

U.S. Department of Labor

Office of Inspector General—Office of Audit

**OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION**



WHISTLEBLOWER PROTECTION PROGRAM COMPLAINT

Date Issued:
Report Number:

March 31, 2011
02-11-202-10-105

BRIEFLY...

Highlights of Report Number **02-11-202-10-105**, to the Assistant Secretary for Occupational Safety and Health.

WHY READ THE REPORT

OSHA is responsible for enforcing and administering the whistleblower protection provisions of 21 Federal statutes, including AIR21. The AIR21 statute protects employees of air carriers from retaliation for having disclosed information to their employer or to the government concerning “any violation or alleged violation of any order, regulation or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety...”

Effective administration of the whistleblower program is integral to OSHA’s core mission. If workers believe the system established by OSHA adequately protects them from retaliation, they will be more willing to report violations. Likewise, if employers believe they will suffer financial consequences for retaliating against whistleblowers, they will be less likely to do so.

WHY OIG CONDUCTED THE AUDIT

The Honorable Edolphus Towns, then Chairman of the Committee on Oversight and Government Reform, requested that we conduct a review into allegations that OSHA “did not conduct a proper investigation and wrongfully dismissed a case or cases relating to Mr. Terry Wallum [complainant], a former employee of Bell Helicopter Textron (Bell-Textron), who allegedly was retaliated against by his employer for reporting a wide variety of wrongdoing, including reporting air safety violations under [AIR21].”

In order to address these concerns, we conducted an audit to answer the question: Did OSHA conduct proper investigations of the whistleblower complaints filed by the complainant?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2011/02-11-202-10-105.pdf>.

March 2011

WHISTLEBLOWER PROTECTION PROGRAM COMPLAINT

WHAT OIG FOUND

OSHA did not conduct proper investigations of the whistleblower complaints filed by the complainant. As a result, it could not provide any assurance that the complainant was protected as intended under Federal whistleblower laws.

OSHA failed to establish a basis for conducting its investigations in that it did not adequately document a logical reason for employer coverage under AIR21 or document a specific activity that would have afforded the complainant protection under AIR21. Once OSHA proceeded with its field investigations, it did not follow its own policies and procedures. Moreover, it exceeded its authority by dismissing one complaint without conducting any sort of investigation.

These findings were consistent with our September 2010 report entitled, “Complainants Did Not Always Receive Appropriate Investigations Under the Whistleblower Protection Program,” which revealed pervasive and systemic weaknesses in the program.

WHAT OIG RECOMMENDED

OSHA agreed with the recommendations we made in our prior report and is taking corrective actions. We also recommend the Assistant Secretary for Occupational Safety and Health implement controls to ensure that supervisors review all complaints for coverage and the presence of a *prima facie* allegation prior to beginning an investigation.

In response to our draft report, the Assistant Secretary for Occupational Safety and Health stated that OSHA is committed to improving the whistleblower protection program and intends to implement the recommendation by requiring supervisory review of complaints during the intake process. OSHA is also in the process of finalizing a top-to-bottom audit of the whistleblower program which it says will address the weaknesses and inefficiencies in the program and incorporate the results of our prior audit.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 31, 2011

Assistant Inspector General's Report

David Michaels, PhD, MPH
Assistant Secretary of Labor for
Occupational Safety and Health
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

The Occupational Safety and Health Administration (OSHA) is responsible for enforcing and administering the whistleblower protection provisions of 21 federal statutes, including the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21).

The Honorable Edolphus Towns, then Chairman of the Committee on Oversight and Government Reform, requested that we conduct a review into allegations that OSHA “did not conduct a proper investigation and wrongfully dismissed a case or cases relating to Mr. Terry Wallum [complainant], a former employee of Bell Helicopter Textron (Bell-Textron), who allegedly was retaliated against by his employer for reporting a wide variety of wrongdoing, including reporting air safety violations under [AIR21].”

In order to address these concerns, we conducted an audit to answer the question:

Did OSHA conduct proper investigations of the whistleblower complaints filed by the complainant?

