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July 2, 2010

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

Re: OSC File No. DI-08-2166

Dear Mr. President:

The Office of Special Counsel (OSC) received disclosures from Paul J. Polly, a whistleblower, formerly employed as a Deckhand at the Department of the Army (Army), United States Army Corp of Engineers (ACE), Louisville Repair Station, Louisville, Kentucky. Mr. Polly, who consented to the release of his name, alleged that ACE employees routinely commit Temporary Duty (TDY) fraud by collecting TDY payments even though they are staying at their personal home or at the home of a friend. He asserted that the actions of these employees constituted a violation of law, rule, or regulation.

Mr. Polly's allegations were referred to the Honorable Preston M. Geren, III, then-Secretary of the Army, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). On December 14, 2009, the Honorable John McHugh, Secretary of the Army, submitted a report to this office. On April 5, 2010, Mr. Polly provided comments on the report pursuant to 5 U.S.C. § 1213(e)(1). As required by law, 5 U.S.C. § 1213(e)(3), OSC is now transmitting the report and Mr. Polly's comments to you.

The Army's Criminal Investigation Command (CID) investigated this matter. Mr. Polly's allegations were substantiated in part. In its investigation, CID concluded that James W. Harris, Machinist and Work Leader, and Mr. Harris' girlfriend, Flordeliza Suntup,¹ committed the offenses of "fraud and making a false statement in violation of Title 18, Unites States Code, Section 1001, theft of Government funds in violation of Title 18, Unites States Code, Section 641, and conspiracy in violation of Title 18, United States Code, Section 371." *See Army Report*, page 4. CID did not substantiate Mr. Polly's allegation that the Fleet Captain impermissibly claimed and collected TDY payments for lodging and food expenses while residing at his own home.

As a result of the investigation, Mr. Harris' case was referred to the Army's Finance Center, which is responsible for processing travel reimbursements. The Finance Center sent Mr. Harris a debt collection letter informing him that a travel overpayment of \$23,265 had been paid to him

¹ Ms. Suntup is not a federal government employee.

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and that he had 30 days to pay this debt before interest started to accrue. In response, Mr. Harris sent the Finance Center a check for \$23,265. Furthermore, the Army issued a Notice of Proposed Removal to Mr. Harris and charged him with falsifying travel vouchers. Ultimately, the Army decided to suspend Mr. Harris for 90 days in lieu of removal. Additionally, on July 17, 2009, the Army referred this matter to the U.S. Attorney's Office for the Western District of Kentucky (USAO). The USAO declined to pursue charges against Mr. Harris and Ms. Suntup.

Mr. Polly provided comments on the report. He was not satisfied with the outcome and expressed his belief that ACE employees misstated the facts in their testimonies. He also disagreed with the criteria the agency used to determine the principal residence for employees.

We have reviewed the original disclosure, the agency's report, and Mr. Polly's comments. Based on that review, OSC has determined that the agency's report contains all of the information required by statute, and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), we have sent copies of the agency's report and Mr. Polly's comments to the Chairman and Ranking Member of the Senate Armed Services Committee, and the Chairman and Ranking Member of the House Armed Services Committee. We have also filed copies of the revised report and Mr. Polly's comments in our public file, which is now available online at www.osc.gov. The revised report identifies the subjects of the investigation, Mr. Harris and Ms. Suntup, Army employees, and witnesses, by title only and contains certain language substituted to maintain the confidentiality of the parties involved.² OSC has now closed this file.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures

² The Army provided OSC with a revised report, which substituted titles for the names of Army employees and witnesses referenced therein. The Army cited the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to the Army's use of the Privacy Act to remove the names of these individuals, especially the names of those who are subjects of the investigation, on the basis that the application of the Privacy Act in this manner is overly broad.