

# ENCLOSURE 2

## ENCLOSURE 2 Threat Analysis

1. Federal statute requires the government prove the existence of a true threat. The primary case law that guides the evaluation of the validity of a threat is *Metz v. Department of the Treasury, F. 2d 1001 (Fed. Cir. 1986)*. (Tab A) In *Metz* the Federal Court of appeals for the Federal Circuit provided five factors to consider when determining if an employee engaged in threatening conduct:

- a. The listener's reaction,
- b. The listener's apprehension of harm,
- c. The speaker's intent,
- d. Any conditional nature of the statements, and
- e. The attendant circumstances.

2. In addition, the *Metz* court directed using a reasonable person criterion when applying the factors to evaluate—what connotation would a reasonable person give the words, as evidenced by "...what reasonable persons who heard the statements actually did." The court also directed giving heavy weight to the objective evidence.

3. The specification against me stated I threatened to break Mr. Baldeo's legs when I stated, "move now or I could break your legs." It included a remark from Mr. Pino that I muttered that I "could break Mr. Baldeo's legs with no problem." A *Metz* analysis of the statements and the incident shows no true threat was made.

4. Though provided at Tab F to Enclosure 6, as part of the rebuttal to the original notification, the full conversation is below for ease of reference:

Swinson (S): While teasing Mr. Baldeo about moving slowly, as if there was something wrong with his legs, "You're acting like one of your legs is broke."

Baldeo (B): "No, Boss. You can't break my legs."

S: "Yes I can, by kicking it just like we're taught in Rules of Engagement (ROE) class. Any full-grown adult could break your leg using unarmed self-defense techniques."

B: "You can't break my leg."

S: "Yes I can."

B: "Go ahead, break my legs."

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Mr. Pino, Mr. Crouse and I walked away. I stated, to no one in particular, "What was that about? Yes, I could break his legs using the ROE techniques. I don't know why he wants me to break his legs."

5. The first factor, as applied in MSPB and court reviews, looks at what people who heard the alleged threat actually did. Because a person's reaction can explain or demonstrate the apprehension of harm, I will discuss the second factor in conjunction with the first.

a. The alleged victim said he was upset by the words because he hadn't done anything wrong. He did not go to Mr. White, the civilian detachment chief and file a complaint. He did not go to anyone else higher in the chain of command to file a complaint or seek protection. He did not talk to other supervisors or personnel in his chain of command just to allay any fears for his safety. He did not even discuss being, or feeling, threatened during his witness interview—even when asked if Mr. Swinson was verbally abusive to subordinates. The follow-on question concerning yelling and cursing was when Mr. Baldeo finally mentioned the incident used as the basis for this specification—and then it was as an example of an opportunity to yell and curse (but not an actuation—his statement that "he has yelled and cursed at me in the past" implies that he did not yell and curse at him during that incident). In fact, Mr. Baldeo was so confident in his safety that he told me, "go ahead and break my legs," before turning his back to me, walking off to get the government vehicle keys and returning to work.

b. Though of highly suspect credibility (see Enclosure 3), the only person who claims to have viewed the situation as threatening, Mr. Pino, simply walked away and returned to work. He too felt no need to talk to his chain of command to report what he had witnessed in the interest of protecting his co-worker's safety. When interviewed for the investigation only 10 days after the allegedly threatening incident, it was of such little significance or import to him that he mentioned it last in a list of examples of Mr. Swinson's threatening or intimidating behavior. He chose to discuss two other incidents of which he had only hearsay knowledge first, and in greater detail.

c. The other bystander, Mr. Crouse, left the room and considered the entire incident a misunderstanding.

6. The last three factors, speaker's intent, any conditional nature of the statements, and attendant circumstances, are addressed most clearly together as well. After joking with a subordinate, I was trying to make a point about what we are trained to do. Twice a year, everyone in the unit is trained in unarmed self-defense techniques. When Mr. Baldeo said no one could break his legs, I was trying to reinforce the fact that yes, someone could break his legs. It was supposed to be a teaching point. I spoke in first person to make it easier to explain to Mr. Baldeo the fact that anyone who is properly trained in those techniques (to include him) can break anyone else's legs. The conditional nature of my statements—"...by kicking it like we're taught in Rules of Engagement (ROE) class; Any full-grown adult could break your leg using...; I could break his legs using the ROE techniques..."—shows that there was no intent of actual physical contact, now or in the future, let alone bodily harm, in my statements or

## ENCLOSURE 2 Threat Analysis

actions. When Mr. Baldeo told me to go ahead and break his legs it was clear he didn't understand and I felt it best to walk away from the conversation, which all four personnel present did. Further demonstrating my lack of intent was my confusion over the direction of the conversation once it was over—as Mr. Crouse pointed out in his statement, "Mr. Swinson said, 'What was that all about?'"—and my own parting reiteration of the use of ROE techniques and "I don't know why he wants me to break his legs."

7. In conclusion, *Metz* requires we give heavy weight to objective evidence. The alleged victim had no apprehension of harm. None of the three witnesses felt the statements in question were serious enough to warrant reporting, or even further discussion in leadership channels. Taken in the context of the attending circumstances and my actual actions, the highly conditional nature of my statements supports that I had no intent to inflict bodily harm, a complete lack of willfulness to even make a threat, let alone carry through with one. Because there is no substantial evidence to support the existence of an actual threat, this charge and specification were not proved. The charge is not supported by law and should have been dropped.

