

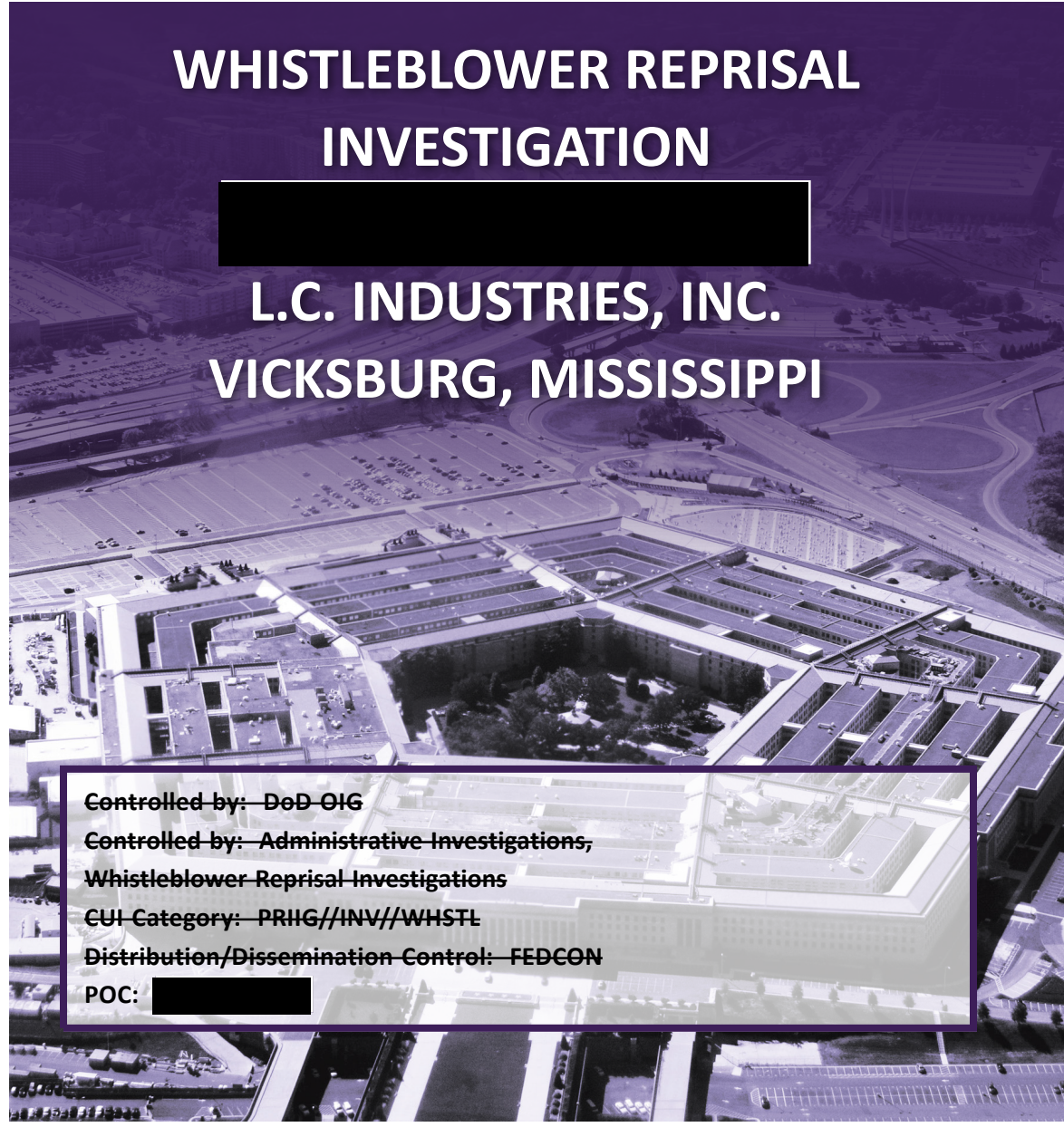
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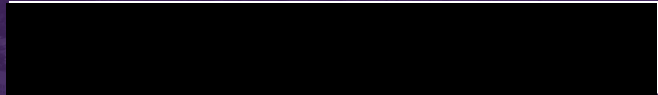
INSPECTOR GENERAL

U.S. Department of Defense

SEPTEMBER 11, 2024



WHISTLEBLOWER REPRISAL INVESTIGATION



L.C. INDUSTRIES, INC. VICKSBURG, MISSISSIPPI

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CUI



Contents

Executive Summary	1
Background	3
Scope	5
Whistleblower Protection for Contractor Employees	6
Legal Framework	7
Two-Stage Process	7
Protected Disclosure	8
Qualifying Action	8
Findings of Fact	9
Complaint of Unprofessional Behavior	9
First Written Warning	10
Complaint to an Inspector General	10
Second Written Warning	11
Complaints to LCI and an Inspector General	13
Discharge from Employment	15
Investigation into Gift Cards Concludes	18
Analysis	19
Protected Disclosures	19
Qualifying Actions	21
Contributing Factor	24
Strength of the Evidence	28
Motive to Retaliate	30
Disparate Treatment of the Complainant	31
Totality of the Evidence	32
Application Denial	32
Discharge from Employment	32

Contents (cont'd)

Preliminary Conclusions	35
LCI's Response to Preliminary Conclusions	36
Discharge from Employment.....	36
Disparate Treatment.....	37
Overall Conclusions	38
Recommendations	39
Acronyms and Abbreviations	40

WHISTLEBLOWER REPRISAL INVESTIGATION

[REDACTED] L.C. INDUSTRIES, INC. VICKSBURG, MISSISSIPPI

Executive Summary¹

We conducted this investigation in response to a reprisal complaint alleging that L.C. Industries (LCI) took a series of qualifying actions against [REDACTED] (the Complainant) in reprisal for making protected disclosures concerning the improper use of Federal funds and that the Complainant's LCI supervisor had retaliated against her. The Complainant was employed as an assistant store manager at LCI base supply centers [REDACTED] in Vicksburg, Mississippi.

The Complainant made five protected disclosures from May 17, 2021, through October 13, 2021: two to an Inspector General (IG), two to LCI management officials, and one to an investigating officer (IO). After making these protected disclosures, the Complainant experienced qualifying actions taken by LCI management officials, who issued the Complainant a written warning, denied her application for an internal vacancy, and discharged her from employment. Furthermore, the LCI management officials knew of the Complainant's protected disclosures before denying her application and discharging her from employment. However, LCI management officials did not know of the Complainant's protected disclosures before issuing her the written warning.

Therefore, we concluded that the Complainant established a *prima facie* allegation of reprisal against LCI in the first stage of our analysis because the Complainant's protected disclosures were a contributing factor in LCI's decisions to deny her application and discharge her from employment, based on knowledge and timing.²

As the evidence was sufficient to establish by a preponderance of the evidence that the Complainant's protected disclosures were a contributing factor in the qualifying actions taken by the LCI management officials against the Complainant, we proceeded to the second stage of our analysis, which required us to determine, by clear and convincing evidence, whether the qualifying actions would have been taken absent any protected disclosure.

¹ This report contains information that has been redacted because it was identified by the DoD Office of Inspector General and the DoD as Controlled Unclassified Information (CUI) that is not releasable outside the Executive Branch. CUI is Government-created or -owned unclassified information that allows for, or requires, safeguarding and dissemination controls in accordance with laws, regulations, and Government-wide policies.

² Black's Law Dictionary defines a *prima facie* case as one that is "established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on [offered by] the other side."

We found, by clear and convincing evidence, that LCI would have denied the Complainant's application for an internal position absent any protected disclosure, as the Complainant was ineligible to apply for the position. Therefore, we did not substantiate the allegation that LCI denied the Complainant's application in reprisal for her protected disclosures.

However, we found that there was not clear and convincing evidence that LCI would have discharged the Complainant from employment absent the protected disclosures and that LCI had a motive to reprise. We were unable to analyze whether LCI treated the Complainant disparately when it discharged her from employment, as no other similarly situated nonwhistleblowers existed for comparison. Therefore, based on the available evidence, we substantiated the allegation that LCI discharged the Complainant from employment in reprisal for her protected disclosures.

We recommend that the Secretary of the Army direct Army officials to:

- order LCI to take affirmative action to abate the reprisal;
- order LCI to award the Complainant compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that the Complainant would have received had she not been reprised against; and
- order LCI to pay the Complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees) that were reasonably incurred by the Complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the Secretary of the Army.

Background

LCI is a diversified manufacturing, distribution, and retail company that operates base supply centers on military bases across the United States. In December 2017, the U.S. Army Engineer Research and Development Center awarded LCI a contract to operate a self-service supply center in Vicksburg.³

The Complainant worked as an assistant store manager at LCI base supply centers [REDACTED] in Vicksburg, Mississippi, from September 4, 2018, through October 18, 2021, the date of her discharge.

As an assistant store manager, the Complainant was responsible for all aspects of the daily operations of the store in the absence of the store manager, including ordering, pricing, merchandising, inventory integrity, safety, and cleanliness. She was also responsible, in conjunction with the store manager, for all aspects of the store's inventory management program.

During the relevant period, the Complainant's supervisory chain consisted of [REDACTED] (Store Manager) and [REDACTED] (District Manager). The District Manager reported to [REDACTED] (Vice President [VP] of Store Operations).

The Complainant alleged that she was subjected to six actions taken by LCI.

- The Store Manager issued her a written warning on September 8, 2020, and a second written warning on June 4, 2021.⁴
- The VP of Store Operations threatened to discharge her from employment on June 14, 2021.
- LCI denied her application for a position at [REDACTED] in September 2021.
- The VP of Store Operations decided to eliminate the Complainant's position at the Vicksburg store in early to mid-October 2021.
- The Store Manager discharged the Complainant from employment on October 18, 2021.⁵

³ LCI's website referred to the Vicksburg location as both a "BSC [base supply center]" and an "SSSC [self-service supply center]."

⁴ Although the Complainant told us that the Store Manager issued her the written warnings, we found that [REDACTED], a former LCI Human Resources Manager, also signed each warning.

⁵ The Complainant told us that the Store Manager discharged her from employment. However, we found that the District Manager and [REDACTED] (Chief HR Officer) signed the discharge letter, and LCI told us that the VP of Store Operations, Chief HR Officer, and District Manager made the discharge decision.

The Complainant alleged that these actions were taken in reprisal for making the following six disclosures.

- One to an auditor during an inspection of the Vicksburg LCI store
- Two to the U.S. Army Corps of Engineers (USACE) Office of Inspector General (OIG)
- Two to LCI management officials
- One to an IO

Scope

This investigation covered the period from November 2019, the date the Complainant made her first disclosure, through October 18, 2021, the date LCI discharged her from employment. We interviewed the Complainant, four LCI management officials, and two witnesses under sworn oath or affirmation. We did not interview one LCI management official—[REDACTED] (Human Resources [HR] Manager)—as she was no longer employed by LCI and did not respond to our written request for an interview. We reviewed documentary evidence regarding LCI policies and procedures, written and electronic communications, and the Complainant’s documented disciplinary actions.

Whistleblower Protection for Contractor Employees

The DoD Office of Inspector General conducts whistleblower reprisal investigations involving employees of DoD contractors, subcontractors, grantees, subgrantees, and personal services contractors under section 2409, title 10, United States Code (10 U.S.C. § 2409), “Contractor Employees: Protection from Reprisal for Disclosure of Certain Information,” as implemented by Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 203.9, “Whistleblower Protections for Contractor Employees.”⁶

⁶ Congress renumbered 10 U.S.C. § 2409 to 10 U.S.C. § 4701 effective January 1, 2022, pursuant to sections 1801(d)(1) and 1863(b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law No. 116-283. Because the qualifying actions in this case occurred before the effective date of the renumbering, references to the governing statute in this report reflect the statute in effect at the time, 10 U.S.C. § 2409.

Legal Framework

Two-Stage Process

The DoD Office of Inspector General employs a two-stage process in conducting whistleblower reprisal investigations under 10 U.S.C. § 2409, as implemented by DFARS subpart 203.9. The first stage focuses on the alleged protected disclosures, the qualifying actions, the subject's knowledge of the protected disclosures, and the timing of the qualifying actions. The second stage focuses on whether the subject would have discharged, demoted, or otherwise discriminated 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.⁷

1. The Complainant made a protected disclosure.
2. The Complainant experienced a qualifying action.
3. The protected disclosure was a contributing factor in the qualifying action.⁸

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 qualifying action
2. The existence and strength of any motive to retaliate on the part of the subjects 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

Once a contributing factor is established, the qualifying actions taken by the subject against the Complainant are considered reprisal unless clear and convincing evidence demonstrates that the subject would have taken or failed to take, or threatened to take or fail to take, those actions absent the protected disclosure.⁹

⁷ A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. See title 5 Code of Federal Regulations section 1201.4(q).

⁸ A contributing factor need not be the sole, or even primary, factor. Rather, a contributing factor means "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Marano v. Dept. of Justice*, 2 F.3d 1137, 1140 (Fed. Cir. 1993). In the absence of testimonial or documentary evidence of intent, one way to establish whether the disclosure was a contributing factor is through the use of the knowledge/timing test, meaning that the deciding official knew of the disclosure, and the adverse action was initiated within a reasonable time of the disclosure.

⁹ "Clear and convincing evidence is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. It is a higher standard than 'preponderance of the evidence,'" but a lower standard than beyond a reasonable doubt. See title 5 Code of Federal Regulations section 1209.4(e).

Protected Disclosure

A protected disclosure under 10 U.S.C. § 2409, as implemented by DFARS subpart 203.9, is information that an employee of a DoD contractor, subcontractor, grantee, subgrantee, or personal services contractor reasonably believes evidences:

- gross mismanagement of a DoD contract or grant;
- a gross waste of DoD funds;
- an abuse of authority relating to a DoD contract or grant;
- a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract) or grant; or
- a substantial and specific danger to public health or safety.

Such disclosures are protected under 10 U.S.C. § 2409 when the Complainant makes the disclosures to qualified recipients, consisting of:

- a Member of Congress or a representative of a committee of Congress;
- an Inspector General;
- the Government Accountability Office;
- an employee of the DoD responsible for contract oversight or management;
- an authorized official of the Department of Justice or other law enforcement agency;
- a court or grand jury; and
- a management official or other employee of the contractor, subcontractor, grantee, subgrantee, or personal services contractor who has the responsibility to investigate, discover, or address misconduct.

Protected disclosures also include initiating or providing evidence of contractor, subcontractor, grantee, subgrantee, or personal services contractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract or grant.

Qualifying Action

The 10 U.S.C. § 2409 statute, as implemented by DFARS subpart 203.9, prohibits discharge, demotion, or other discriminatory action with respect to any employee of a DoD contractor, subcontractor, grantee, subgrantee, or personal services contractor as a reprisal for making a protected disclosure.¹⁰ Under the Statute, an act of reprisal is prohibited even if it is undertaken at the request of a DoD official, unless the request takes the form of a nondiscretionary directive and is within the authority of the DoD official making the request.

¹⁰ The antiretaliation provision prohibits any other action with respect to the employee that might well have dissuaded a reasonable employee from making a protected disclosure. *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006).

Findings of Fact

Complaint of Unprofessional Behavior

In late 2019, an auditor for the National Industries for the Blind (NIB) inspected the Vicksburg LCI store for compliance with the AbilityOne Program, a Federal initiative providing employment for the blind and significantly disabled. The Complainant told us that she had a close working relationship with the NIB auditor, [REDACTED]. According to the Complainant, during this time, she felt like the Store Manager was creating a hostile work environment by being degrading towards employees; however, she did not feel like she could report the matter to HR because the Store Manager was always present. Instead, the Complainant wrote a letter that she provided to the NIB auditor, who in turn provided the letter to LCI.

In her letter, the Complainant described what she perceived to be the Store Manager's demeaning behavior, such as telling another employee that the Complainant was not ready for a manager position or speaking negatively about the Complainant to other employees. The Complainant reported that the Store Manager did not want her to grow in her career and withheld the information and training necessary to do so. The Complainant also wrote that several hourly employees reported to her that the Store Manager created a hostile work environment, in which they felt "on pins and needles" and afraid to do their work. She further wrote that these employees felt that the Store Manager would retaliate against them if they reported it. The Complainant described the Store Manager's habit of telling employees "you're so pretty" or "it's a good thing you're so pretty" as meaning that the employees were dumb or stupid. The Complainant also described how the Store Manager constantly talked down to her employees in demeaning tones. Finally, the Complainant wrote that the Store Manager's comments and behavior were not conducive to a healthy atmosphere in the workplace and that if the issue was not resolved, LCI would continue to lose valuable employees.¹¹

LCI told us that after receiving the letter, it investigated and determined that the Store Manager used unprofessional language when communicating with employees. LCI then counseled the Store Manager and provided her with additional training, which the Store Manager told us occurred sometime in October 2019.

¹¹ The Complainant initially told us that her letter included allegations that the Store Manager sexually harassed her when she told a male customer that the Complainant showed an associate her breasts to facilitate getting a task accomplished. The Complainant repeated this assertion in a follow-on interview. However, when we reviewed a copy of the letter with the Complainant, she retracted her original testimony, telling us that she thought she had referenced the matter in her letter but had not.

First Written Warning

On July 16, 2020, the District Manager emailed the HR Manager and the VP of Store Operations with what she termed a major concern about the Complainant. The District Manager reported that the Complainant had asked a vendor to order her something using their company Amazon Prime account to avoid having to pay taxes. The District Manager wrote that the vendor called her that morning, expressing their concerns with the situation and stating that they did not want to jeopardize their relationship with LCI.

The Complainant confirmed that she asked a vendor to purchase a [REDACTED] for her using their Amazon Prime account. The Complainant told us that she intended to pay for it with her own money but wanted to get the item shipped quickly because [REDACTED].

The Store Manager issued the Complainant a written warning on September 8, 2020, for “solicitation of a vendor for personal favors.” The written warning stated that the Complainant was “not to request or accept any personal favors or gratis from any vendor without full disclosure and permission from upper management.” It also stated that the written warning would be placed in her record and that continuation of the behavior could subject her to further disciplinary action, including termination. The HR Manager signed the written warning on September 10, 2020.

As a result of the written warning, the Complainant was ineligible to apply for an internal vacancy for 1 year, as the LCI Employee Handbook requires employees to be free from any disciplinary action within the last year when applying.

Complaint to an Inspector General

In March or April 2021, the Complainant discovered a \$500 gift card in the store’s mail, intended for one of the store’s customers. The Complainant called the District Manager to report the gift card, who told her to leave the gift card on the Store Manager’s desk and to have the Store Manager call her. The Complainant told us that the Store Manager subsequently called her to discuss the matter, telling the Complainant that she had a purchase order and a sales order for the gift card. The Complainant also told us that it was illegal to purchase gift cards with Federal money and that she began “poking around” in the LCI system. The Complainant found that the Store Manager had been providing the LCI customer with quotes using generic product IDs. The customer would provide that quote to their Government Purchase Card (GPC) holder, who would approve the quote and notify the Store Manager of the approval. The Store Manager would then charge the GPC for the purchase. However, because LCI did not itemize its receipts, the Store Manager would sell the customer less than she had originally quoted and then provide the remainder in the form of a gift card.

