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May 26, 2010

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

Re: OSC File No. DI-09-0267

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel (OSC) is forwarding to you an agency report concerning disclosures from Mr. Donald P. Woodworth, a police officer at the Department of Veterans Affairs (VA), VA Medical Center (VAMC Canandaigua) Police Service in Canandaigua, New York. Mr. Woodworth, who consented to the release of his name, alleged that employees at VAMC Canandaigua engaged in conduct which violated a law, rule, or regulation and created a substantial and specific danger to public safety by authorizing trainee police officers to perform the duties of fully trained and qualified VA police officers.

On March 10, 2009, Mr. Woodworth's disclosures were referred to the Honorable Eric K. Shinseki, Secretary of the VA, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Shinseki tasked the VA's Office of Security and Law Enforcement (OSLE) with conducting the investigation. We received a report from the agency dated October 16, 2009, and a supplemental report dated April 23, 2010. Mr. Woodworth provided comments on the reports to this office pursuant to 5 U.S.C. § 1213(e)(1). As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the reports and Mr. Woodworth's comments to you.

Mr. Woodworth disclosed that on October 10, 2008, Assistant Chief of Police Major John M. Feness directed via e-mail that VA trainee police officers at VAMC Canandaigua be allowed to assume the duties of full police officers subject to certain restrictions. The e-mail directed that the trainees act as second officers, on duty in pairs, with fully-armed officers as their partners. As trainees, the officers had not completed VA police officer Basic Training, were not authorized to carry weapons, and were not considered VA police officers. Thus, under Chief Feness' instruction, only one fully trained and qualified police officer was on duty at any time trainees were also scheduled to be on duty. The requirement for two police officers to be on duty per shift is set forth in the VA Handbook § 0730(2)(a)(2), which states:

For safety purposes, there should always be at least two VA police officers on duty, at all times, at any facility or division. However, the coverage of one VA police officer on a given shift may be sufficient if all of the following conditions are met: (a) The jurisdiction of the facility is proprietorial and/or concurrent....

Pursuant to VAMC Canandaigua Standard Operating Procedures, Chapter III, Section K, para. 1., VAMC Canandaigua has exclusive jurisdiction, not proprietorial or concurrent jurisdiction. Mr. Woodworth alleged that, based on the foregoing, VAMC Canandaigua was not within the exception to the requirement that two police officers must be on duty at any given time, and that Chief Feness' order was in violation of VA policy and posed a potential threat to the safety of patients, staff, and visitors.

The agency's report did not substantiate Mr. Woodworth's allegations. The agency explained that in October 2008, VAMC Canandaigua Chief of Police Lawrence H. Shuermann, Jr. requested from Kevin Doyle, Director of VA's Police Service, a temporary exemption from VA policy. Chief Shuermann made the request in order to alleviate the workloads of VAMC Canandaigua police officers, who were overworked due to staff shortages. Chief Shuermann also anticipated that the six trainee officers at VAMC Canandaigua would be delayed in completing their training at the Law Enforcement Training Center for at least 90 days, furthering the staff shortages. Based on these circumstances, Mr. Doyle granted Chief Shuermann's exemption request on a temporary basis, allowing trainees to operate in a backup role using only the intermediate weapons on which they were trained. Trainees were not authorized to make arrests or issue citations. The agency noted that such exemptions have been issued in the past in situations where staffing issues were not easily resolvable. Once the VAMC Canandaigua trainees completed their training, the exemption was lifted and regular staffing resumed. The report also noted that an agency investigator attempted to contact Mr. Woodworth but was unable to schedule an interview due to a conflict with Mr. Woodworth's attorney. The report concluded that it was unlikely that Mr. Woodworth could provide additional information that would alter the outcome of the investigation.

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Woodworth had an opportunity to review the agency report, and he provided comments expressing his opinion of the investigation. Mr. Woodworth re-emphasized his concern that allowing trainees to operate with only intermediate weapons placed full officers in danger should a situation escalate. He also expressed his belief that lack of staff coverage was not a legitimate concern, as the facility met its full-time employee staffing requirements at the time and had full officers willing to be scheduled for overtime work during the hunting and holiday seasons. Mr. Woodworth stated that he believed the agency simply did not want to pay full officers for overtime hours. Mr. Woodworth also noted that Chief Shuermann's exemption request was not forwarded through the VA's directed Chain of Command, and he felt it should have also been forwarded to the Director for Security and Law Enforcement, Mr. Frederick R. Jackson, for approval. Mr. Woodworth further noted that pursuant to VA policy, trainees should have completed their training within 90 days of their hiring; thus, a 90 day delay in the trainees' training was in violation of agency policy. Finally, Mr. Woodworth noted that he was not interviewed during the agency's investigation and took issue with the conclusion that he could not provide additional useful information to investigators. Following OSC's receipt of Mr. Woodworth's comments, and at OSC's request, the agency conducted an interview with Mr. Woodworth via email.

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Following its interview with Mr. Woodworth, the agency submitted a supplemental report. The supplemental report noted Mr. Woodworth's disagreement with the investigation's outcome, and reiterated the findings and recommendation made in the agency's original report. Mr. Woodworth also had an opportunity to review and comment upon the agency's supplemental report. Mr. Woodworth again alleged that the agency's actions were improper, and emphasized that the evidence he provided supported that belief.

We have reviewed the original disclosures, the agency's reports, and Mr. Woodworth's comments. Based on that review, OSC has determined that the agency's reports contain 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's reports and Mr. Woodworth's comments to the Chairmen and Ranking Members of the Senate Committee on Veterans' Affairs and the House Committee on Veterans' Affairs. I have also filed copies of the reports and Mr. Woodworth's comments in our public file, which is now available online at www.osc.gov, and closed the matter.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures