

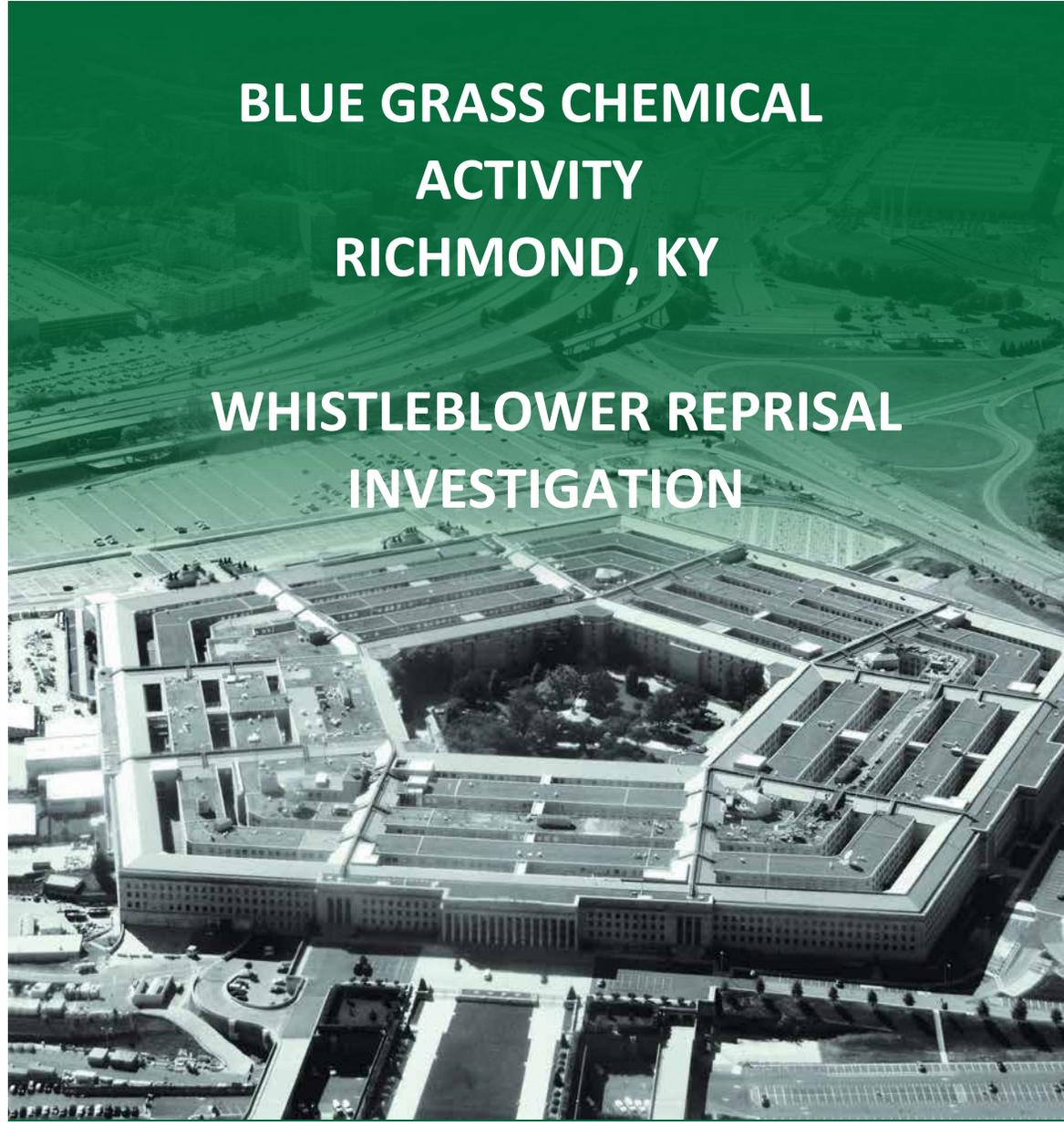
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# INSPECTOR GENERAL

*U.S. Department of Defense*



October 17, 2017



## BLUE GRASS CHEMICAL ACTIVITY RICHMOND, KY

## WHISTLEBLOWER REPRISAL INVESTIGATION

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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**WHISTLEBLOWER REPRISAL INVESTIGATION**

**████████████████████**  
**BLUE GRASS CHEMICAL ACTIVITY**  
**RICHMOND, KY**

**I. EXECUTIVE SUMMARY**

We conducted this investigation in response to an allegation that ██████████, U.S. Army (USA), ██████████, Blue Grass Chemical Activity (BGCA), Richmond, KY, recommended the revocation of ██████████'s (Complainant) access to classified information in reprisal for his protected disclosures to his chain of command and Inspectors General (IG).

We determined that Complainant made disclosures to his chain of command and an IG that were protected, that ██████████ was aware of Complainant's protected disclosures, and that ██████████ subsequently recommended the revocation of Complainant's security clearance. We also determined by a preponderance of evidence that Complainant's protected disclosures were a contributing factor in ██████████'s decision to recommend revocation of Complainant's security clearance.

Finally, in the absence of clear and convincing evidence to the contrary, we determined that ██████████ would not have recommend the revocation of Complainant's security clearance absent his protected disclosures.

We substantiated the allegation that ██████████ recommended revocation of Complainant's security clearance in reprisal for his protected disclosures.

By a letter dated September 5, 2017, we provided ██████████ the opportunity to comment on the preliminary report of investigation. We received ██████████'s response on September 15, 2017. ██████████ disagreed with our conclusions and requested that we revise our report and conclusion to be consistent with his response. After carefully considering the response, we amended various sections of the report but did not alter our original conclusion.<sup>1</sup>

We recommend that the Secretary of the Army direct Army officials to take appropriate action against ██████████ for reprising against Complainant. We make no recommendations in this matter regarding a remedy for Complainant since his security clearance was ultimately never revoked.

