

Office of the Naval Inspector General

Preliminary Inquiry Report

26 May 2016

Subj: NAVY CASE 201601079

Preliminary Statement

1. On 28 March 2016, Department of Defense Inspector General (DOD IG) received a complaint alleging that CAPT Dennis Boyer, Commanding Officer (CO), Naval Station (NAVSTA) Newport failed to ensure proper manning of the installation's civilian police force which resulted in unsafe, excessive levels of civilian overtime. The complaint alleged that although Commander Navy Region Mid-Atlantic (CNRMA) completed a command inquiry of this matter in December 2015 which validated the allegation, CNRMA has failed to implement effective corrective or accountability action and the issue has not been resolved.
2. The complaint also alleged that CNIC N3 and/or CNRMA N3 leadership have failed to ensure compliance with the Commander Navy Installations Command (CNIC) Ashore Protection Program, failed to ensure minimum law enforcement training standards for civilian police officers, and established a wasteful and ineffective process for equipping government patrol vehicles.
3. The complaint also included five individual allegations of civilian employee reprisal, including that CDR Julie Sellerburg, Executive Officer (XO), NAVSTA Newport improperly modified one of the complainant's performance evaluation. DOD IG has the reprisal aspect of this complaint for action and therefore it was not included within the scope of this preliminary inquiry.
4. Five known Complaints, listed below, submitted this complaint to DOD IG collectively as a group. All five provided their names to DOD IG and indicated that they did not wish to remain anonymous and were willing to be interviewed.
 - a. (b) (6)
 - b. (b) (6)
 - c. (b) (6)
 - d. (b) (6)
 - e. (b) (6)
5. On 8 April 2016, DOD IG forwarded DOD Case Number 20160303-036145-CASE-01 to Naval Inspector General (NAVINSGEN) as an Information Referral.

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6. On 12 April 2016, NAVINSGEN assigned case number 201601079 and transferred to case to CNIC IG.

7. On 16 May 2016, NAVINSGEN approved CNIC IG to conduct a Preliminary Inquiry (PI).

Background

8. The following information is provided in order to establish the history and sequence of events that preceded NAVSINGEN's receipt of this complaint on 8 April 2016.

9. On 6 April 2015 DOD IG forwarded Case 20150331-030621-CASE-02 as an Action Referral to NAVINSGEN and NAVINSGEN assigned case number 201501012. The Confidential Complainant in this case (201501012) reported to DOD IG that there was a systemic issue across the Department of the Navy (DON) regarding improper manning of security forces placing Sailors and DON personnel in jeopardy. The Confidential Complainant further alleged that Senior DON leadership have failed to provide appropriate policy or procedures to ensure that installation Security Forces are properly manned, trained and equipped to conduct their jobs. The Confidential Complainant specifically noted NAVSTA, Norfolk as an example of one of the many installations within CNIC where this has occurred and alleged that these issues have been brought to the attention of the chain of command, however there has not been any action taken to address the problem. NAVINSGEN closed this case as dismiss on 10 February 2016. NAVINSGEN N3 was aware of the issue and it was noted that as a result of NAVINSGEN Command Inspections conducted during 2015 in the areas of Antiterrorism/Force Protection (ATFP) at Commander, US Fleet Forces Command (USFF) and CNIC, appropriate initial and short-term corrective measures were taken to address the Security manning issues reported specifically at Naval Station (NAVSTA) Norfolk. It was also noted that CNRMA and CNIC have plans in place to address manning, training, equipping, and continued oversight of NAVSTA Norfolk Security.

10. On 11 September 2015 an anonymous complaint was submitted to DOD IG (Case No 20150921-033260-CASE-01) alleging that CAPT Dennis Boyer, Commanding Officer NAVSTA Newport failed to ensure proper manning of civilian police force which resulted in unsafe, excessive levels of civilian OT. The anonymous complainant alleged that CAPT Boyer forced supervisory civilian police employees to work nearly 150 hours of mandatory overtime per pay period in order to meet mission requirements with reduced manning. The anonymous complaint alleged that these actions created potential safety issues associated with fatigue and on-duty driving time in violation of DODI 6055.4, Enclosure (3) and OPNAVINST 5100.12J, paragraph 7.d

11. On 17 September 2015 the five known complainants listed above (b) (6), (b) (6) reported directly to their chain of command within CNRMA that CAPT Dennis Boyer, Commanding Officer NAVSTA Newport failed to ensure proper manning of civilian police force which resulted in unsafe, excessive levels of civilian due to under-manning.

