



U.S. OFFICE OF SPECIAL COUNSEL

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October 28, 2009

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

Re: OSC File No. DI-09-0597

Dear Mr. President:

The Office of Special Counsel (OSC) received a disclosure from an employee at the Department of the Interior (DOI), Bureau of Indian Affairs (BIA), Mescalero Agency, Mescalero, New Mexico. The whistleblower, who requested anonymity, alleged that Mescalero Agency employees violated a law, rule, or regulation and created a substantial and specific danger to public safety by engaging in and receiving payment for firefighting activities for which they were not certified during the South Tularosa Fire in May 2008.

The whistleblower's allegations were referred to the Honorable Ken Salazar, Secretary of the Interior, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Salazar delegated to George Skibine, Acting Principle Deputy Assistant Secretary—Indian Affairs, the authority to investigate and report the findings to OSC. Acting Principle Deputy Assistant Secretary Skibine submitted the agency's report on June 25, 2009. The report explained that two separate investigations were performed on these allegations by the BIA and the DOI Office of Inspector General (OIG). Copies of both the BIA and DOI OIG reports of investigation were included in the agency's report. A supplemental report was received on September 2, 2009. The whistleblower provided comments on these reports pursuant to 5 U.S.C. § 1213(e)(1).

The agency's reports substantiated the whistleblower's allegations, describing the unqualified employees working in fire suppression roles as a "major safety violation." Additionally, the report identified manipulation of data and access controls to the Incident Qualification Certification System, improper hazard pay claims, and lack of record keeping. The agency has taken corrective action to remedy these deficiencies, but it declined to pursue collection of the improperly awarded hazard pay, because it would be cost prohibitive and the employees were ordered to perform the hazardous work. The agency considered the removal of two supervisors for improperly managing the fire program. However, Acting Regional Director William Walker instead chose to issue both supervisors written reprimands and reassign them to positions outside of the Mescalero Agency. One supervisor, Cornel Cervantes, retired instead of accepting a reassignment. The second supervisor, David Kirgan, accepted a reassignment to a position with the Zuni Agency, Zuni, New Mexico.

The anonymous whistleblower informed OSC that Mr. Kirgan was reinstated to a position at the Mescalero Agency. OSC requested and received a supplemental report addressing the

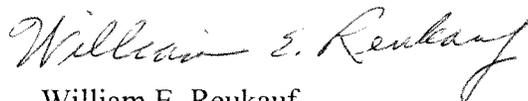
reasons behind this decision. The supplemental report explained that Mr. Kirgan's return was based on compassionate grounds. He recently suffered the loss of three family members, including his father. His mother, who was in ill health, requested his return so that he could assist her. As result, Mr. Kirgan was permitted to return to the Mescalero Agency in a lower-graded position. The supplemental report specifically noted that Mr. Kirgan's reinstatement to the Mescalero Agency "was neither [part of] a quid pro quo deal nor a response to any threats or other promises."

The anonymous whistleblower commented on the agency's reports. The whistleblower believed that Mr. Walker should not have had oversight over the disciplinary decisions because he was a former Mescalero Agency Superintendent and may have had knowledge of previous certification problems. Additionally, the whistleblower believed that Mr. Walker had a conflict of interest because he applied for the Southwest Regional Director position. The whistleblower suspected that Mr. Walker permitted Mr. Kirgan's return in exchange for tribal support for his candidacy to be Southwest Regional Director.

OSC has reviewed the original disclosure, the agency's reports, and the whistleblower's comments. The whistleblower's contention that Mr. Walker used the reinstatement of Mr. Kirgan to improve his chances of receiving the Southwest Regional Director position is an important concern, but one that the agency specifically addressed in its supplemental report. Because the whistleblower did not provide any direct evidence in support of this contention, OSC has determined that the agency's reports contain all of the information required by statute and the findings of the agency head appear reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent a copy of the reports and the whistleblower's comments to the Chairmen and Ranking Members of the Senate Committee on Energy and Natural Resources, the Senate Committee on Indian Affairs, and the House Committee on Natural Resources. OSC has also filed copies of the agency reports and whistleblower's comments in our public file and closed the matter. OSC's public file is now available online at www.osc.gov.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures