

FBI Whistle-Blower Wins \$1.16 Million

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The FBI agreed yesterday to pay a settlement worth more than \$1.16 million to agent Frederic Whitehurst, the whistle-blower who triggered an overhaul of the FBI crime laboratory.

Whitehurst returned to work from a year-long suspension yesterday and voluntarily resigned as required by the deal to settle part of his lawsuit against the bureau.

"The FBI did the right thing," said Whitehurst's attorney, Stephen Kohn. "It's a positive message to all employees."

In the 16-page settlement, the FBI agreed to pay \$1.166 million to purchase annuities that would pay the 50-year-old chemist-agent annual amounts equal to the salary and pension he would have earned had he kept working until normal FBI retirement at age 57.

Under terms of the settlement, the FBI will also pay \$258,580 in legal fees to Whitehurst's lawyers and the Justice Department will drop all consideration of disciplinary action against him.

In a brief statement acknowledging Whitehurst's return to work and his decision to resign, the FBI said, "Dr. Whitehurst played a role in identifying specific areas [of the lab] to be examined and some of the issues he noted resulted in both internal and external reviews."

The FBI made no admission of liability or fault in the settlement document, saying only that the payments were designed to compensate Whitehurst for any economic damage he might suffer as a result of leaving the bureau before he was eligible for retirement.

For 10 years, the lab supervisor who was once the FBI's top bomb residue expert complained mostly in vain about lab practices. But his efforts finally led last April to a scathing 500-page study of the lab by Justice Department Inspector General Michael Bromwich.

Bromwich blasted the world-renowned lab for flawed scientific work and inaccurate, pro-prosecution testimony in major cases including the Oklahoma City and World Trade Center bombings.

Bromwich recommended major reforms, discipline for five agents, which is still under consideration, and transfer of Whitehurst to other duties.

But he also criticized Whitehurst for "overstated and incendiary" allegations of intentional misconduct that Bromwich's investigators did not find.

Whitehurst had been suspended with pay since January 1997 and was facing disciplinary action for refusing to cooperate with an investigation of the leak of some of his allegations to a magazine.

As part of the deal with the FBI, Whitehurst agreed to drop allegations in his lawsuit that



Frederic Whitehurst, right, who triggered an overhaul of the FBI crime laboratory, returned to work from a year-long suspension and voluntarily resigned.

the bureau retaliated against him for whistle-blowing.

However, Whitehurst's allegations that the FBI and the Justice Department violated his rights under the Privacy Act and Freedom of Information Act continue. Those cases are in confidential mediation.

The FBI's action was praised by Sen. Charles E. Grassley (R-Iowa), who chairs a Senate Judiciary subcommittee that oversees the bureau and has sharply criticized its treatment of Whitehurst.

The bureau's settlement sent a signal that "product was more important than image," Grassley said. "Make no mistake about it, however, the FBI would have preferred to get rid of the messenger."

Hailing Whitehurst for "immense public service," Grassley said the chemist-agent had been "unfairly attacked by the FBI and Justice Department's inspector general."

Kohn, Whitehurst's lawyer, said he and his client hope the FBI cooperates "with the ongoing investigation into identifying the victims of the forensic misconduct."

The National Association of Criminal Defense Lawyers has joined Whitehurst in a lawsuit against the Justice Department to obtain working drafts and other data from the inspector general's investigation to identify

defendants whose trials may have been tainted by flawed lab work or testimony.

The FBI has asserted that no prosecutions will be lost because of the lab problems. Justice Department officials have said none have been lost so far but the final outcome remains to be seen. Government witness lists were revised in the Oklahoma City bombing and other prosecutions and at least one count in another trial was dropped, all after word of lab errors or mistakes came out.

Whitehurst is to become founding director of the National Whistleblower Center's Forensic Justice Project. The project will review past FBI lab work to ensure innocent people were not harmed and it plans to monitor the FBI's ongoing effort to obtain its first accreditation of the laboratory by outside experts.

For the seven years until he reaches age 57, Whitehurst would receive payments of \$95,412 a year from the settlement. Between 57 and 62, he would receive \$57,000 a year, or roughly his full pension had he continued working.

At age 62, the payment would decline to \$24,468 a year because he would then be able to draw the actual FBI pension he has earned up to the point of his resignation.

Whitehurst's wife, who continues to work in the FBI lab, would receive the payments after his death.