

Ms. Kristin Ellis
Senior Attorney
Investigation and Prosecution Division
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036-4505

March 22, 2004

RE: File No. MA-03-0306; Mr. James Ruggieri

Dear Ms. Ellis:

Frankly, I am appalled by the shallow effort your office has apparently invested in this matter. Mr. Ruggieri's complaint was filed with your office in November of 2002. The results of the nearly a year and a half that your office has "investigated" this matter are expressed in a total of three sentences on page 3 of your letter. Those three sentences are the stated basis for the conclusion that your office would be "unable to prove a causal connection between Mr. Ruggieri's...protected conduct and his non-selection."

Consider this letter Mr. Ruggieri's response to OSC's preliminary determination in the above-referenced matter.

Initially, it is important to observe that neither Mr. Ruggieri nor OSC need show a "causal connection" between his protected conduct and his non-selection. All that need be shown is that, for purposes of (b)(8), his protected conduct was a contributing factor in his non-selection, and, for purposes of (b)(9), his protected conduct was a significant factor in his non-selection.

On the face of the analysis contained in your letter of March 15, the possible existence of other factors contributing to Mr. Ruggieri's non-selection does not negate his establishing sufficient nexus. Indeed, the very formulation of the contributing/significant factor test allows for other factors to be at play. Nothing in your letter in any way explains why the evidence submitted by Mr. Ruggieri does not meet either the contributing factor or the significant factor threshold.

Second, Mr. Ruggieri submitted the transcript of a tape recording of a conversation Mr. Ruggieri had with the selecting official, Mr. Levine. In this conversation, Mr. Levine admitted that the sole or principal reason for not hiring Mr. Ruggieri was his protected actions with the Coast Guard. Mr. Levine also acknowledged that Mr. Ruggieri was fully qualified and experienced for the job, and would have been hired had it not been for Mr. Ruggieri's protected actions:

Transcript Page 5, Line 2

Mr. Levine: Okay? Then there was your application. You had the oil and gas and you had the electrical

Mr. Ruggieri: Uh-huh.

Mr. Levine: But as you probably - well, you won't be surprised I guess. Going up the line it was just not bought into that - with the problem you are having with the Coast Guard

Mr. Ruggieri: Okay?

Mr. Levine: Folks were not ready to buy into, you know, let's give this person a job

Mr. Ruggieri: Okay, because of the Coast Guard problem?

Mr. Levine: Yes

Mr. Ruggieri: I mean, let me ask you this -

Mr. Levine: Uh-huh.

Mr. Ruggieri: Had it not been for that?

Mr. Levine: I don't think there would have been any problem with that if that hadn't --

This rather direct evidence of nexus is, in PEER's experience, extremely unusual in a whistleblower case. Yet when presented this "smoking gun" evidence, OSC apparently concluded, after months of investigation, that it cannot connect the smoke to the gun's barrel.

Third, the two independent reasons cited by OSC in the March 15 letter do not bear up under scrutiny:

A. Nonexistent or Mixed References

OSC states that the Agency now offers inadequate references as a justification for not hiring Mr. Ruggieri, – citing a “mixed report” from one of three public sector references supplied to MMS and as identified in Mr. Ruggieri’s SF-171. All three of the references Mr. Ruggieri identified in the SF-171 stated that they were never contacted by Mr. Levine or by anyone at MMS regarding Mr. Ruggieri. Additionally, two of the subject references were instrumental in Mr. Ruggieri’s nomination for a Distinguished Service Award from the American Petroleum Institute.

Moreover, Mr. Ruggieri has spoken with all three references, and they state that Mr. Levine never called them. Had OSC actually undertaken an investigation it could have easily verified this fact and rebutted this pretext offered by Mr. Levine.

B. Engineering Degree

OSC also states that that the Agency now offers that the justification for not selecting Mr. Ruggieri for the job was his lack of an engineering degree. This justification conflicts with the Agency’s vacancy announcement, the requirements of the Office of Personal Management (OPM), and the recorded statement made by the selecting official. Mr. Ruggieri more than satisfies the training, education and experience requirements published in the vacancy announcement.

With respect to qualifications, the subject vacancy announcement states, in part:

“*OR*

B. Combination of education and experience: College level education, training, and/or technical experience that furnished (1) a thorough knowledge of the physical and mathematical sciences underlying professional engineering, and (2) a good understanding, both theoretical and practical, of the engineering sciences and techniques and their applications to one of the branches of engineering. The adequacy of such background must be demonstrated by one of the following: (1) **Professional Registration: Current registration as a professional engineer.**”
[emphasis added]

Registration as a professional engineer is clearly identified in the Agency’s vacancy announcement as an equivalent qualifying means in satisfying Agency’s requirements. At no time, either in the vacancy announcement, the recorded conversation, or in discussions between the Agency and Mr. Ruggieri, did the Agency ever identify that candidates electing to qualify using the registration option would be at a “disadvantage” over other candidates qualifying under other permitted options identified in the vacancy announcement.

Mr. Ruggieri is registered and licensed as a professional electrical engineer in two states, Maryland and Maine. He is board certified as a Forensic Electrical Engineer through the National Academy of Forensic Engineers. He holds a Bachelor’s degree in the computer sciences, and is presently engaged in a Masters of Engineering program and a Masters of Science in Computer Systems. It is preposterous for MMS to offer as justification, and

for any disinterested party to believe, that Mr. Ruggieri was not selected because of academic deficiencies.

Conclusion

Any portion of the rebutting information or clarifications outlined above could have been obtained if OSC had bothered to check with Mr. Ruggieri. Had OSC actually conducted an investigation rather than the superficial inquiry it apparently limited itself to, it would have verified Mr. Ruggieri's complaint within a matter of weeks rather than waiting several months to advance an unsupported rationale for dismissing the case.

PEER is painfully aware that OSC is operating under a large backlog of unresolved complaints. Your March 15 letter suggests that OISC is seeking to cut its backlog by simply dumping cases. Your work in this matter has been a disservice to the merit system that your office is supposed to be protecting.

Quite sincerely,

Jeff Ruch
Executive Director

Cc: Mr. Scott Bloch, Special Counsel