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WASHINGTON

FEB 01 2008

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS)

SUBJECT: Delegation of Authority Under Title 5, Sections 1213 (c) and (d)

In accordance with Title 10, United States Code, section 3013(f), I hereby delegate to you certain authority conferred upon me as agency head under Title 5, United States Code, section 1213. Specifically you are authorized to review, sign and submit written reports of investigations of information and related matters transmitted to the Department of the Army by The Special Counsel, in accordance with Title 5, United States Code, sections 1213(c) and (d). The authority delegated herein may not be further delegated.

This delegation shall remain in effect for three years from the date of its execution, unless earlier rescinded in writing by me.


Pete Geren

CF: General Counsel

B



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 20, 2009

The Honorable Pete Geren
Secretary
U.S. Department of the Army
101 Army Pentagon
Washington, D.C. 20310-0101

Re: OSC File No. DI-08-3062

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure alleging that U.S. Department of the Army officials in the Preventive Medicine section of the Munson Army Health Center (MAHC) at Ft. Leavenworth, Kansas are deliberately interfering with the effective operation of MAHC's Industrial Hygiene program. The whistleblower, Karl Gibson, has served as MAHC's Industrial Hygienist and Industrial Hygiene Program Manager for the past 19 years and has consented to the release of his name.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. §1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. §1213(c) and (g).

The Code of Federal Regulations mandates the "annual inspection of workplaces...by personnel who are qualified to recognize and evaluate hazards." 29 C.F.R. §1960. Army Regulation 40-5 requires the establishment of an Army Occupational Health Program in the area of industrial hygiene. Army Pamphlet 40-503 defines Industrial Hygiene as "the science and art devoted to the anticipation, recognition, evaluation, and control of those environmental factors and stresses associated with work and work operations that may cause sickness, impaired health and well being, significant discomfort and inefficiency among workers or among citizens of the community."

Mr. Gibson disclosed that, since June, 2007, his first line supervisor, Lt. Col. [REDACTED] Environmental Science Officer, Department of Preventive Medicine, MAHC, and his second line supervisor, Col. [REDACTED] Chief, Department of Preventive Medicine, MAHC, have actively interfered with his ability to effectively conduct the Industrial Hygiene program. According to Mr. Gibson, Lt. Col. [REDACTED] and Col. [REDACTED] redirected time and resources, issued conflicting and constantly changing directives and diminished Mr. Gibson's authority as Ft. Leavenworth's Industrial Hygienist. As a result,

Mr. Gibson has been prevented from ensuring compliance with federal regulations and Army rules and regulations requiring the regular assessment and appropriate testing of Ft. Leavenworth buildings and facilities for industrial hygiene threats and hazards.

In June, 2007, Mr. Gibson was abruptly ordered by Lt. Col. [REDACTED] and Col. [REDACTED] to stop all industrial hygiene assessments, testing and surveying and given alternative responsibilities minimally related to industrial hygiene to occupy his time. In February, 2008, when he had completed all the alternative duties and had nothing left to do, Mr. Gibson was ordered by Lt. Col. [REDACTED] and Col. [REDACTED] to conduct industrial hygiene "walk-thrus" of 18 of Ft. Leavenworth's 295 buildings. These walk-thrus were extremely limited in scope and allowed Mr. Gibson to ask only seven questions of the occupants of each of the 18 buildings. Mr. Gibson was informed that if, after conducting a walk thru, he had reason to suspect the existence of an industrial hygiene issue, he could conduct an "assessment." An assessment could, according to Lt. Col. [REDACTED] and Col. [REDACTED] include limited "spot testing" for industrial hygiene threats but could not include time weighted measurements, which, according to Mr. Gibson, are an essential part of any properly conducted industrial hygiene program.

Mr. Gibson completed the walk-thrus of only 10 of the 18 buildings when, in August, 2008, the Army Corps of Engineers intervened and objected to Lt. Col. [REDACTED] and Col. [REDACTED] two step (walk-thru followed by assessment) approach. Corps of Engineer officials determined that the walk-thru alone was of minimal value and that the walk-thru and assessment steps should be combined and should include limited measurements of light, noise and, if indoor air quality issues have been raised by the occupants of a building, carbon monoxide, temperature, humidity and particulate testing.

For several months, Lt. Col. [REDACTED] and Col. [REDACTED] and the Army Corps of Engineers debated the merits of these differing approaches to industrial hygiene monitoring. Finally, in October, 2008, Mr. Gibson was informed that he could follow the Corps of Engineers' approach but that he was still prohibited from performing time weighted testing without receiving prior supervisory approval. Mr. Gibson maintains that testing without time weighted measurements renders an industrial hygiene program essentially useless. Absent this type of measurement, an industrial hygienist has no means of determining the cumulative affect a suspected toxin might have upon the occupants of a building over an extended period of time. Mr. Gibson further objects to this need for permission based on the fact that he is the only certified Industrial Hygienist at Ft. Leavenworth and the only individual adequately trained to make a determination as to whether testing is warranted. Finally, Mr. Gibson has little confidence that this approach will result in more thorough testing given that over the past year, Mr. Gibson was granted permission to conduct time weighted measurements on only one occasion. His nearly 40 other requests to conduct further testing were denied by Lt. Col. [REDACTED] and Col. [REDACTED] without explanation.

Based on the above, I have concluded that there is a substantial likelihood that the information Mr. Gibson has provided to OSC establishes that adequate industrial hygiene

assessment and testing has not occurred at Ft. Leavenworth in violation of law, rule and/or regulation. I have further concluded that Lt. Col. [REDACTED] and Col. [REDACTED] actions constitute an abuse of authority and create the potential for a substantial and specific danger to the public health and safety. Accordingly, I am referring this information to you for an investigation of the whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter. By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. §1213(d)(5). Without this information, the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. §1213(c) and (d). A summary of §1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation whenever the whistleblower consents to the disclosure of his or her name.

