

Office of the Naval Inspector General

Investigation Report

21 July 2016

Subj: NAVY CASE 201600681

Preliminary Statement

1. On 10 March 2016, Command Navy Region Mid Atlantic Inspector General (CNRMA IG) received a complaint from a confidential complainant and assigned it Naval Inspector General Hotline Tracking System (NIGHTS) case #201600681.
2. On 22 March 2016, CNRMA IG requested approval from Commander, Navy Installations Command (CNIC) IG to conducting a preliminary inquiry (PI) into case 201600681. CNIC IG approached NAVINSGEN for approval to conduct a PI in this case.
3. On 24 March 2016, NAVINSGEN approved CNIC IG's request to conduct a PI into case 201600681.
4. On 24 March 2016, CNIC IG tasked CNRMA IG with conducting a PI into the complaint in case 201600681.

The two complainants, one confidential and one known, alleged that (b) (6), (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI, and (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI, engaged in professional misconduct. The complainants alleged (b) (6) violated time and attendance policies concerning official travel by taking her regular day off as scheduled during a period when she was in a travel status, but she did not permit her staff to do the same, and she accrued travel compensatory time for herself in a different manner from which she required of her staff. The complainants further alleged (b) (6) accrued leave in large amounts (i.e. 400-500 hours a year), and they believed there was something improper about that. The complainants further alleged that (b) (6) afforded one of her subordinate employee's preferential treatment by allowing her to perform work for her part-time employers during her official government duty hours and permitting her to work outside the office's core hours of 7:30 am to 4:00 pm when there was no valid reason for this arrangement. The complainants alleged that (b) (6), the second subject, performed work for her non-government employers during her official duty hours.

5. A preliminary inquiry determined that a full investigation was warranted.

Summary of the Outcome of the Inquiry
Findings of Fact

Testimony of the Confidential Complainant

6. The confidential complainant (C1), who was interviewed by telephone on 18 March 2016, described the work environment in the office as “tense” and attributed this to her impression that one employee in the office appeared to watch what the other employees did all day. C1 alleged (b) (6) violated DoD 7000.14R pertaining to official, travel compensatory time by calculating her travel compensatory time from the moment she left her residence until she arrived at her travel duty station. C1 alleged this occurred as recently as a February 2016 trip (b) (6) took to Millington, Tennessee. C1 alleged that, in contrast to this, (b) (6) permitted her subordinate employees to only count their time in flight toward their travel compensatory time. C1 stated (b) (6) worked 8-hour days when she was required to travel for official business, but she also permitted herself to also take her regular day off (RDO) during that same pay period; C1 contended that this was against the regulations, but stated (b) (6) has done this for a long time. C1 further stated that, in contrast, (b) (6) did not permit her subordinate employees who traveled for official business to take their RDOs during the same pay period as their travel. C1 referenced a recent travel occasion, on or about 4 March 2016, when (b) (6) took her RDO despite being on an 8-hour work schedule and traveling for official business during the same pay period. C1 stated she had several witnesses in the office that they could corroborate that in the past (b) (6) verbally instructed her subordinate employees they could not take their RDOs during a pay period in which they traveled for official business. According to C1, the other complainant in this case, (b) (6), might have told the (b) (6) (b) (6), about this last year. C1 alleged (b) (6) appeared to accrue a lot of leave time, approximately 400 to 500 hours of leave a year, but it was not clear how she accrued that time. C1 provided notes on (b) (6) leave accrual from 2013 to present that another office employee tracked.

7. C1 stated the other complainant, (b) (6) (C2), (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, spoke with (b) (6) at either the end of 2015 or the beginning of 2016. According to C1, C2 told (b) (6) about the problems described in this complaint concerning (b) (6). C1 stated that she understood (b) (6) told C2 to talk to (b) (6) about some of these matters directly.

8. As already mentioned, C2 was another civilian employee in the same office who did not request confidentiality and was interviewed by telephone on 21 March 2016. C2 stated the office staff were all on a compressed work schedule (9-hour days) rather than a flexible one. According to C2, when staff traveled for official business, the office required them to stop working 9-hour days and revert to an 8-hour day schedule for the pay period. Because of this change, staff was not permitted to take their regularly scheduled day off (RDO) during the same pay period in which they also traveled. C2 alleged (b) (6) would not allow staff to take their RDOs in these circumstances, but that she (b) (6) took her RDO as scheduled even during pay periods when she traveled. C2 referred the investigator to two other employees

with information on this topic: (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, and (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI. According to C2, (b) (6) was violating the CNRMA Instruction by taking her RDO during a pay period when she also went on official travel. C2 stated that a former employee, (b) (6), recently retired, (b) (6) worked as an educator, and (b) (6) afforded him special treatment. For example, he was assigned as an educator, but (b) (6) did not require him to teach any classes.

9. C2 described the work environment as consisting of employees who were “in the club” and those employees who were “not in the club.” C2 stated that some employees, such as the clinicians, found that their time was being micromanaged, whereas others, such as (b) (6), did not have that same experience. In general, C2 alleged that this contributed to a feeling of inequitable treatment in the office.

10. C2 did not know about (b) (6) compensatory travel time, but she stated another employee named (b) (6) kept a record of (b) (6) time off, which she (b) (6) began to document a few years ago. C2 sent the investigator a copy of these handwritten notes. C2 believed that the (b) (6), or the (b) (6), kept (b) (6) time.

11. C2 stated she told (b) (6) directly during the last three years that she saw (b) (6) stuffing envelopes for her church job on government time. C2 said (b) (6) did this most recently as of 2015. C2 stated that in September or October 2015, she decided to go through the chain-of-command and contact the XO about her concerns regarding the office via email. C2 did not have the exact date available, but said the emails would provide those details. C2 stated she told the XO about the following issues: (1) (b) (6) excessive use of leave; (2) (b) (6) functioning as a timekeeper; (3) (b) (6) did not require (b) (6) or (b) (6) (now retired) to perform their jobs; and (b) (6) was permitted to perform work for her part-time jobs on government time. Following the telephone interview, C2 provided the investigator with a number of emails she sent to the XO during the time she referenced. C2 said the XO told her “she would look into the specific concerns she (C2) raised about (b) (6) certifying timecards, emails being forwarded to (b) (6) under certain circumstances, and (b) (6) leave accrual.” C2 stated the XO instructed her (C2) to call her (XO) the next time (b) (6) was working from home, but sending out emails that made it appear as if she were in the office. C2 stated she felt the XO was responsive to her at the time she met with her.

12. C2 provided copies of email messages, dated between 11 February and 31 March 2016, which were relevant to the allegations. The investigator reviewed these emails, noted the dates for the timeline of events, and saw that C2 was offered a chance for third-party mediation with (b) (6), which C2 declined on 31 March 2016. C2 stated she declined the mediation opportunity because she did not believe it would truly address and/or repair the situation.

13. A preliminary inquiry determined that a full investigation was warranted.

Background

14. (b) (6) immediate supervisor was (b) (6), NAVSTA Newport, RI, while (b) (6) immediate supervisor was (b) (6).

Throughout the investigation, the subjects and many of the witnesses provided background information they felt was relevant to this case. Prior to (b) (6) appointment as the (b) (6), Navy Fleet and Family Support Center, a previous Center director was investigated by the Office of Inspector General (IG) for allegations of professional misconduct in 2003. A review of the 2003 report confirmed that both subjects and several witnesses in the 2016 case also participated in the 2003 investigation. In interviews for the current investigation, the investigator noted many commented on how hard feelings resulting from the 2003 case continued to impact the office environment 13 to 14 years later. At her subject interview, (b) (6) submitted a written chronology of events that she believed was relevant to the allegations under investigation.

Tentative Conclusion Letter Information (b) (6)

15. By letter dated 8 September 2016, we provided (b) (6) the opportunity to comment on the results of our investigation. In her written response, dated 12 September 2016, (b) (6) offered no substantial information that overcame the preponderance of testimony or evidence.

16. (b) (6) wrote that although she did not recall “stuffing envelopes” when initially interviewed by the investigator, she subsequently, the next day, provided the investigator information indicating that on one occasion she had received permission from her supervisor, (b) (6), to “stuff invitations for my son’s Ordination.” (b) (6) provided (b) (6) additional comments regarding the working environment within the Fleet and Family Service Center which was not relevant to this investigation.

Tentative Conclusion Letter Information (b) (6)

17. By letter dated 9 September 2016, we provided (b) (6) the opportunity to comment on the results of our investigation. In her written response, dated 20 September 2016, (b) (6) disagreed with our conclusion of allegation #1 that she incorrectly credited travel compensatory time from 18 November 2014 to 21 April 2016.

(b) (6) wrote that, when interviewed, she acknowledged stating that travel compensatory time would start to accrue at the time the traveler left their residence for the airport; however, she did not compensate herself for the two trips in question. (b) (6)

provided travel itineraries for her trips to Millington, TN from 7-12 February 2016 and Souda Bay, Greece from 14-21 April 2016.

For Allegation 2-4, (b) (6) offered no substantial information that overcame the preponderance of testimony or evidence.

18. Based on the information presented by (b) (6), we conducted additional fieldwork by analyzing the (b) (6) travel itineraries and comparing them to her SLDCADA timekeeping records. Upon completion of our analysis we determined that, by preponderance of the evidence, Allegation #1 was Not Substantiated. Therefore, we modified our conclusion of Allegation #1 from Substantiated to Not Substantiated.

Allegation #1: That (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI, incorrectly credited travel compensatory time for herself, from 18 November 2014 to 21 April 2016, in violation of DoD 7000.14-R, Vol. 8, Chapter 5, Paragraph 051006.

Conclusion: The allegation is NOT SUBSTANTIATED.

Findings of Fact for Allegation #1

19. DoD 7000.14-R, Vol. 8, Chapter 5, Paragraph 051006, states,

An employee may earn compensatory time off for travel for time spent in travel status away from the employee's official duty station. Time in travel status includes the usual waiting time that precedes or interrupts travel, such as waiting at an airport or train station for departure. Time spent traveling outside of regular work hours between home and to or from a transportation terminal that is within the official duty station as part of travel away from the duty station is equivalent to commuting time and is not creditable.

Testimony of the Complainants

20. As mentioned earlier, C1 alleged (b) (6) violated DoD 7000.14R pertaining to travel compensatory time by calculating her travel compensatory time from the moment she left her residence until she arrived at her travel duty station. C1 alleged this occurred as recently as a February 2016 trip (b) (6) took to Millington, Tennessee. C1 alleged that, in contrast to this, (b) (6) permitted her subordinate employees to only count their time in flight toward their travel compensatory time. C2 did not know about (b) (6) compensatory travel time, and in a follow-up email dated 26 May 2016, C2 did not recall mentioning (b) (6) travel compensatory time to (b) (6) when the two met in the fall of 2015.

**Testimony of (b) (6) Navy Fleet
and Family Support Center, NAVSTA Newport, RI**

21. (b) (6) was interviewed on 27 April 2016. (b) (6) stated that during the last year she heard one of the two complainants and (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, complain that (b) (6) would not permit them to count certain things toward their travel compensatory time; but, (b) (6) did not know “the full story” and could not be specific because of that. According to (b) (6), the two employees did not understand how (b) (6) managed to receive more travel compensatory time than they did, or why she was instructing them that they could count some things but not others when accruing that time.

**Testimony of (b) (6), Navy Fleet and Family Support
Center, NAVSTA Newport, RI**

22. (b) (6) was interviewed on 28 April 2016. She testified she did not think she knew about the way in which (b) (6) credited her travel compensatory time for herself for her official travel. (b) (6) further testified that (b) (6) never provided her with guidance about what she (b) (6) could or could not count in terms of travel compensatory time when she went on official travel. (b) (6) testified, however, that she was aware, based on training she obtained in the past at her previous official duty station, that a traveler could not count the time between their residence and the airport when calculating their travel compensatory time.

**Testimony of (b) (6), Navy
Fleet and Family Support Center, NAVSTA, Newport, RI**

23. (b) (6) was interviewed on 13 June 2016. She was one of two non-appropriated fund (NAF) employees in the office who reported to (b) (6). In her interview, (b) (6) testified that at one point in the fall of 2015, (b) (6) contacted (b) (6), NAF MIDLANT Morale, Welfare, and Recreation, NAVSTA Norfolk, Norfolk, VA, to request guidance on how NAF employees should count their travel compensatory time while on official travel because NAF and GS employees adhered to slightly different rules. (b) (6) recalled (b) (6) verbally relayed to her that she could count the one hour wait prior to her departure, the time she spent in flight, and 30 minutes of any layover time between flights while en route to her temporary duty station when calculating her travel compensatory time for official travel. In a follow-up email message on 13 June 2016, (b) (6) provided email messages, dated 20 September 2013, between herself and (b) (6) about this topic. The investigator noted the email contained guidance from (b) (6) that (b) (6) could count the one hour wait at the airport prior to her departure and the time spent in flight toward her travel compensatory time.

