INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

SEP 26 2005

MEMORANDUM FOR PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE (PERSONNEL AND READINESS)

SUBJECT: Investigation Involving Allegations Against Mr. Timothy C. Cox, Chief Operating Officer, Armed Forces Retirement Home

We recently completed an investigation into allegations that Mr. Timothy C. Cox, Chief Operating Officer (COO), Armed Forces Retirement Home (AFRH), abused his authority when taking the following personnel actions against [redacted] U.S. Air Force: (1) relieved her as Deputy Director, AFRH, Gulfport; (2) placed her on "administrative leave" pending completion of an investigation; and (3) requested her reassignment.

We substantiated the allegation of abuse of authority. We found that after [redacted] made a personnel decision that Mr. Cox believed was in contravention of his guidance, he directed [redacted] U.S. Navy, Director, AFRH, to place her on administrative leave pending an investigation, requested that she be reassigned from the AFRH, and permitted her to remain in an unproductive status at home for approximately 2 months. Although Mr. Cox had the authority to effect [redacted] reassignment from the AFRH, we concluded that he did so in a manner that was clearly unfair, and resulted in a wrong to [redacted] -- actions that were inconsistent with guidance regarding abuses of authority under Article 138, "Complaints of wrongs," Uniform Code of Military Justice (UCMJ) and Air Force regulations. Further, we found that his decision to place [redacted] on administrative leave violated DoD Instruction 1327.6, "Leave and Liberty Procedures," and constituted the misuse of a Government resource in violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)."

By letter dated July 12, 2005, we provided Mr. Cox an opportunity to comment on the foregoing conclusions. By letter dated July 29, 2005, Mr. Cox disagreed with those conclusions, arguing that his actions in the matter "constituted concerned leadership rather than an abuse of power." We carefully considered Mr. Cox's response, but determined that he did not provide any new or material evidence that would change our conclusions in the matter.

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A copy of our report is attached for your review and appropriate action. We request that you provide "a written report of any disciplinary and/or administrative action, and the nature thereof, taken against [Mr. Cox] within 1 week after such action is taken," in accordance with DoD Directive 5505.6, "Investigations of Allegations Against Senior Officials of the Department of Defense." A response within 90 days will be appreciated.

In addition, we are providing a second copy of our report that is redacted and includes citations showing the sources of the evidence that we considered in rendering our conclusions. That cited version of the report is found in the attached "fact book," along with copies of the documents and testimony that are cited as evidence and Mr. Cox's response. All materials in the fact book, including the cited report, may be released to Mr. Cox at your discretion. Should you wish to review additional documentation that was gathered during this investigation, please submit a written request so that we may make appropriate arrangements. By separate correspondence, we advised Mr. Cox of the results of our inquiry.

Finally, because of unrelated complaints received by this Office from AFRH residents, a separate investigative team conducted on-site visits to both homes, interviewing 69 residents. As requested by your memorandum of February 28, 2005, we provided feedback from those interviews to the Air Force Inspector General for consideration during his recent triennial inspection.

Thank you for referring the matter to this Office for investigation. Please contact me or Mr. Donald M. Horstman, Director, Investigations of Senior Officials, at (703) 604-8316, if you have any questions.

Thomas F. Gimble
Acting

Attachments:
As stated

cc: Inspector General, Department of the Air Force

DEPARTMENT OF DEFENSE
OFFICE OF THE INSPECTOR GENERAL

REPORT OF INVESTIGATION

CASE NUMBER
H05L95546042

SEP 26 2005

ALLEGED ABUSE OF AUTHORITY:
MR. TIMOTHY C. COX, CHIEF OPERATING OFFICER
ARMED FORCES RETIREMENT HOME

Prepared by Directorate for Investigations of Senior Officials
Office of the Deputy Inspector General for Investigations

~~**FOR OFFICIAL USE ONLY**~~

SEP 26 2005

ALLEGED ABUSE OF AUTHORITY: MR. TIMOTHY C. COX, CHIEF OPERATING OFFICER ARMED FORCES RETIREMENT HOME

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Mr. Timothy C. Cox, Chief Operating Officer (COO), Armed Forces Retirement Home (AFRH), abused his authority by taking improper personnel actions against [redacted] (1) relief from her position as [redacted] (2) placement on administrative leave pending completion of an investigation, and (3) reassignment. If substantiated, the conduct could implicate guidance regarding abuses of authority under Article 138, "Complaints of wrongs," Uniform Code of Military Justice (UCMJ), and Air Force regulations, DoD regulations governing leave status for military personnel, and DoD ethics regulations.[1]

We substantiated the allegation of abuse of authority. We found that after [redacted] made a personnel decision that Mr. Cox believed was in direct contravention of his guidance, he directed [redacted] AFRH, to place her on administrative leave pending an investigation, requested that she be reassigned from the AFRH, and permitted her to remain in an unproductive status at home for approximately 2 months.[2] Although Mr. Cox had the authority and discretion to effect [redacted] reassignment from the AFRH, we concluded that he did so in a manner that was clearly unfair, and resulted in a wrong (as described by Article 138) to [redacted] Further, we found that his decision to place [redacted] on administrative absence violated applicable DoD regulations and, therefore, constituted an abuse of authority and misuse of Government resources. That conclusion is based on the following findings:

- The personnel decision made by [redacted] that precipitated Mr. Cox's request for her reassignment, although contentious, was the "right" decision under the circumstances. That is, her decision to overrule a lower level management official and approve sick leave for another AFRH employee was justified.

- The investigation conducted by [redacted] into the personnel decision made by [redacted] was carried out in a way that provided no due process to [redacted] (did not take statements from her or others involved in the matter), failed to meet minimum investigative standards, and simply served to validate a foregone conclusion. This could be characterized as an abuse of authority under Air Force instructions because it failed to give [redacted] the right to be heard.

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[1] Air Force Instruction 90-301, "Inspector General Complaints," defines abuse of authority, in part, as an "arbitrary or capricious exercise of poser by a military member or federal official or employee that adversely affects the rights of any person."

[2] [redacted] remained at her quarters from [redacted] through receipt of reassignment orders [redacted]

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- The decision to remove [redacted] from the premises of the AFRH and place her on administrative leave when [redacted] initiated his investigation and for nearly 2 months thereafter violated DoD Instruction 1327.6, "Leave and Liberty Procedures," and constituted the misuse of a Government resource in violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)." We are not aware of any regulation/precedent that would authorize sending a military officer home on administrative leave during an internal investigation. Customarily, military officers are assigned to other duties pending completion of the investigation. In this situation, we found no justification for placing [redacted] on administrative leave.

- The personal impact of the actions on [redacted] was severe. [redacted] suffered the personal and professional indignity of being prohibited from returning to her office and having her Government email and cell phone accounts withdrawn. The reassignment ultimately required that she prematurely disrupt and relocate her family (including changing schools and neighborhood for her four children) at considerable personal embarrassment, anguish, and expense.

By letter dated July 12, 2005, we provided Mr. Cox an opportunity to comment on the foregoing conclusions. By letter dated July 29, 2005, Mr. Cox disagreed with those conclusions, arguing that his actions in the matter "constituted concerned leadership rather than an abuse of power." Specifically, Mr. Cox argued that [redacted] decision to overrule a lower level management official on a leave request was made without an adequate medical diagnosis and proper staff coordination. Additionally, Mr. Cox noted Air Force regulations and the UCMJ do no apply to him "since the AFRH is an independent Federal Agency," recounted performance weaknesses on the part of [redacted] that caused him to request her removal, and emphasized that he designated her home as "her duty station" because he understood her "reassignment could happen in 24 hours."[3]

After carefully considering Mr. Cox's comments, we stand by our conclusions in the matter. We remain convinced that [redacted] had no alternative but to overrule a sick leave decision made by a subordinate given the circumstances at the time, and we believe that in matters affecting Service members, Mr. Cox should be held to standards that have been established by statute and DoD to protect those Service members. When it became evident that [redacted] was not going to be reassigned immediately, Mr. Cox had an obligation to ensure that she was fairly treated and engaged in productive work, irrespective of his views concerning her performance.[4] Instead, Mr. Cox isolated [redacted] in her quarters for 2 months without communication or direction and, in so doing, caused her unnecessary personal embarrassment, anguish, and expense.

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[3] While we have included in our report what we believe is a reasonable synopsis of the response provided by Mr. Cox, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Mr. Cox throughout this report where appropriate and provided a complete copy of his response to the Principal Deputy Under Secretary of Defense (Personnel and Readiness).

[4] As discussed below, Mr. Cox had not conveyed his dissatisfaction with [redacted] performance to her or otherwise made his concerns a matter of record when he placed her on administrative leave.

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We recommended that the Principal Deputy Under Secretary of Defense (Personnel and Readiness (PUSD(P&R)) take corrective action as appropriate regarding Mr. Cox. We also recommended appropriate consideration of [redacted] request for redress, specifically that any Officer Performance Report (OPR) due be completed by an official other than Mr. Cox or [redacted]

This report sets forth our findings and conclusions based on the preponderance of the evidence.

