NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE



INSPECTOR GENERAL

REPORT OF INVESTIGATION

2 June 2016

IV-15-0013

Alleged Whistleblower Reprisal

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of this report.

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(U) OFFICE OF THE INSPECTOR GENERAL

(U) Chartered by the NSA Director and by statute, the Office of the Inspector General conducts audits, investigations, inspections, and special studies. Its mission is to ensure the integrity, efficiency, and effectiveness of NSA operations, provide intelligence oversight, protect against fraud, waste, and mismanagement of resources by the Agency and its affiliates, and ensure that NSA activities comply with the law. The OIG also serves as an ombudsman, assisting NSA/CSS employees, civilian and military.

(U) AUDITS

(U) The audit function provides independent assessments of programs and organizations. Performance audits evaluate the effectiveness and efficiency of entities and programs and their internal controls. Financial audits determine the accuracy of the Agency's financial statements. All audits are conducted in accordance with standards established by the Comptroller General of the United States.

(U) INVESTIGATIONS

(U) The OIG administers a system for receiving complaints (including anonymous tips) about fraud, waste, and mismanagement. Investigations may be undertaken in response to those complaints, at the request of management, as the result of irregularities that surface during inspections and audits, or at the initiative of the Inspector General.

(U) INTELLIGENCE OVERSIGHT

(U) Intelligence oversight is designed to insure that Agency intelligence functions comply with federal law, executive orders, and DoD and NSA policies. The IO mission is grounded in Executive Order 12333, which establishes broad principles under which IC components must accomplish their missions.

(U) FIELD INSPECTIONS

(U) Inspections are organizational reviews that assess the effectiveness and efficiency of Agency components. The Field Inspections Division also partners with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities.

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I. (U) SUMMARY

(U//~~FOUO~~) On 08 December 2014, the NSA/CSS Annual Contribution Evaluation (ACE) Reconsideration Team (RT) referred to the NSA/CSS Office of the Inspector General (OIG) an allegation that [redacted], GG-15, Chief, [redacted] and [redacted], GG-15, Deputy Chief, [redacted] took an adverse personnel action against [redacted], GG-15, [redacted] in reprisal for her having reported to T3, Enterprise Information Technology Services, and [redacted] leadership the creation of a hostile work environment (HWE) by [redacted] and [redacted]. It was alleged that in reprisal for [redacted] making protected communications [redacted] and [redacted] gave her a lower overall rating than she deserved on the Annual Contribution Evaluation (ACE) that rated her performance during the period 01 August 2013 through 03 May 2014 (when [redacted] left [redacted].[1]

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(U//~~FOUO~~) The subsequent OIG investigation determined that [redacted] complaints to T3 leadership, but not her complaints to [redacted] leadership, were protected communications. Although we ultimately concluded that the ratings [redacted] received on her ACE were accurate indications of her performance and therefore not personnel actions under Agency or other policies, we conducted a complete analysis to ensure that her allegation received the fullest consideration.

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(U//~~FOUO~~) We found that if the ACE ratings given by [redacted] had been determined to be personnel actions, [redacted] protected communications to T3 leadership would have been a contributing factor in her ACE ratings, in that [redacted] was contemporaneously aware of [redacted] 20 March 2014 and 10 April 2014 communications and signed [redacted] final ACE rating less than seven months later on 17 October 2014. However, we determined that [redacted] would have received the initial 3.3 and final 3.8 ACE ratings absent her protected communications. Clear and convincing evidence in the form of emails and testimony revealed that after [redacted] mid-January 2014 arrival in [redacted] performance and conduct declined due to her failure to accept the organization's new business model and that [redacted] and [redacted] informed her of their concerns related to her progress against her Performance Elements (PEs) and Performance Objectives (POs).

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[1] (U//~~FOUO~~) [redacted] was the rater and [redacted] the reviewer on the ACE. [redacted] did not agree with her initial overall ACE rating of 3.8 or "Successful" and requested informal reconsideration of the rating. During the informal reconsideration process, [redacted], as the reviewer, raised [redacted] overall ACE rating to 3.8 or "Excellent." However, [redacted] continued to disagree, claiming that she deserved a rating of 4 (not the 3 she received) on the Performance Element of her ACE related to Personal Leadership and Integrity, which would have resulted in an overall ACE rating of 3.9, rather than 3.8. The OIG interviewed [redacted] as part of the investigation. However, because [redacted] subsequently retired from the Agency and federal service in [redacted], the OIG did not address her potential culpability as a Subject of the investigation in this report.

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Evidence gathered during the course of the investigation reveals that [redacted], who had [redacted] deputy chief at the beginning of the appraisal period, sometimes redirected [redacted] division chiefs not to follow [redacted] and [redacted] directions, attempted to thwart their organizational change efforts, and failed to follow direction on tasks with which she disagreed.

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(U//~~FOUO~~) The investigation determined that [redacted] initial overall ACE rating of 3.3 was based on her performance and the input she provided against her POs and PEs, as well as [redacted] experience in evaluating employee performance in another organization. During the informal reconsideration process, [redacted] raised the scores for several of [redacted] POs and PEs after receiving both additional information from [redacted] regarding her accomplishments and guidance from [redacted] leadership on performance and rating expectations within [redacted] ([redacted] was new to the organization). This resulted in a final overall rating of 3.8. There were no [redacted] employees similarly situated to [redacted]. We found no evidence, other than [redacted] testimony, that her performance warranted a rating above 3.0 or "Successful" for the Personal Leadership and Integrity PE and, therefore, a rating above 3.8 for the overall ACE.

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(U//~~FOUO~~) We also found no evidence that [redacted] was motivated to retaliate against [redacted] for her HWE complaints to T3 leadership, which were related to [redacted] failure to accommodate her [redacted] (without appropriate medical documentation and approval of a formal reasonable accommodation request, [redacted] would not allow [redacted] to work from an alternate location whenever her [redacted] increased). In requiring that [redacted] follow the Agency's reasonable accommodation process, [redacted] was enforcing rather than violating relevant Agency policy.[2] Further, T3 leadership took no disciplinary action against [redacted] as a result of [redacted] complaints. In fact, [redacted] received a 4.5 "Excellent" overall ACE rating for the 2013-2014 appraisal cycle; a rating that was reviewed and approved by T3 leadership. Accordingly, we found credible [redacted] testimony that [redacted] complaints to T3 leadership had no impact on her impartiality.

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(U//~~FOUO~~) Based on the clear and convincing evidence in support of [redacted] ACE ratings and the lack of motive for [redacted] to retaliate against her, we did not substantiate the allegation of reprisal.

(U//~~FOUO~~) [redacted] and [redacted] will be informed of the results of our inquiry in this matter. A summary of the investigative findings will be provided to [redacted] and the DoDIG.

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[2] (U//~~FOUO~~) NSA/CSS Policy 4-23, Provision of Reasonable Accommodation, requires that a request for accommodation be referred to the Agency's Office of Disability Affairs (ODA) whenever a disability and/or need for accommodation is not obvious. In such circumstances, the requester of reasonable accommodation must provide appropriate medical information related to the disability and proposed accommodation; ODA determines whether medical information is necessary and sufficient to support the request.

II. (U) BACKGROUND

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(U) Introduction

(U//~~FOUO~~) On 20 March 2014, [redacted] reported to [redacted] T3, that her supervisors, [redacted] and [redacted], had created a HWE for her by failing to accommodate her [redacted] requested that T3 leadership find her a new position outside of [redacted] With [redacted] permission, [redacted] shared the information with Mr. Greg Witschey, Chief, T3; and on 10 April 2014, both leaders met with [redacted], who reiterated her HWE claims and again asked to be given a new position.

(U//~~FOUO~~) On 30 April 2014 in an email to [redacted], [redacted] Deputy Chief, [redacted] and [redacted], Chief, [redacted] reported that [redacted] had improperly implemented new POs for [redacted] that [redacted] also felt to be unachievable.[3] On 2 May 2014, [redacted] met with [redacted] and [redacted] about the situation and was subsequently reassigned to a position outside of [redacted] Because of the move, the new POs did not go into effect and [redacted] was never evaluated against them.

(U//~~FOUO~~) On 22 September 2014, [redacted] received an overall rating of 3.3 or "Successful" on her performance appraisal covering from 01 August 2013 through 3 May 2014.[4] [redacted] was the rater and [redacted] was the reviewer. In an email that same day, [redacted] notified the OIG that she would be requesting informal reconsideration of her rating because it was lower than she deserved; she alleged that [redacted] gave her a low rating in "reprisal [for] bringing harassment and hostile work [environment] issues up to T3 management." On 23 September 2014, she notified both T3 and [redacted] leadership of the same information. [redacted] did not provide extensive detail in either email. On 17 October 2014, as a result of the informal reconsideration process, [redacted] raised [redacted] overall rating to 3.8 or "Excellent."[5]

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[3] (U//~~FOUO~~) In accordance with NSA/CSS Policy Manual (PM) 4-16A, the annual performance rating cycle is from 01 August to 31 July each year. To be rated, employees must perform under an approved Performance Plan (PP), which includes defined POs and PEs, for at least 90 days during the current rating cycle. PPs and, therefore ACEs, are composed of three to six individual POs aligned with Agency objectives, the number and content of which vary by work role, duties, and grade level, and six PEs that are behaviorally-based and common to all Defense Intelligence (DI) employees. In employee ACEs, performance against each PO and PE is rated numerically between 1 (Unacceptable) and 5 (Outstanding). PO ratings make up 60% and PE ratings 40% of the overall ACE rating.

[4] (U//~~FOUO~~) Because [redacted] left [redacted] as of 03 May 2014, less than 90 days prior to the end of the annual rating cycle, she did not receive an evaluation of record (EOR) for the period 04 May 2013 through 31 July 2014.

[5] (U//~~FOUO~~) The informal reconsideration process provides the employee an informal avenue of appeal of his or her performance rating when the employee believes in good faith and asserts that the process was not followed or that his or her performance was not rated appropriately against POs, PEs, and the applicable rating standards. The employee submits a written request to the reviewer detailing the PO

(U//~~FOUO~~) On 30 October 2014, [redacted] filed with the ACE RT a request for formal reconsideration of her ACE rating. Specifically, [redacted] challenged her rating for one PE, "Personal Leadership and Integrity"; she did not challenge the ratings for her POs. Within her request, [redacted] wrote that she had brought to the attention of management a HWE created by [redacted] and [redacted] and in retaliation received a lower score than she deserved in the PE.[6] On 08 December 2014, the ACE RT referred the allegation of reprisal to the OIG.

