



U. S. Chemical Safety and Hazard Investigation Board
MEMORANDUM

DELIVERED VIA ELECTRONIC MAIL AND FEDEX

MEMORANDUM FOR: DANIEL HOROWITZ, Ph.D.
MANAGING DIRECTOR

FROM: KRISTEN KULINOWSKI, Ph.D. 
BOARD MEMBER

DATE: November 16, 2015

SUBJECT: Notice of Proposed Removal

The purpose of this memorandum is to notify you that I propose to remove you from your position as Managing Director, Chemical Safety and Hazard Investigation Board (“Agency” or “CSB”) and from the federal service. I propose this action due to your misconduct. If this proposal is sustained, your removal will become effective no sooner than thirty (30) calendar days from your receipt of this notice. I propose this action in accordance with Title 5, Code of Federal Regulations, Part 752, Subpart D.

Background

You occupied the position of Special Assistant to the Board from approximately May 2000, to approximately June 2002, when you became Director of Public and Congressional Affairs, a position you occupied to approximately July 2010, when you became Managing Director for the Agency. You have continuously served as the Agency’s Managing Director since your appointment to that position.

In the fall of 2012, the Environmental Protection Agency (“EPA”) Office of Inspector General (“OIG”), which has jurisdiction to perform OIG functions for CSB, began investigating allegations that the Agency learned the identities of whistleblowers within the Agency.

EPA OIG subsequently issued a “seven day letter” to CSB, under Section 5(d) of the Inspector General Act of 1978, raising its assertion of CSB’s lack of cooperation in that investigation to the attention of the House Committee on Oversight and Government Reform. The Committee subsequently began investigating the seven-day letter allegations, leading to issuance of a Staff Report dated June 19, 2014, titled “Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board.” That report concluded that you and former Agency Chairman Rafael Moure-Eraso created a toxic work environment.

EPA OIG opened a second investigation into CSB on April 15, 2013, into allegations that you and other senior CSB officials conducted Agency business on personal e-mail accounts in violation of the Federal Records Act, the implementing National Archives and Records

Administration regulations, and an Executive Memorandum. EPA OIG issued its report on that investigation to the President by letter dated January 16, 2015. That report revealed, among other concerning matters, that you conducted official CSB business on personal e-mail systems that did not preserve those communications on an appropriate agency recordkeeping system.

Concerned by these findings, the Agency opened an administrative investigation, in part, into the allegations of misconduct raised by the Staff Report and the EPA OIG report. You were placed on administrative leave beginning June 16, 2015, while the administrative investigation took place, and you were interviewed as part of that investigation on October 9, 2015. In light of the evidence gathered during that administrative investigation, I now propose to remove you from your position and from the federal service.

The charges and specifications upon which this proposal is based are as follows:

Charge 1: Conduct Unbecoming a Federal Employee

Specification 1: Following several years of negative Federal Employee Viewpoint Survey results for the Agency and feedback critical of the Agency's work environment from the Agency's Workforce Improvement Committee and the Carden Group, with whom the Agency contracted for a report on how to improve morale, the Agency contracted with Vantage Human Resources, for additional evaluation of and assistance with improving the Agency's morale and workplace environment. Then Deputy Managing Director John Lau was the Contracting Officer's Representative (COR) on the Vantage contract. With your knowledge, Mr. Lau worked with Agency attorney Chris Lyon on that contract. When you learned that Vantage was reporting to the Agency that senior leadership was responsible for the negative Agency environment, you suspected that Mr. Lau had manipulated Vantage's report to reach that conclusion. You subsequently retaliated against Mr. Lau for his involvement in the Vantage contract, by removing his Deputy Managing Director position title, supervisory responsibilities, and other duties, and by removing him as the COR on the Vantage contract. I note that you replaced Mr. Lau as COR on that contract, with yourself. These retaliatory acts are conduct unbecoming a federal employee.

Specification 2: As stated in Charge 1, Specification 1, you created the appearance that you retaliated against John Lau for his involvement in the Vantage contract, by removing his Deputy Managing Director position title, supervisory responsibilities, and other duties and by removing him as the Contracting Officer's Representative on the Vantage contract. Creating the appearance of this retaliatory act is conduct unbecoming a federal employee and it contributed to the chilling effect your overall conduct had on employee morale and on employee willingness to express disagreement with you.