II. BACKGROUND

Title 24, United States Code, Section 411 (24 U.S.C. 411), "Establishment of the Armed Forces Retirement Home," (formerly the U.S. Soldiers' and Airmen's Home and U.S. Naval Home) established the AFRH as an independent establishment in the executive branch. In that regard, the AFRH operates under oversight of the Office of the Undersecretary of Defense (Personnel and Readiness (USD(P&R)).[5]

Section 411 established the position of COO and Directors for each of the two AFRH sites (D.C. and Gulfport, MS) stipulating that the COO of the AFRH is subject to the authority, direction, and control of the Secretary of Defense, and that the Directors were "subject to the authority, direction, and control of the COO."[6] Section 417, "Directors, deputy directors, associate directors, and staff of facilities," states that the Directors and Deputy Directors for each site would be appointed and serve at the pleasure of the Secretary of Defense.

Prior to Mr. Cox's current assignment, he served approximately 18 years in the private sector in the assisted living/retirement home industry with Sunrise Assisted Living, Inc., and accepted his appointment as COO, AFRH, in September 2002. Mr. Cox advised us that this was his first occasion to work with the Federal Government and had not previously supervised or worked with military personnel.

[redacted] initially served as [redacted] AFRH, beginning in [redacted] and became the [redacted] in [redacted]

[redacted] received a direct commission into the [redacted] in [redacted] obtained a Bachelor's degree in Nursing, a Masters degree in Public Administration, and promotion to major below-the-zone. Her assignments included duties as a [redacted] and as [redacted] for the White House. [redacted] was appointed as [redacted] AFRH, in [redacted] signed, and Mr. Cox endorsed, [redacted] OPR for the period [redacted] through [redacted] indicating that she served as the Director [redacted] of the time over the rating period. According to the OPR [redacted] received a certificate of appreciation and "trophy" from AFRH Campus Operations staff for

[5] The AFRH has two locations, one in Gulfport, MS, and the other in Washington, D.C. All references to AFRH in this report refer to the Gulfport location unless noted otherwise.

[6] The COO position is an excepted service position by statute.

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being the [redacted] and was a [redacted]

Other AFRH personnel involved in matters at issue included [redacted] Healthcare Administrator, AFRH, and [redacted]

On December 20, 2004, [redacted] a registered nurse employed by the AFRH, submitted a sick leave request for December 27, 2004, through January 5, 2005, annotating that it was for "surgery." On December 21, 2004, [redacted] and in turn, [redacted] disapproved the request for sick leave citing staffing shortages and their belief that [redacted] surgery was "elective." On December 23, 2004, [redacted] subsequently approved the sick leave after [redacted] and [redacted] presented a doctor's note that indicated the surgery was "required (nonelective)."[8]

On December 25, 2004, [redacted] complained to Mr. Cox that [redacted] overruled his decision to disapprove [redacted] sick leave and did so in a disrespectful manner. On January 3, 2005, Mr. Cox requested that [redacted] investigate the matter and to place [redacted] on administrative leave pending completion of the investigation. At that time, Mr. Cox verbally advised Mr. John Molino, Deputy Under Secretary of Defense (Military Community and Family Policy), that [redacted] was no longer suitable to serve as Deputy Director. On January 3, 2005, [redacted] filed a complaint with this Office regarding being placed on administrative leave pending [redacted] investigation – according to [redacted] she was advised that no action could be taken until [redacted] investigation was completed.[9]

By Article 138, "Complaint of wrongs," dated January 11, 2005, [redacted] still on administrative leave in her quarters, requested that [redacted] reinstate her to her position. When [redacted] verbally declined action on the Article 138, [redacted] filed a complaint of reprisal to this Office on January 14, 2005, alleging that in addition to declining action on her Article 138, [redacted] also withdrew access to her Government email and cell phone accounts.[10]

By email to Mr. Charles S. Abell, (then) Principal Deputy, USD(P&R), and Mr. Molino dated January 10, 2005, Mr. Cox requested reassignment of [redacted] Mr. Molino, in turn, queried Air Force personnel officials regarding reassignment of [redacted] By

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[7] As noted in the Scope Section, [redacted] before an interview could be scheduled with him.

[8] [redacted] obtained the note after her request for sick leave was disapproved by [redacted] and [redacted]

[9] As noted further in the report, this Office initiated an investigation pursuant to a request by the PUSD(P&R), and not as a result of [redacted] complaints to the Defense Hotline.

[10] [redacted] complaint of reprisal was deemed not actionable as withdrawal of access to Government cell phone and email accounts was not considered a personnel actions within the meaning of 10 U.S.C. Section 1034, "Protected communications; prohibition of retaliatory personnel actions."

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memorandum dated January 13, 2005, an attorney within the Office of General Counsel, DoD (OGC, DoD), opined that [redacted] Article 138 was not actionable because [redacted] position was not designated as that of a "commanding officer." By memorandum dated January 14, 2005, [redacted] formally advised [redacted] that her Article 138 was not actionable and that he would next meet with her on January 18, 2005, to determine the [redacted]

On January 18, 2005, [redacted] completed the report of his investigation concluding that [redacted] overturning of [redacted] decision reflected poor judgment, was not consistent with [redacted] given her by Mr. Cox, and that during the investigation, she [redacted] to have engaged in unethical and unprofessional behavior by involving AFRH residents in the matter and thereby bringing discredit and ridicule to the AFRH.

On January 25, 2005, [redacted] submitted another Article 138 complaint, this time to the Commander, U.S. Navy Region Southeast, providing documentation that the Navy had designated [redacted] billet as a Shore Command 0-6 position. On February 2, 2005, OGC, DoD, reiterated that [redacted] Article 138 complaint was not actionable because the AFRH was not an entity subject to rules and regulations governing the DoD, but recommended that the complaint be investigated.

Accordingly, by memorandum dated February 28, 2005, Mr. Abell requested that this Office investigate [redacted] complaint as set forth in the Article 138 and that reassignment of [redacted] be delayed. [redacted] remained on administrative leave until receipt of orders reassigning her in mid-March 2005 to Keesler Air Force Base (AFB), MS.

III. SCOPE

During the fieldwork portion of the inquiry, we interviewed 26 individuals including [redacted] Mr. Cox, [redacted] and other individuals involved in the issue of [redacted] sick leave. [redacted] a key witness, [redacted] Because of [redacted] we had to rely on documents (email) and third party testimony regarding his role in the matter. We also reviewed relevant regulations and documents.

IV. FINDINGS AND ANALYSIS

A. Did Mr. Cox abuse his authority in executing personnel actions against [redacted]

Standards Pertaining to Abuse of Authority

Uniform Code of Military Justice (UCMJ), Article 138, "Complaint of wrongs"

Note: Although an Office of General Counsel, DoD, opinion indicated that [redacted] *complaint under Article 138 was "not actionable," we applied its general*

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guidance regarding abuses of authority to this case. In that regard, we focused the investigation on whether the manner in which Mr. Cox executed personnel actions against [redacted] *was equivalent to a "wrong" committed by a commanding officer which was "arbitrary, capricious, or an abuse of discretion," or "clearly unfair" within the meaning of Article 138, UCMJ.*

Article 138 states: "Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon." Terms applicable to matters at issue include:

- Redress. Any lawful action which restores to the member any rights, privileges, property, or status to which the member would have been entitled had the wrong not occurred.

- Wrong. A discretionary act or omission by a commander, that adversely affects the member personally, and that, for example, is:

  - In violation of law or regulation.

  - Beyond the legitimate authority of that commander.

  - Arbitrary, capricious, or an abuse of discretion.

  - Clearly unfair (for example -- selective application of administrative standards/action, either in the type of standard/action applied or in the severity of the penalty imposed, which results in a clearly unfair application of the administrative standard/action).

Air Force Instruction (AFI) 90-301 "Inspector General Complaints," dated January 30, 2001

The AFI defines abuse of authority as an "Arbitrary or capricious exercise of power by a military member or federal official or employee that adversely affects the rights of any person or that result in personal gain or advantage to themselves."

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Standards Pertaining to Military Leave

DoD Instruction 1327.6, "Leave and Liberty Procedures," dated April 22, 2005[11]

The Instruction provides procedures for granting leave, liberty (pass), and administrative absence for military personnel. Paragraph 6.4, "Authority to Grant Leave and Liberty," states, in part:

> Authority to grant leave and liberty, except where otherwise specified by this Instruction, shall normally be extended to unit commanders. Such authority may, at the discretion of the Secretary concerned, be further delegated.

