

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

February 19, 2015

The Honorable Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036

Re: OSC File No. DI-13-3418

Dear Ms. Lerner:

I am responding to your October 24, 2013 letter to Department of Homeland Security (DHS) then-Acting Secretary Rand Beers referencing a U.S. Citizenship and Immigration Services (USCIS) employee's allegations that our Office of Security and Integrity (OSI) violated the law governing administratively uncontrollable overtime (AUO).

Investigation of the matter, as required under 5 U.S.C. § 1213(c), was conducted by DHS's Office of Inspector General (OIG). Once the investigations were completed, DHS referred this matter to USCIS. This action is consistent with DHS's delegation of authority that provides each of its components the responsibility to take disciplinary actions against its employees. (See Enclosure, DHS Delegation No. 160.1, Delegation to Department of Homeland Security Organizational Elements.)

OIG completed separate investigations regarding the two allegations. I have reviewed the reports. The details and findings of each investigation are discussed in more detail below.

ALLEGATION ONE

Background

The whistleblower, who worked for OSI in 2010, asserted that OSI employees claimed AUO on a daily basis but failed to perform duties that qualify for AUO. These employees included investigative specialists, investigative analysts, special agents-in-charge, the deputy chief, and the chief.

OSI is responsible for ensuring the security and integrity of USCIS personnel, property, programs, and products. OSI's responsibilities include internal investigations, security assurance activity, and protective assignments. The USCIS Chief, Office of Human Capital, Training and

Career Development, previously authorized AUO for OSI investigative specialists (GS-1801 series).

OSI had 27 investigative specialists who were eligible for AUO, including a chief supervisory investigative specialist, a deputy supervisory investigative specialist, 5 supervisory investigative specialists, and 20 investigative specialists.¹ The specialists are assigned to one of OSI's six divisions: Headquarters/Leadership, Special Investigations, Northeast Region, Southeast Region, Central Region, and Western Region.

Description of the Conduct of the Investigation

During its investigation, OIG interviewed six supervisory investigative specialists and eight nonsupervisory investigative specialists to gain a better understanding of the duties they typically performed during their AUO hours. In particular, OIG asked questions to determine the employees' understanding of AUO and how they documented and approved AUO hours. OIG also reviewed 227 G-1012 forms. This form is used by OSI employees to substantiate the amount of AUO hours they work as well as the duties they perform while on AUO time.

The OIG also considered the relevant Office of Personnel Management (OPM) regulations and the relevant USCIS policies, each of which are set forth in more detail below.

Pursuant to OPM regulations and according to 5 CFR §550.151, agencies are authorized to pay AUO annually "... to an employee in a position which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing without supervision, circumstances which require the employee to remain on duty."

Furthermore, 5 CFR §550.153(c) defines what it means in §550.151 that an employee is:

Generally responsible for recognizing, without supervision, circumstances which require him to remain on duty:

1. The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.
2. The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.
3. The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as for example, when an employee must continue working because a relief fails to report as scheduled.

¹ On November 19, 2013, USCIS suspended the use of AUO for all employees.

According to OSI Operating Instruction No. 253-003, dated May 16, 2008:

- OSI is authorized to pay AUO to certified employees in GS-1801 and GS-0080 positions in which the hours of duty cannot be controlled administratively, and which require substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances that require remaining on duty.
- The percentage rate authorized for AUO may be at 10, 15, 20, or 25 percent of the employee's rate of basic pay, as follows:
 - Average of 3–5 hours of AUO per week—10% of base pay
 - Average of 5–7 hours of AUO per week—15% of base pay
 - Average of 7–9 hours of AUO per week—20% of base pay
 - Average of more than 9 hours of AUO per week—25% of base pay
- Employees must be certified to receive AUO when they initially are eligible for AUO pay, whenever a change in AUO pay (including adjustment, termination, or resumption of pay) is required, and after the annual AUO audit.
- The employee's immediate or higher-level supervisor prepares and signs a *Certification of Payment of Administratively Uncontrollable Overtime* memo, including the compensation rate and the rationale for establishing the rate.
- All employees who earn AUO must complete form G-1012 to record the number of hours worked. The form must include a description of the compelling circumstances that required the AUO hours to be worked and contain a list of the cases and incidents worked on. The form must be signed each pay period by the employee and by the immediate supervisor and submitted to the appropriate timekeeper. It is to be retained for a minimum of 6 years in the employee's time and attendance folder and should be available for review by internal and external audit teams and other interested parties.

