



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

April 15, 2010

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

Re: OSC File No. DI-09-1294

Dear Mr. President:

The Office of Special Counsel received whistleblower disclosures from an employee at the Department of the Navy, Naval Surface Warfare Center, Carderock Division, Bayview Detachment in Bayview, Idaho. The whistleblower, who requested anonymity, alleged that employees at the Bayview Detachment failed to report that a crane was damaged during operation, and that as a result the crane was still in use, placing staff in danger of injury and government property at risk of further damage.

These disclosures were referred to the Honorable BJ Penn, then Secretary of the Navy, on March 20, 2009, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Then-Secretary Penn tasked the Naval Inspector General (NAVSINGEN) with conducting the investigation. We received a report dated December 14, 2009. As required by law, 5 U.S.C. § 1213(e)(3), we are now transmitting the report to you.

The whistleblower disclosed that on January 15, 2009, an Electromagnetic Array prototype (EMA) was scheduled to be tested at the Bayview Detachment. The EMA was attached to a crane using an aerial work platform controlled by a land-mounted winch. An order was given by [REDACTED] the Project Engineer in charge of the testing, to lower the platform without detaching the crane from the EMA. This resulted in structural damage to the winch and to the support strongback that was attached to the EMA and crane. It also severed two power cables connected to the EMA. At the time of the accident, the damage to the strongback was recognized and temporarily patched; however, the damaged cables were not discovered until the EMA was retrieved because it malfunctioned during project testing.

Pursuant to Section 12 of NAVFAC P-307, as well as OPNAV Instructions 5102.1 and 5100.23, Management of Weight Handling Equipment (June 2006), accidents of this nature must be reported to the Navy Crane Center within 30 days and if necessary, undergo an investigation. However, the whistleblower indicated that there was no government property damage report or crane report filed. As a result, the crane was not load tested or re-certified, but was still in use, creating an unsafe environment for employees and the potential for further damage to government property.

In its report, the agency substantiated the allegation that Bayview Detachment employees improperly failed to report a crane accident in violation of NAVFAC P-307, as well as Carderock Division Instruction 112262/2a. The report indicated that the failure to report the accident was the

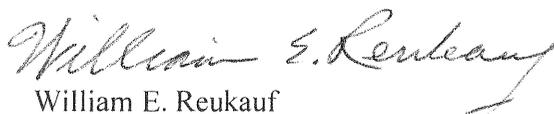
result of employees mistakenly believing that equipment that was damaged in the incident was not supported by the crane.

As a result of its investigation, the agency conducted several inspections of the crane and associated equipment, including an underwater inspection, and concluded that there were no unsatisfactory items identified. Navy personnel also completed the required accident report to document the damage that occurred to the EMA. The agency strengthened the procedures used to deploy the EMA and created an alternative approach for deployment that avoids the combination of factors that led to the January 2009 incident. The report also recommended that the mounting bar be redesigned to better support EMA deployment, and a redesign of the alignment frame is ongoing. Finally, all of the employees involved in the January 2009 accident were counseled, and were required to attend crane remedial/refresher training. A curriculum for this training was created for all crane operators and a half-day safety course was convened on August 11, 2009.

The whistleblower declined to comment on the report. OSC has reviewed the original disclosures and the agency's report. Based on that review, we have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent a copy of the agency report to the Chairmen and Ranking Members of the Senate Committee on Armed Services and the House Committee on Armed Services. We have also filed a copy of the report revised by the Navy in our public file, which is now available online at www.osc.gov. This revised report identifies Navy employees by title only and contains certain language substituted to maintain the confidentiality of the underlying project, which was identified by the Navy as being of a sensitive nature.¹ OSC has now closed this file.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosure

¹ The Navy provided OSC with a revised report, which substituted duty titles for the names of each Naval officer and civilian employee referenced therein. The Navy cited the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and Privacy Act of 1974 (Privacy Act) (5 U.S.C. §552a) as the bases for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to the Navy's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b). OSC also objects to the Navy's use of the Privacy Act to remove the names of each Naval officer and civilian employee on the basis that the application of the Privacy Act in this manner is overly broad.