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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104



REPLY TO
ATTENTION OF

Suspense: November 5, 2007
October 11, 2007

MEMORANDUM FOR U.S. Army Materiel Command, Office of the Command Counsel, ATTN: [REDACTED], 9301 Chapek Road, Fort Belvoir, Virginia 22060

SUBJECT: Whistleblower Investigation—Chemical Battalion, Aberdeen Proving Ground, Maryland (OSC File Numbers DI-07-2722, DI-07-3064, DI-07-3065)

Enclosed for your action is an October 3, 2007 letter from the Office of Special Counsel (OSC), requesting an investigation of the noted allegations and a report pursuant to 5 U.S.C.1213(c)(1) and (g).

The Special Counsel has concluded that there is substantial likelihood that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion, Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED] Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED] Chief, Echo Company.

In July 2006, [REDACTED] and [REDACTED] first became aware that the agency was erroneously paying hazard pay differentials while they were researching a personnel matter. [REDACTED] and [REDACTED] consulted with [REDACTED] who concluded that the regulations did not permit the payment of hazard pay differential to Equipment Specialists. They were concerned about this since, as managers, they have time and attendance responsibilities for their subordinates. They notified agency employees that this payment was not permitted. At various times, there were six Equipment Specialists under the supervision of [REDACTED] and/or [REDACTED] who were being improperly paid. The Special Counsel has provided a copy of the Army's job description for Equipment Specialists, as well as the employee time sheets and an internal memorandum from [REDACTED] to LTC [REDACTED] Commander, 22nd Chemical Battalion, dated March 26, 2007, describing the hazard pay differential issues and the employees affected.

A final response describing any actions taken to address the allegations should be prepared for the signature of the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) who has been delegated the authority by the Secretary of the Army 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



SUBJECT: Whistleblower Investigation—Chemical Battalion, Aberdeen Proving Ground, Maryland (OSC File Numbers DI-07-2722, DI-07-3064, DI-07-3065)

accordance with Title 5, United States Code (U.S.C.), § 1213(c), (d) and (g). The final response should be submitted to this office AS SOON AS POSSIBLE BUT NOT LATER THAN November 5, 2007.

The Army's response will be available to the public and information contained in the Army response will be made public 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. Therefore, our response and any supporting investigative report should be prepared in a manner intended to facilitate public understanding of the allegations and Army's response thereto.

The requirements specified in 5 U.S.C. § 1213(d) (copy enclosed) may be used as a guideline and should include findings, conclusions and corrective action. In all cases, please furnish for our review all backup materials supporting the proposed response that will be used to prepare the official response for the Secretary of the Army.

When you forward your report to me, please do so by providing two hard copies. Additionally, by email to me, please provide the electronic version of the report, including the findings, conclusions and corrective action, but not the backup/supporting documentation.

Please note that should you encounter any problems with the inquiry/investigation and preparation of the subject report, kindly call me as soon as possible to discuss. In some instances, ancillary issues that arise during the course of the investigation may require follow up action.

In conducting your investigation into the allegations, please ensure that the methods and process used are compatible with engaging in a fair and open "dialog" with the OSC regarding the subject allegations and that there are no restrictions or limitations placed on the use or disclosure of the information gathered and relied upon to support the final Army report.

Additionally, the potential use of your report to support any disciplinary actions against individuals based on misconduct should also be considered when structuring your investigation and preparing your report. Lastly, note that copies of the final Army report, along with comments on the report from the individuals making the disclosures and any comments or recommendations by the OSC will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives pursuant to 5 U.S.C. § 1213(e)(3). Additionally,

By statute, the agency has sixty (60) days from receipt of the OSC letter to provide the required report. If necessary, I will seek an extension of the date for our reply to the Special Counsel. As soon as it becomes apparent that more time beyond the suspense noted above will be needed to complete your report, you should forward to me an interim

response requesting the extension and indicating the reasons for the request and the date by which I can expect to receive your final response. As you can understand, once your report is forwarded to me, I will need additional time to staff the proposed response to the OSC and finalize the Army's report.

If you have any questions, please do not hesitate to contact me at [REDACTED]
Additionally, my email address is [REDACTED]@hqda.army.mil.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Associate Deputy General Counsel
(Human Resources)

Enclosure

CF: DOD IG, [REDACTED] Principal Deputy Inspector General
DAJA-LE, [REDACTED]
SA IG, COL [REDACTED]
DACS-ZDV-HR, [REDACTED]

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104



REPLY TO
ATTENTION OF

Suspense: November 19, 2007
November 7, 2007

MEMORANDUM FOR U.S. FORCES COMMAND, Office of the Staff Judge Advocate, ATTN: COL [REDACTED] 1777 Hardee Avenue SW, Fort McPherson, Georgia 30330-1062

SUBJECT: Whistleblower Investigation—Chemical Battalion, Aberdeen Proving Ground, Maryland (OSC File Numbers DI-07-2722, DI-07-3064, DI-07-3065)

Enclosed for your action is an October 3, 2007 letter from the Office of Special Counsel (OSC), requesting an investigation of the noted allegations and a report pursuant to 5 U.S.C.1213(c)(1) and (g). I apologize that this action is being referred to you now. This action was initially forwarded to the U.S. Army Materiel Command (AMC), Office of the Command Counsel, for action in error. Since the organization that is the subject of this matter, Analytical and Remediation Directorate, 22nd Chemical Battalion, is located at AMC's Aberdeen Proving Ground, (APG), Maryland, it was assumed that it was currently under AMC's command functional responsibility as it once had been. The awareness of this mistake just surfaced.

The Special Counsel has concluded that there is substantial likelihood that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion, Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED], Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED], Chief, Echo Company.

In July 2006, [REDACTED] and [REDACTED] first became aware that the agency was erroneously paying hazard pay differentials while they were researching a personnel matter. [REDACTED] and [REDACTED] consulted with [REDACTED] who concluded that the regulations did not permit the payment of hazard pay differential to Equipment Specialists. They were concerned about this since, as managers, they have time and attendance responsibilities for their subordinates. They notified agency employees that this payment was not permitted. At various times, there were six Equipment Specialists under the supervision of [REDACTED] and/or [REDACTED] who were being improperly paid. The Special Counsel has provided a copy of the Army's job description for Equipment Specialists, as well as the employee time sheets and an internal memorandum

from [REDACTED] to LTC [REDACTED], Commander, 22nd Chemical Battalion, dated March 26, 2007, describing the hazard pay differential issues and the employees affected.

A final response describing any actions taken to address the allegations should be prepared for the signature of the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) who has been delegated the authority by the Secretary of the Army 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 (U.S.C.), § 1213(c), (d) and (g). The final response should be submitted to this office AS SOON AS POSSIBLE BUT NOT LATER THAN November 19, 2007.

The Army's response will be available to the public and information contained in the Army response will be made public 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. Therefore, our response and any supporting investigative report should be prepared in a manner intended to facilitate public understanding of the allegations and Army's response thereto.

The requirements specified in 5 U.S.C. § 1213(d) (copy enclosed) may be used as a guideline and should include findings, conclusions and corrective action. In all cases, please furnish for our review all backup materials supporting the proposed response that will be used to prepare the official response for the Secretary of the Army.

When you forward your report to me, please do so by providing two hard copies of the complete report, including all backup/supporting documentation. Additionally, by email to me, please provide the electronic version of the report, including the findings, conclusions and corrective action, but not the backup/supporting documentation. The electronic version will facilitate retrieving and incorporating as much of your draft report as possible directly into the final Army report. A sample report will be provided to you to use relative to the appropriate format, approach, and content that should serve as a pattern for your report.

Please note that should you encounter any problems with the inquiry/investigation and preparation of the subject report, kindly call me as soon as possible to discuss. In some instances, ancillary issues that arise during the course of the investigation may require follow up action.

In conducting your investigation into the allegations, please ensure that the methods and process used are compatible with engaging in a fair and open "dialog" with the OSC regarding the subject allegations and that there are no restrictions or limitations placed on the use or disclosure of the information gathered and relied upon to support the final Army report.

SUBJECT: Whistleblower Investigation—Chemical Battalion, Aberdeen Proving Ground, Maryland (OSC File Numbers DI-07-2722, DI-07-3064, DI-07-3065)

Additionally, the potential use of your report to support any disciplinary actions against individuals based on misconduct should also be considered when structuring your investigation and preparing your report.

Lastly, note that copies of the final Army report, along with comments on the report from the individuals making the disclosures and any comments or recommendations by the OSC will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives pursuant to 5 U.S.C. § 1213(e)(3). Additionally, the Army's final report and any comments to it will be made available to the public. Accordingly, please structure your report so that no restrictions or limitations are placed on its dissemination or the disclosure of the information upon which it relies.

By statute, the agency has sixty (60) days from receipt of the OSC letter to provide the required report. If necessary, I will seek an extension of the date for our reply to the Special Counsel. As soon as it becomes apparent that more time beyond the suspense noted above will be needed to complete your report, you should forward to me an interim response requesting the extension and indicating the reasons for the request and the date by which I can expect to receive your final response. As you can understand, once your report is forwarded to me, I will need additional time to staff the proposed response to the OSC and finalize the Army's report.

If you have any questions, please do not hesitate to contact me at [REDACTED].
Additionally, my email address is [REDACTED]@hqda.army.mil.

[REDACTED]
[REDACTED]
Associate Deputy General Counsel
(Human Resources)

Enclosure

CF: DOD IG, [REDACTED] Principal Deputy Inspector General
DAJA-LE, [REDACTED]
SA IG, COL [REDACTED]
DACS-ZDV-HR, [REDACTED]



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

October 3, 2007

The Honorable Pete Geren
Secretary of the Army
101 Army Pentagon
Washington, DC 20310-0101

Re: OSC File Nos. DI-07-2722, DI-07-3064, DI-07-3065

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a disclosure from three whistleblowers who allege that hazard pay differentials are being improperly authorized for employees who serve as Equipment Specialists at the Department of the Army (Army), Analytical and Remediation Directorate, 22nd Chemical Battalion, Aberdeen Proving Ground (APG), Maryland. After a review of the information provided, I have determined that there is a substantial likelihood that the authorization of hazard pay differentials for Equipment Specialists may be a violation of a law, rule, or regulation, gross mismanagement, and an abuse of authority. Accordingly, I am referring this information to you for an investigation and to issue a report of your findings.

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 whistleblowers, [REDACTED] and [REDACTED], Army APG Toxic Material Control Operator Supervisors, along with their supervisor, [REDACTED] Chief, Echo Company, consented to the release of their names. In July 2006, Mr. Penhollow and Mr. White first became aware that the agency was erroneously granting hazard pay differentials while researching a personnel matter. [REDACTED] and [REDACTED] consulted with [REDACTED] who reviewed the regulations, and each concluded that the regulations did not permit hazard pay differentials for Equipment Specialists. Each of these managers, who has time and attendance responsibilities, therefore, has alleged that hazard pay differentials were being improperly authorized.

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The Honorable Pete Geren

Page 2

The whistleblowers stated that they notified agency employees that: 1) hazard pay differential was not authorized when the hazardous duty or physical hardship has been taken into account in the classification of the position; 2) the inherent hazards and physical exertion duties of an Equipment Specialist (GS-1670) were specifically addressed in both the duty description and the factors analysis used to determine the pay grade of the position; 3) regulations did not authorize the payment of hazard pay differentials where such duty was a factor in the classification of a particular position; and, thus, 4) Equipment Specialists were not entitled to receive a hazard pay differential. Yet, they allege that the agency currently continues to authorize pay differentials improperly. The improperly paid employees are allegedly six Equipment Specialists under the supervision, at various times, by [REDACTED] and/or [REDACTED]

Pursuant to 5 U.S.C. § 5545(d), agencies have the authority to introduce a schedule of pay differentials for duty involving unusual physical hardship or hazard. Section 5545(d) further entitles employees "to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position." However, 5 U.S.C. § 5545(d)(1) and 5 CFR § 550.904(a) prohibit an employee from receiving, and an agency from paying, a hazard pay differential when the "hazardous duty or physical hardship has been taken into account in the classification of [the] position, without regard to whether the hazardous duty or physical hardship is grade controlling."¹

According to the Army's job description, Equipment Specialists (EOD) are expected to perform the following duties: handling live ordnance items; performing the set-up and operation of unexploded ordnance and recovered chemical warfare material; and preparing munitions data requirements, including disassembly. I have enclosed for your review a copy of the job description, as well as employee time sheets and an internal memorandum from [REDACTED] to LTC [REDACTED] Commander, 22nd Chemical Battalion, dated March 26, 2007, describing the hazard pay differential issues and the employees affected. Despite raising these issues, his agency continues to authorize hazard pay differential payments.

Given the whistleblowers' direct experiences with the differential pay issue as current Army APG supervisors, and after a review of the relevant documents provided, I have concluded that there is a substantial likelihood that the information they have provided discloses a violation of a law, rule or regulation, gross mismanagement, and an abuse of authority. As previously stated, I am referring this information to you for an investigation of these 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, I would hasten to add that 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

¹ Title 5 CFR 550.904(c) that explains the phrase "has been taken into account in the classification" to mean that the type of duty was an element considered in establishing the position.

The Honorable Pete Geren
Page 3

whistleblowers as part of the agency investigation whenever the whistleblowers consent to the disclosure of their names.

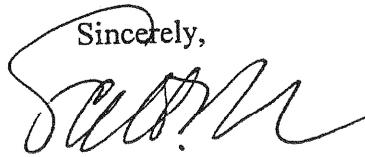
In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, 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 people 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 pursuant to 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 numbers in any correspondence on this matter. If you need further information, please contact [REDACTED], Chief, Disclosure Unit, at [REDACTED]. I am also available for any questions you may have.