Testimony of (b) (6), NAVSTA Newport, RI

24. (b) (6) was interviewed on 2 June 2016. (b) (6) could not discuss how (b) (6) counted her travel compensatory time while on official travel, but acknowledged she saw it noted on her (b) (6) timecards. (b) (6) said she believed (b) (6) followed the rules pertaining to travel compensatory time for official travel, she believed the rules were contained in an Office of Personnel Management manual, and she would have to review (b) (6) travel documentation and/or associated timecards to be able to discuss it in any detail. (b) (6) stated (b) (6) never complained to her about how (b) (6) credited herself with travel compensatory time during their meeting on 10 November 2015.

Testimony of (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI

25. (b) (6) was interviewed on 27 June 2016. (b) (6) testified she did not know for certain how (b) (6) calculated her travel compensatory time for official travel, and she denied that she ever advised her (b) (6) on the matter. (b) (6) testified further that many of (b) (6) subordinate employees complained frequently about the Director for various reasons, but she never heard them complain about (b) (6) travel compensatory time for official travel.

**Testimony of (b) (6)
(b) (6) Navy Fleet and Family Support, NAVSTA Newport, RI,
(SUBJECT)**

26. (b) (6) was interviewed on 7 June 2016. She testified that (b) (6) certified her timecards, and (b) (6), the (b) (6), handled that function in (b) (6) absence. (b) (6) testified she earned travel compensatory time for her official travel, and explained she counted it in the following manner: she started to count it with the time between her residence in North Kingston, RI, and the airport in Providence, RI, one hour prior to her departure, the time she waited for flights, her travel time in flight, and the time up until she arrived at her TDY location. (b) (6) estimated the distance between her residence and the airport was 15 miles, or 45-50 minutes travel time. (b) (6) confirmed that she earned travel compensatory time (identified as CB on her timecards) for her official travel on her most recent trips in 2016: For a trip to Millington, Tennessee, she earned 6 hours of travel compensatory time on both her departure, 7 February 2016, and return date, 12 February 2016, for a combines total of 12 hours for the pay period. For a trip to Souda Bay, Greece, (b) (6) confirmed she earned 12.50 hours in travel compensatory time on Thursday, 14 April 2016, for that pay period.

27. (b) (6) testified she based her understanding of the rules of this on travel guidance she received when she worked in Pearl Harbor in the past, and testified she was not familiar with DoD 7000.14-R, Vol. 8, Chapter 5, Paragraph 051006. (b) (6) testified

she did not know before her IG interview that the standard did not permit her to count the travel time between her residence and the airport terminal as part of her travel compensatory time.

28. Regarding her subordinate employees, (b) (6) did not recall ever informing her GS employees that they could only count the time spent in flight toward their travel compensatory time. (b) (6) said, however, that she provided this guidance verbally to her two NAF employees, (b) (6) and (b) (6), at one point in 2015 after consulting (b) (6), Fleet and Family Support Program Mid-Atlantic Region, (b) (6), Norfolk, for guidance, because she understood such a rule pertained to NAF employees. (b) (6) testified that she felt she set a good example as a supervisor for her employees with respect to her official travel compensatory time.

Information Gathered from Documents

29. In addition to the review of (b) (6) two timecards for her 2016 travel discussed earlier, the investigator obtained additional testimonial and documentary evidence as a follow-up to (b) (6) subject interview. On 10 June 2016, (b) (6) confirmed via email that she recalled having conversations with (b) (6) regarding how her NAF employees could earn travel compensatory time for their official travel, but she could not locate any emails that may have been exchanged between the two in the past on this topic. (b) (6) stated she would have provided guidance she received from NAF timekeeping, which she understood to be the following: NAF travelers only received 30 minutes of wait time prior to a flight and the length of the flight when calculating their official travel compensatory time. NAF employees did not count any layover time associated with their travel. (b) (6) further said they only recently updated the policy on this, which she provided to all Site Directors. (b) (6) sent a copy of this policy to the IG investigator attached to her email. The investigator reviewed the Compensatory Time Off for Travel (CTT Policy), signed by (b) (6), and noted it was dated 13 May 2016.

30. One of the two NAF employees interviewed as a witness in this investigation, (b) (6), provided a copy of an email exchange between (b) (6), and herself, dated 20 September 2013. At that time, (b) (6) consulted with (b) (6) and then relayed to (b) (6) that she could count one hour of waiting time at the airport prior to departure and the time she spent in flight when calculating her official travel compensatory time.

31. We reviewed (b) (6) travel itineraries and compared them to the timekeeping (SLDCADA) records for the same time period.

32. (b) (6) travel to Millington, TN, from 7-12 February 2016 departed Providence, RI at 11:17 on Sunday, 7 February. The timecard entry for 7 February indicated travel compensatory time began accruing at 1015 which accounted for an authorized 1 hour waiting time at the airport prior to departure. (b) (6) timecard accurately reflected 6 hours of travel compensatory time for 7 February. The return trip was originally scheduled for Saturday, 13 February departing Memphis, TN at 0615 and arriving in Providence at 1419. (b) (6)

(b) (6) rescheduled the return flight to Friday, 12 February and annotated her timecard to accrue travel compensatory time for 6 hours of travel.

33. (b) (6) travel to Souda Bay, Greece, from 14-21 April 2016 departed Providence, RI at 1447 and after stops in Washington D.C. and Munich, Germany, arrived in Athens, Greece at 1255 (0515 Eastern Standard Time (EST)) on 15 April. Total itinerary time spent traveling was approximately 14 hours and 30 minutes. (b) (6) timecard indicated that she accrued 10 hours of travel compensatory time on 14 April and 3 hours on 15 April, for a total of 13 hours. The return trip itinerary departed Athens on 21 April at 1700 (1000 EST) and arrived in Providence, RI at 2308 EST. Total time spent on return trip was approximately 13 hours. (b) (6) timecard indicated 12.50 hours of travel compensatory time was accrued.

Analysis and Discussion

34. DoD 7000.14-R, Vol. 8, Chapter 5, Paragraph 051006, states,

An employee may earn compensatory time off for travel for time spent in travel status away from the employee's official duty station. Time in travel status includes the usual waiting time that precedes or interrupts travel, such as waiting at an airport or train station for departure. Time spent traveling outside of regular work hours between home and to or from a transportation terminal that is within the official duty station as part of travel away from the duty station is equivalent to commuting time and is not creditable.

35. C1 alleged (b) (6) violated DoD 7000.14-R, Vol. 8, Chapter 5, Paragraph 051006, pertaining to travel compensatory time by calculating her travel compensatory time from the moment she left her residence until she arrived at her travel duty station. C1 further alleged that, in contrast to this, (b) (6) permitted her subordinate employees to only count their time in flight toward their travel compensatory time.

36. (b) (6) admitted she was not familiar with DoD 7000.14-R, Vol. 8, Chapter 5, Paragraph 051006, and that she calculated her travel compensatory time for her official travel to include the time spent in transit from her residence to the airport, which was not in accordance with the rules. (b) (6) admitted she based her understanding of the rules concerning this on information she obtained during the course of her career while stationed in Pearl Harbor in the past. (b) (6) also said that she would be certain to calculate her travel compensatory time in accordance with the rules from this point forward. (b) (6) did not recall ever informing her GS employees that they could only count the time spent in flight toward their travel compensatory time, but acknowledged she did advise her two NAF employees of this in the past.

37. Although unfamiliar with the requirements governing the accrual of travel compensatory time, (b) (6) timecards and travel itineraries indicated that she had not received compensation for the time she spent traveling to/from her residence to the airport. A comparison

of the timecards and trip itineraries indicated that compensatory time had been properly accrued and accounted for.

Conclusion

38. Based on the preponderance of evidence, the investigator concluded the allegation that (b) (6) incorrectly credited travel compensatory time for herself, from 18 November 2014 to 21 April 2016, in violation of DoD 7000.14-R, Chapter 5, Vol. 8, C.3 & D.2, was not substantiated.

Recommendation

39. No recommendation.

Disposition

40. No action taken.

Allegation #2: That (b) (6) did not revert back to a work schedule consisting of 5 days per week, 8 hours per day for a full pay period during official travel scheduled for more than 1 day, nor did she reschedule her regular day off that fell within that period, as required by policy, from 18 November 2014 to 10 March 2016, in violation of CNICINST 12610.1, Work Schedules, Alternative Work Schedules, and Flexible Work Schedules, 26 October 2012, 4 (i).

Conclusion: The allegation is **SUBSTANTIATED**, but mitigating factors existed and are reflected in the analysis and discussion.

Findings of Fact for Allegation #2

41. CNICINST 12610.1, Work Schedules, Alternative Work Schedules, and Flexible Work Schedules, 26 October 2012, 4 (i), states,

“An employee’s work schedule will revert to 5 days per week, 8 hours per day for a full pay period during periods of travel or training scheduled for more than 1 day, unless it is advantageous to the government for the employee to remain on a compressed work schedule (CWS). If it is determined that the employee should remain on CWS, the employee and the supervisor must discuss and reschedule the employee’s regular day off (RDO). If and when the RDO falls within the travel or training period, the employee should manually change the RDO in SLDCADA for the appropriate pay period. Under no circumstances will a temporary additional duty (TAD) trip be extended to accommodate an employee’s day off.”

Testimony of the Complainants

35. As discussed earlier, C1 stated (b) (6) engaged in a practice regarding her official travel in which she worked 8-hour days, but also took her regular day off (RDO) during that same pay period; C1 contended that this was against the regulations, but (b) (6) did this for years. C1 further stated that (b) (6) did not permit her subordinate employees who traveled for official business to take their RDOs during the same period pay as their official travel even though this was what she did. C1 referenced a recent March 2016 (on or about 4 March 2016) travel occasion when (b) (6) took her RDO despite being on an 8-hour work schedule at the time. C1 stated she had several witnesses in the office that could corroborate that in the past (b) (6) verbally instructed her subordinate employees they could not take their RDOs during a pay period in which they traveled. In a follow-up email message dated 9 May 2016, C1 testified she went on official travel to Washington, DC, during 21-25 September 2015, and (b) (6) did not permit her to take her RDO on 25 September 2015. The investigator reviewed C1's timecard for the pay period in question and noted that it indicated C1 took her RDO as scheduled on 25 September 2015. In an email message dated 8 June 2016, C1 confirmed that, although the timecard indicated she took her RDO that day as planned, she did not have the day off. C1 contended she worked that date and that her timecard was never adjusted to reflect that. In a follow up email dated 6 July 2016, C1 testified she never contested her timecard because she did not feel it was worth the hassle of interacting with (b) (6) and (b) (6) to resolve the issue. C1 further contended that she was not given an opportunity to reschedule her RDO as both (b) (6) and (b) (6) indicated to her that it could not be done.

36. C2 stated she believed (b) (6) took her RDO as scheduled during a pay period when she traveled, but that this had been difficult to track of in the past. C2 testified she believed (b) (6) "always" took her RDO because this was a topic discussed by employees within the office. C2 stated C1 and (b) (6), both of whom also worked compressed schedules, discussed (b) (6) RDO in her presence in the past. C2 stated (b) (6) did not change her work schedule from a compressed one to a standard one during periods when she went on travel, and this was in violation of the requirement. C2 stated (b) (6), however, held some of her employees to a different standard than the one to which she adhered. C2 stated that C1 and (b) (6) were required to give up their RDOs in the past during periods when they traveled, which she cited as an indication that the rules were not applied equitably in the office.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

37. (b) (6) stated she understood that a compressed work schedule must be changed from a 9-hour day to that of an 8-hour day when an employee went on official travel and that the RDO could not be taken during the same pay period as the travel. In a follow up email dated 7 July 2016, (b) (6) testified she was aware through hearsay that (b) (6) did not allow several employees to take their RDOs at all, and during her interview (b) (6) cited (b) (6) as one example. (b) (6) went on to say that, in contrast, (b) (6)

took her RDO as scheduled during pay periods when she went on official travel. During (b) (6) April 2016 trip to Greece, she took Friday, 22 April 2016, as her RDO. (b) (6) testified (b) (6) sent a turnover sheet to (b) (6) and the staff via email in which she specified that Friday was her RDO.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

38. (b) (6) stated (b) (6) told her that when employees who usually worked 9 hour days on a compressed schedule went on travel that they were expected to revert to working 8 hour days and not have a RDO during that pay period. (b) (6) testified that (b) (6) went on official travel to Millington, Tennessee, in February 2016 and to Crete, Greece in April 2016, and on both of these occasions (b) (6) took her RDO as normally scheduled. (b) (6) stated (b) (6) told her in February 2016 that she was taking her RDO, and then in April 2016 (b) (6) wrote she was taking her RDO in an email message she sent out to her staff. In a follow-up email message dated 9 May 2016, (b) (6) testified that she was on official travel 3-8 August 2015 in San Diego, California, and (b) (6) would not allow her to take her RDO on Friday, 7 August 2015, as scheduled. In email messages dated 8 and 28 June 2016, (b) (6) testified she asked if she could take her RDO as scheduled, but she was told by both (b) (6) and (b) (6) that “you don’t get your RDO when you are away at training,” which she said she accepted. In contrast, however, (b) (6) contended that after (b) (6) returned from her travel in February 2016 [to Millington, Tennessee] she (b) (6) took her RDO. In email messages dated 11 July 2016, (b) (6) clarified that she was also on travel for training the week prior to her travel to San Diego, California,

I was in training in North Eastham, MA, from 27-31 July 2015. The following week training was in San Diego, CA, from 3-7 August 2015. My RDO was not rescheduled, as I was told my schedule reverts to 8 hrs./5 days. I did not contest it since I believed that was the rule. I was at the conference on August 7. I did not know my timecard was inaccurate until I pulled it up for you [the investigator], because (b) (6) was inputting T&A [time and attendance] and I was never accessing it.

Testimony of (b) (6), NAVSTA Newport, RI

39. In her interview, (b) (6) testified (b) (6) worked a compressed schedule and she was off every other Friday for her RDO, but 2 to 3 pay periods prior to (b) (6) IG interview, (b) (6) changed to a flexible work schedule with 8 hour work days and no RDO after consulting with (b) (6), the (b) (6). In a follow-up email message dated 14 June 2016, (b) (6) clarified (b) (6) was currently on a maxi-flex schedule with no RDO.

Testimony of (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI

40. (b) (6) testified she was aware of the rule regarding reverting to an 8-hour work day and not taking an RDO during pay periods when an employee also went on official travel. (b) (6) testified she did not recall ever advising (b) (6) about this rule, and she did not know if (b) (6) ever denied any of her subordinate employees, either NAF or GS, their RDO during a pay period in which they also traveled. (b) (6) said she did not know anything about (b) (6) and (b) (6) being denied their RDOs during pay periods in which they also traveled for official purposes and could not comment on this without seeing their timecards for the dates in question. In a follow up email message on 28 June 2016, (b) (6) did not recall having any specific conversations with either NAF or GS employees about the rules regarding their RDO during pay periods when they also went on official travel.

Testimony of (b) (6)
(b) (6) Navy Fleet and Family Support, NAVSTA Newport, RI
(SUBJECT)

41. (b) (6) testified that she was aware of the fact that when an employee traveled for official business, she must revert to an 8-hour work schedule and cannot take her RDO as planned during the same pay period as the travel. (b) (6) said she was aware of the rule, but could not cite the source upon which she relied for this guidance. (b) (6) testified that one to two years ago (b) (6) advised her that she (b) (6) could take her RDO during pay periods when she also traveled for official business. Regarding her 7-12 February 2016 trip to Millington, Tennessee, (b) (6) testified she forget to revert to 8-hour days during that pay period when preparing her timecard, and admitted this could have happened on other occasions in the past, as well. She did not recall the turnover sheet she prepared prior to her 14-21 April 2016 travel in which she stated she would be taking an RDO following her trip to Crete, Greece. Following her interview, the investigator sent an email message to (b) (6) on 8 June 2016, with a copy of the turnover sheet attached. That same day (b) (6) responded via email that she remembered sending the document out to staff before the trip; at some point, she recalled, however, that she was supposed to revert back to an 8-hour work days, so she went into SLDCADA, made the necessary adjustments, and her timecard was then certified. According to (b) (6), the entry in SLDCADA for that pay period reflected the hours she worked. (b) (6) testified she believed her current schedule, which she adjusted to a flexible on in late April 2016, also allowed her to take a RDO.

42. Regarding her subordinate employees and their RDOs, (b) (6) did not recall denying either (b) (6) or (b) (6) their RDOs when they traveled on official business during a pay period. In a follow up email dated 6 July 2016, the investigator obtained more details from (b) (6) concerning the circumstances surrounding these two employees and the RDOs in question:

I just reviewed both timecards (for (b) (6) and (b) (6)) and here is what I believe happened: In regards to (b) (6), I recall that she was at two trainings for both weeks from 27 July thru 7 August as she had travel comp time on Sunday, July 26th, August 3rd, and Saturday, August 8th. My error is that the

timecard did not reflect an 8 hour day for that two week pay period as it should have been. There would not have been an RDO as she was at a conference for those two weeks. In regards to (b) (6), her timecard should of reflected an 8 hour day as she was at training one of those weeks, however it did not reflect that accurately. So, she would not of gotten an RDO. In addition, neither employee ever asked me about this until now see this complaint under an IG. There was never any issue from the employee, but I would have corrected it immediately.

43. In a follow up email dated 11 July 2016, (b) (6) confirmed that she did not recall discussing rescheduling their RDOs with these employees, and neither one approached her about their RDOs.

Information Gathered from Documents

44. The investigator reviewed related timecards for C1, (b) (6) in order to examine this allegation in depth. Besides the confidential complainant's testimony, C1 provided the investigator with email messages dated 8 June 2016. According to C1, she was not allowed to take her RDO as scheduled on 25 September 2015; however, her timecard for the pay period reflected that she took the RDO. When the investigator inquired about this discrepancy, C1 contended she worked on her RDO instead, and her certified timecard was never adjusted by (b) (6), who handled the timecards, to reflect she worked that day or that she worked 8-hour days during that pay period. The investigator further noted C1 stated she had nothing in writing from (b) (6) concerning the denial of her RDO as all of this was relayed verbally at the time it occurred. (b) (6) testified she was also denied her RDO on 7 August 2015, yet her certified timecard for that pay period reflected she worked 9-hour days (vice 8-hour days) and her RDO was on 7 August 2015 as originally scheduled. The investigator could not locate any evidence that C1 or (b) (6) ever contested these timecards.

45. Prior to (b) (6) subject interview, the investigator reviewed her certified timecards for the period of 6 February -5 March 2016, which included her official travel to Millington, TN, from 7-12 February 2016, and 2-30 April 2016, which included her official travel to Souda Bay, Greece, from 14-21 April 2016. The certified February 2016 timecard reflected (b) (6) worked 9 hour days and took a RDO on Friday, 12 February 2016 for that pay period. The investigator also reviewed (b) (6) certified timecard for her April travel and noted she worked 8 hour days and did not take an RDO during that pay period. On Friday, 22 April, 2016, (b) (6) took a combination of approved leave (annual and compensatory travel time earned) to cover her 8-hour work day. Following her interview, (b) (6) provided the investigator with additional information in emails exchanged on 8 June 2016. (b) (6) confirmed she recalled sending out the turnover sheet prior to her April 2016 trip to Souda Bay, Greece, which indicated her RDO was on Friday, 22 April 2016. In both her interview and follow up email message, (b) (6) contended she sent this out to her staff, but then recalled sometime after she sent it out that she needed to revert back to 8-hour work days and she could not take her RDO as planned due to the travel.

Analysis and Discussion

46. CNICINST 12610.1, Work Schedules, Alternative Work Schedules, and Flexible Work Schedules, 26 October 2012, 4 (i), states,

“An employee’s work schedule will revert to 5 days per week, 8 hours per day for a full pay period during periods of travel or training scheduled for more than 1 day, unless it is advantageous to the government for the employee to remain on a compressed work schedule (CWS). If it is determined that the employee should remain on CWS, the employee and the supervisor must discuss and reschedule the employee’s regular day off (RDO). If and when the RDO falls within the travel or training period, the employee should manually change the RDO in SLDCADA for the appropriate pay period. Under no circumstances will a temporary additional duty (TAD) trip be extended to accommodate an employee’s day off.”

47. The complainants alleged that (b) (6) went on official travel and also took her scheduled RDO although this was not in compliance with the regulations. The complainants further alleged that, in contrast to how she conducted matters herself, (b) (6) did not permit her subordinate employees to take their RDOs during pay periods in which they also went on official travel.

48. Witness interviews and relevant documentation reviewed concerning subordinate employees who were denied their RDOs during pay periods when they went on official travel were contradictory and confusing to review.

49. (b) (6) testified she was aware of the rules pertaining to this allegation, but she forgot to revert back to an 8-hour day in February 2016 for her trip to Millington, Tennessee, and admitted this could have happened on other past trips during the period under review. As discussed earlier, her certified timecard for for the period of 6 February -5 March 2016, which included her 7-12 February 2016 travel to Millington, also reflected she took her RDO as planned, and she indicated in her testimony she relied on guidance from Ms. Fleming that she could, in fact, take her RDO according to the travel rules. Prior to (b) (6) April 2016 travel she sent out a turnover sheet with her RDO scheduled on Friday, 22 April 2016. Although she acknowledged she sent this to her staff, she also claimed she corrected the timecard to reflect 8-hour days and a combination of leave for what she originally intended to be her RDO. (b) (6) corrections in SLDCADA were in compliance with the rules, but her subordinate employees who received the turnover sheet from her would have no way of knowing that she used a combination of leave on that date rather than taking a RDO. This discrepancy no doubt contributed to the frustration within the office and the perception that (b) (6) adhered to different rules than she required of her staff. The investigator noted (b) (6) changed her schedule to a maxi-flex in late April 2016, but in her testimony she continued to believe she would have an RDO on this schedule, whereas her supervisor, (b) (6), testified (b) (6) no longer had an RDO per the new schedule.

Conclusion

50. Based on the preponderance of evidence, the investigator determined (b) (6) violated the requirements of the standard in February 2016 by failing to revert to 8 hour days without a RDO during a pay period when she also went on official travel. While this was a technical violation, the investigator further noted (b) (6) provided mitigating circumstances in her testimony that reflected she was relying on poor or outdated guidance at the time she submitted this timecard. By the April 2016 trip, (b) (6) timecard and testimony reflected she had learned and was following the appropriate rules. The investigator determined the allegation was **SUBSTANTIATED** but with mitigating circumstances.

Recommendation

51. The investigator recommended (b) (6) review all relevant travel and work schedule policies with (b) (6) and her subordinate staff to clarify any remaining confusion regarding the rules.

Disposition

52. Reviewed all relevant travel and work schedule policies with (b) (6) and the Navy Fleet and Family Support Center staff. Action complete.

Allegation 3: That (b) (6) received complaints that one of her subordinate employees was misusing official time in support of non-government employment, but did not take or initiate action to correct the employee's behavior from 18 November 2014 to 10 March 2016, in violation of the Department of Navy Civilian Human Resources Manual (CHRM), Subchapter 752 (7) e, 1-3 December 2003 and The Department of the Defense Instruction 1400.25, Vol. 100, 13 April 2009, Enclosure 1, para. 3.

Conclusion: The allegation is NOT SUBSTANTIATED.

Findings of Fact for Allegation #3

53. SECNAVINST 12752.1A, Enclosure (2), Section 7, states,

Managers and Supervisors are responsible to: (a) Implement and execute disciplinary actions at the local command level; (b) Ensure that disciplinary actions are accomplished following applicable DON, DoD, and OPM guidance and criteria when exercising delegated disciplinary program authority; and (c) Shall set a good example by their personal conduct.

The Department of the Defense Instruction 1400.25, Vol. 100, 13 April 2009, Enclosure 1, para. 3, states,

“Managers and supervisors shall, when delegated civilian personnel management authorities, carry out civilian personnel management policies, procedures, and programs as outlined in Reference (a), this Instruction, and other DoD civilian personnel management issuances authorized by Reference (a), DoD Directive 1400.25, ‘DoD Civilian Personnel Management System,’ 25 November 1996, and consistent with applicable negotiated agreements.

Testimony of the Complainants

54. C1 stated that (b) (6), the front desk receptionist, spent some of her official duty time on both her government telephone and her personal, cellular one with her employer for her non-government job. Based on where she sat in the office, C1 heard (b) (6) say often, “Okay, Father, I’ll get that done when I come into work [at the church office]” or words to that effect. C1 stated that in the past there were times when (b) (6) sat at the front desk “stuffing envelopes for church” and “doing stuff on the computer for church.” C1 was not certain if (b) (6) used her government printer for her tasks associated with the church, but said others also observed (b) (6) stuffing envelopes and noted she was on the telephone on many occasions during her official duty hours in the past. When asked who witnessed this behavior, C1 replied “Well, pretty much everybody in the building [except (b) (6) who was a more recent hire].”

55. In addition to the church work, C1 stated that in the past (b) (6) sold products for Tastefully Simple while on government time; but, she did not know if (b) (6) was still selling those products. C1 did not know if (b) (6) also sold products for Jamberry Nails; but, stated on one occasion in the past she observed a client who was visiting the office for assistance one day “looking at the catalogue [for Jamberry Nails] while waiting to be seen.” C1 did not know if the client purchased any products from (b) (6) at the time, but C1 was uncomfortable with the client looking at the catalogue in the office’s waiting area. C1 stated she did not approach (b) (6) about it directly because she did not want there to be a scene in the office about this and she did not want to incur “the wrath of (b) (6).”

