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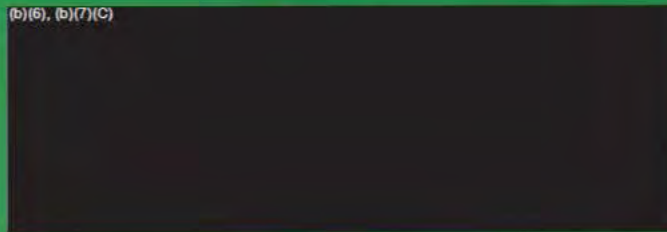
July 15, 2013

Inspector General

United States
Department of Defense



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



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WHISTLEBLOWER REPRISAL INVESTIGATION

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

I. EXECUTIVE SUMMARY

We conducted this investigation in response to an allegation that Rear Admiral (RDML) Brian L. Losey, U.S. Navy, Commander of Special Operations Command Africa (SOCAF), (b)(6), (b)(7)(C) Stuttgart, Germany, relieved (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), from his position as (b)(6), (b)(7)(C), because RDML Losey suspected Complainant of filing an anonymous Inspector General (IG) complaint against him.

We found that there was an anonymous IG complaint; that RDML Losey had actual knowledge of the complaint and suspected Complainant of making the disclosure; that RDML Losey took an unfavorable personnel action against Complainant when he relieved him from his position as (b)(6), (b)(7)(C) and failed to place him in another position commensurate with his rank; and that the same personnel action would not have been taken absent the protected communication.

We concluded that RDML Losey viewed the complaint as a personal attack against him and reprised against Complainant in violation of Title 10, United States Code, Section 1034, as implemented by DoD Directive 7050.06, "Military Whistleblower Protection."

By letter dated November 29, 2012, we provided RDML Losey the opportunity to comment on a preliminary report of investigation. In his response, dated January 11, 2013, RDML Losey disagreed with our conclusions that he suspected Complainant of making the protected disclosure and reprised against him. After carefully considering RDML Losey's response, we amended various sections of the report, but did not alter our original conclusion.¹

We recommend the Secretary of (b)(6), (b)(7)(C) review (b)(6), (b)(7)(C) Official Military Personnel File to ensure no harm to his promotion potential occurred as a result of his reassignment.

We also recommend the Secretary of the Navy take appropriate action against RDML Losey for reprising against Complainant.

¹ While we have included what we believe is a reasonable synopsis of RDML Losey's response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated RDML Losey's comments where appropriate throughout this report and provided a copy of his full response to the cognizant management official together with this report.

II. BACKGROUND

Complainant served as (b) (6), (b) (7)(C) U.S. Special Operations Command Africa (SOCAF) (b) (6), (b) (7)(C) Stuttgart, Germany. SOCAF is a joint service special operations component of Headquarters (HQ) Africa Command (AFRICOM). Complainant reported directly to (b) (6), (b) (7)(C)

The responsible management official (RMO), Rear Admiral (RDML) Brian L. Losey, U.S. Navy, has been the Commander of SOCAF since June 21, 2011.

Two anonymous IG complaints were filed against RDML Losey in July and November 2011. RDML Losey was notified of the July complaint on September 16, 2011. From September through November 2011, RDML Losey tried to learn who filed the complaints. On November 28, 2011, RDML Losey relieved Complainant from his position as (b) (6), (b) (7)(C)

Complainant alleged that he was relieved because RDML Losey suspected him of making one or both of the IG complaints.

III. SCOPE

Whistleblower Reprisal Investigations (WRI) officials interviewed Complainant; RDML Losey; (b) (6), (b) (7)(C); and 14 witnesses, including (b) (6), (b) (7)(C). Additionally, WRI officials acquired documentary evidence, to include the July 13 and November 17, 2011, anonymous IG complaints; the command directed investigation (CDI) report with all witness statements; and email traffic between RDML Losey and several key witnesses.

IV. STATUTORY AUTHORITY

The Department of Defense Inspector General (DoD IG) conducted this whistleblower reprisal investigation pursuant to Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Protected communications; prohibition of retaliatory personnel actions," which is implemented by DoD Directive 7050.06, "Military Whistleblower Protection."

V. FINDINGS AND ANALYSIS

A. Did Complainant make a protected communication? Yes.

Complainant was suspected of making the July 13, 2011, complaint to the DoD Hotline which is described below. Although Complainant was not actually the source of the Hotline complaint, a military member is protected from reprisal for a communication he is suspected of making, as long as the communication 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 complaint to DoD IG via the DoD Hotline, alleging that RDML Losey (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 with RDML Losey from late September through early November 2011 about the IG complaint in which RDML Losey stated that 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 RDML Losey suspected (b) (6), (b) (7)(C), Complainant, or a third person RDML Losey would not name as the source of the IG complaint.

On November 4, 2011, after hearing that RDML Losey was inquiring about who made the complaint, (b) (6), (b) (7)(C), 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, "I appreciate the insight and will follow the advice." On November 9, 2011, RDML Losey removed (b) (6), (b) (7)(C) removing some of (b) (6), (b) (7)(C) duties and responsibilities. RDML Losey selected (b) (6), (b) (7)(C), to replace (b) (6), (b) (7)(C).

RDML Losey did not find out about the complaint until "late September" 2011 when NAVINSGEN contacted him. He 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. He 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?"

When asked if he suspected Complainant of filing the complaint, RDML Losey testified

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

. He then stated,

the only other place that this piece would have gone would be down to (b)(6), (b)(7)(C) ... so, yes, I did say (b)(6), (b)(7)(C) [Complainant] and, you know, I acknowledged to (b)(6), (b)(7)(C) and I may have acknowledged to (b)(6), (b)(7)(C). I really don't recall any specific discussions with him. But I said, 'Hey.' In that context (b)(6), (b)(7)(C) yeah, and the only person (b)(6), (b)(7)(C) that deals with that is (b)(6), (b)(7)(C)

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

RDML Losey told us (b)(6), (b)(7)(C). RDML Losey was the only person interviewed who mentioned (b)(6), (b)(7)(C). The other witnesses who heard RDML Losey name those he suspected of filing the IG complaint testified that he specifically named Complainant from (b)(6), (b)(7)(C).

