

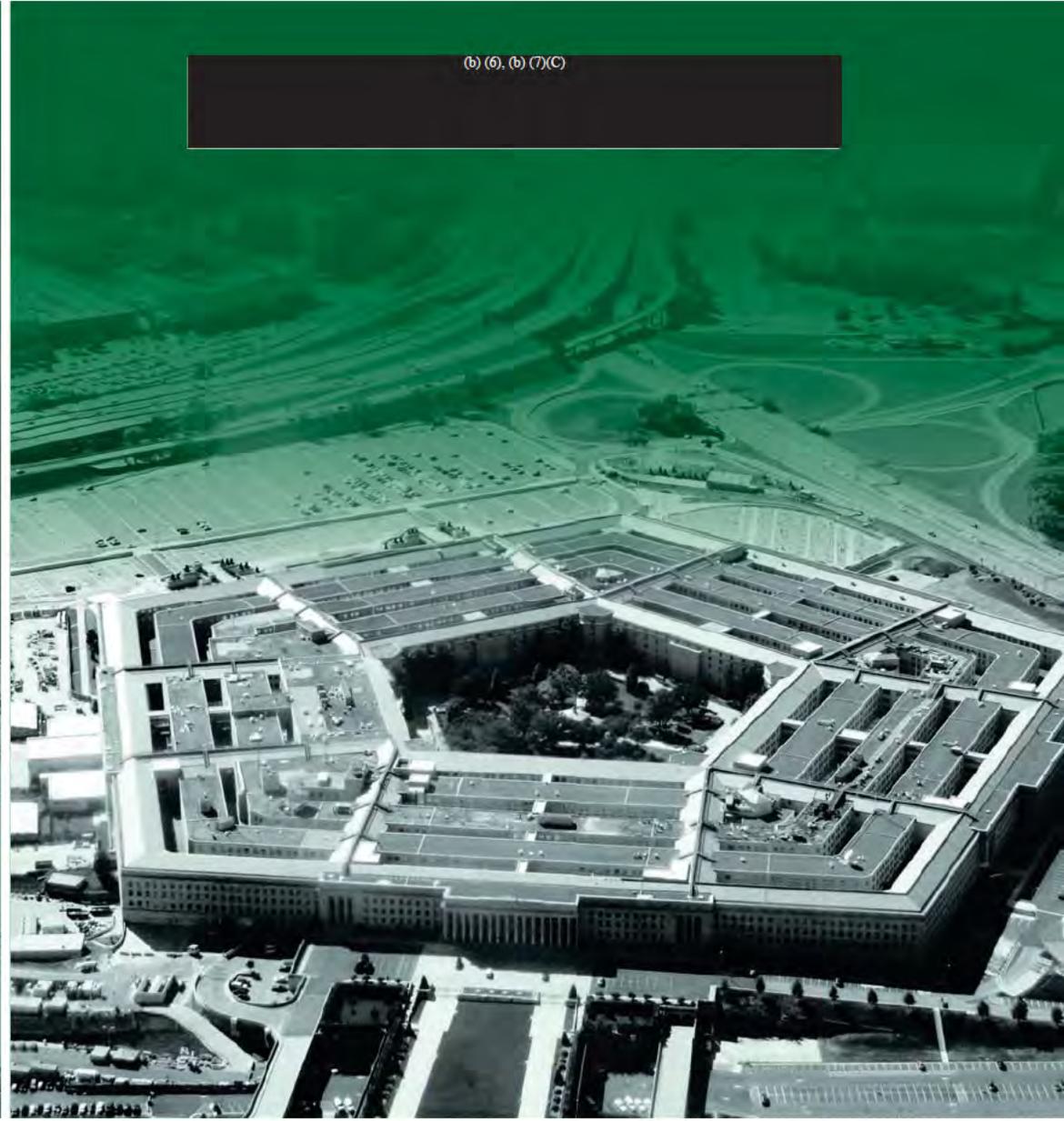
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# INSPECTOR GENERAL

*U.S. Department of Defense*

November 4, 2014



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

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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**WHISTLEBLOWER REPRISAL INVESTIGATION**  
**HEADQUARTERS, SPECIAL OPERATIONS COMMAND, AFRICA**  
**STUTTGART, GERMANY**

**I. EXECUTIVE SUMMARY**

We conducted this investigation in response to allegations that [REDACTED], Special Operations Command Africa (SOCAFRICA), [REDACTED], Stuttgart, Germany, was subjected to reprisal via: 1) a detail, 2) denial of a foreign service tour extension (FSTE), 3) denial of a professional development training seminar, 4) a lowered annual performance evaluation, 5) denial of a performance award, and 6) a proposed disciplinary action for being perceived to have made two anonymous IG complaints, communications to an Investigating Officer (IO), communications to the Department of Defense (DoD) Hotline, cooperation with a Department of Defense Inspector General (DoD IG) investigation, and communications to the U.S. Office of Special Counsel (OSC).

We substantiated allegations #1, and #4 - #6. We did not substantiate allegations #2 and #3, above.

We found Complainant made and was perceived to have made disclosures protected by statute. We determined a detail, lowered annual performance evaluation, denial of a performance award, and proposed disciplinary action were personnel actions that would not have occurred absent the protected disclosures. We found the FSTE was denied in accordance with applicable regulatory guidance and not reviewed for reprisal. We found the professional development training seminar could not have reasonably been expected to lead to a promotion or performance evaluation; accordingly, the denial of said training was not analyzed for reprisal.

We conclude the following responsible management officials (RMOs) did reprise against Complainant by taking actions inconsistent with the principles of Title 5, United States Code (USC), Section 2302:

Rear Admiral (RDML) Brian L. Losey, U.S. Navy (USN), Commander, SOCAFRICA;<sup>1</sup>

[REDACTED],  
SOCAFRICA; and

[REDACTED], SOCAFRICA.

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<sup>1</sup> All titles and ranks identified pertain to the position(s) held at the time the incident took place and do not necessarily reflect an individual's current rank or title.

## II. BACKGROUND

(b)(6), (b)(7)(C)  
[REDACTED]  
The RMOs served at SOCAFRICA as follows:

RDML Losey, Commander, June 21, 2011, to June 7, 2013;

(b)(6), (b)(7)(C) ; and

(b)(6), (b)(7)(C)  
[REDACTED].

Complainant alleged the RMOs administered personnel actions in reprisal for his perceived and actual protected disclosures.

## III. SCOPE

The investigation covered the period from the first anonymous IG complaint on July 13, 2011, to Complainant's proposed disciplinary action on March 8, 2013. The investigation included interviews of Complainant, RMOs, 24 witnesses, Human Resources personnel, and Agency officials. In addition, we reviewed Agency-provided information, email personal storage tables (PSTs), memoranda for record, and comparator information.

## IV. STATUTORY AUTHORITY

The Department of Defense Inspector General (DoD IG) conducts whistleblower reprisal investigations involving civilian appropriated-fund employees of the Department and applicants under Section 7(a) and 8(c)(2) of "The Inspector General Act of 1978," as amended. Further, under DoD Directive 5106.01, "Inspector General of the Department of Defense," DoD IG receives and investigates such complaints of reprisal generally in accordance with Title 5, USC, Section 2302.

