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NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE



INSPECTOR GENERAL

REPORT OF INVESTIGATION

15 September 2016

IV-16-0025

Alleged Hostile Work Environment

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(U) INVESTIGATIONS

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I. (U) SUMMARY

(U//~~FOUO~~) In early March 2016, Dr. George Ellard, NSA/CSS Inspector General (IG), surveyed Office of the Inspector General (OIG) personnel to 'take the pulse' of the OIG. The survey revealed negative feedback about the OIG [redacted], specifically concerning [redacted] Then, on 30 March 2016, the IG received an email message from a former [redacted] employee describing the "grave and systemic" management issues within [redacted]. The survey results and the email alleged that [redacted] had created a hostile work environment and displayed favoritism to certain employees.

(U//~~FOUO~~) As a result of the survey and 30 March 2016 email, the IG directed the AIG for Investigations, [redacted] to conduct a preliminary inquiry into the allegations. The preliminary inquiry uncovered sufficient evidence to warrant opening an investigation, which commenced on 6 May 2016.[1]

(U//~~FOUO~~) During the investigation, the OIG Investigations Division (D14) interviewed [redacted] as well as 36 other witnesses, all of whom were current and former employees of [redacted]. Sixteen (44%) of the witnesses interviewed described working with [redacted] as uncomfortable, unpleasant, or creepy. Nineteen of the witnesses interviewed (53%) reported hearing [redacted] make offensive comments in the workplace. Two of the witnesses found the comments so offensive that they caused them to cry. Other witnesses reported that his inappropriate comments were so frequent that they became desensitized. Two witnesses testified that [redacted] yelled at them in the office, and five reported feeling intimidated or scared. Although [redacted] behavior did not rise to the level of violence or sexual harassment, his offensive comments and intimidating behavior was so pervasive that it was observed by numerous witnesses over a period of years.

(b) (3)-P.L. 86-36
(b) (6)

(b) (3)-P.L. 86-36

(U//~~FOUO~~) [redacted] behavior negatively impacted the work environment. Six witnesses left [redacted] specifically because of the treatment they received from [redacted]. Three additional witnesses left [redacted] in part because of [redacted]. Eleven witnesses currently work in [redacted] but do not want to work for [redacted] again in the future.

(U//~~FOUO~~) The evidence showed that [redacted] created the appearance of preferential treatment. Of the 36 witnesses interviewed, 26 (70%) described [redacted] as having "favorites" in the office; 12 witnesses (33%) claimed that he preferred young females; and 25 witnesses (69%) identified his most preferred employee by name. Even [redacted] acknowledged that he could see why the perception exists.

[1] (U//~~FOUO~~) The NSA OIG approached seven IC agencies to conduct this investigation, but they all declined, primarily due to resource issues.

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(U//~~FOUO~~) [redacted], as well as numerous other witnesses, testified that one individual got more of his attention than any other person. Many witnesses commented on the unique relationship and access that she had to her supervisor. Thus, a reasonable person with knowledge of the relevant facts could conclude that his preference afforded her an unfair advantage. In fact, many witnesses *believed* that [redacted] favorites were rewarded with better projects, which led to bonuses and promotions.

(U//~~FOUO~~) During his interview with the OIG, [redacted] response to the allegations was surprise and denial. He claimed to have no idea that people avoided speaking to him or left the organization because of him. He denied creating a hostile work environment and denied having anything to do with a perception of favoritism. He saw no link between his actions and how he was perceived.

(b)(3)-P.L. 86-36
(b)(6)

(U//~~FOUO~~) The OIG did not find [redacted] denials to be credible for several reasons: 1) those who testified about specific incidents included sufficient detail to be credible; 2) many witnesses corroborated other witnesses' testimony; and 3) the similarities were evidence of a pattern of behavior that were enough to refute his denial to the contrary.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted].[2]

- (U//~~FOUO~~) Engaged in conduct that created a hostile work environment in violation of NSA/CSS PMM, Chapter 366, Section 2-1A and NSA/CSS Policy 1-37, Annex D; and
- (U//~~FOUO~~) Created the appearance of violating ethical standards governing impartiality and preferential treatment in violation 5 CFR §2635.101 (b)(14).

(U//~~FOUO~~) During the course of the investigation, an allegation was made that [redacted] had misused his access to the HRMS[3] database for an inappropriate purpose. However, due to system limitations, the OIG could not determine who had accessed particular HRMS. Lacking physical evidence, the OIG relied upon witness testimony, which proved to be incomplete and conflicting. Thus, the preponderance of the evidence did not support that [redacted] used his position for personal gain or misused government resources for non-official purposes in violation of 5 CFR §2635.702 or §2635.704.

(U//~~FOUO~~) A copy of the NSA/CSS OIG report will be forwarded to the Inspector General for information and any action deemed appropriate.[4] Also, a summary of the findings will be

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[2] (U//~~FOUO~~) At the request of NSA OIG, the Defense Intelligence Agency OIG independently reviewed this report and concurred with the NSA OIG's findings. (Response email in Appendix B).

[3] (U//~~FOUO~~) Human Resources Management System (HRMS) is the personal system of record for all NSA/CSS civilian personnel. It encompasses: payroll, time and attendance, performance appraisal, benefits, recruiting, performance record, employee self-service, scheduling, absence management, analytics, employee re-assign module, and grievance handling.

[4] (U//~~FOUO~~) Reports are typically forwarded to Employee Relations [redacted]. However, because the subject is an employee of the OIG and the IG has independent statutory authority related to its employees under §6 of the Inspector General Act of 1978 (as amended), this report is being forwarded to the IG rather than the Agency Employee Relations Office.

(b)(3)-P.L. 86-36

forwarded to Security and Counterintelligence, Special Actions (A5242) and [redacted] supervisor.

(b)(3)-P.L. 86-36
(b)(6)

II. (U) BACKGROUND

(b) (3)-P.L. 86-36

(b) (3)-P.L. 86-36
(b) (6)

(U) Introduction

(U//~~FOUO~~) has been an Agency employee since 1994. He has worked in the of the OIG since October 2004. He was promoted to the position of in August 2010, where he serves as manages approximately assigned to the reports directly to is responsible for the

(U//~~FOUO~~) At the time of the D1 survey, employees assigned to the organization. The OIG interviewed , as well as 36 other witnesses either currently or previously assigned to . Among the 36 witnesses were supervisor and one of his peers, . Twelve witnesses currently work in and report directly to . Twelve witnesses currently or formerly worked in but did not report to . Finally, ten witnesses formerly reported directly to and either left or currently report to a different supervisor in

(U) Applicable Authorities

(U) The investigation looked at possible violations of the following authorities (full citations are contained in **Appendix A**).

(U) NSA/CSS PMM, Chapter 366, Sections 2-1, 2-1A

(U) NSA/CSS Policy 1-37, Annex D: Prohibition of Harassment

(U) NSA/CSS PMM, Chapter 366, Section 1-3G

(U) 5 CFR §§2635.101 (b) (8) & (14)

(U) 5 CFR §2635.704

(U) JER, DoD Directive 5500.07R 2-301

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III. (U) FINDINGS

*(U//~~FOUO~~) **ALLEGATION 1: Did [redacted] engage in conduct that created a hostile work environment in violation of NSA/CSS PMM, Chapter 366, Section 2-1A and NSA/CSS Policy 1-37, Annex D?***

*(U//~~FOUO~~) **CONCLUSION:** Substantiated*

(U) Evidence

(U) ACTIONS OR WORDS THAT DENIGRATE OR SHOW HOSTILITY

(U) Uncomfortable, Unpleasant, or Creepy Work Environment

(U//~~FOUO~~) We asked each of the 36 witnesses to describe the working environment in [redacted] specifically working with [redacted]. Sixteen witnesses described working with [redacted] as unpleasant, uncomfortable, or creepy. Fifteen witnesses had a positive description of the work environment and working with [redacted]. The remaining five witnesses had a negative view of the working environment and used the adjectives "unprofessional" or "tense" to describe the atmosphere working around [redacted].

(U//~~FOUO~~) The following is a sampling of comments made by the 16 witnesses who negatively characterized working with [redacted].

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) Witness #2,[5] who worked in [redacted] from 2008-2011, stated that the work environment became unpleasant when [redacted] was promoted to [redacted] in August 2010. She was miserable working for [redacted] and could not wait to leave [redacted] which she did in May 2011. Witness #6 stated that she did not feel comfortable around [redacted] because of the aggressive way he talked to her. As a new employee, she did not feel [redacted] was supportive of her as her supervisor. Witness #13 stated [redacted] made the office environment uncomfortable and stressful; and Witness #13 was always trying to make sure she did not make [redacted] mad. Witness #12 stated [redacted] made the office environment awkward because of the way he treated people. She gave examples of offensive comments directed at Witnesses #21 and #29. As a result, Witness #12 only interacted with [redacted] when she had to.

(b) (3)-P.L. 86-36

[5] (U//~~FOUO~~) The OIG has identified all witnesses by number. This was done to protect the identity of the witnesses that participated in this investigation. Additionally, we have identified all witnesses as female for the purposes of this report regardless of gender. Of the 36 witnesses, 13 were male and 23 were female.

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(U//~~FOUO~~) Witness #37 stated that she was uncomfortable around [redacted]. [redacted] had the "creep factor" because of the way he walked around and how he looked at her when she was sitting at her desk. Witness #7 described [redacted] as creepy, rude, and demoralizing to women. She stated [redacted] was a "jerk" and created an environment that she did not want to work in. Witness #8 described her interactions with [redacted] as "stiff" and "uncomfortable." [redacted] gave her the "creeps" because of his mannerisms. Witness #17 described [redacted] interactions with office personnel as "creepy and weird." She would look up and notice that [redacted] was standing behind her, watching her at her desk.

(U//~~FOUO~~) Witness #14, who worked in [redacted] from 2008-2012, described working for [redacted] as an unpleasant experience because he created a toxic work environment. [redacted] actions made it difficult for her to come to work every day. Witnesses #29 and #33 both wore headphones in the office so that they would not have to hear [redacted] whispering to Witness #25. Witness #36 described [redacted] as unprofessional and rude. Witness #19 described [redacted] as a "bully" and stated it was very stressful to work around him. She always felt that she was walking on eggshells around [redacted]. Witness #16 described the work environment as uncomfortable and stated, "It felt like a hostile work environment."

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) Witness #15 stated that [redacted] made his employees uncomfortable because he was inconsistent in how he treated his employees. There was a general feeling of uneasiness because people did not know what to expect from [redacted]. Witness #21 described an uncomfortable working environment because of the disrespectful and discourteous comments [redacted] made towards her.