Despite receiving word from NAVINSGEN on September 28, 2011, that the complaint was closed, RDML Losey was trying in November 2011 to determine who made the complaint when he mentioned it to (b)(6), (b)(7)(C), who reported back to him that it was anonymously submitted.

According to (b)(6), (b)(7)(C), after they had already had six or seven conversations about the IG complaint, RDML Losey asked him his opinion on who he thought would have made the complaint, and they went down the list of possibilities. RDML Losey "steered" him to (b)(6), (b)(7)(C) and Complainant, and he also referred to a third person whom RDML Losey would not name. (b)(6), (b)(7)(C) told RDML Losey it was not (b)(6), (b)(7)(C) or Complainant, but RDML Losey gave him an "assignment" to talk to these individuals and find out for him 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 in the last week of October 2011, in which RDML Losey told him again that he knew it was (b)(6), (b)(7)(C), Complainant, or a third person, and that he would "find out who did this and cut the head off this snake and end this." (b)(6), (b)(7)(C) reiterated that he had talked to (b)(6), (b)(7)(C) and Complainant, and it was neither of them.

No other witnesses heard directly from RDML Losey that he would "cut the head off this," but (b)(6), (b)(7)(C) also testified that RDML Losey had narrowed it down to three people and attempted to find out who made the complaint. According to (b)(6), (b)(7)(C), RDML Losey called him into his office, along with (b)(6), (b)(7)(C), and told him on October 24 and 29, 2011, that he suspected him, Complainant, or an unnamed third person. (b)(6), (b)(7)(C) assured RDML Losey it was not him or Complainant, but according to (b)(6), (b)(7)(C), RDML Losey was convinced someone from (b)(6), (b)(7)(C) was responsible. (b)(6), (b)(7)(C) believed RDML Losey and (b)(6), (b)(7)(C) would deny these conversations, because "that's the threat of retribution right there. He'll say he

didn't say it, but he said it very clearly." (b)(6), (b)(7)(C) wrote a memorandum for record on October 29, 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 he also did not recall the meetings in RDML Losey's office with (b)(6), (b)(7)(C) on October 24 and 29, 2011. 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."

(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 was going to figure out who complained and cut the head off," he went to (b)(6), (b)(7)(C), around the last week of October or first week of November 2011, and recommended 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 a memorandum for record. (b)(6), (b)(7)(C) denied having this conversation with (b)(6), (b)(7)(C) and said (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) testified RDML Losey "confided" in him about the IG complaint in October 2011.

When asked if he knew about the first IG complaint, (b)(6), (b)(7)(C) said he first heard about it when RDML Losey told him in October 2011 that somebody had submitted an IG complaint alleging (b)(6), (b)(7)(C). When asked about the second IG complaint regarding a "toxic environment" (as described below), (b)(6), (b)(7)(C) said, "when the second one came up is when he told me about the first one. So it would have been sometime in October." However, the second complaint was not made until November 17, 2011.

No other witnesses from RDML Losey's immediate staff testified they heard him say that he suspected Complainant of filing the complaint. However, a preponderance of the evidence indicates that RDML Losey was trying to determine who made the complaint, and he did suspect (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) denied being in the room when RDML Losey allegedly said he had narrowed it down to (b)(6), (b)(7)(C), Complainant, or an unnamed third person. He also denied having any conversation about reprisal with (b)(6), (b)(7)(C) (who specifically remembered telling (b)(6), (b)(7)(C) that he needed to warn the boss about reprisal, a conversation he documented by writing a memorandum on November 4, 2011). However, (b)(6), (b)(7)(C) did testify that RDML Losey asked him aloud, "who would have done this" and "rattled off a couple of names."

Finally, (b) (6), (b) (7)(C) testified he heard about an IG complaint when he was (b) (6), (b) (7)(C) with RDML Losey. (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) RDML Losey appeared distracted. He asked him if something was on his mind, and RDML Losey brought up the IG complaint regarding (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) testified, "It was about him personally having to deal with someone who was inquiring about (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) could not remember the exact date this communication occurred, but he stated, "It could have been between Thanksgiving -- it was during the holiday period." This time period is consistent with RDML Losey's testimony that he "thought" and "cogitated" about relieving Complainant over the Thanksgiving holiday, then relieved Complainant from his position Monday morning, November 28, 2011.

A preponderance of the evidence indicates that RDML Losey suspected that Complainant may have made the DoD Hotline complaint regarding (b) (6), (b) (7)(C).

November 2011 IG Complaint

On November 17, 2011, AFRICOM IG emailed RDML Losey notifying him that they had received an anonymous letter stating that the atmosphere at SOCAF was at a "toxic" level and that someone should look into the climate. Complainant testified that he did not make the November 2011 IG complaint, and no one testified that they heard RDML Losey mention any names that he associated with this complaint. However, according to (b) (6), (b) (7)(C), 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)

When asked if he had ever used the term "locker room" in regard to those he suspected of making complaints, RDML Losey stated:

The locker room? I don't suspect anybody of anything.... The fact that it was made, you know, my suspicions are irrelevant, okay. I really, you know, I was a little bit confused at the point because, frankly, I thought that the person that was complaining about the issues in (b) (6), (b) (7)(C), that would be more likely if I get a rush of stuff coming in about issues in (b) (6), (b) (7)(C)

followed by a thing. At any rate, it says do a command climate survey. Got it. Okay, I respect the complaint. Let's go do a command climate survey. There it was. And we don't, you know, on a locker room, we don't have a locker room. That's one of my glaring shortfalls down there is I don't have adequate facilities for what we're trying to do in working with AFRICOM. Locker room is not my language.

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 the DoD civilians at SOCAF we interviewed, (b)(6), (b)(7)(C) did deliver a message to them on behalf of RDML Losey to knock off the conspiracy against him.

(b)(6), (b)(7)(C)
 RDML Losey asked (b)(6), (b)(7)(C) to write down her concerns about Complainant. She provided a memorandum to RDML Losey on November 23, 2011. RDML Losey thought about removing Complainant over the Thanksgiving weekend, made no effort, except as noted below, (b)(6), (b)(7)(C), and then relieved Complainant (b)(6), (b)(7)(C).

Other than the close timing between the November 17, 2011, IG complaint and Complainant's removal (b)(6), (b)(7)(C), there was no evidence to establish that RDML Losey suspected Complainant of making the November 2011 IG complaint. However, the evidence did establish that because of the IG complaint, RDML Losey believed there was a conspiracy to undermine his command, and he instructed (b)(6), (b)(7)(C) to tell a group of people to stop the conspiracy.

B. Was Complainant the subject of an actual or threatened personnel action? Yes

Removal as (b)(6), (b)(7)(C) without Reassignment

On November 23, 2011, (b)(6), (b)(7)(C) sent an eight-page memorandum about Complainant to RDML Losey at his request. (b)(6), (b)(7)(C)

According to (b)(6), (b)(7)(C), RDML Losey kept him (b)(6), (b)(7)(C) after the meeting and asked him if he could trust Complainant and if Complainant was loyal to him.

On or about November 26, 2011, RDML Losey directed (b)(6), (b)(7)(C) to draft a letter to remove Complainant from his position. (b)(6), (b)(7)(C) sent the letter of removal to RDML Losey on November 27, 2011, and advised him that the removal was an "administrative" action, and that he needed to be careful about "punishing" Complainant by taking away his access to the computer network.

On November 28, 2011, RDML Losey called Complainant into his office and presented him a letter relieving him of all responsibilities and duties as (b)(6), (b)(7)(C). He reassigned Complainant to (b)(6), (b)(7)(C) for accountability, interim duties, and follow-on assignments, and he instructed Complainant to relinquish all (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C). RDML Losey did not reassign Complainant to another position commensurate with his rank.

Complainant then met with (b)(6), (b)(7)(C) to discuss what to do next. Complainant asked (b)(6), (b)(7)(C) if he could contact (b)(6), (b)(7)(C) to see if there were any positions available in (b)(6), (b)(7)(C), but (b)(6), (b)(7)(C) told him no and recommended he take some leave and let him work his transfer.

On December 5, 2011, (b)(6), (b)(7)(C) from (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) stating that he had talked to Complainant. (b)(6), (b)(7)(C) recommended to his chain of command that Complainant be moved to (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) concurred and released Complainant to be temporarily detailed to (b)(6), (b)(7)(C) but asked (b)(6), (b)(7)(C) not to initiate the Permanent Change of Station (PCS) action until he had the opportunity to look into allegations against Complainant to determine their merit. Complainant then departed SOCAF and moved to (b)(6), (b)(7)(C).

The next day, (b)(6), (b)(7)(C) appointed an investigating officer (IO) to conduct a CDI into (b)(6), (b)(7)(C).

On December 7, 2011, Major General (Maj Gen) H.D. Pumbo, U.S. Air Force, AFRICOM Chief of Staff, emailed RDML Losey, expressing his desire to detail Complainant to (b)(6), (b)(7)(C) rather than (b)(6), (b)(7)(C). RDML Losey replied that he did not support detailing Complainant to (b)(6), (b)(7)(C) and stated, "He was poisoning the well here, and for obvious reasons placing him at (b)(6), (b)(7)(C) would not be something I would advocate." Further email traffic in December 2011 between (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) indicated that (b)(6), (b)(7)(C) would make Complainant's move to (b)(6), (b)(7)(C) permanent after the new year, and that Maj Gen Pumbo was "OK with the arrangement." (b)(6), (b)(7)(C) told (b)(6), (b)(7)(C) that he did not plan on writing an Officer Performance Report (OPR) on Complainant; rather, he stated, "we'll do the CRO [Change of Reporting Official] shuffle."²

Complainant believed his early removal from his position at SOCAF would hurt his chances for promotion and training opportunities. Conversely, RDML Losey said Complainant's removal would not necessarily hurt his career because RDML Losey was not going to be writing his OPR. RDML Losey stated that under more positive circumstances, he would normally ask to

² A CRO OPR is required when an individual is assigned to a new supervisor, and the previous supervisor had at least 120 days of supervision. The "CRO shuffle" refers to manipulating days of supervision to less than 120 to avoid writing an OPR on an individual.

have a hand in his OPR to help “boost” the individual, but implied he felt his hands were tied because “even a lukewarm evaluation seems to be considered a reprisal.”

When (b) (6), (b) (7)(C) was asked if Complainant’s removal would affect his career, he said he didn’t know, but he believed with Complainant’s move (b) (6), (b) (7)(C) he would still get (b) (6), (b) (7) tour credit. According to (b) (6), (b) (7)(C)

Only those tours that are at least 2 years may be designated as full credit (b) (6), (b) (7)(C)

Complainant was assigned to (b) (6), (b) (7)(C) and officially departed (b) (6), (b) (7)(C) According to (b) (6), (b) (7)(C) the Stuttgart, Germany area requires (b) (6), (b) (7)(C)

Despite the fact that Complainant will still receive full (b) (6), (b) (7)(C) credit, (b) (6), (b) (7)(C), who stated he had been a member of promotion boards before, said he thought Complainant’s early removal from SOCAF would look “a little funny” to the board. (b) (6), (b) (7)(C) also said it would depend on whether or not Complainant would get an OPR from SOCAF and whether there was any derogatory information in the OPR.

RDML Losey stated he placed Complainant under (b) (6), (b) (7)(C) for “onward assignment purposes,” and Complainant transferred to an appropriate (b) (6), (b) (7)(C) billet within a week. Complainant did transfer to an appropriate (b) (6), (b) (7) billet in (b) (6), (b) (7)(C) but only after Complainant himself contacted (b) (6), (b) (7)(C), who contacted (b) (6), (b) (7)(C) to work out a move from SOCAF to (b) (6), (b) (7)(C) RDML Losey had no involvement in getting Complainant into a commensurate position; he only removed him from his position and left him with no duties or responsibilities. Furthermore, when AFRICOM requested RDML Losey allow Complainant to be detailed (b) (6), (b) (7)(C), RDML Losey refused.

RDML Losey’s failure to re-assign Complainant to another position after removing all of his duties and responsibilities negatively affected Complainant’s position and constituted a significant change in his duties and responsibilities not commensurate with his rank. Furthermore, RDML Losey refused to allow Complainant to be detailed to (b) (6), (b) (7)(C) a position that would have been commensurate with his rank. A preponderance of the evidence thus indicates that Complainant’s removal as (b) (6), (b) (7)(C) with no reassignment was an unfavorable personnel action.

Transfer to (b) (6), (b) (7)(C)

Complainant also stated his transfer to (b) (6), (b) (7)(C) was an unfavorable personnel action. He believed his career field (b) (6), (b) (7)(C) would view his move from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) negatively, and stated this move was a “career-ender.”

However, according to (b) (6), (b) (7)(C) there is currently no derogatory information (b) (6), (b) (7)(C) or information that indicates why Complainant transferred to (b) (6), (b) (7)(C) and he did not see any reason why Complainant would not compete well for promotion unless a derogatory OPR is entered into his records. Furthermore, with his move to (b) (6), (b) (7)(C), Complainant will still receive full (b) (6), (b) (7)(C) credit. Accordingly, there is no evidence to suggest that transferring from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) has the potential to affect his career.

C. Did the responsible management official have knowledge, actual or constructive, of the protected communications? Yes

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). As discussed in question A above, a preponderance of the evidence indicates RDML Losey suspected Complainant of making this protected communication.

November 2011 IG Complaint

RDML Losey was aware 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 SOCAF was currently at a toxic level.

D. Would the same unfavorable action have been taken against the complainant absent the protected communication(s)/disclosures(s)? No

Stated Reasons for Removal

In the removal letter to Complainant, RDML Losey stated he was relieving Complainant based on (b) (6), (b) (7)(C). RDML Losey testified that his number one reason for relieving Complainant was Complainant's (b) (6), (b) (7)(C)

RDML Losey testified to having a conversation with Complainant and (b) (6), (b) (7)(C) on November 23, 2011, about (b) (6), (b) (7)(C). He stated that Complainant, (b) (6), (b) (7)(C) Having received (b) (6), (b) (7)(C) eight-page memo alleging, among other things, that (b) (6), (b) (7)(C) and 2 hours after the conversation (b) (6), (b) (7)(C) with Complainant and (b) (6), (b) (7)(C) RDML Losey testified "... that was the (b) (6), (b) (7)(C) issue right there. That's what got [Complainant] out the door, after a litany of a number of other things." Rather than further investigating the issue, RDML Losey took (b) (6), (b) (7)(C) memo at face value and relieved Complainant.

The subsequent CDI determined [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] which RDML Losey said was his reason for relieving Complainant, RDML Losey specifically questioned Complainant about [REDACTED] (b) (6), (b) (7)(C)

The CDI found that Complainant had told [REDACTED] (b) (6), (b) (7)(C)

Complainant testified [REDACTED] (b) (6), (b) (7)(C)

According to [REDACTED] (b) (6), (b) (7)(C)

When the IO asked RDML Losey if [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] (b) (6), (b) (7)(C) email records indicate [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] (b) (6), (b) (7)(C) They also showed that [REDACTED]

RDML Losey stated in an email to General (GEN) Carter Ham, U.S. Army, AFRICOM Commander, that he relieved Complainant based on [REDACTED] (b)(6), (b)(7)(C) allegations, [REDACTED] (b)(6), (b)(7)(C)

[REDACTED]; however, in his email to Maj Gen Polumbo, he said Complainant was “poisoning the well here.”

RDML Losey told WRI investigators he also relieved Complainant because of [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] RDML Losey believed Complainant did not [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] RDML Losey asked Complainant for [REDACTED] (b) (6), (b) (7)(C)

and according to RDML Losey, Complainant was [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] RDML Losey also said he asked Complainant for [REDACTED] (b) (6), (b) (7)(C)

Complainant asked him [REDACTED] (b) (6), (b) (7)(C)

According to Complainant, when he briefed RDML Losey in September 2011 during a staff meeting about [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] RDML Losey seemed surprised, as if he did not know about it. Complainant told him [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] and RDML Losey told all [REDACTED] (b) (6), (b) (7)(C)

Upon hearing that, Complainant told RDML Losey that [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] In a meeting in his office the next day, RDML Losey told Complainant [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] Complainant said [REDACTED] (b) (6), (b) (7)(C)

In the removal letter to Complainant, RDML Losey also stated that he was relieving Complainant because [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] RDML Losey testified he felt Complainant was [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] Some of the witnesses we interviewed testified that Complainant was [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] Complainant had also [REDACTED] (b) (6), (b) (7)(C)

RDML Losey testified, [REDACTED] (b) (6), (b) (7)(C)

[REDACTED] I know what needs to be done here. Let's just get it rolling in the right direction."

Weight of Evidence Supporting Removal

RDML Losey testified that he is a demanding commander. Most witnesses, who were in SOCAF under his predecessor, Brigadier General (BG) Christopher Haas, U.S. Army, testified that RDML Losey was a much more demanding commander. [REDACTED] (b) (6), (b) (7)(C) stated that RDML Losey "praises in public" and "chews out in public."

RDML Losey was dismayed with the lack of established processes to guide the command and also was attempting to change the atmosphere of SOCAF to a more mission-focused command; he was hard on all his staff and directors.

Although [REDACTED] (b) (6), (b) (7)(C) testified that RDML Losey was much harder on and more "direct" with [REDACTED] (b) (6), (b) (7)(C), only the two personnel he specifically named of making the IG complaint ([REDACTED] (b) (6), (b) (7)(C) and Complainant) were removed from their positions, neither of whom were [REDACTED] (b) (6), (b) (7)(C).

