



U.S. Department of Justice

Office of the Inspector General

March 15, 2007

MEMORANDUM FOR LOUIS DEFALAISE
DIRECTOR
OFFICE OF ATTORNEY RECRUITMENT AND
MANAGEMENT

FROM: SCOTT S. DAHL *SSD*
SENIOR COUNSEL
OFFICE OF THE INSPECTOR GENERAL

SUBJECT: OIG Report and Recommendations
in Matter Involving Robert Kobus

Pursuant to 28 C.F.R. § 27.4(a), we are attaching the Office of the Inspector General's (OIG) report detailing the OIG's findings regarding retaliation allegations raised by Federal Bureau of Investigation (FBI) employee Robert Kobus. In accordance with 28 U.S.C. § 27.3(g), we provided Kobus with a draft report detailing our findings relating to the retaliation allegations. Through his attorney, Kobus provided comments to that draft. Where appropriate, we addressed or incorporated Kobus's comments in the attached report and sent it to him pursuant to 28 U.S.C. § 27.3(h). Kobus consented in writing to our providing the attached report to you.

In addition, pursuant to 28 C.F.R. § 27.4(a), we are providing in this memorandum the OIG's recommendations for corrective action. As set forth in our report, the OIG found reasonable grounds to believe that reprisals had been taken against Kobus for a protected disclosure. Specifically, we found that FBI management in the New York Field Division improperly moved Kobus from the position of a senior administrative support manager to several non-supervisory positions – first as “safety officer” and then later as “physical security specialist.” We concluded that the decision to move Kobus was in retaliation for Kobus disclosing information to the Special Agent in Charge regarding wrongdoing by a supervisory agent in the office. As corrective action we recommend that OARM direct the FBI to restore Kobus to the position of a senior administrative support manager in the New York Field Division, or an equivalent position.

If you have any questions regarding the report, please call me at (202) 616-0147.

Attachment

I. INTRODUCTION

This report describes the investigation by the Office of the Inspector General (OIG) into allegations that officials in the Federal Bureau of Investigation (FBI) retaliated against FBI employee Robert S. Kobus for complaining about alleged wrongdoing in the FBI's New York Division Operations Center.

From October 1994 to October 2005, Kobus was a support manager in the New York Division's Operations Center. In late October 2005, Kobus's position was changed to "safety officer," and he was moved from his office at the Operations Center to a cubicle on a different, largely vacant floor in the same building. He alleged that these and other actions were taken against him because he complained about alleged misconduct by his FBI supervisor.

The OIG investigated Kobus's allegations of retaliation, and the OIG's findings regarding Kobus's allegations are presented in this report. Our findings relating to Kobus's allegations of other misconduct by his supervisor are addressed in a separate report.

In this report, we first briefly summarize Kobus's allegations and the scope of the OIG investigation. Next, we set forth the factual background that our investigation found. In the following two sections, we summarize relevant regulations relating to FBI whistleblowers, and whether Kobus's allegations constituted protected disclosures according to the regulations. The last section presents our findings on whether the actions taken against Kobus were personnel actions and were retaliatory.

A. Kobus's Allegations

In a letter to the OIG dated November 17, 2005, Kobus's attorney summarized the alleged retaliation against Kobus. The letter alleged that as a result of Kobus reporting the misconduct of FBI New York Division Supervisory Special Agent (SSA) William S. Powell to FBI New York managers and confronting Powell about the alleged misconduct directly in late 2004 and early 2005, Kobus was subjected to reprisals from Powell, who was then Kobus's immediate supervisor. The letter further alleged that the retaliation escalated in October 2005, when Kobus made additional disclosures to FBI New York supervisors concerning Powell's alleged retaliation and other alleged misconduct by Powell. Powell's alleged misconduct disclosed by Kobus included time and attendance (T&A) fraud and verbal abuse.

During Kobus's OIG interview, he also alleged that the retaliation intensified after he sent an e-mail, on October 6, 2005, to FBI Special Agent in Charge (SAC) Ray A. Morrow, Assistant Special Agent in Charge (ASAC) Mary E.

Galligan, ASAC Timothy Herlocker, and others. In the e-mail, Kobus complained about the alleged wrongdoing by Powell.

In the letter from Kobus's attorney and in Kobus's OIG interview, Kobus summarized the alleged reprisals that Powell and other FBI supervisors took against him. These alleged reprisals included:

- Removing Kobus's signing authority on T&A cards for support employees
- Rescinding his authorization to work a compressed work schedule
- Verbally abusing and humiliating him
- Not allowing him to fulfill his military reserve duty obligations
- Rescinding his authorization to attend certain training
- Reassigning his FBI vehicle
- Transferring him to the position of safety officer
- Requiring him to work on a vacant section of the 24th floor at a cubicle

B. The OIG Investigation

The OIG investigated Kobus's allegations of retaliation under the FBI's whistleblower regulations. In our investigation, we conducted interviews of approximately 45 FBI employees.

We also reviewed documents such as e-mails, electronic communications, time and attendance records, inspection reports, personnel records, electronic Personnel Management Systems records, photographs, and personal notes.

Pursuant to the FBI Whistleblower regulations, 28 C.F.R. § 27.3, we provided the OIG findings regarding retaliation to Kobus, and he responded with comments to our findings. We addressed or incorporated some of his comments into this report. None of our findings changed after considering his comments.

II. FACTUAL BACKGROUND

A. Operations Center and Personnel

The FBI's New York Division's Operations Center operates the division's telephone switchboard, conducts record checks, oversees the division's radio system, processes mail and teletypes, and provides support to the division's command center during critical incidents. The Operations Center is open 24 hours a day, 365 days a year, and is

Kobus has worked in the New York Division's Operations Center for over 22 years and is currently a GS-13. He joined the FBI in October 1981 as a support employee. From October 1994 to January 2006, Kobus was a Supervisory Technical Information Specialist (STIS) at the Operations Center. As a STIS, Kobus's duties included the supervision of support personnel assigned to the Operations Center, reviewing their work product, approving time and attendance records, and handling other administrative issues. As the senior STIS at the Operations Center, he supervised a staff of approximately 35 employees, including two junior managers. Kobus's supervisor from April 2004 until October 2005 was SSA Powell.

The group that Kobus supervised was responsible for operating the telephone switchboard, conducting records checks, monitoring the FBI radio system, sending and receiving teletypes, distributing mail, and assisting the Division's command center during critical incidents. According to Kobus, the agents at the Operations Center field telephone calls and prepare leads from the incoming calls that are referred to the appropriate FBI squad.

Kobus and the two junior support managers he supervised were also responsible for certifying the support employees' time and attendance records. As senior STIS, Kobus had an office on the 26th floor that allowed him to be able to meet individually with the employees he supervised.

On October 6, 2005, Kobus sent an e-mail to SAC Morrow complaining about the alleged misconduct of Powell. In the e-mail, Kobus alleged that Powell improperly retaliated against him and the other support managers by taking away their authority to sign timecards, personally engaged in T&A fraud, and verbally abused Kobus and others.

