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June 7, 2012

# Inspector General

United States  
Department of Defense



REPORT OF INVESTIGATION:  
BRIGADIER GENERAL RICHARD G. ELLIOTT  
UNITED STATES AIR FORCE  
FORMER ADJUTANT GENERAL (AIR)  
STATE OF MICHIGAN

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REPORT OF INVESTIGATION:  
BRIGADIER GENERAL RICHARD G. ELLIOTT, U.S. AIR FORCE

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that, while serving as the Assistant Adjutant General (Air) (AAG-Air), Commander, Michigan Air National Guard (MIANG), and Deputy Director, Department of Military and Veterans Affairs (DMVA), Joint Force Headquarters, Michigan National Guard (MING), Lansing, Michigan (MI), Brigadier General (Brig Gen) Elliott:

- Failed to terminate from his dual-status military technician position as required by Federal law and DoD regulations;
- Used his public office for private gain by receiving Federal pay and benefits to which he was not entitled in violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)"; and
- Improperly claimed temporary duty (TDY) expenses related to travel to his new official duty station in violation of the JER and the Joint Travel Regulations.<sup>1</sup>

We substantiated the allegations. We conclude that Brig Gen Elliott failed to terminate from his dual-status military technician position as required by Federal law and DoD regulations. We found that Brig Gen Elliott served in a dual-status military technician position at the 127th Wing, Selfridge Air National Guard Base (ANGB), MI. He was the Wing Commander as a part-time "traditional Guardsman," and was the Air Commander (Pilot/Navigator) as a full-time Federal military technician in the same unit. In January 2006, he accepted an appointment to serve full-time in a State capacity as the AAG-Air. Federal law and DoD regulations required Brig Gen Elliott to resign from his Federal position. We determined that after his reassignment, he did not terminate from his dual-status military technician position until 16 months later. This delay enabled Brig Gen Elliott to continue to receive pay and appear to accrue sufficient time to be retirement eligible under the Federal Employee Retirement System (FERS).

We also conclude that Brig Gen Elliott used his public office for private gain and improperly received Federal pay and benefits. We found after relinquishing command of the 127th Wing to serve in a State capacity as the AAG-Air, Brig Gen Elliott was obligated to terminate his dual-status military technician position. At that time, Brig Gen Elliott was not retirement eligible and would have received approximately \$15,829.38 for unused annual leave and forfeited 211 hours of unused compensatory time. We also found that Brig Gen Elliott approved his own time and attendance records. The JER prohibits individuals from using their official position for personal benefit and the DoD Financial Management Regulation (DoDFMR) does not authorize self-approval of time and attendance records. We determined that by not terminating his dual-status, Brig Gen Elliott received approximately \$194,370.90 in Federal pay

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<sup>1</sup>(b)(6), (b)(7)(C)



as a dual-status military technician over a 16-month period. We also determined that Brig Gen Elliott was not authorized to approve his own time and attendance.

Finally, we conclude that Brig Gen Elliott improperly claimed TDY expenses related to travel to his new official duty station. We found that on 21 occasions Brig Gen Elliott traveled in a TDY status as a military technician assigned to the 127th Wing from Selfridge ANGB to Lansing, MI, to perform duties as the AAG-Air. Brig Gen Elliott claimed \$19,172 in Federal travel expenses and signed his own travel claims as the supervisor. The DoDFMR and the Joint Travel Regulations (JTR) require a supervisor or authorizing official to review and approve all travel authorizations to ensure compliance with regulations. We determined Brig Gen Elliott approved his own orders and claims without any approval or review by Major General (Maj Gen) Thomas G. Cutler, The Adjutant General (TAG), MING. We also determined the 21 trips were themselves improper because they did not meet the JTR's definition of TDY travel. Lansing, not Selfridge ANGB, was rightfully Brig Gen Elliott's official duty station. There was no JTR provision which authorized Brig Gen Elliott to conduct TDY to his official duty station, and no basis for him to travel on 127th Wing orders and claim Federal reimbursement.

By letter dated October 7, 2011, we provided Brig Gen Elliott an opportunity to comment on the preliminary results of our investigation. Brig Gen Elliott, through counsel, requested three extensions to respond to our preliminary report - October 18, 2011; January 6, 2012; and April 2, 2012.<sup>2</sup>

In his response, dated April 30, 2012, Brig Gen Elliott disagreed with our preliminary findings and conclusions. He asserted that he based his actions regarding his dual-status military technician position, "pursuant to Maj Gen Cutler's [Major General (Maj Gen) Thomas G. Cutler, U.S. Air Force, then The Adjutant General (TAG) of the State of Michigan, and Director, DMVA] authority as TAG" and a reliance on information he received from Maj Gen Cutler and other support staff. They were the ones, according to Brig Gen Elliott, who were "responsible for the proper submission of all required paperwork and approvals."<sup>3</sup>

After carefully considering Brig Gen Elliott's response, we stand by our conclusions. He failed to terminate from his dual-status military technician position as required by Federal law and DoD regulations. As a consequence, he received Federal pay and benefits to which he was not entitled. Brig Gen Elliott also improperly claimed Federal reimbursement for TDY expenses to his official duty station.

Our investigation included recommendations that the Secretary of the Air Force take appropriate action regarding the substantiated allegations. Such action should include determining whether Brig Gen Elliott accrued sufficient time to qualify for military technician retirement under FERS, and initiating the recoupment of the overpayment of Federal pay and

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<sup>2</sup> Brig Gen Elliott obtained the services of (b)(6), (b)(7)(C) who commented via letter on our preliminary report. We will refer to this correspondence as Brig Gen Elliott's response.

<sup>3</sup> While we have included what we believe is a reasonable synopsis of the response provided by Brig Gen Elliott, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Brig Gen Elliott where appropriate throughout this report and provided a copy of his full response to the Secretary of the Air Force together with this report.

benefits and TDY expenses improperly received by Brig Gen Elliott between January 2006 and April 2007.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

## II. BACKGROUND

The MING, like other state National Guard (NG) organizations, maintains a “traditional” force in addition to its “full-time” force. The traditional force typically performs duty one weekend each month and 2 weeks annually. The full-time force includes military technicians, authorized under Section 709 of Title 32, United States Code (U.S.C.) to improve the readiness of the Army and Air National Guard by performing administration, training, maintenance, and repair functions. Most military technicians are employed as dual-status members, a term introduced by Section 10216 of Title 10, U.S.C. Dual-status military technicians are civil service employees of the Federal government who must be military members of the unit that employs them, hold the military grade appropriate to the position, and wear the uniform appropriate to their grade and component of the armed forces.<sup>4</sup>

The NG’s full-time support program requires that military technicians be members of the NG and appointed to full-time positions that correspond to their military assignments. In 1996, Brig Gen Elliott was employed as a dual-status military technician under the Federal Employees Retirement System (FERS). In October 2004, Brig Gen Elliott commanded the 127th Wing, MIANG, Selfridge Air National Guard Base (ANGB), Michigan, as a full-time GS-15 dual-status Federal military technician and traditional guardsman.<sup>5</sup> The position description listed the official title as “Air Commander (Pilot/Navigator).” The “paramount requirement” of the position was to “serve as a manager of an ANG Group/Wing, with leadership responsibility, direct line responsibility and full accountability for the flying unit.” The incumbent had to be a rated pilot or navigator officer who possessed competence in fields such as aircraft maintenance, budgets, personnel, air operations, and other “specialized subject matter or functional areas.”

On December 30, 2005, Maj Gen Cutler appointed Brig Gen Elliott as the AAG-Air, MIANG Commander, and Deputy Director, DMVA.<sup>6</sup> As a consequence, Brig Gen Elliott was transferred from the 127th Wing to the 110th Fighter Wing, MIANG, Battle Creek, MI, and began full-time employment with the State.<sup>7</sup> Until his transfer to the Inactive Status List Reserve

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<sup>4</sup> Unless otherwise specified, the term “technician” as used in this report means a dual-status military technician.

<sup>5</sup> The United States Air Force’s 127th Wing is a fighter and air refueling unit located at Selfridge Air National Guard Base, Michigan. Selfridge is located on the north side of the metropolitan area of Detroit, Michigan, along the western shore of Lake St. Clair and approximately 125 miles from Lansing, Michigan.

<sup>6</sup> The Department of Military and Veterans Affairs mission is to provide organized, combat-ready units, both Army and Air National Guard, for call to federal duty in the event of national emergency and to state duty in time of disaster or civilian disorder; veterans services; and youth military training and education.

<sup>7</sup> The 110th Fighter Wing is located at the W. K. Kellogg Airport on the west side of the city of Battle Creek, Michigan.

Section on January 31, 2008, Brig Gen Elliott was responsible for 2,800 members of the MIANG and their units located in Alpena, Battle Creek, Selfridge, and Mount Clemens, as well as the headquarters unit in Lansing, MI.<sup>8</sup>

On April 3, 2007, this Office received a complaint from (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) which alleged Brig Gen Elliott received Federal and State paychecks at the same time because he failed to terminate his military technician position as the Commander, 127th Wing, when he became the AAG-Air at the end of 2005. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) concerns with Maj Gen Cutler who told them it was “okay” because he had done the same thing in 2002.<sup>9</sup>

On December 11, 2009, after completing the fieldwork required for our administrative investigation of the allegations in the complaint, we referred the evidence to the Defense Criminal Investigative Service (DCIS), DoDIG, as indicative of potential criminal impropriety. DCIS referred the matter to the Assistant United States Attorney (AUSA) for prosecution. On November 18, 2010, the AUSA declined to prosecute Brig Gen Elliott and recommended the matter be handled administratively. Accordingly, we resumed our investigation as a noncriminal, administrative matter.

### III. SCOPE

We interviewed Brig Gen Elliott, Maj Gen Cutler, and 20 witnesses. We reviewed assignment records, time and attendance records, compensatory time records, travel orders, vouchers, calendars, emails, and other relevant documentation. We also reviewed statutes, regulations, and NG guidance applicable to the matters at issue.

In his response to our preliminary report, Brig Gen Elliott stated that our investigation was not completed in a timely manner. He stated witnesses have moved, “documentary evidence has been lost,” and “memories have faded.” Consequently, we should drop the allegations.