Paragraph 6.11.8, "Administrative Absence," states that administrative absence may be authorized for Service members in certain, specific situations. Those situations include absences to attend professional conferences, to participate in DoD-sponsored sports events, to respond to a subpoena or summons, or similar situations. Periods of administrative or "permissive" absence are also authorized in connection with separation or retirement from the Service. The Instruction does not provide for administrative absence in cases where a Service member is removed from a position or is the subject of an investigation. The Instruction emphasizes,

> In approving such requests [for administrative absence], care must be taken to ensure that the planned absence clearly falls within the criteria provided; if it does not, the absence must be handled under normal leave or liberty procedures. Administrative absences that exceed 30 days should be controlled at the Service Headquarters level.

AFI 36-3003, "Military Leave Program," dated February 15, 2005

The AFI governs leave for Air Force military personnel. Section C, "Types of Leave," describes the types of leave authorized under DoD Directive 1327.5, above, to help unit commanders manage their leave programs. The AFI authorizes the following leave categories: annual leave, advance leave, convalescent leave, emergency leave, en route leave, terminal leave, excess leave, and environmental and morale leave.

[11] DoD Instruction 1327.6 implements DoD Directive 1327.5, "Leave and Liberty," dated November 29, 2004. Although the Instruction is dated after events at issue in this investigation occurred, applicable sections summarized above were in effect under prior issuances.

Standards Pertaining to Leadership and Ethics

DoD Regulation 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993[12]

The JER provides standards of ethical conduct and ethics guidance for DoD employees (and cites standards that apply to all Federal employees). Of relevance in this case are the provisions governing the use of Government resources and ethical values.

Section 2635.704(a) of the JER, "Use of Government property," states, "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use for other than authorized purposes." Consequently, employees have an affirmative responsibility to apply Government resources to the use for which those resources were intended. Section 2635.705(b), "Use of a subordinate's time," states that an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation. We believe that placing [redacted] on administrative leave for 2 months may reasonably be evaluated in light of these JER provisions.

Chapter 12 of the JER, Section 5, "Ethical Values," states that ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Ethical values relate to what is right and wrong and thus take precedence over other values when making ethical decisions. DoD employees should consider ethical values when making decisions as part of official duties. The primary ethical values listed in the JER are honesty, integrity, loyalty, accountability, fairness, caring, respect, promise keeping, responsible citizenship, and pursuit of excellence. Of particular relevance in this case is the provision regarding fairness:

> Fairness. Open-mindedness and impartiality are important aspects of fairness. DoD employees must be committed to justice in the performance of their official duties. Decisions must not be arbitrary, capricious or biased. Individuals must be treated equally and with tolerance.

Standards Pertaining to the Conduct of Inquiries and Investigations

President's Council on Integrity and Efficiency (PCIE) publication, "Quality Standards for Investigations," dated December 2003

Because Mr. Cox directed that an investigation be conducted into the facts and circumstances surrounding [redacted] decision to grant an employee sick leave, we included standards that set forth the overarching principles or tenets for investigative endeavors. The PCIE standards include a myriad of criteria by which to judge the qualifications, independence, and due professional care of officials responsible for conducting investigations.

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[12] The JER is composed of executive orders, laws, and regulations, including 5 Code of Federal Regulations Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," which applies to Mr. Cox.

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We pay particular attention to the criteria governing the thoroughness, impartiality, and objectivity of investigations:

- "Thoroughness -- All investigations must be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure pertinent issues are sufficiently resolved and to ensure that all appropriate criminal, civil, contractual, or administrative remedies are considered."

- "Impartiality -- All investigations must be conducted in a fair and equitable manner, with the perseverance necessary to determine the facts."

- "Objectivity -- Evidence must be gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or to resolve the issue."

Judge Advocate Instruction 5800.7C, "Manual of the Judge Advocate General (JAGMAN)," dated October 3, 1990

Because [redacted] is a Naval officer, we included excerpts from the Navy standard that governs administrative investigations. In that regard, Chapter II, "Administrative Investigations," states (in Part C), "A command investigation functions to gather, analyze, and record relevant information about an incident or event of primary interest to command authorities." Chapter II also states (in Part D) that administrative investigations "shall arrive at findings of fact only if supported by a preponderance of evidence." With respect to inferences, Part D also states, "it is, in most cases, irrelevant and improper for an investigative body to theorize about the thought processes of an individual that resulted in certain courses of conduct." Regarding documentary evidence, Part D states that witnesses should provide statements and that the investigating officer should ask "probing questions," to establish the who, what, where, when, why and how of an incident.

Facts

Facts Pertaining to [redacted] Overturning of Lower Level Management Decision

AFRH Instruction 6-6, "Leave Administration," dated July 28, 1997, sets forth procedures for requesting and approving absences from work. The Instruction states as a matter of policy, "Management has the primary responsibility for determining when leave will be granted, while employees have the responsibility of cooperating with management in requesting and scheduling leave." Paragraph 3.d., states that sick leave extending more than three workdays requires a leave request, which will be:

> Verified by the statement of a physician or other licensed practitioner. If a medical certificate cannot be obtained . . . the employee will present a written statement explaining the circumstances in support of the claim for sick leave. Unless some

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other evidence supports the opposite conclusion, an employee's statement should be accepted.

As noted in the Background Section, [redacted] and [redacted] disapproved [redacted] sick leave request on December 21, 2004. [redacted] testified that she wrote [redacted] because when asked if it was an [redacted] replied that it was not.[13]

According to [redacted] sworn affidavit, [redacted] asked whether her surgery was an emergency or could be postponed until January 2, 2005. [redacted] indicated that she simply advised [redacted] that the surgery was what her physician told her she needed, and he denied her appeal.

By note dated December 20 [should be December 21],[14] 2004, [redacted] an AFRH [redacted] wrote the following prescription or doctor's order for [redacted] on his personalized prescription pad:

[redacted]

[redacted] and [redacted] testified that he wrote the note after [redacted] tearfully confided in him the reason for her surgery and that [redacted] and [redacted] had disapproved her request for leave. [redacted] told us that when [redacted] explained her condition to him, he considered the scheduled surgery nonelective, and advised [redacted] to obtain an additional note from [redacted] in that regard. [redacted] testified that it would have been reasonable for any health care professional to view [redacted] condition the same way he did (meaning that the surgery was required, not elective).

On December 23, 2004, [redacted] and [redacted] were both on leave, leaving [redacted] and [redacted] in "acting" capacities in their absence. On that day, [redacted] accompanied by [redacted] appealed the denial of sick leave to [redacted] and provided her the note written by [redacted][6] [redacted] testified, and [redacted] confirmed, that they discussed the matter, and that [redacted] would have approved the leave herself had [redacted] provided her the medical documentation. [redacted] and [redacted] testified that they considered the matter

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[13] We found that [redacted] was being treated for an [redacted] According to her treating physician, her surgery could not be postponed until after the holidays due to medical complications.

[14] As noted further, we believe [redacted] misdated the note as both he and [redacted] testified he wrote the note after [redacted] denied her appeal on December 21, 2004.

[15] [redacted] testified that when he wrote, [redacted] he did so with the understanding that [redacted] would obtain and attach a note from [redacted] documenting the need for surgery.

[16] [redacted] and [redacted] requested an appointment with [redacted] on December 22, but were told he was on leave. Accordingly, the secretary made an appointment with [redacted] on December 23, 2004.

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resolved, and [redacted] and [redacted] returned to [redacted] office to obtain approval of the requested sick leave.[17]

[redacted] testified that while on the telephone with [redacted] on another matter, she mentioned that [redacted] had approved [redacted] sick leave. [redacted] recalled that [redacted] did not have a problem with the issue but simply advised her to follow [redacted] directions. [redacted] told us that neither [redacted] nor [redacted] ever expressed to her any dissatisfaction with the decision [redacted] made (at least not in her presence), and that she did not realize there was a problem until the issue surfaced in a local newspaper in January 2005. [redacted] described [redacted] as a very [redacted] and [redacted] person. When asked whether she was sure that [redacted] in particular, was not upset at [redacted] decision to grant the leave, [redacted] responded, [redacted][18]

According to [redacted] contacted her on December 23, 2004, and asked why she overturned his decision to deny [redacted] request for sick leave. [redacted] testified that she tried explaining her rationale, but [redacted] asserted to her that his decision [redacted] because [redacted] surgery was not an [redacted] [redacted] testified that she told [redacted] she disagreed with him, particularly in view of a doctor's note which indicated [redacted] surgery was required and not elective, and the presence of the AFRH Union Representative. [redacted] testified that [redacted] challenged her, asking by what authority was she overturning his decision. According to [redacted] she replied that she was exercising the authority vested in her [redacted] In that regard, [redacted] AFRH, testified that following [redacted] conversation with [redacted], he could tell that she [redacted] because [redacted] had challenged her authority. [redacted] also recalled that [redacted] told him that when she sought support from Mr. Cox, he supported [redacted] decision rather than hers.

[redacted] testified that she then reported to [redacted] that [redacted] had been very disrespectful to her about her decision, and that she called Mr. Cox to ask for his support. [redacted] recalled that Mr. Cox advised her to arrange a 3-way conversation with [redacted] and [redacted] AFRH, to resolve the issue. [redacted] testified that she was unable to reach [redacted] and that [redacted] advised her to contact [redacted] Bureau of the Public Debt.[19]

According to [redacted] and as corroborated by [redacted] when [redacted] sought [redacted] advice regarding the appropriateness of her decision to approve the leave, [redacted] opined that in view of the doctor's note that the surgery was

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[17] [redacted] wrote in her Article 138 that she admonished [redacted] for not providing [redacted] the doctor's note when she first requested leave.

[18] [redacted] opined that [redacted] was [redacted] based on his comment to her that AFRH would have to pay for agency nurses to fill in during [redacted] absence.

[19] The Bureau of Public Debt also provides human resources services to the AFRH.

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required and nonelective, coupled with the presence of the Union Representative, that even if the surgery was not an emergency per se, it was advisable to "act on the side of caution" and grant the leave. [redacted] told us, and [redacted] confirmed, that she reported to [redacted] that [redacted] had deemed her decision appropriate.

By email to [redacted] and Mr. Cox dated December 25, 2004, [redacted] described his interaction with [redacted] indicating that she had been disrespectful to him, and had made an [redacted] decision with [redacted] and the Union Representative.

[redacted]

[20] As noted further in the report, [redacted] did not make an [redacted] decision, but consulted with [redacted] who was acting in [redacted] absence.

[21] We noted that [redacted] approved [redacted] leave request by signature in the block marked, "Supervisor."

[22] The evidence indicated to us that there may have been a lack of appreciation for military customs and courtesies, particularly with respect to the "chain of command."

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Because we were unable to interview we do not know what additional rationale he had other than what is indicated by other witness testimony; i.e., that had the holidays off the year prior and that her surgery was not an "emergency." It is important to note that did not contact physician's office until return to duty on January 6, 2005.

In that regard, according to an undated timeline of leave prepared on or after January 7, 2005, indicated that told her he had contacted physician,[23] that he and that that she was scheduled to work the holidays.[24] also wrote that [25]

On January 6, 2005, returned to work. affidavit indicated that she told AFRH officials she forgot to bring a physician's release and offered to bring it in the next day. Her affidavit (as well as email below) indicated that told her to go home and not return until she brought in the note. stated in his email:

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[23] We believe this refers to not

[24] In view of other documentation that needed the procedure "ASAP" due to medical complications, we did not find credible speculation that the timing of the surgery was a matter of convenience to avoid working the holidays.

[25] The facts do not support any intentional delay or circumvention of by denied appeal on December 21, 2004. On December 22, 2004, asked to see as the next higher authority but was told he was on leave. At that time, was given an appointment to see the on December 23, 2004.

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Subsequently, presented AFRH officials two notes from office, both dated January 6, 2005. The first note indicated was under care from December 16 – 28, 2004, and with return to work on December 28, 2004. The second note indicated that actually underwent the surgery on December 28, 2004, and that she could return to work January 5, 2005. By memorandum dated January 7, 2005, from her position at the AFRH citing, in part, displayed toward her by AFRH management.[27] testified that was an worker.

testified that called him in an fashion as if he had done something wrong, and kept wanting to know whether procedure was told us he did not want to violate medical privacy, but assured that in his medical judgment the surgery was required. told us he encouraged to get a note from regarding the urgency of the surgery. told us that no one contacted her personally regarding and that the medical procedure required could not be postponed until after the holidays.

told us that anytime he was on leave or away from the AFRH, was Director. He also told us that anytime was on leave, was "acting" in behalf as well. confirmed that both he and were on leave when overturned decision and granted request for sick leave. Nonetheless testified that made the decision without consulting with and that both he and Mr. Cox instructed her to consult with [28] testified that although subsequently contacted he did not believe there was between them -- that announced her decision first, and then asked his opinion. told us that prior to the incident there had been friction between and and that had reported to him that was his authority.

Mr. Cox recalled that called him on December 23 or 24, 2004, and told him, or words to that effect. Mr. Cox told us

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[26] It is true that did not characterize her need for surgery as an "emergency" per se when denied her appeal on December 21, 2004. However, as medical conditions can either improve or deteriorate, we relied on medical documentation from her primary physician, which indicated suffered medical complications requiring the surgery "ASAP."

[27] actually submitted – only one referenced by AFRH staff.

[28] and Mr. Cox's instruction to consult with came after had already informed that the leave would be granted.

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[redacted] told him she received new information (doctor's note stating surgery was required and the fact that [redacted] was accompanied by the Union Representative). Mr. Cox told us that when he asked if she had contacted [redacted] she answered that she did not need to at that point because she had already made her decision.[29] Mr. Cox also testified that he commented to [redacted] that she had not contacted [redacted] supervisor, [redacted][30]

Mr. Cox told us he then advised [redacted] that he was not giving her a choice -- she was to contact [redacted], find out why he disapproved [redacted] leave, and make a decision accordingly.[31] Mr. Cox indicated that when [redacted] reported that she and [redacted] could not reach an agreement, he advised her to contact [redacted] to resolve the matter. Mr. Cox told us that it was his understanding that [redacted] was not available and "so no resolution came of that."[32] Mr. Cox opined that whether [redacted] made the right decision was "immaterial" -- "how she made the decision was inappropriate."

According to [redacted] AFRH (and Deputy Inspector General), [redacted] believed [redacted] only called him because Mr. Cox required her to, and that when she did so, [redacted] responded, [redacted]

Discussion

We concluded that the personnel decision made by [redacted] that precipitated Mr. Cox's request for her reassignment, although contentious, was the "right" decision under the circumstances and was consistent with the AFRH instruction governing the granting of sick leave. That is, [redacted] decision to overrule [redacted] and approve sick leave for [redacted] was justified. [redacted] an [redacted] with [redacted] service in various positions of responsibility, made a reasonable and prudent decision to grant [redacted] sick leave under the circumstances, which was wholly within her authority and discretion as acting Director.

Further, the evidence indicated to us that there was no compelling need at the time for [redacted] to consult with [redacted] (who was on leave) nor did [redacted] make a unilateral or "on the spot" decision. The evidence established that [redacted] first considered a physician's note which indicated the surgery was required and not elective, then

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[29] In our view, [redacted] response did not necessarily infer there was no need or benefit from contacting [redacted] but was simply an acknowledgment that she had already informed [redacted] that she could take the sick leave.

[30] The evidence indicated to us that at the time [redacted] called Mr. Cox, she had consulted with [redacted] who agreed with her decision.

[31] Mr. Cox's email of January 2, 2005, to [redacted] indicated that he directed [redacted] "not to override" [redacted] decision.

[32] As noted above, when [redacted] was not available, [redacted] followed [redacted] advice to contact the Bureau of Public Debt. [redacted] opined that [redacted] decision was appropriate under the circumstances.

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consulted with [redacted] (acting as [redacted]), who told [redacted] (and us) that she would have approved the leave herself had she been presented the doctor's note at the time [redacted] requested the leave.[33] When directed to research the matter further, [redacted] contacted [redacted] of the Bureau of Public Debt who validated [redacted] decision as appropriate.

As discussed in the next section, the controversy only arose after [redacted] personally challenged [redacted] authority to overturn his decision. In that regard, we believe [redacted] had a reasonable expectation when she contacted Mr. Cox that the chain of command would support her decision to overrule [redacted] under the circumstances. However, the facts, as set forth below, indicated that management did not support [redacted] exercise of authority, and instead, investigated her, placed her on administrative leave, and initiated reassignment action when she failed to resolve the dispute with [redacted]

Facts Pertaining to [redacted] Investigation and Media Attention

[redacted] alleged that on January 3, 2005, [redacted] advised her in the presence of [redacted] that Mr. Cox had directed an investigation regarding her overruling of [redacted] decision, and proceeded to place her on administrative leave. [redacted] described the meeting with [redacted] and [redacted] as [redacted] and the action [redacted][34]

[redacted]

In her Article 138 complaint of January 11, 2005, [redacted] asserted that any investigation conducted by [redacted] would be [redacted] and questioned why [redacted] and [redacted] were not treated as she was; i.e., placed on administrative leave pending the outcome of the investigation.

We found that by email dated January 2, 2005, Mr. Cox wrote [redacted] and [redacted] (with copy to [redacted] and [redacted], and specifically noted his direction to [redacted] "to not override" [redacted] authority:

> [redacted] and [redacted], please let me know how you would like to resolve this matter. [redacted] [redacted] does report to [redacted] and ultimately to me. I

[33] These basic facts were absent from [redacted] later investigation of the matter.

[34] As noted in the Background Section, on January 3, 2005, [redacted] filed a complaint with this Office regarding placement on administrative leave pending [redacted] investigation. On January 12, 2005, [redacted] submitted her Article 138 dated January 11, 2005, to [redacted] and on January 14, 2005, submitted a complaint of reprisal with this Office.

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> apologize for any misconceptions she gave you. In fact, I told her she needed to go back to you and work through this matter with you, and to not override your authority. A leader is someone who knows how to support his/her colleagues rather than undermining others authority. If this is what happened, [redacted] did not follow my direction, and this is inappropriate.
>
> [redacted] via this email, would you please investigate this matter and let me know your recommendation.[35] Based on these facts and my direct conversation with her, I feel she acted insubordinately. Thank you. Tim

By email dated January 3, 2005, [redacted] responded to Mr. Cox:

[redacted]

[redacted] confirmed that on January 3, 2005, Mr. Cox instructed him (rather than [redacted], to conduct an inquiry into the facts and circumstances of [redacted] decision to overturn [redacted] denial of [redacted] sick leave. In that regard, [redacted] told us he met with [redacted] and [redacted] and based his inquiry primarily on that meeting:

[redacted]

[35] Mr. Cox and [redacted] confirmed that they later decided that [redacted] would investigate the issue since he was in Gulfport, rather than [redacted] who was in D.C.

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According to documentation attached to investigative report dated January 18, 2005, on January 4, 2005, the flyer, below, was created by , and appeared again on January 7 and 10, 2005, calling for residents to support by attending a press conference with local news media on January 11, 2005.

[36] The evidence indicated that "investigation" consisted primarily of conversations with and (no formal interview or statements taken). Likewise, testified that did not interview or take a statement from her; he did not interview physicians, or of the Bureau of Public Debt.

[37] As noted earlier,

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By email dated January 11, 2005, [redacted] wrote Mr. Cox:

[redacted]

Subsequently, [redacted] forwarded a copy of his email above to [redacted] replied:

[redacted]

Also on January 11, 2005, [redacted] wrote an email, [redacted]

[redacted]

[redacted] testified that the above activity by AFRH residents indicated to him that residents were being involved in a management issue (and in his report, below, attributed the involvement of residents to [redacted]. As a result, [redacted] told us he concluded

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that they (meaning himself, [redacted] and [redacted] would not be able to work together as a team.[38] [redacted] told us because of the media attention of January 11, 2005, Mr. Cox directed him to withdraw [redacted] access to her Government email and cell phone accounts:

[redacted]

Mr. Cox echoed [redacted] belief that [redacted] was actively involved in engaging the media:

> You know, I mean, she was quoted in the paper several times. If you really wanted to deal, you know, honestly about the situation, you know, I wouldn't run to the newspaper directly, you know, to state falsehoods. . . . You know, [redacted] was hired as a deputy. She was never told she was going to go up to the director.[40]

In [redacted] report of investigation dated January 18, 2005, he framed the allegation against [redacted] as [redacted] He concluded that [redacted] acted improperly by overturning [redacted] leave decision, by conveying her authority to [redacted] in an arrogant manner, by willfully disregarding Mr. Cox's instructions to collaborate with [redacted] in the matter, and by eliciting resident/media support for her situation. We provide a more detailed analysis of [redacted] investigation in the "Discussion" section below.

[redacted] testified that he did not take any statements or conduct formal interviews because he did not realize he needed to do that. When asked whether he was aware that

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[38] Email messages from [redacted] were forwarded to [redacted] who advised [redacted] that such activity could not be condoned.

[39] The email [redacted] referenced indicated to us that [redacted] simply thanked a resident for his support. As noted further, [redacted] based his conclusions in this regard on assumptions rather than fact. We found no evidence [redacted] instigated, solicited, or directed that AFRH residents support her through contacting the media or in other ways.

[40] Testimonial evidence indicated that it had been longstanding practice for the military officer serving as Deputy Director, AFRH, to move up and serve as Director. Although Mr. Cox told us he had planned to make changes in that regard, it would not have been a "falsehood" on the part of [redacted] or any other AFRH staff member to have voiced the expectation that [redacted] would have been in line to become the Director once [redacted] retired or was reassigned.

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[redacted] had, indeed, consulted with staff regarding the leave issue, [redacted] testified: [redacted]

When advised that [redacted] had consulted with [redacted] opined that that was not sufficient because: [redacted]

Although [redacted] testified that he did not believe [redacted] should be put [redacted] because of the incident, he made an overall recommendation that she be reassigned [redacted] and that she:

- Be counseled for inadequate management techniques and poor judgment;
- Receive a [redacted] for insubordination by failing to follow Mr. Cox's direction to [redacted] with [redacted] and
- Receive a [redacted] for [redacted] in the matter.

[redacted] testified that he believed that [redacted] used the residents, the media, and politicians to her advantage, which evidenced a lack of [redacted] and [redacted] on her part. [redacted] based his conclusion on the fact that residents were aware of the Article 138 immediately after AFRH officials received it.[41]

Discussion

We concluded that the investigation conducted by [redacted] into the personnel decision made by [redacted] was carried out in a way that provided no due process to [redacted] (did not take statements from her or others involved in the matter) and failed to meet minimum investigative standards. In our view, it simply served to validate a foregone conclusion. Little effort was made to collect relevant evidence. [redacted] did not interview the attending physician, who told us that [redacted] surgery was needed before the holidays. Some statements [redacted] made were speculative and others were simply inaccurate. This could be characterized as an abuse of authority under Air Force instructions because it failed to

[41] As noted further, evidenced indicated it was [redacted] counsel, [redacted] U.S. Navy (Reserve) Judge Advocate General Corps, who disclosed information to the residents.

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give [redacted] the right to be heard. The table below provides our analysis of the facts as set forth by [redacted] in his investigative report:

[redacted]	**Observation**
[redacted] requested sick leave without medical documentation and has a [redacted]	It is correct to state that [redacted] requested sick leave without medical documentation, but such documentation could have easily been obtained at the time the leave request was challenged. The comment regarding [redacted] leave history appears to disparage her work ethic -- but many Government employees take annual leave during holiday periods, especially during the Christmas-to-New Year period.
[redacted]	Factually inaccurate. As noted above, [redacted] consulted with [redacted] who was acting [redacted] at the time. Moreover, under AFRH regulations governing administrative leave, [redacted] as the first line supervisor, had primary responsibility for approving/disapproving sick leave. There was no evidence [redacted] decision was [redacted] as evidenced by the fact that he did not contact [redacted] physician until after her return to duty. [redacted] to participate in discussion of the matter prior to granting [redacted] leave. Although [redacted] testified that he was aware [redacted] and [redacted] discussed the matter, he did not include that information in the report. Further, [redacted] testified that he was unaware whether anyone contacted [redacted] physician prior to that.
[redacted] on the part of [redacted]	As noted above, [redacted] consulted with [redacted] and when contacted by [redacted] explained her rationale, which [redacted] did not accept. In our view, contracting for outside nurses is a typical consequence, normally budgeted for, when there are unforeseen staffing shortages, particularly over the holidays. In our view, [redacted] research of the matter was sufficient under the circumstances.
Members of the meeting [presumably [redacted] and [redacted]	The statement was based on hearsay without any evidence to support the implication that [redacted] participated in, was aware of, or condoned the alleged celebratory behavior. Arguably, obtaining approval for sick leave that

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[redacted]	Observation
	had been denied would prompt a positive response.
[redacted] called [redacted] and provide his rationale; i.e., that surgery could be scheduled after holidays as it was required, but not urgent. [redacted] and referenced [redacted] email on January 6, 2005.	As noted above, [redacted] was presented with a doctor's note that indicated the surgery was required and not elective. [redacted] validated her assessment that it would be more prudent to grant than withhold the leave. And [redacted] physician confirmed that the surgery could not wait until after the holidays. [redacted] made the distinction without input from [redacted] physician who told us the surgery could not be postponed until after the holidays. [redacted] email indicated he still questioned whether [redacted] surgery had been urgent despite receiving the doctor's certification that it was.
[redacted] Asserted that the content of [redacted] email of December 25 was [redacted] based on collective interviews of [redacted] and [redacted]	It appeared to us that [redacted] gave greater weight to [redacted] version of events, particularly his email, than he did [redacted] wrote to [redacted] in her Article 138 of January 11, 2005, and to us, that it was only after [redacted] put her on the defensive by asserting to her that his decision stood and questioning her authority that she felt compelled to assert the authority vested in her position. Again, [redacted] did not act alone – she consulted with [redacted] at the time she made the decision.
Mr. Cox directed [redacted] to [redacted] redress [redacted] request for leave with [redacted] for [redacted] [redacted] called [redacted] but failed to follow instructions; her [redacted] was evidenced in [redacted] email, which stated [redacted] said, "I'm staying with my original decision. Do you agree or disagree." Insubordination: [redacted]	[redacted] did not offer any testimony from [redacted] regarding [redacted] challenging her authority. [redacted] characterization of [redacted] motives and intent appear value-laden without balance, objectivity or thoughtful analysis.
[redacted]	There was no indication [redacted] addressed whether the manner in which [redacted] interacted with [redacted] was insubordinate.

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[redacted]	Observation
[redacted] actions [redacted] [redacted] Characterized [redacted] suspected involvement as [redacted] of residents.	As noted above, the evidence consisted of a single email wherein [redacted] thanked a resident for his "support." [redacted] did not interview [redacted] or [redacted] with respect to his assumptions. Further, evidence indicated that it was [redacted] rather than [redacted] who was providing residents, as well as the media, information pertaining to [redacted] circumstances. [redacted] failed to vet any speculation or assumption on his part that [redacted] was the source, or the sole source, of information obtained and used by residents in their media campaign in support of [redacted] or that [redacted] was responsible for any [redacted] to residents. According to [redacted] testimony, residents expressed concern and worry over [redacted] disappearance. In our view, the media articles and actions by the residents indicated that any [redacted] suffered by AFRH residents/veterans resulted from the precipitous removal of a military officer who had devoted herself to their wellbeing.
Opined that rather than involve the residents, [redacted] was [redacted]	[redacted] twice sought redress under Article 138 to [redacted] and was twice denied as not actionable, all the while she stayed at home on "administrative leave." As cited in the OGC, DoD, legal opinion, [redacted] had every authority to redress [redacted] concerns as her immediate supervisor apart from the Article 138.

As indicated above, [redacted] conclusions were not supported by a preponderance of evidence, and appear to be based primarily on hearsay and speculation. As such, the investigation did not meet standards for fairness and objectivity in investigations as set forth in the PCIE, "Quality Standards for Investigations," adopted in whole or in part by all DoD components with respect to the adequacy of administrative investigations, or JAGMAN requirements. In our view, [redacted] inquiry was remarkably biased against [redacted]

Moreover, Mr. Cox's email of January 2, 2005, to [redacted] indicating that Mr. Cox had directed [redacted] to "not override" [redacted] decision, suggested that the collaboration or team work expected of [redacted] was simply agreement with [redacted] As noted above, we found no reasonable basis for [redacted] to have

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collaborated with [redacted] once she validated her decision with [redacted] Further, it could be argued that [redacted] failed to collaborate with and/or was insubordinate to [redacted] in the manner in which he challenged her authority, and by failing to continue dialogue on the matter when she contacted him.

Facts Pertaining to Administrative Leave

[redacted] characterized her placement on administrative leave as [redacted] of a subordinate under the UCMJ and that she advised [redacted] that "administrative leave" did not exist in military parlance. [redacted] wrote in her second Article 138 that her treatment by "AFRH leadership" has led to multiple visits to her physician for stress-related disorders; that she was embarrassed and humiliated by her treatment in the presence of AFRH staff and residents; and that her husband and four children also suffered.

We found that on January 3, 2005, Mr. Cox directed that [redacted] place [redacted] on administrative leave pending [redacted] investigation, and informed Mr. Molino by telephone that [redacted] was no longer suited for the position of Deputy Director. Mr. Cox advised Mr. Molino that he (Mr. Cox) had instructed [redacted] to place her on administrative leave. [redacted] corroborated that Mr. Cox advised him that [redacted] should not be present at the AFRH while [redacted] was conducting his investigation. [redacted] told us he informed [redacted] that she would be [redacted] but did not assign [redacted] any duties nor tell her what she should be doing while assigned to her quarters. [redacted] testified that when [redacted] asked when she could return to work, he told her she would have to wait to hear from him. Further, we found that [redacted] did not communicate with [redacted] apart from two voice mail messages prior to meeting with her on January 18, 2005, at which time he returned her to administrative leave.

We found that on January 7, 2005, [redacted] informed Brig Gen David Young, U.S. Air Force Medical Corps, Commander, 81st Medical Group, Keesler, AFB, MS, that [redacted] had been directed not to report to work.[42] Brig Gen Young, in turn, contacted Major General (Maj Gen) Barbara Brannon, U.S. Air Force Nurse Corps, Chief Nurse of the Air Force. Maj Gen Brannon indicated that Brig Gen Young told her that [redacted] was not assigned to him, but to the Air Force Element.[43]

[redacted] testified that he kept Mr. Cox informed of actions by AFRH residents to engage the media in support of [redacted] and that Mr. Cox directed him to withdraw [redacted] access to her Government email and cell phone accounts. By email dated January 10, 2005, to Messrs. Abell and Molino, Mr. Cox followed up with Mr. Molino regarding his desire to reassign [redacted]

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[42] Brig Gen Young signed [redacted] OPR as her reviewer.

[43] As noted further in the report, it took approximately three weeks for Air Force officials to establish, with certainty, [redacted] assigned chain of command.

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> Good morning, Charlie [Abell] and John [Molino] . . . John, we discussed the need to move on [redacted] the Deputy, in Gulfport. I have lost all confidence in her leadership ability and her decisions are causing harm to our operations. How would you like to effectuate this change? I will contact whomever you direct me to, if I can help.
>
> Effective last week, she is on leave from her duty in Gulfport. Unfortunately, she lives on campus. I would like to give her a 30-day relocation notice so she can look for housing outside of our gate. I know [redacted] has officer temporary housing. Thanks for your assistance. Have a great day. Tim [Cox]

Mr. Cox told us he took away [redacted] email and cell phone accounts because he had asked for her to be reassigned and in his view, she was "really not a part of our staff anymore."[44]

We found that there was a flurry of emails exchanged on January 11, 2005, among Maj Gen Brannon, Mr. Roger M. Blanchard, SES, Assistant Deputy Chief of Staff for Personnel, Department of the Air Force, and [redacted] Air Force Element Medical:

- [redacted] reported that she was not [redacted] commander, and identified [redacted] supervisors as [redacted] and Mr. Cox.[45] [redacted] wrote that [redacted] told her [redacted] was [redacted] on January 3, 2005, for [redacted] and [redacted] which had resulted in negative media attention. [redacted] relayed that [redacted] had not spoken to [redacted] since January 4, 2005. [redacted] opined, [redacted] and that [redacted] was [redacted]

- Mr. Blanchard advised Maj Gen Brannon that he had received a call "from OSD" that [redacted] was "apparently" having difficulty with the Director of the AFRH who had placed her on administrative leave and requested reassignment.

- Mr. Blanchard reported that there was a conflict with [redacted] supervisor who believed [redacted] was "undermining and contravening his direction." Mr. Blanchard indicated that he could not comment on the "propriety of his direction," and that it could simply be a "professional disagreement." Mr. Blanchard

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[44] We noted that even the media posters generated by AFRH residents during this time indicated that there was "no such thing" as administrative leave for a military officer in this circumstance.

[45] [redacted] reported that personnel records indicated [redacted] was assigned to the Keesler AFB PAS [personnel accounting symbol] code, not the Air Force Element PAS code. Air Force officials later determined that the wrong PAS code had been entered into the system for [redacted] and that she should have been assigned to the Air Force Element.

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wrote that it was being interpreted as a performance issue meaning "she [redacted] either could not, or would not follow" his direction and "he wants her moved."

As noted in the Background Section, [redacted] filed an Article 138 dated January 11, 2005, with [redacted] requesting reinstatement to her position. On January 13, 2005, [redacted] DoD, issued a legal opinion that the Article 138 was not actionable because [redacted] was not a [redacted] the AFRH was not a part of the DoD, and therefore no military officer [redacted] AFRH. [redacted] also opined:

[redacted]

On January 18, 2005, [redacted] completed his investigative report, advised [redacted] of the results, and returned her to administrative leave. On January 19, 2005, Mr. Molino provided Mr. Blanchard [redacted] opinion, asked that the Air Force issue [redacted] orders for reassignment, and that [redacted] have, as a place of duty, [redacted] the AFRH.

By email dated January 19, 2005, Mr. Blanchard forwarded Mr. Molino's email and the legal opinion to Maj Gen Brannon. Mr. Blanchard opined that as discussed previously, "it made sense not to take any action to move" [redacted] pending disposition of her allegations, and asked whether the legal opinion changed Maj Gen Brannon's view.

By email dated January 25, 2005, [redacted] Administrative Law Division, Department of the Air Force, advised Mr. Blanchard that he essentially agreed with [redacted] legal opinion, but offered that it remained to be seen whether the actions against [redacted] were justified. [redacted] opined that given the limited facts, the precipitating event; i.e. [redacted] granting of the leave, [redacted] recommended that the Air Force [redacted] and demand an accounting prior to taking a reassignment action.

By email dated January 26, 2005, Maj Gen Brannon advised Mr. Blanchard that she would ask Brig Gen Young to obtain more information from [redacted] regarding the reasons for relieving [redacted] In that regard, Maj Gen Brannon indicated she had already

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talked once with [redacted] who had "only the complaint about the civilian leave cancellation so far. I do share [redacted] unease." Mr. Blanchard responded that he believed it was important "to know more about the offenses she has allegedly committed, and that we know the exact status of the complaints she has filed before we take any action to move her."

By email exchanges dated February 4, 2005, Maj Gen Brannon, Maj Gen James G. Roudebush, U.S. Air Force Medical Corps, Deputy Surgeon General, and Messrs. [redacted] and Blanchard, discussed the Navy's determination that [redacted] was occupying a Navy commanding officer shore billet, and whether the Article 138 could be investigated by the Navy as valid. [redacted] concurred that reassignment of [redacted] was [redacted] but expressed concern that she was [redacted] In that regard, Maj Gen Brannon reported that [redacted] declined an offer to work at Keesler AFB pending resolution of the matter.

By email messages dated February 15 and 16, 2005, Mr. Blanchard, Maj Gen Brannon, and [redacted] discussed the fact that OSD officials indicated [redacted] would not be returning to the AFRH even when the allegations were resolved, and that she needed to be detailed to Keesler AFB. [redacted] again opined, [redacted] Maj Gen Brannon also opined:

> The action detailed [in the Article 138] does not support any administrative action against [redacted] in my view – and the circumstances verbally communicated to me by her supervisor, [redacted] are consistent with what the ADC [Area Defense Counsel, [redacted] details. There must be a 'rest of the story' or 'administrative leave,' no contact with AFRH, is way out of proportion to action attributed to [redacted]

Thereafter, Maj Gen Brannon reported that [redacted] had consented to reassignment to Keesler AFB. By email dated February 18, 2005, Air Force officials determined that [redacted] did, in fact, belong to the Air Force Element. Accordingly, records were changed to reflect the proper Air Force chain of command for [redacted] with [redacted] as her commander, and Maj Gen Roudebush as her senior rater. By email dated February 21, 2005, Brig Gen Young advised Maj Gen Brannon that he would ask [redacted] to submit a formal request that [redacted] be returned to the Air Force.

By memorandum dated February 23, 2005, Mr. Cox advised Brig Gen Young that [redacted] was available for return to the Air Force. Brig Gen Young, in turn, provided the memorandum to [redacted] requesting that she take action to return [redacted] to the Air Force for service. On March 1, 2005, [redacted] signed a "Request and Authorization for Permanent Change of Station," and received orders, by email, directing her to report to Keesler AFB effective March 7, 2005.

[redacted] testified that during the time [redacted] spent at her quarters (from January 3 to March 7, 2005), he did not communicate with her apart from leaving her two voice

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mail messages and when he advised her of the results of his inquiry. Likewise, Mr. Cox testified that he also did not communicate with [redacted] and [redacted] both opined that but for the incident involving [redacted] overruling [redacted] decision, [redacted] would most likely still be working at the AFRH.

Facts Pertaining to Duration of Administrative Leave

[redacted] told us that he and Mr. Cox had wanted to move [redacted] a lot sooner than she was, but that the Article 138 delayed the action, and there was never any intent to leave [redacted] in her quarters for 2 months with [redacted] opined that everything just [redacted] and then it became hard for the Air Force to move her. [redacted] recalled that there was discussion of detailing [redacted] to Keesler AFB, and he and Mr. Cox did not want her doing anything with the AFRH residents because of their belief that she was responsible, in part, for the negative media attention. [redacted] opined that all the media and Congressional attention the AFRH was receiving at the time caused things to move slower. [redacted] also attributed part of the delay to the Air Force because there were questions about who [redacted] belonged to in the Air Force.[46]

Mr. Molino testified that when Mr. Cox told him he had placed [redacted] on administrative leave, he informed Mr. Cox that such an action for a military officer was not permissible. Mr. Molino recalled that Mr. Cox explained that he was not looking to "relieve" [redacted] but had determined it would be in everyone's interest to have her work somewhere else. Mr. Molino recalled that he then engaged Mr. Blanchard in the matter. In discussing the circumstances which resulted in [redacted] sitting at home for 2 months, Mr. Molino opined that he shared collective responsibility, but she remained an Air Force asset:

> I think the Air Force was motivated by not wanting to hurt her or make it appear that she was -- it [the reassignment] was retribution for what she did [submit an Article 138 complaint]. But in the process, we hurt her by letting her sit there. I mean, I don't know if we hurt her professionally, but we certainly hurt her personally. That's not fair to do that to anybody. Nobody should get that treatment. I think I've said that more than once.

Facts Pertaining to [redacted] Reassignment

In his testimony to us, Mr. Cox stated that the incident involving [redacted] leave was consistent with a pattern of behavior on the part of [redacted] that caused him to lose confidence in her managerial and leadership ability. Mr. Cox told us that when [redacted] interviewed for the position as Deputy Director he and other staff members thought she would be a "good match" for the AFRH, especially as she was a registered nurse. Mr. Cox characterized [redacted] as being "extremely supportive" during her first year, but when conflicts began surfacing in late summer/fall 2004, he stated that [redacted] was not interested in

[46] According to email messages and Maj Gen Brannon, it took approximately 3 weeks to ascertain the correct Air Force chain of command for [redacted]

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changing her behavior, that "it was everyone else's problem, not hers. So there was no ownership."

Mr. Cox testified that [redacted] told him [redacted] did not communicate well with her. In that regard, Mr. Cox's handwritten notes dated October 27, 2004, indicated that [redacted] told him [redacted] did not talk to her daily nor provide her direction, that she did not feel like she knew the Business Plan, and that [redacted] communicated more with [redacted] Operations, than he did with her. In addition, Mr. Cox noted [redacted] concern that [redacted] had departed on official travel without giving her any direction for handling matters in his absence. [redacted] testified that [redacted] even when in town, left every Friday at 3:00 p.m. to visit his mother and that he was normally not available over the weekends. As a result, [redacted] told us she did all the military functions or engagements that occurred on weekends.

Mr. Cox also testified that in September 2004 he contracted with an outside consultant to provide "coaching" to senior members of his staff, including [redacted] and [redacted] to facilitate team building and more collaboration, and that [redacted] resisted the coaching. In that regard, Mr. Cox testified that he began receiving reports of, and noticing a pattern, where [redacted] "would overrule personnel decisions, you know, without coming back to check," and that [redacted] "had favorites, and which as a leader you shouldn't have favorites." Mr. Cox cited an occasion when one staff member indicated he did not want to do a bulletin of events for the AFRH, [redacted] assigned the task to the Public Affairs official -- something he believed [redacted] should not have done without consulting with [redacted] to see what effect such a change would have on the Business Plan. Mr. Cox told us [redacted] was "offended" when he reversed her decision and seized that opportunity to explain how, in his view, she needed coaching with respect to team building.

Mr. Cox recalled another occasion where [redacted] made a decision on a matter involving two residents, one whose personality was "endearing" and whom [redacted] "favored," and another who Mr. Cox described as "irascible." Mr. Cox told us that even though [redacted] may have made the correct decision pertaining to the two residents, she erred when she did not permit the resident who was offended by her decision the opportunity to be heard.

Mr. Cox told us that one of [redacted] strong suits was her ability to listen to residents, but he put a stop to her visits to residents who were hospitalized because according to the Business Plan, that was a function of the social worker and the nursing supervisor, not the Deputy Director. Mr. Cox opined that any official time spent in that regard by [redacted] was a "waste of our time and money" and was duplicative effort. Mr. Cox recalled that the issue of [redacted] visits to residents was a "stumbling block" and he instructed [redacted] to address the issue with [redacted] In addition, Mr. Cox testified that there was "no value added" to [redacted] visits and that she:

> was very needy and wanted residents to like her, you know, wanted staff to like her. You know, so make decisions that were against administration, you know, and saying to people that, you

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> know, 'well, Mr. Cox isn't allowing us to do this,' you know, 'Mr. Cox didn't allow me to visit you anymore,' to me borders on unprofessionalism and, you know, really not part of our team. So I really felt the little benefit we'd get on the social part was heavily outweighed by the one or two staff that we were paying to do that assessment visit and keep a connection with the resident, too.[47]

[redacted] told us [redacted] visited hospitalized residents approximately once a week, and that it was a [redacted] between them. In that regard, [redacted] told us he discussed the issue with [redacted] in the presence of [redacted] told her if she wanted to conduct such visits she needed to [redacted] all that she accomplished during the visits and document how the visits supported the [redacted] set forth in the Business Plan.

[redacted] testified that [redacted] did not have a problem with her visiting residents until sometime in July 2004 when he summarily informed her that she could no longer visit hospitalized residents, and that the 3 hours she did so each week could be better spent on the Business Plan. [redacted] testified that when she asked whether she could visit residents on her own personal time, [redacted]

[redacted]

[redacted] Resident Services, AFRH, testified that [redacted] visits to residents [redacted] on them and he was personally disappointed that management put a stop to her visits:

[redacted]

Regarding the impact of a uniformed service member visiting residents, [redacted] AFRH, told us the residents really appreciated seeing him

[47] The evidence (letters, petitions, media coverage) all indicated to us that [redacted] was, indeed, well-liked and respected by the residents.

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in uniform so much so that when he held his first "all hands" meeting at the AFRH, he received a standing ovation. [redacted] told us that he (and his predecessor, [redacted]) spent as much time with residents as they could, including during non-duty hours, and that [redacted] had even followed residents being transported by ambulance to the local hospital.

Discussion

We concluded that Mr. Cox took personnel actions against [redacted] in a manner that constituted a wrong within the meaning of Article 138, UCMJ. That is, Mr. Cox engaged in an "[a]rbitrary, capricious, or an abuse of discretion," that violated provisions of DoD Instruction 1327.6, "Leave and Liberty Procedures," and was clearly unfair given the facts established in this investigation.

Although we recognize that, given the nature of [redacted] command situation, her Article 138 complaint was not actionable as such, we concluded that she, indeed, suffered the type of wrong described by Article 138. Additionally, Mr. Cox's actions constituted an abuse of authority within the meaning of AFI 90-301 -- his "arbitrary or capricious exercise of power," adversely affected the implicit right of [redacted] as described by the JER, to receive "fairness" and "justice" from her superiors.

In reaching this conclusion, we recognize that, as a matter of practice, reassignments from non-Service (e.g., joint) billets are made on a nonpunitive basis when reporting seniors determine that removal of the Service member is in the best interests of the agency. Little explanation or justification is required. We do not dispute Mr. Cox's authority to demand that the Air Force remove [redacted] from her AFRH position. However, in doing so, he had an obligation to ensure that she was treated fairly in the process, that the investigation into her conduct was properly completed, and that applicable regulations were followed. By failing to meet these obligations, he essentially abused his authority and wronged [redacted] We set forth the following points in support of that conclusion:

- The personnel decision made by [redacted] that precipitated Mr. Cox's request for reassignment, although contentious, was the "right" decision under the circumstances. That is, her decision to overrule Mr. Brown and approve leave was justified even though her manner of implementing that decision may have failed to be sufficiently participative. According to [redacted]

- The investigation conducted by [redacted] in January 2005 was carried out in a way that provided no due process to [redacted] (did not take statements from her or others involved in the matter) and failed to meet minimum investigative standards. In our view, it simply served to validate a foregone conclusion. Little effort was made to collect relevant evidence. [redacted] did not interview the attending physician (who told us that [redacted] surgery could not wait until after the holidays). Some statements [redacted] made were speculative and others were simply inaccurate. This could be characterized as an abuse of authority under Air

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Force regulations because it failed to give [redacted] the right to be heard.

- The decision to remove [redacted] from the premises of the AFRH and place her on administrative leave when [redacted] initiated his investigation and for nearly 2 months thereafter violated DoD Instruction 1327.6, "Leave and Liberty Procedures." As such, it constituted an abuse of authority by Mr. Cox, who, in fact, had no authority to grant administrative absence in this situation. We disagree with Mr. Cox's contention that his responsibility for [redacted] ended in early January 2005 when his request to have her reassigned was informally approved. Until [redacted] was officially ordered to leave her AFRH billet, she remained within the jurisdiction of Mr. Cox. In this situation, we can see little downside to having had [redacted] continue her duties while the investigation proceeded and until such time that a reassignment could be arranged.[48]

- Moreover, the loss of [redacted] service for a 2-month period essentially constituted misuse of Government resources and subordinate time within the meaning of the JER. That is, [redacted] working hours were not used productively and she was not assigned duties commensurate with her rank or expertise.

- Whatever prior counseling Mr. Cox or [redacted] provided to [redacted] did not have the effect of putting [redacted] on notice that her assignment was in jeopardy. Although the testimony of Mr. Cox and [redacted] demonstrated that Mr. Cox had difficulties with [redacted] leadership and attitude for the 4-6 month period preceding her relief from duties, there was no evidence that the significance of those shortcomings was ever conveyed to her in straightforward manner. Mr. Cox kept written notes on [redacted] weaknesses and discussed them with superiors, but did not provide her written guidance or formal counseling. The oral guidance that he did provide could easily have been perceived as benign by [redacted]

- The personal impact of the actions on [redacted] was severe. [redacted] suffered the personal and professional indignity of being prohibited from returning to her office, having her Governing email and cell phone accounts cancelled, and by having to disrupt and relocate her family (including changing schools and neighborhood for her four children) at considerable personal embarrassment, anguish, and expense.

Response to Tentative Conclusions

By letter dated July 12, 2005, we provided Mr. Cox an opportunity to comment on the foregoing conclusions. By letter dated July 29, 2005, Mr. Cox took issue with our determination that [redacted] made a reasonable personnel decision (granting sick leave to an employee); questioned whether DoD and Air Force regulations applied to him in his capacity as

[48] We are not aware of any regulation/precedent that would authorize placing a military officer on administrative leave until completion of an investigation.

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COO, AFRH; and reiterated that his actions were based on assurances he received from his superiors that [redacted] could be reassigned within 24 hours of his request. Mr. Cox opined that his actions "constituted concerned leadership" rather than an abuse of power and devoted most of his 4-page response justifying his decision to request reassignment of [redacted] rather than the focus of our investigation; i.e., his treatment of her once he made the decision to request her reassignment.

Mr. Cox wrote that the "entire report" was predicated on whether [redacted] made the right decision (overturning [redacted] decision to deny leave), and argued that the basic issue was, instead, whether [redacted] original decision to deny the leave was reasonable. In that regard, Mr. Cox asserted that unless we could produce a physician's statement with a "diagnosis" and a "prognosis" for [redacted] (referencing 5 Code of Federal Regulations Subpart 339, "Medical Qualifications Determinations") then the sick leave request [redacted] approved was not valid.[49] Our report did not take issue with the reasonableness of [redacted] initial decision to deny [redacted] sick leave. However, we remain convinced that [redacted] had no alternative but to overrule that decision given the circumstances and information she was presented at the time.

Mr. Cox also questioned the applicability of the standards we applied to his conduct, stating that while he has a personal reporting relationship to the Secretary of Defense, Air Force regulations and the UCMJ do not apply to AFRH employees and their decisions. As stated in this report and our letter to Mr. Cox, we applied the UCMJ and Air Force standards governing abuse of authority in principle only and acknowledged that according to OGC, DoD, the Article 138 complaint was not actionable in this circumstance. Further, we believe that in matters affecting Service members, Mr. Cox should be held to standards that have been established by statute and DoD to protect those Service members.

Mr. Cox provided the following explanation for placing [redacted] on administrative leave for 2 months and withdrawing her Government email and cell phone accounts:

- His superiors advised him in January 2005 the requested reassignment of [redacted] "could happen in 24 hours."
- [redacted] could have continued any on-going projects at her home; she did not ask for work, "nor did we prevent her from doing work."
- "While [redacted] email was suppressed to curtail further agitation with staff and residents, her ability to perform work was not suppressed."

[49] 5 CFR 339 applies to medical qualification determinations with respect to employment decisions affecting applicants and employees in competitive service. It does not apply to documentation required to support a request for sick leave. We used the AFRH publication governing leave administration, which required only a statement from the physician (and/or employee) verifying that an employee is under medical care and the expected date of return to work – it does not require the physician or employee to disclose a medical diagnosis or prognosis.

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- Due to the "tension" caused by [redacted] decision to grant [redacted] sick leave, "having the Deputy operate outside of the building was necessary so the team could refocus and get back to work."

In that regard, our report clearly established that Mr. Cox had the authority and discretion to request reassignment of [redacted] with little or no justification. Accordingly, additional details regarding [redacted] reported shortcomings are not relevant to our findings with respect to Mr. Cox's treatment of her. Further, we do not hold Mr. Cox responsible for the extraordinary delay in the reassignment of [redacted] We recognize that Mr. Cox relied, in good faith, on his superior's assurances that she could be reassigned within 24 hours. However, once it became evident that reassignment of [redacted] was not going to be effected within the first several days she was on administrative leave, Mr. Cox had a duty and obligation as a senior Government official to ensure that she was engaged in productive work. Instead, Mr. Cox isolated her in her quarters for 2 months without communication or direction and, in so doing, caused her unnecessary personal embarrassment, anguish, and expense.

After careful consideration of Mr. Cox's response, we stand by our conclusions in the matter. Mr. Cox he did not provide any new or material evidence not previously considered that would affect the outcome of the investigation.

V. CONCLUSIONS

We concluded that the manner in which Mr. Cox relieved [redacted] from her position and placed her on administrative leave constituted an abuse of authority, a "wrong" within the meaning of Article 138, UCMJ, and a misuse of Government resources.

VI. RECOMMENDATIONS

We recommend that the Principal Deputy Under Secretary of Defense (Personnel and Readiness) take corrective action as appropriate regarding Mr. Cox. We also recommend appropriate consideration of [redacted] request for redress, specifically that any OPR due be completed by an official other than Mr. Cox or [redacted]

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