The audit covered three AIR21 whistleblower complaints filed with OSHA from September 2005 through May 2009 (see Exhibit for details related to each complaint). The audit was limited to the investigations conducted by OSHA; we did not review any matters related to appeals filed with the Office of Administrative Law Judges (OALJ) or the Administrative Review Board (ARB), nor did we test the appropriateness of OSHA's determinations with respect to the three complaints. As such, our work should not be construed as a comment on the merits of any of the complaints.

To accomplish our objective, we obtained an understanding of applicable laws, regulations, and OSHA policies and procedures governing AIR21 whistleblower investigations; reviewed the investigative case files for the three complaints; reviewed documentation provided by the Honorable Edolphus Towns, Pamela Wallum

(complainant's widow), and OSHA's Regional Office in Dallas, Texas. We also interviewed OSHA management from the National Office and Dallas Regional Office and the complainant's widow. Field work was conducted at OSHA's headquarters in Washington, D.C. We conducted this performance audit in accordance with generally accepted government auditing standards. Our objective, scope, methodology, and criteria are detailed in Appendix B.

RESULTS IN BRIEF

OSHA did not conduct proper investigations of the whistleblower complaints filed by the complainant. It failed to establish a basis for conducting the investigations and did not follow its own policies and procedures during the investigations. As a result, it cannot provide any assurance that the complainant was protected as intended by Federal whistleblower laws.

OSHA failed to establish a basis for conducting its investigations. In each investigation, OSHA asserted that the employer, Bell-Textron, was covered under AIR21 but it never adequately documented a logical reason for that coverage. Additionally, OSHA conducted an investigation into the first complaint without documenting a specific activity that would have afforded the complainant protection under AIR21.

Once OSHA proceeded with its field investigations, it did not follow its own policies and procedures. OSHA never conducted a formal interview with the complainant to detail his allegations and obtain a signed statement; never adequately corroborated Bell-Textron's defenses to the complainant's allegations; never allowed the complainant an adequate opportunity to refute Bell-Textron's defenses; and never conducted a closing conference with the complainant. There was also no evidence that any of the investigations were adequately supervised. Moreover, OSHA exceeded its authority by dismissing the third complaint without conducting any sort of investigation.

These findings were consistent with our September 2010 report entitled, "Complainants Did Not Always Receive Appropriate Investigations Under the Whistleblower Protection Program," which revealed pervasive and systemic weaknesses in the program. In that report we found OSHA was not following its policies and procedures in 77 percent of the investigations it conducted. The report's recommendations addressed those weaknesses in OSHA's internal controls.

OSHA agreed with the recommendations we made in our prior report and is taking corrective actions. We will continue to follow up with OSHA regarding its implementation plans. We also recommend the Assistant Secretary for Occupational Safety and Health implement controls to ensure that supervisors review all complaints for coverage and the presence of a *prima facie* allegation prior to beginning an investigation.

In response to our draft report, the Assistant Secretary for Occupational Safety and Health stated that OSHA is committed to improving the whistleblower protection program and intends to implement the recommendation by requiring supervisory review

of complaints during the intake process. OSHA is also in the process of finalizing a top-to-bottom audit of the whistleblower program which it says will address the weaknesses and inefficiencies in the program and incorporate the results of our prior audit.

The Assistant Secretary’s response is included in its entirety as Appendix D.

RESULTS AND FINDINGS

Objective — Did OSHA conduct proper investigations of the whistleblower complaints filed by the complainant?

OSHA failed to establish a basis for conducting its investigations and did not conduct proper investigations

Finding 1 — OSHA failed to establish a basis for conducting its investigations

In each investigation, OSHA asserted that the employer, Bell-Textron, was covered under AIR21, but never adequately documented a logical reason for that coverage. Additionally, OSHA conducted an investigation into the first complaint without documenting a specific activity that would have afforded the complainant protection under AIR21. This occurred because OSHA did not require supervisors to review complaints for coverage and the presence of a *prima facie* allegation prior to beginning an investigation. As a result, OSHA had no assurance that the complainant was ever entitled to protection under Federal whistleblower statutes.

Employer Coverage Under AIR21

OSHA’s Final Investigation Reports (FIR) indicated that Bell-Textron was covered under AIR21 because it operated under a certificate from the Federal Aviation Administration (FAA); and therefore, it relied on the FAA to carry out its duties. However, OSHA never documented why that meant that Bell-Textron was an “air carrier or contractor or subcontractor of an air carrier” as required by AIR21.

