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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

ACCOUNTING AND FINANCIAL
MANAGEMENT DIVISION



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B-211772

MAY 23, 1983

The Honorable James J. Howard
House of Representatives

Dear Mr. Howard:

Subject: Army's Handling of "Whistle Blower's" Contract
Allegations and Merit Systems Protection
Board's Investigation (GAO/AFMD-83-67)

Your November 19, 1982, letter (encl. I) asked a review of the action by the Department of the Army against Mr. Gary Levinson as a result of his allegations of improprieties in a 1980 contract between L & G Engineering, Inc. and the U.S. Army Communications - Electronics Command, Fort Monmouth, New Jersey. Your letter also expressed concern about the Merit Systems Protection Board's Office of the Special Counsel's (OSC's) investigation of possible harassment and the incidents that led to Mr. Levinson's eventual termination from Federal service.

We determined that the Army had investigated this case three times: once by the Inspector General, Headquarters U.S. Army Communications - Electronics Command, Ft. Monmouth (CECOM-IG); a second time by the Army Audit Agency; and finally by the U.S. Army Criminal Investigation Command. We also determined that the CECOM-IG's investigation was reviewed by Headquarters U.S. Army Materiel Development and Readiness Command. The Army's investigations found the following:

- Questionable "conscious management decisions" were made in awarding the 1980 contract for analytical studies.
- The contract was poorly administered and the contractor's efforts poorly managed.
- The work contracted for could have been performed in-house.
- Because the contract covered equipment not due to be procured until fiscal 1985, the studies would become outdated before they could be used.
- Since the studies would be outdated by fiscal 1985, the Army paid \$30,000 for a product it could not use.

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The Army's auditors did not literally support Mr. Levinson's allegations of mismanagement and waste of funds. However, they did find many administrative problems and they did question the outlay of funds for a product the Army could not use. Their reports also state they did not find evidence to show willful or conscious wrongdoing that could be construed as fraud. Even though Mr. Levinson says he did not allege fraud, the Army Criminal Investigative Command reviewed this case for fraud. Finding no evidence of criminal misconduct they terminated their investigation.

However, the Army subsequently established Army Regulation 5-14. This revises the procedures for managing analytical support service contracts--the type involved in Mr. Levinson's allegations.

Regarding your concerns about possible "whistleblower" harassment, we reviewed the criteria used by the Office of Special Counsel to determine what it considered harassment. According to the associate special counsel for investigation, the OSC looks for prohibited personnel actions taken as a direct result of the disclosure of information by an employee. Unless there is evidence of a direct correlation between the personnel action and the disclosure, OSC closes the case as unsubstantiated. The OSC thus closed the Levinson case on September 16, 1981, concluding that there was no evidence of any prohibited personnel practices.

The OSC's annual report to the Congress for calendar 1980 and our December 2, 1981, report entitled "Observations on the Office of the Special Counsel's Operation" (B-203869), both note that from October 1, 1980, through March 3, 1981, the same period as the Levinson investigation, the OSC had budgetary and personnel problems which adversely affected its investigations. Also, in early 1981 the OSC was under pressure from its newly confirmed special counsel to reduce its growing backlog and close as many cases as possible.

We reviewed the OSC's file to determine what information it had collected from the Army. We found the file consisted mainly of documents, affidavits, reports, and other evidence gathered from (1) CECOM management, (2) the CECOM-IG, and (3) the Army Audit Agency. We found no sworn statements or affidavits in the file to indicate that the investigators had talked to Mr. Levinson or had followed up to get any information he might have contributed.

Since the OSC closed its investigation, the Levinson case has been submitted for mediation on three occasions. Each time the arbitrator ruled in favor of Mr. Levinson:

--The first mediation reviewed a 5-day suspension given Levinson and found the suspension had not been imposed for just and sufficient cause. The arbitrator revoked the suspension.

--The second mediation was to see whether the suspension was valid under law and regulation, and in accord with the

negotiated agreement between the union and CECOM. Again, it was found that the suspension was not valid.


--The third mediation addressed Mr. Levinson's removal from Federal Service. The arbitrator found Mr. Levinson was not removed for just and sufficient cause, revoked the dismissal, and ordered that Mr. Levinson be fully reinstated.

We provided these opinions to the OSC and were advised that, based on the additional information, the OSC is going to reopen the Levinson case to determine whether prohibited personnel practices were used.

Enclosure II provides more details on the Army's investigations, OSC's past operations, and OSC's investigation of the Levinson case. We concentrated on reviewing the facts as they were reported. We did not independently determine the merits of Mr. Levinson's allegations or his subsequent termination from Federal service.

If you desire further information concerning the results of our survey, we would be happy to meet with you or your staff.

Sincerely yours,


W. D. Campbell
Acting Director

Enclosures

JAMES J. HOWARD
36 DISTRICT, NEW JERSEY

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COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

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November 19, 1982

Robert L. Meyer, Esq.
Director
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Dear Mr. Meyer:

In further reference to the matter of Henry Levinson, which you discussed with my staff assistant, Lisa Sevier, please find enclosed copies of the remaining information contained in my files.

Mr. Levinson contacted the GAO Hotline in November 1981, claiming actions taken against him from "blowing the whistle" on contract improprieties involving 1981 contracts between L & G Engineering, Inc. and the U.S. Army Communications Electronics Command, Fort Monmouth, New Jersey. Mr. Levinson claimed that there was no basis for the contracts. He was subsequently terminated as an Army employee. Upon recently calling the GAO Hotline, he was advised that the Department of Defense closed out his complaint as unsubstantiated. Further, Merit Systems Protection Board closed the reprisal for whistleblowing complaint on the basis of insufficient evidence of any prohibited personnel practice. Additionally, the matter was not re-referred to the Secretary of the Army for further investigation in light of "new Army regulations which would aid in assuring that shortcoming in awarding contracts of the type disputed would not occur in the future".

As you have been advised and as has been submitted, there is a considerable body of material that appears to be in direct conflict with the conclusions reached by any of the offices contacted by Mr. Levinson. For this reason, it would appear necessary for all information provided by the Army to Merit Systems Protection Board to be reviewed for completeness and accuracy. Further, that there be an examination of the apparent conflicting opinions expressed by various Army officials regarding the propriety of the contract, upon which the whistleblowing and termination were based. There appears to be a question as to the completeness of the MSPB investigation as well as whether proper information was provided by the Army to allow a decision on this case.


2.

The attached material, together with that contained in the Arbitrator's decision of Award, dated October 8, 1982, raises questions about both the L & G contract and the MSPB investigation for harassment. It is my opinion that Mr. Levinson, as a long-term federal employee - now terminated from his employment - deserves a thorough review of his complaints and concerns as supported by various submissions brought to my attention.

I look forward to hearing from your offices in this matter and certainly appreciate your efforts.

With very best regards, I remain

Sincerely,



JAMES J. HOWARD
Member of Congress

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RESULTS OF SURVEY

This survey is in response to Congressman James J. Howard's November 19, 1982, request (encl. I) for a review of the Army's handling of Mr. Henry Levinson's allegations of mismanagement and waste of funds involving a 1980 contract. The contract was for an analytical study of Test Measurement and Diagnostic Equipment (TMDE). We also addressed the Congressman's concerns about the Merit Systems Protection Board's Office of the Special Counsel's (OSC's) investigation of possible whistleblower harassment and the incidents that led to Mr. Levinson's termination from Federal Service. The following pages provide the detailed results of our survey of the Levinson case.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives, based on the issues raised in Congressman Howard's request and subsequent discussions with his staff, were to examine:

- The Army's audit and investigative reports related to the award of a contract to L & G Engineering, Inc. to analyze test equipment.
- The information provided by the Army to the Merit Systems Protection Board's Office of the Special Counsel.
- The OSC's investigation of possible harassment of Mr. Henry Levinson.

During our survey we reviewed the records and reports of the Inspector General, Headquarters U.S. Army Communications-Electronics Command, Ft. Monmouth (CECOM-IG), the U.S. Army Audit Agency's report, and the report by Headquarters U.S. Army Materiel Development and Readiness Command, involving Mr. Levinson's allegations for possible conflicting opinions. We also interviewed the OSC's associate special counsel for investigations to determine the scope and criteria of the OSC's investigations. We reviewed the OSC's annual report to the Congress for 1980 and our December 2, 1981, report, "Observations on the Office of the Special Counsel's Operation" (B-203869), for information on the OSC during the period of the Levinson investigation, and examined the OSC's files on that investigation.

We did not independently determine the merits of Mr. Levinson's allegations or his subsequent termination from Federal Service.

