

**TAB D**

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management.
DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION: Bldg 4220, APG-EA, MD. 21010
2. DATE (YYYYMMDD): 2007/01/25
3. TIME: 0810
4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME: Crouse, Dennis O.
6. SSN: [REDACTED]
7. GRADE/STATUS: [REDACTED]
8. ORGANIZATION OR ADDRESS: HHC 22d Chem BN (TE) Bldg 1942 APG-EA, MD.21010

9. I, Dennis Crouse, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
Q. Have you ever seen or been the victim of any instances of threats, intimidation, favoritism, or theft of government property by Mr. White, Mr. Penhollow, or Mr. Swinson?
A. No. I have seen that Mr. Penhollow has his "boys," there is a small group of people that act as his second in command.
Q. Who are those people?

A. I would rather not say?
Q. Have you ever worked with Mr. Swinson on a site?

A. Yes
Q. Have you ever observed Mr. Swinson yelling at, or belittling and employee?
A. No

Q. Has Mr. Swinson ever mentioned a "leave banking" program to you?
A. No
Q. Have you ever noticed any unusual actions by Mr. Swinson with regards to timecards?

A. No
Q. Have you ever worked with Mr. Penhollow on a site?
A. Yes

Q. Have you ever seen any unusual practices with respect to time cards from Mr. Penhollow?
A. No
Q. Have you ever heard of an incident where Mr. Penhollow had an issue with his own timecard?

A. I have heard roomers, but I was not on that site.

10. EXHIBIT: W
11. INITIALS OF PERSON MAKING STATEMENT: [Signature]
PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

9. STATEMENT (Continued)

Q. Have you ever seen a sheep sex doll on display in Mr. Penhollow's team room?

A. Yes, an employee gave it to him as a gag (joke) as that person left the company, first they put it in his pickup truck, but he did not see it, so they moved it into the office.

Q. How long was it out?

A. I do not recall

Q. About what time does Mr. Penhall arrive for work in the morning?

A. Lately, he has been here before me. Other times he arrives after me, I do know that he stays late often.

Q. Have you ever had any issues with Mr. White?

A. No, He is very professional; I have very high regards for Mr. White.

Q. Is there anything else you would like to add?

A. I have never seen any instances of theft. Mr. Swinson in particular would never steal anything. I have seen Mr. Swinson use his own money to purchase items for the unit.

Q. Do you know if Mr. Swinson was reimbursed for those purchases?

A. I believe he said that he was not going to worry about it; it was two fuel nozzles to get the heathers working.

~~Doc NOTHING follows Doc  
Doc NOTHING follows Doc~~

AFFIDAVIT

I, Dennis Crouse, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

Dennis O. Crouse  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 25th day of January, 2007 at Bldg 4220

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

Wayne Hyman MAJ, OD  
(Signature of Person Administering Oath)

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

Wayne Hyman MAJ, OD  
(Typed Name of Person Administering Oath)

AR-15  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT DOC

# TAB E



DEPARTMENT OF THE ARMY  
US ARMY RESEARCH, DEVELOPMENT AND ENGINEERING COMMAND  
5183 BLACKHAWK ROAD  
ABERDEEN PROVING GROUND MD 21010-5424

REPLY TO  
ATTENTION OF

AMSRD-IG (20-1a)

8 January 2007

MEMORANDUM FOR Commander, 22<sup>nd</sup> Chemical Battalion (TE), 5183 Blackhawk Road, Aberdeen Proving Ground, Maryland 21010-5424

SUBJECT: Report of the Research, Development and Engineering Command (RDECOM) Inspector General (IG) Survey and Sensing Sessions

1. The attached report consists of the results from our web based RDECOM IG survey and consolidated group discussion comments for the three sensing sessions that we conducted with groups of employees from the 22<sup>nd</sup> Chemical Battalion on 11-13 December 2006. We suggest that after reviewing the report, that you share the results with your employees through a Town Hall meeting or some other appropriate forum. ~~No Inspector Action Requests were received during the group sessions.~~

2. Request that this memorandum be retained for the period specified for common mission files listed in AR 25-400-2, applicable to your organization.

*Ernest L. Morgan*  
ERNEST L. MORGAN  
Inspector General

2 Encls  
as

EXHIBIT B

1. My primary career concerns are most closely related to:

- 47 Job satisfaction
  - 44 Promotion opportunities
  - 41 Job security (reshape, reorganization, A-76, downsizing, etc)
  - 25 I am satisfied with my career
  - 24 Individual training opportunities
  - 13 Performance planning and evaluation
  - 5 Other (see following written comments)
- 
- a. Transitioning out of military service
  - b. I feel managers are not telling employees the true story of what will become with this.
  - c. Making a difference. I want to have a lasting, positive impact on this organization.
  - d. No room for upward mobility for administrative types even when job requirements.
  - e. There are NOT any requirement in this battalion by the command (or NCO Support Channel).
  - ~~f. Everything is geared to the professional development and progression of the military and no focus on civilians.~~
  - g. Career planning and family welfare.
  - h. Good leadership and management.

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2. I could get my job done better if I had:

- 32 I am satisfied with my job performance
- 28 Adequate equipment and supplies
- 25 Clearer guidance from my supervisor/team leader
- 22 Supportive and available co-workers
- 21 Clear and reasonable policies/rules
- 14 Adequate feedback from my supervisor/team leader
- 11 Adequate training
- 11 Better understanding of the unit's mission
- 9 Other (see following written comments)

- a. Support from my command
- b. Not assigned additional duties right before transitioning, and time to prepare for separation.
- c. Personnel
- d. Managers/supervisors make a decision once and then five minutes later it can be changed. They can't make a decision and stick with it.
- e. Supplies. Why does the BN XO control company budgets? Why do FG Officers not have their own ability to purchase office supplies? Also, I need competent and qualified NCO's to flesh out the team-not new privates fresh from AIT.
- f. None
- g. The battalion staff and HQ no longer seems to support the teams in any aspect.
- h. More communication needed, i.e., daily meetings.
- i. Help in my office. People are leaving and not being replaced (civilians) to make room for more military.
- j. If the EOD was put into a stand-alone Company.
- k. Leaders that are approachable and had better communication and leadership skills.
- l. The PPE and NBC detection technology we civilians are using is an absolute disgrace. For example we are still using the Interspiro SCBA rigs from 15 years ago. Every end of fiscal year we are asked to submit ideas for purchasing new equipment from our management at B Company and every year they take our suggestions and throw them out. Nobody cares about the guys who are actually getting the work done and keeping the battalion alive. The chief and supervisors at the company are afraid of change and that is what this company needs desperately.

3. The training that could help me most in my job is:

- 43 Job related technical skills
- 23 My training needs are being met
- 22 Dealing with difficult people
- 18 Time/schedule management
- 15 Work planning and evaluation
- 14 Communication skills
- 12 Administrative skills
- 7 Automation skills
- 3 Other (see following written comments)

- a. Managers/supervisors need to have more faith in the lower ranking personnel. Trust is not a word in this organization. Management is getting involved in too many jobs and they have no clue as to how it is accomplished.
- b. Not for me, but for the staff. Every suspense I get from the BN Staff is the same: **NOW**. There is minimal thought or planning on reasonable suspenses. Staffers need to be efficient. Green tabs need to be effective.
- c. More hands on-Demo work
- d. It seems that you receive the basic required training for this job and that is it.  
~~There is no advance schooling we are sent to. There is no refresher courses either~~  
except for annual required refreshers. There are plenty of classes out there related to the CBRNE career field that would advance this unit's knowledge and capabilities.

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4. The following is true of my supervisor:

- 51 Is a good supervisor to work for
- 43 Is concerned about the welfare of subordinate employees
- 42 Actively listens to subordinate employees
- 30 Cares about being a good supervisor
- 29 Cares about making this a better organization
- 27 Actively involves subordinates in daily ops planning
- 24 Is interested in training opportunities for subordinate employees
- 18 Shows favoritism to selected employees
- 11 Holds grudges against or dislikes some employees
- 5 Other (see following written comments)

- a. Am unclear as to who my supervisor is.
- b. Supervisors/managers may listen but they don't hear what we are saying.
- c. I like working for my supervisor, but he does show favoritism.
- d. All of my EOD supervisors are outstanding leaders.
- e. My supervisor is unapproachable, vulgar and arrogant. The B Company Chief Supervisor holds grudges and favors select employees.
- f. ~~My supervisor has displayed both verbally and in writing a tendency towards prejudice concerning performance appraisals. Has stated that he has no regard for my duties as described in my position description. Has abused his authority for negative unjustified and unmitigated counseling during unpaid time. Has treated myself and co-workers in a less than professional manner.~~
- g. My supervisor should not be in charge of a broom closet let alone 10-14 individuals. This is an issue that has been going on for years and will continue as long as a certain "B Company Chief" remains in that position. This battalion has let this go on for so long that it has become a cancer which is slowly bringing the civilian side of Technical Escort to it's demise.

5. Problems which most affect my section's working environment are:

- 47     Uncertainties/constant change
- 32     The climate in my office is satisfactory
- 18     Apathy/burnout
- 14     Moral/ethical problems
- 7      Threatening behaviors
- 5      Cultural/racial/religious differences
- 2      Gender discrimination
- 2      Age discrimination
- 2      Substance abuse
- 12     Other (see following written comments):

- a. Too many senior NCO's simply come here for "Resume experience". I have not heard of anyone re-enlisting, nor is there any push at all. The only thing I ever hear about from leaders at all levels are the tremendous opportunities that await us on the outside. To me, we are failing as leaders.
- b. Poor communication.
- c. Everything is good with my work environment.
- d. ~~Unit does not want to cause waves or change.~~
- e. Subcontractors
- f. The Chemical Command not truly knowing the mission of Tech Escort.
- g. Work load is not evenly distributed.
- h. The B Company Chief Supervisor encourages two of his subordinate supervisors to continually harass and intimidate many of the subordinate employees. This has caused many of the subordinate employees to resign from their current employment with the unit.
- i. Working together. Also people that are willing to work rather than hiding from work or trying to get out of work.
- j. I wish I were a knife collector because almost everyone is walking around with one or two stuck in their back.....
- k. The hostilities that are displayed from the management at B Company are an everyday thing. There is deep hatred toward certain employees working at B Company from their supervisors. This only results in management getting their way and that is when that employee quits. No one to blame but the battalion.

6. My section could accomplish it's mission better if we:

- 28 Had more competent people
- 25 Worked more as a team than as individuals
- 18 Worked more closely with other sections in the battalion
- 15 Worked more closely with our customers/supported commands
- 15 My supervisor involved the subordinates more in planning
- 14 Had a more clearly understood mission
- 3 My office is accomplishing it's mission satisfactorily
- 9 Other (see following written comments):

- a. Better support from higher
- b. Personnel
- c. Had more support from the post
- d. Had more personnel
- e. Everything is not Priority #1. There needs to be more thought put in to taskings at the battalion level. Simply because a team is on a mission does not mean that every tasking should go to them. Likewise, when a team comes off a mission they should not be fenced completely (minus a deploying team within a certain window). We absorb too many missions and spread teams to the point of breaking for fear of saying no.
- f. My office is accomplishing it's mission satisfactorily even though we've been uprooted and shoved into a janitor's closet and lost our response trucks. Our mission will never fall, have you heard the expression you get what you put into it. Think about that.
- g. I'm not sure
- h. Training is the key. Constant training is best and I don't mean POSH, OPSEC or all the other yearly classes. Equipment Training and procedural training and maybe even some leadership training for civilian supervisors (that couldn't hurt a bit).

7. Our customers could be better served if we:

- 52 Our customers are satisfied with us.
- 15 Responded to their needs faster
- 14 Offered more options
- 11 Made timely follow-ups
- 10 Were more professional
- 10 Provided a higher quality service/product
- 9 Listened better
- 1 Were easier to contact (voice mail/email/phone/personal visits/etc.)
- 11 Other: (see following written comments):

- a. No comment
- b. Were better manned
- c. NA
- d. Had more personnel to accomplish the mission
- e. I firmly believe that the units are the problem in responding to higher headquarters. If they responded in a timely manner, it would be a lot easier for us to do our jobs.
- f. ~~If we were supported by higher (20<sup>th</sup> Support Command) better — ie., when we have a question for them, they would find the answer instead of referring us to someone else — leading to a dead end road and therefore having to go around them to find the solution.~~
- g. Could train more with them
- h. We are not operators or special customers. We are unique in that we support them, but nonetheless we are not them. We should not sacrifice discipline and military courtesy and bearing because we think we are "too cool for school".
- i. Offered less options
- j. Unknown...not my concern...above my level
- k. Better organized and had more people to do the job.
- l. Replaced the Chief and 2 of his subordinate supervisors
- m. There is a lot of Homeland Security work out there that 22d Battalion (TE) has let pass by. They seem to fear to get into anything else but remediation...they are getting too close to losing that too.

8. Communications within my section could be better if we had:

- 41 Communication within my office is satisfactory
- 18 More effective meetings
- 18 More trust in/less fear of our supervisor or team leader
- 17 Standardized formats for routine communications
- 14 More understanding, compassion and tolerance of each other
- 11 Better record keeping of meetings/decisions/actions
- 7 Better office computer networking (email) capabilities
- 5 Better telephone equipment/services
- 4 More training (email/phone/communications/meeting skills)
- 8 Other (see following written comments):

- a. No comment
- b. There is absolutely zero faith in MAJ Trimberger's ability to accomplish, resource, plan or streamline anything. It actually creates more work to go thru him/battalion than to plan and resource myself.
- c. New radio's like the ones the rest of the companies have that sit in closets and cages unused.
- d. Better comradery
- e. To be honest, the less communication I have with my supervisors and chief the better off I am.

9. Communication within APG or PBA could be better if we had:

- 37 Communication in my organization is satisfactory
- 36 More trust in our top leaders
- 27 Less animosity between the offices
- 16 More effective organizational meetings/gatherings
- 8 Better organizational computer networking (email) capabilities
- 8 Better record keeping of organizational meetings/decisions/actions
- 7 Other (see following written comments):

- a. More people who realize why they are employed on APG, to support the soldiers.
- b. Do not know
- c. I don't know
- d. There are soldiers leaving for Iraq between Feb-Mar. It's Nov. already and we are only getting a 10 period for block leave which I fear we will lose. Maybe you could let them know when they are leaving, you know just out of respect to their families.
- e. Stop functioning as separate entities. We are one unit no matter where you are stationed.
- f. More understanding, compassion and tolerance of each other.
- g. The Chem Command has little, if any, concern for the EOD of Tech Escort.
- h. The above check is in reference to the B Company leadership!

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10. For items 1-9, these items were listed as needing the most attention:

- 40 My section could accomplish it's mission better if we...
  - 39 My primary career concerns are most closely related to...
  - 38 I could get my job done better if I had...
  - 33 Problems which most affect my section's working environment are...
  - 31 The training that could help me most in my job is...
  - 27 Communication within APG or PBA could be better if we had...
  - 19 Our customers could be better served if we...
  - 16 The following is true of my supervisor...
  - 16 Communication within APG or PBA could be better if we had...
- 
- 
- 
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11. If I could change ONE thing about MY SECTION, it would be:

- Better communication with higher HQ
- NA
- More people
- My section in particular is doing well. I think that if we had more people in the company, the taskings could be spread out more evenly.
- To bring our MTOE to 100%
- The area where I sit.
- I'D LIKE TO SEE MORE TOWN HALL MEETINGS.
- Assign individuals to sections for continuity and better utilization in non-peak work cycles.
- Conduct planned training without dealing with unforecasted taskings from BN
- More competent people within my section in order to more efficiently accomplish the multiple tasks we currently face, thus we can ensure that we are doing the job correctly the first time, allowing DEDICATED time for QA/QC, versus rushing to get everything accomplished.
- Attention to details

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- Get qualified people now! Why do we wait for HRC to tell us who is available and then take what they throw our way. Why does the CSM not have a Recruiting Team that goes out to the Chemical Companies across CONUS and put our name out there.
- Better cohesion
- To delegate properly
- Planning and thinking ahead

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- Nothing at this time
- The E-8 is unnecessary
- Better record keeping
- Equalize the difference in pay grade between WG TMCO's and GS Equipment Specialist EOD
- Nothing
- Conduct team building training
- More training available for administrative personnel
- My Team Leader
- Funding for the basic supplies, i.e., printers and furniture. Buildings are very old and heating and AC is terrible!
- Nothing
- Better support from the 20<sup>th</sup>
- A better office/new/more offices
- Information flow
- None. My team functions as a unit despite what goes on around us. We adapt and overcome. But it is starting to burn us out.
- In my opinion from what I have seen my section is fine the way it is.
- Promotions
- None

- Nothing
  - Give me the equipment I need to perform my mission
  - Improve communication
  - More training
  - I don't know
  - Hire more employees. There is an extreme shortage!
  - Send out teams as a team and not split teams apart to go on missions
  - Just got here.
  - More SPC-SGT's in section no PVT's, if PVT's have to be sent to the unit there needs to be a selection process at the school house for the best qualified soldiers.
  - Keep more experienced soldiers on teams
  - Training with our customers
  - More effective Supervisors
  - Hire more employees
  - Better equipment
  - More training
  - N/A
  - Training
  - Supervisors
  - working closer
- 

- na
  - management
  - Educate supervisors
  - to fill all the vacant positions in B Co.
  - better funding for training
  - Hire more personnel
- 

- Bring in competent help
- Hire more co workers and develop equal opportunity for everyone
- Equipment, less leasing of heavy equipment when having to mobilize for a mission
- Team communication
- Promotion opportunity
- If the EOD was put into a stand-alone company
- More computers/ADP support
- Better attitudes
- Relieve the B Chief Supervisor for encouraging and supporting the terrible behavior of two of his subordinate supervisors who conduct his dirty work. The amount of damage that these individuals have caused will eventually be realized by the chain of command. However, by then it may be too late because many of our best civilian employees have already left the unit for different careers. Other subordinates are currently looking for other employment because of these three individuals. Many employees remain silent about these issues because they believe nothing will be done by the chain of command to correct this problem! Many are even fearful of losing their jobs for even mentioning the problem.

- None
- Better guidance and communication from higher leaders
- na

- Nothing, everything is good.
- Less favoritism and working as a team. There needs to be a rotating list where everyone gets to go on escorts and TDY's. Instead of the same people all the time.
- Obtaining additional personnel
- Replace the supervisor immediately with a competent and professional individual.
- TVA would be out the gate.
- Train to maintain, not just to receive a certificate and forget about it. For example, PINS, you have to practice with the equipment to be able to use it at a moments notice without having to constantly look in the manual for answers.
- I would replace ALL supervisors and chiefs and replace with carefully screened and experienced individuals who were former high ranking military personnel with leadership skills. Hiring from within for the last 15 years has done no good for this unit.

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12. If I could change ONE thing about 22<sup>nd</sup> Chemical Battalion (Tech Escort) it would be:

- Disband the unit, stand up a civilian organization
- My assignment to it
- NA
- The teamwork
- More personnel who come to the unit with a clearance and are able to quickly adapt to the technical and optempo demands of the unit.
- To bring our MTOE to 100%
- Management. They are micro managers which is slowing down the operations of this organization.
- A MORE OPEN POLICY BETWEEN MANAGEMENT AND PERSONNEL
- More standardization and better use of internet/AKO to accomplish mission
- To have the Senior (Bn Level) leadership have more trust in the abilities and decision making skills of company level leaders.
- More communication between the Military and the Civilians. From speaking to a few Civilians- it APPEARS- that they feel they are not being informed of what is happening, ie the new changes – meaning moving towards a more military oriented unit in addition to the fact that soon we will become a Military Pure Unit (aside from a few Civilians).

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Recommend going back to having Town Halls.

-n/a

-The Senior Leadership seems disconnected from what we actually do. Why is it so hard for Soldiers/NCO's to get an award approved for truly excellent work (AAM/ARCOM) for Achievement? Why do I always hear, "He may not have enough for his PCS award." (even though he/she may have two-three years left here). Comments like that tell me that the leadership does not really know what we do on a daily/weekly basis, and it further frustrates the troops when they feel that battalion simply doesn't care. The joke around the companies is that a BN Coin doesn't exist because no one has ever seen one. Why is that? If a private calling cadence during the battalion run or NCOs being recognized by the G8 for excellence during a static display, or an E5/E6 being the DHG at L3/J5, or maxing the APFT during a stressful week followed by qualifying Expert on two weapon systems the first time out, or expertly conducting a remediation in the Solomon Islands during the hottest months in full protection does not qualify for one-then I cannot imagine what does.

- The trust factor between leaders and subordinates....it is non-existent
- Stop the micromanaging and let people do their jobs
- Reduced OPTEMPO/more personnel
- Views taken between Directors, Supervisors, TMCO's and Ord Removers. Seems the relations are strained.
- Stop all the "RED TAPE" from the BN and the Army.
- Which way we want to procede for the future. What our main mission will be. (Support the war fighter, Remediation projects). This is for the civilions not the military.
- More solidity in our training schedules
- Nothing
- Better Communication between command and Units

- Better admin. Skills when dealing with soldiers needs i.e. S1
- Keep the changes down to a minimum
- When something goes wrong on a mission, don't look for someone to blame, try to solve the problem.
- Better telephone equipment for communication
- The chain of command is not supportive of its soldiers and their needs.
- Funding and communications. The senior leaders are not diverse need more POSH and EO training in the Battalion
- I wouldn't change anything
- More soldiers in HHC
- The battalion staff would be more knowledgeable about the teams and do a better job scheduling and supporting quality training events.
- Less influence on Team level training from higher echelons of command
- Leaders actually cared more about mission training than weather or not vehicles in the motorpool were lined up correctly. Or weather or not the grass was cut. Command needs to show interest in actual mission training. If interest was shown there would be no doubt as to how well we can handle missions that come up and the need to micromanage would go away. In short, I feel the command has no confidence in our ability to perform our job and We have no confidence in the ability or willingness of the command to support or care about what goes on with their soldiers. Unless something goes wrong then they are ready to max out punishment on the soldiers.
- I love it here. Everything is fine.
- Communication
- I would convert the WG's to GS's. I do the same job as a lot of my co-workers and make 1/2 the money. When I'm dressed in Level A, working next to a GS doing the same job; they make 25% haz pay and I make 8%. Add that up every day for a pay period, it's \$500 dollar difference. That's not counting the salary difference.
- Nothing
- Have a Change of Command
- Improve balance in tdy
- go back under AMC
- better communications between all of the supervisors and all of the employees
- I don't know
- Teach the support elements to work for the people not the people working for the support elements!
- seperate the military from the civilians put us back under amc or non stockpile
- Nothing
- just got here
- More SPC-SGT's in section no PVT's, if PVT's have to be sent to the unit there needs to be a selection process at the school house for the best qualified soldiers
- Provide better infrastructures for soldiers to work in. Fix/upgrade A Co's bathroom.
- Support from our customers.
- Change three supervisors out of four
- get rid of animosity between soldiers and civilians
- without me
- Poor command leadership

- N/A
- Training
- Updated equipment
- na
- management
- Keep workers properly informed
- Put the unity back in the unit, all companies should work together on same types of missions not separate functions, separate training.
- replacement of the BN OIC and NCOIC
- Buy a Tractor and two Lowboy trailers
- The culture of the organization
- a better working relationships between sections and stop favoritism
- opportunity to purchase the equipment needed for missions, or to make it more convenient to pay for equipment leased that is mission essential
- Promotion policy
- Eliminate the animosity and discriminatory behavior among office leaders and co-workers
- The attitude of the Chemical Command towards the EOD of Tech Escort
- That the civilian employees receive more credit for their efforts

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- Reduce the amount of change

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- To open the eyes of the Command Group and show them what is really going on at B Company
- None
- People more willing to work together, instead of hiding from the work. Which also goes along with the same people are chosen to do all the work because some people don't want to work or try to get out of work.

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- na
- More communications
- more missions
- Change the upper echelon leadership with individuals who are interested in the welfare and professional climate of the BN's subordinate units.
- Avail. Training
- CLEAN THE HOUSE!!!!!!There are some individuals that have no idea about being Managers or Supervisors....
- There needs to be some major house cleaning done in battalion as well. I have never seen so many over payed incompetent employees in my life. It is very frustrating for me to witness GS-12s and GS-13s in such crucial positions that are so clueless on how to complete the mission.

13. What question should be have asked but didn't?

-N/A

-Why?

-NA

-Personnel management

-Maybe, the overall perception of morale.

-I CAN'T THINK OF ONE AT THIS TIME.

-Is there parity in work assignments and pay-grades between companies?

-How would YOU fix....?

-n/a

-“Based on your experience to date, would you re-enlist PDA (NCOs/Soldiers) or request to come back to this unit (officers)? Why/Why not?”

-Are personnel civilian as well as military treated equally across the board.

-Why does everyone want to leave the Battalion or why have all the individuals left the Battalion?

-What are the significant roadblocks that affect successful completion of the mission (i.e., lack of installation support for SRP, Ranges, Transportation, etc., issues with higher headquarters, budget, training facilities available, etc.)

- Rate the atmosphere of your section! Explain your answer.

-Why are we just doing the hot lines instead of digging at job sites.

-N/A

-Nothing

-Are you looking for another job

-Moral of the unit overall!

-???

-How can the command group better serve the companys? Seeing the companys as a customer as well.

-Is the Battalion a close team and do all the Soldiers feel comfortable with their leadership.

-Are you satisfied with your leadership, both immediate and higher?

-Ask about living situations and transportation

-n/a

-none

-none

-Where are we going? There hasn't been a town hall meeting in some time.

-None

-don't know

-How do you fill about the changes in the BN?

-All questions have been asked.

-Have Quarters Mtgs with the LTC and WG's, about problems with the unit.

-how is your morale?

-Why does the command group care about the military side of the house and not the civilians??

-N/A

-Why Managent Dont Care

- do you want to work or just a job
- na
- about management
- What is wrong with management?
- how well dose the BN staff support the companies, because the s-3 does not try to work with the b co. and the short numbers of personell, its go go go and personell are consently gone to fill plate the s-3 fill at bad times and half the time the customer is not in a real rush. its always short notice, but theres never an emergency its just made to seem that way
- overall moral of troops in the BN?
- Does Command treat civilian concerns with the same respect or attention that they do military concerns?
- Is job opportunities distribute [redacted]
- are the TMCO's going to GS status
- are there favoritism with in the company?
- no comments
- How long will you stay in 22<sup>nd</sup> Chem Bn? Not long
- What happened to the "U" in Unit?
- none

---

-Is my morale at its lowest point in my career because of my supervisors? YES!

- none
- Ask about the chief of the company. We are in direct contact with supervisors. But there is also a chief with in the company. Ask about all the same questions as you would about the supervisor.

- na
- everything is well

- 
- Are you satisfactorily trained in your PD?
  - nothing
  - Why do we have more people/employee's wanting to leave than stay? Employees are more likely to stop at nothing to get the job completed if they know they have excellent supervisors/support from management.
  - How many people do you know that are looking for new jobs? You would faint if you knew that number!

INSPECTOR GENERAL OFFICE  
U.S. ARMY RESEARCH DEVELOPMENT AND  
ENGINEERING COMMAND  
ABERDEEN PROVING GROUND, MD 21010-5424

FACSIMILE TRANSMITTAL SHEET

TO: LTC Terrell FROM: RDECOM IG  
AGENCY: 2nd Chem Bn DATE: 1/08/2007  
FAX NUMBER: [REDACTED] TOTAL NO. OF PAGES INCLUDING COVER: 4  
PHONE NUMBER: [REDACTED] SENDER'S PHONE NUMBER: [REDACTED]  
RE: [REDACTED] SENDER'S FAX NUMBER: [REDACTED]

RELEASER'S SIGNATURE

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

For your review.

That's  
Dave

116

**TAB F**



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY 22D CHEMICAL BATTALION  
5183 BLACKHAWK ROAD, BLDG E1942  
ABERDEEN PROVING GROUND MD 21010-5424

AFCB-CFT-CO

17 January 2007

MEMORANDUM FOR MAJ Wayne Hyman, 22d Chemical Battalion (Technical Escort),  
5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010-5424

SUBJECT: Appointment as AR 15-6 Investigating Officer

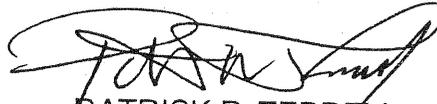
1. Effective this date you are hereby appointed an Investigating Officer pursuant to AR 15-6, as indicated.
  - a. Authority: AR 15-6, Procedure for Investigating Officers and Boards of Officers, 30 Sep 96.
  - b. Purpose: To investigate allegations of supervisory misconduct against Mr. Albert White, Mr. Michael Penhollow and Mr. Thomas Swinson. These allegations include, but are not limited to: theft of U.S. government property, nepotism, threatening subordinates with loss of employment if the subordinate lodges complaints and intimidation. You are to make findings and recommendations for any disciplinary action and make other appropriate recommendations as necessary.
  - c. Period: 30 days.
  - d. Special instructions:
    - (1) In your investigation, all witness statements will be sworn.
    - (2) You will use informal procedures under AR 15-6.
    - (3) If in the course of your investigation you come to suspect that certain individuals may be responsible for any criminal violation, you must consult with your assigned legal advisor referenced in subparagraph five (5) below before proceeding. In addition, you must provide all witnesses a Privacy Act Statement before soliciting any personal information.
    - (4) Statement(s) obtained during the course of your investigation will be administered on DA Form 2823, Sworn Statement, and submitted as Exhibits to Report of Proceedings by Investigating Officer/Board of Officers, DA Form 1574.

AFCB-CFT-CO

SUBJECT: Appointment of AR 15-6 Investigating Officer

(5) Prior to the start of this investigation, coordinate with the Command Judge Advocate, (CJA) CPT Jonathan W. Crisp, Building 1947, 410-436-0336.

2. The conduct of this investigation will be your primary duty until completed and relieved or released by the appointing authority.
3. Your finding(s) and recommendation(s) will be submitted to me using DA Form 1574 or in an appropriate memorandum format, **no later than 16 February 2007**.
4. Should you require an extension to the above suspense date, you will submit to me a written request for extension with justification.



PATRICK R. TERRELL  
Lieutenant Colonel, CM  
Commanding

**REPORT OF PROCEEDINGS BY INVESTIGATING OFFICER/BOARD OF OFFICERS**

For use of this form, see AR 15-6; the proponent agency is OTJAG.

IF MORE SPACE IS REQUIRED IN FILLING OUT ANY PORTION OF THIS FORM, ATTACH ADDITIONAL SHEETS

**SECTION I - APPOINTMENT**

Appointed by LTC Patrick R Terrell  
(Appointing authority)

on 17 January 2007 (Date) (Attach inclosure 1: Letter of appointment or summary of oral appointment data.) (See para 3-15, AR 15-6.)

**SECTION II - SESSIONS**

The (investigation) (board) commenced at APG-EA MD. 21010 at 1300  
(Place) (Time)

on 17 January 2007 (Date) (If a formal board met for more than one session, check here . Indicate in an inclosure the time each session began and ended, the place, persons present and absent, and explanation of absences, if any.) The following persons (members, respondents, counsel) were present: (After each name, indicate capacity, e.g., President, Recorder, Member, Legal Advisor.)

The following persons (members, respondents, counsel) were absent: (Include brief explanation of each absence.) (See paras 5-2 and 5-8a, AR 15-6.)

The (investigating officer) (board) finished gathering/hearing evidence at 1830 on 09 February 2007  
(Time) (Date)  
and completed findings and recommendations at 0030 on 16 February 2007  
(Time) (Date)

**SECTION III - CHECKLIST FOR PROCEEDINGS**

**A. COMPLETE IN ALL CASES**

	YES	NO <sup>1/</sup>	NA <sup>2/</sup>
1 Inclosures (para 3-15, AR 15-6)			
Are the following inclosed and numbered consecutively with Roman numerals: (Attached in order listed)			
a. The letter of appointment or a summary of oral appointment data?			
b. Copy of notice to respondent, if any? (See item 9, below)	X		
c. Other correspondence with respondent or counsel, if any?			X
d. All other written communications to or from the appointing authority?			X
e. Privacy Act Statements (Certificate, if statement provided orally)?			X
Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered (e.g., absence of material witnesses)?			X
g. Information as to sessions of a formal board not included on page 1 of this report?			X
h. Any other significant papers (other than evidence) relating to administrative aspects of the investigation or board?			X

FOOTNOTES: <sup>1/</sup> Explain all negative answers on an attached sheet.  
<sup>2/</sup> Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

		YES	NO <sup>1/</sup>	NA <sup>2/</sup>
2	Exhibits (para 3-16, AR 15-6)			
	a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	X		
	b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	X		
	c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	X		
	d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?			X
	e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?			X
	f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?			X
	g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-16d, AR 15-6)?			X
3	Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?			X
<b>B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)</b>				
4	At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?			
5	Was a quorum present at every session of the board (para 5-2b, AR 15-6)?			
6	Was each absence of any member properly excused (para 5-2a, AR 15-6)?			
7	Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?			
8	If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2d, AR 15-6)?			
<b>C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)</b>				
9	Notice to respondents (para 5-5, AR 15-6):			
	a. Is the method and date of delivery to the respondent indicated on each letter of notification?			
	b. Was the date of delivery at least five working days prior to the first session of the board?			
	c. Does each letter of notification indicate -			
	(1) the date, hour, and place of the first session of the board concerning that respondent?			
	(2) the matter to be investigated, including specific allegations against the respondent, if any?			
	(3) the respondent's rights with regard to counsel?			
	(4) the name and address of each witness expected to be called by the recorder?			
	(5) the respondent's rights to be present, present evidence, and call witnesses?			
	d. Was the respondent provided a copy of all unclassified documents in the case file?			
	e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?			
10	If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
	a. Was he properly notified (para 5-5, AR 15-6)?			
	b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?			
11	Counsel (para 5-6, AR 15-6):			
	a. Was each respondent represented by counsel?			
	Name and business address of counsel:			
	(If counsel is a lawyer, check here <input type="checkbox"/> )			
	b. Was respondent's counsel present at all open sessions of the board relating to that respondent?			
	c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?			
12	If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
	a. Was the challenge properly denied and by the appropriate officer?			
	b. Did each member successfully challenged cease to participate in the proceedings?			
13	Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
	a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?			
	b. Examine and object to the introduction of real and documentary evidence, including written statements?			
	c. Object to the testimony of witnesses and cross-examine witnesses other than his own?			
	d. Call witnesses and otherwise introduce evidence?			
	e. Testify as a witness?			
	f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?			
14	If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?			
	e. all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?			

FOOTNOTES: <sup>1/</sup> Explain all negative answers on an attached sheet.  
<sup>2/</sup> Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.

SECTION IV - FINDINGS (para 3-10, AR 15-6)

The (investigating officer) (board), having carefully considered the evidence, finds:

See attached Memorandum

SECTION V - RECOMMENDATIONS (para 3-11, AR 15-6)

In view of the above findings, the (investigating officer) (board) recommends:

See attached Memorandum

SECTION VI - AUTHENTICATION (para 3-17, AR 15-6)

THIS REPORT OF PROCEEDINGS IS COMPLETE AND ACCURATE. (If any voting member or the recorder fails to sign here or in Section VII below, indicate the reason in the space where his signature should appear.)

\_\_\_\_\_  
(Recorder)

\_\_\_\_\_  
(Investigating Officer) (President)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

SECTION VII - MINORITY REPORT (para 3-13, AR 15-6)

To the extent indicated in Inclosure \_\_\_\_\_, the undersigned do(es) not concur in the findings and recommendations of the board. (In the inclosure, identify by number each finding and/or recommendation in which the dissenting member(s) do(es) not concur. State the reasons for disagreement. Additional/substitute findings and/or recommendations may be included in the inclosure.)

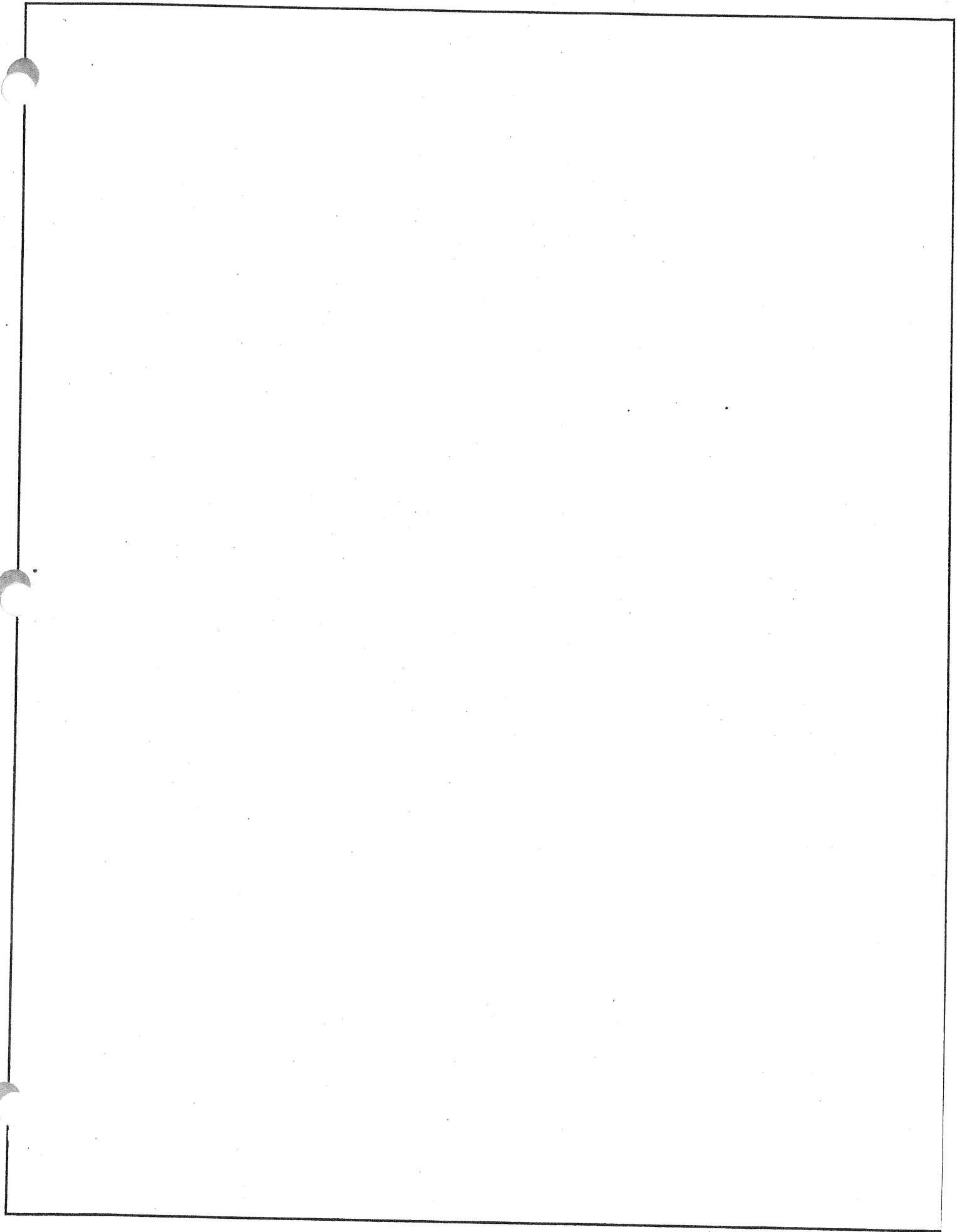
\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Member)

SECTION VIII - ACTION BY APPOINTING AUTHORITY (para 2-3, AR 15-6)

Findings and recommendations of the (investigating officer) (board) are (approved) (disapproved) (approved with following exceptions/substitutions). (If the appointing authority returns the proceedings to the investigating officer or board for further proceedings or corrective action, attach that correspondence (or a summary, if oral) as a numbered inclosure.)

