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Mr. William E. Reukauf  
Associate Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, D.C. 20036-4505

RE: Whistleblower Investigation—U.S. Army Corps of Engineers, Louisville  
District—Louisville Repair Station, Louisville, Kentucky (OSC File No. DI-08-  
2166)

Dear Mr. Bloch:

In accordance with Title 5, United States Code (USC), Sections 1213(c) and (d), the enclosed report is submitted in response to your referral of information requesting an investigation of allegations and a report of findings in the above referenced case [Tab A].

As the Agency head, the Secretary of the Army (SA) has delegated to me his authority to review, sign, and submit to you the report required by Title 5, USC, Sections 1213(b), (c), and (d) [Tab B].

Note that this report and its exhibits contain the names and duty titles of employees of the U.S. Army Corps of Engineers (USACE), as well as other Department of Army employees. Subsequent release of this information may result in violations of the Privacy Act,<sup>1</sup> and breaches of personal privacy interests. Accordingly, those releases required by Title 5, USC Section 1213(e) excepted, the Department of the Army is enclosing two versions of the report of investigation. The first version contains the names of witnesses and is for your official use. I understand that you will provide a copy of this version to the Complainant, the President, and the House and Senate Armed Services Committees for their review.

Witness names are redacted from the second version. The second version is suitable for release to the general public. I request that you make only this redacted version available on your web-site, in your library, or in any other forum in which it will be accessible to members of the general public.

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<sup>1</sup> The Privacy Act of 1974 is codified at Title 5, USC, Section 552a.

## INFORMATION INITIATING THE INVESTIGATION

By letter dated July 17, 2008, the OSC referred to the SA its conclusion that there was a substantial likelihood that information provided by Mr. Paul J. Polly, a former employee<sup>2</sup> of the Department of the Army, U.S. Army Corps of Engineers (USACE), disclosed that other employees of the USACE, Louisville District, Louisville Repair Station (LRS)<sup>3</sup>, violated law, rule, or regulation, including but not limited to a violation of Department of Defense Civilian Personnel, Joint Travel Regulations (JTR)<sup>4</sup>, Appendix O, Temporary Duty Travel Allowances, paragraph T4040(A)(1)(e)(2), when they routinely claimed and collected Temporary Duty (TDY) payments for lodging and food expenses, even though they resided at their personal home or at the home of a friend during periods of authorized travel [Tab A].

## THE OSC REFERRAL

Mr. Polly, who consented to the release of his name [Tab A, page 1]<sup>5</sup>, made two allegations:

**Allegation 1:** That a Louisville District civilian employee, Fleet Captain, impermissibly claimed and collected TDY payments for lodging and food expenses while staying at his own home in Owensboro, Kentucky, which is within a “fifty mile travel radius” of many of his common work sites, for up to fifty percent of the river work season,<sup>6</sup> over a period of at least four years. Mr. Polly asserted that because most of Fleet Captain’s TDY work sites were within fifty miles of his home, Fleet Captain was not eligible to collect TDY payments to reimburse him for lodging or food expenses while performing temporary duty at those job sites.

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<sup>2</sup> Mr. Polly was formerly employed as a deckhand with USACE at the Louisville District. He resigned from federal service on February 5, 2008 in accordance with a sealed agreement with the Louisville District.

<sup>3</sup> The U.S. Army Corps of Engineers, Louisville District is located in Louisville, Kentucky. It is part of the USACE Great Lakes and Ohio River Division. The Louisville Repair Station (LRS) is part of the Operations Division within the Louisville District and performs major maintenance and repairs to navigation facilities and flood control structures along the Ohio River.

<sup>4</sup> The Joint Travel Regulation (JTR) prescribes travel rules and policies pertaining to civilian employees of the Department of Defense (DoD), including the per diem, travel and transportation allowances, relocation allowances, and certain other allowances of DOD civilian employees and civilians who travel using DoD funding. In contrast, the Joint Federal Travel Regulation (JFTR) applies to uniformed service members. Appendix O of the JTR addresses the rules for TDY travel allowances. However, note that Appendix O applies to both the JTR and the JFTR. In the instant case, the individuals involved in the allegations are *civilian employees* of the DoD. Appendix O provides for a very limited set of circumstances when a traveler may be reimbursed some additional lodging costs when staying with friends or relatives while on TDY [Tabs U2, V2, and W2, JTR, Appendix O, paragraph T4040(A)(1)(e)(2)].

<sup>5</sup> Administrative Note: This footnote prescribes the citation convention that will be employed throughout this report with a view to facilitating the reader’s understanding and reference to the specific document from which facts or assertions set forth herein are drawn.

<sup>6</sup> The annual river work season for LRS is approximately April-November.

**Allegation 2:** A Louisville District civilian employee, Machinist and Work Leader (hereafter "Machinist"), impermissibly claimed and collected TDY payments for lodging and food expenses while residing at his Girlfriend's home during authorized travel, for up to fifty percent of the work season, over a period of at least six years.

## CONDUCT OF THE INVESTIGATION

### Receipt of OSC Allegations and Referral to CID for Criminal Investigation:

On July 18, 2008, the Office of the Army General Counsel (OGC) informally forwarded by email the OSC request for investigation to the headquarters of the U.S. Army Criminal Investigation Command (often called "CID"). This inquiry was appropriate because CID is responsible for the conduct of criminal investigations in which the Army is, or may be, a party of interest.<sup>7</sup> [Tab C]. CID, in turn, forwarded the allegation to the Commander, 3rd Military Police (MP) Group (CID),<sup>8</sup> requesting review of the OSC letter, and, as appropriate, the initiation of an investigation [Tab D]. The 3<sup>rd</sup> MP Group assigned the request for investigation to the 280th MP Detachment (CID) at Fort Knox, Kentucky, the CID element with investigative responsibility for the area in and around the Louisville District of the USACE.

On August 4, 2008, CID received and forwarded to the Commander, 3d MP Group (CID) a Department of Defense Inspector General (DoDIG) Hotline Complaint (# 107789) related to the investigation of Fleet Captain and Machinist [Tab F, Exhibit 3; Tab G].<sup>9</sup> This DoDIG Hotline Complaint had itself been forwarded from the U.S. Government Accountability Office. In addition to the allegations against Fleet Captain and Machinist that were similar to those made to OSC, DoD Hotline Complaint # 107789 also made allegations against Branch Chief, a Travel Approving Official, for LRS personnel. Those allegations were that Branch Chief, in his capacity as Approving Official for Fleet Captain and Machinist, knowingly approved improper travel reimbursements for Fleet Captain and Machinist [Tab F, Exhibit 3, pages 1-3]. Subsequently, Branch Chief was added as a subject of CID's investigation. Branch Chief was added as a subject of investigation by a CID supervisory review on September 3, 2008. Ultimately, CID did not substantiate that any offenses were committed by Branch Chief.

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<sup>7</sup> The mission of USACIDC includes conducting and controlling all Army investigations of serious crimes, as defined in Army Regulation (AR) 195-2, *Criminal Investigation Activities*, and less serious crimes upon request or as needed to enforce Army law or regulations. The specific functions and responsibilities of the CID are described in AR 10-87, *Army Commands, Army Service Component Commands, and Direct Reporting Units*, Chapter 17, and in AR 195-2.

<sup>8</sup> Headquartered in Fort Gillem, Georgia, the 3rd MP Group (CID) is responsible for all felony criminal investigation matters with a U.S. Army interest throughout an area of operation encompassing the eastern half of the United States, the Caribbean, Central America (less Mexico) and South America.

<sup>9</sup> The Department of Defense Inspector General (DoDIG) operates the Defense Hotline Program to "encourage DoD personnel to report suspected fraud, waste and mismanagement without fear of reprisal" (DoD Directive 7050.1, *Defense Hotline Program*, January 4, 1999). Upon receipt of a complaint, DoDIG assigns it to the appropriate Department of Defense (DoD) component to conduct an inquiry, if warranted, and to report the results to DoDIG in the form of a Hotline Completion Report (DoD Instruction 7050.7, *Defense Hotline Procedures*, December 14, 1998).

By statute, an agency is afforded sixty days to complete the report required by Title 5, USC, Section 1213(c) [Tab A, page 2]. On July 25, 2008, because the allegations were criminal in nature, OGC requested that OSC allow the Army to submit its report within ninety (90) days of referral rather than the sixty days generally allotted to administrative investigations [Tab E]. OSC granted this request on July 28, 2008, extending the time for the Army report until December 19, 2008. CID conducted its investigation and submitted its initial "final" report to OGC on September 3, 2008. Additionally, the documents that comprised that investigative effort were forwarded to OGC also on September 3, 2008 [Tab F]. Upon review of that report, it was determined by OGC that additional lines of inquiry needed to be pursued. Hence, OGC requested that CID conduct a supplemental investigation. CID issued a supplemental report on November 28, 2008. The documents that comprised that investigative effort were forwarded to OGC also on November 28, 2008 [Tab H]. In order for CID to complete its supplemental investigation and for the Army to prepare its report to OSC, OGC requested another extension request from OSC on December 22, 2008 [Tab I]. OSC granted that request on December 23, 2008, extending the Army's response period until March 23, 2009. CID completed its investigation on March 5, 2009 and forwarded its report to OGC. The documents that comprised that submission were forwarded to OGC also on March 5, 2009 [Tab J]. The OGC requested, and the OSC granted, four more extension requests in order to prepare, staff, and finalize the Army's final report [Tabs K, L, M, and N].<sup>10</sup>

A final summary of CID's investigative findings with regard to each OSC-referred allegation is at Tab O. CID substantiated that Machinist committed the offenses of fraud and making a false statement in violation of Title 18, United States Code, Section 1001, theft of Government funds in violation of Title 18, United States Code, Section 641, and conspiracy in violation of Title 18, United States Code, Section 371. Further, CID substantiated that Machinist's Girlfriend,<sup>11</sup> committed the offenses of fraud and making a false statement in violation of Title 18, United States Code, Section 1001; conspiracy in violation of Title 18, United States Code, Section 371; and theft of Government funds in violation of Title 18, United States Code, Section 641 [Tab O]. CID did not substantiate any of the allegations made against Fleet Captain or Branch Chief [Tab O].<sup>12</sup>

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<sup>10</sup> See Tab A, authorizing the Special Counsel to agree to a longer period of time for the agency to investigate and report its findings. See Extension request 3 requested on March 23, 2009, granted on March 24, 2009, for 90 days until June 25, 2009; Extension request 4 requested on June 19, 2009, granted on June 22, 2009, for 60 days until August 25, 2009; Extension request 5 requested on August 21, 2009, granted on August 24, 2009, for 60 days until October 26, 2009; and Extension 6 requested on October 23, 2009, granted on October 26, 2009, for 60 days until December 28, 2009. [Tabs K, L, M, and N].

<sup>11</sup> Machinist's Girlfriend is not a federal government employee.

<sup>12</sup> The March 5, 2009 CID Report (and other CID documents) also identifies another subject of investigation, Branch Chief, a supervisor to Fleet Captain and Machinist. Branch Chief was not named in the original OSC referral; however, he was added as a subject of investigation by a CID supervisory review on September 3, 2008. Ultimately, CID did not substantiate that any offenses were committed by Branch Chief.

On July 17, 2009, the USACE Louisville District Assistant District Counsel referred this matter to the U.S. Attorney's Office for the Western District of Kentucky [Tab P]. To date, USACE has not received a response from the U.S. Attorney's Office whether or not civil and/or criminal charges will be pursued against Machinist and Machinist's Girlfriend.

**SUMMARY OF EVIDENCE OBTAINED  
FROM THE INVESTIGATION**

Summary of the Evidence:

**The USACE Louisville District Internal Review Office Audit**

As part of its investigation, on August 6, 2008, the CID agent investigating the case requested that the USACE Louisville District Internal Review Office (IRO) conduct an audit of Fleet Captain's TDY vouchers from 2004 to the date of the request and of Machinist's TDY vouchers from 2002 to that date. [Tab F, Exhibit 1, Agent's Investigative Report of Special Agent Number 1; Tab Q].<sup>13</sup>

In its final audit report, dated November 7, 2008, with regard to Fleet Captain's travel vouchers, the IRO review indicated that the "results were inconclusive" regarding any unauthorized or fraudulent activity as alleged [Tab H, Exhibit 16, page 1].

In this same final audit report, the IRO determined that Machinist "submitted lodging receipts "may have been questionable . . . and, accordingly, may have represented a loss to the government of \$22,215.00." [Tab H, Exhibit 16]. The IRO determined that the following receipts submitted by Machinist as part of his travel vouchers were "questionable":

<b>YEAR</b>	<b>"Business" Name on Receipt</b>	<b>Approved by:</b>	<b>Total</b>
2001	[Redacted] Bed & Breakfast	[Approval Authority]	\$2420.00 (4 receipts)
2003	[Redacted] Bed & Breakfast	[Approval Authority]	\$7810.00 (10 receipts)
2004	[Redacted] Bed & Breakfast	[Approval Authority]	\$3595.00 (5 receipts)
2005	North Side Apartment(s)	[Approval Authority]	\$2420.00 (4 receipts)
2006	North Side Apartments	[Approval Authority]	\$3050.00 (4 receipts)

<sup>13</sup> While the CID audit request to the USACE IRO asked for travel records for Machinist from **2002** until the date of the request, in fact, the IRO found questionable travel records for Machinist from **2001** through 2008.

		Authority]	receipts)
2007	North Side Apartments	[Approval Authority]	\$1800.00 (1 receipt)
2008	Northside Apartments	[Approval Authority]	\$1120.00 (1 receipt)

[Tab F, Exhibit 5; Tab H, Exhibit 16, Appendices A1 and B2;]. The CID agent charged with investigating the case also determined that although the name of the lodging on the receipts submitted by Machinist changed from “[Redacted] Bed & Breakfast” to “North Side Apartment” to “North Side Apartments” to “Northside Apartment,” the address on the receipts remained constant (514 Richardt Avenue, Evansville, Indiana 47711). CID determined that this address corresponded to a private apartment complex [Tab F, Exhibit 4, Agent’s Investigative Report of SA Number 2, page 2]. The phone number shown on the receipts dated 2001 through 2004 was [Redacted], while the phone number shown on the receipts dated 2005 through 2008 was [Redacted]<sup>14</sup> The IRO audit report noted that the (812) number was disconnected at the time of the audit and the (502) number was an “irregular” area code [Tab H, Exhibit 16, page 2]. At the time this OSC report was written, a “reverse lookup” website (<http://www.anywho.com>) and a LexisNexis SmartLinx search indicated that the [Redacted] number is or was registered to Machinist’s Girlfriend, [Address Redacted], but that the number is likely disconnected. A LexisNexis SmartLinx search on the number did not reveal any personal information, but indicated that the number corresponded to a wireless phone. The voicemail message reached when the number was dialed did not provide a name, but indicated that the number was a part of the Sprint PCS wireless network.

The daily lodging rate reflected on each of the receipts from 2001 through and including 2008 corresponded to the standard CONUS daily lodging rate (excluding taxes) allowed by the U.S. General Service Administration, increasing from \$55.00/day in 2001 to \$70.00/day in 2008.<sup>15</sup> The total amount paid to Machinist over the period of 2001 through 2008 for lodging at “[Redacted] Bed & Breakfast” and “North Side/Northside Apartment(s)” is estimated to be \$23,265.00.<sup>16</sup>

<sup>14</sup> “812” is the area code applicable to Evansville, Indiana. “502” is the area code applicable to Louisville, Kentucky.

<sup>15</sup> The General Services Administration (GSA) provides rates for the Continental United States (CONUS). GSA updates the CONUS rates once a year or as necessary. CONUS (domestic) per diem rates are available at the GSA website. If neither the city nor the county is listed, the location is considered a “standard CONUS [] destination” with a standard rate for lodging and a standard rate for meals and incidental expenses (M&IE). See also JTR C4550(J) and Appendix D.

<sup>16</sup> Note that this amount does not match the amount stated in the various CID documents, which state that the estimated loss to the Government is \$22,285.00. The loss amount stated in the CID documents conflicts with the Louisville District Internal Review Office (IRO) audit which found an estimated loss to the Government of \$22,215.00. See Tab H, Exhibit 16 at page 1. Louisville District Assistant District Counsel also independently calculated the loss to the Government to be \$22,215.00 based on the audited travel vouchers. On September 6, 2008, Assistant District Counsel emailed the IRO and CID about this \$70.00 discrepancy, which she believed to result from a simple mathematical or typographical error. [Tab R]. On July 20, 2009, a previously unidentified voucher for Machinist was discovered by a supervisory accountant at the USACE Finance Center in Millington, Tennessee. This

## The Interview of Mr. Polly

On November 6, 2008, CID interviewed Mr. Paul J. Polly who provided a sworn statement in which he repeated his original allegations [Tab H, Exhibit 15, Sworn Statement of Mr. Paul J. Polly]. Mr. Polly did not have any direct evidence or proof of any wrongdoing and admitted that he never saw any copies of either Fleet Captain's or Machinist's travel vouchers. Mr. Polly indicated that his allegations were based only on what he had heard from others, including statements from Fleet Captain and Machinist themselves. Mr. Polly stated that he socialized with Machinist outside of work and that he "hung out" with both Machinist and Machinist's Girlfriend, to include going bowling, going to bars, or going to the "gambling boat." Mr. Polly admitted that he had never gone to Machinist's Girlfriend's apartment [Tab H, Exhibit 15, Sworn Statement of Mr. Paul J. Polly, page 1]. While he admitted that he had never actually seen any of Machinist's travel vouchers, Mr. Polly stated that Machinist would talk about staying with his girlfriend and collecting per diem. Mr. Polly stated that he and other employees would tell Machinist this was not right, but that Machinist told them that he would just put "[Redacted] Bed & Breakfast" on the receipts. Mr. Polly stated that Machinist told him that he received "full TDY"—lodging, Meals and Incidental Expenses (M&IE), and mileage—when he stayed with his girlfriend. When asked why Branch Chief would authorize a fraudulent travel voucher for Fleet Captain or Machinist, Mr. Polly replied he "would want to take care of him, in my opinion. Fleet Captain and Machinist were both kind of like little spies who would report to [him] what everyone else was doing." [Tab H, Exhibit 15, Sworn Statement of Mr. Paul J. Polly, page 2]. When asked how he knew that Branch Chief and other supervisors knew that Machinist was living with his girlfriend and submitting fraudulent vouchers, Mr. Polly replied:

Machinist is very upfront with telling everyone about Machinist's Girlfriend and that she lives in Evansville. Machinist is a guy who likes to brag about who he is seeing and we would always hear about Machinist's Girlfriend. They received vouchers from him which contained receipts with "[Redacted] Bed & Breakfast" on them. Common sense would tell anyone to check it out. Another former Travel Approving Authority for LRS would also go out bowling with Machinist and Machinist's Girlfriend. [Tab H, Exhibit 15, Sworn Statement of Mr. Paul J. Polly, page 3].

Mr. Polly further stated that "probably in 2002," he had left an anonymous note for the former Chief of LRS and currently Chief of Operations Division for the Louisville District. Mr. Polly stated this note said that Mr. Polly found it wrong that Machinist was staying at his girlfriend's house and getting reimbursed. Mr. Polly stated nothing

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previously unidentified voucher had a receipt for "Northside Apartments" for August 6-20, 2008 at \$70/day for a total of \$1050.00. The previous known amount of \$22,215.00 plus this latest discovered receipt for \$1050.00 brings the total of known questionable receipts to \$23,265.00. This most recently discovered receipt is attached at Tab S.

was ever done about this note. [Tab H, Exhibit 15, Sworn Statement of Mr. Paul J. Polly, page 3].

On November 7, 2008, Mr. Polly reported to the CID agent investigating the case that he (Mr. Polly) had received a voicemail from Machinist pertaining to the investigation. [Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 1]. Mr. Polly played the voicemail to a CID agent who transcribed it as follows:

Paul, what are you trying to do again? What did you report this for ... to the Army for? They are goin' after her. They ain't, they ain't talkin' to Branch Chief, they're goin' after her. Poor little girl ain't had nothin'. Her momma died when she was fifteen. She never had a daddy. And now they're goin' after her. She's wiggin' out. I owe you one for this one, buddy, reporting on her bed and breakfast. You didn't accomplish nothin' but (incoherent words). I owe you one.

### **The Interview of Fleet Captain**

The CID agent charged with investigating the case interviewed Fleet Captain on August 28, 2008. Fleet Captain waived his rights and gave a verbal statement in which he stated he had submitted travel vouchers claiming only mileage and Meals and Incidentals Expenses (M&IE) while residing at his "secondary" residence in Owensboro, Kentucky while TDY [Tab F, Agent's Investigative Report of SA Number 2, pages 1-2]. Fleet Captain told the CID agent that he claims his Jeffersonville, Indiana home as his primary residence because his job is located in Louisville, Kentucky.<sup>17</sup> Fleet Captain also has a secondary residence in Owensboro, Kentucky, which he stays at while working TDY in the Owensboro area. Fleet Captain admitted to submitting travel vouchers claiming mileage and Meals & Incidental Expenses (M&IE) while staying at this secondary residence; however, Fleet Captain did not state that he was also claiming lodging reimbursement while staying at this secondary residence. Fleet Captain further stated that he had discussed this issue with his supervisor and the District's travel support personnel and was informed that he was authorized to claim mileage and M&IE because he was in an authorized TDY status and he was not staying at his primary residence in the Jeffersonville/Louisville area.

### **The Interview of Machinist**

CID interviewed Machinist on August 28, 2008. In his interview, Machinist waived his rights and gave a sworn statement in which he stated he had been dating Machinist's Girlfriend for approximately eight years and that he had started staying in her apartment at [Redacted] approximately five or six years ago [Tab F, Exhibit 10,

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<sup>17</sup> Jeffersonville, Indiana and Louisville, Kentucky are located directly across the Ohio River from each other. Two bridges connect the cities.



Sworn Statement of Machinist]<sup>18</sup>. Machinist stated that when he stayed at Machinist's Girlfriend's apartment, he paid her—mainly in cash—all the money he received from the Government for his TDY lodging. Machinist stated that Machinist's Girlfriend used a friend's computer to create receipts for the payments he gave her. At the beginning, she used the name "[Redacted] Bed & Breakfast" and then later she used the name "North Side Apartments." Machinist admitted to submitting these receipts when he filed his travel vouchers. Machinist stated that no lease ever was drawn up between him and Machinist's Girlfriend, but that there was only a "verbal agreement" between them. Further, Machinist stated that he thought that it was "legal" to stay with Machinist's Girlfriend because she was just a friend and not a relative. Machinist stated that this was information passed down by other employees over the years, and that he would not even know where to find the rules and regulations on this issue. [Tab F, Exhibit 10, Sworn Statement of Machinist, page 1].

Machinist also stated that "about four years ago," the former Chief of LRS, who at the time of this investigation was serving as the Chief of Operations, had conducted an internal "investigation" of Machinist's TDY practices.<sup>19</sup> Machinist stated that the former Chief of LRS had asked him if he was keeping the money, to which he replied no. Machinist stated that the former Chief of LRS had called Machinist's Girlfriend and asked her if Machinist was paying her, to which she affirmatively responded. Machinist stated that he had been told that everything was okay and he had not heard anything else about the issue until his recent contact with CID. [Tab F, Exhibit 10, Sworn Statement of Machinist, page 1].

### **The Interview of Machinist's Girlfriend**

CID agents investigating the case traveled to Evansville, Indiana on August 28, 2008 in an effort to interview Machinist's Girlfriend. The CID agents were unable to contact her on this date, but did speak to an unknown female at the apartment complex where Machinist's Girlfriend at that time resided. This individual related that she had not seen Machinist's Girlfriend or Machinist that day, and provided the contact information of the apartment complex property manager [Tab O-2, page 2]. The CID agent took photographs of [Redacted], the address provided on the receipts for "[Redacted] Bed and Breakfast" and "Northside Apartments" [Tab F, Exhibit 8]. CID also interviewed the property manager for the apartment complex located at [Redacted]. The property manager related that he did not rent out apartments on a day-by-day basis and that there were no empty apartments at that time [Tab F,

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<sup>18</sup> The original of the subject CID report contained a CD numbered as "9" (which contained the original photographs of Exhibit 8 (with those originals only maintained in the USACRC and file copies only) while the Sworn Statement of Machinist was numbered as "10." However, the original report mislabeled the actual document as Exhibit 9. Therefore, to correct the proper numbering sequencing, the Army report has relabeled Machinist's statement as Exhibit 10 and does not include any copy of Exhibit 9.