The G-1012 AUO documentation form lists 21 duty codes to describe the duties performed by OSI investigative specialists.

Summary of Evidence Obtained

G-1012 AUO Forms

Of the 227 G-1012 forms that OIG reviewed, about 47 percent did not meet the requirements of USCIS Operating Instruction No. 253-003. For example, some forms:

- Did not contain a case number;
- Did not contain duty codes or a reason for the AUO hours worked; or
- Were not signed by the employee or the supervisor.

The G-1012 forms, even when properly completed, did not contain enough detail for an independent reviewer to determine whether there were compelling circumstances that required AUO. For example, the duty code "investigative interviews" does not indicate why the

particular interview could not have been scheduled or completed during the investigative specialist's regular shift.

Investigative specialists also logged the tasks they performed during AUO hours in discernible patterns on about 41 percent of the 227 G-1012 forms. OIG defined "discernible pattern" as multiple, identical duty codes listed on at least 70 percent of the days AUO was claimed in a pay period. For example, one supervisory investigative specialist recorded duty codes 6, 7, 8, 9, and 16 (examination of evidence/records, investigative research, field supervision of investigations, address issues/prepare materials, and OIG/ICE/CBP coordination) on all AUO days for 13 pay periods. Another supervisor used identical duty codes (as shown in appendix B) for all of the 9 pay periods we reviewed. OIG concluded that frequent repetition of identical overtime tasks indicates that the work was likely predictable and thus administratively controllable. According to 5 CFR § 550.151, AUO is intended for employees in positions in which the hours of duty cannot be controlled administratively.

OIG did not find a discernible pattern in the number of AUO hours employees recorded each day. Although AUO in the amount of 2 hours was recorded most frequently on the G-1012 forms OIG reviewed, the number of hours listed on each sequential day during the pay period generally varied.

Employee Interviews

OIG interviewed six supervisory investigative specialists and eight nonsupervisory investigative specialists to gain a better understanding of the duties they typically performed during their AUO hours. OIG also asked questions to determine the employees' understanding of AUO and how they documented and approved AUO hours. Based on these interviews, OIG concluded the following:

- Employees often worked AUO hours to complete routine duties timely.
- Some instances of AUO appeared justifiable, such as an interview that unexpectedly continued beyond an employee's 8-hour workday.
- Although the nonsupervisory employees had not received formal AUO training, they appeared to understand the basic requirements for AUO.
- Not all supervisors thoroughly reviewed G-1012 forms.

Interviews of Nonsupervisory Investigative Specialists

Almost all of the nonsupervisory investigative specialists OIG interviewed implied that they need AUO to complete their work in a timely manner. Specialists used AUO to prepare for and conduct interviews, including follow-on interviews; travel to and from fieldwork locations; collect evidence; and examine records. Two nonsupervisory investigative specialists said they used the duty codes on the G-1012 forms to describe work conducted for the entire day, not specifically for the AUO hours claimed. One investigative specialist said he performed mostly administrative duties for the office and did not work any cases. (In 2013, his rate of AUO pay was incrementally reduced from 25 percent to 10 percent.)

OIG asked all the nonsupervisory investigative specialists whether AYO activities could have been scheduled in advance or performed during regular hours. Some specialists responded that their duties could have been completed during regular hours depending on the circumstances and the workload. Others said their AYO work could not have been scheduled in advance.

None of the nonsupervisory investigative specialists OIG interviewed received formal AYO training. They received guidance and instructions primarily from their supervisors or during initial orientation. Also, according to multiple specialists, employees who qualify for AYO must read and sign a statement to confirm they understand the requirements of AYO policies and procedures. Most OSI specialists maintained personal records or relied on their memories for AYO hours worked and completed their G-1012 forms weekly or at the end of each pay period.

