



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111



REPLY TO
ATTENTION OF

April 4, 2003

The Honorable Elaine Kaplan
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Transmittal to Office of Special Counsel of Report of Investigation of
Whistleblower Allegations, Investigation File Nos. DI-02-1423 et al

Dear Ms. Kaplan:

Enclosed with this letter is the Army's Report of Investigation into allegations that there is a substantial likelihood that there were violations of law, rule or regulation arising out of actions by officials at the Department of the Army, Fort Polk, Louisiana, during the commercial activities cost comparison and procurement for Whole Base Operations and Support Services (BASOPS) recently conducted at Fort Polk. (Report of Investigation (ROI) with Exhibits G/1-4).

The Secretary of the Army has delegated to me his authority, as agency head, to review, sign, and submit to you the report required by Title 5, United States Code, Section 1213.

I have reviewed the Report of Investigation and concur with the findings stated therein. My review indicates that the Army investigation was conducted in a thorough, fair, and impartial fashion. It appears that the Army has properly addressed the allegations of violations of law, rule or regulation by officials at Fort Polk that have been raised by Robert Love, President of Local R5-168 N.A.G.E., and a former employee of the Joint Readiness Training Center and Fort Polk, Louisiana, as well as by several Fort Polk employees. The Report is internally consistent, its conclusions are supported by substantial evidence, and nothing has been brought to my attention that would justify overruling or modifying the conclusions of the Report. The Report:

- a. Summarizes the information with respect to which the investigation was initiated, at ROI, Item 03, Memorandum to Appointing Authority, dated January 24, 2003, and Tabs D and E.
- b. Describes the conduct of the investigation, at ROI, Item 03, and Tabs D and E. Additionally, the following information is provided: The Office of Special Counsel (OSC) request for an Army investigation, dated November 25, 2002, was forwarded to

the Army Office of the General Counsel (Army OGC) for appropriate action. (Tab AA). The subject action was forwarded to Headquarters, Forces Command, (FORSCOM), Office of the Staff Judge Advocate (SJA), on 4 December 2002 (Tab BB). By memorandum dated January 17, 2003, MG Julian Burns, Jr., Acting Chief of Staff, appointed COL Bruce Topletz, Office of the FORSCOM SJA, as the Investigating Officer (IO) to investigate the release of government and contractor information as outlined in OSC correspondence. (ROI, Tab A).

(1) By statute, the agency has sixty days to complete the report. On December 20, 2002, the Army OGC requested an extension of time to file the Department of the Army's report based on a request made by COL Christopher Maher, FORSCOM SJA, who wanted "a fresh set of eyes" to look into the matter for his office and was awaiting the arrival of a reserve Colonel coming on active duty in early January 2003 to perform this review. Additionally, besides the alleged disclosure that is the subject of the above captioned case, when the OGC became aware of a second disclosure stemming from the same whole base study, the FORSCOM SJA was advised to include that disclosure as an incident to address in the FORSCOM investigation. COL Maher subsequently advised the reservist would also be looking into a second release of contractor information made in May 2002 during the same Fort Polk Office Management and Budget (OMB) Circular A-76 study. Their projected time for completion would be the end of January 2003. Given the delay on that end, additional time would also be required for review of the FORSCOM draft report by this office before it could be referred to the Assistant Secretary of the Army (Manpower and Reserve Affairs) for approval of the final Army report to your office. Army OGC requested that Ms. Catherine McMullen, Chief, Disclosure Unit, Office of Special Counsel, grant a 60 day extension (Tab CC). The extension was granted.

(2) Fort Polk coordinated its Investigative Report with the FORSCOM SJA Office before forwarding it to Army OGC for review and further processing within the Department of the Army. The FORSCOM SJA Office forwarded to Army OGC the Investigative Report dated January 27, 2003. (ROI, Tab B). (Please note that there were five binders submitted by the Investigating Officer in the subject investigation. The first volume of the ROI contains Tabs A-F while Volumes 2-5 have been labeled as Tab G, Exhibits 1-4, respectively).

