DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C. 20330-1000

OFFICE OF THE GENERAL COUNSEL

SEP 2 4 2014

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The Honorable Carolyn Lerner
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U.S. OFFICE OF
SPECIAL COUNSEL
WASHINGTON, D.C.
2014 SEP 26 PM 2:18

Re: Office of Special Counsel File No. DI-14-1099

Dear Ms. Lerner:

As agency head, the Secretary of the Air Force has delegated to me her authority to review, sign and submit to you the report required by Title 5, U.S.C. Section 1213(g) (2). I am responding to your April 11, 2014 correspondence, referring for investigation whistleblower disclosures from an anonymous complainant. You requested that the Air Force investigate the allegations that civilian police officers with the 436th Security Forces Squadron (SFS) at Dover Air Force Base (AFB) engaged in conduct that may constitute a violation of law, rule or regulations, gross mismanagement and an abuse of authority. According to the whistleblower and OSC, "civilian police officers at Dover AFB regularly falsify their time and attendance records and [a civilian supervisor] knowingly approves and encourages falsification of his subordinates' time and attendance records."

The investigation substantiated that three non-supervisory civilian police officers (Officers Hunter, Day and Marsters) were absent from duty without taking leave and failed to ensure the accuracy and integrity of their time and attendance records in violation of time and attendance regulations. In addition, the investigation found that a supervisory civilian police officer (Officer Molitor) offered his subordinate police officers unauthorized compensatory time off and subsequently failed to ensure that all entries for overtime earned and compensatory time taken off were properly approved and documented. Officer Molitor was also found to have knowingly falsified time and attendance records for his employees and abused his authority in granting unauthorized compensatory time off. All four officers were also found to have engaged in dishonest conduct in violation of employee conduct regulations. The investigation did not substantiate the allegation of gross mismanagement.

As a result of the investigation, the Air Force plans to take administrative action as follows: the Wing Commander will issue a policy memorandum emphasizing the importance of accurate and timely accounting of time and attendance records. The memorandum will set forth the responsibilities of both employees and supervisors with regard to time and attendance, the time keeping system and emphasize accountability. In conjunction with the policy memorandum, the 436 SFS Commander has scheduled training on both time and attendance requirements and the disciplinary process. The 436 SFS will continue work already begun to more fully integrate the civilian and military forces which would align working schedules, address significant morale issues, and improve time and attendance accountability. As for disciplinary action, Officers Hunter and Marsters are no longer employed by the Air Force, so no actions are planned against them. With regard to the Officers Day and Molitor, as a result of a pending reprisal investigation by OSC, the Air Force is currently precluded, pursuant to 5 U.S.C. § 1214(f), from taking disciplinary action against either employee absent the approval of the Special Counsel. As a result of the underlying investigation, and upon either the closure of the OSC reprisal investigation or receipt of the requisite permission from the Special Counsel, the Air Force will assess the appropriateness of disciplinary action against these individuals.

The attached Report of Investigation contains the names of witnesses and is for your official use. I understand you will provide a copy of this report to the President and the House and Senate Armed Services Committees for their review and to the anonymous complainant. My staff will forward you another version of the report which will exclude (redact) the names of witnesses and other individuals specifically identified within the ROI, with the exception of the subjects (Officers Molitor, Hunter, Day and Marsters). I request that you make only the redacted version available to members of the public.

We appreciate your efforts to bring this matter to our attention. If the Air Force can be of any further assistance, please contact Mr. David L. Thomas, Assistant Deputy General Counsel for Fiscal, Ethics and Administrative Law at (703) 697-2687 or david.l.thomas146.civ@mail.mil.

Sincerely,

Joseph M. McDade
Principal Deputy General Counsel

Attachment:
Report of Investigation

REPORT OF INVESTIGATION
OSC File No. DI-14-1099

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INFORMATION INITIATING THE INVESTIGATION

By letter dated April 11, 2014, the Office of Special Counsel (OSC) referred to the Secretary of the Air Force (SecAF) for investigation a whistleblower disclosure case (OSC File No. DI-14-1099) from an anonymous complainant.[1] The OSC referral letter alleges that "civilian employees of the Department of the Air Force, 436th Security Forces Squadron, at Dover Air Force Base (Dover AFB) in Dover, Delaware, engaged in conduct that may constitute a violation of law, rule or regulation, gross mismanagement, and an abuse of authority." According to OSC, the whistleblower disclosed that, "civilian police officers at Dover AFB regularly falsify their time and attendance records; and [a] supervisor, Officer John Molitor, knowingly approves and encourages falsification of his subordinates' time and attendance records."

In referring this matter to SecAF under 5 U.S.C. § 1213(g)(2), OSC "makes no judgment as to the accuracy of the allegations in this referral." Pursuant to statutory mandate, the Special Counsel requests information from the Air Force regarding the time and attendance practices of civilian police officers at Dover AFB. OSC transmitted the information contained within its referral letter to SecAF "in order to solicit a written report," which "reflects what corrective action the agency has taken, or is being taken, and when such action will be completed."

OSC SUMMARY OF DISCLOSURE INFORMATION

According to the OSC Referral Letter, the whistleblower provided the following information to OSC:

(1) "[S]ome civilian police officers regularly falsify their time and attendance records, claiming more hours than they worked, and their supervisor, Officer John Molitor, knowingly approved and encouraged this wrongdoing." For example, the whistleblower alleged that, "frequently throughout 2012, Officer Alvin Hunter was not present for his shifts on Saturdays and/or Sundays even though he was signed in on the daily roster." The whistleblower claimed that, "Officer Hunter missed approximately one weekend shift every weekend throughout the year and that only a supervisor can sign in an officer onto the daily log." The whistleblower also alleged that "in January and February 2013, on approximately 15 occasions, Officer Aaron Day left work approximately one hour early but did not record his early departure on his time sheet, billing the government for time not worked."

(2) According to the whistleblower, "at the time of the alleged misconduct, Officers Hunter and Day were supervised by Officer Molitor, who took no action to correct the fraud despite knowing of its occurrence." In fact, the whistleblower alleged that, "Officer Molitor encouraged and actively supported the time and attendance fraud by his subordinates." For instance, the whistleblower disclosed that "Officer Molitor was the supervisor who signed-in Officer Hunter on the daily log when Officer Hunter was not present." The whistleblower also alleged that, "on multiple

[1] According to OSC's Referral Letter, the whistleblower has requested anonymity.

occasions, Officer Molitor told [Civilian Police Officer #4] that he was granting her compensatory time off, despite knowing that compensatory time is not available for civilian police officers of the 436th Security Forces Squadron."

CONDUCT OF THE INVESTIGATION

The OSC Referral Letter was forwarded for investigation, through the Air Force Inspector General (SAF/IG), to the Air Mobility Command Inspector General. On May 12, 2014, Air Force Inspector General's Directorate for Complaints Resolution (SAF/IGQ) appointed an investigating officer (IO) to conduct an investigation into the whistleblower allegations contained in the OSC Referral Letter. The IO could not conduct an initial complaint analysis interview with the whistleblower due to the fact that the whistleblower exercised the right to remain anonymous.[2] In the course of the investigation, the IO interviewed ten witnesses.[3] The IO also collected and examined relevant documentation including internal memoranda, personnel records, and written testimony, as well as available time and attendance records. Pertinent legal authorities, including applicable Department of Defense (DoD) and Air Force regulations, were researched and reviewed. The IO found the lapse of time between the alleged violations and the investigation, the turnover of personnel and unavailability of key witnesses, fading memories, documents that were not retained and are no longer available (such as the daily blotters, duty rosters or matrices), as well as the vague references by the whistleblower to an expansive timeframe,[4] made it difficult if not impossible to discover and track down each and every individual instance of a time and attendance violation.

The standard of proof used to determine whether there was a violation of law, rule, regulation, gross mismanagement or an abuse of authority was preponderance of the evidence, *i.e.* was it more likely than not that the alleged violation occurred.

Pursuant to 5 U.S.C. § 1213(g)(2), the Air Force is required to deliver a written report to OSC "within a reasonable time."

LEGAL FRAMEWORK

OSC in its referral letter stated that, "if true, the whistleblower's allegations disclose violations of laws, rules or regulations, including but not limited to various sections of Title 5 of the United States Code governing *Hours of Work* (5 U.S.C. §§ 6101-6133); and sections of Title 5 of the U.S. Code of Federal Regulations governing *Hours of Duty* (5 C.F.R. part 610) and *Absence and Leave* (5 C.F.R. Part 630). In addition, these actions may violate portions of Air Force Instruction (AFI) 36-807 entitled *Weekly and Daily Scheduling of Work and Holiday*

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[2] With the assistance of OSC, the IO conducted a telephonic interview with the whistleblower; however the whistleblower wanted to keep that conversation confidential.

[3] A complete list of the witnesses interviewed is set forth in Appendix 1 of this Report.

[4] According to the IO, allegations in OSC's Referral Letter stated the time frame as 2012; however, after the telephonic interview with the complainant, the time period was clarified and should have been cited as 2011. This was corroborated by the witness testimony of Officers [Civilian Police Officer #4] and [Civilian SFS Shift Supervisor #4] and the internal memoranda in [436 SFS Assistant Operations Officer's] files.

Observances including but not limited to those sections pertaining to alternate work schedules. These allegations may also identify gross mismanagement and an abuse of authority."

The range of statutory and regulatory provisions referenced in OSC's Referral Letter is quite broad. While all of the statutes and regulations cited have general applicability to Federal civilian employees, not all of the references cited are relevant to this investigation. For purposes of this investigation, the following statutes, regulations and rules are more directly pertinent to the issues raised.

Employee Conduct

Part 735 of the Office of Personnel Management (OPM) regulations addresses *Employee Responsibilities and Conduct*, 5 C.F.R. Part 735. Section 735.203 provides that, "[a]n employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

AFI 36-703, *Civilian Conduct and Responsibility*, February 18, 2014, sets forth the responsibilities for supervisors and management officials of civilian employees. Paragraph 6.1 of the recently updated AFI states, "supervisors failing to comply with Air Force standards of conduct and responsibilities adversely reflect upon the integrity of the management process, and may be reassigned to non-supervisory positions under 5 CFR 752 for the efficiency of the service. Follow procedures established in AFI 36-704, Discipline and Adverse Actions." Paragraph 6.2. sets forth requirements for supervisors. Among other things, supervisors are required to "[c]omply with civilian personnel laws, regulations, and negotiated labor agreements (Paragraph 6.2.1.); "[c]omply with attendance, leave, and overtime approval procedures" (Paragraph 6.2.4.); and "[c]onstructively counsel and correct employee performance and conduct" (Paragraph 6.2.6.). Paragraph 3.4.2. requires employees to "[b]e present for duty unless authorized to be absent."

For the time frame covered by the investigation, a prior version of AFI 36-703 was in effect. Under AFI 36-703, paragraph 4 (effective August 1999), employees are required to comply with prescribed standards of conduct in all official matters and expected to maintain high standards of honesty, responsibility, and accountability as well as adhere to the Air Force core values of "Integrity first, Service before self, and Excellence in all we do." Under paragraph 5.4.2 (effective August 1999), employees are required to "be present for duty unless authorized to be absent. Under paragraphs 5.4.1 and 5.4.3 respectively (effective August 1999), employees are required to 1) discharge their assigned duties conscientiously and effectively; and 2) follow Air Force Instructions and other directives and comply in a timely way with proper instructions or orders given by a competent authority.

Title 18, Section 1001 of the United States Code provides "whoever ... knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years."

Work Week, Overtime and Compensatory Time

Title 5, Chapter 61 of the United States Code sets forth the attendance and leave rules for Government organizations and employees. Section 6101 establishes that civilian employees work a basic 40-hour work week. Section 6101 (a)(2) provides, in pertinent part, that the head of the military department shall "(A) establish a basic administrative workweek of 40 hours for each full-time employee in [her] organization; and (B) require that the hours of work within that work week be performed within a period of not more than 6 of any 7 consecutive days." Section 6101 (a)(3) further provides that except where the military department would be "seriously handicapped in carrying out its functions or that costs would be substantially increased, [SecAF] shall provide, with respect to each employee in [her] organization, that ... B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive; (C) the working hours in each day in the basic workweek are the same; and (D) the basic non overtime workday may not exceed 8 hours."

Similarly, Part 610 of Title 5 of the Code of Federal Regulations addresses the requirements of a 40 hour work week and what constitutes overtime work. 5 C.F.R. § 610.111 provides, in pertinent part, that

> (a) The head of each agency, with respect to each full-time employee to whom this subpart applies, shall establish by a written agency policy statement:
> (1) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days. ... [T]he written agency policy statement shall specify the days and hours within the administrative workweek that constitute the basic workweek.
> (2) A regularly scheduled administrative workweek that consists of the 40-hour basic workweek established in accordance with paragraph (a)(1) of this section, plus the period of regular overtime work, if any, required of each employee. ... [T]he written agency policy statement, for purposes of leave and overtime pay administration, shall specify by days and hours of each day the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek.
> (b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative work week as the basic work week. A first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work within the administrative workweek are overtime work. [5]

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[5] Pursuant to Defense Finance and Accounting Services (DFAS) guidance, regularly scheduled overtime is overtime work scheduled prior to the beginning of a regularly scheduled administrative work week. Compensatory time off from regularly scheduled work hours, or tours of duty, is available to eligible employees. Compensatory time is accrued instead of payment for an equal amount of time spent in irregular or occasional overtime work. Compensatory time worked must be approved in advance and cannot be earned when payment of the extra hours at overtime rates would be improper. *See* http://www.dfas.mil/civilianemployees/understandingyourcivilianpay/premiumpay.html (page 5 of 7).

AFI 36-802, *Pay Setting,* September 1, 1998, prescribes rules for the Air Force regarding overtime. Paragraph 3.1.1. requires commanders to "continually ensure that overtime work occurs only pursuant to mission needs." Under paragraph 3.1.2., supervisors must 1) "establish tours of duty which require payment of premium pay rates (for example, night work, Sunday work, overtime, holiday and so forth) only when the mission requires this work for efficient operations;" and 2) "obtain approval from their overtime authorizing official before ordering overtime." Paragraph 3.1.2. provides for an exception where, "in an emergency, the supervisor may order overtime without authorization but must document the overtime no later than the following workday." Pursuant to AFI 36-802, AF Form 428, *Request for Overtime, Holiday Premium Pay, and Compensatory Time,* is the prescribed form for requesting overtime.[6]

Under Paragraph 3.1.3., employees "may not receive overtime pay for work which a supervisor did not properly authorize and approve (except employees under the Fair Labor Standards Act (FLSA) who are suffered and permitted to work overtime (5 C.F.R. § 551.401))."[7] Paragraph 3.2.2. provides that "officials certifying time and attendance, or their designees, must maintain required documentation to support the automated time and attendance record."

In general, compensatory time off is time off with pay in lieu of overtime pay for irregular or occasional overtime work. Section 5543(a) of Title 5 provides that the head of the agency may "on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment ... for an equal amount of time spent in irregular or occasional overtime work." 5 U.S.C. § 5543(a). Compensatory time off may be approved (not required) in lieu of payment for such hours for employees, including wage employees, who are ordered to work overtime hours under flexible work schedules. *See* 5 U.S.C. 6123(a)(1).

OPM regulations reiterate that compensatory time off is time off with pay in lieu of overtime pay for irregular or occasional overtime work; or, when permitted under agency flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work. *See* 5 C.F.R. §§ 550.114 and 551.531.

Leave Approval

AFI 36-815, *Absence and Leave,* September 5, 2002, establishes Air Force Policy regarding leave. Under Paragraph 1.1., it states:

> **Air Force Policy.** Leave is an important and significant benefit for all employees. ... Managers must administer leave and excused absences on a uniform and equitable basis within the scope of applicable laws and regulations. They must base their decisions to deny leave requests and cancel approved leave on the necessity for the employee's services. Denial or cancellation of leave is not disciplinary in character and must not be used as a punitive measure. In

[6] By filing an AF Form 428, the filer must "swear under penalty of perjury that the information I have provided/certified is true and accurate. I understand that giving false information is punishable under Article 107 of the Uniform Code of Military Justice and/or Title 18, Section 1001 of the United States Code. Providing false information or falsely certifying information regarding overtime, holiday premium pay, or compensatory time off could lead to my conviction of a felony, confinement, a fine up to $10,000, discharge, or removal."

[7] The civilian police officers at Dover AFB must have overtime properly authorized and approved.

granting leave, managers must consider the needs of the Air Force and the welfare of the employees. Authority to approve leave requests is normally delegated to the lowest supervisory level having personal knowledge of the work requirements and the employee's leave record. The OPM 71, **Request for Leave or Approved Absence** is available on the OPM web site (**http://www.opm.gov**) for the purpose of requesting leave. (Emphasis in original).

Under Paragraph 1.2.3.1., supervisors authorized to approve leave must "ensure that all employees under their supervision are informed of the procedure they must follow in requesting leave and using leave." Paragraph 1.2.3.2. of AFI 36-815 requires supervisors to "ensure that all absences from duty are appropriately charged according to applicable laws and regulations." Under Paragraph 1.2.4, employees must: 1) "be dependable and regularly report for work;" 2) "in accordance with applicable procedures, request leave in advance, and cooperate in rescheduling leave when necessary;" and 3) "report unexpected absence to the supervisor and request approval for the absence according to established policies."

Time and Attendance

DoD regulates time and attendance of DoD civilian employees through rules codified in DoD 7000.14-R, *Financial Management Regulation*, Volume (Vol) 8, *Civilian Pay Policy*, Chapter (Chapt) 2, *Time and Attendance,* (June 2013). The Financial Management Regulation (FMR) was revised in September 2010 and again in June 2013. As the rules governing the time frame and conduct at issue in this investigation changed, the relevant provisions for both the September 2010 and June 2013 time and attendance regulations are set forth below.

September 2010	June 2013
	020102 A 7. All individuals responsible for reporting, approving, reviewing, or processing T&A [time and attendance] data, in any form, must be held accountable for the accuracy, integrity, and security of the information. The discovery of any violations of internal controls, improper input of T&A data, or security breaches must be immediately reported to an appropriate supervisory official.
020102 B. Approving Official's Responsibilities. When approving time and attendance reports, supervisors, other equivalent officials, or higher level managers are representing that, to the best of their knowledge, the actual work schedules recorded are true, correct and accurate. Review and approval shall be made by the official, normally the immediate supervisor, most knowledgeable of the time worked and absence of the employees involved.	**020102 B. Approving Official's/Supervisor's Responsibilities.** An approving official, usually the employee's supervisor, maintains the primary responsibility for authorizing and approving T&A transactions. An approving official must perform the following T&A functions: 1. When approving T&A, all supervisors, other equivalent officials, or higher level managers must certify that, to the best of their knowledge, the actual work schedules recorded are

	accurate. An employee's supervisor should be aware of an employee's work schedule, leave taken, and any absence from duty and must review and approve the T&A to ensure its accuracy. Supervisors must ensure that exceptions to the employee's normal tour of duty are recorded in a timely and accurate manner. 2. The supervisor may assign responsibility for observing daily attendance or accurately recording T&A data to a timekeeper or, in limited circumstances, to the individual employee. However, the supervisor is still ultimately responsible for timely and accurate reporting of the T&A.
020102 C Timekeeping Responsibilities. Individuals performing the timekeeping function are responsible for (a) timely and accurate recording of all exceptions to the employee's normal tour of duty; (b) ensuring that employees have attested to the accuracy of their current pay period's time and attendance (including any exceptions such as use of leave) and any adjustments or corrections that are required after time and attendance is approved; and (c) ensuring that all entries for overtime and compensatory time earned have been approved, and totals are correct before certification.	**020102 C Timekeeper Responsibility.** Timekeeping is a critical function that may be performed by the individual employee, a designated timekeeper, the employee's supervisor, or a combination of these individuals. A timekeeper must perform the following T&A functions: (1) a timekeeper must accurately and timely record T&A data and maintain all related documentation; and (2) a timekeeper must be aware of the employee's attendance and absence each day.
	020102 D Timekeeper Functions. Individuals performing the timekeeping function are specifically responsible for: (1) promptly and accurately recording all exceptions to the employee's normal tour of duty; (2) ensuring that employees have attested to the accuracy of both their current pay period's T&A including any exceptions such as use of leave and to any adjustments or corrections to a previously approved T&A....(3) ensuring that all entries for overtime and compensatory time earned, or holidays worked have been approved, and that total hours are correct, before submission for a supervisor's approval and certification.
020204. Accounting for Time and Leave. Requires time and attendance data to reflect proper and accurate accounting of an employee's actual time and attendance.	**020204. Accounting for Time and Leave.** The T&A must reflect a proper accounting of an employee's actual T&A and leave.
020206. Work Schedules. The basic work requirement is defined as the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave. Generally, a full-time employee's basic work requirement is 80 hours in a pay period.	**020206. Work Schedules.** The work schedule defines the basic work requirement is defined as the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave. Generally, a full-time employee's basic work requirement is 80 hours in a pay period.
020304. Leave Charges. All leave types are charged to the employee either by whole days, whole hours, or fractions thereof.	**020304. Leave Charges.** All leave types are charged to the employee by either days, hours, or fractions of hours.

020401. Time and Attendance Certification - Controls. The certification of time and attendance is an authorization for the expenditure of government funds.	**020401. Time and Attendance Certification - Controls.** The certification of T&A is an authorization for the expenditure of government funds. Each employee's T&A must be certified correct by the employee's supervisor, acting supervisor, other equivalent official, or a higher level manager authorized to act as an alternate certifier at the end of the pay period.
020404 Maintenance by Employee B. To provide reasonable assurance that employees are working when scheduled, supervisors shall take reasonable measures, such as occasional telephone calls during the times they are scheduled to work, or an assessment of the reasonableness of output for the time spent, to determine the accuracy of time and attendance records submitted by individuals who maintain their own time and attendance. The supervisor and/or approving official is responsible for the accuracy of the time and attendance data submitted by the individual.	
	020402 Responsibility All T&A and supporting documents must be reviewed and approved by a supervisor or designated alternate certifier. The supervisor or designated alternate certifier must be aware of his or her responsibilities for ensuring accuracy of the reports and must have knowledge of the time worked and absence of employees for whom approval is given. A. Certification of T&A. The supervisor or designated alternate certifier must have a reasonable basis for relying on systems of internal control to ensure accuracy and legal compliance when the individual does not have positive, personal knowledge of the presence and absence of, or other information concerning employees whose T&A are being approved. This basis must involve periodic testing of internal controls to ensure they are working as intended. Certification of T&A documents must be based on: (1) knowledge from personal observation, work output, or timekeeper verification; (2) checking data against other independent sources such as validating starting and ending times of work using sign-in and sign-out sheets or time clock entries; (3) reliance on other internal controls; or (4) a combination of controls. B. Approval of T&A. Approvals must be made individually for each employee, and a handwritten or automated signature must be

	provided for each T&A.
	020404 Maintenance of T&A by Employee B. Controls. To provide reasonable assurance that employees are working when scheduled, supervisors must take reasonable measures, such as occasional telephone calls during the times they are scheduled to work, or an assessment of the reasonableness of output for the time spent, to determine the accuracy of T&As submitted by individuals who maintain their own T&A. The supervisor is responsible for the accuracy of the T&A data submitted by the individual.

Standard for Abuse of Authority and Gross Mismanagement

The United States Merit Systems Protection Board (MSPB) defines "Abuse of Authority" and "Gross Mismanagement" in their Report to the President and the Congress of the United States entitled *Whistleblower Protections for Federal Employees*, dated September 2010. The MSPB defines an "abuse of authority"[8] as requiring an "arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." The definition of abuse of authority does not incorporate a *de minimus* standard or threshold.[9] Various actions by a supervisor, if related to supervision, can qualify as an abuse of authority. For example, MSPB has held the following instances to constitute an abuse of authority: 1) a proven allegation of a supervisor approving false time sheets;[10] 2) an allegation, if proved, of a supervisor ignoring an incident of illegal firing of weapons by subordinate border control agents;[11] 3) a decision not to follow agency-written selection rules for a job vacancy;[12] and 4) the mishandling of a grievance and discriminating against a class of individuals in the hiring process.[13]

According to MSPB, "gross mismanagement"[14] "does not include management decisions which are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing. ... Gross mismanagement means a management action or inaction which creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission."

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[8] According to the Report, "the meaning of 'abuse of authority' is not defined in the statute, and the Board has held that the legislative history for the CSRA [Civil Service Reform Act] is silent on the question. The Board has therefore adopted a regulatory definition." The Report further indicates that the definition was created by OSC prior to the WPA [Whistleblower Protection Act] in 1989, but no longer exists in regulation. The definition, however, is used by the Board. *See e.g. Chavez v. Department of Veterans Affairs*, 120 M.S.P.R. 285, 296 (October 30, 2013).

[9] *See Stiles v. Department of Homeland Sec.*, 116 M.S.P.R. 263, 271(2011); *Wheeler v. Department of Veterans Affairs*, 88 M.S.P.R. 236, 241(2001).

[10] *See D'Elia v. Department of the Treasury*, 60 M.S.P.R. 226, 234 (1993), *rev'd on other grounds.*

[11] *See Stiles v. Department of Homeland Sec.,* 116 M.S.P.R. 263, 265-271 (2011).

[12] *See Wheeler v. Department of Veterans Affairs*, 88 M.S.P.R. 236, 238-241 (2001).

[13] *See Thomas v. Department of the Treasury*, 77 M.S.P.R. 224 (1998), *rev'd on other grounds.*

[14] *See e.g. Francis v. Department of the Air Force*, 120 M.S.P.R.138, 144 (September 17, 2013) ("gross mismanagement means a management action or inaction which creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission").

SUMMARY OF THE EVIDENCE

Dover AFB -- 436th Security Forces Squadron

Dover AFB, home to the 436th Airlift Wing (436 AW), known as the "Eagle Wing," houses the world's largest aerial port. The mission at Dover AFB is to provide strategic global airlift capability. Dover AFB covers more than 3,900 acres, has two runways and 1,700 buildings.

The 436th Security Forces Squadron (SFS) at Dover AFB is responsible for the safety and security of Dover AFB's C-5 and C-17 fleet and for conducting law enforcement activities to assure public safety of base residents and facilities. The squadron manages the 436 AW's information and personnel security, combat arms training, drug suppression and criminal investigative support, as well as crime and traffic analysis. Security Forces personnel work with the Staff Judge Advocate, Air Force Office of Special Investigation, wing leadership, Air Mobility Command staff, and federal, state, and local police. In order to supplement the military workforce and provide continuity of force, the 436 SFS began hiring civilian police officers in 2008.[15] At the time of the investigation, this workforce had grown to include 24 full and part-time civilian police officers.

Time and Attendance Reporting System

During the timeframe covered by the whistleblower's allegations (approximately 2011 through 2013), the 436 SFS transitioned from a manual time card system to ATAAPS [Automated Time Attendance and Production System], a computerized time card system to account for civilian employees' time and attendance. [436 SFS Assistant Operations Officer],[16] explained that the 436 SFS changed time and attendance systems about a year ago. [Civilian SFS Shift Supervisor #4],[17] a supervisory police officer, testified that civilian time keeping for the SFS changed "less than a year" ago." "We recently started the ATAAPS program, computer-based time." Attendance records collected by the IO indicate that as of December 16, 2012, the 436 SFS transitioned to ATAAPS.

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[15] The civilian security officers are hired under Title 5 of the United States Code and subject to Title 5 of Code of Federal Regulations which are implemented, *inter alia*, through DoDI (DoD Instruction) 1400.25 and AFIs 36-802, 36-807 and 36-815.

[16] According to [436 SFS Assistant Operations Officer's] testimony, he is a GS-11 employed with the 436 SFS since June 26, 2006. At the time of his interview, he supervised, either directly or indirectly, 23 civilian police officers. As the Assistant Operations Officer, [436 SFS Assistant Operations Officer] "do[es] all the hiring for the Security Forces Civilian police officers for the ... Department of the Air Force Provost Program. ... Right now I'm currently sitting in the Operations Officer position because he's deployed. Or he's actually just gotten back home from R&R and he's deploying again, or actually going TOI (sic) [TDY – temporary duty] again. And I'm filling in for him. So I actually supervise the military or the active duty and the civilian side right now."

[17] [Civilian SFS Shift Supervisor #4] testified that he works for the "Department of the Air Force police at Dover [AFB], 436th Security Forces" as a Supervisory police officer, GS-8. He has been employed with the 436 SFS for four and ½ years. As a supervisor, he is "a flight chief in charge of both military and civilian police officers." He testified that, "[c]urrently I have two civilian police officers [[Civilian Police Officer #3] and [Civilian Police Officer #4]] that are under me and then I have, give or take, about 55 to 60 military personnel."

Prior to ATAAPS, the 436 SFS used a manual timecard system. According to Officer John Molitor,[18] prior to using ATAAPS, time and attendance was done by manual timecard. Time and attendance was "handwritten" and kept on a "handwritten form." According to [436 SFS Assistant Operations Officer], the civilian employee's supervisor was required to certify that the officer's time card accurately reflected the employee's hours worked, sick time and leave.

[Civilian Police Officer #4][19] testified that, under the manual time card system, "the supervisors would write out a sheet and it was for a two-week period. They would write out the number of hours on ... a grid where it had the list of the days.... It was a manual time card. The [supervisor] would bring it to us as the officers. We would initial each line if it were [sic] correct." According to [Civilian Police Officer #4], if there was a discrepancy, the employee would initial the corrected time card.

[Civilian Police Officer #1][20] also testified that prior to ATAAPS, time and attendance "was done on a handwritten card. ... They would – we would have the card brought to us, and it would already be filled – filled out, and we would just have to verify it, and our initials would be placed in the box. Kind of like a – an Excel program looking like card." According to [Civilian Police Officer #1], the supervisor filled out the time card and then the employee would verify it by initialing the time card.

[Civilian SFS Shift Supervisor #4] stated that, "[p]rior to [ATAAPS], it was paper time sheets" which the supervisor filled out. [Civilian SFS Shift Supervisor #4] described the paper time sheet process, "Well, everything was based off of the pay periods, standard, biweekly pay periods and at the end of the second pay period we would be issued out the actual time sheet cards on each employee. We would then account for the time that they were at work or on annual leave, sick time or any other recognized time off, approved time off." While the employee did not fill in the time sheets, [Civilian SFS Shift Supervisor #4] stated that, "we usually sat down with them [employees] to ensure accurate accountability of the times and then we would turn those in to our payroll which at the time it was [436 SFS Assistant Operations Officer] and [SFS Civilian Employee #1]."

As of December 2012, the 436 SFS uses a computer time generated system, ATAAPS, to account for civilian employees' time and attendance. As [436 SFS Assistant Operations

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[18] According to his testimony, Officer John Molitor, a civilian police officer, has been employed for five years with the 436 SFS. At the time of the investigation, Officer Molitor was a shift supervisor working midnight shifts. In that capacity, Officer Molitor explained his duties as "supervise military civilians working my shift, taking care of timecards, taking care of leave requests and ensuring that people are either accounted for or working present for duty." He clarified that he approves timecards and leave requests for civilians, not military members.

[19] [Civilian Police Officer #4] is a GS-6 (General Services) civilian police officer with the 436 SFS at Dover AFB. She testified that she started January 19, 2010 and described her duties as follows: "I'm assigned to a post, I am issued an M4 as well as an M9. I'm assigned to a post within the base, whether it's a patrol, patrol on housing, working a gate. And as a gate officer, I'm the first line of defense. As a patrol officer, I'm a responding officer to any emergencies. I also conduct random anti-terrorism measures and just do routine patrol, looking for anything suspicious or out of the ordinary."

[20] According to his testimony, [Civilian Police Officer #1] is a GS-6, Step 4 patrolman employed by the 436 SFS for the past 4 ½ years.

Officer] testified, "each individual is responsible to put their own time in, they submit their own leave forms for either sick time, leave time, [or] annual award time. And then the supervisor, the first line supervisor, certifies that pay after they have put their [the employee's] leave forms in, [and] they've been approved. And we do that bi-weekly."

Officer Molitor testified that currently civilians use the ATAAPS system to account for their time. "[Civilian employees] certify [their time], we'll certify it but they'll basically say this is true and then we just have to document it."

[Civilian Police Officer #1] indicated that time and attendance is accounted for under the ATAAPS online accounting system. "We – we – our timecards are actually made out ahead of time. If there is any corrections, revisions, or additions, we do that on – usually every other Wednesday, tomorrow being the next Wednesday that I would do my timecard. Once its concurrent [concurred by employee], it goes to our supervisor. He also validates it, and then it goes on electronically to the client, I believe."

[Civilian Police Officer #4] testified that the civilian police officers currently used ATAAPs to record their time and attendance. "Right now we do ATAAPS, a computer time generated where the officer enters their time. We enter our leave. We passed any leave request onto my supervisor. So if it's sick leave or annual leave, then I generate that request, send it on to him. I adjust my time on ATAAPS to reflect that, including taking out any night differentials." She "estimates" that ATAAPs went into effect about "a year ago."

Under ATAAPS, an employee's regular work schedule is entered into the system and used as the default for each two week pay period. When the employee accesses the system, ATAAPS automatically generates the employee's time and attendance record for a particular pay period, with the assumption that the employee would perform regular work during each scheduled work day. The employee is required to use the system to generate leave requests which are then sent electronically to the employee's supervisor for approval. The employee must make changes to the default time and attendance record to reflect any leave that has been approved and taken during the pay period. After the employee has made all changes to his or her time and attendance record for the pay period, he or she must then concur that the time and attendance record is accurate. The system flags any discrepancies between approved leave requests and the time and attendance record. Once the employee concurs, the supervisor must certify the time and attendance before it is sent to payroll for payment.

Work Schedules/Supervisors

At the time of the investigation, [436 SFS Assistant Operations Officer] supervised, either directly or indirectly, 23 civilian police officers. Sometime between 2011-2014, the 436 SFS changed work schedules. The evidence indicates in 2011, there were two shifts of 12 hours each. During this time, the SFS worked a "Panama" schedule. According to [Military Police officer #5],[21] "[a] Panama is three [days] on, two [days] off, two [days] on, three [days] off

[21] According to his testimony, [Military Police officer #5] has been assigned to the 436 SFS since May 2009. "In the beginning of 2009, I was a patrolman. I moved towards the end of 2009 to the commercial vehicles inspection

schedule. And that would mean that you had every other Friday/Saturday/Sunday off." Under this schedule, civilian police officers worked six 12 hour days and one 8 hour day within the two week pay period. Timecards indicate that sometime in 2012, the schedules transitioned to three shifts with 10 hour days. Under this schedule, civilian police officers worked four 10 hour days each week, with three days off.

The testimony indicated that [436 SFS Assistant Operations Officer] directly supervised at least three shift supervisors, [Civilian SFS Shift Supervisor #4], Officer John Molitor and [Civilian SFS Shift Supervisor #1].[22] According to [436 SFS Assistant Operations Officer's] testimony, Officer Molitor directly supervised five civilian police officers and had the responsibility to approve their timecards. The evidence establishes that at various times between 2011 and present, Officer Molitor supervised Officer Alvin Hunter, Officer Aaron Day,[23] Officer Michael Marsters, [Civilian Police Officer #4], [Civilian Police Officer #8][24] and [Civilian Police Officer #1].

At the beginning of each shift, the 436 SFS holds guard mount in Building (Bldg) 910. Guard mount is a meeting led by the shift supervisor to give information and updates to the Security Forces personnel. After the meeting, police officers, civilian and military, working in the commercial vehicle inspection (CVI) area drive from Bldg 910 to the CVI, located on the other side of Dover AFB. The 436 SFS has a posting van (a passenger van) that brings police officers ending their shift from the CVI to Bldg 910 and those police officers beginning their shift from Bldg 910 to the CVI. According to [436 SFS Assistant Operations Officer], "it's a van they use to take people from Building 910 where we have guard mount to CVI, the commercial vehicle gate .... [B]ack then it was necessary for someone to take the van back to pick up the people coming in and bring them back to the gate, the commercial vehicle gate." [25]

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gate. I worked there on and off between deployment for three years, and I came back to work [the] patrolman position, and then got certified on the base CENT (phonetic) Operations Center."

[22]As of July 21, 2014, [Civilian SFS Shift Supervisor #1] is no longer employed with the Air Force. According to [Civilian SFS Shift Supervisor #1's] testimony, he was a GS-8 employed with the 436 SFS since 1998, when he left Active Duty. He served as a shift supervisor for five-and-a-half years. He described his duties as follows: "Assist – right now I'm on light duty, but what my job pertains to is assisting the flight chief, the on duty flight chief with duty schedules, training, disciplining personnel. I'm pretty much doing the same thing I was doing when I was active duty as a flight chief."

[23]According to his testimony, Officer Aaron Day is a GS-6 police officer employed with the 436 SFS since October 9, 2009. As a patrol officer, he is "[b]asically responsible for the patrol of the base, including the housing side. Write citations, doing minor traffic investigations and basic law enforcement duties."

[24][Civilian Police Officer #8] testified that he is a patrolman with the 436 SFS at Dover AFB, since May of 2010 and described his duties as "I patrol, I check IDs [identifications], I do reports, I enforce laws, rules and regulations of the Air Force under UCMJ [Uniform Code of Military Justice]."

[25] The evidence suggests that the van was occasionally used by civilian police officers to "game the system" – allowing them to leave early without reflecting the absence on their time and attendance report. For example, [436 SFS Assistant Operations Officer] testified, "[B]ack then it was necessary for someone to take the van back to pick up the people coming on and bring them back to the gate, the commercial vehicle gate. Well from what I understand, if I remember right, that day two people decided to go. And I think it was Hunter and Day, decide oh I'm going to take the van back. They took the van back and I think they left if I'm not mistaken.... And that's what happened more than once with people. We found out after the fact that some of the civilians were playing the system.... And they would just sneak out and take off. Allegedly."

Time and Attendance Irregularities

The investigation revealed a number of irregularities in the time and attendance for certain civilian police officers working for the 436 SFS, which occurred between 2011 and 2013. Many of these incidents involved Officer Molitor, who according to his supervisor, [436 SFS Assistant Operations Officer], established a history of time and attendance issues.[26] [436 SFS Assistant Operations Officer] kept a file to document the incidents and a number of time and attendance issues were annotated in Officer Molitor's Employee Work Folder. These time and attendance irregularities are set forth below.

Computer Based Training – June 2011

[436 SFS Assistant Operations Officer] testified about an incident a couple of years back where Officer Molitor did not show up for work and was at home doing some computer based training.

> And he [Molitor] said, that instructor, recommended oh if you have a chance to do this at home you should try to do it at home and, you know, away from work and distractions. And he took it upon himself to do that, without clearing it through me or Civilian Personnel. We don't have approved telework. So he took the day off and -- ... Well he stayed at home, just said that he was doing the training. So I had called down to the search pit that day to talk to him about something and they said he's not here. And I'm like well where is he? Oh, he's home today doing training. I'm like what's he home doing training for? So I texted him, we texted back and forth. I said you didn't have approval for this. And he said oh, you know, the course, the course people said, I said those people in that course don't give you permission. They make a recommendation but you've got to run that through your chain. You can't just take time off.

[436 SFS Assistant Operations Officer] documented the incident in the Supervisor's Employee Work Folder for Officer Molitor. In or about mid June 2011, [436 SFS Assistant Operations Officer] wrote the following entry:

> This is a coaching session to help improve your role as a supervisor. One day during the 13-17 Jun 11, I attempted to contact you at your duty station and I was told you were at home for the day training. I sent you a text message asking you what you were doing and you responded you were completing your CPMC training at home because your online instructors made the suggestion that it would be a good idea. You neither made a request, nor were given permission to do this. Your online instructors do not have the authority to give anyone permission to conduct training at home. It must be approved through the proper channels. As a result, you may choose to take annual leave, or LWOP [leave without pay], or be

[26] According to [436 SFS Assistant Operations Officer's] testimony, "under Molitor we had [Civilian Police Officer #8], Day and Hunter. The four of those guys were bosom buddies. They couldn't do any wrong and there was shady stuff going on .... with time and attendance." Similarly, [Civilian SFS Shift Supervisor #4], speaking of Officer Molitor, testified, "... Officers Day and Hunter. There was obvious favoritism going on with the two of them."

> charged AWOL [away without leave] for the time you were away from the work center. Any future violations of this nature may result in administrative action. In addition, you do not have the authority to grant telework to any of your employees. If there are any questions concerning this, you should address them through your chain-of-command.

Officer Molitor initialed the Supervisor's Employee Work Folder, acknowledging the coaching session and [436 SFS Assistant Operations Officer's] comment.

During his interview for the underlying investigation, however, [436 SFS Assistant Operations Officer] could not remember, without looking at documentation, whether he counseled Officer Molitor on this issue or sent it to Civilian Personnel for disciplinary action.

> I can't remember if I have something in there or not. I can't remember. We talked about it. … I don't believe we sent anything for disciplinary action on that one. I don't know if I did a coaching session. If there's something in there that says it's a coaching session that's like your equivalent of a counseling, to change the inappropriate behavior. And I cannot remember if I put something there, I thought I did. I can't remember without looking at the record. Because like I said, he's had so many things that some of it's documented and some isn't.

The IO asked Officer Molitor whether he remember this incident.

> Oh yes, most definitely. … So [436 SFS Assistant Operations Officer] tells me that, I said, I'm supposed to be doing a, trying to think of the word it's called, I was doing a training that you're supposed to call other people and, it was that supervisory one. … And you were supposed to have a three or four person hookup where they all call the number and then you were supposed to be online and you were answering questions and it was a, I don't even, I can't think of the word, I apologize but -- … So I told them that that's what I was going to be doing and he's like, yes sure, whatever. And I texted him so I knew that he knew what I asked him and then he calls me the next day and says, where are you? I'm like are you for real, I just told you yesterday, I explained to you why I needed to be there and he's like, no, I didn't say that. He said, that's not what I meant. He said, you have to take sick leave. I said, I'm doing a conference because it's work related and it's not quiet at work. At the pit where I was working it's pretty loud so I told him that that's what I wanted to do. And I was told that through the administrator, through the Webinar, that you can request that and that's legitimate. Other people do it, they don't have their conferences in the workplace.

Officer Molitor testified that there may have been a miscommunication – "maybe on his [436 SFS Assistant Operations Officer's] part. … Because I explained to him explicitly, he does it to me all the time. I'll tell him something, I'll send him an email, now I send him an email, I tell him, I text him and I call him."

July 6, 2011 Coaching

On July 6, 2011, [436 SFS Assistant Operations Officer] held another coaching session with Officer Molitor which was annotated in the Supervisor's Employee Work Folder.

> 6 Jul 11: This is a coaching session to help improve your performance. Prior to the Memorial Day holiday, you contacted me and informed me the manning at the Commercial Vehicle Inspection Area would not meet the minimum level required and that you didn't have anyone else available to cover the shift because you thought an airman was on leave. As a result, you volunteered to work the shift. It also came to my attention that [Civilian Police Officer #7] changed his schedule without the approval from either you or [Military SFS Flight Chief #4] and he worked the same 12-hour shift with you. During the shift, you also had two military personnel on duty, which met the minimum manning requirement. Instead of sending [Civilian Police Officer #7] home and leaving yourself, you informed me you both stayed to conduct training for this upcoming stan-eval [standardization/evaluation]. You did not have the authority to use overtime for training. As a supervisor, I expect you to be a good steward of the time and money we have entrusted you to use wisely and conservatively. Wasting overtime funds in this manner opens our commander up to scrutiny from her superior that we, as supervisors, should not allow to happen. Future incidents of this nature may lead to disciplinary action.

Officer Molitor initialed the comment, acknowledging the coaching and the comment in his Work Folder.

Commercial Vehicle Inspection and Officer Hunter

Officer Molitor supervised Officer Alvin Hunter.[27] During her interview, [Civilian Police Officer #4] testified about Officer Hunter's time and attendance issues when they worked at the CVI area in 2011.

> When I worked at the commercial vehicle inspection, it was an assigned post. We were doing 12-hour shifts at the time. I think it was 2011, think mid to end of 2011 that this was occurring. I worked the overnight shift so I think it was 5:00 p.m. to 5:00 a.m. In the morning at 5:00 a.m. another civilian officer, Officer Al Hunter, was supposed to come in and relieve me and on many weekend mornings he did not. He was not there. And in the afternoon when I came in to relieve him, he was still not there. I thought he was taking leave. I assumed he was taking leave but when it happened so much on these 12-hour days.

When asked how many times this occurred, she responded, "[p]robably over that four- or five-month period anywhere from 15 to 20 days, maybe 10 to 15. I don't know. I don't remember."

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[27] Officer Hunter resigned from the Air Force effective May 16, 2013 for personal reasons. The IO made several attempts to find Mr. Hunter but his whereabouts are unknown.

[Civilian Police Officer #4] testified that she informed her supervisor, [Civilian SFS Shift Supervisor #3][28] about Officer Hunter's absences, and that he "brought it up to [436 SFS Assistant Operations Officer], his supervisor." She further stated that Officer Molitor was Officer Hunter's supervisor and that "[Civilian SFS Shift Supervisor #3] told [her] he was going to [talk with Officer Molitor] but [she] didn't know if he did." She stated that Officer Hunter was assigned to the CVI area and would not have been performing duties elsewhere on the base. [Civilian Police Officer #4] testified that she asked the military supervisor present on those weekends, [Military Police officer #1], about Officer Hunter, and that he indicated Hunter "took off the day." She questioned whether this was being accounted for on his time sheet. "Not that I was aware of because I did what's called a Blotter Back[29] (phonetic) every day and that showed, like, we had radio numbers assigned and for whatever reason they want to account for radio numbers and his radio number on those days was listed as NA." She indicated that all officers are required to get a radio.

[Civilian Police Officer #4] testified that she "reported that to Officer Molitor and I reported it to the NCOIC [non-commissioned officer in charge], [Military Police officer #4], who was in charge at times or at the time. And all I got from Hunter, he came back out and said that I was a troublemaker, I don't work for you, I don't answer to you." [Civilian Police Officer #4] indicated that Officer Hunter left her there without telling her he was gone "probably ten" times. She indicated that "Hunter finally had had enough of me reporting him and went and worked on the other shift" with Officers Day and [Civilian Police Officer #8].

She also testified during her interview that, "[Molitor and Hunter] were tight buddies, very, very tight. ... Personally. I mean, Officer Molitor picked Officer Hunter up out of jail and I know that they were – I know that Officer Molitor turned his back on a lot of things that Officer Day and Hunter did, a lot of breaks. Officer Hunter took a lot of breaks while we were working." According to [Civilian Police Officer #4], on one occasion, Officer Hunter's frequent breaks had real world consequences. "Because he left me in the search pit and I actually had a truck get out without me checking it because I did not know he had left. He just walked away and went and sat down."

[Civilian Police Officer #4] addressed the same issue in a Memorandum for Record [MFR] dated July 23, 2012. It stated in pertinent part:

> While working the overnight shift (before January 2, 2012) I noticed there were several Saturday and Sunday's that Officer Alvin Hunter was not at the Commercial Gate when I came in to relieve day shift in the evening. He was also not there when day shift relieved me in the morning. When I asked others on his shift, I was told that he had the weekend off. However, when I edited the daily Blotter Back, Officer Hunter's name was listed, indicating he had worked. I

[28] [Civilian Police Officer #4] testified that [Civilian SFS Shift Supervisor #3] had a motorcycle accident and suffered a [omitted] injury. He is no longer with the 436 SFS.

[29] Unfortunately, due to the elapsed time, the records [Civilian Police Officer #4] spoke of such as the blotter and the duty rosters are not reliably maintained after a year. Therefore, independent documentary evidence could not be obtained to verify [Civilian Police Officer #4's] account.

> mentioned it to my supervisor, [Civilian SFS Shift Supervisor #3], who told [436 SFS Assistant Operations Officer]. Shortly after, Officer Molitor wrote me up for sleeping on shift. He severely exaggerated, saying that Officer Hunter had to come into the break room and hit the wall in order to wake me up. When [Civilian SFS Shift Supervisor #3] questioned me about it, I admitted that due to new medication for [a medical condition], and per doctor[']s orders to avoid caffeine until I had [a medical examination], I struggled during night shift, but I certainly was not sleeping. I recall Officer Hunter and [Civilian Police Officer #2] coming into the break room to put their food in the fridge. I asked Officer Hunter if Officer Molitor had sent him into the break room to wake me up and asked if he had to "hit" the wall. He told me that he didn't know what I was talking about and he did not see me sleeping, only that I looked tired.

An examination of Officer Hunter's time cards for 2011 revealed that Officer Hunter is reported as having worked every other Saturday and Sunday during most pay periods. During that time, there were four pay periods in which Officer Hunter's time cards reflect annual leave, travel compensatory time off, or sick leave. There are also three pay periods during which there was a variance in Officer Hunter's usual schedule, which the IO determined, in speaking with [436 SFS Assistant Operations Officer], could have resulted from Officer Hunter trading a shift with another police officer. Finally, the time cards show that Officer Hunter was on light duty or injury convalescence during November and December 2011, which would have restricted him to an administrative position. According to the IO, in total, the time cards reveal approximately seven or eight weekends when Officer Hunter normally would have been scheduled, but was not on post due to annual leave, sick leave, compensatory time off or light duty.

Officer Hunter was arrested in November 2011. He was incarcerated in or about February 2012 for 45 days. Officer Molitor put him on a combination of sick and annual leave during his incarceration due to the fact that Officer Hunter received [medical] treatment while he was incarcerated.

Officer Molitor testified that Officer Hunter was arrested "for an alcohol related incident, it was not a DUI [driving under the influence]." He admitted that he was involved in helping Officer Hunter. "I made sure his paperwork was current, his time off paperwork was current, his comp time[30] [compensatory time] was documented, all the documentation from talking with personnel was documented, taking [sic] care of. And I actually took him to the, his hearing one time" on government time. When asked whether that trip was prearranged with his supervisory chain, Officer Molitor contradicted his prior statement, stating, "I told him I was going to the courthouse but I didn't say what for. And he said I had to take leave for it so I did."

Officer Molitor testified that Officer Hunter was incarcerated which caused him to miss work.

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[30]The IO asked Officer Molitor, "at any time while he [Officer Hunter] was under your supervision, you never actually offered him compensatory time off?" Officer Molitor responded, "[t]here is no such thing."

> I looked up the OPM regs [regulations], I looked up the rules and regulations. And the reason he needed a treatment was because he was dealing with an [medical] incident so I looked at it as, he needs treatment, it doesn't matter, I told personnel this. I know I upset [the] JAG [Judge Advocate General] about it, but I said, I looked at it as he needed treatment, he has sick leave, he already requested leave, so I approved it. And I said I don't feel that I did anything wrong. And they said that is was unsaid, that it's an unwritten custom. I said well, unless it's in writing, I don't know how you can hold me to anything if I'm supposed to magically know that. Because I did it in good faith that he needed the treatment, he had sick leave, he used it. ... And my supervisor knew that I put him in for the leave and then I extended it to make sure he had enough for his treatment. And I gave the leave that Officer Hunter requested. So ... that was it.

In her July 23, 2012 Memorandum for the Record (MFR), [Civilian Police Officer #4] discussed Officer Hunter's behavior at work after he was incarcerated.

> When Officer Hunter came back from his incarceration, he returned to his old ways of not letting anyone know when he was leaving his work areas, disappearing for extended periods of time, and talking to contractors for 20+ minutes while others worked and trucks backed up. I, once again, complained to [Military Police officer #4] who, instead of handling it in a professional manner, he told Officer Hunter exactly what I said and caused another problem. I said to Officer Hunter that, out of courtesy, he needed to let others know when he was leaving the work area because a truck had left the bay and had not been checked. He told me, "I don't work for you, I don't answer to you." Shortly after, Officer Hunter asked to change shifts to Officer Molitor's shift because I was "too difficult to work with."

In the July 2012 MFR, [Civilian Police Officer #4] also discussed Officer Molitor.

> Shortly before coming to day shift in January [2012], [436 SFS Assistant Operations Officer] and I had a discussion about Officer Molitor not arming up and what time he arrived to work in the morning. Within weeks of being on day shift, Officer Molitor had a meeting with all the civilians and was very angry that information about him had been passed on to [436 SFS Assistant Operations Officer]. He did not say specifically what it was. As a group, we were told by Officer Molitor, "What happens in the pit, stays in the pit.[31] [436 SFS Assistant Operations Officer] doesn't need to know anything about what's going on here." He added that if anyone had a problem with him, they were to go to him directly. I reminded him that he did not offer the same courtesy to others and reminded him of the two times he attempted to write me up without even getting my side of the story first.

[Civilian SFS Shift Supervisor #4] also discussed Officer Molitor and time discrepancies related to Officer Hunter. "Down at the commercial vehicle inspection center. [Civilian Police

[31] The pit is the commercial vehicle inspection area.

Officer #4] had brought up these time and attendance issues. She actually was the first one to bring up that he was giving Officer Day and Officer Hunter time off, just free time off. She had raised a flag to [436 SFS Assistant Operations Officer] and from that point on they started pretty much giving her a hard time."

According to [Civilian SFS Shift Supervisor #4's] testimony, Officer Molitor admitted to giving his employees, including Officer Hunter, unauthorized time off during that period of time. [Civilian SFS Shift Supervisor #4] testified, "But I know that from speaking with [Civilian Police Officer #4] a couple years ago, she had told me that Officer Molitor was giving his personnel free days off, not accounting for it on the time sheet and wasn't following the actual OPM guidelines for the time and attendance. ... So I ended up approaching Officer Molitor and I almost sat down as a, I don't want to say a mentoring session but a peer-to-peer. Hey these are the rules. These are the regulations. We got to follow them to a T. You can't do things like that. And from my understanding is he continued to do that even after I advised him."

[Civilian SFS Shift Supervisor #4] testified that Officer Molitor acknowledged that he was giving his people time off without accounting for it. "He did. He did acknowledge it to me." [Civilian SFS Shift Supervisor #4] did not think Officer Molitor mistakenly acknowledged this behavior. "[W]ith his response to me of he's trying to take care of his people, that would lead me to believe that he knew that it wasn't ok and that he was doing it to help his people out."

While he did not see the time cards for Officer Molitor's employees, [Civilian SFS Shift Supervisor #4] testified that, "the word out of the other supervisors and from [436 SFS Assistant Operations Officer] was that they were not taking leave, nor did they, from what I understand, did they go back in and change it to take leave for those times." [Civilian SFS Shift Supervisor #4] indicated that this behavior was going on from 2010, 2011 and 2012 and that it continued after he talked with Officer Molitor. "Yes, because when Officer Hunter was here, I want to say it was 2011, he was involved in an off-base criminal action and I know that Officer Molitor was leaving work to attend to criminal proceedings for Officer Hunter that was not approved, nor was it taken on – on Government time was used for that."

[Civilian Police Officer #4] testified that she witnessed Officer Molitor and Officer Hunter leave together numerous times. According to [Civilian Police Officer #4], "I was working day shift. Officer Molitor was on day shift. ... I was under his [Officer Molitor's] supervisory chain. Officer Hunter, I don't remember if he was -- I know at one point after he was in trouble -- I don't know if he was there or not. Yes, he was. He was there. He just wasn't armed up. ... Officer Hunter was not armed up because he had gotten in trouble off base. There were several times, and I noticed this because we were so busy, it was in the mornings, that Officer Molitor and Officer Hunter would leave together."

[Civilian Police Officer #4] testified that she personally witnessed Officers Molitor and Hunter leave together. "Yes, they took Officer Molitor's car which was parked down at commercial vehicle. It was a personal car. And I asked at one point [Military SFS Flight Chief #3], I said, you know, we're so busy. What's going on? And he said Officer Molitor is taking Hunter. And we weren't supposed to know about court but he said he's taking him down to, you

know, downtown Dover for his issue. And then there was [medical] appointments that Officer Hunter had to go to and –." [Civilian Police Officer #4] indicated that this occurred "from the time he got in trouble and I don't know when that was until the time he was incarcerated." According to [Civilian Police Officer #4], she asked [Military SFS Flight Chief #3], who was the NCOIC at the time, whether Hunter and Molitor were taking leave and "he said no." She also stated that they had not made prior arrangements with [436 SFS Assistant Operations Officer]. "No, because at one point because we were being left so short-handed I went to [436 SFS Assistant Operations Officer] and said this is ridiculous." According to [Civilian Police Officer #4], [436 SFS Assistant Operations Officer] was not aware that Officer Molitor was leaving with Officer Hunter. "No, sir. I know he met with them. Shortly after I spoke with him, he actually met with them down at search pit in a private room."

[Civilian SFS Shift Supervisor #4] testified that he had actually knowledge of what was happening "because he [Officer Molitor] called me and told me where he was at and what he was doing. … He told me he felt that it should have been on government time, you know, because it was a government employee. There's no reasoning with this gentleman." [Civilian SFS Shift Supervisor #4] acknowledged that, "[i]t's kind of a gray area. If you actually read up on the laws and the rules governing what you can be away from work for, I think if you go through the proper channels it can be approved and not have to take leave for it. You can use official government time for it. But there's a process for that, you know, to get prior approval for doing those things just as if I needed to go downtown for an active duty member who got in trouble or had a medical issue. I still got to get prior approval from my supervisor. … [Officer Molitor] did not [get prior approval]."

With regard to Officer Hunter's incarceration for DUI, [Civilian Police Officer #1] remembered, "one time with Officer Hunter, he was placed in custody, civilian custody, for I think it was 45 days, and Officer Molitor made sure that he was there on sick leave. That's the rumor I heard … And I guess it was his third, or something like that. And so he had to go to the correctional facility for 45 days, and during that time period the rumor was that Officer Molitor had made sure that he was going to be paid while he was there." Officer Day was also aware that Officer Hunter "got a DUI." He also indicated that Officer Molitor was helping Officer Hunter with that situation. "I know he [Officer Hunter] had some issues downtown he had to go to, to court. And from there he was sentenced to Smyrna Correctional Facility."

Discussing Officer Hunter's incarceration, [436 SFS Assistant Operations Officer] stated, "Molitor, in his infinite wisdom, decided he's going to handle the whole situation on his own. Didn't consult me. Didn't consult Civilian Personnel. He put him on leave … He put in a leave status he shouldn't have put him on to go to jail … And he didn't work it through Civilian Personnel or through me. So Civilian Personnel was highly upset about that. But that's Molitor trying to do his own thing and he always goes trucking down the road doing his own thing … Well he just put him on leave. He just, because of what he did with the leave, we couldn't go back and change it."

[436 SFS Assistant Operations Officer] stated that, "[f]rom what I understand there was nothing we could do because he did what he did without telling us. … And we did talk to him about it, because I think we talked to CPF [Civilian Personnel Flight]. And I think CPF, or Civilian Personnel, actually I think we might have had a joint meeting with him or a joint

meeting about something else and we brought it up. But I'm quite sure that they actually reiterated the fact to him that it shouldn't have been done."

According to [436 SFS Assistant Operations Officer], the relationship between Officer Molitor and Hunter was "tight." "They were friends first and he [Molitor] didn't hold him accountable. He would hold people like [Civilian Police Officer #4] accountable, [Civilian Police Officer #4], one of my female [police officers], he would try to hold her accountable and write her up. But he wouldn't hold them accountable. We tried to tell him through myself, through the captain that was here and through his peers that you got to learn where to cut the apron strings between friends and supervisor. I said you're taking it too far. I said you got to start disciplining this guy."

Offer of Compensatory Time to [Civilian Police Officer #4]

According to OSC, the whistleblower alleged that "on multiple occasions, Officer Molitor told [Civilian Police Officer #4] that he was granting her compensatory time off, despite knowing that compensatory time is not available for civilian police officers of the 436 [SFS]." Evidence produced during the investigation indicated that Officer Molitor offered [Civilian Police Officer #4] compensatory time off without obtaining appropriate approval. In the interview with [Civilian Police Officer #4], she confirmed that Officer Molitor offered her compensatory time off. [Civilian Police Officer #4] stated,

> When I first went under Officer Molitor, I had asked for a day off, then I was working a day and then I wanted another day off so I was working in between my requests. And he said, well, why don't you, this is Officer Molitor, said why don't you take that middle day off? I said because I don't want to use my leave time. And he said, well, because you're doing such a good job and you're working so hard, you know, you can have comp time. And I said I thought we didn't get comp time. He said no, no. You're all set. I have it all set. You can use comp time. Just take it. … He said it's been approved is what he said. ... I said several times I'm all set, really? I don't, you know, I'm good, I don't -- And then he said just take it. Just take it. And I said, well, fine. I guess you don't have to tell me 50 times to take it. I'll take it. So I took that leave. And during the next pay cycle, I think this was during the written time, I'm sure it was during the handwritten time slips, [Civilian SFS Shift Supervisor #3] had to approve that leave for whatever reason, whether Molitor wasn't there or whatever. He was the one that had to approve that leave. So he gave me my time slip. It showed my leave and it showed my leave on the other day and I said, well, this middle day I took comp time. And he said what do you mean you took comp time? I said Officer Molitor told me I had comp time and he told me to take that middle day. And [Civilian SFS Shift Supervisor #3] said we don't have comp time. And I said, well, I don't know what to tell you. He told me to take it. He told me it was comp time. He told me I was all set. So [Civilian SFS Shift Supervisor #3] called [436 SFS Assistant Operations Officer] while I was standing right there and I could hear [436 SFS Assistant Operations Officer] yelling that we don't have comp time. She needs to take leave. She needs to take sick leave. She needs to

take some kind of leave, and [Civilian SFS Shift Supervisor #3] said, no, this isn't her fault.

[Civilian Police Officer #4] stated that she was not required to take leave for that incident. "No, no, they did waive it. I did have to do an MFR for that though." She indicated that she did not know the waiver process. "I do know that while [436 SFS Assistant Operations Officer] was yelling, he said only the commander can approve comp time. So I don't know if they went to the commander to say, hey, listen, this was -- I don't know but [436 SFS Assistant Operations Officer] finally conceded that I did not have to take leave time because it was not my fault. It was given to me by my supervisor. I had no idea." [Civilian Police Officer #4] testified that the NCOIC at the time, "[Military SFS Flight Chief #4] told me that they [he and Officer Molitor] both got in trouble for that."

[Civilian Police Officer #4], during the same interview, stated that Officer Molitor offered compensatory time to her a second time. "Several months later he offered it to me again." According to [Civilian Police Officer #4], "[h]e said to me that, you know, you have comp time. Just take the day off. And I said was this time approved by the commander? I said because that's the only way that I have comp time and as far as I know we don't have comp time. And he said don't worry about it. I said, well, I am going to worry about it and thank you but no." [Civilian Police Officer #4] stated that she reported this incident to "[436 SFS Assistant Operations Officer]."

Although [Civilian SFS Shift Supervisor #3] was unavailable to corroborate [Civilian Police Officer #4's] testimony, her account was corroborated by [436 SFS Assistant Operations Officer] in his testimony. [436 SFS Assistant Operations Officer] stated, "what happened was Officer Molitor and [Military SFS Flight Chief #4], who's retired now, medically retired, tried to give her a day off. And she said no, you can't do that, it's not allowed. And they said oh just don't worry about it, just don't tell anybody. And Molitor knows, he knows he can't do that. That's administrative leave that only the wing commander can authorize. So for them to do that is totally illegal and she knew that and didn't take it."

Officer Molitor contradicted [Civilian Police Officer #4's] claim in his interview stating that compensatory time is not available. In response to the question, "did you ever actually offer her [Civilian Police Officer #4] any kind of compensatory time?" Officer Molitor stated, "No, there's no such thing."

February 23, 2012

On February 28, 2012, [436 SFS Assistant Operations Officer] made the following handwritten entry under the Comment section of the Supervisor's Employee Work Folder for Officer Molitor:

> On 23 Feb 12, you turned in the timecards for your personnel to [SFS Civilian Employee #1] for payroll submission. There were several hours of sick and annual leave not annotated. When I asked you why the time was not annotated you said it was a "glitch." Maintaining time & attendance records is a serious matter and should not be taken lightly. When you sign those records, you are

> obligating government funds and certifying the information is true and correct. My expectation is that you will pay more attention-to-detail to avoid this from happening again. Future violations such as this may result in discipline.

The entry was shown to Officer Molitor who initialed the page under the entry.

When asked about irregularities in time and attendance, [436 SFS Assistant Operations Officer] discussed a number of instances involving Officer Molitor, including the above incident.

> He [Officer Molitor] turned in two weeks' worth of time cards, a whole pay period, for his personnel and there wasn't any sick or leave time on that. I kind of thought that was kind of strange so I got with the NCOIC down there, which was [Military SFS Flight Chief #3] at the time. He's retired. And I said have you got any -- Because he started to keep a record for me because I thought there was something underhanded going on. So he started keeping a record. He sent me an email and I found out that there were people that had sick time and leave time that wasn't on the time card. So I confronted him [Molitor] about it and he said it was a glitch. And I think it's in his 971, I think I quoted him in there in the 971 as saying it's a glitch. It's not a glitch. I knew it wasn't a glitch. On more than one occasion I've caught him doing this.

March 13, 2012

On March 13, 2012, [436 SFS Assistant Operations Officer], as evidenced by the entry in the Supervisor's Employee Work Folder for Officer Molitor, again counseled Officer Molitor on time and attendance issues. In this counseling secession, [436 SFS Assistant Operations Officer] relieved Officer Molitor of the authority to approve leave for his personnel:

> Due to recent events that have come to my attention involving the inappropriate approval of sick and annual leave for your employees, you are hereby informed you no longer have the authority to approve leave for any of your employees until further notice. All requests for leave will be routed through me for approval. If I am not available, you will send leave requests to [436 SFS Director of Operations].

Officer Molitor signed his name under the entry and initialed it.

May 16, 2012 Memorandum to [436 SFS Assistant Operations Officer]

On May 16, 2012, [Military Police officer #7], a shift supervisor for the 436 SFS/S3OE, wrote a memorandum to [436 SFS Assistant Operations Officer] regarding [Civilian Police Officer #6].

> Sometime in the early part of May, I was made aware of the duties, responsibilities, obligations and restrictions of the civilian officers assigned to the

436 SFS Squadron. Since that time, I've documented the time of the one and only civilian officer assigned to my section. [Civilian Police Officer #6] worked until 2100 hrs on the fourth of May, until 1815 hours on the fifth of May and did not work on the sixth at all because of drill weekend. On the 9th and 10th of May, he worked until 1900 hrs because of something with his orders. [Civilian Police Officer #6] originally stated to me that he would be off, but he was advised by OFC Molitor to come in for, "Face time". He stated that OFC Molitor and [436 SFS Assistant Operations Officer] had discussed it and everything was good to go.

A holiday issue was brought to my attention regarding Easter weekend and [Civilian Police Officer #6]. [Civilian Police Officer #6] stated to me that he was told by his boss, [436 SFS Assistant Operations Officer], that he could not work Easter Day. So, on the night prior, he went home before midnight. [436 SFS Assistant Operations Officer] himself, told me that was false information that [Civilian Police Officer #6] gave me. He stated that Easter wasn't even considered a holiday.

Another issue was authorized physical training during duty hours. I asked [Civilian Police Officer #6] if they were authorized to go to the gym while on duty. He stated, yes they were. [436 SFS Assistant Operations Officer] informed me, that too was false.

The IO asked Officer Molitor about [Civilian Police Officer #6] and whether there were any irregularities in his time. Officer Molitor stated that [Civilian Police Officer #6] "was a temporary. … I think one day someone asked me to sign his [timecard] off even though I wasn't supervising him because he needed to have his time certified. I said that's all you need, just me to certify? I said I don't supervise him, I don't know him and so they asked me …" According to Officer Molitor, [Civilian Police Officer #6] was never actually under his supervision.

June 14, 2012 Memorandum – Overtime Worked Without Approval

On June 14, 2012, [436 SFS Assistant Operations Officer] issued a "Memorandum for Civilian Personnel Flight" regarding Officer Molitor's time and attendance issues. It stated as follows:

1. On 12 June 12, Ofc Molitor turned in his time and attendance records for the pay period ending 16 June 12. As I reviewed the records, I noticed he was submitting Ofc Hunter for four hours of overtime for the following day for what he stated were low manning issues. The overtime was neither requested, nor approved in advance. It is not the first time Ofc Molitor has attempted to obtain overtime funds without prior approval, and I have explained the procedure for requesting overtime to him, more than once. I continually have issues with Ofc Molitor concerning pay issues.

