered the campus, or, alternatively, logged in to the VPN, until he met the hours certified, absent evidence to the contrary. Hours that were worked after 10:00 p.m. in order to meet the hours certified were still tallied. For example, Examiner A certified ten hours of work on March ■ 2014. The records indicate that Examiner A entered the office at 4:45 p.m. and logged in to his laptop at 4:47 p.m. In order to complete ten hours of work on March ■, Examiner A would

³¹ OIG Investigative Record Form: Informal Interview with Supervisor 1 (Apr. 27, 2015). According to Supervisor 1, printing out documents makes logical sense for junior examiners who are learning the examination process because it is easier to share when seeking guidance from, or asking questions of, more senior examiners. On the other hand, Supervisor 1 stated, printing out documents is counterproductive to more senior examiners because they have less time to complete their tasks than their junior counterparts.

³² In noting the IFP work schedule violation, the OIG recognizes that working outside of the required hours is significantly different than claiming hours that were not worked. However, the majority of hours in this group were claimed on days for which we gave Examiner A the benefit of the doubt when determining whether the evidence supported the hours claimed within the regular work hours.

have had to work from 4:45 p.m. to 3:15 a.m., 4.75 hours more than was authorized for that day, under this work schedule.³³

³³ The hours worked must exclude the 30-minute meal period. Thus, an examiner who claims ten hours of work must be in the office for 10.5 hours.

Chapter 4: Legal Analysis and Findings

The OIG concluded that sufficient evidence exists to support the findings that Examiner A violated certain criminal statutes prohibiting fraud and theft, regulations covering the basic obligations of public service, and the agency's policy on work schedules.

I. Examiner A Violated 18 U.S.C. §§ 287, 641, and 1001 When He Certified and Affirmed Time That He Did Not Work

Examiner A's conduct implicates three criminal statutes: 18 U.S.C. § 287 (false claims), 18 U.S.C. § 641 (theft), and 18 U.S.C. § 1001 (false statements). A false claims violation requires two elements: making or presenting a claim to any agency of the United States government, and knowing such claim to be false, fictitious, or fraudulent.³⁴ Theft requires that the money was stolen or converted for use by another, that the money belonged to the United States government, and that the money was stolen knowingly with the intent to deprive the owner of the use or benefit of the money.³⁵ A false statement occurs when a false statement is made knowingly or willfully to a governmental agency as part of an official proceeding, and the false statement was material to that proceeding.³⁶

The OIG found that Examiner A certified approximately 730 hours of work that he did not actually perform, and that his entries into the time and attendance system were false claims made to the United States government. We also found that Examiner A received approximately \$25,500³⁷ as a direct result of his false claims, thereby converting United States government money for his own use. Therefore, the analysis for each of these statutes hinges on whether Examiner A knew that the hours he submitted were inaccurate.

Given both the sheer amount of inaccurate hours for which the data indicates that Examiner A was not present at work or did not log in to his computer, and his frequent, consistent pattern of claiming inaccurate hours, the OIG concluded that Examiner A must have known that the information he submitted and certified into the time and attendance system were false. In making this determination, the OIG considered that there may be times when an innocent mistake could result in a disparity between actual hours worked and hours submitted, e.g., typographical errors or that the employee forgot that s/he was out of the office for an hour or two during a biweek. All things considered, the OIG believes it is implausible to attribute such a large, consistent, pattern of errors to simple mistakes.

Examiner A's own actions support the conclusion that he knew his time and attendance certifications were false. Examiner A's IMs show that he left work after only a few hours, yet he

³⁴ *United States v. Ewing*, 957 F.2d 115, 119 (4th Cir. 1992) (citing 18 U.S.C. § 287).

³⁵ *United States v. Ayes*, 702 F.3d 162, 169 (4th Cir. 2012) (citing *United States v. Rehak*, 589 F.3d 965, 973 (8th Cir. 2009), cert. denied, 130 S. Ct. 2130, 176 L. Ed. 2d 727 (2010)).

³⁶ *United States v. Ismail*, 97 F.3d 50, 61 (4th Cir. 1996) (citing *United States v. Arch Trading Co.*, 987 F.2d 1087, 1095 (4th Cir. 1993)).

³⁷ This amount was calculated using Examiner A's 2014 regular hourly rate.

certified hours that he did not work. His actions demonstrate that he knew that the hours he submitted, and the United States government subsequently paid for, were not accurate.