\_\_\_\_\_



**TAB G**

## 22<sup>nd</sup> CHEMICAL BATTALION SENSING SESSION NOTES:

Monday, 16 October 2006

Group 1 - (14 attendees)

Due to the re-organization of Bravo Company the EOD Soldiers will fall behind in MOS training they won't be able to share experiences. EOD Soldier won't be sure who to answer to as far as first line supervisor. EOD Soldiers get pulled into to many directions. And won't know how to prioritize duties.

Why was Bravo Company given only \$5,000 in End of Year funding when the other companies shared \$500,000 +?

Why does the Battalion only get one 4-day training holiday per quarter? Feel like they are being punished for not being deployed.

Poor installation services in the area of Finance - Not helpful; people aren't user friendly

Battalion needs to follow it own OP order as far as training

There is a need for DTS classes

Poor communication in the Battalion

Would rather be TDY than day to day duties at the Battalion

Re-organization of B Company didn't work in the past, doing the same as before

Group 2 - (8 attendees)

Civilians in B Company can't do their job without military. They support the entire Battalion plus Pine Bluff with only 12 military on a good day.

Requirements aren't being support by the Battalion

Soldiers that were pulled to Charlie Company will need additional training to remain proficient in EOD. Training becomes convoluted and EOD soldier gets pulled in different directions.

Decision was made at Battalion level with no input from experienced civilian workforce.

This is the third time military have been pulled from Bravo Company hasn't work yet. Military needs to be a part of Bravo Company.

Civilians feel that they are going to be on the outside looking in.

As soon as you arrive at Battalion you are told not to complain or go outside the Battalion that there will be a price to pay

Group 4 (25 attendees)

Hire more civilians

Frustration level is at an all time high

Battalion has a non-existent awards program

Annual ratings are being done, but not mid-terms

Need to have relevant training for the right people

Non-supervisor civilian work force is always being talked down to, sick leave being denied, high potential for violence in the work place (Bravo Company). Continually being yelled and cursed at. Back to Back to Back TDY's no relief in sight. A totally different standard between TMCO and UXO employees.

Constant fear of retribution if complain

Experienced work force is leaving; average 10-12 per year. Leave for less pay but better working conditions.

Takes 6 months to train-up new employees and then they leave.

Current Battalion vision is not mission oriented. Civilians just provide military support.

FORSCOM will make civilian work force become obsolete.

DTS vouchers stay up at Battalion in their in-boxes too long. Not being reviewed in a timely manner.

Mission does not equal current staffing. If the problem isn't fixed departures will continue to increase.

All current problems within Battalion have been self-inflicted due to poor management.

11 January 12, 2007

## MEMORANDUM FOR RECORD

SUBJECT: Interviews with Civilian Personnel from B Co 22d Chemical Company on Misconduct of some of their Supervisors.

1. Several months ago I was approached by a Civilian worker from B Co 22d Chemical Company. He was concern about several of his Supervisor that he believed were:
  - a. Mistreating workers.
  - b. Using favoritism when came to handing out work and bonus.
  - c. Falsifying timesheets.
  - d. Stealing supplies from worksites and the unit.
  - e. Not keeping the workers informed and not forwarding complaints or issues up the chain of command.
  - f. Threatening to fire workers if they complain or told anyone outside of B Co of what is going on in the unit.
2. The civilian was very worried about losing his job if anyone found out that he has talked to me and said that several workers who have quit in the last year left out of pressure that was placed on them because they complained. He also said that there was many more workers that want to come forward but were afraid too because they did not know who to trust. He said those supervisors had spies that would tell them if anyone was against them. I ensured him that I will keep their names private with the exception of LTC Terrell and Mrs. Jensen who I would need in order to investigate this further.
3. I immediately informed LTC Terrell and he directed that I talk with these other workers and try to gather as much info as I can without letting my intentions known and keeping their identionies secret. 7 additional workers came forward and this is what they said:

Supervisor: MR. White.

## Allegations:

1. Threatens to fire anyone that opposes him, and was instrumental in forcing some workers to quit their jobs.
2. Hides problems within his organization from the command, giving the impression that the command does not care about worker's problems or concerns.
3. Instructing his supervisors to find ways to fire his UXOs.
4. Covering for, or not dealing with his supervisors when they act unappropriately.
5. Not putting out info to the workforce that higher command has put out.

Supervisor: Mr. Penhollow.

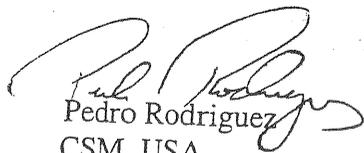
Allegations:

1. Steals unit property.
2. Uses intimidation to get things done.
3. Gives the best jobs and bonus to the folks he likes.
4. Falsifying his time sheets.
5. Has very little leadership abilities, and is a bad manager.
6. Is not fair when recommending bonus.
7. Does not care or takes care of only the workers he likes.

Supervisor: Mr. Swinson

Allegations:

1. Uses intimidation to get things done.
  2. Gives the best jobs and bonus to the folks he likes.
  3. Has very little leadership abilities, and is a bad manager.
  4. Is not fair when recommending bonus.
  5. Does not care or takes care of only the workers he likes.
4. Additionally, they mention that the supply tech (Mrs. Stitley) is also falsifying her time sheet. Everyone I talked to did not want to be identifying because they said they will lose their jobs and many of them have already submitted resumes and threaten to quit if nothing is going to be done. They also mentioned that these problems have been going on for many years, and has been brought to the attention of previous commanders and nothing has ever been done.

  
Pedro Rodriguez  
CSM, USA  
22d Chemical Battalion CSM

**TAB H**

**SWORN STATEMENT**

For use of this form, see AR 190-45; the proponent agency is PMG.

**PRIVACY ACT STATEMENT**

**AUTHORITY:** Title 10, USC Section 301; Title 5, USC Section 2961; E.O. 9397 Social Security Number (SSN).

**PRINCIPAL PURPOSE:** To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

**ROUTINE USES:** Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

**DISCLOSURE:** Disclosure of your SSN and other information is voluntary.

1. LOCATION Bldg 4220, APG-EA, MD. 21010	2. DATE (YYYYMMDD) 2007/01/30	3. TIME 0745	4. FILE NUMBER
E. LAST NAME, FIRST NAME, MIDDLE NAME Griffin, Bruce K.	G. SSN [REDACTED]	7. GRADE/STATUS [REDACTED]	
B. ORGANIZATION OR ADDRESS HHC 22d Chem BN (TE) Bldg 1942 APG-EA, MD.21010			

9. I, Bruce Griffin, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q. How long have you worked here at 22D TE?  
A. About 2.5 years.

Q. Have you ever worked anywhere else prior to working here?  
A. Yes. I retired from the Army as a SGM with 24.5 years. Then I worked for Battelle for 7 months then I hired on here.

Q. Have you ever seen a supervisor treat their employees as badly as you have seen Mr. Swinson and Mr. Penhollow treat their employees?  
A. No I have not; this is the worst I have seen.

Q. I understand that while you were in the Army, you were a senior leader and you had many other supervisors working for you, is that correct?  
A. Yes

Q. Did you as a senior leader allow your subordinate supervisors to treat employees as badly as you have seen Mr. White allow Mr. Swinson and Mr. Penhollow treat their employees?  
A. Never

Q. Do you feel that Mr. Swinson and Mr. Penhollow should be fired due to their treatment of their employees?  
A. Mr. Penhollow should be fired; Mr. Swinson at least is loyal to the unit. He might be salvagable with the right supervision.

Q. Do you think that Mr. White is aware of how badly Mr. Swinson and Mr. Penhollow treat employees?  
A. Yes, there have been several times when I have told Mr. White that that some of the employees wanted to talk to him about Mr. Swinson and Mr. Penhollow. I told him he needed to speak to the employees. He would either say "I will talk to them" which he would never do. Or he would ask me to talk to Mr. Swinson and Penhollow for him. Or in one case he asked me to talk to both the employee (Mr. Stavis,) and Mr. Swinson.

Q. At any other job you have had, would Mr. White, Mr. Swinson, and Mr. Penhollow have been fired for their treatment of employees?  
A. Yes, definitely Mr. Swinson, and Mr. Penhollow, for their treatment, and Mr. White for allowing it continue.

10. EXHIBIT AD	11. INITIALS OF PERSON MAKING STATEMENT [Signature]	PAGE 1 OF 4 PAGES
-------------------	--	-------------------

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF Bruce Griffin TAKEN AT Bldg 4220 DATED 2007/01/30

9. STATEMENT (Continued)

Q. I understand that you told the Battalion leadership that you were considering leaving your job, why?

A. The primary reason is the way employees were being treated. Also I was being forced to be a "middle man" between the employees and the company leadership.

Q. Can you give me any examples?

A. Yes,

1. TDY assignments, I had to be the one to make sure it was done fairly. I had to "protect" the people on my team; I had to make sure they were not sent on projects with certain supervisors.

2. There was a project, Spring Valley around 2005; we had plenty of TMCOs to cover the work on the project and the escort work. I know there was plenty of UXO work here on the installation. Mr. White announced to the supervisors that remediation projects take precedence over the UXO projects. It appeared to me that he intended to "punish" UXO/EOD personnel e.g. Bob Maddox and Phil Mackenprang. He wanted to use his position to bring their projects to a halt. So the decision was made to send 4ea UXO techs down to Spring Valley to work on the PDS (not working as a team leader role) and were going to send 2 more to Hawaii, this would have shut down all of the UXO projects being worked by Phil Mackeprang or Mr. Maddox.

Q. Can you remember any incidents when Mr. White told you or others that they were supposed to single out a group of their work force and treat them badly?

A. yes,

1. He called me into his offices; Mr. Swinson and Mr. Penhollow were already there. He said that you need to get these UXO guys to conform to how we operate around here. At that point Mr. Penhollow said you are being too friendly to these guys, I don't like them guys. This was said in the presence of Mr. White. This is typical of how Mr. White operates, he makes a broad suggestion; Mr. Swinson and Mr. Penhollow feed off of it and amplify it. Mr. White does not make any effort to correct them, and allows them to discriminate against members of our workforce simply because they have a UXO job description. Mr. White knows that I disagree with him with respect to treating employees badly. So he is very careful about what he says and does while I am around.

2. Mr. White will also single out TMCO employees as well. Mr. Ray Steele for instance. He called in one day to inform us that he would not be in to work that day because his power went out, this meant that he would miss a class he was scheduled to attend (Rad Safety 3 day course) we sent Mr. Stavis in his place. When Mr. White came in the next day, Mr. Steele had heard that Mr. White was upset with him. So Mr. Steele went to talk to Mr. White. Mr. White admonished Mr. Steele. Since then Mr. Steele was pulled from the Minicams course that he needed to have for promotion. He has been singled out and treated badly by Mr. Swinson and Mr. Penhollow.

Q. Do you remember a time when Mr. Penhollow displayed a seep sex doll in his office?

A. Yes I do.

Q. As a current supervisor here, and with your experience as a leader, do you feel that it was appropriate for Mr. Penhollow to have that displayed, or for Mr. White to allow it?

A. No, that was very inappropriate.

Q. Did you tell Mr. Penhollow about it?

A. I mentioned it to him, he laughed it off; he did not care.

Q. Have you ever seen Mr. Penhollow operate a rental vehicle in an unauthorized manner?

A. I have seen Mr. Penhollow take the work site pickup truck from Spring Valley and drive it home.

Q. I saw him drive off with it, his office was locked up. I told Mr. White about it, he called Mr. Penhollow up and told him to return the truck.

INITIALS OF PERSON MAKING STATEMENT

*BKG*

PAGE 2 OF 4 PAGES

STATEMENT OF Bruce Griffin TAKEN AT Bldg 4220 DATED 2007/01/30

J. STATEMENT (Continued)

Q. Did Mr. Penhollow return the truck?

A. I do not know.

Q. Have you ever heard about Mr. Penhollow ever stealing anything?

A. Mr. Hawkins told me that while working on a site at Ft Benning last April or May. Mr. Penhollow bought several items at Wal Mart with a government credit card. These items never made it back to the unit after the project was complete. He received authorization to make the purchases over the phone from MRS Shirley at the S4 shop.

Q. Have you ever heard anything about Mr. Penhollow falsifying time cards?

A. I was told by Mr. Ford that he and Mr. Penhollow worked exactly the same hours while on a site in Hawaii. However, Mr. Penhollow had much more overtime hours on his timecard than Mr. Ford.

A. Mr. Gerber never comes to work on time, he is absent a lot. He sometimes only shows up for work one day a week even though he does not have any sick or annual leave time saved up. He is selected to work on projects (these projects pay more than work here at APG) ahead of anyone else. This favoritism has a bad on morale.

Q. Do Mr. Penhollow and Mr. Swinson come to work on time?

A. Mr. Swinson is always here on time. Mr. Penhollow is always late. He claims that he his here for 8 hours on his timesheet, but he arrives late, and leaves on time unless he is preparing for a project, then he will claim overtime.

~~Q. I have been told that there is no written OML for schools, etc. I have also been told that many times, the WS-14s do not deploy to supervise worksites; they allow WG-11's and WG-10's to deploy and supervise sites. Does this have a bad effect on the morale and efficiency of the unit?~~

A. Yes

Q. Based on you experience as a leader and supervisor, are there any other practices that this organization should change?

A. Yes. We need to conduct weekly training meetings and daily information meetings. The leadership of the company withholds information in an attempt to seem powerful to their employees.

Q. Can you give me any examples of a time when Mr. White displayed bad leadership skills?

A. Yes, one time I told Mr. White that he needed to have a sensing session because many employees had told me that they could not go to their supervisors with issues due to fear of reprisal. The next day Mr. White held a company meeting, he said "if you feel you can not talk to your supervisor, do not come to me, I will just send you back to your supervisor." This did not make sense to me and had a bad effect on company morale.

Q. Would you recommend to anyone that they come to work here?

A. No because of the bad command climate.

Q. Does the position description for a WS-14 TMCO supervisor say that good oral and written communication skills are required?

A. All supervisors have to posses good written and oral communication skills.

Q. Does Mr. Swinson possess the written and oral communication skills that are required to be effective in his position?

A. No

Q. Do you think that Mr. Swinson's lack of communication skills are the cause of some of the problems he has with employees?

A. Yes

INITIALS OF PERSON MAKING STATEMENT

*BGG*

PAGE 3 OF 4 PAGES

9. STATEMENT (Continued)

Q. Have you seen any instances when either Mr. Swinson or Mr. Penhollow verbally abused an employee?

A. Not on an individual basis, when I am around they tend to watch what they do. Two things Mr. Penhollow does is purposely waiting until the hottest part of the day, then send employees out to work in the sun. Also when it is cold, he will send employees out to work in the unheated warehouse, or outside in the motor pool.

Q. Have you ever asked him why he does this, or suggested that he not do that?

A. Yes, His answer to me was "I am a supervisor, they are employees, and they will do as they are told if they want to keep their job"

Q. Is there anything else you would like to add?

A. About two weeks ago, I had an incident with Mr. Penhollow: Mr. White had told Mr. Penhollow that he was going to be the supervisor on the Washington state job. I suggested that since this was a new year, we should be proactive, and try to identify the employees that are going to go on that TDY as soon as possible so they could make plans with their families, etc. Mr. Penhollow said "I don't need no @#%\$ng advice from you, I will run it the way I want to run it, and I will tell the employees when I want to tell the employees." I believe he wanted to withhold information from the employees just in order to seem powerful to them. I left the room.

BKA

BKA

NOTHING

FOLLOWS

NOTHING

FOLLOWS

BKA

BKA

AFFIDAVIT

I, Bruce Griffin, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 4. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE; I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

*[Signature]*  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 30th day of January, 2007 at Bldg 4220

*[Signature]*

(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

Wayne Hyman MAJ, OD

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

AR-15

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

BKA

# TAB I

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.
DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION Bldg 1942, APG-EA MD. 21010
2. DATE (YYYYMMDD) 2001/01/29
3. TIME
4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME Penhollow, David Michael
6. SSN [REDACTED]
7. GRADE/STATUS [REDACTED]
8. ORGANIZATION OR ADDRESS E/22d Chemical BN (TE) Bldg 4220, APG-MD 21010

9. I, David Michael Penhollow, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:
Q. How long did you display the inflatable sheep sex doll in your team room for?
A. I do not know how long it was on display for. I am not sure I knew what it was other than it was a gag gift. I went to my truck at the end of the day one evening. I saw it there on my driver's seat; it was up on the steering wheel. The employees that gave it to me were right there watching me. They laughed when I found it.
Q. How did it get into the team room?
A. I brought it in. It is still in my office, it is now deflated. It sat on the training cabinet in a deflated mode for I don't know how long. As far as I know, it was not any kind of a sex toy, and did not have any sexual overtures. Nor did I ever display it or play with it as such.

What portion of the UXO PD do you consider bogus?

A. I do not recall making any statement to that effect whatsoever.
Q. What portion of the UXO program do you consider to be a sham?
A. I do not recall ever having that conversation at any time with an employee.
Q. Did you have a conversation like that with someone who is not an employee?
A. Not to my knowledge.
Q. What does "EOD does not bring anything to the table" mean to you?
A. It does not mean anything to me.
Q. Have you ever made the statement "EOD does not bring anything to the table" to an employee?
A. No
Q. How many times have you been pulled over for DUI while driving a vehicle that was owned, leased, or rented by the government?
A. There was a drinking altercation once
Q. Can you please tell me what that means?

10. EXHIBIT AF 11. INITIALS OF PERSON MAKING STATEMENT PAGE 1 OF \_\_\_\_\_ PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT \_\_\_\_\_ TAKEN AT \_\_\_\_\_ DATED \_\_\_\_\_"
THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF David Michael Penhollow TAKEN AT Bldg 1942 DATED 2007/01/30

STATEMENT (Continued)

Mr. White was notified, he then notified the Battalion Commander (I can not remember who the commander was at that time. The situation was rectified; I have nothing on my record.

Q. I am still not sure, have you ever been pulled over for DUI while operating a vehicle that is owned, leased, or rented by the government?

A. Yes.

Q. What does the statement I have nothing on my record mean?

A. This was out of state after duty hours and I have no record. I have a clean MD driving record. I am not sure what the command may have put on my record. I was temporarily disqualified from the PRP while pending the results of my court appearance; I was reinstated at the conclusion of the investigation.