(U//~~FOUO~~) [redacted] became the deputy chief of [redacted] in December 2007. She was [redacted] and had been granted a formal disability accommodation to use an Agency-provided [redacted] at her workspace. After [redacted] moved to a different building, [redacted] increased. In response, [redacted] then-Chief, [redacted] informally accommodated [redacted] condition by allowing her to physically work in alternate Agency workspaces whenever she experienced [redacted]. Because [redacted] had difficulty managing people from alternate locations, in September 2013 she stepped down as deputy chief and officially became the [redacted]. In May 2014, [redacted] was temporarily assigned to [redacted] in June 2014 she accepted a computer systems security manager position with [redacted] retired from NSA and federal service in [redacted]

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(U//~~FOUO~~) Since 2010, while serving as [redacted] deputy chief, [redacted] received EORs from [redacted] for particular appraisal periods as follows:

- (U//~~FOUO~~) 01 August 2009 to 31 July 2010, 3.6 (Excellent)
- (U//~~FOUO~~) 01 August 2010 to 31 July 2011, 3.9 (Excellent)
- (U//~~FOUO~~) 01 August 2011 to 31 July 2012, 3.9 (Excellent)
- (U//~~FOUO~~) 01 August 2012 to 31 July 2013, 4.1 (Excellent)

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(U//~~FOUO~~) [redacted] became deputy chief of [redacted] in September 2013 after [redacted] left the position. [redacted] became chief of [redacted] in January 2014 upon the retirement of [redacted]

(U) Scope and Authorities

(U//~~FOUO~~) NSA/CSS Policy 1-62, Whistleblower Protection (Policy 1-62), issued 6 July 2005, and NSA/CSS Policy Memorandum 2013-03 (PM 2013-03), issued 14 June 2013, provide protection from reprisal to NSA employees who make a "protected

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and PE rating(s) with which they disagree, the rating(s) felt deserved, and justification in support of a change in the rating(s). The reviewer then makes a written determination on the informal request (ratings can only be raised, not lowered) and includes supporting comments.

[6] (U//~~FOUO~~) [redacted] received a 3 in "Personal Leadership and Integrity" and asked to receive a 4. A rating of 4 in the PE would have raised her overall ACE rating to 3.9.

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communication."[7] Under Policy 1-62, the definition of "protected communication" includes the lawful communication of information which the communicant reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to particular parties, to include an IG, anyone in the chain of command, or any other organization designated under Agency policy or other established procedures to receive such communications. The policy defines a "personnel action" as an action that affects or has the potential to affect the employment opportunities, current position, or career of the NSA employee. "Reprisal" is defined as taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action, for making or preparing a protected communication.

(U//~~FOUO~~) The NSA/CSS OIG employs a two-stage process in conducting whistleblower reprisal investigations. The first stage focuses on the alleged protected communication, personnel action, and acting official's knowledge of the protected communication. The second stage focuses on whether or not the Agency would have taken, withheld, or threatened the personnel action absent the protected communication. The first stage of the whistleblower reprisal analysis is judged based on the preponderance of the evidence. "Preponderance" of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(U//~~FOUO~~) In order to progress to the second stage of the investigative process, there must be sufficient evidence, based on proof by a preponderance of the evidence, to make three findings:

1. (U//~~FOUO~~) The complainant made a protected communication;

2. (U//~~FOUO~~) The complainant was the subject of a personnel action; and

3. (U//~~FOUO~~) The protected communication was a contributing factor in the personnel action.[8]

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[7] (U//~~FOUO~~) Policy 1-62 and NSA/CSS Policy Memorandum 2013-03 implemented Presidential Policy Directive (PPD) 19, Protecting Whistleblowers with Access to Classified Information, dated 12 October 2012. Intelligence Community Directive (ICD) 120, Intelligence Community Whistleblower Protection, dated 20 March 2014, also implements PPD-19. NSA/CSS Policy 1-62 was re-issued 24 June 2015 to incorporate ICD-120, however, because both the alleged protected communications and personnel action in this case occurred prior to that date, the previous version of NSA/CSS Policy 1-62 and the associated policy memo were applied in this investigation.

[8] (U//~~FOUO~~) This third finding may be established where the acting official had knowledge, actual or imputed, of the complainant's communication and the personnel action took place within a period of time subsequent to the communication, such that a reasonable person could conclude that the communication was a contributing factor in the decision to take the action.

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(U//~~FOUO~~) If a preponderance of the evidence supports these three findings, the investigation will proceed to the second stage of the analysis. At that point, the Agency must provide evidence that establishes that the Agency would have taken, withheld, or threatened the personnel action against the complainant absent the protected communication. The second stage of analysis is judged based on a clear and convincing standard. "*Clear and convincing evidence* is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established."[9] It is a higher standard than preponderance of the evidence, but a lower standard than beyond a reasonable doubt.

(U//~~FOUO~~) To address the fourth element, we consider the following three factors:

1. (U//~~FOUO~~) The strength of the Agency's evidence in support of its personnel action;

2. (U//~~FOUO~~) The existence and strength of any motive to retaliate on the part of the Agency officials who were involved in the decision; and

3. (U//~~FOUO~~) Any evidence that the Agency takes similar actions against employees who are not whistleblowers but who are otherwise similarly situated.

(U//~~FOUO~~) We interviewed five witnesses, including the complainant, [redacted], and the responsible management officials (RMOs), [redacted] and [redacted]. We also obtained and reviewed relevant emails, ratings, and other documents from various sources, including [redacted] and [redacted].

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(U) Sequence of Events

(U//~~FOUO~~) On 16 January 2014, [redacted] Human Resources (HR) Advisor for T3, MD1, Employee Gateway, emailed [redacted] to apologize for [redacted] to a meeting with [redacted] wrote she had been informed by a friend, at the behest of [redacted], that [redacted] had had to use an [redacted] and then leave for the day after having a [redacted] said she had been unaware of [redacted] "great [redacted] and would refrain from [redacted] on future visits to [redacted] workspaces.

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(U//~~FOUO~~) On 12 February 2014 in an email titled "Mid Cycle Accomplishments," [redacted] provided [redacted] and [redacted], "background on what I have done [to date], and ensure I am doing what you need me to do in this role [as [redacted]]." She also opined that her current POs

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[9] (U) 5 C.F.R. 1209.4(d). 5 U.S. Code 2302(a)(2)(C)(ii)(1) exempts Intelligence Community employees from statutory whistleblower protections. However, we still use as a guide the implementing guidance found in relevant C.F.R. provisions, U.S. Merit Systems Protection Board, U.S. Office of Special Counsel, and DoD decisions and regulations under that title.

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were difficult to follow and more appropriate to the previous duties, not hers.[10] noted that she had only learned the day before of the need for a "final" evaluation, rather than a mid-year review.[11] She proposed that her POs be changed to Strategic Planning and Security Concerns, Mentoring and Contract Support, Special Projects and Actions, and New Initiatives and Technology, but provided no details as to the potential duties involved. On 28 February 2014, , who's POs had not been changed, acknowledged having received her mid-cycle performance review in the Human Resources Management System (HRMS).[12]

(U//~~FOUO~~) On 04 March 2014, responded to a 24 February 2014 email reminder from to her direct reports that they provide their "ACE closeout" input no later than 03 March 2014. provided detailed information regarding her accomplishments towards each of her current POs and expressed hope that new POs easier to write to and more reflective of the duties and wanted her to perform would soon be put into place.

(U//~~FOUO~~) On 06 March 2014, emailed . According to was undergoing construction that would continue through June 2014. That date, the construction had caused to experience a and she had had to leave and work in another building. wrote that ODA had "basically written [off" due to a lack of current medical documentation; she did not want to undergo again. asked for advice. responded that same date, writing that worked to ensure that the highest standards are being met "and they are in the case of . He suggested that she consult with ODA, the Agency Medical Center (MC), and her personal physicians if additional measures were necessary. almost immediately forwarded the email exchange to and , stating that she was unsure of her options.

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(U//~~FOUO~~) At 1053 on 10 March 2014, emailed (was cc'd) a memorandum for the record (MFR) documenting a 07 March 2014 discussion between , , and . The discussion related to disability

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[10] (U//~~FOUO~~) had five POs for the 2013-2014 rating cycle: Technology Investigation and Transformation; System Accountability and Resource Management; Process Improvement; Metrics, Outreach and Communications; and, Technology Mentoring, Leadership and Strategic Planning.

[11] (U//~~FOUO~~) At the time, , who was rater, intended to assume rater responsibilities for and two division chiefs. An official change in raters with more than 90 days remaining in the appraisal cycle meant that the employee would be rated by the most current rater of record. ultimately assumed rater responsibilities for the division chiefs, but not , who left before the end of the 2013-2014 appraisal cycle.

[12] (U//~~FOUO~~) HRMS is the Agency's electronic system for inputting, sharing, and storing information related to individuals and their careers.

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accommodation status and the 06 March 2014 incident during which [redacted] left [redacted] workspaces due to ongoing construction within [redacted]. In her response, [redacted] forwarded the MFR to NSA Employee Relations (ER) and told [redacted] that ER would guide her "on the proper steps."

(U//~~FOUO~~) According to the MFR, on 19 December 2013 ODA notified [redacted] that she had 30 business days to provide updated medical documentation regarding her disability accommodation (use of [redacted] at her desk). [redacted] failed to do so, and on 10 February 2014, her accommodation expired. During the 07 March 2014 discussion, [redacted] said that the required paperwork was difficult for the doctors, who could provide no specific diagnosis other than [redacted] and for her, as the related testing required that she refrain from the use of [redacted] for four days. When told that ODA would be removing her [redacted] replied that she already knew that and the [redacted] did not help much anyway.

(U//~~FOUO~~) The MFR documented that [redacted] was told that although the previous [redacted] chief informally allowed [redacted] to work in different buildings whenever her symptoms increased, current [redacted] leadership needed "our [redacted] on-site to work with our personnel and daily issues." The possibility of [redacted] accepting a position in another organization or performing a joint duty assignment locally in another building to help meet her health needs was discussed and [redacted] agreed to release [redacted] from her one-year obligation as [redacted]. However, [redacted] noted that she might continue to have [redacted] in other buildings.

(U//~~FOUO~~) According to the MFR, [redacted] and [redacted] offered to assist [redacted] however they could; however, they "had to follow the regulations and procedures." [redacted] was told that the next workday (10 March 2014) she was required to report to duty at her assigned workspace in [redacted] agreed to report as directed, but said that she would then "head right over to the Med Center because she would be encountering symptoms." She also expressed her intention to pursue a disability-based retirement.

(U//~~FOUO~~) On 24 March 2014, [redacted] emailed [redacted] "a summary of [redacted] rant" that occurred the morning of 10 March 2014. According to an MFR attached to this email, shortly after [redacted] arrival on the 10th, [redacted] entered [redacted] office visibly upset and proceeded to "stomp her two feet on the floor" while announcing that she was "in the office." [redacted] said that she was "f*$king pissed" in regard to an email she had received from [redacted] documenting the events surrounding the 06 March 2014 incident when [redacted] left the office "without asking [redacted] permission or identifying where she was going."

(U//~~FOUO~~) According to the MFR, [redacted] informed [redacted] that such language would not be tolerated. Although [redacted] eventually apologized for swearing, she continued to exhibit insubordinate behavior by "challenging" [redacted] on the content of the email and leadership's failure to accommodate her [redacted]. [redacted] reiterated that previous supervisors had always allowed her to "bounce between buildings" and avoid [redacted]

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told that as a former supervisor, "knew better," in that "documentation [was required] to support everything – this is the federal government." left office without any agreement being reached and with telling that she "needed to produce the appropriate medical documentation in order to be accommodated."

(U//~~FOUO~~) At 1339 on 10 March 2014, emailed ((was cc'd) regarding her recollection of the events of 06 and 07 March 2014. responded with comments less than two hours later, which sparked additional email commentary from on 11 March 2014. According to on 06 March 2014, she had an immediate upon entering Although she wore a and ran an her symptoms intensified and "after speaking with [her] management and building management" and learning that construction would continue through June 2014, she left the building to find a desk to work at in said that she both emailed and attempted to call about the situation that same day. She noted that leadership was aware of her condition and had "even advocated for me in the past two months – once when someone with a repeatedly visited my workspace, and another time when a was placed in the lady's room."

(U//~~FOUO~~) In response, clarified on her and behalf that did not speak with management before leaving the office on 06 March 2014. Rather, she stood in the hallway outside of office, gave a thumbs down sign to (who was engaged in conversation with another employee), said that she could not stay in the building, turned, and left. At request, another employee subsequently informed of situation. Additionally, did not speak with building management. Rather, she had the same colleague "go up to the construction area and investigate" for her.

(U//~~FOUO~~) In regard to leadership advocating on behalf, noted that at the time did so, she "was under the understanding that [was] under an active disability accommodation" and therefore trying to be supportive. responded by acknowledging that she may have only come to doorway and not have provided much detail. However, when suffering from she did not think clearly and that day had also apologized for not providing more detail and not stating where she was going. She noted that, whether under an active disability accommodation or not, her condition remained the same; previous managers allowed her to work elsewhere as necessary and had the authority to do so.

(U//~~FOUO~~) In her related email, told that on 07 March 2014, ODA informed leadership that had never had a disability accommodation for "changing work spaces and floating between buildings." Further, knew that her accommodation for an had expired; approximately three months earlier, ODA had notified her that her accommodation paperwork needed updating, yet she failed to act. As a result, ODA notified that her could be removed.

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(U//~~FOUO~~) In response, [redacted] noted that she did not provide the updated paperwork to ODA because they were limited in what they could do, the [redacted] did not help her symptoms, and she had always been allowed to use alternate work spaces. [redacted] wrote that obtaining the updated paperwork for ODA would take time. In the interim, she requested to work in another building:

> (U//~~FOUO~~) I would keep JSignout up to date, and would be available by phone or through Lync.[13] I would be willing to stop in weekly to [redacted] for a meeting, and to see if I am still affected. I could wear my [redacted] for that short period of time. After determination by [ODA] on my paperwork, and if I am still affected by construction, I would like to have a discussion with management on a longer term job or solution. My goal is to remain a healthy and productive worker for the organization.

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(U//~~FOUO~~) [redacted] declined [redacted]'s request: "If we did offer this to you, we would have to offer it to everyone at this time."

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(U//~~FOUO~~) On 13 March 2014, [redacted] emailed [redacted] to ask for status updates on several tasks ([redacted] had received temporary permission to work outside of [redacted] until her medical documentation was received and reviewed by the MC and ODA): [redacted] noted that on 31 January 2014, during a meeting to discuss "AUTOCAD in [redacted][14] [redacted] had agreed to take over that task from [redacted] and to provide [redacted] and [redacted] a list and the status of all [redacted] System Security Plans (SSPs) by the end of February 2014. [redacted] asked for updates and noted that the SSP data was especially critical, given that [redacted] leadership was "getting questions at this time as to what SSP support we may need in the future." In her response that same date, [redacted] denied having agreed to take over the AutoCAD task; rather, she had agreed only to help [redacted] get a server for the [redacted] and had done so. In regard to the SSPs, [redacted] said that she was waiting for either [redacted] or the Information Security Staff Officer (ISSO) to give her a copy of the next monthly SSP list. According to [redacted], even once she had the list, all she could do was reach out to each system owner to obtain the current status of its SSP, "which I believe [the] ISSO [already] does." [redacted] then ended her email: "Since I appear to be targeted, I do plan to spend time looking for a new job. . ."

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(U//~~FOUO~~) On 20 March 2014, [redacted] had a meeting with [redacted] T3. According to information in a 29 April 2014 email [redacted] sent to Mr. Witschey's (Chief, T3) [redacted] she met with [redacted] on 20 March 2014 to tell him "how bad it was" in [redacted] testified that she reported to [redacted] that her supervisors, [redacted] and [redacted], had created a HWE for her by failing to

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[13](U//~~FOUO~~) JSignout is a web-based sign-in board for the Agency that allows users to make their whereabouts known to others, much like a traditional sign-in whiteboard. Lync is a web-based tool that allows Agency users "chat" capability.

[14] (U//~~FOUO~~) AutoCAD is a design and documentation software. The [redacted] is [redacted] environment. The [redacted] which is managed by T3, delivers a self-service capability to NSA users and supports a range of [redacted] systems.

accommodate her [redacted] requested that T3 leadership find her a new position outside of [redacted].

(U//~~FOUO~~) At 0944 on 31 March 2014 at 0944, [redacted] emailed [redacted] to provide an update regarding her appointments with [redacted] and an Agency doctor, who had authorized her to continue to work outside of [redacted] through at least 11 April 2014.

(U//~~FOUO~~) On 03 April 2014, [redacted] emailed [redacted] regarding her attendance at [redacted] Tuesday morning staff meetings ([redacted] was cc'd). [redacted] asked [redacted] whether she would like to catch up on the meeting she had missed by reviewing the notes together over the phone. [redacted] also asked how [redacted] wanted to provide input to the next week's meeting. [redacted] responded shortly thereafter, saying that she was available to speak by phone. Because [redacted] had left for the day, [redacted] responded, saying that she and [redacted] wanted [redacted] to participate in future staff meetings: "As the office [redacted] we want you to either attend the 1.5 hour meeting in [redacted] or make arrangements to participate in the meeting remotely." In her response, [redacted] agreed to do so: "I was actually going to offer to try and do that."

(U//~~FOUO~~) On 09 April 2014, [redacted] emailed [redacted] and several other [redacted] personnel regarding an AutoCAD concern. According to [redacted], although she had kept [redacted] informed on progress, he wanted [redacted] timeline and had threatened to elevate the matter to his management: "...if we could just put times to [redacted] list for what needs to be done, and make it reasonable, [redacted] would be happy." [redacted] responded that same date, asking that [redacted] "please continue to take action [assisting [redacted]] with this task." [redacted] requested that she work with [redacted] "to facilitate/create the timeline by the end of the week" and tell [redacted] when it was complete. On 10 April 2014, [redacted] responded by providing detail as to her work on AutoCAD. She reiterated that she had agreed to help get a server and had done so, but did not address [redacted]'s request: "I also continue to respond on Autocad and work issues, but it is also appropriate to let management know when things could be elevated, where I am unable to respond."

(U//~~FOUO~~) On 10 April 2014, [redacted] met with [redacted] and Mr. Witschey. According to information in [redacted] 29 April 2014 email to Mr. Witschey's [redacted] this was a follow-up meeting to her 20 March 2014 meeting with [redacted] reiterated her HWE claims and again asked to be given a new position.

(U//~~FOUO~~) On 14 April 2014, [redacted] emailed [redacted] regarding leave procedures. [redacted] acknowledged receiving [redacted] voicemail in which [redacted] notified her that she was going home sick and seeing that [redacted] had noted the same on JSignout. [redacted] asked that if such a situation happened again while [redacted] was at an alternate work location that [redacted] "please try" to reach either her or [redacted] "in person." [redacted] responded the next day. She did not say that she would adhere to [redacted] request. Rather, she told [redacted] that she had just spoken with [redacted] in [redacted] (her temporary duty location) "and will be sure to inform someone here if it happens again."

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(U//~~FOUO~~) On 16 April 2014, [redacted] emailed [redacted] to ask what work she was focusing on that week. [redacted] also noted that [redacted] had told her that [redacted] did not like the PP [redacted] had agreed to in August 2013 under the previous chief: "…could you please provide me specific comments as to why you don't like it?" In her response the next day, [redacted] said that she never agreed to her current PP, which also was never discussed with her; the plan was that of the previous [redacted] who had different duties than [redacted]. [redacted] reminded [redacted] that she had provided suggestions for appropriate POs on 12 February 2014. She provided three reasons why she did not like her PP: it was not discussed with her; certain duties it covered were actually performed by a contractor, rather than the [redacted] and, many of the duties it listed, such as mentoring, fit under either multiple POs or none. [redacted] responded by asking for [redacted] phone number. [redacted] provided her number and told [redacted] that it was also listed on JSignout.

