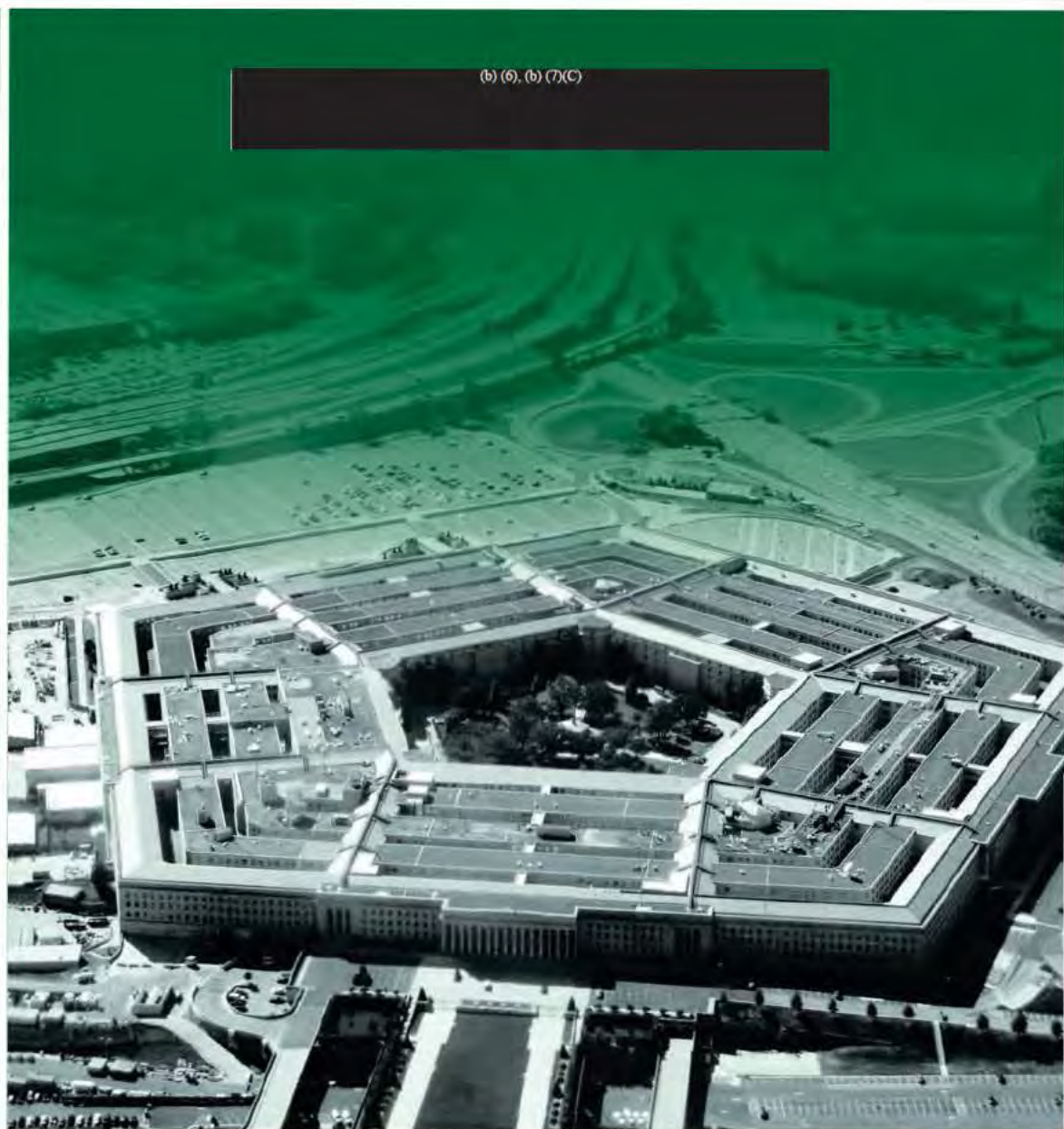


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INSPECTOR GENERAL

U.S. Department of Defense

December 8, 2014



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

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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WHISTLEBLOWER REPRISAL INVESTIGATION
(b)(6), (b)(7)(C)
HEADQUARTERS, SPECIAL OPERATIONS COMMAND, AFRICA
(b)(6), (b)(7)(C)
STUTT GART, GERMANY

I. EXECUTIVE SUMMARY

We conducted this investigation in response to allegations that (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), Special Operations Command Africa (SOCAFRICA), (b)(6), (b)(7)(C), Stuttgart, Germany, was subjected to reprisal via a detail for being perceived to have made two anonymous IG complaints, communication to an Investigating Officer (IO), and for cooperation with a Department of Defense Inspector General (DoD IG) investigation.