Sincerely,



Scott J. Bloch

Enclosures

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

Position Description

PD#: AG153575

Replaces PD#:

Sequence#: 525056

EQUIPMENT SPECIALIST (EOD)

GS-1670-11

Servicing CPAC: ABERDEEN PROVING GROUND, MD
Installation: AGFCWA8Q99AGA

22ND CHEMICAL BATTALION (TE)
REMIEDIATION RESPONSE (TM1)

ABERDEEN PROVING GROUND, MD 21005

Agency: ARMY
MACOM: FORSCOM
Command Code: FC
US ARMY FORCES
COMMAND

Region: NORTHEAST

Citation 1: OPM JFS ADMINSTRATIVE EQUIP, FACILITIES, & SERV. MAY 2003

PD Library PD: NO

COREDOC PD: NO

Classified By: NECPOC

Classified Date: 08/20/2003

FLSA: NON-EXEMPT

Career Program: 17

Functional Code: 00

Competitive Area: 25

Competitive Level: 0738

Bus Code: 2878

PD Status: VERIFIED

Drug Test Required: NO

Financial Disclosure Required: NO

Requires Access to Firearms:

Position Sensitivity: 2

Emergency Essential: N

DCIPS PD: NO

Acquisition Position: NO

Interdisciplinary: NO

Target Grade/FPL: 11

Career Ladder PD: NO

Duties:

Serves as technical authority on US, Soviet, Warsaw Pact and other foreign chemical, biological and conventional ammunition. Serves on Quick Reaction Teams for acquisition and exploitation of first seen foreign ammunition. As an Explosive Ordnance Disposal (EOD) Specialist, incumbent participates in the performance of actual downloading of live, often first seen foreign ordnance items. Interfaces with the intelligence community and other agencies to stay abreast of all munitions designs, functions, and current inventories. Directs and performs the set-up and operation of Unexploded Ordnance (UXO)/Recovered Chemical Warfare Material (RCWM) sites/activities. Assists with supervising all aspects of EOD operations during utilization of the Explosive Destruction System (EDS). Technically directs lower grade EOD specialists in the performance of all duties excluding the preparation of

Munitions Data Requirement (MDR). Duties do include the preparation of Munitions Data Requirements (MDR), including disassembly, stripping and inerting of all US and Foreign ordnance.

1. Serves as senior/journeylevel technician, assisting with directing/leading of team operations involved with the location, access, render safe, disposal, transportation and processing of all types and conditions of US and Foreign ordnance. This includes identification and technical research of guided missiles, bombs and bomb fuzes, projectile and projectile fuzes, grenades and grenade fuzes, rockets and rocket fuzes, landmines and associated components, pyrotechnic items and explosives and demolition materials. Directs and performs the preparation of electric and non-electric demolition firing systems for the purposes of ammunition/UXO/RCWM disposal operations. Directs the use of non-destructive diagnostic equipment used for identifying the fill and condition of chemical, biological and conventional munitions. Evaluates and participates in emergency EOD/UXO incident response per local SOPs and Installation Directives. Interfaces with installation and local authorities, outside the normal chain of command, with respect to EOD/UXO and incident response operations.

40%

2. Performs recovery and exploitation of US and Foreign conventional, chemical and biological ammunition. Searches, collects, interprets, analyzes and develops complete technical information and data on munitions and weapons systems for the purpose of recovery and Foreign Material Exploitation (FME). Analyzes and reduces exploitation data into an accurate and comprehensive report format. Items exploited include guided missiles, bombs and bomb fuzes, projectile and projectile fuzes, grenades and grenade fuzes, rockets and rocket fuzes, landmines and associated components, pyrotechnic items, chemical and biological munitions.

30%

3. Performs duties as Quality Control Specialist (QC) and Site Safety Officer (SSO). As QC, incumbent will implement the EOD/UXO specific sections of the quality control program by conducting inspections, generating written reports and ensuring compliance with regulations and contractual requirements. As SSO, incumbent implements the approved EOD/UXO and explosives safety programs in compliance with all DOD, Federal, State and local statutes and codes. Analyzes operational risks and hazards to ensure compliance with all site-specific safety requirements for EOD/UXO operations.

20%

4. Performs duties as a Radiation Safety Officer (RSO) when operating radiographic instruments and Portable Isotopic Neutron Spectroscopy (PINS). Controls access to radiation areas. Performs and documents radiological surveys for gamma and neutron radiation using Geiger-Muller tubes, proportional counters, and scintillation detectors. Performs shielding calculations and dose estimates for stay times and whole body exposures to ionizing radiation. Directs and evaluates radiation control measures for radiological evolutions including shielding requirements for radiographic work and monitors personnel dosimetry requirements and placement. Responsible for the security and care of radiological sources and the establishment of operational areas with respect to health and safety.

10%

Performs other duties as assigned.

Special requirements

Basic Qualifications: Must be a graduate of a Department of Defense approved military bomb disposal school. These currently include the former US Naval School, Explosive Ordnance Disposal, Naval Ordnance Station, Indian Head, MD, or the current military EOD school

located at Eglin Air Force Base, Fla. This position requires the incumbent to have a minimum of ten (10) years combined military and civilian EOD/UXO experience.

The individual selected must possess or be able to obtain and maintain a Secret security clearance. Must be able to pass a medical examination annually. Must be able to perform all duties while wearing full chemical protective ensemble up to and including OSHA level A.

This position is subject to the provisions of AR 50-6. Individuals select for this position must undergo urinalysis screening under the civilian Drug Abuse Testing Program prior to the appointment to the position and periodically thereafter.

Mobility for temporary duty (TDY) or temporary change of station (TCS) both CONUS and OCONUS are conditions of employment. This position may require the employee to perform mission requirements in hostile environments. In such situations, the position and incumbent will be designated as "Emergency Essential", IAW the current DOD Directive governing retention of DOD civilians in overseas locations.

This position may require the incumbent to obtain and maintain a Commercial Drivers License with Hazardous Material certification.

Factor 1, Knowledge Required FL 1-7 1250 points

Incumbent requires an advanced comprehensive knowledge of Army EOD doctrine and Unit operations, as well as a working knowledge of the care, handling, safety, and use of explosives, chemical and biological materials which are used worldwide. Must possess the technical knowledge required to identify and categorize ammunition of all types to include its filler and fuze condition. Must have the technical knowledge of specialized EOD techniques, tools and equipment used by military personnel for render safe of every type of ordnance and explosive related device, including homemade bombs. Must have the knowledge to locate subsurface ordnance using all modern forms of magnetometers, ground penetrating radar and related technologies. Ability to assist with leading/directing the utilization of both electric and non-electric firing systems for the purpose of demolition operations in conjunction with all EOD/UXO operations.

Factor 2, Supervisory controls FL 2-4 450 points

Supervisor makes assignments with general objectives and discusses matters of major change in approach that may affect other assignments and priorities. Incumbent is relied upon to independently solve technical problems. Completed work is reviewed for attainment of objectives and conformance with policy. When working outside the country, incumbent is responsible for independently choosing courses of action and completing work in accordance with agency policy.

Factor 3, Guidelines FL 3-4 450 points

Selects and uses a wide range of technical material such as technical manuals, bulletins, schematics, line drawings and catalogs as well as intelligence summaries and reports. In addition use is made of agency regulations and policy statements. These provide only general guidance as to the most productive approach or methods to solve the most highly complex or unusual problems.

Factor 4, Complexity FL 4-4 225 points

The specialist must be familiar with many types of ordnance used worldwide, their characteristics and effects. As EOD, the individual is responsible for adjusting plans and

procedures to changing conditions while applying knowledge of procedures and tools available. Incumbent must make decisions based on unusual circumstances and incomplete or conflicting data.

Factor 5, Scope and Effect FL 5-3 150 points

Incumbent performs independently at EOD/UXO sites containing unknown ordnance, contents and conditions. Incumbent must deal with any and all eventualities as they occur. Items may be fuzed and armed and may or may not contain chemical agents. Failure to exercise the utmost care and diligence could result in death or severe bodily injury to incumbent or other personnel, major violations of regulations resulting in fines and/or criminal penalty and significant impact on the environment and health of surrounding communities.

Factor 6/7, Personal Contacts/Purpose of Contacts; FL 3-B 110 points

Contacts are with military personnel and civilians within the Department of Defense and individuals or groups outside the agency to gain information during onsite visits and to coordinate mutual procedures and practices.

Factor 8, Physical Demands FL 8-3 50 points

The field work requires considerable physical exertion such as long periods of standing; recurring activity such as bending, crouching, stooping, stretching, reaching, and lifting of moderately heavy objects in excess of 50 pounds. Requires normal finger dexterity in both hands and normal color vision.

Factor 9, Work Environment FL 9-3 50 points

The fieldwork involves regular and recurring exposure to various weather conditions and unknown explosive devices to include chemical and biological material. Work may require the use of full chemical protective ensemble. The specialist must be continually alert to observe special safety precautions, procedures and ever-changing situations.

Total points: 2735 (GS-11 range: 2355 - 2750 Points)

Evaluation:

FLSA EVALUATION OUTLINE

NOT MET Foreign Exemption

NOT MET Executive Exemption

Exercises appropriate supervisory responsibility (primary duty)

Customarily and regularly exercises independent judgment

80% test, if applicable (GS-5/6; Sit 1 & 2 WS supervisors; law enforcement & firefighter supervisors thru GS-9)

NOT MET Professional Exemption

Professional work (primary duty)

Intellectual and varied work (more than dealing with procedures/precedents)

Discretion & independent judgment

80% test, if applicable (This virtually never applies since GS-5/6 positions are trainees and other eligible employees are not professional)

NOT MET Administrative Exemption

___ Primary duty

___ Policy or

X Management or general business or supporting services or

___ Participation in the executive/administrative functions of a management official

X Nonmanual work test

NOT MET intellectual and significant (more than dealing with procedures/precedents), or

X specialized & technical in nature requiring considerable training/experience

NOT MET Discretion & independent judgment

n/a 80% test, if applicable

Comments/Explanations (State which major duties/job functions are Exempt):

CONCLUSION: Non Exempt

Classification Comments: Employee performs technical support work. Does not regularly develop new work methods or procedures. Work does not meet the spirit and intent of the exemption criteria.

REQUEST FOR APPROVAL OF OVERTIME/HOLIDAY/COMPENSATORY HOURS (APGR 616-2)

1. THRU: [REDACTED] TO: [REDACTED]	2. FROM: [REDACTED]	3. DATE OF REQUEST: 13 August 2007
4. REQUEST NO: (1-10)	5. FY APPROVED OT/HOL BUDGET:	6. FY OT/HOL EXPENDITURES: AMOUNT: DATE:
7. SHORT TITLE DESCRIPTION: UXO Projects		8. DATE(S) TO BE WORKED: 9 August 2007
9. ASSIGNED COST CENTER (11-16): [REDACTED]	10. HOURS REQUESTED: 1130-1230hrs	
	A. OVERTIME/HOLIDAY (17-21): 1hr	B. COMPENSATORY (22-25)
	11. TOTAL 1hr	

12. JUSTIFICATION AND IMPACT:

Job Order# 7GAS11
HDP: 25%

Overtime for working on the DIO 5400 UXO Project.

13. OVERTIME CATEGORY: <input type="checkbox"/> DISCRETIONARY <input type="checkbox"/> EMERGENCY <input checked="" type="checkbox"/> MANDATORY	14. SIGNATURE, REQUESTING OFFICIAL: [REDACTED]
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RECOMMENDING OFFICIAL

15. RECOMMENDED ACTION: <input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL	16. SIGNATURE, TITLE: [REDACTED]	17. DATE: 20070813
---	-------------------------------------	---------------------------

ACTION BY APPROVING AUTHORITY

18. ABOVE REQUEST: <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED	19. SIGNATURE, TITLE:	20. DATE:
---	-----------------------	-----------

REQUEST FOR APPROVAL OF OVERTIME/HOLIDAY/COMPENSATORY HOURS (APGR 616-2)

1. THRU: TO: [REDACTED]	2. FROM: [REDACTED]	3. DATE OF REQUEST: 13 August 2007						
4. REQUEST NO: (1-10)	5. FY APPROVED OT/HOL BUDGET:	6. FY OT/HOL EXPENDITURES: AMOUNT: DATE:						
7. SHORT TITLE DESCRIPTION: UXO Projects		8. DATE(S) TO BE WORKED: 8-10 August 2007						
9. ASSIGNED COST CENTER (11-16):	10. HOURS REQUESTED: 0700-0730/1130-1230hrs							
	A. OVERTIME/HOLIDAY (17-21):	B. COMPENSATORY (22-25)						
[REDACTED]	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align: center;">8 Aug</td> <td style="width:33%; text-align: center;">9 Aug</td> <td style="width:33%; text-align: center;">10 Aug</td> </tr> <tr> <td style="text-align: center;">1.5</td> <td style="text-align: center;">1.5</td> <td style="text-align: center;">1.5</td> </tr> </table>	8 Aug	9 Aug	10 Aug	1.5	1.5	1.5	
8 Aug	9 Aug	10 Aug						
1.5	1.5	1.5						
	11. TOTAL 4.5hrs							

12. JUSTIFICATION AND IMPACT:

Job Order# 7GGJ11
HDP: 25%

Overtime for working on the AA5 UXO Project.