<sup>19</sup> CID coordination with the Louisville District's Office of Counsel failed to identify any paperwork generated by the former Chief of LRS relating to any type of formal investigation into the allegations against Machinist.

Exhibit 4, Agent's Investigative Report of SA Number 2, page 2]. The property manager further related that he had never rented to Machinist, but he knew him as Machinist's Girlfriend's boyfriend and that she had rented an apartment at the complex for approximately 15 to 18 years. CID coordination with the Evansville, Indiana Police Department found no results in a search of the name "[redacted] Bed & Breakfast" and confirmed that the address listed on the receipts submitted by Machinist in support of his travel vouchers was registered to Machinist's Girlfriend [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 2].

On September 3, 2008, CID agents again attempted to contact Machinist's Girlfriend, this time at the residence of Machinist's parents, where Machinist had reported Machinist's Girlfriend was then residing. After getting no answer at the residence, the CID agent attempted to contact Machinist's Girlfriend on her cell phone and left a message. After two additional attempts to make contact with Machinist's Girlfriend by telephone, the CID agent finally reached her and conducted a telephonic interview. [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 3; Tab O-2, pages 2-3]. Machinist's Girlfriend stated that Machinist stayed with her "off and on" in her apartment in Evansville, Indiana and that Machinist paid her in cash for the nights that he stayed at her apartment. Machinist's Girlfriend added that "she believed the rate started somewhere around \$45.00 and increased over the years." Machinist's Girlfriend further stated that she had used a friend's computer to create the receipts that Machinist had submitted in support of his travel vouchers and that she had "made up" the business name(s) for her residence. [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 3].

After several weeks of trying to locate and contact Machinist's Girlfriend again, on November 25, 2008, [Tab O-2, pages 3-4], CID again reached her by phone.<sup>20</sup> In this second phone interview, Machinist's Girlfriend stated that she and Machinist had known each other for about eight years and had become romantically involved during this time [Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 2]. Machinist's Girlfriend described the details of how Machinist would stay at her apartment when he worked in the Evansville area and that as time went on, Machinist would pay her between \$55.00 and \$70.00 a day when he stayed there. Machinist's Girlfriend stated that she provided Machinist with computer-generated receipts that used the name "[Redacted] Bed & Breakfast" or something similar. Machinist's Girlfriend admitted that she never owned any such business and "she only provided a receipt because it was just something she did for Machinist." [Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 2].

### **The Interview of Branch Chief**

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<sup>20</sup> Machinist's Girlfriend declined to meet face to face with CID agents for this investigation. The agent interviewing Machinist's Girlfriend by phone on November 25, 2008 noted that Machinist's Girlfriend became uneasy as further questions were being asked and then terminated the interview stating she had to attend to the children that were in her care. [Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 2].

On August 28, 2008, interviewed Branch Chief, an LRS supervisor and Travel Approving Official [Tab F, Exhibit 6, Sworn Statement of Branch Chief]. Branch Chief was not named in the original OSC referral; however, as discussed above, as the CID investigation of the matters referred by OSC progressed, Branch Chief became a subject of the investigation. At the beginning of his August 28, 2008 interview, Branch Chief waived his rights and provided a sworn statement in which he stated that he was one of three Approving Officials for travel orders submitted by Louisville District LRS employees [Tab F, Exhibit 6, Sworn Statement of Branch Chief].

Branch Chief stated that Fleet Captain, who began working at LRS in approximately 2004, owned a home in southern Indiana near Louisville and Fleet Captain's wife maintained a home in the Owensboro, Kentucky area. Branch Chief stated that before Fleet Captain was authorized travel orders for a TDY location in the Owensboro area, this situation was described to the "travel office" in the Louisville District<sup>21</sup> and that the travel office had confirmed that Fleet Captain was authorized to be on TDY while at this location. Branch Chief stated that in approximately 2005, an anonymous email was sent to the Louisville District Commander stating that, among other things, Fleet Captain should not be on TDY while at Newburgh Locks, located 16 miles upstream from Evansville, Indiana. Branch Chief stated that the allegation was investigated by the Assistant Chief of Operations; it was determined that Fleet Captain was authorized to be on TDY [Tab F, Exhibit 6, Sworn Statement of Branch Chief, pages 1-2].

With regard to Machinist, Branch Chief stated that Machinist began working at LRS in the early to mid-1990s. Branch Chief stated that the former chief of LRS, who was currently the LRS Chief of Operations, had investigated the allegation Machinist had claimed that he lodged at a bed and breakfast while TDY, but had actually been staying with his girlfriend in Evansville, Indiana. Branch Chief stated that he believed that the former chief of LRS had told him the lodging claim was valid. Branch Chief stated that he did not know Machinist's Girlfriend, he had not been to "[Redacted] Bed & Breakfast," and that he did not know if Machinist's Girlfriend owned a bed and breakfast. Branch Chief further stated that he did not recall approving any travel vouchers for Machinist that included a receipt for "[Redacted] Bed and Breakfast."<sup>22</sup> [Tab F, Exhibit 6, Sworn Statement of Branch Chief, page 2].

### **The Interview of the former chief of LRS**

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<sup>21</sup> The "travel office" referred to by Branch Chief is most likely the Louisville District's Logistics Management Division, which supports the Louisville District by providing the facilities, supplies and property, and travel and transportation services necessary to perform missions of the Corps of Engineers.

<sup>22</sup> A review of the TDY vouchers submitted by Machinist shows that Branch Chief approved one voucher with a receipt for "North Side Apartments" in 2006 and two vouchers with a receipt for "Northside Apartments" in 2008. Branch Chief did not sign any vouchers that included receipts for "[Redacted] Bed & Breakfast."

On September 3, 2008, the CID agents investigating the case informally interviewed the former chief of LRS and the current Chief of the Operations Division, USACE Louisville District [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 3]. The former chief of LRS indicated that in his previous position overseeing LRS, he would, on occasion, sign travel vouchers for members of his staff.<sup>23</sup> The former chief of LRS indicated that he had reviewed a travel voucher submitted by Machinist that included a "handwritten" receipt for "[Redacted] Bed & Breakfast" and that he thought the receipt "looked suspicious". Accordingly, the former chief of LRS had spoken to Machinist about the receipt and questioned him as to its authenticity. Machinist had responded that "[redacted] Bed & Breakfast" was a legitimate business and he, Machinist, was making payments to that business for his lodging while TDY. The former chief of LRS indicated that subsequently he had spoken to "Finance"<sup>24</sup> about handwritten receipts and was told that such receipts were "acceptable". The former chief of LRS told the CID agents that he had not further followed-up on the issue once he was informed that handwritten receipts were "acceptable". [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 3].

On November 4, 2008, CID obtained a sworn statement from the former chief of LRS [Tab H, Exhibit 13, Sworn Statement]. He stated that in his former position as Chief of the Physical Support Branch for the Louisville District, he approved travel orders and vouchers. On "one occasion" while reviewing a travel voucher for Machinist, the former chief of LRS stated that he noticed a "different looking" lodging receipt in that it was written or typed on plain paper with "[redacted] Bed & Breakfast" at the top of the page.<sup>25</sup> The former chief of LRS stated that he asked Machinist about this receipt and "if this was a legitimate place of lodging." The former chief of LRS stated that Machinist told him that the place was a bed and breakfast establishment. The former chief of LRS further stated that he told Machinist that "the receipt looked very suspicious and he needed to make sure it was on the up and up". After he reviewed the voucher, the former chief of LRS stated that he drove to the area of the address listed on the receipt, although he did not verify the exact address. The former chief of LRS stated that he noted that there were only apartment buildings in the area. He stated that he had checked with the Logistics Branch<sup>26</sup> about the

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<sup>23</sup> A review of the TDY vouchers submitted by Machinist shows that the former chief of LRS approved two vouchers with receipts for "[redacted] Bed & Breakfast" in 2001 and one voucher with a receipt for "[redacted] Bed & Breakfast" in 2004.

<sup>24</sup> It is likely, as discussed above in Footnote 21, that by "Finance," The former chief of LRS is likely referring to the Louisville District's Logistics Management Division.

<sup>25</sup> Although the former chief of LRS did not tell the CID agents in which timeframe or date he became suspicious of one of Machinist's lodging receipts, in Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2] or in his sworn statement [Tab H, Exhibit 13, Sworn Statement]. In a face-to-face conversation on May 11, 2009 with Louisville Assistant District Counsel, The former chief of LRS stated that he thought he had questioned Machinist about the receipts considerably prior to 2004, the date suggested by Machinist in his statement to CID [Tab H, Exhibit 13, Sworn Statement]. After reviewing the receipts with Louisville Assistant District Counsel, the former chief of LRS thought he had probably questioned Machinist back in 2001.

<sup>26</sup> The former chief of LRS is likely referring to the Louisville District's Logistics Management Division. See Footnote 21 above.

receipt, and that to the best of his memory, he was told that if the receipt had an “address, phone number, and other identification, there were no issues.” The former chief of LRS stated that he did not pursue any other investigation into the matter and did not question any of Machinist’s co-workers about the situation. [Tab H, Exhibit 13, Sworn Statement, pages 1-2]. He admitted that the rumor was that Machinist’s Girlfriend was Machinist’s girlfriend, but that he never met her and that Machinist never told him what was his relationship with Machinist’s Girlfriend. In response to the question of whether there was any question that “[redacted] Bed & Breakfast” was a false business the former chief of LRS stated, “none other than the receipt looked suspicious.” [Tab H, Exhibit 13, Sworn Statement, page 3].

### **The Interview of Machinist’s Second Level Supervisor**

On November 6, 2008, CID obtained a sworn statement from Machinist’s Second Level Supervisor and who approved a number of Machinist travel vouchers from 2001-2006 [Tab H, Exhibit 14, Sworn Statement]. Machinist’s Second Level Supervisor stated that when this situation first occurred, the Travel Approving Official, the former chief of LRS, had spoken to Machinist regarding the receipts and had checked the place of lodging. Machinist’s Second Level Supervisor further believed that the former chief of LRS had spoken with Machinist’s Girlfriend, the owner of “[redacted] Bed & Breakfast.” [Tab H, Exhibit 14, Sworn Statement, pages 1-2]. Machinist’s Second Level Supervisor stated that approximately one to two years after the former chief of LRS’s “investigation,” the former chief of LRS delegated the Travel Approval official duties to Machinist’s Second Level Supervisor. Based on the former chief of LRS’s previous investigation and conclusions, Machinist’s Second Level Supervisor felt comfortable signing Machinist’s vouchers [Tab H, Exhibit 14, Sworn Statement, page 1]. However, before the former chief of LRS formally delegated that responsibility to Machinist’s Second Level Supervisor, it had been only on a rare basis, when the former chief of LRS was out of the office “for an extended period of time,” that Machinist’s Second Level Supervisor had signed any of Machinist’s travel vouchers [Tab H, Exhibit 14, Sworn Statement, page 1]. Machinist’s Second Level Supervisor stated that he never talked to Machinist about his lodging at “[redacted] Bed and Breakfast.” [Tab H, Exhibit 14, Sworn Statement, page 2].

### **DISCUSSION AND ANALYSIS**

**Allegation 1:** Louisville District civilian employee, Fleet Captain, impermissibly claimed and collected TDY payments for lodging and food expenses while staying at his own home in Owensboro, Kentucky, which is within a “fifty mile travel radius” of many of his common work sites, for up to fifty percent of the work season, over a period of at least four years. The whistleblower, Mr. Polly, alleged that because most of Fleet Captain’s TDY work sites were within fifty miles of his home, Fleet Captain was not eligible to collect per diem payments to reimburse him for lodging or food expenses while performing temporary duty at those job sites.

References: The current Department of Defense Joint Travel Regulations (JTR) are available at <http://www.defensetravel.dod.mil/perdiem/trvlregs.html>.

JTR Appendix A, (Definitions), Part 1 (Terms) – defines “Permanent Duty Station (PDS) as an employee’s “permanent work assignment location.” A PDS is defined as “the corporate limits of the city or town in which [an employee] is stationed.”

JTR, Chapter 4 (Employee Travel), Part J (TDY Travel), Section C4410(1) – provides that TDY travel includes an assignment away from the employee’s PDS that is not so frequent or lengthy that the location is, in fact, the employee’s PDS.

JTR, Chapter 4 (Employee Travel), Part L (Per Diem Allowances), Section C4552(C)(1) – provides that “Per diem cannot be authorized or paid within the PDS limits, or at, or within the vicinity of, the place of abode (residence) from which the employee commutes daily to the official station.”

JTR, Chapter 4 (Employee Travel), Part L (Per Diem Allowances), Section C4552(F) – Per diem is not allowed when the official travel period is 12 or fewer hours (the “12-Hour Rule”).

JTR, Chapter 2, (Transportation Modes, Accommodations, Transportation Requests, Baggage and Mileage Rates), Part I (Mileage & MALT Rates) – provides mileage rates for TDY travel.

#### Discussion:

A review of Fleet Captain’s travel vouchers by the USACE IRO did not reveal any conclusive results of fraudulent activity [Tab H, Exhibit 16, page 1, para 1]. CID investigation determined Fleet Captain did not claim or collect lodging costs when working TDY in the Owensboro area when he stayed at his secondary residence in Owensboro, Kentucky [Tab O-1; Tab F, Exhibit 7]. Rather, Fleet Captain claimed and was paid only for authorized mileage and M&IE expenses [Tab O-1].<sup>27</sup>

CID Findings: CID ultimately found no evidence of criminal misconduct associated with Allegation 1 [Tab O-1].

Conclusion: The allegation that Fleet Captain impermissibly collected TDY lodging payments while staying at his own home in Owensboro, Kentucky over a period of at least four years is not substantiated.

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<sup>27</sup> Fleet Captain’s Permanent Duty Station (PDS) is the Louisville District in Louisville, Kentucky; his primary residence or “place of abode” from which he commutes daily to his PDS is located in Jeffersonville, Indiana. When authorized to work TDY in the Owensboro area, Fleet Captain could claim legitimate TDY expenses such as M&IE and mileage. It should be noted that had Fleet Captain chosen to stay at an official lodging business instead of his secondary residence in the Owensboro area, he could also have been reimbursed for lodging expenses.

**Allegation 2:** Louisville District civilian employee, Machinist, impermissibly claimed and collected TDY payments for lodging and food expenses while residing at his girlfriend's home during authorized travel, for up to fifty percent of the work season, over a period of at least six years.

References:

Federal Travel Regulation (FTR)<sup>28</sup>, Section 301-11.12(c) [Tab T]:

*Lodging with friend(s) or relative(s) (with or without charge).* You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount.

JTR, Section C4555(B)(3) and Appendix O [Tabs U1 and U2]:

Prior to October 1, 2006, JTR, Section C4555(B)(3) that had been effective since October 1, 2001, provided that "Lodging With Friends or Relatives. When an employee lodges with friends or relatives (including immediate family members) with or without charge, the allowable lodging cost, for computing per diem, is zero." [Tab U1]. Likewise, prior to October 1, 2006, JTR, Appendix O, paragraph T4040(A)(1)(e) provided, "Reimbursement of lodging cost when staying with friends or relatives is not authorized." [Tab U2] On October 1, 2006, JTR C4555(B)(3) was modified effective July 19, 2006 to correspond with FTR, Section 301.11-12(c) [Tab V1 at page C4L-14]:

Lodging with Friend(s) or Relative(s). When a traveler lodges with friend(s) or relative(s) (with or without charges) the traveler may be reimbursed for additional costs the host incurs in accommodating the traveler (as a lodging expense) only if the traveler is able to substantiate the costs and the AO determines the costs to be reasonable. ***The traveler may not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount.*** See GSBCEA 16836-RELO, 5 June 2006 (This decision is available at: <http://141.116.74.201/regs/comp-gen-dec/GSBCEA16836.PDF>.) A traveler who lodges with friends or relatives is

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<sup>28</sup> The FTR is issued by the Administrator of General Services to implement Title 5, United States Code, Section 5707(a), regarding travel, transportation, and subsistence expenses of federal civilian employees. Because the FTR is promulgated under delegation from Congress, it is a "legislative rule" which is entitled to special weight. The provisions of the FTR are binding on all agencies. *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843-44 (1984). The JTRs are "interpretive rules" because they are typically issued without statutory imprimatur and are generally used to implement and supplement the FTR for civilian DOD employees. Where a conflict exists between the FTR and the JTR, the FTR as a "legislative rule" generally "trumps" the JTR "interpretive rule," unless a particular JTR provision implements a statute specific to the DOD. See *Michael Bilodeau*, CBCEA 686-TRAV, 07-2 BCA ¶ 33,716.

authorized an allowance for meals and incidental expenses at the M&IE rate prescribed for the TDY location.