c. Summarizes the evidence obtained from the investigation, at ROI, Tabs A, B, D and F. In the course of the inquiry, the Army determined that two releases of source selection information occurred. The first, the subject of the allegations directed to your office, resulted from the disclosure of information on or about December 11, 2001, up until January 16, 2002. There was a second release of source selection information, not initially addressed in your letter that occurred on May 1, 2002. The second release involved disclosure of a technical analysis comparing the Government's Technical Performance Plan (TPP) against the Best Value Proposal Contractor's plan to an official involved in the generation of the TPP and who was not authorized to see this analysis. In each instance, the investigations performed show that the Fort Polk Command and management acted promptly to redress the release, ensure the integrity

of the procurement process, and initiate appropriate disciplinary action against the officials involved. These inquiries, investigations and reports are found at ROI, Tab G, Exhibit 1, G/1 Contracting Officer Statement and Evidence; Tab G, Exhibit 2, G/2 Inquiry into Release of December 2, 2001, and Tab G, Exhibit 4, Administrative and AAA Report that addressed the circumstances surrounding the December 2001 disclosure; and Tab G, Exhibit 3, G3/AR15-6 Investigation into Release of May 2002, which deals with that disclosure.

d. Addresses whether there were violations or apparent violations of laws, rules, or regulations, at Volume 1, Tabs D and E. Based upon the Special Counsel's complaint, relevant laws, rules, regulations, and all relevant documents assembled by the Investigating Officer for the instant OSC investigation, I agree with the Investigating Officer that these releases, although clearly violative of the applicable statute (Title 41, U.S. Code, Section 423), Federal Acquisition Regulation, Section 3.104-5, et seq, and Department of Defense Joint Ethics Regulations DoD 5500.7-R, did not result in any unfair advantage being conferred upon either the competing contractors in the first instance or the Fort Polk Management Study Team (MST) in the second event. I further determined that the integrity of the procurement process was not compromised by these releases and that the evidence shows that neither the competing contractors nor the MST attained any benefit or altered their respective proposals based upon the information released. There is no evidence of criminal misconduct by the parties involved.

e. With respect to actions that the Army has taken or plans as a result of the Investigation, the following information is provided: As a result of the Investigating Officer's effort, there were no recommended changes to any agency rules, regulations or procedures. Additionally, there were several disciplinary actions that were taken that were appropriate given the nature of the events and the findings of the numerous investigations. The following actions were taken regarding the first disclosure:

(1) Mr. Jim V. Kelley was proposed for a twelve (12) calendar day suspension without pay for a first offense after twenty-eight years of federal service with no previous disciplinary actions for the offense of releasing procurement sensitive (source selection) information related to the conduct of the OMB Circular A-76 Whole Base Study of Operations and Support at Fort Polk (Tab G, Exhibit. 2). Mr. Kelley retired from his position, effective November 11, 2002, prior to the action of the Deciding Official to impose disciplinary action.

(2) The Fort Polk Commanding General publicly addressed the issue to the President, NAGE Local R5-168, and the general public during a town hall meeting and by publication of his correspondence to Mr. Robert E. Love in the local command newspaper. (ROI, Tab A).

(3) The Contracting Officer, following her own inquiry, consultation with legal counsel, the Chair, Source Selection Evaluation Board, Chair, Source Selection Advisory Council (SSAC), and Source Selection Authority (SSA), determined that the information released was not used or applied by any of the offerors in the competitive range in the

submission of their Final Revised Proposals and accordingly continued the procurement process.

The following actions were taken regarding the second disclosure:

(1) On June 4, 2002, Dr. Ronald Tomas was proposed for removal from federal employment for misconduct by General Jason Kamiya, Commander Joint Readiness Training Center and Fort Polk (Tab G, Exhibit 3). In coordination with Mr. Brian Gerber, Chief, Civil Law, Office of the Staff Judge Advocate, U.S. Army Forces Command, after presenting the matter to the deciding official (Major General Burns, Acting Chief of Staff, U.S. Army Forces Command), Dr. Tomas agreed to serve a fourteen day suspension without pay.

(2) On June 4, 2002, Mr. Richard Wisdom was proposed for removal from federal employment for misconduct by General Jason Kamiya (Tab G, Exhibit 3). At the time the ROI was forwarded to the Office of the Army General Counsel for further processing, this action was pending. Since then, Mr. Wisdom submitted his voluntary retirement application with an effective date of February 20, 2003. According to the FORSCOM SJA Office, he did in fact retire on that date. (See Supplemental document immediately following this transmittal document).

