

Kenneth E. Downey
1550 Main St
Ferndale, Wa. 98248

Mr. Edward F. Flood
Attorney
Disclosure Unit
US Office of Special Council
1730 M St. N.W. Suit 218
Washington DC, 20036-4505

October 3, 2007

Dear Mr. Flood,

I received the unredacted report yesterday at my home. Having read the report I was pleased to have my observations of mismanagement validated. The report did answer a number of questions that I had, but also raised many more. I would like to take this opportunity to comment on the report and ask a few more questions that I believe are related to the findings outlined in the report.

I would like to first comment on the process of requesting and gaining approval for the assignment of overtime work here at Blaine Sector as discussed under paragraph 4 A of the report. I believe there is a well established process, which each Senior Staff Agent is aware of and has used (or uses) every pay period for other employees. This process includes a step whereby Mrs. Grim identifies funding availability for the requested overtime work, and initials the request form accordingly. There is a mandatory signature block for the Assistant Chief Patrol Agent with budget oversight. I have attached as reference a CBP form 4815 (07/06), an example of Blaine Sector's locally created Overtime Request and Approval document (1999), a copy of our locally created Bi-Weekly Time and Attendance worksheet (2003), and a copy of our locally generated G-259 schedule worksheet (1999). Please refer to them as I walk through the process that I am required to follow when requesting overtime funding for the Communications Center.

The schedule is drafted on a form G-259 well in advance of the affected pay period. The requirement is "not less than 5 days prior" however, I generally post the schedule four weeks in advance. At the time I create the schedule I fill out an Overtime Request for each member of my staff who I have assigned overtime work to in that particular pay period. In the example, PP-19, I have a shortage of fully trained personnel and need additional Swing shift coverage. I have assigned over time to insure 24 hour coverage. In the first week of the pay period, individuals are brought in on a day off for 4.5 hours. In the second week, I have extended the day shift for 2.5 hours, and brought the night shift in early, again by 2.5 hours. In the example provided I have a trainee (072) scheduled to train on the swing shift, but not perform as primary shift coverage.

The overtime request for Pay Period 19 was submitted at the beginning of Pay Period 17 in order to allow adequate time for the request and approval to process. In the overtime request example I have attached, Pay Period 20, you will notice that it was submitted by me on 9/3, and funded by Mrs. Grim on 9/26 to cover the pay period beginning on 9/30,

2007. You will also notice that ACPA Bruce Cooke has stamped his approval in the authorizing official signature block. This process has been repeated every pay period since I became a supervisor in December of 1998. This process was in place prior to Mrs. Grim being promoted to the Administrative Officer position, and remains unchanged today. An audit of Communications Center overtime will reveal that this process has continued even prior to my arrival in December, 1998.

It was rather surprising to me when the report indicated that no process was established to approve or fund overtime requests for Mrs. Grim's work unit. The process I am required to follow has in my observation applied to everyone in the Sector for FEPA Overtime.

Subsequently, there is a process under COSS, and even prior under STAR, where work schedules are reviewed and approved by the Supervisor and Timekeeper. Since adopting COSS some four years ago, the process works as follows. Employees enter their actual work hours into the Schedule Module within COSS. Prior to approving for pay, each supervisor is required to review the employee's claims for hours worked. This is where the local timesheet comes into play. You will notice that the time sheet in the example shows my hours for PP-19. This is submitted and reviewed by my boss each pay period. The supervisor compares the G-259 with the submitted timesheet, and against the hours reflected in COSS. This is the process I have followed, for my staff and have been required to comply with for my own time and attendance. This is the check and balance that occurs prior to the COSS schedule Approval / Certification steps every two weeks.

If the IA investigators were not provided this information by Blaine Sector's Staff Agents, then there seems to have been an overt attempt to hide the fact that these procedures were not being followed by the Administrative Support Staff. I would recommend that a follow on review be conducted, to include my staff in the Communications Center, in order to identify that a process does exist here in Blaine, that it is well known to Mrs. Grim and the Senior Staff Agents, and that it is required of other employees in Blaine Sector.

When the CBP-4815 is compared to our current local process, the first thing that I observe is that the CBP form does not identify who is assigned the overtime work. The Overtime request form used in Blaine prior to our current process looked very similar to the front page of the CBP form 4815.

The next point that I find very hard to believe, given the strict "chain of command" approach taken by Chief Henley, Mr. Giuliano, and Mr. Vanderheyden, is that the Assistant Chief Patrol Agents had no control over the Administrative Staff. If this was true, why did the practice of abuse continue after Chief Henley had retired in April? The answer is very simple, both Acting CPA Giuliano and Acting DCPA Vanderheyden had knowledge and actually supported the practice all along. ACPAs Stephens and Cooke either supported the abuse, or simply took no action to challenge the practice. Either way, they were derelict as senior managers. OI 287.10, replaced by AM 5.5.201 (3), and DHS MD 0810.1 5 B, require employees to report misconduct or other violations of rule, law, policy by employees when they encounter or observe such violations.