The Complainant reported the matter to the USACE OIG on May 17, 2021. In her written complaint, the Complainant described how the Store Manager and a USACE employee were using Federal funds to obtain gift cards to Home Depot and Lowe's, totaling \$4,902.17. The Complainant described their actions as "possible fraud, waste, [and] abuse of funds" and requested to remain anonymous, if possible. The Complainant provided 40 pages of enclosures documenting four examples of the alleged misconduct.

The Complainant told us that she overheard the District Manager tell the Store Manager telephonically on a speaker phone that she thought the Complainant had reported the matter to the IG. However, the Complainant did not specify the date of this phone call and said that she did not think LCI officials knew "100 percent" that she had reported the matter to the IG until she informed HR and the VP of Store Operations. We found that the evidence indicated that the District Manager and the Store Manager found out about the IG complaint on or after June 14, 2021. The Store Manager told us that she knew of the Complainant's complaint, saying she probably found out from an employee sometime after September 2021. The District Manager told us that she also knew of the complaint, saying that the VP of Store Operations told her about it after he had a phone call with the Complainant, sometime before June 2021. However, as we discuss in the section titled, "[Complaints to LCI and an Inspector General](#)," the Complainant's phone call with the VP of Store Operations occurred on June 14, 2021. As the District Manager's description of the phone call matched that of the June 14, 2021 phone call, we concluded that the VP of Store Operations told the District Manager about the IG complaint on or after June 14, 2021.

Second Written Warning

On May 24, 2021, the Complainant emailed the Store Manager about an incident on May 19, 2021. The Complainant described being unable to locate two employees—[REDACTED] (Witness 1) and [REDACTED] (Witness 2)—while she was helping a customer and answering the phone. The Complainant found the employees at Witness 2's desk and told them it was unacceptable for the Complainant to be by herself helping a customer and answering both phone lines. According to the Complainant, it was a frustrating experience, but no yelling or anything disrespectful occurred in her conversation with the two employees.

According to testimony from both the Complainant and the Store Manager, as well as the Store Manager's contemporaneous email, the Store Manager told Witness 1 and Witness 2 that they needed to write statements about what happened.¹² The Store Manager told us that she did not tell the employees what to write but asked them to be as specific as possible.

¹² In her testimony, the Store Manager only recalled telling a single employee to write a statement. However, her contemporaneous email stated that she discussed the matter with both Witness 1 and Witness 2.

The Complainant told us that the Store Manager directed the employees to use curse words in their statements. The Complainant said that the Store Manager coerced the employees to make statements that would allow the Store Manager to discipline the Complainant while taking the focus off the Store Manager. However, when we interviewed Witness 1, she denied that anyone from LCI told her what to write in her statement. Similarly, Witness 2 told us that the Store Manager, District Manager, and VP of Store Operations asked her to write a statement but that none of them told her what to write and that she felt no pressure to write the letter in a certain way.

The following day, the two employees submitted their summaries of the incident. Witness 1 emailed the Store Manager that the Complainant cursed at her and Witness 2 and became more aggressive with her tone and words. Witness 1 wrote that she was upset because their customers did not need to hear that. Similarly, Witness 2 wrote a memorandum, which LCI provided to us, in which she described the Complainant's use of profanity, directed at Witness 2 and Witness 1 while customers were still in the store. Witness 2 wrote that the Complainant needed management classes for "how to react and treat her peers beneath her as a manager." After hearing from the Complainant, Witness 1, and Witness 2, the Store Manager emailed the District Manager to report the incident, writing that she had spoken to the customer who was in the store at the time of the incident. According to the Store Manager, the customer described the Complainant as very upset and quite aggressive toward her coworkers.

On June 4, 2021, the Store Manager issued the Complainant a second written warning for unprofessional conduct. The written warning stated that the Complainant "behaved in an unprofessional manner when [she] used profanity while speaking to [her] employees. This was done while in the presence of a customer." The written warning directed the Complainant to speak to others with respect at all times, use professional conduct in front of customers, improve her management skills and approach to employees, and abide by the LCI core values. In the employee remarks section, the Complainant wrote that she did not believe she had used profanity. "Yes there was frustration," she wrote, "but professionalism was maintained at all times." The HR Manager signed the written warning on June 10, 2021. LCI told us that in addition to the Store Manager and the HR Manager, the District Manager was also responsible for the June 4, 2021 written warning, although the District Manager did not sign the written warning.

Complaints to LCI and an Inspector General

Complaint to the HR Manager

According to the Complainant's testimony and her contemporaneous email, she called the HR Manager on June 7, 2021, to report that she felt that she was being retaliated against. The Complainant followed up with an email to the HR Manager on June 10, 2021, writing that if she reported the Store Manager for any sort of wrongdoing, she was shortly after issued a disciplinary action. The Complainant described her letter to the NIB auditor and wrote that she believed the Store Manager worked with a vendor to report the Complainant for unethical behavior shortly afterwards. The Complainant also described discovering that the Store Manager was illegally spending Federal funds by purchasing gift cards for a customer. The Complainant wrote that "there was hearsay that I reported this offense to the Inspector General's Office" and that she confirmed to the HR Manager during their phone call that she did file such a report. The Complainant wrote that she did not report the issue to the VP of Store Operations or LCI because of the pattern of receiving a disciplinary action after reporting the Store Manager. The Complainant then provided information on whistleblower protections and her right to report matters to an outside agency.

We were unable to interview the HR Manager to confirm the Complainant's account, as the HR Manager was no longer employed by LCI and did not respond to our written request for an interview.

Complaint to the USACE OIG

On June 11, 2021, the Complainant emailed the USACE OIG, writing that she no longer needed to remain anonymous and that she had "started receiving retaliation from [her] supervisor (one of the people [she] reported to [the USACE OIG])" The Complainant did not specify the alleged retaliatory actions. She also wrote that she told HR about her IG complaint and about how she felt she was being retaliated against. The USACE OIG responded the same day, writing that it was in the preliminary review stage and that none of the information in the Complainant's case file had been released outside of the OIG.

Complaint to the VP of Store Operations and the VP of Store Operations' Response

On June 14, 2021, the Complainant spoke by phone with the VP of Store Operations and reported to him that the Store Manager was retaliating against her. In their testimony to this office, the Complainant and the VP of Store Operations provided a similar description of the broad outlines of the conversation—namely, that the Complainant informed the VP of Store Operations that the Store Manager had twice retaliated against her with disciplinary action. The VP of Store Operations recalled that the Complainant specifically identified her complaints to the NIB auditor and to the IG as the basis for the Store Manager's retaliation.

On June 15, 2021, the VP of Store Operations emailed the HR Manager and the District Manager about his call with the Complainant.

She believed that [Store Manager] had it out for her and wanted to get her in trouble. [...] I debunked her theory that there was a pattern that she was retaliated against because she complained about [Store Manager]. I also told her that I did not appreciate her going outside the chain of command which she had done twice, once with NIB and the second with IG. She said she was not comfortable with going to [District Manager], me or HR because [Store Manager] was “protected.” I then took offense that she was questioning my integrity as well as [District Manager’s] and [HR Manager’s].

That same day, the Complainant emailed the VP of Store Operations a summary of their phone call. The Complainant wrote that when she raised the allegation of the illegal use of Federal funds to purchase and sell gift cards, the VP of Store Operations asked, “What if you are wrong, [and] then you just threw LCI and the customer under the bus?” The Complainant wrote that she understood this to mean that if the IG determined that her allegation was unfounded, there would be repercussions against her. During her interview with this office, the Complainant clarified that she understood the comment by the VP of Store Operations to mean that if the allegations were unfounded, she would be fired.

The VP of Store Operations replied to the Complainant’s email the same day, writing that her perception of their conversation was very different from his. He also wrote that he wished she had followed the chain of command instead of going to the IG but that he never stated or implied that there would be repercussions for contacting the IG or if the IG’s investigation found her report to be unfounded. In his interview with this office, the VP of Store Operations said that he did not remember saying to the Complainant that she threw LCI and the customer under the bus. However, he confirmed that he talked to the Complainant about following the chain of command.

I know I talked to her about follow[ing] the chain of command. This is the second time she didn’t follow it. [...] If in fact she thought that [Store Manager] was stealing from the company, she should have went [*sic*] to [District Manager], or to [the Regional Manager], or to me, or to the HR Department. Any one of them would have done an investigation She’s bringing now another outside source into LCI.

Other LCI management officials made similar statements to us during our investigation. For example, [REDACTED] (LCI’s Chief HR Officer) told us that LCI stores operated from a “military standpoint,” in which the chain of command was very important. She told us that the VP of Store Operations just wanted the Complainant to adhere to the chain of command by talking to the Store Manager, the District Manager, or himself if issues arose so that they could resolve those issues. Similarly, the District Manager told us that employees could report issues to their store manager, the district manager, or HR, but that LCI wanted its employees to follow the chain of command. The District Manager told us that she did not know of any other avenues for employees to use if they did not feel comfortable reporting

to the company officials that she listed. Likewise, the VP of Store Operations told us that he talked about this matter frequently. He told us, “We have conference calls all the time. I mean I don’t say every single time, but they are reminded there is a chain of command.”

Under its contract with the DoD, LCI specifically agreed to comply with the whistleblower protection provisions of 10 U.S.C. § 2409 and to inform its employees in writing of contractor employee whistleblower rights and protections.

Discharge from Employment

LCI discharged the Complainant from employment on October 18, 2021, citing that the Complainant had acted in an unprofessional manner towards two employees. Three sets of events in the preceding days lent context to LCI’s decision. First, LCI denied the Complainant’s application for a position at [REDACTED] and then decided to eliminate her position at Vicksburg and to offer her a lateral transfer to [REDACTED]. Second, an IO for a commander-directed investigation related to the Complainant’s IG complaint visited the Vicksburg store and conducted a sworn interview with the Complainant. Finally, Witness 1 reported to the Store Manager that the Complainant used profanity and created a hostile and degrading work environment. We discuss each event below.

Application Denial, Position Elimination, and Transfer Offer

In early September 2021, the Complainant applied for the assistant store manager position at [REDACTED]. On September 10, 2021, an LCI HR manager emailed the Complainant that she was ineligible to apply because of her previous disciplinary action. The LCI HR manager wrote that LCI would not reverse that disciplinary action.

In early to mid-October 2021, LCI decided to eliminate the Complainant’s position at the Vicksburg store. The VP of Store Operations told us that at the height of the COVID-19 pandemic, LCI decided it needed to make cuts to address struggling sales. LCI management officials then decided that instead of discharging the Complainant from employment, they would offer her a lateral transfer to [REDACTED].¹³

The VP of Store Operations and the Chief HR Officer informed the Complainant by phone of the transfer offer. The Complainant told us that the call occurred on October 12, 2021. During the call, the VP of Store Operations read a statement in which he told the Complainant that the Vicksburg store was not revenue-producing and that senior management decided to reduce the workforce at the store. He also told the Complainant that LCI was prepared to offer her a lateral move to [REDACTED] and that she would continue in the assistant store manager role, with no incremental increase in pay and without any relocation package.¹⁴ As part of the transfer, the Complainant would be required to adhere to LCI’s core values of

¹³ We received conflicting testimony from LCI management officials about who specifically decided to offer the Complainant the lateral transfer; however, as that specific question did not bear on our analysis of the Complainant’s reprisal allegations, we found it unnecessary to adjudicate the conflicting recollections.

¹⁴ The offered position was the same position she applied for in early September 2021.

Mission-Driven, Stepper Upper, Blameless Problem Solver, and Respectful No Drama Example Setter. Failure to adhere to these core values or to follow the chain of command would result in immediate, no-notice termination.

The Complainant told us that she was ecstatic about the offer and that she told the VP of Store Operations and the Chief HR Officer she accepted and would begin making arrangements to move.

Interview with an Investigating Officer

USACE OIG records showed that after receiving the Complainant's May 17, 2021 complaint, the OIG referred the allegations to the base commander on September 15, 2021. On September 23, 2021, the commander appointed an IO to ascertain the magnitude and validity of the allegations and to make findings concerning whether any wrongdoing occurred.

On October 13, 2021, an IO came to the LCI store and interviewed the Complainant at the store about her IG complaint that the Store Manager and a USACE employee were using Federal funds to obtain gift cards to Home Depot and Lowe's. In the Complainant's sworn statement to the IO, she described her discovery of a \$500 gift card made out to a customer, her effort to report the matter to LCI, her further investigations revealing that the Store Manager had sold around \$5,000 in gift cards to the customer, and her subsequent report to the OIG. The Complainant also reported that she did not feel that LCI took appropriate action regarding the Store Manager's alleged wrongdoing and that she felt that the Store Manager and the customer had an "other than professional" relationship.

Report Against the Complainant

On October 13, 2021—the same day as the Complainant's interview with the IO—Witness 1 emailed the Store Manager to report that the Complainant was creating a hostile and degrading work environment. Witness 1 wrote that the Complainant told Witness 2 she met with the IO investigating the "credit card deal." Witness 1 wrote:

[The Complainant] made the comment earlier to [Witness 2] that she's still got her foot in the door [because] if they fire [Store Manager] this will be her store. Yesterday afternoon her husband came in around 3:45 and he and her were dogging out [Store Manager] to myself and [Witness 2]. One thing I recall she said was that That F***** c*** [sic] I am actually afraid of her. If she can cut throat this deep I can only imagine what she may do to me if she knows I told this. She knows where I live.

Emails provided by LCI showed that by October 15, 2021, both the VP of Store Operations and the HR Manager had received a copy of Witness 1's email.

Discharge from Employment

LCI discharged the Complainant from employment on October 18, 2021. The written discharge notice—signed by the District Manager and the Chief HR Officer—identified the Complainant's unprofessional conduct as the basis for the action. Specifically, the notice stated that the Complainant acted in an unprofessional manner towards two employees by talking about

the Store Manager in a very negative manner, using profane language, and demeaning LCI's process for making the store profitable. Finally, the notice said that the VP of Store Operations and the Chief HR Officer had informed the Complainant that her transfer to [REDACTED] required her to represent the company's core values and to treat coworkers with respect. As the Complainant did not follow those guidelines, her employment was being terminated. LCI told us that the VP of Store Operations, Chief HR Officer, and District Manager made the decision to discharge the Complainant from employment.

We asked the VP of Store Operations, Chief HR Officer, and District Manager why they made this decision. The VP of Store Operations told us that the Complainant made Witness 1 "afraid for her life" and that he thought he remembered something about a gun. He told us that he was afraid for his employees at that point. Similarly, the Chief HR Officer said that in addition to saying she would have the Store Manager fired, the Complainant threatened Witness 1's and Witness 2's jobs and made Witness 1 fear for her safety. Finally, the District Manager said that LCI discharged the Complainant from employment because she violated LCI's core values by disparaging "the manager" and LCI.

In her interview with this office, the Complainant said that she did not know what she had done, telling us, "Never, ever, ever, ever in the store did I ever speak negatively about [Store Manager]."

According to the LCI Employee Handbook, the chief HR officer, in consultation with appropriate executive team members, must review all involuntary termination proposals. The handbook states that disciplinary action usually occurs in a progressive sequence but that it is not necessary to follow all steps and that discipline may begin at any step depending on the seriousness of the offense. The handbook further states that before issuing any disciplinary action other than a verbal counseling, the supervisor should gather all relevant facts pertaining to the situation and provide documented witness statements for the HR managers or chief HR officer to review.

We received contradictory testimony and evidence from LCI about whether LCI management officials gathered all relevant facts and took witness statements.

The VP of Store Operations told us that HR investigated and found that Witness 1's allegation was true, although he did not know who specifically investigated. When we asked what steps LCI took to investigate the matter, he told us that LCI would have gathered statements from "the two employees referenced." He stated that if one person made a statement, it was a he-said/she-said situation, whereas if two people made a statement, it was no longer he-said/she-said.

Similarly, the Chief HR Officer told us that LCI took statements from Witness 1 and Witness 2. She told us that she thought the District Manager gathered the statements, after which she would have checked that everything was in line.

However, Witness 1 and Witness 2 each denied that any LCI official took a statement or discussed the matter with them. Witness 1 told us that no one from LCI replied to her email, and Witness 2 told us that she was not involved in the events that led to the Complainant's discharge. The District Manager told us that she did not review any report of investigation or anything that gave additional detail beyond the employee making the allegation. The Store Manager was not available to gather all relevant facts or to take witness statements, as she told us that she had been working at an alternate location for 2 to 3 weeks and returned on the day of the Complainant's discharge.

During this investigation, we asked LCI for a copy of the investigation that led to the Complainant's discharge. LCI did not provide any report of investigation or any witness statement other than Witness 1's October 13, 2021 email to the Store Manager.¹⁵

Before concluding our fieldwork, we provided an additional opportunity for LCI to provide any written statements or documents, or any other information LCI believed might be relevant to the investigation. LCI's response did not include any written statements or any documents related to the discharge not already provided during the investigation.¹⁶ When we asked LCI for confirmation as to whether it intended to submit a written statement, LCI did not respond. When we again asked for confirmation, LCI requested an extension through March 8, 2024, which we granted. LCI did not submit any additional reply or written statement before submitting a response to our preliminary conclusions on July 10, 2024.

Investigation into Gift Cards Concludes

On December 8, 2021—2 months after the Complainant's discharge from employment—the IO concluded the investigation into the use of Federal funds for the purchase of gift cards. The IO found that two Government employees misused a GPC and that the Store Manager enabled the misuse by procuring gift cards with the LCI purchase system. The IO reviewed data that showed the purchase of approximately \$4,583.51 in gift cards and found that while one of the Government employees swore that the money was used for legitimate purposes, the employee could only account for \$297.79 in receipts. The IO recommended that the GPC program coordinator and the local contracting officer review LCI's markup and procurement practices and determine the appropriate action.

¹⁵ In response to our request for a copy of the investigation, LCI wrote, "Please see the attached documents responsive to the request in conjunction with those documents previously provided." However, the documents did not include an investigation, and LCI did not provide any witness statements pertinent to the events in question beyond Witness 1's email.

¹⁶ Of the 36 documents provided by LCI, 31 were duplicates of documents already provided during the investigation. LCI also provided a screenshot of a text message about the Complainant's request for a vendor to make a purchase on Amazon Prime and four Microsoft Word documents of unknown authorship containing notes from phone calls with the Complainant and other LCI employees.

Analysis

As described in more detail in the “[Legal Framework](#)” section of this report, the Complainant must first establish that they made a protected disclosure; that subsequent to the disclosure, they experienced a qualifying action; and that the disclosure was a contributing factor in the qualifying action taken against them. The strengths of the evidence, motive, and disparate treatment are then weighed together to determine whether the subject has shown that they would have taken the same qualifying action absent the protected disclosure. If the evidence does not establish that the subject would have taken the qualifying action absent the protected disclosure, the complaint is substantiated. Conversely, if the evidence establishes that the subject would have taken the qualifying action absent the protected disclosure, then the complaint is not substantiated. Below, we analyze each of the elements.

Protected Disclosures

We determined, by a preponderance of the evidence, that the Complainant made five disclosures protected under 10 U.S.C. § 2409.

Protected Disclosure 1: Complaint to the USACE OIG

On May 17, 2021, the Complainant filed a complaint with the USACE OIG, reporting that the Store Manager and a USACE employee were using Federal funds to obtain gift cards to Home Depot and Lowe’s, totaling \$4,902.17. This complaint constituted a report of information reasonably believed to evidence a violation of the Army Federal Acquisition Regulation Supplement (AFARS), which generally prohibits the use of a GPC to purchase gift certificates and gift cards, even when used to obtain items from merchants that do not accept the GPC.¹⁷ The Complainant reported this violation to the USACE OIG, an authorized recipient under 10 U.S.C. § 2409. Therefore, the Complainant’s May 17, 2021 complaint to the USACE OIG was protected under 10 U.S.C. § 2409.