Moreover, Examiner A's actions following the initiation of the OIG investigation reinforce that he knowingly falsified his time and attendance records. In particular, when the OIG first compelled Examiner A's testimony, the OIG informed him that we were aware of his work credit abuse. It was not until after Examiner A learned that he would also be questioned about time and attendance issues that he resigned. Furthermore, on the day of the interview, Examiner A informed a co-worker that POPA recommended that he resign in order to "have a clean slate [with] no conduct or performance record." Additionally, Examiner A declined the OIG's offer to review and comment on the draft report concerning his time and attendance.

The OIG concluded that the evidence described above, coupled with the POPA's suggestion, supports our finding that Examiner A's conduct violated 18 U.S.C. §§ 287, 641, and 1001.

II. Examiner A Violated 5 C.F.R. § 2635.101 When He Certified and Affirmed Time That He Did Not Work

The OIG also found that Examiner A violated the basic obligations of public service, codified at 5 C.F.R. § 2635.101, by committing time and attendance abuse. Section 2635.101(b)(5) requires that federal government employees perform their duties honestly.³⁸ Similarly, Section 2635.101(b)(14) requires that an employee attempt to avoid actions that create the appearance of violating the law or ethical standards. Examiner A engaged in a persistent pattern of knowingly and intentionally submitting fraudulent time for the purpose of receiving tens of thousands of dollars in payment for work he never performed. Time and attendance abuse, by its very nature, is based on dishonesty. Such conduct is contrary to the public trust placed in government officials. The OIG concluded that Examiner A's actions were in violation of 5 C.F.R. § 2635.101(b)(5) and (14).³⁹

III. Evidence Raises Concerns That the USPTO Does Not Have Adequate Internal Controls to Prevent Time and Attendance Abuse

Examiner A's time and attendance abuse, and the evidence supporting it, raises concerns that the USPTO does not have adequate internal controls in place or those controls are not functioning properly to prevent such abuse. In interviews with the OIG, several USPTO managers discussed three primary tools available to monitor and prevent time and attendance abuse, regardless of whether the examiner is in a telework status. One tool available to USPTO management is the examiner's production metrics, which illustrate how close an examiner is to

³⁸ 5 C.F.R. § 2635.101(b)(5).

³⁹ Examiner A also violated the USPTO's Policy on Work Schedules and his specific IFP by claiming at least 47 hours worked outside of his designated work hours. In addition, Examiner A's actions violated Section 11.804(c) of USPTO Rules of Professional Conduct when he "[e]ngage[d] in conduct involving dishonesty, fraud, deceit or misrepresentation." 37 C.F.R. § 11.804(c).

reaching his or her production goal for the biweek, quarter, and year.⁴⁰ Complaints from patent attorneys or applicants about an examiner's poor performance or lack of responsiveness are another tool available to monitor and prevent time and attendance abuse. A third tool available to USPTO management is measuring how quickly examiners respond to e-mail, IMs, meeting invites, and phone calls, and visiting examiners' offices to determine whether they are present.⁴¹

Despite the USPTO's internal controls and numerous red flags, the agency did not review Examiner A's time and attendance records to determine if he was claiming time that he did not work. With regard to the first tool—monitoring an examiner's production metrics—Examiner A failed to meet his performance metrics for at least three years. As noted above, Examiner A received nine written and oral warnings for his failure to produce work at an acceptable level, and he received the lowest possible annual performance score during each of his last three years (2012-2014) of employment.⁴² In addition, the USPTO uncovered 13 instances of work credit abuse, which Examiner A admitted, yet USPTO management did not investigate potential time and attendance issues. Although they used the first tool to identify performance issues, USPTO managers still did not scrutinize Examiner A's certified working hours. Beyond reviewing his time and attendance, Examiner A's extended poor performance raises a legitimate concern regarding how his employment with the USPTO continued for as long as it did.

Similarly, the evidence established that the USPTO also received red flags regarding Examiner A's time and attendance with regard to the second tool described above—monitoring complaints from patent applicants and their attorneys. In particular, the evidence showed that numerous patent applicants and their attorneys complained about Examiner A's performance and responsiveness. For example, on November [REDACTED], 2013, Supervisor I e-mailed Examiner A to explain that an attorney for a patent applicant called because “[the attorney] has been trying to reach [Examiner A] since October.” Despite receiving these and numerous other complaints about Examiner A's responsiveness, the relevant managers did not initiate a review of Examiner A's time and attendance data.