Specification 3: When you learned that Vantage was reporting to the Agency that senior leadership was responsible for the negative Agency environment, you suspected that John Lau had inappropriately influenced Vantage's report to reach that conclusion. Soon thereafter, you requested and received authorization from Chairman Moure-Eraso to search Mr. Lau's CSB e-mail, without consulting with the General Counsel and without

submitting the detailed request to access agency records to the Chairman for those records necessary to comply with Section 32 of Board Order 034, Information Technology Security Program. Your failure to follow Agency procedures created the appearance of retaliation. Creating the appearance of this retaliatory act is conduct unbecoming a federal employee and it contributed to the chilling effect your overall conduct had on employee morale and on employee willingness to express disagreement with you.

Specification 4: When you learned that Vantage was reporting to the Agency that senior leadership was responsible for the negative Agency environment, you suspected that Chris Lyon had inappropriately influenced Vantage's report to reach that conclusion. Soon thereafter, you initiated a search of Mr. Lyon's CSB e-mail account without complying with Sections 31 and 32 of Board Order 034, Information Technology Security Program. Your failure to follow Agency procedures created the appearance of retaliation. Creating the appearance of this retaliatory act is conduct unbecoming a federal employee and it contributed to the chilling effect your overall conduct had on employee morale and on employee willingness to express disagreement with you.

Specification 5: In 2011, Director of Financial Operations Bea Robinson informed you that she had filed complaints about her perceptions of impropriety within the Agency to the EPA OIG, which the EPA OIG investigated. You subsequently retaliated against Bea Robinson for reporting her perceptions of impropriety within the Agency to the EPA Office of Inspector General, by taking away some of her job responsibilities even though her performance appraisals did not indicate any significant deficiencies in her job performance. This retaliatory act is conduct unbecoming a federal employee.

Specification 6: As stated in Charge 1, Specification 5, you created the appearance that you retaliated against Bea Robinson for reporting her perceptions of impropriety within the Agency to the EPA OIG, by taking away some of her job responsibilities even though her performance appraisals did not indicate any significant deficiencies in her job performance. Creating the appearance of this retaliatory act is conduct unbecoming a federal employee and it contributed to the chilling effect your overall conduct had on employee morale and on employee willingness to express disagreement with you.

Specification 7: You inappropriately attempted to involve John Lau in your plan to retaliate against Ms. Robinson for reporting her concerns regarding her perceptions of impropriety within the Agency to the EPA OIG and to the House Committee on Oversight and Government Reform.

You asked Mr. Lau to find ways to move Ms. Robinson out of the Agency's finance organization so that she would not be involved in financial matters for the purpose of preventing her from making further complaints to the EPA OIG and to Congress.

Your attempt to use Mr. Lau as part of a plan to retaliate against Ms. Robinson for her complaints to the EPA OIG and to the congressional committee with oversight authority over the Agency is conduct unbecoming a federal employee.

Specification 8: You inappropriately attempted to involve Chris Lyon in your plan to retaliate against Ms. Robinson for reporting her concerns regarding her perceptions of impropriety within the Agency to the EPA OIG and to the House Committee on Oversight and Government Reform.

You told Mr. Lyon that Ms. Robinson's complaints had become problematic and you expressed animus against Ms. Robinson to Mr. Lyon. Mr. Lyon told you he believed it would be unlawful for you to use Ms. Robinson's complaints as basis to remove her duties. I note that Mr. Lyon did tell you that you could take actions against Ms. Robinson for poor performance of her duties, if you were not satisfied with her performance, and you subsequently took away some of Ms. Robinson's job responsibilities even though her performance appraisals did not indicate any significant deficiencies in her job performance.

Your attempt to use Mr. Lyon as part of a plan to retaliate against Ms. Robinson for her complaints to the EPA OIG and to the congressional committee with oversight authority over the Agency is conduct unbecoming a federal employee.

