



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

September 30, 2008

The Honorable Scott J. Bloch
The Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW., Suite 300
Washington, D.C. 20036-4505

Dear Special Counsel Bloch:

On May 30, 2008, The Secretary of Agriculture received a referral from your office (OSC-DI-08-1002) dated May 28, 2008. The complaint alleged misconduct and mismanagement on the part of Department of Agriculture (USDA) Forest Service (FS) employees. Allegedly, FS employees had failed to complete mandatory training requirements and to maintain current and accurate FS training records. It was further alleged that a FS supervisor improperly refused to file an incident report involving an employee driving a FS vehicle.

The Secretary of Agriculture delegated authority to conduct an investigation into these allegations to the Department of Agriculture's Inspector General. A copy of that delegation is enclosed. The investigation required more time and resources than originally anticipated, and I requested an extension of the original due date. A copy of that request for an extension is enclosed.

The Inspector General's investigation is now complete, and I am enclosing a copy of the letter from Inspector General Phyllis Fong conveying the results of the investigation to Secretary of Agriculture Edward T. Schafer. I have also enclosed a copy of the full report prepared by Office of the Inspector General investigators. The Office of Inspector General investigators were unable to substantiate the allegations made in the original complaint. The investigation did not reveal any violations of Federal civil or criminal law.

The Secretary of Agriculture delegated authority to the Under Secretary for Natural Resources and Environment to perform all functions of the Secretary in respect to this case and to report directly to the Special Counsel. A copy of that delegation is enclosed.

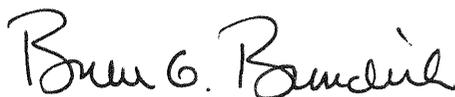
I am herewith transmitting Under Secretary Mark Rey's report to you in which he indicates that he has reviewed the complaint and the investigation by the Inspector General. He states that he has determined that no further management action by the Department of Agriculture is required. He further states that the Department of Agriculture considers the matter closed.

The Honorable Scott J. Bloch
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On September 29, 2008, we submitted by facsimile an advance copy of the letters from Inspector General Fong to the Secretary and by Under Secretary Rey to you. The originals of those letters are enclosed here.

If we can be of additional assistance in the matter, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Bruce G. Bundick".

Bruce G. Bundick
Director
Office of the Executive Secretariat

Enclosures

1. Delegation of authority by the Secretary to the Inspector General.
2. Delegation of authority by the Secretary to the Under Secretary for Natural Resources and Environment.
3. Request for extension.
4. Inspector General's letter to Secretary Schafer.
5. Office of Inspector General's report on investigation of complaint.
6. Under Secretary Mark Rey's letter to you.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

APR 29 2012

MEMORANDUM FOR PHYLLIS K. FONG
INSPECTOR GENERAL

FROM:

Edward T. Schafer
Secretary

SUBJECT:

Office of Special Counsel (OSC) Case No. DI-08-1002

Pursuant to subsection (d), paragraphs (1) through (4), of 5 U.S.C. 1213 (5 U.S.C. 1213(d)(1) - (4)), added by section 3(a)(13) of the Whistleblower Protection Act of 1989, you are hereby delegated authority to perform all functions of the Secretary of Agriculture thereunder respecting the subject case. Please report the results of your inquiry to the Under Secretary for Natural Resources and Environment, to whom I am delegating responsibility regarding this case for remedial functions described in 5 U.S.C. 1213(d)(5) and for reporting to the Office of Special Counsel under 5 U.S.C. 1213(e)(1).



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

MAY 29 2008

MEMORANDUM FOR MARK REY
UNDER SECRETARY
NATURAL RESOURCES AND ENVIRONMENT

FROM: Edward T. Schafer
Secretary

SUBJECT: Office of Special Counsel (OSC) Case No. DI-08-1002

Pursuant to subsection (d), paragraph (5), of 5 U.S.C. 1213 (5 U.S.C. 1213(d)(5)), added by section 3(a)(13) of the Whistleblower Protection Act of 1989, you are hereby delegated authority to perform all functions of the Secretary of Agriculture thereunder respecting the subject case. You are also delegated authority pursuant to subsection (e)(1) of the Act (5 U.S.C. 1213(e)(1)), to report the results thereof directly to the Special Counsel. I have delegated to the Inspector General responsibility respecting this case under 5 U.S.C. 1213(d)(1) - (4), and have asked that she forward the results of her inquiry to you for inclusion in the report you make to the Special Counsel in this matter.



