

[REDACTED]

November 5, 2009

By Email/U.S. Mail

Federal Bureau of Investigation
Office of General Counsel
Employment Law Unit
Attn: Patricia A. Miller
935 Pennsylvania Avenue, NW, Room PA-400
Washington, DC 20535
Patricia.Miller@ic.fbi.gov

Re: MSPB Appeal [REDACTED]
[REDACTED] v. Dept. of Justice
Applicant File #67B-HQ-[REDACTED]

Subject: Further Request

Dear Ms. Miller,

By my count, I have now sent you fourteen email messages this week without a response or a phone call to discuss the important matters therein.



If there is some issue with me writing direct communications that don't hold back what I believe happened and that take the extra step of telling you all kinds of free information about this matter, I would appreciate being notified whether you would or would not like me to continue sending you information that seems like it might contribute to a correction to the opinion that was given, or otherwise.

I believe it could reasonably be contended that you may have an ethical dilemma greater in scope and importance than that for which your office concluded that I had committed a crime as well as professional misconduct, and "recommending" that I be disqualified, the implication being that I had no redeeming value to the FBI. The "recommendation" and of course the opinion that a crime occurred caused a "fact" of the applicant committing a crime to be used as the basis for disqualification. Please consider the implications under the Tort Claims Act.



As a result of that decision, I cannot work for any agency in the Federal government that requires a background investigation. You are on notice that your opinion and its apparent basis have (1) undone all of the work the FBI did in selecting, processing, polygraphing, and investigating me for the Special Agent position for which I was selected, (2) resulted in me being substantially guaranteed to never be able to work for the Federal government, much less the FBI, and (3) provided a claim for which the personnel responsible may not be immune. Without indicating what outcome I am hoping for (which should be obvious by my continued discretion in communicating only with you about this matter), if you were to listen to the first 5-10 minutes of my Phase II interview, I think that might provide some insight as to the possible outcomes that might possibly be able to occur, as well as their magnitude.

The ethical dilemma presented to whoever reviews the eventual appeal will be simple—who to believe. If the applicant is credible, should the appeals board believe at least four Special Agents and one Supervisory Special Agent who reviewed the same factual information and concluded it was harmless enough to continue the applicant's processing, or should the appeals board believe a two month SA who contradicts all four Special Agents and the SSA, as well as the applicant, and has demonstrated gratuitous cruelty to the applicant on at least one occasion? That seems like it may be part of the ethical dilemma that your office has in advising the very personnel who are the subject of this matter despite being told information that is prejudicial to them. Where else can I present this information since you are the Agency Representative and you have asked me not to communicate with other employees?

Imagine my surprise and the degree of my upset, which is demonstrably sincere (and I believe, reasonable), when I find out that the very office that I have been corresponding with at length and providing free information to about my MSPB appeal knew all along that they contributed to the determination, and yet continued to say nothing in the MSPB appeal and ignored discovery that was clearly relevant to the issue. Not only that, you filed two motions to stay discovery, which if granted would have prevented production of the information. How might that look later on if the same office doesn't respond to requests to take a look at the legal opinion it issued and its effect?

You have also been advised of what I believe is information that you may need to look into in order to protect the FBI under your fiduciary duties as its attorneys. I am only asking you to follow the ethical standards you held me to in your legal opinion disqualifying me from government service. I have provided verifiers and advised you there may be a way you could otherwise verify the plausibility of the information and implications I have provided to you, but you have not contacted me for the information needed to verify this. I can't imagine why unless it's because of some type of restriction on approvals or otherwise, because the FBI has been criticized over and over for not correcting small incidents that later become disasters.

Please immediately let me know if you have a conflict that requires me to address my concerns elsewhere in the FBI in order to prevent your violating ethical duties to FBI employees. I can't imagine why you wouldn't have told me this already, of course.



I am sorry if this gives the appearance of making requests that are perhaps inartfully presented, but it seems to me that I might be forgiven for this under the circumstances. Particularly when I have already asked you for guidance on the appropriateness and manner of correspondence to various parts of the FBI, and you also did not respond.

Sincerely,

[Redacted signature]

[Redacted address]