

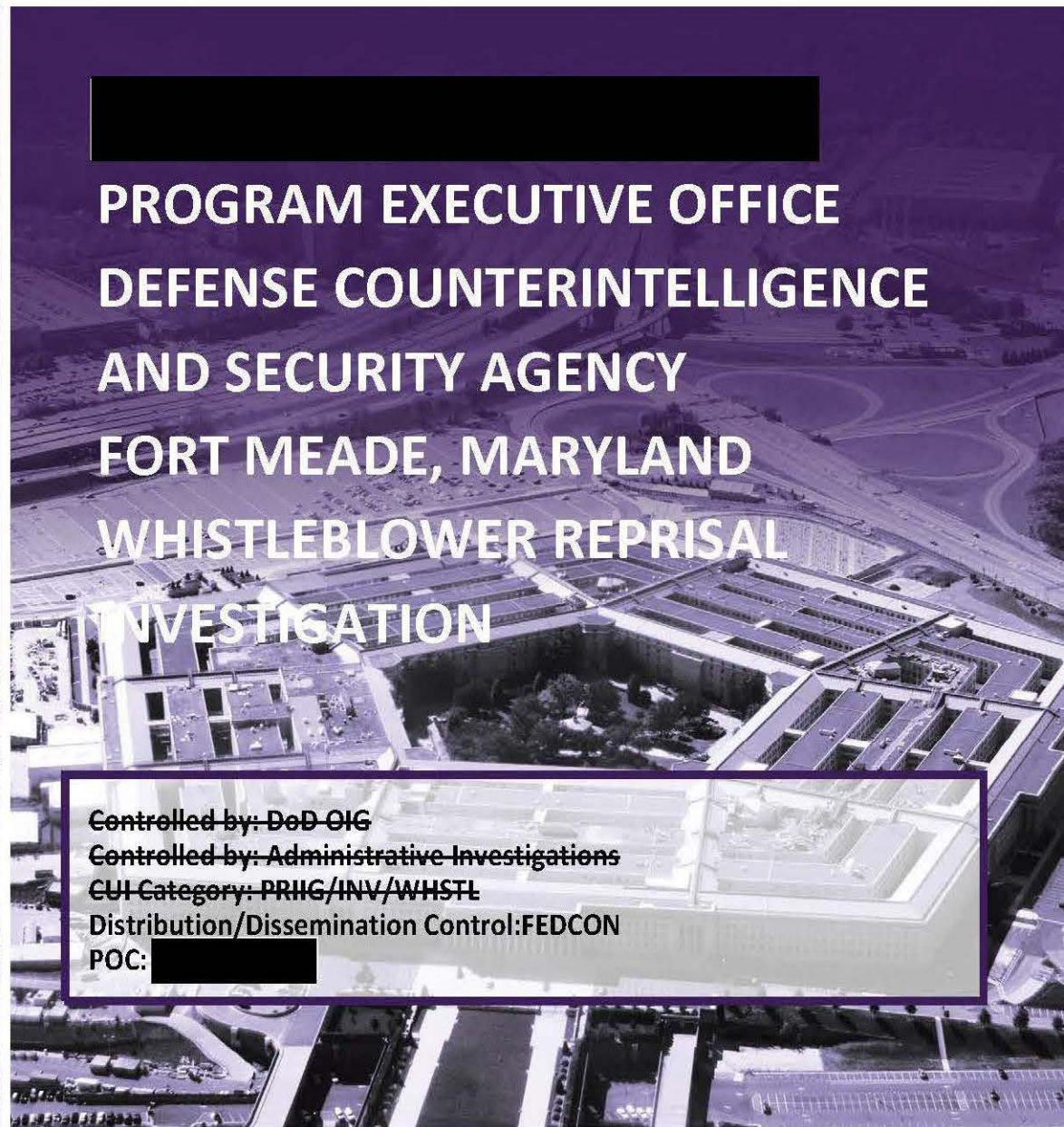


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INSPECTOR GENERAL

U.S. Department of Defense

July 13, 2022



[REDACTED]

PROGRAM EXECUTIVE OFFICE DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY FORT MEADE, MARYLAND WHISTLEBLOWER REPRISAL INVESTIGATION

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INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

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WHISTLEBLOWER REPRISAL INVESTIGATION
[REDACTED]
PROGRAM EXECUTIVE OFFICE
DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY
FORT MEADE, MARYLAND

Executive Summary

We conducted this investigation in response to a reprisal complaint filed with the DoD Hotline by [REDACTED] (the Complainant), General Grade 15 (GG-15), [REDACTED] in the Program Executive Office (PEO) of the Defense Counterintelligence and Security Agency (DCSA), Fort Meade, Maryland. The Complainant alleged that various management officials counseled him, reduced his rating on an element of his 2020 performance evaluation, threatened his employment, and referred him for a psychiatric examination in reprisal for reporting to the Equal Employment Opportunity (EEO) office, Fort Bragg, North Carolina, during his previous employment at Fort Bragg, that he was subjected to a hostile work environment, harassment, and discrimination in violation of Title VII.¹ Furthermore, he alleged reprisal for reporting to the DCSA Inspector General (IG) and the DoD Hotline substantial and specific danger to public safety, gross mismanagement, abuse of authority, gross waste of funds, and violations of DoD regulations and policies. Finally, he alleged reprisal for reporting to the DCSA's Diversity and Equal Opportunity Office (DEO) the DCSA's failure to restore the Complainant's paid leave as directed by a court order in relation to his EEO complaint against the Army in 2018.

The Complainant made four protected disclosures from February 7, 2018, through December 4, 2020, and was subjected to one qualifying personnel action. The Complainant also made one other alleged disclosure that was not protected. The Complainant alleged the following subjects took the following actions against him.

- Ms. Patricia P. Stokes (retired), a former member of the Defense Intelligence Senior Executive Service and former Director in the Defense Vetting Directorate (DVD) of the DCSA, gave him a low rating on an element of his 2020 performance evaluation.²
- Ms. Andrea Luque, a Defense Intelligence Senior Leader and former Senior Advisor for the DVD of the DCSA, had a role in the low rating on his 2020 performance evaluation.³

¹ Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended.

² Senior Executive Service members in the Defense intelligence community are known as Defense Intelligence Senior Executive Service. Ms. Stokes retired from the Government on September 30, 2020.

³ Defense Intelligence Senior Leader positions are technical or scientific positions within the Defense intelligence community that are classified above the Band 5/GG-15 levels. Ms. Luque is currently serving as a senior advisor for a different organization within the DCSA.

- [REDACTED] (GG-15), [REDACTED], threatened his employment and referred him for a psychiatric examination.
- Mr. Troy L. Littles (retired), former member of the Defense Intelligence Senior Executive Service and former Chief Operating Officer at DCSA Headquarters, had a role in the low rating on his 2020 performance evaluation.⁴

We found no evidence that Ms. Luque or [REDACTED] took or failed to take, or threatened to take or fail to take, any personnel action against the Complainant. We found that Ms. Luque had no role in reducing the Complainant's rating on his 2020 evaluation, and that [REDACTED] did not order or threaten the Complainant with a psychiatric examination or threaten his employment.

We found that Ms. Stokes and Mr. Littles were the management officials responsible for taking the action against the Complainant with regard to the low rating on an element of his performance evaluation. Ms. Stokes and Mr. Littles knew that the Complainant made protected disclosures to the EEO office, an IG, and the DEO. A preponderance of the evidence demonstrated that the Complainant's protected disclosures were a contributing factor in Ms. Stokes's decision to give the Complainant a minimally successful rating in one element of his performance evaluation. Without clear and convincing evidence to the contrary, we determined that Ms. Stokes would not have issued the Complainant his 2020 performance evaluation with a reduced rating of 2 in one of the performance elements absent the Complainant's protected disclosures. Therefore, we substantiated the reprisal allegation against Ms. Stokes.

Based on knowledge and timing, the Complainant's protected disclosures were a contributing factor in Mr. Littles's decision to approve of and issue to the Complainant a minimally successful rating (rating of 2) in one element of his performance evaluation. However, clear and convincing evidence established that Mr. Littles would have approved of and issued to the Complainant the rating of 2 in an element of his performance evaluation absent any protected disclosure. Therefore, we did not substantiate the allegation that Mr. Littles approved of and issued to the Complainant a rating of 2 in an element of his performance evaluation in reprisal for his protected disclosures.

We did not send a tentative conclusion letter to Ms. Stokes as she did not respond to any of our attempts to interview her for this investigation.

We recommend DCSA officials take appropriate action to remedy the Complainant's 2020 performance evaluation.

Ms. Stokes retired from Government service. Accordingly, we will forward our report to the Director, Washington Headquarters Services, for inclusion in Ms. Stokes's personnel file.

⁴ Mr. Littles departed the DoD for employment in the private sector in July 2021.

Background

Before joining the Defense Security Service (DSS), which later became the DCSA, the Complainant and Ms. Stokes were employed by the Army at the 18th Airborne Corps at Fort Bragg.⁵ On April 1, 2018, the Complainant and Ms. Stokes began their employment with DCSA in Falls Church, Virginia, and after a reorganization at Fort Meade, Maryland, they were among the first five employees hired at DCSA after the creation of the DVD. Ms. Stokes was the Director and the Complainant's direct supervisor in the DVD from April 1 through October 1, 2018, when the organization restructured and created the Empire Business Systems Office (EBSO), one of three entities within the DVD that reported to her. After October 2018, the Complainant served as the Operations and Integrations Chief for the EBSO under the direct supervision of the Director, [REDACTED], and Ms. Luque became the Complainant's second-level supervisor. After October 2018, Ms. Stokes had fewer interactions with the Complainant to the point of "almost no contact" because the Complainant reported to [REDACTED] and Ms. Luque, and she had no contact or interactions with the Complainant after 2019. Mr. Littles, who joined the DSS in 2011, was already the DCSA's Chief Operating Officer working from the DCSA's headquarters in Quantico, Virginia, and had no interactions with the Complainant.

[REDACTED] and Ms. Luque were the Complainant's initial first- and second-level supervisors, respectively, during the FY 2020 rating period. [REDACTED] departed the DCSA in January 2020, and [REDACTED] supervisory duties fell to Ms. Luque, who served as both the Complainant's first- and second-level supervisor. However, in April 2020, the DCSA placed Ms. Luque on extended non-duty administrative leave for the remainder of the FY 2020 performance period, and she returned to work in October 2020. Ms. Stokes assumed the role of rating official and higher-level reviewer for Ms. Luque's subordinates, including the Complainant. Ms. Stokes delegated to [REDACTED] (GG-15) the EBSO Acting Director role to supervise Ms. Luque's subordinates in her absence.

Whistleblower Protection for Defense Civilian Intelligence Personnel System Employees

The DoD Office of Inspector General conducts whistleblower reprisal investigations involving civilian appropriated fund employees of intelligence community elements and all employees with access to classified information within the DoD under Presidential Policy Directive 19 (PPD-19), "Protecting Whistleblowers with Access to Classified Information," October 10, 2012, as implemented within the DoD by Directive-type Memorandum 13-008, "DoD Implementation of Presidential Policy Directive 19," July 8, 2013, and under sections 7(a) and 8(c)(2) of the "Inspector General Act of 1978," as amended (Title 5—Appendix). Furthermore, under DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012 (Incorporating Change 2, Effective May 29, 2020), the DoD IG receives and investigates such complaints of reprisal generally in accordance with section 2302, title 5, United States Code, "Prohibited personnel practices."

PPD-19 prohibits any officer or employee of an Executive branch agency who has authority to take, direct others to take, recommend, or approve any personnel action from taking or failing to take, or threatening to take or fail to take, any personnel action in retaliation for making a protected

⁵ The Complainant's current employing agency, the DCSA, was formerly known as the Defense Security Service or the DSS. The DSS became the DCSA on October 1, 2019. The Complainant referred to his employing agency as the DSS and the DCSA depending on the name of the agency at the time of the event described. We use the abbreviations DCSA and DSS in a similar way.

disclosure. A protected disclosure is any disclosure made by an employee of information reasonably believed to evidence a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

Protected disclosures also include exercising any appeal, complaint, or grievance about a violation of Section A or B of PPD-19; lawfully participating in an investigation or proceeding regarding a violation of Section A or B of PPD-19; cooperating with or disclosing information to an IG, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the IG; or reporting matters of urgent concern in accordance with the “Inspector General Act of 1978,” as amended (Title 5—Appendix).⁶

PPD-19 authorizes the following individuals to receive such disclosures: a supervisor in the employee’s direct chain of command up to and including the head of the employing agency, the IG of the employing agency or intelligence community element, the Director of National Intelligence, the IG of the intelligence community, an employee designated by any of the above officials for the purpose of receiving such disclosures, and Congress, via an IG.

Scope

This investigation covered the period from February 7, 2018, to December 18, 2020.⁷ We evaluated the Complainant’s disclosures and alleged personnel actions, as well as documentary evidence such as his mid-point review, performance evaluations, e-mails, DCSA policy, and witness testimony. We interviewed Mr. Littles before his retirement in July 2021, but despite our extensive efforts to contact Ms. Stokes for an interview, she did not respond.⁸ Although we did not interview Ms. Stokes, we evaluated her statements made to the Defense Threat Reduction Agency (DTRA) and the DCSA IG.⁹ We evaluated responses to our requests for information provided by the DCSA Human Capital Management Office (HCMO) regarding the Defense Civilian Intelligence Personnel System (DCIPS) personnel performance evaluation process and policy, and the DCSA’s system used by raters and reviewers to complete, review, and transmit performance evaluations to employees.

The DoD Office of Inspector General employs a two-stage process in conducting whistleblower reprisal investigations. The first stage focuses on the alleged protected disclosures, personnel actions, and the subject’s knowledge of the protected disclosures. The second stage focuses on

⁶ Section A of PPD-19 prohibits the taking of personnel actions against an employee serving in an intelligence community element in reprisal for a protected disclosure. Section B of PPD-19 prohibits any officer or employee of an Executive branch agency from taking, failing to take, or threatening to take or fail to take, any action affecting an employee’s eligibility for access to classified information in reprisal for a protected disclosure.

⁷ The Complainant made additional disclosures after receiving his performance evaluation on December 4, 2020. However, as they have no bearing on that action, we do not analyze them further in this report.

⁸ From May 10 through June 23, 2021, we called Ms. Stokes on multiple occasions and left voice mails for her. We also attempted to contact Ms. Stokes through [REDACTED], who left her a voice message informing her of our efforts to interview her and providing our contact information. We also mailed Ms. Stokes a letter via the U.S. Postal Service (using certified mail) on June 3, 2021, which was received at her home address on June 7, 2021, but she never responded to us.

⁹ DTRA and the DCSA IG investigated the Complainant’s allegations made to the DEO and the DCSA IG, respectively, and interviewed Ms. Stokes before she retired. The Complainant named Ms. Stokes and Mr. Littles as subjects in his EEO formal complaint with the DEO, and the DEO referred this complaint outside of the organization to DTRA to avoid possible conflicts of interest.

whether or not the subject would have taken or failed to take, or threatened to take or fail to take, a personnel action against the employee absent the protected disclosures.

Sufficient evidence, based on proof by a preponderance of the evidence, must be available to make three findings.

1. The complainant made a protected disclosure.
2. The complainant received a personnel action.
3. The protected disclosure was a contributing factor in the personnel action.

If a preponderance of the evidence supports these three findings, the analysis will proceed to the second stage. In the second stage, we weigh together three factors.

1. The strength of the evidence in support of the personnel action.
2. The existence and strength of any motive to retaliate on the part of the officials who were involved in the decision.
3. Any evidence that the subject took similar actions against similarly situated employees who did not make protected disclosures.

Unless clear and convincing evidence establishes that the subject would have taken or failed to take, or threatened to take or fail to take, a personnel action against the Complainant absent his protected disclosures, a preponderance of the evidence establishes that the actions were taken in reprisal.

Findings

Protected Disclosures

A protected disclosure under PPD-19 is any disclosure made by an employee of information reasonably believed to evidence:

- a violation of any law, rule, or regulation;
- gross mismanagement;
- a gross waste of DoD funds;
- an abuse of authority; or
- a substantial and specific danger to public health or safety.

The test for determining whether the Complainant had such a belief is whether a reasonable person with knowledge of the essential facts known to and readily ascertainable by the Complainant could conclude wrongdoing occurred.

Protected disclosures also include exercising any appeal, complaint, or grievance with regard to a violation of Section A or B of PPD-19; lawfully participating in an investigation or proceeding regarding a violation of Section A or B of PPD-19; cooperating with or disclosing information to an IG, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the IG; or reporting matters of urgent concern in accordance with the "Inspector General Act of 1978," as amended (Title 5—Appendix).

PPD-19 authorizes certain individuals to receive such disclosures, consisting of:

- a supervisor in the employee's direct chain of command up to and including the head of the employing agency;
- the IG of the employing agency or intelligence community element;
- the Director of National Intelligence;
- the IG of the intelligence community;
- an employee designated by any of the above officials for the purpose of receiving such disclosures; and
- Congress, via an IG.

Overview of Alleged Protected Disclosures

The Complainant alleged that he made five disclosures protected under PPD-19, from February 7, 2018, through July 6, 2020. A preponderance of the evidence established that the Complainant made five disclosures, four of which were protected under PPD-19.

Disclosure 1: To Fort Bragg EEO Office

On or about February 7, 2018, while the Complainant was employed at the 18th Airborne Corps, Fort Bragg, he reported to the Fort Bragg EEO office that management officials at the Installation Management Command and at the U.S. Army Garrison, Fort Bragg, did not select him for a GG-15 position at Fort Bliss, Texas; did not give him a quality step increase; and bypassed him to approve an extension in Afghanistan for a subordinate of his. Furthermore, the Complainant alleged that these management officials bypassed him regarding the distribution of performance awards and salary adjustments as the higher-level reviewer of DCIPS employees, and upon his return from a temporary assignment, reinstated him to a title 10 position with a term limit not to exceed 2 years, causing him to lose career permanent status. Additionally, the Complainant alleged that management officials lowered his performance rating, harassed him, and created a hostile work environment. The Complainant believed that his management officials took these actions against him in discrimination based on his race, disability, and age, and they reprimanded him for his EEO-protected activity involvement with an EEO counselor.¹⁰

The Complainant told us that he believed these management officials discriminated against him because he participated and provided testimony in EEO investigations of senior leaders and participated in employment discrimination proceedings, one of them involving the Director of Plans, Training, Mobilization and Security at Fort Bragg, which did not reflect well on Army management. The Complainant believed that management officials discriminated against him, in reprisal, when they treated him differently, ostracized him, created a hostile work environment, changed his working conditions, abused their authority, and harassed him with intimidation, ridicule, and insults in violation of the law. The Complainant explained to us that he was discriminated against based on race when his supervisor treated him unfavorably because of the Complainant's interracial marriage and biracial children. Likewise, the Complainant believed that he was subjected to disability and age discrimination when his management officials harassed him, strongly encouraged him to retire, and placed him in a term position. The Complainant believed that placing him in a term position was a violation of the law.

¹⁰ EEO complaints are first filed informally. After an EEO counselor reviewed the Complainant's complaint, he filed it again formally with the Equal Employment Opportunity Commission on February 21, 2018.

The Complainant's report of alleged abuse of authority, defined as an arbitrary or capricious exercise of power by a military member or a Federal official or employee that adversely affects the rights of any person, qualifies as a protected disclosure. Additionally, his report of alleged discrimination based on race, disability, and age, in violation of Title VII, constitutes information reasonably believed to evidence a violation of law. EEO officials are employees designated by the agency for the purpose of receiving such disclosures. Therefore, the Complainant's February 7, 2018 disclosure to the Fort Bragg EEO office was protected under PPD-19.

Disclosure 2: First Disclosure to the DCSA IG

The Complainant contacted the DCSA IG on or around January 22 and again on January 27, 2020, and reported that Ms. Stokes and Ms. Luque gave certain contractors non-public information—an unfair competitive advantage in Government contract bids in violation of Federal Acquisition Regulation (FAR) Section 9.505, "General rules."¹¹

Furthermore, the Complainant alleged that contractors were permitted to write the statement of work for Government contracts, which could favorably influence the decision on the award of contracts to those contractors, in violation of FAR Section 9.505-1, "Providing systems engineering and technical direction," and Section 9.505-2, "Preparing specifications or work statements."

Finally, the Complainant alleged that Ms. Stokes and Ms. Luque allowed the aforementioned contractors, with an unfair competitive advantage and conflicting roles, to provide biased advice to the Government that, if taken, would result in the contractors being awarded those contracts in violation of FAR 9.505a.¹²

That same day, the Complainant reported that he witnessed Ms. Stokes; Ms. Luque; and [REDACTED], abuse their discretion in handling administrative and personnel matters in violation of the Fair Labor Standards Act, Federal

¹¹ The Complainant e-mailed his disclosure to the DCSA IG on or around January 22, 2020, and resubmitted it in a sworn statement on January 27, 2020. FAR Part 9, "Contractor Qualifications;" Subpart 9.5, "Organizational and Consultant Conflicts of Interest," Section 9.505, "General Rules," identifies ways to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in some situations. FAR 9.505 states, "The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it." One of the underlying principles is preventing unfair competitive advantage. An unfair competitive advantage exists when a contractor competing for award of any Federal contract possesses proprietary information that was obtained from a Government official without proper authorization or source selection information (as defined in FAR Subpart 2.101, "Definitions") that is relevant to the contract but is not available to all competitors, and the information would help that contractor obtain the contract.

FAR Subsection 9.505-4, "Obtaining access to proprietary information," states that when a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. Furthermore, a contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect this information from unauthorized use or disclosure for as long as it remains proprietary, and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer must obtain copies of these agreements and ensure that they are properly executed. Finally, under the Subsection, contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultants have provided no unfair competitive advantage.

¹² Preventing the existence of conflicting roles that might bias a contractor's judgment.

Employee Pay Act, and the Joint Travel Regulations. Specifically, the Complainant reported that Ms. Stokes refused in writing to follow DSS time and attendance policy or hours on duty regulations.¹³ He reported that she did this by not compensating or not authorizing overtime pay to those Federal workers who were permitted to work additional hours to achieve the agency goals, even though these employees were not expressly directed to work extra hours. Moreover, the Complainant reported that Ms. Stokes, Ms. Luque, and [REDACTED] repeatedly authorized overnight hotel stays for local employees within the Fort Meade area, in violation of DoD travel regulations.

Finally, the Complainant reported to the IG that Ms. Stokes preselected personnel from the Army G-2 and Office of the Under Secretary of Defense (Intelligence) and used her influence to steer hiring panels to her desired end state, and the Complainant gave specific examples of employees who allegedly were preselected over other qualified candidates.

At the time of this disclosure, a reasonable person with knowledge of the essential facts known to the Complainant and the same awareness of Federal Acquisition and Travel Regulations could have concluded that giving contractors non-public information, allowing them to write the statement of work of a Government contract and provide biased advice to the Government, and allowing contractor employees to falsely claim travel payments for overnight stays in local areas violated those regulations. In addition, Ms. Stokes's alleged use of her position to preselect candidates and influence hiring panels could be considered an abuse of authority defined as an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or results in advantages to preferred persons.

Additionally, the DCSA IG is an authorized recipient of such a disclosure. Therefore, the Complainant's January 27, 2020 disclosure to the DCSA IG was protected under PPD-19.

Disclosure 3: To the DCSA DEO

On February 5, 2020, the Complainant e-mailed the DCSA Director and the Deputy Director of the DEO in Quantico, Virginia, and reported sex and disability discrimination, as well as retaliation. The Complainant attached to this e-mail his sworn statement previously sent to the DCSA IG on January 27, 2020, in which he alleged sex discrimination regarding employment policies and practices when Ms. Stokes, Mr. Littles, and Ms. Luque preselected and directly hired females over male candidates, and that males (including the Complainant) "have been neutered or removed from leadership positions" in violation of Title VII.

The Complainant also reported that Ms. Stokes and Mr. Littles reprised against him for his previous EEO case activity when they failed to comply with a December 4, 2019 Equal Employment Opportunity Commission order directing the agency to restore 40 hours of paid leave to him by January 17, 2020.¹⁴ The Complainant also alleged that Ms. Stokes and Mr. Littles unlawfully

¹³ Title 5 Code of Federal Regulations chapter 1, subchapter B, part 610, as amended.

¹⁴ A judgment order by the Equal Employment Opportunity Commission was issued on September 26, 2019, granting the Complainant's motion for sanctions in relation to his EEO case against the Army in 2018. The Army was ordered to, among other things, restore 40 hours of paid leave to the Complainant. Neither the DCSA, Ms. Stokes, nor Mr. Littles was in a position to provide the paid leave to the Complainant until the Army restored the leave. Once the Army restored the leave and the Defense Finance Accounting Service reconciled the leave, the DCSA was able to add the restored leave to the Complainant's balance on or around June 6, 2020. The DEO referred this case to DTRA because of a conflict of interest. This matter was addressed by DTRA and the Complainant did not include it as reprisal in his complaint to the DoD Hotline. Therefore, we did not treat this allegation that the DCSA's management officials failed to restore the Complainant's paid leave as a personnel action.

reprised against him for communicating with DCSA's Acquisitions Department about harassment reported by administrative contractors in June 2018. Additionally, the Complainant alleged that Ms. Stokes and Mr. Littles reprised against him for refusing to follow orders that would result in discrimination.

Finally, the Complainant reported disability discrimination in violation of Title VII and harassment from Ms. Stokes, Mr. Littles, and Ms. Luque when, in October 2018, they ignored his preexisting 100 percent disabled rating and reassigned and demoted him from Chief of Staff, DVD, DCSA, to a less desirable position.¹⁵ The Complainant reported that this action contributed to his stress and aggravated his health.

The Complainant's report of discrimination and reprisal was made to a DEO representative, who is an employee designated by an agency official for the purpose of receiving protected disclosures of reasonably believed violations of discrimination laws and regulations. Therefore, the Complainant's February 5, 2020 disclosure to the DCSA DEO was protected under PPD-19.

Disclosure 4: Second Disclosure to the DCSA IG

On February 14, 2020, the Complainant e-mailed the DCSA IG and DEO Director, and copied Ms. Luque, an attached advisory memorandum, entitled, "Professionalism and Courtesy in the Workplace," which he received from Ms. Luque earlier that day. Ms. Luque stated in that memorandum that she gave the Complainant this advisory memorandum because he told her to "shut up" and separately he displayed "unacceptable behavior" by "chiding" her and showed "disdain" related to the duties assigned to a GG-14 employee during a leadership meeting. Ms. Luque did not include disciplinary language in this memorandum. In the e-mail to the IG and the DEO, the Complainant alleged that he received the advisory memorandum in reprisal for his previous disclosures to them and asked both offices to include it in his complaints to them on January 27 and February 5, 2020, respectively.

The Complainant's forwarding of this memorandum to the IG of the employing agency for inclusion in his previous complaint, which was in the process of being investigated effective February 19, 2020, is considered cooperating with or disclosing information in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the IG. Therefore, the Complainant's February 14, 2020 disclosure to the DCSA IG was protected under PPD-19.

Disclosure 5: To [REDACTED]

The Complainant e-mailed [REDACTED], an acting supervisor in the Complainant's direct chain of command, on July 6, 2020, and shared his concerns that DCSA's leadership, including Ms. Stokes and Ms. Luque, made "risky business decisions for personal advancement" and colluded in a series of shortcuts to reduce the inventory of background investigations, or backlog, by manipulating metrics and not checking the Joint Personnel Adjudication System (JPAS) to save time. According to the Complainant, if the Agency did not review the JPAS, it would fail to see incident reports, leading to the possibility that felons would continue to have access to classified information, installations, and networks. Likewise, the Complainant said that the DCSA converted about 74,000 adjudications

¹⁵ The Complainant alleged to the DEO that he was demoted or reassigned in discrimination for his disabilities, not in reprisal for making protected disclosures. DTRA addressed this allegation in its investigation. Therefore, we did not treat this allegation of reassignment or demotion as a personnel action.

into continuous evaluations to lower background investigations inventory numbers with no intention of ever adjudicating the completed background investigations.

The Complainant also wrote to ██████████ that, at the time, the JPAS remained a primary database with a cost of about \$17 million per year to maintain, and leadership decided not to use it while awaiting policy regarding the new system, thereby creating a specific danger to public safety and national security. The new vetting system, National Background Investigation Services, would replace the JPAS.

Ms. Stokes e-mailed the DVD personnel on November 22, 2019, and indicated that the DCSA had pressure from Congress to close all deferred inventory cases, and the DVD had a goal to close about 74,000 deferred cases by the end of the year. On November 26, 2019, the DCSA's Acting Director informed Members of Congress that the DCSA's priority was to reduce the inventory of DoD and industry cases awaiting adjudication at the DoD Consolidated Adjudication Facility (DoD CAF). The DCSA Acting Director explained to Members of Congress that on February 15, 2019, the Executive Agents for Security and Suitability and Credentialing (the Director of National Intelligence and the Director of the Office of Personnel Management) authorized the DoD CAF to defer adjudications for periodic reinvestigations that posed low to no risk and prioritize adjudications for initial background investigations and investigations with derogatory information. Therefore, to mitigate any potential risk, about 73,000 deferred cases were enrolled in continuous evaluations. Because the Executive Agent authorization was expiring on December 31, 2019, the DCSA authorized adjudicators to address the deferred low to no risk cases enrolled in continuous evaluation and no longer defer adjudications.

On May 12, 2020, a Division Chief of the DoD CAF informed ██████████ that the DoD CAF was not checking the JPAS during adjudications as part of some efficiencies. Additionally, the Acting Director of the DoD CAF informed ██████████ that the DoD CAF made efficiency changes over the course of the previous 2 years to address the backlog of background investigations. The Acting Director of the DoD CAF further conveyed to ██████████ that those changes were supported through various Lean Six Sigma studies, policy reviews, and many more.

For a disclosure to be protected under PPD-19, the Complainant must have had a reasonable belief that the disclosure evidenced a violation of any law, rule, or regulation; gross mismanagement; a gross waste of DoD funds; an abuse of authority; or a substantial and specific danger to public health or safety. The test for determining whether the Complainant had such a belief is whether a reasonable person with knowledge of the essential facts known to and readily ascertainable by the Complainant could conclude that management's actions evidenced wrongdoing as defined by PPD-19.

We found no evidence to suggest that DCSA management's decision to stop checking JPAS after conducting studies and reviewing Agency policies amounted to gross mismanagement. The Complainant's allegations that DCSA management engaged in shortcuts to reduce the inventory of background investigations amounted to management's discretion on carrying out routine business decisions and not decisions that could create a substantial risk of significant adverse impact on DCSA's ability to accomplish its mission. Furthermore, the Complainant's speculation did not cite any examples of any substantial or specific danger or the likelihood of any harm to the health or safety of anyone.

In summary, a reasonable person, with knowledge of the essential facts as known to the Complainant, would have concluded that discretionary management decisions did not evidence a violation of a law, rule, or regulation or a substantial and specific danger to public health or safety.

Accordingly, the Complainant's disclosure to [REDACTED] was not protected under PPD-19.

Personnel Actions Taken, Threatened, or Withheld From the Complainant

Presidential Policy Directive 19 prohibits any officer or employee of an Executive branch agency with authority to take, direct others to take, recommend, or approve any personnel action from taking or failing to take, or threatening to take or fail to take, such action as a reprisal for making a protected disclosure to an authorized recipient. The Complainant alleged that he was subjected to three personnel actions. A preponderance of the evidence established that he was subjected to one personnel action on July 27, 2020.

Qualifying Personnel Action: Lowered Rating on a Performance Evaluation

Effective July 19, 2020, the DCSA dissolved the DVD. Its employees, including the Complainant, were realigned under the newly created Program Executive Office (PEO). Due to the timing of this reorganization, the DCSA instructed all raters to close out their realigned employees' FY 2020 performance period on July 19, 2020, and include any performance from July 20 through September 30, 2020, on their FY 2021 performance evaluations. As a result, on July 27, 2020, Ms. Stokes, as the rating official in Ms. Luque's absence, prepared the Complainant's evaluation using input from [REDACTED], who served as a guest rater by writing the narratives for her, and input from the mid-year progress review that Ms. Luque gave the Complainant on April 21, 2020. Despite stating in the evaluation's narratives that the Complainant performed at the successful level in all elements, Ms. Stokes assigned him a rating of 2 (minimally successful) in the element of Leadership and Integrity.

On December 3, 2020, the DCSA approved the release of the early annual performance evaluations and instructed raters to discuss the evaluations with their employees no later than December 11, 2020.¹⁶ Mr. Littles signed the Complainant's performance evaluation on December 3, 2020, for the rating period October 1, 2019, through July 19, 2020. Mr. Littles issued the Complainant his performance evaluation stating that he performed at the successful level for all elements.¹⁷ However, this performance evaluation reflected a rating of 2 in the performance element of Leadership and Integrity and omitted required examples of the Complainant's actions supporting the rating. Despite receiving an overall rating of 3 (successful) from Mr. Littles, the Complainant did not sign the performance evaluation and referred to it as inconsistent. The Complainant informed [REDACTED] that he would not contest the ratings of 3 but would contest his rating of 2 in the

¹⁶ DCIPS final performance evaluations of record and DCIPS close-out early annual performance evaluations follow the same process for review before being shared with employees. This includes a Performance Management Performance Review Authority review and approval by the DCSA Director to release all FY 2020 performance management scores. Since the DCSA Director approved release of all evaluations on December 3, 2020, no personnel were to be notified of their performance evaluations until that date.

¹⁷ According to DoD Instruction 1400.25, Volume 2011, "DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Performance Management," May 7, 2016 (Incorporating Change 1, Effective July 13, 2020), a performance element is a standard set of behaviors for all DCIPS positions, derived from analysis of the work being performed by employees, that are necessary for successful performance of that work. The DCSA raters evaluate employees' performance according to their accomplishments and rate them on a 5-point scale. These ratings are 1 (unacceptable), 2 (minimally successful), 3 (successful), 4 (excellent), and 5 (outstanding).

performance element of Leadership and Integrity through the EEO office and the IG. After Ms. Stokes prepared the Complainant's proposed performance evaluation on July 27, 2020, Mr. Littles assumed Ms. Stokes's responsibilities as the Complainant's rater and reviewer on September 11, 2020, because Ms. Stokes was retiring on September 30, 2020.¹⁸ On December 3, 2020, the DCSA Director approved release of performance evaluations to the employees, and Mr. Littles signed the Complainant's performance evaluation and issued it to him on December 4, 2020.

A performance evaluation is a personnel action as defined by PPD-19, Part A.

Non-Qualifying Personnel Action: Issuance of an Advisory Memo

Ms. Luque wrote a February 14, 2020 advisory memorandum to the Complainant, entitled, "Professionalism and Courtesy in the Workplace," for displaying "unacceptable behavior" by "chiding" Ms. Luque and showing "disdain" related to the duties assigned to a GG-14 employee during a leadership meeting, as stated by Ms. Luque in the memorandum and in her testimony with DTRA. The memorandum included the statement that the Complainant was previously verbally counseled on February 4, 2020, for telling her to "shut up."

Ms. Luque told us that, as she explained to Ms. Stokes in June or July 2020, the advisory memorandum she gave the Complainant on February 14, 2020, was not disciplinary in nature, and the Complainant did not continue the behavior described in the advisory memorandum after she sent it to him. Therefore, she did not address this matter in the Complainant's mid-point progress review. We found no evidence that Ms. Stokes or Mr. Littles considered this matter when assessing and rating the Complainant's performance in his FY 2020 early annual performance evaluation.

An advisory memorandum counseling the Complainant on his conduct is not an appointment; promotion; detail; transfer or reassignment; demotion; suspension or termination; reinstatement; restoration or reemployment; performance evaluation; or a decision concerning pay, benefits, or awards. It does not concern education or training that may reasonably be expected to lead to an appointment, reassignment, promotion, or performance evaluation; a decision to order psychiatric testing or examination; or any other significant change in duties, responsibilities, or working conditions. Therefore, the advisory memorandum does not qualify as a personnel action as defined by PPD-19, Part A.

Non-Qualifying Personnel Action: Verbal Threat of Discontinued Employment and Psychiatric Examination Referral

The Complainant participated in a teleconference with his new rater, [REDACTED] (GG-15), [REDACTED], and [REDACTED] on December 18, 2020, to discuss the Complainant's planned realignment within the organization. PEO leadership was evaluating a decision to realign the Complainant under the direct supervision of [REDACTED], as part of the PEO's

¹⁸ Ms. Stokes delegated to [REDACTED] the task of writing the evaluation's narratives as a guest rater for Ms. Luque's subordinates, including the Complainant. Before retiring, Ms. Stokes used [REDACTED] narratives to assign numerical ratings to the evaluations in Ms. Luque's absence. The evaluations that Ms. Stokes prepared were proposed and not final, and, therefore, not discussed with the employees until after the Performance Management Performance Review Authority review was complete. Mr. Littles completed the review on November 20, 2020. According to the HCMO, upon Ms. Stokes's retirement, Mr. Littles was completing the higher-level review required action that would be impossible for Ms. Stokes to complete because she departed the DCSA on September 30, 2020.

latest structuring of various positions. The Complainant told us that while discussing his position description and objectives, ██████ implied or threatened him with discontinued employment by telling him, “[Y]ou might not have a job at the end of this,” and when the Complainant asked why, ██████ responded, “[M]aybe people know things you don’t.” Moreover, the Complainant told us that ██████ also informed him of ██████ decision to refer him to the staff psychologist, to the Office of the General Counsel, and to the EEO office to figure out what they could do for his reasonable accommodation because the Complainant reported to ██████ that the reorganization and changes affected his health.¹⁹

The Complainant told us that ██████ threatened his employment and made this referral in reprisal because he informed ██████ on December 6, 2020, that he would appeal his rating on his evaluation with the IG and the EEO office, and that ██████ was “ingratiating” herself with senior leadership in hopes of upward mobility.

██████ heard ██████ responses and comments during that call. Absent any documentary evidence of the conversation, we evaluated the testimony of the three parties involved in the call as well as Mr. Little’s testimony and the Human Capital Management Office’s (HCMO) correspondence with ██████.

██████ denied threatening the Complainant’s employment or referring him for a psychiatric examination and said that ██████ had no authority to take either of these actions. When we asked ██████ about the employment termination threat allegation, ██████ told us, “There is one thing when there is a misunderstanding of communication, and there is another thing when it did not happen. This did not happen. I can’t say it enough.” According to ██████, nobody discussed the Complainant’s employment termination, and, to ██████ knowledge, he was not at risk of losing his job.

██████ explained that when ██████ discussed with the Complainant realigning him under ██████ on December 4, 2020, his personality changed and he became aggressive. The Complainant told ██████ that the constant changes affected his health, and he requested that ██████ wait and confirm with the HCMO that the proposed realignment was really approved. Likewise, the Complainant brought to ██████ attention concerns about his telework status as a reasonable accommodation, and on December 6, 2020, he told ██████ that he would appeal his reduced performance evaluation to the IG and the EEO office. ██████ then said that ██████ informed the Complainant that ██████ would pause his realignment to discuss his concerns with the HCMO.

██████ said that the Complainant made disparaging comments about females (Ms. Luque and Ms. Stokes) in leadership positions via e-mails. Additionally, the Complainant sent an e-mail directly to ██████ before ██████ became ██████, making disparaging comments about leaders. Because the Complainant changed his behavior with ██████ when ██████ told him that ██████ would realign him under ██████, ██████ said that ██████ became concerned about his treatment of female leaders and thought that ██████ was his next target.

Beginning December 4, 2020, ██████ discussed with the HCMO the Complainant’s concerns, ██████ concerns, and the possibility of realigning the Complainant under a different supervisor.²⁰ Although ██████ denied discussing a psychiatric examination with the Complainant, ██████ admitted consulting the HCMO about concerns she had regarding the Complainant’s exhibited behaviors and

¹⁹ The Complainant believed that ██████ turned him in as an insider threat and referred him to a staff psychologist for a mental evaluation.

