



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

February 4, 2016

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

Re: OSC File No. DI-14-1057

Dear Mr. President:

In accordance with my duties as Special Counsel, I am forwarding to you a Department of Veterans Affairs (VA) report based on disclosures received from an employee of the Philadelphia VA Medical Center (VAMC), Nutrition and Food Services (NFS), in Philadelphia, Pennsylvania. I have reviewed the report and, pursuant to 5 U.S.C. § 1213(e), provide the following investigative summary, whistleblower's comments, and my findings.

On July 24, 2014, the Office of Special Counsel (OSC) referred the whistleblower's allegations to then-Acting Secretary of Veterans Affairs Sloan D. Gibson to conduct an investigation under 5 U.S.C. § 1213(c). Secretary Gibson delegated the investigation to the VA's Office of the Medical Inspector (OMI). On February 26, 2015, the agency submitted the report to OSC.¹ Pursuant to 5 U.S.C. § 1213(e)(1),(3), the whistleblower received a copy of the report and provided comments.

The whistleblower, Troy Thompson, who consented to the release of his name, was the NFS production services manager at the Philadelphia VAMC from October 2009 until September 2012. He disclosed that NFS employees consistently violated Veterans Health Administration regulations governing food handling when preparing patient meals.² OMI investigated 13 violations that Mr. Thompson identified. It substantiated nine sanitation violations and concluded that they showed a substantial and specific danger to public health and safety. In response to these findings, the VA developed an action plan and established performance metrics, which have resulted in a high compliance rate with sanitation requirements.

¹ OSC is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she must advise the appropriate agency head of her determination, and the agency head must conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the whistleblower's comments under 5 U.S.C. § 1213(e)(1).

² VHA Handbook 1109.04 Food Services Management Program (October 11, 2013).

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Mr. Thompson further alleged that the NFS chief failed to take corrective action despite knowing about the ongoing violations. OMI substantiated this allegation and concluded that the NFS chief did not take appropriate action to ensure employee compliance with sanitation standards. In order to address management's failure to take action, OMI recommended that the VA perform a comprehensive NFS management review and take disciplinary, administrative, or instructional action as deemed necessary. After, the VA Office of Accountability and Review conducted a senior management administrative investigation, and the VAMC initiated daily monitoring to determine whether the NFS chief is meeting performance standards, or whether further action is required. Finally, OMI did not substantiate Mr. Thompson's allegation that NFS employees left their children unattended on federal property.

In his comments, Mr. Thompson asserted that his allegation about unattended children may not have been properly examined. The report confirmed that a NFS employee left her child unsupervised in a break room on VAMC property. Nevertheless, OMI did not substantiate this allegation because the employee who engaged in the wrongdoing received a written warning that disciplinary action would be taken if the behavior continued. Mr. Thompson questioned OMI's reasoning not to substantiate the allegation despite evidence obtained during investigatory interviews, and he disputed that the employee in question ceased the behavior after receiving a warning.

Based on my review of the disclosures, the agency report, and Mr. Thompson's comments, I have determined that the VA's report contains all of the statutorily required information. However, in light of the finding concerning an unsupervised child and Mr. Thompson's comments, I do not find reasonable the VA's proposition that the allegation is unfounded simply because the wrongdoing ceased.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted agency report to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs.³ I have also filed a copy of the redacted report and whistleblower's comments in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures

³ The VA provided OSC with an unredacted report containing employee names and a redacted report that substituted titles for the names of employees other than the subjects of the investigation. The VA cited the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act of 1974 (5 U.S.C. § 552a) as the basis for these revisions to the reports produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the report in our public file. OSC objects to the VA's use of FOIA and the Privacy Act to remove these names on the basis that it is an overly broad application of the Privacy Act, and because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b). Nevertheless, OSC has agreed to post the redacted version as an accommodation.