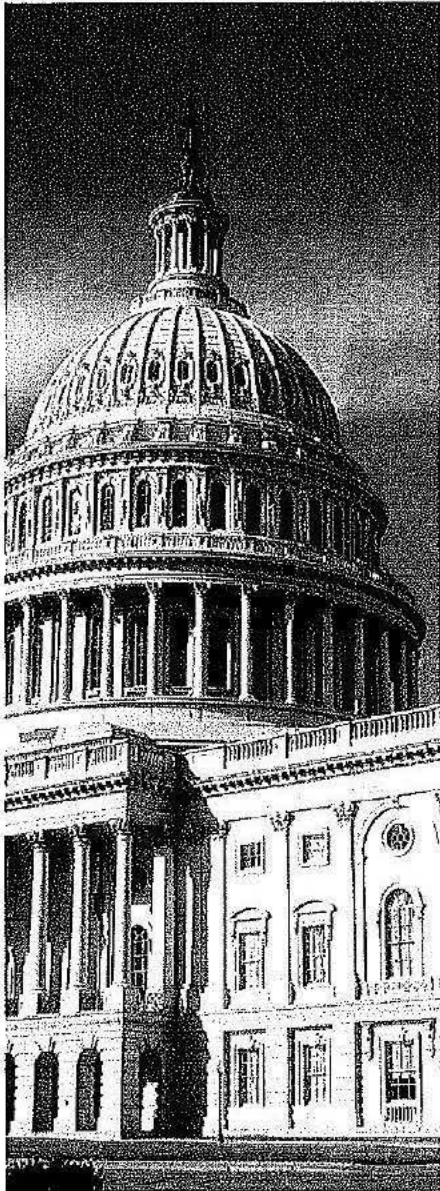


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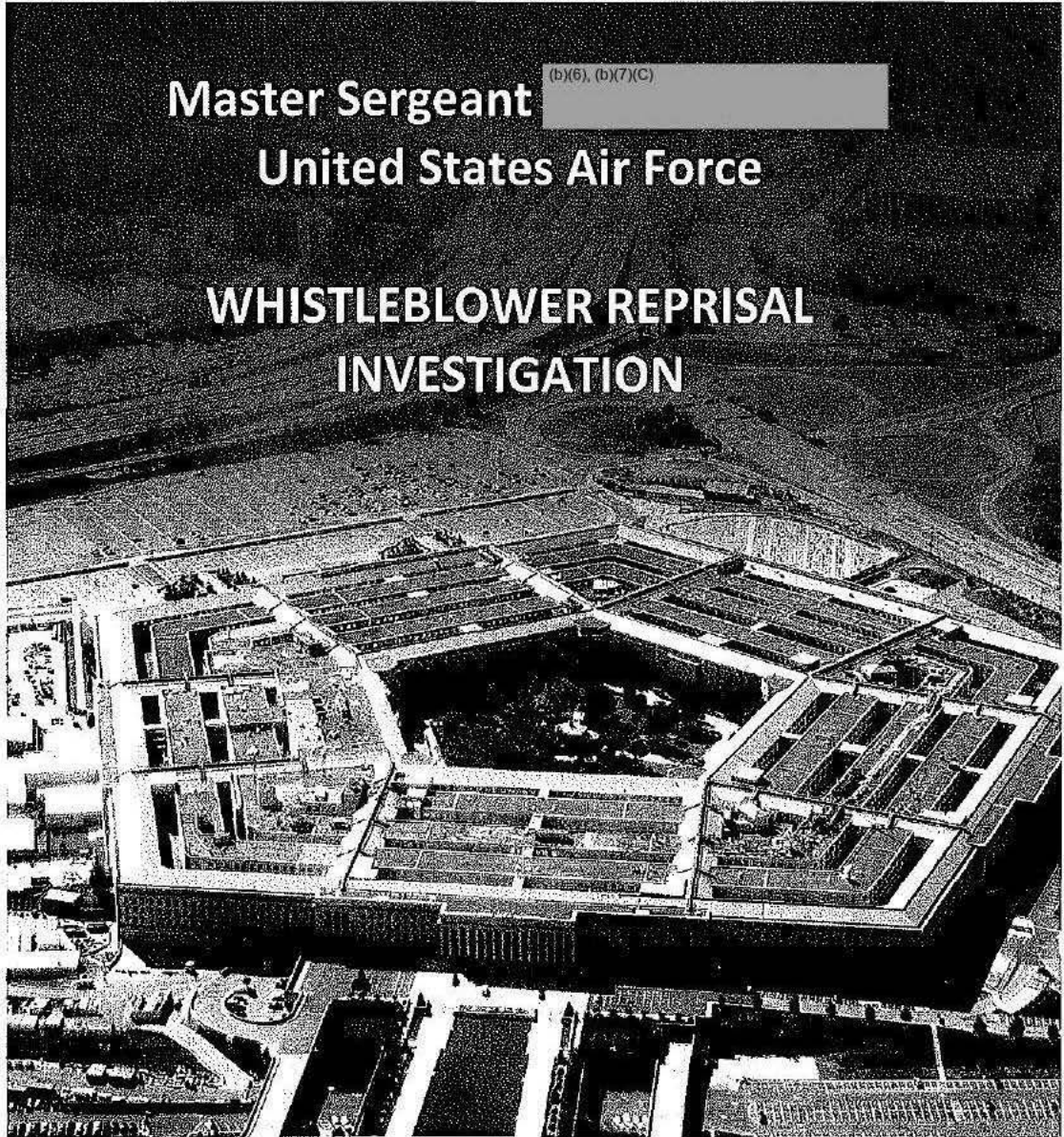
U.S. Department of Defense

August 17, 2015



Master Sergeant (b)(6), (b)(7)(C)
United States Air Force

WHISTLEBLOWER REPRISAL INVESTIGATION



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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WHISTLEBLOWER REPRISAL INVESTIGATION

MASTER SERGEANT (b)(6), (b)(7)(C)

U.S. AIR FORCE/JOINT STAFF

PENTAGON

I. EXECUTIVE SUMMARY

We conducted this investigation in response to an allegation that Lieutenant Colonel (LTC) (b)(6), (b)(7)(C) U.S. Army (USA), (b)(6), (b)(7)(C) Joint Staff (b)(6), (b)(7)(C) Pentagon, and Colonel (COL) (b)(6), (b)(7)(C) USA, (b)(6), (b)(7)(C) Joint Staff (b)(6), (b)(7)(C) Pentagon, gave an adverse Enlisted Performance Report (EPR) to Master Sergeant (MSgt) (b)(6), (b)(7)(C) U.S. Air Force (USAF), (b)(6), (b)(7)(C) Joint Staff (b)(6), (b)(7)(C) Pentagon, that was submitted late, in reprisal for reporting to members of his chain of command and the Joint Staff Inspector General (JSIG) that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor employee.

We determined that Complainant's reports of LTC (b)(6), (b)(7)(C) inappropriate sexual contact made to his chain of command and the IG were protected communications, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were aware of his protected communications, and LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) subsequently gave Complainant a downgraded EPR that lowered his points toward promotion and did not submit it in time for him to be eligible during his promotion cycle.

We substantiated the allegation that LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) downgraded Complainant's EPR in reprisal for his protected communications, in violation of 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."

We recommend the Secretary of the Air Force take appropriate action to remedy Complainant's records and allow him the opportunity to compete for promotion in a supplemental promotion board.

We recommend the Secretary of the Army take appropriate corrective action against LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) for reprising against Complainant.

II. BACKGROUND

Complainant was assigned to the Joint Staff (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) The Joint Staff (b)(6), (b)(7)(C)

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

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

Complainant reported directly to LTC (b)(6), (b)(7)(C) who reported directly to COL (b)(6), (b)(7)(C). COL (b)(6), (b)(7)(C) reported to (b)(6), (b)(7)(C) who reported to the (b)(6), (b)(7)(C) Director, Lieutenant General (LTG) (b)(6), (b)(7)(C).

In March 2014, Complainant reported to his chain of command that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a defense contractor who worked in the (b)(6), (b)(7)(C) and he intended to make an IG complaint. In April 2014, Complainant made an IG complaint to the JSIG alleging LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor, and his chain of command had not appropriately addressed the situation. In November 2014, Complainant filed an IG complaint with DoD IG alleging LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor, his chain of command tried to cover it up, and the JSIG failed to properly investigate his chain of command for not addressing the situation appropriately.

In January 2015 LTC (b)(6), (b)(7)(C) (rater) and COL (b)(6), (b)(7)(C) (senior rater) completed and signed Complainant's 2014 annual EPR for the reporting period (b)(6), (b)(7)(C) through (b)(6), (b)(7)(C). Complainant alleged to DoD IG on March 9, 2015, that LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) gave him low ratings, left out significant accomplishments, and failed to submit the EPR to the Air Force Personnel Center (AFPC) in time for his promotion cycle, resulting in his ineligibility for promotion, all in reprisal for reporting that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with the contractor employee.

III. SCOPE

This investigation covered the period from November 2013, when Complainant witnessed LTC (b)(6), (b)(7)(C) alleged inappropriate sexual contact, through July 2015, when Complainant received his 2014 EPR. We interviewed Complainant, LTC (b)(6), (b)(7)(C) COL (b)(6), (b)(7)(C) and relevant witnesses with first-hand knowledge of the matters. We also reviewed documentary evidence, including emails, personnel records, and regulations.

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 OF FACT

LTC (b)(6), (b)(7)(C) began her supervision of Complainant on (b)(6), (b)(7)(C). On January 2, 2014, LTC (b)(6), (b)(7)(C) gave Complainant his mid-term feedback. On the feedback worksheet, LTC (b)(6), (b)(7)(C) hand-wrote that Complainant was an "Outstanding Airman," noting that he was presented with a coin from the Chairman of the Joint Chiefs of Staff (CJCS). On the back of the worksheet, LTC (b)(6), (b)(7)(C) wrote that she expected Complainant to (b)(6), (b)(7)(C).
(b)(6), (b)(7)(C)

On February 12, 2014, (b)(6), (b)(7)(C) Joint Staff (b)(6), (b)(7)(C) wrote a recommendation letter "strongly" recommending Complainant be extended for 1 year in his current assignment in the (b)(6), (b)(7)(C). Stating Complainant had proven to be a valuable asset to the (b)(6), (b)(7)(C) was selected as the Joint Staff Service Member of the Quarter, was awarded a Joint Staff Achievement Medal, and was awarded a Joint Staff Commendation Medal for his work in preparing the (b)(6), (b)(7)(C) for their (b)(6), (b)(7)(C) Inspection (b)(6), (b)(7)(C).

On February 18, 2014, Complainant was assigned temporary duty at (b)(6), (b)(7)(C) to help them prepare for their (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) received an "Excellent" grade from (b)(6), (b)(7)(C) and Complainant received written praise and a coin from (b)(6), (b)(7)(C) USA, (b)(6), (b)(7)(C). He also received written praise from Major General (MG) (b)(6), (b)(7)(C) USA, (b)(6), (b)(7)(C) and LTG (b)(6), (b)(7)(C) for his work at (b)(6), (b)(7)(C) preparing them for their (b)(6), (b)(7)(C).

On March 7, 2014, LTC (b)(6), (b)(7)(C) emailed Complainant and informed him that he was to return from temporary duty at (b)(6), (b)(7)(C). She concluded her email by stating, "Last, don't ever send me an email then in another email forward it [to] Col (b)(6), (b)(7)(C) to FYI him especially behind my back, that was an unprofessional move on your behalf follow your chain." Complainant responded by asking LTC (b)(6), (b)(7)(C) to what email was she referring.

The foregoing email exchange resulted from Complainant initially asking LTC (b)(6), (b)(7)(C) if he could stay at (b)(6), (b)(7)(C) to help with post (b)(6), (b)(7)(C) actions. She told him no. Complainant then contacted COL (b)(6), (b)(7)(C) and asked him if he could stay at (b)(6), (b)(7)(C). LTC (b)(6), (b)(7)(C) then emailed Complainant and told him that it was unprofessional of him to "FYI" COL (b)(6), (b)(7)(C) behind her back.

On March 20, 2014, LTC (b)(6), (b)(7)(C) emailed Complainant and told him that he did an outstanding job preparing (b)(6), (b)(7)(C) for their (b)(6), (b)(7)(C) but he was to return to (b)(6), (b)(7)(C) on March 21, 2014. Later that day, Complainant reported to (b)(6), (b)(7)(C) U.S. Navy (USN), (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) USAF, (b)(6), (b)(7)(C) that LTC (b)(6), (b)(7)(C) emailed him on March 7, 2014, about emailing COL (b)(6), (b)(7)(C) behind her back, and she had inappropriately courtesy copied (b)(6), (b)(7)(C) and another (b)(6), (b)(7)(C) member of Complainant's same rank who was not in Complainant's chain of command.

During the conversation, Complainant also reported to (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with (b)(6), (b)(7)(C) a subordinate contractor employee, (b)(6), (b)(7)(C) at the Pentagon by sitting on (b)(6), (b)(7)(C) lap and laying her head on his shoulder, that LTC (b)(6), (b)(7)(C) made inappropriate sexual gestures (b)(6), (b)(7)(C) in front of another contractor employee when he (b)(6), (b)(7)(C) and that LTC (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

Following their conversation with Complainant, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) went to LTC (b)(6), (b)(7)(C) office and told her Complainant was concerned about the email she sent him chastising him for being unprofessional. LTC (b)(6), (b)(7)(C) had them bring Complainant to her office, and Complainant told LTC (b)(6), (b)(7)(C) that she disrespected him in the email, and he no longer wanted to have any contact with her.

On March 21, 2014, LTC (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) and directed (b)(6), (b)(7)(C) to document the counseling session that occurred the day prior with Complainant. (b)(6), (b)(7)(C) drafted a Memorandum for Record (MFR) and forwarded it to COL (b)(6), (b)(7)(C) on March 24, 2014. In the MFR, (b)(6), (b)(7)(C) confirmed that Complainant reported to him and (b)(6), (b)(7)(C) that LTC (b)(6), (b)(7)(C) sat on (b)(6), (b)(7)(C) lap (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) in front of another contractor when he (b)(6), (b)(7)(C)

On March 24, 2014, Complainant met with (b)(6), (b)(7)(C), COL (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C). During the conversation, Complainant reported that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with (b)(6), (b)(7)(C) and later threatened to fire (b)(6), (b)(7)(C). After Complainant told (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) that he was going to make an IG complaint against LTC (b)(6), (b)(7)(C), told Complainant that he and COL (b)(6), (b)(7)(C) would handle the situation at their level.

(b)(6), (b)(7)(C) drafted an MFR that day acknowledging that Complainant reported to him that LTC (b)(6), (b)(7)(C) made "inappropriate sexual contact," and "he wanted to open an IG investigation." (b)(6), (b)(7)(C) also wrote that after Complainant departed the room, COL (b)(6), (b)(7)(C) informed him that he was aware of the incident at the (b)(6), (b)(7)(C) and already counseled LTC (b)(6), (b)(7)(C) on her behavior.

COL (b)(6), (b)(7)(C) then contacted the Joint Staff Deputy IG, (b)(6), (b)(7)(C) on March 26, 2014, requesting guidance with a "pissed off" Airman and a "pissed off" Army lieutenant colonel. According to emails, COL (b)(6), (b)(7)(C) met (b)(6), (b)(7)(C) for lunch on or about March 30, 2014, to discuss the situation.

On March 28, 2014, the assignments branch at the Air Force Personnel Center in San Antonio, Texas, disapproved Complainant's request for a 1-year extension at (b)(6), (b)(7)(C) due to the position being a Technical Sergeant position. On March 31, 2014, COL (b)(6), (b)(7)(C) forwarded the extension disapproval email to (b)(6), (b)(7)(C) and recommended Complainant (b)(5), (b)(6), (b)(7)(C) (b)(5), (b)(6), (b)(7)(C)

On March 31, 2014, COL (b)(6), (b)(7)(C) conducted a Commander's Inquiry into Complainant's allegations against LTC (b)(6), (b)(7)(C). COL (b)(6), (b)(7)(C) wrote that he verbally counseled LTC (b)(6), (b)(7)(C) that although (b)(6), (b)(7)(C) stated he was not offended or felt sexually harassed by her sitting on his lap, she must be aware of the perceptions people may have regarding her actions. COL (b)(6), (b)(7)(C) also wrote that he counseled LTC (b)(6), (b)(7)(C) for sending Complainant the email on March 7, 2014, telling him he was unprofessional, and he told her she could have talked to him one-on-one.

On April 2, 2014, Complainant compiled a list of his accomplishments while detailed to (b)(6), (b)(7)(C) to prepare them for their (b)(6), (b)(7)(C). He emailed that list to COL (b)(6), (b)(7)(C) and told him he thought he might be competitive for the (b)(6), (b)(7)(C) Action Officer of the Month award if COL (b)(6), (b)(7)(C) wanted to submit an award package. COL (b)(6), (b)(7)(C) forwarded Complainant's email to LTC (b)(6), (b)(7)(C) that same day and wrote, "Try not to laugh out too loud." LTC (b)(6), (b)(7)(C) replied to the email, "Are you kidding me sir!!!! Really."

On April 4, 2014, the National Capital Region Mass Transportation Benefit Program notified Complainant that LTC (b)(6), (b)(7)(C) denied his application for travel benefits, stating that because Complainant stated he (b)(6), (b)(7)(C) she could not confirm that Complainant was eligible to receive those benefits. Complainant contacted (b)(6), (b)(7)(C) to have him ask LTC (b)(6), (b)(7)(C) to approve his application, and he informed COL (b)(6), (b)(7)(C) on April 8, 2014, that LTC (b)(6), (b)(7)(C) had denied his application.

On April 7, 2014, (b)(6), (b)(7)(C) emailed COL (b)(6), (b)(7)(C) and LTC (b)(6), (b)(7)(C) and informed them that she heard that while Complainant was detailed to (b)(6), (b)(7)(C) he talked poorly about LTC (b)(6), (b)(7)(C) saying LTC (b)(6), (b)(7)(C) was difficult to work with and did not have any (b)(6), (b)(7)(C) experience. (b)(6), (b)(7)(C) stated that she felt Complainant talking about his supervisor to a GS-15 employee in another agency was completely out of line and disrespectful. The next day, LTC (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) and told her COL (b)(6), (b)(7)(C) sent her home yesterday because she was too angry and had to cool down. COL (b)(6), (b)(7)(C) forwarded (b)(6), (b)(7)(C) email to (b)(6), (b)(7)(C) and informed him Complainant's actions "were way out of line."

On April 15, 2014, (b)(6), (b)(7)(C) USAF, (b)(6), (b)(7)(C) provided a Letter of Evaluation (LOE) for Complainant's chain of command to capture the accomplishments Complainant made while detailed to (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) made all positive notes on Complainant's performance stating he "left (b)(6), (b)(7)(C) better than he found it." (b)(6), (b)(7)(C) then wrote Complainant a personal thank you letter for the tremendous work he did in preparing (b)(6), (b)(7)(C) for their (b)(6), (b)(7)(C).

On April 16, 2014, Complainant filed an IG complaint with the JSIG alleging LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) then later threatened to fire (b)(6), (b)(7)(C). During email exchanges with the JSIG, Complainant told them that he believed he reported a "sexual assault" to (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) on March 24, 2014, and they tried to cover up the incident by conducting a commander's inquiry instead of turning the issue over to the Army Criminal Investigations Command (CID). Complainant told the IG that LTC (b)(6), (b)(7)(C) may be involved in inappropriate, unprofessional, unethical, fraternizing relationships with subordinates.

According to Complainant, COL (b)(6), (b)(7)(C) was already aware he had filed an IG complaint when Complainant returned to work the following Monday, April 21, 2014, because COL (b)(6), (b)(7)(C) approached him and said, "I understand you made an IG complaint." COL (b)(6), (b)(7)(C) confirmed the JSIG contacted him regarding the IG complaint, and he gave them the entire commander's inquiry package that he conducted on March 31, 2014, including a memorandum explaining how he verbally counseled LTC (b)(6), (b)(7)(C).

When asked if he was aware if Complainant actually made any IG complaints, COL (b)(6), (b)(7)(C) said the only one he knew of was when he received a phone call from (b)(6), (b)(7)(C) whatever his name is" from the JSIG. According to March 2014 email exchanges between the two, COL (b)(6), (b)(7)(C) met (b)(6), (b)(7)(C) for lunch and referred to (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) referred to COL (b)(6), (b)(7)(C).

On April 22, 2014, the JSIG notified Complainant that they determined appropriate action was taken regarding his complaint against LTC (b)(6), (b)(7)(C) and the JSIG would take no further action.

The next day, COL (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) Chief of Staff, informing (b)(6), (b)(7)(C) the JSIG was not interested in Complainant's IG complaint since they felt the actions COL (b)(6), (b)(7)(C) took regarding Complainant's allegations were appropriate. COL (b)(6), (b)(7)(C) told (b)(6), (b)(7)(C) that Complainant "has it out for LTC (b)(6), (b)(7)(C) and he is going to continue his attempts to take her down," that Complainant may try to get CID involved, and that "LTC (b)(6), (b)(7)(C) is ready to launch on [Complainant] and rightfully so," but he had been successful at "holding her in check."

In early June 2014, after Complainant requested to be moved out of the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) reassigned him to the (b)(6), (b)(7)(C) beginning on (b)(6), (b)(7)(C) with an effective date of (b)(6), (b)(7)(C) since his EPR was closing out on (b)(6), (b)(7)(C) From (b)(6), (b)(7)(C) through (b)(6), (b)(7)(C) Complainant worked at the (b)(6), (b)(7)(C) under the supervision of (b)(6), (b)(7)(C) USN, (b)(6), (b)(7)(C) On or about (b)(6), (b)(7)(C) he was given the opportunity to replace (b)(6), (b)(7)(C) under the supervision of (b)(6), (b)(7)(C) USAF.

On June 10, 2014, (b)(6), (b)(7)(C) emailed COL (b)(6), (b)(7)(C) and informed him that an anonymous person reported that LTC (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) did not include the person's name because the person asked not to be identified for fear of negative reaction from LTC (b)(6), (b)(7)(C) then told COL (b)(6), (b)(7)(C) he should contact his "IG friend" to see what they thought.

When we first interviewed COL (b)(6), (b)(7)(C) he suggested Complainant's EPR could not have been a reprisal action because LTC (b)(6), (b)(7)(C) notified Complainant in January 2014, prior to the protected communications, on his midterm feedback worksheet that he would not receive a very favorable EPR. COL (b)(6), (b)(7)(C) also repeated several times during our interview that LTC (b)(6), (b)(7)(C) had no animosity toward Complainant for making complaints against her, but he

emailed (b)(6), (b)(7)(C) in April 2014 to inform him the JSIG was not going to take action and stated LTC (b)(6), (b)(7)(C) was ready to "launch" on Complainant, but he was holding her back.

In June 2014, LTG (b)(6), (b)(7)(C) directed an Army Regulation (AR) 15-6 investigation after (b)(6), (b)(7)(C) reported a hostile work environment to LTG (b)(6), (b)(7)(C). LTG (b)(6), (b)(7)(C) amended the investigation on September 2, 2014, and instructed the investigating officer to investigate the circumstances surrounding LTC (b)(6), (b)(7)(C) sitting on (b)(6), (b)(7)(C) lap, COL (b)(6), (b)(7)(C) knowledge of the incident, and COL (b)(6), (b)(7)(C) response when he became aware of the incident.

When we asked how LTG (b)(6), (b)(7)(C) got involved and started an investigation into her conduct, LTC (b)(6), (b)(7)(C) testified Complainant went directly to LTG (b)(6), (b)(7)(C) and made accusations to him about her having an inappropriate relationship with (b)(6), (b)(7)(C). She later explained that Complainant approached LTG (b)(6), (b)(7)(C) in March 2014, but said it was (b)(6), (b)(7)(C) going to LTG (b)(6), (b)(7)(C) in June 2014 that "launched" the AR 15-6 investigation after (b)(6), (b)(7)(C) decided to "change his story" and say she had made sexual advances toward him.

On June 23, 2014, Complainant provided a statement to the AR 15-6 investigating officer testifying LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with (b)(6), (b)(7)(C) and then threatened to fire him. He also testified LTC (b)(6), (b)(7)(C) made inappropriate sexual gestures to another contractor employee by (b)(6), (b)(7)(C) in front of the employee's face after he (b)(6), (b)(7)(C).

The AR 15-6 investigating officer asked Complainant to tell him about the IG complaint he made. Complainant told the investigating officer that he made his IG complaint to the JSIG because he felt COL (b)(6), (b)(7)(C) tried to cover up the entire incident. Complainant further stated COL (b)(6), (b)(7)(C) later told him he was labeled a "troublemaker" for making an IG complaint. When we interviewed them, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) said they did not know if Complainant gave testimony in the AR 15-6 investigation, and COL (b)(6), (b)(7)(C) denied calling Complainant a troublemaker.

Around the end of July 2014, (b)(6), (b)(7)(C) received Complainant's draft EPR from the (b)(6), (b)(7)(C) to review.¹ According to (b)(6), (b)(7)(C), LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) rated Complainant an overall (b)(6), (b)(7)(C) and worded it in Army "lingo." (b)(6), (b)(7)(C) said she met with (b)(6), (b)(7)(C) and told him, "We can't leave this EPR in this particular format." (b)(6), (b)(7)(C) explained that she knew of particular things Complainant did during the rating period where he received "kudos" that were left out of the EPR. (b)(6), (b)(7)(C) said she and (b)(6), (b)(7)(C) changed some of the wording on the EPR, but LTC (b)(6), (b)(7)(C) said "No" and "kicked it back" twice.

(b)(6), (b)(7)(C) said she told (b)(6), (b)(7)(C) that if LTC (b)(6), (b)(7)(C) wanted to rate Complainant as a (b)(6), (b)(7)(C), she would need documentation in writing to justify the rating, but the only documentation LTC (b)(6), (b)(7)(C) had was the midterm feedback, which did not support a (b)(6), (b)(7)(C).

¹ As the (b)(6), (b)(7)(C) reviews all (b)(6), (b)(7)(C) enlisted evaluations for administrative accuracy prior to them being finalized.

(b)(6), (b)(7)(C) also testified that she believed Complainant should have been rated a (b)(6), (b)(7)(C) but not (b)(6), (b)(7)(C) 2

(b)(6), (b)(7)(C) confirmed that when LTC (b)(6), (b)(7)(C) showed him Complainant's draft EPR, he talked to (b)(6), (b)(7)(C) because he believed "there's no way this (b)(6), (b)(7)(C) is going to fly." (b)(6), (b)(7)(C) said they also discussed whether or not the (b)(6), (b)(7)(C) things LTC (b)(6), (b)(7)(C) was attempting to give Complainant were tied to the complaints he had made against her, and he told (b)(6), (b)(7)(C) there's "no way" Complainant was (b)(6), (b)(7)(C) knowing all the accomplishments he had done.

(b)(6), (b)(7)(C) confirmed that LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) had first rated Complainant even lower and indicated they wanted to rate him an overall (b)(6), (b)(7)(C) but (b)(6), (b)(7)(C) told them that would require a "significant documentation burden to justify a (b)(6), (b)(7)(C) or any specific negative comment," so LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) raised the ratings on the front and changed the overall rating on the back to a (b)(6), (b)(7)(C)

LTC (b)(6), (b)(7)(C) acknowledged that she wrote Complainant's first draft EPR and rated him a (b)(6), (b)(7)(C). She stated that after input from (b)(6), (b)(7)(C) she raised the overall rating to a (b)(6), (b)(7)(C). On August 12, 2014, LTC (b)(6), (b)(7)(C) emailed Complainant's EPR to (b)(6), (b)(7)(C) for his review. (b)(6), (b)(7)(C) recommended to LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) that they change one of the comments on the EPR from (b)(6), (b)(7)(C) because (b)(6), (b)(7)(C) said (b)(6), (b)(7)(C)

On August 13, 2014, after Complainant refused to meet with LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) to discuss his EPR, (b)(6), (b)(7)(C) emailed the draft EPR to Complainant. (b)(6), (b)(7)(C) informed Complainant that he would either be relieved LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were not giving him (b)(6), (b)(7)(C) or he would be "concerned/upset" that he was not getting a (b)(6), (b)(7)(C)

Complainant then emailed (b)(6), (b)(7)(C) claiming he was a whistleblower, and his "marked down" EPR was a reprisal for reporting LTC (b)(6), (b)(7)(C) inappropriate sexual contact. (b)(6), (b)(7)(C) replied, "I personally don't see a 'reprisal' since I am not aware of any of your accusations resulting in an actual wrong doing being identified with regard to the actions on the part of either LTC (b)(6), (b)(7)(C) or COL (b)(6), (b)(7)(C)." (b)(6), (b)(7)(C) went on to write:

I think if you actually identified something that turned out to be wrong doing or at least corroborated bad behavior, and then they had negative repercussions like being reprimanded based on your accusations and then they attempted to give you a (b)(6), (b)(7)(C) I would agree that you would definitely have a case for a reprisal.

On September 5, 2014, COL (b)(6), (b)(7)(C) testified in the AR 15-6 investigation and stated Complainant told him on March 24, 2014, that he was going to file an IG complaint. He added

² On the Air Force EPR worksheet, there are six performance assessment blocks on the front of the EPR and two overall performance blocks on the back. The term (b)(6), (b)(7)(C) is a slang term that refers to an EPR where the member is given (b)(6), (b)(7)(C)

he called the JSIG as soon as Complainant threatened to go to the IG, and he was aware that Complainant later did file an IG complaint. COL (b)(6), (b)(7)(C) went on to say that Complainant only filed an IG complaint against LTC (b)(6), (b)(7)(C) because she had given him a directive to return from his detail at (b)(6), (b)(7)(C) and "called [him] out" for being unprofessional in an email. COL (b)(6), (b)(7)(C) concluded that Complainant only filed his IG complaint because he "did not get his way."

(b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) both indicated they took Complainant's intent to go to the IG as a threat to report LTC (b)(6), (b)(7)(C) behavior to the IG if he was forced to return to work for LTC (b)(6), (b)(7)(C) and a retaliation because LTC (b)(6), (b)(7)(C) "called him out" as being unprofessional. COL (b)(6), (b)(7)(C) said he had a "problem" with the way Complainant waited until March 2014 to report that LTC (b)(6), (b)(7)(C) sat on (b)(6), (b)(7)(C) lap in (b)(6), (b)(7)(C). When we asked Complainant why he waited so long, Complainant said he should have reported it earlier, but when he heard in March 2014 that LTC (b)(6), (b)(7)(C) threatened to fire (b)(6), (b)(7)(C) he thought the work environment was becoming hostile, and he wanted to "step in, to help save this guy."

On September 8, 2014, LTC (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) employer, (b)(6), (b)(7)(C) and asked him to provide a statement from his company verifying that (b)(6), (b)(7)(C) resigned from his job (versus being fired), because the "vicious attacks" against her were "rearing its [sic] ugly head again."

On September 19, 2014, LTC (b)(6), (b)(7)(C) testified in LTG (b)(6), (b)(7)(C) AR 15-6 investigation and admitted to sitting on (b)(6), (b)(7)(C) lap at the (b)(6), (b)(7)(C) LTC (b)(6), (b)(7)(C) stated that it was innocent fun and is now turning into a "weapon of destruction" because it only became offensive 6 months later "when things are not going their way or getting what they want." LTC (b)(6), (b)(7)(C) testified that she was referring to (b)(6), (b)(7)(C) and another contractor employee, (b)(6), (b)(7)(C) who was being removed from the contract. LTC (b)(6), (b)(7)(C) said the two of them took Complainant's accusation of inappropriate sexual contact and "ran with it."

On October 1, 2014, LTG (b)(6), (b)(7)(C) investigating officer presented his findings in the AR 15-6 investigation and recommended LTC (b)(6), (b)(7)(C) be reassigned to the Army without disciplinary action. The investigating officer concluded that LTC (b)(6), (b)(7)(C) leadership style, documented unprofessional behavior, and judgment lapses were not appropriate for a senior staff position on the Joint Staff.

On November 15, 2014, Complainant filed an IG complaint with DoD IG alleging COL (b)(6), (b)(7)(C) failed to take appropriate action regarding LTC (b)(6), (b)(7)(C) inappropriate sexual contact, and the JSIG failed to properly investigate COL (b)(6), (b)(7)(C) for inappropriately handling his report of LTC (b)(6), (b)(7)(C) behavior because COL (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) were friends. According to Complainant, COL (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) graduated from (b)(6), (b)(7)(C) together, and both were assigned to the Joint Staff together.

The DoD Hotline referred the complaint to Policy and Oversight (P&O), which determined there was insufficient evidence to warrant a review of the JSIG. The DoD Hotline then referred the complaint to Army CID to review the allegation of inappropriate sexual contact. CID contacted Complainant on December 18, 2014, and Complainant gave them everything he submitted to DoD IG in his November 15, 2014, complaint.

From approximately August through November 2014, Complainant's EPR went back and forth between the (b)(6), (b)(7)(C) and the Joint Staff (b)(6), (b)(7)(C) because (b)(6), (b)(7)(C) USAF, Joint Staff (b)(6), (b)(7)(C) in the Joint Staff, and (b)(6), (b)(7)(C) USAF, (b)(6), (b)(7)(C) for the Joint Staff, disagreed with LTC the (b)(6), (b)(7)(C) rating given by LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) said she and (b)(6), (b)(7)(C) met twice with LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) to discuss why they were downgrading his EPR to a (b)(6), (b)(7)(C) without documentation. LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) told her Complainant was disrespectful and not a "team player," and they refused to change their (b)(6), (b)(7)(C) rating on the EPR. According to (b)(6), (b)(7)(C) LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) kept trying to bring up Complainant's complaints about LTC (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) would "cut them off" and tell them, "I can't get into what's going on in an investigation ... my concern here is the EPR." When asked if LTC (b)(6), (b)(7)(C) appeared angry during their meetings, (b)(6), (b)(7)(C) said, "Oh yeah she did. She was, like, you know, she was very, very, like – not, like, irate, but very, like, 'I can't believe I'm discussing this and I refuse to change that EPR. He did this to me, he did that to me,' very, like, stern and, you know, 'No, I cannot change it. I will not change it.'"

(b)(6), (b)(7)(C) said LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) could not produce any documentation to support rating Complainant less than a (b)(6), (b)(7)(C) and his "gut feeling" was telling him that "something wasn't right." During their two meetings with LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) to discuss Complainant's EPR, (b)(6), (b)(7)(C) said LTC (b)(6), (b)(7)(C) would get "heated when we talked about him [Complainant] – I mean really heated," and she and COL (b)(6), (b)(7)(C) mentioned Complainant's complaints about LTC (b)(6), (b)(7)(C) regarding inappropriate sexual contact and how they felt Complainant was trying to "ruin her career" by making formal complaints. (b)(6), (b)(7)(C) said in his "30-some years of seeing this it just – it seemed personal. You felt personally attacked so here's a little bit of repercussion on it."

Finally, on November 26, 2014, LTC (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) and gave her specific reasons for why she gave Complainant the ratings and comments that she did. In her attachment to the email, LTC (b)(6), (b)(7)(C) wrote:

- [Complainant]'s (b)(6), (b)(7)(C) follow the chain of command, and (b)(6), (b)(7)(C)
- Rating him a (b)(6), (b)(7)(C)
- He (b)(6), (b)(7)(C) and use the chain of command.
- He stated that he no longer wanted to be in the office with me alone, for fear of retribution or confrontation.
- He made disrespectful comments outside of our organization to my peers and senior leaders.
- After I declined his request for renewal of the Mass Transit Benefits, he threatened to file an IG complaint against me and made false accusations about me having an

inappropriate relationship with one of my contractors. This was a personal and deliberate attack against my integrity and my professional career. At this point, it was my utmost intention to file a complaint and request for disciplinary action.

- While I recognize that [Complainant] has displayed appropriate levels of technical competence, he (b)(6), (b)(7)(C)

When asked why she wrote that Complainant was not following the chain of command, LTC (b)(6), (b)(7)(C) referenced his circumventing her with work things by going to COL (b)(6), (b)(7)(C) his talking poorly about her to a GS-15 at (b)(6), (b)(7)(C) and "the ultimate," his discussing issues about her to LTG (b)(6), (b)(7)(C) without giving his own leadership the opportunity to resolve the issues they had.

When we asked why she wrote that Complainant threatened to file an IG complaint against her, LTC (b)(6), (b)(7)(C) said she did not mean that Complainant was receiving the rating on the EPR because he threatened to make an IG complaint against her; she said, "But the accusations that he began to make was (sic) false as far as what I'm hearing." LTC (b)(6), (b)(7)(C) said that she only sat on (b)(6), (b)(7)(C) knee for a couple of seconds, and then, 4 months later, she was the (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) "unprofessional," and "those couple of seconds turned into all of that in [Complainant]'s mind. That's because he was just going after me any way he felt that he could."

On January 26, 2015, after several months of input from (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) raised their rating of Complainant in the "Leadership" block from (b)(6), (b)(7)(C) to (b)(6), (b)(7)(C) and signed the EPR. The subject line of her email to COL (b)(6), (b)(7)(C) read, (b)(6), (b)(7)(C) [sic] Eval."

COL (b)(6), (b)(7)(C) replied to LTC (b)(6), (b)(7)(C) email 2 minutes later with an encrypted email, and the subject line was changed to, "RE: (b)(6), (b)(7)(C) Evil." This corrected the spelling of Complainant's name and changed the word eval to evil. However, we were unable to open the encrypted email due to COL (b)(6), (b)(7)(C) having a new security certificate. We interviewed COL (b)(6), (b)(7)(C) in his office and asked him to open the email for us. He was unable to open the encrypted email as well due to a new security certificate and his new Common Access Card, but he said, "I doubt if I did that on purpose," and he followed up with an email explaining he had his auto-correct spell check turned on. We independently duplicated an email with the same subject line and determined the Microsoft Outlook auto-spell-check feature does change (b)(6), (b)(7)(C) and does change "Eval" to "Evil," provided the sender agrees to both corrections prior to sending.

In the final version of the EPR, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) marked Complainant down in two areas on the front of the EPR and gave him an overall rating of (b)(6), (b)(7)(C) (b)(6), (b)(7)(C). They also did not include on the EPR that Complainant had been "coined" by the CJCS and received a letter of appreciation from MG (b)(6), (b)(7)(C). They did, however, annotate that Complainant received a coin from the (b)(6), (b)(7)(C) COL (b)(6), (b)(7)(C).

Complainant was not rated less than an overall rating of (b)(6), (b)(7)(C) on his last nine EPRs, and in the total of (b)(6), (b)(7)(C) over his career, Complainant received only one evaluation (2004) rated (b)(6), (b)(7)(C). This was, however, his first EPR from LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C). Complainant had two previous EPRs at his Joint Staff assignment. He was rated an overall rating of (b)(6), (b)(7)(C) on both. On his (b)(6), (b)(7)(C), his previous rater, (b)(6), (b)(7)(C) USA, and previous senior rater, (b)(6), (b)(7)(C) USA, rated Complainant an (b)(6), (b)(7)(C) and wrote the following promotion statements:

- Elite SNCO! (b)(6), (b)(7)(C) --endorsed by Sr SES (b)(6), (b)(7)(C) Pentagon Officer; SMSgt now!
- Praised by Dir (b)(6), (b)(7)(C) Superior Ldr/JS's premier (b)(6), (b)(7)(C) SNCO; awarded JSAM & JSCM for achiev--Promote ASAP!

LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) provided the following promotion statements on Complainant's 2014 EPR:

- Sound SNCO; challenge with tough leadership & team-building opportunities in preparation for E8 promotion
- Handpicked to support (b)(6), (b)(7)(C) /coined by (b)(6), (b)(7)(C)

For the rating period of July 1, 2013, through June 30, 2014, under the supervision of LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C), the only documented feedback Complainant received on his performance were several positive comments from senior leaders, his January 2014 midterm feedback worksheet where LTC (b)(6), (b)(7)(C) wrote that Complainant was an "Outstanding Airman," and LTC (b)(6), (b)(7)(C) March 7, 2014, email to Complainant telling him it was unprofessional of him to go around her to COL (b)(6), (b)(7)(C).

According to COL (b)(6), (b)(7)(C), prior to Complainant reporting LTC (b)(6), (b)(7)(C) inappropriate sexual contact, Complainant was told on his midterm feedback worksheet and in the March 7, 2014, email from LTC (b)(6), (b)(7)(C) regarding his unprofessionalism that he was not going to receive a very favorable report. However, nothing on the midterm feedback worksheet or in the March 7, 2014, email indicated Complainant would receive an unfavorable EPR.

(b)(6), (b)(7)(C) said when he asked LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) to show him any negative documentation they had on Complainant's performance, LTC (b)(6), (b)(7)(C) pointed out her comments on the back of the January 2014 midterm feedback worksheet, but (b)(6), (b)(7)(C) told her that was not a negative; that was her expectations for Complainant, and it was not telling Complainant what he was not doing in his job.

According to Air Force Instruction (AFI) 36-2406, "Officer and Enlisted Evaluation Systems," Chapter 2:

- Performance feedback is a private, formal communication a rater uses to tell a ratee what is expected regarding duty performance and how well the ratee is meeting those expectations.
- The primary purpose of the initial feedback session is to establish expectations for the upcoming rating period.
- For mid-term feedback sessions, the rater will indicate how the ratee is meeting the established expectations by marking either "Does Not Meet," "Meets," "Above Average," or "Clearly Exceeds." These markings do not directly translate to a rating on the evaluation, but provide an indication of how the ratee is meeting the expectations set forth by the rater.

On February 3, 2015, (b)(6), (b)(7)(C) reviewed Complainant's 2014 EPR as the (b)(6), (b)(7)(C) and non-concurred with LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) ratings on the EPR. (b)(6), (b)(7)(C) attached an LOE to the EPR stating:

- No documentation to support an overall performance assessment of (b)(6), (b)(7)(C)
- Member received outstanding comments on LOE, LOA, and other supporting documents
- Provided only one feedback form for the rating period; did not support the (b)(6), (b)(7)(C) rating or markdowns in Sec III 4,6

According to AFI 36-2406, paragraph 1.9, when the final evaluator on an EPR disagrees with the previous evaluator's rating, the final evaluator documents their reason for the disagreement and documents their own rating. The final evaluator's rating is entered into the member's official record. (b)(6), (b)(7)(C) as the final evaluator, documented her reasons for disagreeing with LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) rating of Complainant, but she did not make a final rating; therefore, the overall rating of (b)(6), (b)(7)(C) was entered into Complainant's records as the final rating on his EPR. (b)(6), (b)(7)(C) said she never met Complainant prior to this and this was "very sticky" for her, so instead of changing the rating to a (b)(6), (b)(7)(C) without observing his performance, she just documented in her disagreement that Complainant "shouldn't be a (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) classified Complainant's EPR as a (b)(6), (b)(7)(C) EPR and said, "When I think of a senior master sergeant, they wouldn't have an EPR like that in their record."

LTC (b)(6), (b)(7)(C) said her overall issue with Complainant was that he (b)(6), (b)(7)(C). He disrespected her by telling the GS-15 over at (b)(6), (b)(7)(C) that she was inexperienced, and then he "went off the deep end" when he came back to (b)(6), (b)(7)(C) and started saying he did not want to work for her anymore. LTC (b)(6), (b)(7)(C) said when writing Complainant's EPR, she considered his (b)(6), (b)(7)(C). (b)(6), (b)(7)(C) also said Complainant had "issues with female supervisors, period," but we note that Complainant's rater and senior rater on his 2012 EPR were both female, and both rated him an (b)(6), (b)(7)(C) with very favorable comments.

When asked if she felt like Complainant was trying to destroy her career, LTC (b)(6), (b)(7)(C) said, "With all this stuff going down the way it did, I just felt like I was a 'piñata' for (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) as well as [Complainant]." In the end, when asked if Complainant's complaints about her factored at all into her writing of his EPR, LTC (b)(6), (b)(7)(C) said, "No, because they're not true."

COL (b)(6), (b)(7)(C) said he rated Complainant an overall (b)(6), (b)(7)(C) because Complainant is at "the top of his class" as a technical sergeant (E6), but as a master sergeant (E7), he was not (b)(6), (b)(7)(C). When asked if Complainant had not made his complaints against LTC (b)(6), (b)(7)(C), COL (b)(6), (b)(7)(C) finished the sentence by saying, "His eval would have still read the same." When asked who else we should talk to that would have knowledge of our focus on whistleblower reprisal, COL (b)(6), (b)(7)(C) laughed and said, "I just have a problem with the way that statement is read because we've already assumed that this is whistleblower."

(b)(6), (b)(7)(C) stated that while he was looking into Complainant's EPR and the reasons why he was marked down, he contacted the (b)(6), (b)(7)(C) and inquired about his performance in his new position. (b)(6), (b)(7)(C) responded by email on January 20, 2015, stating Complainant's performance while assigned to his division was "outstanding." (b)(6), (b)(7)(C) wrote:

In fact, I have been on the JS for nearly three years and in those years [Complainant] has worked directly for me in some capacity. With that said, I can say without hesitation, he has never performance [*sic*] in any way less than outstanding. He is a solid team member and has always committed himself to the mission.

On February 11, 2015, now (b)(6), (b)(7)(C) whom Complainant reported to after moving out of the (b)(6), (b)(7)(C) wrote a letter to AFPC informing them that Complainant's performance while assigned to him was outstanding. (b)(6), (b)(7)(C) gave several instances of stellar performance and concluded:

- An E-7 in the Air Force handily brought productivity up on my (b)(6), (b)(7)(C) by an order of magnitude. This position is correctly billeted to a GS-13. He crushed the job!
- [Complainant] was pulled from my team to fill another critical billet. This time the billet was an O-4/O-5 position. He was hand-picked, yet again.
- Simply put, where ever (b)(6), (b)(7)(C) assigned [Complainant], success and production followed.

EPRs are one of the weighted factors used to calculate an Airman's score toward promotion to the next rank. The score is calculated by using the EPRs in the Airman's records for the past 5 years, with the most recent EPR carrying the most weight. Using table 2.2 in Air Force Instruction (AFI) 36-2502, "Airman Promotion/Demotion Programs," to calculate Complainant's EPR score for promotion, with a (b)(6), (b)(7)(C) on top of his records and his previous EPRs,

which were all rated (b)(6), (b)(7)(C). Complainant's EPR score is (b)(6), (b)(7)(C). If he had received a (b)(6), (b)(7)(C) on this EPR, his EPR score would be (b)(6), (b)(7)(C) points toward promotion.

Complainant's EPR reporting period ended on June 30, 2014. The Promotion Eligibility Cut-Off Date (PECD) for records to be entered into a master sergeant's personnel file for every years' senior master sergeant promotion cycle is September 30, 2014. According to AFI 36-2406, "Officer and Enlisted Evaluation Systems," paragraph 1.4.2.3, completed EPRs are required to be submitted to AFPC within 45 days of closeout so they can be placed in the member's records no later than 60 days after the closeout date.

According to AFI 36-2502, paragraph 2.7.6.1, an Airmen must have an EPR closing out within the last 12 months prior to the PECD to be eligible for promotion. As of the PECD, September 30, 2014, Complainant's last EPR in his records closed out on June 30, 2013, more than 12 months prior.

By regulation, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were required to submit his June 30, 2014, EPR to AFPC by August 14, 2014; however, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) did not complete and sign Complainant's EPR until January 26, 2015. Consequently, Complainant received a score of zero for the 2015 SMSgt promotion cycle due to his "Missing EPR."

On March 9, 2015, Complainant filed this whistleblower reprisal complaint with DoD IG alleging he received a downgraded EPR that was submitted late, causing him to be ineligible for promotion, in reprisal for reporting LTC (b)(6), (b)(7)(C) make inappropriate sexual contact with a contractor to the chain of command and reporting COL (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) improper handling of his report of LTC (b)(6), (b)(7)(C) behavior to the JSIG.

On March 31, 2015, (b)(6), (b)(7)(C) notified LTC (b)(6), (b)(7)(C) that Army CID was investigating her as a subject in their investigation into the alleged sexual assault incident that occurred during the (b)(6), (b)(7)(C). That same day, LTG (b)(6), (b)(7)(C) removed LTC (b)(6), (b)(7)(C) from the Joint Staff and returned her to the Army stating her leadership style and demeanor were incompatible with continued service on the Joint Staff.

On June 19, 2015, Complainant's new rater, (b)(6), (b)(7)(C), and new senior rater, (b)(6), (b)(7)(C) signed his next annual EPR and rated him a (b)(6), (b)(7)(C).

VI. ANALYSIS

The elements of reprisal are protected communication, knowledge of the protected communication on the part of the responsible management official; a personnel action taken, threatened, or withheld; and a causal connection between the protected communication and the personnel action. The causal connection is resolved by answering the question in paragraph D, below. If the evidence does not establish that the personnel action would have been taken, threatened, or withheld even absent the protected communication, then the complaint is substantiated. Conversely, if the evidence establishes that it would have been taken, threatened,

or withheld absent the protected communication, then the complaint is not substantiated. Below, we analyze each of the elements.

A. Did Complainant make or prepare to make a protected communication, or was Complainant perceived as having made a protected communication?

We determined that Complainant made six protected communications under 10 U.S.C. 1034.

March 20, 2014, sexual misconduct to chain of command

Complainant's March 20, 2014, report to (b)(6), (b)(7)(C) that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor is a protected communication since he reported a violation of law, rule, or regulation to a member of the chain of command.

March 24, 2014, sexual misconduct to chain of command

Complainant's March 24, 2014, report to (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor is a protected communication since he reported a violation of law, rule, or regulation to a member of the chain of command.

April 16, 2014, IG complaint

Complainant's April 16, 2014, report to the JSIG that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor and (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) had not handled his report appropriately is a protected communication since he made a lawful communication to an IG.

June 23, 2014, AR 15-6 investigation testimony

Complainant's June 23, 2014, sworn statement to the investigating officer during LTG (b)(6), (b)(7)(C) AR 15-6 investigation is a protected communication since he testified in an investigation or proceeding related to a protected communication.

November 15, 2014, IG Complaint

Complainant's November 15, 2014, report to the DoD IG that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor, (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) did not handle his report appropriately, and the JSIG failed to properly investigate (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) is a protected communication since he made a lawful communication to an IG.

December 2014, report to CID

Complainant's December 2014, report to the Army CID that LTC (b)(6), (b)(7)(C) made inappropriate sexual contact with a contractor is a protected disclosure since he reported what he believed to be a criminal offense to a DoD law enforcement agency.

As described above, a preponderance of the evidence established that Complainant made six protected communications under 10 U.S.C. 1034.

B. Was an unfavorable personnel action taken or threatened against Complainant, or was a favorable personnel action withheld or threatened to be withheld from Complainant?

We determined that Complainant was the subject of a personnel action as defined by 10 U.S.C. 1034 when he received his June 30, 2014, EPR on February 3, 2015.

According to DoD Directive 7050.06, a performance evaluation is a personnel action. Because an overall rating of (b)(6), (b)(7)(C) lowered Complainant's total number of points toward promotion, the lowered rating affected his chances for promotion. Furthermore, by not signing and submitting the EPR prior to the PECD, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) rendered Complainant ineligible for the 2015 senior master sergeant promotion cycle.

As described above, we determined that Complainant was the subject of a personnel action.

C. Did the responsible management official(s) have knowledge of Complainant's protected communication(s) or perceive Complainant as making or preparing protected communication(s)?

We determined that LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were aware of some of Complainant's protected communications.

LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were aware of Complainant's March 20, 2014, protected communication to (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) in which he reported inappropriate sexual contact.

LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were aware of Complainant's March 24, 2014, protected communication to (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) in which he reported inappropriate sexual contact and communicated his intent to file an IG complaint.

LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were aware that Complainant filed an IG complaint with the JSIG on April 16, 2014, in which he reported inappropriate sexual contact and mishandling of his report of the inappropriate sexual contact to the chain of command.

LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) both testified they were unaware if Complainant testified in LTG (b)(6), (b)(7)(C) investigation on June 23, 2014. The investigation was looking into Complainant's allegation regarding inappropriate sexual contact, and both LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) knew Complainant had previously made the allegation; however, we could not determine with reasonable certainty that they were aware he testified in the investigation.

LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were not aware that Complainant filed his November 15, 2014, IG complaint to DoD IG. The Hotline only referred the complaint to CID after DoD IG P&O declined to open a case.

LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were not aware Complainant spoke to Army CID in December 2014. CID did not notify LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) they were being investigated until after they completed and signed Complainant's EPR.

As described above, we determined that LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were aware of Complainant's protected communications to the chain of command and the JSIG.

D. Would the same personnel action(s) have been taken, withheld, or threatened absent the protected communication(s)?

We determined that LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) would not have taken the personnel action against the Complainant absent his protected communications.

LTC (b)(6), (b)(7)(C) stated reasons for the EPR ratings

LTC (b)(6), (b)(7)(C) said she thought Complainant was a (b)(6), (b)(7)(C) because he (b)(6), (b)(7)(C) he disrespected her by talking poorly of her to a GS-15 employee at (b)(6), (b)(7)(C) and he "went off the deep end" when he came back to (b)(6), (b)(7)(C) and started saying he did not want to work for her anymore. LTC (b)(6), (b)(7)(C) said she considered Complainant's (b)(6), (b)(7)(C)

However, she emailed (b)(6), (b)(7)(C) in November 2014 explaining she rated Complainant the way she did because he did not follow the chain of command, and he threatened to file an IG complaint against her. Further, other than sending Complainant the March 7, 2014 email, LTC (b)(6), (b)(7)(C) did not make any contemporaneous documentation of instances in which she found Complainant's (b)(6), (b)(7)(C) to be lacking. She also made no record of instances when she counseled Complainant on such matters.

COL (b)(6), (b)(7)(C) stated reasons for the EPR ratings

COL (b)(6), (b)(7)(C) said he rated Complainant an overall (b)(6), (b)(7)(C) because Complainant is at "the top of his class" as a technical sergeant (E6), but as a master sergeant, he was (b)(6), (b)(7)(C). Additionally, he said Complainant was told on his midterm feedback worksheet and in the March 7, 2014, email from LTC (b)(6), (b)(7)(C) regarding his unprofessionalism that he was not going to receive a very favorable report. However, there was no indication on the worksheet or in the email suggesting Complainant would not receive a favorable report. Further, COL (b)(6), (b)(7)(C) pointed to no other documentation concerning Complainant's leadership or professionalism. In light of the evidence, we did not find COL (b)(6), (b)(7)(C) testimony to be credible.

Timing between protected communication and personnel action

The close timing between Complainant's protected communications and his EPR raises an inference of reprisal.