AIR21 provides whistleblower protection to employees of an “air carrier or contractor or subcontractor of an air carrier.” The statute defines “contractor” as “a company that performs safety-sensitive functions by contract for an air carrier.”

The OSHA Whistleblower Investigations Manual states: “When initially receiving the whistleblower case, it is important to confirm that the complaint ... is covered under one of the whistleblower statutes OSHA investigates.”

Although Bell-Textron cooperated with OSHA’s investigation, it stated in its initial written position paper that it was not covered under AIR21 and OSHA had no jurisdiction over

it. The company maintained this position during the complainant's subsequent complaints and appeals¹.

According to an email from the complainant to the Regional Supervisory Investigator (RSI), the complainant had questioned the investigator about the agency's jurisdiction and the investigator responded that she felt she could find a reason for proceeding with the case.

Although the OSHA Whistleblower Investigations Manual stresses the importance of confirming that a complaint is covered under one of the whistleblower statutes OSHA investigates, there were no policies or procedures requiring a supervisor to review a case for coverage prior to conducting an investigation.

Regional Office management acknowledged this issue and indicated that the region has started to conduct weekly conference calls to discuss the technical aspects of different whistleblower statutes with the investigators because some investigators were not technically proficient with the requirements of the newer statutes that OSHA has been charged with enforcing. The Region has also improved its working relationship with the Regional Solicitor of Labor (RSOL) so that they can get more rapid and definitive advice when faced with legal issues. The RSOL has also provided training during the weekly conference calls.

Complainant's Protected Activity

The complainant, in his initial written complaint, alleged that he was threatened and intimidated for reporting improper work procedures but he did not cite any specific safety violations or Federal laws that may have been violated.

During a screening interview with OSHA, the complainant provided additional information about his safety complaints, such as: supervisors stamping off paperwork instead of mechanics, unsafe housekeeping, foreign object debris, and hurried inspections. However, none of these allegations was ever identified as a possible violation of any order, regulation, or standard of the FAA or any other provision of Federal law relating to air carrier safety.

In its determination letter, OSHA stated that the complainant reported "various aircraft assemblies were being released during the manufacturing process without being approved in accordance with Federal Air Regulations" and that "evidence indicates the approval procedure is regulated by the FAA;" however, there was no evidence to support either of these statements in the case file, nor was a specific Federal Air Regulation cited.

¹ When the complainant appealed OSHA's dismissals of his second and third complaints, the OALJ dismissed both complaints after ruling that Bell-TEXtron was not a covered employer under AIR21. In response, the complainant appealed the OALJ dismissal of his second complaint which, at the time of this report, is pending further review by the ARB.

To further confuse matters, in 2008, OSHA indicated that this complaint was dismissed because it appeared the issues raised in the complainant’s allegations were “labor/management issues.”

AIR21 provides whistleblower protection to an employee who “provided ... information relating to any violation or alleged violation of any order, regulation, or standard of the [FAA] or any other provision of Federal law relating to air carrier safety....”

The OSHA Whistleblower Investigations Manual states: “When initially receiving the whistleblower case, it is important to confirm that the complaint is valid....” In order to be considered a valid complaint, it must present a *prima facie* allegation (protected activity, employer knowledge, adverse action and a nexus).

Although the OSHA Whistleblower Investigations Manual stresses the importance of confirming that a complaint alleges a protected activity, there were no policies or procedures requiring a supervisor to review a case for this information prior to conducting an investigation.

Regional Office management acknowledged this issue and indicated that the Region has been restructuring the whistleblower program so that the RSI now reviews all whistleblower complaints for *prima facie* standing prior to beginning an investigation and discusses cases with the investigators throughout the life of the investigations.

Finding 2 — OSHA did not follow its own policies and procedures during its investigations

Despite OSHA’s failure to establish a basis for its investigations into the complaints, it proceeded with field investigations; however, during those investigations, OSHA did not follow its own policies and procedures. OSHA never conducted a formal interview with the complainant to detail his allegations and obtain a signed statement; never adequately corroborated Bell-Textron’s defenses to the complainant’s allegations; never allowed the complainant an adequate opportunity to refute Bell-Textron’s defenses; and never conducted a closing conference with the complainant. There was also no evidence that the investigations were adequately supervised. Moreover, OSHA exceeded its authority by dismissing the third complaint without conducting any sort of investigation.

