

OPR Quarterly Email: April 2017, Volume 45

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(U//FOUO) **OPR's Quarterly All Employee E-Mail – April 2017 Edition**

(U//FOUO) Set forth below are examples of cases adjudicated by the Office of Professional Responsibility (OPR) during the last quarter to educate employees about the Bureau's standards of conduct and to aid employees in steering clear of ethical pitfalls and other violations.

(U//FOUO) **Summary Dismissals:** In extremely rare cases involving the worst kind of misconduct that implicates: (a) public safety; (b) workplace safety; (c) national security; or (d) other compelling or exigent considerations, the AD, OPR, has the authority to summarily dismiss an employee without a hearing. This authority was first adopted by Director Louis Freeh on March 5, 1997, and has been continuously employed since that time in the very rare instances when it is needed. To emphasize the extreme nature of the conduct in question, examples include:

- Employee summarily dismissed after admitting he had sexually molested his daughter and granddaughter for years.
- Employee summarily dismissed for acting as an agent of a foreign government. Employee was criminally charged, pled guilty to espionage, and was sentenced to prison.
- Employee summarily dismissed for repeatedly stealing drug evidence to feed his addiction. Employee was criminally charged, pled guilty to 64 counts of obstruction of justice, tampering with evidence, and possession of heroin, and was sentenced to prison.
- Employee summarily dismissed after pulling a private citizen from her car at gunpoint in a road rage incident. Employee threw the woman against a concrete lane divider, causing temporary loss of consciousness and large contusion. Employee was, at the time, misusing a Bureau vehicle for an unauthorized personal 366-mile trip. Employee had previously been the subject of a civil rights complaint in which a private citizen alleged Employee punched him in the face without provocation. The Bureau settled the prior case for \$65,000.
- Employee summarily dismissed for shooting and killing his neighbor's dog. Employee was charged with cruelty to animals and sentenced to two years deferred action and 300 hours of community service. Employee admitted having shot and killed another dog five years earlier that he had lured onto his property with bait. When

questioned by that dog's owners, Employee falsely denied having killed the dog and disposed of the dog's remains in a rural area.

- Employee was summarily dismissed for driving drunk and killing an 18-year-old and seriously injuring the 18-year old's passenger when Employee crossed the center line and slammed into the 18-year-old's car. Employee's blood alcohol level was more than three times the legal limit, and he had a prior DUI for driving north in the southbound lane of an interstate highway with a blood alcohol level more than two times the legal limit. Employee was charged with vehicular manslaughter and sentenced to prison.

At the request of the FBI Agents' Association, OPR is preparing and will circulate for comment through IPO's policy portal, a modification to the FBI's summary dismissal policy to allow for a hearing in summary dismissal cases. Please be mindful, however, that given the extreme nature of these cases, even if the process is amended to allow for a hearing in summary dismissal cases, there will still be times when a hearing will not be possible (e.g., due to the employee's incarceration) or necessary (e.g., there is nothing an admitted child molester can say in an oral hearing that would cause OPR to continue his/her FBI employment). Employees interested in commenting on the proposed policy change should do so through their respective Advisory Committee. The final decision will rest with the Director or his designee.

(U//FOUO) **New Whistleblower Rules:** Under the *FBI Whistleblower Protection Enhancement Act of 2016* an employee may make a protected disclosure to **a supervisor in the employee's direct chain of command**. To learn more about whistleblower protections, please read *Know your Rights: Guidance for Potential FBI Whistleblowers* prepared by the [Office of Integrity and Compliance](#).

To contact OPR, please email us at HQ_DIV00_OPR_QUESTIONS or go to our [website](#). Thank you.

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(U//FOUO) **Examples of Recent Adjudications:**

1. (U//FOUO) DUI; Unauthorized Outside Employment; Lack of Candor: Employee operated an unreported outside business supplying hookah services for private parties. On the night in question, Employee supplied hookahs at a party, drank at the party, drove to a bar after the party and continued to drink, and then drove home while intoxicated, striking two telephone poles. Employee was arrested but refused to take a breathalyzer test. After

being released from custody, Employee met with supervisors, but denied drinking. Employee claimed that he had swerved to avoid hitting an animal. Soon thereafter, Employee pled guilty to Driving While Ability Impaired. In a subsequent signed sworn statement, Employee admitted drinking prior to driving. In aggravation, this was Employee's second DUI conviction. Employee's first DUI conviction occurred just prior to onboarding with the FBI.

