

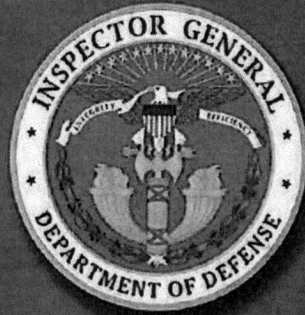
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Inspector General

United States

Department of Defense



APPROPRIATED FUND EMPLOYEE WHISTLEBLOWER REPRISAL INVESTIGATION

Department of Air Force

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WHISTLEBLOWER REPRISAL INVESTIGATION

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

I. EXECUTIVE SUMMARY

We conducted this investigation to address allegations that (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C), reprised against (b)(6), (b)(7)(C) (Complainant),
via (b)(6), (b)(7)(C)

and local suspension of access to classified information/areas. Complainant alleged the personnel actions and security clearance determination were taken in reprisal for disclosures of fraud, waste, and abuse made to Agency officials, (b)(6), (b)(7)(C) Inspector General (IG), and (b)(6), Equal Employment Office (EEO).

We substantiated the security clearance determination involving suspension of Complainant's access to classified information/areas. We concluded, by clear and convincing evidence, that (b)(6), (b)(7)(C) locally suspended Complainant's access to classified information/areas in reprisal for Complainant's disclosures. (b)(6), (b)(7)(C)

Accordingly, we did not address these personnel actions in this report.

We recommend (b)(6), (b)(7)(C), take appropriate action to make Complainant whole. In that regard, we noted that the MSPB agreement specified that unless the Agency received new information relevant to the Complainant's suitability for access to classified information, the Agency would support reinstatement of Complainant's security clearance and access to classified information as required for performance of Complainant's official duties. We also recommend appropriate corrective action regarding (b)(6), (b)(7)(C).

II. BACKGROUND

Complainant served as a supervisor (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) served as Complainant's supervisor until (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) became Complainant's supervisor. (b) (6), (b) (7)(C) served as (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) began working (b) (6), (b) (7)(C) of Complainant. Evidence supported that the working relationship was initially positive, but by October 2010, became mutually hostile and resulted in several verbal altercations. As will be noted further in the report, (b) (6), (b) (7)(C) cited Complainant's interactions with (b) (6), (b) (7)(C), and others, as evidence of erratic behavior.

Between January 2010 and December 2011, Complainant made allegations to his supervisors, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and also to (b) (6), (b) (7)(C) regarding alleged time card fraud on the part of (b) (6), (b) (7)(C) and environmental violations related to various projects that Complainant was asked to perform.

On December 9, 2011, Complainant reported similar allegations of time and attendance violations, environmental law violations, and abuse of authority to the (b) (6), (b) (7)(C) IG.

On December 15, 2011, Complainant reported alleged time and attendance violations to (b) (6), (b) (7)(C). Subsequent to reporting these violations, (b) (6), (b) (7)(C) suspended Complainant's access to classified information/areas.

On January 11, 2012, Complainant filed a whistleblower reprisal complaint with the Department of Defense (DoD) Hotline. Officials within the Whistleblower Reprisal Investigations Directorate, DoD Inspector General (IG), investigated the matter.

III. SCOPE

This investigation addressed only the suspension of Complainant's access to classified information/areas. We interviewed the Complainant, (b) (6), (b) (7)(C), and eight additional witnesses, including an RMO involved in matters adjudicated by the MSPB. We reviewed relevant documents and electronic communications. We also reviewed documentary evidence provided by (b) (6), (b) (7)(C) and a related Command Directed Investigation (CDI) completed by (b) (6), (b) (7)(C) officials.

¹ (b) (6), (b) (7)(C)

IV. STATUTORY AUTHORITY

The DoD IG conducts whistleblower reprisal investigations involving civilian appropriated-fund employees of the Department under Section 7(a) and 8(c)(2) of Appendix 3 of Title 5, United States Code, "Inspector General Act of 1978," as amended. Further, under DoD Directive 5106.01, "Inspector General of the Department of Defense," DoD IG receives and investigates such complaints of reprisal generally in accordance with Title 5, United States Code, Section 2302.

