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REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

SECTION I - APPOINTMENT

Appointed by BG Joseph Carvalho, Jr., Commanding General, Great Plains RMC
(Appointing authority)

on 9 June 2009 (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)
(Date)

SECTION II - SESSIONS

The (investigation) (board) commenced at _____ at _____
(Place) (Time)

on _____ (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

Current IO was not present at the commencement of the investigation.

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 0630 on 8 July 2009
(Time) (Date)

and completed findings and recommendations at 1130 on 16 July 2009
(Time) (Date)

SECTION III - CHECKLIST FOR PROCEEDINGS

A. COMPLETE IN ALL CASES

	YES	NO ¹	NA ²
1 Inclosures (para 3-15, AR 15-6)			
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
a. The letter of appointment or a summary of oral appointment data?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Copy of notice to respondent, if any?(See Item 9, below)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Other correspondence with respondent or counsel, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. All other written communications to or from the appointing authority?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Privacy Act Statements(Certificate, if statement provided orally)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Information as to sessions of a formal board not included on page 1 of this report?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

FOOTNOTES: ¹ Explain all negative answers on an attached sheet.
² Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

	YES	NO	N/A
2 Exhibits (para 3-16, AR 15-6)			
a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3 Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)			
4 At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Was a quorum present at every session of the board (para 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Was each absence of any member properly excused (para 5-2a, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)			
9 Notice to respondents (para 5-5, AR 15-6):			
a. Is the method and date of delivery to the respondent indicated on each letter of notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Was the date of delivery at least five working days prior to the first session of the board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Does each letter of notification indicate --	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(1) the date, hour, and place of the first session of the board concerning that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) the matter to be investigated, including specific allegations against the respondent, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) the respondent's rights with regard to counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) the name and address of each witness expected to be called by the recorder?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) the respondent's rights to be present, present evidence, and call witnesses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Was the respondent provided a copy of all unclassified documents in the case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
a. Was he properly notified (para 5-5, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 Counsel (para 5-6, AR 15-6):			
a. Was each respondent represented by counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name and business address of counsel:			
(If counsel is a lawyer, check here <input type="checkbox"/>)			
b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12 If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
a. Was the challenge properly denied and by the appropriate officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Did each member successfully challenged cease to participate in the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13 Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Examine and object to the introduction of real and documentary evidence, including written statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Object to the testimony of witnesses and cross-examine witnesses other than his own?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Call witnesses and otherwise introduce evidence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Testify as a witness?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15 Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FOOTNOTES: 1. Explain all negative answers on an attached sheet.

2. Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The *(investigating officer) (board)* , having carefully considered the evidence, finds:

See Attached.

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the *(investigating officer) (board)* recommends:

See Attached.

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

(Recorder)



(Investigating Officer) (President)

(Member)

(Member)

(Member)

(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

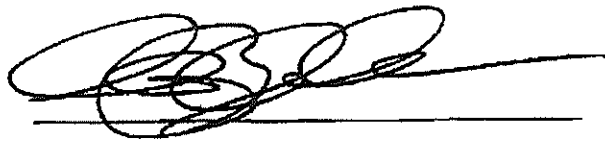
To the extent indicated in Inclosure _____, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

(Member)

(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

Findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/ (findings) (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)



W. Bryan Gamble, BG, MC, Commanding

9 Feb 2010

MEMORANDUM FOR Commander, Great Plains Regional Medical Center, Fort Sam Houston, TX 78234-6200

SUBJECT: AR 15-6 Report of Whistleblower Investigation, Fort Leavenworth, Kansas

1. The appointment memorandum required an investigation into specific questions that arose from an individual who exercised his rights under the Whistleblower Protection Act. The questions (in italics) from the appointment memorandum are answered in this memorandum.

2. *Specifically, you are directed to investigate the following and determine:*

a. *Whether or not since June 2007, LTC [REDACTED], Chief, Department of Preventive Medicine (PM), Munson Army Health Clinic (MAHC) and Mr. Karl Gibson's second-line supervisor, and 1LT [REDACTED], Environmental Science Officer, Department of Preventive Medicine, MAHC and Mr. Gibson's first-line supervisor, have actively interfered with Mr. Gibson's ability to conduct an effective Industrial Hygiene Program at Fort Leavenworth. At minimum, you should investigate and determine as follows:*

1) *Have 1LT [REDACTED] and LTC [REDACTED] redirected time and resources, issued conflicting and constantly changing directives to Mr. Gibson, thereby diminishing Mr. Gibson's authority as Fort Leavenworth's Industrial Hygienist?*

a) FINDINGS: In Mr. Gibson's statements he alleges that he has not been permitted to perform his duties as the Industrial Hygiene (IH) Program Manager. As an exhibit he provides a list of safety and IH related laws, regulations and DA guidance documents, but no specifics on how this list applies to the redirection of resources. Furthermore, his statements are completely counter to the exhibits provided by his immediate supervisor and MEDDAC Environmental Science Officer, LT [REDACTED], and Mr. [REDACTED] (a Certified Industrial Hygienist and the Great Plains Regional Medical Command's Industrial hygiene Program Manager) which demonstrate that he was expected to perform his duties and he refused.

Mr. Gibson states that the complaint and report writing procedures have changed at the direction of his supervisors. Ms. [REDACTED], the Fort Leavenworth Civilian Personnel Advisory Center (CPAC) Management Employee Relations representative, statement validates the right of a supervisor to direct or change an employee's duties (Exhibit 4, page 2, question 8) The statements of COL [REDACTED], the former MEDDAC Commander; COL [REDACTED], the current MEDDAC Commander; LTC [REDACTED], former MEDDAC Chief of Preventive Medicine and Mr.

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Gibson's second-line supervisor; [REDACTED] and [REDACTED] all demonstrate the reasons for changing the procedures (see paragraphs 2.a.2, 2.b.1, and 2.b.2, below).

In addition, when specifically asked, "Why weren't the final changes to Mr. Gibson's memos shared with him?" LTC [REDACTED] stated, "The only changes made to Mr. Gibson's memo's were grammatical in nature and content formatting. No results were ever changed on any reports. The process of report submission began with Mr. Gibson, who would forward to LT [REDACTED], if there was any errors in the reports (grammatical) LT [REDACTED] would forward back to Mr. Gibson for correction. After corrections were made, Mr. Gibson would resend to Lt [REDACTED]. Lt [REDACTED] would then forward all corrected reports to me (LTC [REDACTED]) and I would forward to Ms. [REDACTED] (administration assistant) who would format the reports correctly and hard copy for me to sign before sending to the Command group." (Exhibit 12, addendum).

When asked, "Why weren't the final changes to Mr. Gibson's memos shared with him?" LT [REDACTED] had the following to say:

"The final changes (if any) made to Mr. Gibson's memos were shared with him, with one caveat. I did make a rookie mistake early in 2007 - when this whole situation landed in my lap.

"We found it necessary to have Mr. Gibson pass all his official correspondence (emails of an official capacity, reports, etc.) through his first line supervisor (me) before it reached customers. During my review of his first batch of IH reports, I had to change a number of things in his reports; but all changes were editorial in nature (i.e. grammatical errors, correcting incorrectly, quoted references, etc.) and the content (i.e. results derived from analyses, standards by which the results were rated, etc.) was never changed.

"When these reports were submitted to the Preventive Medicine (PM) secretary for finalization, one way or another Mr. Gibson had the chance to see the reports had been edited and raised his concern that his reports had been changed and he not notified. This was not an example of Management trying to change Mr. Gibson's reports and pass them off as his; this is an example of a new supervisor (me) figuring out the system in which he had been inserted.

"From that point forward, the IH reports submitted by Mr. Gibson were posted to the shared PM shared drive (they were too big - memory-wise - to continually send via email anyway) and Mr. Gibson would notify me of their submission. Any

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edit or modification made to these reports was available for review on the shared PM drive so that Mr. Gibson would have full visibility of his reports and their status.

"It is important to note again that the content of Mr. Gibson's reports was never changed by Management. There was one situation, though, that Management had to include a caveat in one of Mr. Gibson's reports, which stemmed from Mr. Gibson's misuse of an industry standard.

"Mr. Gibson had performed a lead analysis for a workplace and applied a 'Housing and Urban Development' (HUD) standard to which he compared his results. When held to this standard, some of the analyses failed - barely (For example: the standard gave a limit of something like 0.50ug and the result from the analysis was something like 0.58ug).

"The HUD standard was inappropriately applied to this situation as it is a standard designed to protect the families - in particular the children, who generally have a lower body mass - from lead exposures, and is hardly applicable to a workplace where there are no children. Furthermore, I believe that the report in question was for the Airfield Hangar (forgive me, I cannot be certain without the reports in front of me), which is an industrial setting and held to even less stringent standards for lead.

"After vetting the situation through Great Plains Regional Medical Command (GPRMC), it was decided that a caveat would be added to the result - in the form of an asterisk - which stated that the lead result was minimally over the (inappropriately applied) standard and did not pose much of a health risk." (Exhibit 7, addendum).

From the above, I find that final changes to Mr. Gibson's memos were not unshared with him; rather, the memos were available for his review. Furthermore, changes that were made to the memos were neither capricious nor, in general, substantive; they related to format, grammar, and use of standards.

Mr. Gibson states there are 170 incomplete IH survey memorandums that have not gone out from 2006 and 2007, in violation of Occupational Safety and Health Administration (OSHA), DODI, and Army regulations (Exhibit 19, page 2, 3rd paragraph). After reviewing 32 draft reports composed by Mr. Gibson, Mr. [REDACTED] found that "Mr. Gibson provided inaccurate and misleading information to customers. During the period July 2006 through July 2007, Mr. Gibson's assertions have had significant operational and economic ramifications. In addition, his actions have negatively impacted the professional reputation of this Command. There is evidence to support allegations that Mr. Gibson has produced (1) false and misleading statements; (2) concealment of which should

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be disclosed." (Exhibit 2, page 4, para 3.a). "Given the suspect evaluations and misleading statements, this Command decided not to release the reports until they could verify their accuracy. Even after Mr. Gibson was presented with independent reviews of his reports by individuals with greater professional standing, he refused to make corrections" (Exhibits 1, page 8, question 12; and 14, page 10, paragraph 3).

One area that required improvement was Mr. Gibson's report writing. Mr. [REDACTED] found Mr. Gibson's reports to "lack organization and clarity" (Exhibit 1, page 6, question 4). He provided LT [REDACTED] and Mr. Gibson with templates "as a tool designed to help better organize his (Mr. Gibson's) findings, conclusions, and recommendations."

Mr. [REDACTED] statement sheds further light on the communication and report writing issues. "I do not believe that there was any miscommunication between Mr. Gibson and MAHC staff. After spending considerable time with Mr. Gibson, I have arrived to the conclusion that Mr. Gibson has his own sense of reality. We all know someone who refuses to acknowledge their mistakes or short-comings - Mr. Gibson is one of those individuals. MAHC Management has been patient and afforded Mr. Gibson ample opportunity for improvement. I feel Mr. Gibson could improve his communication skills by being more direct and concise; be clear and confident in what he is trying to communicate; listen; think before he speaks and not be overly negative. I feel a reasonable person would have taken the recommendations, observations, assistance under advisement and attempted to take corrective action(s). Mr. Gibson gave too much push-back and took things to the extreme. Mr. Gibson, through his actions and words, made it very clear where he stood on any given issue/concern. He is right and there is no room for compromise. In my opinion, Mr. Gibson has not demonstrated the characteristics required to effectively manage the IH Program at FT Leavenworth." (Exhibit 1, page 15, question 41).

Mr. Gibson repeatedly cites DA PAM 40-503 and other DA PAMs. The purpose of these documents is to "provide(s) guidance for implementing the essential elements of the industrial hygiene (IH) program" and to define the "industrial hygienist's role in other Army programs." (DA PAM 40-503, paragraph 1-1.a&b) They are not regulations or laws.

Industrial hygiene monitoring of the US Disciplinary Barracks (USDB) is one example Mr. Gibson provides as an illustration of Management not allowing him to perform his duties. He cites the USDB as an example of a location where he was prohibited from doing so (Exhibit 19, page 2, 3rd paragraph). Exhibit 23, page 2, second paragraph, however, contains the 8 Feb 2006 correspondence from the USDB, which tells a different story. In his e-mail, Mr. [REDACTED], the USDB Chief Executive Director, states that he is again disappointed with "Karl...citing

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standards that are incorrect." He ended his message with "I am recommending to COL [REDACTED] (USDB Commander) that Karl be barred from the USDB until the two Colonels meet to determine the validity of Karl's reports and method of measurement", thus refuting Mr. Gibson's allegation by demonstrating that it was Mr. Gibson's customer, not his management chain, which prohibited his presence in the USDB. Based on their discussion, Mr. Bentley was asked to perform the surveys rather than Mr. Gibson. The USDB Commander refused to allow Mr. Gibson to enter the facility, even as an observer.

There is no law or regulation that mandates the assigning of an industrial hygienist to perform emergency response assistance, as Mr. Gibson asserts. It is a Commander's prerogative to allocate their resources in a manner which best serves his/her mission.

Furthermore, LTC [REDACTED] states, "I believe that Mr. Gibson was an a member of this team in the capacity a Industrial Hygienist whom performed Pulmonary Function Test on the Emergency Response Team members. This was pre/post LTC [REDACTED] and LT [REDACTED] arrival." (Exhibit 12, addendum). So, although it is a Commander's prerogative to allocate their resources in a manner which best serves his/her mission, it appears that Mr. Gibson was not removed from the Fort Leavenworth emergency response team, if, indeed, he ever served on it.

LT [REDACTED] casts doubt that Mr. Gibson was ever assigned to such a team: "I am not aware that Mr. Gibson was ever a part of any Fort Leavenworth Emergency Response Team. During my tenure as the Munson ESO (AUG 2006-FEB 2009), and Mr. Gibson's first line supervisor (JAN 2007-FEB 2009), the issue of Mr. Gibson being a part of such a team never came up in either communication between Mr. Gibson and myself, or such a team and myself.

"Furthermore, a search of my archived day planners from my tenure at Munson and email records during this time period (I have my entire MS Outlook PST file archived and available for reference) shows no reference of Mr. Gibson's involvement on such a team (no requests for time to attend team meetings, no involvement in team exercises, no team documents), past or present.

"This is key as email, especially from 2007 forward, became a running log of the interactions between Mr. Gibson and myself, unless it was otherwise documented in an MFR of some kind (counselings, accounts of events as they occurred, etc. - all signed by both parties). Nothing official transpired between Mr. Gibson and myself unless it was documented.

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"I suspect that this is just another fabrication on the part of Mr. Gibson in an attempt to somehow point another finger at Management with the hopes that it convinces someone that Management's actions to fix the Ft. Leavenworth IH program somehow lead to negative health and safety issues or a weakened state of readiness of the Post's first responders." (Exhibit 7, addendum).

While Mr. Gibson alleges that he has not been able to participate in the planning and execution of IH duties, e.g., attending safety meetings, review design plans, he provides no evidence that he was prohibited from conducting these activities. The statements of all of the other interviewees indicate that he was expected to perform these functions and did not.

COL ██████████ consulted with the Great Plains Regional Medical Center's Certified Industrial Hygienist, Mr. ██████████, "to assess the best way to handle the IH program." She requested Mr. ██████████ review 32 IH assessment and survey reports because she was concerned about the findings and recommendations in reports written by Mr. Gibson (Exhibit 9, page 2, question 1) from April to July 2007. Mr. ██████████ found significant discrepancies (Exhibit 3, pages 3-7, paragraph 3). Mr. ██████████ 3 Aug 2007 memorandum (Exhibit 2, page 4, paragraph 3.b) outlines performance issues. It also makes recommendations concerning Mr. Gibson's IH weaknesses, suggests direction and oversight in specific areas, and recommends actions to improve the IH program. COL ██████████ met with Ms. ██████████, the CPAC Management Employee Relations representative, and Mr. ██████████ to determine if a "Performance Improvement Plan was required and how to establish standards that would allow Mr. Gibson to do his job but also allow for supervision and oversight to preclude inaccurate reporting of results." (Exhibit 9, page 2, question 1).

Both LT ██████████ and LTC ██████████ conducted performance counseling (Exhibits 15 and 16) to assist Mr. Gibson in improving his skills and abilities in areas that were identified as weakness by third party Certified Industrial Hygienists. Mr. ██████████ conducted a more thorough review of Mr. Gibson's capabilities as the Fort Leavenworth industrial hygienist, which ultimately resulted in a Performance Improvement Plan (PIP) (Exhibit 17).

COL ██████████ stated that in the process of reviewing the IH program, they "found that Mr. Gibson did not have a tracking and monitoring program in place that alerted when testing needed to be performed... We found many discrepancies in the industrial hygiene records and there was no established program in place to ensure more than one person knew when PM services and inspections were required for the installation. It appeared that Mr. Gibson did not want anyone else to have a full understanding of when and where IH

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requirements were needed for evaluation and review." (Exhibit 9, page 4, question 7). Given these conditions, the MAHC staff realized they needed to have greater oversight over the IH activities being conducted at Fort Leavenworth by Mr. Gibson. To that end they instituted a series of measures such as deferring sampling, requiring a monthly IH activities log, and other actions detailed in Mr. Gibson's Individual Performance Standards (IPS).

COL [REDACTED] stated that the redirecting of Mr. Gibson's effort were "...part of a larger plan to correct a program that had drifted seriously off course. The previous Command group in conjunction with the PM staff, GPRMC staff, the Army Corps of Engineers, and OSHA, all attempted to assist Mr. Gibson in explaining the redirection to no avail. My assessment is that Mr. Gibson continues to refuse to take the reasonable advice, mentoring, and redirection offered by a host of valid and qualified sources, from OSHA to the Army Corps of Engineers, to Mr. [REDACTED] GPRMC." (Exhibit 10, page 1, question 1).

COL [REDACTED], LT [REDACTED], and LTC [REDACTED] all indicate that they relied on Mr. Gibson to run the IH program. (Exhibits 9, page 2, question 2; 7, page 1, question 2; and 12, page 1, question 1). When Mr. Gibson lost credibility the Commander placed more and more reliance on the advice of the regional industrial hygienist and his staff. Mr. [REDACTED] and his staff were brought in to work with Mr. Gibson and try to assist and help him improve his skills. (Exhibit 9, pages 2 & 3, questions 2 & 3).

One question that arose during this review process: With all of Mr. Gibson's performance issues, why did LT [REDACTED] mark the block that Mr. Gibson "has demonstrated the knowledge and skills necessary to meet the requirements of their position..." on his performance appraisal? LT [REDACTED] answers, "On 25 JAN 08, when the Competency Assessment in question ...was presented to Mr. Gibson and signed, the situation with Mr. Gibson had not yet degraded to the stage where I felt it necessary to recommended his removal (FEB 2009).

"For all intents and purposes, the 2007 -2AA8 Rating Period had just started (new performance standards for the rating period had just been established on 15 JAN 08) and the atmosphere I was trying to foster between Mr. Gibson and I was one of cooperation in the hopes of getting the IH program functional again. I was in no way out to get Mr. Gibson, and despite the issues we'd had with his performance up to that point, I still felt that with the new performance standards and guidance we were getting from GPRMC we could get the program back on track.