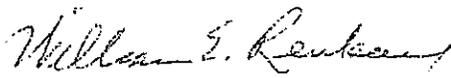
In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. Any additional requests for an extension of time must be personally approved by me.

After making the determinations required by 5 U.S.C. §§1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and any comments or recommendations by this office, will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives, 5 U.S.C. §§ 1213(e)(3).

Unless classified or prohibited from release by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. §§1219(a).

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,



William E. Reukauf
Acting Special Counsel

Enclosure

C

[REDACTED] Ms CIV USA OGC

From: [REDACTED] CIV USA OTJAG
Sent: Monday, March 16, 2009 10:41 AM
To: [REDACTED] Ms CIV USA OGC
Cc: [REDACTED] MAJ MIL USA OTJAG
Subject: FW: Gibson Signed PIP (UNCLASSIFIED)
Attachments: Document.pdf

Cassandra:

As requested.

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

From: [REDACTED] CIV USA TRADOC
Sent: Monday, March 16, 2009 10:22 AM
To: [REDACTED] CIV USA OTJAG
Subject: FW: Gibson Signed PIP (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: FOUO

[REDACTED]
Attorney
Labor and Employment Law
Office of the Staff Judge Advocate
U.S. Army Combined Arms Center & Fort Leavenworth
415 Custer Avenue, Bldg. 244
Fort Leavenworth, KS 66027-2313
Phone [REDACTED]
DSN [REDACTED] FAX 684-3029
[REDACTED]@s.army.mil

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

From: [REDACTED] CIV USA
Sent: Monday, March 16, 2009 9:14 AM
To: [REDACTED] CIV USA TRADOC
Subject: Signed PIP (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: FOUO

[REDACTED]
Management-Employee Relations
Civilian Personnel Advisory Center
Fort Leavenworth, KS 66027-1361
Cml S [REDACTED]
DSN [REDACTED]
FAX 913-684-3464

"Intellectual Center of the Army"
<http://www.leavenworth.army.mil/>

-----Original Message-----
From: CPAC [mailto:leav-atzlgcp@conus.army.mil]
Sent: Monday, March 16, 2009 9:09 AM
To: [REDACTED] CIV USA
Subject: From Digital Sender

This document was digitally sent to you using an HP Digital Sending device.
Classification: UNCLASSIFIED
Caveats: FOUO

Classification: UNCLASSIFIED
Caveats: FOUO



DEPARTMENT OF THE ARMY
U.S. ARMY MEDICAL DEPARTMENT ACTIVITY
550 POPE AVENUE
FORT LEAVENWORTH KS 66027-2332

REPLY TO
ATTENTION OF:

MCXN-PM

12 February 2009

MEMORANDUM FOR Karl L. Gibson GS-0690-11, Industrial Hygienist, USA MEDDAC, Fort Leavenworth, KS 66027

SUBJECT: Performance Improvement Plan

1. The purpose of this memorandum is to advise you that your performance is currently at an unsatisfactory ("fails") level in major performance objectives 3 and 4 as provided in the DA Form 7222-1 attachment, "Clarified Individual Performance Standards for Karl L. Gibson," dated 16 JUL 2008. Therefore, in accordance with AR 690-400, Chapter 4302 (Total Army Performance Evaluation System), I am providing you with an opportunity to improve your performance to the Minimally Successful level. A 90-day Performance Improvement Plan (PIP) will be used to afford you the opportunity to demonstrate and maintain a successful level of performance. This PIP outlines activities that you must complete to attain a Minimally Successful rating on the two performance objectives in which your performance has fallen to an unacceptable level. If you have any concerns about the PIP or you require additional guidance in following it, please let me know as soon as questions arise.
2. The PIP becomes effective today and will continue for 90 calendar days from today. It is important to perform well under the standards set out in your performance plan, which is being provided to you today. A copy of the elements and standards for your job is attached. By the end of the opportunity period, you must have brought your performance up to at least the Minimally Successful level on the objectives in which you are currently unacceptable in order to avoid a reduction in grade, removal, or reassignment. This PIP is to assist you in reaching that objective.
3. During the period of the PIP, you are to report directly to me for problems relating to your performance. Given the nature of my duties, I realize there are times when I may not be available for several hours at a time during the day. During these times, you should report any problems or address your questions to COL [REDACTED]. Beginning this Tuesday, 17 February 2009, at 0900 and every Monday morning throughout the PIP, you and I will meet at least once a week to discuss the quality of your work. If I am gone for a full week, COL [REDACTED] will act on my behalf and meet with you to review your performance.
4. On 16 JUL 2008, you were counseled regarding your job responsibilities and discussed your Total Army Performance Evaluation System (TAPES) performance objectives/standards. You acknowledged receipt of the revised DA Form 7222-1 and subsequent counseling. In addition, you were provided a copy of your TAPES performance requirements (Enclosure 1, "Individual Performance Standards for Karl L. Gibson"). The deficiencies in your performance center around two major performance objectives: Industrial Hygiene (IH) Surveys (paragraph 3 of the DA 7222-1 attachment) and Reports (paragraph 4 of the DA 7222-1 attachment.) In assessing your performance, it is apparent that you do not fully understand your IH work and that you are not performing as required. As a journeyman-level Industrial Hygienist (GS-0690-11), you must be self-motivated to seek out answers for yourself, know how to approach and handle the projects you are working on, and have the ability determine which methods and standards are appropriate to determine workplace hazards and occupational exposures.

12 February 2009

5. Performance Objective 3: IH Surveys

a. Your performance plan states that the Minimally Successful level of performance is: "perform industrial hygiene (IH) hazard assessment surveys each month on buildings maintained on Ft. Leavenworth" and "perform all tasks and procedures inherent and fundamental to an appropriate IH assessment of a given operation."

b. Currently, your performance on this major performance objective is at an unacceptable level due to your inappropriate use of tasks and procedures inherent and fundamental to an IH assessment.

(1) 13 NOV 2008 – You performed a follow-up inspection to your MAR 2007 survey of the Defense Automated Printing Service (DAPS) in Bldg 77.

(a) In the MAR 2007 survey, you inappropriately utilized wipe sampling techniques to determine potential employee exposures to heavy metals. You were instructed to properly resurvey Building 77 in November 2008, and failed in this regard. During the November 2008 resurvey you perpetuated your errors reported in March 2007 despite [REDACTED] CIH, Army Corps of Engineers (CoE), advising you that wipe sampling was not an appropriate means to assess occupational exposures.

(b) Wipe samples, by their nature, should not be the basis to determine whether there is an occupational exposure. Critical to this assessment is determining the likely route of exposure. For the DAPS operation, the inhalation route would be the predominant route of exposure and sampling in MAR 2007 had not identified an airborne hazard. On 13 NOV 2008 you, again, performed inappropriate wipe sampling.

(c) Your failure to appropriately perform tasks and procedures inherent and fundamental to this IH assessment clearly demonstrates unsatisfactory performance.

c. During this opportunity period, you must improve your performance to at least the Minimally Successful level in order to continue in your position. In particular, you must perform all tasks and procedures inherent and fundamental to an appropriate IH assessment, demonstrate knowledge of how to approach and handle the projects you are working on, and have the ability determine which methods and standards are appropriate to determine workplace hazards and occupational exposures.

(1) Continue and complete the annual IH inspections of Munson Army Health Center (MAHC) as per the schedule you established on 09 February 2009.

(2) Once the annual IH inspections of MAHC are completed, continue with the Workplace Hazard Assessments (WHA) on the priority list of 25 Buildings that were established in the Spring 2008. Complete these WHAs at a frequency of five (5) workplaces every two weeks, with the report sets submitted to your supervisor for review by close-of-business (COB) of every other Friday. This bi-weekly suspense will give you the opportunity to manage the IH program, and adjust your schedule should the need arise.

12 February 2009

6. Performance Objective 4: Reports

a. Your performance plan states that the Minimally Successful level of performance is: "provide technically sound findings and recommendations" and "utilize consensus standards, federal and state regulations, DA policies and procedures, and MEDCOM guidance in developing findings and recommendations."

b. Currently, your performance on this major performance objective is at an unacceptable level due to your inability to provide technically sound findings and recommendations to our customers and your misapplication of recognized consensus standards, federal and state regulations, DA policies and procedures, and MEDCOM guidance.

(1) 20 AUG 2008 – You produced a report for the IH WHA of the Center for Army Lessons Learned Offices in Bldg 50.

(a) In this report, you inappropriately applied recommended guidelines (i.e., non-binding limits that are not enforceable by law) as standards (i.e., binding regulations that are enforceable by law) and, as a result, your report was not effective in providing documentation of identified occupational health hazards associated with the facility.

(b) In management's attempts to provide mentoring and guidance, we have continually stressed the necessity for you to accurately identify workplace hazards and to appropriately apply consensus safety and occupational health standards to each situation.

(c) Your failure to adequately identify recognized workplace health and safety issues/concerns clearly demonstrates unsatisfactory performance.

(2) 28 OCT 2008 – You produced an internal MFR for your Indoor Air Quality (IAQ) assessment of the Capability Development Integration Directorate (CDID) offices in Bldg 470.

(a) In this report, you incorrectly applied the EPA's ambient air standard for indoor particulates as "0.015 mg/m³" and subsequently rated every Respirable Particulate measurement taken as "Did not meet standard/guideline."

(b) The EPA's ambient air standard for indoor particulates is, in fact, "0.150 mg/m³" and therefore every Respirable Particulate measurement from the CDID IAQ report actually "Meets [the] standard/guideline."

(c) Your failure to correctly utilize the appropriate standard/guideline clearly demonstrates unsatisfactory performance.

(3) 31 OCT 2008 – You were contacted by individuals from the Media Vocational Support Center (MVSC) of Bldg 77 that had accidentally broken some fluorescent light bulbs.

12 February 2009

maintain the "success" level of performance on both the critical elements listed above for one year following the start of this PIP. Failure to achieve acceptable performance on the critical elements during the opportunity period, or to maintain it during the remainder of the 1 year, may result in removal or reduction in grade without any further opportunity to demonstrate acceptable performance.

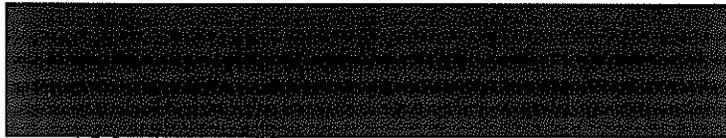
9. If you have any questions about this PIP or require additional guidance on implementing the provisions of it, please let me know as soon as questions arise. Keep in mind that it is important to refer to this plan throughout the PIP period.

10. If you feel that you have a personal or medical problem that may be impeding your ability to perform your duties at an acceptable level, I suggest that you seek assistance through the confidential Employee Assistance Program.

