

# ATTACHMENT E



# **The Office of Accountability and Whistleblower Protection**

## *Report of Investigation*

*23-WashingtonDC-22984*

*Report Date January 26, 2024*  
*(Technical Corrections Made on January 29, 2024)<sup>1</sup>*

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<sup>1</sup> Technical corrections are listing Gina Grosso as a witness on page 8, correcting page 6 to list the recoupment of FY 22 bonuses and awards regarding Respondent Johnson to match page 122, and changing the number of interviews conducted from "40" to "over 40" on page 7.



## OAWP Report of Investigation 23-WashingtonDC-22984

## Table of Contents

Executive Summary .....	4
Overview Of Findings and Recommendations .....	5
Substantiated Allegations .....	5
Recommendations.....	6
Background .....	7
Relevant Witnesses.....	8
Organizational Chart .....	10
Statutory Authority.....	11
Relevant Law, Rule, Or Regulation .....	11
VA Directive 0500, Office of Accountability and Whistleblower Protection: Investigation of Whistleblower Disclosures and Allegations Involving Senior Leaders or Whistleblower Retaliation.....	11
The Secretary's Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement.....	12
VA Directive 5979, Harassment Prevention Policy (HPP) .....	12
White Ribbon VA .....	13
ICARE .....	13
Facts And Analysis (Substantiated Allegations) .....	14
Allegations Regarding Respondent Davis .....	14
o Respondent Davis Engaged in Inappropriate Conduct of a Sexual Nature with (b)(6); (b)(7)(C) .....	14
o Respondent Davis Engaged in Inappropriate Personal Relationships with Subordinate Employees.....	29
o Respondent Davis Uses Inappropriate/Unprofessional Language in the Workplace .....	34
o Respondent Davis Was Aware That Respondent Richardson Engaged In Inappropriate Conduct Of A Sexual Nature And Failed To Initiate An Investigation .....	36
o Respondent Davis Forwarded and Blind Copied Emails to Subordinate Employees and Outside Entities Who Did Not Have a Need to Know .....	40

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## OAWP Report of Investigation 23-WashingtonDC-22984

○ Respondent Davis Contributed to Creating a Toxic and Hostile Work Environment by Partaking in Bullying and Engaging in Misconduct of a Sexual Nature.....	47
Respondent Johnson Failed to Supervise Respondent Davis.....	48
Allegations that Respondent Richardson Engaged in Inappropriate Conduct of a Sexual Nature with (b)(6); (b)(7)(C).....	49
Allegations Regarding Management's Failure To Take Prompt And Appropriate Action Upon Being Notified Of Harassment Complaints.....	54
○ Respondents Mayo, Johnson, and (b)(6); (b)(7)(C) Failed to Take Prompt and Appropriate Action Upon Being Notified of Sexual Harassment Allegations.....	54
Facts And Analysis (Non-Substantiated Allegations) .....	60
Allegations Regarding Respondent Davis .....	60
Allegations Regarding Respondent (b)(6); (b)(7)(C) .....	66
Allegations Regarding Respondent (b)(6); (b)(7)(C) .....	68
Allegations that Respondent (b)(6); (b)(7)(C) Engaged in Personal Relationships with Subordinate Employees.....	72
Allegations Regarding Respondent (b)(6); (b)(7)(C) .....	76
Allegations Regarding Respondent (b)(6); (b)(7)(C) .....	94
Allegations Regarding Management's Failure to Take Prompt and Appropriate Action Upon Being Notified of Harassment Complaints.....	99
Allegations Respondents (b)(6); (b)(7)(C) and (b)(6) Sexually Harassed (b)(6); (b)(7)(C) in October and November 2023 .....	117
Recommendations .....	121
OAWP Findings and Disciplinary Recommendations .....	122
OAWP Non-Disciplinary Recommendations.....	123
Conclusion.....	125

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OAWP Report of Investigation 23-WashingtonDC-22984

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## Executive Summary

The Department of Veterans Affairs (VA), Office of Accountability and Whistleblower Protection (OAWP), conducted this investigation in response to allegations of misconduct within the VA's Office of Resolution Management, Diversity & Inclusion (ORMDI). Led by the VA's Human Resources and Administration/Operations, Security, and Preparedness (HRA/OSP), ORMDI is the office within VA responsible for Harassment Prevention; Equal Employment Opportunity (EEO); Diversity and Inclusion; and Reasonable Accommodations. ORMDI is charged with addressing allegations of discrimination and promoting VA's zero-tolerance policy for workplace harassment.

OAWP's initial investigation centered around allegations of senior leader misconduct, and during the investigation OAWP received assignment of an Administrative Investigation Board from Kimberly Jackson, VA Chief of Staff, concerning non-senior leaders within ORMDI. Over the course of its investigation, OAWP interviewed over 40 witnesses; reviewed over 600 documents; and obtained and searched through over 300,000 emails and Teams messages. The mountain of evidence and testimony revealed an office replete with misconduct, including misconduct by organization leaders, which spawned an environment where inappropriate conduct was rampant. The misdeeds detailed in this report include (but are not limited to) a high-ranking VA official "sexting" with a VA employee subordinate to him within ORMDI; sharing graphic images and messages with a second employee; engaging in bullying and abusive behavior; and sharing emails containing sensitive information with non-VA entities.

OAWP's investigation identified the following respondents within HRA/OSP and ORMDI:

1. **Jeffrey Mayo** (Respondent Mayo)  
*Principal Deputy Assistant Secretary (PDAS), HRA/OSP.*
2. **Laura Eskenazi** (Respondent Eskenazi)  
*Chief of Staff (CoS), HRA/OSP.*
3. **Anne-Marie Duncan** (Respondent Duncan)  
*Associate Deputy Assistant Secretary (ADAS), ORMDI. Effective November 2023, Respondent Duncan was named as the Acting Deputy Assistant Secretary (DAS), ORMDI.*
4. **Harvey Johnson** (Respondent Johnson)  
*DAS (retired), ORMDI.*

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## OAWP Report of Investigation 23-WashingtonDC-22984

5. **Archie Davis** (Respondent Davis)  
*Executive Assistant (EA) [also referred to internally as ORMDI's CoS], ORMDI.*
6. (b)(6); (b)(7)(C) (Respondent (b)(6); (b)(7)(C))  
(b)(6); (b)(7)(C) *Eastern Region, ORMDI.*
7. (b)(6); (b)(7)(C) (Respondent (b)(6); (b)(7)(C))  
*Management Services (b)(6); (b)(7)(C) ORMDI.*
8. (b)(6); (b)(7)(C) (Respondent (b)(6); (b)(7)(C))  
(b)(6); (b)(7)(C) *Veterans Benefit Administration (VBA), Equal Employment Opportunity (EEO) Liaison Office, ORMDI.*
9. (b)(6); (b)(7)(C) (Respondent (b)(6); (b)(7)(C))  
(b)(6); (b)(7)(C) *EEO Specialist, ORMDI.*
10. **Gary Richardson** (Respondent Richardson)  
*Western Region VBA EEO Supervisor, ORMDI.*
11. (b)(6); (b)(7)(C) (Respondent (b)(6); (b)(7)(C))  
*Eastern Region (b)(6); (b)(7)(C) ORMDI.*

While OAWP did not identify individual misconduct on the part of every leader in the organization, the global leadership deficiencies and failures documented herein indicate the need for a reset to ensure that VA, and ORMDI in particular – the very office charged with addressing allegations of discrimination and workplace harassment – have a zero-tolerance policy for all forms of misconduct and harassment, not just in word, but in action.

## Overview Of Findings and Recommendations

### Substantiated Allegations

Respondent Davis:

1. Engaged in an inappropriate personal relationship with subordinate employee, (b)(6); (b)(7)(C)
2. Engaged in inappropriate conduct of a sexual nature with (b)(6); (b)(7)(C)  
(b)(6); (b)(7)(C)
3. Blind copied subordinate VA employees and Federal employees outside of VA on emails when there was no reason for them to know the content (often sensitive) of those emails.

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OAWP Report of Investigation 23-WashingtonDC-22984

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4. Used inappropriate/unprofessional language in the workplace. This includes using profanity during meetings and sending unprofessional emails.
5. Failed to initiate an investigation into sexual harassment allegations against Respondent Richardson.
6. Contributed to the creation of a hostile, toxic, and unprofessional work environment.

Respondent Richardson engaged in inappropriate conduct of a sexual nature in his interaction with (b)(6); (b)(7)(C)

Respondent (b)(6); (b)(7)(C) intentionally declined to take immediate and effective action in response to sexual harassment allegations against Respondent Richardson and later failed to comply with a direct order to conduct a Factfinding into those allegations of sexual harassment.

Respondent Johnson:

1. Failed to take prompt and appropriate action when notified of allegations that Respondent Davis was harassing (and potentially threatening) (b)(6); (b)(7)(C) and other employees.
2. Given that Respondent Johnson was Davis' immediate supervisor, he either knew or should have known of Davis' wide-ranging and pervasive misconduct, yet he failed to take appropriate supervisory action to address Davis's behavior and, in fact, rated Davis exceptional in every category, resulting in an overall Outstanding rating – the highest rating possible. This was a significant leadership failure.

Respondent Mayo failed to ensure prompt and appropriate action was taken when notified of the allegations against Respondent Davis.

## Recommendations

OAWP recommends Respondent Davis be removed from Federal service. OAWP also recommends recoupment of bonuses received by Respondent Davis for FY 2022 and FY 2023.

Respondent Johnson retired from Federal service effective December 30, 2023.<sup>2</sup> OAWP therefore recommends recoupment of bonuses received by Respondent Johnson for FY 2022 and FY 2023,<sup>3</sup> and recommends Respondent Johnson's eOPF be

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<sup>2</sup> Exhibit 001 – SF 50 Johnson Retirement.

<sup>3</sup> See 38 U.S.C. § 721.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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permanently annotated to note that he resigned while under an investigation that substantiated misconduct allegations, in accordance with 5 U.S.C. § 3322.

OAWP recommends Respondent (b)(6) receive no less than a suspension.

OAWP recommends Respondent Richardson receive no less than a suspension.

OAWP recommends Respondent Mayo receive training regarding management's duty to take action upon being notified of sexual harassment allegations.

OAWP makes additional non-disciplinary recommendations in the recommendations section at the end of this report.

### Background

On September 24, 2023, OAWP received allegations against several senior leaders in ORMDI, and immediately initiated this investigation. During the investigation OAWP received allegations of non-senior leader misconduct that were not within the statutory investigative jurisdiction of OAWP per 38 U.S.C. § 323(c)(1)(H).<sup>4</sup> These non-senior leader allegations were referred to Gina Grosso, Assistant Secretary for HRA/OSP. On November 13, 2023, an Administrative Investigation Board (AIB) was initiated<sup>5</sup> to investigate the non-senior leader allegations, and on December 1, 2023, OAWP sent additional allegations to the AIB.<sup>6</sup> On December 14, 2023, the AIB was reassigned by the VA Chief of Staff at the direction of Secretary Denis McDonough to OAWP for investigation, with a deadline for completion of its investigation of January 28, 2024.<sup>7</sup> During the course of the investigation, OAWP conducted over 40 interviews; reviewed over 600 documents; and obtained and searched through over 300,000 emails and Teams messages. This investigation covered the time period between January 2022 and January 2024.

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<sup>4</sup> By statute, OAWP only has authority to investigate misconduct and poor performance by senior leaders (and supervisor retaliation), unless specifically designated additional authority by the Secretary, which is what occurred in this case with the reassignment of the AIB to OAWP, whereupon OAWP combined the senior leader misconduct allegations case with non-senior leader AIB case.

<sup>5</sup> [Exhibit 158](#) – Original Memorandum for AIB.

<sup>6</sup> [Exhibit 159](#) – Memorandum - Second Update to the November 13th AIB.

<sup>7</sup> [Exhibit 066](#) – Memorandum – Reassignment of November 13, 2023, AIB.

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## OAWP Report of Investigation 23-WashingtonDC-22984

**Relevant Witnesses<sup>8</sup>**

Gina Grosso became the Assistant Secretary, HRA/OSP on May 28, 2021.

Respondent Mayo became the PDAS, HRA/OSP, on June 23, 2019.

Respondent Eskenazi became the CoS, HRA/OSP, on May 26, 2019.

Respondent Johnson became the DAS, ORMDI, on November 15, 2015.

Respondent Duncan became the ADAS, ORMDI, on August 4, 2019.

Respondent Davis became the EA/CoS, ORMDI, on April 5, 2015.

Respondent (b)(6); (b)(7)(C) became the (b)(6); (b)(7)(C) of the Eastern Region, ORMDI, on (b)(6); (b)(7)(C).

Respondent (b)(6); (b)(7)(C) became the Management Services (b)(6); (b)(7)(C) ORMDI, on (b)(6); (b)(7)(C).

Respondent (b)(6); (b)(7)(C) became the (b)(6); (b)(7)(C) for the ORMDI, VBA, EEO Liaison Office, on (b)(6); (b)(7)(C).

Respondent (b)(6); (b)(7)(C) became a (b)(6); (b)(7)(C) EEO Specialist, ORMDI, on (b)(6); (b)(7)(C).

Respondent Richardson became Western Region VBA EEO Supervisor, ORMDI, on May 23, 2021.

Respondent (b)(6); (b)(7)(C) became the Eastern Region (b)(6); (b)(7)(C) ORMDI, on (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) began her position as Equal Opportunity Specialist, ORMDI, on (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) became an Equal Employment Specialist, ORMDI, on (b)(6); (b)(7)(C).

<sup>8</sup> Exhibit 003 – VA ORMDI Employment SF50s.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) became a Program Analyst, ORMDI, on (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) also uses (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) interchangeably on email and VA records.

(b)(6); (b)(7)(C) became a (b)(6); (b)(7)(C) ORMDI, on (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) became a Program Manager, ORMDI, on (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) became the (b)(6); (b)(7)(C) of the Western Region, ORMDI, on (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) became the (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) in (b)(6).

(b)(6); (b)(7)(C) became an EEO Specialist, ORMDI, on (b)(6); (b)(7)(C). On (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) was designated as the (b)(6); (b)(7)(C) for ORMDI.<sup>9</sup>

(b)(6); (b)(7)(C) became an Executive Writer, ORMDI, on (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) became a Program Manager, ORMDI, on (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) became a Program Manager, ORMDI, on or about (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) reported to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Program Manager, ORMDI.

(b)(6); (b)(7)(C) retired as a (b)(6); (b)(7)(C) Equal Employment Specialist, ORMDI, on (b)(6); (b)(7)(C).

<sup>9</sup> Exhibit 004 – DAS Memo – Conflict of Interest/Internal Complaints Processing (Nov. 15, 2022).

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## OAWP Report of Investigation 23-WashingtonDC-22984

## Statutory Authority

Pursuant to 38 U.S.C. § 323(c)(1)(H), OAWP is authorized to investigate allegations of senior leader misconduct or poor performance within VA Respondents Mayo, Eskenazi, Johnson, and Duncan are senior leaders as defined by VA Directive 0500.<sup>11</sup>

At the direction of the Secretary, pursuant to 38 U.S.C. §§ 323(b)(4) and (c)(1)(A), the CoS directed OAWP to investigate misconduct allegations within ORMDI concerning non-senior leader Respondents Davis, Richardson, (b)(6); (b)(7)(C), (b)(6); (b)(7)(C), (b)(6); (b)(7)(C), and (b)(6); (b)(7)(C).

## Relevant Law, Rule, Or Regulation

### VA Directive 0500, Office of Accountability and Whistleblower Protection: Investigation of Whistleblower Disclosures and Allegations Involving Senior Leaders or Whistleblower Retaliation

VA Directive 0500 defines misconduct as including, but not being limited to, neglect of duty and malfeasance.<sup>12</sup> An employee is negligent in the performance of their duty if the employee “fails to exercise the degree of care that ‘a person of ordinary prudence’ with the same experience would exercise in the same situation.”<sup>13</sup>

Additionally, it is misconduct for a supervisor to fail to supervise their subordinates. For a supervisor to be held responsible for the misconduct of his or her subordinates, the supervisor must have directed, had knowledge of, or should have known of the misconduct, and acquiesced to the misconduct.<sup>14</sup> Whether a supervisor had knowledge of the misconduct and acquiesced involves weighing the following factors:

- 1) The knowledge the supervisor has, or should have had, of the misconduct of the subordinate employee; and
- 2) The existence of policies and practices within the supervisor’s agency or division relating to the misconduct; and

<sup>11</sup> VA Directive 0500, ¶ 2(i)(1), p. 3. Respondent Johnson retired from federal service effective December 30, 2023. Exhibit 001 – SF50 Johnson Retirement.

<sup>12</sup> VA Directive 0500, ¶ 2(d).

<sup>13</sup> *Robinson v. VA*, 923 F.3d 1004, 1011 (Fed. Cir. 2019) (citing *Velez v. Dep’t of Homeland Sec.*, 101 M.S.P.R. 650 (2006)).

<sup>14</sup> *Robinson v. VA*, 923 F.3d 1004, 1011 (Fed. Cir. 2019) (citing *Miller v. Dep’t of Health and Human Servs.*, 8 M.S.P.R. 249 (1981)).

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OAWP Report of Investigation 23-WashingtonDC-22984

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- 3) The extent to which the supervisor has encouraged or acquiesced in these practices and/or the subordinate's misconduct.<sup>15</sup>

### **The Secretary's Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement**

The Secretary's Equal Employment Opportunity, Diversity and Inclusion, No FEAR, and Whistleblower Rights and Protection Policy Statement provides "harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964." Additionally, "[s]upervisors or managers who observe or are notified of harassing conduct are required to assess the situation immediately and consult with their local Harassment Prevention Coordinator or the HPP within ORMDI. . . . It is also the supervisor's responsibility to conduct an effective inquiry of a harassment allegation and initiate appropriate corrective actions as warranted."<sup>16</sup> Similarly, the Secretary's 2023 statement states that supervisors should "take . . . responsible steps to prevent and abate harassment promptly."<sup>17</sup>

### **VA Directive 5979, Harassment Prevention Policy (HPP)**

VA Directive 5979 "requires immediate and appropriate action to be taken by management when notified of hostile conduct that is, or has the potential to become, severe or pervasive to the point that it constitutes a legal claim of sexual or non-sexual harassment."<sup>18</sup> The Equal Employment Opportunity Commission (EEOC) has defined harassment as "any unwelcome verbal or physical conduct based upon race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, genetic information, parental status or retaliation for opposing discriminatory practices or participating in the discrimination complaint process, when: (1) The behavior can reasonably be considered to adversely affect the work environment."<sup>19</sup> Additionally, VA policy "prohibits employees from engaging in harassing conduct for any reason regardless of whether the conduct was related to one of the legally protected bases."<sup>20</sup>

VA Directive 5979 also requires VA Administration, Staff Office Managers, and Supervisors to "[i]mmediately begin to address (within five business days) any incident of inappropriate and harassing behavior (e.g., separate the alleged perpetrator of sexual

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<sup>15</sup> *Prouty & Weller v. Gen. Servs. Admin.*, 122 M.S.P.R. 117, 126 (2014).

<sup>16</sup> Exhibit 005 – 2022 EEO Policy Statement, pp. 2, 4.

<sup>17</sup> Exhibit 006 – 2023 EEO Policy Statement, p. 4.

<sup>18</sup> Exhibit 007a – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 2.

<sup>19</sup> Exhibit 007a – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 2.a.(1).

<sup>20</sup> Exhibit 007a – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 2.c.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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harassment from the employee alleging harassment; begin an inquiry, factfinding, mediation, administrative investigation, to the extent possible).<sup>21</sup> They must also “[t]ake prompt and appropriate corrective and disciplinary action against personnel who have engaged in harassing conduct.”<sup>22</sup> Finally, HPP requires that all VA employees shall “act professionally and refrain from inappropriate and harassing conduct.”<sup>23</sup>

In cases of alleged sexual harassment, VA managers are “required to conduct initial intervention measures to separate the person who brings forth the allegation from the person accused of sexual harassment” within “one business day” of a sexual harassment allegation.<sup>24</sup>

### White Ribbon VA

White Ribbon VA, launched in 2020, “is a national call to action to eliminate sexual harassment, sexual assault, and domestic violence across the Department of Veterans Affairs by promoting a positive change in culture so that the actions outlined in the pledge become the organizational norm.”<sup>25</sup> Employees participating in White Ribbon VA “pledge to never commit, excuse or stay silent about sexual harassment, sexual assault or domestic violence against others.”<sup>26</sup> The Secretary reaffirmed his commitment to a VA free from harassment in December 2023.<sup>27</sup>

### ICARE

VA’s I CARE Core Values, codified at 38 C.F.R. § 0.601, describe the organization’s culture and serve as the foundation for the way VA employees should interact with Veterans, fellow employees, and others outside of the organization and requires employees to treat those with whom they work with dignity and respect.

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<sup>21</sup> [Exhibit 007a](#) – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 3.g.(4).

<sup>22</sup> [Exhibit 007a](#) – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 3.g.(8).

<sup>23</sup> [Exhibit 007a](#) – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 3.i.(1).

<sup>24</sup> [Exhibit 007b](#) – VA Handbook 5979, Harassment Prevention Program Procedures, March 21, 2022, ¶ 7.c.

<sup>25</sup> [White Ribbon VA – Veterans Health Administration](#)

<sup>26</sup> [White Ribbon VA – Veterans Health Administration](#)

<sup>27</sup> [White Ribbon VA – Veterans Health Administration](#)

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## OAWP Report of Investigation 23-WashingtonDC-22984

**Facts And Analysis (Substantiated Allegations)<sup>28</sup>****Allegations Regarding Respondent Davis**

*Respondent Davis Engaged in Inappropriate Conduct of a Sexual Nature with* (b)(6); (b)(7)(C)

OAWP investigated allegations that Respondent Davis engaged in inappropriate conduct of a sexual nature with respect to (b)(6); (b)(7)(C)

Both (b)(6); (b)(7)(C) and Respondent Davis testified that they met in August 2022 when she contacted him with a work-related question, and during that and subsequent conversations the two discovered that they had multiple things in common.<sup>29</sup> At the time, Respondent Davis was not in (b)(6); (b)(7)(C) supervisory chain of command and did not become part of (b)(6); (b)(7)(C) supervisory chain until (b)(6); (b)(7)(C) when the VBA EEO Liaison Office was realigned under Respondent Davis' Executive Assistant (CoS) position.<sup>30</sup>

In their initial conversations, (b)(6); (b)(7)(C) and Respondent Davis discussed being retired from the military, their affiliation with Greek fraternities and sororities, and (b)(6); (b)(7)(C) being from (b)(6); (b)(7)(C).<sup>31</sup> Respondent Davis referred to his relationship with (b)(6); (b)(7)(C) as both personal and professional.<sup>32</sup> He said that he spoke to (b)(6); (b)(7)(C) two to three times a week and often on weekends.<sup>33</sup>

Respondent Davis and (b)(6); (b)(7)(C) both testified that in October 2022, (b)(6); (b)(7)(C) her (b)(6); (b)(7)(C) a friend of (b)(6); (b)(7)(C) and that friend's (b)(6); (b)(7)(C) visited Washington D.C., and Respondent Davis took them all to dinner.<sup>34</sup> Both witnesses confirmed that the dinner in October 2022 was the only occasion they had physically met or seen each other in person.<sup>35</sup> A review of the text messages provided by (b)(6); (b)(7)(C) shows that Respondent Davis texted her the same evening after their dinner and concluded the text with, "Love

<sup>28</sup> In order to reflect OAWP's fulsome investigation of all the allegations, this ROI contains discussions of both substantiated allegations and unsubstantiated allegations.

<sup>29</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 49-51; Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 5-8.

<sup>30</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 8-9, 22-24.

<sup>31</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 49-51; Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 7-8.

<sup>32</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 9-10.

<sup>33</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 177.

<sup>34</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 132-134 ; Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), p. 33.

<sup>35</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 132 ; Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 33-34.

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## OAWP Report of Investigation 23-WashingtonDC-22984

you!"<sup>36</sup> (b)(6); (b)(7)(C) responded the next morning and concluded her message with, "Talk to you later my brother," and included an image of a heart.<sup>37</sup> He responded the same day commenting on her and her friend's attractiveness: "Yall are some classy ladies. Their [sic] were men checking yall out and hating on me. They were wondering how I could be sitting with two gorgeous ladies . . ."<sup>38</sup>

Respondent Davis testified their communications turned to a romantic or sexual nature after her Washington D.C. trip.<sup>39</sup> He stated that initially their contact died down after the trip but, "after it died down . . . she started sending the photos, that's when it took off, the romance took off; the romantic/sexual communication came."<sup>40</sup>

(b)(6); (b)(7)(C) told OAWP that she shared photos with Respondent Davis, but she did not do so very often.<sup>41</sup> She said that she and Respondent Davis had some friends in common, and she sent photos of herself with people Respondent Davis knew.<sup>42</sup> (b)(6); (b)(7)(C) admitted to sending Respondent Davis photos of herself in a bathing suit.<sup>43</sup> (b)(6); (b)(7)(C) testified she sent a photo of herself in a revealing chain shirt with a cowboy hat, which may have included a close-up photo of her chest area while wearing the revealing shirt.<sup>44</sup> (b)(6); (b)(7)(C) told OAWP that she purchased the shirt to wear to a public concert, and she shared that photo, and other photos of her at the concert, on Facebook and with other friends.<sup>45</sup> (b)(6); (b)(7)(C) also told OAWP that she posted photos of herself in the same revealing shirt on Facebook and shared the same photos of herself wearing the shirt with at least four other male and female friends or family.<sup>46</sup> She told OAWP that any photo she sent to Davis she would have felt comfortable sending to her father and children, or sharing on Facebook.<sup>47</sup> (b)(6); (b)(7)(C) testified that she did not share any photos

<sup>36</sup> Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 2. The only text messages in OAWP's possession were provided by (b)(6); (b)(7)(C) OAWP gave Respondent Davis the opportunity to submit text messages exchanged between him and (b)(6); (b)(7)(C) but he testified that he deleted them from his phone and no longer has access to them. Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 157-158, 178. However, Respondent Davis was still in possession of approximately 44 undated photos and 1 video that he says (b)(6); (b)(7)(C) sent to him over the course of their personal relationship, and he shared those with OAWP. (b)(5); (b)(6); (b)(7)(C)

<sup>37</sup> Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 3.

<sup>38</sup> Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 3.

<sup>39</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 171-172.

<sup>40</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 172-173.

<sup>41</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), p. 3.

<sup>42</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), p. 3.

<sup>43</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), p. 4. (b)(5); (b)(6); (b)(7)(C)

(b)(5); (b)(6); (b)(7)(C)

<sup>44</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 4-6. Any documents containing photos of (b)(6); (b)(7)(C)

(b)(5); (b)(6); (b)(7)(C)

<sup>45</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 6-7, 40.

<sup>46</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 6-7, 40. (b)(5); (b)(6); (b)(7)(C)

(b)(5); (b)(6); (b)(7)(C)

<sup>47</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 3-5, 37, 40.

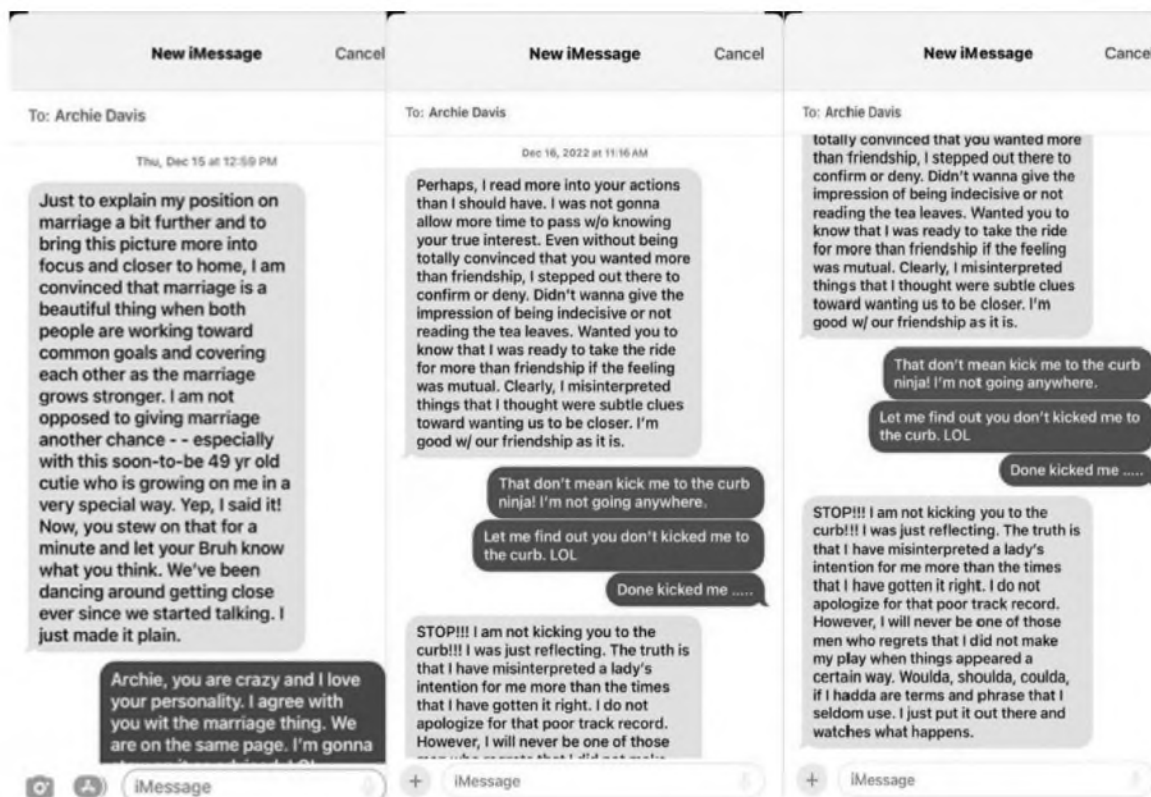
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## OAWP Report of Investigation 23-WashingtonDC-22984

that were “private” or “special.”<sup>48</sup> She stated that she felt obligated to send Respondent Davis photos so “she did not feel his wrath.”<sup>49</sup> After sending photos, he sometimes responded with comments like “you’re holding back” or “where are the real photos at?”<sup>50</sup>

(b)(6); (b)(7)(C) told OAWP that Respondent Davis’ communications changed around December 2022.<sup>51</sup> For example, on December 15 and 16, 2022, Respondent Davis sent (b)(6); (b)(7)(C) a text message making clear his romantic interest in her and trying to determine if they could be more than friends:<sup>52</sup>



<sup>48</sup> Exhibit 010 – (b)(6); Testimony (Jan. 18. 2024), pp. 6-7, 40.

<sup>49</sup> Exhibit 010 – (b)(7)(C) Testimony (Jan. 18. 2024), p. 9.

<sup>50</sup> Exhibit 010 – Testimony (Jan. 18. 2024), p. 25.

<sup>51</sup> Exhibit 010 – Testimony (Jan. 18. 2024), pp. 9-10.

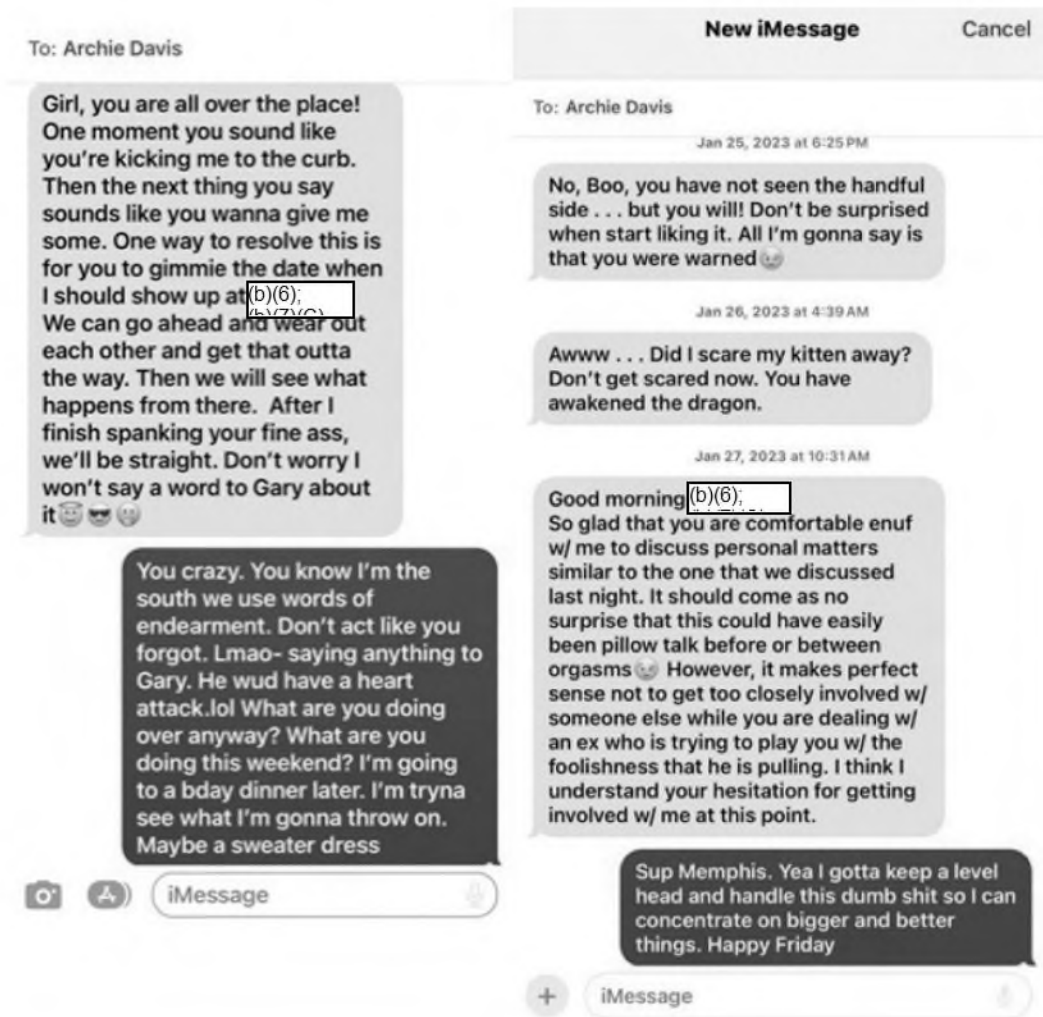
<sup>52</sup> Exhibit 012 – Combined Texts, p. 4. Exhibit 011 – (b)(6); Texts, pp. 9-10. OAWP’s investigation showed that many of the text messages sent by Respondent Davis to (b)(6); (b)(7)(C) occurred during his tour of duty. Respondent Davis admitted to OAWP that he sent messages during the workday and that to do so was not appropriate: “During the workday, my time should be dedicate [sic] toward work and not on personal matters.” Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 233.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) testified that Respondent Davis started sending text messages of a sexual nature beginning in January or February 2023.<sup>53</sup> The following text messages are examples of the highly sexual content Respondent Davis sent to (b)(6); (b)(7)(C)<sup>54</sup>



<sup>53</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), pp. 19-21.

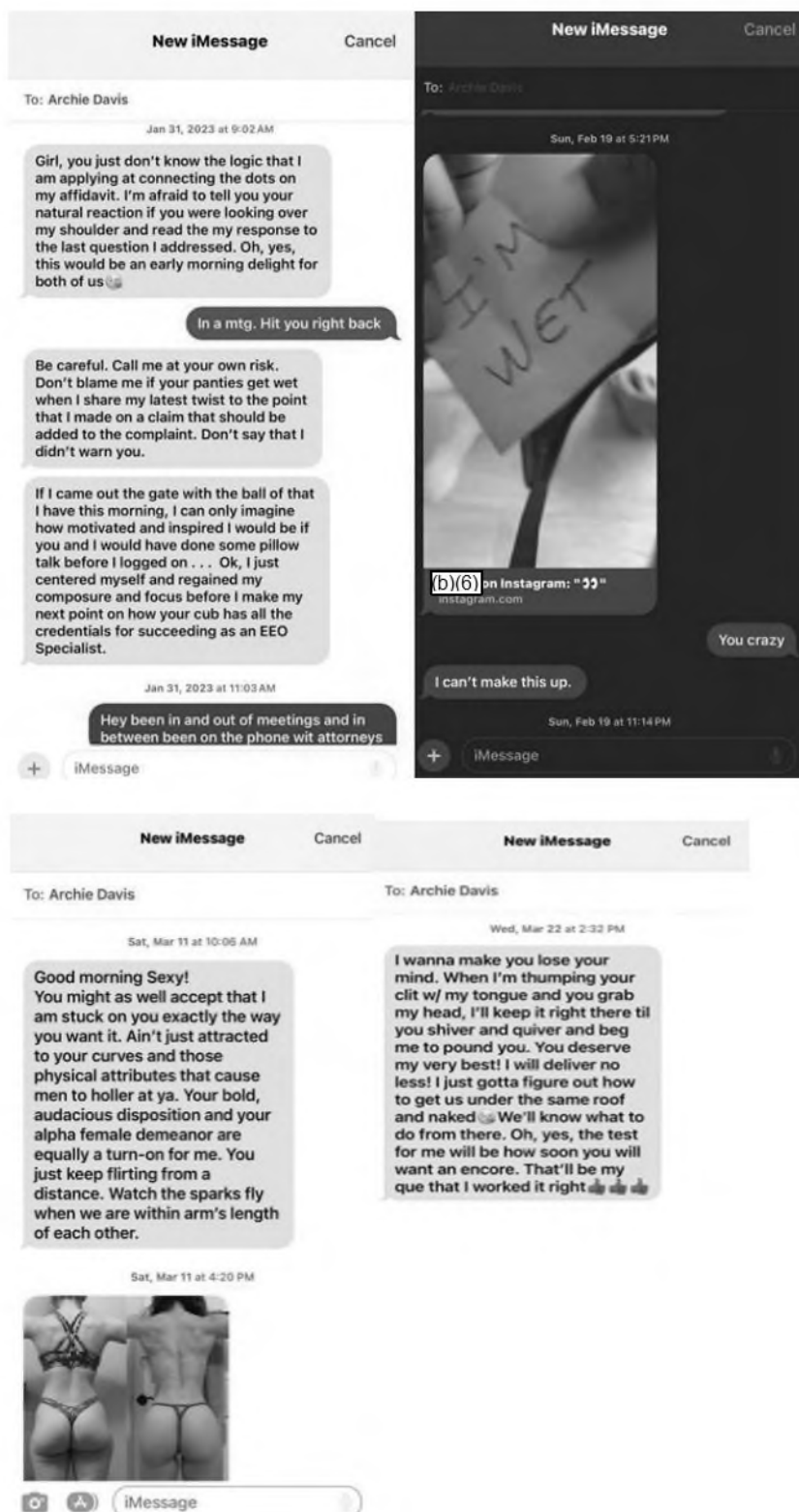
<sup>54</sup> Exhibit 012 – Combined Texts, pp. 10-12; Exhibit 011 – (b)(6); (b)(7)(C) Texts, pp. 11-12, 14. The first image is not dated, however, OAWP's investigation concluded that this message was likely sent in early 2023 after he learned that (b)(6); (b)(7)(C) had accused Respondent [Gary] Richardson of sexual harassment. In the first image, Respondent Davis appears to be mocking Respondent Richardson—a subordinate employee in the ORMDI organization structure whom he had learned was accused of sexual harassment.

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## OAWP Report of Investigation 23-WashingtonDC-22984



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## OAWP Report of Investigation 23-WashingtonDC-22984

When asked by OAWP if (b)(6); (b)(7)(C) reciprocated his messages, Respondent Davis answered that she did, but that she “went back and forth” and that there were “spells where there was no communication.”<sup>55</sup> When asked if (b)(6); (b)(7)(C) ever told him she was not interested, Respondent Davis answered “no,” and added: “The way she put it; she was not interested. She said, be ready when – she told me, eventually we’d get there.”<sup>56</sup>

(b)(6); (b)(7)(C) denied ever sending any text messages of a sexual nature to Respondent Davis.<sup>57</sup> (b)(6); (b)(7)(C) told OAWP that she dealt with Respondent Davis’ sexual messages by ignoring them, changing the subject, purposefully delaying her response, or telling him that he was “crazy,” or something else similar.<sup>58</sup> (b)(6); (b)(7)(C) testified that she tried not to engage in Respondent Davis’ sexual comments, hoping his interest would fade away: “men tend to say certain things, so I’d blow it off. . . . when he would say certain things . . . I’d change the subject or whatever . . . I’m like . . . well if I don’t engage in it . . . he’s just being mean. If I don’t engage in it, it’ll blow off. . . .”<sup>59</sup>

When (b)(6); (b)(7)(C) told Respondent Davis that she wanted to be friends, she testified that he would be accepting at first, but then “he’d sleep on it . . . and then he’ll come back . . . a day or two later . . . [a]nd he has this attitude.”<sup>60</sup> She testified that, “One minute he can be nice, then the next minute... I say I’d talk to him, and he would go back on his wrath of saying, you don’t want to cross me . . . people who cross me, I walk them out the door.”<sup>61</sup> (b)(6); (b)(7)(C) told OAWP that Respondent Davis was always “flexing . . . his aggressiveness” with her:

If I said it once, I said it a thousand times. Because this was his norm. Because he has told me so many stories, I think I have a text of him talking about maybe HR needed him to walk somebody out the door and he’d comment... he’s like well, I wouldn’t wear it. I’d beat their ass . . . if they come at me wrong or whatever. . . . I’m here in (b)(6); (b)(7)(C) he’s in D.C. So I didn’t think he would physically put his hands on me. . . .

I didn’t feel that way. But he knew enough about me. He knew I was a (b)(6); (b)(7)(C). And like I said, right, wrong, indifferent, how I chose to handle Archie or be nice to him if he said different things, I was looking out for me and my financial being. Because at the end of the day, I have no one, and I’m not going to put myself – you know by him in a position of

<sup>55</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 170-171.

<sup>56</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 171.

<sup>57</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 27-28.

<sup>58</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 19-20, 23-25, 26-27, 43-45; Exhibit 011 –

(b)(6); (b)(7)(C) Texts, pp. 12-14, 17-18, 20.

<sup>59</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 19-20.

<sup>60</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 11-12.

<sup>61</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), p. 11.

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## OAWP Report of Investigation 23-WashingtonDC-22984

power. I was not going to put myself in the position to where he could fire me. Because . . . this was something that he stated repeatedly, oh walking people out the door. Cross me, that'd be your worse [sic] regret, which you don't want to do is cross me.<sup>62</sup>

(b)(6); (b)(7)(C) stated that she was "consistent from day one" that she only wanted a friendship with Respondent Davis.<sup>63</sup>

(b)(6); (b)(7)(C) stated that Respondent Davis became more aggressive starting in or around March 2023.<sup>64</sup> She said that he was "very persistent" and that she felt "stuck" because Respondent Davis was not getting the message that she was not interested: "I felt stuck. I felt that if I don't piss him off, he will move on. . . [A]fter being vague and saying you want a friendship 100 times . . . who don't go away? Who don't?"<sup>65</sup>

(b)(6); (b)(7)(C) testified that she also felt "stuck" because she had reported Respondent Richardson for sexual harassment in 2022 and ORMDI did not do anything about it:

I was already on the side of the fence of retaliation with [Respondent] Richardson already. I was already on the fence, [Respondent] Johnson... [Respondent] (b)(6); (b)(7)(C) those guys not doing anything about it. Sweeping it under the rug, not even investigating it. So, here I am dealing with somebody as the Chief of Staff, several layers up. I felt stuck. It was plenty of times I felt like I be damned, here we go again. Here I go again. I didn't ask for this.<sup>66</sup>

(b)(6); (b)(7)(C) testified about and provided a copy of a text message in which she told Respondent Davis, "Good afternoon honey."<sup>67</sup> Respondent Davis told (b)(6); (b)(7)(C) that she was "all over the place," telling her that one minute it sounded like she wanted a relationship, and the next minute she did not: "One way to resolve this is for you to gimme that date when I should show up at (b)(6); (b)(7)(C) We can go ahead and wear out each other and get that outta the way." (b)(6); (b)(7)(C) told OAWP that she corrected Respondent Davis' impression that the use of the word "honey" was meant to indicate her interest in relationship. She explained to OAWP, and in her message to Respondent Davis, that the word "honey" was nothing more than a Southern term of endearment.<sup>68</sup>

<sup>62</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), pp. 12-13.

<sup>63</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), pp. 30-31.

<sup>64</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), p. 21.

<sup>65</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), p. 44.

<sup>66</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), pp. 44-45.

<sup>67</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), p. 10; Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 16.

<sup>68</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18. 2024), pp. 10-11; Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 16.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) told OAWP that she enjoyed her friendship with Respondent Davis, but never looked at him as a boyfriend: "I enjoyed talking to him. You know, we're both from the same place, we knew mutual people, you know, I looked at him as . . . a friend . . . I'm (b)(6); (b)(7)(C), he's 65, so I never looked at him as good to be, you know, a boyfriend, it was always that friendship."<sup>69</sup>

(b)(6); (b)(7)(C) also told OAWP that the text messages she provided "don't even scrape the surface," and that he pursued her sexually in conversation as well:

[W]hen we had the conversation he was like . . . I would love for . . . a pretty little thing like you . . . we could have a great life together. He always would throw his money out there, that he's [a] retired colonel, a GS-15, 100 percent service-connected vet, you know, [a]nything you and your (b)(6); (b)(7)(C) want . . . I can provide that. . . I would tell him . . . [t]hat don't impress me, I got my own money. . . And I would tell him . . . [l]et's not mess up a good thing, we friends . . . we got this brother/sister thing going on, let's keep it that way. And, oh, you just scared. My little bunny is scared. . . [H]e would say . . . Daddy is going to have to tread lightly with you, so I don't run my little bunny off. . .

[H]e'd talk about how he would love to get me in bed. . . [H]e told me he had a hell of a tongue action. . . [H]e would just need to penetrate me one good time and then I'd change my whole perspective. . . [A]gain I always would . . . iterate, hey . . . why these conversations always got to be sexual? Why you got to go there? . . . Hey, I'm your sister . . . why not keep it that way? And he would always say . . . [y]ou just scared. Stop running.<sup>70</sup>

When asked if he ever made statements to (b)(6); (b)(7)(C) about wanting "to get her into bed," Respondent Davis said, "I don't recall, but I won't deny that I had a conversation to that effect."<sup>71</sup> He similarly admitted that he may have said something to the effect that "all [he'd] have to do is penetrate her one good time."<sup>72</sup> He denied ever referring to (b)(6); (b)(7)(C) as a "little bunny."<sup>73</sup>

<sup>69</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), p. 51.

<sup>70</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 52-54.

<sup>71</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 181.

<sup>72</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 182-183.

<sup>73</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 181.

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## OAWP Report of Investigation 23-WashingtonDC-22984

When asked by OAWP if (b)(6); (b)(7)(C) ever considered cutting off communication with Respondent Davis, (b)(6); (b)(7)(C) said that Respondent Davis bragged about “different things he’s done to people” and “because he’s the [C]hief of [S]taff, you get on his bad side, that’s it, your ass is grass.”<sup>74</sup> As a result, (b)(6); (b)(7)(C) testified that she maintained her communications with Respondent Davis out of “fear of not ever crossing him.”<sup>75</sup> She said she was intimidated, “[b]ecause, hell, I can’t afford to lose my job, I’m a (b)(6); (b)(7)(C) and at the end of the day it was I guess that intimidation factor...”<sup>76</sup>

On January 3, 2023, Respondent Davis sent (b)(6); (b)(7)(C) photos of a skinned deer he hunted and hung up for processing.<sup>77</sup> In one message, he told (b)(6); (b)(7)(C) that he dressed the deer himself, adding that, “[d]ressing the animal myself is how I avoid returning to the plant and going postal.”<sup>78</sup> To that statement, (b)(6); (b)(7)(C) replied, “You are the man!”<sup>79</sup> (b)(6); (b)(7)(C) told OAWP that she believed Respondent Davis was sending her a subliminal message when he sent her the skinned deer photos: “I’m a woman, I ain’t never told you I had no interest in hunting. . . . [H]e loves to hunt, he always talked about his guns, how good he is with his guns. Yeah . . . that intimidation factor in the back of my head is like, [o]kay. Point taken. Point made.”<sup>80</sup>

Respondent Davis said he sent the deer photos because (b)(6); (b)(7)(C) was curious about what he had done with his weekend.<sup>81</sup> When asked what he meant by returning to the plant and going postal, Respondent Davis testified to an incident where a friend of his took a hunted deer to a processing plant and they had given him a different deer that had been killed a year earlier.<sup>82</sup> Respondent Davis stated that he did not believe (b)(6); (b)(7)(C) felt threatened by the photos because (b)(6); (b)(7)(C) also grew up in rural (b)(6); (b)(7)(C) and she told him about her relatives hunting and fishing.<sup>83</sup> When asked if he was trying to intimidate (b)(6); (b)(7)(C) by sending these deer photos, Respondent Davis testified he was not trying to intimidate her and felt he was just sharing things taking them back to their roots.<sup>84</sup>

In an undated text message, Respondent Davis recounted to (b)(6); (b)(7)(C) something he told HR after an employee termination meeting: “One time HR asked if I wanted VA

<sup>74</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), p. 54.

<sup>75</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), p. 55.

<sup>76</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), p. 55.

<sup>77</sup> Exhibit 012 – Combined Texts, pp. 5-9.

<sup>78</sup> Exhibit 012 – Combined Texts, p. 6.

<sup>79</sup> Exhibit 012 – Combined Texts, p. 6.

<sup>80</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 68-69.

<sup>81</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 199-200.

<sup>82</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 201.

<sup>83</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 202-203.

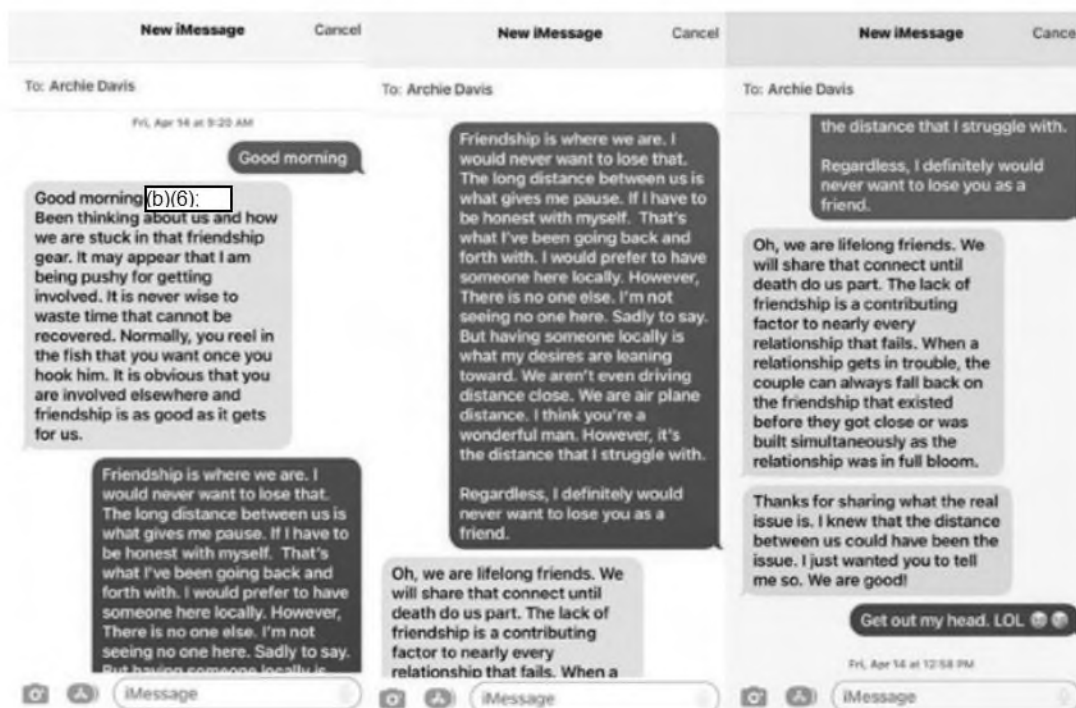
<sup>84</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 234-236.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Police assistance when I served the removal memo. I told them that the employee might need some form of assistance to keep me from beating his ass if he calls me out.”<sup>85</sup>

On April 4, 2023, Respondent Johnson realigned the VBA EEO Liaison Office, including (b)(6); (b)(7)(C) under Respondent Davis.<sup>86</sup> As a result of the realignment, Respondent Davis became (b)(6); (b)(7)(C) supervisor.<sup>87</sup> Messages exchanged between Respondent Davis and (b)(6); (b)(7)(C) shortly after the realignment corroborate that he was trying to figure out the nature of their relationship now that he was in her chain of command, and that while she told him she was “going back and forth” in her mind about what their status should be, she wanted to be friends:<sup>88</sup>



Respondent Davis testified that his communication with (b)(6); (b)(7)(C) stopped around this timeframe, because they had “to put the brakes on this” on account of the realignment and his new position as her (b)(6); (b)(7)(C) supervisor.<sup>89</sup> He told OAWP that he viewed the April 14, 2023, messages as a “wrap up,” and that he did not intend to be more than friends with her at that point.<sup>90</sup>

<sup>85</sup> Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 15.

<sup>86</sup> Exhibit 013 – Realign ORMDI to CoS.

<sup>87</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 17-18.

<sup>88</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 222; Exhibit 012 – Combined Texts, pp. 13-15.

<sup>89</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 177-178.

<sup>90</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 224.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Despite Respondent Davis' stated intention to remain friends with (b)(6); (b)(7)(C) after the realignment, he sent (b)(6); (b)(7)(C) an Instagram link in late April or early May 2023. The link shows that Respondent Davis forwarded (b)(6); (b)(7)(C) a post entitled, "Women like manhandled" (the link is not entirely visible in the copy of the message provided by (b)(6); (b)(7)(C) to OAWP).<sup>91</sup> Respondent Davis admitted that the link led to an Instagram post that was sexual in nature.<sup>92</sup>

Respondent Davis also admitted that on or around May 14, 2023, he ordered flowers to be delivered to (b)(6); (b)(7)(C) on Mother's Day.<sup>93</sup> The flowers cost approximately \$96.00 after tax.<sup>94</sup> (b)(6); (b)(7)(C) told OAWP that she never provided Respondent Davis with her home address, and that he obtained her home address through VA records.<sup>95</sup> (b)(6); (b)(7)(C) provided a text message in which it is evident that Respondent Davis obtained her address and asked her to confirm that it was correct, and that he wanted to send her flowers. She responded, "Hey this is my correct address," along with one winking emoji and one smiley face emoji.<sup>96</sup>

(b)(6); (b)(7)(C) testified that she believed the flowers were inappropriate due to his position as the Executive Assistant (CoS) and because he was aware she felt she had been sexually harassed by Respondent Richardson.<sup>97</sup> (b)(6); (b)(7)(C) testified she told him "thank you" and "that was it."<sup>98</sup> Respondent Davis said that (b)(6); (b)(7)(C) was appreciative of the flowers and did not indicate she did not want him to send her anything or communicate to her in a sexual manner.<sup>99</sup>

On June 12 and 13, 2023, Respondent Davis again sent text messages to (b)(6); (b)(7)(C) of a highly sexual nature:<sup>100</sup>

<sup>91</sup> [Exhibit 012](#) – Combined Texts, p. 17.

<sup>92</sup> [Exhibit 009](#) – Davis Testimony (Dec. 22, 2023), pp. 192-193.

<sup>93</sup> [Exhibit 009](#) – Davis Testimony (Dec. 22, 2023), p. 174.

<sup>94</sup> [Exhibit 014](#) – Flowers.

<sup>95</sup> [Exhibit 010](#) – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 54-55.

<sup>96</sup> [Exhibit 011](#) – (b)(6); (b)(7)(C) Texts, p. 19.

<sup>97</sup> [Exhibit 008](#) – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 69-70.

<sup>98</sup> [Exhibit 008](#) – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), p. 70.

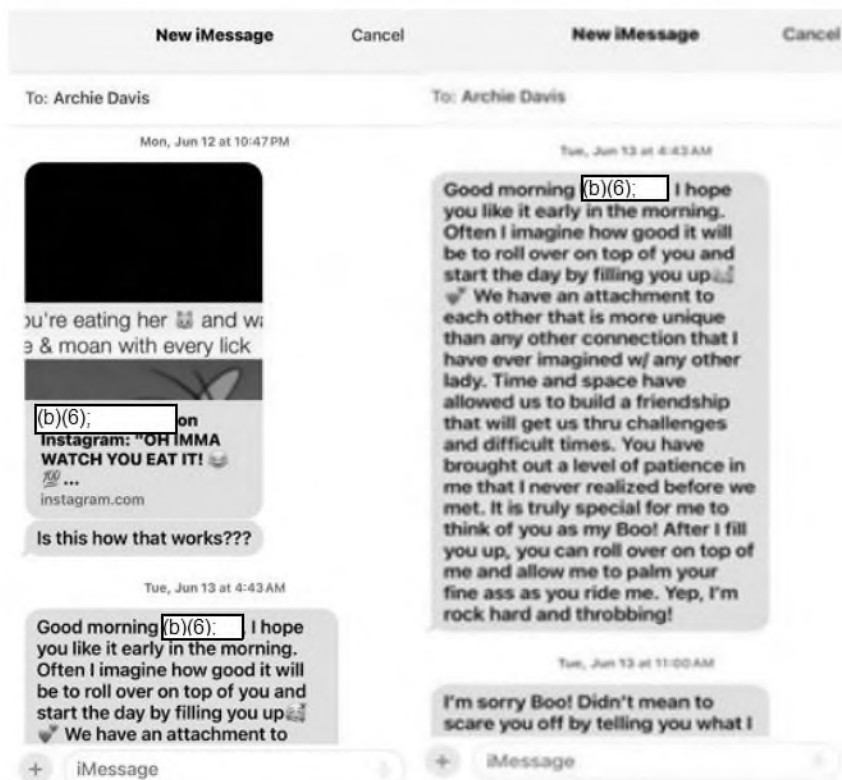
<sup>99</sup> [Exhibit 009](#) – Davis Testimony (Dec. 22, 2023), p. 176.

<sup>100</sup> [Exhibit 012](#) – Combined Texts, pp. 18-19.

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## OAWP Report of Investigation 23-WashingtonDC-22984



By July 2023, the text messages exchanged between (b)(6); (b)(7)(C) and Respondent Davis on July 6, 7, and 11, 2023, suggest he was agitated she had not responded favorably to his advances and for the “moves [she] made that kept [him] guessing as to where [they] were going,” and he seemed to begrudgingly accept that (b)(6); (b)(7)(C) was not interested in a sexual relationship with him.<sup>101</sup> However, seven days later on July 18, 2023, (b)(6); (b)(7)(C) initiated friendly contact with Respondent Davis, who responded in a sexual manner referring to (b)(6); (b)(7)(C) as “Boo,” and making reference to a “booty call” and being “overdue for our show and tell”.<sup>102</sup>

<sup>101</sup> Exhibit 012 – Combined Texts, pp. 21-22.

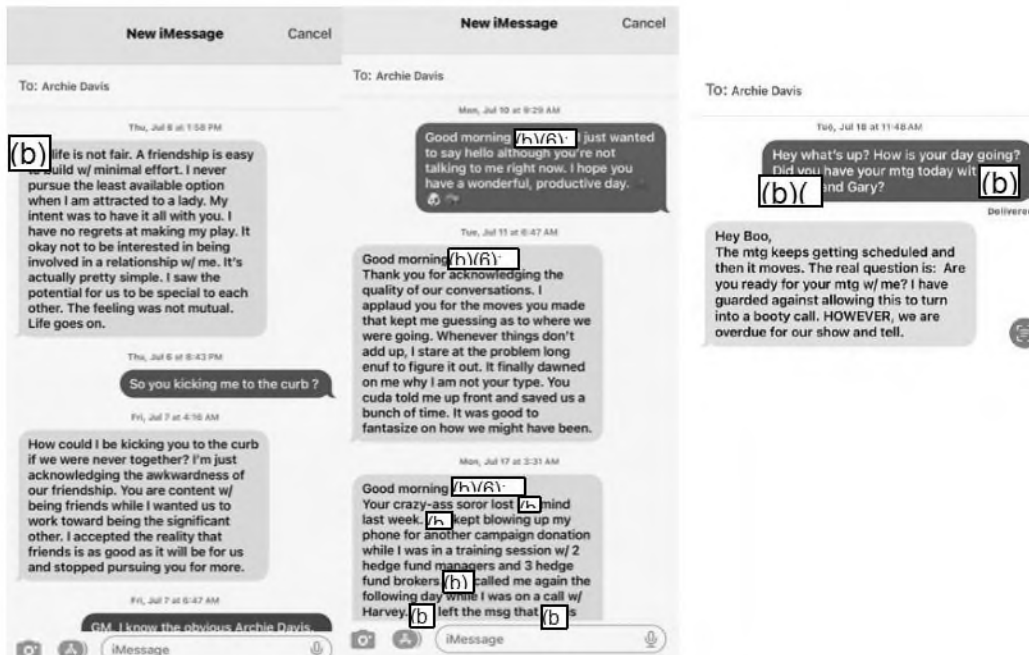
<sup>102</sup> Exhibit 012 – Combined Texts, p. 21-23.

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## OAWP Report of Investigation 23-WashingtonDC-22984



(b)(6); (b)(7)(C) told OAWP that Respondent Davis sent her an email accusing her of “insubordination” on July 27, 2023, after she secured approval from VBA to pay for the final night of a hotel stay at a week-long conference, and he perceived that as a violation of ORMDI’s travel policy.<sup>103</sup> She said at that point she suspected Respondent Davis of starting a “paper trail” to use against her, and filed a complaint against him accordingly:

Now, I’m a labor relations/employee relations person, this is what I used to do for years, now you’re trying to start a paper trail, so now you’re messing with me, you’re messing with my . . . livelihood, my career, how I take care of my (b)(6); (b)(7)(C). . . I felt like my back was against the wall, I’m like, Fine . . . just file a complaint and see what happens. . .

And so that’s when I sent it to USPS. And I also sent it to the VA [S]ecretary. I sent it for the – to the VA [S]ecretary to – in hopes to go outside of ORMDI, because anything that stays within ORMDI, nothing happens under Harvey [Respondent Johnson], nothing, everything gets swept under the rug, I don’t care what it is. And so me reaching out to the [S]ecretary in hopes that I guess somebody at his level, or,

<sup>103</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 56-58; Exhibit 015 – Insubordinate Email.

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## OAWP Report of Investigation 23-WashingtonDC-22984

you know, it gets into the right hands. Because I – if I didn't, I definitely feared that Archie [Respondent Davis] was going to find a way to, you know, try to fire me, and... throughout my whole VA career, I've had outstanding end-of-the-years, I've never had an issue, and I've been working for the VA since 2006, this is my first EEO complaint, or harassment complaint, so this is definitely outside of my norm and not what I do.<sup>104</sup>

Respondent Davis testified that the way in which (b)(6); (b)(7)(C) arranged her travel and got funding from VBA violated travel regulations and could have resulted in disciplinary action for the person authorizing the travel.<sup>105</sup> He said that (b)(6); (b)(7)(C) had been given specific instructions on how to book and manage her travel arrangements, but because she went outside of ORMDI's directions, she had engaged in insubordination: "[T]he thing that made me categorize her action as insubordination is that she had been told, but then she chose to work around."<sup>106</sup> (b)(6); (b)(7)(C) disputes that she and Respondent Davis ever had a conversation about the travel issue prior to him accusing her of insubordination.<sup>107</sup>

Respondent Davis denied that he wrote (b)(6); (b)(7)(C) up for this incident; when asked if he counseled (b)(6); (b)(7)(C) he responded: "That email . . . I mean, in other words, I think the email had gotten her attention to the degree that I wanted to. . . I mean that was my way of saying cease and desist."<sup>108</sup> Respondent Davis also stated that he believed that his relationship with (b)(6); (b)(7)(C) was appropriate and consensual before April 4, 2023, but became inappropriate after that date when Respondent Johnson realigned the VBA EEO Liaison Office making Respondent Davis (b)(6); (b)(7)(C) supervisor.<sup>109</sup>

\* \* \*

The evidence established that Respondent Davis made sexual advances and engaged in misconduct of a sexual nature, both in conversation and through text messages, toward (b)(6); (b)(7)(C). The only text messages available to OAWP for inspection were provided by (b)(6); (b)(7)(C), and do not represent a full and complete history of their

<sup>104</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 58-59.

<sup>105</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 227-228. Respondent Davis was involved in (b)(6); (b)(7)(C) travel request because she was attempting to fund her trip through a combination of funds from ORMDI and VBA. Respondent (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) that only Respondent Davis could approve a request for cross-funding. Exhibit 015 – Insubordinate Email, p. 2.

<sup>106</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 228.

<sup>107</sup> Exhibit 010 – (b)(6); (b)(7)(C) Testimony (Jan. 18, 2024), pp. 17-18.

<sup>108</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 229.

<sup>109</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 232-233.

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## OAWP Report of Investigation 23-WashingtonDC-22984

communications. The text messages (b)(6); (b)(7)(C) provided corroborate (b)(6) testimony that she largely ignored or changed the subject after receiving sexual text messages from Respondent Davis.

Respondent Davis' text messages to (b)(6); (b)(7)(C) on their face, are inappropriate in the work setting. Respondent Davis' conduct was particularly inappropriate, and unbecoming given that he is the Executive Assistant (CoS) for ORMDI.<sup>110</sup> Respondent Davis admitted that his conduct was inappropriate after April 4, 2023, when he became (b)(6); (b)(7)(C) supervisor. However, Respondent Davis' conduct was also inappropriate before the realignment because (b)(6); (b)(7)(C) was a subordinate employee in an organization in which he held a position of authority.<sup>111</sup> Respondent Davis' admission that his behavior was inappropriate for a supervisor was confirmed by Respondent Johnson, Respondent Davis' supervisor at the time, who stated that managers should not say things that are sexually inappropriate and should avoid relationships with individuals in their chain of command. Respondent Johnson also noted that former military personnel, like himself and Respondent Davis, were trained that supervisors should not engage in sexting or other similar behaviors with other subordinate employees.<sup>112</sup>

Further, the evidence supports the conclusion that Respondent Davis' inappropriate conduct of a sexual nature was intimidating for (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) testified that she was intimidated by Respondent Davis and feared telling him to stop because he made it clear to her that he would retaliate against anyone who "crossed" him. Through testimony, (b)(6); (b)(7)(C) recounted instances in which Respondent Davis bragged about putting employees in their place who questioned or angered him. She told OAWP that she was intimidated by the photos Respondent Davis sent her of a skinned deer hung up for processing and his accompanying comment about "going postal." In addition, (b)(6); (b)(7)(C) testified that she was intimidated when Respondent Davis discussed how adept he was with guns.

As discussed in other sections of this report, witnesses described Respondent Davis as aggressive, and as someone who used profanity in the workplace and communicated in a demeaning and condescending manner to and about colleagues

<sup>110</sup> See *Scott v. Dep't of State*, 123 M.S.P.R. 639, \*\*9 (2016) ("inappropriate statements of a sexual nature and displaying an image of a naked woman constitute serious acts of misconduct, particularly when, as here, the acts were committed by a supervisor").

<sup>111</sup> See *Harris v. USPS*, 2016 MSPB LEXIS 2429, at \*28-29 (April 22, 2016) (nonprecedential) (although subordinate participated in forming a personal relationship with (b)(6) manager by initiating text messages, the Board upheld manager's removal where he sent subordinate sexual text messages, noting that a manager is held to a higher standard and "is expected to demonstrate proper conduct regardless of the conduct of his subordinates").

<sup>112</sup> Exhibit 016 – H. Johnson Testimony (Jan. 22, 2024) pp. 54-56. Respondent Johnson did not give any explicit instructions regarding his expectations that managers would avoid such behavior because he did not suspect it was happening.

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## OAWP Report of Investigation 23-WashingtonDC-22984

both in person and in email communications. (b)(6); (b)(7)(C) description of Respondent Davis as intimidating is consistent with other witness accounts.

Ultimately, when Respondent Davis accused (b)(6); (b)(7)(C) of insubordination—only days after sending messages showing his frustration that (b)(6); (b)(7)(C) wanted to be just friends—it was not unreasonable for (b)(6); (b)(7)(C) to fear that Respondent Davis was retaliating against her for refusing his advances by creating a record that could be used to take action against her. At the time Respondent Davis—as her (b)(6); (b)(7)(C) supervisor—accused her of insubordination in July 2023, he had been in her supervisory chain of command for four months, and it was not unreasonable for (b)(6); (b)(7)(C) to presume that Respondent Davis could have used his supervisory power to retaliate against her for rejecting his advances.

ORMDI's mission includes preventing the very type of behavior engaged in by Respondent Davis. Respondent Davis' conduct, therefore, was antithetical to the mission of ORMDI and VA is no longer able to trust Respondent Davis as a representative of that mission.<sup>113</sup>

OAWP found sufficient evidence to conclude that Respondent Davis engaged in misconduct of a sexual nature with respect to (b)(6); (b)(7)(C).

*Respondent Davis Engaged in Inappropriate Personal Relationships with Subordinate Employees*

Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) alleged that Respondent Davis engaged in inappropriate relationships with several subordinate employees, to include (b)(6); (b)(7)(C), (b)(6); (b)(7)(C), and (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

Respondent Davis testified that (b)(6); (b)(7)(C) had his personal cell phone number, but he denied any inappropriate personal relationship or messages with (b)(6); (b)(7)(C) and OAWP was unable to interview (b)(6); (b)(7)(C).<sup>114</sup> Therefore, OAWP finds there is insufficient evidence to substantiate this portion of the allegation.

<sup>113</sup> See *Morrison v. NASA*, 65 M.S.P.R. 348, 358 (1994) (introducing sexually explicit material into the Federal work environment was serious because it “could create a debilitating and potentially discriminatory work environment and its presence inherently impedes the full inclusion of all employees as professional equals”); *Batts v. Dep’t of Interior*, 102 M.S.P.R. 27, ¶ 14 (2006) (upholding removal of a non-supervisor Equal Employment Opportunity Specialist who engaged in unwelcome sexual contact with coworkers, stating that, “he should have been particularly sensitive regarding inappropriate workplace behavior”).

<sup>114</sup> OAWP did not interview (b)(6); (b)(7)(C) because she retired from VA. Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 169-170; Exhibit 019 – SF50 Redacted – (b)(6) Retirement.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C)

Respondent (b)(6); testified that she saw Respondent Davis talk to “a number of women,” including (b)(6);<sup>115</sup> Respondent (b)(6); heard that someone saw Respondent Davis with his arm around (b)(6); at a grocery store around 2018 or 2019, but she never witnessed physical contact or any other behavior between (b)(6); and Respondent Davis that would suggest a relationship that was more than professional.<sup>116</sup>

(b)(6); (b)(7)(C) testified that someone told Respondent (b)(6); that Respondent Davis and (b)(6); were seen “all hugged up, onto one another” at a grocery store, and that (b)(6); had a sexual relationship with Respondent Davis because she needed money after her divorce.<sup>117</sup>

(b)(6); testified that she saw Respondent Davis daily prior to the pandemic, but only interacted with him during virtual meetings during the pandemic because she teleworked.<sup>118</sup> Since approximately February 2023, (b)(6); interacted with Respondent Davis less frequently following an ORMDI reorganization.<sup>119</sup> (b)(6); said that she and Respondent Davis would get coffee or breakfast together at the café at work and discussed work topics, but Respondent Davis never said anything inappropriate to her.<sup>120</sup>

(b)(6); stated that prior to the pandemic, Respondent Davis sometimes accompanied her during the workday to a grocery store nearby the office for her to buy lunch or groceries that she would take home later that day.<sup>121</sup> She said that she was friends with Respondent Davis, and that they would communicate and see each other outside of work on occasion, but denied that there was any kind of romantic relationship between them.<sup>122</sup> (b)(6); testified Respondent Davis never sexually harassed her.<sup>123</sup>

Respondent Davis similarly testified that (b)(6); had his personal cell phone number, and confirmed that they were friends, but denied any romantic or sexual relationship between them.<sup>124</sup>

<sup>115</sup> Exhibit 020 – (b)(6) Testimony (Nov. 07, 2023), pp. 35-36.

<sup>116</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 35-36.

<sup>117</sup> Exhibit 017 – (b)(6); Testimony (Dec. 21, 2023), pp. 34-36.

<sup>118</sup> Exhibit 018 – (b)(6); Testimony (Dec. 21, 2023), pp. 6-9.

<sup>119</sup> Exhibit 018 – (b)(7)(C) Testimony (Dec. 21, 2023), pp. 9-13.

<sup>120</sup> Exhibit 018 – (b)(6); Testimony (Dec. 21, 2023), pp. 18-19.

<sup>121</sup> Exhibit 018 – (b)(6); Testimony (Dec. 21, 2023), pp. 21-22.

<sup>122</sup> Exhibit 018 – (b)(6); Testimony (Dec. 21, 2023), pp. 19-25.

<sup>123</sup> Exhibit 018 – (b)(6); Testimony (Dec. 21, 2023), pp. 25-26.

<sup>124</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 167-169.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Both (b)(6); (b)(7)(C) and Respondent Davis denied having engaged in a personal, romantic relationship, and (b)(6); (b)(7)(C) testified that Respondent Davis did not sexually harass her. Therefore, there is insufficient evidence to conclude that Respondent Davis engaged in an inappropriate personal relationship with subordinate employee (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Respondent (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) told her that she had witnessed Respondent Davis bring (b)(6); (b)(7)(C) candy at her desk and saw him under (b)(6); (b)(7)(C) desk trying to hook up her laptop.<sup>125</sup> Respondent (b)(6); (b)(7)(C) also told Respondent (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) showed her text messages in which (b)(6); (b)(7)(C) texted Respondent Davis, "Do you want to have anal sex? You ought to try it . . . you should let me – allow me to suck you dry. . . ."<sup>126</sup> Respondent (b)(6); (b)(7)(C) testified that she was frustrated because (b)(6); (b)(7)(C) was not "pulling her weight" and had to do (b)(6); (b)(7)(C) work for her.<sup>127</sup>

Respondent (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) showed her a "couple of emails" from Respondent Davis, "telling her stuff like I'm [Respondent Davis] big brown sugar."<sup>128</sup> Respondent (b)(6); (b)(7)(C) testified that she warned (b)(6); (b)(7)(C) to be cautious around Respondent Davis since he was the Executive Assistant at that time.<sup>129</sup> According to Respondent (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) began "slacking off" and was disrespectful to her and Respondent (b)(6); (b)(7)(C).<sup>130</sup> Respondent (b)(6); (b)(7)(C) believed that could have been because of (b)(6); (b)(7)(C) relationship with Respondent Davis.<sup>131</sup> Respondent (b)(6); (b)(7)(C) also testified that she saw Respondent Davis bring (b)(6); (b)(7)(C) lunch and saw them leave for the train together a "couple of times."<sup>132</sup>

(b)(6); (b)(7)(C) testified that she never dated Respondent Davis, and never pursued a relationship with him.<sup>133</sup> However, she admitted to "sexting" with Respondent Davis, and she discussed with Respondent (b)(6); (b)(7)(C) a text that Respondent Davis sent her, but she could not recall what the text said.<sup>134</sup> (b)(6); (b)(7)(C) testified that she began "sexting" Respondent Davis in approximately late 2019, and she continued to do so for approximately seven or eight months until mid-2020.<sup>135</sup>

<sup>125</sup> Exhibit 002 – (b)(6); (b)(7)(C) Testimony (Oct. 12, 2023), pp. 79-80.

<sup>126</sup> Exhibit 002 – (b)(6); (b)(7)(C) Testimony (Oct. 12, 2023), pp. 80-82.

<sup>127</sup> Exhibit 002 – (b)(6); (b)(7)(C) Testimony (Oct. 12, 2023), pp. 80-84.

<sup>128</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 34.

<sup>129</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 34.

<sup>130</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), pp. 34-35.

<sup>131</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 35.

<sup>132</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 35.

<sup>133</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 21, 25.

<sup>134</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 27-28.

<sup>135</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 30-31, 33-34, 41.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) did not recall if she messaged Respondent Davis that she wanted to “suck him dry,” but testified that, “when you’re sexting, you’re liable to say anything . . . so, no doubt, I probably did.”<sup>136</sup> When asked if she felt pressed to “sext” with Respondent Davis on account of his position of authority, (b)(6); (b)(7)(C) denied ever feeling pressured and even welcomed Respondent Davis’ messages.<sup>137</sup> She stated further that there was no “physical” relationship between them, and he never promised her anything or spent more than \$3.00 on her when he bought her two candy bars.<sup>138</sup>

(b)(6); (b)(7)(C) said that she never felt sexually harassed by Respondent Davis: “At no time, not at all. What we did might be inappropriate to some people, but like I said, I enjoyed myself.”<sup>139</sup> She told OAWP that she did not think “sexting” with Respondent Davis was inappropriate because she claims that Respondent (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) at the time, encouraged (b)(6); (b)(7)(C) to have a personal relationship with Respondent Davis.<sup>140</sup> Additionally, rather than advising (b)(6); (b)(7)(C) not to message Respondent Davis, she said that Respondent (b)(6); (b)(7)(C) would inquire with interest about her correspondence with him.<sup>141</sup>

When interviewed by OAWP, Respondent Davis said that after an internal realignment, he became (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) supervisor in April 2023, but prior to that, (b)(6); (b)(7)(C) did not report to him, nor did he otherwise fall in her chain of command.<sup>142</sup> Respondent Davis testified that he “looked at [the relationship] as professional,” but explained that (b)(6); (b)(7)(C) “pursued a personal relationship.”<sup>143</sup>

Respondent Davis explained that shortly after her arrival at ORMDI in 2019, (b)(6); (b)(7)(C) came to the front office frequently to speak with him and Respondent Johnson, and then she started making comments about “hooking up” with Respondent Davis.<sup>144</sup> Respondent Davis stated, “[s]he was quite explicit on things she could do to me, things she could do for me.”<sup>145</sup> Respondent Davis testified that whenever he crossed paths with (b)(6); (b)(7)(C) she would say something flirtatious.<sup>146</sup> He recalled an incident where he and (b)(6); (b)(7)(C) were at a metro stop, and (b)(6); (b)(7)(C) told him if he stayed on the train he could go home with her and could

<sup>136</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 30.

<sup>137</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 38.

<sup>138</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 38-39.

<sup>139</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 44.

<sup>140</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 44-47.

<sup>141</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 45-47.

<sup>142</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 10-11.

<sup>143</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 11.

<sup>144</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 139-141.

<sup>145</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 139-141.

<sup>146</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 142.

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## OAWP Report of Investigation 23-WashingtonDC-22984

"see me bend over and touch her toes."<sup>147</sup> He also admitted to giving (b)(6); (b)(7)(C) the nickname "Foxy (b)(6); (b)(7)(C)"<sup>148</sup>

Respondent Davis never reported (b)(6); (b)(7)(C) behavior because he believed he could handle it and "she'd eventually go away."<sup>149</sup> He told OAWP that the last time (b)(6); (b)(7)(C) said anything sexual or romantic to him was in 2021, before she was in his chain of command.<sup>150</sup> Respondent Davis did not dispute that, prior to 2021, he also sent (b)(6); (b)(7)(C) texts of a sexual nature:

Back when it all started, when she would send me texts, I would reply. I mean, it's a game thing. But then when it got to the point where she was aggressive toward actually making contact, that's when I knew it had gone too far, and that's when I shut down. That's when I stopped responding. . . But I do not deny that I did respond to her text messages with flirtatious comments of a sexual nature.<sup>151</sup>

Respondent Davis confirmed that (b)(6); (b)(7)(C) told him she wanted to "suck him dry," and that she started a conversation with him about anal sex.<sup>152</sup> Respondent Davis testified he told (b)(6); (b)(7)(C) "[n]o we don't do that" and then told her "we're not going to do sex at all."<sup>153</sup> Respondent Davis denied reports by witnesses that he had slapped (b)(6); (b)(7)(C) on the buttocks near a photocopier and denied extending any work-related favors to her.<sup>154</sup>

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Both Respondent Davis and (b)(6); (b)(7)(C) admitted to flirtatious behavior and "sexting" from late 2019 through 2020 or 2021.<sup>155</sup> During this period, Respondent Davis did not directly supervise (b)(6); (b)(7)(C) or otherwise fall in her chain of command; however, he held a position of authority within ORMDI. Even if the messages were consensual and exchanged on private cell phones, it was not appropriate for Respondent Davis, as a leader in the organization, to have engaged in or encouraged

<sup>147</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 139-140.

<sup>148</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 158.

<sup>149</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 151.

<sup>150</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 151-152.

<sup>151</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 152-154.

<sup>152</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 154, 166-167.

<sup>153</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 166-167.

<sup>154</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 158-159, 163.

<sup>155</sup> (b)(6); (b)(7)(C) testified that she stopped "sexting" in 2020, while Respondent Davis recalls 2021 as the last time (b)(6); (b)(7)(C) said anything flirtatious to her. Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 30-31, 33-34, 41; Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 151-152.

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## OAWP Report of Investigation 23-WashingtonDC-22984

such behavior from a subordinate employee, and there is evidence that some of the sexting occurred during their normal duty hours. This misconduct negatively affected the work environment and damaged the reputation of the organization, as it was known by other employees that they were sexting each other. Respondent Johnson confirmed sexting with a subordinate employee was inappropriate and was contrary to his expectations for his managers.<sup>156</sup> Therefore, OAWP concludes that Respondent Davis engaged in misconduct by responding to, engaging in, and encouraging messages of an explicit sexual nature from an employee subordinate to him in the ORMDI organizational structure.<sup>157</sup>

OAWP substantiated the allegation that Respondent Davis engaged in an inappropriate personal relationship with a subordinate employee, (b)(6); (b)(7)(C)

*Respondent Davis Uses Inappropriate/Unprofessional Language in the Workplace*

While several witnesses told OAWP that they never heard Respondent Davis use profanity in the workplace, others testified that they either heard Respondent Davis use profanity or heard from others that he had used profane language in their presence. For example, Respondent (b)(6); testified that Respondent Davis used profane language in meetings, such as “motherfucker,” “bitch,” and “to get our asses together,” and that Respondent Johnson did nothing to stop it.<sup>158</sup> She also told OAWP that a week before her testimony, she attended a meeting in which Respondent Davis stated, “your ass is going to have to deal with me.”<sup>159</sup> According to Respondent (b)(6); Respondent Davis told (b)(6); “I brought you over here. You motherfucker, bitch . . . you mean to tell me you don’t want to have . . . a relationship with me.”<sup>160</sup> (b)(6); denied that Respondent Davis bullied her or called her a “bitch.”<sup>161</sup>

When asked if there was a profanity incident involving Respondent Davis, Respondent Johnson testified that he did not recall one.<sup>162</sup> Respondent Johnson said that “if someone came to me and said, [Respondent Davis] is cursing, using profanity, I would have told [Respondent Davis] that.”<sup>163</sup> He did admit, however, that he had to remind Respondent Davis that “you’re not in the military.”<sup>164</sup>

<sup>156</sup> Exhibit 016 – H. Johnson Testimony (Jan. 22, 2024), pp. 54-55.

<sup>157</sup> See Harris, 2016 MSPB LEXIS at \*9-12 (nonprecedential) (finding that it was “highly inappropriate for a manager to engage in sexual banter with a subordinate” where text messages referred to the subordinate as “baby” and “boo”).

<sup>158</sup> Exhibit 021 – (b)(6); Testimony (Nov. 01, 2023), pp. 56-58.

<sup>159</sup> Exhibit 021 – (b)(7)(C) Testimony (Nov. 01, 2023), pp. 57-58.

<sup>160</sup> Exhibit 022 – Testimony (Dec. 21, 2023), p. 17.

<sup>161</sup> Exhibit 018 – (b)(6); Testimony (Dec. 21, 2023), p. 15.

<sup>162</sup> Exhibit 023 – (b)(6); Testimony (Dec. 19, 2023), pp. 47-48.

<sup>163</sup> Exhibit 023 – (b)(7)(C) Testimony (Dec. 19, 2023), p. 113.

<sup>164</sup> Exhibit 023 – Testimony (Dec. 19, 2023), p. 113.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) testified that around February 2020, Respondent (b)(6); told her that Respondent Davis cursed at her. Respondent (b)(6); later told (b)(6); (b)(6); that Respondent Davis apologized to her.<sup>165</sup> Respondent (b)(6); testified that Respondent Davis “curses constantly in meetings” and that he once said “son of a bitch.”<sup>166</sup> During a discussion with Respondent Davis around the end of 2019, Respondent (b)(6); testified that he told her, “I don’t need you, (b)(6) to tell me how to run my fucking job.”<sup>167</sup> During a town hall in October 2023, Respondent (b)(6); stated that Respondent Davis told employees that if they did not submit their travel requests on time “your asses are mine.”<sup>168</sup>

Respondent Davis denied using the terms “fuck” or “bitch” in meetings or in front of coworkers, but admitted that he would have more likely said, “son of a bitch.”<sup>169</sup> He admitted that he likely used phrases such as “their asses are mine,” “get your asses together,” “your ass is going to have to deal with me,” or “I’m going to have a case of the ass.”<sup>170</sup> Respondent Davis testified that he can see how some of his statements may be construed as bullying tactics, but it was not his intention to bully.<sup>171</sup> Rather, he testified that using such statements was part of his leadership style to motivate someone to get something done, as he did in the military.<sup>172</sup>

Respondent Davis stated that if he did use profanity, it was not directed at any one person: “when I would occasionally use profanity, it was never directed at anyone. It was to emphasize the importance or the significance of what we had done or failed to do. . . . it was never to degrade or attack anyone.”<sup>173</sup> Additionally, he testified that no employees informed him that they were offended by his use of profanity.<sup>174</sup>

In addition to using profanity and unprofessional language, in text messages sent to (b)(6); Respondent Davis spoke disparagingly of ORMDI colleagues. For example, on October 28, 2022, Respondent Davis texted: “I have gotten use [sic] to covering the entire front office. Harvey [Johnson] has limited knowledge on how to run a [sic] organization.”<sup>175</sup> On December 9, 2022, Respondent Davis texted: “Your girl really needs to be escorted to a padded room for an extended stay - (b)(6);”<sup>176</sup>

<sup>165</sup> Exhibit 017 (b)(6); Testimony (Dec. 21, 2023), pp. 72-73.

<sup>166</sup> Exhibit 020 (b)(6); Testimony (Nov. 07, 2023), p. 15.

<sup>167</sup> Exhibit 020 (b)(6); Testimony (Nov. 07, 2023), pp. 20-21.

<sup>168</sup> Exhibit 020 (b)(6); Testimony (Nov. 07, 2023), p. 19.

<sup>169</sup> Exhibit 009 (b)(6); Testimony (Dec. 22, 2023), pp. 110-111, 126.

<sup>170</sup> Exhibit 009 (b)(7) Testimony (Dec. 22, 2023), pp. 111-112, 120-122.

<sup>171</sup> Exhibit 009 (C) Testimony (Dec. 22, 2023), pp. 122-124.

<sup>172</sup> Exhibit 009 (C) Testimony (Dec. 22, 2023), p. 127.

<sup>173</sup> Exhibit 009 (C) Testimony (Dec. 22, 2023), p. 111.

<sup>174</sup> Exhibit 009 (C) Testimony (Dec. 22, 2023), p. 111.

<sup>175</sup> Exhibit 011 (b)(6); Texts, p. 6.

<sup>176</sup> Exhibit 011 (b)(7)(C) Texts, p. 7.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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OAWP concluded that Respondent Davis engaged in misconduct by using inappropriate, unprofessional, and profane language in the workplace. Despite Respondent Davis' testimony that he used profanity in the workplace as a motivational tool and that it was never directed at any one person specifically, the language he admitted to using is both unprofessional and unbecoming of an individual in a position of authority.<sup>177</sup> Respondent Davis' profanity also negatively affected the work environment as multiple witnesses recalled his profanity as inappropriate.

OAWP substantiated that Davis used inappropriate/unprofessional language in the workplace.

*Respondent Davis Was Aware That Respondent Richardson Engaged In Inappropriate Conduct Of A Sexual Nature And Failed To Initiate An Investigation*

Although testimony is inconsistent, the totality of the evidence shows that Respondent (b)(6); (b)(7)(C) likely told Respondent (b)(6); (b)(7)(C) that Respondent Richardson was harassing (b)(6); (b)(7)(C) around the summer of 2022.<sup>178</sup> Specifically, (b)(6); (b)(7)(C) testified that she informed Respondent (b)(6); (b)(7)(C) about Respondent Richardson's behavior when they returned from a work trip to (b)(6); (b)(7)(C)<sup>179</sup> but (b)(6); (b)(7)(C) incorrectly testified that the meeting in (b)(6); (b)(7)(C) occurred in March or April of 2023.<sup>180</sup> Both Respondents Richardson and (b)(6); (b)(7)(C) recalled the (b)(6); (b)(7)(C) meeting for (b)(6); (b)(7)(C) took place in (b)(6); (b)(7)(C)<sup>181</sup> (b)(6); (b)(7)(C) further testified Respondent (b)(6); (b)(7)(C) said she would talk to Respondent (b)(6); (b)(7)(C) and shortly thereafter, in July 2022, Respondent (b)(6); (b)(7)(C) verbally instructed Respondent Richardson to have no contact with (b)(6); (b)(7)(C) since (b)(6); (b)(7)(C) did not want to pursue more serious action at that time.<sup>182</sup> Respondent (b)(6); (b)(7)(C) also asserted via email that she had contacted ORMDI's HPP office around October 2022 regarding Respondent Richardson's alleged harassment of (b)(6); (b)(7)(C)<sup>183</sup> When questioned why she submitted

<sup>177</sup> *Hall v. Dep't of Agriculture*, 2020 MSPB LEXIS 2981, \*22 (Sept. 30, 2020) (nonprecedential) (Profanity in the workplace constitutes inappropriate and unprofessional conduct).

<sup>178</sup> *Exhibit 008* – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 39-41; *Exhibit 020* – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 84.

<sup>179</sup> *Exhibit 008* – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 36-40.

<sup>180</sup> *Exhibit 008* – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 38-39.

<sup>181</sup> *Exhibit 024* – Richardson Testimony (Dec. 27, 2023), pp. 32, 43, 53; *Exhibit 020* – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 44.

<sup>182</sup> *Exhibit 008* – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 39-41; *Exhibit 020* – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 84; *Exhibit 025* – Email – Reassignment for Richardson 03022023, pp. 3, 6.

<sup>183</sup> *Exhibit 026* – Email – FW Documentation - Sexual Harassment Inappropriate Behavior of (b)(6); (b)(7)(C) toward (b)(6); (b)(7)(C) 07272023.

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## OAWP Report of Investigation 23-WashingtonDC-22984

the allegations to ORMDI rather than USPS, Respondent (b)(6); (b)(7)(C) she was unaware until “months later” that ORMDI employees could file a complaint with USPS.<sup>184</sup> ORMDI entered into an Inter-Agency Agreement with USPS in September 2020,<sup>185</sup> and was in the third option year in late 2023 when ORMDI and USPS updated the agreement.<sup>186</sup>

Respondent (b)(6); explained that she brought the matter to Respondent Davis rather than (b)(6); (b)(7)(C) Respondent Johnson, because she already had her own complaint pending against Respondent Johnson at the time.<sup>187</sup> Furthermore, Respondent (b)(6); believed that personally conducting the Factfinding would be a conflict of interest since she (b)(6); Respondent Richardson and was (b)(6); (b)(6); supervisor.<sup>188</sup> When pressed for a timeframe, (b)(6); (b)(6); (b)(7)(C) believed she confided in Respondent Davis about Respondent (b)(6); (b)(7)(C) sometime in October/November 2022.<sup>189</sup> Notably, in a October 9, 2022, text message between Respondent Davis and (b)(6); Respondent Davis referred to “the info you shared on [Richardson],” then stated Respondent Richardson had a vendetta against (b)(6); for his rejected advances.<sup>190</sup> (b)(6); stated that Respondent (b)(6); later informed (b)(6); he would “take care of it” and that Respondent Johnson did not have the “balls” to do so.<sup>191</sup>

On February 3, 2023, (b)(6); (b)(7)(C) informed Respondents (b)(6); and (b)(6); (b)(7)(C) via email that Respondent Richardson had contacted (b)(6); by email once in December 2022 and twice in January 2023.<sup>192</sup> The same day, Respondent (b)(6); emailed Respondent Richardson to remind him of the previous instruction to have no communication with (b)(6); and to delete (b)(6); personal information.<sup>193</sup> On February 27, 2023, Respondent (b)(6); talked to Respondent Davis about the allegations against Respondent Richardson.<sup>194</sup> Respondent (b)(6); then emailed Respondent Davis on March 1, 2023, with more specifics about the alleged harassment.<sup>195</sup> In his response the following day, Respondent Davis told Respondent (b)(6); that the “case is pretty clear” and that “[t]he claims from the victim along with the predatory electronic

<sup>184</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 87-88.

<sup>185</sup> Exhibit 027 – Inter-Agency Agreement ORMDI-USPS (Sept. 2020).

<sup>186</sup> Exhibit 028 – Email – Updates to USPS Inter-Agency Agreement 11282023.

<sup>187</sup> Exhibit 020 – (b)(6); testimony (Nov. 07, 2023), p. 85.

<sup>188</sup> Exhibit 020 – (b)(6); testimony (Nov. 07, 2023), pp. 88-89.

<sup>189</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 43-44, 49.

<sup>190</sup> Exhibit 011 – (b)(6); Texts (Received Jan. 18, 2024), p. 4.

<sup>191</sup> Exhibit 008 – (b)(7)(C) Testimony (Nov. 06, 2023), pp. 43-44.

<sup>192</sup> Exhibit 029 – Email – (b)(6); to (b)(6); 02032023, pp.1-2; Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 84-85.

<sup>193</sup> Exhibit 025 – Email – Reassignment for (b)(6); 03022023, pp. 6-7.

<sup>194</sup> Exhibit 025 – Email – Reassignment for (b)(6); 03022023, p. 3.

<sup>195</sup> Exhibit 025 – Email – Reassignment for (b)(6); 03022023, p. 3.

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## OAWP Report of Investigation 23-WashingtonDC-22984

messages should be sufficient to present [Respondent Richardson] with the option of resignation or retirement in lieu of removal.”<sup>196</sup>

Respondent Davis testified he learned about Respondent Richardson allegedly harassing (b)(6); from Respondent (b)(6); around January 2023 when she sought to detail Respondent Richardson to Respondent Davis’ office.<sup>197</sup> Respondent Davis believed (b)(6); told him about Respondent Richardson “hounding” her with frequent communications around January or February 2023.<sup>198</sup> Respondent Davis stated (b)(6); seemed “not bothered at all” about what happened between her and Respondent Richardson, instead he recalled (b)(6); thought it was “ridiculous” and “a bit much.”<sup>199</sup> Respondent Davis also testified (b)(6); did not seem fearful of Respondent Richardson nor did she use the term harassment to describe her allegations.<sup>200</sup> Regardless, Respondent Davis told Respondent (b)(6); to move Respondent Richardson outside of ORMDI while completing a Factfinding because if he remained in ORMDI, even on a detail under Respondent Davis, “what’s to say he can’t continue to do the harassment from there?”<sup>201</sup> Respondent Davis testified that he informed (b)(6); that Respondent (b)(6); would do a Factfinding and once completed, appropriate action would be taken.<sup>202</sup> Respondent Davis testified he did not feel he should have initiated an investigation when (b)(6); confided in him because Respondent (b)(6); (b)(6); supervisor, was already taking appropriate action.<sup>203</sup>

In April 2023, Respondent Davis began to directly supervise Respondent (b)(6); and her subordinates. Respondent Davis knew that a no contact order had been issued but was not sure about the results of the Factfinding.<sup>204</sup> At that time, Respondent Davis asked Respondent (b)(6); about the sexual harassment allegation between Respondent Richardson and (b)(6); and if it had been documented, to which Respondent (b)(6); said, “no.”<sup>205</sup> Respondent Davis expressed confusion and frustration in his testimony over Respondent (b)(6); failure to document the allegations while she was also requesting Respondent Richardson’s reassignment because of the allegations.<sup>206</sup> Respondent Davis indicated that when Respondent (b)(6); told him about Respondent

<sup>196</sup> Exhibit 025 – Email – Reassignment for (b)(6); 03022023, pp. 2-3.

<sup>197</sup> Exhibit 009 – (b)(6); Testimony (Dec. 22, 2023), p. 53.

<sup>198</sup> Exhibit 009 – (b)(6); Testimony (Dec. 22, 2023), p. 54.

<sup>199</sup> Exhibit 009 – (b)(6); Testimony (Dec. 22, 2023), pp. 209-210.

<sup>200</sup> Exhibit 009 – (b)(7) Testimony (Dec. 22, 2023), p. 210.

<sup>201</sup> Exhibit 009 – (C) Testimony (Dec. 22, 2023), pp. 53-54.

<sup>202</sup> Exhibit 009 – (C) Testimony (Dec. 22, 2023), pp. 54-55.

<sup>203</sup> Exhibit 009 – (C) Testimony (Dec. 22, 2023), p. 55.

<sup>204</sup> Exhibit 009 – (C) Testimony (Dec. 22, 2023), pp. 208-209.

<sup>205</sup> Exhibit 009 – (C) Testimony (Dec. 22, 2023), p. 56.

<sup>206</sup> Exhibit 009 – (C) Testimony (Dec. 22, 2023), pp. 56-57, 208-209; Exhibit 025 – Email – Reassignment for (b)(6); 03022023, p. 2.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Richardson in February 2023, he was “convinced that (b)(6) had done the [Factfinding]” and “everything was working.”<sup>207</sup>

On July 27, 2023, Respondent (b)(6); forwarded<sup>208</sup> to Respondent Davis several documents about Respondent Richardson’s “inappropriate interaction with” (b)(6); (b)(7)(C) including: Responder (b)(6); (b)(7)(C) EEO Investigative Affidavit;<sup>209</sup> six screen shots of Teams messages from Respondent Richardson to (b)(6); (b)(7)(C) a statement from (b)(6); (b)(7)(C) related to the alleged harassment;<sup>211</sup> the February 3, 2023, email from (b)(6); (b)(7)(C) to Respondents (b)(6); and (b)(6); memorializing Respondent Richardson’s violation of the no contact order;<sup>212</sup> a supplemental statement from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and the March 2023 email exchange between Respondents (b)(6); and Davis in which they discuss the allegations (b)(6); (b)(7)(C) raised against Respondent Richardson.<sup>214</sup> When asked what he did in response to Respondent (b)(6); July 27, (b)(6); Respondent Davis testified that he “never got to it.”

Well, she sent it to me for me to do the documentation, but at the time, I just accepted it and I moved on. I mean, I was going to get back to it and address it. In fact, I did not have time to do the coaching I wanted to do then. I was going to explain how I would assist her in doing this. And the point I was going to make is okay, as the rater, this is a direct report to you, you’ve got to document it, and you’ve got to have a conversation with him. . . It was not an oversight, it was just that when I was managing multiple projects, I never got to it. I mean, it was on my to-do list, I just never got to it.<sup>215</sup>

Respondent Davis did not know whether Respondent Richardson had received any disciplinary action for his interactions with (b)(6); (b)(7)(C) <sup>216</sup>

\* \* \*

OAWP substantiated that Respondent Davis failed to take prompt and appropriate action in April 2023 when the VBA EEO Liaison Office was realigned under him, and he learned that Respondent (b)(6); (b)(7)(C) still had not initiated a Factfinding into the

<sup>207</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 208-209.

<sup>208</sup> Exhibit 026 – Email - FW Documentation - Sexual Harassment Inappropriate Behavior of (b)(6) toward (b)(6) 07272023; Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 57.

<sup>209</sup> Exhibit 030 – (b)(6); (b)(7)(C) Investigative Affidavit.

<sup>210</sup> Exhibit 031 – Combined Screenshots of Richardson Teams Chatting (b)(6); (b)(7)(C)

<sup>211</sup> Exhibit 032 – (b)(6); (b)(7)(C) Harassment Statement.

<sup>212</sup> Exhibit 029 – Email - (b)(6); to (b)(6); 02032023.

<sup>213</sup> Exhibit 033 – (b)(6); (b)(7)(C) Supplemental Statement.

<sup>214</sup> Exhibit 025 – Email – Reassignment for Richardson 03022023.

<sup>215</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 61-63.

<sup>216</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 63-64.

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## OAWP Report of Investigation 23-WashingtonDC-22984

sexual harassment allegations against Respondent Richardson. Respondent Davis admitted that as of the date of his interview with OAWP on December 22, 2023, apart from following up with Respondent (b)(6); in April 2023 about the status of her Factfinding and subsequent verbal counseling with her when he found out that she had not done a Factfinding, he still had not taken any action on the allegations.<sup>217</sup>

VA policy requires VA administrators and supervisors to: "Immediately, but no later than five business days from the receipt of the complaint, address any allegations of harassment. Addressing allegations can include... conducting [a] factfinding... [or] inquiry." <sup>218</sup> Respondent Davis had an obligation to ensure that Respondent (b)(6);, his subordinate employee, followed VA policy by promptly and effectively addressing harassment allegations.<sup>219</sup> After learning that Respondent (b)(6); had violated her obligations under VA policy, Respondent Davis should have taken measures to ensure that a Factfinding was promptly convened and completed. Accordingly, OAWP substantiates that Respondent Davis failed to ensure prompt and appropriate action when he learned that no investigation into the sexual harassment allegations against Respondent Richardson had been completed, and he failed to take immediate action to correct this violation of VA policy.<sup>220</sup>

Respondent Davis Forwarded and Blind Copied Emails to Subordinate Employees and Outside Entities Who Did Not Have a Need to Know

OAWP investigated allegations that Respondent Davis blind copied ORMDI employees on emails for which they did not have a need to know. For example, Respondent (b)(6); testified that Respondent Davis blind copied others on a "horrible" email regarding a reprimand an ORMDI employee received: "This boosted [Respondent Davis'] ego, you know, where he just would really . . . tear somebody apart . . ." <sup>221</sup> Respondent (b)(6); also said that Respondent Davis sent her an email "attacking" Respondent Duncan.<sup>222</sup>

The "horrible" email Respondent (b)(6); referenced was one Respondent Davis sent to his subordinate, (b)(6); on January 27, 2023.<sup>223</sup> (b)(6);, former (b)(6); (b)(7)(C) had written an email

<sup>217</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 56-57, 61-63.

<sup>218</sup> Exhibit 007b – VA Handbook 5979, Harassment Prevention Program Procedures, ¶ 4(f)(10), p. 8 (March 21, 2022).

<sup>219</sup> Exhibit 007a – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 3.g.(2), (4).

<sup>220</sup> OAWP makes a similar finding against Respondent (b)(6); below, for her failure to timely act.

<sup>221</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 39-40; Exhibit 034 – Email – Davis to Henson 01272023.

<sup>222</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 40; Exhibit 035 – Davis Bcc to (b)(6); RE- Duncan 06122023.

<sup>223</sup> Exhibit 034 – Email – Davis to (b)(6); 01272023.

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## OAWP Report of Investigation 23-WashingtonDC-22984

to Respondent (b)(6);, copying Respondent Davis, requesting an increase to his office's monthly credit card limit.<sup>224</sup> Respondent Davis replied, blind copying 12 people, and began the message with, "Really (b)(6)?" before chastising (b)(6); for "jump[ing] the chain and go[ing] directly to [Respondent (b)(6);] with a request that was dead-on-arrival."<sup>225</sup> Davis continued:

Let's do a quick review of our organizational chart. I am the [Chief Learning Officer]. You are the (b)(6); (b)(7)(C). . . . It should be abundantly clear as to who works for whom. In our work arrangement, you do not have the authority to jump the chain and present any training matter to any of my peers w/o presenting those matters to me first. Please do not cross this line again.<sup>226</sup>

Davis then recounted several instances, unrelated to the credit card issue, in which Respondent (b)(6); had apparently demonstrated that (according to Davis' email) "your requests mean absolutely nothing to her. Your response to [Respondent (b)(6);] after she rejected your funding request was simply pathetic."<sup>227</sup>

(b)(6); (b)(7)(C) concluded by telling (b)(6); (b)(7)(C) "I am stuck between whether it is your ignorance or your arrogance that shows your lack of understanding" of how things work, and "you continue to operate under the misguided illusion that you know better than I do on how these actions work." Apparently referring to prior communications with (b)(5); (b)(6); Respondent Davis closed the email by stating, "Your innuendos regarding retirement mean nothing to me. Whenever you decide to retire, go ahead and retire."<sup>228</sup>

(b)(6); (b)(7)(C) similarly testified that Respondent Davis blind copied her on emails concerning matters about which she did not have a need to know.<sup>229</sup> OAWP's investigation confirmed that Respondent Davis shared with (b)(6); (b)(7)(C) emails concerning an administrative grievance filed by an employee about the employee's performance rating.<sup>230</sup>

<sup>224</sup> Exhibit 034 – Email – Davis to (b)(6); 01272023, p. 1.

<sup>225</sup> Exhibit 034 – Email – Davis to (b)(6); 01272023, p. 1. Respondent Davis blind copied (b)(6); (b)(6); (b)(7)(C)

Respondent (b)(6); testified that Respondent Davis shared this email with her as well. Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 39-40.

<sup>226</sup> Exhibit 034 – Email – Davis to (b)(6); 01272023, p. 1.

<sup>227</sup> Exhibit 034 – Email – Davis to (b)(7)(C) 01272023, p. 1.

<sup>228</sup> Exhibit 034 – Email – Davis to (b)(6); 01272023, p. 1.

<sup>229</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 63-65.

<sup>230</sup> Exhibit 036 – Email (b)(6); (b)(7)(C) email on (b)(6) evals.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent Davis admitted that he shared emails concerning an employee's performance evaluation appeal with other ORMDI employees.<sup>231</sup> He further admitted that it was inappropriate for him to do so:

[T]he appeal process from an employee with the rater should remain between the employee and the rater. . . . And when I shared with others, with all good intentions on showing some training value, I violated what should have happened. . . . It should have stayed between me and [the employee filing the appeal].<sup>232</sup>

Respondent Davis explained that he was attempting to train others on how a performance rating appeals process worked by blind copying them on the email.<sup>233</sup> He denied that he was trying to show off to (b)(6); or display the power of his Executive Assistant (CoS) position by blind copying others, noting people "are aware of the weight I pull."<sup>234</sup>

Respondent Johnson confirmed in testimony that it was inappropriate for Respondent Davis to forward information to individuals who did not have a need to know.<sup>235</sup> Respondent Davis' training records also show he has completed the VA Privacy and Information Security Awareness and Rules of Behavior course on six occasions since 2015.<sup>236</sup>

On November 16, 2022, Respondent Davis forwarded to (b)(6); (b)(7)(C) an email discussing an EEO complaint filed by (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and management's proposed response to a related congressional inquiry.<sup>237</sup> Respondent Davis testified that he shared the email with (b)(6); because she did not understand why a tentative offer extended to her (b)(6); (b)(7)(C) had been withdrawn.<sup>238</sup> He told OAWP that he believed it was appropriate for him to share management's response regarding the EEO complaint with (b)(6); because she was trying to determine if she should pursue legal action against the agency.<sup>239</sup> (b)(6); provided a copy of a text message dated October 4, 2022, in which Respondent Davis advises (b)(6); to tell her (b)(6); (b)(7)(C) to hire an attorney and pursue legal action against ORMDI:

- 231 Exhibit 009 – (b)(6) Testimony (Dec. 22, 2023), pp. 30-31.  
 232 Exhibit 009 – (b)(6) Testimony (Dec. 22, 2023), pp. 31-32.  
 233 Exhibit 009 – (b)(6) Testimony (Dec. 22, 2023), pp. 31-32.  
 234 Exhibit 009 – (b)(7) Testimony (Dec. 22, 2023), pp. 37-38.  
 235 Exhibit 016 – (b)(6); Testimony (Jan. 22, 2024), pp.62-63.  
 236 Exhibit 037 – (b)(6); VA PII Security Awareness and Rules of Behavior training.  
 237 Exhibit 038 – Email (b)(6); (b)(7)(C) non selection.  
 238 Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 258-259.  
 239 Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 259-260.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Go ahead and get an attorney for (b)(6); (b)(7)(C) to file an EEO complaint or lawsuit. The reply that Harvey [Johnson] is sending to the congressional inquiry is that he will request that the VBA Detroit Office withdraw the tentative offer.... We will discuss strategy when we speak later this afternoon.<sup>240</sup>

On October 9, 2022, Respondent Davis sent another message to (b)(6); (b)(7)(C) stating: "Keep me abreast of the progress on our (b)(6); (b)(7)(C) action. I will do my part to expose Harvey [Johnson] and Gary [Richardson] for the snakes that they are."<sup>241</sup>

On March 2, 2023, Respondent Davis blind copied (b)(6); (b)(7)(C) and others on an email to Respondent (b)(6); (b)(7)(C) where he discussed potentially detailing Respondent Richardson in connection with allegations of sexual harassment made against him.<sup>242</sup> Respondent Davis testified that he believed it was appropriate for him to share the email because some of the ORMDI employees he blind copied would have had input on Respondent Richardson's potential detail.<sup>243</sup> Respondent Davis testified that he copied (b)(6); (b)(7)(C) on the email to mentor her on the process of detailing an employee, but admitted that given the private and sensitive nature of the sexual harassment allegations against Respondent Richardson, it had not been appropriate to share the email with her.<sup>244</sup>

On April 4, 2023, Respondent Davis forwarded an email to (b)(6); (b)(7)(C) concerning the realignment of the VBA EEO staff under his Executive Assistant (CoS) position. In the forwarded message, Respondent Davis told (b)(6); (b)(7)(C): "OMG!!! I could not believe (b)(6); (b)(7)(C) reply when Harvey issue[d] his decision on moving the VBA Liaison Team under me. However, I reverted back to . . . my Army Strong mode to put an end to her foolishness. She should know [I] ain't the one!"<sup>245</sup> Respondent Davis testified that because (b)(6); (b)(7)(C) asked the effective date of the VBA realignment, he shared the email with (b)(6); (b)(7)(C) to keep her informed of the process, but he was unsure if (b)(6); (b)(7)(C) had a need to know.<sup>246</sup> He testified that the VBA realignment affected 16 to 19 employees, but he justified sharing the email with (b)(6); (b)(7)(C) because she was the only one who asked him when the realignment would take place.<sup>247</sup>

<sup>240</sup> Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 8.

<sup>241</sup> Exhibit 011 – (b)(6); (b)(7)(C) Texts, p. 12.

<sup>242</sup> Exhibit 039 – Email Davis with Bcc to (b)(6); (b)(7)(C).

<sup>243</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 64-68.

<sup>244</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 67-70.

<sup>245</sup> Exhibit 040 – Email Davis – (b)(6); (b)(7)(C) email on Decision to realign ORMDI, p. 1.

<sup>246</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 23-25.

<sup>247</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), p. 24.

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## OAWP Report of Investigation 23-WashingtonDC-22984

On May 25, 2023, Respondent Davis forwarded an email thread entitled “\*\*\*HOT\*\*\*FW: Presidential Rank Awards - ORMDI/EEO Records Checks” to (b)(6); (b)(7)(C) <sup>248</sup> In the email thread, an employee at the VA Corporate Senior Executive Management Office (CSEMO), followed up with Respondent Davis in connection with a request related to an annual on-site records review at ORMDI. <sup>249</sup> A representative from the U.S. Office of Personnel Management (OPM) had asked CSEMO for assistance because the Defense Counterintelligence and Security Agency (DCSA) was “attempting to schedule some time to review records” in connection with VA nominees for a Presidential Rank Award. <sup>250</sup> The CSEMO employee emailed Respondent Davis, mirroring the OPM language, stating, “DCSA is attempting to schedule some time to review records for the on-site evaluations on June 1st.” <sup>251</sup> Respondent Davis responded to CSEMO and copied the OPM and DCSA representatives, stating:

Correction: I schedule the onsite records review. DCSA has requested that the review starts on June 1st. Just for clarification.

The onsite review will be conducted consistent with the way that it has been conducted for at least the past nine years. Putting HOT on the subject line of your message creates neither an emergency nor an urgency for either me or my team at ORMDI. <sup>252</sup>

In the forwarded email to (b)(6); (b)(7)(C), Respondent Davis states, “Good afternoon (b)(6); (b)(7)(C). This is how I humble other staff sections that do not seem to understand stan processes.” <sup>253</sup>

Respondent Davis testified that he was trying to teach (b)(6); that, “you have to stand your ground. You can’t let people back you down because of where they are and what they’re doing.” <sup>254</sup> While admitting that (b)(6); was not in training for his position, Respondent Davis testified that he copied (b)(6); because she was the only one that came to mind. <sup>255</sup>

<sup>248</sup> Exhibit 041 – Email Davis – (b)(6); humble staff.

<sup>249</sup> Exhibit 041 – Email Davis – (b)(7)(C) humble staff, p. 2.

<sup>250</sup> Exhibit 041 – Email Davis – humble staff, p. 4; see also Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 40-41; Presidential Rank Awards 2023 (opm.gov).

<sup>251</sup> Exhibit 041 – Email (b)(6); (b)(7)(C) humble staff, p. 2.

<sup>252</sup> Note: the OPM employee, not the CSEMO employee, inserted “\*\*\*HOT\*\*\*” into the email subject line. See Exhibit 041 – Email Davis – (b)(6); humble staff, pp. 1, 4.

<sup>253</sup> Exhibit 041 – Email Davis – (b)(6); humble staff, p. 1.

<sup>254</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 39-42.

<sup>255</sup> Exhibit 009 – Davis Testimony (Dec. 22, 2023), pp. 42, 45-48.

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## OAWP Report of Investigation 23-WashingtonDC-22984

OAWP's investigation also uncovered emails Respondent Davis sent to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) U.S. Department of Housing and Urban Development,<sup>256</sup> and (b)(6); (b)(7)(C) U.S. Department of Agriculture,<sup>257</sup> which disclosed the following information:

- Two VA Forms 0235 (Security Check for Candidate Requiring Approval of the Secretary) containing the employees' names, social security numbers, dates of birth, and places of birth, as well as reportable information stemming from an EEO case.<sup>258</sup>
- A summary of facts and Respondent Davis' answers to an employee's mediation request, and a statement that Respondent (b)(6); [redacted] "bought herself a Letter of Counseling."<sup>259</sup>
- Details on training and travel requests, the denial of such requests, and funding concerns, identifying employees by name.<sup>260</sup>
- An unredacted summary of a Final Agency Decision against a VA employee, identified by name.<sup>261</sup>
- The extension of an employee's detail, to include a signed memorandum outlining the scope, duration, and terms of the detail, discussion of the employee's performance standards, and a statement of Respondent Davis' intent to terminate the employee's assignment.<sup>262</sup>

The emails sent to (b)(6); [redacted] and (b)(6); [redacted] appear devoid of any official purpose, as evidenced by Respondent Davis' June 8, 2023, email to (b)(6); [redacted] "[Respondent (b)(6); [redacted] crossed the line and got slapped below," to which (b)(6); [redacted] replied, "This is just what [I] needed this morning! A good laugh!"<sup>263</sup> In apparent acknowledgement of his wrongdoing, Respondent Davis wrote to (b)(6); [redacted] on September 1, 2023, "Get your popcorn ready!!! This is gonna be a good one!!! I would have bcc'd you on this msg, but

<sup>256</sup> (b)(6); [redacted] previously held a position at the U.S. Department of Justice, (b)(6); (b)(7)(C) [redacted] (b)(6); (b)(7)(C) [redacted], during which time he was blind copied on Davis emails. Exhibit 042 – Davis emails sent outside of VA to DOJ, HUD, and USDA ((b)(6); [redacted] and (b)(6); [redacted]), p. 17.

<sup>257</sup> See USDA Rural Development Civil Rights Office Contacts, <https://www.rd.usda.gov/about-rd/offices/civil-rights/civil-rights-contacts> (last visited Jan. 23, 2024).

<sup>258</sup> Exhibit 042 – Davis emails sent outside of VA to DOJ, HUD, and USDA (b)(6); (b)(7)(C) [redacted], pp. 1-13. VA Forms 0235 have been redacted to prevent the disclosure of protected information. OAWP maintains the original, unredacted version.

<sup>259</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C) [redacted] pp. 68-71.

<sup>260</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C) [redacted] pp. 58-61, 64-66, 72-74.

<sup>261</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C) [redacted] pp. 26-27

<sup>262</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C) [redacted] pp. 17-20, 28-33.

<sup>263</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C) [redacted] pp. 52-53.

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## OAWP Report of Investigation 23-WashingtonDC-22984

I am certain that I will have to use the original in the next EEO complaint that will be filed against me.”<sup>264</sup>

\* \* \*

OAWP concluded that Respondent Davis engaged in misconduct by sharing private and sensitive information with Federal employees both inside and outside VA who did not have a need to know.<sup>265</sup> In some instances, Respondent Davis admitted that the sharing of private information, such as information about an appeal of an employee’s performance appraisal or a discussion regarding an employee accused of sexual harassment, was inappropriate. In the other instances, Respondent Davis did not deny blind copying or forwarding emails to other ORMDI employees but attempted to explain that he had done so to train subordinates, or as a convenient way to share information with them.

However, in some of the emails, Respondent Davis appears to be boasting about ridiculing colleagues within and outside of VA. Moreover, Respondent Davis’ testimony that he acted with “good intentions” and a focus on training is in direct conflict with his disrespectful and self-aggrandizing statements presented to third parties in email: “[I] will raise the testosterone level if [Respondent (b)(6); (b)(7)(C)] gets in the way again”;<sup>266</sup> “The employees are whiners and (b)(6) is lacking in leadership”;<sup>267</sup> “If [Respondent (b)(6)] comes back on the same topic, she will get cussed out. She can report it to whomever she wants to”;<sup>268</sup> and “[Employee] realizes that [she] barked up the wrong tree ... She was not accustomed to being dressed down with someone calling her directly. Now she knows.”<sup>269</sup>

In the instances discussed above, Respondent Davis violated the trust and authority placed in him by VA in the ORMDI Executive Assistant (CoS) position. Respondent Davis’ explanation about training subordinates was neither persuasive nor credible.<sup>270</sup> Further, OAWP did not find Respondent Davis’ explanation about blind copying employees on emails regarding the harassment allegations against

<sup>264</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C), p. 68.

<sup>265</sup> Federal courts have examined the disclosure of protected and confidential information and have affirmed that an employer is entitled to safeguard sensitive information. *Niswander v. Cincinnati Insurance Co.*, 529 F.3d 714, 722-723 (6th Cir. 2008); *Kempcke v. Monsanto Co.*, 132 F.3d 442, 445-446 (8th Cir. 1998); *O’Day v. McDonnell Douglas Helicopter Co.*, 79 F.3d 756, 762-763 (9th Cir. 1996).

<sup>266</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C), p. 43.

<sup>267</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C), p. 64.

<sup>268</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C), p. 52.

<sup>269</sup> Exhibit 042 – Davis emails sent outside of VA to HUD and USDA (b)(6); (b)(7)(C), p. 17.

<sup>270</sup> See *Hillen v. Dep’t of the Army*, 35 M.S.P.R. 453, 458 (1987) (factors in determining credibility include the consistency of the witness’ version of events with other evidence and the inherent improbability of the witness’ version of events).

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## OAWP Report of Investigation 23-WashingtonDC-22984

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Respondent Richardson credible. Respondent Davis' misconduct calls into question the confidence VA should have in entrusting Respondent Davis with access to deliberative and/or sensitive and protected information.<sup>271</sup> Such misconduct also degrades the confidence that subordinate employees should have that their leadership can be trusted to maintain confidentiality and share information only on a need-to-know basis.

OAWP substantiated the allegation that Respondent Davis inappropriately blind copied or otherwise shared emails with subordinate employees and to Federal employees outside of the VA who did not have a need to know.

### Respondent Davis Contributed to Creating a Toxic and Hostile Work Environment by Partaking in Bullying and Engaging in Misconduct of a Sexual Nature

OAWP concluded that Respondent Davis' misconduct contributed to a hostile, toxic, and unprofessional work environment. As detailed in this report, Respondent Davis engaged in behavior that was both inappropriate and of the very kind that ORMDI is charged with preventing. Specifically, he:

- Engaged in misconduct of a sexual nature with a subordinate employee, including while he was in her direct chain of command;<sup>272</sup>
- "Sexted" with a different subordinate employee;<sup>273</sup>
- Inappropriately shared, forwarded, and blind-copied subordinate employees and Federal employees outside the VA without a need to know on emails regarding private and sensitive matters;<sup>274</sup>
- Failed to initiate an investigation into sexual harassment allegations against Respondent Richardson;<sup>275</sup>

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<sup>271</sup> Significantly, the Board has sustained misconduct charges even in cases where the employee revealed confidential information to an attorney for purposes of representation. See, e.g., *Smith v. Dep't of Transportation*, 106 M.S.P.R. 59, ¶¶ 42-43, 67-70 (2007); *Heath v. Dep't of Transportation*, 64 M.S.P.R. 638, 651 (1994); *Clark v. EEOC*, 42 M.S.P.R. 467, 471-473, 475-476 (1989).

<sup>272</sup> See Section: *Respondent Davis engaged in Inappropriate Conduct of a Sexual Nature with (b)(6);*, pp. 14-29.

<sup>273</sup> See Section: *Respondent Davis engaged in inappropriate personal relationships with subordinate employees (b)(6) and (b)(6); and (b)(6);* pp. 31-33.

<sup>274</sup> See Section: *Respondent Davis forwarded and blind copied emails to subordinate employees who did not have a need to know*, pp. 40-47.

<sup>275</sup> See Section: *Respondent Davis was aware that Respondent Richardson engaged in inappropriate conduct of a sexual nature and failed to initiate an investigation*, pp. 36-40.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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- Demonstrated a lack of respect in email communications and communicated to, and about, colleagues in a demeaning and condescending manner;<sup>276</sup> and,
- Used profanity and unprofessional language in the workplace.<sup>277</sup>

Inappropriate behavior and misconduct of this nature damages the reputation of ORMDI and VA, and adversely affects the work environment for other employees, even if those employees are not otherwise directly involved in Respondent Davis' actions. Further, Respondent Davis eroded the trust and confidence placed in him by VA to carry out the functions of the Executive Assistant (CoS) position, and the mission of ORMDI. Indeed, his conduct adversely affects the mission of ORMDI, and if Respondent Davis is allowed to stay in his position, ORMDI would struggle to maintain the confidence of VA employees as one of its own leaders has directly violated VA's Harassment Prevention Program.

OAWP substantiated that Respondent Davis' misconduct contributed to, and created, a hostile, toxic, and unprofessional work environment.

### **Respondent Johnson Failed to Supervise Respondent Davis**

It is misconduct for a supervisor to fail to supervise their subordinates. A supervisor can be held responsible for the misconduct of his or her subordinate if the supervisor knew or should have known of the misconduct and acquiesced in it. Respondent Davis' misconduct, as described above, was so wide-ranging, pervasive, and widely known, that Respondent Johnson – as his first line supervisor – either knew or should have that it was contributing to a hostile, toxic, and unprofessional work environment. Despite this, Respondent Johnson continued to rate Respondent Davis' performance highly (in FY 2023, Respondent Johnson gave him an overall rating of Outstanding) and granted him great autonomy and authority in his position as Executive Assistant (CoS), which enabled Respondent Davis to continue his abusive and toxic ways with VA colleagues. For these reasons, OAWP substantiated that Respondent Johnson committed misconduct when he failed to supervise Respondent Davis.

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<sup>276</sup> See Section: *Respondent Davis uses inappropriate/unprofessional language in the workplace*, pp. 34-36; See also Section: *Respondent Davis forwarded and blind copied emails to subordinate employees who did not have a need to know*, pp. 40-47 (currently).

<sup>277</sup> See Section: *Respondent Davis uses inappropriate/unprofessional language in the workplace*, pp. 34-36.

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## OAWP Report of Investigation 23-WashingtonDC-22984

**Allegations that Respondent Richardson Engaged in Inappropriate Conduct of a Sexual Nature with (b)(6); (b)(7)(C)**

(b)(6); told OAWP that her relationship with Respondent Richardson started off as professional and friendly, but changed about a year and a half prior to her November 6, 2023, OAWP interview when he began to make comments that made her uncomfortable.<sup>278</sup> For example, (b)(6); testified that Respondent Richardson would call her on Teams as soon as he saw her availability light turn green at 6:30 a.m., when her tour of duty started.<sup>279</sup> She said that on those occasions, Respondent Richardson did not want to discuss work, rather he would tell her things like, “good morning beautiful . . . How you doing? . . . I just want to hear your voice to get my day started.”<sup>280</sup>

(b)(6); also testified that Respondent Richardson demanded to speak with her when he saw that her Teams availability light had been red for a long time:

I got aggravated with it because sometimes he would send me messages in Teams, [y]our light has been red which, you know, indicates you're in a meeting. . . I want to talk to you. And I tell him, I'm in a meeting or I'm talking to one of my directors or something. I don't care who you're talking to, what (b)(6); wants, is what (b)(6) gets, I want to talk to you now, whoever you're talking to, hang up, I want to talk to you now.<sup>281</sup>

Respondent Richardson also allegedly told (b)(5); that when he could not talk to her, he told her that he looked at her photo on Teams to “get my fix.”<sup>282</sup>

(b)(5); stated that on at least one occasion, she called Respondent Richardson with a work-related question while he was teleworking from home.<sup>283</sup> He allegedly told her that he did not want his wife to hear him speaking to (b)(5); because, “if my wife hear[s] me talking to you, she'll know I want you . . . she'll know I like you.”<sup>284</sup> After providing specific examples of Respondent Richardson's conduct on Teams, (b)(5); said, “So . . . it was always something, you know, sexual.”<sup>285</sup>

<sup>278</sup> Exhibit 008 – (b)(5); Testimony (Nov. 06, 2023), pp. 34-36.

<sup>279</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), p. 34.

<sup>280</sup> Exhibit 008 – (b)(7)(C) Testimony (Nov. 06, 2023), p. 34.

<sup>281</sup> Exhibit 008 – (b)(7)(C) Testimony (Nov. 06, 2023), p. 35; Exhibit 043 – Teams messages provided by (b)(5); dated August 17, 2021, p. 1.

<sup>282</sup> Exhibit 008 – (b)(5); Testimony (Nov. 06, 2023), pp. 35-36.

<sup>283</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 34-35.

<sup>284</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 34-35.

<sup>285</sup> Exhibit 008 – (b)(7)(C) Testimony (Nov. 06, 2023), pp. 34-36.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); said that ORMDI (b)(6); (b)(7)(C) attended a meeting in Washington D.C., which included her and Respondent Richardson.<sup>286</sup> Before this June 2022 meeting, Respondent Richardson allegedly told (b)(6); that his wife had given him “a pass” and that, “he could stay out late that week, he wanted to show me around (b)(6); wanted to spend some one-on-one time with me during lunchtime.”<sup>287</sup> She said that during lunch at the conference, Respondent Richardson moved Respondent (b)(6); personal items out of the way at a table so he could sit next to (b)(6);<sup>288</sup>

After a couple of days had passed in Washington, D.C., Respondent Richardson allegedly asked (b)(6); (b)(7)(C) “why wasn’t I showing him attention, why wasn’t I answering my phone . . . when can we go to dinner.”<sup>289</sup> (b)(6); testified that she told Respondent Richardson, “what the hell I’m [sic] supposed to do with you? You’re a married man,” and that she told him “no” multiple times.<sup>290</sup>

(b)(6); (b)(7)(C) testified that after she returned from the conference in Washington D.C., she reported Respondent Richardson’s conduct to Respondent (b)(6);<sup>291</sup> (b)(6); stated that Respondent (b)(6); told Respondent (b)(6); about it, and that Respondent (b)(6); emailed (b)(6); to let her know that she would take care of the issue and that she had instructed Respondent Richardson not to contact her.<sup>292</sup> (b)(6); testified that at the time, she did not want to file any kind of complaint, however Respondent (b)(6); did – apparently several months later – file a Memorandum for Record with the Harassment Department,<sup>293</sup> but nobody ever contacted (b)(6); to conduct any kind of Factfinding investigation.<sup>294</sup> (b)(6); (b)(7)(C) filed an EEO complaint against Respondent Richardson for sexual harassment on (b)(6); (b)(7)(C)<sup>295</sup>

<sup>286</sup> (b)(6); incorrectly testified that the meeting took place in March or April 2023. She remembered that the meeting occurred before her (b)(6); filed an EEO complaint, which was on October 7, 2022. Respondents Richardson and (b)(6); recall that the meeting took place in June 2022. Exhibit 044 – DAS Internal complaints case status December 2023 redacted; Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 32, 43, 53; Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 44.

<sup>287</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 36-37.

<sup>288</sup> Exhibit 008 – (b)(7)(C) Testimony (Nov. 06, 2023), p. 37.

<sup>289</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), p. 38.

<sup>290</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), p. 38.

<sup>291</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 39-40.

<sup>292</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), p. 40; Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 84.

<sup>293</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 41-44; Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 84-87.

<sup>294</sup> See also pp. 36-40, 59-60; 101-103.

<sup>295</sup> Exhibit 044 – DAS Internal complaints case status December 2023 redacted.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); also stated that Respondent Richardson rescinded a job offer that he had made to her (b)(6); (b)(7)(C) after (b)(6); rejected his advances during the June 2022 meeting in Washington, D.C.<sup>296</sup>

When interviewed by OAWP, Respondent Richardson testified that he has known (b)(6); since August 2018,<sup>297</sup> when they met at a conference, became friends, talked late one night for three to four hours outside a bar, and exchanged phone numbers.<sup>298</sup> He said that because they were friends, he could understand how some of their conversations may be perceived as unprofessional or “a little loose.”<sup>299</sup> Respondent Richardson said that because of their friendship, he and (b)(6); talked about everything and called each other “on duty, off duty, all of the time.”<sup>300</sup> He said their conversations were a mix of professional and personal topics.<sup>301</sup>

Respondent Richardson estimated that he communicated with (b)(6); three times a week prior to 2020-21 when her position was realigned to ORMDI, at which point they may have communicated more frequently as she sought his assistance in the realignment process.<sup>302</sup> Sometime after (b)(6); transitioned to ORMDI in 2021, he said that communications slowed down.<sup>303</sup> Respondent Richardson provided Teams messages between him and (b)(6); from September 2020 to July 2022.<sup>304</sup> Respondent Richardson testified that he has never supervised (b)(6); or was otherwise in her chain of command.<sup>305</sup>

During an August 17, 2021, Teams conversation, Respondent Richardson asked (b)(6); if she was in training, to which (b)(6); stated, “Yes, all this week. I can IM though.”<sup>306</sup> Respondent Richardson replied, “I told you, I don’t want to IM. You know that Gary wants-what-he-wants. Lol.”<sup>307</sup> Respondent Richardson admitted that he could see how the message could be perceived as sexual in nature but denied that that was his intent and instead wanted to speak to her about something that would have taken

<sup>296</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), p. 48.

<sup>297</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 14.

<sup>298</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 13-14.

<sup>299</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 14.

<sup>300</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 14-16.

<sup>301</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 35.

<sup>302</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 33-35.

<sup>303</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 34.

<sup>304</sup> Exhibit 045 – Teams messages provided by Richardson, Sep. 2020-Jul. 2022.

<sup>305</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 15-16.

<sup>306</sup> Exhibit 045 – Teams messages provided by Richardson, Sep. 2020-Jul. 2022, p. 26.

<sup>307</sup> Exhibit 045 – Teams messages provided by Richardson, Sep. 2020-Jul. 2022, p. 26. Respondent Richardson included a “smiley face” emoji at the end of the message.

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## OAWP Report of Investigation 23-WashingtonDC-22984

too long to message about over Teams.<sup>308</sup> He also said that (b)(6); (b)(7)(C) used to say, "Gary wants what he wants," and it was the running joke between them.<sup>309</sup>

Respondent Richardson did not deny that he could have told (b)(6); (b)(7)(C) that he looked at her photo on Teams "to get my fix."<sup>310</sup> He also said they talked about one of her Teams photos and he told her it was a "really nice picture."<sup>311</sup> Respondent Richardson acknowledged that while that comment may seem unprofessional, he said that (b)(6); (b)(7)(C) never told him that his comment crossed a line, or that he needed to stop.<sup>312</sup>

With regard to the June 2022 meeting in Washington D.C., Respondent Richardson denied moving Respondent (b)(6); (b)(7)(C) personal items to sit next to (b)(6); (b)(7)(C) or otherwise going out of his way to sit near her.<sup>313</sup> (b)(6); (b)(7)(C) have said that (b)(6); (b)(7)(C) gave him a "liberty pass," but denied that meant he was at liberty to go out with (b)(6); (b)(7)(C) specifically, but rather to "have a cocktail with whoever wanted to go."<sup>314</sup> Ultimately, Respondent Richardson stated that he did not even go out that evening because he was tired, and went home instead.<sup>315</sup>

Respondent Richardson recalled one occasion he told (b)(6); (b)(7)(C) he wished she could come with him on a trip to San Diego, but denied that the statement was meant to be sexual in nature, and emphasized their relationship as friends:

I think one time I went to San Diego, and I might have said something like, Girl, if I could pack you up, if you could come out there – you know, just talking trash . . . I mean, there are things that could have been perceived, but I never – it never went to the point where it was specifically, "I want this from you," . . . or "I want this type of – I want to be with you" . . . it never . . . morphed into anything like that. . . [T]he crazy thing is we were friends, I mean, I know how many kids (b)(6); (b)(7)(C) has, I know where she lives, I know about – we talked about divorces. Me and (b)(6); (b)(7)(C) had talked about everything. Everything.<sup>316</sup>

<sup>308</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 25-28.

<sup>309</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 27.

<sup>310</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 30.

<sup>311</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 30.

<sup>312</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 30.

<sup>313</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 58-60.

<sup>314</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 61.

<sup>315</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 43-44, 61.

<sup>316</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 18-19.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent Richardson testified that (b)(6); [redacted] accused him of sexual harassment after he made a request in or around July 2022 to rescind a job offer that ORMDI had made to (b)(6); (b)(7)(C) [redacted].<sup>317</sup> He testified that he had recommended hiring the candidate before he learned that the candidate learned was (b)(6); [redacted] relative.<sup>318</sup> Specifically, Respondent Richardson testified that while he knew that (b)(6); [redacted] had referred the candidate, (b)(6); [redacted] never told him about her relationship to the candidate.<sup>319</sup> When he found out about their relationship during the pre-employment suitability screening, he expressed his discomfort with hiring the candidate to Respondent (b)(6); (b)(7)(C) [redacted].<sup>320</sup>

In addition, he testified that (b)(6); (b)(7)(C) [redacted] resume appeared to have been copied and pasted from (b)(6); [redacted] own resume, and that he reported this finding to Respondent (b)(6); (b)(7)(C) [redacted] as part of his overall reluctance to hire a member of (b)(6); (b)(7)(C) [redacted] family.<sup>321</sup>

Respondent Richardson testified that a day after he made it known to Respondents (b)(6); [redacted] and (b)(6); [redacted] that he was uncomfortable hiring (b)(6); [redacted] (b)(6); (b)(7)(C) [redacted] Respondent (b)(6); [redacted] informed him that (b)(6); [redacted] said that he had been sexually harassing her.<sup>322</sup> She also informed him that (b)(6); [redacted] did not want to file a complaint, and that Respondent (b)(6); [redacted] was obligated to conduct a Factfinding investigation, but she was not going to, and told him that she wanted them both to stay away from each other.<sup>323</sup> Respondent Richardson said that Respondent (b)(6); [redacted] issued him a verbal no contact order in July or August 2022.<sup>324</sup>

Respondent Richardson denied ever soliciting or asking anything sexually from (b)(6); (b)(7)(C) [redacted].<sup>325</sup> Respondent Richardson said that (b)(6); [redacted] never told him that she felt uncomfortable with his communications, and had she said something, "It would have stopped right there."<sup>326</sup>

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<sup>317</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 50-52.

<sup>318</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 41-42.

<sup>319</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 41-42.

<sup>320</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 45-46.

<sup>321</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 51. Richardson testified that because he participated in the realignment process, he still had multiple ORMDI employees' resumes, including (b)(6); [redacted]. Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 51. (b)(6); [redacted] told OAWP that she was surprised that Respondent Richardson still had a copy of her resume three years after she joined ORMDI. Exhibit 008 – (b)(6); [redacted] Testimony (Nov. 06, 2023), pp. 47-48.

<sup>322</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 51-52.

<sup>323</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), pp. 52-53.

<sup>324</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 53.

<sup>325</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 15.

<sup>326</sup> Exhibit 024 – Richardson Testimony (Dec. 27, 2023), p. 18.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Some of the messages (b)(6); (b)(7)(C) complains of could have reasonably been perceived by (b)(6); (b)(7)(C) as sexual in nature and unprofessional (i.e., "Gary wants-what-he-wants," looking at her photo to get his "fix," saying that his wife will know that he likes her).

Therefore, OAWP substantiates the allegation that Respondent Richardson's messages constituted misconduct of a sexual nature.<sup>327</sup>

### **Allegations Regarding Management's Failure To Take Prompt And Appropriate Action Upon Being Notified Of Harassment Complaints.**

#### *Respondents Mayo, Johnson, and (b)(6); Failed to Take Prompt and Appropriate Action Upon Being Notified of Sexual Harassment Allegations*

In (b)(6); (b)(7)(C) filed an EEO complaint against Respondent Davis alleging that he sexually harassed her,<sup>328</sup> and she notified Respondent (b)(6); (b)(7)(C) supervisor.<sup>329</sup> (b)(6); testified she did not tell Respondent Johnson about her allegations but understood that all responsible management officials would be contacted as part of the EEO process.<sup>330</sup>

Respondent (b)(6); testified that she informed Respondents Mayo and Johnson of (b)(6); (b)(7)(C) allegations against Respondent Davis and expressed concern about her office staying under Respondent Davis' direction.<sup>331</sup> Specifically, on October 20, 2023, Respondent (b)(6); (b)(7)(C) emailed Respondents Johnson and Mayo reporting several instances in which Respondent Davis had bullied employees on her team since July 2023. Respondent (b)(6); did not mention (b)(6); (b)(7)(C) by name, but she alluded to an employee's recent EEO complaint, which she believed explained the reason for Respondent Davis' recent bullying behavior.<sup>332</sup> According to (b)(6); (b)(7)(C) EEO complaint, (b)(6); (b)(7)(C) had rejected Respondent Davis' advances in July 2023.<sup>333</sup>

<sup>327</sup> OAWP notes that there are open and ongoing EEO matters addressing this and other conduct of a sexual nature referenced in this ROI.

<sup>328</sup> Exhibit 046 – Final VA Intake Form, pp. 3-4. (b)(6); (b)(7)(C) complaint also named Respondents Johnson, Richardson, and (b)(6); as Responding Management Officials. The assigned EEO investigator contacted Respondent Johnson on November 7, 2023, indicating he was a "management official with knowledge of the allegations" and that she would provide details of the allegations in advance of a call with him that was to take place on November 13 or 14, 2023. Exhibit 047 – Response Requested EEO Counseling VA-0705-200C2024\_HJ.

<sup>329</sup> Exhibit 048 – FW Sexual Harassment-Execs & Senior Leadership at ORMDI.

<sup>330</sup> Exhibit 008 – (b)(6); Testimony (Nov. 06, 2023), pp. 60-61.

<sup>331</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 24.

<sup>332</sup> Exhibit 049 – Email FW: (b)(6); (b)(7)(C) – Special Contribution – FY 23\_HR, pp. 3-4.

<sup>333</sup> Exhibit 046 – Final VA Intake Form, pp. 3-4.

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## OAWP Report of Investigation 23-WashingtonDC-22984

The next day, Respondent Johnson replied to all, suggesting he would schedule a meeting with her and Respondents Mayo and Davis to discuss her concerns.<sup>334</sup> Before responding to Respondent (b)(6); (b)(7)(C), Respondent Johnson forwarded Respondent (b)(6); (b)(7)(C) October 20, 2023, email to Respondent Davis.<sup>335</sup> Respondent Johnson testified he forwarded the October 20, 2023, email to Respondent Davis because “I believe people should know what they’re accused of,” and at that stage, it was “about resolution. Is there a way to fix this, mediate, and have all parties agree.”<sup>336</sup> Respondent Johnson stated that he is “always” concerned about whistleblowers, but Respondent (b)(6); (b)(7)(C) October 20, 2023, email did not raise concerns about safety or sexual harassment, so he felt it was appropriate to share with Respondent Davis.<sup>337</sup> OAWP notes that in the final line of (b)(6); (b)(7)(C) October 20, 2023, email she wrote, “I am concerned about [Respondent Davis] erratic behavior and the safety of staff and myself.”<sup>338</sup>

Respondent (b)(5); (b)(7)(C) replied to Respondents Johnson and Mayo on October 23, 2023, that the nature of the disclosures made in (b)(6); (b)(7)(C) EEO complaint was serious and required “a different type of immediate action.”<sup>339</sup> She attached some of Respondent Davis’ “explicit” text messages and described how he sent (b)(5); (b)(7)(C) photos of gutted deer, telling her that hunting keeps him from “going postal,” which Respondent (b)(5); (b)(7)(C) stated could be construed as a threat.<sup>340</sup> Respondent (b)(5); (b)(7)(C) also referenced a prior occasion in which Respondent Davis had threatened to throw an employee out of a window as well as Respondent Davis’ “irate outbursts memorialized in numerous emails.”<sup>341</sup> Respondent (b)(5); (b)(7)(C) requested that Respondent Davis have no contact with her office and indicated she feared for her team’s safety. The same day, Respondent Johnson replied he would discuss it with Respondent Mayo, but he thought OAWP should review the matter.<sup>342</sup> Respondent Johnson testified he did not view the attachments to Respondent (b)(5); (b)(7)(C) October 23, 2023, email.<sup>343</sup>

<sup>334</sup> [Exhibit 049](#) – Email FW: (b)(6); (b)(7)(C) – Special Contribution – FY 23\_HR, pp. 2-3.

<sup>335</sup> [Exhibit 050](#) – Email – Johnson fwd Davis 10212023, pp. 1-2.

<sup>336</sup> [Exhibit 016](#) – H. Johnson Testimony (Jan. 22, 2024), pp. 27, 34.

<sup>337</sup> [Exhibit 016](#) – H. Johnson Testimony (Jan. 22, 2024), p. 34.

<sup>338</sup> [Exhibit 049](#) – Email FW: (b)(6); (b)(7)(C) – Special Contribution – FY 23\_HR, p. 4.

<sup>339</sup> [Exhibit 049](#) – Email FW: (b)(6); (b)(7)(C) – Special Contribution – FY 23\_HR, pp. 1-2.

<sup>340</sup> [Exhibit 051](#) – Email (b)(5); (b)(7)(C) sent to Johnson cc Mayo on 10/23/23 with attachment.

<sup>341</sup> [Exhibit 049](#) – Email FW: (b)(6); (b)(7)(C) – Special Contribution – FY 23\_HR, pp. 1-2. Davis admitted that during a heated argument, he threatened to throw a colleague out of a tenth-floor window, and Johnson was aware of the encounter but did not counsel him for it. See [Exhibit 009](#) – Davis Testimony (Dec. 22, 2023), pp. 115-119. OAWP found no evidence Johnson was aware of the rude emails cited in the initial complaint, and Johnson denied receiving complaints about rude or bullying emails from Davis. [Exhibit 023](#) – H. Johnson Testimony (Dec. 19, 2023), p. 48.

<sup>342</sup> [Exhibit 049](#) – Email FW: (b)(6); (b)(7)(C) – Special Contribution – FY 23\_HR, pp. 1-2.

<sup>343</sup> [Exhibit 016](#) – H. Johnson Testimony (Jan. 22, 2024), p. 53.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent Johnson testified he contacted Respondent Mayo, likely “[t]hat same night,” and recommended referring the matter to OAWP.<sup>344</sup> Respondent Johnson stated he decided to detail Respondent Davis “within” ORMDI because that was an action he had the authority to take.<sup>345</sup> Respondent Johnson testified he believed he called Respondent Davis on Teams and told him not to contact Respondent (b)(5); and her team within one day of receiving Respondent (b)(5); October 23, 2023, email, saying “I don’t wait on stuff like that.”<sup>346</sup> Respondent Johnson stated he also told Respondent Davis that he would assume supervisory and administrative authority over Respondent (b)(5); team from Respondent Davis.<sup>347</sup> Respondent Johnson testified he believed these actions were sufficient because all involved parties worked remotely, so he did not have concerns about employee safety. He stated he also advised Respondent (b)(5); by phone that Respondent Davis would not have administrative or supervisory authority over her or her team.<sup>348</sup> When asked how Respondent Johnson responded to her October 23, 2023, email, Respondent (b)(5); testified that he said (b)(5); “we’ll talk about this . . . when I get back Thursday . . . we’ll discuss this and we’ll discuss also about your – the situation that’s happened.”<sup>349</sup>

Respondent Johnson did not document his order to Respondent Davis not to contact Respondent (b)(5); team or his decision to assume supervisory and administrative authority over Respondent (b)(5); and her team.<sup>350</sup> In addition, he did not consult anyone other than Respondent Mayo regarding how to respond to the allegations that Respondent (b)(5); brought to him.<sup>351</sup>

Respondent Mayo testified he discussed Respondent (b)(5); emails with Respondent Johnson and agreed they should take the matter to OAWP.<sup>352</sup> Respondent Mayo spoke to Gina Grosso, Assistant Secretary for HRA/OSP,<sup>353</sup> and suggested that because Respondent Mayo was named in another, related matter,<sup>354</sup> she should ask OAWP to get involved.<sup>355</sup> Respondent Mayo recalled that Grosso agreed and told him she had contacted OAWP, which Respondent Mayo later confirmed.<sup>356</sup> Grosso testified

<sup>344</sup> Exhibit 023 – H. Johnson Testimony (Dec. 19, 2023), pp. 109-110.

<sup>345</sup> Exhibit 016 – H. Johnson Testimony (Jan. 22, 2024), p. 15.

<sup>346</sup> Exhibit 023 – H. Johnson Testimony (Dec. 19, 2023), pp. 111-113.

<sup>347</sup> Exhibit 016 – H. Johnson Testimony (Jan. 22, 2024), pp. 15-17.

<sup>348</sup> Exhibit 016 – H. Johnson Testimony (Jan. 22, 2024), pp. 18-20.

<sup>349</sup> Exhibit 020 (b)(5); Testimony (Nov. 07, 2023) pp. 25-26.

<sup>350</sup> Exhibit 016 – H. Johnson Testimony (Jan. 22, 2024), p. 18.

<sup>351</sup> Exhibit 016 – H. Johnson Testimony (Jan. 22, 2024), p. 14.

<sup>352</sup> Exhibit 052 – Mayo Testimony (Dec. 18, 2023), p. 35.

<sup>353</sup> Grosso left VA effective December 2, 2023. Exhibit 054 – Grosso Testimony (Jan. 19, 2024), pp. 4, 6.

<sup>354</sup> Exhibit 053 – VA Intake Form (b)(6);, p. 2. In her EEO complaint, (b)(6); alleged Respondent Mayo created a hostile working environment by failing to investigate harassment claims against Respondents Richardson, Johnson, and Davis.

<sup>355</sup> Exhibit 052 – Mayo Testimony (Dec. 18, 2023), p. 40.

<sup>356</sup> Exhibit 052 – Mayo Testimony (Dec. 18, 2023), p. 40.

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## OAWP Report of Investigation 23-WashingtonDC-22984

that she spoke to Respondent Mayo about allegations raised in the September 29, 2023, letter from Chairman Bost regarding Respondent Johnson, and she referred those to OAWP because Respondent Johnson is a senior leader. She did not believe that Respondent Davis was a senior leader under OAWP's jurisdiction.<sup>357</sup> She did not recall Respondent Mayo recusing himself from any matter.<sup>358</sup> Grosso's communication with OAWP was limited to allegations against Respondent Johnson and did not address Respondent (b)(6); (b)(7)(C) allegations regarding Davis.<sup>359</sup>

Regarding the allegations against Respondent Davis, Grosso consulted OGC, which helped convene an Administrative Investigative Board (AIB) to investigate Respondent Davis.<sup>360</sup> Respondent Eskenazi also testified that she, Grosso, and Respondent Duncan met with an OGC attorney on October 26, 2023, and discussed (b)(6); (b)(7)(C) convening an AIB.<sup>361</sup> Respondent Eskenazi recalled having difficulty identifying an appropriate official to conduct the AIB.<sup>362</sup> Grosso testified similarly and stated that finding someone to conduct an investigation "took a little bit time," and "probably should have moved quicker."<sup>363</sup>

Respondent Davis emailed Respondent (b)(6); (b)(7)(C) on November 2, 2023, regarding an overdue performance appraisal.<sup>364</sup> Respondent (b)(6); (b)(7)(C) forwarded Respondent Davis' message to Respondents Johnson and Mayo, reminding them that Respondent Davis should not have any contact with her office and reiterating that she had safety concerns regarding Respondent Davis.<sup>365</sup> Respondent Johnson replied via email that same day, stating, "I've asked Archie not to contact you."<sup>366</sup> However, Respondent Davis testified the first time he "was told to have no contact with ORM [was] once [he] was put on detail" out of ORMDI in mid-November 2023.<sup>367</sup> When OAWP asked Respondent Davis to produce the no contact order, he testified, "I never received any no contact order at any time during this case. I understood and complied with no contact as a condition of being put on detail for this type of case. No one ever presented or sent me a no contact order."<sup>368</sup> Respondent Johnson approved Respondent Davis' detail to the office of the

<sup>357</sup> [Exhibit 054](#) – Grosso Testimony (Jan. 19, 2024), pp. 64, 90-94.

<sup>358</sup> [Exhibit 054](#) – Grosso Testimony (Jan. 19, 2024), p. 96.

<sup>359</sup> [Exhibit 055](#) – Email Grosso to OAWP Johnson Allegations 10202023.

<sup>360</sup> [Exhibit 054](#) – Grosso Testimony (Jan. 19, 2024), pp.90-91.

<sup>361</sup> [Exhibit 056](#) – Eskenazi Testimony (Dec. 13, 2023), pp. 26-30. Respondent Duncan viewed her calendar and testified that she did not attend any meetings with Grosso or an OGC attorney on October 26, 2023. [Exhibit 110](#) – Duncan Testimony (Jan. 23, 2024), pp. 47-51.

<sup>362</sup> [Exhibit 056](#) – Eskenazi Testimony (Dec. 13, 2023), p. 30.

<sup>363</sup> [Exhibit 054](#) – Grosso Testimony (Jan. 19, 2024), p. 68.

<sup>364</sup> [Exhibit 057](#) – Email FW\_ Overdue Performance Appraisals, p. 2.

<sup>365</sup> [Exhibit 057](#) – Email FW\_ Overdue Performance Appraisals, pp. 1-2.

<sup>366</sup> [Exhibit 057](#) – Email FW\_ Overdue Performance Appraisals, p. 1.

<sup>367</sup> [Exhibit 009](#) – Davis Testimony (Dec. 22, 2023), pp. 280-81, 284-285.

<sup>368</sup> [Exhibit 058](#) – Davis Email to OAWP (Jan. 18, 2024).

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OAWP Report of Investigation 23-WashingtonDC-22984

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Deputy Assistant Secretary for Administration on November 13, 2023.<sup>369</sup> When asked why it took until November 13, 2023, to detail Respondent Davis, Grosso testified that “there were so many complaints at once,” and “it took time to figure out who was the grievred.” and “it’s several things on the plate. . . . I don’t have any other great explanation honestly.”<sup>370</sup>

*Respondent Johnson*

OAWP substantiated that Respondent Johnson failed to take prompt and appropriate action when notified of allegations that Respondent Davis was harassing (and potentially threatening) (b)(6); [redacted] and other employees. Respondent (b)(6); [redacted] notified Respondent Johnson of Respondent Davis’ alleged bullying and harassment on October 20, 2023, and Respondent Johnson then forwarded Respondent (b)(6); [redacted] email to Respondent Davis before suggesting to Respondent (b)(6); [redacted] a meeting with Respondent Davis to discuss her concerns. When, on October 23, 2023, Respondent (b)(6); [redacted] explained why meeting with Respondent Davis would not adequately address the matter and provided detailed evidence of the serious nature of Respondent Davis’ alleged sexual harassment of (b)(6); [redacted], as well as Respondent (b)(6); [redacted] concerns for the physical safety of her staff due to perceived threats of physical violence, Respondent Johnson had a duty to “immediately begin to address” the allegations and “[t]ake prompt and appropriate corrective . . . action against personnel who have engaged in harassing conduct.”<sup>371</sup>

As Respondent Davis’ supervisor, Respondent Johnson was required to immediately assess the situation and to address the allegations, which can include “separating the parties, conducting [a] factfinding, . . . or issuing stay away/no contact order.”<sup>372</sup> Management’s goal in promptly addressing harassing behavior in the workplace is to ensure the inappropriate conduct is stopped before it becomes severe and pervasive.<sup>373</sup> In addition, as a management official, Respondent Johnson was required to “protect” Respondent (b)(6); [redacted] and to ensure she was not retaliated against for disclosing allegations of Respondent Davis’ harassment.<sup>374</sup>

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<sup>369</sup> [Exhibit 059](#) – Davis Detail Memorandum (Nov. 13, 2023).

<sup>370</sup> [Exhibit 054](#) – Grosso Testimony (Jan. 19, 2024), p. 75.

<sup>371</sup> [Exhibit 007a](#) – VA Directive 5979, Harassment Prevention Policy, ¶¶ 3.g.(4), (8), p. 6 (December 8, 2020). See also [Exhibit 006](#) – 2023 EEO Policy Statement, p. 9. (To address workplace violence and bullying, “[t]he supervisor’s duty is to intervene and take prompt and effective corrective action to end bullying and prevent workplace violence.”).

<sup>372</sup> [Exhibit 007b](#), VA Handbook 5759, Harassment Prevention Program Procedures, ¶ f. (10), p. 8 (March 21, 2022).

<sup>373</sup> [Exhibit 006](#) – 2023 EEO Policy Statement, p. 2.

<sup>374</sup> [Exhibit 007b](#) – VA Handbook 5979, Harassment Prevention Program Procedures, ¶ 6.a.(5), p. 22 (March 21, 2022).

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OAWP Report of Investigation 23-WashingtonDC-22984

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Respondent Johnson consulted Respondent Mayo, and they decided referring the matter to OAWP was the best course of action. Respondent Johnson did not take any effective steps to prevent future inappropriate conduct or to counsel Respondent Davis, despite having text messages indicating problematic conduct (which Respondent Johnson admits he did not view) and evidence of potential threats to employees' safety. Additionally, Respondent Johnson shared some of Respondent (b)(6); allegations directly with Respondent Davis, an inappropriate action that raised the possibility of Respondent (b)(6); or others being subjected to retaliation. Respondent Johnson's alleged verbal instruction to Respondent Davis not to contact Respondent (b)(6); was insufficient and ineffective given the seriousness of the allegations. Respondent Johnson did not document the instruction in writing and did not underscore the reason for the instruction or reiterate the Agency's commitment to a harassment- and violence-free workplace. Respondent Johnson also failed to put Respondent Davis on notice of possible future consequences for failing to abide by the issued instruction, additional information that would have conveyed the seriousness of the instruction. Similarly, while Respondent Johnson claimed he removed Respondent (b)(6); and her team from Respondent Davis' supervision, he failed to formalize the arrangement in writing, which would have made clear to Respondent (b)(6); team that he took their concerns seriously and conveyed to Respondent Davis that the allegations against him were serious and warranted decisive action. Finally, Johnson's failure to take definitive action instructing Respondent Davis not to contact Respondent (b)(6); and her team created a risk of serious adverse consequences considering the threatened violent conduct attributed to Respondent Davis. Indeed, Respondent Davis subsequently contacted Respondent (b)(6); on November 2, 2023, demonstrating the ineffectiveness of the actions Respondent Johnson claims he took. Additionally, Respondent Davis testified that he did not receive a no-contact order until weeks later, on November 13, 2023, raising questions about whether Respondent Johnson issued any instruction at all to Respondent Davis prior to authorizing the detail.<sup>375</sup> Therefore, OAWP substantiated that Respondent Johnson committed misconduct in failing to properly and promptly address the sexual harassment and other allegations against Respondent Davis.

### Respondent Mayo

Similarly, Respondent Mayo was notified of the serious allegations against Respondent Davis by email on October 20 and October 23, 2023, including Respondent (b)(6); concerns regarding her staff's personal safety. He discussed the matter with Respondent Johnson and Grosso and agreed that referring the matter to OAWP was the appropriate course of action. He indicated he should not be involved further

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<sup>375</sup> Of note, the detail memorandum did not instruct Respondent Davis to refrain from contacting Respondent (b)(6); or anyone in ORMDI. If an instruction was given when the detail was issued, it was oral and therefore suffered from the same shortcomings of the earlier alleged oral instruction. See [Exhibit 059](#) – Davis Detail Memorandum.

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## OAWP Report of Investigation 23-WashingtonDC-22984

because he was named in a separate but related complaint, although he did follow-up to verify that the matter was referred to OAWP. However, given the seriousness of allegations and potential threat to employee safety, Respondent Mayo had a duty to ensure that Respondent Johnson, his subordinate employee, followed VA policy by promptly and effectively addressing harassment and workplace violence allegations.<sup>376</sup> Merely referring the matter to an investigative entity failed to ensure Respondent Johnson addressed Respondent Davis' alleged harassment and threatening behavior and mitigated the immediate threat of potential harm to VA employees.<sup>377</sup> Accordingly, OAWP substantiates that Respondent Mayo failed to ensure prompt and appropriate action was taken when notified of the allegations against Respondent Davis.

Respondent (b)(6);

In addition, during this investigation, OAWP learned that Respondent (b)(6); intentionally failed to take prompt and appropriate action when she first learned of (b)(6); sexual harassment allegations against Respondent Richardson. Like Respondent Davis, Respondent (b)(6); had an obligation under VA Directive 5979 to take prompt and appropriate measures upon learning of the sexual harassment allegations. Her failure to do so<sup>378</sup> prolonged and/or contributed to any hostile work environment experienced by (b)(6); Moreover, she also admitted she told Respondent Richardson that she was obligated to conduct a Factfinding but wasn't going to, and then later failed to comply with a direct order from her supervisor, Respondent Davis, to conduct a Factfinding into the sexual harassment allegations, which again permitted the offending harassment to continue.

## Facts And Analysis (Non-Substantiated Allegations)

### Allegations Regarding Respondent (b)(6);

Respondent Davis Denied Incentive Awards to Employees Under Respondents (b)(6); and (b)(6); (b)(7)(C) Supervision Because (b)(6); Turned Down (b)(6); Sexual Advances.

In an email dated March 2, 2023, Respondent (b)(6); instructed ORMDI managers, including Respondents (b)(6); (b)(7)(C) to submit their FY23 Special Contribution Award (SCA) recommendations through their supervisory leadership to ORMDI HR by no later than August 11, 2023.<sup>379</sup>

<sup>376</sup> Exhibit 007a – VA Directive 5979, Harassment Prevention Policy, ¶¶ 3.g.(2), (4), pp 5-6 (December 8, 2020).

<sup>377</sup> OAWP also notes that OAWP lacks jurisdiction to investigate (b)(5); (b)(6); (b)(7)(C) (without any specific delegation of such by the Secretary) because (b)(5); is not a senior leader as defined by VA Directive 0500.

<sup>378</sup> (b)(5); (b)(6); (b)(7)(C)

<sup>379</sup> Exhibit 060 – SCA email chain, pp. 2-3.

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## OAWP Report of Investigation 23-WashingtonDC-22984

On Friday, August 11, 2023, at 4:41 p.m., Respondent (b)(6); (b)(7)(C) sent an email to ORMDI HR nominating six employees for SCAs and copied Respondents (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) 380 Respondent (b)(6); (b)(7)(C) responded the same day, "Please disregard this action. I have yet to review and provide my endorsement as specified in the instructions from the (b)(6); (b)(7)(C) 381

Respondent (b)(6); (b)(7)(C) recalled that she and Respondent (b)(6); (b)(7)(C) had submitted four SCA nominations directly to HR, which Respondent (b)(6); (b)(7)(C) then canceled because they were not sent to him first. 382 However, she explained that in July, when Respondent (b)(6); (b)(7)(C) relationship with (b)(6); (b)(7)(C) was "mutual," Respondent (b)(6); (b)(7)(C) had "no problem" with Respondent (b)(6); (b)(7)(C) sending two awards directly to HR. 383 Respondent (b)(6); (b)(7)(C) alleged the real reason for Respondent (b)(6); (b)(7)(C) cancellation of the SCA nominations was (b)(6); (b)(7)(C) refusal to "have a relationship with him." 384

Respondent (b)(6); (b)(7)(C) testified that she was permitted to send awards directly to HR when she was aligned under Respondent (b)(6); (b)(7)(C) 385 She stated Respondent (b)(6); (b)(7)(C) was "calm and supportive as long as he thought . . . he could have a relationship with (b)(6); (b)(7)(C) 386 However, once (b)(6); (b)(7)(C) denied his advances, Respondent (b)(6); (b)(7)(C) "started attacking everybody in the office." 387 Respondent (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) became so vindictive that he denied an award for Respondent (b)(6); (b)(7)(C) subordinate, (b)(6); (b)(7)(C) 388 VBA had offered (b)(6); (b)(7)(C) the SCA in recognition of her serving as the (b)(6); (b)(7)(C) for the Regional Benefits Office (RBO) Jackson, in addition to her regular duties. 389 In an email dated October 20, 2023, Respondent (b)(6); (b)(7)(C) outlined that Respondent (b)(6); (b)(7)(C) never conferred with (b)(6); (b)(7)(C) or Respondent (b)(6); (b)(7)(C) prior to denying the award, and that according to leadership at RBO Jackson, Respondent (b)(6); (b)(7)(C) rationale for the disapproval was that "(b)(6); (b)(7)(C) was just doing her job." 390

380 Exhibit 060 – SCA email chain, p. 2.

381 Exhibit 060 – SCA email chain, p. 2.

382 Exhibit 021 – (b)(6); (b)(7)(C) Testimony (Nov. 01, 2023), pp. 35-37.

383 Exhibit 021 – (b)(7)(C) Testimony (Nov. 01, 2023), pp. 36-37.

384 Exhibit 021 – (b)(6); (b)(7)(C) Testimony (Nov. 01, 2023), p. 39; Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), p. 10.

385 Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 32.

386 Exhibit 020 – (b)(7)(C) Testimony (Nov. 07, 2023), pp. 32-33.

387 Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 28.

388 Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), pp. 26-27; Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), pp. 54-55.

389 Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 27; Exhibit 049 – Email – (b)(6); (b)(7)(C) – Special Contribution Award, pp. 4-5.

390 Exhibit 049 – Email – (b)(6); (b)(7)(C) – Special Contribution Award, pp. 4-6; Exhibit 063 – VA Form 4659, (b)(6); (b)(7)(C) Award Recommendation and Approval.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); testified that August 11, 2023, was a “hard deadline” by which time SCA funds had to be either spent or repurposed.<sup>391</sup> He testified that he denied the six SCAs because they were submitted to him at 4:36 p.m. on the day they were due (before forwarding the same information to ORMDI HR at 4:41 p.m.) and he was unable to vet them prior to their submission to ORMDI HR.<sup>392</sup> Respondent (b)(6); recalled that he denied (b)(6); SCA because the funding had already been repurposed at that point.<sup>393</sup>

When asked to respond to the allegation that he denied the awards because (b)(6); refused his sexual advances, Respondent (b)(6); stated, “[t]hat’s part of the conspiracy.”<sup>394</sup> He reiterated that he denied the six SCAs because he received them 30 minutes before they were due, despite the email requesting nominations being sent out over 21 weeks prior.<sup>395</sup> With respect to (b)(6); SCA, Respondent (b)(6); stated that it was submitted well after the deadline, and any funding not dedicated to an SCA was to be repurposed.<sup>396</sup> Respondent (b)(6); testified that his relationship with (b)(6); did not affect how he treated other employees in the office.<sup>397</sup>

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OAWP found insufficient evidence to conclude that Respondent (b)(6); (b)(7)(C) denied the SCAs submitted by (b)(6); (b)(7)(C) in response to (b)(6); (b)(7)(C) rejecting (b)(6); sexual advances.

**Respondent (b)(6); (b)(7)(C) Stated That** (b)(6); (b)(7)(C)  
(b)(6); (b)(7)(C)

Around November 20, 2023, Respondent (b)(6); (b)(7)(C) submitted a Disruptive Behavior Report (DBR) about Respondent (b)(6); (b)(7)(C) with “allegations of inappropriate communication, bullying and/or intimidation, verbal or written threat of physical harm, and sexual harassment.”<sup>398</sup> An investigation of the DBR by (b)(6); (b)(7)(C) was initiated on December 5, 2023, and (b)(6); (b)(7)(C) contacted Respondent (b)(6); (b)(7)(C) the following day.<sup>399</sup>

According to (b)(6); (b)(7)(C) investigative summary, Respondent (b)(5); (b)(6); (b)(7)(C)  
(b)(5); (b)(6); (b)(7)(C)

<sup>391</sup> Exhibit 009 – (b)(6); Testimony (Dec. 22, 2023), pp. 102-103.

<sup>392</sup> Exhibit 009 – (b)(6); Testimony (Dec. 22, 2023), pp. 70-72; Exhibit 060 – SCA email chain, p. 2.

<sup>393</sup> Exhibit 009 – (b)(7)(C) Testimony (Dec. 22, 2023), pp. 104-105, 272.

<sup>394</sup> Exhibit 009 – (b)(7)(C) Testimony (Dec. 22, 2023), pp. 270-271.

<sup>395</sup> Exhibit 009 – (b)(7)(C) Testimony (Dec. 22, 2023), pp. 270-271.

<sup>396</sup> Exhibit 009 – (b)(7)(C) Testimony (Dec. 22, 2023), p. 272.

<sup>397</sup> Exhibit 009 – (b)(7)(C) Testimony (Dec. 22, 2023), p. 272.

<sup>398</sup> Exhibit 064 – Disruptive Behavior Report Case Summary, p. 2.

<sup>399</sup> Exhibit 064 – Disruptive Behavior Report Case Summary, p. 2.

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## OAWP Report of Investigation 23-WashingtonDC-22984

"whistleblower" was and would "handle it" when he gets back.<sup>400</sup> Respondent (b)(6); (b)(7)(C) stated that Respondent (b)(6); (b)(7)(C) knew (b)(6); (b)(7)(C) home address and feared he may retaliate against them both in some way.<sup>401</sup> Respondent (b)(6); (b)(7)(C) testified that she had submitted the DBR out of concern for Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C), even though the underlying claims in the DBR were already being investigated.<sup>402</sup>

When OAWP asked "[d]id anyone actually hear [Respondent (b)(6)] make the comment that he knows who the whistleblower is and will handle it when he gets back," Respondent (b)(6); (b)(7)(C) responded, "It wasn't that direct."<sup>403</sup> Instead, (b)(6); (b)(7)(C) clarified that Respondent (b)(6); (b)(7)(C) said, "I know who did this. I know who did this. This is nothing but [Respondent (b)(6); (b)(7)(C)]. This is nothing but [Respondent (b)(6); (b)(7)(C)]."<sup>404</sup> Respondent (b)(6); (b)(7)(C) testified that (b)(6); (b)(7)(C) also heard Respondent (b)(6); (b)(7)(C) make the statement about handling the "whistleblowers."<sup>405</sup>

When questioned by OAWP, (b)(6); (b)(7)(C) denied hearing Respondent (b)(6); (b)(7)(C) make a comment, directly or indirectly, that Respondent (b)(6); (b)(7)(C) knew who the "whistleblowers" were and he would handle it when he gets back.<sup>406</sup> Ultimately, (b)(6); (b)(7)(C) expressed confusion as to why his name was brought up into these allegations and reiterated that he and Respondent (b)(6); (b)(7)(C) did not have the type of relationship that would lead to Respondent (b)(6); (b)(7)(C) making such comments to (b)(6); (b)(7)(C).<sup>407</sup>

(b)(5); (b)(6); (b)(7)(C)

400 (b)(5); (b)(6); (b)(7)(C)

(b)(5); (b)(6); (b)(7)(C)

401 (b)(5)

402 (b)(5); (b)(6); (b)(7)(C)

(b)(5)

403 Exhibit 022 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 5.

404 Exhibit 022 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 5-6.

405 Exhibit 022 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 8.

406 Exhibit 065 – (b)(6); (b)(7)(C) Testimony (Dec. 27, 2023), p. 11.

407 Exhibit 065 – (b)(6); (b)(7)(C) Testimony (Dec. 27, 2023), pp. 12-13.

408 (b)(5); (b)(6); (b)(7)(C)

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## OAWP Report of Investigation 23-WashingtonDC-22984

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Despite acknowledging he told some people he knew the whistleblowers' identities, OAWP did not find sufficient evidence to substantiate that Respondent (b)(6); (b)(7)(C) said (b)(6) would "handle" the "whistleblowers" or otherwise threaten to take retaliatory action upon his return to the office.

Respondent (b)(6); (b)(7)(C) Retaliated Against Respondent (b)(6); (b)(7)(C) for Engaging in EEO Activities

OAWP was asked to investigate the allegation that Respondent (b)(6); (b)(7)(C) "experienced sexual and non-sexual harassment from several male employees who were senior to her. She also experienced retaliation when she served as a witness in an EEO complaint."<sup>411</sup> Respondent (b)(6); (b)(7)(C) testified to OAWP that she had never been sexually harassed by anyone in ORMDI, but that she was retaliated against for providing information and testimony in other employees' EEO complaints.<sup>412</sup> Respondent (b)(6); (b)(7)(C) testimony is corroborated by an email she sent to her EEO counselor on October 19, 2023.<sup>413</sup> In her email, Respondent (b)(6); (b)(7)(C) said that she updated her complaint because she did not want it to reflect that she was being sexually harassed, but rather that two of her employees were being sexually harassed by Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C).<sup>414</sup> Respondent (b)(6); (b)(7)(C) stated she was dealing with the "sexual misconduct" and was a "bystander trying to protect, prevent, and intervene and was retaliated against because of it."<sup>415</sup>

Respondent (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) harassed her by being condescending in emails where he would chastise her and ask questions about why she was submitting something late.<sup>416</sup> Respondent (b)(6); (b)(7)(C) also detailed one meeting where Respondent (b)(6); (b)(7)(C) chastised her in front of a subordinate employee and accused her of making threats after she asked him to participate in a mediation with the

<sup>411</sup> Exhibit 066 – Memorandum – Reassignment of November 13th AIB, p. 1.

<sup>412</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 49-50. Respondent (b)(6); (b)(7)(C) also testified that Respondent (b)(6); (b)(7)(C) harassed her and retaliated against her. Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 40-41, 44-45, 54. These allegations are addressed in this report under sections concerning delay of hiring actions at pp. 69-70 and Respondent (b)(6); (b)(7)(C) at pp. 87-88, 91-92.

<sup>413</sup> Exhibit 067 – Email re: EEO Counseling & Sexually Explicit Texts and Graphic Photos (Oct. 19, 2023), pp. 1-2.

<sup>414</sup> Exhibit 067 – Email re: EEO Counseling & Sexually Explicit Texts and Graphic Photos (Oct. 19, 2023), p. 1.

<sup>415</sup> Exhibit 067 – Email re: EEO Counseling & Sexually Explicit Texts and Graphic Photos (Oct. 19, 2023), p. 1.

<sup>416</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 53, 62.

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## OAWP Report of Investigation 23-WashingtonDC-22984

subordinate employee so the employee would not file an EEO complaint.<sup>417</sup>

Respondent (b)(6); [redacted] stated that Respondent (b)(6); [redacted] told her that she needed to know her place, understand when she is making a threat, and watch what she says in emails.<sup>418</sup> Respondent (b)(6); [redacted] stated that the subordinate employee was on the Teams call when Respondent (b)(6); [redacted] made these statements to her.<sup>419</sup> Respondent (b)(6); [redacted] testified that Respondent (b)(6); [redacted] began engaging in this type of condescending behavior and chastised her in front of the subordinate employee shortly after she sent him a copy of the affidavit she submitted in (b)(6); [redacted] (b)(6); (b)(7)(C) [redacted] EEO complaint.<sup>420</sup> Respondent (b)(6); [redacted] stated that she provided Respondent (b)(6); [redacted] with a copy of her affidavit in (b)(6); [redacted] (b)(6); (b)(7)(C) [redacted] EEO complaint in response to Respondent (b)(6); [redacted] request for information involving (b)(6); [redacted] sexual harassment allegations against Respondent (b)(6); [redacted].<sup>421</sup>

Respondent (b)(6); [redacted] admitted that he viewed the request for mediation in lieu of filing an EEO complaint as a threat, but he also noted that the request presumed when the mediation would take place and the outcome.<sup>422</sup> Respondent (b)(6); [redacted] testified that he took issue with Respondent (b)(6); (b)(7)(C) [redacted] characterization of the subordinate employee's request because during the mediation the employee stated that all he wanted was to speak to Respondent (b)(6); [redacted] or Respondent (b)(6); [redacted] to understand why his request to attend a conference was denied.<sup>423</sup> OAWP cannot conclude that Respondent (b)(6); [redacted] conduct during this one meeting was retaliation for Respondent (b)(6); (b)(7)(C) [redacted] EEO activity.

With respect to the condescending emails, Respondent (b)(6); [redacted] did not produce any such emails, but testified that Respondent (b)(6); [redacted] would chastise her and ask questions about why she was submitting something late, which OAWP deduces, based on her testimony, related to her late submission of SCAs. OAWP finds that there is insufficient evidence to conclude that Respondent Davis' tone in emails about the SCAs was because of Respondent (b)(6); (b)(7)(C) [redacted] prior EEO activity.

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<sup>417</sup> Exhibit 061 – (b)(6); [redacted] Testimony (Jan. 09, 2024), pp. 42, 51, 53-54, 62. (b)(6); [redacted] also testified that (b)(6); [redacted] refused to process SCAs that she submitted for her subordinate employees. Exhibit 061 – (b)(6); [redacted] Testimony (Jan. 09, 2024), pp. 42-43. The allegation concerning the SCAs is covered in this report at pp. 60-62.

<sup>418</sup> Exhibit 061 – (b)(6); [redacted] Testimony (Jan. 09, 2024), p. 42.

<sup>419</sup> Exhibit 061 – (b)(7)(C) [redacted] Testimony (Jan. 09, 2024), pp. 53-54.

<sup>420</sup> Exhibit 061 – (b)(6); [redacted] Testimony (Jan. 09, 2024), pp. 50-51, 53-54, 56.

<sup>421</sup> Exhibit 061 – (b)(6); [redacted] Testimony (Jan. 09, 2024), pp. 50-52, 56-57.

<sup>422</sup> Exhibit 009 – (b)(6); [redacted] Testimony (Dec. 22, 2023), pp. 81-84; see also Exhibit 042 – (b)(6); [redacted] emails sent outside of VA to DOJ, HUD, and USDA (b)(6); [redacted] and (b)(6); [redacted], pp. 67-71.

<sup>423</sup> Exhibit 009 – (b)(6); [redacted] Testimony (Dec. 22, 2023), p. 84.

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OAWP did not substantiate that Respondent (b) engaged in retaliatory misconduct against Respondent (b) (6), (b) (7) for participating in other employees' EEO activities.

### **Allegations Regarding Respondent (b) (6)**

#### Respondent (b) (6), (b) (7)(C) Engaged in an Inappropriate Personal Relationship with Subordinate Employee, Respondent (b) (7)(C), (b) (6)

Respondent (b) (6), (b) (7)(C) testified that Respondent (b) (6), (b) (7)(C) was "having a relationship" with a subordinate employee, Respondent (b) (6), (b) (7)(C), and explained, "[t]hat's why [Respondent (b) (6), (b) (7)(C)] keeps going to (b) (6), (b) (7)(C). He's [Respondent (b) (6), (b) (7)(C)] in (b) (6), (b) (7)(C)." In addition, Respondent (b) (6), (b) (7)(C) heard secondhand that Respondent (b) (6), (b) (7)(C) requested to stay on the same floor as Respondent (b) (6), (b) (7)(C) while checking into a hotel during official travel for a Technical Assistance Review (TAR). Respondent (b) (6), (b) (7)(C) also questioned Respondent (b) (6), (b) (7)(C) motives and rhetorically asked, "Why would you want to be on the same floor with your employee?"

Respondent (b) (6), (b) (7)(C) testified that Respondent (b) (6), (b) (6), (b) (7)(C) has been his supervisor since around 2017. He described their relationship as "very professional" and "never personal." Respondent (b) (6), (b) (7)(C) stated that he went on three TARs with Respondent (b) (6), (b) (7)(C) during the previous two years, none of which were in (b) (6), (b) (7)(C). He said that (b) (6), (b) (7)(C), (b) (6) came to (b) (6), (b) (7)(C) once as well. They also both attended the (b) (6), (b) (7)(C) conference in (b) (6), (b) (7)(C). Respondent (b) (6), (b) (7)(C) stated he never engaged in any conduct with Respondent (b) (6), (b) (7)(C), (b) (6) that was not work-related. She has never been to his apartment in (b) (6), (b) (7)(C), and he denied any flirtatious behavior. When asked why someone would assert that he and Respondent (b) (6), (b) (7)(C) had an inappropriate relationship, Respondent (b) (6), (b) (7)(C) stated, "I have no clue because I'm hardly ever with (b) (6), (b) (7)(C)." <sup>424</sup>

Respondent (b) (6), (b) (7)(C) testified she does not have personal relationships with her staff. <sup>425</sup> She explained that she can be supportive as a leader, but she maintains a professional distance to avoid any misperceptions. <sup>426</sup> She has traveled to (b) (6), (b) (7)(C) three times in the past two years: the (b) (6), (b) (7)(C) conference in August; a union meeting in September during which she did not see Respondent (b) (6), (b) (7)(C); and a visit to the office to "make sure that the team there had adequate space." <sup>427</sup> She has never

<sup>424</sup> Exhibit 068 – (b) (6), (b) (7)(C) Testimony (Dec. 28, 2023), p. 34.

<sup>425</sup> Exhibit 069 – (b) (6), (b) (7)(C) (Jan. 04, 2024), pp. 9-11.

<sup>426</sup> Exhibit 069 – (b) (6), (b) (7)(C) (Jan. 04, 2024), pp. 10-11.

<sup>427</sup> Exhibit 069 – (b) (7)(C), (b) (6) (Jan. 04, 2024), pp. 18-19.

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been to Respondent (b) (7)(C), (b) (6) apartment in (b) (6), (b) (7)(C).<sup>428</sup> Respondent (b) (7)(C), (b) (6) denied engaging in any improper personal relationship with him.<sup>429</sup>

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OAWP did not substantiate that Respondent (b) (7)(C), (b) (6) engaged in an inappropriate personal relationship with Respondent (b) (6), (b) (7)(C).

Respondent (b) (6), (b) (7)(C) Was Aware Respondent (b) (6), (b) (7) Was Harassing (b) (7)(C), (b) (6) But Failed to Take Any Action.

Respondent (b) (6), (b) (7)(C) testified that she contacted the HPP Office under Respondent (b) (6), (b) (7)(C) in October 2022 to “put it on record” that Respondent Richardson was harassing (b) (7)(C), (b) (6) and that a Factfinding was necessary.<sup>430</sup> According to an email Respondent (b) (6), (b) (7)(C) sent Respondent (b) (6), she contacted HPP and spoke with (b) (7)(C), (b) (6).<sup>431</sup> Respondent (b) (6), (b) (7)(C) did not conduct a Factfinding herself because she believed there was a conflict of interest, as she was Respondent (b) (6), (b) (7) direct supervisor and (b) (6), (b) (7)(C) second line.<sup>432</sup> She stated Respondent (b) (6), (b) (7)(C) was entitled to a “neutral, unbiased [Factfinding].”<sup>433</sup>

(b) (6), (b) (7)(C) explained she was not ready to file a complaint at the time Respondent (b) (6), (b) (7)(C) contacted ORMDI’s HPP.<sup>434</sup> Nevertheless, after Respondent (b) (6), (b) (7)(C) made the report to HPP, she believed “someone should have contacted [her] and talked to [her] directly” about how she wanted to handle the situation.<sup>435</sup>

Respondent (b) (6), (b) (7)(C) testified that her duties included providing oversight for the HPP and the external complaints program.<sup>436</sup> Her subordinate, (b) (6), (b) (7)(C), served as Chief of the HPP.<sup>437</sup> Respondent (b) (6), (b) (7)(C) testified that she never knew of a harassment complaint against Respondent Richardson.<sup>438</sup> She explained a firewall exists between the HPP and EEO complaint processes, and that she did not have access to the HPP SharePoint site which housed all of the harassment

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<sup>428</sup> Exhibit 069 – (b) (6), (b) (7)(C) Testimony (Jan. 04, 2024), p. 15.

<sup>429</sup> Exhibit 069 – (b) (7)(C), (b) (6) Testimony (Jan. 04, 2024), pp. 20-21.

<sup>430</sup> Exhibit 020 – (b) (6), (b) (7)(C) Testimony (Nov. 07, 2023), pp. 84-85.

<sup>431</sup> Exhibit 026 – Email - FW Documentation - Sexual Harassment Inappropriate Behavior of (b) (6) toward (b) (6), (b) (7)(C) 07272023.

<sup>432</sup> Exhibit 020 – (b) (6), (b) (7)(C) Testimony (Nov. 07, 2023), pp. 88-89.

<sup>433</sup> Exhibit 020 – (b) (7)(C), (b) (6) Testimony (Nov. 07, 2023), p. 89.

<sup>434</sup> Exhibit 008 – (b) (7)(C), (b) (6) Testimony (Nov. 06, 2023), pp. 46-47.

<sup>435</sup> Exhibit 008 – (b) (7)(C), (b) (6) Testimony (Nov. 06, 2023), pp. 46-47.

<sup>436</sup> Exhibit 070 – (b) (6), (b) (7)(C) Testimony (Dec. 04, 2023), p. 7.

<sup>437</sup> Exhibit 070 – (b) (7)(C), (b) (6) Testimony (Dec. 04, 2023), p. 13.

<sup>438</sup> Exhibit 070 – (b) (6), (b) (7)(C) Testimony (Dec. 04, 2023), p. 53.

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allegations.<sup>439</sup> She further explained that facility-based harassment prevention coordinators facilitate the process, but local managers are ultimately responsible for making determinations based on the evidence presented.<sup>440</sup> District EEO offices have “zero involvement with the processing of harassment allegations.”<sup>441</sup> Respondent (b) (6), (b) (7)(C) explained that VA Handbook 5979 requires managers to address allegations of harassment raised by employees under their supervision.<sup>442</sup> The manager would decide whether to address a harassment allegation through a low-level inquiry or Factfinding, depending on the severity of the matter.<sup>443</sup> However, any resulting Factfinding investigation would be conducted by USPS, not ORMDI staff.<sup>444</sup>

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OAWP did not substantiate that Respondent (b) (7)(C), (b) (6) was aware of allegations that Respondent (b) (6), (b) (7)(C) was harassing (b) (7)(C), (b) (6) because of an HPP complaint Respondent (b) (7)(C), (b) (6) had filed or that Respondent (b) (7)(C), (b) (6) failed to take appropriate action.

### **Allegations Regarding Respondent (b) (6)**

Respondent (b) (7)(C), (b) (6) Inappropriately Hired (b) (7)(C), (b) (6) Her Daughter-in-Law's Best Friend.

Respondent (b) (7)(C), (b) (6) testified that Respondent (b) (7)(C), (b) (6) inappropriately hired (b) (7)(C), (b) (6) her daughter-in-law's best friend.<sup>445</sup> Respondent (b) (7)(C), (b) (6) explained that her understanding of this event was based on second-hand information.<sup>446</sup>

(b) (7)(C), (b) (6) was appointed to a Staff Assistant, GS-0301-12, position in the Office of Resolution Management (ORM) on August 29, 2021.<sup>447</sup>

Respondent (b) (7)(C), (b) (6) testified her involvement in (b) (7)(C), (b) (6)' appointment was limited to obtaining a copy of (b) (7)(C), (b) (6)' resume and forwarding it to Respondents

<sup>439</sup> Exhibit 070 – (b) (7)(C), (b) (6) Testimony (Dec. 04, 2023), pp. 12-14.

<sup>440</sup> Exhibit 070 – (b) (6), (b) (7)(C) Testimony (Dec. 04, 2023), p. 14.

<sup>441</sup> Exhibit 070 – (b) (7)(C), (b) (6) Testimony (Dec. 04, 2023), pp. 13-14.

<sup>442</sup> Exhibit 070 – (b) (6), (b) (7)(C) Testimony (Dec. 04, 2023), pp. 48-50.

<sup>443</sup> Exhibit 070 – (b) (7)(C), (b) (6) Testimony (Dec. 04, 2023), pp. 48-50. See Exhibit 007b – VA Handbook 5979, ¶ 4(f)(10), (Mar. 21, 2022), pp. 7-8 (VA Managers and Supervisors shall “address any allegations of harassment. Addressing allegations can include separating the parties, conducting factfinding, inquiry, Administrative Investigative Board (AIB), or issuing a stay away/no contact order, etc.”)

<sup>444</sup> Exhibit 070 – (b) (7)(C), (b) (6) Testimony (Dec. 04, 2023), pp. 48-50.

<sup>445</sup> Exhibit 020 – (b) (7)(C), (b) (6) Testimony (Nov. 07, 2023), pp. 82-83.

<sup>446</sup> Exhibit 020 – (b) (7)(C), (b) (6) Testimony (Nov. 07, 2023), pp. 82-83.

<sup>447</sup> Exhibit 003 – VA ORMDI Employment SF50s, p. 13.

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(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) for selection consideration.<sup>448</sup> She became involved when Respondent Johnson asked her if she knew of anyone qualified to serve in the vacant staff assistant position.<sup>449</sup> Respondent (b) (6), (b) (7)(C) testified she contacted (b) (7)(C), (b) (6), her replacement at the Pentagon, U.S. Army (b) (7)(C), (b) (6), and asked if he knew of anyone looking for a career opportunity.<sup>450</sup> (b) (6), (b) (7)(C) referred her to Respondent (b) (6), (b) (7)(C) own daughter-in-law, (b) (7)(C), (b) (6) because she worked in the front office and knew the staff assistants.<sup>451</sup> Respondent (b) (6), (b) (7)(C) testified that her daughter-in-law provided (b) (7)(C), (b) (6) name and that she was otherwise unfamiliar with (b) (7)(C), (b) (6).<sup>452</sup> She obtained a copy of (b) (6), (b) (7)(C) resume from (b) (7)(C), (b) (6) and forwarded the resume to Respondents (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) who subsequently interviewed (b) (7)(C), (b) (6).<sup>453</sup> Respondent (b) (6), (b) (7)(C) selected (b) (7)(C), (b) (6) for the vacant staff assistant position.<sup>454</sup>

(b) (7)(C), (b) (6) confirmed she worked at the Pentagon as an executive assistant for the Army (b) (6), (b) (7)(C) prior to joining ORM approximately 2.5 years ago.<sup>455</sup> (b) (6), (b) (7)(C) testified she did not know Respondent (b) (6), (b) (7)(C) prior to her employment with the VA.<sup>456</sup> (b) (7)(C), (b) (6) stated that Respondent (b) (6), (b) (7)(C) interviewed her, and although she did not know who ultimately selected her for the vacant position, she opined it may have been Respondent (b) (6), (b) (7)(C) "if she had to guess."<sup>457</sup> (b) (7)(C), (b) (6) testified she had no personal relationship with Respondent (b) (6), (b) (7)(C) outside of work.<sup>458</sup>

\* \* \*

OAWP found insufficient evidence to conclude that Respondent (b) (6), (b) (7)(C) inappropriately hired her daughter-in-law's best friend.

#### Respondent (b) (6), (b) (7)(C) Intentionally Delayed Hiring Actions for ORMDI VBA EEO Liaison Office.

Respondent (b) (6), (b) (7)(C) testified that Respondent (b) (6), (b) (7)(C) intentionally delayed hiring actions for the (b) (7)(C), (b) (6) Office.<sup>459</sup> Respondent (b) (6), (b) (7)(C) asserted that Respondent (b) (6), (b) (7)(C) delayed processing HR actions for anyone she did not like and

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- 448 Exhibit 071 – (b) (6), (b) (7)(C) Testimony (Jan. 02, 2024), pp. 31-34.  
 449 Exhibit 071 – (b) (6), (b) (7)(C) Testimony (Jan. 02, 2024), p. 31.  
 450 Exhibit 071 – (b) (6), (b) (7)(C) Testimony (Jan. 02, 2024), pp. 31-32.  
 451 Exhibit 071 – (b) (6), (b) (7)(C) Testimony (Jan. 02, 2024), pp. 32-33.  
 452 Exhibit 071 – (b) (6), (b) (7)(C) Testimony (Jan. 02, 2024), pp. 32, 40-42.  
 453 Exhibit 071 – (b) (6), (b) (7)(C) Testimony (Jan. 02, 2024), pp. 32-33.  
 454 Exhibit 071 – (b) (6), (b) (7)(C) Testimony (Jan. 02, 2024), p. 32.  
 455 Exhibit 072 – (b) (7)(C), (b) (6) Transcript (Dec. 12, 2023), pp. 4-5.  
 456 Exhibit 072 – (b) (7)(C), (b) (6) Transcript (Dec. 12, 2023), p. 17.  
 457 Exhibit 072 – (b) (6), (b) (7)(C) Transcript (Dec. 12, 2023), pp. 16-17.  
 458 Exhibit 072 – (b) (7)(C), (b) (6) Transcript (Dec. 12, 2023), p. 17.  
 459 Exhibit 020 – (b) (6), (b) (7)(C) Testimony (Nov. 07, 2023), pp. 79-80.

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The information contained herein is covered by the Privacy Act, 38 U.S.C. § 323(c)(3), and other laws. This information is being shared with you under the Privacy Act's need to know exception, 5 U.S.C. § 552a(b)(1), which allows for the disclosure of information to agency personnel who have a need for information for the performance of their duties. You may not share the information contained herein with any individual, unless it is necessary for the performance of that individual's duties and after you have consulted with OAWP.



those who challenged her.<sup>460</sup> Respondent [REDACTED] further testified she used her contacts at HRC-Detroit to obtain information on pending actions, and explained that Respondent [REDACTED] provided “bogus reasons” for the delays, even when presented with information obtained from HRC-Detroit.<sup>461</sup>

When questioned about the allegation, Respondent [REDACTED] testified the process for hiring actions “operates very smoothly” for the six districts and over 370 employees assigned within ORMDI, with the exception of the (b) (7)(C), (b) (6) Office.<sup>462</sup> Many of the employees in that office previously served as HR specialists in the 0201 occupational series.<sup>463</sup> They understood the hiring process and acted to circumvent ORMDI’s established procedures.<sup>464</sup> Respondent [REDACTED] testified that Respondent [REDACTED], Respondent [REDACTED], [REDACTED], and (b) (6), (b) (7)(C) (another ORMDI employee) circumvented standard procedures, resulting in delays.<sup>465</sup> Respondent [REDACTED] provided an example of an employee contacting the VBA Security Office to inquire about the status of the security check on a pending hiring action, and Respondent [REDACTED] explained it was not the employee’s role, and that the employee contacted the wrong office.<sup>466</sup> Respondent [REDACTED] testified these types of delays were “pretty routine” in the (b) (7)(C), (b) (6) Office.<sup>467</sup>

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OAWP found insufficient evidence to conclude that Respondent [REDACTED] intentionally delayed hiring actions within the (b) (7)(C), (b) (6) Office.

*Respondent [REDACTED] Violated HIPAA, the Privacy Act, and the Rehabilitation Act When She Inquired About [REDACTED] Reasonable Accommodation Without a Need to Know.*

[REDACTED] testified Respondent [REDACTED] improperly inquired about her medical conditions when Respondent [REDACTED] contacted the National Reasonable Accommodation Coordinator (NRAC) about her (b) (6), (b) (7)(C) approved reasonable accommodation (RA) related to her August 2023 travel.<sup>468</sup> [REDACTED] stated that

<sup>460</sup> Exhibit 020 – [REDACTED] Testimony (Nov. 07, 2023), pp. 79-80.

<sup>461</sup> Exhibit 020 – [REDACTED] Testimony (Nov. 07, 2023), pp. 80-81.

<sup>462</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 37-38, 43.

<sup>463</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 37-38. Series 0201 refers to the “Human Resource Management Series.” <https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/0200/human-resources-management-series-0201/> (last visited Jan. 22, 2024).

<sup>464</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 37-38.

<sup>465</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 37-39.

<sup>466</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), p. 39.

<sup>467</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 39-40.

<sup>468</sup> Exhibit 008 – [REDACTED] Testimony (Nov. 06, 2023), pp. 26-30.

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Respondent [REDACTED] delayed reimbursing her travel expenses “until she found out the details of [REDACTED] RA.”<sup>469</sup> [REDACTED] uploaded her RA memorandum after the Financial Service Center “kicked [the voucher] back,” but after a week it was still sitting in Respondent [REDACTED] queue.<sup>470</sup> [REDACTED] stated that her supervisor, Respondent [REDACTED] was then contacted by the NRAC and learned that Respondent [REDACTED] had “reached out” regarding [REDACTED] RA, and her voucher was approved later that same day.<sup>471</sup> [REDACTED] stated she believed Respondent [REDACTED] was targeting her due to her “attachment” to Respondent [REDACTED].<sup>472</sup>

Respondent [REDACTED] testified employee travel fell under her purview within the Oversight and Management Services Directorate.<sup>473</sup> When asked about the allegation, Respondent [REDACTED] testified [REDACTED], [REDACTED], [REDACTED], [REDACTED] Supervisor, originally brought the matter to her attention.<sup>474</sup> [REDACTED] informed her a traveler had requested RA, but as she recalled, the “travel comments” did not contain a justification for the request.<sup>475</sup> Respondent [REDACTED] testified that she believed they needed to clarify whether [REDACTED] was requested.<sup>476</sup> [REDACTED] tried to reach the employee but did not get a response.<sup>477</sup> Respondent [REDACTED] stated that she contacted the RA coordinator and asked if she could reach out to the supervisor and obtain the needed information.<sup>478</sup> Respondent [REDACTED] explained the Financial Service Center would not process the request without the additional information.<sup>479</sup>

Respondent [REDACTED] testified she never asked the RA coordinator to identify [REDACTED] medical conditions, nor did the RA coordinator disclose them because there was not a need to know.<sup>480</sup> Respondent [REDACTED] stated, “The only thing we need to know in travel is how we can accommodate that traveler, just to make sure that we have everything in compliance.”<sup>481</sup>

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As an initial matter, there can be no violation of HIPAA because Respondent [REDACTED] is not a medical professional or otherwise part of a covered medical entity under

<sup>469</sup> Exhibit 008 – [REDACTED] Testimony (Nov. 06, 2023), pp. 27-28.

<sup>470</sup> Exhibit 008 – [REDACTED] Testimony (Nov. 06, 2023), p. 28.

<sup>471</sup> Exhibit 008 – [REDACTED] Testimony (Nov. 06, 2023), pp. 28-29.

<sup>472</sup> Exhibit 008 – [REDACTED] Testimony (Nov. 06, 2023), p. 19.

<sup>473</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), p. 9.

<sup>474</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 10-11.

<sup>475</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 10-11.

<sup>476</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), p. 11.

<sup>477</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 10-11.

<sup>478</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 10-11.

<sup>479</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), pp. 11-12.

<sup>480</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), p. 12.

<sup>481</sup> Exhibit 071 – [REDACTED] Testimony (Jan. 02, 2024), p. 12.

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HIPAA.<sup>482</sup> OAWP considered whether the allegation raised one of improper conduct, and OAWP found insufficient evidence to conclude that Respondent (b) (6) improperly inquired about (b) (6)'s medical condition(s). Instead, the evidence indicates Respondent (b) (6) had a legitimate reason to inquire whether (b) (6) had an RA.

### **Allegations that Respondent (b) (6) Engaged in Personal Relationships with Subordinate Employees.**

(b) (6) raised several concerns about Respondent (b) (6) alleged inappropriate personal relationships in October 2022.<sup>483</sup> At that time, (b) (6) filed a complaint, and a Factfinding investigation<sup>484</sup> was conducted through USPS.<sup>485</sup> The Factfinding report was extensive in detailing testimony taken, but failed to make any conclusions or recommendations.<sup>486</sup> (b) (6) testified that Respondent (b) (6) had unprofessional relationships with several female employees who worked for him and then he promoted the women, over (b) (6), because of their allegedly inappropriate relationship.<sup>487</sup>

Respondent (b) (6) denied having any personal relationships with coworkers outside of the workplace.<sup>488</sup> He also denied have any "flirtatious" relationships with any of his employees.<sup>489</sup>

(b) (6) testified that sometime in 2022, he witnessed Respondent (b) (6) and former employee (b) (6) kissing on the lips with Respondent (b) (6) rubbing his hands "all over" (b) (6) body.<sup>490</sup> This occurred near the office (b) (6) was working in, and once (b) (6) saw (b) (6), (b) (6) and (b) (6) went into the copier room for a few seconds and then left.<sup>491</sup> However, in (b) (6) initial declaration to USPS dated November 2, 2022, (b) (6) said that on August 17, 2022, he saw Respondent (b) (6) "with both his hands touching (b) (6) back and his hands slid down to her buttocks," and when Respondent (b) (6) "went" to kiss (b) (6), (b) (6) saw him (b) (6), and (b) (6) and (b) (6) walked away.<sup>492</sup>

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<sup>482</sup> See 42 U.S.C. § 1320d-1(a).

<sup>483</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 15-17.

<sup>484</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023).

<sup>485</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), p. 15.

<sup>486</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023).

<sup>487</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 7-8.

<sup>488</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 15-16.

<sup>489</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), p. 35.

<sup>490</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 29-30, 47-50.

<sup>491</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 30, 50.

<sup>492</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023), p. 69.

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(b) (6) testified that Respondent (b) (6) never touched her aside from one possible handshake, and they never kissed.<sup>493</sup> (b) (6) said that (b) (6) had made these allegations before, that they were investigated, and that she was told there were no substantiated findings.<sup>494</sup> (b) (6) said she left the VA because (b) (6) bullied and harassed her, creating a hostile environment by telling lies and false narratives about her.<sup>495</sup>

(b) (6) claimed that (b) (6) was another employee with whom Respondent (b) (6) had an inappropriate personal relationship, and whom he had promoted twice over (b) (6).<sup>496</sup> (b) (6) admitted he did not know if Respondent (b) (6) and (b) (6) were in a romantic relationship, but noted "how they act" in the office.<sup>497</sup> For example, (b) (6) testified that if they were having a potluck, (b) (6) made Respondent (b) (6) plate for him and (b) (6) was just "real kissy up to him."<sup>498</sup> (b) (6) also claimed that when Respondent (b) (6) went to lunch with another female employee, (b) (6) got mad and openly said to Respondent (b) (6), "I can't believe you went to lunch with that bitch."<sup>499</sup>

(b) (6) provided testimony for the Factfinding conducted by USPS.<sup>500</sup> In (b) (6) declaration, she said she never witnessed Respondent (b) (6) engage in an inappropriate relationship or conduct with any of the female employees who reported to him, and she never saw him touch any employee.<sup>501</sup> (b) (6) also said Respondent (b) (6) never acted in an inappropriate manner with her.<sup>502</sup>

Respondent (b) (6) said that when he went to lunch with employees it was always in a group because he did not want any trouble.<sup>503</sup> Even when the office had luncheons, he ate everyone's food, so he did not create a perception that he was favoring anybody.<sup>504</sup>

(b) (6) asserted that (b) (6) also had a relationship with Respondent (b) (6), and she "could not hide" it.<sup>505</sup> (b) (6) was an intern and when she came back from a work trip to (b) (6) with Respondent (b) (6), (b) (6)

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<sup>493</sup> Exhibit 075 – (b) (6) Testimony (Jan. 09, 2024), p. 15-16, 20-21.

<sup>494</sup> Exhibit 075 – (b) (6) Testimony (Jan. 09, 2024), pp. 19-22.

<sup>495</sup> Exhibit 075 – (b) (6) Testimony (Jan. 09, 2024), pp. 5-6, 19-22.

<sup>496</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 6-8.

<sup>497</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 9-10.

<sup>498</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 9-10.

<sup>499</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 9-10.

<sup>500</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023), pp. 151-154.

<sup>501</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023), p. 153.

<sup>502</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023), p. 153.

<sup>503</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 30-31.

<sup>504</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 30-31.

<sup>505</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), p. 25.

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claimed that she bragged about how Respondent (b) (6) “wined and dined her around the city.”<sup>506</sup> When (b) (6) asked (b) (6) what she meant, (b) (6) said Respondent (b) (6) took her to a lot of “historic restaurants and things like that.”<sup>507</sup> (b) (6) could not specifically recall when the trip occurred, but believed it was a little less than a year after (b) (6) started in (b) (6).<sup>508</sup> (b) (6) stated that (b) (6) “used to like run her mouth a lot. But once she started talking, [Respondent (b) (6)] shut her down.”<sup>509</sup> Specifically, (b) (6) said “after the disagreement with [Respondent (b) (6)], [b) (6)] was shipped to (b) (6) for a position to which she did not apply.”<sup>510</sup>

(b) (6) said another employee (b) (6), told him that he played tennis with Respondent (b) (6) and (b) (6) after work.<sup>511</sup> (b) (6) claimed (b) (6) told him that Respondent (b) (6) and (b) (6) went to lunch and dinner together, but as far as (b) (6) knew, (b) (6) did not go to dinner with them.<sup>512</sup>

In her declaration for the USPS Factfinding, (b) (6) said Respondent (b) (6) conducted himself in a professional manner.<sup>513</sup> (b) (6) said she applied for the position in (b) (6) for reasons “related to [her] children’s education.”<sup>514</sup> (b) (6) said she was not aware whether Respondent (b) (6) had engaged in an inappropriate relationship with any employee and never observed Respondent (b) (6) touch an employee in an inappropriate manner.<sup>515</sup>

(b) (6) confirmed that (b) (6) only worked for her for about two months, until (b) (6) voluntarily transferred to (b) (6) around (b) (6) because her relationship with her boyfriend “went bad.”<sup>516</sup> (b) (6) stated she did not know who (b) (6)’ boyfriend was, but would have recalled if (b) (6) had said her boyfriend was Respondent (b) (6).<sup>517</sup> (b) (6) said another employee told her about the rumor that (b) (6) and Respondent (b) (6) had a relationship, but (b) (6) never saw anything that would make her think that there was anything going on between (b) (6) and Respondent (b) (6).<sup>518</sup>

<sup>506</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 25-26.

<sup>507</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), p. 26.

<sup>508</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 46-47.

<sup>509</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), p. 26.

<sup>510</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), p. 28.

<sup>511</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), p. 26.

<sup>512</sup> Exhibit 073 – (b) (6) Testimony (Dec. 12, 2023), pp. 26-27.

<sup>513</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023), p. 183.

<sup>514</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023), p. 183.

<sup>515</sup> Exhibit 074 – VA-23-HCI-001, Investigative Report (Feb. 23, 2023), p. 184.

<sup>516</sup> Exhibit 075 – (b) (6) Testimony (Jan. 09, 2024), pp. 33, 35-36, 38.

<sup>517</sup> Exhibit 075 – (b) (6) Testimony (Jan. 09, 2024), p. 36.

<sup>518</sup> Exhibit 075 – (b) (6) Testimony (Jan. 09, 2024), pp. 33-35.

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The information contained herein is covered by the Privacy Act, 38 U.S.C. § 323(c)(3), and other laws. This information is being shared with you under the Privacy Act’s need to know exception, 5 U.S.C. § 552a(b)(1), which allows for the disclosure of information to agency personnel who have a need for information for the performance of their duties. You may not share the information contained herein with any individual, unless it is necessary for the performance of that individual’s duties and after you have consulted with OAWP.

Respondent (b) (6) testified that (b) (6) told Respondent (b) (6) that she had not been promoted because the only way to be promoted was to sleep with Respondent (b) (6).<sup>519</sup> Respondent (b) (6) stated that (b) (6) told her she filed an EEO complaint against Respondent (b) (6) asserting those allegations.<sup>520</sup>

Respondent (b) (6) said that (b) (6) told her that while (b) (6) was at the (b) (6) training in August 2023 in (b) (6), some VHA participants told (b) (6) that they were concerned that Respondent (b) (6) was having inappropriate relationships with people in the office.<sup>521</sup> Respondent (b) (6) said (b) (6) also observed Respondent (b) (6) interactions with Respondent (b) (6).<sup>522</sup>

Respondent (b) (6) said he was the only one from his office who went to the 2023 (b) (6) training in (b) (6), and specifically denied that any of his subordinates went.<sup>523</sup> However, he acknowledged that ORMDI employees from other districts attended the conference, to include Respondent (b) (6), (b) (6), (b) (6), and (b) (6).<sup>524</sup> Because Respondent (b) (6) lived close enough to drive to the conference, he said that he drove (b) (6) and (b) (6) to (b) (6), to dinner to meet with other VBA employees, and then back to the hotel because they were all staying there.<sup>525</sup> He denied bringing anyone back to his room or going to anyone else's room.<sup>526</sup>

Finally, Respondent (b) (6) acknowledged that before the pandemic, he rented an apartment in (b) (6), because he lived 2.5 hours away in (b) (6), and he was required to work in the office four days a week.<sup>527</sup> He terminated his lease sometime in October 2021.<sup>528</sup> Respondent (b) (6) said that no VA employees

<sup>519</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), pp. 61-63.

<sup>520</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), pp. 62-63.

<sup>521</sup> Exhibit 021 – (b) (6) Testimony (Nov. 01, 2023), pp. 33-35. Note the testimony does not identify what year or where the (b) (6) conference occurred; however, (b) (6) testimony stated that she attended the (b) (6) conference in (b) (6). See Exhibit 008 – (b) (6) Testimony (Nov. 06, 2023), p. 56. The (b) (6) Conference took place in (b) (6), (b) (6).

<sup>522</sup> Exhibit 021 – (b) (6) Testimony (Nov. 01, 2023), pp. 33-34.

<sup>523</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 21-22. Note the testimony suggests the conference at issue occurred in August 2022; however, the August 2022 (b) (6) Conference was in (b) (6). The 2023 (b) (6) Conference took place in (b) (6), (b) (6).

<sup>524</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 24-25.

<sup>525</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 25-27.

<sup>526</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 27-28.

<sup>527</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 9, 28-29.

<sup>528</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 9-10.

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had ever been to his apartment,<sup>529</sup> he had never invited any employees to his apartment for lunch, and he never offered to let anyone stay at his apartment.<sup>530</sup>

OAWP did not find evidence to corroborate (b) (6) allegation of inappropriate relationships between Respondent (b) (6) and (b) (6), (b) (6), or (b) (6). (b) (6) only firsthand observation was that he saw Respondent (b) (6) and (b) (6) touching and kissing, but both (b) (6) and (b) (6) deny the allegations. Further, the other women who (b) (6) alleged had inappropriate personal relationships with Respondent (b) (6) also denied the allegation, as did Respondent (b) (6).

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OAWP did not substantiate that Respondent (b) (6) engaged in personal or otherwise inappropriate relationships with subordinate employees.

### **Allegations Regarding Respondent (b) (6), (b) (6)**

#### *Respondent (b) (6), (b) (6) Engaged in Inappropriate Personal Relationships with Subordinate Employees.*

During its investigation, OAWP obtained second- and third-hand reports of Respondent (b) (6), (b) (6) alleged inappropriate relationships with subordinate employees. While the subordinate employees each denied any such relationship, and OAWP found no evidence to substantiate them, for completeness, the allegations and testimony are detailed below.<sup>531</sup>

#### *Alleged Inappropriate Relationship Between Respondent (b) (6), (b) (6) and Person 1*

Respondent (b) (6), (b) (6) testified that she heard rumors about Respondent (b) (6), (b) (6) and Person 1 when she began with ORMDI in October 2017.<sup>532</sup> In 2018, Respondent (b) (6), (b) (6) witnessed Person 1 dance in front of Respondent (b) (6), (b) (6) which she found to be “bizarre.” Respondent (b) (6), (b) (6) added that Respondent (b) (6), (b) (6) had “this little smirk on, and I’m thinking he’s enjoying this.”<sup>533</sup> Respondent (b) (6), (b) (6) testified she and Respondent (b) (6), (b) (6) observed Person 1 dancing in front of

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<sup>529</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 17, 29.

<sup>530</sup> Exhibit 068 – (b) (6) Testimony (Dec. 28, 2023), pp. 29, 31-32.

<sup>531</sup> To the extent possible and due to the nature of the allegations, OAWP decided to anonymize these individuals within this section of the ROI due to the lack of probative value of these unsubstantiated allegations.

<sup>532</sup> Exhibit 002 – (b) (6) Testimony (Oct. 12, 2023), pp. 31-32.

<sup>533</sup> Exhibit 002 – (b) (6) Testimony (Oct. 12, 2023), p. 32.

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Respondent (b) (6), after a lunch outing in 2017 or 2018, and Respondent (b) (6) saw it happen again at an office holiday party in 2019.<sup>534</sup>

Respondent (b) (6) also testified she could not understand why Respondent Johnson and Person 1 were traveling so much for Technical Assistance Reviews (TARs).<sup>535</sup> When asked for additional information evidencing a personal relationship between Respondent (b) (6), and Person 1, Respondent (b) (6) identified the travel record, the inappropriate dancing, and a rumor that Person 1 would sit provocatively on Respondent (b) (6), (b) (6) desk.<sup>536</sup> Respondent (b) (6) also testified to OAWP that in July 2023 she heard from Respondent (b) (6), who heard from Respondent (b) (6), that Respondent (b) (6), and Person 1's relationship was still "going strong."<sup>537</sup> In addition, (b) (6) testified that she heard from Respondent (b) (6) that Respondent (b) (6), slept with Person 1.<sup>538</sup>

Respondent (b) (6) explained that when she initially came to ORMDI, Respondent Johnson and Person 1 were "inseparable," and "it was pretty clear that they had more than just a platonic relationship."<sup>539</sup> Respondent (b) (6) testified that it was very apparent that Person 1 had a relationship with Respondent (b) (6), by the way she looked at him and spoke with him.<sup>540</sup> Respondent (b) (6) testified that she noticed Person 1 grab Respondent (b) (6), (b) (6) hands or shoulders in meetings,<sup>541</sup> and noted that Person 1 touched Respondent (b) (6), (b) (6) arm during a congressional hearing in July 2022.<sup>542</sup> Respondent (b) (6) testified that Respondent (b) (6), gave Person 1 benefits by allowing her to keep the harassment prevention and reasonable accommodation programs to justify her promotion to an (b) (6) position.<sup>543</sup>

When interviewed by OAWP, Person 1 described Respondent (b) (6), as "a mentor, a great leader, a wonderful person . . . an approachable senior executive . . . just an overall good person."<sup>544</sup> Person 1 testified she never felt uncomfortable around Respondent (b) (6), (b) (6) he never asked her to go out with him on a date, touched her inappropriately, propositioned her for sex, or offered her any sort of work benefit in

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<sup>534</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), pp. 64-65.

<sup>535</sup> Exhibit 002 – (b) (6) Testimony (Oct. 12, 2023), p. 32.

<sup>536</sup> Exhibit 002 – (b) (6) Testimony (Oct. 12, 2023), pp. 34-35.

<sup>537</sup> Exhibit 002 – (b) (6) Testimony (Oct. 12, 2023), pp. 37-38.

<sup>538</sup> Exhibit 008 – (b) (6) Testimony (Nov. 06, 2023), pp. 65-66.

<sup>539</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), p. 59.

<sup>540</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), pp. 59-60.

<sup>541</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), p. 65.

<sup>542</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), p. 65; see also Exhibit 081 – Mission and Vision of DVA, p. 1 (Congressional Hearing Screenshots); see also Hearing before Subcommittee on Oversight and Investigations, YouTube (July 28, 2022), [https://www.youtube.com/watch?v=4fBev\\_cq60A](https://www.youtube.com/watch?v=4fBev_cq60A).

<sup>543</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), pp. 59-61.

<sup>544</sup> Exhibit 070 – Person 1 Testimony (Dec. 04, 2023), p. 23.

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return for sex.<sup>545</sup> Person 1 testified she did not engage with Respondent (b) (6), outside of work.<sup>546</sup> She denied ever having a personal relationship with Respondent (b) (6), (b) or having any knowledge of Respondent (b) (6), engaging in personal relationships with anyone at ORMDI.<sup>547</sup>

*Alleged Inappropriate Relationship Between Respondent (b) (6), (b) and Person 2*

Respondent (b) (6) testified that “there was always talk” that Person 2 and Respondent (b) (6), (b) “were an item.”<sup>548</sup> When asked about her firsthand observations, Respondent (b) (6) recounted a Microsoft Teams call during which Person 2 “lick[ed] her lips and [Respondent (b) (6), (b)] smiled.”<sup>549</sup>

Respondent (b) (6) testified that employees speculated Person 2 and Respondent (b) (6), were in a relationship because of the amount of time Respondent (b) (6), spent on the second floor, where Person 2’s office was located.<sup>550</sup> Respondent (b) (6) testified Person 2 and Respondent (b) (6), (b) interactions during meetings appeared “very intimate” based on the way they stared at each other, spoke to one another, and touched each other on the hands and shoulders to the exclusion of other people in the meeting.<sup>551</sup> Respondent (b) (6) testified Respondent (b) (6), also spoke about Person 2 and Respondent (b) (6), (b) having a relationship.<sup>552</sup>

(b) (6) testified that Respondent (b) (6), told her that Respondent (b) (6), (b) was sleeping with Person 2.<sup>553</sup> When asked about her personal observations, not based on rumor, (b) (6) did not offer information relating to Person 2.<sup>554</sup>

Person 2 denied being in a personal relationship with Respondent (b) (6), and was unaware of Respondent (b) (6), engaging in an intimate relationship with anyone at ORMDI.<sup>555</sup> Person 2 described Respondent (b) (6), (b) as “a very dear friend,” and explained that although they had a close relationship, it was professional.<sup>556</sup> Person 2 testified she never felt uncomfortable around Respondent (b) (6), (b).<sup>557</sup> Person 2 testified Respondent (b) (6), has never touched her inappropriately, asked her on a

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<sup>545</sup> Exhibit 070 – Person 1 Testimony (Dec. 04, 2023), pp. 26, 28.

<sup>546</sup> Exhibit 070 – Person 1 Testimony (Dec. 04, 2023), pp. 23-24, 26.

<sup>547</sup> Exhibit 070 – Person 1 Testimony (Dec. 04, 2023), pp. 28-30.

<sup>548</sup> Exhibit 002 – (b) (6) Testimony (Oct. 12, 2023), p. 36.

<sup>549</sup> Exhibit 002 – (b) (6) Testimony (Oct. 12, 2023), p. 36.

<sup>550</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), pp. 66-67.

<sup>551</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), p. 68.

<sup>552</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), p. 69.

<sup>553</sup> Exhibit 008 – (b) (6) Testimony (Nov. 06, 2023), pp. 65-67.

<sup>554</sup> Exhibit 008 – (b) (6) Testimony (Nov. 06, 2023), p. 77.

<sup>555</sup> Exhibit 076 – Person 2 Testimony (Nov. 21, 2023), pp. 17-19.

<sup>556</sup> Exhibit 076 – Person 2 Testimony (Nov. 21, 2023), pp. 13-14.

<sup>557</sup> Exhibit 076 – Person 2 Testimony (Nov. 21, 2023), p. 16.

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date, propositioned her for sex, or offered her any sort of work benefit in return for sex.<sup>558</sup>

*Alleged Inappropriate Relationship Between Respondent (b) (6), [REDACTED] and Person 3*

Respondent (b) (6), [REDACTED] testified that she heard from Respondent (b) (6), [REDACTED] who heard from Respondent (b) (6), [REDACTED] that "there was something going on there" regarding Person 3 and Respondent (b) (6), (b) [REDACTED].<sup>559</sup>

Respondent (b) (6), [REDACTED] testified that Person 3 and Respondent (b) (6), [REDACTED] looked at each other in a very suggestive manner and appeared to have more than a platonic relationship.<sup>560</sup> She witnessed Person 3 touch Respondent (b) (6), (b) [REDACTED] shoulder.<sup>561</sup>

Person 3 testified that Respondent (b) (6), [REDACTED] was an ambitious, visionary supervisor who was always professional with her.<sup>562</sup> Person 3 testified that Respondent (b) (6), [REDACTED] never touched her inappropriately, asked her on a date, propositioned her for sex, or offered her any sort of work benefit in return for sex.<sup>563</sup> Person 3 denied any personal relationship with Respondent (b) (6), [REDACTED] and was unaware of Respondent (b) (6), [REDACTED] engaging in a personal relationship with anyone at ORMDI.<sup>564</sup>

*Alleged Inappropriate Relationship Between Respondent (b) (6), [REDACTED] and Person 4*

Respondent (b) (6), [REDACTED] testified that Respondent (b) (6), [REDACTED] told her that Respondent (b) (6), [REDACTED] did not understand why Person 4 would attend TARs with Respondent (b) (6), (b) [REDACTED].<sup>565</sup> Respondent (b) (6), [REDACTED] testified to OAWP that Respondent (b) (6), [REDACTED] told Respondent (b) (6), [REDACTED] that "something is going on there" regarding Person 4 and Respondent (b) (6), (b) [REDACTED].<sup>566</sup>

Respondent (b) (6), [REDACTED] testified she did not witness anything directly between Person 4 and Respondent (b) (6), [REDACTED] but heard from Respondent (b) (6), [REDACTED] that they were having a relationship.<sup>567</sup>

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<sup>558</sup> Exhibit 076 – Person 2 Testimony (Nov. 21, 2023), pp. 17-18.

<sup>559</sup> Exhibit 002 – (b) (6), [REDACTED] Testimony (Oct. 12, 2023), pp. 37-38.

<sup>560</sup> Exhibit 020 – (b) (6), [REDACTED] Testimony (Nov. 07, 2023), p. 37.

<sup>561</sup> Exhibit 020 – (b) (6), [REDACTED] Testimony (Nov. 07, 2023), p. 37.

<sup>562</sup> Exhibit 077 – Person 3 Testimony (Nov. 20, 2023), pp. 11, 14.

<sup>563</sup> Exhibit 077 – Person 3 Testimony (Nov. 20, 2023), pp. 13-14.

<sup>564</sup> Exhibit 077 – Person 3 Testimony (Nov. 20, 2023), pp. 14-15.

<sup>565</sup> Exhibit 002 – (b) (6), [REDACTED] Testimony (Oct. 12, 2023), pp. 38-39.

<sup>566</sup> Exhibit 002 – (b) (6), [REDACTED] Testimony (Oct. 12, 2023), pp. 38-39.

<sup>567</sup> Exhibit 020 – (b) (6), [REDACTED] Testimony (Nov. 07, 2023), pp. 72-73.

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Person 4 testified she had a good working relationship with Respondent (b) (6), and did not see him outside of work.<sup>568</sup> Person 4 testified Respondent (b) (6), has never touched her inappropriately, asked her on a date, propositioned her for sex, or offered her any sort of work benefit in return for sex.<sup>569</sup> Person 4 denied any personal relationship with Respondent (b) (6), and was unaware of Respondent (b) (6), having a romantic relationship with anyone at ORMDI.<sup>570</sup>

*Alleged Inappropriate Relationship Between Respondent (b) (6), (b) (7)(C) and Person 5*

Respondent (b) (6), testified she heard from Respondent (b) (6), that former ORMDI employee (b) (6), offered Respondent (b) (6), the opportunity to come to his house to visit, and Respondent (b) (6), accepted and indicated he would bring Person 5 with him for the weekend.<sup>571</sup>

Respondent (b) (6), testified that (b) (6), (b) (7)(C) called her sometime in 2022 and said he got a "weird call" from Respondent (b) (6), (b) (7)(C).<sup>572</sup> (b) (6), (b) (7)(C) indicated to Respondent (b) (6), that he had previously offered Respondent (b) (6), the opportunity to visit him at home if he was ever in the area, and that Respondent (b) (6), (b) (7)(C) called and asked if the offer was still open.<sup>573</sup> Respondent (b) (6), testified that (b) (6), (b) (7)(C) said Respondent (b) (6), mentioned that he would bring Person 5 with him on the visit.<sup>574</sup> According to Respondent (b) (6), (b) (6), (b) (7)(C) called Respondent (b) (6), and informed him that his (b) (6), wife did not think it was a good idea for Respondent (b) (6), to bring Person 5 and Respondent (b) (6), stated he would bring his wife instead.<sup>575</sup>

Respondent (b) (6), testified he had no reason to suspect that Person 5 and Respondent (b) (6), (b) (7)(C) relationship was anything other than professional.<sup>576</sup>

Person 5 testified she had a close relationship with Respondent (b) (6), (b) (7)(C).<sup>577</sup> She stated Respondent (b) (6), might have contacted her outside of duty hours in her role as a (b) (6), but it was always about work.<sup>578</sup> Person 5 testified that Respondent (b) (6), never invited her to (b) (6), (b) (7)(C) house.<sup>579</sup> She never felt uncomfortable around

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<sup>568</sup> Exhibit 072 – Person 4 Testimony (Dec. 12, 2023), pp. 19-20.

<sup>569</sup> Exhibit 072 – Person 4 Testimony (Dec. 12, 2023), pp. 21-22.

<sup>570</sup> Exhibit 072 – Person 4 Testimony (Dec. 12, 2023), p. 22.

<sup>571</sup> Exhibit 002 – (b) (6), Testimony (Oct. 12, 2023), pp. 40-41.

<sup>572</sup> Exhibit 020 – (b) (6), Testimony (Nov. 07, 2023), pp. 55-56.

<sup>573</sup> Exhibit 020 – (b) (6), Testimony (Nov. 07, 2023), pp. 55-56.

<sup>574</sup> Exhibit 020 – (b) (6), Testimony (Nov. 07, 2023), pp. 55-56.

<sup>575</sup> Exhibit 020 – (b) (6), Testimony (Nov. 07, 2023), pp. 56-57. (b) (6), retired from the VA in July 2023 and could not be contacted during the investigation. Exhibit 003 – VA ORMDI Employment SF50s, p. 19.

<sup>576</sup> Exhibit 078 – (b) (6), Testimony (Dec. 08, 2023), p. 23.

<sup>577</sup> Exhibit 079 – Person 5 Testimony (Nov. 20, 2023), p. 8.

<sup>578</sup> Exhibit 079 – Person 5 Testimony (Nov. 20, 2023), pp. 9-10.

<sup>579</sup> Exhibit 079 – Person 5 Testimony (Nov. 20, 2023), p. 11.

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Respondent (b) (6), and he never asked her to go out with him on a date.<sup>580</sup> Person 5 testified that Respondent (b) (6), has never touched her inappropriately, looked at her inappropriately, or offered her any sort of work benefit in return for sex or a date.<sup>581</sup> Person 5 denied any personal relationship with Respondent (b) (6), and had no knowledge of Respondent (b) (6), engaging in a personal relationship with anyone at ORMDI.<sup>582</sup>

*Alleged Inappropriate Relationship Between Respondent (b) (6), and Person 6*

Respondent (b) (6) testified she heard from Respondent (b) (6) that Respondent (b) (6), was in a relationship with Person 6.<sup>583</sup>

(b) (6) testified she heard from Respondent (b) (6) that Respondent (b) (6), (b) was “screwing” Person 6.<sup>584</sup>

Person 6 confirmed her relationship with Respondent (b) (6), was strictly professional.<sup>585</sup> Person 6 testified that Respondent (b) (6), has not touched her inappropriately, propositioned her for sex, or offered her any sort of work benefit in return for sex or a date.<sup>586</sup> Person 6 denied any personal relationship with Respondent (b) (6), or knowledge of Respondent (b) (6), engaging in personal relationships with ORMDI employees.<sup>587</sup>

*Respondents (b) (6), and (b) (6), (b) (6) Testimony Regarding Respondent (b) (6), (b) (6) Alleged Inappropriate Relationships*

Respondent (b) (6) testified he was not aware of Respondent (b) (6), seeing any ORMDI employees outside of work and did not suspect that he did.<sup>588</sup> Respondent (b) (6) denied telling anyone that Respondent (b) (6), was in a personal relationship with any ORMDI employee.<sup>589</sup>

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<sup>580</sup> Exhibit 079 – Person 5 Testimony (Nov. 20, 2023), p. 10.

<sup>581</sup> Exhibit 079 – Person 5 Testimony (Nov. 20, 2023), p. 11.

<sup>582</sup> Exhibit 079 – Person 5 Testimony (Nov. 20, 2023), pp. 11-13.

<sup>583</sup> Exhibit 020 – (b) (6) Testimony (Nov. 07, 2023), p. 67.

<sup>584</sup> Exhibit 008 – (b) (6) Testimony (Nov. 06, 2023), pp. 63-66.

<sup>585</sup> Exhibit 080 – Person 6 Testimony (Nov. 20, 2023), pp. 7-8.

<sup>586</sup> Exhibit 080 – Person 6 Testimony (Nov. 20, 2023), pp. 11-12.

<sup>587</sup> Exhibit 080 – Person 6 Testimony (Nov. 20, 2023), pp. 12-13.

<sup>588</sup> Exhibit 078 – (b) (6) Testimony (Dec. 08, 2023), pp. 21-22.

<sup>589</sup> Exhibit 078 – (b) (6) Testimony (Dec. 08, 2023), p. 23.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); (b)(7)(C) denied any inappropriate personal relationship with Person 1,<sup>590</sup> Person 2,<sup>591</sup> Person 3,<sup>592</sup> Person 4,<sup>593</sup> Person 5,<sup>594</sup> or Person 6.<sup>595</sup> Respondent (b)(6); (b)(7)(C) further testified he never touched anyone at work inappropriately, propositioned anyone for sex, or offered any work benefit in return for sex or a date, and no employee made romantic advances towards him.<sup>596</sup>

\* \* \*

OAWP found no evidence to conclude that Respondent (b)(6); (b)(7)(C) engaged in inappropriate relationships with subordinate employees.

*Respondent (b)(6); (b)(7)(C) Failed to Follow Proper Hiring Procedures When He Selected (b)(6); (b)(7)(C) as (b)(6); (b)(7)(C)*

OAWP investigated allegations that Respondent (b)(6); (b)(7)(C) failed to follow proper hiring procedures when he hired (b)(6); (b)(7)(C) as (b)(6); (b)(7)(C).<sup>597</sup> Specifically, Respondent (b)(6); (b)(7)(C) alleged that Respondent (b)(6); (b)(7)(C) selected (b)(6); (b)(7)(C) as a favor to Respondent (b)(6); (b)(7)(C) because (b)(6); (b)(7)(C) had a pre-existing relationship with Respondent (b)(6); (b)(7)(C) and her (b)(6); (b)(7)(C). In exchange for selecting (b)(6); (b)(7)(C), Respondent (b)(6); (b)(7)(C) allegedly approved Respondent (b)(6); (b)(7)(C) unnecessary travel at government expense.<sup>598</sup>

OAWP's investigation concluded that Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) did not know each other prior to (b)(6); (b)(7)(C) appointment. Both Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) testified that they did not know each other prior to (b)(6); (b)(7)(C) being hired at ORMDI.<sup>599</sup> Respondent (b)(6); (b)(7)(C) explained that when the Staff Assistant position opened for hiring, she contacted an individual with whom she had worked previously at the Pentagon to

<sup>590</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 28.

<sup>591</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 32-33.

<sup>592</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 30-31.

<sup>593</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 33.

<sup>594</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 37.

<sup>595</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 34-35.

<sup>596</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 13-14.

<sup>597</sup> Exhibit 081 – Mission and Vision of DVA, p. 3. OAWP also investigated an allegation that Respondent (b)(6); (b)(7)(C) failed to follow proper hiring procedures when he allegedly promoted (b)(6); (b)(7)(C) to an SES position. OAWP found insufficient evidence to corroborate this allegation because first, (b)(6); (b)(7)(C) does not hold an SES position, and second, testimony taken does not support the conclusion that Respondent (b)(6); (b)(7)(C) promised (b)(6); (b)(7)(C) an SES position or that he somehow favored her for an SES position in the future. Exhibit 082 – (b)(6); (b)(7)(C) SF50-12.2023. Exhibit 083 – (b)(6); (b)(7)(C) Testimony (Dec. 01, 2023), pp. 12-13; Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 66-69.

<sup>598</sup> Exhibit 081 – Mission and Vision of DVA, p. 3.

<sup>599</sup> Exhibit 084 – (b)(6); (b)(7)(C) Testimony (Dec. 04, 2023), p. 9; Exhibit 071 – (b)(6); (b)(7)(C) Testimony (Jan. 02, 2024), p. 32; Exhibit 072 – (b)(6); (b)(7)(C) testimony (Dec. 12, 2023), p. 17.

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## OAWP Report of Investigation 23-WashingtonDC-22984

help identify potential candidates, and (b)(6); was identified.<sup>600</sup> Respondent (b)(6); later clarified that the person she initially contacted in turn requested input from (b)(6);. Respondent (b)(6); (b)(6); (b)(7)(C), who also works at the Pentagon.<sup>601</sup> Respondent (b)(6); identified (b)(6); as a candidate, and stated she referred (b)(6); application materials to (b)(6);, ORMDI HR (b)(6); who coordinated the interview, qualifications review, and requirements for special hiring authorities.<sup>602</sup>

(b)(6); recalled submitting her application “directly through the VA” and not through USAJOBS.<sup>603</sup> Respondent (b)(6); interviewed her, and after an offer was extended to her, Respondent (b)(6); office handled her onboarding paperwork.<sup>604</sup> (b)(6); SF-50 documenting her appointment indicates that she was hired under Schedule A, which is excepted from the competitive service hiring requirements.<sup>605</sup>

The evidence shows that Respondent (b)(6); received (b)(6); resume in accordance with normal hiring practices and that Respondent (b)(6); did not purposely afford (b)(6); a preference not authorized by law, rule, or regulation. Respondent (b)(6); testified that Respondent (b)(6); office typically provides resumes to him to review.<sup>606</sup> He did not remember what hiring authority was used to hire (b)(6); but he stated, “we use all of the hiring authorities available to us.”<sup>607</sup> When he saw that (b)(6); had worked for a General in the Pentagon, it was a “good sign” because someone wouldn’t survive that job “if you don’t have your stuff together.”<sup>608</sup> He interviewed her, “she said all the right things, and for me, it was just an easy hire.”<sup>609</sup>

Respondent (b)(6); explained that he sought approval from his supervisor, Respondent (b)(6); when Respondent (b)(6); planned official travel. Once Respondent (b)(6); had Respondent (b)(6); concurrence, Respondent (b)(6); would enter his travel request in the system, and either Respondent (b)(6); or his designee would approve it.<sup>610</sup>

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<sup>600</sup> Exhibit 084 (b)(6); Testimony (Dec. 04, 2023), pp. 12-13.

<sup>601</sup> Exhibit 071 (b)(7)(C) Testimony (Jan. 02, 2024), pp. 32-33.

<sup>602</sup> Exhibit 071 (b)(6); Testimony (Jan. 02, 2024), pp. 33-34.

<sup>603</sup> Exhibit 072 (b)(6); Testimony (Dec. 12, 2023), p. 15.

<sup>604</sup> Exhibit 072 (b)(7)(C) Testimony (Dec. 12, 2023), pp. 16-17.

<sup>605</sup> Exhibit 085 (b)(6); VA hiring with cert number SF50-Redacted; 5 C.F.R. § 213.3102(u).

<sup>606</sup> Exhibit 023 (b)(6); Testimony (Dec. 19, 2023), pp. 156-157.

<sup>607</sup> Exhibit 023 (b)(7)(C) Testimony (Dec. 19, 2023), pp. 158-159.

<sup>608</sup> Exhibit 023 Testimony (Dec. 19, 2023), p. 158.

<sup>609</sup> Exhibit 023 Testimony (Dec. 19, 2023), p. 158.

<sup>610</sup> Exhibit 016 Testimony (Jan. 22, 2024), p. 81.

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## OAWP Report of Investigation 23-WashingtonDC-22984

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to follow proper hiring procedures when he selected (b)(6); (b)(7)(C) or that Respondent (b)(6); (b)(7)(C) had selected (b)(6); (b)(7)(C) in exchange for Respondent (b)(6); (b)(7)(C) approving his travel.

Respondent (b)(6); (b)(7)(C) Wasted Government Funds When (b)(6) Attended Technical Assistance Reviews (TARs).

Under VA Directive 5975, the Deputy Assistant Secretary of ORMDI is responsible for directing the VA's Diversity and Inclusion Program, including performing "technical assistance reviews [TARs] and [conducting] program evaluations in headquarters and in the field to ensure compliance with Federal and VA EEO, Diversity and Inclusion policies and programs VA-wide."<sup>611</sup> Respondent (b)(6); (b)(7)(C) testified that TARs are governed by VA Handbook 5975.2,<sup>612</sup> which describes "On-Site Field Audit Visits."<sup>613</sup> Audit teams "may be composed of one or two members and will vary depending on facility."<sup>614</sup>

(b)(6) testified that her primary job function is to conduct TARs.<sup>615</sup> She indicated that the TAR program is being "revamped," and provided OAWP with a draft revision of Handbook 5975.2.<sup>616</sup> The draft revision does not specify or recommend the number of employees that should attend a TAR.<sup>617</sup>

(b)(6) explained that the purpose of a TAR is to ensure VA facilities are maintaining a model EEO program by assessing them against the six essential elements prescribed by EEOC MD-715.<sup>618</sup> To accomplish this, ORMDI representatives conduct interviews with facility leadership and staff, and lead focus groups and training sessions. According to (b)(6), between four to six employees are generally needed on a TAR, depending on the size of the facility.<sup>619</sup>

Witnesses offered differing opinions as to who within ORMDI should be permitted to attend TARs. Perry testified that she informed Respondent (b)(6); (b)(7)(C) that too many

<sup>611</sup> VA Directive 5975, ¶ 3(e)(9)(e), p. 11 (April 29, 2021).

<sup>612</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), pp. 48-50.

<sup>613</sup> VA Handbook 5975.2, Part II, p. 11 (March 21, 2007). Respondent (b)(6); (b)(7)(C) explained this Handbook is under revision. Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 50. Its publication predates the creation of ORMDI.

<sup>614</sup> VA Handbook 5975.2, Part II, ¶ 4, pp. 12-13 (March 21, 2007).

<sup>615</sup> Exhibit 087 – (b)(6); (b)(7)(C) Testimony (Dec. 14, 2023), p. 6.

<sup>616</sup> Exhibit 087 – (b)(6); (b)(7)(C) Testimony (Dec. 14, 2023), p. 26; Exhibit 088 – Email Technical Assistance Review (TAR) Handbook.

<sup>617</sup> Exhibit 088 – Email Technical Assistance Review (TAR) Handbook, p. 15.

<sup>618</sup> Exhibit 087 – (b)(6); (b)(7)(C) Testimony (Dec. 14, 2023), pp. 13-14; Exhibit 088 – Email Technical Assistance Review (TAR) Handbook, ¶ 2(c), pp. 5-6.

<sup>619</sup> Exhibit 087 – (b)(6); (b)(7)(C) Testimony (Dec. 14, 2023), pp. 13, 28.

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## OAWP Report of Investigation 23-WashingtonDC-22984

ORMDI employees were unnecessarily attending TARs. (b)(6); (b)(7)(C) stated that, on one occasion, Respondent (b)(6); (b)(7)(C) instructed her to add a Program Assistant to the TAR to take notes. After (b)(6); advised against doing this, Respondent (b)(6); (b)(6); went to Respondent (b)(6); to get approval even though Respondent (b)(6); agreed with (b)(6); that the Program Assistant should not attend if her only function was to take notes. (b)(6); characterized this as “fraud, waste, and abuse. You know, we had -- I kid you not -- maybe eight, nine people on this TAR that was [sic] sitting around.” She also opined that there is typically not a need for Respondent (b)(6); or Regional Managers to attend as “that’s just too deep in the weeds for them.” (b)(6); testified that Respondent (b)(6); agreed with her assessment that only four people needed to attend a TAR.

Respondent (b)(6); (b)(7)(C) told OAWP that she attended two TARs and stopped because she “could see that the TARs weren’t really TARs. . . . That was a playground, and I could see it.”<sup>621</sup>

(b)(6); (b)(7)(C) (b)(6); (b)(7)(C) to the DAS and ADAS, testified that Respondent (b)(6); wanted to conduct more TARs, and told her, “I need to get out there and travel more, and there is a good way when we do it with the TARs.” (b)(6); stated her opinion that (b)(6); as a (b)(6); (b)(7)(C) should not have been permitted to travel on TARs because she did not have EEO technical expertise.<sup>622</sup>

Respondent (b)(6); testified that Respondent (b)(6); was “an extra” at TARs and the previous DAS opened TARs virtually. Respondent (b)(6); offered his opinion that Respondent (b)(6); (b)(7)(C) and (b)(6); were also “extras” on TARs.<sup>623</sup>

By contrast, Press testified that at least the DAS or ADAS typically attend TARs,<sup>624</sup> and they have always done so when possible.<sup>625</sup> Press testified that (b)(6); attended TARs and helped run focus groups.<sup>626</sup>

(b)(6); confirmed that she helped facilitate sessions with employees. She also attended meetings with Medical Center Directors and EEO Program Managers, and she took notes and provided feedback on the employee sessions she attended to the TAR

<sup>620</sup> Exhibit 087 – (b)(6); testimony (Dec. 14, 2023), pp. 23-25, 30, 37.  
<sup>621</sup> Exhibit 020 – (b)(7)(C) testimony (Nov. 07, 2023), p. 59.  
<sup>622</sup> Exhibit 092 – (b)(6); testimony (Nov. 21, 2023), pp. 45, 49-50.  
<sup>623</sup> Exhibit 078 – (b)(6); testimony (Dec. 08, 2023), pp. 70-74.  
<sup>624</sup> Exhibit 083 – (b)(6); testimony (Dec. 01, 2023), p. 36.  
<sup>625</sup> Exhibit 083 – (b)(6); testimony (Dec. 01, 2023), p. 37.  
<sup>626</sup> Exhibit 083 – (b)(6); testimony (Dec. 01, 2023), pp. 37-38.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Program Manager.<sup>627</sup> Respondent (b)(6); [redacted] testified that (b)(6); [redacted] attended two TARs and assisted (b)(6); [redacted] with reports and ran focus groups.<sup>628</sup>

(b)(6); [redacted] testified that Respondent (b)(6); (b)(7)(C) [redacted] attended TARs because he had oversight of the program as the (b)(6); [redacted]. She stated that Respondent (b)(6); [redacted] interviewed, along with the Regional Directors, the Medical Center Directors and senior staff at the facilities.<sup>629</sup>

Respondent (b)(6); (b)(7)(C) [redacted] testified that Respondent (b)(6); [redacted] presence at TARs added value to ORMDI:

What's necessary is to have ORMDI out there. [Respondent (b)(6); [redacted] again, (b)(6); (b)(7)(C) [redacted] program, and he is the face that people recognize because in addition to the TARs that he goes on he's also speaking to future senior leaders. He's a regular presenter on their training programs and everything and then, of course, being that he's SES he's involved with other SES, so it adds credibility to what we're doing and that's why you have an SES, I think.<sup>630</sup>

When interviewed by OAWP, Respondent (b)(6); [redacted] similarly explained, "If I can support them and I do like supporting them because I think they're an important business line we do, I will go on them. . . . If not, I will do them virtually. But I try to do it in person since kind of the COVID conditions have relaxed."<sup>631</sup> Respondent (b)(6); [redacted] explained that TARs are important because "that's how you build your contacts with the [Medical Center] [D]irectors," and because "we're reimbursable . . . [so] I have to demonstrate the value to them, and they pay us."<sup>632</sup>

Respondent (b)(6); [redacted] told OAWP that Congress specifically asked that ORMDI conduct more TARs, and he doubled the number of TARs conducted by ORMDI accordingly.<sup>633</sup> Of the 12 TARs conducted in 2023, he testified that he went on seven or eight.<sup>634</sup> Respondent (b)(6); (b)(7)(C) [redacted] testified that he had never traveled to a TAR in Hawaii,

<sup>627</sup> Exhibit 072 – (b)(6); [redacted] Testimony (Dec. 12, 2023), p. 8.

<sup>628</sup> Exhibit 023 – (b)(6); [redacted] Testimony (Dec. 19, 2023), pp. 139-140.

<sup>629</sup> Exhibit 072 – (b)(6); [redacted] Testimony (Dec. 12, 2023), p. 10.

<sup>630</sup> Exhibit 070 – (b)(6); (b)(7)(C) [redacted] Testimony (Dec. 04, 2023), p. 40.

<sup>631</sup> Exhibit 023 – (b)(6); [redacted] Testimony (Dec. 19, 2023), pp. 131-132.

<sup>632</sup> Exhibit 023 – (b)(7)(C) [redacted] Testimony (Dec. 19, 2023), pp. 138, 143.

<sup>633</sup> Exhibit 023 – [redacted] Testimony (Dec. 19, 2023), p. 133.

<sup>634</sup> Exhibit 023 – [redacted] Testimony (Dec. 19, 2023), p. 133.

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## OAWP Report of Investigation 23-WashingtonDC-22984

but he did travel to Puerto Rico and stated, “I didn’t take the full complement again because again, I was worried about the optics.”<sup>635</sup>

\* \* \*

OAWP concluded the evidence does not substantiate the allegation that Respondent (b)(6); (b)(7)(C) wasted government funds by unnecessarily attending TARs.

Respondent (b)(6); (b)(7)(C) Provided False Information Regarding the VBA EEO Program Managers’ Realignment to ORMDI Being Complete, Including Lying Under Oath to Congress During His Testimony on July 28, 2022.

The Subcommittee on Oversight and Investigations of the House Committee on Veterans Affairs held a hearing entitled “Progress Made? Ending Sexual Harassment at the Department of Veterans Affairs” on July 28, 2022, to address the VA’s implementation of recommendations made by the EEOC and GAO.<sup>636</sup> One recommendation was to realign all VA EEO program managers to report directly to ORMDI officials, rather than individuals in the “chain of command of the organization that they’re helping counsel.”<sup>637</sup> Complying with this recommendation entailed reassigning EEO program managers at NCA, VHA, Office of Information and Technology (OI&T), and VBA, to ORMDI.<sup>638</sup>

Respondent (b)(6); (b)(7)(C) testified under oath at the hearing, and he was asked about the status of VA’s compliance with the recommendation by Subcommittee Chairman Christopher Pappas, to which Respondent (b)(6); (b)(7)(C) replied, “[r]ealignment of VBA, NCA, and OI&T are already complete.”<sup>639</sup> After OIG declined the matter, OAWP investigated allegations that this statement was false.

Respondent (b)(6); (b)(7)(C) testified he believed his July 28 testimony was correct at the time.<sup>640</sup> He explained that “the benchmark for an EEO [program manager] by EEOC was that . . . any organization with 600 or more people, has to have a full-time EEO [program manager]. And at the time, I believe that every organization in VBA that had

<sup>635</sup> Exhibit 023 – (b)(6); (b)(7)(C) testimony (Dec. 19, 2023), pp. 147-149.

<sup>636</sup> Hearing before Subcommittee on Oversight and Investigations, YouTube (July 28, 2022), [https://www.youtube.com/watch?v=4fBev\\_cg60A](https://www.youtube.com/watch?v=4fBev_cg60A).

<sup>637</sup> Hearing before Subcommittee on Oversight and Investigations, YouTube (July 28, 2022), [https://www.youtube.com/watch?v=4fBev\\_cg60A](https://www.youtube.com/watch?v=4fBev_cg60A), at 42:00; Exhibit 052 – (b)(6); (b)(7)(C) testimony (Dec. 18, 2023), pp. 15-17.

<sup>638</sup> Hearing before Subcommittee on Oversight and Investigations, YouTube (July 28, 2022), [https://www.youtube.com/watch?v=4fBev\\_cg60A](https://www.youtube.com/watch?v=4fBev_cg60A), at 41:00-42:15.

<sup>639</sup> Hearing before Subcommittee on Oversight and Investigations, YouTube (July 28, 2022), [https://www.youtube.com/watch?v=4fBev\\_cg60A](https://www.youtube.com/watch?v=4fBev_cg60A), at 45:30-45:55.

<sup>640</sup> Exhibit 023 – (b)(6); (b)(7)(C) testimony (Dec. 19, 2023), p. 78.

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## OAWP Report of Investigation 23-WashingtonDC-22984

600 or more people, those ones were working for us.”<sup>641</sup> Respondent (b)(6) explained further that the number of full-time EEO program managers is fluid: as VBA grows, “we’ve got to keep revisiting it to see, are there more that need to come under us?”<sup>642</sup> Respondent (b)(6) also noted that because ORMDI is subject to a statutory cap of 406 full-time employees, “I can’t just arbitrarily move people. . . . I need congressional approval to do it.”<sup>643</sup>

Respondent (b)(6) testified that EEOC guidance specified that the recommendation applied to “facilities with 600 or more employees” because only those facilities had full time EEO program managers.<sup>644</sup> At facilities with fewer than 600 employees, EEO program managers perform their EEO functions as collateral duties, so they did not need to be realigned under ORMDI.<sup>645</sup> Respondent (b)(6) told OAWP she believed Respondent (b)(6) statement at the July 28 hearing was accurate.<sup>646</sup> Similarly, Respondent (b)(6) testified she considered the statement to be accurate.<sup>647</sup> Thus, Respondent (b)(6) statement regarding the status of the realignment during the July 28 hearing was informed by EEOC and GAO guidance, and corroborated as accurate by witness testimony and documents.

\* \* \*

OAWP did not substantiate that Respondent (b)(6) provided a false statement under oath during the July 28, 2022, Congressional hearing.

*Respondent (b)(6); (b)(7)(C) Engaged in Misconduct When (b)(5) Asked Respondent (b)(6); (b)(7)(C) Out for Dinner, Looked at (b)(6); (b)(7)(C) Inappropriately, and Subsequently Reassigned (b)(6); (b)(7)(C) Under Respondent (b)(6); (b)(7)(C) in Retaliation for Declining (b)(6); (b)(7)(C) Advances.*

Respondent (b)(6) testified that in April 2022, she and Respondent (b)(6) provided training at the VBA Senior Leaders Symposium in Dallas, Texas.<sup>648</sup> While she presented, she observed that Respondent (b)(6) looked at her “crotch” and breasts

<sup>641</sup> Exhibit 023 – H. (b)(6); Testimony (Dec. 19, 2023), pp. 78-79.

<sup>642</sup> Exhibit 023 – H. (b)(7)(C) Testimony (Dec. 19, 2023), p. 80.

<sup>643</sup> Exhibit 023 – H. (b)(6); Testimony (Dec. 19, 2023), pp. 74-75, 78-80.

<sup>644</sup> Exhibit 086 – (b)(6); Testimony (Dec. 11, 2023), pp. 11-12; See Exhibit 093 – VBA Corrective Action Plan 2 (June 4, 2018), p. 3. Congress later passed legislation requiring all program managers at the facility level report to ORMDI by December 29, 2023. Exhibit 094 – Consolidated Appropriations Act, 2023, p. 1026. [Pub. L. 117-328, Dec. 29, 2022, 136 Stat. 4459]

<sup>645</sup> Exhibit 086 – (b)(6); Testimony (Dec. 11, 2023), pp. 14-15. As of 2018, 13 VBA regional offices had more than 600 employees. Exhibit 093 – VBA Corrective Action Plan 2 (June 4, 2018), p. 3.

<sup>646</sup> Exhibit 086 – (b)(6); Testimony (Dec. 11, 2023), pp. 18-19.

<sup>647</sup> Exhibit 084 – (b)(6); Testimony (Dec. 04, 2023), pp. 52-53.

<sup>648</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 43.

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## OAWP Report of Investigation 23-WashingtonDC-22984

from his position at the back of the room.<sup>649</sup> After the training, Respondent (b)(6); testified Respondent (b)(6); approached her and looked at her lips as he spoke to her. Respondent (b)(6); testified Respondent (b)(6); asked, (b)(6); what are you doing for dinner?" She also testified that she told Respondent (b)(6); that she was tired and going to her room to relax, and then she left.<sup>650</sup> Respondent (b)(6); did not reply prior to her departure, he "just stared" at her.<sup>651</sup> Respondent (b)(6); testified Respondent (b)(6); "did the same thing" the next day. She explained that he "looked at [her] in a suggestive way the whole time [she] was doing training" and she felt uncomfortable.<sup>652</sup>

Respondent (b)(6); testified she called Respondent (b)(6); from the hotel and told her what happened.<sup>653</sup> Respondent (b)(6); testified that Respondent (b)(6); told her that "she declined [Respondent (b)(6);] advance to have dinner and then after that to go out somewhere." Respondent (b)(6); also testified that Respondent (b)(6); told her Respondent (b)(6); made faces at her and that she was uncomfortable.<sup>654</sup>

Respondent (b)(6); testified that Respondent (b)(6); began treating her differently after she avoided meeting with him in his office in June 2022.<sup>655</sup> She testified that Respondent (b)(6); reassigned her to Respondent (b)(6); supervision as a way to use Respondent (b)(6); to harass her.<sup>656</sup> After Respondent (b)(6); gave her a letter of counseling (LOC) on February 17, 2023,<sup>657</sup> she pursued a sexual harassment complaint against Respondent (b)(6);.

Respondent (b)(6); confirmed he and Respondent (b)(6); delivered two days of training during the VBA Senior Leaders Symposium in April 2022. He thought the training was exceptional, and he had "no clue that anything was going on, and that [he]

<sup>649</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 43; Exhibit 062 – (b)(6); Testimony (Jan. 10, 2024), p. 48. Note, Respondent (b)(6); testified that Respondent (b)(6); agreed to conduct training at the VBA Senior Leaders Symposium in or around August 2022. Exhibit 062 – (b)(6); Testimony (Jan. 10, 2024), p. 47. However, this date appears to be a mistake as both Respondents (b)(6); and (b)(6); confirm that this training event occurred in April 2022. Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 43; Exhibit 023 – (b)(6); testimony (Dec. 19, 2023), p. 21.

<sup>650</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 43-44, 47-48.

<sup>651</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 47-48.

<sup>652</sup> Exhibit 020 – (b)(7)(C); Testimony (Nov. 07, 2023), p. 44.

<sup>653</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), pp. 45-46.

<sup>654</sup> Exhibit 002 – (b)(6); Testimony (Oct. 12, 2023), pp. 23-24.

<sup>655</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 44; Exhibit 062 – (b)(6); Testimony (Jan. 10, 2024), pp. 48-49.

<sup>656</sup> Exhibit 020 – (b)(6); Testimony (Nov. 07, 2023), p. 99; Exhibit 062 – (b)(6); Testimony (Jan. 10, 2024), pp. 49-52.

<sup>657</sup> Exhibit 091 – (b)(6); Letter of Counseling (Feb. 17, 2023).

<sup>658</sup> Exhibit 020 – (b)(7)(C); Testimony (Nov. 07, 2023), pp. 99-100; Exhibit 095 – (b)(6); Formal EEO Complaint (June 16, 2023); Exhibit 096 – (b)(6); EEO Complaint Partial Acceptance (July 24, 2023).

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## OAWP Report of Investigation 23-WashingtonDC-22984

would later be accused of anything.”<sup>659</sup> Respondent (b)(6); (b)(7)(C) responded to Respondent (b)(6); (b)(7)(C) allegations in an EEO affidavit, signed November 14, 2023.<sup>660</sup> Respondent (b)(6); (b)(7)(C) denied staring at Respondent (b)(6); (b)(7)(C) in a sexual manner or asking her to dinner, and noted he only learned of the allegations upon receiving the EEO affidavit.<sup>661</sup> Respondent (b)(6); (b)(7)(C) testified that one claim alleged he invited Respondent (b)(6); (b)(7)(C) to “catch up” in his office on February 17, 2023, which he stated “absolutely did not happen” because he was on leave celebrating his wife’s birthday on that day.<sup>662</sup> Respondent (b)(6); (b)(7)(C) written notes concerning the LOC she issued to Respondent (b)(6); (b)(7)(C) corroborate that Respondent (b)(6); (b)(7)(C) was on leave.<sup>663</sup>

Respondent (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) team gathered for an on-site at ORMDI in June 2022.<sup>664</sup> He recalled that he asked about Respondent (b)(6); (b)(7)(C) whereabouts after lunch, but it was a simple inquiry. He assumed she had other business that came up.<sup>665</sup> Respondent (b)(6); (b)(7)(C) testified that he moved Respondent (b)(6); (b)(7)(C) under Respondent (b)(6); (b)(7)(C) supervision in preparation for the realignment of the VHA EEO Program Managers under ORMDI.<sup>666</sup> Respondent (b)(6); (b)(7)(C) explained he needed to reassess the entire command and support structure in order to accommodate the onboarding of 350 employees.<sup>667</sup> He worked with (b)(6); (b)(7)(C) of Manpower Management, who interviewed each of the directors, and several GS-15s reporting to him were moved under Respondent (b)(6); (b)(7)(C).<sup>668</sup>

\* \* \*

OAWP did not find sufficient evidence to verify Respondent (b)(6); (b)(7)(C) allegations that Respondent (b)(6); (b)(7)(C) asked Respondent (b)(6); (b)(7)(C) out for dinner, looked at (b)(6); (b)(7)(C) inappropriately, or reassigned (b)(6); (b)(7)(C) under Respondent (b)(6); (b)(7)(C) in retaliation for declining his advances.

<sup>659</sup> Exhibit 023 – H. (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 23-24.

<sup>660</sup> Exhibit 023 – H. (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 16-17; Exhibit 097 – EEO Affidavit of (b)(6); (b)(7)(C) (Nov. 14, 2023).

<sup>661</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 24-25; Exhibit 097 – EEO Affidavit of (b)(6); (b)(7)(C) (Nov. 14, 2023), pp. 2-3.

<sup>662</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 17; see also Exhibit 097 – EEO Affidavit of (b)(6); (b)(7)(C) (Nov. 14, 2023), p. 5.

<sup>663</sup> Exhibit 098 – Timeline re (b)(6); (b)(7)(C) and VBA Training, p. 2.

<sup>664</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 20-21; Exhibit 097 – EEO Affidavit of (b)(6); (b)(7)(C) (Nov. 14, 2023), p. 4.

<sup>665</sup> Exhibit 097 – EEO Affidavit of (b)(6); (b)(7)(C) (Nov. 14, 2023), p. 4.

<sup>666</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 59-64.

<sup>667</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 63.

<sup>668</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 63-64.

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## OAWP Report of Investigation 23-WashingtonDC-22984

*Respondent (b)(6); (b)(7)(C) Removed Respondent (b)(6); (b)(7)(C) from the GAO Project in (b)(6); (b)(7)(C) in Retaliation for Other Employees Declining Respondent (b)(6); (b)(7)(C) Advances.*

Respondent (b)(6); testified she was the point of contact for a GAO investigation and that she worked on the project for about one year prior to being removed from her lead role.<sup>669</sup> Respondent (b)(6); testified that she was removed from the project by Respondent (b)(6); and did not initially know why, but she was later informed she needed to focus on her supervisory responsibilities.<sup>670</sup> Respondent (b)(6); testified that Respondent (b)(6); removed her from the project around October 2022.<sup>671</sup> During her initial OAWP interview, Respondent (b)(6); asserted that her removal from this role amounted to retaliation by Respondent (b)(6); against her and her entire team due to two different employees declining Respondent (b)(6); sexual advances.<sup>672</sup>

An email chain indicates Respondent (b)(6); (b)(7)(C) notified Respondent (b)(6); (b)(7)(C) on December 2, 2022, about being provided “relief” from her (b)(6); (b)(7)(C) duties.<sup>673</sup> In the same email, Respondent (b)(6); (b)(7)(C) approved the release of the pending GAO responses and stated that Respondent (b)(6); had done an “amazing job,” while acknowledging that she had her full-time (b)(6); (b)(7)(C) responsibilities as well.<sup>674</sup>

In a follow-up interview with OAWP, Respondent (b)(6); testified to her belief that she was removed from the GAO project because management thought she was trying to hide information about the near-hiring of (b)(6); (b)(7)(C) an applicant whose job offer was pulled back over nepotism concerns and who subsequently filed an EEO complaint against Respondent (b)(6); (b)(7)(C).<sup>675</sup>

Respondent (b)(6); testimony confirmed Respondent (b)(6); volunteered for the GAO project and was the project lead.<sup>676</sup> Respondent (b)(6); testified he did not remove Respondent (b)(6); from the GAO project.<sup>677</sup> Instead, Respondent (b)(6); testified he believed that Respondent (b)(6); time on the GAO project had come to an end because “it wears you out . . . I mean, they’re relentless. So, I don’t keep people on them . . . especially once you kind of close out

<sup>669</sup> Exhibit 002 – (b)(6); Testimony (Oct. 12, 2023), pp. 20-21.

<sup>670</sup> Exhibit 002 – (b)(7)(C) Testimony (Oct. 12, 2023), pp. 20-21.

<sup>671</sup> Exhibit 002 – Testimony (Oct. 12, 2023), pp. 21-22.

<sup>672</sup> Exhibit 002 – Testimony (Oct. 12, 2023), pp. 22-25.

<sup>673</sup> Exhibit 099 – Email re: GAO Initial Assignment, p. 5.

<sup>674</sup> Exhibit 099 – Email re: GAO Initial Assignment, p. 5.

<sup>675</sup> Exhibit 021 – (b)(6); Testimony (Nov. 01, 2023), pp. 63-68.

<sup>676</sup> Exhibit 023 – (b)(7)(C) Testimony (Dec. 19, 2023), pp. 86-87.

<sup>677</sup> Exhibit 023 – Testimony (Dec. 19, 2023), p. 87.

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## OAWP Report of Investigation 23-WashingtonDC-22984

one, you go to the next, and then it's someone else.”<sup>678</sup> Respondent (b)(6); (b)(7)(C) explained that the GAO responses for Respondent (b)(6); (b)(7)(C) “realm” were complete and had been approved for release.<sup>679</sup> In addition, Respondent (b)(6); (b)(7)(C) testified that he thought Respondent (b)(6); (b)(7)(C) had told him that Respondent (b)(6); (b)(7)(C) was “kind of burn[ed] out” with the project.<sup>680</sup> Respondent (b)(6); (b)(7)(C) denied making this statement.<sup>681</sup> However, due to Respondent (b)(6); (b)(7)(C) conflicting testimony about the reasons she was removed from the GAO project, Respondent (b)(6); (b)(7)(C) denial of removing (b)(6); (b)(7)(C) from the GAO project, and the fact that ORMDI had submitted the responses Respondent (b)(6); (b)(7)(C) had been spearheading, there is insufficient evidence to conclude that Respondent (b)(6); (b)(7)(C) removed Respondent (b)(6); (b)(7)(C) from the GAO project for other than legitimate business reasons.

\* \* \*

OAWP found insufficient evidence to conclude that Respondent (b)(6); (b)(7)(C) removed Respondent (b)(6); (b)(7)(C) from the GAO project in retaliation for other employees declining Respondent (b)(6); (b)(7)(C) advances.

Respondent (b)(6); (b)(7)(C) Wasted Government Funds When He Hired Contractors to Assist with the ORMDI Realignment.

In September 2023, the United States Government Accountability Office (GAO) issued a report noting the VA had not fully implemented their 2020 recommendations regarding realignment of the agency’s EEO Director position and the EEO Program Managers.<sup>682</sup> Additionally, the Consolidated Appropriations Act, 2023, enacted on December 29, 2022, required the Secretary of VA to ensure each facility-level EEO Program Manager reported to the head of the Office of Resolution Management, or such successor office, with respect to their EEO functions, by no later than one year after enactment.<sup>683</sup> According to the GAO report, VA officials communicated in February 2023 that the agency planned to ensure all facility-level EEO Program Managers reported to the ORMDI District Managers as soon as possible and no later than December 29, 2023, pending Congressional approval of the appropriations needed to facilitate the realignment.<sup>684</sup>

<sup>678</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 87.

<sup>679</sup> Exhibit 023 – (b)(7)(C) Testimony (Dec. 19, 2023), pp. 87-89; Exhibit 099 – Email re: GAO Initial Assignment, p. 5.

<sup>680</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 88.

<sup>681</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), p. 62.

<sup>682</sup> Exhibit 100 – GAO Report 23-105429 (Sept. 2023), p. 10 n.3 (of the PDF); Exhibit 101 – GAO Letter to VA Secretary (May 23, 2023), p. 11.

<sup>683</sup> Exhibit 094 – Consolidated Appropriations Act, 2023, p. 1026.

<sup>684</sup> Exhibit 100 – GAO Report 23-105429 (Sept. 2023), pp. 53-54 (of the PDF).

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); testified the realignment could have been accomplished by simply processing personnel actions, but Respondent (b)(6); spent unnecessary money on contractors who only gathered information that EEO employees had provided for the past several years.<sup>685</sup>

(b)(6); (b)(7)(C) ORMDI,<sup>686</sup> testified that the contract for the ORMDI realignment fell under his purview and impacted between 400-700 full-time equivalent (FTE) positions.<sup>687</sup> (b)(6); explained the contract was necessary because the organization did not have the skillset or the capacity to navigate a change of that magnitude.<sup>688</sup>

Respondent (b)(6); testified that he had learned upon arriving at ORMDI that the organization was not aligned properly.<sup>689</sup> Respondent (b)(6); worked with OI&T, NCA, and VBA (all small units) to realign their EEO Program Managers.<sup>690</sup> Respondent (b)(6); testified he was not given extra positions to absorb the moves, so he had to "eat those positions in house."<sup>691</sup> He could not do the same for VHA because he did not have 350 open positions.<sup>692</sup> Further, ORMDI had a statutory cap of 406 FTEs.<sup>693</sup> Respondent (b)(6); testified that the contract was necessary at the time because he was responsible for implementing three new Executive Orders and participating in four White House initiatives, all of which came with intense requirements and no additional staff.<sup>694</sup> Using a contract for the realignment would allow ORMDI to meet its mission.<sup>695</sup> Respondent (b)(6); further explained that he had limited involvement in the contracting process, outside of ORMDI's role in identifying the requirement.<sup>696</sup> The ORMDI program managers developed the requirement and coordinated with contracting officer representatives, who then worked with contracting officers external to ORMDI.<sup>697</sup>

\* \* \*

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) wasted government funds by utilizing contractors for the ORMDI realignment.

<sup>685</sup> Exhibit 002 (b)(6); Testimony (Oct. 12, 2023), pp. 55-56.

<sup>686</sup> Exhibit 102 (b)(6); SF-50.

<sup>687</sup> Exhibit 065 (b)(6); Testimony (Dec. 27, 2023), pp. 26-28.

<sup>688</sup> Exhibit 065 (b)(7)(C) Testimony (Dec. 27, 2023), pp. 26-28.

<sup>689</sup> Exhibit 023 (b)(6); Testimony (Dec. 19, 2023), pp. 59-60.

<sup>690</sup> Exhibit 023 (b)(7)(C) Testimony (Dec. 19, 2023), pp. 60-61.

<sup>691</sup> Exhibit 023 Testimony (Dec. 19, 2023), p. 61.

<sup>692</sup> Exhibit 023 Testimony (Dec. 19, 2023), pp. 61-62.

<sup>693</sup> Exhibit 023 Testimony (Dec. 19, 2023), pp. 62, 75.

<sup>694</sup> Exhibit 023 Testimony (Dec. 19, 2023), pp. 167-168.

<sup>695</sup> Exhibit 023 Testimony (Dec. 19, 2023), pp. 167-169.

<sup>696</sup> Exhibit 023 Testimony (Dec. 19, 2023), pp. 166-167.

<sup>697</sup> Exhibit 023 Testimony (Dec. 19, 2023), pp. 166-167.

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## OAWP Report of Investigation 23-WashingtonDC-22984

On or Before March 5, 2023, Respondents (b)(5); (b)(6); and (b)(5); (b)(6); Improperly Met With a Contractor Prior to the Contract Being Signed.

Respondent (b)(6); (b)(7)(C) stated that Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) improperly met with a prospective contractor on or before March 5, 2023, to discuss their services prior to a contract being awarded.<sup>698</sup> Respondent (b)(6); (b)(7)(C) alleged that Respondent (b)(6); (b)(7)(C) told Respondent (b)(6); (b)(7)(C) that Respondent (b)(6); (b)(7)(C) had an entry on his calendar to attend the meeting.<sup>699</sup> Neither Respondent (b)(6); (b)(7)(C) nor Respondent (b)(6); (b)(7)(C) provided information to OAWP regarding the contractor with which Respondent (b)(6); (b)(7)(C) allegedly met or for which contract the contractor had submitted a bid. Respondent (b)(6); (b)(7)(C) denied telling Respondent (b)(6); (b)(7)(C) that Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) met with a contractor, and he does not believe they did so.<sup>700</sup> Respondent (b)(6); (b)(7)(C) testified the only time he met with contractors was at the Office of Small and Disadvantaged Business Utilization (OSDBU) Conference, where multiple contractors attended to learn about VA programs.<sup>701</sup> Respondent (b)(6); (b)(7)(C) denied the allegation and explained, "as a former Army contracting officer, you should never meet with a contractor before award."<sup>702</sup>

\* \* \*

OAWP found insufficient evidence to conclude that Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) met with a contractor prior to the contract being awarded.

### **Allegations Regarding Respondent (b)(6); (b)(7)(C)**

Respondent (b)(6); (b)(7)(C) Gave Respondent (b)(6); (b)(7)(C) a Written LOC in Retaliation for Turning Down Respondent (b)(6); (b)(7)(C) Sexual Advances.

Respondent (b)(6); (b)(7)(C) issued Respondent (b)(6); (b)(7)(C) an LOC, dated (b)(6); (b)(7)(C) (b)(6); (b)(7)(C).<sup>703</sup> The LOC stated Respondent (b)(6); (b)(7)(C) team continued to pursue in-person training, despite Respondent (b)(6); (b)(7)(C) communicated decision to deliver virtual training

<sup>698</sup> Exhibit 081 – Mission and Vision of DVA, pp. 15-16.

<sup>699</sup> Exhibit 081 – Mission and Vision of DVA, p. 15. Upon review of Respondent (b)(6); (b)(7)(C) calendar, two potentially relevant meetings were identified: one on May 1, 2023, with Mitre, an existing contract per Respondent (b)(6); (b)(7)(C) and the other on February 23, 2023, pertaining to the HIMSS conference, which was deemed unrelated. Exhibit 089 – (b)(6); (b)(7)(C) calendar – 01292023-05062023, pp. 4, 14; Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 170-171.

<sup>700</sup> Exhibit 090 – (b)(6); (b)(7)(C) Email re: contractor meeting (Jan. 10, 2024), p. 1.

<sup>701</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 169.

<sup>702</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), pp. 56-57; Exhibit 090 – (b)(6); (b)(7)(C) Email re: contractor meeting (Jan. 10, 2024), p. 1.

<sup>703</sup> Exhibit 091 – (b)(6); (b)(7)(C) Letter of Counseling (Feb. 17, 2023).

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## OAWP Report of Investigation 23-WashingtonDC-22984

to VBA.<sup>704</sup> In addition, the LOC stated Respondent (b)(6); (b)(7)(C) failed to provide travel request documents upon Respondent (b)(6); (b)(7)(C) request.<sup>705</sup> Rather, Respondent (b)(6); (b)(7)(C) subordinate (Respondent (b)(6); (b)(7)(C)) had contacted VBA for a travel memorandum, which once provided, was dated February 16, 2023, even though the document properties revealed it was created the morning of February 17, 2023.<sup>706</sup>

Respondent (b)(6); (b)(7)(C) testified the LOC was due to “a mix up about a training program,” but it was not her mistake.<sup>707</sup> Rather, Respondent (b)(6); (b)(7)(C) stated that VBA sent out an incorrect memo.<sup>708</sup> This occurred the first week she was realigned under Respondent (b)(6); (b)(7)(C) supervision.<sup>709</sup> Respondent (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) was using Respondent (b)(6); (b)(7)(C) to harass her, and explained she ultimately filed a sexual harassment complaint against Respondent (b)(6); (b)(7)(C) with USPS.<sup>710</sup>

Respondent (b)(6); (b)(7)(C) explained she decided to issue the LOC to educate Respondent (b)(6); (b)(7)(C) on the travel process because it was only Respondent (b)(6); (b)(7)(C) first week with her.<sup>711</sup> Respondent (b)(6); (b)(7)(C) cited to VA Directive 5021, and testified a written counseling is meant to educate and prevent a future mistake; it is not a disciplinary action.<sup>712</sup> Respondent (b)(6); (b)(7)(C) told OAWP she coordinated her decision with the Office of General Counsel.<sup>713</sup> Respondent (b)(6); (b)(7)(C) denied any knowledge of complaints against Respondent (b)(6); (b)(7)(C) for inappropriate conduct or rumors about Respondent (b)(6); (b)(7)(C) engaging in inappropriate personal relationships with ORMDI employees.<sup>714</sup> Respondent (b)(6); (b)(7)(C) contemporaneous notes regarding the incident include an entry dated February 17, 2023: “ADAS notified DAS, who is on leave, that a letter of counseling had been given to (b)(6); (b)(7)(C) for her conduct with respect to VBACO training.”<sup>715</sup>

Respondent (b)(6); (b)(7)(C) testified he had no role in Respondent (b)(6); (b)(7)(C) decision to issue the LOC.<sup>716</sup> He recalls that Respondent (b)(6); (b)(7)(C) called him and stated she was

<sup>704</sup> Exhibit 091 – (b)(6); (b)(7)(C) Letter of Counseling (Feb. 17, 2023).

<sup>705</sup> Exhibit 091 – (b)(6); (b)(7)(C) Letter of Counseling (Feb. 17, 2023).

<sup>706</sup> Exhibit 091 – (b)(6); (b)(7)(C) Letter of Counseling (Feb. 17, 2023).

<sup>707</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 14.

<sup>708</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 14.

<sup>709</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 14.

<sup>710</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), pp. 99-100; see also Exhibit 095 – (b)(6); (b)(7)(C) Formal EEO Complaint (June 16, 2023); Exhibit 096 – (b)(6); (b)(7)(C) EEO Complaint Partial Acceptance (July 24, 2023).

<sup>711</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), pp. 42, 46.

<sup>712</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 42.

<sup>713</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 42.

<sup>714</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 24.

<sup>715</sup> Exhibit 098 – Timeline re: (b)(6); (b)(7)(C) and VBA Training, p. 2; Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 42.

<sup>716</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 85.

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## OAWP Report of Investigation 23-WashingtonDC-22984

about to issue the LOC.<sup>717</sup> He did not disagree based on the reasons she provided.<sup>718</sup> He said “okay, thank you,” and did not provide any input.<sup>719</sup> Respondent (b)(6); (b)(7)(C) notes he would have objected if the action was disciplinary in nature because the incident did not merit discipline.<sup>720</sup>

\* \* \*

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) issued Respondent (b)(6); (b)(7)(C) an LOC in retaliation for refusing Respondent (b)(6); (b)(7)(C) sexual advances.

Respondent (b)(6); (b)(7)(C) Failed to List ORMDI Deficiencies in the Annual Workforce Report, EEO MD-715.

Respondent (b)(6); (b)(7)(C) testified that during a meeting with the EEOC in December 2022, the EEOC informed ORMDI that its annual Management Directive 715 (MD-715) workforce report lacked a Part H, which is used to list any known or identifiable deficiencies in an agency’s EEO program.<sup>721</sup> Respondent (b)(6); (b)(7)(C) told OAWP that she completed the annual reports for VBA, VHA, NCA, and OI&T, and that the deficiencies she identified in her reports were not listed in the consolidated report for VA.<sup>722</sup> Respondent (b)(6); (b)(7)(C) stated that she asked the individual who compiled the report for VA about the deficiencies she noted as missing, and the individual told her that Respondent (b)(6); (b)(7)(C) did not want to list VA’s deficiencies in the report.<sup>723</sup>

Respondent (b)(6); (b)(7)(C) provided OAWP with a copy of the draft FY2022 MD-715 report with her comments.<sup>724</sup> The only comment Respondent (b)(6); (b)(7)(C) provided in Part H of the draft was, “VA will need a standalone EEO ADR Program for F [sic] 2023.”<sup>725</sup>

OAWP analyzed the published version of FY2022 MD-715 Part H against the draft version of Part H. The published version of VA’s FY2022 MD-715 contained 11 deficiencies, including all but one of the deficiencies listed in the draft version.<sup>726</sup> Prior

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<sup>717</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 85.  
<sup>718</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 85-86.  
<sup>719</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 85-86.  
<sup>720</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), p. 86.  
<sup>721</sup> Exhibit 002 – (b)(6); (b)(7)(C) Testimony (Oct. 12, 2023), p. 56. [Issue – (b)(6); (b)(7)(C) testimony doesn't identify that the meeting with EEO was in 2022, only that it was December.]  
<sup>722</sup> Exhibit 002 – (b)(6); (b)(7)(C) Testimony (Oct. 12, 2023), pp. 67-68.  
<sup>723</sup> Exhibit 002 – (b)(6); (b)(7)(C) Testimony (Oct. 12, 2023), p. 68.  
<sup>724</sup> Exhibit 103 – Email re: VW Review FY 2022 MD-715 (Dec. 21, 2023); see Respondent (b)(6); (b)(7)(C) comments at Exhibit 104 – DRAFT MD715 report\_FY2022, pp. 5, 15-16, 39-40, 65.  
<sup>725</sup> Exhibit 104 – DRAFT MD715 report\_FY2022, p. 65.  
<sup>726</sup> Exhibit 105 – MD-715 Report (FY 2022), pp. 46-75 (of the PDF).

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## OAWP Report of Investigation 23-WashingtonDC-22984

reports show that VA also listed deficiencies in the MD-715 reports for the years 2017-2021.<sup>727</sup>

Respondent (b)(6); (b)(7)(C) testified that (b)(6); (b)(7)(C) Program Manager, drafts the MD-715 report and serves as ORMDI's MD-715 subject matter expert.<sup>728</sup> Respondent (b)(6); (b)(7)(C) said that she, along with several others in her chain of command, reviewed the report, and that she did not make any edits to it.<sup>729</sup> Respondent (b)(6); (b)(7)(C) did not recall telling anyone to remove deficiencies from the report.<sup>730</sup> Respondent (b)(6); (b)(7)(C) testified to the same, and added that he typically holds a meeting with Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) to review the report.<sup>731</sup> His normal process is to review the MD-715 after Respondent (b)(6); (b)(7)(C) then send it to the Secretary for review and approval, who then sends it to (b)(6); (b)(7)(C) to transmit to the EEOC.<sup>732</sup>

(b)(6); (b)(7)(C) stated in an email to OAWP investigators that they are required to list deficiencies in the MD-715.<sup>733</sup> He commented that Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) typically do not make comments or changes to the MD-715 due to the size of the report.<sup>734</sup> Instead, (b)(6); (b)(7)(C) meets with them to discuss the report in detail and at that time Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) may make a decision to remove a deficiency.<sup>735</sup>

\* \* \*

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to list deficiencies in ORMDI's annual EEOC MD-715 report.

Respondent (b)(6); (b)(7)(C) Provided False Information Regarding the Realignment of VBA EEO Program Managers.

Respondent (b)(6); (b)(7)(C) testified that VBA was not correctly or completely realigned as required under the GAO and EEOC recommendations that EEO Program Managers report to ORMDI. Respondent (b)(6); (b)(7)(C) claimed that this failure also violates the law.<sup>736</sup> By contrast, Respondent (b)(6); (b)(7)(C) indicated that Respondent (b)(6); (b)(7)(C) repeatedly asserted that Respondent (b)(6); (b)(7)(C) office was completely and correctly realigned.<sup>737</sup>

<sup>727</sup> See Workforce Analysis – Office of Resolution Management, Diversity & Inclusion (ORMDI), [https://www.va.gov/ORMDI/DiversityInclusion/Workforce\\_Analysis.asp](https://www.va.gov/ORMDI/DiversityInclusion/Workforce_Analysis.asp) (last visited Jan. 25, 2024).

<sup>728</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), pp. 58-60.

<sup>729</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), pp. 60-61.

<sup>730</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), pp. 59-60.

<sup>731</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 175-179.

<sup>732</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 175-179.

<sup>733</sup> Exhibit 106 – Email re: MD-715 deficiencies, p. 1.

<sup>734</sup> Exhibit 106 – Email re: MD-715 deficiencies, p. 1.

<sup>735</sup> Exhibit 106 – Email re: MD-715 deficiencies, p. 1.

<sup>736</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), pp. 101-103; see 38 U.S.C. § 516(i).

<sup>737</sup> Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 102.

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## OAWP Report of Investigation 23-WashingtonDC-22984

In a June 2023 email chain, (b)(6); (b)(7)(C) Office of Policy, Compliance & Oversight, ORMDI, requested Respondent (b)(6); (b)(7)(C) concurrence on whether the VBA EEO Program Manager realignment was complete following conflicting statements from Respondent (b)(6); (b)(7)(C), the VBA (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C).<sup>738</sup> Specifically, (b)(6); (b)(7)(C) was seeking to reconcile prior reports from ORMDI that the VBA realignment was complete with a statement from VBA that realignment was “ongoing,” and that of VBA’s 56 regional offices, only 16 VBA EEO Program Managers had been realigned under ORMDI. On June 5, 2023, Respondent (b)(6); (b)(7)(C) replied stating the VBA realignment was complete for purposes of the Congressionally Mandated Report (CMR).<sup>739</sup>

Respondent (b)(6); (b)(7)(C) said it was her understanding that EEOC did a review of VBA EEO program managers several years ago<sup>740</sup> and made a determination that if a facility had 600 or more employees, the facility should have a full time EEO program manager.<sup>741</sup> In her conversations with Respondent (b)(6); (b)(7)(C) all of the VBA program managers of facilities 600 or more had been brought under ORMDI.<sup>742</sup> At facilities with fewer than 600 employees, individuals perform EEO Program Manager functions as collateral duties and do not have to be realigned under ORMDI.<sup>743</sup> Therefore, the discrepancy between the number of Regional Offices (56) and the number of EEO Program Managers that had been realigned (16) does not signify that her statement was inaccurate.<sup>744</sup> Respondent (b)(6); (b)(7)(C) testified that her statement was accurate at the time she wrote the email.<sup>745</sup>

The June 2023 CMR states that realignment of VBA EEO Program Managers was “complete.”<sup>746</sup> By contrast, the December 2023 CMR states that the realignment of VBA EEO Program Managers was “ongoing.”<sup>747</sup> Respondent (b)(6); (b)(7)(C) testified that her office is currently preparing an amended CMR to correct the statement in the December report that the VBA Program Manager realignment is ongoing. She believes Respondent (b)(6); (b)(7)(C) and/or Respondent (b)(6); (b)(7)(C) “substituted their own language” in the report without authorization, and it was not discovered until after the Secretary signed it. Respondent (b)(6); (b)(7)(C) asserted the realignment of full-time EEO Program Managers from VBA is complete.<sup>748</sup>

<sup>738</sup> Exhibit 107 – Email re: Consolidated Appropriations Act Report (June 2023), pp. 7-8.

<sup>739</sup> Exhibit 107 – Email re: Consolidated Appropriations Act Report (June 2023), p. 2.

<sup>740</sup> Exhibit 093 – VBA Corrective Action Plan 2 (June 4, 2018), p. 3.

<sup>741</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 12.

<sup>742</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 12.

<sup>743</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 15.

<sup>744</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), pp. 13-14.

<sup>745</sup> Exhibit 086 – (b)(6); (b)(7)(C) Testimony (Dec. 11, 2023), p. 15.

<sup>746</sup> Exhibit 108 – CMR (June 2023), pp. 3-4.

<sup>747</sup> Exhibit 109 – CMR (Dec. 2023), p. 4.

<sup>748</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp. 76-77.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) provided false information regarding the realignment of VBA EEO Program Managers.

### **Allegations Regarding Management's Failure to Take Prompt and Appropriate Action Upon Being Notified of Harassment Complaints.**

#### **(b)(6); (b)(7)(C) Harassment Allegations Against (b)(6); (b)(7)(C)**

In or around June 2022, following official travel to (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) reported to her (b)(6); (b)(7)(C) Respondent (b)(6); (b)(7)(C) that Respondent (b)(6); (b)(7)(C) had been sexually harassing her.<sup>749</sup> The harassment included repeated unwelcome phone calls and Teams messages, as well as Respondent (b)(6); (b)(7)(C) conduct during the team visit to (b)(6); (b)(7)(C), when he told (b)(6); (b)(7)(C) his wife had given him a "pass," and "he wanted to see me, he didn't have a curfew."<sup>750</sup> Respondent (b)(6); (b)(7)(C) informed Respondent (b)(6); (b)(7)(C), the supervisor of both (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C) who ordered Respondent (b)(6); (b)(7)(C) to have no contact with (b)(6); (b)(7)(C) in or around July 2022.<sup>751</sup> (b)(6); (b)(7)(C) did not want to file a formal complaint at that time,<sup>752</sup> but in October 2022, Respondent (b)(6); (b)(7)(C) reported the matter to the ORMDI Harassment Prevention Office.<sup>753</sup>

After Respondent (b)(6); (b)(7)(C) sent a work-related email to (b)(6); (b)(7)(C) and other employees,<sup>754</sup> Respondent (b)(6); (b)(7)(C) instructed Respondent (b)(6); (b)(7)(C) again on February 14, 2023, to refrain from any "direct or indirect communication" with (b)(6); (b)(7)(C).<sup>755</sup> (b)(6); (b)(7)(C) testified she expected a Factfinding to be conducted; however, she was never contacted regarding a Factfinding.<sup>756</sup> In March 2023, Respondent (b)(6); (b)(7)(C) also

<sup>749</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), p. 39. See Exhibit 046 – Final VA Intake Form, p. 2 (indicating harassment occurred in June 2022).

<sup>750</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 35-37.

<sup>751</sup> Exhibit 111 – Email – No Contact (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) February 3, 2023, p. 6. In an email to Respondent (b)(6); (b)(7)(C) on March 1, 2023, Respondent (b)(6); (b)(7)(C) appears to have mistakenly remembered that (b)(6); (b)(7)(C) informed Respondent (b)(6); (b)(7)(C) of Respondent (b)(6); (b)(7)(C) conduct in 2021. She, along with Respondent (b)(6); (b)(7)(C) remembered that the District Manager meeting where Respondent (b)(6); (b)(7)(C) allegedly harassed (b)(6); (b)(7)(C) took place in June 2022. (b)(6); (b)(7)(C) testified that she reported Respondent (b)(6); (b)(7)(C) conduct after the June 2022 meeting. Exhibit 024 – (b)(6); (b)(7)(C) Testimony (Dec. 27, 2023), pp. 32, 43, 53; Exhibit 020 – (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), p. 44; Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 39-40.

<sup>752</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), pp. 41-42.

<sup>753</sup> Exhibit 026 – Email – FW Documentation - Sexual Harassment Inappropriate Behavior of (b)(6); (b)(7)(C) toward (b)(6); (b)(7)(C) 07272023; Exhibit 032 – (b)(6); (b)(7)(C) Harassment Statement.

<sup>754</sup> Exhibit 111 – Email – No Contact (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) Feb. 3, 2023, pp. 6-7.

<sup>755</sup> Exhibit 111 – Email – No Contact (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) 2.3.23, p. 5

<sup>756</sup> Exhibit 008 – (b)(6); (b)(7)(C) Testimony (Nov. 06, 2023), p. 44-46

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## OAWP Report of Investigation 23-WashingtonDC-22984

asked her (b)(6); [redacted] Respondent (b)(6); [redacted] to accept Respondent (b)(6); (b)(7)(C) [redacted] for a detail assignment, but Respondent (b)(6); (b)(7)(C) [redacted] declined and advised that there was sufficient information to present Respondent (b)(6); (b)(7)(C) [redacted] "with the option of resignation or retirement in lieu of removal."<sup>757</sup> Respondent (b)(6); [redacted] provided Respondent (b)(6); [redacted] with evidence of Respondent (b)(6); (b)(7)(C) [redacted] harassing behavior on July 27, 2023.<sup>758</sup> Respondent (b)(6); [redacted] testified that he intended to meet with Respondent (b)(6); [redacted] and counsel him, but he did not "get to it."<sup>759</sup>

(b)(6); [redacted] testified that Respondent (b)(6); [redacted] told her that "he would take care of it" when she told him about Respondent (b)(6); [redacted] conduct.<sup>760</sup> Respondent (b)(6); [redacted] told OAWP that he did not inform Respondent (b)(6); [redacted] about (b)(6); [redacted] allegations against Respondent (b)(6); [redacted] because it involved individuals under his supervision, and he did not want to "pass the buck."<sup>761</sup>

Respondent (b)(6); [redacted] stated that Respondent (b)(6); [redacted] informed Respondents (b)(6); [redacted] and (b)(6); [redacted] of (b)(6); [redacted] allegations against Respondent (b)(6); [redacted] on several occasions.<sup>762</sup> Specifically, Respondent (b)(6); [redacted] emailed Respondent (b)(6); [redacted] alleging that she felt disrespected by Respondent (b)(6); [redacted] who had issued Respondent (b)(6); [redacted] a letter of counseling, and by ORMDI leadership when Respondent (b)(6); [redacted] was excluded from the decision to withdraw an employment offer to a candidate for whom she had been the (b)(6); (b)(7)(C) [redacted].<sup>763</sup> Respondent (b)(6); [redacted] requested to be reassigned under Respondent (b)(6); [redacted].<sup>764</sup> Respondent (b)(6); [redacted] recounted in her March 26, 2023, email that she had told Respondent (b)(6); [redacted] on October 26, 2022, her belief that the candidate's prospective supervisor withdrew the employment offer because the supervisor "had retaliatory motives [after] [t]he (b)(6); (b)(7)(C) [redacted] rejected this supervisor's sexual advances and he was angry when she exposed him."<sup>765</sup> Respondent (b)(6); (b)(7)(C) [redacted]

<sup>757</sup> Exhibit 111 – Email – No Contact (b)(6); [redacted] to (b)(6); [redacted], 2.3.23, pp. 2-3

<sup>758</sup> Exhibit 078 – (b)(6); [redacted] Testimony (Dec. 08, 2023), p. 40; Exhibit 026 – Email – FW Documentation – Sexual Harassment Inappropriate Behavior of (b)(6); [redacted] toward (b)(6); [redacted] July, 27, 2023; see also email attachments at Exhibit 030 – (b)(6); [redacted] EEO Investigative Affidavit; Exhibit 033 – (b)(6); [redacted] Supplemental Statement; Exhibit 032 – (b)(6); [redacted] Harassment Statement; Exhibit 031 – Combined Screenshots of (b)(6); [redacted] Teams Chatting (b)(6); [redacted] Exhibit 025 – Email – Reassignment for (b)(6); [redacted] March 2, 2023; Exhibit 029 – Email – (b)(6); [redacted] (b)(6); [redacted] Feb 3, 2023.

<sup>759</sup> Exhibit 078 – (b)(6); [redacted] Testimony (Dec. 08, 2023), pp. 40-41.

<sup>760</sup> Exhibit 008 – (b)(6); [redacted] Testimony (Nov. 06, 2023), pp. 43, 46.

<sup>761</sup> Exhibit 078 – (b)(6); [redacted] Testimony (Dec. 08, 2023), p. 41.

<sup>762</sup> Exhibit 112 – Requested Documents – (b)(6); [redacted] Harassment (Email re: FW: FY 23 Performance Objectives/Standards (Mar. 29, 2023)), p. 4. Respondent (b)(6); [redacted] offered this email as evidence showing Respondent (b)(6); [redacted] communications with Respondents (b)(6); [redacted] and (b)(6); [redacted] about (b)(6); [redacted] alleged harassment of (b)(6); [redacted] Exhibit 160 – FW: Information Request for OAWP case number 23-WashingtonDC-22984 (Oct. 12, 2023), pp. 1, 48-53.

<sup>763</sup> Exhibit 112 – Email re: FW: FY 23 Performance Objectives/Standards (Mar. 29, 2023) pp. 3-5.

<sup>764</sup> Exhibit 112 – Email re: FW: FY 23 Performance Objectives/Standards (Mar. 29, 2023) pp. 3-4.

<sup>765</sup> Exhibit 112 – Email re: FW: FY 23 Performance Objectives/Standards (Mar. 29, 2023) pp. 3-4.

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## OAWP Report of Investigation 23-WashingtonDC-22984

responded and offered to meet with Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) replied on March 29, 2023, copying Respondent (b)(6); (b)(7)(C) and stating, "If mediation was to occur, (b)(6); (b)(7)(C) or someone equivalent to his level would be the management official to participant [sic] in the mediation."<sup>766</sup> Respondent (b)(6); (b)(7)(C) then reiterated her request to be reassigned under Respondent (b)(6); (b)(7)(C).

Respondent (b)(6); (b)(7)(C) did not identify the names of the applicant, the applicant's relative, or the supervisor at issue in either her March 26 or March 29, 2023, email. She explained to OAWP that the supervisor was Respondent (b)(6); (b)(7)(C) the relative was (b)(6); (b)(7)(C) and the applicant was (b)(6); (b)(7)(C).<sup>767</sup>

Respondent (b)(6); (b)(7)(C) testified to OAWP that she did not report (b)(6); (b)(7)(C) allegations to Respondents (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) but she believed that OGC informed them.<sup>768</sup> Her belief is based on an August 2023, email from OGC attorney (b)(6); (b)(7)(C) to, asking for the status of (b)(6); (b)(7)(C) complaint against Respondent (b)(6); (b)(7)(C) because he needed to brief Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) about an EEO complaint filed by (b)(6); (b)(7)(C) after her offer of employment was rescinded.<sup>769</sup> (b)(6); (b)(7)(C) forwarded (b)(6); (b)(7)(C) email to Respondent (b)(6); (b)(7)(C) to obtain information about (b)(6); (b)(7)(C) allegations.<sup>770</sup>

Respondent (b)(6); (b)(7)(C) testified he did not recall being briefed by OGC.<sup>771</sup> He stated he was on leave at that time due to a family matter, so Respondent (b)(6); (b)(7)(C) filled in for him with (b)(6); (b)(7)(C).<sup>772</sup> Respondent (b)(6); (b)(7)(C) confirmed she attended the meeting in Respondent (b)(6); (b)(7)(C) place.<sup>773</sup>

Respondent (b)(6); (b)(7)(C) testified that she did not recall being notified of allegations that Respondent (b)(6); (b)(7)(C) harassed (b)(6); (b)(7)(C) until October 2023, when she assisted providing information for a request for documents to be sent to the Office of the Executive Secretary in response to a Congressional letter.<sup>774</sup> When asked about the email that (b)(6); (b)(7)(C) sent to (b)(6); (b)(7)(C), Respondent (b)(6); (b)(7)(C) said that she met with an OGC attorney, she believed to be (b)(6); (b)(7)(C) but she did not recall (b)(6); (b)(7)(C) discussing (b)(6); (b)(7)(C) allegations against Respondent (b)(6); (b)(7)(C).<sup>775</sup> Instead, the meeting was to prepare for

<sup>766</sup> Exhibit 112 – Email re: FW: FY 23 Performance Objectives/Standards (Mar. 29, 2023), p. 1.

<sup>767</sup> Exhibit 020 (b)(6); (b)(7)(C) Testimony (Nov. 07, 2023), pp. 84-87.

<sup>768</sup> Exhibit 021 – (b)(6); (b)(7)(C) Testimony (Nov. 01, 2023), pp. 9-13.

<sup>769</sup> Exhibit 113 – Email re: Information Requested: Status of Complaint (Aug. 29, 2023); Exhibit 160 – FW: Information Request for OAWP case number 23-WashingtonDC-22984 (Oct. 12, 2023), pp. 1, 54-55.

<sup>770</sup> Exhibit 113 – Email re: Information Requested: Status of Complaint (Aug. 29, 2023).

<sup>771</sup> Exhibit 052 (b)(6); (b)(7)(C) Testimony (Dec. 18, 2023), p. 37.

<sup>772</sup> Exhibit 052 (b)(6); (b)(7)(C) Testimony (Dec. 18, 2023), p. 38.

<sup>773</sup> Exhibit 056 (b)(6); (b)(7)(C) Testimony (Dec. 13, 2023), p. 37.

<sup>774</sup> Exhibit 056 (b)(7)(C) Testimony (Dec. 13, 2023), pp. 14-16, 35.

<sup>775</sup> Exhibit 056 (b)(6); (b)(7)(C) Testimony (Dec. 13, 2023), pp. 36-38.

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## OAWP Report of Investigation 23-WashingtonDC-22984

the next stage in the EEO case brought by (b)(6); (b)(7)(C) when she was not selected for employment with ORMDI.<sup>776</sup>

(b)(6); (b)(7)(C) testified that when he met with Respondent (b)(6); (b)(7)(C) he raised (b)(6); (b)(7)(C) allegations against Respondent (b)(6); (b)(7)(C) to Respondent (b)(6); (b)(7)(C) because (b)(6); (b)(7)(C) had included it in her EEO complaint, but to (b)(6); (b)(7)(C) knowledge neither he or his office made any recommendations to Respondent (b)(6); (b)(7)(C) about how to address (b)(6); (b)(7)(C) allegations at that time.<sup>777</sup> (b)(6); (b)(7)(C) stated he did not have the “full scope” of what (b)(6); (b)(7)(C) had alleged, and he did not recall what specific follow-up questions Respondent (b)(6); (b)(7)(C) asked about (b)(6); (b)(7)(C) allegations.<sup>778</sup>

*Respondent* (b)(6); (b)(7)(C)

OAWP did not substantiate Respondent (b)(6); (b)(7)(C) failed to take prompt and appropriate action regarding (b)(6); (b)(7)(C) allegations against Respondent (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) testified he did not learn of allegations that Respondent (b)(6); (b)(7)(C) had harassed (b)(6); (b)(7)(C) until (b)(6); (b)(7)(C) filed an EEO complaint in October 2023.<sup>779</sup> Although in various communications with Respondent (b)(6); (b)(7)(C) Respondent (b)(6); (b)(7)(C) had alluded to (b)(6); (b)(7)(C) rejecting Respondent (b)(6); (b)(7)(C) advances as being the reason (b)(6); (b)(7)(C) daughter-in-law was not hired, allegations that Respondent (b)(6); (b)(7)(C) was sexually harassing (b)(6); (b)(7)(C) were never reported to Respondent (b)(6); (b)(7)(C). In fact, Respondent (b)(6); (b)(7)(C) decided not to tell Respondent (b)(6); (b)(7)(C) about it because he did not want to be “passing the buck.”<sup>780</sup>

*Respondent* (b)(6); (b)(7)(C)

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to take prompt and appropriate action with respect to (b)(6); (b)(7)(C) sexual harassment allegations against Respondent (b)(6); (b)(7)(C). In August 2023, Respondent (b)(6); (b)(7)(C) filled in for Respondent (b)(6); (b)(7)(C) in a meeting with (b)(6); (b)(7)(C) to discuss (b)(6); (b)(7)(C) EEO complaint, and (b)(6); (b)(7)(C) referenced (b)(6); (b)(7)(C) allegations against Respondent (b)(6); (b)(7)(C) in the context of assessing the EEO Complainant’s potential arguments. (b)(6); (b)(7)(C) did not raise allegations of sexual harassment to Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) did not indicate ongoing harassment by Respondent (b)(6); (b)(7)(C) against (b)(6); (b)(7)(C). Instead, (b)(6); (b)(7)(C) allegations against Respondent (b)(6); (b)(7)(C) were tangential to the matter that prompted the meeting. Under these circumstances, OAWP concludes Respondent (b)(6); (b)(7)(C) did not have a duty to act with respect to the information (b)(6); (b)(7)(C) provided.

<sup>776</sup> Exhibit 056 – (b)(6); (b)(7)(C) Testimony (Dec. 13, 2023), pp. 36-37.

<sup>777</sup> Exhibit 114 – (b)(6); (b)(7)(C) Testimony, (Jan. 18, 2024), pp. 12-15.

<sup>778</sup> Exhibit 114 – (b)(6); (b)(7)(C) Testimony, (Jan. 18, 2024), pp. 15-16.

<sup>779</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 108-109, 116-117.

<sup>780</sup> Exhibit 078 – (b)(6); (b)(7)(C) Testimony (Dec. 08, 2023), p. 41.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); (b)(7)(C)

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to take prompt and appropriate action with respect to (b)(6); (b)(7)(C) sexual harassment allegations against Respondent (b)(6); (b)(7)(C). Although Respondent (b)(6); (b)(7)(C) forwarded an email chain referencing (b)(6); (b)(7)(C) belief that (b)(6); (b)(7)(C) employment offer was withdrawn because (b)(6); (b)(7)(C) had rejected Respondent (b)(6); (b)(7)(C) advances, most of the email chain pertained to Respondent (b)(6); (b)(7)(C) own allegations of unfair treatment by Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). In fact, Respondent (b)(6); (b)(7)(C) message to Respondent (b)(6); (b)(7)(C) on March 29, 2023, was to request that he, not Respondent (b)(6); (b)(7)(C) participate in a proposed mediation with Respondent (b)(6); (b)(7)(C) and that her team be reassigned under Respondent (b)(6); (b)(7)(C). In addition, Respondent (b)(6); (b)(7)(C) did not participate in the August 2023 meeting with (b)(6); (b)(7)(C) regarding (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) EEO complaint.

Respondent (b)(6); (b)(7)(C) Harassment Allegations Against Respondent (b)(6); (b)(7)(C)

On March 26, 2023, Respondent (b)(6); (b)(7)(C) emailed Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) alleging Respondent (b)(6); (b)(7)(C) had subjected (b)(6); (b)(7)(C) to "continuous harassment" and treated her in a biased manner, such as by issuing a Letter of Counseling.<sup>781</sup> Respondent (b)(6); (b)(7)(C) requested that her office be realigned under Respondent (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) responded to Respondent (b)(6); (b)(7)(C) on March 27, 2023, suggesting a meeting with Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) to discuss (b)(6); (b)(7)(C) issues.<sup>783</sup> Respondent (b)(6); (b)(7)(C) replied to Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) on March 29, 2023, declining a meeting, and reiterating the request for her and her office to be realigned under Respondent (b)(6); (b)(7)(C).

Respondent (b)(6); (b)(7)(C) testified that when Respondent (b)(6); (b)(7)(C) alleged that Respondent (b)(6); (b)(7)(C) was harassing her, he moved Respondent (b)(6); (b)(7)(C) out of Respondent (b)(6); (b)(7)(C) supervisory chain and reassigned her under Respondent (b)(6); (b)(7)(C) at Respondent (b)(6); (b)(7)(C) request.<sup>785</sup> Respondent (b)(6); (b)(7)(C) realigned Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) subordinates from Respondent (b)(6); (b)(7)(C) to Respondent (b)(6); (b)(7)(C) effective (b)(6); (b)(7)(C).<sup>786</sup>

<sup>781</sup> Exhibit 115 – Email Re FY 23 Performance Objective/Standards (Mar. 23, 2023 – Mar. 29, 2023), pp. 2-3.

<sup>782</sup> Exhibit 115 – Email Re FY 23 Performance Objective/Standards (Mar. 23, 2023 – Mar. 29, 2023), p. 4.

<sup>783</sup> Exhibit 115 – Email Re FY 23 Performance Objective/Standards (Mar. 23, 2023 – Mar. 29, 2023), p. 2.

<sup>784</sup> Exhibit 115 – Email Re FY 23 Performance Objective/Standards (Mar. 23, 2023 – Mar. 29, 2023), p. 1.

<sup>785</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 95-96; see also Exhibit 115 – Email Re FY 23 Performance Objective/Standards (Mar. 23, 2023 – Mar. 29, 2023).

<sup>786</sup> Exhibit 116 – Decision to Realign ORMDI VBA under the Executive Assistant.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); (b)(7)(C)

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to take prompt and appropriate action to address the alleged harassment and prevent further harassment from occurring. To the contrary, he promptly provided the relief Respondent (b)(6); (b)(7)(C) had requested and removed her from Respondent (b)(6); (b)(7)(C) supervision.

(b)(6); (b)(7)(C) Allegations Against Respondent (b)(6); (b)(7)(C) in 2022

On August 3, 2022, (b)(6); (b)(7)(C) forwarded an email to (b)(6); (b)(7)(C) disclosing alleged Privacy/HIPAA violations by Respondent (b)(6); (b)(7)(C). Specifically, (b)(6); (b)(7)(C) alleged that after she (b)(6); (b)(7)(C) was hired at ORMDI, Respondent (b)(6); (b)(7)(C) "began disclosing information to me regarding PII, HIPPA [sic], EEO case activity on ORMDI employees and their families," and she detailed multiple instances in which Respondent (b)(6); (b)(7)(C) had shared with her other employees' personal information.<sup>787</sup> On Monday, August 15, 2022, (b)(6); (b)(7)(C) forwarded the email to (b)(6); (b)(7)(C) explaining that he received it "because of my responsibilities around privacy. It's not really in that domain though." He sent it to (b)(6); (b)(7)(C) because it contained allegations about employees in her organization. The same day, (b)(6); (b)(7)(C) forwarded the email exchange to Respondent (b)(6); (b)(7)(C) without comment.<sup>788</sup>

Respondent (b)(6); (b)(7)(C) is the (b)(6); (b)(7)(C) for HRA/OSP, and she testified that her primary role is to manage (b)(6); (b)(7)(C) between VA and Congress.<sup>789</sup> She is not in ORMDI's supervisory chain and does not oversee any aspect of ORMDI, so she is not typically involved in ORMDI complaints.<sup>790</sup>

(b)(6); (b)(7)(C) recalled receiving the email from (b)(6); (b)(7)(C) and stated she had never seen a case like this before and did not know how to tackle it. (b)(6); (b)(7)(C) testified she met with Respondent (b)(6); (b)(7)(C) and asked Respondent (b)(6); (b)(7)(C) what the best way forward would be to handle the allegations, and that Respondent (b)(6); (b)(7)(C) took the lead on investigating the allegations. (b)(6); (b)(7)(C) said she had no concerns with Respondent (b)(6); (b)(7)(C) moving forward with the allegations and that it was Respondent (b)(6); (b)(7)(C) responsibility to see the investigation through to completion.<sup>791</sup>

<sup>787</sup> Exhibit 117 – Email re: Privacy HIPAA Information Disclosed about VA Employees and their Families, pp. 1-6.

<sup>788</sup> Exhibit 117 – Email re: Privacy HIPAA Information Disclosed about VA Employees and their Families, pp. 1-6, pp. 1-6. (b)(6); (b)(7)(C) initially sent her allegations on July 27, 2022, to a VA Central Office Privacy Service email account, and addressed the email to (b)(6); (b)(7)(C). Upon receiving no acknowledgment of receipt from that account, (b)(6); (b)(7)(C) forwarded the email directly to (b)(6); (b)(7)(C).

<sup>789</sup> Exhibit 056 – (b)(6); (b)(7)(C) Testimony (Dec. 13, 2023), pp. 1-2, 4.

<sup>790</sup> Exhibit 056 – (b)(6); (b)(7)(C) Testimony (Dec. 13, 2023), pp. 13, 28-29.

<sup>791</sup> Exhibit 054 – (b)(6); (b)(7)(C) Testimony (Jan. 19, 2024), pp. 19, 109-110, 113-114, 127.

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The information contained herein is covered by the Privacy Act, 38 U.S.C. § 323(c)(3), and other laws. This information is being shared with you under the Privacy Act's need to know exception, 5 U.S.C. § 552a(b)(1), which allows for the disclosure of information to agency personnel who have a need for information for the performance of their duties. You may not share the information contained herein with any individual, unless it is necessary for the performance of that individual's duties and after you have consulted with OAWP.



## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); said she discussed the email with (b)(6); and Respondent (b)(6); and (b)(6); asked her to reach out to ORMDI so they could ask USPS to speak with (b)(6); (b)(7)(C). Respondent (b)(6); contacted (b)(6); (b)(7)(C) EEO Specialist, on September 20, 2022, requesting (b)(6); to ask USPS to conduct a Factfinding.<sup>793</sup> Respondent (b)(6); (b)(7)(C) original email requesting USPS investigate included the specific instruction: “whether (b)(6); (b)(7)(C) has any independent evidence of what she alleges (b)(6); (b)(7)(C) told her, *other than* (b)(6); (b)(6); (b)(7)(C) statement in the email.”<sup>794</sup> Respondent (b)(6); requested the investigation initially be limited to interviewing (b)(6); (b)(7)(C) but noted “[s]hould more information arise, the investigation may be expanded.”<sup>795</sup> Respondent (b)(6); (b)(7)(C) stated the initial scope of the investigation was limited because “it was tricky to know what to do with [the allegations]” because they were all things (b)(6); (b)(7)(C) reported Respondent (b)(6); said without (b)(6); (b)(7)(C) having any firsthand knowledge of the actual conduct [i.e., people were having affairs, etc.], but the intent was to see if (b)(6); (b)(7)(C) had “any evidence that (b)(6); is doing all these things (b)(5); (b)(6); (b)(7)(C)”.<sup>796</sup> (b)(6); did not recall any conversations regarding the scope of the investigation and noted she thought all the allegations needed to be investigated. (b)(6); confirmed Respondent (b)(6); had the authority to decide to narrow the scope of the investigation, but that she (b)(6); would not have expected it to be limited. (b)(6); stated she trusted Respondent (b)(6); as a member of the SES to do a proper investigation and to request assistance if she needed it.<sup>797</sup>

USPS conducted the investigation and updated Respondent (b)(6); on the status of the investigation on November 2, 2022.<sup>798</sup> Specifically, USPS informed Respondent (b)(6); that (b)(6); (b)(7)(C) did not provide independent evidence of the “multiple rumors” that (b)(6); (b)(7)(C) alleged Respondent (b)(6); had told her.<sup>799</sup> USPS also informed Respondent (b)(6); that (b)(6); (b)(7)(C) provided other documents that did not pertain to the specific allegations being investigated, that (b)(6); (b)(7)(C) submitted the allegations “because she was given a Letter of Counseling and a Letter of Reprimand,” and that (b)(6); (b)(7)(C) raised “harassment and hostile work environment but both were in reference to things that happened to her

<sup>792</sup> Exhibit 118 – (b)(6); Testimony (Jan. 4, 2024), pp. 3-4, 7-8; see also Exhibit 119 – Email re: (b)(6); requesting a fact-finding (Sept. 20, 2022), pp. 7-8 (“I spoke with (b)(6); and we would like to proceed . . . [with] a fact-finding investigation . . .”).

<sup>793</sup> Exhibit 119 – Email re: (b)(6); requesting a fact-finding, pp. 7-8.

<sup>794</sup> Exhibit 119 – Email re: (b)(6); (b)(7)(C) requesting a fact-finding, pp. 1-2 (all emphasis in the original).

<sup>795</sup> Exhibit 119 – Email re: (b)(6); (b)(7)(C) requesting a fact-finding, pp. 1-2.

<sup>796</sup> Exhibit 118 – (b)(6); testimony (Jan. 4, 2024), pp. 24-26.

<sup>797</sup> Exhibit 054 – (b)(6); Testimony (Jan. 19, 2024), pp. 118, 120.

<sup>798</sup> Exhibit 120 – Email re: (b)(6); discussing VA-22-HCI-004 (b)(6); (b)(7)(C) DC - Scope of Investigation with (b)(6); (Nov. 2, 2022), p. 5.

<sup>799</sup> Exhibit 120 – Email re: (b)(6); discussing VA-22-HCI-004 (b)(6); (b)(7)(C) DC - Scope of Investigation with (b)(6); (Nov. 2, 2022), p. 5.

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## OAWP Report of Investigation 23-WashingtonDC-22984

prior to her current position.”<sup>800</sup> USPS asked whether Respondent (b)(6); (b)(7)(C) wanted “to move forward with the allegations we have and include her Letter of Counseling and Letter of Reprimand.”<sup>801</sup> Respondent (b)(6); (b)(7)(C) forwarded this email to Respondent (b)(6); (b)(7)(C) on November 2, 2022, stating, “Looping on that ORMDI matter . . . we can discuss tomorrow.”<sup>802</sup>

On November 10, 2022, Respondent (b)(6); (b)(7)(C) forwarded her correspondence with USPS to Respondent (b)(6); (b)(7)(C) and provided this update:

Hi (b)(6);

As we discussed on Monday, I spoke with the below investigator. She confirmed that (b)(6); (b)(6); (b)(7)(C) had no other independent evidence to support her allegations against (b)(6); (b)(7)(C). The investigator also indicated that based on the discussion, it appeared that (b)(6); (b)(6); (b)(7)(C) sent the list of complaints as a reaction to her receipt of a Letter of Counseling and Reprimand. (b)(6); (b)(7)(C) is apparently (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) supervisor. Given the above, I advised her not to pursue additional investigation. She investigated what we asked, and from what she indicated the email allegations have no independent substantiation. They will send me a final report, which will be a summary of the interview. The report itself will not contain conclusions, which is partly why I am summarizing the conversation in this email (before I forget).<sup>803</sup>

On November 29, 2023, USPS sent Respondent (b)(6); (b)(7)(C) the final Report of Investigation (ROI) and confirmed no further interviews were conducted per Respondent (b)(6); (b)(7)(C) instructions.<sup>804</sup> Respondent (b)(6); (b)(7)(C) conducted a “quick review” of the ROI, and questioned where in the report (b)(6); (b)(7)(C) was asked if she had independent evidence of her allegations.<sup>805</sup> USPS confirmed (b)(6); (b)(7)(C) was asked this but failed to provide any independent evidence, and USPS and Respondent (b)(6); (b)(7)(C) agreed on language to include in the ROI reflecting this fact.<sup>806</sup> The final ROI with the included Investigator’s Note was sent to Respondent (b)(6); (b)(7)(C) on December 7, 2022.<sup>807</sup>

<sup>800</sup> Exhibit 120 – Email re: (b)(6); (b)(7)(C) discussing VA-22-HCI-004 (b)(6); (b)(7)(C) DC - Scope of Investigation with (b)(6); (b)(7)(C) (Nov. 2, 2022), p. 5. Note: In (b)(6); (b)(7)(C) declaration in the USPS documents she alleged (b)(6); (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) supervisor) were currently harassing, bullying, and intimidating her daily. She requested a transfer from working with (b)(6); (b)(6); (b)(7)(C) Exhibit 121 – VA-HCI-004 USPS Report, redacted (Nov. 28, 2022), pp. 40-42.

<sup>801</sup> Exhibit 120 – Email re: (b)(6); (b)(7)(C) discussing VA-22-HCI-004 (b)(6); (b)(7)(C) DC – Scope of Investigation with (b)(6); (b)(7)(C) (Nov. 2, 2022), p. 5.

<sup>802</sup> Exhibit 122 – Email (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) looping in ORMDI, p. 1.

<sup>803</sup> Exhibit 120 – Email re: (b)(6); (b)(7)(C) discussing VA-22-HCI-004 (b)(6); (b)(7)(C) DC - Scope of Investigation with (b)(6); (b)(7)(C) (Nov. 10, 2022), p. 5.

<sup>804</sup> Exhibit 123 – Email – Final eROI, VA-22-HCI-004 (b)(6); (b)(7)(C) DC (Nov. 29, 2022), p. 4.

<sup>805</sup> Exhibit 123 – Email – Final eROI, VA-22-HCI-004 (b)(6); (b)(7)(C) DC (Nov. 29, 2022), pp. 3-4.

<sup>806</sup> Exhibit 123 – Email – Final eROI, VA-22-HCI-004 (b)(6); (b)(7)(C) DC (Nov. 29 – Dec. 7, 2022), pp. 1-3.

<sup>807</sup> Exhibit 123 – Email – Final eROI, VA-22-HCI-004 (b)(6); (b)(7)(C) DC (Dec. 7, 2022), p. 1.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); (b)(7)(C) confirmed she received the 327-page ROI<sup>808</sup> from USPS but did not recall reading a 31-page declaration from (b)(6); (b)(7)(C) contained in the ROI.<sup>809</sup> She did not recall (b)(6); (b)(7)(C) stating that Respondents (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) harassed her.<sup>810</sup> She only recalled (b)(6); (b)(7)(C) was complaining that Respondent (b)(6); (b)(7)(C) was a gossip.<sup>811</sup> Respondent (b)(6); (b)(7)(C) said that her request to USPS was to conduct a Factfinding, not a harassment investigation.<sup>812</sup>

(b)(6); (b)(7)(C) stated she would have expected Respondent (b)(6); (b)(7)(C) to read the report when it was completed and to share it with Respondent (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) confirmed she did not receive a copy of the report, although she recalled Respondent (b)(6); (b)(7)(C) shared with her the allegations were unsubstantiated.<sup>813</sup>

Although Respondent (b)(6); (b)(7)(C) stated her request to USPS was not a harassment investigation, USPS noted in the final report under the Statement of Allegations: (b)(6); (b)(7)(C) alleged that she was subjected to a hostile work environment by (b)(6); (b)(7)(C) when she (b)(6); (b)(7)(C) shared unsolicited personal information about other employees while they were at the Department of Veterans Affairs (VA) in Washington, D.C.<sup>814</sup> In addition, (b)(6); (b)(7)(C) 31-page affidavit, included in the final ROI, included the following: "The reason why I'm sitting with you on today and discussing all of these conversations is because I have been mentally abused and harassed by these two women (b)(6); (b)(7)(C) . . . No supervisor should ever comport him or herself in an unprofessional manner such as this, which causes mental, physical, psychological [sic] stress and harm to another employee."<sup>815</sup>

Respondent (b)(6); (b)(7)(C) testified she emailed the report to Respondent (b)(6); (b)(7)(C) because Respondent (b)(6); (b)(7)(C) was in the chain of command of ORMDI.<sup>816</sup> Respondent (b)(6); (b)(7)(C) said that she did not know why (b)(6); (b)(7)(C) made her the point of contact instead of Respondent (b)(6); (b)(7)(C)<sup>817</sup> but she kept Respondent (b)(6); (b)(7)(C) informed of the complaint and investigation.<sup>818</sup> She also said she did not contact Respondent (b)(6); (b)(7)(C) about the investigation because he was named as someone who was allegedly having an affair.<sup>819</sup>

<sup>808</sup> Exhibit 121 – VA-HCI-004 USPS Report, redacted (Nov. 28, 2022).

<sup>809</sup> Exhibit 118 – (b)(6); (b)(7)(C) Testimony (Jan. 4, 2024), pp. 13-14.

<sup>810</sup> Exhibit 118 – (b)(6); (b)(7)(C) Testimony (Jan. 4, 2024), p. 20.

<sup>811</sup> Exhibit 118 – (b)(6); (b)(7)(C) Testimony (Jan. 4, 2024), p. 38.

<sup>812</sup> Exhibit 118 – (b)(6); (b)(7)(C) Testimony (Jan. 4, 2024), pp. 33-34.

<sup>813</sup> Exhibit 054 – (b)(6); (b)(7)(C) Testimony (Jan. 19, 2024), p. 119.

<sup>814</sup> Exhibit 121 – VA-HCI-004 USPS Report, redacted (Nov. 28, 2022), p. 6.

<sup>815</sup> Exhibit 121 – VA-HCI-004 USPS Report, redacted (Nov. 28, 2022), pp. 40-41.

<sup>816</sup> Exhibit 118 – (b)(6); (b)(7)(C) Testimony (Jan. 4, 2024), p. 23.

<sup>817</sup> Exhibit 118 – (b)(6); (b)(7)(C) Testimony (Jan. 4, 2024), p. 8.

<sup>818</sup> Exhibit 120 – Email re: (b)(6); (b)(7)(C) discussing VA-22-HCI-004 (b)(6); (b)(7)(C) DC - Scope of Investigation with (b)(6); (b)(7)(C) (Nov. 10, 2022), p. 5.

<sup>819</sup> Exhibit 118 – (b)(6); (b)(7)(C) Testimony (Jan. 4, 2024), pp. 17-18.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); stated she discussed the report with Respondent (b)(6); and (b)(6); although she did not send the report to (b)(6);. She testified, "it didn't seem like there was any further action to pursue based on what we got back in terms of the questions."<sup>820</sup> Respondent (b)(6); confirmed that taking no further action was a group decision.<sup>821</sup>

Respondent (b)(6); recalled being informed by (b)(6); in August 2022 about the email that (b)(6); sent to (b)(6); which contained some "wild allegations" in it.<sup>822</sup> He did not see the (b)(6); email at the time but understood the email to contain a lot of allegations, some with sexual innuendo.<sup>823</sup> He stated (b)(6); gave it to Respondent (b)(6); to do the investigation.<sup>824</sup> He did not recall providing feedback on who should be interviewed,<sup>825</sup> and he did not recall being part of the discussion to send the email to the Postal Service for investigation.<sup>826</sup> Respondent (b)(6); did not recall the conversation with Respondent (b)(6); referenced in the November 10, 2022, email.<sup>827</sup> He also did not recall concurring or disagreeing with Respondent (b)(6); recommendation to discontinue the investigation after (b)(6); (b)(7)(C) interview.<sup>828</sup> Respondent (b)(6); stated he did not recall receiving a USPS report from Respondent (b)(6); but understood it to be unsubstantiated.<sup>829</sup> In an email dated November 2, 2022, Respondent (b)(6); forwarded to Respondent (b)(6); an email from USPS about its investigation, writing, "Looping on that ORMDI matter ... we can discuss tomorrow."<sup>830</sup> In the forwarded email, a USPS representative stated that the investigator had interviewed (b)(6); (b)(7)(C) and did not obtain any independent evidence of the rumors (b)(6); (b)(7)(C) alleged Respondent (b)(6); had told her, and that (b)(6); (b)(6); had "brought up harassment and hostile work environment" but they were "in reference to things that happened to her prior to her current position."<sup>831</sup> Respondent (b)(6); further did not recall discussing the report with Respondent (b)(6); and did not know if (b)(6); read it after it was issued.<sup>832</sup> He was not aware the report documented that (b)(6); (b)(7)(C) alleged she was being harassed,<sup>833</sup> nor did he believe there was any

<sup>820</sup> Exhibit 118 – (b)(6); Testimony (Jan. 4, 2024), pp. 27-28.

<sup>821</sup> Exhibit 118 – (b)(7)(C) Testimony (Jan. 4, 2024), p. 28.

<sup>822</sup> Exhibit 124 – (b)(6); Testimony (Jan. 17, 2024), p. 7.

<sup>823</sup> Exhibit 124 – (b)(6); Testimony (Jan. 17, 2024), pp. 7-8.

<sup>824</sup> Exhibit 124 – (b)(7)(C) Testimony (Jan. 17, 2024), pp. 7, 10.

<sup>825</sup> Exhibit 124 – (b)(7)(C) Testimony (Jan. 17, 2024), pp. 11-12.

<sup>826</sup> Exhibit 124 – (b)(7)(C) Testimony (Jan. 17, 2024), pp. 16-17.

<sup>827</sup> Exhibit 124 – (b)(7)(C) Testimony (Jan. 17, 2024), pp. 26-30.

<sup>828</sup> Exhibit 124 – (b)(7)(C) Testimony (Jan. 17, 2024), pp. 28-30.

<sup>829</sup> Exhibit 125 – Email re: (b)(6); responding to questions about the Oct. 2022 USPS investigation (Jan. 2, (b)(5); (b)(6);).

<sup>830</sup> Exhibit 122 – Email (b)(6); to (b)(6); looping in ORMDI.

<sup>831</sup> Exhibit 122 – Email (b)(6); to (b)(6); looping in ORMDI.

<sup>832</sup> Exhibit 124 – (b)(6); Testimony (Jan. 17, 2024), p. 35.

<sup>833</sup> Exhibit 124 – (b)(7)(C) Testimony (Jan. 17, 2024), p. 34.

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## OAWP Report of Investigation 23-WashingtonDC-22984

follow up from the investigation.<sup>834</sup> He did not talk to (b)(6); (b)(7)(C) about the allegations or the report because he understood it to be unsubstantiated and “did not see the need to get into it.”<sup>835</sup>

Respondent (b)(6); (b)(7)(C)

OAWP did not substantiate that (b)(6); (b)(7)(C) failed to take appropriate action relating to her handling of (b)(6); (b)(7)(C) allegations against Respondent (b)(6); (b)(7)(C). The (b)(6); (b)(7)(C) email presented a complicated investigation due to the broad scope of the allegations and (b)(6); (b)(7)(C) apparent lack of first-hand knowledge of the email allegations of misconduct. It was not unreasonable for Respondent (b)(6); (b)(7)(C) to limit the scope of the investigation initially to gather facts from (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) to ascertain whether there was any truth to the allegations of misconduct, allegations which were not substantiated. Moreover, the USPS incorrectly told Respondent (b)(6); (b)(7)(C) that the allegations about (b)(6); (b)(7)(C) being harasses occurred when (b)(6); (b)(7)(C) was in a prior position, so it was not unreasonable to conclude there was no harassment that needed to be addressed.

Respondent (b)(6); (b)(7)(C)

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to take appropriate action regarding the handling of (b)(6); (b)(7)(C) allegations against Respondent (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) was not tasked with conducting the investigation – this task was assigned to Respondent (b)(6); (b)(7)(C) by (b)(6); (b)(7)(C). Although (b)(6); (b)(7)(C) provided regular updates to (b)(6); (b)(7)(C), Respondent (b)(6); (b)(7)(C) remained the primary point of contact for the USPS investigator and took responsibility for conveying instructions and making recommendations and decisions regarding the scope of the investigation and the content of the Report of Investigation.

(b)(6); (b)(7)(C) Harassment Allegations Against Supervisors in 2022 and 2023

(b)(6); (b)(7)(C) is an EEO (b)(6); (b)(7)(C) for the Southeast District,<sup>836</sup> which falls under Respondent (b)(6); (b)(7)(C) purview. On October 7, 2022, (b)(6); (b)(7)(C) emailed Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) requesting immediate reassignment because of “bullying and harassing tactics” by his supervisors, Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C).<sup>837</sup> Respondent (b)(6); (b)(7)(C) acknowledged receipt of (b)(6); (b)(7)(C) request on October 7, 2022, and said he would

<sup>834</sup> Exhibit 124 – (b)(6); (b)(7)(C) testimony (Jan. 17, 2024), pp. 37-38.

<sup>835</sup> Exhibit 124 – (b)(6); (b)(7)(C) testimony (Jan. 17, 2024), p. 38 and p. 62.

<sup>836</sup> Exhibit 073 – (b)(6); (b)(7)(C) Transcript (Dec. 12, 2023), p. 1.

<sup>837</sup> Exhibit 126 – (b)(6); (b)(7)(C) Reassignment Request (Oct. 7, 2022).

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## OAWP Report of Investigation 23-WashingtonDC-22984

work with Respondent (b)(6); (b)(7)(C) to address the matter.<sup>838</sup> That same day, Respondent (b)(6); (b)(7)(C) granted (b)(6); (b)(7)(C) request for a detail assignment while a Factfinding was conducted.<sup>839</sup> Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) were included on Respondent (b)(6); (b)(7)(C) email.<sup>840</sup> Following a Factfinding by USPS, Respondent (b)(6); (b)(7)(C) informed (b)(6); (b)(7)(C) that his allegations were not substantiated and returned him to his position of record effective March 13, 2023.<sup>841</sup> Meanwhile, (b)(6); (b)(7)(C) filed an EEO complaint in December 2022 that is still ongoing, and which he has amended four times.<sup>842</sup> Respondent (b)(6); (b)(7)(C) recalled only that Respondent (b)(6); (b)(7)(C) informed him of the complaint and looked into it “immediately.”<sup>843</sup>

On September 20, 2023, (b)(6); (b)(7)(C) emailed (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C) requesting a reassignment and expressing his need for “more help from leadership” to address the hostile work environment he felt subjected to at the hands of his supervisor, Respondent (b)(6); (b)(7)(C) as well as two other individuals.<sup>844</sup> (b)(6); (b)(7)(C) email included a forwarded message he had previously sent to HR, in which he described continued general, non-specific harassment and retaliation as a result of his filing an EEO complaint, which was exacerbating a medical condition.<sup>845</sup> The same day, Respondent (b)(6); (b)(7)(C) forwarded (b)(6); (b)(7)(C) email to Respondent (b)(6); (b)(7)(C) writing, “let’s have a conversation about this when you return from travel.”<sup>846</sup> Two weeks later, on October 4, 2023, Respondent (b)(6); (b)(7)(C) offered to set up a meeting between her, (b)(6); (b)(7)(C) and Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) to discuss (b)(6); (b)(7)(C) concerns.<sup>847</sup> (b)(6); (b)(7)(C) declined the offer, citing (b)(6); (b)(7)(C) ongoing EEO complaint against Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) and there was no further follow-up to (b)(6); (b)(7)(C) September 20, 2023, email by Respondent (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) who was copied on the initial email but omitted from Respondent (b)(6); (b)(7)(C) reply.<sup>848</sup>

Respondent (b)(6); (b)(7)(C) testified she did not respond to (b)(6); (b)(7)(C) October 4, 2023, response because Respondent (b)(6); (b)(7)(C) told her (b)(6); (b)(7)(C) was making the same allegations that USPS had already investigated and found not to be substantiated.<sup>849</sup> Respondent (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C)

<sup>838</sup> Exhibit 127 – Email (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) placing on detail, p. 2.

<sup>839</sup> Exhibit 127 – Email (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) placing on detail (with attached detail memorandum and Notification Letter (Oct. 7, 2022), pp. 1, 5-7.

<sup>840</sup> Exhibit 127 – Email (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) placing on detail, p. 1.

<sup>841</sup> Exhibit 129 – Email re: Follow-up Memo to (b)(6); (b)(7)(C) (Mar. 11, 2023).

<sup>842</sup> Exhibit 073 – (b)(6); (b)(7)(C) Transcript (Dec. 12, 2023), pp. 53-54.

<sup>843</sup> Exhibit 023 – (b)(6); (b)(7)(C) Testimony (Dec. 19, 2023), pp. 118-120.

<sup>844</sup> Exhibit 130 – Email re: FW\_Options, pp. 1-2.

<sup>845</sup> Exhibit 130 – Email re: FW\_Options, pp. 1-2.

<sup>846</sup> Exhibit 131 – 09202023 Let’s Have a Conversation, p. 1.

<sup>847</sup> Exhibit 132 – Email to (b)(6); (b)(7)(C) p. 1.

<sup>848</sup> Exhibit 132 – Email to (b)(6); (b)(7)(C) p. 1.

<sup>849</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp. 14-15,

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## OAWP Report of Investigation 23-WashingtonDC-22984

was (b)(6); (b)(7)(C) supervisor.<sup>850</sup> Respondent (b)(6); (b)(7)(C) stated she was aware that (b)(6); (b)(7)(C) had reached out to Respondent (b)(6); (b)(7)(C) about being reassigned but said “there’s no reason to move him.”<sup>851</sup> Because Respondent (b)(6); (b)(7)(C) advised that a new Factfinding was not necessary, Respondent (b)(6); (b)(7)(C) did not request one at this time. Respondent (b)(6); (b)(7)(C) did not contact (b)(6); (b)(7)(C) to determine whether he had any new allegations because she had consulted Respondent (b)(6); (b)(7)(C) who was “closer to the situation.”<sup>852</sup> Respondent (b)(6); (b)(7)(C) also expected Respondent (b)(6); (b)(7)(C) to handle the situation, although she did not give Respondent (b)(6); (b)(7)(C) any direct instructions to take any action with respect to (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) did not recall Respondent (b)(6); (b)(7)(C) following up.<sup>853</sup>

(b)(6); (b)(7)(C) did not recall seeing (b)(6); (b)(7)(C) September 20, 2023, email or having any conversations with Respondent (b)(6); (b)(7)(C) about (b)(6); (b)(7)(C) email.<sup>854</sup> (b)(5); (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) sent another email to Respondent (b)(6); (b)(7)(C) on December 4, 2023, again requesting to meet with her and discuss permanent reassignment due to the ongoing hostile work environment he was experiencing. He did not include specific facts, but rather a general allegation of “ongoing HWE, toxic work environment, disparate treatment any (sic) many other discriminatory practices.”<sup>857</sup> Respondent (b)(6); (b)(7)(C) responded a few minutes later, again offering to arrange a meeting with (b)(6); (b)(7)(C) and Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C).<sup>858</sup> Respondent (b)(6); (b)(7)(C) explained she wanted to hear “both sides of the story” and resolve issues at the lowest level.<sup>859</sup> (b)(6); (b)(7)(C) again declined a meeting with Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) citing his pending EEO complaint against them and the Special Emphasis Division (SED).<sup>860</sup> Respondent (b)(6); (b)(7)(C) acknowledged she was contacted by (b)(6); (b)(7)(C) twice about his complaint, and that both times he declined her offered meeting but did not ask to meet with just her and Respondent (b)(6); (b)(7)(C) noting neither she nor Respondent (b)(6); (b)(7)(C) was identified as a named official in (b)(6); (b)(7)(C)

<sup>850</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 15.

<sup>851</sup> Exhibit 069 – (b)(6); (b)(7)(C) Testimony (Jan. 04, 2024), pp. 24-25.

<sup>852</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 18.

<sup>853</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp. 19-20, 24.

<sup>854</sup> Exhibit 054 – (b)(6); (b)(7)(C) Testimony (Jan. 19, 2024), pp. 99-100.

<sup>855</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 5.

<sup>856</sup> Exhibit 054 – (b)(6); (b)(7)(C) Testimony (Jan. 19, 2024), p. 101.

<sup>857</sup> Exhibit 132 – Email to (b)(6); (b)(7)(C) p. 1.

<sup>858</sup> Exhibit 133 – (b)(6); (b)(7)(C) email chain with his Dec. 4, 2023, response, p. 1.

<sup>859</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp. 7, 27.

<sup>860</sup> Exhibit 133 – (b)(6); (b)(7)(C) email chain with his Dec. 4, 2023, response, p. 1.

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## OAWP Report of Investigation 23-WashingtonDC-22984

EEO complaint.<sup>861</sup> She testified she would have met with (b)(6); to understand his allegations better if he had accepted her offer to meet with the group.<sup>862</sup>

(b)(6); testified it was concerning to her that Respondent (b)(6); twice offered a meeting to (b)(6); with the individuals about whom he was complaining, and stated Respondent (b)(6); should have honored (b)(6); desire for a one-on-one meeting with her.<sup>863</sup> By contrast, Respondent (b)(6); testified that it would be inappropriate for her to meet privately with an employee “who has an ongoing EEO claim.”<sup>864</sup>

On December 14, 2023, (b)(6); (b)(7)(C) emailed Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) requesting a meeting regarding “ongoing retaliation, bullying, HWE and discrimination from SED leadership.”<sup>865</sup> Respondent (b)(6); (b)(7)(C) forwarded (b)(6); (b)(7)(C) message to Respondent (b)(6); (b)(7)(C) asking, “Are you tracking this? Seems like we should initiate a post office investigation if I understand the protocol right. Also, [w]hat do you think about the request for detail.” Respondent (b)(6); (b)(7)(C) then forwarded Respondent (b)(6); (b)(7)(C) response to Respondent (b)(6); (b)(7)(C) stating, “I have offered twice to have you (b)(6); (b)(7)(C) and myself meet with him to discuss his concerns. Twice he has turned down the offer. Thoughts?” Respondent (b)(6); (b)(7)(C) responded, (b)(6); (b)(7)(C) needs to respond by letting him know he is referring this to you and that he (b)(6); (b)(7)(C) encourages him (b)(6); (b)(7)(C) to accept your offer to meet with him (b)(6); (b)(7)(C) along with his leadership.”<sup>866</sup>

The same day, Respondent (b)(6); (b)(7)(C) forwarded (b)(6); (b)(7)(C) December 14, 2023, email to (b)(6); (b)(7)(C) and asked her to “make a referral to USPS for a fact finding for hostile work environment claim [sic].”<sup>867</sup> Less than 30 minutes later, Respondent (b)(6); (b)(7)(C) again emailed (b)(6); (b)(7)(C) writing, “Hold off until Tuesday next week. I am being told a fact finding was done but I need to know more about that before sending to USPS.”<sup>868</sup> Respondent (b)(6); (b)(7)(C) testified she asked (b)(6); (b)(7)(C) to wait because she had finally received a copy of the previous Factfinding that she had asked for back in October 2023.<sup>869</sup> (b)(6); (b)(7)(C) stated that due to “some confusion,” another Factfinding was not requested until January 16, 2024.<sup>870</sup> She testified that she had meant for (b)(6); (b)(7)(C) to refer the

<sup>861</sup> Exhibit 134 – (b)(6); request for OAWP follow up interview.

<sup>862</sup> Exhibit 110 – (b)(7)(C) testimony (Jan. 23, 2024), p. 29.

<sup>863</sup> Exhibit 054 – (b)(6); testimony (Jan. 19, 2024), pp. 104-106.

<sup>864</sup> Exhibit 110 – (b)(6); testimony (Jan. 23, 2024), pp. 8-9.

<sup>865</sup> Exhibit 135 – 20121214 Email String (b)(6); (b)(7)(C) p. 3.

<sup>866</sup> Exhibit 135 – 20121214 Email String (b)(6); (b)(7)(C) p. 1.

<sup>867</sup> Exhibit 136 – 20121214 Email String (b)(6); (b)(7)(C) p. 2.

<sup>868</sup> Exhibit 136 – 20121214 Email String (b)(6); (b)(7)(C) p. 1.

<sup>869</sup> Exhibit 110 – (b)(6); testimony (Jan. 23, 2024), p. 31.

<sup>870</sup> Exhibit 134 – (b)(7)(C) request for OAWP follow up interview, p. 9; see also Exhibit 137 – Email String Immediate Reassignment, pp. 1-3.

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## OAWP Report of Investigation 23-WashingtonDC-22984

allegations on “Tuesday next week,”<sup>871</sup> and (b)(6); (b)(7)(C) should not have been waiting for any further instructions from Respondent (b)(6); (b)(7)(C)<sup>872</sup>

*Respondent* (b)(6); (b)(7)(C)

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to take prompt and appropriate action with respect to (b)(6); (b)(7)(C) 2022 harassment allegations against his chain of command. Although Respondent (b)(6); (b)(7)(C) was notified of the allegations, he was aware that a subordinate manager, Respondent (b)(6); (b)(7)(C) was taking prompt and appropriate action in response to (b)(6); (b)(7)(C) allegations. Specifically, she detailed (b)(6); (b)(7)(C) at his request and arranged a Factfinding the same day she and Respondent (b)(6); (b)(7)(C) had received (b)(6); (b)(7)(C) email. Further, OAWP found no evidence that Respondent (b)(6); (b)(7)(C) was notified of (b)(6); (b)(7)(C) additional complaints of harassment in 2023.

*Respondent* (b)(6); (b)(7)(C)

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to take prompt and appropriate action with respect to (b)(6); (b)(7)(C) September 2023 email alleging harassment by his supervisors. Respondent (b)(6); (b)(7)(C) collected information from Respondent (b)(6); (b)(7)(C) about (b)(6); (b)(7)(C) situation, including whether a detail was appropriate, and offered to meet with (b)(6); (b)(7)(C) and his management team to attempt to resolve the issues. (b)(6); (b)(7)(C) declined the offer of a meeting, being unwilling to meet with the managers against whom he had a pending EEO complaint. When (b)(6); (b)(7)(C) contacted her again in December 2023, (b)(6); (b)(7)(C) again offered to meet, reviewed the prior Factfinding report and forwarded (b)(6); (b)(7)(C) complaint to HPP for a Factfinding. Although there was a delay in the initiation of the Factfinding due to a miscommunication, it was initiated. However, as documented elsewhere in this report, it is inconsistent with Directive and Handbook 5979 to respond to a harassment complaint by offering to bring the complainant and alleged harasser together for a conversation. Instead, the Handbook recommends separating the parties, so Respondent (b)(6); (b)(7)(C) should have offered to meet with (b)(6); (b)(7)(C) one-on-one, especially after he declined the offer to meet with Respondent (b)(6); (b)(7)(C) and his management chain.

(b)(6); (b)(7)(C) Sexual Harassment Allegations Against Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) in 2023

(b)(6); (b)(7)(C) sent an email titled “Request for Information” to Respondent (b)(6); (b)(7)(C) on November 30, 2023, reporting sexual harassment in the form of receiving

<sup>871</sup> The Tuesday after December 14, 2023, was December 19, 2023.

<sup>872</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp. 32-33; see also Exhibit 137 – Email String Immediate Reassignment, pp. 1-3.

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## OAWP Report of Investigation 23-WashingtonDC-22984

“unwanted offensive remarks of a sexual nature” by her previous (b)(6); (b)(7)(C) supervisor, Respondent (b)(6); (b)(7)(C) and her current supervisor, Respondent (b)(6); (b)(7)(C).<sup>873</sup> (b)(6); (b)(7)(C) described the alleged harassment in detail, as well as its potential connection to matters of Congressional interest.<sup>874</sup> Specifically, she related that Respondent (b)(6); (b)(7)(C) had approached her regarding a rumor that (b)(6); (b)(7)(C) had “had sex with ORMDI’s (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and suggested that (b)(6); (b)(7)(C) could file a sexual harassment complaint against Respondent (b)(6); (b)(7)(C).<sup>875</sup> (b)(6); (b)(7)(C) told Respondent (b)(6); (b)(7)(C) that Respondent (b)(6); (b)(7)(C) had never been disrespectful or acted inappropriately toward her, and she suspected that Respondent (b)(6); (b)(7)(C) had ulterior motives when she approached (b)(6); (b)(7)(C) about Respondent (b)(6); (b)(7)(C).<sup>876</sup> (b)(6); (b)(7)(C) also alluded to her 2022 complaint, discussed above, and told Respondent (b)(6); (b)(7)(C) that Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) had “harassed me for the last two-plus years.”<sup>877</sup>

Respondent (b)(6); (b)(7)(C) responded the same day, instructing (b)(6); (b)(7)(C) to contact (b)(6); (b)(7)(C) an ORMDI EEO Specialist, to obtain assistance in opening an EEO case, as well as suggesting she contact OAWP, OSC, OIG, EAP, or Respondent (b)(6); (b)(7)(C).<sup>878</sup> (b)(6); (b)(7)(C) responded, “Thank you for your assistance. Have a great day.”<sup>879</sup> Respondent (b)(6); (b)(7)(C) also forwarded (b)(6); (b)(7)(C) email to OAWP, writing (b)(5).<sup>880</sup> The next day, (b)(6); (b)(7)(C) updated the AIB memo to include (b)(6); (b)(7)(C) allegations against (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C).<sup>881</sup> Respondent (b)(6); (b)(7)(C) did not recall whether she considered requesting a Factfinding or other inquiry into (b)(6); (b)(7)(C) allegations at that time, and she did not consult OGC upon receiving (b)(6); (b)(7)(C) email.<sup>882</sup>

<sup>873</sup> Exhibit 138 – Email re: Request for Information (Nov. 30, 2023), pp. 2-3.

<sup>874</sup> Exhibit 138 – Email re: Request for Information (Nov. 30, 2023), pp. 2-3.

<sup>875</sup> Exhibit 138 – Email re: Request for Information (Nov. 30, 2023), p. 3.

<sup>876</sup> Exhibit 138 – Email re: Request for Information (Nov. 30, 2023), p. 3. Specifically, (b)(6); (b)(7)(C) speculated that Respondent (b)(6); (b)(7)(C) wanted (b)(6); (b)(7)(C) to file a complaint against Respondent (b)(6); (b)(7)(C) in order to protect an anonymous whistleblower whose allegations had led to Respondent (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C) being detailed out of ORMDI.

<sup>877</sup> Exhibit 138 – Email re: Request for Information (Nov. 30, 2023), p. 2. The discussion regarding (b)(6); (b)(7)(C) prior complaint is contained in this report at pp. 104 (currently).

<sup>878</sup> Exhibit 138 – Email re: Request for Information (Nov. 30, 2023), p. 1. (b)(6); (b)(7)(C) is ORMDI’s Conflict of Interest/Internal Complaints Coordinator. Exhibit 139 – ORMDI DAS Memorandum re: Conflict of Interest/Internal Complaints Processing (Nov. 15, 2022). To avoid conflicts of interest, ORMDI contracts with the United States Postal Service to process EEO complaints against ORMDI employees.

<sup>879</sup> Exhibit 138 – Email re: Request for Information (Nov. 30, 2023), p. 1.

<sup>880</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 56; see also Exhibit 140 – 20231130 FW Request for Information – (b)(6); (b)(7)(C) email.pdf

<sup>881</sup> Exhibit 141 – 2nd AIB Memo Update (Dec. 1, 2023), p. 3.

<sup>882</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp. 57, 68.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); (b)(7)(C) testified she had concerns about moving Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) out of their positions because of their "whistleblower status." Instead, she explored an alternative solution whereby (b)(6); (b)(7)(C) could be detailed. To that end, Respondent (b)(6); (b)(7)(C) stated she contacted Respondent (b)(6); (b)(7)(C) to learn more about (b)(6); (b)(7)(C) professional background and identify a place for her. Respondent (b)(6); (b)(7)(C) told Respondent (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) had a background in Diversity and Inclusion, and that Respondent (b)(6); (b)(7)(C) might have a need for someone with that background in her division. Respondent (b)(6); (b)(7)(C) stated (b)(6); (b)(7)(C) reached out to Respondent (b)(6); (b)(7)(C) who told Respondent (b)(6); (b)(7)(C) she would think about it, and then later confirmed she could accept (b)(6); (b)(7)(C) on Eric Shakir's team.<sup>883</sup>

Meanwhile, (b)(6); (b)(7)(C) contacted Respondent (b)(6); (b)(7)(C) again on January 5, 2023, asking why Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) remained in the same office as she, even though she had alleged they harassed (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) stated she had filed complaints against Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) but "I'm still having to be continually harassed by these women. Is there something that can be done concerning this matter?"<sup>884</sup> Respondent (b)(6); (b)(7)(C) testified that around the time she received (b)(6); (b)(7)(C) January 5, 2024, email, she was actively seeking a detail (b)(6); (b)(7)(C). After receiving (b)(6); (b)(7)(C) email, (b)(6); (b)(7)(C) confirmed there were no referrals to HPP for (b)(6); (b)(7)(C) and then forwarded (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) email to (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) in the Office of General Counsel seeking advice.<sup>887</sup> (b)(6); (b)(7)(C) also obtained draft no contact orders for Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) from Respondent (b)(6); (b)(7)(C).<sup>88</sup>

Respondent (b)(6); (b)(7)(C) testified that on January 12, 2024, she intended to contact (b)(6); (b)(7)(C) but (b)(6); (b)(7)(C) "light was not on," so Respondent (b)(6); (b)(7)(C) sent an invitation to (b)(6); (b)(7)(C) to meet via Microsoft Teams on January 16, (b)(6); (b)(7)(C).<sup>889</sup> Unbeknownst to Respondent (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) was on leave but had not "entered it."<sup>890</sup> Respondent (b)(6); (b)(7)(C) stated that on January 17, 2024, (b)(6); (b)(7)(C)

<sup>883</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024) pp. 58-61, 65.

<sup>884</sup> Exhibit 142 – Email re: Request for Information (Jan. 05, 2023), p. 1.

<sup>885</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp.64-64. Respondent (b)(6); (b)(7)(C) Teams messages show she reached out to Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) on January 9, 2024, regarding a detail for (b)(6); (b)(7)(C). In a message to Respondent (b)(6); (b)(7)(C), Respondent (b)(6); (b)(7)(C) wrote, "What grade and series is GD? I'm speaking with [Respondent (b)(6); (b)(7)(C)] now about the detail." Exhibit 162 – (b)(6); (b)(7)(C) Messages (Jan. 09, 2024).

<sup>886</sup> Exhibit 143 – Email re: Question (Jan. 05, 2024), p. 1.

<sup>887</sup> Exhibit 144 – Email re: Urgent Request for Advice (Jan. 05, 2024), p. 1.

<sup>888</sup> Exhibit 145 – Email re: No Contact Notification (Jan. 05, 2024), p. 1 [Issue: no attachments to email; email indicates "draft notification memo" was sent from (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) (rather than (b)(6); (b)(7)(C) received this)]

<sup>889</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 61.

<sup>890</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 62.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) had not responded to her meeting invitation, even though (b)(6); (b)(7)(C) was back online that day.<sup>891</sup> In response to a January 23, 2024, email (b)(6); (b)(7)(C) sent to Respondent (b)(6); (b)(7)(C) and another employee asking to file an HPP complaint, Respondent (b)(6); (b)(7)(C) emailed (b)(6); (b)(7)(C) asking that the latter contact Respondent's (b)(6); (b)(7)(C) to schedule a time to meet.<sup>892</sup> (b)(6); (b)(7)(C) was copied on the email Respondent (b)(6); (b)(7)(C) sent to (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) responded to Respondent (b)(6); (b)(7)(C) stating (b)(6); (b)(7)(C) concerns had been sent to HPP, noting that neither USPS nor Internal Complaints had the authority to take or recommend action regarding (b)(6); (b)(7)(C) request to be separated from her supervisors.<sup>893</sup> Respondent (b)(6); (b)(7)(C) testified that she believes that one, possibly two Factfindings are currently ongoing regarding (b)(6); (b)(7)(C) allegations, per OGC advice.<sup>894</sup>

OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to properly respond to (b)(6); (b)(7)(C) November 30, 2023, email describing potential sexual harassment by Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) recognized the sensitivity of (b)(6); (b)(7)(C) allegations but at the same time, she was cognizant that the alleged harassers had also spoken out about their concerns. We note that in light of Respondent (b)(6); (b)(7)(C) concerns, contacting OGC upon receiving (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) complaint would have been prudent. However, Respondent (b)(6); (b)(7)(C) immediately forwarded (b)(6); (b)(7)(C) message to OAWP because she was aware OAWP was investigating related matters.

Respondent (b)(6); (b)(7)(C) also provided evidence that she engaged Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) to identify a detail opportunity for (b)(6); (b)(7)(C) due to her concerns about moving Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). When (b)(6); (b)(7)(C) followed up with Respondent (b)(6); (b)(7)(C) on January 5, 2024, Respondent (b)(6); (b)(7)(C) obtained no contact order templates from Respondent (b)(6); (b)(7)(C). In addition, Respondent (b)(6); (b)(7)(C) attempted to meet with (b)(6); (b)(7)(C) but (b)(6); (b)(7)(C) did not respond to Respondent (b)(6); (b)(7)(C) meeting invitation and instead pursued other avenues for redress.

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OAWP did not substantiate that Respondent (b)(6); (b)(7)(C) failed to take prompt and appropriate action in response to (b)(6); (b)(7)(C) harassment allegations.

<sup>891</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), pp. 62-63.

<sup>892</sup> Exhibit 146 – Email re: Request to file a HPP (Jan. 23, 2024), pp. 2-3. Respondent (b)(6); (b)(7)(C) was out of the office between January 17 and 23, 2024, for medical reasons. Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 62.

<sup>893</sup> Exhibit 146 – Email re: Request to file a HPP (Jan. 23, 2024), p. 1.

<sup>894</sup> Exhibit 110 – (b)(6); (b)(7)(C) Testimony (Jan. 23, 2024), p. 66; see also Exhibit 146 – Email re: Request to file a HPP (Jan. 23, 2024), p. 2.

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## OAWP Report of Investigation 23-WashingtonDC-22984

**Allegations Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) Sexually Harassed (b)(6); (b)(7)(C) in October and November 2023**
**Respondent (b)(6); (b)(7)(C)**

(b)(6); (b)(7)(C) testified that since her 2019 detail to ORMDI began, Respondent (b)(6); (b)(7)(C) has pushed her to have a relationship with Respondent (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) told her they would make a nice couple; informed her Respondent (b)(6); (b)(7)(C) was single; repeatedly inquired if she saw or spoke to Respondent (b)(6); (b)(7)(C) when he was in the office; would ask if Respondent (b)(6); (b)(7)(C) had communicated with her; and indicated Respondent (b)(6); (b)(7)(C) would be a good provider.<sup>896</sup> (b)(6); (b)(7)(C) asserted that Respondent (b)(6); (b)(7)(C) told her she was Respondent (b)(6); (b)(7)(C) type because she was a “light-skinned black female” like Respondent (b)(6); (b)(7)(C) ex-wife.<sup>897</sup> (b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) “harassed me . . . as if she was . . . a matchmaker.”<sup>898</sup>

Respondent (b)(6); (b)(7)(C) testified she absolutely did not inform (b)(6); (b)(7)(C) that Respondent (b)(6); (b)(7)(C) was interested in dating her.<sup>899</sup> Rather, after (b)(6); (b)(7)(C) showed Respondent (b)(6); (b)(7)(C) inappropriate text messages that Respondent (b)(6); (b)(7)(C) had sent (b)(6); (b)(7)(C) Respondent (b)(6); (b)(7)(C) testified she cautioned (b)(6); (b)(7)(C) about dating someone on the job, particularly someone in senior management.<sup>900</sup> Respondent (b)(6); (b)(7)(C) testified she observed Respondent (b)(6); (b)(7)(C) lingering around (b)(6); (b)(7)(C) cubicle and bringing her candy, breakfast and lunch, which was a pattern of Respondent (b)(6); (b)(7)(C). Respondent (b)(6); (b)(7)(C) also testified that she was concerned about (b)(6); (b)(7)(C) and hoped Respondent (b)(6); (b)(7)(C) was not forceful with her.<sup>902</sup> She testified that she did not encourage (b)(6); (b)(7)(C) to seek a relationship, rather she advised (b)(6); (b)(7)(C) to be careful.<sup>903</sup> Respondent (b)(6); (b)(7)(C) stated that when (b)(6); (b)(7)(C) requested information about Respondent (b)(6); (b)(7)(C) Respondent (b)(6); (b)(7)(C) informed her he was a “full bird colonel” and he was divorced, and said to be cautious about dating someone on the job.<sup>904</sup> Respondent (b)(6); (b)(7)(C) testified she did not inform (b)(6); (b)(7)(C) that Respondent (b)(6); (b)(7)(C) would be an excellent provider; that (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C) would make a good couple; or that (b)(6); (b)(7)(C) Brown was light-skinned like Respondent (b)(6); (b)(7)(C) ex-wife.<sup>905</sup>

<sup>895</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 29, 31.

<sup>896</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 20-21, 44-45.

<sup>897</sup> Exhibit 154 – (b)(6); (b)(7)(C) Allegation of Sexual Harassment by (b)(6); (b)(7)(C).

<sup>898</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 24.

<sup>899</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), pp. 13-14.

<sup>900</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), pp. 13-14, 17-20, 28-29.

<sup>901</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), p. 14.

<sup>902</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), p. 15.

<sup>903</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), p. 23.

<sup>904</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), p. 27.

<sup>905</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), pp. 22, 27, 30.

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## OAWP Report of Investigation 23-WashingtonDC-22984

Respondent (b)(6); (b)(7)(C) testified that she informed Respondent (b)(6); (b)(7)(C) of her concerns with how Respondent (b)(6); (b)(7)(C) interacted with (b)(6); (b)(7)(C) when Respondent (b)(6); (b)(7)(C) subsequently transferred (b)(6); (b)(7)(C) supervision to Respondent (b)(6); (b)(7)(C) around the beginning of 2020.<sup>906</sup> Respondent (b)(6); (b)(7)(C) testified that she informed Respondent (b)(6); (b)(7)(C) of the possible relationship due to (b)(6); (b)(7)(C) allegedly “calling in constantly” and “not do[ing] her work,” and she wanted Respondent (b)(6); (b)(7)(C) to be aware that it could be due to a relationship with (b)(6); (b)(7)(C).<sup>907</sup> Although Respondent (b)(6); (b)(7)(C) testimony identified early 2020 as the timeframe for the supervisory change, annual performance evaluations show that Respondent (b)(6); (b)(7)(C) was (b)(6); (b)(7)(C) primary rater for FY2021, and that Respondent (b)(6); (b)(7)(C) rated (b)(6); (b)(7)(C) for FY2022.<sup>908</sup> Respondent (b)(6); (b)(7)(C) testified that (b)(6); (b)(7)(C) became her subordinate in May 2021, which the evaluations support.<sup>909</sup> Respondent (b)(6); (b)(7)(C) rated (b)(6); (b)(7)(C) as “Needs Improvement” on her FY2022 annual evaluation.<sup>910</sup>

Respondent (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) have vastly differing recollections related to the allegation that Respondent (b)(6); (b)(7)(C) encouraged (b)(6); (b)(7)(C) to date Respondent (b)(6); (b)(7)(C). However, (b)(6); (b)(7)(C) testified that she and Respondent (b)(6); (b)(7)(C) had a “sexting” (sexual text messages) relationship,<sup>911</sup> and the existence of such a relationship supports Respondent (b)(6); (b)(7)(C) recollection that she saw texts (b)(6); (b)(7)(C) shared with her. Nonetheless, because their testimony on their interactions about the texts and (b)(6); (b)(7)(C) relationship with Respondent (b)(6); (b)(7)(C) vastly differ, the evidence is inconclusive regarding whether (b)(6); (b)(7)(C) cautioned (b)(6); (b)(7)(C) about entering a relationship with Respondent (b)(6); (b)(7)(C) or told (b)(6); (b)(7)(C) that sexting Respondent (b)(6); (b)(7)(C) was inappropriate.

*Respondent (b)(6); (b)(7)(C)*

(b)(6); (b)(7)(C) testified that Respondent (b)(6); (b)(7)(C) contacted her daily from October 18-20, 2023, questioning her about concerns for her safety and well-being and culminating with Respondent (b)(6); (b)(7)(C) stating that an employee reported (b)(6); (b)(7)(C) had sex with Respondent (b)(6); (b)(7)(C). Specifically, on October 18 and 20, 2023, Respondent (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) she was concerned about her safety

<sup>906</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), pp. 33-38.

<sup>907</sup> Exhibit 062 – (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), pp. 11, 37-38.

<sup>908</sup> Exhibit 147 – (b)(6); (b)(7)(C) FY21 Performance Appraisal, p.1; Exhibit 148 – (b)(6); (b)(7)(C) FY22 Performance Appraisal, p.1.

<sup>909</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), p. 14.

<sup>910</sup> Exhibit 148 – (b)(6); (b)(7)(C) FY22 Performance Appraisal, p. 3.

<sup>911</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 27, 30, 43-44.

<sup>912</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 7-9; Exhibit 149 – (b)(6); (b)(7)(C) October 18th Instant Message to (b)(6); (b)(7)(C).

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## OAWP Report of Investigation 23-WashingtonDC-22984

and well-being.<sup>913</sup> This was surprising to (b)(6); (b)(7)(C) considering she felt Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) had harassed her for the past two years.<sup>914</sup> On October 19, 2023, Respondent (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) she wanted to make sure no management official made her do anything she did not want to do.<sup>915</sup> On October 20, 2023, Respondent (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) that an employee told her (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) had sex with Respondent (b)(6); and that she had the right to file a sexual harassment case.<sup>916</sup> (b)(6); (b)(7)(C) asked Respondent (b)(6); (b)(7)(C) to put her concern in writing so that she (b)(6); (b)(7)(C) could respond in writing.<sup>917</sup> On October 25, 2023, Respondent (b)(6); (b)(7)(C) emailed (b)(6); (b)(7)(C) and indicated (b)(6); (b)(7)(C) denied harassment by “any” employee within ORMDI.<sup>918</sup> (b)(6); (b)(7)(C) disagreed with Respondent (b)(6); (b)(7)(C) email and asserted she had not experienced the type of harassment Respondent (b)(6); (b)(7)(C) had described when she reached out about (b)(6); (b)(7)(C) safety and well-being, but that she had endured harassment for the past two years which was addressed in her EEO complaints.<sup>919</sup>

(b)(6); (b)(7)(C) wrote that she “didn’t know what was going on” until November 15, 2023, when Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) held a Microsoft Teams meeting with the VBA EEO Liaison Office employees and revealed that Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) had been removed from their positions based on information “supplied by whistleblowers.”<sup>920</sup> (b)(6); (b)(7)(C) explained she was “shocked” like some other employees.<sup>921</sup>

Respondent (b)(6); (b)(7)(C) testified that (b)(6); (b)(7)(C) had informed her about allegations of sexual harassment between (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C) and that Respondent (b)(6); (b)(7)(C) also viewed text messages between (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C) that included “inappropriate” comments about (b)(6); (b)(7)(C).<sup>922</sup> Between (b)(6); (b)(7)(C) complaint of sexual harassment against Respondent (b)(6); (b)(7)(C) and the text messages with inappropriate comments made about (b)(6); (b)(7)(C) by Respondent (b)(6); (b)(7)(C) Respondent (b)(6); (b)(7)(C) testified that she was concerned about (b)(6); (b)(7)(C) welfare in October 2023.<sup>923</sup> Respondent (b)(6); (b)(7)(C) contacted (b)(6); (b)(7)(C)

<sup>913</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 7-9.

<sup>914</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 7-8.

<sup>915</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 8.

<sup>916</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 9.

<sup>917</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 10.

<sup>918</sup> Exhibit 150 – Email {harassment question} (b)(6); (b)(7)(C) 10.25.23.

<sup>919</sup> Exhibit 150 – Email {harassment question} (b)(6); (b)(7)(C) 10.25.23.

<sup>920</sup> Exhibit 151 – (b)(6); (b)(7)(C) allegation of Sexual Harassment Claim by (b)(5); (b)(6); (b)(7)(C) Exhibit 062 – (b)(5); (b)(6); (b)(7)(C) Testimony (Jan. 10, 2024), pp. 11-12.

<sup>921</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 13.

<sup>922</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 13, 64; Exhibit 152 – (b)(6); (b)(7)(C)

Inappropriately Discussed in Text Messages by (b)(6); (b)(7)(C)

<sup>923</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 13-14, 16-17, 25, 39.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) via Teams to see if she was okay and if she had anything she wanted to share.<sup>924</sup> Respondent (b)(6); (b)(7)(C) also thought she asked (b)(6); (b)(7)(C) if any management official made her do anything she did not wish to do.<sup>925</sup> (b)(6); (b)(7)(C) asserted she was a grown woman and knew how to take care of herself.<sup>926</sup> Respondent (b)(6); testified that she did not ask (b)(6); (b)(7)(C) if she had sex with Respondent (b)(6); because that was too personal.<sup>927</sup> Respondent (b)(6); testified that she “was genuinely concerned” about (b)(6); (b)(7)(C) and her safety.<sup>928</sup> Respondent (b)(6); testified that Respondent (b)(6); preyed on women, and retaliated against those who did not submit to his sexual advances.<sup>929</sup> She spoke with Respondent (b)(6); regarding the sexual harassment allegations made against Respondent (b)(6); and Respondent (b)(6); raised the concerns up the chain of command.<sup>930</sup> Respondent (b)(6); testified that (b)(6); (b)(7)(C) misinterpreted her intent to ensure her safety.<sup>931</sup> Finally, Respondent (b)(6); testified that she was so concerned for (b)(6); and (b)(6); (b)(7)(C) safety that she sought information about filing a Disruptive Behavior Report (DBR) and then did so.<sup>932</sup> An inquiry into the DBR was initiated on December 5, 2023.<sup>933</sup>

Regarding contacting (b)(6); (b)(7)(C) Respondent (b)(6); (b)(7)(C) contacted (b)(6); (b)(7)(C) only after (b)(6); (b)(7)(C) informed Respondent (b)(6); (b)(7)(C) that Respondent (b)(6); sexually harassed her (b)(6); (b)(7)(C) information which included an inappropriate text message written by Respondent (b)(6); about (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) asserted that Respondent (b)(6); (b)(7)(C) contacts were “sexual harassment.” However, after viewing the comments made about (b)(6); (b)(7)(C) in the text message, it is plausible that Respondent (b)(6); (b)(7)(C) contacted (b)(6); (b)(7)(C) to ensure she was safe, and that (b)(6); (b)(7)(C) had not been coerced into doing anything she did not want to do with a management official. Respondent (b)(6); (b)(7)(C) assertion that she was concerned for (b)(6); (b)(7)(C) safety is supported by (b)(6); (b)(7)(C) disclosure to Respondent (b)(6); and the filing of the DBR.

<sup>924</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 16-17; Exhibit 149 – (b)(6); (b)(7)(C) October 18th Instant Message to (b)(6);

<sup>925</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 23.

<sup>926</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), p. 25; Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 81.

<sup>927</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 17, 34.

<sup>928</sup> Exhibit 061 – (b)(6); Testimony (Jan. 09, 2024), p. 22.

<sup>929</sup> Exhibit 061 – (b)(6); (b)(7)(C) Testimony (Jan. 09, 2024), pp. 19, 22.

<sup>930</sup> Exhibit 061 – (b)(6); Testimony (Jan. 09, 2024), pp. 27, 35-36.

<sup>931</sup> Exhibit 061 – (b)(6); Testimony (Jan. 09, 2024), p. 36.

<sup>932</sup> Exhibit 061 – (b)(6); Testimony (Jan. 09, 2024), pp. 65, 68-70; Exhibit 153 – Email (b)(6); (b)(7)(C) Requesting Info for Submitting DBR.

<sup>933</sup> Exhibit 064 – Disruptive Behavior Report Summary, p. 2.

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## OAWP Report of Investigation 23-WashingtonDC-22984

(b)(6); (b)(7)(C) Decides to File Sexual Harassment Complaint

(b)(6); (b)(7)(C) testified that because the discussion Respondent (b)(6); (b)(7)(C) had with her about Respondent (b)(6); (b)(7)(C) was of a sexual nature, and because Respondent (b)(6); (b)(7)(C) told her that she (b)(6); (b)(7)(C) and Respondent (b)(6); (b)(7)(C) would make a nice couple, she decided to file a sexual harassment complaint.<sup>934</sup> On November 30, 2023, (b)(6); (b)(7)(C) emailed Respondent (b)(6); (b)(7)(C)<sup>935</sup> stating she would like to file a sexual harassment complaint against Respondents (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C).<sup>936</sup> Respondent (b)(6); (b)(7)(C) referred (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) to assist her in referring the matter to USPS to file an EEO complaint<sup>937</sup> and (b)(6); (b)(7)(C) contacted USPS.<sup>938</sup> (b)(6); (b)(7)(C) testified USPS currently has an open investigation against Respondents (b)(6); (b)(7)(C) and (b)(5); (b)(6); (b)(7)(C).<sup>939</sup>

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Based on the evidence before it, OAWP does not substantiate the allegation that Respondents (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) committed sexual harassment in violation of VA Directive 5979 against (b)(6); (b)(7)(C) in October and November of 2023.

## Recommendations

While an EEO program focuses on discrimination awareness and prevention, an anti-harassment program “requires the agency to take immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violated the law.”<sup>940</sup> VA Policy requires the same vigilance and responsiveness by VA leaders and managers to immediately

<sup>934</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 10-11, 19-21, 24-25, 41-43; Exhibit 151 – (b)(6); (b)(7)(C) allegation of Sexual Harassment Claim by (b)(6); (b)(7)(C) Exhibit 154 – (b)(6); (b)(7)(C) allegation of Sexual Harassment Claim by (b)(6); (b)(7)(C).

<sup>935</sup> Exhibit 155 – Email (b)(6); (b)(7)(C) informing (b)(6); (b)(7)(C) about a sexual harassment complaint against (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) 11.30.23, pp.2-3.

<sup>936</sup> Exhibit 155 – Email (b)(6); (b)(7)(C) informing (b)(6); (b)(7)(C) about a sexual harassment complaint against (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) 11.30.23, pp.2-3; Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 15.

<sup>937</sup> Exhibit 155 – Email (b)(6); (b)(7)(C) informing (b)(6); (b)(7)(C) about a sexual harassment complaint against (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) 11.30.23, p. 1; Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), pp. 15-16.

<sup>938</sup> Exhibit 156 – Email (re EEO against (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) 11.28.23.

<sup>939</sup> Exhibit 017 – (b)(6); (b)(7)(C) Testimony (Dec. 21, 2023), p. 19; Exhibit 161 – Acceptance of Formal EEO Complaint (Dec. 21, 2023), pp. 3-6.

<sup>940</sup> Exhibit 157 – EEOC Letter to Chairman Chris Pappas, Subcommittee on Oversight and Investigations, House Committee on Veterans Affairs, July 26, 2022 (written before enactment of Cleland-Dole), p. 3.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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address harassment brought to their attention.<sup>941</sup> OAWP's investigation revealed that ORMDI's senior leaders repeatedly failed to fulfill this requirement, failing in their mission to prevent harassment of all kinds. This failure gave rise to a hostile, toxic work environment with a permissive culture of rampant gossiping and innuendo, which in turn led to more harassment complaints.

While OAWP did not substantiate allegations of specific misconduct by HRA/OSP senior leaders, the sheer volume of complaints arising in ORMDI should have put HRA/OSP leaders on notice of the dysfunctional situation in ORMDI, but HRA/OSP leadership failed to take sufficient actions to address the situation, for which they bear ultimate leadership responsibility.

### OAWP Findings and Disciplinary Recommendations

OAWP found that Respondent (b)(6); engaged in a variety of misconduct and created a toxic work environment at ORMDI. OAWP recommends Respondent (b)(6); be removed from Federal service, and that bonuses from FY 2022 and FY 2023 be recouped. OAWP notes that on December 6, 2023, well after substantial allegations had come to light and after Respondent (b)(6); had been detailed out of his position, Respondent (b)(6); was approved by Respondents (b)(6); and (b)(6); for a performance award of 48 hours paid time off for his FY 23 performance.

OAWP found that Respondent (b)(6); engaged in misconduct and failed to properly supervise Respondent (b)(6); because he knew or should have known of Respondent (b)(6); and others' misconduct, but did nothing, and thereby permitted a hostile and toxic work environment to persist. Because Respondent (b)(6); retired from Federal service during this investigation, OAWP recommends bonuses be recouped from FY 2022 and FY 2023, and that Respondent (b)(6);'s eOPF be amended to reflect he voluntarily retired during the course of an investigation that substantiated misconduct, in accordance with 5 U.S.C. § 3322.

OAWP found that Respondent (b)(6); engaged in misconduct of a sexual nature and OAWP recommends he receive no less than a suspension.

OAWP found that Respondent (b)(6); engaged in misconduct when she intentionally failed to take prompt action to address sexual harassment allegations brought to her attention by subordinates, including acknowledging the requirement that she conduct a Factfinding but choosing not to do so, and later refusing to follow a direct

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<sup>941</sup> Exhibit 007a – VA Directive 5979, Harassment Prevention Policy, December 8, 2020, ¶ 3.g; Exhibit 007b – VA Handbook 5979, Harassment Prevention Program Procedures, March 21, 2022, ¶ 4.f.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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order to conduct a Factfinding into those allegations. OAWP recommends she receive no less than a suspension.

### **OAWP Non-Disciplinary Recommendations**

#### ORMDI Alignment

Effective January 1, 2021, the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act) amended 5 U.S.C. § 2301, Note, to require that the “head of each Federal agency’s Equal Employment Opportunity Program shall report directly to the head of the agency.” “The U.S. Equal Employment Opportunity Commission (EEOC) has long held that a direct reporting structure must be established between EEO Directors and agency heads to maintain an effective and compliant EEO program. The EEOC defines a direct reporting structure as one where the head of the agency supervises the person with day-to-day control of the agency’s EEO program.”<sup>942</sup> The Cummings Act further required that agencies’ EEO programs not be “under the control, either structurally or practically, of the agency’s Office of Human Capital or Office of the General Counsel (or the equivalent).”<sup>943</sup>

The Deputy Assistant Secretary (DAS) of ORMDI is the person with day-to-day control over VA’s EEO program. As such, as of January 2021, under the Cummings Act, the ORMDI DAS should have reported directly to the Secretary. Instead, the ORMDI DAS reports to the Principal Deputy Assistant Secretary for HRA/OSP, who in turn reports to the HRA/OSP Assistant Secretary, who then reports to the Deputy Secretary, who reports to the Secretary. The Chief Human Capital Officer also reports to the HRA/OSP Assistant Secretary. Thus, VA’s EEO program via ORMDI is not in compliance with two key requirements of the Cummings Act. Moreover, “in a feedback letter, dated July 24, 2020, the EEOC notified VA that due to a conflict of interest concerning the location of ORMDI within HRA/OSP, the VA had a critical deficiency in its EEO program. This location of VA’s EEO Office clearly violates the Cummings Act, because the Assistant Secretary oversees ORMDI and the Office of the Chief Human Capital Officer.”<sup>944</sup>

The Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022 (Cleland-Dole) amended 38 U.S.C. § 516 to, among other things, provide that the Secretary shall ensure that the official of

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<sup>942</sup> *Status and Impact of Direct Reporting Structures for Federal Agencies*, EEOC (Fiscal Year 2021), located at [https://www.eeoc.gov/federal-sector/reports/status-and-impact-direct-reporting-structures-federal-agencies#\\_Toc83886383](https://www.eeoc.gov/federal-sector/reports/status-and-impact-direct-reporting-structures-federal-agencies#_Toc83886383), accessed Jan. 17, 2024, p. 2.

<sup>943</sup> Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act).

<sup>944</sup> *Status and Impact of Direct Reporting Structures for Federal Agencies*, EEOC (Fiscal Year 2021), located at [https://www.eeoc.gov/federal-sector/reports/status-and-impact-direct-reporting-structures-federal-agencies#\\_Toc83886383](https://www.eeoc.gov/federal-sector/reports/status-and-impact-direct-reporting-structures-federal-agencies#_Toc83886383), accessed Jan. 17, 2024, p. 2.

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OAWP Report of Investigation 23-WashingtonDC-22984

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the Department who serves as the EEO Director of the Department “reports directly to the Deputy Secretary with respect to the functions under this section.”<sup>945</sup> While Cleland-Dole clearly conflicts with the Cummings Act, in requiring the EEO Director to report to the Deputy Secretary instead of the Secretary, the newer Cleland-Dole is specific to VA, whereas the older Cummings Act applies more generally to all Federal agencies. Regardless of which law applies, VA is not in compliance with the reporting and structural requirements, as interpreted by EEOC and GAO.

The EEOC advised Congress in July 2022, prior to enactment of Cleland-Dole, of VA’s deficiencies and non-compliance with the Cummings Act, because of the failure of the EEO Director to report to the Secretary.<sup>946</sup> To date, the ORMDI DAS, the official responsible for “day-to-day control” of VA’s EEO program, does not report to the Secretary, as required by Cummings Act, or the Deputy Secretary, as required by Cleland-Dole, and is located within HRA/OSP, as seemingly prohibited by the Cummings Act – two deficiencies that OAWP recommends be promptly addressed by VA.

### VA Policies

VA lacks a policy addressing romantic or sexual relationships in the workplace, including between supervisors and subordinates. OAWP strongly recommends VA adopt an anti-fraternization policy addressing the propriety (or impropriety) of such relationships.

While VA has a Directive and Handbook and other publications on prevention of harassment and dealing with allegations of harassment, they were ineffective at ORMDI, the very office tasked with enforcing them. OAWP recommends VA review and modify Directive and Handbook 5979 to clarify, among other things, management’s obligations when they receive allegations of harassment. For example, it should be clearly stated that simply sending the matter to an external entity for investigation does not absolve management of its responsibilities to put an immediate end to any harassment, including separating the parties, changing reporting structures, etc.

### Training

Because Respondent (b)(6); (b)(7)(V) demonstrated a lack of awareness of management’s obligations to investigate and to address allegations of harassment outside of the EEO complaint process invoked by complainant,<sup>947</sup> OAWP recommends Respondent (b)(6); (b)(7)(C).

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<sup>945</sup> 38 U.S.C. 516(h)(2)(A).

<sup>946</sup> Exhibit 157 – EEOC Letter to Chairman Chris Pappas, Subcommittee on Oversight and Investigations, House Committee on Veterans Affairs, July 26, 2022 (written before enactment of Cleland-Dole).

<sup>947</sup> Exhibit 052 – (b)(6); testimony (Dec. 18, 2023), pp. 40-41, 43, 45, 46, 48-49; Exhibit 124 – (b)(6); Testimony (Jan. 11, 2024), pp. 75, 76, 78-79, 82-86, 90-91.

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## OAWP Report of Investigation 23-WashingtonDC-22984

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receive training on management's obligations when confronted with allegations of harassment.

Because Respondent Duncan demonstrated a lack of awareness that some of her responses upon being notified of allegations of harassment could have been better attuned to the intent of Handbook 5979, OAWP recommends Respondent Duncan receive training regarding what actions are appropriate when management receives a harassment complaint.

Given the failure in ORMDI of VA's anti-harassment training, and the rampant EEO filings at ORMDI, OAWP recommends VA identify EEO and anti-harassment training external to VA and administer it to all ORMDI employees. Management of ORMDI should be given additional training on managerial responsibilities in situations where harassment is alleged.

### USPS Factfindings

OAWP recommends VA review all USPS Factfindings from the past two years to ensure all issues raised have been properly addressed.

## **Conclusion**

Given the importance of ORMDI's function to the ultimate success of VA's mission, and given the systemic deficiencies and failures documented in this report, VA must take immediate action to restore VA employees' trust in ORMDI.

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# ATTACHMENT F

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**From:** Duncan, Dr. Anne-Marie (ORMDI)  
**Sent:** Wednesday, June 5, 2024 7:02 AM  
**To:** ORMDI Employees (b) (6), (b) (7)(C)@va.gov>  
**Subject:** RE: Interim ORMDI HPC

Good Morning Team ORMDI

I am resending the announcement of an Interim ORMDI Harassment Prevention Coordinator (HPC).

Mr. (b) (6), (b) (7)(C) is the Interim ORMDI HPC.

Regards,  
Anne-Marie

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**From:** Duncan, Dr. Anne-Marie (ORMDI) <(b) (6), (b) (7)(C)@va.gov>  
**Sent:** Friday, May 24, 2024 2:41 PM  
**To:** ORMDI Employees (b) (6), (b) (7)(C)@va.gov>  
**Subject:** Interim ORMDI HPC

Good afternoon Team ORMDI,

I am pleased to announce that I have appointed Mr. (b) (6), (b) (7)(C) to serve as the interim ORMDI Harassment Prevention Coordinator (HPC).

Mr. (b) (6), (b) (7)(C) has previously served as an HPC before joining ORMDI.

VA Handbook 5979 provides that all Department of Veterans Affairs employees and contractors are required to report unlawful harassment to supervisory personnel. Supervisory personnel will make an assessment and determine whether a formal fact finding is appropriate. Employees and contractors who have been subjected to unwelcome conduct are encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive. If the conduct continues or the individual is uncomfortable confronting the responsible

person(s) regarding the conduct, the individual should report the matter to a VA official (VA Management official, HPC, ORMDI HPP office) immediately.

**Dr. Anne-Marie Duncan**

Acting Deputy Assistant Secretary

Office of Resolution Management, Diversity & Inclusion (ORMDI)

U.S. Department of Veterans Affairs

1575 I Street, NW | Suite 1000 | Washington, DC 20005

Telephone: (202) 461- (b) (6), (b) (7)(C) | Mobile: (202) 372- (b) (6), (b) (7)(C)



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<https://www.va.gov/ORMDI/> or Call: (888) 566-3982 / TTY/TDD (888) 626-9008

If you believe you have experienced discrimination, retaliation, or harassment, you can also review avenues of redress here: [avenues\\_redress.pdf \(sharepoint.com\)](#).

**Veteran Crisis Line:**

**988** or **(800) 273-8255** and **Press 1** to speak with someone.

**Text** message to **838255** to connect with a VA responder.

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