

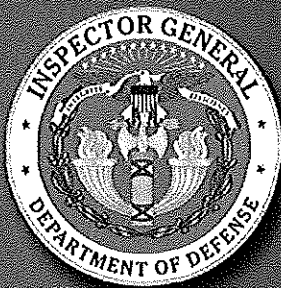
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Report No. 11 119863 249

December 27, 2012

Inspector General

United States
Department of Defense



REPORT OF INVESTIGATION:
ERIN R. MAHAN, Ph. D.

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REPORT OF INVESTIGATION:
DR. ERIN R. MAHAN

DEC 27 2012

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Dr. Erin R. Mahan, Senior Executive Service, while serving as the Chief Historian of the Office of the Secretary of Defense (OSD), engaged in various acts of misconduct in violation of Title 5, United States Code, Section 3131 (5 U.S.C. 3131), "The Senior Executive Service," and DoD 5500.07-R, "Joint Ethics Regulation (JER)."¹ Specifically, we addressed allegations that Dr. Mahan:

- engaged in unprofessional conduct in the workplace by creating situations perceived by others to be socially awkward and inappropriate for an office environment, by discussing personal medical issues with subordinates and speculating about an employee's sexual orientation to a subordinate employee of the opposite sex;
- misused Government resources, by directing two contractor employees in the Office of the Historian to plan, organize, and execute two social events in the office;
- (b)(6) (b)(7)(C)
- improperly promised two subordinates the position of Deputy Chief Historian; and
- (b)(6) (b)(7)(C)

During the course of our investigation we identified an additional allegation that Dr. Mahan used her public office for private gain, and solicited and accepted gifts from prohibited sources when she accepted the services of contract individuals to babysit (b)(6) (b)(7)(C) and transport the child to and from a daycare facility during work hours.

The incoming complaint contained additional allegations. Based on our initial inquiry, we determined those allegations did not merit further investigation and discuss them in detail in Section III of this report.

We substantiated four allegations.

We conclude Dr. Mahan on occasion engaged in unprofessional conduct in the workplace. We found Dr. Mahan discussed personal medical issues with subordinates and speculated about a subordinate's sexual orientation to a subordinate of the opposite sex. Title 5 U.S.C. 3131 established general standards of leadership and conduct for members of the Senior Executive Service. The JER outlines the expectation that Government employees should treat

¹ The Office of the Historian staff consisted of employees of firms contracted to provide services, independent contractors under contract to the Office of the Historian, and Government employees.

others with dignity and respect. We determined that Dr. Mahan's conduct was, on occasion, inconsistent with that expected of a member of the Senior Executive Service.

We conclude Dr. Mahan misused Government resources when she directed two contractor employees in the Office of the Historian to plan, organize, and execute two social events in the office: a "meet-and-greet" gathering in October 2010 and an office holiday party in December 2010. Section 2635.704(a) of the JER requires employees to protect and conserve Government property and not use such property for other than authorized purposes. We determined that social event planning is not an authorized use of contractor employees, and Dr. Mahan's use of those services in such activity was a misuse of Government resources.

We conclude Dr. Mahan used her public office for private gain, and solicited and accepted gifts from prohibited sources. We found Dr. Mahan solicited and accepted the services of individuals who were under contract to the Office of the Historian when she requested those individuals to babysit (b) (6), (b) (7)(C) when she brought (b) (6), (b) (7) to her worksite, and transport the child to and from a daycare facility during work hours, and that she did not compensate the providers for their services. Section 2635.101 of the JER states that employees shall not use public office for private gain. We determined Dr. Mahan's solicitation and acceptance of these services constituted use of public office for private gain.

We conclude that Dr. Mahan failed to comply with the ethical standards set forth in the JER. We found Dr. Mahan improperly promised two subordinates that the position of Deputy Chief Historian would be theirs when next filled. The Code of Ethics for Government Employees states that people in Government service should make no private promises of any kind binding upon duties of office. We determined Dr. Mahan's promises violated that code.

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



Following our established practice, by letter dated September 14, 2012, we provided Dr. Mahan the opportunity to comment on our initial conclusions. In her response, dated October 22, 2012, Dr. Mahan registered her concern that "the majority of the allegations and so called 'evidence' from which the conclusions were drawn appear to have come from office gossip and uncorroborated hearsay." Dr. Mahan stated that her office was a small one in which most of the staff "are contractors with knowledge that option years are not going to be exercised." While we note Dr. Mahan's assertions, we based our conclusions on the preponderance of credible evidence.²

² While we have included what we believe is a reasonable synopsis of Dr. Mahan's response, we recognize that any attempt to summarize risks over simplification and omission. Accordingly, we incorporated comments from the response throughout this report where appropriate and attached a copy of the response to this report.

After carefully considering Dr. Mahan's response and reevaluating the evidence, we stand by our initial conclusions.

We recommend the Director, Administration and Management, consider appropriate corrective action with regard to Dr. Mahan.

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

II. BACKGROUND


Dr. Mahan became a member of the Senior Executive Service in April 2010, when she was appointed as the Chief Historian, OSD (Chief Historian). As Chief Historian, Dr. Mahan is responsible for collecting, preserving, and presenting the history of the OSD, in order to support Department of Defense leadership and inform the American public.

Prior to becoming Chief Historian, Dr. Mahan served as associate research fellow at Center for the Study of Weapons of Mass Destruction at the National Defense University in Washington DC. From 2004 to 2008, she was Chief of the Division of Arms Control, Asia and Africa, in the Office of the Historian at the Department of State, where she edited several volumes in the Foreign Relations of the United States series related to Strategic Arms Limitation Talks, the former Soviet Union, the Vietnam War, and Korea.

III. SCOPE

We interviewed Dr. Mahan and 11 other witnesses with knowledge of matters at issue. We reviewed statutes, the FAR, JER, DoD Regulations, and OPM Policy applicable to the events in question.

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



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



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

IV. FINDINGS AND ANALYSIS

A. Did Dr. Mahan engage in unprofessional conduct in the workplace?

Standards

5 U.S.C. 3131, "The Senior Executive Service"

Title 5 U.S.C. 3131 established the Senior Executive Service "to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality."

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

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

Chapter 12, "Ethical Conduct," states that DoD employees should consider ethical values when making decisions as part of official duties. In that regard, the JER sets forth primary ethical values of "fairness," "caring," and "respect" as considerations that should guide interactions among DoD employees. It elaborates on those characteristics as follows:

- Fairness involves open-mindedness and impartiality. "Decisions must not be arbitrary, capricious, or biased. Individuals must be treated equally and with tolerance."

- Caring involves compassion, courtesy, and kindness to “ensure that individuals are not treated solely as a means to an end.”
- Respect requires that employees “treat people with dignity.” Lack of respect leads to a breakdown of loyalty and honesty.

OPM “Guide to Senior Executive Service Qualifications,” dated October 2006

The Guide sets forth essential leadership qualifications and underlying competencies for members of the Senior Executive Service within the Federal Government. The introduction to the Guide states that leaders must be able to apply “people skills” to motivate their employees, build partnerships, and communicate with their customers. The Guide establishes leadership competencies identifying the personal and professional attributes critical to success by Senior Executive Service employees. Additionally, the Guide identifies the following five Executive Core Qualifications for Senior Executive Service personnel: Leading Change, Leading People, Results Driven, Business Acumen, and Building Coalitions.

Appendix A to the Guide sets forth the underlying leadership competencies that demonstrate each Executive Core Qualification. The “Leading People” qualification requires competence in managing and resolving conflict, as well as in creating a culture that fosters team commitment, spirit, pride, and trust. Additionally, Appendix A expressly defines critical leadership competencies to include treating others with courtesy, sensitivity, and respect, showing consistency in words and actions, and modeling high standards of ethics.

Facts

The incoming complaint alleged that Dr. Mahan engaged in conduct that was inappropriate for the office. Additionally, the incoming complaint alleged Dr. Mahan

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

Witness testimony disclosed instances of Dr. Mahan acting in a manner that was overly personal and making inappropriate comments to subordinates. Witnesses testified that Dr. Mahan discussed the circumstances surrounding (b)(6) (b)(7)(C) and speculated about a subordinate’s sexual orientation to a subordinate of the opposite sex.

Circumstances surrounding (b)(6) (b)(7)(C)

A witness testified that Dr. Mahan shared with him “very personal information,” including the means by which Dr. Mahan (b)(6) (b)(7)(C). The witness testified, “I don’t want to know any of that.” He explained Dr. Mahan “often mistakes the work environment for being an environment where all of her friends are sitting around the table and sharing personal information.” The witness described Dr. Mahan’s discussions of her medical procedures as personal enough to make the average male feel “pretty awkward.”

Another employee testified to being subject to Dr. Mahan’s telling (b)(6) (b)(7)(C)

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

He described his reaction to this

as, "okay, this is a little bit strong." A third witness objected to Dr. Mahan's discussions about

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

Other employees testified they were either unaware of, or took no offense with, Dr. Mahan's discussions of her medical procedures, or (b)(6) (b)(7)(C).

Questioning an subordinate's sexual orientation

Several witnesses testified to an instance where Dr. Mahan openly questioned the sexual orientation of one of her subordinates. One witness testified that Dr. Mahan asked him if he thought one of his co-workers was homosexual. He explained he believed that Dr. Mahan lacks a "filter in her mind that would block what would come out of her mouth."

The witness testified that his co-worker, upon learning of Dr. Mahan's speculation, did not take it well. He recalled the co-worker noted Dr. Mahan had been regularly discussing the sexual preference of (b)(6) (b)(7)(C). Another witness testified he believed the co-worker "pretended to have thick skin," but appeared to be "pretty upset" about the fact that Dr. Mahan was reportedly speculating about sexual orientation. The subject of Dr. Mahan's speculation described Dr. Mahan's comments as "insensitive" and "not relevant to my work."

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

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

Leadership style

Employees' descriptions of Dr. Mahan's leadership style varied from "mercurial" and "inconsistent" to "by far one of the best senior executives I've ever worked with." One employee described Dr. Mahan as professional and testified that Dr. Mahan treated employees with dignity and respect. Yet another employee testified that when Dr. Mahan arrived at the Office of the Historian she tried to fit her leadership style into what already existed in the office. Another employee described Dr. Mahan's style as "micro-managing" and "unorganized," yet credited Dr. Mahan with kindness and pleasantness. One employee with (b)(6) (b)(7)(C) of experience in Government historical offices described Dr. Mahan as "incompetent" and "in over her head." All save one employee denied that Dr. Mahan had a temper. A senior member of the office described her as fairly easygoing and open to ideas and initiative.

Dr. Mahan denied discussing or questioning a subordinate's sexual orientation. She did not deny engaging in conversations about (b)(6) (b)(7)(C), but characterized the allegation that her conversations about (b)(6) (b)(7)(C) were graphic and overly personal as "unfair."

Dr. Mahan denied intentionally making her employees uncomfortable or badgering them. She described herself as a leader who "reads people pretty well," is "respectful of boundaries," and tries to put people at ease, while also holding her employees accountable. She testified that during one staff meeting, when she put a (b)(6), (b)(7)(C) subordinate on the spot, she could tell the employee was uncomfortable, so she never "repeated that kind of staff meeting." She further denied being a mean or malicious person, and stated she made an effort to avoid situations that would bring an employee's comfort level to the point of suffering.

Discussion

We conclude that on occasion Dr. Mahan engaged in conduct in the workplace that was inconsistent with the standards for senior executives. We found that Dr. Mahan discussed personal medical matters and speculated about a subordinate's sexual orientation to another subordinate of the opposite sex.

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

The JER, 5 U.S.C. 3131, and the OPM Guide require members of the Senior Executive Service to develop team spirit, foster group identity, and resolve conflicts in a positive and constructive manner. Additionally, senior level managers must understand and respond appropriately to the unique needs, feelings, and capabilities of different people in different situations while treating them with tact and respect.

We determined that, on occasion, Dr. Mahan's behavior was inappropriate for a member of the Senior Executive Service. The individual violations we identified may appear minor, but when taken together, display a disregard for subordinates' dignity and a lack of respect. We determined Dr. Mahan's actions in discussing personal medical matters and speculating about a subordinate's sexual orientation with another subordinate demonstrated a lack of respect and was inconsistent with the standards for senior executives.

Dr. Mahan's Response

Dr. Mahan acknowledged sharing information about (b)(6) (b)(7)(C) during a "friendly and fluid lunch conversation" but denied her comments rose to the level of "graphic detail" of (b)(6) (b)(7)(C), as described by the IG report. She asserted she never discussed the (b)(6) (b)(7)(C) or anything that could be considered graphic as the report suggests and noted that some staff members were unaware of, or took no offense to, discussion regarding (b)(6) (b)(7)(C).

We reviewed the initial complaint and witness testimony with regard to Dr. Mahan's discussions of personal medical matters. Testimony established that Dr. Mahan discussed the manner of (b)(6) (b)(7)(C) at lunch with subordinates, and that some of those who heard her remarks found them to be inappropriate for an office environment. We acknowledge that some subordinates did not hear or were not offended by the discussion. Nevertheless, the evidence supports our conclusion that the discussion concerning (b)(6) (b)(7)(C) did occur.

With regard to the alleged comments concerning a subordinate's sexual orientation, Dr. Mahan contended the allegation is "wholly inaccurate and false." Witness testimony described Dr. Mahan as someone who "just thinks -- like things just go through her mind, there's no filter in her mind that would block what would come out of her mouth." Regarding the matter at issue, the witness testified, "it just came out of her mouth and then [she] just moved on to the next subject."

Additional testimony described conversations in which Dr. Mahan discussed the sexual orientation of another individual who was not a member of her staff. This witness testified Dr. Mahan on multiple occasions mentioned that one of (b)(6) (b)(7)(C) is homosexual. The witness testified "I just sort of -- okay, I mean, what do you say?" The witness added she was unsure if Dr. Mahan was probing for something or "if it was just in conversation" that (b)(6) (b)(7)(C) is homosexual.

The witness added she did not believe it was appropriate for Dr. Mahan to be talking about (b)(6) (b)(7)(C) sexuality. She testified Dr. Mahan

brings something up and tries to engage in a conversation, and then 20 seconds later she's on a different train of thought. So it is often the case that you don't have time to respond to her because she's all over the place in her conversation.

Given witness descriptions of Dr. Mahan's conversational style we recognize that Dr. Mahan might not recall the comment in question. We considered that the witness who testified to Dr. Mahan making the comment did so in order to provide an example of

Dr. Mahan's "socially awkward" statements. The independent introduction of the comment during a description of Dr. Mahan's conversational style and the other reported conversations regarding sexual preference persuaded us that it was more likely than not that Dr. Mahan made the comment in question.

After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

B. Did Dr. Mahan misuse Government resources?

Standards

31 U.S.C. 1301, "Application"

31 U.S.C. 1301(a) states, "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

DoD Instruction (DoDI) 7250.13, "Use of Appropriated Funds for Official Representation Purposes," June 30, 2009

Paragraph 3a states the authority within annual appropriations acts shall be used to host official receptions, dinners, and similar events, and to otherwise extend official courtesies to guests of the United States and the Department of Defense for the purpose of maintaining the standing and prestige of the United States and the Department of Defense. However, paragraph 3b provides that this authority shall not be used to pay for the cost of "Purely social events intended primarily for the entertainment or benefit of DoD officials and employees, their families, or personal guests."

We also considered "Holiday Guidance for Department of Defense Personnel," DoD Standards of Conduct Office, Office of General Counsel, November 18, 2010, which states, "Generally office parties are unofficial events, and you cannot use appropriated funds to pay for them."

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

Section 2635.704(a), "Standard," states, "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use for other than authorized purposes."

Section 2635.704(b) "Definitions," states, "Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel." It further states, "Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation."

Facts

The incoming complaint alleged Dr. Mahan directed contractor employees to perform unofficial activities on Government time.³ The complaint alleged that contractor employees in Dr. Mahan's office improperly planned and executed two office social events in the fall and winter of 2010: a "meet-and-greet mixer" for various offices within the OSD and the Department of Defense in October 2010, and an Office of the Historian holiday party in December 2010.

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

The complainant testified the events were funded by donations from attendees and that attendance was voluntary. She explained Dr. Mahan held the October 2010 event to provide an opportunity for "Chiefs and Deputies" of other history offices to get to know the OSD Historian staff and socialize with them. The complainant noted the OSD Historian office was not located in the Pentagon as were many of the offices with which it dealt.

Both of the contractor employees identified as making preparations for the two events acknowledged aiding in the preparation of the events. At the time of the two events, one contractor employee was performing duties as (b)(6) (b)(7)(C) in the Office of the Historian, and the other was performing duties as an (b)(6) (b)(7)(C)

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

He confirmed he participated in planning and executing both events.

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

She testified she was involved with the October 2010 "Meet-and-Greet," and, at Dr. Mahan's request, planned the December 2010 holiday party. She testified that even though her contract lacked specific language assigning her social duties, as a (b)(6) (b)(7)(C) she had planned office social events in the past.

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

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

We reviewed the statements of work for the contractor employees who planned and executed the events. The statements of work described the normal tasks consistent with providing administrative support in an office. Neither statement included any reference to planning social events.

Dr. Mahan testified the purpose of the October 2010 event was to award her predecessor with a meritorious award and described the event as a "get to know your history office." She denied it was "some awards party," and described it as an official event to showcase the Office of the Historian volumes, historians, and to spread the word that the Office of the Historian was

³ The DoD Office of the Historian workforce consists of Government employees, employees of firms contracted to provide services, and independent contractors. We refer to employees of firms contracted to provide services as "contractor employees," and independent contractors as "contractors."

available for historical support. Dr. Mahan explained her office extended invitations by email to all the directors and deputy directors of Directorate of Administration and Management and Washington Headquarters Services.

Regarding refreshments at the event, Dr. Mahan testified, "I basically paid for it myself because I know I couldn't get official funds." Dr. Mahan added she "purchased most of the stuff myself, picked it up myself," even though "some contractors volunteered to bring food." Dr. Mahan added she did not request anyone to contribute food for the event and ascribed voluntary food donations to "a culture in this office of everyone chips in." Dr. Mahan testified that both contractor employees who arranged the event were hired to perform "administrative" duties, and asserted their involvement was "appropriate."

Discussion

We conclude Dr. Mahan misused Government resources by using the services of contractor employees to plan and execute two Office of the Historian events in October and December 2010. We found the employees were authorized to provide administrative support services which did not include social event planning. Accordingly, using their services for social event planning was unauthorized and hence, improper.

Title 31 U.S.C. 1301(a) states that appropriated funds shall be used for designated purposes. Although these designated purposes can include hosting official events under DoDI 7250.13, purely social events intended primarily for the entertainment or benefit of DoD officials and employees are not official events. Therefore, appropriated funds may not be used for these types of activities. Furthermore, the DoD Standards of Conduct Office's "Holiday Guidance for Department of Defense Personnel" states that appropriated funds cannot be expended on holiday parties.

Finally, Government employees are not permitted to use Government property for other than authorized purposes. The JER defines the services of government contractor employees as Government property. We determined the use of contractor employees to support unofficial events is improper.

We determined Dr. Mahan's assertion that the October event was official was not supported by the evidence. Although Dr. Mahan described the October event as official, she acknowledged paying for it herself because she could not get official funds for the event. Official funds were not available because the function was a social event and intended primarily for the benefit of DoD officials and employees. Likewise, we determined the December event was not an official event; rather, it was a holiday party for the Office of the Historian staff.

In both instances, Dr. Mahan used the services of Government contractor employees, paid for with appropriated funds, to plan and execute the events. We determined neither employee was authorized to plan or execute social events as part of their official duties. Thus, using them to plan and execute these two events was a misuse of government resources.

Dr. Mahan's Response

With regard to misusing Government resources, Dr. Mahan asserted "One of the two events [in question] was in fact an official event as it was an awards ceremony for two historians, not a 'meet-and-greet mixer' as the report describes." Dr. Mahan provided a copy of a document by which she obtained approval from the Director, Defense Directorate, Washington Headquarters Services, to serve alcohol at an "OSD Open House/Award Ceremony" in a conference room of the Historian's office building in Arlington, Virginia.

We reviewed witness testimony regarding the event and confirmed witnesses described the event in question as a "meet and greet event." Witnesses recalled that Dr. Mahan's predecessor was presented an award at the event; however, the preponderance of testimony indicated that the event also served to allow other members of the Defense Historical community whose offices were located away from Dr. Mahan's to meet members of Dr. Mahan's staff "to get to know your history office."

With regard to the holiday party, Dr. Mahan wrote, "The holiday luncheon of December 2010 relied on the office's voluntary 'sunshine fund' and the planning and setting up was shared amongst staff members, taking minimal time for all involved."

Testimony of the two contractor employees who helped plan the holiday event disclosed that other staff members were involved in planning and executing the event. One testified that a Government employee acted as an assistant to "make sure that RSVPs were all ironed out," but acknowledged having primary responsibility for planning the event.

Dr. Mahan further stated her belief that "all SOWs [Statement of Work] usually have language indicating 'other duties as assigned.'" Our review of the statements of work for the contractor employees who planned the events disclosed they contained no language requiring the contractors to perform "other duties as assigned."

After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

C. Did Dr. Mahan improperly accept gifts?

Standards

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

Section 2635.101 of the JER, "Basic obligation of public service," states that employees shall not use public office for private gain. An employee shall not use or permit the use of his government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself, or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Subpart B, "Gifts from Outside Sources," states:

In Section 2635.202

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

* * * * *

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

In Section 2635.203 *Definitions*

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

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

(d) *Prohibited source* means any person who does business or seeks to do business with the employee's agency.

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

Facts

The incoming complaint alleged that while staying at a local hotel during senior executive training, Dr. Mahan asked two Office of the Historian contractors to pick up (b)(6) (b)(7)(C) from her hotel in the morning and take (b)(6) (b)(7)(C) to the State Department daycare center. The complaint also alleged that a third contractor drove Dr. Mahan's car to pick up (b)(6) (b)(7)(C) from the State Department daycare facility.

One of the contractors denied ever transporting (b)(6) (b)(7)(C) to or from daycare. A second contractor testified that on two occasions, at Dr. Mahan's request, he drove Dr. Mahan's car from the Historian's office parking garage to the hotel where Dr. Mahan was staying to pick up (b)(6) (b)(7)(C). He added he then took (b)(6) (b)(7)(C) to the State Department daycare facility

and returned to work at the Historian's office. He testified the trip took place at the beginning of the workday, took less than 15 minutes, and that he was not compensated for his efforts.

The third contractor denied ever taking (b)(6) (b)(7)(C) to daycare, but testified that he recalled Dr. Mahan once called him from a meeting and asked him to pick up (b)(6) (b)(7)(C) from daycare. He explained that he used Dr. Mahan's car to pick up (b)(6) (b)(7)(C) at daycare after which Dr. Mahan joined them, and drove the contractor home.

Several witnesses testified that Dr. Mahan brought (b)(6) (b)(7)(C) to work on multiple occasions, including one time when (b)(6) (b)(7)(C) and could not attend daycare. Two contractors testified that Dr. Mahan had asked them to watch (b)(6) (b)(7)(C) (b)(6) (b)(7)(C). One of those contractors testified that Dr. Mahan "made the decision that she had to go to this meeting" out of the office, so she asked him to stay with (b)(6) (b)(7)(C) for an hour. He added he was a contractor paid based on "deliverables," not hours, and was not "on the clock" when he performed this service. The other contractor testified that several contractors watched (b)(6) (b)(7)(C) "in shifts," over the course of 8 hours because Dr. Mahan was gone "most of the day" at meetings. He testified, "I saw a DVD playing on her computer so I think you just hit play and that kept (b)(6) (b)(7)(C) entertained for a period of time."

A Government employee in the Office of the Historian testified that Dr. Mahan brought (b)(6) (b)(7)(C) to work between 5-10 times. He testified that while at the office, (b)(6) (b)(7)(C) stayed in her office, and would occasionally come out to say "hi to other people, but I think she pretty much kept (b)(6) (b)(7)(C) in her office for most of the time."

He testified to being "horrified" that Dr. Mahan would bring a (b)(6) (b)(7)(C) to the office, but added that she was "not the type of boss" you could confront, and that he could not "go there." Further, he testified that he attempted to avoid the subject of using contractors for babysitting (b)(6) (b)(7)(C) because "it was clear to me that that was not legitimate and it was clear to anyone who would make it to the Senior Executive Service level would've known that that was not a proper use of contractors."

A contractor employee testified that although Dr. Mahan brought (b)(6) (b)(7)(C) to work "less than a handful" of times, she was never asked to babysit or take (b)(6) (b)(7)(C) to daycare. She testified that had she been asked, she would have refused because "that's not part of my duties."

Dr. Mahan testified she brought (b)(6) (b)(7)(C) to work "maybe half a dozen times in [her] almost 2 years" as Chief Historian. Dr. Mahan described one day she had a meeting she needed to attend within an hour of discovering (b)(6) (b)(7)(C) would not be allowed to stay at daycare. Dr. Mahan brought (b)(6) (b)(7)(C) to work and two contractors -- sensing her "plight" -- agreed when she asked them if they would "mind working in [her] office?" She testified that she was away from the office over the course of a 2-3 hour period of the day, but that although the time spent with (b)(6) (b)(7)(C) was during the duty hours, the contractors were paid "on deliverables." Dr. Mahan attributed her actions to "newness," and a desire to avoid being "Mommy-tracked," but said that she is now more "seasoned," and would take leave if the circumstances arose again.

Dr. Mahan further testified that during Senior Executive Service training, she was required to stay in a hotel located two blocks from her office. She was unable to take (b)(6) (b)(7)(C) to daycare, so asked the same contractors on three occasions to use her car to take (b)(6) (b)(7)(C) to daycare and pick (b)(6) (b)(7) up. She testified that the complete trip from her hotel to the daycare facility and back took approximately 15 minutes, and acknowledged she did not compensate them for their services. She further testified that it was during that senior executive ethics training where she learned of "personal services," and realized that she would "never do that again."

Discussion

We conclude Dr. Mahan improperly used her public office for private gain when she solicited and accepted gifts from prohibited sources, namely, individuals under contract to the Office of the Historian.

We found that Dr. Mahan brought (b)(6) (b)(7)(C) to her workplace on several occasions, including one occasion when (b)(6) (b)(7)(C) and could not attend daycare. On that occasion and at her request, two contractors took turns throughout the duty day watching (b)(6) (b)(7)(C) in Dr. Mahan's office while (b)(6) (b)(7)(C) played or watched DVDs on her office computer. We also found that the same two contractors either picked up or dropped off (b)(6) (b)(7)(C) at daycare on multiple occasions at her request. We found no evidence that Dr. Mahan compensated the contractors for their services.

The JER states that employees shall not use public office for private gain. Further, the JER states an employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source or given because of the employee's official position.

We determined Dr. Mahan's solicitation and acceptance of babysitting and transportation services for (b)(6) (b)(7)(C) from prohibited sources, individuals under contract to the Office of the Historian, violated the JER prohibitions against using public office for private gain and soliciting and accepting gifts from outside sources.

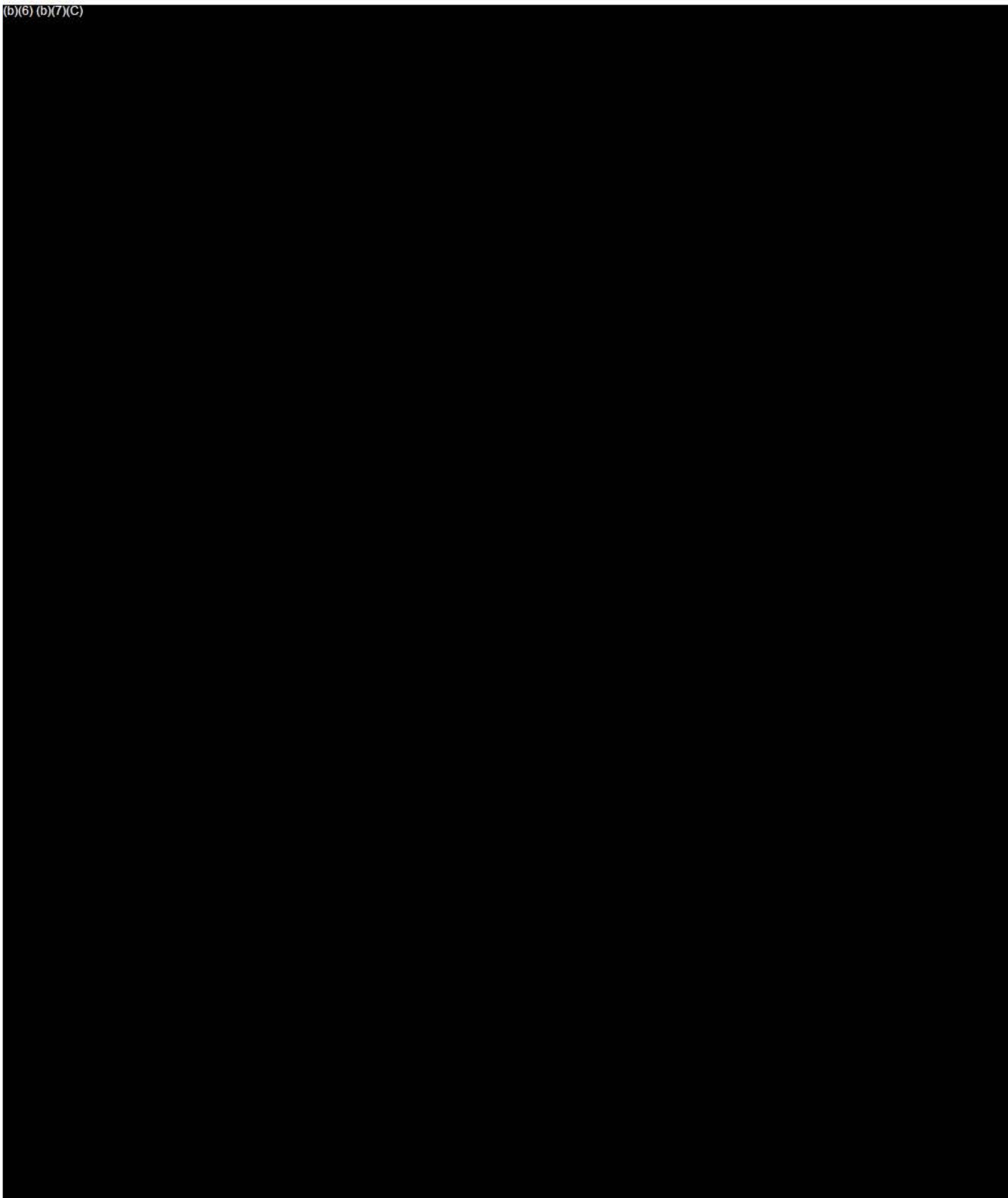
Dr. Mahan's Response

Dr. Mahan acknowledged it was a mistake to use staff for childcare purposes and accepted full responsibility for her actions and noted the underlying facts pre-dated her senior executive ethics training. She wrote, "I exercised a momentary and isolated lapse of judgment out of an overly conscientious desire to be a superb SES and honor all obligations and commitments," while adding her understanding that if gifts/services are rendered because of a personal history rather than because of her position, then there is no violation.

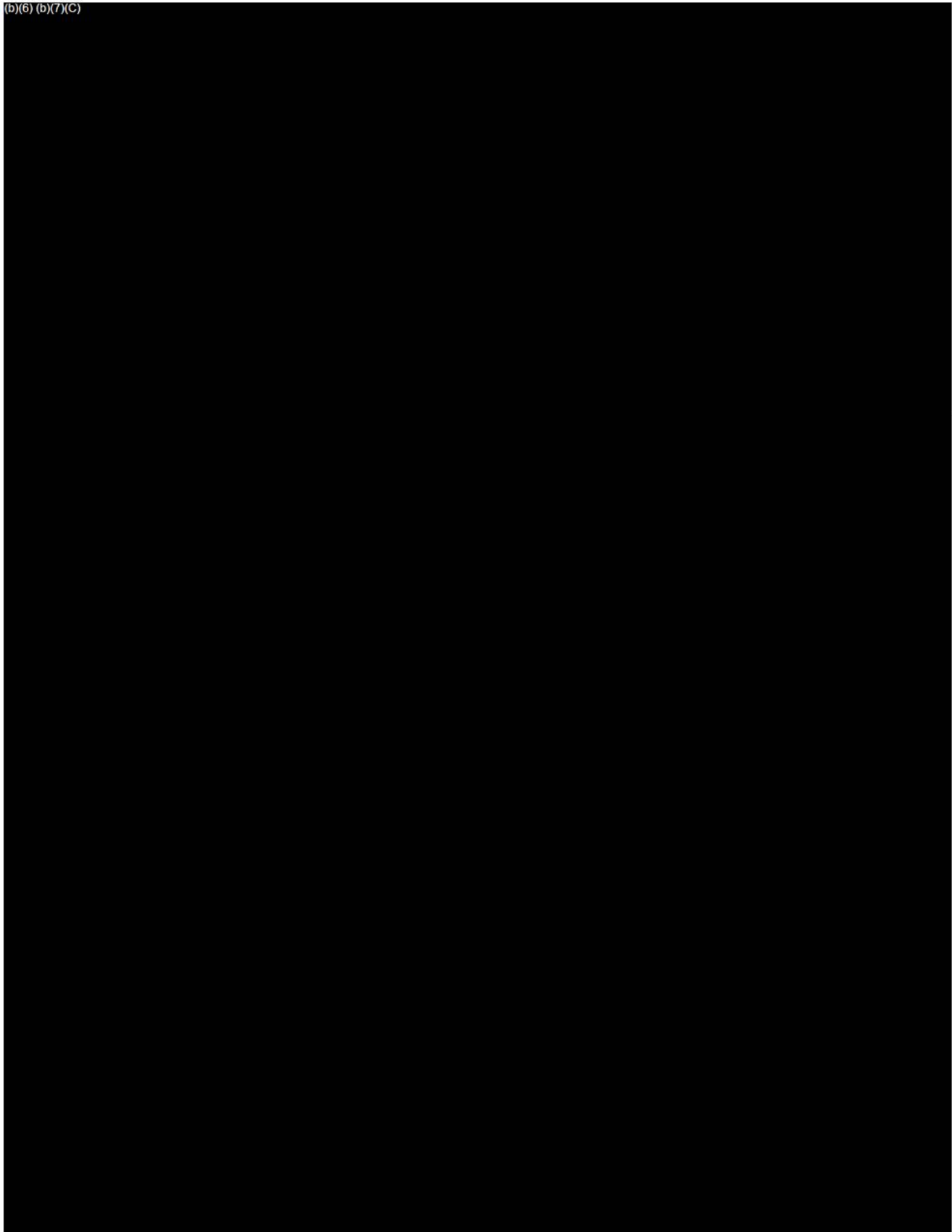
Our review of testimony and Dr. Mahan's response disclosed Dr. Mahan had prior relationships with two of the subordinates in question; however we determined those relationships did not meet the exception provided in the standard. We note Dr. Mahan requested the childcare and transportation services in question and those requests were directly related to Dr. Mahan's official position as Chief Historian.

After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

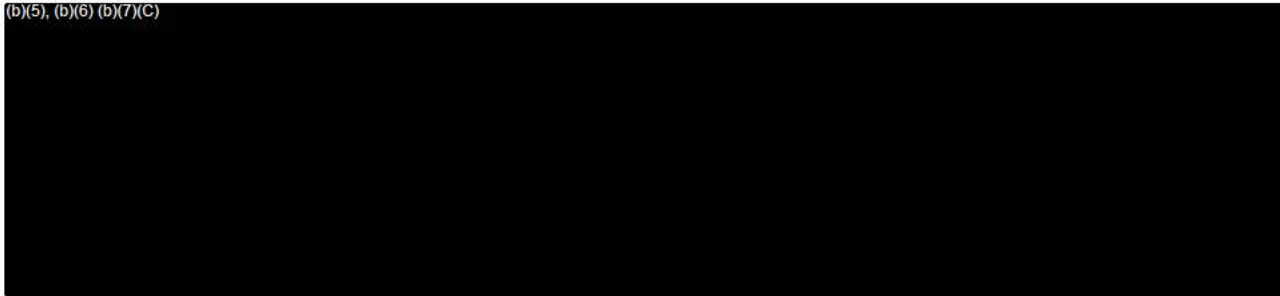
(b)(6) (b)(7)(C)



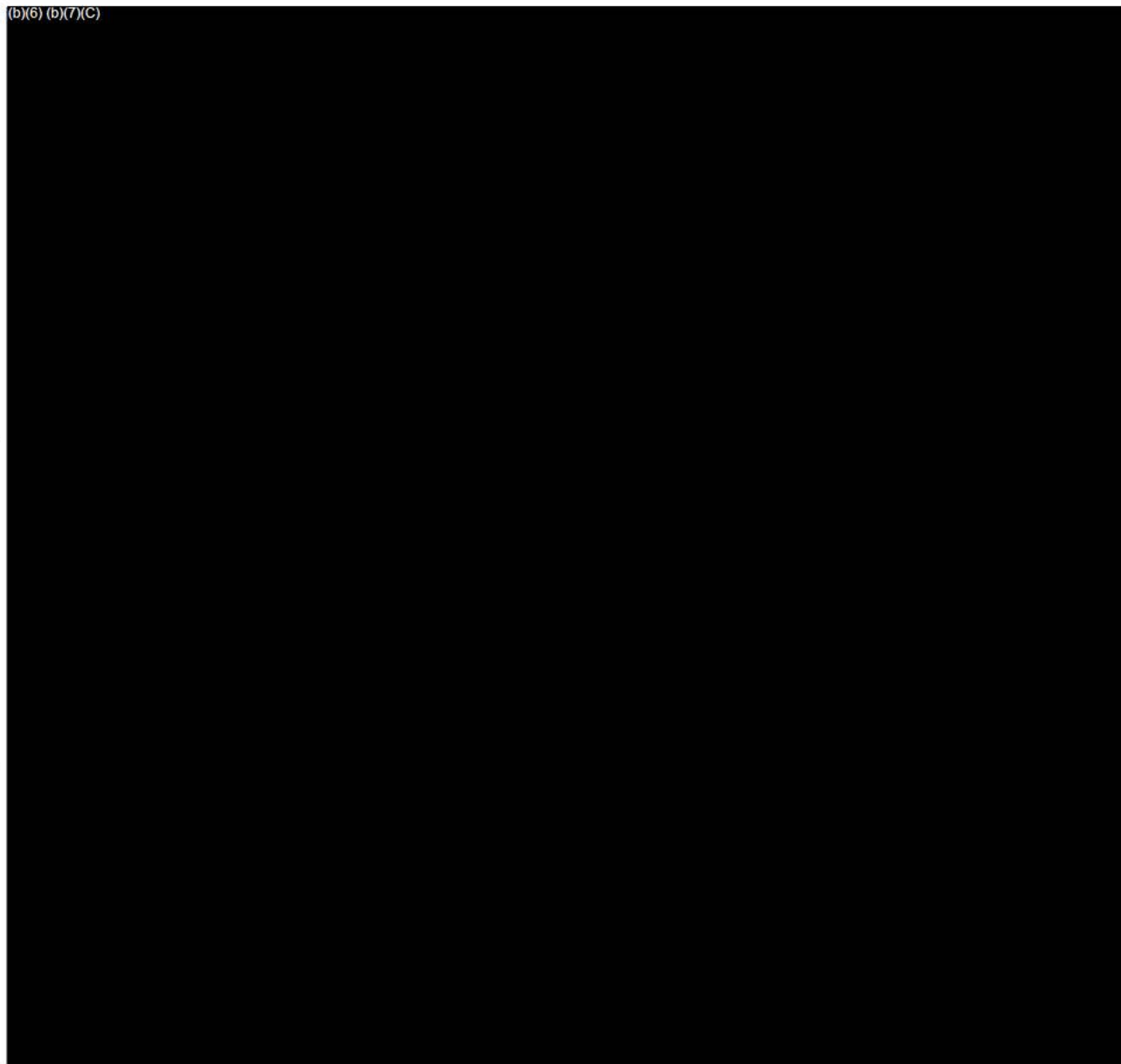
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(b)(5), (b)(6) (b)(7)(C)

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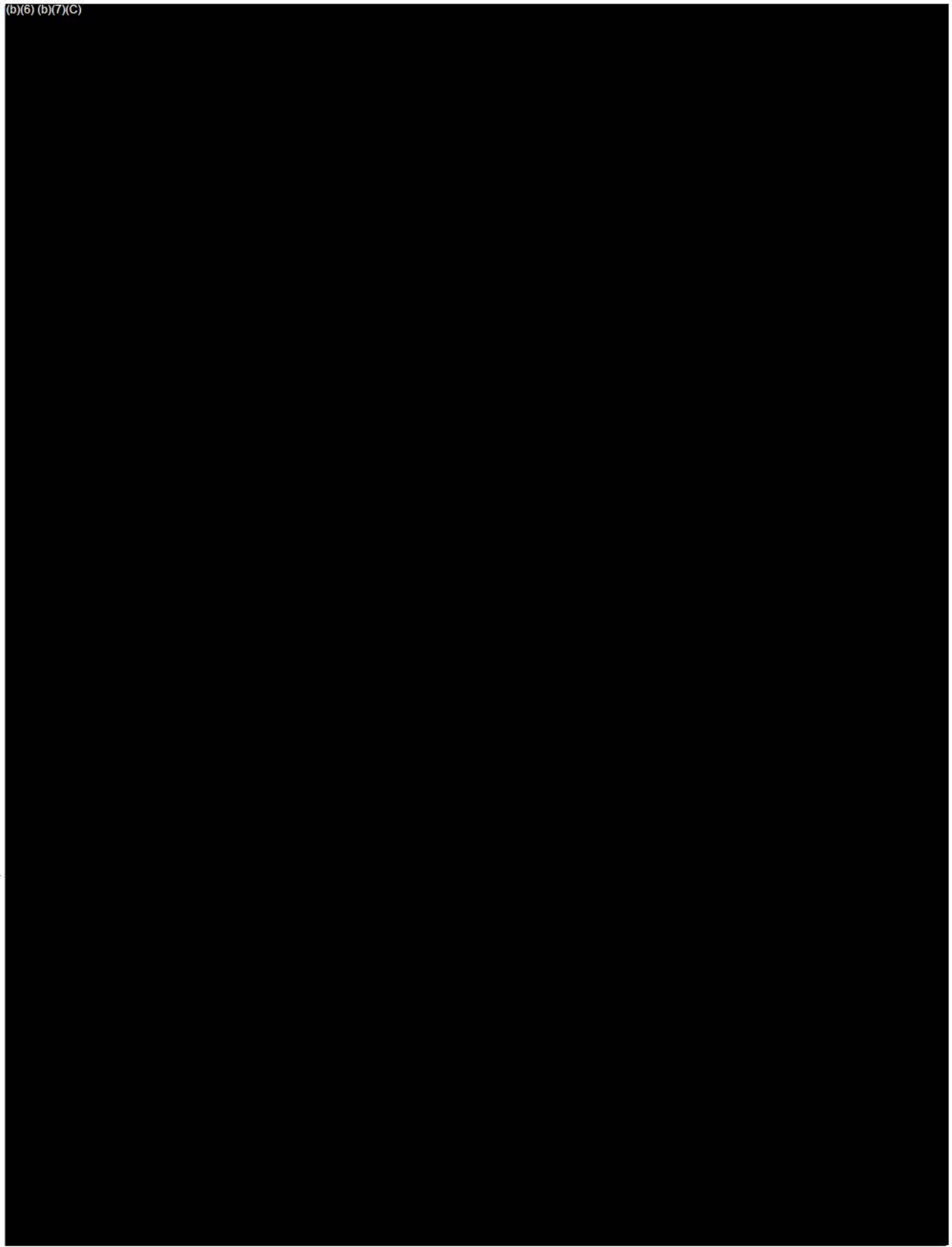
(b)(6) (b)(7)(C)

