



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

July 9, 2015

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

Re: OSC File No. DI-12-2840

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find the Department of Defense, Defense Commissary Agency (DeCA), Office of Inspector General's (OIG) investigative reports based on a disclosure of wrongdoing at the DeCA Ord Community Commissary (OCC) in Presidio of Monterey, California. The Office of Special Counsel (OSC) has reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the allegations and our findings.

The whistleblower, Charles Mason, who consented to the release of his name, alleged that employees of the OCC engaged in conduct that constituted violations of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health and safety. Specifically, Mr. Mason disclosed that the management and operations of the OCC Meat Department failed to meet the standards set forth in the governing DeCA Directive (DeCAD). See DeCAD 40-3, Performance and Policy: Meat Department, December 10, 2007. The management and health breaches alleged include repackaging meat products with false processing dates and extended sell-by dates; excessive price markups and intentional mislabeling of processed meat products; poor inventory management; and improper processing of poultry.

The OIG investigation substantiated the majority of Mr. Mason's allegations, finding that OCC employees improperly repacked meat, falsified date labels, excessively marked up sales prices, mislabeled products, and engaged in poor inventory management. The investigation did not substantiate the allegation that poultry was improperly processed in the Meat Department or that meat being sold was no longer fresh. DeCA took disciplinary action against the employees who engaged in wrongdoing, revised regulatory guidance, instituted additional training for DeCA employees, and conducted audits of DeCA Meat Department operations. Based on my review, I have determined that the reports meet all statutory requirements and that the findings appear to be reasonable.

On July 18, 2012, OSC referred the whistleblower's allegations to then-Secretary of Defense Leon E. Panetta to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Panetta delegated the authority to respond to the Department of Defense Inspector General, who directed the DeCA OIG to conduct the investigation. The Department of

The President
July 9, 2015
Page 2 of 5

Defense Inspector General's office submitted the agency's report to OSC on November 20, 2012, and a supplemental agency report on January 16, 2013. Pursuant to 5 U.S.C. § 1213(e)(1), the whistleblower submitted comments on the agency reports. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the agency reports and whistleblower's comments to you.¹

I. The Whistleblower's Disclosures

Mr. Mason served as a senior meat cutter in the Meat Department for twelve years. He disclosed that Meat Department employees regularly repackaged meat from the store shelves and labeled the repackaged meat with inaccurate processing and sell-by dates, in violation of DeCAD 40-3, Chapter 12, 12-1(b), 12-4. The repackaging often occurred when employees processed orders for U.S. Army Garrison Fort Hunter Liggett, approximately twice per week.

Mr. Mason also disclosed that the Meat Department failed to conform to the DeCA mandate to provide at-cost groceries for military families. DeCAD 40-3, Chapter 5, 5-3(a). While DeCAD 40-3 limits the markup of meat products to only 5 percent of the wholesale cost, Mr. Mason disclosed that the Meat Department manager instructed employees to engage in activities that increased the price of meat products up to and sometimes in excess of 50 percent of the invoiced costs. For example, the Meat Department manager directed meat cutters and packagers to label USDA Select beef as the higher grade USDA Choice beef, which is more expensive, resulting in customers being charged higher prices for lower quality products.

In addition, Mr. Mason disclosed that Meat Department ordering practices did not comply with DeCAD 40-3. According to Mr. Mason, the Meat Department's refrigerators often contain a surplus of meat products that were unopened and unused until the meat had nearly expired. Mr. Mason alleged that, at times, meat that was no longer fresh was processed and subsequently frozen. Finally, Mr. Mason alleged that the Meat Department manager instructed Meat Department employees on multiple occasions to process poultry products. Mr. Mason explained that public health could be compromised if poultry is processed in the

¹ The Office of Special Counsel (OSC) is authorized by law to determine whether a disclosure should be referred to the involved agency for investigation or review, and a report. OSC may refer allegations of 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 or safety. 5 U.S.C. § 1213(a) and (b). Disclosures must include information that aids OSC in making its determination. Disclosures must include information sufficient for OSC to determine whether referral is warranted. OSC does not have the authority to investigate disclosures and therefore, does not conduct its own investigations. 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).

The President
July 9, 2015
Page 3 of 5

same area as meat products because the meat products may be contaminated by *Salmonella* bacteria.

II. The Agency Reports

The DeCA OIG substantiated Mr. Mason's allegation that management and operations of the OCC Meat Department failed to meet the standards set forth in the governing DeCA Directive (DeCAD). The investigation revealed that employees were improperly repackaging and relabeling meat when filling orders for U.S. Army Garrison Fort Hunter Liggett. When rewrapping processed meat products, it is preferable that the original price label reflecting the original sell-by date be maintained. If that is not feasible, a new label may be generated, but must indicate the original sell-by date as stated on the original price label. Under no circumstances is it appropriate for the original sell-by date to be extended on a rewrapped product. DeCAD 40-3, Chapter 12, 12-1(b), 12-4. The Meat Department manager admitted that he instructed employees to repackage meat from the store shelves and falsely label the meat as processed on the day of the order with a new, extended sell-by date, in violation of DeCAD 40-3.