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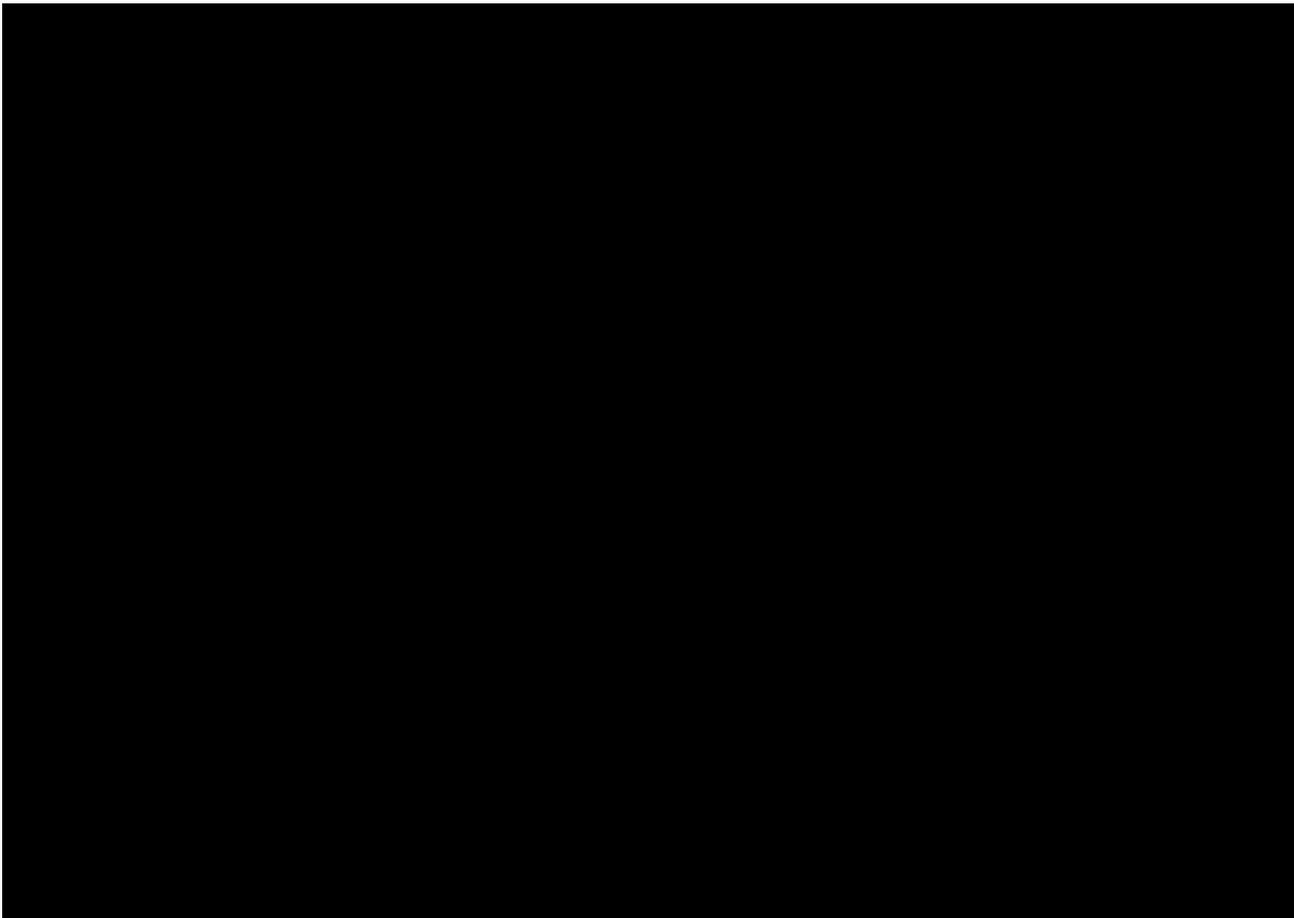
<sup>1</sup> While we have included what we believe is a reasonable synopsis of ██████████'s responses, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated his comments where appropriate throughout this report and provided a copy of his full responses to the cognizant management officials together with this report.

**II. BACKGROUND**

Complainant is a Department of the Army (DA) Civilian [REDACTED] [REDACTED] BGCA. BGCA is located on Blue Grass Army Depot (BGAD) in Richmond, KY. BGCA is one of two chemical weapons activities in the United States that report to the USA Chemical Materials Activity (CMA) Command at Aberdeen Proving Ground, Maryland.

CMA is responsible for managing the Nation's stockpile of chemical weapons, assessing and destroying chemical warfare materiel, complying with chemical weapons treaties, and protecting people and the environment. [REDACTED], USA, has been the [REDACTED]. At the time of this investigation, [REDACTED] reported directly to Major General (MG) Clark W. Lemasters, USA, Deputy Chief of Staff for Operations and Logistics, U.S. Army Material Command (AMC) located at Red Stone Arsenal, Alabama.

[REDACTED] [REDACTED]. In October 2015, BGCA created a Deputy Commander position [REDACTED], Complainant reported directly to [REDACTED], who reported directly to [REDACTED], who reported directly to [REDACTED]. [REDACTED]



### III. SCOPE

This investigation covered the period from August 2015 through October 2016. We interviewed Complainant, [REDACTED], and key witnesses with first-hand knowledge of the matters. We also reviewed documentary evidence, including personnel records, IG records, emails, and security clearance records.

### IV. STATUTORY AUTHORITY

The DoD Office of Inspector General (DoD OIG) conducted this whistleblower reprisal investigation pursuant to Presidential Policy Directive 19 (PPD-19), "Protecting Whistleblowers with Access to Classified Information" (October 10, 2012), as implemented within the Department of Defense by Directive-type Memorandum (DTM) 13-008, "DoD Implementation of Presidential Policy Directive 19" (July 8, 2013) (Incorporating Change 3, February 9, 2016).

### V. FINDINGS OF FACT

On or about August 12, 2015, Complainant used [REDACTED]'s open door policy and reported that [REDACTED] had refused to pay him overtime for hours [REDACTED] had him work outside of duty hours. [REDACTED] testified to us that Complainant wanted to be paid overtime for a couple of phone calls he made on a Saturday, but BGCA had a "standing policy" that employees had to report to BGCA and sign in at the Emergency Operations Center in order to receive overtime pay. [REDACTED] said he explained the policy to Complainant and then gave him an unofficial 59 minutes time-off to compensate him.

Complainant also contacted [REDACTED], CMA IG, Aberdeen, MD, and explained that [REDACTED] refused to pay him overtime and asked the IG for its opinion on whether he should be paid. The conversation with the IG was a verbal conversation and the IG did not open a case. However, [REDACTED] did brief [REDACTED] about 1 week later that Complainant had contacted the IG about the overtime issue.

[REDACTED] testified to us that Complainant's and [REDACTED]'s relationship was "tense," and when Complainant called him about the overtime issue, he told Complainant to calm down, not do anything, and let him talk to [REDACTED]. However, despite [REDACTED]'s instruction, Complainant e-mailed [REDACTED] about it the very next day.

[REDACTED] said [REDACTED] was aware that Complainant had contacted him about the overtime pay issue. [REDACTED] said he listened to both sides and then instructed [REDACTED] to pay the overtime.

On August 27, 2015, [REDACTED] wrote a Memorandum for Record (MFR) stating he had several concerns about a recent "leaker isolation operation" in which several incidents occurred that could have exposed personnel to chemical agents. [REDACTED] further wrote that he was directing Complainant to develop a training plan that incorporated everyone involved in isolation operations, and he directed Complainant to develop a briefing to synchronize that



██████████ through the open door policy, he believed ██████████ was forced to admit that he was wrong, and as a way of “stick[ing] [him] in the eye,” he gave him a time-off award instead of overtime pay.

On October 4, 2015, ██████████ was officially promoted to the newly created position of Deputy Commander of BGCA and assumed supervision of Complainant.

On February 8, 2016, ██████████ held a senior staff meeting in his office with ██████████, ██████████, ██████████, and Complainant. After the meeting, ██████████ and ██████████ found Complainant's ██████████ between Complainant and ██████████. Complainant testified to us that he had ██████████.

██████████ and ██████████ ██████████ to the September 2, 2015, ██████████ between Complainant and ██████████, and they realized the ██████████'s

██████████ testified to us that ██████████ was more concerned about Complainant ██████████ than he was about the things Complainant said ██████████, because she had already told ██████████ what Complainant had said immediately after ██████████ in September 2015. ██████████ said his initial thoughts when he ██████████ were, “Wow ... this is just – it was unbelievable,” ██████████, but because where Complainant's “head was at” and what he was doing as far as supporting the mission at BGCA. ██████████ contacted ██████████ and talked to CMA Legal Counsel about ██████████ and sent Complainant home on administrative leave that same day pending an investigation. In his response to our tentative conclusion, ██████████ stated that CMA Legal Counsel also advised him to suspend Complainant's security clearance as an administrative action and not as punishment.

That same day, Complainant sent a letter to MG Lemasters titled, “Open Door Policy-Report on Blue Grass Chemical Activity.” Complainant wrote that he was informing MG Lemasters of potential misconduct at BGCA; that he had used the open door policy with ██████████ in September 2015; and as a result had been subjected to reprisals in the form of counseling statements.<sup>2</sup>

██████████. Complainant further wrote that he had first attempted to address ██████████ directly, then had contacted the command IG, commented on

<sup>2</sup> Complainant referred to the two MFRs that ██████████ wrote as counseling statements although they were not formal letters of counseling. The MFRs were not corrective or disciplinary in nature.

a climate survey, and used [REDACTED]'s open door policy. Complainant asked MG Lemasters to intervene and conduct an impartial investigation into these matters.

[REDACTED] was aware that after he sent Complainant home on administrative leave, Complainant sent a letter to MG Lemasters because MG Lemasters tasked [REDACTED] to look into Complainant's allegations, and [REDACTED] showed [REDACTED] the letter. [REDACTED] also testified to us that he was aware that Complainant had previously talked to [REDACTED] in August 2015 about the overtime issue and alcohol in the workplace. However, [REDACTED] wrote in his response to Complainant's letter to MG Lemasters that he ([REDACTED]) learned about the alcohol in the workplace from a command climate survey.

[REDACTED] told us that although he explained the overtime policy to Complainant and compensated him with 59 minutes of time off, that did not satisfy Complainant, so [REDACTED] talked to [REDACTED] and Human Resources (HR) at CMA and ended up paying Complainant 1 hour of overtime to "close out that situation." In his response to our tentative conclusion, [REDACTED] admitted that he made a mistake in not paying overtime in accordance with regulations, and he stated "when the issue was pursued," he corrected it and purposefully did not ask for the 59 minutes back as a way to "offer an olive branch and ease tension."

[REDACTED] also testified to us that he was aware that Complainant accused him of stealing money from the Wounded Warrior funds to pay for softball jerseys and said Complainant knew [REDACTED] was not involved in ordering those shirts, but he went ahead and made the allegation to MG Lemasters anyway "just to try to muddy the water a little more." [REDACTED] also testified to us that he was aware Complainant had contacted the IG.

[REDACTED] testified that [REDACTED] was aware of all the complaints Complainant had made against him because he ([REDACTED]) told [REDACTED]. When asked if [REDACTED] expressed any animus towards those complaints against him, [REDACTED] said, "No, I mean, not to the point where, you know, 'That son of a bitch, you know, blah blah blah -- that F'ing SOB.' So yeah, his concern and articulation of [Complainant]'s performance was what I heard." [REDACTED] also said that [REDACTED] and he both were "bothered" by the things Complainant said [REDACTED].

[REDACTED], Personnel Security (PERSEC) Office, testified to us that on February 9, 2016, [REDACTED] notified him that Complainant had been placed on administrative leave.<sup>3</sup> [REDACTED] said he told [REDACTED] that if the reason to place Complainant on administrative leave fell under the 13 [security clearance] adjudicative guidelines, then a DA Form 5248-R, "Report of Unfavorable Information For Security Determination," commonly referred to as a Derogatory Report (DEROG), would need to be submitted through the Joint Personnel Adjudication System (JPAS) to the Department of Defense Consolidated Adjudicating Facility (DOD CAF). [REDACTED] also said he explained the 13 adjudicative guidelines to [REDACTED].

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<sup>3</sup> The BGAD PERSEC office is responsible for ensuring all personnel on BGAD, including BGCA employees, have the proper security clearance, and reporting any security clearance incidents to the DoD Consolidated Adjudicating Facility (CAF) through the Joint Personnel Adjudication System (JPAS).

According to DoD 5200.2-R, "Personnel Security Program," Appendix 8, the granting or continuing of eligibility for a security clearance is based on the following 13 factors: allegiance to the United States; foreign influence; foreign preference; sexual behavior; personal conduct; financial considerations; alcohol consumption; drug involvement; emotional, mental, and personality disorders; criminal conduct; security violations; outside activities; and misuse of Information Technology Systems.

██████████ also testified to us that ██████████ contacted him around February 9, 2016, and inquired on the process for suspending Complainant's security clearance. ██████████ emailed ██████████ and ██████████ on February 11, 2016, and explained the options for either "locally" suspending or revoking someone's clearance. ██████████ also said he met with ██████████ and explained the process, and he told ██████████ that he did not see Complainant's ██████████ as rising to the level of doing an official suspension. ██████████ said ██████████ only mentioned ██████████ during their meeting as the reason for suspending Complainant's clearance.

On February 12, 2016, ██████████ responded in writing to Complainant and addressed the concerns he had made to MG Lemasters. ██████████ wrote that Complainant had contacted him on or about August 12, 2015, about ██████████ denying overtime pay; he had consulted HR and his legal staff and determined the employees were entitled to compensatory pay; and ██████████ had since provided the employees with 1 hour of overtime pay. ██████████ also wrote that the MFRs ██████████ gave Complainant were things that he should have counseled him on as they impacted the safe and efficient operation of the primary mission of storing chemical weapons, and there was no indication these counselings were a threat or a reprisal.

██████████ also wrote that he had been aware of the Wounded Warrior Hunt funds since approximately August 17, 2015, when ██████████ informed him of the issue, and ██████████ had paid the additional cost of the softball jerseys himself after becoming aware of the mistake. Regarding alcoholic beverages in the workplace, ██████████ wrote he was aware of the issue; he determined that as a home brewer enthusiast, ██████████ brought beer into the workplace and shared with employees who were also interested in home brewing; these were gifts that did not violate any gift rules; no alcohol was consumed during duty hours; and he had counseled ██████████ "solely due to the appearance issues."

Lastly, ██████████ wrote that he had spoken with the IG about Complainant's concerns he made to them, which was specifically related to "the overtime issue," and determined the issue was resolved in a satisfactory manner and did not rise to the level of requesting an actual investigation.

In his response to our tentative conclusion, ██████████ stated the allegations that Complainant raised in his letter to MG Lemasters were the same allegations that he raised previously to ██████████ that were proven to be incorrect and unfounded. ██████████ stated that this was Complainant's attempt to confuse the situation, and it showed where Complainant's priorities were.



[REDACTED] he was the subject of a Military Police Report for possession of prohibited items (ammunition) on post in 2012. ... Due to [Complainant's] disregard for prescribed rules and regulations, I recommend that his security clearance be revoked. [Complainant's] grade and position both require an inordinate amount of trust as he represents this organization. He has shown a total disregard for that trust by disregarding rules and regulations [REDACTED]. This leads me to believe that he is not trustworthy and should not have a clearance.

According to DoD 5200.2-R, paragraph C8.1.3.1:

The commander or head of the organization shall determine whether, on the basis of all facts available upon receipt of the initial derogatory information, it is in the interests of national security to continue subjects security status unchanged or to take interim action to suspend subjects access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), if information exists which raises serious questions as to the individual's ability or intent to protect classified information or execute sensitive duties (or other duties requiring a trustworthiness determination) until a final determination is made by the appropriate authority (the CAF).

Regarding [REDACTED]'s comment that Complainant disregarded rules [REDACTED] [REDACTED] referred to an incident in 2012 where Complainant was warned by a military police officer that having personal ammunition in his car was a violation of BGAD policy. Complainant had been out target shooting the day before and said he was unaware in 2012 of the policy against having ammunition in his car. The military police officer wrote a sworn statement in 2012 and determined Complainant was telling the truth that he was unaware of the policy. The police officer gave Complainant a warning and advised him not to bring contraband on post again.

The current BGCA Commander at that time wrote Complainant a counseling statement stating he believed Complainant was unaware of the contraband policy. The Commander further wrote that the counseling was not a disciplinary action and would not be made part of Complainant's Official Personnel Folder or any permanent file.

Complainant testified to us that [REDACTED] falsely misrepresented this 2012 incident on the initial DEROG report by insinuating Complainant intentionally disregarded the rules and regulations in 2012 when in fact, Complainant was unaware of the policy as was documented by the military police officer and former Commander. Complainant believed [REDACTED] did this

to portray Complainant as a habitual violator of installation policy in order to “prejudice the [security clearance] process.” Furthermore, [REDACTED] was not at BGCA until 2014.

[REDACTED] testified to us that he read about Complainant’s 2012 incident with [REDACTED] from a file in the Commander’s office when he initially took command. [REDACTED] said they keep an unofficial file system in the back room of the Commander’s office for historical purposes, and he included Complainant’s 2012 [REDACTED] in the initial DEROG report because Complainant was a very senior member of BGCA who had access to weapons of mass destruction.

[REDACTED] testified to us that a “large thing” that factored into his decision to submit the initial DEROG report was [REDACTED]

[REDACTED] also said what factored into his decision was that Complainant would not “let things go” that were already resolved. [REDACTED]

When asked if he considered Complainant’s reporting of issues to [REDACTED] and MG Lemasters to be undermining the chain of command, [REDACTED] said, “No, absolutely not ... he could do that,” and said those reports to MG Lemasters were taken care of separately by [REDACTED]. However, [REDACTED] said that even after the “overtime” situation had been settled, [REDACTED].

In his response to our tentative conclusion letter, [REDACTED] added that after he counseled Complainant in August 2015, several employees informed [REDACTED] that [REDACTED].

[REDACTED] presented another example to us of Complainant’s unwillingness to “let things go,” stating that back in August 2014, after he first arrived to BGCA, [REDACTED]

After [REDACTED] submitted the February 29, 2016, DEROG, [REDACTED] talked to his [REDACTED], because he did not feel the [REDACTED] rose to the level [REDACTED]

of revoking his security clearance. ██████████ concurred with ██████████ and said he would talk to ██████████ to find out his intent.

██████████ testified to us that he met with ██████████ a few days later and asked him if it was his intent to send this DEROG report to the Central Adjudicating Facility (CAF) to have Complainant's security clearance revoked. According to ██████████, he advised ██████████ that revoking Complainant's clearance was "a little over-reaching" in that particular case, and ██████████ told him his intent was to only "locally" suspend Complainant's clearance until the disposition of the disciplinary action he had proposed. ██████████ said he told ██████████ that if he did not intend to revoke Complainant's clearance, he should send another document over to ██████████ to hold this suspension locally and not forward to the CAF.

In his response to our tentative conclusion, ██████████ stated he went against ██████████'s advice because ██████████ did not have all the details of the case. ██████████ also did not recall ██████████ ever telling him he should send another document to ██████████.

██████████ testified to us that ██████████ never sent another request to change it from revocation to suspension. ██████████ said because ██████████ recommended revocation, he had to check the block in JPAS that recommended revocation, verses checking the block to temporarily remove his access to classified information. As a result, Complainant's security clearance had to be adjudicated by the CAF.

According to DoD 5200.2-R, Paragraph C8.1.3.3, "Component field elements must promptly report all suspension actions to the appropriate CAF, but not later than 10 working days from the date of the suspension action."

██████████ testified to us that he believed when he submitted the initial DEROG report on February 29, 2016, it would be held "locally" pending the disposition of the proposed 1-day suspension, and he was unaware the PERSEC office had submitted the recommendation to the CAF until ██████████ notified him on April 7, 2016. ██████████ testified to us that he did not inform Complainant when he submitted the initial DEROG report on February 29, 2016, because he thought it was ██████████'s responsibility.

██████████ testified to us that he briefed ██████████ on the process prior to the February 29, 2016, DEROG, and he thought ██████████ understood that this did not rise to the level of revoking someone's clearance. ██████████ said he told ██████████ that if he did not want to revoke Complainant's clearance, he should not say anything in the DEROG report about revocation.

Conversely, ██████████ testified to us that when he consulted ██████████ prior to filling out the initial DEROG, ██████████ agreed that a revocation was appropriate. ██████████ was also still under the impression that the initial DEROG report was just a suspension, even though he wrote that he recommended revocation. In his response to our tentative conclusion, ██████████ stated that at no point did ██████████ tell him this did not rise

to the level of suspending or revoking a security clearance. [REDACTED] stated he went out of his way to get another opinion from [REDACTED] because of his concern for reprisal.

[REDACTED] also stated in his response that he sought and received concurrence from [REDACTED] that he was not making an extreme decision, and he stated that despite the “past friction” with Complainant, had any other employee done the same actions as Complainant, he would have taken the same actions with respect to their security clearance.

On April 7, 2016, one of Complainant’s subordinates notified Complainant that his access to the Secure Internet Protocol Router (SIPR) access roster had been suspended. Complainant called [REDACTED] who told him she thought he had been informed. According to Complainant, [REDACTED] then came to Complainant’s office and said, “We screwed this up, I had no choice, you need to contact PERSEC and make an appointment.” Complainant then went to the PERSEC office and [REDACTED] showed him the DEROG report [REDACTED] had submitted on February 29, 2016.

On April 18, 2016, [REDACTED]. Complainant also wrote that the incident in 2012 with the ammunition was proven to be an honest mistake, that he was unaware of the policy against ammunition on BGAD, that policy had since been rescinded, and [REDACTED] made an inaccurate depiction on the DEROG report by stating Complainant had willfully or blatantly disregarded rules and regulations on two different occasions.

On April 27, 2016, the deciding official, [REDACTED], CMA, Aberdeen, MD, determined [REDACTED].

Also on April 27, 2016, Complainant contacted the Defense Security Services (DSS) IG and told them his clearance had been suspended and requested information about the DoD personnel security clearance process. DSS IG explained to Complainant that security clearance matters for USA military and civilians did not fall under the purview of DSS, and DSS IG explained how he could get copies of his JPAS records. DSS IG did not open a case or contact Complainant’s command. Further, Complainant testified to us that he was just seeking information about the security clearance process, and [REDACTED] was unaware of his contact with DSS IG.

On May 9, 2016, Complainant filed a complaint with the Communications-Electronics Command (CECOM) IG at Aberdeen, MD, alleging [REDACTED] made a misleading claim on the February 29, 2016, DEROG report and recommended revocation of his security clearance as an ongoing reprisal for him using the open door policy in August 2015. Complainant further told the IG that [REDACTED] violated Army Regulation (AR) 380-67, “Personnel Security Program,”

by not informing him in writing of the February 29, 2016, DEROG. According to AR 380-67, paragraph 8-6, no unfavorable administrative action shall be taken under the authority of this regulation unless the person concerned has been given:

- A written statement of the reasons why the unfavorable administrative action is being taken;
- An opportunity to reply in writing to such authority as the head of the component concerned may designate;
- A written response to any submissions under paragraph b, stating the final reasons; and
- No final unfavorable personnel security clearance or access determination shall be made on an individual without granting them an opportunity to appeal to a higher level of authority as set forth in DoD 5200.02-R when such determination results in unfavorable administrative action.

According to DoD 5200.2-R, C8.1.3.2, “Whenever a determination is made to suspend a security clearance for access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), the individual concerned must be notified of the determination in writing by the commander, or component CAF, to include a brief statement of the reason(s) for the suspension action.” Neither ██████████ nor the CAF notified Complainant that his security clearance had been suspended or recommended for revocation.

According to Complainant, the IG informed him that they could not do anything about the suspension of his security clearance until the CAF adjudicated the matter. Complainant also testified to us that no one knew about this disclosure to the CECOM IG. According to CECOM IG, Complainant contacted its office on May 9, 2016, and it advised Complainant to give ██████████ a chance to work the issue and wait until his clearance was adjudicated. CECOM IG said its office did not inform anyone of Complainant’s contact with them.

On May 12, 2016, Complainant filed a formal grievance to the 1-day suspension stating he did not believe ██████████ gave full consideration to the mitigating circumstances of “unusually high stress in the work place created by the command climate.” Complainant also requested a meeting with the deciding official with an opportunity to provide verbal statements and call witnesses.

On May 25, 2016, the deciding official, ██████████, signed a letter of intent to vacate Complainant’s 1-day suspension and counsel Complainant that ██████████ violated Installation Policy. ██████████ further wrote Complainant would adhere to all rules and regulations, serve as a role model within the organization, ██████████. ██████████ wrote that he made the decision to vacate the suspension after deciding the mitigating factors surrounding the event outweighed the seriousness of the ██████████.

██████████ testified to us that he vacated Complainant's suspension in the interest of "good order and discipline." When asked for what mitigating factors ██████████ was referring, ██████████ testified to us, "That I need my senior leaders to be able to work together.

Unaware of ██████████'s intent to vacate Complainant's suspension, ██████████ signed the final DEROG report on May 26, 2016, recommending revocation of Complainant's security clearance. ██████████ wrote:

██████████

According to ██████████, he was "kind of shocked" when he received the final DEROG report from ██████████ on May 26, 2016, just before ██████████ departed command of BGCA. ██████████ said he had meetings with ██████████ leading up to the May 26, 2016, DEROG report in which ██████████ gave him the impression that he was going to do a favorable report and reinstate Complainant's clearance. ██████████ said he was "dumbfounded" when he received the final DEROG report recommending revocation of Complainant's security clearance, and he asked ██████████ if that was what he wanted him to do, and ██████████ said, "Yes."

██████████ testified to us that he filled out the final DEROG report prior to departing command on June 9, 2016, because no decision had been made at that time on the 1-day suspension, and he wanted to "close out some loose ends" and not let the issue "travel on over" into ██████████'s command. ██████████ said BGCA was getting ready to start ██████████, and that needed to be ██████████'s focus. ██████████ said he based his decision on the information at the time which was that ██████████ decided to impose the 1-day suspension.

When we asked ██████████ what he meant by Complainant had not taken responsibility for his actions, ██████████ referred to the counseling in the MFR he gave Complainant in August 2015 which Complainant mentioned in his complaints to ██████████ and ██████████; the overtime issue which Complainant kept making a "bone of contention;" and the ██████████ and what it meant to the chain of command.

██████████ testified to us that he did not learn that ██████████ vacated Complainant's suspension until he talked to ██████████ after departing command. In his response to our tentative conclusion letter, ██████████ wrote that he met with ██████████, ██████████, and ██████████ on June 8, 2016, and specifically discussed Complainant's pending disciplinary action. ██████████ stated at no point in the meeting did ██████████ indicate he was going to vacate Complainant's suspension, and had he known ██████████ was not going to support his

decision to suspend Complainant, he “most likely would have made a different decision concerning [Complainant]’s security clearance.”

██████████ confirmed that she did not know ██████████ was vacating Complainant’s 1-day suspension until after ██████████ departed. ██████████ said she later spoke to ██████████ because she was curious why he vacated the suspension, and ██████████ expressed to her that he felt he should have done more about ██████████ bringing alcohol into the workplace, and he did not want that to come back up against ██████████. ██████████ did not recall when he told ██████████ that he was going to vacate Complainant’s suspension.

██████████ testified to us that Complainant was the only member of his command for whom he recommended revocation of a security clearance. When asked if he had any other BGCA members get in trouble for something that would require a security clearance revocation, ██████████ said, “No,” and elaborated that BGCA was comprised of all civilian employees except two, so if a civilian committed an offense off-duty, he would not necessarily hear about it.

██████████, who had been in his position since ██████████, also testified to us that this was the only recommendation to revoke a clearance that ██████████ had done at BGCA. ██████████ said he had seen revocations from other commanders for personnel testing positive for illegal drugs; stealing ammunition off the installation; and viewing websites from a Government computer that showed how to make weapons.

In his response to our tentative conclusion letter, ██████████ stated he also tested his decision to revoke Complainant’s security clearance against another employee for whom the previous BGCA Commander revoked a clearance. We reviewed the other employee’s security records and found that the previous commander had not revoked the employee’s security clearance. The Commander had proposed the employee’s removal, placed him on administrative leave, and temporarily suspended his access to classified information. In August 2015, ██████████ rescinded the employee’s proposed removal based a judge’s ruling from the Merit System’s Protection Board, and the employee’s access to classified information was restored.

The incident reports entered into JPAS indicated the employee had violated two categories of the 13 adjudicative guidelines (“Security Violations” and “Personal Conduct”), and the former commander temporarily suspended his access to classified information. Whereas, the incident report in Complainant’s JPAS records indicated he violated one category of the 13 adjudicative guidelines (“Personal Conduct”), and ██████████ recommended Complainant’s entire security clearance be revoked.

Complainant testified to us that in his opinion, ██████████ filled out the final DEROG report because ██████████ was “ticked off” that Complainant had used the open door policy with ██████████ in August 2015, he had been shown that Complainant was right and was forced to compensate him, and ██████████ never “got over it.”

██████████ testified to us that the ██████████ was the “seminal” event that ██████████, and he said Complainant’s complaints against him to ██████████, MG Lemasters, and the IG

did not factor into his decision to recommend revocation of his clearance. However, as stated above, [REDACTED] said Complainant's inability to get past those issues also factored into his decision.

[REDACTED] testified to us that she believed [REDACTED] recommended revocation of Complainant's security clearance because of the incident with [REDACTED]. She said [REDACTED] made the statement to her, "[REDACTED]?" [REDACTED] said her opinion was that [REDACTED] "was over" the other issues.

On June 9, 2016, [REDACTED] gave up command of BGCA to [REDACTED]. [REDACTED] testified to us that during his turnover, [REDACTED] told him that Complainant had been [REDACTED]. However, [REDACTED] said [REDACTED] never mentioned to him that Complainant had made complaints about him to the IG or the chain of command, other than Complainant's grievance to his 1-day suspension.

[REDACTED] testified to us his perception was that [REDACTED] was focused on the act of Complainant [REDACTED], and [REDACTED] believed [REDACTED] felt a betrayal of trust. [REDACTED] said that the actions [REDACTED] took were guided by what had occurred with [REDACTED]. [REDACTED] said he did not get the impression at all that [REDACTED] was trying to retaliate against Complainant, and he thought there was just an extreme lack of communication that led to a lot of friction between the two. However, [REDACTED] told us he did not know if revoking Complainant's clearance would have been a choice he would have made. [REDACTED] did consider the proposed 1-day suspension to be appropriate.

[REDACTED] testified to us that [REDACTED] never made any comments that would lead him to believe that [REDACTED] was pursuing an action to retaliate against Complainant. [REDACTED] further said that "had it been anyone who had done what Complainant had done, the same actions would have had to occur," and in his mind, [REDACTED] would have been negligent to not take the actions he took.

Complainant testified to us that when [REDACTED] was at BGCA for [REDACTED]'s change of command, [REDACTED] notified him that he was going to vacate his 1-day suspension. However, Complainant said he did not learn that [REDACTED] recommended revocation of his security clearance until [REDACTED] told him on June 23, 2016. Complainant testified to us that he thought [REDACTED] recommended revocation of his security clearance on the final DEROG report because he was "pissed off" that Complainant did not get suspended. However, as described above, [REDACTED] was not aware when he submitted the final DEROG report that [REDACTED] was going to vacate Complainant's suspension.

[REDACTED] testified to us that after the change of command, he spoke to [REDACTED] about Complainant's security clearance, and [REDACTED] told him that he wanted to give a clean break between commanders, and [REDACTED] felt Complainant's [REDACTED] was minor enough that he wanted to stop the revocation of his clearance and move forward. [REDACTED] said

██████████ called him on or about July 18, 2016, and told him they needed to stop the revocation. ██████████ then talked to the PERSEC office to find out what could be done.

██████████ testified to us that ██████████ called him and asked what he needed to do to re-establish Complainant's security clearance. ██████████ said he told ██████████ if that was what he intended to do, he needed to write a letter to the CAF explaining that he was withdrawing the recommendation to revoke Complainant's clearance.

██████████ was not an employee of the BGCA; he was the ██████████. He testified to us that he never heard of any complaints that Complainant may have made against ██████████, but he did say the "word on the street" was that the ██████████ over there at BGCA did not get along because one of them had made allegations, and their command group seemed to be in turmoil, but ██████████ was unaware of what the allegations were.

2016, ██████████ then drafted a letter for ██████████ to send to the CAF, and on July 22, ██████████ sent a letter to the CAF stating:

In light of the attached enclosures and my decision to vacate any disciplinary action, I recommend that [Complainant]'s security clearance be reinstated in full. [Complainant] has my full confidence in his trustworthiness and reliability to have access to classified materials and information.

██████████ testified to us that once he found out Complainant's security clearance had been recommended for revocation, he took the steps to reverse it because he had vacated the entire disciplinary action involving Complainant. ██████████ said after talking to his Security personnel about the clearance process, he sent the letter to the CAF because he felt revoking complainant's security clearance did not support the action of restoring good order and discipline and getting the command where it needed to be.

██████████ testified to us that the situation at BGCA was tense, and at times he had to play referee. When asked if he reversed the revocation because he thought what ██████████ did was wrong, ██████████ said:

Commanders disagree all the time ... A commander makes a decision; if the higher authority has a different opinion about it, he weighs in ... So I mean I'm not mad at [██████████] because he pursued that course of action. It's just I made a different one, and I made it, you know, I had to make it, you know, back to a vacated ... because although he violated a policy, my -- it's my -- my intent -- my efforts is command good order and discipline ... and the only way I could do that is -- is I had to make this correct, so the mitigating circumstances that I saw of getting the command where it needed to be, I didn't see this action supporting that.

██████████ testified to us that after he received ██████████'s letter and submitted it to the CAF, personnel from CMA in Aberdeen were "hounding" him to make sure Complainant's clearance got taken care of and "pinging" him to find out the status of Complainant's clearance in order to keep ██████████ updated.

On August 18, 2016, ██████████ wrote a memorandum for record stating:

Upon review of all available information and discussion with key offices, BGCA and BGAD, it is determined that [Complainant]'s access to the Restricted Area on Blue Grass Army Depot be reinstated effective 18 August 2016.

On August 25, 2016, Complainant contacted CECOM IG and reported that ██████████ had reprised against him by submitting the final DEROG report recommending revocation of his security clearance. CECOM IG advised Complainant to contact the Office of Special Counsel.

On September 9, 2016, the CAF notified ██████████ that Complainant's incident report had been assigned to an adjudicator, and on Monday, September 12, 2016, the CAF notified ██████████ that they had adjudicated Complainant's incident report favorably and closed the case.

On September 14, 2016, Complainant filed this complaint with the DoD OIG and alleged "██████████, on two occasions, improperly filed false and/or misleading information for a security clearance determination with the Blue Grass Army Depot Personnel Security office" as a reprisal, in violation of Presidential Policy Directive 19. Complainant also alleged ██████████ violated AR 380-67, Personnel Security Program, by failing to inform him of the two DEROG reports.

On October 4, 2016, ██████████ wrote a memorandum titled, "Security Clearance Verification," certifying that Complainant had access to classified information in accordance with the provisions of AR 380-67.

## **VI. ANALYSIS**

Under PPD-19, reprisal analysis must apply two different standards of proof. First, a preponderance of the evidence must establish that one or more protected disclosures contributed to a decision to take an action affecting Complainant's eligibility for access to classified information.

If so, the next step is to determine whether clear and convincing evidence establishes that the same action would have been taken even in the absence of the protected disclosure. This is done by weighing together, for each action taken, the following factors: the strength of the evidence in support of the action; the existence and strength of any motive to retaliate on the part of the responsible management officials who were involved in the action; and any evidence that they take similar actions against employees who are not whistleblowers, but who are otherwise similarly situated. In the absence of such clear and convincing evidence, the complaint is

substantiated. If clear and convincing evidence supports the action taken, the complaint is not substantiated.

**A. Did Complainant make a protected disclosure? Yes**

We determined that Complainant made six alleged disclosures under PPD-19, of which five were protected.

*August 12, 2015, Open Door Policy – Yes*

Complainant used [REDACTED]'s open door policy and reported that [REDACTED] had violated regulations by disapproving paying overtime. [REDACTED] was the Director of CMA and in Complainant's direct chain of command. Reporting a violation of regulations to a supervisor in an employee's direct chain of command is protected.

*August 2015, Report to IG – Yes*

In August 2015, Complainant informed the CMA IG that [REDACTED] refused to pay him overtime, and he asked the IG for its opinion on whether he should be paid. Reporting a violation of regulations to the IG of the employing agency is protected.

*September 2, 2015, [REDACTED] [REDACTED] –Yes*

During the September 2, 2015, [REDACTED], [REDACTED],

[REDACTED] did not become Complainant's supervisor officially until October 4, 2015. However, at the time of [REDACTED] on September 2, 2015, [REDACTED] and Complainant were aware that she had been appointed as the [REDACTED] and Complainant's supervisor. Further, [REDACTED] testified that after [REDACTED] called him immediately and told him about [REDACTED], [REDACTED] told him that Complainant was just venting to his supervisor.

Furthermore, [REDACTED] referred to [REDACTED] as the "[REDACTED]" in his August 27, 2015, MFR, and he referred to [REDACTED] as the [REDACTED] in his September 29, 2015, MFR. Along with [REDACTED]'s testimony that she informed [REDACTED] that Complainant was going to report these issues to MG Lemasters, we determined [REDACTED] perceived Complainant to be reporting these issues to a supervisor in his direct chain of command during his September 2, 2015, conversation with [REDACTED].

*February 8, 2016, Letter to MG Lemasters – Yes*

On February 8, 2016, Complainant sent a letter to MG Lemasters titled, "Open Door Policy-Report on Blue Grass Chemical Activity." Complainant reported to MG Lemasters that he had been subjected to reprisals by [REDACTED], that [REDACTED] had violated policies and regulations by improperly allocating funds for a Wounded Warrior Hunt to pay for unit softball apparel, and had violated policy by bringing alcoholic beverages into the workplace.

[REDACTED] testified to us that Complainant knew he had no involvement with the softball apparel and made this "incorrect claim" to MG Lemasters anyway. Regardless of whether Complainant had a reasonable belief that he was reporting a violation regarding the softball apparel, Complainant also reported what he believed was a violation regarding alcohol in the workplace, and he reported a belief that [REDACTED] was reprising against him, which is a violation of law.

MG Lemasters was [REDACTED]'s supervisor at that time. Reporting violations of laws, rules, and regulations to a member of an employee's direct chain of command is protected.

*April 27, 2016, Report to DSS IG – No*

On April 27, 2016, Complainant contacted DSS IG and asked for information on the process for security clearance determinations because his security clearance had been recommended for revocation. DSS IG is not an IG of Complainant's employing agency, and Complainant did not report a violation of law, rule, or regulation. This disclosure was therefore not protected.

*May 9, 2016, Report to CECOM IG – Yes*

On May 9, 2016, Complainant filed an IG complaint with the CECOM IG at Aberdeen, MD, alleging [REDACTED] made a misleading claim on the February 29, 2016, DEROG report and recommended revocation of his security clearance as an ongoing reprisal for him using the open door policy in August 2015. Complainant further told the IG that [REDACTED] violated AR 380-67 by not informing him in writing of the February 29, 2016, DEROG. Reporting violations of laws and regulations to an IG of the employing agency is protected.

As described above, a preponderance of the evidence established that Complainant made five disclosures that were protected under PPD-19.

**B. Did an officer or employee of an Executive Branch Agency take or fail to take, or threaten to take or fail to take, any action affecting Complainant's eligibility for access to classified information? Yes**

We determined that [REDACTED] took two actions affecting Complainant's eligibility for access to classified information.

*February 29, 2016, Initial DEROG report – Yes*

On February 29, 2016, ██████████ submitted an initial DEROG report recommending revocation of Complainant's security clearance. This action affected Complainant's eligibility for access to classified information.

*March 1, 2016, Proposed 1-day suspension – No*

On February 29, 2016, ██████████ proposed a 1-day suspension for Complainant for ██████████. Given Complainant's testimony that he was not alleging the 1-day suspension was taken in reprisal, we do not further analyze the proposed 1-day suspension.

*May 26, 2016, Final DEROG Report – Yes*

On May 26, 2016, ██████████ submitted a final DEROG report recommending revocation of Complainant's security clearance. This action affected Complainant's eligibility for access to classified information. Complainant did not have access to classified information restored until September 2016.

As described above, a preponderance of the evidence established that ██████████ took two actions that affected Complainant's eligibility for access to classified information.

**C. Could a reasonable person conclude that one or more protected disclosures were contributing factors in taking or failing to take, or threatening to take or fail to take, any action affecting Complainant's eligibility for access to classified information? Yes**

“Contributing factor” means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision. To determine whether a protected disclosure was a contributing factor in a decision to take or fail to take, or threaten to take or fail to take, any action affecting Complainant's eligibility for access to classified information, our analysis ordinarily weighs the following factors: knowledge of the protected disclosures on the part of the officer or employee involved in the decision and the decision's proximity in time to the protected disclosure. In most instances, these two factors together suffice to establish that a protected disclosure was a contributing factor. However, if knowledge and timing alone fail to establish that a disclosure was a contributing factor, any other circumstantial evidence may also be considered, such as the strength or weakness of the responsible management official's stated reasons for the action, whether the protected disclosure was personally directed at the responsible management official, or whether the responsible management official had a desire or motive to retaliate against the complainant.

We determined that Complainant's protected disclosures could have been a contributing factor in ██████████'s decision to recommend revocation of Complainant's access to classified information. Discussion of the factors weighed together follows the factor-by-factor analysis below.

*Knowledge*

██████████ testified he was aware that Complainant made complaints against him to ██████████, the IG, and MG Lemasters. As described above, those complaints were considered protected disclosures.

*Timing of the Actions Taken*

██████████ first learned of Complainant's initial complaints to ██████████ in August 2015. He learned of Complainant's letter to MG Lemasters the same day Complainant sent it on February 8, 2016, which was immediately after ██████████ discovered ██████████ and sent Complainant home on administrative leave pending an investigation. ██████████ submitted the initial DEROG report on February 29, 2016, and the final DEROG report on May 26, 2016. The close timing raises an inference of reprisal.

Based on the factors analyzed above, a preponderance of the evidence established that Complainant's protected disclosures could have been a contributing factor in ██████████'s decision to recommend Complainant's access to classified information be revoked.

**D. Does clear and convincing evidence establish that the same action(s) affecting Complainant's eligibility for access to classified information would have been taken against Complainant absent the protected disclosures? No**

Once a preponderance of the evidence establishes that one or more protected disclosures contributed to the action affecting Complainant's eligibility for access to classified information, the case is substantiated unless clear and convincing evidence establishes that the action affecting Complainant's eligibility for access to classified information would have been taken even in the absence of the protected disclosure. For each action, our analysis weighs together the following factors: the strength of the evidence in support of the stated reasons for taking the action affecting Complainant's eligibility for access to classified information; the existence and strength of any motive to retaliate on the part of the responsible management officials who were involved in the decision; and any evidence that they take similar actions against employees who are not whistleblowers, but who are otherwise similarly situated.

We determined in the absence of clear and convincing evidence to the contrary, that ██████████ would not have recommended revocation of Complainant's security clearance absent his protected disclosures. We analyze each factor below.

██████████'s stated reasons for recommending revocation of Complainant's security clearance

██████████ wrote on the February 29, 2016, DEROG report that he recommended revocation of Complainant's security clearance because he had ██████████

██████████ told ██████████ if he could not trust Complainant to ██████████, he could not trust him to have a security clearance.

██████████ told ██████████ he was recommending revocation of Complainant's security clearance because he ██████████. He also told ██████████, ██████████, he recommended revocation of Complainant's security clearance because of the ██████████.

██████████ testified to us that what factored into his decision to recommend revocation of Complainant's security clearance was the ██████████ and the content of the conversation. After discovering the ██████████, ██████████ consulted HR and the CMA Staff Judge Advocate, and they agreed a 1-day suspension was appropriate. ██████████ said he followed the advice of CMA Legal Counsel to suspend Complainant's security clearance. ██████████ submitted the February 29, 2016, DEROG report in conjunction with the 1-day suspension; however, he recommended Complainant's security clearance be revoked.

██████████, ██████████, and ██████████ all testified that they believed ██████████ submitted the DEROG report because Complainant had ██████████.

██████████ and ██████████ each testified that ██████████ never mentioned Complainant's complaints against him when ██████████ discussed Complainant's security clearance with each of them.

██████████ also testified to us that the things Complainant said ██████████ factored into his decision to submit the DEROG. ██████████ said Complainant was undermining the chain of command and did not believe in what they were doing.

██████████ wrote on the May 26, 2016, final DEROG report that during ██████████, Complainant repeatedly attempted to undermine the chain of command at both BGCA and CMA even though he was a senior trusted staff member. ██████████ further wrote that Complainant had not accepted responsibility for his actions, could not be trusted, had shown a total disregard for rules and procedures, was not trustworthy, and should not have a security clearance.

██████████ testified to us that he submitted the final DEROG report prior to departing command on June 9, 2016, because no decision had been made at that time on the 1-day suspension, and he wanted to "close out some loose ends" and not let the issue "travel on over" into ██████████'s command. ██████████ said he based his decision on the information he had at the time that ██████████ decided to impose the 1-day suspension.

██████████ said the ██████████ was the "seminal" event that led him to believe Complainant should not be trusted with access to classified information, and he said Complainant's complaints against him to ██████████, MG Lemasters, and the IG did not factor into his decision. ██████████ stated in his response to our tentative conclusion letter that

despite the “past friction” with Complainant, he would have taken the same actions against any other employee for the same actions.

### *Motive to Retaliate*

██████████ had motive to reprise against Complainant because Complainant made complaints directly against him to ██████████, ██████████, MG Lemasters, and the IG. ██████████ was aware of those complaints and told us he believed Complainant was making “incorrect claim[s]” to MG Lemasters, would not let those issues go, and kept making them a “bone of contention.” ██████████ also expressed that Complainant was making those claims because Complainant had made it his moral obligation to make sure ██████████ never got promoted.

██████████’s testimony that he received concurrence from ██████████ that he was not making an extreme decision conflicted with ██████████’s and ██████████’s testimony. ██████████ testified to us that ██████████ concurred with his revocation recommendation, but ██████████ told us that he told ██████████ that he did not see Complainant’s ██████████ as rising to the level of doing an official suspension, and when ██████████ submitted the initial DEROG, ██████████ expressed that concern to his boss, ██████████.

██████████ testified to us that he agreed with ██████████ that a revocation was “a little over-reaching” in this situation, and he took his concern to ██████████, and ██████████ told him he only meant to locally suspend Complainant’s clearance. ██████████ told us that he told ██████████ he should send another document to ██████████ to make it clear he only wanted to locally suspend Complainant’s access, but ██████████ did not recall ██████████ telling him that. ██████████ did admit to going against ██████████’s advice and said he did so because ██████████ did not have all the details of the case.

Further, ██████████ told us he was “shocked” and “dumbfounded” when ██████████ submitted the final DEROG report because ██████████ had given him the impression leading up to it that he was going to submit a favorable report. ██████████ wrote on the final DEROG report that Complainant had not taken responsibility for his actions. ██████████ told us he was referring to Complainant rebutting the August 2015 MFR, continuing to make the overtime issue a bone of contention, and ██████████. These forms of not accepting responsibility came in the form of protected disclosures to ██████████, ██████████, and MG Lemasters.

Finally, after ██████████ departed command of BGCA, ██████████ vacated ██████████’s proposed 1-day suspension and revocation recommendation, and ██████████ told us he did not know if revoking Complainant’s clearance would have been a choice he would have made.

The evidence indicated ██████████ was motivated to retaliate against Complainant at least in part because Complainant made protected disclosures to the chain of command and IG.

### *Disparate Treatment of Complainant*

Complainant was the only person [REDACTED] had ever recommended for a clearance revocation. However, [REDACTED] stated in his response to our tentative conclusion letter that he also “tested” his decision against another employee for whom the previous BGCA Commander revoked a clearance. The previous commander had recommended that employee be discharged, and he temporarily suspended the employee’s access to classified information pending the outcome. Whereas, [REDACTED] recommended Complainant receive a 1-day suspension, and he recommended Complainant’s security clearance be revoked.

As described above, we determined that [REDACTED] recommended revocation of Complainant’s security clearance because Complainant made complaints against him and [REDACTED] in an attempt to gather evidence in his campaign to derail [REDACTED]’s career.

## **VII. DISCUSSION**

Weighed together, the evidence analyzed above does not clearly and convincingly establish that [REDACTED] would have taken the same actions affecting Complainant’s eligibility for access to classified information absent his protected disclosures.

[REDACTED] was aware of Complainant’s complaints against him to [REDACTED], [REDACTED], MG Lemasters, and the IG, and those complaints qualified as protected disclosures. Upon discovering that Complainant had [REDACTED] in an attempt to gather evidence against him, [REDACTED] recommended disciplinary action in the form of a proposed 1-day suspension.

[REDACTED] said he received legal guidance to suspend Complainant’s security clearance, but [REDACTED] recommended revocation of Complainant’s security clearance against the advice of [REDACTED].

[REDACTED] expressed animus towards Complainant continuing to make complaints against him, and he considered them as Complainant not taking responsibility for his actions.

We did not find clear and convincing evidence that Complainant’s protected disclosures were not a contributing factor in [REDACTED]’s decision to recommend revocation of Complainant’s security clearance.

Accordingly, in the absence of clear and convincing evidence to the contrary, we determined that [REDACTED] would not have taken the same action affecting Complainant’s eligibility for access to classified information absent his protected disclosures.

## **VIII. CONCLUSION(S)**

We conclude, in the absence of clear and convincing evidence to the contrary, that [REDACTED] recommended the revocation of Complainant's security clearance in reprisal for his protected disclosures.

**IX. RECOMMENDATION(S)**

We recommend that the Secretary of the Army direct Army officials to take appropriate corrective action against [REDACTED] for reprising against Complainant.

We make no recommendations in this matter regarding a remedy for Complainant since his security clearance was ultimately never revoked.

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