

REPORT OF INVESTIGATION
OSC File No. DI-08-2693

INFORMATION INITIATING THE INVESTIGATION

By letter dated January 29, 2009, the Office of Special Counsel (OSC) referred to the Secretary of the Air Force for investigation a whistleblower disclosure from Mr. Roy Wood, Human Resource Specialist/Employee and Labor Relations at Columbus AFB. According to OSC, Mr. Wood has alleged that [a squadron] [REDACTED] Commander of the [REDACTED] Squadron ([REDACTED]), Columbus Air Force Base (AFB), Mississippi, "improperly authorized the absence of a civilian employee from official duty for an extended period of time and ordered, either directly or indirectly, the falsification of official government documents in an effort to justify the leave." After review and based upon the information disclosed by Mr. Wood, OSC concluded there was a substantial likelihood that [the commander] [REDACTED] violated a law, rule or regulation when he placed [a civilian employee within his squadron] [REDACTED] Squadron, Columbus AFB, in a telework status for the duration of her absence from her office following surgery. OSC further stated that, if true, Mr. Wood's allegations disclose violations of various sections of Title 5 of the United States Code governing hours of work (5 U.S.C. § 6101); and sections of Title 5 of the United States Code of Federal Regulations governing hours of duty (5 C.F.R. Part 610)¹ and absence and leave (5 C.F.R. Part 630). In addition, the OSC correspondence indicated these actions may violate portions of Air Force Instruction (AFI) 36-807, *Weekly and Daily Scheduling of Work and Holiday Observances* (June 21, 1999), including but not limited to those sections pertaining to alternative workplace arrangements (AWA) and alternative workplace schedules (AWS) and that the allegations may also identify gross mismanagement and abuses of authority.

OSC SUMMARY OF DISCLOSURE INFORMATION

According to the OSC correspondence, Mr. Wood, who has consented to the release of his name, provided the following information:

- (1) From June 9, 2008 until June 27, 2008, [the civilian employee] [REDACTED] was absent from her official duty station following a June 4, 2008 surgery.
- (2) When routine questions were raised by Mr. Wood in his capacity as a Human Resource Specialist in anticipation of [the civilian employee's] [REDACTED] leave, Mr. Wood was notified by [the flight] [REDACTED] Commander, [REDACTED], that [the squadron commander] [REDACTED] had verbally approved [the civilian employee] [REDACTED]'s absence and that [the squadron commander] [REDACTED]

¹ "The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive." 5 C.F.R. Part 610.121(a)(2).

intended to place [the civilian employee] ██████████ in a telework status for the duration of her absence.

- (3) When inquiries were made about [the civilian employee] ██████████'s leave and work assignments during her absence by her immediate supervisor, ██████████ ██████████, [immediate supervisor (S1)] ██████████ was informed that she would not have supervisory authority over [the civilian employee] ██████████ during the absence.
- (4) In response, Mr. Wood notified [squadron commander] ██████████ through [the flight commander] ██████████ that, in accordance with Air Force regulations, Office of Personnel Management regulations and the terms of the base's Union Agreement, any alternative work schedule (AWS) or alternative workplace arrangements (AWA), including a telework arrangement, had to be established in a fully executed AWS or AWA agreement. Further, [the squadron commander] ██████████ was informed that, in accordance with the United States Code, any AWS or AWA agreement affecting a bargaining unit employee was subject to negotiation with the bargaining unit representatives. Finally, [the squadron commander] ██████████ was notified that, in accordance with AFI 36-807, AWS and AWA may only be approved by the installation commander and that, as a squadron commander, he did not have the authority to approve such an arrangement.
- (5) According to Mr. Wood, [the civilian employee] ██████████'s timecards for the pay periods covering her absence indicated that she was charged 80 hours of sick leave. The timecards for that period were subsequently "corrected" to restore 80 hours of leave. Pursuant to the corrected timecards, [the civilian employee] ██████████ was charged only 8 hours of leave for the entire period. Further, this set of timecards, like the original timecards, contained no reference to an AWA or AWS arrangement. After reviewing the corrected timecards and raising concerns regarding [the civilian employee] ██████████'s status, ██████████ ██████████ Squadron Operations Officer, notified Human Resource officials in an email dated July 8, 2008 that [the civilian employee] ██████████ was authorized by [the squadron commander] ██████████ to work from home.
- (6) On August 14, 2008, almost two months after the expiration of the leave period in question and [the civilian employee] ██████████'s return to her position of record, [Immediate supervisor (S1)] ██████████, [the civilian employee] ██████████'s supervisor, was asked to sign yet another set of "corrected" timecards for the pay periods during which [the civilian employee] ██████████ was absent from her duty station. [S1] ██████████ was the same individual who, when she raised questions about [the civilian employee] ██████████'s leave status in June, was told she was relieved of her supervisory responsibilities over [the civilian employee] ██████████ during the absence. These newly prepared timecards were revised to specifically indicate that [the civilian employee] ██████████ was teleworking from her home from June 9, 2008 to June 27, 2008. [S1] ██████████ was further presented with and asked

