From: Whitman, Darrell - OSHA
To: Dillon, Sandra - OSHA; Atha, Ken - OSHA
Cc: Stacey, Stephanie - SOL
Sent: Wed Jun 20 00:30:06 2012
Subject: Concerns

Dear Ms. Dillion and Mr. Atha,

Please accept my apologies for this lengthy and joint email. The lines of administrative authority here in Region IX are hard to decipher making it difficult to determine to whom my concerns should be addressed. Also, because the situation Mr. Paul's immediate supervisor, James Wulff, appears to involved in this situation, which argues that address these concerns to someone in higher authority.

As discussed in more detail below, a situation has developed where I believe that my supervisor, Joshua Paul, is involved in the systematic violation of OSHA Whistle-blower policy and practice, and possibly violations of law. Because these incidents have occurred in the context of my effort to secure the reasonable accommodation requested by my personal physician, I have come to believe that they also reflect an effort by Mr. Paul. to attack on my work product by dismissing merit investigative reports that I have authored. This has includes repeatedly directing that I change these reports that they misrepresent the underlying evidence developed during my investigations. In those cases, I have refused his requests telling Mr. Paul that I regard that practice as violation of ethics that contradicts the policy and procedures outlined in the Whistleblower Manual. In return, Mr. Paul has directly and indirectly threatened me and placed me under close supervision in spite of verbally praising my work. This pattern emerged in the Fall of2011 and parallels my continuing efforts to secure a reasonable accommodation as requested by my personal physician in July of 2011 and again in December of 2011, and my subsequent union grievance and DOL EEO complaint.

To put a finer point on this, I joined OSHA as an investigator in July 2010 after a long career in university teaching, law, and public service. In the first months I was inspired by the stated goals of the program to protect whistleblowers where possible and by comments from Dr. Michaels and Mr. Atha affirming the importance of these goals, and by the dedication of my fellow investigators who collectively represent some of the finest people with whom I have worked over the last 40 years. After a "honeymoon period" lasting to May 2011, during which I enjoyed a positive relationship with Mr. Paul, things began to change when I reported to Mr. Paul in May 2011 that I could not continue travel into the middle of the night because of my diabetic condition. Mr. Paul did not acknowledge this report as a request for reasonable accommodation, but after lengthy discussions with my doctor, who was alarmed at the decline in my diabetic control, I submitted a formal request for reasonable accommodation to Mr. Paul in late July 2011. Thereafter, in spite of my doctor's request, and a directive from OASAM's CRC/EEO office asking that he work with me to arrange the accommodation, Mr. Paul refused the request in late August 2011 claiming that it was not supported by medical evidence. Thereafter, my professional relationship with Mr. Paul declined noticeably, as he began to closely scrutinize my work and question the quality of my merit recommendations. The situation further deteriorated my doctor made a second request for reasonable accommodation in mid-December 2011, after which Mr. Paul repeatedly blocked my merit recommendations on dubious grounds. During the January

through March 2012 period, Mr. Paul undertook a focused effort to manipulate the EEO reasonable accommodation process, leading Dr. Callwood-Jackson, an OASAM CRC/EEO administrator to call me on her own initiative twice – first to ask why Mr. Paul was ignoring the established reasonable accommodation protocols, and a second time to recommend that I file an EEO complaint, which I eventually did in April 2012 along with a union grievance. This combat with Mr. Paul has taken a heavy toll on my health and my work as it has exposed me to a long train of retaliation and the anxiety, stress, and paranoia that entails. Worse, it now appears that Mr. Paul has engaged in a series of actions denying meritorious complainants the benefits of the Whistleblower Protection program, which I will summarize as the following four cases.