We recognize that the field work phase of this investigation was lengthy due to the complex nature of the allegations investigated. Based on the evidence developed, the case also had to be referred to DCIS and the AUSA, further increasing the time required to complete the case. We also recognize the length of time which passed following the AUSA’s decision not to prosecute a criminal case against Brig Gen Elliott. We disagree with Brig Gen Elliott’s inference regarding evidence, and note that Brig Gen Elliott did not specify what relevant documentary evidence was lost, or by whom. On the contrary, the documents mentioned throughout this report, supplemented by witness testimony, unmistakably support our conclusions and have been unaffected by the passage of time.

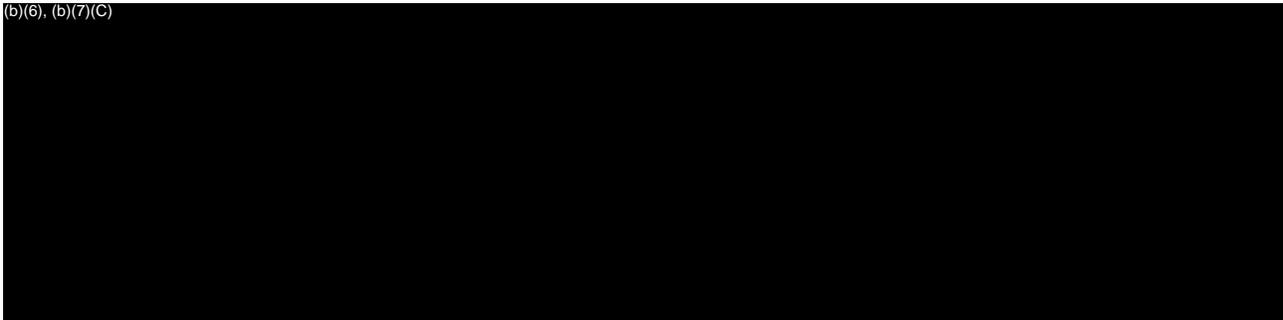
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<sup>8</sup> Members on an inactive status list do not train for points or pay, and cannot be considered for promotion.

<sup>9</sup> We investigated Maj Gen Cutler’s conduct in this matter in a separate investigation (H07L103093116). Our Office substantiated allegations that Maj Gen Cutler improperly received Federal pay and benefits and provided preferential treatment to Brig Gen Elliott.

Brig Gen Elliott also stated in his response that our office never advised him of our open investigation. He added that it was not until after January 18, 2011, when he applied for retired pay to begin, that he discovered the investigation remained open. We notified the National Guard Bureau (NGB) of the investigation on April 23, 2007, and interviewed Brig Gen Elliott as the subject of the investigation on October 25, 2007. We did not provide Brig Gen Elliott with official written status updates after his interview. However, the Director, Investigations of Senior Officials, and the National Guard Bureau IG did speak with Brig Gen Elliott several times over the telephone.

(b)(6), (b)(7)(C)



#### IV. FINDINGS AND ANALYSIS

##### A. Did Brig Gen Elliott fail to terminate from his dual-status military technician position?

###### Standards

###### **Title 32, U.S.C., “National Guard,” Chapter 7, “Service, Supply, and Procurement”**

Section 709, “Technicians: employment, use, status,” states that persons employed as technicians in the administration and training of the NG must meet each of the following requirements:

- Be a military technician (dual-status).<sup>10</sup>
- Be a member of the NG.
- Hold the military grade specified by the Secretary concerned for that position.
- While performing duties as a military technician (dual-status), wear the uniform appropriate for the member’s grade and component of the armed forces.

A dual-status military technician who is separated from the NG or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated

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<sup>10</sup> Members of the Selected Reserve are generally required to perform one weekend of training each month (also referred to as “weekend drill”) and two weeks of annual training each year for which they receive pay and benefits. Air National Guard Military Technicians are dual-status personnel who provide day-to-day continuity in the readiness and training of the Air Reserve Components. They are civil service employees who must maintain military status as a condition of employment.

from military technician (dual-status) employment by the adjutant general of the jurisdiction concerned.

**Title 10, U.S.C., “Armed Forces,” Chapter 1007, “Administration of Reserve Components”**

Section 10214, “Adjutants general and assistant adjutants general,” states, in part, that in any case in which, under the laws of a state, an officer of the NG of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the title of the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general.

Section 10216, “Military Technicians (dual-status),” states:

A military technician (dual-status) is a Federal civilian employee who is employed under Title 32, Section 709, and is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

“Unit Membership Requirement.” Unless specifically exempted by law, each individual who is hired as a military technician (dual-status) after December 1, 1995, shall be required as a condition of employment to maintain membership in a unit of the Selected Reserve by which the individual is employed as a military technician, or a unit of the Selected Reserve that the individual is employed as a military technician to support.

**Title 5, U.S.C., “Government Organization and Employees,” Part III, Employees, Chapter 33, Examination, Selection, and Placement, Subchapter III, Details, Vacancies, and Appointments**

Section 3341 states that details may be made only by a written order of the head of an executive department or military department and for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

**DoD Directive (DoDD) 1205.18, “Full-Time Support to the Reserve Components,” dated May 25, 2000**

The Directive states that military technicians shall, as a condition of their civilian employment, maintain dual-status as members of the Selected Reserve component by which employed and shall remain qualified in both their civilian and military positions. Military technicians shall maintain active status in the Reserve component unit in which they are employed as a civilian, or one in which they are employed to support. The skill requirements of the military and civilian positions for military technicians shall be compatible.

**Air Force Instruction (AFI) 51-604, “Appointment to and Assumption of Command,” dated October 1, 2000**

This instruction applies to members and organizations in the Regular Air Force, Air Force Reserve, and ANG when in Federal service.

Section 1.1 states that command is exercised by virtue of the office and the special assignment of officers holding certain military grades, and who are thereby eligible by law to exercise command.

Section 2 states, in part, that assumption of command is a unilateral act taken under authority of law and regulation. When not otherwise prohibited by superior competent authority, command passes by operation of law to the senior military officer assigned to an organization who is present for duty and eligible to command. The authority to assume command is inherent in that officer’s status as the senior officer in both grade and rank. An officer can assume command only of an organization to which that officer is assigned by competent authority.

**National Guard Regulation (NGR) 600-25/Air National Guard Instruction (ANGI) 36-102, “Military Technician Compatibility,” dated March 31, 1995**

A military technician must be the primary occupant (the individual assigned and annotated on the unit-manning document) of the military position. Compatibility is defined as the condition in which a military technician assignment is substantially equivalent to the duties described in the full-time technician position description. General Officers may not be in a pay status as a technician except ANG technician position descriptions requiring the incumbent to be the commander of a tactical combat unit (i.e., 127th Wing).

**Air National Guard Instruction (ANGI) 36-2101, “Assignments within the Air National Guard,” dated June 11, 2004**

The instruction establishes procedures for the assignment and utilization of members of the ANG.

Section 2-3, “Assignment of Full-Time Personnel,” states, in part, that military technicians and military duty personnel must be assigned as the position incumbent to a military Unit Manpower Document Guard (UMDG) position compatible with their full-time duties and responsibilities. The incumbent was the official occupant of the UMDG position. All others would be coded as excess. Under no circumstances would military technicians or AGR personnel be assigned in an excess status without written approval from the National Guard Bureau (NGB).

Section 2-11, “General Officer Assignments or Colonels Assigned to General Officer Positions,” states, in part, that NGB General Officer Management Office (NGB-GOMO) is the Office of Primary Responsibility for all general officer actions. The high visibility of senior officer personnel management caused by frequent congressional review requires close

monitoring by NGB-GOMO and each TAG. The reassignment of a federally recognized general officer, or colonel, or the assignment of any officer, regardless of grade, to a general officer or colonel position, should not be finalized until prior coordination with NGB-GOMO is completed and TAG reviews and approves the action.

Section 2-20, "Assignment to Excess or Overgrade," states, in part, that no officer, regardless of grade, may be placed in an excess status against a general officer authorization without prior coordination and approval by NGB-GOMO. No officer regardless of grade may be placed in an excess status against a commander position. Only under mission unique situations and in the best interest of the ANG would this be authorized.

**Technical Personnel Regulation (TPR) 303, "Military Technician Compatibility," dated August 24, 2005<sup>11</sup>**

Chapter 1, Section 1.1 defines compatibility as the condition in which the duties and responsibilities of a military technician's full-time civilian position are substantially equivalent to the duties and responsibilities of the technician's military assignment.

Chapter 1, Section 1.4 states that military technicians (dual-status) are responsible to ensure that their full-time assignments satisfy compatibility requirements against the applicable military duty positions.

Chapter 2, Section 2.1 states that the NG's full-time support program requires that all military technicians are members of the National Guard and are appointed to full-time positions which correspond to their military assignments.

Chapter 2, Section 2.1 (b) states that military technicians are assigned to a military position in the same unit in which they are employed or in a unit that is supported by the employing activity when authorized by this regulation. The full-time support member is the primary occupant of the military position and is not coded as excess.

Chapter 2, Section 2.1 (l) states that general officers are not in a pay status as military technicians unless assigned as the commanders of tactical combat units, e.g., ANG Wing Commanders or ARNG Brigade/Division Commanders. A military technician promoted to general officer cannot continue in technician employment unless he/she meets the criteria above.

**TPR 715, "Voluntary and Non-Disciplinary Actions," Chapter 3, "Non-Disciplinary Action," dated June 1, 2005**

Section 3-2 identified the failure to maintain a compatible military assignment as one of the situations that would constitute a failure to meet a condition of employment.

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<sup>11</sup> On August 24, 2005, Technician Personnel Regulation (TPR) 303 replaced National Guard Regulation (NGR) 600-25/ANGI 36-102, dated March 31, 1995.

Section 3-3 states that a technician who fails to maintain the military appointment requirements specified on position descriptions must be removed from the technician position. The supervisor is responsible for issuing a written notice informing the military technician that acceptance of an incompatible military appointment will result in termination from technician employment.

### **National Guard Technician Handbook, dated November 10, 2004**

Chapter 2, "Excepted Service," states, in part, that positions in the National Guard Technician Program that require military membership in the NG as a condition of technician employment are in the excepted service under the provisions of 32 U.S.C. 709. Loss of military membership for any reason will cause termination of technician employment. A technician is required to be assigned to a military position and unit compatible with his military technician position. Failure to maintain military compatibility is grounds for termination.

