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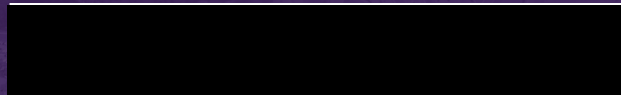


INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 6, 2025

WHISTLEBLOWER REPRISAL INVESTIGATION



66TH FORCE SUPPORT SQUADRON,
66TH AIR BASE GROUP
HANSCOM AIR FORCE BASE,
MASSACHUSETTS

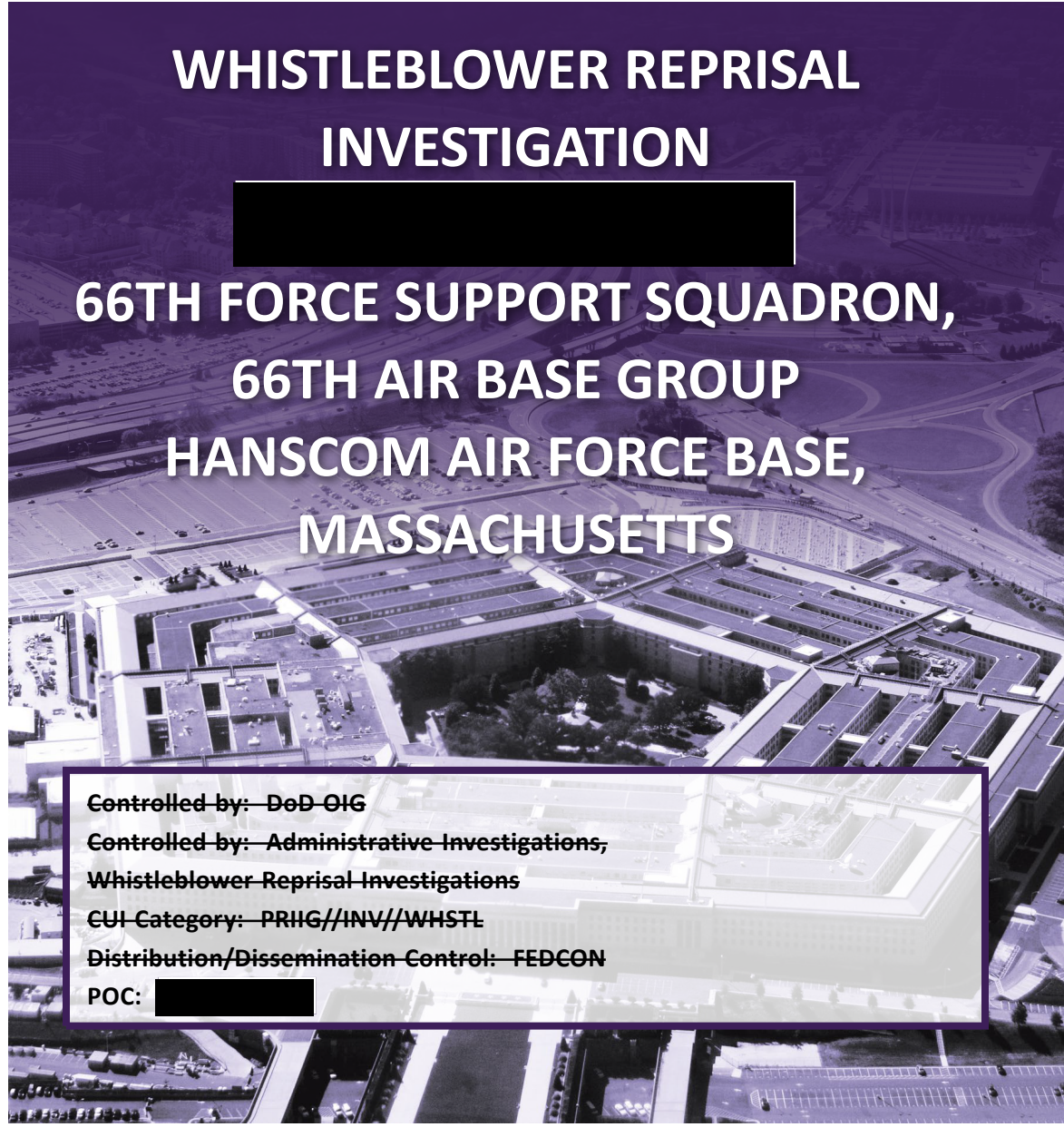
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CUI



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WHISTLEBLOWER REPRISAL INVESTIGATION

████████████████████ 66TH FORCE SUPPORT SQUADRON, 66TH AIR BASE GROUP HANSCOM AIR FORCE BASE, MASSACHUSETTS

Executive Summary¹

We conducted this investigation in response to a reprisal complaint alleging that ██████████ (Subject 1) and ██████████ (Subject 2) took personnel actions against ██████████ (the Complainant) in reprisal for making protected disclosures concerning Subject 1's behavior and management of the Tavern at Hanscom Air Force Base (AFB), Massachusetts. Specifically, the Complainant alleged that Subject 1 and Subject 2 removed her from certain days of the work schedule, arbitrarily reduced her paycheck to reflect fewer hours than she worked, removed her from the schedule entirely, and deducted from her tips.

The Complainant made six protected disclosures from January 17 through September 11, 2023: one to Subject 1, one to Subject 2, one to the Tavern manager, one to human resources (HR), and two to Inspectors General (IG). After making these protected disclosures, the Complainant experienced two qualifying personnel actions taken by Subject 1, who removed her from all Friday shifts and from the schedule entirely. We determined that arbitrarily reducing the Complainant's paycheck and deducting from her tips were not qualifying personnel actions. Furthermore, Subject 1 knew of three of the Complainant's protected disclosures before taking the personnel actions. Subject 2 did not take any personnel actions against the Complainant.

Therefore, we concluded that the Complainant established a *prima facie* allegation of reprisal against Subject 1 in the first stage of our analysis because the Complainant's protected disclosures were a contributing factor in Subject 1's decision to remove her from all Friday shifts and from the schedule entirely, based on knowledge and timing.²

As this evidence was sufficient to establish by a preponderance of the evidence that the Complainant's disclosures were a contributing factor in the personnel actions taken by Subject 1, we proceeded to the second stage of our analysis. This required us to determine,

¹ This report contains information that has been redacted because it was identified by the DoD Office of Inspector General and the DoD as Controlled Unclassified Information (CUI) that is not releasable outside the Executive Branch. CUI is Government-created or -owned unclassified information that allows for, or requires, safeguarding and dissemination controls in accordance with laws, regulations, and Government-wide policies.

² Black's Law Dictionary defines a *prima facie* case as one that is "established by sufficient evidence and can be overthrown only by rebutting evidence adduced on [offered by] the other side."

also by a preponderance of the evidence for Complainants who are Nonappropriated Fund Instrumentality (NAFI) employees, whether the personnel actions would have been taken absent the protected disclosures.

We found that Subject 1 would have removed the Complainant from all Friday shifts absent any protected disclosure due to the operational needs of the Tavern. Although we found that Subject 1 had a motive to reprise against the Complainant, we found it more likely than not that Subject 1 took this personnel action for the reasons given and not in reprisal. We did not find any similarly situated employees to be able to analyze whether Subject 1 treated the Complainant disparately when she took this action. Therefore, we did not substantiate the allegation that Subject 1 removed the Complainant from all Friday shifts in reprisal for her protected disclosures.

However, we found that Subject 1 would not have entirely removed the Complainant from the schedule absent her protected disclosures. We also found that Subject 1 had a motive to reprise against the Complainant and that she treated the Complainant differently than other similarly situated employees. Therefore, we substantiated the allegation that Subject 1 entirely removed the Complainant from the schedule in reprisal for her protected disclosures.

We recommend that the Director of Administration and Management take the following remedial and corrective actions.

- Direct the placement of the Complainant back on the schedule effective immediately.
- Award the Complainant with all appropriate compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that the Complainant would have received had she not been reprised against.
- Consider appropriate action against Subject 1 for reprising against the Complainant.

Background

The Complainant's Employment

The Complainant began her employment as a Nonappropriated Fund (NAF) Tavern bartender on [REDACTED]. The Tavern was a bar that the 66th Force Support Squadron at Hanscom AFB operated and was open on Wednesday, Thursday, and Friday nights. The Complainant, who was a flexible employee, told us that Subject 1's predecessor guaranteed her Thursday and Friday shifts and provided a screenshot of an email from the predecessor, in which the predecessor wrote that she had "no problem with you picking up Thursdays and Fridays that actually helps me out in the long run" and that "your shifts will be your shifts."³

From December 2022 through August 19, 2023, the Complainant's supervisory chain consisted of Subject 1 and Subject 2. Subject 1 worked as the [REDACTED]; in this capacity, [REDACTED]. Subject 2 worked as the [REDACTED].⁴ On [REDACTED], Subject 1 hired [REDACTED] (Witness 1) as the Tavern manager, a position that had been vacant since approximately September 2022.⁵ Witness 1 then became the Complainant's first-line supervisor.

Allegations of Reprisal

The Complainant alleged that she was subjected to five personnel actions taken by Subject 1 and Subject 2.

- From April through August 2023, Subject 1 arbitrarily reduced her paycheck to reflect fewer hours than she worked, such as paying her for 12.5 hours when she had actually worked 13 hours.
- Subject 1 took the Complainant off the schedule and replaced her with another bartender on April 7, 2023.
- Beginning in May 2023, Subject 1 removed the Complainant from all Friday shifts.
- On September 5, 2023, Subject 1 removed the Complainant from all shifts.
- On September 26, 2023, Subject 1 deducted \$94.70 from the Complainant's tips, allotting \$84.70 to Witness 1 and deducting an additional \$10.00 to account for an overcharge error, which the Complainant alleged was Witness 1's fault.

³ Air Force Instruction 34-301, "Nonappropriated Funds Personnel Management and Administration," July 24, 2023, defines flexible employees as those hired to fill positions with irregular schedules, which are not on a continuous basis. Additionally, according to U.S. Air Force, "Nonappropriated Fund Personnel Program Management and Administration Procedures Guide," June 2019, flexible employees may work a minimum of zero hours per week and may be scheduled in advance or on an as-needed basis, so long as they are given 24-hour notice of schedule changes.

⁴ Subject 2 told us that he was an [REDACTED] employee; however, DoD records indicated he was an [REDACTED].