Likewise, on October 1, 2006, the JTR Appendix O was also modified effective July 19, 2006 to provide at Section T4040(A)(1)(e)(2) [Tab V2 at pages O-9 to O-10]:

e. Lodging with Friends or Relatives

(2) Applicable to Civilian Employees. When a traveler lodges with friend(s) or relative(s) (with or without charges) the traveler may be reimbursed for additional costs the host incurs in accommodating the traveler (as a lodging expense) only if the traveler is able to substantiate the costs and the AO determines the costs to be reasonable. ***The traveler may not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount.*** See GSBICA 16836-RELO, 5 June 2006. (This decision is available at: <http://141.116.74.201/regs/comp-gen-dec/GSBICA16836.PDF>). A traveler who lodges with friends or relatives is authorized an allowance for meals and incidental expenses at the M&IE rate prescribed for the TDY location.

On June 1, 2007, JTR, Section C4555(B)(3) was further modified to include some examples and a counseling requirement [Tab W at page C4L-14]:

Lodging with Friends or Relatives (FTR § 301-11-12 (c)). ***Reimbursement of lodging cost is not ordinarily authorized when staying with friends or relatives.*** When an official traveler lodges with friend(s) or relative(s)- with or without charges – the official traveler may be reimbursed for additional lodging costs the host incurs in accommodating the traveler provided the traveler can substantiate the costs and the AO determines the costs are reasonable. ***The Service/Agency cannot direct the official traveler to lodge with friends or relatives.***

The lodging reimbursement examples below apply for official travel including as an attendant/escort, evacuation, extended TDY, limited evacuation and other circumstances in which the official traveler has the option to stay with friends or relatives. The official traveler is not reimbursed the cost of comparable conventional lodging in the area or a flat token amount.

Example 1: A civilian employee (extended TDY) and a member (short-term TDY), each traveling under an official TDY travel authorization/order to Location A, reside together with family members who live at/near Location A during the TDY. They commute daily to the TDY location. The DOD civilian employee's lodging cost may be reimbursed for substantiated lodging cost (above the cost the host ordinarily incurs) if the additional costs are substantiated and determined to be reasonable by the AO, but the member is not authorized lodging reimbursement. See JFTR, par. U4129-E.

Example 2: A DOD civilian employee is TDY (training) to Location A and stays in commercial lodging. A family member later joins the employee at



personal expense. The traveler is authorized up to the single room rate and room taxes if applicable. See pars. C4430, C4530-D and C4552-I if the civilian employee's TDY duration exceeds 30 days.

The traveler must be counseled on required document substantiation and responsibility to support lodging cost reimbursement when staying with friend(s) and family.

Appendix O, paragraph T4040(A)(1)(e)(2) was not changed on June 1, 2007. There have been no subsequent changes to either JTR C4555(B) or T4040(A)(1)(e)(2).

#### Discussion:

The JTR in effect prior to July 19, 2006 provided that travelers who lodged with **family or friends, with or without cost**, were authorized "zero" reimbursement for lodging. However, this version of the JTR was determined to be contrary to what was allowable under the FTR.<sup>29</sup> Subsequently, the JTR was amended to reflect the pertinent provisions of the FTR. Because this prior version of the JTR was found to be contrary to the FTR, the current version of the JTR (effective July 19, 2006), which provides for possible **limited** reimbursement when a traveler lodges with family or friends, will be used for determining the validity of the allegations against Machinist.

While working TDY in the Evansville, Indiana area over the period of 2001-2008, Machinist frequently stayed at the residence of Machinist's Girlfriend, his admitted girlfriend. Machinist claims that when he stayed at his girlfriend's apartment in Evansville, he paid her, usually in cash, "all money received from the government for lodging." [Tab F, Exhibit 10, Sworn Statement, page 1]. Machinist's Girlfriend also told CID agents investigating this case that Machinist paid her cash for lodging in her apartment and admitted that she made receipts bearing the name "[redacted] Bed & Breakfast" or "North Side/Northside Apartment(s)" on a friend's computer that reflected Machinist's daily "lodging rate." [Tab F, Agent's Investigative Report of SA Number 2, page 3; Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 2]. Machinist's Girlfriend admitted to the CID agents that she never owned nor ran a legitimate lodging business, including during the time when Machinist was staying with her [Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 2] and coordination with the Evansville Police Department confirmed that no such business existed. [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 2]. Machinist's Girlfriend provided these receipts to Machinist [Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 2] who subsequently submitted them in support of travel vouchers which he submitted to claim reimbursement for expenses incurred while TDY [Tab F, Exhibit 5 and Exhibit 10, Sworn Statement, page 2].

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<sup>29</sup> The modification of the JTR was prompted by the decision of the General Services Board of Contract Appeals In the Matter of Frank J. Salber, GSBCA 16836-RELO, June 5 2006. See also Footnote 28 which describes the situation when there is a conflict between the FTR and the JTR.

At some point perhaps in late 2001, Machinist then supervisor, the former chief of LRS, conducted an informal investigation about what he considered to be a "suspicious" looking lodging receipt submitted by Machinist [Tab H, Exhibit 13, Sworn Statement]. During his verbal interview with CID, the former chief of LRS stated that he thought the receipt looked "suspicious" because it was "handwritten" [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 3]. The former chief of LRS also told CID that Machinist had told him (the former chief of LRS) that "[redacted] Bed & Breakfast" was a legitimate business and he, Machinist, was making payments to that business [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 3; Tab H, Exhibit 13, Sworn Statement at page 1]. The former chief of LRS stated that he spoke to travel support personnel about the propriety of handwritten receipts and was told that such receipts were acceptable [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2; Tab H, Exhibit 13, Sworn Statement]. In his sworn statement, the former chief of LRS stated that he drove to the area of the address listed on the receipt, although he did not verify the exact address and noted there were only apartment buildings in the area [Tab H, Exhibit 13, Sworn Statement, page 1]. Although the former chief of LRS admitted hearing that the rumor was that 'Machinist's Girlfriend' was Machinist's girlfriend, he stated that he never met her and that Machinist never advised him of that fact [Tab H, Exhibit 13, Sworn Statement, page 3]. The former chief of LRS stated that he did not do any further follow-up on the issue once he was informed that handwritten receipts were acceptable [Tab G, Exhibit 4, Agent's Investigative Report of SA Number 2, page 1]; [Tab H, Exhibit 13, Sworn Statement, pages 1-2]. Machinist claims that the former chief of LRS actually called and spoke to Machinist's Girlfriend and asked her whether Machinist was in fact paying her the lodging costs as Machinist claimed [Tab F, Exhibit 10, Sworn Statement, page 1].

The JTR provides that lodging reimbursement for a civilian employee official traveler while staying with a friend (or relative) is limited to those "additional lodging costs" the host actually incurs in accommodating the traveler if (1) the traveler can substantiate the costs, and (2) the AO (Approving Authority) determines the costs are reasonable. For example, a host may be able to substantiate increased utilities costs incurred while hosting a traveler by providing utility bills as support; if these costs are not unreasonable, the traveler may be reimbursed the additional utilities costs he or she caused the host to incur. However, a traveler may not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount. An official traveler staying with friends or relatives is authorized the TDY location Meals and Incidentals Expenses (M&IE) rate, if otherwise eligible [See Tab W2, JTR Appendix O, paragraph T4040(A)(1)(e)(2)].

Therefore, Machinist could have and in fact did properly receive the TDY location M&IE rate while staying at his girlfriend's apartment while TDY in the Evansville area. He could even have properly received "additional lodging costs" actually incurred by Machinist's Girlfriend if those costs were reasonable and could be substantiated. However, under no circumstances was Machinist entitled to be reimbursed the full commercial lodging rate while staying at his girlfriend's apartment,

as this is specifically prohibited by the JTR and the FTR [Tabs T-W, FTR, Section 301-11.12(c); JTR, paragraph C4555(B)(3); Appendix O T4040(a)(1)(e)(2)].