#### Facts

(b)(6), (b)(7)(C), testified that in November 2006, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), spoke to Maj Gen Cutler about Brig Gen Elliott's failure to terminate his military technician position as the Commander, 127th Wing, prior to becoming the AAG-Air, a State position. (b)(6), (b)(7)(C) stated Maj Gen Cutler told them it was "okay" because he had done the same thing in 2002. After researching the circumstances surrounding Maj Gen Cutler's statement, (b)(6), (b)(7)(C) determined that Maj Gen Cutler should also have terminated his military technician position as the Commander, 127th Wing, concurrent with his acceptance of the State position as the AAG-Air.

#### *Dual-Status Military Technician*

In October 2004, Brig Gen Elliott commanded the 127th Wing as a full-time GS-15 dual-status Federal military technician and traditional guardsman. He was officially named as Air Commander (Pilot/Navigator) with "direct line responsibility and full accountability for the flying unit."

In December 2005, in anticipation of the retirement of Brig Gen Kencil J. Heaton, U.S. Air Force, AAG-Air, Maj Gen Cutler identified Brig Gen Elliott as the next AAG-Air. Concurrent with that appointment, Brig Gen Elliott would command the MIANG.

Brig Gen Elliott stated, and several other witnesses confirmed, that in December 2005, he needed approximately 8 more months, or until September 17, 2006, to qualify for a Federal military technician retirement under FERS.

#### *Request for IPA Waiver Followed by "Detail"*

(b)(6), (b)(7)(C), stated that on December 7, 2005, Maj Gen Cutler requested a waiver from NGB to allow Brig Gen Elliott to participate in an Intergovernmental Personnel Act

(IPA) temporary assignment as the AAG-Air while simultaneously retaining him as a military technician in a leave without pay status until September 17, 2006.<sup>12</sup>

On December 15, 2005, NGB disapproved the request and stated IPA assignments did not include State Deputy or AAG positions. (b)(6), (b)(7)(C) added that on December 30, 2005, despite NGB's disapproval, Maj Gen Cutler detailed Brig Gen Elliott from his military technician position as the Commander, 127th Wing, to perform temporary duties in Lansing, MI, from December 30, 2005, to September 17, 2006.

(b)(6), (b)(7)(C) testified that the detail should have been documented on a Standard Form 52, "Request for Personnel Action," but Maj Gen Cutler did not document the purported detail in any way. She stated the detail was a scheme to enable Brig Gen Elliott to reach his September 17, 2006, retirement date and then terminate his military technician status. She also testified that Brig Gen Elliott began performing duties as the AAG-Air, a State position, in January 2006.

(b)(6), (b)(7)(C), testified that after NGB disapproved Brig Gen Elliott's IPA assignment, she should have received a Standard Form 52 terminating Brig Gen Elliott's military technician status as the Commander, 127th Wing, or "something showing he had been detailed." However, she received nothing that either detailed him to a temporary position or terminated his status as a military technician.

(b)(6), (b)(7)(C) testified it was Maj Gen Cutler's decision to detail Brig Gen Elliott as the AAG-Air from December 2005 to September 2006. He did not recall ever seeing any documentation to support the detail.

(b)(6), (b)(7)(C) testified that Maj Gen Cutler told him he had detailed Brig Gen Elliott to Lansing and that Maj Gen Cutler believed everything was legally permissible. Maj Gen Cutler told the (b)(6), (b)(7)(C) that he [Maj Gen Cutler] had done essentially the same thing in 2002, and that Brig Gen Elliott was not receiving any pay as a military technician because he was using compensatory time that he had earned.

#### *Change-of-Command, 127th Wing*

(b)(6), (b)(7)(C) On January 1, 2006, Brig Gen Michael Peplinski, U.S. Air Force, ANG, became the Commander, 127th Wing, as a full-time GS-15 dual-status military technician and traditional guardsman. (b)(6), (b)(7)(C) stated that Brig Gen Elliott should have immediately terminated his military technician position. However,

<sup>12</sup> The Intergovernmental Personnel Act (IPA) Mobility Program provides for the temporary assignment of personnel between the Federal government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations. The Chief, NGB, is the sole authority for approving and extending IPA agreements involving NG technicians. In accordance with the program, except for the state TAG, personnel may not be assigned to a position where they would be employed or managed by the same jurisdiction [state] before or after the exchange. Technicians assigned to a state TAG position under the terms of an IPA are placed on leave without pay from their position; remain an employee of the NG, and retain the rights and benefits attached to that status.

Brig Gen Elliott and Brig Gen Peplinski were double-slotted in the same military technician position while Brig Gen Elliott was exhausting his annual leave, which was improper.

Brigadier General (BG) James R. Anderson, Army National Guard, AAG-Army, MING, testified that when he became the AAG-Army on October 1, 2006, he terminated his military technician position as the Chief of Staff, MIARNG. (b)(6), (b)(7)(C) MING, confirmed that BG Anderson submitted a Standard Form 52 terminating his status as a military technician effective September 30, 2006. She asserted that in January 2006, after Brig Gen Elliott became the AAG-Air, he likewise should have terminated his military technician status.

#### *Detail to Work BRAC Issues*

Brig Gen Elliott testified that in December 2005, Maj Gen Cutler wanted him to replace Brig Gen Heaton as the AAG-Air, but because he did not qualify for a military technician retirement under FERS, Maj Gen Cutler decided to detail him from his military technician position at Selfridge to work BRAC issues in Lansing. Brig Gen Elliott told us that as a military technician from January 2006 to August 2006, he traveled between Selfridge and Lansing, worked BRAC transformation, and worked weekends, most holidays, and his compressed days off.

Brig Gen Elliott acknowledged there were no records to document his detail other than orders authorizing his travel from Selfridge to Lansing. Sometime before January 2006, he, Maj Gen Cutler, and several other staff members, including (b)(6), (b)(7)(C), met and decided that he would be detailed to work BRAC issues. Brig Gen Elliott also acknowledged there was a perception that by using the Federal process improperly, he and Maj Gen Cutler conspired to keep him in a military technician position so that he could qualify for a military technician retirement under FERS while simultaneously earning pay and benefits as the Commander, 127th Wing, and AAG-Air. Brig Gen Elliott understood the perception, but commented that he never received pay as the AAG-Air from January 2006 to August 2006. He was "paid as a [military] technician to perform a set of duties, and that was BRAC transformation." However, Brig Gen Elliott could not provide any evidence that he headed BRAC transformation.

When asked about who served as the AAG-Air after Brig Gen Heaton retired in January 2006, Brig Gen Elliott responded, "We had none. We didn't have one. It was a vacant position. I wasn't on the State payroll. I was performing duties as the BRAC transformation officer and Commander of the MIANG."

Maj Gen Cutler testified that he wanted Brig Gen Elliott to succeed Brig Gen Heaton as AAG-Air in January 2006. However, Brig Gen Elliott needed to continue as a military technician until mid-September 2006 to qualify for a FERS retirement so he decided to detail Brig Gen Elliott on December 30, 2005, from his military technician position to work BRAC issues. Maj Gen Cutler testified that he would have been willing to tell Brig Gen Elliott that if he wanted the job as the AAG-Air, he would have to leave his civil service military technician

status and serve exclusively in a State status as AAG-Air, or he (Maj Gen Cutler) would have to fill the AAG-Air position with someone else until Brig Gen Elliott was available.

Maj Gen Cutler testified that for then-Colonel Peplinski to get promoted to brigadier general, he needed to be in the Commander, 127th Wing position. Brig Gen Peplinski was clearly the Commander, 127th Wing and Brig Gen Elliott was not. Maj Gen Cutler was not aware of any documentation to establish that Brig Gen Elliott worked BRAC issues, and not State-related AAG-Air duties. He thought it was clear within his leadership group that Brig Gen Elliott worked only BRAC issues. Maj Gen Cutler thought he remembered telling Brig Gen Elliott not to sign any documents as the AAG-Air or to put his signature block on anything. He asserted "we did not go out and make a big production out of the fact Brig Gen Elliott was detailed as the AAG-Air . . . here."

Maj Gen Cutler testified that the AAG-Air position was a State salaried position. After Brig Gen Heaton retired in January 2006 and because he did not have an AAG-Air on the State payroll, he actually saved the State of Michigan money. His staff told him he had the authority to detail personnel and to backfill them, as in the case with Brig Gen Elliott, as long as he stayed within the budget.

#### *Performance of AAG-Air Duties*

(b)(6), (b)(7)(C) stated that Maj Gen Cutler and Brig Gen Elliott interacted regularly during the day in Lansing and worked in close proximity to each other in offices separated by a single wall. She identified numerous letters and documents where Brig Gen Elliott signed as the AAG-Air, and that his biography identified him as the AAG-Air beginning in January 2006. She testified that it was not until late 2006 that she realized Maj Gen Cutler had permitted Brig Gen Elliott to perform duties as the AAG-Air while remaining on the rolls as the Commander, 127th Wing.

Other evidence indicated Brig Gen Elliott actually performed duties as AAG-Air while double-slotted on the UMDG with Brig Gen Peplinski as the Commander, 127th Wing. (b)(6), (b)(7)(C), testified that when Brig Gen Heaton retired in early January 2006, Brig Gen Elliott succeeded him as the AAG-Air. He learned after the fact that Brig Gen Elliott had never terminated his military technician position, and that he had been double-slotted with Brig Gen Peplinski as the Commander, 127th Wing. Brig Gen Elliott told him that Maj Gen Cutler had authorized the detail so that he could work BRAC issues.

(b)(6), (b)(7)(C), testified that he knew Brig Gen Elliott and Brig Gen Peplinski were both double-slotted in the same position as Commander, 127th Wing, and that they both received Federal paychecks. He believed that as long as "he had the funding," it was permissible to double-slot them. Unless the HRO, MING, provided his office with a Standard Form 52 terminating Brig Gen Elliott from his military technician position, Brig Gen Elliott would continue to receive pay as a dual-status military technician. The (b)(6), (b)(7)(C) initially testified he did not know why Brig Gen Elliott was double-slotted with Brig Gen Peplinski, but later stated he thought it had something to do with Brig Gen Elliott extending his military technician time for retirement. He explained that after December 2005

Brig Gen Elliott was portrayed as the AAG-Air and traveled extensively between Selfridge and Lansing.

(b)(6), (b)(7)(C) testified that in November 2005 he advised Maj Gen Cutler to leave Brig Gen Elliott in his position as the Commander, 127th Wing, to retake a major inspection he had failed months before, and because he would be closer to reaching his eligibility for retirement as a military technician. Maj Gen Cutler told him, "No, we're going to bring him up [to be the AAG -Air]." He added that when Brig Gen Elliott was slotted with Brig Gen Peplinski, he was Brig Gen Peplinski's rater, which was inconsistent with the established rating scheme. Further, he stated "there should never have been one full-time military technician position with two members in the same position."

(b)(6), (b)(7)(C) testified that it was by reading an article published by the Detroit Free Press on August 15, 2007, that he learned Brig Gen Elliott had remained as a military technician for 16 months after becoming the AAG-Air on January 1, 2006. He believed Brig Gen Elliott was only interested in meeting his required gates to receive a military technician retirement. He testified:

My thought (b)(6), (b)(7)(C) was, 'it's a gross foul.' If an individual is selected to be the AAG-Air, they've got a decision to make, and that is you accept the position and you do it correctly by selling back your leave, and then you separate from the military technician system at that time.

(b)(6), (b)(7)(C) . He told us that without question, everyone recognized Brig Gen Elliott as the AAG-Air and Brig Gen Peplinski as the Commander, 127th Wing, and he was certain only a handful of people knew that both Brig Gen Elliott and Brig Gen Peplinski were double-slotted as the Commander, 127th Wing:

When the move was made for Brig Gen Elliott to take over Brig Gen Heaton's job as the AAG-Air, it was never mentioned to me, (b)(6), (b)(7)(C), that Brig Gen Elliott was going to continue on status as a [military] technician . . . because in a perfect world, in the technician chain, I do not work for the wing commander of Selfridge (127th Wing). I work for the ATAG [AAG-Air].

BG Anderson testified that although he was not familiar with the circumstances surrounding Brig Gen Elliott, "Brig Gen Heaton was Brig Gen Elliott's predecessor as the AAG-Air, and when Brig Gen Elliott showed up [in January 2006] . . . in my mind, he [was] it."

(b)(6), (b)(7)(C) added that Brig Gen Elliott was unquestionably the AAG-Air because of the numerous documents he signed with that title.

(b)(6), (b)(7)(C) testified that his office had assignment orders moving Brig Gen Elliott from Commander, 127th Wing, to AAG-Air, and designating Brig Gen Peplinski as the Commander, 127th Wing, in December 2005. He told us Brig Gen Elliott could not be the Wing Commander and an AAG, and that “by law, if he is a Federal technician, he cannot be the AAG.” Brig Gen Elliott should have resigned his military technician position concurrent with his acceptance of the State position as the AAG-Air.

(b)(6), (b)(7)(C), explained that both Brig Gen Elliott and Brig Gen Peplinski encumbered the same military technician position as the Commander, 127th Wing, for 16 months. After acknowledging the Federal government paid both Brig Gen Elliott and Brig Gen Peplinski for the same position for 16 months, she could not offer any further details as to whether it was appropriate or not.

(b)(6), (b)(7)(C) In January 2006, Maj Gen Cutler introduced Brig Gen Elliott to him as the AAG-Air, and told him Brig Gen Elliott would remain on the Federal payroll until he met certain conditions for his military technician retirement, and that Brig Gen Elliott would not start on the State payroll until September 2006. (b)(6), (b)(7)(C) testified he had never seen this type of action before, and that even though Brig Gen Elliott was not on the State payroll until August 13, 2006, he thought everyone within the MING knew Brig Gen Elliott had been the AAG-Air since January 2006.

(b)(6), (b)(7)(C) recalled a specific conversation with Maj Gen Cutler about Brig Gen Elliott’s pay status between January and August 2006. He testified, “I knew we weren’t paying him [from January to August 2006].” Maj Gen Cutler told him, “We’re going to save the State a bunch of money until mid year after we put Brig Gen Elliott on [State] status, and that he was on Federal status until then.”

Brig Gen Elliott testified he was not the AAG-Air until August 13, 2006. The many documents he signed as AAG-Air between January 1 and August 13, 2006, “should have read, Michigan Air National Guard Commander.” Brig Gen Elliott had no explanation for the discrepancy.

Table 1 illustrates calendar year (CY) 2005 and identifies documents indicating that Brig Gen Elliott was appointed as the AAG-Air.

TABLE 1: Calendar Year 2005		
Date(s)	Documents/Actions	Remarks
10-06-05	Michigan National Guard Public Affairs Announcement	Brig Gen Elliott was named as new AAG-Air and Deputy Director, DMVA, and replaces Brig Gen Heaton.
Winter 2005	“The Wolverine Guard” (a news publication released by DMVA)	Brig Gen Elliott was identified as new AAG-Air and Deputy Director, DMVA, effective January 2006. The publication named Brig Gen Peplinski as successor to Brig Gen Elliott as the Commander, 127th Wing.
2005	Special orders: ANG G-7-MI; ANG G-23-MI; ANG G-24-MI	Brig Gen Elliott was relieved as Commander, 127th Wing, and appointed as AAG-Air effective December 30, 2005. In addition to duties as AAG-Air, Brig Gen Elliott assumed command of MIANG.

2005	Special Orders: ANG G-107-MI; GO M-341-05-01; ANG G-22-MI; Standard Forms 52/50 (Request - Notification for military technician promotion from GS-14 to GS-15)	Brig Gen Peplinski was promoted to current grade effective December 30, 2005; NGB GOMO extended Federal recognition to Brig Gen Peplinski as Commander, 127th Wing; Brig Gen Peplinski was appointed as Commander, 127th Wing.
12-07-05	Memorandum to NGB	Maj Gen Cutler requested a waiver for an IPA assignment for Brig Gen Elliott. On December 15, 2005, NGB disapproved the request stating that an "IPA assignment did not include State Deputy or AAG positions."
12-30-05	Classification on-the-job training action document; Military Personnel Data System document	Brig Gen Elliott was reassigned from Commander, 127th Wing, to AAG-Air and Commander, MIANG. Maj Gen Cutler was identified as Brig Gen Elliott's rater.
12-30-05	Classification on-the-job training action document	Brig Gen Peplinski was reassigned as Commander, 127th Wing. Brig Gen Elliott was Brig Gen Peplinski's rater.
(undated)	Biographical summaries	Effective January 2006, Brig Gen Elliott and Brig Gen Peplinski were identified as the AAG-Air and Commander, 127th Wing, respectively.

Table 2 identifies CY 2006 and CY 2007 documents and actions to indicate Brig Gen Elliott was performing State duties as the AAG-Air.

<b>TABLE 2: Calendar Years 2006 and 2007</b>		
<b>Date(s)</b>	<b>Documents/Actions</b>	<b>Remarks</b>
01-06-06	Brig Gen Heaton's retirement ceremony	The Master of Ceremonies introduced Brig Gen Elliott as the new AAG-Air and Brig Gen Peplinski as Commander, 127th Wing.
01-06	Minutes from Michigan Aeronautics Commission meeting, January 2006, and other associated documents	The record identified Brig Gen Elliott as a new 4-year statutory member of the Michigan Aeronautics Commission and stated that he was appointed as AAG-Air, Deputy Director DMVA, and he replaced the former statutory member, Brig Gen Heaton.
02-04-06 02-15-06	Retention incentive nominations/justification requests	As AAG-Air, Brig Gen Elliott signed nomination/justification requests for two employees.
03-14-06	State travel expense voucher	As the Deputy Director, DMVA, Brig Gen Elliott traveled to Washington, D.C. to meet with a Congressional Delegation from March 7 to March 9, 2006.
04-17-06 to 04-19-06	MIANG 2006 Civic Leader Tour (State of Michigan, DMVA)	As AAG-Air, Brig Gen Elliott hosted the civic tour to enhance the civic leaders understanding of DoD. Brig Gen Elliott was photographed, signed invitations, welcome letters, and other related documents as AAG-Air.
04-20-06	Quality Step Increase (QSI)	As AAG-Air, Brig Gen Elliott authorized and justified a QSI (Step 4 to 5) for Brig Gen Peplinski, Commander, 127th Wing.
05-16-06	Military Awards (Certificates)	Maj Gen Cutler authorized several military awards to Airmen in the MIANG; he signed the certificates as the TAG, and Brig Gen Elliott signed them as the AAG-Air.
07-21-06	Special order: ANG G-28-MI	Brig Gen Elliott changed the effective date of his assignment and appointment as AAG-Air from December 30, 2005, to August 13, 2006, by having amended Special order ANG-G-7 MI, dated December 2, 2005 (TAB 45).
Summer 06 Winter 06	"The Wolverine Guard"	The publication identified Brig Gen Elliott as the AAG-Air, MIANG. In the winter 2006 edition, Brig Gen Elliott stated, "My first year as AAG-Air has been very exciting!"
Winter 06	The "2006 Annual Report of the Adjutant General to the Governor"	The publication identified Brig Gen Elliott as the Commander, MIANG, and as AAG-Air and Deputy Director, DMVA.
08-13-06	Appointment Approval Request	Maj Gen Cutler appointed Brig Gen Elliott as the AAG-Air and Deputy Director, DMVA, and special appointee, permanent, career, full-time State employee, effective August 13, 2006.

08-16-06	State oath of office	Brig Gen Elliott executed a State oath as a condition for his employment with the State.
03-01-07	State Headquarters Unit Manning Document	The unit manning document identified Brig Gen Elliott as both the AAG-Air (a State position) and as a [military] technician, Commander, 127th Wing.
03-14-07	Thrift Savings Plan (TSP) Election Form <sup>13</sup>	Brig Gen Elliott initiated changes to his Federal TSP (retirement savings plan for civilians) contributions of (b)(6), (b)(7)(C)
04-26-07	Standard Form 52 "Request for Personnel Action"	Brig Gen Elliott requested to terminate his military technician position as Commander, 127th Wing, effective April 28, 2007.
04-28-07	Standard Form 50 "Notification of Personnel Action"	Brig Gen Elliott's military technician status was terminated.
01-01-05 to 04-28-07	Brig Gen Elliott's military technician pay history	The records reflected he was paid a full-time Federal salary.
05-01-07	Email message traffic between Maj Gen Cutler and a (b)(6), (b)(7)(C)	Maj Gen Cutler approved Brig Gen Elliott's termination as a military technician, effective April 28, 2007.

