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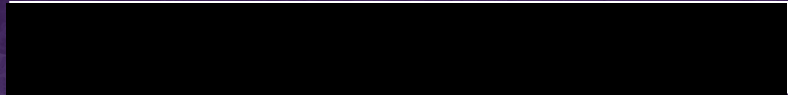
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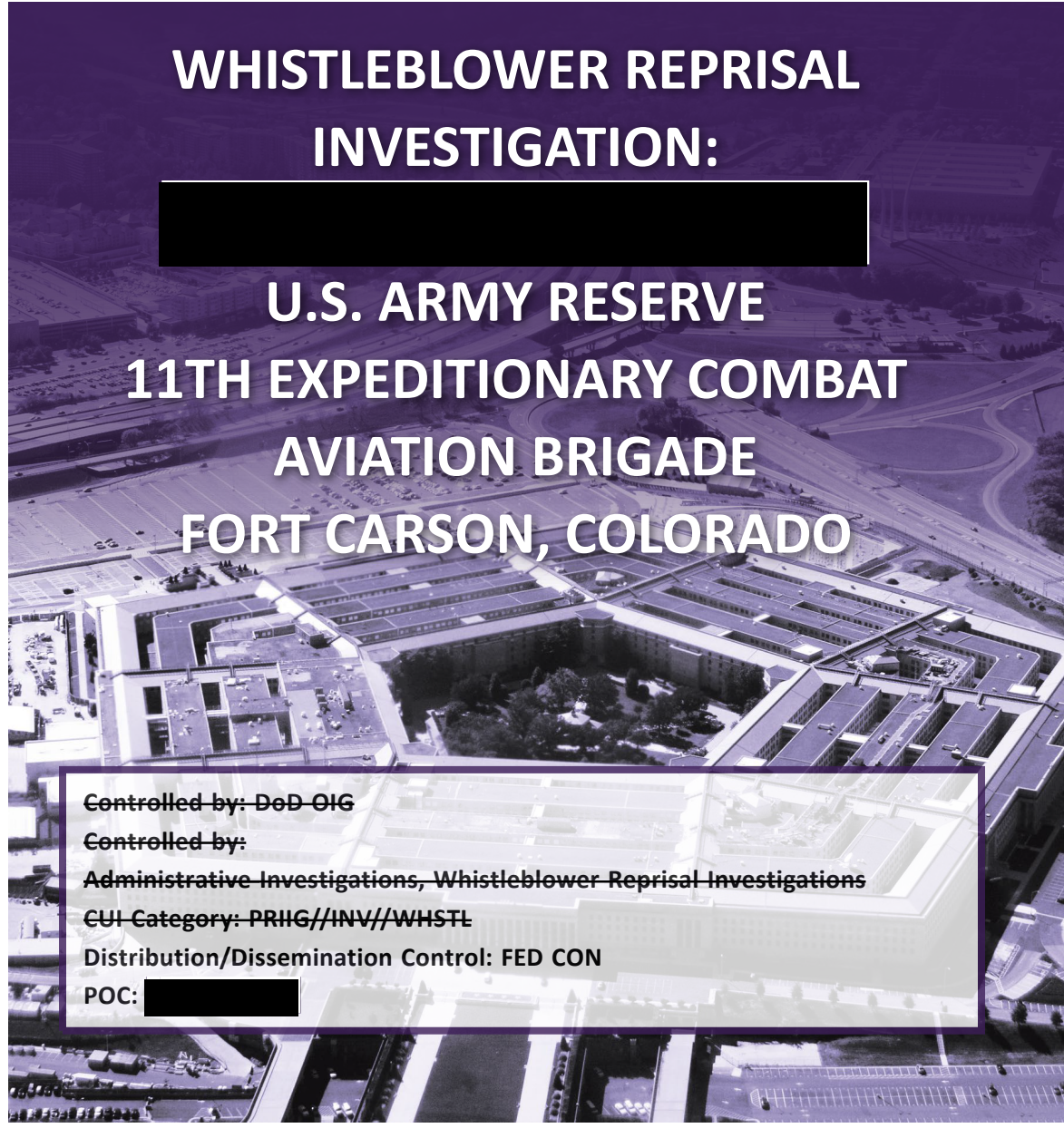
SEPTEMBER 5, 2024



## WHISTLEBLOWER REPRISAL INVESTIGATION:



## U.S. ARMY RESERVE 11TH EXPEDITIONARY COMBAT AVIATION BRIGADE FORT CARSON, COLORADO



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# WHISTLEBLOWER REPRISAL INVESTIGATION:

## [REDACTED] U.S. ARMY RESERVE 11TH EXPEDITIONARY COMBAT AVIATION BRIGADE FORT CARSON, COLORADO

### Executive Summary<sup>1</sup>

We conducted this investigation in response to a reprisal complaint alleging that [REDACTED] (Subject), U.S. Army Reserve (USAR), [REDACTED] 11th Expeditionary Combat Aviation Brigade (11 ECAB), removed [REDACTED] (Complainant), USAR, [REDACTED] 11 ECAB, from a deployment to the Middle East that subsequently made [REDACTED] ineligible for a temporary promotion [REDACTED], in reprisal for making protected communications concerning a sexual assault. The Complainant also alleged that the Subject recommended [REDACTED] for release from active duty (REFRAD), also in reprisal.

The Complainant made three protected communications from November 30, 2021, through December 1, 2021: one to [REDACTED] company commander, one to the 11 ECAB Sexual Assault Response Coordinator (SARC), and one to U.S. Army Criminal Investigations Division (CID) agents conducting an investigation into [REDACTED] allegation of sexual assault. On December 7, 2021, the Subject also perceived that the Complainant was preparing to make a fourth protected communication, when the Complainant's [REDACTED] informed the Subject that if he did not allow the Complainant to deploy, then the Complainant would make a complaint to an Inspector General (IG). After making these protected communications, the Complainant was the subject of personnel actions taken by the Subject, who removed [REDACTED] from the deployment and recommended the Complainant for REFRAD. Additionally, the Subject knew of the Complainant's protected communications before taking these personnel actions against [REDACTED].

Therefore, we concluded that the Complainant established a *prima facie* allegation of reprisal against the Subject in the first stage of our analysis because:

- the Complainant experienced personnel actions after making protected communications that the Subject knew of; and

<sup>1</sup> 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.

- the Complainant's protected communications were a contributing factor in the Subject's decision to take the personnel actions, based on the Subject's knowledge of the protected communications and the close timing between the protected communications and the personnel actions.<sup>2</sup>

Accordingly, we proceeded to the second stage of our analysis, which requires us to determine, by a preponderance of the evidence, whether the personnel actions would have been taken absent any protected communication. We found that the Subject would not have removed the Complainant from the deployment or recommended [REDACTED] for REFRAD absent any protected communication. We also found that the Subject had a motive to reprise, and the evidence did not support the Subject's stated reasons for taking the personnel actions.<sup>3</sup> Therefore, we substantiated the allegations that the Subject removed the Complainant from the deployment and recommended [REDACTED] for REFRAD in reprisal for [REDACTED] protected communications.

However, we determined that the Subject was not involved in decisions regarding temporary promotions, and based on the initial guidance for temporary promotions distributed in February 2022, the Complainant was not eligible for a temporary promotion [REDACTED]. Therefore, the Subject's decision not to deploy and to recommend a REFRAD for the Complainant did not predictably, or with foresight, led to [REDACTED] not being temporarily promoted [REDACTED] as an act of reprisal.

We make no recommendation regarding remedial action for the Complainant. No action can remedy the fact that [REDACTED] did not deploy and that the Subject recommended [REDACTED] for REFRAD.

We recommend that the Secretary of the Army consider appropriate action against the Subject for reprising against the Complainant.

<sup>2</sup> 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."

<sup>3</sup> We did not identify other 11 ECAB Soldiers, who started the mobilization process from October to December 2021 and were similarly situated to the Complainant but did not make protected communications, to determine if the Subject treated the Complainant less favorably.

## Background

### The 11 ECAB

In support of Operation Inherent Resolve and Operation Spartan Shield, the Department of the Army tasked the 11 ECAB with mobilizing approximately 1,200 11 ECAB Soldiers for a 400-day deployment to various locations throughout the Middle East. The 11 ECAB is one of two aviation brigades in the USAR Aviation Command. The 11 ECAB consists of a headquarters company, an aviation support battalion, two assault battalions, and a general support aviation battalion. The HHC is located at Fort Carson, Colorado; one battalion is located in Los Alamitos, California; and the other three battalions are located in Conroe, Fort Worth, and Fort Cavazos, Texas.<sup>4</sup>

### The Complainant Joins the 11 ECAB

The Complainant's assignment with [REDACTED], 11 ECAB, began in April 2019. The Complainant, who initially was assigned to the [REDACTED], 11 ECAB, moved into the [REDACTED] [REDACTED] under [REDACTED] (Witness 1), [REDACTED], 11 ECAB, after [REDACTED]. On June 2, 2021, the Complainant and [REDACTED] went on active duty orders and reported to Fort Carson before arriving at Fort Cavazos on October 8, 2021, to support the 11 ECAB's upcoming mobilization and deployment to various locations in the Middle East. The events discussed and analyzed in this report affected the Complainant [REDACTED].

### The Subject [REDACTED]

During the 11 ECAB's pre-mobilization phase for the impending deployment, the Commanding General, USAR Command, selected the Subject to [REDACTED]. On or about July 16, 2021, the Subject [REDACTED]. The Subject mainly worked with the command staff to prepare the 11 ECAB for mobilization and did not formally introduce himself to the [REDACTED] until early October 2021.

The Complainant alleged that she was subjected to three personnel actions.

- December 6, 2021: Removed from the deployment
- December 8, 2021: Recommended for REFRAD
- April 7, 2022: Became ineligible for temporary promotion [REDACTED]

<sup>4</sup> Fort Cavazos was formerly named Fort Hood.

The Complainant alleged that these personnel actions were taken in reprisal for making the following three protected communications.

- November 30, 2021: Sexual assault report to the company commander
- November 30, 2021: Unrestricted report of sexual assault to the SARC
- December 1, 2021: Testimony to the CID

The investigation also determined that on December 7, 2021, the Subject perceived that the Complainant was preparing to make a complaint to an IG.

## Sexual Assault Victim Reporting and Support

On November 30, 2021, the Complainant made an unrestricted report of sexual assault. Upon notification of that report, the Subject, [REDACTED], had certain responsibilities in accordance with Army Regulation (AR) 600-20. These responsibilities not only included ensuring the Complainant's physical safety, notifying the SARC and the CID, and ensuring [REDACTED] had access to all the services and resources available, but also collaborating with the SARC, legal, medical, and other service providers "to ensure timely, coordinated, and appropriate responses to sexual assault issues and concerns." In addition, the Subject was responsible for providing emotional support to the Complainant. This included such things as consulting with the Complainant throughout the investigation and listening or engaging in quiet support as needed. Finally, the Subject was responsible for making himself available to the Complainant in the "weeks and months following the sexual assault" and ensuring the Complainant that [REDACTED] could rely on him.



## Scope

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This investigation covered the period from June 2, 2021, the date the Complainant went on active duty orders, through September 27, 2022, the date that the CID closed its investigation into the Complainant's sexual assault. We interviewed the Complainant, the Subject, and relevant witnesses under sworn oath or affirmation. We reviewed documentary evidence, including active duty orders, memorandums for record (MFR), emails, reservations in the Army Training Requirements and Resources System (ATRRS), and reports of investigation.

## Whistleblower Protection for Members of the Armed Forces

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The DoD Office of Inspector General conducts whistleblower reprisal investigations involving members of the Armed Forces under section 1034, title 10, United States Code (10 U.S.C. § 1034), “Protected Communications; Prohibition of Retaliatory Personnel Actions,” as implemented by DoD Directive (DoDD) 7050.06, “Military Whistleblower Protection,” April 17, 2015 (Incorporating Change 1, October 12, 2021), and DoD Instruction (DoDI) 7050.09, “Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints,” October 12, 2021.

# Legal Framework

## Two-Stage Process

The DoD Office of Inspector General employs a two-stage process in conducting military whistleblower reprisal investigations. The first stage analyzes the facts, based on proof by a preponderance of the evidence, against the four elements of military reprisal as detailed in DoDI 7050.09.<sup>5</sup> Those four elements are as follows.

1. Did the Complainant make or prepare to make a protected communication, or was the Complainant perceived as having made or preparing to make a protected communication?
2. Was an unfavorable personnel action taken or threatened to be taken against the Complainant, or was a favorable personnel action withheld or threatened to be withheld from the Complainant?
3. Did the subject know of the protected communication being made or prepared, or did the subject perceive the Complainant as making or preparing to make a protected communication?
4. Could the protected communication have been a contributing factor in the subject's decision to take, threaten, withhold, or threaten to withhold the personnel action?<sup>6</sup>

If a preponderance of the evidence supports these four 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 factors.

1. The strength of the evidence in support of the personnel action
2. Motive on the part of the subject to retaliate
3. Disparate treatment with evidence showing whether an individual was treated consistently with other similarly situated non-whistleblowers

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

<sup>5</sup> A preponderance of the evidence is “the 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 1201.56(c)(2).

<sup>6</sup> 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). In the absence of 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 Communication

Under 10 U.S.C. § 1034, as implemented by DoDD 7050.06 and DoDI 7050.09, a protected communication is: (1) any lawful communication to a Member of Congress or an Inspector General or (2) a complaint of or a disclosure of information to an authorized recipient that the Service member reasonably believes to be evidence of:

- a violation of any law or regulation (including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct, sexual harassment, or unlawful discrimination);
- gross mismanagement;
- a gross waste of funds;
- an abuse of authority;
- a substantial and specific danger to public health or safety; or
- a threat by another member of the Armed Forces or employee of the U.S. Government that indicates a determination or intent to kill or cause serious bodily injury to members of the Armed Forces or civilians, or damage to military, Federal, or civilian property.

The following table provides additional information from DoDD 7050.06 about protected communications.

*Table: Protected Communication*

Type of Communication	Conditions on Protection	When made to:
Any communication	Must be a lawful communication	<ul style="list-style-type: none"> <li>• A Member of Congress or</li> <li>• an IG</li> </ul>
<p>Any communication in which a Service member communicates information that he or she reasonably believes evidences:</p> <ul style="list-style-type: none"> <li>• a violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violations of section 920 through 920c of Reference (c) (articles 120 through 120c of the UCMJ), sexual harassment or unlawful discrimination;*</li> <li>• gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety; or</li> <li>• a threat by another Service member or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to Service members or civilians; or damage to military, Federal, or civilian property.</li> </ul>	<p>A communication will not lose its protected status because:</p> <ul style="list-style-type: none"> <li>• the communication was made to a person who participated in the activity that the Service member complained of;</li> <li>• the communication revealed information that had been previously disclosed;</li> <li>• of the Service member’s motive for making the communication;</li> <li>• the communication was not in writing;</li> <li>• the communication was made while the Service member was off duty; or</li> <li>• the communication was made during the normal course of the Service member’s duties.</li> </ul>	<ul style="list-style-type: none"> <li>• A Member of Congress;</li> <li>• an IG;</li> <li>• a member of a DoD audit, inspection, investigation, or law enforcement organization;</li> <li>• any person or organization in the chain of command;</li> <li>• a court-martial proceeding; or</li> <li>• any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.</li> </ul>
<ul style="list-style-type: none"> <li>• Testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication as described above; or</li> <li>• filing, or causing to be filed, participating in, or otherwise assisting in a military whistleblower reprisal action.</li> </ul>		

\*UCMJ Uniform Code of Military Justice.

Source: DoDD 7050.06.

## Personnel Action

DoDD 7050.06 defines a personnel action as any action taken on a Service member that affects, or has the potential to affect, that member's military pay, benefits, or career. Such actions include:

- threatening to take any unfavorable action;
- withholding, or threatening to withhold, any favorable action;
- making, or threatening to make, a significant change in the duties or responsibilities of a Service member not commensurate with the member's grade;
- the failure of a superior to respond to any retaliatory action or harassment (of which the superior had actual knowledge) taken by one or more subordinates against a member;
- conducting a retaliatory investigation of a Service member; and
- referrals for mental health evaluation in accordance with DoDI 6490.04, Enclosure 1.<sup>7</sup>

Personnel actions may be either favorable or unfavorable. Favorable personnel actions are those that are reasonably expected to result in a positive impact on the Service member's military pay, benefits, or career. Unfavorable personnel actions are those that are reasonably expected to result in an adverse impact on the Service member's military pay, benefits, or career. Neither type of personnel action includes inconsequential matters.

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<sup>7</sup> DoDI 6490.04, "Mental Health Evaluations of Members of the Military Services," March 4, 2013 (Incorporating Change 1, April 22, 2020).

## Findings of Fact

### The 11 ECAB Mobilizes and the Complainant is Assaulted

In early October 2021, the Complainant and the mobilized personnel assigned to [REDACTED], 11 ECAB, at Fort Carson began arriving at Fort Cavazos for mobilization to deploy to the Middle East. While at Fort Cavazos, the 11 ECAB fell under the administrative control of the 166th Aviation Brigade (166 AVN BDE), First Army Division West. At that time, [REDACTED] (Witness 2), U.S. Army, [REDACTED]. Witness 2 explained that the 166 AVN BDE was responsible for training, collaborating with, and mobilizing National Guard and USAR aviation units.

According to witness testimony to us, on November 30, 2021, an 11 ECAB Soldier called the 11 ECAB [REDACTED] (Witness 3) and asked that officer to meet them outside the [REDACTED] barracks. When Witness 3 arrived, the officer met the 11 ECAB Soldier and the Complainant. Witness 3 then called Witness 1 and [REDACTED] (Witness 4), [REDACTED], 11 ECAB, and told them it was urgent that they come to the [REDACTED] barracks. Witness 1 said that the Complainant indicated to [REDACTED] that [REDACTED] had been sexually assaulted. Witness 1 stated that [REDACTED] immediately reported the sexual assault to the CID and [REDACTED] (Witness 5), [REDACTED], 11 ECAB. Witness 1 also said that [REDACTED] coordinated transportation to get the Complainant to the Fort Cavazos hospital and rode with [REDACTED]. While at the hospital, the Complainant filed an unrestricted report of sexual assault with Witness 4. Once the Complainant finished filing the report with Witness 4, Witness 1 told us that [REDACTED] called the Subject and told him about the sexual assault.

Witness 4 told us that [REDACTED] also called the Subject from the hospital and briefed him on the situation. According to Witness 4's contemporaneous notes, the Subject asked Witness 4 if [REDACTED] thought the Complainant's report of sexual assault was credible.<sup>8</sup> Witness 4 told the Subject that [REDACTED] did not believe they should be assessing the credibility of the Complainant's report at that time. However, Witness 4 told the Subject that the Complainant seemed like [REDACTED] just experienced something traumatic.

The Subject stated to us that the assault was "not something that you would expect a Soldier to do to another Soldier and it was saddening." The Subject also testified that he did not recall questioning the credibility of the Complainant's report and that "the chain of command immediately gets removed from any investigative process whatsoever and it has to immediately get turned over to CID." According to the Subject, he and [REDACTED] team involved the CID from the beginning. Specifically, the Subject testified that when Witness 1 informed him of the assault, the Subject asked Witness 1 if [REDACTED] had contacted the CID, and Witness 1 said that [REDACTED] had. The Subject also stated that the Complainant came forward

<sup>8</sup> Witness 4 told us that [REDACTED] took [REDACTED] notes the same day or a few days after the events as issues occurred.

and reported the sexual assault and that people he trusted, such as the chaplain, were with the Complainant. Those trusted individuals confirmed to him that it appeared something traumatic had happened, and the Subject relied on their assessment.

Witness 1 stated that [REDACTED] would not say that the Subject questioned the credibility of the Complainant's sexual assault report. According to Witness 1, [REDACTED] perceived the Subject's reaction as in "shock" that the sexual assault happened, not "if it happened." Witness 1 said that after [REDACTED] told the Subject about the assault, the Subject focused on taking care of the Complainant and ensuring that [REDACTED] had everything [REDACTED] needed.

Witness 5 and [REDACTED] (Witness 6) were with the Subject when the Subject received updates about the assault. Neither Witness 5 nor Witness 6 recalled the Subject ever questioning the credibility of the Complainant's report. Witness 5 said that the Subject did not do anything abnormal and reacted as [REDACTED] would expect any [REDACTED] to react after learning about a sexual assault. The Subject received the report and proceeded to gather as much information and details as possible. According to Witness 6, the Subject was noticeably upset and extremely concerned about the Complainant's safety, because no one knew who sexually assaulted [REDACTED]. Witness 6 said that the Subject also made sure that all the personnel who needed to be involved were involved.

Witness 2 testified that when [REDACTED] spoke to the Subject the night of the assault, the Subject seemed "pretty calm and reasonable" and took the actions that [REDACTED] would expect any commander to take. Witness 2 also said that the Subject did not give [REDACTED] any indication that he questioned the Complainant's credibility or the veracity of the Complainant's report.

On December 1, 2021, the Complainant provided testimony to CID special agents. In [REDACTED] testimony, the Complainant alleged that [REDACTED] attacked [REDACTED]. On December 2, 2021, CID special agents conducted canvas interviews of approximately 450 11 ECAB Soldiers. These CID special agents identified one individual with an [REDACTED] and another Soldier who was with that Soldier on November 30, 2021, and interviewed both Soldiers the next day. Both Soldiers denied assaulting the Complainant.

## The Subject Considers Whether to Deploy the Complainant

Almost immediately after reporting the sexual assault, the Complainant expressed to several people, including Witness 1 and Witness 4, that [REDACTED] still desired to deploy with the 11 ECAB. Soon afterwards, Witness 1 and Witness 4 relayed that information to the Subject. The Subject said that he was surprised to learn that the Complainant still wanted to deploy and did not expect that reaction from someone who just experienced a traumatic event. Even though the Complainant still wanted to deploy, the Subject told us that he wanted to ensure the Complainant's safety and well-being and made that his priority.



██████████ (Witness 7), ██████████, 11 ECAB, had been the 11 ECAB ██████████ beginning in 2016 but was Witness 4's backup during the 11 ECAB's mobilization and deployment to the Middle East. Witness 7 had known the Complainant since ██████████ joined the 11 ECAB. Witness 7 testified that on the night of the assault, ██████████ met with the Subject, Witness 5, Witness 6, and a sergeant major to discuss the Complainant's situation because they had many questions. Specifically, they discussed the processes and steps to follow and whether they were going to take the Complainant to Kuwait. Witness 7 informed the Subject that the decision was up to him. They also discussed the available services for the Complainant in Kuwait and that those services are not as plentiful as services in the United States. However, Witness 7 informed them that nothing existed to keep the Complainant from leaving with them.

Witness 4 stated that during a phone call with the Subject on December 2, 2021, 2 days after the Complainant's sexual assault report, ██████████ raised a concern that not allowing the Complainant to deploy could constitute retaliation, and ██████████ attempted to advise the Subject to consult with his legal counsel. According to Witness 4, the Subject told ██████████ that it was inappropriate to discuss the deployment, the focus should be on the Complainant's safety and recovery, his actions were not retaliatory, and he alone had the authority to decide whether the Complainant would deploy. Witness 4's contemporaneous notes, dated December 2, state that the Subject told ██████████ that he was not likely to approve the Complainant's request to deploy because of his concerns for ██████████ mental well-being.

Later, on December 2, 2021, the Subject met with ██████████ (Witness 8), ██████████, 11 ECAB; Witness 1; Witness 4; Witness 5; and Witness 6 to discuss the Complainant's desire to deploy with the 11 ECAB. According to Witness 4's contemporaneous notes and testimony, during that meeting, the Subject stated that Witness 4's phone conversation with him earlier in the day was inappropriate, and the Subject interpreted Witness 4's words about possible retaliation as a threat. Witness 4 said that ██████████ apologized for the misunderstanding and explained that ██████████ did not mean for ██████████ concerns about retaliation to be a threat. Witness 4 wrote in ██████████ notes that the Subject then:

explained that he saw this in one or two ways, first [the Complainant] may be making the whole thing up and is "bat [s\*\*\*] crazy" and if so, can be held liable by UCMJ [Uniform Code of Military Justice], or ██████████ was telling the truth in which there was no excuse to be discussing deployment because that was a distraction to ██████████ recovery.

However, Witness 1, Witness 5, Witness 6, and Witness 8 all testified that they did not hear the Subject express that he took Witness 4's comment as a threat or that the Subject used the phrase "bat [s\*\*\*] crazy."

Witness 3 testified that the Complainant asked [REDACTED] if [REDACTED] ever heard the command team say anything about [REDACTED]. Witness 3 said that [REDACTED] told the Complainant [REDACTED] had not. [REDACTED] then stated to us that the Complainant told [REDACTED] that Witness 4 told [REDACTED] that the command team said the Complainant was “bat[s\*\*\*] crazy.”

The Subject also testified that he did not recall making the statement that the Complainant was “bat [s\*\*\*] crazy.” The Subject prepared an MFR after the meeting on December 2, 2021, which he digitally signed the next morning. In that MFR, the Subject stated that during the meeting, a concern existed that not allowing the Complainant to deploy could constitute retaliation. The Subject included the definition of retaliation from AR 600-20, pointed out that the meeting had occurred less than 48 hours after the assault, and wrote that the CID had no suspects identified at that time. The Subject then wrote that his intent was to protect the Complainant and to ensure the ability of the CID to investigate the incident. He also wrote that while the Command understood the Complainant’s desire to deploy, they had not decided whether or when the Complainant would deploy. The Subject wrote that “[d]ue to the ongoing investigation and services that [the Complainant] is receiving, if [REDACTED] is deployed it may be after other Soldiers from the 11 ECAB have departed North Fort Hood [Cavazos].” The Subject wrote, “A decision regarding [the Complainant’s] ability to deploy will be evaluated periodically.” The Subject listed multiple factors on which he would base his decision, including:

- the Complainant’s well-being and ability to recover,
- the ability to protect the Complainant, and
- the availability of resources to ensure the continued well-being of the Complainant.

Witness 5 testified that [REDACTED] “vaguely” remembered Witness 4 bringing up the perception of reprisal to the Subject. Witness 5 did not, however, recall hearing the Subject expressing that he took Witness 4’s comment as a threat or used the phrase “bat [s\*\*\*] crazy” in any meetings or updates [REDACTED] attended pertaining to the Complainant.

Witness 8 said that during one of the meetings that occurred within 24 to 48 hours after the assault, Witness 4 brought up the perception of retaliation or reprisal, but [REDACTED] did not recall the Subject expressing that he perceived Witness 4’s comment as a threat or using the phrase “bat [s\*\*\*] crazy.” Witness 8 said that after Witness 4 brought up the perception of reprisal, the Subject asked him what [REDACTED] thought from a legal perspective. Witness 8 said that [REDACTED] (Witness 9), [REDACTED], 11 ECAB, prepared a legal memo for the Subject, dated December 6, 2021, in response to the Subject’s request for a legal perspective.

In Witness 9’s December 6, 2021 memorandum, [REDACTED] wrote that the commander’s job was to protect the victim and to balance the needs of the victim without compromising the mission. [REDACTED] noted in the memorandum that at that point, the investigation was ongoing and that the

CID had not identified any suspects. Witness 9 also wrote that because the commander was obligated to protect the victim, reassigning the Complainant to the rear detachment at Fort Carson would meet that requirement. Witness 9 then recommended temporarily removing the Complainant from the deployment and reviewing the Complainant's status and desires every 30 days.<sup>9</sup>

Witness 1 said that [REDACTED] did not remember the Subject suggesting the Complainant was "bat [s\*\*\*] crazy," stating that [REDACTED] took any of Witness 4's comments as a threat, or discussing reprisal in any of the meetings that [REDACTED] attended. According to Witness 1, the leadership primarily discussed how they were going to proceed and how to take care of the Complainant.

Witness 6 described the meetings pertaining to the Complainant as very "tense and stressful" but said that [REDACTED] did not recall hearing the Subject saying that he took something Witness 4 said as a threat or referring to the Complainant as "bat [s\*\*\*] crazy." According to Witness 6, after Witness 4 brought up the perception of reprisal, the Subject said he hoped the Complainant did not see it as reprisal, and then the leadership proceeded to discuss the issue.

According to [REDACTED] (Witness 10), [REDACTED], 11 ECAB, who was present during a few of the meetings concerning the Complainant, "very dynamic discussions" occurred about the Complainant deploying, and the 11 ECAB leadership wrestled with issues such as "when will they be able to deploy? How much care is going to be required? What is the treatment plan for [the Complainant]?" Witness 10 testified that in the days before [REDACTED] own deployment, the Subject was "on the fence" about the Complainant and [REDACTED] deploying. Witness 10 told us that the Subject was trying to determine what resources were available, how to provide for ongoing treatment, how they would provide those resources if they needed additional support, what their primary duty location would be, and how to ensure their safety. Witness 10 said that during the meetings, they discussed the known and unknown risks associated with the Complainant deploying.

They also discussed whether they could mitigate those risks to an acceptable level. According to Witness 10, after deploying, while in theater, [REDACTED] and the Subject discussed two or three times the Subject's decision not to deploy the Complainant and [REDACTED]. Witness 10 relayed that the Subject remained concerned about their ability to ensure the Complainant's safety in a deployed environment.

Witness 10 said that [REDACTED] never heard the Subject use the expression "bat [s\*\*\*] crazy." According to Witness 10, swearing was part of the Subject's "vernacular" in their private conversations. Witness 10 did not recall the Subject ever using that expression but stated that it "would not have shocked" [REDACTED] to hear the Subject use that expression.

<sup>9</sup> The legal memo, dated December 6, 2021, that was prepared by [REDACTED] was dated and signed 2 days before the CID identified the subjects of the investigation into the assault on the Complainant.

Witness 9 said that before the CID identified any suspects, ■ remembered one “big meeting” ■ attended with the Subject, various members of the 11 ECAB command staff, and Witness 1, during which they discussed the Complainant deploying. According to Witness 9, at this meeting, ■ believes the Subject had “essentially come to the conclusion that it was not in the best interests of the Army to bring [the Complainant] forward on deployment at that time.” Witness 9 testified that the Subject was very concerned about not being able to provide the Complainant with resources if ■ needed them and how deploying the Complainant would affect the ability of the CID to conduct the investigation.

According to Witness 9, the Subject was also very concerned about everyone’s personal safety, and the chain of command believed the suspects probably came from within the 11 ECAB. Witness 9 said that during this meeting, they discussed several options, but they “didn’t have a baseline for understanding what this was and in sight of all of these risks, the thing we kept coming back to was why are we ■ acting as if we’re being forced to make a decision now.” Witness 9 said that the conversation then shifted to how they would continue taking care of the Complainant’s needs if ■ did not deploy.

Witness 9 also testified that ■ did legal research and consulted with Witness 8 and that they concluded that, from a legal standpoint, nothing says a Soldier has a right to deploy. Witness 9 said that they then analyzed whether they had a way to balance the needs and wants of the Complainant against the needs of the Army. They determined that “in light of all the risks that were apparent and the fact that we could not take enough measures to mitigate those risks,” the Complainant’s desire to deploy did not outweigh the Subject’s responsibility as the ■ to maintain the Complainant’s safety.

From November 30, 2021, to approximately December 15, 2021, the Subject consulted several 11 ECAB staff members, such as ■ (Witness 11), ■, 11 ECAB; Witness 6; and Witness 8 regarding the Complainant deploying.<sup>10</sup> He also consulted Brigadier General (BG) Harvey Cutchin, who at that time was the Commanding General, USAR Aviation Command, and Major General (MG) Richard Johnson, who at that time was the Commander, First Army Division West. According to the Subject, none of the individuals he consulted believed the Complainant should deploy.

Witness 6 testified that the Subject did not make his decision lightly on whether the Complainant should deploy. Witness 6 stated that ■ recommended to the Subject that the Complainant not deploy. According to Witness 6, the Subject’s job, ■, was to finish the mission and take care of his people, and the Subject’s strong leadership made that deployment possible.

<sup>10</sup> Witness 11 mobilized for the 11 ECAB deployment at ■.

Witness 8 testified that as the [REDACTED], his role was to provide the Subject with legal advice regarding the entire situation pertaining to the Complainant. Beginning December 1, 2021, and in the days that followed, Witness 8 said that [REDACTED] met with the Subject two to three times a day. According to Witness 8, [REDACTED] and the Subject discussed the Complainant's safety often, especially before the identification of suspects. Witness 8 said that the Subject asked about things that could affect the Complainant's ability to be an effective Soldier and what services were available in Kuwait and other austere deployment locations to always ensure the Complainant's safety and security.

Witness 7 testified that [REDACTED] remembered a few more meetings in the days that followed the assault. Specifically, [REDACTED] said that the Subject called [REDACTED] into a meeting with Witness 4 and Witness 6, during which they again discussed the Complainant's desire to deploy. Witness 7 stated that by that time, the Subject had already decided that he was not going to take the Complainant, but he did not tell Witness 7 why. Witness 7 told us that they asked [REDACTED] what [REDACTED] thought about the Complainant deploying. According to Witness 7, [REDACTED] responded that if the Complainant wanted to go and [REDACTED] was in the right mindset to go, [REDACTED] did not see any problem with [REDACTED] going. [REDACTED] also reiterated that it was the commander's decision.

The Subject contacted BG Cutchin on November 30, 2021, and told him that one of the 11 ECAB's Soldiers at Fort Cavazos was a victim of a sexual assault. BG Cutchin said that over the next few days, the Subject also consulted with him about the fact that the Soldier still wanted to deploy. According to BG Cutchin, the Subject was very concerned about doing what was right for that Soldier and the 11 ECAB. BG Cutchin said that in mentoring the Subject, he recommended to the Subject that he seek not to deploy the Soldier but rather leave the Complainant at Fort Cavazos.

MG Johnson testified that when the Subject initially mentioned to him that he was considering removing the Complainant from the deployment and recommending [REDACTED] for REFRAD, MG Johnson said that he told the Subject to be certain that a plan existed to take care of the Complainant if they released [REDACTED] from active duty. MG Johnson said that after he had that discussion with the Subject, he believed other options emerged besides simply removing the Complainant from the deployment and releasing [REDACTED] from active duty. MG Johnson thought that the Complainant's leadership believed they were doing the Complainant a favor by not having [REDACTED] deploy and saw it as the right thing to do for [REDACTED].

On or about December 6, 2021, the Subject decided to remove the Complainant and [REDACTED] from the deployment. The Subject told us that the Complainant was the only person he directly removed from the deployment. Witness 1 then notified the Complainant of the Subject's decision.

## The Subject Responds to the Complainant's Requests to be Heard

Witness 1 said that before the Subject decided on whether the Complainant would deploy, the Complainant requested an open-door meeting with the Subject. According to the Subject, Witness 1 mentioned to him that the Complainant wanted to speak to him, and he testified to us, "That's why [REDACTED] and I went and spoke with [REDACTED] 2 days after the incident." The Subject also testified that based on his open-door policy, he instructed Witness 1 to engage with the Complainant to see if [REDACTED] could address [REDACTED] needs and concerns first.

The Complainant testified to us that [REDACTED] was "really trying" to use the Subject's open-door policy but felt that [REDACTED] was being discouraged from using it. According to the Complainant, "[T]he Subject was trying to make me use the company-level open-door policy before I could go to him, and that made me feel like it wasn't an option at all because my company-level commander was supportive of me going forward." The Complainant also testified, "I was told that I would need to, like, solve it at a lower level first, but everybody at the lower level was supportive of me going forward."

Witness 1 stated that [REDACTED] met with the Complainant and determined [REDACTED] could not address [REDACTED] issues. According to Witness 1, after [REDACTED] met with the Complainant, [REDACTED] believed [REDACTED] "felt that it would be to [REDACTED] detriment" to have an open-door meeting with the Subject. Witness 1 also said that the Complainant did not feel that an open-door meeting with the Subject would change his decision.

When the Subject was asked by us if the Complainant's concerns should move up the chain of command because Witness 1 did not have the authority to address [REDACTED] request to deploy, the Subject responded, "Theoretically, yes. But I never denied any request for open door from [the Complainant]."

About meeting with the Complainant and whether it would be reasonable for a [REDACTED] to have such a meeting, MG Johnson told us, "[I]n this instance, absolutely." MG Johnson explained that he had meetings with junior enlisted members who had not gotten satisfaction from the middle of the chain of command and needed a work-around. He stated that he would have looked into what the issue was about, but in this case, it would have been obvious.

On December 6, 2021, after [REDACTED] learned of the Subject's decision not to deploy the Complainant, [REDACTED] (Witness 12), [REDACTED] representing the Complainant, attempted to meet with the Subject to discuss his decision. However, the Subject was not available. Instead, Witness 5 gave Witness 12 a note stating [REDACTED] could call the Subject the next morning.

Witness 12 called the Subject on December 7, 2021, and captured what they discussed in an MFR. In [REDACTED] MFR, dated December 7, 2021, Witness 12 asserted that [REDACTED] told the Subject that the Complainant had experienced a sudden loss of control since the assault, and [REDACTED] was concerned the Command's actions were exacerbating that sense of lost control. Witness 12 said that [REDACTED] also "expressed explicitly" to the Subject that the Complainant desired to be included in the discussions pertaining to [REDACTED] and reiterated to the Subject that the Complainant still wanted to deploy with [REDACTED] unit. According to Witness 12's MFR, the Subject told Witness 12 that [REDACTED] and the SARC's job was to manage the Complainant's expectations, and the Command's position focused on the Complainant's safety and well-being. Witness 12's MFR stated that the Subject went on to say that the Complainant was not deploying, and the decision was final. Witness 12 stated that after the Subject told [REDACTED] the Complainant was not deploying, [REDACTED] told the Subject the Complainant would benefit from "direct engagement" with him, so he could explain his decision-making process while giving the Complainant an opportunity to express [REDACTED] desires.

Witness 12 also wrote in the MFR that the Subject asked Witness 12 if [REDACTED] understood that he was a [REDACTED] and that the Complainant was a [REDACTED]. Witness 12 said that [REDACTED] again expressed that direct engagement from the Complainant's chain of command would still benefit [REDACTED], given the circumstances. According to the MFR, the Subject asked Witness 12 if [REDACTED] was tracking what a company commander and first sergeant were and if [REDACTED] thought a general officer should have to engage directly with a [REDACTED].

The Subject also prepared an MFR regarding his telephonic meeting with Witness 12 and listed Witness 5 and Witness 8 as attendees in that meeting. In his memorandum dated December 7, 2021, the Subject said that Witness 12 asserted in the meeting that the Complainant felt like [REDACTED] should be included in the discussions about [REDACTED] deploying and that continuing to allow the Complainant to deploy would help [REDACTED] "reestablish some form of control" that [REDACTED] lost after the assault. The Subject wrote that he emphasized to Witness 12 that his continued intent was to ensure the Complainant's safety and to ensure the Complainant could receive treatment and other resources as needed. The Subject wrote that he also told Witness 12 that to meet his intent, the Complainant would not be deploying as planned because the investigation was ongoing, and the CID had not yet identified any suspects. The last points the Subject included in his MFR were that he told Witness 12 that the Complainant could deploy in the future, but it would depend on multiple factors, such as [REDACTED] continued well-being, the availability of resources, and the ability of the 11 ECAB to protect [REDACTED].

Furthermore, the Subject testified that during that telephonic meeting on December 7, 2021, Witness 12 also told him that if he did not allow the Complainant to deploy, the Complainant and [REDACTED] were going to take an IG action against him. The Subject said that when Witness 12 made that statement, it was "very threatening," and he was very surprised that a [REDACTED] would tell him "matter of factly" that if he did not let the Complainant deploy,

they were going to make an IG complaint against him. According to the Subject, Witness 12 told him that they would file an IG complaint against him “twice, on two different phone conversations,” and he was “still kind of flabbergasted” by Witness 12’s statement.

The Subject also testified that he asked Witness 11 what services were available in Kuwait, and “it was unclear. But it was obvious that whatever support [REDACTED] would need would be more readily available at Fort Hood [Cavazos] than it would be at Camp Buehring, Kuwait.” DoD OIG investigators asked the Subject if anything indicated that the Complainant needed services, and he responded, “We’re talking hypothetical now because again it’s a serious traumatic event. Who knows what services [REDACTED] would need going forward? So, whatever [REDACTED] would have needed is obviously available at Hood [Cavazos], but not at Camp Buehring.”

Witness 5 recalled the telephonic meeting between the Subject and Witness 12 and said that in [REDACTED] opinion, Witness 12 was not being very tactful when [REDACTED] spoke to the Subject. Witness 5 said that the Subject’s voice became elevated, and the Subject told Witness 12 that it was not Witness 12’s place to tell him how to do his job. According to Witness 5, Witness 12 told the Subject that the Complainant and [REDACTED] could perceive not allowing them to deploy as reprisal and could file a complaint against the Subject, if he went that route.

Witness 8, who was also present during the Subject’s telephonic meeting with Witness 12, described Witness 12 as a “zealous advocate” for the Complainant to deploy. Witness 8 testified that [REDACTED] believed the Subject had already decided that the Complainant was not going to deploy with the main movement of Soldiers, but he was still assessing the potential for the Complainant to deploy later. Witness 8 said that the Subject listened to Witness 12 and reiterated to Witness 12 that his primary concern was ensuring the Complainant’s safety.

## The Subject Recommends the Complainant for REFRAD

The Subject said that Witness 1, Witness 4, Witness 6, Witness 8, Witness 9, Witness 10, the [REDACTED], and he had “at least two dedicated meetings where we discussed [the Complainant] and [REDACTED] way ahead.” The Subject said that they also discussed “what the way ahead would look like and how we could best take, take care of both [the Complainant] and [REDACTED].” In addition, the Subject testified that during the ongoing discussions about the Complainant deploying, he and the other 11 ECAB staff members agreed that if the Complainant was not going to deploy, [REDACTED] could not remain on the 11 ECAB mobilization orders.

Witness 5 said that they discussed a few different courses of action and that the Subject decided to take the Complainant and [REDACTED] off their mobilization orders and place them on active duty operational support (ADOS) orders back at Fort Carson.



Witness 6 testified that it was never determined to release the Complainant and [REDACTED] completely from active duty, but the Complainant had to be removed from the current mobilization orders if [REDACTED] was not deploying, because “the funding for those orders are [sic] very specific.” According to Witness 6, one option they discussed was for the Complainant to remain on active duty orders at Fort Cavazos to keep receiving services. Another option was to put the Complainant and [REDACTED] on active duty orders at Fort Carson, [REDACTED], so they would be closer to [REDACTED] and receive full pay like everybody else. Witness 6 said that [REDACTED] and the Subject never considered hanging the Complainant “out there to dry.” Witness 6 said that they considered every possible option to keep [REDACTED] with pay and on full-time orders.

Witness 8 said that they discussed if the Complainant did not deploy, where else [REDACTED] could provide value for the 11 ECAB, whether at Fort Cavazos, Fort Carson, or even Fort Knox, Kentucky, where the USAR Aviation Command had other units. According to Witness 8, it was a very drawn-out discussion, but towards the end of it, they developed two or three potential courses of action.

Witness 1 said that once the 11 ECAB leadership mentioned that the Complainant might have to be given a REFRAID, [REDACTED] began contacting personnel in the 11 ECAB Rear Detachment to figure out how to put the Complainant and [REDACTED] on ADOS orders. [REDACTED] (Witness 13), 11 ECAB [REDACTED], who was with the Rear Detachment at Fort Carson, said that the Rear Detachment commander told [REDACTED] that something happened to the Complainant and that the Complainant was not deploying. According to Witness 13, the Rear Detachment commander told [REDACTED] that the plan at that time was for the Complainant to return to Fort Carson and be on full-time ADOS orders in Colorado. However, Witness 2 decided to transfer the Complainant under [REDACTED] at the 166 AVN BDE, and thereafter, none of the courses of action that the 11 ECAB leadership discussed were necessary.

Witness 2 testified that [REDACTED] learned from the 166 AVN BDE SARC and Witness 4 that the Subject intended to release the Complainant from active duty. According to Witness 2, the SARCs also told [REDACTED] that the Subject would not listen to them and the Subject intended to send the Complainant home. Witness 2 said that [REDACTED] called the Subject and asked him if he was sending the Complainant home. According to Witness 2, the Subject said that he was not sending the Complainant home; he just told the Complainant that [REDACTED] would not deploy.

Witness 2 testified that the Subject also said something to the effect of “[REDACTED] needs to make sure [REDACTED] receives the care that [REDACTED] needs.” According to Witness 2, the Subject did not offer anything further, nor did [REDACTED] ask about any options, going forward for the Complainant. Witness 2 said that [REDACTED] just assumed that the “care” the Subject was referring to was going to be at Fort Cavazos. Witness 2 said that [REDACTED] then told the SARCs that the Subject did not have to deploy the Complainant and that it made sense for the Complainant to stay and

continue care at Fort Cavazos. Witness 2 also said, “At that point, you know, we still had some time while the 11 ECAB was with us,” “we’re going to continue to make sure that [the Complainant] got access to care,” and that was the Complainant’s “primary mission.”

The Subject testified that he did not have the authority to release any Soldiers from active duty. He stated that Witness 2 had that authority. The Subject stated that the 11 ECAB had Soldiers released from active duty for medical, physical, family, and other reasons, and in all those situations, he sent the recommendation to Witness 2 for final approval.

Witness 11 stated that [REDACTED] found out about the sexual assault of the Complainant on December 8, 2021, from Witness 8 or Witness 3.<sup>11</sup> The Subject testified that he consulted Witness 11 to determine the services available in Kuwait and to determine the Army’s policy for medical care after an assault. Witness 11 said that [REDACTED] also told the Subject that an individual Soldier’s needs would determine the medical care provided. According to Witness 11, when [REDACTED] spoke to the Subject, [REDACTED] perceived the Subject as being really worried about the Complainant. Witness 11 said that the Subject was concerned that the Complainant was rushing things by wanting to deploy so soon after the sexual assault and was also concerned that the Complainant might “decompensate” during the deployment.<sup>12</sup> Through [REDACTED] conversations with the Subject and various other staff members of the 11 ECAB, Witness 11 said that [REDACTED] knew they wanted to give the Complainant a little time to process what happened before they deployed [REDACTED]. The Subject testified that Witness 11 “wholeheartedly agreed” that deploying the Complainant was not the right call because there were too many unknowns.

However, Witness 11 stated that at that time (December 2021), [REDACTED] was not as concerned about the Complainant deploying and believed that deploying the Complainant could help [REDACTED] be accepted to [REDACTED], which was one of the Complainant’s goals. Witness 11 testified that [REDACTED] has been involved in hundreds of decisions regarding other Soldiers’ fitness to deploy and determined that approximately 15 percent of the 11 ECAB’s Soldiers who were supposed to mobilize could not deploy, and most of those were related to behavioral health.

According to the Subject, because he did not have the authority to release any Soldiers from active duty, on or about December 8, 2021, he recommended to Witness 2 that the Complainant and [REDACTED] be released from active duty. The Subject said that their intent was to take the Complainant and [REDACTED] off the mobilization orders and put them both on ADOS orders back at [REDACTED], where they could support the rear detachment

<sup>11</sup> Witness 11 used the term “rape” to describe the sexual assault of the Complainant. Rape is one form of sexual assault, and the terms are synonymous as used in this report.

<sup>12</sup> Decompensate means to lose the ability to maintain normal or appropriate psychological defenses, sometimes resulting in depression, anxiety, or delusions.

and continue to remain on active duty. The Subject also stated that Witness 2 was aware of the situation surrounding the Complainant, leading up to his recommendation for the Complainant's REFRAD.

Witness 1 routed the memorandum dated December 8, 2021, through the Subject to Witness 2 that recommended the Complainant for REFRAD. The 11 ECAB ██████████ (Witness 14), who was the point of contact on the memorandum, said that ██████ received guidance from Witness 1, Witness 5, and legal regarding what would be included on the REFRAD memorandum. The MFR stated that the Complainant "must be released from the mobilization due to not meeting the standards required for mobilization and will be unable to deploy into the CENTCOM [Central Command] area of operations."<sup>13</sup>

Witness 1 then provided the Complainant with the REFRAD memorandum. According to Witness 1, the Subject determined that ADOS orders were the best option because they would still provide the Complainant financial support and access to all the resources ██████ might need. Witness 1 said that the Subject also decided that he would reassess the situation in a month.<sup>14</sup>

The Complainant said that on December 8, 2021, Witness 1 notified ██████ that the Subject ordered ██████ and ██████████ to be released from active duty and sent back to Fort Carson. The Complainant testified that ██████ wanted to stay at Fort Cavazos and felt they were being sent back to Fort Carson without any support, which ██████ believed would have completely removed any possibility of them deploying. According to the Complainant, it was as if they were being "thrown away" and "left to fend" for themselves. The Complainant said that Witness 1 told ██████ that ██████ could not guarantee anything but that ██████ was searching for some type of orders to place them on at Fort Carson.

Witness 11 testified that ██████ contacted the Complainant on December 8, 2021. According to Witness 11, the Complainant told ██████ via text message that ██████ was being released from active duty but that ██████ wanted to stay on mobilization orders at Fort Cavazos. Witness 11 said that the Complainant wrote that the 11 ECAB leadership offered ██████ ADOS orders, which ██████ was grateful for, but said ██████ preferred to deploy. Witness 11 also said that ██████ told the Complainant that although ██████ was going to be released from active duty, an option still existed for the Complainant to go through an expedited mobilization process in January 2022, to which the Complainant replied, "I hope so." Witness 11 stated that the leadership intended to reassess the situation in January 2022 to see how the Complainant was doing, which they believed would give the Complainant time to "stabilize" because the sexual assault had just happened.

<sup>13</sup> The evidence did not clarify what standards the Complainant failed to meet for mobilization. The quoted text appears to have been standard language used as a template for these types of memorandums. The Subject's testimony, the witness testimony, and the documentary evidence explains that the Complainant did not mobilize and was released from active duty because the Subject made that decision.

<sup>14</sup> The Subject had the opportunity to offer his reasoning for his decision-making during multiple interviews. He did not state that the Complainant failed to meet a specific standard during his interview with us or during other command directed investigations. Additionally, no documentation was provided to support that the Complainant did not meet a standard.

CID identified two suspects on December 8, 2021. On December 10, 2021, the suspects were placed in pretrial confinement at the request of their chain of command. Within 2 days, the suspects were released from pretrial confinement and sent back to Fort Cavazos and eventually assigned to the [REDACTED], which was also located at Fort Cavazos. The Subject remained concerned about whether the CID had accurately identified the individuals responsible for the assault. He stated, “[T]he suspects potentially were identified, but that wasn’t clear. The investigation was ongoing. And so, [REDACTED] safety was always number one. That never wavered. Right. So, until you could tell me that like, hey, specialist X and specialist Y are the two that did this and we’ve got them, you know, well then [REDACTED] safety was still in question.”

MG Johnson testified that before his change of command on December 14, 2021, he had three or four conversations and even a “face-to-face” discussion with Witness 2 and the Subject about the Complainant to make sure they “were on the same page.” Both Witness 2 and the Subject asked him for advice. MG Johnson could not remember his exact words, but testified that he told them victim advocacy, medical care, and whatever else the Complainant required was their main concern, especially after the CID identified suspects, and Fort Cavazos command leadership was dealing with the suspects and the criminal investigation. In addition, MG Johnson said that he told Witness 2 and the Subject to talk to the Complainant, as [REDACTED] was not a “passive victim who wasn’t engaging on [REDACTED] own behalf.” MG Johnson said that he told them the Complainant was “talking about what [REDACTED] needed.”

The Subject testified that his intent was for the Complainant and [REDACTED] to remain on active duty orders, working 40 hours a week at Fort Carson doing “Soldier stuff.” However, regarding the Complainant’s living arrangements, the Subject stated, “[E]verybody [was] trying to kind of figure out where they’re going to live and what have you.”

## The Subject Meets with the Complainant

On December 9, 2021, the Complainant received [REDACTED] REFRAD orders and the official discharge paperwork. The Complainant said that on the day [REDACTED] received [REDACTED] REFRAD paperwork, Witness 1 notified [REDACTED] to be prepared to meet with the Subject. Witness 1 said that [REDACTED] was not present for the meeting, but before the unit deployed, the Subject visited the Complainant in the barracks where [REDACTED] was staying. According to Witness 1, the Subject wanted to have an “impromptu” command visit with the Complainant and [REDACTED] to wish them well, acknowledge what they had been through, and tell them goodbye before they departed.

The Complainant said that on December 9, 2021, [REDACTED] and [REDACTED], Witness 4, and the chaplain’s assistant met with the Subject, Witness 6, and the 11 ECAB’s [REDACTED] [REDACTED] (Witness 15) outside the barracks. According to the Complainant, the meeting with the Subject lasted approximately 3 minutes and “felt closed off and one-sided” as they “all stood at attention for him” in a “public and vulnerable setting” outside the barracks.

The Complainant said that the Subject told them something to the effect that his decision regarding the deployment and REFRAD was not up for discussion and that he was going to do what he thought was best for them.

In [REDACTED] contemporaneous notes about the December 9, 2021 meeting, Witness 4 said that the Command Team specified that their intent in having the meeting was to let the Complainant know they had [REDACTED] best interests in mind. Witness 4 also testified that the Subject said that the purpose of the meeting was not to discuss anything other than the Complainant's recovery and that they were there to support [REDACTED].

According to the Subject, they met with the Complainant because they wanted to see how [REDACTED] was doing and let [REDACTED] know what services were available, they were looking out for [REDACTED] safety and well-being, and they intended to reassure the Complainant on the way forward. The Subject said that during their meeting, the Complainant appeared to be in receive mode only and really did not say anything.

Witness 6 said that when [REDACTED] and the Subject met with the Complainant, [REDACTED] and Witness 4 were there also. According to Witness 6, it was a very brief interaction. Witness 6 said that they expressed their concern for what occurred and told the Complainant to let them know if [REDACTED] needed anything. Witness 6 said that the Complainant did not have any questions or express that [REDACTED] needed anything.

## Witness 2 Rescinds the Complainant's REFRAD

Witness 2 did not recall how much time passed before the SARCs told [REDACTED] that the Subject had decided to release the Complainant from active duty. Before calling the Subject for a second time on that issue, Witness 2 told us that [REDACTED] called the 166 AVN BDE personnel section and instructed them to find out if any REFRAD paperwork existed for the Complainant.<sup>15</sup> Witness 2 said that [REDACTED] then called the Subject, and the Subject confirmed that he planned to release the Complainant from active duty. Witness 2 said that when [REDACTED] called the Subject back, they did not discuss why he decided to recommend the Complainant for REFRAD. According to Witness 2, [REDACTED] told the Subject that he had an hour to rescind the REFRAD paperwork before [REDACTED] rescinded it and that he should be the one to rescind the paperwork because it would look better coming from him. Witness 2 said that [REDACTED] then asked [REDACTED] SARC to ask the Complainant if [REDACTED] would be willing to talk to [REDACTED] because, [REDACTED] said, "I'd really like to talk to [REDACTED] and find out what's going on."

<sup>15</sup> Witness 2 acknowledged that [REDACTED] initially endorsed the Complainant's REFRAD paperwork on December 8, 2021. However, [REDACTED] explained to us that all the commanders (brigade and battalion) sent paperwork through [REDACTED] office and, unless it seemed "fishy," [REDACTED] signed it and sent it on. Witness 2 stated that in the Complainant's case, [REDACTED] looked at the paperwork, but did not recognize the Complainant's name and processed it, which is why [REDACTED] had to have [REDACTED] personnel section confirm there was, in fact, REFRAD paperwork on the Complainant.

Witness 2 said that [REDACTED] thought the Subject was a “little excited” during their conversation about the Complainant’s REFRAD, but believed his level of excitement was in line with any commander who is being “questioned by a peer in terms of their decision-making.” According to Witness 2, after [REDACTED] told the Subject that [REDACTED] would pull the Complainant’s REFRAD if he did not, the Subject’s response was “okay, fine,” and he said that he had to talk to several people and figure it out. Witness 2 said that in the interim, [REDACTED] personnel section verified that REFRAD paperwork existed for both the Complainant and [REDACTED]. Witness 2 said that [REDACTED] “waited a little bit,” but did not hear back from the Subject and then went ahead and rescinded the REFRAD paperwork.

After [REDACTED] rescinded [REDACTED] endorsement on the Complainant’s REFRAD, Witness 2 said that [REDACTED] notified [REDACTED], MG Johnson, and said, “I don’t know if I’m able to do this, but I’ve rescinded the paperwork and my intent is to bring those two Soldiers under the 166 formation so she can continue to receive continuity and care.” Soon after [REDACTED] told MG Johnson about [REDACTED] plan to keep the Complainant with the 166 AVN BDE, Witness 2 said that [REDACTED] believed MG Johnson called the Subject to find out why he recommended releasing the Complainant from active duty. According to Witness 2, MG Johnson relayed to [REDACTED] that the Subject told him that “he was trying to accommodate multiple people and they had a good plan.” Witness 2 said that some time before the 11 ECAB deployed, [REDACTED] talked with the Subject about [REDACTED] decision to rescind the REFRAD and that “he seemed to be okay with it” and said something to the effect of “that’s okay. [...] [REDACTED] with you all. I’m going to move on with my mission.”

Witness 2 testified that [REDACTED] wanted the Subject “ultimately, to take responsibility for, for his people, you know, care and everything,” and although at the time [REDACTED] had authority over the 11 ECAB, [REDACTED] tried to get those who were actually [REDACTED] to take action over their own unit, with some advice from [REDACTED]. “But, as in this case, if they didn’t take the action that I felt was the right action to take, then I can step in, which is what I did in this case.” Witness 2 also testified that [REDACTED] could not say when, but [REDACTED] impression was the Complainant got to the point that [REDACTED] did not want any involvement from the Subject. [REDACTED] said, “[REDACTED] did not want to talk to him.” [REDACTED] also said that the Complainant was “quite happy to stay with 166 [AVN BDE] until we got stuff figured out.”

Regarding the Complainant’s REFRAD, MG Johnson stated that he thought “initially” Witness 2 told him that the Subject recommended the Complainant for REFRAD. He also said that he learned from either Witness 2, the Subject, or “some combination” of both in one of their conversations that the Complainant and [REDACTED] were concerned about being sent [REDACTED] without a job, with no way to pay their bills, and without an apartment. MG Johnson stated that during one of his conversations with the Subject, he reminded the Subject that sending the Complainant home was not necessarily the right thing. According to MG Johnson, he advised the Subject that you have to ask the Soldier what they want to do and

what will best suit them and that taking care of the Complainant is asking [REDACTED] what [REDACTED] needs. Upon leaving command, MG Johnson said that his understanding was that the Complainant was getting what [REDACTED] agreed to, wanted to be at Fort Cavazos, and was happy.

MG Johnson testified he did not recall discussing with the Subject the possibility of placing the Complainant on ADOS orders back at Fort Carson. He said, "I mean, they might have wanted to put [REDACTED] on some kind of orders back home, but I don't recall that specifically." According to MG Johnson, putting the Complainant on ADOS orders was not easy because it "would require ADOS orders from the Army Reserve, which is different than once you're on Title 10," "[n]ot that it couldn't be done, but I don't recall that twist," and "maybe they talked about it at the unit level." MG Johnson said that his direction to the Subject was let us "get the Soldier to the place [REDACTED] needs to be where [REDACTED] can get help that [REDACTED] needs if [REDACTED] needs it." MG Johnson stated that he talked to Witness 2 and the Subject quite a bit about what they could do to put the Complainant "in the best position to be successful in recovering from all of this. Not necessarily what was good for the unit at that point. The unit stuff kind of went away from me while this was going on."

MG Johnson also said that he did not know what they discussed at the unit level, but he did recall them initially contemplating not deploying the Complainant and sending [REDACTED] back to [REDACTED]. MG Johnson said that he was not sure if they initiated some kind of personnel action, but they thought that was the right solution. "They weren't trying to do any bad [*sic*] to anybody; they thought that was the right thing." MG Johnson also said, "I just don't sense that there was some kind of malice or some kind of punishment, you know, underlying the actions that they took in regard to [REDACTED]." He said, "I think everybody was trying to help," and his feeling was that "they did it with all good intentions."

The Complainant said that on December 10, 2021, Witness 1 told [REDACTED] that Witness 2 intended to revoke [REDACTED] endorsement on their REFRAD. Later that day, the Complainant and [REDACTED] met with Witness 2. According to the Complainant, Witness 2 told [REDACTED] that [REDACTED] was supportive of anything that [REDACTED] needed and asked what [REDACTED] could do to help. Witness 2 also told them that they had a home at the 166 AVN BDE, which would provide them with stability, and explained to them why [REDACTED] rescinded [REDACTED] endorsement on the REFRAD.

Witness 2 testified that when [REDACTED] met with the Complainant and [REDACTED], [REDACTED] asked them what would happen if [REDACTED] was released from active duty and if that was what [REDACTED] wanted. According to Witness 2, the Complainant told [REDACTED] that [REDACTED] had nowhere to go if [REDACTED] went back to [REDACTED] and would essentially "couch surf." Witness 2 said that [REDACTED] then told the Complainant:

I would like for you to stay here [Fort Cavazos] for the received care until you know, you're, you're set and then it's going to be—it's going to have to be another discussion because ultimately [the Subject] is your [REDACTED] and he has to figure out, you know, not only what's best for you in terms of your health and care, but also in terms of what's best for the unit while they're trying to fight to prosecute their mission.

According to Witness 2, the Complainant “seemed okay with that answer” and later told [REDACTED] that “[REDACTED] was happy with 166 [AVN BDE] and getting the care [REDACTED] needed.”

The Subject said that the 11 ECAB had numerous Soldiers at Fort Cavazos whom they released from active duty for various reasons, and he and Witness 2 discussed the REFRAD recommendations as needed because [REDACTED] had the approval authority. According to the Subject, Witness 2 was well aware of the situation surrounding the Complainant leading up to the recommendation for the Complainant’s REFRAD, and [REDACTED] approved the Complainant’s REFRAD. The Subject said that he thought Witness 2 reconsidered the Complainant’s REFRAD because Witness 2 thought they were going to release the Complainant from active duty and not put the Complainant on ADOS orders. The Subject said that this was never their intent, but they had to change the Complainant from mobilization orders to ADOS orders because they believed the Complainant could not stay on mobilization orders if [REDACTED] did not deploy.

Witness 2 testified that [REDACTED] could not recall anyone explaining why the Subject planned to release the Complainant from active duty or ever mentioning to [REDACTED] that the Subject intended to put the Complainant and [REDACTED] on ADOS orders.

## The Complainant is Medically Evaluated

The Subject stated that he was unaware whether the Complainant got a medical or behavioral evaluation clearing [REDACTED] for deployment. However, after the Subject decided to remove the Complainant from the deployment, the Complainant volunteered for a psychological evaluation with the [REDACTED] (Witness 16) to prove [REDACTED] was fit for duty. Witness 16 stated in a memorandum dated December 13, 2021, that the assessment of the Complainant occurred telephonically on December 13, 2021, and that the “SM [Complainant] [was] assessed to return to duty at this time without limitations in austere, combat, and garrison environments.” Witness 16 also said that as a “preventative measure,” they would perform a psychological reassessment of the Complainant in approximately 1 month.

Witness 11 said that [REDACTED] never clinically evaluated the Complainant but spoke to the Complainant as a “support system and a friend.” However, [REDACTED] said that [REDACTED] scheduled the Complainant for a clinical evaluation with Witness 16, who conducted a telephonic evaluation with the Complainant on December 13, 2021. On December 14, 2021, Witness 11 cleared the Complainant for flight based on the results of Witness 16’s evaluation. Witness 11 said that [REDACTED] and Witness 16 were located at [REDACTED].

On December 15, 2021, Witness 1 recommended to the Subject that he approve the Complainant’s attachment to the 166 AVN BDE until approximately November 22, 2022, and the Subject and Witness 2 approved Witness 1’s recommendation on December 16, 2021. On December 19, 2021, the Subject and the main movement of Soldiers assigned to the



11 ECAB deployed. The Complainant said that although [REDACTED] and [REDACTED] received discharge paperwork, they were never released from active duty, and [REDACTED] stayed on the same mobilization orders once they transferred to the 166 AVN BDE.

The Subject stated that the agreement was that “we would continue to reevaluate as we went forward.” Specifically, the Subject testified that after the Complainant joined the 166 AVE BDE, he and Witness 1 had an “unofficial” agreement to check in on the Complainant and [REDACTED] to see if they were ready to come forward. According to the Subject, the Complainant’s company leadership continually checked in with [REDACTED]. The Subject also stated that officers in the operations section and Witness 11 also stayed in contact with the Complainant. However, they did not inform him that the Complainant expressed an interest in deploying. The Subject stated that the Complainant’s leadership never expressed an interest in bringing [REDACTED] overseas.

Witness 15 said that [REDACTED] remembered January 15, 2022, as the day established by the Subject to reassess the Complainant. Specifically, this would assess how the Complainant was doing and the status of the investigation. Witness 15 did not know if that reassessment occurred. Witness 1 stated that the 11 ECAB command team explained that they would reevaluate the Complainant deploying after 30 days. Witness 1 stated that at the 30-day point, the 11 ECAB command team determined that they would focus on the mission overseas as long as the Complainant was content, and they received no formal request to join the 11 ECAB. Witness 1 said that [REDACTED] spoke with the Complainant between 30 to 45 days after [REDACTED] transferred to the 166 AVN BDE to see how [REDACTED] was doing, but [REDACTED] did not receive a formal request for the Complainant to deploy to Kuwait.

## The Complainant is Ineligible for Temporary Promotion

On February 17, 2022, about 2 months into the 11 ECAB’s deployment, the USARC issued implementation guidance on temporary promotions for the ranks of sergeant through master sergeant. To be eligible for a temporary promotion to [REDACTED], a Soldier has to be on the Permanent Promotion Recommended List, have a reserved seat for the Basic Leader Course (BLC) in the Army Training Requirements and Resources System (ATRRS), and the BLC report date has to be within 12 months of the temporary promotion date.

Witness 13 testified that after the Rear Detachment Leadership told [REDACTED] the Complainant was staying at Fort Cavazos, [REDACTED] was worried about the Complainant and drove from Fort Carson to Fort Cavazos on March 18, 2022, to check on the Complainant. In an email dated March 29, 2022, that Witness 13 sent to the 166 AVN BDE, S-3, Noncommissioned Officer in Charge, Witness 13 stated that because the Complainant was not currently enrolled in the BLC, the Complainant could not be temporarily promoted and inquired about the possibility of the Complainant attending the BLC at Fort Cavazos. Witness 13 also stated

in [REDACTED] email that the Complainant's temporary promotion came to [REDACTED] attention the weekend of March 18, 2022, and that so far, the only thing [REDACTED] had been able to accomplish was placing the Complainant in a [REDACTED] position.

On April 7, 2022, the Complainant stated that [REDACTED] was aware that other Soldiers had moved forward and joined the 11 ECAB on the deployment. The Complainant also stated that despite that fact and the "vague promises" that [REDACTED] would be considered to move forward, [REDACTED] remained at Fort Cavazos. According to the Complainant, "the 11 ECAB, under the [REDACTED] of the Subject," prioritized the Soldiers who deployed for enrollment into the BLC and thus, prevented her from receiving a temporary promotion to [REDACTED].

The Subject testified that he never had any discussions regarding the Complainant receiving a temporary promotion. The Subject also testified that Witness 6 handled the temporary promotions and that he was not involved in the process. Moreover, according to the Subject, since the Complainant "belonged to the 166th, [REDACTED] was no longer in the 11th and then therefore would not be in consideration for any kind of promotion from us. So anything about [REDACTED] temporary promotion would have to be addressed by the 166th."

Witness 7 testified that the 11 ECAB received approximately 46 BLC slots for the entire 11 ECAB. [REDACTED] and Witness 6 divided those slots among the 11 ECAB units. [REDACTED] received five BLC slots. The S-1, 11 ECAB, provided Witness 7 with an order-of-merit list (OML) of [REDACTED] Soldiers who were eligible for the temporary promotion. The Complainant was not on that OML. Witness 7 then selected the top five of those Soldiers according to the OML and enrolled them in the BLC. In May 2022, the Complainant contacted Witness 7 and requested a BLC slot. Witness 7 requested another OML because the Complainant was not on the first OML [REDACTED] received. The new OML included the Complainant. On May 13, 2022, [REDACTED] enrolled the Complainant into a BLC slot for August 2023. However, because [REDACTED] did not receive a BLC slot in time, the Complainant could not receive a temporary promotion.

The U.S. Army accepted the Complainant's application for [REDACTED] on March 31, 2022, and on April 5, 2022, the [REDACTED], 11 ECAB, informed the Complainant of [REDACTED] acceptance.

## The Acting Deputy Commanding General, USARC, Investigates the Subject's Command Climate

On September 9, 2022, the Acting Deputy Commanding General, USARC, initiated an investigation under AR 15-6, "Procedures for Administrative Investigations and Boards of Officers," April 1, 2016 (15-6 investigation), and appointed an investigating officer. The Acting Deputy Commanding General, USARC, directed the investigating officer to take the following steps.

- "(1). Describe the 11th ECAB command climate during pre-mobilization, mobilization, and post-mobilization. Provide specific examples that detail the command climate.
- (2). What are the leadership lessons learned from the pre-mobilization, mobilization, and post-mobilization?
- (3). If in the course of gathering evidence relevant to Issues 1 and 2, you identify additional issues, analyze the evidence relevant to such issue(s) and enter appropriate findings and recommendations."<sup>16</sup>

In his 15-6 investigation testimony, Witness 4 offered the examples of the Subject's disengagement from the Sexual Harassment/Assault Response Program (SHARP) process, in that the Subject:

- ended the monthly SARC meeting,
- never actually entertained the idea of bringing the Complainant and [REDACTED] back on the deployment, and
- responded with negativity or with disinterest to other SHARP events.

On September 29, 2022, the investigating officer completed the 15-6 investigation. The 15-6 investigation concluded that the 11 ECAB command climate during pre-mobilization, mobilization, and post-mobilization was poor. The investigation also analyzed the Subject's response to the Complainant's sexual assault report under issue (3). The investigating officer found that the Subject "did not fully support the spirit of the Army's SHARP program; specifically, that he did not provide emotional support to the victim, did not show empathy, and did not take steps to be available and support the victim."

On May 4, 2023, the Deputy Commanding General, USARC, modified the 15-6 investigator's findings to "[the Subject] implemented the SHARP Program within the 11th ECAB. The Subject's immediate actions as [REDACTED] after receiving a report of sexual assault complied with requirements contained in AR 600-20, paragraph 7-11. The Subject's

<sup>16</sup> On August 5, 2022, the Complainant sent a memorandum to the commander, First Army Division West, Fort Cavazos, in preparation for meeting with the commander under his open-door policy. In that memorandum, the Complainant requested a 15-6 investigation into the Subject's actions and decisions related to [REDACTED]

subsequent declination to hear directly from the sexual assault victim constituted a failure to meet AR 600-20, paragraph 7-11 requirements to listen and be available to the victim in the weeks and months following a sexual assault.”<sup>17</sup>

AR 600-20, paragraph 7-11.1 (2), directs commanders to “[l]isten/engage in quiet support of the victim, as needed. Be available in the weeks and months following the sexual assault, and ensure the victim that they can rely on the commander’s support.”

On September 27, 2022, while the 15-6 investigation was ongoing, a Special Victims’ Trial Counsel, III Corps, Fort Cavazos, expressed their opinion in the CID investigation into the sexual assault of the Complainant that [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>17</sup> By May 4, 2023, MG Eugene Leboeuf had assumed the position of Deputy Commanding General, USARC, from MG Michael Roache, who was the Acting Deputy Commanding General, USARC.

## Analysis

As described in more detail in the “[Legal Framework](#)” section of this report, a preponderance of the evidence must first establish that the Complainant made a protected communication; that, subsequent to the protected communication, the Complainant experienced a personnel action; and that the protected communication was a contributing factor in the action taken against them. If the first part of the test is met, then we weigh the strength of the evidence in support of the personnel action, the subject’s motive to retaliate, and disparate treatment of others similarly situated who did not make protected communications to determine whether the subject has shown that they would have taken the same action absent the protected communication. If a preponderance of the evidence does not establish that the subject would have taken or failed to take, or threatened to take or fail to take, the action absent the protected communication, the complaint is substantiated. Conversely, if a preponderance of the evidence establishes that the subject would have taken or failed to take, or threatened to take or failed to take, the action absent the protected communication, the complaint is not substantiated. Below, we analyze each of the elements.

### First Stage: *Prima Facie* Allegation of Whistleblower Reprisal

#### ***Protected Communications***

We determined, by a preponderance of the evidence, that the Complainant made three protected communications and was further perceived to be a whistleblower by preparing to make a fourth protected communication, under 10 U.S.C. § 1034.

#### ***Protected Communications 1 and 2: Sexual Assault Report to the Company Commander and SARC – November 30, 2021***

On November 30, 2021, the Complainant communicated to Witness 1, [REDACTED], and Witness 4, [REDACTED], that [REDACTED] had been sexually assaulted. Sexual assault is a violation of law, specifically Article 120 through 120c of the UCMJ and AR 600-20. The Complainant’s [REDACTED] is a person in [REDACTED] chain of command, and [REDACTED] is a designated recipient for reports of sexual assault under DoDI 6495.02.

Therefore, the Complainant’s November 30, 2021 communications to [REDACTED] and [REDACTED] were protected under 10 U.S.C. § 1034.

#### ***Protected Communication 3: Testimony to the CID – December 1, 2021***

On December 1, 2021, the Complainant provided testimony to CID agents about the sexual assault. During [REDACTED] testimony, the Complainant communicated a violation of law (Article 120 through 120c, UCMJ) and regulation (AR 600-20) to members of a DoD law enforcement agency.

Therefore, the Complainant's December 1, 2021 communication to CID agents was protected under 10 U.S.C. § 1034.

### ***Being Perceived as Preparing Protected Communication 4: Preparing to Make an IG Complaint – December 7, 2021***

The Subject testified that Witness 12, in [REDACTED] capacity as [REDACTED], told the Subject that if he did not allow the Complainant to deploy with the 11 ECAB, [REDACTED] would make a complaint to an IG. Any lawful communication to an IG is protected under 10 U.S.C. § 1034. Based on the Subject's conversation with Witness 12, it is more likely than not that he perceived that the Complainant was preparing to make an additional protected communication to an IG.

### ***Personnel Actions***

We determined, by a preponderance of the evidence, that the Complainant experienced two personnel actions and the Subject recommended a third personnel action as defined by DoDD 7050.06.

### ***Personnel Actions 1 and 2: Removal of the Complainant from the Deployment and Recommendation for REFRAD***

On or about December 6, 2021, the Subject decided to remove the Complainant from the deployment, and on December 8, 2021, the Subject recommended to Witness 2 to release the Complainant from active duty.

AR 600-106, "Flying Status for Nonrated Army Aviation Personnel," February 2, 2022, states that a Soldier who is in on active duty status is required to fly a minimum of 4 hours each month and is entitled to hazardous duty incentive pay for flying duty. As an [REDACTED], the Complainant could have earned \$150 of hazardous duty incentive pay per month of deployment by flying at least 4 hours per month in her position as a [REDACTED]. However, once [REDACTED] was removed from the deployment and transferred to the 166 AVN BDE, [REDACTED] was no longer entitled to hazardous duty incentive pay. Removing the Complainant from the deployment had an unfavorable effect on the Complainant's pay.

Therefore, removing the Complainant from the deployment and recommending [REDACTED] for REFRAD were qualifying unfavorable personnel actions under 10 U.S.C. § 1034.

### ***Personnel Action 3: Ineligibility for Temporary Promotion to Sergeant – April 7, 2022***

On or about April 7, 2022, the Complainant was ineligible for temporary promotion to [REDACTED]. [REDACTED] alleged that the Subject was responsible for this action because he removed [REDACTED] from the deployment. [REDACTED], 11 ECAB, was given five slots to enroll Soldiers in the BLC,

a prerequisite to receiving the temporary promotion to [REDACTED]. Priority for those slots went to deployed 11 ECAB Soldiers, and the Complainant did not receive one in time to receive a temporary promotion.

While the Complainant might have been eligible for a temporary promotion had [REDACTED] deployed, the preponderance of the evidence does not support holding the Subject responsible for that possibility. The guidance for temporarily promoting 11 ECAB Soldiers came out in February 2022. The Subject removed the Complainant from the deployment about 2 months before that guidance came out. None of the evidence supports that the Subject, or anyone else in the 11 ECAB [REDACTED], removed the Complainant from the deployment in December 2021 to purposefully prevent [REDACTED] from later receiving a temporary promotion.

Furthermore, the Subject was not involved in determining which Soldiers received temporary promotions. Ultimately, on March 31, 2022, the Army approved the Complainant's application for [REDACTED], which [REDACTED] has successfully completed. The ineligibility of the Complainant for a temporary promotion did not affect [REDACTED] ability to change [REDACTED] Army career by becoming a [REDACTED]. However, in the short term, the Complainant's inability to be temporarily promoted amounted to withholding a favorable personnel action, and therefore, was a qualifying personnel action under 10 U.S.C. § 1034.

Although this qualifies as a personnel action, the Complainant's ineligibility for a temporary promotion was based on circumstances that are insufficient to support a conclusion that the Subject specifically made the Complainant ineligible for a temporary promotion in reprisal for [REDACTED] protected communications. As a result, we do not consider the Complainant's ineligibility for a temporary promotion further in this analysis.

### ***Knowledge of the Protected Communications***

We determined that the Subject knew of the Complainant's protected communications because the Subject testified that he was aware of [REDACTED] communications to the [REDACTED], [REDACTED] chain of command, and the CID, and that he perceived that the Complainant was preparing to make a protected communication to an IG.

Therefore, a preponderance of the evidence established that the Subject knew of the Complainant's protected communications.

### ***Contributing Factor***

We determined that the Complainant's protected communications could have been a contributing factor in the personnel actions.

Whether protected communications could have been a “contributing factor” may be established when:

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

such that a reasonable person could conclude that the communications could have been a contributing factor in the decision to take the actions.

The Complainant made protected communications on November 30, 2021, and December 1, 2021, before the Subject decided to remove ■■■ from the deployment on December 6, 2021. On December 7, 2021, the Subject perceived that the Complainant was preparing to make a protected communication, and he recommended ■■■ for REFRAD on December 8, 2021. The proximity in timing between the Complainant’s protected communications (November 30 and December 1, 2021) and the Subject’s perception that ■■■ was preparing to make a protected communication (December 7, 2021), along with the Subject’s decision to remove ■■■ from the deployment (December 6, 2021) and to recommend ■■■ for REFRAD (December 8, 2021), supports an inference of reprisal.

## Second Stage: Factors Weighed Together

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

### ***Strength of the Evidence***

#### ***The Subject’s Stated Reasons for Not Deploying the Complainant and Releasing ■■■ from Active Duty***

The Subject stated that he was trying to ensure the Complainant’s safety, well-being, and ability to access services if ■■■ needed them when he decided to remove ■■■ from the deployment. Even after the CID identified the suspects, the Subject remained concerned about whether the CID had identified the correct Soldiers, and he was worried that other Soldiers might seek to retaliate against the Complainant. He also expressed his concern for the Complainant’s mental ability after the assault to handle the rigors of the deployment and said that if ■■■ required mental health services in an austere environment, such as the one the 11 ECAB was deploying to, those services might not be available.



Since he had decided to remove the Complainant from the deployment, the Subject told us that he believed the Complainant could not stay on active duty under the 11 ECAB mobilization orders. Therefore, he determined that releasing [REDACTED] from active duty, sending [REDACTED] back to [REDACTED], and placing [REDACTED] on ADOS orders was his best option to keep [REDACTED] safe, close to family, and able to access any necessary services at [REDACTED]. He denied that he removed [REDACTED] from the deployment and recommended [REDACTED] for REFRAD because of [REDACTED] protected communications.

### *The Subject's Concern for the Complainant's Safety Becomes Less Valid*

The Subject and Witness 11 both stated that the Subject removed other 11 ECAB Soldiers from the deployment and recommended them for REFRAD due to medical, physical, family, or other reasons. The Subject decided to remove the Complainant from the deployment on December 6, 2021, as shown in Witness 12's MFR. However, while the Complainant continued to recover from the assault, no documented determination, medical or otherwise, existed that stated [REDACTED] was unfit to deploy. Furthermore, Witness 7, using [REDACTED] experience as a [REDACTED], had given an opinion to the Subject that there was no reason not to deploy the Complainant.

Similarly, the Subject consulted with Witness 11 on or about December 8, 2021, after he had already decided to remove the Complainant from the deployment and recommend [REDACTED] for REFRAD. Witness 11 stated that no blanket policy covered the Complainant's situation and that a decision concerning the Complainant was individualized. Before the CID identified the suspects in the assault, the Subject's concern for the Complainant's safety would have been a suitable reason to remove [REDACTED] from the deployment. However, after the CID identified and arrested the suspects, the Complainant's mental ability to handle the deployment was the only major factor left to consider.

The CID identified and arrested [REDACTED]. However, the Subject stated that the suspects "potentially were identified," but until "you could tell me that like, hey, specialist X and specialist Y are the two that did this and we've got them, you know, well then [the Complainant's] safety was still in question." However, by that logic, every 11 ECAB female Soldier or friend of the Complainant would have been in danger. Nonetheless, he took no action with respect to those Soldiers. Moreover, the suspects could have been at Fort Cavazos. Lastly, nothing in the evidence regarding what they knew in December 2021, after the CID arrested those suspects, raises an inference that the CID misidentified the suspects or that other 11 ECAB Soldiers posed an extraordinary safety risk for the Complainant.<sup>18</sup>

<sup>18</sup> On December 10, 2021, the [REDACTED]  
[REDACTED]

### ***The Subject Expressed Concern About the Complainant's Medical and Mental Health Without Evidence Supporting That Concern***

The Subject's concern for the Complainant's well-being and ability to access services in a deployed location was understandable. In fact, AR 600-20 requires commanders to coordinate with sexual assault response agencies and the victim's chain of command to determine if the victim's condition warrants redeployment or reassignment until final legal disposition of the sexual assault case or the victim is no longer in danger, or both. The Subject testified that he received advice from multiple people that not deploying the Complainant was a good decision and stated that it was never his intent to send the Complainant home without support. However, the Subject ignored the advice of Witness 7, who told the Subject there was no reason the Complainant could not deploy if [REDACTED] was in the "right mindset."

Importantly, the evidence does not support that the Subject ensured that the Complainant would receive the support he espoused, as evidenced by the fact that the Complainant was planning to "couch surf" if sent back to [REDACTED].<sup>19</sup> Also important to our analysis is the fact that, although the Subject had multiple ways to assess the Complainant's ability to deploy, such as seeking a mental health evaluation before making his decision, he did not. The Subject stated that Witness 11 agreed with his decision not to deploy the Complainant. However, he did not consult Witness 11 until after he removed the Complainant from the deployment and recommended [REDACTED] for REFRAD. Furthermore, Witness 11 testified that in December 2021, [REDACTED] was not concerned about the Complainant's ability to handle the deployment. The Subject also did not ask Witness 11 or Witness 16 to evaluate the Complainant, and the Complainant voluntarily met with Witness 16, who determined that [REDACTED] was fit to deploy.

### ***The Subject Did Not Make an Effort to Hear the Complainant's Concerns or Explain His Decision to [REDACTED]***

MG Johnson and BG Cutchin advised the Subject to meet with the Complainant, but the Subject did not meet with [REDACTED] in the manner they recommended. MG Johnson stated that he told the Subject that sending the Complainant home was not necessarily the right thing. He also advised the Subject to ask the Complainant what [REDACTED] wanted and what would best suit her and that taking care of the Complainant was asking [REDACTED] what [REDACTED] needed.

The Subject never had that type of conversation with the Complainant. The Subject testified that he met with the Complainant 2 days after the assault and again on December 9, 2021. However, those meetings were not conducive for the Complainant to express [REDACTED]

<sup>19</sup> The evidence is not clear as to whether the Subject or the 11 ECAB Command Staff had fully coordinated the Complainant being put on ADOS orders by December 8, 2021, when [REDACTED] REFRAD paperwork was processed. However, when Witness 2 decided to take the Complainant into the 166 AVN BDE, the ADOS orders became a moot point because the Complainant would stay on active duty orders at Fort Cavazos and continue to receive all of the benefits and entitlements of an active duty Soldier. It is not possible to know if the Complainant would have been put on ADOS orders by the time she returned to [REDACTED].

or [REDACTED] wants and needs. Witness 1 described the meeting with the Complainant on December 9, 2021, as an “impromptu” command visit to wish the Complainant and [REDACTED] well, acknowledge what they had been through, and tell them goodbye.

Witness 4 stated in [REDACTED] contemporaneous notes about the December 9, 2021 meeting that the Command Team specified that their intent for the meeting was to let the Complainant know they had [REDACTED] best interests in mind. Witness 4 also testified that the Subject said that the purpose of the meeting was not to discuss anything other than the Complainant’s recovery and that they were there to support [REDACTED]. The Complainant said that they “all stood at attention for him” in a “public and vulnerable setting” outside the barracks. The Complainant also said that the meeting lasted approximately 3 minutes, “felt closed off and one sided,” and that the Subject told them something to the effect of his decision regarding the deployment and REFRAD was not up for discussion.

The Subject said they met with the Complainant because they wanted to see how [REDACTED] was doing, they wanted to let [REDACTED] know what services were available, they were looking out for [REDACTED] safety and well-being, and they intended to reassure the Complainant on the way forward. The Subject said that the Complainant seemed to be in receive mode only and did not say anything. Witness 6 said that it was a very brief interaction; they expressed their concern for what occurred and told the Complainant to let them know if [REDACTED] needed anything.

The Subject stated that he never received a request for an open-door meeting from the Complainant, but that is belied by the evidence that Witness 12 made the Subject aware of the Complainant’s desire for such a meeting on December 7, 2021. Instead, the Subject had Witness 1 meet with the Complainant, even though Witness 1 could not address the Complainant’s desire to deploy. Had the Subject met with the Complainant in a more conducive setting and asked [REDACTED] what [REDACTED] wanted, he might have learned that the Complainant and [REDACTED] ended their lease agreement and donated their personal belongings in preparation to be gone for a year and would end up “couch surfing” if sent back to [REDACTED]. Although that was not the type of situation the Subject said that he wanted for [REDACTED] and testified that they never intended to just cut the Complainant and [REDACTED] loose, make them go find jobs, and figure it out on their own, the Subject never relayed his intentions to the Complainant.

### ***The Subject Did Not Attempt to Understand the Complainant’s Medical and Mental Health Needs***

Due to the “impromptu” and “very brief” interactions the Subject had with the Complainant, he also did not make any effort to accurately understand [REDACTED] frame of mind to handle the austere environment during the deployment. It was reasonable for him to be concerned about the Complainant’s ability to deal with such a mission so soon after being sexually assaulted, but the Subject made assumptions about the Complainant instead of attempting to gauge [REDACTED]

ability for himself after listening to [REDACTED]. Witness 7, a [REDACTED], advised the Subject that if the Complainant was in the right mindset, then [REDACTED] could deploy. However, the Subject did not seek to determine if the Complainant had such a mindset.

Additionally, by not having a substantive meeting with the Complainant, the Subject left [REDACTED] with no understanding of what [REDACTED] could do to be deployed later. In fact, the 15-6 investigation into the Subject's handling of the Complainant determined, "[Subject's] subsequent declination to hear directly from the sexual assault victim constituted a failure to meet AR 600-20, paragraph. 7-11 requirements to listen and be available to the victim in the weeks and months following a sexual assault." It also bears repeating that Witness 11 and Witness 16 gave the Complainant a clean bill of health on December 13 and 14, 2021, even though the Subject said, "I don't believe [REDACTED] officially got another on-the-record medical evaluation for medical or behavioral [issues]" after the initial evaluation the night of the assault.

Lastly, although multiple people mentioned the intention for 11 ECAB leadership to reevaluate the Complainant's ability to deploy after 30 days, no one communicated the results of that reevaluation to the Complainant, if in fact it occurred. The Subject testified that the "agreement was that we would continue to reevaluate as we went forward." He also testified that after the Complainant joined the 166 AVN BDE, he and Witness 1 had an "unofficial" agreement to check in on the Complainant and [REDACTED] to see if they were ready to come forward. According to the Subject, the Complainant's company leadership continually checked in with [REDACTED].

The Subject also stated that officers in the [REDACTED] and Witness 11 also stayed in contact with the Complainant. However, they did not inform him that the Complainant expressed an interest in deploying. Conversely, once the Complainant transferred to the 166 AVN BDE, the Subject appears to have considered the Complainant as the 166 AVN BDE's Soldier to deal with. When the Subject testified about the Complainant receiving a temporary promotion, he stated that since the Complainant "belonged to the 166th, [REDACTED] was no longer in the 11th and then therefore would not be in consideration for any kind of promotion from us. So anything about [REDACTED] temporary promotion would have to be addressed by the 166th."

### ***Motive to Reprise***

The evidence supports that the Subject had a personal motive to reprise as the Complainant's sexual assault allegations were against 11 ECAB members, he viewed reports of sexual assault as something for him to distance himself from, and witness testimony to the 15-6 investigation supports the conclusion that the Subject did not fully support the SHARP. In [REDACTED] 15-6 investigation testimony, Witness 4 offered the examples of the Subject's disengagement from the SHARP process, in that the Subject:

- ended the monthly SARC meeting,

- never actually entertained the idea of bringing the Complainant and ██████ back on the deployment, and
- responded with negativity or with disinterest to other SHARP events.