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

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



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

E. Did Dr. Mahan engage in a prohibited personnel practice?

Standards

5 U.S.C. 2302, "Prohibited personnel practices"

Section 2302(b) states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

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

JER Chapter 12, "Ethical Conduct," states that DoD employees should consider ethical values when making decisions as part of official duties. In that regard, the JER sets forth primary ethical values of "honesty," "fairness," and "promise keeping" as considerations that should guide interactions among DoD employees. It elaborates on those characteristics as follows:

- Honesty requires employees to be truthful, straightforward and candid.
- Fairness involves open-mindedness and impartiality. "Decisions must not be arbitrary, capricious, or biased. Individuals must be treated equally and with tolerance."
- Promise Keeping. The JER notes no government can function for long if its commitments are not kept. DoD employees are obligated to keep their promises in order to promote trust and cooperation. Because of the importance of promise keeping, it is critical that DoD employees only make commitments that are within their authority.

Additionally, Section 12-300, "Code of Ethics for Government Employees," states any person in Government service should "Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty."

Facts

The complaint alleged that during the time the position of Deputy Chief Historian was unencumbered, Dr. Mahan publicly announced that the (b)(6) (b)(7)(C) would get the permanent Deputy Chief Historian job, that she gave the (b)(6) (b)(7)(C) all of the key words used to assess

applications for the position, and advised her on what she should focus on during the interview. The complaint further alleged that Dr. Mahan stated she put Dr. John Shortal, the then-Assistant Chief of Military History, Center for Military History, on the hiring panel so that Dr. Mahan would get what she wanted.

The affected employee testified that although she had served as the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), she had no desire to compete for the permanent position. She stated that "almost from the moment Dr. Mahan arrived," Dr. Mahan began to encourage and then insist that she apply for the permanent position, going as far as instructing her (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) despite her protest that this was inappropriate. She recalled Dr. Mahan told her "You're going to get the job. I can't imagine anybody who could do a better job." The employee explained that although she did not want the position, she "succumbed to the pressure exerted by Dr. Mahan and applied for the position." She added she (b)(6) (b)(7)(C) (b)(6) (b)(7)(C).

Dr. Mahan testified that the allegations presented were "patently, completely false." She further testified she held the "most open deputy search. I had every cert[ification] possible. I didn't rig a wire for anybody." She denied providing the (b)(6) (b)(7)(C) anything more than "mentoring advice" and stated she asked for Dr. Shortal to be on the hiring panel because of his position, not so that she could influence the hiring decision. She further testified that the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) at the suggestion of her predecessor, but that the arrangement was intended to be "temporary."

Subsequent to our interview with Dr. Mahan, a witness alleged that Dr. Mahan had promised the deputy position to a different employee. The employee in question testified that Dr. Mahan "told me that she has decided that she is going to make me her deputy." The employee stated she was very uncomfortable with this because the (b)(6) (b)(7)(C) (b)(6) (b)(7)(C). She added that since that time Dr. Mahan "has started acting as if this was a fait accompli. I am going to be her deputy." The employee stated, "I am not interested. I am not qualified. The position is already filled."

Discussion

We conclude Dr. Mahan did not engage in a prohibited personnel practice, but did violate the provisions of Chapter 12 of the JER by promising the Deputy Historian position to two subordinates. We found that on two occasions Dr. Mahan privately promised subordinates that the Deputy Historian position was to be theirs.

JER, Chapter 12 "Ethical Conduct," sets forth primary ethical values of "honesty," "fairness," and "promise keeping" as considerations that should guide interactions among DoD employees. Additionally, Section 12-300, "Code of Ethics for Government Employees," states any person in Government service should "make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty."

Our analysis of the testimony of the two employees and Dr. Mahan led us to conclude that Dr. Mahan made the alleged promises. We considered Dr. Mahan's testimony that she

merely provided mentoring advice to the first employee, but determined the employee perceived Dr. Mahan's statement, "You're going to get the job," to constitute a promise. The second employee's testimony that Dr. Mahan told her she has decided that she is going to "make me her deputy," convinced us that Dr. Mahan's statements to both employees could reasonably be perceived as promises.

We determined Dr. Mahan's promises to two employees that they were to be the next Deputy Chief Historian, DoD Historian Office, were not in keeping with the standards set forth in Chapter 12 of the JER. Further, Dr. Mahan violated the Code of Ethics for Government Employees in that her private promises purported to be binding upon her office as Chief Historian. Accordingly, we conclude Dr. Mahan failed to comply with the ethical standards in the JER when she promised the Deputy Chief Historian position to two employees.

Dr. Mahan's Response

Dr. Mahan stated "both of these allegations are false and patently ridiculous." She added she never promised anyone any position, let alone the same position to two people, and provided a statement of support from a member of the selection panel that selected the current Deputy Historian and recommended we contact another member of the selection panel. We note we have no concern with the selection process for the position as the allegation in question deals only with Dr. Mahan's alleged promises.

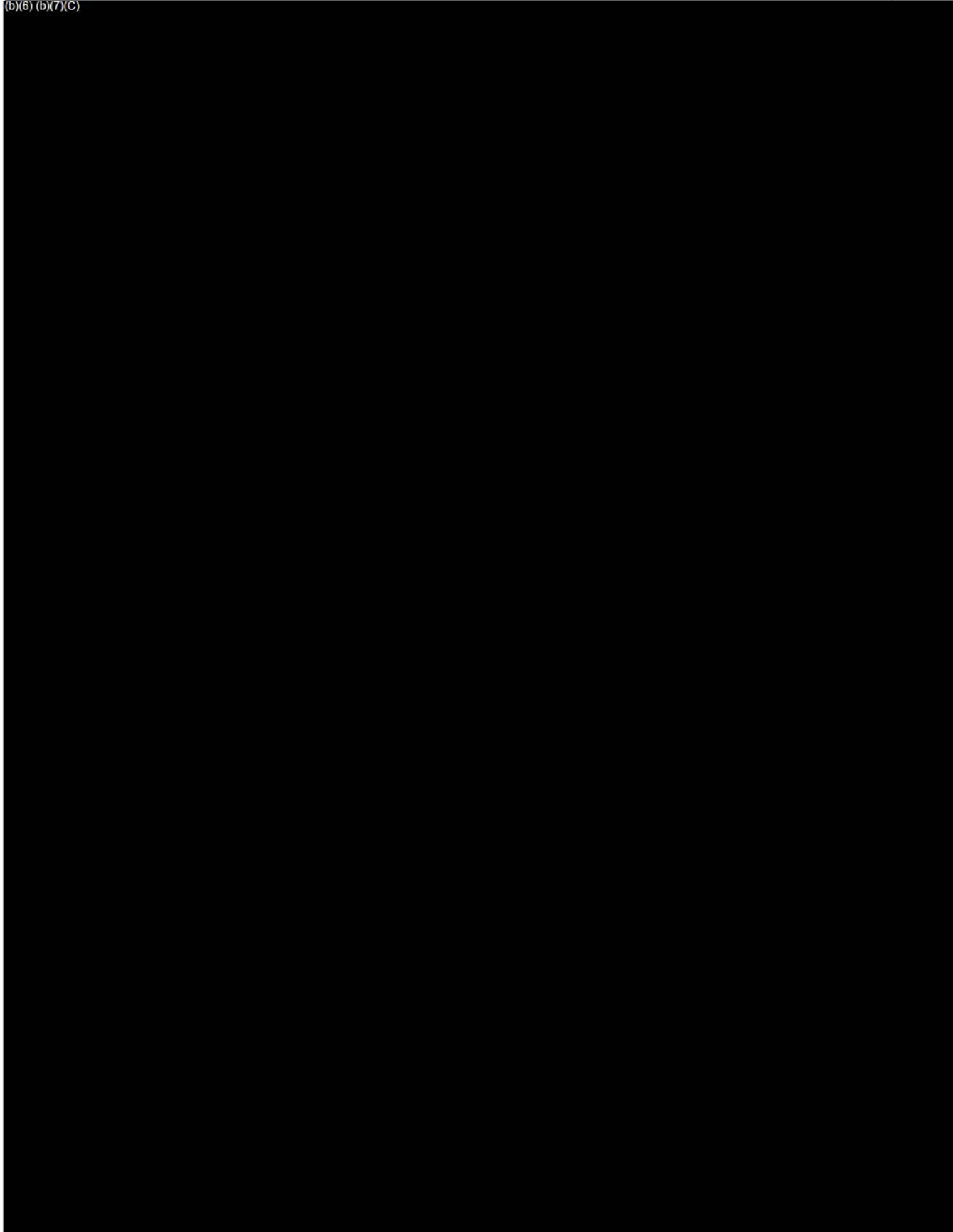
Dr. Mahan also recommended we contact her predecessor as OSD Historian. Dr. Mahan asserted her predecessor could, "fully explain the ambitions of the complainant that may have led her to have delusions that she had been pre-chosen." We contacted the predecessor who declined our request for an interview stating she did not want to be involved in the investigation.