(3) The investigation determined that no criminal conduct occurred.

(4) On May 7, 2002, Brigadier General Yingling, SSA, removed Mr. Wisdom from the SSAC (Tab G, Exhibits 1 and 3).

(5) The Fort Polk Commanding General publicly addressed the issue by publication in the command information newspaper (*The Fort Polk Guardian*) in June 2002 (Tab G, Exhibits 2 and 4-1-A, submitted with NAGE Local R5-168 Administrative Appeal).

(6) The Contracting Officer, after her own inquiry into the incident, determined that the communication from Mr. Wisdom to Dr. Tomas did not have a negative impact on the procurement process and did not require remedial action in regard to effecting award to the BVP Contractor (Tab G, Exhibit 1).

Therefore, on the basis of this Report, the Army does not plan to take any further action regarding this matter other than those actions noted above. Finally, there is no criminal violation inquiry referral to the Attorney General pursuant to 5 USC 1213(d)(5)(d).

This letter and enclosures are submitted in satisfaction of my responsibilities under 5 USC 1213(c) and (d). Please direct any questions you have concerning the conduct of the Report of Investigation in this case to Ms. Cassandra Tsintolas Johnson, at 703-697-6493.



Reginald J. Brown
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosures

Johnson, Cassandra T Ms OGC

From: Gerber, Brian H., Mr. - SJA
Sent: Monday, March 24, 2003 3:33 PM
To: Johnson, Cassandra T Ms OGC
Cc: Maher, COL Christopher M. - SJA
Subject: RE: Status of Personnel Actions

Cassandra, confirmed this afternoon with the personnel folks in G1 that Mr Wisdom did in fact submit his immediate voluntary retirement application with an effective date of 20 Feb. 03, and did, in fact, retire from federal service on that date. He is no longer in the federal service. We confirmed this information with the Ft Polk CPAC and verified that the Personnel Action for retirement was processed effective on 2-20-03. If he ever applies for another federal job he would have to indicate he retired pending disciplinary action by the agency.

BRIAN GERBER
Chief, Civil Law Division

-----Original Message-----

From: Gerber, Brian H., Mr. - SJA
Sent: Tuesday, 18 February 2003 9:34 AM
To: 'cassandra.johnson@hqda.army.mil'
Subject: FW: Status of Personnel Actions

Cassandra, the most recent update on Mr. Wisdom. Our understanding is that he leaves federal service 20 Feb. 03. The disciplinary action is complete so if he chooses to ever apply for another federal job he would have to disclose that.

BRIAN

-----Original Message-----

From: Duston, Donna - G1
Sent: Tuesday, February 18, 2003 7:26 AM
To: Tootle, Kathryn Joy - G1; Smith, Marchie - G1; Malley, Stephen S., Mr. - SJA
Subject: FW: Status of Personnel Actions

Forwarded FYI. Per e-mail below, Mr. Wisdom will retire effective 20 Feb, one day prior to the effective removal date. THANKS DONNA

-----Original Message-----

From: Mallet, Don Mr CPAC [mailto:malletd@polk.army.mil]
Sent: Saturday, February 15, 2003 1:03 PM
To: Rocke, Mark D COL Garrison Commander
Cc: Tomas, R Garrison Command Office; Dunn, Malinda E COL OSJA; Counts, Mark CPT OSJA; Johnson, Y Ms CPAC; Duston, Donna - G1; Richard, Retha Ms CPAC; Ross, Augustine Ms DCP; Vaziri, Bobbie Ms CPAC
Subject: Status of Personnel Actions

Sir:

This serves to provide an update on the status of actions involving your DOC and DCFÁ.

First, the DOC, Mr. Rick Wisdom, came in to the CPAC and completed his

retirement package on 12 Feb 03. He has 33 years of service and will retire effective 20 Feb 03, prior to the effective date of his removal set for 21 Feb 03.

Turning now to the DCFA. Mr. Mike Dutcher, has not come in nor requested the assistance of this office as of yet. In his last communiqué' he indicated that he would deal with the Army Benefits Center (ABC) and contact us if he needed assistance. We contacted the ABC and were advised that he had neither submitted a retirement package nor requested an estimate.

We will keep you informed as developments occur.

Donald

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Donald

REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT McPHERSON, GEORGIA 30330-1062

AFPI-CP (690-700a)

7 FEB 2003

MEMORANDUM FOR Mr. Richard T. Wisdom, 160 Eddy Road, Deritter, LA 70634

SUBJECT: Final Decision on Proposal to Remove

1. Reference letter, Office of the Commanding General, Joint Readiness Training Center and Fort Polk, 4 Jun 02, subject: Advance Notice – Proposed Removal.
2. Referenced letter proposed to remove you based on your actions while serving as a member of the Source Selection Advisory Council (SSAC), when you contacted Dr. Ronald N. Tomas, Fort Polk Deputy to the Garrison Commander. Dr. Tomas, the Chairman of the Management Study Team (MST), was involved with the preparation of Fort Polk's Management Study, In-House Cost Estimate (IHCE), and Technical Performance Plan (TPP) under Office of Management and Budget (OMB) Circular A-76. Knowing the respective positions in the Commercial Activities (CA) Study which you and Dr. Tomas held, you transmitted Source Selection briefing information to Dr. Tomas by e-mail. This was a direct violation of the Procurement Integrity Act, the Federal Acquisition Regulation (FAR), and DOD 5500.7-R, the Department of Defense Joint Ethics Regulation.
3. In addition to the referenced letter above, a letter dated 25 Nov 02, was also provided to you from Colonel Christopher M. Maher, FORSCOM Staff Judge Advocate, to clarify that the proposal was to remove you from your position as Director of Contracting (DOC) and remove you from Federal service. You were also informed in the letter that prior disciplinary actions would be taken into consideration by the Deciding Official, and you were given extra time to respond to these clarifications.
4. My review of the Army Regulation (AR) 15-6 Investigating Officer's (IO) file indicates the e-mail contained evaluations and explanations of the contractor's proposal in the very A-76 study for which you were involved with your duties as a member of the SSAC. The slides included in the e-mail contained information from the contractor's proposals and each was marked, "SOURCE SELECTION INFORMATION (See FAR PART 3.104)."
5. You were fully trained in your responsibilities as DOC and as a member of the SSAC. You received annual ethics training in accordance with appropriate regulations from 1995 to the time of this violation. You were fully aware that

AFPI-CP

SUBJECT: Final Decision on Proposal to Remove

information was not to be shared between employees involved with source selection and employees responsible for the management submissions. The training also emphasized the necessity to ensure source selection information was not compromised. You signed an Army Atlanta Contracting Center Nondisclosure, Conflicts of Interest, and Rules of Conduct Certificate on 22 Feb 01. In addition to the training received by the SSAC members, you also received additional Source Selection Evaluation Board (SSEB) training to include discussion of FAR 3.104 (Procurement Integrity) at Fort McPherson on 6-7 Aug 01. This training put you on notice that, in matters of this particular A-76 study, you and Dr. Tomas were not allowed to communicate. Therefore, you were on notice this transmission was improper. Despite this, you forwarded the Contractor's information and a technical analysis of Fort Polk's TPP and Best Value Proposal contained in the e-mail to Dr. Tomas.

6. After your 30 Apr 02 "FYI" e-mail, Dr Tomas queried, "Was I supposed to get the briefings? I did not get them." Although Dr. Tomas was of superior grade, his e-mail response clearly requests guidance; it does not demand action. As the DOC and subject-matter expert in contracting matters, it was your duty to inform Dr. Tomas that through his involvement with the agency's submissions in this A-76 CA Study, he was not authorized to receive such information. Instead, you forwarded the information. Furthermore, the warning label on these slides indicated, "All information contained in this brief is sensitive IAW (In Accordance With) FAR 3.104, which limits promulgation to SSEB, SSAC, Source Selection Authority (SSA), and Government personnel with a need to know." As the DOC and subject-matter expert, you knew (or should have known) Dr. Tomas did not fit into any of the authorized categories. Therefore, you were obligated to prevent any of this information from being communicated to Dr. Tomas, by yourself, or anyone else. In your 4 Nov 02 submission, you indicated that I should consider that you did not intentionally disclose source selection information to unauthorized personnel. I have determined Dr. Tomas did not order you to forward this information to him. I have further determined that, although it was your duty, you made no effort to prevent Dr. Tomas from obtaining the information.