Protected Disclosure 2: Complaint to the HR Manager

On June 7 and 10, 2021, the Complainant reported to the HR Manager that she felt she was being retaliated against. In her June 10, 2021 email, she also reported that the Store Manager was illegally spending Federal funds by purchasing gift cards for a customer. In her June 7 and 10, 2021 disclosures, the Complainant reported information reasonably believed to evidence a violation of 10 U.S.C. § 2409’s prohibition of reprisal. In her June 10, 2021 email, the Complainant reported information reasonably believed to evidence a violation of the AFARS’ prohibition of the use of a GPC to purchase gift certificates and gift cards. The Complainant reported these violations to the HR Manager, an LCI official with the

¹⁷ AFARS Appendix EE, “Government Purchase Card Operating Procedures,” November 8, 2022.

responsibility to investigate, discover, and address misconduct. Therefore, the Complainant's June 7 and 10, 2021 reports to the HR Manager were protected under 10 U.S.C. § 2409. For purposes of analysis, we treated these two reports as a single protected disclosure.

Protected Disclosure 3: Reprisal Complaint to the USACE OIG

On June 11, 2021, the Complainant emailed the USACE OIG, writing that she had started receiving retaliation from her supervisor, one of the people she previously reported to the USACE OIG. In her June 11, 2021 email to the USACE OIG, the Complainant reported information reasonably believed to evidence a violation of 10 U.S.C. § 2409's prohibition of reprisal. The Complainant reported this violation to the USACE OIG, an authorized recipient under 10 U.S.C. § 2409. Therefore, the Complainant's June 11, 2021 email to the USACE OIG was protected under 10 U.S.C. § 2409.

Protected Disclosure 4: Complaint to the VP of Store Operations

On June 14 and 15, 2021, the Complainant reported to the VP of Store Operations that the Store Manager was retaliating against her and was illegally using Federal funds to purchase and sell gift cards. In her June 14 and 15, 2021 disclosures, the Complainant reported information reasonably believed to evidence a violation of 10 U.S.C. § 2409's prohibition of reprisal and of the AFARS' prohibition of the use of a GPC to purchase gift certificates and gift cards. The Complainant reported these violations to the VP of Store Operations, an LCI official with the responsibility to investigate, discover, and address misconduct. Therefore, the Complainant's June 14 and 15, 2021 reports to the VP of Store Operations were protected under 10 U.S.C. § 2409. For purposes of analysis, we treated these two reports as a single protected disclosure.

Protected Disclosure 5: Sworn Statement to an Investigating Officer

On October 13, 2021, the Complainant made a sworn statement to an IO, describing her discovery of a \$500 gift card made out to a customer, her effort to report the matter to LCI, her further investigations revealing that the Store Manager had sold around \$5,000 in gift cards to the customer, and her subsequent report to the USACE OIG. In her October 13, 2021 sworn statement, the Complainant reported information reasonably believed to evidence contractor misconduct, specifically a violation of the AFARS' prohibition of the use of a GPC to purchase gift certificates and gift cards. The Complainant reported this misconduct during a command investigation into the Complainant's allegations, which qualified as an administrative proceeding related to waste, fraud, or abuse on a DoD contract because the Complainant's allegations implicated LCI in the misuse of a GPC. Therefore, the Complainant's October 13, 2021 sworn statement was protected under 10 U.S.C. § 2409.

Non-Protected Disclosure: Complaint of Unprofessional Behavior

In late 2019, the Complainant wrote a letter that she provided to an NIB auditor, who in turn provided the letter to LCI, describing what the Complainant perceived to be the Store Manager's demeaning behavior. The Complainant also wrote that several hourly employees reported to her that the Store Manager created a hostile work environment, in which they felt on pins and needles and afraid to do their work, and that these employees felt that the Store Manager would retaliate against them if they reported it. Although the Complainant did not cite a specific law, rule, or regulation, we assessed that she reported a reasonably believed violation of the LCI Employee Handbook's prohibition of unprofessional behavior.¹⁸ Although the LCI Employee Handbook contains a set of rules for employee conduct, we found that those rules were not related to a DoD contract, as would be required for this disclosure to be protected under 10 U.S.C. § 2409. Typically, contractor codes of conduct are considered to be related to a DoD contract when the contract incorporates the Federal Acquisition Regulation requirement to implement a written code of business ethics and conduct. That is not the case here, as LCI's contract did not incorporate the specific Federal Acquisition Regulation clause.

As a result, the LCI Employee Handbook's rules for employee conduct were not required by a DoD contract or related to the execution of a DoD contract. Rather, those rules represented LCI's internal rules, pertinent for LCI's internal operations but unrelated to its execution of a DoD contract. Therefore, the Complainant's letter to an NIB auditor did not qualify as a report of a violation of law, rule, or regulation related to a DoD contract and, therefore, was not protected under 10 U.S.C. § 2409.

Qualifying Actions

We determined, by a preponderance of the evidence, that the Complainant experienced four qualifying actions under 10 U.S.C. § 2409.

Qualifying Action 1: First Written Warning

The Store Manager and the HR Manager issued the Complainant a written warning on September 8, 2020.¹⁹ As a result of the written warning, the Complainant became ineligible to apply for an internal vacancy for 1 year, as the LCI Employee Handbook requires employees to be free from any disciplinary action within the last year when applying. We found that such a manifestly adverse effect might well dissuade a reasonable employee from making a protected disclosure. Therefore, the written warning was a qualifying action under 10 U.S.C. § 2409.

¹⁸ This conclusion was supported by LCI's statement to this office that it investigated and determined that the Store Manager used unprofessional language when communicating with employees.

¹⁹ The HR Manager signed the written warning on September 10, 2020.

Qualifying Action 2: Second Written Warning

The Store Manager, HR Manager, and District Manager issued the Complainant a second written warning on June 4, 2021.²⁰ As a result of the written warning, the Complainant became ineligible to apply for an internal vacancy for 1 year, as the LCI Employee Handbook requires employees to be free from any disciplinary action within the last year when applying. We found that such a manifestly adverse effect might well dissuade a reasonable employee from making a protected disclosure. Therefore, the written warning was a qualifying action under 10 U.S.C. § 2409.

Qualifying Action 3: Application Denial

On September 10, 2021, an LCI HR manager informed the Complainant that she was ineligible to apply for the assistant store manager position at [REDACTED] because of her previous disciplinary action. We considered this notification to constitute an application denial. We found that such a manifestly adverse effect might well dissuade a reasonable employee from making a protected disclosure. Therefore, the application denial was a qualifying action under 10 U.S.C. § 2409.

Qualifying Action 4: Discharge from Employment

On October 18, 2021, the VP of Store Operations, Chief HR Officer, and District Manager discharged the Complainant from employment.²¹ Discharging the Complainant from employment was a qualifying action under 10 U.S.C. § 2409.

Non-Qualifying Actions

The Complainant alleged that she experienced two additional actions in reprisal for her protected disclosures: the VP of Store Operations threatened to discharge her from employment and LCI decided to eliminate her position. We determined that the VP of Store Operations did not threaten the Complainant and that LCI's decision to eliminate her position was in fact part of a plan to grant the Complainant's request for a lateral transfer. As such, neither alleged action qualified under 10 U.S.C. § 2409.

Alleged Threat

The Complainant alleged that on June 14, 2021, in response to her allegation of the illegal use of Federal funds to purchase and sell gift cards, the VP of Store Operations asked her, "What if you are wrong, [and] then you just threw LCI and the customer under the bus?" The Complainant told us that she understood the VP of Store Operations' comment to mean that if the allegations were unfounded, she would be fired. The VP of Store Operations told us that he did not remember making this comment. We found it unnecessary to resolve the factual

²⁰ The HR Manager signed the written warning on June 10, 2021. The District Manager did not sign the written warning. However, LCI told us that the Store Manager, HR Manager, and District Manager were responsible for issuing the written warning.

²¹ The District Manager and the Chief HR Officer signed the written discharge notice. LCI told us that the VP of Store Operations, Chief HR Officer, and District Manager decided to discharge the Complainant from employment.

dispute between the Complainant's and the VP of Store Operations' recollections of the VP of Store Operations' comment. Rather, we determined that even if the Complainant's recollection was accurate, the VP of Store Operations' comment would not have constituted a threat.

The Complainant's subjective reaction to the VP of Store Operations' alleged comment demonstrated that at the time of the comment, she perceived a threat of some future action. In the immediate aftermath of their meeting, she emailed the VP of Store Operations that she interpreted his comment to mean that if the IG determined that her allegation was unfounded, there would be repercussions against her. This weighed in the Complainant's favor. However, in analyzing the VP of Store Operations' comment, the relevant criterion was whether a reasonable person would have shared the Complainant's interpretation.

In applying the reasonable person standard, we considered the connotation a reasonable person would have given to the VP of Store Operations' words, as recalled by the Complainant. We concluded that an objective third party would have noted that even in the Complainant's recollection of the event, the VP of Store Operations made no explicit threat to take any specific future action against her. His language was both conjectural and conditional, expressing a question rather than an intended action. While an objective third party could reasonably interpret such comments to demonstrate hostility for making a protected disclosure, the VP of Store Operations' alleged comments did not promise or hint at any future action. For these reasons, such comments did not qualify as a threat or as a qualifying action under 10 U.S.C. § 2409.

Position Elimination

The Complainant alleged that LCI decided to eliminate her position in reprisal for making a protected disclosure. Although it is true that LCI decided to eliminate her position, the Complainant's allegation did not wholly capture the facts. Testimony from LCI management officials and documentary evidence demonstrated that LCI initially decided to eliminate her position but subsequently decided to offer her a lateral transfer to [REDACTED]—the same position for which the Complainant had recently applied. The Complainant told us that she was ecstatic about the offer and that she told the VP of Store Operations and the Chief HR Officer she accepted and would begin making arrangements to move. Yet in her DoD Hotline complaint, the Complainant alleged that the elimination of her position constituted a qualifying action taken in reprisal.

For this to be the case, we would have to conclude that LCI's action constituted a discharge, demotion, or any other action that might well dissuade a reasonable employee from making a protected disclosure. Although LCI's initial plan involved the elimination of the Complainant's position, the final plan, as communicated to the Complainant, was to offer her a lateral transfer to her preferred position, rather than to discharge her from employment. We therefore could not consider such an action to qualify as a discharge, as no discharge ever occurred. Likewise,

the action plainly did not qualify as a demotion. Finally, as the final plan left the Complainant feeling ecstatic and as she immediately accepted the offer and began making arrangements to move, we could not consider such an action to be likely to dissuade a reasonable employee from making a protected disclosure. For these reasons, LCI's proposal to transfer the Complainant as part of a plan to eliminate her position did not qualify as an action under 10 U.S.C. § 2409.

LCI Management Officials

The Complainant alleged that the Store Manager and the VP of Store Operations took qualifying actions against her. We determined that the responsible LCI management officials were the Store Manager, HR Manager, District Manager, Chief HR Officer, and VP of Store Operations.

Contributing Factor

We determined that the Complainant's protected disclosures were a contributing factor in the qualifying actions.

Whether protected disclosures were a "contributing factor" may be established when:

- the subject had knowledge, actual or inferred, of the Complainant's disclosures, and
- the qualifying actions took place within a period of time subsequent to the disclosures,

such that a reasonable person could conclude that the disclosures were a contributing factor in the decision to take the actions.

Knowledge

A preponderance of the evidence established that it is more likely than not that the LCI management officials knew of the Complainant's protected disclosures. We detail specific LCI management official knowledge below.

Disclosure 1: Complaint to the USACE OIG

On May 17, 2021, the Complainant filed a complaint with the USACE OIG, reporting that the Store Manager and a USACE employee were using Federal funds to obtain gift cards to Home Depot and Lowe's, totaling \$4,902.17. The Complainant told us that she overheard the District Manager tell the Store Manager on a speaker phone that she thought the Complainant had reported the matter to the IG. However, the Complainant did not specify the date of this phone call and said that she did not think LCI officials knew "100 percent" that she had reported the matter to the IG until she informed HR and the VP of Store Operations. Furthermore, contemporaneous emails and the VP of Store Operations' testimony confirmed that the Complainant told them about her IG complaint on June 7 and 14, 2021, and the Store Manager and the District Manager both told us that they knew of the Complainant's IG complaint, with the Store Manager finding out about the complaint sometime after September 2021 and the District Manager on or after

June 14, 2021. The Chief HR Officer told us that she was aware of an IG investigation but knew very little about it and did not know what prompted it. Therefore, the Store Manager, HR Manager, District Manager, and VP of Store Operations knew of the Complainant's IG complaint but did not learn of that complaint until at least June 7, 2021.

Disclosure 2: Complaint to the HR Manager

On June 7 and 10, 2021, the Complainant reported to the HR Manager that she felt she was being retaliated against. In her June 10, 2021 email, she also reported that the Store Manager was illegally spending Federal funds by purchasing gift cards for a customer. Therefore, the HR Manager was the direct recipient of the Complainant's June 7 and 10, 2021 reprisal complaint. The VP of Store Operations, District Manager, and Chief HR Officer told us that they did not know of the Complainant's disclosure to the HR Manager.²² The Store Manager did not take a personnel action after June 7, 2021, and thus, her knowledge is irrelevant. Therefore, as the direct recipient of the Complainant's complaint, the HR Manager knew of the protected disclosure, whereas the VP of Store Operations, District Manager, and Chief HR Officer did not.

Disclosure 3: Reprisal Complaint to the USACE OIG

On June 11, 2021, the Complainant emailed the USACE OIG, writing that she had started receiving retaliation from her supervisor. Although we found that the LCI management officials knew of the Complainant's earlier complaint to the USACE OIG, we found no evidence that any LCI management official knew of the Complainant's June 11, 2021 email. Therefore, it is more likely than not that the LCI management officials did not know of the Complainant's June 11, 2021 reprisal complaint to the USACE OIG.

Disclosure 4: Complaint to the VP of Store Operations

On June 14 and 15, 2021, the Complainant reported to the VP of Store Operations that the Store Manager was retaliating against her and was illegally using Federal funds to purchase and sell gift cards. The VP of Store Operations subsequently emailed a summary of the conversation to the HR Manager and the District Manager. The Chief HR Officer told us that the VP of Store Operations never told her about any LCI employee alleging whistleblower reprisal. The Store Manager did not take a personnel action after June 14, 2021, and thus, her knowledge is irrelevant. Therefore, the VP of Store Operations, HR Manager, and District Manager knew of the Complainant's June 14 and 15, 2021 complaint to the VP of Store Operations, whereas the Chief HR Officer did not.

²² The Chief HR Officer told us that she knew about "the situation between what [the Complainant] had reported to [HR Manager] about [Store Manager] and the store." However, when we asked her to expand on her comment, she could not provide any additional detail beyond that the HR Manager was "counseling and hearing from" the Complainant and told us that she tried not to manage in the weeds. We therefore concluded that although the Chief HR Officer might have had general awareness of the Complainant making a report to the HR Manager, she did not know the details of that report and likely did not have sufficient information to perceive that the Complainant had made a protected disclosure.

Disclosure 5: Sworn Statement to an Investigating Officer

On October 13, 2021, the Complainant made a sworn statement to an IO, describing her discovery of a \$500 gift card made out to a customer, her effort to report the matter to LCI, her further investigations revealing that the Store Manager had sold around \$5,000 in gift cards to the customer, and her subsequent report to the USACE OIG. That same day, Witness 1 notified the Store Manager that the Complainant told Witness 2 she had a meeting with the IO investigating the credit card deal. Email evidence provided by LCI showed that the HR Manager and the VP of Store Operations received a copy of the email by October 15, 2021. Additionally, when we asked LCI for a copy of the investigation that led to the Complainant's discharge from employment, LCI provided Witness 1's email. Given that the VP of Store Operations, District Manager, and Chief HR Officer were responsible for the decision to discharge the Complainant from employment, we found it more likely than not that all three received a copy of the email, and thus, would have known of the Complainant's disclosure.

Furthermore, even if the District Manager and Chief HR Officer did not directly receive the email, their direct involvement with the VP of Store Operations as the three management officials responsible for discharging the Complainant, and the VP of Store Operations' actual knowledge of the protected disclosure, was sufficient to establish constructive knowledge. Therefore, the VP of Store Operations knew of the Complainant's October 13, 2021 sworn statement to an IO, and the District Manager and the Chief HR Officer, at a minimum, had constructive knowledge of the statement. The Store Manager and the HR Manager did not take a qualifying action against the Complainant after October 13, 2021, and thus, their knowledge was irrelevant.

Timing of Qualifying Actions

The Complainant made five protected disclosures, from May 17, 2021, through October 13, 2021; of those, the LCI management officials knew of four. The Complainant also experienced four qualifying actions, from September 8, 2020, through October 18, 2021. The timing of the four protected disclosures known by the LCI management officials and the four qualifying actions is summarized in the following table.

Table. Timing of Protected Disclosures and Qualifying Actions

Date	PD ¹	QA ²	Description of Event
September 8, 2020		X	The Store Manager and the HR Manager issued the Complainant a written warning for soliciting a vendor for personal favors.
May 17, 2021	X		The Complainant filed a complaint with the USACE OIG reporting that the Store Manager and a USACE employee were using Federal funds to obtain gift cards to Home Depot and Lowe's.
June 4, 2021		X	The Store Manager, HR Manager, and District Manager issued the Complainant a second written warning for unprofessional conduct.
June 7 and 10, 2021	X		The Complainant reported to the HR Manager that she felt that she was being retaliated against and that the Store Manager was illegally spending Federal funds by purchasing gift cards for a customer.
June 14 and 15, 2021	X		The Complainant reported to the VP of Store Operations that the Store Manager was retaliating against her and was illegally using Federal funds to purchase and sell gift cards.
September 10, 2021		X	An LCI HR manager informed the Complainant that she was ineligible to apply for the assistant store manager position at [REDACTED] because of her previous disciplinary action.
October 13, 2021	X		The Complainant made a sworn statement to an IO, describing her discovery of a \$500 gift card made out to a customer, her effort to report the matter to LCI, her additional investigations revealing that the Store Manager had sold around \$5,000 in gift cards to the customer, and her subsequent report to the USACE OIG.
October 18, 2021		X	The VP of Store Operations, Chief HR Officer, and District Manager discharged the Complainant from employment.

Source: The DoD OIG.

¹ PD: Protected disclosure.

² QA: Qualifying action.

Based on the LCI management officials' knowledge and the close timing between the protected disclosures and the qualifying actions, a preponderance of the evidence established that the protected disclosures were a contributing factor in two qualifying actions: (1) LCI's denial of the Complainant's application for the assistant store manager position at [REDACTED], and (2) LCI's discharge of the Complainant from employment. As the Complainant did not make a protected disclosure before receiving the first written warning, we concluded that the first written warning was not issued in reprisal. Although the Complainant made a protected disclosure before receiving the second written warning, the LCI management officials did not learn of the protected disclosure until *after* issuing the written warning; therefore, we concluded that the second written warning also was not issued in reprisal.

