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September 23, 2009

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

Re: OSC File Nos. DI-07-2722; DI-07-3064; and DI-07-3065

Dear Mr. President:

The Office of Special Counsel (OSC) received a disclosure from Mr. David M. Penhollow, Mr. Thomas R. Swinson, and Mr. Albert J. White ("whistleblowers"), alleging that the Army erroneously paid Hazard Duty Pay (HDP) to Army Explosive Ordnance Disposal (EOD) employees of the Department of the Army, Echo Company, 22d Chemical Battalion, Aberdeen Proving Ground (APG), Aberdeen, Maryland, and the Army's Pine Bluff Arsenal, Pine Bluff, Arkansas. The whistleblowers consented to the release of their names.

In October 2007, OSC requested that the Honorable Pete Geren, Secretary of the Army, conduct an investigation into the whistleblowers' disclosures pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary delegated authority to sign and review the report to the Honorable Ronald James, Assistant Secretary of the Army, and tasked the Office of the Staff Judge Advocate, U.S. Army Forces Command, Fort McPherson, Georgia, with conducting the investigation.

In a report submitted to OSC dated February 2, 2009, the agency substantiated the whistleblowers' allegations and concluded that the Army had improperly paid HDP to EOD employees. The report demonstrated that the physical exertion and hazards inherent in EOD duties were specifically addressed in both the duty description and the factors analysis used to determine the pay grade of the position. Because these factors were already taken into consideration in determining the pay grade, the additional HDP was repetitive, and, thus, erroneous.

Specifically, the investigation found that the Army had violated the law governing HDP. See 5 U.S.C. § 5545(d) and 5 C.F.R. 550.904. In late July 2006, the whistleblowers discovered that employees were paid HDP improperly. Mr. White, Echo Company Chief, then informed his superiors, Lt. Col. Patrick Terrell and Ms. Charlene Jensen, who contacted Ms. Maureen Clifton of the APG Civilian Personnel Advisory Center (CPAC), about the improper payments.

Nonetheless, the report stated that Lt. Col. Terrell, Ms. Jensen, and CPAC, failed to address the HDP issues promptly or appropriately.

With respect to Ms. Jensen, the report concluded that even though she initially took action by contacting CPAC, she did not sufficiently investigate whether EOD employees were erroneously receiving HDP. It was only after the OSC referral that she finally was prompted to conduct an inquiry about HDP, and found that the allegations had merit. As a result, on January 18, 2008, Ms. Jensen terminated all HDP payments to employees. Furthermore, Ms. Jensen established an Oversight Committee to review HDP claims to determine each claimant's eligibility for the pay on a case-by-case basis. Additionally, Ms. Jensen provided a briefing and training to all Analytical and Remediation Activity supervisors and employees to explain her decision for the termination of HDP payments.

As a result of the investigation, Col. Raymond Van Pelt, Deputy Commanding Officer, formally counseled Ms. Jensen. He said that he was satisfied that Ms. Jensen appreciated her responsibilities as a senior member of the agency, and that he was confident that Ms. Jensen would not repeat past errors. Col. Van Pelt also formally counseled Lt. Col. Terrell and stated that he was equally satisfied that Lt. Col. Terrell understood the need to address issues concerning employee pay promptly.

The report reflects that the agency has undertaken a number of corrective actions. The Army has acted to correct the HDP practices by implementing new application and approval procedures, training employees and supervisors to ensure an understanding of established standards, and has established an Oversight Committee to evaluate and take action on all future claims for HDP. Additionally, Assistant Secretary Ronald James has directed that an evaluation be conducted of the Army HDP Program in order to assess whether all Army units are in compliance with applicable laws and regulations pertaining to the payment of HDP. As a result of these corrective actions, Assistant Secretary James concluded that the Army took appropriate action to correct past, improper payments of HDP to those employees who were not authorized to receive it.

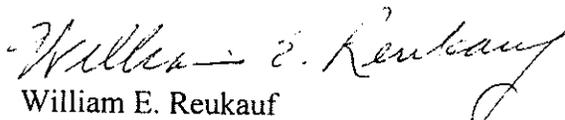
The whistleblowers' comments to the report reflect appreciation of the information and the answers that the report provided, but frustration and concern that, in their view, the agency had minimized the senior leaders' negligence in the performance of their supervisory duties. The whistleblowers stated that the taxpayers deserve to know what monies were saved by identifying and correcting the erroneous HPD, and that the Army and its stakeholders deserve a better accounting of its senior leaders, more than a counseling session, to ensure that these or similar events do not occur again. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the agency's report and the whistleblowers' comments to you.

I have reviewed the disclosures, the agency report, and the whistleblowers' comments. Based on that review, I have determined that the agency report contains all of the information required by statute, and that its findings appear to be reasonable.

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As required by § 1213(e)(3), I have sent copies of the agency report and the whistleblowers' comments to the Chairmen and Ranking Members of the Senate and House Armed Services Committees. I have also filed copies of the agency's redacted report and the whistleblowers' comments in our public file and closed the matter. OSC's public file is now available online at [www.osc.gov](http://www.osc.gov).

Respectfully,

  
William E. Reukauf  
Associate Special Counsel

Enclosures