to sign a telework agreement for the period in question containing a handwritten notation signed by [the civilian employee] [REDACTED] indicating that the application is to correct a verbal agreement between [the civilian employee] [REDACTED], [the squadron commander] [REDACTED] and [the flight commander] [REDACTED] and that the paperwork had not been submitted prior to the telework period of June 9, 2008 to June 27, 2008. Because she had been relieved of her supervisory responsibilities over [the civilian employee] [REDACTED] during the June absence and because she believed [the civilian employee] [REDACTED]'s timecards were retroactively modified to conceal the fact that [the civilian employee] [REDACTED] was absent without leave for almost two pay periods and paid for work she did not perform, [S1] [REDACTED] refused to sign either the corrected timecards or the telework agreement.

According to the OSC correspondence, by letter dated November 12, 2008, the OSC sought information from the Air Force's Office of Inspector General (IG), but the Office of the IG declined the opportunity to provide information regarding [the civilian employee] [REDACTED]'s leave and/or repeated revisions of [the civilian employee] [REDACTED]'s timecards.

CONDUCT OF THE INVESTIGATION

By statute, an agency is afforded 60 days to complete the report required by Title 5, USC, Section 1213. The Air Force has been granted an extension of time until October 9, 2009 within which to submit the required report. On August 22, 2008, the [commander of the numbered] [REDACTED] Air Force, [REDACTED], appointed [REDACTED], as an Investigating Officer (IO) to conduct a Commander-Directed Investigation (CDI) into, *inter alia*, whistleblower allegations asserted by Mr. Wood at Columbus Air Force Base, Mississippi ([REDACTED]). The IO submitted the CDI on February 6, 2009, eight days after the date of the OSC letter to the Secretary of the Air Force. On February 11, 2009, the Staff Judge Advocate for [numbered] [REDACTED] Air Force found the CDI to be legally sufficient and recommended that [numbered] [REDACTED] AF/CC approve the investigation. On February 11, 2009, [commander of numbered AF] [REDACTED] approved the investigation and forwarded the CDI to the Wing Commander at Columbus AFB Mississippi ([REDACTED]) for action consistent with the CDI.

In the course of her investigation regarding the subject of the whistleblower disclosure, the IO interviewed eight witnesses employed at Columbus AFB, collected and examined various memoranda, e-mail, time sheets pertaining to the allegations, and researched the applicable Negotiated Labor Agreement, OPM Guide to Telework in the Federal Government, and AFI 36-807. During the IO's interview of Mr. Wood, after being informed that she did not have authority to give him confidentiality, Mr. Wood revealed that he was the whistle blower in this case.

SUMMARY OF EVIDENCE

Mr. Wood filed a whistleblower disclosure with OSC regarding a telework situation for [the civilian employee] [REDACTED] who worked in a one-deep position in [REDACTED]. The evidence regarding the allegation that [squadron commander] [REDACTED], improperly authorized the absence of a civilian employee from official duty for an extended period of time and ordered, either directly or indirectly, the falsification of official government documents in an effort to justify the leave, is summarized below.

[Squadron commander] [REDACTED], after a discussion with [the civilian employee] [REDACTED], (who indicated that she expected to be out of the office for about three weeks recovering from surgery), asked both Mr. Wood and [employee with the squadron NSPS Office (E2)] [REDACTED] (NSPS Office of the [REDACTED]) whether he could approve telework for [the civilian employee] [REDACTED] since he had determined that she could perform her duties at home, if allowed to do so. Mr. Wood told him that he could not but did not support his answer with any authority. [E2] [REDACTED] indicated that there was an AFI that authorized telework and provided procedures. Based upon this information, [squadron commander] [REDACTED] authorized [the civilian employee] [REDACTED] to work at home, once she was able, and presumed that his staff would take care of processing it. [squadron commander] [REDACTED] understood that [E2] [REDACTED] would work with someone on his staff, perhaps [squadron operations officer] [REDACTED], or flight commander [REDACTED] within the [REDACTED], to make necessary arrangements.