Because the Complainant successfully established the elements of a *prima facie* allegation by a preponderance of the evidence for two of the qualifying actions, the question then became whether there was clear and convincing evidence that the LCI management officials would have taken the same actions even absent the protected disclosures. In so doing, we considered the following factors.

Strength of the Evidence

Stated Reasons for LCI Denying the Complainant's Application

An LCI HR manager notified the Complainant that she was ineligible to apply for the assistant store manager position at [REDACTED] on September 10, 2021, because of her previous disciplinary action.

The evidence established that the Complainant received her second written warning on June 4, 2021. As a result of the written warning, the Complainant was ineligible to apply for an internal vacancy until June 2022, as the LCI Employee Handbook requires employees to be free from any disciplinary action within the last year when applying.

Stated Reasons for LCI Discharging the Complainant from Employment

LCI discharged the Complainant from employment on October 18, 2021. The written discharge notice identified the Complainant's unprofessional conduct as the basis for the action. Specifically, the notice stated that the Complainant acted in an unprofessional manner towards two employees by talking about the Store Manager in a very negative manner, using profane language, and demeaning LCI's process for making the store profitable. Finally, the notice said that the VP of Store Operations and the Chief HR Officer had informed the Complainant that her transfer to [REDACTED] required her to represent the company's core values and treat coworkers with respect. As the Complainant did not follow those guidelines, her employment was being terminated.

In support of its discharge decision, LCI provided us with an October 13, 2021 email from Witness 1 to the Store Manager, in which Witness 1 reported that the Complainant was creating a hostile and degrading work environment. Witness 1 wrote:

[The Complainant] made the comment earlier to [Witness 2] that she's still got her foot in the door [because] if they fire [Store Manager] this will be her store. Yesterday afternoon her husband came in around 3:45 and he and her were dogging out [Store Manager] to myself and [Witness 2]. One thing I recall she said was that That F***** c*** [sic] I am actually afraid of her. If she can cut throat this deep I can only imagine what she may do to me if she knows I told this. She knows where I live.

We asked the VP of Store Operations, Chief HR Officer, and District Manager why they discharged the Complainant from employment. The VP of Store Operations told us that the Complainant made Witness 1 "afraid for her life" and that he thought he remembered

something about a gun. He told us that he was afraid for his employees at that point. Similarly, the Chief HR Officer said that in addition to saying she would have the Store Manager fired, the Complainant threatened Witness 1's and Witness 2's jobs and made Witness 1 fear for her safety. The Chief HR Officer also said that the Complainant's husband came to the store in a manner that was intimidating. Finally, the District Manager said that LCI discharged the Complainant from employment because she violated LCI's core values by disparaging the Store Manager and LCI.

Evidence Against the Stated Reasons for Discharging the Complainant from Employment

We received contradictory testimony and evidence from LCI regarding whether LCI management officials gathered all relevant facts and took witness statements before discharging the Complainant from employment.

The VP of Store Operations told us that HR investigated and found that Witness 1's allegation was true, although he did not know who specifically investigated. Similarly, the Chief HR Officer told us that LCI took statements from Witness 1 and Witness 2. She told us that she thought the District Manager gathered the statements, after which she would have checked that everything was in line.

The VP of Store Operations' and the Chief HR Officer's statements were in line with the LCI Employee Handbook, which states that before issuing any disciplinary action other than a verbal counseling, the supervisor should gather all relevant facts pertaining to the situation and provide documented witness statements for the HR managers or chief HR officer to review. Indeed, when discussing the Complainant's second written warning, the VP of Store Operations told us that LCI investigated and took witness statements, as "[j]ust because [Witness 1] said it doesn't mean it's a fact."

However, contrary to the VP of Store Operations' and the Chief HR Officer's statements, Witness 1 and Witness 2 each denied that any LCI official took a statement or discussed the matter with them. Witness 1 told us that no one from LCI replied to her email, and Witness 2 told us that she was not involved in the events that led to the Complainant's discharge. The District Manager told us that she did not review any report of investigation or anything that gave additional detail beyond the employee making the allegation. Meanwhile, the Store Manager was not available to gather all relevant facts or to take witness statements, as she told us that she had been working at an alternate location for 2 to 3 weeks and returned on the day of the Complainant's discharge.

We asked LCI for a copy of the investigation that led to the Complainant's discharge. LCI did not provide any report of investigation or any witness statement other than Witness 1's October 13, 2021 email to the Store Manager. When we provided an additional opportunity for LCI to provide a written statement or documents, or any other information LCI believed might be relevant to the investigation, LCI's response did not include any written statements

or documents related to the discharge not already provided during the investigation. When we asked for clarification as to whether it intended to submit a written statement, LCI initially did not reply. LCI then requested an extension, but never submitted any further reply or written statement.

Motive to Retaliate

Evidence for motive generally exists when protected disclosures allege wrongdoing that, if proven, would adversely affect the subject. This could be true in this case, as the Complainant's protected disclosures could have reflected poorly on LCI.

In her complaint to the USACE OIG, the Complainant reported that the Store Manager used Federal funds to obtain gift cards for Home Depot and Lowe's, totaling \$4,902.17. The Complainant then reiterated her concerns to the HR Manager, the VP of Store Operations, and an IO. If proven true, the Store Manager's actions would violate the AFARS, which generally prohibits the use of a GPC to purchase gift certificates and gift cards. Such reports could have been embarrassing to LCI and could have reflected a failure on the part of LCI to follow applicable rules and regulations. Additionally, the Complainant's IG complaint led directly to a command investigation into her allegations, which could have adversely affected the LCI management officials and given them motive to reprise.

We found support for this conclusion in the VP of Store Operations' statements that he took offense to the Complainant questioning his integrity by going outside the chain of command and that by going outside the chain of command, she was bringing an outside source into LCI. Multiple LCI management officials made similar statements, emphasizing the importance of following the chain of command to the exclusion of statutorily protected avenues of whistleblowing. Indeed, when LCI offered the Complainant a lateral transfer to [REDACTED], it predicated the Complainant's continued employment on her following the chain of command. Such a workplace culture was in tension with LCI's statutory and contractual obligations, which required LCI to comply with statutory whistleblower protection provisions and to inform its employees in writing of contractor employee whistleblower rights and protections.

Disparate Treatment of the Complainant

We were unable to analyze whether LCI treated the Complainant disparately when it discharged her from employment, as we concluded that LCI did not provide complete and accurate responses to our information requests.²³ In response to our preliminary report of investigation, LCI provided a limited list of individuals that we discuss in analyzing its response later in this report.

We initially requested that LCI provide a list of all employees discharged between October 18, 2020, and October 18, 2022, and the reasons for their discharge. LCI objected to this request, stating that it was overly broad, unduly burdensome, and not reasonably relevant to the investigation.

We then narrowed our request to encompass only those employees working in the district managed by the District Manager. In reply, LCI provided a list of two individuals—the Store Manager and a second store manager—who had each resigned their positions. We asked LCI to confirm that this was a complete list responsive to our request; LCI confirmed that it was complete. We then informed LCI that we had reviewed evidence that LCI discharged additional employees, including the Complainant, during the relevant time period, and renewed our original request. LCI again confirmed that the list of discharged individuals was complete.

Contrary to LCI's statements, we determined that LCI did not provide a complete list of discharged employees. We based this determination on substantial evidence that LCI discharged multiple other employees at the relevant stores during the specified period.

For example, the Complainant and the Store Manager told us that LCI discharged an employee at the Vicksburg store as part of its reduction-in-force in October 2021. Next, [REDACTED] that she left LCI in March 2022. Finally, the District Manager told us that one employee at the Vicksburg store refused to take a drug test and was subsequently discharged. LCI did not include any of these individuals in its response to our request.

As we concluded that LCI did not provide a complete list, we could not analyze whether LCI treated the Complainant disparately when it discharged her from employment. As referenced above, in response to our preliminary report of investigation, LCI provided a limited list of individuals that we discuss in analyzing its response later in this report.

²³ To determine whether a subject treated a Complainant disparately, we analyze any evidence that the subject took similar actions against similarly situated employees who did not make protected disclosures. The first step in this analysis is to determine whether the conduct and circumstances surrounding the conduct of the comparison employee were similar to those of the Complainant. Only after establishing such similarity do we turn to a comparison of the resulting disciplinary actions. However, in this case, LCI did not provide complete and accurate responses to our requests for a list of discharged employees. We therefore found it unnecessary to conduct the first step of the disparate treatment analysis, as such analysis would be meaningless in the absence of complete and accurate information about subsequent disciplinary actions.

Totality of the Evidence

Weighed together, the evidence analyzed in the factors above clearly and convincingly established that LCI denied the Complainant's application because she was ineligible to apply for an internal vacancy. However, the evidence did *not* clearly and convincingly establish that LCI would have discharged the Complainant from employment absent her protected disclosures.

Application Denial

LCI notified the Complainant that she was ineligible to apply for the assistant store manager position at [REDACTED] because of her previous disciplinary action. The evidence established that the Complainant received her second written warning on June 4, 2021. As a result of the written warning, the Complainant was ineligible to apply for an internal vacancy until June 2022, as the LCI Employee Handbook requires employees to be free from any disciplinary action within the last year when applying.

We found LCI's rationale for denying the Complainant's application to be clear and convincing. Under LCI's rules, the Complainant was ineligible to apply for an internal vacancy. Even though we concluded that LCI had a motive to reprise against the Complainant, the strength of the evidence overwhelmingly supported LCI's stated reasons for denying the Complainant's application. As such, the evidence clearly and convincingly established that LCI denied the Complainant's application because she was ineligible to apply for an internal vacancy. Therefore, LCI did not deny the Complainant's application in reprisal.