56. When asked if anyone ever reported (b) (6) misuse of official time to (b) (6) in the past, C1 replied, “Oh, many times.” C1 stated that (b) (6) always responded to these complaints in one of two ways; she either said “Well, this is the first I’m hearing of it” or “Well, I’ve never witnessed that.” C1 described (b) (6) receiving these complaints about (b) (6) “for years.” C1 stated,

Usually once a year I lose it- I lost it and go back and say (b) (6), we need to have a talk.’ So I would say probably at least five or six years she’s been hearing it [complaints about (b) (6) misuse of official time] at least once a year from probably each of us.

57. C1 further testified that both C2 and (b) (6) told her [C1] they had each complained to (b) (6) about (b) (6) behavior in the past. C1 contended that (b) (6) did nothing to correct (b) (6) behavior despite the complaints she received. C1 did not know if (b) (6) witnessed

(b) (6) misuse of official time as described above, but said (b) (6) was “very, very good with paperwork” associated with her position, yet not always aware of other things transpiring in the office. C1 did not know for certain if C2 told (b) (6) about (b) (6) conduct on official time when C2 met with the XO.

58. C2 stated she believed (b) (6) allowed (b) (6) to perform work for her part-time position at a local church using government resources either in her office or while she sat at the front desk during her official duty hours. C2 brought this matter to (b) (6) attention several different times over the last three years, but nothing was ever done to correct the behavior. Sometime in either September or October 2015, C2 stated she, C1, and (b) (6) all met with (b) (6), and in that meeting C2 remembered she brought up seeing (b) (6) in her office stuffing envelopes for a mailing for her church sometime after summer 2015 ended. C2 stated that during the meeting she made it clear to (b) (6) that (b) (6) was doing work for her non-government position during her official duty hours, and (b) (6) replied that she would address the matter. C2 did not know if (b) (6) addressed the matter with (b) (6) following the meeting or not, and she did not know if (b) (6) changed her behavior either because C2 “stayed away from the front desk as much as possible” from that point on.

59. C2 stated that sometime between November 2015 and January 2016 she worked in Portsmouth, and on one occasion she needed to call the office in Newport in order to speak with one of the other clinicians. C2 stated she called the front desk repeatedly over a period of hours and received a voicemail message during a time of day when (b) (6) should have been answering the telephone as the front desk receptionist. C2 stated she then sent emails to the office inquiring about the situation and contacted (b) (6) directly on her cellular telephone to inquire what was going on. (b) (6) responded that there was “a misunderstanding.” C2 stated other employees informed her later that (b) (6) was at the front desk on her personal cellular telephone while C2 was trying to call the office from Portsmouth. C2 stated that this was just one example of the reasons she no longer asked (b) (6) for much in the way of assistance at work, but went to (b) (6) instead, which was what most of the clinicians decided to do. C2 stated she informed (b) (6) that when she asked (b) (6) for assistance, such as a telephone number, (b) (6) would deliberately provide her a telephone number that was missing a digit. After this occurred a few times, C2 brought that to (b) (6) attention, but said nothing was done about this as far as C2 could tell. C2 stated at this point the only service (b) (6) performed for her was to call and alert her when a client was in the waiting room to see her.

60. C2 stated (b) (6) sold products for Tastefully Simple and Jamberry Nails, and on one occasion about two years ago C2 remembered purchasing an item from (b) (6). C2 did not know if (b) (6) sold these products during her official duty hours, but C2 saw catalogues for these companies near the front desk in the past.

61. C2 confirmed C1’s testimony that employees complained to (b) (6) many times over the last five or six years about (b) (6) performing work for her non-government positions during her official time, and that (b) (6) always responded that either this

was the first she was hearing of it or that she had never witnessed it herself. C2 stated one of the reasons she met with (b) (6) in the fall of 2015 and informed the XO about many of the problems in the office was because she told (b) (6) about (b) (6) behavior so many times and had never seen any improvement. C2 felt (b) (6) was getting worse, so she went to see the XO. In a follow up email dated 2 June 2016, C2 said that during the meeting she informed the XO of (b) (6) unwillingness to do her job, her "free pass" to do so, her taking personal calls while the front desk phone rang, and her doing work for her other employer on government time.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

62. (b) (6) stated she understood from coworkers that (b) (6) worked for a church for compensation, and this was why (b) (6) work schedule permitted her to leave at 3:00 pm in order to report to her other workplace. (b) (6) stated she never saw (b) (6) performing work for her church position during her official duty hours. (b) (6) stated she walked by the front desk in the past and observed (b) (6) performing work for home demonstration companies, which she described as "some kind of nail design and some jewelry stuff." (b) (6) confirmed she purchased a Tastefully Simple product from (b) (6) a few years ago and another item she sold from the Pampered Chef about two years ago. (b) (6) confirmed (b) (6) sold these items to her during her official duty hours, and said she had seen (b) (6) showing company catalogues to her coworkers, such as (b) (6), at work. (b) (6) did not think she was the only employee to purchase items from (b) (6) as the company catalogues were always on display at the front desk. (b) (6) could not estimate how much official time (b) (6) devoted to selling for these companies, nor did she know if (b) (6) used any government resources for this purpose, but she described (b) (6) use of official time for her sales to be "minor" in nature.

63. (b) (6) stated she was in a meeting with C1, C2, and (b) (6) in the fall of 2015 when they complained to (b) (6) that (b) (6) was performing work for her church and selling items for companies during her official duty hours. In the meeting (b) (6) stated (b) (6) responded to the complaints by saying she was not aware that this happened. (b) (6) told the investigator that she found (b) (6) lack of awareness in this matter "difficult to believe." During this same meeting, (b) (6) said C1 and C2 also complained to (b) (6) that (b) (6) was on her computer looking at Facebook and on her personal, cellular telephone conducting business for the companies during her official duty time. According to (b) (6), (b) (6) replied, "This is the first I have heard of it." (b) (6) recalled C1 and C2 both replied to (b) (6) that it was not true that this was the first she heard of this and that C1 said she complained about this in the past. (b) (6) confirmed that in the past she heard C1 state she (C1) saw (b) (6) doing something with envelopes for her church on her official time.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

64. (b) (6) stated she knew (b) (6) worked part-time for Tastefully Simple and Jamberry Nails, and she also worked as an administrative assistant at her church outside of her government position. (b) (6) said (b) (6) placed catalogues “strategically on the front desk at the Family Service Center” when she (b) (6)] worked at the front desk, and (b) (6) sold products to her and other employees during her official time over the past five years. (b) (6) stated she never saw (b) (6) sell products to clients who were visiting the Navy Fleet and Family Support Center for assistance. Regarding (b) (6) employment with the church, (b) (4) said that (b) (6) also spent official time performing work for her church. Concerning the church position, (b) (6) said,

The church business-I’ve witnessed her ‘cause she’ll ask me to cover the front desk while she runs to the ladies room and her email’s up and there’s correspondence back and forth, “Can you do this? This needs to get done,” or she’s commented about the pamphlet that she’s doing for the church.

65. (b) (6) specified that (b) (6) both received and made telephone calls on her government telephone (the front desk number, 401-841-2283) and her personal, cellular telephone when performing functions for the church, and she acknowledged that she had overheard some of (b) (6) telephone conversations. (b) (6) stated the last time she heard (b) (6) on the telephone regarding her other employment was on Thursday, 21 April 2016. On that occasion, (b) (6) heard (b) (6) say, “Yes, I can get that for you. It’ll take about a week or so.” In a follow-up email message dated 15 June 2016, (b) (6) clarified that, upon overhearing this remark, her impression was that (b) (6) was performing work for her church position at the time. (b) (6) said anyone in the office who walked by the front desk during the work day, including (b) (6), saw firsthand how (b) (6) used her official time and resources to perform her tasks for her part-time employers because she did this “pretty openly.” (b) (6) believed (b) (6) used her official telephone and the computer to perform her part-time work for at least 11 years. (b) (6) described (b) (6) use of government resources to support her part-time work as “excessive” in nature.

66. (b) (6) said she did not know what (b) (6) knew concerning (b) (6) non-government employment, but said that (b) (6) was made aware by some of the staff that (b) (6) sold these items during her duty hours. According to (b) (6), sometime during the last four months some staff members, including C2, (b) (6), (b) (6), and (b) (6), told (b) (6) that (b) (6) was selling products during her official duty hours. (b) (6) said (b) (6) responded at the time by saying, “Well, you need to tell me when it happens so that I can let her know because I have no documentation of this.” At the time, (b) (6) said she told (b) (6) that she was asking them to basically be “tattletales,” and (b) (6) said, “Well, that’s the only way I’ll know what’s actually going on and then I can possibly make changes.” (b) (6) did not know if anyone reported anything to (b) (6) following this meeting, and she did not know if (b) (6) ever instructed (b) (6) not to sell her products on government time.

Testimony of (b) (6), Navy Fleet and Family Support Center,
NAVSTA Newport, RI

67. (b) (6) was interviewed on 28 April 2016. (b) (6) stated she saw (b) (6) on her personal, cellular telephone during her official duty hours and said there were complaints that she (b) (6) was on her telephone often and tended to ignore others in the office when she was. (b) (6) said she also saw (b) (6) on her personal, cellular telephone and ignoring the office telephone when it rang. (b) (6) also stated that when she walked past (the front desk) she saw (b) (6) on Facebook "five, six times a day." (b) (6) could not estimate how much time Ms. Fleming spent on her telephone or on Facebook during her official duty hours because (b) (6) office was located in the back away from the front desk and, as a result, she was not able to observe the full extent of (b) (6) activities closely throughout the day. (b) (6) knew (b) (6) sold nails and candles and also worked for a church, but said (b) (6) never approached her to buy anything. (b) (6) stated (b) (6) work schedule was also designed to accommodate her second job, but that this occurred before she (b) (6) came to work in the office. (b) (6) said she never saw (b) (6) sell any of her products during her official duty hours, but she heard from the other clinicians in the office that in the past (b) (6) made photocopies for her church and perhaps stuffed envelopes for church events while on government time. (b) (6) knew of these incidents because the other clinicians discussed it in her presence, and she understood from them that (b) (6) performed work for her other employment for "a fair amount" of her duty time.

68. (b) (6) said she did not know what (b) (6) knew regarding (b) (6) non-government employment, but she was aware that all the other employees complained to (b) (6) in the past, probably before they moved out for the building's remediation, that (b) (6) performed this work on government time. (b) (6) recalled,

So it was one afternoon after work hours everybody kind of stayed. We were in one of the offices. It wasn't mine because I don't start these conversations 'cause I don't have any background. But I was listening. So everyone's in the room talking about it and (b) (6) wanders by. And someone said, (b) (6), you really should come in here and listen to this. We-it's not fair that we're talking behind your back.' (b) (6) came in. Um, it turned into a very nice, satisfying meeting about feeling bad that we're giving (b) (6) all this extra work. And (b) (6) was here. Um, many people said their piece about (b) (6) [to (b) (6)]. So (b) (6) said, um, you know, 'If I don't know I can't do anything so you have to come to me. You have to come to me.' And we all said, 'Oh, it's gonna feel like nitpicking like- this happened, this happened.' And she said, 'No, but I need to get an overall picture.' And the agreement was we were gonna go to her.

69. (b) (6) recalled that, after this meeting, she complained to (b) (6) about a time when (b) (6) refused to perform a work-related task for (b) (6) in front of a client visiting the Center. (b) (6) described (b) (6) response to her complaint,

You'd go to (b) (6) with a problem [about (b) (6)] and pretty much what I'm hearing is they all got handled the same way as mine. [(b) (6)] would say to the

person making the complaint] ‘How would you like to do it? [The person would respond] ‘you [(b) (6)] talk to her.’ And then a few weeks later it would come back [from (b) (6)] like, ‘Oh, I never really had a chance to talk to her. What do you wanna do [about it]?’

**Testimony of (b) (6), Navy
Fleet and Family Support Center, NAVSTA, Newport, RI**

70. (b) (6) testified she knew (b) (6) worked for her church, and she also sold candles and nail products. (b) (6) stated she saw (b) (6) stuffing envelopes for her church while on her official duty hours on one or two occasions, and she heard (b) (6) make telephone calls with the office telephone to her non-government employer. (b) (6) believed these instances occurred before the 4 November 2015 meeting the employees had with (b) (6). (b) (6) said she heard from the majority of the other employees in the office that they saw (b) (6) perform work for her outside employer on government time. (b) (6) confirmed the employees told (b) (6) about this during the 4 November 2015 meeting, and (b) (6) behaved as if she had not heard about it before the meeting. (b) (6) described the employees as feeling very frustrated by (b) (6) response. (b) (6), like other witnesses, felt (b) (6) lack of response was indicative of a “disconnect.”

**Testimony of (b) (6), Navy
Fleet and Family Support Center, NAVSTA Newport, RI**

71. (b) (6) was interviewed on 9 June 2016. (b) (6) testified she worked part-time as a contractor employee from June 2015 to February 2016, she had both a professional relationship and a personal friendship with (b) (6), and the two worked together in the same office in the past for several years. Based on where each of them worked in the office, (b) (6) said she was able to observe (b) (6) activities for part of the day. Regarding (b) (6) volunteered for her church in the evenings and on weekends and that she sold products, at different times over the years, for Tastefully Simple, Jamberry Nails, and Jewelry and Candles. (b) (6) said (b) (6) performed her sales work on-line in the evenings. (b) (6) recalled sometimes in the past at lunch or when she left for the day around 3:00 or 4:00 pm, (b) (6) gave her catalogues to take with her, and would tell her to “check the web” if she wanted to place an order. (b) (6) remembered ordering from Tastefully Simple once in either 2010 or 2011, but she did not believe (b) (6) sold to others in the office.

72. (b) (6) said that on one occasion in October 2015 she saw (b) (6) preparing a menu for her church on the government computer when she was at the front desk, but she did not know if (b) (6) was on a break or at lunch when she did this. (b) (6) also did not know if (b) (6) used the government printer to make any copies of the menu for her church.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

73. (b) (6) was interviewed on 4 May 2016. She testified she had a work relationship and a personal friendship with (b) (6). (b) (6) said she and (b) (6) were both in the direct sales business with Jamberry Nails, but “neither of them did anything with it at work.” (b) (6) stated she provided (b) (6) with some catalogues at her request and left them on (b) (6) desk one day. In addition to Jamberry Nails, (b) (6) said (b) (6) currently sold products for Jewelry in Candles and was also employed as a coordinator at her church. (b) (6) described (b) (6) as “very financially strapped,” but also stated (b) (6) did not do anything at work that she (b) (6) would deem to be inappropriate. (b) (6) said she never saw (b) (6) sell any products or perform work for her church on government time, but stressed that (b) (6) was seated at the front desk, while she worked in her own wing of the building and, thus, was not in a position to observe (b) (6) throughout the work day. (b) (6) believed (b) (6) worked at the church during the evenings.

74. (b) (6) said (b) (6) knew (b) (6) worked at a church because (b) (6) work hours for the office were arranged a long time ago so that she could go from one job to the other at the end of her duty hours. (b) (6) said she thought (b) (6) knew (b) (6) sold nails for Jamberry Nails because she (b) (6) commented on how they looked in the past, but (b) (6) did not think (b) (6) knew (b) (6) sold Jewelry in Candles.

75. (b) (6) said she never saw (b) (6) use her government equipment for tasks associated with either her church position or her direct sales work. (b) (6) said she heard complaints through a third party during the past year that (b) (6) used government equipment in support of her part-time work. (b) (6) said she heard someone, either (b) (6) or (b) (6), complain that “(b) (6) was always on Facebook and that she was performing work for her church while at the front desk.”

76. (b) (6) said she was aware that employees complained to (b) (6) about (b) (6), and she knew this because of where her own office was located in relation to (b) (6). (b) (6) thought C1, C2, (b) (6), and (b) (6) went into the office to talk to (b) (6), and that this occurred sometime in December 2015. (b) (6) testified,

There was a time and I don't know the- I don't know the exact time, I couldn't tell you because, like, time kind of escapes me, um that a bunch of people, one-be-one went into (b) (6) office, close[d the] door. I tried very hard not to pay attention 'cause it's none of my business. Um, then I remember seeing (b) (6) go in there, close the door, and then I remember (b) (6) coming out and she was crying and she left for the day, and I texted her and I'm like, 'Hey is everything okay?' And she said, 'Call me later.' . . . [I called her later and] she was crying telling me they they were all complaining about her and was, like, sick to her stomach and she just couldn't take it anymore. [They complained] about those things you

mentioned. That she was doing religious ed [Education] on her time, the Facebook. I don't remember the direct sales piece about that specifically. I, um, you know, that- and they've also said she's screw- well this is what she said, 'She screwed things up at the front desk as well.'

Testimony of (b) (6), NAVSTA Newport, RI

77. (b) (6) testified she did not know until after the investigation began that (b) (6) worked for a church after her duty hours ended, and she did not know anything about her outside employment with direct sales companies. (b) (6) said she never heard complaints about (b) (6) selling products for sales companies on her official time. In an email message dated 18 May 2016, (b) (6) acknowledged she met with (b) (6) on one occasion (date unclear) when (b) (6) "stopped by unannounced" and also on 10 November 2015, but she denied that (b) (6) complained to her about (b) (6) performing work for her non-government employment on official time during their meeting. (b) (6) provided the investigator with documentation on the meeting for review and consideration.

Testimony of (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI

78. (b) (6) testified she held employment outside the Navy as a Religious Education Director at a church in Tiverton, RI, and with two different, direct sales companies. According to (b) (6), she has worked at the church since 2002, and she first requested and obtained permission for this outside employment through her chain of command in May and June 2002. Regarding the two direct sales companies, (b) (6) said she worked for Jewelry In Candles and Jamberry Nails since 2015. For a period time in the past, she also worked for two other direct sales companies, Tastefully Simple and Advo Care. (b) (6) stated she performed her work for the church after her duty hours at the Navy ended and on weekends, and she performed her direct sales work at home on the computer in the evenings. (b) (6) testified (b) (6) was aware of her employment at the church and may have been aware that she worked for at least one of the direct sales companies, but was not sure which one.

79. (b) (6) testified she did not know if her coworkers ever complained to (b) (6) about her (b) (6) performing work for her outside employers during her official duty time, but said it would not surprise her if they had done so. She testified (b) (6) spoke to her after other employees in the office complained to (b) (6) about her (b) (6), but the date of this conversation was unclear. (b) (6) did not recall if the two spoke on 16 or 17 November 2015 about this because she said she had a poor memory for exact dates. According to (b) (6), (b) (6) advised her at the time the two spoke that employees in the office were complaining about her (b) (6) and that she was "under a microscope." (b) (6) recalled that (b) (6) said to her at the time "I don't know if you are doing anything, but if you are, then stop it." (b) (6) said she did not know to what (b) (6) was referring, the Director's instructions to her were not specific with regard to how she spent her official time,

and she did not know what she took this discussion to mean at the time it took place.

(b) (6) further acknowledged that (b) (6) “may have” talked to her in the past about not performing work for her Religious Education Director position during her official time. She did not recall confiding in (b) (6) that (b) (6) discussed this with her, but admitted she might have shared this with (b) (6), whom she considered to be a friend.

(b) (6) recalled that one time in 2014 she requested and received permission from (b) (6) to perform a task for her church’s registration between telephone calls when she worked at the front desk.

Testimony of (b) (6)
(b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI, (SUBJECT)

80. (b) (6) testified she first learned in 2007 that (b) (6) worked at a church in Tiverton, RI, but she did not know what hours or days of the week (b) (6) was employed there. (b) (6) stated (b) (6) work hours in the Navy’s Fleet and Family Support Center, from 6:30 am to 3:00 pm, were first arranged by another director prior to her arrival in the office. (b) (6) also recalled seeing “a note” about this in (b) (6) official personnel file. Following her interview, (b) (6) copied and faxed the note to the investigator. The investigator reviewed the documentation and noted that on 20 May 2002, (b) (6) requested permission to obtain outside employment at a church in Tiverton, RI. In (b) (6) signed request, she stated she would perform work for the church “on her off-duty hours of employment at the Fleet and Family Support Center.” (b) (6), (b) (6) approved the request on 20 May 2002, and forwarded it to the (b) (6), NAVSTA Newport, RI, who also approved the request on 19 June 2002.

81. (b) (6) testified that on 16 November 2015, (b) (6) complained to her that (b) (6) “was doing church stuff on the computer.” (b) (6) discussed the complaint with (b) (6) on 16 or 17 November 2015, and (b) (6) denied performing work for her non-government position on government time. (b) (6) documented the complaint and her subsequent discussion with (b) (6) in a memorandum for the record (MFR) dated 16 November 2015. In her interview, (b) (6) elaborated on the contents of her conversation with (b) (6), testifying that at the time they met she instructed (b) (6) that she could not perform work for her outside employer on her official time, and this could not occur again. (b) (6) told the investigator she never observed (b) (6) doing work for other employers during her official duty hours after that, and she never had to counsel her about this again. Although (b) (6) initially said she did not receive complaints that (b) (6) misused official resources to conduct non-government business, she acknowledged that (b) (6) complaint about (b) (6) using her office computer to conduct business for her non-government position was also an allegation of misuse of the government resources.

82. Regarding (b) (6) outside employment in sales, (b) (6) testified she learned two years ago that she (b) (6) sold products for Tastefully Simple, and (b) (6) recalled (b) (6) left her a brochure on her desk during her

(b) (6)) official duty hours. (b) (6) testified she ordered a product from (b) (6) on one occasion, but she did not recall if (b) (6) sold it to her during her (b) (6)) official duty hours or not. (b) (6) testified she was not aware that (b) (6) sold products to her coworkers during her duty hours.

Information Gathered from Documents

83. (b) (6) documentation consisted of several email messages between herself and (b) (6) about scheduling a meeting on 10 November 2015, a MFR (undated) in (b) (6) email regarding timekeeping issues in the Fleet and Family Support Center, and an email, dated 23 January 2016, to multiple recipients at NAVSTA Newport disseminating information concerning regional timekeeping policies. None of these documents contained any reference to a complaint by (b) (6) that (b) (6) performed work for her non-government employer on her official time.

84. (b) (6) most recent annual ethics training took place on 20 April 2015, and the investigator reviewed the training certificate on file in NIGHTS.

85. (b) (6) submitted three MFRs she prepared concerning complaints she received from her employees, and these were dated: 16 November 2015, 12 January 2016, and 3 March 2016. The investigator reviewed and noted that only the 16 November 2015 MFR referenced a complaint about (b) (6) performing tasks for her non-government employers during her official duty hours. In that MFR, (b) (6) documented that three employees came to see her and one of them, (b) (6), told her at the time that “(b) (6) is always doing her church stuff on the computer. . . when the phone rings up there [at the front desk where (b) (6) sat], she doesn’t answer it. She forwards calls to me that she could answer herself.” (b) (6) MFR reflected she spoke with the employees who approached her that day, documented their concerns, and later spoke with (b) (6) regarding the complaints.

86. In the same MFR, (b) (6) further documented she spoke with (b) (6) directly about the complaint that she (b) (6) “used the computer for non-work related issues.” (b) (6) noted that (b) (6) became tearful, claimed that the other employees, especially (b) (6), “is [were] always blaming and criticizing her.” (b) (6) then requested leave for the remainder of the work day as she was too upset to return to the front desk, and (b) (6) approved her request. (b) (6) documented in this MFR that on Tuesday, 17 November 2015, she let (b) (6) know that she had discussed her (b) (6)) concerns with (b) (6), to which (b) (6) replied, “All you did was make it worse.”

87. (b) (6) second MFR, dated 12 January 2016, documented that six employees also met with her on that same date and expressed complaints to her at that time. Based on the MFR, however, it did not appear that any of the complaints lodged about (b) (6) on this occasion had any connection to her performing work for her non-government positions on official time. The following day, Wednesday, 13 January 2016, (b) (6) sent an email message to staff offering them several options “as a way forward” for handling their workplace

difficulties with (b) (6). (b) (6) noted she did not receive any complaints, either verbal or written, from her employees for the next two months.

88. (b) (6) third and final MFR, dated 3 March 2016, relayed the contents of a closeout meeting (b) (6) had with an employee, (b) (6), the (b) (6), who resigned just a few days before on 25 February 2016. (b) (6) listed three reasons for deciding to resign, the last of which was “the negative comments she was exposed to in her office setting, which she described as ‘toxic.’” (b) (6) heard comments in the office, and she kept track of who made negative remarks. (b) (6) told (b) (6) she intended to send the actual content to her [following the closeout meeting]. According to the MFR, (b) (6) identified (b) (6) and (b) (6) as the worst complainers and even mentioned that “(b) (6) hated (b) (6) and tended to spin up other co-workers about her.” (b) (6) further shared that some of the employees who were complaining had tried to “get her on their side,” but she (b) (6) avoided being pulled into this as much as she could.

89. The next day, 4 March 2016, (b) (6) documented in her MFR that (b) (6) emailed her written documentation to (b) (6), who then shared it with (b) (6). (b) (6) four-page document contained quotes of comments she overheard in the office prior to her resignation. At the beginning of the document, (b) (6) wrote, “This information reported here is due to the fact that certain statement[s] have been made that are uncomfortable, bullying, confusing, antagonizing, and creating an unprofessional atmosphere that I am calling toxic.” (b) (6) described the statements she captured in writing as being ones that did not fit in within the office’s core values and/or ethics. While (b) (6) acknowledged that a certain amount of venting occurred in the workplace, she noted that she felt “bullying, demeaning, toxic, and unprofessional behavior in common areas” was not acceptable. In reviewing this document, the investigator noted only one comment that appeared to reference (b) (6) use of official time: “(b) (6) : ‘She [The investigator believed this referred to (b) (6)] is lazy and does not work. She spends all day on Facebook ask anyone.’” According to the MFR, (b) (6) became very upset after receiving this document from (b) (6) and prepared her own MFR for the XO the same day. The investigator reviewed (b) (6) MFR to the XO and noted there were no comments or references to her misuse of official time in that document.

Analysis and Discussion

90. SECNAVINST 12752.1A, Enclosure 2, Section 7, states,

Managers and Supervisors are responsible to: (a) Implement and execute disciplinary actions at the local command level; (b) Ensure that disciplinary actions are accomplished following applicable DON, DoD, and OPM guidance and criteria when exercising delegated disciplinary program authority; and (c) Shall set a good example by their personal conduct.”

The Department of the Defense Instruction 1400.25, Vol. 100, 13 April 2009, Enclosure 1, para. 3, states,

“Managers and supervisors shall, when delegated civilian personnel management authorities, carry out civilian personnel management policies, procedures, and programs as outlined in Reference (a), this Instruction, and other DoD civilian personnel management issuances authorized by Reference (a), DoD Directive 1400.25, ‘DoD Civilian Personnel Management System,’ 25 November 1996, and consistent with applicable negotiated agreements.

91. Both complainants in this case were credible as they each provided testimonial evidence of specific instances when they either overheard or witnessed (b) (6) performing work for her non-government employers, such as her church, during her official duty time. Both complainants were also aware (b) (6) sold products for various companies, but neither was certain if she performed that work during her official duty time. Both complainants recalled complaining to (b) (6) several times over the past 3 to 6 years about (b) (6) performing work for her church during her duty hours, and testified that (b) (6) responded with one of the following: (1) this was the first she heard of it; (2) she never witnessed anything; or (3) she would address it with (b) (6). The second complainant remembered meeting with (b) (6), the first complainant, and (b) (6), one of the witnesses, in the fall of 2015 (most likely on 4 November 2016) and complaining about (b) (6) “stuffing envelopes for her church.” During this meeting, the second complainant recalled (b) (6) said she would address the matter, but the second complainant did not know if that occurred. When there did not appear to be any improvement in (b) (6) conduct, the second complainant then met with the XO in the fall of 2015 and complained to her at that time about (b) (6) conduct. The investigator confirmed with the XO that the second complainant met with her on two occasions: one date was unclear because it was not noted on her calendar and the second meeting was on 10 November 2015, but the XO denied that the second complainant made any comments about (b) (6) performing work for her non-government employers on her official duty time when they met. .

92. Besides the two complainants, both subjects of this investigation, and the XO, the investigator interviewed a total of 6 current and former employees of the Navy Fleet and Family Support Center, NAVSTA Newport, regarding the allegations. Two of these 6 witnesses testified that they also considered (b) (6) to be a personal friend. All 6 witnesses testified they knew (b) (6) was employed part-time by either a church or two direct-sales companies, or perhaps both. Of those 6 witnesses, 3 of them recounted first-hand experiences in which they witnessed (b) (6) performing work for her non-government employers during her official duty time. Their descriptions of (b) (6) use of her official time for this purpose ranged from “minor” to “excessive” in nature. Based on their testimony, at least 4 of these 6 were also present during the meeting on 4 November 2015, when complaints were made to (b) (6) about (b) (6) conduct, while a 5th witness recounted contacting (b) (6), who advised her that (b) (6) spoke with her that day about “doing her Religious ed [Education] on her time.” One of the 6 witnesses also related seeing (b) (6) performing work for her church as recently as 21 April 2016.

93. (b) (6) testified she did not know (b) (6) worked for a church until after the investigation began, she did not know (b) (6) sold products for direct sales companies, and

she denied (b) (6) complained to her on 10 November 2015 that (b) (6) was selling products for her outside employers during her official duty hours.

94. (b) (6) testified (b) (6) spoke to her after other employees in the office complained to (b) (6) about her (b) (6), but the date of this conversation was unclear. (b) (6) did not recall if the two spoke on 16 or 17 November 2015 about this because she said she had a poor memory for exact dates. (b) (6) recalled that (b) (6) said to her at the time “I don’t know if you are doing anything, but if you are, then stop it.” (b) (6) said she did not know to what (b) (6) was referring, the Director’s instructions to her were not specific with regard to how she spent her official time, and she did not know what she took this discussion to mean at the time it took place. (b) (6) further acknowledged that (b) (6) “may have” talked to her in the past about not performing work for her Religious Education Director position during her official time.

95. (b) (6) testified she was familiar with the two standards, had been trained in them at some point in her Federal career, and felt she abided by them. (b) (6) testified she was aware of (b) (6) outside employers, both with the church and at least one direct sales company. (b) (6) acknowledged receiving one complaint in November 2015 from an employee that (b) (6) was performing work for one of her non-government employers during her official duty hours. (b) (6) documented the complaint in the MFR she provided to the investigator and testified she discussed the complaint with (b) (6). According to (b) (6), (b) (6) denied performing work for her outside employer on government time. (b) (6) testified that she instructed (b) (6) that she could not perform work for her outside employers during her official duty hours and this was not to occur again. (b) (6) testified she never received additional complaints of this nature about (b) (6), and she never had to address the matter with her again.

96. The investigator determined that (b) (6) outside employment was well known throughout the office, and credible witnesses, in addition to the two complainants, were aware that (b) (6) received complaints about (b) (6) performing work for her outside employers during her official duty hours both on and before 4 November 2015. Many of the witnesses, along with the complainants, described a similar pattern of response from (b) (6) that also seemed very credible. While (b) (6) only acknowledged receiving one complaint in November 2015, the investigator believed it was more likely than not that she received a number of complaints about (b) (6) misuse of official time during 2002 to 2015, but choose not to document the complaints each time or to address them with (b) (6) for unclear reasons. Regardless of the number of complaints (b) (6) received about (b) (6), however, both testimonial and documentary evidence reflected that she took a supervisory action in November 2015 after receiving a complaint at that time by addressing the matter with (b) (6) directly. The investigator determined that (b) (6) response to the complaint at that time was in accordance with the requirements of the standards applied to this allegation.

Conclusion

97. Based on the preponderance of evidence, the investigator concluded that the allegation was **NOT SUBSTANTIATED**.

Recommendation

98. The investigator recommends that the entire staff of the Navy Fleet and Family Support Center, NAVSTA Newport, take refresher training in the rules pertaining to misuse of official time and official resources.

Disposition

99. Navy Fleet and Family Support Center staff has completed refresher training related to misuse of official time and official resources. Action complete.

Allegation #4: That (b) (6) provided certain subordinate employees with preferential treatment, from 18 November 2014 to 10 March 2016, in violation of 5 CFR §2635.101 (b) (8).

Conclusion: The allegation is NOT SUBSTANTIATED.

Findings of Fact for Allegation #4

100. 5 CFR §2635.101 (b) (8), states:

“Employees shall act impartially and not give preferential treatment to any private organization or individual.”

Testimony of the Complainants

101. C1 alleged (b) (6) allowed (b) (6) to work outside the office’s core hours (Her work schedule was 6:30 am to 3:00 pm vs. 7:30 am to 4:00 pm), and this required other staff members to fill in for her as the receptionist when she left at 3:00 pm. As (b) (6) was the only employee with this work schedule, C1 felt (b) (6) received preferential treatment from (b) (6) regarding her work hours. In a follow-up email message dated 1 June 2016, C1 stated that she, (b) (6), or (b) (6), another staff member, were required to fill in at the front desk for (b) (6) when she left for the day, and this arrangement disrupted their individual workloads and responsibilities as a result. In a follow-up email message dated 16 June 2016, the investigator asked C1 to comment on whether or not (b) (6) received preferential treatment, and C1 responded with a detailed example about him on the same day,

Most definitely (b) (6) was given preferential treatment. He was not required to do the work as laid out in his Position Description. He was not required to teach/provide Like Skills classes and briefs (Stress Management, Anger

Management, Resiliency, etc.). I was unfortunately present when he was offered the Educator position as I was given first dibs on it, he told (b) (6) at that time he would not do the Life Skills programs and she still put him in the position (not positive but believe it was a promotion for him). He was allowed to watch TV in his office usually Ball Games (which I also had to listen to as his TV was near the shared wall). He was allowed to sit in his office reading novels. When not reading or watching TV, he was out wandering the base visiting with his friends. Closer to his retirement he was not mandated to be in staff meetings. And maybe most importantly he was allowed to be verbally and emotionally aggressive towards other staff.

102. C1 also acknowledged in the email message discussed above that she never complained to (b) (6) that (b) (6) received preferential treatment.

103. C2 alleged (b) (6) and (b) (6) had a “special” working relationship for a supervisor and a subordinate employee. When asked to elaborate, C2 said (b) (6) did not require (b) (6) to perform certain functions of her position as the office’s front desk receptionist, and this disparity was brought to (b) (6) attention several times over the past three years. C2 said each time it was brought to (b) (6) attention she (b) (6) said she would address the matter, but it was never addressed. C2 further said that, as a result, she and the other clinicians chose not to approach (b) (6) for assistance with work tasks, they went to (b) (6) instead, and this impacted (b) (6) work load. C2 described the work environment in the office as “hostile” as a result of (b) (6) work relationship with (b) (6). C2 further said that (b) (6) also permitted (b) (6) to perform her duties poorly (i.e. making numerous errors with client appointments and scheduling), to do work for a non-government job while using government resources, and these issues were never addressed.

104. In addition to (b) (6), C2 said (b) (6) also allowed (b) (6), the (b) (6), to work outside of his position description. According to C2, (b) (6) was supposed to teach classes, but he did not do so, and those assignments were then given to the clinicians to perform instead. (b) (6) preferred to conduct the indoctrination briefs rather than teach, but C2 said that was not what he was supposed to do in his position, and this negatively impacted the clinician’s workloads. According to C2, (b) (6) response to this was that (b) (6) had many other duties to perform, such as that of Facility Manager. C2 contended this situation with (b) (6) was a constant subject in the office, and she compared it to the equivalent of a counselor who refused to conduct counseling. C2 said she was told that nothing could be done about (b) (6), Human Resources had been consulted, but nothing was ever done to address this with him. In reference to the preferential treatment (b) (6) and (b) (6) received, C2 said the rules were not applied equitably to employees throughout the office, which some staff referred to as being “in the club” or “not in the club.” C2 said that, in contrast, it seemed that her time was often “micromanaged,” whereas (b) (6) and (b) (6) were allowed to “pretty much write their own ticket,” and (b) (6) was allowed “to come and go as he pleased while the clinical wing was micromanaged.” Regarding those who were not in the club, C2 stated (b) (6) was an example of one such employee. C2 felt was

(b) (6) often discriminated against with respect to her duties and her relationship with (b) (6). C2 stated (b) (6) was denied leave on one occasion in the past because (b) (6) also requested leave on the same day.

105. C2 said she tried many times to get (b) (6) to respond to her complaints about (b) (6) and (b) (6), but the situation did not improve, so C2 contacted the XO. When C2 met with the XO in the fall of 2015, C2 discussed with her the fact that (b) (6) and (b) (6) both received preferential treatment from (b) (6) in that they did not have to perform all of their individual duties.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

106. (b) (6) stated that, in general, she felt “there were different rules for different people [in the office],” there was a lot of contention between the employees, and the office environment was uncomfortable. (b) (6) recalled that she and other employees had two meetings with (b) (6). During the first meeting [date unclear], (b) (6) stated the employees informed (b) (6) that it appeared to them that some employees received preferential treatment over others. During the second meeting with (b) (6), which (b) (6) estimated occurred sometime within the last six months, employees lodged a number of complaints about (b) (6). (b) (6) recalled that (b) (6) offered the employees a couple of options with respect to how they handled these complaints about (b) (6). (b) (6) stated she felt both (b) (6) and (b) (6) received preferential treatment. Regarding (b) (6), (b) (6) said she [(b) (6)] was allowed to work a schedule (6:30 am to 3:00 pm) that accommodated her second job, and this had been going on for a long time, yet (b) (6) was not permitted to work a maxi flex schedule until March 2016. (b) (6) further observed that (b) (6) was not required to perform certain functions of her position if she did not want to do so.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

107. (b) (6) described the office atmosphere as “tense,” and attributed this to the fact that she believed some employees were treated differently than others, and the supervisor did nothing to rectify this when it was brought to her attention in the past. During her interview, (b) (6) mentioned she felt (b) (6) was “moody” and would let the other employees know if they made her angry for any reason. (b) (6) said, “And it- it’s almost like, um, it used to be described as ‘you’re in the club or you’re not.’” When asked to explain “The Club,” (b) (6) described this as the group of employees who appeared to receive special treatment because (b) (6) favored them over others. According to (b) (6), (b) (6) was one of the employees who was “in the club” at the moment.

108. When asked to provide examples of specific employees whom (b) (6) afforded preferential treatment, (b) (6) referred to (b) (6) and (b) (6). According to (b) (6), during the last sequestration (date unclear) (b) (6) informed employees

that they had to work the office's core hours of 7:30 am to 4:00 pm. Despite this guidance, (b) (6) said (b) (6) permitted both (b) (6) and (b) (6) to work from 6:30 am to 3:00 pm, which Ms. Picard felt was special treatment afforded to the two of them. (b) (6) confirmed (b) (6) was also excused from teaching classes by (b) (6), and this was another example of preferential treatment. (b) (6) said (b) (6) was also very concerned with (b) (6) and (b) (6) arrival times in the morning. While she acknowledged these two employees arrived late to work on a routine basis, (b) (6) said others also arrived late to work from time to time and did not receive as much scrutiny. On occasion, (b) (6) made herself available to greet both employees when they arrived in the morning, which was not something she did with others in the office. Both (b) (6) and (b) (6) worked at the front desk, but (b) (6) said she felt (b) (6) received better treatment as the receptionist. (b) (6) said,

She [(b) (6)] sits at the front desk all day, reads a book, talks on [her] cell phone, talks on the government phone, is on Facebook every day for hours. . . . Um, at one point because I was protesting my having to sit at the front desk and not be able to do my job, I did read a book. And I got in trouble for reading books at the front desk. (b) (6) told me, 'You spend an awful lot of time reading books at the front desk.' [(b) (6)] response to (b) (6) was] 'Yes, because I can't do my job at the front desk.'

109. (b) (6) stated she had this conversation with (b) (6) a couple of years ago. (b) (6) continued the example by saying,

[(b) (6)] talked to me twice—well, the first time it was something about the books, the second time she said she got a complaint that I was rude to a customer. And I said, 'Can I, you know, what- what happened?' because I try not to be rude to anybody. And she- and I asked her, 'Well when was this? Was it in the morning? Was it in the afternoon?' [(b) (6)] replied] 'it doesn't make any difference, it was you.' 'Did they mention my name?' [(b) (6)] replied] 'No, but I know it was you.' It turned out it wasn't me; it was (b) (6). . . . So yeah, I feel like she gets better treatment than I do. And I-I-I work my butt off.

110. (b) (6) described instances when other employees asked (b) (6) to perform a work-related task for them during her duty hours, and (b) (6) responded, "No, I'm not gonna do it. Nope, not my job, not going to do it." According to (b) (6), sometimes (b) (6) would perform a task when requested, but this usually occurred only after (b) (6) advised her to take care of it. (b) (6) said the staff knew to come to her (b) (6) rather than (b) (6) if they needed something done because (b) (6) tended to either refuse to do it or went ahead and performed the task so poorly that they had to redo it themselves anyway. (b) (6) said she knew (b) (6), the (b) (6), told (b) (6) that she [(b) (6)] would not ask (b) (6) for assistance because (b) (6) told her no, but (b) (6) would ask (b) (6) for help because (b) (6) offered to help her.

111. (b) (6) said that in the fall of 2015, she knew (b) (6), (b) (6), and (b) (6) met with (b) (6) about the perception they had that (b) (6) received better treatment than others, and these employees told (b) (6) about the meeting. (b) (6) stated the three employees informed (b) (6) that (b) (6) refused to perform tasks for staff members and she gave out incorrect information, and (b) (6) replied that she wasn't aware any of this was occurring or that she [(b) (6)] treated anyone differently than anyone else. (b) (6) saw no difference in the behavior in the office following the meeting.

112. Regarding the relationship between (b) (6) and (b) (6), (b) (6) said it seemed the two were close, almost as if (b) (6) "had information on (b) (6) and (b) (6) did her best to keep (b) (6) happy." (b) (6) said (b) (6) was "in the club," and (b) (6) decided who in the office was in favor and who was not. (b) (6) acknowledged that because of this, (b) (6) seemed to wield a lot of power in the office, which frustrated other employees.

**Testimony of (b) (6), Navy
Fleet and Family Support Center, NAVSTA, Newport, RI**

113. When asked about preferential treatment in the office, (b) (6) testified she felt (b) (6) gave both (b) (6) and (b) (6) preferential treatment over the other employees. As many other witnesses testified, (b) (6) felt (b) (6) permitted (b) (6) to do what he wanted; for instance, she did not require him to teach although he was the Educator, and he was the only employee in the office who had a television set in his office. According to (b) (6), (b) (6) watched more than just news shows during his work day, and she felt (b) (6) was reluctant to confront him about anything he did. Regarding (b) (6), (b) (6) described (b) (6) as being "always on Facebook and her personal cellular telephone" throughout the work day, which she (b) (6) estimated to be about 4 hours per day, and (b) (6) would ignore staff members who came to her for assistance. (b) (6) stated employees complained to (b) (6) about (b) (6) conduct before and during the 4 November 2015 meeting, and (b) (6) always appeared mystified by their complaints. (b) (6) described how frustrating it was for the employees because they made several complaints to her (b) (6) at different times, and (b) (6) always seemed to act as if this was the first she heard of it even though it was not. (b) (6) recalled that the employees told (b) (6) in the meeting on 4 November 2015 they felt (b) (6) received preferential treatment, but (b) (6) reaction to their complaints frustrated them as there seemed to be some sort of "disconnect."

**Testimony of (b) (6), Navy
Fleet and Family Support Center, NAVSTA Newport, RI**

114. (b) (6) testified that she did not see any preferential treatment in the office, and did not feel (b) (6) treated (b) (6) and (b) (6) with preferential treatment.

**Testimony of (b) (6), Navy Fleet and Family Support Center,
NAVSTA Newport, RI**

115. (b) (6) was interviewed on 2 May 2016, and confirmed he was now retired. When asked if he felt (b) (6) showed any preferential treatment to certain employees in the office while he worked there, (b) (6) said, "She was a department head so she treated employees the way she felt she needed to treat'em." While (b) (6) said he did not witness anything in the way of either preferential or special treatment, he also commented that he suspected "favoritism." (b) (6) said that if (b) (6) received preferential treatment, then he was not made aware of that information, he had "no idea" about the working relationship between (b) (6) and (b) (6), and he did not see anything he felt was out of the ordinary.

116. When the investigator informed (b) (6) that some of the witnesses felt he received preferential treatment from (b) (6), (b) (6) became noticeably agitated and argumentative. While he initially neither confirmed nor denied that he received preferential treatment, (b) (6) said if he received special treatment then that would be "pretty unusual." In addition, (b) (6) further opined there were occasions when he felt he served more than he received from management, but he did not pursue that with (b) (6). When the investigator began to provide examples from witness testimony that (b) (6), as an Educator, decided he did not want to teach classes, (b) (6) became very agitated, even combative, and said, "Well then no, I didn't receive no special preferen- preferential treatment." When asked if it was true that he chose not to teach classes, but he was willing to conduct briefings, (b) (6) said that was not correct. According to (b) (6), in the past there was a time when the office was consolidated and then aligned under the [Norfolk Mid-Atlantic] region. The office held a meeting and at that time it was decided that the subject matter experts [such as the SMEs in Counseling] would be better off presenting the material [covered in the classes.] (b) (6) stated he was qualified to conduct the classes, but the staff in the office agreed the SMEs in Counseling would be best suited for that task. (b) (6) denied ever turning down work in this area or deciding not to perform functions of his position. (b) (6) also said he did not feel this situation was an example of him receiving preferential treatment from management. When the investigator asked (b) (6) about witness testimony claiming he refused to teach classes, yet brought a television set into his office and watched TV throughout the day instead, (b) (6) replied,

I'm absolutely insulted that you'd come to me and tell me that I didn't do my job or somebody's alleging that I didn't do my job or I refused to do my job or I watched TV all day long. Yes, I had a TV in my office because at the time I had to follow what was going on around here because I was also the Deployment Support Specialist. So it's kind of interesting that I stay in touch with what's going on in the world because it was affecting my military personnel and their families. So yeah, that's what I did with the TV.

117. (b) (6) also stated (b) (6) was aware that he had a TV set in his office of how he was using it for his work.

Testimony of (b) (6), NAVSTA Newport, RI

118. (b) (6) described (b) (6) as being a professional who treated all of her employees in the same way. (b) (6) testified (b) (6) “insinuated” to her that (b) (6) and (b) (6) received preferential treatment during their meeting on 10 November 2015. (b) (6) mentioned (b) (6) was allowed to enter his own time card as an example of this. (b) (6) said (b) (6) was not able to provide any other specific examples of (b) (6) providing some employees with preferential treatment over others, and she did not come back to her at a later date with any specific examples. As a result, (b) (6) determined there was nothing for her to discuss regarding this topic with (b) (6) at that time.

Testimony of (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI

119. (b) (6) testified she felt there was no preferential treatment in the office and (b) (6) treated all of the employees in the same way. While (b) (6) denied that (b) (6) received preferential treatment, she acknowledged that she felt (b) (6) treated him “with kid gloves.” (b) (6) denied that she received preferential treatment and described witness testimony that she and (b) (6) received preferential treatment as “hysterical.” (b) (6) stated she felt that (b) (6) received better treatment when she (b) (6) covered the office’s front desk.

Testimony of (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI, (SUBJECT)

120. (b) (6) testified she knew the ethics rule prohibiting preferential treatment, and confirmed her most recent ethics training took place on 1 March 2016. (b) (6) denied that employees ever complained to her that they felt some staff members received preferential treatment over others. While she denied receiving complaints of this nature, (b) (6) acknowledged that in the meeting with some of her employees on 16 November 2015, she first heard comments from (b) (6) that (b) (6) was viewed “as the favored child.” According to (b) (6), this seemed to have something to do with (b) (6) work schedule although no one ever complained about that specifically to her. (b) (6) encouraged (b) (6) to come back to her office and talk further about this, but (b) (6) never returned to discuss it with her any further.

121. (b) (6) denied giving (b) (6) preferential treatment in any way. (b) (6) speculated further that she thought some in the office viewed (b) (6) work schedule as some form of preferential treatment, but she stressed (b) (6) had worked her current hours since 2000 or 2002, when a previous Center director set her hours with her. (b) (6) testified that no one ever complained to her about (b) (6) work hours. (b) (6) stated she originally had (b) (6) and (b) (6) cover the front desk for different portions of the day, but two years ago she adjusted, and ultimately reduced,

(b) (6) scheduled desk coverage in order to accommodate some of (b) (6) other work responsibilities within the office. (b) (6) further said that if other staff members wanted to work the same hours as (b) (6) then she would consider their requests as she never prohibited them from doing so. In a follow up email dated 12 July 2016, (b) (6) further emphasized that (b) (6) schedule “works,” no one complained to her about having to cover the front desk at 3:00 pm, and (b) (6) recently accommodated three other staff members ((b) (6), and (b) (6)) when they requested schedule changes of their own.

122. (b) (6) denied giving (b) (6) any preferential treatment, but referenced the office history and environment, discussed in the background section of the report, as part of the explanation for why some employees felt he received “favoritism” or preferential treatment. (b) (6) recounted some historical background about the division in work duties in the office prior to her arrival in 2007. In some offices, the Educator taught all of the classes, while in other offices the Educator only performed a portion of the teaching. According to (b) (6), when (b) (6) worked for a brief time in Portsmouth, NH, in late 2015/early 2016 she [(b) (6)] saw that the Educator in that office did more than (b) (6) did in Newport, and (b) (6) believed this angered (b) (6). (b) (6) did not add to any of (b) (6) duties at the time because she felt “he had enough to fill his plate,” and she made sure he performed his work. While (b) (6) denied favoring (b) (6) in any way, she also stressed that (b) (6) and (b) (6) both “hated” (b) (6), and this went back to the days with the previous Center Director.

123. Regarding the television set in (b) (6) office, (b) (6) commented:

He basically- he had a television set in his office. When I would walk in there, at times, he had the news on. It wasn't like, you know, that kind of thing. He'd have CNN on and other times, it was not on at all. I mean, (b) (6) had customers that would come in. (b) (6) was- really I had no problems with (b) (6) with his work or how he treated customers. He was a retired Senior Chief. He was very appropriate. However, the tweak with (b) (6) is that once he decided, you know, you were kind of on his crap list, so to speak, he didn't talk. He just- you know, that was it. He hated (b) (6). Why? Because (b) (6) hated (b) (6). She liked (b) (6).

124. When asked to explain the official purpose of the television set in (b) (6) office, (b) (6) commented,

I'm trying to think of that. I don't know if there was an official reason. You know, I mean, I don't even recall if that TV was in a common area. I mean, it had been in there as long as I had been there, you know. But I did not see (b) (6) - I didn't see it on, like, all day long. You know, I did see it on when there were some events goin' on with CNN. He certainly didn't have it on with customers, you know, and - yeah. . . But what's interesting about that [the perception (b) (6) received preferential treatment because he had a TV in his office] is no

one ever came to me to say, 'How come (b) (6) has a TV? or flipside, can I have a TV?' So for me it was sort of like a neutral issue. I don't know [who gave him permission to have it.]

125. When the investigator shared (b) (6) explanation of the official purpose of the television was to assist him with his work responsibilities supporting personnel who deployed, (b) (6) remarked that she was not sure of that explanation. She went on to explain they had a system in place for assisting deployment, but it did not require the use of a TV set in order to perform that function.

Information Gathered from Documents

126. As discussed earlier, (b) (6) submitted documentation that consisted of several email messages between herself and (b) (6) about scheduling a meeting on 10 November 2015, a MFR (undated) in her (b) (6) email regarding timekeeping in the Fleet and Family Support Center, and an email dated 23 January 2016 to multiple recipients at NAVSTA Newport concerning regional timekeeping policies. None of these documents contained any reference to a complaint by (b) (6) that (b) (6) afforded some employees with preferential treatment over others.

127. The investigator reviewed (b) (6) training records and noted she was trained on the ethics rules on 20 April 2015 and 1 March 2016

Analysis and Discussion

128. 5 CFR §2635.101 (b) (8), states:

“Employees shall act impartially and not give preferential treatment to any private organization or individual.”

129. Both complainants in this investigation alleged (b) (6) afforded some employees with preferential treatment over others, citing Ms. Fleming and (b) (6) as the main examples.

130. In addition to the complainants, the investigator interviewed 7 witnesses, including (b) (6) and (b) (6), as well as other current and former Navy Fleet and Family Support Center, NAVSTA Newport, RI staff members. The testimonial evidence broke down as follows: 1 witness felt (b) (6) received preferential treatment; 2 witnesses felt both (b) (6) and (b) (6) received preferential treatment; and the remaining 4 witnesses denied that anyone received preferential treatment from (b) (6) in the office.

131. (b) (6) testified she was aware of, understood, and trained in the ethics rule pertaining to impartial treatment in 2015 and 2016. (b) (6) denied affording any of her employees preferential treatment. According to (b) (6), (b) (6) work

hours were sent in 2000 or 2002, long before she [(b) (6)] arrived at the office. (b) (6) MFR dated 16 November 2015 documented a question (b) (6) asked during a meeting which the two had that day in the presence of other employees. According to the MFR, (b) (6) asked (b) (6) why “(b) (6) was the favored child” and the rest of the employees were “the have nots?” (b) (6) documented that (b) (6) had to leave the meeting early in order to see a client, but on 17 November 2015, (b) (6) sent an email to (b) (6) in which she invited her to return and continue their discussion of her concerns at her convenience. (b) (6) said (b) (6) never returned to see her.

Conclusion

132. Based on the preponderance of evidence, the investigator concluded the allegation was **NOT SUBSTANTIATED**.

Recommendation

133. No Recommendations.

Disposition

134. No action.

Allegation #5: That (b) (6) misused her official time, from 18 November 2014 to 10 March 2016, by performing work for her non-government job during her official duty hours, in violation of 5 CFR §2635.705.

Conclusion: The allegation is substantiated.

Findings of Fact for Allegation #5

135. 5 CFR §2635.705 states,

“An employee shall use official time in an honest effort to perform official duties.”

136. Allegations #5 and #3 were linked as each involved (b) (6) and her use of her official time. In the interest of conciseness, the investigator chose to present the Findings of Fact for Allegation #5 by listing the relevant, undisputed facts already established earlier in this report concerning (b) (6) outside employment. These facts were established through the testimony of both complainants and the same six witnesses who testified in Allegation #3.

Facts Established By Testimony of the Complainants and the Witnesses:

- Both complainants and 6 witnesses all testified they were aware (b) (6) was employed outside the Navy by at least one employer (i.e. the church) prior to the start of this investigation;
- Both complainants and 3 witnesses testified they either saw or heard (and in some cases both) (b) (6) performing work for her outside employers on her official duty time;
- Both complainants and 3 witnesses recounted seeing (b) (6) use government resources (i.e. the computer and the telephone) to perform work for her outside employers on her official duty time;
- Of the three witnesses who testified that they saw (b) (6) performing work for her outside employers during her official time, their individual assessments of the amount of time she devoted to this varied from “minor” to “excessive” in nature; and
- One of the complainants and several witnesses indicated (b) (6) kept catalogues for her direct sales companies at or near the vicinity of the front desk.

Testimony of (b) (6)
(b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI,

137. (b) (6) testified she first learned in 2007 that (b) (6) worked at a church in Tiverton, RI, but she did not know what hours or days of the week Ms. Fleming was employed there. (b) (6) stated (b) (6) work hours in the Navy’s Fleet and Family Support Center, from 6:30 am to 3:00 pm, were first arranged by another director prior to her arrival in the office. (b) (6) also recalled seeing “a note” about this in (b) (6) official personnel file. Following her interview, (b) (6) copied and faxed the note to the investigator. In a follow up email message dated 5 July 2016, (b) (6) denied ever granting (b) (6) permission to stuff envelopes for her church on her official time in 2014.

138. Regarding (b) (6) outside employment in direct sales, (b) (6) testified she learned two years ago that she (b) (6) sold products for Tastefully Simple, and (b) (6) recalled (b) (6) left her a brochure on her desk during her (b) (6) official duty hours. (b) (6) testified she ordered a product from Ms. Fleming on one occasion, but she did not recall if (b) (6) sold it to her during her (FLEMING’S) official duty hours or not. (b) (6) testified she was not aware that (b) (6) sold products to her coworkers during her duty hours.

139. As discussed in Allegation #3, (b) (6) testimony established the following facts concerning her outside employment:

- (b) (6) worked part-time at a church, with the approval and permission from her previous chain of command at NAVSTA Newport, since 2002;
- (b) (6) worked for several direct sales companies over the years, but with two different, current ones since 2015;
- (b) (6) testified she performed work for her outside employers after her duty hours with the Navy ended, in the evenings, and on weekends;

- (b) (6) testified (b) (6) was aware of her employment at the church and with at least one of the direct sales companies;

140. In her interview, (b) (6) acknowledged that she was trained in the ethics rules and was aware of and familiar with the rules pertaining to an employee's use of official time and resources. (b) (6) admitted she performed work for her outside employers during her official duty hours. As examples, she stated she sent email messages on the government computer to the church, and estimated this occurred about one to two times a month and required between 2 and 5 minutes of her time. In total, (b) (6) thought she used "maybe a half an hour of her official time" per month sending emails to her other employer on the government computer. (b) (6) also said she sometimes received telephone calls on the government telephone from her other employer during her official time. (b) (6) described performing these tasks on a sporadic basis rather than an every day occurrence, and said she did this when she forgot something at her other employer.

141. (b) (6) acknowledged she had a personal, cellular telephone, which she brought to work with her, and on occasion she used it to access Internet websites to view catalogues associated with her direct sales employers during her duty hours. (b) (6) estimated she spent about 5 minutes looking at the catalogues and that she had done this less than 5 times altogether. (b) (6) acknowledged she usually had one catalogue at or near the front desk, and she brought this in twice a year for a couple of days only after a new catalogue was released, and she wanted to peruse it. (b) (6) said she kept the catalogue at work long enough to look at it, and then she took it home with her.

142. When the investigator asked (b) (6) about specific examples from witness testimony, she did not recall ever stuffing envelopes for her church during her official time as witnesses testified, nor did she recall performing any work for her church as recently as 21 April 2016. She recalled, however, that at least one time in 2014, (b) (6) permitted her to stuff envelopes for her church during her duty hours. She recalled making a menu for her church on the government computer, but contended she did this during her lunch break. (b) (6) denied that she ever sold direct sales products to her coworkers during her official duty hours despite witness testimony to the contrary. (b) (6) described the official time she spent performing work for her other employers as "inconsequential."

143. Following her interview, (b) (6) sent email messages to the investigator on 28 June 2016, with information concerning some of her coworkers in the office and their outside Navy employment obligations. (b) (6) did not state, however, that any of her coworkers performed tasks for other employers during their official duty hours. (b) (6) stated on employee, (b) (6), also brought catalogues to work in the past.

Information Gathered from Documents

144. As discussed in Allegation #3, documentation provided by (b) (6) confirmed (b) (6) sought and received permission for her outside employment at her church in 2002. In the documentation, (b) (6) signed a statement indicating she would perform work

associated with her church position during her off duty hours from Navy Fleet and Family Support Center on 22 May 2002.

145. (b) (6) training certificates reflected she received training in the ethics rules on 15 April 2015 and 11 April 2016.

Analysis and Discussion

146. 5 CFR §2635.705 states,

“An employee shall use official time in an honest effort to perform official duties.”

147. The complainants alleged (b) (6) misused her official time by performing tasks associated with her outside employers during her duty hours with the Navy’s Fleet and Family Support Center.

148. Documents showed (b) (6) had permission for outside employment at her church since 2002. The investigator found no requirement that (b) (6) was expected to obtain permission for her direct sales positions at any time.

149. The investigator requested and reviewed email messages and website logs from the two computer work stations assigned to (b) (6), including the front desk computer, but was unable to quantify the extent to which (b) (6) used the equipment in pursuit of her outside employment on official time based on the information provided.

150. As noted in Allegation #3, both the complainants and several witnesses provided testimonial evidence of (b) (6) misusing the government computer and telephone for her outside employment during her official duty hours. (b) (6) admitted she knew, understood, and was trained in the ethics rules pertaining to use of her official time and government resources. (b) (6) further admitted performing tasks for one of her outside employers on official time, but also attempted to minimize the effects of this by describing it as ‘inconsequential.’ While the investigator was unable to quantify the extent to which (b) (6) accessed her to perform work for her outside employment, the investigator concluded that witness testimony was the most accurate indicator, and concluded (b) (6) did misuse government equipment and official time to perform work for her outside employment.

Conclusion

151. Based on the preponderance of evidence, the investigator concluded the allegation was **SUBSTANTIATED**, however, based on a preponderance of the evidence (b) (6) misuse of government equipment and official time was not pervasive enough to have a meaningful impact on her ability to perform her assigned duties.

Recommendation

152. The investigator recommends that (b) (6) receive supplemental training on the ethics rules related to this allegation.

Disposition

153. (b) (6) completed ethics training related to use of official time. Action complete.

List of Interviews and/or Documents

Interviews conducted

- (1) Confidential Complainant (C1), Telephone Interview, dated 18 March 2016
- (2) Known Complainant (C2), Telephone Interview, dated 21 March 2016
- (3) (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, Telephone Interview, dated 27 April 2016
- (4) (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, Telephone Interview, dated 28 April 2016
- (5) (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, Telephone Interview, dated 13 June 2016
- (6) (b) (6), NAVSTA Newport, RI, dated 2 June 2016
- (7) (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, dated 27 June 2016
- (8) (b) (6), Navy Fleet and Family Support, NAVSTA Newport, RI, dated 7 June 2016
- (9) (b) (6), NAVSTA Newport, RI, Telephone Interview, dated 28 April 2016
- (10) (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, Telephone Interview, dated 9 June 2016
- (11) (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, Telephone Interview, dated 4 May 2016

(12) (b) (6), Navy Fleet and Family Support Center, NAVSTA Newport, RI, Telephone Interview, dated 2 May 2016

Documents reviewed

- (1) Email message from (b) (6), dated 14 June 2016
- (2) Email message from (b) (6), dated 13 June 2016
- (3) Email messages from (b) (6), dated 10 June 2016
- (4) Email messages from C1 regarding RDO denial in September 2015
- (5) C1's certified timecard for 25 September 2015
- (6) (b) (6) turnover sheet for 14-21 April 2016 travel
- (7) Email messages from (b) (6), dated 28 June 2016
- (8) (b) (6) certified timecard for 7 August 2015 travel and RDO
- (9) Email message from (b) (6), dated 14 June 2016
- (10) (b) (6) notes on RDO dates
- (11) Email message from (b) (6) regarding RDO, dated 28 June 2016
- (12) (b) (6) ethics training certificates for 2014 and 2015
- (13) (b) (6) Three Memorandums for the Record, dated 16 November 2015, 12 January 2016, and 3 March 2016
- (14) Email message from (b) (6), dated 17 November 2015
- (15) Email messages from (b) (6), dated 27 & 28 June 2016
- (16) Email message from (b) (6), dated 18 May 2016
- (17) (b) (6) email documentation on meeting with C2 in November 2015
- (18) (b) (6) ethics training certificates for 2014 and 2015
- (19) (b) (6) chronology of events in the office
- (20) Email message from C2, dated 26 May 2016

- (21) (b) (6) email message, dated 5 July 2016
- (22) (b) (6) request for outside employment, dated 20 May 2002
- (23) C1's email message, dated 6 July 2016
- (24) (b) (6) email message, dated 7 July 2016
- (25) (b) (6) email message, dated 8 June 2016
- (26) (b) (6) email message, dated 11 July 2016
- (27) (b) (6) email message, dated 14 June 2016
- (28) (b) (6) email message, dated 8 Jun 2016
- (29) (b) (6) email message, dated 6 July 2016
- (30) (b) (6) email message, dated 11 July 2016
- (31) C1's email message, dated 8 June 2016
- (32) (b) (6) certified timecards for 6 February 2016-5 March 2016 & 2-30 April 2016
- (33) Copy of the Compensatory Time Off for Travel (CTT) Policy, dated 13 May 2016
- (34) Email messages provided by C2, dated 11 February – 31 March 2016
- (35) (b) (6) TCL response, dated 12 Sep 2016
- (36) (b) (6) travel itinerary to Millington, TN
- (37) (b) (6) travel itinerary to Souda Bay, Greece