7. Your 4 Nov 02 response argues that the Procurement (Integrity) Act protections are inapplicable to internal disclosure between rank and file employees who were "both involved in the bid process." The question at issue is not whether the communication was internal to the agency (i.e., internal disclosures between rank and file), but whether the sender and receiver are both authorized access to the information. While you were authorized to access the information, Dr. Tomas, in his capacity as the Chairman of the MST, was not authorized such access.

AFPI-CP

SUBJECT: Final Decision on Proposal to Remove

8. You further contend that the "previous posting of the source selection information on the world-wide web removed any source selection classification of the documents involved, thereby, precluding any subsequent Procurement Act violations such as those levied in this matter." The original e-mail was between yourself and Mr. Howell (who was also authorized access to the information, over a secured Local Area Network (LAN)). This is not the same as an open disclosure on the world-wide web. You cite no authority, nor am I aware any exists, for the proposition that information communicated by individuals authorized to receive it removes any protection limiting access to the information.

9. Changes were made to Management's IHCE figures, but the Army Audit Agency (AAA) had not completed its audit of the IHCE. The possibility remained these figures might be further modified or changed, and now Dr. Tomas was in possession of the Contractor's information contained in the slides. Questions arose that the changes that were made later to the figures may have been made based on Dr. Tomas' knowledge of the information you sent him. This possibility was closely scrutinized by the IO in his investigation. However, based on the AAA's review, it was determined that the changes had other appropriate bases. While his findings indicate your violation was not done for any criminal motive, personal gain, or for the advantage of Fort Polk's IHCE, it is clear that the segregation of management and source selection officials from each other and the protection of source selection information is of utmost importance to the integrity of the A-76 process.

10. In consideration of all these factors, I find your breach was with full knowledge of the obligations you had, both in your position as DOC and as a member of the SSAC.

11. In reaching my decision, I have reviewed and considered all information in the IO's investigation report, as well as any oral and written submissions you and your attorney presented for my review (including the 4 Nov 02, and 2 Jan 03 submissions). I have further considered the factors found at 5 M.S.P.B. R. 280 (known as the Douglas Factors). You are in the highest Contracting position in your organization. Part of your duties is to ensure continuation of good order and discipline concerning contracting activities at your agency. This includes assuring the protection of the integrity of the Contracting process, as well as the Government-directed A-76 process. You were fully trained in these duties and responsibilities. The A-76 studies result in either jobs being given to contractors, or retained by the Government employees who presently perform them. Therefore, the A-76 process is closely scrutinized with suspicion on both sides that the other side may be gaining an unfair advantage. Any shadow of impropriety in the process must be avoided at all costs. The

AFPI-CP

SUBJECT: Final Decision on Proposal to Remove

directed punishment in this action will be considered by both employees and the administrative review agencies in any similar disciplinary actions for similar infractions in the future. Too light a punishment to the agency's highest-ranking Contracting civilian basically forecloses the agency from punishing lower-ranking employees for future infractions.

12. You have two previous disciplinary actions in your file:

a. On 11 Apr 95, you were assessed a 21-day suspension for reprisal against an employee for exercising a "right-to-file" complaint through established procedures; for failure to follow regulations, orders, rules, or procedures in not correcting, in a timely manner, the misclassification/misassignment of subordinate employees; and failure to respond to a directive to eliminate delinquencies in performance appraisals. In your 2 Jan 03 response, you indicate that although you agreed to accept the 21-day suspension; in retrospect, you believe that the matter should have been brought before the Merit Systems Protection Board (MSPB) for final resolution. The fact remains that you accepted the suspension and did not appeal to the MSPB; therefore, I choose to consider it.

b. On 19 Aug 96, you were assessed a 5-day suspension for failure to respond in a timely manner to written directives issued to you on 22 May 96, which required you to accomplish certain tasks; and for failure to submit a draft of your Senior System Evaluation Support Form within the required five-day workday period from receipt of the letter, dated 12 Jun 96. Your 2 Jan 03 response indicates this suspension was the result of a misunderstanding leading to you approving a personnel action resulting in the reassignment of an employee to an unauthorized position. I still find that you violated rules, regulations, or procedures in this action.