*Termination of his dual-status military technician position*

Two witnesses testified that in July 2006 Brig Gen Elliott directed an (b)(6), (b)(7)(C), to change the effective date of his replacement as the Commander, 127th Wing and appointment to AAG-Air from December 30, 2005, to August 13, 2006. Several witnesses testified that changing the effective date this way potentially nullified all of the acts, decisions, and signatures Brig Gen Elliott accomplished as the AAG-Air between December 30, 2005, and August 13, 2006. The witnesses could not understand why Brig Gen Elliott changed the effective date to August 13, 2006, since he needed another month, or until September 17, 2006, to qualify for a military technician retirement under FERS. (b)(6), (b)(7)(C), testified he had no knowledge of the recent order until after DoDIG started investigating the matter. Brig Gen Elliott testified he needed the more recent order so that he could process into the State payroll on August 13, 2006.

(b)(6), (b)(7)(C) testified that after Brig Gen Elliott started on the State payroll as the AAG-Air on August 13, 2006, one of her employees sent Brig Gen Elliott's (b)(6), (b)(7)(C) an email asking about the status of the Standard Form 52 terminating him as a military technician. In response to the email, (b)(6), (b)(7)(C) wrote, "Brig Gen Elliott said he shouldn't be terminating yet because he's still using up his leave." (b)(6), (b)(7)(C) thought Brig Gen Elliott was putting the HRO staff off and delaying the inevitable. Brig Gen Elliott was ultimately responsible for failing to terminate his military technician position and he "knew that it was wrong because we specifically went to NGB and requested that he be allowed to remain on the books [on an IPA] until a certain date to get him to retirement, and they told us no."

Maj Gen Cutler testified he was unaware of the new Special order, ANG G-28-MI, dated July 21, 2006, which changed the effective date of Brig Gen Elliott's assignment and appointment as AAG-Air from December 30, 2005, to August 13, 2006. He insisted he never gave Brig Gen Elliott permission to generate the new order. He did not understand the reason for the new order and did not realize Brig Gen Elliott had stayed on the books as a military

<sup>13</sup> At the time Brig Gen Elliott made monetary changes to his military technician retirement thrift savings plan, he had been a salaried state employee since August 13, 2006.

technician until April 2007. He agreed to permit Brig Gen Elliott to reach his military technician retirement of September 17, 2006, but did not assent to anything beyond that. He emphasized, "That's all I signed up for. I will guarantee I wasn't, you know, getting, drilling down into the administrative details of what we were doing."

### Discussion

We conclude that Brig Gen Elliott failed to terminate from his dual-status military technician position when required.

We found that Brig Gen Elliott began working as a dual-status military technician in 1996. In October 2004, he took command of the 127th Wing and began serving in the military technician position of Air Commander (Pilot/Navigator), which was compatible with the military position of wing commander. On December 30, 2005, he accepted appointments as AAG-Air; Deputy Director, DMVA; and Commander, MIANG, and was reassigned to the 110th Fighter Wing in Battle Creek as a consequence of those appointments. However, Brig Gen Elliott needed to serve in his military technician position at the 127th Wing until September 2006 to qualify for retirement benefits under FERS. Although another officer assumed command of the 127th Wing in Selfridge, Brig Gen Elliott did not act to terminate his Federal employment at the 127th Wing until April 28, 2007. He remained on the books there as a military technician for 16 months, double-slotted with the new wing commander in the Air Commander (Pilot/Navigator) position, which required an officer to perform the "paramount requirement" of "direct line responsibility and full accountability for the flying unit."

Maj Gen Cutler asked NGB for permission to permit Brig Gen Elliott to participate in an IPA assignment as the AAG-Air and remain assigned to the 127th Wing until September 2006. Under the claim of working BRAC transformation, Maj Gen Cutler and Brig Gen Elliott proceeded with their plan even though NGB denied the IPA request. We found insufficient evidence to establish that Brig Gen Elliott performed substantially as a detailee on BRAC issues. We found clear and consistent evidence, which established that he actually performed substantial duties as the full-time AAG-Air; the Commander, MIANG; and Deputy Director, DMVA beginning January 1, 2006, and that he began receiving State pay as the AAG-Air beginning on August 13, 2006. We also found that NGB was unaware Brig Gen Elliott had purportedly been detailed.

DoDD 1205.18 required Brig Gen Elliott to maintain active status in the 127th Wing as a condition of continued employment as a military technician in that unit. TPR 715 also required the military and civilian positions for military technicians to be compatible, and mandated removal from the technician position if Brig Gen Elliott failed to maintain a compatible military assignment. TPR 303 authorized the Commander, 127th Wing, to be in a pay status as a military technician, but required the Commander to be the primary occupant of the military technician position of Air Commander (Pilot/Navigator). Title 5, U.S.C. required that details would be made only by written order of the head of an executive department or military department and for not more than 120 days. ANGI 36-2101 prohibited military technicians, which Brig Gen Elliott was, from being placed in an excess status without prior coordination and written approval from NGB.

We determined that Brig Gen Elliott's extension of his Federal service past January 1, 2006, to qualify for retirement benefits under FERS, violated DoDD requirements that military technicians be members of the unit that employed them as a civilian, because he had been militarily transferred to the 110th Fighter Wing. It violated DoDD 1205.18, which required military technicians to maintain active status in the Reserve component unit in which they were employed as a civilian and TPR 715, which mandated that military technicians be removed from their positions if they failed to maintain compatibility between their civilian and military jobs. We determined that Brig Gen Elliott's service as the AAG-Air and Deputy Director, DMVA, was incompatible with continued service as a military technician in the 127th Wing. Brig Gen Peplinski served as the Air Commander (Pilot/Navigator) and Brig Gen Elliott was double-slotted with him. Finally, Brig Gen Elliott's actions resulted in a violation of the ANGI prohibition against officers being carried as excess against a general officer authorization, and the requirement to first coordinate and obtain approval by NGB-GOMO.

#### *Response to Preliminary Conclusion*

Brig Gen Elliott cited a "lack of career termination guidance for Military Technicians Transitioning to State Adjutant General Positions," and stated he should not be penalized for relying on advice he received from others.

After carefully considering Brig Gen Elliott's response, we stand by our conclusion. We found no shortage of guidance to establish that Brig Gen Elliott was required to terminate from his dual-status military technician position on December 30, 2005. A similarly situated general officer in the MI National Guard found the guidance sufficient. When he was nominated as the AAG-Army, he promptly terminated from his military technician position in order to accept the position. Additionally, an <sup>(b)(6), (b)(7)(C)</sup> confirmed that after Brig Gen Elliott became the AAG-Air, he should have done likewise by submitting a Standard Form 52 to terminate his military technician status. Further, Brig Gen Elliott's reliance on the advice he said he received from others was not reason enough to absolve him of his responsibilities for terminating from his dual-status military technician position as required by Federal law and DoD regulations.

B. Did Brig Gen Elliott use his public office for private gain, improperly certify time and attendance records, and improperly receive Federal pay and benefits?

#### Standards

**DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993, including changes 1-6 (March 23, 2006)**

Section 2635.702, "Use of public office for private gain," states that an employee shall not use his public office for his own private gain.

**DoD 7000.14-R, "Financial Management Regulation (DoDFMR)," Volume 8, "Civilian Pay Policy and Procedures," Chapter 2, "Time and Attendance," dated February 2002**

Section 0202, “Requirements,” subsection 020206, “Work Schedules,” paragraph A, “Basic Work Requirement,” states that the basic work requirement is defined as the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave. Generally, a full-time employee’s basic work requirement is 80 hours in a pay period.

Subsection 020102, “Responsibilities,”

“Approving Official’s Responsibilities,” states, in part, that when approving time and attendance reports, supervisors, other equivalent officials, or higher level managers are representing that to the best of their knowledge the actual work schedules recorded are true, correct, and accurate. Review and approval shall be made by the official, normally the immediate supervisor, most knowledgeable of the time worked and absence of the employees involved. The approving official may assign responsibility for observing daily attendance or accurately recording time and attendance data to a timekeeper or in limited circumstances as addressed in paragraph 020404 of this chapter, the individual employee. Assignment of these duties does not relieve the approving official of the responsibility for timely and accurate reporting of the time and attendance which he or she approves, including that leave is approved and administered in accordance with applicable policies, regulations, instructions, and bargaining agreements.

“Timekeeping Responsibilities,” states that individuals performing the timekeeping function are responsible, in part, for:

- Timely and accurate recording of all exceptions to the employee’s normal tour of duty.
- Ensuring that employees have attested to the accuracy of their current pay period’s time and attendance (including any exceptions such as use of leave) and any adjustments or corrections that are required after time and attendance is approved.
- Ensuring that all entries for overtime and compensatory time earned have been approved, and totals are correct before certification.

Section 0204, “Time and Attendance Certification,” subsection 020401, “Controls,” states that each employee’s time and attendance shall be certified correct by the employee’s supervisor, acting supervisor, or other designated representative authorized to act as an alternate certifier.

Subsection 020406, “Exceptions,” states that exceptions to the general prohibition of employees approving their own time and attendance recordings are intended to apply only when it is not feasible for employees described to have their time and attendance report approved by a supervisor. In such instances, the Component head or designee shall grant an official authorization in writing. These exceptions are:

- An employee working alone at a remote site for long periods.

- Employees are based at, but frequently away from, the location of their supervisors and timekeepers during working hours.
- The employee is head of an organization within an agency that has no supervisor on site.

**DoD 7000.14-R, “DoDFMR,” Volume 8, “Civilian Pay Policy and Procedures,”  
dated August 1999**

Chapter 3, “Pay Administration,” Section 0303, “Premium Pay,” states in part that:

- Compensatory time worked must be approved in advance in writing and administered in accordance with subsection 020208 of DoDFMR.
- NG employees are not paid for unused compensatory time worked. They must use their compensatory time by the end of the 26th pay period after it is earned or forfeit that compensatory time.
- When an employee separates, dies, or transfers to another DoD Component (e.g., from Army to Navy, or Air Force to the Defense Logistics Agency) or the employee moves to a non-DoD agency (e.g., Army to Department of the Treasury) the losing Component shall pay for any unused compensatory time balances. NG employees are not paid for unused compensatory time.