(U//~~FOUO~~) Fifteen witnesses had a positive view of the work environment in [redacted]. The witnesses that testified to a positive work environment generally described [redacted] as a good manager and hard worker who was fair to his employees. [redacted] described the work environment in [redacted] as good. He believed that most of the people in [redacted] were happy and enjoyed work. His philosophy was to have fun while getting work done at the same time. [redacted] testified that he was never approached by anyone to let him know he had created an uncomfortable work environment.[6]

(b) (3)-P.L. 86-36

(U) Inappropriate Comments

(U//~~FOUO~~) Nineteen witnesses have heard [redacted] make comments that were inappropriate or could have been deemed inappropriate by others in the workplace.

(U//~~FOUO~~) Witness #21 claimed that [redacted] made comments to her about [redacted]. For instance, at the OIG holiday party in 2014, Witness #21 claimed that [redacted] commented, "[redacted]" [redacted] also made comments such as "[redacted]". Witness #21 stated that the comments were so frequent that she became desensitized and

[6] (U//~~FOUO~~) [redacted] testified that he told [redacted] to "tone it down a couple of time over the years when [redacted] has crossed the line."

(b) (6)

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could not recall all the instances. [redacted] denied making jokes about [redacted] with Witness #21. However, [redacted] volunteered information that was not provided by Witness #21; specifically, that he made a comment to Witness #21 at an office function about [redacted] He said, "..[redacted]" [redacted] claimed he did not know that Witness #21 was [redacted]

(U//~~FOUO~~) Several witnesses heard [redacted] make comments about [redacted] of Witness #21. Witness #29 stated that [redacted] was "notorious for making inappropriate comments." According to Witness #29, who overheard the comment made to Witness #21 at the 2014 OIG holiday party, such comments were typical for [redacted]

(U//~~FOUO~~) In an unrelated incident, Witness #21 approached [redacted] about some errors in her ACE[7] write up. [redacted] had used masculine pronouns instead of feminine to describe Witness #21's accomplishments. [redacted] told Witness #21 that he [redacted] when he made the mistake. [redacted] denied making the comment about Witness #21's [redacted]

(b) (6)

(U//~~FOUO~~) Shortly after Witness #14 returned to work [redacted] she, [redacted] and Witness #9 were waiting to brief the IG [redacted] While they were waiting for the IG, Witness #14 made a joke to the others that they could blame her for any deficiencies in the briefing because she [redacted] said, "We'll just tell him [the IG] that [redacted] Witness #14 immediately told [redacted] that the comment was offensive and stated that Witness #9 also told [redacted] the comment was inappropriate. Witness #14 claimed that [redacted] later commented that he "had to be careful what he said around her because he did not trust her." [redacted] denied making the comments and Witness #9 could not recall the incident.

(b) (3)-P.L. 86-36
(b) (6)

(b) (3)-P.L. 86-36

(U//~~FOUO~~) At the OIG holiday party in 2014, [redacted] also made a comment to Witness #15 about taking Witness #18 [redacted] Witness #15 was embarrassed by [redacted] comment, which he continued to repeat, because it necessarily involved Witness #18 [redacted] Witness #15 finally went to the harassment prevention officer for [redacted] to complain and [redacted] stopped making the comment. [redacted] denied ever making the comment to Witness #15, and the harassment prevention officer did not recall the incident. Witness #15 stated that since the incident she and [redacted] do not speak. Witness #15 told Witness #17 about the incident at the time that it occurred. Witness #17 testified to her recollection of what Witness #15 told her at the time and the two accounts were consistent

(U//~~FOUO~~) Witness #5 participated in a golf outing with [redacted] After the event, [redacted] made a comment to Witness #5, in the presence of Witness #31, about having to [redacted]

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[7] (U//~~FOUO~~) The Annual Contribution Evaluation (ACE) is an annual process used to plan work and set expectations needed to meet Agency and organizational goals. It is designed to create a performance culture in which the performance and contributions of the workforce are linked to mission.

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[redacted][8] Witness #5 did not understand the comment and asked [redacted] what he meant by it. According to Witness #5, [redacted] replied, [redacted]" Witness #5 claimed he confronted [redacted] about the comment later in the men's restroom. When asked about the incident, [redacted] denied making a comment about [redacted] or being confronted in the men's room by Witness #5. Witness #31 did not recall the incident.

(U//~~FOUO~~) According to Witness #19, [redacted] yelled at her on two occasions. She described [redacted] as a bully and that she found it very stressful to work around him. Witness #29 claimed that [redacted] screamed at her about not printing a report. Witness #7 stated that before [redacted] was a supervisor, he [redacted] over the phone in which he would yell so loudly that people left the office. [redacted] denied ever yelling at Witnesses #19 or #29 but said that he was "curt" with them at different times. [redacted] denied ever yelling over the phone [redacted] Witness #33 heard [redacted] scream at Witness #19 on several occasions. Witness #32 observed [redacted] make Witness #19 cry on more than one occasion.

(b) (6)

(U//~~FOUO~~) Witness #12 heard [redacted] make several comments that she found offensive. In addition to hearing comments about Witness #21 [redacted] made comments to her concerning the hiring of Witness #29, that it was a mistake and he would not do it again. When Witness #12 told [redacted] that [redacted] he was not supportive and made a comment to the effect of "you aren't the first or the last." As soon as she left the meeting with [redacted] she cried because of his reaction. [redacted] denied making any negative comments to Witness #12 when she [redacted] He stated that he was very supportive.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) Witness #16 stated that [redacted] made "snide comments" to her consistently. They had a good relationship when she first began working for [redacted]. Over time, their relationship deteriorated. [redacted] told Witness #16, "If you want my job, can you wait a few years until I retire?" [redacted] admitted that he made this statement to Witness #16.

(U//~~FOUO~~) Witness #11 was offended by a comment that [redacted] made to her after she had gone downstairs to purchase coffee. [redacted] asked her, "where have you been all day?" Witness #11 did not appreciate [redacted] manner and tone when he spoke to her. Witness #11 notified [redacted] about the incident.

(b) (3)-P.L. 86-36

(U//~~FOUO~~) According to Witness #26, [redacted] made a comment to her about not getting an end-of-year bonus. [redacted] told her that he didn't know why she was upset because she and her husband made more money than him and his wife. Witness #26 stated [redacted] made comments that could be "taken the wrong way."

(U//~~FOUO~~) Witness #33 heard [redacted] call Witness #9 into his office and make a comment about something written in Witness #21's ACE packet, followed by laughter. [redacted] did

[8] (U//~~FOUO~~) [redacted]

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not recall discussing Witness #21's ACE packet with Witness #9, though he recalled seeing something unusual in her ACE packet. Witness #9 denied that [redacted] ever showed her another employee's ACE packet. Witness #33 wore headphones in the office so she did not have to listen to [redacted] and Witness #25 whisper to each other. Witness #33 also heard [redacted] make comments such as [redacted] referring to [redacted]

(U//~~FOUO~~) During a peer review, Witness #37 heard [redacted] say that Witness #1 had [redacted] She also heard [redacted] make a comment to Witness #23 that she [redacted] (Witness #23 had just moved to the desk space that had previously been occupied by Witness #33). [redacted] did not recall making the statement but said that if he did there was no hidden meaning.

(b) (6)

(U//~~FOUO~~) Witness #7 testified that she witnessed [redacted] make inappropriate comments and use derogatory language, but she could not recall specific examples. Witness #30 heard [redacted] make comments that were "a little on edge" and described him as "loose with his comments." Witness #24 stated that [redacted] made comments that could be taken the wrong way.

(U//~~FOUO~~) Witness #32 heard [redacted] make objectionable comments. She also witnessed [redacted] make "smart ass-isms" in staff meetings. Witness #9 described [redacted] as a joker. Although she was never personally offended, she had witnessed [redacted] make comments that others may find inappropriate. Witness #13 heard [redacted] make a comment about having a photo from an NSA beauty pageant from the 1980's during a meeting with a senior level employee from another organization. Witness #13 found the comment inappropriate because of the context and audience in which he made it.

(b) (3)-P.L. 86-36
(b) (6)

(U) IMPACT ON THE WORK ENVIRONMENT

(U//~~FOUO~~) Nine witnesses reported negative impacts on their work environment in the form of decreased productivity, decreased interest in work, and a sense of uneasiness. Twenty witnesses have either left [redacted] (at least in part) because of [redacted] or have testified that they do not want to work for him again in the future. Five witnesses reported feeling scared or intimidated by [redacted] in the workplace. Five witnesses reported a change in attitude and treatment from [redacted] after having negative interactions with him.

(U//~~FOUO~~) Witness #14 stated that it was hard to go to work every day because of [redacted]. Witness #21 described herself as a go-getter and passionate about her work. She had a spark, excitement, and enthusiasm; however, after working for [redacted] he "killed my spirit… I could not do my best work working for him." Witness #21, who left [redacted] in March 2016, recently saw [redacted] in her workspace and became upset. She was surprised at the emotional and physical reaction she had just to seeing him.

(b) (3)-P.L. 86-36

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(U//~~FOUO~~) Witness #7 stated that [redacted] caused a lot of lost productivity in the workspace because of his behavior. Witness #33 stated that she did not work as hard because of [redacted] behavior. Three Witnesses avoided interacting with [redacted] as much as they could.

(U//~~FOUO~~) Witness #16 and #19 described working around [redacted] as "walking on eggshells" and "always feeling like you were in trouble." Witness #29 stated that she has been in "survival mode" with [redacted]. Witnesses #29 and #33 both wore headphones in the office so they did not have to listen to [redacted] and Witness #26 whisper to each other at her desk.

(U//~~FOUO~~) Witnesses that left [redacted] because of [redacted]

(b) (6)

(U//~~FOUO~~) Six witnesses left [redacted] because of the treatment they received from [redacted]. Three additional witnesses left [redacted] in part because of [redacted]. Eleven witnesses currently work in [redacted] but do not want to work for [redacted] again in the future. Finally, eleven witnesses testified they enjoyed working with [redacted] in [redacted] and would work with or for him again in the future.

(b) (3)-P.L. 86-36

(U//~~FOUO~~) Witness #2 worked with [redacted] both as a peer and after he was promoted to [redacted]. During her first mid-point ACE counseling with [redacted] as her supervisor, she received "less than stellar" performance feedback for the first time in her career. [redacted] told her she was "off the mark" but could not tell her what she could do to improve. She started looking for a new job and left [redacted] before the end of the rating period. She would never work for [redacted] again.

(U//~~FOUO~~) Witness #7, who worked in [redacted] from 2004-2010, worked with [redacted] as a peer and after he was promoted to [redacted]. She described [redacted] as a "jerk" before he was promoted and a "jerk" as a supervisor. She knew her "lot in life" was going to be working for [redacted], so she left. Witness #7 told [redacted] the reason she was leaving [redacted] was because of [redacted].

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) Witness #14 left [redacted] in 2012 because of [redacted], which she told [redacted] when she left. When she left, she told [redacted] it was because of [redacted]. She stated that she would never work for either [redacted] or [redacted] in the future.

(U//~~FOUO~~) Witness #19, who worked in [redacted] from 2011-2014, left [redacted] because of the treatment from [redacted]. Although Witness #19 was a direct report to [redacted], she described [redacted] as a bully, and his treatment of her made the work environment very stressful. She would never work for [redacted] in the future.

(b) (3)-P.L. 86-36

(U//~~FOUO~~) Witnesses #21 and #33 left [redacted] because of the treatment they received from [redacted]. Witness #21 told [redacted] in March 2016 the reason she was leaving [redacted] was because of [redacted]. Witness #33 left [redacted] in 2014. Neither Witness #21 or #33 would ever work for [redacted] again.

(U//~~FOUO~~) Three additional witnesses stated that they left [redacted] in part because of [redacted]. Each of the three witnesses stated that they would not ever work for [redacted] again in the future.

(U//~~FOUO~~) Eleven witnesses that currently work in [redacted] do not want to work for [redacted] in the future. Four of the witnesses currently work on the [redacted] team reporting directly to [redacted]. The seven other witnesses work on either the [redacted] teams but share the same workspace within [redacted].

(U//~~FOUO~~) Fear and Intimidation

(U//~~FOUO~~) Five witnesses reported being scared or intimidated by [redacted] conduct in the workplace.

(U//~~FOUO~~) Witness #29 described [redacted] leadership style as "subtle intimidation." For approximately the last four years Witness #29 has been in "survival mode." Witness #29 stated that she just keeps her head down and tries not to make waves so that she can get to retirement. She never knew what kind of mood [redacted] would be in. Witness #12 stated that she always felt intimidated speaking to [redacted] because she never knew how he was going to react.

(b)(3)-P.L. 86-36
(b)(6)

(U//~~FOUO~~) Witness #13 currently works on the [redacted] team reporting directly to [redacted]. She is scared to tell [redacted] that she is looking to leave [redacted] because she fears retaliation if he finds out she is looking for other jobs. When Witness #2 got another job outside of [redacted] she was scared to tell [redacted] that she was leaving. She instead told [redacted] directly because she was too uncomfortable around [redacted] and was concerned about his anger.

(b)(3)-P.L. 86-36

(U//~~FOUO~~) Witness #21 was afraid of reprisal from [redacted]. She went to the harassment officer in [redacted] with complaints about [redacted] behavior but asked him to not take any action until after the ACE cycle because she feared retaliation.

(U//~~FOUO~~) Change in Attitude and Treatment

(U//~~FOUO~~) Witness #16 was once a "favorite" of [redacted] and enjoyed a very cordial relationship with him. Their relationship changed after she did some work with the front office related to [redacted]. Witness #16 stated that [redacted] thought she had gone behind his back and she noticed an immediate change in how he treated her. Witness #16 went from talking with [redacted] daily to [redacted] being very short and cold with her. Witness #16 stated that "it felt like a hostile work environment." Several other witnesses mentioned that Witness #16 was once a favorite of [redacted] but had fallen out of favor.

(U//~~FOUO~~) Witness #21 stated that after she approached [redacted] to complain about comments [redacted] made to her, [redacted] became angry. According to Witness #21, [redacted] made the statement, "Apparently I'm offensive and inappropriate and I can't joke with certain

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people… I'm sorry if I ever offended you." [redacted] then quit talking to Witness #21 for several weeks unless the conversation was specifically work related.

(U//~~FOUO~~) Witness #14 stated [redacted] made the comment, "I have to be careful what I say around you because I don't trust you," after she told him another comment he made was inappropriate. Witness #2 stated that when [redacted] found out she was leaving [redacted] to take another job he quit speaking to her for the last few weeks she was in the office. Witness #15 stated that [redacted] quit talking to her after she asked the harassment officer to intervene at the holiday party.

(b) (3)-P.L. 86-36

(U) Analysis and Conclusions

(U//~~FOUO~~) The NSA/CSS PMM, Chapter 366, §2-1 prohibits employees from engaging in "any conduct that creates a hostile work environment and/or interferes with an individual's work performance." Included in the list of behaviors that constitute a hostile work environment are harassment; intimidation, sexual harassment, and violence. Chapter 366, §2-1A directs that employees may not use "actions or words that denigrate or show hostility toward an individual for any reason…. Likewise, employees will not use abusive or offensive language, gestures, or other conduct…directed against other employees that could affect the individual's work performance or impact the work environment." Similarly, NSA/CSS Policy 1-37, Annex D: Prohibition of Harassment, requires NSA to maintain a work environment free of conduct that interferes with another's individual performance or that creates an intimidating, hostile, or offensive environment.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) In order to substantiate a hostile work environment claim, the conduct must be sufficiently severe or pervasive to adversely impact the work environment. Although [redacted] behavior did not constitute violence or sexual harassment, his offensive comments and intimidating behavior were so pervasive that it was observed by numerous witnesses over a period of years.

(U//~~FOUO~~) Nineteen of the witnesses interviewed (53%) reported hearing [redacted] make offensive comments in the workplace. Some of those comments were so offensive to the listener that two people reported crying. Other witnesses reported that his inappropriate comments were so frequent that they became desensitized. Two witnesses testified that [redacted] yelled at them in the office and five reported feeling intimidated or scared. This is not a case where [redacted] made a singular offensive utterance in jest – he established a pattern of abusive behavior that continued unabated for years.

(U//~~FOUO~~) The OIG did not find [redacted] denials that he made offensive comments or raised his voice to be credible. First, those who testified about specific incidents in which [redacted] made an offensive comment usually did so with sufficient detail to be credible (i.e., [redacted] Second, several witnesses corroborated

(b) (6)

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this testimony (i.e., those who overheard [redacted] comments made to Witness #21). Finally, the similarities in the testimonies of the witnesses established a pattern of behavior that was consistent and thus, credible. [redacted] himself admitted to being "curt" with two employees and making one [redacted] comment to Witness #21. Although many witnesses testified that [redacted] behaved professionally around them, their lack of knowledge of how he treated other individuals in other contexts does not negate the likelihood that these events took place.

(U//~~FOUO~~) Another element to substantiate a hostile work environment claim is the impact upon the workplace. Sixteen (44%) of the witnesses interviewed described working with [redacted], as uncomfortable, unpleasant, or creepy. Employees described [redacted] as a "jerk," "creepy," and a "bully." Witness #16 stated, "It felt like a hostile work environment." Witness #21 stated that [redacted] "killed my spirit," and Witness #14 stated it was hard to go to work every day because of [redacted]. Witnesses felt like they were "always in trouble" or "walking on eggshells" in [redacted]. Witness #29 described [redacted] management style as "subtle intimidation." There was a fear of retaliation, and people were intimidated to speak to [redacted] because they did not know how he would react.

(b) (3)-P.L. 86-36

(U//~~FOUO~~) The strongest evidence of [redacted] impact on the work environment is the people who left because of his treatment. Six witnesses left [redacted] because of the treatment they received from [redacted]. Three additional witnesses left [redacted] in part because of [redacted]. Eleven witnesses currently work in [redacted] but do not want to work for [redacted] again in the future. Only eleven witnesses testified they enjoyed working with [redacted] in [redacted] and would work with or for him again in the future.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) During his interview with the OIG, [redacted] response to the allegations was surprise and denial. He claimed to have no idea that people avoided speaking to him or left the organization because of him. He also claimed that no one had ever confronted him about his conduct. Furthermore, he did not believe he had created a hostile work environment. The OIG did not find such assertions credible. Five witnesses testified that [redacted] changed how he treated them after negative interactions with him. Three of the witnesses testified that they told [redacted] that comments he made were inappropriate. They claimed he responded with comments such as "… I can't joke with certain people…" or "I have to be careful what I say around you…." Or he just quit speaking to people. Based on these facts, the OIG concluded that [redacted] was well aware of the inappropriateness of his conduct and, despite this awareness, made little effort to alter his behavior.

(U//~~FOUO~~) The evidence of [redacted] offensive comments and intimidating behavior is overwhelming. The sheer volume of complaints and the numbers of people who departed because of him demonstrate the pervasiveness of his hostile conduct. Evidence shows that the conduct has occurred since prior to his first becoming a supervisor in 2010 and continued until the time of this investigation. The fact that he was a supervisor and an employee of the OIG makes his behavior particularly egregious. The preponderance of the evidence supports the conclusion that [redacted] engaged in conduct that created a hostile work environment in violation of NSA/CSS PMM, Chapter 366, Section 2-1A and NSA/CSS Policy 1-37, Annex D.

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(U//~~FOUO~~) ALLEGATION 2: Did [redacted] create the appearance of violating ethical standards governing impartiality and preferential treatment in violation of 5 CFR §2635.101 (b)(14)?

(U//~~FOUO~~) CONCLUSION: *Substantiated*

(U) Evidence

(U//~~FOUO~~) We asked each of the witnesses to describe the working environment in [redacted], specifically working with [redacted]. The majority described [redacted] as treating employees differently, failing to act impartially, favoring certain individuals, and creating a divisive environment among the staff. Of the 36 witnesses, 26 (70%) described [redacted] as having "favorites" in the office; 8 (22%) stated that he did not have favorites; and 3 (8%) did not characterize it as favoritism, but stated that he spent a disproportionate amount of time with certain people.

(U//~~FOUO~~) Favors young, attractive females

(b) (3)-P.L. 86-36

(U//~~FOUO~~) Twelve witnesses testified that [redacted] favored females in the office, often characterized as "young" and "attractive" women. Witness #11 said that [redacted] had "work girlfriends." Witness #2 stated that his favorites included young, attractive females that showed cleavage and giggled at his jokes. Three witnesses, each young women, self-identified as [redacted] favorites.

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) Witness #8 and Witness #15 perceived that the young females got better jobs (i.e., [redacted]). Witness #7 said the young, attractive females got "better/cooler projects" which led to better bonuses and promotions. Additionally, an anonymous respondent to the IG's survey wrote that [redacted], "shows an obvious bias toward staff members of the opposite sex. The most desirable assignments, highest ACE scores, bonuses and promotions are skewed toward 'favored' individuals."

