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Report No. 12-122820-079 June 27, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION: VICE ADMIRAL JAMES P. "PHIL" WISECUP UNITED STATES NAVY NAVAL INSPECTOR GENERAL

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JUN 27 2012

MEMORANDUM FOR ACTING INSPECTOR GENERAL

SUBJECT: Report of Investigation Concerning Vice Admiral James P. "Phil" Wisecup, U.S. Navy, (Report No. 12-122820-079)

We recently completed our investigation to address an allegation that while serving as the Naval Inspector General, Vice Admiral (VADM) James P. "Phil" Wisecup, U.S. Navy, improperly endorsed a non-Federal entity in a promotional video in uniform, without a disclaimer.

We substantiated the allegation. We found that Lincoln Military Housing (LMH) invited VADM Wisecup to participate in an interview as a satisfied customer. VADM Wisecup did not fully staff the LMH request and participated in the video-recorded interview in uniform on December 16, 2011. VADM Wisecup neither sought Department of the Navy approval nor signed or stated a disclaimer that his comments were his own and did not necessarily represent the views of the Department of Defense or U.S. Navy. The excerpts from the interview and VADM Wisecup's name were featured in a video posted to the Internet on December 30, 2011. Accordingly, we determined that VADM Wisecup's appearance in uniform and remarks, without a disclaimer, implied that he was an official Department of Defense spokesperson who sanctioned or endorsed the activities of LMH, a non-Federal entity.

In accordance with our established procedure, we provided VADM Wisecup the opportunity to comment on the initial results of our investigation. In his response, dated June 20, 2012, VADM Wisecup did not contest our preliminary findings and conclusions. After carefully considering VADM Wisecup's response, we stand by our conclusion. The report of investigation, together with VADM Wisecup's response, is attached.

We recommend the Secretary of the Navy consider appropriate corrective action with regard to VADM Wisecup.

Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

Attachment:
As stated

REPORT OF INVESTIGATION:
VICE ADMIRAL JAMES P. "PHIL" WISECUP, UNITED STATES NAVY

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address the self-reported allegation that Vice Admiral (VADM) James P. "Phil" Wisecup, while serving as the Naval Inspector General, Washington Navy Yard, improperly endorsed a non-Federal entity (NFE) in a promotional video in uniform, without a disclaimer, in violation of Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)," and Department of Defense Instruction (DoDI) 1334.01, "Wearing of the Uniform."

We substantiated the allegation that VADM Wisecup improperly endorsed an NFE. We found that Lincoln Military Housing (LMH) invited VADM Wisecup to participate in an interview as a satisfied customer. VADM Wisecup did not fully staff the LMH request and participated in the video-recorded interview in uniform on December 16, 2011. VADM Wisecup did not sign or state a disclaimer indicating his comments were his own and did not necessarily represent the views of the DoD or U.S. Navy. The edited video, posted to the Internet on December 30, 2011, featured VADM Wisecup in uniform providing positive comments about LMH.

The JER prohibits an employee from permitting the use of his Government position or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another, without a proper disclaimer. DoDI 1334.01 prohibits the wearing of the uniform by members of the Armed Forces when an inference of official sponsorship for the activity or interest may be drawn.

Accordingly, we determined that VADM Wisecup's appearance in uniform and remarks, without a disclaimer, implied that he was an official DoD spokesperson who sanctioned or endorsed the activities of LMH, an NFE.

Following our established practice, by letter dated June 15, 2012, we provided VADM Wisecup the opportunity to comment on the initial results of our investigation. In his written response, dated June 20, 2012, VADM Wisecup did not dispute our preliminary findings and conclusion, and reiterated his intent was merely "to convey a 'well done' to the Lincoln bosses" regarding the actions of the Washington Navy Yard LMH staff. After carefully considering VADM Wisecup's response, we stand by our conclusion.

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

II. BACKGROUND

In April 2011, VADM Wisecup became the 38th Naval Inspector General and the senior investigative official in the Department of the Navy. In August 2011, VADM Wisecup and his family moved into quarters managed by LMH on the Washington Navy Yard.

LMH is a division of Lincoln Property Company, a commercial and residential property management company. LMH is the private partner in a public private venture that is governed by a business agreement in which the Navy has limited rights and responsibilities. The private entity is responsible for managing the construction, renovation, maintenance, and day-to-day maintenance along with services of the community. On August 1, 2005, LMH assumed management and maintenance responsibilities for most of the family housing communities in the Naval District of Washington including the Executive Homes located on the Washington Navy Yard. The LMH website reflects that LMH is not a Government entity or a Federal Government contractor.

On January 12, 2012, VADM Wisecup met with his staff and self-reported his appearance in the promotional video to the DoD IG, the Undersecretary of the Navy, and the Deputy Chief of Naval Operations. The same day, Naval Facilities Command coordinated with LMH to have the video removed from the Internet.

III. SCOPE

We interviewed VADM Wisecup and eight witnesses, including LMH officials, with knowledge of the matters under investigation. Additionally, we reviewed Government email records, and applicable standards and regulations.

IV. FINDINGS AND ANALYSIS

Did VADM Wisecup improperly endorse an NFE by appearing in a promotional video while in uniform?

Standards

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 23, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart G, "Misuse of Position," Section 2635.702, "Use of public office for private gain," states, in part, that an employee shall not use his public office for the endorsement of any product, service, or enterprise.

In Section 2635.702(b), "Appearance of governmental sanction," except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by Section 2635.807(b).

In Section 2635.702(c), "Endorsements," an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except (1) In furtherance of statutory authority to promote products, services, or enterprises; or (2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

In Section 2635.807(b), "Reference to official position," an employee who is engaged in teaching, speaking, or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking, or writing activity or to promote any book, seminar, course, program, or similar undertaking, except that an employee may use or permit the use of rank in connection with his teaching, speaking, or writing.

Section 2 of the JER incorporates 5 CFR, Part 3601, "Supplemental Standards of Ethical Conduct for Employees of the Department of Defense."

Subsection 2-201a, "Designation of Separate Agency Components," designates the Department of the Navy as a separate Agency within the Department of Defense.

Subsection 2-207, "Disclaimer for Speeches and Writings Devoted to Agency Matters," states, in part, a DoD employee who uses or permits the use of his military grade as one of several biographical details given to identify himself in connection with speaking in accordance with 5 CFR 2635.807(b) shall make a disclaimer if the subject of the speaking deals in significant part with any ongoing program or operation of the DoD employee's Agency and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency's position. Subparagraph 2-207(a) requires the disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components. Subparagraph 2-207(c) states where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

Chapter 3, "Activities with non-Federal Entities," Section 3, "Personal Participation in Non-Federal Entities," Subsection 3-300a, "Fundraising and Other Activities," states, in part, employees may voluntarily participate in activities of NFEs as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions.[1]

[1] JER, Section 1-217, defines a "non-Federal entity" as a self-sustaining, non-Federal person or organization, established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government.

Subparagraph 3-300a(1) further amplifies, except as provided for in 5 CFR 2635.807(b), DoD employees may not use or allow the use of their official titles, positions, or organization names in connection with activities performed in their personal capacities as this tends to suggest official endorsement or preferential treatment by DoD of any NFE involved. Military grade and military department as part of an individual's name may be used, the same as other conventional titles such as Mr., Ms., or Honorable, in relationship to personal activities.

DoDI 1334.01, "Wearing of the Uniform," dated October 26, 2005

This instruction sets limitations on wearing the uniform by members of the Armed Forces.

Paragraph 3, "Policy," Subparagraph 3.1, states, in part, that the wearing of the uniform by members of the Armed Forces is prohibited during or in connection with furthering commercial interests, when an inference of official sponsorship for the activity or interest may be drawn. The Instruction prohibits wearing of the uniform except when authorized by the competent Service authority, when participating in activities such as unofficial interviews, which may imply Service sanction of the cause for which the activity is conducted.

Facts

In the summer of 2011, VADM Wisecup moved into quarters on the Washington Navy Yard managed by LMH. He testified that after moving in, he created a list of discrepancies with the residence, which LMH either addressed or corrected within 24 hours. VADM Wisecup related that this was his fourth public private venture home and that he was not used to that level of service.

On November 8, 2011, VADM Wisecup forwarded (b) (6), (b) (7)(C) a draft email that he intended to send to the LMH (b) (6), (b) (7)(C) and requested an opinion on whether it was appropriate to send. The draft email read:

> [The LMH (b) (6), (b) (7)(C)] and her team are by far/by far, the most engaged, helpful, and WILLING to help us … they are competent and get things done, and that is impressive due to it's (sic) rarity. … and I wanted someone in their leadership to know that.

Three minutes later, (b) (5), (b) (6), (b) (7)(C) Later that same day, VADM Wisecup's (b) (6), (b) (7)(C) forwarded the email to the (b) (6), (b) (7)(C)

The LMH (b) (6), (b) (7)(C) testified that in late November or early December 2011, the LMH Vice President informed her that LMH was creating a public relations video and looking for residents who were willing to go on film and comment about their good experiences with LMH. The LMH (b) (6), (b) (7)(C) related that she immediately thought of VADM Wisecup because she had just received a thank you note from him. The LMH (b) (6), (b) (7)(C) recalled that she told the LMH (b) (6), (b) (7)(C) to ask VADM Wisecup if he would

participate in the public relations video. The LMH (b) (6), (b) (7)(C) further testified that it was not unusual for LMH headquarters to request good news stories because the videos were used for LMH employee training and "Welcome Aboard" processing of newly assigned sailors.[2]

The LMH (b) (6), (b) (7)(C) testified that during the week of December 12, 2011, she called VADM Wisecup and left a voice message asking him to participate in a public relations video.[3] (b) (6), (b) (7)(C) thought that she had mentioned in her voice message that the Vice President requested a video-recorded interview as a public relations event. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) stated that prior to the interview she did not speak directly with VADM Wisecup and only spoke with VADM Wisecup's (b) (6), (b) (7)(C) in order to coordinate the interview.

VADM Wisecup testified that (b) (6), (b) (7)(C) voice message gave him the impression the interview would be with the LMH Chief Executive Officer so he (VADM Wisecup) could relay in person the excellent treatment he had received from the Washington Navy Yard LMH staff. He denied the voice message contained the terms "promotional video" or "public relations video." On December 13, 2011, immediately after listening to the voice message, VADM Wisecup informed (b) (6), (b) (7)(C) by email that the LMH (b) (6), (b) (7)(C) asked him to interview with (b) (6), supervisors from Dallas as a "satisfied customer" and asked, "Can I do this?" Four minutes later (b) (6), (b) (7)(C), (b) (5)

VADM Wisecup, (b)(6), (b)(7)(C) all testified they were on official travel during the period the interview was being coordinated. VADM Wisecup and (b) (6), (b) (7) (C) (b)(6), (b)(7)(C) were on official travel in Annapolis, Maryland. (b) (6), (b) (7)(C) was on official travel in Norfolk, Virginia. VADM Wisecup's official calendar indicated that all three were on temporary assigned duty for the period December 13-15, 2011. Additionally, the three testified the interview request did not receive VADM Wisecup's normal (b) (6), (b) (7)(C) review because they were all on official travel.

On December 15, 2011, by email the LMH (b) (6), (b) (7)(C) informed VADM Wisecup "our camera folks are here on Friday" and asked whether he would be available. VADM Wisecup responded to the (b)(6), (b)(7)(C) stating that he would be back in the Washington, D.C., area that night. VADM Wisecup carbon copied his reply to both (b) (6), (b) (7) (C) (b)(6), (b)(7)(C) and asked them to call the (b)(6), (b)(7)(C) to schedule the interview. The (b)(6), (b)(7)(C) testified that he spoke to the (b)(6), (b)(7)(C) and scheduled the interview for 1500 on Friday, December 16, 2011.