Chapter 5, “Leave,” states in part that:

- Section 0502, “Annual Leave,” subsection 050206, “Unused Annual Leave,” states that upon separation from Federal employment, all employees are entitled to a lump-sum payment for the balance of their annual leave account.
- Section 0510, “Compensatory Time Used,” subsection 051003, states, in part, that Title 32 NG shall forfeit any unused compensatory time when they separate or transfer to another DoD Component or Federal agency.
- Section 0526, “Leave Without Pay,” subsection 052601, states that leave without pay is a temporary nonpay status and absence from duty granted at the employee’s request.

**Title 10, U.S.C., “Armed Forces,” Chapter 1007, “Administration of Reserve Components”**

Section 10214, “Adjutants general and assistant adjutants general,” states, in part, that in any case in which, under the laws of a state, an officer of the NG of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the title of the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general.

Section 10216, “Military Technicians (dual-status),” states, in part, that:

A military technician (dual-status) is a Federal civilian employee who is employed under Title 32, Section 709, and is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

“Unit Membership Requirement.” Unless specifically exempted by law, each individual who is hired as a military technician (dual-status) after December 1, 1995, shall be required as a condition of employment to maintain membership in a unit of the Selected Reserve by which the individual is employed as a military technician, or a unit of the Selected Reserve that the individual is employed as a military technician to support.

**National Guard Regulation (NGR) 600-25/Air National Guard Instruction (ANGI) 36-102, “Military Technician Compatibility,” dated March 31, 1995**

A military technician must be the primary occupant (the individual assigned and annotated on the unit-manning document) of the military position. Compatibility is defined as the condition in which a military technician assignment is substantially equivalent to the duties described in the full-time technician position description. General Officers may not be in a pay status as a technician except ANG technician position descriptions requiring the incumbent to be the commander of a tactical combat unit (e.g., 127th Wing).

**TPR 630, “Absence and Leave Program,” dated March 1, 2006**

Chapter 11, “Compensatory Time,” states that:

Compensatory time is accrued only in support of activity/base/unit missions, should be requested in advance, and must be approved by the supervisor. Military technicians are not entitled to receive a lump sum payment for accumulated compensatory time upon separation from military technician employment. Compensatory time is forfeited upon separation.

Facts

*Failure to Terminate Federal Employment as a Dual-Status Military Technician*

As established earlier in this report, Brig Gen Elliott began working as a dual-status military technician in 1996. He assumed command of the 127th Wing and began working full-time as a dual-status military technician in that unit in October 2004. As Commander, 127th Wing, which normally included performing military duty one weekend each month and 2 weeks annually, Brig Gen Elliott, as a military technician, had a “4/10” compressed work schedule, under which he worked four 10-hour days in a week and had Mondays off. On December 30, 2005, Brig Gen Elliott accepted an appointment as the AAG-Air, a full-time State job, and began receiving a State salary for that position on August 13, 2006. However, he did not terminate as required from his dual-status military technician position until April 28, 2007.

Based on this determination, we investigated whether Brig Gen Elliott received Federal pay and benefits to which he was not entitled. Specifically, we discuss annual leave, compensatory time, retention incentive pay, and other pay and benefits below. During this investigation we also discovered evidence that Brig Gen Elliott improperly certified his own time and attendance records.

#### *Certification of Time and Attendance Records*

(b)(6), (b)(7)(C) told us many of Brig Gen Elliott's time and attendance records were missing for the period December 2005 to April 2007. The records we reviewed reflected Brig Gen Elliott stayed on the books at the 127th Wing after he was militarily transferred to the 110th Fighter Wing on December 30, 2005, and began full-time employment with the State as the AAG-Air in Lansing. Brig Gen Elliott's pay records did not show he received a lump sum payment for accrued annual leave or forfeited his unused compensatory time. Instead, they reflected he earned and took compensatory time or accrued and took annual, sick, and military leave. They reflected that while Brig Gen Elliott was purportedly detailed to Lansing, (b)(6), (b)(7)(C), 125 miles from Lansing, recorded 80 hours per pay period and documented absences by exception. Finally, most of the time and attendance records contained Brig Gen Elliott's own initials as the certifier and none by his immediate supervisor, Maj Gen Cutler.

(b)(6), (b)(7)(C), testified that Maj Gen Cutler should have been certifying Brig Gen Elliott's time and attendance records. Maj Gen Cutler testified he never signed any of them. Brig Gen Elliott asserted that he always submitted "detailed" timecards to the timekeeper at Selfridge. He added that an Air Force audit several years ago validated the process by which time and attendance procedures were handled at Selfridge, so he continued the same practice.

The Wright-Patterson Air Force Base Area Audit Office performed an audit during October and November 2003, as part of an Air Force-wide evaluation of National Guard Compensation.<sup>14</sup> The audit focused on whether the 127th Wing at Selfridge managed dual compensation in accordance with statutory requirements; specifically, whether military technicians were off duty or in an official leave status from their civil service position when they participated in military duty to ensure they did not receive dual compensation. We found no evidence that the Air Force audit had anything to do with the propriety of the procedures for managing time and attendance at Selfridge, as Brig Gen Elliott had asserted.

#### *Annual Leave*

At the end of December 2005, Brig Gen Elliott had an annual leave balance of 238 hours. Table 3 illustrates Brig Gen Elliott's claimed accrual and usage of annual leave (as a Federal employee) after being appointed as the AAG-Air.

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<sup>14</sup> Air Force National Guard Compensation, Project F2003-FB1000-0385.000.

<b>TABLE 3: Annual Leave Balance</b>										
	2005	January 2006	February 2006	March 2006	April 2006	May 2006	June 2006	July 2006	August 2006	Total
<b>Annual Leave Accrued</b>	N/A	16	16	16	16	16	16	16	16	<b>128</b>
<b>Annual Leave Used</b>	N/A	0	0	0	0	0	0	0	20	<b>20</b>
<b>Annual Leave Balance</b>	<b>238</b>	254	270	286	302	318	334	350	346	<b>346</b>

Brig Gen Elliott was required to terminate his military technician position at the end of 2005, prior to assuming the AAG-Air position. We calculated that he would have received a lump sum payment of \$15,829.38 for his unused annual leave balance.<sup>15</sup> The table also reflects that between January and August 2006, Brig Gen Elliott claimed to have earned 128 hours and used 20 hours of annual leave. On August 13, 2006, the date Brig Gen Elliott began receiving a State salary as AAG-Air, he had an annual leave balance of 346 hours.

Table 4 illustrates Brig Gen Elliott's claimed accrual and usage of annual leave as a Federal employee until his termination as a military technician.

<b>TABLE 4: Annual Leave Balance (August 13, 2006 to April 28, 2007)</b>										
	August 2006	September 2006	October 2006	November 2006	December 2006	January 2007	February 2007	March 2007	April 2007	Total
<b>Annual Leave Accrued</b>	N/A	16	14	13	16	16	16	24	16	<b>131</b>
<b>Annual Leave Used</b>	N/A	50	80	10	0	33	0	0	155	<b>328</b>
<b>Annual Leave Balance</b>	<b>346</b>	312	246	249	265	248	264	288	149	<b>149</b>

Based on Brig Gen Elliott's leave and earnings statement, after he began receiving a State salary as the AAG-Air, he continued to accrue an additional 131 hours of annual leave as a dual-status military technician. During the same period, he also used 328 hours. Upon formally terminating his status as a military technician, effective April 28, 2007, Brig Gen Elliott received a lump-sum payment of \$9,959.00 for his unused annual leave balance of 149 hours.

<sup>15</sup> We used the following formula: 238 (hours) x \$66.51 (hourly rate of pay) = \$15,829.38.

### *Compensatory Time*

Brig Gen Elliott asserted that he was a “workaholic,” typically worked “fifty, sixty hour workweeks, and most weekends.” Brig Gen Elliott’s military technician time and attendance records reflected that he recorded, certified, claimed, and received 10 to 12 hours of compensatory time for almost every Saturday, Sunday, Monday (his scheduled days off), and holidays between January and August 2006. His time and attendance records did not describe the justification for working the compensatory hours or whether Maj Gen Cutler approved the additional time in advance.

At the end of December 2005, Brig Gen Elliott had a balance of 211 compensatory hours. Table 5 illustrates Brig Gen Elliott’s purported accrual and usage of compensatory time (as a Federal employee) after being appointed as the AAG-Air.

<b>TABLE 5: Compensatory Time from January 2006 to August 2006</b>											
	2005	January 2006	February 2006	March 2006	April 2006	May 2006	June 2006	July 2006	August 2006	Total 2006	Net
<b>Compensatory Time Earned</b>	N/A	83.5	96.5	108.5	132.5	99	73	91.5	18	<b>702.5</b>	<b>913.5</b>
<b>Compensatory Time Used</b>	N/A	0	33.5	30	0	10	11	10	14	108.5	<b>108.5</b>
<b>Compensatory Time Balance</b>	<b>211</b>	294.5	357.5	436	568.5	657.5	719.5	801	805	594	<b>805</b>

Brig Gen Elliott would have forfeited the 211 hours of compensatory time, valued at approximately \$14,033.61, if he had terminated his military technician position at the end of 2005, as required.<sup>16</sup> Brig Gen Elliott’s leave and earnings statements from January to August 2006 also indicate that he claimed an additional 702.5 hours of compensatory time, while using 108.5 hours. At the beginning of August 2006, Brig Gen Elliott had a balance of 805 hours of compensatory time.

Beginning in September 2006, Brig Gen Elliott began using a significant amount of compensatory time. Table 6 illustrates that Brig Gen Elliott exhausted all 805 hours of compensatory time by the time he terminated his Federal employment on April 28, 2007.

<sup>16</sup> We used the following formula: 211 (hours) x \$66.51 (hourly rate of pay) = \$14,033.61.

<b>TABLE 6: Compensatory Time from August 2006 to April 2007</b>										
	August 2006	September 2006	October 2006	November 2006	December 2006	January 2007	February 2007	March 2007	April 2007	Grand Total
<b>Compensatory Time Used</b>	N/A	90	0	60	150	100	160	160	85	<b>805</b>
<b>Compensatory Time Balance</b>	<b>805</b>	715	715	655	505	405	245	85	0	<b>0</b>

We calculated the total value of the hours of compensatory time to be approximately \$60,756.89.<sup>17</sup> This includes the 211 hours he should have forfeited upon assuming the AAG-Air position, and the subsequent 702.5 hours he claimed he earned from January to August 2006.

On April 26, 2007, Brig Gen Elliott generated and signed his own Standard Form 52 requesting to terminate his Federal employment as a military technician at the 127th Wing. A Standard Form 50, "Notification of Personnel Action" documented the action, which had an effective date of April 28, 2007.