**TAB A**

# ENCLOSURE 3

### ENCLOSURE 3 Credibility Analysis

1. According to *Hillen v. Department of the Army* (35 MSPR 458), to resolve credibility issues. One must identify the factual questions in dispute, summarize the evidence on each disputed question, state which version he believes, and explain in detail why he found the chosen version more credible, considering such factors as:

- a. witness's opportunity and capacity to observe the event or act in question,
- b. the witness's character,
- c. any prior inconsistent statement by the witness,
- d. witness bias, or lack of bias,
- e. contradiction of the witness's version of events by other evidence or its consistency with other evidence,
- f. the inherent improbability of the witness's version of events, and
- g. the witness's demeanor

2. Because of MAJ Hyman's questioning technique, much of the information provided in the witness statements is hearsay. *Borninkhof v. Department of Justice*, 5 MSPR 77 (1981) provides a standard by which to evaluate hearsay evidence:

- a. supported by firsthand information,
- b. consistency with other information, internal consistency, consistency with others,
- c. corroboration in the record,
- d. contradictory evidence, and
- e. credibility of the declarant.

3. According to MAJ Hyman's Investigation Officer Statement (Tab L to Enclosure 7), he considered the following criteria when determining credibility:

- a. "I was able to speak with a number of people, and based on their statements, I was able to draw accurate conclusions as to the credibility of those statements... I found most of these statements to be credible due to the fact that many of them accurately described the same incident. Furthermore the detail of the incidents recalled is consistent with what a person could reasonably be expected to recall.

### ENCLOSURE 3 Credibility Analysis

b. However, when several other people describe the same event accurately, I am left with no choice but to believe that the statements are credible.

c. In stark contrast to the detailed answers given by other employees, the answers given by Mr. Swinson and Mr. Penhollow were purposely vague and evasive. Several times for instance, they claimed to not know or remember something, then after several more questions admit that they had or did.

d. ...they did not give specific denials, rather vague answers of 'I can not recall' or 'I'm not sure.'...a reasonable person should be able to answer yes or no.

e. No attempt was made to provide any information to help lend credibility to the denial. For instance, why just say no or never when it would seem reasonable to add information as to why the allegation was not true.... An example would be no, I do not do that, you can verify this with Mr. X, he knows I am not that type,...

f. Mr. Swinson and Mr. Penhollow denied knowing..., it is not reasonable to believe them.

g. ...they all asked me questions like 'why is this investigation being conducted?' What they did not do at any time is tell me that they were innocent.

h. During the interviews...they used terms like 'them' or 'one' to describe their employees. This coupled with the long list of incidents lends credibility to the statements of the other employees."

4. MAJ Hyman does not appear to have applied any standard criteria for determining credibility beyond if more than one person said the same thing it must be true, unless it was one of the three people being investigated. MAJ Hyman presents their testimony as inherently incredible unless they could prove otherwise, which he demonstrates to be virtually impossible unless they agree with his/others' allegations.

a. MAJ Hyman based his credibility analysis on the fact that so many people recalled almost exactly the same thing; therefore, they must be credible. According to multiple legal research sources, persons experienced in evaluating testimony commonly consider a witness's opportunity to observe an event and the possibility of his bias on the subject. Where different witnesses give identical testimony about the same event, skeptics look for evidence of collusion among them or for other witnesses who could contradict them.

(1) MAJ Hyman did not request substantive support of multiple allegations made by Mssrs. Aviles, Bauld, Budzinski, Hawkins, Marks, Pino, Pulliam, Steele, Versino, and Griffin.

(2) MAJ Hyman did not seek available record evidence to support or refute allegations of wrongdoing for which such evidence must exist (e.g., training

### ENCLOSURE 3 Credibility Analysis

records, promotion records, TDY records). As a result, almost none of the negative assertions made by the other employees interviewed is supported by existing records or documents.

(3) MAJ Hyman did not seek contradictory evidence by interviewing or re-interviewing personnel who might provide a more complete context of the situation. To wit, although Mr. Crouse was identified as a witness to at least two alleged incidents of misconduct on my part, MAJ Hyman did not ask him any questions that would have provided his version of the events—a version that would have contradicted Mr. Pino's allegation of a threat towards Mr. Baldeo (see Enclosure 2).

b. Raising further doubt as to MAJ Hyman's credibility analysis, he finds it undeniably credible when several people "describe the same event *accurately*," not similarly, but accurately. His word choice indicates a predisposition to what he considers the truth, and therefore inherently credible.

c. At no time during the investigation or the interview process was I told that I was suspected of any specific charge. When MAJ Hyman questioned me, he made statements out of context and asked me to respond. Some of the incidents went back to 2002. Having had no prior knowledge of what he was going to ask me, I did not have immediate recall of everything, especially when he did not provide any contextual information to clarify. It only stands to reason that the more he asked and the more time I had to think about it, the more I would actually remember. Furthermore, what he characterizes as evasive, sometimes even contradictory, is actually because of my confusion as a result of the way he asked his questions.

d. In addition to the vagueness of his initial questions and how long ago some of the incidents occurred impacting immediate recall, I did not want to say I did recall something in an exact way when I did not or could not. I was trying to be completely honest and provide the details I remembered. And when I did remember exact details I did provide an explicit response.

(1) When questioned about an incident with Ms. Lisa North (see Tab GG to Enclosure 7) I responded, "I do not know what you are talking about; I do not know anyone with ponytails. That's not me, I do not talk like that. I do not know anyone with pony tails."

(2) When he immediately asked the same question again, I reiterated, "No, not at any time, not any female, I don't joke about sexual remarks. I do not make them. There is absolutely no one in this battalion or on this post that I have that kind of relationship with that I would ever do that. Not joking or otherwise, that is not me. I do not even joke or discuss anything like that with the guys, that is how much that is not me."

e. Paragraph 3.e. above is not a true statement based on MAJ Hyman's own documented statements. See 4.d. above.

### ENCLOSURE 3 Credibility Analysis

f. MAJ Hyman provided no further explanation or circumstance for disbelieving me other than I denied knowing the information about which he asked.

g. MAJ Hyman's write-up confirms that I did not know for what or why I was being investigated. Neither he, nor anyone else had read me my rights or told me I had been officially charged with anything. I was completely unaware of any need or requirement to proclaim my innocence. He also fails to provide any connection between my failure to proclaim innocence and the credibility of my statements in general.

h. MAJ Hyman failed to provide an explanation as to how referring to my employees with third-person pronouns by itself, or in conjunction with the long list of incidents makes the other employees' statements more credible.

5. *Redschlag v. Department of the Army* (89 MSPR 589, Tab A to this enclosure), provides several key determinations in its evaluation and ultimate impeaching of an official's credibility analysis:

a. "The credibility analysis included in the initial decision rarely included discussion of other factors that the Board considers relevant in resolving credibility issues. See *Hillen*, 35 MSPR 458.

b. Given the lapse of time, we find nothing inherently suspect in the fact that the appellant may have been somewhat uncertain about the exact nature and timing of the event. ...even if the appellant was not credible with respect to [that] event, it does not necessarily mean that the remainder of [the] testimony lacked credibility.

c. It is error for a fact finder to rely on a witness's demeanor to find that [the] testimony is untrue without explaining anything about [the] manner and appearance that warranted that conclusion. This conclusion was based on the fact that:

(1) the official made a credibility finding against the appellant based on 'nervous demeanor...and the generally elusive, evasive nature of [the] testimony,

(2) the official did not point to specific testimony by the appellant that he found elusive and evasive,

(3) the Board [did not find] that the appellant's testimony [could be] accurately characterized as 'generally elusive and evasive.'

d. 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.'

### ENCLOSURE 3 Credibility Analysis

- e. The official's credibility findings [were] not supported by the record."
6. The 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."
7. Applying the same standards and level of concern to the statements taken during this investigation, the following witness statements are not entitled to an assumption of credibility:
  - a. Due to lack of substantive support of allegations: Mssrs. Aviles, Bauld, Budzinski, Hawkins, Marks, Pino, Pulliam, Steele, Versino, Griffin and Ms. Jensen
  - b. Due to factual error or contradiction with fact: Mssrs. Budzinski, Martinez, Pino, Pulliam, Rodriguez and Versino.
8. Neither MAJ Hyman nor the other employees provided factual evidence to impeach my credibility. The credibility of 11 of the statements against me is undetermined and that of the remaining statements left highly suspect if MAJ Hyman's analysis and determination is held to the *Hillen* and *Redschlag* standards.
9. Without credible or substantive evidence, there is no preponderance of evidence to support the allegations, or any disciplinary actions taken in response to them.

**TAB A**

**TAB B**

# ENCLOSURE 4

# TAB A

**TAB B**

**TAB C**

**TAB D**

# ENCLOSURE 5

# ENCLOSURE 6

**TAB A**



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 Mr. Thomas Swinson, B Company, 22d Chemical Battalion  
(Technical Escort), 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010-5424

SUBJECT: Detail to Unevaluated Duties Pending the Resolution of an AR 15-6  
Investigation

1. Effective this date and pending the resolution of an AR 15-6 Investigation you are hereby detailed to the Battalion S-4 and will perform unevaluated duties.
2. You will no longer engage in your normal supervisory duties until notified in writing by me or my successor in command. During this detail your security access will be suspended and you are temporarily disqualified from the Personnel Reliability Program (PRP).
3. You are not to impede, obstruct or otherwise interfere with this investigation. 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 Investigation Officer (IO), what they would say if asked or attempt to influence in any way what they would say. If anyone other than the IO approaches you about this investigation, you are not to address their inquiry or answer their questions. You are to inform them you cannot discuss the investigation.
4. This detail is not intended as an adverse administrative action nor should it be construed as such. Should the bases of the AR 15-6 Investigation prove unfounded, you will have all rights and privileges restored and no negative inference will be drawn from the fact this investigation occurred.