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"Please keep in mind that this form is a check of competency - can he DO this job, is he capable of doing it - and not a part of his annual evaluation. I still have no doubts that Mr. Gibson could have done a good job as the industrial hygienist had he wanted to. Also, language is very powerful to me, and I am very deliberate with what I put on paper. If you read the supporting statements that I provided on the form, none of them reference that Mr. Gibson had been doing a good job performing IH duties that his performance counselings show he was struggling with. I was very specific about this.

~~"My purpose was not to destroy Mr. Gibson, and giving him a failed Competency Evaluation would have stayed with him for the rest of his tenure at Munson Army Health Center. Failing Mr. Gibson on his annual Competency Evaluation, while most probably warranted, would not have done anything to move the program away from the dysfunctionality it was in." (Exhibit 7, addendum).~~

In summary, members of Mr. Gibson's chain of command all state that numerous attempts were made to help Mr. Gibson improve in areas where he had demonstrated weak technical and report writing skill. COL [REDACTED] summarized her support of Mr. Gibson and the IH program with the following statement: "I wanted Mr. Gibson to get assistance and correct his deficient technical skills; however, at no time did he accept any suggestion that he was not conducting his technical assessments accurately. The more we tried to work with him, the more he rejected our attempts and viewed all corrective actions as 'attacks' on him personally. He was absent or on leave often and he requested many hours of his duty time to consult with the union. For the record we honored the majority of his requests and were even advised that we did not have to allow as much time as he requested." (Exhibit 9, page 6, question 14). Such efforts include codifying and specifying Mr. Gibson's performance parameters and management's expectations of him (Exhibit 17, pages 1 and 2), inviting Mr. Gibson to present problems, grievances, and/or suggestions to his Commander (Exhibit 17, pages 3 and 4), and presenting Mr. Gibson very detailed evaluation of his performance, with ample opportunity for improvement (Exhibit 18, entirety).

b) CONCLUSIONS: I conclude that there is no evidence that Mr. Gibson's authority as Fort Leavenworth's Industrial Hygienist has been diminished since June 2007 by 1LT [REDACTED] and LTC [REDACTED] actions. Mr. Gibson's experience in managing the IH program should have been sufficient to be able to understand the customers' and Management's expectations for workplace health and safety; however, his analysis of sampling data and identification of appropriated health based standards often fell short. Contrary to diminishing his authority, his supervisors and the chain of command went out of their way to give him ample opportunities to improve his technical, writing, and communication skills.

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2) *Has Mr. Gibson otherwise been prevented by 1LT [REDACTED] and LTC [REDACTED] from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Fort Leavenworth buildings and facilities for industrial hygiene threats and hazards?*

a) FINDINGS: DA PAM 40-503, Section 4, discusses the fundamental processes of IH: hazard anticipation, recognition, evaluation, and control. It lays out the processes, tools, and procedures for developing a comprehensive IH program. A guiding principal behind the IH program is articulated in section 4-4, Survey Frequency and Scope. "The 29 CFR 1960, AR 385-10, and AR 40-5 require the annual inspection of workplaces by OSH personnel who are qualified to recognize and evaluate hazards. The IHPM (Industrial Hygiene Program Manager) ensures that this annual workplace survey documents the IH aspects..." This is a broad statement, which does not specify the boundaries of a workplace. A workplace could be a single room or an entire building with several different operations going on. In order to achieve the intent of the requirement, hazards in work places are prioritized so that the most severe hazards are given the highest priority for inspection. Lower hazards are given a lower priority and less emphasis because the risk of injury or illness from work related activities is less. It is important to note that the regulation does not say that the workplaces have to be inspected by an industrial hygienist, only by qualified occupational health and safety personnel. Inspection of workplaces can be performed by safety personnel, Environmental Science Officers, or other occupational health and safety personnel. Frequently, industrial hygienists and safety personnel work together to meet the intent of the applicable guidance.

An industrial hygienist's role is to document the environmental factors and stresses associated with work and work operations that may cause sickness, impaired health and well being, significant discomfort, and inefficiency among workers. Health hazard assessments or evaluations are a continuous and key component of the process. A comprehensive health hazard assessment requires the IHPM to collect both qualitative and quantitative data. The IHPM uses this data to assess the effectiveness of protective equipment, administrative controls, and engineering controls. The IHPM should ensure that operations are evaluated to build hazard level and exposure histories for each operation over time. These histories are used to identify areas of greatest potential hazard and establish a record of past conditions and testing. Annual work plans or Industrial Hygiene Implementation Plans (IHIP) establish methodologies and schedules for assessing the work sites on an military installation.

Part of the challenge with the Fort Leavenworth IH program is that exposure information was not organized to capture building or work place surveys and testing over time. Mr. [REDACTED] stated, "Based on my original assessment, it was

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determined that Mr. Gibson was doing nothing more than collecting an enormous amount of environmental samples. The IH Program at Ft Leavenworth lacked structure and purpose. The assessment process was misdirected and required updating." (Exhibit 1, page 9, question 15). Mr. [REDACTED] recommended that the MAHC staff establish "a 'building' file which would help maintain chronological data; keep material organized and easily accessible." (Exhibit 1, page 6, question 4).

When the regularly scheduled IH surveys fell further behind schedule in February 2008, LT [REDACTED] developed an IH project priority list (Exhibit 19, Sub-Exhibit KG4). This list was developed in consultation with Mr. [REDACTED] in order to prioritize regular assessments based on the risk level of the processes within the building and the date of the last survey.

Mr. Gibson states he "was prohibited in carrying out my appointed duties as the IHPM when MEDDAC Management directed on 28 August 2007 that I was to defer any further IAQ testing, occupational exposure monitoring and other associated tasks with these duties." (Exhibit 19, page 13, question 5). The memorandum, which should be read in its entirety to discern its implications, states that sampling/testing is deferred until further notice and until Management could evaluate Mr. Gibson's technical competence. Sampling was permitted with the approval of his supervisor and in emergency cases.

LT [REDACTED] states, "This deferment, in no way, was an instruction for Mr. Gibson to stop performing his duties as the Fort Leavenworth Industrial Hygienist or to stop performing assessments of the Fort Leavenworth buildings and facilities. Simply put, if Mr. Gibson needed to perform sampling/testing, it first required supervisory approval." (Exhibit 7, page 1, question 2).

Mr. Gibson's IPS (Exhibit 8) explicitly instructed him to perform Industrial Hygiene (IH) hazard assessment surveys on the buildings maintained on Fort Leavenworth. He was also required to seek supervisory approval before any Indoor Air Quality (IAQ) or occupational exposure testing was performed (Exhibit 7, page 1, question 3).

LT [REDACTED] "In the months following Mr. Gibson's presentation of his new IPS, he proposed that the new IPS were not in compliance with DA doctrine pertaining to annual IH surveys on an installation. However, the IPS was developed from DA IH publications (namely AR 40-5 and AR (sic) 40-503). On the occasion that it was deemed appropriate for Mr. Gibson to perform IH sampling, he was given permission to do so (13 NOV 08, Bldg 77, the Defense Automated Printing Service)." (Exhibit 7, page 1, question 3).

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Mr. Gibson's supervisors restricted his ability to conduct unsupervised testing, monitoring, and surveys because they questioned his technical capabilities and because Mr. Gibson had lost credibility with a number of the Fort Leavenworth IH program customers (Exhibit 1, page 3, paragraphs 1-4), which impeded his ability to assess some work places such as the Disciplinary Barracks (see paragraph 2.a.1.a., above). COL [REDACTED] determined that she "could not allow him to continue to operate with autonomy and without supervision until we could establish his technical proficiencies and understanding of IH procedures and standards." (Exhibit 9, page 3, question 6). COL [REDACTED] further stated, "Mr. Gibson was never prevented or prohibited from ensuring compliance with any appropriate Federal or Army rules and regulations. He was, however, not permitted to select inappropriate rules and regulations and apply them to this setting as has been his habit for many years." (Exhibit 10, page 2, question 4).

Mr. [REDACTED] unequivocally states, "Neither LT [REDACTED] nor LTC [REDACTED] prevented Mr. Gibson from ensuring compliance with Federal regulations and Army rules and regulations" in his sworn statement (Exhibit 1, page 6, question 5). He further states that he worked with Mr. Gibson to explain DA PAM 40-503 and its relationship to the Army Industrial Hygiene Program and provided him with guidance on how to meet the program requirements (Exhibit 1, page 6, question 6).

Neither COL [REDACTED] nor COL [REDACTED] was aware of any non-compliance with federal and Army rules and regulations. Furthermore, COL [REDACTED] stated that Mr. Gibson never brought any suspected violation to her attention (Exhibit 9, page 3, question 4). COL [REDACTED] stated that Mr. Gibson's visit under the open door policy on 18 Feb 2009 was the only occasion that he brought any suspected violations to her attention (Exhibit 10, page 2, question 5). She stated, "All of the allegations were referred to or specifically addressed at that time. However, Mr. Gibson was unable to provide me with original or complete documents, specific names, or any other actionable information. His accusations typically are against 'Management', but he is unable to define who 'Management' is." (Exhibit 10, page 1, question 2).

Additionally, Mr. [REDACTED] was not aware of any violation of laws or regulations (Exhibits 1, page 7, question 7; and 5, page 1, question 4). Mr. [REDACTED] questioned Mr. Gibson about his assertion that the Command "was trying to cover-up safety and health issues. I (Mr. [REDACTED]) directly asked Mr. Gibson to explain his rationale and he was unable to provide specific information."

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In Mr. Gibson's statement he refers to being "verbally ordered not to do 'special testing' in MAHC by COL [REDACTED] and COL [REDACTED]" (Exhibit 19, page 4, question 2, paragraph 1) and being given verbal orders by LT [REDACTED] and LTC [REDACTED]. The present MAHC Commander had six 3-inch binders full of documentation pertaining correspondence and actions involving Mr. Gibson. LTC [REDACTED] states, "The reason for this action was based on several reports (4) at a minimum that had incorrect and inaccurate data and reporting of findings. All four buildings were independently tested with drastic differences in result"

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apparent that Management spent a considerable amount time trying to get Mr. Gibson's skills to the point where he could perform his duties at the expected level of proficiency. When "Management" has offered him answers, training, etc. he has refused to accept the information and assistance presented (Exhibit 1, page 15, question 41).

The only areas I could find where Mr. Gibson informed the Command about potential legitimate violations of federal law involved inorganic lead in the Sherman Army Airfield Hangar and asbestos in Bell Hall and the MAHC Commander's office. Mr. Gibson's arguments about violating federal laws centers around the sampling he performed, the interpretation of his results, and the application of federal standards. However, while Mr. Gibson's initial sampling results for inorganic lead in Sherman Army Airfield Hangar and asbestos in Bell Hall indicate the potential for overexposure to personnel, additional sampling of those areas did not validate his original findings. In fact, Mr. [REDACTED] states "Mr. Gibson is unable to replicate scenarios identified as 'noncompliant' either through actual sampling data or rationale." (Exhibit 1, page 4, last paragraph). In Bell Hall and Sherman Hangar, re-sampling by independent third parties demonstrated no overexposure. The follow-up analytical results were significantly lower than Mr. Gibson's original results. Furthermore, his inability to accurately apply the appropriate standards and assess risk makes his assertion about violation of federal laws questionable. Mr. [REDACTED] stated, "During the review process, I discussed with Mr. Gibson where he provided inaccurate and misleading information to his customers. In many reports, Mr. Gibson failed to exercise sound professional judgment and critical thinking in his application/interpretation of standards and/or guidelines. In his reports, Mr. Gibson demonstrated a profound inability to distinguish between various levels of risk." (Exhibit 1, page 3, last paragraph).

Mr. Gibson's failure to generate reproducible results is reinforced by follow-ups performed by US Army Corps of Engineers personnel. In May 2008, MAHC Command staff requested assistance from the Corps of Engineers Kansas City District and received a proposed Scope of Work, valued at \$30,520 (Exhibit 13). One of the results of this initiative was a program audit, performed 11 September 2008 (Exhibit 14). One of the findings, therein: "Supporting data and information, specifically occupational exposure monitoring, is not readily correlated with identified hazardous operations." When Corps of Engineers personnel (Mr. [REDACTED]) reviewed a representative technical report of Mr. Gibson's one finding stated, "It is our opinion that the report is not effective in providing the Director documentation of identified occupational health hazards associated with the facility nor does the report include existing measures used to control exposure to these hazards." (Exhibit 18, page 1, paragraph 2).

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b) CONCLUSIONS: I find no evidence of Mr. Gibson being prevented, by LTC [REDACTED] or LT [REDACTED], from ensuring compliance with applicable laws, regulations, or standards. Regular assessments and appropriate testing were conducted by Mr. Gibson when conditions warranted. Given Mr. Gibson's loss of credibility, his supervisors took the necessary steps to improve his capabilities and have him produce validated results in order to comply with federal regulations and Army rules. Mr. Gibson was not able to demonstrate a violation of federal and/or Army regulations and rules because of his inability to produce reproducible, valid results.

b. Whether or not the actions of LTC [REDACTED] and 1LT [REDACTED] constituted an abuse of authority. At a minimum you should investigate and determine as follows:

1) Did, in June, 2007, 1LT [REDACTED] and LTC [REDACTED] abruptly order Mr. Gibson to stop all industrial hygiene assessments, testing and surveying and give Mr. Gibson alternative responsibilities minimally related to industrial hygiene? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]?

a) FINDINGS: I find that Mr. Gibson was not prevented from conducting assessments, test, and surveys. The 28 Aug 2007 memorandum titled "Deferment of Indoor Air Quality (IAQ) and Occupational Exposure Testing" specifically stated, "you are not permitted to perform routine testing until you have been given an opportunity for refresher training in IH techniques, procedures, and interpretations, and until the CHPPM Assessment and Training visit to MAHC which is scheduled to occur in the middle of September 2007 (dates forth coming). In the interim, emergency IH testing that is determined necessary by the MAHC Command or your supervisory chain will be considered on a one-for-one basis and will be overseen by the first line supervisor or a proxy." Exhibit 21, paragraph 3. The memorandum requires only that Mr. Gibson seek the approval of his supervisors prior to conducting sampling. This action was taken "after careful review and consideration" (Exhibit 1, page 7, question 8). Mr. [REDACTED] consulted with the Munson Commander and staff, including LT [REDACTED], and "determined that Mr. [REDACTED] lacks the technical competence and professional judgment required to interpret sampling data collected during routine industrial hygiene surveys" (Exhibit 1, page 7, question 8).

LT [REDACTED], with the coordination and consent of his chain of command, used his authority as a supervisor to place checks on Mr. Gibson's activities. (Exhibit 7, page 2, question 6).

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When asked, "If you stopped the assessments, testing and surveys, under what authority did you do this?" LTC [REDACTED] responded, "Assessments were never stopped, nor were surveys. Arbitrarily performing IAQ (indoor air quality) testing was until assessment was performed by Mr. Gibson and he determined IAQ was needed. Then with approval from his first line supervisor or me, he was allowed to perform the test." (Exhibit 12, addendum). Thus, Mr. Gibson was never stopped from performing assessments, only IAQ studies. And these were allowed with permission from his supervision on a case-by-case basis.

Additionally, IAQ is not a health issue; it is a comfort issue. Yes, it is within the purview of the industrial hygiene discipline to perform such studies, but it is of lower priority than hazards that may actually have an adverse impact on human health.

Also, Mr. Gibson's definition of "life safety" seems to differ from the generally accepted understanding. "Life Safety" is generally recognized as pertaining to hazards that are immediately dangerous to life and health, such as fire or electrocution. The practice of industrial hygiene rarely encounters such, and none of Mr. Gibson's examples cited in his matrix meet the generally accepted definition. For example, broken light bulbs and ergonomic issues certainly do not.

Furthermore, COL [REDACTED] states when Mr. Gibson's results and testing proved to be inaccurate, she could not allow him to continue to perform independently. "Prior to this Mr. Gibson would determine what testing that he needed to do and when, with no prior approval from the Command. This was discovered with his increased budget expenditures for testing that were later found not to be required. I could not allow him to continue to operate with autonomy and without supervision until we could establish his technical proficiencies and understanding of IH procedures and standards." (Exhibit 9, page 3, question 6). LTC [REDACTED] further responds, "Assessments were never stopped nor were surveys. Arbitrarily performing IAQ testing was stopped until assessment was performed by Mr. Gibson and he determined IAQ was needed. Then with approval from his first line supervisor (LT [REDACTED]) or me, he was allowed to perform the test." (Exhibit 12, page 2, paragraph 7).

The Civilian Personnel Advisory Center (CPAC) Management-Employee Relations representative's (Ms. [REDACTED]) answer to question 8 in her statement confirms that this was an appropriate action and within the purview of a supervisor. She states, "The supervisor has overall responsibility for the effectiveness of their organization. Accordingly, the supervisor may decide which duties and responsibilities within the employee's official position description are to be assigned and to determined how such work is to be performed. Mr. Gibson was directed not to perform duties related to testing without prior supervisory approval. Such direction would be appropriate in cases where Management had

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appropriate mission-related reason, e.g., noted performance deficiencies." (Exhibit 4, page 2, question 8).

Prior to issuing the memorandum "The change in protocol was vetted through the Fort Leavenworth Civilian Personnel Advisory Center (CPAC) and the JAG office before presentation to Mr. Gibson." (Exhibit 7, page 2, question 7).

Mr. Gibson states, "On 14 March 2007, Management provided additional IPS requirements to Karl Gibson. Management added the following duties to the 8 January 2007 requirements: 1) maintain IH Work Log; 2) Submit leave; 3) Dispatch vehicle from TMP; and 4) Compress report files, so they would not exceed 3 MB. These new duties assigned by Management kept me busy and limited the amount of time that I normally had to perform IH surveys and other IH program requirements." (Exhibit 19, Sub-Exhibit KG18).

LT [REDACTED] and Mr. [REDACTED] stated that the IH work log was necessary because there was no mechanism tracking the progress or completion of IH tasks prior to 14 March 2007. Dispatch of the vehicle was necessary to conduct normal weekly operations. The compressing of files was necessitated by overloading of LT [REDACTED]'s e-mail system when Mr. Gibson transmitted documents to him for review. All of these tasks are considered routine and fall within the duties normally expected of an installation industrial hygienist.

LT [REDACTED] stated, "For the 2008 rating period, which began on 1 Nov 2007, Mr. Gibson was presented with new Individual Performance Standards (IPS) explicitly instructing him to perform Industrial Hygiene (IH) hazard assessment surveys on the buildings maintained on Fort Leavenworth. He was also required to seek supervisory approval before any IAQ or occupational exposure testing was performed." (Exhibit 7, page 1, question 3). LT [REDACTED] and Mr. [REDACTED] statements indicate that Mr. Gibson was given responsibilities related to the practice of industrial hygiene by an Army installation industrial hygienist. In short, he was expected to perform his duties. A copy of the IPS is contained in Exhibit 8 and details Mr. Gibson's duties. The IPS indicates that Management attempted to increase his proficiency and technical capabilities. Mr. [REDACTED] summarized the expectation and assistance when he stated, "Everyone involved who attempted to provide Mr. Gibson guidance, support, assistance, mentoring, counseling, education was rejected out-of-hand by Mr. Gibson. The actions taken were appropriate and I do not see an alternative." (Exhibit 1, page 8, question 12).