On October 24, 2005, Kobus was involuntarily moved to the position of "safety officer" for the FBI New York Division. He was told that the position was temporary and that he would be moved back to STIS after 120 days, but after 120 days his move was extended to November 2006. In that position, he did not supervise anyone. At the same time that he was transferred to the new position, he was moved to a nearly vacant floor and was assigned to work at a cubicle. While in the position of safety officer, Kobus was supervised by SSA Adam Krimmer.

In November 2006, Kobus was again involuntarily transferred for 120 days to the position of "physical security specialist" and moved to a cubicle in a different building than the Operations Center.

SSA Powell has been with the FBI since 1987. He began working at the Operations Center in April 2004 as an SSA, and worked there until June 2006, when he was transferred within the New York Division to the Physical Security

Unit as a manager. As the SSA for the Operations Center, his responsibilities included the overall supervision of agents and support personnel assigned to the Operations Center. He was Kobus's direct supervisor.

The Operations Center's executive management consists of a SAC (who also oversees additional units within the New York Division), an ASAC, and an SSA. From April 2004 through October 2005, the SAC was Charles Frahm. From October 2005 through October 2006, the SAC was Ray Morrow, who then transferred in November 2006 to Pittsburgh as the SAC of that office. From April 2004 to October 2005, the ASAC with responsibilities over Kobus's group was Timothy Herlocker. In October 2005, the new ASAC over Kobus's group was Mary Galligan. Galligan remained Kobus's ASAC until February 2006, and then Kobus reported to ASAC Jill Eulitz. Powell was the SSA from April 2004 until June 2006.

B. Background to Kobus's Allegations in the October 6, 2005, E-Mail

In mid-2004, Powell instituted a "birthday leave" policy for Operations Center employees that permitted employees to take 2 hours of leave on their birthdays without being charged for annual leave. At the time that Powell instituted the birthday leave policy, Kobus and two other support managers were responsible for certifying the T&A cards for Operations Center support employees. Kobus and the two other support managers were concerned about certifying the T&A records knowing that employees who took birthday leave had not worked the full 8 hours listed on their T&A cards. As a result, Kobus and the two other support managers refused to sign support employees' forms when birthday leave was taken because the support managers believed that the forms were not accurate and contained fraudulent information which reflected time that was not worked.

Kobus and the other support managers met with Powell in December 2004 to express their concerns about the policy. According to Kobus, Powell dismissed their concerns and shortly after this meeting removed the authority of Kobus and the other support managers to certify the T&A cards for support employees. Powell took over that responsibility.

After the December 2004 meeting, Kobus complained to Powell's supervisor, ASAC Herlocker, about Powell's birthday leave policy and Powell's removal of the responsibility of the support managers to sign T&A cards for Operations Center support employees. However, the birthday leave policy continued until October 2005, and the T&A responsibilities were not returned to Kobus and his support managers.

In July 2005, Kobus also complained to Herlocker about several incidents in the Operations Center in which Kobus believed that Powell acted

in a verbally abusive or inappropriate manner toward Kobus or other support employees. Shortly thereafter, Herlocker sent an e-mail to all Operations Center managers, including Kobus and Powell, reminding them that all communications must be professional.

In September 2005, Morrow and Galligan learned that they would be taking over management responsibility as SAC and ASAC for the Operations Center in October 2005. They told the OIG that they had heard about disputes between Powell and Kobus and that both managers were "a problem." In addition, Morrow had heard that the two managers were sending to the ASAC accusatory e-mail messages making allegations about the other.

On October 5, 2005, less than 2 weeks before Morrow and Galligan were scheduled to take over responsibility for the Operations Center, Morrow sent an e-mail to Kobus and Powell (with a copy to then ASAC Herlocker and Galligan), chastising the two managers for their ongoing e-mail battle and for their lack of leadership. Morrow warned Kobus and Powell that their behavior would no longer be tolerated and action would be taken if their behavior continued.

The next day, on October 6, 2005, Kobus sent an e-mail response to Morrow complaining about Powell and alleging that Powell had engaged in various misconduct, including verbal abuse, sexual harassment, retaliation, and T&A fraud. Kobus described the T&A fraud as Powell frequently not working a full 8 hour day, but then claiming that he did. Kobus also alleged that on at least six occasions, Powell did not work at all, but he did not put in for leave. In addition, Kobus stated in his e-mail that the retaliation from Powell stemmed from the unwillingness of Kobus and the other support managers to approve birthday leave that Powell has instituted.

C. Actions after Kobus's October 6 E-Mail

Kobus alleged that following his October 6 e-mail to Morrow about Powell, Operations Center management retaliated against him by disapproving his military reserve leave, rescinding his training authorization, taking away his FBI vehicle, transferring him to the "safety officer" position, moving him to a nearly vacant floor, and engaging in further harassment of him.

Kobus told the OIG that prior to October 6, 2005, he had no difficulty obtaining authorization to attend military reserve duty. He said that on October 11, 2005, ASAC Galligan notified him that he needed written orders from his commanding officer prior to taking leave for military duty, which Kobus had not needed prior to that point, and that Powell was to make the decision to approve his leave. Kobus said that after several e-mail exchanges with Powell and other Operations Center management, Powell reluctantly approved his military leave requests, but after Kobus was moved to the "safety officer" position, Kobus's new supervisor said that Galligan would not approve

Kobus's military leave requests without written orders. After Kobus, in February 2006 obtained guidance from FBI Headquarters personnel who said that Kobus did not need written orders, he was able to fulfill his military reserve duties.

Kobus also alleged that prior to his October 6 e-mail, he was approved to attend important training that was scheduled for November 2005 on the New York State Police criminal information database. On October 17, 2005, Powell sent out an e-mail message to all Operations Center employees stating that "for budgetary reasons" only three employees were permitted to attend that training, and Kobus was not one of the three. Kobus alleged that he was excluded in retaliation for his complaints about Powell.

In addition, Kobus said that he had an FBI "take home" vehicle assigned to him for over 11 years while he served as STIS in the Operations Center. He acknowledged that no other support staff in the Operations Center had an assigned FBI vehicle. On October 17, 2005, Powell sent another e-mail to Operations Center employees directing that two vehicles should be parked in the garage for each month between November 2005 and September 2006 because of a "gas crunch." For each month, the first vehicle on the list rotated among agents in the Operations Center, and the second vehicle on the list was Kobus's. Several days later, while Kobus was on approved military leave, Powell sent two agents to retrieve the vehicle from Kobus's residence.

When Morrow met with Kobus on October 24, 2005, Morrow told Kobus that he was taking away Kobus's vehicle permanently because it was needed by another support employee in the New York Division (not in the Operations Center) who had to drive to FBI firing ranges as part of her duties.

Also on October 24, 2005, Kobus had a meeting with Galligan and Powell at which Galligan told him that he was to be transferred temporarily from his position as STIS to the position of "safety officer." Galligan told him that the reason for the transfer to the new position was to allow for a review to be conducted of his position as STIS. According to Kobus, Galligan also told him that he had given a bad impression to Morrow in his October 6 e-mail.

Kobus noted in his OIG interview that he had held the position of STIS at the Operations Center for 11 years and in that position supervised approximately 35 subordinate support personnel. Kobus stated that he did not request this transfer to the position of safety officer, received no training for the position, and did not supervise any personnel in that position. Kobus said that, in that position, he was responsible for ensuring that there were no safety issues in the New York Division building, such as fire hazards.

Kobus stated that immediately after the October 24 meeting with Galligan, he was escorted to the 24th floor of the New York Division building by

Galligan, which is a largely vacant floor, and assigned to work at a cubicle. He said that although other offices on that floor were available, he was told that the cubicle was his assigned station. Previously, as the senior STIS, Kobus had his own office in the Operations Center.

Kobus stated that after he was moved to the 24th floor, he was told by his supervisor, Adam Krimmer, that he was not to appear in the Operations Center, even though his position as safety officer was temporary and he was still assigned to the Operations Center. Kobus alleged that he was singled out because he had complained to management about Powell.

In November 2006, Kobus was transferred again to another temporary position, this time as a non-supervisory physical security specialist, and assigned to a cubicle in another building. As of February 2007, he was still in that position and location.

III. FBI WHISTLEBLOWER REGULATIONS

Under the regulations governing FBI whistleblowers, 28 CFR Part 27, in order to establish a prima facie case for whistleblower retaliation, the complainant must first show that he or she made a "protected disclosure" to a qualifying individual or office about (1) a violation of any law, rule, or regulation; or (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. The complainant is not required to show that a violation of law or regulation actually occurred, only that he or she had a reasonable belief that such a violation occurred. The protected disclosure must be made to the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, the highest ranking official in any FBI field office, or any official in the OIG, Department of Justice OPR, or FBI OPR.

In addition, the complainant must establish that there are reasonable grounds to believe that a "personnel action" was taken or failed to be taken against the complainant as a "reprisal" for the protected disclosure.

IV. OIG FINDINGS CONCERNING "PROTECTED DISCLOSURE"

In Kobus's October 6 e-mail, he reported to SAC Morrow allegations concerning T&A fraud by Powell. Specifically, Kobus alleged that Powell falsified his T&A cards by (1) falsely claiming on at least 6 occasions that he came into the office when he did not report at all; and (2) not working all the hours that he claimed. In November 2005, Kobus provided to management detailed information to support his allegations, including the dates and times that Kobus alleged were falsely claimed by Powell.

Kobus also alleged in the October 6 e-mail that Powell had inappropriately instituted a birthday leave policy and that when Kobus and other support managers refused to sign the T&A cards where the employee took birthday leave, Powell removed the T&A card signing authority from Kobus and the other support managers. In addition, Kobus alleged in his October 6 e-mail to Morrow that Powell had made inappropriate remarks, including sexual comments, around the office.

Kobus's disclosure of the T&A allegations and supporting material demonstrate that Kobus had a reasonable belief that Powell had violated the law and FBI policy. Likewise, the allegation about Powell's "birthday leave" policy is sufficient to establish that Kobus reasonably believed that Powell violated FBI policy by impermissibly allowing employees to be paid for time that they did not work or take authorized annual or sick leave.

As the highest ranking individual for the Administrative Division of the FBI New York Field Office, Morrow was a qualifying individual for receiving the protected disclosure by Kobus. 28 CFR § 27.1(a). Therefore, we conclude that Kobus made a "protected disclosure" under the regulations when he reported Powell's alleged misconduct to Morrow on October 6, 2005.

In Kobus's comments to the OIG's findings, Kobus stated that prior to October 2005 he made disclosures of Powell's wrongdoing to ASAC Herlocker and attempted to make disclosures to Morrow's predecessor, SAC Charles Frahm, but Frahm had avoided him. However, we determined that none of the electronic communications or e-mails prepared by Kobus containing complaints about Powell was sent to Frahm. In addition, Herlocker was not the highest ranking official in the field office, as required by the regulations to be a "protected disclosure." Nevertheless, we analyzed the actions by management to determine if they were retaliatory in nature, even if they occurred prior to the disclosure in October 6, 2005.

V. OIG ANALYSIS CONCERNING ALLEGED RETALIATION

Under the whistleblower regulations, after determining that a protected disclosure was made, the OIG then examines if a "personnel action" was taken or failed to be taken against the complainant as a "reprisal" for the protected disclosure. Covered "personnel actions" are listed at 5 U.S.C. § 2302(a)(2) and include the following actions: (1) a disciplinary or corrective action; (2) a detail, transfer, or reassignment; (3) a decision concerning pay, benefits, or awards; (4) a decision concerning education or training, if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action; and (5) any other significant change in duties, responsibilities, or working conditions.

In addition, as with the finding concerning Kobus's protective disclosure in section IV, we analyzed the conduct of FBI managers to assess whether their conduct was retaliatory in nature, even if the actions do not constitute "personnel actions" as defined by statute.

A. Removal of Signing Authority on T&A Cards

1. Allegations

Kobus alleged that between May and December 2004, he, along with two other support supervisors, STIS Kelly Anne Morsen and Communications Supervisor (CS) Oneida Rosario, spoke with Powell on several occasions to express their concerns over the birthday leave policy that Powell had instituted. The birthday leave policy allowed employees to leave work 2 hours early on or near their birthdays without taking any recognized form of leave.

Kobus and the other two support supervisors told the OIG that at a meeting with Powell in December 2004, the support supervisors repeated their objections to signing and certifying the T&A cards for support employees who took birthday leave but claimed a full 8 hours of work. The support supervisors said that they told Powell that they believed the T&A cards under those circumstances would be false and that they viewed it as inappropriate to sign such cards when a full day was not worked.

In addition, Morsen said that at the meeting the support managers told Powell the birthday leave was causing staffing problems because birthday leave caused gaps in necessary coverage. Similarly, CS Rosario stated that they told Powell birthday leave policy caused support employees to circumvent the support managers and go directly to Powell for approval. She also told him that some employees were approved for the leave and others were not. She stated that this disparate treatment caused tension in the Operations Center. Furthermore, Rosario thought that the policy was wrong because it interfered with support managers being able to schedule the support personnel. Moreover, she told the OIG that signing T&A cards was one of the specific duties in her performance plan as a support manager.

The support supervisors told the OIG that after they identified these problems with the birthday leave, Powell told them to sign the cards anyway. When they told Powell that they would refuse to sign T&A cards where birthday leave was taken, they said that Powell responded that he would take over responsibility for signing T&A cards for support employees.