  
CHADWICK T. BAULD  
Major, CM  
Acting Commander

17 January 2007

MEMORANDUM FOR Thomas R. Swinson

SUBJECT: Temporary Disqualification

1. The purpose of this memorandum is to notify you in writing of my decision to temporarily disqualify you from the Chemical Personnel Reliability Program (CPRP) as of 17 January 2007. This temporary disqualification is a result of a 15-6 investigation.
2. You have been removed from your assigned chemical surety duties and access restricted; however you will remain under continuing evaluation.
3. After reviewing all circumstances concerning this disqualification a decision will be made to either reinstate you to your chemical surety duties or to permanently disqualify you from the CPRP. You will be notified when a decision has been made.

  
CHADWICK T. BAULD  
MAJ, CM  
Commanding

I acknowledge receipt of this memorandum temporarily disqualifying me from the CPRP. I understand I will not be allowed to perform any duties that involve chemical surety materiel and I remain under continuing evaluation.

NAME Thomas R Swinson

Signature Thomas R Swinson Date 1/25/07

Mr. Thomas Swinson  
Unclassified Duties for S4 Detail  
22 January 2007

- Issue, receive, and prepare necessary documentation of all equipment,
- Assist in receipt, turn-in, document, and tracking of vehicles to maintenance facility and/or TMDE,
- Organizational maintenance on all equipment, and
- Other duties as assigned.

Submit your timesheet to Mr. Barney to sign/certify. Mr. Barney will forward it to E Company for entry into ATAAPS. Mrs. Jensen or CPT Miller will certify in ATAAPS.

Received 1/25/07 at 0730 from MAJ BALD  
& MS JENSEN

While signing my Removal from PRP

**TAB B**



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. Thomas R. Swinson

SUBJECT: Notice of Proposed Fourteen (14) Day Suspension

1. This is official notification that I propose to suspend you from your position of Toxic Material Control Supervisor, WS-6501-14 for fourteen (14) days for threatening to inflict bodily harm and your use of abusive or offensive language. This action is proposed to promote the efficiency of the Federal service and the mission of this organization.

a. The specification of the offense of threatening to inflict bodily harm is as follows.

On or about 15 January 2007, you threatened Mr. Ray Baldeo, a subordinate employee, when you stated, "move now or I could break your legs." This threat was upsetting to Mr. Baldeo. Mr. Anthony Pino recalls you cursing as you walked away from Mr. Baldeo and muttering that you "could break Mr. Baldeo's legs with no problem."

b. The specifications for the charge of using abusive or offensive language are as follows.

(i) Mr. David Budzinski recalls that on or around May of 2006, you said to him, "why the fuck don't you answer my calls." Also, he recalls you taking him into the team room and writing on the board, saying, "I want to see if you can fucking read." Mr. William Stavis recalls you saying "you can pack your fucking bags and go home." Mr. Pino remembers you saying "hurry the fuck up Armistead, god damn, what the fuck are you doing."

(ii) You have admitted to regularly referring to your employees as "crackhead." Mr. Arielle Rodriguez, Mr. Scott Marks, and Mr. Garry Ford all recall you using this term on a regular basis. Mr. Versino says you call "everyone a 'crackhead' on several occasions I have asked him to stop calling me a crackhead. He continues to call me a crackhead." Mr. Adam Pulliam remembers conversations occurring as far back as spring of 2005 during a convoy. You said, "it's better to drive cross country with no god damn trailer lights than to have one of you fucking crackheads break something" and "I told you fucking crackheads to follow me, and when I say to follow me, that fucking means fucking follow me!"

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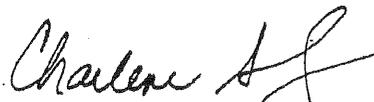
SUBJECT: Notice of Proposed Fourteen (14) Day Suspension

2. In proposing this action I have consulted the Table of Penalties for various offenses listed in Army Regulation (AR) 690-700, Personnel Relations and Services (General) chapter 751, section A-2 (b), "Threatening or attempting bodily harm without bodily contact", and section A-7 (b), "Use of abusive or offensive language, gestures, or similar conduct." I must caution you that if this behavior or any other inappropriate behavior continues it may result in more severe disciplinary action up to and including your removal from government service. This action is considered to be constructive and corrective in nature and is issued to promote the efficiency of the Federal service and this organization.

3. 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), [REDACTED] (AA), with any questions, and for pertinent regulations and or supporting documentation relating to this proposal.

4. 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

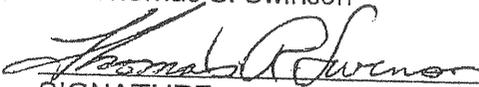


CHARLENE S. JENSEN  
Deputy to the Commander

CF: CPAC, Mr. Crouch

RECEIPT ACKNOWLEDGED:

Mr. Thomas S. Swinson

 \_\_\_\_\_ 5/31/07  
SIGNATURE DATE

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, 3 [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 C**

11 June 2007

2 July

**MEMORANDUM FOR** Deciding Official, LTC Terrell, Commander, 22d Chemical Battalion,  
(Technical Escort), 5182 Blackhawk Road, Bldg E1942, Aberdeen Proving Ground, MD 21010