Interviews of Supervisory Investigative Specialists

Supervisors provided the OIG a number of examples of duties they performed during AYO hours. Most commonly, they said they prepared for and conducted interviews. According to the supervisors, if an interview results in new witnesses, investigative specialists must prepare for and interview those additional witnesses. This requires time that the specialists did not plan on before the original interview. A supervisory investigative specialist may also be called to meet with senior leadership late in the day, which would require working beyond regular hours.

We asked the supervisory investigative specialists whether AYO activities could have been scheduled in advance or performed during regular hours. In response, most implied that some type of overtime was needed to complete the workload timely. One supervisor said that with proper planning, some of the activities performed during AYO could occasionally be performed during regular hours. Another supervisor said he used the duty codes on the G-1012 forms to describe the work he performed for the entire day, not specifically for the AYO hours claimed.

OIG also identified inconsistencies in approving G-1012 forms. Several supervisors believed that they knew the hours their employees worked and did not need to verify the time on the G-1012 forms. One of these supervisors said there was no real way to determine whether the time submitted was worked, other than by using his knowledge of how long a task generally takes. Another supervisor reported that he believed most investigative specialists worked more than 20 hours of AYO per pay period, but stopped recording AYO hours on their G-1012 forms once they reached 20 hours.² One supervisor said he "audited" his subordinates' G-1012 forms to ensure the forms were properly filled out.

Review of Payroll Records

In 2013, the 27 OSI investigative specialists received a total of \$613,811 in AYO pay. According to Operating Instruction No. 253-003, employees are to be paid for AYO as a percentage of their base pay, depending on the average number of AYO hours worked per week.

² An average of 20 AYO hours in a 2-week pay period would meet the minimum requirement for AYO pay at the 25 percent rate.

For the AUO paid in 2013, the USCIS Financial Operations Branch tracked employees' AUO hours based on the timekeepers' input of time and attendance data each pay period.³ Every 4 pay periods, the Financial Operations Branch produced a report that automatically calculated the average weekly AUO hours for each employee and indicated the amount of AUO pay each employee should receive.

In 2013, 22 of 27 OSI employees received AUO at the rate of 25 percent of base pay. Four employees' AUO percentage rate was reduced one or more times during the year. Thus, they received an average AUO rate of between 15 and 24 percent of their base pay in 2013. The remaining employee did not start working at OSI until after AUO was suspended. OIG determined that the amount of AUO paid to OSI employees matched the percentage of AUO they were authorized to receive.

Findings

I have reviewed OIG's report and agree with its conclusion that the overtime work performed by OSI employees was predictable, and thus administratively controllable. For that reason, I conclude that the overtime work did not qualify as AUO because the work was predictable and not "irregular" or "occasional" as required by 5 CFR § 550.151. Additionally, I find that OSI employees violated OSI Operating Instruction No. 253-003, dated May 16, 2008, because they did not complete the requisite documentation that would justify the payment of AUO.

ALLEGATION TWO

Background

The second allegation made by the whistleblower was that she notified senior agency officials that OSI was misusing AUO and that, despite this notification, USCIS officials continued to authorize payment of AUO. Specifically, the whistleblower reported what she believed to be AUO abuse to her supervisor, the OSI Chief, and disclosed AUO abuse to the OSI Deputy Chief, to the Associate Director of the USCIS Management Directorate, and to the then-USCIS Director. The whistleblower further claimed she was approached by a USCIS Human Resources (HR) Specialist "who stated that she knew" the whistleblower "had previously complained about the misuse of AUO in OSI..." and "... the HR Specialist again contacted the whistleblower "and informed her that the audit had determined that the payment of AUO to USCIS OSI employees was not justified but that, regardless of the finding "someone higher up in USCIS wanted it to be paid."

Description of the Conduct of the Investigation

The OIG Office of Investigations interviewed the whistleblower, the former OSI Chief (whistleblower's former supervisor), the OSI Deputy Chief, the Associate Director of the USCIS

³ G-1012 forms are not used to determine the amount of AUO to be paid to the investigative specialists.

