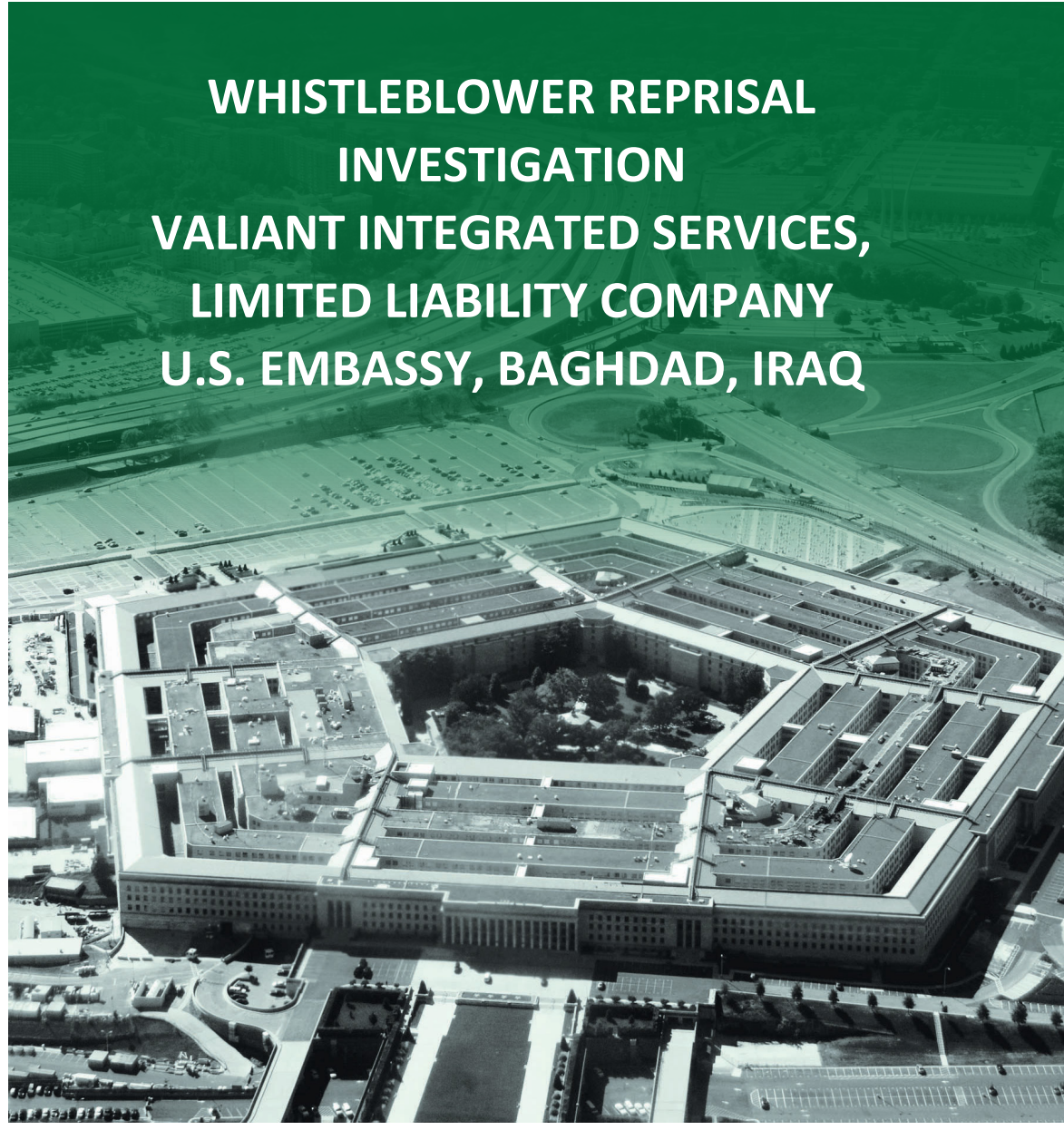


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INSPECTOR GENERAL

U.S. Department of Defense

October 15, 2019



WHISTLEBLOWER REPRISAL INVESTIGATION VALIANT INTEGRATED SERVICES, LIMITED LIABILITY COMPANY U.S. EMBASSY, BAGHDAD, IRAQ

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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WHISTLEBLOWER REPRISAL INVESTIGATION

██████████
VALIANT INTEGRATED SERVICES, LLC
U.S. EMBASSY, BAGHDAD, IRAQ

I. EXECUTIVE SUMMARY

We conducted this investigation in response to allegations that on January 28, 2018, Valiant Integrated Services, Limited Liability Company (VIS), attempted to transfer ██████████ (Complainant), ██████████ from the U.S. Embassy in Baghdad, Iraq, to Basra, Iraq, and discharged her on January 29, 2018, in reprisal for her making protected disclosures to special agents with the Regional Security Office (RSO), U.S. Department of State, U.S. Embassy in Baghdad, Iraq; management officials with Electronic On-Ramp, Incorporated (EOR); and U.S. military members of the ██████████ who had oversight responsibility for the contact between VIS and the Department of the Army.¹

We determined that the Complainant made a protected disclosure to authorized officials of a law enforcement agency (RSO) that evidenced a reasonable belief by the Complainant that a fellow VIS coworker assaulted her on the grounds of the U.S. Embassy in Baghdad on December 7, 2017. We further determined that the Complainant made subsequent protected disclosures in December 2017 regarding the same incident to VIS and EOR management officials with the responsibility to investigate, discover, and address misconduct. Additionally, we determined that the Complainant reported information she reasonably believed to evidence whistleblower reprisal (a violation of law and regulation related to a DoD contract) to U.S. military members of ██████████ (DoD employees) who had responsibility for contract oversight or management. On January 28, 2018, the Complainant spoke with ██████████ leadership after VIS informed her of its intent to transfer the Complainant to Basra. The Complainant told ██████████ leadership that VIS was retaliating against the Complainant for her disclosures during the RSO investigation of the VIS employee the Complainant accused of assault. We further determined that VIS knew of the Complainant's protected disclosures and that the Complainant experienced qualifying actions under 10 U.S.C. 2409 when VIS attempted to transfer her to Basra and subsequently discharged her.

We substantiated the allegation that VIS officials attempted to transfer the Complainant to Basra and subsequently discharged her in reprisal for the Complainant's protected disclosures, in violation of Title 10, United States Code, Section 2409 (10 U.S.C. 2409), "Contractor employees: protection from reprisal for disclosure of certain information," as amended by Section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and as implemented by Defense Federal Acquisition Regulation Supplement, Subpart 203.9, "Whistleblower Protections for Contractor Employees (February 28, 2014)."

By letter dated July 30, 2019, we provided VIS the opportunity to comment on the results of our investigation. In its response, dated August 26, 2019, VIS disagreed with our conclusions. VIS asserted that the DoD OIG did not have jurisdiction to make any findings in this matter because the Complainant's disclosures were not protected under 10 USC 2409. VIS also asserted that disclosures about interpersonal issues and interactions that do not occur during the workday are not protected.

¹ We use the word 'discharge' instead of 'termination' as used by VIS. Both words refer to the same action.

VIS also disagreed with the DoD OIG's "interpretation" of FAR 52.203-13, which obligates Defense contractors to exercise due diligence to prevent criminal activity and otherwise promote an organizational culture that encourages ethical conduct and a commitment to comply with the law. VIS asserted that the FAR clause is concerned with only a limited number of criminal violations that require disclosure to the government involving fraud, conflict of interest, bribery, or gratuity violations, and must occur "in connection with the award, performance, or closeout of" a federal contract.

VIS also stated that it had authority to reassign the Complainant to Basra. VIS wrote that the Complainant's reassignment was permissible under the contract since VIS is required to respond to the military's needs and "rapidly" staff [REDACTED]. VIS asserted that contract clause C.3.2.7 stated that VIS would have "quick reaction capability" to "rapidly provide replacement personnel from among its other employees until such time as permanent personnel can be provided." VIS further stated that the contract did not forbid reassigning [REDACTED] as needed in order to meet the Government's mission and needs. VIS stated that the Complainant chose not to accept the reassignment and resigned, and that the company was not aware of any law or regulation that required VIS to keep an employee who previously resigned, but otherwise changed their mind. VIS stated it properly terminated the Complainant's employment after she announced her resignation following her refusal to accept reassignment to Basra.

However, VIS did not dispute or provide additional evidence regarding the findings of fact as stated in this report. After reviewing the matters VIS presented, we stand by our conclusions.²

We recommend that the Secretary of the Army direct U.S. Army officials to order VIS to take affirmative action to abate the reprisal.

- Order VIS to reinstate the Complainant to the position she held prior to the reprisal, correct the Complainant's personnel record to expunge the January 29, 2018, termination letter from her file (and associated counseling statements), notify EOR of the expunged records, and to award compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the Complainant in that position if the reprisal had not been taken.
- Order VIS to pay the Complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the Complaint regarding the reprisal, as determined by the head of the agency.

² While we have included what we believe is a reasonable synopsis of VIS' response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated VIS' comments where appropriate throughout this report and provided a copy of VIS' response to the Secretary of the Army with this report.

II. BACKGROUND

On March 3, 2017, the Department of the Army, as the contracting agency, awarded ABM Government Services (ABMGS), LLC, \$9.8 billion for contract [REDACTED], an Indefinite Delivery/Indefinite Quantity (IDIQ) contract for [REDACTED] services. The base ordering period for the contract was 5 years, with an additional optional 5 year ordering period, for a total of 10 years.

In June 2017, VIS purchased ABMGS, LLC, from ABM Industries, Inc. Government contracts awarded to ABMGS prior to June 2017 were transferred to VIS, as the successor in interest, as a result of the acquisition. Consequently, contract [REDACTED] was transferred to VIS. Under the section on retention (contract clause 3.3.3.3), the contract states that one of the goals of the contract is to retain the most-qualified [REDACTED] while allowing the least-qualified to leave. The contract further stated that:

The government considers maintaining a low rate of personnel turnover an important performance measure of the success of this contract. It costs both the government and the contractor significant time and money to orient and in-process new personnel.

The Complainant was a [REDACTED] working as a subcontractor on the VIS contract. The Complainant had been employed by EOR as an [REDACTED] [REDACTED] since March 2015, and had worked on various contracts as a subcontractor to ABMGS since February 2016. In February 2017, the Complainant transferred to the U.S. Embassy in Baghdad, Iraq, as an [REDACTED] [REDACTED] assigned to a [REDACTED] unit within the embassy. While assigned to the Baghdad Embassy Compound (BEC), the Complainant reported directly to VIS management officials. There were no EOR supervisors located at the BEC. The VIS management officials consisted of VIS Official #1 (Site Lead), VIS Official #2 (Assistant Task Order Program Manager), and VIS Official #3 (Task Order Program Manager).³ The Complainant's [REDACTED] customers included Government Witness #1, [REDACTED] [REDACTED] and Government Witness #2, [REDACTED] [REDACTED]

On February 16, 2016, the Complainant signed a company policy statement regarding assignment refusal. The signed form stated that the refusal of assignment would result in the following courses of action.

- Employee will be notified he/she is in breach of contract and counseled, in writing, accordingly.
- Employee may be offered a new "Offer Letter/Contract," potentially at a lesser annual salary, if management deems the employee remains a positive contributor to ABM.
- Employees that refuse the secondary offer letter will be suspended with pay through redeployment and out-processed. The final termination decision will be determined by ABM Human Resources.
- If an individual is removed from the contract for refusal of assignment ABM reserves the right to deduct/recoup all costs associated with vetting, medical, dental, security processing and travel from the individual's pay for the time on contract. In addition, ABM may seek legal action due to the breach of contract.

³ VIS Official #1 terminated his employment with VIS prior to October 2018.

III. SCOPE

We interviewed the Complainant, VIS management officials, senior military service members, Government employees and relevant witnesses. We also reviewed documentary evidence provided by VIS, the Complainant, witnesses and the U.S. Department of State, including personnel records, an Army Regulation (AR) 15-6 Investigation, e-mails and VIS policy memos.⁴

IV. STATUTORY AUTHORITY

The DoD Office of Inspector General (DoD OIG) conducts whistleblower reprisal investigations involving employees of Defense contractors under Title 10, United States Code, Section 2409 (10 U.S.C. 2409), "Contractor employees: protection from reprisal for disclosure of certain information," as amended by Section 856 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), and as implemented by Defense Federal Acquisition Regulation Supplement, Subpart 203.9, "Whistleblower Protections for Contractor Employees (April 28, 2014)."

V. FINDINGS OF FACT

Chronology of Significant Events

Table 1. Chronology of Significant Events

Date	Event
March 2015	The Complainant began employment with EOR as an [REDACTED] [REDACTED]
February 2016	The Complainant begins working as a subcontractor to ABMGS.
February 2017	The Complainant transfers to the U.S. Embassy in Baghdad, Iraq, supporting [REDACTED] personnel of [REDACTED]
April 2017	VIS Official #2 (Complainant's assistant manager) receives a Notice of Corrective Action for violation of company policy for "creating or encouraging or participating in disorder."
June 2017	VIS purchases ABMGS, LLC, from ABM Industries, Inc.
June 2017	VIS hires VIS Employee #1 as an [REDACTED] [REDACTED]
October 2017	VIS promotes VIS Employee #1 to an [REDACTED] position working directly for VIS Official #2 and VIS Official #3.
November 7, 2017	VIS gives the Complainant a written counseling for requesting paid cleaning services from the GSO due to an issue with her roommate.
November 17, 2017	RSO officials begin to receive reports regarding VIS Employee #1 being "mean and aggressive" toward civilian and military personnel while intoxicated.
December 7, 2017	The Complainant alleges that VIS Employee #1, another VIS employee, assaults her while at [REDACTED] located on the BEC.
December 7, 2017	The Complainant informs VIS Official #2, while at [REDACTED], that VIS Employee #1 pushed her (assault). [Protected Communication #1]

⁴ AR 15-6 establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another regulation or directive, but in that case, its provisions are not mandatory.