In an effort to provide proof of lodging costs (the \$50-\$70 cash allegedly paid by Machinist to Machinist's Girlfriend for each night Machinist stayed at Machinist's Girlfriend's apartment), Machinist's Girlfriend generated and provided to Machinist receipts titled either "[redacted] Bed & Breakfast" or "Northside Apartments." Although Machinist submitted these receipts as evidence or proof of his lodging costs while TDY, these so-called "receipts" are not in fact legitimate "proof" of costs incurred when lodging with friends or relatives, as required by JTR, paragraph C4555(B)(3) and Appendix O, paragraph T4040(A)(1)(e)(2). There is no evidence that Machinist's Girlfriend actually incurred \$50-\$70 in costs per night as a result of hosting Machinist. Instead, it appears that she simply used the GSA "standard CONUS" lodging rate in creating her false business receipts. Machinist then submitted these "receipts" with his travel vouchers and was reimbursed the commercial lodging or "token" rate, a practice that is specifically prohibited under the travel regulations [Tabs T-W, FTR, Section 301-11.12(c); JTR, paragraph C4555(B)(3); Appendix O, paragraph T4040(a)(1)(e)(2)].

Moreover, the premise of the receipts themselves was inherently false—they purported to be receipts from a commercial lodging establishment (e.g., "[redacted] Bed & Breakfast") and gave no indication that the address was actually the private, non-commercial residence of a close personal acquaintance of Machinist. Machinist's Girlfriend admitted that she did not own or run any such business and that she made up a business name for the receipts [Tab H, Exhibit 11, Agent's Investigative Report of SA Number 2, page 2]. Yet the Government relied upon these receipts in approving and paying Machinist for what it believed to be legitimate receipts for lodging expenses. If Machinist's Girlfriend had provided a receipt or other document with the correct information—i.e., that Machinist was actually staying at the private residence of a friend while on TDY—Machinist would not have been able to be reimbursed the full cost of comparable conventional lodging in the area. See In the Matter of Michael S. Knezevich, GSBICA 14398-TRAV, Feb. 24, 1998, 98-1 BCA ¶ 29607 (1998 WL 78448) (finding where traveler rented a room from friend who was not in the business of renting on a regular basis the quarters involved, the agency acted properly in not reimbursing the traveler a flat daily lodging rate, even if the traveler actually paid the lodging costs to his friend). [Tab AA].

Although the question has been raised whether Machinist had the requisite intent to deceive the Government after an "investigation" conducted by his former supervisor led that supervisor, and subsequent supervisors, to conclude that they could approve the lodging arrangement between Machinist and Machinist's Girlfriend, their conclusion was based on another false statement allegedly made by Machinist to the former chief of LRS, namely, that he was lodging at and received receipts for lodging costs paid to a legitimate business [Tab F, Exhibit 4, Agent's Investigative Report of SA Number 2, page 3; Tab H, Exhibit 13, at page 1]. Because this supervisory approval was apparently based on a false representation by Machinist

that he was staying at a legitimate lodging business, this "approval" does not void or absolve Machinist of his intent to deceive the Government. In essence, his supervisors relied on Machinist representations in approving the travel vouchers he submitted to them for reimbursement.

CID Findings: With regard to Allegation 2, CID ultimately substantiated that Machinist committed the offenses fraud and false statement in violation of Title 18, United States Code, Section 1001; theft of Government funds in violation of Title 18, United States Code, Section 641; and conspiracy in violation of Title 18, United States Code, Section 371 [Tab O]. Further, CID substantiated that Machinist's Girlfriend, <sup>30</sup> committed the offenses of fraud and making a false statement in violation of Title 18, United States Code, Section 1001; theft of Government funds in violation for Title 18, United States Code, Section 641; and conspiracy in violation of Title 18, United States Code, Section 371. CID determined that the estimated total loss to the government as the result of Machinist's and Machinist's Girlfriend fraudulent activity is \$22,285.00 [Tab O]. <sup>31</sup>

Conclusion:

The allegation that Machinist impermissibly collected TDY payments for lodging while staying at his girlfriend's home over a period of at least six years is substantiated. Machinist admitted to staying at the apartment of his longtime girlfriend while he worked TDY in the Evansville, Indiana area from 2001-2008. Machinist's Girlfriend admitted to generating receipts with a false business name using the conventional lodging rate for the area for Machinist. Machinist would then submit these receipts with his travel vouchers and be reimbursed the amount shown on the receipt for lodging. The pertinent travel regulations (JTR, paragraph C4555(B)(3) and Appendix O, paragraph T4040(A)(1)(e)(2)) clearly provide that a civilian employee such as Machinist may not be reimbursed the conventional lodging rate for an area when staying with friends or relatives. The CID substantiated that Machinist's actions constituted fraud and false statement in violation of Title 18, United States Code, Section 1001, theft of Government funds in violation of Title 18, United States Code, Section 641, and conspiracy in violation of Title 18, United States Code, Section 371. The CID also substantiated that Machinist's Girlfriend's actions constituted making a fraud and false statement in violation of Title 18, United States Code, Section 1001; theft of Government funds in violation of title 18, United States Code, Section 641; and conspiracy in violation of Title 18, United States Code, Section 371. The loss to the Government is estimated at \$23,265.00. (See Footnote 16).

**LISTING OF VIOLATIONS OR APPARENT VIOLATIONS  
OF LAW, RULE, OR REGULATIONS**

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<sup>30</sup> Machinist's Girlfriend is not a federal government employee.

<sup>31</sup> As discussed above in Footnote 16, the current estimated loss is \$23,265.00 which includes the recently discovered additional receipt of \$1050.00.

**As to Allegation 1:** This allegation is unsubstantiated.

**As to Allegation 2:**

Machinist committed the offenses of fraud and false statement in violation of Title 18, United States Code, Section 1001; theft of Government funds in violation of Title 18, United States Code, Section 641; and conspiracy in violation of Title 18, United States Code, Section 371 [Tab O].

Machinist's Girlfriend,<sup>32</sup> committed the offenses of fraud and making a false statement in violation of Title 18, United States Code, Section 1001; theft of Government funds in violation of Title 18, United States Code, Section 641; and conspiracy in violation of Title 18, United States Code, Section 371 [Tab O].

**CORRECTIVE ACTION**

The Louisville District Assistant District Counsel Office of Counsel referred Machinist's case to the U.S. Attorney's Office for the Western District of Kentucky on July 17, 2009 [Tab P]. To date, USACE has not received a response from the U.S. Attorney's Office whether or not civil and/or criminal charges will be pursued against Machinist and Machinist's Girlfriend.

On July 20, 2009, the Louisville District Assistant District Counsel referred Machinist's case to the USACE Finance Center in Millington, Tennessee, for possible collection purposes. The USACE Finance Center is responsible for processing travel reimbursements.

On September 11, 2009, the USACE Finance Center sent Machinist a debt collection letter. This letter informed Machinist that a travel overpayment of \$23,265.00 had been paid to him and that he had 30 days to pay this debt or interest would start to accrue. The letter also explained the procedures for establishing a repayment plan, involuntary collection if the debt is not paid, and appealing the debt or requesting a waiver. [Tab X]. In response to this debt collection letter, the USACE Finance Center received a check for \$23,265.00 from Machinist. The USACE Finance Center notified the Louisville District of its receipt by email dated October 21, 2009 [Tab Y].

Additionally, on October 19, 2009, the Louisville District issued a Notice of Proposed Removal to Machinist and charged him with falsifying travel vouchers. [Tab Z]. In accordance with agency procedures, no final decision to remove will be

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<sup>32</sup> Machinist's Girlfriend is not a federal government employee.

made until Machinist has been given the allotted amount of time to respond both orally and in writing.

## CONCLUSION

No evidence with national security implications has been disclosed in the context of this investigation. All potential criminal violations have been referred to the appropriate U.S. Attorney, whose decision regarding possible prosecution is pending.

It should be noted that 5 USC 1213(f) requires that in any case "in which evidence of a criminal violation obtained by an agency in an investigation ...is referred to the Attorney General," the agency must notify the Office of Personnel Management and the Office of Management and Budget of the referral. The two transmittal letters found at Tabs BB and CC forwarded the Army's report to those two agencies.