We conducted this survey in accordance with the generally accepted government audit standards.

ARMY'S INVESTIGATION
FOUND ADMINISTRATIVE PROBLEMS
BUT NO MISMANAGEMENT

Our survey of the Army's records was designed to answer Congressman Howard's questions about "apparent conflicting opinions expressed by various Army offices." We found this case had been investigated at least three times by the Army.

The first investigation, by the CECOM-IG, concerned alleged mismanagement of funds by the Plans and Analysis Directorate of CECOM in awarding contract DAAB07-80-D-0183 to L & G Engineering, Inc. The contract was for a study in 1980 of Test Measurement and Diagnostic Equipment, an area in which Mr. Levinson had worked extensively. During the course of the investigation the CECOM-IG received testimony from Mr. Levinson, his supervisors and co-workers, the former director of the Plans and Analysis Directorate, and an employee of CECOM's Maintenance Engineering Directorate. As a result of this investigation, the CECOM-IG determined that:

- The CECOM had the in-house capability to perform the life cycle/cost analyses called for in the contract.
- Mr. Levinson, when asked by his supervisors to select five equipment families¹ for study in the original contract solicitation, did so. Later, however, he told his supervisors that he had already done the analyses for the five TMDE families selected for the contract and therefore the contract was not necessary.
- Requested then to select five more TMDE families for study, Levinson complied. The new selections were included in the contract solicitation. But Levinson subsequently advised management that no data were available with which to make the analyses on this equipment, because the equipment was not even due to be procured until fiscal 1985.
- Management decided to replace the second group of five families with yet another group, and requested that a contract modification be sent to the CECOM procurement directorate. This, however, was not done. The CECOM-IG apparently did not pursue the reason that the modification was never issued.
- Only \$30,000 of the \$130,000 originally intended was allocated for the contract.
- Some conflict existed between Mr. Levinson and his supervisors over the amount of work Mr. Levinson had already accomplished on the TMDE analyses called for in the contract.

¹"Families" are groups of equipment that all perform the same basic function.

Mr. Levinson asserts he had researched the areas of study included in the contract, and found no data were available to do the analyses at that time. However, his supervisor disagreed and asked Mr. Levinson for the information he had gathered. The CECOM-IG files show that Mr. Levinson refused to turn the information over to his supervisor, saying he needed it to support his allegations in the whistleblowing case. This raised a question in the investigator's mind as to whether the information actually had been collected.

The CECOM-IG found that a conscious management decision was made to award the contract, even though the analyses to be made were for equipment that was not due for procurement until fiscal 1985. The CECOM-IG concluded that management could have selected better candidates for study at that time. However, the CECOM-IG report makes no mention of mismanagement or gross waste of funds as alleged by Mr. Levinson, nor does it say that the contract had not been modified to remove the TMDE families not due to be procured until fiscal 1985.

The next investigation, by the Army Audit Agency, concerned allegations of fraud, mismanagement, and waste in connection with the L & G Engineering, Inc. contract, and found that:

- The contract was poorly administered and the contractor's efforts poorly managed.
- The Army paid approximately \$30,000 for a product that was incomplete, could not be validated, and was useless because it would be outdated before it could be used. The related equipment was not due for procurement until fiscal 1985; by that time the algorithmic constants and inflation indices would have changed, and the whole study would have to be redone. Task 1 of the contract called for the use of updated algorithmic constants in the life cycle cost model; this was not done. Task 2 called for an economic analysis of five TMDE families; this could not be validated because of inconsistencies.
- The contracted work could have been done in-house, but CECOM management decided its personnel were needed for higher priority work. Nevertheless, a review of the Plans and Analysis Directorate's workload showed at least one electronic engineer was on loan to another division since the award of the L & G contract, and the engineer had been assigned to several miscellaneous tasks unrelated to the division's mission.
- No preaward review was performed and no background investigation of L & G Engineering, Inc. was on file.
- Communication was almost nonexistent between the personnel responsible for awarding the contract, those who administered it, and those who managed the program.

Although the Army Audit Agency found a multitude of administrative problems, it could find no evidence of willful wrongdoing. It recommended further study of these problems in an audit of the U.S. Army Materiel Development and Readiness Command. The Army subsequently established an Army regulation (AR 5-14),² which prescribes policy and responsibilities, and outlines procedures for managing analytical support services. AR 5-14 increases management's control over the acquisition, monitoring, and ultimate use of these services.