[Flight commander] [REDACTED] also asked Mr. Wood and, later, [E2] [REDACTED], about the possibility of telework. He got the same answers that [squadron commander] [REDACTED] received: Mr. Wood told him it could not be done and [E2] [REDACTED] said it could and gave him information about how to accomplish such approval. Telework in the Federal Government has been established and encouraged by the Office of Personnel Management (OPM) and approved for use by the Air Force as documented in AFI 36-807, *Weekly and Daily Scheduling of Work and Holiday Observances*. Pursuant to this AFI, organization commanders, such as [squadron commander] [REDACTED], have authority to establish by written order, among other things, "location(s) for alternative workplace arrangements (AWA)." Attachment 2 to the AFI specifically lists accommodation of employees who have temporary health problems as one of the reasons for offering telework in an Alternative Workplace Arrangement (AWA) (telework). While [squadron commander] [REDACTED] approved telework for [the civilian employee] [REDACTED] for part of the time while she was convalescing after surgery, appropriate documentation did not get prepared or processed prior to her absence from her on-base work location.

This situation appears to have been complicated by the fact that [squadron commander] [REDACTED] had been in the process of determining to whom the casualty services position should report. At about the same time that [the civilian employee] [REDACTED] was able to return to work at the base, [squadron commander] [REDACTED] determined that her position would report to [squadron operations officer] [REDACTED] -- thereby changing [the civilian employee] [REDACTED]'s supervisor from [S1] [REDACTED] to

[squadron operations officer] ██████████. The change in supervision was made by or before Monday, June 30, 2008, according to an e-mail from [the civilian employee] ██████████ to her former supervisor, [S1] ██████████. [the civilian employee] ██████████ sent that e-mail on June 30, 2008, after returning to work at the base on Friday, June 27, 2008. After the transfer, [squadron operations officer] ██████████ completed [the civilian employee] ██████████'s time cards for the month of June 2008 and provided that information to [a] ██████████, Human Resources Specialist in the ██████████, in an e-mail dated July 8, 2008. According to the IO's interview with [the civilian employee] ██████████ and review of her time cards and pay records available from the civilian pay function, she used sick leave through the end of the week of the surgery (June 4-6, 2008), was able to work at home the beginning of the week following surgery for a total of thirteen work days (during the period June 9-25, 2008), took one additional day of sick leave (June 26, 2008), and returned to work at the base on June 27, 2008. The review of her pay records showed that her absences during the week of surgery and the day before her return to work at the base were correctly coded LS for sick leave. Those records also show that, for the days she was able to work at home, [the civilian employee] ██████████'s time was correctly coded as RG for regular duty. However, the period of telework should also have had an 'environmental code' of TM for telework for medical reasons added. This oversight was remedied by preparing and processing corrected time cards to add the environmental code.

Mr. Wood cited a time card for [the civilian employee] ██████████ for the pay period ending June 21, 2008 marked "CORRECTION" as evidence of time card fraud. This document was a copy of the timesheet actually processed for the pay period ending June 21, 2008 – the one showing 80 hours of regular work (RG). [The signatures for [squadron operations officer] ██████████ ██████████ on both copies of these time records are identical]. The IO indicated that this time card marked "CORRECTION" was not processed because it did not accurately reflect the work performed by [the civilian employee] ██████████. The unprocessed time card contained an additional, hand-written note in the lower right corner: "80 hours of LA x ██████████." When contacted for clarification, [squadron operations officer] ██████████ confirmed that the valid time card for the pay period in question is the time card showing 80 hours of work. He also stated that he had talked with [the civilian employee] ██████████ prior to finalizing the time card and was comfortable that she had worked the hours shown. He was unaware of this time card marked "CORRECTION." However, he identified the "x ██████████" part of the note as [the civilian employee] ██████████'s telephone extension. He surmised that someone may have made up the time card after the union raised concerns about telework. He was aware that, around this same time, [the civilian employee] ██████████ had said that she did not want to cause anyone any problems, and that it would be okay to just charge her leave if there were going to be problems for others. Because neither [squadron operations officer] ██████████ nor any other official signed or initialed the time card marked "CORRECTION," there was no authority to process it. Moreover, since [squadron operations officer] ██████████ had confirmed to his satisfaction that ██████████ had worked the hours shown on the time card, there was no need to process it.

Based upon the above facts, the IO found no evidence of time card fraud or abuse in this situation. The telework arrangement benefitted the Air Force and the employee. The benefit to the Air Force was continuity of work in a one-deep position by allowing an employee who was able to work at home to do so during her convalescence after surgery. In addition, the Air Force did not have to pull another employee from his/her assigned duties to keep up with the casualty

workload. The employee benefited in that she did not worry about whether her work got done because she was able to do it herself. She also benefited in that she was not required to use leave for a time period when she was able to work at home but not able to work at her regular work location at the base. The telework arrangement was a “win-win situation.”

[Squadron commander] ██████████ stated that, in his discussions regarding [the civilian employee] ██████████, no one mentioned anything to him about the union vis-à-vis telework prior to his decision to authorize [the civilian employee] ██████████ to work at home. In fact, the first time anyone said anything to him about the union in connection with [the civilian employee] ██████████’s working at home was much later – he believes it was after she had returned to her regular work location at the base.

By memo dated June 27, 2008, the union requested time and attendance information on [the civilian employee] ██████████ to determine whether she had been allowed to telework. On July 14, 2008, with a response to the union’s request still pending, Mr. Wood sent an e-mail to his boss, ██████████, stating:

“Boss – I have reviewed all the information on [the civilian employee] ██████████ and it appears she was off for 4 weeks and only charged 8 hours of leave. We had advised management that a telework schedule must be negotiated with the Union and she was not coded as working any type of AWS. Her time card shows she was at work when she clearly was not. This appears to be a deliberate attempt to give an employee a month off without charge to leave and appears to be time card fraud by both the employee and the certifier. Because of the amount of money involved, this would be a felony and I recommend we get the OSI involved immediately. It also appears that management deliberately did not code the time card with an AWS to get around 5 USC 7114 and 7116 which is a violation of federal law.”

As set forth below, Mr. Wood’s email contains inaccurate and misleading assertions:

1. “...she was off for 4 weeks and only charged 8 hours of leave.”

In fact, [the civilian employee] ██████████ was “off” a total of 3 weeks, 1½ days, and she was charged a total of 28 hours of sick leave -- 2½ days (20 hours) the week of her surgery, and 1 day (8 hours) on the day before she returned to work at the base. For the 13 work days between those days of sick leave, she was scheduled to telework and did so.

2. “We had advised management that a telework schedule must be negotiated with the Union...”

As discussed above, no one advised [squadron commander] ██████████ about any requirement to negotiate a telework situation with the union until about the time that the period of telework ended and the employee returned to working at her regular workplace on base.

Both [Wood’s boss] ██████████ and Mr. Wood repeatedly used the acronym AWS (Alternative Work Schedule) when referring to the telework situation. The contract with

the union does contain a provision which requires negotiation of “any and all alternate work schedule (sic) ... prior to implementation,” However, telework is not an AWS. Instead, it is an AWA – an Alternative Workplace Arrangement – under AFI 36-807. An AWS establishes when work is done; telework – an AWA – establishes where work is done. Mr. Wood’s assertion that a telework schedule must be negotiated with the union, based upon this provision of the union contract, is simply mistaken since telework is not an AWS.

3. “...she was not coded as working any type of AWS.”

She was not coded as working any type of AWS (Alternative Work Schedule) because telework is not a type of AWS (see discussion in 2 immediately above).

4. “Her time card shows she was at work when she clearly was not.”

For the days she was able to work at home, [the civilian employee] ██████████’s time was correctly coded as RG for regular duty. The code RG applies whether the work is performed at a primary or an alternate duty location. However, that period of telework should also have had an ‘environmental code’ of TM for telework for medical reasons added. This oversight was remedied by preparing and processing corrected time cards to add the environmental code.

5. “It also appears that management deliberately did not code the time card with an AWS to get around 5 U.S.C. § 7114 and § 7116 which is a violation of federal law.”

The IO found no evidence that there was any deliberate miscoding by management to get around 5 U.S.C. §7114 and §7116. (Note: 5 U.S.C. §7114 is the statute governing representation rights and duties of labor organizations for employees of the federal government; 5 U.S.C. §7116 is the statute governing ULPs.) First, there was no miscoding other than the omission of the environmental code that identified the telework as being for medical reasons. Second, the IO found no evidence that anyone was deliberately trying to “get around” any statutes in order to do something wrong by authorizing a short period of telework for [the civilian employee] ██████████.

On the next day, July 15, 2008, Mr. Wood appeared to obtain some information new to him – that the commander had approved a telework schedule for [the civilian employee] ██████████. Following up on earlier e-mails to ██████████, the Air Force attorney assigned to represent Columbus AFB before the FLRA (with whom he had discussed the union’s request for time and attendance information), Mr. Wood told [Air Force Attorney] ██████████, “I also believe the issue on [the civilian employee] ██████████ is downright fraud. I know for a fact that at least two of the weeks she (██████████) had no equipment to do any work from home. This was done merely to preclude her from having to take leave.” Although there were difficulties in setting up computer access for [the civilian employee] ██████████ (and it never worked correctly), since a large part of [the civilian employee] ██████████’s work is done over the telephone (with family members of decedents, especially surviving spouses, etc.), she was still able to do her job by phone, taking notes by hand, or occasionally, on her personal computer.

On the same day, Mr. Wood sent an e-mail to the union stating:

[Union President] [REDACTED] – the time cards on [the civilian employee] [REDACTED] are a moot point. The [squadron commander] [REDACTED] has stated that he approved a telework schedule for [the civilian employee] [REDACTED] and that was his prerogative. Please withdraw your request for information on the time card and I will have copies of the email for you where he approved a telework schedule. This is a deliberate ULP and we will not fight you on it.

[REDACTED], the vice president of AFGE Local [REDACTED], confirmed that, as promised, Mr. Wood provided [Union President] [REDACTED], the president of AFGE Local [REDACTED], with the e-mail from Squadron operations officer [REDACTED] which indicated that an employee had been approved to work at home for a short period of time.

CORRECTIVE ACTION

No adverse action has been taken against [squadron commander] [REDACTED]. The [squadron commander's] [REDACTED] [REDACTED]'s boss, counseled and trained [squadron commander] [REDACTED] on AWA and on which type of action should be coordinated with the union prior to implementation. [Squadron commander] [REDACTED] has transferred to his next duty assignment.

The investigation indicated that members of the civilian personnel office either did not know the regulations and procedures for several aspects of their duties or knowingly failed to follow them. The commander of [numbered] [REDACTED] Air Force ([REDACTED]) instructed the wing commander of Columbus AFB ([REDACTED]) that appropriate training should be implemented to ensure that the employees are aware of the duties and how they are to be performed. As a result, the technical staff of the [REDACTED] Squadron was tasked with developing training on AWA procedures. The suspense for the completion of the AWA training was July 30, 2009. On July 21, 2009, [REDACTED] the acting [squadron] commander of the [REDACTED] ([REDACTED]) and [his] [REDACTED] deputy commander [REDACTED] ([REDACTED]) completed the AWA training. They will use the AWA training as part of the briefing for initial and recurring supervisor training.

CONCLUSION

There is no evidence of time card fraud. While the appropriate documentation was not done in a timely fashion, prior to [the civilian employee] [REDACTED]'s surgery, the documentation was completed after the fact, to memorialize what actually occurred. The time cards correctly indicated that [the civilian employee] [REDACTED] did work 13 days during that time period and were corrected to indicate that she worked from home for medical reasons. Mr. Wood's negative responses to [squadron commander] [REDACTED] and [the flight commander] [REDACTED] when they asked for guidance regarding allowing an employee to work at home differed from [E2] [REDACTED]'s responses and were not supported by any documentation. In addition, Mr. Wood's e-mail to [his boss] [REDACTED] assessing the telework situation was based upon misinformation. [Squadron commander] [REDACTED] was not advised, prior to approving

telework for [the civilian employee] ██████████, that there might be a requirement to consult with the union. There is no evidence of such advice beyond Mr. Wood's statements discussed above, and the IO found that his statements were not credible.

CLOSING COMMENTS

The investigation did not reveal a criminal violation. Therefore, referral to the Attorney General, pursuant to 5 U.S.C. Sections 1213(c) and (d) is not appropriate.

This Report is submitted in satisfaction of my responsibilities under 5 U.S.C. Sections 1213(c) and (d).

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OSC File No. DI-08-2693

Witnesses Interviewed
(Alphabetical Order with titles at the time)

[Redacted], Squadron Commander
[Redacted], Squadron Operation Officer
[Wood's boss] [Redacted]
[Redacted] and Vice President, AFGC Local
[Civilian employee] [Redacted]
[Flight commander] [Redacted]
[Redacted]
[E2] [Redacted]
Roy Wood, [Redacted], Human Resources Specialist