The Army appreciates OSC's role in this matter. That the whistleblower raised his allegations to OSC and that OSC subsequently referred the allegations to the Army prompted the full investigation documented in this report and has allowed the Army to address significant misconduct on the part of Machinist and Machinist's Girlfriend. Though Machinist is subject to both administrative and possible civil and/or criminal proceedings for his misconduct, since he is a federal employee, Machinist's Girlfriend is only subject to potential civil and/or criminal proceedings since she is not a federal employee.

This letter, with enclosures, is submitted in full satisfaction of my responsibilities under Title 5, USC, Sections 1213(c) and (d) with regard to this OSC referral. Please direct any further questions you may have regarding this matter to [Redacted], at [Redacted].

THOMAS LAMONT  
Assistant Secretary of the Army  
(Manpower & Reserve Affairs)

Enclosures  
as stated

**Army Report—U.S. Army Corps of Engineers, Louisville District-  
Louisville Repair Station, Louisville, Kentucky**  
**OSC File No. DI-08-2166**

<b><u>Tab</u></b>	<b><u>Description</u></b>
A	OSC referral dated July 17, 2008, to the Secretary of the Army requesting he Investigate allegations of violations of law, rule, or regulation at U.S. Army Corps of Engineers, Louisville District, Louisville Repair Station, Louisville, Kentucky
B	Secretary of the Army (SA) delegation to the Assistant Secretary of the Army (Manpower & Reserve Affairs) his authority, as agency head, to review, sign, and submit to Office of Special Counsel the report required by Title 5, USC, Sections 1213(b), (c), and (d), dated February 1, 2008
C	Army Office of the General Counsel (OGC) forwarding memorandum of OSC request for investigation to HQCID and U.S. Corps of Engineers, Office of the Chief Counsel, dated July 25, 2008
D	Memorandum for Commander, 3d Military Police Group (CID), Subject: Request for Investigation – 0293-08-CID001, dated July 18, 2008
E	OGC request to OSC to allow Army to submit its report in 90 days from referral rather than 60 days since allegations were criminal in nature, dated July 25, 2008 (granted by OSC on July 28, 2008, for 90 days until December 19, 2008)
F	Attached exhibits to CID Report of Investigation – Final – 0292- CID032-37187-7F2A1 /8F3 / 8X2, dated September 3, 2008: <ol style="list-style-type: none"><li>1. Agent's Investigative Report (AIR) of SA Number 1, dated August 6, 2008.</li><li>2. Memorandum from the U.S. Office of Special Counsel, dated July 17, 2008.</li><li>3. Copy of email messages pertaining to Mr. Paul Polly, various dates.</li><li>4. AIR of SA Number 2, dated September 3, 2008.</li><li>5. Travel vouchers pertaining to Machinist, various dates-numbered 5-1 to 5-28.</li><li>6. Rights Waiver Certificate and Sworn Statement of Branch Chief, dated August 28, 2008.</li><li>7. Rights Waiver Certificate of Fleet Captain, dated August 28, 2008.</li><li>8. Photographic packet of 514-A Richardt Avenue, Evansville, Indiana.</li></ol>

9. CD containing the originals of Exhibit 8 (Note: CD only in USACRC and file copies; not in Army report to OSC)
  10. Rights Waiver Certificate and Sworn Statement of Machinist, dated August 28, 2008 (Note: an error was made in initially labeling the actual document as Exhibit 9, but the Army report has relabeled it as Exhibit 10. See Footnote 18 for further explanation)
- G CID referral to Commander, 3<sup>rd</sup> Military Police Group (CID), of DoD IG Hotline Complaint #107789
- H Attached exhibits to CID Report of Investigation – 1st Final Supplemental - 0292-08-CID032-37187-7F2A1 / 8F3 / 5M3B / 8X2, dated November 28, 2008:
11. Agent's Investigative Report (AIR) of SA Number 2, dated November 26, 2008
  12. Financial Consent Form pertaining to Machinist, dated October 21, 2008
  13. Sworn Statement of the former chief of LRS, dated November 4, 2008
  14. Sworn Statement of Machinist's Second Level Supervisor, dated November 6, 2008
  15. Sworn Statement of Mr. Paul Polly, dated November 6, 2008
  16. U.S. Army Corps of Engineers Audit Report, dated November 7, 2008
- I Extension 2, requested on December 22, 2008 (granted by OSC on December 23, 2008, for 90 days until March 23, 2009)
- J CID Report of Investigation and its attached exhibits comprising 3rd Final Supplemental - 0292-08-CID032-37187-7F2A1 / 8F3 / 5M3B / 8X2, dated March 5, 2009, are summarized in Tab O-1. Army report has placed no documents in Tab J
- K Extension 3, requested on March 23, 2009 (granted by OSC on March 24, 2009, for 90 days until June 25, 2009)
- L Extension 4, requested on June 19, 2009 (granted by OSC on June 22, 2009, for 60 days until August 25, 2009)
- M Extension 5, requested on August 21, 2009 (granted by OSC on August 24, 2009, for 60 days until October 26, 2009)
- N Extension 6, requested on October 23, 2009 (granted on October 26, 2009, for 60 days until December 28, 2009)



- O O-1--Summary Findings of the U.S. Army Criminal Investigation Command (CID) in Whistleblower Investigation – U.S. Army Corps of Engineers, Louisville District – Louisville Repair Station, Louisville, Kentucky (OSC File No. DI-08-2166) – prepared by Staff Judge Advocate, U.S. Army CID  
  
O-2—Excerptts from the Summary of Investigative Activity referenced in the Army Report for Whistleblower Investigation – U.S. Army Corps of Engineers, Louisville District – Louisville Repair Station, Louisville, Kentucky (OSC File No. DI-08-2166) – prepared by Staff Judge Advocate, U.S. Army CID
- P USACE Louisville District Assistant District Counsel referred OSC alleged travel fraud case to the U.S. Attorney’s Office for the Western District of Kentucky, dated July 17, 2009
- Q Memorandum for Commander, US Army Corps of Engineers, Louisville District, ATTN: Internal Review Office; Subject: Request for Audit of TDY Vouchers, dated August 6, 2008
- R Email from Louisville District Assistant District Counsel to Internal Review Office and CID on vouchers and estimated costs, dated September 6, 2008
- S Voucher discovered by USACE Finance Center after original September 3, 2008 CID report
- T Federal Travel Regulation § 301-11.12
- U U1--Department of Defense Joint Travel Regulations (effective prior to July 19, 2006, effective October 1, 2001) – Chapter 4: Employee Travel, Part L: Per Diem Allowances, C4555 RULES CONCERNING LODGING AND LODGING COST – C4555(B)(3), Lodging with Friends or Relatives  
  
U2--Appendix O: TDY Travel Allowances, T4040 LIVING EXPENSES (PER DIEM) – T4040(A)(1)(e).
- V V1--Department of Defense Joint Travel Regulations (October 1, 2006) – Chapter 4: Employee Travel, Part L: Per Diem Allowances, C4555 RULES CONCERNING LODGING AND LODGING COST – C4555(B)(3), Lodging with Friends or Relatives  
  
V2-- Appendix O: TDY Travel Allowances, T4040 LIVING EXPENSES (PER DIEM) – T4040(A)(1)(e)(2).
- W W1--Department of Defense Joint Travel Regulations (June 1, 2007) – Chapter 4: Employee Travel, Part L: Per Diem Allowances, C4555 RULES

CONCERNING LODGING AND LODGING COST – C4555(B)(3), Lodging with Friends or Relatives

W2--Appendix O: TDY Travel Allowances, T4040 LIVING EXPENSES (PER DIEM) – T4040(A)(1)(e)(2).

- X USACE Finance Center Notice of Debt to Machinist, dated September 11, 2009
- Y USACE Finance Center email notification to Louisville District of its receipt of a check for \$23,265.00 from Machinist, dated October 21, 2009
- Z Notice of Proposed Removal issued to Machinist, dated October 19, 2009
- AA GSBCA Case Number 14398-TRAV, 98-1 BCA P29607, 1998 WL 78448, In the Matter of Michael S. Knezevich, February 24, 1998
- BB Notice to United States Office of Personnel Management of Army referral to The Attorney General
- CC Notice to Office of Management and Budget of Army referral to the Attorney General