



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

The Special Counsel

February 12, 2025

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

Re: OSC File No. DI-21-000339

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) by the Department of Transportation (DOT) in response to the Special Counsel's referral of disclosures of wrongdoing at the Federal Railroad Administration (FRA), Washington, D.C. I have reviewed the disclosure, the agency report, [REDACTED], and in accordance with 5 U.S.C. § 1213(e), I have determined that the report contains the information required by statute, and the findings appear reasonable. The DOT's Office of the Assistant Secretary for Administration investigated the allegations. The allegations were partially substantiated. The following is a summary of the findings [REDACTED].

The Allegations

The whistleblower, who chose to remain confidential, alleged that FRA employees violated federal locality pay regulations. The whistleblower reported that Mechanical Engineers [REDACTED] and [REDACTED] improperly received salaries at the locality pay rate for DOT headquarters (HQ) in Washington, D.C., even though they failed to meet the necessary conditions to receive pay at that rate. The whistleblower noted that the locality pay rate for Washington D.C. exceeded the rate of these employees' teleworking sites, and, therefore, they received an improper salary increase. The whistleblower also alleged that Human Performance Railroad Technical Specialist (HP Technical Specialist) [REDACTED] misled agency officials regarding his telework workstation to receive increased locality pay. Additionally, the whistleblower alleged that FRA Director of Human Resources [REDACTED], Motive Power and Equipment Division (MPED) Staff Director [REDACTED], and Chief Safety Officer [REDACTED] knew the incorrect locality pay rate was being applied but did not correct the agency's personnel systems.

The whistleblower also alleged that FRA officials, including [REDACTED], and Supervisor for Departmental Substance Abuse & Awareness Testing Office [REDACTED] circumvented FRA drug testing regulations by failing to require the FRA employees who permanently teleworked outside the locality area to appear for drug testing. Finally, the whistleblower alleged that [REDACTED] misled drug testing technicians about the availability of the teleworking employees for testing on multiple occasions between 2016 and 2020.

The Agency Report

a. Locality Pay

i. [REDACTED]

DOT's investigation partially substantiated that [REDACTED] improperly received locality pay for DOT HQ while teleworking outside of the Washington, D.C. locality pay area. However, the investigation did not find that these employees, or any other FRA officials, knew that an incorrect locality pay rate was being used or that they knowingly failed to correct it. OPM regulations require that the employees report to DOT HQ at least twice each biweekly pay period to receive Washington D.C. locality pay. According to the investigation, under the telework arrangements with [REDACTED], [REDACTED] teleworked for three consecutive weeks outside of the Washington, D.C. area, reported to DOT HQ for one week, and received the Washington D.C. locality pay rate. They all believed the telework arrangement was consistent with OPM regulations. However, because [REDACTED] did not work at DOT HQ every pay period, their telework arrangements technically violated OPM regulations. Based on interviews with all parties involved, the investigation could not conclude [REDACTED] intentionally violated OPM regulations.

DOT's investigation did not substantiate that [REDACTED] were aware that [REDACTED] were paid at incorrect locality pay rates. The investigation found that [REDACTED] were not involved in the discussions of telework arrangements for these employees and had no reason to know the basis for their pay rates. Further, as discussed above, [REDACTED] was neither aware that the telework arrangements for [REDACTED] violated OPM regulations nor involved in the telework arrangement with [REDACTED].

ii. [REDACTED]

DOT's investigation substantiated that HP Technical Specialist [REDACTED] misled agency officials regarding his telework location to be paid at the incorrect locality pay rates. [REDACTED] worked at FRA under a telework agreement between 2014 and January 2018, and then through 2023 in a fully remote position. During that time, the investigation noted he lived in and worked from Scranton, Pennsylvania. However, the investigation found that in June 2017, [REDACTED] changed his home address in the agency personnel system to a recently-established UPS box in

East Stroudsburg, Pennsylvania.¹ The investigation further noted that when applying to the fully remote position in November 2017, ██████ listed his home address as the UPS box location in East Stroudsburg, Pennsylvania, on both his resume and application. ██████ was selected for the remote work position in January 2018 and his official duty station was listed as East Stroudsburg, Pennsylvania, within the “New York City” locality pay area.² The investigation noted multiple instances where ██████ knew he had provided FRA with a misleading home address, including changing his home address from East Stroudsburg back to Scranton in the personnel system when he learned about the agency investigation.

Based on the investigation’s findings, DOT referred ██████ conduct to the DOT Office of Inspector General, who then referred the matter to the U.S. Attorney for the Middle District of Pennsylvania for criminal prosecution. The U.S. Attorney’s Office criminally charged ██████ with theft of government property and in August 2023, he pleaded guilty to those charges. ██████ received \$123,641.32 in overpayment. In April 2024, he was sentenced to probation, and ordered to pay fines, fees, and restitution of the locality pay. Additionally, the agency has initiated the process to take administrative action against ██████. DOT’s investigation found no information that any other FRA employee knew of ██████ actions prior to the investigation.

b. The FRA Drug Testing Program

DOT’s investigation did not substantiate that officials circumvented FRA drug testing regulations by failing to require FRA employees who permanently teleworked outside the locality area to appear for drug testing. Under the FRA drug testing program, employees may be exempt from a specific instance of testing if they are unavailable to come to the testing location on that day.³ Employees may be exempt when on approved leave, and are not required to report for drug testing when their commute by car to the drug testing site exceeds three hours. If the employee is unavailable for one of these legitimate reasons, the site’s drug program coordinator notifies the drug testing technician and marks the drug testing list to indicate that employee will not be tested.

The report notes that ██████ were not tested between 2016 and 2020 despite being eligible for testing; however, investigators found that “the lack of

¹Scranton, Pennsylvania falls within the “Rest of the U.S.” locality pay area whereas East Strasbourg, Pennsylvania is located within the “New York City” locality pay area. The “New York City” locality pay adjustment has historically been over twice as large as that for the “Rest of the U.S.” locality pay adjustment. See <https://www.federalpay.org/gs>.

²Despite changing his address in the FRA personnel system in June 2017, it was not until he was selected and reassigned to the remote work position in January 2018 that his official duty station on his Standard Form 50 became East Strasbourg and he began receiving the New York City locality pay rate.

³Under the drug testing program, FRA splits its employees into several Metropolitan Statistical Areas (MSA) and then specific MSAs are chosen for testing by computer program. Once an MSA is chosen, the software then chooses specific employees at that MSA who must undergo testing.

testing was not due to evasion or circumvention of FRA policy.” On several occasions during this period, these employees were not selected for testing because they were exempt under FRA testing policy because they were located more than three hours away from the testing site. Finally, the investigation found that there was no evidence to support the allegation that [REDACTED] [REDACTED] or any other FRA employee misled drug testing technicians about the availability of the teleworking employees for testing on multiple occasions between 2016 and 2020.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



The Special Counsel's Findings

I thank the whistleblower for bringing the allegations to OSC. As a result of the investigation, the agency identified and corrected ongoing fraud, leading to a criminal prosecution and restitution for the government. Additionally, FRA changed its drug testing processes to ensure employees that telework or work remotely are tested even if they work more than three hours from their duty station. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, [REDACTED] to the Chairs and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in cursive script that reads "Hampton Dellinger". The signature is written in black ink and is positioned above the printed name and title.

Hampton Dellinger
Special Counsel

Enclosures