**SUBJECT:** Request for Extension

1. I respectfully request a 30 day extension to prepare a response to the proposed personnel action against me.

2. The reasons for this request are as follows:

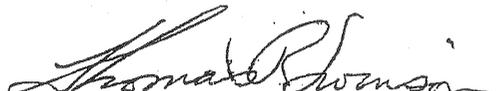
a. I received notification of the proposed action on 31 May, late morning, which began the allotted 15 calendar days response period. My records were not ready for my review until late afternoon on 7 June, the eighth calendar day. I reviewed them at 0630 on 8 June, leaving me only seven and a half days to prepare my response.

b. Because a preponderance of the "evidence" against me is hearsay, subjective or both, I am submitting a Freedom of Information Act request to gain access to the complete documentation of the investigation into the allegations against me. This is particularly important as there were no statements from some of the people referenced as victims or witnesses in the statements made available to me. I would like to exercise my right to know what they said about the alleged incident(s) to determine if their comments in fact refuted what others alleged to have occurred. In addition, there were no statements from three of the members on my team, who work with me every day and whose statements might refute the allegations.

c. I have a right to obtain affidavits but only four duty hours to review the files against me, obtain the affidavits, prepare a written reply and present an oral reply. As such, any affidavits I get must be done at the off-duty convenience of the personnel from whom I request them. I did not know what information was already available until the eighth day into my response period to know from whom I might need to request an affidavit.

d. I have the right to be represented by a management representative; however, Ms. Diane Smith, the CPAC point of contact for support of management personnel was on leave the entire past week. I plan on contacting her for information on Monday, 11 June. At best, that would leave only four days for a representative (if available) to review my case, provide guidance and help me prepare my response accordingly.

3. Thank you for your consideration.

  
Thomas R. Swinson

Approve / Disapprove

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

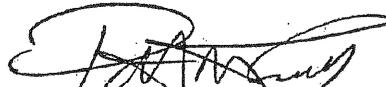
AFCB-CFT-CO

11 June 2007

MEMORANDUM FOR Mr. Thomas R. Swinson

Subject: Request for Extension

1. An extension has been granted through 2 July 2007.
2. You are authorized to speak to individuals from Echo Company, 22d Chemical Battalion (Technical Escort) in order to prepare your reply. However, IAW AR690-700 these interviews may not take place in federal facilities or during duty hours.
3. Those statements used by management to prepare the charges made against you have been provided to you for your review. In order to view any additional statements a Freedom of Information Act (FOIA) request will be required. The results of the FOIA will contain only that information related to you and your case, not to any other individuals being investigated.
4. As a point of clarification you are not authorized a 'management representative'. As a member of 22d Chemical Battalion (Technical Escort) you do have access to the unit representative at CPAC, Mr. David Crouch. Mr. Crouch remains the primary point of contact at CPAC.

  
PATRICK R. TERRELL  
LTC, CM  
Commanding

**Crouch, David P Mr USAGAPG**

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**From:** Clifton, Maureen Ms USAGAPG  
**Sent:** Friday, June 08, 2007 9:37 AM  
**To:** Crouch, David P Mr USAGAPG  
**Subject:** Mr. Swinson (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: FOUO

Dave,

Mr. Swinson and his wife (as his rep) reviewed the material used for his 14-day proposed suspension on Fri, 8 Jun 07. They were here from 0630-0930. Mr. Swinson asked about a previous reprimand that should have been removed from his OPF and I gave him the HR Asst's name/number to make an appt to review his OPF. I also advised Mr. Swinson that this proposed action was considered a first offense. He also asked for Diane's phone number and believe he will be contacting her on Monday.

Maureen

Classification: UNCLASSIFIED

Caveats: FOUO

**Removed  
by Dave  
6/8/07**

**Crouch, David P Mr USAGAPG**

**From:** Clifton, Maureen Ms USAGAPG  
**Date:** Monday, June 11, 2007 3:18 PM  
**To:** Crouch, David P Mr USAGAPG  
**Cc:** Smith, Diane Ms USAGAPG; Worthington, Julie A CPT USAGAPG  
**Subject:** FW: Swinson - Request for Extension (UNCLASSIFIED)  
**Importance:** High  
**Attachments:** AR-M355N\_20070611\_090217.pdf

Classification: **UNCLASSIFIED**

Caveats: NONE

Phone conversation with LTC Terrell:

LTC Terrell will give Mr. Swinson an ext till 2 Jul 07. Needs to get decision done before change of command 9 Jul 07. Mr. Swinson and his Rep spent 3 hrs in CPAC on Friday reviewing the backup documentation used to support the proposed disciplinary action. Mr. Swinson may get statements from others on his own time and outside of the official worksite. He may submit a FOIA request. Mr. Swinson does not have a mgmt rep, he does have a CPAC rep and that is Dave Crouch (or Maureen Clifton - in Dave's absence).

Penhollow and White have already given their reply to LTC Terrell.

Maureen



---

**From:** Terrell, Patrick R LTC 22ND CM BN (TE) [mailto:patrick-terrell@us.army.mil]  
**Sent:** Monday, June 11, 2007 10:03 AM  
**To:** Clifton, Maureen Mrs RDECOM (USAG-APG); Jensen, Charlene S ARD 20TH SUPCOM  
**Subject:** Swinson - Request for Extension (UNCLASSIFIED)  
**Importance:** High

Classification: **UNCLASSIFIED**

Caveats: NONE

Maureen,

Attached is Mr. Swinson's request for extension. He is coming back to see me this afternoon for my answer.

I told him I needed to ask CPAC for a read out on whether or not he can talk to individuals other than those making the accusations against him or evidence on his behalf. That request is not written in this document, but he is willing to add it if required. He just didn't know if it had to be specified in there or if it was implied that he can.

Thanks  
LTC Terrell

PATRICK R. TERRELL  
LTC CM

-----Original Message-----  
From: Sharp355@apega.army.mil [mailto:Sharp355@apega.army.mil]

Sent: Monday, June 11, 2007 10:02 AM

To: patrick-terrell@us.army.mil

Subject: Scanned image from AR-M355N

DEVICE NAME:  
DEVICE MODEL: SHARP AR-M355N  
LOCATION:

FILE FORMAT: PDF MMR(G4)  
RESOLUTION: 300dpi x 300dpi

Attached file is scanned image in PDF format.  
This file can be read by Adobe Acrobat Reader.  
The reader can be downloaded from the following URL:

<http://www.adobe.com/>

Classification: **UNCLASSIFIED**  
Caveats: NONE

Classification: **UNCLASSIFIED**  
Caveats: NONE

**TAB D**

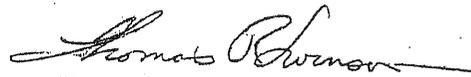
7 June 2007

MEMORANDUM FOR Civilian Personnel Advisory Service

SUBJECT: Request for Personal Representative's Access to Information

My wife, Victoria Kost-Swinson, is my representative in addressing and resolving personnel issues concerning me, Thomas R. Swinson.

Please afford her access to all of my records and any other pertinent information or documentation concerning the matter of my proposed 14-day suspension.



Thomas R. Swinson

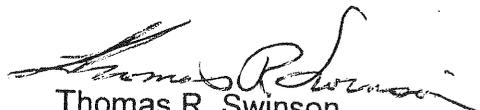
# TAB E

12 Jun 07

**MEMORANDUM FOR** Civilian Personnel Advisory Center, Aberdeen Proving Ground,  
MD

**SUBJECT:** Freedom of Information Act Request

1. In accordance with 5 CFR 552, I respectfully request access to the following federal agency records: all documentation collected and/or generated as part of the 15-6 investigation into allegations of misconduct against Mr. Thomas R. Swinson, et al.
2. The investigation occurred from Nov 06 to 1 Jun 07. The documents I request access to are all statements made by or including information concerning Thomas R. Swinson, [REDACTED], administrative documents initiating, managing and concluding the investigation; and any other documents in the investigation record that impacted the resolution of the investigation and follow-on recommendations with regard to Thomas R. Swinson.
3. This request is in conjunction with preparing a response to the proposed disciplinary action dated 31 May 07.
4. I understand that there may be fees associated with this request.

  
Thomas R. Swinson



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
US ARMY GARRISON ABERDEEN PROVING GROUND  
2201 ABERDEEN BOULEVARD  
ABERDEEN PROVING GROUND MARYLAND 21005-5001



July 18, 2007

Mail and Records Management Division

Mr. Thomas Swinson  
132 Talton Drive  
Delta, PA 17314

Reference: Freedom of Information Act Request Number FP-07-017237 (Mr. Thomas Swinson)

Dear Mr. Swinson:

This is in response to your request dated June 12, 2007, which was received by this office on June 27, 2007 for information under the provisions of the Freedom of Information Act (FOIA). Further delay in response to your request is due to our office not receiving information on your home address and phone number until July 17, 2007. Your request requires further review and is being forwarded to the following address for review of releasability and necessary coordination:

Civilian Personnel and Advisory Center  
305 Longs Corner Road  
Aberdeen Proving Ground, MD 21005-5001

You may expect a direct reply from their Freedom of Information Act Coordinator. Please reference **Freedom of Information Act Case # FP-07-017237** in any future correspondence regarding this request. If you have any further questions, please contact their FOIA Coordinator, Ms. Lisa McKinney at 410-278-1414, or email [lisa.mckinney@us.army.mil](mailto:lisa.mckinney@us.army.mil).

Sincerely,

Sandra L. Schiller  
Garrison Freedom of Information  
Act Officer

Encl 3 7



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
US ARMY INSTALLATION MANAGEMENT COMMAND  
US ARMY GARRISON ABERDEEN PROVING GROUND  
2201 ABERDEEN BOULEVARD  
ABERDEEN PROVING GROUND MARYLAND 21005-5001



IMNE-APG-IM

24 JUL 2007

MEMORANDUM FOR Freedom of Information Act Officer, Civilian Personnel Advisory Center, 305 Longs Corner Road, Aberdeen Proving Ground, Maryland 21005-5001

