



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300

Washington, D.C. 20036-4505

www.osc.gov

The Special Counsel

June 6, 2003

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

Re: OSC File No. DI-00-0411

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from the Honorable Reginald J. Brown, Assistant Secretary of the Army for Manpower and Reserve Affairs, dated April 17, 2003. The report sets forth the findings and conclusions of the Assistant Secretary's review of disclosures of information allegedly evidencing violations of law, rule or regulation by officials of the Department of Army (Army), Fort Dix Regional Directorate of Public Works, Fort Dix, New Jersey.

Our general policy is to transmit a copy of the report to the whistleblower for comments. 5 U.S.C. § 1213(e). However, section 1213(f) states that if evidence of a criminal violation is obtained by the agency and referred to the Attorney General, the report shall not be transmitted to the whistleblower. The Army's report in this case states that a criminal violation was found, and referred to the U.S. Attorney for the District of New Jersey, thus, we did not transmit the report to the whistleblower.

We have carefully examined the original disclosures and reviewed the agency's response. I have determined that the report's findings appear reasonable except with respect to the disciplinary action imposed. The Army disciplined only one of the two officials found to be accountable for the violations and imposed only lenient disciplinary action on that official. Therefore, for the reasons set forth below, I have concluded that the disciplinary action taken by the Army in response to its investigation does not appear reasonable.

The Whistleblower's Disclosures

Ms. Barbara A. Brewer, a budget analyst with the Army, alleged that officials at Fort Dix violated Army Regulation (AR) 672-20 which sets forth the procedures for authorizing monetary awards. She alleged that Mr. Michael W. Burns, then-Deputy Director of Public Works, improperly received over \$19,000 in cash awards in 1999.

Ms. Brewer's duties included reviewing, Incentive Award Nomination and Approval forms (Army Form 1256s) for Mr. Burns. She alleged that Mr. Burns ordered a subordinate employee, Mr. Stephen Whitmore, Chief, Public Division, to nominate him for a number of Special Act awards. She also alleged that Mr. Burns' first-line supervisor, Mr. Peter M. Tranchik, then-Regional Director of Public Works, approved the awards in violation of AR 672-20 §§ 1.4H and 2.5 which require that the nomination for a monetary award be made by a first-line supervisor and approved by the second-line supervisor. Finally, she alleged that Mr. Whitmore informed her that Mr. Tranchik had directed him to sign the Special Act award forms nominating Mr. Burns.

The Department of the Army's Report

Ms. Brewer's allegations were forwarded by the Office of the Associate Deputy General Counsel (Human Resources), Headquarters, Department of the Army, to the Staff Judge Advocate (SJA), U.S. Army Forces Command. The SJA referred the allegations to the SJA, U.S. Army Reserve Command. The Deputy Commanding General, U.S. Army Reserve Command directed that the Commander of Fort Dix, conduct an investigation. The Fort Dix Commander, Colonel David M. Lowry, initiated the investigation under AR 15-6.

The Army substantiated Ms. Brewer's allegations concluding that Army regulations and local policy were violated. The report also states that appropriate corrective actions have been taken to prevent similar violations in the future and that corrective action was taken against the personnel responsible for the violation. The Army's report is summarized more fully below.

The Army's investigation included a review of relevant regulations and handbooks, civilian personnel records and documents, and sworn statements from several current and past employees of the Fort Dix Regional Directorate of Public Works, Civilian Personnel Advisory Center (CPAC), and the National Graduate School for Quality Management. The investigation focused on the three awards, totaling \$12,500, Mr. Burns received in 1999: 1) Special Act or Service Award for \$5,000 approved February 11, 1999; 2) Special Act or Service Award for \$2,500 approved May 14, 1999, and 3) Special Act or Service Award for \$5,000 approved May 25, 1999.

The investigation confirmed that Mr. Whitmore, a subordinate, nominated Mr. Burns for the awards. Mr. Whitmore stated that he did not feel coerced into signing the documents but noted that he did not prepare them and knew little about the events justifying the awards. According to the report, Mr. Whitmore's involvement was limited to signing the award papers after a secretary handed them to him and told him he was supposed to sign them. Mr. Whitmore believed that Mr. Tranchik had directed that he sign the forms. Mr. Whitmore also stated that Mr. Burns had repeatedly borrowed large sums of money from him. For instance, Mr. Burns borrowed \$500-\$1,000 for a used car, and several hundred dollars on two

other occasions. Finally, Mr. Burns borrowed \$500 to buy something for his wife. According to Mr. Whitmore, Mr. Burns eventually repaid some of the money he borrowed. When he left Fort Dix, he still owed Mr. Whitmore \$200.

Based on the information gathered in the course of the investigation, the report concludes that Mr. Whitmore did not write the award nominations but was ordered to sign them by Mr. Tranchik. The investigation also concludes that Mr. Burns violated professional ethics by borrowing money from Mr. Whitmore and failing to repay him.

The report notes that Mr. Burns indicated he was familiar with the policies and regulations governing awards. It also reasons that Mr. Burns should have known it was improper for Mr. Whitmore to nominate him for an award when he had no knowledge of the events serving as the basis for the award. In response to this inquiry, Mr. Burns contended that he did not know a subordinate employee had nominated him. His response is belied by the fact that he received copies of the nomination forms with Mr. Whitmore's signatures.

The Army ultimately concluded that Mr. Burns did not order Mr. Whitmore to nominate him for the awards but found that Mr. Burns should have known that Mr. Tranchik did not have the authority to approve awards over \$2,500. Approval of awards over \$2,500 is limited to the Commander. The report notes specifically that had Mr. Burns received only one award, his failure to catch these violations may have been viewed as an oversight. However, given Mr. Burns' acceptance of multiple Special Act awards in addition to \$3,500 for a performance award, \$17,000 in overtime, and an annual salary of \$75,000 as a GS-14, the report concludes that he chose to accept the award money without objection. He did so, the report finds, due to the financial difficulties he was having paying the tuition for his master's program.

Mr. Tranchik denied ordering anyone to sign the nomination forms for Mr. Burns, but admitted approving them. He would not comment on whether he actually drafted the nominations. Based on the investigation, however, the Army report concluded that Mr. Tranchik wrote the nominations for Mr. Burns, that he improperly signed them as the approving authority when they should have been approved by the commander, and that he did so with the knowledge that he did not have the authority to approve awards over \$2,500. The report notes that Mr. Tranchik said he wanted to help Mr. Burns pay for his master's program and obtained the Special Act awards because there was no mechanism for tuition reimbursement.

The Army's report states that "there is no question violations of laws, rules and regulations" occurred. AR 672-20 states that an individual having "direct knowledge of the act" may nominate a person for an award. Indeed, it was the finding of Col. Lowry, Fort Dix Commander, that Mr. Tranchik and Mr. Burns subverted Army regulations by circumventing the rules governing cash awards. Mr. Tranchik violated AR 672-20 when he directed

The Special Counsel

The President

Page 4

Mr. Whitmore to nominate Mr. Burns for Special Act awards knowing that Mr. Whitmore had no direct knowledge of the events justifying the awards.

The report also states that another violation occurred when the Fort Dix CPAC failed to exercise its supervisory and educational responsibilities over the awards program as required by AR 672-20. The report explains that CPAC serves as the Command's subject matter expert on personnel issues and that if the proper internal controls were in place CPAC would have caught improper approvals of awards over \$2,500.

The Army also concluded that a local policy, implemented in 1999 and set forth in the Supervisor's Handbook for the Incentive Awards Program, was violated. This local policy required the Commander's approval on all Special Act or Service awards exceeding \$2,500. By approving two \$5,000 awards for Mr. Burns, Mr. Tranchik violated this local policy. The report also notes that over the past three years, every directorate at Fort Dix violated the policy.

In January 2001, an audit of Fort Dix's monetary award program for fiscal years 1998-2000 was conducted by the Fort Dix Internal Review and Compliance Office at the request of Fort Dix' previous Commander, Col. J. Snyder, to determine if it was operating in compliance with regulations. The audit showed that most of the directorate managers were unaware that the installation Commander was the approving authority for awards exceeding \$2,500. The report notes that 38 out of 39 awards for that time period were not properly approved. Ms. Brewer was interviewed as part of this audit.

Referral to the Criminal Investigation Division Command (CIDC)

The Army forwarded its investigation to the CIDC at Fort Monmouth, New Jersey in mid-November 2001 for review. CIDC concluded its review of the criminal allegations on August 6, 2002, finding that there was probable cause to believe that both Mr. Tranchik and Mr. Burns had engaged in the criminal offenses of Fraud, 18 U.S.C. § 1001, Conspiracy, 18 U.S.C. § 371, and Larceny, 18 U.S.C. § 641, by "preparing, submitting and accepting monetary awards for Mr. Burns totaling \$12,500 in violation of Army regulations."

The Army's investigation and a summary of disciplinary actions taken, and not taken, by management officials was forwarded to the U.S. Attorney for the District of New Jersey. The U.S. Attorney declined prosecution stating there was insufficient evidence of a criminal violation.

Disciplinary Action

Upon conclusion of the investigation and review of evidence, Col. Lowry recommended that Mr. Tranchik receive a 30-day suspension without pay and that

Mr. Burns receive a 14-day suspension without pay. He also recommended requiring Mr. Burns to repay the \$12,500 in award money to the Army.