On December 8, 2004, Powell sent Operations Center support managers and others the following e-mail: "EFFECTIVE IMMEDIATELY, ALL OI-1 REGISTERS [Operations Center T&A cards] WILL BE UNDER THE CONTROL

OF SSA POWELL ONLY. OI-1 STAFF SHOULD ENSURE THAT ALL THE REGISTERS ARE ACCURATE.”

Kobus told the OIG that after the December 2004 meeting with Powell; he sent an Electronic Communication (EC) dated December 9, 2004, to ASAC Herlocker complaining about Powell’s birthday leave policy and about Powell taking away signing authority from the support supervisors. In Herlocker’s OIG interview, he said that after Kobus complained to him about the birthday leave policy, Herlocker contacted Powell and told him that the policy was inappropriate, although Herlocker did not recall when he made that contact. In ASAC Galligan’s OIG interview, she said that the FBI does not have a birthday leave policy. Nevertheless, according to Kobus, the birthday leave policy continued until October 2005.

Kobus also stated that after the December 2004 meeting with Powell on the birthday leave policy, Powell became verbally abusive to Kobus. In Kobus’s view, his conflict with Powell on the birthday leave policy was the genesis of the later retaliation, including taking away his assigned vehicle, transferring him to the position of safety officer, and moving him to a vacant floor.

In his interview with the OIG, Powell stated that Kobus objected to his practice of allowing employees to leave early on their birthdays. He said that Kobus never explained why he objected, but he recalled that Kobus did object to signing the T&A cards that contained hours not worked. Powell said that as a result of Kobus’s refusal to sign, he decided to take over the support supervisors’ signing authority for T&A cards of support employees. Powell acknowledged that the birthday leave was his idea.

2. OIG Analysis

The dispute between the support managers and Powell on the birthday leave policy and Powell’s decision to take away signing authority for T&A cards occurred in December 2004. Because Kobus’s “protected disclosure” for purposes of the FBI whistleblower regulations occurred in October 2005, Powell’s conduct in taking away the signing authority technically could not be in “reprisal for a protected disclosure.”

However, Kobus and the other two support managers disclosed to Powell their legitimate concerns about his birthday leave policy and told him that they viewed T&A cards where birthday leave was taken as inaccurate and inappropriate. They refused to sign them because they believed they contained fraudulent information which reflected time that was not worked. They also told Powell that the policy was causing management problems for them. In addition, ASAC Herlocker told Powell that his birthday leave policy was inappropriate. In response to the disclosure to Powell by the support managers, and based on their refusal to sign T&A cards containing “birthday

leave,” Powell took away the managerial duties of Kobus and the other two support managers to sign their staff’s T&A cards, which was previously a specific responsibility assigned to support managers. We believe that Powell’s action of completely taking away signing authority from the support managers was retaliatory in nature and a display of poor judgment by Powell.

B. Refusal to Reauthorize a Compressed Work Schedule

1. Allegation

Kobus told the OIG that he was approved in 2002 to work a compressed schedule of four ten hour days. He said that his mother suffers from Alzheimer’s disease, and he utilizes the extra day off during the week to take her to doctor appointments.

Kobus said that in late 2004, Powell told Kobus that he needed approval to continue to work a compressed schedule. When Kobus responded that he already had approval, Powell explained to him that approval for working a compressed schedule was granted on a yearly basis by the New York Division Flexi Committee based on a recommendation from the employee’s ASAC and that an employee must reapply each year to receive approval. Kobus said that Powell further told him ASAC Herlocker would not recommend approval for Kobus’s request.

According to Kobus, he then complained to Herlocker about his need for a compressed schedule. Kobus said that Herlocker responded to him that everyone has parents who are getting old. Kobus alleged that FBI management’s unwillingness to consider his request to work a compressed schedule in 2005 was retaliatory.

Kobus further said that Powell sent an inaccurate e-mail in January 2005 to ASAC Herlocker suggesting that Kobus had voluntarily relinquished his request for a compressed schedule, when Kobus had not actually done so. In the e-mail to Herlocker, dated January 20, 2005, Powell wrote, “Robert [Kobus] has shown true professionalism and team work in deciding to dismiss his request for a compressed work week and work five (5) days. He has been authorized by me to flex three (3) days a week and cover the other shifts 7a-3p. I thank him very much for this, while dealing with his personal matters. This will take effect 2/6/05.” Kobus stated that the information in the e-mail was inaccurate because he did not “decide to dismiss his request” -- he was told by Powell and Herlocker that his request would not be approved.

Powell stated to the OIG that in 2004 he recommended that Kobus’s request be approved for a compressed work schedule. The OIG was not able to find a record for this approval, and Kobus did not recall reapplying in 2004. Powell said that when Kobus resubmitted his request for consideration to work

a compressed work schedule for 2005, Herlocker told Powell the program was not designed for senior support managers. Powell stated that he was not asked for input and made no recommendation regarding the second request.

Herlocker told the OIG that he made the decision not to approve Kobus's request in 2005. He said that Powell initially brought up the subject of Kobus's compressed schedule, but Herlocker agreed that managers should not have compressed work schedules. Herlocker stated he met with Kobus and advised him that his position as a support manager did not meet the criteria for working a compressed schedule. Herlocker also told the OIG that support managers should not work compressed schedules.

Herlocker recalled that Kobus brought up his mother's situation, and when he asked Kobus if he could attend to her needs on the weekends, Kobus replied that to do so would adversely impact time with his family. Herlocker advised Kobus that he would be liberal with leave to assist with the problem.

In his comments to the OIG's findings, Kobus alleged that FBI's denial of his renewed request for a compressed work schedule in 2006 was also retaliatory. Kobus said that in July 2006, he submitted a request to the FBI Flexi Committee for a compressed work schedule. He said that he also submitted the request to his supervisor at the time, SSA Adam Krimmer, and that Krimmer refused to process the request. He said Krimmer's refusal was retaliatory. Kobus stated that when he transferred out of Krimmer's unit, his new supervisors approved a temporary flexible schedule.

2. OIG Analysis

Herlocker's decision to decline to approve Kobus's request for a compressed work schedule in 2005 was made prior to Kobus's "protected disclosure." Therefore, his decision was not in reprisal for a protected disclosure.

Furthermore, the OIG found insufficient evidence to conclude that Herlocker's decision was retaliatory or that the decision was motivated by anything other than management's prerogatives on work scheduling. Herlocker told us that he believed it was inappropriate for a manager to work a compressed schedule, and he also said that he told Kobus that he would be liberal in granting leave to allow Kobus to help his mother. In addition, on other issues, Kobus viewed Herlocker as being supportive of him, including Herlocker's reaction to Powell's birthday leave policy and Kobus's military leave requests. Moreover, Powell in a January 2005 e-mail, authorized Kobus to have flexible time 3 days a week for his personal situation, which demonstrated some flexibility by management on work scheduling.

This same analysis applies to Kobus's renewed effort in 2006 to obtain a compressed schedule. Herlocker told the OIG that managers in the Operations Center did not work compressed schedules.