Abuse of authority. Mr. [REDACTED], Legal Counsel, Office of the Chief Counsel, U.S. Army Center for Health Promotion and Preventive Medicine, characterized "abuse of authority": "Abuse of authority is defined as it relates to personnel. It is an arbitrary or capricious exercise of power by a military member

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or a federal official or employee that adversely affects the rights of any person or that result in personal gain or advantage to them."

In her statement, Ms. [REDACTED] the CPAC Management Employee Relations representative, provided an overview of her involvement in Mr. Gibson's performance and conduct over the last three years. Her answer to question 2 demonstrates that LT [REDACTED] and the MAHC staff worked through the prescribed personnel process to in order to correct weaknesses in Mr. Gibson's performance. When asked about the corrective actions, such as the deferment of testing, and performance improvement plan for Mr. Gibson, she stated, "It is my opinion that LT [REDACTED] and LTC [REDACTED] sought CPAC and legal guidance and followed appropriate procedures to address Mr. Gibson's performance and to effect discipline. Although both routinely conferred with me to ensure regulatory compliance of actions, I relied on the technical expertise within MAHC, including Mr. Bentley, with regard to IH regulations/procedures." (Exhibit 4, page 2, question 3).

When Ms. [REDACTED] was asked about restricting an employee's abilities to perform their duties, she states, "The supervisor has overall responsibility for the effectiveness of their organization. Accordingly, the supervisor may decide which duties and responsibilities within the employee's official position description are to be assigned and to determine how such work is to be performed." In Mr. Gibson's case, his chain of command realized that more oversight of his technical activities, including testing, was required, based on an outside review of his work.

The actions of LT [REDACTED] and LTC [REDACTED] in ordering the deferment of sampling and testing were neither arbitrary nor capricious. Furthermore, Mr. Gibson was encouraged to continue to run and manage the IH program. As a government employee subject to the rules and regulation stipulated by Title 5, he was afforded the appropriate rights intended by the regulations. He was given numerous counseling statements, which objectively discussed positive and negative aspects of his performance. LT [REDACTED] and LTC [REDACTED] attempted to work with Mr. Gibson to increase his proficiency. When his performance did not meet the expected standards, Mr. Gibson was provided with a Performance Improvement Plan. I could find no indication of an unwarranted exercise of power that affected his rights or resulted in personal gain.

b) CONCLUSIONS: I conclude that Mr. Gibson was not ordered to stop all industrial hygiene assessments, testing and surveys. He was given specific direction as to the procedures he needed to follow in order to conduct testing and assessments. There was no evidence to demonstrate that Mr. Gibson was given additional responsibilities outside of those expected of an installation industrial hygienist and documented in his IPS. Given Mr. Gibson's identified weakness, his supervisors exercised the appropriate level of

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supervisory authority in the restriction of his sampling and assessments. LT [REDACTED] and LTC [REDACTED] acted within their supervisory responsibilities and did not abuse their authority.

2) *Did, in February 2008, 1LT [REDACTED] and LTC [REDACTED] order Mr. Gibson to conduct industrial hygiene "walk-thrus" of 18 of Fort Leavenworth's 295 buildings? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]?*

a) FINDINGS: There were actually 26 work areas or shops in 18 buildings that formed the basis of the IH Priority Project List (Exhibit 19, Sub-Exhibit KG4). The e-mail message to which Mr. Gibson refers does not constitute an order. It appears to be a prioritization of projects for Mr. Gibson to focus on for his hazard assessment surveys.

The development of the IH Priority Project List is a key indicator of the issues the MAHC staff faced in terms of administering the IH program and Mr. Gibson's performance. Since July of 2007, Mr. [REDACTED] worked with Mr. Gibson and the Command to improve the IH program. A Performance Improvement Plan (PIP) was recommended by Mr. [REDACTED] based on his staff assistance visit of July and Aug 2007 (Exhibit 2, page 5, paragraph 3.f). In September 2007, LT [REDACTED] and Mr. [REDACTED] were in the process of issuing a PIP when Mr. Gibson announced that the reports reviewed by Mr. [REDACTED] "were not his original documents." He further explained, "Management changed my original findings". Mr. [REDACTED] stated, "During my visit, I spent several days with Mr. Gibson going over the reports in detail, at no time during those discussions did Mr. Gibson indicate that the reports had been altered and/or modified." (Exhibit 1, page 9, question 14). The investigation into the original documents delayed, and in some cases cancelled, the MAHC staff's actions (e.g., implementation of the PIP, USACHPPM staff assistance visit, and training). As a result, the PIP was not implemented until Jan 2008.

LT [REDACTED] response to question 9 clarifies the context of the "walk-thrus". "After Mr. Gibson's presentation with new IPS in Jan 2008, he stopped performing IH workplace hazard assessments because he contended that he did not understand what Management was asking him to do. Seeing that the IH Program was falling behind on its work, a priority list of 25 buildings was developed from IH assessments that needed to be redone and customer service requests that had come up. This priority list was given to Mr. Gibson in Feb 08 as a kind of 'To-Do' list to get him moving on the IH assessments that he was supposed to be performing as the Fort Leavenworth Industrial Hygienist. When the list was complete, he was to move on to whatever building would be next in line for an IH assessment to ultimately continue working his way through the buildings on Fort Leavenworth." (Exhibit 7, page 2, question 9). When LTC [REDACTED] was asked, "Why were 18 of Fort Leavenworth's 295 buildings selected for a walk thru?", she responded, logically, "...this refers to the Priority list Mr.

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Gibson was responsible for putting together, to determine which buildings needed to have an IH assessment done.”

Mr. Gibson's refusal to conduct the IH assessments and the need for the priority list is also documented in Mr. [REDACTED] statement. "Command wished to close the loop and get the original 32 reports submitted between April 2007 and July 2007 approved and distributed (to the building occupants and Management). Mr. Gibson flat out refused to perform the assigned tasks..." (Exhibit 1, page 9, question 14).

Mr. [REDACTED] and LT [REDACTED] developed the list as they "collectively looked through the list of 32 shops, deleted those buildings that had already been validated, and prioritized the remaining group based on anticipated health severity/potential risk. The Disciplinary Barracks (DB) in its entirety was deleted from the inventory based on correspondence between the Deputy Commander (Mr. [REDACTED]); COL [REDACTED], MAHC Commander, COL [REDACTED], Garrison Commander, and LTC [REDACTED]. My staff and I completed many of the required surveys in the interim – the DB was removed from Mr. Gibson's workload (this is probably the largest and most complex work area to assess at Ft Leavenworth)." (Exhibit 1, page 9, question 14).

The MAHC Management expected hazard assessment surveys to be conducted as part of Mr. Gibson's duties. LTC [REDACTED] confirmed this: "As the IH, Mr. Gibson's responsibilities consist of worksite visits/evaluations which are to be conducted on an annual basis. Additional worksite evaluations are conducted as operations change. At a minimum, these evaluations should include hazardous material identification, type of engineering controls, type of PPE required, and posting of appropriate signs needed...and other responsibilities as defined in TB MED 503." (Exhibit 12, page 1, paragraph 1). COL [REDACTED] further verified this in her statement. "...it is Mr. Gibson's job to perform annual to triennial industrial hygiene surveys. It is my understanding from the subject matter experts that the basic survey is a walk through; that, cross referenced with Occupational Health and Safety data, serves as the decision making matrix for any instrumented testing." (Exhibit 10, page 3, question 10).

Mr. Gibson's sworn statement contends that the buildings selected by LT [REDACTED] were low risk buildings (Exhibit 19, page 18, question 12). While LT [REDACTED] states that most of the risks at Fort Leavenworth were "relatively low" (Exhibit 7, page 3, question 11), review of his priority list shows a heavy mix of industrial work places and buildings where chemicals are used. LT [REDACTED], as Mr. Gibson's supervisor, developed the list based on the criteria he felt were necessary to get the IH program back on track. Mr. Gibson also erroneously states that OSHA 29 CFR 1910.1000 requires surveys "by an industrial hygienist annually". As previously discussed, this regulation only requires annual surveys by qualified occupational health and safety personnel. Mr. Gibson also states that

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he brought the high hazard risk assessment to LT [REDACTED] and LTC [REDACTED] attention; however, he did not provide any correspondence to validate this point. This is essentially because there were no high risk areas on Fort Leavenworth. As LT [REDACTED] states on page 3 of his statement, in response to question 11, "On Fort Leavenworth there are primarily office spaces with very few hazards." He goes on to describe the wall-to-wall OSHA inspection in 2008 where no uncontrolled hazards were found.

See paragraph 2.b.1, above, which defines abuse of authority. LT [REDACTED] development of the IH project Priority List and the inspections, assessment and surveys associated with it were neither arbitrary nor capricious. They were intended to focus that Mr. Gibson's activities on the workplaces that required the most immediate attention.

b) CONCLUSIONS: I conclude that LT [REDACTED] was exercising his supervisory responsibilities when he established priorities for the hazard assessment surveys for an employee who was unwilling to execute his job-related duties. LT [REDACTED] and LTC [REDACTED] acted within their supervisory responsibilities and did not abuse their authority.

3) *Were these "walk-thrus" (as described in paragraph b.2), above, unreasonably limited in scope by 1LT [REDACTED] and LTC [REDACTED] by restricting Mr. Gibson to ask only seven questions of the occupants of each of the 18 buildings? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]?*

a) FINDINGS: See the findings in paragraph 2.b.2, above, for detail surrounding "walk-thrus". LT [REDACTED] statement places the "walk-thrus" in the context of the IH program. "The term 'walk-thru' refers to Mr. Gibson's performance of the workplace hazard assessments of the buildings and operations on Fort Leavenworth. In many cases, since most workplaces on Fort Leavenworth are strictly office spaces, the assessments were akin to 'walk-thrus' because they did not require sampling/testing. Nevertheless, Mr. Gibson was required by his IPS to perform IH hazard assessment surveys on the buildings on Fort Leavenworth. The 'seven questions' to which Mr. Gibson refers are the seven points listed in Mr. Gibson's IPS as required in an IH survey (taken directly from DA PAM 40-503). However, the paragraph that precedes these seven points states that the surveys are to 'include but are not limited to' these seven points. In addition, the seventh point states that Mr. Gibson is to 'perform all tasks and procedures inherent and fundamental to an appropriate IH assessment of a given operation.'" (Exhibit 7, page 3, question 9).

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LT [REDACTED] and Mr. Gibson's statements differ on the source of the seven questions; however, the questions cover the majority of the element of an IH survey on Mr. Gibson's IPS. The IPS appears to contain enough specific information that an industrial hygienist with 17 years of experience could determine what was necessary to complete the survey and input the information into the Defense Occupational and Environmental Health Readiness System-Industrial Hygiene (DOEHRS-IH) system. Mr. Gibson did not provide any substantive documentation to validate the allegations of limited scope for the surveys.

Similar to his other answers, Mr. Gibson asserts that he questioned LT [REDACTED] and LTC [REDACTED] but received no answer. LT [REDACTED] stated, "by 2008, the relationship between Mr. Gibson and myself, his first line supervisor, was such that every work related interaction necessitated some kind of paper-trail." (Exhibit 7, page 5, question 16). Furthermore, Ms. [REDACTED] stated that "In response to Mr. Gibson's request for clarification of what he was to do, it became necessary to provide detailed instruction. I ultimately advised LT [REDACTED] that it appeared to me that his guidance had become more detailed than that normally expected." (Exhibit 4, page 2, question 5). Given the preponderance of the documentation surrounding Mr. Gibson's activities, it seems reasonable that if this conversation took place it would be documented. Mr. Gibson did not provide any documentation that the conversation took place. Mr. Gibson also mentions being given verbal directive by LT [REDACTED]. Once again, no documentation was provided to substantiate the allegation.

Mr. [REDACTED] who accompanied Mr. Gibson on some of the surveys, states unequivocally that the "walk-thrus" were not limited in scope. "Based on my original assessment, it was determined that Mr. Gibson was doing nothing more than collecting an enormous amount of environmental samples. The IH Program at Fort Leavenworth lacked structure and purpose. The assessment process was misdirected and required updating." (Exhibit 1, page 9, question 15).

When conducting the work place assistance visits or "walk-thrus" with Mr. Gibson, Mr. [REDACTED] took the opportunity to observe his techniques and his interaction with the customers. He provided the following assessment: "Mr. Gibson rarely had direct conversation with Management officials and asked few questions of the workforce. We walk-through each area and I asked him to identify potential health and safety hazards – which he did with some competency. The problem is – that when he went to apply what he saw to the IHIP (Industrial Hygiene Implementation Plan) – he was unable to determine the level of risk – everything was a PRIORITY 1. Mr. Gibson is unable to differentiate between levels of risk." (Exhibit 1, page 10, question 17). A critical component of an industrial hygiene program is the identification of potential hazards in the work place by conducting surveys or assessments. Interaction with the

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customers is one of the classic methods of identifying hazards and concerns. Mr. Gibson's actions, as observed by Mr. [REDACTED], appear to be self-limiting in scope rather than Management-directed.

b) CONCLUSIONS: I conclude that it was not unreasonable to expect Mr. Gibson to conduct assessments and surveys. The scope of the surveys appears to have been limited by Mr. Gibson rather than by Management. The allegation of a verbal directive is highly suspect given the volume of documentation provided by both Mr. Gibson and MAHC officials. LT [REDACTED] and LTC [REDACTED] acted within their supervisory responsibilities and did not abuse their authority.

4) *If, after conducting a walk-thru, Mr. Gibson had reason to suspect the existence of an industrial hygiene issue was he authorized to conduct an assessment of the building, but was that assessment unreasonably limited in scope by 1LT [REDACTED] and LTC [REDACTED] by restricting Mr. Gibson to "spot testing" for industrial hygiene threats but prohibiting time weighted measurements? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]?*

a) FINDINGS: LT [REDACTED] states: "Mr. Gibson was to perform workplace hazard assessments by 'perform(ing) all tasks and procedures inherent and fundamental to an appropriate IH assessment of a given operation.' This included taking direct-read measurements or 'spot testing' (parameters such as temperature, relative humidity, individual compounds, etc.) to assist him in his assessment of a workplace and aid in the determination of whether or not additional testing, such as time weighted measurements, would be appropriate." (Exhibit 7, page 4, question 12).

Mr. [REDACTED] statement clarifies the purpose of spot testing. "When conducting a baseline audit, direct reading measurements (e.g., SLM, temperature, relative humidity, CO₂) can provide the surveyor with a 'snapshot' of what is going on in the work environment. Based on the findings and professional judgment, the surveyor can then determine if additional sampling is required to evaluate the full extent if [sic] the hazard. This should be included along with workplace observations and employee interviews. Again, our goal was to help Mr. Gibson accurately identify potential safety and health hazards to be included in the IHIP in support of the overall IH Program." (Exhibit 1, page 11, question 20).

In Exhibit 1, page 10, question 18, Mr. [REDACTED] refutes the allegation that the scope of the walk-thrus was unreasonably limited: "At no time did LT [REDACTED] or LTC [REDACTED] place restrictions or limitations on Mr. Gibson that would

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interfere in the performance of his duties as the Industrial Hygienist at Fort Leavenworth, KS. Management provided Mr. Gibson every opportunity to improve and meet his job performance expectations. The purpose of the 'spot testing' was to help Mr. Gibson in his characterization of potential safety and health risks in the work area. Once an accurate assessment had been made, Mr. Gibson was to provide the supervisor with a proposed sampling strategy for that specific work process. This would eliminate much of the unnecessary sampling being conducted by Mr. Gibson as part of his routine assessment protocol."

Mr. Gibson also cites an alleged incident in the Provost Marshal's Office Building involving a "sewer smell" as an example of what he was not allowed to do: "...I was not allowed to do chemical testing beyond grab samples when the employees/soldiers were present." (Exhibit 19, page 22, paragraph 19). LTC [REDACTED] response: "If I recall correctly the incident with the Provost Marshall building, occupants were complaining of a foul smell. Lt [REDACTED] and Mr. Gibson both went over to the building to assess the situation. It was on the guidance of LT [REDACTED] that the occupants be removed until the odor could be located and the problem fixed. I believe the problem was found to be stockings of some sort which was stuck in the drain and was causing a back up which lead to the foul smell. The problem was remedied with the removing of the blockage." (Exhibit 12, addendum). When a problem can be alleviated by a simple response action, there is generally no need to conduct "chemical testing".

LT [REDACTED] recalls this incident in greater detail, refuting Mr. Gibson's claim that he "was not allowed to do chemical testing beyond grab samples...": "Yes, I am aware of this incident. Basically, the people in the Provost Marshal's Office (PMO) were getting a nasty sewage smell in the mornings and we were called in to take some measurements to see if there were any health hazards associated with the smell. Mr. Gibson tested for a gamut of compounds - some that offered immediate results and others which were sent away for analysis - on three different occasions; the first two being in the morning when the complaints were being logged, and the third time over a weekend when we expected the smell had the chance to accumulate due to office inactivity.

"On all three occasions, I relayed the measurements that Mr. Gibson took at the PMO to Mr. [REDACTED], of the Department of Public Works (DPW), so that DPW would have instantaneous feedback from our measurements and could take appropriate action. The first two occasions did not evince any health hazards within the scope of the tests performed, and the third occasion (over the weekend) recorded some hazards that would have endangered workplace occupants, but because it was the weekend no personnel were exposed. Those hazards were easily mitigated before office occupation the next official workday.

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"There were reports produced by Mr. Gibson for all three visits, with his results tabulated for record. However, we (Management) were still having trouble with Mr. Gibson and his ability or willingness to produce the quality IH reports... and the last I heard about the reports in question... they were still being edited for distribution." (Exhibit 7, addendum).

Mr. Gibson also cites an alleged incident involving a worker collapsing and being transported to a hospital, due to formaldehyde off gassing from newly-installed carpet, on 14 June 2008. (Exhibit 19, page 23, paragraph 19). I contacted the Fort Leavenworth Safety Director, Ms. [REDACTED]. She has no record of any such event, neither in her OSHA 300 log, which tracks occupational injuries and illnesses, nor in her Workers' Compensation records. (Exhibit 25). To confirm that no Workers' Compensation claim had been filed, I also contacted Ms. [REDACTED], the Fort Leavenworth Civilian Personnel Advisory Center (CPAC) Director, who would certainly have a record of any incident in which a Fort Leavenworth worker was transported to a hospital by ambulance. Ms. [REDACTED] similarly was not able to find a record of any such incident. (Exhibit 26). I conclude from this information that the alleged incident, at least as described by Mr. Gibson, never occurred.

b) CONCLUSIONS: Mr Gibson was not unreasonably limited in scope. Since Mr. Gibson was not unreasonably limited, no associated abuse of authority took place.

5) Are time weighted measurements an essential part of any properly conducted industrial hygiene program?

a) FINDINGS: Mr. [REDACTED] "The TWA (time-weighted average) represents the employee exposure to any substance during any 8-hour work shift of a 40-hour work week which shall not be exceeded. It is dependent on the nature of substance, the intensity/concentration, duration (time) and individual susceptibility. It is important, however, that the TWA be calculated correctly and the measurement is applied to the appropriate OSHA standard. We are looking at work-related occupational exposures." (Exhibit 1, page 11, question 21).

