

Memorandum

To: Department of Homeland Security
CC: Office of Special Counsel
From: John A. Florence
Date: 3/12/2014
Re: Whistle Blower Response to OSC case #DI-13-4124 (AUO abuse within
CBP/OTD training facilities)

Acting Commissioner Winkowski,

I would like to applaud Secretary Johnson's decisive and appropriate actions regarding the decertification of Authorized Uncontrollable Overtime (AUO) in those areas that were clearly in violation of the AUO policy and applicable laws. I am satisfied that the Internal Affairs Investigation conducted on this matter substantiated my allegations that AUO was being administered in violation of law and policy 88% of the time throughout the Office of Training and Development (OTD). Please allow me to first start by saying that I have the utmost respect and dignity for the hard working Border Patrol Agents that risk their lives daily and are properly compensated for field work that is uncontrollable in nature. I have stated before, and I will say it again, I do not believe AUO is the problem; I believe the problem is the way it was managed or more appropriately mismanaged in this case. Therefore, I feel it may be beneficial as a lesson's learned for the Department to understand the exhaustive efforts I attempted to resolve this issue within Customs and Border Protection (CBP) and the Department of Homeland Security (DHS). I did so recognizing the magnitude of AUO abuse, serious budget constraints, and gross violation of policy and law.

In August of 2012, as the Acting Assistant Director over Use of Force Training at the Field Operations Academy (FOA) I first became aware of the alleged AUO abuse from an email that was sent to two (GS-15) FOA Directors, several high ranking Border Patrol managers, and me. This email was sent by a (GS-14) Branch Chief (James Wilder) within my chain of command. After receiving this email and completing the (OTD) Assistant Commissioner ordered AUO training in August of 2012 it became very apparent that there was validity to Branch Chief Wilder's allegations which identified AUO inconsistencies on the administration and approval of AUO payments within the FOA. Because of the seriousness of these allegations I filed a comprehensive report for

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further investigation to the CBP Joint Intake Center (JIC) identifying my concerns regarding abuse of AUO.

In addition to filing the JIC Investigation I also sent numerous comprehensive emails and provided documentation to my immediate Supervisor. I scheduled several official meetings with him to discuss my serious concerns about the AUO abuse within the FOA and OTD. Unfortunately, it became very apparent that my efforts were not given due diligence, on the contrary, I was verbally rebuked for bringing my concerns forward. I recall these derogatory remarks very clearly. The day after I sent the aforementioned email to my Supervisor I attended a meeting in his office and was asked in a very intimidating manner "Do you think the Director is incompetent and does not understand the AUO policy, are you insinuating that the Director would jeopardize his integrity and career over a few dollars of AUO, and finally I was told that I could file a JIC report but it was a waste of time and money". Obviously, this concerned me greatly because this was coming from a high ranking official and because I realized that the Director of the FOA was significantly benefiting from questionable AUO, up to 25% of his base pay annually. This would lead one to believe that it may not be in his best financial interest to address this issue with the full attention that was required, and could be perceived as a conflict of interest.

After doing what I considered my duty by reporting my concerns through my chain of command, it became very evident that my superiors were extremely displeased with my actions. I can honestly say, doing what was right, came with a tremendous price. Not only did it do irreparable damage to my health, personal life, and career, but it also ruined my, mentorship, friendship, and working relationship with my superiors. This was very disconcerting to me because I have been a dedicated part of the FOA Command Staff for many years and more importantly a Federal Employee for over 27 years. I immediately experienced a hostile work environment by receiving retaliatory treatment in the form of being ostracized from my previously highly respected status within the Command Staff, to being ignored, reprimanded, and treated with indifference. I requested to speak with Employee Assistance Program (EAP) because of the enormous amount of stress and mental anguish this was causing my family and me. I can recall when I requested to speak with EAP through my supervisor, he responded via email "You did not seem upset in our meeting yesterday or "stressed out" as you say". That statement could not have been further from the truth, on the contrary, my reporting AUO abuse has caused me a tremendous amount of stress, so much so that it was a major contributing factor to an incident that nearly cost me my life on February 10, 2013 and caused me to be permanently disabled. I am now in a position that requires me to be reassigned into a non- Law Enforcement position in order to continue my career or be forced to retire early on disability. I can honestly say prior to reporting the AUO violations I have had a lengthy highly distinguished Federal Law Enforcement career. In the previous five years I had received (achieved excellence) on my employee performance appraisals as a second line manager and served in numerous key upper level management positions.

