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OSC Files Amicus Curiae Brief Opposing Higher Burdens on Federal Employee Whistleblowers

FOR IMMEDIATE RELEASE

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Today, the U.S. Office of Special Counsel (OSC) filed an amicus curiae (“friend of the court”) [brief](#) in *Karl v. Merit Systems Protection Board* (Board), a whistleblower retaliation case before the U.S. Court of Appeals for the Federal Circuit. OSC asks the court to reverse the Board’s decision, which creates unwarranted procedural hurdles for federal employees alleging whistleblower retaliation.

In this case, George Karl alleged that his employer, the U.S. Department of the Navy, suspended him in retaliation for his prior OSC complaint and his protected disclosures, including a letter he sent to Senator Patty Murray. The Board held that Mr. Karl failed to exhaust his administrative remedies before OSC, as required by the Whistleblower Protection Act (WPA), because the letter, which Mr. Karl provided to OSC, was allegedly “vague.” OSC disagrees and argues that the letter gave OSC sufficient information to investigate his claim. More broadly, OSC asserts that the Board improperly conflated the initial administrative exhaustion standard with the subsequent merits determination in a whistleblower retaliation case.

The Board further held that Karl’s prior OSC complaint was not protected activity because he did not affirmatively demonstrate that he made his complaint in accordance with law. OSC argues in its brief that the Board’s approach—requiring an affirmative demonstration of legal compliance—transforms a general obligation to comply with the law into a new specific legal burden on whistleblowers, which is not consistent with Board precedent or congressional intent. OSC argues that this additional burden would harm whistleblowers and undermine administrative efficiency.

This is the third amicus curiae brief filed by OSC this year regarding the Board’s interpretation of the administrative exhaustion issue. OSC’s first [brief](#) was filed in April 2017 with the Court of Appeals for the Ninth Circuit in *Johnen v. Merit Systems Protection Board*. The second [brief](#) was filed in June 2017 with the Board in *Chambers v. Department of Homeland Security*.

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.