Q. What is your system for selecting employees for schools, TDYs, promotions, etc?

A. I do not have a particular system, the promotion and training processes are governed by the Battalion. The Battalion has stated in the past that lack of schools would not be held against employees due to the OPTEMPO. However there is some leeway from the commander and the chief to ensure that employees get the training they need along with promotions. There is no specific company written floormat for selecting employees for schools or TDY it is based on the Battalion floormat. Everything is taken into consideration, I try to match availability, skills, and need when selecting. I have never held any of my employees back. I like other supervisors also assume the responsibility to do that for other supervisor's employees while they are gone. I have promoted more employees than all of the other employees combined.

Q. When individuals have issues with you and they take those issues to Mr. White, what happens?

~~A. I have only had one employee have an issue with me, when he and I could not resolve it, I set up a meeting between him and Mr. White. Mr. White brought a fair and equitable solution to the issue. I believe I have had two such incidents with the same employee (Mr. West). Both times, I set up a meeting between Mr. West and Mr. White. Both times they met, and I was called in to speak with them afterwards. Both times there was a fair and equitable solution have never been formally notified that anyone other than Mr. West had any issues with me.~~

Q. What were that issues between you and Mr. West?

A. I do not know, I may have a record of it in Mr. West's folder, possibly something to do with the use of a cab or something, I am not sure. All I can remember is that there were two incidents, and when we left Mr. White's office, we had reached a favorable middle ground both times.

Q. Have you ever witnessed Mr. Swinson being verbally abusive to an employee?

A. No, Tom has a very loud voice he has never been abusive in front of me,

Q. Have any employees ever expressed to you that they have been verbally abused by Mr. Swinson?

A. Not to my knowledge.

Q. Has Mr. White ever given you the impression that he feels differently about UXO employees than he does about other employees?

A. No, unequivocally no If you knew him, you would never have asked that question. He is the epitome of professionalism and he expects the same from all of his supervisors.

Q. Have you ever driven a government owned, leased, or rented vehicle home for the weekend?

A. Yes

Q. Why?

TIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 4 PAGES

STATEMENT OF David Michael Penhollow TAKEN AT Bldg 1942 DATED 2007/01/30

STATEMENT (Continued)

.. Not for private use, to expedite the turn in of a car. If I come home late Friday night from a TDY, for instance and I do not have a ride home from the airport. I have always been authorized a rental vehicle to the company instead of a cab. On a couple of occasions I will took the vehicle to my house overnight and then turned it in the next morning in order to avoid having the vehicle sit around all weekend. This avoids having the vehicle sit at the company over the weekend and keeps costs down.

Q. Have you ever driven a government owned, leased, or rented vehicle that was intended for the purpose of supporting a jobsite site home?

A. Yes, between three and five years ago I was sent to Spring Valley on short notice and I took one home to pick up clothes and such. When I told Mr. White he then told me that I would no longer do that, and that I was to take the vehicle to the Company Building, and then use my POV to go any further. Mr. White made sure that all employees were aware of this policy. He did this to be fair and equitable, and because some other employees were doing this. Every time there is an issue either perceived or real, Mr. White makes sure that everyone is aware of the policy and makes sure there are no misunderstandings and to avoid any problems or improprieties.

Q. What other employees were doing this?

A. I do not know right off hand; this was a long time ago.

Q. Is there anything you would like to say?

A. No, not on the record.

Q. Do you mind if I collect the inflatable Doll from your office?

A. Yes, you can come down and look at it

Q. Why is my collecting the doll an issue?

Why do you want it?

Q. Because it has merit for the investigation.

A. We can go look at it together. However you can not have it.

Q. At this time M.A. Hyman called the JAG and inquired as to whether he could seize the doll from the Mr. Swinson's office. CPT Crisp was not available.

9. STATEMENT (Continued)

At this time MAJ Hyman printed the first page of the statement. MAJ Hyman instructed Mr. Penhollow to read the first page of statement, make any necessary changes, and then initial in block 11. Mr. Penhollow refused to initial the page. He stated that he was concerned that a certain word might be used to "hang him" at a later date. He expressed his displeasure with the wording of me of the questions posed by MAJ Hyman. MAJ Hyman explained that MR. Penhollow would not be held to account for the wording of the questions, merely the answers he gave as his statement. Mr. Penhollow then expressed that he was not aware of any rights he has. MAJ Hyman explained the Mr. Penhollow had the right to have an attorney present during an interview. Mr. Penhollow then asked "you mean this interview?" MAJ Hyman replied that he had the right to have an attorney present during this or any other interview. Mr. Penhollow then stated that he did not want an attorney, but that he did not want to initial or sign anything.

MAJ Hyman decided not to force Mr. Penhollow to initial or sign the statement.

After a discussion with CPT Crisp, MAJ Hyman met with Mr. Penhollow in the parking lot of Bldg 1942 and requested that Mr. Penhollow allow him to see the Sheep Sex Doll. Mr. Penhollow and MAJ Hyman then drove in their separate POVs to the office where Mr. Penhollow has the doll. MAJ Hyman inspected the doll. The appearance of the doll leaves no question in an observer's mind. It is definitely a SEX doll or is designed to give the appearance of a sex doll. It has a "pocket" in the anus, and has an additional "pocket" attached to the lower outer abdomen.

MAJ Hyman instructed MR Penhollow to leave the item in place and to not move or change it.

AFFIDAVIT

I, \_\_\_\_\_, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE \_\_\_\_\_. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

\_\_\_\_\_  
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

\_\_\_\_\_  
(Signature of Person Administering Oath)

\_\_\_\_\_  
(Typed Name of Person Administering Oath)

\_\_\_\_\_  
ORGANIZATION OR ADDRESS

\_\_\_\_\_  
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE OF PAGES

**TAB J**



DEPARTMENT OF THE ARMY  
22d CHEMICAL BATTALION (TECHNICAL ESCORT)  
5183 BLACKHAWK ROAD, BLDG E1942  
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

AFCB-CFT-CO

30 May 2007

MEMORANDUM FOR Mr. David M. Penhollow

SUBJECT: Notice of Proposed Removal

1. This is official notification that I am proposing to remove you from your position of Toxic Material Control Supervisor, WS-6501-14 and the Federal Service no sooner than thirty (30) calendar days from the date you receive this memorandum for conduct unbecoming a Federal Employee, unauthorized removal of government property and violation of administrative rules or regulations where safety to persons or property is endangered. Your removal is proposed to promote the efficiency of the Federal service and the mission of this organization.

2. The reasons for proposing your removal are as follows:

a. You prominently displayed a sexually explicit sheep sex doll in the workplace. You admit that you brought the doll into the training area and after it was deflated moved it to your office. The sheep sex doll was on display on top of a file cabinet in the center of the team room for at least six (6) months. The appearance of the doll leaves no question in an observer's mind that it is a sex doll. This conduct is disgraceful.

b. You removed government property from the worksite without authorization when you placed trash cans with lids, two boxes of trash bags, and a shovel in your personal vehicle. You requested Mr. Garry Ford, a subordinate, to assist you in loading these supplies in the back of your truck. Mr. Ford agreed to assist you. When asked by Mr. Ford where you were taking the items you replied you were "going to take it home" to clean up your property.

c. While in Hawaii, you violated the "two man rule" of chemical safety found in Department of Army (DA) Pamphlet (Pam) 385-61, Toxic Chemical Agent Safety Standards, chapter 6, section 10, and Army Regulation (AR) 50-6, Chemical Surety, 1-5 (d) when you apparently worked 284 total hours, 234 of which were Environmental Differential Pay (EDP) hours, and either no other employee worked EDP hours or the amount of hours you were credited with do not correspond to other employees hours.

(i) During the two week period 8-20 January 2006, when you were in Hawaii acting as supervisor in-charge, you submitted payroll hours consisting of 133 hours of EDP. Three other employees worked with you on this project. You also submitted their payroll hours. Not only did you have thirty (30) more hours of overtime than any one person, you had twenty-eight (28) more hours of EDP. Specifically on 20 January 2006,

AFCB-CFT-CO  
SUBJECT: Notice of Proposed Removal

Mr. Garry Ford was the only employee, other than you, reporting hours of work on the time sheet. He worked six (6) hours of overtime and no EDP while you listed fourteen (14) hours of overtime and fourteen (14) hours of EDP. On 9, 10, 11, 12, 15, 17, 18, and 19 January 2006, you reported more hours of EDP than any of your employees each day, therefore you violated the "two man rule."

(ii) The following two (2) week period 22 January through 4 February 2006 you were again the supervisor in-charge. On 23, 26, 30 January and 1 February you reported more hours of EDP than any of your employees each day. You reported a total of five (5) more hours of EDP for the pay period than any of your employees.

3. In determining the penalty for these offenses, I have compared it to similar offenses as defined in AR 690-700, Personnel Relations and Services (General), chapter 751, table 1-1, section B-18 (a), "Immoral, indecent, or disgraceful conduct", B-12 (a), "Using Government property or Federal employees in a duty status for other than official purposes", and B-14 (b), "Violation of administrative rules or regulations where safety to persons or property is endangered."

4. Your removal is necessary to promote the efficiency of the Federal service and is warranted for the aforementioned reasons. Your acts of misconduct are very serious offenses, which not only reflect adversely on the reputation of the United States Army, but also have completely undermined the trust that I must have in you as a supervisor.

5. The enclosure explains your right to representation, your right to reply to these charges and to review the material relied upon to support this action. You may contact Mr. Dave Crouch, Civilian Personnel Advisory Center (CPAC), 3-8987 (AA), with any questions, and for pertinent regulations and or supporting documentation relating to this proposal.

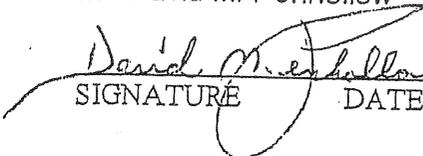
6. Please acknowledge the receipt of this memorandum by affixing your signature and date in the designated space below. Acknowledgement in no way constitutes concurrence or non-concurrence with the contents.

1 Encl

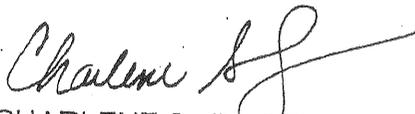
CF: CPAC, Mr. Crouch

RECEIPT ACKNOWLEDGED:

Mr. David M. Penhollow

  
SIGNATURE

5-31-07  
DATE

  
CHARLENE S. JENSEN  
Deputy to the Commander

RIGHT TO REPLY - You have the right to reply to this proposed action personally or in writing or both personally and in writing, and to furnish affidavits and other documentary evidence in support to your answer within 15 calendar days from the date of receipt of this notice. Consideration will be given to extending this time limit upon your written request to LTC Terrell, Deciding Official, for an extension, with your reason(s) for so requesting. If you reply in writing, it should be sent to LTC Terrell, Commander, 22d Chemical Battalion (Technical Escort), 5182 Blackhawk Road, Bldg E1942, Aberdeen Proving Ground, MD 21010.

If you desire to reply personally, Mr. Crouch, CPAC, [REDACTED], will make an appointment for LTC Terrell to hear your reply. You have the right to be represented by an attorney or other representative. If you are covered by a negotiated union agreement, you also have the right to be represented by a union representative. Your choice must be designated in writing. A written summary will be made of any personal reply and will be made available for your review and initialing as to accuracy. Your reply, if any, will be fully considered before a decision is made. If no reply is received, a decision will be made on the basis of present evidence. You will be furnished a written notice of decision.

---

RIGHT TO REVIEW MATERIAL - You may review the material which is relied on to support the reason(s) for this proposed action and it is available for your review at Mr. Crouch's office. If you are in a duty status, you will be granted up to four (4) hours of official duty time to review the material relied on to support this proposed action, for preparing and submitting a written reply, for obtaining affidavits, and for preparing and making an oral reply. The use of duty time for these purposes should be arranged with Mr. Crouch.

---

AVAILABILITY OF PERTINENT REGULATIONS - Pertinent regulations concerning this action are located in the CPAC and upon your request will be explained to you and/or made available to you by contacting Mr. Crouch, [REDACTED].

EMPLOYEE ASSISTANCE PROGRAM - It may be that there are personal problems or circumstances beyond your control such as medical problems, emotional problems or alcohol or drug abuse that contributed to this deficiency in your conduct. You should be aware of the availability of assistance in dealing with such problems through the Employee Assistance Program at this installation. This office is located in Building 2477 - AA and the telephone extension is [REDACTED]. If you have such a problem you must notify LTC Terrell, Deciding Official, or Mr. Crouch of its existence in order that it may be afforded appropriate consideration in deciding the proposed action.

Enclosure

**TAB K**

MEMORANDUM FOR LTC Patrick R. Terrell

SUBJECT: Response to Notice of Proposed Removal

1. As to the actuation listed as (2: a) it states that I knowingly and prominently displayed a sexually explicit sex doll in the work place.

This actuation is totally and unequivocally false.

- This item was a gift given to me by company employees and I thought it was an off the cuff jest or joke at my expense.
- Even though I didn't understand it's meaning I never asked the employees to explain as I was content to know that they were happy; morale was high, which was just what the company needed since we had been putting in long hours on the road TDY in and around the country the past couple of years.
- The item was placed inside my personal truck affixed to the steering wheel late one evening after a particularly long and exhausting work day.
- ~~As I was preparing to leave the arsenal that night I saw the item for the first time.~~ Immediately seeing this blown-up item which resembled a baby sheep I heard hysterical laughter which erupted in and around the parking lot. I remember just laughing too as I pulled out and left.
- The following morning I brought the item into our building and left it in the training room. I also made an off the cuff remark thanking the employees and that their gift was in the training room. I never thought about it after that until we were cleaning the training area at which time I moved the item to my team room and placed it on the filing cabinet.
- No one (employees, secretaries, management external or internal, military external or internal) ever told me that this was in any way fashion or form some type of an prohibited and or an objectionable sex object. No one ever came to me and complained that this item was offensive in and way shape or form and that it needed to be removed. No one ever brought this to the attention of my supervisor Mr. White stating that this was offensive and objectionable.
- I never knowingly handle display or talked about this item as if it was an offensive item.
- There have been numerous functions at the company during this time period. Formal and informal gatherings, promotions, inspections, and meetings where arsenal staff and battalion staff have been in my team room to include but not limited to the CG, BN Cdr, IG and CSMs and no one has ever mention anything about the inflated plastic animal; although, this is supposed to be so prominently displayed which leaves no question in observer's mind?

SUBJECT: Response to Notice of Removal Proposal

2. As to the actuation listed as (2. b.) it states that I removed government property from the worksite without authorization and had an employee, Mr. Ford, place the property in my personal vehicle for personal use at my house. The actuation further states that Mr. Ford asked me where the property was going and I replied quote (I was "going to take it home" to clean up my property).

This actuation that I took home any government property mention above for personal use is unequivocally false.

- There have been occasions where I have placed government property in the back of my personal vehicle only to facilitate movement due to time restraints.
- Most recently during 2006 into 2007 the company had been tasked to remove all supervisory team gear and company property from our old warehouse and place it into the new battalion warehouse.
- Due to the non availability in 2005, 2006 & 2007 and shortage of government vehicles there had become a standard practice among E-Company employees and supervisors to use POVs on occasions to complete the tasks at hand.
- During 2006 & 2007 time frame the company supervisors and employees had also moved equipment from our main office building and assigned government vehicles that had been improperly stored due to the transitions that had been taking place at the warehouses and the various equipment returns from TDY missions and projects.
- I don't recall asking neither Mr. Ford nor any other employee to carry out this particular task nor do I recall making the statement about taking the property home.
- I do admit that I routinely made off the cuff quirky remarks for there shock value in jest. These remarks were and are to elicit responses from employees to break the ice and bring humor to the burdens and tasks at hand.
- It has never been my intent to hurt nor to deceive employees and management. Nor has it been my intent to have anyone walk away with an impression other than my remarks have been a poke at good old fashion humor.
- In retro respect I can clearly see now that one may take away or misconstrue my intent to what I say as in this particular case.
- To correct this type of situation from occurring again in the future I can assure you that I fully understand the impact I have on employee's and their perceptions. Furthermore, I understand the need to take a firm stance and correct gray areas or misconceptions like this from ever happening again.

SUBJECT: Response to Notice of Proposed Removal

3. As to the actuations listed as (2. c, (i), and (ii) it states that I violated the two man rule on numerous occasions. It also states that I submitted Environmental Differential Pay (EDP) and over time hours for myself which differ in time and amount from other employees that were working on the same project (Hawaii) as well.

This actuation is totally and unequivocally false.

- Environmental Differential Pay (EDP) for handling toxic agents is paid to employees based on the total number of hours worked during the business day or work status.
- MSG. Reyes and I were required to work additional hours (continuing environmental pay) inventorying the Interim Holding Facility on a daily basis, attending project meetings, installation meetings, battalion conference calls, and MARB conference calls, which did not require the other team members.
- ~~Other duties which did not require other team members were the administrative~~ duties I was required to do.
- These duties required me to read and assist in rewriting the project and destruct plans, to send SIT-REPS daily and weekly, to send MARB item accountability and disposition daily, to send time sheets and projected over time requests, to write and send official memorandums to include but not limited to change of duty hours; to coordinate the shipment of in coming and out going equipment needed to sustain operations, and the coordination of employees and soldiers in coming and outgoing.
- The aforementioned isn't all encompassing as sever weather and broken equipment required solutions on a daily and nightly basis in order to successfully complete and keep up with the daily work schedule.
- On 8-20 January 2006, and 22 January 2006 through February 4, 2006 the above duties were performed by me and the attached paper work (SIT-Reps) cover the aforementioned.
- To specify address January 20, 2006 it states that Mr. Ford and I were the only employees working and that the over time hours and EDP hours were different as well.
- That is a misconception; Mr. Carney (Dugway) Mr. Roberts (PBA), INEL Technicians and I were working as were other employees from E Company and RMT.
- The accompanying (SIT-REPS) and documentation cover this as well.

4. Sir, my loyalty, dedication, performance and integrity to the Army, organization, and company are unwavering and still intact. I ask that your final decision on this matter be made only on the facts that have been provided to you

  
DAVID M. PENHOLLOW  
Supervisor E-Company

# TAB L



DEPARTMENT OF THE ARMY  
22d CHEMICAL BATTALION (TECHNICAL ESCORT)  
5183 BLACKHAWK ROAD, BLDG E1942  
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

AFCB-CFT-CO

3 JULY 2007

MEMORANDUM FOR Mr. David M. Penhollow, 22<sup>nd</sup> Chemical Battalion (Technical Escort),  
5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010

SUBJECT: Notice of Decision

1. This is official notification of my decision concerning your proposed removal from your position of Toxic Material Control Supervisor, WS-6501-14 and the Federal Service for, Conduct Unbecoming a Federal Employee, Unauthorized Removal of Government Property, and Violation of Administrative Rules or Regulations Where Safety to Persons or Property is Endangered.
2. Reference is made to the Notice of Proposed Removal which you acknowledged receipt on 31 May 2007. You were afforded fifteen (15) calendar days in which to reply orally, in writing, or both to the notice of proposed removal. Your written reply, undated, was received by me on 8 June 2007. I have carefully considered the reasons contained in the notice of proposed removal and your written reply, fully and impartially. I find the circumstances involving the charges of "unauthorized removal of government property", and the "violation of administrative rules or regulations where safety to persons or property is endangered" are not sustained, and are therefore dismissed. I find that the circumstances involving the charge of "conduct unbecoming a Federal employee" as described in the notice of proposed removal, are fully supported by a preponderance of the evidence, and are sustained.
3. In deciding the appropriate penalty, I have considered the factors listed in Douglas v. Veterans Administration, 5 MSPR 280 (1981). I believe a three (3) day suspension is the appropriate disciplinary action to correct your misconduct and promote the efficiency of the service.
4. Therefore, my decision is that you be suspended from your position for a period of three (3) days, effective 16 July 2007, for "conduct unbecoming a Federal Employee." You should return to duty on 19 July 2007. A Standard Form 50, Notification of Personnel Action, effecting this action is forthcoming under separate correspondence. I must warn you that any subsequent misconduct may result in more serious disciplinary action up to and including your removal from Federal service.
5. You will remain in a detailed status until the completion of the realignment of the Analytical & Research Directorate (ARD), approximately September 2007. A decision will be made at that point concerning your detailed position.
6. If you believe this personnel action discriminated against you on the basis of your race, color, religion, age, sex, physical or mental handicap, or national origin, you may file, within 45 days

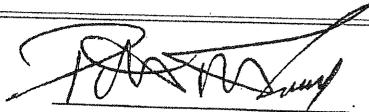
AFCB-CFT-CO

SUBJECT: Notice of Decision

of the effective date of this action, a complaint of discrimination with the Equal Employment Opportunity Office, telephone 410-278-1100. You may not, however, file both a grievance and a complaint of discrimination. Should you elect to file a complaint of discrimination, your complaint will be processed in accordance with Equal Employment Opportunity Commission Regulations at Title 29 Code of Federal Regulations Section 1614.

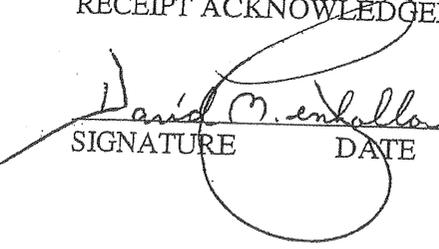
7. You may grieve this suspension under the administrative grievance procedures found in DoD-1400.25-M, DoD Civilian Personnel Manual, Chapter 700, Subchapter 771, Administrative Grievance System. You have the right to represent yourself or seek assistance from a representative of your choosing in matters pertaining to this action. Copies of applicable regulations as well as the materials relied on in issuing this suspension is available to you and/or your representative for review through the Civilian Personnel Advisory Center (CPAC). If you require assistance or additional information concerning your procedural rights, you may consult with Mr. David Crouch, Civilian Personnel Advisory Center, [REDACTED]

8. Please acknowledge receipt of this notice by affixing your signature and date in the designated space on the enclosed "Employee Receipt Acknowledgement Copy" of this memorandum and returning it to me. Acknowledgement in no way constitutes concurrence or non-concurrence with the contents.



PATRICK R. TERRELL  
LTC, CM  
Commanding

RECEIPT ACKNOWLEDGED:

  
SIGNATURE

DATE

3 JUL 2007

# ENCLOSURE 7



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

REPLY TO  
ATTENTION OF

NOV 26 2007

AFCB-DCO

MEMORANDUM FOR RECORD

SUBJECT: Designated Grievance Receiver Decision Regarding Michael Penhollow  
Grievance

1. As the Designated Grievance Receiver for Mr. Michael Penhollow's formal grievance dated 16 October 2007, I have reviewed the investigation and grievance materials provided by Diane J. Smith, Director, Civilian Advisory Center, Aberdeen Proving Grounds. I find as follows:

a. The Investigating Officer (IO) did not conduct a model investigation. His questions were sometimes suggestive or imprecisely focused. However, I find no investigatory errors or practices that materially prejudiced any substantial rights of Mr. Penhollow. Even discounting the questionable aspects of the IO's interviews, the remaining evidence is sufficient to arrive at the findings below.

b. 5 USC 7701, cited as an authority for the grievance in Mr. Penhollow's memorandum, is inapplicable to this review. 5 USC 7701 deals with appeals to the U.S. Merit System Protection Board.

c. The original charges of "unauthorized removal of Government property" and "violation of administrative rules or regulations where safety to personnel or property is endangered" were dismissed by LTC Terrell as unsubstantiated. As such, the only remaining charge was "conduct unbecoming an employee". The sole basis of this remaining charge was displaying a "sex sheep doll" in the workplace, negatively affecting unit morale and readiness. No witness statements or IO findings regarding any other possible supervisory misconduct were considered in this grievance review.

d. There is no dispute that the inflatable sheep in question was placed in the office by Mr. Penhollow, apparently after some employees had placed it in Mr. Penhollow's vehicle as a joke. While the IO stated that every person interviewed had seen the sex doll, it is not mentioned in the majority of the employee statements taken by the IO.

e. There is insufficient evidence to conclude that the sex sheep doll adversely affected unit morale and readiness. However, the simple act of placing such an object in the workplace, regardless of intent, shows extremely poor judgment for a supervisor and constitutes conduct unbecoming an employee. Mr. Penhollow's claim that he did not know the true nature of the inflatable sheep is implausible, given the appearance of the doll and Mr. Penhollow's decision to display it in the office. Thus, the charge of conduct unbecoming an employee is substantiated under the preponderance of the evidence standard.

AFCB-CS

SUBJECT: Designated Grievance Receiver Decision Regarding Michael Penhollow  
Grievance

2. The three (3) day suspension issued by LTC Terrell is reduced to one (1) day to reflect the findings above..



BARRETT F. LOWE

COL, IN

Deputy Commander

# ENCLOSURE 8

4 August 2008

MEMORANDUM FOR RECORD

SUBJECT: OSC Form 11, Questions 13 and 14; Prohibited Personnel Practices Involving David M. Penhollow

1. The purpose of this memorandum is to relay prohibited personnel practices taken against me pursuant to an Article 15-6 investigation conducted between 17 Jan and 31 May 07 (Tab B to Enclosure 6, Exhibit 1). I continue to be subjected to ongoing prohibited practices, primarily in the form of a detail to which was assigned for the 19 months, 12 of which were in unevaluated duties.
2. I am a 20-year veteran of the CBRNE Analytical and Remediation Activity, and its predecessor organizations. On 17 Jan 07 I was removed from my WS-14 position and placed on a detail to unevaluated duties pending the outcome of an Article 15-6 investigation (Tab A to Enclosure 5, Exhibit 1). I was not told at that time what the allegations against me were. The Investigating Officer, MAJ Wayne Hyman treated it as an adversarial process with a foregone conclusion from the onset. Following the investigation, the Deputy to the Commander, Ms. Charlene Jensen (YC-301-03), proposed removal from federal service. Following my rebuttal, the Battalion Commander, LTC Patrick Terrell, imposed a three-day suspension. The Designated Grievance Receiver (Deputy Commander, 20<sup>th</sup> Support Command), COL Barrett Lowe, reduced it to a one-day suspension.
3. With the exception of references to COL Lowe's actions, all of the information concerning the investigation discussed below was presented as part of the grievance I presented to COL Lowe. I have left the information in its original format, referenced it in that format and included that grievance package as Exhibit 1. Exhibit 2 contains the information pertinent to actions begun during the investigation but not ended following either the completion of my suspension or COL Lowe's final decision.
4. 5 USC 2302(b)(2) (Tab A to Enclosure 3, Exhibit 1) states "Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority... solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on personal knowledge or records of the individual providing it."
  - a. As discussed in Enclosure 2 to Exhibit 1, MAJ Hyman's frequent solicitation of exactly such information was in direct violation of this requirement.
  - b. Despite her access to official records and other documents that could refute some of the allegations, Ms. Charlene Jensen, relied heavily upon this type of unsubstantiated information in the Notice of Proposed Removal, on which the final

4 August 2008

**SUBJECT:** OSC Form 11, Questions 13 and 14; Prohibited Personnel Practices Involving David M. Penhollow

decision was based, as direct quotation in one place. COL Lowe's finding that two of the three allegations for which Ms. Jensen punished me were unfounded and that there was essentially no record evidence to support the third allegation attest to her unquestioned consideration and acceptance of the biased and incomplete information presented in many of MAJ Hyman's witness statements

5. 5 USC 2302(b)(12) states that it is a prohibited practice to "...take or fail to take any other personnel action if taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 or this title." 5 USC 2301(b)(2) states, "All employees...should receive fair and equitable treatment in all aspects of personnel management without regard to ...race, color...sex, age,...and with proper regard for their privacy and constitutional rights."

a. The expansive and extensive investigation and punitive disciplinary action I received as a result were not equitable to the actions LTC Terrell took with respect to other supervisors and senior personnel committing the same or similar offenses during his command.

(1) Tab AI to Enclosure 6, Exhibit 1, is one of the 15-6 statements of a peer supervisor in B Company. In it he states that he knew the item in question was sex doll and that it was inappropriate. He also reveals that he did not remove it from the company area. I did not even know what it actually was and was suspended for three days just for having it in the office. Mr. Griffin knew exactly what it was and nothing has come of his admission or of the command's subsequent knowledge that he took no active steps to rectify a situation he knew was improper.

(2) It is common knowledge in the battalion that 1SG Davidson was found guilty of making a racial slur against one of his subordinates; the veracity of the allegations was not in question. Neither he nor his commander was temporarily removed from his position during the investigation; my commander was temporarily removed from his position and I have still not been allowed to return to my position. The only action taken against the 1SG was a local letter of reprimand. In fact, after questioning the First Sergeant's ability to be a role model after such an incident, LTC Terrell made it very clear that the reprimand was administrative in nature, not punitive.

(3) Mr. Miller, a physical science technician in the battalion's Analytical Branch, was found guilty of accessing pornographic websites on his government computer. He received a one-day suspension and return to duty.

4 August 2008

**SUBJECT:** OSC Form 11, Questions 13 and 14; Prohibited Personnel Practices Involving David M. Penhollow

b. In his final decision memorandum (Enclosure 1 to Exhibit 2), COL Lowe, stated: "The sole basis of this remaining charge [conduct unbecoming] was displaying a 'sex sheep doll' in the workplace, negatively affecting unit morale and readiness."

(1) COL Lowe established that, "There is insufficient evidence to conclude that the sex sheep doll adversely impacted unit morale and readiness." Despite determining that the sole basis of the remaining charge was unfounded, he upheld the disciplinary action taken against me.

(2) That apparent contradiction aside, COL Lowe determined that: "Mr. Penhollow's claim that he did not know the true nature of the inflatable sheep doll is implausible, given the appearance of the doll." The record shows that the doll had not been inflated for a number of months prior to the AR 15-6 or at any time during it. He also acknowledged that some of my employees had brought the item onto post and placed it in my truck as a joke and that it was not mentioned in the majority of the employee statements, contradicting the inference of the obvious true nature of the doll, to me or to others. COL Lowe's final decision, "Thus, the charge of conduct unbecoming an employee is substantiated under the preponderance of evidence standard," does not appear to be supported by the correct application of that standard (as discussed in the credibility assessment at Enclosure 2 to Exhibit 1).

(3) Essentially, my disparate treatment was based on either a charge that the final decision authority himself proved unfounded or on personal conduct which was not adverse to my on-the-job performance or that of any of my subordinates, peers or supervisors. The latter personnel action is expressly prohibited by 5 USC 2302(b)(10).

(4) It bears mentioning that the fact that the entire battalion chain of command, and much of the brigade chain of command, had walked through and inspected the team area over the course of the time the doll was present and never made mention of its appropriateness, or lack thereof, was never refuted. This obvious absence of disapproval of the item constitutes tacit approval of it. It seems somewhat arbitrary and capricious to suspend me for three days, reduced to one, without ever having informed me my heretofore acceptable "conduct" was now inappropriate.

c. Substantial substantive and procedural error prejudiced my rights and LTC Terrell's decision. Because much of the error was caused by prohibited personnel practices, Ms. Jensen's initial decision, LTC Terrell's decision after my rebuttal, and COL Lowe's decision on my grievance were based on prohibited personnel practices.

(1) As established in Enclosure 1 to Exhibit 1, MAJ Hyman's conduct of his fact finding was in gross violation of my constitutional rights, as was LTC Terrell's failure to remain impartial in his evaluation of all of the evidence. Enclosure 2 to Exhibit

4 August 2008

**SUBJECT:** OSC Form 11, Questions 13 and 14; Prohibited Personnel Practices Involving David M. Penhollow

2 further describes the elements of MAJ Hyman's investigatory conduct that violated UCMJ and civilian personnel regulations.

(2) Enclosure 1 to Exhibit 1 contains a detailed discussion of statutory and regulatory substantive due process requirements for AR 15-6 proceedings and civilian adverse personnel actions. In short, the investigating officer's conduct during the investigation was so egregious and procedural due process violated so much that I could not possibly have received a fair evaluation of the allegations or disposition thereof. As a result, in accordance with AR 15-6 paragraph 2-3.c.(3)(c) (Tab A to Enclosure 1, Exhibit 1), the appointing authority may not use the affected part of the investigation as the basis for adverse action; no part of the investigation was unaffected by the substantive errors.

(3) Significant harmful errors led to decisions and disciplinary actions that would not have occurred had the investigation and handling of the information obtained been accomplished in accordance with statutory and regulatory requirements.

6. As described in Enclosure 3 to Exhibit 2, Ms. Jensen's actions with respect to my lengthy detailed status were prohibited practices in that they amounted to mismanagement of my skills and experience as a Government resource and had the effect of making the detail punitive in nature.

7. My personal representative in this matter is Ms. Victoria Kost; 132 Talton Drive, Delta, PA 17314; (h) 717-456-5883; (w) 443-402-9293.

8. Thank you for your consideration in this matter.

2 encls

Exhibit 1 – Original

Documentation

Exhibit 2 – Additional

Documentation

David M. Penhollow

**ENCLOSURE 1** Statutory and Regulatory Substantive Due Process Requirements for AR 15-6 Proceedings and Civilian Adverse Personnel Actions

1. AR 15-6, paragraph 1-5 (Tab A to this enclosure) defines an investigation under this regulation as an administrative fact-finding procedure. Paragraph 1-6 states, "It is the duty of the investigating officer 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.

a. By its very nature, hearsay cannot stand as fact without corroborating factual or credible evidence. Yet in many of his interviews, MAJ Hyman solicits at least one instance of hearsay—a very common questioning method he used was to ask the interviewee, "What have you heard about...?" or "Has anyone ever told you about...?" With almost equal consistency, he allows the interviewees to present hearsay, sometimes third- and fourth-hand information, and later treats that hearsay as credible evidence. He rarely received or requested substantiating information for hearsay or personal allegations, nor did he seek out existing records that could confirm or deny allegations, such as performance appraisals, documented personnel actions, training records and TDY records.

b. MAJ Hyman presented only six facts in his findings and recommendations memorandum. The fifth item he presents is factually incorrect. I know personally that Mr. Swinson has never been pulled over for a DUI while driving a vehicle owned, leased or rented by the government. According to Mr. Swinson, the incident in question was actually dropped and his record expunged.

c. His sixth fact is misleading in that he did not ask all of the interviewees about the working environment, nor did he ask all of them about their professional experience and credentials. And he did not ask me, or the other two accused, about our professional experience or credentials. In addition, the conclusions he is presenting as fact are actually compilations of carefully selected opinions.

d. He presented no other facts to support his follow-on findings and recommendations. He does rely upon unsupported hearsay (see Enclosure 2) to make a number of factually incorrect or otherwise unfounded conclusions. Again, an impartial search for all of the facts would have led him to the factual evidence of record that provides the full context of many of the historical incidents, to include refuting the improprieties to which some of them allude, and refutes some of his eventual conclusions.

2. AR 15-6, paragraph 2-1. b., the commander must appoint an investigating officer. Whether oral or written, the appointment must specify clearly the purpose and scope of the investigation and the nature of the findings and recommendations required. As mentioned above, his findings and recommendations must comply with the appointing authority's instructions. MAJ Hyman's appointment orders (see Tab AC to Enclosure 6) include:

a. "Purpose: To investigate allegations of supervisory misconduct against Mr. Albert White, Mr. Michael Penhollow and Mr. Thomas Swinson. These allegations include, but are not limited to: theft of US government property, nepotism, threatening subordinates with loss of employment if the subordinate lodges complaints and intimidation. You are to make findings and recommendations for any disciplinary action and make other appropriate recommendations as necessary.

(1) "Include, but not limited to" is neither specific nor clear with regards to establishing the scope of the investigation.

(2) Short of specific allegations, reverting to CSM Rodriguez' 11 January 2007 memorandum (Tab AD to Enclosure 6) provides the only command-level stated allegations in the record: "1) Steals unit property, 2) Uses intimidation to get things done, 3) Gives the best jobs and bonus to the folks he likes, 4) Falsifying his time sheets, 5) Has very little leadership abilities, and is a bad manager, 6) Is not fair when recommending bonus, 7) Does not care or takes care of only the workers he likes."

## ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements

(3) MAJ Hyman's investigation did not address or make any finding on allegations 3 and 6. He attempted to address the other issues; however, his reliance on unsubstantiated hearsay (see Enclosure 2) and failure to seek and evaluate available factual, recorded evidence caused him to fall short of being able to make any warranted conclusions or recommendations. As a result, he did not comply with the appointing authority's instructions.

b. Special instructions: (1) In your investigation, all witness statements will be sworn, (2) You will use informal procedures under 15-6, (3) ...you must provide all witnesses a Privacy Act statement before soliciting any personal information, (4) Statements obtained during the course of your investigation will be administered on DA Form 2823."

(1) Only my first statement was recorded on a DA Form 2823 (Tab AK to Enclosure 6), but the statement was not sworn, nor did I sign it. MAJ Hyman failed to properly close out that statement—he did not sign it and he did not record why I did not sign it (I told him his paraphrased written answers did not accurately reflect my verbal answers). I was not afforded the opportunity to review the second one for completeness and correct representation of my comments or to sign it.

(2) Despite soliciting personal information from many of the interviewees, there is no record of Privacy Act statements in the record of the investigation. I was not provided one before either interview.

(3) Only one of my statements was recorded on a DA Form 2823.

c. Paragraph 1.c. established the duration of the assignment to be 30 days. Paragraph 3 required the investigation be completed and the findings be presented by 16 February 2007.

(1) The DA Form 1574 and MAJ Hyman's findings and recommendations memorandum support the investigation was closed and findings presented on 16 February 2007.

(2) MAJ Hyman interviewed the three accused in March 2007 and three other witnesses provided additional statements in April 2007. Those interviews are all included as exhibits in the final record of the investigation. As such, the investigation did not end on 16 February, though there is no record of an amendment extending MAJ Hyman's appointment as Investigating Officer beyond 16 February or appointing a new investigating officer after MAJ Hyman departed the unit in mid-March 2007.

3. AR 15-6, 3-7.c.(5)(b) states that 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. Subparagraph (d) requires an investigating officer to explain a witness' rights whenever it appears appropriate and advisable. Paragraph 4-3 states that no respondents will be designated in an informal investigation. Furthermore, both the commander and his investigating officer are subject to UCMJ. As such, they are expressly prohibited from compelling self-incriminating statements from the accused. "No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offence of which he is accused or suspected and that any statement made by him may be used as evidence against him," UCMJ, Subchapter 6, 813 Art. 31.(b).

a Though not officially notified that I was a respondent, the appointment orders clearly designate me as a person suspected of wrongdoing. The nature and conduct of MAJ Hyman's questioning of witnesses further develops me as a suspect—the entire line of questioning with every witness, including me, centered on me and the other two accused and allegations of our wrongdoing. As I was one of the last people to be interviewed, the content of all of the statements MAJ Hyman had taken understandably gave him reasonable cause to suspect me of wrongdoing. In fact, he stopped Mr. Gary Ford's 19 January interview (Tab I to Enclosure 6) twice after Mr. Ford's answers to questions about my conduct—an action AR 15-6 directs an investigating officer take if s/he suspects criminal misconduct. And MAJ

## ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements

Hyman did submit to CID certain elements of his investigation related to allegations against me. There is no doubt that he considered me a suspect at the outset of our first interview, 29 January.

b. Though it was appropriate and advisable to explain my rights to me at the outset of our first conversation (Tab AK to Enclosure 6), MAJ Hyman chose not to. In fact, in his record of our first conversation, MAJ Hyman recorded, "Mr. Penhollow then expressed he was not aware of any of the rights he has....MAJ Hyman replied that he had the right to have an attorney present during this and any other interview." What he did not record was that after telling me I had the right to have an attorney, he added that I still had to answer the questions. I was never read my rights throughout the course of the investigation. As such, MAJ Hyman did not just fail to comply with his AR 15-6 responsibilities, he violated the UCMJ rights warning requirement.