PENALTY: Dismissal

OFFENSE: Lack of Candor – No Oath, [Offense Code 2.5](#)
Violation of Ethical Guidelines, [Offense Code 2.12](#)
DUI – Personally Owned Vehicle, [Offense Code 4.4](#)

2. (U//FOUO) False Job Application: Employee falsified academic credentials on an FBI SES application by falsely indicating that Employee had a college degree. Although having a college degree was not a requirement of the job, Employee nevertheless improved Employee's prospects by falsely claiming a bachelor's degree in business administration. Employee was selected for the job over other degreed applicants. Employee also lacked candor when questioned under oath. In mitigation, Employee had more than 30 years of FBI service and a positive performance record. In aggravation, Employee gained an unfair advantage for an extended period of time, and was a supervisor at the time of the false application, and as such, held to a higher standard.

PENALTY: Dismissal

OFFENSE: False Information – Employment Documents, [Offense Code 2.1](#)
Lack of Candor – Under Oath, [Offense Code 2.6](#)

3. (U//FOUO) False Security Documents: While on foreign travel and acting without authorization or the knowledge of the FBI, Employee provided foreign officials with sensitive, nonpublic FBI information, including information regarding surveillance technologies used by the FBI. Employee also lied about it on his pre- and post-trip FBI debriefing forms. In addition, Employee attempted to recruit another individual to provide sensitive U.S. Government information to the foreign government. Employee was arrested and confessed. Employee pled guilty to acting as an agent of a foreign government. Employee's actions were criminal and negatively impacted national security.

PENALTY: Summary Dismissal

OFFENSE: False Information – Security Documents, [Offense Code 2.1](#)
Felony, [Offense Code 4.7](#)

4. (U//FOUO) Theft; Lack of Candor; Misuse of Computers; Security Violation; Unprofessional Conduct: Employee stole industrial-grade cleaning solution and other FBI property, such as tires, welders, and air jacks, from an FBI automotive facility. Surveillance footage confirmed the thefts. When questioned, Employee lied. Employee also altered the online auto shop maintenance schedule to prevent FBI employees from signing up for vehicle maintenance. Employee also brought a personal laptop into FBI space and improperly connected it to an FBI desktop computer. Finally, Employee improperly installed unauthorized applications on an FBI computer. In aggravation, Employee's misconduct was serious, repeated, and spanned numerous Offense Codes. Moreover, Employee displayed a lack of respect for supervisors and Bureau protocol and continued to engage in misconduct despite warning from the Division's Chief Security Officer. Finally, the Division did not

believe Employee could be rehabilitated.

PENALTY: Employee resigned after being proposed for dismissal

OFFENSE: Lack of Candor – No Oath, [Offense Code 2.5](#)
Lack of Candor – Under Oath, [Offense Code 2.6](#)
Misuse of Government Computers, [Offense Code 3.6](#)
Fraud/Theft, [Offense Code 4.5](#)
Security Violation, [Offense Code 5.17](#)
Unprofessional Conduct – On Duty, [Offense Code 5.22](#)

5. (U//FOUO) Felony; Lack of Candor: Supervisory Employee threw a rock at the windshield of a car being driven by a 16-year-old neighborhood boy. When police responded, Employee admitted throwing the rock and was arrested, stating, "If you put me in that patrol car, you better take me to jail and not let me back out because this will not end well." When questioned by investigators for this administrative inquiry, Employee changed his story, claiming the boy's car veered towards him and as he jumped out of the way, he accidentally threw the rock at the windshield. In aggravation, Employee had a serious prior disciplinary history, involving hostile confrontations and a serious domestic violence incident.

PENALTY: Employee resigned after being proposed for dismissal

OFFENSE: Lack of Candor – Under Oath, [Offense Code 2.6](#)
Felony, [Offense Code 4.7](#)

6. (U//FOUO) Failure to Safeguard Weapon: Employee left a bag containing credentials, badge, and FBI-issued weapon in the passenger compartment of a car overnight. The next morning, Employee found the car window smashed and the bag stolen. Section 4.1.2.4. of the [FBI's Firearms Policy Guide](#) governing Security of Firearms in Vehicles states, in part:

Outside of emergency or exigent circumstances, a firearm must never be left unsecured or unattended in the passenger compartment of a car, a truck, or a sport utility vehicle (SUV) [the entire interior compartment of a vehicle is considered the passenger compartment] unless (1) the firearm is affixed to the vehicle via a locked firearms mount or within a locked security container (preferably constructed of metal); (2) the firearms mount or container is secured to the vehicle itself; and (3) the vehicle is equipped with an alarm, a manufacturer's theft-deterrent system, or a similar anti-theft device.

Employees must also receive prior written approval to store a weapon in a vehicle overnight. Employee canvassed the area and recovered the badge and credentials.

