



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

September 26, 2013

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

Re: OSC File No. DI-11-2144

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on disclosures made by an employee at the Department of the Navy (Navy), Department of Public Works (DPW), Landfill/Recycling Center (Recycling Center), Lejeune, North Carolina. The whistleblower, who requested anonymity, alleged that several DPW employees engaged in conduct that constituted a violation of law, rule or regulation, and an abuse of authority. Specifically, the whistleblower alleged that employees misappropriated government-owned property, including scrap metal, copper wire, gasoline, gravel, wheel rims, dorm-sized refrigerators, dumpster bottoms and motor tubes, for personal use or profit.

The Navy substantiated the whistleblower's allegation that two of the identified employees violated 18 U.S.C. § 661 by improperly removing scrap metal from the Recycling Center, selling it to a commercial scrap processor, and converting the proceeds for personal use. In addition, the agency partially substantiated the misappropriation of copper wire to the extent that copper wire might have been mixed among other types of stolen scrap metal. As a result of the investigation, the two employees were removed from their positions and a policy letter was issued against the removal of government property in order to prevent such violations from reoccurring. The agency's report did not substantiate the allegation that employees misappropriated gasoline, gravel, wheel rims, dorm-sized refrigerators, dumpster bottoms or motor tubes. I have determined that the report meets all statutory requirements and that the findings of the agency head appear reasonable.

On August 1, 2011, OSC referred the whistleblower's allegations to the Honorable Ray Mabus, Secretary of the Department of the Navy, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). On June 1, 2012, Secretary Mabus submitted the agency's report to OSC based on the results of an investigation conducted by the Naval Criminal Investigative Service (NCIS). On November 16, 2012, the Navy submitted a supplemental report. On April 10, 2013, the Navy submitted a cumulative report to OSC, which replaced the two prior submissions. The whistleblower did not submit comments on the report. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the April 10 report to you.¹

¹ The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a

Misappropriation of Scrap Metal

The whistleblower disclosed that DPW employee, Barry Bennett², improperly stored a large pile of scrap metal on a hill at the Recycling Center and that he, along with several other employees, used a government-owned front-end loader to place the scrap metal into DPW employee Rickey Hunter's personally-owned vehicle (POV). The whistleblower believed that Mr. Hunter intended to store the scrap metal in his POV until he was able to sell it at a later date.

The agency's report substantiated the whistleblower's allegation that Mr. Bennett and Mr. Hunter misappropriated scrap metal in violation of 18 U.S.C. § 661, Embezzlement and Theft. However, the investigation did not substantiate the involvement of other employees named by the whistleblower. The agency based its determination, in part, on three main pieces of evidence. First, both men were observed and photographed transporting scrap metal on June 30, 2011 by NCIS agents. Second, Mr. Bennett and Mr. Hunter provided NCIS investigators with sworn statements, in which they admitted culpability for removing scrap metal from the Recycling Center, selling it to the commercial scrap processor Foss Recycling, Inc. (Foss) and converting the proceeds for personal use. Finally, Foss' business records reflected that Mr. Bennett and Mr. Hunter sold scrap metal to Foss on several occasions and received a total of approximately \$50,000 in exchange for scrap metal during the years 2009 through 2011.

As a result, Mr. Bennett was terminated from employment by contractor MANCON and Mr. Hunter was removed from his position at Camp Lejeune. Furthermore, on September 28, 2011, Mr. Hunter threatened to break another employee's legs if Mr. Hunter lost his job. As a result the Special Assistant U.S. Attorney, Camp Lejeune, charged Mr. Hunter with communicating a threat, for which he was convicted on February 8, 2012, in U.S. District Court.

The Special Assistant U.S. Attorney declined to prosecute for larceny because it was determined that Mr. Bennett and Mr. Hunter did not have sufficient notice that the government intended to retain ownership of the scrap metal. In part, for this same reason, the Navy Acquisition Integrity Office (AIO) determined that suspension and/or debarment from participation in federal government procurement was not warranted. The AIO based its determination on the lack of evidence that either employee manipulated government procurement or a contractor's participation in government procurement.

substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g).

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

² At the time of OSC's referral, the whistleblower did not recall this employee's last name. The Navy's investigation indicates that the employee's last name is Bennett.