Management Directorate, and a Supervisory Investigative Specialist for OSI. The OIG also reviewed emails received from the whistleblower.

Summary of Evidence Obtained

Emails from the Whistleblower

The whistleblower provided one email dated October 21, 2010, to the Director of USCIS which addressed her concerns with the OSI quarterly statistics reported to Congress. There is no reference to or any statements regarding AUO in the provided email. On the same date, the USCIS Director forwarded the whistleblower email to the USCIS Deputy Chief Counsel, who in turn referred the matter to the DHS OIG for review. No other email was provided by the whistleblower to the Director containing any reference to AUO.

The whistleblower also provided one email dated November 12, 2010, that she sent to the Chief of the USCIS Investigations Division. The whistleblower provided a courtesy copy of the email to the OSI Deputy Chief, the Associate Director of the USCIS Management Directorate, and an OSI Supervisory Investigative Specialist. The email indirectly references the whistleblower's previous requests to be decertified from AUO, but was in substance about an unrelated personnel matter.

Employee Interviews

On July 1, 2014, the DHS OIG Office of Investigations interviewed the whistleblower regarding the information brought forward to OSC, more specifically to address the information of AUO misuse in OSC's referral letter to DHS in general, and to determine the identity of the HR Specialist referenced in the letter accordingly. The whistleblower provided the identity of the USCIS HR Specialist referenced in the OSC letter whom she approached regarding AUO, and who allegedly subsequently contacted and informed the whistleblower that AUO payments to USCIS OSI employees were not justified and that "someone higher up in USCIS wanted it to be paid."

On July 1, 2014, OIG contacted the HR Specialist to obtain additional information and clarification on the aforementioned disclosure by the whistleblower to OSC regarding AUO abuse at USCIS OSI, and asked the HR Specialist if she could further elaborate or provide additional information on the whistleblower's statement as it is described in the OSC letter to DHS.

The HR Specialist advised that she was never approached by the whistleblower with any complaints regarding the payment of AUO to OSI employees, and stated that she did not contact the whistleblower to inform her that AUO payments to OSI employees were not justified. The HR Specialist further advised that she did not make a statement to the whistleblower that someone higher up in USCIS wanted AUO to be paid. The OIG found no evidence, and the HR Specialist had no information, that an "audit of AUO" by USCIS was performed as referenced in the OSC letter.

OIG subsequently contacted the whistleblower to determine if she possessed any documentation (i.e. emails/memorandums, etc.) to substantiate her disclosure of AUO abuse to USCIS/OSI senior management officials. On August 6, 2014, the whistleblower advised that she believes she provided all email and correspondence to the OIG.

On August 20, 2014, OIG re-interviewed the whistleblower to obtain additional information and clarification on her aforementioned disclosure to OSC regarding AUO abuse at USCIS OSI, and to determine if the whistleblower could provide any further supporting documentation regarding her disclosure to OSC other than the documentation she initially provided to OIG.

The whistleblower stated that she advised her supervisor that her (the whistleblower's) work did not justify AUO. The whistleblower advised her supervisor that she believed AUO should be paid only "to Investigators who do investigative work," and AUO should not be paid for work that is administrative in nature. According to the whistleblower, she also advised her supervisor that she was "not going to work/claim or get paid" AUO when she was not performing the type of work that the whistleblower believed qualified for AUO. The whistleblower stated that her supervisor required OSI staff to work 10 hours per day in order to qualify for AUO pay. The whistleblower advised that she began her employment with USCIS OSI in June 2010 and met with her supervisor in July of 2010 regarding her AUO concerns. The whistleblower stated she also sent an email to her supervisor with a courtesy copy to another supervisor and the Associate Director of the USCIS Management Directorate, which discussed her AUO concerns, and eventually met with the Associate Director to discuss her AUO concerns.

