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Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments, and Comments of the Special Counsel

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Summary

Frank Hood, former Chief of Supply at the Department of Defense, National Guard Bureau, North Carolina Air National Guard (NCANG), 145th Airlift Wing (AW), Logistics Readiness Squadron (LRS), Charlotte, North Carolina, disclosed to OSC that civilian and military personnel at the NCANG routinely claimed compensatory time for hours that were not spent on stand-by status or performing mission-related work. Mr. Hood also alleged that the 145th Airlift Wing management allowed non-commissioned officers to approve leave and passes. Mr. Hood contended that, in doing so, the civilian and military personnel violated the Office of the Adjutant General North Carolina Pamphlet (AGNCP) 690-1, 5 C.F.R. § 551.431, and Air Force Instruction (AFI) 36-3003 as well as committed an abuse of authority, gross mismanagement, and a gross waste of funds.

The Department of Defense investigated Mr. Hood's allegations and found them to be unsubstantiated. However, the agency's investigations did find that clearer guidance should be provided to prevent the appearance of fraud, waste, and abuse.

OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblower's Disclosures

Mr. Hood, who consented to the release of his name, alleged that LRS support personnel for the Modular Airborne Firefighting System (MAFFS) claimed an unjustifiable amount of compensatory time for missions that required little, if any, overtime work. MAFFS is a joint program between the United States Forest Service, the Air National Guard, and the Air Force Reserve, which provides emergency capability to supplement the existing commercial air tanker support on wildfires. Mr. Hood alleged that the excessive compensatory time was granted between July 20, 2005, and September 30, 2005, which included deployments to Boise, Idaho, and Pensacola, Florida.¹ During this time period, support personnel collectively claimed 585 compensatory hours.

¹ The deployment to Pensacola, Florida, was to respond to potential wildfires caused by gas leaks in the aftermath of Hurricane Katrina. However, no missions were actually flown during this deployment.

According to Mr. Hood, management approved compensatory time for time spent engaging in leisure activities, such as going golfing, to a beach, or to their hotel. AGNCP 690-1 § 10-24(a) provides that compensatory time can only be accrued when personnel are acting “in support of the activity/base/unit missions.” Mr. Hood further alleged that a civilian employee could only receive compensatory time, according to 5 C.F.R. § 551.431, if “the employee is restricted by official order to a designated post of duty and is assigned to be in a state of readiness to perform work with limitations on the employee’s activities so substantial that the employee cannot use the time effectively for his or her own purposes.” Mr. Hood alleged that personnel received compensatory time covering periods when they were not under official orders limiting them to such restrictions.

Next, Mr. Hood alleged that non-commissioned officers approved leave passes for Active Guard and Reserve personnel in violation of AFI 36-3003. The passes were given for overtime worked in lieu of compensatory time to personnel in military status, who were ineligible to receive compensatory time. AFI 36-3003 Section D 8.3 provides that “[u]nit commanders may award 3- or 4-day special passes for special occasions or circumstances, such as reenlistment or for some type of special recognition or compensatory time off. They may delegate approval to a level no lower than squadron section commander, deputies, or equivalents.” Mr. Hood alleged that the orders he was given to award such passes violated the delegation clause of this section, because he was not a commissioned officer.

Department of Defense Investigation and Report

According to the Department of the Defense report, the agency conducted two investigations into Mr. Hood’s allegations. Both investigations were encompassed in separate sections of a single report. Major Toni L. Coats, North Carolina National Guard, Joint Forces Headquarters (JFHQ-NC), Raleigh, North Carolina, conducted the initial investigation (first section of the report) in December 2006, in which 20 individuals, including Mr. Hood, were interviewed. Col. Michael Alexander conducted a second investigation (second section of the report) in April 2007, to provide clarification regarding the allegations. Col. Alexander re-interviewed seven individuals. Neither investigation substantiated Mr. Hood’s allegations. However, both investigations determined that “clear guidance should be provided to prevent the appearance of excess compensatory time earned by military technicians and ultimately the appearance of fraud, waste, and abuse within the use of military technicians deployed in support of MAFFS missions.”

Office of the Adjutant General North Carolina Pamphlet 690-1

Mr. Hood alleged that LRS personnel received compensatory time during periods when they did not act “in support of the activity/base/unit missions.” Both investigations found that the compensatory time awards did not violate any law, regulation, or policy. The first section of the report contained a generalized finding that the “numerous laws, instructions, regulations and policies that address military technician compensatory time . . . are broad in nature and do not provide specific guidance on the appropriateness of awarding compensatory time during specific types of missions.” Nevertheless, the Inspector General did not find evidence of personnel claiming compensatory time when not in an on duty or official stand-by status.

The second section of the report contained a more detailed analysis, specifically analyzing the allegations under AGNCP 690-1. This section explained that mission commanders in Boise, Idaho, and Pensacola, Florida, had placed the deployed personnel “on a 20 minute stand-by in an on-duty status.” In both cities, the lodging was close enough to the duty station that personnel could be recalled within this time limit. Similarly, a golf driving range was within walking distance of the flight line in Boise, which allowed personnel to conduct a leisure-type activity in an on duty status while remaining able to return within this time limit. As such, the second section of the report concluded that AGNCP 690-1 was not violated by management’s approval of compensatory time for time spent at lodging or the golf driving range, because such activities were performed while personnel were still in an on duty status.

5 C.F.R. § 551.431

Mr. Hood alleged that LRS personnel were not on stand-by status, according to § 551.431. This regulation says time spent on stand-by duty may be counted as hours of work if an employee is restricted by an official order to a designated post, is in a state of readiness to perform work, and has his or her activities substantially restricted such that the employee cannot use the time effectively for his or her own purposes. The first section of the report analyzed this allegation concurrently with the AGNCP 690-1 allegation when it summarily stated that it found no evidence of personnel claiming compensatory time when not in an on duty or official stand-by status.

The second section of the report provided a substantive analysis of this claim under §551.431. This section analyzed the deployment to Boise, Idaho. While on duty personnel initially remained on the airstrip due to the high number of missions, the Mission Commander, in coordination with the forestry service, decided to keep half the crew in stand-by mode when the number of missions began to diminish. This decision was due to the high temperatures, which were between 95 and 110 degrees, during July and August 2005. LRS personnel in stand-by mode were restricted to the immediate area of their motel, prohibited from consuming alcohol, and had to be able to return to the flight line within 10 to 20 minutes. The motel was a 10 minute walk from the airstrip. On duty airmen also visited a golf driving range located adjacent to the airstrip. The airmen tested their ability to return to the flight line from these locations within the required time. At all times, the airmen either personally had access to an electronic communication device or were in the company of someone who did.

The second section of the report next analyzed the deployment to Pensacola, Florida, after Hurricane Katrina. Because city fire trucks and helicopters were more efficient than C130 aircraft in firefighting, the 145th AW personnel became a backup option. Upon determining that the personnel were not needed, mission commanders attempted to return them to North Carolina, but the chain of command decided it was in its best interest to keep the 145th AW as a backup. The personnel were housed in a Naval Air Station barracks, which was a 10 minute bus ride to the flight line. In the morning, the air crews prepared the aircraft and themselves for missions, and they were restricted to the barracks in the afternoon. Based on these facts, the second section of the report concluded that it could not substantiate the allegations that the personnel were in an off duty status.

Air Force Instruction 36-3003

Mr. Hood alleged that the 145th AW management violated AFI 36-3003 by allowing non-commissioned officers to approve leave and passes. The first section of the report summarily stated that “[t]echnician personnel leave and pass requests are approved through the direct supervisor which is not required to be a commissioned officer.” The second section of the report explained that the “designated individual who can sign off on the leave passes is the first line supervisor. In some cases, this individual would be a non commissioned officer.”

The Whistleblower’s Comments

Mr. Hood expressed disappointment that his allegations were not investigated by officials from outside the state of North Carolina. He believed his allegations were “swept under the carpet.” Additionally, Mr. Hood believed the investigations should have been done by the National Guard Bureau.

Conclusion

I have determined that the agency’s report contains all of the information required by statute and the findings appear to be reasonable. Nevertheless, the investigations uncovered some problems that the agency should address. While the agency may not have technically violated a law, rule, or regulation by issuing the vast quantity of compensatory time, I am concerned that there is a lack of specific guidance in this area. Overly broad regulations, such as these, increase the likelihood of situations that create “an appearance of abuse.” I urge the agency to reevaluate these regulations and provide clearer guidance to prevent future appearances of abuse.