12. On 23 September 2015 DOD IG forwarded Case 20150921-033260-CASE-01 (Anonymous) to NAVINSGEN as an Information Referral. NAVINSGEN assigned case number 201502985. Since the same allegations had already been reported by the five known Complainants directly and internally to their leadership at CNRMA on 17 September 2015, NAVINSGEN closed case 201502985 as referred to the chain of command, CNRMA, for appropriate action and no further IG inquiry or investigation was conducted.
13. On 20 October 2015 the five known Complainants reported the same allegations of unsafe, excessive levels of civilian overtime due to under-manning to CNIC and United States Fleet Forces Command (USFF) leadership.
14. On 23 December 2015, CNRMA issued a 551-page command investigation report which concluded that there was merit to the Complainants' allegations and sustained that CAPT Boyer had violated DODI 6055.04, DOD Traffic Safety Program, OPNAVINST 5100.12J, Navy Traffic Safety Program and OPNAVINST 3500.39C, Operational Risk Management.
15. On 22 January 2016: CNRMA endorsed the command investigation report of 23 December 2015 directing that CO, NAVSTA Newport implement the recommendations contained therein and also directing that CNRMA N1 and CNRMA N3 consider additional recommendations contained in the report.
16. On 28 January 2016 the complainants submitted a Freedom of Information Act (FOIA) request for a copy of CNRMA's command investigation report.
17. On 18 February 2016 the Complainants submitted a memorandum to Honorable Ray Mabus, Secretary of the Navy and members of Congress including Senator Jack Reed alleging that despite CNRMA's command investigation substantiating the allegations, corrective action to resolve their previously reported concerns and allegations had not been executed and that the potentially unsafe overtime conditions continued at NAVSTA Newport.
18. On 29 February 2016 Senator Jack Reed wrote a letter to DOD IG requesting that NAVINSGEN review and investigate the information provided to him by the five Complainants.
19. On 10 March 2016, as recommended by CNRMA's command investigation report, the NAVSTA Newport Operational Risk Management (ORM) Safety Subcommittee issued a report which further validated the risks associated with the high overtime levels being worked by Security personnel and included recommendations to the Commanding Officer, NAVSTA Newport intended to address the manning shortage, excessive overtime concerns and associated safety violations.
20. On 16 March 2016 the five Complainants submitted another memorandum to members of Congress alleging that they had now been reprisal against in retaliation for reporting the allegations of excessive overtime and associated safety violations. The memorandum also stated that (b) (6) NAVSTA Newport, informed the ORM committee members that

their recommendation to hire additional police officers to resolve the safety violations was not an option and was not going to happen.

21. On 17 March 2016 (b) (6) e-mailed his first line supervisor, (b) (6) (b) (6), also describing additional lack of compliance with various requirements contained in CNICINST 5530.14A, CNIC Ashore Protection Program and DODI 5525.15, Law Enforcement Standards and Training in the DoD. Copies of these e-mails were included among the information the Complainants submitted to DOD IG in March 2016.

22. On 25 March 2016 DOD IG responded to Senator Reed indicating that Naval IG had conducted an inquiry and that it appeared the complainants were dissatisfied with the outcome. It should be noted that although CNRMA conducted a command investigation (report dated 23 December 2015), Naval IG had not conducted any inquiry or investigation of these matters.