Time-weighted measurements are an essential tool to determine exposure if the measurements are performed properly using a scientifically valid methodology. On two different occasions in his statement, Mr. [REDACTED] provided specific examples of time weighted measurements taken by Mr. Gibson that were grossly above normal, as much as 5 to 10 times the values of the actual field data. These two instances involved the carbon dioxide testing in Building 136 (Exhibit 1, page 4, question 1) and the Sherman Air Field Hangar inorganic lead samples (Exhibit

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1, page 12, question 28). Mr. Gibson's ability to collect, analyze, and interpret results accurately were suspect, based on these occasions and the results of Mr. Gibson's previous surveys.

Mr. Gibson's cites DA PAM 40-503 as the basis for conducting TWA measurements (Exhibit 19, page 22, question 18). The DA PAM does not state that TWA measurements will be collected in every work place; rather, it lays out the guidance for collecting measurements, analyzing them, making sure that they are statically valid, and comparing them to applicable standards. A qualified industrial hygienist and his/her chain of command are responsible for determining where and when to collect TWA measurements. Based on the Command's concerns about Mr. Gibson's technical capabilities, it is unlikely that he was considered qualified to perform these duties as an industrial hygienist.

b) CONCLUSIONS: Mr. Gibson's insistence on conducting time-weighted testing for every hazard and/or every complaint is not in accordance with best management practices of industrial hygiene. Time-weighted testing should absolutely be conducted if the hazard and the circumstances warrant it, and the conditions at Fort Leavenworth do occasionally warrant this level of testing. However, excessive time-weighted testing when it is not warranted wastes valuable resources. When it was found to be necessary by Management, time-weighted testing was performed at Fort Leavenworth either by Mr. Gibson or by independent third parties. Once again, LT [REDACTED] and LTC [REDACTED] acted within their supervisory responsibilities and did not abuse their authority.

6) *Did, in October, 2008, 1LT [REDACTED] and LTC [REDACTED] permit Mr. Gibson to follow the Corps of Engineers' approach to inspecting buildings but still prohibit him from performing time weighted testing without first receiving prior supervisory approval? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]?*

a) FINDINGS: Management had lost confidence in Mr. Gibson's abilities to perform hazard recognition, sampling, and risk assessment correctly. The Command assessed Mr. Gibson's industrial hygiene strengths and weaknesses by having Mr. [REDACTED] review 32 reports Mr. Gibson had produced. Mr. [REDACTED] also observed Mr. Gibson's technical capabilities in the field. Based on Mr. [REDACTED] assessment (Exhibit 2, page 6, paragraph 4a), Mr. Gibson was counseled by LT [REDACTED] on his strengths and weaknesses and a Performance Improvement Plan (PIP) was developed. Before and after the report review and staff assessment visits, Mr. Gibson was given the opportunity to work with Mr. [REDACTED] other Great Plains Regional Medical Center Industrial Hygienists, and Mr.

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██████████ a Certified Industrial Hygienist with the Army Corps of Engineers' Kansas City District, in order to improve his technical capabilities and for mentoring. The Corps of Engineers' role was to provide field oversight of building assessments, walk-thrus, and/or inspections, as well as technical oversight during sampling (Exhibit 13, page 1, paragraph 1). In that capacity, the Corps of Engineers and Mr. Gibson conducted a survey of Building 77, Defense Automated Printing Service, that began in October 2008.

Mr. Gibson's statement explains the circumstances associated with his resurveying of Building 77 (Exhibit 19, page 23, question 20, paragraph 3). Mr. Gibson's statement and LT ██████████ statement confirm that Mr. Gibson was required to get LT ██████████ approval prior to conducting the testing. In the answer to question 14 of LT ██████████ statement, he explains, "Mr. Gibson still required supervisory approval to perform time weighted testing because it was still part of his IPS and he had yet to display an understanding of the appropriate use of time weighted testing." (Exhibit 7, page 4, question 14). This assessment was also confirmed by COL ██████████ when she stated "At the end of the FY08, the ACOE (Army Corps of Engineers) felt that Mr. Gibson was competent in basic instrumented testing but that he still required supervision, and that he was not yet competent in higher level analysis of that data, nor of basic risk communication back to the community." (Exhibit 10, page 3, question 12).

In the answer to question 19 of his statement, LT ██████████ further stated that the Corps of Engineers agreed that time-weighted testing should not automatically be performed for every workplace or operation (Exhibit 7, page 6, question 19). Based on the Civilian Personnel Advisory Center representative's statement (Exhibit 4, page 2, question 6), these procedures are reasonable and in line with a supervisor's responsibility and authority: "From my knowledge of actions taken, LT ██████████ was within his authority as a supervisor to assign work, to limit performance of certain duties, and to measure workplace performance."

b) CONCLUSIONS: I conclude that Mr. Gibson was permitted to follow the Corps of Engineers' approach to inspecting buildings and still prohibited from performing time weighted testing without first receiving prior supervisory approval; however, these circumstances do not constitute an abuse of authority by LTC ██████████ or LT ██████████. See the abuse of authority discussion, above (paragraph 2.a.2).

7) *Was it reasonable for 1LT ██████████ and LTC ██████████ to require Mr. Gibson, the only Certified Industrial Hygienist at Fort Leavenworth, to obtain permission from his supervisors before performing time weighted testing on buildings?*

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a) FINDINGS: Mr. Gibson is an industrial hygienist; however, he is not certified by the American Board of Industrial Hygiene, the profession's accrediting body (Exhibit 20, search of American Board of Industrial Hygiene database for Certified Industrial Hygienists named "Gibson"). He has been assigned as an industrial hygienist at Fort Leavenworth since 1990. Mr. Gibson has attended a number of USACHPPM-sponsored industrial hygiene short courses and maintains Kansas state licensure in lead and asbestos abatement (Exhibit 2, page 1, para 2.a).

Mr. Gibson accurately states that Federal Law requires Federal agencies to provide a safe and healthful environment. His statement also cites DA PAM 40-503, Industrial Hygiene Program, paragraph 4-8, concerning the importance of health hazard evaluations and assessments as they apply to identifying, evaluating, and controlling potential occupational health hazards using both qualitative and quantitative data. In his review of the MAHC industrial hygiene program, Mr. [REDACTED] did not find a logical structure of documentation that would rank the possible hazards and determine way to mitigate them. Mr. [REDACTED] states unequivocally that the "walk-thrus" were not limited in scope. Based on his "original assessment, it was determined that Mr. Gibson was doing nothing more than collecting an enormous amount of environmental samples. The IH Program at Ft Leavenworth lacked structure and purpose. The assessment process was misdirected and required updating." (Exhibit 1, question 9, page 15).

Mr. [REDACTED] conducted a Management Staff Assistance Visit on 15 – 20 July 2007 to investigate issues and concerns expressed by the Munson Army Health Center's Commander, COL [REDACTED] (Exhibit 2). Mr. [REDACTED] found that "Mr. Gibson provided inaccurate and misleading information to customers. During the period July 2006 through July 2007, Mr. Gibson's assertions have had significant operational and economic ramifications. In addition, his actions have negatively impacted the professional reputation of this Command. There is evidence to support allegation that Mr. Gibson has produced (1) false or misleading statements; (2) concealment of that which should be disclosed." (Exhibit 2, page 4, para 3.a).

LT [REDACTED] contends that requiring Mr. Gibson to obtain permission from his supervisors before performing time weighted testing "...was reasonable, based on Mr. Gibson's inability to display that he understood the appropriate use of time weighted testing." (Exhibit 7, page 4 question 15). Furthermore, COL [REDACTED], in her sworn statement, agreed, based on Mr. Gibson's past performance, that it was reasonable to require him to obtain permission prior to conducting such testing (Exhibit 9, page 5, question 12).

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In Mr. Gibson's answer to question 22 concerning obtaining prior approval to conduct testing, he admits that it is not unreasonable to require the IHPM (Industrial Hygiene Program Manager) to obtain prior approval conducting IH testing (Exhibit 19, page 26, question 22). He then further asserts that he was prohibited from conducting this testing. Paragraph 2.b.1, above, addresses the restriction of testing and demonstrates that Mr. Gibson was not prohibited from testing.

b) CONCLUSIONS: Mr. Gibson is correct that Federal Law requires federal agencies to provide a safe and healthy environment. However, he is incorrect in assuming this statement extends to the determination of when and how time-weighted testing should be performed. The execution of the Munson Industrial Hygiene Program fell under the purview of the Chief of Preventive Medicine (LTC [REDACTED]) and the Environmental Science Officer (LT [REDACTED]). Therefore, I conclude that it was clearly reasonable and within LTC [REDACTED] and LT [REDACTED] authority to determine when time-weighted testing should be performed, especially given the Commander's concerns about Mr. Gibson's inaccurate, flawed, and potentially manipulated results. LTC [REDACTED] and LT [REDACTED] acted in a reasonable and responsible manner.

8) *During 2008 were 1LT [REDACTED] and LTC [REDACTED] arbitrary in denying 39 of Mr. Gibson's 40 requests to conduct time weighted measurements testing on buildings without an explanation?*

a) FINDINGS: Unfortunately, Mr. Gibson was mistakenly not asked this question for his original sworn statement (Exhibit 19). Repeated requests by FONECON and email (on 1, 2, 6, 8, 13, and 14 July) for Mr. Gibson to meet with the investigating officer and/or provide a sworn statement regarding this question were unsuccessful (Exhibit 24 is an example of an electronic mail attempt). Below are the findings based on the statements of other witnesses.

Both LT [REDACTED] and LTC [REDACTED] refuted the allegation that 40 requests for time-weighted sampling were arbitrarily denied. LTC [REDACTED] when asked if she arbitrarily denied 39 of Mr. Gibson's 40 requests to conduct time weighted measurements testing on buildings without an explanation, replied, "No – time weighted averages did not need to be done at all buildings." (Exhibit 12, page 3, question 17).

LT [REDACTED] states that he did "not know where these statistics are from, but I can attest that Mr. Gibson was only given permission to perform time

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weighted measurement testing once during 2008. This was because of a combination of reasons.

"First, Mr. Gibson spent the greater part of 2008 refusing to perform IH surveys under the guise of not understanding his IPS.

"Second, the workplace assessments that were actually performed were generally of office spaces and did not require further testing.

"Third, if there were instances where Mr. Gibson felt that additional sampling/testing was required, he did not request it. He was the IH Program Manager and would've been the one to request this.

"Unfortunately, by 2008, the relationship between Mr. Gibson and myself, his first line supervisor, was such that every work-related interaction necessitated some kind of paper trail (sometimes a hard copy, others just email). A review of all paper trails and email traffic from Mr. Gibson during 2008 shows that not one request for time weighted measurements was submitted, and furthermore, the one time that he was permitted to perform the testing, the request was submitted directly to Management by the Safety department of the customer's office and not Mr. Gibson." (Exhibit 7, page 5, question 16).

b) CONCLUSIONS: I conclude that LTC [REDACTED] and LT [REDACTED] were not arbitrary in denying requests to conduct time weighted sampling; rather, they appropriately prioritized limited resources so that they would be most effectively and efficiently utilized.

c. Whether or not adequate industrial hygiene assessment and testing has not occurred at Fort Leavenworth, Kansas, in violation of law, rule, and regulation.

1) *Did, in August 2008, the Army Corps of Engineers object to 1LT [REDACTED] and LTC [REDACTED] two step (walk-thru followed by assessment) approach?*

a) FINDINGS: Mr. [REDACTED], Certified Industrial Hygienist, ACOE, clearly states: "In the absence of a comprehensive hazard inventory for the Fort, the facility inspection process was deemed an effective and timely means to verify and compile identified hazards into the required inventory. Therefore, the Corps of Engineers did not object to LT [REDACTED] and LTC [REDACTED] approach." (Exhibit 6, page 1, question 15).

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b) CONCLUSIONS: The Corps of Engineers did not object to 1LT [REDACTED] and LTC [REDACTED] two step (walk-thru followed by assessment) approach.

2) Did Corps of Engineer officials determine that the walk-thru alone was of minimal value and that the walk-thru and assessment steps should be combined?

a) FINDINGS: Mr. [REDACTED], the Certified Industrial Hygienist that assisted Mr. Gibson, LT [REDACTED], and LTC [REDACTED] by providing outside observations of the Fort Leavenworth Industrial Hygiene Program, did not determine that the walk-thrus were of minimal value. Mr. [REDACTED] recommendation was to complete the facility inspections with a flexible approach primarily based on professional judgment of the industrial hygienist (Exhibit 5, page 3 question 16).

Between 2 Sep 2008 and 23 Dec 2008, Mr. [REDACTED] reviewed 10 of Mr. Gibson's reports. In five of the 10 (50%) he found the following wording: "Measurement does not comply with survey requirements and have limited value." Mr. [REDACTED] recommended that MAHC provide a clarification for the reports since the statement made by Mr. Gibson was incongruous with the reports' intent. Furthermore, Mr. [REDACTED] states, "Significant issues were noted in relationship to identification and application of appropriate occupational standards and interpretation of sampling results." (Exhibit 5, page 2, question 13). In fact, of the 10 reports, every review found that either the exposure guidelines were applied incorrectly or the standards referenced were not appropriate for the occupational health and safety enforcement. (Exhibit 18, pages 1-2, paragraphs 3-5, 7).

b) CONCLUSIONS: Conducting a multi-step approach to assessing work place hazards is consistent with industrial hygiene best practices and appropriate when determining how to utilize limited resources. I find no evidence that Corps of Engineers officials determined that the walk-thru step alone was of minimal value and that the walk-thru and assessment steps should be combined.

3) Did Corps of Engineer officials determine that assessments should include limited measurements of light, noise and, if indoor air quality issues had been raised by the occupants of a building, to conduct carbon monoxide, temperature, humidity and particulate testing?

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a) FINDINGS: LT [REDACTED] presented the context for using limited measurement: "Since Mr. Gibson's judgment and interpretation of risk and hazards in workplaces had previously been found to be lacking, Management required that, if necessary, Mr. Gibson take these direct read measurements to aid in the justification for any occupational exposure testing that Mr. Gibson may recommend." (Exhibit 7, page 7, question 22).

On 22 August 2008 Mr. [REDACTED] accompanied Mr. Gibson while he evaluated Building 77, Fort Leavenworth. The subsequent report, dated 26 August 2008 (Exhibit 22) states, "Mr. [REDACTED]...explained that the purpose of the visit was to observe the facility assessment and provide technical observations. In addition, Mr. [REDACTED], as a professional colleague, is available to provide *unofficial* review and feedback to Mr. Gibson..." (emphasis mine) (Exhibit 22, page 1, paragraph 2). Further, "Mr. Gibson identified the rooms within the building associated with each of the operations. Each room was then visited and real-time monitoring was performed. Real-time monitoring included respirable particulates, noise, light levels, temperature, relative humidity, carbon dioxide." (Exhibit 22, page 1, paragraph 3). Nowhere is it stated nor even implied that it was the Corps of Engineers officials who limited Mr. Gibson to the evaluation of the stated parameters.

In its 26 Aug 2008 report, the Corps of Engineers verified that real-time monitoring of respirable particulates, noise, light levels, temperature, relative humidity, carbon dioxide performed by Mr. Gibson "complied with accepted industrial hygiene practice." (Exhibit 22, page 1, paragraph 4.a). The report correctly observed that there is no known requirement for use of real-time instruments, but they should be used to assist in the determination of hazard severity.

In paragraph 4b of the 26 August 2008 memorandum, the Corps of Engineers noted, "the quantity of real time sampling performed, routine nature, and sole reliance on sampling may not reflect DOD's intention for annual facility inspections (surveys) (DA PAM 40-503 4-4.b). It is our judgment that the preliminary identification of hazards should rely considerably on professional judgment of qualified individuals (DODI 6055.5 6.1.1)." (Exhibit 22, page 1, paragraph 4.b). This paragraph was further clarified in Mr. [REDACTED] answer to question 9 (Exhibit 5, page 4) where he states, "The comment is made in context as a mechanism to improve the existing program and as there is a limited IH resource, prioritize assessment activities. In my opinion, the scope of the inspections is limited (in the Army Standard). It requires that all facilities be inspected; however, in my opinion, does not require that all identified hazards be assessed by industrial hygiene sampling during the facility inspection process. It was recommended that prioritization of assessment of identified hazards be established using hazard inventory that should encompass the entire facility."

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Mr. [REDACTED] provided an answer to the above question in which he states that to his knowledge the Corps of Engineers did not make the determination that assessment should be limited to measurement of light, noise and carbon monoxide, temperature, humidity, and particulate sampling. The Corps of Engineers' "Technical consultation was not provided in relationship to sampling strategies employed. Sampling strategies and protocols were determined by Mr. Gibson without (Corps of Engineers') technical consultation." (Exhibit 5, page 3, question 17).

b) CONCLUSIONS: I conclude that Corps of Engineers officials did not specifically determine that assessments should include limited testing of the parameters cited. They did, however, state in general terms that limited testing can be beneficial to identifying and assessing hazards.

d. Whether or not the actions of LTC [REDACTED] and 1LT [REDACTED] have created the potential for a substantial and specific danger to the public health and safety at Fort Leavenworth, Kansas.

1) Does testing buildings without time weighted measurements render an industrial hygiene program essentially useless and constitute a danger to public health and safety?

a) FINDINGS: Both Certified Industrial Hygienists, Mr. [REDACTED] and Mr. [REDACTED], agreed that time-weighted measurements are an important component of an industrial hygiene program, but there are other sampling techniques and qualitative means of assessing and managing risk (Exhibits 5, page 4, question 19; and 1, page 11, question 21). Mr. [REDACTED] stated it concisely when he said, "Time-weighted sampling is one component of a comprehensive program. Other types of sampling methods are often appropriate, especially to assist in identify potential hazards. Time-weighted sampling is appropriate in the assessment processes, but may not always be required."

Both Mr. [REDACTED] and Mr. [REDACTED] worked with Mr. Gibson and evaluated his technical skills, customer relations abilities, and effectiveness to communicate with the public. Mr. [REDACTED] stated that Mr. Gibson's "primary focus was air sampling. Interaction with employees appeared to be limited and coincided with periods of lower activity in the facilities." (Exhibit 5, page 2, question 10).

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Mr. [REDACTED] rated the hazard severity at Fort Leavenworth as "low – primarily due to abundance of administrative space and the limited amount of light industry (DB, DPW, Pesticide Shop, motor pool, etc)". (Exhibit 1, page 15, questions 40).

Both Certified Industrial Hygienists stated that they were not aware of any "substantial and specific" danger to the public as a result of actions involving the Industrial Hygiene Program. (Exhibits 5, page 3, question 18; and 1, page 14, question 37). Mr. [REDACTED] further elaborates that while health was not affected, "falsified survey reporting resulted in expensive unnecessary remediation."

COL [REDACTED] assesses the adequacy of the IH program as follows: "...for many years adequate IH was not performed. Results were tampered with, skewed, or outright falsified. Workers were frightened through scare tactics, supervisors were circumvented, there was no rationale for the testing performed, and there was no crosswalk with post safety or even Munson Occupational Health." (Exhibit 10, page 4, question 14). The Corps of Engineers' reviews of Mr. Gibson's reports backs this assessment up. Their finding identified a history of using inappropriate standards and questionable sampling techniques in many cases (Exhibit 18, pages 1-2, paragraphs 3-5, 7).

