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F. Douglas Hartnett, admitted in MD, DC
Eda Elitok, J.D., not a licenced attorney, practice limited to
immigration matters before federal agencies.

October 11, 2022

Honorable Cathy Harris, Chairman
Honorable Raymond Limon, Vice Chair
Honorable Tristan Leavitt, Member
US Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

RE: Your 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.*” (5 U.S.C. §1204(a)(3)).

Dear Acting Chairman Harris and Members Limon and Leavitt,

I write on behalf of Joseph Carson, PE, regarding his disclosure against you and your predecessors at MSPB alleging that the Board has failed, since its creation in 1979, in a critical statutory duty. As described below, his attempts to gain resolution of that allegation through litigation have been stymied, in part because of the Board’s improper refusal to recuse itself. Because he believes his disclosure is critical to a functioning Federal Civil Service capable of protecting the American people, he refuses to abandon his campaign to resolve his disclosures.

He therefore requests that the Board ask President Biden, pursuant to his primary statutory duty to the over two million members of the federal civil service, to direct the Attorney General to issue his opinion on the proper interpretation and application of 5 U.S.C. §1204(a)(3).¹

Background to this request

I have known Joseph (Joe) Carson, PE for a quarter century. His 30 year-long saga as a federal agency whistleblower is unlikely unprecedented in the history of the federal civil service, since its creation by the Pendleton Act of 1883. I understand Ms. Harris and her firm represented him about 20 years ago; I understand Mr. Leavitt met with him about his whistleblower disclosures against OSC and MSPB when he worked for Senator Grassley.

¹ The President’s duty is found at 5 U.S.C. §2301(c). His authority to direct the Attorney General to resolve Mr. Carson’s whistleblower disclosure is found at 28 U.S.C. §511. As noted, your predecessors’ (and your) duty to make this report is found at 5 U.S.C. §1204(a)(3).

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Mr. Carson is 68 and now has over 37 years of federal service (six as a engineering division officer on nuclear submarines (from 1976-82) and, since 1990, as a nuclear safety engineer in the Department of Energy (DOE)). He and his wife Karen (also of 37 years) enjoyed a household income of over 200K last year. They own their house, have no debt, and their three adult children are financially independent (in fact, each made more money last year than Karen, an RN with 40+ years experience, to her chagrin/pride).

Mr. Carson is in excellent health (his 3-on-3 basketball team won a gold medal in May at the National Senior Olympics) and has plenty of interests. He is, by any objective standard (and as I can personally attest), enjoying a flourishing life.

I share this to stress the following - while Mr. Carson will not break any law, nor threaten to break any law to obtain an objective resolution of his undisputed whistleblower disclosure against you and your predecessors, he has stated to me that he is willing to risk his life, let alone only his federal agency employment and/or PE license, to obtain it.²

During the processing of Mr. Carson's most recent IRA appeal, (Carson v. DOE, 2020 MSPB LEXIS 308 (M.S.P.B. Jan. 28, 2020 and subsequent appeals, Mr. Leavitt acted as MSPB's General Counsel. In that limited capacity he defended the agency against Mr. Carson's claims on Appeal that the Board had an impermissible conflict of interests and failed to recuse itself and assign the claim to an independent ALJ. (Carson v. MSPB, docket no. 20-3459 (6th Circuit) and Carson v. MSPB, Supreme Court Docket no. 21-1109).³ However, as a Board Member, he now shares your duty to protect the Merit System first, and to correct any misconduct within its jurisdiction by federal agencies, including the Board itself.

Recently, Mr. Carson retained the National Legal Research Group (NLRG), see <https://www.nlr.com/> to independently and objectively determine whether you, as lawyer-leaders of MSPB, had either:

1. A positive legal and professional duty as the lawyer-leaders of MSPB to do your best to prevent an objective resolution of Mr. Carson's whistleblower disclosure, because its resolution could well find your client - MSPB, your employing agency

² No, Mr. Carson does not think there is any realistic risk to his life or liberty, unlike the dismal realities faced by engineer and/or government agency whistleblowers in many parts of our world/imperiled civilization. So "God bless America" - but God blesses America via patriots as Mr. Carson, who put duty to our common good before their professional standing and economic security.

³ The merits of Mr. Carson's numerous whistleblower disclosures against OSC and DOE, as well as his single one against MSPB, were not adjudicated. They remain outstanding and unresolved.

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- in the wrong,
or

2. A positive legal and professional duty to recuse from considering Mr. Carson's whistleblower disclosure and invoke appropriate ways to obtain its resolution.

The result was clear and, I believe, dispositive - you have a duty - as both licensed attorneys and principal officers of the federal government - to recuse from adjudicating cases which involve allegations of violations of law rule or regulations by the Board itself, and use appropriate means to obtain its objective resolution.⁴

As an attachment to this request, I have included my recent "To whom it may concern" letter about the validity and significance of Mr. Carson's whistleblower disclosure (it pre-dates the recent NLRG analysis of your duty to recuse and refers Mr. Carson's whistleblower disclosure).

Respectfully,



F. Douglas Harnett

Enclosures

My "To Whom It May Concern" letter of August 6, 2022

Mark Harrison's expert opinion of MSPB's duty to recuse from Mr. Carson's last IRA appeal

NLRG's independent, objective, analysis of MSPB's duty to recuse from Mr. Carson's last IRA appeal

NLRG's independent, objective, analysis of your duty to recuse from considering Mr. Carson's whistleblower disclosure against you and your predecessors.

⁴ Additionally, both NLRG and Mark Harrison, who was a national recognized expert in legal and judicial ethics, concluded DOE and MSPB violated Mr. Carson's constitutional right to due process. They both agreed that the U.S. Constitution, relevant law and precedent required MSPB to assign Mr. Carson's IRA to an administrative law judge (ALJ) consistent with the intent of MSPB regulations at 5 C.F.R. § 1201.13, because of the conflict of interest his whistleblower disclosure caused the Board. I have attached both these analyses, as well as the more recent NLRG analysis of your duty to recuse.