Lastly, the evidence showed that USPTO supervisors' third tool, which includes routine office visits by a supervisor, as well as monitoring the timeliness of an examiner's responses to phone calls, e-mails, meeting invites, and IMs from management, failed to identify Examiner A's time

⁴⁰ In order to avoid a warning, an examiner must perform at a “marginal” level. The USPTO defines “marginal” as reaching 88 percent of the production goal for the docket management and production elements. A score between 80 percent and 87 percent at the end of the quarter would trigger a “safety letter,” which is essentially a pre-warning. An oral warning would be issued for a score below 80 percent, or, alternatively, a written warning if the examiner received an oral warning for the same performance metric in the prior quarter.

⁴¹ One senior manager noted that supervisory patent examiners should leave notes in the office for subordinates who are on-site employees as a means to determine how often those examiners are present. Supervisor I confirmed that they were directed to use notes:

You know, we've been told, especially more recently, that you know, if -- you know, if you're -- if you think someone is not there, maybe go by the office, you know, and see, you know, maybe leave a note or something like that on their chair or something. “Hey, I came by to see you on this and this day.” Those are the kind of directions we've been given.

⁴² It is important to note that the USPTO disciplines examiners based on quarterly performance evaluations. As a result, there is no USPTO policy regarding the discipline of examiners who receive consecutive “Unacceptable” annual performance ratings, such as Examiner A.

and attendance abuse. Supervisor 1 stated that he would stop by Examiner A's office on occasion, and nothing seemed to be amiss.

OIG: [D]id you ever get the impression that he should have been in the office and . . . wasn't?

Supervisor 1: Well, I -- there would be a light on. He's got an office mate. Sometimes she'd be in there. Sometimes I'd go; he'd be in there. Sometimes he wouldn't be in there.

Additionally, Supervisor 2 told the OIG that Supervisor 1 would reach out by phone on occasion and that Examiner A would "generally call him back." Examiner A's responsiveness to communications from his supervisor demonstrate a weakness in the third tool—examiners who are not working can periodically monitor their e-mail and respond to specific messages in order to create the appearance that they are in an active work status. Moreover, as we discuss below, witness statements reflect that the utility of this tool is limited because the USPTO does not require that employees notify their supervisors when they are or will be working. For example, if a supervisor e-mails an employee with a question on Monday at 10:00 a.m., the employee may not respond immediately because he or she is not actually scheduled to be working at that time. The employee might not start working until 2:00 p.m., or might not be scheduled to work at all that day. Because the supervisor may not know the employee's schedule, it is difficult, if not impossible, to interpret his or her lack of responsiveness at that time.

In order to successfully employ this third tool, supervisors would need to track how timely examiners respond to e-mails or other forms of communication and then compare this with their time and attendance certifications. Doing so requires an extensive amount of time and effort on the part of the supervisor, who already has a multitude of competing responsibilities. The OIG asked Supervisor 2 whether supervisors have the capacity to track patent examiners' activities in this way, and he replied that "a lot of the [supervisors] have upwards of 20 Examiners, and [monitoring whether they are or aren't working at any given time] – you know, it's just not feasible." Supervisor 1 echoed this sentiment. When asked how much time he spent monitoring his examiners' time and attendance, he indicated that there was "[n]ot much time for that."

The USPTO supervisors with whom we spoke identified additional tools that would assist in identifying time and attendance abuse. Currently, examiners are not required to provide their supervisors with their planned work schedule prior to each biweek, e.g., when they plan to work on any given day, per an agreement with POPA. Examiners provide their supervisors with only the *total number of hours* they intend to work in a given biweekly period. Examiner A's first-, second-, and third-line supervisors indicated that knowing an examiner's work schedule in advance would help with monitoring time and attendance. Supervisor 1 explained that, without knowledge of an examiner's work schedule, "[t]here's no way to verify [that an examiner is working when he or she says they are working] . . . unless I spent the time every day to try to log when every person [appeared to be working from their online presence] . . . or whether they were in their office or whether they weren't in their office."

Most examiners are permitted to work Monday through Saturday, between the hours of 5:30 a.m. and 10:00 p.m.⁴³ Considering that an examiner can work anytime within a 16.5-hour workday under the IFP, an examiner could easily say that they were working at a time when the supervisor was offline. Supervisor I also indicated that reaching out to examiners blindly for the purpose of monitoring whether examiners are working was extremely difficult, if not impossible.⁴⁴

According to the witnesses we interviewed, advance knowledge of the patent examiners' work schedules would allow supervisors to cross-reference those schedules with their actual work status. Witnesses told the OIG that determining actual work status is difficult to do when either or both the examiner and the supervisor are on a telework schedule. The USPTO provides its employees with a "presence indicator" as part of its instant messaging software.⁴⁵ Examiners are required to log in to the presence indicator during working hours, but USPTO's Policy on *Work Schedule Notification, Communication, and Collaboration*, which was implemented as a result of negotiations with POPA, states that the presence indicator may be used only for the purpose of facilitating communications between other examiners and their supervisors—and supervisors are not permitted to use the presence indicator to determine whether examiners are in working status. If supervisors were able to verify whether off-campus examiners are "at work" using the presence indicator, similar to how they verify on-campus employee status, then they could compare the work status indicator with an examiner's work schedule to verify that the examiner is working as scheduled.