Date	Event
December 8, 2017	The RSO begins an investigation into VIS Employee #1 and contacts the Complainant asking her to provide a statement regarding the alleged assault by VIS Employee #1. [Protected Communication #2]
December 11, 2017	The RSO requests a meeting with VIS management officials to discuss the alleged assault against the Complainant by VIS Employee #1.
December 12, 2017	The Complainant provides a written statement to the RSO regarding the alleged assault. [Protected Communication #3]
December 13, 2017	VIS Official #2 provides a statement to the RSO regarding the events of December 7, 2017. In her statement, VIS Official #2 states that she did not see VIS Employee #1 touch the Complainant or do anything wrong, and insinuates that the Complainant was intoxicated at the time.
December 13, 2017	The Complainant sends an e-mail to various members of EOR's management team reporting the alleged assault involving VIS Employee #1. An EOR management official responds to the Complainant on the same day confirming receipt. [Protected Communication #4]
December 17, 2017	Around this timeframe, the Complainant takes leave away from the BEC until around January 2, 2018.
January 2, 2018	Around this time, the Complainant returns from leave and resumes work with [REDACTED]
January 10, 2018	Government Witness #3 notifies VIS Official #2 and VIS Official #1 that an opening for a [REDACTED] has come open in Basra, Iraq.
January 10, 2018, through January 12, 2018	VIS officials decide to fill the vacancy in Basra with the Complainant, and initially notifies Government Witness #1 that the Complainant is a candidate.
January 12, 2018	VIS confirms with Government Witness #1 that the Complainant was selected for the position in Basra.
January 2018	At some point towards the end of January 2018, VIS Employee #1 tells VIS Corporate Attorney that VIS Employee #2 (VIS [REDACTED] [REDACTED] harassed her. Without speaking to VIS Employee #2, or taking a statement, VIS discharges VIS Employee #2.
January 27, 2018	Government Witness #3 provides Government Witness #1 with a CC Form 90 requesting travel funds for the Complainant's transfer to Basra on January 31, 2018. Government Witness #1 expresses concern that VIS has not told the Complainant of the pending transfer, and will not sign the CC Form 90 until she is notified.
January 28, 2018	Government Witness #3, VIS Official #1, and VIS Official #2 meet with the Complainant to inform her that VIS is transferring her to Basra effective January 31, 2018. Complainant states that VIS management officials tell her that it is [REDACTED] request to have her transferred. [Personnel Action #1]
January 28, 2018	The Complainant tells VIS management officials that she believes the transfer is in retaliation for her participation in the RSO investigation of VIS Employee #1. [Protected Communication #5]
January 28, 2018	The Complainant refuses the transfer to Basra and asks VIS management officials to prepare her resignation paperwork.
January 28, 2018	After the meeting, the Complainant reports to Government Witness #2 that the transfer to Basra is in retaliation for her involvement in the RSO investigation of VIS Employee #1. [Protected Communication #6]

Date	Event
January 28, 2018	Government Witness #1 e-mails VIS Official #1, VIS Official #2 and Government Witness #3 reporting that the Complainant informed him that she was told ██████ had requested her transfer to Basra.
January 28, 2018	VIS Official #1 also informs Government Witness #1 that the Complainant accused VIS of retaliating against her by transferring her to Basra.
January 29, 2018	The Complainant meets with VIS Official #1 and tells him that she has changed her mind and will like to accept the transfer to Basra.
January 29, 2018	VIS Official #1 tells the Complainant that VIS is discharging her for refusing the transfer to Basra, threatening to resign, and for jumping the chain of command and discussing the matter with Government Witness #1 and Government Witness #2. [Personnel Action #2]
January 29, 2018	The Complainant informs Government Witness #1, Government Witness #2, and the RSO that VIS is discharging her. The Complainant provides the RSO with a written complaint via e-mail stating that VIS is retaliating against her.
January 29, 2018	The Complainant approaches Government Witness #3, informing him that VIS is discharging her, but she will accept the position if it was still available.
January 29, 2018	Government Witness #3 speaks with VIS seeking permission to allow the Complainant to take the transfer to Basra since she changed her mind; however, VIS refuses to reverse the discharge.
January 29, 2018	VIS Official #1 sends the Complainant a text message instructing her not to enter the Chancery Building (where Government Witness #1, Government Witness #2, Government Witness #3, and the RSO work) and not to speak with the military team. VIS Official #1 also informs the Complainant that she will be leaving the next day.
January 30, 2018	The Complainant leaves Baghdad, Iraq.
January 30, 2018	Valiant Corporate Attorney and Contract Compliance, speaks with the RSO and communicates that VIS discharged the Complainant for performance issues.
January 31, 2018	Around this time, the RSO speaks with Government Witness #1 and verifies that the Complainant did not have performance problems.
January 31, 2018	The RSO requests to meet with VIS Official #3 to discuss the pending investigation of VIS Employee #1 and the discharge of the Complainant.
January 31, 2018	On/about this date, VIS Employee #2 meets with the RSO to complain about his pending wrongful termination by VIS management officials and shows the RSO evidence that he never harassed VIS Employee #1.
January 31, 2018	The RSO contacts VIS Official #3 to discuss VIS Employee #2's allegations of wrongful termination. VIS Employee #2 meets with VIS Official #3 and shows him evidence that he was not harassing VIS Employee #1. VIS Official #3 initiates an internal investigation and reverses the decision to discharge VIS Employee #2.
February 1, 2018	VIS Official #3 and VIS Official #4, ██████ VIS, meet with the RSO regarding the allegations of reprisal by the Complainant. The pending investigation of VIS Employee #1 is turned over to VIS.
February 5, 2018	RSO officials speak with VIS management regarding VIS Employee #1's removal from the BEC and all other State Department facilities in Iraq due to her disruptive behavior.

Date	Event
February 5, 2018	VIS Official #3 informs the RSO that VIS management will counsel VIS Employee #1 in writing for her alcohol-related incidents and abuse of position.
February 5, 2018, through February 11, 2018	VIS attempts to transfer VIS Employee #2 to Basra. VIS Employee #2 does not transfer because the military unit in which he is assigned strongly requests that he not be moved.
February 8, 2018	VIS Corporate Attorney responds to an e-mail from the Complainant regarding her allegations of retaliation. VIS Corporate Attorney tells the Complainant that it was the military's request to "replace" the Complainant and relocate her to Basra.
February 11, 2018	Government Witness #2 requests to meet with VIS Official #3 to discuss VIS' policy prohibiting communication with the military units. Government Witness #2 also discusses the wrongful termination of VIS Employee #2.
February 11, 2018	VIS provides a "Notice of Corrective Action" form to VIS Employee #1 for the various alcohol-related complaints provided by the RSO.
February 14, 2018	VIS transfers VIS Employee #1 to a DoD site in Erbil, Iraq, where she continues to work as the [REDACTED] to VIS Official #2 and VIS Official #3.
March 8, 2018	VIS Corporate Attorney asks ACOR, [REDACTED] Assistant Contracting Officer Representative (ACOR), if he was able to get an MFR from Government Witness #1 or Government Witness #3 stating that the DoD had requested VIS to move the Complainant to Basra. ACOR responds that Government Witness #1 would not provide a MFR, and Government Witness #3 would not likely do so either.
May 7, 2018	VIS Corporate Attorney sends an e-mail to Government Witness #1 requesting clarification on who exactly requested the Complainant be transferred to Basra because he was unable to "get straight answers" elsewhere.
May 7, 2018	Government Witness #1 suggests to VIS Corporate Attorney that VIS Official #3 and VIS Official #2 were providing VIS Corporate Attorney inaccurate information, and that the Complainant's accusations about her termination and retaliation were not baseless. Government Witness #1 recommends that he, Government Witness #2, and VIS Corporate Attorney meet to discuss the matter. That meeting never occurs.
May 29, 2018	Government Witness #4, [REDACTED] [REDACTED] [REDACTED] files a verbal complaint against VIS Employee #1 with VIS Employee #3, VIS Site Lead for Erbil. Government Witness #4 cites two separate issues involving VIS Employee #1: (1) a verbal altercation with a dining facility employee, and (2) unprofessional appearance, specifically her septum nose ring.
June 2, 2018	VIS Official #2 notifies VIS Employee #1 of Government Witness #4 complaint. VIS Official #2 asks VIS Employee #1 to remove the septum nose ring and to dress in accordance with company policy.
June 3, 2018	VIS Employee #1 confronts Government Witness #4 about his complaint to VIS management.

Date	Event
June 3, 2018, through June 17, 2018	After being counseled by VIS management for her behavior and appearance, VIS Employee #1 attempts to recruit VIS ██████ in Erbil to conduct surveillance on ██████ leadership in an effort to obtain negative information about them.
June 13, 2018	VIS Employee #1 initially contacts an Equal Opportunity representative in Kuwait via e-mail to discuss her concerns about being discriminated against by ██████ leadership.
June 18, 2018	Government Witness #4 verbally asks VIS management to have VIS Employee #1 removed from Erbil Airbase after learning about her attempts to conduct surveillance on ██████ leadership. ██████ leadership thinks the act of conducting surveillance on leadership poses a security threat.
June 25, 2018	Government Witness #4 submits an MFR to VIS Official #2 requesting that VIS remove VIS Employee #1 from Erbil Airbase.
June 26, 2018	VIS Employee #1 specifically names Government Witness #4 to the EO Regional Director in an e-mail complaint regarding discrimination.
July 9, 2018	VIS management officials decide to terminate VIS Employee #1's employment with the company after receiving Government Witness #4 MFR.
July 10, 2018	VIS Corporate Attorney reverses VIS' decision to discharge VIS Employee #1 because he believes that Government Witness #4 is retaliating against her for filing an EO complaint.
July 10, 2018	VIS allows VIS Employee #1 to submit a letter of resignation in lieu of termination. She submits her resignation effective September 30, 2018.
July 15, 2018	VIS Corporate Attorney encourages VIS Employee #1 to "push ahead" with filing a formal EO complaint against Government Witness #4 and ██████ leadership.
July 15, 2018	VIS Employee #1 files an official EO complaint against Government Witness #4 and other members of ██████ leadership
July 21, 2018	██████ leadership meets with VIS Official #3, VIS Official #2 and VIS Corporate Attorney after Government Witness #4 notices that VIS Employee #1 has not been removed from Erbil Airbase.
July 22, 2018	At some point after July 21, 2018, VIS reassigns and transfers VIS Employee #1 to Camp Arifjan, Kuwait, to work out the rest of her resignation.
September 15, 2018	VIS Employee #1 officially terminates employment with VIS.

The following section details the findings of fact as summarized in Table 1. Chronology of Significant Events:

General Employee Background and Work Performance

Both VIS Official #1, Complainant's direct supervisor, and ██████ leadership stated that the Complainant's work performance was good. Government Witness #1 described the Complainant's work performance as impeccable, and stated that the Complainant was one of the better ██████ assigned to his unit. VIS Official #1 reported that the Complainant's work performance was good and he never had complaints from the customer about her.

However, VIS Official #1 and Government Witness #1 explained that the Complainant sometimes got involved in gossip and personality conflicts with other ██████ Government Witness #1 considered it a ██████ dynamic. VIS Official #1 further stated that everybody gossiped on the BEC, and thought it was the norm for people to talk about each other.

The Complainant's EOR personnel file included two corrective action write-ups issued by VIS, and two certificates of appreciation. The two corrective action write-ups included the January 29, 2018, termination write-up (discussed below), and a November 7, 2017, write-up.⁵ The Complainant stated that she was written up in November 2017 for approaching the General Services Office (GSO) at the BEC and asking to purchase cleaning services due to an issue with a roommate. VIS Official #2 corroborated this information. Even though the Complainant stated that she did not speak with GSO, the Complainant admitted that VIS instructed her not to contact GSO directly and instead go through VIS to resolve housing issues. EOR did not provide a copy of the November 7, 2017, write-up because they stated that the document was noted as containing VIS attorney-client privileged information. We asked VIS for copies of any write-ups associated with the Complainant, but VIS did not provide any.

VIS documents also show that VIS Official #2, the Complainant's assistant manager, received a Notice of Corrective Action in April 2017 when a VIS investigation found her in violation of company policy for "creating or encouraging or participating in disorder." During April 2017, VIS Official #2 was a Site Lead in Baghdad, supervised by the former Assistant Task Order Program Manager (ATOPM) in Iraq. The investigation identified that VIS Official #2 and other employees spread rumors about the ATOPM, possibly to prevent his plans to relocate VIS Official #2 and other employees to different locations in Iraq. The rumor was that the ATOPM had forced a Senior Site Lead to hire an administrative assistant with whom the ATOPM was having a sexual relationship. VIS Official #2 reported the rumor to VIS Official #3, Task Order Program Manager, and other ABM employees.⁶ The ATOPM complained to ABM Human Resources (HR), because he believed VIS Official #2 had purposefully defamed his character by spreading information she knew was false. VIS Official #2 stated to us that she did not remember reporting the rumor to VIS Official #3 or any other member of management.