4. AR 15-6, 3-8.c.(2) directs that care must be taken to ensure that the statement is phrased in the words of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or nonexistence of material facts. AR 15-6, paragraph 3-8. d. states, "Witnesses may not be precluded from discussing any relevant matter with the recorder, respondent, or counsel for a respondent."

a. At the close of our first interview, MAJ Hyman printed the first page of the statement and asked me to review and sign it. When I read it I saw that he had not recorded the answers as I had said them. He stated that he was paraphrasing them. I told him that I felt he was taking too much liberty in how he was paraphrasing my answers—his written version did not accurately reflect my spoken response—and I refused to initial that page or sign the statement. He did not record the reason for my refusal to sign in the signature section of the form, as is required.

b. My original Detail to Unevaluated Duties memorandum (Tab A to Enclosure 5), states, "This means you shall not speak with or question anyone, directly or indirectly, regarding their participation in this investigation. This includes asking individuals whether they have met with or been asked to meet with the Investigating Officer (IO), ..." That wording and the verbal directive that I was to have no contact with the members of B Company, to include going to the company area during duty hours, made it clear to me I could not speak with anyone except the IO and the chain of command as to the allegations, nor they with me.

c. MAJ Hyman's questioning technique consisted primarily of questions that began with "What can you tell me about...", "Have you ever heard about...", and then he would describe a specific incident mentioned in someone else's statement. Or, he would lead you to provide the answer he wanted to hear—"Have you ever seen a sheep sex doll on display?" If the person has seen the doll, regardless of knowing its possible purpose, he will answer yes; to say no would be lying.

d. He continued to suggest facts not in evidence throughout his findings and opinion statement by choosing qualitative adjectives that grossly misrepresented the actual number of statements he had that supported the point he was trying to make.

5. AR 15-6, paragraphs 3-9 through 3-11 address changing the scope, findings and recommendations.

a. 3-9 directs that if something happens that could cause the appointing authority to consider enlarging the proceedings or otherwise modifying any instruction in the original appointment, the investigating officer will report this to the appointing authority.

(1) As the sheep doll was not mentioned during the command climate survey, the IG sensing session or the CSM's personal interviews, it could not possibly have been included in whatever scope LTC Terrell had in mind, yet, that was one of MAJ Hyman's major findings and the only one LTC Terrell upheld and for which I was disciplined. There is nothing in the record indicating MAJ Hyman brought what he considered a new offense to the attention of the appointing authority or that the appointing authority approved expanding the scope of the investigation to include the item in question.

## ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements

(2) The original appointment orders directed the investigation close by 16 February. The DA Form 1574 confirms the investigation closed on 16 February. Yet, there are at least six statements dated beyond 16 February.

(3) There is no record of communication in the record to explain why MAJ Hyman conducted interviews in March, to include whether it was on his accord or by the direction of the appointing authority.

(4) There is nothing in the record to indicate who requested and took the statements made in April—MAJ Hyman was no longer with the unit at that time—or why they were requested.

b. 3-10 defines a finding as “a clear and concise statement of fact that can be readily deduced from evidence in the record. It is directly established by evidence in the record or is a conclusion of fact by the investigating officer. The investigating officer will normally not exceed the scope of findings indicated by the appointing authority. Findings will be stated to reflect clearly the relevant facts established by the evidence and the conclusions thereon of the investigating officer.

(1) Even a cursory review of MAJ Hyman’s collected statements shows that he did not seek confirming factual evidence of the claims made by most of the witnesses.

(2) A 15-6 investigation is a fact-finding mission. The credibility analysis in Enclosure 2 shows that MAJ Hyman found very few facts, and he presented even fewer in his findings document. The one offense for which I was eventually disciplined was not supported by objective, factual evidence—essentially, it was a sex doll because Mr. Pulliam declared it as such and MAJ Hyman continued to refer to it as such for the rest of the questioning. Of particular import, missing from MAJ Hyman’s record of facts is the number of Battalion and Brigade command officials (to include LTC Terrell), external command officials and DAIG inspectors who have visited and conducted inspections of the company and my team area since the doll was given to me, seen the sheep doll and said nothing about it, least of all been offended by it.

(3) An analysis of his findings and recommendations further demonstrates that MAJ Hyman did not have relevant, record facts to support the allegations made against me or the conclusions he was drawing with regards to me. This is borne out by LTC Terrell’s removal of two of the charges against me upon receiving the full context and all of the facts during my rebuttal to Ms. Jensen’s Notice of Proposed Removal memorandum. (Tabs AP and AQ to Enclosure 6)

c. 3-11 directs that investigating officers “make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of fairness both to the Government and to individuals.

(1) MAJ Hyman’s failure to remain impartial is clear in his findings and recommendations memorandum and the opinion statement he presented at the conclusion of his investigation (Tab B to Enclosure 6). It is also clear in his selection of interviewees and the manner in which he questioned them.

(2) MAJ Hyman’s failure to comply with even the basic requirements of an investigating officer and in the conduct of a 15-6 investigation indicate that his actions were not guided by the concept of fairness, particularly to the individual.

6. AR 15-6, paragraph 3-15 requires “all significant letters and other papers that relate to administrative aspects of the investigation that are not evidence will be numbered consecutively..., including such items as these: e. Privacy Act statements and f. Explanation by the investigating officer of any unusual delays, difficulties, irregularities or other problems encountered.”

a. As noted above, at least six statements were taken well after the official close of the investigation, yet there is not amendment to the appointment orders. There is no explanation or

## ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements

documentation of the reopening of the investigation. And there is absolutely no documentation to explain or support the April statements—the original investigating officer was not with the organization when they were taken.

b. As noted above, there is no documentation supporting the expansion of the scope to include the sheep doll.

c. There are no Privacy Act statements in the record.

7. AR 690-700, Chapter 751, 1-4(c) states that aggravating factors on which the agency intends to rely for imposition of enhanced penalties (such as offense committed by a supervisor) should be included in the notice of proposed discipline so the employee has the opportunity to respond. CPOL guidance "Notice of Proposed Suspension" (Tab B to this enclosure) calls for a detailed factual description (dates, times, places, people involved...) of the incidents, to include a statement on how the efficiency of the service is adversely affected by the conduct.

a. The Notice of Proposed Removal (Tab AP to Enclosure 6) did not contain any details as to what factors would be relied upon to determine the final disciplinary action.

b. The proposal memorandum does provide all of the requisite detail for one of the offenses that LTC Terrell dismissed. It only contained the name and the items allegedly stolen in the description of the other offense LTC Terrell dismissed. The remaining offense for which I was disciplined is described in very scant detail, to include lacking the names of anyone who was offended or even impacted by the item in question. In addition, it does not offer a statement as to how the efficiency of the service was affected by my alleged conduct. As the investigation provided no factual or subjective evidence of mission failure or incomplete mission accomplishment (most notably, failures of or comments on inspections in this particular instance), the "efficiency of the service" to be gained by the proposed discipline is not clear or intuitive. The fact that numerous chain of command and external leadership observers found nothing wrong, improper or disgraceful about the item leaves the connection to the efficiency of the service even more tenuous.

c. The proposal provided no explanation as to what about the item "[left] no question in an observer's mind that it is a sex doll." LTC Terrell demonstrated a failure to remain impartial by suggesting his own facts not in evidence in his completion to the Douglas Factors analysis (Tab AR to Enclosure 6). Perhaps to make the offense seem more severe, he embellished his description of the sheep doll with details that not only were nowhere in any of the statements, but were not even true. There are no "red orifices" in the doll and the orifices discussed by MAJ Hyman are not both located on the rear of the toy. While I still do not recognize the item as more than a blow-up child's toy, I had no opportunity to address what information was used to make the determination of its other possible use, and I certainly could not have addressed the "facts" upon which LTC Terrell based his decision as they were not even in the record.

c. The employee's right to respond becomes meaningless if employees are not given full, complete and specific notice of the reasons to be considered by the deciding official (Department of Homeland Security Customs and Border Protection US Border Patrol, El Paso, TX (61 FLRA No. 2, 2005), Tab C to this enclosure).

8. 5 USC 7503(b) lays the groundwork for the minimum due process to which an employee is entitled. This includes a written decision and the specific reasons therefore at the earliest practicable date. AR 690-700, Chapter 751, 1-3.b.(3) states that decision notices should contain information demonstrating the deciding official considered all available information, aggravating and mitigating (e.g., "I have considered" aggravating and mitigating Douglas factors). The official must explain what weight was given to the aggravating factors in reaching the final decision.

## ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements

a. The final decision memorandum provides no specific reasons for LTC Terrell's final decision and I did not receive his Douglas Factors analysis until 9 October, when I received my FOIA request packet.

b. While he alludes to a Douglas Factors analysis, he does not mention the actual mitigating or aggravating factors that led to his final conclusion, nor did he mention any other aggravating or mitigating factors that may have impacted his decision. As no factors were listed, no weights for the aggravating factors were provided either.

c. Though LTC Terrell's Douglas Factors analysis does state that I lost the trust and confidence of my subordinates, this is not supported by objective evidence in the record.

(1) It was one of my employees who actually brought the item onto post and displayed it in my personal vehicle.

(2) Neither the IG Survey and Sensing Session results (Tab AA to Enclosure 6) or CSM Rodriguez' battalion- and B Company-level surveys (Tab AD to Enclosure 6) make any mention of a sheep sex doll, let alone provide any feedback from individuals stating they had lost their trust and confidence in me because of the presence of such an item in the company area.

(3) Only five of the 30 witness statements, which does not include those of the accused, even mention the doll. Only one person brings the doll up on his own accord, the other four were asked about it. One of those is a fellow supervisor who admits he knew what it was but did not remove it (Tab AI of Enclosure 6). Three of the personnel only referred to it as a sex doll in the sense that MAJ Hyman asked if they'd seen the sex doll and they answered yes.

d. As discussed in 7.b. above, the final decision memorandum does not provide the required explanation of nexus between the disciplinary action and the efficiency of the service. As the investigation provided no factual or subjective evidence of mission failure or incomplete mission accomplishment, the "efficiency of the service" gained by the discipline is not clear or intuitive, nor is any damage to the Army's reputation.

e. What is clear in LTC Terrell's Douglas Factors analysis is that he did not conduct it with an impartial view to and evaluation of all of the facts in evidence.

9. As discussed above, very little of the actual AR 15-6 investigation was done correctly, and at times it was in direct violation of my constitutional rights. Other statutory and regulatory requirements were violated as well. The investigation is over. I have served and continue to serve the actions prescribed in the Notice of Final Decision. Nothing can be done at this point to correct the substantial errors committed during this investigation. AR 15-6, 2-3.c.(3)(a) states, "Substantial errors are those that have a material adverse effect on an individual's substantial rights." Subparagraph (c) states, "If the error cannot be corrected,...the appointing authority may not use the affected part of that investigation as the basis for adverse action against that person."

**Enclosure 2** Specific Issues Concerning Conduct of the Investigating Officer,  
MAJ Wayne Hyman

MAJ Hyman committed a series of prohibited personnel practices in that he violated 5 USC 2302 (b)(12): "Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title."

Merit system principle 2 requires all employees receive fair and equitable treatment in all aspects of personnel management...and with proper regard for their privacy and constitutional rights. Principle 8 states employees should be protected from arbitrary action. Enclosure 1 to Exhibit 1 contains a detailed discussion of the violations of statutory and regulatory substantive due process requirements for AR 15-6 proceedings and civilian adverse personnel actions and establishes that MAJ Hyman's actions during the AR 15-6 investigation violated both of those principles.

1. I have a constitutional right for procedural due process by an unbiased decision maker. Tab B to Enclosure 6, Exhibit 1 is the Investigating Officer Statement MAJ Hyman filed in conjunction with his investigation closeout report.

a. The disparaging and inflammatory tone of that memorandum, coupled with the general procedural irregularity of providing such a statement at all, substantiates his lack of objectivity.

b. Given the intensity of his personal opinion and the questionable nature with which he conducted the investigation and determined witness credibility (Enclosure 2 to Exhibit 1), it is reasonable to conclude his bias was not the result of the information he gathered during the investigation.

c. Rather, his fidelity as a fellow explosive ordnance specialist (he is an EOD officer) clouded his judgment and gave him a predisposition to find those who spoke in support of the allegations credible and generally discredit the testimony of anyone who spoke on my behalf on the basis of bias.

2. MAJ Hyman's conduct during the investigation and his written reports following it were so egregious and the procedural due process violations so overwhelming that I could not possibly have received a fair evaluation of the allegations, or disposition thereof.

a. There were a number of unit personnel MAJ Hyman did not interview but who reasonably would have had material knowledge or other information germane to the investigation—people mentioned in other statements or who worked closely with me..

b. Although MAJ Hyman did not notify LTC Terrell of the need to expand the scope of the investigation when Mr. Pulliam mentioned the alleged sex doll in the office,

**Enclosure 2** Specific Issues Concerning Conduct of the Investigating Officer,  
MAJ Wayne Hyman

he did in fact, and without requisite amendment to his appointment orders, begin an investigation into that alleged unbecoming conduct. That segment of the investigation was not conducted evenhandedly.

(1) No factual or objective evidence was ever sought or otherwise provided to substantiate that the toy was in fact intended for vulgar uses.

(2) Mr. Griffin, a peer supervisor, twice stated that he knew what the doll was and that it was inappropriate (Tab AI to Enclosure 6, Exhibit 1). He adds that Mr. White, E Company Chief, also must have seen the doll and allowed the doll to remain.

(3) I was a supervisor being investigated for allowing a (supposed) sex toy to be displayed (I still maintain that I had no idea that's what it actually was—that simply isn't a part of my lifestyle, especially as a supervisor). MAJ Hyman received firsthand knowledge that another supervisor knew exactly what it was, that it was inappropriate and that he did not remove it. He had secondhand knowledge that a senior supervisor knew about it and allowed it to remain.

(4) If the unbecoming conduct was displaying the toy, Mr. Griffin's and Mr. White's actions should have at least been examined, as they allowed the toy to remain on display. Yet they were not addressed any further, let alone scrutinized like mine.

3. MAJ Hyman's actions establish the grounds for several violations of the Uniform Code of Military Justice (UCMJ):

- a. 831 ART 31 Compulsory self-incrimination prohibited
- b. Article 92 Failure to Obey Order or Regulation
- c. Article 98 Noncompliance With Procedural Rules
- d. Article 107 False Official Statements
- e. Article 133 Conduct Unbecoming an Officer and Gentleman

4. Although MAJ Hyman is not bound by AR 690-700's Table of Penalties, the violations described above constitute the following offenses committed against me:

- a. Punitive Offense 10.d Deliberate misrepresentation, exaggeration, concealment, or withholding of material facts
- b. Punitive Offense 14.a Violation of administrative rules and regulations where safety to persons and property is not involved
- c. Punitive Offense 17 Violation of employee's constitutional rights

### **Enclosure 3 Ms Charlene Jensen's Mismanagement of Resources, Punitive Detail**

1. According to the website for the DoD Office of the Inspector General, "Mismanagement is a collective term covering acts of waste and abuse. Extravagant, careless, or needless expenditure of Government funds or the consumption or misuse of Government property or resources, resulting from deficient practices, systems, controls, or decisions. Abuse of authority or similar actions that do not involve criminal fraud. Ms. Jensen's continued mismanagement of me as a mission resource has deprived the unit of my skills and experience during a time of tremendous organizational change and has made my extended detail punitive in nature.
2. According to the CPOL e-pamphlet "Detail," a detail is the temporary assignment of an employee to a different position or set of duties for a specified period of time with the employee returning to his original position at the end of the detail. Details are intended for meeting temporary needs of the agency's work, program or mission requirements when necessary services cannot be provided by other means. They can be used in situations such as temporary shortage of military or civilian personnel or emergency work situations. Documentation is not necessary if details to an identical position or one of the same grade and series requiring the same basic duties. All others will be documented.
3. With over 20 years of experience with the CARA and its predecessor organizations, I am one of the most senior members of the organization—in tenure, supervisory time and hands-on field and technical experience, to include seeing it through multiple reorganizations and mission restructurings (Tab A to this enclosure). My duty position is a WS-14, Toxic Material Control Operator (TMCO) Supervisor.<sup>1</sup>
4. I was detailed to unevaluated duties in the battalion's Operations Office. My co-workers were a GS-0301-12 and GS-0301-11 (Tab B to this enclosure). Conducting actual emergency response and remediation missions, my primary missions as a WS-6501-14 (Tab C to this enclosure), are not in that office's mission and function statement. Though the detail was clearly not identical duties or in the same grade and series, I did not receive any documentation concerning the detail, nor was any added to my electronic personnel file.
5. On 9 Jul 07 I received a memorandum stating I was to be suspended without pay for three days and remain in the unevaluated duties detail "until the completion of the realignment of the Analytical & Research Directorate (ARD), approximately September 2007. A decision [would] be made at that point concerning [my] detailed position." I was detailed pending resolution of an investigation. The investigation was completed. Once I served my disciplinary action, the identified need for the detail was met. I should have been returned to my original position.

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<sup>1</sup> On 20 Jul 08 I was temporarily promoted (NTE 120 days) to the Operations Office as an Operations Specialist (Planner); however, for ease of understanding, I am discussing things from the perspective that I am still detailed away from my WS-14 position.

### Enclosure 3 Ms Charlene Jensen's Mismanagement of Resources, Punitive Detail

6. I was temporarily disqualified from the Chemical Personnel Reliability Program (CPRP) at the same time I was detailed to unevaluated duties. The Oct 07 extension of the temporary CPRP disqualification (it had to be renewed every 30 days), put me in excess of 270 days. AR 50-6 states that temporary disqualifications in excess of 270 days require DA approval. Ms Jensen did not provide evidence of approval or reference in the memorandum when she initiated the Oct 07 extension (Tab D to this enclosure). Without DA's approval, she did not have the authority to leave me in the temporary status.

7. In Dec 07 Ms Jensen administratively terminated me from the CPRP (Tab E to this enclosure). At that point it was explicitly clear she had no intention of returning me to my original duty position, even though I had served my disciplinary action and COL Lowe's final decision on the investigation determined the action for which I was punished did not impact morale or mission accomplishment. Further demonstrating her lack of intent to return me to my former position, in late Dec 07 a company administrative person was directed to empty my office because someone else was going to use it. I interceded because I am signed for all of the equipment. When my detail changed in Jan 08 I was told to move my things and the locks were changed. Having no access to the over \$100K worth of mission equipment for which I am signed, I asked the acting Chief if I would receive keys to the area. His response was that he did not see the need for me to have access and I was told I could not enter my former company area without permission.

