

March 23, 2010

Ms. Lynn Alexander, Esq.  
Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505

RE: OSC File No. DI-08-2143

Dear Ms. Alexander:

Reference is made to your cover letter to me, dated March 11, 2010. You cite statutory permission to comment on the Report of Investigation, comments that will be sent to the Chief of the Forest Service, the President, and congressional oversight committees. I avail myself of the opportunity here. Thank you.

### **Comments**

Preliminarily, let me register objection at the length of time it took for the report to reach me. The quality of the report is inversely proportionate to the time it took for OSC to get the report to me. While I am cognizant that the review process and decision-making are conducted by officials in high priority positions, the toll on my personal health and professional career as a result of reprisal has been high. My comments are directed at the two Reports of Investigation (Stanford and Gilmore).

**Stanford ROI, p.1.** Under BACKGROUND, the investigator refers to a January 7, 2009, "Notice of Proposed Removal" in Exhibit 2. Instead, Exhibit 2 contains the "DECLARATION OF JESSE L. KING." Please correct that error.

**Stanford, p.2.** In his Declaration, Mr. King admits to knowingly misusing the government's travel card for personal expenses while at this duty station in Albuquerque, NM. He admits to using the card in Houston, TX, his true residence.

In his Declaration, Mr. King admits to availing himself of the government's contract fare "to include personal travel (airfare) to Houston on six occasions..." (p.3). Nevertheless, he "did not make any deductions for travel in which [he] laid over Houston as there was never an additional cost to the government."

Mr. King's assertion his side trips to Houston resulted in no additional cost to the government is contradicted by the investigator's finding:

Documentary evidence from Fed Traveler and GSA Airline City Pair Program information reveals the YCA contract fare from Albuquerque to Washington DC and Albuquerque to Portland OR is significantly less than the fares KING elected and the government was charged.

**[Gilmore ROI, p.3]**

Additional inquiry as to whether he benefitted financially in *per diem* during his stays in Houston should be ascertained.

**Stanford, p.3.** The investigator erroneously writes that I,

apparently discussed the matter [of Mr. King's misuse and delinquency] with DONNA CARMICAL (CARMICAL) and she advised that PARK was out of line for referring the matter to Employee Relations.

For the record, I most certainly did *not* discuss the matter with Ms. Carmical. Her reporting directly to Mr. King made me understandably reluctant to discuss the misconduct of her supervisor. I do not know why the investigator would draw such a conclusion. There was every reason why I would not do such a thing.

Ms. Carmical was assuredly not pleased to learn her subordinate (Jeffrey Park) had referred the matter of her boss's travel card misuse to me. In fact, she astonishingly documented her displeasure in Mr. Park's mid-term evaluation.

[NOTE: I note here that after learning Mr. Park had referred the matter of Mr. King's travel card to me (Branch Chief, Employee Relations), Ms. Carmical ordered the Travel Section to stop sending the Data Mining Report to my branch.]

**Stanford, p.4.** The investigator erroneously writes,

RON BANERGAS [sic] Acting Director, HR, FS, that he (SHIBUYA) should report the misuse of the Government credit card by KING.

Mr. Banegas recommended no such thing. I notified him only *after* I made my disclosure to the Office of Special Counsel.

Also, Donna Carmical's directing Pamela Scalco, Chief of the Travel Section Branch, to send her all Data Mining Reports is serious. It implies, strongly, that she wanted to quell future disclosure of SES travel card abuse/delinquencies by keeping the matter from standard operating procedure.

My equally strong recommendation is that any and all bars to SES credit card activity be immediately rescinded. The agency (and the Department) should take the position that all employees -- members of the Senior Executive Service and general services employees -- be held to the same standard of conduct.

Among the many programs under his authority, Mr. King oversaw the agency's credit card program, a program he abused with impunity. If anything, he should be held to an even higher standard of conduct. Nevertheless, members of the SES took pains to ensure Mr. King rode off in the proverbial sunset with a \$13,000.00 performance award in hand and a 3% increase.