<p>13. OVERTIME CATEGORY:</p> <p><input type="checkbox"/> DISCRETIONARY <input type="checkbox"/> EMERGENCY <input checked="" type="checkbox"/> MANDATORY</p>	<p>14. SIGNATURE, REQUESTING OFFICIAL:</p> <p>[REDACTED]</p>
RECOMMENDING OFFICIAL	
<p>15. RECOMMENDED ACTION:</p> <p><input checked="" type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL</p>	<p>16. SIGNATURE, TITLE:</p> <p>[REDACTED]</p>
<p>17. DATE:</p> <p align="right">20070813</p>	
ACTION BY APPROVING AUTHORITY	
<p>18. ABOVE REQUEST:</p> <p><input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED</p>	<p>19. SIGNATURE, TITLE:</p> <p> </p>
<p>20. DATE:</p> <p> </p>	

SUBJECT: Hazardous Pay

1. The following personnel are working in Position Description AG153575 and is receiving Hazardous Duty Pay of 25%.

[REDACTED]

2. Past employees who have worked in this Position Description and received Hazardous Duty Pay.

[REDACTED]

3. The following personnel are working in Position Description AG11759 and is receiving Hazardous Duty Pay of 25%.

[REDACTED]

4. Past employees who have worked in this Position Description and received Hazardous Duty Pay.

[REDACTED]

E



DEPARTMENT OF THE ARMY
U.S. ARMY 20TH SUPPORT COMMAND
5183 BLACKHAWK ROAD
ABERDEEN PROVING GROUND MD 21010-5424

REPLY TO
ATTENTION OF

AFCB-CG

9 November 2007

MEMORANDUM FOR Deputy Commanding Officer, 20th Support Command (CBRNE)

SUBJECT: Appointment of Investigating Officer

1. References:

a. Army General Counsel Letter, 7 Nov 07, subject: Whistleblower Investigation – Chemical Battalion, Aberdeen Proving Ground, Maryland (OSC File Numbers DI-07-2722, DI-07-3064, DI-07-3065) (encl 1).

b. US Office of Special Counsel Letter, 3 Oct 07, subject: OSC File Nos. DI-07-2722, DI-07-3064, DI-07-3065 (encl 2).

2. To implement a Department of the Army General Counsel request for an investigation (see references), I appoint you an Investigating Officer (IO) under the provisions of AR 15-6. You will investigate the issues and the questions listed below in paragraph 3. In making this investigation, you will consider the evidence of witnesses, the materials contained in the reference and any other materials that you consider relevant.

3. Your investigation will address the following issues and questions:

a. Determine whether Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22d Chemical Battalion, Aberdeen Proving Ground (APG), Maryland are improperly receiving hazard pay differentials for Equipment Specialists in violation of law, rule, or regulation; or as the result of gross mismanagement and/or abuse of authority. At a minimum, you will examine relevant agency time and attendance records beginning in July 2006 forward, but are not limited to these records if you discover additional relevant information outside this time period. Specifically, with regard to the references in paragraph 1(a) above:

(1) Determine when the witnesses, [REDACTED] and [REDACTED] first became aware that the agency was erroneously paying hazard pay differentials. In what context did they become aware of that information? Who received this pay? What records exist regarding payment? Why did they believe this pay was not permitted? With whom did they consult regarding the propriety of employees receiving this pay? What immediate action did they take? Provide copies of all records of receipt of this pay to employees including locally produced time and attendance documents and any records kept IAW 5 C.F.R. § 550.904 (b) to substantiate hazardous duty pay.

(2) Determine when [REDACTED] first became aware of the questions regarding hazard pay differential. From whom did he receive this information? What action did he take? What statutory or regulatory authority did [REDACTED] rely upon? What supervisory responsibilities did he have concerning [REDACTED] and the employees alleged to have been paid the hazard pay differential?

(3) What is the supervisory chain of command in 22d Chemical Battalion? Provide a diagram, if possible. When did [REDACTED] notify LTC [REDACTED] Commander, 22d Chemical Battalion with his concerns regarding the hazard pay differential? What action did LTC [REDACTED] take? Interview LTC [REDACTED] as appropriate. Do employees continue to receive the hazard duty pay? If so, who certifies their entitlement to the pay? If not, when was this pay discontinued?

(4) Determine whether these allegations appear to be an isolated occurrence or a problem of a more systemic nature. Support this finding with specific facts.

(5) Carefully review all documentary evidence available concerning these allegations and determine whether the employees drawing hazard duty pay were performing their customary government employment duties. If you determine that these employees were performing work normally done by contract employees, make a specific finding to substantiate this conclusion supported by available evidence.

b. In your investigation, you are not limited to the questions listed above. You will investigate any relevant related matters. If you are in doubt about the relevance of a matter, you will consult your legal advisor, CPT [REDACTED] Command Judge Advocate, 20th Support Command (CBRNE), [REDACTED] e-mail: [REDACTED]@us.army.mil.

4. In conducting your investigation, you will use the informal procedures specified in AR 15-6. All witness statements will be written (typed or block printed) and sworn. If, in the course of your investigation, you suspect a witness of a criminal offense, you will advise the witness of his/her rights under Article 31, Uniform Code of Military Justice, or the Fifth Amendment, as appropriate. You will provide each witness with a Privacy Act statement before soliciting any personal information.

5. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

AFCB-CG

SUBJECT: Appointment of Investigating Officer

6. You will submit your completed investigation on a DA Form 1574 with a table of contents and enclosures. The enclosures will include all documentary materials considered by you. Before beginning your investigation, you will receive a legal briefing from CPT [REDACTED]. You may consult the legal advisor at any time during the investigation and you will consult the legal advisor before warning any witness as a suspect and before putting your report in final form. Additionally, along with your report of investigation, you will submit a draft final agency response describing any actions taken to address the allegations. The parameters of the draft are outlined in reference 1(a).

7. You will submit your report to me not later than 4 December 2007, 1700 hours. If you find that you need additional time to complete the investigation properly, you will contact the legal advisor and request an extension.

2 Encls
as


KEVIN R. WENDEL
Brigadier General, U.S. Army
Commanding

DRAFT

Paragraph 2 of ATC Policy Letter 28, General Schedule Employees' HDP Policy, dated 21 January 2005, states that employees requesting HDP will submit an approved Job Hazard Analysis along with an HDP request form. The current ATC Form CSTE-DTC-AT-CO 1051R in this policy letter is dated 1 August 2004.

Paragraph 6a(6) of APG Regulation 690-28 states that supervisors and line management will, "Carry out all tasks necessary to ensure proper payment of HDP differentials to subordinates. This includes ... explaining to the work force the basis for approval and/or disapproval of the differential as appropriate."

Title 5 of the Code of Federal Regulations, Section 550.904 states, "An agency shall pay the hazard pay differential listed in appendix A of this subpart to an employee who is assigned to and performs any duty specified in appendix A of this subpart." Appendix A states, "HDP will be paid for "Exposure to Hazardous Agents, work with or in close proximity to: (1) Explosive or incendiary materials. Explosive or incendiary materials which are unstable and highly sensitive."

Paragraph 13-2d of ATEC Regulation 385-1 states, "A Hazard Analysis Working Group (HAWG), Operational Test Readiness Review (OTRR) group, or a similar technical review committee will be formed to support the risk management process. The HAWG, OTRR, or similar technical review committee will review and risk assess all hazardous operations/ procedures before submission for approval and use."

RECOMMENDATIONS

ATC management should ensure that:

1. The most current HDP request form is used, and that it is fully completed with all required signatures.
2. HDP requests are processed in a timely manner. If HDP is denied, the requestor should be provided, in writing, the reasons for the denial to include any risk mitigation actions taken to reduce high risks to medium risks or other acceptable level of risk. The denial letter should address reasons the task does not meet the conditions of the CFR's Appendix A.
3. Guidelines are established for determining what constitutes an employee being "in close proximity" to a hazard. Ensure that management and employees have a clear and uniform understanding of "in close proximity to a hazard".
4. Required HAWGS are conducted, documented, and annotated in Part III of HDP request forms.

ACTIVITY COMMENTS

OBSERVATION FIVE

Not all Civilian Personnel Advisory Center (CPAC) HDP procedures/responsibilities current at the time of this review were in agreement with APG Regulation 690-28. The APG regulation, dated 23 August 2000, had not been updated to reflect changes that have since taken place. Outdated procedures/responsibilities in governing regulations could lead to ineffective internal controls and mismanagement of the HDP Program.

DISCUSSION

We compared current HDP procedures and responsibilities to those stipulated in APG Regulation 690-28 and determined that not all current CPAC procedures and policies were in agreement with those in the regulation.

- Paragraph 6c(1) states that CPAC will provide required training to installation supervisors. Our review indicated that no HDP supervisory training had been provided for several years.
- Paragraph 6c(2) states that CPAC will provide feedback to line managers and supervisors on the status of their HDP programs to include periodic statistical information on HDP costs and trends. Our review indicated that CPAC was not providing any feedback on the status of HDP programs.
- Paragraph 6c(3) states that CPAC will interpret and provide advice to line management on rules and regulations governing the HDP program, particularly for those aspects dealing with job classification-related matters such as "taken into account in the classification of the position". We determined that CPAC participates with Civilian Personnel Operations Center (CPOC) classification specialists when responding to questions on these issues. CPOC, not CPAC, is the final authority on HDP aspects dealing with classification-related matters.
- Paragraph 7b states that if an existing certificate does not cover the work being performed and/or it does not cover work in the organizational location of the supervisor involved, a request for approval of HDP must be initiated by the supervisor. This request will be sent to CPAC who will then forward it to appropriate safety/industrial hygiene/medical offices for review. Our review indicated that CPAC was not receiving HDP requests that are sent to safety/industrial hygiene/medical offices for review.
- Paragraphs 6b(4) and 6c(4) & (5) states that CPAC (i) receives information on the HDP Program, (ii) oversees coordination between offices for the HDP Program Administration, and (iii) participates on HDP oversight committees. Our review indicated that CPAC involvement in the above is limited to determining the need for local HDP certificates, and that currently there is no HDP oversight committee that CPAC participates in.

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SUGGESTION

The director of CPAC should review and revise APG Regulation 690-28 to reflect current HDP program procedures/responsibilities.

ACTIVITY COMMENTS

Concur. The APG Regulation 690-28 will be updated to reflect current procedures.

- ✓ Paragraph 6c(1). There is no “required” HDP training. CPAC provides training on an as requested basis. The word “required” will be deleted and “as requested” will be added to the paragraph.
- ✓ Paragraph 6c(2). CPAC does not provide statistical feedback to managers and supervisors. This information is currently available through timekeeping records. This paragraph will be deleted from the regulation.
- ✓ Paragraph 6c(3). This paragraph will be changed to reflect CPOC’s responsibility associated with classification-related matters.
- ✓ Paragraph 7b. CPAC has only had one such request within the past 10 years. It was sent to CPAC “after” it was coordinated with safety/industrial hygiene/medical offices for review rather than before coordination. We will add a caveat at the end of the paragraph stating that CPAC will forward the request to appropriate offices “unless previously accomplished by the activity”.
- ✓ Paragraphs 6b(4) and 6c(4) & (5), CPAC does receive information, give advice and guidance only when it relates to new local certificates. CPAC will serve on any such oversight committees that may be established by any Commander. No APG Activity has established a committee. No change to the regulation is required.

The target date for completion is 1 Jul 2006.

PART III

DRAFT

DISCUSSIONS WITH INTERESTED OFFICIALS

The results of this review were discussed with and agreed to by:

Joseph Topper
Evaluator

REVIEWED BY:

APPROVED BY:

MURAHARI KUNCHAM
Lead Evaluator, Internal
Review

MARIAN HODGE
Chief, Internal Review and
Audit Compliance Office

F

Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

Headquarters
Department of the Army
Washington, DC
2 October 2006

UNCLASSIFIED

SUMMARY of CHANGE

AR 15-6

Procedures for Investigating Officers and Boards of Officers

This rapid action revision, dated 2 October 2006--

- o Clarifies the distinction between levels of appointing authorities for hostile fire death investigations and friendly fire death investigations (para 2-1a(3)).
- o Permits the general court-martial convening authority to delegate appointing authority to the special court-martial convening authority in hostile fire death investigations (para 2-1a(3)).

This regulation, dated 30 September 1996--

- o Is a complete revision of the earlier regulation dated 24 August 1977.
- o Updates policies and procedures concerning the procedures for investigating officers and boards of officers.

Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

By Order of the Secretary of the Army:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:


JOYCE E. MORROW
Administrative Assistant to the
Secretary of the Army

History. This publication is a rapid action revision. The portions affected by this rapid action revision are listed in the summary of change.

Summary. This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. During mobilization,

chapters and policies contained in this regulation may be modified by the proponent.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The Judge Advocate General has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The Judge Advocate General may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army management control process. This regulation does not contain management control provisions.

Supplementation. Supplementation of

this regulation and establishment of command and local forms are prohibited without prior approval from HQDA (DAJA-AL), Washington, DC 20310-2212.

Suggested improvements. The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAJA-AL), Washington, DC 20310-2212.

Distribution. This publication is available in electronic media only and is intended for command level A for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

Purpose • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

Responsibilities • 1-4, page 1

Types of investigations and boards • 1-5, page 1

Function of investigations and boards • 1-6, page 1

Interested persons • 1-7, page 2

Respondents • 1-8, page 2

Use of results of investigations in adverse administrative actions • 1-9, page 2

*This regulation supersedes AR 15-6 dated 30 September 1996.

Contents—Continued

Chapter 2

Responsibilities of the Appointing Authority, page 2

Appointment • 2-1, page 2

Administrative support • 2-2, page 6

Action of the appointing authority • 2-3, page 7

Chapter 3

General Guidance for Investigating Officers and Boards, page 8

Section I

Conduct of the Investigation, page 8

Preliminary responsibilities • 3-1, page 8

Oaths • 3-2, page 8

Challenges • 3-3, page 8

Counsel • 3-4, page 8

Decisions • 3-5, page 8

Presence of the public and recording of proceedings • 3-6, page 8

Rules of evidence and proof of facts • 3-7, page 13

Witnesses • 3-8, page 14

Communications with the appointing authority • 3-9, page 15

Section II

Findings and Recommendations, page 15

Findings • 3-10, page 15

Recommendations • 3-11, page 15

Deliberation • 3-12, page 16

Voting • 3-13, page 16

Section III

Report of Proceedings, page 16

Format • 3-14, page 16

Enclosures • 3-15, page 16

Exhibits • 3-16, page 16

Authentication • 3-17, page 17

Safeguarding a written report • 3-18, page 17

Submission • 3-19, page 17

Action of the appointing authority • 3-20, page 17

Chapter 4

Informal Investigations and Boards of Officers, page 17

Composition • 4-1, page 17

Procedure • 4-2, page 17

Interested persons • 4-3, page 17

Chapter 5

Formal Boards of Officers, page 18

Section I

General, page 18

Members • 5-1, page 18

Attendance of members • 5-2, page 19

Duties of recorder • 5-3, page 19

Section II

Respondents, page 20

Designation • 5-4, page 20

Contents—Continued

- Notice • 5-5, *page 20*
- Counsel • 5-6, *page 20*
- Challenges for cause • 5-7, *page 21*
- Presentation of evidence • 5-8, *page 21*
- Argument • 5-9, *page 22*
- After the hearing • 5-10, *page 22*

Appendixes

- A.** References, *page 23*
- B.** Guidance for Preparing Privacy Act Statements, *page 24*

Glossary

Index

Chapter 1

Introduction

1-1. Purpose

This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive. This regulation or any part of it may be made applicable to investigations or boards that are authorized by another directive, but only by specific provision in that directive or in the memorandum of appointment. In case of a conflict between the provisions of this regulation, when made applicable, and the provisions of the specific directive authorizing the investigation or board, the latter will govern. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another directive, but in that case its provisions are not mandatory.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

Responsibilities are listed in chapter 2.