These findings were consistent with our September 2010 report entitled, “Complainants Did Not Always Receive Appropriate Investigations Under the Whistleblower Protection Program,” which revealed pervasive and systemic weaknesses in the program. In that report we found OSHA was not following its policies and procedures in 77 percent of the investigations it conducted. The report’s recommendations addressed those weaknesses in OSHA’s internal controls. OSHA agreed with the recommendations we made in our prior report and is taking corrective actions. We will continue to follow up with OSHA regarding its implementation plans.

Formal Interview With Complainant

OSHA never conducted a formal interview with the complainant to detail his allegations and obtain a signed statement.

The Whistleblower Investigations Manual states that investigators will arrange to meet with a complainant as soon as possible to interview and obtain a signed statement detailing the complainant's allegations. Signed statements are highly desirable and useful for purposes of case review, subsequent changes in the complainant's status, possible later variations in testimony, and documentation for potential litigation. Complainants should never be instructed to submit a statement without engaging in the interview process.

There were no signed statements in the case files, nor any evidence that the investigator conducted a formal interview with the complainant.

OSHA did conduct a screening interview with the complaint upon receipt of the first complaint, but these types of interviews are used to determine whether an investigation should be conducted. In this case, it resulted in a memo-to-file that lacked details that would have been necessary to conduct a proper investigation. For example, the complainant alleged that he was told if he reported items he would be fired, but the individual who said that was not identified in the case file documentation.

The complainant, in the notes accompanying the documentation provided by the Honorable Edolphus Towns, confirmed he was never interviewed by OSHA.

Regional Office management acknowledged this issue and indicated that investigators have been directed to conduct face-to-face interviews with complainants when possible and obtain complainant statements for every investigation.

Corroboration of Employer's Defense

OSHA never adequately corroborated Bell-Textron's defenses to the complainant's allegations.

The Whistleblower Investigations Manual states that assertions made in the employer's position statement do not constitute evidence, and generally, the investigator will still need to contact the respondent to interview witnesses, review records, and obtain documentary evidence, or further test the employer's stated defense. The investigator should interview all company officials who have known direct involvement in the case and attempt to identify other persons (witnesses) at the employer's facility who may have knowledge of the situation.

There was no evidence in the case files (outside of what Bell-Textron provided in its position papers) that the investigator reviewed records, obtained documentary evidence, or further tested Bell-Textron's stated defenses. Other than three interviews

conducted during the first investigation, there was also no evidence in the case files that the investigator interviewed (or attempted to interview) any company officials with direct involvement in the case, or attempted to identify any other persons or witnesses at Bell-Textron who might have knowledge of the situation.

During the first investigation, the investigator interviewed a supervisor and two Defense Contract Management Agency (DCMA) inspectors. Those interviews focused on safety complaints made by the complainant and death threats the complainant alleged he received from DCMA inspectors approximately two years prior to filing his whistleblower complaint with OSHA. According to the FIR, other witnesses provided by the complainant were not interviewed because the complainant only gave names of managers in his area and it did not appear necessary to interview them because Bell-Textron provided a lengthy position paper.

Regional Office management acknowledged this issue and indicated that investigators now regularly make company visits to conduct on-site interviews. In addition, the Region now conducts weekly conference calls where they discuss best practices for obtaining relevant evidence at a facility and conducting quality interviews. Investigators have also been coached on developing independent witnesses and investigative leads.

Complainant's Opportunity to Refute

OSHA never allowed the complainant an adequate opportunity to refute Bell-Textron's defenses.

The Whistleblower Investigations Manual states that the investigator will contact the complainant during the investigation to resolve any discrepancies or counter allegations resulting from the investigator's contact with the employer. A complainant should never be instructed to submit a statement or fill out a questionnaire without engaging in the interview process.

According to documentation in the case files, the investigator simply forwarded Bell-Textron's position papers to the complainant and asked him to submit rebuttals to the company's claims, which he provided in the form of notes annotating numerous issues he had with statements Bell-Textron had made. There was no evidence that the investigator ever discussed any issues with the complainant concerning Bell-Textron's position paper, the complainant's rebuttal, or specific discrepancies between the two.