C. Rejection of Kobus's Military Reserve Duty Requests

1. Allegation

Kobus alleged that prior to October 6, 2005, he had been approved to take leave to perform military reserve duty without submitting military orders. He alleged that after sending his October 6, 2005, e-mail to Morrow, Operations Center managers improperly denied his requests for military leave.

Kobus provided the OIG with the following e-mails to support his allegation. On October 6, 2005, Kobus sent his e-mail response to Morrow in which Kobus complained about Powell's misconduct. Later that day, Kobus sent an e-mail to Powell advising him that the U.S. Coast Guard had requested that Kobus be placed on military leave on October 7, 14, and 17, 2005. On the same day, Kobus received an approval from Herlocker who stated, "Concur on the dates that you are still under [Herlocker's unit]." (Herlocker was referring to the fact that the Operations Center would soon be transferred to another unit and that he soon would no longer have authority to approve leave for Kobus's proposed leave.) Kobus went on military leave on October 7, 2005.

However, on October 11, 2005, Galligan, who would soon be taking over from Herlocker as the ASAC for the Operations Center, sent Kobus an e-mail stating, "Robert, FBI Policy is, Military orders need to be presented to the SSA before you are authorized to report for duty. Therefore, please provide the orders to Powell before Friday or you will be unable to report on 10/17. As far as the dates under [Herlocker's unit], please see Tim. Thanks."

On October 12, 2005, Kobus sent Galligan an e-mail explaining that he had contacted his commanding officer to inform the officer that the FBI required military orders, based on Galligan's instruction on October 11. Kobus further explained to Galligan that actual orders were not yet available. Later that same day, Galligan advised Kobus that he should provide all the paperwork to Powell for his review and that Powell would decide.

On October 13, 2005, Kobus sent Galligan, Herlocker, Powell, and Morrow, among others, a detailed e-mail outlining how he had already obtained authorization from Powell to attend his military leave dates in October. Later that day, Kobus received an e-mail from Galligan advising him that the decision to approve the military leave was Powell's to make. According to Kobus, Powell reluctantly approved Kobus's military leave requests for October 14 and 17-21, 2005.

In his OIG interview, Powell stated he was aware that Kobus was a member of the U.S. Coast Guard Reserve. He was also aware Kobus frequently attended reserve duties and he had never received any orders from Kobus. Powell further said that he had brought this deficiency to the attention of Herlocker, who instructed Powell to let Kobus attend the military training and told Powell to "drop it." Powell stated that after the supervision of the Operations Center was transferred from Herlocker to Galligan in October 2005, Powell again brought Kobus's request for military leave without military orders to the attention of Galligan. Powell said that when he advised Galligan of the situation in October 2005, she denied Kobus's request for military leave because Kobus had no orders to substantiate his request. Powell further stated that he never personally denied Kobus's request for military leave, although he had some concerns about it.

In her OIG interview, Galligan said that she did advise Kobus that office policy required military orders to be presented before an individual could go on military leave. She said this policy was necessary to ensure that an employee received proper compensation and leave. Galligan stated that Kobus provided a letter from his commanding officer, which she viewed as insufficient. Because the dates in October 2005 when Kobus requested military leave fell on dates in which both Herlocker and Galligan had jurisdiction over the Operations Center, she requested that Kobus submit the documents to Powell for review.

After Kobus was transferred to the position of safety officer in late October 2005, he was supervised by SSA Adam Krimmer. Kobus said that in late 2005 and January 2006, Krimmer denied Kobus's requests for military leave. Krimmer stated to the OIG that Galligan instructed him not to approve Kobus's requests for military leave unless Kobus provided military orders.

Kobus said that the matter was finally resolved when he requested assistance from a human resource specialist at FBI Headquarters. The specialist informed Kobus in an e-mail on February 9, 2006, that the U.S. Coast Guard does not provide orders for inactive duty training, which applied to Kobus. The e-mail further indicated that a letter from Kobus's commanding officer would be sufficient documentation for approving military leave. Kobus said that he then forwarded this e-mail to Krimmer, who reversed his position and allowed Kobus to take military leave when Kobus provided a letter from his commanding officer.

2. OIG Analysis

Krimmer's and Galligan's actions in denying Kobus's requests for military reserve duty in late 2005 and early 2006 may be a "decision concerning . . . benefits" under the definition of a "personnel action." However, the OIG did not find sufficient evidence to conclude that Galligan or Krimmer acted in reprisal

for Kobus's protected disclosure in October 2005. Krimmer was following Galligan's orders. Galligan was apparently operating under a mistaken understanding that inactive reservists needed military orders to take leave. When she took over as ASAC of the Operations Center in October 2005, she viewed Kobus's requests for military leave as insufficient without the written orders. Powell and Herlocker also thought that written orders were necessary, but when Powell tried prior to October 6 to have Herlocker deny Kobus's request for military leave, Herlocker did not believe the issue of written orders was worth pursuing. Moreover, Powell approved Kobus's request to take military leave in October 2005.

D. Rescinding Authorization for Training

1. Allegation

Kobus stated that he was approved in September 2005 to attend an annual training conference in November 2005, sponsored by New York State Police, on using the state criminal information database. He alleged that the approval was rescinded by his supervisors after his October 6 e-mail. Kobus told the OIG that in past years he had attended the training as the designated coordinator in the office for the database and that it was relevant to his duties, although not mandatory.

Kobus provided the OIG with documentation that showed he received approval in September 2005 to attend the training. Specifically, Kobus provided the OIG with an Electronic Communication (EC) dated September 9, 2005, sent to Powell requesting approval to attend the training. On September 20, 2005, Powell sent an e-mail to Herlocker requesting authorization from Herlocker to send "at least four folks for this state mandatory training." In an e-mail response to Powell on September 21, 2005, Herlocker replied, "[S]end them...it's a new fiscal year brothers and sisters!" In an e-mail message from Powell sent to Kobus and others on September 21, 2005, Powell instructed Kobus to assemble a team and schedule the training. Kobus said that he assembled the team of three other employees and himself, and they prepared to attend the training.

Kobus told the OIG that the next thing he heard about the training was an e-mail from Powell, sent to all Operations Center employees on October 17, 2005, in which Powell stated, "Due to budgetary reasons, the following individuals have only been authorized to travel to the NCIC conference: Rose Rini, Brian Hough and Susan McGivney." Kobus said that he was surprised to learn that he was excluded from attending the training that Powell had already approved and had told Kobus to assemble a team.

Powell told the OIG that he recalled that Kobus and three other Operations Center employees were approved to attend the "mandatory"

training. He said that after the approval was obtained, funding became an issue. He said he believed only one employee was sent. Powell stated that the decision not to send Kobus was made by Galligan.

Galligan told the OIG that it was not her decision to exclude Kobus from the training. She said that she was not aware that Kobus's authorization to attend the training had been rescinded.