Incident on July 7, 2012

On or about July 11, 2012, [436 SFS Assistant Operations Officer] sent a memorandum to the CPF, relaying a time and attendance incident which occurred on July 7, 2012. According to the memorandum, on July 10, 2012, an off-duty 436 SFS civilian police officer, [Civilian Police Officer #1], stopped by the commercial vehicle gate on his way back from a motorcycle ride. He noticed that only the shift supervisor (Officer Molitor) was manning the gate. As this was unusual, he reported it to [436 SFS Assistant Operations Officer], the civilian supervisor. [436 SFS Assistant Operations Officer] investigated and discovered that Officer Day had left his shift to visit his son in the hospital, Officer Hunter had gone home sick and [Civilian Police Officer #8] had not shown up for his scheduled shift. When Officer Molitor turned in the time cards for that pay period, Officer Day, Officer Hunter, and [Civilian Police Officer #8's] time cards did not show any sick or annual leave. The internal memorandum[32] from [436 SFS Assistant Operations Officer] stated as follows:

> On 10 Jul 12, I received a text message from one of my civilian police officers assigned to the Commercial Vehicle Inspection (CVI). He informed me that he stopped at the CVI at approximately 1100-1230, 7 Jul 12, to cool off after a motorcycle ride with his club. While at the CVI, he noticed Ofc Molitor was the only civilian officer on-duty. Missing were [Civilian Police Officer #8], Ofc Alvin Hunter, and Ofc Aaron Day. On 9 Jul 12, I reported for work and found Ofc Molitor's time cards under my door. While reviewing them, I noticed none of the officers in question had sick time, or annual leave annotated on their time cards. I went to the Armory and asked the Armorer to check the tracking system to verify the three individuals worked 7 July 12. The check revealed Ofc Day scanned in and out of the system, and drew a weapon for a 12 hour shift. [Civilian Police Officer #8] did not scan in or out of the system, and did not draw a weapon. Ofc Hunter could not be checked, as he is on the Do Not Arm (DNA) roster, and did not draw a weapon on 7 Jul 12. I was concerned about their absence on 7 Jul 12, so I contacted our [Military SFS Operations Superintendent] and went to the CVI to talk with the active duty members on-duty that day to get to the bottom of the issue. The first person I talked with was [Military Police officer #3]. I could tell he did not want to get involved, and he was not very forthcoming with information. He did tell me that Ofc Hunter left early that day, that [Civilian Police Officer #8] did not work at all, and that Ofc Day left for some time to visit his son in a Baltimore hospital. Next, I talked with [Military Police officer #8]. She informed me that [Civilian Police Officer #8] did not work 7 Jul 12, and Ofc Day left at approximately 1030, to go to the Baltimore hospital to visit his son. She said Ofc Day returned to duty at approximately 1500, 7 July 12. [Military Police officer #8] also informed me that Ofc Hunter left at approximately 0736, 7 Jul 12. She quoted the time because she received a text message at the same time she was told Ofc Hunter would be leaving. [Military Police officer #8] told me she and Ofc Molitor drove Ofc Hunter to the McDonald's at Goose Creek to retrieve his vehicle. When I questioned her as to

[32]On its face, the memorandum is dated "11 Jun 2012." The memorandum, however, seems to be incorrectly dated. From the information contained in the memorandum, the appropriate date appears to be July 11, 2012.

why it took two people to drive Ofc Hunter to get his vehicle, she said she did not know. I told her it did not make sense that it took two people because I knew Ofc Hunter could operate his vehicle off-base. She again replied she was not sure why they both took Ofc Hunter to his car. While I was talking with [Military Police officer #8], Ofc Molitor approached me and made a spontaneous statement informing me that he could save me the time of "doing what you are doing." Ofc Molitor then told me he forgot to put sick leave on [Civilian Police Officer #8's] time card. Neither he, nor I, mentioned the issues with Ofc Hunter and Ofc Day's time cards. Next I talked with [Military Police officer #5]. He told me that Ofc Day left early to visit his son in the hospital. He said Ofc Hunter left early, and Ofc Hunter [sic] did not work at all. After talking with [Military Police officer #5], [Military SFS Operations Superintendent] and I were walking to my vehicle, when [Military Police officer #8] began following us and yelling for us to stop. When we approached her, she said she didn't want to lie, and that she knew the reason two people escorted Ofc Hunter to his vehicle. [Military Police officer #8] told me she and Ofc Molitor drove Ofc Hunter to McDonald's and she drove Ofc Hunter home, while Ofc Molitor followed them. She said Ofc Hunter was not feeling well, and she felt it would be better if he did not operate his vehicle. On 11 Jul 12, Ofc Molitor put his time cards under my office door, and I reviewed them immediately. During my review, I noticed there was no annual leave, or sick leave annotated for Ofc Hunter on 7 Jul 12. I also noticed there was not annual leave, or sick leave annotated for [Civilian Police Officer #8], and he was submitted for one hour of overtime for the day he did not work. I then looked at Ofc Days' time card, and there was no annual leave, or sick leave annotated for his hospital visit. After talking with the active duty personnel at the CVI, I went back to my office. In the course of a few hours, Ofc Molitor sent me an MFR with an explanation of what occurred with the time card oversight. In addition, Ofc Day, Ofc Hunter, and [Civilian Police Officer #8] all contacted me to properly annotate their time cards. I found it interesting that all three individuals contacted me to correct their time cards without any direction from me to anyone. While updating Ofc Hunter's time card, he told me he wanted to use compensatory time. I asked him what compensatory time he was referring to, as I knew he did not have any compensatory time according to the monthly report. He said Ofc Molitor was keeping track of his compensatory time he accumulated at work. I informed Ofc Hunter there was no preapproved compensatory time on record for him, and that all compensatory time has to be approved, in advance. Ofc Hunter complained to me that he was being delayed after work when relieved from his post because he had to wait for his co-workers to drive him to retrieve his vehicle. I informed him he does not get compensated because he had to wait for his co-workers. I told him he is off the clock at the end of his shift, and if he has to wait for a ride, that is on him. I explained to each of them they initialed the entries on the card acknowledging the time was true and correct. I informed them they need to scrutinize what they are initialing in the future.

Officer Molitor sent [436 SFS Assistant Operations Officer] a memorandum dated July 11, 2012 regarding "Saturday 7 July 2012" stating:

REFERENCE: I prepared the Timecards for this pay period before Saturday, and when [Civilian Police Officer #8] requested a Time off award I forgot to change the Timecard. I realized that I did not change it when I talked to [Civilian Police Officer #8] on 07/11/12, so I advised you my supervisor so it could be corrected before the end of the pay period. I was concerned for Ofc Day's family member on Saturday and I forgot to change it, it was not malicious in nature but an honest mistake.

I was not sure when Day went to the hospital since I was trying to make sure he was okay to drive before he went to the hospital. He advised me that he was gone about 3 hours not the 1 ½ hours plus he missed lunch time that I thought that he was gone. I take family emergencies very seriously, and I put getting Day to see his son on the top of my list of things to do in a hurry. Now that I can think about it I know that he left right before lunch, and was back by about 1455. Please allocate the 3 hours of sick time on his Time card, and he will sign for it today. Neither he nor I was trying to cheat anyone, and we were going to have him make his missed time up. From now on everyone will be marked Sick, and the time will be documented.

On July 12, 2012 Officer Molitor sent [436 SFS Assistant Operations Officer] a second memorandum – this one regarding Wednesday, July 11, 2012.

REFERENCE: 1. I want to go on the record that I was made aware that you advised an Amn [Airman] that I was lying and stealing on the timecards, and that I was going to be taken care of for doing so. I was also advised that the same Amn was told that she will lose her stripe if she does not tell the truth, and give a statement in reference to what transpired on 07/07/12. I believe that you apparently talked to [Military Police officer #7] about [Civilian Police Officer #6's] time at the pit. I was asked to take care of his Timecards even though I did not work the same shift as him. I advised you that I will use the Matrix to see what he was working since I did not see him. You already wrote me up for not knowing that [Civilian Police Officer #6] may have been creative with his time worked according to you, and that I should have known before I filled out his Timecards. I am not lying or stealing from anyone, and I do not appreciate my name being dragged in the mud, especially since it is a civilian matter and not the business of any subordinates in the military.

2. I already advised you that I prepared the Timecards for this pay period before Saturday, and when [Civilian Police Officer #8] requested a Time off award I forgot to change the Timecard. I realized that I did not change it when I talked to [Civilian Police Officer #8] on 07/11/12, so I advised you my supervisor so it could be corrected before the end of the pay period. I was concerned for Ofc Day's family member on Saturday and forgot to change it, it was not malicious in nature but an honest mistake.

3. I already advised you that I was not sure when Day went to the hospital since I was trying to make sure he was okay to drive before he went to the hospital. He advised me that he was gone about 3 hours not the 1 ½ hours plus his missed lunch time that I thought that he was gone. I take family emergencies very seriously, and I put getting Day to see his son on the top of my list of things to do in a hurry. Now that I can think about it I know that he left right before lunch, and was back by about 1455. Please allocate the 3 hours of sick time on his Time card, and he will sign for it today. Neither he nor I was trying to cheat anyone, and we were going to have him make his missed time up. From now on everyone will be marked Sick, and the time will be documented.

4. I would like a sit down with you so I can discuss these serious allegations, and the fact that you were conducting this investigation and would not speak to me before you left the Pit. I know that we are all human beings and that we make mistakes, even you have made mistakes with other Officers like Hunter's pay on several occasions in the past. I would like to clear the air and move forward armed with the new knowledge that I have gained in this ongoing process.

The IO discussed this incident with several witnesses. According to [Civilian Police Officer #1], "I was off on a Saturday. I can't remember the exact date or how long ago it was, but I came in, just to stop in, say hi, and use the restroom and go on about my business. But when I showed up, there were two officers, civilian officers that were – were there. And this is, -- I think, it was like 11:00 in the morning. And I asked the supervisor, 'Where are these guys at [Officer Day and Officer Hunter]? Are they at lunch?' He said, 'No. They left earlier this morning because they didn't need them.' Saturday is usually a slow day for the commercial gate." [Civilian Police Officer #1] stated that, "I think I sent an e-mail to [436 SFS Assistant Operations Officer] and advised him of this, and then I think he waited for the timecards to actually come back in. It didn't show that they had taken leave or – sick leave." He further testified that Officer Molitor was the supervisor for both Officer Hunter and Officer Day at the time.

According to Officer Day, during the timeframe when he worked for Officer Molitor, he went to Baltimore when, "my son was admitted to the hospital in Baltimore. And as a parent you want to be there." The only time Officer Day can recall making a correction to his time card "was when he went to see his son in the hospital." Officer Day believes he left "right before lunch" and "got back before 3 o'clock." He indicated that, "[i]t takes about an hour and a half to get there," and that he was gone "like three hours. … three and a half hours." When asked by the IO if he had to meet with [436 SFS Assistant Operations Officer] to do a correction on his time card for this day, Officer Day stated, "I believe [436 SFS Assistant Operations Officer] and I spoke by phone to get that time corrected." He further indicated that this was the only time he could remember having to go back and correct his timecard. "As far as I know, yes." At the time Officer Day was assigned to work at the "search pit." He recalled that "[Civilian Police Officer #8], Officer Molitor and Officer Hunter" were assigned to the pit that day but could not recall the military guys who were there. He testified he saw all three of these officers at the search pit on this day, including [Civilian Police Officer #8].

[Civilian Police Officer #8] testified that he recalled the day when Officer Day went to the hospital to see his son. "I recall that, yes. ... yes, I was off that day [on annual leave]." He does not know whether there was a mix up in the timecards that day, although he did believe he had to initial his timecard at the end of the pay period. He heard about Officer Day going to the hospital when he returned to work the next day. [Civilian Police Officer #8] does not recall if Officer Hunter took off early or not.[33]

[Military Police Officer #5] saw Officer Hunter that day. According to [Military Police Officer #5], Officer Hunter went home early "because he wasn't acting [like] his normal self ... I don't think he was sick. I don't – I'm not positive to his physical attributes that day. I know that he has had [medical] issues before. He has had [medical] issues. But I do not know if he was either drunk or hung over at that time. ... He was dragging around. He didn't have the normal energy he had. And so this is – he just wasn't paying attention to what he was doing, like he normally does."

The evidence showed that Officer Hunter, while supervised by Officer Molitor, missed part of a duty day of work on July 7th and failed to account for the missed time on his time and attendance report.

Notice of Proposed Suspension

On September 7, 2012 [436 SFS Assistant Operations Officer] served Officer Molitor with a notice of proposed suspension for insubordination on issues not directly related to time and attendance.[34] The notice proposed a suspension of fourteen days.

In a written rebuttal responding to the proposed suspension, dated September 8, 2012, Officer Molitor argued, "I am being disciplined based on unwritten/undocumented rules and hearsay that is unfounded, and untrue. I have had several coaching sessions, which were not disciplinary in nature, about these unwritten rules. I have no disciplinary actions in my file and I have never been suspended before. The possible suspension for any day(s), and up to 14 calendar days is excessive and I believe progressive discipline is not being followed."

Further, in his response, Officer Molitor refutes the allegations with regard to the communal desk, the failure to arm up, and challenges his inability to arm up. Officer Molitor stated that, "Recently, [436 SFS Assistant Operations Officer] told me that this paperwork does not refer to the Supervisor that I am now. I do not have any more problems because I decided on my own to straighten up my act and do the right thing. I am on the right track now, and [436 SFS Assistant Operations Officer] has acknowledged this by advising me that I have come back to the right way of doing things and stating I'm no longer a problem. ... I am a good supervisor, and I do care about all of the troops. I love order, and I strive to follow all rules and regulations

[33] According to [Civilian Police Officer #8], he was unaware of any particular incident involving Officer Hunter on the July 7th date. He described Officer Hunter as, "he was good. He, to me, he was a hard charger. He got out there and did his job and he – he was a hard charger. Hunter was a good, good man."

[34] The allegations of insubordination in the proposed suspension related to Officer Molitor's failure to remove his personal items from a communal desk and his failure to arm up.

... I believe that any further discipline at this point would just be excessive."[35]

According to [436 SFS Assistant Operations Officer], the proposal to suspend Officer Molitor was approved by both civilian and legal authorities and returned four months later on December 7, 2012 for action. By memorandum dated December 19, 2012, the [436 SFS Commander (436 SFS/CC)] issued a decision to dismiss the proposal to suspend. As part of that memorandum, [436 SFS Commander (436 SFS/CC)] stated, "I have also considered your improved conduct since the proposal was issued and the delay in issuing this decision. I believe the imposition of discipline at this point will not support the efficiency of the service. Therefore, I have decided to dismiss this action."

According to [436 SFS Assistant Operations Officer], in response to Officer Molitor's memorandum, the deciding official decided not to suspend Officer Molitor -- primarily due to the lengthy delay of CPF processing the proposed suspension and the improvement in Officer Molitor's conduct.

Officer Day

According to OSC, the whistleblower alleged that in January and February 2013, on approximately 15 occasions, Officer Day left work approximately one hour early but did not record his early departure on his time sheet, billing the government for time not worked.

Officer Day was interviewed and denied ever leaving work early, receiving compensatory time, noticing any irregularities with regard to time and attendance, taking any undocumented leave and/or taking free time off. Officer Day was quite adamant that he had never taken off any time without it being documented. When asked whether he was granted compensatory time while he worked for Officer Molitor, Officer Day testified that, "To the best of my knowledge, when I was given time off it was logged on the time system. ... I was never granted free time off." He further indicated that he did not receive compensatory time from Officer Molitor. "Not with me because I don't believe in comp time. I'd rather be paid overtime. ... If it's comp time, no I don't want comp time I'll just stay and do what I got to do. ... I'm against comp time."

In his testimony, Officer Day denies ever leaving work early without permission. Officer Day also testified that he never was late to a shift and did not leave early. There was "[n]ever a gap" between shifts. He indicated that he always had a hundred percent transfer over to the new shift. Officer Day indicated that he was well trained in the Army. "I will Guard everything within the limits of my post, quit my post only when properly relieved. ... I'll never forget that." He stated, "I did not take free time off, I don't believe in that." If he took time off, Officer Day indicated that it was pre-coordinated with his supervisor. Officer Day testified, "I just would like to say that I've been with the Government, after 20 years military, for almost ten – doing this job here. So I don't believe in cheating the Government out of anything."

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[35] In his September 8, 2012 "Rebuttal to Notice of Proposal to Suspend" memorandum, Officer Molitor also asserted that he was being subjected to an abuse of power, borderline harassment and retribution [redacted]."

Officer Day indicated that "back in September [2013] when I went on light duty," [Civilian SFS Shift Supervisor #4] became his supervisor.[36] Prior to that he had [Civilian SFS Shift Supervisor #1] and has also served under Officer Molitor. Officer Day indicated that he has a "pretty good relationship" with Officer Molitor which is both "professional and private. Personal and professional." Officer Day testified he "can't recall" whether Officer Molitor ever offered anyone compensatory time off. He indicated that Officer Molitor did not talk about an employee's time off with other employees and that he "ha[d] no idea what he [Officer Molitor] did."

However, [Civilian Police Officer #4] stated, "Officer Day was under [Civilian SFS Shift Supervisor #1]... and as soon as he [Officer Day] turned in his weapon, he was gone even though we had anywhere from one to two hours left on shift." In response to how many times this occurred, [Civilian Police Officer #4] replied, "six to ten. That was when we first went to day shift." [Civilian Police Officer #4] explained, "I watched him leave because as an officer you sit there and you watch people walk out the door and you're sitting there saying why am I an idiot staying here when I, you know?"

[Civilian SFS Shift Supervisor #4] testified that, "[a] couple of times I noticed directly Officer Day was supposed to work a certain amount of hours and he would be leaving early. I ended up calling him out on it one time or actually a couple of times." According to [Civilian SFS Shift Supervisor #4], Officer Day "was not under my supervision at the time. However, as a supervisor, I do have a duty to recognize a discrepancy like that and take appropriate action. I gave him an opportunity to correct it and make sure that his time card with his supervisor

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[36] [Civilian SFS Shift Supervisor #4] testified that he had issues with Officer Day when he was assigned to him. "When [Officer Day] was assigned to me, there was an incident where he got belligerent and insubordinate because I was explaining to him my expectations and breaking down OPM guidance on how you take leave, who's going to be notified when you, you know, if I'm not present for duty. And he didn't like that and started screaming at me. I had several witnesses there." [Civilian SFS Shift Supervisor #4] testified that he had a problem with the way Officer Day was taking leave.

> [Officer Day]'s also a union steward and unfortunately he's never read his union bylaws. He tried to come at me with that he didn't have to notify me directly that he was going to take sick time or leave time, that he could notify anybody at the law enforcement desk which is our dispatch center. And I advised him that, per the labor agreement that we have, they have to notify me which is considered their work center. And I had broken it down and said that he needed to notify me at his earliest convenience if he was going to be sick and that just because he's wanting to take sick leave, that doesn't guarantee him the right to take sick leave. It's based on our needs and whether, you know, we have to go medical route. Does he need, you know, doctor notification? I was explaining all those expectations and he became belligerent.

According to [Civilian SFS Shift Supervisor #4], he was aware of prior issues with Officer Day and his time and attendance when he worked with [Civilian SFS Shift Supervisor #1]. "With [Civilian SFS Shift Supervisor #1] because I'm by the book, you know, and I'm going to make you work your ten hours because that's the law and I had known that he had gotten away with some things with [Civilian SFS Shift Supervisor #1]. So I wanted to assure him that while he worked for me there wasn't going to be any of those, okay, you can have a little bit of time off or leave early and we won't document it. I wanted to establish right off the bat what he was getting when he was assigned to me, that he was going to be held to the standards and to the law." [Civilian SFS Shift Supervisor #4] indicated that he tried to discipline Officer Day for insubordinate conduct but ran into difficulties with civilian personnel.

reflected the appropriate time that I had seen him leave. … His supervisor at that particular time was [Civilian SFS Shift Supervisor #1]. I then notified my supervisor, [436 SFS Assistant Operations Officer], that there was a discrepancy and I have noticed Officer Day leaving early." [Civilian SFS Shift Supervisor #4] indicated that he had personally witnessed Officer Day leave early "probably about four or five times but [he] heard [from his subordinates that] it was into the high dozens." [Civilian SFS Shift Supervisor #4] testified that "each time I notified my supervisor to let him know that there were issues that needed to be looked into. … From talking to my supervisor, I know that he [436 SFS Assistant Operations Officer] directed [Officer Day's] supervisor to take action against him but I don't know the follow on. I was not privy to that."

[Civilian SFS Shift Supervisor #4] indicated this occurred "probably, maybe a year, year and a half ago. We were still in 12-hour shifts. I want to say it was springtime, spring maybe summer, time period of about a year, year and a half ago. [436 SFS Assistant Operations Officer] should have [a] record of our conversation. I tried to take disciplinary action. However, our civilian personnel advised against me taking any action because I'm not his direct supervisor. They said per the labor agreements that are here at Dover, it's got to be the direct supervisor that actually takes action. So I notified my supervisor and his supervisor of the discrepancies and from what I understand no action was taken. I think that was partly because of, and this is my opinion at this point, [Civilian SFS Shift Supervisor #1] didn't want to take action and I don't think he got the support from civilian personnel."

In contrast to these previous witnesses' testimony, [Civilian SFS Shift Supervisor #1], in his testimony, denied that he had ever spoken to Officer Day about leaving work early and stated that he was unaware of this ever happening. "At one time, it was probably about two or three years ago, because we used to get off at 10:00 or 10:30, and they started monitoring us because in the Armory it shows when you're turning in so somebody must have thought we were going home. We were still there, we just weren't armed. So that's the only think I can think about that might have happened, but we were still on duty there." At the time of [Civilian SFS Shift Supervisor #1's] interview, Officer Day had worked for [Civilian SFS Shift Supervisor #1] for the prior two or three months. When asked by the IO as to whether he had noticed any time and attendance irregularities with Officer Day, [Civilian SFS Shift Supervisor #1] responded, "No." He likewise responded "no" to the IO's question as to whether anyone has ever brought to his attention that Officer Day may have left work early or not worked his full shift. [Civilian SFS Shift Supervisor #1] stated that, "as a matter of fact even today he [Officer Day] said he was going to put in his time. I said put in time for what? He said for this [interview]. I said well it's duty related."

Although the testimony above is in direct conflict, there is some evidence to question Officer Day's and [Civilian SFS Shift Supervisor #1's] credibility on this matter. After the interview with [Civilian SFS Shift Supervisor #1], the IO went back to [Civilian SFS Shift Supervisor #4] to confirm whether he had spoken to [Civilian SFS Shift Supervisor #1] about Officer Day leaving his work shifts early. In response, [Civilian SFS Shift Supervisor #4] offered a written statement dated June 20, 2014, in which he affirmed:

> Approximately 6 months ago, I [Civilian SFS Shift Supervisor #4], while performing my supervisory police officer duties on Dover AFB, myself and Ofc

Aaron Day were working our swing shift on a Wednesday. Day's supervisor [Civilian SFS Shift Supervisor #1] was out this particular shift for either annual leave or sick time, I don't recall. I was in my office completing my required end of shift paperwork at bldg 910 (DAF [Department of the Air Force]/436 SF police headquarters on DAFB [Dover Air Force Base]). The shift for Day and I still had approximately 1 and 1/2 hours until we had completed our full tour of duty. The active duty SF [Security Forces] counterparts had turned in and gone home. I had a question requiring Ofc Day's attention, but was unable to locate him. I verified with the armory to see if he was still armed up, as he was still on the clock. The armor advised me Day had turned in and was currently at our Commercial Vehicle Inspection Center (CVI is a separate facility on the opposite end of DAFB). I called down to the CVI and asked the Mid shift [mids] personnel assigned that I needed to speak with Ofc Day. The mids SF member informed me that Ofc Day had come back down after being relieved but had left shortly after arriving. I again asked if the SF member was certain he had left. The SF member said he was sure. I then checked bldg 910 to see if he has returned but was unable to locate him.

I advised his supervisor of the discrepancy and requested he follow up with the member to inquire if wrong doing had occurred. I also notified my supervisor [436 SFS Assistant Operations Officer] of the incident, especially since time and attendance was a current problem for Ofc Day and a select few of Ofcs. Unfortunately, current agreements from CPF prevent a supervisor to take disciplinary action against another civilian employee who is not currently under their immediate supervision. [Civilian SFS Shift Supervisor #1] was informed, however action was never taken. I requested from [Civilian Personnel Flight Civilian Employee #1] that I be allowed to hold Ofc Day accountable since I was the Supervisor at the time of the incident. [Civilian Personnel Flight Civilian Employee #1] stated disciplinary action must come from [Civilian SFS Shift Supervisor #1] as he is his supervisor. [436 SFS Assistant Operations Officer] instructed [Civilian SFS Shift Supervisor #1] to take action, but action was not taken. I know this to be true because I took over official supervisory duties of Officer Day shortly after the incident. A review if his 971 personal file revealed no documentation of any incidents of his actions regarding time and attendance nor was the incident described above entered.

This was corroborated by [436 SFS Assistant Operations Officer] in a follow-up phone interview with the IO.[37] [436 SFS Assistant Operations Officer] stated that [Civilian SFS Shift Supervisor #4] informed him of this particular incident. He stated that he wanted [Civilian SFS Shift Supervisor #4 to speak with Officer Day's immediate supervisor, [Civilian SFS Shift Supervisor #1], and work it out supervisor to supervisor. [436 SFS Assistant Operations Officer] committed this to writing in a July 8, 2014 memorandum to the IO.

In approximately December 2013, Supervisory Police Officer, [Civilian SFS Shift Supervisor #4] contacted me in my office and informed me that he observed Ofc

[37] The phone conversation with [436 SFS Assistant Operations Officer] was not recorded.

