

Recent Resolutions and Determinations:

OSC Corrective Action Cases:

OSC settles whistleblower retaliation case involving Customs and Border Protection employee.

An employee of the U.S. Customs and Border Protection (CBP) alleged that he was retaliated against for making a series of whistleblowing disclosures to OSC and the Department of Homeland Security's Office of Inspector General (OIG). The whistleblower had first reported to four levels of his chain of command that a radio operator responsible for providing 911 emergency services and radio support to CBP agents on the field was chronically sleeping on the job. After management failed to take any action, the employee contacted OSC and OIG. Within days of his OIG disclosure, the whistleblower was detailed to a different station and forced to perform demeaning tasks, like washing cars. The detail lasted over nine months, during which time the CBP investigated the whistleblower for misconduct. He was eventually returned to his position, but only after receiving a proposed 12-day suspension for alleged insubordination, which was later reduced to a letter of reprimand. After returning to his position, the whistleblower alleged that he was subjected to various retaliatory actions, including a proposed removal based on three incidents of alleged misconduct. OSC determined that all of the personnel actions suffered by the employee were because of protected whistleblowing. A global settlement of all actions was reached earlier this year.

OSC negotiates a \$140,000 settlement on behalf of HUD whistleblower. A U.S. Department of Housing and Urban Development (HUD) employee disclosed a possible violation of law, rule, or regulation concerning a HUD grant and related loan guarantee. The employee alleged that the agency retaliated against him by reassigning him to a different city because of his whistleblowing activity. Prior to OSC completing its investigation, HUD agreed to pay the complainant \$140,000 to settle the claim.

OSC settles First Amendment case at U.S. Naval Academy. The case involved a tenured professor at the U.S. Naval Academy (USNA) who alleged he was retaliated against for exercising his First Amendment rights. The professor had published articles asserting that USNA admitted unqualified minorities and athletes over more qualified students who would make better military officers. OSC's investigation uncovered evidence indicating that USNA illegally denied the professor a merit pay increase because of his public statements. One official told USNA faculty members that the professor should not be rewarded for the manner in which he had expressed his concerns outside USNA. Subsequently, the professor was also issued a warning letter informing him that if he continued making inappropriate public statements, disciplinary action could be taken against him. While the investigation was ongoing, OSC negotiated an informal settlement of the complaint.

OSC negotiates favorable settlement on behalf of Census Bureau whistleblower. The employee, a former Census Bureau temporary field office supervisor, was terminated a week after disclosing to his supervisor that two crew leaders were improperly processing fingerprint cards and that two new enumerators had not yet taken the oath of office. Earlier this year, the parties agreed to settle the matter. The Census Bureau agreed to: 1) remove all documentation from the whistleblower's personnel file relating to his initial termination; 2) issue an SF-50 reflecting that

his temporary appointment had expired; 3) remove all documentation from the whistleblower's Disciplinary and Adverse Action File; and 4) give him a lump-sum payment of \$3,159.00.

OSC investigation leads to more expansive telework policy at U.S. Department of Defense. An Attorney Advisor with the Department of Defense, Defense Finance and Accounting Service alleged that the agency unlawfully prevented employees from participating in telework based on their marital status. According to the employee, the agency's policy of limiting telework to those employees who were separated from a spouse or minor child as a result of the Office of General Counsel's permanent change of duty station was discriminatory. As a result of OSC's investigation, the agency took action to change the policy to allow all eligible employees to telework, subject to the discretion of the employees' supervisors.

OSC negotiates \$126,000 settlement in case involving improper termination of U.S. Coast Guard employee. An employee of the U.S. Coast Guard alleged that he was improperly terminated during his probationary period in violation of his due process rights. In his removal letter, the agency stated that the employee was required to serve a new probationary period when he accepted the position of Construction Inspector, and as such, he was not entitled to due process rights. The employee had signed a statement agreeing to a new probationary period when he took the new position. OSC determined, however, that the employee did not waive his due process rights by signing the probationary statement. The Coast Guard agreed to: 1) give the employee a monetary settlement of \$126,000, and 2) issue the employee an SF-50 reflecting that he voluntarily resigned from his position.

OSC Disciplinary Action Cases:

OSC investigation results in disciplinary action against Bureau of Prisons employee. An anonymous complainant alleged that management officials at the Bureau of Prisons (BOP) violated the law by inappropriately selecting a candidate for a position as a technician. The hiring process was allegedly manipulated to ensure the preferred candidate's selection and appointment. During the investigation, OSC learned that the vacancy announcement for this position was canceled after a "certificate of eligibles" was produced. The position was then re-announced at a lower grade, with a new crediting plan, allegedly to qualify the preferred candidate. Once the position was re-announced and the preferred candidate made the certificate of eligibles, she was interviewed, selected, and appointed to the position. After OSC reported the results of its investigation, the BOP sought a waiver under 5 U.S.C. § 1214(f) to discipline the Human Resources (HR) Officer for committing a prohibited personnel practice. OSC notified the BOP that the request was granted, and the BOP issued the HR Officer a 14-day suspension.

Other OSC Activity:

Department of Energy changes internal policies and regulations in response to OSC investigative report. A nuclear courier with the Department of Energy (DOE) alleged that DOE retaliated against him because he appealed a 30-day suspension to the Merit Systems Protection Board (MSPB) and made disclosures to the Office of Inspector General (OIG). The employee had been suspended for 30 days because he misused a government vehicle. He subsequently appealed the

suspension to the MSPB, and several months later, his supervisors revoked his certification to guard nuclear materials under DOE's Human Reliability Program (HRP). Under DOE policy, the revocation of the employee's HRP certification resulted in a mandatory indefinite suspension. The suspension lasted 13 months, during which time the employee administratively appealed the revocation of his HRP certification. He also disclosed violations to the OIG. After the DOE Deputy Secretary eventually decided the employee should be recertified, DOE officials placed him back through the certification process and again declined to recertify him, and he was suspended indefinitely for a second time. OSC obtained three orders from the MSPB that temporarily stayed the employee's suspension while OSC investigated the case. The investigation concluded that DOE's policy of indefinitely suspending employees with revoked HRP certifications violated due process. OSC sent a formal Report of Prohibited Personnel Practice and Corrective Action Letter to DOE Secretary Steven Chu recommending that DOE provide the employee with back pay and rescind its mandatory suspension policy. DOE informed OSC that while it disagreed with OSC's conclusion that it had violated the employee's due process rights, it was rescinding its policy of mandatory indefinite suspensions for the revocation of HRP certifications. Furthermore, a DOE working group is drafting regulatory changes to expedite the internal appeals process to avoid any lengthy delays, like the 13 months that the employee endured between the revocation decision and the resolution of his appeal.