V. FINDINGS AND ANALYSIS

A. Did Complainant make a protected disclosure? Yes.

Communication Regarding Time and Attendance Violations

On December 8, 2011, Complainant reported an alleged instance of time and attendance violation to (b)(6), (b)(7)(C). Specifically, Complainant alleged (b)(6), (b)(7)(C), improperly allowed (b)(6), (b)(7)(C), Complainant's (b)(6), (b)(7)(C), to leave work early by granting (b)(6), (b)(7)(C) leave under what is commonly referred to as the "59 minute" rule. Complainant testified he had received time and attendance training regarding granting leave and was instructed there was no such thing as the "59 minute" rule. (b)(6), (b)(7)(C) testified she confirmed to Complainant there was no such thing as the "59 minute" rule in the Air Force Instructions (AFI).² (b)(6), (b)(7)(C) testified her interpretation was that a supervisor may grant an employee leave if the employee experiences an emergency situation on the way to work or, at the end of the day, if there is an issue (e.g., the air conditioning breaks down). She informed Complainant that supervisors may grant up to one hour leave for emergencies and that supervisors often misuse this reference and call it the "59 minute" rule. (b)(6), (b)(7)(C) informed Complainant she would discuss his concerns with (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) testified after meeting with Complainant she spoke with (b)(6), (b)(7)(C) and informed him he had misapplied AFI time and attendance rules. (b)(6), (b)(7)(C) testified he required (b)(6), (b)(7)(C) to take leave when he came in the following work day. Further, (b)(6), (b)(7)(C) testified after her meeting with (b)(6), (b)(7)(C) she informed (b)(6), (b)(7)(C) of the misuse of time and attendance reported by Complainant, and that (b)(6), (b)(7)(C) already corrected the incident by having (b)(6), (b)(7)(C) take leave.

² AFI 36-851 §8.3, *Absences for Brief Periods or Tardiness*, may be used by supervisors to grant less than 1 hour of leave for unavoidable absences, brief periods of early dismissal, and brief periods of tardiness. It is commonly referred to, throughout the Federal government, as the "59 minute rule." It is also commonly misused throughout the Federal government. AFI 36-815 §8.1, *Excused Absence*, is an administratively authorized absence from duty without loss of pay or charge to leave. The leave approving supervisor may excuse employees only for the periods and the reasons specified in this chapter. The installation commander or head of serviced organizations is authorized to excuse employees for brief periods for any other reasons that are deemed to be in the best interest of the public or the Air Force. A "brief period" normally means not more than 4 hours per day. Excused absence differs from administrative dismissal in that it normally addresses individual employees being excused for non-mission related emergency reasons, or for reasons the government encourages such as voting.

Additionally, on December 8, 2011, Complainant emailed (b)(6), (b)(7)(C) [redacted], who assisted with the time and attendance training Complainant previously attended. Complainant inquired about the "59 minute" rule. (b)(6), (b)(7)(C) [redacted] informed him the "59 minute" rule is to be used on an individual basis and is not to be used to let everyone go home early. She also said the "59 minute" rule was misused all of the time. (b)(6), (b)(7)(C) [redacted] told Complainant he must review local policy and, as a supervisor, he probably could not grant the leave. Complainant also sent an email to (b)(6), (b)(7)(C) [redacted] on that date and she responded that there is no such thing as the "59 minute" rule, quoting AFI 36-815, section 8.3.