2. OIG Analysis

The decision denying Kobus's training opportunity constitutes a "personnel action" if the training "may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action." When asked what impact the decision had, Kobus told the OIG that it was relevant to his work and that he was the designated coordinator for the database in the New York Division. However, the OIG could not establish that the training could lead to any discernable action for Kobus. Therefore, the decision to deny Kobus the training opportunity does not appear to be a "personnel action" under the FBI whistleblower regulations.

Nevertheless, the evidence shows that Kobus was singled out by Powell and denied a training opportunity for which Powell had approved Kobus to attend. The timing of Powell's decision to rescind Kobus's authorization is suspect – less than 2 weeks following Kobus's protected disclosure complaining about Powell. In addition, the budgetary reason that Powell offered in the e-mail to all Operations Center staff on October 17, 2005, is at odds with the response from Herlocker that funds were available in the new fiscal year. Moreover, he approved three other members of the team to attend the training, and only excluded Kobus. We believe that the evidence shows that Powell's decision to exclude Kobus was retaliatory, even if it did not technically qualify as a personnel action under the whistleblower regulations.

In Kobus's comments to the OIG findings, Kobus disagreed with this analysis. He stated that the denied training opportunity had "serious ramifications [because] training can be a major factor in promotion, in performance evaluations, and/or in other opportunities for advancement." However, there was insufficient evidence that his inability to take the non-mandatory training would have affected his possibility for promotion or award, or affected his opportunities for advancement.

Kobus also asserted that the "absence of such training is highly detrimental" to his unit. However, three of Kobus's subordinate employees, including the two managers who reported to Kobus, were able to attend the training and were in a position to ensure that the division had trained personnel on the system.

E. Reassignment of Kobus's FBI Vehicle

1. Allegation

Kobus alleged that after 11 years with an FBI vehicle, his vehicle was taken away from him on October 19, 2005, as a result of his October 6 e-mail to Morrow. Kobus said that on October 13, 2005, less than a week prior to his vehicle being taken away, Kobus had a conversation with SSA Russell Fincher, his previous supervisor. Kobus stated that Fincher told him that Morrow was very upset at him because of Kobus's October 6 e-mail and that Kobus's assigned Bureau vehicle was going to be taken away from him because he had forced Morrow's hand.

In his OIG interview, SSA Fincher told the OIG that he met with Kobus on several occasions and offered guidance, but he denied that Morrow told him that he was upset by Kobus's e-mail or that he advised Kobus that his FBI vehicle would be taken away. Fincher stated, however, that he believed actions taken against Kobus were retaliatory, and he cited the clearest example of retaliation as the move to an unoccupied floor.

On October 17, 2005, Powell sent an e-mail to all Operations Center personnel, in which he stated: "We have been mandated by the ADIC to come up with a plan to save some dollars. To do this, we will not utilize two vehicles a month to help with the gas budget." In the e-mail, Powell designated two FBI vehicles from the Operations Center that would not be utilized for a month at a time. Powell listed in the e-mail the names of employees required to park their FBI vehicles for each month beginning in November 2005 and ending in September 2006. Although a different first employee is listed for each month, Kobus's name appears as the second employee for every month. The e-mail demonstrates that it was Powell's intention on October 17 to remove Kobus's assigned vehicle for a period of at least 11 months.

Kobus also told the OIG that his FBI vehicle was taken away on October 19, 2005, with a sense of urgency. Kobus said that on October 17, he was serving his military reserve duties when he was notified by his daughter that Powell had called Kobus's residence five times in an attempt to reach him. Kobus said that when he returned Powell's call on October 17, Powell informed him that Morrow wanted his assigned automobile and although Kobus inquired as to why, Powell did not give him a reason. Kobus said that he offered to drive the vehicle in the next day, even though he was on approved military leave until October 21, but Powell told him that two agents were being sent immediately to retrieve his assigned automobile. Kobus said the agents retrieved the vehicle 2 days later.

Morrow stated to the OIG that he spoke with Kobus in late October 2005 shortly after Kobus met with Galligan about being transferred on a temporary

basis (the meeting with Galligan was on October 24). Morrow said that during his meeting with Kobus, he asked Kobus who had assigned the Bureau vehicle to him and Kobus could not answer the question. Morrow said that he informed Kobus at that moment that he was transferring the Bureau vehicle to another support employee. Morrow stated that he transferred Kobus's vehicle to a support employee assigned to the firearms unit of the New York Division who had been vouchering significant mileage reimbursement requests. According to Morrow, the decision to remove Kobus's vehicle was a matter of cost savings to the agency. Morrow said that he did not give any instructions on how Kobus's vehicle should be picked up or made available for transfer.

Powell told the OIG that in October 2005, a gasoline "crunch" hit the New York Division. Morrow directed him to produce a list of FBI vehicles that could be "grounded" until the gasoline "crunch" was over. Powell stated that he produced a list which included Kobus's car. He said he included Kobus's name on the list because he felt Kobus did not need a Bureau vehicle as a support employee. Kobus was the only support employee in the Operations Center with an assigned vehicle.

Powell also recalled that Morrow contacted him around the same time in October 2005 and advised Powell that he was reassigning Kobus's Bureau vehicle. Powell told the OIG that he was aware Kobus was away on military leave and that the military leave was less than a week. Powell stated that he asked agents to contact Kobus's residence and arrange for the return of the Bureau vehicle.

Galligan told the OIG that Morrow informed her he was taking Kobus's Bureau vehicle away because he had reviewed Kobus's use of the vehicle and found Kobus was using it simply to commute to and from work. Galligan also stated that Morrow told her Kobus was the only support person he knew who had a Bureau vehicle and did not have an operational reason for having the vehicle.

Kobus told the OIG that on infrequent occasions he was tasked to transport dignitaries and judges in his Bureau vehicle. Furthermore, The OIG found that while all of the agents assigned to the Operations Center have assigned vehicles, the agents do not work cases and generally do not have operational duties that require a vehicle. They too use the vehicles simply to commute to and from work.

2. OIG Analysis

The decision to take away Kobus's vehicle constitutes a "personnel action" as defined in 5 U.S.C. § 2302(a)(2) because it was a "decision concerning . . . benefits" or a "significant change in . . . working conditions." He had the vehicle assigned to him for 11 years while a manager at the

Operations Center. The OIG concludes that there are reasonable grounds to believe that Kobus's protected disclosure to Morrow was a contributing factor in the decision to take away Kobus's Bureau vehicle, as well as the manner in which the vehicle was taken away. The timing of the decision, coming shortly after Kobus's protected disclosure, also provides support for our finding of reasonable grounds to believe that the decision was retaliatory.

In addition, we are concerned that Morrow and Galligan, knowing that Powell and Kobus were locked in a contentious dispute, would assign Powell the responsibility to take away Kobus's vehicle.