11. Please sign a copy of this memorandum, which serves only to acknowledge your receipt of this notice.

12. Received by:

_____	_____
(Print Name)	(Initials)
_____	_____
(Signature)	(Date)



1 Encl

LTC. AN
Chief, Preventive Medicine

2/12/2009

- ① Mr. Gibson was given time to seek help from union representation without success. 2/12/2009
- ② Mr. Gibson disagreed with statements within the PIP stating many are not factual.
- ③ Mr. Gibson was given the PIP without his signature; he received on 2/12/2009
- ④ Individual Performance standards not signed by Mr Gibson he received on 2/12/2009



D

██████████ USA

From: ██████████ 1LT MIL USA MEDCOM MAHC ██████████@amedd.army.mil]
Sent: Tuesday, February 17, 2009 2:32 PM
To: ██████████ CIV USA; ██████████ CIV USA IMCOM
Cc: ██████████ CIV USA TRADOC
Subject: Gibson Presented with Proposed Removal (UNCLASSIFIED)
Attachments: Gibson - Notice of Proposed Removal - 17 FEB 09.pdf
Signed By: ██████████@us.army.mil

Classification: UNCLASSIFIED
Caveats: NONE

██████████

At 1400 today I sat down with Mr. Gibson and Mr. ██████████ (Ms. ██████████ was a little late) and gave him my decision regarding my consideration of disciplinary action: a proposal for his removal. They immediately asked to confer in private, which I allowed. During their conference, Ms. ██████████ arrived and I filled her in as to what she missed; she then joined the rest of her team. Within moments, Mr. Gibson and his Union Reps returned to my office and Mr. Gibson signed receipt of the Notice of Proposed Removal.

Both Mr. Gibson and the Union each received copies of the Proposal, and I kept one which will be given to LTC ██████████ the deciding official. A scanned version of the signed document is attached for CPAC.

Please let me know if there are any further duties required of me in making this proposal.

V/R

██████████
1LT, MS
Environmental Science Officer
Department of Preventive Medicine
Munson Army Health Center
Office ██████████
Fax 913-684-6534

Classification: UNCLASSIFIED
Caveats: NONE

17 February 2009

MEMORANDUM FOR Mr. Karl L. Gibson, Munson Army Health Center (MAHC), Preventive Medicine (PM) Service, Industrial Hygiene Section, Fort Leavenworth, KS 66027

SUBJECT: Notice of Proposed Removal

1. This memorandum serves as official notice that in accordance with Title 5, Code of Federal Regulations, Part 752, Subparts C & D, and Army Regulation 690-700, Chapter 751, Discipline, I propose to remove you from your position, Industrial Hygienist, GS-0690-11 (Enclosure 1), and from the Federal Service, based on the charges of (1) Failure to comply with a policy or directive and (2) Careless or negligent performance of duties and (3) Failure to Provide Accurate Information on an Official Report. This action will be effected, if that is the decision, no sooner than 30 days following your receipt of this notice.

2. The facts in support of the above charges are as follows:

a. Charge 1: Failure to comply with a policy or directive.

(1) Specification 1 Background:

(a) On 7 December 2006, during your mid-point counseling, you were directed, in writing, that all requests for information, and replies to questions pertaining to your work be reviewed by your supervisor or the Chief of Preventive Medicine (PM) before leaving the PM office until further notice. (Enclosure 2)

(b) In June 2008, you asked your supervisor for authorization to release a statement regarding the results of surveys previously completed by employees in Pope Hall. Your supervisor expressed some concerns about the statement, instructed you to stand by until given further guidance and did not give you permission to release the statement. (Enclosure 3).

(c) On 01 October 2008, your supervisor instructed you to return to Pope Hall and conduct a re-evaluation. (Enclosure 4)

(d) In October 2008, you returned to Pope Hall to perform the re-evaluation. When you met with Mr. [REDACTED] Deputy Director, Sustainment Capability Development Integration

MCKN-PM

SUBJECT: Notice of Proposed Removal

Directorate, you provided him a copy of the internal email summarizing your findings of the surveys previously completed. This was an inflammatory statement about Pope Hall that you were not given supervisory permission to release. (Enclosure 5)

(2) Specification 1: On 06 October 2008, you provided Mr. [REDACTED] an internal document containing your draft summarization of the results of surveys completed by the employees in Pope Hall. This was in direct violation of the 07 December 2006 counseling which instructed you that all information pertaining to your work must be reviewed and approved by your supervisor or the C, PM before it leaves the PM office. This was also in direct violation of the 30 June 2008 email from your supervisor instructing you not to provide any information to Mr. [REDACTED] until given further guidance.

(3) Specification 2: On 15 October 2008, after being instructed to compile documents in relation to a FOIA request, you forwarded several documents directly to the FOIA requestor. (Enclosures 6, 7 and 8) This was in direct violation of the 14 October 2008 email from your supervisor instructing you to provide the reports requested as part of the FOIA request to your supervisor. (Enclosure 9) This was also in direct violation of the 07 December 2006 counseling which instructed you that all information pertaining to your work must be reviewed and approved by your supervisor or the C, PM before it leaves the PM office.

(4) Specification 3 Background:

(a) On 17 October 2008, a customer service request was submitted by Ms. [REDACTED], Office Manager, FMSO-JRIC, asking for an IH assessment of a room in Building 48 because one of the office occupants was having difficulty in breathing.

(b) You requested and were given permission to conduct a "walk thru" and do an IAQ assessment. (Enclosure 10).

(c) You responded to Ms. [REDACTED] (and copied furnished several other individuals at Fort Leavenworth), indicating you would come over on 22 October to look at the area. In addition, you provided information regarding findings and recommendations from a 2005 Survey of Building 48. (Enclosures 11 and 12)

(5) Specification 3: On 17 October 2008, you provided Ms. [REDACTED] information regarding findings and

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SUBJECT: Notice of Proposed Removal

recommendations from a 2005 Report on Building 48. This was in direct violation of the 07 December 2006 counseling which instructed you that all information pertaining to your work must be reviewed and approved by your supervisor or the C, PM before it leaves the PM office.

b. Charge 2: Careless or negligent performance of duties.