In December of 2011, Complainant notified (b)(6), (b)(7)(C) [redacted] of an additional time and attendance violation involving (b)(6), (b)(7)(C) [redacted] employees whom Complainant (b)(6), (b)(7)(C) [redacted]. Complainant told (b)(6), (b)(7)(C) [redacted] that on a day when Complainant was absent from work the (b)(6), (b)(7)(C) [redacted] employees left early and did not reflect their early departures on their time cards. Complainant identified the (b)(6), (b)(7)(C) [redacted] employees as (b)(6), (b)(7)(C) [redacted].

On December 15, 2011, Complainant met with (b)(6), (b)(7)(C) [redacted] and informed him of AFI 36-815 violations he previously reported to (b)(6), (b)(7)(C) [redacted] and (b)(6), (b)(7)(C) [redacted]. (b)(6), (b)(7)(C) [redacted] testified he spoke with (b)(6), (b)(7)(C) [redacted] about the "59 minute" rule and she informed him that he had discretion to grant leave as a (b)(6), (b)(7)(C) [redacted], but allowing employees to leave early as part of a "59 minute" rule may be a technical violation of the AFI.

Additionally, on December 15, 2011, Complainant informed (b)(6), (b)(7)(C) [redacted] of additional AFI 36-815 violations. Specifically, that (b)(6), (b)(7)(C) [redacted] and (b)(6), (b)(7)(C) [redacted], claimed hours not worked on their respective time card submissions. The investigation produced no evidence to support Complainant's allegations regarding (b)(6), (b)(7)(C) [redacted] and (b)(6), (b)(7)(C) [redacted]. Therefore we concluded Complainant's disclosure in this instance was not reasonable.

Complainant believed the information he disclosed regarding violations of AFI 36-815 were reasonable and non-frivolous. Complainant's belief was reasonable in that (b)(6), (b)(7)(C) [redacted] early release from work was improper. Further, Complainant's belief was reinforced by (b)(6), (b)(7)(C) [redacted] and (b)(6), (b)(7)(C) [redacted] actions requiring (b)(6), (b)(7)(C) [redacted] to take leave to account for the time. Although it appears (b)(6), (b)(7)(C) [redacted] may have been within his rights to grant the leave under AFI 36-815 §8.1, it is clear from the actions taken (i.e., requiring (b)(6), (b)(7)(C) [redacted] to take leave) that all parties involved believed the time off was not authorized. Thus, Complainant had a reasonable belief that a time and attendance violation had occurred.

Communications Regarding Environmental Violations

In February 2011, Complainant informed (b)(6), (b)(7)(C) [redacted], of environmental violations regarding the cutting of a hole in the wall for (b)(6), (b)(7)(C) [redacted] office prior to obtaining an asbestos report. Specifically, Complainant reported he was directed to cut the hole in (b)(6), (b)(7)(C) [redacted] office to support a Secret Internet Protocol Router Network (SIPRNet) cable, without first completing an Air Force Form 332, Civil Engineering Work

Request, and without obtaining asbestos test data; both of which Complainant believed were necessary.³

On December 8, 2011, Complainant reiterated his environmental violation concerns to (b)(6), (b)(7)(C).

Moreover, Complainant's communications were specific and reasonable given his understanding of the facts and regulations in place applicable to the above situations. Complainant's communications involved matters outside his normal duties and were made to someone beyond the wrongdoer who could remedy the wrong.

Communication to (b)(6), (b)(7)(C) IG and EEO

On December 9, 2011, Complainant testified he reported to (b)(6), (b)(7)(C) IG the same issues that he had reported to (b)(6), (b)(7)(C). Complainant testified he was told by a "Colonel with the IG," [N.F.I.], to take his issues to the Equal Employment Opportunity Office (EEO). Complainant said he went to EEO on December 10, 2012, and was informed by (b)(6), (b)(7)(C), that there was nothing EEO could do at that time. Accordingly, disclosures to an IG are protected.

Communications to DoD IG

On January 11, 2012, Complainant filed a complaint with the DoD IG Hotline. In that complaint he outlined AFI time and attendance violations and environmental issues outlined above. The communication was made to DoD IG, and, accordingly, disclosures to an IG are protected.

B. Was Complainant the subject of an actual or threatened security clearance determination action? Yes.

Suspension of Access to Classified Information/Areas

On December 22, 2011, (b)(6), (b)(7)(C) locally suspended Complainant's access to classified information/areas. (b)(6), (b)(7)(C) indicated the suspension was due to trust issues he had related to Complainant's suitability. (b)(6), (b)(7)(C) also stated that on December 8, 2011, (b)(6), (b)(7)(C) informed him that Complainant expressed (b)(6), (b)(7)(C). The suspension specified that Complainant would be required to (b)(6), (b)(7)(C).

³ Air Force Instruction 32-1001, does not specifically require a Form 332 be filed; however, it does state designated personnel should submit work requests to civil engineering and it will determine the necessary documentation and establish the appropriate type of work order.

Notification of Suspension of Access

On April 30, 2012, (b)(6), (b)(7)(C) administered a second "revised" local suspension of Complainant's access to classified information/areas. (b)(6), (b)(7)(C) indicated the suspension was due to Complainant's (b)(6), (b)(7)(C); Complainant's inappropriate comments directed at subordinates; and Complainant's failure to safeguard access to government information systems and his failure to follow proper Operations Security (OPSEC) procedures.⁴ Suspension of access to classified information/areas is a personnel security determination.

C. Could the protected disclosures have been a contributing factor in the Agency's decision to take, not take, threaten to take, or threaten not to take the security clearance determination action? Yes.

Communications to Human Resources

(b)(6), (b)(7)(C) testified he had no knowledge Complainant spoke with (b)(6), (b)(7)(C) regarding time and attendance and environmental issue.

Communications to (b)(6), (b)(7)(C) IG and EEO

(b)(6), (b)(7)(C) testified he had no knowledge Complainant filed complaints with (b)(6), (b)(7)(C) IG. (b)(6), (b)(7)(C) further testified he had no knowledge Complainant filed a complaint with the EEO office.

Communications to Agency Officials

(b)(6), (b)(7)(C) testified that on December 15, 2011, Complainant informed him of time card fraud that was occurring on the base. Accordingly, (b)(6), (b)(7)(C) had knowledge of Complainant's December 15, 2011, protected disclosure.

The first personnel security determination occurred on December 22, 2011 – 7 days after Complainant's disclosure to (b)(6), (b)(7)(C) on December 15, 2011. The second personnel security determination occurred on April 30, 2012 – 137 days after the December 15, 2011, disclosure.

The personnel security determination occurred between 1 week and 4 months, respectively, after Complainant's December 15, 2011, protected disclosure. Accordingly, a reasonable person could conclude that the disclosure was a contributing factor in (b)(6), (b)(7)(C) decision to take the personnel security determinations.

⁴(b)(6), (b)(7)(C)

D. Does clear and convincing evidence indicate that the same actions would have been taken against Complainant absent the protected disclosures? No

Suspension of Access to Classified Information/Areas, December 22, 2011, and Notification of Suspension of Access, April 30, 2012.

Due to similarity, we analyzed the two personnel security clearance determinations together.

Deficiencies in the reasons for local suspension of access to classified information

(b)(6), (b)(7)(C) testified that in December 2010, one year prior to suspending Complainant's access to classified information/areas, he consulted with (b)(6), (b)(7)(C) regarding Complainant's suitability to hold a security clearance. (b)(6), (b)(7)(C) served as (b)(6), (b)(7)(C) for personnel at (b)(6), (b)(7)(C). At that time, (b)(6), (b)(7)(C) advised (b)(6), (b)(7)(C) that erratic behavior or drug use could serve as the basis for suspension. (b)(6), (b)(7)(C) further advised (b)(6), (b)(7)(C) that without a positive urinalysis an employee having spats with other employees was not enough evidence to establish a Security Information File (SIF). (b)(6), (b)(7)(C) told (b)(6), (b)(7)(C) to consult with the personnel office for advice and to "get back to him." Three months later (March 2011), (b)(6), (b)(7)(C) asked (b)(6), (b)(7)(C) whether he could order Complainant to undergo a mental health evaluation. (b)(6), (b)(7)(C) advised (b)(6), (b)(7)(C) he could not order the examination and that only a physical examination was a requirement for Complainant's position. The Agency made no requirement on Complainant's physical forms that he must possess mental or emotional stability to maintain employment. (b)(6), (b)(7)(C) testified after she informed (b)(6), (b)(7)(C) about the physical forms not requiring Complainant to possess mental or emotional stability, she received an email from (b)(6), (b)(7)(C) stating that Complainant's access had been suspended based on the security clearance guidelines that state that Complainant must possess mental and emotional stability to maintain a security clearance. (b)(6), (b)(7)(C) testified she later learned the CDI concluded that (b)(6), (b)(7)(C) could not require Complainant to undergo a mental health evaluation. She testified (b)(6), (b)(7)(C) told her he would reissue a new letter to Complainant and merely recommend a mental health evaluation and not require it. (b)(6), (b)(7)(C) took no further action after she informed (b)(6), (b)(7)(C) that mental stability was not a requirement of Complainant's position.

On December 13, 2011, (b)(6), (b)(7)(C) again consulted with (b)(6), (b)(7)(C) regarding suspension of Complainant's access to classified information/areas. (b)(6), (b)(7)(C) testified (b)(6), (b)(7)(C) informed him Complainant had filed an EEO complaint against (b)(6), (b)(7)(C) for (b)(6), (b)(7)(C) and that (b)(6), (b)(7)(C) believed Complainant was a danger to himself or others. At that time, (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C) he believed sufficient grounds existed to suspend Complainant's access to classified information/areas. (b)(6), (b)(7)(C) based his advice to (b)(6), (b)(7)(C) on (b)(6), (b)(7)(C) assessment that Complainant was exhibiting "bizarre" behavior; had personnel issues with subordinates and supervisors, and was

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expressing symptoms of stress. (b)(6), (b)(7)(C) asked no further questions of (b)(6), (b)(7)(C) at that time.

(b)(6), (b)(7)(C) consulted with both (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) regarding suspending Complainant's security clearance. Notwithstanding (b)(6), (b)(7)(C) advice, the CDI established that in the December 22, 2011, "Notification of Suspension of Access," (b)(6), (b)(7)(C) directed temporary suspension of Complainant's access to classified information/areas pending a review by a qualified mental health provider. (b)(6), (b)(7)(C) wrote that he would make a decision to open a Security Incident File (SIF) to the U.S. Air Force Central Adjudication Facility (AFCAF) based on the mental health evaluation, Complainant's willingness to receive treatment, and Complainant's future duty performance. (b)(6), (b)(7)(C) further directed that on completion of the mental health evaluation, and a "favorable or non-favorable recommendation from (b)(6), (b)(7)(C), access/unescorted entry may either be reinstated or revoked permanently by the AFCAF."

In the December 22, 2011, "Notification of Suspension of Access to All Classified Information/Areas," (b)(6), (b)(7)(C) referred to situations and conflicts that he believed led in part to Complainant's bizarre behavior. (b)(6), (b)(7)(C) stated he received information from (b)(6), (b)(7)(C) regarding Complainant's behavior and he included that language in the December 22, 2011, "Notification of Suspension of Access to All Classified Information/Areas." Specifically, (b)(6), (b)(7)(C) wrote that Complainant was "exhibiting symptoms of stress which led to disruptive, verbally violent, and inappropriate behavior." This was not the first time there was a documentation issue regarding Complainant. In April 2011, (b)(6), (b)(7)(C) administered Complainant his annual evaluation. Complainant grieved the results of that evaluation to (b)(6), (b)(7)(C), who after consultation with (b)(6), (b)(7)(C) was advised there was not enough documentation to support Complainant's lowered rating. As a result, (b)(6), (b)(7)(C) reviewed Complainant's grievance and increased the ratings in every area except one.