Had Acting CPA Giuliano or his staff felt that this was an abuse they had plenty of time to halt the practice following Chief Henley's retirement. The fact that they continued to support the abuse, absent Chief Henley, seems contrary to the position that it was out of their control.

The question that is in my mind is how did this practice begin, and why did Chief Henley support it. It was not a matter of administrative workload, it was something much more underhanded. It was done to pay off loyalty, and to reward obedience. I would encourage the review board to consider the circumstance that occurred in 2002-2003. Chief Henley was entrenching his own people, Giuliano was a key figure, into the Senior Staff here in Blaine Sector. Any person deemed to have been closely associated with the prior Chief, Cary James, was pushed aside or discarded. Those who didn't "swear allegiance" to Chief Henley were persecuted. The latter was the case for myself, ACPA Aaron K. Miller, PAIC Mike Baker, and then DCPA John Bates, and the Chief's Executive Secretary Mrs. Carol Mullen.

ACPA Miller, the most senior ACPA, had all of his program authority removed and reassigned to either Giuliano or Vanderheyden. He also spent his last two years detailed out of the Sector to Bastrop Federal Prison, near Austin Texas. PAIC Baker was hounded until he finally retired in disgrace, DCPA Bates was detailed to Detroit Sector away from his family for nearly one year. He never returned to Blaine as he was eventually selected to fill that position permanently in Detroit. Mrs. Mullen was reduced from being the Chief's Executive Secretary to being the lowest admin assistant on the staff, actually working for Mrs. Grim. Upon her retirement, there was not even a goodbye from the Staff. She had been here for well over 15 years. When ACPA Miller retired last year, DCPA Giuliano prevented any of the Sector Staff Agents from attending his retirement party. Mr. Giuliano admitted that Chief Henley had directed this to Mr. Miller when attending PAIC Keller's retirement last month.

As for me, I was stripped of my position in October of 2005, exactly two weeks after I filed an OIG complaint, and then was detailed to Lynden Border Patrol Station. I had literally no duties for nine months, a busy day for me was to take a vehicle or two to Les Schwab for brake or tire work. During these months I was harassed with the threat of serious disciplinary action. Following my return to the Communications Center in July of 2006, I was not granted any of my supervisory duties until the effect of this current investigation was felt by Acting CPA Giuliano in June of 2007 as indicated in the report. But for my having filed this complaint, I would still be pushed aside and harassed on a daily basis.

Observing this treatment, many other Agents and Supervisors turned a blind eye out of fear that they would be next. The Sector motto became "Got to support the Chief". It was during this process in 2003 when the Administrative Officer position became vacant and Mrs. Lorrie Grim was promoted by Chief Henley to the AO position, now titled Supervisory Mission Support Specialist. Coincidentally, about that time, Mrs. Grim and her family began building a huge three story home overlooking a lake in Bellingham Wa.

I have seen the pictures and it is a mansion, obviously difficult to pay for on a GS-7 or 9 salary. This is about the time when Chief Henley's "approval" for consistent Admin Staff overtime seems to have been "understood" by his senior staff. It would seem reasonable that during the following three years, the reporting requirements in MD 0810.1 5 B (OI 287.10) would have been followed by one of the Senior Staff Agents if they truly believed it was improper.

Of interest is the fact that upon Chief Henley's retirement, his official party was not held in a public facility but rather in Mrs. Grim's new mansion overlooking the lake, by invitation only. Chief Henley knew full well what that he was authorizing illegal overtime, and his staff simply fell in line. Mrs. Grim's hosting of his retirement party is an obvious show of gratitude for having been treated so well during these three years.

I would encourage the board to look into the timing of these events. I believe that they will find that Chief Henley was not trying to foster an increase in office work production, but rather to buy or reward Mrs. Grim's loyalty.

The sinister nature of the management style adopted by Chief Henley, DCPA Giuliano, ACPA Vanderheyden are the root causes of the various abuses and mismanagement in Blaine Sector during the past few years. The review board must take a strong look at this and make some organizational adjustments to halt this ongoing trend of preferential and/or punitive treatment.

Section 4 C of the report addresses the Administratively Uncontrollable Overtime abuse as I charged against Supervisory Border Patrol Agent Brooks Madden. I now know that this is only the tip of the iceberg when addressing AUO misuse or abuse in Blaine Sector. Prior to my having filed this complaint, I had never had any reason to study the proper use of AUO. According to many Border Patrol Agents, it was simply an entitlement and 25% pay bonus for being a Border Patrol Agent. The loose phrase "Don't mess with my AUO" has been the answer given many times when questioning the use of this overtime program.