Summary of Results of Preliminary Inquiry

23. Based on the results of this PI we determined that the previously reported allegation that CAPT Dennis Boyer, Commanding Officer (CO), Naval Station (NAVSTA) Newport failed to ensure proper manning of the installation's civilian police force which resulted in unsafe, excessive levels of civilian overtime warrants an IG investigation, although there also appears to be mitigation due to manning and resourcing constraints imposed on NAVSTA Newport by higher authority. Of the nine new allegations contained in this complaint, we concluded that six are appropriate for referral to CNIC N3 for information and action as deemed appropriate, and three warrant no further action. As a result of this PI, we further concluded that mitigation of the systemic CNIC-wide safety risks caused by under-manning of Security personnel across CNIC, due to implementation of the Chief of Naval Operations (CNO) 2012 Mission Profile Validation – Protection (MPV-P) is also appropriate for referral to CNIC N3.

24. Despite previous findings and recommendations reported by CNRMA's Command Inquiry of 22 January 2016 and also by NAVSTA Newport Safety Sub-Committee's ORM Report of 10 March 2016, the PI revealed that CAPT Boyer continues to authorize civilian supervisory police officers to work unsafe levels of overtime that exceed maximum government motor vehicle (GMVs) driving time standards in violation of OPNAVINST 5100.12J, Navy Traffic Safety Program paragraph 7.d(2).

25. CNRMA's Command Inquiry Report endorsed on 22 January 2016 stated, in part, that "the preponderance of evidence indicates the CO did violate guidance requiring appropriate rest and limits on operating vehicles during assigned duty shifts. Specifically that CAPT Boyer was aware that supervisors were being forced to operate vehicles in violation of OPNAVINST 5100.12J but failed to take reasonable and required measures to mitigate the impact of that use on their safety, to include operation of a meaningful Operational Risk Management (ORM) Program."

26. The NAVSTA Newport ORM Safety-Sub Committee Report stated, in part, that excessive and repeated reliance on overtime may lead to the physical and mental fatigue and exhaustion of

affected personnel. Potential long term effects of fatigue and exhaustion include decreased vigilance, inattention, mood changes, perceptual and cognitive decrements. With specific regard to the working environment of Patrol and Supervisory Security personnel, issues such as driving, trips/falls, firearm safety, interaction with the public, and potential lapses in focus, judgment, and command and control functions are potential considerations for concern. With only five personnel available to support supervisory functions for a 24/7, three shift operation, it is easy to conclude that overtime requirements for supervisors are overwhelming. These occurrences are a direct result of operating under and adverse work schedule due to manpower shortfalls.

27. The PI revealed that although CAPT Boyer reported completion of corrective actions as recommended by CNRMA's command inquiry report, effective action to actually alleviate the unsafe overtime has not been implemented, and as of May 2016 CAPT Boyer continues to authorize unsafe levels of overtime for Supervisory Police Officers.

28. CNRMA's endorsement letter of 22 January 2016 directed CAPT Boyer to take the following actions:

a. Establish of a Safety Sub-Committee and complete a risk assessment. The PI determined that CAPT Boyer completed this action on 10 March 2016, which resulted in issuance of the ORM Safety-Sub Committee Report described above which simply further validated the unsafe overtime issue and associated risks.

b. Conduct the annual Command Managed Equal Opportunity (CMEO) Survey. The PI determined that CAPT Boyer completed this action 15 January 2016.

c. Publish the order list for filling overtime slots. The PI determined that CAPT Boyer completed this action prior to 19 May 2016. The list is published but has not resolved the amount of overtime required to cover the shift supervisor duties.

29. CNRMA's endorsement of 22 January 2016 also directed CNRMA N1, (b) (6), to provide a memorandum by 22 March 2016 addressing the potential hire of "term" employees to fill current manning gaps in the NAVSTA Newport Security Department focused on supervisory responsibilities. As of 25 May 2016, (b) (6) testified that CNRMA N1 had not prepared or provided this memorandum to the Regional Commander. (b) (6) explained that requests for personnel action (RPAs) were planned and had been initiated on 24 May 2016 to attempt to fill supervisory police officer positions through Temporary promotions of patrol officers not to exceed one year.

30. CNRMA's endorsement of 22 January 2016 also directed CNRMA N3 to provide a memorandum by 22 March 2016 addressing the feasibility of providing advanced law enforcement training to inbound Master-at-Arms (MA) personnel to assume and execute supervisory responsibilities in the NAVSTA Newport Security Department. The IO requested a copy of this memorandum from CAPT Peter Nette, CNRMA N3, but as of 26 May 2016 it has not been received. (b) (6), CNRMA N3AT testified that he had no knowledge of such a memorandum.

31. Review of Standard Labor Data Collection and Distribution Application (SLDCADA) time and attendance records, e-mail correspondence, and Watch Bills (work schedules) shows that as of 20 May 2016, CAPT Boyer continued to approve NAVSTA Newport Supervisory Security Personnel to work a significant amount of overtime including up to 16-hour work shifts. Preliminary interviews conducted to date, including with all five Complainants, NAVSTA Newport Security Director and (b) (6), NAVSTA Newport Safety ORM Committee Representative consistently reported that CAPT Boyer's continued authorization of high levels of overtime creates an unsafe situation which increases the risk of safety mishaps and/or incidents.

32. Testimony during this PI also revealed that due to the nature of the work required by the Supervisory Police Officers, including driving GMVs, handling loaded firearms, and potentially having to make split second decisions in life or death emergency situations, the current overtime levels, in which personnel can become fatigued and sometimes report to work on 3-4 hours of sleep, is viewed as unsafe. For example, (b) (6) testified that he believes the current overtime situation is dangerous, could potentially lead to someone's death, and that too often it takes somebody to die before corrective action is implemented.

33. Based on the PI, we also identified an emerging related issue, which potentially mitigates the alleged regulatory violations by CAPT Boyer. CNIC N3's implementation of the 2012 MPV-P has resulted in the gradual elimination of Supervisory Police Officer billets at NAVSTA Newport and many other installations across CNIC. Elimination of Security Patrol Supervision is not consistent with guidance contained in OPNAVINST 5530.14E, Chapter 5, NTTP 3-07.2.3 or the opinion and advice of ATFP subject matter experts interviewed. As a consequence of the 2012 MPV-P manning reductions, Installation Commanding Officers and Security Directors have been lead to either require unsafe levels overtime to cover supervisory operational mission requirements or leave patrol shift supervisory duties unmanned, both of which increase the risk of potential mishaps.

34. The 2012 Naval Security Force (NSF) Mission Profile Validation - Protection (MPV-P) issued by the Chief of Naval Operations (CNO), appears to have prohibited CNRMA from adequately resourcing and manning the NAVSTA Newport Security Department Supervisory Police Officer duties. Information obtained during this PI further indicates that the MPV-P directly affects other installation Security operations across the CNIC enterprise and therefore could potentially represent a systemic safety problem caused by either excessive overtime or unmanned supervisory patrol shifts at other installations in addition to NAVSTA Newport (as alleged in case 201501012).

35. According to Naval Message R 111507Z Mar 16 from CNO, NAVADMIN 062/16, the MPV-P is the CNO model used to determine posts required to meet protection requirements, associated staffing, and resource options per OPNAVINST 5530.14E.

36. However, OPNAVINST 5530.14E, Chapter 5, states that the budget submitting office (BSO)¹ has the overall authority and responsibility to identify the appropriate staffing and skill level of NSF personnel required to meet the Navy's security mission, in accordance with OPNAVINST 1000.16K, Navy Total Force Manpower Policies and Procedures. OPNAVINST 5530.14E, further specifically describes the duties and responsibilities of supervisory security positions such as Watch Commanders and Patrol Supervisors. According to OPNAVINST 5530.14E, Appendix A to Enclosure (1), post validations will be conducted every five years (i.e. 2017), interim changes will be submitted to Ashore Readiness Division (OPNAV N46) for approval, and patrol and watch section supervisors will be validated based on section size (minimum 15/section) and/or complexity of operations (ROC 1/2 installations).

37. The Navy Tactics Techniques and Procedures (NTTP) 3-07.2.3 (August 2011), issued by the Chief of Naval Operations (CNO) and approved by CNIC in October 2011, provides tactics, techniques and procedures governing the conduct of physical security and law enforcement and provides guidance to assist regional commanders, regional security officers, commanding officers and security officers to efficiently allocate security resources and effectively employ Navy security forces. NTTP 3-07.2.3, paragraph 3.2.6 states, "The Patrol Supervisor is the roving supervisor for an area or a section of NSF personnel. This individual will usually be the first supervisor on site at an incident and makes decisions pertaining to the requirements of law enforcement (LE) incident and may assume the role of the incident commander on incidents requiring a larger response than one patrol member and/or one command investigator. The patrol supervisor does not automatically assume the duties of incident commander and may be advisory only on minor incidents." NTTP 3-07.2.3, paragraph 3.2.4 states, "The Watch Commander (WC) is the designated Security Officer (SO) representative and has authority of the SO when on duty. On major incidents the WC may be assigned as the incident commander or assistant incident commander."

38. Testimony from CNRMA subject matter experts, including (b) (6) CNRMA N3AT and (b) (6), CNRMA N1 indicated that patrol shifts supervisors are considered appropriate and necessary at NAVSTA Newport for a number of practical reasons and that supervisory billets should be required, authorized, and funded in order to ensure guidance and oversight of junior level patrol officers on duty. (b) (6) explained that there is agreement among N1 and N3 personnel that there should be patrol supervisors on every shift, that this is not in dispute, but the issue is that the MPV-P document eliminated the supervisory billets at some installations. According to (b) (6) some Commanding Officers within CNRMA experiencing Supervisory Security billet manning shortages have opted to leave their supervisory shifts unmanned (in accordance with the 2012 MPV-P guidance) which also creates risk, however CAPT Boyer has made the decision to cover the supervisory shifts at NAVSTA Newport by authorizing the overtime.

39. Testimony of both (b) (6) and (b) (6) indicated that as of 24 May 2016 CNRMA initiated Requests for Personnel Action (RPAs) to fill unfunded supervisory police

¹ BUDGET SUBMITTING OFFICE (BSO): A four position alphanumeric code that identifies the major commanders or bureaus that are authorized manpower resources directly by CNO for the accomplishment of the assigned missions and tasks.(Activity Manpower Management Guide Nov 15).

officer billets with Temporary appointments not to exceed one year at a number of installations, including NAVSTA Newport, as a temporary mitigation strategy. However, until the MPV-P is changed CNRMA will remain unable to fill the Supervisory Police Officer billets with permanent appointments at NAVSTA Newport or at any other affected installations.


40. There appears to be conflicting guidance between the 2012 MPV-P manning level authorizations and the operational requirements established by OPNAVINST 5530.14E and NTTP 3-07.2.3, wherein compliance with the MPV-P results in violation of the regulations. Therefore, this issue appears to present an immediate risk to the safe execution of the Security mission at NAVSTA Newport and potentially other CNIC installations as well.

41. Due to the potential risks and safety concerns expressed by those interviewed regarding this issue, CNIC N3 should either clearly authorize Regions and Installation Commanding Officers, in writing, to leave their Supervisory Police Officer shifts unmanned (in accordance with the 2012 MPV-P) or fill the billets required to safely and properly man the Security shifts, in accordance with OPNAVINST 5530.14E and NTTP 3-07.2.3 in order to reduce or eliminate unsafe levels of overtime at NAVSTA Newport and other installations as determined to be appropriate.

42. The PI also determined that the following allegations do not warrant further IG investigation, but are also appropriate for referral to the chain of command, CNIC N3.

a. CNIC N3 has not enforced or ensured the consistent use of SECNAV Form 5512/1, Department of the Navy Local Population ID Card/Base Access Pass Registration has not been across all installations throughout CNIC as required by CNICINST 5530.14A, CH-1, paragraph 1205.f(1)(a)-(c). This form is not being used at NAVSTA Newport.

b. (b) (5)



c. CNIC N3 has not consistently enforced the Police Uniform requirements at all installations across CNIC in violation of CNICINST 5530.14A, paragraph 0614.

d. CNIC N3 has not consistently enforced Physical Agility Test (PAT) requirements at all installations across CNIC in violation of CNICINST 5530.14A, paragraph 707.

e. CNIC N3 has not ensured that minimum law enforcement training standards are consistently met at all installations for all personnel, both civilian and military, in violation of DODINST 5525.15 and CNICINST 5530.14A, paragraph 707.d.