On March 16, 2012, (b)(6), (b)(7)(C) completed a CDI into allegations concerning abuse of authority by (b)(6), (b)(7)(C) and other supervisors within (b)(6), (b)(7)(C). As reported in the CDI investigation, there was no mental health requirement in Complainant's physical form documentation when he transferred from another DoD job, and it was not added when he came to (b)(6), (b)(7)(C). It was also established in the CDI that a (b)(6), (b)(7)(C) cannot mandate a mental health evaluation for a civilian employee. The CDI concluded that, as the (b)(6), (b)(7)(C), it was within (b)(6), (b)(7)(C) prerogative to suspend Complainant's access to classified information/areas based on exhibited qualities outlined in the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information. (b)(6), (b)(7)(C) concluded (b)(6), (b)(7)(C) abused his authority by stipulating that the only way Complainant's security clearance would be "re-instated is as the result of a successful mental health evaluation." As a result, (b)(6), (b)(7)(C) removed the mental health evaluation requirement as part of the April 2012, "Notification of Suspension of Access."

(b)(6), (b)(7)(C) testified he believed Complainant's behavior supported the suspension of Complainant's access. (b)(6), (b)(7)(C) testified Complainant exhibited "bizarre" behaviors

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in and out of the workplace, that Complainant had difficulty getting along with fellow employees, that employees were afraid of Complainant and locked the office door because of that fear, and that he suspected Complainant was abusing drugs. However, as mentioned before (b)(6), (b)(7)(C) could not provide any documentation to support these allegations. (b)(6), (b)(7)(C) also testified he discussed Complainant's potential drug use with (b)(6), (b)(7)(C); however (b)(6), (b)(7)(C) could not produce evidence that Complainant was a drug user.

We found insufficient evidence to support that Complainant's behaviors breached any of the guidelines for determining eligibility for access to classified information/areas as set forth in 32 CFR 147, "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information." As established in the CDI and testified to by (b)(6), (b)(7)(C), Guidelines E and I were the focus of behaviors and conduct associated with suspending Complainant's access to classified information/areas. Guideline E relates to "Personal Conduct" and Guideline I relates to "Emotional, Mental and Personality Disorders."

In Guideline I the area of concern that can impact eligibility for a security clearance relates to emotional, mental, and personality disorders that can cause a significant deficit in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability, or stability. The areas of concern as set out in Guideline I include:

- (1) An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;
- (2) Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g., failure to take prescribed medication;
- (3) A pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;
- (4) Information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

We found no evidence to support concerns 1 or 2. As to conditions 3 and 4, (b)(6), (b)(7)(C) testified the "bizarre behavior" he relied on to suspend Complainant's access consisted of wild mood swings such as going from happy to tears in a fifteen minute conversation; saying someone you hired in (b)(6), (b)(7)(C) is the greatest employee you have ever had and then, approximately one year later, saying that same person is the worst employee they have ever had; paranoia in that (b)(6), (b)(7)(C) stated Complainant believed an investigation, that occurred in November of 2010, regarding another employee was somehow related to him; that on March 16, 2011, Complainant dialed the telephone number of one individual while he was engaged in an argument with an employee so the conversation could be overheard; and a suspicion that Complainant was using drugs (although (b)(6), (b)(7)(C) could produce no evidence to support that claim). When queried as to why he did not document these "bizarre" behaviors in either the December 22, 2011, or April 29, 2012, memo to support Complainant's

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suspension, (b)(6), (b)(7)(C) testified he had been "hamstrung" on documenting anything because Complainant grieved everything that was documented. (b)(6), (b)(7)(C) further testified he believed his chain of command did not want documentation of these things for fear that there would be complaints filed by Complainant. (b)(6), (b)(7)(C) testified he received no support from the Civilian Personnel Office or his chain of command when it came to dealing with Complainant. (b)(6), (b)(7)(C) testified (b)(6), (b)(7)(C) told him (b)(6), (b)(7)(C) that he had handled the issues regarding Complainant correctly; but he was going to order a CDI to throw Complainant a bone and so, "maybe Complainant would not file a bunch of IG complaints." (b)(6), (b)(7)(C) testified that, in hindsight, he made a mistake trying to handle Complainant's suspension locally and he should have gone straight to AFCAF with Complainant's bizarre behavior.

