

replied 2/20/07

file 4/1

**COMPLAINT OF POSSIBLE PROHIBITED PERSONNEL PRACTICE
OR
OTHER PROHIBITED ACTIVITY**

(Please print legibly or type and complete all pertinent items. Enter "N/A" (Not Applicable) or "Unknown" where appropriate. Use Continuation Sheet on page 12 if more room is needed.)

PART 1: PROHIBITED PERSONNEL PRACTICES / OTHER PROHIBITED ACTIVITY (GENERAL)

1. Name of person seeking OSC action ("Complainant"): Mr. () Ms. () Mrs. () Miss ()
MELANIE DINWIDDIE

For USERRA complaints only – please provide the last digit only of your Social Security Number (SSN):
(needed to determine jurisdiction under § 204(c)(2) of Public Law No. 108-454.)

2. Position, title, series, and grade: CLAIMS REPRESENTATIVE TRAINEE, GS-105-9

3. Agency name: SOCIAL SECURITY ADMINISTRATION

4. Agency Address: 902 S George Nigh

McAlester, Oklahoma 74501

5. Home or mailing address: 1118 HIDDEN VALLEY DRIVE

McALESTER, OKLAHOMA 74501

6. Contact information: Telephone number(s): (918) 423-2478 (Home)

(918) 429-0300 (Office) Ext. _____

Fax number: _____

E-mail address: melanie@sagency.com

7. If you are filing this complaint as a legal or other representative of the Complainant, please supply the following information:

Name and title of filer: Mr. () Ms. () Mrs. () Miss ()

RALPH DE JULIIS, EXECUTIVE VICE PRESIDENT, AFGC LOCAL 2505

Address: c/o SOCIAL SECURITY ADMINISTRATION, 4750 SOUTH GARNETTE ROAD

TULSA, OKLAHOMA 74146-5233

Telephone number(s): (918) 781-3096 (Home)

(918) 641-2904 (Office) Ext. 2923

Fax number: (918) 641-2446

E-mail address: ralph.dejuliis@ssa.gov

8. Are you (or is the Complainant, if you are filing as a representative) covered by a collective bargaining agreement? (Check one.)

() Yes () No () I don't know

9. How did you first become aware that you could file a complaint with OSC?

() OSC Web site () OSC speaker () OSC brochure () OSC poster

() news story () agency personnel office () union () co-worker

() other (please describe): _____

Date (approximate): 11-28-2006

COMPLAINT OF POSSIBLE PROHIBITED PERSONNEL PRACTICE OR OTHER PROHIBITED ACTIVITY
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10. What is the employment status of the person affected by the suspected prohibited personnel practice or other prohibited activity? (Check all applicable items - more than one item may apply.)

- a. Applicant for Federal employment
- b. Competitive Service
 - temporary appointment
 - term appointment
 - career or career-conditional appointment
 - probationary employee
- c. Excepted Service
 - Schedule A
 - Schedule B
 - Schedule C
 - National Guard Technician
 - nonappropriated fund
 - Postal Service
 - Tennessee Valley Authority
 - VA Dept. of Medicine and Surgery
 - Veterans Readjustment Act (VRA)
 - other (specify): _____
- d. Senior Executive Service (SES), Supergrade, or Executive Level
 - career SES
 - noncareer SES
 - career GS-16, 17, or 18
 - noncareer GS-16, 17, or 18
 - Executive Level V or above (career) fund
 - Executive Level V or above (noncareer)
 - Presidential appointee (Senate-confirmed)
- e. Other
 - civil service annuitant
 - former civil service employee
 - competitive service
 - excepted service
 - military officer or enlisted person
 - contract employee
 - other (specify): _____
 - unknown

11. What other action(s), if any, have you taken to appeal, grieve, or report this matter under any other procedure? (Check all that apply.)

- None, or not applicable
- Appeal filed with Merit Systems Protection Board (MSPB) Date: _____
- Petition for reconsideration of initial decision filed with MSPB Date: _____
 Initial Decision No. _____
- USERRA claim filed with VETS (Department of Labor) Date: _____
 (Form VETS/USERRA/VP-1010)
- Grievance filed under agency grievance procedure Date: _____
- Grievance filed under negotiated grievance procedure Date: 05-19-2005
- Matter heard by arbitrator under grievance procedure Date: 10-20-2006
- Matter is pending in arbitration Date: _____
- Discrimination complaint filed with agency Date: _____
- Agency or Administrative Judge (AJ) decision on discrimination Date: _____
 complaint appealed to Equal Employment Opportunity Commission
- Appeal filed with the Office of Personnel Management Date: _____
- Unfair Labor Practice (ULP) complaint filed with the Date: _____
 Federal Labor Relations Authority General Counsel
- Lawsuit filed in Federal Court Date: _____
 Court name: _____
- Reported matter to agency Inspector General Date: _____
- Reported matter to Member of Congress Date: _____
 Name of Senator or Representative: _____
- Other (specify): _____

12. What official is responsible for the violation(s) that you are reporting, and what is his/her employment status? (See question 10 for appropriate description of employment status. If space is needed to identify more than one official, use Continuation Sheet at page 12.)

Name: SUE FEREDAY

Position/Title: DISTRICT MANAGER

Employment Status: ACTIVE, ON DUTY

13. What are the actions or events that you are reporting to OSC? (To the extent known, specifically list: (a) any suspected prohibited personnel practices or other prohibited activity, other than reprisal for whistleblowing; and (b) any personnel actions involved. (IF YOU ARE ALLEGING REPRISAL FOR WHISTLEBLOWING, SKIP TO PART 2 ON THE NEXT PAGE.)

See attached arbitration decision of Patrick Halter in Local 2505, American Federation of Government Employee, AFL-CIO and Social Security Administration, Area V, District Office, McAlester, Oklahoma, Case No. DF-2005-R-0055 dated 10-20-06: "The grievant was terminated for exercising a statutory right to engage in protected activity." (Award Summary), "But for this protected activity the grievant would not have been terminated at that time during her probationary year." (Award 3, p. 36) Also, see page 33: "The Agency acted with knowledge of grievant's union representation and a motivation to avoid it and that motivation to terminate in reprisal for protect activity was determinative before Marshall did any assessment under the guidelines. When Fereday failed on April 15 to persuade grievant to work through Lewis and Sharp, steps were taken to terminate. The Agency would not have terminated grievant at the time it effectuated the discharge had she not exercised her statutory right to engage in protected activity."

Your Website states that: "The OSC is authorized by law to investigate and seek appropriate corrective and disciplinary action for-- ... involvement by any employee in any prohibited discrimination found by a court or administrative authority to have occurred in the course of any personnel action." The administrative authority is Arbitrator Patrick Halter who found prohibited discrimination for my having engaged in protected activity to be the cause of my termination.

Also, see 5 USC 2302(b)(a)(A).

4. Provide details of the actions or events shown in your response to question 13. (Be as specific as possible about dates, locations, and the identities and positions of all persons mentioned. In particular, identify actual and potential witnesses, giving work locations and telephone numbers when possible. Also, attach any pertinent documents that you may have. Please provide, if possible, a copy of the notification of the agency's proposal and/or decision about the personnel action(s) covered by your request for OSC action. If more space is needed, continue on page 12.)

Attached is the Arbitrator's decision which gives all the relevant dates and locations and identities.

In summary, I engaged in protected activity on April 14, 2005 and demanded Union representation. On April 15, 2005, DM Fereday tried to get me to accept a representative other than the one the Union assigned (Ralph de Juliis, EVP, AFGE Local 2505). I refused. On April 21, 2005 DM Fereday sent an e-mail to Helene Jones, Labor and Employee Relations Specialist, SSA Dallas Regional Office and wrote, "[my] concern is that we may be setting ourselves up for a ULP if we don't honor the 3 week plan. If we are certain we don't have to honor the plan, I'd rather not, but sure don't want to jeopardize our case for termination."

Ralph de Juliis has stated that he has already photocopies the entire transcript and all the exhibits for OSC if they accept this matter and want documentation other than the arbitrator's decision.

15. What action would you like OSC to take in this matter (that is, what remedy are you asking for?)

(1) Discipline and demotion of both DM Fereday and ADM Marshall (2) OSC Posting and Notice to All Employees in All Social Security Administration Offices in the jurisdiction of AFGE Local 2505 (i.e., SSA Field Offices in Oklahoma).

