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BEFORE THE
COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEES ON
OVERSIGHT AND MANAGEMENT EFFICIENCY
And
TRANSPORTATION SECURITY
U.S. HOUSE OF REPRESENTATIVES
CONCERNING
TSA INTEGRITY CHALLENGES: EXAMINING MISCONDUCT BY
AIRPORT SECURITY PERSONNEL

JULY 31, 2013



Good morning Chairman Duncan, Ranking Member Barber, Chairman Hudson, and Ranking Member Richmond. Thank you for the opportunity to testify on integrity and misconduct challenges in the Transportation Security Administration.

To protect the American people and their homeland, it is paramount to maintain employee integrity and accountability. Within the Department of Homeland Security, the *Inspector General Act of 1978* and the *Homeland Security Act of 2002* give the department's Office of Inspector General (OIG) primary law enforcement authority to investigate allegations of employee misconduct and contractor or grantee fraud involving DHS programs, operations, and activities. Other departmental internal affairs units investigate allegations of employee misconduct that OIG either refers to them, or that do not require referral to OIG. These allegations generally relate to administrative or noncriminal matters.

For fiscal years 2004 through 2012, DHS OIG received about 130,000 allegations through the OIG Hotline, and from various internal affairs offices within the Department, and initiated investigations on about 10,000 allegations.

OIG Office of Investigations (INV) hotline staff process all complaints that come to the OIG. Allegations are logged into the Enterprise Data System (EDS), which links OIG headquarters to its field offices. When OIG headquarters sends an allegation to a field office, the Special Agent in Charge (SAC) of the field office has 5 days to retain or decline the case. Cases declined by field offices are returned to the hotline staff for transmittal to applicable component agency for further inquiry or investigation. Unless specifically requested, INV does not track what happens to the complaint after referring it to the component.

When OIG INV refers a matter to a component, the component uses its personnel to investigate. Within TSA, the Office of Inspection (OOI) is responsible for ensuring (1) the effectiveness and efficiency of TSA's operations and administrative activities through inspections and internal reviews, and (2) the integrity of TSA's workforce. OOI is delegated authority to conduct internal investigations of employee misconduct.

Management Directive 0810.1 requires that OOI, immediately upon receipt, refer to OIG all allegations of criminal misconduct by a DHS employee; allegations of misconduct by a GS-15 level (K band) or higher, or OOI employee; allegations of serious noncriminal misconduct against a law enforcement officer; discharges of firearms resulting in injury or death; and allegations of fraud involving contractors, grantees, or DHS funds. OOI must notify OIG of all other allegations within 5 days. OIG assigns investigative responsibility for allegations by (1) initiating an investigation, (2) referring allegations back to OOI for handling, or (3) administratively closing matters without further action.

OOI operates under a blanket waiver that waives referrals to OIG for certain alleged offenses. These offenses include (1) thefts from TSA checkpoints of less than \$2,000, (2)

time, attendance, and travel fraud; (3) domestic violence by employees who were not law enforcement officers; (4) accidental firearms discharge not involving injury; (5) workers' compensation fraud; (6) local criminal charges such as failure to appear, (7) traffic offenses and driving under the influence; and (8) other local misdemeanors (provided they involve employees below K band, and the offenses are not indicative of systemic problems). The waiver was based on our observation that we had accepted for investigation about 3 percent of these referred allegations, and had requested reports of results from only 10 percent of such cases referred to TSA for investigation.

In fiscal year 2012, OIG received approximately 16,400 complaints of misconduct. Of these cases, 1,358 were related to TSA. OIG INV initiated investigations for approximately 90 cases, and referred approximately 1,268 complaints to TSA's Office of Inspection. Categories for complaints received include employee corruption, civil rights and civil liberties, program fraud, and miscellaneous.

The effectiveness of TSA and the safety of the flying public depend, in part, on the agency's ability to curtail and prevent corruption within its workforce. While none of our work focused primarily on TSA's challenges in dealing with misconduct issues, we identified two reports that may provide some insight into TSA's efforts to address allegations of employee misconduct, and strengthen their ability to monitor employee misconduct across the agency.

