



PROJECT ON GOVERNMENT OVERSIGHT

Exposing Corruption. Exploring Solutions.

May 20, 2014

Mr. Jon T. Rymer
Inspector General
U.S. Department of Defense
Office of Inspector General
4800 Mark Center Drive
Alexandria, VA 22350-1500

Dear Mr. Rymer:

The Project On Government Oversight respectfully requests that the Department of Defense (DoD) Office of Inspector General (IG) overturn its recent decision to vastly narrow the protections afforded to contractor whistleblowers pursuant to 10 U.S.C. § 2409.

In 2010, John Edwards, a Science Applications International Corporation (SAIC) employee, became aware of possible misconduct by co-workers regarding overbilling on a federal government contract. Edwards reported the misconduct to senior managers at SAIC, but no action was taken to correct the problem.

Generally, a complaint such as this would be directed to the Contract Officer's Technical Representative (COTR)—in this case Brannan Chisolm—but Edwards was concerned that Chisolm may have been involved in another questionable contract arrangement and therefore would not be responsive to his overbilling concerns. So Edwards went to Mike Boller, who is Chisolm's supervisor, and Dr. Moses Yarmus, who had contract management responsibilities for the contract on which the alleged overbilling took place.

Dr. Yarmus thought enough of the allegations to state in an email to Chisolm that hours not worked on the contract should not be reimbursed, and he requested "immediate corrective actions by SAIC." Chisolm responded to Dr. Yarmus, stating that he "forwarded" the overbilling concerns to the SAIC project managers "for action up to & including removal" of the contractor employees for whom the company overbilled.

Unfortunately, soon after Chisolm's email response, Edwards was removed from all of his projects at SAIC. By the end of 2011, SAIC terminated Edwards, who had never received a negative performance review.

Edwards subsequently filed a complaint with your office, alleging that SAIC terminated him as a result of his decision to bring to light the alleged misconduct by co-workers. Because Edwards disclosed this misconduct to DoD employees who were involved in oversight or management of

the contract, he should be afforded the whistleblower protections against reprisal as outlined at 10 U.S.C. § 2409.

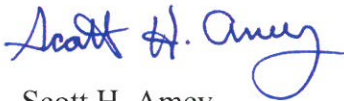
Unfortunately, Edwards' complaint was denied by your office. The whistleblower reprisal investigation report stated that Edwards' disclosures to Boller and Yarmus were not a "protected disclosure" because they were not made to authorized contracting officials.¹ The investigation report went further, stating that Dr. Yarmus was not an employee responsible for "contract oversight and management," ignoring the fact that protected disclosures can be made to DoD employees responsible for "oversight or management." (Emphasis added) Dr. Yarmus was involved in the daily management of the contract, and Boller supervised Chisolm, the COTR. In either case, they each had management responsibilities involving the contract in question.

Your office's narrow interpretation of the law is not consistent with the intent of Congress. This is exactly the type of situation Congress wanted to avoid when it improved the statute in 2008 and 2013, expanding the appropriate officials inside DoD and company management to ensure that reports to such individuals would be protected.²

Please reconsider the facts in this case and provide Edwards, and similarly situated whistleblowers, with the protections provided by law. The government should be incentivizing whistleblowing, not making it more difficult and hazardous.

Thank you in advance for your consideration of this request. If you have any questions or would like to discuss the issue further, please contact me at (202) 347-1122.

Sincerely,



Scott H. Amey
General Counsel

cc: Secretary of Defense Chuck Hagel
Lieutenant General Thomas P. Bostick
Senate Armed Services Committee Chairman Carl Levin
Senate Armed Services Committee Ranking Member James Inhofe
House Armed Services Committee Chairman Howard P. "Buck" McKeon
House Armed Services Committee Ranking Member Adam Smith
Senator Charles Grassley
Senator Claire McCaskill

¹ Department of Defense Inspector General, *Mr. John S. Edwards Defense Contractor Employee Whistleblower Reprisal Investigation* (20121204-000838), January 17, 2014. <http://www.pogoarchives.org/m/co/DoDIG-Report-whistleblower-reprisal-20140507.pdf>

² Pub. L. 110-181, § 846, January 28, 2008; Pub. L. 112-239, § 827, January 3, 2013.