(1) Specification:

(a) On 31 October 2008 in your capacity as the Fort Leavenworth Industrial Hygienist, you were informed of an accident in Building 77 in which florescent light bulbs had been broken. When you were asked what hazards might be involved in the accident you informed the requestor that it would be mercury. Further you referred the employees to Occupational Health for a "total inorganic mercury in blood at the end of shift at end of workweek" blood test. (Enclosure 13)

(b) While it is true that fluorescent light bulbs do contain a small amount of mercury, a mercury exposure resulting from a few broken light bulbs would be minimal and there is no recommended medical surveillance requirement for this type of exposure event. You misrepresented the level of risk associated with this event and misapplied occupational exposure standards. (Enclosure 14)

(2) Your unfounded recommendation to the supervisor and employees involved in the accident caused unnecessary alarm and apprehension over a situation that in actuality posed little threat to their health (Enclosure 15).

c. Charge 3: Failing to provide accurate information on an official report.

(1) Background Information:

(a) In November 2008 an issue was surfaced by employees in Building 53 regarding complaints of mold and a variety of health effects attributed to exposure to mold. Upon recent review of the reports you produced for surveys performed at Building 53 in 2005, it was discovered that you reported the laboratory results as 10 times greater than the actual number, e.g., when the lab result stated 3,600 C/m3, you reported 36,000 C/m3. (Enclosures 16 and 17)

MCXN-PM

SUBJECT: Notice of Proposed Removal

(b) On 26 January 2009 you submitted documents responsive to a FOIA request to your supervisor for review. Upon review of the documents it was discovered that you reported several of the laboratory results significantly greater than the actual results. Most of the inflated results stated in your report were inflated by adding a "1" to the beginning of the actual number, e.g. when the lab result stated 3,600 C/m3, you reported 13,600 C/m3. (Enclosures 18 and 19)

(c) Such misrepresentation of findings, whether intentional or inattentive, again leads to unnecessary alarm and apprehension over a situation that may pose little threat. Further, it undermines the credibility of you and the PM office overall.

(2) Specification 1: In November 2005, you submitted an Industrial Hygiene Report for surveys you conducted on Building 53. The report contained inflated laboratory results.

(3) Specification 2: In September 2006, you submitted an Industrial Hygiene Report for surveys you conducted on Building 244. The report contained inflated laboratory results.

3. Your behavior as outlined above is unacceptable and cannot be tolerated. Your repeated failure to follow instructions, repeatedly inflating lab results and negligent performance of duties severely diminishes management's confidence in your ability to produce an honest and qualitative product. Your actions adversely impact the efficiency and productivity of this office, impair mission accomplishment and morale. As the Industrial Hygienist, you hold the position of "subject matter expert" for your customers and you often must interact with the public while providing your services. Your actions have not only severely reduced your credibility and the credibility of the Munson Army Health Center (MAHC) Preventive Medicine (PM) Department in the eyes of the public, but also made it impossible for many of the workplace supervisors on Fort Leavenworth to believe that they are getting an honest and qualitative product when they enlist your services.

4. In proposing your removal, I was guided in part by the Table of Penalties for Various Offenses, found in Chapter 751, Army Regulation 690-700. For a second and third offense of failure to observe orders, rules, or procedures, the suggested penalty ranges from a 1-day suspension to removal. You are charged with three specifications of failure to comply with a policy or

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directive. Although you have been disciplined previously for failure to provide accurate information on an official report, the misconduct currently charged occurred prior to the previous disciplinary action. Despite that fact, there is clearly a repeated pattern of providing inflated results in your reports spanning over several years. For a first offense of this nature, the guidance in the suggested penalties range from a written reprimand to removal. You are charged with two specifications of failure to provide accurate information on an official report. Although in determining the appropriate action to propose I considered your 22 years of Federal service, which includes numerous awards, I have concluded that removal is the appropriate action to propose for the efficiency of the Federal service. You have a past disciplinary record, which includes a 14-day suspension for failure to comply with a policy or directive and failing to provide accurate information on an official report. As you have repeatedly disregarded my supervisory directive, even after receiving a previous 14-day suspension, I find that lesser disciplinary measures would not be effective.

5. Your rights in this matter are as follows:

a. You have the right to reply orally and/or in writing, and furnish affidavits and/or other documentary evidence in support of your reply. Any reply must be made within fifteen (15) calendar days from the date you receive this notice and be addressed to the deciding official at the following address: LTC [REDACTED], Chief PM, MAHC, 684-6531. Consideration will be given to extending the time for your reply upon submission of a valid written request to the above named official, before the expiration of the 15-day reply period.

b. You have the right to be represented by the American Federation of Government Employees, Local 738 (AFGE Local 738) in accordance with the agreement between US Army Combined Arms Center and Fort Leavenworth and AFGE Local 738. If you elect to be represented, an extra copy of this memorandum is enclosed for you to provide your representative. Further, you may select another representative of your own choosing, at your own expense. If you choose a representative other than an AFGE local 738 official, you must designate him or her in writing to the Fort Leavenworth Civilian Personnel Advisory Center (CPAC) prior to the appearance of such representative on your behalf. Please be advised that the agency may disallow as your representative an employee whose activities as a representative would cause a

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SUBJECT: Notice of Proposed Removal

conflict of interest or position, or whose release from his or her official position would give rise to unreasonable costs or whose priority work assignment preclude his or her release from duty.

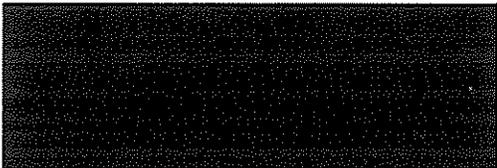
c. You and your representative, if a member of this agency, are entitled to a reasonable amount of official time during your normal tour of duty to review the material relied upon in this matter and to prepare a written and/or oral reply; for securing affidavits and statements of witnesses in support of your response, and for making an oral reply should you desire. Arrangements for such time must be made in advance through your respective supervisors.

d. You may contact the CPAC, 913-684-2151, to schedule an appointment to review regulations and materials on which this proposal is based or for technical assistance in understanding your rights in this matter.

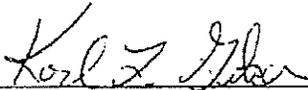
6. No decision on this proposal has been made. Your reply, if any, will be given full and careful consideration. You will receive a written decision on the proposal as soon as possible after receipt of your response(s) or after expiration of the reply period.