Following recommendations by ABM investigators, ABM discharged the Senior Site Lead for providing an intentionally false statement to company investigators and participating in disorder. He was also written-up for refusing the mission, and threatening to make allegations against the ATOPM to ABM HR officials. ABM administered written Notices of Corrective Action to other supervisors and managers, including VIS Official #2. VIS Official #2 received a Final Warning because her records indicated that she had other prior corrective actions in her file for creating, encouraging, or participating in disorder. VIS attorneys stated that they were unable to find VIS Official #2's prior write-ups. In 2017, VIS Official #2 became the ATOPM in Iraq. While VIS Official #2 acknowledged the incident and the write-up, VIS Official #2 disagreed with the company's findings and stated she never had any written disciplinary actions prior to that point.

⁵ Differences in e-mail systems indicates notification on January 28, 2018. However, the evidence as a whole supports January 29, 2018 as the date of this action.

⁶ ABM employees became VIS employees following the VIS purchase of ABMGS. ABM forwarded human resources records of its employees to VIS.

Alleged Assault of the Complainant

The Complainant alleged that on December 7, 2017, VIS Employee #1, another VIS employee, assaulted her while at ██████████ located on the BEC. VIS Employee #1 was the ██████████ reporting directly to VIS Official #2 and VIS Official #3. The Complainant stated that VIS Employee #1 was intoxicated and pushed her out of the way while the Complainant was at the ██████████ talking to an employee about a missing cell phone. The Complainant stated the force of the push almost knocked her over. The Complainant also said that she informed VIS Official #2 that evening, since VIS Official #2 was also at ██████████. The Complainant said that VIS Official #2 hugged her, and told the Complainant that VIS Employee #1 was drunk and asked the Complainant to not make any problems regarding the incident. The Complainant stated she was shocked by VIS Official #2's response, but agreed to let the incident go.⁷

VIS Official #1 stated that VIS Official #2 did not want to bring negative attention to VIS. VIS Official #1 stated that VIS Official #2 told him that the Complainant promised her, as a friend, that the Complainant would not report the incident. VIS Official #1 also said that both the Complainant and VIS Official #2 told him similar stories about VIS Employee #1 being intoxicated and allegedly pushing the Complainant.

VIS had hired VIS Employee #1 as a ██████████ in June 2017. She and the Complainant were originally assigned to the same ██████████ unit within ██████████ Government Witness #1 explained that VIS Employee #1 and the Complainant had some personality conflicts and were competitive; but he did not recall any serious disagreements or incidents between them. VIS promoted VIS Employee #1 to an ██████████ position in the fall of 2017. VIS Employee #1 and the Complainant applied for the vacancy, were both interviewed, and VIS selected VIS Employee #1. Upon her promotion, VIS Employee #1 began working directly for VIS Official #2 and VIS Official #3.

VIS Official #1 stated that VIS Employee #1 and VIS Official #2 became best friends and did everything together. VIS Official #1 said that everyone knew that they were best friends, and the ██████████ believed that if anyone "messed" with VIS Employee #1 they were "messaging" with VIS Official #2. A U.S. State Department, Regional Security Office (RSO) Special Agent, BEC, corroborated VIS Official #1's assessment.⁸ An RSO Special Agent stated that VIS Employee #1 and VIS Official #2 were known to be best friends and that VIS Employee #1 could act with impunity because VIS Official #2 covered for her, allowing VIS Employee #1 to mistreat other employees. The Complainant and two other VIS ██████████ shared a similar assessment of VIS Official #2 and VIS Employee #1's relationship.

VIS Official #2 disputed that assessment of her relationship with VIS Employee #1 and said that they were not close friends, and only had a pleasant working relationship with each other. VIS Official #2 stated that people created untrue rumors about them. She could not explain why numerous people shared a similar assessment of her relationship with VIS Employee #1.

⁷ In its August 26, 2019, response to the DoD OIG preliminary report, VIS stated that this was a personal issue and trivial matter.

⁸ The Regional Security Office (RSO) provides comprehensive security and law enforcement support to the Embassy in Baghdad, the Consulate General in Erbil and the Consulate General in Basra. The office staff includes special agents of the State Department's Diplomatic Security Service and Marine Security Guard Detachment.

RSO Begins an Investigation Into the Assault

As early as November 2017, RSO officials had received reports regarding VIS Employee #1 being "mean and aggressive" toward civilian and military personnel while intoxicated. An RSO Special Agent stated that VIS Employee #1 had a reputation on the BEC of drinking to the point of intoxication and generally causing problems.

The Complainant stated that on December 8, 2017, two RSO Special Agents, contacted her to discuss a report about the incident the night before between her and VIS Employee #1. The Complainant explained that someone had reported the incident to the RSO. The Complainant said that she did not want to discuss the alleged assault initially, because she was afraid VIS Official #2 would retaliate against her and could cause her to lose her job. However, the RSO Special Agents assured the Complainant that VIS Official #2 could not retaliate against her for cooperating. The Complainant met with the RSO Special Agents and provided a statement regarding the alleged incident.

On December 11, 2017, an RSO Special Agent and VIS Official #3 discussed the incident between the Complainant and VIS Employee #1. Later that same day, VIS Official #3 e-mailed the RSO Special Agent and informed him that VIS Official #2 had provided a different accounting of events than those reported by the Complainant. VIS Official #3 told the RSO Special Agent that he was obtaining statements from other witnesses of the incident.

The Complainant told us that VIS Official #1 approached her and informed her that VIS Official #3 wanted her to provide a written statement to the RSO regarding the incident. VIS Official #1 said that VIS Official #3 wanted him to tell the Complainant that she had the right to make a statement and if she decided to do so, she would not face any retaliation. VIS Official #1 passed that message along to the Complainant. The Complainant provided a written statement to the RSO on or about December 12, 2017, that stated, "I was asked and advised to write a report by my site-manager VIS Official #1 and RSO at the embassy to protect my rights. This statement is just for the records and not a report. I am really afraid and concerned of retaliations by the company's management against me in the future." That same day, December 12, 2017, an RSO Special Agent responded to VIS Official #3 asking him to refer individuals to the RSO for statements involving the matter. The RSO Special Agent explained that referring witnesses to the RSO would prevent any perception of impropriety and undue influence by VIS concerning this issue. In response, VIS Official #3 asked the RSO Special Agent if he planned to continue the investigation and that he would like to keep the matter at the lowest level possible.

On December 13, 2017, VIS Official #2 provided a written statement to the RSO regarding the events of December 7, 2017, at the direction of VIS Official #3. In her written statement, VIS Official #2 stated she did not see VIS Employee #1 touch the Complainant or do anything wrong, and insinuated that the Complainant was the one that was intoxicated at the time. VIS Official #2 corroborated that the Complainant approached her and accused VIS Employee #1 of pushing her. VIS Official #2 also stated that the Complainant threatened to report VIS Employee #1 to the RSO and get VIS Employee #1 fired as a result.

In a December 11, 2017, e-mail (before VIS Official #2's written statement), VIS Official #3 told the RSO Special Agent that he had spoken with VIS Official #2 and that she had witnessed the entire event. VIS Official #3 told the RSO Special Agent that VIS Official #2's version of the story was different from the Complainant's and that VIS Employee #1 never touched the Complainant. In response, the RSO Special Agent told VIS Official #3 that VIS Official #2's presence and involvement

with the incident at [REDACTED], and her personal relationship with VIS Employee #1, gave VIS Official #2 credibility issues. The RSO Special Agent also told VIS Official #3 that VIS Official #2 was not an idle observer of the incident, and had a potentially biased opinion since VIS Employee #1 was her friend. The RSO Special Agent assessed that VIS Official #2's statement had significant gaps, appeared to absolve VIS Employee #1 of any wrongdoing, and failed to address key details of the incident. In spite of the RSO Special Agent's response, VIS Official #3 still had VIS Official #2 provide a written statement of events to the RSO. We note that VIS Official #2 testified she did not witness the entire event as stated by VIS Official #3, because she was distracted at the time talking to friends.

VIS Official #2 told us that the Complainant threatened to make a report about VIS Employee #1 to the RSO, but the Complainant did not threaten to get VIS Employee #1 fired. VIS Official #2 also verified that she asked the Complainant not to report the issue to the RSO because the Complainant and VIS Employee #1 were intoxicated at the time. VIS Official #2 stated that she did not want either VIS Employee #1 or the Complainant to get in trouble. VIS Official #1 testified that VIS Official #2 felt betrayed by the Complainant, because the Complainant promised VIS Official #2 that the Complainant was not going to talk to the RSO because the Complainant considered VIS Official #2 a friend.

The Complainant stated to us that she had a conversation with VIS Official #2 on or about December 12, 2017, regarding the written statement she provided to the RSO. According to the Complainant, VIS Official #2 was upset because she had asked the Complainant not to report the issue in the first place. The Complainant explained that she felt forced to give the statement after her conversation with VIS Official #1. According to the Complainant, VIS Official #2 told her that VIS Official #1 was supposed to tell the Complainant that she had the choice to not make a statement. In his statement to us, VIS Official #1 did not recall VIS Official #2 telling him to inform the Complainant that she did not have to make a statement.

On December 13, 2017, the Complainant sent an e-mail to various members of EOR's management team reporting the incident with VIS Employee #1. Individuals included in the e-mail were the Chief Executive Officer, and a Program Manager. The e-mail included a copy of the Complainant's statement to the RSO at the BEC. The Complainant told EOR officials, "I am really afraid that I will face some type of retaliation from the management here" regarding the report to the RSO. The EOR Program Manager responded to the Complainant on December 13, 2017, confirming receipt of the original e-mail. The EOR Program Manager stated she would put a copy of the RSO statement into the Complainant's personnel file and check with VIS regarding any precautions between her and VIS Employee #1.

The Proposed Transfer and Ultimate Discharge of the Complainant

On January 10, 2018, Government Witness #3, [REDACTED], notified VIS Official #2 and VIS Official #1 that there was an opening for a [REDACTED] in Basra, Iraq. Government Witness #3 expressed that he needed someone qualified and reliable to fill the vacancy. At some point between January 10 and January 12, 2018, VIS officials decided to fill the vacancy with the Complainant and make the recommendation to Government Witness #3. VIS Official #1 stated that it was VIS Official #2's idea to recommend the Complainant to Government Witness #3. In direct contrast, VIS Official #2 stated VIS Official #1 approached her to inform her that Government Witness #3 had an opening in Basra and he recommended that the Complainant fill the position. VIS Official #2 alleged that VIS Official #1 brought the original idea to her and she agreed as long as [REDACTED] agreed. VIS Official #2 stated that she did not make a practice

of transferring ██████ without a courtesy notification to their current military point of contact. VIS Official #2 also said that she thought it would be a good opportunity for the Complainant because the position in Basra would allow the Complainant to work and live alone and not have any roommate problems.⁹

Despite VIS Official #2's testimony, evidence provided by VIS attorneys showed that Government Witness #3 e-mailed VIS Official #2 and VIS Official #1 directly on January 10, 2018, asking to discuss the issue. Additionally, VIS provided evidence showing that on January 11, 2018, a ██████, contacted VIS Official #2 regarding the ██████ position in Basra. On January 11, 2018, VIS Official #2 responded to the VIS ██████, agreeing to provide a ██████ that was qualified for ██████. Counter to her statement to us, the evidence supports that VIS Official #2 knew about the ██████ position in Basra and was personally involved from the beginning.

VIS Official #1 also stated to us that the Complainant's participation with the RSO's investigation into VIS Employee #1 affected VIS' decision to transfer the Complainant to Basra. He stated that it was his understanding that VIS Official #2 believed that the Complainant personally reported VIS Employee #1 to the RSO, and did not keep her (Complainant's) promise to not report the issue. VIS Official #1 stated that VIS wanted to remove any possible future issues involving the Complainant, and wanted the Complainant to "cool down and stop getting in trouble". VIS Official #1 further stated that since VIS Employee #1 was having problems with the Complainant, and VIS Employee #1 was bringing too much negative attention to the company, that the vacancy in Basra was an opportunity to remove the Complainant from the equation. However, VIS Official #1 also stated that he recalled a conversation with VIS Official #3 and VIS Official #2 in which VIS Official #3 stated that VIS could not just "remove" or "move" the Complainant because VIS Employee #1 was also causing "havoc."

VIS officials told us that VIS management was aware that the Complainant was not going to be happy about being transferred to Basra. As a result, according to VIS Official #1, VIS originally planned to tell the Complainant with short notice, giving her 2 days to transition. VIS Official #1 stated this plan gave the Complainant no choice but to accept the transfer. This was corroborated by Government Witness #2, who stated that VIS informed ██████ leadership that the original plan was to tell the Complainant a day before the transfer to Basra.

VIS Official #1 approached Government Witness #1 to discuss the transfer after discussing it with VIS Official #2. VIS Official #1 told Government Witness #1 about the Basra vacancy, and that the Complainant was a candidate to fill the vacancy. VIS Official #1 asked Government Witness #1 for his thoughts about the Complainant's performance, and if Government Witness #1 would recommend the Complainant as a well-qualified candidate for the vacancy. Government Witness #1 stated that the Complainant was able to operate independently, did great work, and would do a good job in Basra. Government Witness #1 told us that VIS Official #1 informed him that other candidates besides the Complainant were being considered.

⁹ One of the reasons the Complainant received a formal write-up in November 2017 was because she went to the GSO at the Embassy to request additional cleaning services for her onsite apartment bathroom. She was having issues with her roommate not helping to keep the common area, including the bathroom, clean. In its August 26, 2019, response to the DoD OIG preliminary report, VIS stated that whistleblower protection laws do not exist to protect employees, such as the Complainant, when she had complaints about the cleanliness of shared bathrooms on military bases because such complaints are trivial. DoD OIG did not analyze this issue as a protected disclosure in the preliminary report, and the Complainant did not allege that VIS reprimed against her for it. Therefore, we will not further address this issue.

On or about January 12, 2018, VIS notified Government Witness #1 that it had selected the Complainant for the position in Basra. Government Witness #1 had requested notification before the transfer to give the Complainant a farewell lunch. Government Witness #1 said he wanted the transfer handled correctly, and the Complainant given 2-3 day notice before the reassignment. During the same period, Government Witness #3 contacted a member of the Complainant's [REDACTED] unit, verified the quality of work she was performing, and made sure the unit was aware that the Complainant was being considered for the transfer. Government Witness #3 said he could not remember whom he spoke with; however, he did verify that he did not speak directly with Government Witness #1. Government Witness #3 also reviewed the Complainant's personnel appraisals to review her performance and determined it was good.

On January 27, 2018, Government Witness #3 provided a CC Form 90, "USCENTCOM TDY Request Form," to Government Witness #1 requesting funds for the Complainant's travel to Basra. Government Witness #3 stated in his e-mail to Government Witness #1 that VIS had informed him that the Complainant's departure date was either January 31, 2018, or February 1, 2018. However, the Complainant had not been notified of the pending transfer. Government Witness #1 responded to Government Witness #3 and VIS Official #1 that he did not want to be caught in an integrity violation, and would not sign the CC Form 90 until the Complainant had been made aware she was being transferred to Basra. Further, Government Witness #2 informed us VIS did not keep its promise to [REDACTED] to allow the Complainant enough time to be notified of the transfer so she could have a proper going-away celebration.

On January 28, 2018, after Government Witness #1's e-mail regarding not signing the CC Form 90, Government Witness #3, VIS Official #1, and VIS Official #2 met with the Complainant to inform her that she was being transferred to Basra, and that she would be transferring on January 31, 2018. The Complainant stated to us that VIS officials explained to her that her [REDACTED] unit had made the recommendation to transfer her to Basra. According to the Complainant, upon learning of the unexpected transfer, she became upset and told VIS Official #1 and VIS Official #2 that the transfer to Basra was in retaliation for the Complainant's cooperation with the RSO's investigation involving VIS Employee #1.

The Complainant stated that VIS Official #2 told the Complainant that she could either take the position or be discharged for refusing the mission. The Complainant responded that she believed the transfer to Basra was retaliation by VIS and that she was going to resign because she knew her [REDACTED] unit was not actually requesting the transfer. The Complainant testified that VIS Official #2 yelled at the Complainant and told her to resign immediately if that was the case, and the Complainant asked VIS Official #1 to prepare the resignation document so the Complainant could sign it.¹⁰ The meeting ended at that point.

Immediately after the meeting, the Complainant spoke with Government Witness #2 and Government Witness #1. The Complainant asked them if they had requested that she be transferred to Basra. Government Witness #2 and Government Witness #1 told us that it was not their choice to transfer the Complainant, and that VIS made the decision. Government Witness #2 stated that the Complainant informed him that the Complainant believed VIS was retaliating against her because she participated in an investigation involving VIS Employee #1. Government Witness #3 also spoke with Government Witness #1 and Government Witness #2 directly after the meeting

¹⁰ VIS Official #1 said that VIS Official #2 often raised her voice and embarrassed people. He said that VIS Official #2 had raised her voice at him and "chewed" him out so loud that other people could hear her. He said he was so embarrassed that he submitted his resignation but VIS Official #3 convinced him to withdraw it.

with the Complainant. After seeing the Complainant at Government Witness #2' office, Government Witness #3 e-mailed VIS Official #2 and VIS Official #1 to inform them that the Complainant was speaking to Government Witness #2 about the Basra meeting.

Government Witness #1 also e-mailed VIS Official #1, VIS Official #2, and Government Witness #3, reporting that the Complainant visited him and informed him that the Complainant was told [REDACTED] had volunteered her to be transferred to Basra. Government Witness #1 clarified that VIS made the decision, in coordination with Government Witness #3, to transfer the Complainant. Government Witness #1 wrote, "I did not, nor have I ever approached you all/your company looking for a different location for her to be assigned." In response, Government Witness #3 responded to Government Witness #1, "As stated before, I'm under the impression that per conversations with you and Valiant [VIS] that you recommended her based on qualifications and work that she will be a better fit elsewhere."

VIS Official #1 responded to Government Witness #1 on January 28, 2018, and copied VIS Official #2 and Government Witness #3. VIS Official #1 explained that the Complainant was informed that her skills were needed in Basra, and that she was recommended based on her background, education, and ability to work independently. VIS Official #1 stated that Government Witness #1's name was only used to highlight the fact that other senior-ranking leaders agreed with the high level of the Complainant's character and work performance, and insinuated that VIS did not tell the Complainant that it was [REDACTED] decision to transfer her to Basra. VIS Official #1 also stated to Government Witness #1 that the Complainant accused VIS of retaliating against her. VIS Official #1's response to Government Witness #1 was that the Complainant could not explain what the retaliation was about. However, VIS Official #1 later confirmed with us that the Complainant told him and VIS Official #2 during the meeting that the retaliation was for the Complainant's participation with the RSO investigation of VIS Employee #1.

The next day, January 29, 2018, the Complainant met with VIS Official #1. The Complainant told him that she had changed her mind and was willing to take the transfer to Basra. However, VIS Official #1 told her that she was being discharged. VIS Official #1 gave the Complainant an "ABM Government Services Reprimand/Termination Form" stating why she was being discharged. The form stated that the Complainant was being discharged for refusing the transfer to Basra, threatening to resign, and for jumping the chain of command and discussing the matter with Government Witness #1 and Government Witness #2. VIS alleged that the Complainant had caused damage to the working relationship between VIS and their customer by discussing company business with [REDACTED] leadership. The termination form stated that that the Complainant had accused VIS management officials of retaliating against her by transferring the Complainant to Basra.

In its August 26, 2019, response to the DoD OIG preliminary report, VIS said that the contract required VIS to respond to the military's [REDACTED] needs and to rapidly staff [REDACTED] VIS characterized the Complainant as:

the most-qualified choice – she was a good performer, liked by the military, and possessed the [REDACTED] required for the position. [The Complainant] chose not to accept the reassignment. Indeed, she resigned after being informed of the transfer and told VIS to begin the paperwork to terminate her position.

VIS' January 29, 2018, termination write-up for the Complainant stated the following.

- VIS Official #2, VIS Official #1, and Government Witness #3 participated in a meeting on January 28, 2018, to inform the Complainant that VIS was transferring her to Basra.
- After she was notified that the decision to transfer her to Basra was final, the Complainant refused the assignment and accused VIS Official #2 and VIS Official #1 of retaliation, and stated that she wished to resign instead.
- The Complainant had been previously instructed by VIS management not to discuss company issues with the customer.
- After the first meeting with VIS Official #2, VIS Official #1, and Government Witness #3, the Complainant spoke with Government Witness #1 and Government Witness #2 about her situation (transfer to Basra) which created a bad image for the company and possibly damaged working relations with the military.

According to the termination write-up, based on the statement that the Complainant refused the mission, threatened to quit, and ultimately went to the customer to discuss company-related business (transfer to Basra), VIS management recommended that the Complainant be discharged immediately.

The Complainant informed Government Witness #1, Government Witness #2, and the RSO on January 29, 2018, that VIS was discharging her. The Complainant provided the RSO with a written complaint via e-mail stating that VIS was retaliating against her for past interactions with VIS Employee #1 and also for reporting her concerns to Government Witness #1 and Government Witness #2. The Complainant also approached Government Witness #3, informing him that she had been discharged, but that she was willing to accept the position in Basra if it was still available. Government Witness #3 stated to us that he needed a [REDACTED] in Basra, that the Complainant had been recommended to him by VIS management, and that he had still wanted the Complainant to fill the position. Government Witness #3 spoke with VIS to inform it that the Complainant had reconsidered her position and was willing to accept the transfer to Basra; however, VIS officials informed Government Witness #3 that the company was not willing to reverse the discharge, even though Government Witness #3 needed the position filled and he was informed the Complainant was a qualified [REDACTED] for the position. Government Witness #3 told us that it upset him that VIS would not reconsider the discharge and allow the Complainant to transfer, because it was putting him in a difficult position.

VIS Official #1 stated that it would have been possible for VIS to reverse the termination and transfer the Complainant to Basra because company policy allowed it. The company could have chosen to warn the Complainant about refusing future missions and given her another opportunity to accept the transfer. VIS Official #1 explained that he believed past animosity between VIS Official #2 and the Complainant stood in the way of that policy being used.

Soon after responding to Government Witness #1's e-mail, VIS Official #1 sent the Complainant a text message on January 29, 2018, instructing her to not enter the Chancery Building (where Government Witness #1, Government Witness #2, Government Witness #3, and the RSO worked) and not to speak with the military team. VIS Official #1 also informed the Complainant she would be flying out the next day.

On January 30, 2018, after the Complainant flew out of Baghdad, VIS Corporate Attorney and Contract Compliance, spoke with an RSO Special Agent, and communicated that the

Complainant was discharged for performance issues. VIS Corporate Attorney conveyed to the RSO Special Agent that VIS had tried to relocate the Complainant to Basra per the military's request, but she had refused. Shortly thereafter, the RSO Special Agent spoke with Government Witness #1 to discuss those allegations. According to the RSO Special Agent, Government Witness #1 informed him that the Complainant did not have performance issues. Government Witness #1 said that while the Complainant was known to have some personality clashes with other ██████████ her work performance was very good. Government Witness #1 was shocked to learn that VIS' attorney insinuated that the Complainant was a poor performer.

On January 31, 2018, the RSO Special Agent requested to meet with VIS Official #3. VIS Official #3 contacted VIS Corporate Attorney to inform him about the request, and expressed apprehension about meeting with the RSO Special Agent alone. VIS Official #3 also contacted ACOR, ██████████ Alternate Contracting Officer Representative, ██████████, and told him he was not comfortable meeting with the RSO Special Agent alone, and asked if ACOR knew the purpose of the meeting. ACOR offered to attend the meeting with VIS Official #3; however, ACOR was out of the office at the time. VIS Official #3 and VIS Official #4, ██████████ ██████████ VIS, met with the RSO Special Agent on or about February 1, 2018. The RSO Special Agent informed them of the Complainant's allegations of reprisal for her participation in the investigation of VIS Employee #1. The pending investigation of VIS Employee #1 was also turned over to VIS after the RSO Special Agent discovered that video evidence at ██████████ was not available. The RSO Special Agent stated that the investigation was basically inconclusive and was deferred to the company for appropriate handling.

After the meeting with the RSO Special Agent on February 1, 2018, VIS Official #4 requested additional information from VIS Official #2 and VIS Official #3 regarding the Complainant's transfer to Basra, and whose decision it was to transfer her. VIS Official #2 forwarded an e-mail chain to VIS Official #4 alleging that it was between Government Witness #3 and Government Witness #1, insinuating that it was ██████████ idea and decision to transfer the Complainant to Basra. The original e-mail chain that VIS Official #2 forwarded was associated with Government Witness #1 confronting VIS on January 28, 2018, stating that it was VIS and Government Witness #3's decision to transfer the Complainant to Basra, and not ██████████. However, instead of sending the original e-mail from Government Witness #3 to Government Witness #1, VIS Official #2 paraphrased the response from Government Witness #3 to Government Witness #1, which appeared to distort an important fact. VIS Official #2 told VIS Official #4 that Government Witness #3 told Government Witness #1 on January 28, 2018, "per conversations with you (Government Witness #1) that you recommended her based on qualifications and work that she will be a better fit elsewhere." However, Government Witness #3's original e-mail to Government Witness #1 stated, "As stated before I'm under the impression that per conversations with you and Valiant that you recommended her based on qualifications and work that she will be a better fit elsewhere." In response, VIS Official #3 replied to VIS Official #2, "The email does confirm Government Witness #1/Government Witness #3 did not recommend [the Complainant] for the position. Read from the bottom of the email chain. ██████████ put the decision in our lap. It was our decision."

In an e-mail dated February 8, 2018, from VIS Corporate Attorney to the Complainant, VIS again stated that it was the military's request to "replace" the Complainant from the ██████████ unit and relocate her to Basra. In a similar manner, VIS informed EOR that the Complainant was discharged because the DoD requested that she be replaced or transferred and she refused the mission. EOR officials stated to us that VIS told them that a captain or a major from the military requested that the Complainant be reassigned to another military base; however, EOR was never provided anything in writing from VIS to support that claim. VIS Corporate Attorney testified that VIS Official

#2 and VIS Official #3 told him that the military requested that the Complainant be replaced and transferred to Basra.

Although VIS Corporate Attorney told the Complainant on February 8, 2018, that the [REDACTED] unit wanted her sent to Basra, he sent an e-mail to Government Witness #2 on May 7, 2018, because he was unable to “get straight answers” about why the Complainant was originally transferred. He informed Government Witness #1 about a pending DoD OIG complaint made by the Complainant and was seeking answers. VIS Corporate Attorney explained to Government Witness #1 in the e-mail that he was informed that someone at [REDACTED] most likely Government Witness #1 or Government Witness #2, had requested that VIS replace the Complainant with another [REDACTED]. As a result, the company attempted to transfer the Complainant to Basra; she refused, and was discharged. Since no one was able to produce a memorandum for record (MFR) for VIS Corporate Attorney, or another document showing the original reason why the Complainant was transferred to Basra, VIS Corporate Attorney asked Government Witness #1 to help shed some light on whether someone at [REDACTED] had requested that the Complainant be replaced.

In response, Government Witness #1 encouraged VIS Corporate Attorney to have a discussion with him and Government Witness #2 regarding the events surrounding the Complainant’s transfer to Basra. Government Witness #1 suggested to VIS Corporate Attorney that VIS management (VIS Official #3 and VIS Official #2) were providing VIS Corporate Attorney inaccurate information, and that the Complainant’s accusations about her termination and retaliation were not baseless. Government Witness #1 stated that VIS Corporate Attorney never responded to the e-mail and that Government Witness #1 never heard from VIS Corporate Attorney again. VIS Corporate Attorney stated to us that he indeed had a followup telephone conversation with Government Witness #1 about his e-mail, but that maybe Government Witness #1 did not remember the phone call. VIS Corporate Attorney verified that he never responded back to Government Witness #1 in writing. VIS Corporate Attorney said he deduced from his conversations that it was all just a misunderstanding with people talking past each other and making assumptions.

Prior to this point, on March 8, 2018, VIS Corporate Attorney sent an e-mail to ACOR asking if ACOR was able to get an MFR from Government Witness #1 or Government Witness #3 stating that the DoD had requested VIS to move the Complainant to Basra. Government Witness #1 told us that ACOR approached him prior to March 8, 2018, and asked him to provide such an MFR suggesting the Complainant was not performing. Government Witness #1 stated that the request by ACOR offended him personally and professionally because ACOR wanted Government Witness #1 to write something that ACOR knew to be untrue. Government Witness #1 explained that he chastised ACOR for requesting a memo that was not forthright. After the meeting with Government Witness #1, ACOR responded to VIS Corporate Attorney that he was not able to get an MFR from Government Witness #1, and that Government Witness #3 would most likely not provide one either. He apologized to VIS Corporate Attorney about the “not so great news.” Government Witness #3 verified ACOR never approached him for an MFR.¹¹

During the same time period in February 2018 that VIS met with the RSO regarding its investigation into VIS Employee #1, VIS Official #3 met with [REDACTED] leadership to address various issues impacting the [REDACTED]. One of the issues addressed included a VIS policy that prohibited [REDACTED] from discussing company-related matters with the military units in which they were assigned. This policy was one of the documented reasons why VIS discharged the Complainant.

¹¹ We attempted to interview ACOR regarding his discussions with Government Witness #1 and VIS Corporate Attorney. On advice of counsel, he declined to be interviewed in this investigation.

However, Government Witness #2 told us that he had an open door policy by which he encouraged all individuals, including ██████████ to participate.

Government Witness #2 stated that he was concerned after he learned that VIS discharged the Complainant for speaking with him about the Basra transfer. Government Witness #2 stated that the Complainant had reported that she was being retaliated against by VIS for participating in the RSO investigation of VIS Employee #1. Government Witness #2 said he saw the Complainant's termination form and verified that VIS terminated her for talking to him and Government Witness #1. As a result, Government Witness #2 requested to meet with VIS Official #3 on or about February 11, 2018, to discuss VIS' policy prohibiting communication with the military units. Government Witness #2 was concerned that VIS was telling its employees they could not report anything to military personnel, including legally-protected disclosures. In that meeting, Government Witness #2 requested a copy of the policy memo because he wanted his military attorneys to review it; however, VIS Official #3 did not share a copy of the policy after conversation with VIS legal counsel. Government Witness #2 stated that he understood that human resources-related issues could not be reported; however, a blanket policy allowing no "company related matters" was not legal. Government Witness #2 stated that VIS employees should be able to report illegal or unethical behavior to anybody in the military.

In response, VIS Official #3 sent an e-mail to Government Witness #2 on February 21, 2018, stating that while the company had a policy prohibiting employees from discussing human resources issues with the military point of contact, none of the ██████████ had ever been discharged on first, second, or even third-time offenses for going to their military point of contact with such issues. However, VIS Official #3 was not aware that Government Witness #2 had already seen a copy of the Complainant's termination form clearly stating that one of the reasons the Complainant was discharged was because she had discussed company-related matters with him and Government Witness #1. Based upon records provided by EOR and VIS, no corrective actions were ever documented or placed in the Complainant's personnel file showing that she had ever been counseled or warned about discussing company-related issues in the past. In spite of this, VIS Official #3 attempted to tell Government Witness #2 about "numerous examples of her (Complainant's) inappropriate behavior since her arrival at the BEC."

VIS Corporate Attorney told us that one of the reasons that VIS discharged the Complainant was that she went outside her chain of command and spoke with the military customer (Government Witness #1 and Government Witness #2) about company-related matters. VIS Corporate Attorney stated that he was told by VIS management at the BEC that the Complainant had a history of discussing company-related matters with the customer, and had been instructed not to do so in the past. When asked to specifically identify what the Complainant spoke about with the customer that violated VIS policy, VIS Corporate Attorney responded, "I believe that's when she went to Government Witness #1 and was complaining about the company moving her [to Basra], and it was some kind of retaliation."

VIS Employee #1's Continued Employment After the Complainant's Discharge

In addition to the December 7, 2017, incident involving the Complainant, VIS Employee #1 was involved in other alcohol-related incidents and abuse of position issues involving other military and civilian personnel in which she was identified as the aggressor. As a result, State Department officials spoke with VIS management on February 5, 2018, regarding VIS Employee #1's removal from the BEC and all other State Department facilities in Iraq. VIS then transferred VIS Employee #1 to a DoD site in Erbil, Iraq, on or about February 14, 2018. An RSO Special Agent stated that VIS

management did not want to discharge VIS Employee #1 for the violations at the BEC, but instead give her an opportunity to improve her behavior. The RSO Special Agent further told us that VIS management officials stated that VIS did not want to discharge VIS Employee #1 at that point because VIS had invested time and money into her employment with the company.

As stated above, other [REDACTED] had reported VIS Employee #1 to the RSO for various alcohol-related incidents. One of those individuals was VIS Employee #2. VIS Employee #2 stated that he and VIS Employee #1 were hired by VIS around the same time in the summer of 2017. VIS Employee #2 stated that he and VIS Employee #1 were initially friends and spent time together. VIS Employee #2 explained that over time, he began to warn VIS Employee #1 about her excessive alcohol consumption and associated behavior. VIS Employee #2 stated that VIS Employee #1 would be aggressive and confrontational when she was drinking, and he warned her about the impact of this behavior on the BEC. VIS Employee #2 stated that after VIS promoted VIS Employee #1 she began to threaten him by stating that she was management and would get him in trouble. VIS Employee #2 stated that he attempted to speak with VIS Official #2 to help resolve the issue.

A U.S. Army Staff Sergeant (SSG) witnessed an incident on November 17, 2017, and provided a signed statement to the RSO on January 31, 2018. The SSG reported that VIS Employee #1 got upset with VIS Employee #2 about something he said. VIS Employee #1 stood up and screamed at VIS Employee #2. In response, VIS Employee #2 told VIS Employee #1 that he would make a complaint to the company about her screaming at him. At that moment, VIS Employee #1 told VIS Employee #2 something like, she was management and she would get him fired. The SSG stated that after that event, VIS Employee #1 commented on multiple occasions that she hated VIS Employee #2. The SSG also stated that VIS Employee #1 had a habit of being intoxicated at [REDACTED], resulting in her being mean and aggressive.

On another occasion, VIS Employee #2 reported that VIS Employee #1 approached him, asking him to play a specific song while he was the [REDACTED] at [REDACTED].¹² He explained that on that specific night VIS Employee #1 appeared intoxicated and requested that he [REDACTED] that he did not have in his [REDACTED]. VIS Employee #2 also explained that the lack of Internet connectivity did not allow him to download it either. In response, VIS Employee #1 became upset and threatened to get him in trouble if he [REDACTED].

At some point in January 2018, VIS Employee #1 told VIS Corporate Attorney that VIS Employee #2 harassed her. Without speaking to VIS Employee #2, or taking a statement, VIS discharged VIS Employee #2. VIS Employee #2 stated that he still does not know the specifics of what VIS Employee #1 told VIS Corporate Attorney, but VIS Employee #2 attempted to speak with VIS Official #2 to explain that the allegations were not true. VIS Employee #2 had text messages and other evidence to show that he and VIS Employee #1 had a friendly relationship and that he never harassed her as she alleged. However, according to VIS Employee #2, VIS Official #2 told him there was nothing she could do to help him. Concerned that his legal rights had been violated, VIS Employee #2 approached the RSO and Government Witness #2 to explain that he had been wrongfully discharged.

The RSO contacted VIS Official #3 on or about January 31, 2018, and he met with VIS Employee #2 to discuss the discharge and review the evidence. VIS Employee #2 stated to us that after reviewing the evidence, VIS Official #3 conducted an internal investigation and reversed the

¹² While VIS Employee #2 worked full-time as a [REDACTED] and [REDACTED] he worked part-time as a [REDACTED].

discharge decision. However, VIS Official #3 told VIS Employee #2 that he was going to be reprimanded for going to the RSO and talking to them about company-related matters. VIS Employee #2 stated that he did not actually receive any disciplinary action from VIS because he told VIS Official #3 that VIS Official #2 gave him permission to speak with anyone he wanted outside of the company.

On February 11, 2018, VIS provided a "Notice of Corrective Action" form to VIS Employee #1 for the various complaints provided by the RSO because of the investigation against her. The company informed VIS Employee #1 that there was a theme to her inappropriate behavior while consuming alcohol, which included verbal altercations. The company included the December 7, 2017, incident between VIS Employee #1 and the Complainant as one of the various episodes in which she engaged in inappropriate behavior. VIS also listed two separate incidents between VIS Employee #1 and VIS Employee #2 as reasons for the disciplinary action. VIS stated that if VIS Employee #1 were "involved in any verbal altercations with, or without alcohol in Erbil" she would be counseled and discharged. In a February 5, 2018, e-mail, VIS Official #3 told an RSO Special Agent that VIS Employee #1 would be counseled in writing for her alcohol-related incidents and abuse of position; however, the Notice of Corrective Action did not mention any abuse of position violations.

VIS Official #2 stated to us that she did not consider VIS Employee #1's drunken altercations at [REDACTED] to violate company policy. VIS Official #2 stated that it was a violation of RSO policy, and the company had to move VIS Employee #1 to Erbil to prevent the RSO from revoking VIS Employee #1's security clearance and kicking her out of the BEC. The company wanted to make sure VIS Employee #1 had a second chance and that was why VIS moved her to Erbil.

At some point between February 5, 2018, and February 11, 2018, VIS also attempted to transfer VIS Employee #2 to Basra. VIS Employee #2 stated that VIS Official #2 told him that he had to transfer out of the BEC in order to avoid any tension with VIS Employee #1's friends. VIS Employee #2 also reported that VIS Official #2 was one of VIS Employee #1's close friends. Ultimately, VIS Employee #2 was not transferred because the military unit in which he was assigned strongly requested that he not be transferred. While he was not transferred to Basra, VIS banned VIS Employee #2 from [REDACTED] for several months.

On February 11, 2018, Government Witness #2 met with VIS Official #3 to discuss issues negatively affecting the VIS contract. One of the issues discussed was the manner in which VIS attempted to discharge VIS Employee #2 and transfer him to Basra. Government Witness #2 accused VIS of retaliating against VIS Employee #2. VIS Official #3 stated that VIS Corporate Attorney was to blame for his termination, and that VIS Official #3 and VIS Official #2 tried to defend VIS Employee #2. Because of the evidence provided by the RSO, VIS reversed VIS Employee #2's termination; and VIS Employee #1 was disciplined and removed from the BEC. VIS Official #3 also told Government Witness #2 that VIS was rescinding VIS Employee #2's transfer to Basra. VIS Official #3 then told VIS management that VIS Employee #2 gave Government Witness #2 copies of his termination form and counseling for relocation to Basra when he filed a complaint with Government Witness #2. VIS Official #3 stated that this should be considered a violation of company policy. [REDACTED], Mission Support/Facility Services [REDACTED], VIS, responded to VIS Official #3 that VIS Employee #2 should be counseled for providing Government Witness #2 with company proprietary information.

Government Witness #2 verified that he discussed VIS Employee #2 with VIS Official #3 because Government Witness #2 wanted VIS to know that VIS Employee #2's situation was another incident, in addition to the Complainant, of the company mistreating their employees. He stated that he told VIS Official #3, "... if you are mistreating your employees, then you are creating a toxic work environment that affects the military's mission." Government Witness #2 said that VIS Official #3 told him that VIS Employee #2's discharge was just a misunderstanding among VIS personnel. Government Witness #2 was told that VIS was able to determine that the root cause of the problem was VIS Employee #1, and that VIS Employee #1 and VIS Official #2 got a little too close in their relationship. Government Witness #2 stated that he pushed back against VIS Official #3, explaining that the fact that VIS Official #2 was allowed to have positive bias for VIS Employee #1, and that the VIS attorney fired VIS Employee #2 without giving him a chance to defend himself lowered Government Witness #2's trust in the company. Government Witness #2 further stated that he questioned VIS as to what actions the company was going to take against VIS Employee #1 for making false claims of sexual harassment.

