

**Statement of Senator Daniel K. Akaka**  
**“Safeguarding the Merit System Principles:**  
**A Review of the Merit Systems Protection Board and the Office of Special Counsel”**  
**Committee on Homeland Security and Government Affairs**  
**Subcommittee on Oversight of Government Management, the Federal Workforce,**  
**and the District of Columbia**  
**March 22, 2007**

I am pleased to welcome Mr. Neil McPhie, Chairman of the Merit Systems Protection Board (MPSB), and Mr. Scott Bloch, Special Counsel at the Office of Special Counsel (OSC), to the Subcommittee today to review how both agencies are meeting their statutory missions as Congress begins consideration of their reauthorization requests.

Both MSPB and OSC were created by the Civil Service Reform Act of 1978 to safeguard the merit system principles and to help ensure that federal employees are free from discriminatory, arbitrary, and retaliatory actions, especially against those who step forward to disclose government waste, fraud, and abuse. These protections are essential so that employees can perform their duties in the best interests of the American public. The enforcement of the merit system principles by MSPB and OSC helps ensure that the federal government is an employer of choice.

The MSPB is charged with monitoring the federal government's merit-based system of employment by hearing and deciding appeals from federal employees regarding job removal and other major personnel actions. The Board also reviews regulations of the Office of Personnel Management (OPM) and conducts studies of the merit systems.

OSC is charged with protecting federal employees and job applicants from reprisal for whistleblowing and other prohibited personnel practices. OSC serves as a safe and secure channel for federal workers who wish to disclose violations of law, gross mismanagement or waste of funds, abuse of authority, and a specific danger to the public health and safety. In addition, OSC enforces and provides advisory opinions regarding the Hatch Act, which restricts the political activities of federal employees, and protects the rights of federal employees, military veterans, and reservists under the Uniformed Services Employment and Reemployment Rights Act of 1994.

Congress intended OSC and MSPB to be the stalwarts of the merit system. However, both agencies have been criticized for failing to live up to their mission. For example, the most recent federal employee satisfaction survey conducted by OSC shows that less than five percent of the respondents reported any degree of satisfaction with the results obtained by OSC while more than 92 percent were dissatisfied.

Since 2000, I have been pushing legislation to reform the Whistleblower Protection Act (WPA) to address judicial decisions that have been inconsistent with congressional intent and provide structural reform to the process for protecting federal whistleblowers.

The need for this legislation is clear. No federal whistleblower has won on the merits of their claim before the Board since 2003. At the Federal Circuit, whistleblowers have won on the merits twice out of 178 cases since October 1994, when Congress last strengthened the Act. For OSC, organizations that help whistleblowers claim that OSC has gone from being their first option for relief to their last choice since OSC no longer works with agencies to achieve informal relief and the percentage of corrective actions and stays has been cut in half since 2002.

As the Administration pushes for changes to federal personnel laws that decrease the ability of employees to engage in collective bargaining and bring grievances, it becomes even more important for employees to have full confidence in the MSPB and OSC.

Two years ago, this Subcommittee held a hearing on how OSC was meeting its statutory mission. At that time, employees, good government groups, and employee unions alleged that OSC was abandoning its mission — to protect employees, especially whistleblowers, from prohibited personnel practices and to act in the interests of employees who seek its assistance — and instead had been:

- ignoring whistleblower complaints,
- failing to protect employees subjected to sexual orientation discrimination, and
- retaliating against whistleblowers at OSC.

If true, these practices run directly counter to OSC's legal responsibility to be the protector of civil service employees.

Given the fact that OSC employees could not make their disclosure to the Special Counsel — the alleged individual who engaged in the wrongdoing and retaliated against them, the employees and stakeholders filed a complaint with the President's Council on Integrity and Efficiency. The OPM Inspector General (IG) was then charged with investigating the matter. Unfortunately, the OPM IG is still investigating these allegations, but new evidence suggests that things have not changed.

OSC has interfered with the ability of employees to talk to the OPM IG by requiring employees to arrange interviews through the Special Counsel's office. While OSC has since rescinded this policy, this action, combined with the numerous other allegations against the agency, does not instill confidence. The lead agency charged with protecting federal employees cannot ignore its responsibility and violate the merit principles, or even give the appearance of doing so, or else the trust of federal employees and the American people in the federal workforce will be compromised.

OSC must be a safe haven and a place of hope for employees. As such, OSC must be held to a higher standard and be beyond reproach. Unfortunately, it does not appear that OSC is measuring up.

I hope that today's hearing will allow us to address these concerns and allegations and ensure that MSPB and OSC are meeting their missions.