



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

The Special Counsel

May 2, 2025

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

Re: OSC File No. DI-24-001225

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) by the Department of Defense in response to the Special Counsel's referral of a disclosure of wrongdoing at the Defense Health Agency (DHA), Office of General Counsel (OGC), San Antonio, Texas. The whistleblower, who chose to remain confidential, commented on the report. OSC has reviewed the disclosure, agency report, and whistleblower comments 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.¹ The following is a summary of the allegations, the agency's findings, and the whistleblower's comments in response.

The whistleblower alleged that OGC, Labor and Employment Branch (OGC-L&E) management violated the requirement in the Equal Employment Opportunity Commission (EEOC) Management Directive 110 (EEOC MD-110) that an agency maintain its Equal Employment Opportunity (EEO) complaint program separate from its EEO defense program because it directed OGC-L&E attorneys, who defend the agency in EEOC litigation, to write or rewrite Final Agency Decisions (FADs) and/or Final Agency Actions (FAAs) in EEO matters. While the investigation did not substantiate the allegation, it found that the agency may have violated the EEOC MD-110 general requirement to separate the EEO complaint program from the EEO defense program by having OGC-L&E attorneys review FADs for legal sufficiency.

DHA's Equal Opportunity and Diversity Management (EODM) office manages the agency's EEO Program, which includes investigating EEO complaints and issuing FADs and FAAs. OGC-L&E attorneys defend the agency in EEOC litigation, including disputes over FADs and FAAs. In November 2023, OGC generally assumed responsibility for writing FADs and FAAs due to deficiencies in the work product of the EODM contract employees. However, according to the report, OGC-L&E attorneys were not writing FADs, but rather reviewing draft FADs for legal sufficiency. The legal sufficiency reviews often resulted in

¹ OSC referred the allegations to former Secretary of Defense Lloyd J. Austin, III for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The authority to review and sign the agency report was delegated to Former Department of Defense General Counsel Caroline Krass. The Defense Contract Management Agency investigated the allegation.

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comments or edits needed to make the FADs legally sufficient.² The report found that the OGC-L&E attorneys conducting the legal sufficiency reviews returned the draft FADs, with comments, to EODM for further review and any potential rewrites. The Complaints Manager, who received all FADs after the legal review, confirmed that not all edits or comments suggested were accepted or required to be accepted. Two employees stated the reviewing attorneys did not rewrite FADs.

The report acknowledged that employees knew about the EEOC MD-110 mandate to separate the EEO program from the EEO defense function; they also acknowledged that having OGC-L&E attorneys review FADs for legal sufficiency was not a best practice. The investigation found that the agency ensured that the OGC-L&E attorneys who conducted the legal sufficiency reviews did not represent DHA on that same matter.

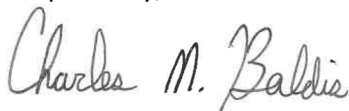
The agency resolved the situation long-term by hiring two attorneys in August 2024 into the Administrative and Management Branch, which is not organized within OGC, dedicated to drafting and reviewing FADs. These attorneys will not represent DHA in EEO matters. The report stated that the EODM contract-writers remain available for drafting purposes if the need arises, and the new attorneys will review any FADs the EODM contract writers may write. The report stated that no OGC-L&E attorneys have been asked to review FADs since August 2024.

In comments, the whistleblower objected to management's failure to recognize the problem until OSC's referral and the agency investigation. The whistleblower opined that while hiring attorneys to draft and review FADs appears responsive, OGC-L&E attorneys will likely continue to provide input to these new attorneys because they lack EEO experience.

Pursuant to 5 U.S.C. § 1213(e) I have determined that the report contains the information required by statute and the findings appear reasonable. I thank the whistleblower for bringing this important allegation to OSC's attention. I expect the agency to maintain the separation between its EEO program and defense functions pursuant to EEOC MD-110.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the agency report, and whistleblower comments to the Chairmen and Ranking Members of the Senate and House Committees on the Armed Services. I have also filed redacted copies of these documents and the redacted referral letter in OSC's public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in cursive script that reads "Charles N. Baldis".

Charles N. Baldis
*Senior Counsel and Designee
of Acting Special Counsel Jamieson Greer*

Enclosures

² An employee explained that the legal sufficiency review ensured the FADs applied the law appropriately through a reasonable analysis and reached a legally consistent decision.