



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

July 22, 2014

The President
The White House
Washington, D.C. 20510

Re: OSC File No. DI-13-1188

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find agency reports based on disclosures made by an employee of the Department of Justice, Federal Bureau of Prisons (BOP), Federal Medical Center (FMC) Lexington, Lexington, Kentucky. The whistleblower, Ellis B. Garrison, a vocational training instructor at FMC Lexington, alleged that Education Department employees at the facility engaged in conduct that constituted a violation of law, rule, or regulation, and gross mismanagement. Mr. Garrison consented to the release of his name.

The agency partially substantiated Mr. Garrison's allegations. The report confirmed that Education Department employees violated BOP policy by failing to monitor and verify the hours that inmates claimed to have devoted to on-the-job vocational training and classroom instruction, and frequently credited inmates for training hours they did not actually accrue. The investigation also determined that one of the ten instructors, who was not identified by name in the report, violated the requirement that teachers spend at least fifty percent of their time on classroom instruction. The investigation did not substantiate Mr. Garrison's allegation that inmate tutors were improperly used as primary instructors in the general education development (GED) and English as a second language (ESL) programs. In response to the investigative findings, FMC Lexington instituted scheduling changes, organized work groups to review the apprenticeship program to ensure compliance with regulations, and instituted semi-annual apprenticeship committee meetings to ensure proper oversight of the program. The agency also took disciplinary action against the supervising employee who did not maintain adequate oversight and control over the Inmate Apprenticeship program. I have determined that the BOP's investigative report contains all of the information required by statute and the findings appear to be reasonable.

Mr. Garrison's allegations were referred to Attorney General Eric H. Holder, Jr., to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Review of the matter was delegated to the BOP Office of Internal Affairs (OIA) to conduct an investigation. On June 24, 2013, Julie Zebrak, the deputy chief of staff in the Office of the Deputy

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Attorney General submitted the agency's report to the Office of Special Counsel (OSC). Pursuant to 5 U.S.C. § 1213(e)(1) Mr. Garrison was given the opportunity to provide comments on the agency report and did so on July 10, 2013. On April 30, 2014, OIA provided additional updates on the status of the corrective actions at the request of OSC. As required by, 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.¹

I. Mr. Garrison's Disclosures

Mr. Garrison alleged that FMC Lexington Education Department employees violated rules and regulations regarding the administration of the Inmate Apprenticeship program, as required under BOP Program Statement 5300.21. Inmates at FMC Lexington are assigned to a daily work detail in a particular vocational trade. To be placed in a detail in a selected vocational trade, an inmate must submit a "Request to Staff Member" form to the detail supervisor. Once admitted to the trade detail, the inmate is eligible to apply for admission to FMC Lexington's Apprenticeship Program in his selected trade. Completion of an apprenticeship or other major accomplishment (earning a GED, for example) is taken into account in assessing an inmate's "good time," which may have an impact on the inmate's security status and/or release date.

After being alerted to the possibility that inmates who were assigned to one apprenticeship trade program were actually deployed to another vocational trade detail, Mr. Garrison initiated a review. Because successful completion of an apprenticeship in a particular trade requires completion of a specified number of on-the-job training hours and related classroom instruction, inmates are required to record the hours they devote to training and instruction on a timesheet. Mr. Garrison's review of inmate timesheets revealed that inmates were giving themselves credit for more hours of on-the-job training than they could have possibly worked.

Mr. Garrison found, for example, that one inmate claimed he worked in his vocational trade eight hours every day but Mr. Garrison knew the inmate was enrolled in a half-day (three hours per day) Braille class. Another inmate had a full-time job in the food service department but claimed to have worked as an apprentice in a vocational detail eight hours per day. A third inmate completed apprenticeship timesheets in an

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 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). 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).

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identical, diagonal pattern every month for three years. Mr. Garrison noticed two additional significant irregularities common among timesheets. Many inmates recorded work hours on holidays and/or weekends when all work programs are closed, and more than eighty percent of the timesheets were not, as required, signed and certified by the inmates' detail supervisors. Mr. Garrison alleged that most inmates who received their apprenticeship certificates did so without having met the on-the-job time requirements.

In addition Mr. Garrison alleged that instructors at FMC Lexington violated agency rules regarding instructor classroom times. BOP Program Statement 5300.21, § 544.83, requires that full-time BOP teachers and education specialists must spend a minimum of 50% of their work hours in direct classroom instruction. Based on his personal observation, Mr. Garrison alleged that nine of the ten current full-time instructors at FMC Lexington failed to meet this requirement.

