



U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

April 6, 2000

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-97-0312

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Rodney E. Slater, Secretary, Department of Transportation, dated June 3, 1999, and supplemental responses dated July 20, 1999, and February 9, 2000, sent to me pursuant to 5 U.S.C. §§ 1213(c) and (d). The report and supplemental responses set forth the findings and conclusions of the Secretary's review of disclosures of information allegedly evidencing violations of law, rule, or regulation and a substantial and specific danger to public safety by officials of the Department of Transportation, Federal Aviation Administration (FAA), Houston Air Traffic Control Center (ARTCC).

The whistleblower (WB)<sup>1</sup>, provided comments on the June 3, 1999, agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting. The WB was given an opportunity to comment on the supplemental responses and did not respond.

We have carefully examined the original disclosures and reviewed the agency's response and the WB's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report are reasonable and contain all of the information required by statute.

#### Whistleblower's Allegations

The WB alleged that David B. Johnson, the former Air Traffic Manager at ARTCC, established a policy of ignoring the first "operational error," which indicates the lack of the minimum separation distance between two aircraft, if only one incident occurred. In particular, Mr. Johnson stated that "there will be no one-hit errors at Houston Center." Federal Aviation Administration Order (FAAO) 7110.65 defines the minimum separation distance between two or more aircraft. FAAO 7210.3 requires the investigation and reporting of all operational errors. The FAAO requirements provide for escalating safety measures to be taken as the number of operational errors increases. Thus, the under-reporting of operational

---

<sup>1</sup> OSC received the allegations from an employee who wished to remain anonymous. The allegations were transmitted without revealing the identity of the employee, identified here as the "Whistleblower."

errors at ARTCC directly impacts public safety. Mr. Johnson articulated this “policy” to the employee and other “Air Traffic Controllers” (ATCs), during a meeting which took place sometime between 1995 and 1996. According to the WB, Mr. Johnson’s successor, Raul Trevino, formerly the Assistant Manager under Mr. Johnson has sustained this “operational error policy.”

To enforce this policy, Mr. Johnson and Mr. Trevino allegedly trained the ATCs to modify their measurement of the computer generated tracks of the aircraft, called the National Track Analysis Program (NTAP), whenever the distances between the aircraft indicated one instance of a failed minimum separation distance. Specifically, the ATCs were told not to calculate the distance between the aircraft at their closest points. For instance, if the minimum separation distance was lost at some point during an aircraft’s turn, the ATCs were allegedly told to redraw the point at which the aircraft were closest to another point in the curve where the minimum separation distance existed.

The WB stated that another tactic Mr. Johnson and Mr. Trevino used to “overlook” operational errors was to classify operational errors as target jumps. A “target jump” denotes inconsistent data relayed to the computer tracking system resulting from radar which are not synchronized. The WB explained that Mr. Johnson told him that if there were just “one-hit,” meaning one operational error, Mr. Johnson would presume it was due to an informational error such as a target jump. The WB also alleged that Mr. Johnson and Mr. Trevino improperly designated ATC operational errors as pilot errors. According to the WB, the NTAPs reveal that even if the pilot remained at the assigned altitude, there would still be a loss of the minimum separation distance. The WB provided copies of five NTAPs and supporting documentation, demonstrating instances where the minimum separation distance between two aircraft was not maintained.

#### Summary of the Report and Supplemental Responses

According to the report, there was no credible evidence that ARTCC ignored operational errors; failed to report operation errors based on redrawing of computer measurements of the NTAP; or improperly classified operational errors as pilot deviations. The report stated that twenty-two past and current quality assurance personnel were interviewed as well as Mr. Johnson and Mr. Trevino. Of those interviewed, only three employees indicated a belief that the allegations were substantially true. The report noted that “[w]hen asked to provide examples or specific instances where improper procedures were applied, or where there was a failure to report an operational error, none of the three were able to do so.” In response to this office’s request, FAA’s Air Traffic Evaluations and Investigations Staff provided supplemental information, which included a summary of the interviews of the three employees who substantiated the WB’s allegations.

