



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

The Special Counsel

December 12, 2007

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

Re: OSC File No. DI-07-0929

Dear Mr. President:

I received a whistleblower disclosure from Mr. Kenneth E. Downey, Supervisory Sector Enforcement Specialist, at the Department of Homeland Security (DHS), Customs and Border Protection (CBP), Border Patrol (BP), Blaine Sector, Blaine, Washington. Mr. Downey alleged that that employees at BP Blaine Sector improperly provided overtime pay to employees in violation of 5 C.F.R. 550.153 and the DHS policy and payroll handbook, including Federal Employees Pay Act of 1945 ("45 Act" or "regularly scheduled overtime") and Administratively Uncontrollable Overtime (AUO) pay.

I required the DHS Secretary to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). The DHS Secretary tasked the CBP, Office of Internal Affairs (OIA), with conducting the investigation and writing the report. OSC received an initial report dated September 18, 2007, by Mr. James F. Tomscheck, DHS Assistant Commissioner, OIA.

Specifically, the agency report found that Mr. Downey's allegations had merit. The report found that that Blaine Sector Border Patrol had no established procedures in place for monitoring overtime as required under the Customs Border Protection (CBP) Handbook (Handbook) and the Overtime Act of 1945 (1945 Act) and that CBP managers improperly provided excess overtime in violation of the Handbook and the 1945 Act. The report concluded that now retired Chief Henley improperly gave blanket authorization for employees to work overtime and that CPB managers improperly granted Supervisor Brooke Madden AUO when he was serving in an ineligible position with the communications center. He should have instead been paid 1945 Act, if it had been authorized. Further, based on records, the report found that Mr. Madden's overtime was administrative controllable because it was consistent, not administratively uncontrollable and, therefore, he should not have been paid AUO.

The report also found that the Administrative Staff Supervisor Lorrie Grim had approved Administrative Support employee Daniele Castro-Kiley's excessive and, admittedly, erroneous overtime pay during times when she was not working or earning her overtime pay.

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In September 2007, a DHS Disciplinary Review Board met and proposed removal for both Ms. Grim and Ms. Castro-Kiley.

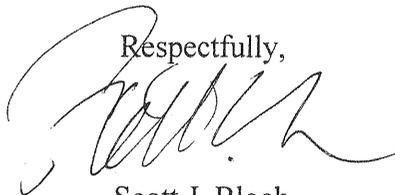
Additionally, as part of the agency's corrective action plan, supervisors and agents will be required to participate in training on AUO, web-based with annual certification. Also, in May 2007 and June 2007, then Acting Chief Joseph Giuliani issued memoranda to all Blaine Sector Staff reinforcing chain of command and informing staff of overtime and compensation time requirements.

Mr. Downey provided comments to the agency report. He was pleased that report validated his concerns about mismanagement were validated. However, Mr. Downey took exception to the report's finding that there was no established process for requesting premium pay. He believes that if the investigators were not provided this information, then there might have been an attempt to hide the fact that procedures were not followed by CBP employees. He added that these issues are systemic of larger issues of favoritism and reprisal and stated that "[b]ut not for having filed this complaint, I would still be pushed aside and harassed on a daily basis." Pursuant to 5 U.S.C. 1213(e)(3), I am now transmitting the agency's report along with the whistleblower's comments to you.

I have reviewed the original disclosure, the report, and the whistleblower's comments. Based on that review, I have determined that the agency's report contains all of the information required by statute. The statute also requires that I make a determination whether or not the findings of the agency head appear reasonable. In this case, I conclude that the findings set forth in the reports appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the agency report and the whistleblower's comments to the Chairman of the Senate Committee on Homeland Security and Governmental Affairs and to the Chairman of the House Committee on Homeland Security. I have also filed copies of the agency's redacted report and the whistleblower's comments in our public file and closed the matter.

Respectfully,



Scott J. Bloch

Enclosures