



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

August 10, 2015

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

Re: OSC File No. DI-14-2444

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find the Department of the Navy's (Navy) report, based on disclosures of wrongdoing at U.S. Marine Corps (Marine Corps), Marine Corps Base Camp Pendleton, Range Operations Division, San Diego County, California, made to the U.S. Office of Special Counsel (OSC). 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, David Bennett, was a range operations officer in Camp Pendleton's Range Operations Division (ROD), which is responsible for the scheduling, control, and management of Camp Pendleton's ranges, training areas, airspace, and sea space. Mr. Bennett alleged that since at least 2008, ten ROD employees have engaged in violations of law, rule, or regulation by falsifying their time and attendance (T&A) records and that managers failed to take appropriate corrective actions despite their knowledge of the falsifications. Mr. Bennett consented to the release of his name.

The Navy's investigation did not substantiate Mr. Bennett's allegation that range controllers submitted T&A records that falsely claimed they worked full shifts. In addition, the investigation did not substantiate Mr. Bennett's allegations that he informed managers of the falsifications and that they failed to take appropriate corrective action.

Despite the agency's findings, the Marine Corps directed a comprehensive review of standard operating procedures and policies to ensure compliance with Department of Defense (DoD) Financial Management Regulation (FMR) 7000.14-R, Volume 8, Chapter 2, on Time and Attendance. Based on my review of the original disclosure and the agency's report, I have determined that the report contains all of the information required by statute and that the findings appear to be reasonable.

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Mr. Bennett's allegations were referred to Secretary Ray Mabus for investigation pursuant to 5 U.S.C. §§ 1213(c) and (d). On September 25, 2014, Paul L. Oostburg Sanz, as Acting Secretary of the Navy, submitted the agency's report to OSC based on an investigation conducted by the Marine Corps Installations West Command Inspector General (CIG). Mr. Bennett declined to provide comments on the report. On January 8, 2015, Marine Corps Installations Command Commander Chele Robertson provided a supplemental report. As required by 5 U.S.C. §§ 1213(e)(3), I am now transmitting the report and the supplemental report to you.¹

I. Mr. Bennett's Disclosures

In brief, Mr. Bennett alleged that since at least 2008, ten ROD range controllers under his supervision have consistently left their shifts early when their hours overlapped with those of range controllers on subsequent shifts. Moreover, these ten employees submitted T&A records that falsely indicated that they worked full shifts, in violation of Navy Administration Manual Article 12600-190 and DoD FMR 7000.14-R, Volume 8, Chapter 2. Mr. Bennett estimated that over the course of six years, the government paid approximately \$187,200 to range controllers for work they did not perform.

Mr. Bennett also alleged that he reported this matter to Director of Range Operations James Marshall and Deputy Director of Range Operations William Lynch, but neither took corrective action. Instead, Mr. Bennett reported that Deputy Director Lynch instructed him to "look the other way." Mr. Bennett alleged that the failure of these management officials to act violated the above-cited regulations and constituted gross mismanagement and a gross waste of funds.

II. The Agency's Report

The report notes that Mr. Bennett was unable to provide specific dates, times, or other detailed information regarding his allegations, nor did he provide log books, personal timekeeping records, or other material evidence. He stated that he first witnessed

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).

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violations beginning in 2011. He also acknowledged that managers implemented an eight-hour shift schedule for 22 months to eliminate overlapping shifts, and that during these months employees did not leave their shifts early.

CIG interviewed the two range controllers whom Mr. Bennett considered key witnesses. The first range controller stated that since 2011, employees have not left their shifts early, although previously there were some concerns with time and attendance. The second range controller stated that he began working at ROD in 2010. Although he witnessed employees leaving early eight or nine times per year, they may have left for administrative or otherwise valid reasons.

CIG also interviewed the employees alleged to have committed T&A fraud, except for one range controller who was no longer employed by the Navy at the time of the investigation. Each of the nine employees denied improperly leaving his or her shift early during overlapping hours. They stated that they received approval from supervisors or took leave before occasional absences, and that they worked on administrative matters during overlapping hours.

Finally, the report states that Director Marshall and Deputy Director Lynch denied that Mr. Bennett brought the T&A fraud allegations to their attention. Each also stated that the eight-hour shift schedules were implemented due to manpower shortages during the 2013 government furlough—not to eliminate overlapping schedules. Deputy Director Lynch denied telling Mr. Bennett to ignore the problem. He did acknowledge, however, that he directed Mr. Bennett to counsel employees after he learned in 2011 that employees were coming in late and abusing break periods.

The CIG's investigation concluded that it could not substantiate any of Mr. Bennett's allegations that employees falsified their T&A reports from January 2008 to present, in violation of the applicable directive, DoD FMR 7000.14-R, Volume 8, Chapter 2. Furthermore, the investigation did not substantiate Mr. Bennett's allegations that Director Marshall or Deputy Director Lynch knowingly approved falsified T&A records, in violation of Chapter 2. OSC requested additional information from the Marine Corps regarding the investigation, including why a comprehensive review of all standard operating procedures was conducted even though the allegations were not substantiated. The Marine Corps clarified that it is common practice to review standard operating procedures whenever a potential problem is identified—even where the allegations are not substantiated.

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I have reviewed the original disclosure and the agency's reports.² I have determined that the reports meet all statutory requirements and that the findings of the agency head appear reasonable.

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

Respectfully,



Carolyn N. Lerner

Enclosures

² The Navy provided OSC with reports containing employee names (enclosed), and redacted reports in which most names, including employees' names, were removed. The Navy 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 Navy'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.