We also reviewed the information we received regarding the second alleged promise. A member of the historian staff informed us the affected employee sought his advice on the matter. He described the employee as "greatly dismayed that Dr. Mahan would think that an employee without managerial experience would be the appropriate choice to run a history program." The witness stated that both he and the affected employee agreed that it was inappropriate for Dr. Mahan to speculate about the incumbent deputy's future and to disclose her inclinations regarding future hiring decisions.

We reviewed the testimony of the two witnesses who testified Dr. Mahan promised them the Deputy Historian position. Our review, along with the contemporaneous report of the second alleged promise persuaded us that both subordinates were convinced Dr. Mahan intended to have them as her Deputy Historian. We found their testimony to be more persuasive than Dr. Mahan's denial since neither witness ^{(b)(6) (b)(7)(C)} and neither had any known connection to the other. We also found persuasive the second employee's contemporaneous disclosure of the matter to another member of the Historian office.

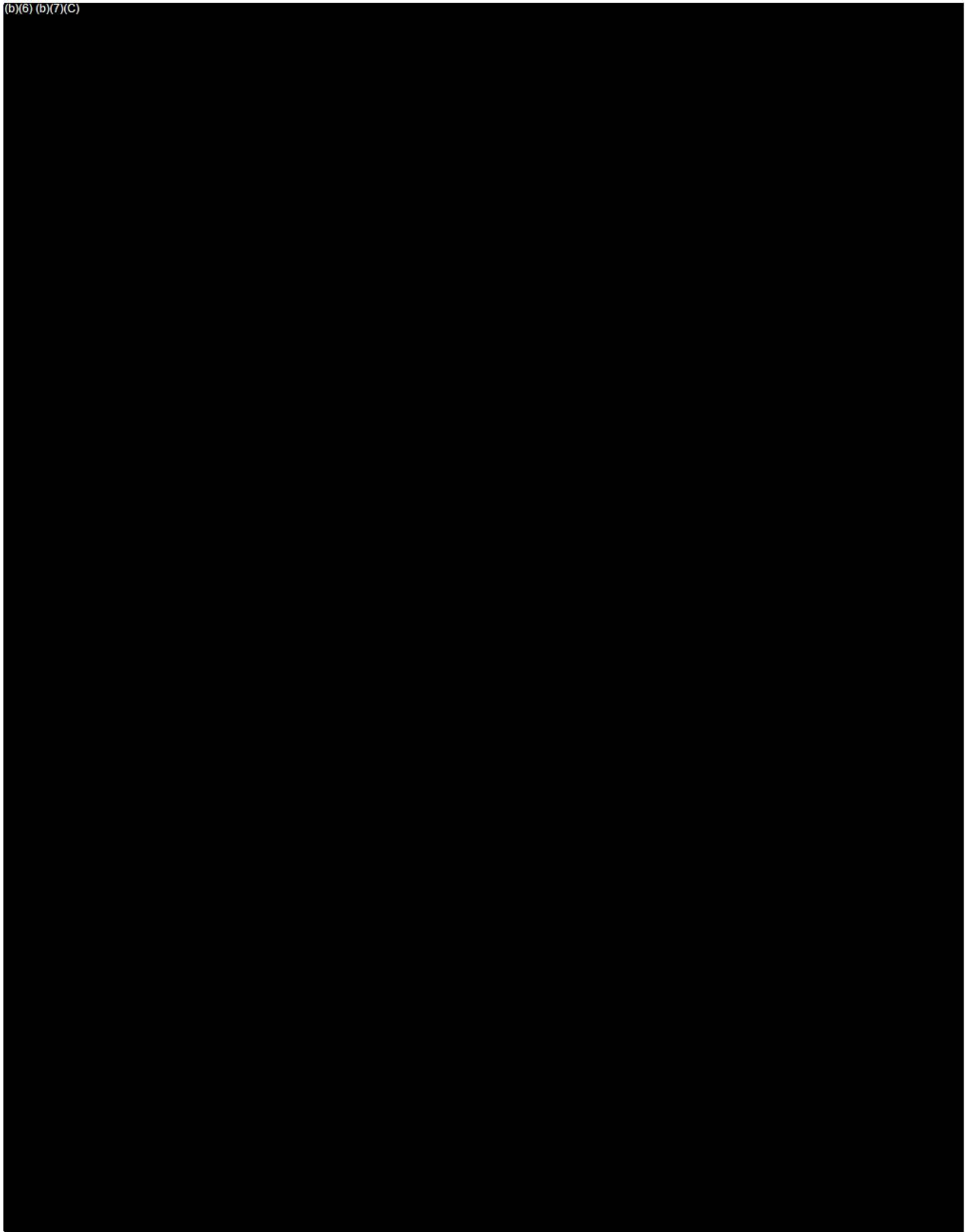
After reviewing and carefully considering the matters presented by Dr. Mahan and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

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



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



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V. CONCLUSIONS

- A. Dr. Mahan on occasion engaged in conduct in the workplace that was inconsistent with the standards for senior executives.
- B. Dr. Mahan misused Government resources.
- C. Dr. Mahan used her public office for private gain and improperly solicited and accepted gifts from prohibited sources.
- D. (b)(6) (b)(7)(C)
- E. Dr. Mahan violated the provisions of Chapter 12 of the JER by promising the Deputy Historian position to two subordinates.
- F. (b)(6) (b)(7)(C)

VI. RECOMMENDATION

We recommend the Director, Administration and Management, consider appropriate corrective action with regard to Dr. Mahan.

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Report No. DA 119863 249



Inspector General
Department of Defense

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