Regional Office management acknowledged this issue and indicated that since it began restructuring the whistleblower program, cases have been returned to investigators if all applicable leads are not pursued.

Closing Conference

OSHA never conducted a closing conference with the complainant.

The Whistleblower Investigations Manual states that the investigator will conduct a closing conference with the complainant after completion of the investigation (after discussion of the case with the supervisor and Solicitor of Labor as necessary). A thorough, tactful closing conference is a valuable step to achieve a successful conclusion to an investigation. Assuring the complainant that his or her concerns have been fully explored and the investigative findings impartially evaluated will minimize the likelihood of appeals or objections, even though the complainant may not be totally satisfied or in agreement with the determination. The closing conference also allows the complainant another opportunity to offer new evidence or witnesses. During the closing conference, the investigator must inform the complainant of his rights to appeal or objection under the appropriate statute, as well as the time limitation for filing the appeal or objection.

Although the FIR for the first investigation referenced two conversations with the complainant in the “Closing Conference” section, there was no evidence that the investigator discussed OSHA’s determination with the complainant, informed him of his right to file an appeal, or gave him an opportunity to offer new evidence or witnesses during either of these conversations. In the second investigation, the investigator left a message for the complainant indicating that OSHA was sending his file to the RSOL and asked if there was anybody the complainant wanted OSHA to interview. There was no evidence that the complainant got the message, that the investigator explained why OSHA was sending the case to the RSOL, or what OSHA’s determination was, or that the complainant was informed of his right to file an appeal. In addition, OSHA did not issue its decision to dismiss the complaint until four months later, indicating that the field investigation was not complete when the message was left.

Regional Office management acknowledged this issue and indicated that investigators have been coached on conducting quality closing conferences, with emphasis on asking complainants for any additional information or leads that can be pursued.

Supervision

There was no evidence that OSHA provided adequate supervision over the investigations.

The Whistleblower Investigations Manual states that the supervisor is responsible for providing guidance, assistance, supervision, and direction to investigators. The supervisor will review the completed investigative case file to ensure technical accuracy, thoroughness of the investigation, applicability of law, completeness of the report, and merits of the case. Supervisory concurrence with the investigator’s analysis and recommendations will be documented on the FIR or documented via memorandum to the Regional Administrator (RA). Additionally, upon receipt of the case file from the supervisor, the RA (or delegate)² will review the recommendations and the file, and sign

² According to the Whistleblower Investigations Manual, the RA may delegate his responsibilities but no lower than the Assistant Regional Administrator or Area Director level.

the appropriate letter of determination as prepared by the Supervisor or return the file for further clarification or additional investigation as appropriate.

Supervisory concurrence with the investigator's analysis and recommendations was not documented on any of the FIRs or via memorandums to the RA. There was also no evidence that the RA (or delegate) reviewed the file and recommendations because the determination letters were signed by the RSI. Additionally, in the first investigation, there was no evidence in the case file that the supervisor provided any guidance to the investigator concerning the coverage issue that was brought to his attention by the complainant.

Regional Office management acknowledged this issue and indicated that since the region began restructuring the whistleblower program, supervision has dramatically improved. Investigators have been coached to discuss all cases with the RSI. Also, the RSI now signs off on all FIRs and cases have been returned to investigators for additional work if all applicable leads have not been pursued.

Case Dismissal

OSHA exceeded its authority by dismissing the third complaint without conducting any sort of investigation. OSHA accepted the complaint and immediately dismissed it to allow the complainant an opportunity to consolidate the complaint with his previous complaint which was appealed, dismissed by the OALJ, and awaiting review by the ARB. According to an email from OSHA's National Office to the RSI, OSHA did not have statutory or regulatory authority to recommend consolidation without first conducting an investigation to determine the merits of the complaint. Additionally, the OALJ step in the appeals process cannot be bypassed for direct review to the ARB³.

The OSHA Whistleblower Investigation Manual allows a case to be dismissed if a complaint is untimely or if the complainant does not present a *prima facie* case, otherwise the investigator should proceed with a field investigation.

OSHA had no written policies and procedures to address consolidation of whistleblower complaints. Neither AIR21 nor the regulations address complaint consolidation or allow OSHA to consolidate complaints without first conducting an investigation.