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

July 30, 2008

The Honorable Scott J. Bloch
The Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW., Suite 300
Washington, D.C. 20036-4505

Dear Special Counsel Bloch:

On May 30, 2008, we received a referral from your office dated May 28, 2008, alleging misconduct and mismanagement on the part of Department of Agriculture (USDA), Forest Service (FS) employees. Allegedly, FS employees had failed to complete mandatory training requirements and to maintain current and accurate FS training records. It was further alleged that a FS supervisor improperly refused to file an incident report involving an employee driving a FS vehicle.

Please be advised that the Office of Inspector General reviewed the matter and determined that an OIG inquiry should be conducted. OIG found that the complainant had also contacted the Occupational Safety and Health Administration (OSHA) and that OSHA had been investigating the allegations since December 2007. OIG is presently coordinating its efforts with those of OSHA.

As the final response was due to your office by July 28, 2008, we are requesting an extension of 60 days so that ongoing investigative work can be completed. We are aware of the urgency of this referral and will complete the investigation and forward our report to your office as soon as possible.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Bruce G. Bundick".

Bruce G. Bundick
Director
Office of the Executive Secretariat



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



SEP 23 2008

The Honorable Edward T. Schafer
Secretary
U.S. Department of Agriculture
1400 Independence Avenue SW.
Washington, D.C. 20250-0001

Dear Mr. Secretary:

Pursuant to the requirements of 5 U.S.C. Section 1213(d), the enclosed investigative report is in response to U.S. Office of Special Counsel (OSC) referral OSC-DI-08-1002 (OIG Complaint Number PS-0801-0258). The referral is a whistleblower disclosure alleging that employees at the Department of Agriculture (USDA), Forest Service (FS), failed to complete their mandatory training requirements and maintain current and accurate FS training records. It was also alleged that an FS supervisor improperly refused to file an incident report involving an employee driving an FS vehicle.

Office of Inspector General (OIG), Investigations and Audit officials reviewed the allegations presented by the whistleblower. The OIG review determined that one of the three allegations presented by the whistleblower, Mr. Gerry Reynolds, the Salmon-Challis National Forest (SCNF) Safety Officer, was partially substantiated.

In reference to the allegation that SCNF employees failed to complete their mandatory training, Audit officials researched training requirements, interviewed key FS staff, and reviewed FS training records based on a sample of 30 selected FS employees. OIG verified that all 30 SCNF employees in the sample completed the six mandatory training classes. The six mandatory courses are Defensive Driving, Emergency Action Plan, Bloodborne Pathogens, Hazard Communications, Hazardous Waste Operations and Emergency Response, and Safety Awareness. Our review did not substantiate the allegation that employees at the SCNF failed to complete their mandatory training requirements.

It was further alleged that FS failed to maintain current and accurate training records in the FS database. OIG's review disclosed that 27 of the 30 (90 percent) records reviewed were properly entered into the database. For the three records not entered, OIG determined that FS officials provided an acceptable explanation why they were not entered. The SCNF has subsequently updated the database for the three records not entered. These findings were discussed with

Mr. William Wood, SCNF Forest Supervisor. OIG advised Mr. Wood to issue a memorandum to FS staff about the importance of timely providing safety training records to the Safety Officer and that unit supervisors would be held accountable for noncompliance. In addition, OIG suggested that he require the Safety Officer to provide, on a periodic basis, a status report on those units that have failed to provide training records and/or to update the database.

The last issue involved the alleged "near miss" incident and the FS supervisor's improper refusal to record the incident into the Safety and Health Information Portal System (SHIPS). SHIPS is an FS on-line system used for recording and managing safety incidents. According to the FS Users Manual for SHIPS, Section 1: Introduction to SHIPS, "SHIPS will hold records on injuries, illnesses, and near misses. SHIPS produces the CA-1 for reportable injuries and the CA-2 for reportable illnesses."

OIG, Investigations officials interviewed all parties involved in the alleged August 18, 2007, incident, Mr. Reynolds and his wife, Nancy Reynolds (Exhibits 8 & 13); and Mr. Randy Lambeth, the driver of the FS vehicle, and his passenger, Ms. Judy Wiley, an FS employee (Exhibits 12 & 14). Mr. Reynolds was off duty at the time of the incident and was driving his personally owned vehicle. In addition to these parties, the Sheriff's Office (Exhibit 15) and the Lemhi County Prosecutor's Office (Exhibit 16) were also interviewed. The Sheriff's Office was provided with several different accounts of what occurred. The accounts varied so much that there was no way to determine who was at fault. The Prosecutor's Office declined prosecution of the matter. In OIG's interview of Mr. Lambeth, he stated that his vehicle may have touched the two double yellow lines, but he did not go past them (Exhibit 12). However, Mr. Kurt Werst, Mr. Lambeth's immediate supervisor, and Mr. Lyle Powers, Mr. Reynold's supervisor, both met with Mr. Lambeth to get his version of the incident, and according to Mr. Powers' account of the meeting, Mr. Lambeth admitted that he had crossed the double yellow line a small amount but had clear eye contact with Mr. Reynolds. As a result, Mr. Lambeth was verbally counseled and reprimanded by Mr. Werst and Mr. Wood. The verbal reprimand included the recommendation that Mr. Lambeth review his defensive driving techniques while driving FS vehicles.

As to the "refusal" to record the incident into the SHIPS, OIG, Investigations officials interviewed Mr. Powers, who, as Mr. Reynold's supervisor would have been the official responsible for recording the incident in SHIP. Mr. Powers stated that he did not report the incident because he did not believe it to be a "near miss." He also indicated his mistaken belief that SHIPS was to be used only for actual accidents (Exhibit 6). Mr. Wood confirmed that he did not think Mr. Powers thought about entering the incident as a "near miss" into SHIPS and stated his own belief that the incident did not rise to that level based on his interviews of three of the witnesses to the accident (Exhibit 17).

In sum, based on the conflicting evidence, OIG could not determine whether a "near miss" incident occurred between Mr. Lambeth and Mr. Reynolds. For much the same reasons, OIG determined that there was no improper "refusal" to record the incident in SHIPS.

The Honorable Edward T. Schafer
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Based on the information above, we have closed our file concerning this referral. Should you require additional information about this response, please do not hesitate to contact me at (202) 720-8001, or have a member of your staff contact Ms. Karen L. Ellis, Assistant Inspector General for Investigations, at (202) 720-3306.

Sincerely,

A handwritten signature in cursive script, appearing to read "Phyllis K. Fong".

Phyllis K. Fong
Inspector General

Enclosures



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

SEP 27 2008

The Honorable Scott J. Bloch
The Special Counsel
U.S. Office of Special Counsel
Washington, D.C. 20036-4505

Subject: OSC File No. DI-08-1002

Dear Mr. Bloch:

I am writing in regard to the above-referenced whistleblower complaint on behalf of Secretary of Agriculture Edward T. Schafer, who on May 29, 2008, delegated to me the authority to act on his behalf concerning this matter. I have enclosed a copy of that delegation.

As you know, the whistleblower complaint alleged that employees of the Forest Service (FS) of the Department of Agriculture had failed to complete mandatory training requirements and to maintain current, accurate FS training records. In addition, it was alleged that an FS supervisor had improperly refused to file an incident report involving an employee driving an FS vehicle and that the FS supervisor had improperly refused to record the alleged "near miss" incident in the FS' Safety and Health Information Portal System (SHIPS).

The Secretary delegated the responsibility to investigate the complaint to the Department of Agriculture's Inspector General. I have reviewed the enclosed report provided to Secretary Schafer by the IG, and I have determined that the allegations of misconduct were not substantiated by the investigation. Specifically, I note that the alleged failure of employees to complete mandatory training requirements was unsubstantiated by the IG. Further, I note that the FS training records referenced in the complaint have been updated. The IG has advised the Forest Supervisor to emphasize the importance of timely maintenance of safety records and to require periodic status reports on units failing to provide training records and/or to update the database. Finally, I have noted that OIG has found no improper refusal to record the incident in the SHIPS.

I have reviewed the complaint and the Inspector General's investigation report. Based on that review, I have determined that no further management action is required. We therefore consider the matter closed. Should you have any questions or wish additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Rey".

MARK REY
Under Secretary
Natural Resources and Environment

Enclosures



UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF INSPECTOR GENERAL-INVESTIGATIONS

Western Region

75 Hawthorne Street, Suite 200

San Francisco, California 94105

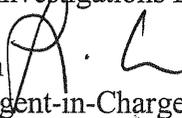
Phone: 415-744-2887

Fax: 415-744-2896



DATE: September 10, 2008

TO: Harold Stanford
Special Agent-in-Charge
Program Investigations Division

FROM: Lori Chan 
Special Agent-in-Charge

SUBJECT: OSC Referral
Salmon-Challis National Forest
(SF-0801-0588, PS-0801-0258)

Pursuant to the requirements of 5 U.S.C. Section 1213 (d), this is a report in response to the U.S. Office of Special Counsel (OSC) referral, dated May 28, 2008, to the Secretary of the U.S. Department of Agriculture (USDA). The referral is a whistleblower disclosure that employees at the USDA, Forest Service (FS), failed to complete their mandatory training requirements and to maintain current and accurate FS training records. It was also disclosed that a supervisor improperly refused to file an incident report involving an employee driving a FS vehicle.

In November 2007, after numerous attempts to get the District Rangers/Managers to cooperate on correcting safety and health violations as well as providing training attendance documentation, the whistleblower contacted the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA). On December 18, 2007, the OSHA investigators arrived at the Salmon-Challis National Forest (SCNF). It was around this same time that the whistleblower also forwarded his request to the OSC.

OSHA made three visits from December 2007 to January 2008. We obtained a DRAFT OSHA "Violation Summary" report pertaining to safety and health violations at SCNF. This report was sent to the OSHA national office in Washington, DC for their review.

Kurt Werst, Lambeth's immediate supervisor and Lyle Powers, Reynold's supervisor, both met with Lambeth to get his version of the near miss incident. Lambeth admitted that he had crossed the center line a small amount but had clear eye contact with Reynolds. The admission by Lambeth that he had crossed the center line led to counseling and a verbal reprimand by Werst and Wood. The verbal reprimand included the recommendation that Lambeth review his defensive driving techniques while driving FS vehicles.

Our investigation determined that there was no evidence to conclude that a near miss incident occurred between Randy Lambeth, a FS employee driving a FS vehicle, and Gerry Reynolds, SCNF Safety Officer (SO), who was an off-duty FS employee driving his Personally Owned Vehicle (POV) at the time of the incident.

Refusal to Record the Incident into the Safety and Health Information Portal System (SHIPS)

SHIPS is a FS on-line system used for recording and managing safety incidents. Per Section 1: Introduction to SHIPS, "SHIPS will hold records on injuries, illnesses, and near misses. SHIPS produces the CA-1 for reportable injuries and the CA-2 for reportable illnesses."

USDA-OIG-OI interviewed Reynold's supervisor, Lyle Powers (Exhibit 6). Powers did not enter the incident into SHIPS because he associated SHIPS to CA-1s and CA-2s, not near misses. Also, since Reynolds was off duty at the time, he considered him a private citizen issuing a complaint. Lastly, there were two divergent versions of the events and no way to determine what really occurred.

Wood, Lambeth's supervisor, was also interviewed (Exhibit 17). Wood stated that after interviewing three of the witnesses to the August 18, 2007, near miss incident, he concluded that the incident did not rise to the level of a near miss incident and should not have been entered into SHIPS. Due to the two different versions and no way to prove otherwise, Powers' decision not to enter the incident was a correct one.

Our investigation determined that the FS did not refuse to record the information into SHIPS; the FS personnel did not feel it was appropriate to add the information into SHIPS because they could not determine that the incident was a "near miss".

Based on the information above, we will not be conducting any additional investigation or audit work on this referral. Attached is a copy of our Report of Investigation and Audit memorandum documenting our conclusions. If you have any questions, or need any additional information, please contact me at 415-744-2887.

Attachments