

Summary: Former OHA Administrative Judge Violated Ethics Recusal and Prohibited Holdings Waiver

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The OIG investigated an allegation from the U.S. Department of the Interior's (DOI's) Departmental Ethics Office (DEO) that an Administrative Judge in a section within the Office of Hearings and Appeals (OHA) failed to comply with a waiver issued by the DEO under 5 C.F.R. § 3501.103(e) (prohibited holdings waiver). The waiver allowed the Administrative Judge to retain ownership of stock from a particular energy company (the Energy Company) but required the Administrative Judge to refrain from participating in any matter involving the Energy Company and its affiliated companies and to provide specified OHA officials and other officials in the section of the OHA in which the Administrative Judge worked with a copy of the ethics recusal.¹ We also investigated an allegation that the Administrative Judge violated the criminal financial conflict of interest statute, 18 U.S.C. § 208, by participating in matters involving a wholly owned subsidiary (the Subsidiary) of the Energy Company.

We determined that the Administrative Judge's ownership of the Energy Company stock violated the DOI's supplemental ethics regulations because it is a prohibited holding under 5 C.F.R. § 3501.103(b)(1)(ii). We also concluded that the Administrative Judge did not comply with the ethics recusal obligations or the prohibited holdings waiver because the Administrative Judge participated in matters in which the Administrative Judge held a financial interest and failed to provide DOI officials with a copy of the ethics recusal as directed. Even though we concluded that the Administrative Judge participated personally and substantially in a particular matter in which the Administrative Judge held a financial interest, we did not find that the Administrative Judge violated 18 U.S.C. § 208 because the evidence did not show that the Administrative Judge knew that the Administrative Judge had a financial interest in the Subsidiary as required under the statute. We did find, however, that the Administrative Judge exercised poor judgment and a lack of due diligence by failing to ensure recusal from all matters involving the Energy Company and its affiliated companies as required by the ethics recusal and prohibited holdings waiver.

We also found that the DEO was aware of the Administrative Judge's prohibited holdings when the Administrative Judge joined the DOI but took almost 10 years to address them and that the DEO failed to meet its responsibilities to review and certify the Administrative Judge's public financial disclosure reports from 2010 to 2014. Moreover, we found that, even though the DOI took the position that relevant guidance gave only the ethics counselor for the Office of the Secretary and related offices the authority to order divestiture, the agency did not name someone to this position until late 2021. As a result, the Administrative Judge continued holding the Energy Company stock without consequence for 18 months after the Administrative Judge's waiver had been revoked.

This is a summary of an investigative report we issued to the Chief of Staff for the Office of the Secretary.

¹ The Energy Company operates on Federal lands and, absent a written waiver, is a prohibited financial investment for certain high-level DOI employees pursuant to the DOI's supplemental ethics regulations found at 5 C.F.R. part 3501.

