

FULL STATEMENT FOR THE RECORD

OF

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DEPARTMENT OF BUDGET, FINANCE & MANAGEMENT
SOCIAL SECURITY ADMINISTRATION

REGARDING A HEARING ON

"BLOWING THE WHISTLE ON RETALIATION:
ACCOUNTS OF CURRENT AND FORMER
FEDERAL AGENCY WHISTLEBLOWERS"

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Thursday, June 11, 2015 at 10:30 a.m.

SD-342 Dirksen Senate Office Building

Introduction

Chairman Johnson, Ranking Member Carper and distinguished members:

Thank you for the opportunity to appear before you today to discuss my experience of unjust retaliation against me during my tenure at the Social Security Administration, or "SSA".

In July 2011, I was recruited by the former Deputy Commissioner, Budget, Finance & Management, ("BFM"), Michael Gallagher, specifically to assume management and responsibility for the "Office of Facilities & Supply Management" ("OFSM").

This was an organization of approximately 500 employees and Contractors operating, maintaining and administering facility management and real estate actions for hundreds of SSA facilities across our country.

Following a very rigorous hiring process which included five interviews and extensive reference checks from my three previous employers I assumed my responsibilities at SSA in August 2011. From the beginning of my employment and on numerous occasions thereafter, Deputy Commissioner Gallagher emphatically reminded me that I was "hand selected" to assume responsibility for and "turn around" a dysfunctional organization and that he expected results.

The "National Support Center" project.

In January 2012, I was assigned as the Project Executive for the construction of a replacement data center in Urbana, MD. The project was funded via a \$500M appropriation as part of the President's "American Reinvestment and Recovery" initiative. Congress had previously been briefed by SSA officials that the justification for the appropriation was to replace the existing "National Computing Center" located on the SSA headquarters campus in Woodlawn, MD. It is important to note that the "data center" occupies one floor of the National Computing Center with approximately 75 employees however, there are an additional 925 employees working on the other three floors of the building. The center piece of the justification presented to Congress was that the National Computing Center building was beyond economical repair, in terrible condition and had to be replaced in totality. Additionally, SSA officials testified that it was legally required that the new data center be located at least 35 miles from the existing National Computing Center in Woodlawn, MD.

My duties included attendance at the quarterly Congressional staff briefings before the House Ways & Means Committee, Subcommittee on Social Security. SSA was required to brief this Committee on the progress and costs of the NCC project. I was an important member of SSA's delegation.

In the course of performing these duties, I discovered a number of serious problems at SSA. I first brought these problems to the Assistant Deputy Commissioner for Budget, Finance and Management, Ms. Tina Waddell, who did not act upon my recommendations and told me to brief the new Deputy Commissioner of BFM.

"Whistleblower Retaliation"

In February 2013, Mr. Peter Spencer was brought out of retirement by acting Commissioner Colvin to assume the duties of Deputy Commissioner for Budget, Finance and Management (DCBFM). Ms. Colvin selected Mr. Spencer despite his involvement in running a highly controversial, \$700,000, lavish, three day conference in Phoenix, Arizona in 2009, for 700 SSA employees (exhibit 1). Nonetheless, Mr. Spencer was Ms. Colvin's choice and I attempted to work with him in good faith.

Soon after Mr. Spencer's arrival, I gave him a detailed briefing on serious issues that I believed included misleading Congress, waste and abuse. They included:

1. The case to replace the existing National Computing Center (NCC) was "overstated" and relied too heavily on the premise that the NCC was in "terrible condition" and could no longer support the agency mission.¹

¹ According to Aiosa's OIG report, (exhibit 2, Tab 4c of Agency file) Mr. Spencer acknowledges that I had a conversation with him about the use of the NCC and redeploying employees after the National Support Center was completed and Spencer himself didn't feel the NCC was in terrible condition and stated, "[T]here are two different

2. The rationale and references used to justify relocating the new National Support Center (data center) 35 miles from the existing campus were very “broadly” interpreted at best and not applicable at all in my opinion.
3. Retention of the existing NCC building was absolutely essential to house the ~925 employees who must remain when the data center function was relocated.
4. In working with GSA, SSA staff and reviewing historical files, I had discovered that SSA has awarded hundreds of millions of dollars in poorly developed and in many cases, unneeded projects.
5. That prior to my arrival there had been no controls on travel and that many OFSM employees have traveled widely across the United States to various SSA locations without adequate justification or business purpose.
6. My efforts at reducing overtime from ~60,000 hours in 2011 to ~25,000 hours in 2012 had revealed significant abuses and unsubstantiated use of overtime inconsistent with SSA policies. The impact of my work yielded a reduction in overtime expenditures from 2011 to 2012 of approximately \$2,500,000.

The most serious of these disclosures in my view is SSA's misleading of Congress regarding the NCC project. SSA officials represented to Congress that the entire NCC needed replacement, when at most, only the part of the NCC that housed SSA's data center needed replacement.

conditions for a building, one for the use as office space and one for the use as a data center. Thus, the preponderance of evidence that I made this disclosure is overwhelming. This factual finding by Aiosa also directly contradicts his conclusion on the very next page, "all we have are disclosures allegedly made by Keegan verbally to Waddell and Spencer, neither of whom could recall the disclosures when interviewed by OIG agents. (exhibit 2 at page 24).

An example of SSA's lack of candor is in exhibit 3, page 2, testimony from Patrick O'Carroll, SSA's Inspector General references the NCC replacement with the NSC. Page 3 of same notes that SSA represented that it was monitoring NCC plumbing conditions, foundation inspections and monitoring HVAC ductwork. This was no mistake or misunderstanding. SSA was specifically advised by an independent assessor to revise a Jacobs Engineering report to directly address the Committee's inquiries on construction costs and future use of the NCC (See exhibit 4). SSA refused to follow this recommendation and chose not to be forthright with Congress.

There is no mistake. At depositions, my attorney, Morris Fischer, specifically asked and clarified from Ms. Colvin and her top aides that SSA never had any plans to replace all four floors of the NCC. Attached hereto for this committee's review (exhibits 5-7) are those deposition transcripts which demonstrate the lack of candor and stonewalling that typify SSA's defense.

I ask the committee to pay special attention to Ms. Colvin's deposition transcript, page 71, where she denies knowledge of that which NCC employees do. Exhibit 5, pages 85-87 where she testifies that she never even saw the reassignment letter, ruining my career, a letter which she signed. Notably, her testimony that her chief of staff made the critical decisions against me, is squarely contradicted by her chief of staff's testimony, which stated she made those decisions.

I ask the committee to read carefully pages exhibit 6, pages 41-46 of Mr. Spencer's testimony in which he dances around basic questions about whether he would consider purposely misleading congress to be unethical. Mr. Spencer actually testifies that he can't affirmatively say that purposely misleading congress is necessarily unethical.

On April 26, 2014 I was called by Mr. Spencer and he instructed me as follows:

- * *I am to "forget" the issues that I brought to his attention.*
- * *That "he" will handle this with no specifics what that meant.*
- * *That I will no longer be required at the quarterly Congressional staff briefings before the House Ways & Means Committee, Subcommittee on Social Security. According to Aiosa's report, Spencer didn't recall the reason I stopped going to the meetings. (exhibit 2 at 23).*

On about April 30, 2013, Mr. Spencer presented me with my mid-year performance review. There was no adverse discussion and in fact, I was told quote:

"Keep on doing the great job you are doing".

Forty-eight hours later on May 2, 2013, I was summoned to a short notice meeting with Mr. Spencer. He proceeded to tell me that I was being placed under formal investigation due to unspecified "complaints".

On May 21, 2013, Mr. Spencer appeared in my office and informed me that I had been relieved of my duties and that I had 30 minutes to clear out my office. Additionally, I was given a direct order not to communicate with any of my employees. I was then directed to report to the Operations organization in a temporary assignment.

During the period from May 21st until early December, I was confined to an empty office with little or no work to do, no responsibilities and very little contact with other SSA employees. I made numerous requests for updates and status on the "investigation" however Mr. Spencer did not respond to any of my inquiries.

On or about November 5, 2013, I received a letter informing me that the investigation was complete and that I had been exonerated of any charges regarding a "hostile work environment" or "sexual harassment". It is important to note that this is the first and only time that I was given any information concerning the purpose of the investigation.

On November 22, 2013, I was summoned to meet with Mr. Spencer for my 2012 annual performance appraisal. The appraisal included vague comments concerning "my overly aggressive management style" and "difficulty working with people."

This is the first time in my 44 year military, private sector and government career where I had been given any type of adverse appraisal or criticized for my management style or ability to work with people. Mr. Spencer was unable or unwilling to explain what facts were used to justify the adverse comments. Mr. Spencer proceeded to tell me that the "agency leadership" had decided to permanently remove me from my senior executive position and reassign me permanently as a non-supervisory "advisor" in operations.

From December 2013 until I left SSA on July 31, 2014, I again sat in an empty windowless office with very little to do. Occasionally, my Supervisor would task me to draft a short routine email for him or make a phone call. These were tasks normally accomplished by an administrative assistant. In July, 2014, I finally made the very difficult decision to retire from government service. I was severely demoralized, and my health and home life were suffering. This was a very difficult decision in that I was not financially ready to retire and had planned to work at least five more years.

After retaining counsel, my lawyer filed several Office of Special Counsel ("OSC") complaints. Relying solely on SSA management officials, OSC dismissed my complaints, pointing to a feasibility study from Lockheed Martin, "concerning the condition of the NCC, which identified several structural and technical deficiencies and estimated that the NCC would reach its maximum capacity for operations in three to five years (exhibit 8)." In closing its file, the OSC gave me the right to file a Merit Systems Protection Board lawsuit, which we filed in December, 2014. The case is in active litigation, Case No. PH-1221-15-0121-W-1.

SSA has put up every procedural road block it can to stop the truth from surfacing in this case. At the end of December, 2014, my attorney filed a Motion for Sanctions against SSA for failing to produce the required Agency file in response to the action (exhibit 9). On Court order from the Administrative Judge, (exhibit 10) SSA produced some 700 pages of documents, which for the first time illustrated the great lengths SSA went to in attempting to smear my name and ruin my career.

SSA then fought my attorney's motion to compel the depositions of Carolyn Colvin and Peter Spencer, two central figures in this case (exhibit 11). SSA argued that only in the most extraordinary circumstances should the head of an agency, essentially, a cabinet level position, should be required to give deposition testimony (exhibit 12). SSA ignored the point that Ms. Colvin's signature, penned or not, was on the reassignment letters. I briefed Ms. Colvin a number of times. She and I were not separated by countless levels of management. The ALJ permitted those depositions to go forward.

Ironically, the only portion of the motion to compel my attorney lost was he was not permitted to ask Ms. Colvin questions about the probe before Congress involving Ms. Colvin misleading Congress about the success of a \$300 million dollar Disability Care Processing Computer System (DCPS), that I blew the whistle on in July, 2014 (exhibit 13). Senator Orrin Hatch, on December 11, 2014, summarized the issues involving SSA mismanagement of this project and possible cover-up by SSA officials (exhibit 14-15). Ultimately, Ms. Colvin's nomination for SSA Commissioner was suspended, due in-part to my disclosure.

The Agency then served approximately 22,000 documents in discovery. We retained a lawyer who is an expert on electronic discovery issues. Attached hereto was his affidavit before the MSPB that detailed the problems with the documents (exhibit 16).

The expert notes that these files could have been produced in their original format (msg extension) or even in a PDF format as long as it is accompanied by a load file containing the necessary metadata fields that would allow Appellant to organize and search the files in a similar manner as the Defendant was able to do in the ordinary course of business and throughout their review prior to production. The fact is they weren't.

The alleged genesis of the investigation SSA launched against me was done solely to retaliate against me. According to Mr. Spencer, the decision to have me investigated happened after he met with Cynthia Ennis, AFGE Union president at SSA, who provided him a number of written complaints against me. (exhibit 6 at 233). Spencer testified at deposition it was "a stack of 12 or 15 or so complaints." (Id. at 240). They were not formal grievances (Id.). The complaints were later confirmed by Agency Counsel to be Tab-4rr of the Agency file (exhibit 17).

To begin with, the complaints are unsigned. One of the basic tenants of this country is for the right of the accused to face his accusers. I had no such rights. I was fighting ghosts. Moreover, absolutely nothing on these pages indicated whether one person complained, five people complained or some other number. Furthermore, there's nothing on these complaints remotely meeting the standard of causing a hostile work environment through sexual harassment, racial discrimination or other traditional justifications for Civil Rights involvement. The exhibits notes that employees were upset about their lost overtime, which I deemed was wasteful.

My job at SSA was not to be liked by employees. The American taxpayer didn't pay me to accomplish that goal. SSA is not a country club or someone's living room. It's an Agency tasked with administering benefits to the elderly and disabled. It's there to serve our citizens, rather than our citizens serving SSA management.

The agency file submitted in the MSPB case and the subsequent depositions in my MSPB case reveal that the allegations against me in the investigation were completely unfounded. Mr. Spencer testified that whenever an allegation of a hostile work environment is made, that employee is investigated. To quote my attorney's successful Opposition to Dismiss (exhibit 18):

The Agency's 700-800 page Response represents the quintessential whistle blower reaction by an Agency to preserve the status quo. The union official who allegedly gave all of these complaints to management, didn't retain a copy of them (Agency Response 4c-16). There wasn't a single formal union grievance by any employee SSA against Mr. Keegan. There never was any finding by an EEOC Court of any kind that or even a conclusion by the SSA internal EEO investigation that Mr. Keegan violated any EEO standard. None of Mr. Keegan's evaluations contained any comments reflecting any of the allegations against him. The lowest rating he received was "fully successful" which by definition means- in spite of whatever complaints against his no-nonsense attitude were, he was *fully successful* at the subject job. (exhibit 19) (Initial filing at 185-211). Webster's Dictionary defines successful as "having the correct or desired result." The investigation against Keegan took place about a month or so after the disclosures, not before (exhibit 2 at 5) (Agency Response 4c-5). It is undisputed that Keegan was taken off the Congressional House Subcommittee quarterly NSC project briefings on April 26, 2013.

Because the complaints against Mr. Keegan are entirely subjective, they are difficult to disprove on an individual basis. However, because they are so subjective, the Agency will be unable to prove its allegations by clear and convincing evidence which is their burden of proof. Moreover, Appellant submits that the blue print for ensuring someone like Keegan never again rears his ugly head as SSA is this case. Namely, when someone like this tries to make a change, start an investigation to cover a previous time period. Make the complaints subjective, based upon the "feelings" of the "offended" or "victimized" employees. In this case, unfortunately for the agency in this case, a number of the employees supported Keegan, even during the investigation.

The investigation itself hardly demonstrated that Keegan was a universal, rude, and hostile manager. Many of the witnesses that contributed to the investigation spoke very highly and favorably of Michael Keegan.

- Lydia Marshall stated that her supervisor, Mr. Keegan, never made any inappropriate comments to her (exhibit 20) (Agency Response 4mm 100-102).
- Nicole Graham stated that Mr. Keegan was "great to work for" and that she "looked forward to coming to work every day" (exhibit 21) (4LL 165-166).

- Jeanne Balch stated that Mr. Keegan was the best manager that she ever had at SSA and she saw him get employees to tell the truth when they were not giving complete answers (exhibit 22) (Agency Response 4LL-1).
- Ernest Phillips stated that he worked with Mr. Keegan on a daily basis and that he never saw Keegan lose his temper. Moreover, he would like Keegan to return as Associate Commissioner of OFSM. Ernest Phillips states that Mr. Keegan made him "feel valued" (exhibit 23) (Agency Response 4MM 132-133).
- Michael Gallagher, Mr. Keegan's supervisor stated that Mr. Keegan was always courteous and respectful to him and that many people spoke highly of him. Not once did Mr. Gallagher recommend a demotion or a major downgrade in the duties of Mr. Keegan (exhibit 24) (Agency Response 4LL 156-164).

Aside of the many positive things that Keegan's direct reports and others, such as his supervisor, said about him, much of the investigation's negative comments are nothing more than unsubstantiated EEO complaints. For example, the record establishes that Mr. Summers, Don Howard, Scott Morningstar, Eric Clayton, and Monique Cephas all had EEO complaints involving Keegan. However, none of the complaints were about harassment. Instead they involved non-selections for promotions and an FMLA issue (exhibit 25) (Agency Response 4qq-1, 4LL 170-172, 4LL 150-154, 4LL-5). Moreover, there never has been a single finding by an ALJ, federal judge, or jury that Mr. Keegan created a hostile work environment or ever harassed any SSA employee.

Other complaints such as the one made by Sandra Eddington were completely unjustified. Eddington contended that when she said " hi" to Keegan once, he grunted at her and that he was a strange person. She further contended that she was upset when Keegan moved Jeanne Balch. However, Balch never had a bad thing to say about him (exhibit 26) (Agency Response 4LL 148-150).

At the time, we filed this opposition, we had not yet taken depositions of the employees with the alleged complaints. Deposition highlights of the following SSA employees revealed the following:

Scott Morningstar stated that employees' problems w/ Michael Keegan were centered: reducing overtime; changing shift schedules; realigning one shift to day maintenance work; and not replacing people who left due to hiring freeze (exhibit 27).

Don Howard confirmed that the only concerns the shops had were as per his statement to the investigator:

Our shop had concerns about the changes that Mr. Keegan was making. We were concerned about shift changes, loss of overtime, and vacancies not being filled. Since Mr. Keegan started with the agency, there have been major changes and reorganizations. Not only did he cut shifts, but he has security guards doing the work that the USRO guys used to do, checking rooms and equipment in the buildings to make sure things aren't going wrong. However, the guards aren't trained to do the work, so they just look around. (exhibit 28).

Jeanne Balch² testified I was straightforward and honest, a man of my word and was never disrespectful to her or based on her observations, to anyone else. (exhibit 29 at page 26) .

Carl Pasquali testified³: (1) that overtime was reduced and that was the cause of reduced morale; (2) that he cannot articulate any specific complaints about me. That includes everything the "anonymous complaint Doc's"- (exhibit rr); (3) admits to himself being named in EEO complaints and union grievances; (4) he did not submit any written complaints to any of my supervisors; Ms. Ennis or to Schofield; (5) the investigative interview was the first time that he ever made any complaints about me. SSA has produced nothing to indicate that Mr. Pasquali was treated in the same manner as Mr. Keegan.

Jeremiah Schofield testified: (1) Herman Summers (someone who complained against me) was a habitual complainer. Notably, Mr. Summers was charged with attempted first degree murder and first degree assault in September, 2014 (see exhibit); (2) he did not recall having any conversations about his opinions about me; (3) he did not ever complain to Mike Gallagher, Peter Spencer or Ms. Ennis about me; (4) he had a number of union grievances filed against him. SSA has produced nothing to indicate that Mr. Pasquali was treated in the same manner as Mr. Keegan.

In short, the litigation has revealed that few employees actually complained about me and of those that did, the complaints centered around my policies to stop overtime and other abuses. Also, Spencer was the person who directed the investigators to the employees to be interviewed. (Spencer deposition 295-305).

² Ms. Balch's changed her last name to Carey prior to her deposition.

³ We have not yet received the deposition transcripts of Carl Pasquali and Jeremiah Schofield at the time of my submission of my full statement to the committee.

The investigation OIG performed for my concerns of whistleblowing was evasive and manipulative. Tab 4c-14 indicates that OIG investigator, Joe Aiosa, interviewed an individual identified as "witness 3", a former - his position was redacted out of the report- of Total Site Solutions (TSS) a subcontractor for SeBS, who supported my concerns about the total NCC replacement. Aiosa's report states, "[A]ccording to Witness 3, after reading the Lockheed Martin report he thought the building was in extreme disrepair and ready to be demolished. (exhibit 2 at 15). Witness 3 and members of his firm inspected the existing NCC and determined that was not the case. (Id.).

In other words, Witness 3 completely backed up my whistleblower disclosure that the NCC didn't have to be replaced. Aiosa's report should have concluded, "As Witness 3 supports Mr. Keegan's contentions that the NCC wasn't in the great disrepair to which SSA represented to Congress, and didn't have to be replaced, I find that there is strong validity to Mr. Keegan's whistleblower disclosures on those issues."

Instead, Aiosa manipulates the report to conclude in the very next paragraph, "[B]ased on OIG OA's limited review, it was determined that SSA did not mislead the U.S. Congress with respect to the need for building a new computer data center." However, the issue is not whether SSA misled Congress regarding the need to build a new computer data center. Rather, the narrower, specific point at issue is: Did SSA mislead Congress regarding the need to completely replace the NCC?

This is not an issue of politics. This is a situation involving law. A specific representation was made that was not true. There's no spinning that.

Aiosa in the very next sentence states:

Through assessments of outside contractors and SSA's OIG, it was determined that the NCC had a myriad of problems which included the roof, lighting protection grid, heating ventilation and air conditioning system, federal pacific electric panels, uninterruptible power supply, fire protection, facility storage and plumbing. Tab4c-16.

If the above is true, why then did SSA in fact, not replace the NCC? The entire underpinning of SSA's defense to this is that SSA ended up replacing the NCC in its entirety because of the roof, lighting, heating, etc. SSA contends it was reasonable based on engineering reports to do said replacement. This may be a sound defense, but for witness 3's findings and that SSA never replaced this building and has no plans to do so.

The retaliation against me in removing me from the quarterly congressional briefings was done strictly to keep me quiet. I was getting at the truth. SSA didn't want that. There had not even been an investigation started on me, when I was removed from these briefings. There was no justification for it.

It is my strong belief that had the truth come out before Congress, it would have embarrassed Carolyn Colvin in her nomination to SSA commissioner. Ms. Colvin was asked at deposition as to the first time she learned she was being nominated for commissioner. She testified that she didn't know until May, 2014.

Q Okay. When did you -- new topic. And this is about your confirmation hearing. And I'm not going to get into your testimony before Congress, or anything like that, I just want some time periods. When did you first become aware that the White House had an interest in nominating you for the permanent Commissioner of Social Security?

A I think it was around May of 2014.

Q Okay. And how did you learn that?

A I was meeting with the White House Office of Personnel on a number of matters, and they indicated that my name was being submitted to nomination.

Q All right. All right --

A It was not public at that time.

Q Sure. Okay. But that was the first, in May of '14?

A Yes.

(exhibit 5, Colvin Deposition at 97-98).

However, Mr. Spencer testified as follows:

Q Okay. Was there a time that you became aware that Ms. Colvin was being vetted by Congressional committee to be appointed as Commissioner of Social Security?

MR. TOMPSETT: Objection. Go ahead.

THE WITNESS: Ms. Colvin was the President's nominee.

BY MR. FISCHER:

Q Okay, and when was the first time you learned that Ms. Colvin was the President's nominee?

A When she -- when was the first time.

I'm not sure. I'm going to say that it was clear when I first came, but that may not be true. But she did go through the confirmation process. But I think she was the nominee when I got here.

Q All right. When you got here, she was the nominee; correct?

A I believe so.

(exhibit 6, Spencer deposition at 284-285).

It's undisputed that Mr. Spencer was brought back to SSA in the February-March, 2013, time period. By his own acknowledgment, he had some sort of discussion with Mr. Keegan on March 14, 2013. Consequently, Ms. Colvin likely wasn't telling the truth about when she first became aware that she was being vetted for the commissioner position.

Undoubtedly, this disclosure getting before Congress would have had a serious detriment to her chances of making it through the nomination process.

In summary, despite the fact that I had a flawless 44 year performance history including two superior performance reviews (2011 and 2012) at SSA, I was forced to retire in disgrace,

dishonor and financial hardship due to the fact that I choose to do the right thing and report fraud, waste and abuse.