(U//~~FOUO~~) On 22 April 2014, [redacted] emailed [redacted] to ask whether T3 would find her another job or whether she needed to apply for positions outside of T3. She also asked about either his or Mr. Witschey's availability to meet. According to [redacted], she needed to write down examples of incidents, because HR could soon be contacted by multiple [redacted] employees: "It is very hard to describe just how bad it is [in [redacted]" She did not provide any additional details or further explanation. [redacted] responded the same date, asking that she "sit tight" while Mr. Witschey considered possible courses of action. [redacted] wrote back within minutes to say that she was working in [redacted] and [redacted] was "wearing [redacted] and coming into [her] space." According to [redacted], [redacted] had told her that she was "not allowed to say anything regarding [redacted]" Additionally, ODA had yet to rule on her accommodation paperwork.

(U//~~FOUO~~) On 28 April 2014, in an email to Mr. Witschey [redacted] was cc'd) titled "Personal – Need Immediate Action," [redacted] attached her new PP, claiming that its POs were unattainable; she asked to be given a "new job immediately!" According to [redacted], [redacted] knew of her meeting with Mr. Witschey. [redacted] said that she was under stress and could no longer work in "this environment." Although she claimed that "multiple people" in [redacted] were ready to go to the OIG regarding abuse of authority, mismanagement, and unfair treatment by [redacted], [redacted] provided no details.

(U//~~FOUO~~) On 29 April 2014, [redacted] emailed Mr. Witschey's [redacted] the draft of an email that she intended to send to HR in regard to new POs she had received from [redacted] the previous day; [redacted] did not want to discuss the matter with [redacted] without a witness. In the draft email, [redacted] claimed that her new PP, which shifted her to being rated by [redacted] rather than [redacted] for the remainder of the appraisal cycle, and its associated POs "were totally unattainable, and meant to show failure." According to [redacted], her previous POs were the same as those of the [redacted] she replaced; they had never been discussed with her or updated before being put in place. According to [redacted], she spoke with [redacted] about the need to change the POs and also emailed PO recommendations to [redacted] on 12 February 2014. Although [redacted] had provided [redacted] leadership her final closeout accomplishments based on the original POs on 03 March 2014, she had "heard nothing more [until now]."

(U//~~FOUO~~) On 29 April 2014, [redacted] also forwarded to Mr. Witschey's [redacted] an email that she had received on 22 April 2014 from [redacted] a division chief in [redacted] According to [redacted], the email provided "a better idea of the hostile work environment [within [redacted]." In forwarding the email, [redacted] noted that the other [redacted] division chief, [redacted] had been "treated even worse" than [redacted] in that [redacted] was "coming down on her, and not offering help in any way," and wanted [redacted] removed from management.

(U//~~FOUO~~) According to information in [redacted] email, someone (ostensibly [redacted]):

- (U//~~FOUO~~) Accused [redacted] of holding a [redacted] meeting outside of [redacted] office spaces;
- (U//~~FOUO~~) Complained about [redacted] speaking with [redacted]
- (U//~~FOUO~~) Threatened [redacted] "career and future promotions" if [redacted] involved herself in [redacted] issue;
- (U//~~FOUO~~) Drove "a wedge between team members";
- (U//~~FOUO~~) Revealed too much information regarding subordinates;
- (U//~~FOUO~~) Summoned people to her office in such a manner that it felt like going to the principal's office;
- (U//~~FOUO~~) Micromanaged [redacted] team;
- (U//~~FOUO~~) Questioned [redacted] subordinates regarding [redacted] management style and their ratings;
- (U//~~FOUO~~) Arrived an hour or more later than her scheduled reporting time; and,
- (U//~~FOUO~~) Offered 10-hour work days to only a few [redacted] employees.

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(U//~~FOUO~~) [redacted] email provided no additional details.

(U//~~FOUO~~) On 30 April 2014, [redacted] emailed [redacted] and [redacted] Deputy Chief, [redacted] Chief, [redacted] was cc'd) to say that her new POs were "not obtainable in any way." According to [redacted], a new PP "should have been put in place within 30 days of [redacted] arrival." Further, she had been working for three months with no PP in place and the new one had not been discussed with her: "This [PP] is written with intent of failure. I do not agree with this in any way." In her response that same date, [redacted] said that she did not appreciate the tone of [redacted] email. Further, she had never written a PP with failure in mind and considered the accusation that she had done so in this case to be "highly disrespectful and insubordinate."

(U//~~FOUO~~) According to [redacted], she and [redacted] had discussed [redacted] dislike of her PP, under which [redacted] continued to work after [redacted] arrival in [redacted] Further, they had discussed the new POs "in detail" and [redacted] had agreed with them; "you thought that it [all] 'sounded good.'" However, [redacted] acknowledged that she had later added metrics, which were not included in the old PP. [redacted] noted that although they had discussed the new PP the previous week, [redacted] "chose to wait until today to review it." She asked that [redacted] provide specifics as to what she did not like or felt to be unattainable: "You are a GG-15 and I gave you objectives to cover the areas that you have been

working this year." also "respectfully" requested "once again" that discuss any concerns with her and before elevating them to the T3 or level.

(U//~~FOUO~~) In her 01 May 2014 response, said that she had been unaware that she continued to work under her original PP; the matter was not discussed with her. She acknowledged speaking with on 25 April 2014 regarding her POs not being appropriate and providing recommendations for inclusion in new POs: "And I did see some of those included, and I also saw you did remove some areas of concern." also acknowledged seeing that the new PP was in HRMS on Friday, the 25th; she had not had an opportunity to read them until Monday, the 28th. According to , although told her not to be concerned about the metrics in the POs, she could not help but be concerned by the words "at least" and the numbers that followed.[15]

(U//~~FOUO~~) On 02 May 2014, met with and regarding her situation in According to information provided by in a 22 September 2014 email to the OIG, during this meeting, was told that did not like that employees within continued to come to regarding management issues, even though was no longer the deputy chief of the organization. As a result of this meeting, management reassigned out of Because there were less than 90 days left in the rating cycle, the new POs for did not go into effect and was never evaluated against them. Her EOR for the 2013-2014 performance cycle would cover from 01 August 2013 through 03 May 2014 and be based on the POs in effect during that period.

(U//~~FOUO~~) On 19 September 2014, , as the reviewer, signed performance evaluation for the period 01 August 2013 through 03 May 2014, for which received a 3.3 "Successful" overall ACE rating. received the following ratings for her five POs below:

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- (U) Technology Investigation and Transformation (TIT) 4.0
- (U) System Accountability and Resource Management (SARM) 3.0
- (U) Process Improvement (PI) 3.0
- (U) Metrics, Outreach and Communications (MOC) 3.0
- (U) Technology Mentoring, Leadership and Strategic Planning (TMLSP) 3.0

(U//~~FOUO~~) ratings for her PEs were as follows:

- (U) Accountability for Results 3.0
- (U) Communication 3.0
- (U) Critical Thinking 4.0

[15] Each of new PO's required that she achieve certain metrics in order to be considered to be performing at the "Successful" level. For example, under the Strategic Planning, Special Projects and Expertise PO, was to "show at least 4 examples" of her support to strategic planning initiatives during the rating period.

- (U) Engagement and Collaboration 4.0
- (U) Personal Leadership and Integrity 3.0
- (U) Technical Expertise 4.0

(U//~~FOUO~~) On 22 September 2014, [redacted] notified the OIG that she had received her ACE and would be requesting informal reconsideration, because her rating of 3.3 was lower than she deserved. According to [redacted], during previous performance evaluation cycles she received ratings of 3.9 and 4.1 and her "work ethic and knowledge" had not changed. Further, [redacted] division chiefs and the previous [redacted] chief "constantly" told her that her approach, knowledge, and one-on-one mentoring of employees exceeded that of the previous [redacted].

(U//~~FOUO~~) According to [redacted], "the [evaluation] process was not followed and the rater did not do her job," as [redacted] did not have a reviewer in place for five months out of the nine-month rating period. Additionally, she and her rater never discussed her POs, several of which "were specific to a contractor who worked under [the] previous [redacted]. Further, [redacted] never agreed with the POs and on 12 February 2014 had so notified both [redacted] and [redacted].

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(U//~~FOUO~~) Finally, [redacted] alleged that her rating was also lower than she deserved "due to reprisal [on the part of [redacted]] of bringing harassment and hostile work issues up to T3 management." She said that both [redacted] and [redacted] began demonstrating hostility towards her on 06 March 2014 due to her "[redacted] and not having updated paperwork." According to [redacted], she brought this to the attention of [redacted] on 20 March 2014 and had a follow-on meeting with both [redacted] and Mr. Witschey on 10 April 2014. Additionally, on 28 April 2014, [redacted] notified both T3 management and HR regarding a HWE "due to Abuse of Authority, Mismanagement, and unfair treatment"; [redacted] had given [redacted] new POs that were not discussed with her and meant to set her up for failure. [redacted] had also overheard [redacted] telling [redacted] over the phone that she wanted [redacted] to leave the office. On 02 May 2014, [redacted] discussed the HWE created by the new PP with [redacted] and [redacted] who reassigned her out of [redacted] and told her that [redacted] did not like that [redacted] employees continued to discuss management issues with [redacted] although she was no longer a manager.

(U//~~FOUO~~) On 23 September 2014, [redacted] emailed T3 and [redacted] management to notify them of her intention to request informal reconsideration of her ACE rating. In the email, [redacted] reminded leadership that she had brought to their attention "the bullying and hostile work environment that exists in [redacted] predominantly due to [redacted] and of

[6] (U//~~FOUO~~) NSA/CSS Policy Manual (PM) 4-16A, Framework for Compensation, requires that raters and employees engage in "continuing dialog throughout the rating cycle" regarding progress against POs. It also requires at least once "at or near the midpoint of the rating cycle" that raters formally document their performance discussion with the employee. Such documentation is to include the date on which the session took place and "any changes in objectives or other summary information regarding the conversation."

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her concern regarding how [redacted] "would handle" her performance evaluation. According to [redacted], [redacted] had rated her lower than she deserved and misused the ACE to reprise against [redacted] "for her own vengeance and gains." The email went on to repeat the information [redacted] had emailed to the OIG the day before. The only response to [redacted] email came from [redacted] who recommended to all on distribution that the matter proceed through the official reconsideration process and that they "keep to the facts" and be prepared to provide supporting documentation.