²⁰ In ██████ testimony, ██████ often referred to the HCMO as Employee Management Relations or EMR.

addressing his mental state. ██████ told us that during ██████ consultation with the HCMO, ██████ learned that the DCSA did not normally order employees to undergo psychiatric evaluations, so ██████ left it alone. According to ██████, after receiving guidance from the HCMO, ██████ had a teleconference (in which the alleged threats occurred) with ██████ and the Complainant on December 18, 2020, to resume talking about the Complainant's realignment under new supervision. Following that meeting, ██████ continued consulting with the HCMO through January 14, 2021.

████████, who participated in this meeting, said that ██████ did not witness ██████ threaten the Complainant's employment or discuss that topic or anything along those lines. ██████ told us that they talked to the Complainant about reassigning him to a position better suited for him. Furthermore, ██████ said that everything discussed during that meeting was positive, and ██████ had no idea where that accusation came from. ██████ said that ██████ was "totally stunned" by the accusation that ██████ threatened the Complainant's employment, ██████ did not remember any conversation or situation that would threaten the Complainant and his job, and ██████ believed this accusation was "frivolous."

████████ told us that the Complainant's verbal interactions with ██████ were very cordial and respectful, but ██████ thought the Complainant was more aggressive and direct with ██████ and did not extend the same level of courtesy toward ██████ that he extended toward ██████. ██████ also told us that ██████ did not witness ██████ order or threaten the Complainant with a psychological evaluation during the December 18, 2020 teleconference. ██████ referred to the Complainant's allegation of a psychiatric examination order or threat as "silly," as ██████ did not have the authority to make that decision. ██████ also said that this allegation was not true, there was no conversation about referring him for a psychiatric evaluation, and ██████ believed this accusation was "ridiculous."

Mr. Littles told us that the Complainant was not at risk of losing his job, and nobody discussed this topic with him. Mr. Littles also stated that to his knowledge, no one ordered the Complainant to undergo a psychiatric examination.

We did not find evidence to support that these alleged actions occurred, as ██████ and ██████ did not corroborate the Complainant's allegations. Furthermore, ██████ and ██████ testimonies were consistent with one another. Additionally, Mr. Littles, as the Chief Operating Officer, would have been aware of any discussions about terminating the Complainant's employment or ordering him to undergo psychiatric testing, and he clarified to us that no one discussed these topics with him. Finally, the HCMO did not mention any referral for psychiatric testing in its response to ██████ concerns on January 14, 2021. Likewise, the Complainant acknowledged to us that he never received written orders to undergo a psychiatric examination and did not undergo one.

Moreover, ██████ was not an officer or employee with the authority to take, or threaten to take, these actions against the Complainant, and the evidence demonstrates that no one ever took these actions.

Analysis

The evidence establishes that the Complainant's protected disclosures were a contributing factor in the decision to reduce the Complainant's rating on the element of Leadership and Integrity on his 2020 performance evaluation. Discussion of the factors weighed together follows the factor-by-factor analysis below, as appropriate.

Knowledge

A preponderance of the evidence establishes that it is more likely than not that Ms. Stokes was aware of three of the Complainant's four protected disclosures and that Mr. Littles was aware of all four of the Complainant's protected disclosures before deciding to reduce the Complainant's rating on the element of Leadership and Integrity on his 2020 performance evaluation.

Disclosure 1: To the Fort Bragg EEO Office

After the Complainant filed his March 6, 2020 EEO complaint with the DEO, in part for not having his paid leave restored in connection with his Equal Employment Opportunity Commission case against the Army, Mr. Littles copied Ms. Stokes in an e-mail mentioning the complaint and discussing the Complainant's requested relief. The Complainant named Ms. Stokes and Mr. Littles as subjects in his EEO formal complaint with the DEO, and the DEO referred this complaint outside of the organization to DTRA, which conducted an investigation and interviewed Ms. Stokes on May 29, 2020. In her testimony to DTRA, Ms. Stokes acknowledged that the Complainant mentioned to her his "lawsuit" against the Army "at some point" and that the EEO counselor for his DEO complaint made her aware of his EEO complaint against the Army.²¹ Therefore, we found that Ms. Stokes likely knew of the Complainant's 2018 disclosures to Fort Bragg's EEO office.

Mr. Littles first learned about the Complainant's disclosures to Fort Bragg's EEO office in 2019.²² This came to Mr. Littles's attention again on February 19, 2020, once the Complainant filed an EEO complaint with the DEO, in part for not having restored 40 hours of paid leave, in connection with his Equal Employment Opportunity Commission case against the Army. Therefore, we found that Mr. Littles knew of this disclosure.

Disclosure 2: First Disclosure to the DCSA IG

The Complainant e-mailed his complaint to the DCSA IG on or around January 22, 2020, and copied [REDACTED] before sending his disclosures again in a sworn statement to the DCSA IG on January 27, 2020. According to the DCSA IG, on or around January 24, 2020, [REDACTED] made the DCSA's senior leadership, including Ms. Stokes and Mr. Littles, aware of the Complainant's complaint to the DCSA IG. In addition, on February 12, 2020, an employee informed Ms. Stokes of e-mail communications between the Complainant and colleagues in which the e-mails mentioned the Complainant's IG complaint. Additionally, the DCSA IG opened an investigation on February 19, 2020. Although the DCSA IG e-mailed Ms. Stokes the allegations made against her by the Complainant and interviewed her after she rated the Complainant a 2 in an element of his performance evaluation on July 27, 2020, in her statement to the DCSA IG, Ms. Stokes acknowledged that an employee made her aware

²¹ The Complainant contends that Ms. Stokes knew about his EEO case against Fort Bragg in 2018 while they were both employed by the Army and that he discussed it with her in a telephonic conversation. Either way, Ms. Stokes became aware of this disclosure before taking the action on July 27, 2020.

²² Mr. Littles was inconsistent on exactly when he first learned about the Complainant's disclosures to Fort Bragg's EEO office. He told the IRD that he learned about it in 2019; he told the DTRA IG that he became aware of it in February 2020; and he told us that he learned about it in March 2020. The Complainant contends that Mr. Littles became aware of his disclosures to Fort Bragg's EEO office in 2018 during a routine reference check before the Complainant was hired by DSS on April 1, 2018, about 2 years and 8 months before the performance evaluation. Regardless, Mr. Littles became aware of it before issuing the performance evaluation on December 4, 2020.

of an e-mail in which the Complainant mentioned an IG complaint.²³ When completing his employee self-assessment for his FY 2020 mid-point progress review in or around April 2020 and in his end-of-year performance evaluation, the Complainant detailed his protected disclosures made to the IG in which he named Ms. Stokes as a subject, thus making Ms. Stokes as one of the reviewers of his self-assessments aware of his disclosures. Ms. Luque copied Ms. Stokes on an e-mail in which she discussed the Complainant's self-assessment on April 17, 2020. Ms. Stokes reviewed the Complainant's mid-point progress review to prepare his end-of-year performance evaluation. Likewise, as the rating official, Ms. Stokes prepared the Complainant's end-of-year performance evaluation on July 27, 2020, which included his self-assessment with his disclosures. Finally, Ms. Luque told us that Ms. Stokes was aware of the Complainant's disclosure to the DCSA IG and that it was common knowledge between Ms. Stokes, Mr. Littles, and herself. Therefore, we found that Ms. Stokes knew of this disclosure.

Mr. Littles denied knowing of the Complainant's January 22 and 27, 2020 disclosures to the DCSA IG. However, according to the DCSA IG, because the Complainant copied ██████████ in his January 22, 2020 e-mail to the DCSA IG, he made senior leadership at DCSA, including Ms. Stokes and Mr. Littles, aware of his IG complaint. According to the DCSA IG, "Mr. Littles, and other members of Senior Management within [the] DCSA, were made aware of the allegation(s) as of January 24, 2020." Therefore, we conclude that the DCSA IG notified Mr. Littles of the Complainant's protected disclosures to the DCSA IG before Mr. Littles issued the Complainant his performance evaluation with a rating of 2 in one element in December 2020. In addition, Ms. Luque told us that Mr. Littles was aware of the Complainant's disclosure to the DCSA IG, and it was common knowledge between Ms. Stokes, Mr. Littles, and herself. Ms. Luque confirmed to us that senior leadership knew about it, and ██████████ also made her aware in January 2020.