## V. FINDINGS AND ANALYSIS

### A.1. Did Complainant make a protected disclosure? Yes.

Complainant was perceived as making the July 13, 2011, complaint to the DoD Hotline described below. Although Complainant was not actually the source of the Hotline complaint, an appropriated fund civilian is protected from reprisal for a disclosure he is perceived of making, as long as the disclosure at issue would be protected under the statute.

*July 13, 2011, DoD Hotline Complaint*

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

[REDACTED]

On July 13, 2011, an anonymous person (b)(6), (b)(7)(C) filed a DoD Hotline complaint alleging that RDML Losey (b)(6), (b)(7)(C)

[REDACTED] DoD IG referred the complaint to the Naval Inspector General (NAVINSGEN) on September 16, 2011. NAVINSGEN questioned RDML Losey in late September 2011 (b)(6), (b)(7)(C) and determined that the July 13, 2011, complaint lacked merit. The case was closed on September 27, 2011, and NAVINSGEN notified RDML Losey on September 28, 2011, that the case was closed.

(b)(6), (b)(7)(C) reported having many conversations about the IG complaint with RDML Losey from late September through early November 2011. (b)(6), (b)(7)(C) testified RDML Losey stated he was determined to find out who made the IG complaint, having narrowed it down to three people he suspected. (b)(6), (b)(7)(C) stated that RDML Losey perceived the source of the IG complaint to be Complainant, (b)(6), (b)(7)(C), SOCAFRICA, or a third person RDML Losey would not name.

(b)(6), (b)(7)(C), stated he and RDML Losey (prior to November 4, 2011) met to discuss a recent SOCAF inspection conducted by Special Operations Command (SOCOM). (b)(6), (b)(7)(C) stated that during the meeting, RDML Losey was “frustrated and felt that members of his command were disloyal to him, and that they should have addressed any concerns directly with him rather than through Inspector General channels.” As a result, (b)(6), (b)(7)(C) sought more information about the status of the IG complaint and on November 4, 2011, emailed RDML Losey stating:

Sir, I checked on the DoD IG complaint you mentioned in our recent meeting. The complaint was anonymously submitted to the DoD Hotline. The investigation was closed in late September 2011, and the allegations were not substantiated. No further action is being taken.

Further, he advised RDML Losey that complaints against senior officials are common and not to engage in reprisals because of such a complaint. RDML Losey replied, "Roger- appreciate the insights and will follow the advice."

RDML Losey did not understand why someone in his command would file a complaint against him (b)(6), (b)(7)(C). RDML Losey testified that he discussed this issue with his front office and wondered why someone would not come to him first instead of filing a complaint. RDML Losey testified that he could not understand why someone would not just say:

'Hey, boss, did you know that you're not entitled to this ... It's like, I don't understand. Why didn't somebody just fess up to it?'

(b)(6), (b)(7)(C), I said [to (b)(6), (b)(7)(C)], 'Why didn't you tell me?' And then we engaged in a speculative discussion of, you know, only three officers knew, (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

According to (b)(6), (b)(7)(C), after they had already had numerous conversations about the IG complaint, RDML Losey asked him his opinion on who he thought would have made the complaint, and they discussed a list of possibilities.

(b)(6), (b)(7)(C) stated RDML Losey suspected (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) assured RDML Losey he knew (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), SOCAFRICA) had not made the anonymous complaint. RDML Losey told (b)(6), (b)(7)(C) to talk to them to find out if they made the complaint. (b)(6), (b)(7)(C) also testified that the topic of who filed the complaint was discussed repeatedly over the course of 3 months, including an instance approximately the last week of October 2011 in which RDML Losey told him again that he knew it was either Complainant, (b)(6), (b)(7)(C), or a third person, and that he (RDML Losey) would "find out who did it" and "cut the head off this snake and we'll end this." (b)(6), (b)(7)(C) reiterated that he had talked to Complainant and (b)(6), (b)(7)(C), and it was neither of them.

On October 24 and 29, 2011, RDML Losey called Complainant and (b)(6), (b)(7)(C) into his office and discussed the IG complaint. Complainant testified he "assured [RDML Losey] that I had nothing to do with it," and that (b)(6), (b)(7)(C) "would never submit an IG complaint against you," but that RDML Losey was convinced someone from (b)(6), (b)(7)(C) was responsible. Complainant wrote a memorandum for record (MFR) on October 24, 2011, which stated:

On Monday morning at 0745 prior to his travel on Navy business ... He mentioned the IG complaint that had been filed against him

alleging (b)(6), (b)(7)(C) ... He said that he'd narrowed it down to 3 people who could have submitted it. He said, 'I'll find out who did it.'

(b)(6), (b)(7)(C) denied ever hearing RDML Losey say he had "narrowed it down to three people and was determined to find out who did it" and did not recall the October 24 and 29, 2011, meetings in RDML Losey's office with Complainant. When asked if he ever heard RDML Losey say he suspected someone of making the complaint, (b)(6), (b)(7)(C) testified:

I did. ... Well, and he didn't suspect so much as he said, 'Who would have done this?' And he rattled off a couple of names. I think he mentioned [Complainant], and he mentioned (b)(6), (b)(7)(C) that might have lodged the complaint.

(b)(6), (b)(7)(C), SOCAFRICA, (b)(6), (b)(7)(C), testified that after being told by (b)(6), (b)(7)(C) and Complainant that RDML Losey had "narrowed it down to three people and ... he was going to figure out who had complained and cut the head off," he recommended to (b)(6), (b)(7)(C), around the last week of October or first week of November 2011, that he advise RDML Losey to "tone it down and be very careful about the appearance of reprisal." (b)(6), (b)(7)(C) documented that conversation on November 4, 2011, in an MFR.

(b)(6), (b)(7)(C) testified that RDML Losey brought up the IG complaint, telling (b)(6), (b)(7)(C) the "IG complaint was malicious." (b)(6), (b)(7)(C) testified about this discussion as follows:

I remember saying, 'Brian [RDML Losey], you can't say out loud that using the IG system is malicious. You can't say that.' That was right around that same time, of the first week in November.

Yeah, yeah, yeah, because he didn't think I was supporting him in terms of some other things that were happening, and I was doing my best. I was trying to get him some more options on some issues, and he just thought I wasn't supporting him and he wanted to talk to me about it. But when I said, 'Brian, you can't use, I don't think the IG would appreciate it if you said using their system was malicious.' And he kind of laughed. He goes, 'Yeah, I know, but it was malicious, (b)(6), (b)(7)(C) I thought okay, he didn't get it, then. He's not listening to me.'

I was really surprised that RDML Losey got so hot on it. ... So I was kind of surprised when this — I thought this complaint came up that RDML Losey reacted so strongly to it. I thought that was part of GO Indoc [General Officer Indoctrination] that said, ‘Hey, you’re going to get IG complaints. Handle it.’

A preponderance of the evidence indicates that RDML Losey was trying to determine who made the complaint and that he perceived a group of civilians, including Complainant, as having made the DoD Hotline complaint regarding (b)(6), (b)(7)(C).

*November 17, 2011, AFRICOM IG Complaint*

On November 17, 2011, the AFRICOM IG emailed RDML Losey notifying him that they had received an anonymous letter requesting an assessment of a “toxic” SOCAFRICA command climate. (b)(6), (b)(7)(C) stated RDML Losey was livid after receiving the complaint, and he called him into his office that same day and told him to deliver a message to “the locker room” and tell them to:

play nice and wait until I’m gone. Smile. Act like you’re going to work. ... but if you continue to undermine my authority as a commander, I’m going to bury each one of them. I’m going to come after them and I’m going to [make] it very unpleasant.

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



We were unable to corroborate whether RDML Losey used the term “locker room” as this was a one-on-one conversation between him and (b)(6), (b)(7)(C); however, according to SOCAFRICA civilian employees we interviewed, (b)(6), (b)(7)(C) discussed with them RDML Losey’s belief of a “locker room” conspiracy.

A preponderance of the evidence indicates that RDML Losey was trying to determine who made the complaint and that he perceived a group of civilians, including Complainant, of making the November 17, 2011, AFRICOM IG complaint.

*December 16, 2011, Communications to Investigating Officer, CDI (b)(6), (b)(7)(C)*

(b)(6), (b)(7)(C)<sup>2</sup> On December 16, 2011, (b)(6), (b)(7)(C) appointed (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), AFRICOM, as IO to conduct a CDI into the facts and circumstances concerning (b)(6), (b)(7)(C). On December 29, 2011, and on February 14, 2012, Complainant provided a sworn statement to the IO. Complainant's statement contained information including but not limited to his duty title, his knowledge of SOCAFRICA (b)(6), (b)(7)(C), and his favorable characterization of (b)(6), (b)(7)(C). Complainant did not disclose information concerning a violation of law, rule or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Accordingly, Complainant's communication to the IO is not a protected disclosure.

*January 17, 2012, Communication to DoD Hotline*

On January 17, 2012, Complainant filed a DoD Hotline complaint alleging RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) took or directed personnel actions in reprisal for Complainant's perceived and protected disclosures. Complainant's DoD Hotline complaint contained reprisal allegations that are violations of law; accordingly, it is a protected disclosure. DoD IG reviewed Complainant's allegations and referred Complainant to the U.S. Office of Special Counsel (OSC).

*February 23, 2012, Communication to Office of Special Counsel (OSC)*

On February 23, 2012, Complainant filed a complaint with OSC alleging reprisal by RDML Losey. Complainant's OSC communication contained a reprisal allegation that is a violation of law; accordingly, it is a protected disclosure. On June 15, 2012, OSC made a preliminary determination to close their inquiry into Complainant's allegation of reprisal pending any further information. Complainant responded with additional information, but on June 27, 2012, OSC upheld their initial determination to close their inquiry into the allegation as Complainant provided no new information or facts.

*July 23, 2012, Communication to DoD Hotline*

On July 23, 2012, Complainant filed a DoD Hotline complaint alleging RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) took or directed personnel actions in reprisal for Complainant's perceived and protected disclosures. Complainant's DoD Hotline complaint contained reprisal allegations that are violations of law; accordingly, it is a protected disclosure.

<sup>2</sup>(b)(6), (b)(7)(C)

**A.2. Did Complainant cooperate with or disclose information to the Inspector General of an agency? Yes.**

*February 21, 2012, Cooperation with DoD IG (b)(6), (b)(7)(C)*

On February 21, 2012, Complainant provided a sworn statement to an IO in the DoD IG investigation of (b)(6), (b)(7)(C). Complainant's statement constituted cooperation with the Inspector General of an agency. Accordingly, Complainant's cooperation is protected.

**B. Was Complainant the subject of an actual, threatened, or recommended personnel action?**

*Detail - Yes*

On November 10, 2011, RDML Losey and (b)(6), (b)(7)(C) detailed Complainant to a set of general duties that were significantly reduced from (b)(6), (b)(7)(C). RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) directed Complainant move his office multiple times. (b)(6), (b)(7)(C)

A detail is a personnel action.

*Denial of FSTE - No*

On April 15, 2012, (b)(6), (b)(7)(C) denied Complainant's request for an FSTE. Officials from the Whistleblower Reprisal Investigations (WRI) directorate found AFRICOM and SOCAFRICA generally approved FSTE requests only as an exception to policy, when extreme detriment to the command was shown based upon an employee's qualifications and expertise. WRI found the FSTE denial was consistent with others across the command and in accordance with applicable regulatory guidance. Accordingly, we did not further review the FSTE denial for reprisal.

*Denial of Professional Development - No*

On January 15, 2012, RDML Losey and (b)(6), (b)(7)(C) canceled Complainant's attendance at a (b)(6), (b)(7)(C) professional development training seminar (b)(6), (b)(7)(C). The denial of an education or training seminar is a personnel action if training attendance could reasonably be expected to lead to a promotion or performance evaluation. WRI found (b)(6), (b)(7)(C) that Complainant felt would enhance his professional development. However, WRI did not find that Complainant's attendance at the training seminar could have reasonably led to a performance evaluation or his promotion (b)(6), (b)(7)(C). Accordingly, we did not further review the training denial for reprisal.

*Lowered Annual Performance Evaluation - Yes*

On September 21, 2012, (b)(6), (b)(7)(C), as the rater, administered Complainant a “Success All or Excellence” rating for the performance appraisal period of June 22, 2011, to June 30, 2012. (b)(6), (b)(7)(C), as senior rater, administered Complainant a “Successful (3 block)” rating. A performance evaluation is a personnel action.

*Denial of Performance Award - Yes*

On September 21, 2012, (b)(6), (b)(7)(C) denied Complainant a performance award for the June 22, 2011, to June 30, 2012 civilian appraisal period. A decision concerning pay, benefits, or awards is a personnel action.

*Proposed Disciplinary Action - Yes*

On December 20, 2012, (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) a copy of an August 21, 2012, time and attendance Command Directed Investigation (CDI), and proposed disciplinary action against Complainant ranging from written reprimand to dismissal.

On March 8, 2013, (b)(6), (b)(7)(C), as proposing official, directed (b)(6), (b)(7)(C) to “prepare and process” disciplinary action for Complainant. Specifically, he directed that Complainant receive a 14-day suspension and reprimand.

**C. Could Complainant’s protected disclosures or cooperation with the Inspector General of an agency have been a contributing factor in the agency’s decision to take, not take, threaten to take, or threaten not to take the personnel actions? Yes.**

*RMO Actual and Imputed Knowledge*

A preponderance of evidence established RDML Losey had knowledge and (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had imputed knowledge of Complainant’s first protected disclosure (July 2011 IG complaint) prior to administering Complainant’s first personnel action (temporary detail). A preponderance of the evidence further established RDML Losey had knowledge and (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had imputed knowledge of three of Complainant’s protected disclosures, and knowledge of Complainant’s protected cooperation with DoD IG prior to administering Complainant’s lowered performance evaluation, denial of Complainant’s performance award, and proposal of Complainant’s disciplinary action. Thus, the RMOs’ actual and imputed knowledge of the disclosures and cooperation prior to the personnel actions demonstrated the disclosures could have been a contributing factor in the personnel actions.

*July 13, 2011, DoD Hotline Complaint*

RDML Losey testified he was contacted by the Naval IG in late September 2011 notifying him of the anonymous complaint regarding (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) testified he learned of the complaint in October 2011 when RDML Losey told him somebody had submitted an IG complaint alleging (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) stated RDML Losey told him someone from the command lodged the complaint and that RDML Losey referred to a group of SOCAFRICA civilians, including Complainant, (b)(6), (b)(7)(C), as someone who would probably have made the complaint.

A preponderance of the evidence established RDML Losey suspected Complainant of making this protected disclosure. Further, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had knowledge RDML Losey suspected Complainant of making the July 2011 IG complaint. Accordingly, where RDML Losey influenced their personnel actions, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had imputed knowledge of Complainant's perceived protected disclosure.

#### *November 17, 2011, AFRICOM IG Complaint*

RDML Losey had knowledge of the November 2011 IG complaint. On November 17, 2011, AFRICOM IG sent an email to RDML Losey notifying him they received an anonymous complaint that the climate in SOCAFRICA was at a toxic level. He suspected a group of civilians, including Complainant, of making the November 17, 2011, AFRICOM IG complaint.

(b)(6), (b)(7)(C) testified he gained knowledge of the complaint from RDML Losey around December 2011, but he also testified he [(b)(6), (b)(7)(C)] did not attribute it to Complainant. (b)(6), (b)(7)(C) testified he had knowledge of the complaint in November 2012.

A preponderance of the evidence indicates that RDML Losey was trying to determine who among the civilians he suspected made the complaint. Further, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had knowledge RDML Losey suspected Complainant of making the November 2011 IG complaint. Accordingly, where RDML Losey influenced their personnel actions, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had imputed knowledge of Complainant's perceived protected disclosure.

#### *January 17, 2012, Communication to DoD Hotline*

On January 17, 2012, Complainant filed a DoD Hotline complaint alleging RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) took or directed personnel actions in reprisal for perceived and actual disclosures. DoD IG reviewed Complainant's allegations and referred Complainant to the OSC.

RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) denied any knowledge of Complainant's communication to the DoD Hotline. We have no evidence to the contrary.

*February 21, 2012, Cooperation with DoD IG (b)(6), (b)(7)(C)*

RDML Losey provided testimony on February 21, 2012, (b)(6), (b)(7)(C) in the DoD IG investigation of (b)(6), (b)(7)(C). RDML Losey testified to knowledge that Complainant and (b)(6), (b)(7)(C) participated in the DoD IG investigation of (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) testified he had knowledge of the February 2012 DoD IG investigation but had no knowledge DoD IG interviewed Complainant.

(b)(6), (b)(7)(C) testified he had no knowledge Complainant provided testimony to DoD IG in the investigation of (b)(6), (b)(7)(C).

A preponderance of evidence established RDML Losey's knowledge of Complainant's cooperation with DoD IG. Accordingly, where RDML Losey influenced their personnel actions, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) had imputed knowledge of Complainant's cooperation with DoD IG.

*February 23, 2012, Communication to OSC*

On February 23, 2012, Complainant filed a complaint with OSC alleging RDML Losey took or directed personnel actions in reprisal for perceived and actual disclosures.

RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) denied any knowledge of Complainant's communication to OSC, and we found no evidence that contradicted their testimony.

*July 23, 2012, Communication to DoD Hotline*

OSC referred Complainant's allegations back to the DoD IG for action as deemed appropriate, and on July 23, 2012, Complainant re-filed a DoD Hotline complaint alleging RDML Losey took or directed personnel actions in reprisal for perceived and actual disclosures. On September 17, 2012, the Deputy Inspector General, Administrative Investigations (DIG-AI), notified RDML Losey that he was under investigation for allegations of whistleblower reprisal against Complainant.

RDML Losey became aware of Complainant's communication to DoD Hotline on September 17, 2012, upon notification by DIG-AI.

A preponderance of the evidence established that on September 17, 2012, RDML Losey knew Complainant filed a DoD Hotline complaint of reprisal. Accordingly, where RDML Losey influenced their personnel actions as RMOs, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) had imputed knowledge of Complainant's protected disclosure.

*Timing between the IG complaints and personnel actions*

Complainant's first disclosure (i.e., July 2011 anonymous IG complaint) and Complainant's last protected disclosure (i.e., July 19, 2012, DoD IG Hotline disclosure) occurred within a 12-month time frame. RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) had actual or imputed knowledge of Complainant's first disclosure in late September 2011, and despite RDML Losey counseling Complainant in October 2011 that he intended no adverse action, the RMOs began administration of the first personnel action (the detail) on November 10, 2011, approximately 6-8 weeks after they began to suspect Complainant made the July 2011 IG complaint. The RMOs administered the remaining personnel actions throughout the following year, culminating 18 months later (March 2013) when (b)(6), (b)(7)(C) proposed disciplinary action against Complainant. Accordingly, the timing of the personnel actions would lead a reasonable person to believe that Complainant's disclosures could have been a contributing factor in the RMOs' decisions to take the personnel actions.

**D.1. Does clear and convincing evidence indicate that the same actions would have been taken against Complainant absent the perceived protected disclosures? No.**

Once a preponderance of the evidence establishes that one or more protected disclosures could have contributed to the decision to take a personnel action, the case is substantiated unless clear and convincing evidence establishes that the personnel action would have been taken even in the absence of the protected disclosure. However, when it is a protected activity rather than disclosure—in this case, cooperating with an IG—that could have contributed to a personnel action, the case is substantiated unless a preponderance of evidence establishes that the action would have been taken absent the protected activity. We substantiated the instant mixed case based on the clear and convincing standard as applied to the protected disclosures. Given that we substantiated reprisal for the protected disclosures, we did not find it necessary to analyze whether the actions were also taken in reprisal for the protected activity.

*Detail*

On June 21, 2011, RDML Losey assumed command of SOCAFRICA, (b)(6), (b)(7)(C). RDML Losey administered Complainant an October 29, 2011, counseling memorandum for the period June 21 through October 25, 2011. The memorandum's stated intent was that it be provided, "so that you [Complainant] are aware of my expectations, and to ensure there is no miscommunication regarding my concerns. There is no intention to take any adverse action ... " Within the five areas of concern outlined in the memorandum, (communication, staff integration/tracking, registering/following through on direction and intent, standards, and initiative and proactivity), only two specific issues have a corresponding date predating RDML Losey's knowledge of Complainant's first protected disclosure.<sup>5</sup>

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<sup>5</sup> Counseling memorandum issues prior to September 2011 include a concern with Complainant not providing three task tracking documents RDML Losey indicated he requested in July 2011 and had not received as of October 2011. The second issue involved standards, specifically that RDML Losey stated Complainant was not properly oversighting critical command processes.