The whistleblower was provided with a copy of the above referenced email that she sent to her supervisor, Subject: RE: *Request for extension for grievance for FY10 PPA*, for her review. Regarding her statement in the email, "...the improper use of *Administratively Uncontrollable Overtime (AUO)* by this office," the whistleblower advised that she was referring to "the office in general," and her opinion was that "OSI work did not justify AUO." The whistleblower stated she would occasionally observe OSI employees taking "long lunches" and "watching the clock" to complete their AUO hours. The whistleblower advised that she had discussions with her supervisor and the Deputy Chief OSI regarding her observations. Regarding her statement in the email, "...you are not entitled to AUO and...have been erroneously compensated for it..." the whistleblower advised that in her understanding of AUO policy "supervisors are not entitled to AUO," and her supervisor would be "upset" if OSI employees worked less than 10 hours per day.

The whistleblower claimed that she contacted her supervisor, the OSI Chief, "to report what she believed to be AUO abuse" and that her supervisor stated she "did not want a spotlight put on this office." The whistleblower was asked if she could provide any additional information or explanation, or elaborate on this statement. The whistleblower advised that in her initial meeting with her supervisor, wherein she identified what she believed to be the improper use of AUO by OSI, the whistleblower also discussed with her supervisor the inconsistencies in the data input into the OSI Investigative Division Case Management System (IDCMS), and that no one was willing to reconcile the IDCMS data. The whistleblower advised that during that meeting, her supervisor advised her that she did not want a spotlight put on OSI.

On August 22, 2014, OIG interviewed the Associate Director of the USCIS Management Directorate to obtain additional information and clarification on the whistleblower's claims. Regarding the whistleblower's reporting and disclosure of AUO abuse to USCIS management, the Associate Director advised that sometime between October and November of 2012, the whistleblower asked to meet with him regarding "issues" she was having in OSI. The Associate Director stated he recalls the "context" of their meeting being that the whistleblower "was not having a good working experience in OSI" and that the whistleblower discussed her concerns with him. According to the Associate Director, he and the whistleblower discussed inconsistencies/errors and timeliness of OSI quarterly reports to Congress, the whistleblower's dissatisfaction with her evaluation from her supervisor, the OSI Chief, the requirement to work AUO by her supervisor, and her concerns that she was unable to telework. The Associate Director advised he first became aware that there was an OSC disclosure matter concerning AUO use at USCIS OSI, in October 2013. With regard to the claims of the improper use of AUO within OSI, the Associate Director believes from his meeting with the whistleblower, that she was "largely concerned about her ability to perform" AUO. The whistleblower reported office problems that she was experiencing in OSI, and her concerns about OSI reports, but did not specifically address or discuss AUO misuse with the Associate Director.

The Associate Director was provided with a copy of his November 12, 2010, email response to the whistleblower Subject: *RE: Request for extension for grievance for FY10 PPA*, for his review. The Associate Director advised he could not recall how he received the email, but that he may have been "blind copied" by the whistleblower, (the original email was sent from the whistleblower to her supervisor). The Associate Director advised that his email was ultimately a follow-up to their above-mentioned meeting. Regarding the whistleblower's statement in the email to her supervisor, "*I believe that your evaluation is unfair and retaliatory in nature...*", the Associate Director advised that he didn't recall that specific statement and he viewed and interpreted the email in the context of his meeting with the whistleblower and the concerns she discussed during that meeting, including wanting to telework, not working the extra hours of AUO, wanting a more flexible workspace, and not liking her supervisor.

The Associate Director further advised that he would have reviewed and acted on any "substantive issues," and cited as an example the issue the whistleblower brought forth about inconsistent reporting. According to the Associate Director, his staff looked into the reporting issue, and did identify limitations to the report. The Associate Director also provided a copy of an email from the whistleblower dated October 21, 2010, 9:43 AM (No Subject) referencing errors in a report of "Quarterly Stats reported to Congress." That same day, October 21, 2010, at 6:06 PM, the Deputy Chief Counsel USCIS forwarded the email to DHS OIG for appropriate action.