SUBJECT: Freedom of Information Act (FOIA) Case # FP-07-017237

1. Subject FOIA request (encl 1) from Mr. Thomas Swinson, is being forwarded for action and direct reply to the requester within 20 working days, IAW DOD 5400.7-R, September 1998, DOD Freedom of Information Act Program. Please note the DOD regulation should be used until the AR 25-55, The Department of the Army Freedom of Information Act Program, is updated to include the electronic FOIA Amendments of 1996.
2. Your reply must be coordinated with the Public Affairs Office and the Staff Judge Advocate. The Staff Judge Advocate has requested that they be the last in the review process. Coordination Form, IMNE Form 1189 (encl 2), has been provided for your use. Please return a copy of the completed IMNE Form 1189 to the Garrison Freedom of Information Action Officer before providing the requested information. Refer to DOD 5400.7-R, Chapter 3, for specific rules and guidelines when releasing information.
3. The requester has been notified of this referral (encl 3).
4. Please forward us a copy of your final reply cover letter with required DD Form 2086, Record of Freedom of Information Processing Cost (encl 4).
5. The DOIM point of contact for this action is Ms. Sandra Schiller, Garrison Freedom of Information Action Officer; she can be reached at 410-436-3580 or electronically at [sandra.schiller@us.army.mil](mailto:sandra.schiller@us.army.mil).

FOR THE COMMANDER:

4 Encls

KIM PARKER  
Director, Information Management



DEPARTMENT OF THE ARMY  
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PERSONNEL, G-1  
USACHRA, NORTHEAST REGION, CIVILIAN PERSONNEL ADVISORY CENTER  
305 LONGS CORNER ROAD  
ABERDEEN PROVING GROUND, MD 21005-5000

August 27, 2007

Civilian Personnel Advisory Center

Mr. Thomas Swinson  
132 Talton Drive  
Delta, PA 17314

Dear Mr. Swinson:

This is in response to your request for information under the Freedom of Information Act (FOIA), Freedom of Information Act Case #FP-07-017237 (Mr. Thomas Swinson). Your request was dated 12 June 2007 and requested all documentation collected and/or generated as part of the 15-6 investigation into allegations of misconduct. Enclosed is the information you requested.

Please contact Lisa McKinney, (410) 278-1414, if you need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Diane J. Smith".

DIANE J. SMITH  
Director, Civilian Personnel Advisory Center

Enclosure

**TAB F**



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. Thomas R. Swinson

SUBJECT: Notice of Proposed Fourteen (14) Day Suspension

1. This is official notification that I propose to suspend you from your position of Toxic Material Control Supervisor, WS-6501-14 for fourteen (14) days for threatening to inflict bodily harm and your use of abusive or offensive language. This action is proposed to promote the efficiency of the Federal service and the mission of this organization.

a. The specification of the offense of threatening to inflict bodily harm is as follows.

On or about 15 January 2007, you threatened Mr. Ray Baldeo, a subordinate employee, when you stated, "move now or I could break your legs." This threat was upsetting to Mr. Baldeo. Mr. Anthony Pino recalls you cursing as you walked away from Mr. Baldeo and muttering that you "could break Mr. Baldeo's legs with no problem."

b. The specifications for the charge of using abusive or offensive language are as follows.

(i) Mr. David Budzinski recalls that on or around May of 2006, you said to him, "why the fuck don't you answer my calls." Also, he recalls you taking him into the team room and writing on the board, saying, "I want to see if you can fucking read." Mr. William Stavis recalls you saying "you can pack your fucking bags and go home." Mr. Pino remembers you saying "hurry the fuck up Armistead, god damn, what the fuck are you doing."

(ii) You have admitted to regularly referring to your employees as "crackhead." Mr. Arielle Rodriguez, Mr. Scott Marks, and Mr. Garry Ford all recall you using this term on a regular basis. Mr. Versino says you call "everyone a 'crackhead' on several occasions I have asked him to stop calling me a crackhead. He continues to call me a crackhead." Mr. Adam Pulliam remembers conversations occurring as far back as spring of 2005 during a convoy. You said, "it's better to drive cross country with no god damn trailer lights than to have one of you fucking crackheads break something" and "I told you fucking crackheads to follow me, and when I say to follow me, that fucking means fucking follow me!"

AFCB-CFT-CO

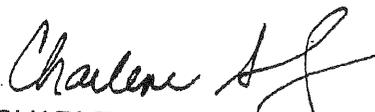
SUBJECT: Notice of Proposed Fourteen (14) Day Suspension

2. In proposing this action I have consulted the Table of Penalties for various offenses listed in Army Regulation (AR) 690-700, Personnel Relations and Services (General) chapter 751, section A-2 (b), "Threatening or attempting bodily harm without bodily contact", and section A-7 (b), "Use of abusive or offensive language, gestures, or similar conduct." I must caution you that if this behavior or any other inappropriate behavior continues it may result in more severe disciplinary action up to and including your removal from government service. This action is considered to be constructive and corrective in nature and is issued to promote the efficiency of the Federal service and this organization.

3. 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), [REDACTED] (AA), with any questions, and for pertinent regulations and or supporting documentation relating to this proposal.

4. 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.

