

OSC Takes Action To Protect VA Whistleblower

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

Update on Sam Wright

11.0—Veterans' claims

On October 19, 2016, the United States Office of Special Counsel (OSC) sent out a press release about its successful efforts to protect the job of Greg Kendall, an employee of the United States Department of Veterans Affairs (VA) who blew the whistle on questionable expenditures of federal funds and who was then reprimanded by his VA supervisors. The press release is reprinted below, in its entirety.

Let me just add that I wholeheartedly endorse and applaud OSC's efforts to protect federal employee whistleblowers from reprisal. Insiders (military personnel and federal civilian employees) have information about fraud, waste, and abuse in federal agencies. It is only when these insiders have the courage to bring this information to the attention of proper authorities (OSC, the agency's Inspector General, or a Member of Congress, for example) that action can be taken to mitigate the fraud, waste, and abuse and to hold wrongdoers accountable.

Federal supervisors (especially at the VA) need to be taught and retaught that the proper response to the whistleblower's disclosure is to thank the whistleblower for his or her courage in coming forward and then to act promptly to investigate the disclosure and to correct any substantiated problems. Federal supervisors must not be permitted to reprimand the brave men and women who risk their own careers to blow the whistle on wrongdoing.

¹ I invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1500 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1300 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For six years (2009-15), I was the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA. Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. Although I am no longer employed by ROA, I have continued writing new "Law Review" articles as a volunteer and ROA member. I am available by e-mail at SWright@roa.org or by telephone at (800) 809-9448, extension 730.

OSC Resolves an Atlanta VA Whistleblower Retaliation Case

FOR IMMEDIATE RELEASE

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WASHINGTON, D.C./October 19, 2016 –

The U.S. Office of Special Counsel (OSC) recently resolved a Department of Veterans Affairs (VA) whistleblower retaliation complaint made by an employee at the Atlanta VA Medical Center (VAMC). OSC facilitated a settlement between the Atlanta VAMC and Greg Kendall, a public affairs officer (PAO) at the VAMC.

In 2013, Mr. Kendall raised concerns about the Atlanta VAMC's plan to donate \$35,000 of taxpayer funds to a local charity for a fundraiser gala, which Atlanta VAMC officials planned to attend. Mr. Kendall was asked to coordinate a publicity campaign for the gala. He raised concerns about this expenditure, especially during a time when the VAMC was receiving negative press about the underfunding of its mental health unit.

While Mr. Kendall's concerns prompted the Atlanta VAMC to seek advice about the planned participation in the fundraiser from the regional VA leadership and other offices within the VA, the Atlanta VAMC decided to push forward and committed to the gala even though it had not received a final decision on the questions involved.

In August 2013, a reporter published a critical story on the Atlanta VAMC's plan to sponsor the gala. After the news story, regional VA leadership discovered that the Atlanta VAMC did not receive proper approval for the gala participation and directed the Atlanta VAMC to cancel its sponsorship.

Based on Mr. Kendall's relationship with the reporter who broke the story, as well as his earlier objections to the sponsorship, Atlanta VAMC officials assumed that he was the reporter's source. Soon after, the Atlanta VAMC initiated a series of actions against Mr. Kendall, such as stripping him of his duties, moving his office, changing his supervisors, and altering his job performance standards. Within months of receiving his new standards, the Atlanta VAMC told Mr. Kendall he was failing them and placed him on a Performance Improvement Plan.

Mr. Kendall also filed a complaint with Congressman David Scott. The Atlanta VAMC obtained the complaint and disapproved of Mr. Kendall's reaching out to Congress. One Atlanta VAMC official wrote, "I still don't know who our mole is and... I need you [referring to another employee] to make sure PAO's our [sic] not in [our] email group!"

In early 2015, the Atlanta VAMC was preparing to demote Mr. Kendall. OSC negotiated a stay of this demotion while investigating Mr. Kendall's retaliation claim. The settlement agreement reached by Mr. Kendall and the VA rescinds several personnel actions made against Mr. Kendall. The agreement, which was signed last month, also alters Mr. Kendall's chain of command and provides him compensatory damages.

"Mr. Kendall did the right thing by raising concerns about an inappropriate expenditure of taxpayer dollars, but the Atlanta VA hospital failed to heed his warnings and instead targeted Mr. Kendall," said Special Counsel Carolyn Lerner. "While the VA has now appropriately resolved Mr. Kendall's claims, the VA must continue working to make its culture more welcoming to whistleblowers in all of its facilities."

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: The Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.

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