Discharge from Employment

Strength of the Evidence in Support of the Discharge

LCI stated that it discharged the Complainant from employment for unprofessional conduct, specifically when she allegedly acted in an unprofessional manner towards two employees by talking about the Store Manager in a very negative manner, using profane language, and demeaning LCI's process for making the store profitable. LCI stated that the Complainant's behavior violated her agreement to represent the company's core values and treat coworkers with respect. In interviews with this office, the LCI management officials—the VP of Store Operations, Chief HR Officer, and District Manager—told us that the Complainant made her coworkers fear for their safety. For example, the VP of Store Operations told us that the Complainant made Witness 1 afraid for her life and that he thought he remembered something about a gun. In support of its decision, LCI provided us with an October 13, 2021 email from Witness 1 to the Store Manager, in which Witness 1 reported that the Complainant was creating a hostile and degrading work environment.

We agreed that the behavior described in Witness 1's email, if proven to have occurred, would have constituted a serious offense. However, we found substantial reason to doubt whether LCI followed its own procedures before discharging the Complainant from employment. We also found substantial reason to doubt the testimony of LCI management officials about the measures they took after receiving Witness 1's email. According to the LCI Employee Handbook, before issuing any disciplinary action other than a verbal counseling, the supervisor should gather all relevant facts pertaining to the situation and provide documented witness statements for the HR managers or chief HR officer to review. We found no evidence of LCI taking such actions in this case, despite the VP of Store Operations' and the Chief HR Officer's testimony to the contrary. Rather, the evidence established that LCI did not take statements or discuss the matter with either Witness 1 or Witness 2. Witness 1 told us that no one from LCI replied to her email, and Witness 2 told us that she was not involved in the events that led to the Complainant's discharge.

Meanwhile, the Store Manager was not present for the 2 to 3 weeks before the Complainant's discharge, and the District Manager did not review any report of investigation or any additional detail beyond the original allegation. This evidence contradicted the VP of Store Operations' testimony regarding LCI's disciplinary procedures. For example, in discussing the Complainant's second written warning, the VP of Store Operations told us that LCI investigated and took witness statements, as "[j]ust because [Witness 1] said it doesn't mean it's a fact." Yet when it came to the Complainant's discharge, the evidence established that LCI relied on Witness 1's word alone.

We found an additional reason to doubt LCI's stated reasons in analyzing the timing of events. LCI discharged the Complainant from employment on October 18, 2021—5 days after the Complainant gave a sworn statement to an IO investigating the Store Manager's alleged misuse of a GPC. Indeed, the Complainant's protected disclosure to the IO was inextricably intertwined with her ultimate discharge from employment. In Witness 1's email to the Store Manager, she noted that the Complainant was meeting with the IO investigating the credit card deal. According to Witness 1, the Complainant told Witness 2 that "she's still got her foot in the door [because] if they fire [Store Manager] this will be her store." Therefore, in both timing and substance, we found a direct link between the Complainant's IG complaint (which led to the appointment of the IO), her sworn statement to the IO, and her ultimate discharge from employment. Although this connection was not, on its own, sufficient to substantiate the Complainant's allegation, it served to provide additional doubt as to LCI's stated reasons for discharging the Complainant from employment.

Throughout this investigation, we provided ample opportunity for LCI to provide additional evidence in support of its stated reasons. We asked LCI for a copy of the investigation that led to the Complainant's discharge; LCI did not provide that report or any witness statement other than Witness 1's email. We provided additional opportunities to submit written statements or documents; LCI did not provide a response.

On these grounds, we found substantial reasons to doubt LCI's stated reasons for discharging the Complainant from employment.

Existence and Strength of Any Motive to Retaliate

We determined that LCI had a motive to reprise. Evidence for motive generally exists when protected disclosures allege wrongdoing that, if proven, would adversely affect the subject. This could be true in this case, as the Complainant's protected disclosures could have reflected poorly on LCI. In her complaint to the USACE OIG (Protected Disclosure 1), the Complainant reported that the Store Manager used Federal funds to obtain gift cards to Home Depot and Lowe's, totaling \$4,902.17. The Complainant then reiterated her concerns to the HR Manager (Protected Disclosure 2), the VP of Store Operations (Protected Disclosure 4), and an IO (Protected Disclosure 5). Such reports could have been embarrassing to LCI and could have reflected a failure on the part of LCI to follow applicable rules and regulations. Additionally, the Complainant's IG complaint led directly to a command investigation into her allegations; the mere fact of the investigation could have adversely affected the LCI management officials and given them motive to reprise. We found support for this conclusion in the VP of Store Operations' statements that he took offense to the Complainant questioning his integrity by going outside the chain of command and that by going outside the chain of command, she was bringing an outside source into LCI.

Disparate Treatment

We were unable to analyze whether LCI treated the Complainant disparately when it discharged her from employment, as we concluded that LCI did not provide complete and accurate responses to our information requests.

Conclusion

A preponderance of the evidence established that the Complainant's protected disclosures were contributing factors in LCI's decision to discharge her from employment. Clear and convincing evidence did not exist that LCI would have taken the same action absent the Complainant's protected disclosures. Rather, we found substantial reasons to doubt LCI's stated reasons for discharging the Complainant from employment and to confirm that the Complainant's protected disclosures gave LCI a motive to reprise. The existence of such doubts undermined any firm belief in LCI's nonretaliatory explanation. We therefore concluded that LCI discharged the Complainant from employment in reprisal for her protected disclosures.

Preliminary Conclusions

Clear and convincing evidence established that LCI would have denied the Complainant's application absent any protected disclosure. Accordingly, LCI did not deny the Complainant's application in reprisal for her protected disclosures.

In the absence of clear and convincing evidence to the contrary, a preponderance of the evidence established that LCI discharged the Complainant from employment in reprisal for her protected disclosures.

LCI's Response to Preliminary Conclusions

We provided a preliminary report of investigation to LCI on June 12, 2024, and provided it an opportunity to respond to our preliminary conclusions. LCI responded in writing on July 10, 2024. In its written response, LCI disagreed with our findings, denied that any “alleged disclosure” was a factor in its decision to discharge the Complainant, and asserted that it had provided clear and convincing evidence it would have discharged the Complainant absent the “alleged protected disclosure.” Additionally, LCI suggested that we interview the HR Manager, as she might have additional information that might be informative to the investigation. We informed LCI that the HR Manager did not respond to our written request for an interview and asked LCI to schedule the interview with the HR Manager. On August 2, 2024, LCI told us that they had not yet been able to get the HR Manager to agree to an interview. After carefully considering LCI's response, our conclusion remains unchanged. We address LCI's argument for its response below.

Discharge from Employment

In its response to our preliminary report of investigation, LCI wrote that we wrongfully cast doubt on the reason for the Complainant's discharge from employment because we claimed that LCI did not follow its own procedures in investigating the incident. LCI restated that it conducted an investigation into the Complainant's statements and explained that the Store Manager gathered all the relevant facts and took oral witness statements from Witness 1 and Witness 2 at the HR Manager's direction. LCI also asserted that both Witness 1 and Witness 2 substantiated the Complainant's unprofessional conduct that ultimately led to her discharge.

However, as detailed in our preliminary report of investigation, the evidence established that LCI did not take statements or discuss the matter with either Witness 1 or Witness 2. Witness 1 told us that no one from LCI replied to her email, and Witness 2 told us that she was not involved in the events that led to the Complainant's discharge. Furthermore, the Store Manager was not available to gather all relevant facts or to take witness statements, as she told us that she had been working at an alternate location for 2 to 3 weeks, returned on the day of the Complainant's discharge. The Store Manager stated that she did not know of any investigative steps LCI took to ensure the statement in question was accurate.

As LCI provided no new information that was not previously considered in making our determination, we found no basis on which to alter our conclusion.

Disparate Treatment

LCI provided an updated list of employees it discharged from 2020 through 2022 to supplement the previously provided information. According to its list, LCI discharged three employees from employment in 2021 and 2022: one employee as part of a reduction in force, the Complainant for gross misconduct, and Witness 1 for a process/policy violation. Witness 1 was a known whistleblower, as detailed in our preliminary report of investigation; however, the District Manager told us that LCI discharged Witness 1, [REDACTED], from employment [REDACTED]. Additionally, although it is unknown whether the employee was a whistleblower, LCI told us that it discharged the other employee as part of a reduction in force, so the employee was not similarly situated to the Complainant. Therefore, we were still unable to assess whether LCI treated the Complainant disparately in its decision to discharge her from employment, as no other similarly situated nonwhistleblowers existed for comparison.

Overall Conclusions

After giving LCI an opportunity to respond to our preliminary report of investigation and having carefully considered its response, our conclusions remain unchanged. Clear and convincing evidence established that LCI would have denied the Complainant's application absent any protected disclosure. Accordingly, LCI did not deny the Complainant's application in reprisal for her protected disclosures.

However, in the absence of clear and convincing evidence to the contrary, a preponderance of the evidence established that LCI discharged the Complainant from employment in reprisal for her protected disclosures, and we, therefore, substantiate that allegation.

Recommendations

We recommend that the Secretary of the Army direct Army officials to:

- order LCI to take affirmative action to abate the reprisal;
- order LCI to award the Complainant compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that the Complainant would have received had she not been reprised against; and
- order LCI to pay the Complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees) that were reasonably incurred by the Complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the Secretary of the Army.

Acronyms and Abbreviations

- 10 U.S.C. § 2409** Section 2409, title 10, United States Code
- AFARS** Army Federal Acquisition Regulation Supplement
- [REDACTED]** [REDACTED]
- CUI** Controlled Unclassified Information
- DFARS** Defense Federal Acquisition Regulation Supplement
- GPC** Government Purchase Card
- HR** Human Resources
- IG** Inspector General
- IO** Investigating Officer
- LCI** L.C. Industries
- NIB** National Industries for the Blind
- OIG** Office of Inspector General
- USACE** United States Army Corps of Engineers
- VP** Vice President

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