Aaron Day leave work early without being properly relieved from duty. I asked [Civilian SFS Shift Supervisor #4] to inquire more into the incident, and to contact the Civilian Personnel Flight (CPF) to coordinate administrative disciplinary action, if necessary. [Civilian SFS Shift Supervisor #4] conducted a thorough inquiry and contacted [Civilian Personnel Flight Civilian Employee #1]. She informed [Civilian SFS Shift Supervisor #4] that he could [not] enforce any action on Ofc Day because he was not the first-line supervisor. [Civilian SFS Shift Supervisor #4] informed me of this, and I told [Civilian SFS Shift Supervisor #4] to pass everything on to [Civilian SFS Shift Supervisor #1], who was Ofc Day's first-line supervisor. [Civilian SFS Shift Supervisor #4] passed the information on to [Civilian SFS Shift Supervisor #1] and informed him to coordinate with CPF for proposed action. I also had a conversation with [Civilian SFS Shift Supervisor #1] and informed him to follow-up with CPF. I had the conversation with [Civilian SFS Shift Supervisor #1] because I knew he would not do so because [Civilian SFS Shift Supervisor #4] was telling him to do it, and [Civilian SFS Shift Supervisor #1] and Ofc Day are friends. [Civilian SFS Shift Supervisor #1] is a supervisory police officer, but I have to constantly remind him to complete his duties. Each year, I have to direct him to schedule mandatory medical appointments, PT tests, and weapons firing for his employees. Every time I send a suspense to all of my supervisory officers, I know that I will have to explain more, or show [Civilian SFS Shift Supervisor #1] how to complete the task, and I have to follow-up and remind him constantly of his duties. In this particular case, I did not follow-up with [Civilian SFS Shift Supervisor #1] and I believe no action was taken with Ofc Day for leaving work early. Honestly, if [Civilian SFS Shift Supervisor #1] had contacted the CPF, I doubt if any action(s) would have been proposed. There are too many times to count for incidents in which we requested input from the CPF on administrative/disciplinary actions, and we never got a response. We have to coordinate these actions with the CPF and Legal Office, as our employees belong to the Local 1709 AFGE [American Federation of Government Employees].

April 2013

[Military SFS Flight Chief #2] wrote a memorandum to [436 SFS Assistant Operations Officer] on April 22, 2013 regarding "Officer Molitor, 19 April 2013". In the memorandum, he stated,

1. On 19 April, at approximately 1230, Officer John Molitor approached me after being relieved of duty by the oncoming Police-2. Officer Molitor stated that he would be departing after he turned in his weapons to the armory because he had worked through his lunch break for the second day in a row. When I asked him if this was a legitimate reason for him to leave work early he replied with a statement along the lines that if asked he could justify the time taken. My understanding was that the civilian officers on my flight were required to perform a full 10 hour shift with a 20 minute on site lunch.

[436 SFS Assistant Operations Officer] wrote a memorandum to the CPF regarding Officer's time and attendance.

> On 22 Apr 13, I was reviewing clothing allowance paperwork in my officer [sic] with one of my supervisory officers, [Civilian SFS Shift Supervisor #2]. During our review, he informed me that [Military SFS Flight Chief #2] told him that Ofc Molitor left early one day the previous week because he missed his lunch two consecutive days. Ofc Molitor does not have an unpaid lunch in his schedule. He is entitled to a 20 minute paid lunch, and he is well aware, because I have informed him many times in the past. This is not the first time I have had issues with Ofc Molitor with time and attendance issues. [Civilian SFS Shift Supervisor #2] also informed me that Ofc Molitor is spreading rumors to the our [sic] Police Officers that I am being investigated by the Union, and [SFS Civilian Employee #2] had a meeting with my commander to discuss the investigation.

Time and Attendance Issues Related to Officer Marsters

According to his testimony, in December 2013, [436 SFS Assistant Operations Officer] noticed some irregularities with Officer Marsters' time and attendance records. Specifically, [436 SFS Assistant Operations Officer] discovered that Officer Marsters had not concurred in his time, that Officer Molitor had not certified Officer Marsters' time, and upon further inquiry, determined that Office Marsters also had not recorded leave for days missed from his duty station. According to [436 SFS Assistant Operations Officer],

> The most recent time he [Molitor] did it was back in, within the last six months. I don't remember if was August, September, October or October, November, December. I had three pay periods where one of his personnel [Marsters] had not concurred their pay. Now what happens with ATAAPS is when you [the employee] go in to do your time, you do your time card and then you do your leave forms. And they have to match. ... And then you have to concur your pay which is by concurring your pay you hit concur. And once you've done it and it says yes or puts a check in the box. When you go to the main screen where you [the supervisor] certify it you know your personnel have done their time card because they have the check that they've concurred. So you [the supervisor] know you can certify it after you've checked the leave forms and everything else and make sure that, you know, they've put their time there. I had three pay periods in a row where Officer Marsters had not concurred his pay and I'm like -- ... He's out now, he separated. ... So I questioned it and I said why -- And there was one pay period out of those three that I had to concur, that I had to certify the pay because Molitor had not done his job and certified them. And with ATAAPS you cannot not certify people because they won't get paid and you can't allow that to happen. So I was forced on a Friday to certify his pay without being able to check with him to find out if he had any time or anything, which upset me because I don't like doing that. I'm a stickler for time, you can ask any of my guys that. So I questioned Molitor on it, we did some research into it and we found out there were 13 days, 13 days in there, that Marsters had not had on his time card that he was off, didn't come to work, and Molitor had not tracked it. Had not tracked it.

So then Molitor tries to give me the excuse, and I know Molitor keeps a little notebook of all his stuff. So how 13 days got by him, now obviously they work different [shifts] -- ... [Marsters] was so bad at not showing up for work, and this didn't get to me until after the fact, that the Master Sergeant Flight Chief never put him as a primary on the duty roster, he always put him a rider, a patrol rider, because he never knew if he was going to show up to work. And if he didn't show up to work he assumed a civilian was taking care of the time card, which he [Molitor] is a supervisor of civilians, he's taking care of the time cards. So the Master Sergeant wouldn't go to him and say hey, blah, blah, blah, you know, they have a matrix[38] where they annotate everything.

[436 SFS Assistant Operations Officer] provided a memorandum dated December 5, 2013 to the CPF regarding "Officer Molitor's Time and Attendance Issues." The memorandum provided the background for [436 SFS Assistant Operations Officer's] discovery of Officer Marsters' time and attendance issues and stated as follows:

1. On 4 Dec 13, I received a text message from Supervisory Police Officer John Molitor stating that [Civilian Police Officer #5] had M-9 firing that day, then asked whether Ofc Michael Marsters had firing. Molitor added that if Ofc Marsters did have training, Molitor was not aware. This raised a red flag to me because Ofc Molitor was inquiring about Ofc Marsters, but not his other three personnel. The first thought in my mind was, "Why is he asking about Ofc Marsters and not his other personnel?" I did some inquiring and learned that Ofc Marsters was scheduled for firing at 1200, 4 Dec 13. Ofc Marsters was notified, via email, by the [SFS Unit Scheduler], on 21 Nov 13. I also checked the 4 Dec 13 duty roster and learned that Ofc Marsters was not scheduled to work, and it was his first day back on his work cycle. This would make sense if Ofc Marsters was scheduled to fire that day, as his schedule would have been adjusted to accommodate the appointment. I sent Ofc Molitor a text asking why Marsters was not on the duty roster. He replied, "He is not off, I have him in training to get him caught up on all paperwork and training." I do not know of any training that requires our personnel to report for duty and not draw a weapon and work a post. Normally our personnel accomplish their training on duty, while assigned to a post. We do not have a policy to not post our personnel to complete Computer-Based Training (CBTs) for an entire shift. On 5 Dec 13, I checked with [Military Police Officer #2] and learned that Ofc Marsters completed four (CBT's) [sic] while on duty 4 Dec 13. I also checked with the SF Armory and learned Ofc Marsters was not on the schedule, and did not draw a weapon for his tour of duty. When I looked at the duty roster for personnel listed in training, there were two names listed and Ofc Marsters was not one

[38][Military SFS Flight Chief #1] explained that to keep track of time and attendance of military and civilian police officers alike, the 436 SFS maintained a matrix on which the projected leave and duty schedules for all members of the squadron were maintained. The matrix did not account for personnel who called in sick or had to take emergency leave, but gave an overview of who was available to work. The matrix was kept two to three months in advance.

of them. He was not accounted for in any section of the duty roster. The perception is that Ofc Marsters was not scheduled to work because of the firing appointment, and was called back to work only after I discovered he missed the appointment. Otherwise, Ofc Marsters should have been accounted for on the duty roster. This is the second time he has missed a firing date. The first time was approximately a year ago, when he allegedly confused the days and missed the firing appointment, and obtained child care for the wrong day. Ofc Molitor also advised me he only knew that [Civilian Police Officer #5] had firing on 4 Dec 13, and not of Ofc Marsters' appointment. However, Ofc Molitor asked me if Ofc Marsters was scheduled for firing in the earlier text, then stated he did not know of the appointment if Ofc Marsters was scheduled. In addition, the appointment was on the Appointment Roster on 27 Nov 13. All supervisors are provided access to the roster and are expected to track the appointments of their troops. Ofc Molitor should have known about the appointment and informed Ofc Marsters.

2. Prior to this incident, I noticed that for the last two pay periods, Ofc Marsters did not concur his time card for the pay period 3 Nov 13 and 17 Nov 13. I contacted Ofc Molitor when I noticed the 3 Nov 13 issue. Ofc Molitor stated he would correct contact [sic] Ofc Marsters and correct the issue. At the end of the 17 Nov 13 pay period, I noticed Ofc Marsters had not only not corrected the 3 Nov 13 issue, but had not concurred his pay for 17 Nov 13. I also had to certify Ofc Marsters' pay for the 17 Nov 13 pay periods, as Ofc Molitor did not do so, as required because he [Marsters] would not have been paid if his timecard had not been certified. Both Ofc Molitor and Ofc Marsters did not concur or certify the 17 Nov 13 timecard before going on scheduled time off. After Ofc Molitor's text on 4 Dec 13, I decided to check time and attendance for Ofc Marsters for three pay periods: 20 Oct 13, 3 Nov 13, and 17 Nov 13. The check revealed that Ofc Marsters did not annotate any sick or annual leave in that time. I then called the active duty [Military SFS Flight Chief #1] to inquire as to whether Ofc Marsters had any time off in those periods, and he informed me that Ofc Marsters had taken time off during those pay periods. He also informed me that he does not always assign Ofc Marsters a primary post on the duty roster because he cannot rely on him to be at work. However, the three pay periods I checked did not reflect any sick or leave time used. I sent Ofc Molitor a text regarding Ofc Marsters' time and attendance for the three pay periods, and he informed me the time cards would be corrected the evening of 4 Dec 13. Ofc Molitor stated he knew of at least three days that needed to be corrected.

3. This is not the first time Ofc Molitor has had a problem with recording time and attendance for his personnel. On 28 Feb 12, I documented that he had turned one pay period of paper time cards to our timekeeper, for which no annual leave or sick time had been documented, for any of his personnel during the entire pay period. When I questioned him on the incident, he said it was a "glitch." On 13 Mar 12, I documented another entry in Ofc Molitor's employee folder

revoking his authority to approve sick and annual leave for his personnel due to additional time and attendance abuse.

On December 4, 2013, Officer Marsters emailed [436 SFS Assistant Operations Officer] about his time and attendance. His email stated as follows:

> [436 SFS Assistant Operations Officer],
> I wanted to sincerely apologize for not paying proper attention to my leave and appointments, I know you expect more from me. I honest to god forgot and have had so much on my plate these last few months that is completely consumed me. I have been working full time and attending school fulltime and working part time on my days off because my wife has not been getting full time hours at the CDC anymore. I have been just trying to make ends meet and lost my train of thought and focus. I logged in and submitted my leave requests. I honestly come into work go through the motions and leave and everything seems like a blur, I can't remember that last time I got some real sleep. I would never try to get one over on you. I have a wife and kids one of which has a [medical] condition and I'm fortunate enough to have insurance that helps care for our son, and I would never do anything to put them at jeopardy. I'm seriously sorry for not paying attention to these matters and I assure you that these mistakes will never happen again and you will never have to address these issues with me. Mike

According to [436 SFS Assistant Operations Officer], Officer Marsters sent him the above email after there had been some digging into the matter. "And then that's when he sent me an email, Marsters, oh I'm so sorry. I've got these issues going on, I totally forgot. I'm like, no, no. There's no way you forgot. ... And then Molitor tried to make excuses oh he had issues with his family at the time, which he did, but it doesn't excuse him from doing his job and certifying the pay and keeping track of his people."

Officer Marsters' absences were confirmed by the [Military SFS Flight Chief #1].[39] [Military SFS Flight Chief #1], issued a "Memorandum for 435 SFS/S3/S30" on December 5, 2013 regarding "Undocumented Leave/Absence from Duty Concerning Ofc. Marsters." It stated as follows:

1. On 4 December 2013, I received a telephone call from [436 SFS Assistant Operations Officer] in which he inquired about Ofc Michael S. Marsters['] work schedule. Specifically, [436 SFS Assistant Operations Officer] asked, if the only time Ofc. Marsters took off from duty was the Federal and Authorized Holidays. I informed him that the information he asked about was incorrect.

[39] According to his testimony [Military SFS Flight Chief #1] has been stationed at Dover for approximately two years and serves as the Flight Chief for the SFS/S30C. As Flight Chief he "monitor[s] and manage[s] all functions of, we have about 50 corps-enlisted personnel and we got to monitor, just count the, six civilians." He testified that he and Officer Molitor were co-chairs, equals. "He's the primary civilian supervisor. I pretty much handle all military, handling leave, appointments, EPRs [Enlisted Performance Reports], decorations, handling all the administrative and day-to-day operations."

2. Although I am uncertain as to how many days Ofc. Marsters failed to report to scheduled duty, I am certain that his absence caused me to post him as a secondary on patrols due to my fear of having to find a replacement if he failed to report for duty. I assumed that his supervisor, Ofc Molitor had operational and situational awareness of Ofc. Marsters['] schedule. I did not know anything was amiss until I was informed that his time card claimed zero leave days.

3. I must state, the S3OC schedule matrix in the "S" drive is merely a tool used to assign post and monitor the schedule of assigned personnel. Routinely there are post changes and personnel released from duty for various reasons and the posting matrix will not display that information, that information is reported in the daily blotter and tracked on the blotter back paperwork. Ofc Marsters stated that all his days were reported to Ofc. Molitor, but for whatever reason many of the weekend leave days was [sic] never reported to the military Flight Chief covering the shift.

4. If you have any questions or concerns regarding this matter, please feel free to contact me [contact information omitted].

In his interview, [Military SFS Flight Chief #1] testified that Officer Marsters was moved to the midday shift under [Military SFS Flight Chief #1] to help him out. "Ever since Marsters arrived to [my] flight because he was originally on another flight. I can't recall if it was days or swings, but I know they said he was going to school, finishing up his degrees, and working mids helped him out. So they moved him to my shift to help him out." [Military SFS Flight Chief #1] stated that Officer Marsters was so unreliable that it caused problems with duty schedules. According to [Military SFS Flight Chief #1], "That was Officer Marsters. You know, he was, that was problematic … I mean it was so bad with me where I refused to post, this was going on for Marsters, that I refused to post him as a primary post without an Alpha, an Alpha is a partner." [Military SFS Flight Chief #1] testified that he "always had [Marsters] on the roster. I always had him posted. … He'll be on a patrol, because I usually, because a lot of times the civilians are my best guys. You know, those are the guys who are my best guys when there's any type of altercations. My military guys were training them up and my civilians actually helped train my, a lot of my younger ranking guys. … So he was usually on a patrol. A lot of times I don't put the civilians on the gates lock because I need them on the road because I want them training more people and I want them doing things. So I would usually put them on, and Marsters was good at his job, he knew his job, he was good at it. But I would post him on a police unit, but I always made sure I had somebody with him just in case it was a no show. … Most of the time -- I always make sure I have somebody with him."

[Military SFS Flight Chief #1] testified that [436 SFS Assistant Operations Officer] called him to ask about Officer Marsters. "But I remember receiving a phone call from [436 SFS Assistant Operations Officer], he's the Program Manager, saying hey, you know, I'm looking at Officer Marsters time cards and it's not right. He was like, he goes there's no time missing. He was like, he goes he didn't have no time on off, and I was like absolutely he did. Absolutely he did have a lot of time, and that's when, you know, he went to Officer Molitor, and Officer Molitor, and he said hey, why didn't you document this properly?"

[Military SFS Flight Chief #1] testified that he brought the problems with Officer Marsters to Officer Molitor's attention.

> I believe he [Officer Molitor] talked to him [Officer Marsters] because for a while Officer Marsters started showing up. He started showing up and then there was times where like I said, you know, I've seen Officer Marsters leaving, and like we were talking about it yesterday. I was talking to a lot of the guys saying how Marsters is a good guy but it was good he was no longer on the team because, you know, I said, you know, there was times where I will pull up, because I usually get to work anywhere between 8:30 and 8:45, 2030 and 2045, that's when I usually come in. ... And there was times where I would see Officer Marsters walking back to the vehicle and I'm like oh, maybe he forgot something, and then the next thing I'll see the car pull out and go, you know, what's up with that? So I go in, and these are usually days that Officer Molitor was not there though. I have to make sure, make that clear, because Officer Molitor works Mondays, Tuesdays, Wednesdays, and Thursdays, and he's off Friday, Saturday, Sunday. ... And then Officer Marsters, I just talk about him a lot, because he was the one who was most of my problem and he worked Wednesday, Thursday, Friday, Saturdays, so on those Fridays and Saturdays that Officer Molitor wasn't there, Officer Marsters would, that's when I would see him like taking off on like a Friday night or just leaving, like where's he going?

The IO asked [Civilian SFS Flight Chief #1] what action, if any, Officer Molitor took once he [Military SFS Flight Chief #1] brought the issue of Officer Marsters to his attention.

> I don't know. The only action I know that came down was once [436 SFS Assistant Operations Officer] got involved. ... That's when most of the action came down was when [436 SFS Assistant Operations Officer], after that phone call and I told him absolutely not, that I can't even rely on him to post him as a primary on his own and then that's when, you know, the ball got rolling big time. I think that's when [436 SFS Assistant Operations Officer] got with Molitor, and I remember Molitor going through and going through his notes. Because I know Officer Molitor said that he had, because he keeps a written journal. ... And so he has a book and he was going through it and he was actually putting the leaves in after the fact. ... And I know that for a fact that he went in and put the stuff in after the fact. They found like 15 days of leave that Officer Marsters requested, but never made it into that matrix.

[Military SFS Flight Chief #1] testified that Officer Molitor normally puts the leave dates for his employees in the matrix. "But that didn't happen in the Marsters case. ... Because I remember [Officer Molitor] had the matrix open and he had his book and he was going through, going back and said okay, here's the date that he requested and then was putting him back in. But this was after [436 SFS Assistant Operations Officer] identified it. ... I told him -- I told him he made a huge mistake. I said you made a huge mistake and I said although you may be completely innocent on this I said it just, I said you messed up."

When asked whether he thought Officer Molitor was "completely innocent on this or not," [Military SFS Flight Chief #1] stated, "I honestly don't know. I honestly can't, I don't see why he would put himself in jeopardy of fudging the books for a guy who really doesn't matter. I don't know why he would. I don't see the purpose in him intentionally putting himself in jeopardy for that guy."

Officer Molitor sent a MFR dated December 5, 2013 to [436 SFS Assistant Operations Officer] regarding Officer Marsters and the time and attendance issues. It stated as follows:

> 1. I met with Officer Marsters on several occasions and annotated what days that he wanted to have for leave. I documented them in my notebook, so I could keep track of his leave usage as I do with all of my troops to ensure leave was taking. [sic] I advised him to document the leave, and to do it as soon as he wanted to request it. I also had him text me if he wanted to take a day of leave on my day off, and I marked that in my book as well. I advised him to submit them so he did not forget to annotate them. I did not see any reason to check up on him due to his quality of work and state of professionalism. Its evident OFC Marsters has a lot on his plate and it has caused him to lose focus. I lost sight that I was not the only one dealing with pressing family matters. Somehow I did not remember to check for any new requests for leave. I take the blame for not checking up on my troops more and it is my fault partially due to seriously pressing personal matters concerning my daughter's health. I forgot to check to see if it was done, but I will ensure form [sic] now on everything is completed.
>
> 2. I talked with Ofc Marsters and advised him that we will concur his timecard in ATAAPS, and I told him that it will be done on the last Wednesday of each pay period. Since it was inadvertently forgotten to be annotated, I reiterated to him that this will not happen again. I know for a fact that he is a completely honest person and not deceitful in any way. He has made a mistake and already submitted his leave request and I believe that his working and attending school full time has taking [sic] a toll on him causing him to forget things. He has more than enough leave built up and was in no way trying to be deceitful. He is a dependable worker, excellent patrolmen and great dad who put his family first. He would never jeopardize them in anyway. I asked him if he needed anything because I can see he is a little stressed, and he said that he did not at this time. We talked about managing his many tasks and focusing on taking care of work while at work and school while in school. I was on sick leave with my daughter and I was not physically able to make sure that his pay was concurred correctly. He will without fail make sure that he concurs his pay without fault from now on. His leave was being documented but failed to make it to the leave requests. It will not happen again.
>
> 3. I advised him that this cannot happen again, and that we both need to be better with our documentation of leave. I can understand OFC Marsters rationale, he has been under immense pressure with school and it's literally been a full time job. He has been counseled and I also advised him that his integrity and professionalism are in question by others who do not know him, the way I do. I

want to state that OFC Marsters is a completely honest and professional person and patrolmen and that he was in no way purposely failing to submit his leave. I guarantee this will never happen again.

[436 SFS Assistant Operations Officer] provided Officer Molitor with a document entitled "Questions for Ofc Molitor" to clarify statements in his MFR. This two-page document is dated December 16, 2013 and has thirteen (13) typed questions with Officer Molitor's handwritten responses. It is signed by Officer Molitor above his type written name and title. The questions and answers are as follows:

Q. What is your leave policy for DAF officers?
A. Text and then call on duty FC [Flight Chief] if I'm not working do a leave slip. Manning has to permit.
Q. If you met with Ofc Marsters and documented his leave requests, why didn't you ensure he accomplished the required leave forms and documented his timecard for each pay period in which he requested leave?
A. I reminded him to do it, and trusted that he would do it.
Q. Why didn't you reconcile Ofc Marsters' timecard with your records you use to document leave requests to ensure no time was missing from his timecard?
A. I didn't know he took some leave days, the ones I knew, I verified. I work a different shift from him for FRI/SAT night & I trusted he would do the leave.
Q. Why did you not certify Ofc Marsters' time card for the pay period, 17 Nov 13?
A. I was waiting for him to concur, [sic] and then I had a family emergency.
Q. Why didn't Ofc Marsters concur his pay for the pay periods 3 Nov 13, and 17 Nov 13?
A. he called off & or left early & didn't do what I told him to do. He left off early & did not concurr [sic] as I told him (&) I was on leave.
Q. After I informed you that Ofc Marsters did not concur his pay on 3 Nov 13, why didn't you have him complete the task?
A. I told him to, he said he did before he left for the day & he did not. I have noticed that his wife's hours got cut back, & he took an extra hours [sic] at Best Buy to make ends. He is in school, and his son has a [medical issue]. He does his job, but I think that he is dealing w/major issues.
Q. Why didn't you certify Ofc Marsters' pay for the pay period 17 Nov 13?
A. I was on sick leave.
Q. Why didn't you inform me whether or not Ofc Marsters had taken leave during the pay period of 17 Nov 13?
A. He took sick time when I was not working, I asked later to correct shortfalls & we corrected that he didn't do the leave slip.
Q. To date, Ofc Marsters has not concurred his pay for the pay periods 3 Nov 13 and 17 Nov 13? (Why?) (Note: I asked you why Ofc Marsters had not concurred his pay and you stated he still had a lot of personal issues)
A. I believe that he is not doing anything other than going through the motions at times. Personal matters are causing him stress.

Q. Do you understand that falsifying a Time and Attendance document is a criminal offense, and you may be disciplined for such offenses?
A. Yes, if I did it maliciously or w/intent which I did neither. I found 13x he missed.
Q. Have you explained to Ofc Marsters that falsifying a Time and Attendance document is a criminal offense, and that he may be disciplined for such offenses?
A. Yes. I told him we need to be on the up & up. This will not happen again.
Q. What procedures do you have in place to ensure incidents of this nature will not occur in the future?
A. 1) QC [Quality Control] on leave usage & cross check matrix. 2) documenting all leaves, & cross referencing the schedule. If I have a family crisis I will request help, my [child's health issue] kind of messes me up.
Q. Do you have any comments to add to these questions concerning this inquiry?
A. I found that his leave time was not documented as I requested. I looked into it & accomplished 13 leave slips w/him.
(Emphasis in original).

In his interview, Officer Molitor discussed Marsters' time and attendance issues. He testified that [436 SFS Assistant Operations Officer] talked to him about Officer Marsters' time and attendance issues.

> [436 SFS Assistant Operations Officer] asked me if Officer Marsters was on leave or if he took leave that I was aware of and why isn't it on the timecard? I told him, I don't know, he works when I'm not working so I said hopefully he takes all the leave that he's supposed to take. ... So then, which obviously it made me kind of leery like wait a minute, what's going on here, someone is trying to get over on me. So I started looking into the matrix which is, basically it shows what you work and what you don't. And I noticed some irregularities like wait a minute, on days that I wasn't working he didn't show up either. He'd show up and leave and no one told me about it. And it was supposed to happen that if I wasn't there then the head person that's in the military would let us know if someone wasn't there and that wasn't happening. For I don't know what reason, I can't account for them, I can only account for myself. But, so once I found out that something was (inaudible) I told [436 SFS Assistant Operations Officer], I said I realize that this is going to look bad, but I found I think 13 times that he's done it. And I was told basically that that makes me a crappy supervisor because I didn't even notice. I said, well I have stuff going on in my life that I wasn't aware because I'm trusting them. ... Basically it has to be now trust with verify so that's what I started doing. Because I told him you're supposed to be an adult and I shouldn't have to keep checking, but it's my job so I checked and I found that something was wrong.

According to Officer Molitor, he discovered that Officer Marsters was not working on the days he was not there when he "started looking at the matrix." As a result, Officer Molitor stated that Officer Marsters "ended up having to take 13 days."

According to the testimony of [Civilian SFS Shift Supervisor #4], in discussing whether he noticed discrepancies with reporting time and attendance, he stated, "[y]es, a more recent one was with Officer Marsters who unfortunately is no longer with our agency. He was assigned to the mid-shift, actually under Officer Molitor, and it was brought to my attention that on the days that Officer Molitor was not present, on his days off, Officer Marsters would say that he showed up to work and actually didn't show up. And then when it came time for the ATAAPS system, he would document that he was here and I know of at least 12 occasions that he did that. Now, I believe it was brought up to Officer Molitor. I mean, I know it was brought up to him and from what I understand [436 SFS Assistant Operations Officer] and leadership at the unit were handling the discrepancies."

[Civilian SFS Shift Supervisor #4] further testified that he did not believe Officer Molitor was aware of what Officer Marsters was doing.

> Well, in this particular situation, he [Officer Molitor] had just taken over supervision of him so he really didn't have much knowledge of him other than in passing, from him working days and him working nights. Officer Marsters was on days and then came to nights. … But I think from talking with Officer Molitor and the circumstances with Officer Marsters, Officer Molitor told me on numerous occasions that he had no knowledge that Officer Marsters was doing this. And, in fact, when he did find out about it, and this is where I say that Officer Molitor has changed somewhat of his ways, soon as he found out about it he called Officer Marsters on it, forced him, or not forced him but made him take leave for those days and then notified [436 SFS Assistant Operations Officer] of the wrongdoings of Officer Marsters. So I don't think that that particular instance is the same as it was previously for Officer Day and Hunter. I really think this time around he was doing the right thing and keeping Officer Marsters accountable for his actions. … My personal opinion, I honestly think that he had no knowledge of it because at the time, the schedules that we worked, Officer Molitor was Sunday through Wednesday. Officer Marsters was Wednesday through Saturday and there was no supervisor on that shift and when this was going on he never worked with him. So if Officer Molitor went in and he looked at our -- Because we have a matrix that we maintain, if he went in and the active duty never put that he was on break those times, we would never know. You know, we would have to go off of what Officer Marsters inputted into ATAAPS.

According to [Civilian Police Officer #1], although he does not know if it was preapproved with his supervisor, Officer Molitor, he noticed on more than one occasion, that Officer Marsters would leave right after guard mount. "If we show up at 5:00, these people that are on the midnight shift would come in, turn in, stick around for a couple of minutes, and all of a sudden, before we finished guard mount they were gone … He [Marsters] would do that quite a bit. He would come in and just, you know, turn in and he was gone."

According to the ATAAPS records, once Officer Marsters' absences were discovered, the ATAAPS time cards were corrected to reflect 13 days of annual and sick leave. [436 SFS

Assistant Operations Officer] testified that, "[w]e tried to take action on both of them for it. And he got out, Marsters got out." Shortly after this incident, Officer Marsters resigned from the 436 SFS and left the Air Force. According to Officer Molitor's notes in the Supervisor-Employee-Brief for Officer Marsters, Officer Marsters gave two weeks' notice on March 8, 2014. His last day with the Air Force was March 18, 2014.

[Military SFS Flight Chief #1] testified that after the trouble with Officer Marsters, "[436 SFS Assistant Operations Officer] lost confidence in Molitor's ability."

Other Evidentiary Matters

Officer Molitor and Compensatory Time

Officer Molitor testified that, as a supervisor, his job is to account for the time and attendance of the people he supervises, "you're either present for duty or you're on leave." In his interview, Officer Molitor admitted giving compensatory time to employees in the past. Officer Molitor stated, in response to the question "have you ever offered or granted compensatory time off to your employees?" "No." He then clarified, "Not after, I did initially when I was first hired because I was under the impression if they needed to leave a little early or something that we had a little leeway. I was corrected that that was not the case and I talked to my supervisor and then I haven't done it since ... That was like in 2010." Asked whether he has done it since – Officer Molitor stated, "No, I've made sure if I'm on leave or they're on leave it's documented."

However, as the interview continued, Officer Molitor seemed to contradict his denial. Officer Molitor explained, "if he works a half an hour over he gets a half hour back because they don't approve the overtime. But I talked to my supervisor and he said that's fine, just make sure they work their ten hours, so." Officer Molitor testified that there is no official approval process involved. "No, I just asked my supervisor [436 SFS Assistant Operations Officer] if as long as I had their ten hours. ... And it's not an official compensatory or overtime, it's just that they went over so I make sure that on the other end that they don't go over with, like say if they go over Thursday that they don't Friday and they are given that half hour back so it's fair that they're not losing any time."

Although he claims to have permission from [436 SFS Assistant Operations Officer] for this method, according to [436 SFS Assistant Operations Officer], this would be in violation of the Collective Bargaining Agreement (CBA). To corroborate, the IO conducted a follow-up telephone interview with [436 SFS Assistant Operations Officer]. [436 SFS Assistant Operations Officer] stated, "if a civilian officer were required to work past their established work hours due to mission need or an emergency situation, the policy is to officially request compensatory time or overtime after the fact. He stated that it important to show actual time worked in the ATAAPS system for accountability purposes."

According to Officer Molitor,

> I've had my ups and downs with keeping track of stuff. And sometimes I had, I at one point I had a family issue and I'm not making excuses, so I'm stating that up

front, that I wasn't exactly on top of everything like I should have and I acknowledge that and I took (inaudible) it. I said I deserve it and I went ahead with it. But there are things here to me that almost sounds like a witch hunt trying to take things out of perception and combine everything that's been for five years and that's the way they do it here. So that's just the way I feel so I can feel that way. But I feel that I make mistakes, I try to correct them. … And I make sure 100 percent now that if someone takes leave that they're taking leaving. And if they're here, they're here, if they're not they're on leave. And that includes myself. If I can't do it than I can't expect them to do it so. … I retired from security forces and I, initially I was kind of used to that so if they were tired and I let them go a little early it was, like I said, it was my understanding that it was okay. I was definitely told it wasn't so, I go okay. So it, I've had my ups and downs here, but this place, it doesn't seem like you can get a fair shake if you screw up once, they're at you and they're on you and that's the end of it.

Witness Perceptions of Officer Molitor

When asked by the IO how he would characterize Officer Molitor's work performance, [436 SFS Assistant Operations Officer] responded, "poor." "He doesn't listen. He's very defiant. He doesn't like to be told what to do. He doesn't like authority."

This perception was shared by a fellow supervisor, [Civilian SFS Shift Supervisor #4], who described Officer Molitor as, "difficult. He's a good guy. However, his supervisory skills, his willingness to follow the rules tend to be clouded. I don't know if it's that he's got his own agenda or he sees the way that he wants something to be and goes for it but he's very confrontational with [436 SFS Assistant Operations Officer], his supervisor, our supervisor, and very much, what's the word I want, goes against the grain in essence if you understand what I'm saying." Later in the interview, [Civilian SFS Shift Supervisor #4], speaking of Officer Molitor, stated, "[w]e've had many conversations over the years. I mean, he is a good guy and I think if he changed a few things he could be a valuable asset here." In response to the IO's follow up question on what changes, [Civilian SFS Shift Supervisor #4] testified, "[h]e needs to stop fighting every – every regulation, every decision that's made, he wants to fight it. He doesn't agree with it. It's almost like he feels entitled I guess you could say. And, you know, I've tried to come alongside him and encourage him to not be that way and, you know, over the couple years he's come a long way from where he was at but he just, he wants to fight the system I guess and there's a right and wrong way to do it I guess."

When asked to describe Officer Molitor's work performance, [Military SFS Flight Chief #1] stated, "[h]e's the, we're a good team. I guess when I said how we worked together we're a good team, because he's my good side to my harder standards of discipline. … So a lot of times, you know, he'll, I appreciate because he'll rein me in sometimes, it's like hey, you know, he's like you're angry right now let's calm down. Let's go have a cup of coffee and talk about things, you know. So he's the, we work well together. [Military SFS Flight Chief #1] testified that "[a]s far as being a Flight Chief when things go down he's there. … He's there and he knows what he's doing." When asked about Officer Molitor's ethics, [Military SFS Flight Chief #1] testified, "[t]hey're good. I mean the troops, I think the troops love him more than they love me. … I say that because of his, I'm not going to say easiness, that's not the right word, but he's different than

me, I guess. You know, his leadership style is more of a loving grandpa, I guess. I guess that's the best way to describe it, that he's more, the kids feel more comfortable coming to him because, and I told him, I said, you know, we talked, I said, you know, I said they come to you because I think they feel that you'll, get a better yes out of you. And like I said we play off each other, because now he's becoming a more understanding of things ..." The IO asked [Military SFS Flight Chief #1] how he would rate Officer Molitor's job performance. "If I had to rate him, if I said, Molitor, I'm going to sit you down and rate you, it would be average. ... Average. Just because his leadership style is different than mine. Mine is more combined directive. His is more as long as it's good it's good. So it's one of those type of leadership styles." He also stated, "So saying, trying to judge how he does his job, I think he's a laid back supervisor. I think he's more (inaudible) fair type of supervision."

The IO also made similar inquiry to [Civilian Police Officer #1]. In describing his relationship with Officer Molitor, [Civilian Police Officer #1] stated, "he is – I really don't care for his style of leadership. So I – I try to stay away from him. I mean, we – yeah, I'd say hi to him in the hallway, or come in if he is still in the office. But other than that, there is no friendship there." In describing Molitor's style of leadership, [Civilian Police Officer #1] stated, "[h]e is like, 'You know what? I can get away with stuff because I'm a supervisor.' And so forth and so on. I just don't agree with that. My morals are a little bit higher than that. A lot of higher than that. ... Just he is kind of a – not a rabble rouser, but he likes to be rogue, if that's – if that's a good word, and do what he wants to do, and try to get away with as much as he can. ... the way he runs his ship, you know, he won't do exactly what is in the regs or he will modify them somehow to where, you know, it will be easier for the troops to – to do their job, which itself is not a bad thing, but it makes people, in my opinion, lackadaisical and ... really hurts the rest of the people that are trying to do their job the right way."

Civilian Personnel

Both [436 SFS Assistant Operations Officer] and [Civilian SFS Shift Supervisor #4] testified as to concerns with the Civilian Personnel Office. [436 SFS Assistant Operations Officer] stated, "[o]ur Civilian Personnel Office here is horrible. We cannot take disciplinary action on our people because they won't act. And we can't take disciplinary action without them in legal because we have BUEs, or bargain unit employees." [436 SFS Assistant Operations Officer] explained what should happen when disciplinary action is being taken.

> The way it should work is when you find something out like this, [Civilian SFS Shift Supervisor #4] when he found that out, he should have gone to the people that were filing the complaint or had the first-hand knowledge -- We don't write statements because they don't want, Civilian Personnel does not want the 1168s that we write. The FF-1168. They want -- ... It's a Statement of Witness, Suspect or Complainant. They don't want those from us. From us they want a Memorandum For Record, in that format. So what he could have done, and should have done and I don't know if he did, is you talk to the person, interview the person, find out what their side of the story is and get them to write an MFR. Then you'd want to do the same thing with the suspect, or the person the complaint's about. Once you gather all those facts we give them to Civilian Personnel. They look at the facts. They give us a course of action, what they

> think we, coaching session. We don't use the term counseling. Letter of Reprimand, Letter of Admonishment, whatever. They make a recommendation on punishment. They draft the punishment letter. Or what happens is many times I've done the coaching sessions for the two of them and say hey have I covered everything, am I missing anything. It goes to Legal. Legal has to review it. It comes back to CPF to us, we present it.

[436 SFS Assistant Operations Officer] testified that the process with Civilian Personnel takes too long.

> It took me four months, four months to get a letter of admonishment done for one of my supervisory guys. Four months for a statement this long, four to five sentences -- … with Civilian Personnel. When we tried to discipline Molitor with a suspension it was three months and there was no end in sight, it wasn't done. And … This incident with Marsters, I had surgery in January. I came in on my convalescent leave and sent them emails. Said where are we at with this? Gave her [Civilian Personnel Flight Civilian Employee #1] my personal cell phone number or at home. If you have any questions call me. I've got the email traffic on that if you want it. … [SFS Civilian Employee #3] over at our office, he's coined a phrase for them, every time we call them, you hardly ever get an answer when you call them. It's rare they answer the phone. If you send them an email it's rare they answer it or if they do answer it it takes a while. And some just fall off, it goes in a black hole, some of this stuff. And it's very frustrating. Because the message out there to our people is that I can get away with this because nothing's going to happen. That's the message that's out there. And my attitude is we're like okay, we throw our arms in the air, it's like what do we do next? I actually went to, and, sir, we went to the [Deputy Mission Support Group Commander] in March I went and talked to her because I was so frustrated. They had me give them my top three or top four items I wanted to get through Civilian Personnel. One of them was the Officer Molitor discipline. Nothing. Still nothing. So what's my next course of action? I go to the Group Commander, then I become the bad guy. Or do I go the OSC or do I go to OPM? I mean you've been in the military for a while, you understand the position I'm in now is I'm the bad guy if I keep, and as much as I push I get pushback.

[Civilian SFS Shift Supervisor #4] also conveyed his frustration with the Civilian Personnel Office in the disciplinary process.

> They said it's got to be timely and so, you know, timely should be no more than I would say a month at max with getting information back so that we can issue that disciplinary action. That allows for union notification, to give them opportunity to have union representation, to have all the paperwork, you know, reviewed and brought back to us. The problem is that doesn't go on. I'm sorry to say but our civilian personnel is horrible. They don't do -- Timeliness is not a virtue of theirs.

When asked why he thought Civilian Personnel was not timely, [Civilian SFS Shift Supervisor #4] stated,

> Honestly I think it's laziness. It's laziness. I know firsthand that they, especially with my particular labor management personnel, they don't have the knowledge. I'm more versed in their job than they are, you know, and that's because I spend the time to review the regulation, review the laws and understand them. A lot of times I bring things up to them and they're dumbfounded. And the other part of that, too, is that for whatever reason here at Dover the legal office and the civilian personnel feel it is their job to issue out disciplinary paperwork, disciplinary action, to decide what disciplinary action is going to be taken and they want to write everything for us, which is a clear violation of the regulation and the U.S. Code for my duties and responsibilities as a supervisor and I think that's where they run into the problems. They don't know what they're doing and they try to do it themselves. And I have firsthand knowledge because I actually was trying to discipline Officer Day on an insubordinate conduct and I haven't gotten anything back up to now (phonetic).

[Civilian SFS Shift Supervisor #4] testified that he believed supervisors may be adverse to taking disciplinary action due to a perception that the disciplinary process with the civilian personnel office does not work well. "Absolutely. I've heard from other supervisors that they don't even want to attempt it because, you know, they'll do the work but they're not going to get anything back. And so what that does now is it's to our patrolmen, they see that as we're weak and, you know, they can pretty much do what they want because no action is going to be taken. So it kind of ties our hands."

[Civilian Police Officer #4]

According to [Civilian SFS Shift Supervisor #4], Officer Molitor favored Officers Hunter and Day and not Officers [Civilian Police Officer #1] and [Civilian Police Officer #4]. "There was an obvious favoritism going on with the two of them [Hunter and Day] and I think [Civilian Police Officer #4] and [Civilian Police Officer #1] kind of got the brunt of that. You know, they were definitely treated a lot different. And actually when I assumed supervisory responsibilities over [Civilian Police Officer #4], one of the things that we have to do is we have to do a records review and go through anything that had been previously put in there and I had noticed a lot of discrepancies, things that just didn't add up with her records. For example, she had annotations in her 971, the supervisory annotations that didn't match up with her performance. There was negative comments."

One such annotation involved an incident with Officers Hunter and Day at the CVI. [Civilian SFS Shift Supervisor #4] described the incident as follows:

> Down at the commercial vehicle inspection center. [Civilian Police Officer #4] had brought up these time and attendance issues. She actually was the first one to bring up that he was giving Officer Day and Officer Hunter time off, just free time off. She had raised a flag to [436 SFS Assistant Operations Officer] and from that point on they started pretty much giving her a hard time, and one such incident was they were going out to post. They were in one of the posting vans to go down there and Officer Hunter and Officer Day had exited the vehicle. She

> was in the back of the van and it's very hard to get out of that unless somebody would open up the vans on the outside and they just left her in there. And there was an active duty member in there and from what I understand is [Civilian Police Officer #4] made a derogatory comment that she didn't mean, according to her and the investigation that came out of it, she used a racial slur but not directed at anybody and … It was the word nigger. I believe the phrase was 'I ain't nobody's nigger.' … Which then they heard. Either they heard it or somebody told them that she had said that and then from that point on they really started treating her with a lot of disrespect. You know, you could tell that they didn't like her.

In [Civilian Police Officer #4's] personnel file, in a Supervisor's Employee Work Folder, Officer Molitor wrote, "On 02/15/12 A coaching session was held, and the below was discussed. On 02/10/12 you confronted [Military Police Officer #6] about him having a problem with you. You failed to use restraint when dealing with another.… On 02/12/12 you had another confrontation with [Military Police Officer #6], and you used profanity and a racial comment/slur.… On 02/12/12 you violated AFI 36-704 by using language which contained an ethnic slur. It was not known if it was directed at another, but it did offend those who heard the comment. I advised you that there is a zero tolerance policy about these types of actions in the workplace. EEO [Equal Employment Opportunity] was notified."

According to [Civilian Police Officer #4], "Officer Molitor wrote me up. He wrote me up for -- I use the N word against myself, about myself, and Officer Day told, he wasn't even there, said that I called someone the N word which is not that. I said it about me." She indicated that the incident was investigated.

> That what I said was about myself to myself. Again, Officer Day, this is where the defamation came in, he told everybody that I called an African American that was in the building nowhere near me, called them that. Officer Molitor wrote me up, or it was a counseling. I refused union representation. I was in the union at the time and there were so many AFIs, blah, blah, blah, blah, blah, and I said I don't understand this. And he said, oh don't worry about it. It's just gibberish. Just go ahead and sign it, so like a dummy I did. And then when [Civilian SFS Shift Supervisor #4] got my file, he said to me you were written up twice or you were counseled twice. I said, no, I wasn't. He said it's in your file that you were counseled twice and you signed it. I said I was counseled once. I did not. After looking at the second one, there was a line -- No, there wasn't a line. There was an X and my name was written out. I said that's not my signature. Officer Molitor said, oh, I forgot to have her sign it. That X was where she was supposed to sign it. I forgot to have her sign it. … Yes, yes. [Civilian SFS Shift Supervisor #4] was witness to it but it was as though I had signed it and it was a false allegation. … [the allegation was] I think that I basically assaulted one of them. Yes."

[Civilian Police Officer #4] indicated that the second incident/counseling had been removed from her record. "It has been. It wouldn't have been though if it weren't for [Civilian SFS Shift Supervisor #4]. [Civilian SFS Shift Supervisor #4] has the courage to stand up to anybody. Nobody else has courage to stand up to Molitor or Day."

[Civilian SFS Shift Supervisor #4] reiterated in his testimony that, "she [Civilian Police Officer #4] was the first one to bring up that he [Officer Molitor] was giving Officer Day and Officer Hunter time off, just free time off. She had raised a flag to [436 SFS Assistant Operations Officer] and from that point on they started pretty much giving her a hard time." [Civilian SFS Shift Supervisor #4] testified that the negative behavior toward [Civilian Police Officer #4] began prior to the comment incident. "[T]hat behavior was going on before that comment was even made because she had brought to [436 SFS Assistant Operations Officer's] attention the issues that were going on down there and the favoritism even before that phrase came out. It got worse when that happened and so, I mean, I would say that they knew what they were doing prior to. And John [Molitor] and I have had many conversations."

[Civilian Police Officer #4] testified that "[t]here was a lot of retaliation when I did that [report time and attendance discrepancies], yes."

> A lot of horrible things were said about me, a lot of defamation of character. There was times that I was in tears going down there. People did not speak to me because of it. … It was [a difficult working environment]. Oh my gosh. I had a part-time job that I had to quit. I worked for the United States Postal Service. I was making good money and I had to quit that because I could not take the stress. I was engaged at the time and that relationship ended because of it. … One thing that, and this isn't, every day there was a posting of where you were going to be assigned. Officer Molitor approved that and my name was spelled [derogatory misspellings of name]. That was humiliating. I brought that up to [Military SFS Flight Chief #3], the NCOIC at the time. He saw it when I reported it to [436 SFS Assistant Operations Officer]. He said do you have any evidence of that? Do you have the papers? I said no. They tried to go back and find them in the computer and they had been deleted. … Other than being assigned outside all the time and then when we went to, we came out of the search pit and went to post where we were, you know, out with all of the assignments, I was being assigned to the gates nearly every day or the time was Romeo 3 (phonetic) which was the gates, checking the fuel line and checking the trench. That was it. I was not any other post ever. I brought that up to [Civilian SFS Shift Supervisor #4] because that was during the changeover and he went to the person writing the posts and was told that my supervisor at the time said that I was to only be posted which is way out of my core document (phonetic).

[Civilian Police Officer #4] indicated she was assigned to Officer Molitor when the retaliation was occurring. She further testified that she does not currently work for Officer Molitor "I never will be ever again. … I will not. I will change shifts. I will quit."

ANALYSIS

Violation of Law, Rule or Regulation

Law, Rules and Regulations

Officers Molitor, Hunter, [Civilian Police Officer #4], Day and Marsters are or were GS employees with the Air Force and the Federal Government. As Federal employees, each was required to comply with the time and attendance requirements. Specifically, for purposes of this investigation, they were subject to the following law, rules and regulations:[40]

- Under 18 U.S.C. § 1002, employees shall not knowingly and willfully
  - Falsify, conceal, or cover up a material fact by any trick, scheme or devise;
  - Make any materially false, fictitious, or fraudulent statement or representation; or
  - Make or use any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry.
- Under 5 C.F.R. § 735.203, employees "shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.
- Under the FMR, Vol 8, Chapt 2, under paragraph 020102 A.7 (effective June 2013), employees must
  - Be held accountable for the accuracy and integrity of their time and attendance reporting; and
  - Immediately report the discovery of any violations of internal control, improper input of T&A data to an appropriate supervisory official.
- Under the FMR, Vol 8, Chapt 2, under paragraph 020102 C (effective September 2010) and D (effective June 2013), as employees responsible for the timekeeping function, employees are required
  - To timely (promptly) and accurately record all exceptions to their normal tour of duty;
  - Attest to the accuracy of their current pay period's T&A (including any exceptions such as use of leave) and any adjustments or corrections that are required after T&A is approved; and
  - Ensure that all entries for overtime and compensatory time earned have been approved, and totals are correct before certification.
- Under AFI 36-703, paragraph 4 (effective August 1999), employees are required to comply with prescribed standards of conduct in all official matters and expected to maintain high standards of honesty, responsibility, and accountability as well as adhere to the Air Force core values of "Integrity first, Service before self, and Excellence in all we do."

[40] The timeframe covered by this investigation is 2010 through late 2013, early 2014. The FMR was revised in 2013 during the timeframe covered by this investigation. As discussed, some of the allegations are covered by the 2010 FMR; other allegations fall under the current 2013 version. Similarly, the August 1999 version of AFI 36-703, was revised in February 2014. Most if not all of the allegations investigated and substantiated herein, however, fall under the 1999 version of AFI 36-703.

- Under AFI 36-703, paragraph 5.4.2 (effective August 1999) and paragraph 3.4.2 (effective February 18, 2014), employees are required to "be present for duty unless authorized to be absent."
- Under AFI 36-703, paragraph 5.4.1 and 5.4.3 respectively (effective August 1999), employees are required to
    - Discharge their assigned duties conscientiously and effectively; and
    - Follow Air Force Instructions and other directives and comply in a timely way with proper instructions or orders given by a competent authority.
- Under AFI 36-802, employees
    - Are required to use AF Form 428 to request overtime or compensatory time; and
    - Pursuant to paragraph 3.1.3, may not receive overtime pay for work which a supervisor did not properly authorize and approve.
- Under AFI 36-815, paragraph 1.2.4., employees are required to
    - Be dependable and regularly report for work;
    - In accordance with applicable procedures, request leave in advance, and cooperate in rescheduling leave when necessary; and
    - Report unexpected absence to the supervisor and request approval for the absence according to established practice.

As a shift supervisor, Officer Molitor is subject to, *inter alia*, the following additional law, rules and regulations:

- Under the FMR, Vol 8, Chapt 2, under paragraph 020102 B, Officer Molitor, as a supervisor approving T&A reports, is required to
    - Represent that, to the best of his knowledge, the actual work schedules reported are true, correct and accurate (effective September 2010);
    - Certify that, to the best of his knowledge, the actual work schedules recorded are accurate (effective June 2013);
    - Be aware of his employees' work schedules, leave taken, and any absence from duty and reviewed and approved the T&A to ensure its accuracy (effective June 2013); and
    - Ensure that exceptions to the employee's normal tour of duty are recorded in a timely and accurate manner (effective June 2013).
- Under the FMR, Vol 8, Chapt 2, under paragraph 020401, Officer Molitor, as a supervisor, in certifying the T&A as correct, authorizes expenditure of government funds.
- Under the FMR, Vol 8, Chapt 2, under paragraph 020402 (effective June 2013), Officer Molitor, as a supervisor, is required to
    - Review and approve all T&A and supporting documents for his employees;
    - Be aware of his responsibilities for ensuring accuracy of the reports and must have knowledge of the time worked and absence of his employees for whom he gave approval;
    - Have a reasonable basis for relying on systems of internal control to ensure accuracy and legal compliance when the individual does not have positive, personal knowledge of the presence and absence of, or other information concerning employees whose T&A are being approved;

        - The basis must involve periodic testing of internal controls to ensure they are working as intended;
    - Base his certification of T&A documents on
        - Knowledge from personal observation;
        - Checking data against other independent sources such as validating starting and ending times or work using sign-in and sign-out sheets or time clock entries; or
        - A combination of controls; and
    - Individually approve each employee's T&A with a handwritten or automated signature.
- Under the FMR, Vol 8, Chapt 2, under paragraph 020404, Officer Molitor as a supervisor,
    - Is required to take reasonable measures, such as occasional telephone calls during the times his employees were scheduled to work to determine the accuracy of time and attendance records submitted by individuals who maintain their own time and attendance; and
    - Is responsible for the accuracy of the time and attendance data submitted by the individual.
- Under AFI 36-703, paragraph 6.2 (effective February 18, 2014), Officer Molitor, as a supervisor, is required to
    - Comply with civilian personnel laws, regulations and negotiated labor agreements;
    - Comply with attendance, leave and overtime approval procedures; and
    - Constructively counsel and correct employee performance and conduct.
- Under AFI 36-802, paragraph 3.1.2., Officer Molitor is required to obtain approval from his authorizing official before ordering overtime or where there was an emergency, documenting the overtime no later than the following workday.
- AFI 36-802, paragraph 3.2.2. requires Officer Molitor, as an official certifying time and attendance, to maintain mandatory documentation to support the automated time and attendance record.
- AFI 36-815, paragraph 1.2.3.1, requires Officer Molitor, when he was authorized to approve leave, to ensure that all employees under his supervision are informed of the procedure they must follow in requesting and using leave.
- AFI 36-815, paragraph 1.2.4, requires Officer Molitor to ensure that all absences from duty are appropriately charged according to applicable laws and regulations.

Non-Supervisory Police Officers – Officers Hunter, Day, [Civilian Police Officer #4] and Marsters

With regard to certain non-supervisory civilian police officers in the 436 SFS, the whistleblower alleged that (1) Officer Alvin Hunter missed several whole weekend shifts, or departed early throughout 2011; (2) on approximately 15 occasions, in January and February 2013, Officer Aaron Day left work approximately one hour early but did not record his early departure on his time and attendance report, billing the government for time not worked; and (3) Officer John Molitor granted [Civilian Police Officer #4] compensatory time off despite knowing

that compensatory time is not available for civilian police officers in the 436 SFS. During the course of the investigation, the IO discovered that Officer Marsters also engaged in potential time and attendance irregularities.

Officer Hunter

Officer Hunter was not available to interview. According to the evidence, Officer Hunter appears to have worked as a police officer with the 436 SFS from January 2010 until the time he resigned on May 16, 2013.

The evidence establishes that on July 7, 2012, Officer Hunter missed a part of one duty day and that missed time was not accounted for in his time and attendance report. The missed work was witnessed by [Civilian Police Officer #1] and tacitly acknowledged by Officer Molitor, who told [Civilian Police Officer #1] that "Officer Hunter went home because he was not needed." Officer Molitor then submitted Officer Hunter's time card to [436 SFS Assistant Operations Officer], reflecting inaccurately that Officer Hunter was present for duty on July 7, 2012. Under time and attendance directives, Officer Hunter was required to review his time card for accuracy. Under the manual time card procedure used by the SFS at the time, Officer Hunter was also required to initial off on it prior to Officer Molitor's approval. He either failed to review his time card for accuracy or he falsely represented his time and attendance on the time card.

While it appears that Officer Molitor may have given Officer Hunter permission to leave, Officer Hunter was responsible for ensuring the accuracy and integrity of his time and attendance. He failed to do so in violation of FMR, Vol 8, Chapt 2, Paragraph 020102 C (effective September 2010) and AFI 36-815, paragraph 1.2.4. In addition, his failure to follow the time keeping requirements was in violation of AFI 36-703, paragraphs 5.4.1 and 5.4.3. Moreover, by failing to disclose that he was on leave, Officer Hunter engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203. The evidence supporting these violations meets the preponderance of evidence standard.

While Officer Hunter's time and attendance report contained a false statement, we did not find a violation of 18 U.S.C. §1001. By its terms, Section 1001 requires a knowing and intentional falsification. Moreover, the evidentiary burden to prove a criminal violation requires that the crime be shown beyond a reasonable doubt. The evidence with regard to Officer Hunter does not clearly show that he knowingly and intentionally falsified his time card or used a false time card. As such, the evidence adduced did not meet the criminal standard of beyond a reasonable doubt.

The whistleblower alleges that throughout calendar year 2011, Officer Hunter, on multiple occasions, was not present for duty while not in a leave status. More specifically, the whistleblower alleges Officer Hunter missed weekend shifts, and/or departed early from his shifts on numerous occasions throughout 2011.

According to [Civilian Police Officer #4], while working 12 hour shifts, Officer Hunter would be scheduled to relieve her at the end of her shift, or she would be scheduled to relieve him, and that, on many days, Officer Hunter was not there. [Civilian Police Officer #4]

estimated this occurred anywhere from 10-20 times during the time period of mid-2011 to the end of the year. She further noted that she drafted the blotter back every day and on the days at issue, Officer Hunter's name was listed, signifying he was on duty. In a MFR dated July 23, 2012, [Civilian Police Officer #4] described situations wherein Officer Hunter disappeared from his work area for extended periods of time, did not let others know that he was leaving his work area and that he spent time talking to contractors while neglecting his duties.

In his testimony, [436 SFS Assistant Operations Officer] described a situation in which Officer Hunter left before the end of his shift when he was supposed to be taking the posting van back. In addition, according to [436 SFS Assistant Operations Officer's] July 11, 2012 memorandum, Officer Hunter wanted [436 SFS Assistant Operations Officer] to use compensatory time, which according to the monthly report, Officer Hunter did not have. According to Officer Hunter, Officer Molitor was keeping track of his compensatory time and (inappropriately) allowed Officer Hunter to accumulate such compensatory time when he had to wait for his ride after his shift was over. In his testimony, [Civilian Police Officer #1] noted that there were times when Officers Day and Hunter would take the posting van back to the squadron, then leave before the end of the shift; [Civilian Police Officer #1] noted that he was "pretty sure" that they [Officers Hunter and Day] left early a few times. Further, Officers [Civilian Police Officer #4], [436 SFS Assistant Operations Officer] and [Civilian SFS Shift Supervisor #4] describe the relationship between Officer Molitor and Officer Hunter as "tight" and each testified that there was a perception of favoritism by Officer Molitor, the supervisor, toward Officer Hunter.

According to the IO, given the passage of time, fading memories, and the retention period of some documentation, there is very little hard evidence to suggest Officer Hunter had missed whole days of work as claimed by the whistleblower and [Civilian Police Officer #4]. [Civilian Police Officer #4] did not know exact dates, could only estimate a timeframe from approximately three years ago, and only estimated a number of days on which these incidents occurred, first saying 15-20 days, then revising her estimate to 10 -15 days and ultimately testifying that she did not know how many times Officer Hunter was not present for duty and not on leave. In fact, an examination of Officer Hunter's time records for the period in question show that there were occasions in which weekend absences could have been accounted for via authorized leave, scheduled variances or restriction to light duty. However, [436 SFS Assistant Operations Officer's] July 11, 2012 memorandum and the testimony of [Civilian SFS Shift Supervisor #4] do shed some light onto possible unreported time off from work. [Civilian SFS Shift Supervisor #4] states that Officer Molitor admitted to allowing his employees to take time off without marking them as leave. This is supported by Officer Hunter's comments to [436 SFS Assistant Operations Officer] with respect to Officer Molitor keeping track of his compensatory time. Given the close personal relationship between Officer Molitor and Officer Hunter, it would have been very easy for Officer Hunter to miss a shift or for that matter leave early mostly unnoticed since it would have been up to the discretion of Officer Molitor whether to make this time as leave. While this is a close call, the IO substantiated the claim, finding the preponderance of the evidence does support the allegation.

As such, Officer Hunter failed to ensure the accuracy and integrity of his time and attendance records in violation of FMR, Vol 8, Chapt 2, Paragraph 020102 C (effective September 2010) and AFI 36-815, paragraph 1.2.4. This violation includes his failure to ensure

that all entries for overtime and compensatory time were appropriately approved and his failure to actually account for any compensatory time awarded to him by Officer Molitor. In addition, his failure to follow the time keeping requirements was in violation of AFI 36-703, paragraphs 5.4.1, 5.4.2, and 5.4.3. Moreover, by failing to disclose that he was on leave or compensatory time, Officer Hunter engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.

Officer Day

The whistleblower alleged that on approximately 15 occasions, in January and February 2013, Officer Day left work approximately one hour early without recording his early departure on his time and attendance report, billing the government for time not worked.

Although completely denied by Officer Day and by his supervisor, [Civilian SFS Shift Supervisor #1], the early departures and missed work were witnessed by [Civilian Police Officer #4]. As [Civilian Police Officer #4] testified, "Officer Day was under [Civilian SFS Shift Supervisor #1]... and as soon as he [Officer Day] turned in his weapon, he was gone even though we had anywhere from one to two hours left on shift. ... I watched him [Officer Day] leave because as an officer you sit there and you watch people walk out the door and you're sitting there saying why am I an idiot staying here when I, you know?"

[Civilian SFS Shift Supervisor #4] also witnessed Officer Day's early departures. According to [Civilian SFS Shift Supervisor #4], "a couple of times I noticed directly Officer Day was supposed to work a certain amount of hours and he would be leaving early. I ended up calling him out on it one time or actually a couple times that .... He was not under my supervision at the time. However, as a supervisor, I do have a duty to recognize a discrepancy like that and take appropriate action. I gave him an opportunity to correct it and make sure that his time card with his supervisor reflected the appropriate time that I had seen him leave. ... His supervisor at that particular time was [Civilian SFS Shift Supervisor #1]. I then notified my supervisor, [436 SFS Assistant Operations Officer], [436 SFS Assistant Operations Officer], that there was a discrepancy and I had noticed Officer Day leaving early. ... That was probably, maybe a year, year and a half ago. I personally witnessed Officer Day leave early probably about four or five times but I've heard it was into the high dozens."

[Civilian SFS Shift Supervisor #4] provided a written statement to the IO regarding the issue and reaffirming his testimony. His testimony, that he spoke to [Civilian SFS Shift Supervisor #1] about Officer Day's leaving early, is corroborated by [436 SFS Assistant Operations Officer], in a written memorandum for the record. Specifically, [436 SFS Assistant Operations Officer] confirmed that in approximately December 2013, [Civilian SFS Shift Supervisor #4] contacted him regarding the incident, that he directed [Civilian SFS Shift Supervisor #4] to pass the information onto [Civilian SFS Shift Supervisor #1], and that he had a follow-up conversation with [Civilian SFS Shift Supervisor #1] during which he directed [Civilian SFS Shift Supervisor #1] to contact Civilian Personnel to coordinate a proposed action to document the incident.

The whistleblower alleged that the incidents occurred in January and February 2013. [Civilian SFS Shift Supervisor #4] testimony varies as to the timing of these incidents. In his

testimony on May 16, 2014, [Civilian SFS Shift Supervisor #4] testified that the incident occurred approximately a year to a year and a half prior to his interview (which would be sometime during the first half of 2013 and consistent with the whistleblower's allegations); in his written statement, dated June 20, 2014, he estimates the incident occurred approximately six months prior to the writing (which places it around December 2013). In his written statement, [436 SFS Assistant Operations Officer] estimates the incident occurred in approximately December 2013, consistent with [Civilian SFS Shift Supervisor #4's] written statement.

In the IO's review of Officer Day's time cards for calendar years 2013 and 2014, he found that his leave was generally taken in large blocks reflective of taking whole days off. There were no pay periods in 2013 which reflected annual or sick leave in one or two hour increments. Only two pay periods in 2014 reflected leave of lesser duration (*i.e.* one to two hours). On February 13 and 14, 2014, his time card showed that Officer Day took two hour blocks of leave each day; however, on each of those days, he was also given "administrative leave" in three-hour blocks, with documentation that he performed work for five hours each day. This is not consistent with leaving one to two hours early. Officer Day also took one hour off on February 18, 2014, charged to a time off award. The second pay period was in April 2014, where Officer Day took two hours of annual leave on April 7, 2014 (four days before OSC issued its Referral Letter to the Air Force). If the incidents where Officer Day left work one to two hours early occurred in early 2013, it was not being documented on his time card. If, based on the written statements of [436 SFS Assistant Operations Officer] and [Civilian SFS Shift Supervisor #4], Officer Day was leaving work one or two hours early in December 2013, it was not being documented on his time card.

The IO found that the preponderance of the evidence indicates that Officer Day did leave his duty station early on several occasions. While the evidence is not specific as to which dates, two separate witnesses testified that they observed Officer Day leave early. Although Officer Day and his supervisor, [Civilian SFS Shift Supervisor #1] do contradict these witnesses, there is evidence to doubt their credibility. There are three witnesses, including his supervisor, who testify that [Civilian SFS Shift Supervisor #1] was informed of Officer Day's early departures. Additionally, Officer Day's time and attendance records contradict both his and [Civilian SFS Shift Supervisor #1's] claim of always documenting any time away from work. Further, given the evidence presented related to Officer Hunter, Officer Day had an established pattern for leaving his duty station before the end of his shift. The IO thus substantiated this allegation.

As such, Officer Day failed to ensure the accuracy and integrity of his time and attendance records in violation of FMR, Vol 8, Chapt 2, paragraphs 020102 C (effective September 2010), 020102 A.7 and D (effective June 2013), and AFI 36-815, paragraph 1.2.4. In addition, his failure to follow the time keeping requirements was in violation of AFI 36-703, paragraphs 5.4.1, 5.4.2, and 5.4.3. Moreover, by failing to disclose that he was on leave or compensatory time, Officer Day engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.

While Officer Day's time and attendance reports contain a false statement, we did not find a violation of 18 U.S.C. §1001. By its terms, Section 1001 requires a knowing and intentional falsification. Moreover, the evidentiary burden to prove a criminal violation requires

that the crime be shown beyond a reasonable doubt. The evidence with regard to Officer Day does not clearly show that he knowingly and intentionally falsified his time card or used a false time card. As such, the evidence adduced did not meet the criminal standard of beyond a reasonable doubt.

[Civilian Police Officer #4]

The whistleblower alleged that "Officer Molitor granted [Civilian Police Officer #4] compensatory time off despite knowing that compensatory time is not available for civilian police officers of the 436th Security Forces Squadron."

A preponderance of the evidence establishes that Officer Molitor gave [Civilian Police Officer #4] compensatory time off which was not officially approved and which she had not earned. The evidence further establishes that [Civilian Police Officer #4] was led to believe, by Officer Molitor, that he had obtained the required approvals needed to give her compensatory time. In fact, the evidence shows that [Civilian Police Officer #4] told her supervisor, [Civilian SFS Shift Supervisor #3], when he was going over her time card with her, that she had been given the compensatory time off by Officer Molitor and that [Civilian SFS Shift Supervisor #3] immediately reported it to [436 SFS Assistant Operations Officer]. Ultimately, because the 436 AW's leadership determined that she was not at fault, the time off was authorized and [Civilian Police Officer #4] was not required to use annual or sick leave to account for the unauthorized day of compensatory time. Moreover, the second time Officer Molitor offered [Civilian Police Officer #4] compensatory time, [Civilian Police Officer #4] refused to accept the compensatory time and reported the offer to [436 SFS Assistant Operations Officer]. As such, although she technically used unauthorized compensatory time, the IO does not substantiate any wrongdoing against [Civilian Police Officer #4] with regard to having used unauthorized compensatory time on one occasion.

Officer Marsters

Officer Marsters was not available for interview during the investigation. According to the evidence, Officer Marsters worked as a police officer with the 436 SFS during the timeframe of this investigation until he resigned from the Air Force on March 18, 2014. Information regarding this allegation did not appear in OSC's Referral Letter; rather, the IO discovered evidence of these irregularities during the course of the investigation.

During his interview, [436 SFS Assistant Operations Officer] related a situation in which Officer Marsters had not concurred on his time card for at least two pay periods and on one of those pay periods, Officer Molitor had not certified it. In order to get Officer Marsters paid for that pay period, [436 SFS Assistant Operations Officer] had to certify the time without ascertaining the accuracy of the information on the time card, which he did not like to do. In doing so, he began to investigate Officer Marsters' time and attendance, initially going back three pay periods (October and November 2013). What he found was that Officer Marsters was claiming he worked on days he did not show up for work. [Military SFS Flight Chief #1], the Flight Chief on Officer Marster's shift, confirmed to [436 SFS Assistant Operations Officer] that Officer Marsters was absent for work on a number of days, and was so unreliable due to his

numerous absences that [Military SFS Flight Chief #1] took this into account in scheduling Officer Marsters as a backup rather than the primary officer.

Officer Molitor testified that he was unaware of Officer Marsters' absences because Officer Marsters worked certain days that Officer Molitor did not. [Military SFS Flight Chief #1] also made clear that Officer Marsters was leaving or not showing up on days that Officer Molitor was not working. Upon rechecking records, Officer Molitor discovered that Officer Marsters had been absent from work on 13 occasions, which were not properly reflected on his time cards. In addition, both [Civilian SFS Shift Supervisor #4] and [Civilian Police Officer #1] testified that they were aware of Officer Marsters absences. Officer Marsters admitted that he was not paying proper attention to his time and attendance in an email to [436 SFS Assistant Operations Officer] on December 4, 2013.

The IO's review of Officer Marsters' time cards revealed that on many days Officer Marsters was absent, he did not take leave. That review also indicated that the days Officer Marsters took off without leave corresponded to the days his supervisor, Officer Molitor, was not scheduled to work. The IO found that this correspondence evidenced intent to deceive management on the part of Officer Marsters.

The evidence establishes that on at least 13 occasions in 2013 Officer Marsters left his duty station early or was simply absent while not in a leave status. Officer Marsters failed to document this absence on his time card, billing the government for time not worked. The IO found that, although mistakes to time cards are prone to happen occasionally, it is highly suspect that an employee would simply forget 13 whole days of leave. According to the *ATAAPS* records, once Officer Marsters' absences were discovered, his ATAAPS time cards were corrected to reflect 13 days of annual and sick leave.

As such, Officer Marsters failed to ensure the accuracy and integrity of his time and attendance records in violation of FMR, Vol 8, Chapt 2, paragraphs 020102 A.7 and D (effective June 2013), and AFI 36-815, paragraph 1.2.4. In addition, his failure to follow the time keeping requirements was in violation of AFI 36-703, paragraphs 5.4.1, 5.4.2, and 5.4.3. Moreover, by failing to disclose that he was absent from duty and should have been on leave, as well as his attempts to deceive management with regard to his absences without leave, Officer Marsters engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.

While Officer Marsters' time and attendance reports contained a false statement, we did not find a violation of 18 U.S.C. §1001. By its terms, Section 1001 requires a knowing and intentional falsification. Moreover, the evidentiary burden to prove a criminal violation requires that the crime be shown beyond a reasonable doubt. The IO found that it was apparent that Officer Marsters intentionally failed to document his absences on his time card. The result of this failure was to submit a falsified time card. While the evidence reveals such knowing intent by a preponderance of the evidence, it is not clear that Officer Marsters' *mens rea* meets the higher criminal standard of beyond a reasonable doubt.

Supervisory Officer Molitor

The Whistleblower made the following allegations against Officer Molitor: 1) that on multiple occasions, Office Molitor told [Civilian Police Officer #4] that he was granting her compensatory time off, despite knowing compensatory time is not available for civilian police offices in the 436 SFS; 2) that Officer Molitor knowingly approved and encouraged certain of his employees to regularly falsify their time and attendance records, claiming more hours than they worked; and 3) that Officer Molitor took no action to correct the time and attendance fraud of Officers Hunter and Day when he supervised them, despite knowing of its occurrence.

With regard to the allegation regarding compensatory time, the evidence shows that overtime work for which compensatory time off may be granted in lieu of payment, must be properly requested and authorized prior to actually performing the overtime work, with some exception for emergency. Under AFI 36-802, an Air Force Form 428 must be used to request overtime/compensatory work. Moreover, the evidence indicated that the commander, not Officer Molitor, had the requisite authority to approve overtime work.

In his interview with the IO, Officer Molitor admits that he allowed compensatory time off "when he was first hired because [he] was under the impression if they needed to leave a little early" he "had a little leeway." He testified, however, that he was corrected by his supervisor and told that was not the case and since 2010 he has never done that again. "I've made sure if I'm on leave or they're on leave it's documented."

Officer Molitor's statement lacks credibility, however, as he contradicts his own testimony in the very same interview. He testified that if an employee is required to "work a half an hour over he gets a half hour back because they don't approve the overtime." He stated that this practice was okay with his supervisor as long as the employee puts in his ten hours. According to Officer Molitor, an employee can take time off the next day if he worked over his ten hours the day before. "Basically if [the employee] stays … over last night half an hour … I will say come in half an hour late or leave half an hour early because you're allowed to have ten hours." Officer Molitor stated that this is "not an official compensatory or overtime, it's just that they went over so I make sure that on the other end that they don't go over … so it's fair that they're not losing any time." According to Officer Molitor, he does not follow any official approval process when he does this because he says his supervisor said it was ok. His supervisor, [436 SFS Assistant Operations Officer] contradicts this assertion, stating that this would be in violation of the CBA.

The above statements indicate either that Officer Molitor fails to understand what constitutes overtime and compensatory time or that he knows but chooses to disregard the rules and required procedures. As he is a supervisor, it is hard to believe that Officer Molitor does not know about overtime and compensatory time or that he is unaware of the rules relating to earning overtime and taking compensatory time off. Indeed, as notated in Officer Molitor's personnel file in June 2012, he was counseled by [436 SFS Assistant Operations Officer] with regard to requesting and approving overtime. As such, it is clear that Officer Molitor understood the rules but chose to ignore them.

In addition to Officer Molitor's admission that he has given unauthorized compensatory time off to his employees, there is other evidence in the record that supports this allegation. As previously discussed, [Civilian Police Officer #4] testified that Officer Molitor offered her compensatory time off, which she took, after he insisted it was authorized and approved. She later learned from her supervisor [Civilian SFS Shift Supervisor #3] and his supervisor, [436 SFS Assistant Operations Officer], that the compensatory time was unauthorized and that Officer Molitor did not have the authority to approve the accrual of compensatory time. [Civilian Police Officer #4] further testified that Officer Molitor again offered her compensatory time off, which she refused, as it was not properly authorized. [436 SFS Assistant Operations Officer] corroborated her testimony.

Evidence in the record supports the fact that Officer Hunter was also offered compensatory time off from Officer Molitor. According to [436 SFS Assistant Operations Officer's] July 11, 2012 memorandum, Office Hunter asked [436 SFS Assistant Operations Officer] to use his compensatory time for his absence from work on July 7, 2012 and told [436 SFS Assistant Operations Officer] that Officer Molitor was "keeping track" of his compensatory time. [436 SFS Assistant Operations Officer] wrote in his memorandum that when he checked the monthly overtime report, it showed that Officer Hunter had no officially approved compensatory time.

The evidence shows that Officer Molitor offered his employees compensatory time off, that he failed to properly request or obtain appropriate approval for such compensatory time and that he did not document the overtime worked or the compensatory time taken off. This was in violation of FMR Vol 8, Chapt 2, paragraph 020102 C (effective September 2010) which required Officer Molitor, *inter alia*, to timely and accurately record all exceptions to his employees normal tour of duty and ensure that all entries for overtime and compensatory time earned have been approved, and totals are correct before certification. Further, Officer Molitor's actions were in violation of paragraph 3.1.2 of AFI 36-802, which required Officer Molitor to obtain approval from his authorizing official before ordering overtime or where there was an emergency, documenting the overtime no later than the following workday. Officer Molitor also failed to request overtime using the prescribed Air Force Form 428 in violation of AFI 36-802.

The IO also found that the record supported substantiation of the allegation that Officer Molitor did knowingly falsify time and attendance records for his employees. In a handwritten annotation in Officer Molitor's personnel folder, dated February 2012, [436 SFS Assistant Operations Officer] stated that Officer Molitor turned in time sheets for his employees that failed to annotate several hours of sick and annual leave taken. According to [436 SFS Assistant Operations Officer], when he asked Officer Molitor why the time cards did not show the sick and annual leave, Officer Molitor stated it was a "glitch." [436 SFS Assistant Operations Officer] counseled him that "when you sign those records, you are obligat[ing] government funds certifying the information is true and correct." [436 SFS Assistant Operations Officer] stated he expected Officer Molitor to pay more attention to detail to avoid this from happening again and that future violations such as this may result in discipline.

The very next month, in March 2012, [436 SFS Assistant Operations Officer] again annotated Officer Molitor's personnel folder, indicating that he was once again counseling

Officer Molitor on his time and attendance issues. In this counseling session, "due to recent events that have come to my attention involving the inappropriate approval of sick and annual leave for your employees," Officer [436 SFS Assistant Operations Officer] relieved Officer Molitor of the authority to approve leave for his personnel.

On June 12, 2012, Officer [436 SFS Assistant Operations Officer] again notated Officer Molitor's personnel file, noting that Officer Molitor attempted to give Officer Hunter four hours of overtime that was neither requested, nor approved in advance. Officer [436 SFS Assistant Operations Officer] stated that this was "not the first time Ofc Molitor has attempted to obtain overtime funds without prior approval, and I have explained the procedure for requesting overtime to him, more than once."

Another incident occurred in early July 2012, just a month later. On Saturday, July 7, 2012, an off duty police officer [Civilian Police Officer #1] had gone by the commercial vehicle gate on his way back from a motorcycle ride. He noticed that only the shift supervisor, Officer Molitor, was manning the gate. Believing this to be unusual, he reported it to [436 SFS Assistant Operations Officer]. [436 SFS Assistant Operations Officer] investigated and found that during that particular time at the gate, Officer Day had left his shift to visit his son in the hospital, Officer Hunter had gone home sick and [Civilian Police Officer #8] had not shown up at all for his scheduled shift. When Officer Molitor turned in his time cards for that pay period, none of these officers' time cards showed any sick or annual leave. Officer Molitor explained in a memorandum, that this was an "honest mistake."

While it is within the realm of possibility that this was a simple mistake, several factors undercut Officer Molitor's assertion. The event in question happened three days prior to when Officer Molitor turned in the time cards. All three of his employees who were scheduled to work on that day did not show up or left early, leaving Officer Molitor alone at the gate. Such an occasion was certainly unusual and it is highly unlikely that Officer Molitor did not remember the incident three days later. Moreover, in light of Officer Molitor's expressed concern for Officer Day and his family, it is highly suspect that Officer Molitor would forget to mark the time Officer Day went to the hospital as sick leave. Further, [436 SFS Assistant Operations Officer] noted with suspicion the fact that all three of Officer Molitor's employees at issue here, went unprompted, to [436 SFS Assistant Operations Officer] to make a correction to their time cards. Finally, considering that Officer Molitor had been counseled not once but three times by [436 SFS Assistant Operations Officer] within the last five months on this very issue, the idea that he had simply made an "honest mistake" is highly doubtful.

In addition, as stated above, Officer Molitor offered unauthorized compensatory time off to his employees, which was not reflected on their time cards. As such, when Officer Molitor approved the time cards for these employees, he knew that their time cards did not accurately reflect the unauthorized compensatory time off that he gave them.

The IO, considering the above evidence and noting the evidence in the record regarding Officer Molitor's reputation for defiant behavior, found that Officer Molitor did knowingly falsify time and attendance records for his employees. Based on the above and the fact that Officer Molitor was required to approve the time cards for his employees, Officer Molitor

violated AFI 36-815, paragraph 1.2.4, which required Officer Molitor to ensure that all absences from duty are appropriately charged according to applicable laws and regulations. He also violated FMR, Vol 8, Chapt 2, paragraphs 020102 B and 020404 which required Officer Molitor to ensure that the actual work schedules reported were true, correct and accurate and made him responsible for the accuracy of the time and attendance data submitted by his employees.

Moreover, for certifying to inaccurate, false statements on his employees' timecards as well as for his lack of candor during his interview, Officer Molitor engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.

With regard to Officer Marsters, there is evidence that supports a finding that Officer Molitor was not aware that Officer Marsters was skipping work and not accounting for it on his time card. However, as a supervisor, Officer Molitor was required, under the FMR, Vol 8, Chapt 2, paragraph 020404, to take reasonable measures, such as occasional telephone calls during the times his employees were scheduled to work to determine the accuracy of time and attendance records submitted by individuals who maintain their own time and attendance. In addition, under paragraph 020402 (effective June 2013), Officer Molitor was required to ensure the accuracy of the time and attendance reports and have a reasonable basis for relying on systems of internal control to ensure accuracy and legal compliance when, as in the case of Officer Marsters, he did not have positive, personal knowledge of the presence and absence of, or other information concerning his T&A. Because Officer Molitor failed to check the data on Officer Marsters' time cards, either through occasional telephone calls or by checking with [Military SFS Flight Chief #1], Officer Molitor violated both Paragraph 020404 and 020403 of the FMR, Vol 8, Chapt 2.

Abuse of Authority

The evidence establishes that Officer Molitor abused his authority by failing to properly account for the time and attendance records for his employees. The MSPB defines an "abuse of authority" as requiring an "arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." The definition of abuse of authority does not contain a *de minimus* standard or threshold.

The evidence shows that Officer Molitor provided personal gain to select employees by allowing them to take undocumented leave and thereafter certifying their time cards as correct and accurate. This occurred both when Officer Molitor allowed employees such as Officer Day to leave early without taking leave and by giving certain employees (such as Officer Hunter and [Civilian Police Officer #4]) unauthorized compensatory time off.

In doing so, Officer Molitor, a federal employee, made an arbitrary exercise of power that resulted in personal gain for more than one of his subordinates, perhaps in the name of trying to take care of his people. As the abuse of authority definition does not contain a *de minimus* threshold, an abuse of authority is substantiated against Officer Molitor by a preponderance of the evidence.

Gross Mismanagement

According to MSPB, "gross mismanagement does not include management decisions which are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing. It means a management action or inaction which creates a substantial risk of significant adverse impact upon the agency's ability to accomplish the mission."

The 436 SFS is responsible for the safety and security of Dover AFB's C-5 and C-17 fleet and for conducting law enforcement activities to assure public safety of base residents and facilities. The investigation revealed only one possible lapse. In her testimony, [Civilian Police Officer #4] alleges that Officer Hunter's frequent unauthorized breaks directly led to a commercial truck getting past the commercial vehicle inspection area without being searched. While there was no corroborating evidence to show that this actually occurred, even if it did, it would have been the result of simple negligence rather than gross mismanagement.

The IO found that the evidence did not support a finding of gross mismanagement. Although there was the potential for lapses in security or safety none actually occurred. Even with the missing personnel, all duty stations were manned and functional (albeit sometimes at minimum levels) and had very little impact on the organization's mission.

ACTIONS TAKEN OR PLANNED

Administrative Actions

The 436 AW at Dover Air Force Base has taken or plans to take several actions in response to the investigation into time and attendance misconduct in the 436 SFS. On September 22, 2014, the Wing Commander (436 AW/CC) issued a policy memorandum for civilian employees and their supervisors and managers. The policy memorandum emphasized both accountability and the importance of accurate and timely accounting of time and attendance in ATAAPS. It also set forth the responsibilities of both employees and supervisors with regard to time and attendance and ATAAPS.

In conjunction with the Wing Commander's memorandum, the 436 SFS/CC has scheduled a training day during which he will disseminate the Wing Commander's policy memorandum to Security Forces personnel and reinforce the Wing Commander's message by addressing the Security Forces personnel to impart his leadership emphasis. The 436 SFS/CC will require training on ATAAPS, AFI 36-703, *Civilian Conduct and Responsibility*, and AFI 36-704, *Discipline and Adverse Actions*, for all civilian personnel and those who supervise civilian personnel. The training related to the disciplinary action process will address conduct for which employees and supervisors may be held accountable, factors that affect the timeliness of civilian personnel actions, and the disciplinary procedural process, including specific roles in the process (*i.e.* proposing officials, legal and CPF personnel, and deciding officials). Additionally, the 436 SFS/CC has mandated all supervisors attend the Civilian Personnel Management Refresher Course and the Military Supervisors Course and receive training on the civilian disciplinary process and procedures. The training, which will combine sessions conducted by members of

the 436 Staff Judge Advocate's office, the 436 CPF and the 436 Comptroller Squadron, and refresher training through Air University, will be accomplished no later than December 31, 2014.

Upon taking command in June 2013, the 436 SFS/CC implemented a number of changes affecting time and attendance. These changes included changing the approval authority for leave and other absences. Approval authority is now with the Flight Chief and can no longer be exercised by supervisors within the flight. In addition, time cards are also certified by the Flight Chief, instead of supervisors. As a result of these changes, each flight has a single individual who is responsible for approving absences and ensuring submitted timecards reflect the approved absences.

In response to this investigation, the 436 SFS/CC will continue to work on integrating the civilian and military forces within the SFS, building upon earlier efforts to address time and attendance issues. In an effort to more fully integrate civilian and military police forces at Dover AFB, to align military and civilian duty hours, and to create greater protections against future time and attendance abuse, the 436 SFS will continue to negotiate with the union to enact a change in working conditions for flight members, civilian and military, to a single duty schedule of four eight-hour days followed by two days off. This proposed schedule change will address a significant morale issue caused by different work schedules and simultaneously improve time and attendance accountability by increasing the number of days each week that supervisors are physically present and on duty with their subordinates.

Disciplinary Action

Based upon the evidence adduced in the underlying investigation, the IO substantiated allegations against Officers Hunter, Marsters, Day and Molitor. Under section 1213(g)(2), the Air Force must inform the Special Counsel of what action has been or is being taken, based on the investigation. In prior disclosure cases where the Air Force has substantiated allegations in its investigation, the Air Force has considered and taken disciplinary action against those subjects found to have violated a law, rule or regulation, committed an abuse of discretion or gross mismanagement. However, here the Air Force is constrained from doing so by an ongoing OSC reprisal investigation.

During the pendency of OSC's reprisal investigation, the Air Force may not take certain disciplinary action without permission from the Special Counsel. Specifically, Section 1214(f) states, "[d]uring any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel." 5 U.S.C. § 1214(f).

According to the evidence, [redacted] filed a complaint with OSC on or before September 8, 2012. The Air Force is aware through communications with OSC that sometime thereafter, in 2013, OSC opened a reprisal investigation (OSC File No. [redacted]), pursuant to 5 U.S.C. § 1214 and 5 U.S.C. § 2302(b)(8), based upon whistleblower retaliation allegations set forth in [redacted] complaint. OSC has not shared [redacted] complaint with the Air Force. However, in an attempt to settle the OSC reprisal complaint, OSC did disclose to the Air Force that [redacted] [details of complaint omitted]. In light of OSC's April 11,

2014 referral letter [redacted], the Air Force declined settlement of [redacted] reprisal complaint at that time. OSC's investigation into [redacted] whistleblower retaliation claim is still pending. Moreover, while OSC has not shared [redacted] reprisal complaint or information obtained in its pending reprisal investigation, it is our understanding that there is substantial overlap (with witnesses and underlying evidence) between OSC's reprisal investigation and the Air Force disclosure investigation herein.

At this juncture, no disciplinary or other action is planned with regard to Officers Hunter, and Marsters, as they are no longer Air Force employees. With regard to Officer Molitor and Officer Day, however, during the pendency of OSC's reprisal investigation, the Air Force is precluded, pursuant to 5 U.S.C. § 1214 (f), from taking action against either employee absent the approval of the Special Counsel. As a result of the underlying investigation, and upon either the closure of the OSC reprisal investigation or receipt of the requisite permission from the Special Counsel under Section 1214(f), the 436 SFS/CC will assess the appropriateness of disciplinary action against Officers Day and Molitor.

CONCLUSION

Upon review of the evidence and testimony adduced during the investigation, the following violations of law, rule, or regulation are based upon a preponderance of the evidence:

- Officer Hunter failed to ensure the accuracy and integrity of his time and attendance in violation of FMR, Vol 8, Chapt 2, Paragraph 020102 C (effective September 2010) and AFI 36-815, paragraph 1.2.4. This violation includes his failure to ensure that all entries for overtime and compensatory time were appropriately approved and his failure to actually account for any compensatory time awarded to him by Officer Molitor.
- Officer Hunter failed to following time keeping requirements in violation of AFI 36-703, paragraphs 5.4.1, 5.4.2, and 5.4.3.
- Officer Hunter, by failing to disclose that he was on leave, engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.
- Officer Day failed to ensure the accuracy and integrity of his time and attendance records in violation of FMR, Vol 8, Chapt 2, paragraphs 020102 C (effective September 2010), 020102 A.7 and D (effective June 2013), and AFI 36-815, paragraph 1.2.4.
- Officer Day failed to follow the time keeping requirements in violation of AFI 36-703, paragraphs 5.4.1, 5.4.2, and 5.4.3.
- Officer Day, by failing to disclose that he was on leave or compensatory time, engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.
- Officer Marsters failed to ensure the accuracy and integrity of his time and attendance records in violation of FMR, Vol 8, Chapt 2, paragraphs 020102 A.7 and D (effective June 2013), and AFI 36-815, paragraph 1.2.4.
- Officer Marsters failed to follow the time keeping requirements in violation of AFI 36-703, paragraphs 5.4.1, 5.4.2, and 5.4.3.

- Officer Marsters, by failing to disclose that he was absent from duty and should have been on leave, and by his attempts to deceive management with regard to his absences without leave, engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.
- Officer Molitor, by failing to properly request or obtain appropriate approval for compensatory time off given to select employees and not documenting the overtime worked or the compensatory time taken off violated FMR Vol 8, Chapt 2, paragraph 020102 C (effective September 2010) which required Officer Molitor to timely and accurately record all exceptions to his employees normal tour of duty and ensure that all entries for overtime and compensatory time earned have been approved, and totals are correct before certification.
- Officer Molitor violated FMR, Vol 8, Chapt 2, paragraphs 020102 B and 020404 (under both the 2010 and 2013 versions) which required Officer Molitor to ensure that the actual work schedules reported were true, correct and accurate and made him responsible for the accuracy of the time and attendance data submitted by his employees.
- Officer Molitor, by his failure to check the data on Officer Marsters time cards, either through occasional telephone calls or by checking with the Flight Chief, [Military SFS Flight Chief #1], violated both Paragraph 020402 (effective 2013) and 020404 (under both the 2010 and 2013 versions) of the FMR, Vol 8, Chapt 2.
- Officer Molitor violated paragraph 3.1.2 of AFI 36-802, which required Officer Molitor to obtain approval from his authorizing official before ordering overtime or where there was an emergency, documenting the overtime no later than the following workday.
- Officer Molitor failed to request overtime using the prescribed Air Force Form 428 in violation of AFI 36-802.
- Officer Molitor knowingly falsified time and attendance records for his employees in violation of AFI 36-815, paragraph 1.2.4, which required Officer Molitor to ensure that all absences from duty are appropriately charged according to applicable laws and regulations.
- Officer Molitor, by certifying to inaccurate, false statements on his employees' timecards and for a lack of candor during his interview, engaged in dishonest conduct in violation AFI 36-703, paragraph 4 as well as OPM regulation, 5 C.F.R. § 735.203.

Based upon the evidence and testimony in the record, the IO found, by a preponderance of the evidence, that Officer Molitor abused his authority when he provided personal gain to select employees by allowing them to take undocumented leave and thereafter certifying their time cards as correct and accurate.

This Report is submitted in satisfaction of my responsibilities under 5 U.S.C. Sections 1213(g)(2).

APPENDIX I

REPORT OF INVESTIGATION
OSC File No. DI-14-1099

Witnesses Interviewed
(Alphabetical Order with titles at the time)

[Civilian Police Officer #1]
[436 SFS Assistant Operations Officer]
[Civilian SFS Shift Supervisor #1] Officer Aaron Day
[Civilian Police Officer #4]
[Military SFS Flight Chief #1]
[Military Police Officer #5]
Officer John Molitor
[Civilian SFS Shift Supervisor #4]
[Civilian Police Officer #8]
Whistleblower (Anonymous)

ABBREVIATIONS

AF – Air Force
AFI – Air Force Instruction
AFGE – American Federation of Government Employees
Amn – Airman
ATAAPS – Automated Time Attendance and Production System
AW – Airlift Wing
AW/CC – Air Wing Commander
AWOL – Away Without Leave
Bldg – Building
BUES – Bargaining Unit Employees
Capt – Captain
CBA – Collective Bargaining Agreement
CBT – Computer-Based Training
CFR – Code of Federal Register
Chapt – Chapter
Comp Time – Compensatory Time
CPF – Civilian Personnel Flight
CSRA – Civil Service Reform Act
CVI – Commercial Vehicle Inspection
DAF – Department of the Air Force
DAFB – Dover Air Force Base
DFAS – Defense Finance and Accounting Service
DMA – Do Not Arm

DoD – Department of Defense
DODI – Department of Defense Instruction
DUI – Driving Under the Influence
EEO – Equal Employment Opportunity
EPR – Enlisted Performance Report
FC – Flight Chief
FLSA – Fair Labor Standards Act
FMR – Financial Management Regulation
GS – General Service
IDs – Identifications
IO – Investigating Officer
JAG – Judge Advocate General
LWOP – Leave Without Pay
Mids – Mid Shift
MFR – Memorandum for the Record
MRI – Magnetic Resonance Imaging
MSgt – Master Sergeant
MSPB – Merit Systems Protection Board
NA – Not Applicable
NCOIC – Non-Commissioned Officer In Charge
OFC(s) (or Ofc) – Officer(s)
OPM – Office of Personnel Management
OSC – Office of Special Counsel
QC – Quality Control
Regs – Regulations
R&R – Rest and Relaxation
T & A – Time and Attendance
TDY – Temporary Duty
TSgt – Technical (or Tech) Sergeant
SAF/IG – Office of the Air Force Inspector General
SAF/IGQ – Office of the Air Force Inspector General's Directorate of Complaints Resolution
SecAF – Secretary of the Air Force
SF – Security Forces
SFS – Security Forces Squadron
SFS CC – Security Forces Squadron Commander
Sgt – Sergeant
SrA – Senior Airman
SSgt – Staff Sergeant
Stan/Evaluation – Standardization/Evaluation
UCMJ – Uniform Code of Military Justice
USAF – United States Air Force
U.S.C. – United States Code
Vol – Volume
WPA – Whistleblower Protection Act