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American Federation of Government Employees

AFFILIATED WITH THE AFL-CIO

Local 2505

Ylita Edd
President



Ralph C. de Juliis
Executive Vice President

May 31, 2007

Ms Angela D. Rush
Complaints Examiner
Complaints Examining Unit
1730 M Street, N.W., Suite 201
Washington, DC 20036-4505

RE: Mrs. Dionwiddie, Melanie; OSC File No. MA-07-1223

Dear Ms Rush:

I respectfully request that you reconsider the OSC's decision not to pursue this complaint.

Mrs. Dinwiddie is NOT the moving party in an OSC Complaint; the Office of the Special Counsel is the moving party.

Furthermore, the OSC has, in plain language, jerked us around. The first filing was by me (MA-07-0254) and the OSC said I didn't have standing to file. The second filing was by Mrs. Dinwiddie and that one was rejected because she referred to my filing and signed her name. The third filing turned into MA-07-01223 which was, basically, a reiteration of my first filing to which I attached her signature sheet.

Since we are being picky and closely reading the Statute (5 USC 7121), Mrs. Dinwiddie did NOT file a grievance. I filed the grievance and I filed it on behalf of the Union. There is a difference between an employee as an individual and the Union as an institution, filing a grievance. For instance, an employee does NOT have the right to invoke arbitration on his/her grievance. Only the Union has the

c/o Social Security Administration
4750 South Garnett Road ♦ Tulsa, Oklahoma 74146-5233
VOICE: (918) 641-2409 Ext. 2923 ♦ CELL: (918) 781-3096 ♦ FAX: (918) 641-2446
SSA E-mail: ralph.dejuliis@ssa.gov ♦ Internet E-mail: ralph.de.juliis@sbcglobal.net

standing to invoke arbitration. If the Union wished to appeal a matter to the courts, the Union cannot represent itself and must hire an attorney, whereas an individual has the right to go *pro se* and represent him/her self.

Therefore, the distinction between the party that files a grievance is substantive, not merely insignificant procedure, not mere artifice, careful or crafty couching.

So, since I am speaking and writing plainly, what do you say? Why don't we give SSA and MSPB a chance to tell me I am full of myself, full of "it" and wrong?

Look at what is at stake: when an Arbitrator or EEOC determines a manager discriminated, that is, by definition, a prohibited personnel practice. The OSC gets to take a case where it does NOT have to prove that a prohibited personnel practice occurred; it only has to address the appropriate remedy.

The OSC's own website states: "The OSC is authorized by law to investigate and seek appropriate corrective and disciplinary action for – involvement by any employee in a prohibited discrimination found by ...administrative authority..." Well, an arbitrator is an administrative authority.

How, by the way, would an employee something get to an administrative authority without first filing a grievance (ends up with an arbitrator), an EEO Complaint (ends up with an EEO Administrative Judge) or a ULP (which ends up before an Administrative Law Judge of the FLRA)? Your dismissal of Mrs Dinwiddie's complaint would make the OSC's own website language, for the most part, meaningless because the dismissal says the OSC is NOT authorized by law to investigate any prohibited personnel practices if an administrative authority (arbitrator, EEO AJ or FLRA ALJ) got the matter first. From my perspective, it is an abuse of the OSC's administrative discretion to interpret the law authorizing it to act in such a way that prohibits it from acting.

This is a case of first impressions, as you state "Therefore, we believe the Board would find that the grievance constituted an election of remedy..." I am confident that if the Board had ever made such a ruling, you would have given me the citation AND the OSC's web site would no longer claim to investigate prohibited personnel practices found by other administrative authorities.

Come on! Work with me! Let's make case law together!! I'm up for it!! How many chances during our career are we going to be presented with the opportunity, on a silver platter, no less, to make case law and go boldly where no one has gone before?

How can you say no to my enthusiasm?!

If the OSC reconsiders and reverses its decision to dismiss, and we win, it is a great victory for the OSC! If the OSC loses, you have the satisfaction of seeing

my crestfallen face and rubbing it in that you were right and I was wrong (though I don't believe I am) and that your authorizing laws and regulations don't actually authorize the OSC to investigate much of anything...which may be what the OSC actually needs to get Congress to strengthened law regarding prohibited personnel practices just as it did whistleblowers.

Thank you, in advance, for your consideration!

Sincerely,

Ralph C. de Juliis
Executive Vice President
AFGE Local 2505

cc: Melanie Dinwiddie