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NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE



INSPECTOR GENERAL

REPORT OF INVESTIGATION

12 April 2016

IV-15-0017

Alleged Reprisal

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Release 2022-11
NSA 22366

(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

Release 2022-11
NSA 22367

with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities.

Release 2022-11
NSA 22368

I. (U) SUMMARY

(U//~~FOUO~~) On 16 October 2014, the NSA/CSS Office of the Inspector General (OIG) received an allegation that [redacted] a language analyst in [redacted] had been subjected to reprisal for his protected communications to [redacted] both members of his chain of command. It was also alleged that [redacted] was subjected to a hostile work environment by [redacted]. Specifically, it was alleged that management officials had:

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

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

1) Completed repeated verbal and written counseling statements from 31 October 2013-30 July 2014;

2) Removed [redacted] from consideration for a Branch Chief position on 30 July 2014; and

3) Rated [redacted] with a "2" rating in the communication element in the 2013-2014 annual contribution evaluation (ACE).

(U//~~FOUO~~) NSA/CSS Policy 1-62, Whistleblower Protection, prohibits taking, or threatening to take, an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making a protected communication. The OIG investigation determined that [redacted] did not make any protected communication to his chain of command.[1] Furthermore, even if he had made a protected communication, none of the three alleged actions taken against [redacted] constituted a personnel action under applicable standards.

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

(U//~~FOUO~~) In the interest of conducting a full examination of the action of Agency management officials in this matter, the OIG also examined whether the basis of [redacted] allegations against [redacted] constituted an abuse of authority. In doing so, the OIG applied NSA/CSS PMM, Chapter 366, Section 1-3E, and the definition of "abuse of authority" provided by the Merit Systems Protection Board (MSPB) in *Jessup v. Department of Homeland Security*, which defines an abuse of authority as an "arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or results in personal gain or advantage to himself or preferred other persons."[2]

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

(U//~~FOUO~~) The OIG found that neither [redacted] engaged in any arbitrary or capricious acts that adversely affected the rights of any person or resulted in personal gain or advantage to himself or herself in violation of NSA/CSS PMM, Chapter 366, Section 1-3A.

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[1] [redacted] alleged that he made two protected communications, however the OIG determined that [redacted] disclosures were not protected disclosures because he could not have reasonably believed the reported conduct to be a violation of law, rule, or regulation. However, in deference to the Complainant, we went a step further and analyzed the alleged personnel actions for purposes of whistleblower reprisal protection.

[2] (U//~~FOUO~~) See *Jessup v. Department of Homeland Security*, 8107 M.S.P.R. 1, ¶8 (2007).

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Declassify On: 20410301

Release 2022-11
NSA 22369

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

(U//~~FOUO~~) The OIG concluded that [redacted] did not engage in behavior that adversely impacted the work environment or created a hostile work environment in [redacted]. Although [redacted] alleged that he complained to [redacted] about the picture of a [redacted] on [redacted] desk, testimony revealed that [redacted] and [redacted] were friends and the picture on [redacted] desk was intended as and taken as a joke by [redacted] both deny that [redacted] ever complained to them about the presence of the picture in the workplace.

(b) (3)-P.L. 86-36
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(U//~~FOUO~~) [redacted] will be informed of the results of our investigation. A summary of the investigative findings will be provided to [redacted] and the Inspector General, Department of Defense.

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

II. (U) BACKGROUND

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(U) Introduction

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

(U//~~FOUO~~) [redacted] entered on duty on [redacted]. He was hired as a [redacted] language analyst to work on the watch floor [redacted]. At the time [redacted] was hired as an Agency employee the current Branch Chief in [redacted] knew [redacted] was a [redacted] with leadership, organizational, and management experience. [redacted] asked [redacted] if he was interested in filling the acting branch chief role for [redacted] accepted the position and immediately began making positive changes within the branch.

(b) (3)-P.L. 86-36
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(U//~~FOUO~~) When the branch chief returned from [redacted] she was promoted to Deputy Divison Chief of [redacted]. Once the branch chief position became vacant, [redacted] contacted Human Resources to inquire if [redacted] was eligible to apply for the position. Human Resources informed [redacted] that [redacted] was ineligible to apply for the branch chief position because he was a probationary employee. [redacted] also inquired whether it was possible to execute a direct hire action for [redacted] but again, he was informed that [redacted] was ineligible as a probationary employee.

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

(U//~~FOUO~~) [redacted] advertised a competitive selection announcement for the Branch Chief position. [redacted] was selected for the position in September 2013. When [redacted] was selected as the branch chief, [redacted] returned to his position within [redacted] as the [redacted].

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

(U//~~FOUO~~) In September 2013, [redacted] allegedly complained to [redacted] that he believed [redacted] had shown favoritism by changing the work schedule of an employee in the office on the basis of the employee's parental and marital status. [redacted] alleged that he was subjected to reprisal for his protected communications to [redacted] both members of his chain of command. [redacted] also alleged that he was subjected to a hostile work environment by [redacted] As a result of these allegations, the OIG began this reprisal investigation.

Release 2022-11
NSA 22370

(U) Scope and Authorities

(U//~~FOUO~~) NSA/CSS Policy 1-62, *Whistleblower Protection* (Policy 1-62), issued 6 July 2005, supplemented by NSA/CSS Policy Memorandum 2013-03 dated 14 June 2013, implementing Presidential Policy Directive (PPD) 19 (Appendix 1) provides protection to NSA employees who make a "protected communication."[3] A protected communication is any lawful communication to a member of Congress or an IG, or a "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 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."

(U//~~FOUO~~) Policy 1-62, paragraph 11, prohibits taking, or threatening to take, an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making a protected communication. Paragraph 9 defines a "personnel action" as an action that affects, or has the potential to affect, the employment opportunities, the current position, or the career of the employee.

(U//~~FOUO~~) The NSA/CSS OIG employs a two stage process in conducting whistleblower reprisal investigations.[4] The first stage focuses on the alleged protected disclosures, personnel action(s), and acting official's knowledge of the protected disclosure. The second stage focuses on whether or not the Agency would have taken, withheld, or threatened the personnel actions absent the protected disclosure. 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:

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[3] (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 actions in this case occurred prior to that date, the previous version of NSA/CSS Policy 1-62 and the associated policy memo was applied in this investigation.

[4] (U//~~FOUO~~) 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 U.S. Merit Systems Protection Board, U.S. Office of Special Counsel, and DoD decisions and regulations under that title.

Doc ID: 6791587

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.[5]

(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 disclosure. 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. It is a higher standard than preponderance of the evidence," but a lower standard than beyond a reasonable doubt.

(U//~~FOUO~~) In the second stage, we consider the following three factors for presence of "clear and convincing evidence":

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~~) In addition to interviewing [redacted] two times, we obtained sworn testimony from six witnesses, including [redacted] We also obtained and reviewed relevant e-mails, pertinent performance documents, and copies of relevant correspondence from various sources, including [redacted]

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(b) (3)-P.L. 86-36
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(U) Sequence of Events

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

(U//~~FOUO~~) [redacted] entered on duty on [redacted]. He was hired as a [redacted] language analyst to work on the watch floor in [redacted] At the time [redacted] was hired as an Agency employee the current branch chief in [redacted]

(U//~~FOUO~~) In approximately the winter of 2012, [redacted] approached [redacted] about assuming the acting branch chief position in [redacted] This was in

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

Release 2022-11
NSA 22372

part based on previous experience as a retired noncommissioned officer (NCO) which included organizational and management experience. accepted the temporary assignment and performed well in the position.

(U//~~FOUO~~) In approximately the summer of 2013, when the previous branch chief returned from deployment she was promoted and the branch chief position was vacated. approached human resources about applying for the position. Human resources told that because was a probationary employee he was ineligible to apply for the branch chief position.

(U//~~FOUO~~) In September 2013, hired through the competitive selection process as the new branch chief for . When was hired, assumed the position of working for .

(U//~~FOUO~~) After took over as branch chief in September 2013, she was approached by about her work schedule. introduced herself to and told her that she had been working on the watch floor for two years. was had already approached her military leadership and was offered another position as an Air Force Language Professional. told that despite the better work schedule the new position would offer, she really wanted to stay with - but to do so she needed a day-shift position.

(U//~~FOUO~~) Shortly after speaking with met with and informed him about her conversation with supported working to accommodate schedule and keeping her in the branch. directed to speak with the shift leaders to keep them informed of her decision.

(U//~~FOUO~~) After her discussion with met with the three shift leaders in that were in charge of scheduling. asked for feedback on whether it was feasible to accommodate to a day shift position and provide her leadership opportunities. told the shift leaders that she would like to be able to keep in the branch because of her skills as a linguist and NCO. When the new rotation schedule came out, reviewed the schedule with the shift leaders and approved the changes. Once the schedule was approved, it was emailed out to the branch.

(U//~~FOUO~~) As soon as received the schedule change he immediately went to desk to speak with her about the schedule change. was very upset and told that she was going to get reported for favoritism and that the Equal Opportunity Office should be involved. aggressive tone caused to feel threatened and cry when was speaking to her.

(U//~~FOUO~~) claims that the same day, or the day after speaking with about the schedule change, he also complained to . However, stated that

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Release 2022-11
NSA 22373

never spoke to him about the schedule change or the fact that thought was acting unfairly.

(U//~~FOUO~~) On 1 October 2013, was designated as the branch Technical Director in According to , this move was to transition out of his position into a leadership role. The Technical Director position was the only other branch level position other than branch chief in . This allowed to collaborate with other branch level managers and expand his resume working with different Agency tool sets.

(U//~~FOUO~~) As the branch chief, received several complaints from the branch NCOIC, the watch floor NCOIC, and individual operators about aggressive, derogatory, and demeaning behavior by to other employees in the branch. On 31 October 2013, issued a memorandum for record (MFR) to The MFR was issued for actions that were perceived as a failure to demonstrate courtesy and respect to colleagues and subordinates. The incident that precipitated the MFR was an incident between and the watch floor NCOIC, in which criticized the work of the watch floor team. mimicked in front of the team and made derogatory comments about the inability of the team. stated this was the first tangible incident that she could act on with regard to the complaints received about (Appendix 2)

(U//~~FOUO~~) On 2 April 2014, provided with specific tasks related to a new position in which would lead as a part of a diversity tour. began the tour on . At the conclusion of the detail; provided feedback to that due to mission reasons the team was not mature enough to stand up on its own and the detail ended in July 2014. (Appendix 3)

(U//~~FOUO~~) On 28 July 2014, had a discussion with about stated that his Deputy, and the division NCOIC, had experienced issues with condescending attitude. described attitude as unprofessional and arrogant when interacting with her. (Appendix 4)

(U//~~FOUO~~) On 30 July 2014, spoke with about returning to her branch after his detail ended. shared several incidents involving unprofessional behavior over the past year. told that she had several conversations with about his behavior and would like to find a position in the organization where he could contribute while having limited exposure to the other linguists and analysts. (Appendix 4)

(U//~~FOUO~~) On 30 July 2014, verbally counseled about his behavior and the concerns shared by others in the organization. informed that he was still considering putting him in charge of the but that he would formulate a plan of action and discuss it with him. (Appendix 4)

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Release 2022-11
NSA 22374

(U//~~FOUO~~) On 7 August 2014, [redacted] received notes from a sensing session[6] with personnel in [redacted]. The results indicated that there was a great deal of concern with [redacted]' leadership abilities among the workforce.

(U//~~FOUO~~) Additionally, a commander's inquiry into an allegation of a hostile work environment was conducted by [redacted] informed [redacted] that [redacted]' name came up as a possible cause of the hostile work environment during the outbrief of the inquiry on 5 August 2014.

(U//~~FOUO~~) [redacted] made the decision to appoint [redacted] as the Deputy Chief of the new [redacted] working for [redacted] thought this arrangement would allow [redacted] to monitor [redacted] behavior and mentor him on his leadership development. [redacted] met with [redacted] in the afternoon of 7 August 2014 to explain his decision. (Appendix 5)

(U//~~FOUO~~) On 21 October 2014, [redacted] completed the 2014 ACE for [redacted]. [redacted] rated [redacted] with an overall ACE score of 3.5. Although she awarded a rating of "5-Outstanding" for Objective 1, [redacted] rated [redacted] with a "2- Minimally Successful" in the communication performance element. (Appendix 6)

(U//~~FOUO~~) In accordance with Agency policy, [redacted] submitted informal, first level, and second level reconsideration requests for his ACE. [redacted] the first level reconsideration authority, partially granted [redacted] request and directed that his score for Objective 2 [redacted] be raised from a "3" to a "4," and that the score for Element 2 (Communication) be raised from a "2" to "3." [redacted]' overall score was raised from a 3.5 to a 3.8. (Appendix 7) [redacted] then filed a second level request for reconsideration of his ACE score. (Appendix 8) However, [redacted] the second level reconsideration authority, concurred with the first-level reconsideration.

III. (U) FINDINGS

1. (U) Did [redacted] make a protected communication? No.

(U//~~FOUO~~) NSA/CSS Policy 1-62, Paragraph 10, defines a protected communication as:

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

b. 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

[6] Sensing sessions are non-attribution meetings for employees to discuss the morale and command climate within the organization.

Release 2022-11
NSA 22375

command) designated under Agency policy or other established administrative procedures to receive such communications.

(U//~~FOUO~~) PPD 19 and NSA/CSS Policy Memorandum 2013-03 defines a protected disclosure as:

> A disclosure of information by the employee to a supervisor in the employee's direct chain of command up to and including the head of the employing agency, to the Inspector General of the employing agency or Intelligence Community Element, to the Director of National Intelligence, to the Inspector General of the Intelligence Community, or to an employee designated by any of the above officials for the purpose of receiving such disclosures, that the employee reasonably believes evidences (i) a violation of any law, rule, or regulation; or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;…

(U//~~FOUO~~) The OIG identified one alleged protected communication made by [redacted][7]:

(U//~~FOUO~~) In September 2013, [redacted] received an email from [redacted] with a new watch floor schedule. [redacted] immediately went to [redacted] desk to speak with her about the schedule change. [redacted] was very upset and told [redacted] that she was going to be reported for favoritism and that her actions were discriminatory. [redacted] stated that he believed [redacted] reasons for making the schedule change were discriminatory in nature.

(U//~~FOUO~~) The test for whether the appellant had a reasonable belief that his disclosure evidenced a violation of Agency regulation is an objective one.[8] An actual regulatory violation does not need to be proven by the complainant or a subsequent investigation or audit. It is necessary only for a complainant to prove that "a reasonable person in [his] position would believe" the disclosure evidenced a regulatory violation and that his belief was genuine.

(U//~~FOUO~~) Here, we find that [redacted]' communication to [redacted] was not a protected communication because a reasonable person in [redacted]' position would not have believed the information disclosed evidenced a violation of law, rule, or regulation. [redacted] made the decision to accommodate an employee's work schedule for the benefit of both the employee and the Agency. Additionally, given [redacted]' long career in the [redacted] in leadership positions, he clearly should have been accustomed to the standard of leaders trying to accommodate personal, professional, and Agency needs when scheduling individuals, particularly on shift work. This would not have been the first time in [redacted]' career that an individual's work schedule had

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[7] [redacted] alleged that he made a protected communication to [redacted] on the same day or the following day after making the disclosure to [redacted]. However, the OIG did not find any evidence that [redacted] ever made a disclosure to [redacted] concerning the schedule change. Therefore, the OIG did not analyze the alleged disclosure to [redacted] as a protected communication. Even if [redacted] made the disclosure to [redacted], it would not have been a protected communication for the same reasons as the disclosure to [redacted] was not a protected communication.

[8] See *Haley v. Department of Treasury*, 977 F.2d 553, 557 (Fed. Cir. 1992), *cert. denied*, 113 S. Ct. 2440 (1993) (concurring with Board's conclusion that the appellant lacked an "objective belief" that the disclosure evidenced a violation of law).

Doc ID: 6791587

been adjusted to meet their professional and personal needs, and doing so would not have indicated any discriminatory or illegal motive. There was no evidence that the action taken was discriminatory in nature, and the evidence shows that [redacted] dissatisfaction with the decision was more likely because he was no longer the acting branch chief and was not consulted before [redacted] made the schedule change, not that [redacted] reasonably believed [redacted] actions had violated a law, rule, or regulation.

(U//~~FOUO~~) Although the OIG determined that [redacted] did not make a protected communication, in deference to the Complainant, we went a step further and analyzed the alleged protected communication for purposes of whistleblower reprisal protection.

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

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

(U//~~FOUO~~) NSA/CSS Policy 1-62 defines a personnel action as "any action that affects or has the potential to affect the employment opportunities, the current position or the career of any employee of the NSA/CSS…. Such actions include a promotion; a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the employee's salary or grade level." [redacted] alleged that he was subjected to two adverse actions[9]:

(b) (3)-P.L. 86-36
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1. Received repeated verbal and written counseling statements from 31 October 2013-30 July 2014; and

2. Receiving a "2" rating in the communication element in the 2013-2014 annual contribution evaluation (ACE).

(U//~~FOUO~~) The OIG determined that neither of these two actions constituted a personnel action.

1. (U//~~FOUO~~) Repeated verbal and written counseling statements from 31 October 2013-30 July 2014.

(U//~~FOUO~~) [redacted] alleged that he was subjected to repeated verbal and written counseling statements during the time period. Counseling statements can only by disciplinary so as to constitute a reprisal if it is similar to a Chapter 75 disciplinary action. In *Gober v. Dep't of the Navy*, the MSPB held that letters of caution and requirement, issued to appellant, were not disciplinary actions because they outlined the duties required of appellant, provided specific work requirements, and offered appellant assistance to improve his performance. No discipline was imposed, and indeed the letters clearly state that they are not disciplinary actions.[10]

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[9] [redacted] alleged a third personnel action, that he was removed from consideration of a branch chief position on 30 July 2014 by [redacted]. Because the OIG did not find there was a protected communication to [redacted] this was not analyzed as a personnel action. However, this allegation was analyzed under an abuse of authority standard.

[10] See *Gober*, 15 M.S.P.R. at 357.

Release 2022-11
NSA 22377

Doc ID: 6791587

(U//~~FOUO~~) The evidence shows that [redacted] was given a written MFR on 31 October 2013 by [redacted]. As stated in the letter, the purpose of the MFR was not disciplinary in nature, rather the purpose of the MFR was to put [redacted] on notice so that he could improve his performance. There is also testimony from [redacted], [redacted], and [redacted] that [redacted] was verbally counseled on at least three other occasions between 31 October 2013 and 31 July 2014. Each of the verbal counselings given to [redacted] concerned his workplace behavior and his lack of courtesy and respect for others in the workplace. [redacted] was never subjected to disciplinary action for any reason by [redacted] or [redacted].

(U//~~FOUO~~) Therefore, the verbal counselings and one written MFR issued to [redacted] did not constitute an adverse personnel action under NSA/CSS Policy 1-62.

2. (U//~~FOUO~~) Received a "2" rating in the communication element in the 1 August 2013- 31 July 2014 Annual Contribution Evaluation (ACE)

(U//~~FOUO~~) NSA/CSS Policy 1-62 lists a "performance evaluation" as a type of action that has the potential to affect the career of an employee. Within the Agency, ACE Manager Evaluations are used to determine performance bonuses for civilian employees. Additionally, the most recent three ACEs of record 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. Further, when applying for another position within NSA, an employee must submit their computer-generated employment history profile, which includes the overall rating of the employee's ACEs of record for the last several performance appraisal cycles. However, in [redacted] case, the OIG determined that [redacted] 1 August 2013- 31 July 2014 ACE was not an unfavorable personnel action because it was an accurate indication of [redacted] performance, and the appropriate performance standard was applied.[11]

(U//~~FOUO~~) [redacted] alleged that [redacted] reprised against him by giving him a "2" rating in the communication element of his 1 August 2013- 31 July 2014 ACE. [redacted] gave [redacted] a rating of "2" which equates to "Minimally Successful." According to NSA/CSS Policy Manual 4-16A "NSA/CSS Annual Contribution Evaluation Policy," a rating of 2 means that "the employee's performance requires improvement on one or more of the key behaviors for the objective."

(U//~~FOUO~~) [redacted] also gave [redacted] ratings of a "5" on Technical/Language Processing; a "3" on Technical/Scanning, Analysis and Documentation; a "3" on Building Capacity; a "3" on Lead; a "4" on Accountability for Results; a "4" on Critical Thinking; a "3" on Engagement and Collaboration; a "3" on Personal Leadership and Integrity; and a "5" on Technical Expertise. The overall rating from [redacted] was a 3.5 "Successful."

(U//~~FOUO~~) [redacted] assessed her rating as fair. [redacted] believed that [redacted] performance required improvement in communication. [redacted], the reviewer, concurred

[11] (U//~~FOUO~~) *See Ireland v. Dep't of Health and Human Serv.*, 1987 M.S.P.B. 36 at 6-7, which found that there was no reprisal because the standard against which the Agency measured the appellant's performance permitted an accurate evaluation of his job performance.

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Release 2022-11
NSA 22378

with [redacted] application of the performance element when he performed the informal reconsideration of [redacted]' ACE. [redacted] wrote:

> (U//~~FOUO~~) I have completed a thorough review of [redacted] request and do NOT recommend a rating change on either item. When his rater, [redacted], originally submitted [redacted] ACE for review, I asked for an explanation of the low score on the Communication element and if there was documentation on the issue. She gave me an overview of the problem and confirmed that there was indeed a written memorandum…. [redacted] and I met to discuss his ACE and specifically the rating on the Communication Performance Element. I told him that I had discussed the rating briefly with [redacted] when she originally submitted his ACE and was satisfied with the response. [redacted] then went on to state that he was never given any specifics on his behavior and that he could not control people's perceptions. I pointed out that I believed he was given specifics in the MFR and verbal counseling's. While I agreed that he could not control people's perceptions, I noted that how he interacted with people within the organization was being perceived negatively. Although I never personally witnessed this sort of perceived inappropriate behavior (as I mentioned to him during my counseling on 30 July), I said he was apparently "rubbing people the wrong way" and needed to work on his interpersonal skills.

(U//~~FOUO~~) [redacted] also filed a formal first and second level reconsideration of his ACE. The first level reconsideration authority raised the Technical/Scanning, Analysis and Documentation Objective from a "3" to a "4" and the Communication performance element from a "2" to a "3". The second level reconsideration authority concurred with the decision of the first level reconsideration authority. After completing the ACE reconsideration process IAW NSA/CSS Policy Manual 4-16A, [redacted] final ACE score was adjusted to a 3.8 Excellent. The score adjustment by the first level reconsideration authority was based on a process issue. The reconsideration authority pointed out that [redacted] had noted improvement in [redacted]' communication at the midpoint counseling and there were no documented communication issues after the midpoint. The documented counselings in July were within the 30 days of the ACE closeout and not considered by the reconsideration authority. Although the reconsideration authority made a subjective decision to adjust the ACE score there was no indication that [redacted] original rating was not an accurate indication of [redacted]' performance or that the appropriate performance standard was not applied.

(U//~~FOUO~~) According to documentary and testimonial evidence, [redacted] requested input on her evaluation of [redacted] before she finalized it. [redacted] sought out guidance from employee relations (ER) to make sure that her MFR and oral counselings of [redacted] during the rating period would support the "2" rating on the communication element. (Appendix 9) [redacted] was advised by [redacted] that the written MFR would support the "2" rating. She also discussed the evaluation with her supervisor, [redacted]. By taking these additional steps in her evaluation of [redacted], [redacted] took steps to ensure that she accurately characterized [redacted]' performance and applied the appropriate performance standards.

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

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

(U//~~FOUO~~) Therefore, by a preponderance of the evidence, the OIG concluded that [redacted]' 1 August 2013-31 July 2014 ACE was not an unfavorable personnel action because it was an accurate indication of [redacted]' performance and the appropriate performance standard was applied.

(U//~~FOUO~~) Because our analysis revealed that there were no protected communications and no unfavorable personnel actions, the OIG did not evaluate whether the protected communications were a contributing factor in the alleged adverse actions or whether the alleged adverse actions would have taken place absent the protected communications. The reprisal allegations are unsubstantiated.

(U//~~FOUO~~) However, to give fullest consideration to whether the Agency acted improperly, we considered whether the Agency's actions constituted an "abuse of authority."

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

(U) ABUSE OF AUTHORITY

(U//~~FOUO~~) Did [redacted] or [redacted] engage in any arbitrary or capricious acts that adversely affected the rights of any person or result in personal gain or advantage to himself or herself in violation of NSA/CSS PMM, Chapter 366 1-3A?

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

(U//~~FOUO~~) Conclusion: Unsubstantiated.

(U//~~FOUO~~) [redacted] and [redacted] were responsible for three alleged personnel actions that adversely affected [redacted]. Even though the allegations were determined to not be adverse personnel actions for the purpose of whistle blower reprisal, the OIG will analyze the allegations under an abuse of authority standard. Therefore, the OIG applied NSA/CSS PMM, Chapter 366, 1-3A; General Principles for On-the-Job Conduct (Appendix 1), and the definition provided by the Merit Systems Protections Board (MSPB). In *Jessup v. Department of Homeland Security* the MSPB defined an abuse of authority as an "arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or results in personal gain or advantage to himself or preferred other persons."

(U//~~FOUO~~) Repeated verbal and written counseling statements from 31 October 2013-30 July 2014

(U//~~FOUO~~) [redacted] was given an MFR on 31 October 2013 by [redacted]. [redacted] testified that during her first month on the job she received several complaints regarding the way that [redacted] would communicate with coworkers. She testified that most of the complaints about [redacted] were not tangible enough for her to address. However, when [redacted] was notified about an incident involving [redacted] and [redacted], she took action in the form of an MFR. [redacted] discussed the incident with [redacted] and contacted her ER representative to discuss her options. (Appendix 10) After receiving guidance from ER, [redacted] issued the MFR to [redacted].

(U//~~FOUO~~) [redacted] also testified that she had numerous conversations with [redacted] about his treatment of others. They discussed how his approach to mentoring was demeaning and becoming a disruption in the branch. [redacted] also tried to mitigate the effect on the workforce by placing [redacted] in the Technical Director position to remove him from the operations floor and his interaction with the operators. [redacted] testified that this arrangement seemed to work better because [redacted] would normally communicate directly with the team leads and not the operators. Having the team leads as a buffer between [redacted] and the operators seemed to reduce the number of complaints about [redacted].

(U//~~FOUO~~) [redacted] also verbally counseled [redacted] on his communication skills and how he interacted with others. In addition to getting feedback from his branch chief, [redacted] received feedback from others outside the organization about [redacted] behavior. In June 2014, [redacted] received feedback that [redacted] was mentioned by several people as the cause of a hostile work environment during sensing sessions conducted by the OIG. Additionally, [redacted] was approached by another branch chief in his division as well as two military leaders in his division with complaints about [redacted] unprofessional behavior.

(U//~~FOUO~~) Ultimately, the documentary and testimonial evidence presented established that [redacted] communication skills were less than satisfactory. The numerous verbal counselings and one written MFR issued by [redacted] and [redacted] were not arbitrary or capricious acts that constituted an abuse of authority. Rather, they were appropriate management actions, utilized after consultation with ER to improve the performance of an employee with documented deficiencies.

(U//~~FOUO~~) Removed [redacted] from consideration for a branch chief position on 30 July 2014

(U//~~FOUO~~) In July 2014, [redacted] was considering placing [redacted] in the [redacted] chief position. As discussed above, due to the number of complaints [redacted] received about [redacted] and his communication skills, [redacted] named [redacted] the Deputy Chief of the [redacted] with a military supervisor. [redacted] testified he made his decision so [redacted] would be able to closely monitor [redacted] and ensure his development. The evidence shows that [redacted] was very careful to be fair to [redacted]. Despite receiving numerous complaints about his communication skills and his demeanor, [redacted] continually put [redacted] in leadership positions. The decision to make [redacted] the Deputy Chief for [redacted] was not an arbitrary or capricious act. Rather, it was a prudent action on the part of management to reconsider whether this employee was ready to perform as a manager.

(U//~~FOUO~~) Received a "2" rating in the communication element in the 2013-2014 annual contribution evaluation (ACE)

(U//~~FOUO~~) [redacted] gave [redacted] a "2" in the communication element of his ACE. As discussed above, [redacted] reached out to ER as well as her supervisor before completing the ACE for [redacted]. [redacted] relied on her documented MFR and numerous verbal counselings of [redacted] when she gave him a "2" in communication. There is no evidence that

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

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

[redacted] acted in bad faith. Additionally, [redacted] gave [redacted] "3s," "4s," and "5s" on his ACE. The evidence does not show an arbitrary or capricious act on the part of [redacted].

(U//~~FOUO~~) Therefore, we find that [redacted] and [redacted] did not engage in any arbitrary or capricious acts that adversely affected the rights or any person or resulted in personal gain or advantage to himself or herself in violation of NSA/CSS PMM, Chapter 366, Section 1-3A. Rather, [redacted] gave a score which she felt fairly reflected the performance of the employee over the course of the rating period.

Allegation: Did [redacted] engage in conduct that created a hostile work environment and interfered with [redacted]' work performance in violation of NSA/CSS Personnel Management Manual (PMM), Chapter 366, Section 2-1(A)?

(U//~~FOUO~~) Conclusion: Unsubstantiated.

Testimonial Evidence

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

(U//~~FOUO~~) On 4 August 2015, [redacted] Branch Chief [redacted] was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) From approximately February 2014- October 2014, [redacted] displayed two paper [redacted] caricatures representing [redacted] on [redacted] desk locker. According to [redacted] the first picture had [redacted] name listed as the person the [redacted] was to represent. It also listed the "reason for change" as "Asshole." The second picture also listed [redacted] as the person the [redacted] was to represent but listed "things that come out of his mouth" as the desired change and "I don't like those things" as the reason for change. [redacted] stated that he found the caricatures offensive. (Appendix 11)

(U//~~FOUO~~) [redacted] stated that he did not believe [redacted] "meant any harm" by the picture and was "just trying to be funny." [redacted] asked [redacted] to remove the pictures on multiple occasions and [redacted] refused. [redacted] complained to [redacted] about the pictures and she did not address the issue with [redacted]. [redacted] also discussed the pictures with [redacted] and asked her to speak with [redacted] about taking the pictures down. [redacted] finally came to work on a Saturday and removed the picture himself when no one else was around.

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

(U//~~FOUO~~) On 13 October 2015, [redacted] Senior Language Analyst, [redacted], was interviewed and provided the following sworn testimony:

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

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

(b) (6)

Release 2022-11
NSA 22382

(b) (6)

(U//~~FOUO~~) began working in , in February 2014. had known for over six years while both were active duty in the . stated that he and had a good working friendship in the

(U//~~FOUO~~) admitted to hanging a picture of a caricature on his desk locker with name on it in February or March of 2014. He stated that it was meant as an inside joke. only recalled there being one picture and he did not remember when it was removed. stated that during the first four-to-six months on the job he worked closely with , and had a good relationship and gave each other a hard time. put up the picture because of the way that would talk to people. was rude, demeaning, and often called people "stupid or dumb."

(U//~~FOUO~~) saw the picture in work space and asked why he put it up. told him because "you are always being a butt head." never appeared to be offended or upset by the picture and never asked to take it down. states that he was never approached by anyone about taking the picture down.

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

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

(U//~~FOUO~~)

(U//~~FOUO~~) On 14 October 2015, , former Branch Chief, , was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) had seen pictures of the in the workspace. However, she claimed that she had never seen the picture of the with name on it. stated that she considered the pictures a "playful gesture" amongst the analysts. denied ever being approached by about a picture. No one in the office ever complained to her about any pictures.

(U//~~FOUO~~)

(U//~~FOUO~~) On 14 October 2015, Division Chief, , was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) is the Division Chief and has been in the position for seven years. denies ever seeing a picture of a in the work place. was never approached by to complain about the or a hostile work environment. If had seen the picture he would have had it removed immediately.

(U//~~FOUO~~)

(U//~~FOUO~~) On 13 October 2015, , NCOIC, , was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) has worked with for approximately two years. is professional and well liked in the workplace. and would often "poke jabs" at each other in the workplace. did see a picture of a on

Release 2022-11
NSA 22383

locker about a year ago. He did not know what was written on the picture and believed that it was a joke. He could not recall how long the picture hung in the workspace. was not aware of going to anyone in management to complain about the picture.

(U//~~FOUO~~)

(U//~~FOUO~~) On 13 October 2015, former NCOIC; , was interviewed and provided the following sworn testimony:

(U//~~FOUO~~) came to in early 2010. She was deployed during 2012 and 2014. During 2013 she returned to for a few months before returning to work in . did not notice any issues between and in the workplace. She never saw a picture of a in the workplace. She was not aware of anyone complaining about the picture in the time that she worked at .

(U//~~FOUO~~)

(U//~~FOUO~~) On 11 March 2016, former NCOIC, , was interviewed and provided the following testimony:

(U//~~FOUO~~) was the NCOIC of from approximately April 2014- April 2015. She worked in close proximity to and . She does not recall ever seeing a picture of a in the workplace. If she had seen a picture in the workplace she would have addressed it immediately and removed it. has a medical condition that can affect her memory but to the best of her knowledge never came to her to discuss the picture. She did not think it was likely would come to her to complain about because she did not have a good relationship with . had a reputation for yelling at the operators on the watch floor. Her impression of is that he jokes around a lot but that he is professional.

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

(b) (6)

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

(U) Documentary Evidence

(U//~~FOUO~~) Picture of caricature that was hung by on his work locker depicting . (Appendix 11)

(U) Analysis

(U//~~FOUO~~) NSA/CSS PMM, Chapter 366, §2-1 prohibits employees from engaging in "any conduct that creates a hostile work environment and/or interferes with an individual's work performance" and directs that employees may not use "actions or words that denigrate or show hostility toward an individual for any reason…. Likewise, employees will not use abusive or offensive language, gestures, or other conduct… directed against other employees that could affect the individual's work performance or impact the work environment." It is generally

understood that in order to substantiate a hostile work environment claim, the conduct must be sufficiently severe and pervasive to adversely impact the work environment. The preponderance of the evidence shows that [redacted] conduct did not rise to the level of severe or pervasive conduct that impacted the work environment.

(U//~~FOUO~~) The evidence established that the [redacted] and [redacted] have known each other professionally for several years. They had a friendly working relationship and were able to tease and joke with one another in the workplace. [redacted] admitted to hanging the picture of the [redacted] with [redacted] name on it as an "inside joke." [redacted] testified that he did not believe that [redacted] "meant any harm" and "thought it was funny." [redacted] testified that [redacted] and [redacted] seemed to work well together and would "poke jabs" at each other in the workplace. Additionally, [redacted] testified that [redacted] liked to joke around a lot.

(b) (6)

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

(U//~~FOUO~~) [redacted] claimed to have asked [redacted] to take down the picture because it was inappropriate on multiple occasions. He also claimed that he approached [redacted] and asked her to address the issue as well as discussed the picture with [redacted] There is no evidence to support [redacted] claim. [redacted], [redacted], and [redacted] all deny that [redacted] ever approached them to complain about the picture. No other witnesses were aware of [redacted] complaining or being upset about the picture.

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

(U//~~FOUO~~) [redacted] also claimed that the picture could easily be seen in the workplace because of its location on [redacted] desk. The testimony of the witnesses does not support the picture being prominently displayed. Despite [redacted] admitting to hanging the picture on his locker and it likely hanging for several months, three other witnesses claimed to have never seen the picture. No witnesses knew that [redacted] was upset by the picture.

(U//~~FOUO~~) In this case, the preponderance of the evidence established [redacted] conduct was meant as an inside joke and was accepted as a joke. The conduct did not rise to the level of severe or pervasive conduct that impacted the work environment.

Release 2022-11
NSA 22385

IV. (U) CONCLUSION

(U//~~FOUO~~) Conclusion

(U//~~FOUO~~) The OIG concluded that [redacted] and [redacted] did not reprise against [redacted]. [redacted] did not make any protected communications, nor did he suffer any adverse personnel actions.

(U//~~FOUO~~) The OIG concluded that neither [redacted] nor [redacted] engaged in any arbitrary or capricious acts that adversely affected the rights of [redacted] and therefore, did not abuse their authority in violation of NSA/CSS PMM, Chapter 366, Section 1-3A.

(U//~~FOUO~~) The OIG concluded that [redacted] conduct did not rise to the level of severe or pervasive conduct that impacted the work environment in violation of NSA/CSS PMM, Chapter 366, Section 2-1A.

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

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

(U//~~FOUO~~) Distribution of Results

(U//~~FOUO~~) [redacted], [redacted], [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.

[redacted]
Senior Investigator

[redacted]
Assistant Inspector General
for
Investigations

Release 2022-11
NSA 22386

Appendices

1. (U//~~FOUO~~) Authorities
2. (U//~~FOUO~~) MFR dated 31 October 2013
3. ~~(Secret//SI//REL to USA, FVEY)~~ Email from [redacted] to [redacted] dated 2 April 2014
4. (U//~~FOUO~~) Email from [redacted] documenting conversations about [redacted] dated 31 July 2014
5. (U//~~FOUO~~) Email from [redacted] documenting conversation with [redacted] dated 8 August 2014
6. ~~(Top Secret//SI//NOFORN)~~ Original ACE completed by [redacted] on 21 October 2014
7. ~~(Secret//SI//NOFORN~~) First level ACE reconsideration
8. ~~(Secret//SI//NOFORN)~~ Second level ACE reconsideration
9. (U//~~FOUO~~) Email from [redacted] to ER dated 19 September 2014
10. (U//~~FOUO~~) Email from ER to [redacted] dated 29 October 2013
11. (U//~~FOUO~~) Picture of the [redacted] caricature

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

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

(b) (6)

Release 2022-11
NSA 22387

Appendix 1

Authorities

NSA/CSS Policy 1-62, NSA/CSS Policy Memorandum 2013-03, Presidential Policy Directive-19, and NSA/CSS PMM 366

Release 2022-11
NSA 22388

Doc ID: 6791587

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
NSA/CSS POLICY 1-62

Issue Date: 6 July 2005

Content Verified Current on 02 August 2010

(U) WHISTLEBLOWER PROTECTION

(U) PURPOSE AND SCOPE

(U) This policy implements References a-p and establishes the responsibilities and rights of individuals employed, assigned, or detailed to the NSA/CSS, or *applicants for employment*, who disclose information they reasonably believe is evidence of unlawful or improper conduct. This policy does not affect the Equal Employment Opportunity (EEO) rights and responsibilities of *NSA/CSS employees*.

(U) This policy applies to any *employee of the NSA/CSS*, any qualified applicant for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and Nonappropriated Fund Instrumentality (NAFI) employees and applicants.

WILLIAM B. BLACK, JR.
Acting Director

Endorsed by
Associate Director for Policy
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DJP1
DJP6 (VR)
DJP6 (Archives)

(U) This Policy supersedes NSA/CSS Regulation 30-3, dated 1 April 1996.
(U) OPI: Office of the Inspector General, D14, 963-0925s).
(U) The compilation of the information contained in this document is UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~. No section of this document shall be released without approval from the Office of Policy and Records (DJP).

Release 2022-11
NSA 22389

(U) POLICY

1. (U) All employees of the NSA/CSS and applicants for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and NAFI employees and applicants shall be free from *reprisal* for making or preparing to make a *protected communication*. Contractors shall not discriminate against or discharge an employee for disclosing to an appropriate government official information relating to a substantial violation of a law related to a contract (References a, b, c and e-j).

2. (U) No person shall restrict or intimidate another NSA/CSS employee or applicant, NAFI employee or applicant, or member of the Armed Forces assigned, attached, or detailed to the NSA/CSS, who wishes to make or prepare a protected communication in accordance with References b, and d-j.

3. (U) The NSA/CSS IG shall investigate and report, or refer allegations of reprisal against individuals to the appropriate Inspector General organization or other government entity, in accordance with this policy and Reference k.

(U) RESPONSIBILITIES

4. (U) The Office of the Inspector General (OIG) shall:

a. (U) Receive all allegations and evidence of reprisal consistent with the provisions of this policy and in accordance with Reference k;

b. (U) Conduct an investigation of the allegation (unless obviously frivolous) and prepare a Report of the Investigation (ROI) within 180 days of receipt of the allegation. The ROI shall include a thorough review of the facts and circumstances surrounding the allegation, the relevant documents acquired during the investigation and summaries of interviews conducted;

c. (U) If the ROI cannot be issued within 180 days of receipt of the allegation, notify the complainant and all management parties concerned of the reason(s) why the ROI will not be issued within that time period, and provide an estimate as to when the ROI will be issued;

d. (U) Obtain legal review of the ROI. In cases of substantiated reprisal, forward the ROI to the Associate Directorate for Human Resource Services, Employee Relations (MR) office for disciplinary action;

g. (U) Refer to the DoD IG any allegations of reprisal submitted by NAFI employees or applicants in accordance with References g and h;

h. (U) Refer to the DoD IG any complainants who seek to submit a complaint to Congress under the provisions of the Intelligence Community Whistleblower Protection Act in accordance with References l, m, n and o; and

Release 2022-11
NSA 22390

i. (U) In accordance with Reference p, report to the DoD IG any allegations that an NSA senior official has engaged in reprisal.

5. (U) The Office of General Counsel (OGC) shall provide legal review of investigative findings and recommendations, if requested to do so by the IG.

(U) REFERENCES

6. (U) References:

a. (U) DoD Inspector General Memorandum, "Policy on Whistleblower Protection for DoD Employees, Standards Applied to Complaints," dated 7 January 2005.

b. (U) IG Act of 1978, Section 7, DoD IG Guidance Memorandum, dated 05 October 2009.

c. (U) Title 5, United States Code, Section 2301(c)(2).

d. (U) Title 5, United States Code, Section 2302, "Prohibited Personnel Practices."

e. (U) Title 10, United States Code, Section 1034, "Protected Communications: Prohibition of Retaliatory Personnel Actions."

f. (U) DoD Directive 7050.6, "Military Whistleblower Protection," dated 23 July 2007.

g. (U) Title 10, United States Code, Section 1587, "Employees of Nonappropriated Fund Instrumentalities: Reprisals."

h. (U) Department of Defense Directive 1401.03, "DoD Nonappropriated Fund Instrumentality Employee Whistleblower Protection," dated 23 April 2008

i. (U) Title 10, United States Code, Section 2409, "Contractor Employees: Protection From Reprisal for Disclosure of Certain Information."

j. (U) Federal Acquisition Regulation, Subpart 3.9, "Whistleblower Protections for Contractor Employees."

k. (U) NSA/CSS Policy 1-60, "NSA/CSS Office of the Inspector General," dated 6 July 2005

l. (U) The IG Act of 1978, Title 5, United States Code, Appendix III, as amended by the Intelligence Community Whistleblower Protection Act of 1998.

m. (U) DOD Inspector General Memorandum, "Implementation of the Intelligence Community Whistleblower Protection Act of 1998," dated 11 March 1999.

n. (U) DOD Inspector General Memorandum, "Change to the Intelligence Community Whistleblower Protection Act of 1998," dated 5 March 2002.

o. (U) DOD Inspector General Memorandum, "Inspector General Implementation of the Intelligence Community Whistleblower Protection Act of 1998," dated 27 February 2004.

p. (U) DoD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense," dated 10 April 2006.

(U) DEFINITIONS

7. (U) Applicant for Employment: Any person who is applying for employment with, or who is seeking assignment or detail to the NSA/CSS, other than an applicant who is a member of the Armed Forces or an applicant for a NAFI position.

8. (U) Employee of the NSA/CSS: Any civilian who is an assignee, detailee, or employee with the NSA/CSS.

9. (U) Personnel Action: Any action that affects or has the potential to affect the employment opportunities, the current position or the career of any employee of the NSA/CSS, any qualified applicant for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and NAFI employees and applicants. Such actions include a promotion; a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the employee's salary or grade level.

10. (U) Protected Communication:

a. (U) Any lawful communication of information to a Member of Congress or an IG; or

b. (U) A 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 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.

11. (U) Reprisal: 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) NSA/CSS Policy Memorandum 2013-03- Protecting Whistleblowers with access to Classified Information

2. Pursuant to Reference a, any officer or employee of NSA/CSS who has authority to take, direct others to take, recommend, or approve any *personnel action*, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee serving in an Intelligence Community Element as a *reprisal* for a *protected disclosure.*

(U) NSA/CSS PMM, Chapter 366 — *Personal Conduct*

Section 1-3 — (U) *General Principles for On-The-Job Conduct*

A. Uphold the public trust by placing the Constitution, the laws and ethical principles above private gain.

Section 2-1 — (U) *Work Environment*

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

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

Appendix 2
MFR dated 31 October 2013

Release 2022-11
NSA 22394

Doc ID: 6791587

MEMORANDUM FOR THE RECORD 31 OCTOBER 2013

SUBJECT: [redacted]

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

(U//~~FOUO~~) You are being issued this Memorandum for the Record (MFR) for failure to demonstrate courtesy and respect toward your managers, co-workers, colleagues, and subordinates.

(U//~~FOUO~~) There have been reports from managers outside the branch that you have displayed inappropriate and unprofessional behavior in interactions with them and/or their subordinates. In addition, complaints have been received from your peers and personnel subordinate to you within the branch that interactions with you have been demeaning and so uncomfortable that these employees have wanted to depart the workplace.

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

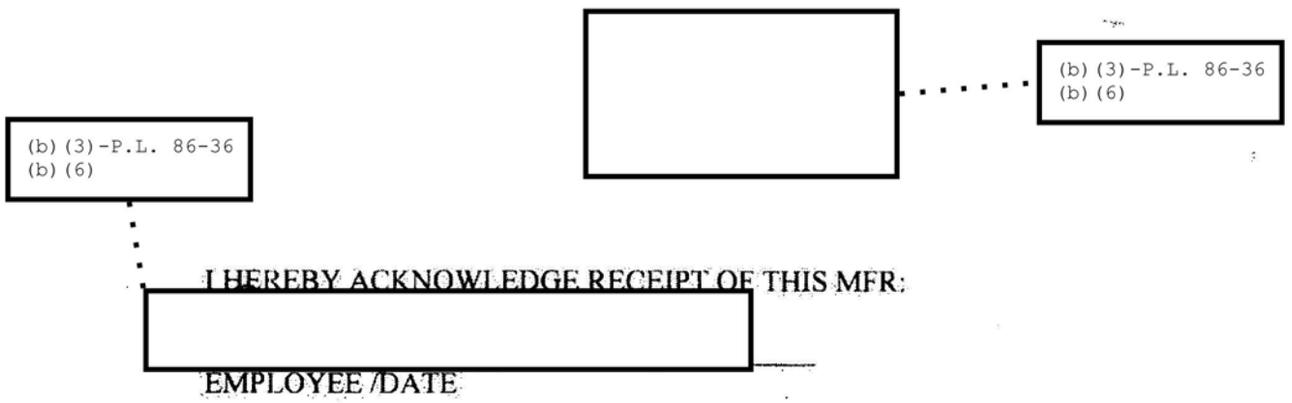
(U//~~FOUO~~) Your lack of professionalism is unacceptable and will not be tolerated in the workplace. Your conduct is a negative reflection on our organization and is in direct violation of the following Agency Policies:

> **NSA/CSS PMM Chapter 366, Section 1-3, GENERAL PRINCIPLES FOR ON-THE JOB CONDUCT:** "Generally, every employee is expected to….Exercise courtesy and respect in dealings with fellow workers and the public…"
>
> **NSA/CSS PMM 30-2, Chapter 366, Section 2-1. WORK ENVIRONMENT.** states the following: "Employees will not engage in any conduct that creates a hostile work environment and/or interferes with an individual's work performance. A. Harassment/Intimidation – Employees will not use actions or words that denigrate or show hostility toward an individual for any reason…

(U//~~FOUO~~) You are reminded that you are currently serving your trial period at NSA. Your management uses this trial period to assess your qualifications and suitability for continued employment. The trial period allows the Agency to terminate your appointment if your performance and/or conduct do not meet acceptable standards. As an Agency employee, you are expected to exercise courtesy and respect to all employees which includes managers, co-workers, colleagues, subordinates, and customers.

Release 2022-11
NSA 22395

(U//~~FOUO~~) This memorandum is intended to be a reminder of appropriate conduct in the work environment per the above referenced policies. Should this type of behavior continue this memorandum could be used to support a future administrative and/or disciplinary action. A copy of this MFR will be retained in my files.



I HEREBY ACKNOWLEDGE RECEIPT OF THIS MFR:

EMPLOYEE /DATE

Release 2022-11
NSA 22396

Appendix 3

Email from [redacted] to [redacted] dated 2 April 2014

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

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

Release 2022-11
NSA 22397

Doc ID: 6791587

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

From:
To:
Cc:
Subject: (U) Leadership Opportunity
Date: Wednesday, April 02, 2014 4:47:41 PM

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

(b)(1)
(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36

Classification: ~~SECRET//SI//REL TO USA, FVEY~~

At the end of 2013, in response to with proven leadership skills and the capability to develop/grow the organization. Therefore, I would like to detail you to team to evaluate where they are and where they need to go. Here are the specifics:

(b)(6)

- Detail would start on
- I will create a Staff Processing Form (SPF) to document the detail
- While detailed, you would work for branch chief of
- Your current supervisor, would continue to rate you but will adjust your ACE objectives to reflect your detail and new expectations
- As a you would be expected to maintain your language proficiency and support the as needed. Both and will work with you to accommodate this requirement
- You would be expected to evaluate the current capabilities of the team
- You would then be expected to provide recommendations to improve the capabilities of the team and attempt to set it up for long term
  Success; recommendations should at a minimum cover personnel, training, and tools/techniques needed to perform the mission
- You would also be expected to establish/document procedures, processes, SOPs, etc
- You would also take a hard look at the team and recommend if it should be expanded into a branch providing target enhancement support to all targets within the division
- At the end of the detail, we (division/branch leadership) will evaluate where we are going with the team. There may be an additional leadership opportunity available if the organization is transformed into a branch. However, NSA guidelines for filling such a position will have to be followed and there are no guarantees that you would be selected for the position, if in fact you were interested.
- On 31 July, no matter what decision leadership makes, you will be allowed to return to if you so choose

Release 2022-11
NSA 22398

Please let me know if you have any additional questions or concerns. Thanks for considering this request.

Cheers,

[redacted]

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

(U//~~FOUO~~)

Classified By: [redacted]
Derived From: NSA/CSSM 1-52
Dated: 20070108
Declassify On: 20390401

Classification: ~~SECRET//SI//REL TO USA, FVEY~~

Appendix 4

Email from [redacted] documenting conversations about [redacted] dated 31 July 2014

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

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

Release 2022-11
NSA 22400

From: [redacted]
To:
Subject: FW: (U) [redacted]
Date: Thursday, July 31, 2014 4:28:06 PM

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

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

On Monday afternoon, July 28, [redacted] advised me that both his deputy, [redacted] and the division NCOIC, [redacted] had experienced some issues with [redacted] on an unspecified date or dates. Although he did not clearly define the issues he did state that both [redacted] and [redacted] had used the term condescending when referring to [redacted] attitude. On the morning of 29 July, I asked [redacted] to provide me with insight on her issue with [redacted]. She explained that he had wanted to submit a military member for an impact award. However, she said that the individual's actions did not meet the criteria for an award. Apparently not satisfied with that answer, he went directly to [redacted] and asked her to initiate an award so that he could submit it. [redacted] said that [redacted] attitude and behavior was unprofessional and arrogant. She also noted that she had heard from others, especially in [redacted] that he had also behaved that way towards them. [redacted] made it clear that she had never witnessed this behavior beyond her personnel interaction with [redacted].

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

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

On the morning of 30 July, I spoke with [redacted] regarding [redacted] position and any issues she may have with returning him to the branch after his current detail. She then brought up several incidents that she had either witnessed or been advised of by her subordinates where [redacted] displayed unprofessional behavior. Some of these incidents went back almost a year. One of the incidents involved [redacted] displaying unprofessional behavior during an interaction with [redacted]. When I asked her why this was the first time she was bringing this to my attention, she said she did not want to make this into a huge issue. She had verbally counseled (this may be too strong a term but she did talk to him) [redacted] on his behavior and tried to find a position for him in the organization where he would contribute to mission but have limited exposure to some of the other linguists and analysts.

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

On the afternoon of 30 July, I spoke with [redacted] regarding the issues/concerns noted above. He initially seemed taken aback but then said that this has been an ongoing issue – people's perception of his behavior but the only person to address it with him was [redacted]. I told him I had never witnessed unprofessional behavior on his part but I needed to discuss the issue with him since other personnel had come to me with concerns. I said that I was still considering putting him in charge of the new [redacted] but I wanted to think about it . This position will be critical to unifying division operations so we need someone there that can work well with the other branches and division leadership. I also wanted to make sure that he wouldn't be put in an awkward position with people that he may have offended. Ultimately I said I would think about the position in the coming days and then come up with a plan of action. Unfortunately, because he is a [redacted] with a 5 year language commitment as part of the hiring process, he was still going to have to do language work for [redacted] whether that's as a fulltime member of the branch or assisting from the outside.

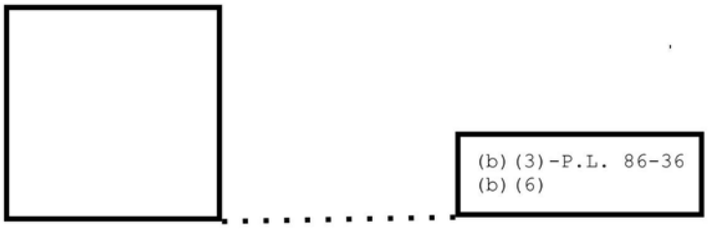
(b) (3)-P.L. 86-36

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

Finally, I said that I was not writing any of this up in formal documentation at this point, he was to

consider this a verbal counselling.

Cheers,



(U//~~FOUO~~)

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

Appendix 5

Email from [redacted] documenting conversation with [redacted] dated 8 August 2014

[redacted]
(b)(3)-P.L. 86-36
(b)(6)

[redacted]
(b)(3)-P.L. 86-36

Release 2022-11
NSA 22403

From:
To:
Subject: (U) Deputy Branch Chief - 7 August 2014
Date: Friday, August 08, 2014 12:24:58 PM
Attachments: Sensing Session Results.docx

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

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

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

Note to self –

On the afternoon of 7 August, (Division NCOIC) provided me with notes (attached) from sensing sessions she held with personnel in . As mentioned in her notes, there is a great deal of concern among the work force on leadership abilities. Additionally, I was informed by that during the outbrief of the Commander's Inquiry into on the afternoon of 5 August, name came up. I don't have the final report with any details but since the review was for a possible hostile work environment it contributes to my concern over possible issues with leadership style. However, this could just be the same information from personnel that was noted in the sensing results.

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

Keeping this info in mind, I decided to appoint the deputy chief of our new with as the Chief. My thinking is that she will be able to monitor his behavior and mentor/assist him in his leadership development

I met with on the afternoon of 7 August to explain all of the above. He was very concerned over the fact that he couldn't confront the people accussing him or poor or improper behavior. I explained that's not the way the system works and it's my job as the division chief to look at all sides of an issue. While he had his hopes on the branch chief job, he did accept the role of deputy and said that he was trusting me to handle any issues professionally. I thanked him and said I would keep a close eye on him to ensure he wasn't out of line but also that he wasn't being accused unjustly.

I spoke with on the morning of the 7th to ask if she was okay with being the branch chief and then explained my rational for making her deputy. She was fine with the decision and noted that she had no issues with and would mentor him.

Cheers,

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

(U~~//FOUO~~)

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

Release 2022-11
NSA 22405

Appendix 6

Original ACE completed by [redacted] on 21 October 2014

[redacted]

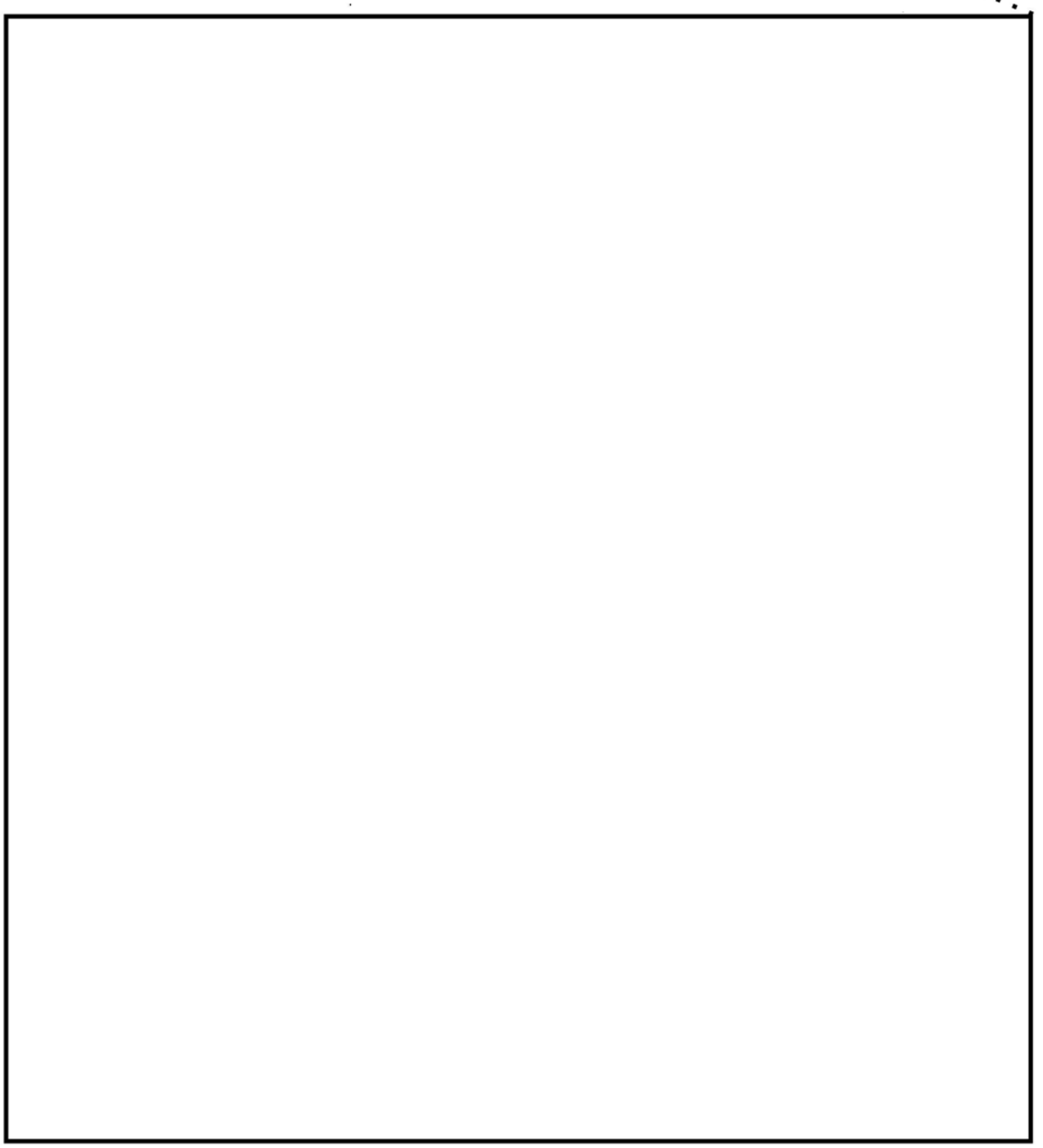
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(b)(6)

Release 2022-11
NSA 22406

PRIVACY ACT STATEMENT:

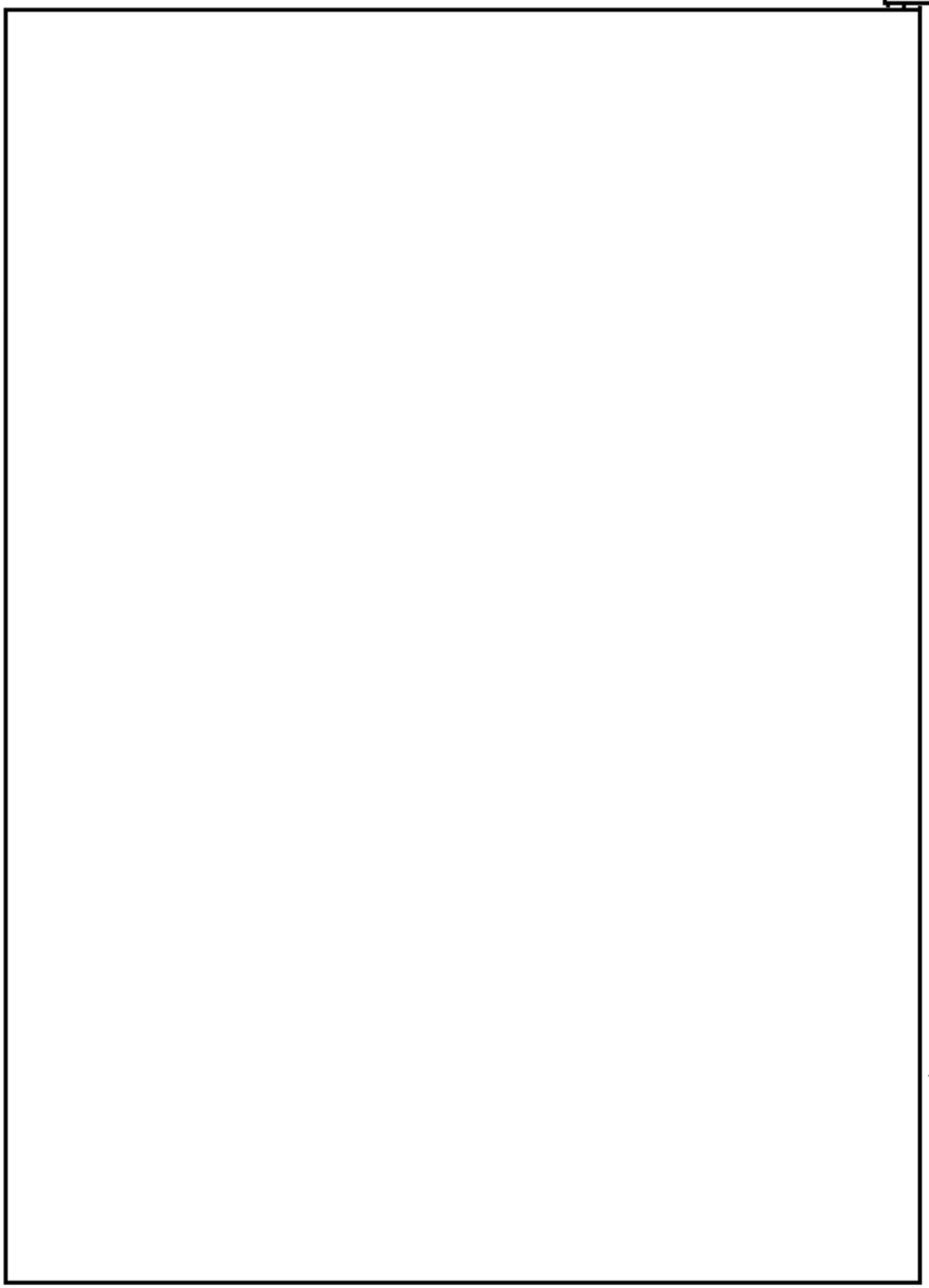
Authority for collecting information requested on this form is contained 10 U.S.C. Sections 1601-1614, 50 U.S.C. Section 402 note, and Executive Orders 12333 and 12968. NSA's Blanket Routine Uses found at 58 Fed. Reg. 10,531 (1993) as well as the specific uses found in GNSA09 apply to this information. The requested information will be used for promotion, training, assignment and other human resource purposes. Your disclosure of requested information is voluntary. However, failure to furnish the requested information, other than the Employee ID number, may delay inclusion of the information into your personnel files for consideration in human resource actions.

(b)(1)
(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)



Release 2022-11
NSA 22407

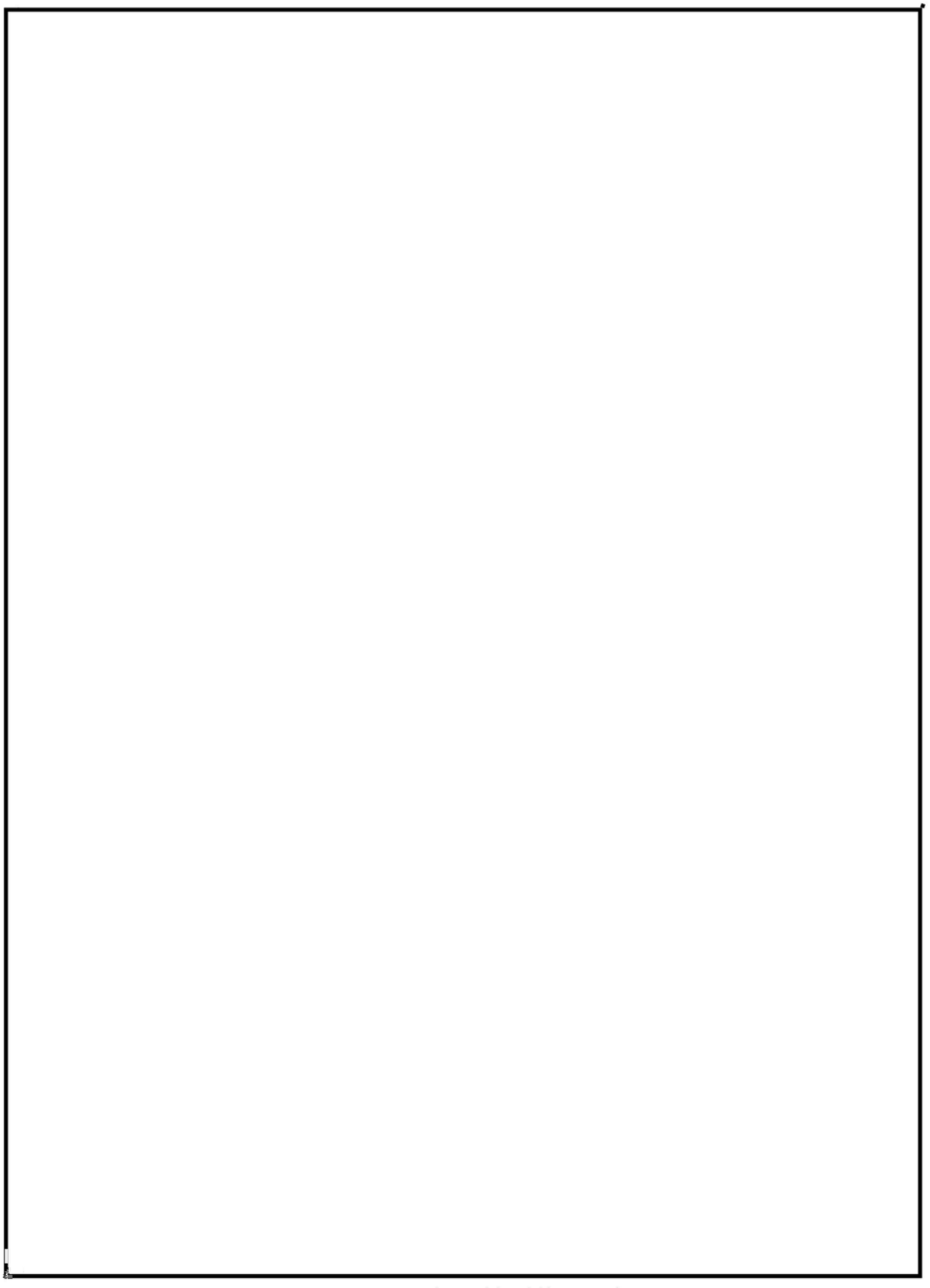
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(b)(6)



Release 2022-11
NSA 22408

Doc ID: 6791587

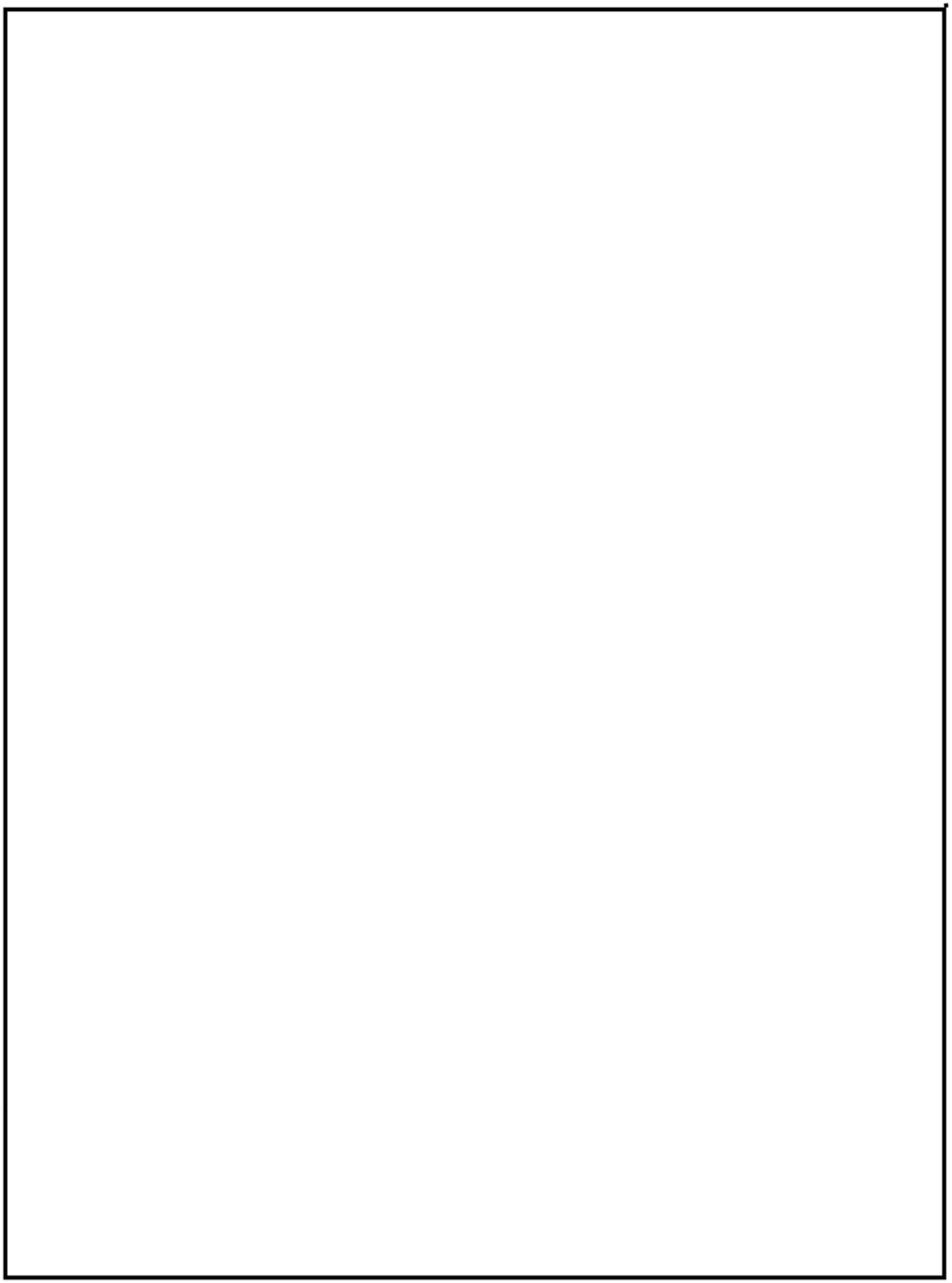
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(b)(6)



Release 2022-11
NSA 22409

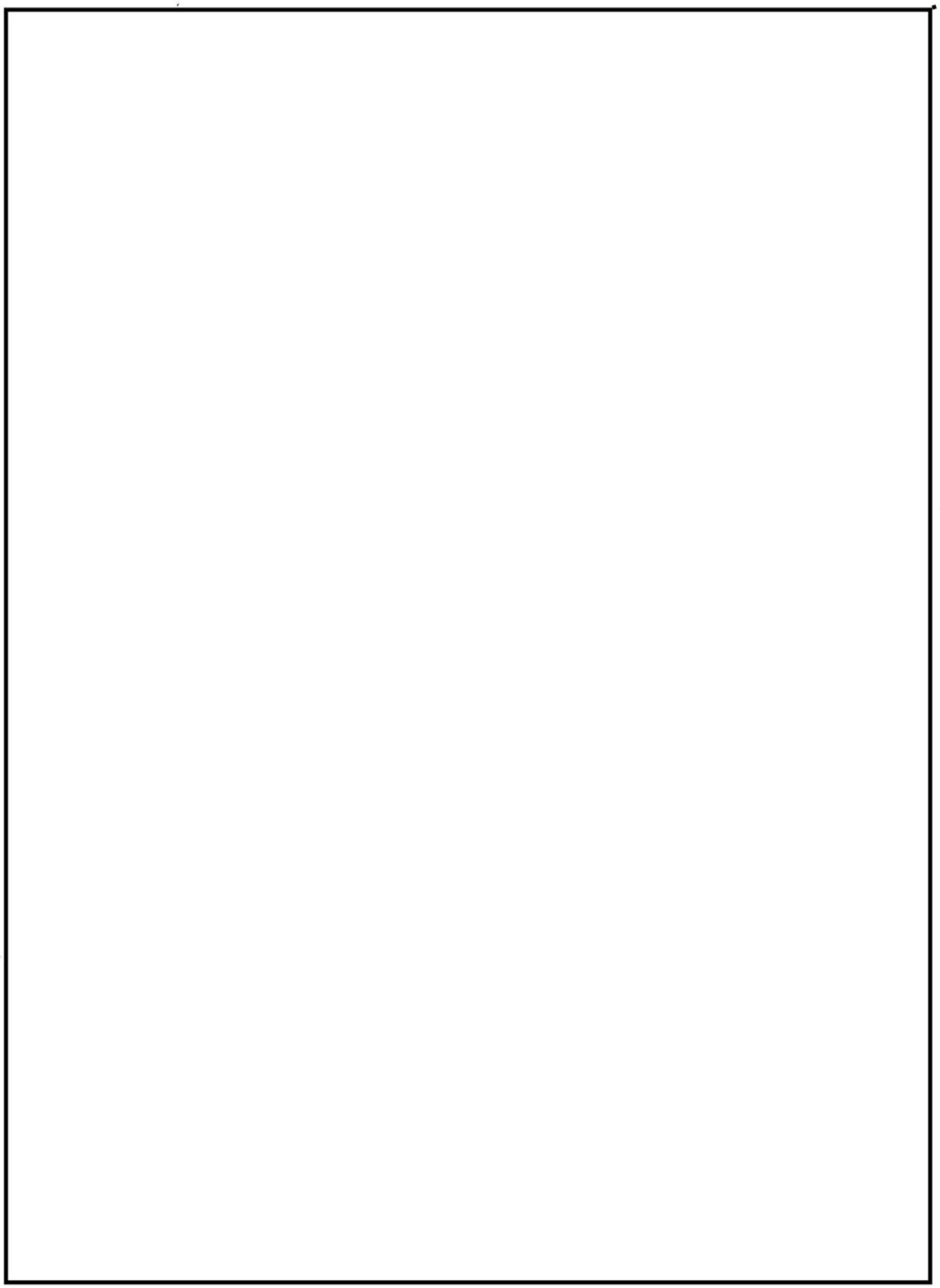
Doc ID: 6791587

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(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)



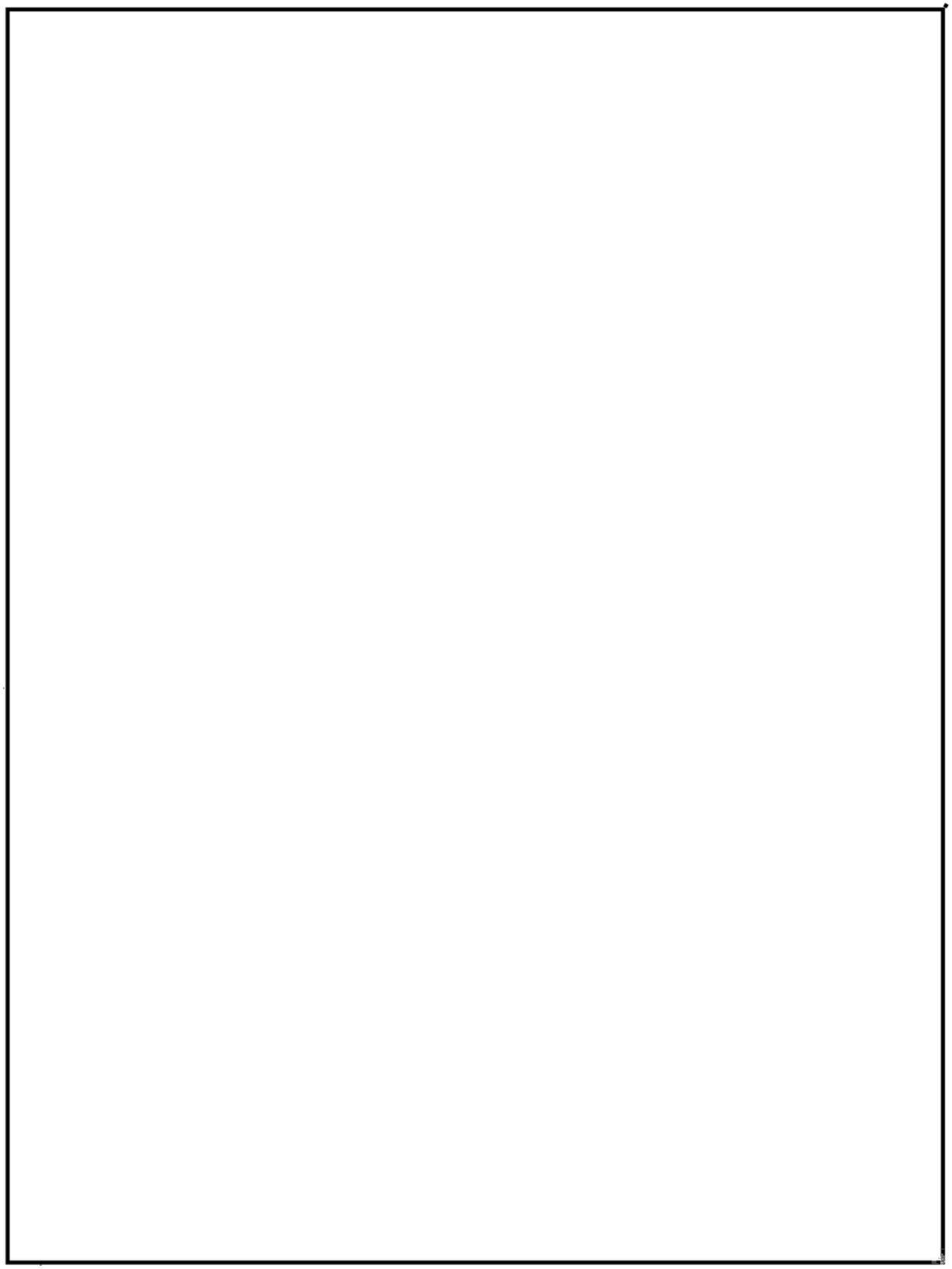
Release 2022-11
NSA 22410

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



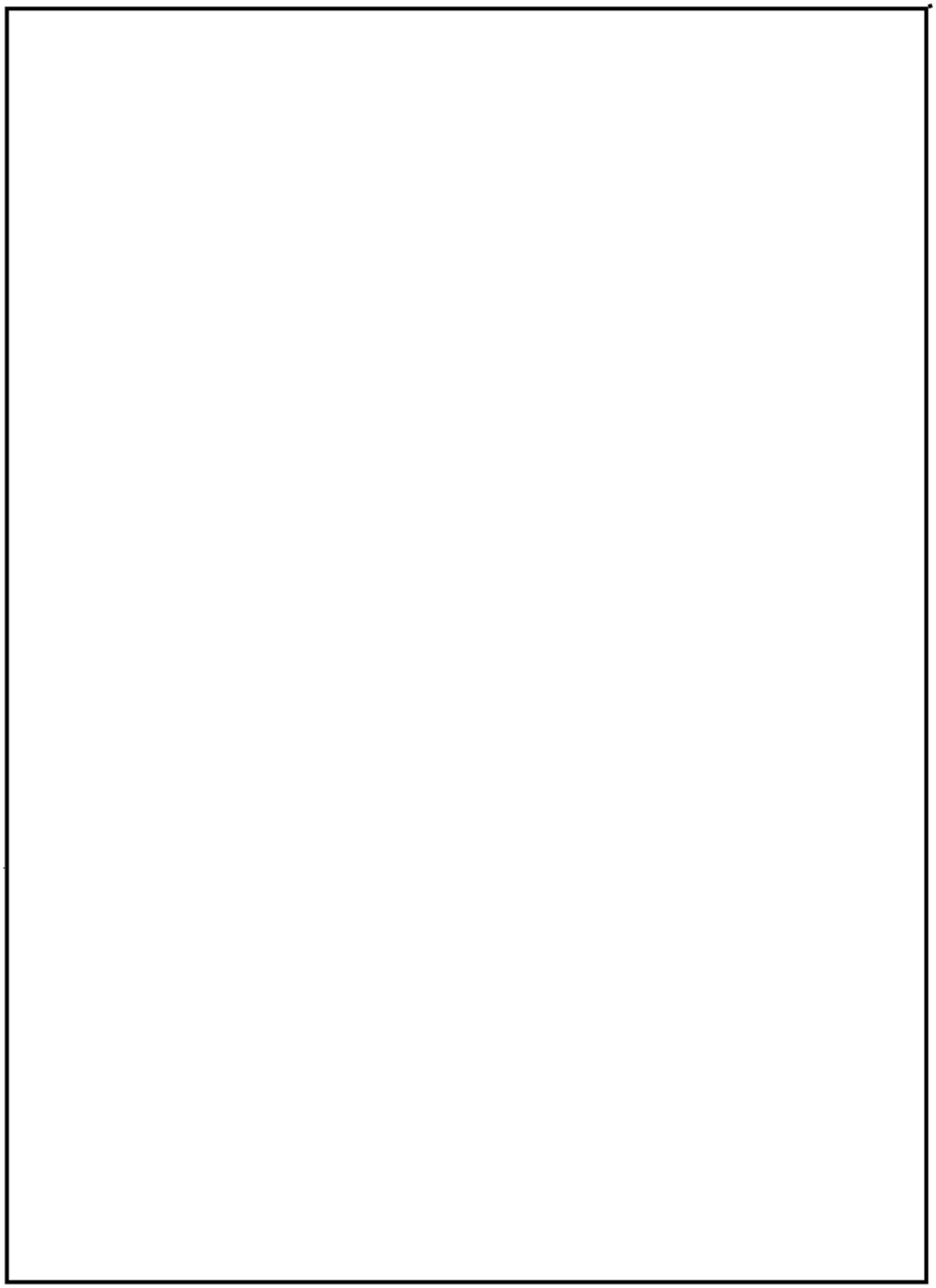
Release 2022-11
NSA 22411

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(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)



Release 2022-11
NSA 22412

(b)(1)
(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)



Release 2022-11
NSA 22413

(b)(1)
(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)

Section 3 - Employee Comments

Release 2022-11
NSA 22414

Comments:

Section 4 - Overall Summary

Rating: Successful 3.50

Section 5 - Signatures

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

Employee Name: Date Acknowledged

Rater Name: Date Completed

Reviewer Name: Date Approved

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

Release 2022-11
NSA 22415

Appendix 7
First level ACE reconsideration

Release 2022-11
NSA 22416

Doc ID: 6791587

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

First-Level Request for Reconsideration of ACE Rating

PRIVACY ACT STATEMENT: Authority for collecting information requested on this form is contained 10 U.S.C. Sections 1601-1614, 50 U.S.C. Section 402 note, and Executive Orders 12333 and 12968. The Agency's Blanket Routine Uses found at 58 Fed. Reg. 10,531 (1993) as well as the specific uses found in GNSA09 apply to this information. The requested information will be used for promotion, training, assignment and other human resource purposes. Your disclosure of requested information is voluntary. However, failure to furnish the requested information, other than the Employee ID number, may delay inclusion of the information into your personnel files for consideration in human resource actions.

Derived From:
Date:
Declassify On:
Date of Source:

Release 2022-11
NSA 22417

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

ACE First-Level Reconsideration Process

3 Basis for Request

Please identify and justify the desired score changes to your objectives (Section 3a) or elements (Section 3b) that form the basis of your request for reconsideration of your overall rating of record, which is currently a 3.5 .

Release 2022-11
NSA 22418

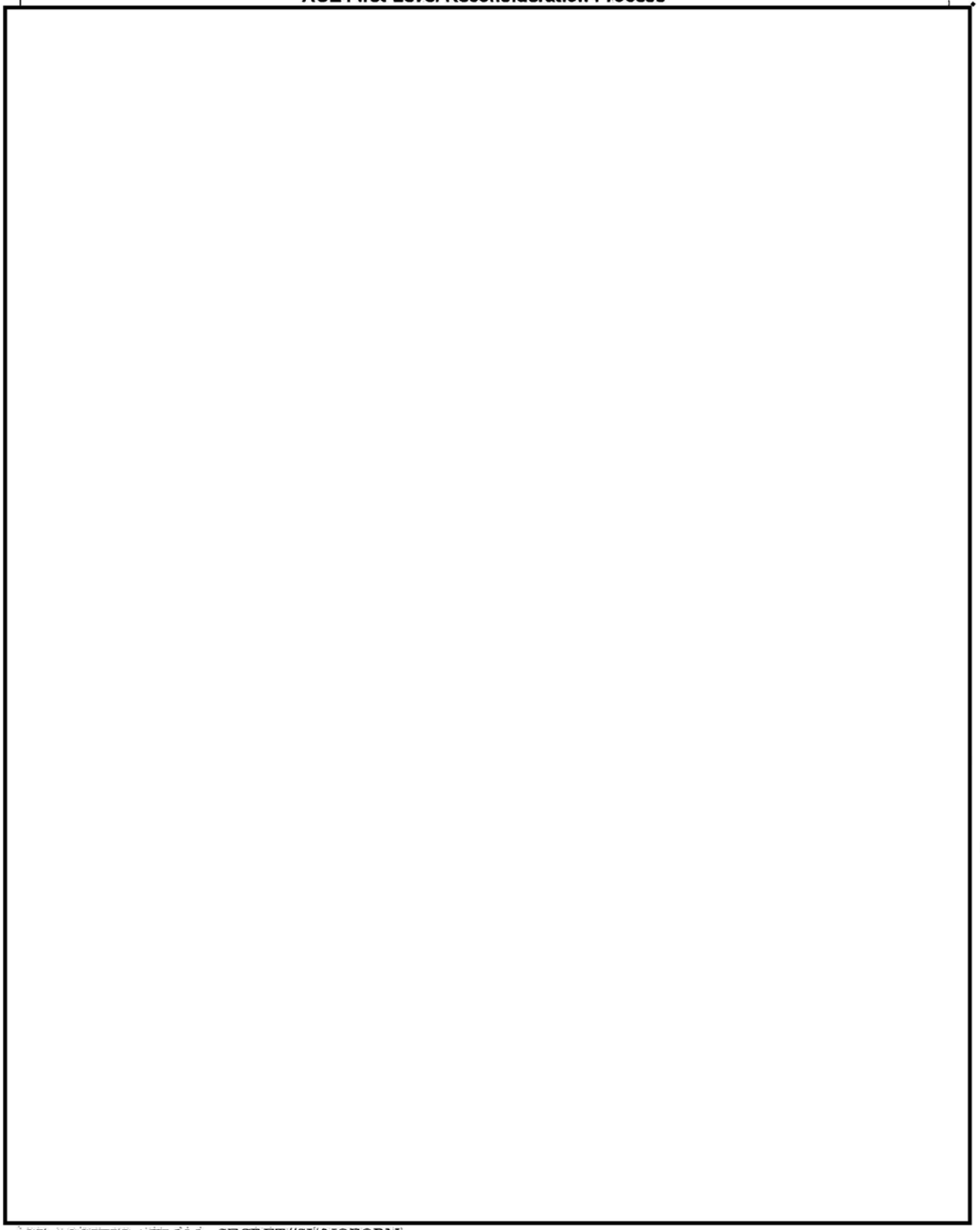
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(b) (3)-18 USC 798
(b) (3)-50 USC 3024(i)
(b) (3)-P.L. 86-36
(b) (6)

ACE First-Level Reconsideration Process

Release 2022-11
NSA 22419

(b)(1)
(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)

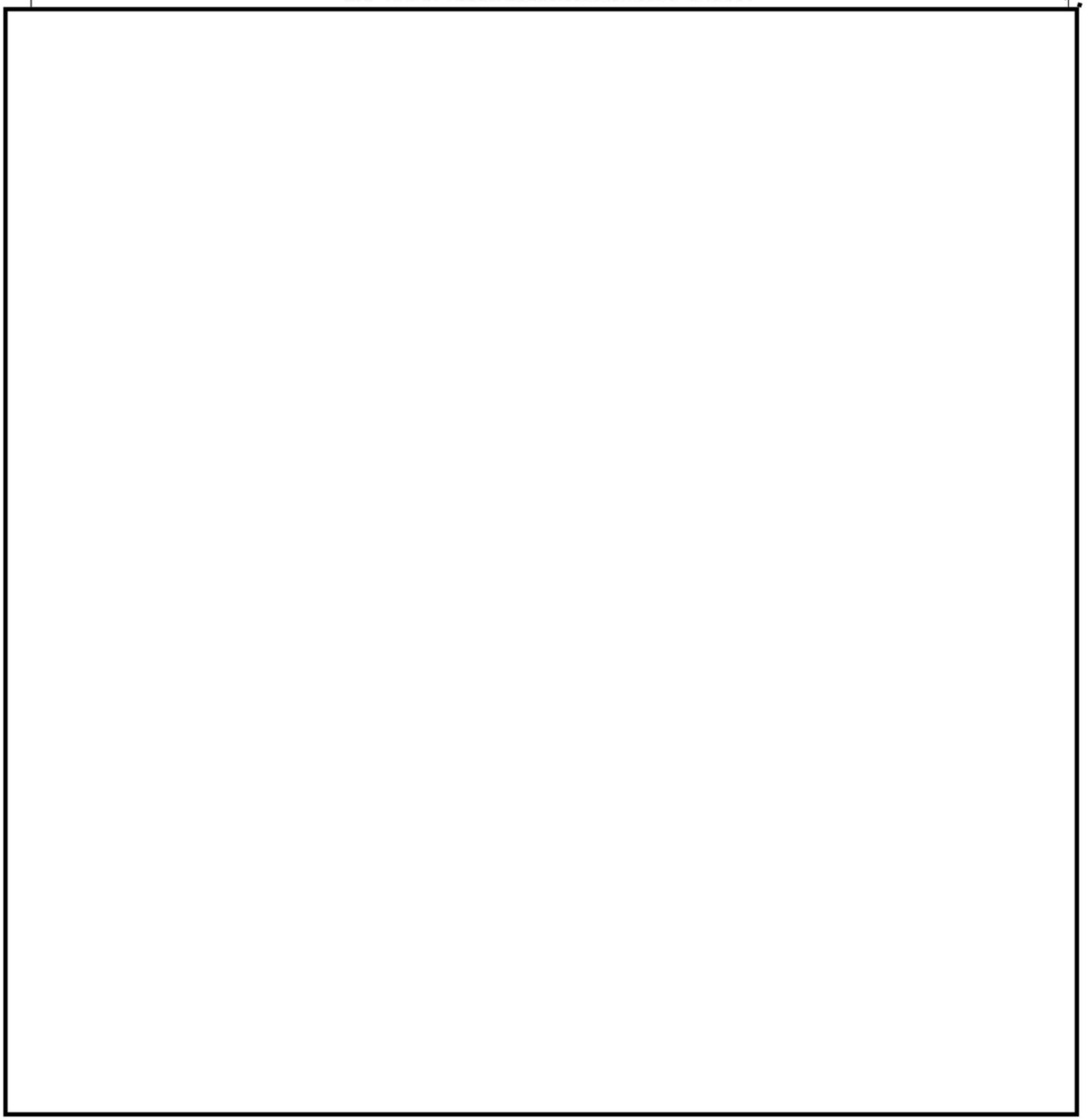
ACE First-Level Reconsideration Process



Release 2022-11
NSA 22420

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

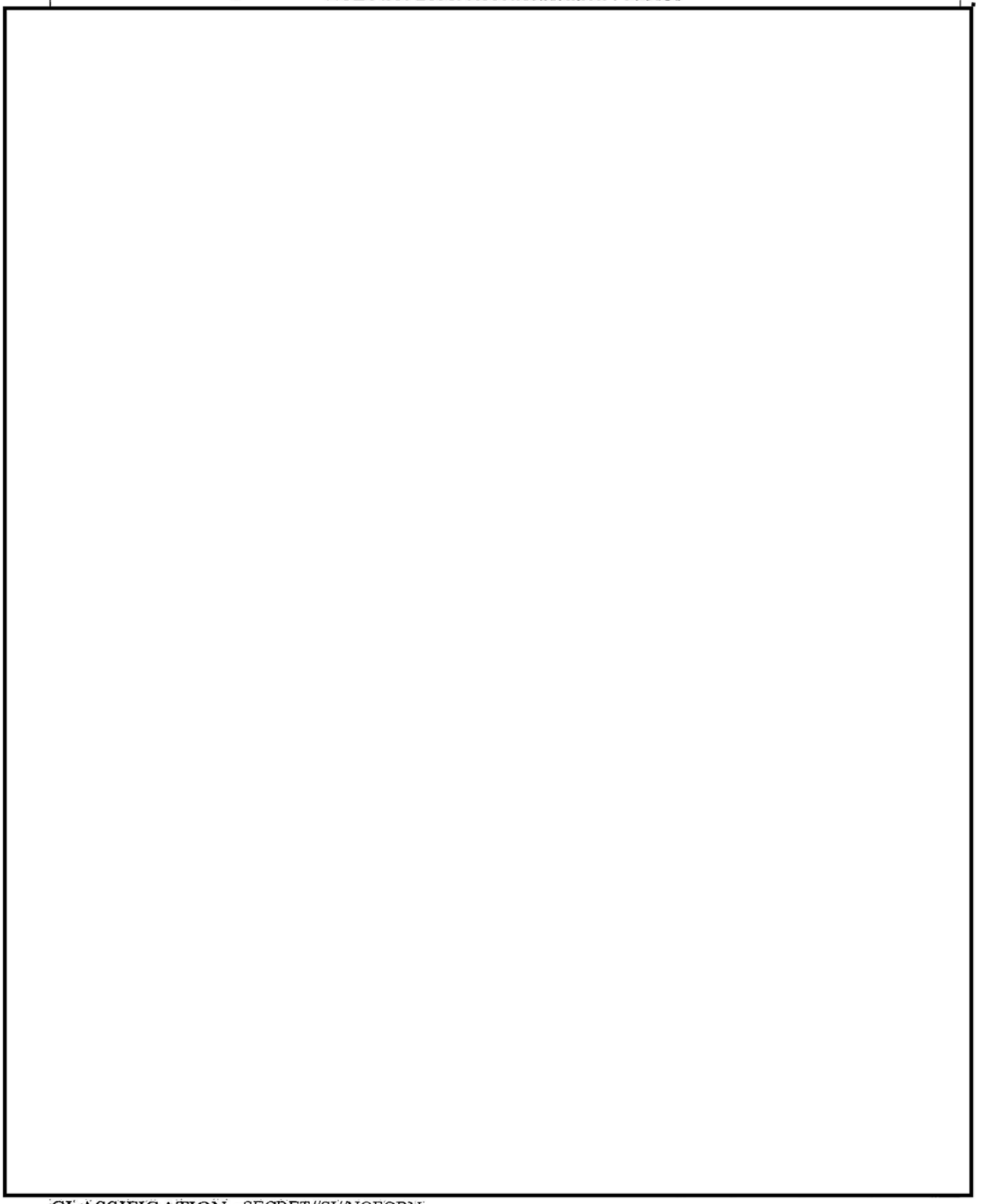
ACE First-Level Reconsideration Process



Release 2022-11
NSA 22421

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(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)

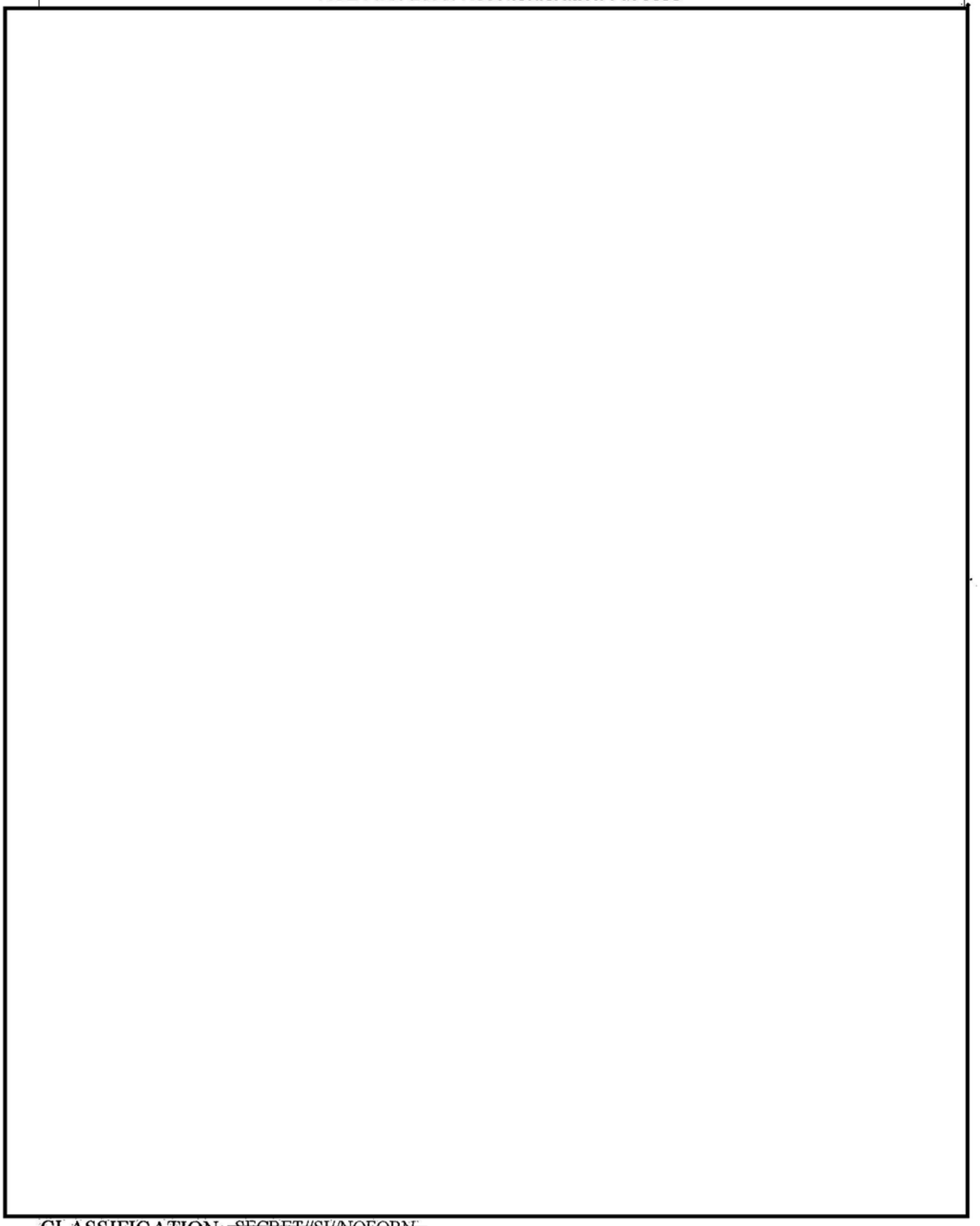
ACE First-Level Reconsideration Process



Release 2022-11
NSA 22422

(b)(1)
(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)
(b)(3)-P.L. 86-36
(b)(6)

ACE First-Level Reconsideration Process



Release 2022-11
NSA 22423

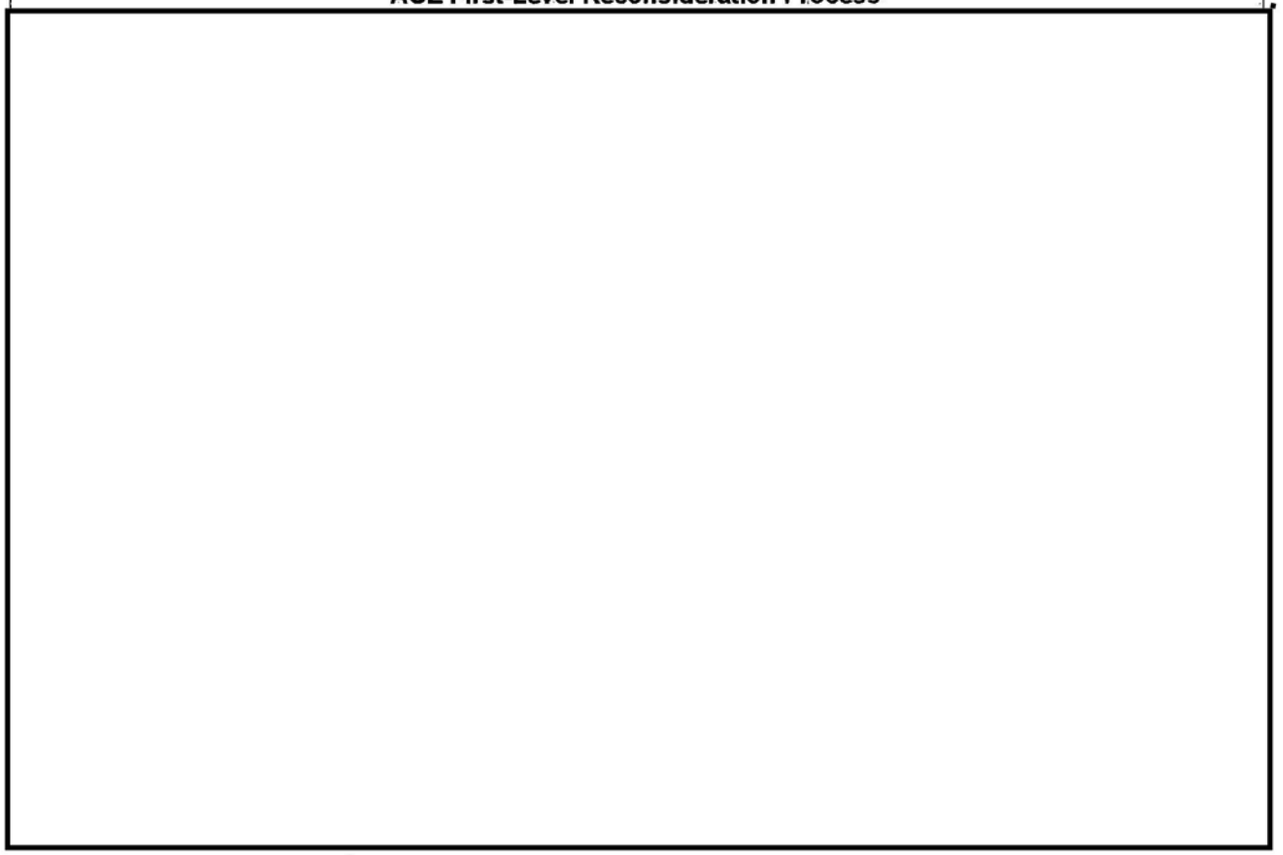
(b)(3)-P.L. 86-36
(b)(6)

ACE First-Level Reconsideration Process

Release 2022-11
NSA 22424

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

ACE First-Level Reconsideration Process



Release 2022-11
NSA 22425

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

ACE First-Level Reconsideration Process



Release 2022-11
NSA 22426

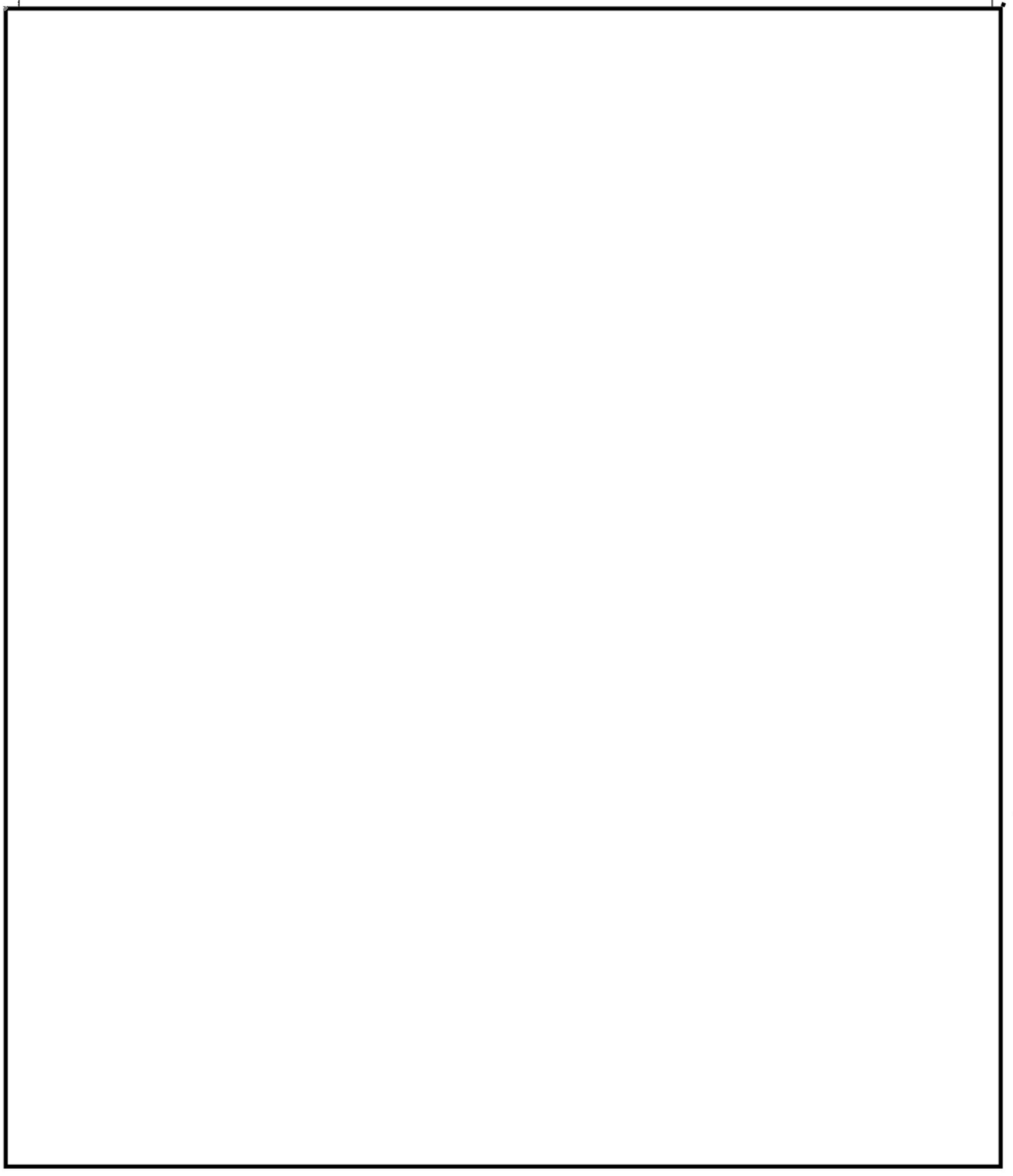
(b)(3)-P.L. 86-36
(b)(6)

ACE First-Level Reconsideration Process

Release 2022-11
NSA 22427

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

ACE First-Level Reconsideration Process



Release 2022-11
NSA 22428

Doc ID: 6791587

Appendix 8
Second level ACE reconsideration

Release 2022-11
NSA 22429

Doc ID: 6791587

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

Second-Level Request for Reconsideration of ACE Rating

PRIVACY ACT STATEMENT: Authority for collecting information requested on this form is contained 10 U.S.C. Sections 1601-1614, 50 U.S.C. Section 402 note, and Executive Orders 12333 and 12968. The Agency's Blanket Routine Uses found at 58 Fed. Reg. 10,531 (1993) as well as the specific uses found in GNSA09 apply to this information. The requested information will be used for promotion, training, assignment and other human resource purposes. Your disclosure of requested information is voluntary. However, failure to furnish the requested information, other than the Employee ID number, may delay inclusion of the information into your personnel files for consideration in human resource actions.

Derived From:
Date:
Declassify On:
Date of Source:

Release 2022-11
NSA 22430

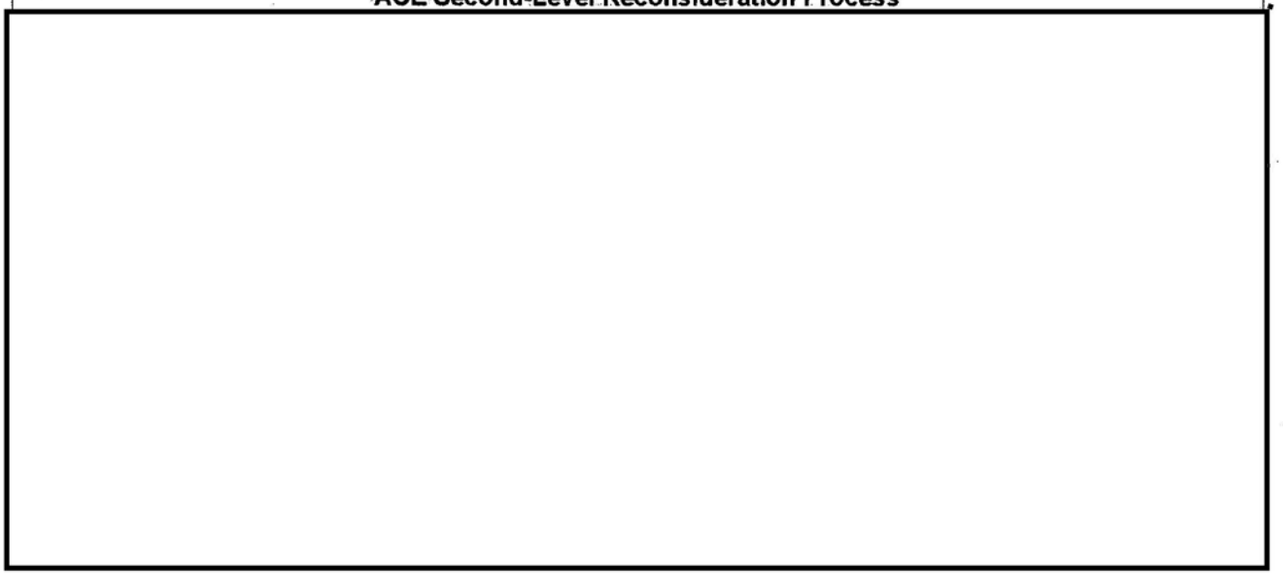
(b)(3)-P.L. 86-36
(b)(6)

ACE Second-Level Reconsideration Process

Release 2022-11
NSA 22431

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

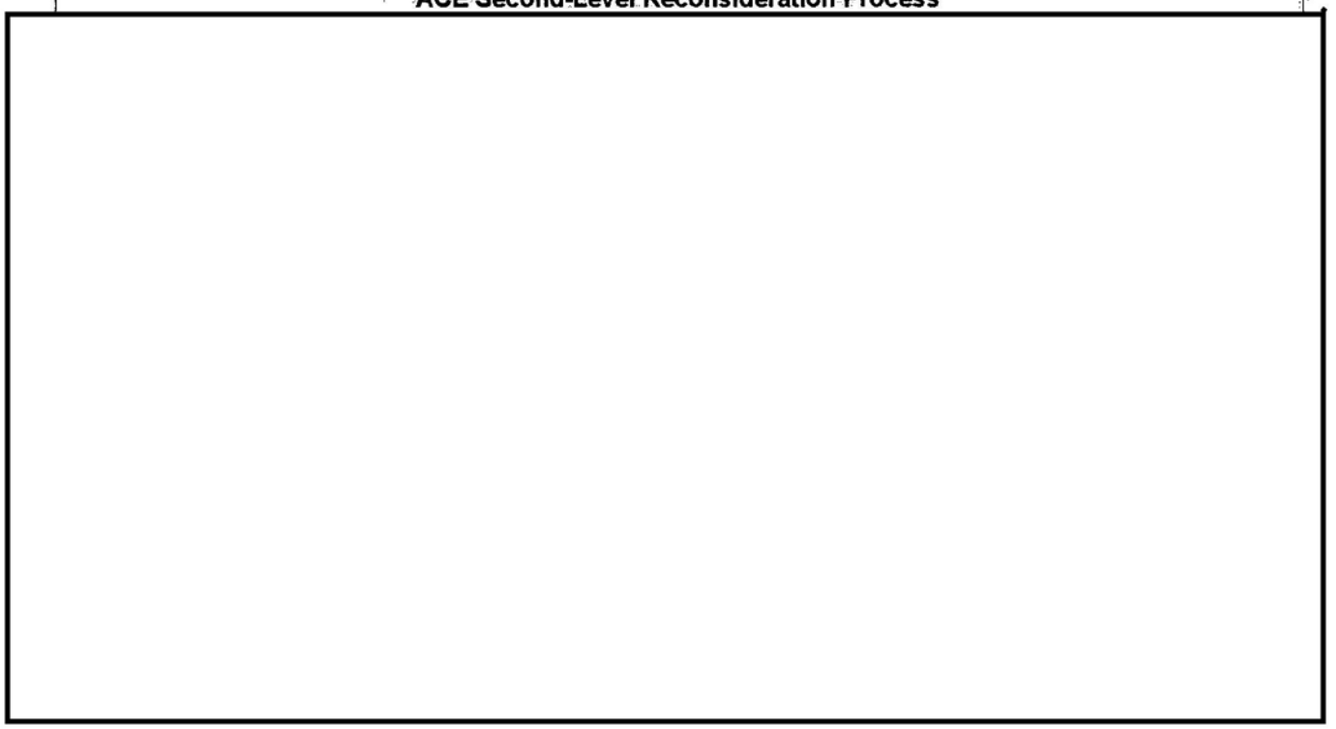
ACE Second-Level Reconsideration Process



Release 2022-11
NSA 22432

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

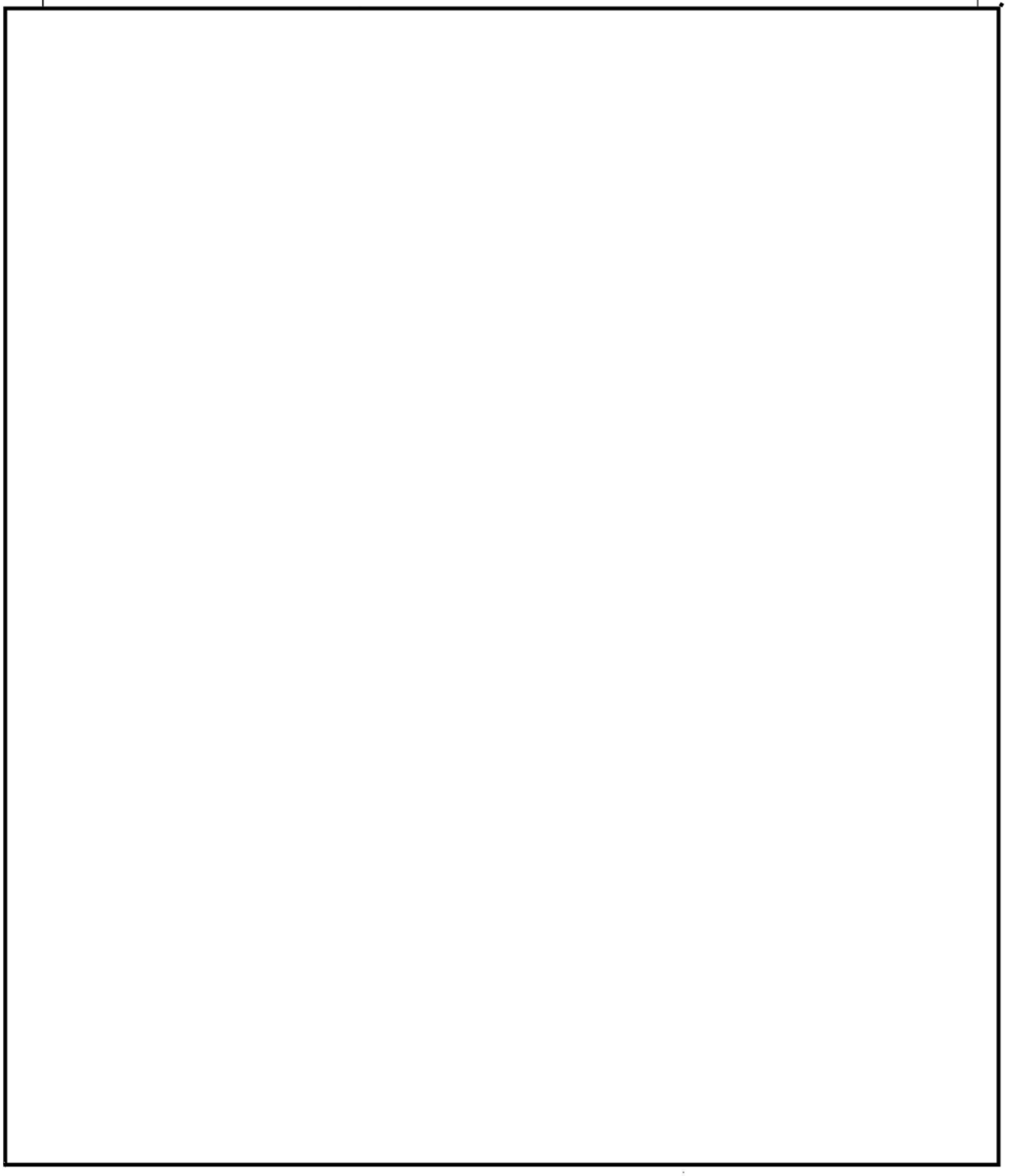
ACE Second-Level Reconsideration Process



Release 2022-11
NSA 22433

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

ACE Second-Level Reconsideration Process



Release 2022-11
NSA 22434

Appendix 9

Email from [redacted] to ER dated 19 September 2014

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

Release 2022-11
NSA 22435

(b) (6)

From: [redacted]
To: [redacted]
Subject: (U) ER inquiry from [redacted]
Date: Friday, September 19, 2014 11:35:35 AM

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

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

[redacted]

Thanks again for your insight and support. I did speak with [redacted] and she agreed that the "2" rating on an element, with written counseling, should stand. She is also notifying our local HR of her opinion for the likely impending reconsideration. Thanks again for all your help, I certainly didn't want to have to give a counseling in the first place, but the subsequent "ripples" make me understand why so many issues go unresolved! You have definitely helped to navigate those.

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

[redacted]

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

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

Appendix 10

Email from ER to [redacted] dated 29 October 2013

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

Release 2022-11
NSA 22437

From: [redacted]
To: [redacted]
Subject: RE: (U) MFR - [redacted]
Date: Friday, November 01, 2013 8:18:17 AM

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

[redacted]

I'm glad it went well and hopefully it was an eye opener for [redacted] and his conduct will change.

I am hoping that you won't need my services again but I'm here if you need me.

Take care.

[redacted]

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

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

PERSONNEL PRIVILEGED INFORMATION
Do not release without approval from Employee Relations

From: [redacted]
Sent: Thursday, October 31, 2013 3:37 PM
To: [redacted]
Subject: RE: (U) MFR - [redacted]

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

[redacted]

I completed the counseling session with [redacted] I believe it went well, he seemed shocked that his actions/comments were perceived negatively by more than junior military personnel and has stated his intent to be wary of the way he communicates with others. He did ask that some of the wording be changed, and it was not a point of contention with me to change it because he had good justification for the wording change. I'll attached a final version for you.

The wording doesn't flow as well, but [redacted] was concerned that the wording appeared to have been the result of an investigation, and he requested that I added that his "actions were perceived by others to have been a failure to demonstrate courtesy and respect" rather than him definitively failing to demonstrate courtesy and respect.

I truly appreciate your assistance, I hope this is the last that you hear from me, and I definitely needed your words of encouragement. Thank you, so much.

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

[redacted]

(U//~~FOUO~~) DropBox: [redacted]

From: [redacted]
Sent: Thursday, October 31, 2013 1:23 PM
To: [redacted]
Subject: RE: (U) MFR - [redacted]

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

Good luck....it will be fine.

[redacted]

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

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

PERSONNEL PRIVILEGED INFORMATION
Do not release without approval from Employee Relations

From: [redacted]
Sent: Thursday, October 31, 2013 1:21 PM
To: [redacted]
Subject: RE: (U) MFR - [redacted]

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

[redacted]

Thanks again for all your help. I'll update you if needed? I'm not well versed in the etiquette here, so I assume that you consider no-news good-news and unless you hear from me it all worked out?

[redacted]

(U//~~FOUO~~) DropBox: [redacted]

From: [redacted]
Sent: Thursday, October 31, 2013 12:55 PM
To: [redacted]
Subject: RE: (U) MFR - [redacted]

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

[redacted]

That is absolutely fine. I would not encourage to put names in the MFR. It is also fine if you prefer not to have a witness but I feel it's best that the MFR is issued by you since you are his immediate supervisor.

I have made a few minor tweaks to the second paragraph. I took out the last sentence. See attached.

Thanks.

[redacted]

PERSONNEL PRIVILEGED INFORMATION
Do not release without approval from Employee Relations

From: [redacted]
Sent: Thursday, October 31, 2013 11:48 AM
To: [redacted]
Subject: RE: (U) MFR - [redacted]

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

[redacted]

Thank you for the draft. I added non-specific wording because the complaining personnel asked to not be identified, can you please tell me if this is acceptable? Also, I spoke with [redacted] (our Div supervisor) to make him aware of the situation, and he offered to be present if a witness was required. If possible, I would like it to stay between [redacted] and I; to minimize embarrassment. In the event that the counseling escalates, I won't hesitate to call in [redacted] as a witness.

Also, I apologize for not responding earlier [redacted] and we have been struggling to keep up. Please let me know what your guidance is.

[redacted]

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

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

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

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

[redacted]

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

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

From: [redacted]
Sent: Tuesday, October 29, 2013 3:24 PM
To: [redacted]
Subject: (U) MFR - [redacted]

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

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

[redacted]

Per our phone conversation, I have drafted a Memorandum for the Record (MFR) for your situation with [redacted] Attached is the MFR. Please fill in the specific information in paragraph 2. I am happy to review the MFR before you present it to the employee.

[redacted]

PERSONNEL ~~PRIVILEGED~~ INFORMATION
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Appendix 11

Picture of the [redacted] caricature . . . . . (b) (6)

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

