

committed a prohibited personnel practice under section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D), the Board may impose disciplinary action if the Board finds that the activity protected under section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D) was a significant motivating factor, even if other factors also motivated the decision, for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by a preponderance of the evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.

(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

(c)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 27; amended Pub. L. 112-199, title I, §106, Nov. 27, 2012, 126 Stat. 1468.)

Editorial Notes

AMENDMENTS

2012—Subsec. (a)(3). Pub. L. 112-199 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-199 effective 30 days after Nov. 27, 2012, see section 202 of Pub. L. 112-199, set out as a note under section 1204 of this title.

§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5), if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

(c) If the Special Counsel receives an allegation concerning any matter under paragraph (1), (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 and disciplinary action under section 1215 in the same way as if a prohibited personnel practice were involved.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 28; amended Pub. L. 103-94, §3, Oct. 6, 1993, 107 Stat. 1004.)

Editorial Notes

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-94 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

“(2) If the Special Counsel receives an allegation concerning any matter under paragraph (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 in the same way as if a prohibited personnel practice were involved.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103-94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any pen-

alty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of that penalty, forfeiture, or liability, and no provision of Pub. L. 103-94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103-94 had not been enacted, see section 12 of Pub. L. 103-94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

§ 1217. Transmittal of information to Congress

(a) IN GENERAL.—The Special Counsel or any employee of the Special Counsel designated by the Special Counsel, shall transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and the Special Counsel's views on functions, responsibilities, or other matters relating to the Office. Such information shall be transmitted concurrently to the President and any other appropriate agency in the executive branch.

(b) ADDITIONAL REPORT REQUIRED.—

(1) IN GENERAL.—If an allegation submitted to the Special Counsel is resolved by an agreement between an agency and an individual, the Special Counsel shall submit to Congress and each congressional committee with jurisdiction over the agency a report regarding the agreement.

(2) CONTENTS.—Any report required under paragraph (1) shall identify, with respect to an agreement described in that paragraph—

(A) the agency that entered into the agreement;

(B) the position and employment location of the employee who submitted the allegation that formed the basis of the agreement, provided the information is not so specific as to be reasonably likely to identify the employee;

(C) the position and employment location of any employee alleged by an employee described in subparagraph (B) to have committed a prohibited personnel practice, as defined in section 2302(a)(1);

(D) a description of the allegation described in subparagraph (B); and

(E) whether the agency that entered into the agreement has agreed to pursue any disciplinary action as a result of the allegation described in subparagraph (B).

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 28; Pub. L. 115-91, div. A, title X, §1097(h)(3), Dec. 12, 2017, 131 Stat. 1625.)

Editorial Notes

AMENDMENTS

2017—Pub. L. 115-91 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 1218. Annual report

The Special Counsel shall submit to Congress, on an annual basis, a report regarding the activities of the Special Counsel, which shall include, for the year preceding the submission of the report—

(1) the number, types, and disposition of allegations of prohibited personnel practices

filed with the Special Counsel and the costs of resolving such allegations;

(2) the number of investigations conducted by the Special Counsel;

(3) the number of stays and disciplinary actions negotiated with agencies by the Special Counsel;

(4) the number of subpoenas issued by the Special Counsel;

(5) the number of instances in which the Special Counsel reopened an investigation after the Special Counsel had made an initial determination with respect to the investigation;

(6) the actions that resulted from reopening investigations, as described in paragraph (5);

(7) the number of instances in which the Special Counsel did not make a determination before the end of the 240-day period described in section 1214(b)(2)(A)(i) regarding whether there were reasonable grounds to believe that a prohibited personnel practice had occurred, existed, or was to be taken;

(8) a description of the recommendations and reports made by the Special Counsel to other agencies under this subchapter and the actions taken by the agencies as a result of the recommendations or reports;

(9) the number of—

(A) actions initiated before the Merit Systems Protection Board, including the number of corrective action petitions and disciplinary action complaints initiated; and

(B) stays and extensions of stays obtained from the Merit Systems Protection Board;

(10) the number of prohibited personnel practice complaints that resulted in a favorable action for the complainant, other than a stay or an extension of a stay, organized by actions in—

(A) complaints dealing with reprisals against whistleblowers; and

(B) all other complaints;

(11) the number of prohibited personnel practice complaints that were resolved by an agreement between an agency and an individual, organized by agency and agency components in—

(A) complaints dealing with reprisals against whistleblowers; and

(B) all other complaints;

(12) the number of corrective actions that the Special Counsel required an agency to take after a finding by the Special Counsel of a prohibited personnel practice, as defined in section 2302(a)(1); and

(13) the results for the Office of Special Counsel of any employee viewpoint survey conducted by the Office of Personnel Management or any other agency.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 29; amended Pub. L. 103-424, §3(e), Oct. 29, 1994, 108 Stat. 4363; Pub. L. 115-91, div. A, title X, §1097(h)(1), Dec. 12, 2017, 131 Stat. 1623.)

Editorial Notes

AMENDMENTS

2017—Pub. L. 115-91 amended section generally. Prior to amendment, text read as follows: “The Special Coun-