

March 5, 2017

Mr. Mark Robbins, Vice Chairman
US Merit Systems Protection Board
1615 M St, NW
Washington, DC 20419

Subject: My outstanding claims of law-breaking and related professional misconduct at US Merit Systems Protection Board (MSPB)

Dear Vice Chairman Robbins,

As you may know, for a decade or more I have been publicly claiming that MSPB, since its creation, has violated its positive, non-discretionary, statutory duty to conduct the requisite “special studies” of the US Office of Special Counsel (OSC) and other federal agencies to determine and report, to the President and Congress, “as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”^{1 2}

Absent this decades-long law-breaking on MSPB’s part, I think a reasonable case can be made that 9/11 does not happen, nor loss of space shuttles, no VA health care scandals, no going to war in Iraq for false reasons, nor the economic meltdown of 2008, etc - i.e. America is much stronger and united in 2017 than it is. This is because MSPB’s law-breaking enables decades of law-breaking at US Office of Special Counsel (OSC) in its not complying with its aspects of non-discretionary statutory duties to protect federal employees from reprisal and other types of

¹ See 5 U.S.C. §1204(a)(3). While MSPB has conducted discretionary special studies of a variety of topics over the decades, it has failed to conduct the non-discretionary special studies of OSC - or any other agency - necessary for it to make this statutory required determination.

² In Carson v. MSPB, docket no. 07-0445, District Court for the District of Columbia (D.D.C.), the Department of Justice, representing MSPB, claimed there was an “administrative interpretation” of §1204(a)(3), despite there being no MSPB regulation for its special studies, see pages 6 and 7 of its opposition brief at http://whsknox.blogs.com/2017/opposition_show_cause.pdf.

MSPB is in violation of FOIA law in refusing or failing to respond, for over a year now, to my FOIA request for any such “administrative interpretation” that has not been published in the federal register, see <http://whsknox.blogs.com/2017/foia-request-2016-interpret.pdf>.

At her 2009 Senate Confirmation Hearing, former MSPB Chairman Susan Grundman pledged, under oath, that MSPB would conduct such special studies. MSPB failed or refused to do so, despite her sworn commitment, see <http://whsknox.blogs.com/2017/grundman-2009-confirmation-excerpts.pdf>.

prohibited personnel practices (PPPs), which has allowed dysfunction and corruption to take deep root in many federal agencies.³ Because of MSPB's law-breaking, the President does not have the information he needs to comply with his primary non-discretionary statutory duty to two million federal agency employees - to "take any action necessary" to ensure federal agency employment "embodies" the merit system principles.⁴

In agencies such as FBI and intelligence agencies, which are excluded from OSC's PPP jurisdiction, MSPB's law-breaking prevents the heads of those agencies from having have the information necessary to comply with their primary non-discretionary statutory duty to their employees - to "take any action necessary" to ensure their working conditions "embody" the merit system principles.⁵

On February 8, 2017, MSPB attorney Jeffrey Gauger, in my opinion, engaged in professional misconduct at oral argument at the US Court of Appeals for the Federal Circuit (CAFC) in his misstatements of material fact about case record in Carson v. MSPB, docket no. 2015-3135; - 3211. The CAFC made "sealed or confidential" my motion to correct his misstatements of material fact, in which I also requested the Court take disciplinary action against Mr. Gauger, which is consistent with its rules for attorney discipline.⁶

The novel question of law in this case is whether OSC's failure or refusal to comply with aspects of its non-discretionary statutory duties to protect a federal agency employee from reprisal can create "any significant change in the working conditions" for the employee. I suspect Mr. Gauger's misconduct may have been a ploy to distract the Court from asking about the related case, Carson v. MSPB, docket no. 14-1306, U.S. Court of Appeals for the District of Columbia Circuit. The novel question of law in that case is whether MSPB's failure or refusal to comply with its non-discretionary statutory duty to conduct the special studies necessary to determine "as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected" can create "any significant change in the working conditions" for a federal agency employee.

Mr. Robbins, as I understand your interpretation of legal ethics, you are NOT the Vice Chairman

³ See <http://whsknox.blogs.com/special-counsel/>. Only OSC has the positive, non-discretionary statutory duty to protect federal agency employees from reprisal and other types of PPPs, see 5 U.S.C. §§1212(a)(1) and 1214(a)(1)(A).

⁴ 5 U.S.C. §2301(c).

⁵ 5 U.S.C. §2301(c).

⁶ This motion and related documentation is available at <http://whsknox.blogs.com/special-counsel/>. Mr. Gauger's response is due by March 9, 2017.

of MSPB, now responsible to be its “chief executive and administrative officer,”⁷ in responding to my concerns of MSPB law-breaking. Instead, you apparently consider MSPB to be your client in an attorney-client relationship, and see your primary professional duty to do whatever you can to evade accountability for MSPB’s decades-long failure and refusal to comply with its non-discretionary statutory duties to conduct the special studies necessary to make its non-discretionary statutory determination, per 5 U.S.C. §1204(a)(3).

I am a licensed professional engineer (PE).⁸ As a PE, I am a “mandated reporter” - regardless of possible workplace retribution - when necessary to “hold paramount the public (including workplace) health and safety in the performance of professional duty.” For example, a PE cannot allow substandard steel to be used in the bridge, because their employer would make more money - the PE has a positive legal and professional duty to “blow whistles,” regardless of possible workplace retribution, and, if their concerns are still not resolved, to resign.

Apparently, by your reading of legal ethics, you are a “mandated NON-reporter” about MSPB’s failure or refusal to comply with its non-discretionary statutory duties to conduct the special studies of OSC necessary to determine whether federal agency PEs who risk their careers to do their duty to protect the public health and safety are adequately protected by OSC from reprisal. As you apparently understand legal ethics, you must put the interests of your client, MSPB, above the public health and safety, even while federal agency PEs do the opposite - losing their jobs, savings, families in the process while MSPB fails to determine whether OSC fails to protect them.

How can someone responsible to determine whether federal agency PEs are adequately protected by OSC from reprisal knowingly break the law in refusing or failing to do so, based on the argument that it does not create “any significant change in their working conditions” and still sleep at night? You can and do, Mr. Robbins - you apparently just see yourself as being a good attorney for your client MSPB.

Thank you for whatever consideration you deem my point of view to merit. Like it or not, our unprecedented global civilization is UTTERLY dependent on its engineered underpinnings. When federal agency PEs cannot or do not comply with their positive legal duty to “hold paramount the public health and safety in the performance of professional duties” because MSPB will not comply with its duty to determine whether OSC is adequately protecting them from reprisal - then it cannot end well for America and civilization.

⁷ 5 U.S.C. §1203

⁸ My agency, the US Department of Energy, knew I was a PE when it hired me (being a PE was a way to qualify for the position) and reimburses my PE license renewal fee.

Respectfully,

 /s/
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