



**U.S. OFFICE OF SPECIAL COUNSEL**

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May 10, 2011

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

Re: OSC File No. DI-09-1816

Dear Mr. President:

The Office of Special Counsel (OSC) received a report from Thomas R. Lamont, Assistant Secretary of the Army (Manpower and Reserve Affairs), on September 27, 2010. The report is the Department of the Army's (Army) response to allegations received from Patrick Wall, a Sergeant with the Tobyhanna Army Depot (TYAD), who alleged that employees of the TYAD Security Division, Tobyhanna, Pennsylvania, engaged in conduct that constituted violations of laws, rules, or regulations, and a substantial and specific danger to public safety. Mr. Wall consented to the release of his name.

OSC referred the allegations to then-Secretary Pete Geren for investigation pursuant to 5 U.S.C. §§ 1213(c) and (d). The Honorable John McHugh, Secretary of the Army, subsequently delegated authority for the review and submission of the Army's report to Assistant Secretary Lamont.<sup>1</sup> As required by 5 U.S.C. § 1213(e)(3), OSC is transmitting the agency report and the whistleblower's comments to you.

TYAD is an electronics maintenance facility under the Department of Defense responsible for the design, manufacture, repair and overhaul of a wide variety of electronic systems including satellite terminals, radio and radar systems, night vision and anti-intrusion devices, airborne surveillance equipment, navigational instruments, and guidance and control systems for tactical missiles. The TYAD Security Division is comprised of civilian Army employees and is responsible for the law enforcement, physical security, and force protection functions at the facility. The Depot Commander requires that all law enforcement and security personnel, approximately 50 officers, carry firearms in the performance of their duties.

Mr. Wall alleged that Ashley Haynes, TYAD Chief of Security and Mr. Wall's second-level supervisor, had not been recertified to carry a firearm in 2008 or 2009 as required by Army

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<sup>1</sup>The Army provided OSC with a revised report for public release which substituted duty titles for employee names 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 Army's use of the Privacy Act to remove the names of employees on the basis that it constitutes an overly-broad application of the Privacy Act.

Regulation (AR) 190-56, *The Army Civilian Police and Security Guard Program*. He also alleged that Captain Brett Morgenweck, a Security Specialist (Operations) employed at TYAD since October 2008, had not obtained an initial firearms certification or any recertification. Next, Mr. Wall alleged that AR 109-56 requires that firearms and ammunition be stored in the Arms Room at the end of each shift but that Chief Haynes' firearm and 26 rounds of ammunition had not been returned to the Arms Room for several months. He further alleged that Cpt. Morgenweck periodically checked out his firearm and ammunition but failed to return them at the end of the shift as required. Finally, Mr. Wall alleged that he had informed his supervisor, Lieutenant Stephen Vogt, of these regulatory violations and safety concerns, but Lt. Vogt had not taken any action due to his concerns that he would be subject to retaliation. The Army provided a detailed report that partially substantiated Mr. Wall's allegations.

In summary, the Army determined that Chief Haynes violated AR 190-14, *Carrying Firearms and Use of Force for Law Enforcement and Security Duties*, when he failed to complete his 2009 firearms training recertification by the required deadline and when he erroneously used AR 190-14 to issue Cpt. Morgenweck a DA Form 3749 (Weapons Card). The Army also concluded that Chief Haynes violated AR 190-14 and TYAD Standard Operating Procedure 16, *Weapon Responsibility*, when he stored his firearm and ammunition in his office, rather than in the Arms Room as required. Further, AR 190-11, *Physical Security of Arms, Ammunition, and Explosives*, was violated through the practice of using an evidence container as temporary storage for firearms and ammunition instead of properly storing them in the Arms Room.

In response to these violations and the investigative findings, the Army issued Chief Haynes a Letter of Reprimand. TYAD Security Division also discontinued the practice of using an evidence container as temporary storage for firearms and ammunition. Additionally, the report listed a number of corrective actions taken in response to the investigative findings. These actions include establishing a civilian position of Security Division Training Officer responsible for ensuring complete and timely fulfillment of all training requirements and implementing a database to track recurring Security Division qualification requirements and the status of those requirements. Additional corrective actions include providing training for the Security Division from the TYAD Legal Office on a number of topics, such as the use of force and liability for weapons and ammunition control and using the Total Ammunition Information System automated systems to order ammunition to ensure TYAD is adequately supplied with ammunition to meet its training requirements. The report also notes that the TYAD Commander meets regularly with Chief Haynes to discuss the Commander's expectations.

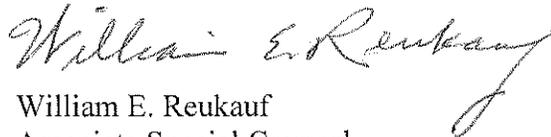
Mr. Wall had the opportunity to review the agency's report pursuant to 5 U.S.C. § 1213(e). In his comments, Mr. Wall expressed doubt that all relevant documentation was provided to the investigators. He also wrote that many employees fear retaliation and, thus, may not have been truly honest during investigative interviews because of fear their careers or employment would suffer as a result. Finally, he noted that the report contains many inconsistencies and he does not believe that Mr. Haynes' explanations and statements are credible.

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OSC reviewed the original disclosures, the agency's report, and the whistleblower's comments. Based on that review, OSC determined that the report contains all of the information required by statute and its findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency report, the redacted report for public release, and the whistleblower's comments to the Chairmen and Ranking Members of the Senate and House Armed Services Committees. OSC has also filed a copy of the redacted agency report submitted for public release and the whistleblower's comments in our public file. OSC has closed its file on this matter.

Respectfully,

  
William E. Reukauf  
Associate Special Counsel

Enclosures