After months of recovering from serious medical conditions I returned to work in a light duty capacity. I waited approximately nine months from the date I initially reported the AUO violations during which time I continued to witness AUO abuse. This made it increasingly clear that a corrective action by my chain of command, CBP/JIC, and/or the Department was not going to happen. I believe it is relevant to mention that I was not contacted nor was I interviewed by the JIC or any agency representatives or management officials. At this point, I felt abandoned by the agency, which left me with no other recourse then to go outside the agency and become a Whistle Blower in an effort to cease the systemic AUO abuse I was witnessing.

Fortunately, the Office of Special Counsel (OSC) conducted an appropriate and comprehensive review in a matter of weeks to conclude there was a high likelihood that there was indeed AUO abuse throughout OTD which was classified as serious fraud, waste, and abuse of government funds and taxpayer dollars. I would like to take this opportunity to publically thank the Honorable Carolyn Lerner and Ms. Lynn Alexander for their guidance and reassurance that due diligence would be administered by OSC in my case. Ms. Alexander worked tirelessly even during her off-duty time to not only work with me on the AUO abuse case but also on my congressional testimony. More importantly she treated me with professionalism, respect, and dignity throughout the most difficult time of my career and life, which was in complete contrast as to how I was treated by my own agency. I believe it is imperative to mention that I am not the only Whistle Blower that feels they were treated deplorable in this case; I have spoken to several other Whistle Blowers that have similar thoughts and feelings. This was all because we performed our duties and did what was right and honorable. I want to make this clear, our personal sacrifices and perseverance will ultimately save this Agency, the US Government, and the American Taxpayers tens of millions of dollars annually in AUO payments that were in violation of policy and law.

I am seriously concerned that two GS-14 managers, who together have a combined total of 56 years of federal government service, reported and provided compelling documentation to their superiors, JIC, and OIG, however to our astonishment continued to witness blatant disregarded for policy and law by the prolonged authorization of AUO for well over one year. Again, all managers and supervisors in OTD were required to complete AUO training that was ordered through Assistant Commissioner Hall's office on August 23, 2012. This training corroborated that AUO was being abused at the FOA and throughout OTD, as Ms. Lerner stated during her congressional testimony "this is not rocket science the AUO policy is very clear in its definition". In my opinion once you are advised and receive comprehensive documentation substantiating abuse then it becomes a case of blatant and deliberate fraud, waste, and abuse of tax payers dollars which is further exacerbated by the fact that some high level managers were approving and then significantly financially benefiting from this pay. As one example of how extensive this problem is: I know of one senior level CBP employee who has earned approximately \$250,000 of AUO in violation of the policy during his tenure in the

training environments over a ten year span. This is just one example of the many that have spent the majority of their careers in headquarters and at the training academies while earning AUO in violation of the policy.

I concur with Congressman Chaffetz's statement during the first congressional hearing on AUO abuse that I provided testimony "I have serious concerns as to how the agency will claw back this money" from those who authorized and blatantly abused AUO pay in violation of the policy. Secondly, another imperative consideration is should AUO payments that were earned in violation of the policy be part of those individuals retirement annuity calculations. Many CBP employees that did not qualify for AUO or overtime have expressed their concerns about this regarding equal work for equal pay. Again, I believe the initial corrective actions demonstrate due diligence by the Department, however to right this wrong there is much work to be completed to restore the trust and confidence of all the hard working DHS employees that were negatively impacted by this situation. In saying negatively impacted I refer to the CBP (1895) GS-13/14/15 supervisors/ managers that worked in the same positions as their Border Patrol colleagues, worked 10-12 hours daily, were required to be on call 7/24, and earned no additional premium pay annually or towards their retirement annuity calculations. Conversely, their Border Patrol colleagues earned up to 25% of their base pay annually in AUO pay for identical work being performed, and then enjoyed this additional pay as part of their retirement annuity calculations.

Sir, again I highly commend Secretary Johnson's efforts in addressing this issue in such an expeditious manner shortly after being appointed and assuming his position. I can only hope the future will bring an equitable premium pay package with appropriate checks and balances to proactively detour abuse for all CBP employees. I believe this would seriously reduce low morale regarding inequitable pay and compensation, bring the CBP components into more cohesive and productive work units, improve interoperability, and greatly assist in enhancing border and national security.