I now understand that the accepted AUO management practice around the Sector is not legal. While I was "assigned" to Lynden Station, I watched every day as Agents hung around the station on AUO, doing nothing more than checking e-mail and telling stories. I recall one day an Agent stated that he wished he could go home early, that is not work AUO that day, however Station management required each Agent to remain on duty even though there was no "enforcement work" to be done. At that time, I took it for granted that the Station management knew how to manage the AUO program.

Now however, after reading the investigative report identifying the type of work "not supported as AUO", I realize that there are many Border Patrol Supervisors here in Blaine Sector, generally at the FOS level and above, that don't do any more justified "AUO" work than Madden did while sitting in my chair. The second and third line supervisor workload at the three stations is completely administrative in nature, as are the Sector Senior Staff positions. I now believe very strongly that Supervisory Agents

enjoying the benefits of unauthorized AUO earnings, and mandating the misuse of AUO by the line Agents. I know that this practice is consistent between Lynden Station, Blaine Station, Bellingham Station, and Port Angeles Station. I have watched for years as the Sector Senior Staff Agents work 10 hour days, under the AUO umbrella.

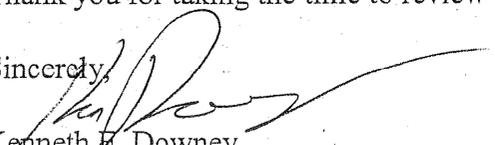
When Day Shift agents are relieved by the Swing Shift, for example, and no lingering enforcement work is required there is no reason for the entire shift to hang around the office for two more hours, yet this has become common practice. Northern Border Sectors do not have trainee Agents assigned. The Agents here in Blaine are seasoned and all have several years experience at a Southern Border Station. This is true for Supervisors and managers as well. If they brought this AUO misuse to Blaine Sector from the Southern Border, how big is this problem?

After reviewing the Payroll Handbook, other AUO guidance, the conclusions in this report, and after observing how it is actually managed here in the field I fully believe that it is a grossly mismanaged if not a fraudulently administered overtime provision across the entire service. Clearly the Agents benefiting from this practice aren't likely to raise a flag, but now that I understand the appropriate use, I feel compelled to raise it myself.

Our nation is currently facing a crisis of conscience regarding border security. This topic is in the news, it's on everyone's mind. We must manage our resources, fiscal and personnel, so that the American People are getting value for the taxes they pay. If the outrageously bad management practice here in Blaine Sector is present at other Sector HQs, this agency is in serious trouble.

Thank you for taking the time to review this report, and my comments.

Sincerely,



Kenneth E. Downey
Supervisory Sector Enforcement Specialist
Blaine Sector, USBP
Blaine Wa. 98248
(360)332-9218

TO: Bruce Cooke, ACPA

Approving Official

THROUGH: Joseph Jovanovich, SOS

Second Level Supervisor

FROM: Ken Downey, SSES

First Level Supervisor

DATE: 9/3/2007



FOR EMPLOYEE: Hafich, Daniel J

GS-1801- 9/3

Reason for Overtime

SL Coverage for 077 / Short Staff

Comments:

COPY

COPY

FOR PAY PERIOD: **20**

Enter Pay Period Starting Date here:

9/30/2007

WEEK ONE	SUN 9/30/2007	MON 10/1/2007	TUE 10/2/2007	WED 10/3/2007	THU 10/4/2007	FRI 10/5/2007	SAT 10/6/2007	TOTAL
REGULAR OT								0
NIGHT DUTY OT								0
Clock Hours From:								
Clock Hours To:								
WEEK TWO	SUN 10/7/2007	MON 10/8/2007	TUE 10/9/2007	WED 10/10/2007	THU 10/11/2007	FRI 10/12/2007	SAT 10/13/2007	TOTAL
REGULAR OT		1	1	1				3
NIGHT DUTY OT		1.5	1.5	1.5				4.5
Clock Hours From:		1700	1700	1700				
Clock Hours To:		1930	1930	1930				

REG. OT RATE PER HOUR:

\$35.30

REG OT FUNDS USED:

\$ 105.90

N/D OT RATE PER HOUR:

\$37.65

N/D OT FUNDS USED:

\$ 169.43

GRAND TOTAL USED:

\$ 275.33

APPROVED:

DISAPPROVED

AUTHORIZING OFFICIAL'S SIGNATURE

COPY

POSTED

Funds Certification: _____

Date: 9/24/07

funds availability based on FY08 C.R.