Both Commanders (COLs [REDACTED] and [REDACTED]), whose staffs are responsible for monitoring injury and illness rates, stated that there were no abnormal increases in the clinic's injury, illness, or complaint rates resulting from industrial hygiene-related issues. (Exhibits 9, page 3, question 5; and 10, page 2, question 6). COL [REDACTED] stated, "All of these extra measures required increased man-hours on others and increased resources and funding to support; however, there was no hesitation as no one wanted to compromise the safety and well-being of any employees or patrons by not doing the due diligence to meet IH compliance standards." (Exhibit 9, page 4, question 7). Mr. [REDACTED] also stated that medical surveillance prompted by Mr. Gibson's sampling results for air field hangar revealed no elevated lead levels in employees' blood (Exhibit 1, page 13, question 28).

When confronted with any information indicating a potential health risk, the Munson Commanders worked with the Command and General Staff College and garrison Management to remove individuals from areas that presented a potential health risk (Exhibit 9, page 1).

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b) CONCLUSIONS: Mr. Gibson was overly concerned with conducting time-weighted sampling, which was often unnecessary and expensive. His overemphasis on sampling demonstrates his lack of understanding of the components of a good industrial hygiene program, which uses both qualitative and quantitative information to maintain a safe and healthful work environment. The purpose of an IH Program is to anticipate, recognize, evaluate, and control hazards in the workplace. Properly performed time-weighted measurements are one aspect of the evaluation portion of the program, but the lack of time-weighted measurements does not render an IH program useless, nor does it necessarily present a danger to public health and safety.

2) Does an industrial hygienist have any means of determining the cumulative effect a suspected toxin might have upon the occupants of a building over an extended period of time without time weighted measurements?

a) FINDINGS: Mr. [REDACTED] A toxic effect "...relates to the nature of the substance, the duration/time of exposure, the concentration, and individual susceptibility. An industrial hygienist can quantify an employee's potential exposure over a given period of time and anticipate the long-term effect." (Exhibit 1, page 15, question 39). In Mr. [REDACTED] opinion, "determining cumulative effect of a suspected toxin cannot be effectively assessed due to the nature of the exposure, difference in individuals, exposure histories, and the complex nature of chemical interactions. The industrial hygienist, using a spectrum of sampling along with professional judgment, can assess compliance with established exposure limits at which it is thought the majority of workers can be safely exposed without adverse effect. Time-weighted monitoring is often critical to completing this assessment." (Exhibit 5, page 4, questions 20).

However, time-weighted monitoring is not required for every hazard. Mr. [REDACTED] clarifies that lead and asbestos are the toxins at Fort Leavenworth that require monitoring against compliance exposure limits. The Fort Leavenworth program sampled and monitored for both (Exhibit 5, page 4, question 21).

Industrial hygienists are trained to assess potential exposures using scientifically validated procedures. Analytical results of sampling are compared to widely-accepted occupational exposure values. A competent industrial hygienist understands the difference between a population approach and an individual approach to exposure assessment. Cumulative effects of suspected toxins upon building occupants venture into the individual approach,

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SUBJECT: AR 15-6 Report of Whistleblower Investigation, Fort Leavenworth, Kansas

which contains enormous uncertainty. Most industrial hygienists are unlikely to predict cumulative toxic effects on an individual basis.

b) CONCLUSIONS: I conclude that Munson Army Health Center officials have conducted the necessary hazard assessments and monitoring to address potential exposures to significant health hazards. When conditions warranted, the MAHC Command demonstrated its willingness to take decisive action if hazards were shown to present unhealthful conditions for the workforce. The workforce is better served by the changes that were instituted to eliminate unnecessary testing, misapplication of standards, and inaccurate reporting of work place hazards.

3. Recommendation. Recommend that the actions taken by Mr. Gibson's Command chain be recognized as appropriate and legitimate based upon the findings and conclusions of this investigation.

4. Questions or comments regarding this document should be directed to the undersigned at [REDACTED]@us.army.mil.

[REDACTED]

Certified Industrial Hygienist No. 3086

Certified Safety Professional No. 16096

Investigating Officer



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SOUTHERN REGIONAL MEDICAL COMMAND (PROVISIONAL)
2410 STANLEY ROAD, SUITE 121
FORT SAM HOUSTON, TEXAS 78234-6230

MCSR-JA

8 February 2010

MEMORANDUM FOR Commander, Southern Regional Medical Command (Provisional)
(SRMC(P)), Fort Sam Houston, Texas 78234-6230

SUBJECT: Legal Review – AR 15-6 Report of Whistleblower Investigation, Munson Army
Health Clinic (MAHC), Fort Leavenworth, Kansas

1. Purpose. I reviewed the subject AR 15-6 report of investigation pursuant to AR 15-6
paragraph 2-3b. The report is legally sufficient. I have determined the following:

- a. The proceedings complied with legal requirements.
- b. There were no procedural or substantial errors. Potential errors contained in the report
are harmless errors, having no material adverse effect on any individual's substantial rights.
- c. There is sufficient evidence to support the findings of the Investigating Officer (IO).
- d. The recommendations are consistent and supported by the findings.

2. Investigating Officer Background:

- a. On 22 April 2009, Brigadier General (BG) James Gilman appointed Colonel (COL) [REDACTED] as IO to investigate a Whistleblower Protection Act complaint Mr. Karl Gibson Munson Army Health Clinic (MAHC) Fort Leavenworth, Kansas, filed with the Office of Special Counsel alleging reprisal by his supervisors at MAHC.
- b. On or about 14 May 2009, during a complainant interview, COL [REDACTED] entered into a heated discussion with Mr. Gibson. As a curative measure, on 31 May 2009, the appointing authority (BG Gilman) relieved COL [REDACTED] of his duties as the IO. There were no findings of wrongdoing against either the IO or Mr. Gibson as a result of their encounter. Both parties were asked to provide a statement and each submitted a Memorandum for Record which is included in the Report of Investigation.
- c. On 9 June 2009, BG Joseph Carvalho, Jr, the incoming Commanding General of Great Plains Regional Medical Command (now Southern Regional Medical Command (Provisional)), appointed Mr. [REDACTED], U.S. Army Center for Health Promotion and Preventive Medicine (now Public Health Command), as the substituted IO. Moreover, a new legal advisor

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SUBJECT: Legal Review – AR 15-6 Report of Whistleblower Investigation, Munson Army Health Clinic, Fort Leavenworth, Kansas

to the IO, Mr. [REDACTED] an attorney advisor at Public Health Command, was also appointed.

d. During the course of the second investigation, the new IO, Mr. [REDACTED] offered Mr. Gibson numerous opportunities to provide additional evidence for consideration. Mr. Gibson did not respond and did not provide any additional evidence.

2. Investigative Findings. The IO found no evidence that Mr. Karl Gibson, MAHC's industrial hygienist, was prevented by anyone at MAHC from conducting his duties to standard or that his rights under federal law and regulation were violated. The IO did find the complainant warranted supervision and a comprehensive Performance Improvement Plan (PIP) after he repeatedly failed to perform to standard and the command and supervisors lost confidence in his abilities. The IO did not find that Mr. Gibson's supervisors acted in an arbitrary or capricious manner or that they abused their authority over him. A review of the findings follows.

3. Evidentiary Review.

a. Question 2a 1) Have 1LT [REDACTED] and LTC [REDACTED] redirected time and resources, issued conflicting and constantly changing directives to Mr. Gibson, thereby diminishing Mr. Gibson's authority as Fort Leavenworth's Industrial Hygienist? The evidence supports the IO's finding that neither LTC [REDACTED] nor 1LT [REDACTED] interfered with Mr. Gibson's job performance by changing his duty focus. An interview with a CPAC representative confirms that a supervisor may amend an employee's duties. Moreover, the evidence supports finding that Mr. Gibson refused to perform his duties or performed them in a substandard manner which led to the need to increase supervision of his work to ensure effective management of the industrial hygiene (IH) program at Fort Leavenworth.

b. Question 2a 2) Has Mr. Gibson otherwise been prevented by 1LT [REDACTED] and LTC [REDACTED] from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Fort Leavenworth buildings and facilities for industrial hygiene threats and hazards? The evidence supports finding that greater supervision over Mr. Gibson duty performance did not prevent him from meeting IH compliance requirements. Mr. Gibson was required to obtain approval before performing sampling/testing – he was not directed to not perform sampling or testing. As the regional industrial hygienist, Mr. Scott Bentley stated "...it was determined that Mr. Gibson was doing nothing more than collecting an enormous amount of environmental samples." Ensuring that Mr. Gibson was performing necessary and appropriate testing was to be the objective of the supervision and thereby appropriate.

c. Question 2b 1) Did, in June, 2007, 1LT [REDACTED] and LTC [REDACTED] abruptly order Mr. Gibson to stop all industrial hygiene assessments, testing and surveying and give Mr. Gibson

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alternative responsibilities minimally related to industrial hygiene? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]? The evidence supports the IO's finding that the supervision over Mr. Gibson's activities was appropriate and not an abuse of authority by his chain of command. The nexus between the deficiency in his ability to perform his assessments, test and surveys to standard and the supervision over his activities was appropriate. The evidence shows that Mr. Gibson's chain of command sought guidance from both CPAC and legal counsel to ensure he was accorded due process while supervising his work.

d. Question 2b 2) Did, in February 2008, 1LT [REDACTED] and LTC [REDACTED] order Mr. Gibson to conduct industrial hygiene "walk-thrus" of 18 of Fort Leavenworth's 295 buildings? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]? The evidence supports finding that Mr. Gibson was given a priority tasking list for IH hazard assessments after he stopped performing duties and claimed he did not understand what duties he was expected to perform. The list was compiled only after Mr. Gibson's work stoppage when the IH program fell behind scheduled hazard assessments. Moreover, evidence supports finding that the purpose of the list was to conduct necessary hazard assessments IAW the IH program (and not just force Mr. Gibson to conduct "walk-throughs" of low risk buildings) when certain inspections sites were deleted from the list if a hazard assessment was no longer needed for a site.

e. Question 2b 3) Were these "walk-thrus" unreasonably limited in scope by 1LT [REDACTED] and LTC [REDACTED] by restricting Mr. Gibson to ask only seven questions of the occupants of each of the 18 buildings? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]? The evidence supports the IO's findings that the "walk-thrus" were not limited in scope. The basis of this finding is that by 2008, all guidance to Mr. Gibson was generally reduced to writing and there was not a written directive limiting the scope of the "walk thru." The absence of such written guidance makes the likelihood of a verbal order, not otherwise supported by a preponderance of the evidence, unreasonable.

f. Question 2b 4) If, after conducting a walk-thru, Mr. Gibson had reason to suspect the existence of an industrial hygiene issue was he authorized to conduct an assessment of the building, but was that assessment unreasonably limited in scope by 1LT [REDACTED] and LTC [REDACTED] by restricting Mr. Gibson to "spot testing" for industrial hygiene threats but prohibiting time weighted measurements? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]? The technical evidence the IO collected during the investigation supports finding that spot-testing is an appropriate evaluation tool. Additionally, the evidence supports the IO's finding that the MAHC command would authorize follow-on testing to include time weighted measurements (TWM) when appropriate and that the supervision over the methods Mr. Gibson used was necessary because he was unable to properly prioritize hazards.

g. Question 2b 5) Are TWM an essential part of any properly conducted industrial hygiene program? As noted above, the technical evidence obtained does support finding that

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TWM is an essential tool; however, the experts interviewed also determined that it was not essential to every work place inspection at Fort Leavenworth. Therefore, the IO's finding that LTC [REDACTED] and 1LT [REDACTED] supervision over his work methods was not an abuse of authority is reasonable.

h. Question 2b 6) Did, in October, 2008, 1LT [REDACTED] and LTC [REDACTED] permit Mr. Gibson to follow the Corps of Engineers' (COE) approach to inspecting buildings but still prohibit him from performing time weighted testing without first receiving prior supervisory approval? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]? The evidence supports the IO's finding that Mr. Gibson was permitted to use the COE's approach; and based on COE advice was required to obtain supervisory approval over TWM testing due to his IPS and therefore did not constitute an abuse of authority.

i. Question 2b 7) Was it reasonable for 1LT [REDACTED] and LTC [REDACTED] to require Mr. Gibson, the only Certified Industrial Hygienist at Fort Leavenworth, to obtain permission from his supervisors before performing time weighted testing on buildings? The evidence clearly supports that the supervisors' lack of confidence in Mr. Gibson's technical abilities was the basis for requiring him to obtain permission before conducting weighted testing. The evidence supports finding that there were limited resources and Mr. Gibson was not proficient in evaluating hazards sufficiently to determine on his own whether or not weighted testing was necessary.

j. Question 2b 8) During 2008 were 1LT [REDACTED] and LTC [REDACTED] arbitrary in denying 39 of Mr. Gibson's 40 requests to conduct time weighted measurements testing on buildings without an explanation? The IO did not find evidence that 39 of Mr. Gibson's requests for additional testing were denied. He did find circumstantially (from 1LT [REDACTED] statements) that it was unlikely that Mr. Gibson made those requests because: 1) the places he inspected during 2008 were mostly buildings with office space that did not require the additional testing; 2) Mr. Gibson generally was unable to do inspections in 2008 stating that he did not understand his IPS; and 3) no request at all were made by Mr. Gibson. The one request that was made came from a customer and not Mr. Gibson. Mr. Gibson, while requested by the IO to meet regarding this specific complaint, did not meet with the IO or provide evidence to refute the sworn statements of LTC [REDACTED] and 1LT [REDACTED]. Employing the preponderance of evidence standard, the IO's finding that Mr. Gibson was not arbitrarily denied TWM testing by his supervisors is reasonable.

k. Question 2c 1) Did, in August 2008, the Army Corps of Engineers object to 1LT [REDACTED] and LTC [REDACTED] two step (walk-thru followed by assessment) approach? The Certified Industrial Hygienist from the COE (Mr. [REDACTED]) did not object to the walk-thru followed by assessment approach and found it reasonable in light of the absence of a

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SUBJECT: Legal Review – AR 15-6 Report of Whistleblower Investigation, Munson Army Health Clinic, Fort Leavenworth, Kansas

comprehensive hazard inventory of Fort Leavenworth. The IO's findings are evidence-based and reasonable.

l. Question 2c 2) Did Corps of Engineer officials determine that the walk-thru alone was of minimal value and that the walk-thru and assessment steps should be combined? There was no specific finding made by the COE IH that "walk-thrus" were of minimal value. The COE IH did recommend a flexible approach be used and stated that of review of Mr. Gibson inspection reports uncovered "significant issues" within the reports and that every report incorrectly applied the exposure guidelines. Therefore, the IO's finding that the multi-step approach was appropriate is reasonable.

m. Question 2c 3) Did Corps of Engineer officials determine that assessments should include limited measurements of light, noise and, if indoor air quality issues had been raised by the occupants of a building, to conduct carbon monoxide, temperature, humidity and particulate testing? While there was no specific COE determination that the assessments should have included other measurements, the previous finding again supports finding that supervision over Mr. Gibson's testing method is reasonable.

n. Question 2d 1) Does testing buildings without time weighted measurements render an industrial hygiene program essentially useless and constitute a danger to public health and safety? The evidence supports finding that the lack of TWM in an IH program does not render it useless. The IO's finding is reasonable.

o. Question 2d 2) Does an industrial hygienist have any means of determining the cumulative effect a suspected toxin might have upon the occupants of a building over an extended period of time without time weighted measurements? The evidence collected throughout the investigation reasonably supports IO's finding that the MAHC IH program did not place the workforce at risk. Additionally, the evidence support finding that the command was willing to take all necessary action to address potential exposures when required and that the COE determined that the MAHC IH program properly monitored the two toxins present at Fort Leavenworth KS.

4. Recommendation. I recommend you approve the IO's findings and recommendations.

a. To approve the findings and recommendation, on DA Form 1574, Section VIII, circle "investigating officer" and "approved," and line-out all other items in parenthesis and sign in the bottom right corner of DA Form 1574, section VIII. You may type comments in Section VIII although comments are optional.

b. To approve partial findings and only certain recommendations, on DA Form 1574, Section VIII, circle "investigating officer" and "approved with the following

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SUBJECT: Legal Review – AR 15-6 Report of Whistleblower Investigation, Munson Army Health Clinic, Fort Leavenworth, Kansas

exceptions/substitutions," and line-out all other items in parenthesis. If you choose this option, you must make a comment in Section VIII, stating which findings and recommendations are approved and which are disapproved. Again, you may make an additional comment regarding what you are directing.

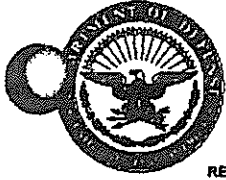
5. This investigation should be maintained in your unit for a minimum of two years following any action that occurs as a result of the investigation. If you have any additional questions, I am available in person or at [REDACTED]

[REDACTED]

MAJ, JA
Command Judge Advocate

2

Appointment Memorandum



DEPARTMENT OF THE ARMY
GREAT PLAINS REGIONAL MEDICAL COMMAND
FORT SAM HOUSTON, TEXAS 78234-6200

REPLY TO
ATTENTION OF:

MCGP-JA

9 June 2009

MEMORANDUM FOR DAC Mr. [REDACTED] USACHPPM-North, Ft. Meade, MD
20755

SUBJECT: Appointment of Investigating Officer – Whistleblower Investigation

1. You are hereby appointed an investigating officer pursuant to Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of Officers*, 2 October 2006, to conduct an informal investigation into allegations by Mr. Karl Gibson of improprieties by Lieutenant Colonel (LTC) [REDACTED] and First Lieutenant [REDACTED] Munson Army Health Center (MAHC), Fort Leavenworth, Kansas.

Procedures for Investigating Officers and Boards of Officers, 2 October 2006, to conduct an informal investigation into allegations by Mr. Karl Gibson of improprieties by Lieutenant Colonel (LTC) [REDACTED] and First Lieutenant (ILT) [REDACTED] Munson Army Health Center (MAHC), Fort Leavenworth, Kansas.

2. Specifically, you are directed to investigate the following and determine:

a. Whether or not since June 2007, LTC [REDACTED] Chief, Department of Preventive Medicine, MAHC and Mr Gibson's second-line supervisor, and 1LT [REDACTED] Environmental Science Officer, Department of Preventive Medicine, MAHC and Mr. Gibson's first-line supervisor, have actively interfered with Mr. Gibson's ability to conduct an effective Industrial Hygiene Program at Fort Leavenworth. At minimum, you should investigate and determine as follows:

(1) Have 1LT [REDACTED] and LTC [REDACTED] redirected time and resources, issued conflicting and constantly changing directives to Mr. Gibson, thereby diminishing Mr. Gibson's authority as Ft. Leavenworth's Industrial Hygienist?

(2) Has Mr. Gibson otherwise been prevented by 1LT [REDACTED] and LTC [REDACTED] from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Ft. Leavenworth buildings and facilities for industrial hygiene threats and hazards?

b. Whether or not the actions of LTC [REDACTED] and 1LT [REDACTED] constituted an abuse of authority. At a minimum you should investigate and determine as follows:

(1) Did, in June, 2007, 1LT [REDACTED] and LTC [REDACTED] abruptly order Mr. Gibson to stop all industrial hygiene assessments, testing and surveying and give Mr. Gibson alternative responsibilities minimally related to industrial hygiene? If so, did this constitute an abuse of authority by 1LT [REDACTED] or LTC [REDACTED]?