1-5. Types of investigations and boards

a. General. An administrative fact-finding procedure under this regulation may be designated an investigation or a board of officers. The proceedings may be informal (chap 4) or formal (chap 5). Proceedings that involve a single investigating officer using informal procedures are designated investigations. Proceedings that involve more than one investigating officer using formal or informal procedures or a single investigating officer using formal procedures are designated a board of officers.

b. Selection of procedure.

(1) In determining whether to use informal or formal procedures, the appointing authority will consider these among other factors:

(a) Purpose of the inquiry.

(b) Seriousness of the subject matter.

(c) Complexity of issues involved.

(d) Need for documentation.

(e) Desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being investigated. (See paras 1-8, 4-3, and 5-4a.)

(2) Regardless of the purpose of the investigation, even if it is to inquire into the conduct or performance of a particular individual, formal procedures are not mandatory unless required by other applicable regulations or directed by higher authority.

(3) Unless formal procedures are expressly required, either by the directive authorizing the board or by the memorandum of appointment, all cases to which this regulation applies will use informal procedures.

(4) In determining which procedures to use, the appointing authority will seek the advice of the servicing judge advocate (JA).

(5) Before opening an investigation involving allegations against general officers or senior executive service civilians, the requirements of Army Regulation (AR) 20-1, subparagraph 8-3i(3) must be met.

c. Preliminary investigations. Even when formal procedures are contemplated, a preliminary informal investigation may be advisable to ascertain the magnitude of the problem, to identify and interview witnesses, and to summarize or record their statements. The formal board may then draw upon the results of the preliminary investigation.

d. Concurrent investigations. An administrative fact finding procedure under this regulation, whether designated as an investigation or a board of officers, may be conducted before, concurrently with, or after an investigation into the same or related matters by another command or agency, consistent with subparagraph *b(5)* above. Appointing authorities, investigating officers, and boards of officers will ensure that procedures under this regulation do not hinder or interfere with a concurrent investigation directed by higher headquarters, a counterintelligence investigation or an investigation being conducted by a criminal investigative. In cases of concurrent or subsequent investigations, coordination, coordination with the other command or agency will be made to avoid duplication of investigative effort, where possible.

1-6. Function of investigations and boards

The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority. It is the duty of the investigating officer or board to ascertain and consider the evidence on all sides of each

issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

1-7. Interested persons

Appointing authorities have a right to use investigations and boards to obtain information necessary or useful in carrying out their official responsibilities. The fact that an individual may have an interest in the matter under investigation or that the information may reflect adversely on that individual does not require that the proceedings constitute a hearing for that individual.

1-8. Respondents

In formal investigations the appointing authority may designate one or more persons as respondents in the investigation. Such a designation has significant procedural implications. (See chap 5, sec II, in general, and para 5-4a, in particular.) Respondents may not be designated in informal investigations.

1-9. Use of results of investigations in adverse administrative actions

a. This regulation does not require that an investigation be conducted before adverse administrative action, such as relief for cause, can be taken against an individual. However, if an investigation is conducted using the procedures of this regulation, the information obtained, including findings and recommendations, may be used in any administrative action against an individual, whether or not that individual was designated a respondent, and whether formal or informal procedures were used, subject to the limitations of *b* and *c* below.

b. The Office of Personnel Management and Army Regulations establish rules for adverse actions against Army civilian personnel and establish the procedural safeguards. In every case involving contemplated formal disciplinary action against civilian employees, the servicing civilian personnel office and labor counselor will be consulted before the employee is notified of the contemplated adverse action.

c. Except as provided in *d* below, when adverse administrative action is contemplated against an individual (other than a civilian employee, see *b* above), including an individual designated as a respondent, based upon information obtained as a result of an investigation or board conducted pursuant to this regulation, the appropriate military authority must observe the following minimum safeguards before taking final action against the individual:

(1) Notify the person in writing of the proposed adverse action and provide a copy, if not previously provided, of that part of the findings and recommendations of the investigation or board and the supporting evidence on which the proposed adverse action is based.

(2) Give the person a reasonable opportunity to reply in writing and to submit relevant rebuttal material.

(3) Review and evaluate the person's response.

d. There is no requirement to refer the investigation to the individual if the adverse action contemplated is prescribed in regulations or other directives that provide procedural safeguards, such as notice to the individual and opportunity to respond. For example, there is no requirement to refer an investigation conducted under this regulation to a soldier prior to giving the soldier an adverse evaluation report based upon the investigation because the regulations governing evaluation reports provide the necessary procedural safeguards.

e. When the investigation or board is conducted pursuant to this regulation but the contemplated administrative action is prescribed by a different regulation or directive with more stringent procedural safeguards than those in *c* above, the more stringent safeguards must be observed.

Chapter 2 Responsibilities of the Appointing Authority

2-1. Appointment

a. Authority to appoint. The following people may appoint investigations or boards to inquire into matters within their areas of responsibility.

(1) Except as noted in subparagraph 2-1a(3) below, the following individuals may appoint a formal investigation or board (chap 5) after consultation with the servicing judge advocate (JA) or legal advisor (LA):

(a) Any general court-martial (GCM) or special court-martial convening authority, including those who exercise that authority for administrative purposes only.

(b) Any general officer.

(c) Any commander or principal staff officer in the grade of colonel or above at the installation, activity, or unit level.

(d) Any State adjutant general.

(e) A Department of the Army civilian supervisor permanently assigned to a position graded as a general schedule

(GS)/general management, grade 14 or above and who is assigned as the head of an Army agency or activity or as a division or department chief.

(2) Except as noted in subparagraph 2-1a(3), the following individuals may appoint an informal investigation or board (chap 4):

(a) Any officer authorized to appoint a formal board.

(b) A commander at any level.

(c) A principal staff officer or supervisor in the grade of major or above.

(3) Only a general court-martial convening authority may appoint a formal investigation or board (chap 5) or an informal investigation or board (chap 4) for incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability, the death of one or more persons, and the death of one or more persons by fratricide/friendly fire.

(a) For investigations of a death or deaths involving a deployed force(s), from what is believed to be hostile fire, the general court-martial convening authority may delegate, in writing, appointing/approval authority to a subordinate commander exercising special court-martial convening authority. This authority may not be further delegated.

(b) If evidence is discovered during a hostile fire investigation that indicates that the death(s) may have been the result of fratricide/friendly fire, the investigating officer will immediately suspend the investigation and inform the appointing authority and legal advisor. At this time the general court-martial convening authority will appoint a new investigation into the fratricide/friendly fire incident. Any evidence from the hostile fire investigation may be provided to the investigating officer or board conducting the fratricide/friendly fire investigation.

(4) Appointing authorities who are general officers may delegate the selection of board members to members of their staffs.

(5) When more than one appointing authority has an interest in the matter requiring investigation, a single investigation or board will be conducted whenever practicable. In case of doubt or disagreement as to who will appoint the investigation or board, the first common superior of all organizations concerned will resolve the issue.

(6) Appointing authorities may request, through channels, that persons from outside their organizations serve on boards or conduct investigations under their jurisdictions.

b. Method of appointment. Informal investigations and boards may be appointed orally or in writing. Formal boards will be appointed in writing but, when necessary, may be appointed orally and later confirmed in writing. Any written appointment will be in the form of a memorandum of appointment. (See figs 2-1 through 2-5.) Whether oral or written, the appointment will specify clearly the purpose and scope of the investigation or board and the nature of the findings and recommendations required. If the appointment is made under a specific directive, that directive will be cited. If the procedures of this regulation are intended to apply, the appointment will cite this regulation and, in the case of a board, specify whether it is to be informal or formal. (Refer to chaps 4 and 5.) Any special instructions (for example, requirement for verbatim record or designation of respondents in formal investigations) will be included.

c. Who may be appointed. Investigating officers and board members shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament.

(1) Except as provided in paragraph 5-1e, only commissioned officers, warrant officers, or Department of the Army civilian employees permanently assigned to a position graded as a GS-13 or above will be appointed as investigating officers or voting members of boards.

(2) Recorders, legal advisors, and persons with special technical knowledge may be appointed to formal boards in a nonvoting capacity. (See para 5-1.)

(3) An investigating officer or voting member of a board will be senior to any person whose conduct or performance of duty may be investigated, or against whom adverse findings or recommendations that may be made, except when the appointing authority determines that it is impracticable because of military exigencies. Inconvenience in obtaining an investigating officer or the unavailability of senior persons within the appointing authority's organization would not normally be considered military exigencies.

(a) The investigating officer or board president will, subject to the approval of the appointing authority, determine the relative seniority of military and civilian personnel. Actual superior/subordinate relationships, relative duty requirements, and other sources may be used as guidance. Except where a material adverse effect on an individual's substantial rights results, the appointing authority's determination of seniority shall be final (see para 2-3c).

(b) An investigating officer or voting member of a board who, during the proceedings, discovers that the completion thereof requires examining the conduct or performance of duty of, or may result in findings or recommendations adverse to, a person senior to him or her will report this fact to the board president or the appointing authority. The appointing authority will then appoint another person, senior to the person affected, who will either replace the investigating officer or member, or conduct a separate inquiry into the matters pertaining to that person. Where necessary, the new investigating officer or board may be furnished any evidence properly considered by the previous investigating officer or board.

(c) If the appointing authority determines that military exigencies make these alternatives impracticable, the appointing authority may direct the investigating officer or member to continue. In formal proceedings, this direction will be

written and will be an enclosure to the report of proceedings. If the appointing authority does not become aware of the problem until the results of the investigation are presented for review and action, the case will be returned for new or supplemental investigation only where specific prejudice is found to exist.

(4) Specific regulations may require that investigating officers or board members be military officers, be professionally certified, or possess an appropriate security clearance.

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(President)*

SUBJECT: Appointment of Board of Officers

1. A board of officers is hereby appointed pursuant to AR 735-5 and AR 15-6 to investigate the circumstances connected with the loss, damage, or destruction of the property listed on reports of survey referred to the board and to determine responsibility for the loss, damage, or destruction of such property.

2. The following members are appointed to the board:

MAJ Robert A. Jones, HHC, 3d Bn, 1st Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member (President)

CPT Paul R. Wisniewski, Co A, 2d Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT David B. Braun, Co C, 1st Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT John C. Solomon, HHC, 2d S & T Bn, DISCOM 20th Inf Div, Ft Blank, WD 88888 Alternate member (see AR 15-6, para 5-2c)

1LT Steven T. Jefferson, Co B, 2d Bn, 2d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Recorder (without vote)

3. The board will meet at the call of the President. It will use the procedures set forth in AR 735-5 and AR 15-6 applicable to formal boards with respondents. Respondents will be referred to the board by separate correspondence.

4. Reports of proceedings will be summarized (the findings and recommendations will be verbatim) and submitted to this headquarters, ATTN: ABCD-AG-PA. Reports will be submitted within 3 working days of the conclusion of each case. The Adjutant General's office will furnish necessary administrative support for the board. Legal advice will be obtained, as needed, from the Staff Judge Advocate's office.

5. The board will serve until further notice.

(Authority Line)

(Signature block)

CF: *(Provide copy to board personnel)*

Figure 2-1. Sample memorandum for appointment of a standing board of officers using formal procedures

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(President of standing board)*

SUBJECT: Referral of Respondent

1. Reference memorandum, this headquarters, dated *(day-month-year)*, subject: Appointment of Board of Officers.
2. *(Enter rank, name, SSN, and unit)* is hereby designated a respondent before the board appointed by the referenced memorandum. The board will consider whether *(enter name of respondent)* should be held pecuniarily liable for the loss, damage, or destruction of the property listed on the attached report of survey. The correspondence and supporting documentation recommending referral to a board of officers are enclosed.
3. *(Enter rank, name, branch, and unit)* is designated counsel for *(enter name of respondent)*.
4. For the consideration of this case only, *(enter rank, name, and unit)* is designated a voting member of the board, vice *(enter rank, name, and unit)*.

(Authority line)

Encl

(Signature block)

CF: *(Provide copy to board personnel, counsel, and respondent)*

Figure 2-2. Sample memorandum for referral of a respondent to a standing board

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(Officer concerned)*

SUBJECT: Appointment as a Board of Officers to Investigate Alleged Corruption and Mismanagement

1. You are hereby appointed a board of officers, pursuant to AR 15-6, to investigate allegations of *(enter subject matter to be investigated, such as corruption and mismanagement in the office of the Fort Blank Provost Marshal)*. The scope of your investigation will include *(mention specific matters to be investigated, such as whether military police personnel are properly processing traffic tickets, whether supervisory personnel are receiving money or other personal favors from subordinate personnel in return for tolerating the improper processing of traffic tickets, and so forth)*. Enclosed herewith is a report of proceedings of an earlier informal investigation into alleged improper processing of traffic tickets that was discontinued when it appeared that supervisory personnel may have been involved.
2. As the board, you will use formal procedures under AR 15-6. *(Enter duty positions, ranks, and names)* are designated respondents. Additional respondents may be designated based on your recommendations during the course of the investigation. Counsel for each respondent, if requested, will be designated by subsequent correspondence.
3. *(Enter rank, name, branch, and unit)* will serve as legal advisor to you, the board. *(Enter rank, name, duty position, and unit)*, with the concurrence of *(his)(her)* commander, will serve as an advisory member of the board. The office of the adjutant general, this headquarters, will provide necessary administrative support. The Fort Blank Resident Office, Criminal Investigation Division Command (CIDC), will provide technical support, including preserving physical evidence, if needed.
4. Prepare the report of proceedings on DA Form 1574 and submit it to me within 60 days.

