



J.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

August 10, 2010

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

Re: OSC File No. DI-08-3062

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 received from Mr. Karl Gibson, former Industrial Hygienist and Industrial Hygiene Program Manager (IHPM), Munson Army Health Center (MAHC), Fort Leavenworth, Kansas. Mr. Gibson, who consented to the release of his name, disclosed that officials in the Preventive Medicine section of MAHC deliberately interfered with the effective operation of MAHC's Industrial Hygiene (IH) Program. Mr. Gibson disclosed that this interference constituted an abuse of authority, created the potential for a substantial and specific danger to public health and safety, and violated laws, rules and regulations governing industrial hygiene assessment and testing.

On February 20, 2009, pursuant to 5 U.S.C. § 1213(c) and (d), OSC requested the Honorable Pete Geren, then-Acting Secretary of the Army, to conduct an investigation. Authority to approve the investigation and report the findings to OSC was delegated by then-Acting Secretary Geren to the Assistant Secretary of the Army, Manpower & Reserve Affairs (ASA M&RA). The Honorable Thomas R. Lamont, ASA M&RA, submitted his report based on the results of an investigation conducted by the U.S. Army Medical Command on March 30, 2010. As required by law, 5 U.S.C. § 1213(e)(3), OSC is now transmitting the agency report and Mr. Gibson's comments to you.

The agency report did not substantiate Mr. Gibson's allegations. According to the report, the investigation found that agency officials, including Mr. Gibson's first line supervisor, Lt. Col. Jacob J. Derivan, Environmental Science Officer, Department of Preventive Medicine, MAHC, and his second line supervisor, Col. Beverly Jefferson, Chief, Department of Preventive Medicine, MAHC, did not interfere with Mr. Gibson's ability to conduct the MAHC IH Program as he alleged. Rather, the report found that the officials acted within the scope of their supervisory authority in attempting to redirect and update the IH Program after determining that, under Mr. Gibson's auspices, the program "lacked structure and purpose" and after questions were raised regarding Mr. Gibson's technical capabilities, testing results and conclusions.

The report further found no merit to Mr. Gibson's allegations that the Fort Leavenworth IH Program failed to operate in accordance with applicable laws, rules and regulations.

According to the report, at no time was there a threat to public health and safety resulting from a lack of required IH assessment and testing as alleged by Mr. Gibson. While Mr. Gibson accurately asserts that both the Code of Federal Regulations and Army Regulations require the "annual inspection" of workplaces by IH personnel, the report acknowledges that a disagreement surfaced between management and Mr. Gibson regarding the extent of actions necessary to satisfy this mandate. Prior to 2006, Mr. Gibson had wide latitude to conduct IH assessments and testing as he saw fit. In 2006, with a change in management and corresponding questions raised about Mr. Gibson's approach and techniques, agency officials elected to review and modify the IH Program and, as a result, placed limitations upon Mr. Gibson's ability to unilaterally decide when IH testing was necessary. The agency report determined that these program modifications were justified and within management's prerogative. Based on these findings, the agency concluded that no corrective action was warranted in the matter.

Pursuant to 5 U.S.C. § 1213(e), Mr. Gibson was offered an opportunity to review and submit comments in response to the agency report. Mr. Gibson cited what he believed to be factual inconsistencies in the report and reiterated his belief that agency officials interfered with the execution of annual, legally-required Industrial Hygiene Surveys in 2007, 2008 and 2009. In addition, Mr. Gibson submitted documentation attempting to refute management allegations regarding deficiencies in his performance as the IHPM.

We have reviewed the original disclosures, the agency's report and Mr. Gibson's comments. Based on that review, we have determined that the agency's report contains 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 report and Mr. Gibson's comments to the Chairmen and Ranking Members of the Senate Committee on Armed Services and the House Committee on Armed Services. We have also filed a copy of the report and comments in our public file which is now available at www.osc.gov and closed the matter.¹

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures

¹ The Department of the Army provided OSC with a revised report, which redacted the names of individuals referenced therein, excluding the whistleblower. The Army cited the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for this revision 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 name of each Army officer and civilian employee on the basis that the application of the Privacy Act in this manner is overly broad.