



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

April 25, 2016

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

Re: OSC File No. DI-15-3034

Dear Mr. President:

Pursuant to my responsibilities as Special Counsel, I am forwarding a report from the U.S. Department of Transportation (DOT) based on disclosures of wrongdoing at the Federal Aviation Administration (FAA), Chicago Air Route Traffic Control Center (ZAU), Aurora, Illinois. The whistleblower, who chose to remain confidential, disclosed that ZAU upper-level managers were routinely assigning front-line managers (FLMs) to supervise air traffic control specialists in geographical areas in which they were neither certified nor current¹. The whistleblower also disclosed that upper-level managers assigned FLMs to fill in as temporary supervisory traffic management coordinators (STMCs), despite the fact that the FLMs were not current in their STMC certifications or were never certified as STMCs. The whistleblower alleged that in doing so, ZAU managers jeopardized these FLMs' situational awareness² and endangered public safety.

The agency investigation substantiated the whistleblower's allegations that FLMs were routinely being scheduled for "out-of-area" assignments and to fill in as STMCs notwithstanding their lack of certification and currency, but noted that this practice did not violate any FAA order or policy or endanger public safety. I have reviewed the agency report and determined that it meets the statutory requirement and the findings appear reasonable.

The whistleblower's allegations were referred to Secretary of Transportation Anthony R. Foxx for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Foxx referred the matter to FAA's Office of Audit and Evaluation for investigation and submitted the agency's report to the Office of Special Counsel (OSC). In response to OSC's request for additional information, the DOT provided an update. In accordance with 5 U.S.C. § 1213(e), I now

¹ FAA Joint Order (JO) 3120.4N, App'x J defines currency as the "[p]rescribed minimum time requirement necessary to work an operational position independently under general supervision."

² JO 7210.3Y, Section 6, Part 2-6-1 provides that "[w]atch supervision requires maintaining situational awareness... of traffic activity and operational conditions.... Situational awareness is defined as a continuous extraction of environmental information, integration of this information with previous knowledge to form a coherent mental picture, and the use of that picture in directing further perception and anticipating future events. Simply put, situational awareness means knowing what is going on around you."

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provide the following summary of the investigation, whistleblower comments, and my findings.³

The whistleblower reported that many FLMs felt underprepared for out-of-area assignments. According to the whistleblower, each area is both geographically and situationally distinct such that an FLM who is certified or current in one area would not have sufficient knowledge or specialized skills to supervise a different area without compromising situational awareness and, therefore, aircraft safety. The whistleblower also provided information that scheduling shortages had led ZAU managers to assign FLMs to fill in as temporary STMCs, without regard for their certification or currency.

As previously noted, FAA's investigation substantiated that ZAU managers were scheduling FLMs for out-of-area assignments and as temporary STMCs, despite their lack of certification and currency, but it did not conclude that ZAU violated any FAA order or policy and did not find a nexus between these staffing assignments and any safety event in ZAU airspace. Specifically, none of the numerous ZAU personnel whom investigators interviewed reported instances of FLMs' unsafe actions. Investigators also reviewed safety events that occurred at ZAU in 2014 and 2015 and were unable to identify any that were attributable to FLM actions. Finally, FLMs whom investigators interviewed denied losing situational awareness when they provided supervision in areas in which they were neither certified nor current.

Nevertheless, the agency report notes that because many FLMs expressed discomfort and frustration with out-of-area assignments, FAA's Air Traffic Organization (ATO) implemented various process improvements at ZAU. For example, ATO hired a new air traffic manager (ATM) to oversee operations at ZAU. It instructed management to limit the practice of assigning FLMs to geographical areas where they have no experience, training, or familiarity, and that such assignments must be formal and documented. ATO also instructed management to utilize overtime or supervisory air traffic control specialists in lieu of scheduling FLMs on out-of-area assignments. Further, it committed to issuing new national policy guidance on out-of-area assignments by September 30, 2015.

In December 2015, the agency updated OSC that ATO had formed a National Cross Aisle Workgroup (Workgroup) in September 2015 to craft and issue new national policy guidance on out-of-area assignments. The Workgroup developed and distributed surveys to

³ 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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FLMs across the National Airspace System and received an unprecedented number of responses, which made the Workgroup's task a larger undertaking and rendered it impossible for FAA to issue new national policy guidance by September 30, 2015. As such, on January 22, 2016, ATO issued interim Watch Supervision Guidance for Out of Area Assignments (Guidance) to be applied throughout the National Airspace System. Per this Guidance, FLMs may only be assigned watch supervision duties for one area of specialization, except that the service area director of operations may approve an ATM to assign an FLM one additional area in which the FLM has situational awareness to perform watch supervision. The Guidance also requires that facilities develop local training procedures regarding out-of-area assignments—and provides minimum standards for such training—to ensure that FLMs have sufficient situational awareness and knowledge to effectively manage their assignments.

Commenting on the agency's report, the whistleblower disagreed with the DOT's interpretation of FAA orders and policy concerning whether FLMs could be scheduled for out-of-area and STMC assignments despite their lack of certification and currency. The whistleblower also explained that today's FLMs are responsible for supervising air traffic control specialists with varying levels of experience, which increases the need for operational engagement on the part of FLMs. As such, the whistleblower asserted that an FLM's lack of certification or currency in an area where he or she is assigned to provide supervision necessarily endangers public safety. Additionally, the whistleblower expressed discomfort with ATO's use of the term "familiarity," suggesting that it could be interpreted and applied loosely and thus could be dangerous. Nonetheless, the whistleblower acknowledged that the process improvements made by the ATO were in the best interest of the flying public.

As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the agency report and the whistleblower comments to you, the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation, and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure. I have also filed copies of this letter, the agency report, and the whistleblower comments in OSC's public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures