



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

June 9, 2016

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

Re: OSC File No. DI-15-1941

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding an unredacted Department of Veterans Affairs (VA) report based on disclosures of wrongdoing at the Washington, D.C. VA Medical Center (Medical Center), Nutrition and Food Services Program (NFS). The whistleblower, Robert Johnson, who consented to the release of his name, alleged that NFS management and employees have failed to properly maintain food safety and sanitation at the Medical Center. He also alleged NFS management failed to address his reports of misconduct. I have reviewed the VA's report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the agency investigation, the whistleblower's comments, and my findings.¹

I referred Mr. Johnson's allegations to Secretary Robert A. McDonald for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary McDonald forwarded the allegations to the Under Secretary for Health, who directed the Office of the Medical Inspector (OMI) to conduct the investigation. Secretary McDonald delegated responsibility to submit the agency's report to then-VA Chief of Staff Robert L. Nabors, II, who submitted the report to OSC on December 29, 2015.

The agency investigation substantiated many of Mr. Johnson's allegations, finding violations of VA and Veterans Health Administration (VHA) policies and a substantial and specific danger to public health and safety at the Medical Center. OMI found a

¹The Office of Special Counsel (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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general lack of cleanliness in the main food preparation area, including evidence of a cockroach infestation as well as built-up food debris and dust. In addition, OMI substantiated the allegation that NFS employees do not properly inspect, label, and store food items. During the investigation, OMI found open, undated packages of meat, spoiled produce, and inconsistent dating and labeling practices. Further, OMI partially substantiated Mr. Johnson's allegation that NFS employees do not comply with personal hygiene requirements, finding that employees failed to wear beard restraints and remove jewelry in the food preparation area.

The investigation did not substantiate the allegation that the Medical Center lacks food safety policies or a Hazard Analysis Critical Control Point (HACCP) plan, but determined that the Medical Center's current HACCP plan does not meet all of the requirements outlined in VHA Handbook 1109.04. Finally, the investigation did not substantiate the allegation that NFS management failed to take appropriate action to ensure employee compliance with sanitation standards. OMI found that the current NFS chief had taken ten personnel actions and sent one staff member home for an untidy uniform during her tenure; the personnel actions include six reprimands and four terminations for violations such as failure to follow sanitation guidelines and failure to follow supervisory instructions.

In response to these findings, the Medical Center updated the NFS staffing plan, filled the vacant assistant chief position, and posted job vacancy announcements for seven new full-time employee positions within NFS. Second, NFS and Environmental Management Services signed a memorandum of understanding on March 24, 2016, to assign responsibilities, assist NFS with maintaining safe and sanitary conditions, and ensure the coordination of efforts to eradicate pests. Third, the NFS chief updated the HACCP plan to ensure it complies with the required standards. The updated plan was signed and went into effect on April 30, 2016. Fourth, NFS management established a monthly training calendar and a SharePoint site to make upcoming training, NFS policies, and the HACCP plan readily accessible to NFS employees. Management also started providing training to NFS staff on best inventory and labeling practices and uniform requirements; established a training log to record all training activities to ensure requirements are met for all NFS staff; and ensured that NFS supervisors are ServSafe certified. Last, the VHA NFS Program Office conducted an unannounced site visit to the Medical Center on May 17–18, 2016, and confirmed that the NFS chief and administrative section chief are participating in the VHS NFS mentoring program.

In his comments, Mr. Johnson discussed the allegations that were not substantiated. He noted that he was reporting conditions that existed during his employment in 2014 and submitted photographs to substantiate his allegations. He disagreed with OMI's finding that NFS did not lack food safety policies, stating that he was not given an NFS policy or procedures manual during his tenure at the VA despite making numerous requests. Mr. Johnson also stated that he did not observe any discipline or other

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management action taken regarding his concerns during his employment at the Medical Center.

I have reviewed the original disclosure, the agency report, and the whistleblower's comments. I thank Mr. Johnson for raising these important food safety issues and sanitation deficiencies at the Medical Center. While OMI did not substantiate all of his allegations, the corrective measures that OMI recommended and that the Medical Center has taken appear to address most of Mr. Johnson's outstanding concerns. Thus, I have determined that the VA's report contains all of the information required by statute and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted agency report and the whistleblower's comments to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed copies of the redacted agency report and whistleblower'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 The VA provided OSC with reports containing employee names (enclosed), and redacted reports in which employees' names were removed. The VA 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 VA'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.