Description of document:	Department of Defense (DoD) Inspector General (OIG) investigative reports relating to misconduct by senior officials, 2012-2013
Requested date:	06-April-2013
Released date:	9 interim releases – see dates below
Posted date:	03-March-2014
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Source of document:	Department of Defense Office of Inspector General DoD IG FOIA Requester Service Center ATTN: FOIA/PA Chief, Suite 17F18 4800 Mark Center Drive Alexandria, VA 22350-1500 Fax: (571) 372-7498 Online FOIA Request Form
Release dates:	14-June-2013 30-July-2013 06-August-2013 04-November-2013 19-November-2013 13-January-2014 23-January-2014 07-February-2014 12-February-2014 21-May-2014

From: dodigfrsc
Date: Jun 14, 2013 12:00:22 PM
Subject: DoDIG FOIA case F-13-00373

Please find attached an interim response to your April 6, 2013, Freedom of Information Act request for copies of the investigative reports relating to misconduct by senior officials. Please let me know if you have any trouble opening the attachments.

Sincerely,

Jeanne Miller
Chief, Freedom of Information and Privacy Act Office
Department of Defense
Office of Inspector General

H11121648 January 24, 2012

Inspector General

United States Department of Defense

ALLEGED MISCONDUCT: MAJOR GENERAL FRANK J. PADILLA UNITED STATES AIR FORCE FORMER COMMANDER, 10TH AIR FORCE

UNREDACTED ROI

H11121648

JAN 24 2012

ALLEGED MISCONDUCT
MAJOR GENERAL FRANK J. PADILLA
U.S. AIR FORCE RESERVE
FORMER COMMANDER 10th AIR FORCE
NAVAL AIR STATION JOINT RESERVE BASE
FORT WORTH, TEXAS

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that while serving as Commander, 10th Air Force, Major General (Maj Gen) Padilla:

- Improperly appointed his Inspector General (IG) as the Investigating Officer (IO) in a Commander-Directed Investigation (CDI), in violation of Air Force Instruction (AFI) 90-301, "Inspector General Complaints"; and
- (b)(6) (b)(7)(C) [redacted]

We substantiated the first allegation. We conclude Maj Gen Padilla improperly appointed his IG as the IO in a CDI. We found that (b) (6), (b) (7)(C) [redacted], United States Air Force Reserve (USAFR), served as the IG for the Headquarters, 10th Air Force. On May 17, 2010, Maj Gen Padilla appointed her to conduct a CDI into allegations made against (b)(6), (b)(7)(C) [redacted] 306th Rescue Squadron (RQS). The AFI 90-301 in effect at that time prohibited commanders from using IGs and their staff members as IOs for CDIs. Accordingly, we determined Maj Gen Padilla violated the prohibition in AFI 90-301.

We did not substantiate the second allegation. (b)(6) (b)(7)(C) [redacted]

(b)(6) (b)(7)(C) [redacted]

(b)(6) (b)(7)(C) [redacted]

We provided Maj Gen Padilla the opportunity to comment on the preliminary results of our investigation by letter dated January 9, 2012. We received his response on January 12, 2012.[1] In his response, Maj Gen Padilla did not dispute the relevant facts we presented to him and accepted full responsibility for appointing (b) (6), (b) (7)(C) to conduct CDIs. He stated it was his understanding she had accomplished CDIs under a previous commander with the knowledge and tacit approval of Air Force Reserve Command (AFRC), so he elected to continue the practice. He further added that he found (b) (6), (b) (7)(C) report of investigation thorough, legally sufficient, and a solid foundation for the command actions he took in addressing (b)(6), (b)(7)(C) misconduct.

We appreciate Maj Gen Padilla's cooperation and timely response to the preliminary results of our investigation.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

[1] While we have included what we believe is a reasonable synopsis of Maj Gen Padilla's response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and provided a copy of the response to the cognizant management officials together with this report.

II. BACKGROUND

Maj Gen Padilla commanded the 10th Air Force, Naval Air Station Joint Reserve Base at Fort Worth, Texas (TX) from May 2009 to November 2011. The 10th Air Force is one of three numbered air forces in the AFRC and includes a headquarters (HQ) staff, six fighter units, three rescue units, and other subordinate units. The command is responsible for more than 16,000 reservists and 940 civilians at 30 military installations throughout the United States.

Col Robert L. Dunn, USAFR, commanded the 920th Rescue Wing (RQW), a part of the 10th Air Force, until his retirement in September 2011. The 920th RQW is located at Patrick Air Force Base, Florida (FL). The 943rd Rescue Group (RQG), currently commanded by Col Harold L. Maxwell, USAFR, is part of the 920th RQW. The 306th RQS, an Air Force Reserve Combat Search and Rescue (CSAR) squadron, is part of the 943rd RQG. The 943rd RQG and 306th RQS are located at Davis-Monthan AFB, Arizona.

(b)(6) (b)(7)(C) [redacted]. (b)(6), (b)(7)(C) [redacted] chain of command was Col Maxwell, Col Dunn, then Maj Gen Padilla.

The 306th RQS is a flying unit consisting of aircrew members (pilots, flight engineers, and pararescuemen) and various types of support personnel. Pararescuemen, or "PJs," are full-time AGR personnel. A PJ's mission is to recover downed and injured aircrew members in austere and non-permissive environments. PJs are trained to provide emergency medical treatment necessary to stabilize and evacuate injured personnel while acting in an enemy evading recovery role.

III. SCOPE

We interviewed the complainant, Maj Gen Padilla and two other individuals who had knowledge of the events at issue. We reviewed the IO appointment, CDI, personnel records, and other relevant documentation. We also reviewed Air Force instructions, and guidance the Air Force published for IOs conducting CDIs.

(b)(6) (b)(7)(C) [redacted]

IV. FINDINGS AND ANALYSIS

A. Did Maj Gen Padilla improperly appoint his IG to conduct a CDI?

Standards

Air Force Instruction (AFI) 90-301, "Inspector General Complaints Resolution," dated May 15, 2008

Chapter 1, Section 1.31, "Commander-Directed Investigations (CDIs)," states, in part, that the primary purpose of a CDI is to gather, analyze and record relevant information about matters of primary interest to command authorities. Commanders should consult with their staff judge advocate before initiating a CDI. Commanders will not appoint IGs or IG staff members as inquiry or investigation officers for CDIs.

Facts

(b) (6), (b) (7)(C) has served as the 10th Air Force IG as a traditional reservist since 2008.[2] (b)(6) (b)(7)(C), confirmed, that numbered air forces in the AFRC were not authorized an IG. If a commander wanted an IG, he or she had to take an asset out of an existing personnel authorization. The Unit Manning Document (UMD) and (b) (6), (b) (7)(C) most recent OPR identified her as the "Special Assistant to the Commander, IG." Both documents indicated her Duty Air Force Specialty Code (DAFSC) as 87G (IG). Her OPR listed one of her duties as developing methods and control procedures to implement IG policies, and directing, conducting, and monitoring IG programs. Further, the 10th Air Force Staff Directory identified (b) (6), (b) (7)(C) as the IG.

(b) (6), (b) (7)(C) However, Maj Gen Padilla appointed her to conduct several CDIs, probably because she had been trained to conduct investigations.

In an email dated May 7, 2010, Col Maxwell asked Maj Gen Padilla for assistance in initiating a CDI into allegations of (b)(6) (b)(7)(C) (b)(6) (b)(7)(C). Col Maxwell explained he had no one of sufficient rank available to serve as the IO. By appointment letter dated May 17, 2010, Maj Gen Padilla appointed (b) (6), (b) (7)(C) to conduct a CDI into allegations (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) (b) (6), (b) (7)(C) completed the CDI on July 13, 2010.

Maj Gen Padilla testified (b) (6), (b) (7)(C) t and served as a (b) (6), (b) (7)(C) at Fort Worth. He did not view her as the IG with responsibility for the

[2] A traditional reservist typically reports for duty one weekend each month and completes two weeks of annual training a year.

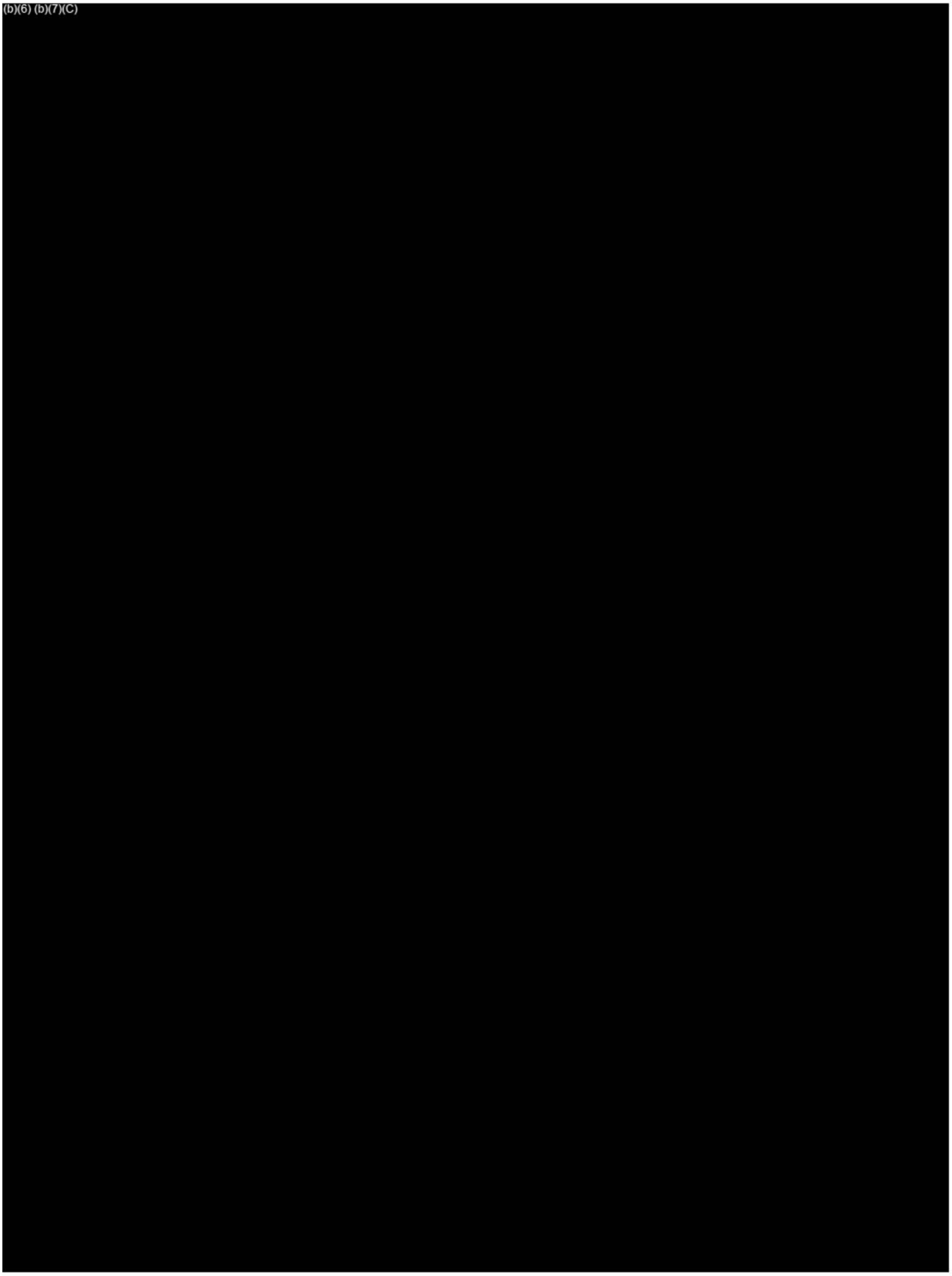
10th Air Force's subordinate units, which reported IG matters directly to the IG, AFRC. He knew [redacted] had experience in conducting CDIs, was extremely thorough, had enormous flexibility from her civilian job as a realtor, and as a traditional reservist she was always looking for man-days to perform extra work and special projects. He admitted to occasionally appointing her as the IO to conduct CDIs.

Discussion

We conclude that Maj Gen Padilla improperly appointed his IG as the IO in a CDI. We found [redacted] OPR, the UMD, and the staff directory identified [redacted] as the IG and that Maj Gen Padilla recognized her as the IG for his HQ staff. We also found Maj Gen Padilla appointed [redacted] to conduct a CDI. AFI 90-301, "Inspector General Complaints Resolution," prohibited commanders from using IGs and their staff members as IOs for CDIs.[3]

[redacted]

(b)(6) (b)(7)(C)



(b)(6) (b)(7)(C)

[redacted]

Appointment and Conduct of CDI

Maj Gen Padilla stated he required his commanders to keep him informed of alleged officer misconduct, but he did not as a rule withhold the authority to dispose of officer misconduct at his level. In this case, Col Maxwell asked Maj Gen Padilla for assistance in initiating a CDI into the allegations against (b)(6) (b)(7)(C) [redacted]. Maj Gen Padilla stated Col Maxwell was uncomfortable investigating allegations which had the potential to reflect negatively on his

(b)(6) (b)(7)(C)

[redacted]

superior, Col Dunn, since (b)(6) (b)(7)(C) misconduct allegedly occurred when Col Dunn, not Col Maxwell, commanded the 943rd RQG. Given these circumstances, Maj Gen Padilla decided to direct the investigation. On May 17, 2010, he appointed (b) (6), (b) (7)(C) as the IO for the CDI.

Maj Gen Padilla identified (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), as (b) (6), (b) (7)(C). On May 20, 2010, two junior officers from the 306th RQS reported additional allegations against (b)(6) (b)(7)(C) to Col Maxwell. Maj Gen Padilla then expanded the scope of the CDI from 4 allegations to an investigation of 14 allegations.

On June 4, 2010, Col Maxwell, with (b) (6), (b) (7)(C) as a witness, advised (b)(6) (b)(7)(C) in writing that Maj Gen Padilla had directed a CDI concerning allegations of misconduct in the 306th RQS and that (b) (6), (b) (7)(C) was the investigating officer. (b)(6) (b)(7)(C) acknowledged the advisement by written endorsement on June 5, 2010.

(b)(5), (b)(6) (b)(7)(C)

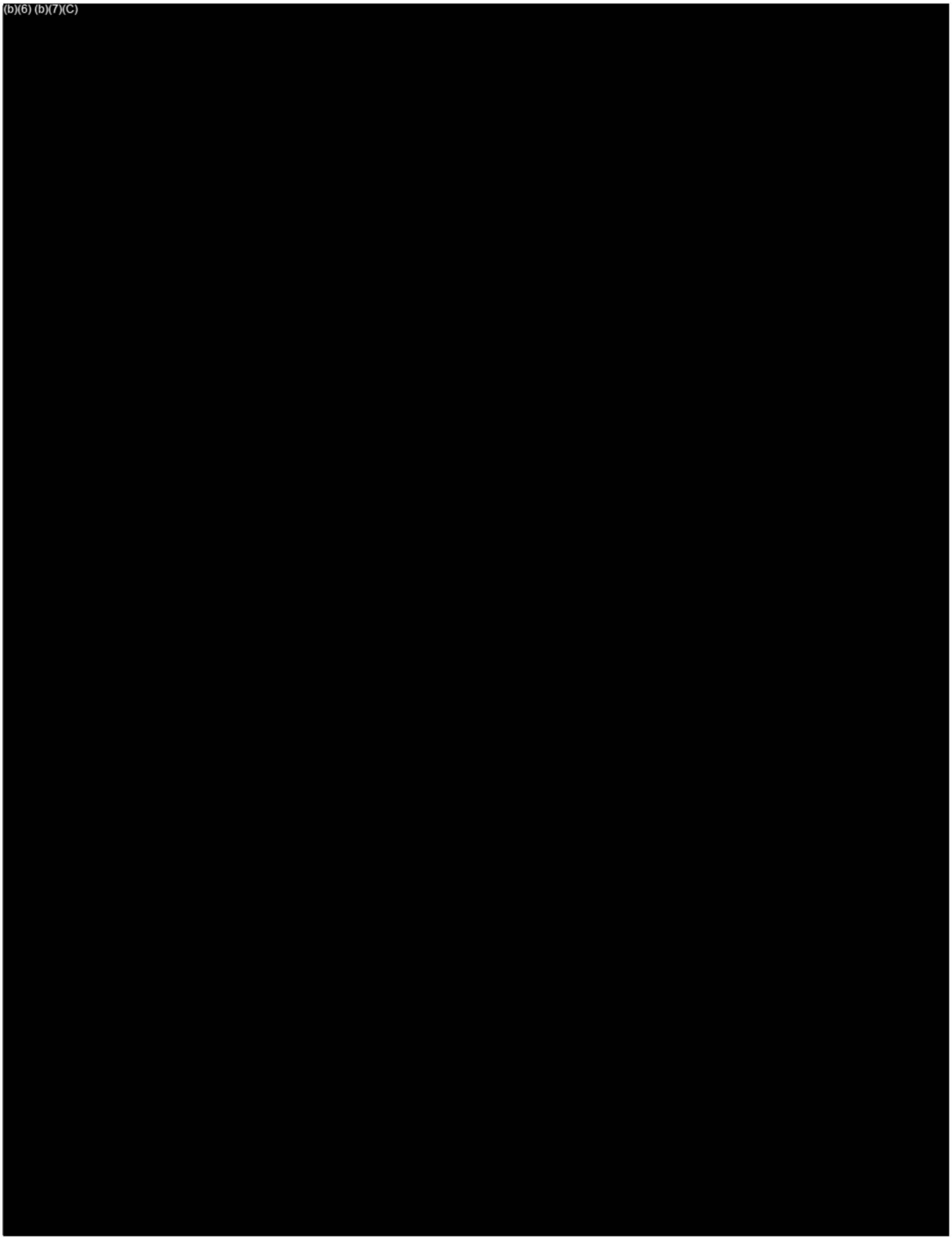
(b)(6) (b)(7)(C)

(b)(5), (b)(6) (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

[redacted]

(b)(6) (b)(7)(C)



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(b)(5), (b)(6), (b)(7)(C)

[redacted]

(b)(5), (b)(6), (b)(7)(C)

[redacted]

V. CONCLUSIONS

A. Maj Gen Padilla improperly appointed his IG to serve as an investigating officer in a CDI.

B. (b)(6) (b)(7)(C) [redacted]

VI. RECOMMENDATION

The Secretary of the Air Force consider appropriate corrective action with respect to Maj Gen Padilla.

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JUN 14 2013

Ref: F-13-00373

OCCL

This is an interim response to your April 6, 2013, Freedom of Information Act (FOIA) request asking to receive a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number F-13-00373.

The enclosed Report of Investigation concerning Lieutenant General David H. Huntoon, Jr. is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request, and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number F-13-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

~~FOR OFFICIAL USE ONLY~~

Report No. H11L120171242 May 1, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION:
LIEUTENANT GENERAL DAVID H. HUNTOON
U.S. ARMY
SUPERINTENDENT
UNITED STATES MILITARY ACADEMY
WEST POINT, NY

~~FOR OFFICIAL USE ONLY~~

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

MAY 1 2012

MEMORANDUM FOR ACTING INSPECTOR GENERAL

SUBJECT: Investigation of Alleged Misconduct Concerning Lieutenant General David H. Huntoon, U.S. Army, Superintendent, United States Military Academy, West Point, NY (Report No H11L120171242)

We recently completed an investigation to address allegations that while serving as the Superintendent, United States Military Academy, Lieutenant General David H. Huntoon, U.S. Army, (b)(6) (b)(7)(C) [redacted] and misused Government resources and personnel for other than official purposes in violation of the JER and DoD Instruction (DoDI) 1315.09, "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers."

(b)(6) (b)(7)(C) [redacted]

We also conclude that LTG Huntoon improperly used Government personnel in violation of the JER and DoD Instruction (DoDI) 1315.09, "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers." We found LTG Huntoon misused official time by using his (b)(6) (b)(7)(C) [redacted] during the duty day to prepare and service an unofficial luncheon. We also conclude that on two occasions, LTG Huntoon improperly accepted gifts of services from his subordinates in violation of the JER. Finally, we conclude that LTG Huntoon misused his position to induce a benefit to a friend by requesting (b)(6) (b)(7)(C) [redacted] care for (b)(6) (b)(7)(C) [redacted] cats.

We provided LTG Huntoon the opportunity to comment on our tentative conclusions. In his response, dated April 13, 2012, LTG Huntoon stated he accepted full responsibility for his actions and provided documentation that, after receiving our tentative conclusions letter, he had appropriately compensated all parties concerned totaling $1815. We recommend the Secretary of the Army consider appropriate corrective action with regard to LTG Huntoon.

CSt. Cy

Charles E. St.Cyr
Assistant Deputy Inspector General
for Administrative Investigations

Attachment:
As stated

~~FOR OFFICIAL USE ONLY~~

H11L120171242

REPORT OF INVESTIGATION: LIEUTENANT GENERAL DAVID H. HUNTOON, U.S. ARMY

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that while serving as the Superintendent, United States Military Academy (USMA), West Point, NY, Lieutenant General (LTG) David H. Huntoon [redacted] and misused Government resources and personnel for other than official purposes.[1] We substantiated the second allegation.

[redacted]

We also conclude that LTG Huntoon improperly used Government personnel for other than official purposes, improperly accepted gifts of services from subordinates, and misused his position to induce a benefit to a friend. We found LTG Huntoon misused his [redacted] during the duty day to prepare and service an unofficial luncheon. We also found that on two occasions, LTG Huntoon improperly accepted gifts of services from his subordinates. First, we found that the level of compensation provided by LTG Huntoon to his [redacted] was not sufficient given the amount of personal time and services rendered in support of an unofficial charity fundraiser dinner. Second, [redacted] provided driving lessons to LTG Huntoon's [redacted]. Finally, we determined that LTG Huntoon misused his position to induce a benefit to a friend, [redacted], by requesting his [redacted] care for [redacted] cats.

In accordance with our established procedure, we provided LTG Huntoon the opportunity to comment on our tentative conclusions by correspondence dated March 28, 2012. In his response, dated April 13, 2012, LTG Huntoon, through counsel, stated he accepted full responsibility for his actions, he never intended to violate any regulation, and provided documentation that he had, after receipt of our tentative conclusions letter, appropriately compensated all parties for services rendered.[2]

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[1] [redacted]

[2] While we have included what we believe is a reasonable synopsis of LTG Huntoon's response, we recognize that any attempt to summarize risks oversimplication and omission. Accordingly, we incorporated comments from the

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

In July 2010, LTG Huntoon assumed duties as the Superintendent, USMA, after serving as the Director of the Army Staff (DAS) at the Pentagon. LTG Huntoon is responsible for the education, training, and leader development of approximately 4,400 cadets who ultimately receive commissions as Army officers. He reports directly to the Chief of Staff, U.S. Army.

(b)(6), (b)(7)(C)

On October 25, 2010, the Army Inspector General (IG) initiated a preliminary inquiry into allegations that LTG Huntoon improperly hired, and later promoted, the subordinate. The complaint also alleged that he improperly designated her as "Key and Essential," and thus entitled to USMA Government quarters, based on their personal relationship. The Army IG preliminary inquiry, with legal review, determined the allegations were not founded. The Acting Inspector General, U.S. Army, approved the report on March 29, 2011.

During the oversight review of the Army IG inquiry, this Office received a Memorandum for Record (MFR) prepared by an Associate Deputy General Counsel, Office of the General Counsel of the Army, dated June 2, 2011. The MFR documented the Associate Deputy General Counsel's telephone conversation the previous day with (b)(6), (b)(7)(C) LTG Huntoon's (b)(6), (b)(7)(C) at USMA. (b)(6), (b)(7)(C) (b)(6) (b)(7)(C) also related that there were allegations that LTG Huntoon improperly utilized his (b)(6) (b)(7)(C) for unofficial or personal duties, (b)(6), (b)(7)(C)

response throughout this report where appropriate and provided a copy of the response to the Secretary of the Army together with this report.

[3] The incoming chief of staff assumed office on October 1, 2010.

III. SCOPE

We interviewed 35 witnesses, to include LTG Huntoon and [redacted][4] We also interviewed the former and incumbent Vice Chiefs of Staff, U.S. Army; [redacted] and the following senior USMA leaders: the Commandant of Cadets; Dean of the Academic Board; Director of Intercollegiate Athletics; Garrison Commander; Director of Admissions; Commander, Keller Army Community Hospital; USMA Chief of Staff; USMA Staff Judge Advocate (SJA); and USMA Command Sergeant Major. We also interviewed other members of LTG Huntoon's staff, and additional senior officers. [redacted] Further, we reviewed the Army IG preliminary inquiry concerning matters related to this investigation.

After conducting our initial fieldwork, we determined that the following allegations did not warrant further investigation and consider them not substantiated.

[redacted]

[4] LTG Huntoon also provided a sworn statement subsequent to his testimony.

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

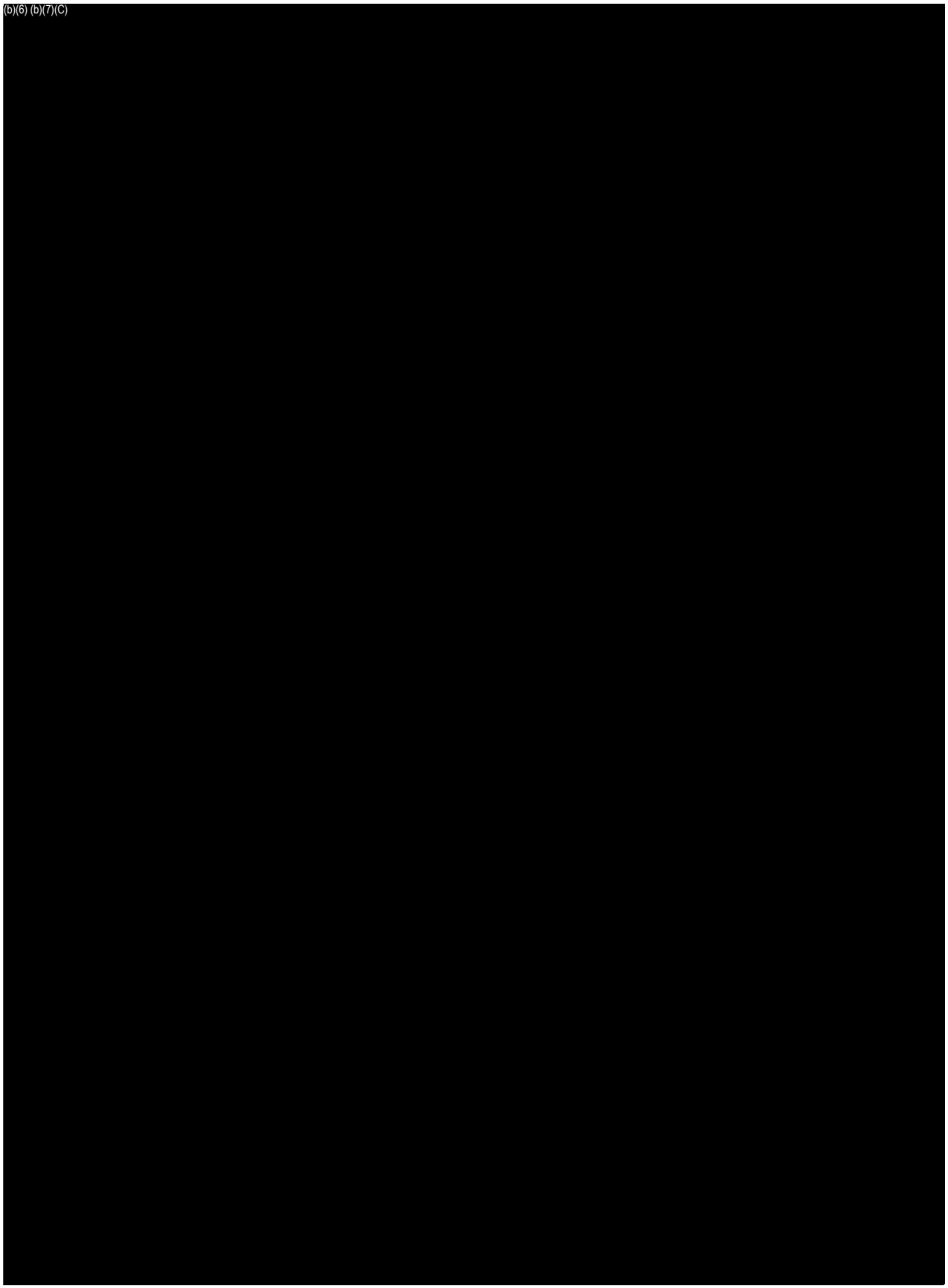
IV. FINDINGS AND ANALYSIS

(b)(6)

Standards

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)



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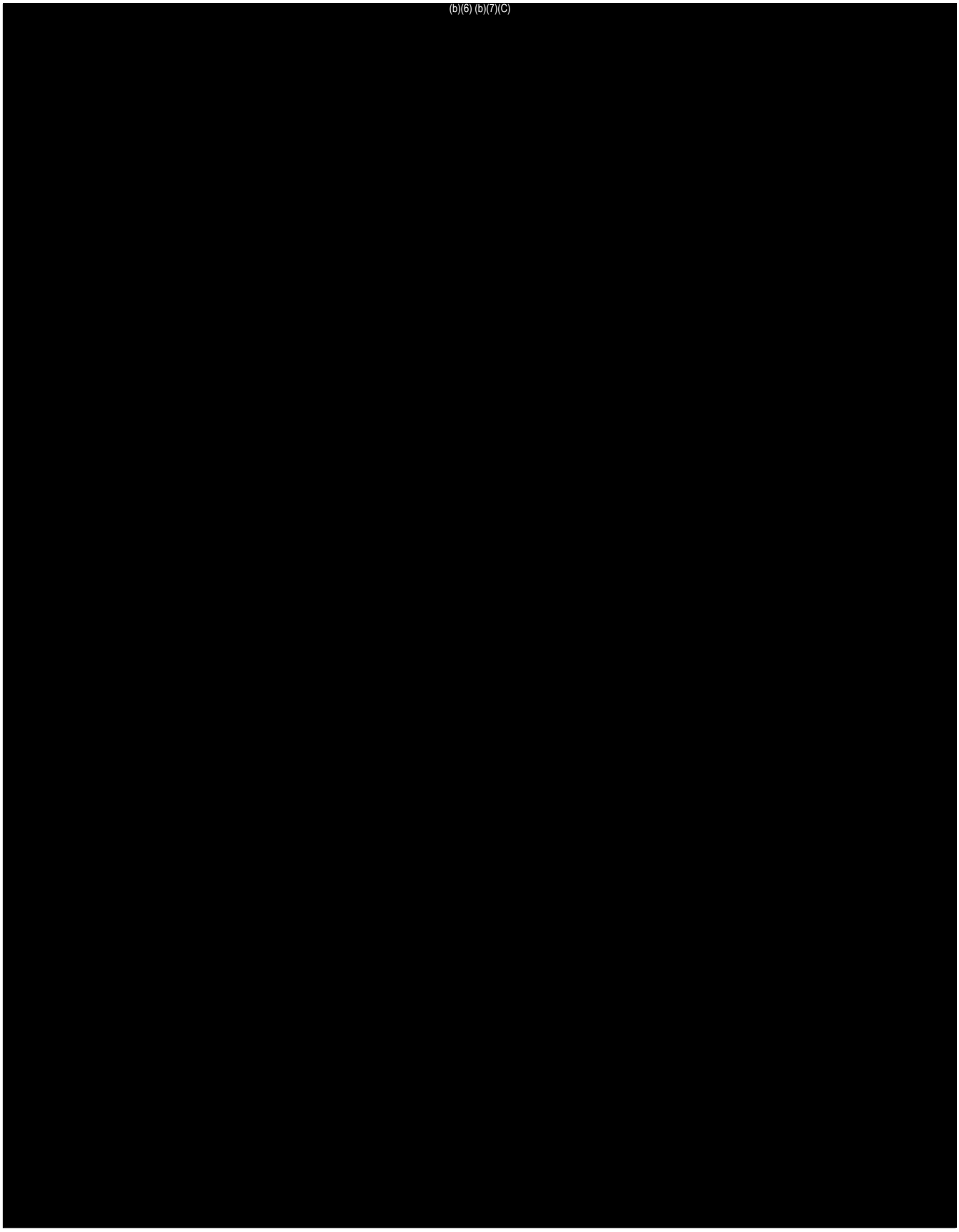

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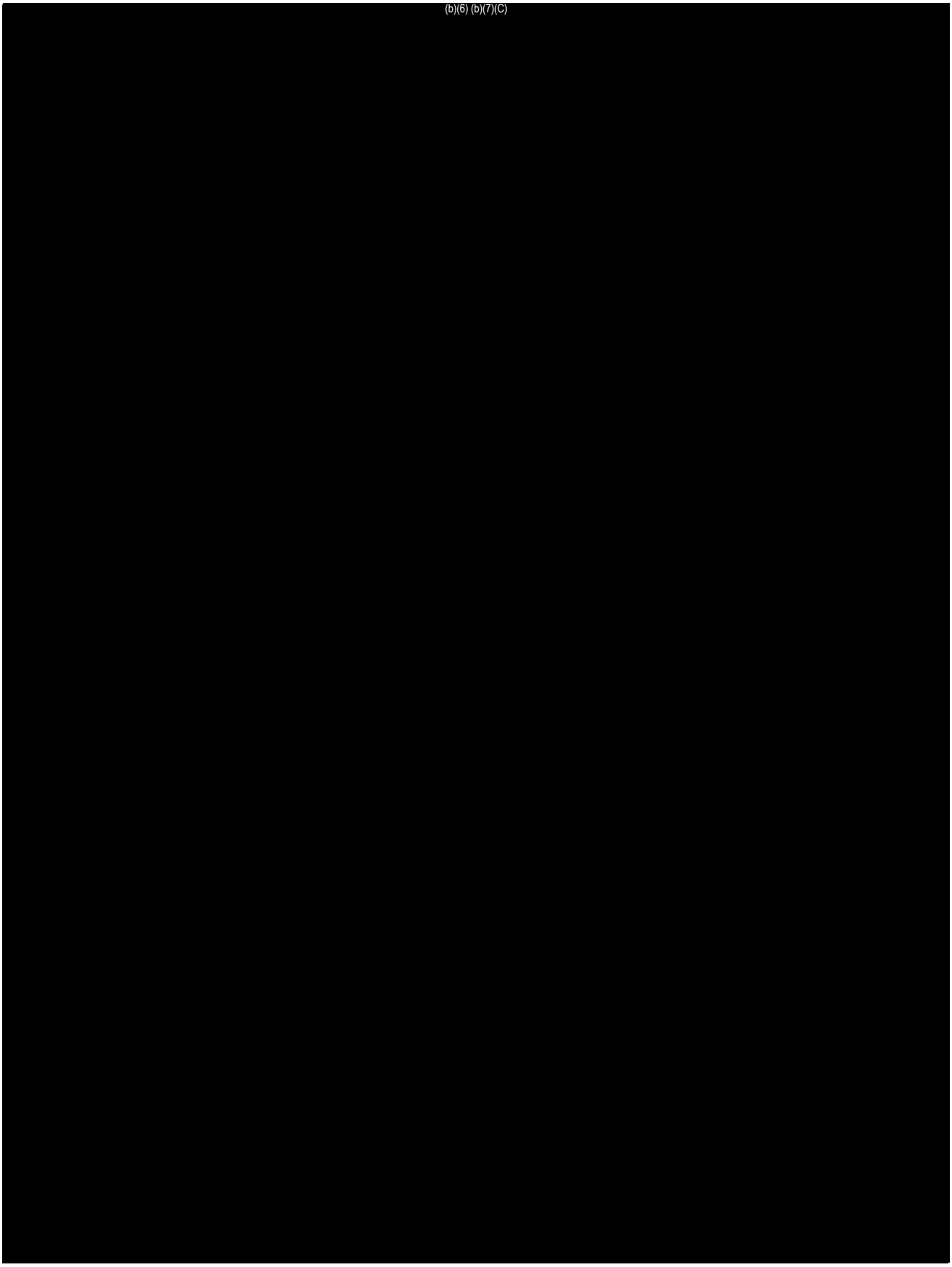

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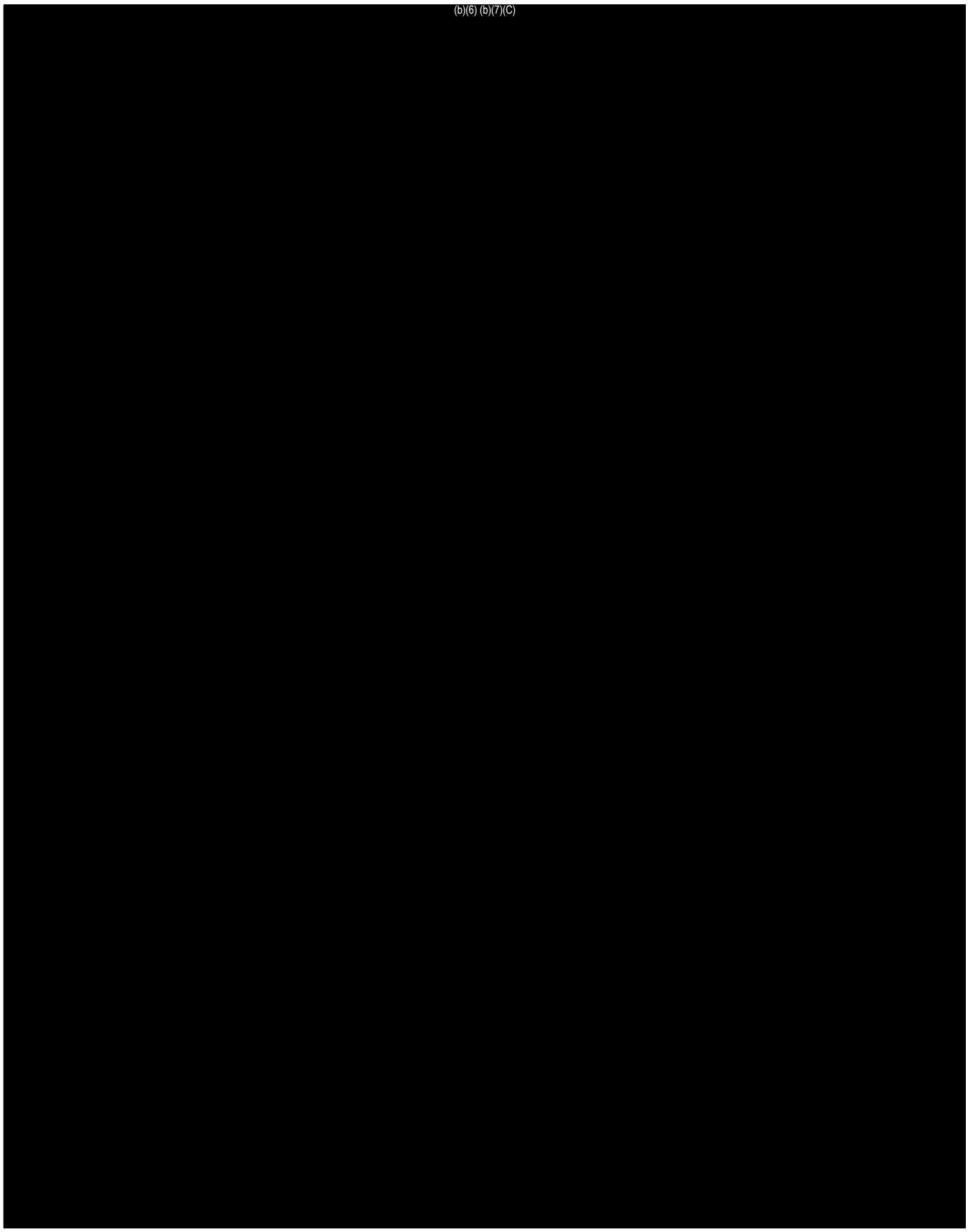

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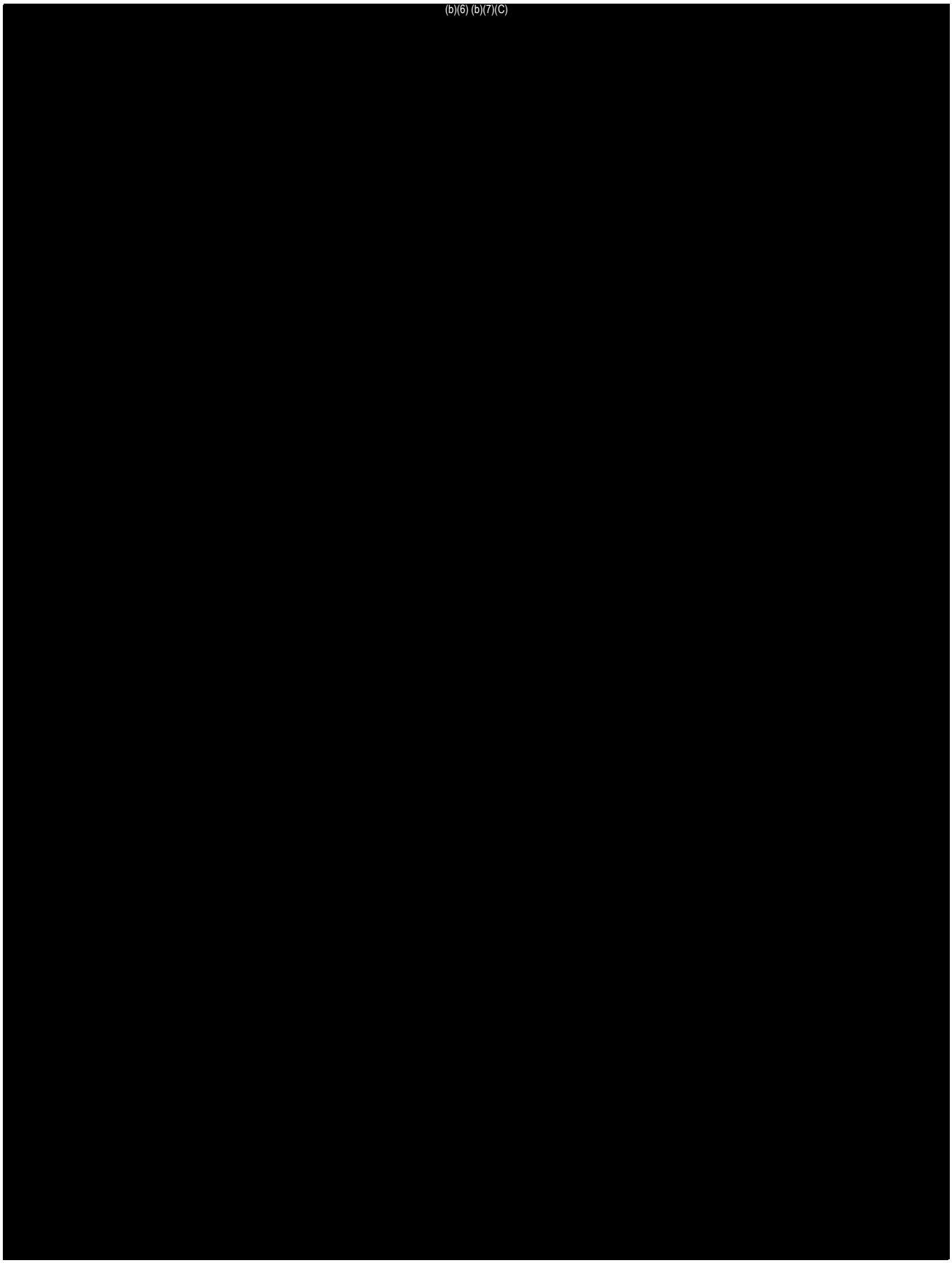

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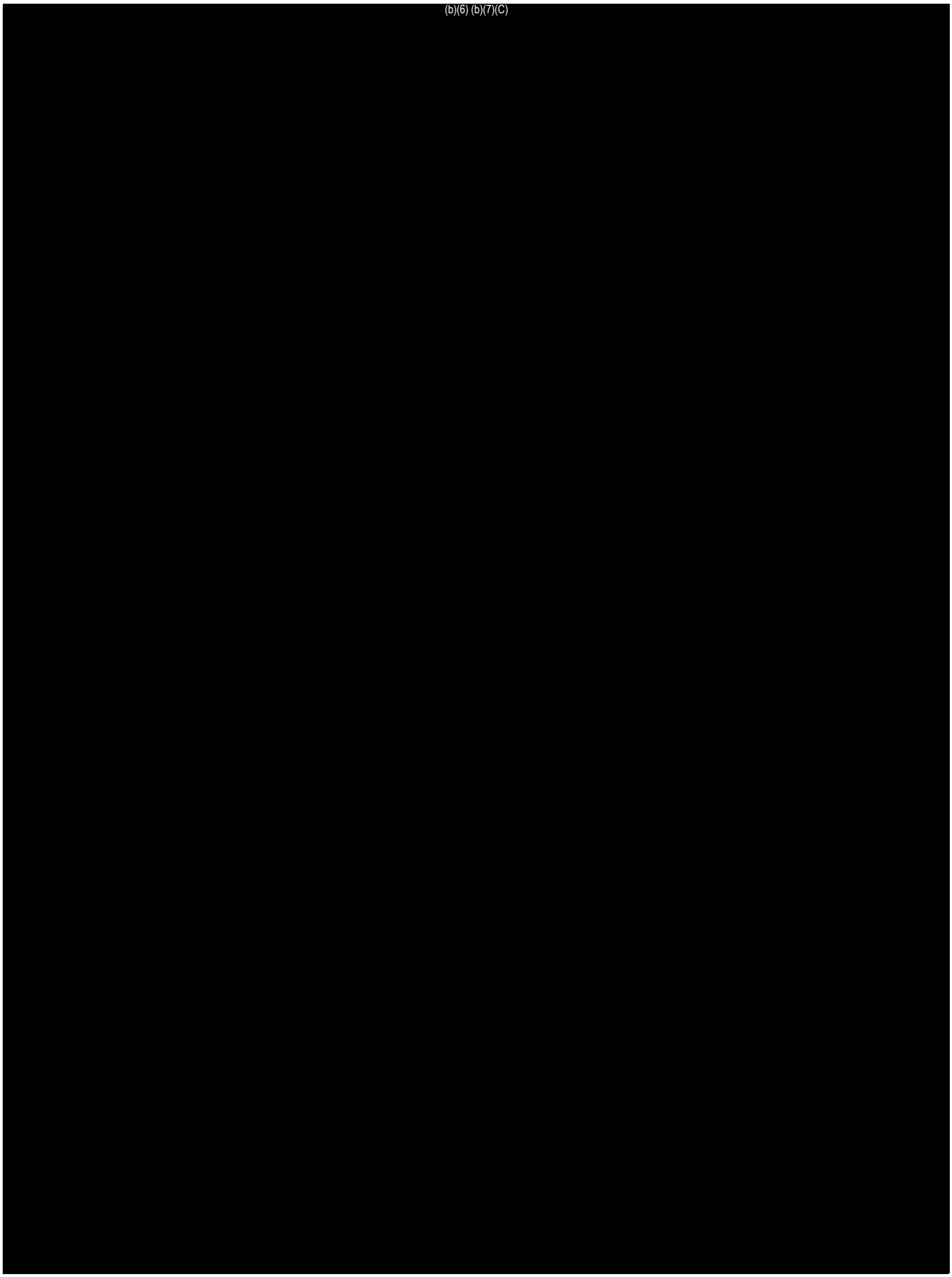

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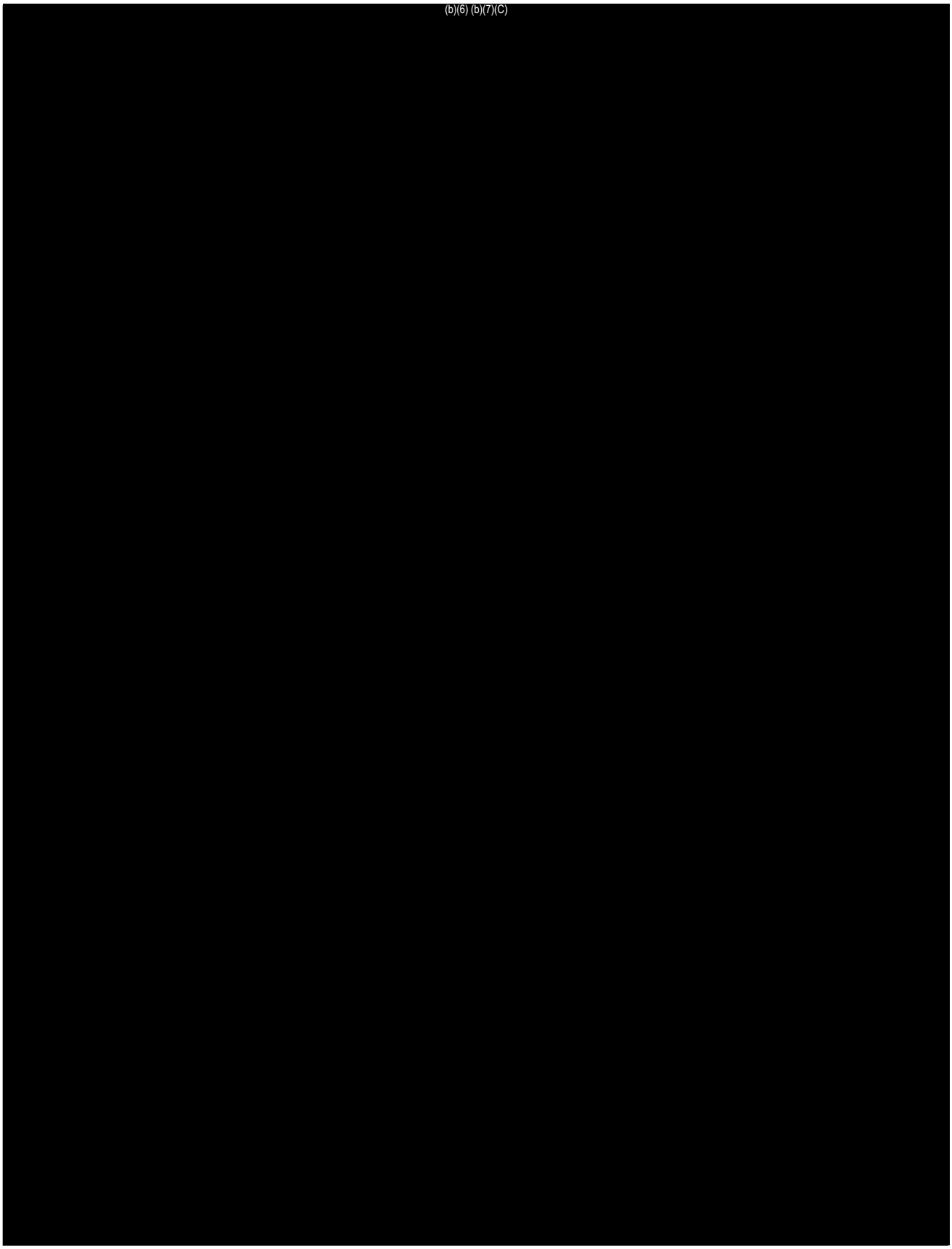

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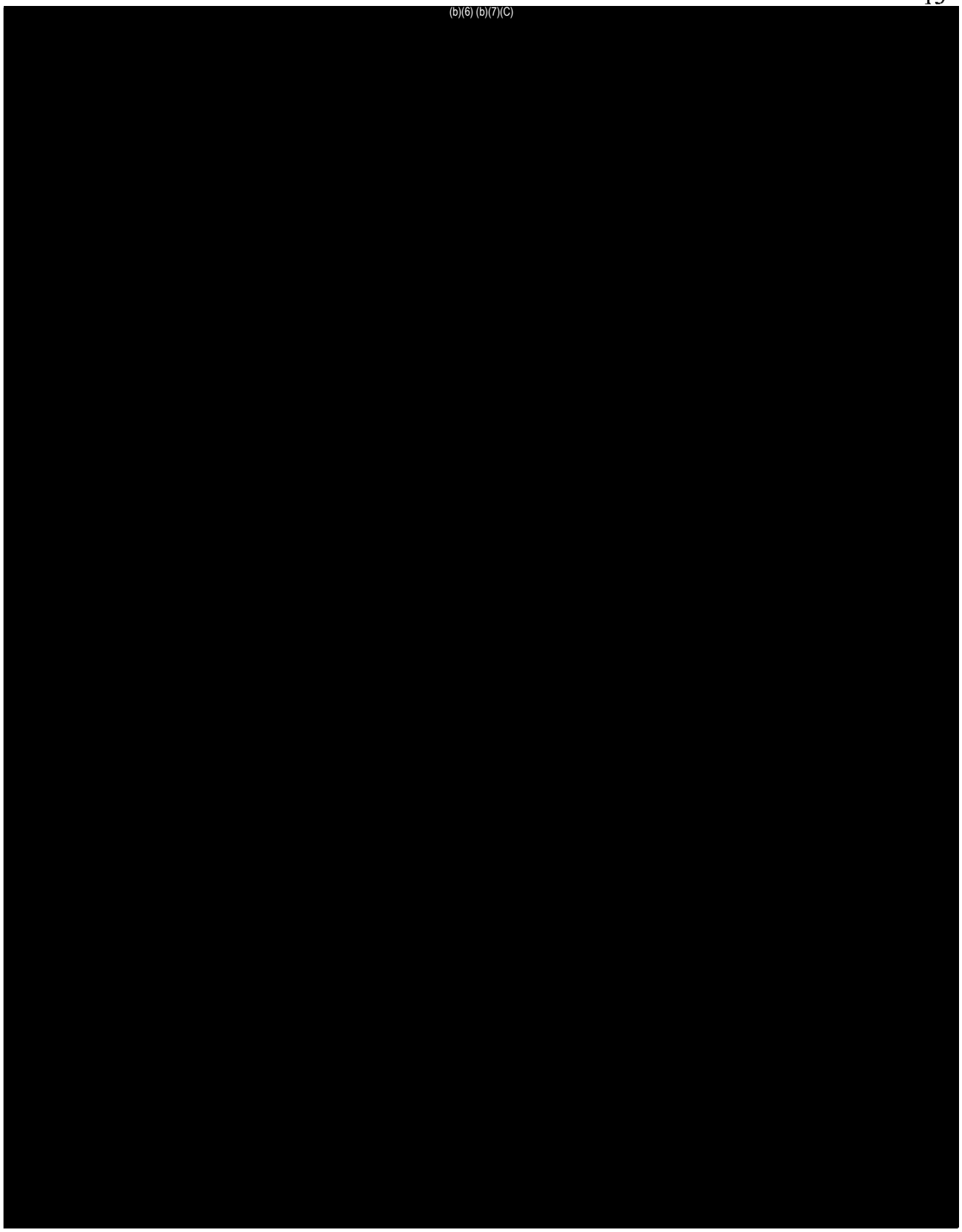

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[redacted]

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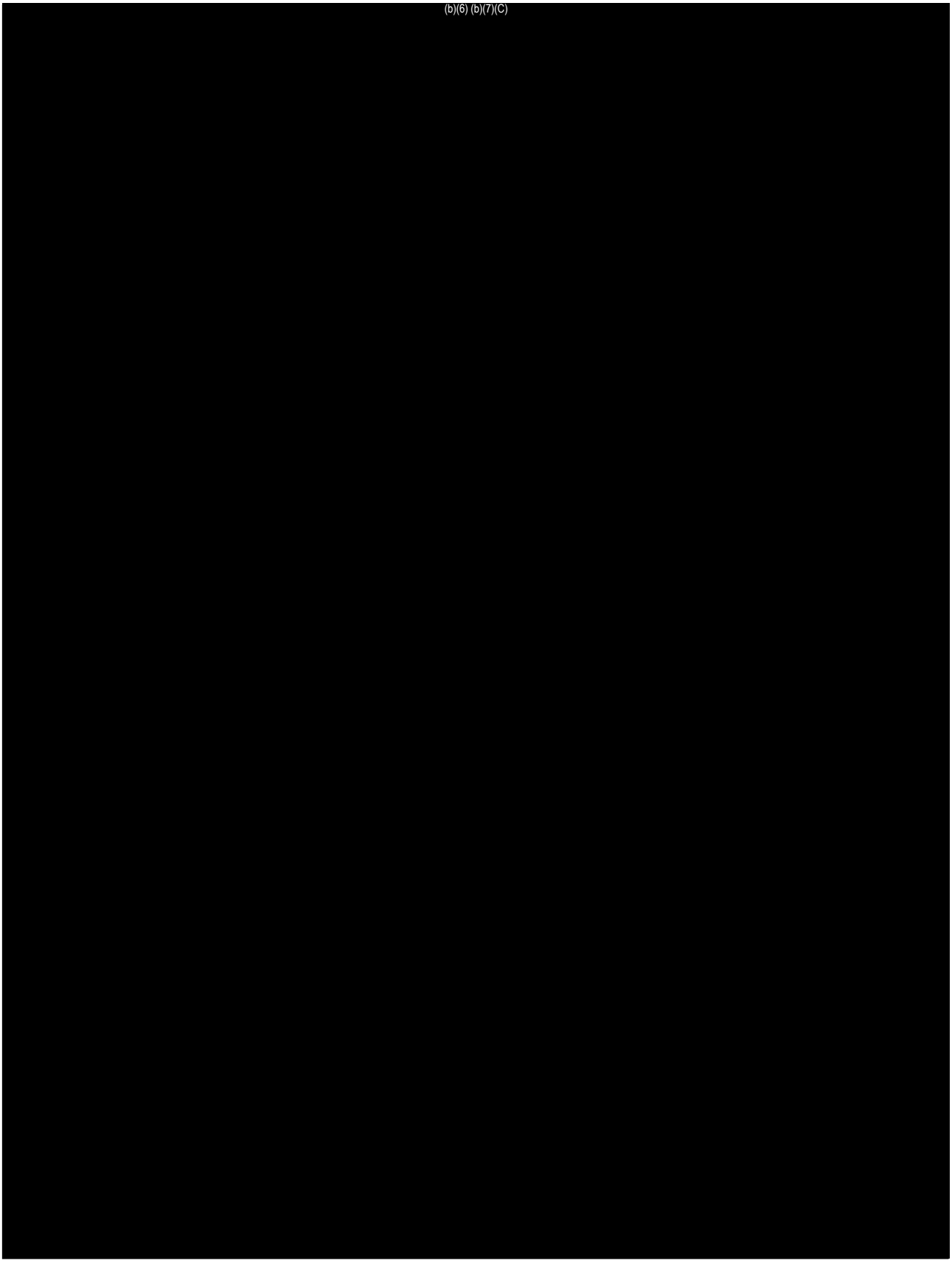

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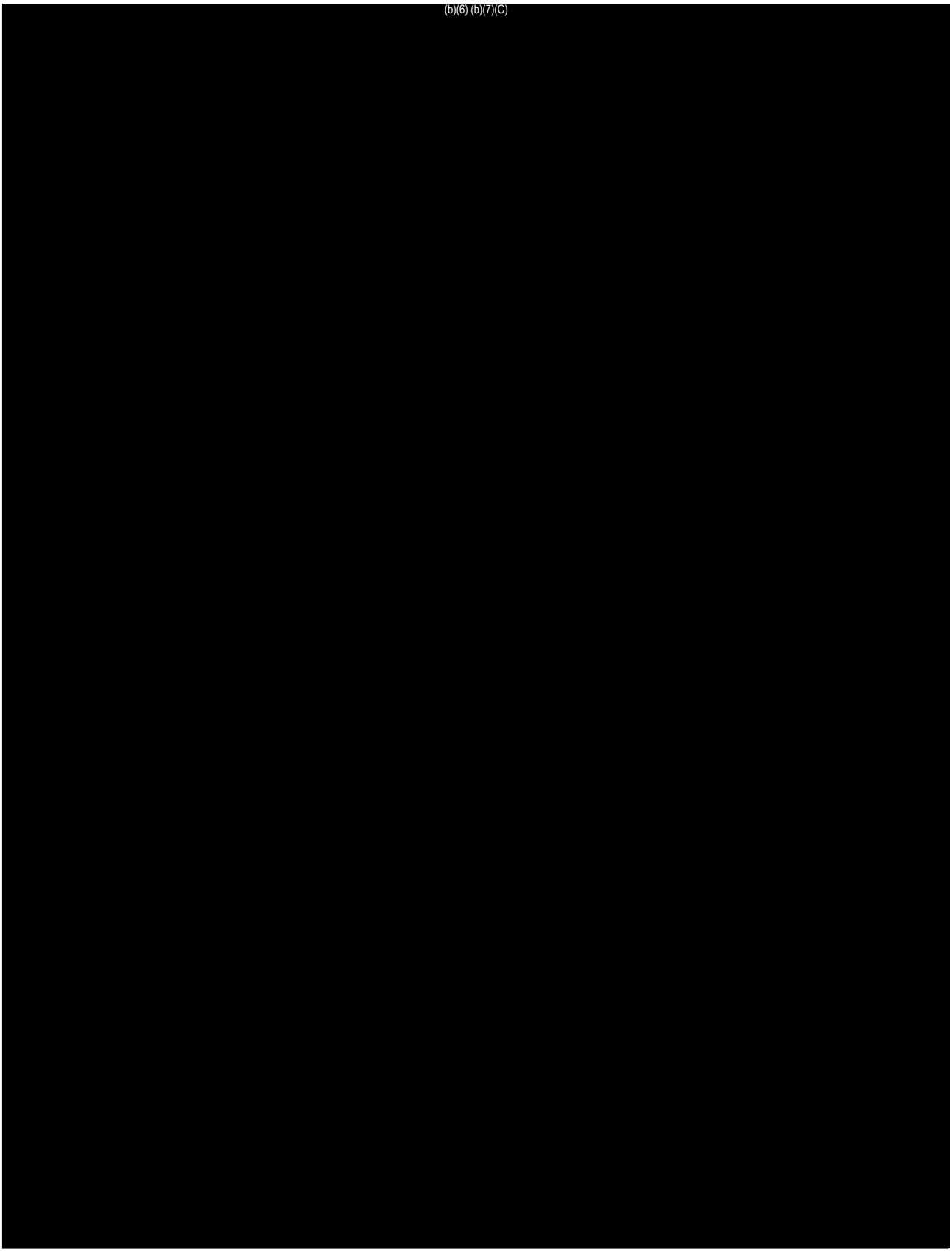

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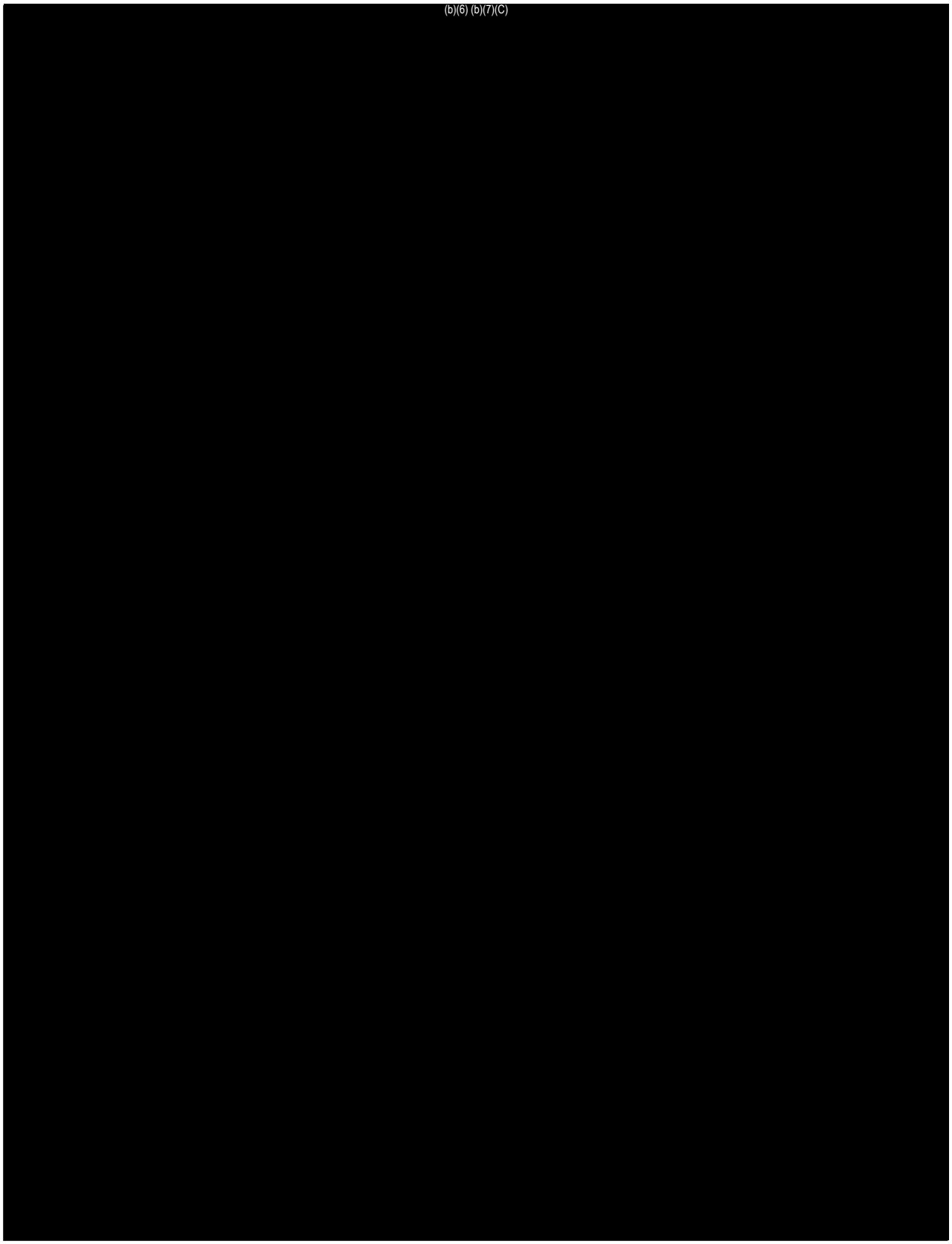

