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U.S. Office of Special Counsel

I am extraordinarily disappointed by the DOD's handling of my follow-up inquiries. I revealed to the Disclosure Unit of the Office of Special Counsel that employees of the Department of the Army, Office of Provost Marshal General (OPMG) misinterpreted the language and spirit of the amended Law Enforcement Officers Safety Act of 2004 (LEOSA) resulting in the promulgation of unlawful regulatory restrictions. My allegation was substantiated by the Inspector General's Office (DODOIG) yet they chose to remand my follow-up inquiries to the very person whose erroneous interpretations compelled me to disclose wrongdoing in the first place.

OPMG failed to answer my question concerning their timetable for revision. I specifically asked for a timetable because the DOD and the Army have historically moved at a snail's pace when implementing regulatory revisions. My experience of extension requests and missed deadlines with regard to this matter-of-fact investigation only serves to underscore my concern. Under most circumstances, they can move at their leisure, however, in this particular instance, this revision is to remedy an acknowledged civil rights violation which should accelerate the bureaucratic process. The Army has processes in place that allows Principal Army staff officers to revise policies and protocols outside of the rule-making process and I respectfully ask that they initiate such a process.

My question regarding the application fee was not specific to Department of the Army Security Guards (DASG). My question was for everyone who is qualified to carry and possesses a law enforcement credentials pursuant to Army regulations or local policy. Mr. Blair's rationale for not allowing personnel to carry on their issued credentials is convoluted. What does authority have to do with displaying credentials that provides proof of employment? And, the idea that there is no nexus between our duties and LEOSA is patently false. It is precisely because of our duties that we retain LEOSA rights, which is why these duties were explicitly written in statute. LEOSA does not grant extra-jurisdictional law enforcement authority—the credential LEOSA prescribes merely substantiates that the named individual is employed as a DOD Law Enforcement Officer and their employment status is in good standing.

Regarding my request to consider whether Security Guards are qualified officers: it seems that the details of my argument may have been lost in translation, so I will attempt to clarify. First, by establishing that DASGs are Law Enforcement Officers.

Manual for Courts-Martial section 302 states: "Military Law Enforcement Officials" "**security police, military police, master at arms personnel, members of the shore patrol, and persons designated by proper authorities to perform military criminal investigative, GUARD [emphasis added], or police duties... in each of the foregoing instances, the official making the apprehension is in the EXECUTION OF LAW ENFORCEMENT DUTIES**" [emphasis added].

The Army specifically cited the Manual for Courts-Martial in U.S. Army Military School, Civilian Police Academy Student Disk 2016 — Functions of Department of the Army Police: “DOD/DA security guards and police, along with military police (MPs), are designated as military law enforcement officials by the Manual for Courts-Martial (MCM).

Each is fully empowered by the Uniform Code of Military Justice (UCMJ) to apprehend military members while in the execution of their official law enforcement duties... [The] differences between DA personnel assigned as civilian police or guards lie in the duties performed, not in their authority.”

With DASGs status as DoD Law Enforcement Officials explicitly acknowledged by both DOD and Army publications, I will conversely argue that whether DASGs are considered law enforcement by anyone is irrelevant. For the narrow purposes of LEOSA, Congress explicitly and broadly defined “law enforcement officer” so that Mr. Blair would not need to “carefully read” his own policies. In doing so, Congress has prescribed three criteria for qualification along with several prerequisites that an otherwise qualified officer must meet. The three criteria are as follows:

1. Employee of a Governmental Agency
 - a. The fact that DASGs are federal government employees hired under OPM position series GS -0085 should be without dispute.
2. Authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code...
 - a. Title 10 section 807(b): Any person authorized under regulations governing the armed forces to apprehend persons... may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.
 - b. [Enabling Regulation] Army Regulation 190-56 “DACP/SGs... can apprehend any persons found on the installation or activity for offenses committed on post that are felonies, misdemeanors, breaches of the peace, a threat to property or welfare, or detrimental to good order and discipline.”
3. Authorized by the agency to carry a firearm.
 - a. Title 10 Section 1585: Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.
 - b. [Enabling Regulation] Army Regulation 190-14 “DA personnel are authorized to carry firearms while engaged in security duties...”

Personnel who satisfies these three criteria are deemed qualified even if they are not colloquially regarded as law enforcement officers. In fact, this was a point of contention during congressional debate (see: h. Rept. 108-560 - law enforcement officers safety act of 2003).

Representative Bobby Scott of Virginia lamented that “a law enforcement officer includes not only police and sheriffs... but... just about anyone who has statutory power of arrest...” The need for DASGs to be considered law enforcement officers by Army Regulation 190-56 is a subjective standard established by Mr. Blair himself not a legal standard enacted by Congress.

In support of OPMG’s position that they have the authority to deny personnel their congressionally-granted rights, OPMG cites an Illinois Court of Appeals decision yet they ignore the U.S. Court of Appeals decision in *Duberry v. D.C.* which has binding authority over the federal government. In *Duberry*, the court opined that: “the ordinary meaning of the words used by Congress does not afford discretion... to redefine either who are “qualified law enforcement officers” or who is eligible for the LEOSA right. Its plain text, then, confers upon a specific group of individuals a concrete right the deprivation of which is presumptively remediable under Section 1983” [Civil Rights Act].

Additionally, in the congressional debate, Representative Scott proposed an amendment, which was ultimately rejected, that would allow police chiefs to restrict LEOSA carry. (see: H. Rept. 108-560 - LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2003)

The fact that their argument was considered by Congress and a U.S. Court of Appeals— and emphatically rejected by both— does not support the view that OPMG retains discretion to redefine LEOSA qualifications. In fact, had they retained such discretion, they would not be amending this regulation at all, and the arbitrary restrictions that OPMG imposed on police officers with less than six years of police experience would have been upheld by the Inspector General’s Office.

Therefore, in the interest of impartiality, I respectfully request that DODOIG respond to my inquiry and all subsequent correspondence. I personally know of another class of DoD law enforcement officers who has their presumptive LEOSA rights denied (Marine Corps Corrections Personnel); a final judgement by DODOIG will serve to ensure that all personnel in DOD law enforcement billets will be able to exercise their LEOSA rights, as Congress intended.

Shaun Michael Lomax

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