We believe the evidence shows that it is unlikely that the FBI management would have made the decision at that time to take away his vehicle absent his protected disclosure. One of the manager's major reasons for taking away Kobus's vehicle -- that Kobus did not have an operational reason -- is undermined by the fact that Operations Center agents who all had assigned vehicles similarly did not generally have operational needs for their vehicles because the agents answered telephone calls and did not work on cases. In addition, Kobus on occasion was assigned special projects by management including picking up dignitaries from the airport.

F. Transfer to Safety Officer Position

1. Allegation

Kobus told the OIG that on October 24, 2005, while attending a meeting in ASAC Galligan's office, Galligan informed Kobus that he was being temporarily transferred from his position as STIS to the position of "safety officer." Powell was present at the meeting. Kobus said that, during this meeting, Galligan also told Kobus that he had given Morrow a bad impression with the October 6 e-mail. In addition, Kobus said that Galligan told him he was not performing at a GS-13 level and that he must perform at the GS-13 level during the next 119 days, which she said was the duration of the temporary move to the new position.

Kobus said that he had not asked for the transfer, but he did not object to it at the meeting. He stated that Galligan was intimidating at the meeting and that given the harsh statements by her, he was concerned that he could be terminated.

Kobus told the OIG that prior to October 6, 2005, he had consistently received positive performance reviews (excellent or "meets expectations"). He said that he has also received numerous awards from the FBI. He said that he was never told that he was not performing adequately or at the GS-13 level. The OIG confirmed that Kobus did not have any negative ratings and had

received dozens of commendations. He said that in 2001 he was selected to attend the FBI's prestigious Executive Development Institute.

Kobus noted that as the senior STIS for 11 years, he supervised the Operations Center support staff, which consisted of approximately 35 support employees, including 2 support managers. He stated that as the safety officer, he did not supervise any staff.

Kobus stated that he did not receive any direction initially concerning what his duties would be as safety officer. The position of safety officer had been vacant for nearly 6 months prior to his assignment. He said that, until he received a performance plan several months after assuming the position, he performed duties such as ensuring that hallways were clear of debris. When he eventually received his performance plan, it assigned him responsibilities such as distributing gas masks to employees, managing the emergency evacuation procedures, escorting smoke alarm personnel through the building, and preparing environmental reports. Kobus said that he did not receive any training for this position or for the duties he was assigned to perform.

Galligan told the OIG that in the middle of September 2005 when she was informed that she would be assigned supervisory responsibility as the ASAC over the Operations Center, she had a discussion with Herlocker who told her that Powell was "a problem" and also that Kobus was also "a problem." Galligan also said that during this same time period she was involved in several discussions with Morrow about transferring both Powell and Kobus from the Operations Center because of the problems with both supervisors that she and Morrow had heard about.

According to Galligan, the decision to move Kobus was made prior to Kobus's October 6 e-mail, although she could not specify when the decision was made. Galligan stated that because there were no open SSA positions for Powell and that because Kobus could be moved to the safety officer position, Morrow decided to transfer Kobus out of the Operations Center and leave Powell in the Operations Center. Galligan said that while Morrow made the ultimate decision on Kobus's transfer, she had input on the reassignment and that she concurred with the decision. She said she also knew from her prior management experience that a 3-4 month review of a unit with the conflicting personalities separated could be very effective. Galligan stated that at no time was the decision to move Kobus retaliatory -- it was simply the proper business decision.

Galligan said that at the October 24 meeting with Kobus, she explained to Kobus that over the next 119 days, an independent audit of the workload and job descriptions and duties of his previous position as STIS would be conducted. She said she further told Kobus that an assessment of his actual duties as an STIS needed to be compared to the duties of a GS-13 employee in

order to determine whether his duties had eroded over time. She denied telling Kobus that he had given Morrow a bad impression with his October 6 e-mail.

Morrow told the OIG that prior to receiving Kobus's October 6 e-mail, he and Galligan had discussed the possibility of transferring Kobus and Powell from the Operations Center. Morrow said that he had heard they were both ineffective supervisors and had concerns that Kobus and Powell could not work together. He also had heard that they were sending accusatory e-mail messages to the ASAC making allegations against the other. He said that after receiving Kobus's e-mail, he felt that there was then a sense of urgency to move a supervisor out of the Operations Center because it was being driven apart by two supervisors. He said that the decision was made to move Kobus because there was a position available for Kobus as safety officer but not for Powell. Morrow stated that his intent in moving Kobus was to give him the potential to advance and possibly receive a promotion.

However, Morrow also told the OIG that he was angered by Kobus's e-mail because Morrow had just sent the e-mail instructing the two managers to discontinue their "e-mail battle," and then he received the e-mail from Kobus continuing the battle.

According to Morrow, he had Galligan speak to Kobus initially about the transfer, and then he met with Kobus personally to discuss the transfer. He told Kobus that the transfer was temporary and at the end of 119 days Kobus could return to his old position if he desired.

However, Kobus said that FBI management extended his detail to the safety officer position until November 2006. In November 2006, Kobus was again transferred temporarily (for 120 days) to the non-supervisory position of "physical security specialist" and was told to report to another building in the New York Division, where he was again assigned to a cubicle. Kobus said that the position of physical security specialist is set at levels GS-7, 9, and 11 (Kobus was a GS-13). In this position, he does not supervise any employees. As of February 2007, he was still in this position.

2. OIG Analysis

Kobus's transfer clearly fits two categories of "personnel action": (1) "detail, transfer, or reassignment"; and (2) "significant change in duties." The OIG concludes that the evidence shows reasonable grounds to believe that Kobus's protective disclosure was a contributing factor in the decision to transfer him to the position of safety officer. Although Galligan stated that Morrow made the decision to move Kobus out of the Operations Center prior to the October 6 e-mail, Morrow told us that he had decided to move both Kobus and Powell from the Operations Center and that only after Kobus's e-mail did he decide to move Kobus alone. Moreover, Kobus was not merely transferred

out of the Operations Center, he was moved out of his supervisory position into a job that he had no training for and where he was not supervising anyone.

Furthermore, the OIG is troubled by Galligan's decision to include Powell at the meeting during which Kobus was told that he was being transferred. By including Powell at the meeting, FBI management contributed to the impression that it was defending Powell and punishing Kobus.

G. Move to a Vacant Section of a Floor

1. Allegation

Kobus alleged that on October 24, 2005, which was the same day of his transfer to the position of safety officer, Galligan escorted him to the 24th floor of the FBI New York Division. Kobus stated in his OIG interview that Galligan told him his new office would be on that floor. Kobus said that Galligan also indicated he would have to sit at a cubicle, even though there were offices available.

Galligan told the OIG that she did not escort Kobus to his new office location. She said she may have escorted Kobus to SSA Krimmer's office, but she was not sure. Galligan denied having anything to do with Kobus's specific office assignment.

Krimmer stated that he is responsible for assigning FBI personnel to work space. He said he has several FBI SSAs assigned to pods because of a shortage of offices. He said that the decision to place Kobus on the 24th floor was his. He placed Kobus there because he had office space available there. Krimmer said that he did not have other open space.