LTC (b)(6), (b)(7)(C) motive to reprise

LTC (b)(6), (b)(7)(C) had motive to reprise against Complainant for reporting she made inappropriate sexual contact with (b)(6), (b)(7)(C). COL (b)(6), (b)(7)(C) was adamant that LTC (b)(6), (b)(7)(C) never displayed any animosity toward Complainant's complaints about her. However, the evidence shows that LTC (b)(6), (b)(7)(C) displayed numerous instances of animosity toward Complainant after he initially made allegations against her on March 20 and 24, 2014, to the chain of command and threatened to make an IG complaint:

- April 2, 2014 – COL (b)(6), (b)(7)(C) emailed LTC (b)(6), (b)(7)(C) and told her Complainant wanted him to submit him for an award and she should not laugh too loud. LTC (b)(6), (b)(7)(C) responded, "Are you kidding me sir!!!! Really."
- April 8, 2014 – After (b)(6), (b)(7)(C) informed LTC (b)(6), (b)(7)(C) that Complainant had talked poorly about her to a GS-15 at (b)(6), (b)(7)(C), LTC (b)(6), (b)(7)(C) replied that COL (b)(6), (b)(7)(C) had to send her home because she was "too angry" at Complainant.
- April 23, 2014 – COL (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) and told him the JSIG was not going to act on Complainant's IG complaint and LTC (b)(6), (b)(7)(C) was ready to "launch" on Complainant, but he had been successful at "holding her in check."
- September 8, 2014 – LTC (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) stating the "vicious attacks" against her were "rearing its ugly head again."
- September 19, 2014 – LTC (b)(6), (b)(7)(C) testified in LTG (b)(6), (b)(7)(C) AR 15-6 investigation stating the accusations Complainant started were being used as a "weapon of destruction."
- November 26, 2014, LTC (b)(6), (b)(7)(C) emailed (b)(6), (b)(7)(C) and explained her reasons for the ratings she gave Complainant on his EPR, one of which being that Complainant "threatened to file an IG complaint against [her]," and she considered that to be "a personal and deliberate attack against [her] integrity and [her] professional career," and she intended to pursue disciplinary action against him.

LTC (b)(6), (b)(7)(C) said as a result of the complaints against her, she felt like a "piñata." Finally, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) said during their meetings to discuss Complainant's EPR, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) kept bringing up Complainant's complaints against LTC (b)(6), (b)(7)(C).

COL (b)(6), (b)(7)(C) motive to reprise

COL (b)(6), (b)(7)(C) had motive to reprise against Complainant. Complainant made an IG complaint to the JSIG alleging COL (b)(6), (b)(7)(C) had not handled his report of inappropriate sexual

contact appropriately. That complaint eventually resulted in COL (b)(6), (b)(7)(C) being investigated in LTG (b)(6), (b)(7)(C) AR 15-6 investigation.

COL (b)(6), (b)(7)(C) recommended in February 2014 that Complainant be extended 1 year at the Joint Staff, but a few days after Complainant reported LTC (b)(6), (b)(7)(C) for inappropriate sexual contact, he emailed (b)(6), (b)(7)(C) that Complainant (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

COL (b)(6), (b)(7)(C) displayed animus concerning Complainant's timing of not making a protected communication until March 2014, stating he had a "problem" with that timeline. Furthermore, COL (b)(6), (b)(7)(C) told (b)(6), (b)(7)(C) that Complainant's protected communications were attempts to "take [LTC (b)(6), (b)(7)(C)] down," and he said Complainant only made his IG complaint because things were not going his way.

Complainant said he reported the (b)(6), (b)(7)(C) incident in March 2014 because he had just overheard LTC (b)(6), (b)(7)(C) threaten to fire (b)(6), (b)(7)(C), and he wanted to "step in" and help save (b)(6), (b)(7)(C). Regardless of whether Complainant had an ulterior motive for waiting to report what he believed to be inappropriate sexual contact, DoD Directive 7050.06 states, "A communication will not lose its protected status because of the service member's motive for making the communication."

Disparate treatment of Complainant

Complainant was (b)(6), (b)(7)(C) and this was the first time LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) rated him on an EPR, so there was no direct way to evaluate disparate treatment. However, a review of Complainant's previous EPRs from other raters showed that he had received (b)(6) EPRs on his last nine, two of which were rated by Army officers at his assignment at the Joint Staff. Had it not been for the Air Force Element's challenge of the proposed EPR, LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) would have rated Complainant even lower than they did. LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) did report on three other senior NCOs in the (b)(6), (b)(7)(C) but we were unable to effectively compare them to Complainant's EPR since they were Navy and Army NCOs under different rating systems.

We conclude LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) had motive to reprise against Complainant, displayed animus toward him for making protected communications, and repeatedly brought up Complainant's protected communications when they were discussing Complainant's EPR with (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C). We also conclude the late submission of the EPR was partially attributable to (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) disagreement with LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) assessment of Complainant.

VII. DISCUSSION

Given the absence of documentation showing that Complainant's professionalism or performance had declined since his previous EPRs, Complainant's documented accomplishments during the rating period, outstanding comments from his new supervisors, and in light of our determination that both responsible management officials displayed animus and had motive to

reprise against Complainant, we conclude based on a preponderance of the evidence that LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) downgraded Complainant's EPR in reprisal for his protected communications. LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) were aware of Complainant's protected communications, which resulted in an investigation that eventually led to LTG (b)(6), (b)(7)(C) returning LTC (b)(6), (b)(7)(C) to the Army. LTC (b)(6), (b)(7)(C) and COL (b)(6), (b)(7)(C) displayed numerous instances of animus toward Complainant for making protected communications. They did not provide documentation supporting the downgraded EPR, and they failed to submit it in time for consideration by Complainant's promotion board.

VIII. CONCLUSION(S)

We conclude, by a preponderance of the evidence, that:

- A. LTC (b)(6), (b)(7)(C) downgraded Complainant's EPR in reprisal for his protected communications.
- B. COL (b)(6), (b)(7)(C) downgraded Complainant's EPR in reprisal for his protected communications.

IX. RECOMMENDATION(S)

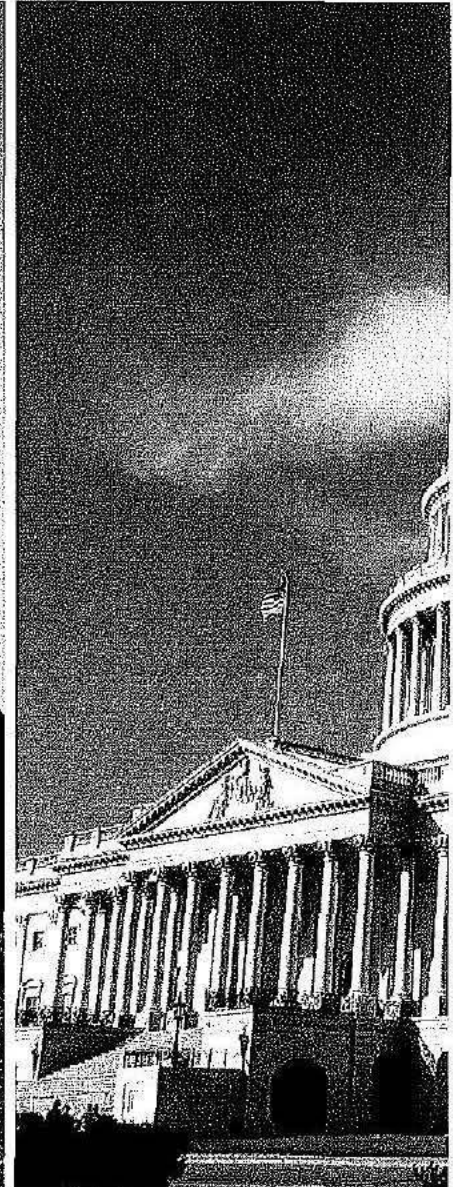
We recommend the Secretary of the Air Force:

- A. Remove Complainant's June 30, 2014, Enlisted Performance Report and replace it with an evaluation that accurately reflects Complainant's work performance.
- B. Convene a supplemental promotion board to allow Complainant to compete for promotion.

We recommend the Secretary of the Army:

- A. Take appropriate corrective action against LTC (b)(6), (b)(7)(C) for reprising against Complainant.
- B. Take appropriate corrective action against COL (b)(6), (b)(7)(C) for reprising against Complainant.

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