On November 10, 2011, RDML Losey replaced Complainant with (b)(6), (b)(7)(C). Additionally, the temporary detail changed Complainant's rating chain. (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) Complainant was not given performance objectives and was assigned nominal duties significantly reduced from (b)(6), (b)(7)(C). In December 2011, (b)(6), (b)(7)(C) directed Complainant be moved from (b)(6), (b)(7)(C). As a result, Complainant moved his office from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C), SOCAFRICA. Complainant stated he told (b)(6), (b)(7)(C) of his concern about being able to do his job effectively from (b)(6), (b)(7)(C) and not (b)(6), (b)(7)(C).

On February 3, 2012, (b)(6), (b)(7)(C) administered Complainant an MFR with attached draft position description (PD) detailing Complainant to an "unclassified set of duties" as (b)(6), (b)(7)(C) for 120 days. On February 7, 2012, Complainant and (b)(6), (b)(7)(C) met for a mid-point review, and (b)(6), (b)(7)(C) approved three performance objectives Complainant listed on (b)(6), (b)(7)(C).

In March 2012, (b)(6), (b)(7)(C) directed a second move of Complainant - from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C). Finally, in July 2012, (b)(6), (b)(7)(C), with RDML Losey's approval, directed Complainant move to (b)(6), (b)(7)(C).

On July 13, 2012, (b)(6), (b)(7)(C) administered Complainant an MFR extending his (b)(6), (b)(7)(C) detail to an "unclassified set of duties" by an additional 120 days, backdated to June 4, 2012. Both detail MFRs indicated Complainant would be reassigned to (b)(6), (b)(7)(C) once the PD was formally classified.

On July 27, 2012, (b)(6), (b)(7)(C) directed Complainant to move his work location from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) directed Complainant to prepare for (b)(6), (b)(7)(C), as well as prepare for an upcoming IG inspection and (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) had denied Complainant's FSTE on April 15, 2012, (b)(6), (b)(7)(C). Further, in July 2012, Complainant's access to SOCAFRICA command distribution emails ceased, effectively removing Complainant's visibility of operations and staff functions.

In August 2012, SOCAFRICA submitted a manpower change request to AFRICOM requesting a (b)(6), (b)(7)(C) billet replace (b)(6), (b)(7)(C). Upon (b)(6), (b)(7)(C) change, Complainant was not reassigned to (b)(6), (b)(7)(C) billet. (b)(6), (b)(7)(C) Ms. Rhonda K. Diaz, Senior Executive Service, DAC, Deputy Director of Resources J-1/J-8, AFRICOM detailed Complainant from SOCAFRICA to the AFRICOM (b)(6), (b)(7)(C), per Complainant's request.

Complainant testified that on November 4, 2011, he met with RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) and discussed new duty titles he would assume, including (b)(6), (b)(7)(C). Complainant testified that (b)(6), (b)(7)(C) was decided upon and a detail to (b)(6), (b)(7)(C) changed his duties and responsibilities "pretty substantially" and that he spent from November 2011 to January 2012 informing (b)(6), (b)(7)(C) his PD for (b)(6), (b)(7)(C) needed to be put into place. However, Complainant testified his PD was never changed from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C).

On November 7, 2011, (b)(6), (b)(7)(C) provided Complainant an MFR requesting his feedback on designating (b)(6), (b)(7)(C). Complainant responded the same day and transmitted an MFR to (b)(6), (b)(7)(C) documenting his support (b)(6), (b)(7)(C)

During this time, (b)(6), (b)(7)(C) contained no (b)(6), (b)(7)(C) billet or corresponding PD. Complainant's detailed duties were significantly reduced from his (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

Complainant testified by the time he moved to (b)(6), (b)(7)(C), he had completed his assigned duties of (b)(6), (b)(7)(C) and had provided the completed work products to (b)(6), (b)(7)(C) for review.

Complainant testified that (b)(6), (b)(7)(C) told him, "Well, [Complainant], the boss [RDML Losey] wants you to move. You've got to move." Complainant testified on July 24, 2012, he told (b)(6), (b)(7)(C), "If you want me to move (b)(6), (b)(7)(C) I need to see it in writing." Subsequently, (b)(6), (b)(7)(C) directed he move to (b)(6), (b)(7)(C) via email on July 27, 2012. Complainant testified he had already completed (b)(6), (b)(7)(C) he was previously directed to complete. Complainant testified, "They were printed out and they were sitting on (b)(6), (b)(7)(C) desk waiting for him to review and sign them. And at that point, after they were all done I was moved (b)(6), (b)(7)(C) and was told ... 'Finish these procedures.' They were already finished."

(b)(6), (b)(7)(C), SOCAFRICA, (b)(6), (b)(7)(C) and observed that initially Complainant had no assigned tasks. (b)(6), (b)(7)(C) testified Complainant was eventually assigned to (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) described this change of duties as not equitable:

... Truthfully I don't know what his role was. [Complainant] was minimalized, (b)(6), (b)(7)(C) ... the commander [RDML Losey] felt that [Complainant] was working against him ... there was a linkage back to the initial IG complaint relating to the alleged (b)(6), (b)(7)(C).

Ms. Diaz testified Major General (Maj Gen) H.D. Polumbo, USAF, CoS, AFRICOM, asked her to engage RDML Losey regarding a civilian employee. Ms. Diaz testified she contacted RDML Losey, and they met around January 10, 2012. Ms. Diaz testified RDML Losey provided her a counseling memorandum for review that he had previously provided Complainant. Ms. Diaz reviewed the document and, with the knowledge that Complainant had been moved, advised RDML Losey that:

We need to take care of necessary personnel kinds of actions, and if there's an issue with performance, we would need to put [Complainant] on a PIP, a performance improvement plan. But in order to put [Complainant] on a PIP, one, you have to have an approved PD. You have to have performance objectives so that [Complainant] knows what it is that he's supposed to be doing.

Ms. Diaz testified that in January 2012, she offered RDML Losey AFRICOM civilian personnel assistance with developing (b)(6), (b)(7)(C) PD and was still waiting for the PD in July 2012. Ms. Diaz testified Complainant was "... moved to a position that didn't exist, one that we didn't know whether it was even going to grade out." Ms. Diaz explained RDML Losey should have first consulted her or her staff for assistance in requesting a (b)(6), (b)(7) change.

(b)(6), (b)(7)(C), SOCAFRICA, testified (b)(6), (b)(7)(C) directed Complainant move to (b)(6), (b)(7)(C) despite his objection. (b)(6), (b)(7)(C) went on to say Complainant had no stated duties he was aware of after moving to (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) testified he believed the move was unnecessary and that it could be perceived as reprisal against Complainant. (b)(6), (b)(7)(C) testified (b)(6), (b)(7)(C) responded by thanking him for his advice, telling him he was still going to move Complainant to (b)(6), (b)(7)(C), and that:

[Complainant] was part of the civilian dog pile, which were [Complainant], (b)(6), (b)(7)(C), who (b)(6), (b)(7)(C) believed were causing friction within the organization and that he needed to take steps to pull them out of the dog pile, which in his mind meant that they were to be moved out of either the (b)(6), (b)(7)(C) or the building altogether, or the command if possible.

#### *RMO Stated Reasons*

RDML Losey testified (b)(6), (b)(7)(C) was a "total meat grinder" and "with everything that was going on here [Complainant] could not keep up." RDML Losey indicated he was trying to correct what he viewed as SOCAFRICA's structural and process deficiencies and that moving Complainant to (b)(6), (b)(7)(C) was part of a larger effort to correct a SOCAFRICA functional deficiency. RDML Losey testified Complainant's duties were changed with his (Complainant's) assent, consultation, and collaboration as evidenced by the November 7, 2011, MFR Complainant provided the DCO. RDML Losey testified that (b)(6), (b)(7)(C) wanted to remove Complainant from the chaos of the (SOCAFRICA) (b)(6), (b)(7)(C) and give him time and space to transition to the Priority Placement Program (PPP).

(b)(6), (b)(7)(C) testified that "we moved [Complainant] from (b)(6), (b)(7)(C) — to a non-existent position ... but we defined his work in a performance plan that was within his PD as (b)(6), (b)(7)(C)." (b)(6), (b)(7)(C) testified Complainant was given "a narrower set of tasks, mostly

<sup>6</sup> The PPP is an automated mandatory placement program used to match eligible well-qualified employees, most of whom are subject to displacement, with vacant DoD positions. (<http://www.defense.gov/personneltransition/faqs.aspx#PPP>)

(b)(6), (b)(7)(C) ... basically removing him from (b)(6), (b)(7)(C) because he clearly was not up to that ... he was in above his head. (b)(6), (b)(7)(C) testified (b)(6), (b)(7)(C) did not consult with him prior to directing Complainant move to (b)(6), (b)(7)(C) and stated, "I would have advised against it, simply because I was not happy with the progress of the development of those instructions and procedures that [Complainant] was responsible for." According to (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) told him (b)(6), (b)(7)(C) move was necessary because Complainant had an additional burden of having to prepare for return to CONUS.

When asked when RDML Losey wanted Complainant out of his position, (b)(6), (b)(7)(C) testified, "just a few days before we actually did it ... probably about between 1 November and 10 November." (b)(6), (b)(7)(C) testified (b)(6), (b)(7)(C) move allowed Complainant to prepare for PPP and still complete his other assigned tasks. Complainant's move to (b)(6), (b)(7)(C) allowed him time to engage in interviews for jobs and not be disrupted by others.

(b)(6), (b)(7)(C) replaced Complainant (b)(6), (b)(7)(C), and Complainant was detailed to a set of general duties on November 10, 2011, which was approximately 6 to 8 weeks after the RMOs began to suspect Complainant made the July 13, 2011, IG complaint. Complainant was directed to move three separate times, culminating in a move to (b)(6), (b)(7)(C), SOCAFRICA. Despite Complainant being given two detail letters (February 3 and July 17, 2012), the duties assigned were broad in scope, relatively undefined, and neither (b)(6), (b)(7)(C) nor (b)(6), (b)(7)(C) provided Complainant a performance plan documenting expectations and assigning duties and responsibilities as required by (b)(6), (b)(7)(C).<sup>7</sup> Despite the detail MFRs indicating Complainant would be reassigned to (b)(6), (b)(7)(C) PD once classified, SOCAFRICA did not request the AFRICOM Manpower office replace (b)(6), (b)(7)(C) billet with (b)(6), (b)(7)(C) billet on (b)(6), (b)(7)(C) until August 2012.

WRI found Complainant, (b)(6), (b)(7)(C), experienced a significant change in duties and responsibilities as a result of the detail to a position subordinate to (b)(6), (b)(7)(C). Complainant was verbally detailed to (b)(6), (b)(7)(C), was never given a performance plan outlining his specific job duties and responsibilities as required by (b)(6), (b)(7)(C), was never put on a performance improvement plan (PIP), and was moved multiple times, culminating in a move to (b)(6), (b)(7)(C).

SOCAFRICA command waited 9 months after Complainant's detail to request AFRICOM Manpower replace (b)(6), (b)(7)(C) billet with (b)(6), (b)(7)(C) billet on (b)(6), (b)(7)(C). Even when (b)(6), (b)(7)(C) changed, SOCAFRICA command left Complainant assigned to (b)(6), (b)(7)(C) and took no steps to reassign Complainant to (b)(6), (b)(7)(C) billet. These actions reflect RDML Losey's, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) attempts to marginalize Complainant as a result of the July and November 2011 IG complaints.

<sup>7</sup> (b)(6), (b)(7)(C)

*Motive*

The evidence established RDML Losey believed (b)(6), (b)(7)(C) civilian employees in his command acted in concert to undermine his authority, in part by making IG complaints against him. RDML Losey referred to these civilian employees as either the “locker-room,” (b)(6), (b)(7)(C) or “the cabal.” When RDML Losey was asked if he ever used the terms “locker room,” “old guard,” “cabal,” or (b)(6), (b)(7)(C) to any particular group, he stated:

No, absolutely not. ... I’ve got to tell you, I don’t even know who, what that, who’s in those groups, if there is such a thing. You know, the cabal. You know, (b)(6), (b)(7)(C) I have no idea. I mean, I know (b)(6), (b)(7)(C) is, (b)(6), (b)(7)(C). I know [Complainant] is. Beyond that, I’m not real sure.

When asked about the term, (b)(6), (b)(7)(C) RDML Losey stated that (b)(6), (b)(7)(C), SOCAFRICA, used the term.

(b)(6), (b)(7)(C) testified he used the term “cabal” to describe “a dynamic of folks out for their own self-interest ... [Complainant], (b)(6), (b)(7)(C)” (b)(6), (b)(7)(C) stated (b)(6), (b)(7)(C) coined the (b)(6), (b)(7)(C) term, that it was a pejorative term describing a group limited to “... (b)(6), (b)(7)(C), mainly,” and that he (b)(6), (b)(7)(C) used the term (b)(6), (b)(7)(C) with (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) testimony corroborated (b)(6), (b)(7)(C) account that (b)(6), (b)(7)(C) coined the term, (b)(6), (b)(7)(C) and of RDML Losey’s use of (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) stated, “... the Admiral, you know, [said] it has a little ring to it, and so the Admiral had said that a couple of times.” (b)(6), (b)(7)(C) stated:

RDML Losey at times, when he was, you know, out of sorts, would refer to a group of civilians as ‘the cabal,’ was the term that he used most of the time around me when I heard it. Of course, he wouldn’t say this in the hallway or anything. He would say it when we were in private, as far as the command team ... And I took that to mean that that was the (b)(6), (b)(7)(C) ... when the commander [RDML Losey] used the term (b)(6), (b)(7)(C) ... normally ‘the cabal’ ... he was talking about those people that would be talking to [Complainant] on a regular basis and felt like that they shared information amongst people ... (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), and [Complainant].

The evidence established RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) used the term “cabal” to identify a group of civilians they believed to be out for their own self-interest and used a self-described pejorative term to identify Complainant. (b)(6), (b)(7)(C) testified he understood

“cabal” to mean (b)(6), (b)(7)(C). These two terms involved the same group of civilian employees, including Complainant, whom (b)(6), (b)(7)(C) identified as intent on undermining the SOCAFRICA command. The same three criteria RDML Losey communicated to (b)(6), (b)(7)(C) in November 2011 identifying the people he suspected of a conspiracy (in part by making IG complaints) were also the same individuals in the “cabal” and (b)(6), (b)(7)(C).

RDML Losey suspected Complainant of making the July 2011 IG complaint alleging (b)(6), (b)(7)(C). RDML Losey also suspected Complainant of making the November 2011 AFRICOM IG complaint. (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) were influenced in their personnel actions as RMOs by RDML Losey who perceived Complainant made two IG complaints.

Accordingly, clear and convincing evidence does not establish that RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) would have detailed Complainant absent his perceived protected disclosures.

#### *Lowered Annual Performance Evaluation*

On September 21, 2012, (b)(6), (b)(7)(C), as rater, administered Complainant a rating of “Success All or Excellence” for his performance evaluation and provided supporting comments. The performance evaluation listed Complainant’s position as (b)(6), (b)(7)(C). As senior rater, (b)(6), (b)(7)(C) administered Complainant a “Successful (3 block)” rating for the civilian appraisal period June 22, 2011, to June 30, 2012.

Complainant testified he was not evaluated against any established objectives or a valid PD. On October 1, 2012, Complainant grieved his annual performance evaluation with (b)(6), (b)(7)(C), and a decision was held in abeyance until completion of WRI’s investigation. Complainant’s grievance stated his evaluation rating amounted to a significant drop in his level of performance and that he never received any feedback indicating a decline in his performance by his rater or senior rater, who at that time were (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), respectively.

Ms. Diaz testified she maintained oversight of annual performance evaluation trends, “... It’s kind of hard [to not be rated level 1] unless you’ve really failed and there’s lots of documentation.” Further, Ms. Diaz testified that in Complainant’s case “there should have been lots of counseling session[s], lots of discussions about, you know, performance and expectations.” Ms. Diaz went on to say that as a result, an employee should not be surprised with the rating they received.

#### *RMO Stated Reasons*

(b)(6), (b)(7)(C) testified he lowered Complainant’s performance rating after (b)(6), (b)(7)(C), as senior rater, did not concur with his initial evaluation of Complainant as “Highly Successful” (2 block) rating. (b)(6), (b)(7)(C) testified he discussed Complainant’s performance evaluation with RDML Losey and (b)(6), (b)(7)(C) and that while RDML Losey did not pressure him or (b)(6), (b)(7)(C) to administer Complainant a specific rating, RDML Losey did let him and

(b)(6), (b)(7)(C) know that he “did not see the [Complainant’s] output justifying anything higher than that [Successful] and [RDML Losey] let that be known regularly.

When asked if he had provided Complainant any written, specific guidance on correcting performance deficiencies, (b)(6), (b)(7)(C) testified that he had not. (b)(6), (b)(7)(C) testified Complainant’s performance did not justify anything “beyond successful.” (b)(6), (b)(7)(C) further testified RDML Losey was not involved in the discussion.

RDML Losey testified he believed that despite Complainant receiving four top performance evaluations from the two commanders preceding him (RDML Losey), Complainant received a higher evaluation than he deserved. RDML Losey testified, “He got exactly what he earned. And I’m telling you, he actually got a lot more than he earned with that success [Performance Evaluation Rating].”

While WRI found RDML Losey administered Complainant an October 29, 2011, counseling memorandum that conveyed some areas of concern with Complainant’s work performance, as stated above in the analysis of Complainant’s detail, RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) failed to put Complainant on a PIP. Further, RDML Losey did not provide Complainant a special appraisal documenting Complainant’s performance as (b)(6), (b)(7)(C) at the time (b)(6), (b)(7)(C) replaced RDML Losey (b)(6), (b)(7)(C) on November 10, 2011, as outlined by (b)(6), (b)(7)(C). Complainant had served as (b)(6), (b)(7)(C) prior to his temporary detail. (b)(6), (b)(7)(C) could have considered the special appraisal for consideration of Complainant’s (b)(6), (b)(7)(C) performance as he (b)(6), (b)(7)(C) prepared Complainant’s annual evaluation. (b)(6), (b)(7)(C) February 7, 2012, mid-point review provided Complainant no negative feedback regarding his performance during the temporary detail. (b)(6), (b)(7)(C) concurred with Complainant’s objectives and performance, and absent any statement or counseling otherwise, demonstrated he agreed with Complainant’s performance assessment. (b)(6), (b)(7)(C) documented his evaluation of the mid-point review by his initials on May 1, 2012. The performance evaluation period concluded 5 months after (b)(6), (b)(7)(C) provided Complainant positive counseling and 7 months after Complainant was detailed. Without any negative documented (verbal or otherwise) performance feedback during the temporary detail putting Complainant on notice that his performance was in decline, WRI found the Agency produced insufficient evidence to support the performance evaluation rating.

#### *Motive*

RDML Losey suspected Complainant of making the July 2011 IG complaint alleging (b)(6), (b)(7)(C). RDML Losey also suspected Complainant of making the November 2011 AFRICOM IG complaint.

(b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) as RMOs were influenced in lowering Complainant’s performance evaluation by RDML Losey, who believed Complainant was attempting to undermine his command in part by filing IG complaints about him and about SOCAFRICA, and for his knowledge Complainant cooperated in the DoD IG investigation of (b)(6), (b)(7)(C). Accordingly, clear and convincing evidence does not establish that RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) would have administered Complainant a “Success

All or Excellence” and a “Successful (3 block)” performance evaluation rating absent Complainant’s perceived and protected disclosures.

*Denial of Performance Award*

On September 21, 2012, (b)(6), (b)(7)(C), as the awards approval authority, denied Complainant a performance award for the June 22, 2011, to June 30, 2012, appraisal period.

Complainant stated he believed it was inconceivable his performance could have deteriorated so far, in part because he received top ratings on annual performance evaluations for four years prior, received no verbal or written counseling or MFR documenting failed performance, and finally, because he was not working against a classified (b)(6), (b)(7) PD or against any clearly established objectives. Complainant believed (b)(6), (b)(7)(C) decision to deny him a performance award was based on the lowered annual performance evaluation he received.

(b)(6), (b)(7)(C) testified that he wrote on Complainant’s appraisal what Complainant could receive in terms of a time off award (based on the rating). According to (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) “... marked it out and said, ‘I will not approve an award for these individuals [Complainant and (b)(6), (b)(7)(C)].’ (b)(6), (b)(7)(C) did not give a reason.”

