

OSC File No. DI-14-0416

From: Andrew J. Koma 
To: OSC and other disclosed officials
Subject: OSC File No. DI-14-0416 Comments in response to the Office of Special Council (OSC) respectfully submitted to the President and the Congressional committees with oversight responsibility over the Department of Homeland Security.
Date: 07 June 2016

First and foremost I want to thank the Office of Special Council and any other participating agencies responsible for handling this case. I am aware of the time, effort, resources and tenacity that an investigation such as this calls for.

This complaint was predicated upon after I feel that I was being singled out for actions that were in no way different than those of my own, as it pertains to the record keeping related to Administrative Uncontrollable Overtime (AUO). The subject matter in this investigation is, in most events, I trust is accurate as I feel that the Office of Personnel Management (OPR) did its due diligence in conducting its investigation.

The first matter that I would like to contribute is found on Page 6 paragraph 3 which states that *"In June 2007, the ICE ERO Assistant Director for Management sent a memorandum to all Field Office Directors requesting review of the general statutory and regulatory requirements pertaining to AUO to ensure its proper administration via supervisors"*. I bring this up because it is factual that myself along with 3 other Salem (ERO) employees "eligible for AUO did not join the agency until 2009 and later. Though the information provided in that memo "pre-dated" certain employees, the two most senior Officers in the Salem ERO office along with management in Fairfax, were active with the agency and that information would have no doubt been provided to them at some point.

Next, on page 7 of the report, OPR found during its investigation that 84 percent of the AUO justifications reviewed were deemed insufficient. Also, on page 7, OPR very clearly states all of the discrepancies which are plentiful.

I now move on to the activity discovered by OPR on page 8. Specifically, *"During the interviews, all of the ERO Salem employees, including the SDDO, stated they had never received formal training on AUO, had no refresher training on AUO, had never received guidance on what specific duties were allowed or what duties were not permissible when claiming AUO, and received no guidance or instructions on the completion of the AUO worksheets"*. I believe this statement to be inaccurate. I

believe that the most senior officers were with the agency during the time that was referred to on page 3 and mentioned in this statement.

As the report continues, OPR goes even further on to point out insurmountable inaccuracies and record keeping.

OPR then recorded in several that because I chose anonymity that I could not be interviewed to ascertain certain vital information. Ironically, I found that in the report I was the only individual repeatedly mentioned by name. Ironic, because I filed the complaint with OSC after my supervisor (SDDO Neyman) and I began to have personal problems that rapidly evolved into extra scrutiny.

Information obtained regarding OSC File No. DI-14-0416 (Supplemental Report) that I have noticed. During the investigation it is documented on page 1 and 2 of this report that ***"a detailed description of the communication among Enforcement Removal Assistant (ERA) Michele FOWLER, SDDO NEYMAN, and Assistant Field Office Director (AFOD) Norman PARRISH regarding Immigration Enforcement Agent (IEA) Andrew KOMAR's concerns about what constitutes AUO; (10) the date of SDDO NEYMAN's report to the Joint Intake Center of IEA KOMAR's alleged time and attendance misstatements; (11) and (12) the basis for the investigation of IEA KOMAR; (13) the findings and/or status of the investigations referenced in requests (10)-(12); and (14) the basis for determining that assigning and approving pre-scheduled AUO is not a violation of 5 C.F.R. § 153(c)(2) and reconcile that basis with the report's finding that ERO Salem management did not knowingly approve improper AUO use"***. The report follows theme and breaks down AUO mistakes made by every AUO eligible in the Salem Office. I would like to add that the report clearly states on page 3 that ***"IEA KOMAR worked the least amount of AUO during this period (395.75 hours), while IEA Nathan SWITZER worked the greatest amount of AUO (738 hours).***

On page 4 of the supplemental report OPR discloses that on ***"[Page 8]: OPR found that for two employees, IEA SWITZER and IEA KOMAR, AUO hours claimed in WebTA exceeded the number of hours claimed on their AUO form. IEA SWITZER claimed a total of 5.5 more AUO hours in WebTA than what was claimed on two different AUO forms (2013 PP14 1 hour; 2013 PP 19 4.5 hours). IEA KOMAR claimed a total of three more AUO hours in WebTA than what was claimed on 3 different AUO forms (2012 PP22 1 hour; 2013 PP7 1 hour; 2013 PP21 1 hour)"***

For me the most striking piece of evidence in the supplemental report is ***"On December 15, 2014, ERA FOWLER was interviewed by OPR to address in detail any communications she had related to IEA KOMAR's concerns regarding what constituted AUO. ERA FOWLER was provided with emails from January 9 and 10, 2014, between herself and IEA KOMAR (OSC Request for Supplemental Report, November 21, 2014, Attachment B). ERA FOWLER advised that she did not have extensive communications with SDDO NEYMAN or AFOD PARRISH and that she could not recall the specifics of any telephone calls with them but they fell within the same issues addressed in the provided emails.***

ERA FOWLER said that OSC File No. DI-14-0416 (Supplemental Report) 10 For Official Use Only (FOUO) IEA KOMAR took it upon himself to research the statutory guidelines governing AUO, and after his research, he raised concerns with her that the duties of scrubbing court documents would not qualify as AUO..” If I, barely a journeymen had the insight to research this issue, how could it be so hard to find by high ranking and SES employees?

It is extremely important to me to mention that on November 6th 2015, I was terminated for Conduct Unbecoming, Failure to accurately and Truthfully Record Time and Attendance. Coincidence or planned action?

I have grieved this decision with the AFGE to no avail, I was then informed by the union that they will no longer be representing me, furthermore, I filed a grievance through the Merit System Board. I agreed to attempt mediation pending an actual MSPB Court case. During the mediation on 23 May 2016 I was not even provided the courtesy to hear the agencies response. I was left alone in a conference room for an unreasonable amount of time just to hear from the mediator that Washington Field Office Director Mary Evans would not budge from her decision.

While relevant or not to this action, I believe that I have been fired because of my personal conflict with my former supervisor. While I did admit to my wrongdoings, I feel that no matter what I say or do will return me to my dream job with ICE.

It is my contention that throughout this entire process that I was scrutinized above all others, that over the period of approximately 2 years an attempt for my “Constructive Dismissal” that a case was built and in some cases fabricated against me to achieve my termination. Douglas Factors were ignored and no progressive disciplinary action was taken against me, giving me the opportunity to correct what the “agency” deemed problems.

In closing I would just like to add that I am a proud Disabled, Operation Enduring Freedom Veteran and have worked in law enforcement for approximately 16 years and have never had to suffer through anything remotely close to this. I would also add that in all that time I have always received “Outstanding” performance appraisals. I am also the Honored father of two Princesses, 1 Mathlete, and the undeserving husband of the most wonderful women and mother possible

Respectfully,


Andrew J. Komar