RDML Losey does have the inherent authority as a commander to relieve [REDACTED] (b) (6), (b) (7)(C) from their position, and he did consult [REDACTED] (b) (6), (b) (7)(C), who drafted the removal letter, prior to removing Complainant; however, there was no counseling or performance documentation conducted prior to the removal. When asked to provide documentation to show that Complainant's performance had been lacking, RDML Losey had none and stated, "I just gave you the whole testimony."

The only derogatory documentation that occurred prior to Complainant's removal as [REDACTED] (b) (6), (b) (7)(C) was [REDACTED] (b) (6), (b) (7)(C) eight-page memorandum, and [REDACTED] (b) (6), (b) (7)(C).

Complainant's last OPR, which closed out on [REDACTED] (b) (6), (b) (7)(C) approximately a month before the first IG complaint, was written by [REDACTED] (b) (6), (b) (7)(C). [REDACTED] (b) (6), (b) (7)(C) rated Complainant "#1 of 38 all-star [REDACTED] (b) (6), (b) (7)(C)" Absent any documentation of poor performance after that, there is no evidence that Complainant's performance had been considered an issue until after the two IG complaints, at least one of which he was suspected of filing, came to RDML Losey's attention.

Complainant testified that he was "utterly shocked," had no idea what he did wrong to be relieved from his position, and was never provided any reasons other than the removal letter itself. He had never been given any negative feedback, letters of counseling, or letters of reprimand. Complainant said he was confused by the order of events and believed that normally a person is relieved from their position based on the results of an investigation. Complainant said, "I feel like I was removed and they've spent the last six weeks trying to find a reason why."

Witnesses also testified that they thought Complainant's removal was surprising. [REDACTED] (b) (6), (b) (7)(C), testified that he heard RDML Losey was

frustrated with Complainant about (b)(6), (b)(7)(C), but also said Complainant was “twice as good” as (b)(6), (b)(7)(C) before him and had fixed several processes in (b)(6), (b)(7)(C). Regarding Complainant’s removal, (b)(6), (b)(7)(C) stated, “It did surprise me to a certain extent because I didn’t really see it coming to that.”

(b)(6), (b)(7)(C) believed Complainant’s removal was “incongruent,” stating RDML Losey had just been congratulating (b)(6), (b)(7)(C) for how well they performed (b)(6), (b)(7)(C), and suddenly Complainant was “fired.” (b)(6), (b)(7)(C) further stated that he “... never saw this one coming, except for the conversations where he [RDML Losey] personally named him [Complainant] as being somebody that filed an IG complaint against him.”

(b)(6), (b)(7)(C), testified, “I was in total shock when it happened ... he was one of the most professional officers I have ever worked with.”

When asked why he thought Complainant was relieved of duty, (b)(6), (b)(7)(C) testified,

I have no idea ... I think you have a flag officer that thinks that he needs the grounds to relieve a guy that, for whatever reason, you know, whether he’s chopping that head off that’s filed the previous complaint, or he simply doesn’t like the guy, it’s a tool to say, ‘You’re fired.’ Those couple of statements, you know, (b)(6), (b)(7)(C) I don’t know how you relieve a guy unless you have some kind of indication that something is there, and you’re going to do something about it.

(b)(6), (b)(7)(C) testified about Complainant’s removal,

My mouth hit the floor ... He is a consummate professional... We were all (b)(6), (b)(7)(C) and, you know, like the core values, he lived them. And there wasn’t anything fake about him. He was driven. He was a hard worker, true professional, and I was stunned when he was relieved. I just didn’t understand it.

(b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), each testified they had no knowledge of why Complainant was relieved. (b)(6), (b)(7)(C) said (b)(6), (b)(7)(C) and thought it was suspicious that (b)(6), (b)(7)(C) and then the following Monday morning Complainant was relieved. (b)(6), (b)(7)(C) said (b)(6), (b)(7)(C)

From the time RDML Losey was first notified he was the subject of this investigation, he maintained they were conducting a CDI that would explain why he relieved Complainant. The CDI thus appears pretextual, because it was initiated *after* RDML Losey relieved Complainant.

The allegations were drafted specifically from (b) (6), (b) (7)(C) eight-page memorandum, and RDML Losey relieved Complainant without first determining if the allegations had any merit.

The CDI IO reported (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) Based on (b) (6), (b) (7)(C) interview, the IO questioned the validity of (b) (6), (b) (7)(C) eight-page memorandum to RDML Losey.

Despite the IO's skepticism of (b) (6), (b) (7)(C), RDML Losey relied upon (b) (6), (b) (7)(C) for justification to take a personnel action against Complainant.

Prior to (b) (6), (b) (7)(C) providing RDML Losey (b) (6), (b) (7)(C) eight-page memorandum, (b) (6), (b) (7)(C) RDML Losey testified,

I took a phone call from 'an educated AFRICOM staff officer' who was talking to one of my (b) (6), (b) (7)(C) said, 'Hey, there's some things that you should know about.' ... (b) (6), (b) (7)(C) was all wrung out of shape about the work environment.

RDML Losey testified he asked (b) (6), (b) (7)(C) how things were going (b) (6), (b) (7)(C). Then, (b) (6), (b) (7)(C) told him (b) (6), (b) (7)(C) concerns about Complainant, he said, "Hey, if you're willing to put this in writing, okay, I'd like you to do so, so I have something to work off of besides a conversation." (b) (6), (b) (7)(C) providing the memorandum 5 days later on November 23, 2011.

RDML Losey's reliance on (b) (6), (b) (7)(C) to provide him the information he needed to remove Complainant is further corroborated by the testimony of (b) (6), (b) (7)(C), who testified to WRI officials that they feared saying anything around (b) (6), (b) (7)(C) because they believed (b) (6), (b) (7)(C) "run to RDML Losey and tell him things." They also testified that (b) (6), (b) (7)(C) knew RDML Losey personally and knew how he wanted things done, and (b) (6), (b) (7)(C) would frequently "throw his name around." Further, (b) (6), (b) (7)(C) testified (b) (6), (b) (7)(C) bypassed (b) (6), (b) (7)(C) and provided information directly to RDML Losey in order to get (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) frequently had one-on-one meetings in RDML Losey's office about (b) (6), (b) (7)(C) without Complainant's knowledge, and wondered why RDML Losey was "reaching down into (b) (6), (b) (7)(C) asking directly to her without (b) (6), (b) (7)(C) knowing."

(b) (6), (b) (7)(C) also testified that the CDI suggested (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) Additionally, he did not believe there was any need to take “punitive” action against Complainant. Nonetheless, on March 1, 2012, before the CDI was completed, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that he intended to give Complainant a Letter of Admonishment and a derogatory OPR. (b) (6), (b) (7)(C) also testified that RDML Losey wanted to transfer Complainant to (b) (6), (b) (7)(C) and “be done with it,” but he recommended RDML Losey keep Complainant so he could investigate (b) (6), (b) (7)(C) allegations; however, when Maj Gen Polumbo asked RDML Losey if he would consider transferring Complainant to (b) (6), (b) (7)(C) RDML Losey replied, “He was poisoning the well here, and for obvious reasons placing him at (b) (6), (b) (7)(C) would not be something I would advocate.”

Even though RDML Losey asserted that the CDI would provide the explanation for Complainant’s removal from (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) testified the CDI was not conducted to “justify” Complainant’s removal and that RDML Losey was not involved in it. However, several emails demonstrated RDML Losey was closely involved with the CDI:

- On December 6, 2011, Maj Gen Polumbo emailed RDML Losey stating, “Brian, as we discussed, (b) (6), (b) (7)(C) will act as your I/O (Investigating Officer). Please keep me apprised of the situation.”
- On December 7, 2011, (b) (6), (b) (7)(C) emailed RDML Losey stating,

Sir, per our discussion earlier this morning I am providing you the IO letter coupled with the framed allegations for your information. I also wanted to let you know that (b) (6), (b) (7)(C) indicated that [Complainant] submitted an IG complaint. I have not verified that information, but either way, as we have discussed, I welcome the investigation as we have nothing to hide. If you have questions or concerns, please let me know.
- On December 15, 2011, RDML Losey emailed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), stating, “Gents, This investigation has not even started, I explained the need to move this apace, and it is not being monitored nor accomplished. By my recollection it was to be completed tomorrow. Pls take a turn on this and get it moving.”
- On December 15, 2011, (b) (6), (b) (7)(C) emailed Maj Gen Polumbo stating (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was an important topic with RDML Losey and he wanted to know how the investigation was coming along. Maj Gen Polumbo replied that he appointed a new IO, (b) (6), (b) (7)(C), and already updated RDML Losey.
- On December 16, 2011, (b) (6), (b) (7)(C) emailed Maj Gen Polumbo and told him she was ready to begin interviews, but (b) (6), (b) (7)(C) told her she needed an official appointment letter first. Maj Gen Polumbo replied, (b) (6), (b) (7)(C) proceed on a ‘voice’ approval re your appointment. No delays. I have RDML Losey’s ok on this. Press.”

Sometime during the CDI, Maj Gen Barbara Faulkenberry, U.S. Air Force, Service Element Commander from HQ AFRICOM, took over as the appointing authority. According to (b)(6), (b)(7)(C), when (b)(6), (b)(7)(C) became a witness in the investigation, he recused himself, and requested that Maj Gen Faulkenberry take the case. (b)(6), (b)(7)(C) became a witness because he was courtesy copied on an October 26, 2011, email from Complainant to (b)(6), (b)(7)(C), where he stated, "Good news. (b)(6), (b)(7)(C) RDML Losey provided this email to DoD IG investigators as proof that Complainant was (b)(6), (b)(7)(C). However, RDML Losey testified to the CDI IO that (b)(6), (b)(7)(C).

On March 15, 2012, the IO completed the CDI and determined (b)(6), (b)(7)(C). The IO also determined (b)(6), (b)(7)(C). Four other allegations against (b)(6), (b)(7)(C) RDML Losey then emailed GEN Ham requesting AFRICOM take over as command authority for taking actions (b)(6), (b)(7)(C) based on the CDI results so he would not be subjected to "another round of reprisal allegations."

Timing between the IG complaints and the personnel action

The timing between the July 2011 anonymous IG complaint (late September 2011 when RDML Losey became aware of it) and when RDML Losey relieved Complainant (November 28, 2011) was close, and during this time period, RDML Losey was trying to find out who made the complaint. As described above, one day after learning of the November 17, 2011, IG complaint, RDML Losey solicited information from (b)(6), (b)(7)(C), and asked (b)(6), (b)(7)(C) put it in writing so he would have "something to work off of besides a conversation." (b)(6), (b)(7)(C) provided RDML Losey an eight-page memorandum of accusations against Complainant on November 23, 2011. (b)(6), (b)(7)(C) RDML Losey "cogitated" on the memorandum over the weekend, and the first thing Monday morning, November 28, 2011, relieved Complainant.

Motive of RMO to Retaliate

RDML Losey was the subject of two anonymous IG complaints. From late September 2011 when he found out about the first complaint regarding (b)(6), (b)(7)(C) until the time he relieved Complainant, he was upset about the complaints. He tried to identify the source of the July 2011 complaint and narrowed his list down to three people he suspected, including the Complainant.

RDML Losey was “frustrated” because he thought someone in his command made the complaint [REDACTED] (b) (6), (b) (7)(C). He testified he did not understand why someone would go to the IG instead of coming to him, and he wondered “why didn’t somebody just fess up to it?”

According to [REDACTED] (b) (6), (b) (7)(C), RDML Losey told him the IG complaint was “malicious,” and he warned RDML Losey that he could not say that about the IG system.