When asked if he provided input to (b)(6), (b)(7)(C) regarding the performance award decision, (b)(6), (b)(7)(C) testified he did not think so.

RDML Losey affirmed that the decision to give Complainant a performance award was solely (b)(6), (b)(7)(C) to make as the SOCAFRICA awards official and as Complainant’s senior rater. RDML Losey testified he believed Complainant did not merit an award or bonus anyway, but that he did not make the decision.

*RMO Stated Reasons*

(b)(6), (b)(7)(C) testified he based his decision to not give Complainant a performance award on his belief that Complainant did not rise to the level of exemplary performance that would merit such an action. Specifically, (b)(6), (b)(7)(C) testified:

I mean, I based it on the same rationale for the rating. It was that, you know, if he had been successful to a degree that was exemplary, then I might be able to pick out that act and justify in my own conscience, saying, ‘Really, he did a bang-up job on this, that or the other project.’ Not the case with [Complainant].

(b)(6), (b)(7)(C) based his decision on Complainant’s annual performance evaluation rating.

*Motive*

(b)(6), (b)(7)(C), as an RMO, was influenced in denying Complainant’s performance award by RDML Losey, who believed Complainant was attempting to undermine his command in part

by filing IG complaints about him and about SOCAFRICA, and for his knowledge Complainant cooperated in the DoD IG investigation of (b)(6), (b)(7)(C).

Accordingly, clear and convincing evidence does not establish that (b)(6), (b)(7)(C) would have denied Complainant a performance award absent Complainant's perceived and protected disclosures.

### *Proposed Disciplinary Action*

On August 21, 2012, RDML Losey appointed (b)(6), (b)(7)(C), SOCAFRICA, as IO to conduct a CDI pursuant to Army Regulation (AR) 15-6. The scope of the CDI was to investigate SOCAFRICA civilian pay system irregularities from January 1, 2010, to August 21, 2012. On December 13, 2012, (b)(6), (b)(7)(C) transmitted his findings and recommendations to RDML Losey. Finding 1 of the CDI found that Complainant violated the intent of ACSOI 1400.02, DoD FMR, and AFRICOM Policy Directives. (b)(6), (b)(7)(C) recommended Complainant receive an LOR, and RDML Losey approved the findings and recommendation, which served as the basis for later proposed disciplinary actions by (b)(6), (b)(7)(C).

WRI reviewed the CDI and identified problems with the thoroughness and scope of investigation. Specifically, the scope of the CDI was the SOCAFRICA civilian pay system, but evidence indicated (b)(6), (b)(7)(C) focused on reviewing the time and attendance of Complainant, (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) testified that he reviewed time and attendance records for a large number of SOCAFRICA employees. (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) only requested the timekeeping records for the four individuals. (b)(6), (b)(7)(C) corroborated (b)(6), (b)(7)(C) statement and testified that (b)(6), (b)(7)(C) only requested time and attendance records concerning Complainant, (b)(6), (b)(7)(C), and that he believed the CDI was investigating only them for time and attendance violations. (b)(6), (b)(7)(C) did not conduct any subject or witness interviews for the CDI.

The CDI findings disclosed disparities with out-of-sequence ATAAPS certifications and identified those certifications actions as misconduct by Complainant, (b)(6), (b)(7)(C). However, data from an October 2012 AFRICOM IG inspection that covered the period October 2011- October 2012 identified out-of-sequence certifications had occurred throughout SOCAFRICA and were not limited to just Complainant and three other employees as reflected in the CDI findings. The AFRICOM IG inspection data identified improperly built organizational hierarchies within ATAAPS as a root problem for out-of-sequence certifications.

While on its face RDML Losey's appointment was for a CDI into SOCAFRICA's civilian pay system irregularities, in fact, (b)(6), (b)(7)(C) focused his examination on alleged time and attendance misconduct by Complainant, (b)(6), (b)(7)(C). In spite of the apparent discrepancy between the broad CDI scope as appointed and the narrowed scope of the actual CDI report as conducted, RDML Losey did not return the CDI for further investigation consistent with the language of the appointment, but instead approved the CDI as submitted.

On December 20, 2012, (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) a copy of the August 21, 2012, time and attendance CDI. (b)(6), (b)(7)(C) proposed disciplinary action against Complainant ranging from written reprimand to dismissal.

On March 8, 2013, (b)(6), (b)(7)(C), as proposing official, directed (b)(6), (b)(7)(C) to “prepare and process” disciplinary action for Complainant, (b)(6), (b)(7)(C). Specifically, he directed that Complainant and (b)(6), (b)(7)(C) receive a 14-day suspension and reprimand and that (b)(6), (b)(7)(C) receive a reprimand.

On May 30, 2013, an AFRICOM legal review of (b)(6), (b)(7)(C)

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

Specifically, the legal review stated (b)(6), (b)(7)(C)

The legal review further outlined (b)(6), (b)(7)(C)

The AFRICOM legal counsel recommendation was (b)(6), (b)(7)(C)

#### *RMO Stated Reasons*

(b)(6), (b)(7)(C) testified that in December 2012, he decided to take disciplinary action against Complainant and initiated the process. (b)(6), (b)(7)(C) testified he consulted officials from two CPAC offices, and both indicated the evidence he presented them supported Complainant’s removal from federal employment. (b)(6), (b)(7)(C) also testified that from December 2012 to March 2013, he and (b)(6), (b)(7)(C) reviewed the evidence and concluded “in these circumstances removal probably isn’t supportable.” In March 2013, (b)(6), (b)(7)(C) decided there was enough time and attendance misconduct [by Complainant] and that he had to take action. According to (b)(6), (b)(7)(C), he told CPAC to prepare disciplinary action against Complainant, specifically a 14-day suspension and letter of reprimand.

#### *Motive*

(b)(6), (b)(7)(C) was influenced as an RMO in proposing disciplinary action against Complainant by RDML Losey, who believed Complainant was attempting to undermine his command in part by filing IG complaints about him and about SOCAFRICA, and for his knowledge Complainant cooperated in the DoD IG investigation of (b)(6), (b)(7)(C).

Accordingly, clear and convincing evidence does not establish that (b)(6), (b)(7)(C) would have proposed Complainant’s disciplinary action absent Complainant’s perceived and protected disclosures.

## VI. CONCLUSIONS

We conclude:

**A.** RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C), inconsistent with the principles of Title 5, USC, Section 2302, detailed Complainant in reprisal for perceiving Complainant made two anonymous IG complaints.

**B.** RDML Losey, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C), inconsistent with the principles of Title 5, USC, Section 2302, administered Complainant a lowered annual performance evaluation in reprisal for perceiving Complainant made two anonymous IG complaints.

**C.** (b)(6), (b)(7)(C), inconsistent with the principles of Title 5, USC, Section 2302, denied Complainant a performance award in reprisal for perceiving Complainant made two anonymous IG complaints.

**D.** (b)(6), (b)(7)(C), inconsistent with the principles of Title 5, USC, Section 2302, proposed disciplinary action against Complainant in reprisal for perceiving Complainant made two anonymous IG complaints.

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