Case 1

This case involved two complainants: the senior safety manager at a nuclear plant here in California and his successor, who assumed the position when the senior manager was demoted. The complainant's alleged that they were terminated for repeatedly reporting safety issues to the plant managers. During a fifteen month long investigation, evidence emerged strongly supporting these allegations, including two independent investigations – one conducted by the California Unemployment Appeals Board and another conducted by Anata Solutions, a company that places high level managers within the nuclear industry, which found that the company had wrongfully terminated these two managers without any evidence supporting the company's claim that they were involved in the theft of some tools from an employee group. My own investigation confirmed this my interviews with several employees strongly suggested that this alleged theft was merely a pretext for terminating these manager who had repeatedly complained to the plant manager about wide-spread drug use among the security staff and the improper construction of safety systems designed to protect against terrorist attacks. Adding weight to that evidence was the professional standing of the senior safety manager, who had been a respected member of the nuclear management community for some twenty years and an advisor to Senator Lieberman's committee during the drafting of protocols for the decommission of nuclear plants. Notwithstanding the overwhelming evidence supporting these two complainants, Mr. Paul ordered that I dismiss their complaint in December 2011, based on his rejection of the two earlier investigations and his sympathy for the plant manager. I objected and refused to withdraw the merit recommendation, telling Mr. Paul that I found his arguments were not supported by evidence in the file. Mr. Paul then proceeded to dismiss the complaint on his own initiative in February 2012.

Case 2

The second case involved a railway employee who worked for a very small railroad in Arizona. The employee had filed an OSHA complaint in 2010, and the investigation in that case supported his claim that he was terminated for complaining about a safety hazard. Mr. Paul agreed with the merit recommendation, and thereafter I was able to secure a settlement agreement with the company that included the employee's reinstatement in December 2010. Unfortunately, this reinstatement involved placing the employee back under the supervision of the very manager that was the subject of his OSHA complaint, and not surprisingly within two weeks of his reinstatement the employee called to advise me that the manager was creating a hostile workplace. Three weeks later, the employee was again terminated and we opened a second investigation. The investigation produced witness testimony that the manager in question had openly declared he would find a way to again terminate the employee, and this opportunity was created during a drug testing

incident where the employee refused a second drug test, ordered immediately after the first test and before the results were known, which later indicated that the employee was drug free. This demand for a second test appeared, under the circumstances, as a pretext to accomplish what the manager had earlier declared as the termination of the employee. Mr. Paul reviewed the investigation and merit recommendation in October 2011, agreeing with my merit recommendation and promising to refer the case to the Solicitor's office for an order of reinstatement. The referral took several months and in January 2012, during the same time that the battle over my request for reasonable accommodation was heating up, Mr. Paul and I met with Ian Eliasoph, a solicitor who I later learned was a personal friend of Mr. Paul's. During the course of the meeting, Mr. Eliasoph opined that it was a difficult case because of the presence of a drug issue and advised us that he would not seek the order of reinstatement. A few days later, on January 18, 2012, Mr. Paul asked that I convert my merit recommendation into a dismissal, which I again refused to do, citing what I believed to be serious ethical issues. Mr. Paul responded to this refusal by threatening that he expected me to follow his orders in the future.

Case 3

The third case involved an airline mechanic who had worked for a very large air freight company for almost 20 years. The investigation was transferred to me by Mr. Paul in early 2011 with Mr. Paul urging me to aggressively investigate the complaint based on Mr. Paul's opinion that the mechanic had suffered retaliation for reporting maintenance deficiencies to the FAA. It was a difficult investigation as many of the employee witness declined to be interviewed, citing their fear of retaliation. However, a witness finally emerged confirming the basic elements in the mechanics complaint, which included a very chilled workplace and the continuing harassment of the mechanic over a period of more than eight months. In September 2011, I submitted a FIR to Mr. Paul recommending merit, based on evidence the evidence developed during the investigation and on new evidence that the harassment of the mechanic had continued up through the period during which the FIR was drafted. Mr. Paul did not respond to FIR for several months. But in early 2012 Mr. Paul approached me complaining that I had overlooked the fact that the company had given the mechanic a merit award, which Mr. Paul argued somehow cut off and discounted the ongoing harassment of the employee, which was so well documented in the file. He then proceeded in March 2012 to once again order that I convert the FIR to a dismissal, which I again declined as not supported by the evidence, and which Mr. Paul again proceeded to do on his own initiative.

