

November 19, 2006

Mr. B. Chad Bungard  
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Via: mail and email

Re: My letter to President Bush, calling for the removal, for cause, of the MSPB's three members

Dear Mr. Bungard,

My understanding is that you do not have the independence of an appointed Inspector General. I emphasize with asking you to take actions which could result in your needing OSC's protection.

But you were a licensed attorney before you became a MSPB employee and you'll be a licensed attorney when you end your employment relationship with MSPB, so I call upon you to do your duty as a licensed attorney, given your professional responsibilities in this matter, and "blow whistles" on the meltdown in legal ethics at OSC and MSPB.

If MSPB were compliant with its responsibilities at 5 USC 1201 (appendix, citing the findings and purpose statement of the Federal Whistleblower Protection Act (WPA) of 1989) and 5 USC 1204(a)(3), by which:

- "the protection of individuals who are the subject of prohibited personnel practices (PPP's) remains the paramount consideration,"
- OSC shall "act in the interests" of those who seek its protection from PPP's,
- MSPB and OSC are responsible for implementing the law's mandate "that employees should not suffer adverse consequences of a result of PPP's," and
- MSPB shall "report to the President and Congress as to whether the public interest in a civil service free of PPP's is being adequately protected."

Then the following would be trues:

- Then many, if not most, of MSPB special studies would address PPP's; instead of few, if any.
- MSPB would know, for each year since 1989, how many PPP's occurred, of which type, and in which agencies, based on its or OSC's determination.

- MSPB's Judge's Handbook would instruct its AJ's to refer its recommendations and determinations of non-compliance with Board Orders to OSC for investigation as possible (b)(9) type PPP's and/or disciplinary action as "knowing and willful non-compliance with an MSPB Order."
- MSPB's Judge's Handbook would instruct its AJ to refer any ID to OSC for investigation for disciplinary action if it determined any (b)(2) to (b)(12) PPP occurred, not just (b)(8) ones.
- MSPB regulations for IRA whistleblower stays would specify "reasonable grounds to believe," not "substantial likelihood" as the evidentiary standard, to comply with Congressional intent, as stated in the legislative history that such stays be granted "liberally" and to agree with the statutory evidentiary burden by which OSC can presumptively seek a stay for a PPP. MSPB grants IRA whistleblower stays about 2% of the time.
- MSPB would have conducted a special study to ascertain how the 1994 amendment to the WPA, which added "any other significant change to duties, responsibilities, or working conditions" to the list of "personnel actions" was or was not increasing protection from PPP's.
- Had it conducted such a study, it would have determined that OSC was nullifying the intent of the law by claiming that in the absence of a specific MSPB ruling that any specific agency action created "any other significant change in duties, responsibilities, or working conditions," it would presumptively determine it did not.
- Then MSPB would have created a means by which these employees could obtain such a jurisdictional ruling from MSPB, whether the agency actions in questions were a "personnel action," so OSC could not evade its statutory obligations to protect them based on its making presumptive MSPB determinations against them (while "acting in their interest").

MSPB does not know how many positive PPP determinations OSC makes and fails to report to it, apparently for the simple reason it does not ask.

Even though MSPB has determined agency non-compliance with many hundreds of its final orders since 1989, it apparently has yet to ask why OSC has yet to prosecute a single case of such non-compliance being "knowing and willful failure to comply" or make a single positive (b)(9) type PPP determinations about such agency non-compliance. Of course, MSPB does not refer its determinations of such agency non-compliance to OSC for such consideration, even though it could.

Additionally, it does not appear MSPB knows (or cares) that OSC has a practice of making presumptive ruling in its name, apparently always against the employee and the employee's interest, about whether agency actions cited in a PPP complaint are personnel actions for creating "any other significant change in duties, responsibilities, or working conditions."

I doubt that MSPB has yet to report, to the President or Congress, that it thinks OSC's

compliance with the law and Congressional intent to protect federal employees from PPP's is relevant to its obligation to "report to the President and Congress as to whether the public interest in a civil service free of PPP's is being adequately protected." I agree it is largely OSC job to protect federal employees from PPP's, but I contend, based in the law, that MSPB's responsibilities include reviewing OSC's compliance with the law and Congressional intent in protecting federal employees from PPP's and reporting the results to the President and Congress at regular intervals.

Mr. Bungard, if you, per your obligations as the MSPB Inspector General, report that MSPB has failed to comply with its statutory obligation to report at regular intervals "as to whether the public interest in a civil service free of PPP's is being adequately protected," because it has not conducted the necessary oversight of OSC's performance, you would risk career suicide, because you would be putting your supervisors "on report." However, for you not to comply with your "doubly sworn duty" as an attorney and federal employee, given the responsibilities of your position, and report it could contribute to a nuclear 9/11 and destruction of an American city.

This is because OSC's lawbreaking failure to protect federal employees from PPP's, including some who are on the front lines in the war on terror, could have that result.

Respectfully,

Joe Carson, P.E.  
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Knoxville, TN 37934

copy: Melissa Jurgens, Chairman McPhie, VC Rose, Member Sapin

Enclosed: My November 18, 2006 letter to President Bush, calling for the removal of the current members of the Board for cause.