[REDACTED] (b) (6), (b) (7)(C) testified RDML Losey believed the IG complaint was “a cheap shot,” and he [Losey] was “very upset” that somebody had called the IG. [REDACTED] (b) (6), (b) (7)(C) and [REDACTED] (b) (6), (b) (7)(C) both testified they heard RDML Losey say on more than one occasion that he had narrowed it down to three possible complainants and would find out who made this complaint. According to [REDACTED] (b) (6), (b) (7)(C) was also in the room. [REDACTED] (b) (6), (b) (7)(C) denied hearing this, but acknowledged that he had heard RDML Losey speculate about the identity of the complainant.

RDML Losey “expects” people to follow the chain of command before going to the IG, and does not consider the IG process a “normal” grievance channel. This was evident in his testimony where he stated:

...there is a process out there, okay. I support the process. People want to make complaints, I support the process, you know. I would expect, though, that you follow a normal process leading up to conflict resolution or grievance adjudication. I mean, there’s established procedures for that. It normally starts with the lowest level possible. It doesn’t normally ramp up outside of an organization without first doing it. Now, if I be perceived as the problem then okay, we have a slightly different course. But do I suspect anybody of doing it? The fact that it was made, you know, my suspicions are irrelevant, okay.

In addition, RDML Losey considered the IG complaint about [REDACTED] (b) (6), (b) (7)(C) “frivolous,” and he asked the DoD IG investigators if there was anything they could do about people filing frivolous complaints.

Finally, RDML Losey repeatedly attempted to find out the identity of the source of the IG complaint, and expressed a desire to “cut off the head of the snake that did this.”

Disparate treatment by RMO

Complainant ultimately departed [REDACTED] (b) (6), (b) (7)(C) after being relieved and was not awarded an end-of-tour medal. The ensuing CDI concluded [REDACTED] (b) (6), (b) (7)(C)

In contrast, [REDACTED] (b) (6), (b) (7)(C)

Nonetheless, RDML Losey awarded [REDACTED] (b) (6), (b) (7)(C), a Defense Meritorious Service Medal (DMSM) upon [REDACTED] (b) (6), (b) (7)(C) departure, after [REDACTED] (b) (6), (b) (7)(C) assigned to [REDACTED] (b) (6), (b) (7)(C) for only [REDACTED] (b) (6), (b) (7)(C) months. Moreover, the award was not coordinated with [REDACTED] (b) (6), (b) (7)(C) supervisor, [REDACTED] (b) (6), (b) (7)(C) who testified that he had never heard of [REDACTED] (b) (6), (b) (7)(C)

A preponderance of the evidence indicates that RDML Losey reprised against Complainant because he suspected him of going to the IG. After months of trying to ascertain who filed the first anonymous IG complaint and 1 day after being informed of the second also anonymous IG complaint, RDML Losey solicited (b)(6), (b)(7)(C) for information on her concerns about Complainant and asked her to put them in writing. RDML Losey thought about it (b)(6), (b)(7)(C) . RDML Losey relieved Complainant the following Monday morning using (b)(6), (b)(7)(C) allegations as a pretext to remove the individual he thought had made the July 2011 IG complaint against him.

VI. RDML LOSEY'S RESPONSE TO THE TENTATIVE CONCLUSION

In his January 11, 2013, response to our preliminary report of investigation, RDML Losey raised various objections, to include: mischaracterization of the findings of a command directed investigation (CDI) in the draft report; factual errors made in the draft report relating to (b)(6), (b)(7)(C); and failure to acknowledge multiple feedback sessions supposedly conducted by (b)(6), (b)(7)(C), aimed at improving Complainant's performance.

We stand by our characterization of the relevant parts of the CDI, but have revised the report to more accurately summarize the complete findings of the CDI. Additionally, we have revised the report to clarify (b)(6), (b)(7)(C).

We stand by our conclusions on the lack of prior feedback administered to Complainant, and note that (b)(6), (b)(7)(C) neither documented any specific problems with Complainant's performance nor described anything in his testimony that could be construed as conducting feedback with the intent to improve performance.

RDML Losey also identified an apparent contradiction in testimony in the draft report regarding who RDML Losey suspected of making a complaint about (b)(6), (b)(7)(C). Further, RDML Losey objected to our suggestion in the draft report that he had not provided a direct answer to our question about his use of the term "locker room." We additionally revised the report to address the contradiction in testimony regarding who was suspected of complaining about (b)(6), (b)(7)(C). After additional review of RDML Losey's testimony on his use of the term "locker room," we revised our characterization of that testimony.

RDML Losey also denied that he made a statement on October 24, 2011, that he had narrowed it down to three people and would find out who made the complaint. RDML Losey said he "was busy with travel plans" that day and therefore, could not have made that statement. He provided a copy of his travel itinerary which showed he departed Stuttgart at 1100. The witness who reported this statement was (b)(6), (b)(7)(C), who wrote a memorandum for record on October 29, 2011, which stated, "On Monday [Oct 24, 2011] morning at 0745 prior to his travel on Navy business ... He mentioned the IG complaint that had been filed against him alleging that (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.'"

Suspecting Complainant of making the protected communications

RDML Losey asserted that he did not “suspect” Complainant of making protected communications, in part because through deductive reasoning he believed a different individual, (b)(6), (b)(7)(C), was the most likely person to have made the complaint. RDML Losey characterized our reliance on the timing between the protected communication and the personnel action as a “classic logical fallacy.” We note that although RDML Losey testified that he believed (b)(6), (b)(7)(C) was the most likely person to have made the complaint, none of the people with whom he discussed the issue named (b)(6), (b)(7)(C) as one of the people RDML Losey mentioned. We have revised the report to remove the reference to timing as proof of RDML Losey’s suspicion that Complainant was the one who filed the November IG complaint. However, we stand by our determination that RDML Losey suspected Complainant of making the IG complaint regarding (b)(6), (b)(7)(C).

Placing Complainant in a position not commensurate with rank

Finally, RDML Losey disagreed with our determination that Complainant was not placed in a position commensurate with his rank after being relieved, noting that his reassignment letter to Complainant reassigned him under (b)(6), (b)(7)(C) for “onward assignment purposes.” We have revised this section of the report to clarify that while Complainant did ultimately transfer to an appropriate billet in (b)(6), (b)(7)(C) he did so entirely on his own initiative and without any assistance or involvement from RDML Losey.