8. On 7 Jan 08, nine days short of one year in unevaluated duties, Ms Jensen changed the nature of my detail from unevaluated duties to evaluated duties in the same office. In the 356 days of my unevaluated duties detail I was given few and relatively meaningless assignments—generate a duplicate equipment list and review two SOPs. Still without any formal written job description and detailed to a non-existent position, I have yet to be gainfully employed. Instead, my duties consist primarily of being available for work. Until mid Jul 08, my only assignments had been placing a supply order and gathering site data. My sparse utilization over a protracted amount of time seems to be in direct contradiction to the requirement that detail be temporary and for requirements that cannot be filled by other means.

9. Following Mr. White's 30 Nov 07 retirement, a peer WS-14 supervisor, Mr. Bruce Griffin, was placed in the Acting Chief position, despite having significantly less experience than the other three WS supervisors in the organization, me included. This left only one WS-14 in Echo Company when four were authorized, and the OPTEMPO was not slowing down. (Mr. Swinson, another peer supervisor, had been detailed to the Chemical Equipment Room (CER) since 17 Jan 07. As the most senior member of the organization, his vast knowledge and experience were of even less use in the CER than mine in the operations office. (see Tab A to this enclosure))

10. The sole WS-14 supervisor still serving in that position, Mr. Ryan O'Connell, has been committed to Spring Valley since Apr 08. This left no team-level supervision at the unit for day-to-day, emergency, or planned responses. On 22 Jan 08, the acting Chief,

### Enclosure 3 Ms Charlene Jensen's Mismanagement of Resources, Punitive Detail

Mr. Griffin detailed a UXO specialist in the unit to serve as a WS-14 supervisor until further notice (see Tab F to this enclosure). Despite having two fully qualified WS-14s (save her administrative termination of them from the CPRP) available to fill unit needs, Ms. Jensen allowed a non-supervisory EOD technician to be detailed into a supervisory position that required a much broader and deeper knowledge of technical escort and remediation operations than EOD functions.

11. Presently there is an on-going remediation project at Camp Sibert with no supervisor on site. One weekend this spring, there was an EOD incident at Redstone Arsenal and the team at Sibert was called to respond. SFC Borgealt, the NCOIC on site called the senior EOD Operations NCO in Edgewood, SFC Hipskin, for guidance because the response truck was not available to respond to the incident. SFC Borgealt was able to determine that one of the toxic material control operators, Mr. Pino, had taken the truck from Anniston, Alabama to West Virginia to pick up a POV and return to Anniston. When he left with the government-leased response vehicle to conduct personal business, he also took all of the keys to the MILVANS in which the equipment and supplies were stored. The team on site had to delay its response to the incident at Redstone while they waited for Mr. Pino to return with the response truck and storage keys.

12. The organization has continuing on- and off-post response missions at Edgewood, Japan, Hawaii, and South Carolina; there are no supervisors on site at the last three locations. A response mission to Redstone, Alabama, is pending. The organization has on- and off-post escorts scheduled in the upcoming weeks as well.

13. Given the inherently hazardous nature of the mission and the non-negotiable need to meet extensive safety and regulatory requirements, in addition to the intricacies of managing projects' time and budget constraints, ensuring projects are supervised on site and by knowledgeable and well-seasoned CBRNE experts would be in the best interest of the organization, its customers and the communities surrounding the work sites; however, Mr. Swinson and I were not allowed to return to our supervisory positions. Our current details to non-mission-essential positions in CARA do not optimize the valuable breadth of our skills and knowledge in light of the OPTEMPO the organization is facing. Ms. Jensen's continued disinterest in returning even one of us to our former position seems to be motivated by something other than the best interests of the unit.

14. If continuing me and Mr. Swinson in our details was for the good of the unit or the individual, if they had no associated negative connotations, why weren't the other two TMCO supervisors rotated through the details to gain that same valuable experience and enable the battalion to benefit from their knowledge and skills? Why weren't they afforded the same "opportunity" to contribute and develop that the two of us were provided for 19 months? And if our details were not punitive in nature, why were Mr. Swinson and I not afforded the opportunity to rotate into the detail of Acting Chief?...both of us have much more time in the unit, in the civilian personnel

### **Enclosure 3 Ms Charlene Jensen's Mismanagement of Resources, Punitive Detail**

management arena, in the technical escort area of expertise, in a TMC0 supervisor position, and even as Acting Commander during Mr. White's tenure.

15. Mr. Griffin was hired for the Chief position in May 08, despite being the most junior supervisor of the four in the unit. His four years as a civilian supervisor and one tour with the unit as a soldier pale in comparison to my 20 years (10 as a wage supervisor) and Mr. Swinson's 25 years (12 as a wage supervisor and 7 as a soldier). One of the selection board members told me after the hiring announcement that Mr. Griffin received significant weight for his military service; however, the position is a civilian position and all of the unit members he would lead are federal civilians. I also learned from one of the handling personnelists that Mr. Swinson and I received no points for our deployments (detailed in our resumes at Tab A to this enclosure), while Mr. Griffin was maxed out, as was another applicant who had never deployed for the organization. One clear advantage that Mr. Griffin did have was that he was already CPRP, while Ms. Jensen had administratively terminated mine and Mr. Swinson's CPRP certification in Dec 07.

16. As a senior employee, my appraisal was due as of 30 Jun 07. My rater, Mr. Albert White, prepared my appraisal, to include providing the signed document to Ms. Jensen, my senior rater, before retiring in Nov 07. He prepared it as an annual report and rated my performance from 1 Jul 06 to 16 Jan 07. I was assigned to unevaluated duties for the remainder of that time period. Despite having my rater's completed input and my repeated reminders of Mr. White's pending retirement, Ms. Jensen did not complete my Jul 06 to Jul 07 appraisal until Jan 08. Not only had she changed some of Mr. White's submission, she had also had someone for whom I never worked and who had only seen me in my workspace once evaluate my performance in the unevaluated duties. Neither she nor the rater provided any comments on the appraisal form. (Tab G to this enclosure)

17. On 1 Aug 08 Ms. Jensen opened two of our WS-14 positions for hiring, as GS-12s. On 16 Jul 08 Ms. Jensen counseled me that it would be in my best interest not to apply for my former position when it was advertised. Rather, she had created a position in the Operations Office that would also be advertised and she strongly recommended that I apply for that job—despite the fact that the position is not on the TDA. Not only does the Operations position vary significantly from the other two planners already working in the office, but the differences are clearly additions pulled from my resume and WS-14 position description requirements (Tab H to this enclosure).

18. As Mr. Swinson and I expressed to the DA IG representative, MAJ Stephens, in Jul and Oct 07, it is clear that Ms. Jensen never had any intent to return us to our former positions, even after the completion of our disciplinary actions and despite the demonstrated need to have us return to our former duties.

a. Removing us from the CPRP and keeping us essentially hidden away in non-essential details (therefore unaware of and uninvolved in the day-to-day operations of our company and former peers, subordinates, and customers) effectively handicapped

**Enclosure 3 Ms Charlene Jensen's Mismanagement of Resources, Punitive Detail**

us in competing for the Chief position, a natural progression for either of us given our time and experience in the unit.

b. Though I should return to my former position at the completion of a legitimate detail, I have been strongly discouraged from applying for it with the implication that I would not be hired for it (even though I've done exactly what it requires for 10 and 20 years).

c. The same person a member of the Chief's position hiring panel informed me had denigrated mine and Mr. Swinson's service and accomplishments to the panel is going to be on the hiring panel for our former positions, as is the individual who benefited most from our extended details, the accompanying termination from the CPRP and our lack of involvement in unit operations.

d. I have been strongly encouraged to apply for a job for which I was not qualified until the description was written using my resume from my application for the Chief position and that differs significantly from the other two Operations personnel in the same office (at Tab B to this enclosure).

#### **Enclosure 4** Timeline of Events From Initial Notice of Pay Concern to 20-Month Detail

What follows is the timeline of the initial anonymous complaint to the Battalion CSM and the sensing sessions that LTC Terrell used to justify the AR 15-6 investigation. The timeline coincides with the events that led to the filing of a Whistleblower action on behalf of Mr. David M. Penhollow, Mr. Thomas R. Swinson and Mr. Albert White.

1. In late July 2006, while researching issues in the Code of Federal Regulations, I came across information concerning job classifications and hazard pay differential. The information conflicted with the unit's current practices so I brought the information to the attention of my supervisor, Mr. Albert White. After Mr. White conducted additional research into the issue of authorized entitlements, he concurred with me that the commander, LTC Patrick R. Terrell and the Deputy to the Commander, Mrs. Charlene S. Jensen, needed to be notified.
2. In early August 2006, at a scheduled battalion meeting, where planning for imminent overseas deployment was being discussed, the conversation shifted to civilian overseas entitlements (i.e., pay, overtime and hazard duty pay while deployed). It was at that meeting that Mr. White and I first brought the hazard pay differential issue to the attention of LTC Terrell. Mr. White also told the commander that his subordinate supervisors were uncomfortable signing off on overtime and hazardous duty pay requests if indeed the employees weren't entitled to receive it. LTC Terrell assured Mr. White and me that he would look into the issue and get back with us.
3. In an effort to uphold the requirements, Mr. White, I and Mr. Thomas Swinson, another wage supervisor in the unit, began scrutinizing the Equipment Specialists' (EOD) hazard pay differential requests more closely and requiring stronger justifications—times, locations and actual duties performed—for approval.
4. In October 2006, with no word or feedback from LTC Terrell, Mr. White asked Mrs. Jensen about the hazardous duty pay issue. Mrs. Jensen told Mr. White that the battalion was reviewing the policy. Mr. White then asked what they should do in the interim, as it seemed clear that the pay differentials were not authorized. Mrs. Jensen replied that the situation would stay as it was, nothing would change until new guidance was published. In addition, we had not received any acknowledgment or notification of actions in response to the research we provided the command group that indicated that it was not authorized.
5. Mr. White called a meeting with 3 of the 4 supervisors (one was TDY) to inform us of battalion's guidance on the issue and encourage us to maintain our scrutiny of the hazard pay requests. Mr. Griffin stated that he would not change his approach to approving the requests until he heard it from battalion. Mr. Swinson and I informed the EOD specialists on our teams of our findings and of the fact that the additional pay would most likely be going away once the issue was settled at battalion; however, the EOD specialists were adamant that they were entitled to the pay.

#### **Enclosure 4** Timeline of Events From Initial Notice of Pay Concern to 20-Month Detail

6. When Mssrs Penhollow, Swinson and White questioned subordinates' requests, we continued to be assured by Mr. Dalys Talley, Battalion Operations Officer; Mr. Robert Maddox, Ordnance Removal Manager; and Mr. Phillip Mackeprang, Battalion Ordnance Removal Specialist, that the requests were authorized. So, E Detachment leadership continued to approve and certify the questionable requests.

7. According to the record of the investigation, an employee, who asked to remain anonymous, approached the Battalion Command Sergeant Major circa October 2006 with some allegations against Mssrs Penhollow, Swinson and White. (Tab AD to enclosure 6, Exhibit 1)

a. CSM Rodriguez did not document the conversation at that time. Instead, he documented that it occurred "several months ago" when he generated the summary memorandum and allegations on 11 Jan 07—3 days after the Battalion Commander received the results of the IG sensing session and survey.

b. It is unclear from the wording of the memo as to whether or not the additional interviews occurred before the IG sessions, during them or after they had been completed; however, many of the allegations proffered in that memorandum are easily refuted by documented records (i.e., time sheets, project status reports, pay and personnel records, etc...)

8. On 16 Oct 06 and from 11 to 13 Dec 06, battalion personnel participated in an IG command climate survey and IG sensing sessions. The Battalion Commander received those results on 8 Jan 07.

a. The IG's recommendation was to share the results with unit employees, perhaps through a Town Hall meeting. No IGARs were received during the group sessions.

b. There were several recurring themes in the IG results: a rift between the military and civilian elements of the unit; EOD personnel felt slighted by the Chemical Command; dissatisfaction with, distrust in the battalion staff; lack of adequate equipment and training; and issues with leadership, to include E Detachment supervisors.

9. On 17 Jan 07, LTC Terrell initiated an AR 15-6 into the allegations against Mssrs Penhollow, Swinson and White.

a. According to the Investigating Officer's Findings memorandum, "The Battalion Commander reviewed the results of the surveys. ...developed a concern about the command climate of one companies [sic] in particular. ...initiated an investigation under AR 15-6." (Tab AC to enclosure 6, Exhibit 1)

#### **Enclosure 4** Timeline of Events From Initial Notice of Pay Concern to 20-Month Detail

b. The appointment orders state the investigation is into allegations of misconduct against 3 specific people—it says nothing of the other 2 supervisors or of the command climate.

c. The misconduct stated in the Investigating Officer's appointment orders most closely resembled the CSM's findings as stated in his 11 Jan 07 memo.

d. It is unclear if the CSM or anyone else tried to substantiate any of the allegations in his 11 Jan memo before pursuing further investigation into them; however, the allegations against Ms. Patricia Stitely were not part of the ensuing AR 15-6 investigation.

e. No 15-6 or other formal or informal investigation was done to look into any other potential issues raised in either of the IG surveys, which the Investigating Officer stated was the Battalion Commander's cause for concern.

10. In late January 2007, LTC Terrell officially tasked Mr. White to research the differential pay issue and provide him the written findings—even though the findings and where to locate the supporting information had been readily available to the commander and Mrs. Jensen since August 2006. On 26 March 2007, Mr. White provided the commander the formal paperwork, to include the regulations governing the issue of Hazard Pay Differential.

11. In July 2007, I asked Mr. White about the final outcome of the issue. I told Mr. White about a draft memorandum from Mr. Maddox and Mrs. Jensen requesting changes and approval of a new Hazardous Duty Pay Work situation. The rationale for the change was that the Equipment Specialists are exposed to US, foreign known and unknown chemical ordnance items, both CONUS and OCONUS. I pointed out that hazard pay differential still wouldn't be authorized by the legal statutes and regulations. The description of the potential hazards are already identified and described in the affected job descriptions. The final justification negates the eligibility for the pay differential—the request states the hazardous duty occurs on a daily basis, it is not intermittent or irregular as required by statute; therefore, it should be stopped altogether.

12. It was clear that the unit was not going to do anything with our research into the hazard pay differential being authorized, and in fact were trying to legitimize it. It was also clear that Ms. Jensen was not going to return us to our supervisory positions, where we could at least try to control it. We determined that the best course of action for resolving this potential fraudulent payment of the differential pay was to file a disclosure with the OSC, which we did on 14 Aug 07.

# EXHIBIT 2

16 October 2007

MEMORANDUM THRU Director, Civilian Personnel Advisory Center, APG, MD  
Building 305, ATTN: PECP-NER-G

FOR Commander, 20<sup>th</sup> Support Brigade, APG, MD

SUBJECT: Grievance of Personnel Actions Involving Thomas R. Swinson, 101-56-4929

1. The purpose of this memorandum is to grieve personnel actions taken against me pursuant to an AR 15-6 investigation which began 17 January 2007.
2. I respectfully request that the battalion commander's final decision be set aside and I be returned to my previous supervisory position and duties immediately; that my record be expunged of all personnel actions and documentation pertaining to the investigation, decision and punishment; and that the five-days' pay lost during the suspension be restored.
3. This grievance and remediation request is based on the following:
  - a. 5 USC 7701(c)(2)(A)-(C); Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee--:
    - 1) shows harmful error in the application of the agency's procedures in arriving at such decision;
    - 2) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title, or
    - 3) shows that the decision was not in accordance with the law.
  - b. 5 USC 7701(c)(1)(B): Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision is supported by a preponderance of the evidence.
4. Substantial substantive and procedural error prejudiced my rights and LTC Terrell's decision.
  - a. Enclosure 1 contains a detailed discussion of statutory and regulatory substantive due process requirements for AR 15-6 proceedings and civilian adverse personnel actions. In short, the investigating officer's conduct during the investigation was so egregious and procedural due process violated so much that I could not possibly have received a fair evaluation of the allegations or disposition thereof. As a result, in

16 October 2007

**SUBJECT:** Grievance of Personnel Actions Involving Thomas R. Swinson

accordance with AR 15-6 paragraph 2-3.c.(3)(c) (Tab 1 to Enclosure 2), the appointing authority may not use the affected part of the investigation as the basis for adverse action; no part of the investigation was unaffected by the substantive errors.

b. The significant harmful errors led to decisions and disciplinary actions that would not have occurred had the investigation and handling of the information obtained been accomplished in accordance with statutory and regulatory requirements. This is most obvious in the upholding of and disciplinary action in response to a charge not supported by law (addressed in paragraph 7 below, discussed in Enclosure 2).

5. 5 USC 2302(b)(2) states "Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority...solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on personal knowledge or records of the individual providing it." As discussed in Enclosure 3, MAJ Hyman's frequent solicitation of exactly such information was in direct violation of this requirement. Despite Mr. Crouch's email assertion (see Tab A to Enclosure 8) that LTC Terrell did not use any of MAJ Hyman's conclusions or recommendations in making his final decision with regards to my case, the Notice of Proposed Actions and Notice of Final Decision rely upon information from the statements MAJ Hyman collected during the investigation, as direct quotations in several instances.

6. 5 USC 2302(b)(12) states that it is a prohibited practice to "...take or fail to take any other personnel action if taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 or this title." 5 USC 2301(b)(2) states, "All employees...should receive fair and equitable treatment in all aspects of personnel management without regard to ...race, color...sex, age,...and with proper regard for their privacy and constitutional rights."

a. Tab B to Enclosure 8 contains evidence that shows the then-Deputy to the Commander, 22<sup>nd</sup> Chemical Battalion (TE) attempted to coerce testimony from a subordinate employee who had already provided a witness statement.

b. As established in Enclosure 1, MAJ Hyman's conduct of his fact finding was in gross violation of my constitutional rights.

7. Enclosure 2 provides an analysis of the threat allegation in accordance with the Metz factors. In short, the proper evaluation of the information gathered with regards to me making a threat shows that the decision to sustain that threat is not in accordance with law.

8. Preponderance of evidence is based on the more convincing evidence and its probable truth or accuracy; facts or a clearly knowledgeable witness outweigh opinions

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or speculation. In this investigation the predominance of the witness statements are hearsay or emotionally charged opinions. What to believe became a matter of credibility. In his findings report, the investigating officer, MAJ Hyman, presented the results of his credibility analysis and applied those results to his evaluation of the witnesses' statements and mine. Though he did not specifically state his criteria, his discussion makes clear what he considered valid and convincing in determining who was credible.

9. Enclosure 3 contains a review of MAJ Hyman's credibility analysis with respect to the seven factors established in *Hillen v. Department of the Army* (35 MSPR 458) and in light of Merit Systems Protection Board (MSPB) case law (*USAF, 60<sup>th</sup> Air Mobility Wing, Tab B to Enclosure 3*) (*US Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, 54 FLRA 987, 1007 (1998), Tab C to Enclosure 3*).

a. Much like MAJ Hyman's analysis, in *Redschlag v. Department of the Army* (89 MSPR 589, Tab A to Enclosure 3) the credibility analysis "...generally included a finding that the witnesses who testified on behalf of the agency were credible because their testimony was straightforward, consistent, and articulate...also generally discredit[ed] the testimony of any witnesses who testified on [my] behalf on the basis of bias. However, the [agency] cannot discount testimony solely on the potential bias of a witness."

b. The *Redschlag* Board determined "...because the administrative judge's credibility findings in this case were abbreviated, based on improper considerations, and often unsupported by the record, we find that they are not entitled to deference," (i.e., the testimony in question was not credible).

c. In addition to restoring my credibility, applying this finding to MAJ Hyman's analysis raises doubts as to the credibility of most of the statements and renders the following witness statements not credible: Mssrs. Aviles, Bauld, Budzinski, Hawkins, Marks, Martinez, Pino, Pulliam, Rodriguez, Steele, Versino, Griffin and Ms. Jensen.

d. If there is no credible evidence, there is no preponderance of evidence.