Krimmer told the OIG that the prior safety officer had an office at 290 Broadway, which is in a separate building from the Operations Center. However, that office is now being used by the Acting Administrative Officer.

Krimmer stated that when Galligan advised him of Kobus's temporary transfer, he walked Kobus to his new office space. Krimmer said that he personally asked Kobus on several occasions if he needed anything and Kobus never mentioned that he did not like his current office location.

Morrow stated in his OIG interview that he did not know where Kobus's current office was located. He said he did not direct anyone to place Kobus on the 24th floor.

Witnesses told the OIG that a paper sign was placed for several weeks on the outside of Kobus's former office in the Operations Center that read, "The William S. Powell Conference Room." The OIG also received a photograph of

the sign in front of the office. Witnesses identified the possible author of the sign – it was not Powell or anyone from management.

Kobus said that when he was assigned to the cubicle on the 24th floor, he felt like he was “on display” for anyone who came to the floor and that he viewed this placement as calculated to embarrass him.

2. OIG Analysis

The move to a different floor and desk assignment could be considered part of the “transfer, detail, or reassignment” to the position of safety officer, which we found to be a “personnel action.” While Krimmer stated that he made the decision regarding the desk assignment, he reported to both Galligan and Morrow. The OIG concludes that there are reasonable grounds to believe that Kobus’s protective disclosure was a contributing factor for Kobus being moved to a vacant section of a floor and assigned to a cubicle, and that this move to a vacant floor and assignment of a cubicle appear to have been punitive and retaliatory in nature.

H. Verbal Abuse and Harassment

1. Allegations

Kobus told the OIG that Powell routinely used profanity in the squad area, and although Kobus and several employees told Powell that his language was offensive to them, he continued.

Kobus provided the OIG with an electronic communication (EC) dated July 14, 2005, which he had sent to Herlocker. Kobus stated in his EC that while he and the other two support managers were meeting concerning an incident that had occurred earlier involving Powell being disrespectful to a support employee, Powell came into the room where Kobus was having the meeting and started yelling at Kobus and the two other support managers.

Kobus further stated in the EC that Powell later confronted him alone in his office and started to yell and curse at him. Kobus said that he felt Powell was out of control with anger. Kobus also indicated that other support employees became concerned about Kobus’s safety.

Herlocker stated to the OIG that in July 2005, he met with Powell, Morsen, Rosario, and Kobus. During that meeting, he counseled all on the need for communication through regular office meetings and advised that abrasive language would not be tolerated. He also provided written instructions to all personnel in an e-mail dated July 21, 2005, detailing the directives that he had provided orally at the meeting.

Kobus also alleged that Galligan spoke to him in an abusive manner during the course of several meetings in late October 2005 to discuss his transfer and his allegations. The OIG interviewed everyone who was present at any of the meetings. No one said that Galligan spoke to Kobus in an abusive manner. Rather, several witnesses said that Galligan told Kobus that he was not performing at a GS-13 level and his performance would be re-evaluated upon his transfer to the safety officer position.

Kobus told the OIG that on September 19, 2006, after he had been reporting to the vacant section of the 24th floor for 11 months, he was summoned to the office of his supervisor, SSA Krimmer. Krimmer inquired whether Kobus had been in the Operations Center of the FBI New York Division and whether Kobus had spoken to STIS Morsen during those visits. Kobus told Krimmer that he had recently visited the Operations Center and had a discussion with Morsen during the visit.

Kobus told the OIG that in response to his answer to Krimmer, Krimmer admonished him that he was no longer permitted in the Operations Center. Kobus also told the OIG that he viewed the safety officer position as temporary and that he was still considered a support manager assigned to the Operations Center. In addition, Kobus said that some of his responsibilities as the safety officer required that he visit the Operations Center, including his responsibility to hand out gas masks. Kobus stated that he viewed the decision to ban him from the Operations Center as retaliatory for his protected disclosure. He noted that Powell, one of the subjects of the OIG investigation, was not similarly banned from the Operations Center.

When the OIG re-interviewed Krimmer, he stated that on March 2, 2006, he was directed by Morrow and ASAC Jill Eulitz to advise Kobus that he was not to enter the Operations Center area without prior approval to permit Kobus to conduct his duties as a safety officer. Krimmer stated to the OIG that he gave Kobus specific instructions not to enter the Operations Center without prior approval and documented the instructions in an e-mail. Krimmer further said that he believed that this instruction was given because some Operations Center personnel felt uncomfortable with Kobus being around them, although Krimmer could not recall where he had heard that.

Krimmer also told the OIG that he had instructed Kobus a second time on April 6, 2006, not to enter the Operations Center without prior approval and that Kobus acknowledged he understood Krimmer's instructions. Krimmer said that Kobus's last visit to the Operations Center may qualify Kobus as being insubordinate.

ASAC Eulitz told the OIG that she had instructed Krimmer in February or March 2006 to advise Kobus that he was not to enter the Operations Center unless it was necessary for his current safety officer position. She said that

she did this after receiving complaints that people were uncomfortable with Kobus's presence.

2. OIG Analysis

The OIG concludes that there was insufficient evidence to show that Powell's alleged abusive statements to Kobus were retaliatory. Even Kobus alleged that Powell did not single Kobus out for verbal abuse, and that Powell engaged in verbal abuse of other squad members. The OIG also did not substantiate Kobus's complaint of verbal abuse by Galligan in the October 2005 meetings.

We did not conclude that ASAC Eulitz's decision to limit Kobus's access to the Operations Center was a "personnel action" (as this decision did not significantly change his "working conditions") or that it was in retaliation for his protected disclosure. Eulitz stated that the restriction was in response to complaints that she had received about Kobus's presence in the Operations Center, and that he was not to enter the center unless his duties as safety manager required him to. In addition, Krimmer's directives to Kobus that he needed prior approval to enter the Operations Center if not related to his duties as safety officer were not "personnel actions." Krimmer's directives to Kobus are documented in e-mail messages that the OIG viewed. However, the OIG notes that even though Powell was transferred in 2006 from the Operations Center and no longer has responsibilities there, he was not banned from the center.

CONCLUSION

The OIG determined that Kobus made a "protected disclosure" to SAC Morrow on October 6, 2005, when he sent an e-mail message complaining about alleged misconduct by Powell, including alleged T&A fraud. The OIG also concluded that there are reasonable grounds to believe that the protected disclosure was a contributing factor in the following personnel actions taken against Kobus: (1) taking away his assigned Bureau vehicle after 11 years; (2) transferring him from an STIS position supervising 35 employees to the position of the safety officer with no supervisory responsibilities; and (3) moving him from an office in the Operations Center to a cubicle on a largely vacant floor.

In accordance with 28 C.F.R. § 27.4, the OIG will report these findings, together with recommendations for corrective action, to the Department's Office of Attorney Recruitment and Management. The OIG also intends to provide these findings to the FBI's Office of Professional Responsibility for its review and consideration of appropriate action.