The complainant, in the notes accompanying the documentation provided by the Honorable Edolphus Towns, stated that he wanted a full investigation but the RSI said that "this was the best way to handle it."

Regional Office management acknowledged that it had made a mistake when it dismissed this complaint. Consolidation had been done in the past at the OALJ level but not the ARB level.

³ When this complaint was reviewed by ARB, it denied the complaint consolidation because the OALJ had not issued a recommended decision on the complaint.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Occupational Safety and Health implement controls to require that supervisors review all complaints for coverage and the presence of a *prima facie* allegation prior to beginning an investigation.

We appreciate the cooperation and courtesies that OSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis
Assistant Inspector General
for Audit

Exhibit

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Exhibit

Whistleblower Complaint Details

Whistleblower Complaint Details			
	Complaint 1	Complaint 2	Complaint 3
Date Filed	9/21/2005	3/14/2008	5/28/2009
Basis for Complaint	Intimidated and threatened by government and company personnel for reporting improper work procedures	Suspended after filing a police report against Bell-Textron Security Administrator (related to history of reporting non-compliance and safety violations)	Fired for questioning and reporting fraudulent work (and history of reporting non-compliance and safety violations)
OSHA Decision	Dismissed – Complainant suffered no adverse employment action	Dismissed – Protected activity not a contributing factor in suspension	Dismissed – To consolidate complaint with previous complaint
Current Status	Closed	Awaiting ARB review	Closed
Did OSHA conduct an investigation?	Yes	Yes	No
Did OSHA establish employer coverage?	No	No	No
Was an alleged protected activity identified?	No	Yes (filed prior whistleblower complaints)	Yes (filed prior whistleblower complaints)
Did OSHA conduct a formal interview?	No	No	*
Did OSHA corroborate Bell-Textron’s defense?	Inadequate	No	*
Did OSHA give complainant an opportunity to refute?	Inadequate	Inadequate	*
Did OSHA conduct a closing conference?	No	No	*
Did OSHA provide adequate supervision?	No	No	No

* = Not applicable – no investigation was conducted.

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Appendices

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Appendix A

Background

OSHA is responsible for enforcing and administering the whistleblower protection provisions of 21 Federal statutes, including AIR21. The AIR21 statute protects employees of air carriers from retaliation for having disclosed information to their employer or to the government concerning “any violation or alleged violation of any order, regulation or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety...”

A person filing a complaint of retaliation will be required to show that he or she engaged in protected activity, the employer knew about that activity, the employer subjected him or her to an adverse action, and the protected activity contributed to the adverse action. Adverse action is generally defined as any action that would dissuade a reasonable employee from engaging in protected activity.

Effective administration of the whistleblower program is integral to OSHA’s core mission. If workers believe the system established by OSHA adequately protects them from retaliation, they will be more willing to report violations. Likewise, if employers believe they will suffer financial consequences for retaliating against whistleblowers, they will be less likely to do so.

In September 2010, we reported that OSHA was not following its policies and procedures in 77 percent of the investigations it conducted under 3 specific whistleblower statutes and issued 6 recommendations to address weaknesses identified in OSHA’s internal controls.

In August 2010, GAO reported similar internal control weaknesses in OSHA’s Whistleblower Protection Program.

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Appendix B**Objective, Scope, Methodology, and Criteria**

Objective

The objective of the audit was to determine if OSHA conducted proper investigations of whistleblower complaints filed by the complainant.

Scope

The audit examined three AIR21 whistleblower complaints that the complainant filed with OSHA from September 2005 through May 2009, and covered OSHA policies and procedures during that time period. The audit was limited to the investigations conducted by OSHA and we did not review any appeals to the OALJ or ARB, nor did we test the appropriateness of OSHA's determinations. As such, our work should not be construed as a comment on the merits of any of the complaints filed by the complainant.

We performed field work at OSHA headquarters in Washington, D.C., where we reviewed the case files for the three complaints filed by the complainant. We also reviewed documentation provided by the Honorable Edolphus Towns, the complainant's widow, and the Dallas Regional Office. We also interviewed OSHA management from both the National Office and Dallas Regional Office and the complainant's widow.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Methodology

To accomplish our objective, we obtained an understanding of OSHA's policies and procedures governing whistleblower investigations under AIR21, and applicable laws and regulations. We reviewed the three case files for compliance with OSHA's Whistleblower Investigations Manual. We also interviewed the complainant's widow and OSHA personnel at the national and regional levels, and reviewed other documents related to the complainant's whistleblower complaints.