On December 16, 2011, four hours before the scheduled interview with VADM Wisecup, the LMH (b) (6), (b) (7)(C) sent an email to the (b) (6), (b) (7)(C) Washington Navy Yard, and the Commander, Naval Installations Command, indicating that LMH:

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[2] "Welcome Aboard" is a Navy colloquialism for the Navy Command Sponsor Program for newly assigned sailors and their families.

[3] VADM Wisecup testified that he was on official travel when he received the voice message and he did not save it.

> [W]ill have a camera crew at the Navy Yard this afternoon for a promotional video that Lincoln is working on. VADM Wisecup has graciously agreed to be interviewed for this project and the camera crew will be filming at Qtrs F.

VADM Wisecup testified that the interview was held in his quarters right before his holiday reception. VADM Wisecup related that because he planned to be in uniform during his holiday reception, he asked (b) (5), (b) (6), (b) (7)(C) [redacted]

VADM Wisecup testified that the film crew was at his quarters when he arrived. The LMH (b) (6), (b) (7)(C) [redacted] testified (b) (6), [redacted] pulled VADM Wisecup aside before the interview began and asked him if he had "checked everything out legally." (b) (6), (b) (7) [redacted] stated that VADM Wisecup told (b) (6), [redacted] that his legal department had "signed off on everything, he was fine." VADM Wisecup denied this conversation ever occurred.

On December 30, 2011, a 64-second video titled, "Vice Admiral James P. "Phil" Wisecup on Lincoln Military Housing," was posted to both YouTube and the LMH Cares websites. The video begins with a head and shoulder shot of an unnamed man wearing 3-star collar insignia on a khaki shirt saying, "The first place we lived in military housing was, my first flag assignment in Korea."

At four seconds into the video, while the man continues to speak, a transparent two-line banner fades in on the lower portion of the screen and identifies the man as "VICE ADMIRAL JAMES P. "PHIL" WISECUP, U.S. NAVY." This banner fades out at 8 seconds into the video. At 15 seconds, the video fades to white and three lines appear which read:

VICE ADMIRAL JAMES P. "PHIL" WISECUP
ON
LINCOLN MILITARY HOUSING

At 18 seconds into the video, VADM Wisecup begins to speak, "I mean I know these people." At 19 seconds, the frame transitions back to the shot of VADM Wisecup as he continues, "I know them by name. I recognize them on the sidewalk when they're coming to do things and things like that. All I have to do is send an email, or make a phone call and people actually do things."

At 30 seconds into the video and as VADM Wisecup continues to speak, the scene transitions and displays for 4 seconds a Navy flag on a staff hanging outside Quarters F. At 34 seconds the image transitions back to the shot of VADM Wisecup as he states, "This house meets our needs, and far exceeds our expectations." At 57 seconds, VADM Wisecup completes his remarks, the video fades to white, and the following four lines appear which ends the video:

LINCOLN
MILITARY
HOUSING
Every Mission Begins at Home™

On January 11, 2012, (b) (6), (b) (7)(C) informed VADM Wisecup by email that a video of the interview had been posted to the Internet, which "certainly presents an endorsement issue."

(b) (6), (b) (7)(C) testified that (b) (5) He stated, "I thought it was the customer satisfaction survey meeting with the bosses from Texas. So, they obviously know he is an admiral living in flag housing. (b) (5)

VADM Wisecup testified that he did not know that the interview was going to be video-recorded until he received an email on Thursday morning (December 15, 2011), the day before the interview. The email from the LMH (b) (6), (b) (7)(C) included a reference to "camera folks." When questioned about his thoughts at that point, VADM Wisecup stated he "assumed" the LMH executives were not available and "that instead of talking to people, I was going to be … doing a video for the people [the LMH (b) (6), (b) (7)(C) wanted me to talk to." VADM Wisecup related that he did not clarify the intent of the interview with LMH (b) (6), (b) (7)(C) (b)(6), (b)(7)(C) and that it "didn't register" with him to ask "what's going on." He stated he made "assumptions" about what he was going to do and the email did not "set off any alarm bells."

