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INVESTIGATIONS OF SENIOR OFFICIALS

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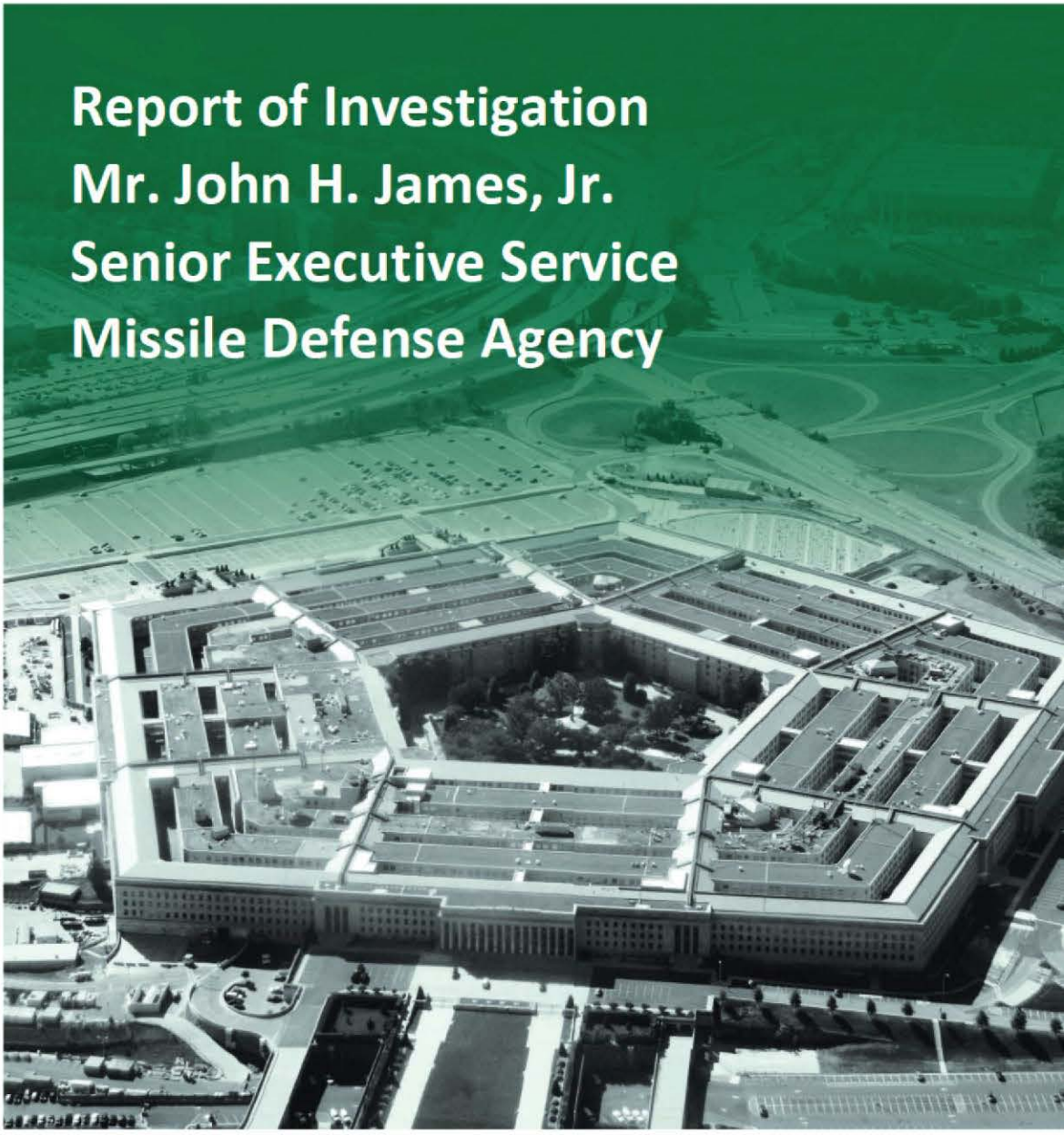

Report of Investigation
Mr. John H. James, Jr.
Senior Executive Service
Missile Defense Agency

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

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INSPECTOR GENERAL
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REPORT OF INVESTIGATION:
MR. JOHN H. JAMES, JR.
SENIOR EXECUTIVE SERVICE
FORMER EXECUTIVE DIRECTOR
MISSILE DEFENSE AGENCY

I. INTRODUCTION AND SUMMARY

Complaint Origin and Allegations

On August 12, 2019, the DoD Office of Inspector General (DoD OIG) received a complaint referred from the Missile Defense Agency (MDA) containing allegations against Mr. John H. James, who at that time was MDA Executive Director. The complaint included allegations that Mr. James sexually harassed two employees whom we refer to as Employees 1 and 2. We also include Employee 3 who was a recipient of an inappropriate comment made by Mr. James in 2017.

On September 16, 2019, the DoD OIG initiated an investigation. If substantiated, these allegations would violate the standards summarized throughout this report. We present the applicable standards in Appendix A. We briefly discuss in Appendix B two other allegations in the complaint that were not supported by any evidence.

On February 29, 2020, Mr. James retired from government service. Although Mr. James retired, we completed our investigation consistent with our standard practice.

Scope and Methodology of the Investigation

During our investigation, we interviewed Mr. James and 11 witnesses (including Employees 1, 2, and 3) who had information about the allegations, or who were identified as potentially having knowledge relevant to the investigation.

We reviewed and examined government-issued cell phones, tablets, and laptops, and over 421,800 unclassified official e-mails, messages, and supporting documents. We also reviewed applicable standards, personnel records, and Mr. James's travel documents. The documents also included a December 2017 letter of counseling issued to Mr. James for an inappropriate comment he made to Employee 3 during an MDA holiday party.

Conclusions

We substantiated the allegation that Mr. James engaged in a pattern of misconduct in which he sexually harassed Employee 1 and Employee 2.

DoD Directive (DoDD) 1440.1, "The DoD Civilian Equal Employment Opportunity (EEO) Program," May 21, 1987, states that sexual harassment is a form of sex discrimination that involves unwelcomed sexual advances and other verbal or physical conduct of a sexual nature when such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment. A civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

MDA Policy Memorandum No. 20, "Equal Employment Opportunity Anti-Harassment Policy," June 18, 2019, reinforces the MDA's commitment to ensuring the MDA workplace remains free from violence, threats of violence, harassment, assault, intimidation, or unlawful discrimination of any kind.[1] The policy memorandum further states that MDA leaders are expected to set the example for appropriate behavior and vigilantly monitor the workplace to prevent and correctly respond to allegations of harassment.

We determined that from 2012 through 2019, Mr. James repeatedly sought out and made deliberate, unwelcomed physical contact with Employee 1, (b)(6), (b)(7)(C) over whom he had no direct supervisory authority and with whom he would normally have little or no professional interaction. He often sought her out at MDA events, asked her for her personal information, made inappropriate comments to her, and engaged in other inappropriate conduct that implied a personal or sexual interest in her.

Mr. James frequently invited Employee 1 to his office, even though there was no official reason for her to visit him. She repeatedly declined his invitations. A witness told us (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) yet witnesses told us of many incidents when Mr. James would show Employee 1 unwanted attention. For instance, Mr. James would often linger with and talk to Employee 1 while visiting her office and would seek her out at MDA events. Employee 1 and her supervisor made specific arrangements to avoid interaction with Mr. James, but Employee 1 was not successful in avoiding Mr. James.

Mr. James asked for Employee 1's personal cell phone number and repeatedly asked (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) On one occasion, Mr. James wiped rain from Employee 1's raincoat while she was wearing it. On two different occasions, Mr. James led Employee 1 to the dance floor at MDA events and danced with her. On several occasions, Mr. James shook and held Employee 1's hand for an uncomfortably long time; one witness described the handshaking he witnessed as odd and creepy.

Mr. James did not make similar efforts to engage with Employee 1's coworkers or her supervisor. Although Mr. James told us he interacted with Employee 1 in an effort to mentor her, she did not ask him to mentor her, and he did not make similar efforts to mentor male coworkers in Employee 1's office. In fact, he did not even know the names of Employee 1's coworkers or her supervisor.

Even after receiving a letter of counseling for comments he made to another female employee, Mr. James continued to directly approach Employee 1 at MDA events and make inappropriate comments to her. Mr. James told us the receipt of the letter of counseling gave him cause for concern and caused him to be more careful in his interactions with others. However, the counseling had little or no effect on his behavior with Employee 1. Mr. James continued to engage in inappropriate interactions with Employee 1 even after receiving the letter. For example, at one MDA event he told her that he had been chasing her for seven years. At another event, he told her that she could not hide from him.

Mr. James told us that his contacts with Employee 1 were part of a mentoring relationship. However, we found no evidence to support his assertion. Employee 1 and other witnesses

[1] Each incoming director re-issues MDA Policy Memorandum No. 20 upon arrival at MDA. The relevant language was included in each policy memorandum in effect during the time period described in this report.

perceived his behavior as unwelcome and inappropriate, and his comments and actions were not consistent with developing a mentoring relationship with Employee 1. In addition, he did not attempt to mentor any of the other employees in Employee 1's office and did not even know the names of the other employees or their supervisor.

Employee 1 told us that Mr. James's comments and actions made her uncomfortable and led her to restrict her activities within the MDA and stay in her office to avoid Mr. James. Mr. James's comments and actions also caused Employee 1's supervisor to tailor Employee 1's work assignments to avoid encounters between Employee 1 and Mr. James.

In addition, Mr. James sexually harassed Employee 2, an employee who Mr. James "mentored," by massaging her neck behind a closed door in his office on two occasions while making an inappropriate comment, "I love this." Employee 2 abruptly ended the mentoring relationship but did not report Mr. James's behavior because she feared retaliation from Mr. James. Employee 2 eventually left the MDA due in part to Mr. James's behavior.

Mr. James admitted to mentoring Employee 2, but denied massaging her neck or making inappropriate comments and described Employee 2 as an employee (b)(6), (b)(7)(C) However, based on our consideration of all the facts, in particular Mr. James's overall course of conduct with Employee 1 and the similarities in Mr. James's conduct with the two female employees, we are convinced by a preponderance of evidence that Mr. James sexually harassed Employee 2.

We concluded that Mr. James engaged in a pattern of misconduct in which he sexually harassed Employee 1 and Employee 2. As a senior leader in the MDA, he clearly failed to set the example for appropriate behavior by sexually harassing his subordinates.

On June 1, 2020, we provided Mr. James with our Tentative Conclusions Letter (TCL) containing our preliminary conclusions, and gave him an opportunity to review and comment before we finalized our report. We requested his response by June 15, 2020. On June 9, 2020, Mr. James acknowledged receipt and we reminded him of the June 15, 2020, suspense for a response to our TCL. Mr. James never submitted a TCL response to our office.

The following sections of this report provide the detailed results of our investigation. We first provide background information on Mr. James and the MDA. Next, we discuss in chronological order the incidents of sexual harassment involving Employees 1 and 2, and the incident involving Employee 3. Finally, we present our conclusions and recommendations.

II. BACKGROUND

Organization

The MDA was created to develop and deploy a layered missile defense system to defend the United States, its deployed forces, and allies and friends, from ballistic missile attacks of all ranges and in all phases of flight. The MDA is led by a director, normally a three-star general or flag officer, who is assisted by an executive director.

Mr. John H. James

Mr. James began serving as MDA Executive Director in May 2011. As Executive Director, Mr. James was the senior civilian in the MDA and reported directly to the Director. He supervised all aspects of MDA's operations.

Mr. James previously served as the National Security Personnel System Transition Office Director within the Office of the Secretary of Defense, and in a variety of positions within the Department of the Navy. He was selected for the Senior Executive Service (SES) in May 2000. In total, he served within the Department of Defense for more than 37 years.

On November 24, 2019, Mr. James was reassigned within the MDA to the position of Assistant Director for Cybersecurity and served in that capacity until he retired from Government service.

III. ANALYSIS OF THE ALLEGATIONS

Complaint

The complaint alleged that Mr. James sexually harassed Employee 1 and Employee 2. Specifically, the complaint stated that Mr. James gave unwanted personal attention to Employee 1 on a regular basis from 2012 through 2019, including unwanted physical contact, suggestive comments, invitations to socialize outside of the office, and requests to visit Mr. James's office. The complaint also stated that Mr. James stroked Employee 2's hair on two occasions during mentoring sessions.

Chronology of Significant Events

Table 1 lists the significant events related to this investigation. Many witnesses told us that the passage of time hampered their ability to provide dates for many of the alleged events.

Table 1. Chronology of Significant Events and Sexual Harassment Allegations

Date	Event
May 2011	Mr. James begins serving as MDA Executive Director.
August 2011	As part of MDA's consolidation, Employee 1 moves with the personnel in her office into MDA's headquarters building.
2012[2]	Mr. James begins to regularly approach Employee 1 to speak with her and ask her where she (b)(6), (b)(7)(C) during her off-duty time (b)(6), (b)(7)(C)
2012–2013	Mr. James begins extending a series of invitations for Employee 1 to visit his office.
2013–2014	Mr. James massages Employee 2's neck on two separate occasions.
Summer of 2014	Mr. James uses (b)(6), (b)(7)(C) to take a picture of her buttocks as she walks away from him.
Prior to 2015	Mr. James approaches Employee 1 in the MDA parking lot and asks for her personal cell phone number.
Prior to 2016	Mr. James stops Employee 1 when she enters her office after coming in out of the rain and brushes water off her coat.

[2] Due to the passage of time, witnesses were unable to provide a firm estimate of the date of some events. Given the totality of the circumstances, including the order of certain events, we estimated the date of several events and listed them chronologically.

2015-16	On two occasions during dances at organization social events, Mr. James takes Employee 1 by the hand and leads her to the floor to dance.
August 2017	Mr. James's Executive Assistant creates an appointment in Mr. James's office at Mr. James's direction for a meeting with Employee 1.
December 1, 2017	Mr. James asks Employee 3 to open her jacket so Mr. James could see her sweater at an MDA holiday event.
December 18, 2017	The MDA Director issues Mr. James a letter of counseling for Mr. James's comment to Employee 3.
2017–or prior	Mr. James shakes hands with Employee 1 and holds her hand for long periods of time.
September 2018	Mr. James tells Employee 1, "I've been chasing you for seven years."
October 2018	Employee 2 tells the complainant about neck-massaging incidents.
(b)(6), (b)(7)(C)	Employee 2 (b) (6), (b) (7)(C)
February 2019	Mr. James extends his most recent invitation to Employee 1 to visit his office.
July 2019	Mr. James tells Employee 1, "Even though you're wearing all black I was still able to find you."
August 5, 2019	The complainant submits documents to the MDA Director summarizing allegations.
August 12, 2019	The MDA notifies the DoD OIG of the complaint against Mr. James.
September 16, 2019	The DoD OIG initiates this investigation.
November 24, 2019	The MDA Director reassigns Mr. James as MDA's Assistant Director, Cybersecurity.
February 29, 2020	Mr. James retired from Government service.

Introduction

In this section we discuss in chronological order our findings with respect to the allegations. We also include a discussion of the facts and circumstances that led to a December 2017 letter of counseling that the MDA Director issued to Mr. James for an inappropriate comment made to Employee 3. We introduce Employees 1, 2, and 3 as they first appear in this section. We then discuss the overall impact of Mr. James's behavior and include his general comments about the allegations.

Overview of Interactions between Mr. James and Employee 1

Employee 1 was (b)(6), (b)(7)(C) working in a (b)(6), (b)(7)(C) office located in (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) the MDA headquarters building. The (b)(6), (b)(7)(C) office has an open-plan layout with low barriers between workstations, making it easy for office members to communicate with each other, and to see and hear what is happening in the space. Office personnel (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

Mr. James did not directly supervise Employee 1 or her supervisor. Employee 1's duties did not require interaction with Mr. James. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) The MDA Chief of Staff was responsible for providing direction to the office at Fort Belvoir, but the office accepted work from other offices throughout the MDA, including Mr. James's executive assistants.

Employee 1's office was physically located far away from Mr. James's office. In fact, her supervisor told us that Mr. James's office was on the second floor of the building, (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) and that (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

The office staff consisted of (b)(6), (b)(7)(C) who worked together since moving to the MDA headquarters building in 2011. (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) We refer to these (b)(6), (b)(7)(C) as Employee 1's "coworkers" throughout this report. The office staff also included (b)(6), (b)(7)(C) was not aware of the incidents between Mr. James and Employee 1.

Mr. James visited Employee 1's office infrequently, normally during a tour of the building preceding holiday periods, and was accompanied by another senior MDA employee. Employee 1 said she encountered Mr. James while (b)(6), (b)(7)(C) or when entering or leaving the building. Employee 1's colleagues told us they worked closely with Employee 1 and witnessed Mr. James interacting with Employee 1 on a number of occasions. They also told us that Employee 1 told them about other interactions with Mr. James soon after they occurred.

The supervisor told us that Mr. James approached Employee 1 every time he saw her, and described Mr. James's conduct toward Employee 1 as "wrong. It's just wrong" and "it is definitely harassment." The supervisor also told us that Mr. James's constant attempts to interact with Employee 1 led her to avoid sending Employee 1 to (b)(6), (b)(7)(C) attended by Mr. James.

The coworkers told us that Mr. James would always try to talk to Employee 1 during breaks when a team from their office was (b)(6), (b)(7)(C) and that when Mr. James saw Employee 1 alone at an event, he made a "beeline" toward her. The coworkers told us Mr. James did not make similar efforts to interact with them.

One of Employee 1's coworkers told us that Mr. James is "always trying to sort of have a conversation with her, trying to offer like his personal email to her, or trying to meet with her privately in his office" and that Mr. James "doesn't linger with other people like he does with her." The other co-worker told us that Mr. James "actually tries to have conversations with her. Everyone else, it's just like, how ya doin', how ya doin', how ya doin'? And then it's like, oh, [Employee 1], how are you?"

Employee 1 told us that from 2012 to 2019, Mr. James repeatedly approached her and talked to her, often making unwanted comments to her, some as recently as 2019. Employee 1 also told us of specific instances of interactions with Mr. James that included other unwanted contacts. She also described negative impacts of Mr. James's interactions with her.

Employee 1 said the first time she remembers talking to Mr. James was during an "organization day" event in 2012 or 2013 (witnesses described an "org day" or "organization day" as an internal MDA event or celebration with food, games, and other entertainment). She told us that Mr. James approached her and started asking her questions about herself. After she told him (b)(6), (b)(7)(C) Mr. James asked if he could (b)(6), (b)(7)(C) Employee 1 said she did not know that Mr. James was the MDA Executive Director until after this initial meeting. Employee 1 told us that Mr. James repeatedly asked her many times over the years to (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)

Mr. James told us he asked Employee 1 (b)(6), (b)(7)(C) and he attended other (b)(6), (b)(7)(C) For instance, he also told us he watched (b)(6), (b)(7)(C) he knew (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) Mr. James acknowledged talking to Employee 1 "maybe once a month, maybe." When we asked why he spoke to her, he told us:

> She's (b)(6), (b)(7)(C) I'll say hello to her. I ask her about—she (b)(6), (b)(7)(C) I ask her about how (b)(6), (b)(7)(C) I've asked her—some of the folks in [her office] have moved onto other jobs. And I've noticed that she has been there continuously, and I've asked her about her career.

However, Mr. James also told us that he did not make similar efforts to interact with Employee 1's coworkers or supervisor.

Mr. James Invites Employee 1 to his Office

Employee 1 said Mr. James invited her on several occasions over the years to visit his office to "see his trinkets," since about 2012 to the most recent invitation in February 2019. We asked her when Mr. James made these invitations and she told us he often approached her during breaks while she was working (b)(6), (b)(7)(C) She added, "… he just comes up to me and starts talking. And then he would just ask. 'You know, you should come up.'" But she did not accept his invitations. Employee 1 told us that in addition to these in-person invitations, Mr. James also called her once at her desk to invite her to his office, and she told him she was busy and did not have time to talk to him.

Employee 1 told us that on one occasion several years ago, Mr. James invited her to his office to discuss "helping her with her career," but she didn't accept that invitation either. Employee 1 told us that she declined the invitations to visit Mr. James in his office, saying:

> He would ask me when is a good time to go, and I would tell him ... I just stay (b)(6), (b)(7)(C) I don't really know when I have time, because work comes in and this and that. So I did not, I was just trying to avoid anything.

Employee 1 told us that (b)(6), (b)(7)(C) e-mailed her an Outlook calendar invitation from Mr. James's account to visit him at his office. Employee 1 said the appointment made her uncomfortable because she had no official reason to speak with Mr. James, and she was relieved when it was postponed. Employee 1 told us that the appointment was never rescheduled. Our examination of Mr. James's Government computer showed an appointment for Employee 1 to visit Mr. James's office on August 14, 2017. The subject line of the appointment was entered as "Discussion w/ Mr. James."

When we asked Employee 1 why she thought Mr. James wanted her to visit his office, she said:

> I don't know. I thought it was very weird how he would want me to go to his office, when we really have nothing to talk about, workwise, you know? So it definitely made me feel like he wanted something more than just a work relationship. Something that I did not want. But I didn't know how to what to do … or how to tell him, you know? I wanted to tell him something, but I didn't want to get in trouble.

The supervisor told us Mr. James called Employee 1 at her desk on more than one occasion and asked her to visit his office and see his "trinkets," and that Employee 1 would make excuses because she didn't want to visit his office:

> She would say things like, "oh, I'm sorry, but you know, I'm really busy right now." He goes, "well, you could spare some time." She says, "well, no, you know, [my supervisor] really needs me to finish this up." You know, she would make those kinds of excuses, yeah, and then come in and tell me you're not going to believe who was just on the phone and that she wouldn't go up.

The supervisor and Employee 1's coworkers told us Mr. James did not interact with them, did not call them, and did not mentor them. They only knew of him because of his position, from seeing him during his rare visits to their office and when they (b)(6), (b)(7)(C) and from his contacts with Employee 1.

Mr. James told us that he made the appointment for Employee 1 to come his office for mentoring because he wanted to talk to Employee 1 about her future. He said he did not ask her to come to his office to see "trinkets" and had no idea why someone would say he used that term. He said he directed a formal appointment with Employee 1 because when he asked her to visit his office she "was sort of afraid." We then asked Mr. James whether Employee 1 asked for this appointment, and he responded, "What she said to me is that [her office did not] like her to come up there. That was what she said."

Mr. James also told us that he talks to all employees about their careers and that one of the things he is known for within the MDA is mentoring people. However, he said Employee 1 did not ask for mentoring. Additionally, he told us he did not discuss mentoring Employee 1 with her supervisor and did not even know who Employee 1's supervisor was.

We also asked Mr. James if he offered to mentor Employee 1's supervisor or (b)(6), (b)(7)(C) coworkers. Mr. James said he did not offer to mentor them because he did not see them as often and didn't necessarily know their status.

Massaging Neck of Employee 2

Employee 2 worked at the MDA (b)(6), (b)(7)(C) until (b)(6), (b)(7)(C) when she transferred to another part of the DoD. She said that she met Mr. James when he arrived at the MDA and that Mr. James (b)(6), (b)(7)(C) She also said she encountered Mr. James at work and at occasional MDA social events. For a short time, she regarded Mr. James as a mentor and attended a couple of mentoring sessions with him. She said that nothing inappropriate happened during mentoring sessions. However, she told us she had two encounters with Mr. James during 2013 or 2014 that she said were "inappropriate."

Employee 2 said that on the first occasion, Mr. James called her into his office to discuss a work-related matter. She told us:

> We were talking. And then I was getting ready to go, and we were standing, so it wasn't like we were sitting. He walked up and he put his hand back on my neck, … and massaged my neck … and he just said, "I love this." And I thought that was odd. And I was just like, okay. So after he did that, I mean, he did nothing else other than that, and then I said, okay. That was weird, but I'm going to kind of blow it off.

She said on the second occasion, Mr. James called her into his office while she was passing by and again massaged her neck. She said he told her that "when he called me in, I just wanted to do this" as he was massaging her neck.

She described the massaging as:

> So he will come up, I don't know, it's kind of hard to say. So he'll come up next to me and then put his hand on the back of my neck, like, to massage. To I guess feel my hair, I don't know. I have long hair, obviously, and I usually wear it out. But he would just put his hand [on my neck] massaging, like, the back of my neck.

She added that she did not say anything to Mr. James and that he stopped massaging her neck on his own on each occasion. She told us each massage lasted approximately half a minute and the total time in Mr. James's office on each occasion was 1-2 minutes. According to Employee 2, Mr. James told her to shut the door to his office, which was a common procedure when she met him in his office, prior to the neck-massaging incidents. She said she could not remember how close together in time these incidents occurred.

She described her reaction as "I was just like, okay, I'm just not going to be that girl. So I didn't say that to him, but, you know, once I left there, I was like, I'm not going to be that girl."

When we asked her what she mean by "that girl" she explained:

> That girl, the woman who allows certain things to happen so she can get ahead, whatever that certain thing is. I just did not want to be that person … . I did not want to be that girl that was, like, people would say, that's Mr. James's girl, you know? So he'll do whatever for her, and whatever other assumptions come along with that.

Employee 2 told us that after the second occasion she decided she would limit her interactions with Mr. James in the future and do "most of my questioning or clarifying" with Mr. James through her immediate supervisor.

Employee 2 told us that she spoke to her Equal Employment Opportunity (EEO) Director about her work environment, in part because of disputes she was having with her immediate supervisor. She also told the MDA EEO Director about the two neck-massaging incidents with Mr. James. Employee 2 told her that she did not want to make a formal complaint against Mr. James because she "would have had to leave the MDA" if she even "thought about putting forth a complaint." She also told us she felt that putting in a complaint would have made her life "even more of a living hell that what I was dealing with."

The complaint stated that Employee 2 told the MDA EEO Director and (b)(6), (b)(7)(C) about the neck-massaging incidents, who later passed this information to the complainant. According to the EEO Director, Employee 2 told her that Mr. James touched Employee 2's neck in his office on two occasions. The EEO Director said that this discussion occurred early in 2018, before Employee 2 left the MDA, but that Employee 2 implied the incidents occurred a number of years before 2018. She added that Employee 2 said Mr. James touched her neck, ran his fingers through her hair, and complimented Employee 2 on her hair; and that Employee 2 said she felt uncomfortable when it happened and regarded the touching as inappropriate. According to the

EEO Director, Employee 2 told her that she did not want to make a complaint because she did not think she would be believed.

The (b)(6), (b)(7)(C) worked closely with Employee 2 before leaving the MDA in early 2019 to take a position at another agency within DoD. According to the (b)(6), (b)(7)(C) Employee 2 told her that Mr. James massaged Employee 2's neck and ran his fingers through her hair after he closed the door to his office. The (b)(6), (b)(7)(C) said that Employee 2 told her about the incident in early 2018, but the (b)(6), (b)(7)(C) believed the incident occurred years before Employee 2 told her about it. According to the (b)(6), (b)(7)(C) Employee 2 did not want to make a complaint because Employee 2 feared no one would believe her and that she would be "targeted."

Mr. James said he never massaged Employee 2's neck or initiated any touching of Employee 2. Mr. James told us that he began mentoring Employee 2 shortly after he arrived at the MDA and stopped shortly before she left (b)(6), (b)(7)(C) He told us he did not mentor her often and "dialed it back" because (b)(6), (b)(7)(C) For example, Mr. James said he was told by "a number of people" that Employee 2 told others that Mr. James approved actions she wanted to take when that was not true. Additionally, he said that Employee 2 also berated other employees. However, Mr. James also told us that after Employee 2 left the MDA, they maintained a friendly relationship and Employee 2 initiates hugs when they meet.

Photograph of Employee 1's Buttocks

Employee 1 told us that she (b)(6), (b)(7)(C) during an MDA "organization day" event in 2014. She said Mr. James came up to her and offered (b)(6), (b)(7)(C) while she went into a food tent to get something to eat. She accepted his offer. She said that after she returned (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) she discovered that while she walked away, Mr. James had taken a "picture of [her] butt" (b)(6), (b)(7)(C) for her to see. When we asked her how this incident made her feel, she said "Well, I didn't like it. I didn't appreciate it. I felt very uncomfortable."

She told us that she immediately deleted the photograph. She said she didn't say anything to him because "I knew he was already a lot higher than me. So I just didn't know what to do." She also told us that Mr. James was still there, and when we asked her if he said anything to her about the photo, she said that "what I remember, because this is such a long time ago, but I remember, like, he acted like it was fine, which to me felt very uncomfortable."

The supervisor said Employee 1 told her about the photograph after she returned from the event. The supervisor also said that Employee 1 deleted the photograph (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) and Employee 1 did not want a photo of her "backside" (b)(6), (b)(7)(C)

Mr. James told us that he recalled the 2014 "organization day," but that he did not recall seeing or meeting Employee 1 during the event. We asked Mr. James if he ever took a picture of Employee 1's "backside" or "buttocks." He told us "no" and added "that is not something I would ever do, would be to take a picture of someone like that."

Asking Employee 1 for Personal Cell Phone Number

Employee 1 told us that sometime before 2015, Mr. James approached her in the MDA parking lot as she was leaving the building, started talking to her, and asked her for her personal

cell phone number. She told us, "I really suck at lying. I didn't know what to do." So she gave him her real number. She said she does not know if Mr. James ever tried to call her because she does not answer calls from numbers she does not recognize.

We searched Mr. James's Government computer and found an entry for Employee 1 with her personal cell phone number listed in his Microsoft Outlook contacts. We also searched Mr. James's computer but did not find contact information or phone numbers for Employee 1's supervisor or coworkers.

During our interview, Mr. James initially told us he never asked for Employee 1's personal cell phone number. However, after we told him that we found her contact information and personal cell phone number on his computer, Mr. James told us he must have obtained the number from her, but he did not recall asking her for it.

Brushing Water Off Employee 1's Coat

Employee 1 told us that on one occasion several years ago, when she entered her workspace after coming out of the rain, she saw Mr. James with another senior MDA employee, both of whom were conducting a tour of MDA offices, and her supervisor. She said Mr. James came up to her and began using his hands to brush the raindrops off the shoulders and arms of the coat she was wearing. She said her supervisor also saw this incident. Employee 1 told us:

> For him to wipe the water off my coat was very uncomfortable and unnecessary. I was very embarrassed. I didn't want anyone thinking there was anything between us when there wasn't. My male coworkers whom I have worked with for years have never touched me before. I didn't like the fact that [Mr. James] touched me. Plus it was my coat, which I was going to take off anyways.

The supervisor told us that Employee 1 arrived in the office when Mr. James and another senior MDA employee were visiting their spaces. Both visitors were leaving when Employee 1 arrived, wet from the rain outside. She said Mr. James would not let Employee 1 pass, rubbed the water off her coat, and said "Oh you're so wet. I should stay and dry you off … ."

> [Employee 1] was running late because of the weather. And so she came in and she was all wet. So there was body contact, not letting go. Oh, you're so wet. I should stay and dry you off kind of, and you're just like that gets into inappropriate territory to me.

The senior MDA employee told us he remembered an occasion when he and Mr. James were at Employee 1's workspace when she came in out of the rain. He told us he was not paying attention to what happened between Mr. James and Employee 1 and apart from maybe hearing a comment about hugging or "hug" he did not recall any details.

When we asked Mr. James about that incident or if he ever brushed water off Employee 1's coat, he told us, "I do not recall that ever happening."

Dancing with Employee 1

Employee 1 told us that Mr. James insisted that she dance with him at two different MDA events. She (b)(6), (b)(7)(C) The first incident

happened during an "organization day" event when Mr. James led her onto the floor during a Latin dance lesson. Employee 1 said this dance required her to hold hands with Mr. James. She said the second incident occurred during a holiday event when Mr. James came up to her, took her (b)(6), (b)(7)(C) handed it to someone else, and "insisted" she dance with him.

Employee 1 said she did not want to make a scene at either event and did not feel she could refuse his request in front of everybody. She told us she left both events after the dances ended because Mr. James made her feel uncomfortable.

A coworker said both he and Employee 1 attended one of the MDA events (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) which occurred three or four years ago (2015 or 2016). The coworker said that Employee 1 told him that soon after he departed the event, Mr. James approached Employee 1 and "roped her into dancing with him." He said

> I think we thought [Employee 1] was going to be safe [from Mr. James], just because, like I said, there was only a few minutes left in the thing, and there was a bunch of people there, but—you know. As soon as—he must have been watching, because as soon as I left, it was like, the next day, I come in, [and asked Employee 1] how did it go? [And Employee 1 told me:] "It was like, oh, well, I had to, you know, I had to dance with him, or he tried to get me to dance, or you know, that kind of thing."

Mr. James told us that he did not recall leading Employee 1 out on the dance floor during an MDA event or ever dancing with her, but said he danced with employees, male and female, during holiday parties because they were festive occasions.

Mr. James's Comment to Employee 3 at Holiday Party

Documents that we reviewed during the course of this investigation included a December 2017 letter of counseling that the MDA Director issued Mr. James for an inappropriate comment Mr. James made to Employee 3 during an MDA holiday party. Employee 3 worked at MDA's office (b)(6), (b)(7)(C) and told us she had worked at the MDA (b)(6), (b)(7)(C) Mr. James was not in her direct supervisory chain. She said she did not know Mr. James personally and normally had no reason to interact with him.

Employee 3 told us that during a holiday event on December 1, 2017, Mr. James approached her while she was speaking with a male colleague. Witnesses told us that MDA holiday parties generally included an "ugly sweater" contest and Employee 3 said the contest may have played a part in Mr. James's comment. Employee 3 told us Mr. James greeted the colleague, then turned to her and told her, "I want to see your sweater. Open your coat." while looking at her chest area. Employee 3 said she reported the incident to her supervisor and human resources representative.

On December 18, 2017, Mr. James received a letter of counseling from MDA's Director for his comments to Employee 3. In the letter, the Director stated the comment was unwelcome and made the employee feel uncomfortable, and described the comment as "ill-advised and inappropriate." The Director's letter told Mr. James that, as the Executive Director, his conduct was subject to strict scrutiny, and that Mr. James failed to meet the standard of conduct the Director required of all MDA senior officials.

Mr. James denied sexually harassing Employee 3. He told us that he knew Employee 3's colleague but not Employee 3, and that he was trying to see her name on her identification badge on her chest so that he could address her by name. He said he asked to see her sweater because there was an "ugly sweater" contest at the party and that employees often wore jackets to cover the sweater prior to the contest, and he just wanted to see the sweater.

Mr. James said that receiving the letter of counseling gave him "cause for concern" regarding how he interacted with others and made him "more cautious to the point of almost being awkward in interactions with people."

Long Handshakes with Employee 1

Employee 1 told us about an occasion, which she believed occurred in 2017 or "maybe earlier than that," when Mr. James visited her office space and came "straight to the back, in a corner" where she worked. She said he shook her hand for a "very long time. … Longer than it should be" while he said "oh, you're cold." She added that one of her coworkers observed this long handshake. This coworker said that he observed this incident and heard Mr. James say, "your hands are really cold and mine [are] really warm." The coworker described the incident as "odd" and "creepy." The other coworker said that within the last two years, he saw Mr. James shake Employee 1's hand "for a long, uncomfortable time" in the lobby of the headquarters building.

Mr. James told us he has shaken Employee 1's hand but denied ever holding her hand while shaking her hand or saying she was cold and that he needed to warm her up.

Mr. James's Comment about "Chasing" Employee 1

Employee 1 told us of a comment made to her by Mr. James during an "organization day" event in September 2018. She stated he told her he was "chasing [her] for seven years," and added:

> I saw Mr. James there so I went towards [my coworker]. I remember Mr. James coming up to me and talking to me. I don't remember everything he said to me but I know he was asking me about when I would go up to his office. He would ask me that every now and then and I would tell him that I am busy or that I just stay in my office (b)(6), (b)(7)(C) [I know I definitely] remember him telling me that he has been chasing me for seven years and I remember that because I was shocked he told me that.

We interviewed the coworker, who told us that he heard Mr. James make a statement to Employee 1 that the coworker described as "extremely uncomfortable." The coworker said that during an "organization day" in September 2018 (b)(6), (b)(7)(C) Mr. James approached Employee 1 to speak to her:

> He's in casual clothes because people dress down for this event, and he's asking—he's like, "hey, hey, let's hang out." And she's just like trying to like move away, change the subject, and he says, "I've been chasing you for seven years, come on."

We asked the coworker what Employee 1's reaction was to this comment. He told us:

> I think just uncomfortable laughter, and you know, shaking her head, and like, "oh, I've got to (b)(6), (b)(7)(C) now." Just like dismissive. Not like – I've

> never heard her say, "no, leave me alone, this is not right." You know, something we wish we could say or wish she could say. But there wasn't any of that. It was just like, ha-ha, uncomfortable laughter, and just trying to like—and just, you know, walk away from the situation.

Mr. James said that he never told Employee 1 he had been "chasing her" or words to that effect, and added, "I didn't make that statement."

Mr. James's Comment that Employee 1 Cannot Hide from Him

Employee 1 told us that she was wearing all black clothing while working at an MDA event in the late summer of 2019 when Mr. James approached her and said:

> "I could still see—I could still tell it was you even though you were wearing all black." Something like that. Or like, "you couldn't hide from me, I could still tell. I could still see you." Those aren't the exact words, but something like that.

When we asked Employee 1 how this incident made her feel she said, "Oh, I didn't like it. I try to avoid him as much as possible."

The supervisor said Employee 1 generally told her about incidents involving Mr. James soon after they occurred and that in this instance, Employee 1 told her that Mr. James came up to her and said, "I notice you're wearing black today, but you know, I found you anyway."

Mr. James told us that he did not tell Employee 1 that he found her even though she was wearing black clothing or words to that effect, and that he did not remember any occasion when he was talking to her while she was wearing dark clothing.

Impact of Mr. James's Behavior

Employee 1

Employee 1 told us that Mr. James's behavior made her "very uncomfortable." She told us, "It's more like I just don't feel comfortable there, you know? Whenever I see him, like, I really feel uncomfortable, and I just don't want to see him."

We asked Employee 1 if she ever told Mr. James how his attentions made her feel. She said:

> I never knew how to—what to do because I'm really nothing, and he's someone who's so much higher than I am. So I felt like if I said something that, if anything, you know, it's a he said she said type thing. Who's going to believe me? So I didn't know what to do. So I was just trying to avoid him as much as possible.

We asked her what she thought might happen if she did say something. She said, "I could get fired. I don't know, you know? He's someone who's so much higher than I am."

Employee 1 said she coped with Mr. James's attentions by staying in her office for the last couple of years and avoiding Mr. James. Employee 1 also told us, "When I get off at 5 p.m. I do try to look to see if he is around so that I can avoid him." She told us that she told her supervisor about

her issues with Mr. James and that her supervisor tried to keep her away from events attended by Mr. James.

Employee 1's supervisor said that several years ago she began to tailor Employee 1's work assignments to keep her away from events attended by Mr. James. According to Employee 1's supervisor, Employee 1 did not want to formally report Mr. James's conduct because she was afraid she would be fired or transferred if she complained, saying Employee 1 "didn't want to have work problems, you know, like employment problems." (b)(6), (b)(7)(C) Employee 1's coworkers told us that they are doing more work because Employee 1 was no longer assigned to work at events attended by Mr. James.

The supervisor and the coworkers told us Mr. James treated Employee 1 differently than he treated them and that he spent more time trying to interact with her. They said that because Mr. James would frequently seek out Employee 1, they worked to shield her and give her an opportunity to get away from him.

Employee 2

Employee 2 told us that Mr. James's attitude towards her after the neck-massaging incidents contributed to her decision to leave the MDA. However, she also told us that she left the MDA for her new job primarily because of her relationship with her immediate supervisor and believed that her supervisor favored another employee. Employee 2 said she might have stayed at the MDA if Mr. James had been more supportive of her in dealing with her immediate supervisor, but she believed Mr. James did not help her because he "blackballed" her after the hair-stroking incidents. She told us that she still interacted with Mr. James on an occasional basis when Mr. James visited for ceremonies and other events at the building at which she now works. She said that they greeted and occasionally hugged each other and that she was "okay with hugging."

Employee 3

Employee 3 told us that she was "shocked," "uncomfortable," and felt "exposed" by Mr. James's comment. She also told us that although she did not describe the incident as sexual harassment, she believed someone in Mr. James's position should be aware that his comment was "inappropriate" in a workplace environment. She also said she reported the incident because she "felt like this needed to be a teaching moment for Mr. James before he got into more trouble and caused the agency trouble, because of his position."

Mr. James's General Response to Sexual Harassment Allegations

We asked Mr. James if he had any final comments regarding the allegations of sexual harassment. He stated, "There's a modicum of truth in the interactions, but no intent for sexual harassment, or favors, or anything of that nature." He also told us he believed the complaints arose from the efforts of an MDA employee who was not selected for an SES position within the MDA. Mr. James told us that the MDA employee blamed his non-selection on Mr. James, and that "[the MDA employee] was going to get me, that he was going to punish me. He was going to end my career based on this, because I was affecting him and his family."

We asked Mr. James how the information we developed during our investigation related to the disgruntled MDA employee. Mr. James told us that the MDA employee told everyone Mr. James

was behind his non-selection and that he would retaliate against Mr. James. He said the MDA employee went around and told people they needed to talk about Mr. James, and added:

> How would I relate it back? So [the MDA employee] has gone around and told people that they—hey, you know, you need to tell—you need to talk to this person, that person. For instance, [the EEO Director]. He told [the EEO Director], you need to go tell the truth … . You need to go tell the truth. You need to tell them what happened with Mr. James, or you need to tell them this, you need to tell them that.

IV. OVERALL CONCLUSIONS

We substantiated the allegation that Mr. James engaged in a pattern of misconduct in which he sexually harassed two women at the MDA: Employee 1 and Employee 2.

DoDD 1440.1, "The DoD Civilian Equal Employment Opportunity (EEO) Program," May 21, 1987, states that sexual harassment is a form of sex discrimination that involves unwelcomed sexual advances and other verbal or physical conduct of a sexual nature when such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment. A civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

MDA Policy Memorandum No. 20, "Equal Employment Opportunity Anti-Harassment Policy," June 18, 2019, states the MDA Director is committed to ensuring the MDA workplace remains free from violence, threats of violence, harassment, assault, intimidation, or unlawful discrimination of any kind. The policy memorandum further states that harassment by supervisors and managers is especially unacceptable and those who engage in this activity should expect timely and appropriate corrective and/or disciplinary action, up to and including removal. MDA leaders are expected to set the example for appropriate behavior and vigilantly monitor the workplace to prevent and correctly respond to allegations of harassment.

We determined that from 2012 through 2019, Mr. James repeatedly sought out and made deliberate, unwelcomed physical contact with Employee 1, (b)(6), (b)(7)(C) over whom he had no direct supervisory authority and with whom he would normally have little or no professional interaction. He often sought her out at MDA events, asked her for her personal information, made inappropriate comments to her, and engaged in other inappropriate conduct that implied a personal or sexual interest in her.

Mr. James frequently invited Employee 1 to his office, even though there was no official reason for her to visit him. She repeatedly declined his invitations. A witness told us that no one in the MDA headquarters building sat further away from Mr. James than Employee 1, yet witnesses told us of many incidents when Mr. James would show Employee 1 unwanted attention. For instance, Mr. James would often linger with and talk to Employee 1 while visiting her office and would seek her out at MDA events. Employee 1 and her supervisor made specific arrangements to avoid interaction with Mr. James, but Employee 1 was not successful in avoiding Mr. James.

Mr. James asked for Employee 1's personal cell phone number and repeatedly asked to (b)(6), (b)(7)(C) On one occasion, Mr. James wiped rain from Employee 1's raincoat while she was wearing it. On two different occasions, Mr. James led Employee 1 to the dance floor at MDA

events and danced with her. On several occasions, Mr. James shook and held Employee 1's hand for an uncomfortably long time; one witness described one of these handshakes as odd and creepy.

