

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

I. INTRODUCTION AND SUMMARY

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

- Accepted gifts in violation of DoD 5500.7-R, “Joint Ethics Regulation (JER)”²; and
- Failed to report gifts that exceeded the applicable monetary threshold in violation of the JER.

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

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

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

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

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

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

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

(b)(5)

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

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

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

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

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

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

II. BACKGROUND

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

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

III. SCOPE

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

IV. FINDINGS AND ANALYSIS

A. Did MG Fil improperly accept gifts?

Standards

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

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

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

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

In Section 2635.202

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

* * * * *

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

In Section 2635.203 *Definitions*

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

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

* * * * *

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

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

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

In Section 2635.204 *Exceptions*

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

In Section 2635.205 *Proper disposition of prohibited gifts*

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

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

* * * * *

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

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

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

Facts

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

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

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

⁵ (b)(6), (b)(7)(C)

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

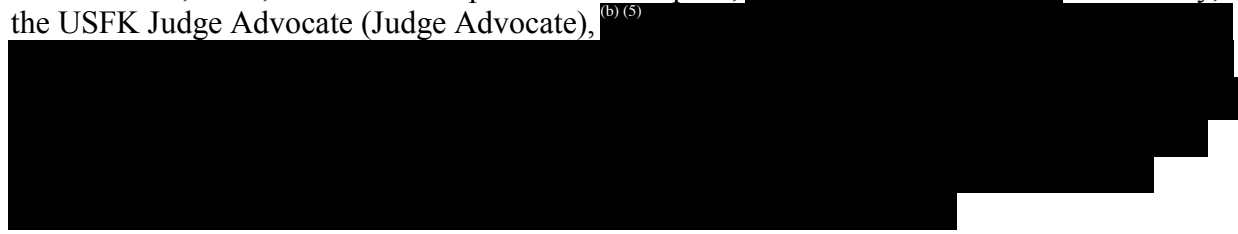
(b)(6), (b)(7)(C) characterized (b)(6), (b)(7)(C) as MG Fil’s “golfing buddy” and believed they were real friends.

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

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

Ethics Opinions Regarding Designation of Korean Nationals as Friends

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



(b)(5)



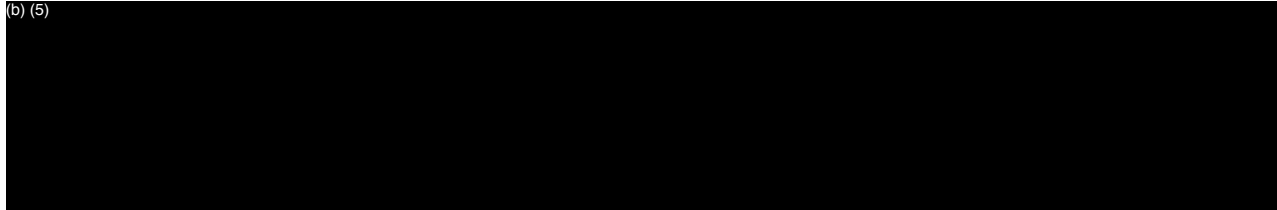
⁶ United States Forces Korea (USFK) has a formally established “Good Neighbor Program” designed to strengthen the alliance between the United States and the ROK by improving the understanding of USFK’s mission through personal engagement between local nationals and USFK personnel.

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

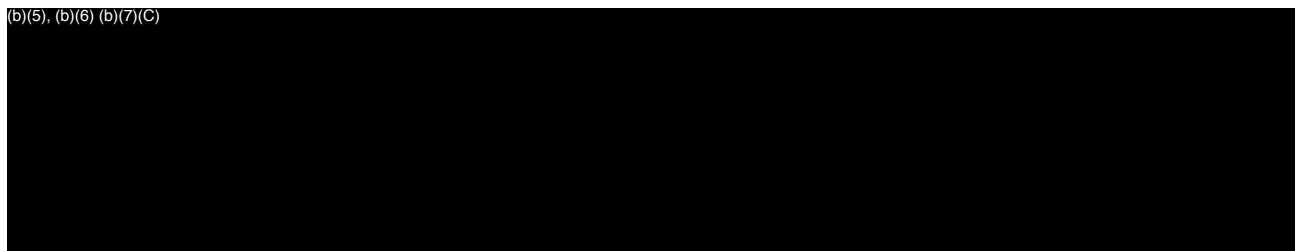
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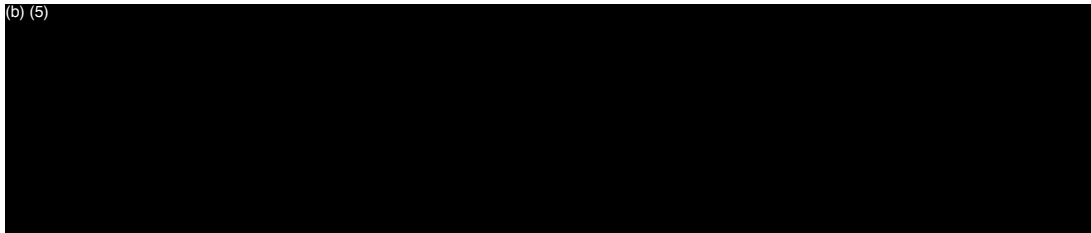
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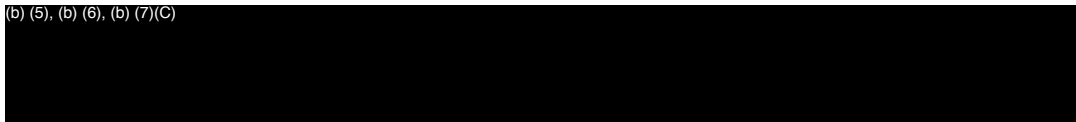
(b)(5), (b)(6) (b)(7)(C)

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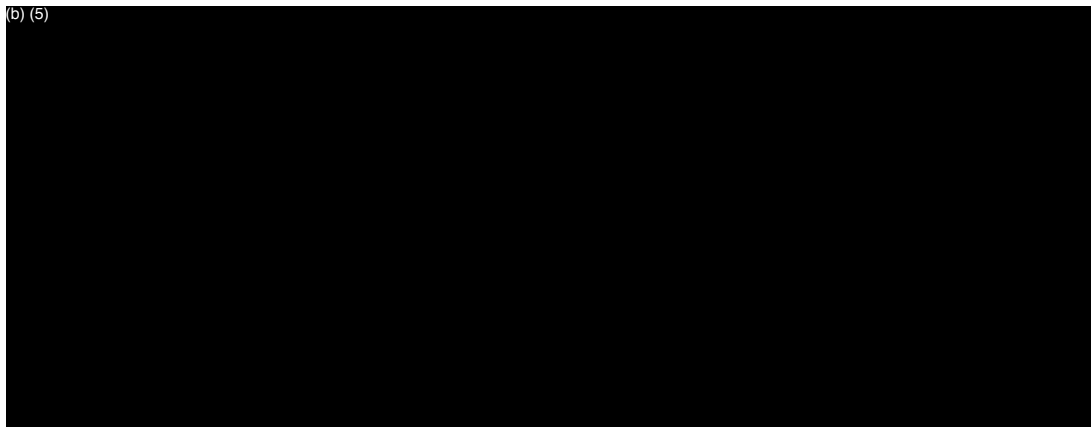
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(b) (5)

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⁸ These ethics opinions were dated April 28, 2009, June 25, 2009, August 28, 2009, and October 30, 2009. An

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

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(b) (5)

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

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

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

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

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

Gifts

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

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

and presented it to MG Fil approximately 2 to 3 months later as a gift. (b)(6), (b)(7)(C) stated the briefcase was a going away gift for MG Fil, and that (b)(6), (b)(7)(C) purchased it for him using his (b)(6), (b)(7)(C) corporate credit card. (b)(6), (b)(7)(C) presented the briefcase to MG Fil in September or October 2010.


MG Fil stated that he received the pen set, consisting of a ballpoint pen and a rollerball pen encased in a leather case, from (b)(6), (b)(7)(C). MG Fil stated he believed the pen set was expensive, possibly valued at \$150.

MG Fil also stated that he accepted several additional gifts from (b)(6), (b)(7)(C) including two golf bags and golf balls. After the initial interview, MG Fil provided a subsequent statement and disclosed that (b)(6), (b)(7)(C) had received \$3,000 in cash from (b)(6), (b)(7)(C) as a birthday gift in April 2010. MG Fil believed (b)(6), (b)(7)(C) could keep the money because of his personal relationship with (b)(6), (b)(7)(C).

We found no evidence that MG Fil sought a legal opinion regarding acceptance of the pen set, the briefcase, or the cash gift given to (b)(6), (b)(7)(C).

Discussion

We conclude MG Fil improperly accepted gifts in violation of the JER. We found that MG Fil accepted three significant gifts from (b)(6), (b)(7)(C): a pen set; a briefcase; and a \$3,000 cash gift given to (b)(6), (b)(7)(C). MG Fil met (b)(6), (b)(7)(C) when he assumed command in 2008. We found that MG Fil requested several ethics opinions about designating (b)(6), (b)(7)(C) as a personal friend and whether he (MG Fil) could accept gifts from (b)(6), (b)(7)(C). (b)(5), (b)(6), (b)(7)(C)



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

We determined that MG Fil accepted gifts that were given to him based on his official position. We found no evidence of a prior personal relationship between (b)(6), (b)(7)(C) and MG Fil unaffiliated with MG Fil's official position. MG Fil's relationship with (b)(6), (b)(7)(C) did not begin until after he assumed command in February 2008. We also determined that (b)(6), (b)(7)(C) gave the pen set to MG Fil and the \$3000 cash gift to (b)(6), (b)(7)(C) before MG Fil designated (b)(6), (b)(7)(C) as a personal friend. We further determined that although MG Fil received the briefcase after designating (b)(6), (b)(7)(C) as a personal friend, the gift was not a personal gift because it was purchased using (b)(6), (b)(7)(C) corporate credit card. Moreover, we determined that the JER exceptions did not

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

B. Did MG Fil fail to report gifts received?

Standards

DoD 5500.7-R “JER,” dated August 30, 1993

Chapter 7, “Financial and Employment Disclosure”

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

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

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

In Section 7-204, *Content of Report*

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

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

In Section 2634.304, *Gifts and Reimbursements*

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

* * * * *

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

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

Facts

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

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

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than \$260 and (2) travel-related cash reimbursements received from one source totaling more than \$260.¹¹

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

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

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

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

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

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

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

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

Discussion

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

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

V. CONCLUSIONS

- A. MG Fil improperly accepted gifts.
- B. MG Fil failed to properly report gifts received.

VI. RECOMMENDATION

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