Additionally, the DEO Complaint Manager briefed Mr. Littles in February 2020 about the Complainant's February 5, 2020 EEO complaint, which included a copy of the Complainant's sworn statement with his disclosures to the DCSA IG. Mr. Littles shared with us the EEO overview report that he reviewed on or around March 2020, which also mentions an IG investigation. The Complainant also made the reviewers of his performance directly aware of his protected disclosures made to the DCSA IG when he detailed those disclosures, in which he named Mr. Littles as a subject, when completing his employee self-assessment for his FY 2020 mid-point progress review in or around April 2020, and in his end-of-year performance evaluation. Mr. Littles told us that he did not read the Complainant's self-assessment for his mid-point review; however, he was copied in an e-mail regarding the Complainant's self-assessment on April 17, 2020. Likewise, Mr. Littles denied reading the Complainant's self-assessment in his 2020 performance evaluation, despite signing the evaluation on December 3, 2020. Although the DCSA IG did not interview Mr. Littles during the investigation, documentary and testimonial evidence demonstrates that Mr. Littles was aware of this protected disclosure. Therefore, we found that Mr. Littles was aware of this disclosure.

²³ On February 12, 2020, an Empire Business Systems Office employee made Ms. Stokes aware of her finding of e-mail communications between the Complainant and three other colleagues and that the Complainant mentioned filing an IG complaint. Ms. Stokes said that she believed the Complainant was colluding to defame her and requested that DCSA's senior leadership investigate the e-mails, but when the DCSA Office of the General Counsel reviewed the e-mails, the DCSA did not investigate further as there was no indication of subversion or collusion.

Disclosure 3: To the DCSA DEO

When completing his employee self-assessment for his FY 2020 mid-point progress review in or around April 2020, and in his end-of-year performance evaluation, the Complainant detailed his protected disclosures made to the DEO in which he named Ms. Stokes as a subject, thus making the readers of his self-assessments aware of his disclosures. Ms. Luque copied Ms. Stokes on an April 17, 2020 e-mail in which she discussed the Complainant's self-assessment. Ms. Stokes reviewed the Complainant's mid-point progress review to complete his end-of-year performance evaluation. Likewise, as the rating official, Ms. Stokes prepared the Complainant's end-of-year appraisal on July 27, 2020, which included his self-assessment with his disclosures to the DEO. Additionally, the DEO Acting Director told us that the DEO Complaint Manager notified Ms. Stokes of this complaint when the Complainant filed it. Finally, the DTRA EEO office interviewed Ms. Stokes in its investigation and informed her of the allegations the Complainant made against her on May 29, 2020. Therefore, we found that Ms. Stokes knew of this disclosure.

The DEO Director briefed Mr. Littles each month on all formal EEO complaints filed against DCSA personnel because Mr. Littles was the Chief Operating Officer, and Mr. Littles told us that he reviewed them all. The DEO Complaint Manager also made Mr. Littles aware of the Complainant's disclosures to the DEO and that the Complainant named Mr. Littles as a subject on or around February 19, 2020. To prevent any perceived conflict of interest, the DEO referred the Complainant's EEO formal complaint outside of the organization to DTRA, which conducted an investigation and interviewed Mr. Littles on June 18, 2020. Therefore, we found that Mr. Littles likely knew of this disclosure.

Disclosure 4: Second Disclosure to the DCSA IG

When the Complainant e-mailed the DCSA IG the advisory memorandum he received from Ms. Luque, he copied Ms. Luque. According to Ms. Luque, she might have shared it with her supervisor, Ms. Stokes, to let her know how the Complainant responded to her giving him the advisory memorandum; however, we have found no evidence to indicate she actually did share the memorandum. In light of Ms. Luque's uncertainty and absent any evidence to the contrary, we found it more likely than not that Ms. Stokes was not aware of the Complainant's February 14, 2020 disclosure to the DCSA IG.

Mr. Littles denied knowing of the Complainant's February 14, 2020 disclosure to the DCSA IG. However, because the DEO added this supplemental disclosure in the February 5, 2020 disclosure record, it is likely that Mr. Littles became aware of this disclosure when the DEO Complaint Manager briefed him about the Complainant's disclosure to the DEO in February 2020. Furthermore, in the EEO complaint overview Mr. Littles reviewed in March 2020 and shared with us, the timeline explains that on February 14, 2020, the Complainant e-mailed DCSA IG personnel to add Ms. Luque's memorandum to his initial complaint. The overview also included a portion of the Complainant's statement in quotation marks regarding his refusal to sign the memorandum he received. Therefore, we found it more likely than not that Mr. Littles was aware of this disclosure.

Timing of Personnel Actions

The close timing between Ms. Stokes learning of the protected disclosures in January and February 2020 and her decision to assign the Complainant a rating of 2 in the Leadership and Integrity element of his 2020 performance evaluation in July 2020 raises an inference of reprisal.

The close timing between Mr. Little's learning of the protected disclosures in January and February 2020 and his decision to issue the Complainant a rating of 2 in the Leadership and Integrity element on his 2020 performance evaluation in December 2020 raises an inference of reprisal.

Strength of the Evidence

Stated Reasons for Lowering the 2020 Performance Evaluation

Despite our multiple attempts to interview Ms. Stokes, she did not make herself available for an interview to provide reasons for issuing the Complainant a rating of 2 in the element of Leadership and Integrity on his FY 2020 performance evaluation. Nonetheless, the evidence shows that Ms. Stokes prepared the Complainant's preliminary 2020 performance evaluation and assigned ratings to the elements and objectives being evaluated on July 27, 2020, just before she retired from Federal service.

According to Mr. Little, his role was strictly to sign the evaluation and transmit it to the Complainant because of Ms. Stokes's departure from the DCSA. However, we learned from the HCMO that Mr. Little also had the role of the higher-level reviewer and Performance Management Performance Review Authority (PM PRA). Mr. Little told us that the rating official's proposed assessments and ratings become final once the higher-level reviewer signs that performance evaluation. Mr. Little signed the Complainant's performance evaluation after assuming the higher-level reviewer role in Ms. Stokes's absence.²⁴ However, Mr. Little also told us that Ms. Stokes's proposed assessments and ratings were "final" because Ms. Stokes, as the Complainant's higher-level reviewer at the time she drafted his performance evaluation, provided the comments and scores she wanted to give him.

Mr. Little decided not to change the evaluation that Ms. Stokes prepared because he thought it would be inappropriate and premature on his part to decide that what Ms. Stokes wrote was incorrect. Mr. Little asked us, "Who would I be to change it, and what would I base it on?" Mr. Little told us that because the Complainant was three or four levels below him, he did not know anything about the Complainant's performance. As a result, Mr. Little said that he neither agreed nor disagreed with Ms. Stokes's proposed rating of the Complainant. Although the rating of 2 in the element of Leadership and Integrity did not match the narrative text of the performance element, there is no evidence that Mr. Little questioned this inconsistency. Although Mr. Little became the Complainant's higher-level reviewer after Ms. Stokes retired, as well as the PM PRA, he stated that he did not review the Complainant's performance evaluation before signing it, and he probably did not even read it because he did not write it. He also indicated that because he was responsible for hundreds of evaluations, he could not read them all.²⁵

²⁴ According to the HCMO, Mr. Little completed the required action for the higher-level review that would be impossible for Ms. Stokes to complete because she departed the DCSA on September 30, 2020.

²⁵ Absent special circumstances, in the DCSA the direct supervisor serves as the rating official—and the second-level supervisor serves as the higher-level reviewer—when evaluating employees. Also, DCIPS positions require oversight of the performance management process to ensure consistency of performance management practices and processes. This oversight is conducted by the PM PRA. The PM PRA must return proposed evaluations of record in which a disparity exists between the narrative and the proposed evaluation of each performance objective or performance element, or any indication that policy was not followed, and direct or take corrective action, as appropriate. The PM PRA has the final approval of all performance evaluations of record under his or her purview, directing changes when necessary to ensure compliance with policy requirements. Once the PM PRA review is complete, the DCSA Director authorizes rating officials to communicate the final and approved appraisal to the employees.