With respect to the five incidents cited as examples of wrongdoing in the WB’s complaint, the report stated that the inquiry was hampered by the fact that the only documentation available concerned one incident in which an operational error had occurred. With respect to the four other incidents, the report indicated that there was no “triggering

event," therefore the records were destroyed after 15 days in accordance with FAA's records retention practices. The report reasoned, therefore, that the investigation was limited to probing the recollections of those interviewed. Based on an assessment of the information gathered from the interviews, the report concluded that the allegations of unlawful practices were not substantiated.

Due to the fact that the report did not address the documentation provided by the WB, the Investigations Staff provided supplemental information (SI) to this office. The review evaluated WB's documentation of five incidents. According to the WB, this documentation demonstrated five incidents where the minimum separation distance between two aircraft was not maintained. The SI indicated that WB's documentation did "not appear to support the narrative." In addition, the SI noted that validation of the incidents requires a complete NTAP, voice recordings and flight progress strips, none of which were available. According to the SI, the above-listed items are required by FAA regulations (FAAH 7210.56) for operational error investigation, and that data had been destroyed. Finally, the SI concluded that the allegations are "much too serious" to be supported by the limited documentation provided by the WB.

The Investigations Staff also conducted a technical review in order to substantiate the current facility practices and thoroughness. The agency reviewed "301 immediate alerts, 52 pilot deviations, 7 operational error/deviation packages, and all Freedom of Information Act and Unsatisfactory Condition Report files." Pursuant to FAA's records retention practices, the only immediate alerts which could be reviewed were those which occurred within the 15 days previous to the investigation. This meant that the technical review for the type of data the WB alleged, that is, flights in which operational errors were ignored or mischaracterized, was limited to a 15-day time period. The technical review found no evidence of "[d]ata being incorrectly reported, misrepresented, or in any way altered to avoid reporting as required by FAA policies and regulations."

The February supplemental response confirmed that the FAA would be taking additional steps to address the issues raised by the WB's allegations, as follows: (1) by February 15, 2000, Mr. Morgan, in his capacity as the Director of Air Traffic, will issue a policy statement to all air traffic employees nationwide reiterating the importance of reporting all operational errors, without exception<sup>2</sup>; (2) since January 18, 2000, the Air Traffic Manager of the Houston Center has been personally conducting training for all Houston Center employees to ensure that they are aware of the requirement to report all operational errors, without exception, with such training expected to be completed by March 1; (3) the Air Traffic Investigations Division is developing a new training module for the agency's Quality Assurance Course that trains employees on the National Track Analysis Program (NTAP). Training will be mandatory and will ensure the uniform measurement of NTAP data.

<sup>2</sup> Jerry Mellody, Assistant Chief Counsel for Personnel and Labor Law, Office of the Chief Counsel, FAA, advised this office on March 23, 2000 that the policy statement has been issued and that training and the development of training are continuing as planned.

Whistleblower's Comments

In his comments, the WB stated that although the agency acknowledged "a fairly widespread misapplication of FAA Order 7210.56, paragraph 5-1-5," the report obscured the fact that "this misapplication" is intentional. According to the WB, while the agency declined to rely on the data provided by the WB evidencing operational errors, the FAA routinely relies upon this type of data. The WB also challenged the report's statements that certain records were destroyed pursuant to the 15-day record retention regulations. The WB indicated that FAA Orders 1350.15B and 7210.3 require the retention of these records for a period of two and one-half years. In addition, the WB noted that the report failed to indicate that the three individuals who substantiated the WB's allegations, all had years of experience interpreting the "operational error" data. In conclusion, the WB maintained "[t]hat a proper and unbiased investigation into this matter was not conducted."

The WB did not respond to OSC's request for comments on the February supplemental response.

Based on the representations made in the report and supplemental responses, I have determined, pursuant to section 1213(e)(2), that the findings in the agency's report are reasonable and contain all of the information required by statute.

As required by section 1213(e)(3), I have sent a copy of the report and the Whistleblower's comments to the Chairman of the Senate Committee on Commerce, Science and Technology, and the Chairman of the House Committee on Transportation and Infrastructure. We have also filed copies of the report, supplemental responses, and the Whistleblower's comments in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures