



The sections of law Appellant alleges OSC is violating, in whole or part, include:

5 U.S.C. §§ 1213(g)(1) and (g)(2)

5 U.S.C. §§ 1213(b) and (c) for employees of Tennessee Valley Authority (TVA) and other wholly-owned government corporations

5 U.S.C. §§ 1214(a)(1)(A), (a)(1)(C), (a)(1)(D), (a)(2)(A), (a)(4), (b)(2)(A)(i) and (ii), (b)(2)(D), (e), and requirements of the "termination statement" found in endnotes of § 1214, citing Pub. L. 103-424 §12(b).

The Appellant alleges MSPB is violating 5 U.S.C. §1204(a)(3) insofar as failing or refusing to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”

The Appellant alleges the President is unable, refusing and/or failing to comply with 5 U.S.C. § 2301(c).

The Appellant alleges the heads of the FBI and intelligence community agencies are unable, refusing and/or failing to comply with 5 U.S.C. § 2301(C).

The Appellant alleges the law-breaking by OSC, MSPB and/or the President precludes Department of Energy (DOE) Secretary Perry (as other agency heads) from being able to comply, in any objective way, with their duty at 5 U.S.C. § 2302(c)(2)(A) in "preventing prohibited personnel practices (PPPs)" in their agencies.

The Appellant alleges DOE attorneys unlawfully conspired with agency managers and HR specialists to engage in reprisal against him for prevailing in whistleblower appeal at MSPB in the 1999-2002 time period and then cloaked their law-breaking by abusing attorney-client privilege in subsequent litigation at MSPB.

***(2) the date(s) you made the disclosure(s);***

September 11, 2018 (but appellant has been making them for over 15 years as his personal, post 9/11, mission)

See pages 12, 30 and 35 of IRA appeal

***(3) the individual(s) to whom you made any disclosure(s);***

Secretary of Energy Perry and everyone else in appellant’s chain of command in the Department of Energy, starting with his immediate supervisor, Chelsea Hubbard.

See pages 20, 31, 35, 51 of IRA appeal

***(4) why your belief in the truth of any disclosure(s) was reasonable;***

Appellant understands he must, at this stage, only demonstrate non-frivolous claims of reasonable belief in his whistleblower disclosures. If that is incorrect, he desires both discovery of DOE, MSPB and OSC, as well as the opportunity to supplement his declaration with substantial documentary evidence of his reasonable belief.

See pages 37-50 of IRA appeal.

See appellant's related declaration, TAB A

***(5) the action(s) the agency took or failed to take, or threatened to take or fail to take, against you because of your disclosure(s);***

The appellant's supervisory chain has refused or failed to comply with its statutory duties for appellant's working conditions. These new statutory duties were created in December 2017 by Pub. L. 115-91 and are found at 5 U.S.C. §4302(b)(2)(A). They were, as required by law, incorporated into a critical performance element in their performance plans, starting with their FY 2019 performance plans that commenced in October 2018.<sup>1</sup>

Their failure or refusal to comply with their statutory duties for appellant's working conditions is a significant change to the working conditions the law mandates. This is a personnel action by 5 U.S.C. §2302(a)(2)(A)(xii).

Appellant's supervisory chain is responsible, by law - a law which is incorporated as a critical element in their performance plans - to ensure appellant working conditions includes a supervisory chain that:

- 1) respond constructively to appellant's whistleblower disclosures,
- 2) take responsible action to resolve appellant's whistleblower disclosures, and
- 3) foster an environment in which appellant feels comfortable making whistleblower disclosures to them.

None of this is now present for the appellant for the whistleblower disclosures listed in this

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<sup>1</sup> A November 2011 MSPB Special Study, "Blowing the Whistle: Barriers to Federal Employees Making Disclosures" determined employee fear of the agency ignoring their whistleblower disclosure was a larger deterrent to whistleblowing than fear of workplace reprisal. Pages 60-61 of the IRA appeal is the MSPB press release for this special study.

The 2017 change in the law, mandating agency supervisors, as a condition of their employment, create working conditions where their subordinates would feel comfortable making whistleblower disclosures, because the supervisors would respond constructively to them and take responsible action to resolve them, resulted from the 2011 MSPB Special Study.

appeal and their absence creates an unlawful “significant change in working conditions” for the appellant.

See pages 12-13, 31-32, and 52-57 of the IRA appeal

***(6) why you believe your disclosures were a contributing factor to the personnel action(s);***

The appellant made whistleblower disclosures. His supervisory chain had a positive legal duty to not ignore them, but still ignored them and refused to discuss them with appellant.

This is contrary to their statutory duty to create working conditions for appellant where his whistleblower disclosures are not ignored. As a direct result of his whistleblower disclosures, his supervisory chain changed his working conditions by refusing to respond, as required by law and their performance plans, constructively to them and take responsible action to resolve them.

See pages 12-13, 30-33, and 62 of IRA appeal

***(7) the date of your complaint to OSC and the date that it notified you it was terminating its investigation of your complaint.***

Appellant’s complaint was filed with OSC on December 6, 2018

See pages 12, 26, 27, 34 of IRA appeal.

OSC notice of the termination of its investigation is dated March 29, 2019

See pages 14-15 of IRA appeal.

Respectfully,

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph Carson, PE  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
Pro Se

# Tab A



For over 15 years, as my personal, post-9/11 mission, I have made a close study of OSC interpretation and implementation of its non-discretionary statutory duties in its PPP function and its whistleblower disclosure functions. I have identified about a dozen specific, non-discretionary, statutory duties that I claim OSC is violating, systematically for decades, in whole or part.

### **For OSC**

I have now spent many hundreds of hours making FOIA requests of OSC, reading its annual reports to Congress, reading congressional testimony, reading congressional reports about OSC, GAO reports about OSC, news stories about OSC, litigating with OSC, talking with others who have sought OSC's protection from OSC, etc. My purpose is to obtain an objective resolution of my whistleblower disclosures.

I have many thick 3-ring binders containing relevant information in support of my "reasonable belief" of my whistleblower disclosures against OSC. In my litigation with OSC, it does not even defend its interpretations of the contested law, it gets my appeals dismissed on other grounds. OSC has no Inspector General, its General Counsel acts as its Inspector General.

### **For MSPB**

With respect to MSPB, I claim it is refusing or failing to comply with its non-discretionary statutory duty to "report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected." I have now also spent many hundreds of hours seeking an objective resolution of this whistleblower disclosure, including studying MSPB reports, GAO reports, press stories, Congressional testimony, Congressional reports, FOIA requests, litigation, etc. I have a significant amount of documentary evidence supporting my "reasonable belief" in this whistleblower disclosure. MSPB has no Inspector General, its General Counsel acts as its Inspector General.

### **In support of my response to jurisdictional item 5:**

Chelsea Hubbard, my immediate supervisor, has verified to me that her performance plan contains the critical performance element required by 5 U.S.C. §4302(b).

### **In support of my response to jurisdictional item 4: (Note: what follows tracks with pages 39-50 of my IRA appeal)**

**5 U.S.C. § 1213(g)(1):** My testimony is that OSC has, in a recent response to my FOIA request, informed me that the MSPB initial and final decisions of 2014 and 2015 notwithstanding, OSC continues to claim its previous position, that it cannot - as a matter of law, not policy - receive and refer whistleblower disclosures from DOE contractor employees to the Secretary of Energy. I think this an abuse of authority by OSC. Specifically, that OSC, despite determinations from

MSPB that it has, as a matter of law, the statutory discretion to receive and refer such disclosures, still claims to lack that discretion. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. section 1213(b) and (c)** (for employees of Tennessee Valley Authority (TVA) and other wholly-owned government corporations listed at 31 U.S.C. §9101). My testimony is that to my knowledge, OSC has never defended its claim that even though a 1994 law explicitly states these employees can seek OSC's protection from reprisal for making whistleblower disclosures to OSC; OSC somehow lacks jurisdiction to receive whistleblower disclosures from them. No other agency - not TVA, nor NRC (for TVA nuclear power plants) that I have contacted about this matter has provided any legal analysis defending OSC's claim either. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. § 1214(a)(1)(A):** My testimony is that I have made upwards of a dozen PPP complaints to OSC in past quarter-century. In the vast majority of them, OSC has refused or failed to report its statutory required investigatory determination "whether there are reasonable grounds to believe" the PPP occurred. Instead its reports its discretionary prosecutorial determination "the evidence is insufficient for OSC to seek corrective action." Insufficient by what evidentiary standard? Was it still adequate for "reasonable grounds to believe? - OSC will not answer such questions. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. § 1214(a)(1)(C):** My testimony is that I have received many of these status letters over the years, they almost always fail to describe the "any action" OSC has taken since the last one, contrary to the law's requirement. If necessary at this stage, I can supply extensive supporting documentation.

**5 U.S.C. § 1214(a)(1)(D):** My testimony is that I have received many of these letters over the years. They fail or refuse to report the required information regarding OSC's proposed findings of fact and legal conclusions. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. § 1214(a)(2)(A):** My testimony is that I have received many such letters from OSC. OSC's investigation closure letters fail to provide a summary of facts ascertained by OSC, particularly including the facts that support the complainant. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. § 1214(a)(4):** My testimony is that OSC is open in stating that it routinely ends investigations of PPPs if the employee files an IRA. Nothing in the law allows OSC to end its investigation for this reason - its continuing investigation may uncover evidence helpful to the employee and OSC should share it with the employee. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. § 1214(b)(2)(A)(i) and (ii):** My testimony is that I have filed many PPP complaints

with OSC over the years. Rarely, if ever, has it informed him of its “determination whether there are reasonable grounds to believe that a PPP has occurred.” Instead, it has reported “there is insufficient evidence for OSC to seek corrective action for the complaint,” a statement it could make even if the evidence for the PPP was incontrovertible, because OSC has complete discretion, regardless of its required determination, about seeking corrective action.

OSC Annual Reports to Congress are also consistent with this claim, in failing to report how often OSC makes a positive determination. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. §1214(b)(2)(D):** My testimony, based on FOIA responses, conversations with OSC personnel, MSPB responses to FOIA, and conversations with MSPB personnel, this just doesn’t happen - OSC makes no such report. There is no OSC nor MSPB regulation that mentions it. If necessary at this stage, I can provide extensive supporting documentation.

**5 U.S.C. §1214(e):** My testimony, based on litigation, FOIA, and conversations with OSC, is that OSC violates this statute by claiming it has total discretion, contrary to the explicit wording of this (and other laws that require it to report, to the complainant and head of involved agency, when its statutory required determination of every PPP complaint it receives is positive) to:

- 1) whether to investigate a PPP complaint to “extent necessary to determine whether there are reasonable grounds to believe a PPP occurred.”
- 2) whether to report its determination, if the instances in which it deigns to make it, to the complainant
- 3) whether to report its determination to anyone else, in particular the head of the complainant’s agency.

If necessary at this stage, I can provide extensive supporting documentation.

**The requirements of the “termination statement” found in endnotes of §1214, citing Pub. L. 103-424 § 12(b).** My testimony is that I have repeatedly cited this law to OSC attorneys in efforts to obtain information from OSC about its investigations and their findings of my PPP complaints. Only once - in its recent email related to the PPP complaint that is the basis for this appeal - did OSC not ignore me. Even - many years after - a federal judge took exception to OSC’s failure to comply with this law, OSC continues to violate it.

Additionally, when I litigated this point with OSC, OSC failed to take any exception to my claim of its law-breaking. If necessary at this stage, I can provide extensive supporting documentation.

**For MSPB**

**5 U.S.C. §1204(a)(3):** My undisputed testimony, based on FOIA responses, Congressional testimony, review of MSPB annual reports to Congress, and MSPB special studies is that for 40 years now, since its creation, has refused or failed to comply with its non-discretionary statutory duty to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.” If necessary at this stage, I can provide extensive supporting documentation.

**Other disclosures**

**Involving the President, head of FBI and Intelligence Community agencies, and heads of other agencies and 5 U.S.C. §§2301(c) and 2302(c)(2)(A).** My undisputed testimony is that the law-breaking I allege in my whistleblower disclosures against OSC and MSPB preclude these officials from being able to comply with these duties in an objective way. I have written many letters to such officials over the years, filed many FOIA requests, etc. My claims are undisputed to this point. If necessary at this stage, I can provide extensive supporting documentation.

**Disclosure against DOE attorneys** conspiring or colluding with agency management and HR staff to engage in reprisal against me in the 1999-2002 time period, for prevailing in my whistleblower appeals to MSPB, and then abusing attorney-client privilege to cover-up their law-breaking.

This claim is based on the extreme amount of attorney-client privilege claimed in related, subsequent litigation at MSPB. If I prevail in other aspects of this appeal, I hope someone with responsible authority finds the moral courage to pierce the attorney-client concealment used and get to the facts of my disclosure. I have been making this whistleblower disclosure for many years to many people in DOE. To this point, it is undisputed. If necessary at this stage, I can provide extensive supporting documentation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully,

Date

Joseph P. Carson, PE  
Appellant