⁵ Throughout the report, we use the terms "Tavern manager" and "bar manager" interchangeably.

When testifying, the Complainant primarily discussed Subject 1's role in taking the alleged personnel actions. However, the Complainant also told us that Subject 2 was responsible for the reprisal in combination with Subject 1; therefore, we considered Subject 2 a subject and analyzed his role in the alleged personnel actions.

In her DoD Hotline complaint about her tips, the Complainant listed Witness 1 as a subject, in addition to Subject 1. However, in her interview, she told us, "I'm not sure if [Witness 1] is a pawn in this or he's just doing what [Subject 1] tells him to do." As the Complainant did not allege that Witness 1 took a qualifying personnel action against her, we did not consider him a subject of this investigation.

The Complainant alleged that the five personnel actions listed above were taken in reprisal for making eight disclosures: two to Subject 1, one to Subject 2, one to Witness 1, one to public health inspectors, one to HR, and two to IGs.

Scope

This investigation covered the period from [REDACTED], the date the Complainant was appointed as a bartender, through September 26, 2023, the date the Complainant became aware of the deduction from her tips. We interviewed the Complainant, Subject 1, Subject 2, and one additional witness under sworn oath or affirmation. We reviewed documentary evidence regarding departmental and organizational policies, written communications, emails, IG records, documents related to a command inquiry, inspection results, photographs of the Tavern, leave and earnings statements, employee sign-in and sign-out sheets, and personnel records.

Whistleblower Protection for Nonappropriated Fund Instrumentality Employees

The DoD Office of Inspector General (OIG) conducts whistleblower reprisal investigations involving DoD NAFI employees under section 1587, title 10, United States Code (10 U.S.C. § 1587), “Employees of Nonappropriated Fund Instrumentalities: Reprisals,” as implemented by DoD Directive (DoDD) 1401.03, “DoD Nonappropriated Fund Instrumentality Employee Whistleblower Protection,” June 13, 2014 (Incorporating Change 3, April 5, 2023).

Legal Framework

Two-Stage Process

The DoD OIG employs a two-stage process in conducting whistleblower reprisal investigations under 10 U.S.C. § 1587, as implemented by DoDD 1401.03. The first stage focuses on the alleged protected disclosures, the personnel actions, the subject's knowledge of the protected disclosures, and the timing of the personnel actions. The second stage focuses on whether the subject would have taken or failed to take, or threatened to take or fail to take, the personnel actions against the employee, former employee, or applicant absent the protected disclosures.

Sufficient evidence, based on proof by a preponderance of the evidence, must be available to make three findings.⁶

1. The Complainant made a protected disclosure.
2. The Complainant experienced a personnel action.
3. The protected disclosure was a contributing factor in the personnel action.⁷

If a preponderance of the evidence supports these three findings, the analysis will proceed to the second stage. In the second stage, again using the preponderance of the evidence standard, we weigh together the following three factors.

1. The strength of the evidence in support of the personnel action
2. The existence and strength of any motive to retaliate on the part of the subjects who were involved in the decision
3. Any evidence that the subject took similar actions against similarly situated employees who did not make protected disclosures

On this basis, we will determine whether the evidence establishes that the subject would have taken or failed to take, or would have threatened to take or fail to take, the personnel action against the Complainant absent the protected disclosure.

⁶ A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. See title 5 Code of Federal Regulations section 1201.4(q).

⁷ A contributing factor need not be the sole, or even primary, factor. Rather, a contributing factor means "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Marano v. Dept. of Justice*, 2 F.3d 1137, 1140 (Fed. Cir. 1993). Absent testimonial or documentary evidence of intent, one way to establish whether the disclosure was a contributing factor is through the use of the knowledge/timing test, meaning that the deciding official knew of the disclosure, and the adverse action was initiated within a reasonable time of the disclosure.

Protected Disclosure

A protected disclosure under 10 U.S.C. § 1587, as implemented by DoDD 1401.03, is a disclosure of information by an employee, former employee, or applicant that the employee, former employee, or applicant reasonably believes evidences:

- a violation of any law, rule, or regulation;
- mismanagement;
- a gross waste of funds;
- an abuse of authority; or
- a substantial and specific danger to public health or safety.⁸

Section 1587, title 10, United States Code, as implemented by DoDD 1401.03, does not require that such disclosures be made to any particular recipient unless the disclosure is specifically prohibited by law or the information is specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.⁹

Personnel Action

Section 1587, title 10, United States Code, as implemented by DoDD 1401.03, prohibits any civilian employee or member of the Armed Forces who has authority to take, direct others to take, recommend, or approve any personnel action from taking or failing to take, or threatening to take or fail to take, a personnel action with respect to any NAFI employee, former employee, or applicant in reprisal for making a protected disclosure. The term “personnel action” means:

- an appointment;
- a promotion;
- a disciplinary or corrective action;
- a detail, transfer, or reassignment;
- a reinstatement, restoration, or reemployment;
- a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and
- any other significant change in duties or responsibilities that is inconsistent with the employee’s salary or grade level.

⁸ The test to determine whether the Complainant had a reasonable belief is whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the Complainant could reasonably conclude one of the categories of wrongdoing protected by 10 U.S.C. § 1587 occurred.

⁹ Disclosures related to information prohibited by law from release, and in which the information is specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, must be made to a civilian employee or Service member designated by law or the Secretary of Defense to receive such disclosures.

Findings of Fact

Reduced Paychecks

On January 13, 2023, the Complainant texted Subject 1 that her last paycheck was short by 3.5 hours. Subject 1 replied that the Complainant did not report her hours and that payroll had been requested early. Subject 1 added that if the Complainant sent her what her hours should have been, she could see what was submitted and adjust accordingly.

On January 17, 2023, the Complainant texted Subject 1 again, reporting that her most recent paycheck compensated her for 11.5 hours worked, when she had actually worked 14 hours. The Complainant wrote that putting in hours without checking with an employee was illegal under state and Federal law. Subject 1 replied that the law was for the Complainant to “report your hours which hasn’t been happening. I need the times, not total hours.” The Complainant later responded that she would be filing a complaint.

Subject 1 told us that they started a sign-in and sign-out sheet when she began working in December 2022. The employee sign-in and sign-out sheet we reviewed covered the period from January 17 through December 7, 2023, and was a running log in which employees could see their previous entries as well as Subject 1’s notes.

According to the Complainant, from April through August 2023, Subject 1 arbitrarily reduced her paycheck in agreement or collaboration with Subject 2, in reprisal for making protected disclosures. The Complainant said that for about half of her work shifts, Subject 1 would adjust her time by 15 – 30 minutes. For example, the Complainant said that if she clocked in at 3:05 p.m., Subject 1 would adjust her timesheet to reflect a 3:15 p.m. or 3:30 p.m. start time.

Subject 1 disputed this allegation, telling us that she reduced the Complainant’s paycheck below the number of hours the Complainant logged on the sign-in and sign-out sheets based on the actual times that the Complainant walked in the door. For example, she told us, “... I am not clocking in on the timeclock that [the Complainant] was here at 3:30 when I saw her walk in the door at 3:50.” Subject 1 said that she initially annotated the Complainant’s arrival times on the sign-in and sign-out sheets but that she annotated her arrival times on a calendar in her office afterwards because she did not want other employees to see them.

Subject 1 annotated on the sign-in and sign-out sheets that the Complainant arrived to work later than she had signed in, by anywhere from 8 to 10 minutes, in March and April 2023. Subject 1 also provided us with a copy of her text messages with a coworker and her August 2023 calendar. On August 10, 2023, although the Complainant signed in at 3:50 p.m., a coworker texted Subject 1 that the Complainant “just walked in” after 3:58 p.m. The same coworker texted Subject 1 on August 17, 2023, that the Complainant “just walked in” at

3:58 p.m., whereas the sign-in and sign-out sheets reflected a 3:45 p.m. arrival.¹⁰ Additionally, Subject 1's calendar reflected that the Complainant arrived at 4:00 p.m. on August 24, 2023, although the Complainant signed in at 3:50 p.m.

We reviewed the Tavern's sign-in and sign-out sheets and the Complainant's earnings statements for the pay periods of April 29, 2023, through September 16, 2023, as provided in Table 1.¹¹

Table 1. Comparison of Hours Logged to Paid Hours of Work¹²

Pay Period End Date	Hours Logged on Sign-In and Sign-Out Sheets	Paid Hours of Work	Differential
April 29, 2023	26.75	28.25	+1.50
May 13, 2023	12.75	12.75	–
May 27, 2023	13.25	13.00	-0.25
June 10, 2023	11.75	11.50	-0.25
June 24, 2023	19.25	19.25	–
July 8, 2023	16.25	16.00	-0.25
July 22, 2023	13.75	13.75	–
August 5, 2023	24.00	24.00	–
August 19, 2023	14.75	14.25	-0.50
September 2, 2023	13.50	11.25	-2.25
September 16, 2023	0	2.00	+2.00

Source: The DoD OIG.

Removal from Work Schedule

Removal from a Friday Shift

In February 2023, the Complainant worked a total of seven shifts; in March 2023, Subject 1 scheduled the Complainant for nine shifts. The Complainant worked all scheduled shifts.

¹⁰ Subject 1's calendar reflected that the Complainant arrived at 4:04 p.m. on August 17, 2023. However, we did not adjudicate the difference between the text message and the calendar, as the arrival times that the coworker reported and Subject 1 noted both rounded up and down to 4:00 p.m.

¹¹ The Complainant's reprisal allegation pertained specifically to those paychecks that she received *after* her April 18, 2023, meeting with Subject 2, which we discuss on the following pages.

¹² When analyzing sign-in and sign-out times, we rounded the time at which the Complainant signed in or out to the nearest quarter hour, as required by the U.S. Air Force, "Nonappropriated Fund Personnel Program Management and Administration Procedures Guide," June 2019. The Complainant told us that common practice before Subject 1's arrival was to round employee time to the nearest quarter hour in favor of the employee, stating that if an employee worked until 9:05 p.m., it would be rounded to 9:15 p.m. However, as the U.S. Air Force guide requires rounding to the nearest quarter hour, we followed the U.S. Air Force procedure. Additionally, when we asked her on which increment employees' pay was based, Subject 1 explained to us about the "seven-minute rule" with examples: If an employee clocked in at 3:50 p.m., the clock might push the time to 3:45 p.m. On the other hand, if an employee clocked in at 3:58 p.m., their time would be pushed to 4:00 p.m.

When Subject 1 created the April 2023 work schedule, she did not assign Friday, April 7, 2023, to the Complainant. Rather, Subject 1 scheduled another bartender—[REDACTED] (Bartender 1)—to work the April 7, 2023 shift. Subject 1 told us that if the Complainant was not on the schedule, it was because of one of two reasons. Either the Complainant was not available, or she needed to schedule another bartender, who was only available once a month, to keep that bartender's opening and closing skills current. Subject 1 added that she believed the Complainant was unable to work on Friday, April 7, 2023, due to another commitment and that she usually coordinated the Complainant's schedule in person. The Complainant told us that she was available for the April 7, 2023 shift, as she expected to be scheduled.

In April 2023, Subject 1 scheduled the Complainant for a total of seven shifts; she worked all scheduled shifts.

Meeting with Subject 2

On April 18, 2023, the Complainant met with Subject 2—her second-line supervisor. She reported, in part, that Subject 1 created a toxic work environment; committed fraud, waste, and abuse; used condescending language toward her and customers; transferred her hours to another employee; reprised against her; and targeted and harassed her. The Complainant also reported that Subject 1 consumed alcohol while on the job and engaged in inappropriate contact with customers in the parking lot. On the same day, Subject 2 emailed Subject 1 a summary of his discussion with the Complainant. Subject 1 responded to Subject 2's email on April 19, 2023, thanking him for talking with her. Subject 1 wrote that she wished the Complainant would communicate with her so that she could fix what Subject 2 noted in his email. Subject 1 also wrote, "At this point I feel [the Complainant would] rather complain then [sic] have anything fixed."

Subject 1 told us that she talked with Subject 2 about his discussion with the Complainant. Subject 1 added that she was pretty shocked at some of the allegations, stating that:

some of those things were just completely against my character, and so it upset me. I was just kind of disgusted that somebody, you know, [the Complainant] was trying to I guess tarnish my character of me drinking on the job, which I've—had never. Public displays of affection. [...] And it was the first time my boyfriend, coming from [REDACTED] had just moved there, and that was the first time the team got to meet him.

Report to Subject 1

According to the Complainant, on April 21, 2023, she asked Subject 1 about missing time from her last two biweekly paychecks. As the Complainant recalled it, Subject 1 told her that she deducted some time because she watched outside the window to see what time the Complainant arrived and adjusted her paychecks accordingly. The Complainant told Subject 1

that she was wrong, her actions were illegal, and “common practice” had always been to round to the nearest quarter hour in favor of the employee, “not to the minute and then subtract even more.”

According to Subject 1, the Complainant argued with her after she started annotating the Complainant’s arrival times on the sign-in and sign-out sheets. Subject 1 told us that she did not remember the Complainant’s exact words but that the Complainant said Subject 1 could not change her clock-in and -out times because it was falsifying a timecard and told her to ask the gate guards what time she got there. Subject 1 said that she told the Complainant that the Complainant was falsifying a timecard, and when she walked in the doors was when she arrived. Subject 1 told us that she had this conversation with the Complainant multiple times. As discussed previously, in March and April 2023, Subject 1 annotated on the sign-in and sign-out sheets that the Complainant arrived to work later than she had signed in, by anywhere from 8 to 10 minutes.

Complaint to an IG

On May 2, 2023, the Complainant filed a complaint with the OIG of the 66th Air Base Group (66th ABG/IG). In her complaint, the Complainant described many of the same concerns she reported to Subject 2, including Subject 1’s consumption of alcohol while on duty. The Complainant also wrote that Subject 2 sent her a follow-up note on April 23, 2023, but that he did not address most important issues and addressed some issues they did not really discuss.

On May 26 and June 2, 2023, the Complainant emailed the OIG, in which she referenced photos and said that the photos depicted expired and rotting food, a broken dishwasher temperature gauge, a juice container with mold, and food or beverage items left at room temperature, among other deficiencies in Tavern management. The Complainant also reported that the Tavern was serving expired beer and that she had been removed from the work schedule for all Fridays in June.

The 66th ABG/IG analyzed the complaint and determined that the Complainant raised 44 allegations, including that Subject 1:

- consumed alcohol while working;
- engaged in sexually inappropriate contact with a male customer;
- allowed unknowing customers to be served food or drink that was moldy or unfit for consumption;
- failed to submit the Complainant’s timecard properly;
- removed her from the schedule for all Fridays in May;
- failed to create a work environment free from harassment;
- violated laws instituting limits on the sale of alcohol; and
- failed to fully train the staff.

Additionally, the 66th ABG/IG determined that the Complainant raised allegations that Subject 2 violated his responsibility as a management official when he neglected to mitigate issues raised to him by the Complainant.

██████████, Investigating Officer, ██████████, investigated and did not substantiate the Complainant's allegations. On March 20, 2024, the 66th Force Support Squadron Commander concurred with the investigating officer's finding that the Complainant's allegations were not substantiated.

Subject 1 told us that she learned of this complaint when an investigating officer contacted her in December 2023. We confirmed that the investigating officer first contacted Subject 1 on December 4, 2023.

Removal from All Friday Shifts

The Complainant alleged that after meeting with Subject 2 in April and filing an IG complaint in May, her Friday nights were "taken away from me" or "cut." As discussed previously, the Complainant told us that Subject 1's predecessor guaranteed her Thursday and Friday shifts.¹³

In February 2023, the Complainant worked a total of seven shifts—one Wednesday, four Thursdays, and two Fridays. Subject 1 scheduled the Complainant for nine shifts—five Thursdays and four Fridays—in March 2023; the Complainant worked all scheduled shifts. Subject 1 scheduled the Complainant for seven shifts—four Thursdays and three Fridays—in April 2023; she worked all scheduled shifts.

Beginning in May 2023, Subject 1 did not schedule the Complainant for Friday shifts. In May, June, and July 2023, Subject 1 scheduled the Complainant for four, five, and four Thursday shifts, respectively; the Complainant worked all scheduled shifts. In August 2023, although Subject 1 scheduled the Complainant for four Thursday shifts, the Complainant worked five Thursday shifts and one Friday shift.¹⁴

When we asked her why she removed the Complainant from all Friday shifts, beginning in May 2023, Subject 1 told us that it was because she needed to hire additional bartenders to ensure she could staff the Tavern. She noted that ██████████ (Bartender 2), one of the bartenders, was not available to work on Thursdays and Fridays and that Bartender 1 was only available maybe once a month. She told us that scheduling an additional bartender for a regular night would keep them fully trained for bigger events, as opposed to having them only come in once a month and forget how to open the cash register and go through

¹³ As discussed previously, the Complainant was a flexible employee who was hired to fill positions with irregular schedules, which were not on a continuous basis.

¹⁴ Subject 1 scheduled Witness 1, not the Complainant, for Thursday, August 31, 2023. However, the Complainant told us that she had an ██████████ that day. She told Subject 1 that the ██████████ might cause her to run a little bit late. Subject 1 scheduled Witness 1 to work until the Complainant arrived.

all the processes. Finally, Subject 1 stated that the Complainant told her that she worked at the [REDACTED] on Fridays, which meant that Subject 1 needed to quickly find another bartender.

Subject 1 provided us with her text messages with the Complainant about the Complainant's unavailability because of [REDACTED]. On December 30, 2022, the Complainant texted Subject 1 that she was "[v]ery busy now due to holiday" and would not be available to work "due to [REDACTED]" on January 20 and 27, February 3 and 24, and March 3—all Friday dates—as well as "the next two Fridays" if [REDACTED].

On [REDACTED], Subject 1 hired Witness 1 as a bartender. Subject 1 then scheduled Witness 1 for two Fridays in May, five Fridays in June, four Fridays in July, and three Fridays in August 2023.

Report to Witness 1

On August 4, 2023, the Complainant worked a shift with Witness 1. According to the Complainant, she told Witness 1 during this shift that he was violating rules that limited the amount of an alcoholic beverage that could be served in a single serving and that he was mischarging customers for their drinks.

Witness 1 confirmed to us that the Complainant talked to him about the appropriate amount of wine to pour in a single glass, which he said he appreciated, and helped him learn how to charge drinks in the computer. Witness 1 thought that this probably occurred in April 2023. Subject 1 also thought this occurred in April or May 2023. Subject 1 told us, "... I can't remember if [Witness 1] had told me that [the Complainant] wanted him to use a measuring cup or something that she set aside for him" However, the sign-in and sign-out sheets showed that the Complainant and Witness 1 only worked together on August 4 and 31, 2023.

Public Health Inspection

On August 17, 2023, the 66th Medical Squadron (66th MDS) conducted a public health inspection at the Tavern. According to the report, issued on August 24, 2023, the inspection was both an annual and a spot inspection, after 66th MDS public health inspectors received an August 11, 2023 customer complaint of poor sanitation practices within the Tavern's ice machine and bar area. In their report, the 66th MDS public health inspector found "non-critical" violations of the Tri-Service Food Code's rules for cleaning receptacles and maintaining ice machines.¹⁵ Subject 1 signed the report on August 24, 2023.

¹⁵ TB MED 530/NAVMED P-5010-1/AFMAN 48-147_IP, "Technical Bulletin: Tri-Service Food Code," March 1, 2019.

The Complainant told us that the public health inspection was the result of her IG complaint. Subject 1 also told us that she believed the Complainant submitted a complaint to public health inspectors about the water temperature, after which public health inspectors came out to inspect the Tavern. According to Subject 1, a few customers told her that the Complainant made the complaint.¹⁶

Removal from All Shifts

Subject 1 did not schedule the Complainant for any shifts in September 2023.¹⁷ Rather, Subject 1 scheduled Witness 1 to work all Thursday and Friday shifts in September 2023, with Bartender 1 also working the first Friday with Witness 1 and one special event on a Monday. Subject 1 scheduled Bartender 2 to work all Wednesday shifts. On September 5, 2023, Subject 1 emailed the Complainant and courtesy copied Subject 2, informing her that they would not need her for the month of September. Subject 1 wrote that she would email the Complainant again if they changed the schedule or had additional scheduling needs.

The September 2023 schedule is provided in the following figure.

¹⁶ Although the Complainant contended that the public health inspection was the result of her IG complaint, we found no evidence of a connection between the Complainant's IG complaint and the public health inspection. Therefore, and in light of the other protected disclosures identified by the OIG, we do not address the public health inspection further in this report.

¹⁷ On May 24, 2024, the Complainant told us that she had been removed from the schedule since September 2023. Witness 1 told us that it was his decision not to bring the Complainant in for any regular hours or special events since September or October of 2023. Witness 1 reasoned that the need for bartenders had not been much, except for special events and "everything like that." Witness 1 added that he thought the bartenders were responsible for reaching out to him about scheduling but that there has not been any communication with the Complainant.

Figure. September 2023 Schedule

September 2023						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 Closed for Family Day	2
3	4 Labor Day	5	6 Bartender 2 3:30	7 Witness 1 3:30	8 Witness 1 Bartender 1 3:30 First Friday	9
10	11	12	13 Bartender 2 3:30	14 Witness 1 3:30	15 Witness 1 3:30 Trivia	16
17	18 Bartender 1 2:30 AF Birthday	19	20 Bartender 2 3:30 Darts	21 Witness 1 3:30 Spouses Welcome Party	22 Witness 1 3:30	23
24	25	26	27 Bartender 2 3:30	28 Witness 1 2:30 ALS Graduation	29 Witness 1 2:30 Base promotion	30

Source: Subject 1.

Subject 1 provided four reasons for removing the Complainant from all shifts: (1) financial considerations, (2) Witness 1's availability, (3) his supervision of special events, and (4) opening time. However, Subject 1 said that the first three factors were the "driving force" behind her decision.

Financial Considerations and Witness 1's Availability

On [REDACTED], Witness 1 became the bar manager, a position that had been vacant since September 2022.

In her monthly financial narratives for the months of July and August 2023, Subject 1 wrote that the hiring of a bar manager would affect the bottom line. Subject 1 explained to us that before Witness 1's promotion, she had been managing the bar herself, but that as an appropriated fund employee, her salary did not reflect on the Tavern's financial accounts.

Subject 1 added that Witness 1's salary as a manager would affect the Tavern's books, so she needed him to take both roles—bartending while also assuming management duties—on Thursdays and Fridays.

Table 2 shows the Tavern's monthly total personnel expenses and sales for the 3 months before and after Witness 1's promotion.

Table 2. Tavern Personnel Costs and Sales

Month	Total Personnel Expenses	Tavern Sales	Personnel Costs as a Percent of Sales
June 2023	\$3,785	\$8,085	47%
July 2023	\$2,290	\$6,784	34%
August 2023	\$2,274	\$7,436	31%
September 2023	\$4,953	\$6,050	82%
October 2023	\$4,881	\$9,350	52%
November 2023	\$4,291	\$8,435	51%

Note: Figures are rounded to the nearest dollar or percent.

Source: The DoD OIG.

We also reviewed the Tavern's profits from June through August 2023. The Tavern profited \$4,332.51, \$97.89, and \$3,235.01 in June, July, and August 2023, respectively. From June through August 2023, July at 1.22 percent was the only month in which the Tavern fell below the 2-percent profit that Subject 1 told us the Tavern needed to stay out of the red.

Subject 1 also told us that Witness 1 was available on Thursday and Friday. In his testimony to this office, Witness 1 confirmed that he was available Thursdays and Fridays but typically not available on Wednesdays unless he received advance notice.

The Complainant told us that she was available Wednesdays, Thursdays, and Fridays, and was also available to work special events. The Complainant also told us that she "NEVER" had a discussion with Subject 1 about working Wednesdays and that Bartender 2 had always been assigned the Wednesday shifts. However, Subject 1 told us that the Complainant was not available Wednesdays. Subject 1 added that the Complainant had always told her that she could not work Wednesdays and that most of the conversations about availability occurred orally although she had a few text messages from the Complainant. We reviewed all the text messages that Subject 1 provided to us and did not find a text message in which the Complainant told Subject 1 that she could not work Wednesdays.

We asked Subject 1 if she asked the Complainant whether the Complainant was available for the shifts that she assigned to Bartender 1 and Bartender 2. First, Subject 1 recalled asking Bartender 2 and the Complainant if they were available to assist Witness 1 on Friday,

September 8, 2023. Subject 1 said that neither of them was available. Next, Subject 1 could not say whether she asked the Complainant if she was available for the Monday, September 18, 2023 shift. Subject 1 explained that she knew Mondays, Tuesdays, and Wednesdays were the Complainant's designated days at a [REDACTED]. Finally, Subject 1 did not contact the Complainant to see if she was available for Wednesday shifts before she completed the September 2023 schedule, because of her previous conversations with the Complainant.

In response to our questions on whether Subject 1 asked her about her availability in September 2023, the Complainant stated, "... [Subject 1] send [sic] me a message (which [DoD OIG] should have), which stated that I was not needed in September 2023 and going forward." As mentioned previously, on September 5, 2023, Subject 1 notified the Complainant that she was not scheduled to work any shifts during the month of September. The Complainant also told us that she was available for all Thursday and Friday shifts in September 2023.

Special Events

Subject 1 told us that special events occurred on Thursdays and Fridays, for which she wanted a manager on duty to make sure everything ran smoothly. We reviewed the September 2023 schedule that showed that special events occurred on one Monday, two Thursdays, and two Fridays in September 2023. Additionally, the September 2023 schedule showed that Witness 1 was scheduled to work all the special events on Thursdays and Fridays and that Bartender 1 was scheduled to work the special event on Monday by herself.

Opening Time

Subject 1 told us that they had received requests to open the bar at 3:00 p.m., and that as the Complainant had stated before that she could not make a 3:30 p.m. shift, Subject 1 knew that the Complainant would not be able to make the earlier time. The Complainant confirmed with us that she was not available before 3:30 p.m.

Subject 1 told us that the Tavern's operating hours changed in September or October 2023. Witness 1 initially told us that the hours changed in October or November; he later told us that the change occurred in September or October. In discussing the change, Witness 1 told us that he thought they sent "something" to marketing. We found an email that Witness 1 sent to the Force Support Squadron Marketing Team on October 25, 2023, in which he wrote that he was going to send the Tavern's new hours. Witness 1 also sent us an email that he sent to Subject 2 on September 27, 2023, in which he wrote that he was hoping to change the Tavern's hours from "3-close Wednesday-Friday." Additionally, the September 2023 schedule showed a start time of 3:30 p.m. for a regularly scheduled shift, except for a Monday special event that showed a 2:30 p.m. start time. Employees signed in at 2:45 p.m., 3:00 p.m., 3:20 p.m., and 3:30 p.m. in September 2023, except the employee who worked the special event.

In the March 11, 2024 referral completion report, the investigating officer, who investigated the Complainant's allegations that the 66th ABG/IG referred to the 66th ABG Commander for action, wrote that the Tavern's opening time changed from 4:00 p.m. to 3:00 p.m. in September of 2023, due to increased demand. We reviewed the supporting documentation and found one piece of evidence that discussed the operating hours change: On December 11, 2023, Subject 1 emailed the investigating officer, writing that the Tavern's opening time changed from 4:00 p.m. to 3:00 p.m. in September 2023.

Grievance and DoD Hotline Complaint

On September 7, 2023, the Complainant filed a grievance with HR for "remov[ing] me from my position of Tavern bartender by eliminating my hours for the foreseeable future." In her grievance, the Complainant also reported, in part, that Subject 1 consumed alcohol while on duty and that she feared Subject 1 removed her from the work schedule in reprisal for filing an IG complaint.

On September 11, 2023, the Complainant filed a complaint with the DoD Hotline alleging, in part, that Subject 1 reprised against her by eliminating her hours for the foreseeable future.

On September 13, 2023, HR notified the Complainant that her grievance was rejected, stating that according to NAF personnel guidance, any matters relating to wage or salary rates or schedules were excluded from the grievance process. The letter from HR informed the Complainant that if she was making a reprisal complaint, it should be handled through the DoD IG.

On October 10, 2023, Subject 1 emailed HR and courtesy copied Subject 2, explaining how tips were split between the Complainant and Witness 1 on August 31. Subject 1 also wrote about the schedule, stating that she had never sent the schedule out as it was employees' responsibility to collect it, so "I'm not sure what she's referring to." Subject 1 further wrote that she had emailed the Complainant, letting her know that they would contact her if they needed her.

Subject 1 told us that she received an email from HR about the Complainant's last paycheck and explained to us that the Complainant was concerned about her tips. Subject 1 also told us that she was not aware of the Complainant's communications with HR about being removed from the schedule.

On February 7, 2024, we informed Subject 1 that she was the subject of an investigation into the allegation that she reprised against the Complainant.

Deduction from Tips

The Complainant worked her final shift on August 31, 2023. The employee sign-in and sign-out sheets for August 31, 2023, showed that Witness 1 worked from 2:00 p.m. through 5:00 p.m. (3 hours), while the Complainant worked from 4:15 p.m. through 10:15 p.m. (6 hours). When the Complainant picked up her tips from that shift, on September 26, 2023, she found that Subject 1 had deducted \$94.70, allotting \$84.70 to Witness 1 and deducting an additional \$10.00 to account for an overcharge error, which the Complainant told us was Witness 1's fault.

Subject 1 told us that she deducted from the Complainant's final tips for two reasons. First, the Tavern had a system by which tips would be split proportionally based on hours the bar was open if more than one bartender was on duty. In this case, Subject 1 said that Witness 1 was on duty for 2.5 hours and so he received that portion of the tips, while the Complainant received the remaining portion. Second, Subject 1 said that the Complainant added a \$10 tip for a customer who had put a line through the receipt. Subject 1 said that she pulled the \$10 out of the Complainant's tips.

We reviewed the Tavern's internal financial software, which showed that the Tavern credited Witness 1 with 2.5 hours of work and the Complainant with 6 hours, for a total of 8.5 hours of working hours. Of the \$288 collected in tips, Witness 1 received \$84.70, which equated to his proportion of the total working hours; similarly, the Complainant received a preliminary total of \$203.30, which also equated to her proportion of the total working hours.

We also reviewed a copy of the customer receipt related to the alleged overcharge. The receipt showed that the customer did not leave a tip but was charged for a \$10 tip on his credit card. Although the receipt stated that the server was "[REDACTED]," the receipt was timestamped at 6:21 p.m., which indicated that the Complainant, not Witness 1, was responsible for charging the erroneous \$10 tip.

