



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

The Special Counsel

—
December 22, 2020

The President
The White House
Washington, DC 20510

Re: OSC File Nos. DI-17-3277, DI-18-3883, and DI-18-1621

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e), the U.S. Office of Special Counsel (OSC) is submitting to you a report and supplemental report of a U.S. Air Force (USAF) investigation of whistleblower allegations.¹ Three whistleblowers—**Whistleblower 1**, who consented to the release of [REDACTED] name, and two others, who chose to remain anonymous—disclosed that the Hill Air Force Base (AFB) Equal Opportunity Office (EEO) Director had been executing the responsibilities of the office improperly and unlawfully.

The investigation, conducted by USAF's Material Command (AFMC) Office of Inspector General (OIG), substantiated the whistleblowers' allegations.² Specifically, the USAF found that the EEO Director had:

- Actively discouraged employees from filing EEO complaints, including telling one whistleblower that [REDACTED] (later substantiated) sexual harassment claims against [REDACTED] supervisor “wouldn't carry weight” and “wouldn't go anywhere” when the whistleblower tried to file a complaint;
- Illegally modified and rejected EEO complaints and allegations, including at least 10 of the 11 complaints made by **Whistleblower 1**, and another filer's entire complaint, after erroneously eliminating language critical to the validity and timeliness of that complaint;
- Given employees false and misleading information about the EEO process, including illegally denying a whistleblower the ability to remain anonymous at the informal stage of the EEO process and telling a filer that [REDACTED] was not entitled to file a claim when the filer was, in fact, entitled to do so³; and

¹ See 5 U.S.C. § 1213(c) and (e).

² The Special Counsel referred the whistleblowers' allegations to former Secretary Heather Wilson to investigate pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary requested that OIG investigate the matter. The Secretary delegated authority to review and sign the report to Assistant Secretary Shon J. Manasco.

³ See 29 C.F.R. § 1614.105(g); see also EEO Management Directive 110, at Ch. 2 § VII(E) (“[T]he EEO Counselor should explain that unless the aggrieved authorizes or files a formal complaint, the EEO Counselor will not reveal their identity.”)



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- Failed to identify conflicts of interest by management during the EEO mediation process, including allowing a senior official accused of wrongdoing in a whistleblower’s EEO filing to serve as the sole settlement authority for the agency during that whistleblower’s EEO mediation.

The USAF OIG’s report also identified potential wrongdoing by two attorneys in the Hill AFB Civil Law Division. For example, the report contains evidence that both attorneys failed—like the EEO Director—to identify conflicts of interest during the EEO settlement process. One of the attorneys also appeared to reject a whistleblower’s request for a Commander Directed Investigation into [REDACTED] supervisor’s sexual harassment of [REDACTED] when the whistleblower was, in fact, entitled to one under law. The evidence in the report also raises questions as to the two attorneys’ competence and candor, stating in part that “legal and other mistakes made [one whistleblower’s sexual harassment case] far more difficult.”

In response to these findings, USAF has completed or committed to complete the following corrective actions:

- Removing the EEO Director from [REDACTED] position, reassigning [REDACTED] to another office with no involvement and influence over EEO filings, and issuing [REDACTED] a Letter of Counseling;
- Revising the annual training for all EEO personnel and holding a supplemental training for all AFMC installation EEO offices, including Hill AFB, “[r]eflecting a number of the lessons learned from the incidents at Hill AFB”;⁴
- Issuing new EEO policies, including requiring the EEO Director to notify the commander of conflict of interest requirements when settling EEO cases; and
- Referring the two relevant attorneys’ conduct, as outlined in the report, to the Professional Responsibility Program for the Air Force Judge Advocate General Corps and initiating an inquiry into allegations of unprofessional conduct by those attorneys.

The whistleblowers all commented on the USAF report. One whistleblower’s comments express gratitude to OSC, encourage USAF to live up to its values, and advise future whistleblowers to “find within yourself to stay strong, persevere, and hold true to your beliefs and integrity” and “[n]ever allow anyone to threaten or discourage you from doing what is right, honest, and fair.” Whistleblower 1 and the other whistleblower identified omissions and factual discrepancies in the report that, if corrected, they allege, would strengthen the evidence against the EEO Director and the two attorneys. Whistleblower 1 and this other whistleblower were also deeply concerned that USAF had not, in its first communication to OSC, explicitly committed to removing or taking other action against the EEO Director or the two relevant attorneys. In response to these comments, as well as other concerns raised by OSC, USAF submitted a supplemental report on September 8, 2020, containing additional corrective action, including the

⁴ Letter from USAF to OSC, re. OSC File Nos. DI-17-3277, DI-18-3883, DI-18-1621, Sept. 8, 2020.



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commitment to remove the EEO Director from [REDACTED] office and to refer the relevant attorneys for investigation, as outlined above. Whistleblower 1 responded with, *inter alia*, comprehensive recommendations for improving the USAF's approach to "civil rights . . . sexual assault, suicide, and sexual harassment" and protecting those who experience and report such wrongdoing.

I commend the whistleblowers for coming forward to identify these violations of law, gross mismanagement, and abuses of authority. I am disappointed that the USAF's report—despite acknowledging a plethora of legal violations and other egregious conduct—stops short of acknowledging the Director's culpability for [REDACTED] actions, often attributing [REDACTED] conduct to "negligence" and misunderstanding, despite [REDACTED] approximately 21 years of EEO experience. Nevertheless, given the USAF's commitments to corrective action based on this report, including as to the Director, I have determined that the report contains the information required by statute and that its findings appear reasonable. I am also encouraged that the agency is taking other needed steps to restore the integrity of its EEO process.

I have also enclosed a related USAF investigative report, which the USAF produced to OSC on May 30, 2019, in response to an earlier OSC referral of wrongdoing at Hill AFB made pursuant to 5 U.S.C. § 1214(e)⁵ ("Section 714 investigation"). The USAF's instant report describes the Section 714 investigation as "related [] and interconnected," and makes repeat reference to evidence and findings contained in that preceding report. OSC is therefore attaching the preceding report, to clarify and complete the record in this case.

As required by 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency reports, this letter, and the whistleblowers' comments to the Chairman and Ranking Members of the Senate and House Committees on Armed Services. OSC has also filed redacted copies of these documents and a copy of our original referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in black ink, appearing to read "Henry J. Kerner".

Henry J. Kerner
Special Counsel

Enclosures

⁵ Section 1214(e) applies when the Special Counsel determines, in connection with a prohibited personnel practice investigation, that there is "reasonable cause to believe that any violation of any law, rule, or regulation has occurred" outside of OSC's relevant jurisdiction. It states that "the Special Counsel shall report such violation to the head of the agency involved . . . [and] shall require, within 30 days . . . a certification by the head of the agency which states (1) that the head of the agency has personally reviewed the report; and (2) what action has been or is to be taken, and when the action will be completed."