7. You are asked to sign and date the copy of this memorandum provided for such purpose to indicate that you have received it. Your acknowledgement of receipt does not result in the forfeiture of any of the rights mentioned in this memorandum nor does it indicate agreement with its contents. However, your refusal to acknowledge receipt will not affect the validity of this proposed action.

Encls



ILT, MS
Environmental Science Officer


RECEIPT ACKNOWLEDGED

17 Feb 09
DATE

I DON-Consent + sign in duress + protest

E

Ms CIV USA OGC

From: [REDACTED] Mr CIV USA OTJAG
Sent: Monday, March 23, 2009 7:50 AM
To: [REDACTED] Ms CIV USA OGC; [REDACTED] MAJ MIL USA OTJAG
Cc: [REDACTED] Mr CIV USA OTJAG
Subject: Gibson removal Decision
Attachments: DOC (112).pdf

[REDACTED] [REDACTED]

Attached is the removal decision on Gibson. The hospital commander has agreed to stay the effective date of removal (27 March 2009) for 60 days to allow OSC to investigate the alleged retaliation.

[REDACTED]

16 March 2009

MEMORANDUM FOR Mr. Karl L. Gibson, Munson Army Health Center (MAHC), Preventive Medicine (PM), Industrial Hygiene (IH) Section, Fort Leavenworth, KS 66027

SUBJECT: Notice of Decision - Removal

1. By memorandum dated 17 February 2009, your supervisor, 1LT [REDACTED], proposed to remove you from your position as Industrial Hygienist, GS-0690-11 and from the Federal service based on the charges: (1) failure to comply with a policy or directive, (2) careless or negligent performance of duties, and (3) failure to provide accurate information on an official report (Enclosure 1). As discussed below, I have given full and careful consideration to the charges and to the written response you provided me. I have determined that the charges are supported by a preponderance of the evidence and that removal from the Federal service is warranted and necessary to promote the efficiency of the Federal service. Therefore, your removal will be effective close of business on **27 March 2009**. You will be placed in a paid non-duty status (administrative leave) until the effective date of your removal.

2. The Notice of Proposed Removal informed you of your right to respond orally and/or in writing, within 15 calendar days, and to furnish affidavits and other documentary evidence in support of your reply. On 27 February 2009, you provided me with a written reply. In addition to your written reply you provided me a packet of supporting documentation for my consideration tabbed 1-10. (One copy is provided at Enclosure 2. However, due to the voluminous size of the document submitted to the Agency by you, additional copies are not provided, but will be made available upon request.)

3. After reviewing the information that was used to support the Notice of Proposed Removal, your response with enclosures and considering the record as a whole I have determined that the charges outlined above are supported by a preponderance of the evidence.

a. Charge 1: Failure to comply with a policy or directive. In your response and enclosure, you presented nothing that would persuade me that you did not fail to comply with a policy or directive. This Charge is Sustained.

(1) You acknowledge that you were given a supervisory directive in paragraph IIa of your response when you state

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"During a December 2006 mid-point counseling I was instructed not to release information outside the Preventative Medicine (PM) office until it had been reviewed by either my immediate supervisor or the Chief of PM."

(2) Specification 1: Although you indicate that during a periodic performance counseling by 1LT [REDACTED] on 6 October 2008, you were allowed to release preliminary survey information to Mr. King, you provided no evidence to support your assertion. To the contrary there are several documents provided with the Notice of Proposed Removal which indicate you asked for permission but were not given it. In addition, as evidence in support of your written response you provided your weekly work logs. These work logs contain very detailed explanations of the actions taken in relation to the tasks you are working. Your weekly summaries in relation to Pope Hall confirm the facts as set out by 1LT [REDACTED] in the Notice of Proposed Removal and contain no facts which would confirm that 1LT [REDACTED] ever gave you permission to release the information. In fact, during the month of October they repeatedly indicate there has been no change.

(3) Specification 2: In response to this specification you state that 1LT [REDACTED] gave you permission to send the documents directly to the requestor and that this was standard "past practice" to send the documents directly to the requestor. I find no merit in your arguments. The documentary evidence in the file shows that 1LT [REDACTED] specifically told you to provide the documents to him. There is nothing in the file to support your statement. In fact, there is an MFR written by you in the documents you provided which 1LT [REDACTED] refused to sign implying that he did not concur with the contents. In addition, a review of your weekly work logs does not support your argument. In reference to your argument that "past practice" at MAHC allowed you to release requested information without prior approval; I find this argument to be unpersuasive. You were specifically directed in December 2006 that nothing was to leave the office without the prior approval of your supervisor or the Chief of PM. Therefore, even if there were a "past practice" it would not have applied in this situation.

(4) Specification 3: In response to this specification you indicate that you sent 1LT [REDACTED] your proposed response to the request which included the 2005 survey report information, that 1LT [REDACTED] reviewed the response; and then directed you to (1) provide the response to the customer and (2) take care of the

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matter. You indicate that this order was done by email. I find no merit in your explanation. The documents in the file do not support your explanation. To the contrary the email in the file relating to 1LT [REDACTED] direction included nothing about providing historical information to the customer nor does your request to 1LT [REDACTED] include anything about providing historical information to the customer. I conclude that the documents in the record do not support the facts as you have stated them but rather support the facts as outlined in the Notice of Proposed Removal.

b. Charge 2. In your response and enclosures, you presented nothing that would persuade me that you were not negligent or careless in performance of duties. Rather I find that your lack of understanding of the standard caused employees unnecessary alarm and unfounded anxiety and fear for their health. This Charge is Sustained.