PENALTY: 3-day suspension

OFFENSE: Loss of Weapon, [Offense Code 3.4](#)

7. (U//FOUO) Failure to Safeguard Weapon: Employee failed to properly safeguard weapons, leading to their theft. As a SWAT team member, Employee had authorization to store two FBI-issued weapons and one personally-owned weapon in a vehicle overnight to facilitate operational readiness. Section 4.1.2.4. of the [FBI's Firearms Policy Guide](#) governing Security of Firearms in Vehicles states, in part:

A firearm may be stored in the trunk of a car during routine working hours and in a vehicle that meets all of the following requirements: (1) the vehicle is equipped with an alarm, a manufacturer's theft-deterrent system, or a similar anti-theft device; (2) the vehicle is equipped with a case-hardened chain and a padlock (drawn as tight as possible to prevent access to trunk contents when locked); (3) the interior passenger compartment trunk-release has been disabled; and (4) the trunk cannot be accessed from the interior passenger compartment.

However, Employee failed to ensure that the vehicle was locked and the trunk release disabled. The weapons were stolen. In aggravation, local media outlets reported on the incident and specifically referenced stolen FBI weapons, one of which was used by juveniles in the commission of, or attempted commission of, one or more robberies. The juveniles were arrested and the weapons recovered.

PENALTY: 3-day suspension

OFFENSE: Loss of Weapon, [Offense Code 3.4](#)

8. (U//FOUO) Assault and Battery: Supervisory Employee hit his minor child. The child's school noticed bruises and contacted Child Protective Services. In mitigation, Employee has 15 years of FBI service, no prior disciplinary matters, and has taken parenting classes. In aggravation, the victim was a minor and the child appeared to have been coached to minimize what happened.

PENALTY: 40-day suspension

OFFENSE: Assault/Battery, [Offense Code 4.1](#)

9. (U//FOUO) Theft: Supervisory Employee shoplifted items from a grocery store. The loss prevention officer provided police with surveillance tapes from three separate dates showing Employee shoplifting. Employee was convicted of one count of petit larceny. In mitigation, Employee had 20 years of FBI service, a positive performance record, and no prior disciplinary inquiries. In aggravation, Employee's conduct is fundamentally at odds with continued employment at the FBI.

PENALTY: Employee resigned before receiving dismissal letter

OFFENSE: Theft, [Offense Code 4.5](#)

10. (U//FOUO) Felony; Misdemeanor; Weapon Safety Violation: Employee traveled to another state to conduct interviews for a case. Employee drank beer at dinner and then went to a strip club. Employee continued to drink at the strip club. Employee left the strip club in the early morning hours and was next found at a 24-hour fitness club waving his weapon in the air and telling patrons to lock the doors, people were going to kill them, and to call the police. When the local police responded to concerned callers, Employee fired several shots at the police. Employee was arrested at gunpoint by the responding officers, criminally charged, and is awaiting sentencing.

PENALTY: Summary Dismissal

OFFENSE: Felony, [Offense Code 4.7](#)
Misdemeanor, [Offense Code 4.8](#)

Misuse of Weapon – Safety Violation, [Offense Code 5.13](#)

11. (U//FOUO) Weapon Safety Violation: Supervisory Employee failed to properly store a personally-owned weapon. Employee left the weapon in the drawer of a nightstand, holstered and loaded. Employee's weapon was found by Employee's dog walker, a minor. The minor took a picture of himself with the weapon and sent the photo to his friends on Snapchat. The minor returned several days later with two friends to show them the weapon. While removing the weapon from Employee's nightstand, the boy accidentally discharged one round through the floor into the kitchen below. Nobody was injured. [The FBI's Firearms Policy Guide](#), Section 4.1.2.3, states:

FBI personnel must ensure the security of their issued and approved FBI firearms at all times while the firearms are maintained in their residences. When unattended, FBI firearms must be secured...to prevent access by unauthorized personnel, regardless of location.

A number of prevention procedures are provided in the Firearms Policy Guide, including field stripping the weapon, installing a FBI-issued Master Lock, or storing the weapon in its own lockbox. None of these procedures were followed by Employee. Employee's method of storing the firearm also violated state law. In mitigation, Employee has over ten years of FBI service and a positive performance record. In aggravation, Employee is a supervisor, and has a prior disciplinary matter for failing to safeguard a weapon.

PENALTY: 14-day suspension

OFFENSE: Misuse of Weapon – Safety Violation, [Offense Code 5.13](#)

For further information, please refer to the complete [Offense Codes and Penalty Guidelines Governing the FBI's Internal Disciplinary Process](#). Also, all FBI policies are available to employees at the Internal Policy Office's [Policy Portal](#).

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