(Signature of appointing authority)

CF: *(Provide copy to all parties concerned)*

Figure 2-3. Sample memorandum for appointment of a single officer as a board of officers, with legal advisor and advisory member, using formal procedures

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (Officer concerned)

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and AR 210-7, paragraph 4-3, to conduct an informal investigation into complaints that sales representatives of the Fly-By-Night Sales Company have been conducting door-to-door solicitation in the River Bend family housing area in violation of AR 210-7. Details pertaining to the reported violations are in the enclosed file prepared by the Commercial Solicitation Branch, Office of the Adjutant General, this headquarters (Encl).
2. In your investigation, all witness statements will be sworn. From the evidence, you will make findings whether the Fly-By-Night Sales Company has violated AR 210-7 and recommend whether to initiate a show cause hearing pursuant to AR 210-7, paragraph 4-5, and whether to temporarily suspend the company's or individual agents' solicitation privileges pending completion of the show cause hearing.
3. Submit your findings and recommendations in four copies on DA Form 1574 to this headquarters, ATTN: ABCD-AG, within 7 days.

(Authority line)

Encl

(Signature block)

Figure 2-4. Sample memorandum for appointment of an investigating officer under AR 15-6 and other directives

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (Officer concerned)

SUBJECT: Appointment as Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and AR 380-5, paragraph 10-8, to investigate the circumstances surrounding the discovery of a CONFIDENTIAL document in a trash can in the office of the 3d Battalion S-3 on 31 August 1987. A preliminary inquiry into the incident proved inconclusive (see enclosed report).
2. In your investigation, use informal procedures under AR 15-6. You will make findings as to whether security compromise has occurred, who was responsible for any security violation, and whether existing security procedures are adequate.
3. This incident has no known suspects at this time. If in the course of your investigation you come to suspect that certain people may be responsible for the security violation, you must advise them of their rights under the UCMJ, Article 31, or the Fifth Amendment, as appropriate. In addition, you must provide them a Privacy Act statement before you solicit any (further) personal information. You may obtain assistance with these legal matters from the office of the Staff Judge Advocate.
4. Submit your findings and recommendations on DA Form 1574 to the Brigade S-2 within 10 days.

(Authority line)

(Signature block)

Figure 2-5. Sample memorandum for appointment of an investigating officer in a case with potential Privacy Act implications

2-2. Administrative support

The appointing authority will arrange necessary facilities, clerical assistance, and other administrative support for investigating officers and boards of officers. If not required by another directive, a verbatim transcript of the proceedings may be authorized only by The Judge Advocate General (TJAG) or the GCM convening authority in his or her sole discretion. However, before authorization, the GCM convening authority will consult the staff judge advocate (SJA). A contract reporter may be employed only for a formal board and only if authorized by the specific directive under which the board is appointed. A contract reporter will not be employed if a military or Department of the Army

(DA) civilian employee reporter is reasonably available. The servicing JA will determine the availability of a military or DA civilian employee reporter.

2-3. Action of the appointing authority

a. Basis of decision. Unless otherwise provided by another directive, the appointing authority is neither bound nor limited by the findings or recommendations of an investigation or board. Therefore, the appointing authority may take action less favorable than that recommended with regard to a respondent or other individual, unless the specific directive under which the investigation or board is appointed provides otherwise. The appointing authority may consider any relevant information in making a decision to take adverse action against an individual, even information that was not considered at the investigation or board (see para 1-9c and d). In all investigations involving fratricide/friendly fire incidents (see AR 385-40), the appointing authority, after taking action on the investigation, will forward a copy of the completed investigation to the next higher Army headquarters for review.

b. Legal review. Other directives that authorize investigations or boards may require the appointing authority to refer the report of proceedings to the servicing JA for legal review. The appointing authority will also seek legal review of all cases involving serious or complex matters, such as where the incident being investigated has resulted in death or serious bodily injury, or where the findings and recommendations may result in adverse administrative action (see para 1-9), or will be relied upon in actions by higher headquarters. The JA's review will determine—

- (1) Whether the proceedings comply with legal requirements.
- (2) What effects any errors would have.
- (3) Whether sufficient evidence supports the findings of the investigation or board or those substituted or added by the appointing authority (see para 3-10b).
- (4) Whether the recommendations are consistent with the findings.

c. Effect of errors. Generally, procedural errors or irregularities in an investigation or board do not invalidate the proceeding or any action based on it.

(1) *Harmless errors.* Harmless errors are defects in the procedures or proceedings that do not have a material adverse effect on an individual's substantial rights. If the appointing authority notes a harmless error, he or she may still take final action on the investigation.

(2) *Appointing errors.* Where an investigation is convened or directed by an official without the authority to do so (see para 2-1a), the proceedings are a nullity, unless an official with the authority to appoint such an investigation or board subsequently ratifies the appointment. Where a formal board is convened by an official authorized to convene an informal investigation or board but not authorized to convene formal investigations, any action not requiring a formal investigation may be taken, consistent with paragraph 1-9 and this paragraph.

(3) *Substantial errors.*

(a) Substantial errors are those that have a material adverse effect on an individual's substantial rights. Examples are the failure to meet requirements as to composition of the board or denial of a respondent's right to counsel.

(b) When such errors can be corrected without substantial prejudice to the individual concerned, the appointing authority may return the case to the same investigating officer or board for corrective action. Individuals or respondents who are affected by such a return will be notified of the error, of the proposed correction, and of their rights to comment on both.

(c) If the error cannot be corrected, or cannot be corrected without substantial prejudice to the individual concerned, the appointing authority may not use the affected part of that investigation or board as the basis for adverse action against that person. However, evidence considered by the investigation or board may be used in connection with any action under the Uniform Code of Military Justice (UCMJ), civilian personnel regulations, AR 600-37, or any other directive that contains its own procedural safeguards.

(d) In case of an error that cannot be corrected otherwise, the appointing authority may set aside all findings and recommendations and refer the entire case to a new investigating officer or board composed entirely of new voting members. Alternatively, the appointing authority may take action on findings and recommendations not affected by the error, set aside the affected findings and recommendations, and refer the affected portion of the case to a new investigating officer or board. In either case, the new investigating officer or board may be furnished any evidence properly considered by the previous one. The new investigating officer or board may also consider additional evidence. If the directive under which a board is appointed provides that the appointing authority may not take less favorable action than the board recommends, the appointing authority's action is limited by the original recommendations even though the case subsequently is referred to a new board which recommends less favorable action.

(4) *Failure to object.* No error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the legal advisor or the president of the board at the appropriate point in the proceedings. Accordingly, errors described in (3) above may be treated as harmless if the respondent fails to point them out.

Chapter 3 General Guidance for Investigating Officers and Boards

Section I Conduct of the Investigation

3-1. Preliminary responsibilities

Before beginning an informal investigation, an investigating officer shall review all written materials provided by the appointing authority and consult with the servicing staff or command judge advocate to obtain appropriate legal guidance.

3-2. Oaths

a. Requirement. Unless required by the specific directive under which appointed, investigating officers or board members need not be sworn. Reporters, interpreters, and witnesses appearing before a formal board will be sworn. Witnesses in an informal investigation or board may be sworn at the discretion of the investigating officer or president. The memorandum of appointment may require the swearing of witnesses or board members.

b. Administering oaths. An investigating officer, recorder (or assistant recorder), or board member is authorized to administer oaths in the performance of such duties, under UCMJ, Art. 136 (for military personnel administering oaths) and Section 303, Title 5, United States Code (5 USC 303) (for civilian personnel administering oaths) (see fig 3-1 for the format for oaths).

3-3. Challenges

Neither an investigating officer nor any member of a board is subject to challenge, except in a formal board as provided in paragraph 5-7. However, any person who is aware of facts indicating a lack of impartiality or other qualification on the part of an investigating officer or board member will present the facts to the appointing authority.

3-4. Counsel

Only a respondent is entitled to be represented by counsel (see para 5-6). Other interested parties may obtain counsel, at no expense to the Government, who may attend but not participate in proceedings of the investigation or board which are open to the public. The proceedings will not be unduly interrupted to allow the person to consult with counsel. When a civilian employee is a member of an appropriate bargaining unit, the exclusive representative of the unit has the right to be present whenever the employee is a respondent or witness during the proceedings if requested by the employee and if the employee reasonably believes that the inquiry could lead to disciplinary action against him or her (see para 3-8).

3-5. Decisions

A board composed of more than one member arrives at findings and recommendations as provided in section II of this chapter. A formal board decides challenges by a respondent as provided in paragraph 5-7. The investigating officer or president decides administrative matters, such as time of sessions, uniform, and recess. The legal advisor or, if none, the investigating officer or president decides evidentiary and procedural matters, such as motions, acceptance of evidence, and continuances. The legal advisor's decisions are final. Unless a voting member objects to the president's decision on an evidentiary or procedural matter at the time of the decision, it too is final. If there is such an objection, a vote will be taken in closed session, and the president's decision may be reversed by a majority vote of the voting members present.

3-6. Presence of the public and recording of proceedings

a. The public. Proceedings of an investigation or board are normally open to the public only if there is a respondent. However, if a question arises, the determination will be made based on the circumstances of the case. It may be appropriate to open proceedings to the public, even when there is no respondent, if the subject matter is of substantial public interest. It may be appropriate to exclude the public from at least some of the proceedings even though there is a respondent, if the subject matter is classified, inflammatory, or otherwise exceptionally sensitive. In any case, the appointing authority may specify whether the proceedings will be open or closed. If the appointing authority does not specify, the investigating officer or the president of the board decides. If there is a respondent, the servicing JA or the legal advisor, if any, will be consulted before deciding to exclude the public from any portion of the proceedings. Any proceedings that are open to the public will also be open to representatives of the news media.

b. Recording. Neither the public nor the news media will record, photograph, broadcast, or televise the board proceedings. A respondent may record proceedings only with the prior approval of the appointing authority.

Preliminary Matters

PRES: This hearing will come to order. This board of officers has been called to determine _____

When RESP is without counsel: _____

PRES: _____, you may, if you desire, obtain civilian counsel at no expense to the Government for this hearing. If you do not obtain civilian counsel, you are entitled to be represented by a military counsel designated by the appointing authority. Do you have counsel?

RESP: No (Yes).

If RESP has counsel, the RCDR should identify that counsel at this point for the record. If RESP does not have counsel, the PRES should ask this question:

PRES: Do you desire to have military counsel?

RESP: Yes (No).

If RESP answers "yes," the PRES should adjourn the hearing and ask the appointing authority to appoint counsel for RESP (see para 5-6b). If counsel is supplied, the RCDR should identify that counsel for the record when the board reconvenes.

A reporter and an interpreter, if used, should be sworn.

RCDR: The reporter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of reporter to this board, (so help you God)?

REPORTER: I do.

RCDR: The interpreter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of interpreter in the case now in hearing, (so help you God)?

INTERPRETER: I do.

RCDR: The board is appointed by Memorandum of Appointment, Headquarters, _____, dated _____. Have all members of the board read the memorandum of appointment? (If not, the memorandum of appointment is read aloud by RCDR or silently by any member who has not read it.)

When RESP has been designated by a separate memorandum of appointment, the same procedure applies to that memorandum of appointment.

RCDR: May the memorandum of appointment be attached to these proceedings as Enclosure I?

PRES: The memorandum of appointment will be attached as requested.

RCDR: The following members of the board are present:

The following members are absent:

RCDR should account for all personnel of the board, including RESP and COUNSEL, if any, as present or absent at each session. RCDR should state the reason for any absence, if known, and whether the absence was authorized by the appointing authority.

PRES: _____, you may challenge any member of the board (or the legal advisor) for lack of impartiality. Do you desire to make a challenge?

Figure 3-1. Suggested procedure for board of officers with respondents

RESP (COUNSEL): No. (The respondent challenges _____.)

If RESP challenges for lack of impartiality, the LA, PRES, or next senior member, as appropriate, determines the challenge. See paragraph 5-7. If sustaining a challenge results in less than a quorum, the board should recess until additional members are added. See paragraph 5-2b.

RCDR swears board members, if required. PRES then swears RCDR, if required.

RCDR: The board will be sworn.

All persons in the room stand while RCDR administers the oath. Each voting member raises his or her right hand as RCDR calls his or her name in administering the following oath:

RCDR: Do you, Colonel _____, Lieutenant Colonel _____, Major _____, swear (affirm) that you will faithfully perform your duties as a member of this board; that you will impartially examine and inquire into the matter now before you according to the evidence, your conscience, and the laws and regulations provided; that you will make such findings of fact as are supported by the evidence of record; that, in determining those facts, you will use your professional knowledge, best judgment, and common sense; and that you will make such recommendations as are appropriate and warranted by your findings, according to the best of your understanding of the rules, regulations, policies, and customs of the service, guided by your concept of justice, both to the Government and to individuals concerned, (so help you God)?

MEMBERS: I do.

The board members lower their hands but remain standing while the oath is administered to LA and to RCDR, if required.

PRES: Do you _____, swear (or affirm) that you will faithfully perform the duties of (legal advisor) (recorder) of this board, (so help you God)?

LA/RCDR: I do.

All personnel now resume their seats.

PRES may now give general advice concerning applicable rules for the hearing.

RCDR: The respondent was notified of this hearing on _____ 19_____.

RCDR presents a copy of the memorandum of notification with a certification that the original was delivered (or dispatched) to RESP (para 5-5) and requests that it be attached to the proceedings as Enclosure _____.

PRES: The copy of the memorandum of notification will be attached as requested.

Presentation of Evidence by the Recorder

RCDR may make an opening statement at this point to clarify the expected presentation of evidence.

RCDR then calls witnesses and presents other evidence relevant to the subject of the proceedings. RCDR should logically present the facts to help the board understand what happened. Except as otherwise directed by PRES, RCDR may determine the order of presentation of facts. The following examples are intended to serve as a guide to the manner of presentation, but not to the sequence.

RCDR: I request that this statement of (witness) be marked Exhibit _____ and received in evidence. This witness will not appear in person because _____.

LA (PRES): The statement will (not) be accepted.

RCDR may read the statement to the board if it is accepted.

RCDR: I request that this (documentary or real evidence) be marked as Exhibit _____ and received in evidence.

A foundation for the introduction of such evidence normally is established by a certificate or by testimony of a witness indicating its authenticity. LA (PRES) determines the adequacy of this foundation. If LA (PRES) has a reasonable basis to believe the evidence is what it purports to be, he or she may waive formal proof of authenticity.

Figure 3-1. Suggested procedure for board of officers with respondents—Continued

RCDR: The recorder and respondent have agreed to stipulate_____.

Before LA (PRES) accepts the stipulation, he or she should verify that RESP joins in the stipulation.

LA (PRES): The stipulation is accepted.

If the stipulation is in writing, it will be marked as an exhibit.

RCDR conducts direct examination of each witness called by RCDR or at the request of PRES or members. RESP or COUNSEL may then cross-examine the witness. PRES and members of the board may then question the witness, but PRES may control or limit questions by board members.

RCDR: The board calls_____ as a witness.

A military witness approaches and salutes PRES, then raises his or her right hand while RCDR administers the oath. A civilian witness does the same but without saluting. See MCM, Rules for Court-Martial 807, for further guidance with regard to oaths.

RCDR: Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth, (so help you God)?

If the witness desires to affirm rather than swear, the words "so help you God" will be omitted.

WITNESS: I do.

The witness then takes the witness chair. RCDR asks every witness the following question no matter who called the witness.

RCDR: What is your full name (grade, branch of service, organization, and station) (and address)?

Whenever it appears appropriate and advisable to do so, the board should explain the rights of a witness under Article 31 of the UCMJ or the Fifth Amendment to the Constitution. See paragraph 3-6c(5).

If the report of proceedings will be filed in a system of records under the witness's name, the board must advise that witness in accordance with the Privacy Act. See paragraph 3-7e. Normally, this requirement applies only to RESP.

RCDR then asks questions to develop the matter under consideration.

RCDR: The recorder has no further questions.

RESP (COUNSEL) may cross-examine the witness. RCDR may then conduct a redirect examination.

RCDR: Does the board have any questions?

Any board member wishing to question the witness should first secure the permission of PRES.

If RCDR and RESP (COUNSEL) wish to ask further questions after the board has examined the witness, they should seek permission from the PRES. PRES should normally grant such requests unless the questions are repetitive or go beyond the scope of questions asked by the board.

When all questioning has ended, PRES announces:

PRES: The witness is excused.

PRES may advise the witness as follows:

PRES: Do not discuss your testimony in this case with anyone other than the recorder, the respondent, or his or her counsel. If anyone else attempts to talk with you about your testimony, you should tell the person who originally called you as a witness.

Verbatim proceedings should indicate that the witness (except RESP) withdrew from the room.

Unless expressly excused from further attendance during the hearing, all witnesses remain subject to recall until the proceedings have ended. When a witness is recalled, the RCDR reminds such witness, after he or she has taken the witness stand:

RCDR: You are still under oath.

The procedure in the case of a witness called by the board is the same as outlined above for a witness called by RCDR.

Figure 3-1. Suggested procedure for board of officers with respondents—Continued

RCDR: I have nothing further to offer relating to the matter under consideration.

Presentation of Respondent's Evidence

RESP (COUNSEL): The respondent has (an) (no) opening statement.

RESP presents his or her stipulations, witnesses, and other evidence in the same manner as did RCDR. RCDR administers oath to all witnesses and asks the first question to identify the witness.

Should the RESP be called to the stand as a witness, the RCDR will administer the oath and ask the following preliminary questions, after which the procedure is the same as for other witnesses:

RCDR: What is your name, (grade, branch of service, organization, and station) (address, position, and place of employment)?

RESP: _____

RCDR: Are you the respondent in this case?

RESP: Yes.

The board may advise RESP of his or her rights under Article 31 of the UCMJ, or the Fifth Amendment of the Constitution. See paragraph 3-6c(5).

If the report of proceedings will be filed in a system of records under RESP's name, the board must advise RESP in accordance with the Privacy Act. See paragraph 3-7e.

When RESP has concluded his or her case, RESP announces:

RESP (COUNSEL): The respondent rests.

RCDR: The recorder has no further evidence to offer in this hearing. Does the board wish to have any witnesses called or recalled?

PRES: It does (not).

Closing Arguments and Deliberations

PRES: You may proceed with closing arguments. RCDR: The recorder (has no) (will make an) opening argument.

RCDR may make the opening argument and, if any argument is made on behalf of RESP, the rebuttal argument. Arguments are not required (see para 5-9). If no argument is made, RESP or RCDR may say:

RESP (COUNSEL)/RCDR: The (respondent) (recorder) submits the case without argument.

PRES: The hearing is adjourned.

Adjourning the hearing does not end the duties of the board. It must arrive at findings based on the evidence and make recommendations supported by those findings. See chapter 3, section II. Findings and recommendations need not be announced to RESP, but in certain proceedings, such as elimination actions, they customarily are. RCDR is responsible for compiling the report of proceedings and submitting properly authenticated copies thereof to the appointing authority. See chapter 3, section III.

Legend

PRES: President of the board of officers.

LA: Legal Advisor

LA(PRES): Legal Advisor, if one has been appointed; otherwise the board President.

RCDR: Recorder (junior member of the board if no recorder has been appointed). (If the board consists of only one member, that member has the responsibilities of both PRES and RCDR.)

RESP: Respondent.

RESP (COUNSEL): Respondent or respondent's counsel, if any.

Figure 3-1. Suggested procedure for board of officers with respondents—Continued

3-7. Rules of evidence and proof of facts

a. General. Proceedings under this regulation are administrative, not judicial. Therefore, an investigating officer or board of officers is not bound by the rules of evidence for trials by courts-martial or for court proceedings generally. Accordingly, subject only to the provisions of *c* below, anything that in the minds of reasonable persons is relevant and material to an issue may be accepted as evidence. For example, medical records, counseling statements, police reports, and other records may be considered regardless of whether the preparer of the record is available to give a statement or testify in person. All evidence will be given such weight as circumstances warrant. (See para 3-5 as to who decides whether to accept evidence.)

b. Official notice. Some facts are of such common knowledge that they need no specific evidence to prove them (for example, general facts and laws of nature, general facts of history, location of major elements of the Army, and organization of the Department of Defense (DOD) and its components), including matters of which judicial notice may be taken. (See Military Rules of Evidence (MRE) 201, sec II, part III, Manual for Courts-Martial, United States (MCM).)

c. Limitations. Administrative proceedings governed by this regulation generally are not subject to exclusionary or other evidentiary rules precluding the use of evidence. The following limitations, however, do apply:

(1) *Privileged communications.* MRE, section V, part III, MCM, concerning privileged communications between lawyer and client (MRE 502), privileged communications with clergy (MRE 503), and husband-wife privilege (MRE 504) apply. Present or former inspector general personnel will not be required to testify or provide evidence regarding information that they obtained while acting as inspectors general. They will not be required to disclose the contents of inspector general reports of investigations, inspections, inspector general action requests, or other memoranda, except as disclosure has been approved by the appropriate directing authority (an official authorized to direct that an inspector general investigation or inspection be conducted) or higher authority. (See AR 20-1, para 3-6.)

(2) *Polygraph tests.* No evidence of the results, taking, or refusal of a polygraph (lie detector) test will be considered without the consent of the person involved in such tests. In a formal board proceeding with a respondent, the agreement of the recorder and of any respondent affected is required before such evidence can be accepted.

(3) *“Off the record” statements.* Findings and recommendations of the investigating officer or board must be supported by evidence contained in the report. Accordingly, witnesses will not make statements “off the record” to board members in formal proceedings. Even in informal proceedings, such statements will not be considered for their substance, but only as help in finding additional evidence.

(4) *Statements regarding disease or injury.* A member of the Armed Forces will not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he or she has suffered. Any such statement against his or her interest is invalid (10 USC 1219) and may not be considered on the issue of the origin, incurrence, or aggravation of a disease or injury that the member concerned has suffered. A statement made and signed voluntarily by a soldier is not a statement that the soldier was “required to sign” within the meaning of this paragraph.

(5) *Ordering witnesses to testify.*

(a) No military witnesses or military respondents will be compelled to incriminate themselves, to answer any question the answer to which could incriminate them, or to make a statement or produce evidence that is not material to the issue and that might tend to degrade them (see UCMJ, Art. 31).

(b) No witnesses or respondents not subject to the UCMJ will be required to make a statement or produce evidence that would deprive them of rights against self-incrimination under the Fifth Amendment of the U.S. Constitution.

(c) A person refusing to provide information under (a) or (b) above must state specifically that the refusal is based on the protection afforded by UCMJ, Art. 31, or the Fifth Amendment. The investigating officer or board will, after consultation with the legal advisor or, if none has been appointed, the servicing JA, unless impractical to do so, decide whether the reason for refusal is well taken. If it is not, the witness may be ordered to answer.

(d) Whenever it appears appropriate and advisable, an investigating officer or board will explain their rights to witnesses or respondents. A soldier, for example, who is suspected of an offense under the UCMJ, such as dereliction of duty, will be advised of his or her rights under UCMJ, Art. 31, before being asked any questions concerning the suspected offense. The soldier will be given a reasonable amount of time to consult an attorney, if requested, before answering any such questions. No adverse inference will be drawn against soldiers who invoke that right under UCMJ, Art. 31. It is recommended that the procedure for explaining rights set forth on DA Form 3881 (Rights Warning Procedure/Waiver Certificate) be used.

(e) The right to invoke UCMJ, Art. 31, or the Fifth Amendment is personal. No one may assert the right for another person, and no one may assert it to protect anyone other than himself or herself. An answer tends to incriminate a person if it would make it appear that person is guilty of a crime.

(f) In certain cases the appropriate authority may provide a witness or respondent a grant of testimonial immunity

G



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

November 29, 2007

[REDACTED]
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Chemical
Battalion, Aberdeen Proving Ground, Maryland
(OSC File Numbers DI-07-2722, DI-07-3064, DI-
07-3065)

Dear [REDACTED]

I respectfully submit the following status report for the above captioned cases and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for these Office of Special Counsel (OSC) cases where OSC determined that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion (22nd CB), Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED], Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED] Chief, Echo Company.

To date, the following actions have been taken on these cases. On October 11, 2007, I forwarded the OSC correspondence for appropriate action to the United States Army Materiel Command (AMC), Office of the Command Counsel, Unfortunately, due to a re-organization, the 22nd CB was no longer part of AMC but had become part of the United States Army Forces Command (FORSCOM). On November 7, 2007, when I was made aware of this mistake, I immediately transferred this action to the FORSCOM Office of the Staff Judge Advocate (OSJA). As a result, valuable time had been lost. I requested that the FORSCOM OSJA take appropriate action, ensure that the matter is investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case.

Shortly, upon receiving the transferred action, the FORSCOM command group and COL [REDACTED] FORSCOM SJA, initiated an Army Regulation 15-6 investigation on November 9, 2007. (Enclosure 1). Unfortunately, given the initial loss of time described above, the FORSCOM investigation is still ongoing but should be

completed very shortly. This request for an extension is being made in order to complete that investigation and allow sufficient time for the FORSCOM OSJA to review the investigation, prepare and staff the draft Army report , and then forward it to OGC for further staffing and completion of the final Department of the Army report in satisfaction of the 5 USC § 1213 requirements. (Enclosure 2).

Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Associate Deputy General Counsel
(Human Resources)

Enclosures



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY 20TH SUPPORT COMMAND
5183 BLACKHAWK ROAD
ABERDEEN PROVING GROUND MD 21010-5424

AFCB-CG

9 November 2007

MEMORANDUM FOR Deputy Commanding Officer, 20th Support Command (CBRNE)

SUBJECT: Appointment of Investigating Officer

1. References:

a. Army General Counsel Letter, 7 Nov 07, subject: Whistleblower Investigation – Chemical Battalion, Aberdeen Proving Ground, Maryland (OSC File Numbers DI-07-2722, DI-07-3064, DI-07-3065) (encl 1).

b. US Office of Special Counsel Letter, 3 Oct 07, subject: OSC File Nos. DI-07-2722, DI-07-3064, DI-07-3065 (encl 2).

2. To implement a Department of the Army General Counsel request for an investigation (see references), I appoint you an Investigating Officer (IO) under the provisions of AR 15-6. You will investigate the issues and the questions listed below in paragraph 3. In making this investigation, you will consider the evidence of witnesses, the materials contained in the reference and any other materials that you consider relevant.

3. Your investigation will address the following issues and questions:

a. Determine whether Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22d Chemical Battalion, Aberdeen Proving Ground (APG), Maryland are improperly receiving hazard pay differentials for Equipment Specialists in violation of law, rule, or regulation; or as the result of gross mismanagement and/or abuse of authority. At a minimum, you will examine relevant agency time and attendance records beginning in July 2006 forward, but are not limited to these records if you discover additional relevant information outside this time period. Specifically, with regard to the references in paragraph 1(a) above:

(1) Determine when the witnesses [REDACTED] and [REDACTED] [REDACTED] became aware that the agency was erroneously paying hazard pay differentials. In what context did they become aware of that information? Who received this pay? What records exist regarding payment? Why did they believe this pay was not permitted? With whom did they consult regarding the propriety of employees receiving this pay? What immediate action did they take? Provide copies of all records of receipt of this pay to employees including locally produced time and attendance documents and any records kept IAW 5 C.F.R. § 550.904 (b) to substantiate hazardous duty pay.