Name: Downey, Kenneth E.
 SSN: *****

19

Date:	Pay Period:	September 29, 2007	Hours
9/16/07	WEEK ONE	Pay Code:	Total

COPY

COPY

9/17/07	MONDAY	0700	1500	1	8.00	9/24/07	MONDAY	0730	1530	1	8.00
---------	--------	------	------	---	------	---------	--------	------	------	---	------

9/18/07	TUESDAY	0700	1500	1	8.00	9/25/07	TUESDAY	0700	1500	1	8.00
---------	---------	------	------	---	------	---------	---------	------	------	---	------

9/19/07	WEDNESDAY	0730	1530	1	8.00	9/26/07	WEDNESDAY	1600	1800	1	2.00
								1800	2400	11	6.00

9/20/07	THURSDAY	0800	1600	1	8.00	9/27/07	THURSDAY	0730	1530	1	8.00
---------	----------	------	------	---	------	---------	----------	------	------	---	------

9/21/07	FRIDAY	0700	1500	1	8.00	9/28/07	FRIDAY	0700	1500	1	8.00
---------	--------	------	------	---	------	---------	--------	------	------	---	------

9/22/07	SATURDAY					9/29/07	SATURDAY				
---------	----------	--	--	--	--	---------	----------	--	--	--	--

Over Flow						Over Flow					
-----------	--	--	--	--	--	-----------	--	--	--	--	--

Pay Code Chart		Totals		40.00		Remarks:		40.00	
Regular Pay	1	74							
Regular Pay with ND	11	6							
Sunday Pay	4	0							
Sunday Pay with ND	5	0							
Overtime	21	0							
Overtime with ND	25	0							
Holiday Off	66	0							
Holiday Off with ND	66	0							
Holiday Worked	31	0							
Annual Leave	61	0							
Annual Leave with ND	61	0							
Sick Leave	62	0							
Sick Leave with ND	62	0							
TOTALS	2	80							

Leave Hourly Balances					
FWD	ACC	BAL	USED	ENDING	Initial Leave Used
Annual	108.00	8	116.00	0.00	116.00
Sick	390.00	4	394.00	0.00	394.00
Comp			0		0
LWOP			0		0
Military	16.00	0	16.00		16.00

Certified Correct
 Employee
 Supervisor
 Date: _____

DUTY ASSIGNMENT SHEET

STANDARD SHIFTS				SPECIAL ASSIGNMENT OR LEAVE			
NO	HOURS	NO	HOURS	AL	ANNUAL LEAVE	LH	LIEU HOLIDAY
1		10	0700 - 1500	D	DETAIL	OT	OVER TIME PAY
2		11	1100 - 1900	H	HOLIDAY	SU	SUSPENSION
3		12		SL	SCHED SICK LV		
4		13		TR	TRAINING		
5	0500 - 1500	14	1400 - 2400	TS	TRAVEL STATUS		
6	0600 - 1600	15	1500 - 0100	X	DAY OFF		
7	0700 - 1700	16	1600 - 0200	CT	COURT		
8	0800 - 1800	17	1700 - 0300	ML	MILITARY LEAVE		
9	0800 - 1600	21	2130 - 0730	V	VARIABLE		

LOCATION		9/16/2007								9/29/2007							
BLAINE, WA		VARIATIONS								VARIATIONS							
NAME	MATRIX	SUN	MON	TUE	WED	THR	FRI	SAT		SUN	MON	TUE	WED	THR	FRI	SAT	
	Star#	16	17	18	19	20	21	22		23	24	25	26	27	28	29	
FAUBION, G	074	X	21	21	21	21	X	X		X	+2.5 21	+2.5 21	+2.5 21	21	X	X	
KAYA, K	076	7	X	+4.5 OT	X	7	7	7		7	X	X	X	7	7	7	
CONNER, G	077	21	X	X	X	21	21	21		21	X	X	X	21	21	21	
HAMANN, S	078	14	+4.5 OT	X	X	14	14	14		14	X	X	X	14	14	14	
HAFICH, D	075	7	7	7	7	X	X	X		7	+2.5 7	+2.5 7	+2.5 7	X	X	X	
FINCH, R	079	7	X	X	X	7	7	7		7	X	X	X	7	7	7	
COLLINS, L.	072	X	14	14	14	14	X	X		X	SL	14	14	14	X	X	
DAVES, C	073	21	X	X	+4.5 OT	21	21	21		21	X	X	X	21	21	21	
VACANT	084																
VACANT	085																
VACANT	086																
VACANT	087																
DOWNEY, K	071	X	V	V	V	V	V	X		X	V	V	16	V	V	X	

SUPERVISORY SECTOR ENFORCEMENT SPECIALIST

Ken Downey _____

_____ Date Posted