Ms. Carmical's prohibiting the referral of the data mining report to my branch (Employee Relations) is shameful. That she retaliated against Mr. Park by excoriating him for raising the travel card misuse/delinquency to me as Branch Chief of Employee Relations evinces a corruptive element of an improper supervisory influence.

Even now, SES members are treated with leniency. Hank Kashdan, Associate Chief, is the only one to review the credit card activity of his cohorts. In her Memorandum of Interview, Donna Carmical states, "there was no policy in place for reporting abuse of government credit cards involving the SES employee." (p.2) Having the Associate Chief (a retaliating official in the instant case) be the sole reviewer hardly ensures integrity in a standardized operating procedure.

In her electronic mail (email) to me on April 28, 2008 (enclosed), Kathleen Burgers, Director of Human Resources(ret.) advised me of Mr. Kashdan's desire to keep the matter of Mr. King's travel card misuse from the attention of the Department.

I contend Mr. Kashdan was unhappy I elected to report the matter to the Office of Special Counsel. My email to Ms. Burgers, which I cannot retrieve because the agency erased it after seizing my computer and conducting its forensics, documents the agency's hurriedly reporting the matter to the Department to as it were, "cover its behind" after learning I made a disclosure protected under 5 USC 1213 *et seq.*, with the Office of Special Counsel.<sup>33</sup>

#### **OIG RELUCTANCE TO INVESTIGATE ALLEGATION OF REPRISAL**

In her August 17, 2009, letter to the Acting Special Counsel, Kathleen Merrigan, Deputy Secretary of the U.S. Department of Agriculture (Department) verifies the findings of the Report of Investigation (HY-0801-0094). She draws the following, unfortunate, conclusion:

...all necessary remedial actions have been taken and, as a result, that no further steps by USDA are required.

The Deputy Secretary's conclusion is based on the declination of the U.S. Attorney's Office to pursue prosecution and Mr. King's reluctant retirement in the face of proposed adverse action.

The great failing of this Report of Investigation is that OIG did not investigate allegations of retaliation, retaliation both Jeffrey Park, Senior System Accountant, and I, Chief of Employee Relations Branch, suffered as a result of our protected disclosure. Mr. Park's mid-term evaluation explicitly identifies Donna Carmical's displeasure at his reporting the CFO's travel card misuse and other irregularities to my branch, Employee Relations.

For my part, I am left with no forum in this investigation to publicize the retaliation I suffer from agency officials. In my interview with Harold Stanford, principal investigator, I told him I suffer retaliation from agency officials. Judging from the contents of the investigative report, my allegation was not explored.

I therefore use this sole opportunity to "daylight" my reprisal in this forum. In light of my proposed demotion, I am hopeful the Deputy Secretary will rethink her finding that "all necessary remedial actions have been taken" and "no further steps by USDA are required." Whistleblowers do not fare well in the Federal government.

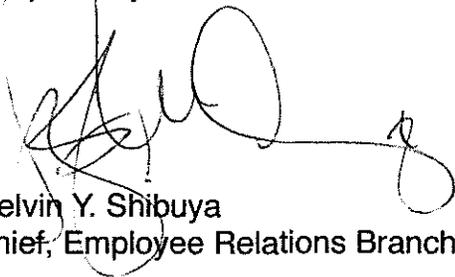
I believe I make a *prima facie* case for whistleblower retaliation. I enclose my response to the proposed adverse action with these comments.

Agency officials (principally, Hank Kashdan, Donna Carmical, Jacqueline Myers and perhaps others should not be allowed to escape the disciplinary consequences of retaliating against Jeffrey Park and me for holding Mr. King accountable for abusing his authority. The declination of the U.S. Attorney Office to prosecute the former Chief Financial Officer does not mitigate the gravity of Mr. King's misconduct.

Additional inquiry into my allegation I suffer reprisal at the hands of senior agency officials should be undertaken. If my allegation is true, they should be disciplined pursuant to 5 USC 1215(a)(1).

I appreciate the opportunity to respond to the Report of Investigation.

Respectfully submitted,



Melvin Y. Shibuya  
Chief, Employee Relations Branch

**Enclosures**

Email

Consent form

Response to Proposed Adverse Action