The agency determined that it could seek to recoup the \$50,000 in scrap metal sales from Mr. Bennett and Mr. Hunter through administrative setoffs against any debts the government might owe to either of them, such as unpaid salaries or government pensions. However, neither Mr. Hunter nor Mr. Bennett is entitled to any unpaid salary nor are they currently receiving a government pension that could be setoff against the funds they received for misappropriated scrap metal.

To ensure that it is clear to employees that the government retains ownership of materials that are intended for recycling, Camp Lejeune's Commanding Officer issued a policy letter prohibiting the removal of items that have been delivered to the Recycling Center, or placed in solid waste or recycling collection containers at Camp Lejeune.

Misappropriation of Copper Wire

The whistleblower disclosed that several employees misappropriated copper wire. The agency report partially substantiated the misappropriation of copper wire, to the extent that copper wire had been mixed among other types of stolen scrap metal. As noted above, the agency investigation substantiated that Mr. Bennett and Mr. Hunter misappropriated scrap metal and sold it for personal gain to Foss. Foss' business records, however, do not differentiate among types of metals it purchases by the truckload.

Misappropriation of Gasoline

The whistleblower alleged that several employees stole diesel and unleaded gasoline from Camp Lejeune's fuel farm for use in their POVs and personal farm equipment. Specifically, the whistleblower disclosed that Mr. Hunter siphoned diesel gasoline from government-owned vehicles (GOVs), including inoperable dump trucks, which were filled each week at Mr. Hunter's and DPW employee Dave Register's request. In addition, on three separate occasions, the whistleblower observed employees fill cans with gasoline at the fuel farm. The whistleblower believed that these employees intended to steal the gasoline for personal use.

The agency's report noted that, although there is a surveillance camera at the fuel farm, the camera recycles the video every 30 days. Thus, by the time NCIS investigators sought the videos, it had overwritten any images that might have depicted theft. In its investigation, the agency noted that it is a common practice for employees to fill 5-gallon cans at the fuel farm and transport them to the landfill to refuel certain pieces of gasoline-powered equipment. Therefore, investigators determined that it is unlikely that the employees who the whistleblower observed filling gas cans at the fuel farm actually stole the gasoline. In addition, the report concluded that there was insufficient evidence to establish that Mr. Hunter siphoned gasoline from a dump truck and Mr. Hunter denied stealing fuel. Based on the foregoing, the agency did not substantiate the whistleblower's allegation that employees misappropriated gasoline.

Misappropriation of Wheel Rims

The whistleblower alleged that Mr. Hunter stole several dumpsters full of wheel rims and that Joseph Powers, Landfill Manager, informed the whistleblower that Mr. Hunter sold them for personal profit. The agency investigation did not substantiate this allegation. Specifically, Mr. Hunter denied

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stealing wheel rims and Mr. Powers provided a written statement in which he claimed to have no knowledge of rims being taken from the Recycling Center. In addition, other employees interviewed by investigators denied knowledge of the theft.

Misappropriation of Gravel

The whistleblower also disclosed that DPW employees stole gravel from the Recycling Center and sold it for personal profit. The agency report did not substantiate this allegation. Specifically, the investigation did not find evidence that gravel had been stolen. Furthermore, the report concluded that the gravel was owned by a private contractor and thus was not government property.

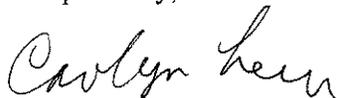
*Misappropriation of Dorm-Size Refrigerators, Dumpster
Bottoms and Motor Tubes*

The whistleblower also disclosed that DPW employees transported dorm-sized refrigerators, dumpster bottoms, and motor tubes from the Recycling Center and sold them for personal profit. The agency did not substantiate this allegation. No witnesses asserted they knew of the theft and the two employees who admitted to theft of the scrap metal denied stealing these items.

I have reviewed the original disclosure and the agency's report. Based on my review, I have determined that the agency's report contains all of the information required by statute and that the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency's report to the Chairman and Ranking Member of the Senate Committee on Armed Services and the Chairman and Ranking Member of the House Armed Services Committee. I have also filed a copy of the redacted report in our public file, which is now available online at www.osc.gov. The redacted report identifies Navy employees and other individuals by title.³ OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosure

³ The Navy provided OSC with a redacted report, which substituted titles for the names of Navy employees and other individuals referenced therein. The Navy cited the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) and related agency policies as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to the Navy's use of those provisions to remove the names of these individuals on the basis that the application of the FOIA and Privacy Act in this manner is overly broad.