On or about February 14, 2018, VIS Employee #1 transferred to Erbil Airbase, where she continued to work as the [REDACTED] to VIS Official #2 and VIS Official #3. On May 29, 2018, Government Witness #4, [REDACTED] filed a verbal complaint against VIS Employee #1 with VIS Employee #3, VIS Site Lead for Erbil. Government Witness #4 cited two separate issues involving VIS Employee #1: (1) a verbal altercation with a dining facility employee, and (2) unprofessional appearance, specifically her septum nose ring. VIS Employee #3 contacted VIS Official #2 about counseling VIS Employee #1. On June 2, 2018, VIS Official #2 notified VIS Employee #1 of Government Witness #4 complaint. VIS Official #2 asked VIS Employee #1 to remove the septum nose ring and to dress in accordance with company policy. On June 3, 2018, VIS Employee #1 confronted Government Witness #4 about his complaint in spite of VIS Employee #3's direction not to approach him.

On June 13, 2018, VIS Employee #1 contacted an Equal Opportunity representative in Kuwait via e-mail and filed a formal complaint on or about July 15, 2018, for which she provided a written statement.

Shortly after being counseled by VIS management, VIS Employee #1 attempted to recruit VIS [REDACTED] in Erbil to conduct surveillance on [REDACTED] leadership in an effort to obtain negative information on the chain of command. This was corroborated in evidence provided to [REDACTED]. [REDACTED] leadership felt that the act of conducting surveillance on them posed a security threat. Based on this information and VIS Employee #1's previous conduct at Erbil Airbase, [REDACTED] requested that VIS Employee #1 be removed from the base as early as June 18, 2018. On June 25, 2018, Government Witness #4 submitted an MFR to VIS Official #2 requesting that VIS remove VIS Employee #1 from Erbil. On July 21, 2018, [REDACTED] leadership met with VIS Official #3, VIS Official #2 and VIS Corporate Attorney after Government Witness #4 noticed that VIS Employee #1 had not been removed from Erbil Airbase more than a month after his initial request to remove her. At some point after July 21, 2018, VIS reassigned VIS Employee #1 to a position in Kuwait.

In statements taken in a related Army Regulation (AR) 15-6 investigation involving VIS Employee #1; VIS Official #2 and VIS Employee #3 said that the company had initially decided to discharge VIS Employee #1 in July 2018, after receiving the MFR from Government Witness #4 and considering her past work history at the Embassy in Baghdad. However, VIS officials ultimately decided to reassign VIS Employee #1 to a position in Kuwait. VIS Corporate Attorney stated that he decided VIS should not discharge VIS Employee #1 because he believed Government Witness #4 was retaliating against VIS Employee #1 for filing an EO complaint against him. However, VIS

Employee #3 testified that VIS Employee #1 was “immature, seeks attention and will lie for just cause or retaliation purposes.” The AR 15-6 investigation determined that Government Witness #4 did not target, threaten, bully, or retaliate against VIS Employee #1 while in Erbil, and did not substantiate any of the specifics allegations VIS Employee #1 made against him.

In his statement for the AR 15-6 investigation, VIS Corporate Attorney stated, “I can tell you directly that Valiant was planning to discharge VIS Employee #1 over Government Witness #4's MFR. When the Program Manager and I sat down with her to discharge her, she brought up the harassment complaint she filed. Based on that, I made the decision that Valiant should not discharge VIS Employee #1. It was my determination that this MFR was retaliatory and VIS Employee #1 should not be discharged based on the MFR.” While VIS Employee #3 stated that VIS Employee #1 told him that she was filing a complaint against Government Witness #4 with someone in Kuwait, and he told Government Witness #4 about the complaint, evidence shows that VIS Employee #1 did not specifically name Government Witness #4 to the EO Regional Director until June 26, 2019, which was one day after Government Witness #4 submitted the formal MFR. Evidence shows that the June 13, 2018, e-mail that VIS Employee #1 sent to the EO Regional Director did not mention either [REDACTED] or Government Witness #4 directly.

On May 6, 2019, attorneys representing VIS confirmed that VIS Employee #1 had not been discharged on July 9, 2018. Instead, she was allowed to submit a resignation letter on July 10, 2018, with an effective date of September 30, 2018. VIS transferred VIS Employee #1 to Kuwait and allowed her to work for 2 more months. VIS Employee #1 officially separated from the company on September 15, 2018.

VI. ANALYSIS

Under 10 U.S.C. 2409, reprisal analysis must apply two different standards of proof. First, a preponderance of the evidence must establish that one or more protected disclosures contributed to a decision to discharge, demote, or take or fail to take another action with respect to the Complainant.

If so, the next step is to determine whether clear and convincing evidence establishes that the same action would have been taken or not taken, even in the absence of the protected disclosure. This is done by weighing together, for each action taken or not taken, the following factors: the strength of the evidence in support of the action; the existence and strength of any motive to retaliate on the part of the responsible management officials who were involved in the action; and any evidence that they take similar actions against employees who are not whistleblowers, but who are otherwise similarly situated. In the absence of such clear and convincing evidence, the complaint is substantiated. If clear and convincing evidence supports the action taken, the complaint is not substantiated.

A. Did the Complainant make a protected disclosure? Yes

We determined that the Complainant made six protected disclosures under 10 U.S.C. 2409.

Complainant's Initial Report of Alleged Assault

On December 7, 2017, the Complainant told VIS Official #2, while at [REDACTED] that a fellow coworker and VIS employee, VIS Employee #1, had pushed her and almost knocked her over (assault). Title 18 U.S.C., Chapter 7, Section 113(a)(5), states that simple assaults

within territorial jurisdiction of the United States are punishable by fine or imprisonment. 18 U.S.C., Chapter 1, Section 7(9)(A) defines territorial jurisdiction to include the premises of U.S. diplomatic and consular facilities. Additionally, the VIS contract with the Army includes Federal Acquisition Regulation (FAR) clause 52.203-13, "Contractor Code of Business Ethics and Conduct." The FAR clause states that the Contractor shall exercise due diligence to prevent criminal activity and promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law. The Complainant's report to VIS Official #2 is protected because she provided information she reasonably believed to evidence an assault; a violation of law, rule, or regulation related to a DoD contract. Furthermore, VIS Official #2, as the Assistant Task Order Program Manager, was a management official of the contractor with the responsibility to investigate, discover, or address misconduct.

VIS Response to the DoD OIG Preliminary Report:

VIS disagreed with the DoD OIG determination that FAR clause 52.203-13 was applicable to this situation. VIS asserted that the FAR clause concerns only a limited number of criminal violations that require disclosure to the government involving fraud, conflict of interest, bribery, or gratuity violations, and must occur "in connection with the award, performance, or closeout of" a federal contract. VIS further asserted that this portion of the FAR clause did not obligate VIS to do anything "with, because of, or in response to" the Complainant's complaints. VIS stated that the inclusion of FAR clause 52.203-13 in the contract does not mean that the Complainant's allegation of assault is a violation of a law, rule, or regulation related to the contract. VIS argued that the purpose of the whistleblower protection laws is to protect individuals who report violations that related to the business of the Contract, and that they do not extend to personal time. VIS believes that the Complainant's allegation of assault by VIS Employee #1 was a personal, not a professional, issue.

VIS also stated that the legislative history of whistleblower reprisal law and case law make clear that the laws and implementing regulations provide protections for contractors who witness fraud, waste, abuse, gross mismanagement, violation of law (of serious or significant nature) related to a contract, or a substantial and specific danger to public health or safety, and report what they witnessed to proper U.S. government authorities.¹³

DoD OIG Response:

We disagree with VIS' interpretation of the FAR and 10 U.S.C. 2409. FAR clause 52.203.13, establishing a code of business ethics and conduct, requires contractors to exercise due diligence to "prevent and detect criminal conduct," and to promote a culture emphasizing ethical conduct and commitment to compliance with the law. The clause further requires that contractors disclose to an agency OIG whenever a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733). These requirements are distinct. Additionally, FAR clause 52.203-13 (c)(2)(ii)(D) also requires that a contractor's internal control system provide for an internal reporting mechanism, such as a hotline, by which employees may report suspected instances of "improper conduct", and instructions that encourage employees to make such reports. Further, the internal control system must provide for disciplinary action for "improper conduct" or for failing to take reasonable steps

¹³ VIS' response to the DoD OIG preliminary report did not specify which protected disclosures they disagreed with. Therefore, we treated its response as if VIS addressed all of the Complainant's disclosures to VIS and EOR management and RSO officials.

to prevent such conduct. Finally, paragraph 52.203-13(c)(2)(ii)(F) establishes the internal control system requirements to ensure timely reporting to the OIG of specific criminal violations under Title 18 U.S.C., or violation of the False Claims Act.

In this case, the Complainant reported VIS Employee #1's alleged improper and criminal conduct directly to her supervisor, VIS Official #2. Regarding VIS' contention that the Complainant's disclosures were *de minimis*, or trivial, we disagree that an allegation of assault by one person upon another is a trivial matter. Though the degree of the alleged assault in this case may not require mandatory reporting under FAR clause 52.203-13, it is a type of "improper conduct" for which the reporting mechanism required in VIS's internal control system is implicated.

In the enclosed environment of the BEC, disruptive behavior, or improper conduct, could adversely affect VIS' reputation with military officials and contracting personnel. VIS was concerned about its reputation with those individuals. On February 11, 2018, VIS provided a "Notice of Corrective Action" form to VIS Employee #1 because of a theme of her inappropriate behavior while consuming alcohol, which included verbal altercations with personnel on its contract and other contracts. VIS included three examples of VIS Employee #1's verbal altercation. All three occurred at [REDACTED] on the BEC during VIS Employee #1's personal time, and one of those was the December 7, 2017, incident between VIS Employee #1 and the Complainant. By stipulating that VIS Employee #1's altercations were with people on their contract, VIS indicates that her behavior during her personal time was a professional issue related to their contact. Additionally, the RSO requested VIS Employee #1's removal from the BEC and barred her from entering all State Department facilities in Iraq. VIS Employee #1's behavior, including her alleged assault upon the Complainant was a violation of law related to the business of their contract.

VIS included the phrase "of serious or significant nature" when describing the requirement for a disclosure of a violation of law to be protected. VIS' assertion is not supported by the plain language of 10 U.S.C. 2409. It prohibits reprisal for disclosing to specific entities, including a management official of the contractor who has the responsibility to investigate, discover, or address misconduct, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. 10 U.S.C. 2409 does not limit the kinds of reportable violations of law, rule, or regulation to only those "of serious or significant nature," and expressly authorizes an employee to make disclosures to persons with the responsibility to investigate, discover, or address *misconduct*. We disagree with VIS that such disclosure must be made only to proper U.S. government authorities. The statute is not so limited as VIS contends.

A disclosure need not necessarily be of a particularly serious or significant nature in order to qualify for protection under 10 U.S.C. 2409. Rather, the plain language of the law protects disclosures including "a violation of law, rule, or regulation related to a DoD contract." Regardless, the type of misconduct the Complainant reported – an alleged assault made by another VIS employee against her – is, in the DoD OIG's view, a serious type of misconduct.

Complainant's First Conversation with the RSO

On December 8, 2017, the Complainant spoke with RSO Special Agents, and disclosed information regarding the alleged assault committed by VIS Employee #1 on December 7, 2017. Title 18 U.S.C., Chapter 7, Section 113(a)(5), states that a simple assault within the territorial

jurisdiction of the United States is a violation of law and is punishable by fine or imprisonment. The Complainant's disclosure to RSO Special Agents is protected because she provided information she reasonably believed to evidence an assault by a fellow VIS coworker (a violation of law, rule, or regulation related to a DoD contract) to an authorized official of a law enforcement agency. Special agents working with the Regional Security Office of the U.S. Embassy in Baghdad, Iraq, are authorized officials of a law enforcement agency.

Complainant's Second Conversation with the RSO

On December 12, 2017, the Complainant spoke again with RSO Special Agents regarding the alleged assault committed by VIS Employee #1 on December 7, 2017, and provided a written statement. Title 18 U.S.C., Chapter 7, Section 113(a)(5), states that a simple assault within the territorial jurisdiction of the United States is a violation of law and is punishable by fine or imprisonment. The Complainant's conversation with RSO Special Agents and written statement are protected because she provided information she reasonably believed to evidence an assault by a fellow VIS coworker (a violation of law, rule, or regulation related to a DoD contract) to an authorized official of a law enforcement agency as stated in DFAR subpart 203.9.

Complainant's Communication with EOR (Subcontractor)

On December 13, 2017, the Complainant sent an e-mail to EOR management team members disclosing the alleged December 7, 2017, assault by VIS Employee #1. Title 18 U.S.C., Chapter 7, Section 113(a)(5), states that a simple assault within the territorial jurisdiction of the United States is a violation of law and is punishable by fine or imprisonment. Individuals included in the e-mail were the EOR Chief Executive Officer and an EOR Program Manager. The e-mail also included a copy of the statement the Complainant provided to the RSO. The Complainant told EOR officials in her communication that she was afraid of retaliation by VIS management for making the report against VIS Employee #1 to the RSO. The Complainant's communication with EOR management officials is protected because she provided information she reasonably believed to evidence an assault by a fellow VIS coworker (a violation of law, rule, or regulation related to a DoD contract) to management officials with the responsibility to investigate, discover, or address misconduct (EOR Chief Executive Officer and Program Manager).

Complainant's Response to VIS Management About Basra Transfer

On January 28, 2018, the Complainant responded to VIS Official #2, VIS Official #1, and Government Witness #3 that her sudden and unexpected transfer to Basra was in retaliation for her participation in the RSO investigation of VIS Employee #1. VIS Official #1 and Government Witness #3 corroborated to us that the Complainant made that statement. The VIS contract with the Army includes Defense Federal Acquisition Regulation (DFAR) clause 252.203-7002, "Requirement to Inform Employees of Whistleblower Rights." The DFAR clause references the protections under 10 U.S.C. 2409 as described in DFAR subpart 203.9. DFAR subpart 203.9 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee for disclosing information the employee reasonably believes is evidence of a violation of law, rule, or regulation related to a DoD contract to a management official with the responsibility to investigate, discover, or address misconduct.