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SUBJECT: Appointment of Investigating Officer – Whistleblower Investigation

(1) Does testing buildings without time weighted measurements render an industrial hygiene program essentially useless and constitute a danger to public health and safety?

d. Whether or not the actions of LTC [REDACTED] and 1LT [REDACTED] have created the potential for a substantial and specific danger to the public health and safety at Fort Leavenworth, Kansas.

(2) Does an industrial hygienist have any means of determining the cumulative effect a suspected toxin might have upon the occupants of a building over an extended period of time without time weighted measurements?

3. In your investigation, you are not limited to the questions listed above. You will investigate any relevant related matters. If you are in doubt about the relevance of a matter, you will consult with your legal advisor and consult with me regarding these additional issues.

4. In conducting this investigation, use the informal procedures of AR 15-6, Chapter 4. Upon completing your investigation, make appropriate specific findings and recommendations. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence; provide a written rationale for what you believe and why.

5. Make two copies of your report of investigation (ROI). Provide an index and clearly tab the original ROI, to include your findings and recommendations on DA Form 1574, with appropriate enclosures and forward the entire package, to me, through the Office of the Staff Judge Advocate, US Army Medical Command, no later than 8 May 2009.

6. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

7. You should contact those witnesses you consider relevant during the course of your investigation. Your investigation must include an interview with Mr. Gibson. You are to thoroughly document all witness interviews in writing, preferably on DA Form 2823 (Sworn Statement), and have witnesses verify their statements when final. In addition, you must provide all persons interviewed with a Privacy Act statement before you solicit any information.

8. You will interview all witnesses in person, if practical. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator. If, in the course of your investigation, you come to suspect that certain people may have committed criminal conduct, you must advise them of their rights under Article 31, UCMJ or the Fifth Amendment, U.S. Constitution, as appropriate. In such a case, waivers should be documented on DA Form 3881 (Rights Warning Procedure/Waiver Certificate).

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SUBJECT: Appointment of Investigating Officer – Whistleblower Investigation

12. Timely completion of this investigation is essential. If you believe that you require additional time to complete your investigation, you must request an extension in writing through the MEDCOM Staff Judge Advocate stating the reason(s) for your request and an approximate completion date. I must personally approve any extension.



JOSEPH CARVALHO, JR.
Brigadier General, MC
Commanding

3

Privacy Act Statements

SUBJECT: Privacy Act Statement

DATE: 21 MAY 2009

NAME: [REDACTED]

1. **AUTHORITY:** The authority for the collection of personal information during the conduct of this investigation is Title 10, United States Code, Section 3012 (10 USC 3012).

2. **PRINCIPAL PURPOSE:** The purpose for soliciting this information is to obtain facts and make recommendations to assist the Brooke Army Medical Center Commander in reviewing the facts and circumstances surrounding allegations by Mr. Karl Gibson concerning the MAHC industrial Hygiene Program.

3. **ROUTINE USES:** Any information you provide may be disclosed to members of the Department of Defense (DoD) who have a need for the information in the performance of their official duties. In addition, the information may be disclosed to government agencies outside of the DoD as follows:

a. To members of the U.S. Department of Justice when necessary in the defense of litigation brought against the DoD, or against the members of that department as a result of actions taken in their official capacity.

b. To members of the U.S. Department of Justice when necessary for the further investigation of criminal misconduct.

4. **DISCLOSURE MANDATORY; EFFECT OF NOT PROVIDING INFORMATION:**

a. For individual warned of his or her rights under Article 31, UCMJ, or the Fifth Amendment to the U.S. Constitution, providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.

b. For individual who may be ordered to testify, providing this information is mandatory. Failure to provide information could result in disciplinary action or other adverse action against you under the UCMJ, Army Regulations, or Office of Personnel Management Regulations.

c. For individual who may not be ordered to testify, providing this information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.

[REDACTED]

Signature of Witness

SUBJECT: Privacy Act Statement

DATE: 14 May 2009

NAME: Karl L. Gibson

1. AUTHORITY: The authority for the collection of personal information during the conduct of this investigation is Title 10, United States Code, Section 3012 (10 USC 3012).

2. PRINCIPAL PURPOSE: The purpose for soliciting this information is to obtain facts and make recommendations to assist the Brooke Army Medical Center Commander in reviewing the facts and circumstances surrounding allegations by Mr. Karl Gibson concerning the MAHC industrial Hygiene Program.
made KL6 P.78

3. ROUTINE USES: Any information you provide may be disclosed to members of the Department of Defense (DoD) who have a need for the information in the performance of their official duties. In addition, the information may be disclosed to government agencies outside of the DoD as follows:

a. To members of the U.S. Department of Justice when necessary in the defense of litigation brought against the DoD, or against the members of that department as a result of actions taken in their official capacity.

b. To members of the U.S. Department of Justice when necessary for the further investigation of criminal misconduct.

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c. For individual who may not be ordered to testify, providing this information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.

Karl L. Gibson

Signature of Witness

SUBJECT: Privacy Act Statement

DATE: 5/4/2009

NAME: 

1. **AUTHORITY:** The authority for the collection of personal information during the conduct of this investigation is Title 10, United States Code, Section 3012 (10 USC 3012).

2. **PRINCIPAL PURPOSE:** The purpose for soliciting this information is to obtain facts and make recommendations to assist the Brooke Army Medical Center Commander in reviewing the facts and circumstances surrounding allegations of MR Karl Gibson and the MAHC industrial Hygiene Program.

3. **ROUTINE USES:** Any information you provide may be disclosed to members of the Department of Defense (DoD) who have a need for the information in the performance of their official duties. In addition, the information may be disclosed to government agencies outside of the DoD as follows:

a. To members of the U.S. Department of Justice when necessary in the defense of litigation brought against the DoD, or against the members of that department as a result of actions taken in their official capacity.

b. To members of the U.S. Department of Justice when necessary for the further investigation of criminal misconduct.

4. **DISCLOSURE MANDATORY; EFFECT OF NOT PROVIDING INFORMATION:**

a. For individual warned of his or her rights under Article 31, UCMJ, or the Fifth Amendment to the U.S. Constitution, providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.

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c. For individual who may not be ordered to testify, providing this information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.



SUBJECT: Privacy Act Statement

DATE: 1 May 09

NAME



1. AUTHORITY: The authority for the collection of personal information during the conduct of this investigation is Title 10, United States Code, Section 3012 (10 USC 3012).

2. PRINCIPAL PURPOSE: The purpose for soliciting this information is to obtain facts and make recommendations to assist the Brooke Army Medical Center Commander in reviewing the facts and circumstances surrounding allegations by Mr. Karl Gibson concerning the MAHC industrial Hygiene Program.

3. ROUTINE USES: Any information you provide may be disclosed to members of the Department of Defense (DoD) who have a need for the information in the performance of their official duties. In addition, the information may be disclosed to government agencies outside of the DoD as follows:

a. To members of the U.S. Department of Justice when necessary in the defense of litigation brought against the DoD, or against the members of that department as a result of actions taken in their official capacity.

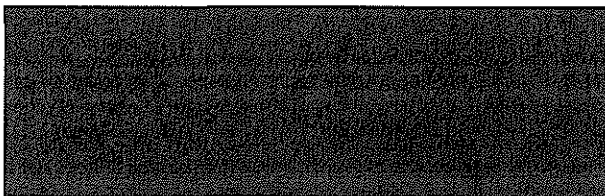
b. To members of the U.S. Department of Justice when necessary for the further investigation of criminal misconduct.

4. DISCLOSURE MANDATORY; EFFECT OF NOT PROVIDING INFORMATION:

a. For individual warned of his or her rights under Article 31, UCMJ, or the Fifth Amendment to the U.S. Constitution, providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.

b. For individual who may be ordered to testify, providing this information is mandatory. Failure to provide information could result in disciplinary action or other adverse action against you under the UCMJ, Army Regulations, or Office of Personnel Management Regulations.

c. For individual who may not be ordered to testify, providing this information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.



SUBJECT: Privacy Act Statement

DATE: 21 May 09

NAME: 

1. **AUTHORITY:** The authority for the collection of personal information during the conduct of this investigation is Title 10, United States Code, Section 3012 (10 USC 3012).

2. **PRINCIPAL PURPOSE:** The purpose for soliciting this information is to obtain facts and make recommendations to assist the Brooke Army Medical Center Commander in reviewing the facts and circumstances surrounding allegations by Mr. Karl Gibson concerning the MAHC industrial Hygiene Program.

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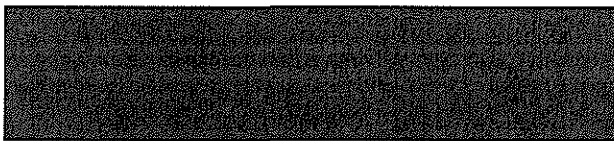
b. To members of the U.S. Department of Justice when necessary for the further investigation of criminal misconduct.

4. **DISCLOSURE MANDATORY; EFFECT OF NOT PROVIDING INFORMATION:**

a. For individual warned of his or her rights under Article 31, UCMJ, or the Fifth Amendment to the U.S. Constitution, providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.

b. For individual who may be ordered to testify, providing this information is mandatory. Failure to provide information could result in disciplinary action or other adverse action against you under the UCMJ, Army Regulations, or Office of Personnel Management Regulations.

c. For individual who may not be ordered to testify, providing this information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information may not be provided which might not otherwise be available to the Commander for his/her decision(s) in this matter.



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List of Exhibits

AR 15-6 ROI TABS and EXHIBITS

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Tab. 2. Appointment Memorandum

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Tab. 4 List of Exhibits

Tab. 5. Ex. 1. Sworn Statement, Mr. [REDACTED], Industrial Hygienist, Great Plains Regional Medical Command Industrial Program Manager Fort Sam Houston, Texas, 21 May 2009.

Tab 6. Ex. 2. Memorandum, HQ GPRMC, MCHE-DHI, 3 August 2007, subject: Management Staff Assistance Visit (MAV) – MAHC Industrial Hygiene Services – 15-20 July 2007.

Tab 7. Ex. 3. Memorandum, HQ GPRMC, MCHE-DHI, 29 August 2007, subject: Management Staff Assistance Visit (MAV) – B 136 – DOIM, Ft Leavenworth, KS – Industrial Hygiene Health Hazard Evaluation (21-23 August 2007).

Tab 8. Ex 4. Sworn Statement, Ms. [REDACTED], Human Resources Specialist, Civilian Personnel Advisory Center, Fort Leavenworth, Kansas, 12 May 2009.

Tab 9. Ex. 5. Sworn Statement, Mr. [REDACTED], Industrial Hygienist, U.S. Army Corps of Engineers, Kansas City, Missouri, 19 May 2009.

Tab 10. Ex 6. Sworn Statement, Mr. [REDACTED], Industrial Hygienist, U.S. Army Corps of Engineers Kansas City, Missouri, 6 July 2009.

Tab 11. Ex 7. (A)--Sworn Statement, Mr. [REDACTED], former Environmental Science Officer and Chief, Environmental Health, Munson Army Health Clinic, Fort Leavenworth, Kansas, 12 May 2009.

(B)--Memorandum For Record, Subject: Additional Questions for 1LT [REDACTED] from 15-6 Investigation, Mr. [REDACTED], former Environmental Science Officer and Chief, Environmental Health, Munson Army Health Clinic, Fort Leavenworth, Kansas, 7 January 2010.

MCHB-AN-IH

SUBJECT: AR 15-6 Report of Whistleblower Investigation, Fort Leavenworth, Kansas

Tab 12. Ex. 8. (A) Memorandum for Record U.S. Army MEDDAC, Fort Leavenworth, MCXN-PM, 10 January 2008, Subject Individual Performance Standards for Karl L. Gibson, from 1LT [REDACTED].

(B) Memorandum for Record U.S. Army MEDDAC, Fort Leavenworth, MCXN-PM, 16 July 2009, Subject Clarified Individual Performance Standards for Karl L. Gibson, from 1LT [REDACTED].

Tab 13. Ex. 9. Sworn Statement, COL [REDACTED], former Commander, Munson Army Health Clinic, June 2006-June 2008, now at Fort Sam Houston, Texas, 21 May 2009.

Tab 14. Ex. 10. Sworn Statement, COL [REDACTED], Commander, Munson Army Health Clinic, Fort Leavenworth, Kansas, 12 May 2009.

Tab 15. Ex. 11. Notices of Alleged Safety or Health Hazards (OSHA Form 7), various locations, U. S. Army Combined Arms Center, Fort Leavenworth, Kansas, 9 April thru 21 August 2008--

(A) Notice of Unsafe or Unhealthful Working Conditions, Inspection Number 116053000, dated 8/21/2008.

(B) Notice of Alleged Safety of Health Hazards, Complaint Number 20594857, dated April 24, 2008.

(C) Notice of Unsafe or Unhealthful Working Conditions, Inspection Number 311788863, dated 8/21/2008.

(D) Notice of Unsafe or Unhealthful Working Conditions, Inspection Number 116053018, dated 8/21/2008.

(E) U.S. Department of Labor, Re: December 15th Request, dated December 17, 2009 (Notice of Alleged Safety of Health Hazards, Complaint Number 205948557, dated April 9, 2008.

Tab 16. Ex. 12. (A) Sworn Statement, LTC (now Retired) [REDACTED], former Chief, Preventive Medicine, Munson Army Health Clinic, Fort Leavenworth, Kansas, 12 May 2009.

(B) Sworn Statement, LTC (now Retired) [REDACTED], former Chief, Preventive Medicine, Munson Army Health Clinic, Fort Leavenworth, Kansas, 22 December 2009.

Tab 17. Ex. 13. Scope of Work (SOW) and Cost Estimate for USACE-Kansas City District (NWK) to Provide Industrial Hygiene (IH) Support for Munson Army Health Center (MAHC) Command Staff, Ft. Leavenworth, 27 May 2008.

MCHB-AN-IH

SUBJECT: AR 15-6 Report of Whistleblower Investigation, Fort Leavenworth, Kansas

Tab 18. Ex. 14. Memorandum, Kansas City District, Corps of Engineers, CENWK-ED-EF, 12 September 2008, subject: 11 September 2008 – Industrial Hygiene Facility Inspection Audit Findings.

Tab 19. Ex. 15. MFR, U.S. Army MEDDAC, Fort Leavenworth, MCXN-PM, 6 October 2008, subject: Periodic Performance Counseling.

Tab 20. Ex. 16. MFR, U.S. Army MEDDAC, Fort Leavenworth, MCXN-PM, 5 March 2007, subject: Chief, Preventive Medicine Performances.

Tab 21. Ex. 17. Memorandum, U.S. Army MEDDAC, Fort Leavenworth, MCXN-PM, August 2008, subject: Notice of Unacceptable Performance – Performance Improvement Plan.

Tab 22. Ex. 18. Memorandum, Kansas City District, Corps of Engineers, CENWK-ED-EF, 2 September 2008, subject: Industrial Hygiene Support – technical comments on draft IH Work Assessment, BLDG 50 – CALL Offices dated 20 August 2008.

Tab 23. Ex. 19. Sworn Statement with exhibits, Mr. Karl Gibson, Industrial Hygienist, Munson Army Health Clinic, Fort Leavenworth, Kansas, 20 May 2009.

Tab 24. Ex. 20. American Board of Industrial Hygiene, Certified Industrial Hygienists' database, <http://www.abih.org/members/roster/fullrostersearch.cfm>.

Tab 25. Ex. 21. Memorandum, U.S. Army MEDDAC, Fort Leavenworth, MCXN-PM, 28 August 2007, subject: Deferment of Indoor Air Quality (IAQ) and Occupational Exposure Testing.

Tab 26. Ex. 22. Memorandum, Kansas City District, Corps of Engineers, CENWK-ED-EF, 26 August 2008, subject: Field observation of the Industrial Hygiene Facility Assessment Process.

Tab 27. Ex. 23. Electronic Mail, United States Detention Barracks, 10 October 2007, subject: IH Survey of USDB for 2006.

28. Ex. 24. Electronic Mail, U. S. Army CHPPM-North, 8 July 2009, subject: Whistleblower Investigation.

Tab 29. Ex. 25. FONECON, between Mr. [REDACTED] and Ms. [REDACTED], Safety Director, Fort Leavenworth, 22 December 2009, subject: Alleged Incident of Fort Leavenworth Employee Collapsing Due to Formaldehyde Exposure, 14 June 2008.

MCHB-AN-IH

SUBJECT: AR 15-6 Report of Whistleblower Investigation, Fort Leavenworth, Kansas

Tab 30. Ex. 26. FONECON, between Mr. [REDACTED] and Ms. [REDACTED], Chief, Civilian Personnel Advisory Center, Fort Leavenworth, 28 December 2009, subject: Alleged Incident of Fort Leavenworth Employee Collapsing Due to Formaldehyde Exposure, 14 June 2008.

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SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2051; E.O. 8307 Social Security Number (SSN).
PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.
DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION Fort Sam Houston, TX	2. DATE (YYYYMMDD) 2009/05/21	3. TIME 10:30	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME [REDACTED]	6. SSN XXX-XX-[REDACTED]	7. GRADE/STATUS YJ-02	
8. ORGANIZATION OR ADDRESS Great Plains Regional Medical Center			

9. I, [REDACTED], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

1 - Please describe your position title and give a brief summary your duties?

A: In my role as the Great Plains Regional Medical Command (GPRMC) Industrial Program Manager I provide professional advice and consultation on matters related to industrial hygiene program management, program planning, resource management and technical services. I also maintain direct supervision and oversight of the industrial hygiene programs at Brooke Army Medical Center, Fort Sam Houston, TX and Corpus Christi Army Depot (CCAD) located in Corpus Christi, TX. I have 28 years federal service and have 26 years experience as a supervisor.

2 - How has the execution of those duties within the last 3 years involved Mr. Gibson and the Munson Army Health Clinic?

A: I view my primary role in the matters involving Mr. Gibson as that of a consultant and technical advisor to Command, managers/supervisors and Mr. Gibson. My biggest challenge has been helping management to recognize what "right" looks like. Mr. Gibson has experienced a great deal of autonomy over the past 17 years while performing his duties and responsibilities as Industrial Hygienist at Ft. Leavenworth, KS. I have been in my role as the GPRMC Regional Industrial Hygiene Program Manager since 1999. Over the years, I can recall at least four (4) instances, where Mr. Gibson's previous supervisors "questioned" the validity and accuracy of information contained in Mr. Gibson's written reports. The supervisor/manager would send me a copy of the report in question, I would provide a technical review along with format adjustments and editorial enhancements and return the document to the supervisor/manager for follow-up. When appropriate, I would forward the report(s) to other technical experts (USACHPPM, AMEDD C&S) for peer review/comment; formulate a collective response and make recommendations to the supervisor/manager. I am not in the direct line of command for Mr. Gibson and assumed that the managers/supervisors handled the situation appropriately. I viewed these isolated requests from direct supervisors/managers as "hiccups" in the program - they appeared to be cyclic in nature - whenever a new Service Chief or supervisor would change - Mr. Gibson would pop-up on the radar again.

Over the past three (3) years I have been actively engaged in as a technical advisor and consultant to MAHC management as well as a coach and mentor Mr. Gibson in meeting his performance expectations. Between July 2006 and December 2006, Mr. Gibson a cluster IH issues between July 2006 through January 2007. COL [REDACTED] Commander arrived at Munson Army Health Clinic (MAHC) late spring 2006, LTC [REDACTED] Chief, Preventive Medicine arrived in July 2006 and LT [REDACTED] Environmental Science Officer (ESO) arrived in August 2006. The stage was set when COL [REDACTED] took immediate and decisive action to remove employees from Bell Hall based on Mr. Gibson's reported "documented" overexposures to asbestos on 12 JUN 2006. It is reported that Mr. Gibson conducted quarterly air monitoring in Bell Hall to determine asbestos exposure levels on non-asbestos workers (i.e., casual office workers, teaching staff, etc.). I am unclear as to how long this sampling protocol was followed - I anticipate that quarterly air sampling was conducted for at least 5-6 years. COL [REDACTED] contacted the COE and requested the findings be validated. (continued on page 2)

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT [REDACTED]	PAGE 1 OF 15 PAGES
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____"		
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.		

Exhibit 1

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [REDACTED] TAKEN AT Ft Sam Houston, TX DATED 2009/05/21

9. STATEMENT (Continued)

During their review of the 12 JUN 06 sampling set, the COE CIH made the following determinations:

- (1) Mr. Gibson failed to have the collected samples analyzed by TEM. All analyses and recommendation were based on PCM determinations.
- (2) Mr. Gibson failed to follow prescribed sampling methods and protocols (e.g., did not maintain the integrity of the sample(s) by allowing janitorial staff monitor the air sampling devices; calibration issues, etc).
- (3) Mr. Gibson failed to properly document calibration information and start and stop times
- (4) Mr. Gibson made false and misleading statements in the report regarding the Secretary of the Army statements regarding a "wavior" increasing the action level to asbestos by a factor of 10 (highly suspect).
- (5) Mr. Gibson misinterpreted and applied the OSHA PEL 0.1 fiber/cc standard to a non-occupational workforce (casual office workers); and
- (6) There was evidence to show possible "overloading" and/or "tampering" with the sample cassettes. It was reported that sample cassettes were received by the laboratory with 1/8 inch to 3/4 inch of "dust" on the media.

The Corp of Engineers (COE) contracted with an outside certified industrial hygiene firm (APEX) to resample the entire work area. Samples were collected and evaluated using TEM. There were no documented overexposures - in fact, there was no evidence to support Mr. Gibson's reported findings. In late September 2006, COL [REDACTED] requested that I attend a meeting between the COE representatives, the independent industrial hygiene firm (APEX) and Mr. Gibson to review their findings and discuss specific protocols to be followed when performing asbestos sampling. It was my initial impression that accepted the recommendations made as "constructive criticism" and would move forward. Col [REDACTED], LTC [REDACTED] Mr. Gibson and I sat down afterwards and discussed specific industrial hygiene program issues and areas where Command could help. Mr. Gibson requested some technical equipment needs (i.e., digital camera and color printer) - I provided Mr. Gibson funding to purchase the requested equipment FY 06 year-end dollars. Mr. Gibson did indeed "challenge" the independent contractor's laboratory results and findings through an MPR.

During the period 1 September 2006 and 30 December 2006, Command responded to three (3) similar industrial hygiene issues/concerns. Specifically, (1) B 275 Trolley where Mr. Gibson reportedly exercised poor professional judgment in his response to a potential carbon monoxide situation; (2) MAHC Command Suite where Mr. Gibson did not follow proper protocol for determining occupancy clearance after a water leak event in the Commander's Office, MAHC and (3) SAAF Building 132 where Mr. Gibson failed to demonstrate best practices and techniques in evaluating potential lead exposures in the aircraft hangar building. My involvement in Item 1 and Item 2 was cursory only. I did, however, perform an after-action technical review of the subsequent reports and made general technical observations, format adjustments and editorial changes, where appropriate.

At the Commander's request, I provided direct technical assistance to LTC [REDACTED] and LT [REDACTED] in the helping them recognize what "right looks like". Collectively we reviewed the basic IH Program requirements as outlined in AR 40-503 and 40-11. We specifically worked on IH program elements [to include but not limited to the Industrial Hygiene Program document; the Industrial Hygiene Implementation Plan (IHIP)]; program planning (to include but not limited the role of the industrial hygienist; prioritization of work (RAC); scheduling/planning; and resource management (e.g., personnel issues/concerns; staffing, budget, etc). I arranged to have LT [REDACTED] attend the Basic IH Course and the Intermediate IH Course offered by USACHPPM.

In late spring, 2007, Mr. Gibson submitted approximately 32 industrial hygiene reports to Command for final approval. Command provided me an electronic copy of each report along with appendices and attachments. Most of the reports ranged between 20 and 40 pages in length. From a technical review perspective, I found the reports to lack clarity and organization - not to mention the technical aspects. Up to this point, management had taken an active role in supporting Mr. Gibson's recommendations, later to discover that the methodology used, laboratory results, and/or interpretation of findings have been inaccurate and/or misleading. During the first 4-5 months of 2007, Mr. Gibson was issued five counseling statements addressing various aspects of his work performance and conduct. I was in constant telephonic and/or email contact with LT [REDACTED] LTC [REDACTED] and COL [REDACTED] during this period. I discussed issues and concerns with the management and offered suggestions for improvement and/or resolution.

-----Continued on page 3-----

INITIALS OF PERSON MAKING STATEMENT

SM

PAGE 2 OF 15 PAGES

STATEMENT OF [REDACTED]

TAKEN AT Ft Sam Houston, TX DATED 2009/05/21

8. STATEMENT (Continued)

It became increasingly apparent to me that Mr. Gibson had compromised his credibility with Command and management. Mr. Gibson's inaccurate, misleading and often inflammatory representations had placed a significant operational and economic burden on Command. In addition, I sensed Command felt Mr. Gibson's actions had tarnished their professional reputation. COL [REDACTED] discussed with me several scenarios where she received negative feedback from COL [REDACTED] Garrison Commander and others regarding Mr. Gibson and his role as the "technical expert" for industrial hygiene matters at Ft. Leavenworth. At the request of COL [REDACTED] through GPRMC, I conducted a formal investigation to determine Mr. Gibson's technical competency and validity of information presented in the 32 industrial hygiene survey reports generated between April and July 2007.

I arranged to conduct the formal investigation into the allegations against Mr. Gibson in July 2007. During the investigations, I reviewed and discussed with Mr. Gibson the 32 submitted IH reports; the IH program document and the IHIP. My findings and recommendations are outlined in a letter to COL [REDACTED] entitled "Management Staff Assistance Visit (MAV) - MAHC Industrial Hygiene Services - 15-20 July 2007" (TAB 2). A copy of this memo was provided to LTC [REDACTED] and LT [REDACTED]

This visit was not designed a "FAULT-FINDING" mission. My goal (and that of the Commander) was to validate the information contained in the reports; format each in a "customer service friendly" format; assess Mr. Gibson's technical competencies through field observation; and provide recommendations to improve/enhance Mr. Gibson's work performance.

REPORTS: During the review process, I discussed with Mr. Gibson where he provided inaccurate and misleading information to his customers. In many reports, Mr. Gibson failed to exercise sound professional judgment and critical thinking in his application/interpretation of standards and/or guidelines. In his reports, Mr. Gibson demonstrated a profound inability to distinguish between various levels of risk. In the majority of his reports, he inappropriately identified the Risk Assessment Codes (RAC) as a 2. As demonstrated in his reports, Mr. Gibson fails to recognize scientific practices (i.e., standard sampling and collection methods) which are accepted by OSHA, research agencies like NIOSH, or by consensus standard-setting organizations. In addition, Mr. Gibson demonstrated a lack of understanding of basic IH principles and practices. We specifically reviewed 8 (25%) separate reports during the visit. Similar issues/concerns were also noted on the remaining reports.

(continue on page 4)

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 15. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]

ORGANIZATION OR ADDRESS

2410 Stanley Rd
FORT SAM HOUSTON, TX

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 21 day of May 2009 at Fort Sam Houston, TX

(Signature of Person Administering Oath)

[REDACTED] COL
(Typed Name of Person Administering Oath)

Investigating Officer
(Authority To Administer Oaths)

WIT [REDACTED] MAKING STATEMENT

PAGE 3 OF 15 PAGES

FIELD OBSERVATIONS

I visited face-to-face with four (4) of Mr. Gibson's key customers. It appears as if Mr. Gibson, through his actions, both direct and indirect, has alienated himself from many of his customers. During an interview with Mr. [REDACTED] Chief of Staff, U.S. Disciplinary Barracks described several past incidents where Mr. Gibson was requested to perform industrial hygiene surveys. Mr. [REDACTED] explained that on two separate occasions, Mr. Gibson purposely manipulated survey data and reported the areas surveyed as noncompliant. Mr. [REDACTED] has "banned" Mr. Gibson from performing industrial hygiene services for the DB. Similar experiences were described by Ms. [REDACTED] MAHC Safety, Mr. [REDACTED] MAHC Facility Engineer and [REDACTED], Chief, Operations and Maintenance.

My focus during this visit was to assess Mr. Gibson's technical competencies and to determine what would be needed to bring him to full performance level. Mr. Gibson and I visited the Health Clinic and I asked him to show me around and tell me about the hazards associated with various processes within the Clinic. Mr. Gibson was able to articulate the process, but had difficulty expressing the hazard severity (HS) associated with each process. In reviewing Mr. Gibson's reports I noted an enormous amount of sampling was being conducted for the facility. It did not appear as if Mr. Gibson had actually characterized the work process to determine the extent of hazard. In many cases, Mr. Gibson would request analyses for 25 analytes - I perceived this to be a "shotgun" approach to industrial hygiene. I also discovered evidence to support allegations that Mr. Gibson has produced (1) *false or misleading statements*; and (2) *concealment of that which should be disclosed*. This evidence was collected through direct employee interviews, review of previous reports/correspondence, email traffic and general workplace observations. Specifically, Mr. Gibson fails to (1) recognize basic industrial hygiene practices and principles; (2) provide accurate and truthful representations; and (3) apply sound professional judgment in several of his workplace assessments/evaluations. I also conducted a walk-through in several other buildings as well during this visit (B 77//B 45// SAAF// Detention Barracks // DPW Shops).

When asked to explain his rationale on various findings and/or recommendations, Mr. Gibson was unable (or unwilling) to clearly communicate his rationale. Mr. Gibson appears to be very rigid in his thought processes and does not demonstrate a willingness to accept recommendations for improvement. Mr. Gibson "knows what he knows" and is quick to discount other perspectives.

Mr. Gibson is unable to replicate scenarios identified as "noncompliant" either through actual sampling data or rationale. Specifically, in Building 136, DOIM survey report dated 16 April 2006 (TAB 7), Mr. Gibson shows measured carbon dioxide levels between 1500 and 2300 ppm. This represents an employee overexposure nearly 1.5 times the recommended upper limit of 1000 ppm. A review of the actual data sheets show carbon dioxide levels measured between 285-625 ppm at the time of survey. Mr. Gibson was unable to explain the difference in the reported levels.

Statement of [REDACTED] taken at Fort Sam Houston, TX dated 2009/05/21

There was evidence presented during the July investigation from LTC [REDACTED] and LT [REDACTED] suggesting an on-going personnel issue exists with Mr. Gibson. Discussions were void of any mention of retaliation or discrimination by any of the parties involved. Mr. Gibson received a "1" rating on his last appraisal rating of record from MAJ [REDACTED] in August 2006. Mr. Gibson did indicate, however, that he feels that his current supervisor (LT [REDACTED]) and senior rater (LTC [REDACTED]) are "out to get me". Mr. Gibson chronicled his perception of my activities during my July 2007 visit. Mr. Gibson issued an email on 20 July 2007 describing his perceptions of activities that took place during the investigation -although he was not a participant in many of the independent discussions and/or interviews. Furthermore, Mr. Gibson indicated to me during the interview process, that he has made contact with local bargaining unit representatives.

LTC [REDACTED] Chief, Department of Preventive Medicine has been proactive and remains actively involved in resolving the industrial hygiene related issues. LTC [REDACTED] has been unbiased in her assessment of the situation and has initiated reasonable supervisory controls in managing Mr. Gibson. LTC [REDACTED] was receptive to the recommendations outlined in my report and discussed during the closing conference. In addition, LTC [REDACTED] has expressed her desire for doing "what is right" for the organization.

A review of Mr. Gibson's personnel record was conducted in July 2007 and revealed Mr. Gibson has successfully performed his duties as an Industrial Hygienist, GS-0690-11. Documentation further portrays Mr. Gibson as a valuable asset and a significant contributor to the overall success of the IH program at MAHC. Mr. Gibson's last rating of record dated 30 June 2006 is marked as "1" or exceeded expectations. Mr. Gibson has received numerous monetary awards as well as quality step increases (QSIs) over the past several years.

NOTE: I recognize the issues addressed during this investigation have been longstanding with regard to Mr. Gibson's conduct and performance. Documentation shows that numerous military supervisors identified similar issues/concerns with Mr. Gibson as far back as 1999. After repeated counseling's, Mr. Gibson was given the opportunity to modify his work conduct and/or performance. Trending does show Mr. Gibson rating of record fluctuated between "1" and "2". This coincides with military change of raters. There is, however, no formal documentation showing follow-up action by previous supervisors.

I felt Mr. Gibson needed to overcome both professional and personal obstacles in order to maintain a satisfactory job performance level. To that end, I strongly recommended that Mr. Gibson be placed on a formal Performance Improvement Plan (PIP) designed to assist him in meeting his job performance standards. Specifically, the PIP addressed areas for improvement in Mr. Gibson's critical thinking and professional judgment; technical writing and risk communication skills; and customer service issues. I also stressed with management that Mr. Gibson make the changes necessary to help ensure his continued productivity and that satisfactory performance is achieved.

Statement of [REDACTED] taken at Fort Sam Houston, TX dated 2009/05/21

3 - (2a1) Did LT [REDACTED] or LTC [REDACTED] redirect Mr. Gibson's time and resources, there by diminishing his authority as the Ft Leavenworth's IH?

A: To my knowledge, neither LT [REDACTED] nor LTC [REDACTED] redirected Mr. Gibson's time and resources diminishing his authority as the FT Leavenworth Industrial Hygienist (IH).

4 - Can you explain why a number of different report formats or templates were provided to Mr. Gibson?

A: Mr. Gibson's reports lacked organization and clarity. The templates were provided as a "tool" designed to help better organize his findings, conclusions and recommendations. I also provided a template for establishing a "building" file which would help maintain chronological data; keep material organized and easily accessible.

5 - (2a2) Are there any instances in which Mr. Gibson was prevented by LT [REDACTED] and LTC [REDACTED] from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Ft. Leavenworth buildings and facilities for industrial hygiene threats and hazards?

A: Neither LT [REDACTED] nor LTC [REDACTED] prevented Mr. Gibson from ensuring compliance with federal regulations and Army rules and regulations. After a series of unexpected and unexplained sampling results, Mr. Gibson was issued MFR outlining job performance expectations. It is my belief Mr. Gibson has misconstrued management's attempt to provide guidance and assistance in helping him meet his performance expectations.

6 - In the conduct of his duties, did you Mr. Gibson ever discuss how Ft Leavenworth would violate Federal and Army regulations concerning industrial hygiene and safety by not conducting regular assessment and the appropriate testing of Ft Leavenworth's buildings/facilities?

A: Mr. Gibson and I discussed various aspects of the AR 40-503 and its relationship to the Army Industrial Hygiene Program. I advised Mr. Gibson the regulations establish the development of an installation level Industrial Hygiene Program document. The Industrial Hygiene Program document is reviewed annually and establishes work priorities. In addition, we discussed the use of the Industrial Hygiene Implementation Plan (IHIP) in managing the Industrial Hygiene Program at Ft Leavenworth. I provided Mr. Gibson with guidance on how to meet Army Industrial Hygiene Program requirements. In addition, I provided several templates to help him in developing a focused IH Program based on the identification, evaluation and control of hazards in the workplace.

-----Continued on next page-----

Statement of [REDACTED] taken at Fort Sam Houston, TX dated 2009/05/21

7 - Did Mr. Gibson ever discuss how Ft Leavenworth might be violating Federal and Army regulations by not taking industrial hygiene and safety actions to correct conditions?

A: During a SAV in July 2007, Mr. Gibson did tell me that he felt Command was not providing support and was trying to cover-up safety and health issues. I directly asked Mr. Gibson to explain his rationale and he was unable to provide specific information. In subsequent conversations, we discussed Command's concerns regarding Mr. Gibson's inaccurate and misleading information contained in his industrial hygiene survey reports.

8 - (2b) Abuse of authority- Were you working with the preventive medicine staff at Munson Army Health Clinic prior to the 28 Aug 2007 memorandum directing Mr. Gibson to defer further Indoor Air Quality (IAQ) and occupational exposure testing until further notice? If so, what are the circumstances that prompted the development of the memorandum?

I did consult with management on the issues which resulted in Mr. Gibson's supervisor issuing the deferment of indoor air quality and occupational health exposure testing on 28 August 2007. The memorandum (TAB 3) restricts Mr. Gibson from performing air sampling without supervisory approval. After careful review and consideration, it was determined that Mr. Gibson lacks the technical competence and professional judgment required to interpret sampling data collected during routine industrial hygiene surveys. During my July and August 2007 visits, it was discovered that Mr. Gibson routinely collected biological samples for speciation of mold as part of his annual workplace sampling protocol. This sampling protocol is unnecessary and costly and is contrary to US ARMY Technical Guide 277 and 278 guidelines for handling indoor air quality issues. During a walk through survey in Funston and McNair on 23 August 2007 it was revealed that Mr. Gibson collected biological air samples in Funston and McNair after being specifically instructed not to do so without his supervisor's approval. Air testing for speciation of mold is an investigative tool used to characterize the nature and extent of contaminants in air and to determine whether contaminant sources affect indoor air quality. I have repeatedly discussed the Army protocols with Mr. Gibson. From a health perspective the industrial hygienist should rarely, if ever, need to have mold testing performed in their initial investigation of a mold problem. The Army guidelines for handling indoor air quality issues are outlined in Technical Guide 277 and 278.

Briefly, the main reasons for this position are that:

- Mold growth simply should not be tolerated in our buildings -- when such growth is evident, the critical cause (excess moisture) should be corrected and the mold removed as quickly as can be done in a safe and effective manner;
- Mold testing rarely answers the difficult questions building occupants staff struggle with such as, what are the health risks and is evacuation necessary?;
- Such testing often leads to unrealistic expectations that can't be met;
- There are other practical and cost-effective methods for identifying many of the conditions which need intervention; and
- The key to solving an indoor mold problem will always be to correct the source of excess moisture and remove mold contamination -- very often, these can be achieved reasonably well without mold testing.

[REDACTED]
05/21/2009

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Statement of [REDACTED] taken at Fort Sam Houston, TX dated 2009/05/21

9 - The memorandum stops Mr. Gibson from conducting routine testing until he has an opportunity for refresher training. If you assessed Mr. Gibson's technical skills and capabilities, what was your assessment? What refresher training or professional improvement actions were taken to improve weak areas?

A: Based on my initial assessment, it was determined that the supervisor would initiate a performance improvement plan (PIP) to address technical competencies and deficiencies identified. I had tentatively planned for USACHPPM IH representatives to visit FT Leavenworth in mid-September 2007 to provide Mr. Gibson technical guidance and recommendations for improvement. Most of the competencies are listed in the ACTEDs program document for Industrial Hygienist. Command had also looked into providing Mr. Gibson additional training through AIHA (TAB 3) and local educational offerings.

10 - Were outside industrial hygiene professionals engaged to assist in the accomplishing IH program requirements and improve weak areas?

A: I worked with [REDACTED] and [REDACTED] - all at CHPPM, and Ms. [REDACTED] JMC. In addition I provided GPRMC IH Program dollars (\$60K) to support the initial COE contracts to assist with Mr. Gibson.

11- What was your role in any corrective action or performance improvement plan?

A: I served as a resource and consultant to the Commander as well as to Mr. Gibson. Command made all decisions regarding corrective action and any PIP. I did help draft the original PIP in August 2007 and subsequent follow-up in late December 2007.

12 - Are there other actions that could have been taken to improve the Fort Leavenworth IH program?

A: Everyone involved who attempted to provide Mr. Gibson guidance, support, assistance; mentoring, counseling, education was rejected out-of-hand by Mr. Gibson. The actions taken were appropriate and I do not see an alternative.

13 - Did any major life safety or IH issues come to the attention of the Munson staff that required IH intervention or assessment? If so, who handled these issues and what was the resolution?

A: To my knowledge, there were no major safety or health issues identified that required immediate IH intervention or assessment. Management did hire outside contractors to perform routine IH monitoring required by Joint Commission. I arranged to provide basic IH services for MAHC. If I was unable to meet the requirement, MAHC contracted with outside IH firms to conduct the required sampling.

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14 - February 2008 - Explain the rationale behind selecting 18 of Ft Leavenworth's 295 buildings selected for a walk thru?

A: THIS IS AS SENTINEL EVENT. This is a pivotal point in the on-going investigation. Actually, there were 26 shops located in 18 different buildings listed on the IH Project Priority List provided to Mr. Gibson by LT [REDACTED] in February 2008. Command wished to close the loop and get the original 32 reports submitted between April 2007 and July 2007 approved and distributed. Mr. Gibson flat out refused to perform the assigned tasks. During my SAV in July 2007, I encouraged Mr. Gibson to review the reports for accuracy and content and resubmit each one for approval. LT [REDACTED] and I were in the process of issuing a performance improvement plan after my July 2007 and August 2007 SAVs. In September 2007, while attempting to present my B 136 findings telephonically, Mr. Gibson announced that the reports I reviewed were not his original documents. He further explained that "management changed my original findings". During my visit, I spent several days with Mr. Gibson going over the reports in detail, at no time during those discussions did Mr. Gibson indicate that the reports had been altered and/or modified. A copy of the proposed PIP and correspondence can be found in TAB 4.

MAHC management handled the allegations made by Mr. Gibson at the local level. My findings and recommendations to Command and management were based on the fact that the work product was produced by Mr. Gibson. Mr. Gibson allegations pushed back any action(s) planned by management (i.e., PIP, USACHPPM SAV, training, etc.). I was asked in late December 2007 to relook the draft PIP prepared in August 2007. LT [REDACTED] and I collectively looked through the list of 32 shops, deleted those buildings that had already been validated and prioritize the remaining group based on anticipated health severity/potential risk

The DB in its entirety was deleted from the inventory based on correspondence between the Deputy Commander (Mr. [REDACTED]; COL [REDACTED], MAHC Commander, COL [REDACTED] Garrison Commander and LTC [REDACTED]. My staff and I completed many of the required surveys in the interim - the DB was removed from Mr. Gibson's workload (this is probably the largest and most complex work area to assess at Ft Leavenworth).

15 - 2b3) Were these "walk-thrus" (as described in item b2), above), unreasonably limited in scope by LT [REDACTED] and LTC [REDACTED] by restricting Mr. Gibson to ask only seven questions of the occupants of each of the 18 buildings? If so, why? What were the questions?

A: Absolutely not. Based on my original assessment, it was determined that Mr. Gibson was doing nothing more than collecting an enormous amount of environmental samples. The IH Program at Ft Leavenworth lacked structure and purpose. The assessment process was misdirected and required updating.

16 - What was the level of health risk to personnel conducting operations in the buildings surveyed?

A: Low - administrative - light industrial minimal exposure.

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17 - During the work place assistance visits or "walk thrus" with Mr. Gibson, What did you observe about his techniques and his interaction with the customers?

A: Mr. Gibson rarely had direct conversation with management officials and asked few questions of the workforce. We walk-through each area and I asked him to identify potential health and safety hazards -- which he did with some competency. The problem is -- that when he went to apply what he saw to the IHIP -- he was unable to determine the level of risk -- everything was a PRIORITY 1: Mr. Gibson is unable to differentiate between levels of risk.

18 - (2b4) If, after conducting a walk-thru, Mr. Gibson had reason to suspect the existence of an industrial hygiene issue was he authorized to conduct an assessment of the building, but was that assessment unreasonably limited in scope by LT [REDACTED] and LTC [REDACTED] by restricting Mr. Gibson to "spot testing" for industrial hygiene threats but prohibiting time weighted measurements? If so, did this constitute an abuse of authority by LT [REDACTED] or LTC [REDACTED]?

A: At no time did LT [REDACTED] or LTC [REDACTED] place restrictions or limitations on Mr. Gibson that would interfere in the performance of his duties as the Industrial Hygienist at Ft. Leavenworth, KS. Management provided Mr. Gibson every opportunity to improve and meet his job performance expectations. The purpose of the "spot testing" was to help Mr. Gibson in his characterization of potential safety and health risks in the work area. Once an accurate assessment had been made, Mr. Gibson was to provide the supervisor with a proposed sampling strategy for that specific work process. This would eliminate much of the unnecessary sampling being conducted by Mr. Gibson as part of his routine assessment protocol.

19 - What were the hazards identified in the walk thru? What was Mr. Gibson's assessment of the situation? Did your opinion differ from his assessment? If so, why?

A: B 77 (see TAB 9) is nothing more than a Kinko's with a small craft shop on the first floor. During the walk-through, it was determined that many of the silk screening operations, etc. located on the second floor had been abandoned and replaced with new digitized equipment. Mr. Gibson and I agreed that all areas needed to be reassessed and characterized.

B 53 (see TAB 10) is noted for on-going indoor air quality issues. I walked Mr. Gibson through and attempted to show him what "right" looks like. I first visited with the Service Chief and explained the purpose of our visit. He assigned an escort and began the walk-through. During the walk-through I pointed out holes in the roof, leaky radiators, live plants in basement work areas, general housekeeping, etc. We also conducted employee interviews to help determine whether or not the employees were "affected". Mr. Gibson noted the identified deficiencies and was to take that information and apply it to the IHIP. NO SIGNIFICANT HEALTH RISKS WERE IDENTIFIED. Later in November 1008, B 53 hit the TRADOC Commander's radar. I happen to be at MAHC conducting a GPRMC OIP and investigated the situation. Much to my dismay -- Mr. Gibson had taken no action to correct the issues we identified in February 2008. He later indicated in a memo -- that I should have written the report. Nonetheless, I addressed the issues at hand and after reviewing Mr. Gibson previous reports, found that inaccurately reported indoor quality laboratory results. The actual laboratory results had been increased by a factor of 10 (in

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most cases) – more in others. I have included Mr. Gibson's original reports and laboratory reports under TAB 10. I worked with the TRADOC SES (Mr. Ormond); COL [REDACTED] Garrison Commander, COL [REDACTED] MAHC Commander and DPW in resolving this issue

20 - What did the "spot testing" entail? Why was it important?

A: When conducting a baseline audit, direct reading measurements (e.g., SLM, temperature, relative humidity, CO2) can provide the surveyor with a "snapshot" of what is going on in the work environment. Based on the findings and professional judgment, the surveyor can then determine if additional sampling is required to evaluate the full extent of the hazard. This should be included along with workplace observations and employee interviews. Again, our goal was to help Mr. Gibson accurately identify potential safety and health hazards to be included in the IHIP in support of the overall IH Program.

21 – (2b5) Are time weighted measurements an essential part of any properly conducted industrial hygiene program?

A: Certainly. The TWA represents the employee exposure to any substance during any 8-hour work shift of a 40-hour work week which shall not be exceeded. It is dependent on the nature of substance, the intensity/concentration, duration (time) and individual susceptibility. It is important, however, that the TWA be calculated correctly and the measurement is applied to the appropriate OSHA standard. We are looking at work-related occupational exposures.

22 – (2b6) Did, in October, 2008, LT [REDACTED] and LTC [REDACTED] permit Mr. Gibson to follow the Corps of Engineers' approach to inspecting buildings but still prohibit him from performing time weighted testing without first receiving prior supervisory approval?

A: I do not have direct knowledge pertaining to this statement. I am not in the direct line of supervision for this employee. This is contrary to the scope of work (SOW) developed to provide Mr. Gibson direct training and mentorship in his efforts to complete initial IH assessment. Please see TAB 13 for SOW.

23 – (2b7) Was it reasonable for LT [REDACTED] and LTC [REDACTED] to require Mr. Gibson, the only certified Industrial Hygienist at Ft. Leavenworth, to obtain permission from his supervisors before performing time weighted testing on buildings?

A: To my knowledge, Mr. Gibson does not hold a certification by the Board of American Industrial Hygiene nor is he currently a member of the professional organization (AIHA). He is licensed by the State of Kansas in asbestos and lead management. All fees and cost associated with this licensing were paid for by the government. Based on program assessments, it was determined that Mr. Gibson does not possess the technical competencies to manage an effective industrial hygiene program in accordance with AR 40-503 and 40-11. It is not within my scope as Regional IH Program Manager to determine what is reasonable for command and control. In light of Mr. Gibson's flagrant exaggerations on previous surveys and reports, I believe the supervisor made the proper decision in requiring Mr. Gibson to plan his surveys and to support his plans before implementing them.

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24 - (2b8) During 2008 were LT [REDACTED] and LTC [REDACTED] are alleged to have arbitrarily denied 39 of Mr. Gibson's 40 requests to conduct time weighted measurement testing on buildings without an explanation? Were you aware of these requests?

A: I have no knowledge of this allegation. I question the validity of the allegation and source.

25 - (2b8) What was the reason for denying these requests?

A: If denied, it was based on insufficient planning and the designation of improper protocols by Mr. Gibson.

26 - (2c). Whether or not adequate industrial hygiene assessment and testing has not occurred at Fort Leavenworth, Kansas, in violation of law, rule, and regulation. What actions did you take to assess the MAHC IH program? How did you determine if there were deficient areas?

A: GPRMC performs biannual operational inspection program (OIP) audits at all facilities under our Command. Please see TAB 6 for a copy of the OIP findings of November 2008. In addition, the COE 12 September 2007, IH Facility Inspection Audit Findings TAB 6.

27 - If you found questionable program areas or reports, what action did you take to verify a problem existed and correct it?

A: I presented my findings to Command and/or supervisor/manager. Where appropriate, I did provide Mr. Gibson feedback and counseling.

28 - Why was the airfield hanger resampled? What did the results of the sampling show? If there was a difference in the results, what reasons could account for the differences?

A: I did not engage in this issue until mid-January 2007. COL [REDACTED] provided management with some general information regarding lead exposure prior to my involvement. I received an electronic copy of the initial laboratory analysis report from LTC [REDACTED] for lead exposures taken on 28 Feb 2007 in Building 132 SAHF, Fort Leavenworth, KS (see TAB 8). I spoke with LTC [REDACTED] at length on the significance of these samples. I questioned the validity of the sample results based on the type of work being performing in the affected area. I verbally confirmed through Mr. Gibson the sampling protocol and methodology. Based on what I knew of the work environment - I would NOT expect the sample results to exceed the OSHA Permissible Exposure Limit (PEL). These laboratory results showed exposures 10 - 12 times the PEL. The initial air samples results showed two (2) samples slightly at or above the PEL of 50 $\mu\text{g}/\text{m}^3$ - 47 $\mu\text{g}/\text{m}^3$ and 58 $\mu\text{g}/\text{m}^3$ respectively. The other samples were below the limit of detection with the two (2) exceptions noted on the North side of the Hangar.

I requested Mr. Gibson to resample the affected area. He indicated that he would be able to perform this task on Thursday 8 MAR 2007. I asked Karl to forward the samples to me in San Antonio via FEDEX. I had my IH hand-carry the samples to the Brooks AF Bioenvironmental Lab SA for analyses. The sampling cassettes were examined by the lab for tampering/overloading prior to analyses. In addition, I requested the QC package from Schneider Laboratories for the samples analyzed on 5 MAR 2007. I suspected (1) the sampling

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protocol was not followed properly; (2) the lab QC is not good and/or (3) the samples had been loaded. In my years practicing IH, I have never seen lead exposures this high (even in the foundry while pouring lead and/or firing ranges). Another curious oddity is that, to my knowledge, there were no employees showing medical effects from the elevated lead exposures.

I did review Mr. Gibson's report dated 7 May 2007 as part of the packet of 32. I noted several issues with the report and discussed those with Mr. Gibson face-to-face during my July 2007 visit. Mr. Gibson did make some of my recommended format changes and editorial enhancements. SEE TAB 8.

29 - What type of measurements were taken while you were assisting the MAHC staff with the Fort Leavenworth IH program? Were time weighted measurement taken? If so, what was the purpose and how did it relate to the MAHC IH program.

A: Command requested GPRMC IH assistance on a couple of different occasions during the past several years. These requests were initiated to provide IH support to the Detention Barracks and MAHC.

My staff and I performed a health hazard evaluations (HHE) in 16 shops located the Detention Barracks in May 2008. We collected air samples to determine worker exposure levels to various chemical agents used in shops throughout the facility (A Graphic Arts, Wood Shop, Textiles, and Craft Shop. A total of 8 breathing zone (BZ) and 10 general area samples were collected during the survey. Based on laboratory analyses there were no documented chemical overexposures noted. In addition, will collected direct reading measurements for indoor air quality (TEMP/RH/CO2); lighting and noise. Initial general ventilation assessments were also determined. 8-hr TWA were collected for potential to determine potential noise exposures where indicated.

In addition, we have collected BZ samples in the Munson Army Health Clinic on three separate occasions. Passive dosimeters were used to determine potential employee exposures to waste anesthetic gases, formaldehyde and glutaraldehyde (OAP). I took past sampling data collected by Mr. Gibson and incorporated it into a sample log for May 2008 OSHA Inspection. There was no documented overexposure noted in the 120 samples collected. (See TAB XX) for detailed information.

I also assisted Command in responding to a wall-to-wall OSHA compliant issued in April 2008 (see TAB 11). The OSHA Compliance Officer was on-site for approximately three weeks. I dealt with her directly addressing issues and concerns identified involving the MAHC and B 136 (DOIM). I also assisted Post Safety by conducting pre-inspection surveys in various shops throughout the Post (primarily focused on DPW shops). A copy of the actual compliant and OSHA final report can be found under TAB 11.

30 - Did you review Mr. Gibson's IH reports? If so, what did you find?

A: To my recollection, I do not believe Mr. Gibson has issued any IH report of findings from July 2007 to present that I have reviewed. With Mr. Gibson's allegation that the original 32 reports submitted between April 2007 and July 2007 had been later/modified by his supervisors - Mr. Gibson was placed on a PIP. As of May 2008 - I have no record of any

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reports being submitted for my review. Mr. Gibson was working with the COE IH consultant in developing a plan to re-evaluate the 26 Listed Priority Reports.

31 - What immediate or follow on actions did Mr. Gibson take as a result of the sampling and surveys he conducted?

A: To my knowledge, I do not believe Mr. Gibson has finalized any reports since August 2007. The COE IH was actually monitoring Mr. Gibson's performance and reports.

32 - What immediate or follow on actions did LT [REDACTED] or LTC [REDACTED] take as a result of the sampling and surveys conducted by Mr. Gibson?

A: LT [REDACTED] communicated directly with [REDACTED] CIH, and COE consultant.

33 - (2c1) What was the purpose of the two step (walk-thru followed by assessment) approach?

A: Identification-hazard recognition; evaluation, and control.

34 - In August 2008, did the Army Corps of Engineers object to LT [REDACTED] and LTC [REDACTED]'s use of this approach?

Not observed smf

35 - (2c2) Did Corps of Engineer officials determine that the walk-thru alone was of minimal value and that the walk-thru and assessment steps should be combined?

Not observed smf

36 - (2c3) Did Corps of Engineer officials determine that assessments should include limited measurements of light, noise and, if indoor air quality issues had been raised by the occupants of a building, to conduct carbon monoxide, temperature, humidity and particulate testing?

Not Observed smf

37 - (2d) Were there any instances in which the Fort Leavenworth IH program created the potential for a substantial and specific danger to the public health and safety. If so, please specify the instance, circumstances, and individuals responsible.

A: No "substantial and specific" danger, but falsified survey reporting resulted in expensive unnecessary remediation

38 - (2c1) Does testing buildings without time weighted measurements render an industrial hygiene program essentially useless and constitute a danger to public health and safety?

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A: Absolutely not! Again, the focus of the PIP to help Mr. Gibson build a comprehensive IH Program at Ft Leavenworth. The IH program, as it stands now is misdirected and does not adhere to the principles of good industrial hygiene practice.

39 - Does an industrial hygienist have any means of determining the cumulative effect a suspected toxin might have upon the occupants of a building over an extended period of time without time weighted measurements?

A: Exposure relates to the nature of the substance, the duration/time of exposure, the concentration and individual susceptibility. The industrial hygienist can measure (quantify) an employee's potential exposure over a given period of time and anticipate the long-term effect.

40 - In comparison with other Army installation industrial hygiene programs, how would you rate the potential hazards at Fort Leavenworth?

A: I would rate hazard severity (HS) at Fort Leavenworth as low – primarily administrative with light industry (DB, DPW, Pesticide Shop, motor pool, etc).

41 - Did Mr. Gibson and the MAHC staff have a history of miscommunication? If so, what appeared to be contributing factors to the miscommunication?

A: I do not believe that there was any miscommunication between Mr. Gibson and MAHC staff. After spending considerable time with Mr. Gibson, I have arrived to the conclusion that Mr. Gibson has his own sense of reality. We all know someone who refuses to acknowledge their mistakes or short-comings – Mr. Gibson is one of those individuals. MAHC management has been patient and afforded Mr. Gibson ample opportunity for improvement. I feel Mr. Gibson could improve his communication skills by being more direct and concise; be clear and confident in what he is trying to communicate; listen; think before he speaks and not be overly negative. I feel a reasonable person would have taken the recommendations, observations, assistance under advisement and attempted to take corrective action(s). Mr. Gibson gave too much push-back and took things to the extreme. Mr. Gibson through his actions and words, made it very clear where he stood on any given issue/concern. He is right and there is no room for compromise.

In my opinion, Mr. Gibson has not demonstrated the characteristics required to effectively manage the IH Program at FT Leavenworth. These characteristics include technical competency, team building skills, effective communication and personal integrity. Mr. Gibson will need to take an active role in building credibility and fostering work relationships/alliances.

42- Do you have anything further to add to your statement?

A: *Not at this time.*

----- End of Statement ----- *SDP*

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