Witnesses unanimously testified to their skepticism that Brig Gen Elliott properly accounted for his time and attendance. They thought it was implausible he could have earned more than 800 hours of compensatory time between January and August 2006, and believed Maj Gen Cutler should have approved such time in advance.

Maj Gen Cutler testified that while he was sure Brig Gen Elliott worked well in excess of 40 hours per week, he never authorized any compensatory time for Brig Gen Elliott and was surprised to learn Brig Gen Elliott had claimed so many hours. Brig Gen Elliott explained that as a military technician, he normally averaged 20 hours over and above the normal workweek and while 800 hours of compensatory time seemed high, he often worked back-to-back weekends.

Brig Gen Elliott stated he wrote a letter to Maj Gen Cutler in which he wrote that while he "was not admitting guilt," he would pay back all of the compensatory time because of the "recent media coverage and the negative impact it had on the MING."

#### *Retention Incentive Pay*

On November 30, 2007, the Michigan United States Property & Fiscal Officer (USPFO) completed a comprehensive review of the MING Technician Retention Bonus Program, which included a detailed evaluation of retention incentive payments for MING members.<sup>18</sup> The

<sup>17</sup> We used the following formula: 913.5 (hours) x \$66.51 (hourly rate of pay) = \$60,756.89

<sup>18</sup> According to the Office of Personnel Management (OPM), an employee may be paid a retention incentive upon written determination by the authorizing official that the unusually high or unique qualifications of the employee or a special need of the organization for the employee's services makes it essential to retain the employee, and that absent a retention incentive, the employee would be likely to leave Federal service.

USPFO review reflected that between December 2005 and April 2007, Brig Gen Elliott improperly received \$3,027.50 in retention incentive payments.

### *Pay and Benefits Summary*

We estimated that if Brig Gen Elliott had terminated his dual-status military technician position on December 30, 2005, as required, he would have received \$15,829.38 for his unused annual leave balance, forfeited any unused compensatory time, and ceased to receive additional pay and benefits. We estimated he used regular hours, compensatory time, annual leave, holiday leave and retention incentives to receive \$184,411.90 in gross Federal pay between January 1, 2006, and April 28, 2007.<sup>19</sup> The final \$9,959.00 payment he received on April 28, 2007, for his unused annual leave balance brought his total Federal pre-tax compensation after December 30, 2005, to approximately \$194,370.90. This total does not include the value of Federal benefits such as employer contributions to social security, continued participation in the Thrift Savings Plan, and continued coverage by group life and health insurance.

### Discussion

We conclude that Brig Gen Elliott used his public office for private gain, improperly certified his own time and attendance records, and received Federal pay and benefits to which he was not entitled.

As discussed earlier in this report, we concluded that Brig Gen Elliott was required to terminate his military technician position at the end of 2005, prior to accepting appointments as the AAG-Air; Deputy Director, DMVA; and Commander, MIANG. As a consequence, Brig Gen Elliott would have been paid \$15,829.38 for his unused annual leave balance and forfeited 211 hours of his unused compensatory time.

We also found that Brig Gen Elliott used regular hours, compensatory time, annual leave, holiday leave, and retention incentives to extend his employment with the Federal government while receiving pay and benefits. We found that he received approximately \$184,411.90 in gross Federal pay between January 1, 2006, and April 28, 2007, and \$9,959.00 for his unused annual leave - totaling approximately \$194,370.90. In addition, he began receiving a State salary on August 13, 2006.

Further, we found that Brig Gen Elliott did not submit his time and attendance records for the period in question to his supervisor, and that he instead approved them himself without supervisory review. We found that between January and August 2006, Brig Gen Elliott claimed 702.5 hours of compensatory time, without prior approval of his supervisor. He subsequently exhausted those hours prior to terminating his status as a military technician in April 2007.

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<sup>19</sup> We used the following formula: 16 (pay periods through August 2006) x 80 (hours per pay period) x \$66.51 (hourly rate of pay) + 18 (pay periods between September 2006 and April 2007) x 80 (hours per pay period) x \$66.84 (increased hourly rate of pay) + \$3,027.50 (retention incentive pay) = (16 x 80 x 66.51) + (18 x 80 x 66.84) + 3,027.50 = \$184,411.90.

The DoDFMR states that Federal employees are entitled to a lump-sum payment for unused annual leave when they separate from Federal employment, and requires Title 32 NG employees to forfeit unused compensatory time upon separation. The DoDFMR also requires that each employee's time and attendance be certified correct by the employee's supervisor, acting supervisor, or other designated representative authorized to act as an alternate certifier, and that supervisors preapprove the earning of compensatory time.

We determined that Brig Gen Elliott would have received a lump-sum payment for his annual leave. However, he was not entitled to any Federal pay and benefits after January 1, 2006, to include base pay, the accrual of annual leave and compensatory time, or participation in the Thrift Savings Plan.

As such, we determined that the difference between \$194,370.90, the estimated compensation received after December 30, 2005; and \$15,829.38, his entitlement for unused leave as of that date, was an amount to which Brig Gen Elliott was not otherwise entitled. This difference totaled an estimated \$178,541.52. Additionally, we found that he also improperly received \$3,027.50 in retention incentive payments.

Finally, we determined that Brig Gen Elliott took these improper actions for his own private gain, which was inconsistent with the JER prohibition against such behavior.

#### *Response to Preliminary Conclusion*

Brig Gen Elliott did not dispute our determination that he improperly certified his own time and attendance records. Regarding improper receipt of Federal pay and benefits, he offered several points that he believed were relevant. Brig Gen Elliott asserted that between December 30, 2005, and August 13, 2006, he volunteered his services to the State of Michigan and received no compensation from the State. After the State began paying him on August 13, 2006, Brig Gen Elliott only continued to receive Federal pay and benefits by "drawing down" accrued compensatory time and annual leave in a "terminal leave" status. (b)(6), (b)(7)(C) advised him this was not improper. Brig Gen Elliott asserted that these arrangements were permissible due to his "detail" from the 127th Wing to work BRAC issues, beginning on December 30, 2005. His detail from the 127th Wing meant he was not required to terminate from his dual-status military technician position when he relinquished command of the wing. Finally, the requirement of military technician compatibility with military duties was not an issue because he was properly detailed.

After carefully considering Brig Gen Elliott's response, we stand by our conclusion. As established previously, Brig Gen Elliott failed to terminate his dual-status military technician position on December 30, 2005, as required. That Brig Gen Elliott received no compensation from the State of Michigan until August 13, 2006, was not relevant. He was not entitled to any Federal compensation after December 30, 2005.

Further, his statement that he provided services to the State strictly on a voluntary basis was not credible. We found ample evidence Brig Gen Elliott performed duties as the AAG-Air,

a full-time state job which he now claims he performed as a volunteer. We found no evidence he performed duties related to the BRAC, the purported nexus to Federal duties, yet Brig Gen Elliott would have us believe he performed these duties full-time. Brig Gen Elliott even claimed 702.5 hours in Federal compensatory time between January and August 2006.

In addition, TPR 303 provides that Brig Gen Elliott could not be in a pay status as a full-time military technician unless he was the primary occupant and Air Commander (Pilot/Navigator) of the 127th Wing. After December 30, 2005, Brig Gen Peplinski was the primary occupant, and Brig Gen Elliott was not. Moreover, even if regulations provided for such authority, there was no authority to allow Brig Gen Elliott to have “volunteered” his Federal time as a full-time military technician to perform inherently full-time State duties as the AAG-Air. Essentially, the Federal Government paid for Brig Gen Elliott to perform State duties in a State position for which the State should have paid.

Finally, Brig Gen Elliott’s statement that it was not improper to draw down unused compensatory and leave time while in a “terminal leave” status after August 13, 2006, is incorrect. Dual-status military technicians and traditional guardsman are not eligible to take “terminal leave.” After being selected as the AAG-Air on December 30, 2005, Brig Gen Elliott had to forfeit any unused compensatory time and receive a lump-sum payment for all unused annual leave.

C. Did Brig Gen Elliott improperly claim TDY expenses related to travel to his new official duty station?

#### Standards

**DoD 5500.7-R, “Joint Ethics Regulation (JER),” dated August 30, 1993, including changes 1-6 (March 23, 2006)**

Section 2635.702, “Use of public office for private gain,” states that an employee shall not use his public office for his own private gain.

**Joint Travel Regulations (JTR), Volume 2 (Department of Defense Civilian Personnel), dated December 1, 2005**

Appendix A defines the following terms:

- Temporary Duty Travel. Travel to one or more places away from a permanent duty station to perform duties for a period of time and, upon completion of assignment, return or proceed to a permanent duty station.
- Permanent Change of Station. In general, the assignment, detail, or transfer of an employee to a different permanent duty station under a competent travel authorization that does not specify the duty as temporary, provide for further assignment to a new permanent duty station, or direct return to the old permanent duty station.

- Permanent Duty Station. Also called “Official Station.” The employee’s permanent work assignment location. For the purpose of determining PCS travel allowances, a permanent duty station is the building or other place (base, post, or activity) where an employee regularly reports for duty. With respect to authorization under these regulations relating to the residence and the household goods (HHG) and an employee’s personal effects, permanent duty station also means the residence or other quarters from (to) which the employee regularly commutes to (and from) work.

Section C1050B, “Travel Justification,” states that travel and transportation at Government expense may be directed only when officially justified, and by means which meet mission requirements consistent with good management practices.

Section C1058, “Obligation to Exercise Prudence in Travel,” states that Federal employees have an obligation to exercise prudence in travel. Employees must exercise the same care and regard for incurring expenses to be paid by the Government as would a prudent person traveling at personal expense. Excess costs, circuitous routes, delays, or luxury accommodations that are unnecessary or unjustified are the traveler’s financial responsibility.

Section C4113, “TDY Station becomes permanent duty station (PDS),” states that generally, when an employee is transferred for permanent duty to a place at which the employee is already on TDY, the transfer is effective for per diem purposes on the date the employee receives definite notice, whether formal or informal, of the transfer.<sup>20</sup> Per diem stops on the date the employee receives the notice. This, however, does not apply if the employee performs a TDY period or periods at the new PDS between the time the employee receives definite notice of the transfer and the effective date of the transfer if such period or periods are terminated by a return to the old PDS at which the employee performs substantial duty.