Documents reviewed as part of the case file review included the complainant's original written complaints and rebuttals, memos-to-file, investigative reports, investigator notes, e-mails, position statements and letters from Bell-Textron, notification and determination letters, OALJ and ARB decisions, and internal agency communications.

In planning and performing our audit, we considered whether internal controls significant to the audit were properly designed and placed in operation. This included reviewing

OSHA's policies and procedures related to conducting whistleblower investigations. We confirmed our understanding of these controls and procedures through interviews and case file review and analysis. We evaluated internal controls used by OSHA for reasonable assurance that investigations were conducted according to Federal requirements and guidance. Our consideration of OSHA's internal controls for conducting investigations would not necessarily disclose all matters that might be significant deficiencies. Because of inherent limitations in internal controls, misstatements or noncompliance may nevertheless occur and not be detected.

Criteria

We used the following criteria to accomplish the audit objectives:

- Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. §42121
- OSHA Directive Number: DIS 0-0.9, Whistleblower Investigations Manual, August 22, 2003
- Secretary's Orders 5-2002 & 5-2007 – Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health
- 29 CFR Part 1979 - Procedures for the Handling of Discrimination Complaints under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

Appendix C

Acronyms and Abbreviations

AIR21	Wendell H. Ford Aviation Investment and Reform Act for the 21st Century
ARB	Administrative Review Board
Bell-Textron	Bell Helicopter Textron
CFR	Code of Federal Regulations
DCMA	Defense Contract Management Agency
FAA	Federal Aviation Administration
FIR	Final Investigation Report
GAO	Government Accountability Office
OALJ	Office of Administrative Law Judges
OSHA	Occupational Safety and Health Administration
RA	Regional Administrator
RSI	Regional Supervisory Investigator
RSOL	Regional Solicitor of Labor
U.S.	United States

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OSHA Response to Draft Report

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



MAR 31 2011

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: 
DAVID MICHAELS, PhD, MPH

SUBJECT: Response to OIG's Draft Audit Report No. 02-11-202-10-105
"Whistleblower Protection Program Complaint"

This memorandum is in response to your March 21, 2011, transmittal of the Office of Inspector General (OIG) Audit Report No. 02-11-202-10-105, "Whistleblower Protection Program Complaint." The Agency appreciates the opportunity to submit a statement in response to this report. As you know, the Agency is committed to improving this program.

In FY 2010, OSHA completed the initial draft report on the top-to-bottom audit of the whistleblower protection program. In FY 2011, after the report and accompanying recommendations are finalized, OSHA will make any changes necessary to address the weaknesses and inefficiencies in the operation of the program, including programmatic changes to ensure consistency and improved program delivery and possibly restructuring the Office of the Whistleblower Protection Program. I assured you that the results of your prior comprehensive evaluation of the program (Audit Report No. 02-10-202-10-105) would be addressed in this process. Likewise, our plan will incorporate your latest recommendation, discussed below.

Recommendation: We recommend that the Assistant Secretary for Occupational Safety and Health implement controls to require that supervisors review all complaints for coverage and the presence of a *prima facie* allegation prior to beginning an investigation.

OSHA Response: I intend to implement such controls. The *Whistleblower Investigations Manual*, which will be issued in the coming weeks, will include such supervisory review as a step in the intake process. In addition, the training we provided to all users when we implemented the recent change to the Whistleblower application in the Integrated Management Information System (IMIS) should reinforce this requirement. We stated in the training that decisions on whether to docket and investigate complaints under three statutes must be reviewed and approved by supervisors.

OSHA appreciates the opportunity to comment on the report.

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Appendix E

Acknowledgements

Key contributors to this report were Mark Schwartz and Steve Sovich.

TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

Online: <http://www.oig.dol.gov/hotlineform.htm>
Email: hotline@oig.dol.gov

Telephone: 1-800-347-3756
202-693-6999

Fax: 202-693-7020

Address: Office of Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-5506
Washington, D.C. 20210