13. In your 2 Jan 03 submission, you contend that I should not consider these previous offenses as they, "cannot conceivably be connected to the current charges." While they may not be close in time, they are similar offenses (i.e., failure to comply with directives issued by superior authority). This indicates your inability, or unwillingness to obey superior authority. This response also mentions another (recent) incident concerning the "botched painting of a Black Hawk helicopter." I have no other record of this incident before me and I did not consider it in making my Final Decision.

14. In AR 690-700, Chapter 751, Table 1-1 (Table of Penalties for Various Offenses), paragraph B14(a), "Failure to observe written regulations, orders, rules, or procedures - violation of administrative rules or regulations where

AFPI-CP

SUBJECT: Final Decision on Proposal to Remove

safety to persons or property is not endangered," it indicates a range from 5-day suspension to removal for a third offense. You have already served two suspensions as discussed above, and yet, you still fail to follow written directions.

15. Furthermore, I have lost all faith in you as the DOC (as apparently BG Kamiya has, since he proposed your removal). In this position, it is incumbent on you to ensure that everyone follows the FAR and the DOD Joint Ethics Regulation requirements to safeguard acquisition-sensitive information. This would include you informing Dr. Tomas that it would be inappropriate for him to receive Source Selection briefing material when he asked you whether he should have received the attachments to the e-mail you originally sent him. You failed in this responsibility. Your 2 Jan 03 response argues that because Dr. Tomas received a 14-day suspension, as a subordinate of Dr. Tomas, you should not be removed. I find Dr. Tomas was not the subject-matter expert in contracting matters; you are. In this capacity it should be expected that you would refrain from discussing any Source Selection materials with someone responsible for the Management Study. In your capacity as DOC, you should not have sent the e-mail to Dr. Tomas in the first place. When you received Dr. Tomas' query concerning the attachment, you should have refused (after advising Dr. Tomas why it was inappropriate). Were it not for your improper conduct in this matter, Dr. Tomas never would have been involved in the breach of regulations involved in the release of the material. If you cannot be counted upon to ensure that your own conduct in contracting matters is above reproach, I can no longer allow you the responsibility or duty to lead others in contracting matters.

16. It is my decision that you be removed from your position as Director of Contracting and from the Federal service effective 21 Feb 03, for the charges as described in the Advance Notice - Proposed Removal. A Standard Form 50, Notification of Personnel Action, effecting your removal will be forwarded to you under separate cover.

17. You have a right to appeal this action to the Merit Systems Protection Board (MSPB), Dallas Field Office, 1100 Commerce Street, Room 6F20, Dallas, TX 75242-9979. A copy of the MSPB appeal form, which you may use to file your appeal, is enclosed along with an excerpt from 5 CFR Part 1201. A representative of your choice may represent you in filing an appeal. If you elect to appeal, you or your representative must file your appeal with the MSPB during the period beginning with the day after the effective date of the removal until, not later than, 30 days after the effective date.

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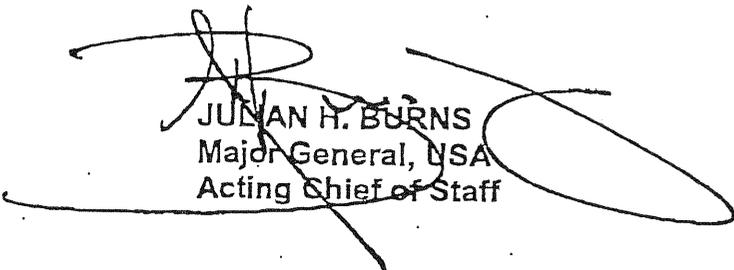
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18. If you wish to read regulations pertinent to this decision or obtain further information about your procedural rights, you may contact Ms. Bobbie Vaziri, Human Resources Specialist, Civilian Personnel Advisory Center, Building 413, Fort Polk, Louisiana, 318-531-6500.

FOR THE COMMANDER:

2 Encl

1. MSPB Appeal Form
2. MSPB Appeal Rights



JULIAN H. BURNS
Major General, USA
Acting Chief of Staff

CF:

Mr. John T. Andrishok, Attorney at Law

COL Malinda Dunn, Staff Judge Advocate, Fort Polk, LA

Mr. Don Mallet, Director, Civilian Personnel Advisory Center, Fort Polk, LA