Section C4405 states that TDY assignments may be authorized and approved only when necessary in connection with official DoD activities or Government business. This provision further provides that procedures must be in place to evaluate TDY requests to ensure that the purpose is essential official business, cannot be satisfactorily accomplished less expensively by correspondence or other appropriate means, the duration is no longer than required, and the number of persons assigned is held to a minimum.

Section C4410 defines TDY travel as an assignment away from the employee’s PDS that it is not so frequent or lengthy that the location is, in fact, the employee’s PDS.

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<sup>20</sup> DoDFMR, Volume 9, stated that a permanent duty station was referred to as an “official station.”

**DoDFMR, “Volume 9, “Travel Policy and Procedures,” dated May, September, and October 2005**

Chapter 5, “TDY”

Section 0502, “Responsibilities,” Subsection 050201, states, in part, that approving officials approve TDY orders and travel claims. Supervisory reviews include reviewing, signing, and dating all travel claims for military and civilian personnel.

The DoDFMR defined supervisory review as a review conducted by a person who has supervisory responsibilities over the person whom he or she directs to travel. The supervisor has knowledge of the basis for the traveler’s temporary duty travel claim. The supervisor reviews the travel claim to ensure that it is valid and accurate. He or she signs and dates the travel claim prior to submitting it to the proper travel computation office.

Section 0511, “Leave, Permissive TDY, or Administrative Absence in Conjunction with Funded TDY,” Subsection 051103, states that the unit commander, designated representative, or employee’s supervisor shall make and document determinations regarding leave and duty status, to include overtime.

Chapter 8, “Processing Travel Claims”

Section 0803, “Voucher Preparation,” Subsection 080301, states, in part, that the traveler is responsible for the preparation of the travel voucher. Even when someone else prepares the voucher, the traveler is responsible for the truth and accuracy of the information. When the traveler signs the form, the traveler attests that the statements are true and complete and is aware of the liability for filing a false claim.

Section 0804, “Responsibilities,” Subsection 080403, states, in part, that an authorizing official or supervisor that has knowledge of the purpose and conditions of the travel claim prepared by the traveler conducts the review of the claim by ensuring that:

- The claim is properly prepared.
- The amounts claimed are accurate and reasonable.
- The required orders authorizing the travel, receipts, statements, and any justifications are attached to the travel claim.
- The claimed expenses were authorized and allowable, and that any deviations from the authorized travel were in the best interest of the government.
- The AO or supervisor has reviewed, signed, and dated all travel claims and forwarded them to the travel office for computation.

**National Guard Regulation No. 37-110, Air National Guard Regulation No. 177-08, “Control of TDY Travel and Per diem Costs,” dated August 31, 1983**

Authorizing officials must be prudent in approving the use of Federal funds for travel.

**Office of Government Ethics (OGE) Guidance, dated March 23, 1992**

A bona fide official activity must be the predominant purpose of the travel for the trip to be characterized as official.

Facts

The facts detailed in the previous allegations are relevant to this allegation. In January 2006, Brig Gen Elliott failed to terminate his Federal status as a dual-status military technician prior to transferring from the 127th Wing to the 110th Fighter Wing and performing full-time duties with the State as the AAG-Air.

We obtained and reviewed Brig Gen Elliott’s travel orders issued by the 127th Wing from January to August 2006. The approving official was Brig Gen Elliott, or in some cases, the new Commander, 127th Wing. Brig Gen Elliott’s travel orders identified the purpose for his travel as “Lansing.” On 21 occasions Brig Gen Elliott traveled in a TDY status as a GS-15 military technician from Selfridge ANGB to Headquarters, DMVA, Lansing, MI. Brig Gen Elliott testified that Maj Gen Cutler authorized or approved his TDY orders, but none of the orders bore Maj Gen Cutler’s signature as the approving official. Brig Gen Elliott’s travel vouchers reflected that he claimed expenses such as lodging, meals and incidental expenses, rental car, parking, etc. totaling \$19,172 and that he signed the vouchers himself as both the claimant and the supervisor.

Although Brig Gen Elliott, as a military technician, worked a “4/10” compressed work schedule, under which he worked four 10-hour days in a week and had Mondays off, his travel records reflected that he claimed TDY expenses for the Lansing area for almost every Saturday, Sunday, Monday (his scheduled days off), and holidays between January and March 2006.

On February 28, 2006, Brig Gen Elliott purchased a home in suburban Lansing. On March 14, 2006, Brig Gen Elliott began claiming and receiving reimbursement for his mortgage payment as a TDY expense. Brig Gen Elliott processed his TDY vouchers in 30-day increments and stopped claiming travel to Lansing in a TDY status on August 12, 2006, the day before he processed into the State payroll as the AAG-Air. Public records reflected that Brig Gen Elliott sold his house in Macomb, MI, near Selfridge, on August 14, 2006.

Maj Gen Cutler testified he did not coordinate with Brig Gen Elliott about his TDY to Lansing during this period. He did not “drill down into the details,” but testified that if Brig Gen Elliott had asked, he would have approved his TDY orders. Maj Gen Cutler stated he had asked Brig Gen Elliott to come to Lansing to work BRAC transformation, and knew that Brig Gen Elliott had not terminated his Federal status as a military technician.

Brig Gen Elliott testified that as far as he was concerned, his TDY orders were what gave him the authorization to travel in a TDY status to Lansing. He explained that because he was not a “detail” person he did not know if the necessary information on his order was there.

### Discussion

We conclude Brig Gen Elliott improperly claimed TDY expenses related to travel to his new official duty station. When Brig Gen Elliott relinquished command of the 127th Wing to Brig Gen Peplinski on January 1, 2006, he should have also terminated his employment as a dual-status military technician from the 127th Wing before he began performing full-time duties with the State as the AAG-Air.

We found that Brig Gen Elliott claimed TDY status from Selfridge ANGB to Lansing, MI, on 21 separate occasions between January and August 2006. We also found that either Brig Gen Elliott or the Commander, 127th Wing approved Brig Elliott’s TDY orders, which incorrectly identified Brig Gen Elliott as a GS-15 military technician assigned to the 127th Wing. Further, we found that Brig Gen Elliott was paid \$19,172 for travel expenses claimed, and that he signed his own travel vouchers as both the claimant and the supervisor.

The JTR, Section C4410, defined TDY travel as an assignment away from the employee’s PDS. Section C1050B prohibited travel and transportation at government expense unless it was officially justified. Section C4405 required TDY to have a necessary connection to official DoD activities or Government business, and the establishment of procedures to ensure TDY was necessary and served an essential and official purpose. Finally, the DoDFMR required an authorizing official or supervisor to review travel orders and claims.

We determined that Brig Gen Elliott’s practice of approving his own orders and claims violated the DoDFMR requirement for supervisory or authorizing official review and was inconsistent with the JTR’s requirement regarding internal control procedures.

We also determined that the 21 TDY trips he took to Lansing on or after January 1, 2006, as well as any claims associated with them, were improper. The trips did not meet the JTR definition of TDY travel because Lansing, not Selfridge ANGB, became Brig Gen Elliott’s PDS when he relinquished command to Brig Gen Peplinski, transferred militarily to the 110th Fighter Wing, and accepted appointments as the AAG-Air; Deputy Director, DMVA; and Commander, MIANG. There was no JTR provision which authorized him to conduct TDY travel to his PDS.

Further, we determined there was no basis or official purpose for him to claim TDY travel to any destination as a military technician in the 127th Wing on or after January 1, 2006, because he was not properly assigned as a member of that unit after that date. These conditions and actions were inconsistent with JTR requirements that TDY have an official purpose and justification.

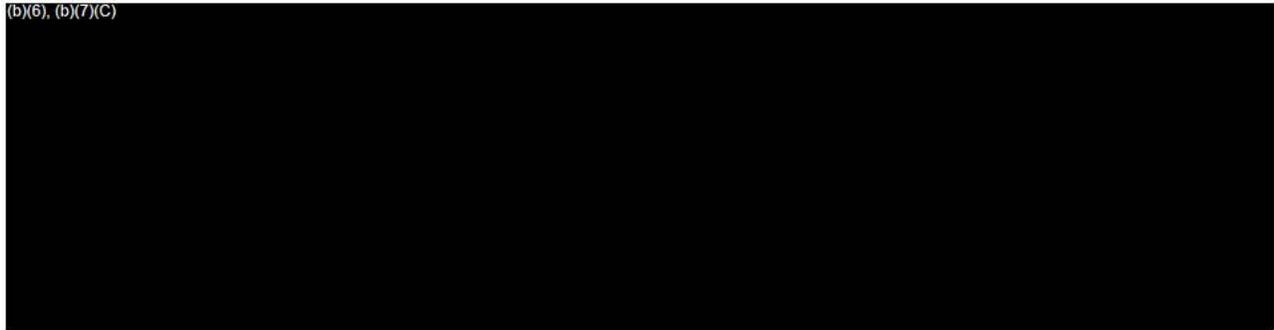
### *Response to Preliminary Conclusion*

Brig Gen Elliott did not dispute our determination that he improperly approved his own TDY orders and claims, in violation of the JTR and DoDFMR. However, he asserted that

After carefully considering Brig Gen Elliott's response, we stand by our conclusion. As discussed previously, Brig Gen Elliott was appointed as the AAG-Air on December 30, 2005, and failed to terminate from his dual-status military technician position as required. As a result, he was militarily transferred to the 110th Fighter Wing to perform State, not Federal (127th Wing), duties in Lansing. Therefore, it was not possible for him to be detailed from the 127th Wing and compensated for any TDY expenses as a member of that unit after December 30, 2005.

V. OTHER MATTERS

(b)(6), (b)(7)(C)



VI. CONCLUSION

A. Brig Gen Elliott failed to terminate from his dual-status military technician position when required.

B. Brig Gen Elliott used his public office for private gain and improperly received Federal pay and benefits.

C. Brig Gen Elliott improperly claimed TDY expenses related to travel to his new official duty station.

VII. RECOMMENDATIONS

A. That the Secretary of the Air Force take appropriate action regarding the substantiated allegations. Such action should include determining whether Brig Gen Elliott accrued sufficient time to qualify for military technician retirement under FERS, and initiating the recoupment of the overpayment of Federal pay and benefits and TDY expenses improperly received by Brig Gen Elliott between January 2006 and April 2007.

B. (b)(6), (b)(7)(C)



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Inspector General  
Department of Defense

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