The Complainant also told us that it was illegal for managers to participate in a tip pool. Subject 1 said that Witness 1 had not yet transitioned into the bar manager role and was in his last week of bartending.

Analysis

As described in more detail in the “[Legal Framework](#)” section of this report, the Complainant must first establish that they made a protected disclosure; that subsequent to the disclosure, they experienced a personnel action; and that the disclosure was a contributing factor in the personnel action taken against them. The strength of the evidence, motive, and disparate treatment are then weighed together to determine whether the subject has shown that they would have taken the same personnel action absent the protected disclosure. If the evidence does not establish that the subject would have taken or failed to take, or threatened to take or fail to take, the personnel action absent the protected disclosure, the complaint is substantiated. Conversely, if the evidence establishes that the subject would have taken or failed to take, or threatened to take or failed to take, the personnel action absent the protected disclosure, the complaint is not substantiated. Below, we analyze each of the elements.

Protected Disclosures

We determined, by a preponderance of the evidence, that the Complainant made six protected disclosures under 10 U.S.C. § 1587.

Protected Disclosure 1: Report to Subject 1

On January 17, 2023, the Complainant texted Subject 1, reporting that her most recent paycheck compensated her for 11.5 hours worked, when she had actually worked 14 hours. The Complainant wrote that putting in hours without checking with an employee was illegal under state and Federal law.

In her January 17, 2023 text to Subject 1, the Complainant reported a reasonably believed abuse of authority, defined in part by DoDD 1401.03 as “[a]n arbitrary and capricious exercise of power by a military member or a Federal official or employee that adversely affects the rights of any person.” Therefore, the Complainant’s January 17, 2023 text to Subject 1 was protected under 10 U.S.C. § 1587.

Protected Disclosure 2: Meeting with Subject 2

On April 18, 2023, the Complainant met with Subject 2 and reported, in part, that Subject 1 created a toxic work environment; committed fraud, waste, and abuse; used condescending language toward her and customers; transferred her hours to another employee; reprisal against her; and targeted and harassed her. The Complainant also reported that Subject 1 consumed alcohol while on the job and engaged in inappropriate contact with customers in the parking lot.

The Complainant's April 18, 2023 disclosure to Subject 2 was protected under 10 U.S.C. § 1587 as a report of reasonably believed violations of various laws, rules, or regulations, including the Department of the Air Force Instruction (DAFI) 34-219, "Alcoholic Beverage Program," March 31, 2022, which prohibited the consumption of alcohol by individuals in the performance of official duties, except when attending, or speaking at, a social gathering as part of official duties.¹⁸

Protected Disclosure 3: Complaint to an IG

On May 2, 2023, the Complainant filed a complaint with the 66th ABG/IG, describing many of the same concerns she reported to Subject 2, including Subject 1's consumption of alcohol while on duty. The Complainant then supplemented her written complaint with additional allegations and photos on May 26 and June 2, 2023.

The Complainant's disclosures to the 66th ABG/IG were protected under 10 U.S.C. § 1587 as a report of reasonably believed violations of various laws, rules, or regulations, including the DAFI 34-219 prohibition of the consumption of alcohol by individuals in the performance of official duties. For purposes of analysis, we treated the Complainant's May 2, 2023 complaint and subsequent May 26 and June 2, 2023 emails as a single disclosure, with a date of May 2, 2023.

Protected Disclosure 4: Report to Witness 1

On August 4, 2023, the Complainant told Witness 1 that he was violating rules that limited the amount of an alcoholic beverage that could be served in a single serving and that he was mischarging customers for their drinks.

In her August 4, 2023 disclosure to Witness 1, the Complainant reported reasonably believed evidence of mismanagement, defined by DoDD 1401.03 as "[w]rongful or arbitrary and capricious actions that may have an adverse effect on the efficient accomplishment of the agency's mission." Therefore, the Complainant's August 4, 2023 disclosure to Witness 1 was protected under 10 U.S.C. § 1587.

Protected Disclosure 5: Grievance to Human Resources

On September 7, 2023, the Complainant filed a grievance with HR about being removed from the schedule for the foreseeable future. In her grievance, the Complainant also reported that Subject 1 consumed alcohol while on duty and wrote that she feared Subject 1 removed her from the work schedule in reprisal for filing an IG complaint.

¹⁸ DAFI 34-219 was superseded by DAFI 34-107, "Alcoholic Beverage Program," July 5, 2023. The updated issuance also prohibits the consumption of alcohol by individuals in the performance of official duties; however, we refer here to DAFI 34-219, as that was the issuance in effect at the time of the Complainant's protected disclosure.

In her September 7, 2023 grievance, the Complainant reported a reasonably believed violation of 10 U.S.C. § 1587's prohibition of reprisal. Therefore, the Complainant's September 7, 2023 disclosure to HR was protected under 10 U.S.C. § 1587.

Protected Disclosure 6: DoD Hotline Complaint

On September 11, 2023, the Complainant filed a complaint with the DoD Hotline alleging, in part, that Subject 1 reprised against her by eliminating her hours for the foreseeable future.

In her September 11, 2023 DoD Hotline complaint, the Complainant reported a reasonably believed violation of 10 U.S.C. § 1587's prohibition of reprisal. Therefore, the Complainant's DoD Hotline complaint made on September 11, 2023, was protected under 10 U.S.C. § 1587.

Non-Protected Disclosure: Report to Subject 1

On April 21, 2023, the Complainant asked Subject 1 about missing time from her last two biweekly paychecks. As the Complainant recalled it, Subject 1 told her that she deducted some time because she watched outside the window to see what time the Complainant arrived and adjusted her paychecks accordingly. The Complainant told Subject 1 that she was wrong, that her actions were illegal, and that common practice had always been to round to the nearest quarter hour in favor of the employee, not to the minute and then subtract even more. Subject 1 confirmed the Complainant's recollection of their conversation, telling us that she said to the Complainant that when she walked in the doors was when she arrived. Subject 1 also told us that she had this conversation with the Complainant multiple times.

By the time the Complainant made her report to Subject 1, Subject 1 had started annotating the Complainant's arrival times on the sign-in and sign-out sheets. After seeing Subject 1's notes on the sign-in and sign-out sheets, the Complainant should have become aware that she might not have been annotating her time on the sign-in and sign-out sheets accurately. Based on these facts, the Complainant's belief that she was making a protected disclosure was not objectively reasonable, as a disinterested observer who knew of the essential facts known to and readily ascertainable by her would not reasonably conclude that the missing time from her last two biweekly paychecks evidenced a violation of any law, rule, or regulation or an abuse of authority.

Personnel Actions

We determined, by a preponderance of the evidence, that the Complainant experienced two personnel actions under 10 U.S.C. § 1587. Although the Complainant alleged that Subject 2 reprised against her, we determined that Subject 2 did not take a qualifying personnel action against her and do not address him further in this report.

Personnel Action 1: Removal from All Friday Shifts

Beginning in May 2023, Subject 1 did not schedule the Complainant for Friday shifts. The Complainant worked on average of 4.75 shifts per month from May through August 2023, after Subject 1 did not schedule her for Friday shifts, in comparison to working an average of 7.67 shifts from February through April 2023. Subject 1's action was a decision concerning pay, as it resulted in the Complainant working fewer hours; therefore, it was a qualifying personnel action under 10 U.S.C. § 1587.

Personnel Action 2: Removal from All Shifts

Subject 1 did not schedule the Complainant for any shifts in September 2023. As Subject 1's decision resulted in the Complainant working no hours from working on average of 4.75 shifts per month from May through August 2023, it was a decision concerning pay; therefore, it was a qualifying personnel action under 10 U.S.C. § 1587.

Non-Qualifying Personnel Action 1: Removal from Friday Shift

Subject 1 did not schedule the Complainant for the Friday, April 7, 2023 shift. However, the Complainant worked a total of seven shifts in April 2023, after working seven and nine shifts in February and March 2023, respectively. As the Complainant worked a similar number of shifts in February, March, and April 2023, not scheduling the Complainant for the April 7, 2023 shift was not a decision concerning pay and, therefore, was not a qualifying personnel action under 10 U.S.C. § 1587.

Non-Qualifying Personnel Action 2: Reduction of Paycheck

From April 29, 2023, through September 16, 2023, Subject 1 authorized the Complainant for fewer hours of work than the Complainant logged on the sign-in and sign-out sheets on five occasions. Paying the Complainant for fewer hours of work was a decision concerning pay and, therefore, would qualify as a personnel action under 10 U.S.C. § 1587. However, the evidence demonstrated that the Complainant's logged hours on the sign-in and sign-out sheets did not reflect her actual start time.

Subject 1 told us that she reduced the Complainant's paycheck below the number of hours the Complainant logged on the employee sign-in and sign-out sheets based on the actual times that the Complainant walked in the door. For example, she told us, "... I am not clocking in on the timeclock that [the Complainant] was here at 3:30 when I saw her walk in the door at 3:50."

Contemporaneous text messages and Subject 1's handwritten annotations on the calendar in her office supported her testimony. For example, on August 10, 2023, although the Complainant signed in at 3:50 p.m., a coworker texted Subject 1 that the Complainant "just walked in" after 3:58 p.m. The same employee texted Subject 1 on August 17, 2023, that the

Complainant “just walked in” at 3:58 p.m., whereas the sign-in and sign-out sheets reflected a 3:45 p.m. arrival. Additionally, Subject 1’s calendar reflected that the Complainant arrived at 4:00 p.m. on August 24, 2023, although the Complainant signed in at 3:50 p.m.

Furthermore, we noted that even the large discrepancy in the September 2, 2023 paycheck—a 2.25 hour differential between the employee sign-in and sign-out sheets and the Complainant’s earnings statements—was well explained by Subject 1’s testimony and documentary evidence. Subject 1 told us that the payroll for this pay period was due early, so she pre-submitted the Complainant’s hours and then adjusted her paycheck for the next pay period. The Complainant’s earnings statements supported this testimony: The Complainant received 2 hours of pay on September 16, 2023, even though she did not work during the pay period. The 2-hour pay adjustment did not fully resolve the 2.25-hour discrepancy. However, we also reviewed handwritten notes on Subject 1’s desk calendar, which showed that the Complainant arrived at work at 4:00 p.m. on August 24, 2023, versus a 3:50 p.m. sign-in for that day, which accounted for the other 0.25 hours of discrepancy.

As the evidence demonstrated that Subject 1 authorized the Complainant for her *actual* hours worked, the Complainant did not experience a qualifying personnel action under 10 U.S.C. § 1587.

Non-Qualifying Personnel Action 3: Deduction from Tips

On September 26, 2023, Subject 1 deducted \$94.70 from the Complainant’s tips, allotting \$84.70 to Witness 1 and deducting an additional \$10.00 to account for an overcharge error, which the Complainant alleged was Witness 1’s fault. Deducting from the Complainant’s tips was a decision concerning pay and, therefore, would qualify as a personnel action under 10 U.S.C. § 1587. However, Subject 1 told us that she deducted from the Complainant’s final tips for two reasons. First, the Tavern had a system by which tips would be split proportionally based on the hours the bar was open if more than one bartender was on duty. In this case, Subject 1 said that Witness 1 was on duty for 2.5 hours, so he received that portion of the tips, while the Complainant received the remaining portion. Second, Subject 1 said that the Complainant added a \$10 tip for a customer who had put a line through the receipt. Subject 1 said that she pulled the \$10 out of the Complainant’s tips. The evidence that we reviewed supported both of these statements.

The evidence demonstrated that Subject 1 fully comported with the Tavern’s tip allocation policy as the Complainant received an amount that equated to her proportion of the total working hours. Additionally, the Complainant charged a customer a \$10 tip although he did not leave a tip. Therefore, as Subject 1 did not make a discretionary decision in determining the amount of tips the Complainant was entitled to, we determined the deduction from tips did not constitute a qualifying personnel action under 10 U.S.C. § 1587.

Contributing Factor

We determined that the Complainant's protected disclosures were a contributing factor in the personnel actions.

Whether protected disclosures were a "contributing factor" may be established when:

- the subject had knowledge, actual or inferred, of the Complainant's disclosures, and
- the personnel actions took place within a period of time subsequent to the disclosures,

such that a reasonable person could conclude that the disclosures were a contributing factor in the decision to take the actions.

Knowledge

A preponderance of the evidence indicated that it is more likely than not that Subject 1 knew of five of the Complainant's protected disclosures. We also found it more likely than not that Subject 1 inferred that the Complainant made one additional protected disclosure.

Protected Disclosure 1: Reports to Subject 1

On January 17, 2023, the Complainant reported to Subject 1 that her most recent paycheck did not account for her total hours worked. Subject 1 was the recipient of this disclosure.

Protected Disclosure 2: Meeting with Subject 2

On April 18, 2023, the Complainant met with Subject 2 to report a series of allegations against Subject 1. That same day, Subject 2 sent a summary of the meeting to Subject 1, who responded on April 19, 2023. Subject 1 also told us that she talked with Subject 2 about his discussion with the Complainant. Therefore, Subject 1 knew of the Complainant's April 18, 2023 disclosure to Subject 2.

Protected Disclosure 3: Complaint to an IG

On May 2, 2023, the Complainant filed a complaint with the 66th ABG/IG, describing many of the same concerns she reported to Subject 2. Subject 1 told us that she learned of this complaint when an investigating officer contacted her in December 2023. We confirmed that the investigating officer first contacted Subject 1 on December 4, 2023, and we reviewed no evidence to contradict Subject 1's statement that this was the first time she learned of the complaint. Therefore, we concluded that Subject 1 knew of the Complainant's IG complaint but that she did not learn of this complaint until December 4, 2023, after the personnel actions occurred.

Protected Disclosure 4: Report to Witness 1

On August 4, 2023, the Complainant told Witness 1 that he was violating rules that limited the amount of an alcoholic beverage that could be served in a single serving and that he was mischarging customers for their drinks. Subject 1 told us, "... I can't remember if [Witness 1] had told me that [the Complainant] wanted him to use a measuring cup or something that she set aside for him" Subject 1 thought this occurred in April or May 2023.

Despite her use of the phrase "I can't remember," Subject 1's recollection appeared to match the Complainant's. Although Subject 1 recalled that the disclosure occurred in April or May 2023, we found it more likely than not that it occurred in August 2023, considering that the employee sign-in and sign-out sheets showed that the Complainant and Witness 1 only worked together on August 4 and 31, 2023. Therefore, we found it more likely than not that Subject 1 knew of the Complainant's August 4, 2023 disclosure to Witness 1.

Protected Disclosure 5: Grievance to Human Resources

On September 7, 2023, the Complainant filed a grievance with HR. Subject 1 told us that she received an email from HR about the Complainant's last paycheck and explained to us that the Complainant was concerned about her tips. Similarly, on October 10, 2023, Subject 1 emailed HR and courtesy copied Subject 2 explaining how tips were split between the Complainant and Witness 1 on August 31. On these bases, we found it more likely than not that Subject 1 did not know of the Complainant's specific grievance. However, given that Subject 1's October 10, 2023 email included notes about the Complainant's schedule and tips, we found it more likely than not that Subject 1 inferred that the Complainant made a protected disclosure to HR and that she likely formed this inference sometime in early October 2023; which occurred after the final personnel action.

Protected Disclosure 6: DoD Hotline Complaint

On September 11, 2023, the Complainant filed a complaint with the DoD Hotline alleging, in part, that Subject 1 reprised against her by eliminating her hours for the foreseeable future. We informed Subject 1 on February 7, 2024, that she was the subject of an investigation into the allegation that she reprised against the Complainant. We reviewed no evidence indicating that Subject 1 could have known of this complaint before our notification. Therefore, we found it more likely than not that Subject 1 did not learn of the Complainant's DoD Hotline complaint until February 7, 2024.

Timing of Personnel Actions

The Complainant made six protected disclosures, from January 2023 through October 2023. The Complainant also experienced two qualifying personnel actions from April 2023 through September 2023.

The timing of the six protected disclosures and the two personnel actions is summarized in Table 3. To analyze whether the protected disclosures were a contributing factor in Subject 1's decisions to take the personnel actions, we used the dates on which Subject 1 learned of each disclosure, rather than the date that the Complainant made the disclosure.

Table 3. Timing of Protected Disclosures and Qualifying Personnel Actions

Date	PD ¹	PA ²	Description of Event
January 17, 2023	X		The Complainant reported to Subject 1 that her most recent paycheck did not account for her total hours worked.
April 18, 2023	X		The Complainant met with Subject 2 to report a series of allegations against Subject 1.
May 5, 2023		X	Beginning in May 2023, Subject 1 did not schedule the Complainant for Friday shifts.
August 4, 2023	X		The Complainant told Witness 1 that he was violating rules that limited the amount of an alcoholic beverage that could be served in a single serving and that he was mischarging customers for their drinks.
September 5, 2023		X	Subject 1 did not schedule the Complainant for any shifts in September 2023.
Early October 2023	X		Subject 1 inferred that the Complainant made a protected disclosure to HR about her work schedule and tips.
December 4, 2023	X		Subject 1 learned of the Complainant's May 2, 2023 complaint to the 66th ABG/IG in which she made a series of allegations against Subject 1 and Subject 2.
February 7, 2024	X		Subject 1 learned of the Complainant's September 11, 2023 complaint to the DoD Hotline in which she alleged, in part, that Subject 1 reprised against her for making protected disclosures.

Source: The DoD OIG.

¹ PD: Protected disclosure.

² PA: Personnel action.

Based on Subject 1's knowledge of the Complainant's protected disclosures to Subject 1, Subject 2, and Witness 1, and the close timing of those disclosures and the subsequent personnel actions, a preponderance of the evidence established that these protected disclosures were a contributing factor in the personnel actions. Additionally, we concluded that the Complainant's grievance to HR and her complaints to the 66th AB/IG and the DoD Hotline were *not* contributing factors in the personnel actions, as Subject 1 did not learn of these disclosures until after taking the personnel actions.

Because the Complainant successfully established the elements of a *prima facie* allegation by a preponderance of the evidence, the question then became whether a preponderance of the evidence indicated that Subject 1 would have taken the same personnel actions even absent the protected disclosures. In so doing, we considered the following factors.

Strength of the Evidence

Stated Reasons for Removing the Complainant from All Friday Shifts

When we asked her why she removed the Complainant from all Friday shifts beginning in May 2023, Subject 1 told us that it was because she needed to hire additional bartenders to ensure she could staff the Tavern. She noted that Bartender 2 was not available to work on Thursdays and Fridays and that Bartender 1 might only be available once a month. She told us that scheduling an additional bartender for a regular night would keep them fully trained for bigger events, as opposed to having them only come in once a month and forget how to open the cash register and go through all the processes. Finally, Subject 1 stated that the Complainant told her that she worked at the [REDACTED] on Fridays, which meant that Subject 1 needed to find another bartender.

Documentary evidence supported Subject 1's testimony. Specifically, to meet staffing needs and accommodate the Complainant's unavailability due to conflicting commitments, Subject 1 hired Witness 1 as a bartender on [REDACTED]. She then scheduled him for two Fridays in May, five Fridays in June, four Fridays in July, and three Fridays in August 2023 to ensure he remained sufficiently trained and proficient in the Tavern's operating procedures and available to work special events.

Stated Reasons for Removing the Complainant from All Shifts

Subject 1 provided four reasons for removing the Complainant from all shifts: (1) financial considerations, (2) Witness 1's availability, (3) his supervision of special events, and (4) opening time. However, Subject 1 said that the first three factors were the "driving force" behind her decision.

Financial Considerations

Subject 1 told us that before Witness 1's promotion, she had managed the bar herself, but that as an appropriated fund employee, her salary did not reflect on the Tavern's financial accounts. Subject 1 added that Witness 1's salary as a manager would be accounted for on the Tavern's books, so she needed him to take both roles—bartending and management duties—on Thursdays and Fridays.

We reviewed the Tavern's monthly financial statements and found that, as Subject 1 testified, Witness 1's promotion to manager resulted in a significant increase in total personnel expenses, as his NAF salary was accounted for on the Tavern's books, while Subject 1's appropriated fund salary had not been. Before Witness 1's promotion on [REDACTED], total personnel expenses accounted for between 31 percent and 47 percent of the Tavern's sales. After his promotion, those figures rose to between 51 percent and 82 percent.

Witness 1's Availability

Subject 1 told us that Witness 1 was available in the mornings on Monday, Tuesday, and Wednesday, and all day on Thursday and Friday. Witness 1 confirmed that he was available Thursdays and Fridays but typically not available on Wednesdays unless he received advance notice.

Evidence Against the Stated Reasons for Removing the Complainant from All Shifts

First, as mentioned previously, we reviewed the Tavern's monthly financial statements and found that, as Subject 1 testified, Witness 1's promotion to manager resulted in a significant increase in total personnel expenses. However, our calculations called into question the degree to which scheduling Witness 1 as both bartender and bar manager actually saved the Tavern on personnel expenses.

Subject 1 told us that she removed the Complainant from all shifts, partially on the basis that Witness 1 could conduct bar management duties while bartending, thus avoiding the need to pay both a bartender and a bar manager. If we calculate an average of 7 hours per Thursday shift, over the four Thursdays in September 2023, we arrive at 28 total bartending hours.¹⁹ Witness 1 told us that he spent 70 percent of his time performing bar management duties during the week but that it would be different depending on how busy it was. For analytical purposes, we concluded that Witness 1 accomplished 19.6 hours of bar management duties while tending bar; then the cost savings work out as follows.

- **Witness 1 Scheduled as Both Bar Manager and Bartender:** Witness 1 works 28 total hours on Thursdays in September 2023. At his wage rate of [REDACTED] per hour, he earns [REDACTED].
- **The Complainant Scheduled as Bartender and Witness 1 Scheduled as Bar Manager:** If instead Subject 1 keeps the Complainant as the Thursday night bartender, the Complainant would earn [REDACTED] at her wage rate of [REDACTED] per hour. Meanwhile, Witness 1 would need to be scheduled for 19.60 hours of bar manager time, to make up for the duties he would have accomplished during the Thursday night shifts. At his wage rate of [REDACTED] per hour, he earns [REDACTED]. Total personnel expenses in this scenario are [REDACTED].

In this scenario, scheduling Witness 1 for both duties resulted in personnel expenses of [REDACTED], compared to personnel expenses of [REDACTED] if the Complainant were scheduled as bartender and Witness 1 as bar manager only, for a total savings of \$374.36. These theoretical savings would increase or decrease depending on the percentage of his time that Witness 1 could spend on bar manager duties while also tending bar. Yet as an analytical tool, this calculation demonstrates that the cost savings from removing the Complainant

¹⁹ We reviewed the sign-in and sign-out sheet for the month of August 2023 and concluded that the Complainant worked an average of approximately 7 hours per Thursday shift.

from the schedule were not significant, especially when the Tavern profited more than the 2-percent profit that the Tavern needed to make to stay out of the red in June (\$4,332.51) and August (\$3,235.01) 2023, before Subject 1 decided to remove the Complainant from all shifts.

Second, Subject 1 scheduled Witness 1 to work all Thursday and Friday shifts in September 2023. Even without those shifts, Subject 1 could have scheduled the Complainant to work six additional shifts—one Friday, one Monday, and four Wednesdays. The Complainant told us that she was available Wednesdays, while Subject 1 told us that the Complainant was not available Wednesdays. Subject 1 added that the Complainant had always told her that she could not work Wednesdays and that most of the conversations about availability occurred orally, although she had a few text messages from the Complainant. We reviewed all the text messages that Subject 1 provided to us and did not find a text message in which the Complainant told Subject 1 that she could not work Wednesdays. The Complainant told us that she “NEVER” had a discussion with Subject 1 about working Wednesdays.

We asked Subject 1 if she asked the Complainant whether the Complainant was available for the shifts that she assigned to Bartender 1 and Bartender 2. First, Subject 1 recalled asking Bartender 2 and the Complainant if they were available to assist Witness 1 on Friday, September 8, 2023. Subject 1 said that neither of them was available. Next, Subject 1 could not say whether she asked the Complainant if she was available for the Monday, September 18, 2023 shift. Subject 1 explained that she knew Mondays, Tuesdays, and Wednesdays were the Complainant’s designated days at a [REDACTED]. Finally, Subject 1 told us that she did not contact the Complainant to see if she was available for Wednesday shifts before she completed the September 2023 schedule, because of her previous conversations with the Complainant.

In response to our questions on whether Subject 1 asked her about her availability in September 2023, the Complainant stated, “... [Subject 1] send [sic] me a message (which [the DoD OIG] should have), which stated that I was not needed in September 2023 and going forward.” On September 5, 2023, Subject 1 notified the Complainant that she was not scheduled to work any shifts during the month of September. The Complainant also told us that she was available for all Wednesday, Thursday, and Friday shifts in September 2023.

Third, Subject 1 told us that special events occurred on Thursdays and Fridays, for which she wanted a manager on duty to make sure everything ran smoothly. We reviewed the September 2023 schedule that showed that special events occurred on one Monday, two Thursdays, and two Fridays. Additionally, the September 2023 schedule showed that Witness 1 was scheduled to work the special events on Thursdays and Fridays and that Bartender 1 was scheduled to work the special event on Monday by herself. This called into question Subject 1’s reasoning that she wanted a manager on duty at special events to make sure everything ran smoothly.

Fourth, Subject 1 told us that if the Complainant was not on the schedule, it was because of one of two reasons. Either the Complainant was not available, or she needed to schedule another bartender, who was only available once a month, to keep that bartender's opening and closing skills current. When we asked her why she removed the Complainant from all Friday shifts, beginning in May 2023, Subject 1 told us that it was because she needed to hire additional bartenders to ensure she could staff the Tavern. She told us that scheduling an additional bartender for a regular night would keep them fully trained for bigger events, as opposed to having them only come in once a month and forget how to open the cash register and go through all the processes. Despite her testimony, Subject 1 removed the Complainant from all shifts. When we asked her about the discrepancy between her testimony and her action, Subject 1 responded that they now had a bar manager who could assist with the opening and closing procedures and the daily paperwork. As discussed previously, Witness 1 became the bar manager on [REDACTED]. As the evidence supported Subject 1's response, we did not analyze this further.

Finally, we found that the Tavern's operating hours likely did not change in September. However, we did not analyze this further as Subject 1 told us that financial considerations, Witness 1's availability, and his supervision of special events were the "driving force" behind her decision.

Motive to Retaliate

Evidence for motive generally exists when protected disclosures allege wrongdoing that, if proven, would adversely affect the subject. This could be true in this case, as the Complainant's protected disclosures directly called into question Subject 1's conduct as well as her management of the facility.

In her meeting with Subject 2, the Complainant reported a series of allegations against Subject 1. Subject 2 then addressed these allegations with Subject 1. Subject 1 told us that she was "pretty shocked" at some of the allegations, stating, "... some of those things were just completely against my character, and so it upset me. I was just kind of disgusted that somebody, you know, [the Complainant] was trying to I guess tarnish my character of me drinking on the job, which I've—had never."

Therefore, we determined the Complainant's protected disclosures would have provided a motive for Subject 1 to reprise against the Complainant.

Disparate Treatment of the Complainant

We found that Subject 1 treated the Complainant disparately in her decision to remove the Complainant from all shifts. As discussed previously, Subject 1 scheduled three employees to tend the bar in September 2023: (1) Witness 1 for all Thursday and Friday shifts, (2) Bartender 1 for the first Friday and one special event on a Monday, and (3) Bartender 2

for all Wednesday shifts. Of the three employees, Witness 1 was not similarly situated to the Complainant, as Witness 1 was the bar manager. On the other hand, Bartender 1 and Bartender 2 were similarly situated to the Complainant as flexible employees. Subject 1 scheduled Bartender 2 for all Wednesday shifts and Bartender 1 for two shifts while not scheduling the Complainant for any shifts; therefore, we determined Subject 1 treated the Complainant disparately.

Totality of the Evidence

Weighed together, the evidence analyzed in the factors above established that Subject 1 would have removed the Complainant from all Friday shifts absent any protected disclosure. However, a preponderance of the evidence did not establish that Subject 1 would not have entirely removed the Complainant from the schedule absent her protected disclosures.

Removal from All Friday Shifts

When we asked her why she removed the Complainant from all Friday shifts, beginning in May 2023, Subject 1 told us that it was because she needed to hire additional bartenders to ensure she could staff the Tavern. Subject 1 also told us that scheduling an additional bartender for a regular night would keep them fully trained for bigger events, as opposed to having them only come in once a month and forget how to open the cash register and go through all the processes.

The evidence that we reviewed supported Subject 1's stated reason for removing the Complainant from all Friday shifts. Witness 1 was available Thursdays and Fridays but typically not available on Wednesdays unless he received advance notice. This meant that Subject 1 could schedule Witness 1 mostly for Thursday or Friday shifts. Subject 1 hired Witness 1 as a bartender on [REDACTED], and scheduled him for Friday shifts, beginning in May 2023. Therefore, a preponderance of the evidence established that Subject 1 did not remove the Complainant from all Friday shifts, beginning in May 2023, in reprisal.

Removal from All Shifts

We determined that Subject 1 provided insufficient evidence for removing the Complainant from all shifts in September 2023. The evidence that we reviewed supported Subject 1's stated reasons for removing the Complainant from all shifts and saving costs by having Witness 1 perform double duty as a bartender and a bar manager provided a rational business explanation for the lack of available shifts. However, we found reasons to doubt Subject 1's stated reasons.

First, our calculation demonstrated that the cost savings from removing the Complainant from the schedule were not significant, especially when the Tavern profited more than the 2-percent profit that the Tavern needed to make to stay out of the red in the two months out of the three months preceding Subject 1's decision to remove the Complainant from all shifts. Next, Witness 1 was scheduled to work the special events on Thursdays and Fridays, but Bartender 1 was scheduled to work the special event on Monday by herself, calling into question Subject 1's reasoning that she wanted a manager on duty at special events to make sure everything ran smoothly. Finally, she could have scheduled the Complainant for six shifts—one Friday, one Monday, and four Wednesdays—even without the Thursday and

Friday shifts for which Subject 1 scheduled Witness 1. Subject 1 said that the Complainant had always told her that she could not work Wednesdays and that she recalled asking the Complainant if she was available to assist Witness 1 on Friday, September 8, 2023. However, the Complainant told us that she “NEVER” had a discussion with Subject 1 about working Wednesdays and that she was available for all Thursday and Friday shifts in September 2023.