On August 25, 2014, OIG interviewed the former OSI Chief, currently an Intelligence Research Specialist with the DHS OIG, Office of Investigations, Detroit Field Office to obtain additional information and clarification on the aforementioned disclosure by the whistleblower to OSC regarding AUO abuse at USCIS OSI. The former OSI Chief advised that she considered the working and documentation of AUO hours very seriously. The former OSI Chief was asked if she could provide an explanation and/or elaborate on the whistleblower's claim that the former

OSI Chief told the whistleblower that she “did not want to put a spotlight on this office.” The former OSI Chief advised she did not make the statement and “that [spotlight] is not a word I would use, that is not a direct quote and I did not say that.”

The former OSI Chief was asked to review and elaborate on the November 12, 2010 email she received from the whistleblower. Specifically, the former OSI Chief was asked to comment and provide any additional information or explanation regarding sub-paragraph b. which states: “*My identification of the improper use of Administrative Unscheduled Overtime (AUO) by this office. On three separate occasions, I requested to be decertified from AUO. All my requests were denied as you did not want to draw attention to this office...Additionally, per the AUO policy, you are not entitled to AUO, and you have been erroneously compensated for it apparently for some time.*” The former OSI Chief advised that the whistleblower would periodically send her emails recounting their conversations, and that the paragraph cited above was taken out of context by the whistleblower, specifically the statement “...*you did not want to draw attention to this office...*” According to the former OSI Chief, the whistleblower was an employee with OSI for only 4 months, and the former OSI Chief denied the whistleblower’s request to be decertified from AUO because “everybody [in OSI] was working long hours, and we were short staffed.” Regarding the statement, “*Additionally, per the AUO policy, you are not entitled to AUO and you have been erroneously compensated for it apparently for some time,*” the former OSI Chief stated that in her opinion the whistleblower did not believe “anyone deserved AUO.” Referencing the statement, “*My identification of the improper use of Administrative Unscheduled Overtime (AUO) by this office....*,” the former OSI Chief stated that AUO “was not abused” in OSI, and that although the AUO policy required the capture of AUO in 30-minute increments, her directions to her OSI Special Agents in Charge were to calculate AUO in 15-minute increments. The former OSI Chief advised that because she was the Chief of Investigations, and did not believe or have evidence that OSI staff were misusing AUO, she determined “it was not necessary to report” this information to higher level management.

On August 26, 2014, OIG interviewed the Deputy Chief Investigations Division, OSI, USCIS. The Deputy Chief stated that he “cannot recall” having any discussion with the whistleblower regarding allegations of “misuse /misconduct” of AUO within OSI, and advised that if he became aware “of any misconduct” issue, OSI would “disclose” the information to the “OIG.” The Deputy Chief further advised that he “does not ever recall” hearing of “[AUO] misconduct allegations” and stated that the Associate Director of the Management Director and the then-USCIS Director Mayorkas “would have immediately acted on it.”

The Deputy Chief was provided with a copy of the November 12, 2010 email, from the whistleblower to her supervisor (OSI Chief) on which he was courtesy copied, for his review and comment. Specifically, the Deputy Chief was asked to comment and provide any additional information or explanation regarding the reference to AUO in the email and on the whistleblower’s statement in sub-paragraph b., “*My identification of the improper use of Administrative Unscheduled Overtime (AUO) by this office.*” The Deputy Chief advised he could not recall the email in particular and stated, “I don’t have a recollection of that email.” He further explained that because he was courtesy copied on the email to the whistleblower’s supervisor, he “cannot say if I read it, or read it in great detail.” The Deputy Chief stated that any

allegations of “misconduct” would be entered into the OSI IIDCMS and “sent to the OIG.” He advised this would include allegations of “retaliation” if validated, and further stated the he “did not recall anyone saying [OSI staff] was misusing/abusing AUO.” The Deputy Chief was asked if he could recall any incidence, situation or allegation that he believed may be suggestive of AUO misuse at OSI, and commented “absolutely not” and stated that any claims of what he considered to be misconduct” he would “report to the OIG.”