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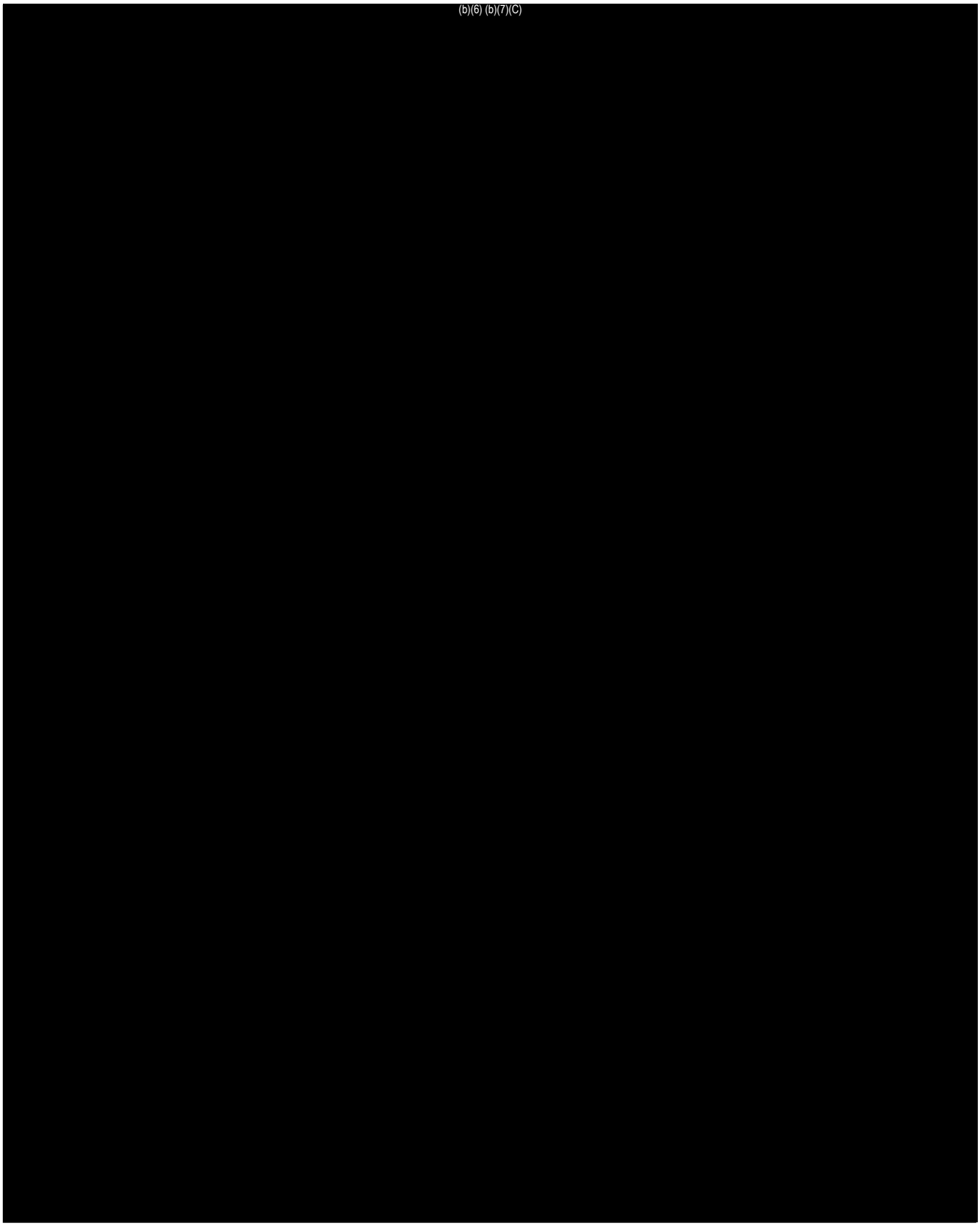

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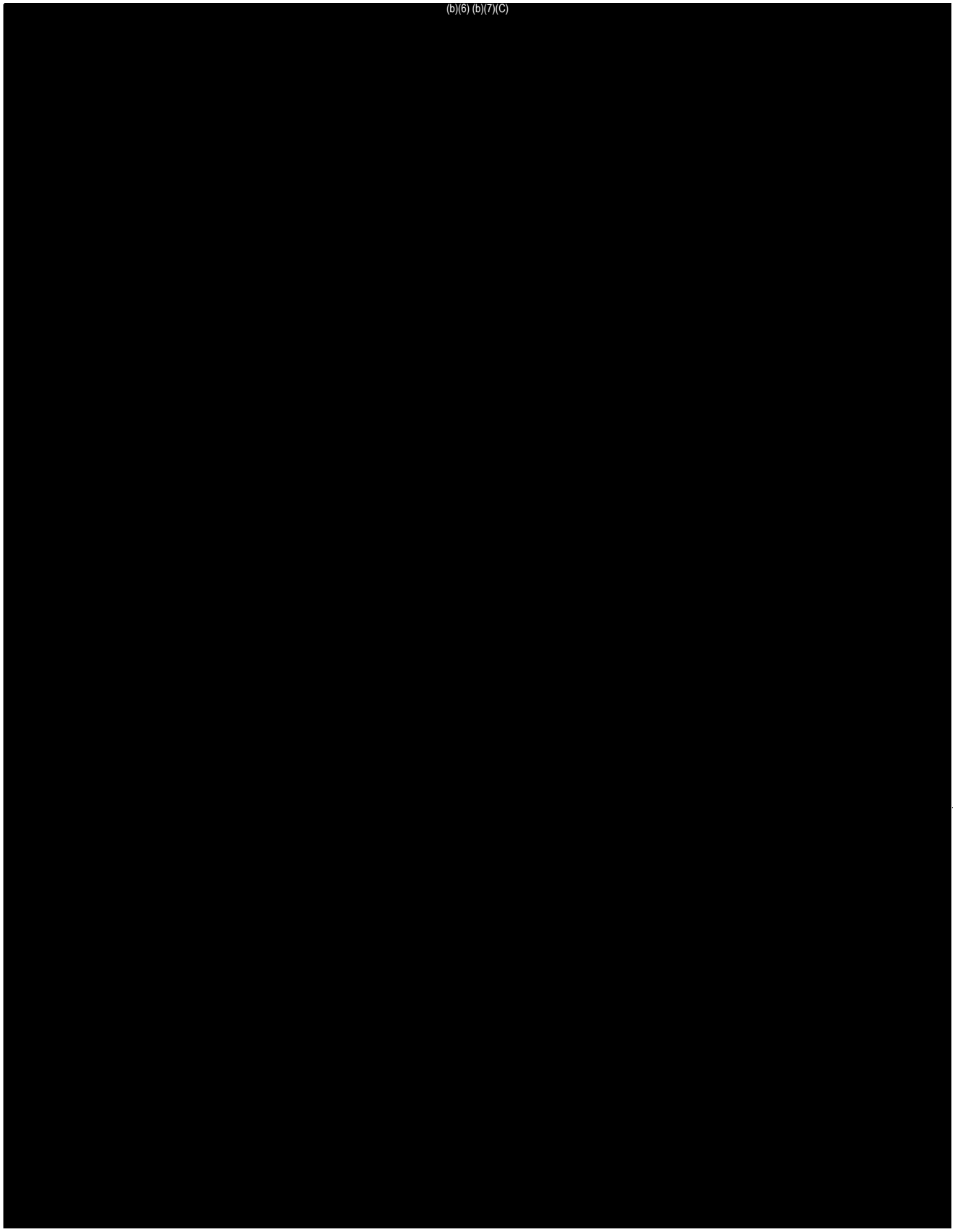

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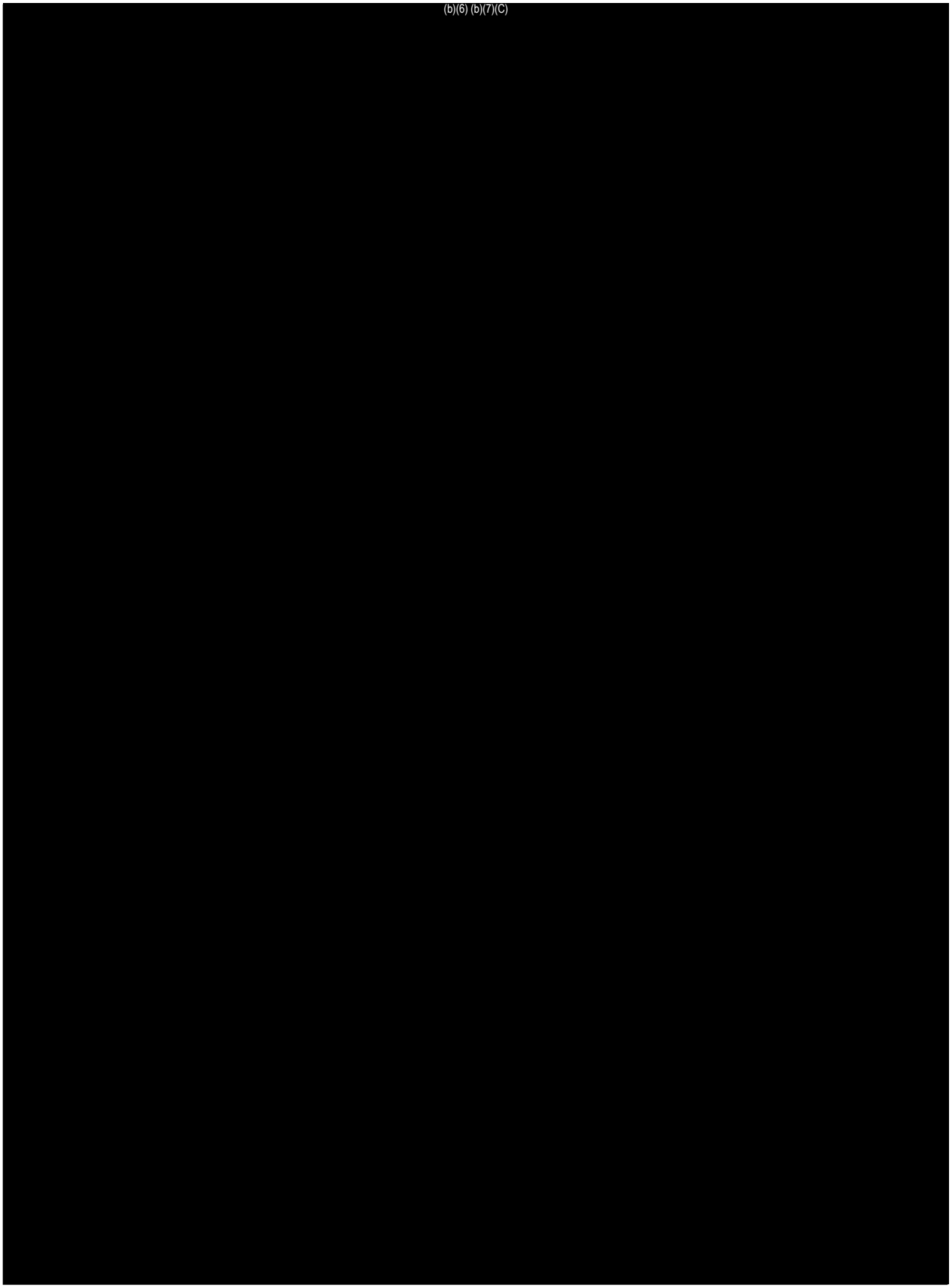

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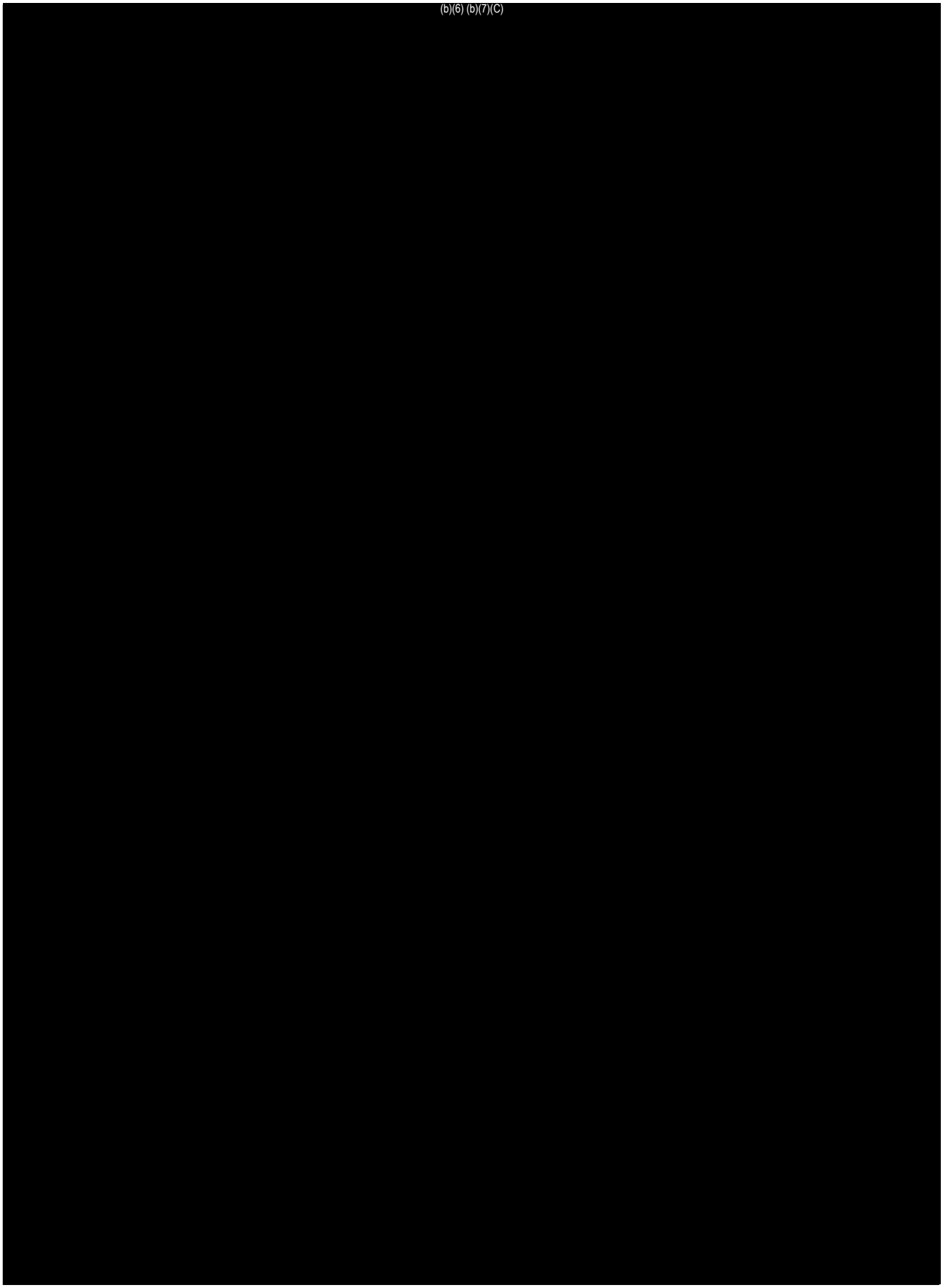

(b)(6) (b)(7)(C)

[redacted]

(b)(6) (b)(7)(C)

[redacted]

B. Did LTG Huntoon misuse Government personnel for other than official purposes?

Standards

Title 10, United States Code, Section 3639 (10 U.S.C. 3639), "Enlisted members: officers not to use as servants," dated August 10, 1956

This provision states that no officer of the Army may use an enlisted member of the Army as a servant.

DoD 5500.7-R, "JER," dated August 30, 1993, including changes 1-6 (March 23, 2006)

Subpart A, "General Provisions," Section 2635.101, "Basic obligation of public service," provides general principles applicable to every employee. Section 2635.101(b) (14) mandates that employees endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. The section explains that whether particular circumstances create an appearance that the law or standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Subpart B, "Gifts from Outside sources," Section 2635.203, "Definitions," defines a gift as including any gratuity, favor, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Subpart C, "Gifts Between Employees," Section 2635.302(b), "Gifts from employees receiving less pay," states that an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless the two employees are not in a senior-subordinate relationship and there is a personal relationship between the employees that would justify the gift.

Subpart G, "Misuse of Position," states:

In Section 2635.702(a), "Inducement or coercion of benefits." An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

In Section 2635.705(b), "Use of a subordinate's time," that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation. Additionally, the applicable example under Section 2635.705(b) affirms that directing or coercing a subordinate to perform personal services during non-duty hours constitutes an improper use of public office for private gain in violation of Section 2635.702 of the JER. The example further states that during non-duty hours, where an arrangement is entirely voluntary and appropriate compensation is paid, a subordinate may provide a service for a superior. If the compensation is not adequate, the service constitutes a "gift to a superior" in violation of the JER prohibitions regarding gifts between employees.

DoDI 1315.09, "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers," dated October 2, 2007

This Instruction provides guidance regarding the allocation of enlisted aides to the individual Services and the duties that may properly be assigned to enlisted aides. The Instruction governs the utilization of enlisted personnel who are assigned to duty in public quarters and on the personal staffs of general and flag officers.

Section 3.1 states that enlisted aides are authorized for the purpose of relieving general and flag officers of those minor tasks and details which, if performed by the officers, would be at the expense of the officers' primary military and official duties. The duties of these enlisted personnel shall be concerned with tasks relating to the military and official responsibilities of the officers, to include assisting general and flag officers in discharging their official DoD social responsibilities in their assigned positions. The propriety of such duties is governed by the official purpose which they serve, rather than the nature of the duties.

With regard to the issues in this investigation, the Instruction permits enlisted aides to assist with the care, cleanliness, and order of assigned quarters, uniforms, and military personal equipment. Enlisted aides may be used to assist in the planning, preparation, arrangement, and conduct of official social functions and activities, such as receptions, parties, and dinners. Additionally, enlisted aides may assist in purchasing, preparing, and serving food and beverages in the officer's assigned quarters. They may accomplish tasks that aid the officer in the performance of his military and official responsibilities, including performing errands, providing security, and providing administrative assistance. However, Section 5.1 places limitations on the tasks that may be properly assigned to an enlisted aide, noting that:

No officer may use an enlisted member as a servant for duties that contribute only to the officer's personal benefit and that have no reasonable connection with the officer's official responsibilities.

AR 614-200, "Enlisted Assignments and Utilization Management," dated February 26, 2009, paragraph 8-11, states:

Enlisted aide duties must relate to the military and official duties of the General Officer and, thereby, serve a necessary military purpose. The propriety of duties is determined by the

official purpose they serve rather than the nature of the duties. In connection with the military and official functions and duties, enlisted aides may perform the following (list not all inclusive and provided only as a guide):

(1) Assist with care, cleanliness, and order of assigned quarters, uniforms, and military personal equipment.

(2) Perform as point of contact in the GO's quarters. Receive and maintain records of telephone calls, make appointments, and receive guests and visitors.

(3) Help to plan, prepare, arrange, and conduct official social functions and activities, such as receptions, parties, and dinners.

(4) Help to purchase, prepare, and serve food and beverages in the GO's quarters.

(5) Perform tasks that aid the officer in accomplishing military and official responsibilities, including performing errands for the officer, providing security for the quarters, and providing administrative assistance.

The Regulation does not preclude the employment of enlisted personnel by officers on a voluntary, paid, off-duty basis.

Facts

LTG Huntoon's [(b)(6) (b)(7)(C)] stated that on at least four occasions, he and [(b)(6) (b)(7)(C)] involuntarily supported unofficial events for LTG Huntoon. The [(b)(6) (b)(7)(C)] identified the four events as three luncheons hosted by [(b)(6) (b)(7)(C)] and a fund raising event known as the "Progressive Dinner." The [(b)(6) (b)(7)(C)] only recalled specifics for one of the three luncheons, which occurred on Monday, May 2, 2011, for the "War College Ladies" from Carlisle Barracks, Pennsylvania. The [(b)(6) (b)(7)(C)] stated the Progressive Dinner occurred the following Saturday, May 7, 2011.

The [(b)(6) (b)(7)(C)] also testified that LTG Huntoon's [(b)(6) (b)(7)(C)] [(b)(6) (b)(7)(C)] had provided unofficial transportation to LTG Huntoon's [(b)(6) (b)(7)(C)] on several occasions by transporting [(b)(6) (b)(7)(C)][14]

LTG Huntoon's [(b)(6) (b)(7)(C)] confirmed [(b)(6) (b)(7)(C)] supported the two entertainment events which he understood were "unofficial." The [(b)(6) (b)(7)(C)] added that he believed the [(b)(6) (b)(7)(C)] volunteered to support the events. The [(b)(6) (b)(7)(C)] continued that he was unaware that the [(b)(6) (b)(7)(C)] ever objected to supporting the events.

[(b)(6) (b)(7)(C)]

War College Ladies Luncheon (Monday, May 2, 2011)

The [redacted] stated that [redacted] informed him she required his support for the luncheon. He estimated that he and [redacted] worked about 10 hours each to support the event, which was attended by approximately 30 guests. The [redacted] explained their support consisted of developing the menu, purchasing the provisions, preparing and serving the food, and post-event clean-up. The [redacted] stated LTG Huntoon did not attend the luncheon and that [redacted] paid for the event with her personal funds.

The [redacted] testified the [redacted] requested his assistance in preparing for the luncheon. [redacted] explained there was never any discussion regarding whether or not the event was "official," or whether his or the [redacted] participation should be voluntary. [redacted] testified they worked approximately 7 hours each to support the event which was attended by approximately 15 guests. [redacted] corroborated that [redacted] paid for the event with personal funds.

LTG Huntoon's [redacted] testified he recalled the [redacted] prepared one [redacted] luncheon, which occurred during the duty day. The [redacted] believed that the [redacted] volunteered, but was not aware of any compensation.

In a sworn statement to this Office, LTG Huntoon provided bank records processed on April 20, 2011, which established LTG Huntoon's personal funds for $275 were used to purchase provisions for the event.

Progressive Dinner (Saturday, May 7, 2011)

On February 25, 2011, the West Point Women's Club (WPWC) held its annual charity fundraiser on the USMA military reservation. The WPWC is an authorized private organization and during the fundraiser they auctioned off a "Progressive Dinner," which entailed a three course dinner with a different course of the meal served at the quarters of the Commandant, the Superintendent, and the Dean.

Two USMA Staff Judge Advocate legal opinions, general subject: West Point Women's Club (WPWC)-Viva! Las Vegas Night, stated the WPWC annual charity fund-raiser was a private event, and therefore was "unofficial."

The [redacted] stated that 14 people attended the dinner held on May 7, 2011. He stated that both he and [redacted] worked about 18 hours each to support the event and received a $40 and $30 Starbucks Gift Card, respectively, as compensation. The [redacted] stated the Huntoon's paid for the event with their personal funds.

The [redacted] testified the [redacted] requested his assistance in preparing for the event, but never indicated that he questioned the nature of the dinner or their participation. [redacted] confirmed the [redacted] account of the matter regarding the concept and approximate number of participants, and estimated they worked 13 hours each to support the event. [redacted] also confirmed that LTG Huntoon compensated them with a

Starbucks Gift Card each. (b)(6) (b)(7)(C) added the (b)(6) (b)(7)(C) was not pleased with the level of compensation for the amount of time and effort they provided.

In the referenced sworn statement, LTG Huntoon also declared the (b)(6) (b)(7)(C) and his (b)(6) (b)(7)(C) volunteered to support the event which was attended by eight guests.[15] LTG Huntoon also stated he believed that the (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) each worked for four or five hours to support the dinner. LTG Huntoon explained the dinner concept was such that the winners dined first at BG Rapp's quarters for appetizers, then to his quarters for the entrée, and finally to BG Trainor's quarters for dessert. LTG Huntoon added that the food and associated items were financed with his personal funds, and provided this Office with bank documentation to that effect.

LTG Huntoon requested that these limited, unofficial instances, be placed in the context of his entire career of service. LTG Huntoon continued that he takes full responsibility for any violations of the (b)(6) (b)(7)(C) duties.

Transportation

LTG Huntoon's (b)(6) (b)(7)(C) stated he once volunteered to transport LTG Huntoon's (b)(6) (b)(7)(C) from the train station in Newark, New Jersey, to LTG Huntoon's quarters. The (b)(6) (b)(7)(C) explained that he drove LTG Huntoon's personally owned vehicle the roundtrip of approximately 100 miles which took approximately 3 hours.[16] The (b)(6) (b)(7)(C) continued that the trip occurred on May 18, 2011, during the week in off-duty evening hours and that LTG Huntoon compensated him with $60.00 and an $8.00 lunch.

The (b)(6) (b)(7)(C) later stated that on two other occasions he volunteered to drive LTG Huntoon's (b)(6) (b)(7)(C) to the train station in Garrison, NY, using LTG Huntoon's personally owned vehicle. The (b)(6) (b)(7)(C) added that LTG Huntoon provided him a one-time payment of $40.00, as well as an $8.00 lunch on each occasion as compensation. The (b)(6) (b)(7)(C) estimated the roundtrip duration and distance as 30 minutes and 20 miles respectively.[17]

Personal Services

Driving Lessons: BG Rapp and the Director of Admissions testified to their belief that (b)(6) (b)(7)(C) provided driving lessons to LTG Huntoon's (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) confirmed that she did so. Our survey of three driving schools in the West Point area established an average rate for individual instruction of $45 per hour.

Pet Care: The Director of Admissions and (b)(6) (b)(7)(C) testified that (b)(6) (b)(7)(C) was a close friend of the Huntoon family. The (b)(6) (b)(7)(C) testified that (b)(6) (b)(7)(C) had a

[15] The West Point Women's Club representative confirmed eight guests attended the dinner.

[16] MapQuest established the roundtrip duration and distance as 2:44 hours and 110 miles respectively.

[17] MapQuest established the roundtrip duration and distance as 44 minutes and 22 miles respectively.

"strong relationship" with LTG Huntoon's [redacted], and got along well with the entire Huntoon family. BG Rapp testified [redacted] had an "almost familial" relationship with the Huntoon family. [redacted] testified she had a personal relationship with the Huntoon family. LTG Huntoon testified [redacted] was known and welcome by his family. LTG Huntoon testified that in November or December 2010, [redacted] agreed to feed [redacted] cats, but was unable to do so and he agreed to perform that task. LTG Huntoon explained that after the first time, "it occurred to me this was not the right thing to do." Subsequently, he requested his [redacted] assume that duty, which he did.

The [redacted] corroborated LTG Huntoon's account of the matter. The [redacted] explained that LTG Huntoon stopped by his quarters one evening to "ask a favor" that he assume responsibility for feeding [redacted] cats. The [redacted] added that he also owns a cat and continues to feed [redacted] cats when she is away.

Discussion

We conclude that LTG Huntoon improperly used Government personnel for other than official purposes. We also conclude that LTG Huntoon improperly accepted gifts from his subordinates on at least two occasions: the Progressive Dinner, and by allowing [redacted] to provide driving lessons to [redacted]. Additionally, we conclude that LTG Huntoon improperly induced his [redacted] to care for [redacted] cats, a misuse of his position. We further conclude that LTG Huntoon properly compensated his [redacted] for providing transportation for [redacted] outside of duty hours.

We found that the [redacted]' luncheon, hosted by [redacted] was not related to LTG Huntoon's duties as the Superintendent. The event occurred during duty hours and was supported by LTG Huntoon's [redacted] We also found that the [redacted] prepared and serviced the Progressive Dinner, a private, unofficial dinner event auctioned off by the WPWC, which occurred outside normal duty hours. Even if the [redacted] volunteered to support the event, we found that they were inadequately compensated for their time. We also found that [redacted] provided driving lessons to LTG Huntoon's [redacted] and that this service also constituted an improper gift. Furthermore, we found that LTG Huntoon acknowledged that [redacted] was a family friend. Therefore, LTG Huntoon's request to the [redacted] a direct report to LTG Huntoon, to feed [redacted] cats, was a misuse of his position.

The JER prohibits an employee from using subordinates for unofficial business during duty hours. Additionally, the JER requires that if services are outside the duty day, the subordinate may volunteer to provide services if the senior provides appropriate compensation. However, if there is inadequate compensation, the service is considered a gift from a subordinate. The JER does provide certain criteria when a superior may accept a gift from a subordinate, but not in instances where the individuals are in a senior/subordinate relationship. The JER also prohibits an employee from inducing another person, including a subordinate, to provide a benefit to another person with whom the employee is affiliated in a nongovernmental capacity.

We determined that in the instance of the [redacted]' luncheon, LTG Huntoon misused official time by using the [redacted] during the duty day to prepare and service the event. We also determined that on two occasions, LTG Huntoon improperly accepted gifts from his subordinates. First, regarding the Progressive Dinner, we determined that the level of compensation (Starbucks gift cards valued at $30 and $40) was not sufficient given the amount of personal time and services rendered in support of the dinner. Second, we determined that the driving lessons for LTG Huntoon's [redacted] constituted a gift of services, which LTG Huntoon cannot accept due to his supervisory relationship with [redacted] Finally, with respect to care of [redacted] cats, we found that LTG Huntoon's relationship with [redacted] was both personal as well as professional. We conclude that the cat care was provided to [redacted] as a friend and not in her professional capacity. Consequently, we determined that in requesting the [redacted] to care for [redacted] cats, LTG Huntoon misused his position to induce a benefit to a friend.

Accordingly, we determined LTG Huntoon misused Government personnel by improperly using [redacted] for other than official duties without adequate compensation, improperly accepted gifts of services from subordinates, and misused his official position to induce benefits to a friend.

Response to Tentative Conclusions

In his response to this Office, dated April 13, 2012, LTG Huntoon accepted full responsibility for his actions. LTG Huntoon provided documentation that he had researched labor rates for the events in question and compensated all parties concerned totaling $1815.

After carefully considering LTG Huntoon's response, we stand by our conclusion that LTG Huntoon misused Government personnel for other than official purposes, improperly accepted gifts of services from subordinates, and misused his position to induce a benefit to a friend.

V. CONCLUSIONS

A. [redacted]

B. We conclude that LTG Huntoon improperly used Government personnel for other than official purposes, improperly accepted gifts of services from subordinates, and misused his position to induce a benefit to a friend.

VI. RECOMMENDATION

We recommend the Secretary of the Army consider appropriate corrective action with regard to LTG Huntoon.

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JUL 30 2013

Ref: F-13-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number F-13-00373.

The enclosed reports of investigation concerning Dr. Carol E. Lowman and Vice Admiral James P. Wisecup are responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege, 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number F-13-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure(s):
As stated

FOR OFFICIAL USE ONLY

Report No. 11-121391-398 November 9, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION: DR. CAROL E. LOWMAN SENIOR EXECUTIVE SERVICE

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REPORT OF INVESTIGATION:
DR. CAROL E. LOWMAN, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that Dr. Carol E. Lowman, while serving as Executive Director, U.S. Army Contracting Command (ACC), used her Government Travel Charge Card (GTCC) for unauthorized personal use, in violation of the Department of Defense Financial Management Regulation (DoD FMR); and that (b) (6), (b) (7)(C) [redacted]

We substantiated one allegation. We conclude that Dr. Lowman improperly used her GTCC. We found that Dr. Lowman used the GTCC on two occasions for personal purchases at a designer cosmetics store and at a nail salon. The DoD FMR requires that the GTCC will only be used for official travel related expenses. We determined that Dr. Lowman's purchases were not related to official travel.

(b) (6), (b) (7)(C) [redacted]

By letter dated September 14, 2012, we provided Dr. Lowman the opportunity to comment on the initial results of our investigation. On September 21, 2012, (b) (6), (b) (7)(C) signed for our letter by certified mail. Our Office made multiple attempts to contact Dr. Lowman after receiving no reply by the suspense date of September 28, 2012. Accordingly, we finalized our report of investigation without benefit of a response from Dr. Lowman.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

Dr. Lowman was appointed as the Executive Director, ACC, on September 27, 2011.[2] The ACC is a major subordinate command of the U.S. Army Materiel Command (AMC). Prior to her appointment as Executive Director, Dr. Lowman served as the Deputy Director, ACC, beginning in November 2009.

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[1] (b) (6), (b) (7)(C) [redacted]

[2] Dr. Lowman retired from Federal service on August 31, 2012.

On September 28, 2011, DoD IG received a DoD Hotline complaint alleging Dr. Lowman misused, and failed to pay in a timely manner, her GTCC.

III. SCOPE

We interviewed Dr. Lowman and three witnesses with knowledge of matters under investigation. Additionally, we reviewed records from Defense Finance and Accounting Service (DFAS) and GTCC statements for official travel taken from September 2009 through December 2011.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

[redacted]

IV. FINDINGS AND ANALYSIS

A. Did Dr. Lowman use her GTCC for unauthorized personal use?

Standards

DoD 7000.14-R, "DoD Financial Management Regulation (FMR)," Volume 9, "Travel Policies and Procedures"

Chapter 3, "Department of Defense Government Travel Charge Card (GTCC)," dated August 2010, states in section 031003, that the misuse of the GTCC will not be tolerated. Commanders and supervisors will ensure GTCCs are issued only for official travel related expenses. Example of misuse include: expenses related to personal, family or household purposes. The cardholder, while in a travel status, may use the GTCC for non-reimbursable incidental travel expenses such as in-room movie rentals, personal telephone calls, exercise fees, and beverages, when these charges are part of a room billing and are reasonable.

Facts

The complaint alleged Dr. Lowman used her GTCC for unauthorized personal use.

A witness testified that during a (b) (6), (b) (7)(C) [redacted] discovered Dr. Lowman had used her GTCC to pay for a manicure and pedicure. The witness related that in March or early April 2010 (b) (6), briefed Dr. Lowman on the proper use of the GTCC.

Dr. Lowman's GTCC statements from September 2009 through December 2011 contained 300 transactions of which two, totaling $124.78, were questionable. The first instance

was on August 2, 2010, for $68.78 at Sephora in Arlington, Virginia.[3] The second instance was on December 18, 2010, for $56.00 at Nail Lytan in Atlanta, Georgia.

Dr. Lowman testified she mistakenly used her GTCC instead of her personal credit card. She stated, "that's my other absolute brain dump. One Sephora and one the nail place." Dr. Lowman also testified that no one ever informed her that these purchases were improper.

Dr. Lowman further testified that based on our investigation she directed an audit of her GTCC transactions and a review of all processes related to official travel.

Discussion

We conclude Dr. Lowman used her GTCC for unauthorized personal use. We found two instances in which Dr. Lowman used her GTCC for personal purchases totaling $124.78. The two purchases were at a designer cosmetics store and a nail salon.

The DoD FMR requires that the GTCC is only to be used for official travel related expenses. Additionally, the DoD FMR permits the use of the GTCC for non-reimbursable incidental travel expenses such as in-room movie rentals, personal telephone calls, exercise fees, and beverages, when these charges are part of a room billing and are reasonable.

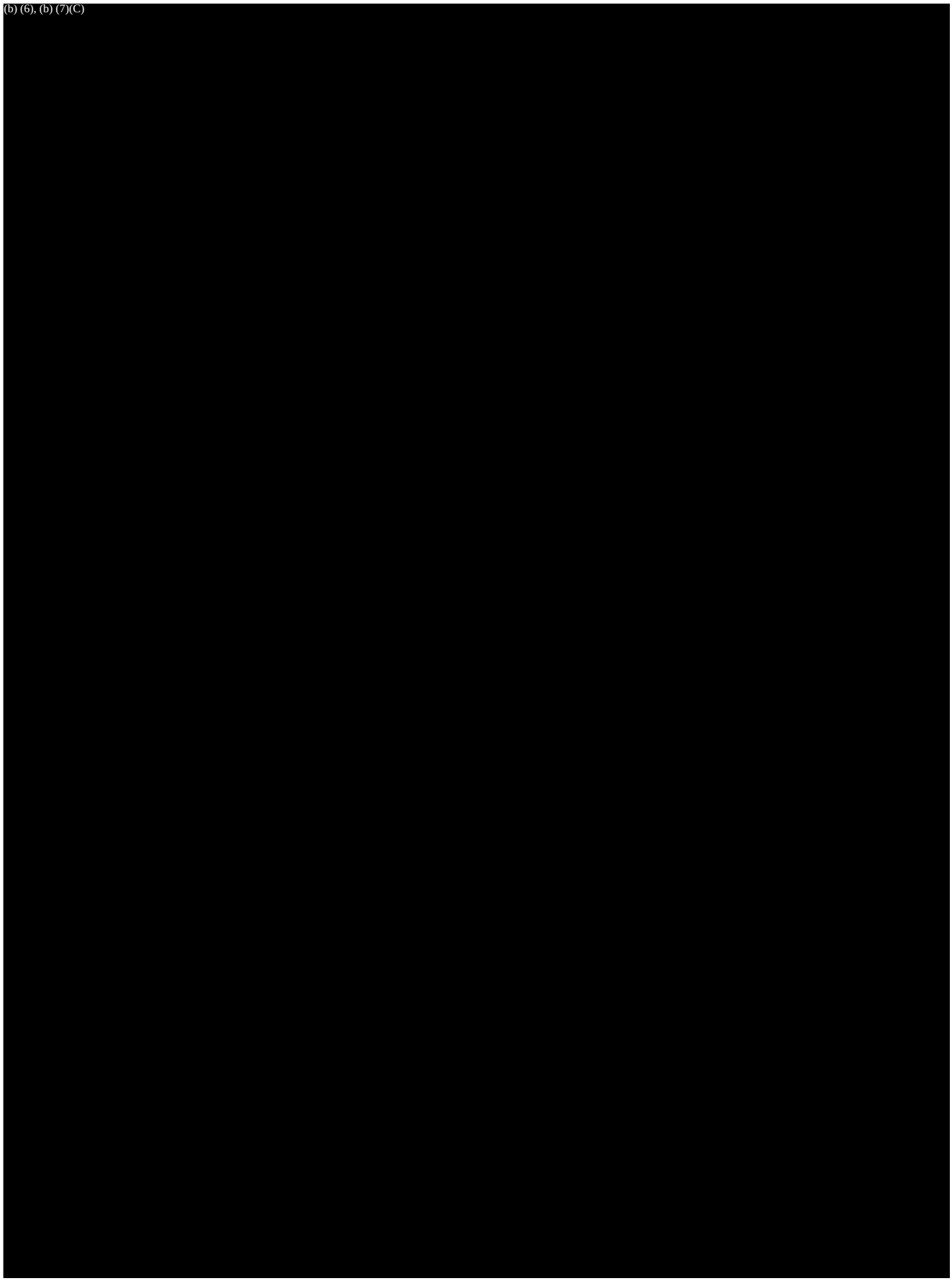
We determined that the two instances were not for official travel related expenses. Additionally, the charges were not part of a room billing. Accordingly, we determined that Dr. Lowman's use of the GTCC for purchases not related to official travel was improper.

(b) (6), (b) (7)(C)

[redacted]

[3] Sephora sells name brand and designer cosmetics and fragrances.

(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C) [redacted]

V. CONCLUSIONS

A. Dr. Lowman used her GTCC for unauthorized purchases.

(b) (6), (b) (7)(C) [redacted]

VI. RECOMMENDATION

We have no recommendation in this matter.

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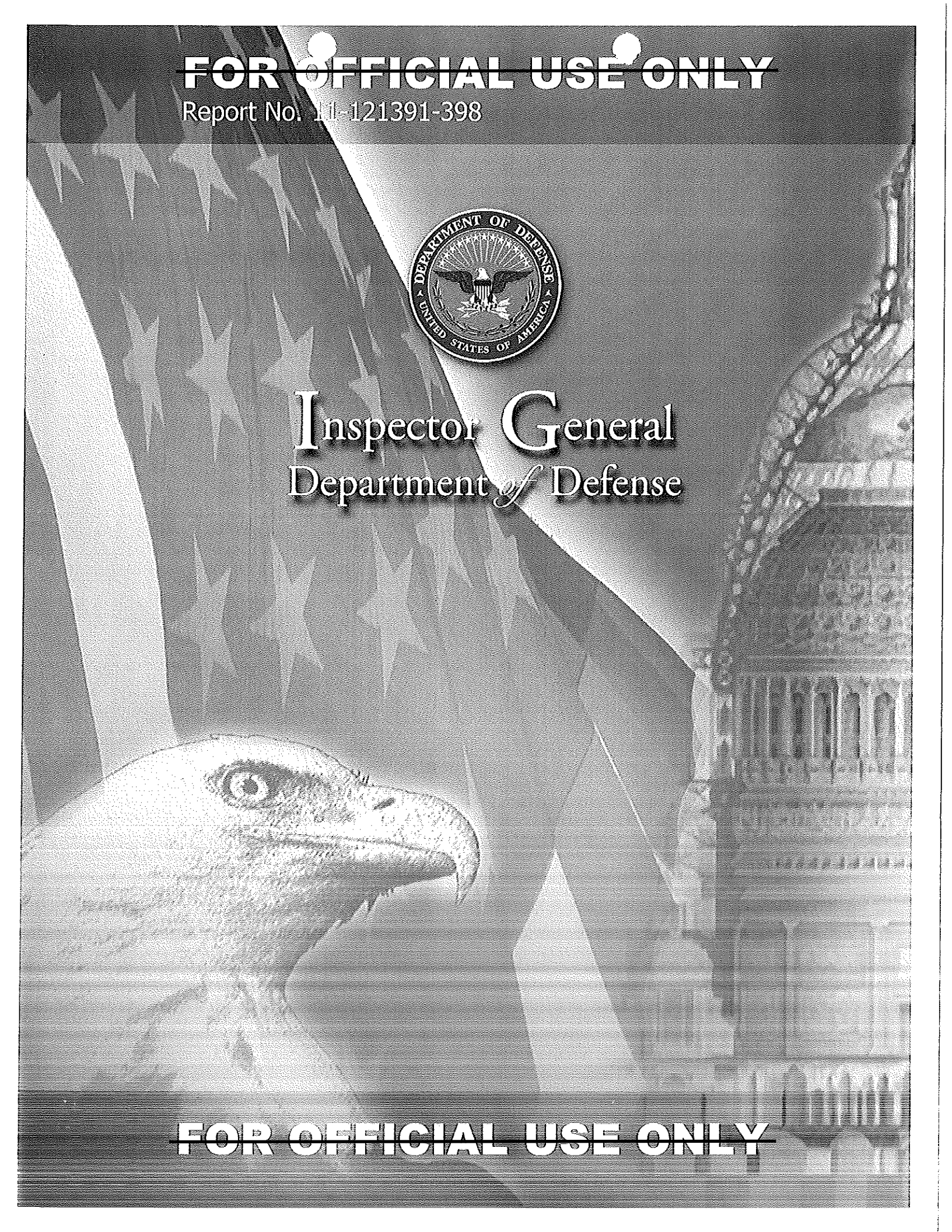
Report No. 11-121391-398



Inspector General
Department of Defense

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Report No. 12-122820-079 June 27, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION: VICE ADMIRAL JAMES P. "PHIL" WISECUP UNITED STATES NAVY NAVAL INSPECTOR GENERAL

~~FOR OFFICIAL USE ONLY~~

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JUN 27 2012

MEMORANDUM FOR ACTING INSPECTOR GENERAL

SUBJECT: Report of Investigation Concerning Vice Admiral James P. "Phil" Wisecup, U.S. Navy, (Report No. 12-122820-079)

We recently completed our investigation to address an allegation that while serving as the Naval Inspector General, Vice Admiral (VADM) James P. "Phil" Wisecup, U.S. Navy, improperly endorsed a non-Federal entity in a promotional video in uniform, without a disclaimer.

We substantiated the allegation. We found that Lincoln Military Housing (LMH) invited VADM Wisecup to participate in an interview as a satisfied customer. VADM Wisecup did not fully staff the LMH request and participated in the video-recorded interview in uniform on December 16, 2011. VADM Wisecup neither sought Department of the Navy approval nor signed or stated a disclaimer that his comments were his own and did not necessarily represent the views of the Department of Defense or U.S. Navy. The excerpts from the interview and VADM Wisecup's name were featured in a video posted to the Internet on December 30, 2011. Accordingly, we determined that VADM Wisecup's appearance in uniform and remarks, without a disclaimer, implied that he was an official Department of Defense spokesperson who sanctioned or endorsed the activities of LMH, a non-Federal entity.

In accordance with our established procedure, we provided VADM Wisecup the opportunity to comment on the initial results of our investigation. In his response, dated June 20, 2012, VADM Wisecup did not contest our preliminary findings and conclusions. After carefully considering VADM Wisecup's response, we stand by our conclusion. The report of investigation, together with VADM Wisecup's response, is attached.

We recommend the Secretary of the Navy consider appropriate corrective action with regard to VADM Wisecup.

Marguerite C. Garrison
Deputy Inspector General for
Administrative Investigations

Attachment:
As stated

~~FOR OFFICIAL USE ONLY~~

REPORT OF INVESTIGATION:
VICE ADMIRAL JAMES P. "PHIL" WISECUP, UNITED STATES NAVY

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address the self-reported allegation that Vice Admiral (VADM) James P. "Phil" Wisecup, while serving as the Naval Inspector General, Washington Navy Yard, improperly endorsed a non-Federal entity (NFE) in a promotional video in uniform, without a disclaimer, in violation of Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)," and Department of Defense Instruction (DoDI) 1334.01, "Wearing of the Uniform."

We substantiated the allegation that VADM Wisecup improperly endorsed an NFE. We found that Lincoln Military Housing (LMH) invited VADM Wisecup to participate in an interview as a satisfied customer. VADM Wisecup did not fully staff the LMH request and participated in the video-recorded interview in uniform on December 16, 2011. VADM Wisecup did not sign or state a disclaimer indicating his comments were his own and did not necessarily represent the views of the DoD or U.S. Navy. The edited video, posted to the Internet on December 30, 2011, featured VADM Wisecup in uniform providing positive comments about LMH.

The JER prohibits an employee from permitting the use of his Government position or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another, without a proper disclaimer. DoDI 1334.01 prohibits the wearing of the uniform by members of the Armed Forces when an inference of official sponsorship for the activity or interest may be drawn.

Accordingly, we determined that VADM Wisecup's appearance in uniform and remarks, without a disclaimer, implied that he was an official DoD spokesperson who sanctioned or endorsed the activities of LMH, an NFE.

Following our established practice, by letter dated June 15, 2012, we provided VADM Wisecup the opportunity to comment on the initial results of our investigation. In his written response, dated June 20, 2012, VADM Wisecup did not dispute our preliminary findings and conclusion, and reiterated his intent was merely "to convey a 'well done' to the Lincoln bosses" regarding the actions of the Washington Navy Yard LMH staff. After carefully considering VADM Wisecup's response, we stand by our conclusion.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

II. BACKGROUND

In April 2011, VADM Wisecup became the 38th Naval Inspector General and the senior investigative official in the Department of the Navy. In August 2011, VADM Wisecup and his family moved into quarters managed by LMH on the Washington Navy Yard.

LMH is a division of Lincoln Property Company, a commercial and residential property management company. LMH is the private partner in a public private venture that is governed by a business agreement in which the Navy has limited rights and responsibilities. The private entity is responsible for managing the construction, renovation, maintenance, and day-to-day maintenance along with services of the community. On August 1, 2005, LMH assumed management and maintenance responsibilities for most of the family housing communities in the Naval District of Washington including the Executive Homes located on the Washington Navy Yard. The LMH website reflects that LMH is not a Government entity or a Federal Government contractor.

On January 12, 2012, VADM Wisecup met with his staff and self-reported his appearance in the promotional video to the DoD IG, the Undersecretary of the Navy, and the Deputy Chief of Naval Operations. The same day, Naval Facilities Command coordinated with LMH to have the video removed from the Internet.

III. SCOPE

We interviewed VADM Wisecup and eight witnesses, including LMH officials, with knowledge of the matters under investigation. Additionally, we reviewed Government email records, and applicable standards and regulations.

IV. FINDINGS AND ANALYSIS

Did VADM Wisecup improperly endorse an NFE by appearing in a promotional video while in uniform?

Standards

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 23, 1993, including changes 1-7 (November 17, 2011)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart G, "Misuse of Position," Section 2635.702, "Use of public office for private gain," states, in part, that an employee shall not use his public office for the endorsement of any product, service, or enterprise.

In Section 2635.702(b), "Appearance of governmental sanction," except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by Section 2635.807(b).

In Section 2635.702(c), "Endorsements," an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except (1) In furtherance of statutory authority to promote products, services, or enterprises; or (2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

In Section 2635.807(b), "Reference to official position," an employee who is engaged in teaching, speaking, or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking, or writing activity or to promote any book, seminar, course, program, or similar undertaking, except that an employee may use or permit the use of rank in connection with his teaching, speaking, or writing.

Section 2 of the JER incorporates 5 CFR, Part 3601, "Supplemental Standards of Ethical Conduct for Employees of the Department of Defense."

Subsection 2-201a, "Designation of Separate Agency Components," designates the Department of the Navy as a separate Agency within the Department of Defense.

Subsection 2-207, "Disclaimer for Speeches and Writings Devoted to Agency Matters," states, in part, a DoD employee who uses or permits the use of his military grade as one of several biographical details given to identify himself in connection with speaking in accordance with 5 CFR 2635.807(b) shall make a disclaimer if the subject of the speaking deals in significant part with any ongoing program or operation of the DoD employee's Agency and the DoD employee has not been authorized by appropriate Agency authority to present that material as the Agency's position. Subparagraph 2-207(a) requires the disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its Components. Subparagraph 2-207(c) states where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

Chapter 3, "Activities with non-Federal Entities," Section 3, "Personal Participation in Non-Federal Entities," Subsection 3-300a, "Fundraising and Other Activities," states, in part, employees may voluntarily participate in activities of NFEs as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions.[1]

[1] JER, Section 1-217, defines a "non-Federal entity" as a self-sustaining, non-Federal person or organization, established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government.

Subparagraph 3-300a(1) further amplifies, except as provided for in 5 CFR 2635.807(b), DoD employees may not use or allow the use of their official titles, positions, or organization names in connection with activities performed in their personal capacities as this tends to suggest official endorsement or preferential treatment by DoD of any NFE involved. Military grade and military department as part of an individual's name may be used, the same as other conventional titles such as Mr., Ms., or Honorable, in relationship to personal activities.

DoDI 1334.01, "Wearing of the Uniform," dated October 26, 2005

This instruction sets limitations on wearing the uniform by members of the Armed Forces.

Paragraph 3, "Policy," Subparagraph 3.1, states, in part, that the wearing of the uniform by members of the Armed Forces is prohibited during or in connection with furthering commercial interests, when an inference of official sponsorship for the activity or interest may be drawn. The Instruction prohibits wearing of the uniform except when authorized by the competent Service authority, when participating in activities such as unofficial interviews, which may imply Service sanction of the cause for which the activity is conducted.

Facts

In the summer of 2011, VADM Wisecup moved into quarters on the Washington Navy Yard managed by LMH. He testified that after moving in, he created a list of discrepancies with the residence, which LMH either addressed or corrected within 24 hours. VADM Wisecup related that this was his fourth public private venture home and that he was not used to that level of service.

On November 8, 2011, VADM Wisecup forwarded [redacted] a draft email that he intended to send to the LMH [redacted] and requested an opinion on whether it was appropriate to send. The draft email read:

> [The LMH [redacted]] and her team are by far/by far, the most engaged, helpful, and WILLING to help us … they are competent and get things done, and that is impressive due to it's (sic) rarity. … and I wanted someone in their leadership to know that.

Three minutes later, [redacted] Later that same day, VADM Wisecup's [redacted] forwarded the email to the [redacted]

The LMH [redacted] testified that in late November or early December 2011, the LMH Vice President informed her that LMH was creating a public relations video and looking for residents who were willing to go on film and comment about their good experiences with LMH. The LMH [redacted] related that she immediately thought of VADM Wisecup because she had just received a thank you note from him. The LMH [redacted] recalled that she told the LMH [redacted] to ask VADM Wisecup if he would

participate in the public relations video. The LMH (b) (6), (b) (7)(C) further testified that it was not unusual for LMH headquarters to request good news stories because the videos were used for LMH employee training and "Welcome Aboard" processing of newly assigned sailors.[2]

The LMH (b) (6), (b) (7)(C) testified that during the week of December 12, 2011, she called VADM Wisecup and left a voice message asking him to participate in a public relations video.[3] (b) (6), (b) (7)(C) thought that she had mentioned in her voice message that the Vice President requested a video-recorded interview as a public relations event. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) stated that prior to the interview she did not speak directly with VADM Wisecup and only spoke with VADM Wisecup's (b) (6), (b) (7)(C) in order to coordinate the interview.

VADM Wisecup testified that (b) (6), (b) (7)(C) voice message gave him the impression the interview would be with the LMH Chief Executive Officer so he (VADM Wisecup) could relay in person the excellent treatment he had received from the Washington Navy Yard LMH staff. He denied the voice message contained the terms "promotional video" or "public relations video." On December 13, 2011, immediately after listening to the voice message, VADM Wisecup informed (b) (6), (b) (7)(C) by email that the LMH (b) (6), (b) (7)(C) asked him to interview with (b) (6), supervisors from Dallas as a "satisfied customer" and asked, "Can I do this?" Four minutes later (b) (6), (b) (7)(C), (b) (5)

VADM Wisecup, (b)(6), (b)(7)(C) all testified they were on official travel during the period the interview was being coordinated. VADM Wisecup and (b) (6), (b) (7)(C) (b)(6), (b)(7)(C) were on official travel in Annapolis, Maryland. (b) (6), (b) (7)(C) was on official travel in Norfolk, Virginia. VADM Wisecup's official calendar indicated that all three were on temporary assigned duty for the period December 13-15, 2011. Additionally, the three testified the interview request did not receive VADM Wisecup's normal (b) (6), (b) (7)(C) review because they were all on official travel.

On December 15, 2011, by email the LMH (b) (6), (b) (7)(C) informed VADM Wisecup "our camera folks are here on Friday" and asked whether he would be available. VADM Wisecup responded to the (b)(6), (b)(7)(C) stating that he would be back in the Washington, D.C., area that night. VADM Wisecup carbon copied his reply to both (b) (6), (b) (7)(C) (b)(6), (b)(7)(C) and asked them to call the (b)(6), (b)(7)(C) to schedule the interview. The (b)(6), (b)(7)(C) testified that he spoke to the (b)(6), (b)(7)(C) and scheduled the interview for 1500 on Friday, December 16, 2011.

On December 16, 2011, four hours before the scheduled interview with VADM Wisecup, the LMH (b) (6), (b) (7)(C) sent an email to the (b) (6), (b) (7)(C) Washington Navy Yard, and the Commander, Naval Installations Command, indicating that LMH:

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[2] "Welcome Aboard" is a Navy colloquialism for the Navy Command Sponsor Program for newly assigned sailors and their families.

[3] VADM Wisecup testified that he was on official travel when he received the voice message and he did not save it.

> [W]ill have a camera crew at the Navy Yard this afternoon for a promotional video that Lincoln is working on. VADM Wisecup has graciously agreed to be interviewed for this project and the camera crew will be filming at Qtrs F.

VADM Wisecup testified that the interview was held in his quarters right before his holiday reception. VADM Wisecup related that because he planned to be in uniform during his holiday reception, he asked (b) (5), (b) (6), (b) (7)(C) [redacted]

VADM Wisecup testified that the film crew was at his quarters when he arrived. The LMH (b) (6), (b) (7)(C) [redacted] testified (b) (6), [redacted] pulled VADM Wisecup aside before the interview began and asked him if he had "checked everything out legally." (b) (6), (b) (7), [redacted] stated that VADM Wisecup told (b) (6), [redacted] that his legal department had "signed off on everything, he was fine." VADM Wisecup denied this conversation ever occurred.

On December 30, 2011, a 64-second video titled, "Vice Admiral James P. "Phil" Wisecup on Lincoln Military Housing," was posted to both YouTube and the LMH Cares websites. The video begins with a head and shoulder shot of an unnamed man wearing 3-star collar insignia on a khaki shirt saying, "The first place we lived in military housing was, my first flag assignment in Korea."

At four seconds into the video, while the man continues to speak, a transparent two-line banner fades in on the lower portion of the screen and identifies the man as "VICE ADMIRAL JAMES P. "PHIL" WISECUP, U.S. NAVY." This banner fades out at 8 seconds into the video. At 15 seconds, the video fades to white and three lines appear which read:

VICE ADMIRAL JAMES P. "PHIL" WISECUP
ON
LINCOLN MILITARY HOUSING

At 18 seconds into the video, VADM Wisecup begins to speak, "I mean I know these people." At 19 seconds, the frame transitions back to the shot of VADM Wisecup as he continues, "I know them by name. I recognize them on the sidewalk when they're coming to do things and things like that. All I have to do is send an email, or make a phone call and people actually do things."

At 30 seconds into the video and as VADM Wisecup continues to speak, the scene transitions and displays for 4 seconds a Navy flag on a staff hanging outside Quarters F. At 34 seconds the image transitions back to the shot of VADM Wisecup as he states, "This house meets our needs, and far exceeds our expectations." At 57 seconds, VADM Wisecup completes his remarks, the video fades to white, and the following four lines appear which ends the video:

LINCOLN
MILITARY
HOUSING
Every Mission Begins at Home™

On January 11, 2012, (b) (6), (b) (7)(C) informed VADM Wisecup by email that a video of the interview had been posted to the Internet, which "certainly presents an endorsement issue."

(b) (6), (b) (7)(C) testified that (b) (5) He stated, "I thought it was the customer satisfaction survey meeting with the bosses from Texas. So, they obviously know he is an admiral living in flag housing. (b) (5)

VADM Wisecup testified that he did not know that the interview was going to be video-recorded until he received an email on Thursday morning (December 15, 2011), the day before the interview. The email from the LMH (b) (6), (b) (7)(C) included a reference to "camera folks." When questioned about his thoughts at that point, VADM Wisecup stated he "assumed" the LMH executives were not available and "that instead of talking to people, I was going to be … doing a video for the people [the LMH (b) (6), (b) (7)(C) wanted me to talk to." VADM Wisecup related that he did not clarify the intent of the interview with LMH (b) (6), (b) (7)(C) (b)(6), (b)(7)(C) and that it "didn't register" with him to ask "what's going on." He stated he made "assumptions" about what he was going to do and the email did not "set off any alarm bells."

VADM Wisecup also testified he was not aware that the interview would be video-recorded when he consulted with (b) (6), (b) (7)(C) about whether he could do the interview, and if there was a concern about being in uniform. VADM Wisecup denied LMH told him the interview would be part of a promotional video and also stated he never signed or made a verbal disclaimer regarding his comments about LMH. He further stated he was shocked when notified that his comments were included in a LMH video posted to the Internet.

VADM Wisecup further testified, "I kind of got tricked here or that's probably not the right word to use, but I was not on the same wavelength" as the LMH staff with regard to the video interview. VADM Wisecup also commented, "bottom line is, I didn't know what they were going to do with it."

Discussion

We conclude that VADM Wisecup improperly endorsed an NFE in violation of the JER and DoDI 1334.01.

We found that LMH approached VADM Wisecup to participate in an interview after receiving his email complimenting the prompt, professional service provided by the LMH staff at the Washington Navy Yard. After consulting with (b) (6), (b) (7)(C), he accepted the invitation. VADM Wisecup expected a face-to-face meeting with senior LMH leadership, but on December 15, 2011, he became aware that the interview would be video-recorded. VADM Wisecup did not seek any clarification from the LMH (b) (6), (b) (7)(C) or request additional guidance from (b) (6), (b) (7)(C) We also found no evidence that VADM Wisecup signed or made a verbal disclaimer indicating his comments were his own and did not

necessarily represent the views of the DoD or U.S. Navy. On December 30, 2011, LMH posted a promotional video featuring VADM Wisecup in uniform on the Internet.

JER, Section 3-300a, permits DoD employees to voluntarily participate in activities of NFEs in their personal capacities, provided they act "exclusively outside the scope of their official positions." JER, Section 2635.702(b), requires that an employee shall not use or permit the use of his Government position, title or any authority associated with his position in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses the personal activities of another. JER, Section 2635.702(c) directs that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product or service. JER, Section 2-207, states that any speaking engagement, where military grade is publicized and the subject deals in significant part with any ongoing Agency program, requires a disclaimer that the views presented are those of the speaker and do not necessarily represent the views of the DoD or its Component. Finally, DoDI 1334.01 prohibits the wearing of the military uniform in connection with furthering commercial interests, when an inference of official sponsorship for the activity or interest may be drawn, unless authorized by the Secretary of the Navy.

We determined VADM Wisecup participated in a video-recorded interview with LMH officials, in uniform and without proper authorization, and that his positive comments related directly to LMH residences under the Navy's partnership agreement. We also determined the request from LMH was not vetted by the established review process because VADM Wisecup and (b) (6), (b) (7)(C) were on official travel. We acknowledge VADM Wisecup did not know that his comments would be inserted into an LMH promotional video, which was only available on the Internet for 2 weeks. We also acknowledge that once he became aware of the video, VADM Wisecup immediately self-reported and the video was removed. However, VADM Wisecup's personal participation in the promotional video in uniform, without a verbal or written disclaimer, emphasized his military status and affiliation, and, by implication, the authority associated with his public office. These factors could be perceived by DoD and non-DoD audiences that the DoD and U.S. Navy endorsed the activities of LMH, an NFE.

Response to Tentative Conclusion

In his response, dated June 20, 2012, VADM Wisecup wrote he did not recall "red flag" words such as "public relations video" or "promotional video." He reiterated his intent was merely "to convey a 'well done' to the Lincoln bosses ... Anything else was someone else's decision, which I had no control over." VADM Wisecup closed with "no one in my family benefitted in any way from this, or received any personal gain, from me making these comments."

After carefully considering VADM Wisecup's response, we stand by our conclusion in the matter.

V. CONCLUSION

We conclude that VADM Wisecup improperly endorsed an NFE.

VI. RECOMMENDATION

The Secretary of the Navy consider appropriate action.