Mr. Littles also told us he was not aware that Ms. Stokes did not include a narrative on the Complainant's evaluation justifying the rating of 2, but acknowledged that she should have. Mr. Littles explained that when he accessed the Complainant's evaluation on December 3, 2020, he learned for the first time that it included a rating of 2 because he saw it on the first page when he opened it. He transmitted the evaluation to the Complainant electronically on December 4, 2020, without discussing it, as he did with all other evaluations he signed and issued on Ms. Stokes's behalf. However, the HCMO briefed Mr. Littles on all preliminary ratings for the GG-15 employees in November 2020. Mr. Littles said that, in his role as the PM PRA, he reviewed statistical data, and he looked for evaluations with overall ratings of 1 or 5 to ensure consistency in DCIPS performance management practices. Since the Complainant's overall rating was 3, despite having a rating of 2 on one element, it did not raise a red flag for him, and, therefore, he did not review it.

Motive to Retaliate

Evidence for motive generally exists when protected disclosures allege wrongdoing that, if proven, would adversely affect the subject. In this case, Ms. Stokes and Mr. Littles would likely have been adversely affected because of the Complainant's protected disclosures to the DCSA IG on January 27, 2020, and the DEO on February 5, 2020, which implicated them.

The Complainant alleged that Ms. Stokes abused her authority, preselected and hired female over male candidates, gave competitive advantage to a contractor, mishandled administrative and personnel matters, retaliated against him for his disclosures to the EEO office at Fort Bragg, discriminated against him for his disabilities, and harassed him. Likewise, the Complainant alleged in his February 5, 2020 complaint to the DEO that Mr. Littles abused his authority, influenced hiring panels, preselected and hired female over male candidates, retaliated against the Complainant for his disclosures, discriminated against him for his disabilities, and harassed him.

The Complainant was open about his protected disclosures and accusing Ms. Stokes and Mr. Littles of wrongdoing. Documentary evidence and testimony shows that, in February 2020, Ms. Stokes learned about e-mail communications between the Complainant and colleagues in which the Complainant's complaint to the IG was mentioned, and she was concerned and upset. The Complainant's allegations against Ms. Stokes and Mr. Littles did not reflect well on them. The Complainant's allegations of wrongdoing against Ms. Stokes and Mr. Littles called into question their ethics, integrity, and leadership, and could have professionally embarrassed them. Being named as subjects alleged to have engaged in wrongdoing in an EEO complaint that was investigated by an outside agency could have created motive for Ms. Stokes and Mr. Littles to retaliate against the Complainant.

Ms. Stokes or Mr. Littles would not likely have been adversely affected by the Complainant's protected disclosure to Fort Bragg's EEO office in 2018. Although the Army employed the Complainant and Ms. Stokes at the time of his disclosure, the Complainant did not name Ms. Stokes as a subject or implicate her. Similarly, the Complainant's protected disclosure to Fort Bragg's EEO office in 2018 did not implicate Mr. Littles or the DCSA. The Complainant made this disclosure during his employment with the Army 2 months before being hired at the DCSA, and the subjects were Army officials not organizationally related to DCSA or Mr. Littles. Likewise, the Complainant did not implicate Ms. Stokes or Mr. Littles in his disclosure to the DCSA IG on February 14, 2020, as he only named Ms. Luque as the subject. Therefore, if the Complainant's allegations of reprisal against Ms. Luque were proven, it would not likely adversely affect Ms. Stokes or Mr. Littles.

Disparate Treatment of the Complainant

We found evidence of disparate treatment of the Complainant by Ms. Stokes. Data from the HCMO shows that when preparing the preliminary performance evaluations for Ms. Luque's subordinates in her absence, Ms. Stokes assigned the Complainant a rating of 2 (minimally successful) in the element of Leadership and Integrity but assigned ratings of 3 (successful) or greater to all other employees in all elements and objectives. Evidence also shows that Ms. Stokes treated the Complainant differently when she included a narrative for that element saying that the Complainant performed at the successful level and yet rated him minimally successful.²⁶ According to DoD Instruction 1400.25, Volume 2011, the rating official will prepare a brief narrative summary of the employee's performance against each performance element. Likewise, the rating official is required to highlight, in the narrative, brief examples of the employee's actions that support the numerical rating assigned. As the rating official, Ms. Stokes was required to provide examples of the Complainant's shortcomings during the rating period to justify the rating of 2, but she did not. During FY 2020, the Complainant was the only direct report of Ms. Stokes who filed complaints against the DCSA naming her as a subject and the only one she rated as less than a 3.²⁷

We found no disparate treatment of the Complainant by Mr. Littles. Data from the HCMO showed that after Ms. Stokes retired, Mr. Littles assessed the performance evaluations of 16 employees from December 3 through 4, 2020, including the Complainant's, and he did not alter any of them. He subsequently signed and provided them to the employees between December 3, 2020, and December 8, 2020.

The evidence demonstrates that Mr. Littles signed and issued to the employees all 16 evaluations without reviewing them. Additionally, HCMO data shows that Mr. Littles opened, signed, and issued all 16 evaluations without changing them. In conclusion, the evidence we reviewed did not support that Mr. Littles treated the Complainant differently, given that he did not review any of the 16 evaluations before signing and providing them to the employees.

The Totality of the Evidence

Weighed together, the evidence analyzed above does not clearly and convincingly establish that Ms. Stokes would have taken the same action with respect to the Complainant absent the protected disclosures made to the DCSA IG on January 27, 2020, and the DEO on February 5, 2020. However, the evidence does clearly and convincingly establish that Mr. Littles would have taken the same action with respect to the Complainant absent his protected disclosures to the DEO on February 5, 2020.

Despite our multiple attempts to interview Ms. Stokes, she did not make herself available for an interview, and thus, we do not have her reasons for assigning the Complainant a rating of 2 in the element of Leadership and Integrity. Additionally, Ms. Stokes did not provide, nor did we uncover, any documentary evidence to indicate the Complainant's performance was below successful. The evidence shows that Ms. Stokes was aware of three protected disclosures that named her as a

²⁶ Before making his protected disclosures as a DCSA employee, the Complainant was rated 4 in the element of Leadership in his FY 2018 and FY 2019 performance evaluations.

²⁷ In addition to the Complainant, [REDACTED] filed a complaint against the DCSA and named Ms. Stokes as a subject with the DCSA IG on December 11, 2019. However, [REDACTED] requested that [REDACTED] complaint be anonymous and subsequently withdrew the complaint. Ms. Stokes never learned about it.

subject, that the allegations made against her did not reflect well on her, and that she was investigated and interviewed by DTRA, an outside agency, before she took the qualifying action.

During the FY 2020 rating period, the Complainant was the only DCSA employee who filed complaints against the DCSA naming Ms. Stokes as a subject, and the only employee Ms. Stokes rated a 2 in one element. The evidence shows that before making these protected disclosures, the Complainant received a rating of 4 (excellent), demonstrating mastery-level performance, in this element in his FY 2018 and FY 2019 performance evaluations. Ms. Stokes did not cite any reasons for rating the Complainant a 2 in one element of his FY 2020 performance evaluation. Furthermore, we found no evidence to show any decrease in the Complainant's performance that would support the rating of 2 in that element. Without clear and convincing evidence to prove that Ms. Stokes would have taken the same action even in the absence of the protected disclosures, we conclude that Ms. Stokes took this action against the Complainant in reprisal for his protected disclosures.

As it relates to Mr. Littles, the evidence demonstrates that the Complainant made protected disclosures, Mr. Littles was aware of those protected disclosures, and Mr. Littles took an action. The evidence also demonstrates, however, that Mr. Littles would have taken that same action even absent any protected disclosures, as shown by the fact that Mr. Littles issued all 16 performance evaluations without making a single change to any of them.

Mr. Littles's stated reasons for giving the Complainant a rating of 2 in the element of Leadership and Integrity is supported by documentary evidence. Therefore, clear and convincing evidence demonstrates that Mr. Littles would have taken the same action even in the absence of the protected disclosures, and we conclude that Mr. Littles did not take this action against the Complainant in reprisal for his protected disclosures.

Recommendation

We recommend that DCSA officials take appropriate action to remedy the Complainant's 2020 performance evaluation.

Ms. Stokes retired from Government service. Accordingly, we will forward our report to the Director, Washington Headquarters Services, for inclusion in Ms. Stokes's personnel file.

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