(U//~~FOUO~~) The most favored employee

(U//~~FOUO~~) Although the names of five women and one man surfaced in interviews as "favorites" of [redacted], one name was raised repeatedly. Twenty-five witnesses testified either that witness #25 was [redacted] favorite or that he spent a disproportionately large amount of time with her.[9] These witnesses claimed that the time he spent with her was personal in nature, and typically spent in her cubicle or his office. One witness reported that [redacted] spent at least an hour a day in her company. Another estimated it as "half a day" (spending time

[9] (U//~~FOUO~~) Witness #25 was one of [redacted] direct reports.

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with both Witness #25 and #16 in their respective cubicle). Regardless of the estimated amount, witnesses agreed that he spent significantly more time with her than anyone else. Furthermore, witnesses agreed that no one else had the kind of access to [redacted] that Witness #25 did.

(U//~~FOUO~~) Witnesses testified that [redacted] and Witness #25's relationship was unique. He did not interact with anyone else the way he did with her. They gossiped, shared inside jokes, and exchanged banter. For instance, Witness #33 testified that she heard [redacted] comment to Witness #25 "You're in a bitchy mood, it must be your time of the month." Witness #25 responded, "Yeah, so you need to get out of my cubicle." Several witnesses observed [redacted] Observers found the behavior unprofessional.

(b) (6)

(U//~~FOUO~~) **The side-lined employees**

(U//~~FOUO~~) Five witnesses testified that with [redacted], one is either "in" or "out." Witness #2 testified, "If you didn't have the personal connection [with [redacted]] you would never succeed…you're either in the club or you're not. [I]f you're on the outs, you are not moving up." According to Witness #14, if you are not favored by [redacted], then you will have "problems."

(b) (3)-P.L. 86-36
(b) (6)

(U//~~FOUO~~) Three other witnesses reported that they were personally "snubbed," ignored, or dismissed by [redacted]. Four witnesses observed [redacted] former "favorite," Witness #16, "fall from grace" after offending him. At least eight individuals, each of whom was interviewed separately as a witness, were identified as individuals that [redacted] did not care for.

(U//~~FOUO~~) Ten witnesses said that [redacted] did not like Witness #29 or spent a disproportionately small amount of time with her. Witness #5 observed that [redacted] barely spoke to Witness #29, even though she was part of his team. Witness #29 testified that [redacted] visited Witness #25's cubicle daily whereas he had only sat down in her cubicle once in five years. The disparate way that [redacted] treated Witness #29 and Witness #25 was characterized as "obvious" by two witnesses.

(U//~~FOUO~~) This perception was echoed in the IG's survey results. One respondent wrote, "The [redacted] goes around the office and greets everyone in the morning. Some of us get a simple "good morning" and nothing further. For others, he steps into their cube and whispers and giggles for ½ hour or longer…it becomes very clear who he does and does not like."

(U//~~FOUO~~) **Defense for** [redacted]

(U//~~FOUO~~) Eight witnesses believed [redacted] was fair in his treatment of employees. One who defended him (#35) stated that he just "clicks better" with some individuals. Other witnesses reported that he gravitated to the higher performers in the office, which was

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reasonable. [redacted] himself denied that he showed favoritism but understood why there might be that perception. Some people came into his office more readily than others, and he did not discourage them. Witness #25 took more of his time than any other employee because she did not have a background in [redacted] had a lot of questions, and was trying to become the best [redacted] she could be. Others who visited him frequently included Witness #16 (until she stopped) and Witness #1. On the other hand, there were people who did not visit him, including Witness #29 and #12. He did not know what he was supposed to do to keep people out of his office, nor could he make others come in to talk to him.

(U//~~FOUO~~) [redacted] testified that the suggestion that he preferred young females was "ludicrous." Furthermore, if he needed something done, he knew he could count on Witnesses #25, #1, and #16 for results. He also denied side-lining Witness #29, explaining that she had disciplinary issues which were directed to [redacted] for resolution. [redacted] tried to "get along" with Witness #29.

(b)(3)-P.L. 86-36
(b)(6)

(b)(3)-P.L. 86-36

(U) Analysis and Conclusions

(U//~~FOUO~~) The OIG examined whether or not [redacted] respected and adhered to the principles of ethical conduct. Specifically, 5 CFR §2635.101(b)(8) and NSA/CSS PMM 366, 1-3G state that employees shall act impartially and not give preferential treatment to any individual. 5 CFR §2635.101(b)(14) states that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part.

(U//~~FOUO~~) The OIG had insufficient data to make a statistically significant analysis of the personnel actions taken by [redacted]. Therefore, we could not determine with reliability whether he rewarded (through promotions, bonuses and awards) certain individuals based upon personal biases and thus could not substantiate whether he violated 5 CFR §2635.101(b)(8) or NSA/CSS PMM 366 Section 1-3G by treating individuals impartially with regard to these types of actions..

(U//~~FOUO~~) However, the CFR also requires that employees not "create the appearance" of having violated ethical standards pertaining to impartiality. This standard is particularly important for supervisors, who are in the unique position of being able to take actions that can directly and indirectly affect employees' long-term promotion opportunity, bonuses, and other remuneration. In an MSPB decision, the courts found that "supervisory personnel, who set an example for the type of conduct expected not only for Federal employees but by the public as well, are held to a higher standard of conduct."[10]

[10] (U//~~FOUO~~) See *Martin v. Department of Transportation*, 103 M.S.P.R 153103 (2006).

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(U//~~FOUO~~) The evidence overwhelmingly shows that [redacted] created at least the appearance of preferential treatment. Of the 36 witnesses interviewed, 26 (70%) described [redacted] as having "favorites" in the office, twelve witnesses (33%) claimed that he preferred young females and 25 witnesses (69%) identified his most preferred employee by name. Even [redacted] himself testified that he could see why the perception exists.

(U//~~FOUO~~) [redacted], as well as numerous other witnesses, testified that Witness #25 got more of his attention than any other person. Many witnesses commented on the unique relationship and access that she had to her supervisor. Thus, a reasonable person with knowledge of the relevant facts could conclude that his preference afforded her an unfair advantage. In fact, many witnesses *believed* that [redacted] favorites were rewarded with better projects, which led to bonuses and promotions.[11] A reasonable belief of preferential treatment is all that is required to demonstrate violation of the standard.

(U//~~FOUO~~) [redacted] denied having anything to do with this perception of favoritism. He saw no link between his actions and how he was perceived. For instance, he claimed the disparate amount of time he spent with certain employees was completely beyond his control – even when he was their supervisor. He claimed that those who spent more time with him were in need of additional help. However, this is illogical given that he spent virtually no time at all with the purportedly problematic employee, who arguably needed the most help. In fact, 10 witnesses claimed that [redacted] actively disliked the employee and thus, avoided her. Furthermore, witness testimony indicated that the majority of time spent with his favorites was engaged in gossip and banter. Thus, the preponderance of the evidence supports the conclusion that [redacted] created the appearance of violating ethical standards pertaining to impartiality and preferential treatment in violation of 5 CFR §2635.101 (b)(14).

(b)(3)-P.L. 86-36
(b)(6)

(U//~~FOUO~~) ALLEGATION 3: Did [redacted] misuse his access to HRMS for an inappropriate purpose in violation 5CFR 2635.702/.704 and DoD Directive 5500.07-R, Chapter 2?

(U//~~FOUO~~) CONCLUSION: *Unsubstantiated*

(U) Complaint/allegation

(U//~~FOUO~~) The OIG received an anonymous complaint dated 7 April 2016[12] that Witness #25 had misused HRMS to gain personal information about an individual [redacted] (b)(6)

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[11] (U//~~FOUO~~) Similar to the above, we did not have enough statistically significant data to substantiate whether [redacted] violated 5 CFR §2635.101(b)(8) or NSA/CSS PMM 366 Section 1-3G in how he assigned work to his employees.

[12] (U//~~FOUO~~) The letter was mailed via USPS and was received by D14 on 22 April 2016.

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her.[13] The complaint stated that Witness #25 was overheard making comments about the salary

(b) (6)

(U//~~FOUO~~) During the course of the hostile work environment inquiry, witnesses testified that was also involved in misuse of HRMS. Witness #29 observed with Witness #25, in her cubicle looking at what appeared to be employees' HRMS records. Witness #29 did not know the specific information being viewed, but was sitting "shoulder to shoulder" with Witness #25 whispering and laughing for at least one hour.

(U) Evidence

(U//~~FOUO~~) In FY15, an OIG (Witnesses #25, #28, #22, and #26) initiated the copy of HRMS, as opposed to giving them access to the live database system. Although he was not granted access to the role. The " role" was inclusive for and enabled the to query and see HR information, excluding performance appraisals, on all employees.[14] The provided a briefing on the basic navigation of the system. However, the was not provided with terms or conditions for use nor did they sign any user agreements. The " role" in HRMS is actually a snapshot of the current database,

(U//~~FOUO~~) , who was not granted access to the role in HRMS, denied using HRMS inappropriately and denied using Witness #25's access to the role to look at information that was not related to the He denied any involvement in the incident when Witness #25 allegedly looked up personal information of

(b) (3)-P.L. 86-36
(b) (6)

(b) (3)-P.L. 86-36

(U//~~FOUO~~) Witness #25 testified that in approximately March 2016, in order to "test" HRMS, gave her consent to look at a job vacancy at NSA-Hawaii he had applied for in the fall of 2015. Witness #25 wanted to see the different types of information she could access with the role in HRMS. Witness #25 specifically mentioned that she looked at the interviewer notes section of job application. According to Witness #25, knew that he had not been selected for this vacancy when she accessed the information. Email records indicate that was notified of his non-selection in October 2015.

(U//~~FOUO~~) denied Witness #25's version of events. He testified that in approximately September 2015, prior to the initiation of and prior to the team obtaining

[13] (U//~~FOUO~~) Allegations concerning misconduct by Witness #25 are addressed in a separate report.
[14] (U//~~FOUO~~) All employees can view their own personnel information in HRMS and supervisors can view that of their subordinates.

the specialized [redacted] role" in December 2015, he asked Witness #25 to look up the status of a vacancy he had applied for at NSA Hawaii. [redacted] stated that he wanted to check to see if he was selected for the position and knew that Witness #25 could help him find the information. [redacted] claimed that he did not know the status of the job application when he asked Witness #25 to look at the data and he denied looking at the interview notes. He further claimed that Witness #25 told him that she could not see anything regarding his job application in the database.

(U//~~FOUO~~) Following is a timeline of events:
September 2015 – [redacted] claimed to ask Witness #25 to check the status of his application for a job in Hawaii
October 2015 – HR notified [redacted] of his non-selection for the position in Hawaii
December 2015 – [redacted] team obtained [redacted] role in HRMS
March 2016 – Witness #25 claimed that [redacted] gave her permission, using her [redacted] view, to look at the interviewer notes in his job application.

(b) (3)-P.L. 86-36

(b) (3)-P.L. 86-36
(b) (6)

(U) Analysis and Conclusions

(U//~~FOUO~~) 5 CFR §2635.702 states that "An employee shall not use his public office for his own private gain…" 5 CFR §2635.704 states "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." The preponderance of the evidence does not support that [redacted] used his position for personal gain or misused government resources for non-official purposes.

(U//~~FOUO~~) The investigation established that there were no audit logs available for the [redacted] role access to HRMS. Due to these audit capability limitations, the OIG could not definitively determine what information was accessed and what pages were viewed by the [redacted] team. Furthermore, such logs would have been of limited utility as [redacted] did not personally have access to the [redacted] role. To access the [redacted] role of HRMS, he would have had to use the permissions of another [redacted] on the [redacted] team.

(U//~~FOUO~~) Thus, without any physical evidence, the OIG had to rely upon testimony. Those who claimed that [redacted] misused HRMS were unable to say what he had looked at and whether or not it was related to the [redacted] As manager of [redacted] he may have a valid reason to confer with Witness #25 about the information contained in the database. Furthermore, [redacted] testified that he did not ask Witness #25 to look up anything unrelated to [redacted]

(U//~~FOUO~~) [redacted] and Witness #25 provided conflicting accounts of [redacted] actions surrounding a possible request from [redacted] to look up his personal information in HRMS. With two conflicting accounts and no supplemental evidence, we were unable to demonstrate a preponderance of the evidence. Even if Witness #25's account was accurate, at

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most [redacted] would have obtained slightly more information about a job application he already knew had been rejected. Thus, even if true, it was not a compelling case of private gain.

(U//~~FOUO~~) The preponderance of the evidence does not support that [redacted] used his position for personal gain or misused government resources for non-official purposes in violation of 5 CFR §2635.702 or §2635.704.

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(b)(6)

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IV. (U) RESPONSE TO TENTATIVE CONCLUSION(S)

(U//~~FOUO~~) On 8 August 2016 the OIG sent [redacted] the tentative conclusion reached in the investigation (Appendix C). In its 6 September 2016 response, [redacted] attorney, [redacted] rejected the OIG's findings. They provided no new information that required additional investigation nor did their claims warrant any changes in our report.

(U//~~FOUO~~) However, in response to the complaint that the NSA OIG failed to recuse/refer this investigation and failed to maintain the appearance of impartiality and independence in this matter, the following supplemental information is provided for context. The NSA OIG conducted a preliminary inquiry into the allegations that [redacted] repeatedly acted in an inappropriate fashion in the workplace. When the decision was made to open an investigation, the NSA IG contacted seven different IGs and requested they conduct the investigation. All declined. Given the unusual nature of the NSA OIG investigating its own personnel, D14 took several measures to ensure objectivity, including assigning investigative personnel who had no personal or professional relationship with [redacted] or the personnel in [redacted]. Additionally, D14 requested and received an external independent review of its report by an external statutory OIG. The DIA OIG Counsel and Assistant Inspector General for Investigations concurred with our findings and legal opinion (Appendix B). The IG informed the Chairman of the Council of the Inspectors General on Integrity and Efficiency of the situation and the extra measures taken to ensure the investigation was conducted independently.

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(U//~~FOUO~~) The [redacted] response submitted on behalf of [redacted] can be found in Appendix D.

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(b) (6)

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V. (U) CONCLUSION

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that [redacted]:

- (U//~~FOUO~~) Engaged in conduct that created a hostile work environment in violation of NSA/CSS PMM, Chapter 366, Section 2-1A and NSA/CSS Policy 1-37, Annex D; and
- (U//~~FOUO~~) Created the appearance of violating ethical standards governing impartiality and preferential treatment in violation 5 CFR §2635.101 (b)(14).

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(b)(6)

(U//~~FOUO~~) The preponderance of the evidence does not support that [redacted] used his position for personal gain or misused government resources for non-official purposes in violation of 5 CFR §2635.702 or §2635.704.

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VI. (U) DISTRIBUTION OF RESULTS

(U//~~FOUO~~) A copy of the NSA/CSS OIG report will be forwarded to the Inspector General for information and any action deemed appropriate. Also, a summary of the findings will be forwarded to Security and Counterintelligence, Special Actions (A5242) and [redacted] supervisor.

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(b) (6)

[redacted]
Senior Investigator

Concurred by:

[redacted]
Assistant Inspector General
for
Investigations

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APPENDIX A

(U) Applicable Authorities

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APPLICABLE AUTHORITIES

- (U//~~FOUO~~) NSA/CSS PMM, Chapter 366, Personal Conduct, Section 2, Personnel and Security Standards, 2-1 Work Environment.

  (U//~~FOUO~~) Employees will not engage in any conduct that creates a hostile work environment and/or interferes with an individual's work performance.

  A. (U//~~FOUO~~) Harassment/Intimidation – Employees will not use actions or words that denigrate or show hostility toward an individual for any reason, but especially because of race, color, religion, gender, national origin, age, or disability. Likewise, employees will not use abusive or offensive language, gestures, or other conduct (e.g. display of offensive writings, objects or pictures) directed against other employees that could affect the individual's work performance or impact the work environment.

- (U//~~FOUO~~) NSA/CSS Policy 1-37, Annex D: Prohibition of Harassment.

  1. (U//~~FOUO~~) NSA/CSS shall maintain a work environment free of conduct that interferes with another's individual performance or that creates an intimidating, hostile, or offensive environment. All NSA/CSS personnel are responsible for ensuring a harassment-free workplace.

- (U) 5 CFR, § 2635.101 (a and b), Basic Obligation of Public Service, General Provisions

  (a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

  (b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

  … (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

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... (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

- (U//~~FOUO~~) NSA/CSS PMM, Chapter 366, Personal Conduct, Section 1, General Principles For On-The-Job Conduct, 1-3.

(U//~~FOUO~~) Generally, every employee is expected to:

G. Act impartially and not give preferential treatment to any private organization or individual.

- 5 Code of Federal Regulations (CFR), Part 2635- Standards of Ethical Conduct for Employees of the Executive Branch, Subpart G- Misuse of Position

...§2635.702, Use of public office for private gain.

An employee shall not use his public office for his own private gain, for the endorsement of any product, service, or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply to this general standard, but are not intended to be exclusive or to limit the application of this section.

- 5 Code of Federal Regulations (CFR), Part 2635-Standards of Ethical Conduct for Employees of the Executive Branch, Subpart G-Misuse of Position

...§2635.704, Use of Government property.

(a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) Definitions. For purposes of this section:

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(1) Government property.... The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing, and reproduction facilities, Government records, and Government vehicles.

(2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

- (U) The Joint Ethics Regulation (JER), DoD Directive 5500.07-R, Chapter 2: Standards of Ethical Conduct

...Section 3. DoD Guidance

2-301. *Use of Federal Government Resources.*

a. Communication Systems. Federal Government communication systems and equipment (including Government owned telephones, facsimile machines, electronic mail, internet systems, and commercial systems when use is paid for by the Federal Government) shall be for official use and authorized purposes only...

b. Other Federal Government Resources.... Federal Government resources, including personnel, equipment, and property, shall be used by DoD employees for official purposes only....

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APPENDIX B

(U//~~FOUO~~) Independent Review Conducted by DIA OIG

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NSA15431

From: [redacted]
To:
Cc:
Subject: FW: (U) ROI FOR REVIEW (Update)
Date: Thursday, August 04, 2016 3:32:31 PM

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

FYI.

[redacted]

[redacted]
Deputy Inspector General (Acting)
Assistant Inspector General for Investigations
National Security Agency/Central Security Service
963-0921 (s)

From: [redacted]
Sent: Thursday, August 04, 2016 2:49 PM
To: [redacted]
Cc: [redacted]
Subject: RE: (U) ROI FOR REVIEW (Update)

Classification: UNCLASSIFIED//~~FOUO~~

[redacted]

[redacted] and I completed the Internal Investigation's review. Our review resulted in concurrence with your investigative findings and legal opinion.

Please advise if you have additional questions/concerns.

Regards,

[redacted]
Assistant Inspector General for Investigations
Office of the Inspector General
Defense Intelligence Agency
[redacted]

(b) (6)

(b) (3)-P.L. 86-36

U) INSPECTOR GENERAL SENSITIVE INFORMATION - FOR OFFICIAL USE ONLY: The information contained in this e-mail and any accompanying attachments may contain Inspector General sensitive information, which is protected from mandatory

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From:
Sent: Tuesday, August 02, 2016 11:50 AM
To:
Subject: RE: (U) ROI FOR REVIEW (Update)

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Classification: UNCLASSIFIED/~~FOUO~~

Good morning/afternoon

(b)(3)-P.L. 86-36

I hope all is well. I have completed my review of your internal investigation. Our is reviewing as well and I hope to have it completed by COB today.

Talk soon.

Regards,

Assistant Inspector General for Investigations
Office of the Inspector General
Defense Intelligence Agency

U) INSPECTOR GENERAL SENSITIVE INFORMATION - FOR OFFICIAL USE ONLY: The information contained in this e-mail and any accompanying attachments may contain Inspector General sensitive information, which is protected from mandatory disclosure under the Freedom of Information Act (FOIA), 5 USC 552. It should not be released to unauthorized persons. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is prohibited. If you received this e-mail in error, please notify us immediately by return e-mail or by calling

(b) (6)

From:
Sent: Friday, July 22, 2016 1:55 PM
To:
Cc:
Subject: (U) ROI FOR REVIEW

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I hope all is well. It's been a few weeks since we talked about this, but attached is the draft ROI that we discussed. Request an independent review from your office to ensure that, in your opinion, the ROI meets appropriate standards for an investigation. As you know, we would have preferred to not do the investigation, but we had no choice – we believe we conducted a thorough, complete, fair, and objective investigation, but welcome your input. This ROI has been reviewed through me, as well as our Counsel. In our normal process, the next step would be to present "tentative conclusions" to the subject; we will not do that until we have input from you and reviewed any concerns you have with the report.

I have also attached the two authorities that are NSA specific. Both and I will be on leave next week, but one of the two investigators assigned to this case, will be here. is cc'd on this email, and can also be reached at or 963-0947(s). Please let her know what questions you have, or if there is any evidence you'd like to review, MOIs, etc – anything you need she will get for you.

Thank you so much for your assistance.

(b) (3)-P.L. 86-36

Deputy Inspector General (Acting)
Assistant Inspector General for Investigations
National Security Agency/Central Security Service
Room Suite 6247
Fort Meade, Maryland 20755-6247
963 - 0921s

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APPENDIX C

(U//~~FOUO~~) Tentative Conclusions Provided to [redacted]

8 August 2016

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(b)(6)

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INSPECTOR GENERAL SENSITIVE INFORMATION: *This document is intended only for authorized recipients. This document may contain information that is confidential, sensitive, and/or protected by Federal law, including the Privacy Act of 1974, as amended.*

[redacted]

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(U//~~FOUO~~) We have completed the field work associated with our investigation into allegations that you created a hostile work environment and created the appearance of violating ethical standards governing preferential treatment.

(U//~~FOUO~~) Prior to finalizing the Report of Investigation, we are notifying you of our tentative conclusions and extending an opportunity for you to provide a response. We include this step in our investigative process to ensure that subjects are afforded the opportunity to review our findings and reply with any mitigation, facts, information, or evidence that might not have been considered in reaching our conclusion.

(U//~~FOUO~~) Please take the following actions:

1. (U//~~FOUO~~) Immediately confirm receipt of this email.
2. (U//~~FOUO~~) Although you are not required to provide any input, if you choose to do so, please provide your input by 22 August 2016. Your reply can be in the form of an email, memo, or any format you choose. Please provide as much detail as possible, including dates, facts, names, and supporting documentation.
3. (U//~~FOUO~~) If you choose not to provide any input, please let us know that as soon as practicable, but no later than 22 August 2016.

(U//~~FOUO~~) The preponderance of the evidence supports the conclusion that you:

- (U//~~FOUO~~) Engaged in conduct that created a hostile work environment in violation of NSA/CSS PMM, Chapter 366, Section 2-1A and NSA/CSS Policy 1-37, Annex D; and
- (U//~~FOUO~~) Created the appearance of violating ethical standards governing impartiality and preferential treatment in violation 5 CFR §2635.101 (b)(14).

HOSTILE WORK ENVIRONMENT:

(U//~~FOUO~~) The NSA/CSS PMM, Chapter 366, §2-1 prohibits employees from engaging in "any conduct that creates a hostile work environment and/or interferes with an individual's work performance." Included in the list of behaviors that constitute a hostile work environment are harassment, intimidation, sexual harassment, and violence. Chapter 366, §2-1A directs that employees may not use "actions or words that denigrate or show hostility toward an individual for any reason.... Likewise, employees will not use abusive or offensive language, gestures, or other conduct...directed against other employees that could affect the individual's work

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performance or impact the work environment." Similarly, NSA/CSS Policy 1-37, Annex D: Prohibition of Harassment, requires NSA to maintain a work environment free of conduct that interferes with another's individual performance or that creates an intimidating, hostile, or offensive environment.

(U//~~FOUO~~) In order to substantiate a hostile work environment claim, the conduct must be sufficiently severe or pervasive to adversely impact the work environment. Although your behavior did not constitute violence or sexual harassment, your offensive comments and intimidating behavior were so pervasive that it was observed by numerous witnesses over a period of years.

(U//~~FOUO~~) Nineteen of the witnesses interviewed (53%) reported hearing you make offensive comments in the workplace. Some of those comments were so offensive to the listener that two people reported crying. Other witnesses reported that your inappropriate comments were so frequent that they became desensitized. Two witnesses testified that you yelled at them in the office and five reported feeling intimidated or scared. You established a pattern of abusive behavior that continued unabated for years.

(U//~~FOUO~~) The OIG did not find your denials that you made offensive comments or raised your voice to be credible. First, those who testified about specific incidents in which you made an offensive comment usually did so with sufficient detail to be credible (e.g., the [redacted] comment, the comment about [redacted]. Second, several witnesses corroborated this testimony (i.e., those who overheard [redacted] comments made to an employee). Finally, the similarities in the testimonies of the witnesses established a pattern of behavior that was consistent and thus, credible. You admitted to being "curt" with two employees and making one [redacted] comment to an employee. Although many witnesses testified that you behaved professionally around them, their lack of knowledge of how you treated other individuals in other contexts does not negate the likelihood that these events took place.

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(U//~~FOUO~~) Another element to substantiate a hostile work environment claim is the impact upon the workplace. Sixteen (44%) of the witnesses interviewed described working with you as uncomfortable, unpleasant, or creepy. Employees described you as a "jerk," "creepy," and a "bully." One witness stated, "It felt like a hostile work environment." Another witness stated that you "killed my spirit," and yet another witness stated it was hard to go to work every day because of you. Witnesses felt like they were "always in trouble" or "walking on eggshells" in [redacted] One witness described your management style as "subtle intimidation." There was a fear of retaliation, and people were intimidated to speak to you because they did not know how you would react.

(U//~~FOUO~~) The strongest evidence of your impact on the work environment is the people who left because of your treatment. Six witnesses left [redacted] because of the treatment they received from you. Three additional witnesses left [redacted] in part because of you. Eleven witnesses currently work in [redacted] but do not want to work for you again in the future. Only eleven witnesses testified they enjoyed working with you in [redacted] and would work with or for you again in the future.

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(U//~~FOUO~~) During your interview with the OIG, your response to the allegations was surprise and denial. You claimed to have no idea that people avoided speaking to you or left the organization because of you. You also claimed that no one had ever confronted you about your conduct. Furthermore, you did not believe you had created a hostile work environment. The OIG did not find your assertions credible. Five witnesses testified that you changed how you treated them after negative interactions with you. Three of the witnesses testified that they told you that comments you made were inappropriate. They claimed you responded with comments such as "… I can't joke with certain people…" or "I have to be careful what I say around you…." or you just quit speaking to people. Based on these facts, the OIG concluded that you were well aware of the inappropriateness of your conduct and, despite this awareness, made little effort to alter your behavior.

(U//~~FOUO~~) The evidence of your offensive comments and intimidating behavior is overwhelming. The sheer volume of complaints and the numbers of people who departed because of you, demonstrates the pervasiveness of your hostile conduct. Evidence shows that the conduct has occurred since prior to you first becoming a supervisor in 2010 and continued until the time of this investigation. The fact that you are a supervisor and an employee of the OIG makes your behavior particularly egregious. The preponderance of the evidence supports the conclusion that you engaged in conduct that created a hostile work environment in violation of NSA/CSS PMM, Chapter 366, Section 2-1A and NSA/CSS Policy 1-37, Annex D.

APPEARANCE OF PREFERENTIAL TREATMENT:

(U//~~FOUO~~) The OIG examined whether or not you respected and adhered to the principles of ethical conduct. Specifically, 5 CFR §2635.101(b)(8) and NSA/CSS PMM 366, 1-3G state that employees shall act impartially and not give preferential treatment to any individual. 5 CFR §2635.101(b)(14) states that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part.

(U//~~FOUO~~) The OIG had insufficient data to make a statistically significant analysis of the personnel actions taken by you. Therefore, we could not determine with reliability whether you rewarded (through promotions, bonuses and awards) certain individuals based upon personal biases and thus could not substantiate whether you violated 5 CFR §2635.101(b)(8) or NSA/CSS PMM 366 Section 1-3G by treating individuals impartially with regard to these types of actions.

(U//~~FOUO~~) However, the CFR also requires that employees not "create the appearance" of having violated ethical standards pertaining to impartiality. This standard is particularly important for supervisors, who are in the unique position of being able to take actions that can directly and indirectly affect employees' long-term promotion opportunity, bonuses, and other remuneration. In an MSPB decision, the courts found that "supervisory personnel, who set an example for the type of conduct expected not only for Federal employees but by the public as well, are held to a higher standard of conduct."[1]

[1] (U//~~FOUO~~) See *Martin v. Department of Transportation*, 103 M.S.P.R 153103 (2006).

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(U//~~FOUO~~) The evidence overwhelmingly shows that you created at least the appearance of preferential treatment. Of the 36 witnesses interviewed, 26 (70%) described you as having "favorites" in the office, twelve witnesses (33%) claimed that you preferred young females and 25 witnesses (69%) identified your most preferred employee by name. Even you testified that you could see why the perception exists.

(U//~~FOUO~~) You, as well as numerous other witnesses, testified that one specific employee got more of your attention than any other person. Many witnesses commented on the unique relationship and access that the employee had to you, the employee's supervisor. Thus, a reasonable person with knowledge of the relevant facts could conclude that your preference afforded the employee an unfair advantage. In fact, many witnesses *believed* that your favorites were rewarded with better projects, which led to bonuses and promotions.[2] A reasonable belief of preferential treatment is all that is required to demonstrate a violation of the standard.

(U//~~FOUO~~) You denied having anything to do with this perception of favoritism. You saw no link between your actions and how you were perceived. For instance, you claimed the disparate amount of time you spent with certain employees was completely beyond your control – even when you were their supervisor. You claimed that those who spent more time with you were in need of additional help. However, this is illogical given that you spent virtually no time at all with the purportedly problematic employee, who arguably needed the most help. In fact, 10 witnesses claimed that you actively disliked the employee and thus, avoided that particular employee. Furthermore, witness testimony indicated that the majority of time spent with your favorites was engaged in gossip and banter. Thus, the preponderance of the evidence supports the conclusion that you created the appearance of violating ethical standards pertaining to impartiality and preferential treatment in violation of 5 CFR §2635.101 (b)(14).

OTHER MATTER:

(U//~~FOUO~~) We did not substantiate the allegation that you used HRMS for non-official purposes.

[2] (U//~~FOUO~~) Similar to the above, we did not have enough statistically significant data to substantiate whether you violated 5 CFR §2635.101(b)(8) or NSA/CSS PMM 366 Section 1-3G in how you assigned work to your employees.

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APPENDIX D

(U) [redacted] Response to Tentative Conclusions

6 September 2016

(b) (6)

[redacted]

VIA ELECTRONIC MAIL TO: [redacted] (b) (6)

September 6, 2016

[redacted] (b) (3)-P.L. 86-36
Senior Investigator
Office of Investigations
Office of the Inspector General
National Security Agency
[redacted] Suite 6247

Re: [redacted]
Case No. IV-16-0025
Objections and Request for Corrections/Clarification to Tentative Conclusions

Dear [redacted]

Please be advised that this firm represents [redacted] National Security Agency (hereinafter referred as "NSA" or the "Agency"), on the NSA Office of the Inspector General's ("OIG's") investigation in the above-referenced matter. To that end, please find enclosed herewith a copy of a Power of Attorney, which includes a Privacy Act waiver and has been executed in favor of this firm by [redacted] *See* Power of Attorney, Enclosure ("Enc.") 1 hereto. Accordingly, as [redacted] is a represented party in this matter, all future communications and correspondence in this matter should be directed to the undersigned, with a copy to [redacted] (b) (3)-P.L. 86-36 (b) (6)

I. INTRODUCTION

The purpose of this correspondence is to lodge our client's initial objections to the *Tentative Conclusions* (the "TC"), as well as to request certain corrections and clarifications be made thereto, following the inspection opportunity provided to [redacted] and the undersigned in August 2016. *See* Tentative Conclusions, Enc. 2 hereto.