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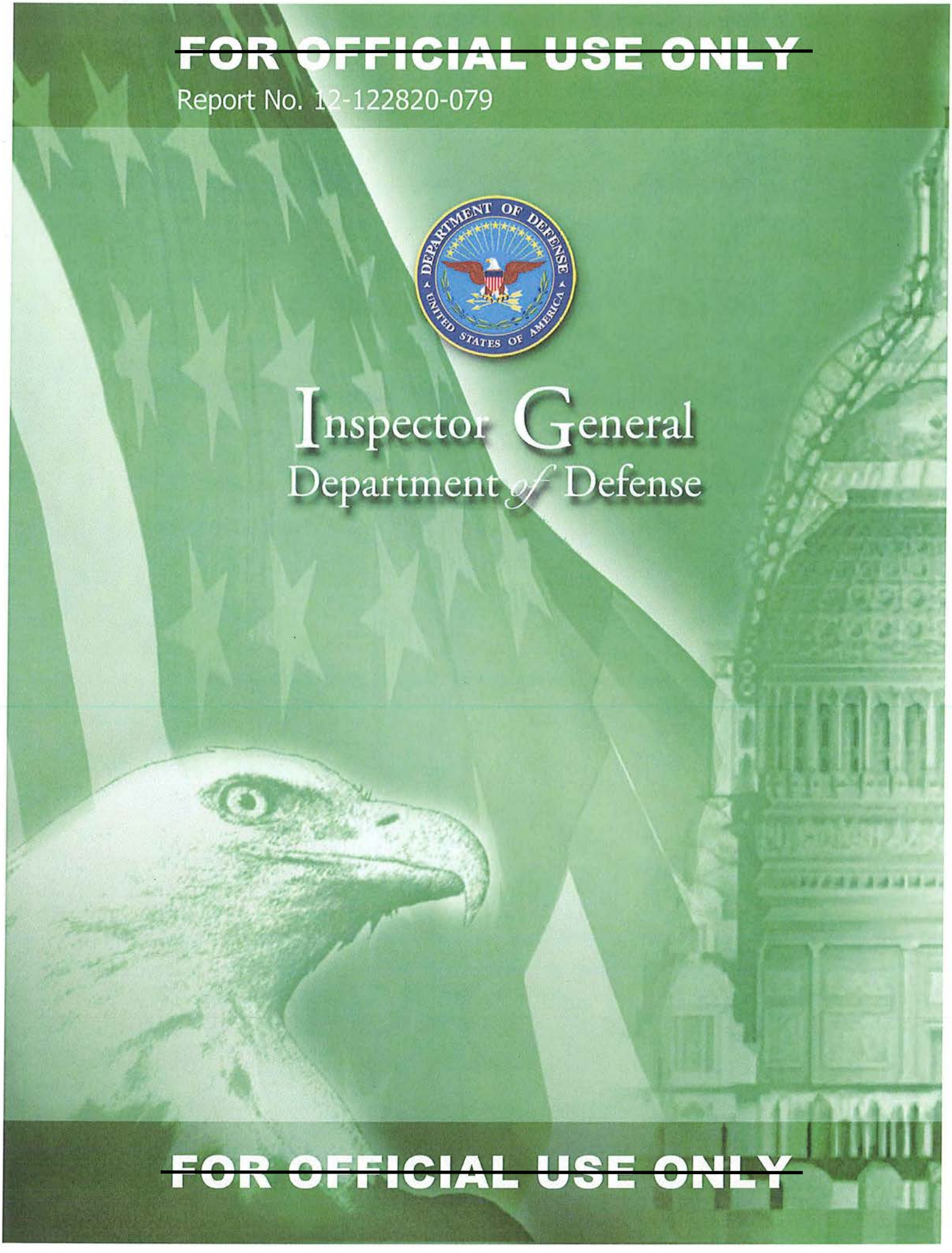
Report No. 12-122820-079



Inspector General
Department of Defense

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

AUG - 6 2013

Ref: F-13-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number F-13-00373.

The enclosed Report of Investigation concerning Major General Joseph F. Fil, Jr. is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege; 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number F-13-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

ALLEGED MISCONDUCT:
MAJOR GENERAL JOSEPH F. FIL, JR., UNITED STATES ARMY,
FORMER COMMANDING GENERAL, EIGHTH UNITED STATES ARMY AND
CHIEF OF STAFF, UNITED NATIONS COMMAND/COMBINED FORCES COMMAND/
UNITED STATES FORCES KOREA

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Major General (MG) Joseph F. Fil, Jr. improperly accepted, and later failed to report, gifts given to him based on his official position as Commanding General, Eighth United States Army, and Chief of Staff, United Nations Command/Combined Forces Command/United States Forces Korea.[1] Based on information gathered in interviews conducted by the Federal Bureau of Investigation (FBI), the Defense Criminal Investigative Service (DCIS), and the U.S. Army Criminal Investigation Command (CID), and information provided by the U.S. Army Office of The Judge Advocate General, Financial Disclosure Management Office, we focused our investigation on allegations that MG Fil:

- Accepted gifts in violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)"; and
- Failed to report gifts that exceeded the applicable monetary threshold in violation of the JER.

We substantiated the allegations. We conclude MG Fil improperly accepted a Montblanc pen set (pen set) with a U.S. market value above the permissible gift threshold,[2] and a leather briefcase (briefcase) costing approximately $2,000. MG Fil also allowed (b)(6), (b)(7)(C) to accept a $3,000 cash gift given because of MG Fil's official position. We found that MG Fil accepted the gifts from (b)(6), (b)(7)(C), whom he met after he assumed command. The JER prohibits individuals from accepting gifts given based on their official position, but does provide for certain exceptions. We considered the JER exceptions and determined that none of the exceptions applied to the gifts in question. Accordingly, we conclude MG Fil improperly accepted gifts that were offered based on his official position.

[1] During his assignment as Commanding General, Eighth United States Army, and Chief of Staff, United Nations Command/Combined Forces Command/United States Forces Korea, Major General Fil held the grade of Lieutenant General (O-9). He reverted to his permanent grade of Major General (O-8) on September 20, 2011. We refer to him as Major General (MG) Fil in our report.

[2] The Joint Ethics Regulation defines market value as "the retail cost the employee would incur to purchase the gift." Investigators were unable to determine the exact retail value in the United States of the pen set at the time of purchase. Review of pen set photos led investigators to conclude that the pens were most likely the Montblanc Meisterstück Classique model rollerball and ballpoint pens, with gold-plated furnishings. An October 12, 2011, review of the Montblanc website listed the value of the pens at $385 each. After allowing for price increases from 2008 to 2011, investigators determined that the combined U.S. retail value of the pens, plus the presentation gift box and leather case, would have exceeded the 2008 gift value threshold of $335.

We also conclude that MG Fil failed to report the gifts from (b)(6), (b)(7)(C) that exceeded the applicable monetary thresholds. We reviewed MG Fil's Standard Form 278, "Executive Branch Personnel Public Financial Disclosure Report," (SF 278) and information from the U.S. Army Financial Disclosure Management (FDM) System and found that MG Fil did not declare any of the gifts. Chapter 7 of the JER requires regular military officers whose pay grade is O-7 or above to file a financial disclosure report, which contains the source, a brief description, and the value of all gifts aggregating more than $335 in value received by the filer during the reporting period from any one source. We determined that the pen set, briefcase, and cash gift all exceeded the reporting threshold and MG Fil was required to report them.

Following our established practice, by letter dated November 9, 2011, we provided MG Fil the opportunity to comment on our initial conclusions. In his response, dated November 15, 2011, MG Fil accepted full responsibility for his actions noting,

> Although at the time I accepted these gifts in good conscience, believing I had met the requirements for an exemption to the JER, I fully acknowledge that I used poor judgment. I accept full responsibility for my actions and the findings.

MG Fil also provided evidence of steps he took to mitigate his improper acceptance of and failure to report the gifts. As evidence, MG Fil provided a copy of an amended SF 278, dated July 25, 2011, listing the gift items and a copy of a letter, dated July 8, 2011, and cashier's check returning the $3000 cash gift to (b)(6), (b)(7)(C)[3] In his letter to (b)(6), (b)(7)(C) MG Fil also expressed his intention of returning the pen set and briefcase to (b)(6), (b)(7)(C) should those items come back into his possession. MG Fil noted that he met with an attorney-advisor from the office of the Army Judge Advocate General in April 2011 to review a draft copy of his SF 278. He testified (b)(5)

(b)(5)

(b)(5), (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

[3] On November 21, 2011, DoD IG investigators confirmed with the Director of Army Financial Disclosure Management that MG Fil submitted an amended Financial Disclosure Report (SF 278) on July 25, 2011.

(b)(5) [redacted]. We note that regardless of his attorney advisor's advice, as the filer and signatory MG Fil was responsible for the information reported on the SF 278; information he subsequently amended and submitted on a revised SF 278 dated July 25, 2011.

After carefully considering MG Fil's response, we stand by our conclusions in the matter.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

MG Fil arrived in the Republic of Korea (ROK) in February 2008, and served as the Commanding General, Eighth United States Army, and Chief of Staff, United Nations Command/Combined Forces Command/United States Forces Korea. MG Fil was reassigned to the United States in November 2010.

The JER acknowledges distinctions between gifts received because of an individual's official position and gifts received from personal friends. In general, however, gifts with an aggregate value above a specified threshold amount received from a single source in a calendar year period must be reported.[4]

III. SCOPE

We reviewed summaries of 13 FBI, DCIS, and Army CID interviews to include March 3 and 30, 2011, interviews of MG Fil. We further reviewed related documentary evidence, to include photographs of the pen set and briefcase, purchase records, financial data, travel data, and U.S. Government memoranda and records. We also reviewed applicable statutes, regulations, and policies.

IV. FINDINGS AND ANALYSIS

A. Did MG Fil improperly accept gifts?

Standards

DoD 5500.7-R, "JER," dated August 30, 1993

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (C.F.R.), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

[4] The aggregate value threshold in 2008 was $335. The aggregate value threshold is periodically adjusted. It was adjusted in 2010 to $350.

Subpart B, “Gifts from Outside Sources,” states:

In Section 2635.202

(a) *General Prohibitions* states that an employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source or given because of the employee’s official position.

* * * * * * *

(c) *Limitations on use of exceptions* states an employee shall not accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain.

In Section 2635.203 *Definitions*

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings, and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

* * * * * * *

(e) A gift is solicited or accepted because of the employee’s official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee’s knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person’s relationship to the employee.

In Section 2635.204 *Exceptions*

(b) *Gifts based on a personal relationship.* An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

In Section 2635.205 *Proper disposition of prohibited gifts*

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See Section 2635.203(c).

* * * * * * *

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

Facts

MG Fil's Relationship with (b)(6), (b)(7)(C)

The United States Forces Korea (USFK) (b) (6), (b) (7)(C) introduced MG Fil to (b)(6), (b)(7)(C) after MG Fil assumed command of Eighth United States Army in February 2008.

(b)(6), (b)(7)(C) does not speak English and relied upon (b)(6), (b)(7)(C) to translate for him when he was with MG Fil. In describing his relationship with MG Fil, (b)(6), (b)(7)(C) stated that he had dinner with MG Fil 10 to 20 times and had been to MG Fil's residence approximately 5 times. (b)(6), (b)(7)(C) often sponsored USFK events, such as buying tickets to the annual Eighth U.S. Army Ball to subsidize and facilitate U.S. soldiers' attendance.

5 (b)(6), (b) (7)(C)

MG Fil stated he communicated with (b)(6), (b)(7)(C) "using hand and arm signals." He added that (b)(6), (b)(7)(C) never asked him for any official favors and that there was no "quid pro quo" exchange, and that he sponsored (b)(6), (b)(7)(C) to get an installation pass because (b)(6), (b)(7)(C) was a "good neighbor" to USFK.[6]

(b)(6) (b)(7)(C) characterized (b)(6), (b)(7)(C) as MG Fil's "golfing buddy" and believed they were real friends.

MG Fil and his family traveled on leave to China in 2009 and met (b)(6), (b)(7)(C) for part of the trip. They stayed in a Beijing hotel in which (b)(6), (b)(7)(C) had a commercial interest. MG Fil stated that he and (b)(6), (b)(7)(C) played golf during the trip and that he paid all of his own expenses. (b)(6), (b)(7)(C) stated that (b)(6) (b)(7)(C) gave him approximately $2,000 to cover the cost of the hotel.

In both an undated memorandum and a memorandum dated May 18, 2010, MG Fil designated (b)(6), (b)(7)(C), among others, as a personal friend. MG Fil's justification was that he had known the individuals "for years" and asserted that their friendship was not based on MG Fil's official position. The memoranda did not provide any detailed information about the friendships.

Ethics Opinions Regarding Designation of Korean Nationals as Friends

Some time after being introduced to (b)(6), (b)(7)(C) MG Fil requested an ethics opinion regarding the designation of (b)(6), (b)(7)(C) among others, as his personal friend for JER purposes.[7] On December 16, 2008, in a written response to this request, (b) (6), (b) (7)(C) U.S. Army, the USFK Judge Advocate (Judge Advocate), (b) (5)

(b) (5)

[6] United States Forces Korea (USFK) has a formally established "Good Neighbor Program" designed to strengthen the alliance between the United States and the ROK by improving the understanding of USFK's mission through personal engagement between local nationals and USFK personnel.

[7] An individual may use a memorandum to document reasons he or she considers another individual to be a personal friend. A memorandum designating another individual as a "personal friend," however, does not establish that the individual is, in fact, a personal friend of the signatory. The individuals must actually be personal friends.

(b)(5)

(b) (5)

(b)(5), (b)(6) (b)(7)(C)

(b) (5)

(b) (5), (b) (6), (b) (7)(C)

(b) (5)

[8] These ethics opinions were dated April 28, 2009, June 25, 2009, August 28, 2009, and October 30, 2009. An (b) (5), (b) (6), (b) (7)(C)

(b) (5)

(b) (5), (b) (6), (b) (7)(C)

By memorandum dated January 4, 2010, the USFK Judge Advocate provided a memorandum with legal advice on the effect of designating someone a "personal friend," and the impact such a decision might have on official decisions MG Fil might make in his capacity as the Eighth United States Army Commanding General and the USFK Chief of Staff. (b)(5)

(b)(5), (b)(6) (b)(7)(C)

On or about May 20, 2010, the Office of the Judge Advocate received the undated memorandum from MG Fil designating (b)(6), (b)(7)(C) and others as "personal friends." In it, MG Fil noted only that he and his wife considered the individuals to be their personal friends for JER-related purposes, that he and his wife had known them "for years" and their relationship was not based on MG Fil's official position.

MG Fil stated that he had received training on gift reporting and was aware of the restrictions and reporting requirements regarding gifts. He also recalled the contents of the January 4, 2010, ethics opinion provided to him about his relationship with (b)(6), (b)(7)(C)

Gifts

(b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) told him that MG Fil was not permitted to accept gifts from a private party; however, since (b)(6), (b)(7)(C) was a registered friend, MG Fil was permitted to accept gifts from him. (b)(6), (b)(7)(C) also recalled that (b)(6), (b)(7)(C) told him that she kept a record of all gifts given to MG Fil. (b)(6), (b)(7)(C) stated MG Fil gave him many gifts, including: golf shoes, a shirt, cigars, alcohol, and chocolate. (b)(6), (b)(7)(C) also stated that MG Fil invited him to most off-post events that MG Fil sponsored.

(b)(6), (b)(7)(C) acknowledged giving MG Fil both the pen set and briefcase. Statements by (b)(6), (b)(7)(C) established that he paid approximately $1,500 for the pen set and approximately $2,000 for the briefcase. (b)(6), (b)(7)(C) stated he bought the pen set in April 2008 with his personal credit card,

and presented it to MG Fil approximately 2 to 3 months later as a gift. [redacted] stated the briefcase was a going away gift for MG Fil, and that [redacted] purchased it for him using his [redacted] corporate credit card. [redacted] presented the briefcase to MG Fil in September or October 2010.

MG Fil stated that he received the pen set, consisting of a ballpoint pen and a rollerball pen encased in a leather case, from [redacted]. MG Fil stated he believed the pen set was expensive, possibly valued at $150.

MG Fil also stated that he accepted several additional gifts from [redacted] including two golf bags and golf balls. After the initial interview, MG Fil provided a subsequent statement and disclosed that [redacted] had received $3,000 in cash from [redacted] as a birthday gift in April 2010. MG Fil believed [redacted] could keep the money because of his personal relationship with [redacted].

We found no evidence that MG Fil sought a legal opinion regarding acceptance of the pen set, the briefcase, or the cash gift given to [redacted].

Discussion

We conclude MG Fil improperly accepted gifts in violation of the JER. We found that MG Fil accepted three significant gifts from [redacted]: a pen set; a briefcase; and a $3,000 cash gift given to [redacted]. MG Fil met [redacted] when he assumed command in 2008. We found that MG Fil requested several ethics opinions about designating [redacted] as a personal friend and whether he (MG Fil) could accept gifts from [redacted]. [redacted]

The JER prohibits employees from directly or indirectly soliciting or accepting a gift given because of the employee's official position. The definition of a gift also includes gifts given to a Government employee's spouse. The JER also provides for exceptions, such as gifts with a value under $20. There is also an exception if the gift is given under circumstances which make it clear that the gift is motivated by a personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally paid for the gift.

We determined that MG Fil accepted gifts that were given to him based on his official position. We found no evidence of a prior personal relationship between [redacted] and MG Fil unaffiliated with MG Fil's official position. MG Fil's relationship with [redacted] did not begin until after he assumed command in February 2008. We also determined that [redacted] gave the pen set to MG Fil and the $3000 cash gift to [redacted] before MG Fil designated [redacted] as a personal friend. We further determined that although MG Fil received the briefcase after designating [redacted] as a personal friend, the gift was not a personal gift because it was purchased using [redacted] corporate credit card. Moreover, we determined that the JER exceptions did not

apply to the gifts in question. Accordingly, we conclude MG Fil improperly accepted gifts in violation of the JER.

B. Did MG Fil fail to report gifts received?

Standards

DoD 5500.7-R "JER," dated August 30, 1993

Chapter 7, "Financial and Employment Disclosure"

In Section 7-200, *Individuals Required to File*

Covered Positions. For purposes of this section, the following individuals are in "covered positions" and are required by the Ethics in Government Act of 1978, Public Law 95-521 (reference (b)) to file a Standard Form (SF) 278, Appendix C of this Regulation, with their DoD Component Designated Agency Ethics Official or designee as set out in subsection 7-205 of this Regulation, below:

Regular military officers whose pay grade is O-7 or above.

In Section 7-204, *Content of Report*

Instructions for completing the SF 278, Appendix C of this Regulation, are attached to the form. See detailed instructions at 5 C.F.R. 2634.301 through 2634.408 (reference (a)) in subsection 7-100 of this Regulation, above, for additional guidance or contact the local Ethics Counselor.

In Subsection 7-100, 5 C.F.R. 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees"

In Section 2634.304, *Gifts and Reimbursements*

(a) *Gifts.* Except as indicated in Subsection 2634.308(b), each financial disclosure report filed pursuant to this subpart shall contain the identity of the source, a brief description, and the value of all gifts aggregating more than $350 in value which are received by the filer during the reporting period from any one source. [9] For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

* * * * * * *

[9] The $350 amount represents the current aggregate value. See Footnote 4.

(d) *Aggregation exception.* Any gift or reimbursement with a fair market value of $140 or less need not be aggregated for purposes of the reporting rules of this section.[10] However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Facts

A review of MG Fil's SF 278s disclosed real estate and investment information, but did not include the gifts he and (b)(6), (b)(7)(C) received from (b)(6), (b)(7)(C)

The instruction section on the SF 278 (Rev. 03/2000), Schedule B, Part II, *Gifts, Reimbursements and Travel Expenses,* states,

> For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260 and (2) travel-related cash reimbursements received from one source totaling more than $260.[11]

The instruction added, "it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. Section 4111 or other statutory authority." It also listed exclusions, including gifts "received by your spouse or dependent child totally independent of their relationship to you."

In both an undated memorandum and a memorandum dated May 18, 2010, MG Fil designated (b)(6), (b)(7)(C) among others, as a personal friend of MG Fil and (b)(6), (b)(7)(C) The USFK (b)(6), (b)(7)(C) stated that he believed the Office of the Judge Advocate received the undated memorandum on or about May 20, 2010.

MG Fil acknowledged receiving a pen set and briefcase from (b)(6), (b)(7)(C) Statements by (b)(6), (b)(7)(C) established that he paid approximately $1,500 for the pen set and approximately $2,000 for the briefcase. MG Fil also informed investigators of a $3,000 cash gift made by (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C) in April 2010. He stated he did not report the cash gift because it was from a designated personal friend. (b)(6), (b)(7)(C) acknowledged the gift to investigators and recalled asking MG Fil if they could keep it. (b) (6), (b) (7) stated that MG Fil told (b) (6), they could keep it because (b)(6), (b)(7)(C) was a designated personal friend.

MG Fil stated that he did not report gifts from personal friends. MG Fil stated that he did not report the pen set on the SF 278 because he failed to "put the two together." He further stated that it never entered his mind to report gifts he received from personal friends on the

[10] The $140 amount represents the current aggregation exception. This amount is reviewed and adjusted as noted in Footnote 4.

[11] MG Fill completed an out-of-date SF 278 that did not accurately reflect the adjusted aggregate threshold value.

SF 278. On July 25, 2011, MG Fil submitted an amended SF 278 that included the gifts in question.

MG Fil surrendered the pen set and briefcase to investigators once his household goods shipment arrived from Korea. Evidence provided by MG Fil in response to our tentative conclusions established that he returned the $3,000 cash gift to (b)(6), (b)(7)(C) in the form of a cashier's check mailed to (b)(6), (b)(7)(C) on July 14, 2011.

Discussion

We conclude that MG Fil failed to report gifts as required by the JER. We found that MG Fil received at least three gifts from (b)(6), (b)(7)(C) that exceeded the JER reporting threshold. The JER requires MG Fil to report annually on an SF 278 any gifts he, or his family members, received with an aggregate value of more than a specified threshold amount. The JER requires MG Fil to submit this information annually through his supervisor and Ethics Counselor.

We determined that MG Fil failed to report the pen set on his 2008 SF 278 and failed to report both the briefcase he received and the $3,000 cash gift given to (b)(6), (b)(7)(C) on his 2010 SF 278. We note that the instructions on the SF 278 state that the filer should exclude gifts "received by your spouse or dependent child totally independent of their relationship to you." However, we determined that this provision was not applicable because (b)(6), (b)(7)(C) relationship with (b)(6), (b)(7)(C) was predicated on (b)(6), (b)(7)(C) relationship with (b)(6), (b)(7)(C) We note that on July 25, 2011, MG Fil submitted an amended SF 278 for calendar year 2010 reporting the pen set, which he should have reported on his 2008 SF 278, and the briefcase and cash gift which he should have reported on his 2010 SF 278. Accordingly, we conclude that MG Fil failed to report gifts, above the threshold, as required by the JER.

V. CONCLUSIONS

A. MG Fil improperly accepted gifts.

B. MG Fil failed to properly report gifts received.

VI. RECOMMENDATION

We recommend the Secretary of the Army consider appropriate corrective action with regard to MG Fil.

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

NOV - 4 2013

Ref: FOIA-2013-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Mr. Stephen E. Calvery is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

FOR OFFICIAL USE ONLY

Report No. 20121204-000911 February 20, 2013

Inspector General

United States Department of Defense

ALLEGED MISCONDUCT:
Mr. Stephen E. Calvery
Senior Executive Service
Director, Pentagon Force Protection Agency

Warning

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REPORT OF INVESTIGATION:
MR. STEVEN E. CALVERY, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated an investigation to address allegations that Mr. Stephen E. Calvery, while serving as the Director, Pentagon Force Protection Agency (PFPA): misused his position; misused his subordinates; [redacted] improperly authorized the use of administrative leave; provided preferential treatment to a subordinate; [redacted][1]

We substantiated the allegations that Mr. Calvery misused his position; misused his subordinates; improperly authorized the use of administrative leave; and engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

We conclude that Mr. Calvery misused his position in violation of Department of Defense (DoD) 5500.07-R, "Joint Ethics Regulation (JER)." We found that Mr. Calvery arranged for [redacted] who was not an employee of PFPA or DoD, to use the PFPA firing range. The JER requires that employees shall not use their public office for the private gain of relatives. We determined that family members of other PFPA employees were not offered the same benefit. Accordingly, we determined that Mr. Calvery misused his position to allow [redacted] access to the PFPA firing range, and use of a PFPA weapon, ammunition, and two PFPA firearms instructors.

We also conclude that Mr. Calvery misused his subordinates in violation of the JER. We found that Mr. Calvery had his office staff order and pick up his lunch and retrieve coffee for him. The JER requires that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit. Although Mr. Calvery paid for the lunches and coffee using his own funds, we determined that it was improper for Mr. Calvery to ask or allow his subordinates to routinely retrieve lunch or coffee for him. Additionally, Mr. Calvery's [redacted] felt obligated to get Mr. Calvery his lunch and believed that if [redacted] did not agree, [redacted] would have been reconsidered. Accordingly, we determined that Mr. Calvery misused his subordinates.

We further conclude that Mr. Calvery improperly authorized the use of administrative leave in violation of DoD Financial Management Regulation (FMR), DoD Instruction (DoDI) 1400.25, Volume 630, "DoD Civilian Personnel Management System: Leave," and Office of the Secretary of Defense (OSD) Administrative Instruction (AI) Number (No.) 67, "Leave Administration." We found that Mr. Calvery authorized administrative leave to PFPA employees who participated in the 2009 and 2010 Annual PFPA Golf Tournaments. The DoD

[1] The incoming complaints contained several additional allegations. Based on our investigation we determined those allegations did not merit further investigation, and discuss them in Section III of this report.

FMR, DoDI, and OSD AI No. 67 require that if administrative leave is authorized there must be a benefit to the agency's mission, a Government-wide recognized and sanctioned purpose or in connection with furthering a function of DoD. We determined that the golf tournament, although open to all PFPA employees, was not a DoD-sanctioned event and there was no perceived benefit toward PFPA's mission or a Government-wide recognized and sanctioned purpose. We determined the reason for authorizing administrative leave to participate in a golf tournament was not consistent with the examples cited in the regulations. Accordingly, we determined that Mr. Calvery improperly authorized the use of administrative leave.

We finally conclude that Mr. Calvery provided preferential treatment to a subordinate in violation of Title 5, United States Code, Section 2301, "Merit system principles," 5 U.S.C. 2302, "Prohibited personnel practices," and the JER. We found that Mr. Calvery selected a subordinate for promotion, (b) (6), (b) (7)(C), because he felt the subordinate would never get promoted in his current position. Mr. Calvery's action resulted in one of the three individuals recommended by the selection board being removed from the promotion list to accommodate the promotion of the subordinate. Title 5 U.S.C. requires that candidates be selected based on their ability, knowledge and skills after a fair and open competition, and the JER requires employees to act impartially and not give preferential treatment to any individual. We determined that Mr. Calvery selected the subordinate for promotion based on their relationship rather than on the subordinate's experience or scope of responsibilities. Accordingly, we determined that Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

We did not substantiate the remaining four allegations.

By letter dated October 25, 2012, we provided Mr. Calvery the opportunity to comment on the results of our investigation. In his response, via his counsel, dated December 7, 2012, Mr. Calvery disputed the substantiated conclusions, and wrote that his violations of applicable standards were unintentional. Mr. Calvery contended the different practices used by PFPA and the Secret Service (his former employer) contributed to his misunderstanding that (b) (6), (b) (7)(C) was eligible to use the PFPA firing range. Mr. Calvery also wrote that he believed his subordinates only used personal time to pick up his lunch or coffee, that his granting administrative leave for the PFPA Golf Tournament met the criteria outlined in the DoD Financial Management Regulation, and that he exercised his discretion when he selected (b) (6), (b) (7)(C) for promotion to (b) (6), (b) (7)(C) After reviewing the matters presented by Mr. Calvery, reexamining the evidence, and obtaining additional testimony, we stand by our conclusions.[2]

[2] While we have included what we believe is a reasonable synopsis of the response provided by Mr. Calvery, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Mr. Calvery where appropriate throughout this report and provided a copy of his full response to the Director, Administration and Management, Office of the Secretary of Defense, with this report.

We recommend the Director, Administration and Management, Office of the Secretary of Defense, consider appropriate action with regard to Mr. Calvery and the use of a [redacted] for the Director, PFPA. Additionally, we will notify the U.S. Office of Special Counsel of the substantiated allegation concerning the prohibited personnel practice.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

On May 3, 2002, in response to the September 11, 2001, terrorist attack against the Pentagon and the subsequent anthrax incidents, Deputy Secretary of Defense Paul Wolfowitz, established the PFPA as a DoD Agency under the cognizance of the Office of the Director of Administration and Management (A&M). This new agency absorbed the Defense Protective Service and its role of providing basic law enforcement and security for the Pentagon.

Mr. Calvery assumed duties as the Director, PFPA, on May 1, 2006. As the Director, Mr. Calvery is responsible for providing a full range of services to protect people, facilities, infrastructure, and other resources at the Pentagon Reservation and in DoD-occupied facilities in the National Capital Region.

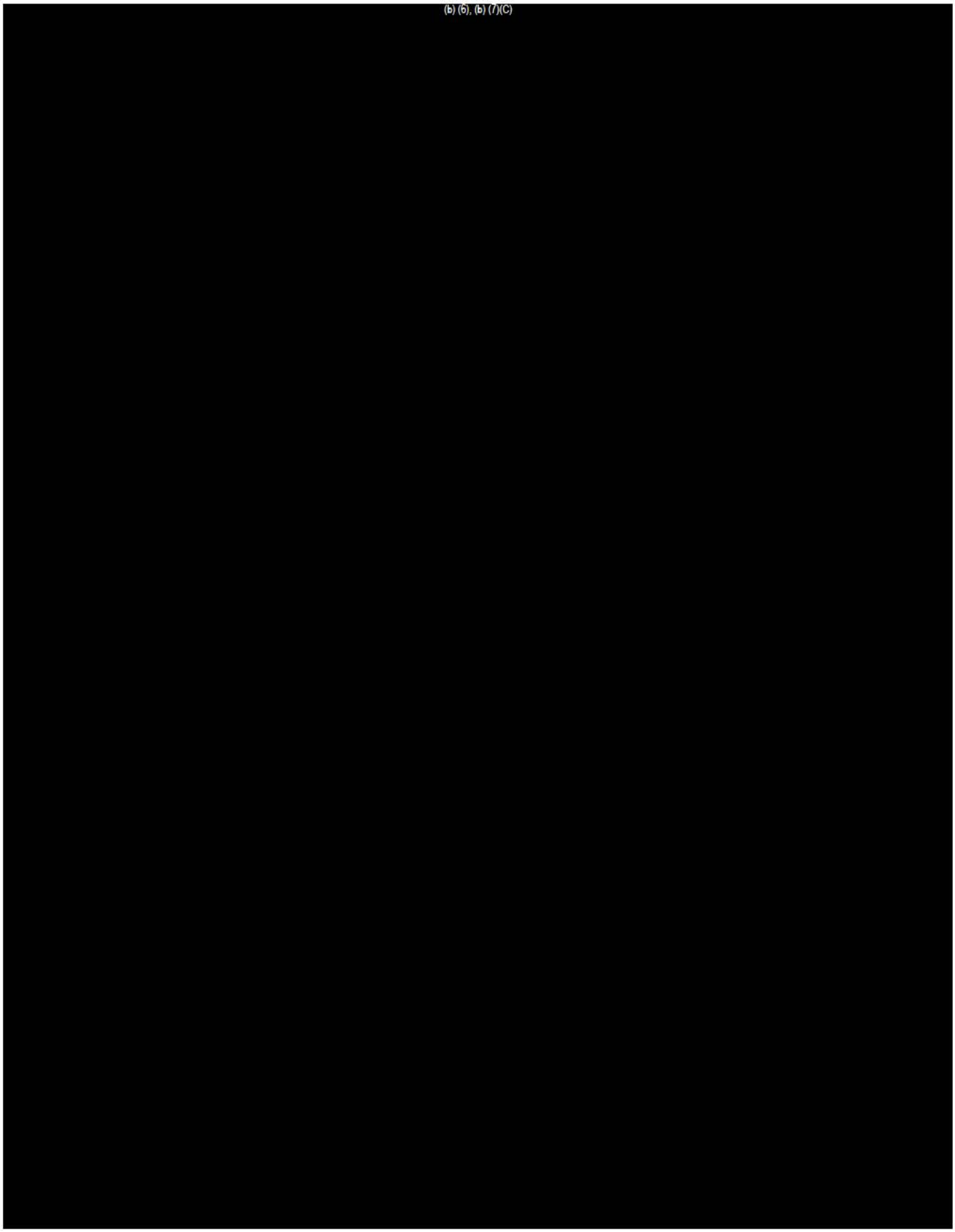
III. SCOPE

We interviewed Mr. Calvery, and [redacted] with knowledge of the matters under investigation. We examined relevant documents and standards that govern the issues under investigation. We reviewed official email messages, memorandums, official personnel records, manpower documents, evaluation reviews, logistics budget, property accountability reports, and promotion packages.

Our Office received two anonymous hotline complaints alleging misconduct by Mr. Calvery. The first complaint, dated March 16, 2011, alleged that Mr. Calvery abbreviated regularly scheduled firearms training in order for [redacted] to use the PFPA firing range, instructors, weapon, and ammunition. The second complaint, dated March 17, 2011, alleged that Mr. Calvery created a hostile work environment by [redacted] misusing his subordinates, [redacted] improperly authorizing administrative leave, [redacted]

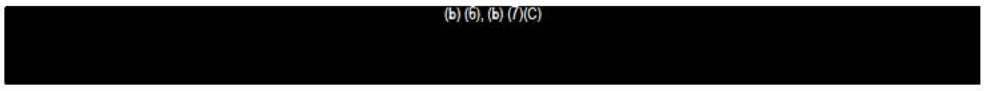
By letter dated September 2, 2011, a U.S. Senator, on behalf of a constituent, asked this Office to review allegations of mismanagement by Mr. Calvery.

During our preliminary investigative work, we determined that the following issues, which the complainants alleged were violations, did not merit further investigation and consider them not substantiated.


(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)



IV. FINDINGS AND ANALYSIS

A. Did Mr. Calvery misuse his position?

Standards

DoD 5500.07-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Section 2635.101, "Basic Obligation of Public Service," states that employees shall put forth honest effort in the performance of their duties.

Section 2635.702, "Use of Public Office for Private Gain," states that employees shall not use their public office for their own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or person with whom the employee is affiliated in a nongovernmental capacity.

Section 2635.704, "Use of Government Property," states that an employee has the duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.[4]

Section 2635.705, "Use of Official Time," states that unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.

(b) (6), (b) (7)(C) [redacted]

(b) (6), (b) (7)(C) [redacted]

[redacted]

[4] The JER defines Government property to include any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes Government vehicles.

(b) (6), (b) (7)(C)

Facts

The anonymous complaint alleged that Mr. Calvery allowed (b) (6), (b) (7)(C) to use a Government firing range, PFPA weapon, and ammunition; and that PFPA instructors provided personal instruction to (b) (6), (b) (7)(C) Additionally, the complaint alleged that a regularly scheduled class was shortened in order to accommodate Mr. Calvery's (b)(6) (b)(7)

A review of personnel records established that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

PFPA Training Directorate Administrative Instruction 9002-004, "Standing Operating Procedures, Use of PFPA Firearms Ranges by Outside Agencies," states that outside agencies can request to use the PFPA firing range. If approved, the Agency must provide their own targets, ammunition, and certified firearms instructors. The Instruction also requires all shooters to sign a "Pentagon Force Protection Agency Firearms Waiver Form," which relieves PFPA for any injuries/property damage.

Mr. Calvery's (b) (6), (b) (7)(C) testified that Mr. Calvery asked (b)(6) (b)(7) to coordinate with (b) (6), (b) (7)(C) in order to escort his (Mr. Calvery's) (b)(6) (b)(7) to the firing range. On January 11, 2011, the (b) (6), (b) (7) emailed (b) (6), (b) (7)(C) to inform (b)(6) (b)(7) that Mr. Calvery's (b)(6) (b)(7) had been cleared by the (b)(6) (b)(7)(C), to use the PFPA Firing Range at the Pentagon and to set up a time. The (b) (6), (b) (7) clarified that the event was not scheduled at that point.

(b) (6), (b) (7)(C), testified that (b) (6) received a telephone call from the front office, a day or two before Mr. Calvery's (b)(6) (b)(7) used the range, asking if time could be made available for Mr. Calvery's (b)(6) (b)(7) to use the firing range. (b)(6) (b)(7)(C) related that (b) (6) checked with (b) (6) staff and was informed that it was possible and no class would be interrupted.

(b) (6), (b) (7)(C) testified that the (b) (6), (b) (7)(C), asked if there was time on the schedule for Mr. Calvery's (b)(6) (b)(7) to use the range. (b) (6) recalled reviewing the range schedule and scheduling (b) (6), (b) (7)(C) use where it would cause minimal impact on operations. (b) (6) scheduled (b) (6), (b) (7) (C) to shoot at 1400 on January 13, 2011, in between work shifts when no one would be on the range. The witness stated that because (b) (6) believed the request was an "internal thing," (b) (6) did not have Mr. Calvery's (b)(6) (b)(7) complete the required paperwork.

(b)(6) (b)(7)(C) testified that on January 13, 2011, two PFPA firearms instructors provided approximately 1 hour of training to Mr. Calvery's (b)(6) (b)(7) which consisted of basic shooting fundamentals and 30 minutes of dry fire or dry practice. The witness stated that Mr. Calvery's (b)(6) (b)(7) shot approximately 50 rounds of .40 caliber frangible ammunition at an approximate cost of $17-$18. The Ammunitions Log listed 150 rounds of .40 caliber frangible ammunition being used on January 13, 2011, for Mr. Calvery's (b)(6) (b)(7)(C) familiarization training with a PFPA-owned pistol.[5]

A PFPA Firing Range Training Schedule for the period January 10-14, 2011, did not list any training for Mr. Calvery's (b)(6) (b)(7)

Witnesses testified that other than Mr. Calvery's (b)(6) (b)(7) no other PFPA employee's family member had used the firing range. Witnesses related that using the firing range for other than official business would be inappropriate.

(b) (6), (b) (7)(C), testified that (b) (6) office did not coordinate with PFPA for Mr. Calvery's (b)(6) (b)(7) to conduct weapons familiarization.

Mr. Calvery testified that (b) (6), (b) (7) (C) asked if he could use the PFPA firing range before he attended training at the Federal Law Enforcement Training Center. Mr. Calvery related he told the (b) (6), (b) (7)(C) not to cancel any training when he checked for range availability. Mr. Calvery stated that he told the (b) (6), (b) (7)(C):

> You tell me when's the best time to come. And we just want to come down and do a weapons familiarization. You know, we don't want anything special. You know, (b) (6), (b) (7) (C) is completely flexible. You tell me when the best time is.

Mr. Calvery testified that the (b) (6), (b) (7)(C) told him, "Thursday at 2:00 is the best time. Tell him to come then." Mr. Calvery stated that (b) (6), (b) (7) (C) used the PFPA firing range, weapon, ammunition, and targets. He related that (b) (6), (b) (7)(C) use of the firing range was as a law enforcement officer.

Mr. Calvery also testified he was not aware of any other PFPA employee's family member ever using the firing range. However, Mr. Calvery added that he would permit a PFPA employee's family member, who was joining another law enforcement agency, to use the firing range to familiarize with a firearm.

Mr. Calvery further testified that after (b) (6), (b) (7) (C) used the PFPA firing range, he (Mr. Calvery) (b) (6), (b) (7)(C) The PFPA firing range is co-located inside the Pentagon near the Remote Delivery Facility.

[5] The estimated cost of 150 rounds of .40 caliber frangible ammunition was $51-$54.

Discussion

We conclude Mr. Calvery misused his position to provide a benefit to [redacted]. We found that on January 13, 2011, Mr. Calvery's [redacted] received 1 hour of firearms training from two PFPA Firearms instructors, and used a PFPA weapon, targets, and 150 rounds of ammunition. We also found [redacted] had not coordinated for the official use of the PFPA firing range and equipment. We found no evidence a previously scheduled class was shortened in order to accommodate Mr. Calvery and [redacted]

[redacted]

We determined Mr. Calvery misused his position to allow [redacted] who was not an employee of PFPA or DoD, access to the PFPA firing range. Mr. Calvery's [redacted] used a PFPA weapon, ammunition, and the official time of two Government employees while using the range on January 13, 2011. We also determined other family members of PFPA employees were not offered the same benefit. Furthermore, while there is a process in place for outside agencies to request the use of the PFPA firing range and equipment, we determined that there was no official coordination or documentation between the [redacted] and PFPA, and the targets, ammunition, firearms, and instructors were from PFPA, and not the [redacted]. Furthermore, PFPA employees did not fill out the required paperwork, most significantly the waiver form, for Mr. Calvery's [redacted] We further determined Mr. Calvery misused his position when he had [redacted] coordinated the unauthorized event. [redacted]

Response to Tentative Conclusion

In his response, Mr. Calvery wrote the violation was unintentional and due to different practices used by PFPA and the Secret Service (his former employer). He reasonably believed [redacted] and thus eligible to use the PFPA firing range. Mr. Calvery acknowledged he should have completed additional paperwork and ensured [redacted] targets, ammunition, and certified firearms instructors. Mr. Calvery apologized for his oversight and stated he was willing to reimburse the agency accordingly.

Our office confirmed with [redacted], that Mr. Calvery's [redacted] when he used the PFPA Firing Range, and that the required coordinating paperwork for the use of the range was not prepared. After considering Mr. Calvery's remarks and confirming [redacted] status, we stand by our conclusion and recommend recoupment.

B. Did Mr. Calvery misuse his subordinates?

Standards

DoD 5500.07-R, "JER," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic obligation of public service," states in paragraph (b)(14) that employees "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part." The section explains that whether particular circumstances create an appearance that the law or standards have been violated "shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

Subpart G, "Misuse of Position," states:

In Section 2635.702, "Use of public office for private gain," that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity.

In Section 2635.705(b), "Use of a subordinate's time," that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Facts

The anonymous complaint alleged Mr. Calvery's protocol staff regularly obtained lunch for him.

Five witnesses testified Mr. Calvery's office staff would bring him lunch and/or coffee/tea on a daily basis. One witness testified that Mr. Calvery never directed them to do it, but he would ask his office staff to pick up his lunch. Two witnesses testified that Mr. Calvery typically preordered his lunch at the Air Force or Navy mess and someone would pick the lunch up for him.

One witness testified the office staff's duties included getting Mr. Calvery his lunch and "lattes." The witness related that it was expected and if (b)(6) (b)(7) raised concerns over getting Mr. Calvery his lunch, they would think (b)(6) (b)(7) was not the right person for the job. Another witness testified that when (b)(6) (b)(7) worked for Mr. Calvery, (b)(6) (b)(7) ordered and picked up Mr. Calvery's lunch every day and had to have his coffee ready before he arrived in the morning.

Two witnesses testified (b)(6) (b)(7)(C), not Mr. Calvery, would ask the (b) (6), (b) (7)(C) to get Mr. Calvery's lunch. One witness testified that when (b)(6) (b)(7) arrived at PFPA, no one was getting Mr. Calvery his lunch, and so (b)(6) (b)(7) started it as a courtesy. (b)(6) (b)(7) further testified that Mr. Calvery had grown to expect someone to get his lunch and coffee. (b)(6) (b)(7) related that Mr. Calvery did not abuse it, "it's not a mandatory requirement whatsoever."

Three witnesses testified getting Mr. Calvery his lunch was not in their position description. The position description for an (b) (6), (b) (7)(C) did not list any duties or responsibilities commensurate with ordering and picking up lunches or coffee.

Seven witnesses testified Mr. Calvery always paid for his own lunch. One witness testified that the office staff maintained a cash fund to purchase Mr. Calvery's coffee, which Mr. Calvery replenished every week.

Mr. Calvery testified that occasionally, only when he was really busy, (b) (6), (b) (7)(C) would get him coffee and lunch. He stated that it has been going on for a while and related that "it's something that's kind of evolved. I've never directed or ordered (b)(6) (b)(7) to do that." He added that occasionally (b) (6), (b) (7)(C) also got him lunch. Mr. Calvery testified that he never coerced (b) (6), (b) (7)(C) into getting his lunch and that it was not commensurate with their duties. Mr. Calvery testified:

> And I would hope if they felt uncomfortable doing it, they would tell me. And if they did feel uncomfortable, then that would be okay. You know, they wouldn't have to do that. And they don't have to do it now.

Discussion

We conclude Mr. Calvery misused his subordinates by regularly having his office staff order and pick up his lunch and retrieve coffee for him. Multiple witnesses testified that Mr. Calvery's staff performed these personal services on a routine basis. We found these duties were not part of any staff member's official duties. Mr. Calvery did not dispute accepting these services, but characterized the frequency as only on occasion.

The JER requires that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit. Additionally, an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

We determined it was improper for Mr. Calvery to have his [redacted] order and bring him his lunch. Mr. Calvery and witness testimony established that when Mr. Calvery was busy, his office staff ordered and retrieved his lunch from either the Air Force or Navy mess. Additionally, we found [redacted] bought him coffee each morning with money [redacted] maintained for him. Although Mr. Calvery paid for the lunches and coffee using his own funds we determined that it was improper for Mr. Calvery to ask or allow his subordinates to routinely retrieve lunch or coffee for him. Finally, the [redacted] felt obligated to get Mr. Calvery his lunch and [redacted] We also conclude these duties were expected as evidenced by the cash maintained by office staff, which was used for the daily purchase of Mr. Calvery's coffee.

Response to Tentative Conclusion

In his response, Mr. Calvery wrote that he never directed, coerced, induced or intimidated any subordinate to pick up his lunch or coffee. Mr. Calvery acknowledged that [redacted] would occasionally pick up lunch for him due to his back-to-back meetings and clarified that it was not a daily occurrence. He reiterated that he believed [redacted] offered to do so because [redacted] was already leaving the office for lunch or a break. Mr. Calvery added that in retrospect, he should have been clear to ensure his employees understood that he was not directing anyone to pick up his lunch or coffee. Mr. Calvery gave his assurance that he will be careful to avoid even the perception of impropriety and will not accept voluntary offers from employees that could be perceived as other than official duties. After carefully considering Mr. Calvery's response, we stand by our conclusion.

C. Did Mr. Calvery improperly authorize the use of administrative leave?

Standards

DoD Financial Management Regulation (DoD FMR), Volume 8, "Civilian Pay Policies and Procedures," Chapter 05 "Leave", dated September 2008

Section 051601, states, in part, that with regard to excused absences, "Agency heads or their designees have authority to grant excused absence in limited circumstances for the benefit of the agency's mission or a government-wide recognized and sanctioned purpose." Common situations where agencies generally excuse absence without charge to leave are: closure of

installations or activities, tardiness and brief absence,[6] registering and/or voting, taking examinations, attending conferences or conventions, and representing employee organizations.

DoD Instruction (DoDI) 1400.25, Volume 630, DoD Civilian Personnel Management System: Leave, dated December 1996 (Administratively reissued April 6, 2009)

Paragraph 6, "Excused Absence," states, in part:

- In subparagraph a. that an excused absence refers to an authorized absence from duty without loss of pay and without charge to other paid leave. Periods of excused absence are considered part of an employee's basic workday even though the employee does not perform his or her regular duties. Consequently, the authority to grant excused absence must be used sparingly.

- In subparagraph b. that the Heads of the DoD Components or their designees shall delegate to the lowest practical level authority to grant excused absence.

- In subparagraph c. that Comptroller General decisions limit discretion to grant excused absence to situations involving brief absences. Where absences are for other than brief periods of time, a grant of excused absence is not appropriate unless the absence is in connection with furthering a function of the Department of Defense.

- In subparagraph d. that more common situations in which excused absence can be granted are for: voting, blood donation, permanent change of station, employment interview, counseling, certification, volunteer activities, emergency situations, physical examination for enlistment or induction, invitations for Congressional Medal of Honor holders, and funerals.

OSD Administrative Instruction (AI) Number 67, Subject: Leave Administration, dated December 27, 1988

Paragraph 15, "Administrative Excusals," states, in part:

- In subparagraph 15.1, that employees may be excused from duty without charge to leave or loss of compensation in accordance with FPM Supplement 990-2 and CPM Supplement 990-2 (references (b) and (c)).

- In subparagraph 15.2.1, that additionally, management officials may excuse employees from duty for reasonable amounts of time, normally not to exceed 8 hours.[7]

[6] A brief absence is limited to periods of less than 1 hour.
[7] Participation in an organizational golf tournament was not one of the examples authorized as an administrative excuse.

Facts

The anonymous complaint alleged that Mr. Calvery approved all employees who participated in the annual PFPA-sponsored golf tournament to take 4 hours of administrative leave. The complaint also alleged that not everyone was allowed to participate in the golf tournament.

Flyers reflected that the last three Annual PFPA Golf Tournaments were held on June 4, 2009; June 4, 2010; and June 24, 2011. Registration was open to all PFPA Government and contractor employees, as well as PFPA partners and guests.

(b)(6) (b)(7)(C) testified that the PFPA Golf Tournaments were not a DoD-sanctioned event. (b)(6) (b)(7) related that as an "MWR-type function" everyone was eligible to participate. (b)(6) (b)(7) stated that Mr. Calvery approved 4 hours of administrative leave for those that participated. (b)(6) (b)(7) further testified that (b)(6) (b)(7) did not know if Mr. Calvery had sought a legal opinion with regard to the granting of administrative leave.

The 2011 announcement for the Golf Tournament indicated that employees needed to be on a scheduled day off, or use annual leave to attend the tournament. (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) clarified that PFPA contractor employees who participated were required to take leave per their company guidelines.

On May 24, 2011, the (b)(6) (b)(7)(C), sent an email advising the PFPA Golf Tournament's point of contact, "Finally, we know of no legal method for granting employee administrative time to attend this Golf Tournament. Recommend, therefore, that all employees be required to take annual leave to attend the Golf Tournament if they are otherwise in a duty status."

Mr. Calvery testified that the PFPA Golf Tournament was one of several team building "esprit de corps" initiatives he established. He related that the golf tournament was started 3 to 4 years ago and it was open to all PFPA employees, of which approximately 100-150 participated. He further stated that the number of participants was regulated by the capacity of the golf course.

Mr. Calvery testified that the first year the tournament was held he approved 4 hours of administrative leave because, "I was told, and I believed and I still believe that that was in my authority to grant that because it was an Agency sponsored event." He clarified that during the planning process, although he could not recall who, someone recommended that he grant administrative leave.

> I mean, I'm responsible --. I'm the responsible official. I mean, it was laid out as an option and I said, 'That sounds good. I think we should do it.' And I authorized it.

Mr. Calvery related that the first year of the tournament he did not seek any legal guidance prior to authorizing administrative leave. He recalled that during a subsequent tournament the Office of General Counsel advised that it was not a good idea to authorize

administrative leave. Mr. Calvery testified, "I personally still think it's within my authority, but to err on the side of caution, we decided that next year to have everybody take annual leave."

Discussion

We conclude that Mr. Calvery wrongfully authorized the use of administrative leave for PFPA employees who participated in the 2009 and 2010 Annual PFPA Golf Tournaments. We note that for the 2011 tournament, Mr. Calvery sought legal advice and required all employees to use annual leave to attend the tournament. We also conclude that the tournament did not exclude any one group of employees within PFPA.

The DoD FMR and DoDI 1400.25 provide that administrative leave is authorized when there is a benefit to the agency's mission, a Government-wide recognized and sanctioned purpose, or in connection with furthering a function of DoD. In addition to the DoD FMR and DoDI 1400.25, OSD AI No. 67 lists several situations where administrative leave could be granted.

We determined that Mr. Calvery wrongfully authorized administrative leave to PFPA employees participating in the PFPA Golf Tournament in 2009 and 2010. We also determined the golf tournament, although open to all PFPA employees, was not a DoD-sanctioned event and there was limited benefit toward PFPA's mission or a Government-wide recognized and sanctioned purpose. Further, we determined that authorizing administrative leave to participate in the golf tournaments was not an example cited in DoD regulations. Mr. Calvery may have had the authority to grant 4 hours of administrative leave, but could not do so for the purpose of playing golf.

Response to Tentative Conclusion

In his response, Mr. Calvery wrote that he sought appropriate guidance from his staff and that the annual golf tournament was a team-building event for PFPA and other partner organizations. He asserted the event was consistent with DoD policy, and the added liaison benefits with partner organizations strengthened PFPA's ability to complete its mission. Mr. Calvery offered in mitigation that he only granted administrative leave for four PFPA employees for the 2009 tournament.

DoD Regulations do not list a golf tournament as a common situation in which agencies generally grant excused absence. Golf tournaments are limited in attendance by the capacity of the golf course and interested golfers. Additionally, it is difficult to justify the golf tournament's benefit to the agency's mission or Government-wide recognized and sanctioned purpose when only four employees were granted administrative leave. Furthermore, he did not seek the advice of WHS OGC concerning the use of administrative leave to attend a golf tournament until 2011. After carefully considering Mr. Calvery's response, we stand by our conclusion.

D. Did Mr. Calvery provide preferential treatment to a subordinate?

Standards

Title 5, United States Code

Section 2301, "Merit system principles," states, in part, that Federal personnel management should be implemented consistent with the merit system principles:

> (1) recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity
>
> (8) that employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.

Section 2302, "Prohibited personnel practices," Paragraph (b) states, in part, that any employee who has authority to take, directs other to take, recommend, or approve any personnel action, shall not, with respect to such authority:

> (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
>
> (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in Section 2301 of this title.

Paragraph (c) states that the head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring that agency employees are informed of the rights and remedies available to them.

DoD 5500.07-R, "JER," August 30, 1993, including changes 1-6 (November 29, 2007)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees.

Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, CFR, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Subpart A, "General Provisions," Section 2635.101, "Basic Obligation of Public Service," states in paragraph (b)(8) that employees shall act impartially and not give preferential treatment to any private organization or individual, but shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Facts

The anonymous complaint alleged that Mr. Calvery personally promoted (b) (6), (b) (7)(C) (b)(6) (b)(7)(C) even though the promotion board "vigorously" recommended against it.

A senior official within PFPA testified that (b) (6) was surprised at how fast (b) (6), (b) (7)(C) was promoted. It was difficult to go from Police Officer to Sergeant to Lieutenant because experience was one of the things that counted as points, and he would have had fewer points in the experience part of the process. (b) (6) had no doubt that (b) (6), (b) (7)(C) was promoted because he was so close to "the flagpole." (b) (6) reiterated, "I mean it's obvious. There's no way."

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) The selection board results reflected that (b) (6), (b) (7)(C) was ranked (b) (6), out of 23 applicants. In an April 16, 2007, memorandum the (b) (6), (b) (7)(C) concurred with the selection board's recommendation to select and promote (b)(6) (b)(7)(C) to (b) (6), (b) (7)(C) Personnel records reflected the promotion was effective on (b) (6), (b) (7)(C)

(b)(6) (b)(7)(C)

(b) (6), (b) (7)(C) .
A Selection Board rated the applicants based on answers to nine verbal and four written questions. The results, compiled on a spreadsheet, indicated that (b) (6), (b) (7)(C) was ranked (b) (6), (b) (7)(C) out of 17 applicants.

On February 25, 2009, (b)(6) (b)(7)(C) signed the Certificate of Eligibles for the position and selected three applicants for promotion; (b)(6) (b)(7)(C) .

A PFPA Staff Action Summary, dated February 27, 2009, forwarded the Certificate of Eligibles and a brief biography of each applicant to Mr. Calvery requesting approval. The Staff Action Summary contained handwritten notes and initials. One of the handwritten notes on the front page is "ADD.- (b) (6), (b) (7)(C) On the second page of the Staff Action Summary there is a typed paragraph stating, (b) (6), (b) (7)(C) was competitively selected from (b) (6), (b) (7)(C) by Mr. Steven E. Calvery, (b) (6), (b) (7)(C) Unlike the other

selectees, the paragraph about [redacted] did not summarize his current duties or education level.

The Certificate of Eligibles attached to the PFPA Staff Action Summary was also changed to reflect [redacted] selection. The handwritten and initialed changes included removing one of the previous selectees and adding [redacted]. The changes were initialed by the [redacted]

Personnel records indicated that [redacted].

[redacted] testified that at Mr. Calvery's direction, [redacted] sat on the selection board for the [redacted] positions. The witness related that because at the time [redacted] the board ranked him [redacted] out of 15 applicants. The witness further testified that a month after the promotion board's recommendation, he discovered that [redacted] was one of the three selected for promotion to [redacted]

On April 3, 2009, the [redacted] emailed the [redacted] stating that as a [redacted] could not believe [redacted] was selected for [redacted] above many others who truly shined during the board proceedings." [redacted] added there was no doubt in [redacted] mind that there was preferential treatment in that [redacted] stated that [redacted] selection set a terrible precedent for others who scored well above him.

[redacted] testified that when [redacted] approached Mr. Calvery about [redacted] promotion to [redacted], Mr. Calvery told [redacted] that it was his prerogative to promote [redacted], [redacted] recalled the conversation:

> Sir, do you recognize that you told me in a face-to-face that you're concerned about transparency?' "Yep." Well, this isn't transparent, sir. He's not qualified for the position. "Well, he made the cert." Yes, sir, but there were people ahead of him that made more points and did a good job impressing the board and he wasn't one of them, and the senior person on the board told -- he's not even a police officer -- told you that. "I have my -- it's my prerogative." Yes, sir.

Three senior members of PFPA testified they did not think [redacted] current duties and responsibilities were commensurate with other [redacted] in the PPD. A review of the PFPA position descriptions for [redacted] reflected that neither position description listed serving as a [redacted] as a specific duty or responsibility.

Mr. Calvery testified that it was his responsibility to ensure the right people were in the right job, and was adamant that, as the Director, it was his prerogative; "I think I have to have that ability to exercise that. If I don't then you know, I'm not fulfilling my responsibility."

Mr. Calvery stated that [redacted] was currently and had been [redacted] for the past 3 to 4 years. He related that [redacted] supervised some of [redacted] but he was not aware of any additional supervisory responsibilities. Mr. Calvery added, "You know, he [[redacted]] does other things. I'm, you know, I'm not that close to all the other issues that he works." Mr. Calvery stated that [redacted] was in a unique position and could not be compared to other [redacted]

Mr. Calvery further testified that the [redacted] for [redacted] promotion. He related, "I don't know if I overturned anything." He recalled that the situation was unique because [redacted] was [redacted] and almost became "persona non grata" within the PPD. Mr. Calvery testified that [redacted] would have never been promoted because the [redacted] told him many times that a [redacted] would never get promoted.

Mr. Calvery related that he added [redacted] to the promotion list because he did not want [redacted] to suffer from being [redacted] Mr. Calvery testified, "I didn't remove anybody from the list. I added him to the list when that promotion list came by, which is my prerogative." Mr. Calvery related that [redacted] met the minimum standards and was on the well-qualified list. He added that [redacted] was a loyal employee, "he does his job in an exemplary manner and I thought he needed to be promoted."

Discussion

We conclude Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate. We found that [redacted] has served as Mr. Calvery's [redacted] for several years and was promoted to [redacted] while serving in the same capacity. There were no improprieties with [redacted] promotion to [redacted] In February 2009, [redacted] was considered for one of three [redacted] positions available. A selection board did not recommend [redacted] for promotion and ranked him in the [redacted]. [redacted] approved the selections and routed the Certificate of Eligibles to Mr. Calvery for approval/concurrence. We also found that during the routing process, Mr. Calvery directed that [redacted] be added to the list - resulting in one of the selectees being removed from the promotion list. Mr. Calvery testified that it was his prerogative to select [redacted] for promotion because he felt that [redacted] would never get promoted in his current position because he was not [redacted].

5 U.S.C. 2301 requires approving officials to select and advance employees solely on the basis of relative ability, knowledge, and skills, after fair and open competition, and shall not grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment. 5 U.S.C. 2302 states that the head of each agency shall be responsible for the prevention of prohibited personnel practices, and prohibits actions that violate any law, rule, or regulation implementing or directly concerning the merit system principles contained in Section 2301. 5 U.S.C. 2302 and the JER requires employees to act impartially and not give

preferential treatment to any individual, and endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.

We determined that Mr. Calvery selected [redacted] for promotion based on their relationship rather than on [redacted] experience or scope of responsibilities. The selection board objectively evaluated each candidate based on their ability, knowledge, and skills, after a fair and open competition, and selected three candidates for promotion to [redacted]. [redacted] was not one of the three candidates selected by the board's criteria and would not have been selected without Mr. Calvery's assistance. Mr. Calvery used his discretion and authority to arbitrarily add [redacted] to the list, but was unable to describe what experience or qualifications he had to merit promotion to [redacted] Mr. Calvery justified his decision on [redacted] loyalty and thought that he deserved to be promoted. Mr. Calvery, as the agency head responsible for the prevention of prohibited personnel practices, violated the merit systems principles. His actions resulted in one of the three individuals selected by the board for promotion being removed to accommodate [redacted] promotion.

Accordingly, we conclude that Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

Response to Tentative Conclusion

In his response, Mr. Calvery denied having a personal interest in [redacted] promotion or pulling anyone off the promotion list to accommodate his selection. Mr. Calvery wrote that he exercised his discretion to ensure the agency was selecting the best and brightest for promotion. Additionally, Mr. Calvery explained [redacted]

Mr. Calvery's personal interest in [redacted] promotion was evident when he testified he did not want [redacted] to "suffer" because of the "unique" situation of being [redacted] We interviewed [redacted] testified [redacted] did not [redacted] stated [redacted] made it abundantly clear to "everybody" that [redacted] wanted the promotion and [redacted] was disappointed when [redacted] was not selected. After carefully considering Mr. Calvery's response and the additional testimony, we stand by our conclusion.

(b) (6), (b) (7)(C)

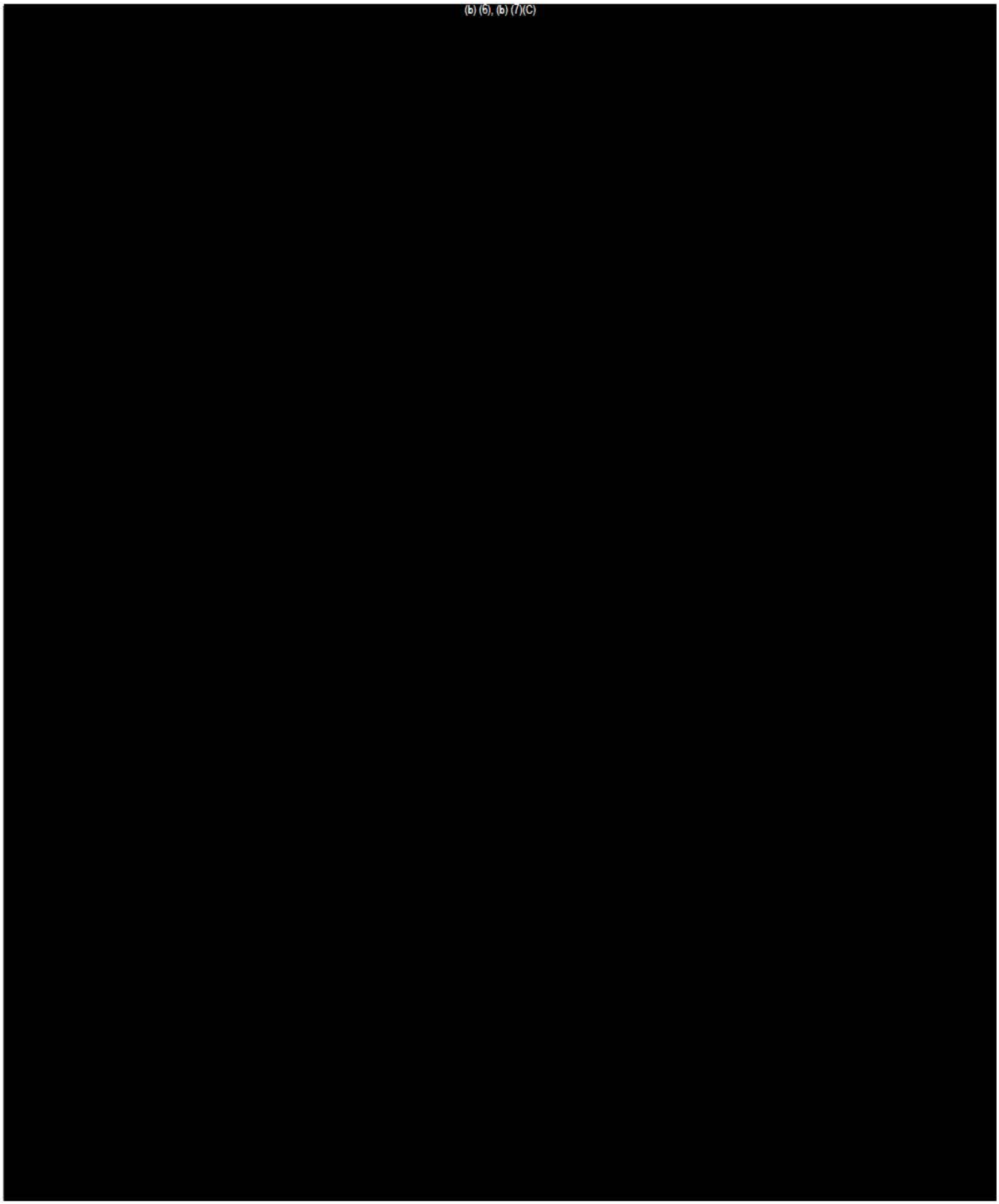
[redacted]

~~FOR OFFICIAL USE ONLY~~

(b) (6), (b) (7)(C)

[redacted]

(b) (6), (b) (7)(C)



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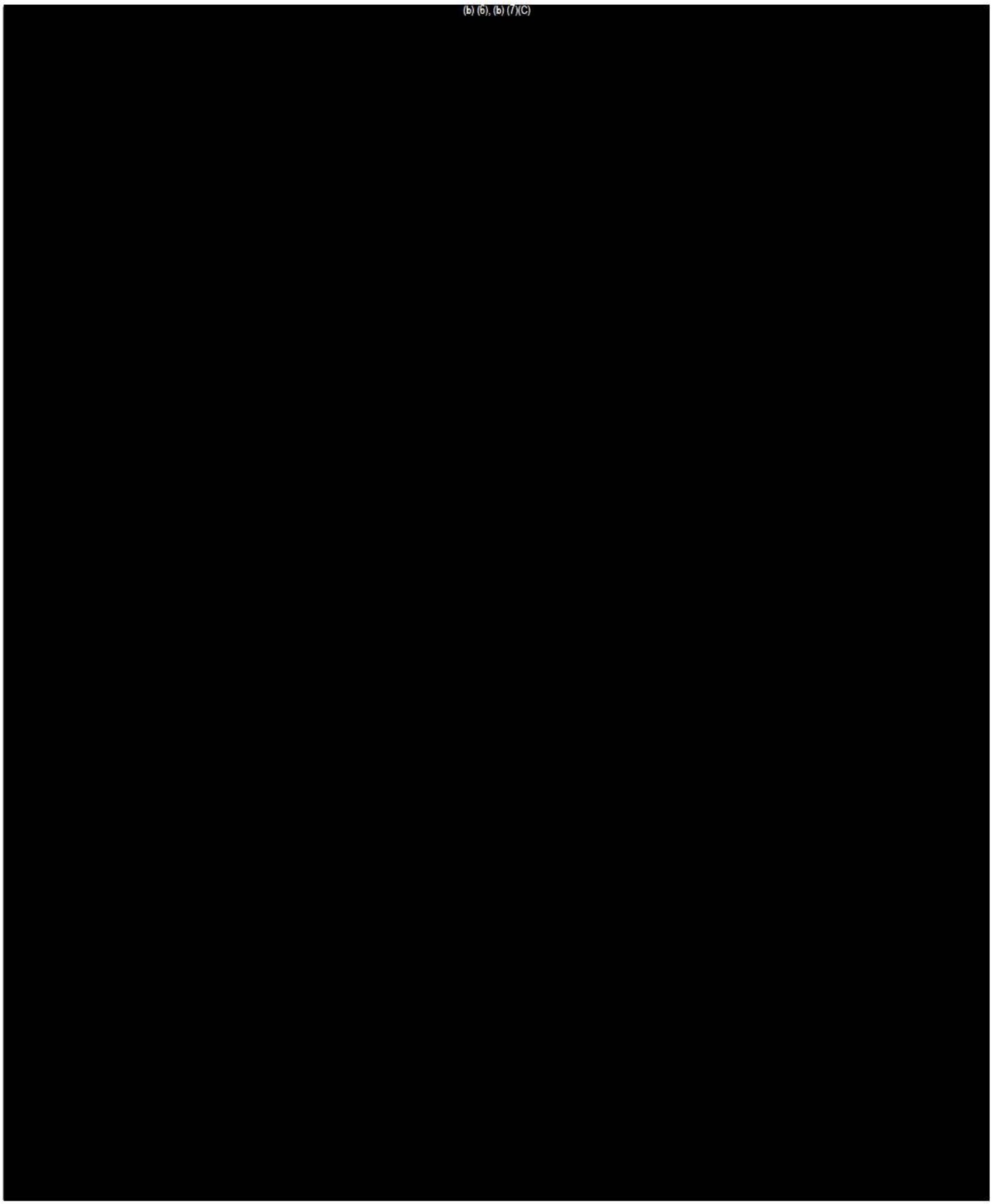
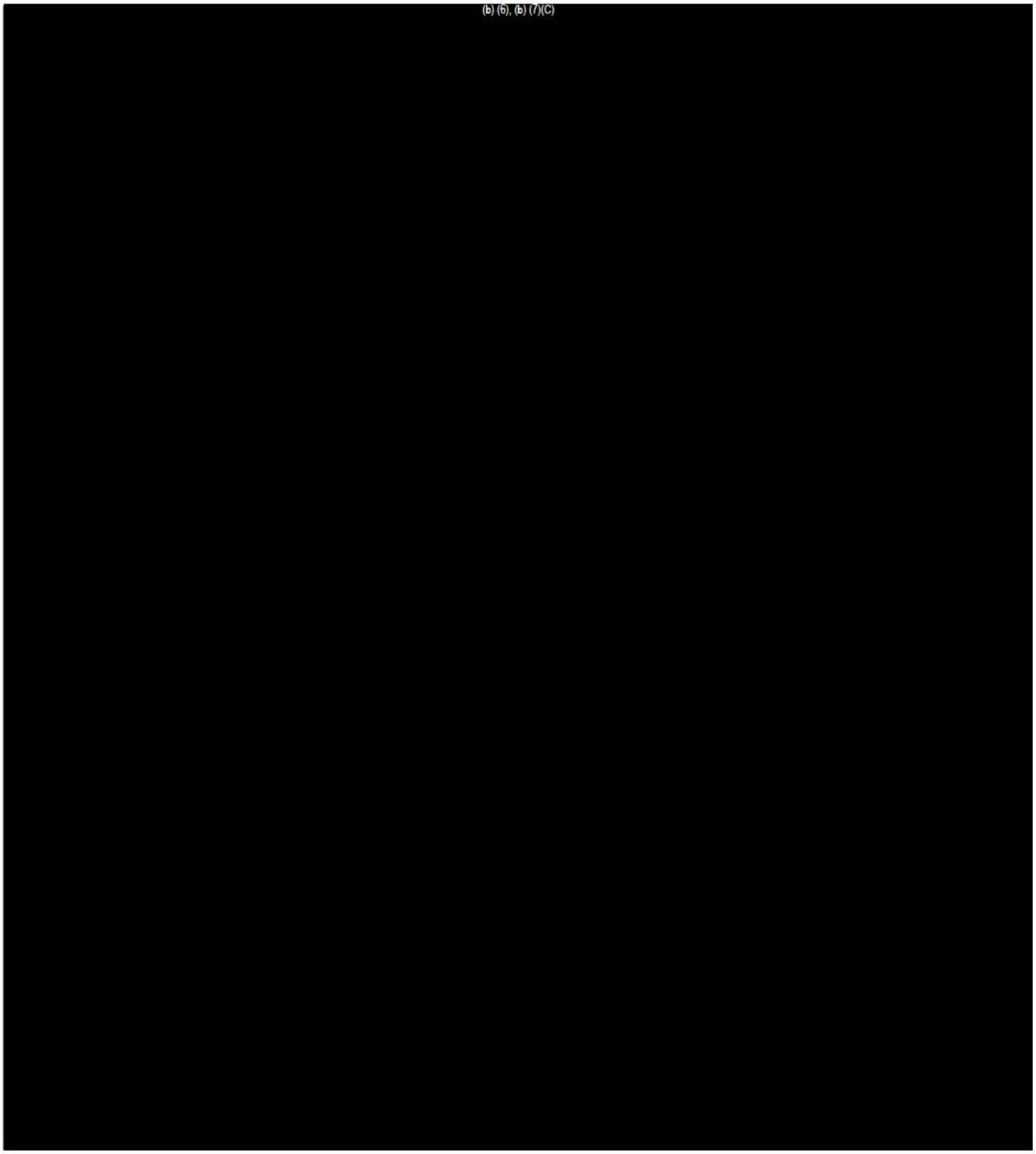
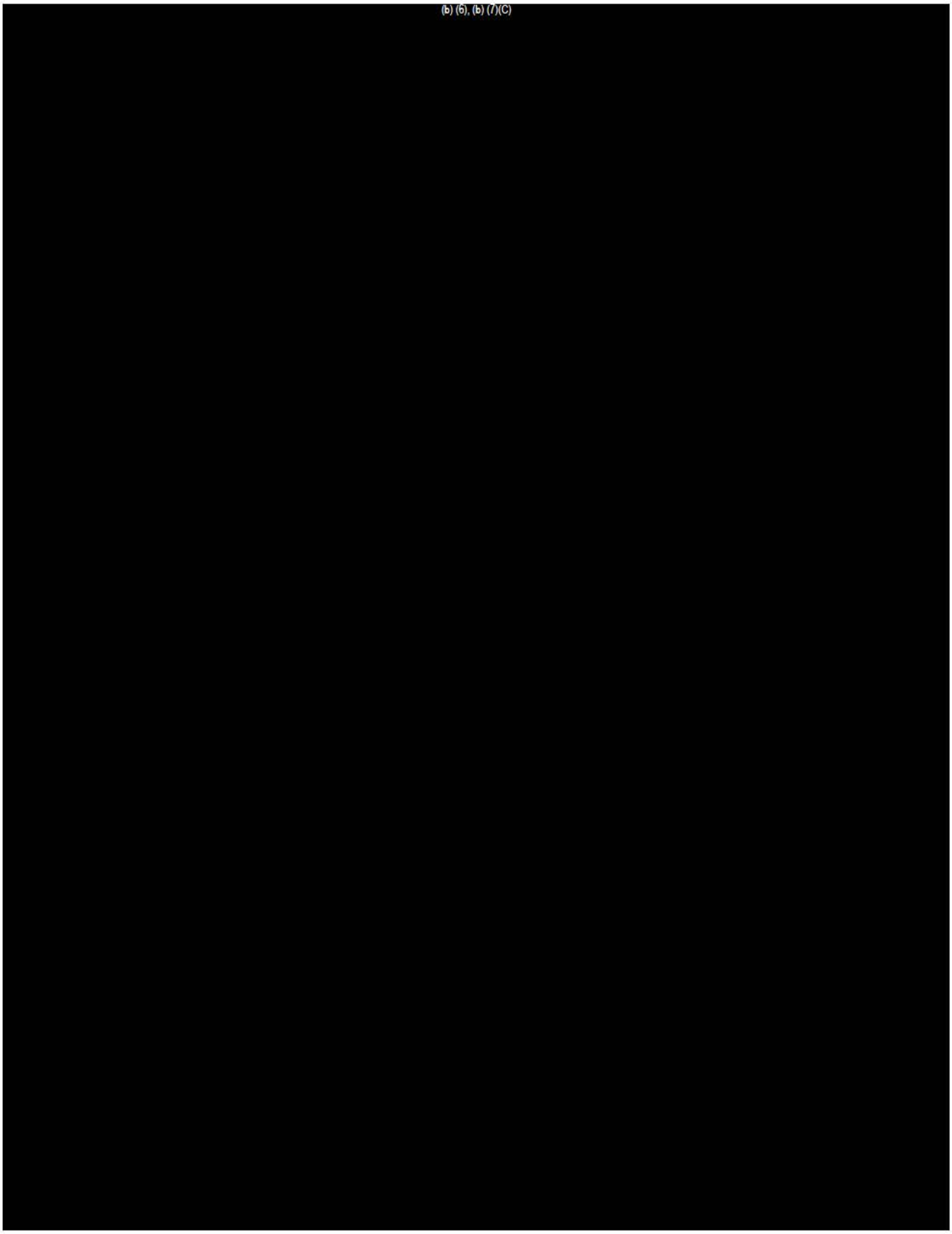


(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



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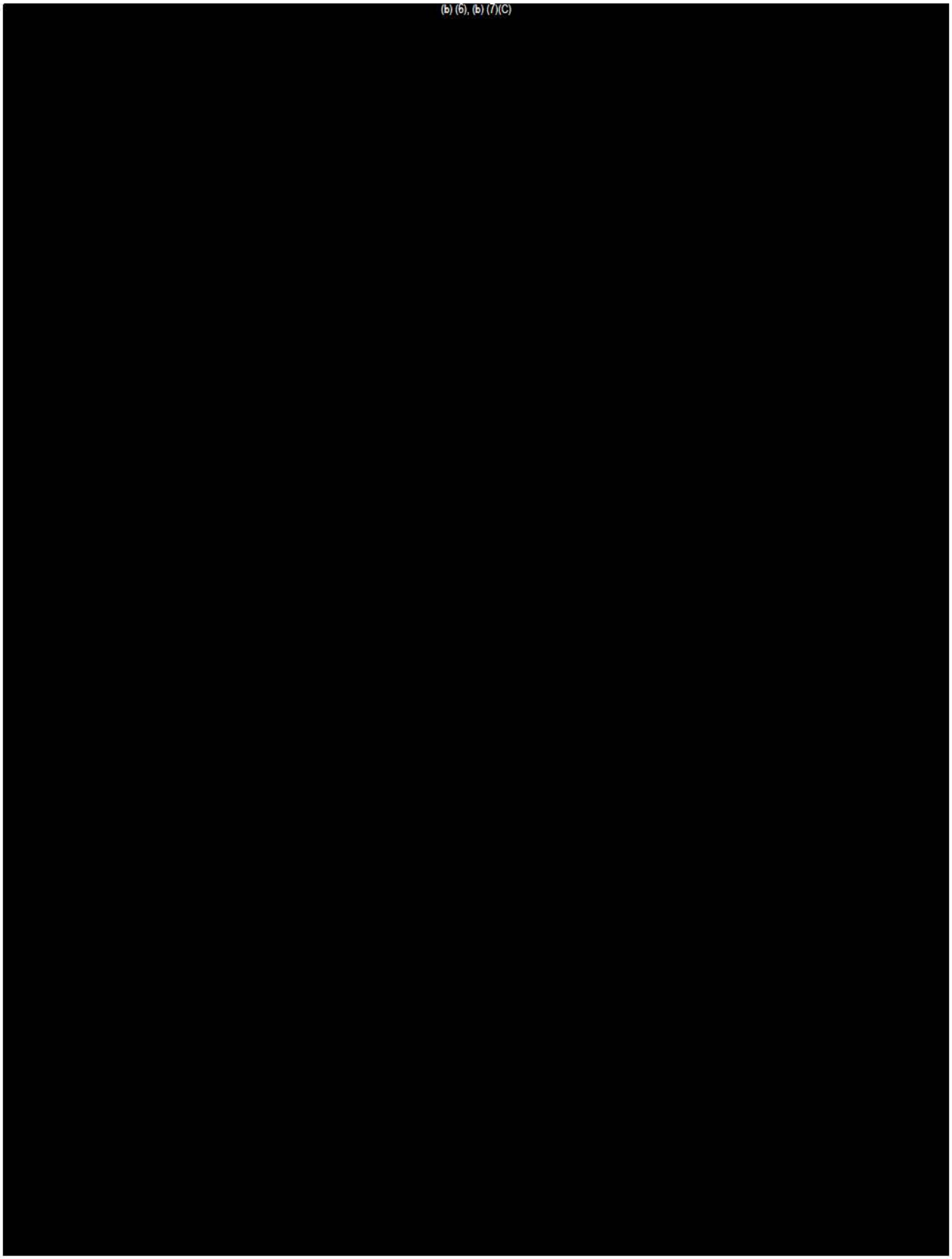

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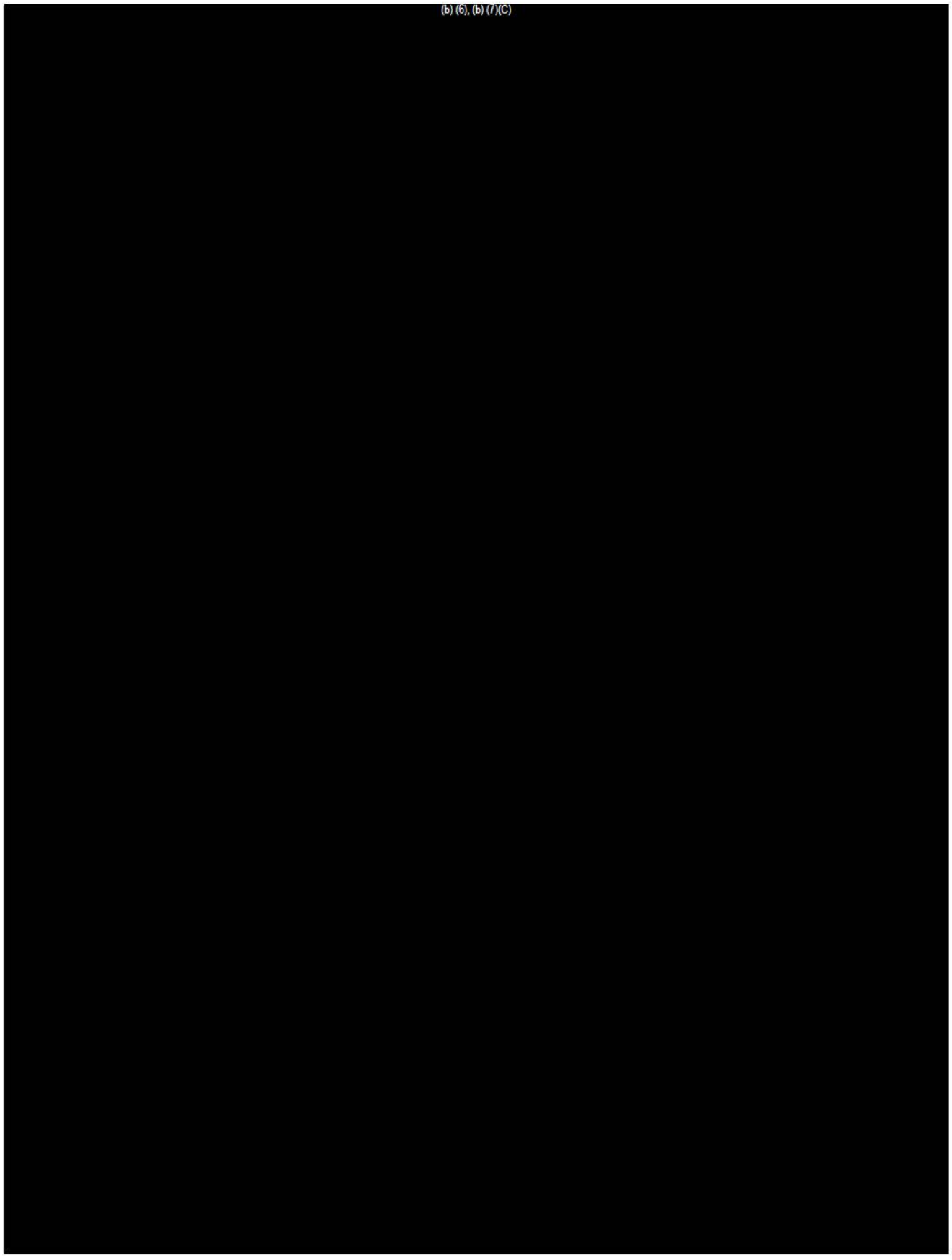

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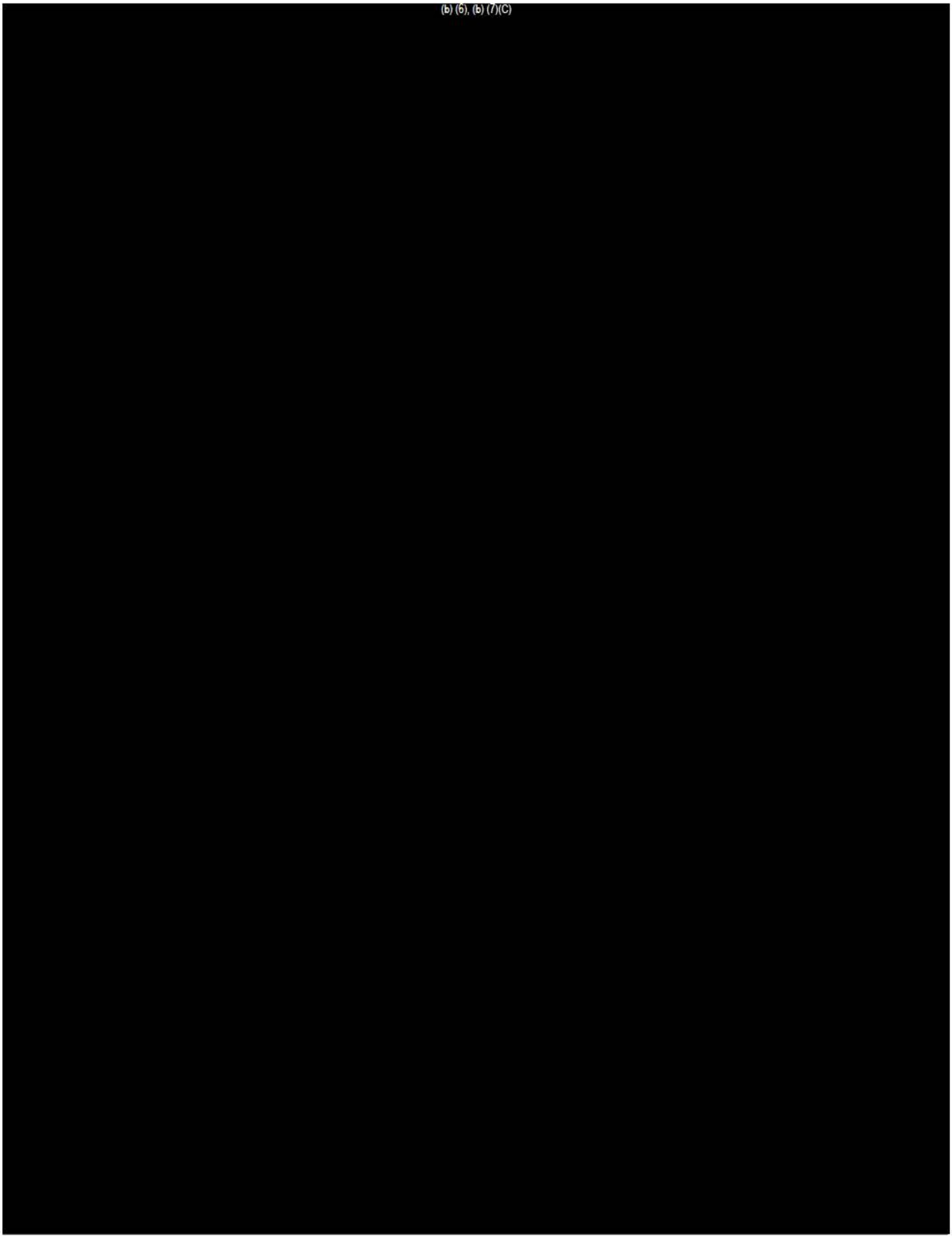

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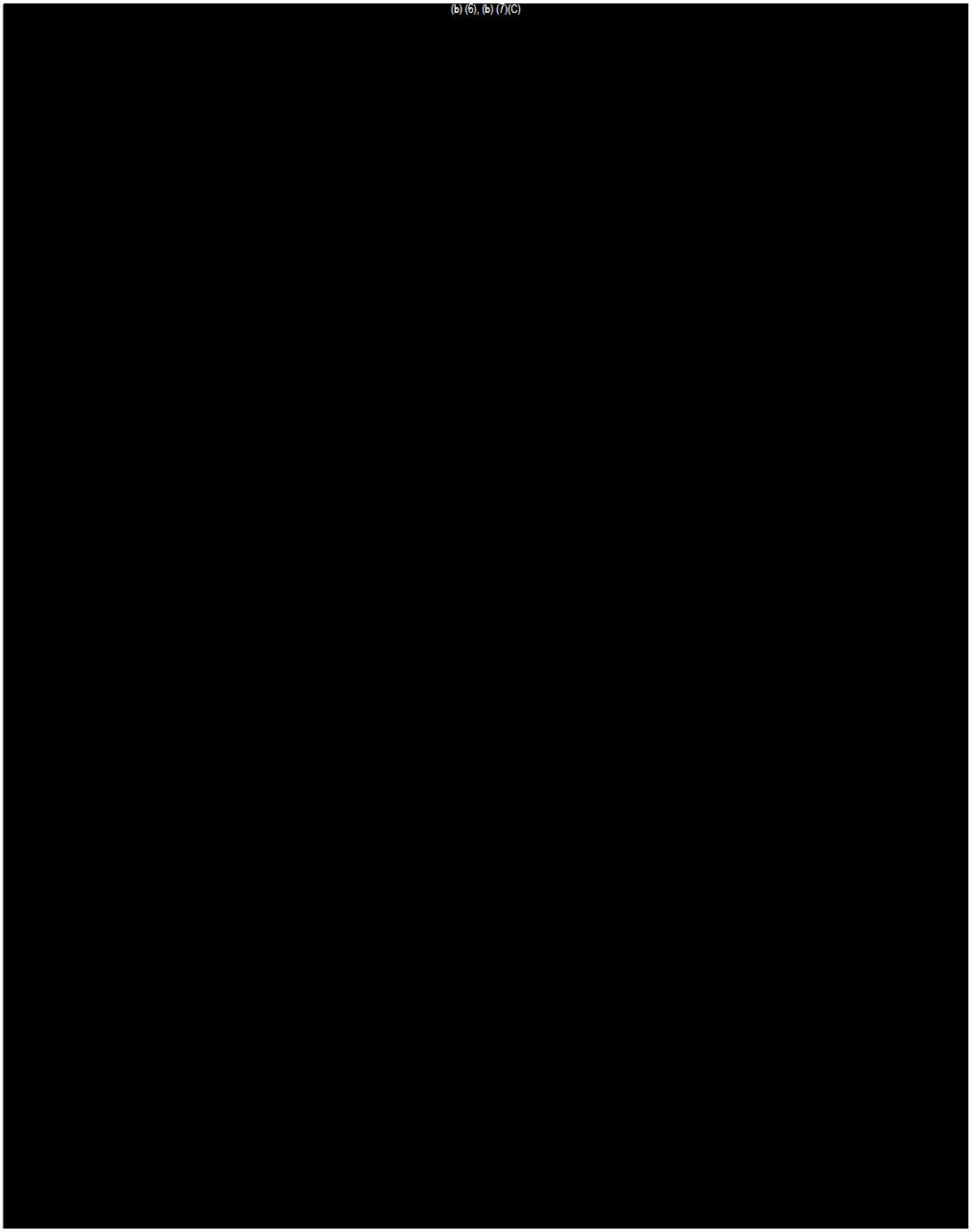
(b) (6), (b) (7)(C)



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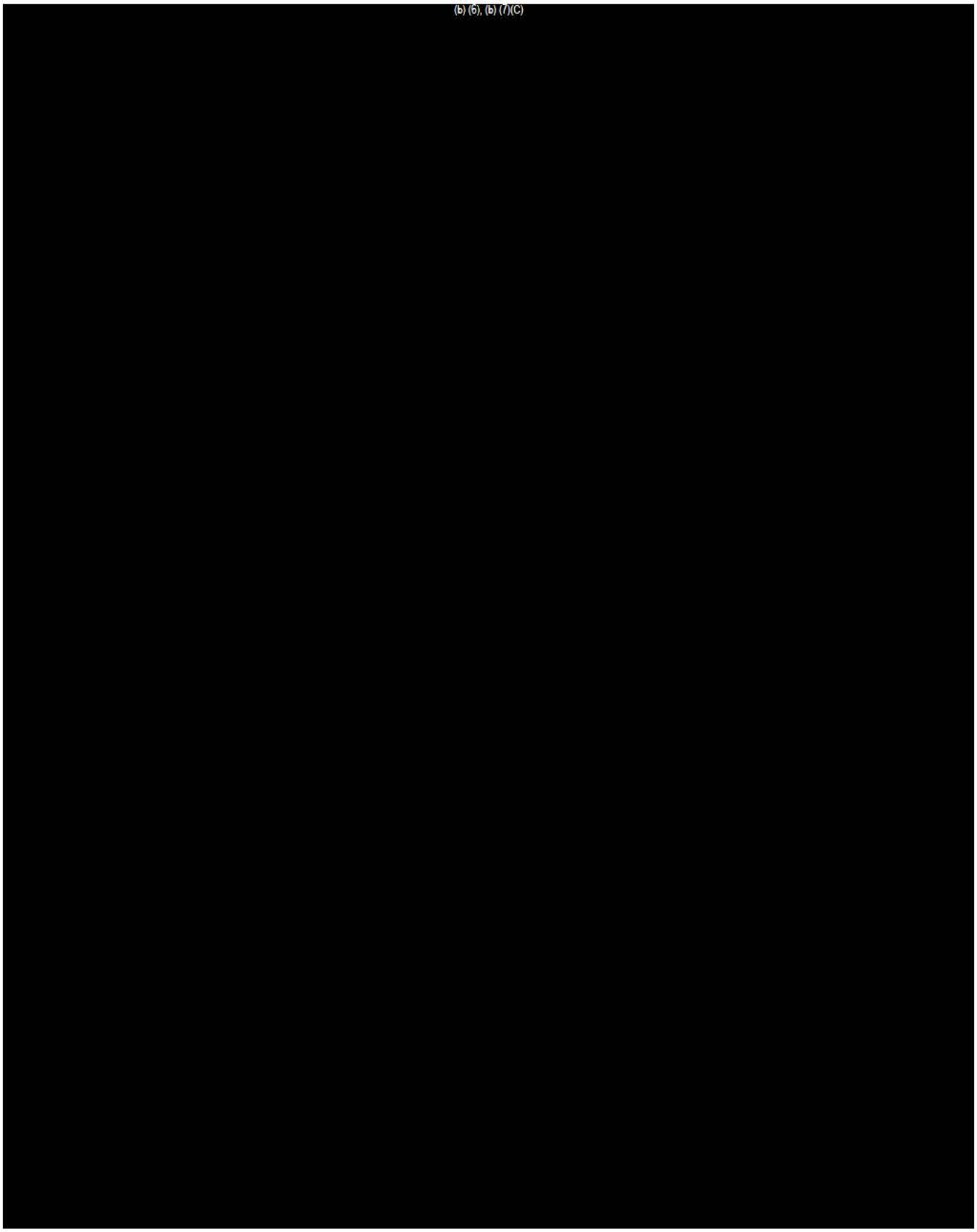

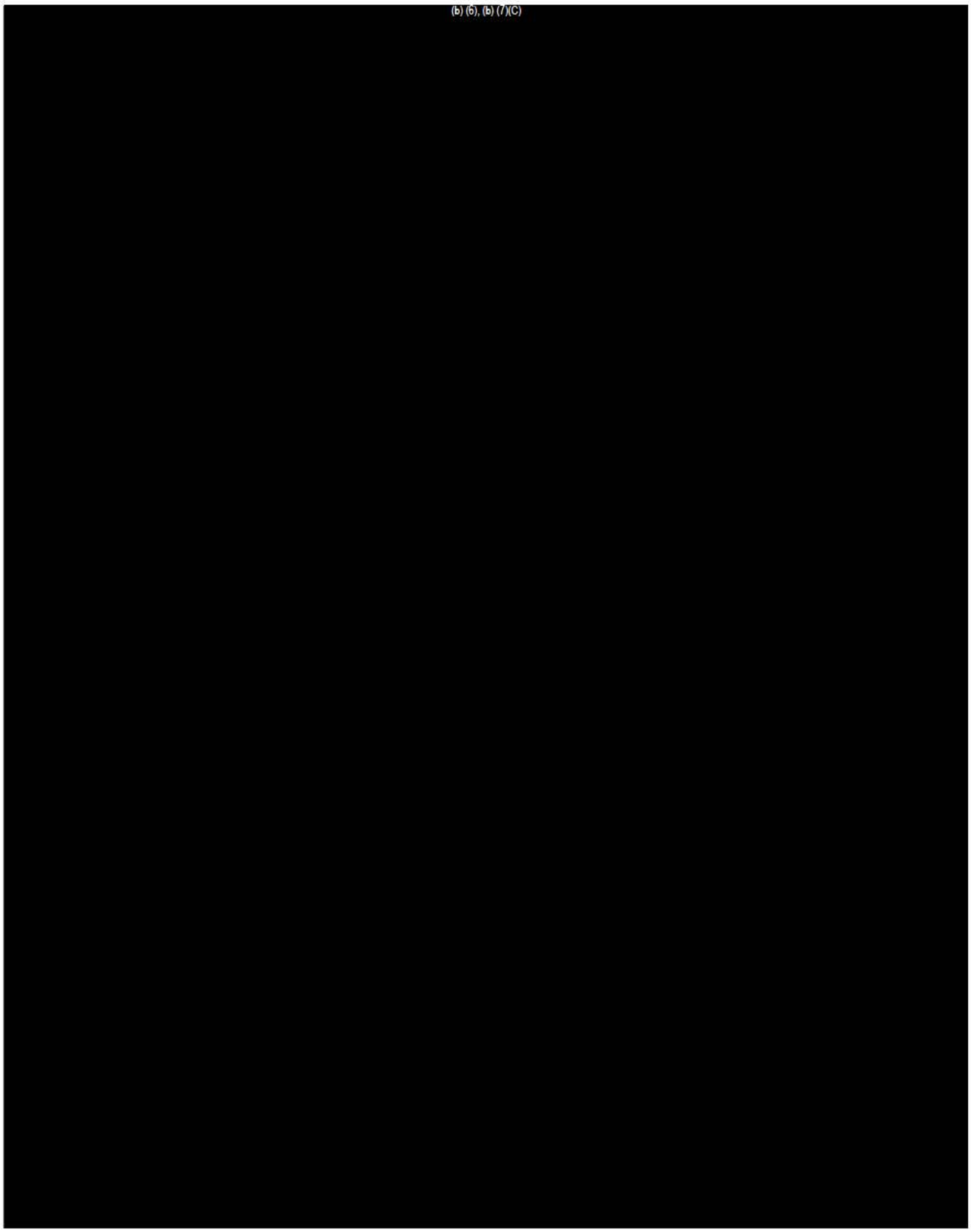
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

[redacted]

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(b)(6) (b)(7)(C) [redacted]

V. OTHER MATTERS

During the conduct of the investigation, we questioned the use of a (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) position within PFPA, (b)(6) (b)(7)(C) for the Director. Mr. Calvery could not provide any written authorization for a (b)(6) (b)(7)(C) in accordance with DoD Publication 4500.36-R, paragraph C.2.2.2, and Appendix 1, paragraph AP1.2.9. Additionally, based on a position description for a (b)(6) (b)(7)(C) for the Director appears inconsistent with the duties and responsibilities associated with the grade of that position.

VI. CONCLUSIONS

A. Mr. Calvery misused his position by allowing (b)(6) (b)(7)(C) access to the PFPA firing range, and use of a PFPA weapon, ammunition, and two PFPA firearms instructors.

B. Mr. Calvery misused his subordinates by having his office staff order and pick up his lunch and retrieve coffee for him.

C. Mr. Calvery improperly authorized the use of Administrative Leave for the 2009 and 2010 PFPA Golf Tournaments.

D. Mr. Calvery engaged in a prohibited personnel practice by providing preferential treatment to a subordinate.

E. (b)(6) (b)(7)(C) [redacted].

F. (b)(6) (b)(7)(C) [redacted].

G. (b)(6) (b)(7)(C) [redacted]

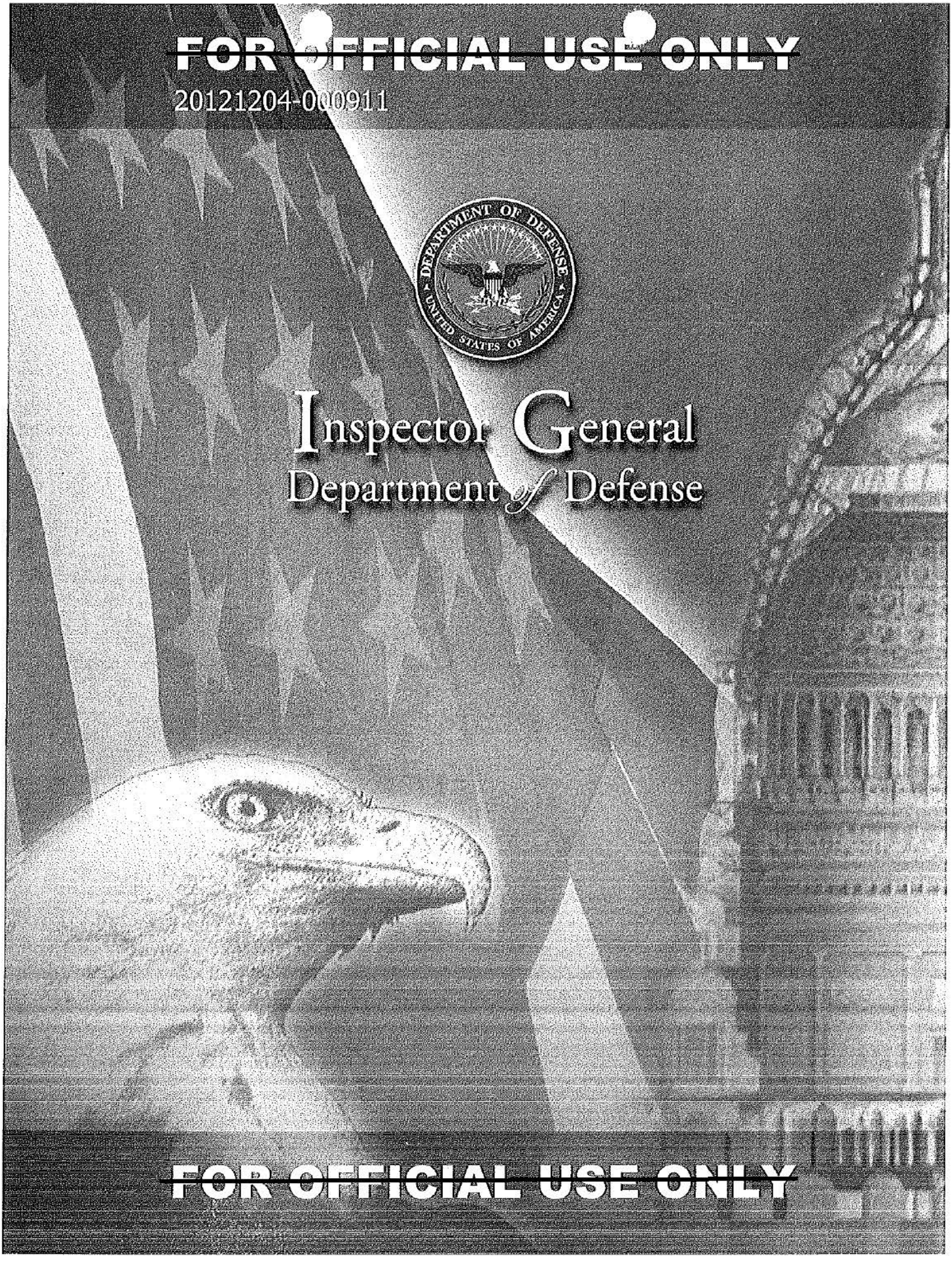
H. (b)(6) (b)(7)(C) [redacted]

VII. RECOMMENDATIONS

A. The Director, Administration and Management, consider appropriate action regarding the substantiated allegations, to include recoupment of costs associated with (b)(6) (b)(7)(C) use of the PFPA firing range.

B. The Director, Administration and Management, consider appropriate action regarding the use of a (b)(6) (b)(7)(C) for the Director.

C. The DoD, Office of the Inspector General, will notify the U.S. Office of Special Counsel of the substantiated allegation concerning the prohibited personnel practice.



Inspector General
Department of Defense

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

NOV 19 2013

Ref: FOIA-2013-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Major General Frank J. Padilla is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the deliberative process privilege; 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

H11121648 January 24, 2012

Inspector General

United States Department of Defense

ALLEGED MISCONDUCT: MAJOR GENERAL FRANK J. PADILLA UNITED STATES AIR FORCE FORMER COMMANDER, 10TH AIR FORCE

UNREDACTED ROI

H11121648

JAN 24 2012

ALLEGED MISCONDUCT
MAJOR GENERAL FRANK J. PADILLA
U.S. AIR FORCE RESERVE
FORMER COMMANDER 10th AIR FORCE
NAVAL AIR STATION JOINT RESERVE BASE
FORT WORTH, TEXAS

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that while serving as Commander, 10th Air Force, Major General (Maj Gen) Padilla:

- Improperly appointed his Inspector General (IG) as the Investigating Officer (IO) in a Commander-Directed Investigation (CDI), in violation of Air Force Instruction (AFI) 90-301, "Inspector General Complaints"; and
- (b)(6) (b)(7)(C) [redacted]

We substantiated the first allegation. We conclude Maj Gen Padilla improperly appointed his IG as the IO in a CDI. We found that (b) (6), (b) (7)(C) [redacted], United States Air Force Reserve (USAFR), served as the IG for the Headquarters, 10th Air Force. On May 17, 2010, Maj Gen Padilla appointed her to conduct a CDI into allegations made against (b)(6), (b)(7)(C) [redacted] 306th Rescue Squadron (RQS). The AFI 90-301 in effect at that time prohibited commanders from using IGs and their staff members as IOs for CDIs. Accordingly, we determined Maj Gen Padilla violated the prohibition in AFI 90-301.

We did not substantiate the second allegation. (b)(6) (b)(7)(C) [redacted]

(b)(6) (b)(7)(C) [redacted]

(b)(6) (b)(7)(C) [redacted]

We provided Maj Gen Padilla the opportunity to comment on the preliminary results of our investigation by letter dated January 9, 2012. We received his response on January 12, 2012.[1] In his response, Maj Gen Padilla did not dispute the relevant facts we presented to him and accepted full responsibility for appointing (b) (6), (b) (7)(C) to conduct CDIs. He stated it was his understanding she had accomplished CDIs under a previous commander with the knowledge and tacit approval of Air Force Reserve Command (AFRC), so he elected to continue the practice. He further added that he found (b) (6), (b) (7)(C) report of investigation thorough, legally sufficient, and a solid foundation for the command actions he took in addressing (b)(6), (b)(7)(C) misconduct.

We appreciate Maj Gen Padilla's cooperation and timely response to the preliminary results of our investigation.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

[1] While we have included what we believe is a reasonable synopsis of Maj Gen Padilla's response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and provided a copy of the response to the cognizant management officials together with this report.

II. BACKGROUND

Maj Gen Padilla commanded the 10th Air Force, Naval Air Station Joint Reserve Base at Fort Worth, Texas (TX) from May 2009 to November 2011. The 10th Air Force is one of three numbered air forces in the AFRC and includes a headquarters (HQ) staff, six fighter units, three rescue units, and other subordinate units. The command is responsible for more than 16,000 reservists and 940 civilians at 30 military installations throughout the United States.

Col Robert L. Dunn, USAFR, commanded the 920th Rescue Wing (RQW), a part of the 10th Air Force, until his retirement in September 2011. The 920th RQW is located at Patrick Air Force Base, Florida (FL). The 943rd Rescue Group (RQG), currently commanded by Col Harold L. Maxwell, USAFR, is part of the 920th RQW. The 306th RQS, an Air Force Reserve Combat Search and Rescue (CSAR) squadron, is part of the 943rd RQG. The 943rd RQG and 306th RQS are located at Davis-Monthan AFB, Arizona.

(b)(6) (b)(7)(C) [redacted] . (b)(6), (b)(7)(C) chain of command was Col Maxwell, Col Dunn, then Maj Gen Padilla.

The 306th RQS is a flying unit consisting of aircrew members (pilots, flight engineers, and pararescuemen) and various types of support personnel. Pararescuemen, or "PJs," are full-time AGR personnel. A PJ's mission is to recover downed and injured aircrew members in austere and non-permissive environments. PJs are trained to provide emergency medical treatment necessary to stabilize and evacuate injured personnel while acting in an enemy evading recovery role.

III. SCOPE

We interviewed the complainant, Maj Gen Padilla and two other individuals who had knowledge of the events at issue. We reviewed the IO appointment, CDI, personnel records, and other relevant documentation. We also reviewed Air Force instructions, and guidance the Air Force published for IOs conducting CDIs.

(b)(6) (b)(7)(C) [redacted]

IV. FINDINGS AND ANALYSIS

A. Did Maj Gen Padilla improperly appoint his IG to conduct a CDI?

Standards

Air Force Instruction (AFI) 90-301, "Inspector General Complaints Resolution," dated May 15, 2008

Chapter 1, Section 1.31, "Commander-Directed Investigations (CDIs)," states, in part, that the primary purpose of a CDI is to gather, analyze and record relevant information about matters of primary interest to command authorities. Commanders should consult with their staff judge advocate before initiating a CDI. Commanders will not appoint IGs or IG staff members as inquiry or investigation officers for CDIs.

Facts

(b) (6), (b) (7)(C) has served as the 10th Air Force IG as a traditional reservist since 2008.[2] (b)(6) (b)(7)(C), confirmed, that numbered air forces in the AFRC were not authorized an IG. If a commander wanted an IG, he or she had to take an asset out of an existing personnel authorization. The Unit Manning Document (UMD) and (b) (6), (b) (7)(C) most recent OPR identified her as the "Special Assistant to the Commander, IG." Both documents indicated her Duty Air Force Specialty Code (DAFSC) as 87G (IG). Her OPR listed one of her duties as developing methods and control procedures to implement IG policies, and directing, conducting, and monitoring IG programs. Further, the 10th Air Force Staff Directory identified (b) (6), (b) (7)(C) as the IG.

(b) (6), (b) (7)(C) However, Maj Gen Padilla appointed her to conduct several CDIs, probably because she had been trained to conduct investigations.

In an email dated May 7, 2010, Col Maxwell asked Maj Gen Padilla for assistance in initiating a CDI into allegations of (b)(6) (b)(7)(C) (b)(6) (b)(7)(C). Col Maxwell explained he had no one of sufficient rank available to serve as the IO. By appointment letter dated May 17, 2010, Maj Gen Padilla appointed (b) (6), (b) (7)(C) to conduct a CDI into allegations (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) (b) (6), (b) (7)(C) completed the CDI on July 13, 2010.

Maj Gen Padilla testified (b) (6), (b) (7)(C) t and served as a (b) (6), (b) (7)(C) at Fort Worth. He did not view her as the IG with responsibility for the

[2] A traditional reservist typically reports for duty one weekend each month and completes two weeks of annual training a year.

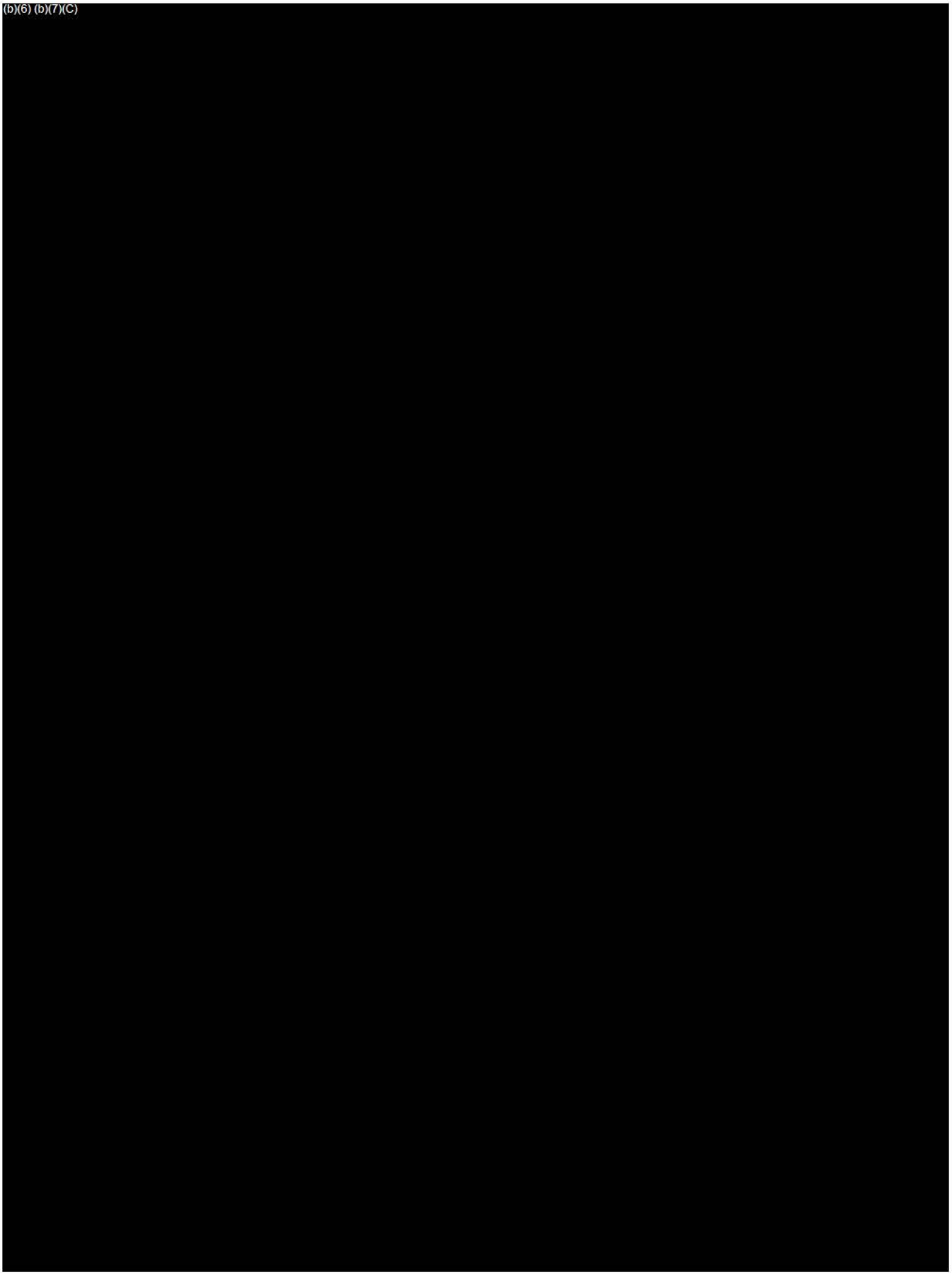
10th Air Force's subordinate units, which reported IG matters directly to the IG, AFRC. He knew [redacted] had experience in conducting CDIs, was extremely thorough, had enormous flexibility from her civilian job as a realtor, and as a traditional reservist she was always looking for man-days to perform extra work and special projects. He admitted to occasionally appointing her as the IO to conduct CDIs.

Discussion

We conclude that Maj Gen Padilla improperly appointed his IG as the IO in a CDI. We found [redacted] OPR, the UMD, and the staff directory identified [redacted] as the IG and that Maj Gen Padilla recognized her as the IG for his HQ staff. We also found Maj Gen Padilla appointed [redacted] to conduct a CDI. AFI 90-301, "Inspector General Complaints Resolution," prohibited commanders from using IGs and their staff members as IOs for CDIs.[3]

[redacted]

(b)(6) (b)(7)(C)



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(b)(6) (b)(7)(C)

[redacted]

Appointment and Conduct of CDI

Maj Gen Padilla stated he required his commanders to keep him informed of alleged officer misconduct, but he did not as a rule withhold the authority to dispose of officer misconduct at his level. In this case, Col Maxwell asked Maj Gen Padilla for assistance in initiating a CDI into the allegations against (b)(6) (b)(7)(C) [redacted]. Maj Gen Padilla stated Col Maxwell was uncomfortable investigating allegations which had the potential to reflect negatively on his

(b)(6) (b)(7)(C)

[redacted]

superior, Col Dunn, since (b)(6) (b)(7)(C) misconduct allegedly occurred when Col Dunn, not Col Maxwell, commanded the 943rd RQG. Given these circumstances, Maj Gen Padilla decided to direct the investigation. On May 17, 2010, he appointed (b) (6), (b) (7)(C) as the IO for the CDI.

Maj Gen Padilla identified (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), as (b) (6), (b) (7)(C). On May 20, 2010, two junior officers from the 306th RQS reported additional allegations against (b)(6) (b)(7)(C) to Col Maxwell. Maj Gen Padilla then expanded the scope of the CDI from 4 allegations to an investigation of 14 allegations.

On June 4, 2010, Col Maxwell, with (b) (6), (b) (7)(C) as a witness, advised (b)(6) (b)(7)(C) in writing that Maj Gen Padilla had directed a CDI concerning allegations of misconduct in the 306th RQS and that (b) (6), (b) (7)(C) was the investigating officer. (b)(6) (b)(7)(C) acknowledged the advisement by written endorsement on June 5, 2010.

(b)(5), (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

(b)(5), (b)(6) (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

[redacted]

(b)(6) (b)(7)(C)

[redacted]

(b)(5), (b)(6), (b)(7)(C)

[redacted]

(b)(5), (b)(6), (b)(7)(C)

[redacted]

V. CONCLUSIONS

A. Maj Gen Padilla improperly appointed his IG to serve as an investigating officer in a CDI.

B. (b)(6) (b)(7)(C) [redacted]

VI. RECOMMENDATION

The Secretary of the Air Force consider appropriate corrective action with respect to Maj Gen Padilla.

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JAN 13 2014

Ref: FOIA-2013-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it FOIA case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Brigadier General Richard G. Elliott is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

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Sincerely,

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

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Report No. 11-118752-109 June 7, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION: BRIGADIER GENERAL RICHARD G. ELLIOTT UNITED STATES AIR FORCE FORMER ADJUTANT GENERAL (AIR) STATE OF MICHIGAN

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REPORT OF INVESTIGATION:
BRIGADIER GENERAL RICHARD G. ELLIOTT, U.S. AIR FORCE

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that, while serving as the Assistant Adjutant General (Air) (AAG-Air), Commander, Michigan Air National Guard (MIANG), and Deputy Director, Department of Military and Veterans Affairs (DMVA), Joint Force Headquarters, Michigan National Guard (MING), Lansing, Michigan (MI), Brigadier General (Brig Gen) Elliott:

- Failed to terminate from his dual-status military technician position as required by Federal law and DoD regulations;
- Used his public office for private gain by receiving Federal pay and benefits to which he was not entitled in violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)"; and
- Improperly claimed temporary duty (TDY) expenses related to travel to his new official duty station in violation of the JER and the Joint Travel Regulations.[1]

We substantiated the allegations. We conclude that Brig Gen Elliott failed to terminate from his dual-status military technician position as required by Federal law and DoD regulations. We found that Brig Gen Elliott served in a dual-status military technician position at the 127th Wing, Selfridge Air National Guard Base (ANGB), MI. He was the Wing Commander as a part-time "traditional Guardsman," and was the Air Commander (Pilot/Navigator) as a full-time Federal military technician in the same unit. In January 2006, he accepted an appointment to serve full-time in a State capacity as the AAG-Air. Federal law and DoD regulations required Brig Gen Elliott to resign from his Federal position. We determined that after his reassignment, he did not terminate from his dual-status military technician position until 16 months later. This delay enabled Brig Gen Elliott to continue to receive pay and appear to accrue sufficient time to be retirement eligible under the Federal Employee Retirement System (FERS).

We also conclude that Brig Gen Elliott used his public office for private gain and improperly received Federal pay and benefits. We found after relinquishing command of the 127th Wing to serve in a State capacity as the AAG-Air, Brig Gen Elliott was obligated to terminate his dual-status military technician position. At that time, Brig Gen Elliott was not retirement eligible and would have received approximately $15,829.38 for unused annual leave and forfeited 211 hours of unused compensatory time. We also found that Brig Gen Elliott approved his own time and attendance records. The JER prohibits individuals from using their official position for personal benefit and the DoD Financial Management Regulation (DoDFMR) does not authorize self-approval of time and attendance records. We determined that by not terminating his dual-status, Brig Gen Elliott received approximately $194,370.90 in Federal pay

[1] (b)(6), (b)(7)(C) [redacted]

as a dual-status military technician over a 16-month period. We also determined that Brig Gen Elliott was not authorized to approve his own time and attendance.

Finally, we conclude that Brig Gen Elliott improperly claimed TDY expenses related to travel to his new official duty station. We found that on 21 occasions Brig Gen Elliott traveled in a TDY status as a military technician assigned to the 127th Wing from Selfridge ANGB to Lansing, MI, to perform duties as the AAG-Air. Brig Gen Elliott claimed $19,172 in Federal travel expenses and signed his own travel claims as the supervisor. The DoDFMR and the Joint Travel Regulations (JTR) require a supervisor or authorizing official to review and approve all travel authorizations to ensure compliance with regulations. We determined Brig Gen Elliott approved his own orders and claims without any approval or review by Major General (Maj Gen) Thomas G. Cutler, The Adjutant General (TAG), MING. We also determined the 21 trips were themselves improper because they did not meet the JTR's definition of TDY travel. Lansing, not Selfridge ANGB, was rightfully Brig Gen Elliott's official duty station. There was no JTR provision which authorized Brig Gen Elliott to conduct TDY to his official duty station, and no basis for him to travel on 127th Wing orders and claim Federal reimbursement.

By letter dated October 7, 2011, we provided Brig Gen Elliott an opportunity to comment on the preliminary results of our investigation. Brig Gen Elliott, through counsel, requested three extensions to respond to our preliminary report - October 18, 2011; January 6, 2012; and April 2, 2012.[2]

In his response, dated April 30, 2012, Brig Gen Elliott disagreed with our preliminary findings and conclusions. He asserted that he based his actions regarding his dual-status military technician position, "pursuant to Maj Gen Cutler's [Major General (Maj Gen) Thomas G. Cutler, U.S. Air Force, then The Adjutant General (TAG) of the State of Michigan, and Director, DMVA] authority as TAG" and a reliance on information he received from Maj Gen Cutler and other support staff. They were the ones, according to Brig Gen Elliott, who were "responsible for the proper submission of all required paperwork and approvals."[3]

After carefully considering Brig Gen Elliott's response, we stand by our conclusions. He failed to terminate from his dual-status military technician position as required by Federal law and DoD regulations. As a consequence, he received Federal pay and benefits to which he was not entitled. Brig Gen Elliott also improperly claimed Federal reimbursement for TDY expenses to his official duty station.

Our investigation included recommendations that the Secretary of the Air Force take appropriate action regarding the substantiated allegations. Such action should include determining whether Brig Gen Elliott accrued sufficient time to qualify for military technician retirement under FERS, and initiating the recoupment of the overpayment of Federal pay and

[2] Brig Gen Elliott obtained the services of (b)(6), (b)(7)(C) who commented via letter on our preliminary report. We will refer to this correspondence as Brig Gen Elliott's response.

[3] While we have included what we believe is a reasonable synopsis of the response provided by Brig Gen Elliott, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Brig Gen Elliott where appropriate throughout this report and provided a copy of his full response to the Secretary of the Air Force together with this report.

benefits and TDY expenses improperly received by Brig Gen Elliott between January 2006 and April 2007.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

The MING, like other state National Guard (NG) organizations, maintains a "traditional" force in addition to its "full-time" force. The traditional force typically performs duty one weekend each month and 2 weeks annually. The full-time force includes military technicians, authorized under Section 709 of Title 32, United States Code (U.S.C.) to improve the readiness of the Army and Air National Guard by performing administration, training, maintenance, and repair functions. Most military technicians are employed as dual-status members, a term introduced by Section 10216 of Title 10, U.S.C. Dual-status military technicians are civil service employees of the Federal government who must be military members of the unit that employs them, hold the military grade appropriate to the position, and wear the uniform appropriate to their grade and component of the armed forces.[4]

The NG's full-time support program requires that military technicians be members of the NG and appointed to full-time positions that correspond to their military assignments. In 1996, Brig Gen Elliott was employed as a dual-status military technician under the Federal Employees Retirement System (FERS). In October 2004, Brig Gen Elliott commanded the 127th Wing, MIANG, Selfridge Air National Guard Base (ANGB), Michigan, as a full-time GS-15 dual-status Federal military technician and traditional guardsman.[5] The position description listed the official title as "Air Commander (Pilot/Navigator)." The "paramount requirement" of the position was to "serve as a manager of an ANG Group/Wing, with leadership responsibility, direct line responsibility and full accountability for the flying unit." The incumbent had to be a rated pilot or navigator officer who possessed competence in fields such as aircraft maintenance, budgets, personnel, air operations, and other "specialized subject matter or functional areas."

On December 30, 2005, Maj Gen Cutler appointed Brig Gen Elliott as the AAG-Air, MIANG Commander, and Deputy Director, DMVA.[6] As a consequence, Brig Gen Elliott was transferred from the 127th Wing to the 110th Fighter Wing, MIANG, Battle Creek, MI, and began full-time employment with the State.[7] Until his transfer to the Inactive Status List Reserve

[4] Unless otherwise specified, the term "technician" as used in this report means a dual-status military technician.

[5] The United States Air Force's 127th Wing is a fighter and air refueling unit located at Selfridge Air National Guard Base, Michigan. Selfridge is located on the north side of the metropolitan area of Detroit, Michigan, along the western shore of Lake St. Clair and approximately 125 miles from Lansing, Michigan.

[6] The Department of Military and Veterans Affairs mission is to provide organized, combat-ready units, both Army and Air National Guard, for call to federal duty in the event of national emergency and to state duty in time of disaster or civilian disorder; veterans services; and youth military training and education.

[7] The 110th Fighter Wing is located at the W. K. Kellogg Airport on the west side of the city of Battle Creek, Michigan.

Section on January 31, 2008, Brig Gen Elliott was responsible for 2,800 members of the MIANG and their units located in Alpena, Battle Creek, Selfridge, and Mount Clemens, as well as the headquarters unit in Lansing, MI.[8]

On April 3, 2007, this Office received a complaint from (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) which alleged Brig Gen Elliott received Federal and State paychecks at the same time because he failed to terminate his military technician position as the Commander, 127th Wing, when he became the AAG-Air at the end of 2005. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) concerns with Maj Gen Cutler who told them it was "okay" because he had done the same thing in 2002.[9]

On December 11, 2009, after completing the fieldwork required for our administrative investigation of the allegations in the complaint, we referred the evidence to the Defense Criminal Investigative Service (DCIS), DoDIG, as indicative of potential criminal impropriety. DCIS referred the matter to the Assistant United States Attorney (AUSA) for prosecution. On November 18, 2010, the AUSA declined to prosecute Brig Gen Elliott and recommended the matter be handled administratively. Accordingly, we resumed our investigation as a noncriminal, administrative matter.

III. SCOPE

We interviewed Brig Gen Elliott, Maj Gen Cutler, and 20 witnesses. We reviewed assignment records, time and attendance records, compensatory time records, travel orders, vouchers, calendars, emails, and other relevant documentation. We also reviewed statutes, regulations, and NG guidance applicable to the matters at issue.

In his response to our preliminary report, Brig Gen Elliott stated that our investigation was not completed in a timely manner. He stated witnesses have moved, "documentary evidence has been lost," and "memories have faded." Consequently, we should drop the allegations.

We recognize that the field work phase of this investigation was lengthy due to the complex nature of the allegations investigated. Based on the evidence developed, the case also had to be referred to DCIS and the AUSA, further increasing the time required to complete the case. We also recognize the length of time which passed following the AUSA's decision not to prosecute a criminal case against Brig Gen Elliott. We disagree with Brig Gen Elliott's inference regarding evidence, and note that Brig Gen Elliott did not specify what relevant documentary evidence was lost, or by whom. On the contrary, the documents mentioned throughout this report, supplemented by witness testimony, unmistakably support our conclusions and have been unaffected by the passage of time.

[8] Members on an inactive status list do not train for points or pay, and cannot be considered for promotion.

[9] We investigated Maj Gen Cutler's conduct in this matter in a separate investigation (H07L103093116). Our Office substantiated allegations that Maj Gen Cutler improperly received Federal pay and benefits and provided preferential treatment to Brig Gen Elliott.

Brig Gen Elliott also stated in his response that our office never advised him of our open investigation. He added that it was not until after January 18, 2011, when he applied for retired pay to begin, that he discovered the investigation remained open. We notified the National Guard Bureau (NGB) of the investigation on April 23, 2007, and interviewed Brig Gen Elliott as the subject of the investigation on October 25, 2007. We did not provide Brig Gen Elliott with official written status updates after his interview. However, the Director, Investigations of Senior Officials, and the National Guard Bureau IG did speak with Brig Gen Elliott several times over the telephone.

(b)(6), (b)(7)(C)

[redacted]

IV. FINDINGS AND ANALYSIS

A. Did Brig Gen Elliott fail to terminate from his dual-status military technician position?

Standards

Title 32, U.S.C., "National Guard," Chapter 7, "Service, Supply, and Procurement"

Section 709**,** "Technicians: employment, use, status," states that persons employed as technicians in the administration and training of the NG must meet each of the following requirements:

- Be a military technician (dual-status).[10]
- Be a member of the NG.
- Hold the military grade specified by the Secretary concerned for that position.
- While performing duties as a military technician (dual-status), wear the uniform appropriate for the member's grade and component of the armed forces.

A dual-status military technician who is separated from the NG or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated

[10] Members of the Selected Reserve are generally required to perform one weekend of training each month (also referred to as "weekend drill") and two weeks of annual training each year for which they receive pay and benefits. Air National Guard Military Technicians are dual-status personnel who provide day-to-day continuity in the readiness and training of the Air Reserve Components. They are civil service employees who must maintain military status as a condition of employment.

from military technician (dual-status) employment by the adjutant general of the jurisdiction concerned.

Title 10, U.S.C., "Armed Forces," Chapter 1007, "Administration of Reserve Components"

Section 10214, "Adjutants general and assistant adjutants general," states, in part, that in any case in which, under the laws of a state, an officer of the NG of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the title of the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general.

Section 10216, "Military Technicians (dual-status)," states:

A military technician (dual-status) is a Federal civilian employee who is employed under Title 32, Section 709, and is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

"Unit Membership Requirement." Unless specifically exempted by law, each individual who is hired as a military technician (dual-status) after December 1, 1995, shall be required as a condition of employment to maintain membership in a unit of the Selected Reserve by which the individual is employed as a military technician, or a unit of the Selected Reserve that the individual is employed as a military technician to support.

Title 5, U.S.C., "Government Organization and Employees," Part III, Employees, Chapter 33, Examination, Selection, and Placement, Subchapter III, Details, Vacancies, and Appointments

Section 3341 states that details may be made only by a written order of the head of an executive department or military department and for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

DoD Directive (DoDD) 1205.18, "Full-Time Support to the Reserve Components," dated May 25, 2000

The Directive states that military technicians shall, as a condition of their civilian employment, maintain dual-status as members of the Selected Reserve component by which employed and shall remain qualified in both their civilian and military positions. Military technicians shall maintain active status in the Reserve component unit in which they are employed as a civilian, or one in which they are employed to support. The skill requirements of the military and civilian positions for military technicians shall be compatible.

Air Force Instruction (AFI) 51-604, "Appointment to and Assumption of Command," dated October 1, 2000

This instruction applies to members and organizations in the Regular Air Force, Air Force Reserve, and ANG when in Federal service.

Section 1.1 states that command is exercised by virtue of the office and the special assignment of officers holding certain military grades, and who are thereby eligible by law to exercise command.

Section 2 states, in part, that assumption of command is a unilateral act taken under authority of law and regulation. When not otherwise prohibited by superior competent authority, command passes by operation of law to the senior military officer assigned to an organization who is present for duty and eligible to command. The authority to assume command is inherent in that officer's status as the senior officer in both grade and rank. An officer can assume command only of an organization to which that officer is assigned by competent authority.

National Guard Regulation (NGR) 600-25/Air National Guard Instruction (ANGI) 36-102, "Military Technician Compatibility," dated March 31, 1995

A military technician must be the primary occupant (the individual assigned and annotated on the unit-manning document) of the military position. Compatibility is defined as the condition in which a military technician assignment is substantially equivalent to the duties described in the full-time technician position description. General Officers may not be in a pay status as a technician except ANG technician position descriptions requiring the incumbent to be the commander of a tactical combat unit (i.e., 127th Wing).

Air National Guard Instruction (ANGI) 36-2101, "Assignments within the Air National Guard," dated June 11, 2004

The instruction establishes procedures for the assignment and utilization of members of the ANG.

Section 2-3, "Assignment of Full-Time Personnel," states, in part, that military technicians and military duty personnel must be assigned as the position incumbent to a military Unit Manpower Document Guard (UMDG) position compatible with their full-time duties and responsibilities. The incumbent was the official occupant of the UMDG position. All others would be coded as excess. Under no circumstances would military technicians or AGR personnel be assigned in an excess status without written approval from the National Guard Bureau (NGB).

Section 2-11, "General Officer Assignments or Colonels Assigned to General Officer Positions," states, in part, that NGB General Officer Management Office (NGB-GOMO) is the Office of Primary Responsibility for all general officer actions. The high visibility of senior officer personnel management caused by frequent congressional review requires close

monitoring by NGB-GOMO and each TAG. The reassignment of a federally recognized general officer, or colonel, or the assignment of any officer, regardless of grade, to a general officer or colonel position, should not be finalized until prior coordination with NGB-GOMO is completed and TAG reviews and approves the action.

Section 2-20, "Assignment to Excess or Overgrade," states, in part, that no officer, regardless of grade, may be placed in an excess status against a general officer authorization without prior coordination and approval by NGB-GOMO. No officer regardless of grade may be placed in an excess status against a commander position. Only under mission unique situations and in the best interest of the ANG would this be authorized.

Technical Personnel Regulation (TPR) 303, "Military Technician Compatibility," dated August 24, 2005[11]

Chapter 1, Section 1.1 defines compatibility as the condition in which the duties and responsibilities of a military technician's full-time civilian position are substantially equivalent to the duties and responsibilities of the technician's military assignment.

Chapter 1, Section 1.4 states that military technicians (dual-status) are responsible to ensure that their full-time assignments satisfy compatibility requirements against the applicable military duty positions.

Chapter 2, Section 2.1 states that the NG's full-time support program requires that all military technicians are members of the National Guard and are appointed to full-time positions which correspond to their military assignments.

Chapter 2, Section 2.1 (b) states that military technicians are assigned to a military position in the same unit in which they are employed or in a unit that is supported by the employing activity when authorized by this regulation. The full-time support member is the primary occupant of the military position and is not coded as excess.

Chapter 2, Section 2.1 (l) states that general officers are not in a pay status as military technicians unless assigned as the commanders of tactical combat units, e.g., ANG Wing Commanders or ARNG Brigade/Division Commanders. A military technician promoted to general officer cannot continue in technician employment unless he/she meets the criteria above.

TPR 715, "Voluntary and Non-Disciplinary Actions," Chapter 3, "Non-Disciplinary Action," dated June 1, 2005

Section 3-2 identified the failure to maintain a compatible military assignment as one of the situations that would constitute a failure to meet a condition of employment.

[11] On August 24, 2005, Technician Personnel Regulation (TPR) 303 replaced National Guard Regulation (NGR) 600-25/ANGI 36-102, dated March 31, 1995.

Section 3-3 states that a technician who fails to maintain the military appointment requirements specified on position descriptions must be removed from the technician position. The supervisor is responsible for issuing a written notice informing the military technician that acceptance of an incompatible military appointment will result in termination from technician employment.

National Guard Technician Handbook, dated November 10, 2004

Chapter 2, "Excepted Service," states, in part, that positions in the National Guard Technician Program that require military membership in the NG as a condition of technician employment are in the excepted service under the provisions of 32 U.S.C. 709. Loss of military membership for any reason will cause termination of technician employment. A technician is required to be assigned to a military position and unit compatible with his military technician position. Failure to maintain military compatibility is grounds for termination.

Facts

(b)(6), (b)(7)(C), testified that in November 2006, (b)(6), (b)(7)(C), (b)(6), (b)(7)(C), spoke to Maj Gen Cutler about Brig Gen Elliott's failure to terminate his military technician position as the Commander, 127th Wing, prior to becoming the AAG-Air, a State position. (b)(6), (b)(7)(C) stated Maj Gen Cutler told them it was "okay" because he had done the same thing in 2002. After researching the circumstances surrounding Maj Gen Cutler's statement, (b)(6), (b)(7)(C) determined that Maj Gen Cutler should also have terminated his military technician position as the Commander, 127th Wing, concurrent with his acceptance of the State position as the AAG-Air.

Dual-Status Military Technician

In October 2004, Brig Gen Elliott commanded the 127th Wing as a full-time GS-15 dual-status Federal military technician and traditional guardsman. He was officially named as Air Commander (Pilot/Navigator) with "direct line responsibility and full accountability for the flying unit."

In December 2005, in anticipation of the retirement of Brig Gen Kencil J. Heaton, U.S. Air Force, AAG-Air, Maj Gen Cutler identified Brig Gen Elliott as the next AAG-Air. Concurrent with that appointment, Brig Gen Elliott would command the MIANG.

Brig Gen Elliott stated, and several other witnesses confirmed, that in December 2005, he needed approximately 8 more months, or until September 17, 2006, to qualify for a Federal military technician retirement under FERS.

Request for IPA Waiver Followed by "Detail"

(b)(6), (b)(7)(C), stated that on December 7, 2005, Maj Gen Cutler requested a waiver from NGB to allow Brig Gen Elliott to participate in an Intergovernmental Personnel Act

(IPA) temporary assignment as the AAG-Air while simultaneously retaining him as a military technician in a leave without pay status until September 17, 2006.[12]

On December 15, 2005, NGB disapproved the request and stated IPA assignments did not include State Deputy or AAG positions. (b)(6), (b)(7)(C) added that on December 30, 2005, despite NGB's disapproval, Maj Gen Cutler detailed Brig Gen Elliott from his military technician position as the Commander, 127th Wing, to perform temporary duties in Lansing, MI, from December 30, 2005, to September 17, 2006.

(b)(6), (b)(7)(C) testified that the detail should have been documented on a Standard Form 52, "Request for Personnel Action," but Maj Gen Cutler did not document the purported detail in any way. She stated the detail was a scheme to enable Brig Gen Elliott to reach his September 17, 2006, retirement date and then terminate his military technician status. She also testified that Brig Gen Elliott began performing duties as the AAG-Air, a State position, in January 2006.

(b)(6), (b)(7)(C), testified that after NGB disapproved Brig Gen Elliott's IPA assignment, she should have received a Standard Form 52 terminating Brig Gen Elliott's military technician status as the Commander, 127th Wing, or "something showing he had been detailed." However, she received nothing that either detailed him to a temporary position or terminated his status as a military technician.

(b)(6), (b)(7)(C) testified it was Maj Gen Cutler's decision to detail Brig Gen Elliott as the AAG-Air from December 2005 to September 2006. He did not recall ever seeing any documentation to support the detail.

(b)(6), (b)(7)(C) testified that Maj Gen Cutler told him he had detailed Brig Gen Elliott to Lansing and that Maj Gen Cutler believed everything was legally permissible. Maj Gen Cutler told the (b)(6), (b)(7)(C) that he [Maj Gen Cutler] had done essentially the same thing in 2002, and that Brig Gen Elliott was not receiving any pay as a military technician because he was using compensatory time that he had earned.

Change-of-Command, 127th Wing

(b)(6), (b)(7)(C) On January 1, 2006, Brig Gen Michael Peplinski, U.S. Air Force, ANG, became the Commander, 127th Wing, as a full-time GS-15 dual-status military technician and traditional guardsman. (b)(6), (b)(7)(C) stated that Brig Gen Elliott should have immediately terminated his military technician position. However,

[12] The Intergovernmental Personnel Act (IPA) Mobility Program provides for the temporary assignment of personnel between the Federal government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations. The Chief, NGB, is the sole authority for approving and extending IPA agreements involving NG technicians. In accordance with the program, except for the state TAG, personnel may not be assigned to a position where they would be employed or managed by the same jurisdiction [state] before or after the exchange. Technicians assigned to a state TAG position under the terms of an IPA are placed on leave without pay from their position; remain an employee of the NG, and retain the rights and benefits attached to that status.

Brig Gen Elliott and Brig Gen Peplinski were double-slotted in the same military technician position while Brig Gen Elliott was exhausting his annual leave, which was improper.

Brigadier General (BG) James R. Anderson, Army National Guard, AAG-Army, MING, testified that when he became the AAG-Army on October 1, 2006, he terminated his military technician position as the Chief of Staff, MIARNG. (b)(6), (b)(7)(C) MING, confirmed that BG Anderson submitted a Standard Form 52 terminating his status as a military technician effective September 30, 2006. She asserted that in January 2006, after Brig Gen Elliott became the AAG-Air, he likewise should have terminated his military technician status.

Detail to Work BRAC Issues

Brig Gen Elliott testified that in December 2005, Maj Gen Cutler wanted him to replace Brig Gen Heaton as the AAG-Air, but because he did not qualify for a military technician retirement under FERS, Maj Gen Cutler decided to detail him from his military technician position at Selfridge to work BRAC issues in Lansing. Brig Gen Elliott told us that as a military technician from January 2006 to August 2006, he traveled between Selfridge and Lansing, worked BRAC transformation, and worked weekends, most holidays, and his compressed days off.

Brig Gen Elliott acknowledged there were no records to document his detail other than orders authorizing his travel from Selfridge to Lansing. Sometime before January 2006, he, Maj Gen Cutler, and several other staff members, including (b)(6), (b)(7)(C), met and decided that he would be detailed to work BRAC issues. Brig Gen Elliott also acknowledged there was a perception that by using the Federal process improperly, he and Maj Gen Cutler conspired to keep him in a military technician position so that he could qualify for a military technician retirement under FERS while simultaneously earning pay and benefits as the Commander, 127th Wing, and AAG-Air. Brig Gen Elliott understood the perception, but commented that he never received pay as the AAG-Air from January 2006 to August 2006. He was "paid as a [military] technician to perform a set of duties, and that was BRAC transformation." However, Brig Gen Elliott could not provide any evidence that he headed BRAC transformation.

When asked about who served as the AAG-Air after Brig Gen Heaton retired in January 2006, Brig Gen Elliott responded, "We had none. We didn't have one. It was a vacant position. I wasn't on the State payroll. I was performing duties as the BRAC transformation officer and Commander of the MIANG."

Maj Gen Cutler testified that he wanted Brig Gen Elliott to succeed Brig Gen Heaton as AAG-Air in January 2006. However, Brig Gen Elliott needed to continue as a military technician until mid-September 2006 to qualify for a FERS retirement so he decided to detail Brig Gen Elliott on December 30, 2005, from his military technician position to work BRAC issues. Maj Gen Cutler testified that he would have been willing to tell Brig Gen Elliott that if he wanted the job as the AAG-Air, he would have to leave his civil service military technician

status and serve exclusively in a State status as AAG-Air, or he (Maj Gen Cutler) would have to fill the AAG-Air position with someone else until Brig Gen Elliott was available.

Maj Gen Cutler testified that for then-Colonel Peplinski to get promoted to brigadier general, he needed to be in the Commander, 127th Wing position. Brig Gen Peplinski was clearly the Commander, 127th Wing and Brig Gen Elliott was not. Maj Gen Cutler was not aware of any documentation to establish that Brig Gen Elliott worked BRAC issues, and not State-related AAG-Air duties. He thought it was clear within his leadership group that Brig Gen Elliott worked only BRAC issues. Maj Gen Cutler thought he remembered telling Brig Gen Elliott not to sign any documents as the AAG-Air or to put his signature block on anything. He asserted "we did not go out and make a big production out of the fact Brig Gen Elliott was detailed as the AAG-Air . . . here."

Maj Gen Cutler testified that the AAG-Air position was a State salaried position. After Brig Gen Heaton retired in January 2006 and because he did not have an AAG-Air on the State payroll, he actually saved the State of Michigan money. His staff told him he had the authority to detail personnel and to backfill them, as in the case with Brig Gen Elliott, as long as he stayed within the budget.

Performance of AAG-Air Duties

(b)(6), (b)(7)(C) stated that Maj Gen Cutler and Brig Gen Elliott interacted regularly during the day in Lansing and worked in close proximity to each other in offices separated by a single wall. She identified numerous letters and documents where Brig Gen Elliott signed as the AAG-Air, and that his biography identified him as the AAG-Air beginning in January 2006. She testified that it was not until late 2006 that she realized Maj Gen Cutler had permitted Brig Gen Elliott to perform duties as the AAG-Air while remaining on the rolls as the Commander, 127th Wing.

Other evidence indicated Brig Gen Elliott actually performed duties as AAG-Air while double-slotted on the UMDG with Brig Gen Peplinski as the Commander, 127th Wing. (b)(6), (b)(7)(C), testified that when Brig Gen Heaton retired in early January 2006, Brig Gen Elliott succeeded him as the AAG-Air. He learned after the fact that Brig Gen Elliott had never terminated his military technician position, and that he had been double-slotted with Brig Gen Peplinski as the Commander, 127th Wing. Brig Gen Elliott told him that Maj Gen Cutler had authorized the detail so that he could work BRAC issues.

(b)(6), (b)(7)(C), testified that he knew Brig Gen Elliott and Brig Gen Peplinski were both double-slotted in the same position as Commander, 127th Wing, and that they both received Federal paychecks. He believed that as long as "he had the funding," it was permissible to double-slot them. Unless the HRO, MING, provided his office with a Standard Form 52 terminating Brig Gen Elliott from his military technician position, Brig Gen Elliott would continue to receive pay as a dual-status military technician. The (b)(6), (b)(7)(C) initially testified he did not know why Brig Gen Elliott was double-slotted with Brig Gen Peplinski, but later stated he thought it had something to do with Brig Gen Elliott extending his military technician time for retirement. He explained that after December 2005

Brig Gen Elliott was portrayed as the AAG-Air and traveled extensively between Selfridge and Lansing.

(b)(6), (b)(7)(C), testified that in November 2005 he advised Maj Gen Cutler to leave Brig Gen Elliott in his position as the Commander, 127th Wing, to retake a major inspection he had failed months before, and because he would be closer to reaching his eligibility for retirement as a military technician. Maj Gen Cutler told him, "No, we're going to bring him up [to be the AAG -Air]." He added that when Brig Gen Elliott was slotted with Brig Gen Peplinski, he was Brig Gen Peplinski's rater, which was inconsistent with the established rating scheme. Further, he stated "there should never have been one full-time military technician position with two members in the same position."

(b)(6), (b)(7)(C) testified that it was by reading an article published by the Detroit Free Press on August 15, 2007, that he learned Brig Gen Elliott had remained as a military technician for 16 months after becoming the AAG-Air on January 1, 2006. He believed Brig Gen Elliott was only interested in meeting his required gates to receive a military technician retirement. He testified:

> My thought (b)(6), (b)(7)(C) was, 'it's a gross foul.' If an individual is selected to be the AAG-Air, they've got a decision to make, and that is you accept the position and you do it correctly by selling back your leave, and then you separate from the military technician system at that time.

(b)(6), (b)(7)(C). He told us that without question, everyone recognized Brig Gen Elliott as the AAG-Air and Brig Gen Peplinski as the Commander, 127th Wing, and he was certain only a handful of people knew that both Brig Gen Elliott and Brig Gen Peplinski were double-slotted as the Commander, 127th Wing:

> When the move was made for Brig Gen Elliott to take over Brig Gen Heaton's job as the AAG-Air, it was never mentioned to me, (b)(6), (b)(7)(C), that Brig Gen Elliott was going to continue on status as a [military] technician . . . because in a perfect world, in the technician chain, I do not work for the wing commander of Selfridge (127th Wing). I work for the ATAG [AAG-Air].

BG Anderson testified that although he was not familiar with the circumstances surrounding Brig Gen Elliott, "Brig Gen Heaton was Brig Gen Elliott's predecessor as the AAG-Air, and when Brig Gen Elliott showed up [in January 2006] . . . in my mind, he [was] it."

(b)(6), (b)(7)(C) added that Brig Gen Elliott was unquestionably the AAG-Air because of the numerous documents he signed with that title.

(b)(6), (b)(7)(C) testified that his office had assignment orders moving Brig Gen Elliott from Commander, 127th Wing, to AAG-Air, and designating Brig Gen Peplinski as the Commander, 127th Wing, in December 2005. He told us Brig Gen Elliott could not be the Wing Commander and an AAG, and that "by law, if he is a Federal technician, he cannot be the AAG." Brig Gen Elliott should have resigned his military technician position concurrent with his acceptance of the State position as the AAG-Air.

(b)(6), (b)(7)(C), explained that both Brig Gen Elliott and Brig Gen Peplinski encumbered the same military technician position as the Commander, 127th Wing, for 16 months. After acknowledging the Federal government paid both Brig Gen Elliott and Brig Gen Peplinski for the same position for 16 months, she could not offer any further details as to whether it was appropriate or not.

(b)(6), (b)(7)(C) In January 2006, Maj Gen Cutler introduced Brig Gen Elliott to him as the AAG-Air, and told him Brig Gen Elliott would remain on the Federal payroll until he met certain conditions for his military technician retirement, and that Brig Gen Elliott would not start on the State payroll until September 2006. (b)(6), (b)(7)(C) testified he had never seen this type of action before, and that even though Brig Gen Elliott was not on the State payroll until August 13, 2006, he thought everyone within the MING knew Brig Gen Elliott had been the AAG-Air since January 2006.

(b)(6), (b)(7)(C) recalled a specific conversation with Maj Gen Cutler about Brig Gen Elliott's pay status between January and August 2006. He testified, "I knew we weren't paying him [from January to August 2006]." Maj Gen Cutler told him, "We're going to save the State a bunch of money until mid year after we put Brig Gen Elliott on [State] status, and that he was on Federal status until then."

Brig Gen Elliott testified he was not the AAG-Air until August 13, 2006. The many documents he signed as AAG-Air between January 1 and August 13, 2006, "should have read, Michigan Air National Guard Commander." Brig Gen Elliott had no explanation for the discrepancy.

Table 1 illustrates calendar year (CY) 2005 and identifies documents indicating that Brig Gen Elliott was appointed as the AAG-Air.

TABLE 1: Calendar Year 2005

Date(s)	Documents/Actions	Remarks
10-06-05	Michigan National Guard Public Affairs Announcement	Brig Gen Elliott was named as new AAG-Air and Deputy Director, DMVA, and replaces Brig Gen Heaton.
Winter 2005	"The Wolverine Guard" (a news publication released by DMVA)	Brig Gen Elliott was identified as new AAG-Air and Deputy Director, DMVA, effective January 2006. The publication named Brig Gen Peplinski as successor to Brig Gen Elliott as the Commander, 127th Wing.
2005	Special orders: ANG G-7-MI; ANG G-23-MI; ANG G-24-MI	Brig Gen Elliott was relieved as Commander, 127th Wing, and appointed as AAG-Air effective December 30, 2005. In addition to duties as AAG-Air, Brig Gen Elliott assumed command of MIANG.

2005	Special Orders: ANG G-107-MI; GO M-341-05-01; ANG G-22-MI; Standard Forms 52/50 (Request - Notification for military technician promotion from GS-14 to GS-15)	Brig Gen Peplinski was promoted to current grade effective December 30, 2005; NGB GOMO extended Federal recognition to Brig Gen Peplinski as Commander, 127th Wing; Brig Gen Peplinski was appointed as Commander, 127th Wing.
12-07-05	Memorandum to NGB	Maj Gen Cutler requested a waiver for an IPA assignment for Brig Gen Elliott. On December 15, 2005, NGB disapproved the request stating that an "IPA assignment did not include State Deputy or AAG positions."
12-30-05	Classification on-the-job training action document; Military Personnel Data System document	Brig Gen Elliott was reassigned from Commander, 127th Wing, to AAG-Air and Commander, MIANG. Maj Gen Cutler was identified as Brig Gen Elliott's rater.
12-30-05	Classification on-the-job training action document	Brig Gen Peplinski was reassigned as Commander, 127th Wing. Brig Gen Elliott was Brig Gen Peplinski's rater.
(undated)	Biographical summaries	Effective January 2006, Brig Gen Elliott and Brig Gen Peplinski were identified as the AAG-Air and Commander, 127th Wing, respectively.

Table 2 identifies CY 2006 and CY 2007 documents and actions to indicate Brig Gen Elliott was performing State duties as the AAG-Air.

TABLE 2: Calendar Years 2006 and 2007		
Date(s)	**Documents/Actions**	**Remarks**
01-06-06	Brig Gen Heaton's retirement ceremony	The Master of Ceremonies introduced Brig Gen Elliott as the new AAG-Air and Brig Gen Peplinski as Commander, 127th Wing.
01-06	Minutes from Michigan Aeronautics Commission meeting, January 2006, and other associated documents	The record identified Brig Gen Elliott as a new 4-year statutory member of the Michigan Aeronautics Commission and stated that he was appointed as AAG-Air, Deputy Director DMVA, and he replaced the former statutory member, Brig Gen Heaton.
02-04-06 02-15-06	Retention incentive nominations/justification requests	As AAG-Air, Brig Gen Elliott signed nomination/justification requests for two employees.
03-14-06	State travel expense voucher	As the Deputy Director, DMVA, Brig Gen Elliott traveled to Washington, D.C. to meet with a Congressional Delegation from March 7 to March 9, 2006.
04-17-06 to 04-19-06	MIANG 2006 Civic Leader Tour (State of Michigan, DMVA)	As AAG-Air, Brig Gen Elliott hosted the civic tour to enhance the civic leaders understanding of DoD. Brig Gen Elliott was photographed, signed invitations, welcome letters, and other related documents as AAG-Air.
04-20-06	Quality Step Increase (QSI)	As AAG-Air, Brig Gen Elliott authorized and justified a QSI (Step 4 to 5) for Brig Gen Peplinski, Commander, 127th Wing.
05-16-06	Military Awards (Certificates)	Maj Gen Cutler authorized several military awards to Airmen in the MIANG; he signed the certificates as the TAG, and Brig Gen Elliott signed them as the AAG-Air.
07-21-06	Special order: ANG G-28-MI	Brig Gen Elliott changed the effective date of his assignment and appointment as AAG-Air from December 30, 2005, to August 13, 2006, by having amended Special order ANG-G-7 MI, dated December 2, 2005 (TAB 45).
Summer 06 Winter 06	"The Wolverine Guard"	The publication identified Brig Gen Elliott as the AAG-Air, MIANG. In the winter 2006 edition, Brig Gen Elliott stated, "My first year as AAG-Air has been very exciting!"
Winter 06	The "2006 Annual Report of the Adjutant General to the Governor"	The publication identified Brig Gen Elliott as the Commander, MIANG, and as AAG-Air and Deputy Director, DMVA.
08-13-06	Appointment Approval Request	Maj Gen Cutler appointed Brig Gen Elliott as the AAG-Air and Deputy Director, DMVA, and special appointee, permanent, career, full-time State employee, effective August 13, 2006.

08-16-06	State oath of office	Brig Gen Elliott executed a State oath as a condition for his employment with the State.
03-01-07	State Headquarters Unit Manning Document	The unit manning document identified Brig Gen Elliott as both the AAG-Air (a State position) and as a [military] technician, Commander, 127th Wing.
03-14-07	Thrift Savings Plan (TSP) Election Form [13]	Brig Gen Elliott initiated changes to his Federal TSP (retirement savings plan for civilians) contributions of (b)(6), (b)(7)(C)
04-26-07	Standard Form 52 "Request for Personnel Action"	Brig Gen Elliott requested to terminate his military technician position as Commander, 127th Wing, effective April 28, 2007.
04-28-07	Standard Form 50 "Notification of Personnel Action"	Brig Gen Elliott's military technician status was terminated.
01-01-05 to 04-28-07	Brig Gen Elliott's military technician pay history	The records reflected he was paid a full-time Federal salary.
05-01-07	Email message traffic between Maj Gen Cutler and a (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)	Maj Gen Cutler approved Brig Gen Elliott's termination as a military technician, effective April 28, 2007.

Termination of his dual-status military technician position

Two witnesses testified that in July 2006 Brig Gen Elliott directed an (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), to change the effective date of his replacement as the Commander, 127th Wing and appointment to AAG-Air from December 30, 2005, to August 13, 2006. Several witnesses testified that changing the effective date this way potentially nullified all of the acts, decisions, and signatures Brig Gen Elliott accomplished as the AAG-Air between December 30, 2005, and August 13, 2006. The witnesses could not understand why Brig Gen Elliott changed the effective date to August 13, 2006, since he needed another month, or until September 17, 2006, to qualify for a military technician retirement under FERS. (b)(6), (b)(7) (b)(6), (b)(7)(C), testified he had no knowledge of the recent order until after DoDIG started investigating the matter. Brig Gen Elliott testified he needed the more recent order so that he could process into the State payroll on August 13, 2006.

(b)(6), (b)(7)(C) testified that after Brig Gen Elliott started on the State payroll as the AAG-Air on August 13, 2006, one of her employees sent Brig Gen Elliott's (b)(6), (b)(7)(C) an email asking about the status of the Standard Form 52 terminating him as a military technician. In response to the email, (b)(6), (b)(7)(C) wrote, "Brig Gen Elliott said he shouldn't be terminating yet because he's still using up his leave." (b)(6), (b)(7) (b)(6), (b)(7)(C) thought Brig Gen Elliott was putting the HRO staff off and delaying the inevitable. Brig Gen Elliott was ultimately responsible for failing to terminate his military technician position and he "knew that it was wrong because we specifically went to NGB and requested that he be allowed to remain on the books [on an IPA] until a certain date to get him to retirement, and they told us no."

Maj Gen Cutler testified he was unaware of the new Special order, ANG G-28-MI, dated July 21, 2006, which changed the effective date of Brig Gen Elliott's assignment and appointment as AAG-Air from December 30, 2005, to August 13, 2006. He insisted he never gave Brig Gen Elliott permission to generate the new order. He did not understand the reason for the new order and did not realize Brig Gen Elliott had stayed on the books as a military

[13] At the time Brig Gen Elliott made monetary changes to his military technician retirement thrift savings plan, he had been a salaried state employee since August 13, 2006.

technician until April 2007. He agreed to permit Brig Gen Elliott to reach his military technician retirement of September 17, 2006, but did not assent to anything beyond that. He emphasized, "That's all I signed up for. I will guarantee I wasn't, you know, getting, drilling down into the administrative details of what we were doing."

Discussion

We conclude that Brig Gen Elliott failed to terminate from his dual-status military technician position when required.

We found that Brig Gen Elliott began working as a dual-status military technician in 1996. In October 2004, he took command of the 127th Wing and began serving in the military technician position of Air Commander (Pilot/Navigator), which was compatible with the military position of wing commander. On December 30, 2005, he accepted appointments as AAG-Air; Deputy Director, DMVA; and Commander, MIANG, and was reassigned to the 110th Fighter Wing in Battle Creek as a consequence of those appointments. However, Brig Gen Elliott needed to serve in his military technician position at the 127th Wing until September 2006 to qualify for retirement benefits under FERS. Although another officer assumed command of the 127th Wing in Selfridge, Brig Gen Elliott did not act to terminate his Federal employment at the 127th Wing until April 28, 2007. He remained on the books there as a military technician for 16 months, double-slotted with the new wing commander in the Air Commander (Pilot/Navigator) position, which required an officer to perform the "paramount requirement" of "direct line responsibility and full accountability for the flying unit."

Maj Gen Cutler asked NGB for permission to permit Brig Gen Elliott to participate in an IPA assignment as the AAG-Air and remain assigned to the 127th Wing until September 2006. Under the claim of working BRAC transformation, Maj Gen Cutler and Brig Gen Elliott proceeded with their plan even though NGB denied the IPA request. We found insufficient evidence to establish that Brig Gen Elliott performed substantially as a detailee on BRAC issues. We found clear and consistent evidence, which established that he actually performed substantial duties as the full-time AAG-Air; the Commander, MIANG; and Deputy Director, DMVA beginning January 1, 2006, and that he began receiving State pay as the AAG-Air beginning on August 13, 2006. We also found that NGB was unaware Brig Gen Elliott had purportedly been detailed.

DoDD 1205.18 required Brig Gen Elliott to maintain active status in the 127th Wing as a condition of continued employment as a military technician in that unit. TPR 715 also required the military and civilian positions for military technicians to be compatible, and mandated removal from the technician position if Brig Gen Elliott failed to maintain a compatible military assignment. TPR 303 authorized the Commander, 127th Wing, to be in a pay status as a military technician, but required the Commander to be the primary occupant of the military technician position of Air Commander (Pilot/Navigator). Title 5, U.S.C. required that details would be made only by written order of the head of an executive department or military department and for not more than 120 days. ANGI 36-2101 prohibited military technicians, which Brig Gen Elliott was, from being placed in an excess status without prior coordination and written approval from NGB.

We determined that Brig Gen Elliott's extension of his Federal service past January 1, 2006, to qualify for retirement benefits under FERS, violated DoDD requirements that military technicians be members of the unit that employed them as a civilian, because he had been militarily transferred to the 110th Fighter Wing. It violated DoDD 1205.18, which required military technicians to maintain active status in the Reserve component unit in which they were employed as a civilian and TPR 715, which mandated that military technicians be removed from their positions if they failed to maintain compatibility between their civilian and military jobs. We determined that Brig Gen Elliott's service as the AAG-Air and Deputy Director, DMVA, was incompatible with continued service as a military technician in the 127th Wing. Brig Gen Peplinski served as the Air Commander (Pilot/Navigator) and Brig Gen Elliott was double-slotted with him. Finally, Brig Gen Elliott's actions resulted in a violation of the ANGI prohibition against officers being carried as excess against a general officer authorization, and the requirement to first coordinate and obtain approval by NGB-GOMO.

Response to Preliminary Conclusion

Brig Gen Elliott cited a "lack of career termination guidance for Military Technicians Transitioning to State Adjutant General Positions," and stated he should not be penalized for relying on advice he received from others.

After carefully considering Brig Gen Elliott's response, we stand by our conclusion. We found no shortage of guidance to establish that Brig Gen Elliott was required to terminate from his dual-status military technician position on December 30, 2005. A similarly situated general officer in the MI National Guard found the guidance sufficient. When he was nominated as the AAG-Army, he promptly terminated from his military technician position in order to accept the position. Additionally, an (b)(6), (b)(7)(C) confirmed that after Brig Gen Elliott became the AAG-Air, he should have done likewise by submitting a Standard Form 52 to terminate his military technician status. Further, Brig Gen Elliott's reliance on the advice he said he received from others was not reason enough to absolve him of his responsibilities for terminating from his dual-status military technician position as required by Federal law and DoD regulations.

B. Did Brig Gen Elliott use his public office for private gain, improperly certify time and attendance records, and improperly receive Federal pay and benefits?

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993, including changes 1-6 (March 23, 2006)

Section 2635.702, "Use of public office for private gain," states that an employee shall not use his public office for his own private gain.

DoD 7000.14-R, "Financial Management Regulation (DoDFMR)," Volume 8, "Civilian Pay Policy and Procedures," Chapter 2, "Time and Attendance," dated February 2002

Section 0202, "Requirements," subsection 020206, "Work Schedules," paragraph A, "Basic Work Requirement," states that the basic work requirement is defined as the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave. Generally, a full-time employee's basic work requirement is 80 hours in a pay period.

Subsection 020102, "Responsibilities,"

"Approving Official's Responsibilities," states, in part, that when approving time and attendance reports, supervisors, other equivalent officials, or higher level managers are representing that to the best of their knowledge the actual work schedules recorded are true, correct, and accurate. Review and approval shall be made by the official, normally the immediate supervisor, most knowledgeable of the time worked and absence of the employees involved. The approving official may assign responsibility for observing daily attendance or accurately recording time and attendance data to a timekeeper or in limited circumstances as addressed in paragraph 020404 of this chapter, the individual employee. Assignment of these duties does not relieve the approving official of the responsibility for timely and accurate reporting of the time and attendance which he or she approves, including that leave is approved and administered in accordance with applicable policies, regulations, instructions, and bargaining agreements.

"Timekeeping Responsibilities," states that individuals performing the timekeeping function are responsible, in part, for:

- Timely and accurate recording of all exceptions to the employee's normal tour of duty.

- Ensuring that employees have attested to the accuracy of their current pay period's time and attendance (including any exceptions such as use of leave) and any adjustments or corrections that are required after time and attendance is approved.

- Ensuring that all entries for overtime and compensatory time earned have been approved, and totals are correct before certification.

Section 0204, "Time and Attendance Certification," subsection 020401, "Controls," states that each employee's time and attendance shall be certified correct by the employee's supervisor, acting supervisor, or other designated representative authorized to act as an alternate certifier.

Subsection 020406, "Exceptions," states that exceptions to the general prohibition of employees approving their own time and attendance recordings are intended to apply only when it is not feasible for employees described to have their time and attendance report approved by a supervisor. In such instances, the Component head or designee shall grant an official authorization in writing. These exceptions are:

- An employee working alone at a remote site for long periods.

- Employees are based at, but frequently away from, the location of their supervisors and timekeepers during working hours.

- The employee is head of an organization within an agency that has no supervisor on site.

DoD 7000.14-R, "DoDFMR," Volume 8, "Civilian Pay Policy and Procedures," dated August 1999

Chapter 3, "Pay Administration," Section 0303, "Premium Pay," states in part that:

- Compensatory time worked must be approved in advance in writing and administered in accordance with subsection 020208 of DoDFMR.

- NG employees are not paid for unused compensatory time worked. They must use their compensatory time by the end of the 26th pay period after it is earned or forfeit that compensatory time.

- When an employee separates, dies, or transfers to another DoD Component (e.g., from Army to Navy, or Air Force to the Defense Logistics Agency) or the employee moves to a non-DoD agency (e.g., Army to Department of the Treasury) the losing Component shall pay for any unused compensatory time balances. NG employees are not paid for unused compensatory time.

Chapter 5, "Leave," states in part that:

- Section 0502, "Annual Leave," subsection 050206, "Unused Annual Leave," states that upon separation from Federal employment, all employees are entitled to a lump-sum payment for the balance of their annual leave account.

- Section 0510, "Compensatory Time Used," subsection 051003, states, in part, that Title 32 NG shall forfeit any unused compensatory time when they separate or transfer to another DoD Component or Federal agency.

- Section 0526, "Leave Without Pay," subsection 052601, states that leave without pay is a temporary nonpay status and absence from duty granted at the employee's request.

Title 10, U.S.C., "Armed Forces," Chapter 1007, "Administration of Reserve Components"

Section 10214, "Adjutants general and assistant adjutants general," states, in part, that in any case in which, under the laws of a state, an officer of the NG of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the title of the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general.

Section 10216, "Military Technicians (dual-status)," states, in part, that:

A military technician (dual-status) is a Federal civilian employee who is employed under Title 32, Section 709, and is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

"Unit Membership Requirement." Unless specifically exempted by law, each individual who is hired as a military technician (dual-status) after December 1, 1995, shall be required as a condition of employment to maintain membership in a unit of the Selected Reserve by which the individual is employed as a military technician, or a unit of the Selected Reserve that the individual is employed as a military technician to support.

National Guard Regulation (NGR) 600-25/Air National Guard Instruction (ANGI) 36-102, "Military Technician Compatibility," dated March 31, 1995

A military technician must be the primary occupant (the individual assigned and annotated on the unit-manning document) of the military position. Compatibility is defined as the condition in which a military technician assignment is substantially equivalent to the duties described in the full-time technician position description. General Officers may not be in a pay status as a technician except ANG technician position descriptions requiring the incumbent to be the commander of a tactical combat unit (e.g., 127th Wing).

TPR 630, "Absence and Leave Program," dated March 1, 2006

Chapter 11, "Compensatory Time," states that:

Compensatory time is accrued only in support of activity/base/unit missions, should be requested in advance, and must be approved by the supervisor. Military technicians are not entitled to receive a lump sum payment for accumulated compensatory time upon separation from military technician employment. Compensatory time is forfeited upon separation.

Facts

Failure to Terminate Federal Employment as a Dual-Status Military Technician

As established earlier in this report, Brig Gen Elliott began working as a dual-status military technician in 1996. He assumed command of the 127th Wing and began working full-time as a dual-status military technician in that unit in October 2004. As Commander, 127th Wing, which normally included performing military duty one weekend each month and 2 weeks annually, Brig Gen Elliott, as a military technician, had a "4/10" compressed work schedule, under which he worked four 10-hour days in a week and had Mondays off. On December 30, 2005, Brig Gen Elliott accepted an appointment as the AAG-Air, a full-time State job, and began receiving a State salary for that position on August 13, 2006. However, he did not terminate as required from his dual-status military technician position until April 28, 2007.

Based on this determination, we investigated whether Brig Gen Elliott received Federal pay and benefits to which he was not entitled. Specifically, we discuss annual leave, compensatory time, retention incentive pay, and other pay and benefits below. During this investigation we also discovered evidence that Brig Gen Elliott improperly certified his own time and attendance records.

Certification of Time and Attendance Records

(b)(6), (b)(7)(C) told us many of Brig Gen Elliott's time and attendance records were missing for the period December 2005 to April 2007. The records we reviewed reflected Brig Gen Elliott stayed on the books at the 127th Wing after he was militarily transferred to the 110th Fighter Wing on December 30, 2005, and began full-time employment with the State as the AAG-Air in Lansing. Brig Gen Elliott's pay records did not show he received a lump sum payment for accrued annual leave or forfeited his unused compensatory time. Instead, they reflected he earned and took compensatory time or accrued and took annual, sick, and military leave. They reflected that while Brig Gen Elliott was purportedly detailed to Lansing, (b)(6), (b)(7)(C), 125 miles from Lansing, recorded 80 hours per pay period and documented absences by exception. Finally, most of the time and attendance records contained Brig Gen Elliott's own initials as the certifier and none by his immediate supervisor, Maj Gen Cutler.

(b)(6), (b)(7)(C), testified that Maj Gen Cutler should have been certifying Brig Gen Elliott's time and attendance records. Maj Gen Cutler testified he never signed any of them. Brig Gen Elliott asserted that he always submitted "detailed" timecards to the timekeeper at Selfridge. He added that an Air Force audit several years ago validated the process by which time and attendance procedures were handled at Selfridge, so he continued the same practice.

The Wright-Patterson Air Force Base Area Audit Office performed an audit during October and November 2003, as part of an Air Force-wide evaluation of National Guard Compensation.[14] The audit focused on whether the 127th Wing at Selfridge managed dual compensation in accordance with statutory requirements; specifically, whether military technicians were off duty or in an official leave status from their civil service position when they participated in military duty to ensure they did not receive dual compensation. We found no evidence that the Air Force audit had anything to do with the propriety of the procedures for managing time and attendance at Selfridge, as Brig Gen Elliott had asserted.

Annual Leave

At the end of December 2005, Brig Gen Elliott had an annual leave balance of 238 hours. Table 3 illustrates Brig Gen Elliott's claimed accrual and usage of annual leave (as a Federal employee) after being appointed as the AAG-Air.

[14] Air Force National Guard Compensation, Project F2003-FB1000-0385.000.

TABLE 3: Annual Leave Balance										
	2005	January 2006	February 2006	March 2006	April 2006	May 2006	June 2006	July 2006	August 2006	Total
Annual Leave Accrued	N/A	16	16	16	16	16	16	16	16	**128**
Annual Leave Used	N/A	0	0	0	0	0	0	0	20	**20**
Annual Leave Balance	**238**	254	270	286	302	318	334	350	346	**346**

Brig Gen Elliott was required to terminate his military technician position at the end of 2005, prior to assuming the AAG-Air position. We calculated that he would have received a lump sum payment of $15,829.38 for his unused annual leave balance.[15] The table also reflects that between January and August 2006, Brig Gen Elliott claimed to have earned 128 hours and used 20 hours of annual leave. On August 13, 2006, the date Brig Gen Elliott began receiving a State salary as AAG-Air, he had an annual leave balance of 346 hours.

Table 4 illustrates Brig Gen Elliott's claimed accrual and usage of annual leave as a Federal employee until his termination as a military technician.

TABLE 4: Annual Leave Balance (August 13, 2006 to April 28, 2007)										
	August 2006	September 2006	October 2006	November 2006	December 2006	January 2007	February 2007	March 2007	April 2007	Total
Annual Leave Accrued	N/A	16	14	13	16	16	16	24	16	**131**
Annual Leave Used	N/A	50	80	10	0	33	0	0	155	**328**
Annual Leave Balance	**346**	312	246	249	265	248	264	288	149	**149**

Based on Brig Gen Elliott's leave and earnings statement, after he began receiving a State salary as the AAG-Air, he continued to accrue an additional 131 hours of annual leave as a dual-status military technician. During the same period, he also used 328 hours. Upon formally terminating his status as a military technician, effective April 28, 2007, Brig Gen Elliott received a lump-sum payment of $9,959.00 for his unused annual leave balance of 149 hours.

[15] We used the following formula: 238 (hours) x $66.51 (hourly rate of pay) = $15,829.38.

Compensatory Time

Brig Gen Elliott asserted that he was a "workaholic," typically worked "fifty, sixty hour workweeks, and most weekends." Brig Gen Elliott's military technician time and attendance records reflected that he recorded, certified, claimed, and received 10 to 12 hours of compensatory time for almost every Saturday, Sunday, Monday (his scheduled days off), and holidays between January and August 2006. His time and attendance records did not describe the justification for working the compensatory hours or whether Maj Gen Cutler approved the additional time in advance.

At the end of December 2005, Brig Gen Elliott had a balance of 211 compensatory hours. Table 5 illustrates Brig Gen Elliott's purported accrual and usage of compensatory time (as a Federal employee) after being appointed as the AAG-Air.

TABLE 5: Compensatory Time from January 2006 to August 2006

	2005	January 2006	February 2006	March 2006	April 2006	May 2006	June 2006	July 2006	August 2006	Total 2006	Net
Compensatory Time Earned	N/A	83.5	96.5	108.5	132.5	99	73	91.5	18	**702.5**	**913.5**
Compensatory Time Used	N/A	0	33.5	30	0	10	11	10	14	108.5	**108.5**
Compensatory Time Balance	**211**	294.5	357.5	436	568.5	657.5	719.5	801	805	594	**805**

Brig Gen Elliott would have forfeited the 211 hours of compensatory time, valued at approximately $14,033.61, if he had terminated his military technician position at the end of 2005, as required.[16] Brig Gen Elliott's leave and earnings statements from January to August 2006 also indicate that he claimed an additional 702.5 hours of compensatory time, while using 108.5 hours. At the beginning of August 2006, Brig Gen Elliott had a balance of 805 hours of compensatory time.

Beginning in September 2006, Brig Gen Elliott began using a significant amount of compensatory time. Table 6 illustrates that Brig Gen Elliott exhausted all 805 hours of compensatory time by the time he terminated his Federal employment on April 28, 2007.

[16] We used the following formula: 211 (hours) x $66.51 (hourly rate of pay) = $14,033.61.

TABLE 6: Compensatory Time from August 2006 to April 2007										
	August 2006	September 2006	October 2006	November 2006	December 2006	January 2007	February 2007	March 2007	April 2007	Grand Total
Compensatory Time Used	N/A	90	0	60	150	100	160	160	85	**805**
Compensatory Time Balance	**805**	715	715	655	505	405	245	85	0	**0**

We calculated the total value of the hours of compensatory time to be approximately $60,756.89.[17] This includes the 211 hours he should have forfeited upon assuming the AAG-Air position, and the subsequent 702.5 hours he claimed he earned from January to August 2006.

On April 26, 2007, Brig Gen Elliott generated and signed his own Standard Form 52 requesting to terminate his Federal employment as a military technician at the 127th Wing. A Standard Form 50, "Notification of Personnel Action" documented the action, which had an effective date of April 28, 2007.

Witnesses unanimously testified to their skepticism that Brig Gen Elliott properly accounted for his time and attendance. They thought it was implausible he could have earned more than 800 hours of compensatory time between January and August 2006, and believed Maj Gen Cutler should have approved such time in advance.

Maj Gen Cutler testified that while he was sure Brig Gen Elliott worked well in excess of 40 hours per week, he never authorized any compensatory time for Brig Gen Elliott and was surprised to learn Brig Gen Elliott had claimed so many hours. Brig Gen Elliott explained that as a military technician, he normally averaged 20 hours over and above the normal workweek and while 800 hours of compensatory time seemed high, he often worked back-to-back weekends.

Brig Gen Elliott stated he wrote a letter to Maj Gen Cutler in which he wrote that while he "was not admitting guilt," he would pay back all of the compensatory time because of the "recent media coverage and the negative impact it had on the MING."

Retention Incentive Pay

On November 30, 2007, the Michigan United States Property & Fiscal Officer (USPFO) completed a comprehensive review of the MING Technician Retention Bonus Program, which included a detailed evaluation of retention incentive payments for MING members.[18] The

[17] We used the following formula: 913.5 (hours) x $66.51 (hourly rate of pay) = $60,756.89

[18] According to the Office of Personnel Management (OPM), an employee may be paid a retention incentive upon written determination by the authorizing official that the unusually high or unique qualifications of the employee or a special need of the organization for the employee's services makes it essential to retain the employee, and that absent a retention incentive, the employee would be likely to leave Federal service.

USPFO review reflected that between December 2005 and April 2007, Brig Gen Elliott improperly received $3,027.50 in retention incentive payments.

Pay and Benefits Summary

We estimated that if Brig Gen Elliott had terminated his dual-status military technician position on December 30, 2005, as required, he would have received $15,829.38 for his unused annual leave balance, forfeited any unused compensatory time, and ceased to receive additional pay and benefits. We estimated he used regular hours, compensatory time, annual leave, holiday leave and retention incentives to receive $184,411.90 in gross Federal pay between January 1, 2006, and April 28, 2007.[19] The final $9,959.00 payment he received on April 28, 2007, for his unused annual leave balance brought his total Federal pre-tax compensation after December 30, 2005, to approximately $194,370.90. This total does not include the value of Federal benefits such as employer contributions to social security, continued participation in the Thrift Savings Plan, and continued coverage by group life and health insurance.

Discussion

We conclude that Brig Gen Elliott used his public office for private gain, improperly certified his own time and attendance records, and received Federal pay and benefits to which he was not entitled.

As discussed earlier in this report, we concluded that Brig Gen Elliott was required to terminate his military technician position at the end of 2005, prior to accepting appointments as the AAG-Air; Deputy Director, DMVA; and Commander, MIANG. As a consequence, Brig Gen Elliott would have been paid $15,829.38 for his unused annual leave balance and forfeited 211 hours of his unused compensatory time.

We also found that Brig Gen Elliott used regular hours, compensatory time, annual leave, holiday leave, and retention incentives to extend his employment with the Federal government while receiving pay and benefits. We found that he received approximately $184,411.90 in gross Federal pay between January 1, 2006, and April 28, 2007, and $9,959.00 for his unused annual leave - totaling approximately $194,370.90. In addition, he began receiving a State salary on August 13, 2006.

Further, we found that Brig Gen Elliott did not submit his time and attendance records for the period in question to his supervisor, and that he instead approved them himself without supervisory review. We found that between January and August 2006, Brig Gen Elliott claimed 702.5 hours of compensatory time, without prior approval of his supervisor. He subsequently exhausted those hours prior to terminating his status as a military technician in April 2007.

[19] We used the following formula: 16 (pay periods through August 2006) x 80 (hours per pay period) x $66.51 (hourly rate of pay) + 18 (pay periods between September 2006 and April 2007) x 80 (hours per pay period) x $66.84 (increased hourly rate of pay) + $3,027.50 (retention incentive pay) = (16 x 80 x 66.51) + (18 x 80 x 66.84) + 3,027.50 = $184,411.90.

The DoDFMR states that Federal employees are entitled to a lump-sum payment for unused annual leave when they separate from Federal employment, and requires Title 32 NG employees to forfeit unused compensatory time upon separation. The DoDFMR also requires that each employee's time and attendance be certified correct by the employee's supervisor, acting supervisor, or other designated representative authorized to act as an alternate certifier, and that supervisors preapprove the earning of compensatory time.

We determined that Brig Gen Elliott would have received a lump-sum payment for his annual leave. However, he was not entitled to any Federal pay and benefits after January 1, 2006, to include base pay, the accrual of annual leave and compensatory time, or participation in the Thrift Savings Plan.

As such, we determined that the difference between $194,370.90, the estimated compensation received after December 30, 2005; and $15,829.38, his entitlement for unused leave as of that date, was an amount to which Brig Gen Elliott was not otherwise entitled. This difference totaled an estimated $178,541.52. Additionally, we found that he also improperly received $3,027.50 in retention incentive payments.

Finally, we determined that Brig Gen Elliott took these improper actions for his own private gain, which was inconsistent with the JER prohibition against such behavior.

Response to Preliminary Conclusion

Brig Gen Elliott did not dispute our determination that he improperly certified his own time and attendance records. Regarding improper receipt of Federal pay and benefits, he offered several points that he believed were relevant. Brig Gen Elliott asserted that between December 30, 2005, and August 13, 2006, he volunteered his services to the State of Michigan and received no compensation from the State. After the State began paying him on August 13, 2006, Brig Gen Elliott only continued to receive Federal pay and benefits by "drawing down" accrued compensatory time and annual leave in a "terminal leave" status. (b)(6), (b)(7)(C) advised him this was not improper. Brig Gen Elliott asserted that these arrangements were permissible due to his "detail" from the 127th Wing to work BRAC issues, beginning on December 30, 2005. His detail from the 127th Wing meant he was not required to terminate from his dual-status military technician position when he relinquished command of the wing. Finally, the requirement of military technician compatibility with military duties was not an issue because he was properly detailed.

After carefully considering Brig Gen Elliott's response, we stand by our conclusion. As established previously, Brig Gen Elliott failed to terminate his dual-status military technician position on December 30, 2005, as required. That Brig Gen Elliott received no compensation from the State of Michigan until August 13, 2006, was not relevant. He was not entitled to any Federal compensation after December 30, 2005.

Further, his statement that he provided services to the State strictly on a voluntary basis was not credible. We found ample evidence Brig Gen Elliott performed duties as the AAG-Air,

a full-time state job which he now claims he performed as a volunteer. We found no evidence he performed duties related to the BRAC, the purported nexus to Federal duties, yet Brig Gen Elliott would have us believe he performed these duties full-time. Brig Gen Elliott even claimed 702.5 hours in Federal compensatory time between January and August 2006.

In addition, TPR 303 provides that Brig Gen Elliott could not be in a pay status as a full-time military technician unless he was the primary occupant and Air Commander (Pilot/Navigator) of the 127th Wing. After December 30, 2005, Brig Gen Peplinski was the primary occupant, and Brig Gen Elliott was not. Moreover, even if regulations provided for such authority, there was no authority to allow Brig Gen Elliott to have "volunteered" his Federal time as a full-time military technician to perform inherently full-time State duties as the AAG-Air. Essentially, the Federal Government paid for Brig Gen Elliott to perform State duties in a State position for which the State should have paid.

Finally, Brig Gen Elliott's statement that it was not improper to draw down unused compensatory and leave time while in a "terminal leave" status after August 13, 2006, is incorrect. Dual-status military technicians and traditional guardsman are not eligible to take "terminal leave." After being selected as the AAG-Air on December 30, 2005, Brig Gen Elliott had to forfeit any unused compensatory time and receive a lump-sum payment for all unused annual leave.

C. Did Brig Gen Elliott improperly claim TDY expenses related to travel to his new official duty station?

Standards

DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993, including changes 1-6 (March 23, 2006)

Section 2635.702, "Use of public office for private gain," states that an employee shall not use his public office for his own private gain.

Joint Travel Regulations (JTR), Volume 2 (Department of Defense Civilian Personnel), dated December 1, 2005

Appendix A defines the following terms:

- Temporary Duty Travel. Travel to one or more places away from a permanent duty station to perform duties for a period of time and, upon completion of assignment, return or proceed to a permanent duty station.

- Permanent Change of Station. In general, the assignment, detail, or transfer of an employee to a different permanent duty station under a competent travel authorization that does not specify the duty as temporary, provide for further assignment to a new permanent duty station, or direct return to the old permanent duty station.

- Permanent Duty Station. Also called "Official Station." The employee's permanent work assignment location. For the purpose of determining PCS travel allowances, a permanent duty station is the building or other place (base, post, or activity) where an employee regularly reports for duty. With respect to authorization under these regulations relating to the residence and the household goods (HHG) and an employee's personal effects, permanent duty station also means the residence or other quarters from (to) which the employee regularly commutes to (and from) work.

Section C1050B, "Travel Justification," states that travel and transportation at Government expense may be directed only when officially justified, and by means which meet mission requirements consistent with good management practices.

Section C1058, "Obligation to Exercise Prudence in Travel," states that Federal employees have an obligation to exercise prudence in travel. Employees must exercise the same care and regard for incurring expenses to be paid by the Government as would a prudent person traveling at personal expense. Excess costs, circuitous routes, delays, or luxury accommodations that are unnecessary or unjustified are the traveler's financial responsibility.

Section C4113, "TDY Station becomes permanent duty station (PDS)," states that generally, when an employee is transferred for permanent duty to a place at which the employee is already on TDY, the transfer is effective for per diem purposes on the date the employee receives definite notice, whether formal or informal, of the transfer. [20] Per diem stops on the date the employee receives the notice. This, however, does not apply if the employee performs a TDY period or periods at the new PDS between the time the employee receives definite notice of the transfer and the effective date of the transfer if such period or periods are terminated by a return to the old PDS at which the employee performs substantial duty.

Section C4405 states that TDY assignments may be authorized and approved only when necessary in connection with official DoD activities or Government business. This provision further provides that procedures must be in place to evaluate TDY requests to ensure that the purpose is essential official business, cannot be satisfactorily accomplished less expensively by correspondence or other appropriate means, the duration is no longer than required, and the number of persons assigned is held to a minimum.

Section C4410 defines TDY travel as an assignment away from the employee's PDS that it is not so frequent or lengthy that the location is, in fact, the employee's PDS.

[20] DoDFMR, Volume 9, stated that a permanent duty station was referred to as an "official station."

DoDFMR, "Volume 9, "Travel Policy and Procedures," dated May, September, and October 2005

Chapter 5, "TDY"

Section 0502, "Responsibilities," Subsection 050201, states, in part, that approving officials approve TDY orders and travel claims. Supervisory reviews include reviewing, signing, and dating all travel claims for military and civilian personnel.

The DoDFMR defined supervisory review as a review conducted by a person who has supervisory responsibilities over the person whom he or she directs to travel. The supervisor has knowledge of the basis for the traveler's temporary duty travel claim. The supervisor reviews the travel claim to ensure that it is valid and accurate. He or she signs and dates the travel claim prior to submitting it to the proper travel computation office.

Section 0511, "Leave, Permissive TDY, or Administrative Absence in Conjunction with Funded TDY," Subsection 051103, states that the unit commander, designated representative, or employee's supervisor shall make and document determinations regarding leave and duty status, to include overtime.

Chapter 8, "Processing Travel Claims"

Section 0803, "Voucher Preparation," Subsection 080301, states, in part, that the traveler is responsible for the preparation of the travel voucher. Even when someone else prepares the voucher, the traveler is responsible for the truth and accuracy of the information. When the traveler signs the form, the traveler attests that the statements are true and complete and is aware of the liability for filing a false claim.

Section 0804, "Responsibilities," Subsection 080403, states, in part, that an authorizing official or supervisor that has knowledge of the purpose and conditions of the travel claim prepared by the traveler conducts the review of the claim by ensuring that:

- The claim is properly prepared.
- The amounts claimed are accurate and reasonable.
- The required orders authorizing the travel, receipts, statements, and any justifications are attached to the travel claim.
- The claimed expenses were authorized and allowable, and that any deviations from the authorized travel were in the best interest of the government.
- The AO or supervisor has reviewed, signed, and dated all travel claims and forwarded them to the travel office for computation.

National Guard Regulation No. 37-110, Air National Guard Regulation No. 177-08, "Control of TDY Travel and Per diem Costs," dated August 31, 1983

Authorizing officials must be prudent in approving the use of Federal funds for travel.

Office of Government Ethics (OGE) Guidance, dated March 23, 1992

A bona fide official activity must be the predominant purpose of the travel for the trip to be characterized as official.

Facts

The facts detailed in the previous allegations are relevant to this allegation. In January 2006, Brig Gen Elliott failed to terminate his Federal status as a dual-status military technician prior to transferring from the 127th Wing to the 110th Fighter Wing and performing full-time duties with the State as the AAG-Air.

We obtained and reviewed Brig Gen Elliott's travel orders issued by the 127th Wing from January to August 2006. The approving official was Brig Gen Elliott, or in some cases, the new Commander, 127th Wing. Brig Gen Elliott's travel orders identified the purpose for his travel as "Lansing." On 21 occasions Brig Gen Elliott traveled in a TDY status as a GS-15 military technician from Selfridge ANGB to Headquarters, DMVA, Lansing, MI. Brig Gen Elliott testified that Maj Gen Cutler authorized or approved his TDY orders, but none of the orders bore Maj Gen Cutler's signature as the approving official. Brig Gen Elliott's travel vouchers reflected that he claimed expenses such as lodging, meals and incidental expenses, rental car, parking, etc. totaling $19,172 and that he signed the vouchers himself as both the claimant and the supervisor.

Although Brig Gen Elliott, as a military technician, worked a "4/10" compressed work schedule, under which he worked four 10-hour days in a week and had Mondays off, his travel records reflected that he claimed TDY expenses for the Lansing area for almost every Saturday, Sunday, Monday (his scheduled days off), and holidays between January and March 2006.

On February 28, 2006, Brig Gen Elliott purchased a home in suburban Lansing. On March 14, 2006, Brig Gen Elliott began claiming and receiving reimbursement for his mortgage payment as a TDY expense. Brig Gen Elliott processed his TDY vouchers in 30-day increments and stopped claiming travel to Lansing in a TDY status on August 12, 2006, the day before he processed into the State payroll as the AAG-Air. Public records reflected that Brig Gen Elliott sold his house in Macomb, MI, near Selfridge, on August 14, 2006.

Maj Gen Cutler testified he did not coordinate with Brig Gen Elliott about his TDY to Lansing during this period. He did not "drill down into the details," but testified that if Brig Gen Elliott had asked, he would have approved his TDY orders. Maj Gen Cutler stated he had asked Brig Gen Elliott to come to Lansing to work BRAC transformation, and knew that Brig Gen Elliott had not terminated his Federal status as a military technician.

Brig Gen Elliott testified that as far as he was concerned, his TDY orders were what gave him the authorization to travel in a TDY status to Lansing. He explained that because he was not a "detail" person he did not know if the necessary information on his order was there.

Discussion

We conclude Brig Gen Elliott improperly claimed TDY expenses related to travel to his new official duty station. When Brig Gen Elliott relinquished command of the 127th Wing to Brig Gen Peplinski on January 1, 2006, he should have also terminated his employment as a dual-status military technician from the 127th Wing before he began performing full-time duties with the State as the AAG-Air.

We found that Brig Gen Elliott claimed TDY status from Selfridge ANGB to Lansing, MI, on 21 separate occasions between January and August 2006. We also found that either Brig Gen Elliott or the Commander, 127th Wing approved Brig Elliott's TDY orders, which incorrectly identified Brig Gen Elliott as a GS-15 military technician assigned to the 127th Wing. Further, we found that Brig Gen Elliott was paid $19,172 for travel expenses claimed, and that he signed his own travel vouchers as both the claimant and the supervisor.

The JTR, Section C4410, defined TDY travel as an assignment away from the employee's PDS. Section C1050B prohibited travel and transportation at government expense unless it was officially justified. Section C4405 required TDY to have a necessary connection to official DoD activities or Government business, and the establishment of procedures to ensure TDY was necessary and served an essential and official purpose. Finally, the DoDFMR required an authorizing official or supervisor to review travel orders and claims.

We determined that Brig Gen Elliott's practice of approving his own orders and claims violated the DoDFMR requirement for supervisory or authorizing official review and was inconsistent with the JTR's requirement regarding internal control procedures.

We also determined that the 21 TDY trips he took to Lansing on or after January 1, 2006, as well as any claims associated with them, were improper. The trips did not meet the JTR definition of TDY travel because Lansing, not Selfridge ANGB, became Brig Gen Elliott's PDS when he relinquished command to Brig Gen Peplinski, transferred militarily to the 110th Fighter Wing, and accepted appointments as the AAG-Air; Deputy Director, DMVA; and Commander, MIANG. There was no JTR provision which authorized him to conduct TDY travel to his PDS.

Further, we determined there was no basis or official purpose for him to claim TDY travel to any destination as a military technician in the 127th Wing on or after January 1, 2006, because he was not properly assigned as a member of that unit after that date. These conditions and actions were inconsistent with JTR requirements that TDY have an official purpose and justification.

Response to Preliminary Conclusion

Brig Gen Elliott did not dispute our determination that he improperly approved his own TDY orders and claims, in violation of the JTR and DoDFMR. However, he asserted that

After carefully considering Brig Gen Elliott's response, we stand by our conclusion. As discussed previously, Brig Gen Elliott was appointed as the AAG-Air on December 30, 2005, and failed to terminate from his dual-status military technician position as required. As a result, he was militarily transferred to the 110th Fighter Wing to perform State, not Federal (127th Wing), duties in Lansing. Therefore, it was not possible for him to be detailed from the 127th Wing and compensated for any TDY expenses as a member of that unit after December 30, 2005.

V. OTHER MATTERS

(b)(6), (b)(7)(C) [redacted]

VI. CONCLUSION

A. Brig Gen Elliott failed to terminate from his dual-status military technician position when required.

B. Brig Gen Elliott used his public office for private gain and improperly received Federal pay and benefits.

C. Brig Gen Elliott improperly claimed TDY expenses related to travel to his new official duty station.

VII. RECOMMENDATIONS

A. That the Secretary of the Air Force take appropriate action regarding the substantiated allegations. Such action should include determining whether Brig Gen Elliott accrued sufficient time to qualify for military technician retirement under FERS, and initiating the recoupment of the overpayment of Federal pay and benefits and TDY expenses improperly received by Brig Gen Elliott between January 2006 and April 2007.

B. (b)(6), (b)(7)(C) [redacted]

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Report No. 11-118752-109

Inspector General
Department of Defense

~~FOR OFFICIAL USE ONLY~~

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

JAN 2 3 2014

Ref: FOIA-2013-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Dr. Erin R. Mahan is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency communications protected by the attorney-client privilege; 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

~~FOR OFFICIAL USE ONLY~~

Report No. 11 119863 249 December 27, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION: ERIN R. MAHAN, Ph. D.

~~FOR OFFICIAL USE ONLY~~

11 119863 249

REPORT OF INVESTIGATION:
DR. ERIN R. MAHAN

DEC 27 2012

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Dr. Erin R. Mahan, Senior Executive Service, while serving as the Chief Historian of the Office of the Secretary of Defense (OSD), engaged in various acts of misconduct in violation of Title 5, United States Code, Section 3131 (5 U.S.C. 3131), "The Senior Executive Service," and DoD 5500.07-R, "Joint Ethics Regulation (JER)."[1] Specifically, we addressed allegations that Dr. Mahan:

- engaged in unprofessional conduct in the workplace by creating situations perceived by others to be socially awkward and inappropriate for an office environment, by discussing personal medical issues with subordinates and speculating about an employee's sexual orientation to a subordinate employee of the opposite sex;
- misused Government resources, by directing two contractor employees in the Office of the Historian to plan, organize, and execute two social events in the office;
- (b)(6) (b)(7)(C)
- improperly promised two subordinates the position of Deputy Chief Historian; and
- (b)(6) (b)(7)(C) .

During the course of our investigation we identified an additional allegation that Dr. Mahan used her public office for private gain, and solicited and accepted gifts from prohibited sources when she accepted the services of contract individuals to babysit (b)(6), (b)(6) (b)(7)(C) and transport the child to and from a daycare facility during work hours.

The incoming complaint contained additional allegations. Based on our initial inquiry, we determined those allegations did not merit further investigation and discuss them in detail in Section III of this report.

We substantiated four allegations.

We conclude Dr. Mahan on occasion engaged in unprofessional conduct in the workplace. We found Dr. Mahan discussed personal medical issues with subordinates and speculated about a subordinate's sexual orientation to a subordinate of the opposite sex. Title 5 U.S.C. 3131 established general standards of leadership and conduct for members of the Senior Executive Service. The JER outlines the expectation that Government employees should treat

[1] The Office of the Historian staff consisted of employees of firms contracted to provide services, independent contractors under contract to the Office of the Historian, and Government employees.

others with dignity and respect. We determined that Dr. Mahan's conduct was, on occasion, inconsistent with that expected of a member of the Senior Executive Service.

We conclude Dr. Mahan misused Government resources when she directed two contractor employees in the Office of the Historian to plan, organize, and execute two social events in the office: a "meet-and-greet" gathering in October 2010 and an office holiday party in December 2010. Section 2635.704(a) of the JER requires employees to protect and conserve Government property and not use such property for other than authorized purposes. We determined that social event planning is not an authorized use of contractor employees, and Dr. Mahan's use of those services in such activity was a misuse of Government resources.

We conclude Dr. Mahan used her public office for private gain, and solicited and accepted gifts from prohibited sources. We found Dr. Mahan solicited and accepted the services of individuals who were under contract to the Office of the Historian when she requested those individuals to babysit (b) (6), (b) (7)(C) when she brought (b)(6) (b)(7) to her worksite, and transport the child to and from a daycare facility during work hours, and that she did not compensate the providers for their services. Section 2635.101 of the JER states that employees shall not use public office for private gain. We determined Dr. Mahan's solicitation and acceptance of these services constituted use of public office for private gain.

We conclude that Dr. Mahan failed to comply with the ethical standards set forth in the JER. We found Dr. Mahan improperly promised two subordinates that the position of Deputy Chief Historian would be theirs when next filled. The Code of Ethics for Government Employees states that people in Government service should make no private promises of any kind binding upon duties of office. We determined Dr. Mahan's promises violated that code.

(b) (6), (b) (7)(C)

Following our established practice, by letter dated September 14, 2012, we provided Dr. Mahan the opportunity to comment on our initial conclusions. In her response, dated October 22, 2012, Dr. Mahan registered her concern that "the majority of the allegations and so called 'evidence' from which the conclusions were drawn appear to have come from office gossip and uncorroborated hearsay." Dr. Mahan stated that her office was a small one in which most of the staff "are contractors with knowledge that option years are not going to be exercised." While we note Dr. Mahan's assertions, we based our conclusions on the preponderance of credible evidence.[2]

[2] While we have included what we believe is a reasonable synopsis of Dr. Mahan's response, we recognize that any attempt to summarize risks over simplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and attached a copy of the response to this report.

After carefully considering Dr. Mahan's response and reevaluating the evidence, we stand by our initial conclusions.

We recommend the Director, Administration and Management, consider appropriate corrective action with regard to Dr. Mahan.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

Dr. Mahan became a member of the Senior Executive Service in April 2010, when she was appointed as the Chief Historian, OSD (Chief Historian). As Chief Historian, Dr. Mahan is responsible for collecting, preserving, and presenting the history of the OSD, in order to support Department of Defense leadership and inform the American public.

Prior to becoming Chief Historian, Dr. Mahan served as associate research fellow at Center for the Study of Weapons of Mass Destruction at the National Defense University in Washington DC. From 2004 to 2008, she was Chief of the Division of Arms Control, Asia and Africa, in the Office of the Historian at the Department of State, where she edited several volumes in the Foreign Relations of the United States series related to Strategic Arms Limitation Talks, the former Soviet Union, the Vietnam War, and Korea.

III. SCOPE

We interviewed Dr. Mahan and 11 other witnesses with knowledge of matters at issue. We reviewed statutes, the FAR, JER, DoD Regulations, and OPM Policy applicable to the events in question.

(b) (6), (b) (7)(C)

(b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

IV. FINDINGS AND ANALYSIS

A. Did Dr. Mahan engage in unprofessional conduct in the workplace?

Standards

5 U.S.C. 3131, "The Senior Executive Service"

Title 5 U.S.C. 3131 established the Senior Executive Service "to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality."

DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-6 (March 23, 2006)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5, Code of Federal Regulations (C.F.R.), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Chapter 12, "Ethical Conduct," states that DoD employees should consider ethical values when making decisions as part of official duties. In that regard, the JER sets forth primary ethical values of "fairness," "caring," and "respect" as considerations that should guide interactions among DoD employees. It elaborates on those characteristics as follows:

- Fairness involves open-mindedness and impartiality. "Decisions must not be arbitrary, capricious, or biased. Individuals must be treated equally and with tolerance."

- Caring involves compassion, courtesy, and kindness to "ensure that individuals are not treated solely as a means to an end."

- Respect requires that employees "treat people with dignity." Lack of respect leads to a breakdown of loyalty and honesty.

OPM "Guide to Senior Executive Service Qualifications," dated October 2006

The Guide sets forth essential leadership qualifications and underlying competencies for members of the Senior Executive Service within the Federal Government. The introduction to the Guide states that leaders must be able to apply "people skills" to motivate their employees, build partnerships, and communicate with their customers. The Guide establishes leadership competencies identifying the personal and professional attributes critical to success by Senior Executive Service employees. Additionally, the Guide identifies the following five Executive Core Qualifications for Senior Executive Service personnel: Leading Change, Leading People, Results Driven, Business Acumen, and Building Coalitions.

Appendix A to the Guide sets forth the underlying leadership competencies that demonstrate each Executive Core Qualification. The "Leading People" qualification requires competence in managing and resolving conflict, as well as in creating a culture that fosters team commitment, spirit, pride, and trust. Additionally, Appendix A expressly defines critical leadership competencies to include treating others with courtesy, sensitivity, and respect, showing consistency in words and actions, and modeling high standards of ethics.

Facts

The incoming complaint alleged that Dr. Mahan engaged in conduct that was inappropriate for the office. Additionally, the incoming complaint alleged Dr. Mahan (b)(6) (b)(7)(C) [redacted].

Witness testimony disclosed instances of Dr. Mahan acting in a manner that was overly personal and making inappropriate comments to subordinates. Witnesses testified that Dr. Mahan discussed the circumstances surrounding (b)(6) (b)(7)(C) [redacted] and speculated about a subordinate's sexual orientation to a subordinate of the opposite sex.

Circumstances surrounding (b)(6) (b)(7)(C) [redacted]

A witness testified that Dr. Mahan shared with him "very personal information," including the means by which Dr. Mahan (b)(6) (b)(7)(C) [redacted] The witness testified, "I don't want to know any of that." He explained Dr. Mahan "often mistakes the work environment for being an environment where all of her friends are sitting around the table and sharing personal information." The witness described Dr. Mahan's discussions of her medical procedures as personal enough to make the average male feel "pretty awkward."

Another employee testified to being subject to Dr. Mahan's telling (b)(6) (b)(7)(C) [redacted] (b)(6) (b)(7)(C) [redacted] He described his reaction to this

as, "okay, this is a little bit strong." A third witness objected to Dr. Mahan's discussions about (b)(6) (b)(7)(C) [redacted] Other employees testified they were either unaware of, or took no offense with, Dr. Mahan's discussions of her medical procedures, or (b)(6) (b)(7)(C) [redacted].

Questioning an subordinate's sexual orientation

Several witnesses testified to an instance where Dr. Mahan openly questioned the sexual orientation of one of her subordinates. One witness testified that Dr. Mahan asked him if he thought one of his co-workers was homosexual. He explained he believed that Dr. Mahan lacks a "filter in her mind that would block what would come out of her mouth."

The witness testified that his co-worker, upon learning of Dr. Mahan's speculation, did not take it well. He recalled the co-worker noted Dr. Mahan had been regularly discussing the sexual preference of (b)(6) (b)(7)(C) [redacted]. Another witness testified he believed the co-worker "pretended to have thick skin," but appeared to be "pretty upset" about the fact that Dr. Mahan was reportedly speculating about sexual orientation. The subject of Dr. Mahan's speculation described Dr. Mahan's comments as "insensitive" and "not relevant to my work."

(b)(6) (b)(7)(C) [redacted]

(b)(6) (b)(7)(C) [redacted]

Leadership style

Employees' descriptions of Dr. Mahan's leadership style varied from "mercurial" and "inconsistent" to "by far one of the best senior executives I've ever worked with." One employee described Dr. Mahan as professional and testified that Dr. Mahan treated employees with dignity and respect. Yet another employee testified that when Dr. Mahan arrived at the Office of the Historian she tried to fit her leadership style into what already existed in the office. Another employee described Dr. Mahan's style as "micro-managing" and "unorganized," yet credited Dr. Mahan with kindness and pleasantness. One employee with (b)(6) (b)(7)(C) [redacted] of experience in Government historical offices described Dr. Mahan as "incompetent" and "in over her head." All save one employee denied that Dr. Mahan had a temper. A senior member of the office described her as fairly easygoing and open to ideas and initiative.

Dr. Mahan denied discussing or questioning a subordinate's sexual orientation. She did not deny engaging in conversations about (b)(6) (b)(7)(C) [redacted], but characterized the allegation that her conversations about (b)(6) (b)(7)(C) [redacted] were graphic and overly personal as "unfair."

Dr. Mahan denied intentionally making her employees uncomfortable or badgering them. She described herself as a leader who "reads people pretty well," is "respectful of boundaries," and tries to put people at ease, while also holding her employees accountable. She testified that during one staff meeting, when she put a (b) (6), (b) (7)(C) [redacted] subordinate on the spot, she could tell the employee was uncomfortable, so she never "repeated that kind of staff meeting." She further denied being a mean or malicious person, and stated she made an effort to avoid situations that would bring an employee's comfort level to the point of suffering.

Discussion

We conclude that on occasion Dr. Mahan engaged in conduct in the workplace that was inconsistent with the standards for senior executives. We found that Dr. Mahan discussed personal medical matters and speculated about a subordinate's sexual orientation to another subordinate of the opposite sex.

(b)(6) (b)(7)(C) [redacted]

The JER, 5 U.S.C. 3131, and the OPM Guide require members of the Senior Executive Service to develop team spirit, foster group identity, and resolve conflicts in a positive and constructive manner. Additionally, senior level managers must understand and respond appropriately to the unique needs, feelings, and capabilities of different people in different situations while treating them with tact and respect.

We determined that, on occasion, Dr. Mahan's behavior was inappropriate for a member of the Senior Executive Service. The individual violations we identified may appear minor, but when taken together, display a disregard for subordinates' dignity and a lack of respect. We determined Dr. Mahan's actions in discussing personal medical matters and speculating about a subordinate's sexual orientation with another subordinate demonstrated a lack of respect and was inconsistent with the standards for senior executives.

Dr. Mahan's Response

Dr. Mahan acknowledged sharing information about (b)(6) (b)(7)(C) during a "friendly and fluid lunch conversation" but denied her comments rose to the level of "graphic detail" of (b)(6) (b)(7)(C), as described by the IG report. She asserted she never discussed the (b)(6) (b)(7)(C) or anything that could be considered graphic as the report suggests and noted that some staff members were unaware of, or took no offense to, discussion regarding (b)(6) (b)(7)(C).

We reviewed the initial complaint and witness testimony with regard to Dr. Mahan's discussions of personal medical matters. Testimony established that Dr. Mahan discussed the manner of (b)(6) (b)(7)(C) at lunch with subordinates, and that some of those who heard her remarks found them to be inappropriate for an office environment. We acknowledge that some subordinates did not hear or were not offended by the discussion. Nevertheless, the evidence supports our conclusion that the discussion concerning (b)(6) (b)(7)(C) did occur.

With regard to the alleged comments concerning a subordinate's sexual orientation, Dr. Mahan contended the allegation is "wholly inaccurate and false." Witness testimony described Dr. Mahan as someone who "just thinks -- like things just go through her mind, there's no filter in her mind that would block what would come out of her mouth." Regarding the matter at issue, the witness testified, "it just came out of her mouth and then [she] just moved on to the next subject."

Additional testimony described conversations in which Dr. Mahan discussed the sexual orientation of another individual who was not a member of her staff. This witness testified Dr. Mahan on multiple occasions mentioned that one of (b)(6) (b)(7)(C) is homosexual. The witness testified "I just sort of -- okay, I mean, what do you say?" The witness added she was unsure if Dr. Mahan was probing for something or "if it was just in conversation" that (b)(6) (b)(6) (b)(7)(C) is homosexual.

The witness added she did not believe it was appropriate for Dr. Mahan to be talking about (b)(6) (b)(7)(C) sexuality. She testified Dr. Mahan

> brings something up and tries to engage in a conversation, and then 20 seconds later she's on a different train of thought. So it is often the case that you don't have time to respond to her because she's all over the place in her conversation.

Given witness descriptions of Dr. Mahan's conversational style we recognize that Dr. Mahan might not recall the comment in question. We considered that the witness who testified to Dr. Mahan making the comment did so in order to provide an example of

Dr. Mahan's "socially awkward" statements. The independent introduction of the comment during a description of Dr. Mahan's conversational style and the other reported conversations regarding sexual preference persuaded us that it was more likely than not that Dr. Mahan made the comment in question.

After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

B. Did Dr. Mahan misuse Government resources?

Standards

31 U.S.C. 1301, "Application"

31 U.S.C. 1301(a) states, "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

DoD Instruction (DoDI) 7250.13, "Use of Appropriated Funds for Official Representation Purposes," June 30, 2009

Paragraph 3a states the authority within annual appropriations acts shall be used to host official receptions, dinners, and similar events, and to otherwise extend official courtesies to guests of the United States and the Department of Defense for the purpose of maintaining the standing and prestige of the United States and the Department of Defense. However, paragraph 3b provides that this authority shall not be used to pay for the cost of "Purely social events intended primarily for the entertainment or benefit of DoD officials and employees, their families, or personal guests."

We also considered "Holiday Guidance for Department of Defense Personnel," DoD Standards of Conduct Office, Office of General Counsel, November 18, 2010, which states, "Generally office parties are unofficial events, and you cannot use appropriated funds to pay for them."

DoD 5500.7-R, "JER," August 30, 1993, including changes 1-6 (March 23, 2006)

Section 2635.704(a), "Standard," states, "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use for other than authorized purposes."

Section 2635.704(b) "Definitions," states, "Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel." It further states, "Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation."

Facts

The incoming complaint alleged Dr. Mahan directed contractor employees to perform unofficial activities on Government time.[3] The complaint alleged that contractor employees in Dr. Mahan's office improperly planned and executed two office social events in the fall and winter of 2010: a "meet-and-greet mixer" for various offices within the OSD and the Department of Defense in October 2010, and an Office of the Historian holiday party in December 2010. (b)(6) (b)(7)(C) [redacted].

The complainant testified the events were funded by donations from attendees and that attendance was voluntary. She explained Dr. Mahan held the October 2010 event to provide an opportunity for "Chiefs and Deputies" of other history offices to get to know the OSD Historian staff and socialize with them. The complainant noted the OSD Historian office was not located in the Pentagon as were many of the offices with which it dealt.

Both of the contractor employees identified as making preparations for the two events acknowledged aiding in the preparation of the events. At the time of the two events, one contractor employee was performing duties as (b)(6) (b)(7)(C) [redacted] in the Office of the Historian, and the other was performing duties as an (b)(6) (b)(7)(C) [redacted] (b)(6) (b)(7)(C) [redacted] He confirmed he participated in planning and executing both events.

(b)(6) (b)(7)(C) [redacted]. She testified she was involved with the October 2010 "Meet-and-Greet," and, at Dr. Mahan's request, planned the December 2010 holiday party. She testified that even though her contract lacked specific language assigning her social duties, as a (b)(6) (b)(7)(C) [redacted] she had planned office social events in the past.

(b)(6) (b)(7)(C) [redacted]

We reviewed the statements of work for the contractor employees who planned and executed the events. The statements of work described the normal tasks consistent with providing administrative support in an office. Neither statement included any reference to planning social events.

Dr. Mahan testified the purpose of the October 2010 event was to award her predecessor with a meritorious award and described the event as a "get to know your history office." She denied it was "some awards party," and described it as an official event to showcase the Office of the Historian volumes, historians, and to spread the word that the Office of the Historian was

[3] The DoD Office of the Historian workforce consists of Government employees, employees of firms contracted to provide services, and independent contractors. We refer to employees of firms contracted to provide services as "contractor employees," and independent contractors as "contractors."

available for historical support. Dr. Mahan explained her office extended invitations by email to all the directors and deputy directors of Directorate of Administration and Management and Washington Headquarters Services.

Regarding refreshments at the event, Dr. Mahan testified, "I basically paid for it myself because I know I couldn't get official funds." Dr. Mahan added she "purchased most of the stuff myself, picked it up myself," even though "some contractors volunteered to bring food." Dr. Mahan added she did not request anyone to contribute food for the event and ascribed voluntary food donations to "a culture in this office of everyone chips in." Dr. Mahan testified that both contractor employees who arranged the event were hired to perform "administrative" duties, and asserted their involvement was "appropriate."

Discussion

We conclude Dr. Mahan misused Government resources by using the services of contractor employees to plan and execute two Office of the Historian events in October and December 2010. We found the employees were authorized to provide administrative support services which did not include social event planning. Accordingly, using their services for social event planning was unauthorized and hence, improper.

Title 31 U.S.C. 1301(a) states that appropriated funds shall be used for designated purposes. Although these designated purposes can include hosting official events under DoDI 7250.13, purely social events intended primarily for the entertainment or benefit of DoD officials and employees are not official events. Therefore, appropriated funds may not be used for these types of activities. Furthermore, the DoD Standards of Conduct Office's "Holiday Guidance for Department of Defense Personnel" states that appropriated funds cannot be expended on holiday parties.

Finally, Government employees are not permitted to use Government property for other than authorized purposes. The JER defines the services of government contractor employees as Government property. We determined the use of contractor employees to support unofficial events is improper.

We determined Dr. Mahan's assertion that the October event was official was not supported by the evidence. Although Dr. Mahan described the October event as official, she acknowledged paying for it herself because she could not get official funds for the event. Official funds were not available because the function was a social event and intended primarily for the benefit of DoD officials and employees. Likewise, we determined the December event was not an official event; rather, it was a holiday party for the Office of the Historian staff.

In both instances, Dr. Mahan used the services of Government contractor employees, paid for with appropriated funds, to plan and execute the events. We determined neither employee was authorized to plan or execute social events as part of their official duties. Thus, using them to plan and execute these two events was a misuse of government resources.

Dr. Mahan's Response

With regard to misusing Government resources, Dr. Mahan asserted "One of the two events [in question] was in fact an official event as it was an awards ceremony for two historians, not a 'meet-and-greet mixer' as the report describes." Dr. Mahan provided a copy of a document by which she obtained approval from the Director, Defense Directorate, Washington Headquarters Services, to serve alcohol at an "OSD Open House/Award Ceremony" in a conference room of the Historian's office building in Arlington, Virginia.

We reviewed witness testimony regarding the event and confirmed witnesses described the event in question as a "meet and greet event." Witnesses recalled that Dr. Mahan's predecessor was presented an award at the event; however, the preponderance of testimony indicated that the event also served to allow other members of the Defense Historical community whose offices were located away from Dr. Mahan's to meet members of Dr. Mahan's staff "to get to know your history office."

With regard to the holiday party, Dr. Mahan wrote, "The holiday luncheon of December 2010 relied on the office's voluntary 'sunshine fund' and the planning and setting up was shared amongst staff members, taking minimal time for all involved."

Testimony of the two contractor employees who helped plan the holiday event disclosed that other staff members were involved in planning and executing the event. One testified that a Government employee acted as an assistant to "make sure that RSVPs were all ironed out," but acknowledged having primary responsibility for planning the event.

Dr. Mahan further stated her belief that "all SOWs [Statement of Work] usually have language indicating 'other duties as assigned.'" Our review of the statements of work for the contractor employees who planned the events disclosed they contained no language requiring the contractors to perform "other duties as assigned."

After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

C. Did Dr. Mahan improperly accept gifts?

Standards

DoD 5500.7-R, "JER," August 30, 1993, including changes 1-6 (March 23, 2006)

Section 2635.101 of the JER, "Basic obligation of public service," states that employees shall not use public office for private gain. An employee shall not use or permit the use of his government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself, or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Subpart B, "Gifts from Outside Sources," states:

In Section 2635.202

(a) *General Prohibitions* states that an employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source or given because of the employee's official position.

* * * * * * *

(c) *Limitations on use of exceptions* states an employee shall not accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain.

In Section 2635.203 *Definitions*

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings, and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

(d) *Prohibited source* means any person who does business or seeks to do business with the employee's agency.

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

Facts

The incoming complaint alleged that while staying at a local hotel during senior executive training, Dr. Mahan asked two Office of the Historian contractors to pick up (b)(6) (b)(7)(C) from her hotel in the morning and take (b)(6) (b)(7) to the State Department daycare center. The complaint also alleged that a third contractor drove Dr. Mahan's car to pick up (b)(6) (b)(7)(C) from the State Department daycare facility.

One of the contractors denied ever transporting (b)(6) (b)(7)(C) to or from daycare. A second contractor testified that on two occasions, at Dr. Mahan's request, he drove Dr. Mahan's car from the Historian's office parking garage to the hotel where Dr. Mahan was staying to pick up (b)(6) (b)(7)(C). He added he then took (b)(6) (b)(7)(C) to the State Department daycare facility

and returned to work at the Historian's office. He testified the trip took place at the beginning of the workday, took less than 15 minutes, and that he was not compensated for his efforts.

The third contractor denied ever taking (b)(6) (b)(7)(C) to daycare, but testified that he recalled Dr. Mahan once called him from a meeting and asked him to pick up (b)(6) (b)(7)(C) from daycare. He explained that he used Dr. Mahan's car to pick up (b)(6) (b)(7)(C) at daycare after which Dr. Mahan joined them, and drove the contractor home.

Several witnesses testified that Dr. Mahan brought (b)(6) (b)(7)(C) to work on multiple occasions, including one time when (b)(6) (b)(7)(C) and could not attend daycare. Two contractors testified that Dr. Mahan had asked them to watch (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) One of those contractors testified that Dr. Mahan "made the decision that she had to go to this meeting" out of the office, so she asked him to stay with (b)(6) (b)(7)(C) for an hour. He added he was a contractor paid based on "deliverables," not hours, and was not "on the clock" when he performed this service. The other contractor testified that several contractors watched (b)(6) (b)(7)(C) "in shifts," over the course of 8 hours because Dr. Mahan was gone "most of the day" at meetings. He testified, "I saw a DVD playing on her computer so I think you just hit play and that kept (b)(6) (b)(7) entertained for a period of time."

A Government employee in the Office of the Historian testified that Dr. Mahan brought (b)(6) (b)(7)(C) to work between 5-10 times. He testified that while at the office, (b)(6) (b)(7)(C) stayed in her office, and would occasionally come out to say "hi to other people, but I think she pretty much kept (b)(6) (b)(7) in her office for most of the time."

He testified to being "horrified" that Dr. Mahan would bring a (b)(6) (b)(7)(C) to the office, but added that she was "not the type of boss" you could confront, and that he could not "go there." Further, he testified that he attempted to avoid the subject of using contractors for babysitting (b)(6) (b)(7)(C) because "it was clear to me that that was not legitimate and it was clear to anyone who would make it to the Senior Executive Service level would've known that that was not a proper use of contractors."

A contractor employee testified that although Dr. Mahan brought (b)(6) (b)(7)(C) to work "less than a handful" of times, she was never asked to babysit or take (b)(6) (b)(7)(C) to daycare. She testified that had she been asked, she would have refused because "that's not part of my duties."

Dr. Mahan testified she brought (b)(6) (b)(7)(C) to work "maybe half a dozen times in [her] almost 2 years" as Chief Historian. Dr. Mahan described one day she had a meeting she needed to attend within an hour of discovering (b)(6) (b)(7)(C) would not be allowed to stay at daycare. Dr. Mahan brought (b)(6) (b)(7)(C) to work and two contractors – sensing her "plight" – agreed when she asked them if they would "mind working in [her] office?" She testified that she was away from the office over the course of a 2-3 hour period of the day, but that although the time spent with (b)(6) (b)(7)(C) was during the duty hours, the contractors were paid "on deliverables." Dr. Mahan attributed her actions to "newness," and a desire to avoid being "Mommy-tracked," but said that she is now more "seasoned," and would take leave if the circumstances arose again.

Dr. Mahan further testified that during Senior Executive Service training, she was required to stay in a hotel located two blocks from her office. She was unable to take [redacted] to daycare, so asked the same contractors on three occasions to use her car to take [redacted] to daycare and pick [redacted] up. She testified that the complete trip from her hotel to the daycare facility and back took approximately 15 minutes, and acknowledged she did not compensate them for their services. She further testified that it was during that senior executive ethics training where she learned of "personal services," and realized that she would "never do that again."

Discussion

We conclude Dr. Mahan improperly used her public office for private gain when she solicited and accepted gifts from prohibited sources, namely, individuals under contract to the Office of the Historian.

We found that Dr. Mahan brought [redacted] to her workplace on several occasions, including one occasion when [redacted] and could not attend daycare. On that occasion and at her request, two contractors took turns throughout the duty day watching [redacted] in Dr. Mahan's office while [redacted] played or watched DVDs on her office computer. We also found that the same two contractors either picked up or dropped off [redacted] at daycare on multiple occasions at her request. We found no evidence that Dr. Mahan compensated the contractors for their services.

The JER states that employees shall not use public office for private gain. Further, the JER states an employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source or given because of the employee's official position.

We determined Dr. Mahan's solicitation and acceptance of babysitting and transportation services for [redacted] from prohibited sources, individuals under contract to the Office of the Historian, violated the JER prohibitions against using public office for private gain and soliciting and accepting gifts from outside sources.

Dr. Mahan's Response

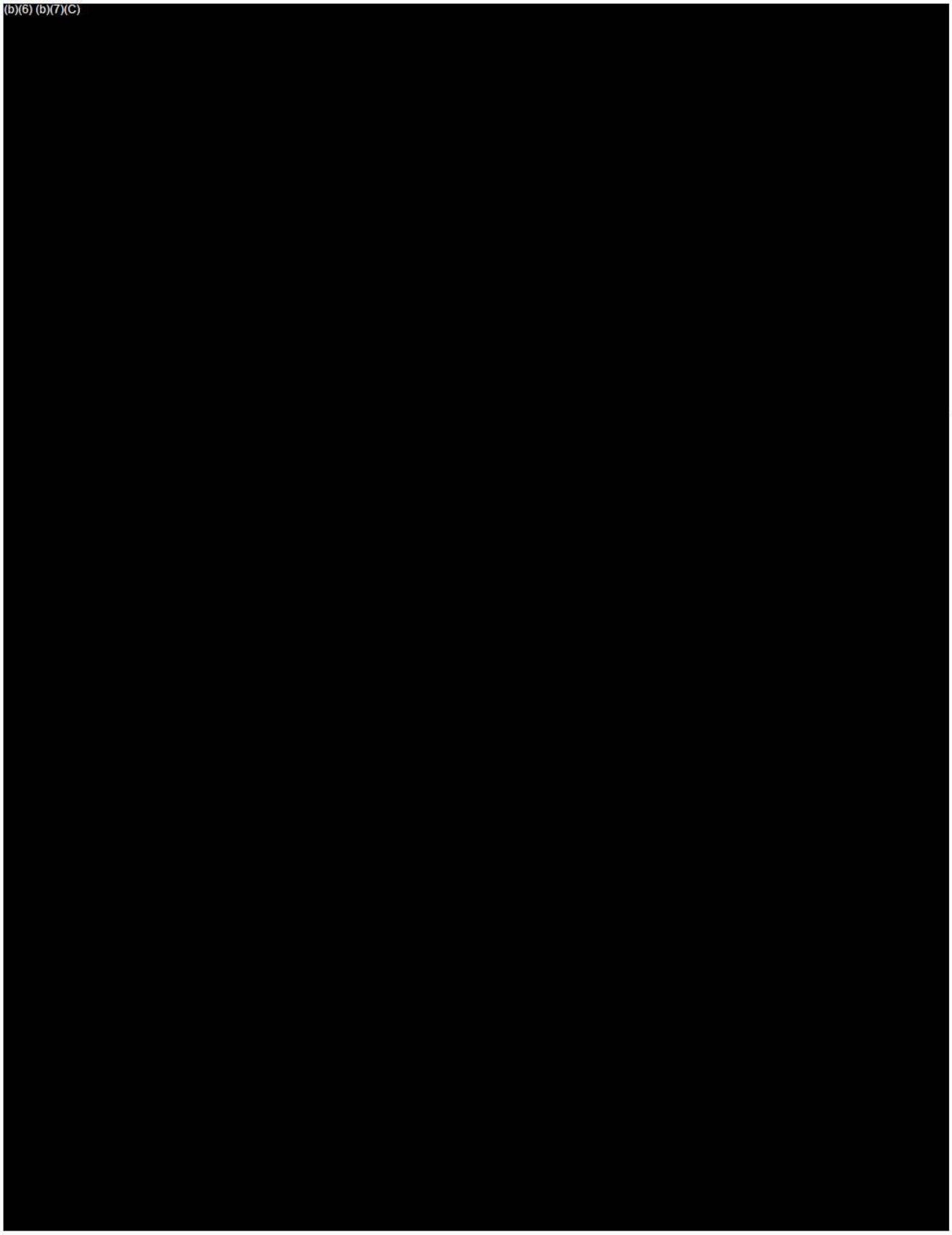
Dr. Mahan acknowledged it was a mistake to use staff for childcare purposes and accepted full responsibility for her actions and noted the underlying facts pre-dated her senior executive ethics training. She wrote, "I exercised a momentary and isolated lapse of judgment out of an overly conscientious desire to be a superb SES and honor all obligations and commitments," while adding her understanding that if gifts/services are rendered because of a personal history rather than because of her position, then there is no violation.

Our review of testimony and Dr. Mahan's response disclosed Dr. Mahan had prior relationships with two of the subordinates in question; however we determined those relationships did not meet the exception provided in the standard. We note Dr. Mahan requested the childcare and transportation services in question and those requests were directly related to Dr. Mahan's official position as Chief Historian.

After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

(b)(6) (b)(7)(C)

[redacted]


(b)(6) (b)(7)(C)

(b)(5), (b)(6) (b)(7)(C)

[redacted]

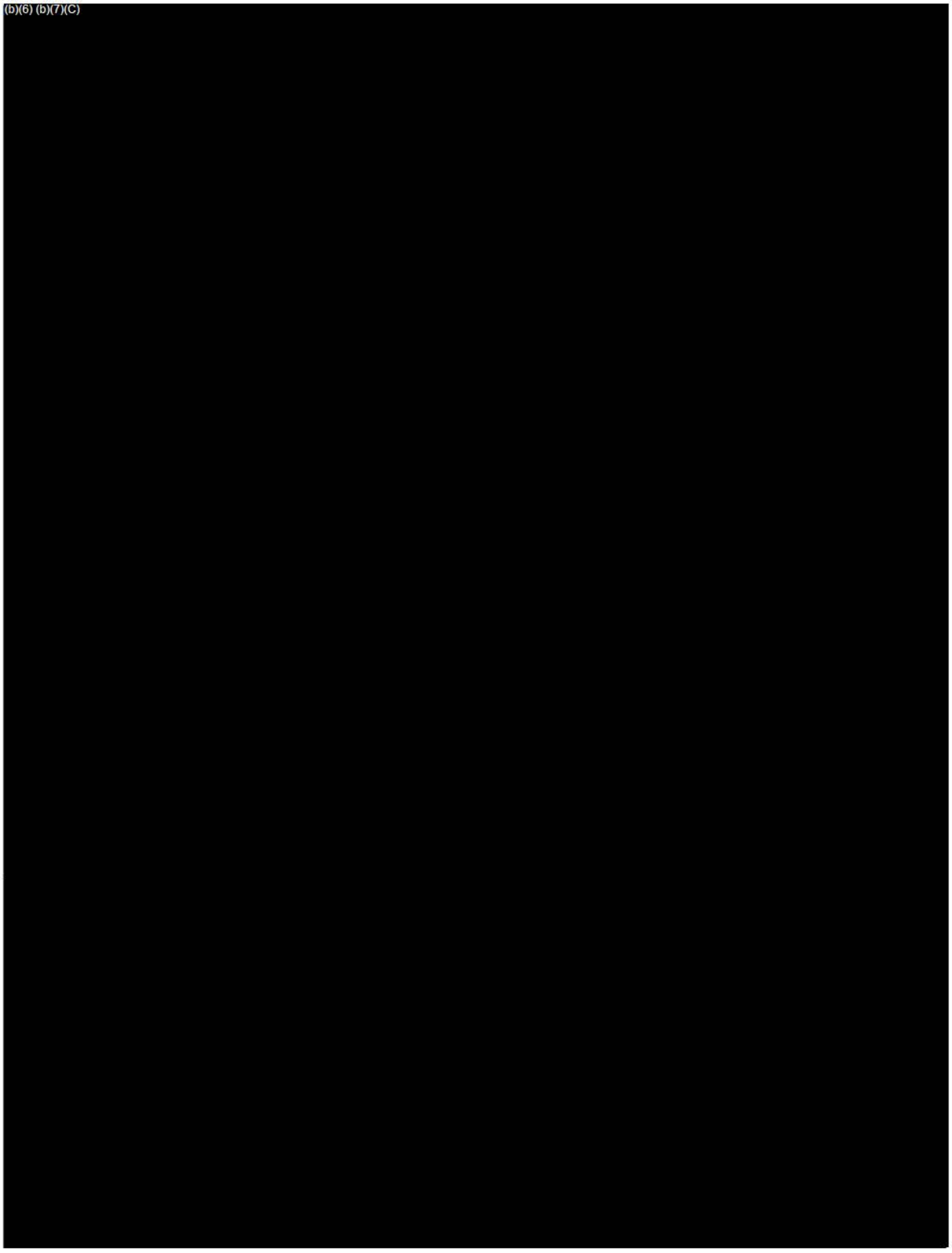
(b)(6) (b)(7)(C)

[redacted]

(b)(6) (b)(7)(C)

[redacted]

(b)(6) (b)(7)(C)



(b)(6) (b)(7)(C) [redacted]

E. Did Dr. Mahan engage in a prohibited personnel practice?

Standards

5 U.S.C. 2302, "Prohibited personnel practices"

Section 2302(b) states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

DoD 5500.7-R, "JER," August 30, 1993, including changes 1-6 (March 23, 2006)

JER Chapter 12, "Ethical Conduct," states that DoD employees should consider ethical values when making decisions as part of official duties. In that regard, the JER sets forth primary ethical values of "honesty," "fairness," and "promise keeping" as considerations that should guide interactions among DoD employees. It elaborates on those characteristics as follows:

- Honesty requires employees to be truthful, straightforward and candid.
- Fairness involves open-mindedness and impartiality. "Decisions must not be arbitrary, capricious, or biased. Individuals must be treated equally and with tolerance."
- Promise Keeping. The JER notes no government can function for long if its commitments are not kept. DoD employees are obligated to keep their promises in order to promote trust and cooperation. Because of the importance of promise keeping, it is critical that DoD employees only make commitments that are within their authority.

Additionally, Section 12-300, "Code of Ethics for Government Employees," states any person in Government service should "Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty."

Facts

The complaint alleged that during the time the position of Deputy Chief Historian was unencumbered, Dr. Mahan publicly announced that the (b)(6) (b)(7)(C) [redacted] would get the permanent Deputy Chief Historian job, that she gave the (b)(6) (b)(7)(C) [redacted] all of the key words used to assess

applications for the position, and advised her on what she should focus on during the interview. The complaint further alleged that Dr. Mahan stated she put Dr. John Shortal, the then-Assistant Chief of Military History, Center for Military History, on the hiring panel so that Dr. Mahan would get what she wanted.

The affected employee testified that although she had served as the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), she had no desire to compete for the permanent position. She stated that "almost from the moment Dr. Mahan arrived," Dr. Mahan began to encourage and then insist that she apply for the permanent position, going as far as instructing her (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) despite her protest that this was inappropriate. She recalled Dr. Mahan told her "You're going to get the job. I can't imagine anybody who could do a better job." The employee explained that although she did not want the position, she "succumbed to the pressure exerted by Dr. Mahan and applied for the position." She added she (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)

Dr. Mahan testified that the allegations presented were "patently, completely false." She further testified she held the "most open deputy search. I had every cert[ification] possible. I didn't rig a wire for anybody." She denied providing the (b)(6) (b)(7)(C) anything more than "mentoring advice" and stated she asked for Dr. Shortal to be on the hiring panel because of his position, not so that she could influence the hiring decision. She further testified that the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) at the suggestion of her predecessor, but that the arrangement was intended to be "temporary."

Subsequent to our interview with Dr. Mahan, a witness alleged that Dr. Mahan had promised the deputy position to a different employee. The employee in question testified that Dr. Mahan "told me that she has decided that she is going to make me her deputy." The employee stated she was very uncomfortable with this because the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C). She added that since that time Dr. Mahan "has started acting as if this was a fait accompli. I am going to be her deputy." The employee stated, "I am not interested. I am not qualified. The position is already filled."

Discussion

We conclude Dr. Mahan did not engage in a prohibited personnel practice, but did violate the provisions of Chapter 12 of the JER by promising the Deputy Historian position to two subordinates. We found that on two occasions Dr. Mahan privately promised subordinates that the Deputy Historian position was to be theirs.

JER, Chapter 12 "Ethical Conduct," sets forth primary ethical values of "honesty," "fairness," and "promise keeping" as considerations that should guide interactions among DoD employees. Additionally, Section 12-300, "Code of Ethics for Government Employees," states any person in Government service should "make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty."

Our analysis of the testimony of the two employees and Dr. Mahan led us to conclude that Dr. Mahan made the alleged promises. We considered Dr. Mahan's testimony that she

merely provided mentoring advice to the first employee, but determined the employee perceived Dr. Mahan's statement, "You're going to get the job," to constitute a promise. The second employee's testimony that Dr. Mahan told her she has decided that she is going to "make me her deputy," convinced us that Dr. Mahan's statements to both employees could reasonably be perceived as promises.

We determined Dr. Mahan's promises to two employees that they were to be the next Deputy Chief Historian, DoD Historian Office, were not in keeping with the standards set forth in Chapter 12 of the JER. Further, Dr. Mahan violated the Code of Ethics for Government Employees in that her private promises purported to be binding upon her office as Chief Historian. Accordingly, we conclude Dr. Mahan failed to comply with the ethical standards in the JER when she promised the Deputy Chief Historian position to two employees.

Dr. Mahan's Response

Dr. Mahan stated "both of these allegations are false and patently ridiculous." She added she never promised anyone any position, let alone the same position to two people, and provided a statement of support from a member of the selection panel that selected the current Deputy Historian and recommended we contact another member of the selection panel. We note we have no concern with the selection process for the position as the allegation in question deals only with Dr. Mahan's alleged promises.

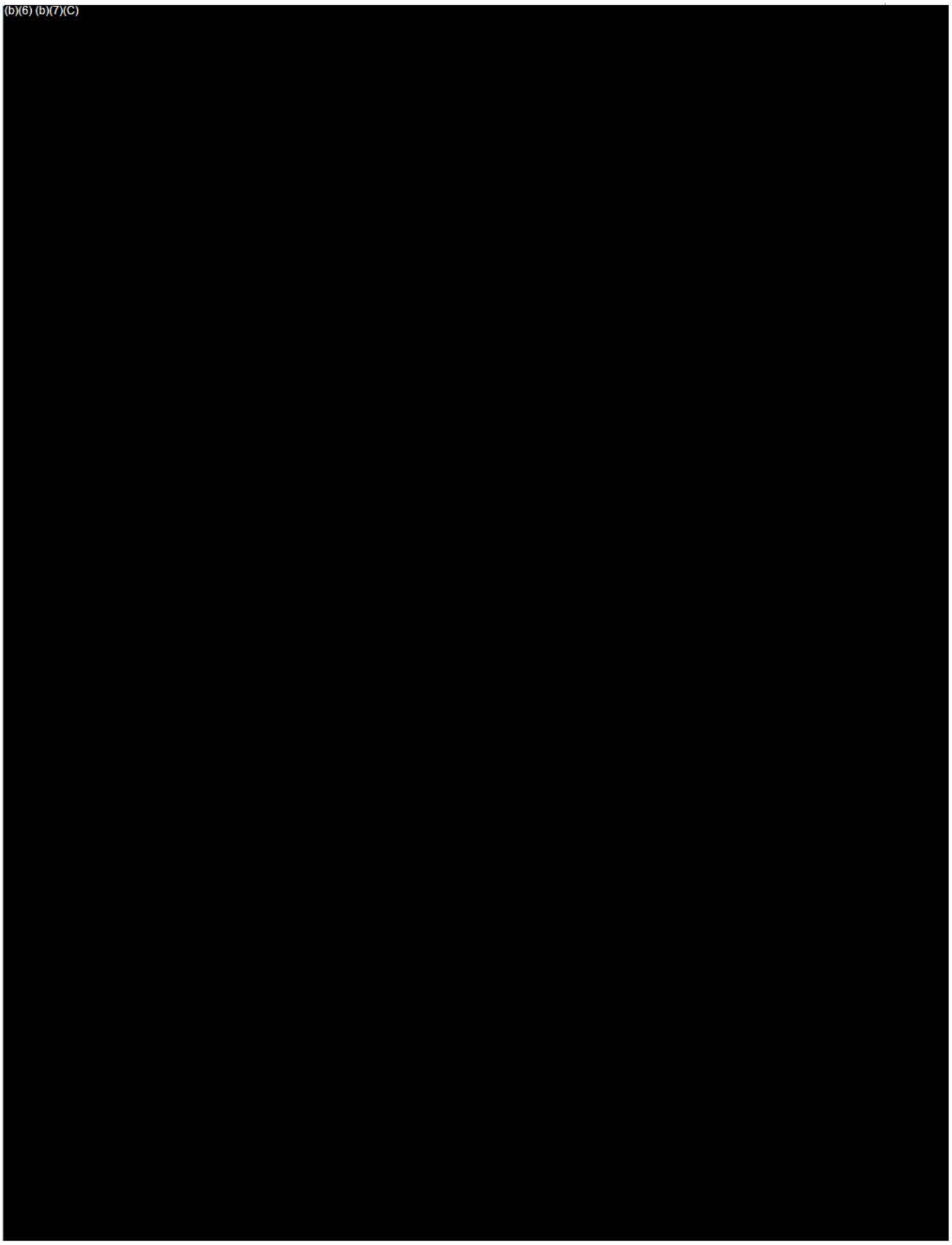
Dr. Mahan also recommended we contact her predecessor as OSD Historian. Dr. Mahan asserted her predecessor could, "fully explain the ambitions of the complainant that may have led her to have delusions that she had been pre-chosen." We contacted the predecessor who declined our request for an interview stating she did not want to be involved in the investigation.

We also reviewed the information we received regarding the second alleged promise. A member of the historian staff informed us the affected employee sought his advice on the matter. He described the employee as "greatly dismayed that Dr. Mahan would think that an employee without managerial experience would be the appropriate choice to run a history program." The witness stated that both he and the affected employee agreed that it was inappropriate for Dr. Mahan to speculate about the incumbent deputy's future and to disclose her inclinations regarding future hiring decisions.

We reviewed the testimony of the two witnesses who testified Dr. Mahan promised them the Deputy Historian position. Our review, along with the contemporaneous report of the second alleged promise persuaded us that both subordinates were convinced Dr. Mahan intended to have them as her Deputy Historian. We found their testimony to be more persuasive than Dr. Mahan's denial since neither witness (b)(6) (b)(7)(C) [redacted], and neither had any known connection to the other. We also found persuasive the second employee's contemporaneous disclosure of the matter to another member of the Historian office.

After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

(b)(6) (b)(7)(C)



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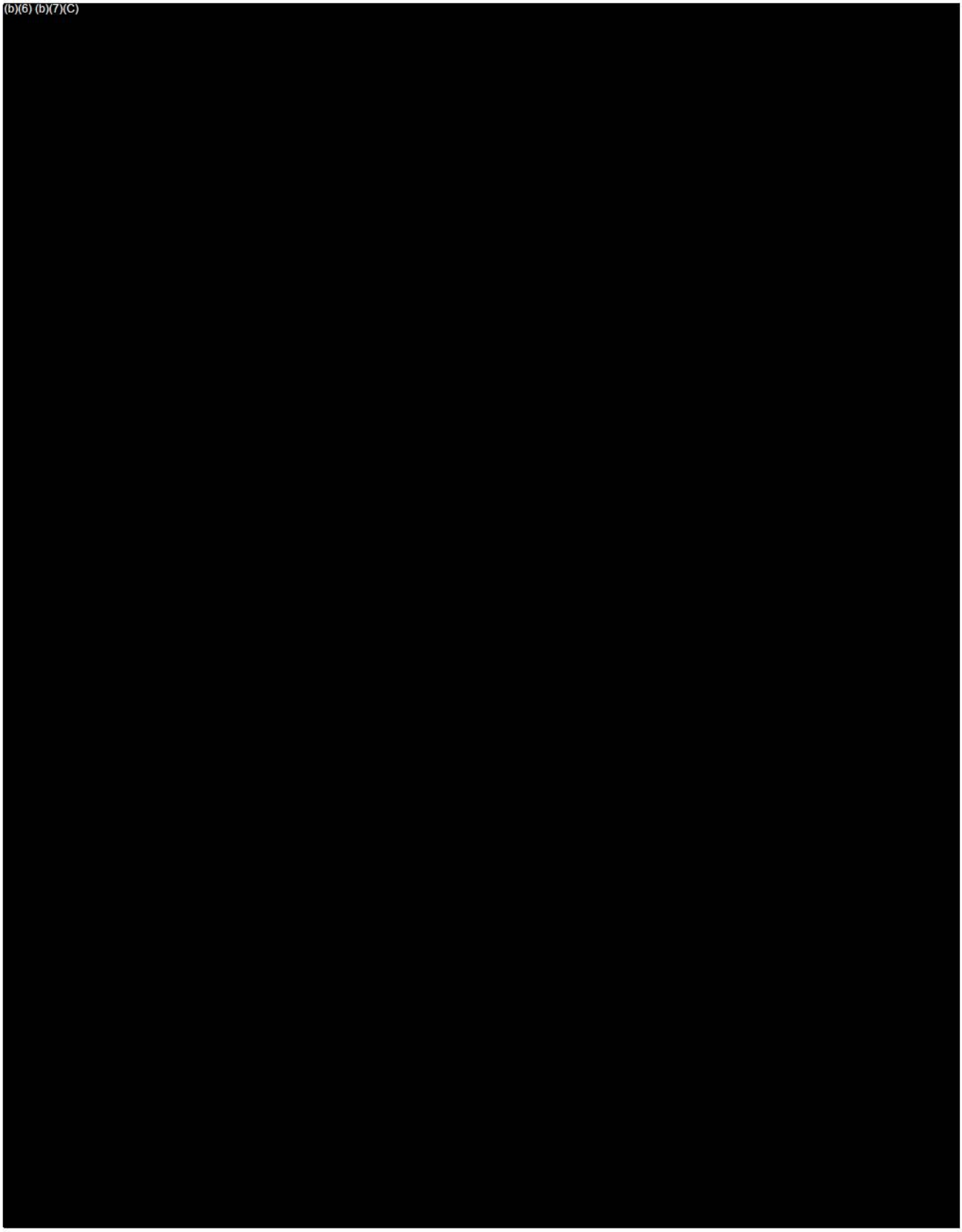

V. CONCLUSIONS

A. Dr. Mahan on occasion engaged in conduct in the workplace that was inconsistent with the standards for senior executives.

B. Dr. Mahan misused Government resources.

C. Dr. Mahan used her public office for private gain and improperly solicited and accepted gifts from prohibited sources.

D. (b)(6) (b)(7)(C) [redacted].

E. Dr. Mahan violated the provisions of Chapter 12 of the JER by promising the Deputy Historian position to two subordinates.

F. (b)(6) (b)(7)(C) [redacted]

VI. RECOMMENDATION

We recommend the Director, Administration and Management, consider appropriate corrective action with regard to Dr. Mahan.

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Report No. 11-119863-249

Inspector General
Department of Defense

~~FOR OFFICIAL USE ONLY~~

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

FEB - 7 2014

Ref: FOIA-2013-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it case number FOIA-2013-00373.

Please note that while conducting a search for responsive records, the Office of the Deputy Inspector General for Administrative Investigations discovered two investigations of senior officials completed in fiscal year 2012, in which allegations were substantiated, that were not included in the Semi-Annual Report to the Congress. These investigations concern Mr. Keith E. Seaman and Ms. Diana J. Ohman. This office considers these investigations responsive to your request, and is providing them to you as they become available.

The Report of Investigation concerning Ms. Diana J. Ohman is enclosed. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request, and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

FOR OFFICIAL USE ONLY

Report No. 11-119768-306 July 17, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION:
Ms. Diana J. Ohman,
Former Director, DoD Dependents Schools - Pacific/ Domestic Dependent Elementary and Secondary Schools - Guam, DoD Education Activity

FOR OFFICIAL USE ONLY

REPORT OF INVESTIGATION: MS. DIANA J. OHMAN, SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address an allegation that Ms. Diana J. Ohman, while serving as Director, Department of Defense Dependents Schools (DoDDS) - Pacific/Domestic Dependent Elementary and Secondary Schools (DDESS) - Guam, Department of Defense Education Activity (DoDEA), used her official position to induce the (b)(6) (b)(7)(C) of a subordinate to exchange the wheels and tires of his car with the wheels of Ms. Ohman's car in order for her car to pass a mandatory vehicle safety inspection.[1]

We conclude that in May 2010, Ms. Ohman violated applicable standards of the Joint Ethics Regulation (JER); Title 5, Code of Federal Regulations (CFR), Section 735.203; the United States Forces Japan (USFJ) Status of Forces Agreement (SOFA); and USFJ regulations when she arranged for the (b)(6) (b)(7)(C) of a subordinate to exchange the wheels of her car in order to pass the mandatory safety inspection under the Japanese Safety Regulations for Road Vehicles law. We determined that Ms. Ohman compensated the (b)(6) (b)(7)(C) for his services. Accordingly, such arrangement did not constitute an improper gift under the JER.

By letter dated May 21, 2012, we provided Ms. Ohman the opportunity to comment on the initial results of our investigation. In her response dated June 4, 2012, Ms. Ohman agreed with the conclusion and with the determination that the service of exchanging the wheels did not constitute a gift to her. She stated that she was sorry that she did not respect the vehicle safety inspection law of Japan and that the action created the appearance of violating that law. She also stated that she was sorry that she acted in a manner inconsistent with DoD ethical values.

This report sets forth our findings and conclusion based on a preponderance of the evidence.

II. BACKGROUND

Ms. Ohman, a member of the Senior Executive Service (SES) and a career educator, assumed duties as Director, DoDDS - Pacific/DDESS - Guam, in July 2009. She previously served as the Area Director, DoDEA – Europe, from 1999 - 2009. As Director, DoDDS - Pacific/DDESS - Guam, Ms. Ohman reported directly to the Director, DoDEA.

As Director, DoDDS-Pacific/DDESS-Guam, Ms. Ohman was directly responsible for 24,000 students, 3,100 full-time employees, and 48 schools geographically organized into four districts within the Pacific theater: Guam, Japan, Okinawa, and South Korea. She also supervised an annual budget of approximately $395 million and a non-DoD schools program with a budget of $13.5 million that served eligible students in over 20 countries where DoD schools are unavailable.

[1] In this report, for simplicity, we use the term "wheel" to refer to the combined wheel and tire unit exchanged between the vehicles. Where we use the term "tire," we refer only to the vehicles' tires.

On May 26, 2011, the DoDEA Office of Compliance and Assistance forwarded to us a portion of an Equal Employment Opportunity (EEO) complaint against non-senior officials. The complaint contained a separate allegation of misconduct by Ms. Ohman alleging that she induced the (b)(6) (b)(7)(C) of one of her subordinates to switch the wheels on his BMW automobile with those of Ms. Ohman's vehicle so her vehicle would pass the mandatory vehicle inspection. Under the USFJ SOFA, all privately owned vehicles must obtain an inspection certificate every 2 years and maintain Japanese Compulsory Insurance (JCI).

We determined that the alleged misconduct, if substantiated, might violate Japanese criminal law against obtaining an insurance liability certificate by fraudulent means. The U.S. Air Force Office of Special Investigations (AFOSI) has jurisdiction at Kadena Air Base. Accordingly, we referred the matter to the Secretary of the Air Force, Office of Inspector General (Special Investigations Directorate) for possible criminal investigation. AFOSI declined to investigate the allegation.

Ms. Ohman terminated her employment with DoDEA on November 18, 2011, and, as of November 20, 2011, was employed in an SES position within the Department of Veterans Affairs in Indianapolis, Indiana.

III. SCOPE

We interviewed the complainant, Ms. Ohman, and (b)(6) (b)(7) witnesses with knowledge of the matters under investigation. Additionally, we reviewed applicable standards, regulations, emails, and personal documents provided by Ms. Ohman pertaining to her vehicle.

IV. FINDINGS AND ANALYSIS

Did Ms. Ohman improperly arrange for the wheels of her car to be exchanged in order to pass the Japanese mandatory vehicle safety inspection?

Standards

DoD Regulation 5500.7-R, "JER," dated August 30, 1993, including changes 1-6 (March 23, 2006)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates 5 CFR 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

5 CFR 2635:

Subpart A, "General Provisions," "Basic obligation of public service." Section 2635.101(b)(1) states: "Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain."

5 CFR 2635.101(b)(7) states: "Employees shall not use public office for private gain."

5 CFR 2635.101(b)(14) states: "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. . ."

5 CFR 735.203, "Conduct Prejudicial to the Government"

5 CFR 735.203 states that an employee shall not engage in "dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

USFJ SOFA

The USFJ SOFA provides rights, privileges, and special protections to USFJ military personnel, civilian employees, and their respective dependants, who are in turn obligated to respect the laws of Japan and to abstain from any activity inconsistent with the spirit of the SOFA.

A SOFA is an agreement that establishes the framework under which armed forces operate within a foreign country. The agreement provides for rights and privileges of covered individuals while in the foreign jurisdiction, addressing how the domestic laws of the foreign jurisdiction shall be applied to U.S. personnel while in that country. U.S. personnel may include U.S. armed forces personnel, Department of Defense civilian employees, and/or contractors working for the Department of Defense.

USFJ Instruction 51-701, "Japanese Laws and You," dated June 1, 2001

While in Japan, all military members, civilian employees, and their respective dependants are subject to both United States (US) laws and military regulations and Japanese laws and regulations.

USFJ Instruction 31-205, "Motor Vehicle Operations and Traffic Supervision," dated April 5, 2004

US forces personnel will obey Government of Japan traffic laws and regulations.

All privately owned vehicles must pass a safety inspection and have a valid inspection certificate.

JCI coverage is required for the inspection period.

Japanese "Safety Regulations for Road Vehicles" within the "Road Vehicles Act"

"Vehicle Inspection" is the process which allows the government to confirm that each individual vehicle complies with the regulations and that each user is conducting the vehicle maintenance properly.

Renewal inspection, or "shaken" in Japanese, is a periodic inspection undertaken after the expiration of the valid term of the initial motor vehicle inspection certificate. For private passenger motor vehicles, the valid term of the inspection certificate is 2 years.

Facts

The USFJ SOFA requires DoD civilian employees and military personnel stationed in Japan to respect Japanese laws. Japanese law requires that automobiles undergo a safety inspection every 2 years.

In May 2010, Ms. Ohman's personal vehicle, a 1998 BMW Z3, failed the mandatory inspection because of a missing tail light and the tires protruded about a quarter inch beyond the wheel well.

[redacted], testified that during either the week of May 3 or May 10, 2010, [redacted] informed her that Ms. Ohman's vehicle failed its JCI inspection.[2] [redacted] stated that [redacted] asked her, "You know, her tires didn't pass, and we were thinking, since, you know, [redacted] has the same car, can we use his vehicle, his tires?" [redacted] also testified that [redacted] called [redacted], from her office, discussed the situation, and arranged to meet him later that day. [redacted] testified that later that day [redacted] met with [redacted] and Ms. Ohman at the DoDDS-Pacific headquarters to discuss the wheel exchange.

[redacted] testified that [redacted] told her about the meeting and that he had agreed to switch the wheels from his vehicle with those of Ms. Ohman's. [redacted] further testified that [redacted] subsequently switched the wheels of the two vehicles so that Ms. Ohman's vehicle would pass the inspection.

[redacted] testified Ms. Ohman later put a $400 check on [redacted] desk for other work [redacted] performed on Ms. Ohman's car. She stated that she did not think that Ms. Ohman compensated [redacted] for changing the wheels.

[redacted] testified that after [redacted] informed him that Ms. Ohman's car failed the JCI he "spoke to the officers concerned" who told him that Ms. Ohman's vehicle failed because of incorrect wheel fit. He stated that he spoke to [redacted] on the phone about exchanging the wheels. He also testified that, in addition to himself, Ms. Ohman, [redacted], and [redacted], met to discuss the wheel exchange. [redacted] testified that during the meeting Ms. Ohman "concurred with the wheel exchange."

[redacted] testified that he made the wheel exchange at the Air Force car workshop. [redacted] testified that it took approximately 2 hours to swap the wheels between vehicles. [redacted] further testified that approximately 10 days after making the initial tire switch and after Ms. Ohman's vehicle passed the second inspection, he did "exactly the reverse of what I did the first time, and returned the wheels to their respective vehicles in the workshop once again."

[2] Although [redacted] referred to [redacted] he testified that his name is [redacted]

(b)(6) (b)(7)(C) testified that Ms. Ohman did not pay or otherwise compensate him for any vehicle inspection-related work he performed for her. He testified that he received approximately $460 from Ms. Ohman for other work he performed on her car, but reiterated that he did not receive compensation for exchanging the wheels, testifying, "I neither requested, asked, applied, or received anything." He testified that he "considered my service as a courtesy, (b)(6) (b)(7)(C) He stated that he did not "wish to be condescending or patronizing," but if a lady owner had a problem with her BMW, (b)(6) (b)(7)(C) would assist in resolving the problem.

When asked what personal or social interactions he had with Ms. Ohman, (b)(6) (b)(7)(C) testified, "Absolutely none." He stated that on one occasion he accompanied (b)(6) (b)(7)(C) to an evening function at a restaurant and had minimal contact with Ms. Ohman for about 5 minutes.

(b)(6) (b)(7)(C) denied telling (b)(6) (b)(7)(C) that Ms. Ohman's car failed the vehicle inspection and testified he did not know who took Ms. Ohman's vehicle in for the initial inspection. He testified that he knew (b)(6) (b)(7)(C) had a vehicle similar to Ms. Ohman's and that (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) stated:

> To be completely honest, I was present when (b)(6) (b)(7)(C) just openly said, "Diana, we're all part of the (b)(6) (b)(7)(C). Let me help you with your inspection." And that was the extent of my involvement. I sort of backed out because I knew that this was between two car owners and I had nothing to do with it. So I just moved on and transitioned from that room.

(b)(6) (b)(7)(C) testified that the conversation between Ms. Ohman and (b)(6) (b)(7)(C) about exchanging wheels took place in a meeting room near the Director's office, that it was completely informal, and that the only persons present were (b)(6) (b)(7)(C), Ms. Ohman, and himself. (b)(6) (b)(7)(C) stated that he "was only there by chance. So, I sort of backed out to be polite." (b)(6) (b)(7)(C) testified that he had no direct knowledge of how (b)(6) (b)(7)(C) knew that Ms. Ohman's vehicle failed the JCI inspection. (b)(6) (b)(7)(C) testified that changing wheels just to pass the JCI inspection and then changing them back after the inspection "would not be what I would do as an adult." He also testified that he did not know directly whether the wheels from Ms. Ohman's car were ultimately switched with (b)(6) (b)(7)(C).

(b)(6) (b)(7)(C) testified that he had no knowledge of Ms. Ohman's vehicle failing the safety inspection or of the wheel exchange. Further, (b)(6) (b)(7)(C) denied meeting with Ms. Ohman about the vehicle and denied discussing the wheel exchange with her. He also denied having any discussions with (b)(6) (b)(7)(C) regarding Ms. Ohman's car or meeting him in Ms. Ohman's office.

Ms. Ohman testified that while living in Japan she was the registered owner of a 1998 BMW Z3 automobile. In May 2010 Ms. Ohman took her vehicle to an inspection station at Camp Foster, Japan, for the mandatory JCI inspection. Her vehicle failed the inspection due to, among other things, a missing tail light and the tires of the vehicle protruding "about a quarter inch beyond the wheel well."

Ms. Ohman testified that she knew (b)(6) (b)(7)(C) had the same type of vehicle as hers from a conversation she had with (b)(6) (b)(7)(C) at a social gathering in September 2009. She also

testified that when her car failed the inspection, she talked to [redacted] about what she should do. Ms. Ohman testified that [redacted] said, "Well, yours is just exactly like mine. We can just switch the tires." She stated that she and [redacted] agreed to the switch. Ms. Ohman testified that she did not recall a meeting in her office to discuss switching the wheels.

Ms. Ohman testified that she did not know where or when the wheel exchange took place because she was TDY at the time. Ms. Ohman testified that she received invoices from [redacted] for work he did on her car. One invoice stated, "Total hours worked, 26 hours at $15 an hour for $390." She did not know what part of the labor charge was for the wheel exchange. She testified that the total amount she paid him for his work on her vehicle was $930, with the difference being for "parts and pieces." When questioned specifically whether any of the $930 she paid to [redacted] was for switching the wheels on the two vehicles, she testified:

> Yes, as far as I'm concerned because that was our discussion that any time that he put into my vehicle would be paid by me. And obviously, 26 hours and $390 would indicate that, yes, in my opinion, it was paid.

Ms. Ohman provided us photocopies of the carbon copies of the two checks she wrote to [redacted] for work he performed on her vehicle. On June 3, 2010, Ms. Ohman wrote check #134 in the amount of $450, and wrote in the memo line, "Car parts for $450." On July 30, 2010, Ms. Ohman wrote check #151, in the amount of $480, and wrote in the memo line, "Work on BMW Z3."

Ms. Ohman testified that she considered buying new tires for her vehicle when it failed inspection, but did not research the price of new tires because, after the discussion with [redacted], she had a "different option [switching the wheels]" and she chose that option.

Ms. Ohman testified that she did not recall "talking about legality" of what she did and that she chose to switch the wheels "because it needed to get done because I knew I was going TDY. I had to figure out something – and probably because I thought it was going to be a lot cheaper than buying new tires."

With regard to her personal relationship with [redacted] before he exchanged the wheels on their cars, Ms. Ohman testified:

> He stopped by the office infrequently… He and I did exchange some emails in regards to BMWs. [redacted] and we discussed that… We did talk a couple of times on the phone.

On May 23, 2010, Ms. Ohman sent an email to [redacted], Subject: "RE: The white 'Baby Z3'." In it, Ms. Ohman wrote:

> Oh My My [sic] [redacted] I doubt that that [sic] this Baby has ever had this kind of care! Thanks for changing wheels with me to get her through the inspection. I know you are glad to have your Baby back to normal.

When asked how she would respond to the allegation that she conspired or induced another person to switch the wheels of his vehicle with hers in order for her vehicle to pass the mandatory JCI inspection, Ms. Ohman testified:

> I would never deny that. That is what happened. I did not conspire. It was a mutually agreed upon process. I didn't require him to do anything that he didn't want to do, and we agreed that that's what would happen, and it did.

Discussion

We conclude that Ms. Ohman violated applicable standards when she arranged for the (b)(6) (b)(7)(C) of a subordinate to exchange the wheels of her car in order to pass the mandatory safety inspection under the Japanese Safety Regulations for Road Vehicles law. We also conclude that (b)(6) (b)(7)(C) service of exchanging the wheels was not a gift to Ms. Ohman.

We found that in May 2010 Ms. Ohman's personal vehicle failed a mandatory safety inspection under Japanese law. She assented to an arrangement wherein (b)(6) (b)(7)(C) switched the wheels and tires of his car with those on Ms. Ohman's car so her car would pass the inspection. Ms. Ohman testified she chose to have (b)(6) (b)(7)(C) exchange the wheels between the vehicles in order to pass the inspection because it was the cheaper course of action and because she was leaving soon on TDY. She stated she did not "talk about" the legality of her actions.

Japanese law mandates that all vehicles pass a safety inspection. The USFJ SOFA requires all DoD civilians to respect the laws of Japan and the USFJ Instructions reemphasize the requirement for a safety inspection. Additionally, the JER outlines the expectation that DoD employees act in an ethical manner and avoid any actions that would create the appearance that they are violating the law.

We conclude that Ms. Ohman's conduct was dishonest and violated the applicable standards. She chose a course of action that brought her personal monetary gain, in the form of money saved by not purchasing new tires for her car. Her decision to switch the tires may also be characterized as a violation of the Japanese Safety regulations in that she used wrongful means to pass a mandatory safety inspection. Further, Ms. Ohman acted in a manner that was inconsistent with DoD ethical values.

We also determined that the wheel exchange did not constitute a gift to Ms. Ohman. Although (b)(6) (b)(7)(C) testified that Ms. Ohman did not compensate him for exchanging her wheels, Ms. Ohman testified that she considered the labor charges billed by (b)(6) (b)(7)(C) included compensation for switching the wheels. We compared the invoice for repair work performed by (b)(6) (b)(7)(C), which included an unattributed total charge for hours of labor, with an estimate of the average labor hours typical for such repairs. Based on that comparison, we determined that it was reasonable to conclude the labor hours charged included compensation for the wheel exchange in addition to the repair work. Accordingly, (b)(6) (b)(7)(C) service of exchanging the wheels was not a gift to Ms. Ohman.

V. CONCLUSION

Ms. Ohman violated applicable standards of the JER, 5 CFR 735.203, the USFJ SOFA, and USFJ regulations by improperly arranging with a subordinate's (b)(6) (b)(7)(C) for the temporary exchange of her wheels in order to pass the mandatory Japanese safety inspection.

VI. RECOMMENDATION

As Ms. Ohman is no longer employed by DoD but is still in the SES, notify the Office of Personnel Management of the substantiated misconduct.

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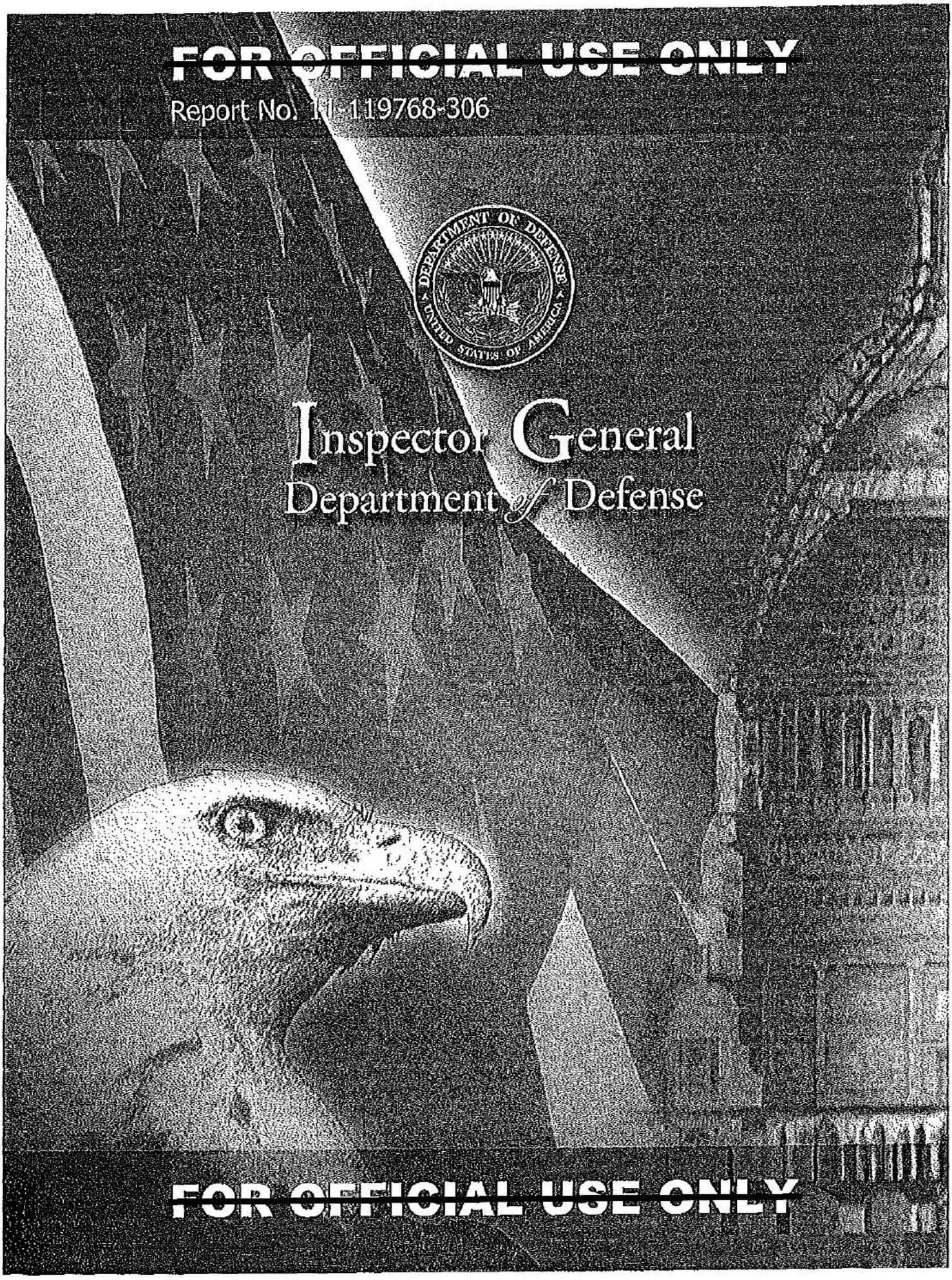
Report No. 11-119768-306



Inspector General
Department of Defense

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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

FEB 12 2014

Ref: FOIA-2013-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Mr. Keith E. Seaman is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

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August 24, 2012

Inspector General

United States Department of Defense

ALLEGED MISCONDUCT: MR. KEITH E. SEAMAN

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REPORT OF INVESTIGATION:
MR. KEITH E. SEAMAN

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Mr. Keith E. Seaman, then-Acting Defense Business Systems Acquisition Executive (DBSAE), Defense Business Transformation Agency (BTA) engaged in misconduct. Based on complaints to this Office and information gathered in the course of the investigation, we focused our investigation on allegations that Mr. Seaman:

- Failed to treat subordinates with dignity and respect;
- Engaged in prohibited personnel practices;
- (b)(6) (b)(7)(C) [redacted];
- (b)(6) (b)(7)(C) [redacted];
- (b)(6) (b)(7)(C) [redacted];
- Improperly used his Government travel charge card (Government travel card) for non-official expenses; and
- Improperly directed a subordinate employee to use official time to perform activities other than those required in the performance of official duties.[1]

We substantiated four allegations. We conclude that Mr. Seaman, in making inappropriate remarks about subordinates, failed to treat subordinates with dignity and respect in violation of the Joint Ethics Regulation (JER). We found that Mr. Seaman failed to demonstrate the underlying leadership competencies of the "Leading People" executive core qualification, which requires competence in managing and resolving conflict, as well as in creating a culture that fosters team commitment, spirit, pride, and trust. Additionally, Mr. Seaman failed to exhibit the critical leadership competencies defined in Appendix A of the Office of Personnel Management (OPM) "Guide to Senior Executive Qualifications," (the Guide) dated October 2006, as treating others with courtesy, sensitivity, and respect, showing consistency in words and actions, and modeling high standards of ethics.

We also conclude that Mr. Seaman directed a subordinate not to apply for a position within BTA, and that his actions violated merit system principles as defined in Title 5, United States Code, Section 2301(b)(1) (5 U.S.C. 2301(b)(1)) in that his actions violated the principle of

[1] We received additional allegations that a preliminary inquiry determined did not warrant further investigation. We discuss those allegations in Section III of this report.

"fair and open competition." We further conclude that his actions constituted a prohibited personnel practice as defined in 5 U.S.C. 2302(b)(4) in that his actions amounted to a "willful obstruction" of the employee's right to compete for employment.

We further conclude that Mr. Seaman used his Government travel card for personal purposes in violation of DoD Financial Management Regulation, Volume 9, Chapter 3, dated March 2005.

Finally, we conclude that Mr. Seaman used a subordinate's official time for unauthorized purposes in violation of Title 5, Code of Federal Regulations, Part 2635.705(b) (5 C.F.R. 2635.705(b)).

Following our established practice, by letter dated May 21, 2012, we provided Mr. Seaman the opportunity to comment on our initial conclusions. In his response, dated June 25, 2012, Mr. Seaman asserted our findings were inaccurate, contested testimony of witnesses, and described the changes he advanced during his tenure at DBSAE. Mr. Seaman provided no new evidence for us to consider.[2]

After carefully considering Mr. Seaman's response and reevaluating the evidence, we stand by our initial conclusions.

We recommend the Deputy Inspector General for Administrative Investigations notify the Directors of OPM and OSC of the results of this investigation.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

BTA was formed on October 7, 2005, to "guide the transformation of business operations throughout the Department of Defense and to deliver Enterprise-level capabilities that align to warfighter needs." BTA was organized into several directorates. DBSAE, which included roughly half of the agency's employees, was the largest directorate within BTA. As originally organized, a military flag grade officer (two star) would have served as the DBSAE with a DoD civilian senior executive deputy.[3] In practice, once Major General Carlos D. Pair, U.S. Army Reserve, DBSAE, departed BTA in 2008, the BTA Director, Mr. David Fisher, made Mr. Seaman, who was the Deputy DBSAE, the Acting DBSAE, the position in which Mr. Seaman served until leaving BTA in May 2011.

[2] While we have included what we believe is a reasonable synopsis of Mr. Seaman's response, we recognize that any attempt to summarize risks over simplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and attached a copy of the response to this report.

[3] The acronym DBSAE (Defense Business Systems Acquisition Executive) referred both to the directorate within the Business Transformation Agency that dealt with acquisition of DoD business systems and the individual that headed that directorate. Context determines its usage in this report.

On August 16, 2010, the Secretary of Defense announced the elimination of BTA as part of the Secretary's efficiencies initiative. With this announcement, many BTA employees began to seek alternate employment and left the agency in advance of its elimination.

Mr. Seaman left BTA and DoD on May 7, 2011, to accept an acquisition position as a senior executive with the Department of Veterans Affairs.

III. SCOPE

We conducted a total of 36 interviews with 29 witnesses with knowledge of matters at issue, including Mr. Seaman. We reviewed Mr. Seaman's Government emails, Government telephone records, official travel records, and Government travel card records. We also reviewed applicable statutes, regulations, and policies.

During our preliminary inquiry we concluded the following allegations did not warrant further investigation. We consider these allegations not substantiated:

(b)(6) (b)(7)(C)

[redacted]

(b)(6) (b)(7)(C)

[redacted]

IV. FINDINGS AND ANALYSIS

A. Did Mr. Seaman fail to treat subordinates with dignity and respect?

Standards

5 U.S.C. 3131, "The Senior Executive Service"

Title 5 U.S.C. 3131 established the Senior Executive Service "to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality."

DoD 5500.7-R, "JER," dated August 30, 1993

The JER contains standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates 5 C.F.R. 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Title 5 C.F.R. 2635, Section 2635.101, "Basic obligation of government service," states in paragraph (b)(14) that employees will "endeavor to avoid any actions creating the appearance

that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

JER Chapter 12, "Ethical Conduct," states that DoD employees should consider ethical values when making decisions as part of official duties. In that regard, the JER sets forth primary ethical values of "fairness," "caring," and "respect" as considerations that should guide interactions among DoD employees. It elaborates on those characteristics as follows.

- Fairness involves open-mindedness and impartiality. "Decisions must not be arbitrary, capricious, or biased. Individuals must be treated equally and with tolerance."
- Caring involves compassion, courtesy, and kindness to "ensure that individuals are not treated solely as a means to an end."
- Respect requires that employees "treat people with dignity." Lack of respect leads to a breakdown of loyalty and honesty.

OPM Guide

The Guide sets forth essential leadership qualifications and underlying competencies for members of the Senior Executive Service within the Federal Government. The introduction to the Guide states that leaders must be able to apply "people skills" to motivate their employees, build partnerships, and communicate with their customers. The Guide establishes leadership competencies identifying the personal and professional attributes critical to success by Senior Executive Service employees. Additionally, the Guide identifies the following five Executive Core Qualifications for Senior Executive Service personnel: Leading Change, Leading People, Results Driven, Business Acumen, and Building Coalitions.

Appendix A to the Guide sets forth the underlying leadership competencies that demonstrate each Executive Core Qualification. The "Leading People" qualification requires competence in managing and resolving conflict, as well as in creating a culture that fosters team commitment, spirit, pride, and trust. Additionally, Appendix A expressly defines critical leadership competencies to include treating others with courtesy, sensitivity, and respect, showing consistency in words and actions, and modeling high standards of ethics.

Facts

Mr. Seaman's Treatment of Subordinates

Mr. David Fisher, former Director, Defense Business Transformation Agency, and Mr. Seaman's supervisor during the time in question, testified that based on his personal observation and understanding, he believed Mr. Seaman treated his subordinates with dignity and respect. He noted that he had received two anonymous notes that seemed to imply differently and recalled one incident in which a (b) (6), (b) (7)(C) subordinate reported being uncomfortable around

Mr. Seaman, but added he never witnessed anything other than appropriate behavior by Mr. Seaman with his staff.

Dr. Douglas Webster, former Deputy Director, Defense Business Transformation Agency, testified Mr. Seaman's leadership style was "not consistent with what I would like to see in a leader." He stated that he had not personally witnessed Mr. Seaman's interactions with subordinates, but became aware of them through employees who commented on Mr. Seaman's behavior.

Members of Mr. Seaman's staff testified that Mr. Seaman's conduct toward them did not always convey dignity and respect. One of Mr. Seaman's (b)(6) (b)(7)(C) testified that Mr. Seaman is "one of those guys who has a tendency to talk about people in front of other people."

A member of Mr. Seaman's (b)(6) (b)(7)(C) testified that Mr. Seaman "has a communication problem," and that his communication practices can "be perceived as not respecting another individual." She stated that Mr. Seaman asserts that he treats others with dignity and respect, and that "he doesn't perceive what he's doing as being threatening or derogatory even though he knows he's saying negative things."

Another of Mr. Seaman's (b)(6) (b)(7)(C) testified that Mr. Seaman's style is to complain about a person who is not present. (b) (6), (b) (7)(C) stated Mr. Seaman "loves to complain about people that just aren't in the office." He added that Mr. Seaman "very frequently" talks about those who are not in meetings and that, if [the subordinate] is not in the meeting, he becomes the target for something he hasn't done.

A BTA employee (b)(6) (b)(7)(C) for Mr. Seaman testified that Mr. Seaman "would lash out at [(b)(6) (b)(7)(C)] continually." This employee stated that the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), were Mr. Seaman's (b)(6) (b)(7)(C) and that he "just never understood" why Mr. Seaman treated them in that manner.

A BTA employee who observed Mr. Seaman's leadership style and his interactions with subordinates testified that while she would not have dealt with her staff in the same way Mr. Seaman did, she learned from his leadership style, noting that sometimes examples "of how not to lead can be the best ones."

This witness testified that Mr. Seaman sometimes criticized subordinates in public. She stated she disagreed with his practice of "completely unload[ing] on somebody" with everybody in the room. She added that she had only seen Mr. Seaman do this in DBSAE (b) (6), (b) (7)(C) meetings, and noted that "if you're on the receiving end of it, it's embarrassing." She speculated that Mr. Seaman believed that in criticizing these subordinates in public, "he's just putting it on the table and being forthright and honest." She questioned the necessity of Mr. Seaman publicly admonishing subordinates in front of their peers, and stated that such public admonishments could leave one feeling "completely exposed ... probably the feeling of, 'I was just kneecapped.'"

The witness added that the part of Mr. Seaman's behavior that she liked the least was that he would talk negatively about people in their absence. When asked if Mr. Seaman treated his employees with dignity and respect, the witness responded, "Most of the time, yes." When asked about the times that he did not, the witness testified, "It's when they're not present and he makes reference to some of the things that they're not meeting expectations on. And I don't know whether it's intentional or unintentional, but I personally don't like that style." She added she found Mr. Seaman's actions embarrassing and damaging to morale.

(b)(6) (b)(7)(C) in BTA testified that he started to distance himself from Mr. Seaman because "I just didn't want to be part of the sharing of raw thoughts and discussions about others." (b)(6) (b)(7)(C) explained that Mr. Seaman would "talk negative things about others and I would always tell him, 'Sir, you really shouldn't do that. You should be talking to them directly. If this is an issue, bring it to them, discuss it with them.'"

(b)(6) (b)(7)(C) gave an example involving Mr. Seaman and one of Mr. Seaman's (b)(6) (b)(7)(C) (b)(6) (b)(7)(C). He testified that Mr. Seaman had been "riding [(b)(6) (b)(7)(C)] very hard" for several months and that "he would talk to us negatively about [(b)(6) (b)(7)(C)]. And my response to him is consistently, 'Sir, you need to talk to [(b)(6) (b)(7)(C)]. If you're not happy with what he's doing or not doing you need to talk to him about it rather than just talk to all of us.'"

(b)(6) (b)(7)(C) further testified that Mr. Seaman stated he wanted to have an open discussion with DBSAE leadership about this (b)(6) (b)(7)(C) and not present. He stated he privately told Mr. Seaman that discussions about employees while they were not present "wasn't the right thing to do." He continued that another of Mr. Seaman's (b)(6) (b)(7)(C) recommended to Mr. Seaman that they should not have the discussion in the absence of the employee in question because the employee "needs to be part of [the discussion], and it needs to be focused on the mission," and that Mr. Seaman agreed not to hold the meeting in the (b)(6) (b)(7)(C) absence.

(b)(6) (b)(7)(C) testified that when the (b)(6) (b)(7)(C) returned, Mr. Seaman held the meeting, but focused only on progress made by the organization as a whole, not on the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) or the roles and responsibilities of the (b)(6) (b)(7)(C) organization. (b)(6) (b)(7)(C) stated that during the meeting, Mr. Seaman specifically noted that, "What's going on here isn't all in [the (b)(6) (b)(7)(C) organization]. It's on the rest of the organization, how we're all interacting."

(b)(6) (b)(7)(C) testified that in subsequent meetings, Mr. Seaman rebuked his senior leaders because they did not have the "backbone" to stand up and say anything bad about the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) recalled that the senior leaders reacted to the rebuke with disbelief as Mr. Seaman had never raised the issue of the (b)(6) (b)(7)(C). He stated, "We just listened to him for about an hour and a half talk about the progress we'd made and what we need to be doing. It was another example where he was, quite frankly, fibbing about the meeting and what those of us in the meeting had done." (b)(6) (b)(7)(C) added Mr. Seaman's behavior left him "very uncomfortable."

(b)(6) (b)(7)(C) who routinely participated in DBSAE (b) (6), (b) (7)(C) meetings testified that she remembered several instances where she questioned Mr. Seaman's actions. When asked if she had ever been embarrassed by the way Mr. Seaman treated an employee, the witness stated she had felt empathy for both Mr. Seaman and the employee. She noted nobody wants to have their lack of performance pointed out, and added, "it's not something I would find comfortable .... It's just not good to see conflict or challenging conversations with anybody."

Another (b) (6), (b) (7)(C) of Mr. Seaman's (b) (6), (b) (7)(C) recalled Mr. Seaman's (b) (6), (b) (7)(C) meetings differently. She testified that the atmosphere of the meetings "seemed fine to me." When asked if Mr. Seaman might speak negatively about a person who was not at the meeting, the employee testified, "I thought that was a joke because they would all sit around and laugh. And then the next week ... when the person is there, they'd all laugh about it again." When asked if she saw this as something personal or vindictive on Mr. Seaman's part, the employee stated, "No, they seemed to pick on each other a lot but in a joking [manner]."

One of Mr. Seaman's (b)(6) (b)(7)(C) at BTA remarked on Mr. Seaman's "somewhat bizarre behavior at times," noting that he had been around Mr. Seaman enough "both as a (b)(6) (b)(7)(C) and working in DBSAE for a while to know ... nobody likes to come to work where they don't know what they're going to get that day."

Mr. Seaman testified that he held regular meetings with his direct reporting staff and that in those meetings he discussed "inabilities" and things that "were not right." Mr. Seaman denied speaking about people behind their backs. He stated, "I'm always up front. I just don't talk behind people's backs," but acknowledged that he would discuss shortcomings of subordinate offices with members of other offices when the subject of the discussion was not present.

Inappropriate Comments to Subordinates

(b)(6) (b)(7)(C) for DBSAE testified that Mr. Seaman would knowingly make inappropriate comments about subordinate employees, but would preface them by stating, "Please don't take this the wrong way" or "I know I'm probably not supposed to say this." He added he was "taken aback" and considered it "an affront" to a female employee of DBSAE when during a meeting, Mr. Seaman told her, "You know, for an older lady you're fairly attractive." (b)(6) (b)(7)(C) described the incident as "astounding" given Mr. Seaman's status as a senior executive.

(b)(6) (b)(7)(C) of Mr. Seaman's staff confirmed the (b)(6) (b)(7)(C) recollection. She also testified that Mr. Seaman prefaced his inappropriate remarks with comments such as, "'This is going to get out,' or 'Somebody's going to file a complaint,' or, 'I know I shouldn't be saying these things,'" and then making the inappropriate comments. She ascribed his behavior to his "personality" and added she believed Mr. Seaman "couldn't help himself."

When asked if she believed Mr. Seaman's behavior was appropriate for a senior executive, (b)(6) (b)(7)(C) replied, "No," and added there were so many things that he did that were far worse than his comment to her that "for an older lady she was pretty attractive"; especially in terms of comments he would make about people behind their backs and "calling out

what he considered to be inadequate work performance" in the presence of others. She described such behavior is "offensive." She also noted that Mr. Seaman shared "more than others might have" and that he would "talk about himself quite often."

(b)(6) (b)(7)(C) testified that Mr. Seaman made inappropriate comments. She stated that he often (b)(6) (b)(7)(C) that the BTA Director liked them because "You are more like men than women." The witness testified that she found the comment to be "weird, weird and awkward." She interpreted Mr. Seaman's comment to be about "how we talk, that we're logical, we make decisions, and, sort of, how we act and dress." (b)(6) (b)(7)(C) stated that she felt she could "handle" Mr. Seaman because she kept her focus on work, "no matter what awkward comment he made," but stated, "I think other people get embarrassed too."

Mr. Seaman denied making inappropriate comments in the workplace. He testified, "I'm just not that way." He also denied being confronted by anyone in BTA about inappropriate comments.

Mr. Seaman's Truthfulness and Recollection of Events

Multiple witnesses testified regarding Mr. Seaman's truthfulness and ability to recall events accurately. One of Mr. Seaman's (b) (6), (b) (7) testified, "I don't think Keith is a very truthful person. He … either has a skewed view of what the reality is or he just makes something up to get himself out of trouble when he's confronted." (b) (6), (b) (7) (C) testified that in conversations with their supervisor Mr. Seaman would exaggerate his role in activities to enhance his importance. Conversely, Mr. Seaman would shift responsibility away from himself when things went awry. (b) (6), (b) (7) (C) observed that on occasions when Mr. Seaman gets cornered, rather than just telling the truth and "sticking to his guns" he would change his story.

(b)(6) (b)(7)(C) recalled an occasion when she believed Mr. Seaman deliberately provided inaccurate information to the BTA Director, information that prompted the Director to contact a senior executive in another agency to address the matter. The witness testified that as the director was about to place the call to the senior executive, she advised him, "Please don't make that call, because [Mr. Seaman] is lying to you. He's being less than honest." She added that, although she could not recall what Mr. Seaman had said that was inaccurate, the Director heeded her advice and did not place the telephone call.

(b)(6) (b)(7)(C) testified that Mr. Seaman lied about her in a conversation with (b)(6) (b)(7)(C) . She testified that Mr. Seaman asserted she had spoken with (b) (6), (b) (7)(C) She stated, "that was a blatant lie and one that I felt very strongly about, and still feel strongly about," and asserted that she had never spoken with (b) (6), (b) (7)(C)

Another of Mr. Seaman's (b)(6) (b)(7)(C) testified about Mr. Seaman and the events surrounding the reassignment of a (b)(6) (b)(7)(C) in DBSAE. (b) (6), (b) (7)(C) testified that Mr. Seaman "changed his story [about wanting to move this employee to the (b)(6) (b)(7) (C)

(b)(6) (b)(7)(C) program] by stating, 'She's going there to support because it's our Number 1 program and … she's volunteered to go do that.'"

(b) (6), (b) (7)(C) testified that he advised Mr. Seaman that he recalled the matter differently and that Mr. Seaman responded that he was recounting what had occurred at the time. (b) (6), (b) (7)(C) stated he told Mr. Seaman, "Sir, that's not what happened," to which Mr. Seaman replied, "Yes, it is, let it go."

(b) (6), (b) (7)(C) continued that about a month later Mr. Seaman stated to him and another of Mr. Seaman's (b)(6) (b)(7)(C) "If [the reassignment of this employee] ever comes to a complaint, here's what happened that day." (b) (6), (b) (7)(C) recalled that both he and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) responded, "Sir, that's not what happened," and offered their recollections of the event, which Mr. Seaman rejected.

Mr. Seaman testified that he was told by (b) (6), (b) (7)(C) that she overheard members of his staff coordinating the testimony they would provide to IG investigators concerning the allegations under investigation. We interviewed (b) (6), (b) (7)(C) who testified that she did not overhear these individuals coordinating their testimony and did not tell Mr. Seaman that she did.

One of Mr. Seaman's (b)(6) (b)(7)(C) testified that Mr. Seaman's recollection of events often varied from reality. She recalled "observations from many people" about meetings they had attended with Mr. Seaman, which Mr. Seaman described as fantastic while others who were in the meeting would say, "Not so much," or "Oh, my goodness … I can't believe he said that." She testified that Mr. Seaman's "telling of the story was always grander than the events," and that Mr. Seaman "says things to solicit sympathies … wanting people to make him feel more important."

(b)(6) (b)(7)(C) , testified that when Mr. Seaman arrived at BTA, Mr. Seaman would say or do anything in order to get his way, "whether it's the truth or not, whether it's in the interest of the organization or not." He added that Mr. Seaman no longer acted that way.

Mr. Fisher testified he was unaware of Mr. Seaman's conversations with subordinates. He stated Mr. Seaman "is in my meetings more than I am in his meetings … and so I don't see him in direct interaction with his staff very often."

Discussion

We conclude that Mr. Seaman violated the JER by failing to treat his subordinates with dignity and respect when he spoke negatively about subordinates to other subordinates, often in the absence of the subordinate being discussed. We found that such comments created an awkward environment in the workplace and displayed a lack of respect by Mr. Seaman for his subordinates. We also found that Mr. Seaman made inappropriate comments to subordinates that exhibited a lack of awareness of the feelings of his subordinates.

JER, Chapter 12, "Ethical Conduct," states that DoD employees should consider ethical values when making decisions as part of official duties. In that regard, the JER sets forth primary ethical values of "fairness," "caring," and "respect" as considerations that should guide interactions among DoD employees. We determined that by making disparaging comments about subordinates in the presence of other employees and in making inappropriate comments to subordinates, Mr. Seaman failed to treat subordinates with dignity and respect in violation of the JER.

We determined that Mr. Seaman's actions were inconsistent with the standards of SES conduct described in the OPM "Guide to Senior Executive Service Qualifications," specifically Appendix A, "Leading People," which requires competence in creating a culture that fosters team commitment, spirit, pride, and trust. Additionally, Appendix A expressly defines critical leadership competencies to include treating others with courtesy, sensitivity, and respect, showing consistency in words and actions, and modeling high standards of ethics.

We also found Mr. Seaman's testimony to be divergent from that of most other witnesses. Multiple witnesses testified that Mr. Seaman's recollection and description of events were often at odds with that of others who participated in the same events. We found the discrepancies between Mr. Seaman's testimony and that of other witnesses to be troubling and inconsistent with his responsibilities as a member of the SES to foster trust.

Response to initial conclusion

Mr. Seaman's response contained no information that challenged the evidence on which we based our initial conclusion. Based on our thorough review of Mr. Seaman's response and the relevant evidence, we stand by our initial conclusion.

B. Did Mr. Seaman violate merit system principles or engage in prohibited personnel practices?

Standards

5 U.S.C. 2301, "Merit system principles"

Title 5 U.S.C. 2301(b)(1) states recruitment should be from qualified individuals and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

5 U.S.C. 2302, "Prohibited personnel practices"

Title 5 U.S.C. 2302(a)(xi) includes a "significant change in duties, responsibilities" as a "personnel action."

Title 5 U.S.C. 2302(b) states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ...

deceive or willfully obstruct any person with respect to such person's right to compete for employment.

Facts

(b)(6) (b)(7)(C) [redacted]

(b)(6) (b)(7)(C) testified that Mr. Seaman's anger grew as Dr. Webster communicated directly with her and included her in meetings. She added that Mr. Seaman directed her to tell Dr. Webster that she "was not allowed to talk to him ... that all communication between Dr. Webster and her had to come directly through [Mr. Seaman]," and that she could only accept taskings from Mr. Seaman. (b)(6) (b)(7)(C) testified that it would have been "just wrong" for her to tell the agency's Deputy Director "no" when he asked her to attend a meeting.

(b)(6) (b)(7)(C) testified (b) (6), (b) (7)(C) [redacted] She added that because Dr. Webster (b)(6) (b)(7)(C) [redacted] (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) recalled that in December 2009, Mr. Seaman told her he wanted to reassign her from DBSAE to a (b) (6), (b) (7)(C) to "help [(b)(6) (b)(7)(C)] get her office together," and "help them do (b)(6) (b)(7)(C) ." She asserted the proposed move was punishment for her interaction with Dr. Webster on the (b)(6) (b)(7)(C) and stated she did not believe she was a good skills match to work in (b) (6), (b) (7)(C) and did not want to go. (b)(6) (b)(7)(C) testified that the (b)(6) (b)(7)(C) of the program to which Mr. Seaman wanted to move her telephoned her and said, "I'm not quite sure why you are coming down here. I don't really have a position for you."

(b)(6) (b)(7)(C) explained that she had to "bargain" with Mr. Seaman to remain as (b)(6) (b)(7)(C) in DBSAE rather than move to the program office and explained that Mr. Seaman made her "promise that I would never submit for the job with Dr. Webster." The (b)(6) (b)(7)(C) testified that she was upset because Mr. Seaman would not talk to her and he was treating her "very poorly." She stated that she went to Mr. Seaman and said, "Sir, I didn't ask for any of this to happen ... I'm just happy being (b)(6) (b)(7)(C) , happy working for you, happy ... getting the job done. I don't want to move to (b) (6), (b) (7)(C) . I'm not qualified to do that." (b)(6) (b)(7)(C) testified that Mr. Seaman replied:

> Well, if you want to stay here and keep your job, then you have to promise me that you are not going to apply for Dr. Webster's position. And you're going to go down and tell Dr. Webster, today, that you're not applying; that you're not interested. And when you come back, if I'm in a meeting, you give me a thumbs-

> up. You walk past my office and give me the thumbs-up. And when you do that I'm going to tell [BTA Director] David Fisher that you have volunteered to stay and you want to stay. And I'm going to keep you here just to close the loop on that.

(b)(6) (b)(7)(C) was asked if she followed through on Mr. Seaman's instructions to talk to Dr. Webster and then to come back and give Mr. Seaman a "thumbs-up" indicating that she had told Dr. Webster she was no longer interested in the (b)(6) (b)(7)(C). The (b)(6) (b)(7)(C) replied:

> You bet I did. I was scared for my job and I'm still in (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) So I went down and told Dr. Webster and he said, "Okay. I understand." I didn't tell him the whole thing with [Mr. Seaman] behind it.

(b)(6) (b)(7)(C) testified that she felt as if she had no choice but to inform Dr. Webster that she was not interested in the job.

(b)(6) (b)(7)(C) testified that when the (b)(6) (b)(7)(C) job was advertised, Dr. Webster and the (b)(6) (b)(7)(C) both asked if she planned to apply. She testified that she told them:

> I would really like to but [Mr. Seaman] had also told me that if I applied, he would find out who was on the cert (certificate of eligibles). And if my name was on that cert and I wasn't chosen, that life would be very hard in the aftermath.

(b) (6), (b) (7)(C)

Dr. Webster testified he sought to hire (b)(6) (b)(7)(C) who would work directly for him. He recalled that the individual he sought was told by Mr. Seaman to not apply for the job. He asserted Mr. Seaman's actions reinforced for him his opinion that Mr. Seaman was not much of a team player. He added that he viewed Mr. Seaman's actions—telling an individual what positions they can and cannot apply for, and that if the individual did apply that she would regret it—as "totally inappropriate."

(b)(6) (b)(7)(C) offered that Mr. Seaman wanted to prevent the employee from applying for the (b)(6) (b)(7)(C) because Mr. Seaman probably did not want things that DBSAE was working on to become known outside of DBSAE "before they were prime time."

(b)(6) (b)(7)(C) stated that Dr. Webster's desire to have (b)(6) (b)(7)(C) work at the BTA level while still assigned to DBSAE caused friction between Dr. Webster and Mr. Seaman. He added that Mr. Seaman told him if we saw Dr. Webster talking to (b)(6) (b)(7)(C) we were supposed to report that to Mr. Seaman. He stated, "We're not to engage her, just not to have contact with her on (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) confirmed that Mr. Seaman explicitly told him not to deal with the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) He stated, "Twice he told me that I was not to have any dealings with her." The second time, (b)(6) (b)(7)(C) had approached to Mr. Seaman because he believed it would be appropriate for the (b)(6) (b)(7)(C) to be part of a team addressing a specific issue in DBSAE. (b)(6) (b)(7)(C) testified, "So I explicitly went to him and asked him if she should be part of the team, and he told me, 'No. No,' [and] that I was not to talk to her."

Another one of Mr. Seaman's (b)(6) (b)(7)(C) testified that when Mr. Seaman directed him "not to interface with" the (b)(6) (b)(7)(C) he responded, "You can't say that kind of thing," and talked Mr. Seaman out of limiting his contact with the (b)(6) (b)(7)(C). He also noted Mr. Seaman's desire to reassign the (b)(6) (b)(7)(C) and advised Mr. Seaman that such a move could be viewed as reprisal and that he should not reassign her. He added Mr. Seaman heeded his advice for "about a week and then, it's like, 'I'm moving her.'"

(b)(6) (b)(7)(C) recalled when he learned that Mr. Seaman told the (b)(6) (b)(7)(C) she could not apply for the (b)(6) (b)(7)(C) he went to Mr. Seaman and told him, "Sir, you cannot do that. That's a prohibited action. You cannot tell somebody that they cannot apply." (b) (6), (b) (7)(C) testified that Mr. Seaman "took that as a personal affront and that each time (b)(6) (b)(7)(C) name came up, he looked at me and said, "Why do you keep throwing that back in my face?"

(b)(6) (b)(7)(C) also testified that Mr. Seaman told (b)(6) (b)(7)(C) and him that the (b)(6) (b)(7)(C) would not go to work as the (b)(6) (b)(7)(C). He recalled Mr. Seaman stating the (b)(6) (b)(7)(C) "was going down to work (b)(6) (b)(7)(C) program office if she was trying to leave." (b) (6), (b) (7)(C) testified that Mr. Seaman "later … changed his story to say the (b)(6) (b)(7)(C) was going to support the program office because it's our Number one program and she's volunteered to go do that."

When asked if he was aware of Mr. Seaman ever taking any improper personnel actions or threatening to withhold a proper personnel action for any employee, a different (b)(6) (b)(7)(C) testified, "Yeah, that's where he struggled a little bit with the [(b)(6) (b)(7)(C)] situation where he perceived that she was talking to the deputy director and was sharing things that he necessarily didn't want her to share yet."

(b)(6) (b)(7)(C) testified Mr. Seaman never said, "Hey, I want to screw this person," and, "Move them over there," but he observed it was "odd timing" that Mr. Seaman wanted to move the (b)(6) (b)(7)(C) during the "Dr. Webster thing." (b) (6), (b) (7)(C) testified that, "I tried to talk [Mr. Seaman] out of it, just the perception. I said, 'This is not the right time.'" He stated that Mr. Seaman's desire to move the (b)(6) (b)(7)(C) "felt a little punitive," but acknowledged that she would have been helpful in the program office.

Another of Mr. Seaman's (b)(6) (b)(7)(C) testified that because the program office was in a different building, it "became a way of getting you out of sight … so there was a lot of shifting people down the street under the cover of "the program needs help." (b) (6), (b) (7)(C) acknowledged that the program "had a lot to accomplish," and that employees could get acquisition experience there.

(b)(6) (b)(7)(C) where Mr. Seaman wished to send the (b)(6) (b)(7)(C), said that he thought the program was a great opportunity, but laughed as he noted the program office "could be viewed as being put out to 'the North 40.'"

(b)(6) (b)(7)(C) testified he was aware of Mr. Seaman's actions with regard to the potential reassignment of the (b)(6) (b)(7)(C). He testified that the (b)(6) (b)(7)(C) told him that Mr. Seaman told her, "Do not volunteer for that position. Point blank. Do not. I do not want you to volunteer for that position." (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) added he considered that to be an inappropriate personnel action," and noted that [one of Mr. Seaman's (b)(6) (b)(7)(C)] tried to tell Mr. Seaman, "Don't go down this road. Be very careful."

Mr. Seaman testified that he desired to move the (b)(6) (b)(7)(C) to work in the subordinate program office, which he described as a DBSAE-managed program that would benefit from her organizational abilities. Mr. Seaman stated that the (b)(6) (b)(7)(C) did not want to move, so Dr. Webster, (b)(6) (b)(7)(C) and a member of Mr. Seaman's staff, worked behind his back to have her assigned to work for Dr. Webster on the (b)(6) (b)(7)(C).

Mr. Seaman explained he selected the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), because she "has impeccable abilities to organize a front office." Mr. Seaman stated that the (b)(6) (b)(7)(C) informed him that she did not want to move to the program office. He asserted that "Doug Webster, behind my back, with [a member of Mr. Seaman's staff] and (b)(6) (b)(7)(C) created the paperwork to transfer the (b)(6) (b)(7)(C) to Doug Webster."

Mr. Seaman testified that "about 2 days later," [(b)(6) (b)(7)(C)] came to see him and told him, "I want to work for you, but I don't want to go down to the program office." Mr. Seaman added that he asked the (b)(6) (b)(7)(C) if she wanted to work for Dr. Webster and that she replied, "No, I just wanted to work for Dr. Webster if I have to go to the program office." Mr. Seaman testified:

> I said, 'Well, you guys have created this storm. I knew nothing about what's going on here. So it's going to be you that goes down and cleans up the storm. You have to go down and talk to Doug Webster, and you have to tell Doug Webster that it was okay, that you want to work for me. And then I want Doug Webster to come down and tell me that it's okay with him so that this is all clear.'

When investigators sought to clarify his statements, Mr. Seaman confirmed that the issue he had with the (b)(6) (b)(7)(C) desiring to leave DBSAE to do (b)(6) (b)(7)(C) for BTA was with the process used to arrange the move, which he described as behind the scenes maneuvering. Mr. Seaman denied telling the (b)(6) (b)(7)(C) that if she applied for the (b)(6) (b)(7)(C) position and he found out about it, then life would be difficult for her.

Mr. Seaman testified that he did not instruct his employees to limit contact with the

(b)(6) (b)(7)(C) [redacted]. He explained that information about her project was "coming in, not through proper channels," so he instructed his subordinates to "let me know what's going on."

Discussion

We conclude that Mr. Seaman engaged in prohibited personnel practices when he directed a subordinate employee not to apply for the (b)(6) (b)(7)(C) [redacted] position, and by coercing her to tell Dr. Webster that she was not interested in the position.

Title 5 U.S.C. 2301 requires fair and open competition which assures that all receive equal opportunity. Although Mr. Seaman denied taking the actions alleged, we found his testimony to be less credible than the testimony of the other witnesses with knowledge of the matter. We found that by directing the (b)(6) (b)(7)(C) [redacted] not to apply for the (b)(6) (b)(7)(C) [redacted] (b)(6) (b)(7)(C) position and by coercing her to disavow interest in the position, Mr. Seaman attempted to restrict fair and open competition. Mr. Seaman's actions violated provisions of 5 U.S.C. 2302 that prohibit an employee with authority to take, recommend, or approve any personnel action from willfully obstructing any person with respect to such person's right to compete for employment.

Response to initial conclusion

Mr. Seaman asserted "On the issue of the (b)(6) (b)(7)(C) [redacted] the facts are not captured." He placed responsibility for the events in question on Dr. Webster, whom he asserted "failed to follow the chain of command." Mr. Seaman denied telling the (b)(6) (b)(7)(C) [redacted] she could not apply for the position in question. He wrote, "I never told her she could not apply and statements by others are untrue." Based on our thorough review of Mr. Seaman's response and the relevant evidence, we stand by our initial conclusion.

C. Did Mr. Seaman improperly use his Government travel card?

Standards

DoD Financial Management Regulation, Volume 9, Chapter 3, March 2005[4]

0301 POLICY AND PURPOSE

030101. General. "The Travel and Transportation Reform Act of 1998" (TTRA) (Public Law 105-264) stipulates that the Government-sponsored, contractor-issued travel card (travel card) shall be used by all U.S. Government personnel (civilian and military) to pay for costs incident to official business travel. Provisions governing this mandatory use requirement within the DoD are set forth in section 0303 of this chapter.

[4] Chapter 3, Volume 9, of the DoD Financial Management Regulation has been updated since March 2005, but the version cited above was in force for most of the period that Mr. Seaman misused his Government travel charge card and the provisions of the regulation relative to this violation remain essentially unchanged.

030102. Purpose. This chapter sets forth the policy and procedures with respect to mandatory use of the travel card under the TTRA. It also establishes procedures for travel card issuance and use. Within the Department, the travel card program is intended to facilitate and standardize the use by DoD travelers of a safe, effective, convenient, commercially available method to pay for expenses incident to official travel, including local travel.[5]

030104. Compliance. This regulation establishes command, supervisory, and personal responsibility for use of the Government travel card and operation of the DoD travel card program. Civilian personnel who misuse or abuse the Government travel card may be subject to appropriate administrative or disciplinary action up to, and including, removal from federal service. Additionally, willful misuse of the Government travel card by either military personnel or civilian employees may constitute a crime punishable under federal or state law.

030211. Travel Cardholders. Cardholders for individually billed accounts are personnel to whom travel cards have been issued for use while performing official Government travel. These personnel shall adhere to the procedures set forth in this Regulation and applicable DoD Component guidance.

Facts

Mr. Seaman's Government travel card statements for the period January 2009 to May 2010 revealed charges to "PMI," a local parking management company. Mr. Seaman testified that he used his Government travel card to track his daily "Government" parking expenses when he did not ride his motorcycle to work.

In an attempt to clarify what Mr. Seaman meant by "Government" parking expenses, investigators asked Mr. Seaman if his "Government" parking expenses were incurred as part of his normal commute to work. Mr. Seaman explained that he used his Government travel card to track parking charges on occasions when he could not park for free.

Mr. Seaman described these expenses as "questionable," and noted he did not request reimbursement for them. Mr. Seaman stated that he discontinued his practice of using his Government travel card to pay for local parking after Human Resources personnel advised him that he should not use the card for that purpose.

Discussion

We conclude that Mr. Seaman misused his Government travel card. Mr. Seaman's Government travel card records disclosed that he improperly used his Government travel card to pay for local parking during his daily commute to his primary place of duty. The records disclosed that the majority of Mr. Seaman's PMI charges were for parking at 1750 Crystal Drive,

[5] Local travel is official travel within the local area. Commuting from one's residence to one's primary place of duty is not considered local travel.

Arlington, Virginia -- a parking garage a block from Mr. Seaman's office. We note that Mr. Seaman testified that he considered these charges "questionable" and did not submit them for reimbursement.

We find credible Mr. Seaman's testimony that he used the Government charge card to "track" his parking expense and that he discontinued this practice once he was made aware that it was improper, but we also note that, as part of the issuing process, Mr. Seaman should have received training in the proper use of the card and that as a long-time user of the Government travel card he was responsible for knowing the regulations pertaining to its use.

Response to initial conclusion

Mr. Seaman's response contained no information with regard to this allegation. We stand by our initial conclusion.

D. Did Mr. Seaman misuse a subordinate's official time?

Standards

5 C.F.R. 2635, "Standards of ethical conduct for employees of the Executive Branch"

Title 5 C.F.R. 2635.705(b), "Use of a subordinate's time," states that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Facts

Mr. Seaman testified that he and (b)(6) (b)(7)(C) regularly played racquetball on Tuesdays and Thursdays, and that "we give it to [(b)(6) (b)(7)(C)] to schedule it." A (b)(6) (b)(7)(C) to Mr. Seaman confirmed that she performed this service for Mr. Seaman. Further, an email dated March 30, 2010, disclosed that Mr. Seaman's (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) reserved a racquetball court for Mr. Seaman and one of his (b)(6) (b)(7)(C) .

An email dated April 5, 2010, reflected that Mr. Seaman asked a (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) to inquire of the (b)(6) (b)(7)(C) about Mr. Seaman's gym membership.[6] Mr. Seaman testified that this gym offered special reduced membership fees for BTA employees. He stated:

> I don't know the whole details behind it. I just know that my membership cost me a certain amount. I gave them my credit card, and [(b)(6) (b)(7)(C)]

[6] The Defense Business Transformation Agency (DBTA) provided subsidized gym memberships for civilian and military personnel assigned to the Agency. Employees paid 25% of the membership fee directly to the gym. DBTA paid the remaining 75%.

would get that. She'd go down to human resources, get my stuff, and I'd fill out the form. She'd turn it in to human resources, and -- just what an [redacted] would do.

Discussion

We conclude that Mr. Seaman requested and allowed his [redacted] to use official time to schedule personal racquetball games and obtain a gym membership for Mr. Seaman in violation of 5 C.F.R. 2635.705(b), "Use of a subordinate's time."

Title 5 C.F.R. 2635.705(b), states that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

We determined that Mr. Seaman directed his [redacted] to schedule his regular racquetball games and assist in processing his application for a gym membership. Both Mr. Seaman's racquetball games and his application for a gym membership were personal activities without a connection to his or his [redacted] official duties. His use of his [redacted] to assist in these activities violated the provisions of 5 C.F.R. 2635.705(b).

Response to initial conclusion

Mr. Seaman's response contained no information with regard to this allegation. We stand by our initial conclusion.

V. CONCLUSIONS

A. Mr. Seaman failed to treat subordinates with dignity and respect.

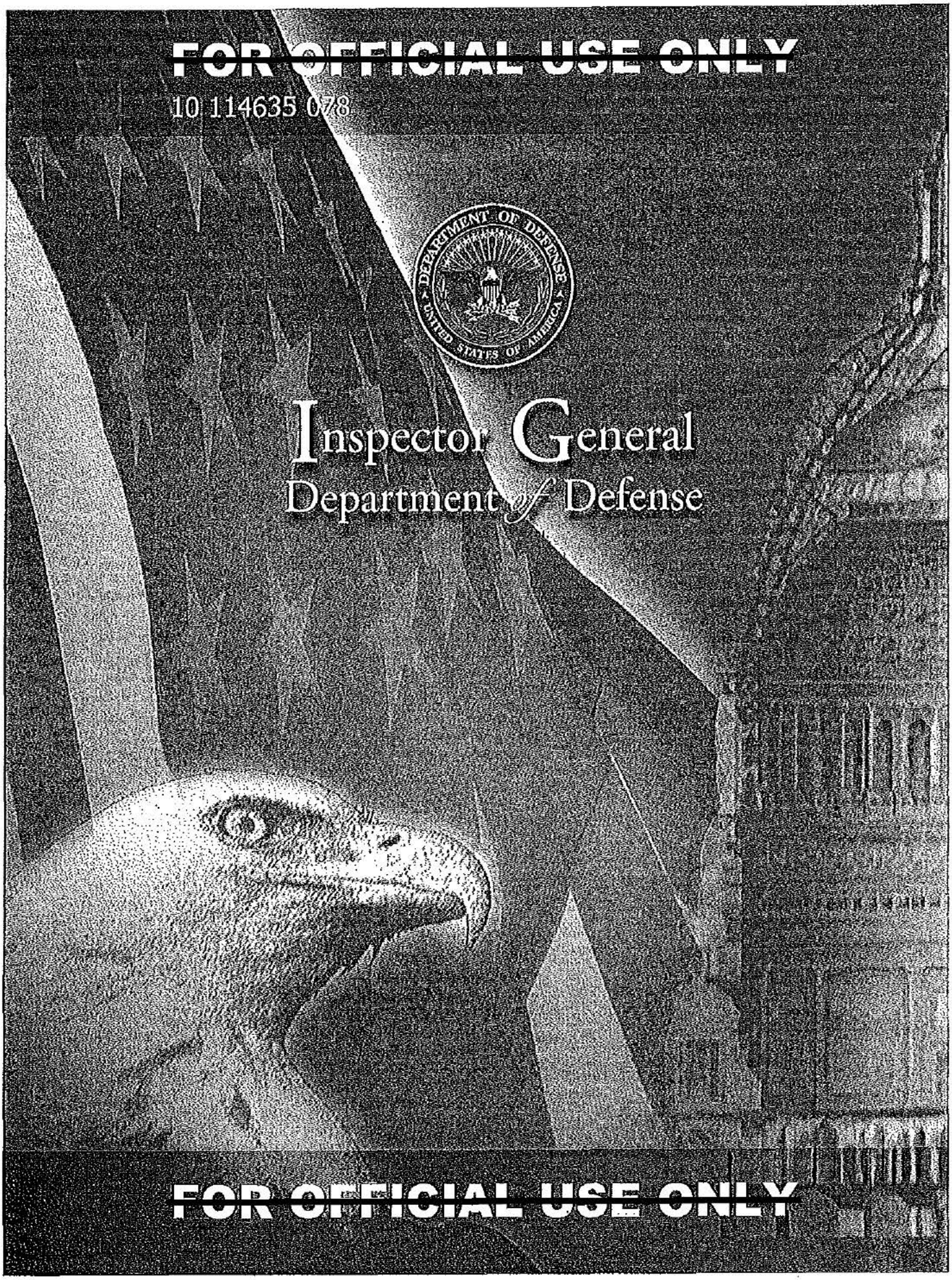
B. Mr. Seaman engaged in prohibited personnel practices.

C. Mr. Seaman misused his Government travel card.

D. Mr. Seaman misused a subordinate's official time.

VI. RECOMMENDATIONS

We recommend the Deputy Inspector General for Administrative Investigations notify the Directors of OPM and OSC of the results of this investigation.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

MAY 21 2014

Ref: FOIA-2013-00373

OCCL

This is in further response to your April 6, 2013, Freedom of Information Act (FOIA) request for a copy of investigative reports relating to misconduct by senior officials. We received your request on April 9, 2013, and assigned it case number FOIA-2013-00373.

The enclosed Report of Investigation concerning Mr. Bernd McConnell is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please note that we are processing the remaining items of your request and will continue to provide them on a rolling release basis.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite to case number FOIA-2013-00373, and should be clearly marked "Freedom of Information Act Appeal." Although you have the right to file an administrative appeal at this time, I suggest that you wait until the processing of this request has been completed and all of the interim releases are made before filing an appeal.

Sincerely,

Jeanne Miller
Chief, Freedom of Information and
Privacy Act Office

Enclosure:
As stated

~~FOR OFFICIAL USE ONLY~~

Report No. 11H122569569 September 25, 2012

Inspector General

United States Department of Defense

REPORT OF INVESTIGATION: MR. BERND McCONNELL SENIOR EXECUTIVE SERVICE DIRECTOR, INTERAGENCY COORDINATION UNITED STATES NORTHERN COMMAND

~~FOR OFFICIAL USE ONLY~~

REPORT OF INVESTIGATION:
MR. BERND McCONNELL
SENIOR EXECUTIVE SERVICE

I. INTRODUCTION AND SUMMARY

We initiated this investigation to address allegations that Mr. Bernd McConnell, while serving as the Director, Interagency Coordination, North American Aerospace Defense Command (NORAD), United States Northern Command (USNORTHCOM), failed to follow applicable regulations relating to official and unofficial travel and misused his position.[1]

We conclude Mr. McConnell violated applicable sections of the Joint Travel Regulations (JTR) and the Joint Ethics Regulation (JER) by failing to use the Defense Travel System (DTS) and a Government-contracted commercial travel office (CTO) to schedule official air travel and rental vehicles. We found Mr. McConnell self-procured commercial air transportation, failed to use the City-Pair program or the Government-contracted lowest cost airfares, and self-procured rental vehicles at charges exceeding rental rates available through DTS and the CTO without proper authorization. We further found Mr. McConnell was reimbursed for air travel and rental vehicles charged to his Government Travel Charge Card (CTCC), including for amounts that exceeded rates available through DTS.

We also conclude Mr. McConnell failed to conserve Government resources and misused his position for personal gain in violation of the JTR, JER, and USNORTHCOM policy. We found that Mr. McConnell arranged his air travel with specific commercial carriers, rather than the Government contracted carrier, and consistently rented non-compact vehicles from one vendor without proper authorization. We also found that Mr. McConnell obtained TDY lodging at specific hotels for his personal convenience at rates exceeding the maximum authorized lodging rate for his temporary duty (TDY) location. We found Mr. McConnell received reimbursement for rental vehicle and lodging expenses incurred on TDY, including sums that exceeded maximum authorized rates for his locations.

By letter dated August 21, 2012, we provided Mr. McConnell the opportunity to comment on the initial results of our investigation. In correspondence dated September 4, 2012, Mr. McConnell contested our preliminary conclusions but acknowledged personally procuring air travel from time to time and routinely procuring rental vehicles from Hertz in connection with TDY travel. He denied ever having used Government resources for personal gain and implied that his frequent, rigorous official travel justified his efforts to maximize personal convenience during such travel.

[1] For ease of reference, we refer to duty positions in this report as being assigned only to United States Northern Command (USNORTHCOM). In all instances, unless otherwise specifically noted in the report, said duty positions are part of both the North American Aerospace Defense Command (NORAD) and USNORTHCOM.

We disagree with Mr. McConnell's assertions. While he may not have profited financially from his official travel and the manner in which his travel vouchers were processed, the evidence does not support his claim that he personally would pay the difference between expenses claimed on his travel vouchers and what was authorized for reimbursement.[2] We address his response in more detail with regard to our findings and conclusions in Part IV, Findings and Analysis, below.[3]

We recommend that the Secretary of the Air Force consider appropriate action with respect to Mr. McConnell.

This report sets forth our findings and conclusions based upon a preponderance of the evidence.

II. BACKGROUND

USNORTHCOM was created and established in 2002 as a geographic combatant command and the lead DoD agent responsible for the defense and security of the United States homeland. USNORTHCOM's mission includes support to civil authorities as part of a national interagency and intergovernmental collaboration to respond to natural and man-made threats against the homeland. USNORTHCOM's area of responsibility includes the 50 states and 4 U.S. territories.

USNORTHCOM's interagency presence is the largest of all combatant commands. USNORTHCOM interacts with more than 40 non-DoD Government organizations to carry out its mission, including but not limited to the Departments of Agriculture, Justice, and Homeland Security, United States Customs and Border Protection, the National Oceanographic and Atmospheric Administration, and the Federal Emergency Management Agency. The Directorate for Interagency Coordination (NC/IC) facilitates interagency and Federal-state responses to threats and disasters. NC/IC's structure includes three divisions and employs more than 50 military and civilian employees.

Mr. McConnell has been a member of the Senior Executive Service since 1997. He has been the Director of NC/IC since 2004. He is a retired Air Force officer and reports directly to the Commander, USNORTHCOM.

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[2] We do not comment in this report on personal benefits, if any, Mr. McConnell received from his rental vehicle and airline frequent traveler programs. We recognize that, generally, a traveler without a frequent traveler rewards program may incur additional expenses for travel upgrades.

[3] We have attempted to summarize Mr. McConnell's comments in a thorough, objective, and complete manner. However, recognizing that a summary may not capture the full import or substance intended by Mr. McConnell in his response, a copy of his response is attached to this report.

III. SCOPE

We interviewed Mr. McConnell and 12 additional witnesses. We reviewed travel documentation, including itineraries, correspondence, travel vouchers, TDY payment records, airline ticket receipts, and other documents covering more than 100 trips taken by Mr. McConnell between June 2007 and December 2011.[4] We reviewed email and other documents retrieved from USNORTHCOM staff members' official email user accounts. We also analyzed travel claim documentation obtained from the Defense Finance and Accounting Service (DFAS) records relating to Mr. McConnell's travel claims in connection with TDY.

Based on an anonymous complaint to the Office of the Inspector General, United States Air Force, and information gathered in the course of the investigation, we focused our investigation on allegations concerning travel expenses incurred and claimed by Mr. McConnell in connection with TDY travel.

(b)(6) (b)(7)(C)

[redacted]

IV. FINDINGS AND ANALYSIS

A. Did Mr. McConnell fail to use DTS and the Government-contracted CTO to schedule official travel requirements, including air travel and rental vehicles, and otherwise self-procure travel-related services without proper authorization?

Standards

JTR, Volume 2, Chapter 1, "Department of Defense (DoD) Employee Travel Administration," December 1, 2011[5]

Part A, "Application and General Rules," states in Paragraph C1008, "Defense Travel System (DTS)," that DTS covers individual TDY travel for business, travel for schoolhouse training and deployment or personnel traveling together with or without reimbursement, and certain travel under special circumstances. DTS does not cover permanent change of station travel or evacuation travel.

[4] We define the term "trip" in the report to include travel to one or more locations in connection with specific travel for temporary duty (TDY). For example, if a TDY trip called for travel to El Paso, Texas, and Albuquerque, New Mexico, we considered it be one "trip" rather than two.

[5] The references to the Joint Travel Regulations (JTR) in this report show the date of the most recent revisions to cited provisions in the JTR. Unless otherwise noted, the provisions referred to herein were in effect at all times relevant to the allegations under investigation.

Subparagraph C1008(C), "AO's Responsibilities," states that an AO [Authorizing Official] must determine the travel purpose for TDY travel on the DTS-generated trip record, and that the information provided by the DTS Reservation Module or directly from the CTO is central in helping meet those responsibilities.

Subparagraph C1008(D), "Traveler Rights and Responsibilities," states a traveler should promptly update his/her trip record and confirm or modify arrangements when communication with the CTO is not possible. (Subparagraph C1008(E), "A Typical Business Trip," states that the CTO updates the trip record with confirmed reservations and commercial ticket information.)

JTR, Volume 2, Chapter 2, "Transportation Modes, Accommodations, Transportation Requests, Baggage & Mileage Rates," December 1, 2011

CTO Use

Part E, "Travel by Common Carrier," Section 2, "Arranging Official Travel," Paragraph C2203, sets forth DoD mandatory policy that DoD civilian employees shall use an available CTO to arrange official travel, including transportation and rental cars.

Paragraph C2203(D), "Transportation Reimbursement," states that when a CTO is available but not used by the traveler, reimbursement for the transportation cost is not to exceed the amount the Government would have paid if travel arrangements had been made directly through a CTO.

Part E, Section 3, "Commercial Air Transportation," Paragraph C2204, provides it is mandatory to arrange official transportation through an available CTO.

City-Pair Airfares

Part A, "Travel Policy," Paragraph C2001, "Transportation Mode," Paragraph A.2(a), "Contract Air Service," states the use of City-Pair airfares, offered by a contract air carrier between certain cities, is to the Government's advantage, and such fares should be used for official air transportation between cities.

Paragraph C2001(A)(2)(a), "Contract Air Service," provides that except as otherwise noted in the JTR, City-Pair airfares should be used for official air transportation. If City-Pair airfares are not available for particular travel, the traveler should use a lower unrestricted economy/coach-class airfare offered to a Government traveler on official business.

Paragraph C2001(A)(2)(b), "Non-contract Air Service," provides the use of non-contract air service may be authorized only when justified, and that advance authorization with the specific justification reason must be shown on the travel order before travel begins (unless circumstances make advance authorization "impossible"). The approval and justification must be stated on or attached to the travel voucher.

Paragraph C2001(A)(3)(d), "Traveler's Cost Liability when Selected Mode Not Used," states an employee should use the transportation mode administratively authorized or approved by the DoD component as being to the Government's best advantage. Additional costs resulting from use of a transportation mode other than specifically authorized, approved, or required by regulation is the employee's responsibility.

Appendix P, "City-Pair Program," Part I, "City-Pair Program," describes the City-Pair program and the use of contract carriers for official travel. It encourages travelers to reserve travel as far in advance as possible to increase the chance of obtaining unrestricted capacity-controlled GSA City-Pair airfares, which in general are significantly less expensive than an unrestricted airfare.

Paragraph A(6), "Exception to the Use of Contract Carriers," provides that one or more express travel conditions must exist and be certified on the travel order, voucher, or other document provided by the traveler or authorizing official if a non-contract carrier or contract carrier other than the primary contractor is used for travel within a contract route. Those conditions include the following:

- Space on a scheduled contract flight is not available in time to accomplish the travel purpose, or contract service would require the traveler to incur overnight lodging costs that would increase the total trip cost.
- The contract carrier's flight schedule is inconsistent with explicit agency policies to schedule employee travel during normal working hours.
- A DoD-approved non-contract U.S.-certificated carrier offers a lower airfare available to the general public, the use of which results in a lower total trip cost to the Government, to include the combined costs of transportation, lodging, meals, and related expenses. Certain exceptions apply.
- Cost-effective rail service is available and consistent with mission requirements.

Paragraph A(7), "Requirements that must be met to use a non-contract airfare (FTR §301-10.108)," states the traveler's agency must determine that the proposed non-contract transportation is practical and cost effective for the Government before the traveler purchases a non-contract airfare.

Paragraph A expressly states, "carrier preference is not a valid reason for using a non-contract airfare."

Appendix P, Part 2, states the use of a Government-contracted CTO is mandatory when such services are available.

Rental Vehicles

Part C, "Travel by Taxicab, Bus, Streetcar, Subway, or Other Public or Special Conveyance," Paragraph C2102(A)(2), authorizes a rental vehicle when it is to the Government's advantage, and adds that a traveler's personal preference or minor inconvenience must not be the basis for authorizing such use.

Paragraph C2102(B), "Selecting a Rental Vehicle," states the lowest cost vehicle service meeting mission requirements must be selected for commercially rented vehicles. It adds that the authorizing official may approve an appropriately sized vehicle in accordance with mission requirements "when a compact car (the 'standard' for TDY travel) does not meet the requirement."

Paragraph C2102(B)(1)(c) states that the use of rental car vendor participating in the DTMO [Defense Travel Management Office] rental car agreement is encouraged, because the Government rate includes full liability and vehicle loss and damage insurance coverage for the traveler and the Government.

Paragraph C2102(B)(1)(d) states that a traveler disregarding rental car arrangements made by the CTO may be required to provide justification for additional rental car cost before reimbursement is allowed.

Paragraph C2102(D), "Use Limited to Official Purposes," limits the use of rental vehicles to official purposes including transportation to and from duty sites, lodgings, dining facilities, and other expressly authorized locations a traveler may have need to visit during TDY.

JTR, Appendix O, "Temporary Duty (TDY) Travel Allowances," February 1, 2011

Paragraph T4020, "TDY Travel Policy," Paragraph B, "Traveler Rights and Responsibilities," states a traveler must follow the policies and procedures established in the JTR, and use good judgment in incurring official travel-related expenses, as if traveling using personal funds.

Paragraphs T4020(B)(3) and (B)(4) require that a traveler arrange official travel, transportation, and rental cars through a contracted CTO. Paragraph T4020(B)(3) provides that DTS estimates the total cost for the trip forming the basis for reimbursement to the traveler.

Paragraph T4020(B)(4) provides that only in extremely unusual circumstances in which the traveler cannot communicate with the CTO should the CTO not be used. Paragraph T4020(B)(4) further states a traveler must use economy-class for all official Government funded travel unless other class accommodations are authorized or approved by the appropriate approving official.

Paragraph T4025, "Arranging Official Travel," Paragraph A(1), "Mandatory Policy," mandates that all civilian employee travelers use an available CTO for all official transportation requirements. It adds that a command must not permit a CTO to issue other than the least expensive unrestricted economy/coach-class tickets purchased at Government expense without prior proper authority.

Paragraph T4050, "Taking a Typical Business Trip," provides in subparagraph A(1), "Cost Estimate," that a traveler should obtain a cost estimate for a trip to provide the traveler and AO up-front standard and actual arrangements, associated costs, and maximum allowances. The

estimate includes transportation costs to and from the TDY location, lodging costs, and fees determined by the DTS Reservation Module or directly from the CTO.

Paragraph T4060, "AO [Authorizing Official] Responsibilities," Paragraph A, "General," provides that the information provided by the DTS Reservation Module or obtained directly from the CTO is central in helping an AO exercise his/her responsibilities. Paragraph T4060(B)(6), "Rental Car," states an AO may authorize a rental car when it is the most cost-effective or efficient way to complete the mission. Compact cars should be authorized unless a large vehicle is justified under JTR paragraph C2102-C1.

DoD 7000.14-R, "Department of Defense Financial Management Regulations (FMR)," Volume 9, Chapter 2, "Defense Travel System," August 2011[6]

Section 020302, "Traveler," provides that the traveler is responsible for preparing initial authorizations, amendments, and post trip vouchers. It adds the traveler also is liable for any false or fraudulent written or oral statements under the False Claims Act (18 U.S.C. 287, 18 U.S.C. 1001 and 31 U.S.C. 3729).

Paragraph 020302(D) states the traveler is required to provide justification to the authorizing official in the comment field of an authorization, amendment, or voucher for variations from policy and/or any substantial variances between an authorized "should cost" estimate and the final travel claim.

DoD 7000.14-R, FMR, Volume 9, Chapter 3, "Department of Defense Government Travel Charge Card (GTCC)," August 2010

Paragraph 030101 states it is DoD policy that the GTCC will be used by all DoD personnel to pay for all costs related to official Government travel. Official Government travel is defined as travel under competent orders while performing duties pertaining to official Government assignments such as TDY.

Paragraph 030103 provides that commanders and supervisors at all levels shall ensure compliance with the regulation.

Paragraph 030501 states that unless otherwise exempt, all DoD personnel are required to use the GTCC for all authorized expenses relating to official travel.

DoD 5500.7-R, "Joint Ethics Regulation (JER)," August 30, 1993, including changes 1-6 (March 23, 2006)

The JER provides a single source of standards of ethical conduct and ethics guidance for DoD employees. Chapter 2 of the JER, "Standards of Ethical Conduct," incorporates Title 5,

[6] DoD 7000.14-R, "Financial Management Regulations", is revised periodically. The date shown reflects the date of the last revision of the published regulation.

Code of Federal Regulations (C.F.R.), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," in its entirety.

Section 2635.101, "Basic obligation of public service," provides general ethical principles applicable to every employee. Section 2635.101(b)(14) states that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in Part 2635.

Section 2635.704(a), "Use of Government property," states, "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." Consequently, employees have an affirmative responsibility to conserve resources.

Under Secretary of Defense Memorandum, Subject: "Mandatory Use of the Defense Travel System (DTS)," dated March 28, 2008

The memorandum mandates that DTS shall be the single, online travel system used for all official travel functions in DoD.

Defense Travel Management Office, "DoD Defense Travel System (DTS) Best Practices," November 8, 2011

Section 9, "Travel Reservations," provides in Paragraph 9.1, "Commercial Travel Office," that the CTO is the commercial entity providing a full range of travel and ticketing services for official travel under a contract or memorandum of understanding with the Government.

The DTS Reservation Module is used for reserving travel to be ticketed through a CTO. Paragraph 9.9, "Ticketing," provides that ticketing of travel is normally completed 3 business days before scheduled departure. When the CTO issues the ticket, an email is sent to the traveler with the reservation and cost information.

Paragraph 9.17, "DTS-Tailored Organizations," states that if the CTO interface is not used, travelers are not able to request travel reservations through the DTS Travel module and must make arrangements offline directly with the CTO, then enter the information into DTS.

Facts

The complaint alleged that Mr. McConnell personally procured airline tickets for official travel rather than use DTS or the Government-contracted CTO. Records for Mr. McConnell's TDY travel showed that between 2007 and November 29, 2011, Mr. McConnell traveled on TDY more than 100 times. The complaint alleged that Mr. McConnell selected specific flights for TDY rather than obtaining flights through DTS and the CTO.

2008 USNORTHCOM Travel Review

We obtained documentary and testimonial evidence indicating that issues involving Mr. McConnell's official travel had been the subject of an internal USNORTHCOM review in 2008. The evidence showed that in September 2008, (b)(6), (b)(7)(C) reported concerns to an attorney assigned to the Office of the Staff Judge Advocate (OSJA), USNORTHCOM, regarding travel-related issues surrounding Mr. McConnell's official travel.

After meeting with (b)(6), (b)(7)(C) the attorney informed his supervisor, the SJA, who in turn notified the USNORTHCOM IG. The USNORTHCOM IG briefed the Commander, USNORTHCOM, concerning the issues and recommended an informal review of Mr. McConnell's official travel. The Commander, USNORTHCOM, concurred in the recommendation and approved an informal audit of Mr. McConnell's records for official travel.

(b)(6), (b)(7)(C), testified that the USNORTHCOM IG requested that (b)(6), office review records for Mr. McConnell's TDY travel.[7] (b)(6), (b)(7) stated the scope of the review was to conduct an informal travel audit. USNORTHCOM's Directorate for Programs and Resources (J8) staff reviewed Mr. McConnell's TDY records for travel during a 6-month period in 2008. The J8 informal travel audit covered various issues including:

- Alleged self-procurement of travel requirements and the use of a specific airline tied to a personal interest (mileage rewards);
- Selection of specific airlines and car rental companies;
- Arranging for sports utility vehicles (SUVs) instead of appropriate vehicles when selecting rental cars; and
- Departing for TDY from (b)(6), (b)(7)(C), when his home of record and the official departure airport are in (b)(6), (b)(7)(C).

At the conclusion of J8's informal audit of Mr. McConnell's travel records, the (b)(6), (b)(7)(C) and the (b)(6), (b)(7)(C) met with Mr. McConnell to brief him on the results of the review and provided recommendations concerning their findings.

The J8 review of Mr. McConnell's travel records revealed a number of inconsistencies and irregularities regarding Mr. McConnell's TDY travel. The informal audit identified more than 25 potential irregularities or inconsistencies for which additional documentation, explanation, or justification was necessary. The inconsistencies included Mr. McConnell's self-procurement of tickets for TDY air travel, rental vehicle issues during TDY travel, Mr. McConnell's apparent use of his GTCC for expenses that appeared unrelated to his official travel, and lodging issues.

[7] (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) testified (b)(6), personally briefed Mr. McConnell concerning J8's review of his travel records and provided a copy of the review results to him during the briefing to ensure he was aware of the identified issues and the steps he needed to take to resolve them.

Table 1, below, shows representative examples of J8's analysis and recommendations concerning Mr. McConnell's TDY travel and travel record keeping. A copy of J8's complete post-travel findings and recommendations is attached as an Appendix to this report.

Table 1. USNORTHCOM J8 Analysis and Recommendations
McConnell TDY Travel - 2008

Dates of Travel / Transaction Date	DTS Transactions Analysis and Recommendations	Bank of America Transactions Analysis and Recommendations
2 Jun - 6 Jun	1. Airfare - Personally purchased $769.51 (COSIAD-DEN) -- No Travel Cost Comparison Worksheet (TCCW) or Waiver from 21 Logistics Readiness Squadron (LRS). 2. Rental car - Full Size 3. The National Defense University (NDU) symposium (4 -5 Jun), departed 2 Jun (a day early). 4. There were 2 entries for "Lodging balance" –non-reimbursable entry. *Recommendation: 1. Traveler needs to amend the voucher to correct the lodging claims, thereby requires to complete (sic) an Actual Expense Allowance (AEA) letter. 2. Traveler needs to provide a comment to the Approving Official (AO) for not using the Compact car. 3. Traveler needs to provide comment for traveling a day early. 4. Traveler needs to provide comment on how the registration fee was paid. NDU site shows a registration fee.*	n/a
8 Jun-11 Jun	1. Airfare thru DTS (WingGate Travel). 2. Rental car - Intermediate, missing receipt for the $82 fee. 3. Missing an Actual Expense Allowance (AEA) Letter for 8/9 Jun. Max Lodging $93.00, AO paid $149 and $113 respectively *Recommendation: Amend the paid voucher and attach the missing AEA letter, missing rental car receipt, and provide comment to why the Compact car was not used.*	1. Voucher is missing the $13.58 CTO fee (ref: 0167197147928, dated 3 Jun 2008). 2. BoA statements do not show an entry to the $82.00 (rental car). *Recommendation: 1. Cardholder needs to amend voucher and claim the CTO fee. 2. Cardholder needs to review personal records for the missing receipt.*
29 Jul	n/a	United Airlines Rosemont, IL (Ticket # 0162179637550) $234.00 *Recommendation: Cardholder needs to provide explanation to the GTC Agency Program Coordinator (APC).*
10 Aug – 14 Aug	1. Airfare - Personally purchased $473.50 -- No TCCW or Waiver from 21 LRS 2. Rental Car - Full Size 3. (b)(6), (b)(7)(C) *Recommendation: 1. Prepare and attach the TCCW to the voucher and provide a comment to the AO why Full Size car was used instead of the Compact car. 2. Traveler needs to amend the voucher to prorate rental car claims (3 days)*	Casa Benavides Taos, NM $197.64. Transaction can be linked to this travel authorization. Cardholder claimed a leave in or near Albuquerque, NM. GTC should have not been used while on leave status. *Recommendation: The GTC Agency Program Coordinator needs to counsel cardholder [on] the proper use of GTC.*

Dates of Travel / Transaction Date	DTS Transactions Analysis and Recommendations	Bank of America Transactions Analysis and Recommendations
25 Aug – 27 Aug	1. Airfare - Personally purchased $410.00 (DENDCA-DEN, submitted Travel Cost Comparison Worksheet, a savings of $36.38 2. No Rental Car 3. Missing AEA letter, max lodging $154, AO Approved $174 *Recommendation: Traveler needs to attach the missing Actual Expense Allowance (AEA) letter to the voucher.*	n/a
29 Aug	n/a	United Air E-Tkt (0162181082522), HI $323.49 *Recommendation: Cardholder needs to provide explanation to the GTC Agency Program Coordinator (APC).*
7 Oct – 10 Oct	1. Airfare - Personally purchased $ 756.00 (COSIAD-SFO-COS) -- No TCCW or Waiver from 21 LRS 2. Rental car - Full Size *Recommendation: Prepare and attach the TCCW to the voucher and provide a comment to the AO why Full Size car was used instead of the Compact car.*	

(b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) each testified that after the (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) briefed the audit findings to Mr. McConnell, no one performed any follow up with Mr. McConnell or the NC/IC staff concerning the issues or recommended corrective actions addressed in J8's report.

(b)(6), (b)(7)(C) testified Mr. McConnell seemed to appreciate the review to ensure his staff helped him do things correctly. However, (b)(6), added (b)(6), believed Mr. McConnell did not necessarily agree that the J8 should have questioned certain travel concerns. (b)(6), (b)(7)(C) specifically recalled discussing rental vehicles with Mr. McConnell and Mr. McConnell saying, "I'm not putting my fat ass in an economy or a compact car." (b)(6), (b)(7) added (b)(6), told him he did not have to, but he was obligated to pay the difference between an authorized vehicle and the vehicle he rented.

(b)(6), (b)(7)(C) testified that (b)(6), and the (b)(6), (b)(7)(C) met with Mr. McConnell in late 2008 to discuss the results of the J8's staff assistance visit. (b)(6), stated that (b)(6), role during the meeting was limited, as the travel issues were not within (b)(6), area of expertise. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) testified that in a personal conversation with Mr. McConnell (b)(6), attempted to convey (b)(6), view to Mr. McConnell that (b)(6), had not concluded Mr. McConnell committed criminal wrongdoing. (b)(6), (b)(7)(C) stated (b)(6), reached this conclusion even though Mr. McConnell's travel records were incomplete and required explanation, clarification, or additional supporting documents.

Mr. McConnell testified he did not recall meeting with the (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) (b)(6), (b)(7)(C). He recalled the (b)(6), (b)(7)(C) discussing the results with him and telling him the review showed no evidence of criminal wrongdoing.
Mr. McConnell testified he believed his staff had fulfilled the recommended corrective actions identified by the J8. However, he added he did not engage in any post-review follow up with the

J8, (b)(6), (b)(7)(C) [redacted], or others. We found no evidence indicating Mr. McConnell or his staff took corrective action or followed up with the J8 after the travel review.

We reviewed travel records relating to Mr. McConnell's TDY travel, including records that were the subject of the 2008 J8 staff assistance visit. The evidence we obtained detailed the following with respect to Mr. McConnell's official travel.

Air Travel

Travel records disclosed nine occasions on which Mr. McConnell personally purchased tickets for TDY travel directly from a commercial airline instead of having his travel ticketed through DTS and the Government-contracted CTO. The records showed that on three of those occasions, in 2009, 2010, and 2011, Mr. McConnell obtained tickets for adjoining seats for himself and (b)(6) (b)(7)(C) [redacted] in connection with travel from Colorado to the east coast. Mr. McConnell claimed reimbursement for the cost of his personally procured airfare on his travel vouchers. We found no evidence Mr. McConnell sought Government reimbursement for any airfare costs associated with (b)(6), (b)(7)(C) [redacted] travel.

(b)(6), (b)(7)(C) [redacted] testified that when Mr. McConnell scheduled TDY involving air travel, he routinely used specific commercial carrier's Web sites to determine available flights for his planned travel. (b)(6), (b)(7)(C) [redacted] stated Mr. McConnell identified flights that best met his travel schedule, then directed (b)(6), [redacted] to schedule him on those flights. (b)(6), (b)(7) [redacted] added that Mr. McConnell chose his preferred travel schedules after reviewing flights through the airline's online scheduling and reservation system. (b)(6), (b)(7)(C) [redacted] testified that, in many instances, the ticket for his preferred flight could not be purchased with a City-Pair fare.

(b)(6), (b)(7)(C) [redacted] testified that on occasion Mr. McConnell directly purchased airline tickets for TDY travel. (b)(6), (b)(7) [redacted] stated Mr. McConnell

> would go straight to United Airlines and he would get on the phone with them. He got the military fare, but he would get on the phone with United, instead of booking through the CTO. I didn't know that's what he was doing. I didn't know that's how he was getting his airfare through United until there was a time he asked me to change a flight for him, and he had self-procured straight through United, and he told me how he was doing it.

(b)(6), (b)(7) [redacted] stated that in instances when Mr. McConnell self-procured air travel, he purchased his ticket with his personal credit card, then provided (b)(6), [redacted] with documentation confirming the ticket purchase for (b)(6), [redacted] use in preparing and processing his travel authorization and, at the end of this TDY travel, the travel voucher.

(b)(6), (b)(7)(C) [redacted] testified that on many occasions, the airfare Mr. McConnell purchased directly was not a City-Pair fare for his specific TDY location. (b)(6), (b)(7) [redacted] added that while sometimes the airfare was less expensive than the City-Pair fare for the travel, on occasion it was more expensive than the City-Pair fare would have been for the same travel.

Testimony by several witnesses established that Peterson Air Force Base, on which NC/IC is located, has a Government-contracted CTO serving USNORTHCOM.

Mr. McConnell testified he occasionally purchased airline tickets directly from a commercial carrier for TDY travel when [redacted] planned to travel with him to a particular location. He added he also purchased airline tickets directly from a commercial carrier when he planned to take annual leave in conjunction with his TDY travel. [redacted] testified that when Mr. McConnell scheduled TDY travel, he personally chose the flights he sought to take for his travel. [redacted] added that while [redacted] made all of his travel arrangements through DTS, Mr. McConnell would tell [redacted] "what he wanted, when he wanted to fly out, you know, his preferred timeframes, things of that nature." [redacted] continued that 9 times out of 10, [redacted] would be able to "give him the flights he wanted," but that on occasion he did not like the flights that were available within DTS.

[redacted]

[redacted] stated that in scheduling travel for Mr. McConnell and the [redacted] used DTS to review and match available flights to the traveler's expressed desire to leave Colorado at a certain time or return from TDY at a specific time.

[redacted] testified that when Mr. McConnell planned travel for TDY, he would tell [redacted] specific flights he wanted to take for the TDY travel and [redacted] would attempt to obtain those flights through DTS. [redacted] added that if [redacted] could not find the flights in DTS, Mr. McConnell instructed [redacted] to reserve them anyway. Mr. McConnell testified that he did not personally schedule any of his TDY travel through DTS. Instead, he stated he authorized [redacted] to log into his DTS account using his common access card (CAC) and personal identification number and create the travel authorization for his TDY. Once [redacted] had created the document, Mr. McConnell digitally signed the authorization request in DTS.

Mr. McConnell's travel records show he was reimbursed for airfares charged to his GTCC (via direct payment to the CTCC carrier) and airfares charged to his personal credit card for official TDY travel.

Rental Vehicles

Documentation for Mr. McConnell's TDY travel showed that between March 2008 and November 2010, Mr. McConnell rented automobiles from the Hertz Corporation (Hertz) on 20 occasions.[8] We found no records showing that Mr. McConnell rented a vehicle during TDY from any other rental car company.

[8] Mr. McConnell's travel records showed no car rentals in December 2010 or 2011. Hertz categorizes vehicles in nine major groupings, subcompact through luxury class vehicles. Hertz codes its vehicles on an alphabetized system, beginning with Class "A" (subcompact). Vehicles coded as "Q4" are mid-size sport utility vehicles.

Our review of Mr. McConnell's TDY travel authorization documents showed one instance, in 2008, in which the travel authorization listed Hertz as the Government-contracted carrier from which the vehicle was to be obtained. In the remaining cases, travel authorization documents listed other car rental companies as the Government-contracted carrier, including but not limited to Alamo, Enterprise, and Budget.

Mr. McConnell testified he always used Hertz to obtain a rental vehicle if he needed one in connection with TDY. He added that when he rented a vehicle he routinely chose to rent a sports utility vehicle (SUV) as opposed to a sedan. Mr. McConnell stated he is a member of Hertz's Gold Club rewards program.

Our review of Hertz receipts Mr. McConnell submitted with his travel vouchers showed that he rented mid-size SUVs 5 times out of the 20 referenced rentals. The records indicated Mr. McConnell rented intermediate or larger vehicles for 14 of the remaining rentals with Hertz, and we found one receipt showing the rental of a compact vehicle during a June 2009 TDY trip to Riverside, California.

Travel records for Mr. McConnell's April 2008 TDY travel to Memphis, Tennessee; Vicksburg, Mississippi; Kansas City, Missouri; and San Antonio, Texas, showed that he rented a four-wheel drive Toyota 4 Runner for travel from Memphis, Tennessee, to Jackson, Mississippi. Mr. McConnell rented a Lincoln MKX for transportation in San Antonio, Texas, April 24 - 27, 2008. Mr. McConnell's travel voucher shows he took leave on (b)(6), (b)(7)(C) [redacted], indicates that he calculated the pro-rated sums attributable to personal use of the vehicle during his leave period, and reveals he did not claim reimbursement for such costs. He claimed reimbursement for the rental costs attributable to his official use of the vehicle on April 24-25, 2008.[9]

Travel records showed two occasions in 2009 and 2010, when Mr. McConnell rented a car from Hertz during TDY in Washington, DC, but used taxis for local transportation during the same travel.

Mr. McConnell's travel records showed 11 instances where his travel authorization documents authorized a vehicle rental from vendors other than Hertz. In each instance, however, Mr. McConnell actually rented a vehicle from Hertz. Further, in every instance in which Mr. McConnell's travel authorization or travel voucher showed a daily or weekly rental rate for the authorized (non-Hertz) vehicle, the actual daily or weekly rate on the Hertz receipt exceeded the authorized rate. However, in those instances the total approved rental amount on Mr. McConnell's travel voucher matched the total amounts shown on receipts Mr. McConnell submitted in support of his claims for reimbursement. We provide the following examples:

- *March 31, 2009, TDY to Santa Fe, New Mexico.* Travel records show a vehicle rental approved through Enterprise for 3 days at a daily rate of $25.60. Mr. McConnell's

[9] The dates of the referenced TDY travel were outside the scope of the 2008 informal audit of Mr. McConnell's official travel performed by the USNORTHCOM J8 and, therefore, were not documented in the audit results briefed to Mr. McConnell.

rental receipt with Hertz showed a daily rate of $145.99 for 3 days. The voucher approved vehicle rental reimbursement of $462.83.

- *June 29, 2009, TDY to Riverside, California.* Mr. McConnell's travel records show an approved vehicle rental through Dollar for 1 day at a daily rate of $18.00. Mr. McConnell's rental receipt with Hertz showed a daily rate of $53.84. The voucher approved vehicle rental reimbursement of $72.60.
- *November 30, 2009, TDY to Washington, DC.* Mr. McConnell's travel records show an approved vehicle rental through Budget at a weekly rate of $146.00. Mr. McConnell's rental receipt with Hertz showed the rental of a mid-size SUV at a weekly rate of $457.00. The voucher approved vehicle rental reimbursement totaling $412.68.
- *September 7, 2010, TDY to Providence, Rhode Island.* Mr. McConnell's travel records show an approved vehicle rental through Alamo for 4 days at a daily rate of $19.00. Mr. McConnell's rental receipt with Hertz showed the rental of a full-size sedan at a daily rate of $59.49. The voucher approved vehicle rental reimbursement totaling $240.04.

(b)(6), (b)(7)(C) testified Mr. McConnell told (b)(6), he preferred to rent through Hertz rather than any other vendor. (b)(6), (b)(7) added Mr. McConnell usually procured his rental vehicle himself rather than through (b)(6), efforts in arranging travel through the CTO and DTS.

Mr. McConnell testified he did not make his own travel reservations and arrangements in DTS. He stated (b)(6), (b)(7)(C) did so. He added he always personally reserved a vehicle when he needed one for TDY. He did so by using Hertz's online Web site to reserve a vehicle through his Gold Club membership. Mr. McConnell testified he did not prepare his own travel authorizations or travel vouchers. He stated when it was time to certify a TDY authorization or voucher in DTS either he logged into DTS on his computer using his U.S. Government common access card (CAC), then turned the computer over to (b)(6), (b)(7)(C), or he simply gave (b)(6), (b)(7)(C) his CAC and his personal identification number. Mr. McConnell acknowledged certifying the documents electronically, but stated he did not personally prepare them.

Mr. McConnell's travel records show that he received reimbursement for his incurred rental vehicle expenses associated with official travel, including sums that exceeded daily rates he would have received had he rented through DTS and the CTO.

Discussion

We conclude Mr. McConnell personally procured air travel and rental vehicles in connection with TDY travel rather than use the automated DTS process and Government-contracted CTO, in violation of the JTR, the FMR, and the JER.

We found Mr. McConnell did not personally prepare his travel vouchers and he did not ensure the accuracy of the data submitted for reimbursement. We also found Mr. McConnell had personal responsibility as the traveler to ensure the documentation submitted on his behalf was correct.

Air Travel

We found that Mr. McConnell personally procured airline tickets for TDY air travel on nine occasions rather than obtain his travel through DTS and the CTO serving USNORTHCOM. We also found Mr. McConnell submitted travel vouchers after TDY travel to obtain reimbursement for his personally procured air tickets. We found that Mr. McConnell submitted receipts for his personally procured air tickets and obtained reimbursement of sums charged to his personal credit card.

The JTR requires that travelers and approving officials use DTS when it is available for creating TDY trip records and reserving air travel for ticketing by a CTO. Additionally, the JTR requires travelers to use a CTO when one is available to purchase air tickets for TDY travel. Government travelers are required to pay for the purchases of tickets with their GTCC, unless specific exceptions apply. We found no evidence showing that the personal purchase of air tickets outside of DTS or paid for with a personal credit card was required due to exigent circumstances or other exceptions set forth in the JTR and the FMR.

The JTR requires travelers to travel on City-Pair carriers for official travel when available. Further, if a traveler purchases a non-contract airfare, the traveler's agency must first determine that non-contract transportation is practical and cost-effective for the Government. The JTR states that carrier preference is not a valid reason to choose a non-contract airfare.

The JER requires a traveler to conserve and protect Government property and resources and not to use it except for authorized purposes.

Rental Vehicles

We found that Mr. McConnell personally procured rental vehicles in connection with TDY travel rather than obtain them through DTS and the available CTO, and at rental rates exceeding the lowest cost rental service meeting mission requirements, in violation of the JTR and JER. We found Mr. McConnell regularly obtained rental vehicles through Hertz when he needed a rental vehicle on TDY travel. We further found Mr. McConnell directly reserved and rented such vehicles on his own, rather than through the USNORTHCOM CTO.

We found the daily or weekly rental rates charged by Hertz for Mr. McConnell's rental vehicles consistently were higher than the rates shown for the Government-contracted vehicle reserved through DTS. We found Mr. McConnell received reimbursement for his rental vehicle expenses.

We found Mr. McConnell rented mid-size SUVs or mid-size vehicles for his personal convenience. We further found no evidence Mr. McConnell provided justification to the approving official to support his decision to rent an SUV or mid-size vehicle from Hertz.

The JTR requires the traveler to use DTS to reserve auto rentals and to select the lowest cost vehicle service meeting mission requirements for commercially rented vehicles. Further, the JTR requires that a traveler use a CTO to obtain a rental vehicle when a CTO is available. The

JTR also states compact cars should be authorized unless a larger vehicle is specifically justified under the JTR.

We determined Mr. McConnell did not use DTS or the CTO to reserve and obtain rental vehicles, did not select the lowest cost vehicle service meeting mission requirements, and did not provide required justification to rent vehicles larger than compact cars. Accordingly, we conclude Mr. McConnell violated the JTR and JER in directly procuring and renting vehicles through Hertz rather than through the CTO.

Based on the foregoing, we conclude Mr. McConnell personally reserved and obtained air travel and rental vehicles for TDY travel rather than use DTS and the CTO, in violation of the JTR, FMR, and JER, respectively. We additionally conclude that in the course of obtaining air travel for TDY, Mr. McConnell occasionally purchased flights with his personal credit card rather than his GTCC, in violation of the FMR.

Mr. McConnell's Response

In his September 4, 2012, response, Mr. McConnell acknowledged self-procuring airline tickets on occasion, as well as proposing to (b)(6) (b)(7)(C) flights that in his view best fit requirements for a particular trip. He also acknowledged that he did not personally use DTS for planning or accounting for official travel. He stated that, instead, he relied on the technical expertise of his staff members to perform the mechanics within DTS.

Mr. McConnell stated that he pursued convenience in traveling on Government business, however, did so under the principle that he would be responsible for any cost in excess of authorized reimbursement. He did not deny using Hertz routinely as a matter of convenience when renting automobiles on TDY travel. However, he asserted that his staff understood that rental car costs exceeding the Government allowed rate would be deducted from any TDY reimbursement or paid out of pocket. Mr. McConnell stated that with respect to air travel, he did not seek reimbursement above the Government rate on those occasions that he personally procured airline tickets. He added that he sometimes saved the Government money when the self-procured tickets were less expensive than the Government rate.

Witness testimony did not support or corroborate Mr. McConnell's assertion that excess rental car costs were to be deducted from amounts to be reimbursed to him. The evidence showed that Mr. McConnell's reliance on the technical expertise of his staff enabled him to obtain and use travel facilities in a manner contrary to the requirements of governing travel standards. With regard to rental cars, the evidence showed that his staff processed his travel vouchers to reimburse the rates actually charged to Mr. McConnell, even though those rates significantly exceeded available rental rates through DTS. We found no evidence that NC/IC staff members reduced reimbursement amounts to be paid to Mr. McConnell to account for any excess costs in the DTS voucher process.

Mr. McConnell challenged our finding that no corrective action was taken following the J8's issuance of its report after concluding its 2008 travel review. Mr. McConnell pointed out that his staff began preparing AEA documentation to account for lodging costs exceeding

prevailing allowable rates for his TDY locations. However, as we note in more detail in Part IV, Paragraph B, below, we did not find that the AEA letters represented appropriate corrective action. To the contrary, the evidence showed that the manner in which AEA letters were produced was indicative of an ongoing disregard of the governing travel standards.

After carefully considering Mr. McConnell's response and reevaluating the evidence, we stand by our conclusions.

B. Did Mr. McConnell misuse his position for personal gain and fail to conserve Government resources?

Standards

DoD 5500.7-R, JER, August 30, 1993, including changes 1-6 (March 23, 2006)

The provisions set forth in Paragraph A., above, apply.

Subpart G, "Misuse of Position," Section 2635.702, "Use of public office for private gain," states that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce others, including subordinates, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-Governmental capacity.

JTR, Volume 2, Chapter 1, "DoD Employee Travel Administration," December 1, 2011

The provisions set forth in Paragraph A., above, apply.

Paragraph C1058, "Obligation to Exercise Prudence in Travel," states that a traveler must exercise the same care and prudence for incurring Government paid expenses as he would when traveling at personal expense. Paragraph C1058(3) additionally states that excess costs and luxury accommodations that are unnecessary or unjustified are the traveler's financial responsibility.

JTR, Volume 2, Chapter 2, "Transportation Modes, Accommodations, Transportation Requests, Baggage & Mileage Rates," December 11, 2011

The provisions set forth in Paragraph A., above, apply.

JTR, Volume 2, Chapter 4, "Employee Travel," December 11, 2011

Part B, "Per Diem Allowances," Paragraph C4553, "Lodging-Plus Per Diem Method Computation," states in Sub-paragraph C.1., "Maximum Lodging Expense Allowance," that per diem rates include a maximum amount for lodging expenses. It further provides that

reimbursement may not exceed actual lodging costs or the applicable maximum amount unless an actual expense authorization (AEA) is prescribed.

Part C, "AEA," provides in Paragraph C4600, "General," that an AEA allows a traveler to be reimbursed in unusual circumstances for actual and necessary expenses that exceed the maximum locality per diem rate.

Paragraph C4602, "Justification," states that an AEA may be authorized when the per diem rate is insufficient for part or all of a travel assignment. Sub-paragraph C4602(B), "Reasons for authorizing/approving AEA," includes the following:

- Actual and necessary expenses (especially lodgings) exceed the maximum per diem;
- Special duties require such authorization; or
- Costs associated with specific functions or events have escalated temporarily due to special or unforeseen events.

Paragraph C4604, "Authority/Approval," provides that an AEA may be authorized before travel begins or approved after travel is performed.

Paragraph C4606, "Limitations," Sub-paragraph A, "Conditions," states that an AEA may not be issued as blanket authority for all travel to an area, and is prescribed only on an individual trip basis, "and only after consideration of the facts existing in each case."

Paragraph C4606, "Limitations," Sub-paragraph B, "Personal Preference/Convenience," states that a traveler is financially responsible for excess costs and additional expenses incurred for personal preference or convenience.

Under Secretary of Defense Memorandum, Subject: "Mandatory Use of the Defense Travel System (DTS)," dated March 28, 2008

The memorandum mandates that DTS is the single, online travel system used for all official travel functions in DoD.

NORAD-USNORTHCOM/J8 Memorandum for All Directors, Special Staff and Subordinate Commands, "Subject: Approval of TDY Actual Expense Allowance (AEA) Payments," February 15, 2007

The memorandum establishes AEA processing guidance for all USNORTHCOM personnel.

Paragraph 2 states that the per diem rate for a TDY location is normally adequate, but that a lodging allowance may be inadequate for particular locations. It provides that in such cases an AEA may be authorized in advance of travel. Paragraph 2 further states that if an AEA is repetitively required on a continuing basis for a particular area, a per diem rate adjustment should be requested.

Paragraph 3 provides examples of circumstances under which an AEA may be approved, including:

- The traveler accompanies a dignitary and is required to lodge in the same hotel;
- Costs in an area have escalated during special functions, such as sporting events, missile-launching periods, etc.
- Affordable lodging is not available within a reasonable commuting distance of the TDY location, and commuting costs from less expensive locations would offset the savings from occupying the less expensive lodging.
- Special TDY duties require upgraded quarters.

Paragraph 5 states the need for an AEA is determined before the travel occurs. The traveler must submit a letter to his AO detailing the reasons why the per diem allowance is not adequate.

Paragraph 6 provides that USNORTHCOM directorates using DTS should attach the approved AEA to the travel authorization or travel voucher. Further, an AEA is required whenever actual lodging costs exceed the maximum allowed lodging amount.

Facts

The complaint alleged Mr. McConnell personally procured airline tickets on specific airlines in order to obtain or use frequent flyer mileage rewards, rented vehicles larger than those authorized by the JTR, and lodged at hotels when on TDY travel at rates that exceeded the maximum lodging rate for the TDY location.

We incorporate facts set forth in Part IV, Paragraph A, by reference and provide additional facts with respect to these allegations below.

Air Travel

Travel records showed Mr. McConnell personally procured airline tickets for TDY travel. Mr. McConnell testified he purchased airline tickets directly from commercial carriers when he traveled with (b)(6), (b)(7)(C) or took leave in conjunction with official travel. He stated that one reason he purchased tickets directly was to ensure he sat with (b)(6), (b)(7)(C) He testified,

> Well, frankly, a couple times a year, (b)(6), (b)(7)(C) , likes to go back East, where we used to live, with me. Well, first of all, let me go back to your earlier thing, there. The nature of my job is such — I almost always have a reason to go to DC I could go to DC every week on government official business, if I chose to. But I already travel a lot. Anyway, when I travel with (b)(6), (b)(7)(C) a couple times a year, I have this habit of wanting to sit with (b)(6), (b)(7) and if you're not on the same reservation, you can't choose seats together, or whatever. So yes, I have purchased tickets for me separately, for (b)(6), (b)(7) just so that we can travel together.

Mr. McConnell stated (b)(6), (b)(7)(C) told him he should not self-purchase tickets. He stated, "I know I should not, but given (b)(6), (b)(7)(C) wrath versus (b)(6) (b)(7)(C) wrath, I chose to go ahead and buy the ticket myself for the convenience of traveling together."

Testimony by Mr. McConnell and other witnesses established that when Mr. McConnell traveled for TDY, he regularly directed (b)(6), (b)(7)(C) to ticket flights he personally selected from reservations and ticketing systems on commercial airline Web sites.

(b) (6), (b) (7)(C) testified Mr. McConnell preferred to fly on United Airlines and that there were occasions when United Airlines was not the Government-contracted carrier for a particular flight in question.[10] (b) (6), (b) (7)(C) stated one reason Mr. McConnell preferred to travel on United instead of other available carriers was that he had frequent flyer miles with United.[11]

(b) (6), (b) (7)(C) testified that (b)(6), repeatedly explained to him that there were City-Pair or GSA low-cost fares available for the TDY travel he had scheduled, instead of the flights he selected on an airline's Web site. (b)(6), stated that on occasion (b)(6), printed excerpts from the JTR to show Mr. McConnell the rules governing TDY air travel. (b)(6), added that (b)(6), printed Mr. McConnell's travel itinerary and available Government-contracted airfares shown in DTS, and went over the information with Mr. McConnell to compare the Government-contracted flights that were available with those he had initially selected.

(b) (6), (b) (7)(C) testified that on more than one occasion Mr. McConnell became upset with (b)(6), for coming to him and discussing his flight choices. (b)(6), (b)(7) stated he used language such as,

> I don't give a goddamn what the GSA city carrier is. These are the fucking flights I want and these are the fucking flights you're going to get me.

(b) (6), (b) (7)(C) recalled one particular occasion when (b)(6), discussed his air travel choices with him. (b)(6), testified (b)(6), told Mr. McConnell he constantly used United Airlines and self-procured tickets with United, and added that doing so was "all fine and dandy" so long as he chose a flight with a GSA carrier. (b)(6), stated that when (b)(6), told Mr. McConnell his actions could be construed as a violation of the JTR, he responded by telling (b)(6), he wanted (b)(6), to have the "JAG" (the Staff Judge Advocate) tell him what he was doing was illegal. [12]

(b)(6), (b)(7)(C) described the flight scheduling process (b)(6), and Mr. McConnell used to arrange for his TDY travel. (b)(6), testified

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[10] The travel documents we reviewed showed that the primary commercial carriers for most air travel from Colorado Springs, Colorado, to the destinations to which Mr. McConnell traveled on TDY were United Airlines, American Airlines, and Frontier Airlines.

[11] Travel documents showed that Mr. McConnell was a member of United Airlines' Mileage Plus frequent flyer rewards program.

[12] We summarized the (b)(6), (b)(7)(C) communication with a staff attorney from the office of the Staff Judge Advocate and the results of that communication in Part IV, Paragraph A, of this report.

Mr. McConnell first informed [redacted] of the dates on which he was traveling. [redacted] stated [redacted] placed the TDY travel dates on the NC/IC calendar, and added that Mr. McConnell then informed [redacted] of specific flights that he wanted to take for the travel. [redacted] testified,

> He [Mr. McConnell] will go back on his computer, look up the flights on civilian airlines, and print the scheduling, and ask me to match that in DTS. I will then look in DTS for the flight. If I can't find the flight, then I will tell him, 'These flights I can't see because they're not City-Pair.'

[redacted] testified that if [redacted] could not find his preferred flight in DTS, Mr. McConnell directed [redacted] to contact the CTO to find out if personnel there could find his preferred flights in the reservation system. [redacted] added that most of the time, the flights Mr. McConnell desired to take were not City-Pair flights, but that he directed [redacted] to schedule them anyway.

[redacted] testified that when [redacted] encountered flights that were not City-Pair flights available in DTS, [redacted] often advised the [redacted] and requested [redacted] assistance in addressing the matter with Mr. McConnell. [redacted] stated that, on occasion, the [redacted] talked with Mr. McConnell about his flight choices. [redacted] added [redacted] also told [redacted] from time to time to talk directly with Mr. McConnell about the issue.

[redacted] testified that on one occasion [redacted] informed Mr. McConnell that his desired TDY travel was available on less expensive City-Pair routes offered by Sky West Airlines and Frontier Airlines. [redacted] stated that he rejected [redacted] suggestion and told [redacted] "My fat ass can't sit in those seats."

Rental Vehicles

[redacted] testified Mr. McConnell stated he preferred to rent through Hertz rather than any other vendor. [redacted] added Mr. McConnell usually procured his rental vehicle himself rather than through [redacted] efforts in arranging travel through the CTO and DTS.

Mr. McConnell testified he preferred to rent vehicles through Hertz, and that when he did rent a car, he preferred to rent a sport utility vehicle. He added he rented with Hertz because he preferred the convenience afforded him as a Hertz Gold Club member to be able to simply walk directly to his reserved car's parking space location, enter the vehicle, and depart without having to fill out rental forms, wait in line, or take other steps to obtain the vehicle and depart the rental location. Mr. McConnell confirmed that he rented his vehicles personally, not through DTS.

As we noted above, travel records showed that Mr. McConnell rented Hertz vehicles 20 times between 2008 and November 2010. Of those 20 rentals, Mr. McConnell rented a compact car once. The remaining 19 rentals were for an SUV or mid-size vehicle. Mr. McConnell received reimbursement for the rental vehicle expenses associated with official travel in each instance.

Mr. McConnell's travel records showed one occasion in 2010, when he rented a full-size vehicle for transportation during TDY travel, and used the vehicle for personal use during a leave period in conjunction with the official travel. In this instance, he calculated the pro-rated portion of the rental cost attributed to his official use and personal use of the vehicle and did not seek reimbursement for the costs attributed to the latter.

Lodging

The complaint alleged Mr. McConnell routinely stayed at hotels the costs of which exceeded the maximum lodging rate allowed under the JTR for his particular TDY location. We reviewed travel authorizations and vouchers, hotel receipts, and other documentation relating to Mr. McConnell's lodging expenses on TDY trips. We also interviewed Mr. McConnell and others with knowledge of his lodging and record keeping in connection with official travel.

Travel documents showed 26 occasions when Mr. McConnell obtained lodging in connection with TDY travel at costs that exceeded the maximum authorized lodging cost for the TDY locations. We found that in 15 of those instances, Mr. McConnell's travel documentation included an AEA letter purporting to address the excess lodging costs. Table 2, below, summarizes the referenced instances.

Table 2. Lodging and AEA Summary

Travel Date	TDY Location	Reimbursed Lodging Cost	Max Lodging Amt.	# of Nights	AEA (Y/N)
25-Mar-08	Warrenton, VA; Washington, DC	$251.00	$201.00	3	N
20-Apr-08	Memphis, TN Kansas City, MO San Antonio, TX	$125.00 $ 147.00	$ 86.00 $112.00		N N
8-Jun-08	Omaha, NE El Paso, TX	$149.00 $113.00	$ 93.00 $ 93.00	1 1	N N
25-Aug-08	Washington, DC	$174.00	$154.00	2	N
22-Sep-08	Washington, DC	$241.00	$201.00	2	N
14-Oct-08	Lakewood, CO	$174.00	$149.00	1	N
10-Mar-09	Washington, DC	$229.00	$209.00	2	N
23-Mar-09	Washington, DC	$249.00	$209.00	4	N
21-Apr-09	Knoxville, TN Austin, TX Washington, DC	$139.00	$ 83.00	1	Y
20-May-09	Washington, DC	$261.00	$209.00	1	Y
13-Oct-09	Washington, DC	$286.00	$229.00	2	Y

Travel Date	TDY Location	Reimbursed Lodging Cost	Max Lodging Amt.	# of Nights	AEA (Y/N)
8-Jan-10	Miami, FL Key West, FL	$282.00	$188.00	2	Y
1-Feb-10	Omaha, NE Washington, DC	$129.00	$101.00	1	Y
23-Feb-10	El Paso, TX Washington, DC	$ 91.00 $259.00	$ 88.00 $207.00	1 2	Y
2-Mar-10	Washington, DC	$226.00	$207.00	2	Y
22-Mar-10	Washington, DC	$283.00	$226.00	4	N
12-Apr-10	Washington, DC Norfolk, VA	$241.00 $115.00	$226.00 $ 95.00	3 2	Y
11-May-10	Washington, DC	$254.00	$226.00	3	Y
8-Jun-10	Baltimore, MD Dahlgren, VA	$170.00 $241.00	$161.00 $226.00	1 2	Y
20-Jun-10	Washington, DC	$241.00	$226.00	3	Y
27-Jul-10	Washington, DC	$213.00	$170.00	3	Y
29-Aug-10	Washington, DC	$185.00 $244.00	$170.00 $170.00	2 1	Y
8-Mar-11	Washington, DC	$241.00	$211.00	1	Y
29-Nov-11	Albuquerque, NM	$ 84.95	$ 81.00	1	Y

We calculated that for the above-referenced TDY travel, the daily lodging rate charged to Mr. McConnell exceeded the maximum authorized lodging amount on average by approximately $34.00 per night, or almost 21% more than the maximum authorized lodging amount for Mr. McConnell's referenced TDY locations.

Testimony established that if actual lodging expenses were 150% or less of the maximum authorized lodging amount, AEA approval authority was exercised by approving officials within a traveler's directorate or division. If the actual lodging expenses exceeded 150% of the maximum authorized lodging amount for a location, the USNORTHCOM Comptroller exercised approval authority. We found no instances in which Mr. McConnell's lodging costs required NC/IC to submit an AEA letter to the USNORTHCOM Comptroller for approval.

AEA letters for Mr. McConnell's TDY travel included the following statements as justification for authorization exceeding the maximum authorized lodging amount for his TDY travel location:

- "Reservations were scheduled late due to briefing schedule. There were no government rates available during this time frame." (October 13, 2009, travel to Washington, DC. Lodging at the Ritz Carlton) [13]
- "Government rate was quoted at $129." (February 1, 2010, travel to Washington, DC. Lodging at the Ritz Carlton)
- "Adequate lodging at government rate was not available at the time of scheduling." (August 29, 2010, travel to Washington, DC. Lodging at the Ritz Carlton)
- "Traveler's certification that no reasonable accommodations were available within the established per diem rates." (March 11, 2011, travel to Washington, DC. Lodging at the Ritz Carlton); (November 29, 2011, travel to Albuquerque, New Mexico. Lodging at the Marriott)[14]

(b) (6), (b) (7)(C) testified that when Mr. McConnell traveled to Washington, DC, he lodged at the Ritz Carlton hotel. (b)(6), (b)(7) added that he had a distinct preference to stay at the Ritz Carlton over any other hotel. (b)(6), (b)(7) stated that he "wanted to stay at the Ritz at all costs," and that most of the time (b) (6), could arrange accommodations at the Ritz within the per diem rate. (b)(6), (b)(7) continued, however, that even if (b) (6), could not obtain accommodations there within the per diem rate, Mr. McConnell wanted to lodge there.

(b) (6), (b) (7) (C) testified that when Mr. McConnell stayed in lodging that exceeded the maximum authorized lodging rate, (b) (6), would be directed to prepare an AEA, which the (b)(6), (b)(7)(C) would sign. (b) (6), added that most of the time, (b) (6), included "canned" reasons for the AEA that (b) (6), did not like to use. (b) (6), stated (b) (6), told Mr. McConnell that one of the canned statements, that no lodging was available at the per diem rate, was not true because other rooms were available within the lodging rate. (b) (6), added that Mr. McConnell responded, "Well, you know, we can do an AEA up to 300 percent." (b) (6), added, "most of the time, I knew that lodging was available at the Government rate in the DC area."

(b) (6), (b) (7) (C) testified Mr. McConnell loved the Ritz Carlton. (b) (6), added that (b) (6), spoke with Mr. McConnell when (b) (6), found lodging at a less expensive rate or when the rate offered by the Ritz Carlton exceeded the per diem amount. (b) (6), (b) (7) (C) stated,

> I would say, "The Ritz is – the per diem that they're offering – that they're giving you, it's not the per diem that's authorized in DTS. So I can find you a nicer hotel." And he said, "Well, I'm going to stay at the Ritz."

(b) (6), (b) (7)(C) testified (b) (6), and Mr. McConnell discussed his preference for lodging at the Ritz Carlton when he traveled to Washington, DC. (b)(6), (b)(7) added that on one occasion (b) (6), teased Mr. McConnell about staying at the Ritz Carlton or other resort hotels, because they cost more than other hotels, to which he responded, "Well, these are the hotels that I like."

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[13] The AEA letter states the reason for the travel was to "visit the Pentagon on Homeland Security Matters."

[14] The AEA for the November 29, 2011, travel was dated December 6, 2011. It states in Paragraph 3, "Specific reason for travel: Visit to Pentagon on Homeland Security Matters."

(b)(6), (b)(7)(C) stated (b)(6), brought the matter of Mr. McConnell staying at hotels exceeding the maximum lodging amount to the attention to the (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) testified the (b)(6), (b)(7)(C) told (b)(6), that in those circumstances to put together an AEA letter for (b)(6), signature. (b)(6), added (b)(6), believed that even though (b)(6), was hired to do the right thing, it was clear that when it came to his travel, "you just don't tell – go in there and tell Bear [Mr. McConnell] you can't do something."

(b)(6), (b)(7)(C) testified that on one occasion, (b)(6), felt frustrated about having to draft an AEA letter for Mr. McConnell's lodging. As a result, (b)(6), drafted the stated justification in the AEA letter to read, "This is what the traveler wanted." When (b)(6), provided the draft to the (b)(6), (b)(7)(C) told (b)(6), (b)(7)(C) could not include such a statement. (b)(6), testified (b)(6), asked why, since the statement was the truth. (b)(6), stated

> (b)(6), (b)(7)(C) said, "You can't do that, and you can't put that on the AEA letter. I'll tell you what. I'll tell you what to put on the AEA letter." So as I sat at my computer, (b)(6), (b)(7)(C) stood at my counter, and (b)(6), told me to type exactly that … the Government rate is not going to be available.

(b)(6), (b)(7)(C) testified (b)(6), was aware the Mr. McConnell made his own hotel reservations at times. (b)(6), stated (b)(6), tried to scrutinize those arrangements closely. (b)(6), stated there were occasions when Mr. McConnell obtained lodging at the Ritz Carlton that were not charged at the Government rate for the entirety of the TDY trip. (b)(6), testified that while (b)(6), occasionally called other hotels in the Washington area to inquire if lodging existed at the per diem rate, (b)(6), did not do so each time Mr. McConnell's travel authorization showed estimated lodging costs in excess of the maximum authorized lodging amount.

Mr. McConnell testified that when he traveled to Washington, DC, he preferred to stay at Pentagon City and the Ritz Carlton, if he could get the Government rate. He added it was strictly a matter of convenience. He stated that when he could not obtain lodging at the Ritz Carlton at the Government rate, his office prepared AEA letters with justification for why the lodging amount was "a little more."

Mr. McConnell's travel records showed that Mr. McConnell lodged at the Ritz Carlton almost every time he traveled on TDY to Washington, DC. His travel records also show that he was reimbursed for lodging expenses incurred in connection with his TDY travel, including lodging for which no AEA letter was submitted.

We asked Mr. McConnell if he could explain AEA letters stating that the traveler (i.e., Mr. McConnell) certified there were no rooms available for the TDY location at the Government rate. He stated that he did not call other hotels to determine if they had lodging at the Government rate. He testified, "I didn't ever call anywhere. Any reservation I would make would be online." We asked if he made online inquiries with other hotels in the Pentagon City area to determine if they had available lodging at the per diem rate. Mr. McConnell stated he recalled lodging at the Hilton or Embassy Suites in the area when the Government rate was not available, but he did not recall searching for other hotels the Washington, DC, area before he reserved lodging with the Ritz Carlton.

Mr. McConnell testified that until March 9, 2012, when we showed him an AEA letter we obtained from his travel records, he had not seen an AEA letter relating to his TDY travel and travel vouchers. He added he did not understand the significance of the justification language in the AEA letter, which stated "adequate lodging at the government rate was not available at the time of scheduling." Mr. McConnell stated he did not consult with (b)(6), (b)(7)(C) or the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) regarding the justification in his AEA letters and he did not approve AEA letters.

Discussion

We conclude Mr. McConnell misused his position and failed to conserve Government resources in connection with official travel by:

- obtaining air travel and directing the ticketing of air travel for TDY with specific commercial carriers rather than through the City-Pair program or the Government-contracted lowest cost airfares;

- obtaining rental vehicles with a specific vendor for his personal convenience and at rental rates that exceeded sums available by renting such vehicles through Government-contracted vendors;

- procuring lodging at rates that exceeded the maximum daily lodging rate for his particular TDY location without first obtaining proper authorization to do so; and

- obtaining lodging at costs exceeding the maximum authorized lodging amount and, in 11 instances, failing to submit an AEA justifying the excess lodging costs.

Air Travel

We found that Mr. McConnell personally procured airline tickets primarily for his personal convenience, such as to ensure he traveled with (b)(6) (b)(7)(C) and obtained seats together. We further found that Mr. McConnell received reimbursement for all airfares associated with his official travel, regardless of whether he selected such fares through DTS and the CTO.

The JTR requires travelers to use DTS and a CTO for ticketing air travel for TDY. Additionally, the JTR requires travelers to travel on City-Pair carriers for official travel when available. Further, the traveler's agency must determine that any non-contract transportation is practical and cost-effective for the Government before a traveler purchases a non-contract airfare. The JTR states that carrier preference is not a valid reason to choose a non-contract airfare.

The JER mandates that a Government employee conserve Government property and resources, and not to use his office or position for personal benefit or gain.

The JTR provides that a traveler is financially responsible for excess costs and additional expenses incurred for personal convenience or benefit.

Rental Vehicles

We found Mr. McConnell rented vehicles through Hertz for personal convenience rather than use lower cost vehicles reserved through DTS and the Government-contracted CTO. We also found Mr. McConnell acknowledged his preference for renting cars through Hertz, with whom he had a Gold Club membership in its rewards program.[15] We found that (b)(6), (b)(7)(C) and members of his staff were aware of his preference to rent with Hertz and the fact that he obtained rental vehicles directly himself, rather than through the CTO. We further found that Mr. McConnell did not rent compact vehicles. Instead, he routinely rented SUVs or other large vehicles.

We determined Mr. McConnell rented vehicles through Hertz for his personal convenience. We also determined he did not select the lowest cost vehicle service meeting mission requirements, and he failed to provide any justification for vehicles larger than compact cars. We found he was reimbursed fully for his rental car expenses.

The JER mandates that a Government employee conserve Government property and resources and not use his office or position for personal benefit or gain.

The JTR provides that a traveler is financially responsible for excess costs and additional expenses incurred for personal convenience or benefit. The JTR further requires that official travel be provided through the lowest cost transportation available unless other, more expensive transportation is authorized.

Lodging

We found that in instances where Mr. McConnell's travel documents included an AEA, he did not participate in providing the specific factual grounds to justify issuance of the letter or the actual justification stated in the AEA letter. We found no evidence that the justifications specified in the AEA letters filed with respect to Mr. McConnell's TDY travel to Washington, DC, reflected factual justification offered by or known to the traveler prior to his departure for TDY. Further, we did not find evidence of special events or circumstances justifying a temporary increase in lodging costs in those instances when Mr. McConnell's lodging exceeded the maximum authorized lodging amount for a locale. We found that Mr. McConnell was fully reimbursed for his lodging expenses.

The JTR provides that a traveler may incur lodging costs exceeding the maximum authorized amount so long as the traveler obtains an AEA justifying the expense. The JTR expressly provides that a traveler's personal preference or convenience does not justify an AEA. Further, the JTR requires travelers to exercise prudence in travel.

[15] Hertz's Gold Club membership is the highest rewards level offered by the company, enabling its members to obtain expedited rental service, discounts, vehicle upgrades, guaranteed reservations, and reward points.

USNORTHCOM's AEA guidance requires a traveler to submit a letter to his Director or Deputy detailing the need for an AEA letter and the reasons why the per diem allowance is not adequate to cover the traveler's lodging expense. It further states that the basis or justification for seeking an AEA letter must exist prior to the travel and lodging.

The JTR provides that a traveler is financially responsible for excess costs and additional expenses incurred for personal convenience or benefit.

The JER mandates that a Government employee conserve Government property and resources and not use his office or position for personal benefit or gain.

Based on the foregoing, we determined Mr. McConnell misused his office for personal benefit and failed to conserve Government resources by obtaining and directing that his subordinates obtain for his use air travel, rental vehicles, and lodging for his personal convenience and at extra cost to the Government without proper authorization.

Mr. McConnell's Response

In his September 4, 2012, response Mr. McConnell denied ever having used Government resources for personal gain. However, he acknowledged pursuing convenience when on official business if it was at no cost to the Government, and stated he did so with the understanding that he was responsible for excess costs beyond Government allowed rates.

Mr. McConnell asserted that his responsibility for cost differences between travel facilities he used for official travel and those that were authorized was clearly conveyed to his staff. He stated that if he has been overcompensated with respect to any official travel, it is his intent to repay. Further, Mr. McConnell noted that on some occasions the cost of self-procured flights or travel starting or ending in [redacted], saved the Government money. Mr. McConnell stated we failed to note the times when he received reduced reimbursement "for differences in rental car, airline or hotel costs," and contended that his agreement to such reductions showed his understanding and willingness to pay costs exceeding allowed Government rates. He contended that in instances where reimbursement was not reduced, it was the result of an accounting error rather than willful disregard of regulatory requirements or an attempt to defraud the Government.

We disagree with Mr. McConnell's assertions in his response. We found that Mr. McConnell planned his travel, including lodging, rental cars, and airline travel, for personal convenience. He specifically acknowledged doing so when procuring lodging and rental cars for TDY. Notwithstanding Mr. McConnell's claims to the contrary in his response, we found that in procuring airline travel, rental cars, and lodging for his personal convenience, Mr. McConnell did so for his personal benefit and gain.

As we noted above, for example, Mr. McConnell was not subjected to reduced reimbursement or out-of-pocket responsibility for costs associated with his lodging at the Ritz Carlton Hotel in the Washington, DC, area. When [redacted] told the [redacted] less expensive lodging was available on a particular trip to the Washington area, the

[redacted] personally dictated the justification language [redacted] was to place in an AEA letter authorizing the excess costs Mr. McConnell would incur by lodging at the Ritz Carlton. Further, when Mr. McConnell rented cars through Hertz, the costs claimed by him on his travel voucher were reimbursed. We did not find evidence of reduced reimbursement to Mr. McConnell for the difference between the DTS-approved rental rate and the higher rental rates charged by Hertz.

The evidence did not support Mr. McConnell's assertion that his responsibility to pay excess costs over allowed Government rates clearly had been conveyed to his staff. We note, for example, that after the internal 2008 informal review of Mr. McConnell's official travel, the [redacted] routinely approved travel authorizations and vouchers in which lodging, rental car costs, and airfare exceeded authorized rates for such travel facilities. Additionally, [redacted] confronted him with respect to travel requests that did not appear to be consistent with JER or FMR requirements. We did not find evidence supporting Mr. McConnell's claim that his agreement to pay the cost differences stemming from his desire to pursue convenience on official travel was clearly conveyed to his staff.

Mr. McConnell raised two additional matters in his response that merit a reply. He unequivocally denied making the statement attributed to him in the testimony cited on page 21 of this report.[16] We acknowledge that no other witnesses testified to having heard Mr. McConnell make statements of a similar vein. However, assuming Mr. McConnell's recollection and statement in his response are accurate, our findings and conclusions are not affected and remain unchanged.

Mr. McConnell also stated in his response that in 2011 his staff "scrubbed" his travel account in anticipation of his retirement, and that he wrote checks to "balance the books." We note that Mr. McConnell's post-travel repayments to balance his travel account do not change our findings that he violated the governing standards cited above in this report. To the contrary, his belated efforts to balance the books support our findings and conclusions.

After carefully considering Mr. McConnell's response and reevaluating the evidence, we stand by our conclusions.

V. OTHER MATTERS

During the course of our investigation, the evidence established that Mr. McConnell's [redacted], executed AEA letters in connection with Mr. McConnell's official travel even though [redacted] advised them, for example, that lodging was available at the applicable lodging rate. In one instance, the [redacted] dictated to [redacted] the words [redacted] was to insert in an AEA to justify Mr. McConnell's lodging expense.

[16] Mr. McConnell denied making the statements shown on "page 20" of our preliminary report. The text referred to is now found at page 21 of this report.

The evidence also indicated that the (b)(6), (b)(7)(C) approved Mr. McConnell's travel vouchers with reimbursement claims for airfare, lodging, and rental vehicles either that exceeded authorized rates or which Mr. McConnell did not obtain through DTS and the available CTO.

The JTR imposes specific obligations on AOs with respect to travelers' AEA requests and reimbursement claims for TDY travel expenses.

We refer these matters to the Commander, USNORTHCOM, for appropriate action.

VI. CONCLUSIONS

We conclude Mr. McConnell:

A. Failed to use DTS and the Government-contracted travel office (CTO) to schedule official travel and rental vehicles, failed to use the City-Pair program or the Government-contracted lowest cost airfares, and upgraded his lodging and rental vehicle without proper authorization in violation of the JTR, FMR, and the JER; and

B. Failed to conserve Government resources and misused his position for personal gain in violation of the JTR and JER.

VII. RECOMMENDATION

We recommend the Secretary of the Air Force consider appropriate action with respect to Mr. McConnell.

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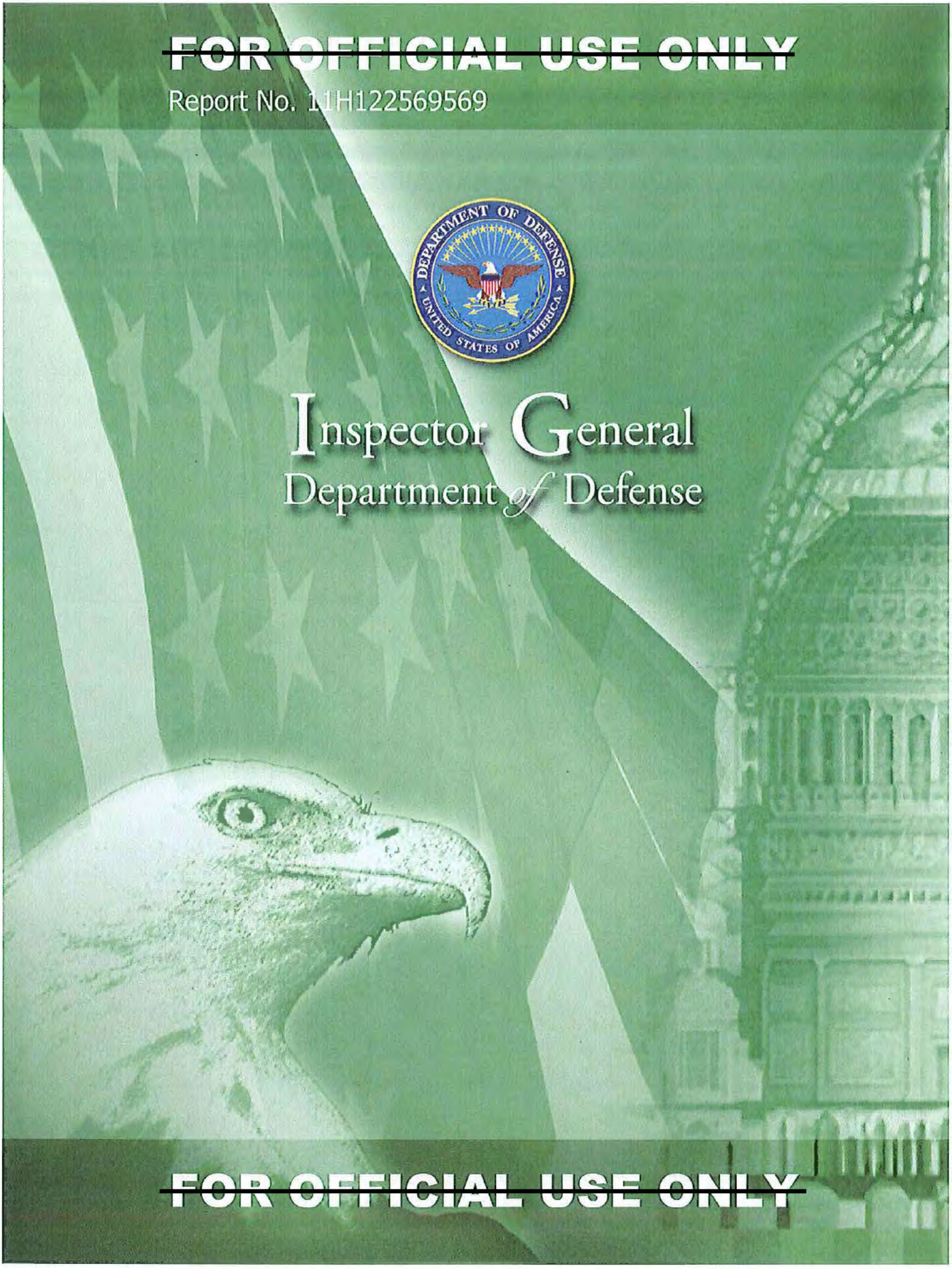

Inspector General
Department of Defense

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