This company is a notorious target of numerous OSHA complaints, and at the time I was both surprised and puzzled by Mr. Paul's remarkable change of position in this case. But on reflection, it appears as part of a pattern where Mr. Paul retaliated for my persisting in the effort to obtain a reasonable accommodation. Following Mr. Paul's dismissal of the mechanic's complaint, OSHA received another complaint from an employee working for the company at the same location, which alleged similar retaliation.

Case 4

The fourth and most recent case should be familiar to the national office as a companion to a recently settled case by the national quality assurance director of a major asbestos testing laboratory. These two case share central facts, including evidence developed during the investigations that: 1) the two high level employers were responding to a request made by an inspector for NVLAP, who had raised questions about the lab testing process during a NVLAP audit;

2) statements from an independent expert that the laboratory's testing process was flawed and producing erroneous reports; 3) documentary evidence that the company was pressuring laboratory personnel to complete tests at a rate that would result in false test reports; 4) statements from the national quality assurance director who replaced the first national director that the company had falsified reports and manufactured evidence against the regional quality assurance director; 5) witness statements and documentary evidence that the company president harbored animus toward the two OSHA complainants; 6) witness statements that the company had engaged in a systematic campaign to discredit the regional quality control manager by accusing him of being mentally unstable; 7) documentary evidence and witness statements that the company targeted the regional quality assurance director for retaliation when he continued to investigate the falsification of asbestos tests after the national director was constructively terminated; 8) witness statements and documentary evidence that there was an ongoing effort by the company's attorney to intimidate and discredit witnesses; 9) documentary evidence that the two OSHA complainants had exemplary professional records before they began to investigate the company's asbestos testing; and 10) a detailed trail of documentary evidence indicating that the company attempted to conceal facts and evidence, including doctoring emails, during the course of the investigation.

These were very complicated investigations involving high-level science and expert knowledge of the processes surround the asbestos testing. The investigations required more than a year to complete and involved more than 4000 pages of documents. Yet, from the very beginning Mr. Paul has made repeated attempts to induce me to dismiss the complaints for various reasons: At first, Mr. Paul claimed there was no OSHA coverage – a claim that I refuted with an extensive legal memo clearly putting coverage under TSCA, a statute that Mr. Paul had never considered. Then, Mr. Paul claimed that there was no protected activity as the complainants were merely engaged in their ordinary work. That claim was ultimately refuted by the testimony of the NVLAP auditor who reported that he had asked the complainant's to investigate what he clearly believed to be fraud in asbestos testing, thus revealing that the complainant's protected activity was rooted in participating in a government investigation. When all else failed, Mr. Paul attempted to claim there was no nexus between the retaliation suffered by the complainants and their protected activity. In fact, as the investigation proceeded evidence mounted that the only basis for the adverse actions taken by the company were in response to the complainant's efforts to correct false asbestos test reporting. At many points, I felt like I was contesting with the company's attorney as Mr. Paul repeatedly interjected himself and his opinions into the investigation on behalf of the company's defenses.

The evidence in these cases overwhelmingly supports the merit recommendations that I made in both cases, and is bolstered by the opinion of Dr. Mark Hagadone, who conducted the NVLAP audit that led the complainants to investigate and who among the most expert of asbestos experts as a designated expert testifying in federal asbestos cases and the long-time manager of his own asbestos testing laboratory. Thus, in July 2011 I submitted FIR's recommending merit in both cases, at which time Mr. Paul indicated to me and to the complainants that he would review these FIRs in the following 1-2 months. However, in spite of repeated requests by the parties, and repeated promises by Mr. Paul, the reviews of the complaints were delayed until December 2011 for the national quality assurance director, and to March 2012, for the regional quality assurance director.