The third and last investigation, by the U.S. Army Criminal Investigation Command, was for possible criminal misconduct. It determined that there had been no allegations of criminal misconduct and no information to support such allegations. The inquiry was terminated.

BUDGET AND PERSONNEL PROBLEMS CAUSED OSC
TO RELY HEAVILY ON ARMY'S EVIDENCE

Our survey included a review of OSC, its past operations, its investigative criteria, and files pertaining to this case.

Mr. Levinson alleges that, as a result of his whistle-blowing, he was harassed by management, suspended from work for 1 day, suspended from work again for 5 days, and finally terminated from Federal Service. On January 12, 1981, Mr. Levinson requested the OSC to investigate possible "harassment and an apparent effort to encourage my resignation."

On January 27, 1981, OSC answered Mr. Levinson by requesting additional information regarding his allegations, and explained what it would be able to do for him. On February 17, 1981, and again on April 9, 1981, Mr. Levinson submitted additional information to the OSC explaining in detail the circumstances of his case. The OSC then conducted its own investigation and, according to a letter sent to Mr. Levinson on September 16, 1981, was unable to find any prohibited personnel action taken against him in reprisal for his whistleblowing. The case was closed as unsubstantiated.

The OSC investigation was based upon affidavits and other evidence gathered from CECOM management, from Mr. Levinson's co-workers, from CECOM-IG reports and files, and from the Army Audit Agency report and certain supporting documents. OSC concluded that the information showed no correlation between the disclosure of information and the personnel action taken against Mr. Levinson.

We reviewed the OSC files and found the information to weigh heavily against Mr. Levinson. Also, we found the OSC file had no affidavits or sworn statements from Mr. Levinson and no indication

²AR 5-14 "Managing Analytical Support Services," issued on Oct. 15, 1981.

that the investigator(s) had talked to him. However, the January, February, and April 1981 letters to the OSC from Mr. Levinson, discussed above, were in the file.

As discussed in our December 2, 1981, report, "Observations on the Office of the Special Counsel's Operations," (B-203869) and in the OSC's 1980 annual report to the Congress, during the period of the Levinson investigation the OSC

- operated without a confirmed special counsel;
- had 46 percent of its fiscal 1980 budget rescinded by the Congress, which adversely affected all areas of OSC operation;
- stopped all travel and most other fund outlays during August 1980;
- detailed about 60 percent of its staff to the Merit Systems Protection Board for about 5 weeks to avoid furloughs;
- continued to receive complaints for investigation, creating a case backlog;
- came under pressure from the newly confirmed special counsel to reduce the backlog and close as many cases as possible; and
- operated without specific criteria for its staff to use in deciding to close or continue an investigation, apparently leaving this decision entirely to the investigator's subjective judgment.

We discussed the Levinson case with the OSC's associate special counsel for investigation, who advised us that the OSC looks for "prohibitive personnel actions taken as a direct result of the disclosure of information by the employee." Unless it can show a direct correlation between the personnel actions and the disclosure of information, the case is closed as unsubstantiated. This is apparently what happened in the Levinson case.

Since the OSC closed its investigation, the Levinson case has been mediated on three different occasions. Mr. Levinson was represented by the American Federation of Government Employees, Local 1904, and the Army was represented by CECOM's Office of General Counsel. The three issues mediated were:

1. Whether a 5-day suspension of Mr. Levinson was imposed for just and sufficient cause and whether certain of his employee's rights were violated.
2. Whether Mr. Levinson was suspended during the period he was under notice of removal and, if so, whether the suspension was valid under law, regulation, and negotiated agreement.

3. Whether Mr. Levinson's removal from Federal Service was for just and sufficient cause, and in compliance with applicable statutes, regulations, and the negotiated agreements.

In each case the arbitrator ruled in favor of Mr. Levinson and ordered full restitution of all rights, position, and leave. The CECOM's Office of General Counsel told us the Army (1) has appealed the first arbitration and the case is pending, (2) does not plan to appeal the second arbitration since it is not considered to have a real impact on Army's case, but (3) intends to appeal the third arbitration to the U.S. Court of Appeals through the Office of Personnel Management.

We provided copies of the arbitrators' opinions to the OSC's associate special counsel for investigations, who has advised us he will reexamine the Levinson case for prohibited personnel actions.