On these grounds, we found reasons to doubt Subject 1’s stated reasons for removing the Complainant from all shifts. We also determined that Subject 1 had a motive to reprise and that Subject 1 treated the Complainant disparately in her decision to remove the Complainant from all shifts.

Preliminary Conclusions

A preponderance of the evidence established that Subject 1 would have removed the Complainant from all Friday shifts absent any protected disclosure. Accordingly, based on the preponderance of the evidence, we concluded that Subject 1 did not take this personnel action against the Complainant in reprisal for her protected disclosures.

However, a preponderance of the evidence established that Subject 1 would not have entirely removed the Complainant from the schedule absent any protected disclosure. Accordingly, based on the preponderance of the evidence, we concluded that Subject 1 entirely removed the Complainant from the schedule in reprisal for her protected disclosures.

Subject 1's Response to Preliminary Conclusions

We provided a preliminary report of investigation to Subject 1 on November 18, 2024, and provided her an opportunity to respond to our preliminary conclusions. Subject 1 responded in writing on December 2, 2024. In her written response, Subject 1 disagreed with our evidence against her stated reasons for removing the Complainant from all shifts, argued that two disclosures should not be protected, and denied that she had a “motivation” when making the schedule change. After carefully considering Subject 1's response, our conclusion remains unchanged. We address Subject 1's arguments from her response below.

Removal from All Shifts

In her response to our preliminary report of investigation, Subject 1 made three arguments to counter our evidence against her stated reasons for removing the Complainant from all shifts. First, in our preliminary report of investigation, we wrote that our calculation demonstrated that the cost savings from removing the Complainant from the schedule were not significant. In her response, Subject 1 wrote that she based her decision completely on operational needs. Subject 1 explained that the NAF financial advisor, resource management flight chief, and community support flight chief advised her when she came onboard that the manager's payroll would historically cause a monthly loss of \$2,000 to \$4,000. Subject 1 also explained that the monthly profit of \$2,000 to \$4,000 that we detailed in our report would be in the negative once Witness 1's full management duty potential reached the \$2,000 to \$4,000 payroll prediction. Subject 1 further explained that they were preparing for the potential negative balances and that they did not know how much time it would take to operate at a profit again.

We asked Subject 1 if she ran any specific calculations to determine how many hours of bar manager duties Witness 1 would need to complete during his bartender shifts to save money compared to scheduling the Complainant for those bartender shifts. Subject 1 told us that she did not do a cost analysis because Witness 1 and the Complainant were making about the same amount of money. Furthermore, Subject 1 could not explain how much time Witness 1 would be able to spend on his bar manager duties during a bartender shift.

We found insufficient evidence to support the conclusion that Subject 1 applied the claimed analysis to her scheduling methodology. Therefore, we found Subject 1's argument that she removed the Complainant from *all* shifts to prepare for the negatives they would experience from the new bar manager's payroll unpersuasive.

Next, we wrote that Subject 1 could have scheduled the Complainant for six shifts, even without the Thursday and Friday shifts. In her response, Subject 1 provided us with three additional pieces of evidence supporting her contention that the Complainant was available only on Thursdays and Fridays. On December 6, 2022, the Complainant texted

an individual who Subject 1 identified as “the previous acting manager,” writing, “Sorry day job then [REDACTED] on Mondays and Wednesdays.” Additionally, on February 22, 2024, the Complainant texted Witness 1, writing that her availability had not changed, and that Thursdays and Fridays were still good.²⁰ The Complainant did not write about her Wednesday availability. Finally, on October 23, 2024, the Complainant emailed Witness 1, writing that she was not available on Wednesday, October 30, 2024.

Subject 1 also wrote that the Complainant told her that she had other obligations—working at a restaurant in [REDACTED]—on Fridays around the May 2023 time frame after Witness 1 took on the Friday shifts. Although the Complainant admitted that she volunteered for some shifts elsewhere after she was taken off the schedule, she added, “I never told anyone at any time I wanted to be taken off of the schedule nor did I request such.”

We did not find that the additional evidence supported Subject 1's statement that the Complainant told her that the Complainant was available only on Thursdays and Fridays. The Complainant's availability in 2022 and 2024 could have differed from her availability in 2023, as demonstrated by Subject 1's response and the Complainant's statement about her availability in the May 2023 time frame. Subject 1 also told us in her testimony that the Complainant “may or may not be available on like, a Wednesday” and that the Complainant had told Bartender 2 to “reach out” if he needed a substitute on Wednesdays. Had Subject 1 presented evidence that she asked the Complainant for her availability before removing her from all shifts in September, we could have come to a different conclusion. However, Subject 1 could not say whether she asked the Complainant if she was available for the Monday, September 18, 2023 shift, and Subject 1 did not contact the Complainant to see if she was available for Wednesday shifts before she completed the September 2023 schedule. Additionally, although Subject 1 recalled asking Bartender 2 and the Complainant if they were available to assist Witness 1 on Friday, September 8, 2023, the Complainant stated, “... [Subject 1] sen[t] me a message (which [the DoD OIG] should have), which stated that I was not needed in September 2023 and going forward.” The Complainant added that she was available for all Wednesday, Thursday, and Friday shifts in September 2023.

Finally, we wrote that Bartender 1 was scheduled to work the special event on Monday by herself, calling into question Subject 1's reasoning that she wanted a manager on duty at special events to make sure everything ran smoothly. Subject 1 responded that the doubt about having the Monday event with no manager oversight was “deceiving,” because she was the next in line as a manager. Subject 1 explained that she stepped in for Witness 1 when he was unavailable if the event warranted it and that she was present at this particular event. We reviewed Subject 1's timecard for Monday, September 18, 2023, and confirmed that she worked 8 hours.

²⁰ The Complainant's text message to Witness 1 shows only the month and the date; however, as Witness 1 became the bar manager in [REDACTED], it is more likely than not the Complainant sent the text message in 2024.

Witness 1's supervision of special events was one of the four reasons Subject 1 provided for removing the Complainant from all shifts. However, if Subject 1 could step in as a manager when needed, she could have scheduled the Complainant to work special events, and Subject 1 could have performed manager duties. Subject 1's response further called into doubt her reasoning that she wanted a manager on duty at special events to make sure everything ran smoothly.

Therefore, we found no basis on which to change our conclusion.

Protected Disclosure 2

Subject 1 wrote that the Complainant knowingly created false accusations with no proof in "retaliation" 2 weeks after she counseled the Complainant for drinking on her shift.²¹ The Complainant's motive for making a disclosure does not affect whether content qualified for protection under the statute. Additionally, in her testimony to us, Subject 1 admitted to engaging in misconduct that the Complainant reported to Subject 2. Specifically, the Complainant's report to Subject 2 included an allegation that Subject 1 engaged in inappropriate contact with customers in the parking lot. Subject 1 told us, "Public displays of affection. ... it turns out it was one event that she had addressed with that. [...] And it was the first time my boyfriend, coming from [REDACTED], had just moved there and that was the first time the team got to meet him. So, then it all made sense that—yeah." As Subject 1 provided testimonial evidence that refuted her own statement that the Complainant knowingly created false accusations with no proof, we found no basis on which to amend our conclusion.

Protected Disclosure 4

In our preliminary report of investigation, we found that the Complainant reported reasonably believed evidence of mismanagement when she told Witness 1 that he was violating rules that limited the amount of an alcoholic beverage that could be served in a single serving and that he was mischarging customers for their drinks. Subject 1 disagreed, writing that there was no such policy in place and that the Complainant had been previously counseled multiple times that she was not authorized to create her own pricing lists or pouring rules. Subject 1 contended that the disclosure was not the Complainant believing that there was mismanagement; rather, it was her trying to manage the Tavern in accordance with her civilian training and prices and not the Air Force guidelines. We did not analyze Subject 1's argument as we determined that Subject 1 knew of the Complainant's two other protected disclosures before not scheduling the Complainant for any shifts in September 2023. Accordingly, our overall findings would not change in the absence of this protected disclosure.

²¹ In her testimony, Subject 1 told us about the Complainant's behavioral issues. However, Subject 1 denied that the Complainant's conduct or performance affected her decision to remove the Complainant from the work schedule entirely in September 2023. Subject 1 added that her comments about the Complainant's performance and conduct should not play a role in our investigation. Finally, in response to us asking her for her response to the allegation that she removed the Complainant from the work schedule beginning in September 2023 in reprisal, Subject 1 responded, "It was all operational needs."

Motive

Subject 1 disagreed with our finding that the Complainant's protected disclosures would provide a motive for her to reprise against the Complainant. However, when writing about her meeting with Subject 2, she admitted that she was upset and saddened that the Complainant would tarnish her reputation to avoid taking accountability, while also stating that she was not embarrassed and affected. Subject 1 further wrote that she had long forgotten many of the issues by September 2023 and that she did not and had never supervised with emotion. Subject 1 confirmed our conclusion that the Complainant's disclosure to Subject 2 provided a motive for Subject 1. Therefore, we found no basis on which to change our conclusion.

Overall Conclusions

After providing Subject 1 an opportunity to respond to our preliminary report of investigation, and having carefully considered Subject 1's response, our conclusion remains unchanged. A preponderance of the evidence established that Subject 1 would have removed the Complainant from all Friday shifts absent any protected disclosure. Accordingly, based on the preponderance of the evidence, we concluded that Subject 1 did not take this personnel action against the Complainant in reprisal for her protected disclosures.

However, a preponderance of the evidence established that Subject 1 would not have entirely removed the Complainant from the schedule absent any protected disclosure. Accordingly, based on the preponderance of the evidence, we concluded that Subject 1 entirely removed the Complainant from the schedule in reprisal for her protected disclosures.

Recommendations

We recommend that the Director of Administration and Management take the following remedial and corrective actions.

- Direct the placement of the Complainant back on the schedule effective immediately.
- Award the Complainant with all appropriate compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that the Complainant would have received had she not been reprised against.
- Consider appropriate action against Subject 1 for reprising against the Complainant.

Acronyms and Abbreviations

66th ABG/IG	OIG of the 66th Air Base Group
66th MDS	66th Medical Squadron
AFB	Air Force Base
DAFI	Department of the Air Force Instruction
DoDD	DoD Directive
HR	Human Resources
NAF	Nonappropriated Fund
NAFI	Nonappropriated Fund Instrumentality
U.S.C.	United States Code

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