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(U//~~FOUO~~) That same date, [redacted] filed a "Request for Informal Reconsideration of ACE Rating." On 17 October 2014, [redacted] approved the request and agreed to change certain PO and PE ratings, which raised [redacted] overall rating from 3.3 to 3.8. In her request, [redacted] did not contest the ratings for her Technology Investigation and Transformation (TIT) and Metrics, Outreach and Communications (MOC) POs. However, under the justification in support of rating change comments section for the TIT PO, [redacted] repeated the information in her 22 September 2014 email to the OIG, including that the evaluation process had not been correctly followed and that the ACE rating was an act of reprisal for her reporting of a HWE to leadership. In [redacted] approval, [redacted] retorted that the evaluation process had been correctly followed: a PP, signed by [redacted], [redacted], and [redacted] had been in effect; a mid-cycle review, acknowledged by [redacted] in HRMS, had been performed; and, a final evaluation had been completed and provided to the employee for review in a timely manner: "The amount of time during the rating cycle a reviewer is in place is irrelevant."

(U//~~FOUO~~) [redacted] also noted that [redacted] had been well aware of her POs, as they were the same as those of the previous [redacted] who [redacted] had supervised. Further, [redacted] final ACE had not been reviewed with her, as she had not responded to [redacted] email request for a meeting to discuss it. According to [redacted], [redacted] was an "extremely fair rater" and the requests [redacted] construed as hostile were actually [redacted] leadership's attempts to have her follow Agency processes; they had "pointed out many times [that] there could be no accommodations made without appropriate documentation." [redacted] emphasized that the initial ratings [redacted] received were based on the written input/accomplishments [redacted] provided. She also noted that on 30 April 2014, [redacted] refused supervisory direction to develop a strategy for integrating and improving a specific process.

(U//~~FOUO~~) In her informal request for reconsideration, [redacted] asked that her rating for the System Accountability and Resource Management (SARM) PO be raised from 3.0 to 4.0, stating that what was "not brought to strong light" in her ACE evaluation was that she took over the management of a contract with "high level issues" after another employee went on extended medical leave. [redacted] provided details and added that she also assisted in resolving particular issues with another employee's contract. [redacted] agreed to raise the PO rating to a 4.0; however, she noted that the original rating was based on the original input provided by [redacted], which was documented in the ACE write-up "exactly as provided."

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(U//~~FOUO~~) For the Process Improvement (PI) PO, [redacted] requested that her rating be raised from 3.0 to 4.0. [redacted] explained that the Media Leaks incident brought to light the need for [redacted] to change its way of doing business. As a result, she led security-related initiatives within [redacted] to ensure that the organization complied with "all new policies and directives." [redacted] agreed to raise the rating to 4.0, while noting that [redacted] original input included only two paragraphs related to Media Leaks work.

(U//~~FOUO~~) [redacted] asked that her Technology Mentoring, Leadership and Strategic Planning (TMLSP) PO rating be raised from 3.0 to 5.0, because during the appraisal cycle she worked one-on-one with almost every member of [redacted] and also was commended by one of the division chiefs for helping guide some of the newer employees: "Though I did not account for every time in this ACE area, I do bring up key elements in other [POs]." She provided no additional details. [redacted] agreed to raise the rating, but only to 4.0. According to [redacted], to earn a score of 5.0 ("Outstanding") meant that an "employee far exceeded expected results on the objective such that organizational goals were achieved that otherwise would not have been," and [redacted] justification provided insufficient accomplishments to warrant such a rating.

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(U//~~FOUO~~) [redacted] did not request that the ratings for her Critical Thinking and Engagement and Collaboration PEs be raised. However, she asked that her rating for the Accountability for Results PE be changed from 3.0 to 4.0. For justification, [redacted] suggested that [redacted] review her input as well as her "past scores" in the PE. She added that her Media Leaks security-related special project work demonstrated how her performance exceeded the successful level. [redacted] agreed to raise the rating to 4.0 based on her review of [redacted] original input. She also commented that despite [redacted] request that she do so, she could not take into consideration [redacted] past scores in this or any other PE; HR had confirmed that only accomplishments achieved during the current appraisal cycle could be considered.

(U//~~FOUO~~) [redacted] requested that her rating for Communication be raised from 3.0 to 5.0. She again suggested that her input and past ratings in the PE be reviewed: "I believe my above and beyond follow through in examples exemplifies my abilities." Based on her review of [redacted] original input [redacted] agreed to raise the rating, but only to 4.0.

(U//~~FOUO~~) [redacted] asked that her rating for Personal Leadership and Integrity be raised from 3.0 to 4.0. In her justification, [redacted] took issue with a particular comment in the PE's narrative, that [redacted] "freely expresses her opinions in all settings." According to [redacted], the comment was derogatory; although blunt and straightforward, she was always aware of relevant "settings, audience and issues." In her response, [redacted] declined to change the rating for the PE. She noted that the statement [redacted] considered derogatory was actually meant as a compliment. Further, "as discussed with [redacted] on multiple occasions," [redacted] did not represent "all key behaviors of this [PE]" well.

(U//~~FOUO~~) Finally, [redacted] requested that her rating for Technical Expertise be raised from 3.0 to 4.0. According to [redacted], she had heard [redacted] refer to the term "comfortable"

as a negative trait. Therefore, she considered a particular comment in the PE's narrative, that [redacted] had worked a software licensing issue for a period of time and "therefore is comfortable and knowledgeable in this area," to be derogatory. [redacted] added that with her contract knowledge, security and technical background, historical knowledge of [redacted] and ability to deal with changes in licensing and technology, her "expertise in support of [redacted] exceeds expectations." [redacted] agreed to raise the PE rating to 4.0. However, she said that it was [redacted], not her, who had written the referenced statement: "It too was meant to be a compliment."

(U//~~FOUO~~) On 30 October 2014, [redacted] filed a request for formal reconsideration of her ACE rating with the ACE RT. Specifically, [redacted] challenged her rating for the Personal Leadership and Integrity PE, asking that it be raised from 3.0 to 4.0; she did not challenge the ratings for the other PEs or any of her POs. Within her request, [redacted] wrote that she had brought to the attention of management a HWE created by [redacted] and [redacted] and in retaliation had received a lower score than she deserved in the PE. Because of the reprisal allegation, on 08 December 2014, the ACE RT referred the matter to the OIG.

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III. (U) FINDINGS

1. (U) Did [redacted] make a protected communication? Yes.

(U//~~FOUO~~) Policy 1-62 and Policy Memorandum 2013-03 prohibit the Agency from taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, against an employee, for making a protected communication. Policy 1-62, Paragraph 10, defines a protected communication as:

1. Any lawful communication to a member of Congress or an IG; or

2. A lawful communication of information which the employee reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of Congress, an IG, or any other person or organization (including any person or organization in the chain of command) designated under Agency policy or other established administrative procedures to receive such communications.

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(U) **Failure to Accommodate**

(U//~~FOUO~~) On 20 March and 10 April 2014, [redacted] complained to T3 leadership regarding [redacted]'s treatment of her and claimed to be experiencing a HWE. During an interview with the OIG, [redacted] testified that during her 20 March 2014 meeting with [redacted] she told him about the events of 06 March 2014, when she left [redacted] to work elsewhere due to her [redacted] also told [redacted] that the next day, [redacted] and [redacted] pulled her into a room and told her that she had no documentation in place regarding her [redacted] could not work in another building, and had to report to [redacted] the next workday. This incident made her feel like a schoolchild being lectured by her principal and she considered such conduct abusive.

(U//~~FOUO~~) According to [redacted], she further informed [redacted] that subsequent to these events and, while working with Agency Medical Center temporary permission in a building other than [redacted], she heard from colleagues that [redacted] was upset that [redacted] had arranged to meet with another [redacted] employee (with whom she was working on a project) in contractor spaces, rather than in [redacted] office spaces. Although [redacted] could not recall many additional details of what she told [redacted] regarding the HWE in [redacted] she recalled saying that [redacted] made people cry and "is a bully, calls people into her office, and is abusive and it is a bad working environment." [redacted] also told [redacted] that [redacted] was "a patsy" and "totally ineffective" as [redacted] deputy chief and asked him to find her a position outside of [redacted] "I said, 'Get me out from under [redacted]!'"

(U//~~FOUO~~) [redacted] testified that on 10 April 2014, she had a short meeting with both [redacted] and Mr. Witschey during which she reiterated, in an abbreviated fashion, the

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information she had provided to [redacted] During this meeting, [redacted] might also have mentioned what she considered to be the nasty tone of [redacted]'s emails directing her to perform particular tasks ("'Do this,' dadadadada.") and that colleagues told her that [redacted] had directed them not to speak with her. According to [redacted], her goal, and therefore the focus of the meeting, was for Mr. Witschey to find her a position outside of [redacted] She received no response to the emails she later sent to Mr. Witschey's [redacted] about the work environment in [redacted].

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(U//~~FOUO~~) During his interview with the OIG, [redacted] corroborated much of [redacted]'s testimony. He had known [redacted] for many years and was aware that she was [redacted] Further, [redacted] was aware that [redacted] daughter had [redacted]; she may have come to speak with him on 20 March 2014 about her issues within [redacted] not just because they had a good professional relationship, but also because he would relate to her situation: "A lot of times, folks with [redacted] are not taken seriously…. It's an issue that you've got to convince people sometimes that your [redacted] are actually real."

(U//~~FOUO~~) [redacted] testified that during this meeting, [redacted] told him that [redacted] was ignoring her legitimate need for accommodation related to her [redacted] building was undergoing renovation, which aggravated [redacted] symptoms and made her unable to effectively perform her job duties. As a result, [redacted] wanted to perform her work elsewhere. According to [redacted] during the early 2014 timeframe, [redacted] was undergoing tremendous change; [redacted] had been hired to reinvigorate the organization and make it more customer-focused, as [redacted] was in danger of "becoming irrelevant." [redacted] told him that [redacted] thought [redacted] was not a team player and was impeding [redacted] mission with her accommodation request; [redacted] denied the request, saying that she needed [redacted] to be with the team. According to [redacted] was "tremendously upset" by the situation and was in tears about it during their meeting.