Enclosure 1

AFCB-CG

SUBJECT: Appointment of Investigating Officer

(2) Determine when [REDACTED] first became aware of the questions regarding hazard pay differential. From whom did he receive this information? What action did he take? What statutory or regulatory authority did [REDACTED] rely upon? What supervisory responsibilities did he have concerning [REDACTED] and the employees alleged to have been paid the hazard pay differential?

(3) What is the supervisory chain of command in 22d Chemical Battalion? Provide a diagram, if possible. When did Mr. White notify LTC [REDACTED] Commander, 22d Chemical Battalion with his concerns regarding the hazard pay differential? What action did LTC [REDACTED] take? Interview LTC [REDACTED] as appropriate. Do employees continue to receive the hazard duty pay? If so, who certifies their entitlement to the pay? If not, when was this pay discontinued?

(4) Determine whether these allegations appear to be an isolated occurrence or a problem of a more systemic nature. Support this finding with specific facts.

(5) Carefully review all documentary evidence available concerning these allegations and determine whether the employees drawing hazard duty pay were performing their customary government employment duties. If you determine that these employees were performing work normally done by contract employees, make a specific finding to substantiate this conclusion supported by available evidence.

b. In your investigation, you are not limited to the questions listed above. You will investigate any relevant related matters. If you are in doubt about the relevance of a matter, you will consult your legal advisor, CPT [REDACTED], Command Judge Advocate, 20th Support Command (CBRNE), [REDACTED] e-mail: [REDACTED]@us.army.mil.

4. In conducting your investigation, you will use the informal procedures specified in AR 15-6. All witness statements will be written (typed or block printed) and sworn. If, in the course of your investigation, you suspect a witness of a criminal offense, you will advise the witness of his/her rights under Article 31, Uniform Code of Military Justice, or the Fifth Amendment, as appropriate. You will provide each witness with a Privacy Act statement before soliciting any personal information.

5. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

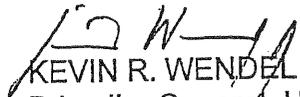
AFCB-CG

SUBJECT: Appointment of Investigating Officer

6. You will submit your completed investigation on a DA Form 1574 with a table of contents and enclosures. The enclosures will include all documentary materials considered by you. Before beginning your investigation, you will receive a legal briefing from CPT [REDACTED]. You may consult the legal advisor at any time during the investigation and you will consult the legal advisor before warning any witness as a suspect and before putting your report in final form. Additionally, along with your report of investigation, you will submit a draft final agency response describing any actions taken to address the allegations. The parameters of the draft are outlined in reference 1(a).

7. You will submit your report to me not later than 4 December 2007, 1700 hours. If you find that you need additional time to complete the investigation properly, you will contact the legal advisor and request an extension.

2 Encls
as


KEVIN R. WENDEL
Brigadier General, U.S. Army
Commanding



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GA 30330-1062

REPLY TO
ATTENTION OF

AFCG-JA-ML

29 November 2007

MEMORANDUM FOR Associate Deputy General Counsel (Human Resources), Office of the Army General Counsel (ATTN: [REDACTED]), 104 Army Pentagon, Room 3C546, Washington, D.C. 20310-0104

SUBJECT: Request for Extension, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-07-3064, DI-07-3065

1. On 9 November 2007, BG Kevin R. Wendel appointed his Deputy Commanding Officer, COL [REDACTED] to investigate the Whistleblower complaints raised in the above referenced Office of Special Counsel files. A copy of the appointment memorandum is attached. The investigation is complex and requires multiple witness interviews. COL [REDACTED] legal advisor, CPT [REDACTED], advises me that he will require a brief extension of his suspense date to complete the ROI. Hence, on behalf of 20th Support Command, I request an extension for additional time in which to review the investigation report and prepare the draft Army report for OSC. I will monitor the progress of the investigation to ensure timely completion.

2. Please contact me by phone at [REDACTED] or by email at [REDACTED]@forscom.army.mil if you have any questions concerning this request.

Encl
as

[REDACTED]
COL, JA
Staff Judge Advocate

cf:
Cdr, 20th Sup Com

Enclosure 2

H



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

February 5, 2008

[REDACTED]
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Chemical
Battalion, Aberdeen Proving Ground, Maryland
(OSC File Numbers DI-07-2722, DI-07-3064, DI-
07-3065)

Dear [REDACTED]

I respectfully submit the following status report for the above captioned cases and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for these Office of Special Counsel (OSC) cases where OSC determined that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion (22nd CB), Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED], Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED] Chief, Echo Company.

To date, the following actions have been taken on these cases. On October 11, 2007, I forwarded the OSC correspondence for appropriate action to the United States Army Materiel Command (AMC), Office of the Command Counsel, Unfortunately, due to a re-organization, the 22nd CB was no longer part of AMC but had become part of the United States Army Forces Command (FORSCOM). On November 7, 2007, when I was made aware of this mistake, I immediately transferred this action to the FORSCOM Office of the Staff Judge Advocate (OSJA). As a result, valuable time had been lost. I requested that the FORSCOM OSJA take appropriate action, ensure that the matter is investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case.

Shortly, upon receiving the transferred action, the FORSCOM command group and COL [REDACTED], FORSCOM SJA, forwarded to BG Kevin Wendel, Commander, U.S. Army 20th Support Command, Aberdeen Proving Ground, Maryland, a request to initiate an Army Regulation 15-6 investigation into the OSC referred allegations. On

November 9, 2007, BG Wendel appointed COL [REDACTED] to investigate the allegations. Unfortunately, given the initial loss of time described above, completion of the investigation and full staffing within the FORSCOM/20th Support Command as well as with OGC and other Department of the Army elements could not be completed in time before the OSC suspense date of December 3, 2007. Consequently, based on a request by COL [REDACTED] dated November 29, 2007, on that same day, I requested an extension of time to complete this process and forward the final Army report to OSC. On December 1, 2007, OSC granted an extension to provide additional time to forward the § 1213 Agency report to OSC by February 5, 2008.

COL [REDACTED] completed his investigation and forwarded his AR 15-6 Report of Investigation (ROI) to BG Wendel on December 4, 2007. BG Wendel approved the ROI. On December 11, 2007, COL [REDACTED] forwarded the ROI to OGC for review. On January 7, 2008, I conducted a teleconference with COL [REDACTED] to discuss the ROI. There were several matters that needed to be more fully developed and I requested that a supplemental investigation be undertaken to address those issues, including answering the threshold question if the subject Equipment Specialists were entitled to receive Hazardous Duty Pay. In response, on January 8, 2008, COL [REDACTED] advised BG Wendel about the additional issues that needed to be further addressed. Though efforts were begun by the IO to address these additional matters in a supplemental ROI, progress reports that COL [REDACTED] provided to me since then indicated that assistance from FORSCOM resources may be needed to move that effort further along. In response, COL [REDACTED] forwarded the enclosed request for an extension since all of these efforts could not be completed by the end of the current suspense period. (Enclosure 1).

Therefore, this request for an extension is being made in order to complete that supplemental investigation and allow sufficient time for the FORSCOM OSJA to review the investigation, prepare and staff the draft Army report, and then forward it to OGC for further staffing and completion of the final Department of the Army report in satisfaction of the 5 USC § 1213 requirements.

Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]
[REDACTED] #1
[REDACTED]
Associate Deputy General Counsel
(Human Resources)



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GA 30330-1062

REPLY TO
ATTENTION OF

AFCG-JA-ML

1 February 2008

MEMORANDUM FOR Associate Deputy General Counsel (Human Resources), Office of the General Counsel (ATTN: [REDACTED], 104 Army Pentagon, Room 3C546, Washington, DC 20310-0104

SUBJECT: Request for Extension, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-07-3064, DI-07-3065

1. On 9 November 2007, BG Kevin R. Wendel appointed his Deputy Commanding Officer, COL [REDACTED] to investigate the Whistleblower complaints raised in the above referenced OSC files. Due to the complexity of the investigation, I have returned it on two occasions (encl) to 20th Support Command for further investigation and submission of a Supplemental ROI (SROI). The investigation is extremely complex and requires additional witness interviews and gathering of new evidence to support the investigating officer's findings and recommendations. COL [REDACTED] advises me that he will require an extension of his suspense date to complete the ROI. Hence, on behalf of 20th Support Command, I request an extension until 4 April 2008.

2. It is my current intent, based on telephonic coordination with COL [REDACTED] to hold a teleconference next week to discuss the way forward. Additionally, if required, this office will send an attorney TDY to 20th Support Command to assist in completion of the investigation. I will continue to work with 20th Support Command and monitor the progress of the investigation to ensure timely completion.

3. Please contact me by phone at [REDACTED] or by email at [REDACTED]@forscom.army.mil if you have any questions concerning this request.

Encl
as

[REDACTED]
COL, JA
Staff Judge Advocate

cf:
Cdr, 20th Sup Com

Enclosure



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GA 30330-1062

REPLY TO
ATTENTION OF

AFCG-JA-ML

1 February 2008

MEMORANDUM FOR Associate Deputy General Counsel (Human Resources), Office of the General Counsel (ATTN: [REDACTED]), 104 Army Pentagon, Room 3C546, Washington, DC 20310-0104

SUBJECT: Request for Extension, Whistleblower Investigation, OSC Files Nos. DI-07-2722, DI-07-07-3064, DI-07-3065

1. On 9 November 2007, BG Kevin R. Wendel appointed his Deputy Commanding Officer, COL [REDACTED], to investigate the Whistleblower complaints raised in the above referenced OSC files. Due to the complexity of the investigation, I have returned it on two occasions (encl) to 20th Support Command for further investigation and submission of a Supplemental ROI (SROI). The investigation is extremely complex and requires additional witness interviews and gathering of new evidence to support the investigating officer's findings and recommendations. COL [REDACTED] advises me that he will require an extension of his suspense date to complete the ROI. Hence, on behalf of 20th Support Command, I request an extension until 4 April 2008.

2. It is my current intent, based on telephonic coordination with COL [REDACTED] to hold a teleconference next week to discuss the way forward. Additionally, if required, this office will send an attorney TDY to 20th Support Command to assist in completion of the investigation. I will continue to work with 20th Support Command and monitor the progress of the investigation to ensure timely completion.

3. Please contact me by phone at [REDACTED] or by email at [REDACTED]@forscom.army.mil if you have any questions concerning this request.

Encl
as

[REDACTED]
COL, JA
Staff Judge Advocate

cf:
Cdr, 20th Sup Com





DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

April 4, 2008

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Chemical
Battalion, Aberdeen Proving Ground, Maryland
(OSC File Numbers DI-07-2722, DI-07-3064, DI-
07-3065)

Dear Ms. McMullen:

I respectfully submit the following status report for the above captioned cases and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for these Office of Special Counsel (OSC) cases where OSC determined that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion (22nd CB), Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED] [REDACTED] Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED] Chief, Echo Company.

To date, the following actions have been taken on these cases. On October 11, 2007, I forwarded the OSC correspondence for appropriate action to the United States Army Materiel Command (AMC), Office of the Command Counsel, Unfortunately, due to a re-organization, the 22nd CB was no longer part of AMC but had become part of the United States Army Forces Command (FORSCOM). On November 7, 2007, when I was made aware of this mistake, I immediately transferred this action to the FORSCOM Office of the Staff Judge Advocate (OSJA). As a result, valuable time had been lost. I requested that the FORSCOM OSJA take appropriate action, ensure that the matter is investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case.

Shortly, upon receiving the transferred action, the FORSCOM command group and COL [REDACTED] FORSCOM SJA, forwarded to BG Kevin Wendel, Commander, U.S. Army 20th Support Command, Aberdeen Proving Ground, Maryland, a request to initiate an Army Regulation 15-6 investigation into the OSC referred allegations. On

November 9, 2007, BG Wendel appointed COL [REDACTED] to investigate the allegations. Unfortunately, given the initial loss of time described above, completion of the investigation and full staffing within the FORSCOM/20th Support Command as well as with OGC and other Department of the Army elements could not be completed in time before the OSC suspense date of December 3, 2007. Consequently, based on a request by COL [REDACTED], dated November 29, 2007, on that same day, I requested an extension of time to complete this process and forward the final Army report to OSC. On December 1, 2007, OSC granted an extension to provide additional time to forward the § 1213 Agency report to OSC by February 5, 2008.

COL [REDACTED] completed his investigation and forwarded his AR 15-6 Report of Investigation (ROI) to BG Wendel on December 4, 2007. BG Wendel approved the ROI. On December 11, 2007, COL [REDACTED] forwarded the ROI to OGC for review. On January 7, 2008, I conducted a teleconference with COL [REDACTED] to discuss the ROI. There were several matters that needed to be more fully developed and I requested that a supplemental investigation be undertaken to address those issues, including answering the threshold question if the subject Equipment Specialists were entitled to receive Hazardous Duty Pay. In response, on January 8, 2008, COL [REDACTED] advised BG Wendel about the additional issues that needed to be further addressed. Since the investigation was more complex than originally contemplated and required gathering testimony from additional witnesses, the FORSCOM SJA, COL Goetzke, concluded that it would be best if he assigned an attorney from his office to assist in the supplemental investigation. He assigned LTC [REDACTED], Chief of the FORSCOM Military Law division, to that task.

On March 13, 2008, COL [REDACTED] advised me that sufficient evidence had been gathered during the supplemental investigation and wanted to provide me with a status report on those efforts, to date. Upon receiving an advance copy of the gathered evidence and reviewing it, we were able to have an extensive status update and substantive discussion of this evidence in a telephone conference held on March 26, 2008. As a result, COL [REDACTED] is currently working toward the completion of the supplemental investigation and preparing the draft Army report that will be based on the evidence gathered during these investigations, all of which will be submitted to OSC in satisfaction of the 5 USC § 1213 report requirement. Completion of these efforts and the preparation of the final Army report cannot be completed within the current suspense period. Therefore, COL [REDACTED] forwarded the enclosed request for an extension so he could complete his efforts and forward these documents to OGC for further review and staffing before the final Army report is submitted to OSC. (Enclosure 1).