On August 29, 2014, the OIG spoke with the Supervisory Investigative Specialist by telephone and agreed to an interview.⁴ The Supervisory Investigative Specialist was provided with the information contained in the November 12, 2010 email sent from the whistleblower to her supervisor on which he was courtesy copied and asked to review and comment on the information provided. The Supervisory Investigative Specialist was asked to elaborate and provide any additional information or clarification on the whistleblower’s reference to AUO, and on the whistleblower’s statement in sub-paragraph b. *“My identification of the improper use of Administrative Unscheduled Overtime (AUO) by this office. On three separate occasions, I requested to be decertified from AUO. All my requests were denied as you did not want to draw attention to this office. Through your ambassador...I was advised that if my position was ‘reclassified’ I could be decertified from AUO.”* The Supervisory Investigative Specialist advised that he was the whistleblower’s “first line supervisor” at USCIS OSI, and that the whistleblower “complained” that she “did not want to work AUO or overtime.” The Supervisory Investigative Specialist stated that he “did not recall” the email from the whistleblower to the OSI Chief, and commented “I was cc’d, the email was sent to [the OSI Chief].” Based on the email re-read to the Supervisory Investigative Specialist by the OIG investigator, the Supervisory Investigative Specialist commented, “the crux [of the email] was about the whistleblower’s performance evaluation.” The Supervisory Investigative Specialist again stated that he did not recall the email, and that “it didn’t raise any red flags to me” as his interpretation of the email was that the whistleblower was “unhappy” with her performance “evaluation.” Regarding the whistleblower’s statement *“My identification of the improper use of Administrative Unscheduled Overtime (AUO) by this office...”* he stated that the whistleblower “never” approached him about or to discuss AUO abuse within OSI, and advised that the whistleblower “did not want to work overtime, she wanted to work a straight 8 hours and go.” The Supervisory Investigative Specialist was asked if he remembers considering forwarding (or if he would have forwarded) the email to his supervisor or to USCIS/OSI management, and replied that he “looks at it [the whistleblower’s email] from the standpoint she was not satisfied with her evaluation from a supervisor, and he did not find it necessary to forward the email any further.”

Findings

After reviewing OIG’s second report of investigation, I have determined that the evidence conclusively establishes that no one in USCIS violated any law, rule, or regulation concerning the employee’s alleged disclosures. OIG’s investigation was thorough—including two separate interviews of the employee—and I find that it established that the allegation is unsubstantiated. Neither of the two emails the employee provided to OIG supports a finding that the employee

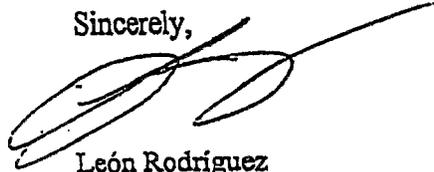
⁴ The Supervisory Investigative Specialist was on extended medical leave.

made such a disclosure. Further, to the extent the employee made a disclosure in her emails, the evidence demonstrates that USCIS senior officials immediately notified OIG of the employee's allegation. I have no reason to believe that these senior officials would not have also contacted OIG if they had become aware of an allegation that USCIS was making improper AUO payments. OIG's investigation also refutes the employee's allegation regarding an AUO audit. OIG found no evidence that USCIS conducted an audit finding that the payment of AUO was improper. There is also no evidence to support a finding that a USCIS employee stated, "someone higher up in USCIS wanted AUO to be paid." I do not find that USCIS violated any law, rule, or regulation within the meaning of 5 U.S.C. § 1213(d)(4) as it relates to the whistleblower's second allegation.

As you are aware, once USCIS became aware of issues involving AUO practices, we immediately terminated all AUO compensation for OSI employees. Specifically, USCIS terminated AUO compensation on November 19, 2013. Given the regulatory violation as well as OSI's failure to follow USCIS policy governing AUO, pursuant to 5 U.S.C. § 1213(d)(5)(A), I do not intend to allow the use of AUO for any USCIS employees.

Thank you for your correspondence. Please do not hesitate to contact my office at (202) 272-8000 should you require further information regarding these matters.

Sincerely,



León Rodríguez
Director