VADM Wisecup also testified he was not aware that the interview would be video-recorded when he consulted with (b) (6), (b) (7)(C) about whether he could do the interview, and if there was a concern about being in uniform. VADM Wisecup denied LMH told him the interview would be part of a promotional video and also stated he never signed or made a verbal disclaimer regarding his comments about LMH. He further stated he was shocked when notified that his comments were included in a LMH video posted to the Internet.

VADM Wisecup further testified, "I kind of got tricked here or that's probably not the right word to use, but I was not on the same wavelength" as the LMH staff with regard to the video interview. VADM Wisecup also commented, "bottom line is, I didn't know what they were going to do with it."

Discussion

We conclude that VADM Wisecup improperly endorsed an NFE in violation of the JER and DoDI 1334.01.

We found that LMH approached VADM Wisecup to participate in an interview after receiving his email complimenting the prompt, professional service provided by the LMH staff at the Washington Navy Yard. After consulting with (b) (6), (b) (7)(C), he accepted the invitation. VADM Wisecup expected a face-to-face meeting with senior LMH leadership, but on December 15, 2011, he became aware that the interview would be video-recorded. VADM Wisecup did not seek any clarification from the LMH (b) (6), (b) (7)(C) or request additional guidance from (b) (6), (b) (7)(C) We also found no evidence that VADM Wisecup signed or made a verbal disclaimer indicating his comments were his own and did not

necessarily represent the views of the DoD or U.S. Navy. On December 30, 2011, LMH posted a promotional video featuring VADM Wisecup in uniform on the Internet.

JER, Section 3-300a, permits DoD employees to voluntarily participate in activities of NFEs in their personal capacities, provided they act "exclusively outside the scope of their official positions." JER, Section 2635.702(b), requires that an employee shall not use or permit the use of his Government position, title or any authority associated with his position in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses the personal activities of another. JER, Section 2635.702(c) directs that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product or service. JER, Section 2-207, states that any speaking engagement, where military grade is publicized and the subject deals in significant part with any ongoing Agency program, requires a disclaimer that the views presented are those of the speaker and do not necessarily represent the views of the DoD or its Component. Finally, DoDI 1334.01 prohibits the wearing of the military uniform in connection with furthering commercial interests, when an inference of official sponsorship for the activity or interest may be drawn, unless authorized by the Secretary of the Navy.

We determined VADM Wisecup participated in a video-recorded interview with LMH officials, in uniform and without proper authorization, and that his positive comments related directly to LMH residences under the Navy's partnership agreement. We also determined the request from LMH was not vetted by the established review process because VADM Wisecup and (b) (6), (b) (7)(C) [redacted] were on official travel. We acknowledge VADM Wisecup did not know that his comments would be inserted into an LMH promotional video, which was only available on the Internet for 2 weeks. We also acknowledge that once he became aware of the video, VADM Wisecup immediately self-reported and the video was removed. However, VADM Wisecup's personal participation in the promotional video in uniform, without a verbal or written disclaimer, emphasized his military status and affiliation, and, by implication, the authority associated with his public office. These factors could be perceived by DoD and non-DoD audiences that the DoD and U.S. Navy endorsed the activities of LMH, an NFE.

Response to Tentative Conclusion

In his response, dated June 20, 2012, VADM Wisecup wrote he did not recall "red flag" words such as "public relations video" or "promotional video." He reiterated his intent was merely "to convey a 'well done' to the Lincoln bosses ... Anything else was someone else's decision, which I had no control over." VADM Wisecup closed with "no one in my family benefitted in any way from this, or received any personal gain, from me making these comments."

After carefully considering VADM Wisecup's response, we stand by our conclusion in the matter.

V. CONCLUSION

We conclude that VADM Wisecup improperly endorsed an NFE.

VI. RECOMMENDATION

The Secretary of the Navy consider appropriate action.

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Inspector General
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