



REDACTED REPORT



THE UNDER SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

October 27, 2011

Carolyn N. Lerner, Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, DC 20036-4505

Dear Ms. Lerner:

Thank you for your letter of April 20, 2011, requesting an investigation of the alleged misuse of a government computer by a contractor employee working in the Pay and Personnel Support Center, Personnel Support Detachment Afloat West (PSD-AW), San Diego, California. Your letter, Office of Special Counsel (OSC) File No. DI-11-2120, indicates the employee used the computer in support of his personal tax preparation business and may have conducted that business from his PSD-AW work space at times when he should have been doing work related to the contract under which he was performing. The Secretary of the Navy has authorized me to sign out the report on his behalf.

The inquiry led by the Naval Inspector General (NAVINGEN) determined the contractor employee was using the government assigned computer to support his tax preparation business. The contracting officer requested the contractor stop using this employee to work on the contract. The contractor immediately did so, and fired the employee shortly thereafter.

The NAVINGEN inquiry revealed the contractor employee did create or download documents related to his business at various times during the workday, not simply before or after working hours or during his lunch break. However, the evidence also established that the employee performed the contract work expected of him in a professional and timely manner. Thus, the evidence was insufficient to conclude the contractor was not meeting the work performance requirements of the contract by virtue of its employee's misconduct.

Although regulations applicable to government employees did not apply to the contractor employee, the evidence established the employee violated the conditions of use of the government computer to which he had agreed and been trained to understand, as well as his employer's internal work rules intended to prevent misuse of government resources. The employee's violation of those standards formed the basis for the actions taken against him.

Evidence developed during the course of the investigation suggests the contractor employee may have been violating Internal Revenue Service regulations pertaining to the fees that may be charged for tax preparation services. The Naval Inspector General has referred this case to the Department of the Treasury Office of Inspector General for review and such action as it may deem appropriate.

I am enclosing two versions of the report of investigation. The first contains 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.

The second version excludes the names of witnesses and is suitable for release to the general public. As has been the case with other reports that the Department has provided to your office since September 11, 2001, I request that you make only this redacted version available to members of the public.

Again, thank you for bringing this matter to our attention. If I may be of any further assistance, please let me know at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert O. Work", written in a cursive style.

Robert O. Work

Enclosures: (1) For Official Use Copy of Report of Investigation
(2) Public Release Copy of Report of Investigation

Office of the Naval Inspector General

OSC DI-11-2120
NAVINGEN 201101247

Report of Investigation

6 October 2011

ALLEGED MISUSE OF GOVERNMENT RESOURCES AT
PERSONNEL SUPPORT DETACHMENT ALOAT WEST, SAN DIEGO, CA

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Preliminary Statement

1. This report is issued pursuant to a 20 April 2011 Office of Special Counsel (OSC) letter tasking the Secretary of the Navy (SECNAV) to conduct an investigation under 5 USC §1213.
2. OSC is an independent federal agency whose primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices. OSC also serves as a channel for federal workers to make allegations of: violations of law; gross mismanagement or waste of funds; abuse of authority; and a substantial and specific danger to the public health and safety.
3. Reports of investigations conducted pursuant to 5 USC §1213 must include: (1) a summary of the information for which the investigation was initiated; (2) a description of the conduct of the investigation; (3) a summary of any evidence obtained from the investigation; (4) a listing of any violation or apparent violation of law, rule or regulation; and (5) a description of any action taken or planned as a result of the investigation, such as changes in agency rules, regulations or practices, the restoration of employment to an aggrieved employee, disciplinary action, and referral of evidence of criminal violations to the Attorney General.

Information leading to the OSC Tasking

4. The OSC tasking stems from a complaint stating that Mr. Lolito "Dustin" L. Luna (hereafter "Subject"), an employee of a contractor in the Commander, Navy Installations Command (CNIC), Pay and Personnel Support Center, Personnel Support Detachment Afloat West (PSD-AW), San Diego, California, operates a personal tax preparation business in his official capacity as a PSD-AW

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auditor, while on duty, and using government resources. OSC identified Mrs. Tameron W. Hodges, a Human Resources Assistant, as the person who provided information causing OSC to task this investigation. OSC said Mrs. Hodges, (hereafter "Complainant"), consents to the release of her name.

5. The OSC provided the following summary of the complainant's allegations:

[Complainant] alleged that [Subject] is operating a tax preparation business in his official capacity as a PSD-AW Auditor, while on duty and using government resources, which may be a violation of the Standards of Ethical Conduct. See 5 C.F.R. §2635.702, .704-.705, & .801. [Subject]'s business targets veterans and purports to offer a Veteran's Tax Package, which allows qualified taxpayers to receive an additional tax refund. Specifically, [Complainant] informed our office that on March 17, 2011, [Subject] sent an e-mail soliciting business to her husband ..., a disabled veteran. The message was sent from [Subject's] e-mail account issued by the Navy and contained his official position, office telephone numbers, fax number, and the agency's address. A copy of the e-mail correspondence is enclosed. [Complainant] expressed her concern that [Subject] is using his position at the Navy to coerce or mislead veterans into paying for his services.

6. A copy of the e-mail sent by Subject on 17 March 2011 at 1334 was provided as an attachment to the complaint. The e-mail was from "Luna, Lolito CTR PSD Afloat West, N14 <lolito.luna.ctr@navy.mil>." The e-mail was addressed to the personal email address of Ms. Hodges' husband with the subject line "Net Disability Exclusion [NDE]." Attached to the e-mail was a file called "NDE TAX FLYERS.docx." The attachment provided with the OSC letter was a partially legible flyer entitled "NET DISABILTY EXCLUSION." The e-mail is quoted below (including mis-spellings and errors in grammar).

Thank you for inquiring the Net Disability Exclusion. Let me give you some insight about this Net Disability Exclusion IAW [in accordance with] IRS [Internal Revenue Service] regulations 1.122-1. This regulations was promulgated since 1999 and no one the big tax preparer company such as H&R blocks and others did not bothered to learn this law. Fortunately, there was a lady ... from Sacramento a former tax examiner in IRS who first

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introduced it to all Veterans. She quit on her job in IRS and had her own office to process this things. To make the story short, she succeeded and I was one of her customer and learned it the hard way.

I am a licensed tax preparer and started doing this last year June and currently doing it. Ok, here how I'm going to do on this. First, prepare all the necessary document needed to process this:

- 1) Six (6) copies of your last DD-214 (Record to release in Active duty).
- 2) Visit VA [Veterans' Administration] building at Mission 3rd floor (compensation and benefit office) and ask a letter certifying that you have been awarded the combined or overall disability percentage and the monthly VA compensation that you received for the year 2007, 2008 and 2009.
- 3) 2 copies of 1099R (retired) as stands as our W2 received from DFAS [Defense Finance and Accounting Service] for the year 2007, 2008 and 2009.
- 4) 1 copy each of your 1040 Federal Income Tax and 1 copy of 540 State Income Tax for the year 2007, 2008 and 2009.

As soon as you complete all the necessary paper works, then call me for an appointment to check what you have and we start from there.

The charge will be payable upon completion of all the amended package with a 10% charged for the total of all amended claim for the year 2007, 2008 and 2009 totaling of 6 claims. For instance, if your total for all federal and state come up to \$10,000.00 the 10% charges will be \$1000.00. In case the total of charges is \$1000.00 or more, I will split it for two checks payment. One check should be dated the day to pick up the Tax claim and the other one will be blank date on the check. Once you received any or one of the refund, you will make a courtesy call to me to provide the date to put it on the check for bank deposit.

I hope I gave you all the details and if you have any question, just call me at this following numbers: ... See attachment!!!

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Very respectfully,
Dustin L. Luna "LLCOOLL"
Personnel Assistant III
Travel Auditor, PSD AFLOAT WEST
Naval Station Bldg 118
[street address omitted]
San Diego, CA 92136
[phone # omitted]
[phone # omitted]
[phone # omitted]
EMAIL: lolito.luna.ctr@navy.mil
***"Our Customer are the most important people in our
business"***
HAPPY!! YIPPEY!! YEHEY!!

7. During the course of this investigation, a legible copy of the attachment was obtained from the government computer assigned for Subject's use at PSD-AW.¹ This document is entitled "Net Disability Exclusion Veteran's Tax Package." It lists "Mr. Lolito L. Luna" with a work phone number of (619) 556-3395, which Subject verified as his PSD phone number. The flyer also identifies an address that investigators verified was Subject's home address on a resume he had saved on his government computer, and the "Old Address" on a Department of Motor Vehicle Notice of Change of Address saved on his computer 18 April 2011. The flyer is quoted below, including errors in grammar and spelling:

"NET DISABILITY EXCLUSION"

Veteran's Tax Package

Did you know that you might be one of this?

What is the Veteran's Tax Package?

The Veteran's Tax Package, if you qualify, a calculation that allows the taxpayer to receive an additional tax refund on amended returns with both the Internal Revenue and State taxing authorities.

How do I know if I qualify?

¹ Multiple copies of the flyer, using different telephone numbers for call-back, were located on the hard drive of Subject's government computer under his profile.

If you have a disability rating that has been confirmed by letter from the Veteran's Administration and/or receive Retired Military Pay from any branch in the military and pay taxes each year due to a high tax liability you more than likely qualify. This process is known as the Net Disability Exclusion per the Internal Revenue Code 1.122-1.

How long does it take for processing?

Processing takes between 8-12 weeks, sometimes longer if certain conditions exist. This processing time begins after the signing and mailing of the amended returns.

What do I need to bring with me when I am scheduled for an appointment?

-A copy of your tax returns for 2007, 2008 and 2009

-A copy of your DD-214 (6 copies)

Letter from VA showing the monthly Va compensation received 2007,08,09 (6 copies)

-A copy of your 1099R's for each year

-A copy of your VA disability rating letter (6 copies)

What if I am a Vietnam veteran and served for only a short period of time due to my injuries in action?

You more than likely qualify as long as and/or YOUR SPOUSE paid in and are requesting additional refund. Generally, a Vietnam veteran's calculations are very high and produce a 100% refund return of taxes paid in.

What does it cost and how is payment made for the services?

The fees are reasonable and consistent with standard tax preparer rates for amended returns. Payment is generally made by check or cash at the time of service. The fees is 10% of the total refund.

Call now for an appointment

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8. The OSC letter said, "We have concluded that there is a substantial likelihood that the information provided to OSC by Mrs. Hodges discloses possible violations of law, rule, or regulation and an abuse of authority."

Description of Conduct of Investigation

9. SECNAV referred the OSC 20 April 2011 tasking letter to the Office of the Naval Inspector General (NAVINSGEN) for investigation. NAVINSGEN assigned case number 201101247 to the matter and forwarded the complaint to the Inspector General (IG), at Commander, Navy Installations Command (CNIC), directing the CNIC IG to conduct an investigation. CNIC IG, in turn, assigned investigative responsibility to the Navy Region Southwest (NRSW) IG.

10. NRSW IG personnel from Naval Weapons Station, Seal Beach, Naval Base San Diego and Naval Base Ventura County, conducted interviews, an extensive forensic computer analysis, and drafted a report of their investigation. During the course of their inquiry they interviewed 12 people, including Complainant and Subject and reviewed 65 documents. These documents included electronic copies of 13 letters to IRS on behalf of clients that were located on the government computer assigned for Subject's use. Other documents obtained through the forensic review of Subject's assigned government computer included emails Subject exchanged with six different clients. Other documents found on the computer suggest Subject used the computer to examine websites and download documents related to the preparation of tax returns that could be related to the conduct of a tax preparation business. The investigators also researched statutory, regulatory and contract provisions that could be used as standards by which to examine Subject's conduct.

Summary of Evidence Obtained During Investigation

Findings

Complainant Interview

11. On 2 May 2011, an investigator interviewed Complainant by telephone. She provided the following additional information.

12. The investigator asked Complainant how Subject got her husband's personal e-mail address to send the "solicitation." She replied that her husband, a 90 percent disabled Veteran who worked as a contractor for Homeland Security, had heard from a co-worker that Subject had filed a tax return for him, resulting

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in a large refund. The co-worker, [name omitted], a retired Marine, encouraged Complainant's husband to contact Subject. He eventually called Subject and asked for the information.

13. The complainant said that once she read the e-mail from Subject, she contacted the manager of the H & R Block tax preparation office she and her husband have used for 15 years. She said that when asked about the IRS regulation, the manager replied, "I've heard of that kind of scam before. It's mostly in the Philippine-American community."

14. The complainant said she also contacted the California Tax board and informed them that Subject was running a "scam" in relation to tax preparation, and that for performing this work, he was requiring disabled veterans to give up 10 percent of the money that the Veterans' Administration is giving to them, that they are supposed to get tax free.

15. Complainant said she was convinced Subject was running a "scam" and using his government position to do it. She believes the fees Subject was charging for his tax preparation service violate the tax statutes in that he was charging a fee based on a percentage of the computed refund amount. She indicated she had filed complaints against Subject with the California Tax Education Council (CTEC), the Veterans Administration (VA) and the IRS.

16. Complainant said she works in the same building as Subject, along with about 150 other people. She said she had not discussed this issue with him, and indeed did not recall ever having spoken with him at all. She did not believe Subject realized the e-mail he had sent was to the spouse of a co-worker.

17. Complainant said she has not heard other people in the office discussing this tax information, but said that her desk is situated in such a way that she does not often hear conversations held by co-workers. She said she had no indication that her supervisor or anyone in her chain-of-command knew Subject was running a personal business on government time or using government equipment for that purpose.

Information Pertaining to Possible Tax Law Violations

18. According to the California Franchise Tax Board website at www.ftb.ca.gov, "Any non-exempt tax preparer in California who for a fee assists with or prepares state and/or federal income tax returns must register with the California Tax Education

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Council (CTEC) to become a CTEC Registered Tax Preparer (CRTP). Exempt preparers are California Certified Public Accountants (CPAs), attorneys who are members of the State Bar of California, Enrolled Agents, and certain other specified banking or trust officials." The section of the CTEC website www.ctec.org entitled "Verify a Tax Preparer" indicates Subject holds a registration that is valid through 31 October 2011.

19. Title 31 Code of Federal Regulations, Subtitle A, Part 10, Practice before the Internal Revenue Service permits charging of contingent fees in only a limited number of circumstances, none of which appear to apply to Subject.

20. Subject is a registered tax preparer in the state of California, who may be, as the complainant suggests, charging contingent fees which are prohibited by 31 C.F.R. §10.27. Any issues related to Subject's tax preparation business (whether a genuine service or a "scam," as alleged by Complainant) and the fees he charges for his service are outside the purview of this investigation. NAVINSGEN has referred these matters to the Department of Treasury Office of Inspector General for its consideration and possible referral to the IRS.

Standard for Examining Subject's Conduct

21. The OSC 20 April 2011 letter indicated that Subject may have violated 5 C.F.R. §2635, Standards of Ethical Conduct for Employees of the Executive Branch. But 5 C.F.R. §2635.102 defines "employee" as "any officer or employee of an agency, including a special Government employee." Thus, an employee of a government contractor is not an "employee" under this regulation.

22. Had Subject been a government employee, the most reasonable standards to apply would be 5 CFR 2635.704, Use of Government Property, and 5 CFR 2635.705, Use of official Time.

23. The standard for use of government property provides that:

An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes ... Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

24. The standard for use of official time states:

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Use of an employee's own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee ... has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

25. The investigators learned that Subject was employed by Alutiiq Joint Venture of Chesapeake, VA under contract number N00189-02-D-0042 dated 12 September 2001; Delivery Order/Call (Task Order) Number H7L2 dated 25 September 2010. Alutiiq, a limited liability corporation (LLC), is a wholly owned subsidiary of the Afognak Native Corporation, an Alaska Native corporation formed under the Alaska Native Claims Settlement Act. Alutiiq LLC, is a minority owned small business and is an SBA (Small Business Administration) certificated 8a program participant. The contract was awarded under 10 U.S.C. 2304(c)(5), and includes Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.219-7009 SECTION 8(A) DIRECT AWARD (MAR 2002), which states, "This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated February 1, 2002, between the Small Business Administration (SBA) and the Department of Defense."

26. Because Subject was an employee of a government contractor, Complainant's concerns were investigated using standards of conduct imposed upon Subject by virtue of the terms of the contract between the Navy and Alutiiq. As outlined later in this report, the contract, and applicable rules pertaining to the use of government computers effectively impose standards similar to those set forth in 5 CFR 2635.704 and 705. Consequently, the investigators were able to conclude that Subject misused a government computer provided to Alutiiq for official use and misused his work time to run his personal tax business. Based on this investigation, PSD-AW management requested the contractor, Alutiiq, remove Subject from work on the contract. Alutiiq immediately complied and thereafter informed PSD-AW that it had fired Subject.

The Contract and Task Order

27. Contract Number N00189-02-D-0042 includes numerous Contract Line Items (CLINs) for services to be performed in various geographic areas throughout the world. The statement of work includes a provision that states: "Generally, the

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Government will provide normal operating supplies and equipment for use in performing services under this contract."

28. Specific contract tasks include, in pertinent part:

The Contractor shall provide required personnel in support of normal working hours and perform the following tasks. Contractor shall provide Pay and Personnel support services to PSD/CSD, to include the following: Update, inquire, and process personnel and disbursing actions through Navy Standard Integrated Personnel System (NSIPS) and Defense MILPAY Office Database (DMO). [gap]

- Reviews travel orders for completeness verifies date of departure from old duty station, date of arrival at new duty station or date of return if TAD/TDY, rental car authorizations/receipts, name of traveler, accounting data, and proper signatures.

- Determines traveler's entitlements in accordance with Joint Travel Regulations, Volume I and II.

- Using applicable tariffs, official airline/bus/Amtrak guides and Contracting Routing Directives, plans itineraries, determines modes/routes which involve least cost to the government.

- Consolidates individuals into groups where such action is more economical.

- Completes travel arrangements and computes cost for travel, excess baggage, meal tickets and car rentals.

- Adjusts weight allowances of carriers with baggage allowances authorized in travel orders.

- Provide guidance and advise [sic] to individuals on travel matters including baggage allowances, restrictions, special regulations, passports, shipment of pets, immunizations required etc.

29. A "Security Requirement" provision states:

Work under this task order requires access to personally identifiable information (PII) and information protected by the Privacy Act. [gap] The

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contractor shall comply with all applicable DOD security regulations and procedures during the performance of this task order. [gap] "ALL AUTHORIZED USERS OF DOD INFORMATION SYSTEMS SHALL RECEIVE INITIAL IA [Information Assurance] AWARENESS ORIENTATION AS A CONDITION OF ACCESS AND THEREAFTER MUST COMPLETE ANNUAL IA REFRESHER AWARENESS TRAINING TO MAINTAIN AN ACTIVE USER ACCOUNT."

30. A "Special Contract Requirements: provision states, "Work to be performed is described in the Statement of Work [SOW]" And identifies the work category of Personnel Assistant III, 1st Shift, 12 Workers at 8 hours per day for 251 days for completion of Task 1 of the SOW.

31. An Information Assurance Contract Clause required by federal regulation states:

[DFARS] 252.239-7001 INFORMATION ASSURANCE CONTRACTOR TRAINING AND CERTIFICATION (JAN 2008)

(a) The Contractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoD 8570.01-M, Information Assurance Workforce Improvement Program. The Contractor shall meet the applicable information assurance certification requirements, including-

(1) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoD 8570.01-M; and

...

(c) Contractor personnel who do not have proper and current certifications shall be denied access to DoD information systems for the purpose of performing information assurance functions. [gap]

IT [Information Technology] Systems Access

When access to IT systems is required for performance of the contractor employee's duties, such employees shall in-process with the Navy Command's Security Manager and Information Assurance Manager upon arrival

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to the navy command and shall out-process prior to their departure at the completion of the individual's performance under the contract. Completion and approval of a System Authorization Access Request Navy (SAAR-N) form is required for all individuals accessing Navy Information Technology resources. The SAAR-N shall be forwarded to the Navy Command's Security Manager at least 30 days prior to the individual's start date. [gap] When required to maintain access to required IT systems or networks, the contractor shall ensure that all employees requiring access complete annual Information Assurance (IA) training, and maintain a current requisite background investigation.

Navy Contracting Official Interviews

32. The investigators asked Navy personnel responsible for administering the contract how they would deal with a complaint that a contract employee was misusing government property, such as computers and telephones. They said they would inform the company and would expect it to reimburse the government for the loss of resources (including time), if a dollar figure could be calculated. The company would take appropriate disciplinary action against the employee, based on established company policies. The government has the right to inform the company the employee should be removed from work on the contract, but that would not be necessary in all cases.

33. In those instances where the contractor's employee was not getting the work done, but was charging for the time, the employee's time should not be certified for payment. However, if the contractor employee has been doing a good job in accomplishing the work required by the contract, then it would be up to the contractor to discipline the employee for misuse of government computers and telephones; they might give him a cautionary letter or take similar action.

PSD-AW Personnel Interviews

34. The investigators interviewed six government military or civilian personnel and two Alutiiq employees who had an opportunity to observe Subject in the office from time to time. Collectively, their testimony indicated a general awareness that Subject received an unusual number of visitors who, because of their age, did not appear to be regular PSD-AW customers. Many of them came in around lunchtime and Subject left the office with them. Although these witnesses expressed some concern or

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discomfort with the presence of the visitors, everyone appeared to think that once the concern was expressed to Subject the problem was resolved. Of note, no one indicated they ever saw one of these visitors sitting with Subject in his work area and carrying on a conversation with him.

35. One employee said that on a single occasion he noticed some tax flyers and forms in Subject's work space; when he questioned the propriety of this Subject removed them and this employee did not see them again. Most witnesses professed no knowledge that Subject had a tax preparation business or engaged in any other personal business at the office. On the contrary, their testimony suggests a firm belief that Subject did excellent work, always performed in a timely manner, and was regarded as a valuable and knowledgeable addition to the office. In that regard, the investigators developed no evidence that would indicate Subject was not fulfilling all of the contract provisions pertaining to performance of work for the government.

36. One Alutiiq employee in PSD-AW considered Subject a personal friend, although they met through Alutiiq and had no social contact outside of work. This employee said he was not certain that Subject had a tax preparation business, but said Subject told him he had a tax preparation license and helped him prepare his own taxes without charge. When asked if Subject did his taxes at the office, he responded, "He went home. Cause he's not gonna be able to do it here because he's busy doing the travel claims." When asked if Subject told him he knew about special tax refunds for veterans or people with disabilities, he said that he did, and "He helped me." He said he got an extra refund due to Subject's assistance.

37. In general, the testimonial evidence provided by others in Subject's workplace is insufficient to conclude that Subject was conducting personal business in government spaces or using government resources to support that business. Since the forensic evidence developed from an examination of the government computer assigned to Subject and the admissions Subject made during his interview clearly establish Subject was using government equipment to conduct a personal tax preparation business, no further summary of the interviews of these witnesses is necessary or appropriate to establish Subject's

Forensic Evidence From Subject's Computer

38. The investigators obtained a copy of Subject's on-line completion certificate for version nine of the mandatory DoD Information Assurance Awareness [IA] Course, which Subject

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completed on 20 December 2010. The certificate bears Subject's signature certifying his completion of the course.

39. The training program includes the following guidance:

Although DOD may permit some incidental and casual e-mail use; e-mail from your Government computer is for official business. Follow these guidelines for ethical use of e-mail. E-mail use must not adversely affect the performance of official duties. E-mail use must not reflect poorly on the DOD or the Government. Do not use Government e-mail to sell anything. Personal e-mail use may be authorized if it is of reasonable duration and frequency, preferably on employee's personal time, such as on a lunch break. E-mail is permissible when it serves a legitimate public interest, such as allowing employees to search for a job in response to Federal downsizing. Locally, personal e-mail use guidelines may be more restrictive. Confirm your organization's guidelines.
[gap]

Determine your organization's policies with respect to loading outside files to your workplace computer.
[gap]

Remember, each time you log on to a Government-owned computer system, you consent to being monitored when you click on the DoD Warning Banner, in accordance with the user agreement that you have signed. Avoid government computer misuse.

Examples of Computer Misuse:

- Viewing/downloading pornography*
- Gambling on the Internet*
- Private business/money-making ventures***
[emphasis added]
- Loading personal/unauthorized software*
- Unauthorized configuration changes*
- Accessing or downloading any software or application that is not authorized for use on your Government system*

40. The Alutiiq Employee Policy Manual, Service Contract Act (SCA) Version covering California employees says, in pertinent part:

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You should read, understand, and comply with all provisions of this policy manual. [gap] [Section] 207 Attendance and Punctuality [gap] Employees should not spend time conducting personal business during work hours. [gap] [Section] 501 Standards of Conduct...4. Employees are cautioned not to abuse the use of Government-furnished property, including office equipment, furniture, and telephones. The use of Government telephones and other equipment for personal use is strictly prohibited.

41. The Naval Base San Diego Information Assurance Manager provided a copy of the System Authorization Access Request Navy (SAAR-N) form signed by Subject on 3 May 2011. He indicated that this was the only SAAR-N form signed by Subject on file.

42. The SAAR-N form includes the following statement:

I understand that to ensure the integrity, safety and security of Navy IT resources, when using those resources, I shall: *Safeguard information and information systems from unauthorized or inadvertent modification, disclosure, destruction, or use...*

I further understand that, when using Navy IT resources, I shall not: *[gap] Put Navy IT resources to uses that would reflect adversely on the Navy (such as uses involving [gap] unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use).*

43. After making official requests to the appropriate network administrators, the investigators obtained copies of all e-mail files sent from or to Subject's Navy and Marine Corps Intranet (NMCI) work station and Exchange server account between 1 December 2010 to 27 April 2011. They also secured all ".pst" (personal storage table files for Microsoft Outlook) files on his Home drive (H drive) on the NMCI network.k

44. The information the investigators obtained includes letters Subject apparently wrote for signature by his tax clients. The letters are addressed to the IRS and explain their entitlement to "the Net Disability Exclusion" on recently submitted tax forms. The 13 such letters found indicated that each taxpayer had received notice that the "Net Disability Exclusion" submitted on their amended tax return had been disallowed by the IRS, and explained to the IRS how it had been computed. Each

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letter requests a review of the amended return and processing of the additional refund amount. The forensic computer analysis reveals that these letters had been saved on Subject's government computer at various times throughout the work day.

45. Additional information located on Subject's computer account includes e-mail messages to/from six individuals regarding tax preparation information. These e-mails consist of Subject asking for additional documentation before he could complete the amended tax returns, clients responding to Subject's requests for additional information, and clients complaining that their amended tax returns had been disallowed by the IRS. The format in which the e-mail was provided by the network administrators does not permit a determination of whether or not Subject used a digital signature or a signature block on these e-mails.

46. When the computer files were examined, the letter to the Complainant's husband was not located, and none of the e-mail files provided by GNOC were as old as the Complainant's e-mail.

47. One series of e-mails between Subject and a friend who was also a tax client included the friend's responses to Subject. Subject's original e-mail is copied on the friend's response, to include his "signature block" which is an exact duplicate of the signature block on the e-mail sent to the complainant's husband, as shown below:

Very respectfully,

*Dustin L Luna "LLCOOLL"
Personnel Assistant III
Travel Auditor, PSD AFLOAT WEST
Naval Station Bldg 118
2730 McKean Street
San Diego, CA 92136*

[phone # omitted]

[phone # omitted]

[phone # omitted]

EMAIL: Lolito.luna.ctr@navy.mil

****"Our Customer are the most important people in our business"****

HAPPY!! YIPPEY!! YEHEY!!!

48. In one 13 April 2011 e-mail, Subject explains to a friend that a tax client who had complained that his amended tax return had been rejected, wanted a refund of the money he had paid for Subject's services. Subject tells his friend:

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[He] visited me here in the office to discuss something regarding this net disability exclusion with a copy of letter from VA about the discussion of some high ranking officer in the Army posted some issue about it. [gap] [H]e got pissed off and start saying a lot of things to me that he will get an attorney if [his] check will not return to him and he gave me a warning that he will report me to my command utilizing the government property and doing tax without any permit. At first, I realized that he's got a point however, how could he said that I utilizing government property which I did not even know that he is coming about his amended return. I gave him a favor for that and entertained him. Then on his amended return, I have the permit already during that period I just cant use it yet until beginning of the January. Now, after I realized about the trust that I did not have to him, I txted him and asked sorry for my call, then he called and accepted it. But one thing that I really don't like to what he said and feel that he is trying to intimidate me on something. I don't know what is running on his mind and advise no to tell this to anyone. I was thought to myself that you and me were both close to each other and he don't want to spread this to all the people he knows. I just don't want to have any more urguement [sic] so I just simply said ok, ok ok. He got his money back and the other check he issued and now, I don't have any business on that guy and I don't care to what he's thinking or whatever intimidation he might have. I am ready.

49. One e-mail located on Subject's computer is addressed to the government email account of a Navy employee stationed at Great Lakes. In that e-mail, dated Friday, 22 April 2011, Subject asks a former co-worker to pass out flyers by saying, "By the ways, I have a part-time job doing Tax for the veterans to what they so called Net Disability Exclusion. Maybe you can pass this flyers to all the veterans that you know down there. This process is to amend the tax for the year 2008, 2009 and this current 2010 to reduced their gross adjustable income to come out with a new tax. [gap] Please change my number to the flyers. ... They can call me anytime if they have question." Attached to this e-mail is a ".pdf" file containing a Net Disability Exclusion flyer listing Subject as the tax preparer.

50. The computer files include a document entitled "NDE TAX FLYERS.docx" which consists of a two page color document

advertising "Net Disability Exclusion" and listing Subject's name, home address, mobile phone number, home phone number and work number. The files also include a business card for "Dustin Luna" identifying "Veterans Tax Exclusion" and the same home phone number, cell phone number and e-mail address as the flyer. (This is the same flyer as is quoted in its entirety in paragraph 7 above.)

51. The computer files include a list entitled, "OUTSTANDING BALANCE FOR THE SERVICES ON AMENDED TAX NET DISABILITY EXCLUSION" dated 16 November 2010 @ 1029, showing payments paid/due for 47 tax clients for services totaling in excess of \$52,000.

52. The computer files include documents entitled "CALCULATION OF THE NET DISABILITY EXCLUSION IAW INTERNAL REV.doc" and "2010 TAX ADDENDUM.doc" which explain how the net disability exclusion was calculated for unnamed clients on 24 March 2011 and 14 March 2011 respectively. "VA TAX EXCLUSION FOR IRS.xls" is a worksheet completed for Reynaldo Q. Devera 27 April 2011 showing the net disability exclusion calculation for a Kentucky tax return. A document entitled "WHERE'S MY REFUND.doc" explains to the client what he/she is to do if the refund is not received within three months of filing the amended return.

53. The computer files include a file entitled "labeler name plate.doc" which consists of three columns, with 10 addresses in each column, half of which are, "Department of the Treasury, Internal Revenue Service Center, Fresno, CA 93888-0422" and half of which are, "Franchise Tax Board, P. O. Box 942840, Sacramento, CA 94240-0002." The addresses are configured as if intended to be printed on labels.

54. The computer files include blank forms 1040X, Amended U. S. Individual Income Tax Return and 540X, Amended Individual Income Tax Return for California.

55. The computer files include a file entitled "1040X AMENDMENT COMPUTATION.xls" which consists of a completed form explaining the Alutiiq coworker's calendar year 2010 "Original 1040 Line 37: Adjusted Gross Income" and the adjustments for the "Net Disability Exclusion" to show "New Taxable Income" and an "Amended Return Refund" of "\$4,755.00."

56. The computer files also reveal Subject's Internet history. This history shows hundreds of visits to IRS websites and other sites providing tax forms and information. It also reveals hundreds of visits to websites for conducting personal banking,

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and Internet searches for information related to home repairs and shopping. The Internet searches occurred at various times throughout each work day. The records show that each entry was stored in "index.dat." The browser used was "Internet Explorer (Windows)." All the records were for Subject's profile name. The records also reflect the date/time last accessed, a "visit count" and the URL (Uniform Resource Locator) Name. The "visit count" is a cumulative number showing the number of times the profile name accessed that particular URL since the last time the history had been cleared; we have no way of knowing the last time the history had been cleared. A few examples below show a snapshot of the current counts associated with the government computer assigned to Subject:

<http://www.facebook.com/home.php>
Visit Count: 911 5/3/11

<https://www.navyfederal.org>
Visit Count: 389 5/4/11

<http://www.aafes.com>
Visit Count: 271 05/04/11

<http://www.cox.net>
Visit Count: 193 5/4/11

<http://www.ctec.org> (California Tax Education Council)
Visit Count: 177 5/4/11

<http://www.ftb.ca.gov/online/Tax-Calculator/Calculator.aspx>
Visit Count: 99 04/29/11

<http://www.irs.gov/formspubs/index.html>
Visit Count: 97 12/22/10

<http://ezinearticles.com/?2008-Federal-Tax-Table~~~>
Visit Count: 76 12/22/10

<http://www.ask.com/web?q=20-08+IRS+FEDERAL+TAX+TABLE~~~>
Visit Count: 65 12/22/10

<https://rpr.irs.gov/datamart/contactList.do?applicationId=1>
Visit Count: 52 12/28/10

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<http://www.google.com/search?hl=en&source=hp&biw=1418&bih=728&q=landscaping+san+diego~~~>

Visit Count: 46 04/26/11

<https://myaccount.sdge.com> (San Diego Gas & Electric)

Visit Count: 35 05/04/11

Subject Interview

57. In his interview, Subject provided the following information.

58. Subject verified that he was an Alutiig employee holding the title of Personnel Assistant III, Travel Auditor. Describing his job duties, Subject explained that after the travel examiners process the travel claims submitted by ships Afloat, the claims are sent to Subject who, along with one other employee, audits them and then sends them on for payment. The government personnel in the office do not directly supervise his work or watch what he does throughout the day, but at the end of the day they are aware of the number of travel claims he has audited, which he said is usually 30-35 claims a day.

59. Subject identified his working hours as 0730-1600, Monday through Friday. When asked how his work hours are reported, Subject indicated that recently a new electronic system was installed on the computer for contractor employees to use to sign in/out. Prior to that, they submitted time sheets on a local form that each employee filled out and submitted to their supervisor, who sent them to the Alutiig office. He indicated that he is not aware if anyone currently certifies the time entered on the electronic time sheets.

60. Subject said he is entitled to two 15-minute breaks each day and one 30-minute lunch from 1100 to 1130. He said he usually does not take the breaks, but does take lunch at the designated time. He indicated that he often eats lunch at the office, and sometimes on his lunch break he gets phone calls related to his part-time job, which is "similar to a tax preparer," but not doing regular taxes. He said in his part time job he is helping veterans to amend tax returns and he sometimes gets phone calls during lunch related to that tax work. He said sometimes tax clients may drop off paperwork at the office; it doesn't happen every day, but sometimes.

61. Subject was asked if he sometimes did his tax work on his government computer during his lunch break; he responded, "Lunch time, I won't deny. I would say that sometimes I use the

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computer for downloading the [tax] form. And of course that includes printing of that. And again, I won't deny it. I did it maybe two or three times that I used that and printed to the printer. But again, I'm not doing it every day."

62. Subject indicated that the Navy office section chief talked to him one day about two months ago about dealing with tax clients during his work day. He said that the chief told him some people had noticed that Subject was taking care of other people that are not part of the work for the job, like when people came in and brought him tax information. He said he responded to the chief saying, "I know it's a mistake. I agree with that. I'm a Senior Chief retired in the Navy. I never got in trouble. I retired. And I know it's not right. So I told chief it's not gonna happen again. I know it's wrong." He indicated that after this discussion, when clients called him at the office, he instructed them to meet him outside the building after working hours. He added that since the retirees have ID cards and have access to the base, they could come into the building without his prior knowledge any time and drop off information, but this didn't happen every day. He said he could not control this.

63. Subject indicated that he used a government computer and government telephone in his job. He had an NMCI computer account and Internet access. When asked about the rules regarding using his government computer for anything personal, he responded that "from time to time" he uses the Internet to get some forms and print them. He added this is occasional use, not every day. When asked what kinds of things individuals are not allowed to do on a government computer, he responded, "Well, browsing some, you know, some Internet that's not really pertaining to your job."

64. Subject was asked about use of government phones for personal business; he indicated that he used his cell phone, but sometimes his tax clients would call the office phone and ask questions which he answered. He said if the tax clients had his cell phone number they used it. When asked about the rules regarding government telephone use, he responded that he is not allowed to use the phone for personal use except in an emergency if he needs to contact his family or something. He said he follows these rules.

65. Subject was asked if he has taken an Information Assurance training course on how to use the government computer. He responded that he had taken the online course, and this is the only such training that he has received. He indicated that the

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training informed him what he could and could not do on the government computer. He was asked why he took the training, and he responded that he took it to have the knowledge of how to use the computer. When asked if it was required, and he responded that it was. When asked if he understood that he was required to follow the information provided in the course, he indicated he did understand that. When asked if he believed he followed the guidance, he responded, "I believe so."

66. Subject was shown an "ethics" slide from the online training course which stated, "Do not use e-mail to: sell anything." When asked if he feels like he follows everything on the slide; he responded, "I would say yes."

67. Subject was shown the SAAR-N form he had signed on 3 May 2011 and asked if he recalled what it told him he could and could not do. He responded that he did. He was shown the section of the form which addresses not using government equipment for unofficial advertising, soliciting or selling anything. He was asked if he believes he follows that guidance, and he responded that he did.

68. Subject was asked about his part-time tax preparation job. He indicated it is his own business, and the business does not have a name, it just has his name on it. He indicated that he processes taxes for veterans. When asked how he advertises the business, he indicated that people hear about it from friends who have used his services. He said that he has a flyer that he made and he passes flyers out to clients, who give them to friends. He said that the flyer had his office phone number on it. When asked if he had printed those flyers at the PSD office, he indicated that at one time he printed about 10 (black and white only). He said, "I just printed that like in a time that they asking me a copy and you know bring it with me, with those ten copies and just when they ask me. I'm not soliciting it when person will come over and ask me for a copy I just give him one." Later Subject said that he printed these ten copies and took them home to hand out to whoever wanted them. When asked to clarify whether he might sometimes give someone a flyer at the office, he indicated that he doesn't give the flyers out in the office, just at home.

69. When asked if he solicits customers through his PSD job, he responded, "Not at all." He was asked if he uses the databases that he has access to at PSD to get customer names and he responded, "No, not at all."

70. When asked if the people he worked with at PSD were aware that he has this tax business he said that they were. He indicated that sometimes someone would ask "what is that for" when they saw something, and he explained to them that it is for veterans' tax. He indicated that he has done taxes for two workers in the PSD office who are veterans. He identified his Alutiig coworker as one, but said he could not recall the other individual's name.

71. When asked how his coworker found out about the service, Subject responded that they had been together the first time Subject had his taxes done by somebody else and learned about the amended tax. After that, his coworker found out that Subject knew how to do the amended tax, and he wanted Subject to do it for him. So he brought the documents to the office and Subject helped him with it. He said he could not recall the name of the other individual he had done taxes for, but he still works there. Subject was asked if he received a fee for helping them with their tax submissions; he said no for his coworker, but the other individual was so happy about it that he gave Subject compensation for the supplies he had used. (It is noted for the record that the Alutiig coworker's name does not appear on the "Outstanding Balance for the Services on Amended Tax Net Disability Exclusion" list found on Subject's computer, mentioned in a previous paragraph.)

72. Subject was asked if he keeps business cards or flyers on his PSD desk for his tax preparation service; he indicated that he does not, he only has them at his home.

73. When asked if he actually fills out tax forms for clients at the PSD office; he responded that all he does is download and print the blank forms, he does not fill them out at PSD. He was asked, "You don't actually do the tax work there at the office?" He responded, "Oh, no, no, no, not at all."

74. Subject was asked if he does any solicitation on base for his business and responded that he does not. He was asked if he ever meets with tax customers on base other than for them to just drop something off; he responded that he does not. He was asked if he meets with them to talk about their taxes or actually do their taxes on base; he responded, "I don't do any taxes on base." He said when he meets his customers it is during lunch time, just to drop something off or "just explain a little bit and they just go home."

75. When asked if he believes he does not conduct any actual tax business at the PSD office, and he said he believes he does

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not. When asked whether he fills out tax forms for his clients while at the PSD, he responded "No."

76. Subject was asked if he ever used his government job title when doing his tax business; he responded, "Oh, no, no." He was asked how people know they can drop off paperwork at the PSD office; he responded that they ask if they can drop off the paperwork and that's why they know where he works. He indicated that if they call him in advance, he meets them outside and gets the package, but he can't control who comes into the building and sometimes he doesn't know if they are coming to see him. He said he tells them to call him next time and he will meet them outside after working hours. He indicated this has always been the case since he has been doing the tax preparation business.

77. When asked if he stores any tax preparation files or information on his government computer, he responded, "I would say yes, some forms are in there." He was asked what kinds of information; he responded, the 1040X and 540X amended tax forms, blank forms only. He was asked if he stored any correspondence or letters, he responded "No." When asked about e-mails, he responded, "If I remember I think, I think I do some letter that I did in there, maybe a couple letters." He was asked if the letters were to his tax customers; he responded that the letters would be a response to the notices that the veterans had received from the IRS, and the letters explained their returns. He was asked if he created the letters at the PSD office during government work time; he responded that he did them on his lunch time. Subject was asked if he was familiar with the Alutiiq employee policy manual and was shown a copy of selections of the manual. He indicated he was familiar with the manual, including the section indicating that using government telephones and other equipment for personal use is strictly prohibited. Subject was asked if he feels like he follows that policy; he responded, "Uh, maybe I uh I violated maybe few." He explained that sometimes he might be in a hurry, and someone calls him and he just calls them right away for a quick response, but it's not long distance. He was asked about his using his computer for personal searches for his business or personal use; he responded that he admits that he downloaded and printed the tax form, but nothing other than that.

78. Subject was shown a series of letters extracted from his government computer. These letters were addressed to the IRS on behalf of tax clients. Subject indicated he recognized the letters and said he did not create them during working hours. When informed that the time stamps on the computer files show that he saved the files at various times throughout the day, not

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on his lunch time, he responded that he may have done them "when I'm not busy, when after I finish my job."

79. Subject was shown an e-mail of 17 March 2011 addressed to Complainant's husband that that appeared to show Subject was sending information out about his tax preparation business to a potential client using his NMCI e-mail account, identifying himself as a PSD employee and saying it was okay to contact him at any time. Subject responded, "Oh, maybe I did that." He was asked if he did so on a regular basis and he responded in the negative. He said, "Oh no, ma'am, no, not at all. Like I said, I mean, I did it. But not, not, not all the time on a regular basis."

80. When shown a series of e-mails extracted from his government computer that were addressed to and from tax clients regarding their tax returns, Subject said he recalled them.

81. Investigators showed Subject a series of e-mails from Wednesday, 13 April 2011 @ 0910 discussing a dissatisfied tax client. Subject explained that in the e-mail he was telling a friend the story of what the client had done to him. When informed that it appeared his tax client had come into the office and was upset with the tax service, Subject said the client wasn't upset, and no one had come to the office complaining about the matter. The investigators pointed to the the second page of the email, which reads:

[H]e got pissed off and start saying a lot of things to me that he will get an attorney if he's check will not return to him and he gave me a warning that he will report me to my command utilizing the government property and doing tax without any permit. At first, I realized that he's got a point.

82. In response, Subject said:

During the time, the first time he came into the office, I didn't even know him. He asked me if I could give him, you know, if I uh give him a favor to process his veterans tax. And I say yes I will. Then uh during, during that time he said ok I will gather all the information, all the required document then he gave to me and I processed it. Now this conversation here, he came, he called me after he came from the Philippines from vacation, he called me and he said he wants to see me and talk to me about this because he received two checks from the IRS. So I told him ok

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I'll be, I'll meet you outside. So we came over there and we talk about it. So during the time he told me that he would return the check to the IRS because uh he had something that this one is not true or something like that, something to that effect. But he said he wouldn't believe it so he return the check to him, to the IRS. So after he left I called him up, I just thinking to myself why, why, eh why, I, I need give him advance, I mean advice that if you think that, why you just give the check to the bank and then if you, if the IRS try to get you back, then you've got some money that you could return back. No, no, he said he, I will return the money to IRS to make sure, to make sure that eh you know I'm entitled to it and ask if I'm entitled to it. So I talked to him, then I called him back while, while he left the building and I said eh Mr. Conception, why did you do that, I mean. I, I, I render my services to you and you now, you still trying to get your money. And he, he intimidated me for something that eh that if I didn't return his money you know, just exactly what, what is said here [in the e-mail]. That he said he report me because I'm, you know, because he came over there. I didn't even know that he's coming. So he's got a point to saying I'm taking care customer during my working hours. Because he came down. I didn't even know that he's coming there. And that's what, that's what the uh intimidation that he made to me. So.

83. When asked how the client knew that he worked at PSD, Subject replied, "From some other friend that I did their tax."

84. Subject was shown the e-mail of Friday, 22 April 11 @ 0812 addressed to the former Great Lakes coworker asking the coworker to hand out flyers. He said the coworker used to work with Subject but was transferred. He said that in the e-mail they were just saying hi, and "then I mention about hey I this, I'm, you know, I'm uh I'm doing veterans tax exclusion. I just wondering if you could tell some of their. Ok, I got the point. Now, I mentioned it in my e-mail asked if there is anybody, like soliciting." He was asked, "So you were asking her to hand out flyers in her office?" He responded, "No, I just ask, I think I asking her just like, you know, I mentioned to her that I'm doing it. If there is anybody that are interested for doing that." The questioner continued, "And you attached a copy of your flyer to this so she could hand them out and you asked her to hand them out?" He responded, "I don't remember, no, if I

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did." The questioner went on, "This [e-mail] shows that you did." He responded, "I did?" The questioner said, "This [e-mail] shows that there was an attachment to it, and in your e-mail you say uh maybe you could pass out the flyers to the veterans that you know down there." He responded, "Oh, I forgot, maybe, I didn't know." He affirmed that it looked like the e-mail that he had sent out.

85. The investigators told Subject that information from his computer shows he apparently spends government time searching Internet sites that have nothing to do with PSD. Some of the sites include hundreds of visits to Facebook, Navy Federal Credit Union, Cox Cable, a landscaping business, Army Air Force Exchange Service (AAFES), the California Tax Education Center (CTEC) and many tax related sites. In relation to Facebook, Subject responded that he very seldom uses it, like everybody else in the office. He said he was surprised by the high number of visits shown, as he "very seldom" uses Facebook.

86. Subject was asked if he ever allowed other people to use his CAC or his user profile; he responded that sometimes he might forget to take his CAC out of the computer when he leaves. When asked if it has a "time out" feature so that after a few minutes you have to log back on; he did not respond.² Subject said that at lunch time or breaks he sometimes forgets to pull his card out. He was asked if he believes other people were using his work station while he was away, he responded, "I do, because especially when I eh when I when I left in the Philippines for vacation. I, I don't know just like, I just like to ask a question that I have. That, I was surprised for the Facebook. I very seldom did I use the Facebook. I don't know why it's been recorded to being like that. Do you think like if the computer it's been there before or something that like they assigned the computer to me before but they had it already or something like that?" He was informed that it was all under his user profile.

87. Subject indicated that with Navy Federal Credit Union he was checking his balance. He said he was using Google to look for landscaping and concrete work because he was trying to get things done at his home and was seeking a better price. When

² (NMCI computers have an automatic time out feature that locks the computer after 15 minutes of inactivity to prevent unauthorized access. To unlock the seat the current user must re-insert his/her CAC and enter the password. If a different user wants to unlock the computer, he/she must shut down and restart the machine, then log in using his/her own CAC and password.

asked if he was doing this during working hours, he replied, "I would say maybe sometimes in my working hours if I'm not busy."

88. The investigators told Subject that there were a lot of tax inquiries, more than just a few times going to the tax site to print a form, but actually researching tax information. He responded that as far as research, he only prints the tax forms, he doesn't research about doing taxes.

89. The investigators told Subject that other records found on his government computer included two actual tax forms that had been filled out and saved for two different clients. He acknowledged he had actually completed these forms at the office during his regular working hours.

90. When told the information found on his government computer included a list of addresses for the IRS and Franchise Tax Board configured so that labels could be printed, Subject said he had printed 15-20 copies of that list onto labels which he brought from home.

91. When asked if he would like to say anything else about the fact that these files dealing with his tax business were found on his government computer, he responded, "I'm not denying it. I'm guilty for that part. But it's not that you'll find that I'm doing my business for the whole time that I be there." He said he spends more time doing his regular job, and continued, "Yeah, I use some of the time during work, eh the time that I'm not really busy on my job, on my regular job. I'm not denying it. I'm guilty about it. And again, uh thinking about something like eh maybe I just got carried away sometimes for, for, for what I did, for what I'm doing, eh because eh the job that I have the current job that I have, I never have any problem. And I eh I complete my job, completely and never get late for my work and never get eh behind on my work. And I would say that I did that during not on my busy day eh to include on my busy day on my regular working hours as far as doing my job."

92. The investigators asked Subject if there was not enough work to keep him busy all the time. He responded, "There's a lot of time that we are busy. But because the kind of job that we have, we are looking to the examiner, travel examiner, to put them in our basket for audit. And most of the time, like I said, once we got the stack we, I always finish that every day. Nothing been behind." He was asked, "So you don't get behind in your work?" He said, "Right, so during that time that I waiting for to audit, maybe like again, maybe that's probably the time that I used that computer for that thing." Subject was asked,

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"But you wouldn't have been doing this, any of this [tax] work, at times when you had [PSD] work that you needed to be doing, so you didn't get behind in your [PSD] work because you were doing [taxes]?" He responded, "Not at all; I've always done completely my job before, before I do something else. [gap] You can talk to the supervisor that I work with. To anyone else in the office. Any, anybody that you could talk with there, I never get behind. I always complete my job as what, you know, does assigned to me. And again, and I was carried away during the time as I repeated that, keep on repeating it. And probably I used the time to perform what you have there."

93. In summarizing, Subject said, "I'm not denying it. I committed mistake. During my twenty-six years, I never get in trouble. Just only this time. I agree. It's not right. Hundred percent. It's not right."

94. For clarity, the investigators asked Subject what he believed that he was guilty of doing; he responded, "Exactly what I have on the print out right there" [pointing to the printouts from his computer discussed in previous paragraphs].

95. The investigator and Subject then engaged in the following series of exchanges:

Q: So using your government computer for doing research for your tax business, you did that?

A: Right.

Q: And using your e-mail account to communicate with your customers, you used it for that?

A: Yes.

Q: And sometimes when you weren't really busy at work you would do Internet searches for your tax business and for personal things?

A: Ummm, like I said, the form, yes. I eh download the forms yes.

Q: Ok, and I think it's pretty clear based [on your testimony], you did not solicit people, you did not ask people, you did not use your government access to find people?

A: Oh, no. Well in one, in one case about the e-mail, yes. Other than, other than that, I didn't. I didn't use that for any.

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Q: You didn't use rosters or customer names or sign-in sheets or anything to contact people?

A: "No. Yeah, just putting my, the office there in the flyer, that's another thing that I accept that I did.

Q: And sometimes having customers visit you at your office while you were working because that's when they would drop in?

A: Yeah.

Q: And you did have the computer training, correct?

A: Yeah.

Q: So you knew the rules about use of government equipment for personal use?

A: Yes.

96. When an investigator asked Subject if there was anything else he wanted to say to mitigate what happened, he responded:

Like what I said, I was just carried away during the time that I finished all my work and uh did some of that. Uh the violation that I did was really I used government thing like computer printer, but it's not to the point to use this as being my part time job that I'm soliciting in the office to, you know, to get some help for that particular part time that I have. It just so happened that eh I'm servicing the veterans helping them to process because not too many eh tax preparer doing that and they know how to do it. That's why they allowing for me. I'm helping them. That's the bottom line. It's not it's not after the money or what I made, you know, for the compensation that what I did for them. And that's the only thing that I could say. Yes, it's a part time job. But I, but I'm helping the veterans as well because they don't know it and not too many people, not too many tax preparer know it.

Additional information

97. On Thursday, 7 July 2011, the Director, PSD-AW informed an investigator by e-mail that, "Alutiq will be here tomorrow to terminate [Subject]. He will not be told before that to ensure no sabotage to computers, etc.. not that he would. Just for precaution."

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98. In a follow-up e-mail and telephone interview, the investigator asked the Director why Subject was terminated. He said he asked Alutiiq to terminate Subject, "because of an initial verbal de-brief from the IG concerning running a personal business at the work place. During the investigation, [Subject] admitted that he was doing that. [The Alutiiq Site Manager] was aware of the situation. I told [her] that I could not support AT ALL his current employment through Alutiiq based on this information. I absolutely WILL NOT hire [Subject] as a GS employee unless it has been proven to me otherwise that the case was unfounded."

99. In an e-mail to an investigator the Alutiiq Site Manager, stated "I would like to inform you that [Subject] was removed from the site at the request of the government. I placed him on suspension and his last day with Alutiiq will be this Friday [22 July 2011]."

100. During the course of their inquiry, the investigators learned PSD-AW does not intend to continue using contractor personnel to perform work such as that done by Subject. Rather, it intends to return to its prior practice of using government personnel. The decision does not appear to be related to the evidence developed during this investigation.

Discussion and Analysis

101. If a government employee had used government time and resources (computer and telephone) in the ways Subject used them to conduct a private money making activity, the government employee would be in violation of 5 C.F.R. §2635, Standards of Ethical Conduct for Employees of the Executive Branch. However, since Subject is an employee of a contractor, those regulations do not apply to his conduct. The government has no direct relationship with Subject, only with the contractor. Likewise, the government has only indirect control over Subject in the sense that the contractor is responsible to the government for his performance.

102. The preponderance of the credible evidence developed during this investigation establishes that Subject, an employee of the government contractor Alutiiq, used government resources for conducting a private money making activity. This is not what the government intended when providing a government computer for the contractor's use. Rather, the government intended that the resources would be used to perform work required by the contract.

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103. Subject admitted being aware that government resources were not to be used to conduct personal business. He said he believed he followed these rules. However, when presented with evidence to the contrary, he admitted to having violated the rules in several areas as explained below.

104. The Alutiig contract requires all contractor employees to complete IA training to maintain access to IT systems or networks. Although the contract does not specifically state that the information provided in the training must be followed by the contractor's employees, compliance reasonably is implied, and Subject understood this requirement. He said that from the training he understood that he should not be using a government computer for "well, browsing some, you know, some Internet that's not really pertaining to your job."

105. The contract also requires completion and approval of the SAAR-N form by each contractor employee. The SAAR-N form, signed by Subject, says, "I further understand that, when using Navy IT resources, I shall not" use it for unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use. However, he did not sign this form until 3 May 2011, after the e-mail which generated this complaint. When asked if he complies with this direction, Subject responded that he does.

106. The Contractor's company policy manual states that "The use of Government telephones and other equipment for personal use is strictly prohibited." Subject admitted that he was aware of this prohibition and said that he follows it.

107. When asked about authorized use of government telephones, Subject stated that he is not allowed to use the phone for personal use except in an emergency if he needs to contact his family or something. He said he believes he follows these rules; he usually uses his personal cell phone for his tax clients, but sometimes his clients may call the office phone and ask questions, which he answers.

108. Several files located on Subject's government computer represented letters he had written on behalf of clients of his personal tax preparation business. These letters had been saved at various times throughout the work day. Contrary to his initial testimony and as he later admitted, these were not written on his lunch break or other break time, but during his regular work day when the government was paying Alutiig for his professional services as a travel claim auditor.

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109. The evidence demonstrates it is more likely than not that Subject made a regular practice of including his PSD-AW signature block on all e-mails. Additionally, his advertising flyer had his work phone number listed. This explains how potential tax clients were aware that he worked at PSD-AW and were able to call or visit him at that location, with or without his prior knowledge of their intent to do so.

110. When the computer files were examined, the letter to the complainant's spouse was not located, and none of the e-mail files reviewed were as old as this e-mail, even though the request for e-mails extended back 2½ months prior. This leads the investigators to believe that Subject regularly deleted old sent e-mail from his account. Therefore, it is more likely than not that more e-mail had been sent regarding his tax business than was located in the files provided by the network administrators.

111. Subject initially admitted to occasionally talking to tax clients by government phone during his lunch break, and occasionally downloading and printing a few tax forms, also on his lunch break, but nothing further. When presented with evidence to the contrary, Subject admitted to having created all the documents located in his computer, but still claimed he had created them during his lunch break until the time stamps were brought to his attention. Only then did he admit he created them at various times throughout the day.

112. Subject claimed to not do any tax work on his government computer other than to simply download and print an occasional form. However, when he was shown two completed tax forms which had been located on his computer, he admitted he had created them during working hours when he was not busy with PSD work, as he admitted to having created some tax letters. A fellow employee indicated he had seen packets of tax information along with tax forms on Subject's desk one day, and that "he was definitely doing some tax work, that's for sure" at a time other than a lunch break. It is more likely than not that if he did this tax work at the PSD, he created other tax work product that was no longer on his computer at the time his files were retrieved for this investigation.

113. Unrelated to his tax preparation business, Subject conducted hundreds of personal Internet searches and Facebook visits, and frequently performed his personal banking on the government computer. PSD management indicated that personal use of the Internet is a problem that is difficult to detect and overcome. It is apparent that Subject is not the only PSD employee or contract employee to conduct personal Internet searches or use Facebook for personal interaction during working hours, and it is acknowledged that since many government organizations now provide information via Facebook,

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not all Facebook searches could be considered personal. While limited personal Internet searches can be permitted during break periods, Subject's use of the Internet appears to have gone beyond limited personal use during authorized breaks. His extensive personal use was spread throughout the day on a regular basis.

114. Subject mitigated the facts by stating that he never gets behind on his PSD work, and if he has PSD work to do, he doesn't do his personal Internet searches or tax work. This statement was supported by PSD management who indicated that Subject is a good worker and is "very efficient" in getting his tasks completed.

Conclusion

115. The preponderance of credible evidence shows that Mr. Lolito Luna, an employee of the government contractor Alutiig, misused government resources by supporting and conducting his personal tax preparation business while on duty in his capacity as a PSD-AW Travel Auditor, which is not what the government intended when the resources were provided to the contractor. The government intended that the resources be used for completion of the contract work, not for one of its contractor employees to use in running his own business enterprise. However, there is no evidence that Subject used his position at PSD to coerce or mislead veterans into paying for his personal tax preparation services.

List of Actual/Apparent Violations

116. Misuse of government resources is a violation of Contract Section C, Description Specifications; Statement of Work, clause 1.5, Government Furnished Property, Services and Responsibilities which says, "Generally the Government will provide normal operating supplies and equipment for use in performing services under this contract."

117. Misuse of government resources is also a violation of Delivery Order H7L2, Section I, Contract Clauses, which incorporates DFARS 252.239-7001, Information Assurance Contractor Training and Certification, mandating that a SAAR-N form be completed and approved for all contractor employees requiring access to IT systems. The SAAR-N form requires the employee to certify that, "I further understand that, when using Navy IT resources, I shall not: [gap] Put Navy IT resources to uses that would reflect adversely on the Navy (such as uses involving [gap] unofficial advertising, soliciting or selling except on authorized bulletin boards established for such use.)"

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Actions Planned or Taken

118. Because the government has no authority to take any personnel action against the contractor's employee, Alutiiq was asked to remove its employee from PSD-AW, which it did immediately. Subject's employment with Alutiiq was subsequently terminated effective 22 July 2011.

119. The issues involving Subject's tax preparation business (i.e., whether it is a legitimate service or the "scam" the complainant alleged, and whether his fees are appropriate) were reported to have already been referred to the IRS by the complainant. Notwithstanding her referral, NAVINSGEN has referred the matter to the Department of Treasury Office of Inspector General, who has agreed to identify the appropriate office in the Internal Revenue Service to review such issues.

Personnel Actions Taken

120. Subject was a contract employee and, as such, was not subject to adverse personnel action taken by the government; however, his employer removed him from his assignment to work at PSD-AW at the request of the government. Subsequently, on 22 July 2011, Alutiiq terminated his employment with the company.

Observations

121. The facts show that Subject was perceived to be a productive employee of PSD-AW. Subject's timely and professional work performance tended to mask his other activities, and the investigators were unable to develop credible evidence that would demonstrate PSD-AW management officials were aware, or reasonably should have been aware, that Subject was spending government time and resources conducting his personal tax preparation business. Likewise, the investigators made diligent efforts to determine whether lower level personnel working closer to Subject knew, or reasonably should have known, that Subject was engaging in personal business while at PSD-AW. The investigators' inquiries revealed that when lower level personnel observed conduct suggesting Subject could have been engaged in business related or other improper activities while in PSD-AW spaces, they confronted Subject with their concerns and Subject appeared to cease engaging in the conduct of which they complained.

122. The facts also indicate that Subject was able to produce accurate and timely work product, perform activities related to his personal business, and conduct extensive personal Internet

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searches during the hours he was present at PSD-AW. This led the investigators to question whether Subject had sufficient work to perform each day and whether the government should backcharge the contractor for some of Subject's time. However, the terms of the contract indicate it was written so as to require Subject to be at PSD-AW and available to process travel claims for a set number of hours each day, whether or not the number of claims presented to him was sufficient to require him to expend all of those hours processing them.

123. Management officials acknowledged that monitoring personal use of the Internet is an ongoing challenge.

124. Subject had been working at PSD-AW on the current contract since October 2010, had taken IA training in Dec 2010, and had IT access during that time; however, he did not complete and sign the SAAR-N form until May 2011. This form is supposed to be completed and approved prior to an employee being permitted access to government IT systems.

125. Because the PSD-AW is in the process of replacing contract workers with government personnel, NAVINGEN has no specific recommendations to address potential problems with the contract terms and conditions that this investigation may illustrate.

Appendix A - Witness List

1. Complainant
2. Contracting Officer, FISC San Diego
3. Deputy Disbursing Officer, PSD Afloat West
4. Contracting Officer's Representative/Technical Assistant,
FISC San Diego
5. Assistant Officer-in-Charge, PSD Afloat West
6. Subject
7. Personnel Officer, PSD Afloat West
8. Director, PSD Afloat West
9. LPO, PSD Afloat West
10. Employee of Alutiiq, assigned to PSD Afloat West
11. PSD Afloat West
12. Employee of Alutiiq, assigned to PSD Afloat West