For the reasons stated above, it appears that the USPTO's internal control system used to monitor and prevent time and attendance abuse is insufficient. The three tools identified during our investigation that are used to monitor and detect time and attendance abuse were not successful identifying Examiner A as a time and attendance abuser, despite the fact that he did not work for at least 43 percent of his claimed hours for FY 2014. The OIG's analysis suggests that the USPTO's current monitoring system will likely fail to detect future time and attendance abusers. Examiner A engaged in egregious time and attendance abuse, likely lasting over several years, which was uncovered only due to an anonymous note by an employee who witnessed Examiner A's conduct and had the courage to blow the whistle.⁴⁶ A robust and fully functioning system of internal controls should have identified Examiner A's abuse long before he was able to fraudulently claim approximately \$25,500 in falsified working hours.

⁴³ Examiners can work no more than 12 hours and no less than 15 minutes per day.

⁴⁴ While discussing the difficulty in monitoring the working status of patent examiners, Supervisor I stated that it was challenging to tell if patent examiners "worked three hours and did a midday flex . . . and then logged back on and worked later. . . . Or if they worked on Saturday because I might be [doing something with my family] on Saturday, and I don't—like I said, that I don't know."

⁴⁵ The USPTO provides its employees with the Microsoft Lync communication platform, an instant messaging-type program that allows employees to send real-time IMs, make phone calls, or video conference with one another, and also includes the presence indicator. The colored presence indicator informs others whether an employee is online and "available" (green light), online but "busy" or "in a meeting" (red light), online but "away" from their computer for a certain amount of time (yellow light), or offline.

⁴⁶ A few weeks after the two supervisors received the anonymous note, a third supervisor in Examiner A's unit raised concerns about potential time and attendance abuse upon noticing that Examiner A claimed time for two days when Examiner A was not in the office.

Chapter 5: Conclusions and Recommendations

Even when viewed in the light most favorable to Examiner A, the evidence gathered by the OIG reveals that Examiner A defrauded the United States government and taxpayers out of approximately \$25,500 by submitting fraudulent claims for 730 hours of work he did not perform in FY 2014. Finding no evidence to explain or excuse the questionable hours, we concluded that there is sufficient evidence to support Examiner A violated 18 U.S.C. §§ 287, 641, and 1001; 5 C.F.R. § 2635.101; and the USPTO's policy on work schedules. We also concluded that the internal control system in place at the USPTO to monitor and prevent time and attendance abuse is insufficient to catch misconduct and may be inadequate to prevent comparable abuses by other patent examiners, both currently and in the future.

In light of the findings contained in this report, the OIG makes the following recommendations:

1. USPTO management should consider investigating whether Examiner A fraudulently certified hours in FY 2015.
2. USPTO management should consider consulting with the relevant USPTO officials, including legal counsel and POPA, to implement a plan to legally recover—voluntary or involuntarily—the funds Examiner A fraudulently received in FY 2014, and any other payments for work that he did not perform during FY 2015.
3. USPTO management should consider the feasibility and cost-effectiveness of (I) restoring backup tapes containing the VPN and workstation data from FYs 2012 and 2013, (II) investigating whether Examiner A fraudulently certified hours in those years, and (III) recovering funds Examiner A fraudulently received, if applicable. In assessing these issues, USPTO management should also consider the benefits that such restoration would provide in connection with future investigations.
4. In light of Examiner A's apparent decision to resign to preserve "a clean slate [with] no conduct or performance record," USPTO management should consider taking action that would note these findings in Examiner A's personnel file.
5. USPTO management should consider reassessing the current controls to monitor the time and attendance of its employees, providing supervisors with patent examiner schedules, and requiring the presence indicator to reflect actual work presence.
6. USPTO management, in conjunction with the Office of the Chief Information Officer (OCIO), should consider retaining the data stored in its servers, including VPN and workstation event data, for at least a three-year period, as the current retention period of one year severely limits both agency and OIG investigations.
7. The USPTO should consider reinstating the USPTO requirement that employees use their USPTO-issued ID badges to exit through the access control turnstiles during weekday working hours.