The investigation also substantiated Mr. Mason's allegation that employees engaged in prohibited price markups. DeCAD 40-3 limits the markup of meat products to 5 percent of the wholesale cost. Because all meat that the Meat Department processes contains a certain amount of waste, there is a pricing strategy in place that accounts for the cost of discarded waste by increasing the price-per-pound of salable meat using cutting tests. *See* DeCAD 40-3, Chapter 5. Cutting tests to identify the salable yield of a particular section of meat are to be performed monthly. The Meat Department manager admitted that he entered false fixed values in the cutting test reports, resulting in an average overall markup of 13 percent for meat products. In addition, Meat Department employees were improperly increasing the price on 81 percent lean ground beef and intentionally mislabeling the lower grade USDA Select beef as the higher grade USDA Choice beef. These actions drove the markup prices even higher than 13 percent over wholesale prices.

The evidence gathered in the investigation supported a mixed conclusion regarding inventory management in the Meat Department. DeCAD 40-3 requires that managers "[e]nsur[e] inventories are maintained at a level to minimize out-of-stock and overstocks while ensuring that merchandise is fresh[.]" DeCAD 40-3, Chapter 1, 1-4(d)(5). This involves ordering meat regularly based on the estimated needs for the period between orders, receiving meat and inspecting it appropriately upon receipt, and reviewing daily the items and quantities being marked down to compensate for any over processing or excessive inventory levels. *See* DeCAD 40-3 Chapters 3, 4, and 7. For this to be accomplished, when ordering meat products, managers are required to "review on-hand stock and then estimate and order only the quantity needed to operate until the next delivery, plus one additional day's stock requirements." DeCAD 40-3, Chapter 3, 3-1(f). The investigation revealed that Meat Department had an excess of nearly three weeks of inventory on hand. However, the meat all appeared to be processed within the timeline laid out in DeCAD 40-3, and the investigation did not substantiate the allegation that the meat being sold was not fresh. The

The President
July 9, 2015
Page 4 of 5

investigation revealed one occasion when Meat Department employees repackaged bulk chicken breasts; however, it did not substantiate the allegation that chicken was regularly processed in the Meat Department, leading to a danger of *Salmonella* bacteria contamination of other meat products.

In response to the DeCA OIG findings and recommendations, DeCA took disciplinary action against the responsible OCC employees: the store director was removed from federal service; the store manager received a seven-day suspension; the Meat Department manager was demoted from his supervisory position to a meat cutter position; the assistant store director received a letter of reprimand; and the zone director received a letter of counseling. In addition, the DeCAD 40-3 was revised and re-published, along with an accompanying manual, DeCA Manual 40-3.1. Training was provided to zone managers and a new checklist for key operations was developed for mandatory use by all zone managers during store visits, to be kept as a matter of record for use during audits. Finally, a pilot program for centralized meat cutting was launched in 2013, starting in DeCA's zone 28 (the tidewater Virginia area) and expanded to DeCa's zone 16 (the greater southern California area) in 2014.

III. The Whistleblower's Comments

In his comments, Mr. Mason expressed his frustrations regarding how long it took to get his disclosures addressed, indicating he began reporting his concerns internally in 2003. Mr. Mason believes the investigation should have included a review of audits dating back to 2003, when he reported that a pallet of expired pork was sent to Fort Hunter Liggett. In addition, Mr. Mason elaborated on the way he was treated at the OCC once he began to report wrongdoing and described how he was attacked off-duty in 2011, and told by three masked assailants to "stop talking s--t at work." As a result of that attack, Mr. Mason is now disabled and was ultimately removed from federal service because his disabilities affected his ability to perform his job duties. Mr. Mason believes OCC management improperly handled his workers' compensation and reasonable accommodation claims in retaliation for his whistleblowing activities.

IV. The Special Counsel's Findings

I have reviewed the original disclosure, the agency reports, and the whistleblower's comments. I have determined that the reports meet all statutory requirements and that the findings appear to be reasonable. Breaches related to food safety protocols are extremely serious and anything less than full compliance poses the potential for serious harm to military personnel and their families who rely on the commissaries for groceries. I commend Mr. Mason for his courage in coming forward to report the entrenched mismanagement at the OCC. His disclosure yielded significant results and demonstrates his strong commitment to the country's well-being.

The Special Counsel

The President
July 9, 2015
Page 5 of 5

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report to the Chairmen and Ranking Members of the Senate and House Committees on Armed Services. I have also filed copies of the redacted agency reports and Mr. Mason's comments in OSC's public file, which is available online at www.osc.gov.² This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures

² DOD IG provided OSC with reports containing employee names (enclosed), and redacted reports in which employees' names were removed. DOD IG has cited Exemption 6 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the reports produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the reports in our public file. OSC objects to the DOD IG's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b), but has agreed to post the redacted version of the reports as an accommodation.