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OSC Obtains Corrective Action for Transgender Federal Employee

FOR IMMEDIATE RELEASE

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The U.S. Office of Special Counsel (OSC) recently found that the Department of the Army engaged in gender identity discrimination against Tamara Lusardi, a civilian Army quality assurance specialist, after she announced her transition from male to female. OSC's investigation found that Ms. Lusardi experienced a significant change in working conditions when the Army improperly restricted her restroom usage, repeatedly referred to her by her birth name and male pronouns, and excessively monitored her conversations with coworkers. In response, the Army agreed to provide training to correct and prevent future discrimination. The Army already had permitted Ms. Lusardi to use the restroom associated with her gender identity.

According to OSC's prohibited personnel practice (PPP) [report](#), "OSC finds that the acts at issue were sufficiently frequent, pervasive, and humiliating to constitute discriminatory harassment" and that Ms. Lusardi "experienced these effects on a daily basis for many months, and they served as a constant reminder that she was deprived of equal status, respect, and dignity in the workplace." As a result, OSC concluded that the Army committed a PPP in violation of 5 U.S.C. § 2302(b)(10), which prohibits discrimination based on conduct that does not adversely affect job performance, including sexual orientation and gender identity discrimination. OSC's investigation found no evidence that Ms. Lusardi's gender transition had a discernable or detrimental impact on her or other employees' work performance.

The Army agreed to resolve the matter by providing remedial training on PPPs for supervisors, particularly on prohibitions against gender identity discrimination. The Army also agreed to OSC's recommendation to provide workplace diversity and sensitivity training, with a specific focus on lesbian, gay, bisexual, and transgender (LGBT) individuals, to all employees at the Army organization where Ms. Lusardi works. The Army's agreement to voluntarily resolve this matter does not constitute an admission that it committed a PPP against Ms. Lusardi.

"I applaud Ms. Lusardi for standing up not only for her rights, but for those of all federal employees," said Special Counsel Carolyn Lerner. "The Army deserves credit for seeking to right the wrongs that Ms. Lusardi faced and for creating a more welcoming environment for its LGBT employees."

Ms. Lusardi is represented by the non-profit Transgender Law Center.*

The Civil Service Reform Act of 1978, and specifically, 5 U.S.C. § 2302(b)(10), protects federal employees in the conduct of their personal lives without the threat of discrimination when that conduct is unrelated to work performance. The scope of section 2302 (b)(10) extends to any and all conduct – including behavior related to one's sexual orientation and gender identity – that does not adversely affect the work performance of the employee or other employees. The Merit Systems Protection Board recently [indicated](#) that an employee may demonstrate a violation of section 2302(b)(10) under the same general principles that govern an employment discrimination claim under Title VII of the Civil Rights Act of 1964.

OSC is [committed](#) to preventing and investigating sexual orientation and gender identity [discrimination](#) in the federal workplace. Last week, OSC [announced](#) it secured a change in an Army security regulation that had been used to discriminate against an employee on the basis of sexual orientation. OSC's efforts in this area are among several being undertaken by the federal government to ensure greater fairness for all employees.

OSC has recently begun an initiative, in response to commitments made in the White House's [second Open Government National Action Plan](#) and requests from federal agencies and non-profit groups, to publish redacted versions of OSC PPP reports with

broad educational value. This transparency initiative is part of an effort to enhance education and understanding of PPPs within the federal government with the aim of preventing and reducing their occurrence, and protecting the federal merit system.

OSC obtained Ms. Lusardi's consent to use her name in this press release. In OSC's PPP [report](#), which OSC is making public in redacted form, Ms. Lusardi was identified as "Jane Doe" to protect her identity while her matter was still under investigation.

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.

**OSC has amended this press release by removing a link to the Transgender Law Center.*