Specification 9: You created the appearance that you misused your position as Managing Director, when you used your position to obtain appointment to an Interim Senior Executive Service ("SES") position under the auspices that you would provide additional value to the Agency as Senior Adviser to the Deepwater Horizon Investigation. You did not perform substantial, additional duties commensurate with your position as Senior Adviser to the Deepwater Horizon Investigation for the almost three years you occupied the Interim SES position (April 2012 through March 2015). I note that in your GS-15 position as Managing Director, your annual salary was approximately \$155,500, and in your Interim SES position, your annual salary was approximately \$179,700.

Specification 10: You have engaged in a pattern of management decisions constituting neglect of your duties as Managing Director:

- a. In 2011, you directed your staff to work together to create an investigations completion plan, but then later chastised them for preparing the draft document and subsequently chose not to have anyone perform this task at all.
- b. You directed Bea Robinson to stop creating fiscal year operating budgets for approval by the Chairman or Board in 2011. Since 2012, there has been no plan for agency budgeting.
- c. You have failed to ensure any investigations group training since 2012.
- d. You have not approved agency action plans since 2013.
- e. One of your primary responsibilities is to direct the Agency's Office of Investigations and shepherd reports through the review process before Board

Member review and voting. In late 2014, you stopped commenting on reports before they were reviewed by the Board. Prior to that, you had not consistently conducted your reviews.

- f. Beginning in 2014, several congressional committees (Appropriations, House Committee on Oversight and Government Reform, and the Agency's Authorizing committees) expressed concerns about Agency performance; you were asked to explain how Agency performance could be improved. Then, while on extended leave in summer 2014, you asked your direct reports to put together a plan to address those concerns. When you returned, you refused to discuss it with your team and you ignored their requests to review it.
- g. You did not direct the creation of a strategy or hiring plan for new Agency hires, despite increases in Agency funding.

These decisions caused Agency work to go undone, and constitute a neglect of your duties as Managing Director.

Penalty Determination

As a federal employee, you are in a position of public trust and are required to maintain a high degree of professionalism and integrity in your position at all times. Moreover, as a member of senior leadership at the Agency, your conduct in representing the Agency must be above reproach. However, you have failed to act in a manner that is in accordance with those high standards.

In proposing this action, I have considered multiple aggravating and mitigating factors, as indicated in the attached *Douglas* factor worksheet. Having considered these factors, I do not believe any penalty less than removal is suitable in light of your misconduct, especially in light of your apparent, regular practice of responding to unfavorable circumstances and feedback by retaliating against Agency employees.

Your actions call into serious question your judgment, and they irreparably damage my ability to believe that you can be trusted to continue as an Agency employee.

Rights

You have the following rights in connection with the proposed action:

1. To Reply:

You may reply to this Notice of Proposed Removal orally, in writing, or both, within fifteen (15) calendar days following your receipt of this notice. Full and proper consideration will be given to any response you furnish in a timely manner.

You should make any written reply to Vanessa Allen Sutherland, Chairperson, by e-mail at Vanessa.Sutherland@csb.gov. Should you wish to make an oral reply, you must contact Anna Brown, Director of Administration, by e-mail at Anna.Brown@csb.gov or by telephone at (202) 261-7639, within seven (7) calendar days following your receipt of this notice, to schedule the oral reply.

If you have a medical condition that you wish to raise with the Agency to consider before reaching a decision in this matter, you may raise it in connection with your reply. However, any such claim must be supported by medical documentation that shows a causal connection between a medical condition and the above-described misconduct.

You may address any questions regarding this process, including any request for additional time to respond to this Notice of Proposed Removal, to Ms. Brown.

2. To Be Represented:

You are entitled to be represented by an attorney or other representative in this matter. Before that individual may act on your behalf in this matter, however, that person must be designated by you, in writing, to Ms. Sutherland. Your representative may be disallowed if he or she is an employee of the Agency whose activities as representative could cause a conflict of interest or position, if his or her release would give rise to unreasonable cost to the government, or if he or she cannot be released from official duties because of work assignments.

3. To Review Material:

You and/or your representative may review all of the material I relied upon to support this Notice of Proposed Removal. You may arrange to do so by contacting Ms. Brown.

You will receive a written decision as soon as practicable after Ms. Sutherland receives your reply, or following expiration of the time allowed you to respond if you do not reply. If you have any questions regarding this process, please contact Ms. Brown.