During this time, the complainants repeatedly sought information from Mr. Paul about their complaints, with Mr. Paul often ignoring these requests or offering obscure responses. (Invariably, I would get the follow up calls for the complainants asking for more definitive information.) Mr. Paul finally completed his review of the national quality assurance director's complaint in January 2012, after which he assumed control of the process and attempted to conduct settlement talks with the company over the objects of the complainant. Then, after attempting to coerce a settlement at a fraction of his make whole remedy, the national quality assurance director, whose wife is an attorney, took the settlement discussions away from Mr. Paul and quickly settled it for more than $400,000.

The regional quality assurance director was not so lucky, as Mr. Paul continued to delay reviewing his FIR. The regional director protested loudly about this delay to Mr. Paul, who in late February suddenly decided he want me to rewrite the FIR as a dismissal. In response, I reviewed the FIR and once again reminded Mr. Paul of the overwhelming evidence in the files supporting a merit determination. At that point, Mr. Paul appeared to be resigned to accepting the merit recommendation and for the next three months actively represented that he was about to approve it as he proceeded to attempt a settlement with the company, again over the objections of the complainant, who continued to complain about Mr. Paul's handling of his complaint. Then, on April 16, 2012, Mr. Paul's supervisor, James Wulff, sent a letter to the complainant alleging erroneous facts, including a claim that Mr. Paul had only received the FIR in March 2012, when in fact it had been sitting in his office since early August 2011. In response, the complainant continued to press Mr. Paul, and now Mr. Wulff, to produce the FIR and it supporting documents. On June 1, 2012, Mr. Paul advised me he had completed the Secretary's Findings and had sent them for review, something he would only do in cases where there was a merit FIR that asked for either reinstatement or punitive damages. When the complainant called later that day, I offered that assessment to him, assuring him that Mr. Paul was in the process of completing the administrative process. However, without advanced warning Mr. Paul sent me an email on Friday June 15, 2012, saying he had decided to dismiss the complaint and asking that I once again revise the FIR in such a way that it would support his dismissal. Unknown to Mr. Paul, the complainant had copied me several of his emails to Mr. Paul, including one that he authored late on the night of June 14, 2012, that reprimanded Mr. Paul for his treatment of the complainant.
Mr. Paul received that email only hours before he announced that he would dismiss the complaint, and I believe that the circumstances surrounding this incident strongly suggest that he did so in retaliation for the complainant's persistence in criticizing Mr. Paul. From the beginning of the investigation, Mr. Paul made statements indicating his personal dislike of the complainant, and his repeated refusals to engage with the complainant over the last 18 months would support that animus. Further, the basis upon which Mr. Paul claims to have arrived at his decision to dismiss the complaint are the old and discredited arguments he has offered from the time I concluded the investigation. Additionally, over the last year I have had an increasing number of complaints from parties that Mr. Paul has either concealed important information, attempted to coerce them into unfavorable outcomes, or treated them with disrespect or indifference. All of these complaints, as well as the details concerning the 4 cases reviewed above, indicate a willingness on Mr. Paul's part to ignore the goals and guidelines of the whistleblower program, including a willingness to abandon legitimate merit complaints where it suits his purposes.

All of these complaints and incidents are easily documented, and any effort to confirm the detailswill confirm the substance of what I have said here. As the union steward for OSHA

Region IX, I have had many conversations with the other members of the whistleblower group where they have recounted from personal experience Mr. Paul's willingness to manipulate facts, intimidate and harass, and retaliate against those who oppose his purposes. They also have confessed that they no longer believe that their work is important, but rather that they are doing more harm than good. This almost complete collapse of morale bodes ill for the program as well as the investigators. I believe that justice requires that the national offer consider reviewing Mr. Easley's case and the other three cases I've cited to determine whether there are grounds for reopening them. which I believe Mr. Paul has wrongly dismissed. I think the public interest deserves at least that much.

Darrell Whitman, Regional Investigator, Region IX