We did not substantiate the allegations. We found that Complainant was perceived to have made a disclosure protected by statute in November 2011, and engaged in protected cooperation with the IG of an Agency in February 2012. We found Complainant's communication to an IO was not a protected disclosure. We found Complainant was detailed from (b)(6), (b)(7)(C) in May 2012, and the detail was a personnel action.

We determined one responsible management official (RMO) did not influence the administration of the detail, and the RMO responsible for the detail had no knowledge of Complainant's protected disclosure or cooperation with the IG.

Accordingly, we conclude the following RMOs did not engage in reprisal against Complainant by taking actions inconsistent with the principles of Title 5, United States Code, Section 2302:

- Rear Admiral (RDML) Brian L. Losey, U.S. Navy (USN), Commander, SOCAFRICA;¹
- (b)(6), (b)(7)(C), SOCAFRICA.

¹ 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

In May 2010, Complainant began his employment as the (b) (6), (b) (7)(C) for SOCAFRICA, a sub-unified command of Africa Command (AFRICOM). Complainant was responsible for (b) (6), (b) (7)(C). Complainant's supervisory chain of command was (b) (6), (b) (7)(C) and the Commander, SOCAFRICA, respectively. The RMOs served at SOCAFRICA as follows:

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

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

Complainant alleged RDML Losey administered him a personnel action 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 detail in May 2012. The investigation included interviews of Complainant, RMOs, 28 witnesses, Human Resources personnel, and Agency officials. In addition, we reviewed Agency-provided information, email personal storage tables, 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, United States Code, Section 2302.

V. FINDINGS AND ANALYSIS

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

Complainant was not perceived of making the July 13, 2011, complaint to the DoD Hotline but was perceived of making the November 17, 2011, AFRICOM IG complaint described below. Although Complainant was not actually the source of the AFRICOM IG 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)

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)

(b) (6), (b) (7)(C) 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 either (b) (6), (b) (7)(C), SOCAFRICA; (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)

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) assured RDML Losey he knew (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 (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 (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), and it was neither of them.

On October 24 and 29, 2011, RDML Losey called (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) into his office and discussed the IG complaint. (b)(6), (b)(7)(C) testified he told RDML Losey "Sir, I had absolutely nothing to do with this" 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. (b)(6), (b)(7)(C) 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)

(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 (b)(6), (b)(7)(C). 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 (b)(6), (b)(7)(C), and he mentioned (b)(6), (b)(7)(C) that might have lodged the complaint.

When asked about the IG complaint (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 " ... somebody within that group would probably be somebody that would do that complaint."

(b)(6), (b)(7)(C), SOCAFRICA, (b)(6), (b)(7)(C), testified that after being told by (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) 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.'

(b)(6), (b)(7)(C) testified that RDML Losey suspected (b)(6), (b)(7)(C), and a third unnamed person of making the complaint. (b)(6), (b)(7)(C) testified that RDML Losey suspected someone in (b)(6), (b)(7)(C) testified RDML Losey named (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) as someone who might have made the complaint. RDML Losey testified he speculated (b)(6), (b)(7)(C) made the complaint. (b)(6), (b)(7)(C) stated RDML Losey referred to a group of SOCAFRICA civilians (including Complainant) as probably someone who would make the complaint.

The evidence indicates RDML Losey was trying to determine who made the complaint and that he perceived a group of civilians as responsible for the DoD Hotline complaint. However, (b)(6), (b)(7)(C) was the only witness among many who testified RDML Losey referred to Complainant as someone who may have made the complaint. Accordingly, a preponderance of the evidence does not indicate RDML Losey suspected Complainant of making 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 that RDML Losey was livid after receiving the complaint, and he called him into his office 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, Communication to IO, Command Directed Investigation (CDI,

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

(b)(6), (b)(7)(C) On December 16, 2011, (b)(6), (b)(7)(C) appointed (b)(6), (b)(7)(C) AFRICOM, as IO to conduct a CDI into the facts and circumstances concerning (b)(6), (b)(7)(C). On January 4 and 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), his favorable characterization of (b)(6), (b)(7)(C), and general information about RDML Losey’s management style. 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.