Guideline E sets forth several areas of concern as it relates to security clearances. These areas are: untrustworthy, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. It goes on to set out conditions that could raise a security concern and these include:

(1) Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(3) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other representative in connection with a personnel security or trustworthiness determination;

(4) Personal conduct or concealment of information that may increase an individual's vulnerability to coercion, exploitation, or duties, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

(5) A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

(6) Association with persons involved in criminal activity.

We found no evidence to support condition 2, 3, 4, 5, and 6. In fact, as to condition 5, several witnesses testified that Complainant insisted on following laws, rules, and regulations.

As to condition 1, (b)(6), (b)(7)(C) testified he received information from co-workers that Complainant could not get along with others and that two employees were physically afraid of Complainant. Witness testimony and Agency documentation supported, in part, (b)(6), (b)(7)(C) belief regarding Complainant's difficulty getting along with fellow

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employees. Specifically, (b)(6), (b)(7)(C), whom Complainant has alleged reprised against him, testified two former employees, (b)(6), (b)(7)(C), did not get along with Complainant. (b)(6), (b)(7)(C) testified he believed the problems resulted from Complainant's leadership style. (b)(6), (b)(7)(C) further testified Complainant and (b)(6), (b)(7)(C) engaged in arguments that escalated to screaming matches and accusations of exchanged racial epithets. (b)(6), (b)(7)(C) testified that in 2008, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) confided to him that they were having difficulties working for Complainant and both were contemplating leaving (b)(6), (b)(7)(C) which they eventually did. (b)(6), (b)(7)(C) testified Complainant had difficulty getting along with subordinates as well as supervisors.

Although Complainant had difficulty getting along with co-workers, and he apparently had this issue for several years, no steps were taken to rectify the situation until December of 2012, when Complainant's (b)(6), (b)(7)(C) and access to classified information/areas were removed. These actions took place within days of Complainant making protected disclosures.

(b)(6), (b)(7)(C) asserted that other employees feared Complainant. (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), the only employees identified by (b)(6), (b)(7)(C) as fearing Complainant, testified that neither of them locked the office door because they feared Complainant. (b)(6), (b)(7)(C) testified she did not know if she was afraid of Complainant. She stated she was typically a nervous person and she locked the office door because Complainant had (b)(6), (b)(7)(C) and security clearance status and was being accused of (b)(6), (b)(7)(C). Further, (b)(6), (b)(7)(C) testified she was not afraid of Complainant and did not recall a situation where the door was locked.

We found the Agency did not provide clear and convincing evidence that it would have taken the same actions had Complainant not made protected disclosures. We concluded the suspension of Complainant's access to classified information/areas was in reprisal and, therefore, is substantiated.

VI. CONCLUSION

We conclude that (b)(6), (b)(7)(C) reprised against Complainant by locally suspending his access to classified information/areas in violation of Title 5, United States Code, Section 2302.

VII. RECOMMENDATIONS

We recommend (b)(6), (b)(7)(C), direct Agency officials to:

- A. Restore Complainant's access to classified information/areas.
- B. Consider taking appropriate corrective action against (b)(6), (b)(7)(C).

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Inspector General Department of Defense

Whistleblower Reprisal Investigations
U.S. Department of Defense
Office of the Inspector General (AI-WRI)
4800 Mark Center Drive
Alexandria VA 22350

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