In October 2012, we issued a report, *Personnel Security and Internal Control at TSA's Legacy Transportation Threat Assessment and Credentialing Office*. The objective of this review was to determine whether personnel in the legacy Transportation Threat Assessment and Credentialing Office with critical roles in transportation security had sufficient oversight.

Personnel Security and Internal Control at TSA's Legacy Transportation Threat Assessment and Credentialing Office

Congressman Bennie G. Thompson, Ranking Member of the House Committee on Homeland Security, requested that we review the background investigations and suitability determinations conducted for personnel within TSA's Transportation Threat Assessment and Credentialing (TTAC) Office. TTAC was established as the lead for conducting security threat assessments and credentialing initiatives for domestic passengers on public and commercial modes of transportation, transportation industry workers, and individuals seeking access to critical infrastructure. In 2010, TSA began a restructuring initiative that included an administration-wide review of personnel position descriptions and a reorganization of TSA, which realigned TTAC functions among three different TSA operational organizations. We reviewed the potential effect of these changes on oversight of legacy TTAC personnel, but did not review oversight of personnel from any other TSA offices or programs.

We determined that TSA employee background investigations met Federal adjudicative standards, but were not timely. We also determined that within the legacy Transportation Threat Assessment and Credentialing Office, there has been a pattern of poor management practices and inappropriate use of informal administrative processes to assess and address misconduct. Legacy TTAC employees made allegations of improper conduct through formal and informal processes, including allegations of poor management practices and violations of Equal Employment Opportunity laws. While all employees said they would report national security vulnerabilities, some feared retaliation for raising other concerns.

Senior legacy TTAC leaders sought to address allegations of misconduct through training and informal internal administrative processes, but efforts were not successful. For example, use of informal administrative processes did not address or expose the extent of workplace complaints and eventually led to internal investigations being managed inappropriately. Employee complaints channeled through TSA's formal grievance processes were managed and documented appropriately, but not all employees had sufficient information to access formal redress options. Unaddressed workplace complaints of favoritism, discrimination, and retaliation hindered TSA's efforts to streamline its operational structure and align compensation with appropriate authorities and responsibilities.

Of the eight recommendations we made in this report, three were related to monitoring allegations of employee misconduct:

- For a minimum of 2 years, direct legacy TTAC offices to refer all personnel-related complaints, grievances, disciplinary actions, investigations, and inspections to appropriate TSA or DHS offices with primary oversight responsibility.
- Provide employees a Know Your Rights and Responsibilities website and brochure that compiles appropriate directives on conduct, processes, and redress options.
- Establish an independent review panel reporting to the Office of the Chief Human Capital Officer through which legacy TTAC employees may request a review of desk audits and reassignments.

Allegations of Misconduct and Illegal Discrimination and Retaliation in the Federal Air Marshal Service

In January 2010, CNN reported allegations of misconduct and illegal employment discrimination and retaliation in the Federal Air Marshal Service's Orlando field office. The reports included descriptions of an agency rife with cronyism; age, gender, and racial discrimination; and unfair treatment in promotions, assignments, and discipline. Senator Bill Nelson and Congressmen Edolphus Towns and Darrell Issa requested a review of these allegations in Orlando and throughout the Federal Air Marshal Service.

While our review did not find widespread discrimination and retaliation within the Federal Air Marshal Service, we identified inconsistencies in regards to (1) how field offices handle and report misconduct incidents to headquarters; (2) the severity of discipline decisions for employee misconduct; and (3) the timeliness for executing various portions of the discipline process.

Of the 12 recommendations in this report, 3 were aimed at improving TSA's handling of misconduct cases:

- Provide guidance regarding the types of incidents the Federal Air Marshal Service should and should not report to the Office of Inspection in an incident tracking report.
- Provide guidance and clarification regarding how long prior corrective or discipline actions should be considered and for which types of incidents.
- Develop a comprehensive system to track individual cases through the discipline process.

At the time of our review, various components within TSA (Office of Professional Responsibility (OPR), Office of Human Capital (OHC), and OOI) were working together to develop a shared database to track all misconduct cases.

Chairman Duncan and Chairman Hudson, this concludes my prepared remarks. I welcome any questions that you or the members of the Subcommittees may have.