

§ 1215. Disciplinary action

(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

(A) committed a prohibited personnel practice,

(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

(B) be represented by an attorney or other representative;

(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

(D) have a transcript kept of any hearing under subparagraph (C); and

(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(3) 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.

(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.)

§ 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.)

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