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

February 24, 2012, Cooperation with DoD IG (b)(6), (b)(7)(C)

On February 24, 2012, Complainant provided a sworn statement to an IO in the DoD IG whistleblower reprisal 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? Yes

On May 7, 2012, (b)(6), (b)(7)(C) detailed Complainant from (b)(6), (b)(7)(C), SOCAFRICA, to (b)(6), (b)(7)(C) SOCAFRICA, (b)(6), (b)(7)(C). A detail is a personnel action.

RDML Losey - No

RDML Losey testified while he approved of the concept of Complainant reinforcing the (b)(6), (b)(7)(C) was primarily responsible for Complainant’s detail.

(b)(6), (b)(7)(C) - Yes

Complainant testified that on May 7, 2012, he moved to (b)(6), (b)(7)(C) for a 120-day detail and returned to (b)(6), (b)(7)(C) on August 15, 2012. (b)(6), (b)(7)(C) confirmed there was (b)(6), (b)(7)(C) backlog when (b)(6), (b)(7)(C) detailed Complainant. (b)(6), (b)(7)(C) arrived at SOCAFRICA in July 2012, and testified that at this time there was (b)(6), (b)(7)(C) backlog of roughly (b)(6), (b)(7)(C), and overdue (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) testimony supported (b)(6), (b)(7)(C) had a significant (b)(6), (b)(7)(C) backlog, and said:

[Complainant] was somebody we had in the office that could do those types of works. He was very good (b)(6), (b)(7)(C), and he's good at (b)(6), (b)(7)(C). He's good at structuring. He does good quality control and (b)(6), (b)(7)(C) in all of our (b)(6), (b)(7)(C) ... I had him at my disposal that I could apply him against the problem. So I sent him down there for 90 to 120 days to get the backlog fixed.

(b)(6), (b)(7)(C) testified he gave Complainant to (b)(6), (b)(7)(C) with the purpose of helping them with additional manpower to get this backlog done. When asked if RDML Losey approved the detail, (b)(6), (b)(7)(C) testified, "... He did not direct me to do that, nor ask me to do that ... I told him I was going to do that."

WRI found RDML Losey knew (b)(6), (b)(7)(C) detailed Complainant, however, did not influence (b)(6), (b)(7)(C) in the administration of the detail. We found (b)(6), (b)(7)(C) independently made and executed the decision to detail Complainant.

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? No

July 13, 2011, DoD Hotline Complaint

A preponderance of the evidence does not indicate (b)(6), (b)(7)(C) suspected Complainant of making the July 2011 DoD Hotline complaint.

November 17, 2011, AFRICOM IG Complaint

A preponderance of the evidence established (b)(6), (b)(7)(C) had no knowledge of the November 2011 IG complaint until November 2012, six months after he administered Complainant's detail.

February 2012 Communication to DoD IG (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) testified he was not aware Complainant had participated in the DoD IG investigation of (b)(6), (b)(7)(C).

A preponderance of the evidence did not establish (b)(6), (b)(7)(C) had knowledge Complainant participated in the February 2012 DoD IG investigation of (b)(6), (b)(7)(C).

Although Complainant's detail took place within a 3- to 10-month time period subsequent to the disclosures such that a reasonable person could conclude the disclosures were a contributing factor to the personnel action, (b)(6), (b)(7)(C) had no knowledge of the protected disclosures. Accordingly, the protected disclosures were not a contributing factor in his decision to administer Complainant's personnel action.

VI. CONCLUSION

As explained above, we conclude based on clear and convincing evidence:

RDML Losey, not inconsistent with the principles of 5 U.S.C. 2302, did not influence Complainant's detail in reprisal for perceiving Complainant to have made two anonymous IG complaints or for his cooperation with the IG.

(b)(6), (b)(7)(C), not inconsistent with the principles of 5 U.S.C. 2302, did not detail Complainant in reprisal for perceiving Complainant to have made two anonymous IG complaints or for his cooperation with the IG.

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