The Complainant's report to these individuals is protected, as supported by DFAR subpart 203.9, because she disclosed information that she reasonably believed to evidence whistleblower reprisal (a violation of law, rule, or regulation related to a DoD contract) to a management official

with the responsibility to investigate, discover, or address misconduct. VIS Official #2 and VIS Official #1 were aware of, and personally involved in, the Complainant's original protected disclosures related to VIS Employee #1. Furthermore, VIS Official #2, as the Assistant Task Order Program Manager, and VIS Official #1, as the BEC Site Lead, were management officials of the contractor with the responsibility to investigate, discover, or address misconduct.

Complainant's First Conversation with Government Witness #1 and Government Witness #2

On January 28, 2018, the Complainant spoke with Government Witness #2 and Government Witness #1 after being informed that she was being transferred to Basra. The Complainant told Government Witness #2 and Government Witness #1 that VIS told her that [REDACTED] had requested that she be transferred, but she did not believe what VIS officials told her. Instead, the Complainant told Government Witness #2 that she believed VIS was retaliating against her for her participation in the RSO investigation involving VIS Employee #1. The Complainant's disclosure to [REDACTED] leadership is protected, as explained in DFAR subpart 203.9, because she provided information she reasonably believed to evidence whistleblower reprisal (a violation of law, rule, or regulation related to a DoD contract) to a DoD employee with the responsibility for contract oversight or management. Government Witness #2, as the [REDACTED], and Government Witness #1, as the [REDACTED], are DoD employees with the responsibility for contract oversight or management.

VIS Response to the DoD OIG Preliminary Report:

VIS stated that its company policy permits employees to communicate with government officials regarding "significant matters, such as fraud and safety." It is against its policy for employees to distract the military from its mission for trivial matters, such as the Complainant's "personal issues" and those that do not relate to either a "substantial and specific danger to public safety" or a "violation of law."¹⁴ VIS asserted that the Complainant's disclosures violated company policy.

DoD OIG response:

We disagree with VIS's implied contention that the Complainant's disclosures covered trivial matters or merely "personal issues." Moreover, as we noted above, 10 U.S.C. 2409 does not contain the words "serious" or "significant" to describe the types of violation of law, rule or regulation that contractor employees can disclose. Contractor employees can report more than just "serious" and "significant" violations of law and specific dangers to public safety. They are protected for reporting gross mismanagement, gross waste of funds, abuse of authority, and violations of laws, rules and regulations. In this instance, the Complainant disclosed what she reasonably believed was a violation of law, including an alleged violation of 10 U.S.C. 2409 itself, in that she believed VIS' intention to transfer her to Basra was an act of reprisal. 10 U.S.C. 2409 and DFAR subpart 203.9 specify that such disclosures are protected.

Complainant's Disclosures Following VIS' Termination of Her Employment.

On January 29, 2018, the Complainant told Government Witness #2, Government Witness #1, and two RSO Special Agents that she believed VIS' effort to transfer her, and VIS' subsequent

¹⁴ VIS did not specify if it was referring to the Complainant's January 28, 2018, disclosures to Government Witness #2 and Government Witness #1. However, we reasoned that its response did appear to relate to that protected disclosure and therefore we have addressed it here.

decision to discharge her, were acts of retaliation for her participation in the RSO investigation involving VIS Employee #1. However, the Complainant made these disclosures after VIS had attempted to transfer her, and decided to discharge her. Therefore, they could not have been a contributing fact in VIS' decision to take those actions and we will not analyze them further.

As described above, a preponderance of the evidence established that the Complainant made six protected disclosures from December 7, 2017, through January 28, 2018.

B. Did the contractor, subcontractor, grantee, subgrantee, or personal services contractor discharge, demote, or take or fail to take another action with respect to Complainant? Yes

We determined that VIS took two actions with respect to the Complainant.

Transfer to Basra

On January 28, 2018, VIS informed the Complainant that VIS had decided to transfer her to Basra, Iraq, effective January 31, 2018. The attempt to transfer the Complainant constitutes an action that might dissuade a reasonable employee from making a protected disclosure. Accordingly, the attempt to transfer the Complainant is a covered action under 10 U.S.C. 2409 and DFAR subpart 203.9.

Termination (Discharge)

On January 29, 2018, VIS discharged the Complainant. Discharge of a subcontractor employee is a specific covered action under 10 U.S.C. 2409 and DFAR subpart 203.9.

As described above, a preponderance of the evidence established that VIS took two actions under 10 U.S.C. 2409 and DFAR subpart 203.9 with respect to the Complainant.

C. Could a reasonable person conclude that one or more protected disclosures were contributing factors in the decision of the contractor, subcontractor, grantee, subgrantee, or personal services contractor to take or fail to take an action with respect to the Complainant? Yes

"Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision. To determine whether a protected disclosure was a contributing factor in a decision to take or failure to take an action with respect to the Complainant, our analysis ordinarily weighs the following factors: knowledge of the protected disclosures on the part of the management official involved in the decision, and the decision's proximity in time to the protected disclosure. In most instances, these two factors together suffice to establish that a protected disclosure was a contributing factor. However, if knowledge and timing alone fail to establish that a disclosure was a contributing factor, any other circumstantial evidence may also be considered, such as the strength or weakness of the responsible management official's stated reasons for the action, whether the protected disclosure was personally directed at the responsible management official, or whether the responsible management official had a desire or motive to retaliate against the complainant.

We determined that one or more of the Complainant's protected disclosures were a contributing factor in VIS' decision to take actions with respect to the Complainant. Discussion of the factors weighed together follows the factor-by-factor analysis below.

Knowledge

VIS officials knew of all six of the Complainant's protected disclosures at issue.

VIS Official #2 was the direct recipient of the Complainant's December 7, 2018, protected disclosure at [REDACTED]. Four days later, on December 11, 2017, an RSO Special Agent discussed the Complainant's allegations regarding VIS Employee #1 with VIS Official #3. VIS Official #3 informed VIS Official #2 that same day. In an e-mail to that RSO Special Agent, VIS Official #3 referenced the Complainant's story and stated that it was different than VIS Official #2's. The next day, December 12, 2017, VIS Official #3 instructed VIS Official #1 to tell the Complainant that she had the right to provide a statement to RSO officials without fear of retaliation. That same day, the Complainant told VIS Official #2 that the Complainant had provided a written statement to RSO officials regarding VIS Employee #1. On December 13, 2017, an EOR Program Manager, responded to the Complainant's e-mail to EOR officials and informed her that EOR officials would follow up with VIS management.

On January 28, 2018, immediately after VIS officials told her about the transfer to Basra, the Complainant again made a protected disclosure directly to VIS officials when she informed VIS Official #1 and VIS Official #2 that she believed the transfer was in retaliation for her participation in the RSO investigation of VIS Employee #1. Likewise, VIS officials knew that the Complainant informed [REDACTED] officials about her belief that the attempt to transfer her was in retaliation for her disclosures to RSO officials. In an e-mail from Government Witness #3 to VIS Official #1 and VIS Official #2, Government Witness #3 informed VIS management that the Complainant had spoken with Government Witness #1 and Government Witness #2 about the meeting. Government Witness #1 also contacted VIS Official #1 and VIS Official #2 via e-mail regarding his January 28, 2018, conversation with the Complainant. VIS stated in the Complainant's termination letter on January 29, 2018, that one of the reasons they were discharging her was because she spoke about company business with a customer on January 28, 2018.

Timing of Actions Taken

The timing between the Complainant's protected disclosures and the actions taken against her was significantly close. The Complainant's first four protected disclosures occurred from December 7, 2017, through December 13, 2017. The first action taken against her (transfer to Basra) was first decided on or about January 12, 2018, though VIS purposely decided not to inform the Complainant about the transfer until January 28, 2018. The Complainant's next two protected disclosures occurred on January 28, 2018, after notification of her imminent transfer to Basra. VIS terminated the Complainant the next day, January 29, 2018.

Discussion

Based on the factors analyzed above, a preponderance of the evidence established that the Complainant's six protected disclosures at issue were a contributing factor in VIS' decision to transfer her to Basra, and subsequently discharge her from employment.

D. Does clear and convincing evidence indicate that the contractor, subcontractor, grantee, subgrantee, or personal services contractor would have discharged, demoted, or taken or failed to take another action with respect to the Complainant absent the protected disclosure(s)? No

Once a preponderance of the evidence establishes that one or more protected disclosures contributed to the decision to discharge, demote, or take or fail to take another action with respect to Complainant, the case is substantiated unless clear and convincing evidence establishes that the action would have been taken or failed to have been taken even in the absence of the protected disclosure. For each action, our analysis weighs together the following factors: the strength of the evidence in support of the stated reasons for taking or failing to take the action; the existence and strength of any motive to retaliate on the part of the company officials who were involved in the decision; and any evidence that they take or fail to take similar actions with respect to employees who are not whistleblowers, but who are otherwise similarly situated.

We determined that VIS would not have transferred the Complainant to Basra, and subsequently discharge her from employment, absent her protected disclosures. Discussion of the factors weighed together follows the factor-by-factor analysis below.

VIS' Stated Reasons for Transferring the Complainant to Basra

VIS provided different reasons to different people for transferring the Complainant to Basra.

A VIS attorney, VIS Corporate Attorney, stated to the Complainant and EOR that ██████ requested that the Complainant be replaced with another ██████ and as a result, VIS decided to transfer her to Basra because it needed to fill a vacancy there. In a February 8, 2018, e-mail from VIS Corporate Attorney, he told the Complainant that the Army had requested that VIS replace her. VIS Corporate Attorney copied the EOR Chief Executive Officer and an EOR Program Manager on the e-mail. In a similar manner, VIS Corporate Attorney emailed Government Witness #1 on May 7, 2018, asking him to clarify why the Complainant was transferred to Basra since VIS Corporate Attorney was told that someone from ██████ most likely Government Witness #1 or Government Witness #2, had requested that the Complainant be replaced with another ██████ VIS Corporate Attorney alleged that VIS Official #2 and VIS Official #3 initially informed him that Government Witness #1 and Government Witness #3 originated the idea and approached VIS to arrange the transfer.

However, Government Witness #3 stated to us that he merely informed VIS Official #1 that he had a vacancy in Basra. Government Witness #3 said that he needed someone reliable and well-qualified to fill the vacancy. Evidence shows that Government Witness #3 made the request on January 10, 2018. In response, Government Witness #3 stated that VIS recommended the Complainant as the best available ██████ VIS Official #1 further stated that it was originally VIS Official #2's idea to fill the position with the Complainant in Basra. At VIS Official #2's direction, VIS Official #1 asked Government Witness #1 his thoughts on the Complainant, and whether Government Witness #1 would recommend the Complainant as a well-qualified candidate for the vacancy. Government Witness #1 stated that the Complainant was able to operate independently and did great work. VIS officials notified Government Witness #1 on or about January 12, 2018, that they intended to transfer the Complainant to Basra.

Conversely, VIS Official #2 stated that VIS Official #1 came up with the idea to transfer the Complainant to Basra after Government Witness #3 approached him about the vacancy. However,

VIS Official #2 also claimed at one point that it was Government Witness #1 and Government Witness #3 who came up with the idea. VIS Official #3 stated in an e-mail to other VIS management that VIS decided to transfer the Complainant to Basra.

VIS Response to the DoD OIG Preliminary Report::

VIS referenced its contract to support the assertion that it had a contractual obligation to rapidly provide replacement personnel by reassigning ██████ as needed to meet the Government's mission and needs. Therefore, VIS asserted that it had an independent, contractually valid reason for requiring the Complainant to relocate.

DoD OIG Response:

The DoD OIG does not dispute that VIS has contractual obligations, or that Government Witness #3, as the Government's representative, asked the company to find a suitable replacement for a ██████ in Basra. However, VIS delayed notifying the Complainant of that need and its intent, giving her only 2 days to accept and prepare for that relocation. As stated by VIS Official #1, VIS did so in order to give the Complainant no option but to accept the relocation, even though that was not necessary. VIS could have informed the Complainant much earlier and still compelled her to relocate in order to keep her job.

Further, VIS did not dispute VIS Official #1's statement to us that the Complainant's participation with the RSO's investigation into VIS Employee #1 affected VIS' decision to transfer the Complainant to Basra. VIS Official #1 stated that it was his understanding that VIS Official #2 believed that the Complainant personally reported VIS Employee #1 to the RSO, and did not keep her (the Complainant's) promise to not report the issue. VIS Official #1 stated that VIS wanted to remove any possible future issues involving the Complainant, and wanted the Complainant to "cool down and stop getting in trouble." VIS Official #1 further stated that since VIS Employee #1 was having problems with the Complainant, and VIS Employee #1 was bringing too much negative attention to the company, that the vacancy in Basra was an opportunity to remove the Complainant from the equation.

VIS' Stated Reasons for Discharging the Complainant

VIS' January 29, 2018, termination write-up for the Complainant stated that:

- VIS Official #2, VIS Official #1, and Government Witness #3 participated in a meeting with the Complainant on January 28, 2018, to inform the Complainant that VIS was transferring her to Basra.
- After she was notified that the decision to transfer her to Basra was final, the Complainant refused the assignment and accused VIS Official #2 and VIS Official #1 of retaliation, and stated that she wished to resign instead.
- The Complainant had been previously instructed by VIS management not to discuss company issues with the customer.
- After the first meeting with VIS Official #2, VIS Official #1, and Government Witness #3, the Complainant spoke with Government Witness #1 and Government Witness #2 about her situation (transfer to Basra), which created a bad image for the company and possibly damaged working relations with the military.
- Based on the fact that the Complainant "refused mission, threatened to quit and ultimately went to the customer to discuss company related business" (transfer to

Basra), VIS management recommended that the Complainant be discharged immediately.