II. GENERAL OBJECTIONS

The instant initial response is subject to the following general, preliminary objections:

A. Conflict of Interest/Recusal

First, and most significantly, we raise grave concerns over this Office's failure to recuse itself from this investigation despite a conflict of interest. [redacted] is a Federal

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whistleblower who – well prior to the initiation of the instant matter --[redacted] the Inspector General, George Ellard, PhD ("Ellard"), [redacted] respectively. Further, we contend that this investigation is, *inter alia*, direct retaliation with a close temporal connection not only to [redacted] protected disclosures and speech, but to Ellard's compelled response to that complaint. NSA OIG's failure to recuse itself from this investigation is an egregious affront to the principles of independence, fairness, and impartiality and objectivity required by law, policy, and regulation, effectively compromising the integrity of this investigation. Because an objective internal investigation of the allegations against [redacted] is not feasible and/or may not appear to be objective, this matter should have been referred to an unbiased Inspector General and/or to the Integrity Committee under Section 11 of the Inspector General Act of 1978.

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Here, a multiplicity of provable facts establishes not only that a conflict of interest exists, but NSA OIG's notice of the problem. For example, Ellard initially acknowledged the existence of a conflict when informing [redacted] on or about April 12, 2016 that another investigatory organization would conduct the investigation. We are well aware that NSA OIG initially at least contemplated referral of this matter to the Defense Information Systems Agency ("DISA") OIG. NSA OIG's failure to follow through on a recusal/referral is an inexcusable error.

The integrity of this investigation is compromised, in actuality and/or appearance, by NSA OIG's failure to recuse itself. As addressed in more detail below, *infra*, at 4-5, 7-10, there are significant deficiencies in the investigation. The irony here cannot be lost: this investigation cites [redacted] for violating ethical standards under 5 C.F.R. § 2635.101(b)(14) all the while disregarding the apparent conflict of interest created by this investigation. *See* TC, Enc. 2 hereto at 1. Simply put, the NSA OIG has failed to maintain the appearance of impartiality and independence in this matter. Consequently, we strongly invite NSA OIG to terminate this investigation and to rescind and expunge the TC, as well as all records related thereto, and immediately refer this matter outside of NSA OIG for a separate, independent review. Any other result is suspect and subject to vigorous challenge.

B. Limited Inspection Opportunity

Second, we note that because our inspection opportunity was limited to the TC, and did not extend to any audio or video recordings, reports, witness statements, and/or other documents referenced therein, there may be other factual inaccuracies, misstatements and/or other objectionable material we are now unable to address. We do not concede the completeness of this initial response and expressly reserve the right to raise additional objections, corrections and clarifications upon our receipt and review of the complete investigative file.

C. Reservation of Rights

Third, we understand this response is not a final opportunity to address the OIG's substantive findings. We therefore expressly reserve the right to respond to any and all findings OIG substantiated during its investigation. Furthermore, we assert [redacted] right to

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procedural due process under the Constitution of the United States, including without limitation his right to view all evidence relied upon, as well as to respond orally and/or in writing to any proposed adverse action.

III. RESPONSE TO TENTATIVE CONCLUSIONS

Subject to the foregoing general objections, we respond as follows to the TC as follows:

A. Hostile Work Environment

The first allegation identified by NSA OIG is whether [redacted] "[e]ngaged in conduct that created a hostile work environment in violation of NSA/CSS PMM, Chpater 366, Section 2-1A and NSA/CSS Policy 1-37, Annex D." *See* TC, Enc. 2 hereto at 1. The TC states in relevant part that a preponderance of the evidence supports an affirmative conclusion on this allegation. *Id.* In support of this conclusion, the TC identifies several factors: (a) the alleged pervasiveness of the conduct; (b) witness credibility; (c) workplace impact; and (d) employee departures. *Id.* at 1-2. Each of these factors is addressed in turn immediately below.

1. Pervasiveness

The TC's ***first factor*** asserts [redacted] engaged in "offensive comments and intimidating behavior so pervasive that it was observed by numerous witnesses over a period of years." *Id.* at 2. Further, the TC states that "two people reported crying," "other witnesses" became "desensitized," two other witnesses testified that he "yelled at them in the office," and "five reported feeling intimidated or scared." *Id.* The TC then concludes [redacted] engaged in abusive behavior "for years." *Id.*

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In order to substantiate a charge of hostile work environment harassment, the Agency must show that the conduct in question is so severe and pervasive that it altered the material conditions of another's employment and adversely impacted the work environment by a preponderant standard. *See Pope v. U.S. Postal Serv.*, 114 F.3d 1144 (Fed. Cir. 1997). Preponderance of the evidence is defined as the 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* 5 C.F.R. § 1201.56(c)(2).

a. Lack of Specificity

Significantly here, the TC is so lacking in specificity that [redacted] is deprived of the opportunity to present any meaningful rebuttal. Indeed, the TC focuses more on the subjective ***reactions*** of unidentified individuals than on the alleged acts or omissions themselves. *See* TC, Enc. 2 hereto at 2-3. While concluding that the conduct was "so pervasive," the TC offers not a single date, time, place, person, or event to support its "pervasiveness" conclusion. That [redacted] would be asked to, in his reply, "provide as much detail as possible, including dates,

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facts, names and supporting documentation," *see id.* at 1, when ***not a single detail*** has been provided to him, is inconceivable. This is especially the case where it appears that 36 individuals – a number well above his assigned 14-15 staff – were interviewed. *See id.* at 4. This reply opportunity is, therefore, not a meaningful one and an apparent exercise in futility.

A further dissection of the report reveals that the only identifiable information is that two, unnamed people claimed that [redacted] "yelled at them in the office," and he is accused of commenting about [redacted] *Id.* at 2. It is unclear what [redacted] even stands for, as this is a common acronym referencing anything from [redacted] Since the Agency has provided no further detail, it is unclear why any of these comments would be deemed "offensive." Notwithstanding, [redacted] recalls a situation that may be referenced here, as well as the discussions about the [redacted] which were unique events.

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To be clear, [redacted] was not in the habit of yelling at his employees, although he at times addressed them directly, succinctly and/or pointedly as necessary to provide supervisory oversight and carry out the unit's assigned mission. One such example occurred with a former subordinate, [redacted] GS-13, in or around November 2015. As background, [redacted] had hired [redacted] position. The passage of time revealed [redacted] to be a mediocre performer who was known to "goof off" on the job and solicit the assistance of lower-graded employees (including GS-09s) on his work. During the incident [redacted] recalls, he was in the vicinity of [redacted] workstation and observed him watching a video news report on the internet. [redacted] asked [redacted] the status of a [redacted] report that was due to the Inspector General that day. [redacted] responded, nonchalantly, that he "will get to it tomorrow" or words of similar effect. In response, [redacted] told him, emphatically, that the assignment "needs to get due today." [redacted] tone and gesture conveyed the seriousness of the matter.

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[redacted] recalls around November 2015, [redacted] an employee from another division shared that [redacted] responded that he was impressed and he personally [redacted] He joked that [redacted]

Regarding the [redacted] it appears that someone related a conversation between [redacted] (a former direct report from roughly 2010 to 2014) and [redacted] and [redacted] were discussing a joke made by a popular television female daytime television show personality (*i.e., The Ellen Show*). [redacted] was a participant in the conversation and took no known offense to it. Ironically, while citing this event as evidence of [redacted] offensive conduct, reportedly NSA OIG has ***not interviewed*** [redacted] the only other party

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to the conversation. This omission is remarkable as it evidences the selective corralling of witnesses) by NSA OIG. Excluding from investigation such an obvious witness as [redacted] – who is expected to be a favorable witness for [redacted] – indicates the NSA OIG cherry-picked the witnesses, then relied about the biased totals/percentages to justify its meet its findings. NSA OIG's exclusion of a key, relevant and favorable witness only highlights its inability to conduct a fair, unbiased, and independent investigation in this matter. A review of these incidents indicates he did not commit any misconduct at least for two of the three incidents identified in support of the Agency's "pervasive harassment" conclusion.

The final evidentiary point cited in the TC in support of its pervasiveness conclusion pertains to [redacted] interviews with the OIG. The accurately reflects that [redacted] acknowledged being "curt" on 1-2 times; however, brusqueness falls far short of harassing conduct. The TC also mischaracterizes [redacted] answers to suggest that he made an offensive [redacted] comment" to an employee; [redacted] denies that he made a [redacted] comment; as explained during his interview, he acknowledges he said to [redacted] (b)(6) [redacted] It was in this context that [redacted] made a good-natured statement about [redacted] That could not be more normal. There is a clear difference between joking about an [redacted] It is not offensive, particularly when the person to whom the comment was directed was expressly not offended. Accordingly, the TC misconstrues these events to suggest that [redacted] made an inappropriate statement; this statement should be stricken from the report or otherwise revised to capture proper context.

b. [redacted] **Well-Documented Record**

The existence of a pervasive hostile work environment is also contradicted by [redacted] 26-year unblemished, well-document favorable work record. More specifically, [redacted] has honorably served the Federal Government for 26 years without being subject to disciplinary action or even a negative performance review. Specifically, it should be noted at the outset that [redacted] (b)(3)-P.L. 86-36 (b)(6) 's competency, work ethic, or ability to fully and efficiently perform his position to the Agency's benefit has never heretofore been called into question. From 2011 through the present date, [redacted] has received overall "Excellent" ratings in his Manager Evaluations by [redacted] See Performance Records, Enc. 3 hereto.

A review of [redacted] most recent evaluation period provides a picture of his management ability, skill in his position, and adeptness with his staff. During that period [redacted] completed no less than [redacted] which complied with [redacted] and OIG policies. See *Id.* Importantly, it is noted by [redacted] that [redacted] accomplished this feat by, *inter alia*, providing proper feedback to

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those under his charge and coaching his employee's notes. Additionally, [redacted] worked with AIG to develop personnel assignments to maximize productivity and the proper application of skills within his team. He has continually spurred his team to produce [redacted] of a high caliber, with two of those that he oversaw in 2016 being nominated for awards. In or about April of 2016, [redacted] successfully worked a detail with [redacted] wherein he was tasked with the [redacted] within that Agency. He also contributed in a proficient manner to the [redacted] and excelled at the detail's unique political requirements.

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During all rating periods from 2011 to present, [redacted] has been specifically praised for his ability to interact with his peers and subordinates in a positive manner. In his year-end rating for 2015, it is noted that [redacted] has shown the skills necessary to overcome challenges in the workplace by engaging with his employees and keeping his management aware of potential issues. *See id.* In each and every year from 2011 continuing through present, [redacted] has received "Excellent" ratings regarding his management ability. Similarly, he has received "Successful" ratings in the category of Leadership and Integrity for 2011 and 2012, and "Excellent" ratings in that category for each year thereafter. *Id.*

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In direct contrast to the instant charges, both [redacted] leadership and interaction with his staff have long been lauded by the Agency and the Federal Government. Prior to the instant Report, no allegation had ever been made against him regarding any impropriety or offensive behavior in 26 years. Rather, [redacted] was regarded as someone who provided his staff with increased opportunities for success, allowing them to participate in peer reviews, joint inspections, and special studies. *See id.* He has kept his team focused in turbulent times, and has been recognized for the leadership he has displayed in working through challenges. *See id.* Further, he has developed employee dialogue and provided each individual with feedback at all relevant times herein, discussing their strengths and weaknesses in the workplace. *Id.* [redacted] personally met with each employee under his supervision and provided them with feedback during their mid-year review period each year. Moreover, he has shown himself to be compassionate and understanding in his supervisory role, by operating within permissible bounds to permit an employee with childcare issues to take on a new schedule which would be more conducive to her needs. He has nominated numerous individuals for promotion and awards over his tenure of federal employment, never being accused of bias or favoritism. During his most recent evaluation period alone [redacted] nominated four (4) individuals for promotion and eight (8) for awards, delineating the specific accomplishments of each. *Id.* In those nominations, he proffered individuals for Employee of the Year, OIG Team of the Year, [redacted] of the year. *Id.*

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has also fostered the development of those individuals under his supervision who are still pursuing their education. During the most recent evaluation period, went above and beyond to ensure that two (2) employees had appropriate schedules and workloads.

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In conclusion, the TC has not shown, by preponderant evidence, created or maintained a pervasive hostile work environment for Agency employees. The TC has not identified during what "period of years" the alleged harassment occurred, who he supposedly harassed, what valid acts/omissions and/or surrounding context constituted the alleged harassment (or retaliation, for that matter); instead making vague, conclusory statements and employing circular reasoning to reach its conclusions. Further, the barebones assertions stand in stark contrast to record. Therefore, on this record, the Agency is unable to meet its burden of proving the misconduct alleged against occurred as specifically alleged therein. *See Fitzgerald v. Dep't of the Army*, 61 M.S.P.R. 426, 428 (1994).

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2. **Credibility**

The ***second factor*** the TC identifies in support of its conclusion is the purported credibility of its unnamed and otherwise unidentified witnesses. *See* TC, Enc. 2 hereto at 2. The TC asserts that the witnesses offered "sufficient detail" to be credible, that there were "several witnesses" who corroborated this testimony, and that similarities in the testimony established an alleged "pattern of behavior." *See id.*

In the leading case of *Hillen v. Department of the Army*, 35 M.S.P.R. 453, 458 (1987), the U.S. Merit Systems Protection Board ("MSPB") set forth the following standard for assessing witness credibility:

> Numerous factors, which will be considered in more detail below, must be considered in making and explaining a credibility determination. These include: (1) The witness's opportunity and capacity to observe the event or act in question; (2) the witness's character; (3) any prior inconsistent statement by the witness; (4) a witness's bias, or lack of bias; (5) the contradiction of the witness's version of events by other evidence or its consistency with other evidence; (6) the inherent improbability of the witness's version of events; and (7) the witness's demeanor.

Hillen, 35 M.S.P.R. at 458. Here, yet again the TC fails to provide adequate detail to permit a meaningful response. *See* TC, Enc. 2 hereto. Without any information identifying the witnesses (or at least the details of their allegations), it is impossible to identify discrepancies, inaccuracies or half-truths in their testimony or to refute them with other documentary or testimonial evidence.

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Three (3) points are, however, worthy of consideration. First, the TC expressly acknowledges that "many witnesses testified that [redacted] behaved professionally around them." *See id.* at 2. The refutation of this harassment claim by "many" witnesses is significant, especially in light of the witness selectivity concerns raised above. To the extent these witnesses have a greater capacity to observe the events and/or lack the same biases of the complaining individuals, their denials should be afforded greater weight.

Second, to the extent the complaining witnesses are no longer agency and/or OIG employees, their responses offered during this proceeding must be compared with the responses they supplied during exit interviews the Agency conducted immediately prior to their departures.

Third, the extreme delay by the complaining witnesses in reporting these allegations is also highly suspect. The TC insinuates that the alleged hostile work environment began even before [redacted] assumed his current supervisory position, which occurred in 2010, i.e., ***six years ago.*** Prior to 2016, there were ***no allegations or complaints*** against [redacted] for harassment or retaliation. The fact that the complainants never once indicated they were uncomfortable and/or displeased with [redacted] is highly relevant to their credibility. Also, we note there may be direct evidence through email communications, witnesses and otherwise that may show the complaining individuals had a good working relationship with him; however, the NSA OIG's failure to identify them effectively ties our hands from casting further doubt on their credibility.

(b)(3)-P.L. 86-36
(b)(6)

3. Impact on Workplace

The ***third factor*** cited by the TC is the impact on the workplace. The Agency goes on to refer to [redacted] as a "jerk," "creepy," and a "bully," and similar other characterizations, without so much as a single detail regarding any actions which serve as a basis for those statements. In the same vein, the Agency asserts that witnesses provided information that he made the work environment difficult, there was a fear of retaliation, and individuals were afraid to speak with him. Again, each and every statement proffered by the Agency is unsupported by specific allegation of improper behavior.

What the record does show, however, is that [redacted] has been highly successful at driving result and providing opportunities for his employees to grow and develop. In the few examples noted above, [redacted] submitted an exception to allow an employee [redacted] he guided employees to qualify for Agency awards; and he supported the continued education goals of two employees. *See above, supra,* at 8-9. As a detailed example, [redacted] supported the educational goals of [redacted] who worked as a GS-14 until her temporary promotion to his position, writing a recommendation for [redacted]

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recently completed the program, [redacted] Despite supporting her personal educational objectives, it was made clear to [redacted] that she was gunning for his position; she has taken several inappropriate steps to undermine his authority, to include making decisions without his knowledge about the structure/content of certain reports, and other instances of overstepping (such as encouraging an employee not to follow his legitimate directives). After this investigation commenced, the Agency authorized [redacted] to "act" in his position. (b)(6)

Additionally, we have enclosed documentation that further contraindicates the complainants' claims that they worked in perpetual fear of [redacted] will send you, by separate cover, emails sent within the regular course of business that reflect employees communicating aggressively with [redacted] *e.g.*, telling him what they planned to do. These are a few of many, many communications that will demonstrate his employees were not intimidated or fearful of him or walking on proverbial eggshells.

4. Employee Departures

In the final, ***fourth factor,*** the TC claims that the "strongest evidence" of [redacted] creation of a hostile workplace is derived from the individuals who ceased their employment with the Agency or with [redacted] unit. The Agency asserts that six (6) individuals left the Agency's employ because of [redacted] treatment, three (3) left his unit for the same reason, and eleven (11) have indicated that they do not desire to work for him in the future. *See* Enc. 2 hereto at 2-3. Significantly though, many of the departing employees were subject to exit interviews prior to their separations; those exit interviews occurred, again and again, without incident. Most certainly, these individuals never informed [redacted] that he was the purported reason for their departure; upon information and belief, this is also a departure from the information provided during the exit interviews. The investigation should have compared their statements to assess consistency, and ultimately, weigh credibility. (b)(3)-P.L. 86-36 (b)(6)

B. Appearance of Preferential Treatment

The second allegation identified by NSA OIG is whether [redacted] "[c]reated the appearance of violating ethical standards governing impartiality and preferential treatment in violation of 5 CFR §2635.101 (b)(14) (sic)." *See* TC, Enc. 2 hereto at 1. The TC states in relevant part that a preponderance of the evidence supports an affirmative conclusion on this allegation. *Id.* In support of this conclusion, the TC basically asserts that favoritism was perceived by a number of witnesses, some of whom "identified [his] most preferred employee by name." *See id.* at 4.

Notably, the NSA OIG has abdicated its responsibility to conduct a fair investigation of this allegation, likely because the actual review of the bonuses paid and performance ratings

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issued by [redacted] will readily disprove the existence of favoritism. Indeed, we trust that a review will show that many of those receiving bonuses and high evaluations interfaced least with [redacted] As retention of the relevant records is mandated by law and regulation, nothing evidences the biased and retaliatory nature of this investigation more than the NSA OIG's failure to secure and rely upon personnel data on the performance reviews and bonuses paid to employees for this investigation.

[redacted] contends that a thorough review of each and every personnel action taken by him for the past five (5) years will reveal that there was no impropriety in his management, nor was there the appearance of any violation of workplace rules or regulations. [redacted] provided help and assistance to a great many of those individuals who worked under him. He, for example, helped an employee [redacted] work around her husband and children's schedule to ensure they had proper care, he wrote letters of recommendation for employees [redacted] and [redacted] and he allowed individuals who were still engaging in their studies to have flexible schedules to ensure they had the time they needed to succeed [redacted] and [redacted]. At all relevant times, [redacted] asserts the record will reflect that he gave promotions, awards, and increases solely based on documentable merit, and that he did so in a manner which was in accordance with all applicable Agency procedures and regulations. Moreover, [redacted] asserts that those individuals identified by the Agency as people who he supposedly considered his "favorites" during questioning actually received less of his attention than others. Specifically, the highest bonus paid during the relevant period was not given to any individual identified as a "favorite," nor was any promotion. Furthermore, all promotions during the relevant period were discussed with, and approved by, [redacted] first-line supervisor.

(b) (6)

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(b) (6)

The Agency also mischaracterizes [redacted] statements that he could "see why the perception exists," or words to that effect, as evidence of this charge's substantiation, however the Agency fails to consider the possibility that some employees (a) are more concerned with meeting goals and milestones than others, (b) require more on-the-job assistance, support and overall supervision; and (c) routinely seek out help from their supervisors in order to produce a quality work product.

For the foregoing and other reasons, this investigation should immediately be terminated, and the Agency should rescind and expunge the biased TC, as well as all records related thereto. This matter should be referred outside of NSA OIG for a separate, independent review.

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If you have any questions regarding this matter, please do not hesitate to contact us. Your attention to this matter is greatly appreciated.

Sincerely,

(b)(6)

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