Mr. Burns and Mr. Tranchik no longer work at Fort Dix. Thus, copies of the Army's investigative report and Col. Lowry's recommendations were forwarded to their present supervisors for review and any disciplinary action deemed necessary.

Mr. Tranchik is employed by the Army Corps of Engineers. Upon review of the information, Lt. Col. Timothy Brown, Mr. Tranchik's supervisor, issued him an official reprimand. Mr. Tranchik responded to the reprimand. Notwithstanding his response, the reprimand was sustained. Thereafter, Lt. Col. Brown was provided with a copy of the CIDC report but declined to take additional disciplinary measures against Mr. Tranchik.

Mr. Burns is presently the Deputy Chief, Management and Services Division, U.S. Army Reserve Directorate, Installation Management Agency at the Headquarters for the Army Installation Agency. Mr. Philip Sakowitz, Mr. Burns' supervisor, reviewed both the Army and the CIDC reports regarding the issues of Mr. Burns' improper receipt of Special Act awards and loans from subordinates. Despite the information gathered in the investigations and the conclusion reached by CIDC, Mr. Sakowitz concluded that there was insufficient information to warrant disciplinary action of any kind against Mr. Burns. Consequently, Mr. Burns was not disciplined for his actions.

Finally, Fort Dix officials and the Staff Judge Advocate considered initiating a recoupment action against Mr. Burns with the Defense Finance and Accounting Service for the \$12,500 in improperly approved awards. They concluded, however, that because no disciplinary action had been taken, no recoupment action could be initiated. As a result, Mr. Burns has not made restitution to the Army for his improper receipt of Army funds through the employee awards program.

Recommendations of the Fort Dix Internal Review and Compliance Office (IRCO)

Based on the results of its audit, IRCO recommended comprehensive changes to the Fort Dix monetary award program. Specifically, IRCO recommended that the commander order CPAC and the Incentive Awards Committee to develop guidance for the incentive program that includes the following approval levels: 1) all monetary awards exceeding \$3,500 must be submitted to the Commander for approval, 2) the Awards Committee can approve awards up to \$3,500 and may only delegate authority for performance awards below \$2,500 and Special Act awards below \$1,000, 3) Special Act awards over \$1,000 should not exceed 5 percent of any organization's work force, and 4) multiple monetary awards to one employee in the same fiscal year should be rare and include a justification that must be provided to the Commander through the Deputy Commander.

IRCO also recommended that the Awards Committee report the command's award expenses to the Commander on a quarterly basis with the Resource Management and Personnel Directorates providing verifying data at the end of the year. Finally, IRCO recommended that the Commander direct the Civilian Personnel Office to distribute this guidance regarding the awards program to all supervisors and management. Thereafter, Fort Dix' Commander issued a memorandum on October 4, 2001, reminding agency managers of the regulatory requirements and directed the Civilian Personnel Advisory Center to implement IRCO's recommendations.

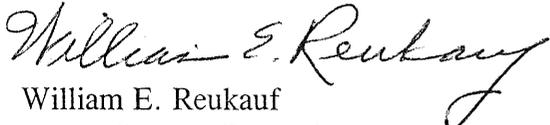
The Special Counsel's Findings and Comments

As summarized above, the Army substantiated Ms. Brewer's allegations and found that Mr. Burns and Mr. Tranchik violated both Army regulations and local policy. Indeed, the report reasons that Mr. Burns and Mr. Tranchik intentionally circumvented the regulations to obtain award money for Mr. Burns. Given the regulatory and ethical violations substantiated in this case, the Army's failure to discipline Mr. Burns appears unreasonable as does its failure to recoup the funds he fraudulently obtained. Similarly, the nominal disciplinary action taken against Mr. Tranchik appears unreasonable.

Mr. Burns and Mr. Tranchik hold positions of considerable public trust and have the authority to access public funds. The Army's response to their abuse of that trust and the public fisc, as described in its report, does not comport with the gravity of their misconduct. Unless adequate measures are taken to hold officials responsible for such misconduct, I fear that similar, or more egregious, misconduct might recur in the future. I therefore recommend that the Army and the congressional oversight committees look into these matters further.

Pursuant to 5 U.S.C. § 1213(e)(2), I have concluded that the report contains the information required under section 1213(d), and its findings appear reasonable except with respect to the lack of appropriate disciplinary action and of recoupment of illegally obtained funds. As required by section 1213(e)(3), I have sent copies of the report to the Chairman of the Senate Committee on Armed Services and the Chairman of the House Committee on the Armed Services.

Respectfully,


William E. Reukauf
Acting Special Counsel

Enclosures