(1) The material you provided as part of TAB 8, Material Safety Data Sheet (MSDS), Revised: 8/02 for Philips standard fluorescent lights, Section 6: Health Hazard Data states "Breakage of the lamp may result in some exposure to the phosphor powder dust/and to elemental mercury vapor. No adverse affects are expected from occasional exposure to broken lamps." Section 7: Precautions for Safe Handling and Use states "Normal precautions should be taken for collection of broken glass." Thus your primary concern in the above situation (breakage of 1-2 lamps) should have been proper clean-up and disposal of damaged items.

(2) Because mercury compounds vary in toxicity, OSHA provides standards for each. You must first clarify which category a compound belongs to before comparing it with a standard or determining its relative toxicity. There is no current recommended medical surveillance requirement for an exposure event as described in the Notice of Proposed Removal.

(3) In your response you state that you complied with the American Conference of Government IH (ACGIH) Threshold Limit Values (TLV) and Biological Exposure Indices Dated 2007 (Mercury Exposure, Air Vapors) from Standard Fluorescent Light Bulbs. However, the standard you used was misapplied. ACGIH assigns mercury vapors a TLV of 0.025 mg/m³ as a TWA for a normal 8-hour workday and a 40-hour workweek and considers mercury vapor an A4 substance (not classified as a human carcinogen). This standard

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applies to workers around mercury 8 hours a day, 40 hours a week. It does not apply, nor should you have applied it, to individual workers who broke 1 or 2 light bulbs.

c. Charge 3. With regard to charge 3, failure to provide accurate information on an official report, you presented nothing which would persuade me that the actions did not occur as described in the Notice of Proposed Removal. To the contrary, I question the validity of the documents you provided in support of your reply. I find there is sufficient evidence to support that you failed to provide accurate information in these reports. This Charge is Sustained.

(1) In response to both Specifications you argue that the documents provided from your "H" drive may not be accurate because you believe other persons have accessed your "H" drive and altered documents. You further argue that the original signed versions of the reports contain the accurate data. In support of this argument you obtained copies of these signed documents from the Preventative Medicine files. I find your argument to be unpersuasive and further question the validity of the supporting documentation you provided in relation to this charge.

(2) In relation to your argument that someone has been accessing your "H" drive and altered these reports you have provided no documentation to support this theory. In addition, if you suspected this to be occurring, I question why you didn't check the accuracy of the numbers before providing the documents to ILT Derivan.

(3) In relation to your argument that the original signed reports contain accurate reporting numbers found in the laboratory results I find this to be unpersuasive. After reviewing the reports provided by you, I noted that the inaccurate data is contained in an Appendix to the report. The Appendix contains no signatures which verify that it is the actual Appendix which was attached to the original signed reports. I requested copies of the reports from the records of DIS and CAC Safety. CAC Safety provided me with their copy of the original reports. These reports contain the same inflated lab results (Enclosure 3).

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SUBJECT: Notice of Decision - Removal

4. As discussed below, I have specifically considered the impact of the following aggravating "Douglas" factors in reaching my decision. See Douglas vs. Veterans Administration, 5 MSPR 280.

a. I find the charges above to be extremely serious and adversely affect your ability to perform duties as the IH as well as your relationships with other staff, this organization and customers on Fort Leavenworth. Your actions have caused employees undue alarm and increased anxiety. The language of your interactions with customers and your reports are inflammatory with unfounded exaggerated risk to employee health. Your actions have further undermined the credibility of you, Preventative Medicine and MAHC CMD overall. Further, your actions illustrate a lack of trustworthiness and a disregard for authority.

b. Your position involves frequent contact with the public both in conducting the testing and in reporting the results of the testing. As the IH for MAHC and Fort Leavenworth you have the primary responsibility for assessment of environmental conditions in order to determine whether occupational hazards pose a threat to workers' health. As the IH interface with other organizations, employees, and the community, your position is viewed by others as one with knowledge of IH, understanding of testing results, and ability to advise and provide sound recommendations. Your position, therefore, involves a high level of public and private trust. You have lost the trust and confidence of your supervisors and have created doubt as to the accuracy of the reports produced during your tenure as the IH.

c. The loss of management's trust and confidence in you is further supported by the fact that this was not an isolated incident but rather you have committed these offenses on many occasions. In addition, you have attempted to present altered documents in an attempt to convince me you did not commit these offenses.

d. I considered that you were fully aware of the restriction imposed by your supervisory chain prohibiting you from releasing anything from the office without prior approval. I also considered that as an IH with numerous years of experience and as a Federal employee, you were aware of the importance to provide accurate information in your official reports.

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e. I have considered your prior disciplinary record. This is not the first time you have been disciplined for misconduct. You received a 14-day suspension for failure to comply with a policy or directive and failure to provide accurate information on an official report.

f. I see no alternative sanction as sufficient to deter this or similar behavior in the future especially considering that that other lesser penalties have been imposed on you for similar offenses, failure to comply with a policy or directive, and this did not deter you from committing the same offense again. Furthermore, you have failed to accept the mentorship and support provided by your supervisory chain, the Great Plains Regional Medical Center IH Consultant, and the US Army Corps of Engineers in providing oversight of the IH program.

g. I have also considered the consistency of the penalty with that imposed on other employees for the same or similar offenses and with the DA Table of Penalties found in AR 690-700, Chapter 751, Discipline.

5. Balanced against the above aggravating factors, I also carefully considered the following mitigating factors:

a. I have considered as mitigating factor your Federal career of over 22 years of combined active duty, reserve, and civilian Federal service, which demonstrates dependability and includes numerous awards. Although this was considered a mitigating factor, I did not find this to be a major mitigating factor which outweigh the aggravating factors as outlined above.

b. I considered your argument that for the past 16 years you have received the rating of "Excellent" on your performance evaluations. However, although your past work record includes exceptional performance ratings, your performance for the past two evaluation periods has been rated as "Unsuccessful" due to your inability to produce quality work as a journeyman IH. Therefore, I did not find this to be a strong mitigating factor which outweighs the aggravating factors as outlined above.

c. To the extent your argument that someone has been accessing your computer is intended to be a mitigating factor in relation to Charge 3, I find this factor to be unpersuasive. You have provided nothing to substantiate this theory.