Mr. Garrison also alleged that FMC Lexington Education Department employees violated agency rules regarding limitations on inmate tutors. BOP Program Statement 5300.21, § 544.83, prohibits inmate tutors from serving as the primary instructors for the GED and ESL programs. In July 2012, Mr. Garrison overheard an inmate angrily confronting an inmate tutor regarding the lack of instruction in his GED program. When Mr. Garrison intervened in an attempt to diffuse the situation, the inmate stated that in the two months he was enrolled in the GED class, he only had one instructor provide classroom training. The inmate was unable to even identify the Education Department staff member assigned to instruct the class. According to Mr. Garrison, this situation was not uncommon.

II. The Agency's Report

The report substantiated Mr. Garrison's allegations concerning the administration of the inmate apprenticeship program, finding violations of BOP Program Statement 5353.01. The Program Statement requires review of apprenticeship opportunities, regular apprenticeship committee meetings, and a variety of specific administrative guidelines for the review and approval of inmate apprenticeship activities. These duties are the responsibility of the apprenticeship coordinator, a position at FMC Lexington that was filled by Vernon Shackelford, a vocational training instructor. During the investigation, Mr. Shackelford acknowledged that no formal committee meetings occurred, and that proper review of the programs and inmate progress was not routinely conducted. The report noted that because of these deficiencies there was a general lack of oversight in the FMC Lexington apprenticeship program, in violation of BOP policy.

In addition, the report found that FMC Lexington inmates tracked their own hours, which were routinely approved by Mr. Shackelford, who did not verify their accuracy with detail supervisors. Investigators reviewed the records of several inmates who had a high number of hours, and determined that the total number of hours worked

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exceeded working hours available for these individuals. The investigation concluded that inaccurate hours were reported by inmates and insufficient verification of work records occurred.

In response, the agency organized a work group to review all the apprenticeship programs to ensure compliance, re-instituted regular apprenticeship committee meetings to ensure review, and mandated an increased emphasis on verification and certification of inmate work hours. The agency took disciplinary action against Mr. Shackelford, who served a one-day suspension. The agency provided meeting agendas and minutes demonstrating that FMC Lexington was in compliance with these components of BOP policy.

The agency report partially substantiated a violation of the component of 5300.21 requiring all full-time teachers and education specialists to spend a minimum of fifty percent of work hours in direct classroom instruction. The agency report determined that one instructor did fail to spend at least fifty percent of his work time in direct classroom instruction, in violation of BOP policy. However, upon examining departmental, staff, and classroom schedules, the OIA ultimately determined that the other nine instructors met the fifty percent time requirement.

FMC Lexington instituted corrective action to address this deficiency. This involved adjusting the non-compliant education specialist's class time and responsibilities so that he met the fifty percent time requirement. This individual was not identified by name in the report. FMC Lexington also instituted follow-up reviews to ensure that this corrective action was happening. The agency provided time sheets detailing classroom instruction percentages demonstrating that FMC Lexington education specialists were fully compliant with regulations.

With respect to Mr. Garrison's third allegation, the agency report did not find a violation of BOP Program Statement 5300.21, which also prohibits inmate tutors/aids from serving as primary instructors for the GED or ESL programs. Investigators interviewed eight teachers and fourteen inmate tutors at FMC Lexington, who verified that inmate tutors were not being used as primary instructors. The report stated that investigators did not find any evidence to support Mr. Garrison's allegations.

III. The Whistleblower's Comments

Mr. Garrison provided comments on the report pursuant to § 1213(e)(1). He acknowledged that FMC Lexington staff were spending substantially more time in the class room, but raised concerns with respect to how BOP conducted their investigation. Specifically, he explained that in addressing his allegation concerning the excessive use of inmate tutors, investigators only interviewed teachers and student tutors.

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Mr. Garrison also indicated that no inmate students or administrative staff members were interviewed to determine the veracity of the claims. He explained that he believed the allegations regarding the apprenticeship program were properly investigated and appropriate corrective actions were taken at FMC Lexington. Although he does not have knowledge of practices at other facilities, he believes that this is a systemic problem throughout all BOP facilities.

IV. The Special Counsel's Findings

I have reviewed the original disclosure, the agency reports, and the Mr. Garrison's comments. Based on that review, I have determined that the reports contain 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 reports and Mr. Garrison's comments to the Chairmen and Ranking Members of the Senate and House Judiciary Committees. I have also filed copies of the agency reports and whistleblower's comments in OSC's public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures