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OSC Obtains Stay of Removal of Army Police Whistleblower

FOR IMMEDIATE RELEASE

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Yesterday, the U.S. Office of Special Counsel (OSC) obtained an order putting on hold the proposed removal of a Department of Army police officer, who alleges he was retaliated against for disclosing that fellow officers were receiving unearned pay. The Merit Systems Protection Board (MSPB) [granted](#) OSC's request to stay the Army's removal of Kenneth Delano, a police officer with the Army's Directorate of Emergency Services at Fort A.P. Hill, Virginia. OSC sought the 45-day stay to keep Mr. Delano in his job while OSC investigates his whistleblower retaliation complaint.

According to OSC's filing, Mr. Delano—who served for more than a decade and consistently exceeded performance standards—disclosed to the Defense Department's Inspector General (IG) in August 2013 that two officers were each inappropriately receiving approximately \$25,000 in Law Enforcement Availability Pay. Superiors in the Directorate of Emergency Services had approved the extra pay. That fall, the Army stopped the extra pay to those two officers, suggesting that Mr. Delano's disclosure had merit. Around this time, Mr. Delano told Fort A.P. Hill management that he had made the disclosure.

In March 2014, Mr. Delano noticed that the patrol car he was driving had steering problems, and it was later discovered that the car had been damaged. Mr. Delano's police department assigned one of the officers on whom Delano had blown the whistle to conduct the investigation. Mr. Delano asked his chief to put someone else in charge, out of concern that the officer assigned would not be objective because of Mr. Delano's whistleblowing. The chief declined the request. The officer concluded Mr. Delano damaged the patrol car. "More significantly, though, he concluded that Delano's statements during the investigation lacked candor," according to OSC's filing.

On July 1, 2014, citing the investigating officer's findings, Mr. Delano's chief proposed his removal based on a single charge of lack of candor during the investigation. A few weeks later, a second charge was added for allegedly acting discourteously to a fellow officer. Mr. Delano was not interviewed about this second charge and only became aware of the complaint on the day it was added to the proposal to remove him. On September 5, 2014, the Director of Emergency Services sustained both charges and removed Mr. Delano.

"Based on the totality of facts, OSC concludes that there are reasonable grounds to believe that retaliation for whistleblowing at least contributed to the Army's decision to propose Delano's removal," OSC's filing states.

In its [order](#) granting OSC's stay request, an MSPB board member wrote, "I find that there are reasonable grounds to believe that the agency proposed Mr. Delano's removal based on his protected disclosure in violation of 5 U.S.C. § 2302(b)(8)."

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.