Additionally, the Subject questioned the credibility of the Complainant's report of sexual assault with no reason to do so. None of the evidence has ever called the Complainant's report of sexual assault into question. However, Witness 4's contemporaneous notes indicate that the Subject asked about the credibility of the Complainant's sexual assault shortly after learning about it, and, a few days later, the Subject used the phrase "bat [s\*\*\*] crazy" in reference to the Complainant and ██████ report of sexual assault.<sup>20</sup>

Lastly, the Subject told us that Witness 12 threatened that if he did not allow the Complainant to deploy, ██████ would make an IG complaint of reprisal against him. The Subject characterized the potential of the Complainant filing an IG complaint as a threat—this would further increase his motive as the perceived threat was directed at him—and he was "flabbergasted" when Witness 12 told him the Complainant would make an IG complaint. Commanders who follow U.S. Army rules and regulations do not need to feel threatened that an IG might inquire into their decisions, as whistleblowers are important to the proper functioning of the U.S. Army and the U.S. military writ large, and the expectation is that leaders will encourage personnel to report suspected wrongdoing through whatever appropriate channels exist for them.

Therefore, interpreting the Complainant's expressed intent to make a complaint to an IG as a threat indicates that the Subject may have been motivated to not deploy the Complainant and to release ██████ from active duty due to ██████ protected communications and the perception that ██████ would make additional protected communications to an IG that could result in adverse consequences for him.

### ***Comparator Data or Disparate Treatment of the Complainant***

The comparator evidence demonstrated that the Subject treated the Complainant disparately because he removed the Complainant from the deployment and recommended ██████ for REFRAD without reasons similar to other 11 ECAB Soldiers who were also removed and released from active duty, but had not made protected communications. Witness 11 told us that those Soldiers were not deployed due to medical, physical, family, or other reasons. The Complainant did not have any documented medical, physical, family, or other reason

<sup>20</sup> Neither the Subject nor any Witness corroborated Witness 4's notes. However, Witness 10 testified that the Subject swore regularly and that it would not shock ██████ to hear the Subject say something like that. We determined that Witness 4's contemporaneous notes were more credible than the witness testimony. Witness 4 took ██████ notes with the events as they transpired, whereas our interviews of the Subject and witnesses occurred months, and in most cases, more than a year later. Additionally, Witness 4 testified under oath during the 15-6 investigation and to WRI investigators to the same facts. ██████ also told the Complainant that ██████ heard the command team say that the Complainant was "bat [s\*\*\*] crazy," which Witness 3 corroborated.

supporting the decision to not deploy [REDACTED] and to release [REDACTED] from active duty. Conversely, the 11 ECAB Soldiers who met the deployment standards and deployed were treated more favorably than the Complainant.

The Subject told us that the Complainant was the only person he directly removed from deployment. Additionally, Witness 11 testified that approximately 15 percent of 11 ECAB Soldiers who mobilized could not be deployed and that most of those Soldiers had behavioral health issues. However, the Subject did not seek to have the Complainant's medical and mental health assessed before deciding if [REDACTED] could handle the deployment following the assault. Rather, the memorandum signed by Witness 1, the Subject, and Witness 2 stated that the Complainant "must be released from the mobilization due to not meeting the standards required for mobilization and will be unable to deploy into the CENTCOM [Central Command] area of operations." The memorandum did not state which standards [REDACTED] failed to meet. However, the available evidence supported that the Complainant met the applicable mobilization standards. Specifically, at the Complainant's request, Witness 16 evaluated the Complainant on December 13, 2021, and determined that "at this time no indications suggesting behavioral health difficulties emerging for [the Complainant]. [The Complainant] assessed to return to duty at this time without limitations in austere, combat, and garrison environments."

Following that assessment, Witness 11 filled out DoD Form 2992, "Medical Recommendation for Flying or Special Operational Duty," on which Witness 11 cleared the Complainant for flight duties. By that time, the Complainant's transfer to the 166 AVN BDE had occurred. However, the Subject and other 11 ECAB command team members stated that in January 2022, they intended to reevaluate the Complainant's ability to deploy. That evaluation did not occur. Other 11 ECAB Soldiers continued to mobilize and deploy during that period. No evidence indicated the Complainant could not do the same.

## Totality of the Evidence

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Weighed together, the evidence analyzed in the factors above establishes that the Subject removed the Complainant from the deployment and recommended [REDACTED] for REFRAD based on the Complainant making protected communications and the perception that [REDACTED] was preparing to make an additional protected communication. The documentary and testimonial evidence supports an inference that the Complainant's protected communications and possible future protected communications directly against him motivated the Subject's decision-making. He resented the concept that the Complainant might view his decision not to deploy [REDACTED] as reprisal and viewed the Complainant's possible IG complaint, as expressed by Witness 12, as a threat.

Furthermore, once the CID identified suspects, the Complainant's safety increased sufficiently for a reasonable person to determine that it no longer needed to be a controlling factor in deciding to deploy or release [REDACTED] from active duty. After that, the Complainant's ability to maintain [REDACTED] mental health while deployed was the only major concern. However, the Subject did not seek a medical or mental health evaluation of the Complainant, and he did not take the time to assess for himself or determine if the Complainant could take specific steps to assuage his concerns. Instead, he decided not to have follow-up meetings with [REDACTED], in violation of AR 600-20, and relied on assumptions.

## Preliminary Conclusions

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A preponderance of the evidence establishes that the Subject would not have removed the Complainant from the deployment and recommended [REDACTED] release from active duty absent any protected communications. Accordingly, based on the preponderance of evidence, we conclude that the Subject did remove the Complainant from the deployment and recommended [REDACTED] release from active duty in reprisal for [REDACTED] protected communications.



## Subject's Response to Preliminary Conclusions

We provided a preliminary report of investigation to the Subject on May 17, 2024, and afforded him the opportunity to respond to our preliminary conclusion. The Subject responded through his legal representative and in his own writing on July 1, 2024.<sup>21</sup> In his written response, the Subject disagreed with our findings, offered several arguments in rebuttal, and requested that we reverse our preliminary conclusion. After carefully considering the Subject's response, our conclusion remains unchanged.

### Protected Communications

In his response to our preliminary report of investigation, the Subject stated that the Complainant's allegations "are not within the spirit of whistleblower protections or reprisals. [The Complainant] is not claiming that [the Subject] committed any sort of misconduct that [redacted] reported him on." Neither 10 U.S.C. § 1034 nor DoDD 7050.06 require that the Complainant's protected communications state that the Subject himself engaged in the wrongdoing being reported; rather, they require only that [redacted] reported the wrongdoing specified under the statute to a qualified recipient. As previously discussed and consistent with 10 U.S.C § 1034(c)(2)(A), the Complainant's report of sexual assault to a DoD law enforcement agency constituted a reasonably believed report of violation of law or regulation to an authorized recipient. Therefore, we found no basis on which to amend our previous determination regarding the Complainant's protected communications.

### Personnel Actions

The Subject also stated in his response to our preliminary report that he did not take any unfavorable personnel action against the Complainant. Specifically, the Subject referenced the fact that the Complainant remained on active duty throughout the 11 ECAB's deployment and is now a [redacted]. However, those facts do not refute that, during the period covered by this report, the Subject's decision not to allow the Complainant to deploy and to recommend [redacted] release from active duty affected [redacted] military career, pay, and benefits and were therefore unfavorable personnel actions.

The Subject also stated that the Complainant "voluntarily transferred" to another unit (presumably the 166 AVN BDE). However, the evidence does not support that the Complainant volunteered to transfer to the 166 AVN BDE. It is more accurate to say that the Complainant transferred willingly when [redacted] only other option was to travel back to [redacted] where [redacted] had no place to live. Therefore, we found no basis on which to amend our previous determination regarding the personnel actions.

<sup>21</sup> We incorporated in this report what we believe is a reasonable synopsis of the Subject's response.

## Stated Reasons

The Subject also reasserted that the sexual assault suspects could have deployed with the Complainant. However, the Subject's response did not explain how that would have occurred once those suspects transferred to the [REDACTED]. The Subject also referenced that the original suspects were ultimately not prosecuted as support for his decision regarding the Complainant, but he did not address the fact that the prosecutorial decision occurred on September 27, 2022, more than 10 months after his decision not to deploy the Complainant and to release [REDACTED] from Active Duty.

## Motive

The Subject denied having a personal motive to reprise against the Complainant. The Subject stated that the fact that his immediate steps after being notified that the Complainant was sexually assaulted complied with Army Regulations refutes the conclusion that he had personal motive to reprise and that he viewed such reports as something to distance himself from. Although the Subject's actions after being notified of the sexual assault allegations appear to comply with Army Regulations, he did not comply with all requirements when he failed to listen to what the Complainant wanted or needed before he decided to remove [REDACTED] from deployment and recommended [REDACTED] for REFRAD.

The Subject refuted that he questioned the credibility of the Complainant's report of sexual assault. However, in the Subject's response, he again accused Witness 12 of threatening him with an IG complaint, which caused the Subject to be "understandably guarded." The Subject asserted that because he had already decided not to deploy the Complainant, the perception that [REDACTED] might make a protected communication could not have affected that decision. However, the Subject did not acknowledge that the Complainant had already made a protected communication when [REDACTED] made an unrestricted report of sexual assault. Additionally, the Subject's logic ignores the possibility that, had he granted [REDACTED] request to meet, the Complainant might have changed the Subject's mind or established reasonable conditions for [REDACTED] to deploy.

This leads to the Subject's contention that he sought "a more in depth meeting with [the Complainant] and [REDACTED] but the timing did not work out." The Subject's contention ignores that on December 7, 2021, he spent the time to speak with Witness 12 on the phone. Given his [REDACTED] authority, the Subject could have allowed the Complainant to participate in that meeting, thereby satisfying [REDACTED] expressed desire to meet with him under his open-door policy. Therefore, we again found no basis on which to amend our report.

## Denial of Due Process

In the Subject's PCL response, he asserted that procedural and due process issues existed. Specifically, the Subject stated that the DoD OIG should have allowed him to review "all evidence" used to substantiate the allegations against him and that not doing so was contrary to DoDD 7050.06, enclosure 2, paragraph 1(h). However, paragraph 1(h) refers to transmitting an ROI and evidence after an investigation is complete. Our investigation was not complete when we sent the Subject the preliminary report for his comment. Additionally, paragraph 1(h) refers to transmitting an ROI and evidence to "the Service member." In this paragraph, as well as other places within DoDD 7050.06, the phrase "the Service member" refers to the complainant who alleged reprisal, not the individual who allegedly committed the reprisal. As a result, paragraph 1(h) does not apply to subjects and does not support the Subject's assertion of procedural and due process issues.

The Subject was afforded the same procedural protections as subjects of other investigations, consistent with the DoD OIG "Administrative Investigations Manual." We provided a preliminary copy of this report and the Subject's testimony. We also extended the Subject's response deadline by more than 30 days to provide him adequate time to submit his response.

## Other Matters

The Subject raised several factual arguments disputing how we weighed evidence in addition to those addressed here. We found those arguments unpersuasive and unsupported by the evidence. As we already address those matters comprehensively in the report of investigation, we found it unnecessary to respond here, and we conclude that the Subject's submission was insufficient to demonstrate that he would have removed the Complainant from deployment and released [REDACTED] from active duty absent [REDACTED] protected communications.

## Overall Conclusion

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After providing the Subject an opportunity to respond to our preliminary report of investigation and having carefully considered the Subject's response, our conclusion remains unchanged. A preponderance of the evidence established that the Subject removed the Complainant from a deployment to the Middle East and recommended [REDACTED] for REFRAD in reprisal for the Complainant's protected communications.

## Recommendations

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We make no recommendation regarding remedial action for the Complainant. There is no action that can remedy the fact that [REDACTED] did not deploy and that the Subject recommended [REDACTED] for REFRAID.

We recommend that the Secretary of the Army consider appropriate action against the Subject for reprising against the Complainant.

# Acronyms and Abbreviations

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<b>10 U.S.C. § 1034</b>	Section 1034, title 10, United States Code
<b>11 ECAB</b>	11th Expeditionary Combat Aviation Brigade
<b>166 AVN BDE</b>	166th Aviation Brigade
<b>1LT</b>	First Lieutenant
<b>ADOS</b>	Active duty operational support
<b>AR</b>	Army Regulation
<b>BG</b>	Brigadier General
<b>BLC</b>	Basic Leader Course
<b>CID</b>	Criminal Investigation Division
<b>[REDACTED]</b>	[REDACTED]
<b>[REDACTED]</b>	[REDACTED]
<b>[REDACTED]</b>	[REDACTED]
<b>DoDD</b>	DoD Directive
<b>DoDI</b>	DoD Instruction
<b>[REDACTED]</b>	[REDACTED]
<b>IG</b>	Inspector General
<b>LTC</b>	Lieutenant Colonel
<b>MFR</b>	Memorandum for record
<b>MG</b>	Major General
<b>[REDACTED]</b>	[REDACTED]
<b>OML</b>	Order-of-merit list
<b>REFRAD</b>	Release from active duty
<b>[REDACTED]</b>	[REDACTED]
<b>UCMJ</b>	Uniform Code of Military Justice

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