f. CNIC N3 has established an ineffective, wasteful process and procedure which installations are required to follow in order to equip official government Security patrol vehicles leased through the General Services Administration (GSA). Complainants alleged that

NAVSTA Newport has been leasing two Security vehicles since approximately October 2015, at a cost of \$1,800 per month, which cannot be placed in service and sit idle in a parking lot. Complainants allege that this is a waste of taxpayer dollars and is due to CNIC N3's centralized, slow, inefficient process for obtaining equipment (lights, sirens, etc.) necessary to place the patrol vehicles in service. Complainants allege that this process affects all government leased Security patrol vehicles across CNIC and is not unique to NAVSTA Newport.

43. The following additional issues raised in this complaint do not warrant further investigation or action:

a. NAVSTA Newport improperly assigned (b) (6) as the Auxiliary Security Force (ASF) Coordinator although he was not an E-7 or above in violation of CNICINST 5530.14A. The results of the PI determined that this was unfounded as (b) (6) testified that he actually serves as the ASF Coordinator and closely oversees (b) (6) as his assistant.

b. (b) (6), XO NAVSTA Newport, inappropriately modified a (b) (6) performance evaluation which was previously completed and digitally signed by the employee's supervisor, (b) (6). Based on the PI, we concluded that his matter is related to (b) (6) allegation of Civilian Whistleblower Reprisal and advised the complainant to include it among the information provided to DOD IG as part of his reprisal complaint.

c. NAVSTA Newport "gun-decked" Master at Arms Training. There was insufficient information available pertaining to this as a specific issue. Testimony indicated that it relates to the issue of inconsistent enforcement of training standards identified as appropriate for referral to the chain of command, CNIC N3.

Interviews

- (1) Complainant, (b) (6), NAVSTA Newport
- (2) Complainant, (b) (6), NAVSTA Newport
- (3) Complainant, (b) (6), NAVSTA Newport
- (4) Complainant, (b) (6), NAVSTA Newport
- (5) Complainant, (b) (6), NAVSTA Newport
- (6) (b) (6), NAVSTA Newport
- (7) (b) (6), NAVSTA Newport
- (8) (b) (6), NAVSTA Newport
- (9) (b) (6), NAVSTA Newport
- (10) (b) (6), CNRMA N3AT, Norfolk VA
(telephone)
- (11) (b) (6), CNRMA N1, Norfolk, VA (telephone)
- (12)

Documents reviewed

- (1) SLDCADA Records (b) (6)
- (2) SLDCADA Records (b) (6)

- (3) SLDCADA Records (b) (6)
- (4) SLDCADA Records (b) (6)
- (5) SLDCADA Records (b) (6)
- (6) E-mail CAPT Boyer 20 May 2016 regarding Watch Bill
- (7) NAVSTA Newport Watch Bill for 22-28 May 2016
- (8) CNRMA Command Investigation Report of 23 Dec 2015 with enclosures
- (9) CNRMA First Endorsement on Investigation Report of 22 Jan 2016
- (10) CO NAVSTA Newport Letter 5830 Ser N00/151 to CNRMA 00 – undated
- (11) CO NAVSTA Newport Letter of 10 Feb 2016, Safety Sub Committee Assignments
- (12) Memorandum from (b) (6), ORM Sub-Committee Findings of 10 Mar 2016
- (11) Power Point Slide from NAVSTA Newport Security Department Head Briefing of May 2016, “Security/AT Significant issues/items – still no status on RPA’s sent out 01 Mar 16...”
- (12) 2012 MPV-P Detail CNRMA
- (13) 2012 MPV-P Summary Roll Up CNRMA
- (12) SECNAV Form 5512/1
- (13) E-mail correspondence from (b) (6), CNIC N3AT, dated 28 May 2014 Subj: Base Access Form
- (14) DOD Case Referral 20160303-036145-CASE-01 with enclosures and attachments
- (15) **Requests for Personnel Action – Temporary Appointment not to exceed 1 year dated _____ (Requested from Ed Ullom- pending)**