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The Special Counsel

September 16, 2024

The President
The White House
Washington, D.C. 20050

RE: OSC File No. DI-23-000639

Dear Mr. President:

I am forwarding to you a report transmitted to the U.S. Office of Special Counsel (OSC) by the Department of the Army in response to the Special Counsel's referral of a disclosure of wrongdoing at the U.S. Army Forces Command, 20th Chemical, Biological, Radiological, Nuclear Explosives Command (CBRNE), Analytical and Remediation Activity (CARA), Aberdeen Proving Ground, Aberdeen, Maryland. I have reviewed the disclosure, agency report, and whistleblower comments, and in accordance with 5 U.S.C. § 1213(e), have determined that the report contains the information required by statute and the findings appear reasonable. CBRNE's Deputy Commander appointed an Investigating Officer (IO) to investigate the matter. The whistleblower, ██████████ ██████████ a Pilot and Aviation Safety Officer, consented to the release of his name. The following is a summary of the findings:

The Allegations

██████████ alleged that Supervisory Pilot ██████████ failed to conduct a required investigation into a safety incident that occurred on February 6, 2023, in which Army Pilot Instructor ██████████ caused a helicopter engine to overheat during training, resulting in significant damage to the helicopter. ██████████ further alleged that ██████████ attempted to prevent him from initiating an independent investigation into the incident and provided false information about the incident to the U.S. Army Combat Readiness Center (USACRC).

On February 6, 2023, ██████████ and ██████████ were performing a training mission as pilot and instructor pilot, respectively, on a UH-72A helicopter. When the mission initiated, ██████████ inadvertently shut off and attempted to restart the engine before it was completely shut down, resulting in the engine overheating and over \$200,000 in damage to the aircraft. ██████████ immediately sent a mishap report to the USACRC as required by Army Regulation (AR) 385-10, paragraph 3-8(a). Because ██████████ was the safety officer involved and a witness to the safety incident, he asked ██████████, the USACRC safety officer/supervisor, how to proceed. ██████████ advised ██████████ that the Army should appoint an independent investigator outside both ██████████ and ██████████ command to conduct the investigation.

██████████ alleged that ██████████ nevertheless attempted to prevent him from initiating an independent investigation into the incident and provided false information to the USACRC regarding the incident.

The Agency's Findings

The agency substantiated the allegations in part. The agency determined that while ██████████ investigated the February 6th 2023 mishap, the investigation did not satisfy the requirements of AR 385-10 and Department of the Army Pamphlet (DA PAM) 385-40 because ██████████ was not appointed in writing by the appropriate authority.¹ Additionally, given ██████████ position and because he conducted the investigation, the agency found that there was a perception that he could have a personal interest in the outcome of the investigation. Thus, ██████████ should have identified an outside, neutral party to assist in reviewing the mishap. Additionally, the agency found that ██████████ required sworn statements from both ██████████ and ██████████, even though DA PAM 385-40 provides that preliminary witness statements are not to be made under oath. The agency also determined that the errors in ██████████ investigation demonstrated that the 20th CBRNE Risk Management Team (RMT) lacked the subject matter expertise in aviation to advise the 20th Commander and CARA Director on proper courses of action to address aviation safety incidents. Accordingly, On June 26, 2023, the CBRNE Commanding General, Brigadier Gen. ██████████, appointed Lieutenant Colonel (Lt. Colonel) ██████████ from FORSCOM Aviation to investigate the safety incident. The agency found that ██████████ reached the same conclusion as ██████████ regarding the incident's causation.

The agency did not substantiate that ██████████ directed ██████████ not to pursue a safety investigation, or that he directed ██████████ to falsify information in an Abbreviated Aviation Accident Report (AAAR). Instead, the agency determined that ██████████ removed ██████████ from the investigation because he was involved in the safety incident as a pilot. Further, although ██████████ asserted that ██████████ incorrectly told him to fill out ██████████ pilot job designation as a Department of the Army Civilian (DAC) and use a CARA Aviation Unit Identification Code on the AAAR, Aberdeen Test Center and the 20th CBRNE had a Memorandum of Agreement providing for inter-agency exchange of crewmembers for evaluations, training, and aircraft movements. Accordingly, the agency concluded that ██████████ correctly identified ██████████ as a DAC on the AAAR.

Based on the findings, the agency recommended that: (1) the 20th CBRNE send a primary and alternate representative to the Aviation Safety Officer's course to train personnel to advise the RMT Director, CARA Director, and Commander when an aviation incident occurs and provide oversight and assistance for CARA; (2) the 20th CBRNE Command develop a plan to identify all actions/responsibilities for reacting to an aviation safety incident and a tracking mechanism for completion of those actions; and (3) the 20th CBRNE RMT reassess and make a recommendation to

¹ Army Regulation (AR) 385-10, paragraph 3-13 states that accident investigation board appointing authority will ensure that no member of the board has a personal interest in the outcome of the accident investigation. Department of the Army Pamphlet (DA-PAM) 385-40 provides a detailed, standardized set of instructions and procedures for the process and reporting of Army mishaps.

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the Commander or designated representative for Class C aviation accident boards.² OSC confirmed that the majority of these recommendations detailed in the report have been implemented.³

The Whistleblower's Comments

In his comments, ██████████ asserted that the investigation re-affirms the agency's attempts to cover up the February 6th mishap. He noted that many of management's statements related to the mishap and accompanying investigation were contradictory, which he asserted highlighted management's efforts to minimize the gravity of the incident.

The Special Counsel's Findings

I thank ██████████ for his disclosures. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, and whistleblower comments to the Chairs and Ranking Members of the Senate and House Committees on the Armed Forces. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Hampton Dellinger
Special Counsel

Enclosures

² Since the current appointment authority is the CARA Director, who will likely appoint the CARA AVN Chief, this could create a perception of bias as the CARA AVN chief may have an interest in the outcome of the investigation.

³ While the agency implemented the majority of the recommendations, the agency notified OSC that the recommendation that the 20th CBRNE send a primary and alternate representative to the Aviation Safety Officer's course to train personnel on how to address aviation accidents could not be implemented as the personnel in the 20th CBRNE's safety section did not meet the prerequisites to attend the course. However, the agency noted that other relevant and responsive safeguards were implemented to ensure better accountability and oversight of any safety mishaps in the future.