Therefore, this request for an extension of time is being made to provide for additional time within which FORSCOM can complete its actions and forward these documents to OGC. In turn, OGC will need additional time within which to properly prepare and staff the draft Army report so the final Army report can be forwarded to OSC in satisfaction of the 5 USC § 1213 requirements.

Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending

action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]

Associate Deputy General Counsel
(Human Resources)

Enclosure

J



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

June 6, 2008

[REDACTED]
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Chemical
Battalion, Aberdeen Proving Ground, Maryland
(OSC File Numbers DI-07-2722, DI-07-3064, DI-
07-3065)

Dear [REDACTED]

I respectfully submit the following status report for the above captioned cases and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for these Office of Special Counsel (OSC) cases where OSC determined that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion (22nd CB), Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED] [REDACTED] Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED], Chief, Echo Company.

To date, the following actions have been taken on these cases. On October 11, 2007, I forwarded the OSC correspondence for appropriate action to the United States Army Materiel Command (AMC), Office of the Command Counsel, Unfortunately, due to a re-organization, the 22nd CB was no longer part of AMC but had become part of the United States Army Forces Command (FORSCOM). On November 7, 2007, when I was made aware of this mistake, I immediately transferred this action to the FORSCOM Office of the Staff Judge Advocate (OSJA). As a result, valuable time had been lost. I requested that the FORSCOM OSJA take appropriate action, ensure that the matter is investigated, and to prepare a draft report of findings for submission to OSC as required by 5 USC §1213 for the above captioned OSC case.

Shortly, upon receiving the transferred action, the FORSCOM command group and COL [REDACTED] FORSCOM SJA, forwarded to BG Kevin Wendel, Commander, U.S. Army 20th Support Command, Aberdeen Proving Ground, Maryland, a request to initiate an Army Regulation 15-6 investigation into the OSC referred allegations. On

November 9, 2007, BG Wendel appointed COL [REDACTED] to investigate the allegations. Unfortunately, given the initial loss of time described above, completion of the investigation and full staffing within the FORSCOM/20th Support Command as well as with OGC and other Department of the Army elements could not be completed in time before the OSC suspense date of December 3, 2007. Consequently, based on a request by COL [REDACTED], dated November 29, 2007, on that same day, I requested an extension of time to complete this process and forward the final Army report to OSC. On December 1, 2007, OSC granted an extension to provide additional time to forward the § 1213 Agency report to OSC by February 5, 2008.

COL [REDACTED] completed his investigation and forwarded his AR 15-6 Report of Investigation (ROI) to BG Wendel on December 4, 2007. BG Wendel approved the ROI. On December 11, 2007, COL Goetzke forwarded the ROI to OGC for review. On January 7, 2008, I conducted a teleconference with COL [REDACTED] to discuss the ROI. There were several matters that needed to be more fully developed and I requested that a supplemental investigation be undertaken to address those issues, including answering the threshold question if the subject Equipment Specialists were entitled to receive Hazardous Duty Pay. In response, on January 8, 2008, COL [REDACTED] advised BG Wendel about the additional issues that needed to be further addressed. Since the investigation was more complex than originally contemplated and required gathering testimony from additional witnesses, the FORSCOM SJA, COL [REDACTED] concluded that it would be best if he assigned an attorney from his office to assist in the supplemental investigation. He assigned LTC [REDACTED], Chief of the FORSCOM Military Law division, to that task.

On March 13, 2008, COL [REDACTED] advised me that sufficient evidence had been gathered during the supplemental investigation and wanted to provide me with a status report on those efforts, to date. Upon receiving an advance copy of the gathered evidence and reviewing it, we were able to have an extensive status update and substantive discussion of this evidence in a telephone conference held on March 26, 2008. As a result, COL [REDACTED] was able to complete the supplemental investigation and prepare the draft Army report that is based on the evidence gathered during these investigations, all of which will be submitted to OSC in satisfaction of the 5 USC § 1213 report requirement. He forwarded these documents to OGC on April 23, 2008. At the present time, OGC is in the process of reviewing these documents to ensure that all necessary lines in inquiry have been completed. Also, once that is completed, OGC will be staffing the draft report with other headquarters elements in order to finalize the final Army report. All of these efforts and the preparation of the final Army report cannot be completed within the current suspense period.

Therefore, this request for an extension of time is being made to provide for additional time within which OGC can complete the above actions so the final Army report can be forwarded to OSC in satisfaction of the 5 USC § 1213 requirements.

Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending

action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]

Associate Deputy General Counsel
(Human Resources)

Enclosure

K



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

August 13, 2008

[REDACTED]
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Chemical
Battalion, Aberdeen Proving Ground, Maryland
(OSC File Numbers DI-07-2722, DI-07-3064, DI-
07-3065)

Dear [REDACTED]

I respectfully submit the following status report for the above captioned cases and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for these Office of Special Counsel (OSC) cases where OSC determined that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion (22nd CB), Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED] [REDACTED] Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED], Chief, Echo Company.

You granted a previous request for an extension for sixty days on June 9, 2008, and agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken since you granted the June 2008 extension request. As you may recall, an initial Army Regulation 15-6 investigation into the OSC referred allegations was initiated by BG Kevin Wendel, Commander, U.S. Army 20th Support Command, Aberdeen Proving Ground, Maryland, at the request of its higher headquarters, the FORSCOM command group and COL [REDACTED], FORSCOM SJA, the appropriate Army organization with responsibility over the APG 22nd Chemical Battalion). The investigative report that resulted from that effort was completed. However, upon its review, I requested that COL [REDACTED] initiate a supplemental investigation since several matters needed to be more fully developed including answering the threshold question if the subject Equipment Specialists were entitled to receive Hazardous Duty Pay. Since the investigation was more complex than originally contemplated and required gathering

testimony from additional witnesses, the FORSCOM SJA, COL ██████████ concluded that it would be best if he assigned an attorney from his office to assist in the supplemental investigation. He assigned LTC ██████████ Chief of the FORSCOM Military Law division, to that task.

On March 13, 2008, COL ██████████ advised me that sufficient evidence had been gathered during the supplemental investigation and wanted to provide me with a status report on those efforts, to date. Upon receiving an advance copy of the gathered evidence and reviewing it, we were able to have an extensive status update and substantive discussion of this evidence in a telephone conference held on March 26, 2008. As a result, COL ██████████ was able to complete the supplemental investigation and prepare the draft Army report that was based on the evidence gathered during these investigations, all of which will be submitted to OSC in satisfaction of the 5 USC § 1213 report requirement. He forwarded these documents to OGC on April 23, 2008.

A review of those documents was underway, but could not be completed within the time period provided by the previous extension request of June 6, 2008. Consequently, in response to my June 6, 2008 request for an extension of time to provide the Army with additional time to complete its review and submit the final Army report, you granted my request on June 9, 2008. Since then, OGC completed its review of COL ██████████ submissions and concluded that additional inquiries and fact gathering was necessary in order to more fully address the OSC referred allegations. On June 24, 2008, OGC requested additional clarifying information from COL ██████████ and his team. This additional information was provided to OGC for its consideration on July 2, 2008. Upon reviewing this submission to ensure that all necessary lines of inquiry had been completed, I concluded that another teleconference was necessary to address my questions and further necessary avenues for fact gathering. On August 4, 2008, a teleconference was held and due outs from that teleconference are expected to be provided to me by the end of this week. The lengthy discussion revealed that several of the issues at hand were more complex and multi-faceted than originally envisioned. Participants at this teleconference included FORSCOM attorneys, civilian personnel specialists, and a functional expert for the subject 22nd CB employees. I also included a subject matter expert from the Headquarters Army civilian personnel community in the teleconference. Once I receive this information, additional time will be needed to review the information, incorporate it into the draft final report, and staff the draft report with other headquarters elements in order to finalize the final Army report. All of these efforts and the preparation of the final Army report cannot be completed within the current suspense period.

Therefore, this request for an extension of time is being made to provide for additional time within which OGC can complete the above actions so the final Army report can be forwarded to OSC in satisfaction of the 5 USC § 1213 requirements.

Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending

action or be able to submit the final Department of the Army report to the Special Counsel.

I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]

Associate Deputy General Counsel
(Human Resources)

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

October 10, 2008

[REDACTED]
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Chemical
Battalion, Aberdeen Proving Ground, Maryland
(OSC File Numbers DI-07-2722, DI-07-3064, DI-
07-3065)

Dear [REDACTED]

I respectfully submit the following status report for the above captioned cases and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for these Office of Special Counsel (OSC) cases where OSC determined that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists at the Department of the Army Analytical and Remediation Directorate, 22nd Chemical Battalion (22nd CB), Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED] and [REDACTED] [REDACTED] Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED] Chief, Echo Company.

You granted a previous request for an extension for sixty days on August 19, 2008, and agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel. To date, the following actions have been taken since you granted the August 2008 extension request.

As you may recall, an initial Army Regulation 15-6 investigation into the OSC referred allegations was initiated by BG Kevin Wendel, Commander, U.S. Army 20th Support Command, Aberdeen Proving Ground, Maryland, at the request of its higher headquarters, the FORSCOM command group and COL [REDACTED] FORSCOM SJA, the appropriate Army organization with responsibility over the APG 22nd Chemical Battalion). The investigative report that resulted from that effort was completed. However, upon its review, I requested that COL [REDACTED] initiate a supplemental investigation since several matters needed to be more fully developed including answering the threshold question if the subject Equipment Specialists were entitled to receive Hazardous Duty Pay. Since the investigation was more complex than originally

contemplated and required gathering testimony from additional witnesses, the FORSCOM SJA, COL [REDACTED], concluded that it would be best if he assigned an attorney from his office to assist in the supplemental investigation. He assigned LTC [REDACTED] Chief of the FORSCOM Military Law division, to that task.

The supplemental investigation was completed and forwarded to OGC on April 23, 2008. OGC concluded that additional inquiries and fact gathering was necessary in order to more fully address the OSC referred allegations and requested additional clarifying information on June 24, 2008 that was provided to OGC for its consideration on July 2, 2008. Upon reviewing this submission to ensure that all necessary lines of inquiry had been completed, I held a teleconference on August 4, 2008 to address my questions and pursue further avenues for fact gathering particularly since several of the issues at hand were more complex and multi-faceted than originally envisioned. Participants at this teleconference included FORSCOM attorneys, civilian personnel specialists, a functional expert for the subject 22nd CB employees and a subject matter expert from the Headquarters Army civilian personnel community. On August 13, 2008 to complete this follow up action and prepare and submit the Army's 5 USC § 1213 report, OGC requested an extension to time. Subsequent to OSC granting this request on August 19, 2008, additional documents were provided by the FORSCOM team.

However, after a review of those documents and several follow up discussions that were held in September 2008 to discuss that submission, there are still additional questions must be answered centering around the threshold question if the subject Equipment Specialists were entitled to receive Hazardous Duty Pay. Because the resolution of this issue remains unclear, another teleconference is being scheduled for next week to provide greater clarity on this threshold question. I anticipate closure on this matter shortly thereafter. At which time, I will be able to incorporate this information into the draft final report, staff the draft report with other headquarters elements, and then finalize the final Army report.

Because all of these efforts and the preparation of the final Army report cannot be completed within the current suspense period, this request for an extension of time is being made to provide for additional time within which OGC can complete the above actions so the final Army report can be forwarded to OSC in satisfaction of the requirements. Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel. I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]
Associate Deputy General Counsel
(Human Resources)

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DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

December 22, 2008

[REDACTED]
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Chemical
Battalion, Aberdeen Proving Ground, Maryland
(OSC File Numbers DI-07-2722, DI-07-3064, DI-
07-3065)

Dear [REDACTED]:

I respectfully submit the following status report for the above captioned cases and request that you grant an extension of time to file the Department of the Army's report required by 5 USC §1213 for these Office of Special Counsel (OSC) cases where OSC determined that information provided by three whistleblowers with first-hand knowledge, discloses that there is a substantial likelihood that Equipment Specialists (EOD) at the Department of the Army 22nd Chemical Battalion (22nd CB), Aberdeen Proving Ground, (APG), Maryland, may be improperly receiving hazard pay differentials for Equipment Specialists in violation of a law, rule, regulation, gross mismanagement, and an abuse of authority. There are three whistleblowers who have made these allegations: [REDACTED], [REDACTED] and [REDACTED], Army APG Toxic Material Control Operator Supervisors, and their supervisor, [REDACTED], Chief, Echo Company.

You granted a previous request for an extension for sixty days on October 14, 2008, and agreed that I would provide a status update on this pending action within sixty days or if the outstanding action had been completed, then the final Department of the Army report would be submitted to the Special Counsel.

Since the last extension request was granted, the Army has been working diligently to prepare the final Army report in satisfaction of 5 USC §1213. There have been several teleconferences held since October to include two in November and one last week, as well as continuous dialog between myself and members of the team. Additional documents and testimony have been gathered for inclusion in the report. These efforts have been undertaken to ensure that the report presents a complete and thorough presentation of the facts and analysis of the allegations and the supporting documentary and testimonial evidence.

We are in the final stages of this effort, and respectfully request that additional time be granted in order to complete report, properly staff it at the Department of the Army level, and then forward it for final approval and transmission to OSC in satisfaction

of the requirements. Should you grant this extension, please advise me as to length of the extension. Within that allotted time, I will either provide you another status update on this pending action or be able to submit the final Department of the Army report to the Special Counsel. I appreciate your assistance in considering the extension request. To advise me if this extension will be granted, you can reach me at [REDACTED]

[REDACTED]

Associate Deputy General Counsel
(Human Resources)