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**RE: Step 1 grievance re: counseling of BPA [REDACTED]**

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[REDACTED]@cbp.dhs.gov> Tue, Mar 12, 2019 at 5:18 PM  
To: "Anfinsen, Jon" <[REDACTED]>  
Cc: [REDACTED]  
[REDACTED]@cbp.dhs.gov>, [REDACTED]@cbp.dhs.gov>

Mr. Anfinsen,

As discussed in our meeting on Monday March 11, 2019, BPA [REDACTED] counselling will be rescinded. BPA [REDACTED] will be advised today March 12, 2019 in person.

Thank You

[REDACTED]  
Supervisory Border Patrol Agent

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

**From:** Anfinsen, Jon <[REDACTED]>  
**Sent:** Tuesday, February 26, 2019 8:23 PM  
**To:** [REDACTED]@cbp.dhs.gov>  
**Cc:** [REDACTED]  
**Subject:** Step 1 grievance re: counseling of BPA [REDACTED]

Sir, the following constitutes a Step 1 grievance filed on behalf of Border Patrol Agent (BPA) [REDACTED], alleging that you improperly counseled him regarding the submission of a Form CA-1.

According to a counseling worksheet you filled out, which was received by the union today, you alleged that BPA [REDACTED] failed to follow a supervisory order, and in doing so, he "missed the open window to report [his] exposure," because he didn't submit the Form CA-1 within 30 days of the exposure.

According to 5 USC § 8122 and 20 CFR § 10.100, employees must file a notice of injury within three years of the injury. Your counseling letter stated that "injuries/exposures must be reported within 30 days from the date of the incident." However, even if a claim is not filed within three years, it could still be compensable if the employer had actual knowledge of the injury within 30 days. In this case, you knew he had been exposed to [REDACTED] because you knew of the improperly filed Form CA-2.

Your counseling letter also indicates that he was ordered to submit a Form CA-1 and that he had failed to comply with that order. You cannot order an employee to file a claim of any kind with the Department of Labor, whether compensation is being requested or not. If an employee chooses not to submit a claim, that is his or her prerogative. The agency may provide guidance or recommendations regarding which forms should be submitted to DOL, but it is ultimately the employee's decision regarding what form to submit and it is up to DOL to decide which forms are properly submitted.

Therefore, the counseling letter is invalid because the underlying allegations are not valid and the order to fill out the Form CA-1 is not an order you may make.

The union requests the following remedies:

1. You shall rescind the counseling letter you issued to BPA [REDACTED];
2. You shall apologize to BPA [REDACTED] for improperly counseling him; and
3. You shall undergo OWCP training regarding the submission of Forms CA-1 and CA-2 and the relevant deadlines.

Please let me know if you have any questions or concerns.

Thank you,

Jon

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Jon Anfinsen  
National Vice President at Large  
Local President, Local 2366 -- Del Rio, Texas  
National Border Patrol Council  
[REDACTED]