Credibility Assessments

Additionally, RDML Losey identified several instances in which he felt we failed to make necessary credibility assessments or to resolve apparent contradictions in testimony. In particular, RDML Losey attempted to discredit (b)(6), (b)(7)(C) as a witness. RDML Losey provided a copy of a (b)(6), (b)(7)(C) containing adverse information relating to (b)(6), (b)(7)(C). We do not view the 2004 report as relevant to this case, and we assessed (b)(6), (b)(7)(C) credibility, as well as all witnesses, and confirmed that all conclusions reached were based on corroborated testimony and evidence.

Although the names of witnesses were redacted in the preliminary report, RDML Losey opined there were 4 “adverse witnesses” who should be deemed not credible as they were in the group he referred to as (b)(6), (b)(7)(C) and have also subsequently filed whistleblower reprisal allegations against him. We interviewed those 4 witnesses as well as 10 others, who we determined were credible. To the contrary, we found the testimonies of (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) lacking credibility.

With regards to (b)(6), (b)(7)(C) questioned the credibility of (b)(6), (b)(7)(C) eight-page complaint to RDML Losey, and (b)(6), (b)(7)(C) testified the CDI revealed (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) provided conflicting testimony. In one instance, he denied hearing RDML Losey say he had narrowed his suspicions down to three people, but in another instance testified RDML Losey “wondered aloud” and “rattled off a couple names” regarding who he thought made the IG complaint. (b)(6), (b)(7)(C) also denied attempting to do a CRO shuffle to

prevent Complainant from receiving an OPR; however, his testimony contradicted his earlier email to (b)(6), (b)(7)(C) where he told them he was going to do a CRO shuffle to prevent Complainant from receiving an OPR.

(b)(6), (b)(7)(C) also told investigators that RDML Losey wanted to send Complainant (b)(6), (b)(7)(C) and “be done with it,” but RDML Losey had specifically told the AFRICOM CoS, “placing him at (b)(6), (b)(7)(C) would not be something I would advocate.”

(b)(6), (b)(7)(C) was also heavily involved in helping Complainant get transferred to (b)(6), (b)(7)(C) but he told investigators he had no idea how Complainant “PCAed (permanent change of assignment) to (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) also denied having a conversation with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), about warning RDML Losey about reprisal, but (b)(6), (b)(7)(C) wrote an MFR on November 4, 2011, documenting their conversation.

(b)(6), (b)(7)(C) also testified he did not find out about the IG complaint until after (b)(6), (b)(7)(C) had departed, but in another instance said RDML Losey confided in him about the IG complaint in October 2011, the month prior to (b)(6), (b)(7)(C) departure.

Removal based on performance

RDML Losey claimed that the personnel action he took against Complainant was justified and was based on (b)(6), (b)(7)(C). We stand by our conclusions in the report, noting that (b)(6), (b)(7)(C) and that Complainant had received no specific negative performance feedback prior to his removal.

RDML Losey reiterated that he relieved Complainant for (b)(6), (b)(7)(C)

However, allegation 1 in the subsequent CDI concluded (b)(6), (b)(7)(C) and allegation 3 (b)(6), (b)(7)(C)

RDML Losey also stated that in addition to his own performance feedback to Complainant, (b)(6), (b)(7)(C) conducted several formal feedback sessions with [Complainant] about how he needed to improve his performance – and (b)(6), (b)(7)(C) told this to the DoD IG investigators.” To support this claim, (b)(6), (b)(7)(C) sent an email to RDML Losey on January 3, 2013, stating, “I conducted mentoring sessions with [Complainant] on at least four occasions from the time I assumed my duties as (b)(6), (b)(7)(C) to the time of his being relieved as (b)(6), (b)(7)(C).”

However, (b)(6), (b)(7)(C) made no mention in his sworn testimony of conducting any formal or informal feedback sessions with Complainant. He said only that he had “mentored” Complainant “once” early in his tenure, telling him “you need to work on having a personal

relationship with RDML Losey.” (b)(6), (b)(7)(C) made no other mention of “mentoring” or “feedback.” No specific performance problems were ever documented, and (b)(6), (b)(7)(C) testified about nothing that could be construed as “conducting feedback” with the intent to improve performance.

Supplemental Response

Finally, as supplemental documentation to his tentative conclusion response, RDML Losey provided a copy of a letter that (b)(6), (b)(7)(C) sent to (b)(6), (b)(7)(C) on (b)(6), (b)(7)(C) 2013. The (b)(6), (b)(7)(C) explained in the letter that he relieved an (b)(6), (b)(7)(C) from his position as (b)(6), (b)(7)(C)

RDML Losey explained that this officer was relieved for “far less in the way of performance shortfalls” than was Complainant.

“Disparate treatment” by the responsible management official is a viable element of reprisal that DoD IG considers when evaluating reprisal; its analysis entails comparing the treatment of a complainant with that of similarly situated persons who did not make protected communications. The actions of another (b)(6), (b)(7)(C) in (b)(6), (b)(7)(C) 2013, subsequent to all relevant events in this case, are of little evidentiary value to consideration of RDML Losey’s relieving Complainant in November 2011.

After carefully considering RDML Losey’s response to our tentative conclusion and supplemental information, which did not provide any information that we had not considered, and reevaluating the evidence, we stand by our conclusion.

VII. CONCLUSION

We conclude, based on a preponderance of the evidence, that RDML Losey relieved Complainant from his position as (b)(6), (b)(7)(C) and failed to place him in another position commensurate with his rank, in reprisal because he suspected Complainant of filing an IG complaint against him, in violation of 10 U.S.C. 1034.

VIII. RECOMMENDATIONS

We recommend the Secretary of (b)(6), (b)(7)(C) review (b)(6), (b)(7)(C) Official Military Personnel File to ensure no harm to his promotion potential occurred as a result of his reassignment.

We recommend that the Secretary of the Navy take appropriate action against RDML Losey for reprising against Complainant.

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Inspector General
Department of Defense

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