8. The USPTO should consider implementing a semi-annual or annual review of the time and attendance of employees who receive an “Unacceptable” annual performance rating.
9. The USPTO should consider modifying its Performance Appraisal Plan and applicable Human Resources policies regarding employees with below standard performance to address individuals who receive consecutive “Unacceptable” annual performance ratings.

Appendix A

I am a frustrated colleague of Examiner [REDACTED]

This examiner seems to get away with anything.

He never shows up to work. It appears the SPE doesn't hold the examiners accountable and condones this behavior.

As a permanent GS-11 he is only allowed at most a 10 hour telework program (1 day per biweek).

You should pull his badge records and computer activity records.

Also, he has the worst DM in the office. He regularly doesn't work all quarter and comes in the last biweek and endloads garbage work. Then he has a boatload of returns.

Look at his production and DM history over the last few years, the spikes are only at the end of each quarter.

It is frustrating to a person like myself that comes in on a regular schedule and works a full 80 hours. The whole art unit sees this and talks about it.

This is abuse of a great federal government job. As well as defrauding the government of time abuse.

I am not sure as a SPE how you allow this type of behavior. Do you check the quality of the work or just rubber stamp it? Why hasn't he been fired by now for performance?

Appendix B

Examiner A's Oral and Written Warnings between March 2012 and [REDACTED] 2015

Date of Warning	Quarter in which conduct occurred	Type of Warning	Performance Metric
[REDACTED] 12-12	Q2/FY 2012	Oral Warning	Warning due to failing the Docket Management element in Q2 of FY 2012
[REDACTED] 12-12	Q3/FY 2012	Oral Warning	Warning due to failing the Production element in Q3 of FY 2012
[REDACTED] 12-12	Q3/FY 2012	Written Warning	Warning the result of failing the Docket Management Oral Warning ending [REDACTED] 12
[REDACTED] 13-13	Q3/FY 2013	Oral Warning	Warning the result of failing the Production element in Q3 of FY 2013
[REDACTED] 13-14	Q1/FY 2014	Oral Warning	Failed Docket Management element in Q1 of FY 2014
[REDACTED] 14-14	Q3/FY 2014	Oral Warning	Failed Docket Management element in Q3 of FY 2014
[REDACTED] 14-14	Q3/FY 2014	Oral Warning	Failed Production element in Q3 of FY 2014
[REDACTED] 14-15 (resigned)	Q4/FY 2014	Written Warning	Failed Q3-issued Docket Management Oral Warning
[REDACTED] 14-15 (resigned)	Q4/FY 2014	Written Warning	Failed Q3-issued Production Oral Warning

Appendix C

USPTO Weekly

From: USPTO Weekly
Sent: Thursday, May 08, 2008 10:12 AM
To: USPTO Weekly
Subject: A Message from USPTO Director Jon Dudas – No More Badging Out

A Message from USPTO Director Jon Dudas – No More Badging Out

Dear Colleagues:

Your safety and security on the USPTO campus is critically important. Our Office of Corporate Services works hard to ensure a balance between security and access to our facilities. I am pleased to announce a change that maintains the high level of security you deserve while improving your ability to move more freely throughout our campus.

Effective May 19, employees, contractors, and visitors will no longer be required to use their USPTO issued ID badges when leaving a secured area during weekday working hours—that is 5:30 a.m. to 10 p.m. Monday through Friday. We will continue to use our badges to enter secured facilities as well as when leaving a secured area after 10:00 p.m. or before 5:30 a.m.

We planned and implemented our current security system shortly after September 11, 2001. At that time, we determined that a badge in/badge out procedure was necessary to account for everyone who was in our facility in the event of another emergency of that magnitude. Our emergency preparedness since 2001 – including our evacuation and sheltering plans – has improved the USPTO's ability to act should an emergency occur. These improvements allowed us to reexamine our system.

Your security remains our priority. Consistent with federal building security guidelines, we will all continue to use an ID badge to enter secured areas. We will also continue to maintain electronic records for all who enter secured areas. Finally, those records will continue to be available to security staff and first-responders if we cannot otherwise account for someone.

If you have any questions or concerns, please contact our Office of Security by phone at 2-8000, or by e-mailing "Security Services Center." Please look for a USPTO Weekly article within the next week with more details on badge swipe-out procedures for weekends and after-hours.

Thank you again for your dedication to the USPTO.

Sincerely,

Jon