(b)(6)

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(U//~~FOUO~~) [redacted] did not recall any particular incident having instigated [redacted] conversation with him and he had previously been unaware of any management issues within [redacted] He believed [redacted] and felt that, by not taking [redacted] health concerns seriously, [redacted] was being hostile and denigrating towards her, as "the person who knows best is the person whose body is actually being affected…." [redacted] did not recall [redacted] discussing anything other than her [redacted] or [redacted]'s reaction to her request for accommodation during their meeting. Rather, [redacted] talked about [redacted] being a "terrible manager" for not taking her health issue seriously. [redacted] vaguely recalled [redacted] saying that [redacted] was "out to get her," but did not recall her providing any supporting information. Although [redacted] did not say anything specific about [redacted] treating others badly, she mentioned that there was a disparity of treatment between different groups of people in the office; a "them [versus] us" type of situation. [redacted] seemed more frustrated than intimidated by [redacted].

(U//~~FOUO~~) After this meeting, [redacted] heard that the Agency was in the process of trying to determine whether [redacted] were legitimate. Further, an [redacted]

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assessment of her workspaces was conducted and came back [redacted] Therefore, it was determined that special accommodations were not required: "I know that [redacted] was unhappy about that." During their meeting, [redacted] had asked for a job outside of [redacted] subsequently told Mr. Witschey that, given her [redacted] would likely not be productive in [redacted]

(U//~~FOUO~~) [redacted] vaguely recalled the 10 April 2014 meeting with both Mr. Witschey and [redacted]. During the meeting, [redacted] reiterated what she had told [redacted] about her situation in [redacted] She provided no new information. Rather, [redacted] was focused on the failure to accommodate her [redacted] and her desire for a new job; [redacted] did not recall her even mentioning the existence of an insider/outsider environment within [redacted] Although no promises had been made, [redacted] specifically recalled [redacted] asking Mr. Witschey why it was taking so long to find her a new position.

(U//~~FOUO~~) The OIG investigation revealed that [redacted] was unwilling to accommodate [redacted] request for an alternate work location absent an approved ODA reasonable accommodation request. NSA/CSS Policy 4-23 requires the Agency to provide reasonable accommodations to qualified individuals with disabilities and sets forth a process for obtaining such accommodations. The policy also requires that a request for accommodation be referred to ODA whenever, as in [redacted] case, a disability and/or need for accommodation is not obvious. ODA reviews the written request and determines whether medical information is necessary and sufficient to process it. [redacted] was aware of this policy and had used it successfully in the past to obtain an accommodation. However, she subsequently allowed the required medical documentation to expire. Because [redacted] no longer had an approved accommodation in place, [redacted] was under no obligation to accommodate, especially if she felt doing so would adversely impact mission.

(U//~~FOUO~~) Nonetheless, we concluded that [redacted] related disclosures to [redacted] and Mr. Witschey constituted protected communications. [redacted] knew that a formal accommodation was not necessarily required to allow her to work from an alternate location. Although [redacted] formally approved accommodation was only for an [redacted] for years her previous manager, [redacted] allowed to [redacted] to work from available desks in other buildings whenever [redacted] symptoms bothered her. Because of her [redacted] and related frequent need to be out of the office, [redacted] eventually stepped down as deputy chief; she felt unable to perform the supervisory duties of the position. Prior to [redacted] arrival and being told otherwise, [redacted] assumed that serving as the [redacted] nullified the need for her physical presence in [redacted]

(U//~~FOUO~~) Based on the above, we found reasonable [redacted] belief that [redacted] failure to accommodate her claimed disability evidenced either a violation of policy or mismanagement. Further, her resultant complaints were made to leaders within her chain of command. As a result, we concluded that they constituted protected communications under Policy 1-62.

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

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

(b) (6)

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

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

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(U) New POs

(U//~~FOUO~~) We found that [redacted]'s 28 April 2014 email to T3 leadership and her 30 April 2014 email to [redacted] leadership, in which she accused [redacted] of "abuse of authority, mismanagement, and unfair treatment," did not constitute protected communications under Policy 1.62. Despite the wording of her accusation, [redacted] further explanation of what she meant by the phrase made clear that it centered on her unhappiness with her new POs; in the emails, [redacted] alleged that the new POs [redacted] intended to implement were "not obtainable in any way" and therefore she was being set up for failure. She also alleged that [redacted] was required to put a new PP in place within 30 days of becoming chief of [redacted] and failed to do so. As a result, [redacted] worked for months without a PP in place. Further, the new PP was not discussed with her.

(U//~~FOUO~~) Although [redacted] claimed to not have an approved PP in place, the OIG found this to be inaccurate. In fact, [redacted] was well aware of her PP and its included POs. Her PP as [redacted] (the POs of which, according to [redacted], were the same as the previous [redacted]), was entered into HRMS on 27 August 2013. Further, [redacted] provided written input for her mid-cycle performance review to both [redacted] and [redacted] on 12 February 2014. Finally, on 28 February 2014, she acknowledged (within HRMS via digital signature) that the review was held.

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

(U//~~FOUO~~) As the long-time former deputy chief of [redacted] and a former rater, we believe it reasonable for [redacted] to have known that her original PP would remain in effect until a new PP was entered into HRMS. Further, because [redacted] did not feel that her POs were appropriate for the work that she was actually performing, she had on several occasions proposed that they be changed. In February and again in mid-April 2014, [redacted] discussed her PP concerns with [redacted] and [redacted] by both email and telephone; she knew that the PP was in effect.

(U//~~FOUO~~) Further, despite her claims to the contrary, [redacted] new POs were discussed with her. Based on [redacted]'s concerns and [redacted] desire to assume rater responsibility, on 25 April 2014 [redacted] met with [redacted] to discuss the matter. That same date, [redacted] entered [redacted] new PP into HRMS. Although [redacted] had incorporated many of [redacted] suggestions, [redacted] did not like her new POs, which for the first time included metrics. [redacted] unhappiness with her new PP led her to complain to T3 and [redacted] leadership.

(U//~~FOUO~~) During his interview with the OIG, [redacted] stated that he did not recall receiving emails from [redacted] in late April 2014 regarding her unhappiness with new POs that [redacted] put in place. However, such a complaint would not have made an impression:

> (U//~~FOUO~~) I probably wouldn't have given that a lot of credence, just because, again, like her or not, [redacted] is your manager and she has the authority to say, 'here's how I'm going to be judging you by'…. And, it might be that you don't like it, but you don't have to like everything that your boss wants you to do.

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

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

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

(U//~~FOUO~~) During his interview with the OIG, [redacted] testified that during his related meeting with [redacted], she expressed unhappiness in [redacted] :she did not agree with her new POs, refused to acknowledge them in HRMS, and said that she was working in a HWE. However, both [redacted] and [redacted], who had been given the charge to reinvigorate and develop a new business model for [redacted] (which was in danger of being abolished due to lack of relevance), had previously told [redacted] that [redacted] was actively undermining their management efforts. In an effort to resolve the situation, he simply moved [redacted] to another position outside of [redacted]

(U//~~FOUO~~) PM 4-16A requires that raters and employees engage in "continuing dialog throughout the rating cycle" regarding progress against POs. It also requires that "at or near the midpoint of the rating cycle" at least one such performance discussion be formally documented. In the case of [redacted] PP, these requirements were followed. Further, while under PM 4-16A employees are required to dialogue with their rater in the development of POs, it is the rater who is ultimately responsible for developing and communicating performance expectations and, therefore, POs. [redacted] consulted with [redacted] in the development of the new POs; [redacted] did not have to agree with them. Finally, there was no requirement that [redacted] implement a new PP for [redacted] within 30 days. [redacted] had been the [redacted] chief since only mid-January, yet at [redacted] request, she attempted to put a new PP and POs in place that more accurately reflected her expectations regarding the duties [redacted] was to perform. That [redacted] did not want her performance judged against quantifiable measures is irrelevant.

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(U//~~FOUO~~) Based on the above, we did not find reasonable [redacted] belief that [redacted]'s actions related to the implementation of new POs for [redacted] evidenced a violation of policy, abuse of authority, or mismanagement. As a result, we concluded that her related complaints, although made to leaders within the chain of command, did not constitute protected communications under Policy 1-62; the OIG did not further investigate this aspect of the complaint.

2. (U) Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or threatened to be withheld following the protected communication? No.

(U//~~FOUO~~) [redacted] alleged that [redacted] reprised against her for making protected communications. Specifically, she alleged that in reprisal for [redacted] reporting to [redacted] and Mr. Witschey that [redacted] failed to provide her a reasonable accommodation, [redacted] gave her a lower ACE rating than she deserved for the rating period covering 01 August 2013 through 03 May 2014.

(U//~~FOUO~~) Policy 1-62 defines a "personnel action" as an action that affects or has the potential to affect the employment opportunities, current position, or career of the NSA employee. Within the Agency, EORs are used to determine performance bonuses for civilian employees. Additionally, when applying for another position within NSA, an employee must submit their

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(b) (6)

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computer-generated employment history profile, which includes the overall rating of the employee's EORs for the last several performance appraisal cycles.[17]

(U//~~FOUO~~) Although lowered performance evaluations may constitute a personnel action in this context, courts are hesitant to find the existence of reprisal, particularly if the performance evaluation is an accurate indication of the complainant's performance. As evaluated in detail in the final step of the reprisal analysis *infra*, we concluded that the ACE ratings [redacted] received were accurate indications of her performance and, therefore, were not personnel actions under NSA/CSS Policy 1-62 or other policies. However, to ensure that [redacted] allegation receives the fullest consideration, we will continue the analysis.

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

3. (U//~~FOUO~~) If the evidence had established that a personnel action had taken place, would the protected communication have been a contributing factor? Yes.

(U//~~FOUO~~) We concluded that if the ACE ratings given by [redacted] had been determined to be personnel actions, they would have been within a period of time after [redacted]'s protected communications to reasonably conclude that the communications were a contributing factor for the personnel actions; [redacted]'s final ACE was signed less than seven months after her complaints to T3 leadership. Additionally, we determined by a preponderance of the evidence that [redacted] had knowledge of [redacted]'s communications at the time she signed the EOR on 17 October 2014.

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(U//~~FOUO~~) In her testimony to the OIG, [redacted] said that during her 10 April 2014 meeting with [redacted] and Mr. Witschey, Mr. Witschey told her that he wanted to discuss [redacted] situation with [redacted]. Although [redacted] was not certain that he did so, after [redacted] commented that she was aware of "what's going on," [redacted] assumed that he had, which is why she referenced [redacted] knowledge of the meeting in her 28 April 2014 email to Mr. Witschey. Further, on 30 April 2014 [redacted] called [redacted] into her office to complain that T3 leadership (she did not specify who) had taken her out of class to discuss [redacted] complaints. Although she did not mention specifics, [redacted] said that she had to explain herself and asked why [redacted] did not speak with her before going to leadership. [redacted] could not recall how the meeting ended and whether [redacted] was also present. [redacted] was also unsure whether it was T3 or [redacted] leadership who spoke with [redacted].

(U//~~FOUO~~) In his testimony to the OIG, [redacted] said that although he never discussed [redacted] concerns with [redacted], Mr. Witschey would likely have done so. Further, sometime after the 10 April 2014 meeting with [redacted], either [redacted] or

[17] (U//~~FOUO~~) Further, the most recent three EORs are part of the promotion review package an employee submits when seeking promotion to the next higher grade and the ratings received are a consideration in the decision whether or not to promote. Because [redacted] was already a GG-15 and in a position that did not allow for promotion to the senior level, this factor did not apply to her specific case.

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Mr. Witschey (but most likely [redacted]) told [redacted] that [redacted] was unhappy that [redacted] had been allowed to meet with T3 leadership, as she felt it undermined her management efforts.

(U//~~FOUO~~) In her testimony to the OIG, [redacted] said that although they were unaware of the details, both she and [redacted] knew that [redacted] had complained to both T3 and [redacted] leadership regarding the decision not to accommodate her [redacted] without medical documentation. [redacted] and Mr. Witschey discussed the situation and [redacted] own unrelated concerns that [redacted] was trying to bully her direct managers. [redacted] also spoke with both Mr. Witschey and [redacted] about the matter.

(U//~~FOUO~~) In her testimony to the OIG, [redacted] said that she knew that [redacted] had told [redacted] leadership about her unhappiness in [redacted] Although [redacted] did not go into detail, he told [redacted] that because [redacted] was upset and wanted to leave [redacted] he was going to move her to another organization. [redacted] assumed that [redacted] was upset because of the accommodation issue and because she had overheard [redacted] speaking on the telephone with [redacted] in her office; during that conversation, [redacted] told [redacted] that [redacted] was undermining her management efforts within [redacted] (a separate matter from the accommodation issue) and, therefore, she wanted [redacted] moved out of the organization. [redacted] believed that [redacted] complained to T3 leadership in addition to [redacted] leadership. However, she did not know for certain until Mr. Witschey's [redacted] told her so in fall 2015. According to [redacted] complaints were not bothersome: "…[redacted] has the right, if she's not happy with me as a leader, to go to my leaders and talk to them."

(U//~~FOUO~~) Although [redacted] did not recall speaking with Mr. Witschey about [redacted] complaints, she acknowledged believing that [redacted] had complained to T3 leadership. Given [redacted]'s testimony that both she and [redacted] were contemporaneously aware of the complaints, we concluded that [redacted] knew of [redacted] protected communications when she took the adverse personnel actions against her.

4. (U) If the evidence had established that a personnel action occurred, would it have been taken absent the protected communication? Yes.

(U//~~FOUO~~ The OIG determined that [redacted] would have received the overall 3.3 and 3.8 ratings on her ACE, even if [redacted] had not made protected communications to T3 leadership. We considered the following factors in our analysis:

(U//~~FOUO~~) **Strength of the Agency's evidence in support of its personnel action.** Although [redacted] testified that her ACE rating was lower than she deserved because [redacted] "hated" her for going to T3 leadership with her complaint and therefore would "do anything to hurt" her, the investigation disclosed that [redacted] was aware that [redacted] and [redacted] were not completely satisfied with her performance throughout the rating cycle.

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(U//~~FOUO~~) testified that told her to stop letting employees come to her with issues, as she was "not management anymore." Further, both and told her that did not want to provide advice to division chiefs. According to , and used email to make her feel like she was not doing her job; for instance, they demanded by email that she attend weekly staff meetings, although she obtained any necessary information through the division chiefs. However, we found it reasonable for and to want their to participate in staff meetings and therefore be available to provide technical information and advice. , as a GG-15 and the former deputy chief of the organization, should not have needed to be directed to attend.

(U//~~FOUO~~) Further, documentation otherwise confirmed that did not take direction well:

(b) (6)

- (U//~~FOUO~~) On 10 March 2014, was so upset that she stomped her feet and swore when challenging about management's MFR regarding the events of 06 and 07 March 2014 and the decision to require medical documentation before accommodating her
- (U//~~FOUO~~) On 13 March 2014, argued with regarding whether she had "agreed" to take over a task to get AutoCAD software onto the . Further, she appeared unconcerned about another task that considered especially critical (the SSPs), claiming to be awaiting action by others. also told that she would be seeking a new job, as request for a status update on the tasks made her feel "targeted."

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

- (U//~~FOUO~~) On 09 April 2014, told that a customer wanted a timeline from regarding resolution of the AutoCAD issue and was threatening to elevate the matter to his management. When asked to work with another employee to complete the timeline that week and inform when it was ready, again responded that she had only agreed to help get a server, implying that she would not follow direction.
- (U//~~FOUO~~) On 14 April 2014, requested that try to speak directly with either or , rather than leave voice messages or use JSignout to notify management when she needed to go home ill. Rather than saying she would do so, responded that she would notify someone at her temporary duty location instead.

(U//~~FOUO~~) Additionally, although testified that she would not have received the original 3.3 rating absent her protected communications to T3 leadership, she did not express the same certainty in regard to her final rating of 3.8. According to , neither nor over told that she was performing at a level higher than 3.8 and, prior to complaints, had already "targeted" her for harassment related to failing to accommodate her disability.

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(b) (6)

(U//~~FOUO~~) In her testimony, denied giving a lower ACE rating than she deserved, let alone giving her a lowered rating in reprisal for protected communications to T3 leadership. Rather, the original rating was based on

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

performance and the input she provided regarding her accomplishments against the PQs and PEs in her PP, as well as [redacted]'s previous experience in evaluating subordinates. Although [redacted] initially suggested giving [redacted] a higher rating simply to avoid conflict, [redacted], who came from an organization that did not allow inflated ratings, discussed with [redacted] the justification required for each level of scoring and whether [redacted] had actually met those requirements for each PO and PE. [redacted] adjusted the ratings accordingly.

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(b)(6)

(U//~~FOUO~~) During the informal reconsideration process, [redacted] raised the scores for several of [redacted] POs and PEs after receiving both additional information from [redacted] regarding her accomplishments and guidance from [redacted] leadership on performance and rating expectations within [redacted]. According to [redacted], [redacted] was not an outstanding [redacted] and overall did not perform at the 4 or 5 level. Her performance was adversely impacted by her absence from the office; in that frequently she was not present for meetings. Further, [redacted] did not always perform the tasks she was given and sometimes undermined the changes that [redacted] and [redacted] were trying to make in [redacted].

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

(U//~~FOUO~~) According to [redacted], her main concern with [redacted] performance and conduct related to [redacted] integrity and it was the one area of [redacted] ACE rating (the Personal Leadership and Integrity PE) that [redacted] was unwilling to raise during the reconsideration process. Under [redacted] had served as the *de facto* chief and upon assuming the [redacted] position, "she was not willing to let go of the control and running the organization." [redacted] found that when she or [redacted] directed the division chiefs to do something, frequently [redacted] would "redirect" them not to. And, whenever [redacted] and [redacted] told [redacted] that as [redacted] she did not have the authority to overturn their decisions, [redacted] made excuses or said, "[but,] we have always done it [that way]." This frustrated [redacted], who was being held accountable for the organization's achievements or lack thereof.

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(U//~~FOUO~~) According to [redacted], [redacted] was used to "bossing people around" in [redacted] without anyone standing up to her ([redacted] was really a workplace bully in there."). Therefore, [redacted] was very unhappy that [redacted] held her accountable and did not allow her to leave the office without explanation or authorization, hold meetings with [redacted] personnel outside of [redacted] spaces, and provide management advice and direction to the division chiefs. When [redacted] first came to [redacted] told her that she could start with a "clean slate" and have the entire leadership team compete for their positions. By the end of April 2014, after multiple incidents of [redacted] hindering [redacted] mission improvement efforts, [redacted] regretted not having done so; she called [redacted] and told him that [redacted] needed to leave [redacted] because she was repeatedly undermining her and [redacted] authority.

(U//~~FOUO~~) [redacted] said that somehow [redacted] overheard this conversation through the office wall and therefore knew that [redacted] wanted her out of the organization, which [redacted] regretted: "I'm not cruel." She understood why [redacted] was upset with her and the changes within [redacted].

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(U//~~FOUO~~) I kind of rocked [redacted] world, too…. it's hard when you come into an organization and you're brought in to make change… and you have got people who have been there for quite a while in place… and you're telling them, "We're changing things"….

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

(U//~~FOUO~~) According to [redacted], her decisions and actions as a manager, including her decision not to raise [redacted] PE rating and therefore her overall ACE rating, were justified. Therefore, [redacted] was unconcerned about any complaints to her supervisors; [redacted] complaints to leadership did not influence in any way the ratings she received on her ACE.

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

(U//~~FOUO~~) [redacted] testified that, during the appraisal cycle, [redacted] frequently and overtly disagreed with management's direction for the office. She also continued to interact with [redacted] employees in the manner of a deputy chief, rather than [redacted]. Additionally, after being called out for leaving [redacted] workspaces without authorization and told to provide medical documentation regarding her [redacted] [redacted] took great offense and began saying "no" to management; She deliberately did not accomplish some of the tasks assigned her and at times bullied [redacted] and [redacted].

(b) (6)

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

(U//~~FOUO~~) According to [redacted], when initially rating [redacted], she felt that [redacted] deserved either a 3.5 or 3.6 overall rating. However, [redacted] disagreed because [redacted] had not been doing what they wanted her to do. After their discussion, [redacted] lowered the rating to 3.3. [redacted] was a GG-15, and there were higher expectations associated with her grade and position; the rating was not an act of reprisal against her for complaints to T3 leadership. As the rater of record for [redacted]'s ACE, [redacted] was not involved in the reconsideration process.

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

(U//~~FOUO~~) In his testimony [redacted] said that [redacted] and [redacted] did not reprise against [redacted] with the initial overall ACE rating of 3.3. Rather, it was based on performance. When [redacted] came to [redacted] gave her the "charge to make the organization viable." During the rating cycle, [redacted] told [redacted] that [redacted] was undermining the office changes [redacted] and [redacted] were trying to make; as she wanted to keep [redacted] old business model; [redacted] only disparaging remarks regarding [redacted] related to her work performance. In a separate conversation, [redacted] confirmed the information [redacted] provided and said that she agreed with [redacted]'s vision for [redacted]. Additionally, [redacted] shared with [redacted] her belief that [redacted] was destroying [redacted] opined that there were two groups of employees within [redacted] those who revolved around [redacted] and those newer to the organization who were trying to implement the new business model espoused by [redacted] and [redacted]. In constantly undermining [redacted] leadership authority, [redacted] had almost created a HWE for [redacted].

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

(U//~~FOUO~~) According to [redacted] during the initial performance evaluation process, he had several conversations with [redacted] regarding [redacted] leadership's expectations regarding the range for ACE ratings and the normalization process used. After [redacted] asked for informal reconsideration of her rating, [redacted] again spoke with [redacted]. Together, they reviewed the range of ratings that were given across [redacted] and discussed the highest and lowest scores and the specific performance involved. They also discussed [redacted] work

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(b) (6)

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performance and history. Additionally, [redacted] reviewed with [redacted] what he considered to constitute "Outstanding" and "Excellent" work performance under various POs. [redacted] considered this a second "normalization" process, because [redacted] was a new manager in [redacted] she was unaware of how other [redacted] managers might rate the achievement/performance input provided by [redacted]. According to [redacted] s initial overall rating was a little low for [redacted] standards; however, the low ratings for the behavioral aspects of the AGE were warranted.

(U//~~FOUO~~) The documentary and testimonial evidence in this case is clear and convincing that [redacted] overall AGE ratings for the period covering 01 August 2013 through 03 May 2014 were appropriate. Testimony revealed that [redacted] initial 3.3 rating was based on [redacted] management experience in her prior organization. [redacted] came to T, the Technology Directorate, from I, the Information Assurance Directorate, where it was more difficult to justify 4.0 and 5.0 ratings on PEs and POs ([redacted] received 3.9 overall ACE ratings during her last two years as a GG-15 deputy chief in I; during her last year there, she rated two managers and gave both 3.8 overall ratings). [redacted] shared her I experience regarding rating expectations with [redacted], who then used those expectations in rating [redacted] performance; lowering her rating from a 3.5 or 3.6 to a 3.3.

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

(U//~~FOUO~~) The testimonial evidence about [redacted] being a tough rater was corroborated by the ratings she gave within [redacted] for the 2013-2014 appraisal cycle. [redacted] rated three [redacted] leaders during that cycle; [redacted], a GG-15 who received an overall rating of 4.3 or "Excellent" and the two GG-13 division chiefs, [redacted] and [redacted] who received ratings of 3.7 and 3.8 respectively. [redacted], a GG-15 member of the [redacted] senior leadership team who, unlike [redacted], refused to complete tasks with which she did not agree and actively undermined leadership's efforts to effect a new business plan within the organization, initially received a 3.3 from [redacted], who relied upon [redacted] guidance regarding performance expectations. Given the circumstances, we found this initial rating to be reasonable.

(U//~~FOUO~~) After [redacted] requested informal reconsideration of her ACE rating, [redacted] reviewed with [redacted] the performance expectations and the normalization process within [redacted]. He also told her the level of performance he believed demonstrative of "Excellent" or "Outstanding" for specific POs and PEs within [redacted]. Based on this discussion and added input from [redacted] regarding her achievements, [redacted] raised the ratings of various POs and PEs within [redacted] ACE, resulting in an overall rating of 3.8.

(U//~~FOUO~~) [redacted] specific complaint related to her final overall EOR score of 3.8 was that she received a 3.0 or "Successful" rather than a 4.0 or "Excellent," on her Personal Leadership and Integrity PE. However, in her informal request for reconsideration, [redacted] offered no justification for a higher rating, other than she was "blunt and straightforward." Had she received a 4.0 for the PE, [redacted] overall ACE rating would have risen from 3.8 to 3.9.

(U//~~FOUO~~) The description for the Personal Leadership and Integrity PE states that DI employees are expected to demonstrate personal initiative and innovation, as well as integrity, honesty, and respect for diversity in their professional dealings with others. Further, they are to

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demonstrate core organizational, DoD, and IC values, including selfless service, a commitment to excellence, and the conviction to express their professional views.

(U//~~FOUO~~) Evidence in the form of emails and testimony revealed that after [redacted] mid-January 2014 arrival in [redacted] performance and conduct declined due to her failure to accept the new business model being established within [redacted] to include more hands-on supervision. As appropriate under the PE description above, [redacted] expressed her concerns regarding the changes within [redacted] to management. However, her conduct in redirecting the division chiefs, attempting to thwart management's change efforts, and refusing to follow supervisory direction on tasks was unprofessional and demonstrated a lack of integrity and respect for authority; therefore, a 4.0 or higher rating under the PE was not warranted. As a result, we found the 3.8 overall rating on [redacted] EOR to be an accurate depiction of her performance for the 2013-2014 appraisal cycle.

(U//~~FOUO~~) **Existence and strength of any motive on the part of [redacted] to retaliate.** We also found no evidence that [redacted] was motivated to retaliate against [redacted] for her HWE complaints related to [redacted] failure to accommodate her [redacted] testified that it was not necessarily the HWE complaints themselves that motivated [redacted] to give her a lower rating than she deserved. Rather, it was that [redacted] "took anything to T3 management…. The fact that I went above her [about anything]." Further, given that [redacted] disability and need for accommodation were not obvious, under NSA/CSS Policy 4-23 it was ODA's decision, not [redacted] as to whether medical documentation was necessary to support [redacted] request for an alternate duty location. ODA told both [redacted] and [redacted] that previous medical documentation had expired and that new documentation was required before a determination could be made as to whether [redacted] was a qualified individual with a disability and reasonable accommodation decisions could be made.

(U//~~FOUO~~) [redacted] knew that in requiring [redacted] to follow the Agency's reasonable accommodation process she was enforcing rather than violating policy. Mr. Witschey knew this as well; he took no disciplinary action against [redacted] based on [redacted] HWE complaint. In fact, [redacted] subsequently received a 4.5 "Excellent" overall ACE rating for the 2013-2014 appraisal cycle; a rating that was reviewed and approved by T3 leadership. Additionally, although the MC allowed [redacted] to work from an alternate location after her HWE complaint, this was a temporary accommodation until medical documentation could be obtained and assessed, not an official validation of [redacted] complaint. Given the above, we found credible [redacted] testimony that [redacted] complaints to T3 leadership had no impact on her impartiality and concluded that [redacted] had no motive to reprise against [redacted] for her protected communications to [redacted] and Mr. Witschey.

(U//~~FOUO~~) **Evidence that the Agency takes similar actions against employees who are not whistleblowers but are otherwise similarly situated.** As noted previously, the investigation determined that [redacted] ultimately rated three [redacted] employees during the 2013-2014 appraisal cycle. However, none of these employees performed the same [redacted] role as [redacted]. Rather, they were managers, two of whom were more junior in grade (GG-13s)

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than [redacted]. None of these managers shared the same POs as [redacted]. Further, their POs varied based on position, duties, and grade. Because their roles and POs differed from those of [redacted], we concluded that there were no [redacted] employees similarly situated to [redacted] during the 2013-2014 appraisal cycle.

(U//~~FOUO~~) Nonetheless, because DI employees share the same PEs, we examined [redacted] Leadership and Integrity PE rating against those of [redacted] three immediate subordinates. We found that because the subordinates were managers, they had additional duties under the PE not shared by [redacted].[18] Further, all three received different ratings for the PE. [redacted] deputy chief, who received an overall ACE rating of 4.3; received a 5.0 for the PE. The related narrative stressed that her leadership and integrity skills "well exceeded expectations" in that she performed in a professional, positive manner and "eagerly and readily teamed with [redacted]… to achieve mission objectives and evolve the organization to its new operating paradigm and mission focus areas." [redacted] gave the division chief who received a 3.8 overall ACE rating a 4.0 for the PE, noting within the relevant narrative that this division chief had "evolved into an integral member of the leadership team."

(U//~~FOUO~~) The second [redacted] division chief received the same 3.0 rating as [redacted] for the PE (this division chief's overall ACE rating was 3.7). In the related narrative, [redacted] wrote that the second division chief's communication and leadership skills had increased during the appraisal cycle and that she was "on her way" to continued progress in her career. [redacted] related narrative noted that she demonstrated core organizational values and freely expressed her opinions, demonstrating initiative and openness "in dealing with coworkers, customers and stakeholders"; her relationship to and with [redacted] leadership was not mentioned. Although they were different grades, neither [redacted] nor the second division chief's narrative for the PE was supportive of a rating higher than a 3.0. The narratives in support of [redacted] deputy chief's and the other division chief's higher ratings stressed supporting and collaborating with [redacted] leadership; behavior that the investigation disclosed was lacking on the part of [redacted].

(U//~~FOUO~~) Based on the clear and convincing evidence in support of [redacted] ACE ratings and the lack of motive for [redacted] to retaliate against her for her protected communications, we did not substantiate the allegation of reprisal.

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

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

[18] The Leadership and Integrity PE description for managers requires, among other things, that they establish a work environment that promotes diversity and collaboration and that they recognize and reward individual excellence, enterprise focus, innovation, and collaboration.

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

IV. (U) CONCLUSION

(U) Conclusion

(U//~~FOUO~~) We concluded that [redacted] did not reprise against [redacted] for reporting to T3 leadership that she had created a HWE for [redacted] by failing to accommodate her [redacted]

(U) Distribution of Results

(U//~~FOUO~~) [redacted] and [redacted] will be informed of the results of our inquiry in this matter. A summary of the investigative findings will be provided to [redacted] and the DoDIG.

(b)(6)

[redacted]

Senior Investigator

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[redacted]

Assistant Inspector General
for
Investigations

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