10. I reiterate the remedies requested in paragraph 2 above. As described in paragraphs 4 - 7, the conduct of the investigation and the resulting actions meet all three statutory thresholds for not sustaining the decision. In addition, the collection and analysis of the evidence does not meet the standard to establish the credibility of the witnesses over that of the accused. Without credible evidence to support the allegations, there is no preponderance of evidence to support them; therefore, the decision also fails to meet the statutory threshold to sustain. Setting aside all of the findings and restoring my employment status and conditions is the legally correct and only acceptable remedy.

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11. I have not filed an EEO complaint, an appeal or any other grievance concerning this or a similar matter.

12. My personal representative in this matter is Ms. Victoria Kost; 132 Talton Drive, Delta, PA 17314; (h) 717-456-5883; (w) 443-402-9293.

13. Thank you for your consideration in this matter.

8 encls

1-5. as

6. Notice, Rebuttal, Decision Documents

7. FOIA Request Documentation, FOIA Packages (in order received)

8. Miscellaneous Documents

  
Thomas R. Swinson

# **ENCLOSURE 1**

**ENCLOSURE 1** Statutory and Regulatory Substantive Due Process Requirements for AR 15-6 Proceedings and Civilian Adverse Personnel Actions

1. AR 15-6, paragraph 1-5 (Tab A to this enclosure) defines an investigation under this regulation as an administrative fact-finding procedure. Paragraph 1-6 states, "It is the duty of the investigating officer 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.

a. By its very nature, hearsay cannot stand as fact without corroborating factual or credible evidence. Yet in many of his interviews, MAJ Hyman solicits at least one instance of hearsay—a very common questioning method he used was to ask the interviewee, "What have you heard about...?" or "Has anyone ever told you about...?" With almost equal consistency, he allows the interviewees to present hearsay, sometimes third- and fourth-hand information, and later treats that hearsay as credible evidence. He rarely received or requested substantiating information for hearsay or personal allegations, nor did he seek out existing records that could confirm or deny allegations, such as performance appraisals, documented personnel actions, training records and TDY records.

b. MAJ Hyman presented only six facts in his findings and recommendations memorandum. The fifth item he presents is factually incorrect. I have never been pulled over for a DUI while driving a vehicle owned, leased or rented by the government. My response during the interview was a result of my confusion over the entire investigation, the rapidly-asked, disparate questions, and my concern over MAJ Hyman's growing frustration with and obvious disbelief in my responses. I was trying to be as succinct as possible to preclude anymore cause for doubt. Had he asked for any type of further explanation, and provided me the opportunity to provide the same level of details he afforded other witnesses, I would have explained that not only was I not pulled over for DUI while driving a government vehicle but the officer had not seen me driving and I was not even physically co-located with the vehicle when issued the citation. That fact and questionable breathalyzer results were two of the reasons the case against me was thrown out and my record expunged.

c. His sixth fact is misleading in that he did not ask all of the interviewees about the working environment, nor did he ask all of them about their professional experience and credentials. And he did not ask me, or the other two accused, about our professional experience or credentials. In addition, the conclusions he is presenting as fact are actually compilations of carefully selected opinions.

d. He presented no other facts to support his follow-on findings and recommendations. He does rely upon unsupported hearsay (see Enclosure 3) to make a number of factually incorrect or otherwise unfounded conclusions. Again, an impartial search for all of the facts would have led him to the factual evidence of record that provides the full context of many of the historical incidents, to include refuting the

## ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements

improprieties to which some of them allude, and refutes some of his eventual conclusions.

2. AR 15-6, paragraph 2-1. b., the commander must appoint an investigating officer. Whether oral or written, the appointment must specify clearly the purpose and scope of the investigation and the nature of the findings and recommendations required. As mentioned above, his findings and recommendations must comply with the appointing authority's instructions. MAJ Hyman's appointment orders (see Tab KK to Enclosure 7) include:

a. "Purpose: To investigate allegations of supervisory misconduct against Mr. Albert White, Mr. Michael Penhollow and Mr. Thomas Swinson. These allegations include, but are not limited to: theft of US government property, nepotism, threatening subordinates with loss of employment if the subordinate lodges complaints and intimidation. You are to make findings and recommendations for any disciplinary action and make other appropriate recommendations as necessary.

(1) "Include, but not limited to" is neither specific nor clear with regards to establishing the scope of the investigation.

(2) Short of specific allegations, reverting to CSM Rodriguez' 11 January 2007 memorandum (Tab LL to Enclosure 7) provides the only command-level stated allegations in the record: "1) Uses intimidation to get things done, 2) Gives the best jobs and bonus to the folks he likes, 3) Has very little leadership abilities, and is a bad manager, 4) Is not fair when recommending bonus, 5) Does not care or takes care of only the workers he likes."

(3) MAJ Hyman's investigation did not address or make any finding on the second and fourth allegations above. He attempted to address issues 1, 3, and 5; however, his reliance on unsubstantiated hearsay (see Enclosure 3) and failure to seek available factual, recorded evidence caused him to fall short of being able to make any warranted conclusions or recommendations. As a result, he did not comply with the appointing authority's instructions.

b. Special instructions: (1) In your investigation, all witness statements will be sworn, (2) You will use informal procedures under 15-6, (3) ...you must provide all witnesses a Privacy Act statement before soliciting any personal information, (4) Statements obtained during the course of your investigation will be administered on DA Form 2823."

(1) None of my statements were sworn, nor was I afforded the opportunity to review them for completeness and correct representation of my comments and sign them (despite me asking and MAJ Hyman telling me he would let me). I did not see MAJ Hyman's recreation of one of my interviews until 10 October 2007.

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(2) Despite soliciting personal information from many of the interviewees, there is no record of Privacy Act statements in the record of the investigation. I was not provided one before either interview.

(3) Neither of my statements were recorded on a DA Form 2823.

c. Paragraph 1.c. established the duration of the assignment to be 30 days. Paragraph 3 required the investigation be completed and the findings be presented by 16 February 2007.

(1) The DA Form 1574 and MAJ Hyman's findings and recommendations memorandum support the investigation was closed and findings presented on 16 February 2007.

(2) MAJ Hyman interviewed the three accused in March 2007 and three other witnesses provided additional statements in April 2007. Those interviews are all included as exhibits in the final record of the investigation. As such, the investigation did not end on 16 February, though there is no record of an amendment extending MAJ Hyman's appointment as Investigating Officer beyond 16 February or appointing a new investigating officer after MAJ Hyman departed the unit in mid-March 2007.

3. AR 15-6, 3-7.c.(5)(b) states that 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. Subparagraph (d) requires an investigating officer to explain a witness' rights whenever it appears appropriate and advisable. Paragraph 4-3 states that no respondents will be designated in an informal investigation. Furthermore, both the commander and his investigating officer are subject to UCMJ. As such, they are expressly prohibited from compelling self-incriminating statements from the accused. "No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offence of which he is accused or suspected and that any statement made by him may be used as evidence against him," UCMJ, Subchapter 6, 813 Art. 31.(b).

a Though not officially notified that I was a respondent, the appointment orders clearly designate me as a person suspected of wrongdoing. The nature and conduct of MAJ Hyman's questioning of witnesses further develops me as a suspect—the entire line of questioning with every witness, including me, centered on me and the other two accused and allegations of our wrongdoing. As I was one of the last people to be interviewed, the content of all of the statements MAJ Hyman had taken understandably gave him reasonable cause to suspect me of wrongdoing. And his question on the topic during our first conversation (Tab GG to Enclosure 7) "Why did you approach a female employee of lesser rank...and make a remark to the effect of [a sexually explicit comment]" clearly establishes he suspected me of at least one offense before we actually started talking.

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b. Though it was appropriate and advisable to explain my rights to me at the outset of our first conversation, MAJ Hyman chose not to. In fact, in his record of our first conversation, he lists several questions I asked at the beginning of the conversation. One of them is "What are the allegations?" Another one is "What are my rights?" (Tab GG to Enclosure 7) He did not answer either question at that time, nor did he answer them in the course of the questions and answers. I was never read my rights throughout the course of the investigation. As such, MAJ Hyman did not just fail to comply with his AR 15-6 responsibilities, he violated the UCMJ rights warning requirement.

4. AR 15-6, 3-8.c.(2) directs that care must be taken to ensure that the statement is phrased in the words of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or nonexistence of material facts. AR 15-6, paragraph 3-8. d. states, "Witnesses may not be precluded from discussing any relevant matter with the recorder, respondent, or counsel for a respondent."

a. My original Detail to Unevaluated Duties memorandum (Tab A to Enclosure 6), states, "This means you shall not speak with or question anyone, directly or indirectly, regarding their participation in this investigation. This includes asking individuals whether they have met with or been asked to meet with the Investigating Officer (IO), ..." That wording and the verbal directive that I was to have no contact with the members of B Company, to include going to the company area during duty hours, made it clear to me I could not speak with anyone except the IO and the chain of command as to the allegations, nor they with me.

b. MAJ Hyman's questioning technique consisted primarily of questions that began with "What can you tell me about...", "Have you ever heard about...", and then he would describe a specific incident mentioned in someone else's statement. For example, he asked Mr. Budzinski, "Have you ever heard about an incident where Mr. Swinson touched Mrs. North in an inappropriate manner?" Mr. Budzinski replied, "Yes, I was told of an incident..." Given that Mrs. North's statement had already been taken and already refuted the allegation, MAJ Hyman's question was suggesting the existence of facts that he already knew to not be true.

c. He continued to suggest facts not in evidence when he asked Mr. Swinson during their initial conversation, "So, if I had a statement from over 15 people some of whom were not even involved with the convoy..." The fact is that he did not have 15 statements, first-hand or hearsay, that talked about an incident with a convoy. And anyone not involved with the convoy would not have been available for interviewing because they would have been local civilians in whichever state it was that the alleged incident occurred.

d. He continued to suggest facts not in evidence throughout his findings and opinion statement by choosing qualitative adjectives that grossly misrepresented the actual number of statements he had that supported the point he was trying to make.

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5. AR 15-6, paragraphs 3-9 through 3-11 address changing the scope, findings and recommendations.

a. 3-9 directs that if something happens that could cause the appointing authority to consider enlarging the proceedings or otherwise modifying any instruction in the original appointment, the investigating officer will report this to the appointing authority.

(1) The original appointment orders directed the investigation close by 16 February. The DA Form 1574 confirms the investigation closed on 16 February. Yet, there are at least six statements dated beyond 16 February.

(2) There is no record of communication the record to explain why MAJ Hyman conducted interviews in March, to include whether it was on his accord or by the direction of the appointing authority.

b. 3-10 defines a finding as "a clear and concise statement of fact that can be readily deduced from evidence in the record. It is directly established by evidence in the record or is a conclusion of fact by the investigating officer. The investigating officer will normally not exceed the scope of findings indicated by the appointing authority. Findings will be stated to reflect clearly the relevant facts established by the evidence and the conclusions thereon of the investigating officer.

(1) Even a cursory review of MAJ Hyman's collected statements shows that he did not seek confirming factual evidence of the claims made by most of the witnesses.

(2) A 15-6 investigation is a fact-finding mission. The credibility analysis in Enclosure 3 shows that MAJ Hyman found very few facts, and he presented even fewer in his findings document.

(3) An analysis of his findings and recommendations further demonstrates that MAJ Hyman did not have relevant, record facts to support the allegations made against me or the conclusions he was drawing with regards to me.

c. 3-11 directs that investigating officers "make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of fairness both to the Government and to individuals. MAJ Hyman's failure to comply with even the basic requirements of an investigating officer and in the conduct of a 15-6 investigation indicate that his actions were not guided by the concept of fairness, particularly to the individual.

6. AR 15-6, paragraph 3-15 requires "all significant letters and other papers that relate to administrative aspects of the investigation that are not evidence will be numbered consecutively..., including such items as these: e. Privacy Act statements and f.

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Explanation by the investigating officer of any unusual delays, difficulties, irregularities or other problems encountered.”

a. As noted above, at least six statements were taken well after the official close of the investigation, yet there is not amendment to the appointment orders. There is no explanation or documentation of the reopening of the investigation. And there is absolutely no documentation to explain or support the April statements—the original investigating officer was not with the organization when they were taken.

b. There are no Privacy Act statements in the record.

7. 5 CFR 752.203(e) directs that in arriving at a written decision, the agency must consider only those reasons specified in the notice of proposed action and shall consider any answer of the employee.

a. The information at Tab C to Enclosure 8 establishes LTC Terrell's predecisional conclusion of my guilt. There is a statement from my supervisor, Mr. Al White, stating he was directed by LTC Terrell in the morning of 2 Jul 07 to make an appointment to see LTC Terrell the following morning, and informing him that his final decision memorandum was complete, to include all of the requisite review by external agencies.

b. I did not meet with LTC Terrell to present my rebuttal to the proposed actions against me until 1500 on 2 Jul 07.

c. Tab C to Enclosure 8 also contains Mr. White's Notice of Decision to Suspend. In that memorandum he stated he sustained two of the specifications for the charge of "negligence in the performance of your supervisory duties." "Specifically, the specifications of allowing Mr. Swinson to be verbally abusive to employees..."

d. In holding my supervisor accountable for my conduct, LTC Terrell had to have decided I was guilty as accused. He could not possibly have considered "any answer of the employee" in determining my guilt because he had not yet heard or received my rebuttal to the proposal to suspend me.

e. The dates of the Notice of Final Decision memorandum and Douglas Factors analysis (Tab G to Enclosure 6) further support that the commander had a preconceived belief of guilt and his failure to give full thought and consideration to my rebuttal. The Douglas Factors analysis was completed and dated 9 July 2007. The final decision memorandum is also dated 9 July 2007.

f. According to CPOL guidance, notices of final decisions for adverse actions are coordinated with the Office of the Judge Advocate General's (JAG) office and the CPAC before delivery to the employee. Both of those offices are located approximately 15 miles away from LTC Terrell's headquarters. The commander presented to me and I signed the final decision memorandum on 9 July 2007. This would have required that

## ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements

he conducted/completed a thoughtful and balanced analysis of the Douglas Factors as they pertained to my case, generated the Notice of Final Decision memorandum, provided the packet to CPAC for CPAC to provide to the JAG office for review, CPAC receive the documents back from the JAG office and conduct its own review and return the memorandum to LTC Terrell to present to me in the course of one duty day. This is not a reasonable timeline for documents that were created from a process conducted with an open mind.

8. AR 690-700, Chapter 751, 1-3.b.(2) reinforces the requirement to remain impartial and objective. The employee has a right to a fair and impartial investigation during which no one interferes with or attempts to influence or alter the testimony of a witness or participant. This right is derived from the fact that Item 19b in the Table of Penalties states it is punitive misconduct to interfere with, attempt to influence or attempt to alter testimony of a witness or participant (AR 690-700, Chapter 751, Table 1-1, Enclosure 5). At Tab B of Enclosure 8 is evidence that supports the then-Deputy to the Commander, 22d Chemical Battalion (TE) attempted to get one of the witnesses to not only change her testimony but also to file additional charges against me.

9. The employee has the right that no one can knowingly make false or malicious statements against him with the effect of harming or destroying his reputation, authority or official standing in the organization. This right is derived from Item 10c in the Table of Penalties, which makes it a punitive offense to knowingly make false or malicious statements against co-workers, supervisors, subordinates or government officials with the effect of harming or destroying the reputation, authority, or official standing of that individual or an organization (AR 690-700, Chapter 751, Table 1-1).

a. Mrs. North's statement shows that Mr. Marks' and Mr. West's account of my interaction with her was incorrect. They knew their version to be incorrect when they relayed the incident to Mr. Budzinski at a later time. As evidenced by Mr. Budzinski's testimony, the false statements they made did harm my authority and official standing with at least one of my subordinates.

b. As evidenced by its inclusion as one of the IO's findings, their knowingly false statements have now harmed my reputation, authority and official standing in the organization as well.

10. AR 690-700, Chapter 751, 1-4(c) states that aggravating factors on which the agency intends to rely for imposition of enhanced penalties (such as offense committed by a supervisor) should be included in the notice of proposed discipline so the employee has the opportunity to respond. CPOL guidance "Notice of Proposed Suspension" (Tab B to this enclosure) calls for a detailed factual description (dates, times, places, people involved...) of the incidents, to include a statement on how the efficiency of the service is adversely affected by the conduct.

a. The Notice of Proposed Action (Tab B to Enclosure 6) did not contain any details as to what factors would be relied upon to determine the final disciplinary action.

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b. While the proposal memorandum does provide the names of most of the people involved, it provides only one, somewhat fixed date. That particular date was not provided by either of the statements in the record and not supported by the estimated date of the alleged victim. No other dates or estimated dates were included. In addition, it does not include a statement as to how the efficiency of the service was affected by my alleged conduct. As the investigation provided no factual or subjective evidence of mission failure or incomplete mission accomplishment, the "efficiency of the service" to be gained by the proposed discipline is not clear or intuitive.

c. One of the specifications is supported by statements from a specific individual whose statement was not provided to me or my personal representative for review before preparing my rebuttal. I mentioned the missing statement (Stavis) to LTC Terrell in my rebuttal meeting. He took note that I had not received it, but did not take any action to provide it. I received that statement when I received my initial FOIA packet on 28 August.

d. The employee's right to respond becomes meaningless if employees are not given full, complete and specific notice of the reasons to be considered by the deciding official (Department of Homeland Security Customs and Border Protection US Border Patrol, El Paso, TX (61 FLRA No. 2, 2005), Tab C to this enclosure).

11. 5 USC 7503(b) lays the groundwork for the minimum due process to which an employee is entitled. This includes a written decision and the specific reasons therefore at the earliest practicable date. AR 690-700, Chapter 751, 1-3.b.(3) states that decision notices should contain information demonstrating the deciding official considered all available information, aggravating and mitigating (e.g., "I have considered" aggravating and mitigating Douglas factors). The official must explain what weight was given to the aggravating factors in reaching the final decision.

a. The final decision memorandum provides no specific reasons for LTC Terrell's final decision and I did not receive his Douglas Factors analysis until 28 August, when I received my initial FOIA request packet.

b. While he alludes to a Douglas Factors analysis, he does not mention the actual mitigating or aggravating factors that led to his final conclusion, nor did he mention any other aggravating or mitigating factors that may have impacted his decision. As no factors were listed, no weights for the aggravating factors were provided either.

c. The final decision memorandum does not provide the required explanation of of nexus between the disciplinary action and the efficiency of the service. As the investigation provided no factual or subjective evidence of mission failure or incomplete mission accomplishment, the "efficiency of the service" gained by the discipline is not clear or intuitive.

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12. As discussed above, very little of the actual AR 15-6 investigation was done correctly, and at times it was in direct violation of my constitutional rights. Other statutory and regulatory requirements were violated as well. The investigation is over. I have served and continue to serve the actions prescribed in the Notice of Final Decision. Nothing can be done at this point to correct the substantial errors committed during this investigation. AR 15-6, 2-3.c.(3)(a) states, "Substantial errors are those that have a material adverse effect on an individual's substantial rights." Subparagraph (c) states, "If the error cannot be corrected, ... the appointing authority may not use the affected part of that investigation as the basis for adverse action against that person."

**TAB A**

**TAB B**

**TAB C**