Motive to Retaliate by Transferring the Complainant to Basra

The evidence supports that the Complainant's protected disclosures motivated VIS officials to transfer the Complainant to Basra. VIS Official #1 stated to us that the Complainant's participation in the RSO's investigation of VIS Employee #1 directly contributed to VIS' decision to transfer her to Basra. Based on this admission alone, a member of VIS' management confirmed that at least one of the Complainant's protected disclosures motivated the decision to transfer her. Additionally, the company had other motivations to retaliate against the Complainant by transferring her to Basra. These motivations included the personal relationship that VIS Official #2 had with VIS Employee #1 and the negative attention that the RSO investigation against VIS Employee #1 was bringing to the company.

VIS Official #2 and VIS Employee #1 were friends and spent much of their free time together. VIS Official #3 admitted to Government Witness #2 that VIS Official #2 and VIS Employee #1 had gotten too close to one another, affecting their working relationship. Likewise, both VIS Official #1 and an RSO Special Agent stated that VIS ██████ believed that if anyone "messed with" VIS Employee #1 they were "messing with" VIS Official #2. Taking this into consideration, we determined the Complainant's participation in the RSO's investigation of VIS Employee #1 motivated VIS Official #2 to transfer the Complainant to Basra because VIS Official #2 wanted to protect her friend, VIS Employee #1. As early as December 12, 2018, an RSO Special Agent told VIS Official #3 that VIS Official #2's presence and involvement with the incident at ██████, and her personal relationship with VIS Employee #1, gave VIS Official #2 "credibility issues."

Additionally, evidence suggests that a personal animosity developed between the Complainant and VIS Official #2. VIS Official #1 stated that VIS Official #2's animosity most likely affected how she interacted with the Complainant. He also stated that VIS Official #2 told him that the Complainant promised her, as a friend, that she would not report VIS Employee #1's incident to the RSO. VIS Official #1 further stated that VIS Official #2 told him she had asked the Complainant to keep things quiet and not report anything about the incident at ██████ because VIS Employee #1 had been drinking. VIS Official #1 stated that he thought that VIS Official #2 felt betrayed because she believed the Complainant had broken her promise.

In addition, the Complainant's cooperation with the RSO's investigation of VIS Employee #1 brought unwanted attention to the company. VIS officials believed that the Complainant was the person who made the report to the RSO. On December 12, 2017, VIS Official #3 told the RSO that he wanted to keep the incident between the Complainant and VIS Employee #1 at the lowest level possible. VIS Official #3 made efforts, which were ultimately successful, to have the RSO hand the investigation over to VIS. VIS Official #1 stated that since VIS Employee #1 was having problems with the Complainant, and VIS Employee #1 was bringing too much negative attention to the company, that the vacancy in Basra presented itself as an opportunity to remove the Complainant from the equation.

Motive to Retaliate by Discharging the Complainant

The evidence also supports that the Complainant's allegations of retaliation, made to ██████ officials, motivated VIS to discharge her. She alleged that VIS retaliated against her, and shared this allegation with the military customer. The Complainant told VIS Official #1 and VIS Official #2 that

the transfer to Basra was in retaliation for her participation in the RSO investigation involving VIS Employee #1. She also told Government Witness #2 the same thing immediately following the meeting. Additionally, she reported to Government Witness #1 and Government Witness #2 that VIS told her that [REDACTED] was the source of the recommended transfer to Basra when VIS was the actual source.

We determined the Complainant's report to Government Witness #1 and Government Witness #2 caused embarrassment for VIS management officials at the BEC and amplified the already strained working relationship between [REDACTED] and VIS. This is expressly mentioned in the Complainant's discharge letter, where VIS stated that one of the reasons the Complainant was discharged was because she went to the customer and discussed company-related issues (transfer to Basra), creating a bad image for the company and possibly damaging the working relationship with the customer ([REDACTED]).

VIS Corporate Attorney acknowledged that one of the reasons VIS discharged the Complainant was because she went to Government Witness #1 and accused VIS of retaliating against her by sending her to Basra. While VIS Corporate Attorney refers to the contents of that conversation as being about company-related matters in violation of VIS policy, under 10 U.S.C. 2409, the content of that conversation was a protected disclosure. Based on VIS Corporate Attorney's testimony alone, at least one of the Complainant's protected disclosures was a contributing factor in her discharge.

Disparate Treatment of Complainant

Because all of the protected disclosures involved VIS Employee #1 either directly or indirectly, it is reasonable to compare the manner in which VIS treated the Complainant to how it treated VIS Employee #1. While the Complainant had a couple of years more experience as a [REDACTED] in Iraq, both she and VIS Employee #1 began working as [REDACTED] with [REDACTED] in 2017. Even though VIS Employee #1 became VIS' [REDACTED] in fall 2017, both individuals were otherwise similarly situated employees.

Beginning with the incident that occurred at [REDACTED] on December 7, 2017, it became apparent that VIS management at the BEC took efforts to protect VIS Employee #1 from the RSO, while discrediting the Complainant. VIS officials questioned the Complainant's credibility while attempting to hide or minimize VIS Employee #1's behavior. VIS Official #3 suggested to the RSO that the Complainant's story was untrue because VIS Official #2 told him so. Additionally, VIS Official #2 wrote a statement for the RSO that minimized VIS Employee #1's role in the incident, insinuating that VIS Employee #1 did nothing wrong, suggesting that the Complainant was the intoxicated individual and that she had caused problems. VIS Official #1 stated VIS Official #2 felt betrayed because she believed that the Complainant had reported the issue to the RSO. Even after VIS discharged the Complainant, VIS officials attempted to discredit her by telling RSO officials that she had a history of performance problems.

Conversely, VIS allowed VIS Employee #1 to transfer to Erbil when the RSO threatened to remove her from the BEC due to alcohol-related altercations, which is arguably a more egregious circumstance than the Complainant's behavior. VIS eventually removed VIS Employee #1 from the BEC but VIS management continued to minimize the significance of her actions. The company wanted to give VIS Employee #1 another chance because it had invested significant time and monetary resources into her employment. When VIS removed VIS Employee #1 from Erbil for

behavior issues at the request of Army leadership there, it allowed her to resign in lieu of discharging her, transferred her to Kuwait, and allowed her to work for an additional 2 months.

In contrast, while the Complainant was identified as one of the better [REDACTED] assigned to [REDACTED] she was terminated for refusing the initial transfer to Basra because she believed it was being done in retaliation. Even after the Complainant changed her mind and agreed to accept the transfer to Basra, VIS discharged her and removed her from the country within 24 hours. When Government Witness #3 asked VIS to reconsider the termination because he still wanted the Complainant to transfer to Basra, the company refused. Unlike VIS Employee #1, VIS was not concerned about the time and money invested in the Complainant, nor extending the same amount of leniency. VIS' lack of concern for the cost of replacing the Complainant and its efforts to retain VIS Employee #1 are more disconcerting considering that its contract with the Army states the contract's goal is to retain the most-qualified [REDACTED] while allowing the least-qualified to attrite. The contract further states:

The government considers maintaining a low rate of personnel turnover an important performance measure of the success of this contract. It costs both the government and the contractor significant time and money to orient and in-process new personnel.

One of the reasons that VIS discharged the Complainant was because she discussed company-related matters (transfer to Basra in retaliation) with [REDACTED] leadership, which the company alleged created a bad image and possibly damaged the customer relationship with the military. However, VIS did not cite VIS Employee #1's behavior as creating a bad image for the company when RSO officials investigated VIS Employee #1 and found that she engaged in multiple altercations with civilian contractors and military personnel and abused her position. As recently as May 13, 2019, VIS Official #2 had continued to minimize the importance and gravity of VIS Employee #1 being removed from the BEC. VIS Official #2 continued to state that VIS Employee #1 did not violate any VIS rules or policies. She implied that VIS Employee #1 only violated RSO rules and policies, and had to be removed because the RSO gave VIS no choice. VIS did not want VIS Employee #1 to have her security clearance removed and ruin her career. VIS Employee #1 was not held to the same standard as the Complainant.

Additionally, VIS Corporate Attorney treated the Complainant and VIS Employee #1 differently. When the Complainant reported to VIS Corporate Attorney that she believed that she was discharged in retaliation for her involvement with the incident involving VIS Employee #1 at [REDACTED] VIS Corporate Attorney dismissed the Complainant's allegations. VIS Corporate Attorney acknowledged to us that one of the reasons that the Complainant was removed from the contract was because she reported the same allegation to [REDACTED] leadership. However, when VIS Employee #1 was supposed to be discharged after being removed from Erbil, VIS Corporate Attorney reversed that decision because he believed the retaliation allegations VIS Employee #1 made against [REDACTED] leadership. As a result, VIS allowed VIS Employee #1 to resign and work an additional 2 months in Kuwait. Even though VIS Employee #1 had a reputation for making false reports and allegations, VIS Corporate Attorney believed her retaliation accusations, but disbelieved the Complainant.

In conclusion, we determined that VIS did not treat the Complainant similarly to how it treated VIS Employee #1. Even though the Complainant had more tenure, and her work performance was identified as among the best [REDACTED] VIS discharged her quickly for a less serious offense than VIS Employee #1. Conversely, VIS Employee #1 had a reputation among the

RSO and other BEC employees as being difficult, disruptive, and creating a bad image for the company. In spite of this, VIS Employee #1 continued employment with VIS after RSO officials forced her removal from the BEC and DoD facilities for a pattern of disruptive behavior. In addition, VIS believed her allegations of retaliation by ██████ leadership, allowing her to be employed an additional 2 months. However, the Complainant also alleged retaliation and was met with disbelief.

Discussion

Weighed together, the evidence analyzed above does not clearly and convincingly establish that VIS would have transferred the Complainant to Basra, and subsequently discharge her, absent the protected disclosures.

VIS management officials knew about the Complainant's protected disclosures before they attempted to transfer her and before they discharged her. VIS Official #1's statements to us support that the Complainant's participation in the RSO's investigation of VIS Employee #1 was a contributing factor in VIS' decision to attempt to transfer the Complainant to Basra. In fact, VIS Official #1 admitted that VIS purposefully chose to give the Complainant short notice of the transfer in order to give her no choice but to accept. VIS provided no evidence to support that it attempted to retain the Complainant in accordance with their contract goals. VIS officials then expressed dissatisfaction with the Complainant's disclosures to Government Witness #2 and Government Witness #1 that she felt VIS officials were retaliating against her. When she attempted to rescind her resignation less than 24 hours later, VIS refused, the contract goals related to retaining good ██████ notwithstanding.

We also note that the company information the Complainant discussed with Government Witness #2 and Government Witness #1 was significant. She disclosed that she believed VIS was retaliating against her, in violation of law and regulation. She did not complain about a minor dispute within VIS or otherwise disclose protected company information. The evidence showed that Complainant's disclosures in December 2017 motivated VIS' decision to transfer her and give her very short notice about the transfer. Likewise, the Complainant's disclosures to Government Witness #2 and Government Witness #1 motivated VIS' decision to discharge her instead of complying with the contract goals by allowing her to rescind her resignation and accept the transfer.

VIS also attempted to disparage the Complainant's reputation after the fact by alleging that she drank alcohol excessively and had performance issues. However, most people with direct knowledge of the Complainant's performance stated that she did a very good job. Conversely, VIS Employee #1's performance resulted in RSO officials forcing her removal from the BEC and Army officials forcing her removal from Erbil. Still, VIS took much more effort to retain her than they did the Complainant. VIS officials went so far as to allow VIS Employee #1 to work in Kuwait for 2 months after she resigned, in lieu of being discharged.

VIS did not dispute the underlying facts presented in this report. It did dispute that the Complainant's disclosures were protected under 10 U.S.C. 2409. However, VIS' arguments that the DoD OIG did not have jurisdiction to make any findings regarding prohibited retaliation because the communications made by the Complainant were not protected under 10 U.S.C. 2409, nor that disclosures about interpersonal issues and interactions that do not occur during the workday are also not protected under 10 U.S.C. 2409, were not persuasive and they are not supported by the plain language of 10 U.S.C. 2409 and DFAR subpart 203.9. This also applies to VIS' interpretation of FAR 52.203-13, which obligates Defense contractors to exercise due diligence to prevent criminal

activity and otherwise promote an organizational culture that encourages ethical conduct and a commitment to comply with the law.

Accordingly, we determined that VIS' decision to transfer the Complainant to Basra, and subsequently discharge her, was in reprisal for the Complainant's protected disclosures.

VII. CONCLUSION

We conclude that Valiant Integrated Service's decision to transfer the Complainant to Basra, Iraq, and subsequently discharge her, was done in reprisal for the Complainant's protected disclosures made from December 7, 2017, through January 28, 2018.

VIII. RECOMMENDATIONS

We recommend that the Secretary of the Army direct U.S. Army officials to order VIS to take affirmative action to abate the reprisal.

- Order VIS to reinstate the Complainant to the position she held prior to the reprisal, correct the Complainant's personnel record to expunge the January 29, 2018, termination letter from her file (and associated counseling statements), notify EOR of the expunged records, and to award compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to Complainant in that position if the reprisal had not been taken.
- Order VIS to pay Complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

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