Mr. James did not make similar efforts to engage with Employee 1's coworkers or her supervisor. Although Mr. James told us he interacted with Employee 1 in an effort to mentor her, she did not ask him to mentor her, and he did not make similar efforts to mentor male coworkers in Employee 1's office. In fact, he did not even know the names of Employee 1's coworkers or her supervisor.

Even after receiving a letter of counseling for comments he made to another female employee, Mr. James continued to make a "beeline" for Employee 1 at MDA events and make inappropriate comments to her. Mr. James told us the receipt of the letter of counseling gave him cause for concern and caused him to be more careful in his interactions with others. However, the counseling had little or no effect on his behavior with Employee 1. Mr. James continued to engage in inappropriate interactions with Employee 1 even after receiving the letter. For instance, at one MDA event he told her that he had been chasing her for seven years. At another event, he told her that she could not hide from him.

Mr. James told us that his contacts with Employee 1 were part of a mentoring relationship. However, we found no evidence to support his assertion. Employee 1 and other witnesses perceived his behavior as unwelcome and inappropriate, and his comments and actions were not consistent with developing a mentoring relationship with Employee 1. In addition, he did not attempt to mentor any of the other employees in Employee 1's office and did not even know the names of the other employees or their supervisor.

Mr. James also sexually harassed another woman, Employee 2, on two occasions in his office, by massaging her neck while saying "I love this" and "I wanted to do this."

Mr. James cited (b)(6), (b)(7)(C) to suggest bias by Employee 2 against Mr. James. However, we are not convinced that Employee 2's testimony is biased (b)(6), (b)(7)(C) We considered the information that Employee 2 shared about the incident with other witnesses. We also considered Mr. James's overall course of conduct with Employee 1 and find that there are similarities in Mr. James's conduct with the two female employees that convince us by a preponderance of evidence that Mr. James sexually harassed Employee 2.

The effect of Mr. James's actions and comments created an intimidating, hostile, and offensive work environment for Employees 1 and 2. His physical interactions and statements caused them to avoid contact with him, and both Employee 1 and 2 told us and others that they feared being fired or suffering other negative consequences if they complained about his behavior. Additionally, Mr. James's actions and comments toward Employee 1 were perceived as sexual harassment by her coworkers, who took active measures to shield Employee 1 from contact with Mr. James.

Finally, Mr. James attributed the filing of this complaint to the animosity of another MDA employee who Mr. James asserted wanted revenge for not being selected for an SES position. However, any potential motive for filing this complaint does not change the facts and information we found and would not change our conclusions.

In sum, we conclude that Mr. James engaged in a pattern of misconduct in which he sexually harassed Employee 1 and Employee 2. As a senior leader in the MDA, he clearly failed to set the example for appropriate behavior by sexually harassing his subordinates.

On June 1, 2020, we provided Mr. James with our Tentative Conclusions Letter (TCL) containing our preliminary conclusions, and gave him an opportunity to review and comment before we finalized our report. We requested his response by June 15, 2020. On June 9, 2020, Mr. James acknowledged receipt and we reminded him of the June 15, 2020, suspense for a response to our TCL. Mr. James never submitted a TCL response to our office.

V. RECOMMENDATIONS

Mr. James retired from his position. Accordingly, we forwarded our report to the MDA Director for inclusion in his personnel file.

Appendix A: Standards

Section 2000e-16, Title 42, United States Code, "Employment by Federal Government"

Section (a) prohibits discrimination against employees and applicants of the military departments based on race, color, sex, religion, or national origin.

Section (e) requires Government agencies or officials to assure nondiscrimination in employment or equal employment opportunity in the Federal Government.

Section 1604.11, Title 29, Code of Federal Regulations, "Sexual harassment"

Sexual harassment is unwelcome sexual conduct that is a term of condition of employment. Unwelcome sexual conduct constitutes sexual harassment when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

DoDD 1440.1, "The DoD Civilian Equal Employment Opportunity (EEO) Program," May 21, 1987

Section 4.5 prohibits sex discrimination, and applies to civilian employees and applicants in the Office of the Secretary of Defense (OSD) and activities supported administratively by OSD, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Defense Agencies, the Army and Air Force Exchange Service, the National Guard Bureau, the Uniformed Services University of the Health Sciences, the Office of Civilian Health and Medical Programs of the Uniformed Services, and the DoD Dependents Schools.

Section E2.1.10. Defines sexual harassment as a form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

E2.1.10.1. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; or

E2.1.10.2. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

E2.1.10.3. Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

DoD Administrative Instruction Number 31, "Equal Employment Opportunity (EEO) and Diversity Programs," August 19, 2013

Prohibits sexual discrimination and harassment in employment and applies to all civilian employees within the OSD, including employees in the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, and the DoD Field Activities serviced by Washington Headquarters Services.

MDA Policy Memorandum No. 20, "Equal Employment Opportunity Anti-Harassment Policy," June 18, 2019 (superseding Policy Memorandum No. 20, November 14, 2017)

The current and superseded version state the Director, MDA, is committed to ensuring the MDA workplace remains free from violence, threats of violence, harassment, assault, intimidation, or unlawful discrimination of any kind.

Both versions of Policy Memorandum No. 20 further state that harassment by supervisors and managers is especially unacceptable and those who engage in this activity should expect timely and appropriate corrective and/or disciplinary action, up to and including removal. MDA leaders are expected to set the example for appropriate behavior and vigilantly monitor the workplace to prevent and correctly respond to allegations of harassment.

Appendix B: Other Matters

Alleged Inappropriate Comment at 2018 Holiday Event

A witness told us that at a December 17, 2018, holiday party, Mr. James approached a female employee and told her that a female former SES employee of the MDA approached Mr. James at a different holiday party and gave Mr. James a "big kiss on the lips." The female employee told us that she spoke with Mr. James at the party, but that Mr. James did not mention a kiss on the lips during the conversation. When we asked her if there has been any behavior by Mr. James that raised concerns about sexual harassment, she said, "No, there hasn't." She also told us that she never observed any conduct by Mr. James toward others that concerned her. Accordingly, we determined the allegation was not supported by the evidence.

Official Travel

A witness told us that he had "concerns" about Mr. James's temporary duty travel, including annual travel for the last three years to New York City to attend a conference hosted by an investment group and a different conference held in Washington, D.C. The witness said that he did not know if the associated travel was improper, but that he wanted MDA leadership to check if travel regulations were followed. We reviewed official records for the travel events in question, including MDA General Counsel legal reviews that approved the travel. The MDA did not pay excess or unauthorized expenses. Accordingly, we determined the alleged concern was not supported by the evidence.

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