



U.S. OFFICE OF SPECIAL COUNSEL
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September 28, 2010

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

Re: OSC File No. DI-09-1298

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 Robert Spahr (formerly Lowery), a whistleblower at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Allegheny Flight Standards District Office (FSDO), Pittsburgh, Pennsylvania. Mr. Spahr, who consented to the release of his name, alleged that FAA managers at the Allegheny FSDO and in the Eastern Division Regional Office failed to enforce specific aviation maintenance regulations and instead encouraged an improper collaborative relationship with certificate holders, resulting in a substantial and specific danger to public safety.

Mr. Spahr's allegations were referred to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). Secretary LaHood tasked the investigation of the matter to the Honorable Calvin Scovell, III, DOT Inspector General (OIG). OSC received a report dated April 27, 2010, and a supplemental report dated August 3, 2010, from DOT.

The agency investigation substantiated Mr. Spahr's allegations. The report reflects that seven of the eight specific incidents cited by Mr. Spahr resulted in violations of Federal Aviation Regulations and FAA Orders by the Allegheny FSDO and Eastern Region managers. Specifically, the investigation found that managers failed to ensure that timely and appropriate enforcement action was taken against three certificate holders, including Erie Aviation, C.J. Systems, and Air Charter Service. The investigation further found that in the eighth incident, Eastern Region managers were responsible for the failure to document C.J. Systems' violations in an inspection report.

As reflected in the supplemental report, FAA counseled the Allegheny FSDO managers identified as culpable, Wendy Grimm, Manager, William Hess, then-Assistant Manager, and David Milo, Airworthiness Front Line Manager, regarding the findings in the report. In addition, FAA pledged to provide for additional monitoring and training of the identified managers, including Individual Development Plans for each, to be included in their performance standards. According to the supplemental report, the Individual Development Plans will be monitored by FAA Headquarters management.

In addition to the actions noted above, the supplemental report described FAA's revisions to agency orders and guidelines related to compliance and enforcement to incorporate systems safety risk management principles and provide for standardization and consistency when

determining appropriate enforcement actions. According to FAA, the revisions simplified the enforcement decision process, eliminated redundancies, and provided for the development of guidance specific to Flight Standards. Additionally, FAA pledged to provide recurrent and advanced compliance and enforcement procedures training for experienced personnel, to be developed by the end of the current fiscal year. The supplemental report noted FAA's intention to issue a memorandum to all managers and employees outlining the benefit and need of utilizing its Aviation Safety Issues Reporting System to raise aviation safety issues to management officials at the local or national level. Finally, the supplemental report states that as a result of the investigation and findings, FAA established an Internal Assistance Capability (IAC) team in May 2010, to address significant or potentially significant allegations of misconduct or improper oversight at the Allegheny FSDO. The IAC team's findings will be used to educate Flight Standards Offices, as appropriate, as a "lessons learned." The IAC team agreed with the OIG's findings.

Mr. Spahr provided comments on the reports. He expressed dismay at the FAA's Performance Management System loophole, which allows an employee's inappropriate behavior to go undocumented and without remedial actions. He asserts that there should be a means to address undiscovered performance issues that are brought to the knowledge of the supervisor at a later date. He also notes, significantly, that although the corrective actions proposed by FAA focus on changes to policy and procedure, this ignores the fact that the policy and procedure were not the problem. It was management's failure to follow the policy and procedure. The real focus, he maintains, should be on why employees throughout the FAA routinely stray from guidance and orders. He posits that overly collaborative relationships between FAA inspectors and the certificate holders they regulate contribute to the failure of oversight and enforcement. Finally, Mr. Spahr voiced concern regarding the operations of Erie Aviation and FAA's oversight of air carriers' maintenance programs.

OSC has reviewed the original disclosures, the agency's reports, and Mr. Spahr's comments. Based on that review, OSC has determined that the agency reports contain all of the information required by statute, and that the findings of the agency head appear reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent copies of the reports and Mr. Spahr's comments to the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure and the Chairman and Ranking Member of the Senate Committee on Commerce, Science and Transportation. We have also filed copies of the reports and Mr. Spahr's comments in our public file, which is available online at www.osc.gov, and closed the matter.

Respectfully,



William E. Reukauf
Associate Special Counsel