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6. After carefully considering all aggravating and mitigating circumstances, I have determined that the aggravating factors outweigh mitigation and that your removal from your position of Industrial Hygienist, GS-0690-11, and the Federal service will best promote the efficiency of the Federal service. This decision is consistent with the Army's Table of Penalties for Various Offenses found in Chapter 751, Army Regulation 690-700. I find the penalty of removal from Federal service is appropriate. I also specifically considered and rejected lesser potential penalties such as a long-term suspension or demotion. I ultimately rejected imposing such lesser penalties because the nature of the misconduct has stripped you of the necessary trust and credibility that would permit you to perform your duties or support the mission in another position effectively. In addition, I have confidence that your removal will deter other employees from committing the same or similar offenses in the future.

7. In conclusion, I find that the evidence supports all the charges described in the notice of proposed removal. I further find the weight of the aggravating evidence supporting removal greatly exceed the mitigating evidence in this case. In order to promote the efficiency of the Federal service, I therefore SUSTAIN each charge and specification and hereby direct your removal from Federal service. As stated in paragraph 1 above, you will be removed from your position and from Federal service effective **27 March 2009**. You will remain in a paid non-duty status (administrative leave) until the effective date of your termination. Please contact COL [REDACTED], Deputy Commander for Nursing and Patient Support Services, 684-6423, to make arrangements to obtain any personal items from your office. The Standard Form (SF) 50 (Notification of Personnel Action) effecting this personnel action will be issued to you once processed by the Southwest Civilian Personnel Operations Center, Fort Riley, Kansas.

8. Your appeals rights are as follows:

a. You have the right to appeal this action to the Merit Systems Protection Board (MSPB) or to file a grievance, but not both. If you elect to appeal this action with the MPSB, such appeal must be submitted no later than thirty (30) calendar days following the effective date of the action. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the

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first workday after that date. If you fail to submit an appeal within the time limit set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown.

b. The requirements for an appeal with the MSPB are set forth in detail in Title 5, Code of Federal Regulations (CFR), Part 1201 (enclosure 4). A copy of the appeal form is also provided (enclosure 5). The appeal procedures and appeal form may also be obtained at <http://www.mspb.gov>. Alternatively, an appeal may be filed electronically by using the Internet filing option available at the MSPB website: www.mspb.gov/e-appeal.html. Your appeal, if any may be in any format, including letter form, but must contain the information listed in 5 CFR, Section 1201.24(a). You may comply with these requirements, and with Section 1201.31 concerning representatives, by completing the MSPB Appeal Form. Filing your appeal may be accomplished by personal delivery, by facsimile, by mail, or by commercial overnight delivery to the MSPB Denver Regional Office at the following address:

Merit Systems Protection Board
Chief Administrative Judge
165 South Union Blvd, Suite 318
Lakewood, CO 80228-2211
Telephone (303)969-5101
FAX (303)969-5109

c. I request that you send a copy of any appeal you may file to the Agency listed in subparagraph 4d below.

d. To assist the MSPB in processing your appeal, you should advise them that the Agency representative may be contacted at the following address/telephone numbers:

Office of the Staff Judge Advocate
Labor Law Division
415 Custer Ave, Bldg 244
Fort Leavenworth, KS 66027-2313
Telephone (913)684-4928
FAX (913)684-3029

e. If you elect to grieve this action, such grievance must be filed in accordance with the procedures set forth in Article XXIX, Section 13, Grievance Procedures, of the negotiated

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agreement between the Combined Arms Center and Fort Leavenworth and the American Federation of Government Employees, Local 738. Under the negotiated agreement, your written grievance must be addressed to COL Andrea E. Crunkhorn, Commander, Munson Army Health Center, 550 Pope Avenue, Fort Leavenworth, KS 66027 etc. and submitted to the Civilian Personnel Advisory Center (CPAC), 821 McClellan Avenue, Fort Leavenworth, KS 66027-1361, no later than twenty (20) days following the effective date of the action.

9. You are also advised that you have the right to file an equal employment opportunity (EEO) complaint if you believe my decision to remove you was based on your race, color, religion, sex, national origin, age, handicap (physical or mental disability), and/or in reprisal for prior protected activity. If you wish to file an EEO complaint, you must initiate contact with the Combined Arms Center and Fort Leavenworth Office of Equal Employment Opportunity within forty-five (45) days of the effective date of your removal. The telephone number for that office is (913)684-3697.

10. Please note that because your removal can be appealed to the MSPB, it becomes a mixed case if you also raise a claim of discrimination or reprisal. An employee must choose the system under which he wishes to proceed. Whichever formal action you file first, in writing, will be considered an election to proceed in that forum as to the alleged discrimination. Thus, if you file an appeal to the MSPB which raises a claim of discrimination or reprisal, it will be processed as a mixed case appeal. If you file a formal complaint of discrimination, it will be processed as a mixed case complaint.

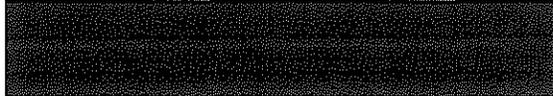
11. If necessary, you may contact personnel in the Civilian Personnel Advisory Center (CPAC), 684-2151, for technical assistance in understanding your rights in this matter.

12. I request that you sign and date the acknowledgement portion of this memorandum. Your acknowledgement of receipt does not constitute agreement with the decision or result in the

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forfeiture of any of the rights mentioned herein. Please note, however, that refusal to acknowledge receipt in no way affects the validity of this action.



LTC, AN
Chief, Preventive Medicine

RECEIPT ACKNOWLEDGED:

Karl L. Gibson

Date