



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

SPECIAL COUNSEL LERNER ANNOUNCES THAT OSC HAS OBTAINED AN ORDER FROM THE U.S MERIT SYSTEMS PROTECTION BOARD THAT STAYS THE FIRING OF A FEDERAL WHISTLEBLOWER

FOR IMMEDIATE RELEASE

CONTACT: Darshan A. Sheth, (202) 254-3617; dsheth@osc.gov

WASHINGTON, DC/July 6, 2011 – Special Counsel Carolyn Lerner of the U.S. Office of Special Counsel (OSC) today announced that her office obtained a July 5 order from the U.S. Merit Systems Protection Board (MSPB) that stays the firing of federal whistleblower David Butterfield so that OSC may have time to investigate the matter. Agent Butterfield is an air interdiction pilot with the U.S. Department of Homeland Security's (DHS) Customs and Border Protection agency in San Diego, California. In 2007, Butterfield disclosed to the agency's Office of Inspector General that his fourth-level supervisor had compromised a potential internal affairs investigation by secretly tipping off Butterfield to the fact that Butterfield was the subject of an ongoing internal affairs investigation. Upon advice of his personal attorney, Butterfield reported his supervisor's actions to DHS authorities, who in turn investigated the matter.

OSC's stay request alleged that because of his whistleblowing, DHS stripped Butterfield of his service weapons and ordered him to submit to physical and psychiatric fitness for duty examinations, which he ultimately passed. OSC further alleged that because of these alleged retaliatory actions, Butterfield was grounded for more than two years and restricted from flying his plane. Although he has remained on the federal payroll during his ordeal, he also has been prevented from performing his job of detecting, intercepting and tracking suspicious cargo and people that illegally cross our country's borders.

On July 2, DHS fired Butterfield ostensibly under the terms of an earlier settlement agreement – called a "last-chance" agreement – that Butterfield and DHS had entered. In a matter of first impression, OSC argued to the Board last week that the employer's retaliatory actions denied Butterfield the opportunity to do his job and, therefore, denied him the benefit of his settlement agreement. The employer, OSC argued, should not be allowed to benefit from its own retaliation by holding Butterfield to the settlement terms, when it had not upheld its own end of the agreement by allowing him to perform his duties.

In granting OSC's stay request, MSPB Chairman Susan Grundmann found that OSC had presented reasonable grounds to believe that DHS fired Agent Butterfield in violation of the federal protections for whistleblowers. She therefore ordered that Butterfield's firing be stayed for 45 days.

Special Counsel Lerner issued the following statement: “I plan to use my authority to stay questionable personnel actions against federal whistleblowers so that they are protected from the immediate consequences of illegal retaliation. In partnership with the Merit Systems Protection Board and all federal agencies, I intend to rebuild the trust of all federal whistleblowers in OSC and in our whistleblower protection program. By obtaining a stay of Agent Butterfield’s firing, we have successfully minimized his suffering while the OSC investigation process proceeds. I want to thank the Chairman for acting expeditiously and for giving this case her personal attention over the long holiday weekend.”

The U.S. Office of Special Counsel (OSC) is an independent federal agency that investigates and prosecutes complaints alleging the commission of prohibited personnel practices. Pursuant to statute, OSC has authority to seek voluntary corrective action from federal agencies or through administrative litigation before the U.S. Merit Systems Protection Board (MSPB). OSC also has authority to seek disciplinary action before the MSPB. For more information, please visit our website at www.osc.gov or call (800) 872-9855.