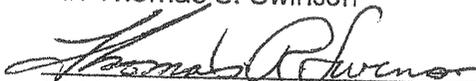
1 Encl

  
CHARLENE S. JENSEN  
Deputy to the Commander

CF: CPAC, Mr. Crouch

RECEIPT ACKNOWLEDGED:

Mr. Thomas S. Swinson

 — 5/31/07  
SIGNATURE DATE

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, 3 [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 G**

2 Jul 07

MEMORANDUM FOR LTC Patrick R. Terrell

SUBJECT: Notice of Proposed Fourteen (14) Day Suspension

1. The purpose of this memorandum is to provide my response to the proposed 14-day suspension I received 31 May 07. For the record, I have not yet received the response to my Freedom of Information Act request to obtain the complete record of the investigation into the allegations against me.

2. The first specification of the proposal was "...the offense of threatening to inflict bodily harm." It was based on an incident between me and Mr. Baldeo, and witnessed by Mr. Pino and Mr. Crouse. Mr. Baldeo alleged I threatened to break his legs. I provide the following in response:

a. The complete context within which the statements were made.

Swinson (S): While teasing Mr. Baldeo about moving slowly, as if there was something wrong with his legs, "You're acting like one of your legs is broke."

Baldeo (B): "No, Boss. You can't break my legs."

S: "Yes I can, by kicking it just like we're taught in Rules of Engagement (ROE) class. Any full-grown adult could break your leg using unarmed self-defense techniques."

B: "You can't break my leg."

S: "Yes I can."

B: "Go ahead, break my legs."

Mr. Pino, Mr. Crouse and I walked away. I stated, to no one in particular, "What was that about? Yes, I could break his legs using the ROE techniques. I don't know why he wants me to break his legs."

b. Mr. Baldeo's statement. It agrees in concept with the complete incident—I did say I could break his legs and he did tell me to go ahead. But even he did not say that he felt a threat of bodily harm by the conversation. He implies that I was not cursing or yelling at him at the time either—by his statement that followed his brief recollection of the incident, that "...he has yelled and cursed at me in the past." He also did not say anything about the tone I chose to use, only that the words "...upset me, I was not doing anything wrong." Finally, he goaded me by suggesting I go ahead and try to break his legs. If the alleged victim did not feel threatened or in danger of bodily harm, and the

SUBJECT: Notice of Proposed Fourteen (14) Day Suspension  
2 Jul 07

conversation was only between the two of us, there was no actual threat to inflict bodily harm.

c. Mr. Pino's statement. It contradicts in fact both Mr. Baldeo's and my recollections of the incident. Mr. Pino does agree with my recollection that I said I could break Mr. Baldeo's legs. Taken out of context, as Mr. Pino has done, it is still a correct and innocent statement. Anyone using unarmed self-defense techniques properly could break someone else's legs. Mr. Pino, however, provided additional details not provided or supported by either statement of the principal participants in the incident—cursing and a threatening manner. This makes Mr. Pino's rendition of the event suspect at best.

d. Mr. Crouse's statement. Mr. Baldeo identified Mr. Crouse as another witness of the incident. Mr. Crouse's statement provided a more complete recollection of the incident in question, which includes many of the details I provided above but were left out by Mr. Baldeo and Mr. Pino. His rendition does include the allegedly threatening statement that I could break Mr. Baldeo's leg; however, Mr. Crouse adds that Mr. Swinson and Mr. Baldeo were joking at the beginning of the incident and that the way the incident ended seemed to be a misunderstanding on Mr. Baldeo's part.

e. The alleged victim himself did not say he felt threatened. One of the witness statements supports that lack of a threat in his statement. The verbiage cited in the official notice of the proposed suspension was actually taken from the other witness' statement, not the alleged victim's, and is not supported by any other statement, not to mention the questionable veracity of that witness' statement.

3. With respect to the first specification for the charge of using abusive or offensive language, sup-paragraph (i), I provide the following:

a. Mr. Budzinski recalls a very specific incident on or around May 06. I do not use profanity when admonishing, counseling or training my subordinates and could not have done so on this particular occasion. Mr. Budzinski recalled an incident that had to have happened on Edgewood, in the team room. From 27 February through 30 Jun 06 I was on TDY in Alabama. I was on leave for the week of the Fourth of July and back on TDY in Alabama from 9 to 14 Jul 06, except for the weekend of the Talladega race (we had to return home because the hotels were already booked). The incident Mr. Budzinski recalled could not have occurred.

b. I was not provided Mr. Stavis' statement to review in preparation for this response. Given that I was assured by CPAC that they had provided me all of the information that was used against me to determine this proposed action, I do not understand why this statement is included in this specification. It should not have been; however, I will provide the rest of the missing context. Mr. Stavis was being

SUBJECT: Notice of Proposed Fourteen (14) Day Suspension  
2 Jul 07

insubordinate, not supporting the team and his attitude reflected that he did not want to be TDY. I told him he could either support the team or go home and I would get a replacement. I let him know there would be paperwork that followed him home explaining why he had been relieved. Mr. Stavis decided he did not want to be relieved and stayed to support the mission and the team at Spring Valley.

c. Mr. Pino's recollection of my comments to Mr. Armistead recalled an event that happened in 2003. His recollection of the events is incorrect in fact. What really happened is a matter of record, one to which Mr. Pino is not privy. And, just as with the incident with Mr. Baldeo, Mr. Pino is providing an account of an incident that did not involve him directly. Also as with Mr. Baldeo's allegations, Mr. Pino's recollections of specific verbiage, this time almost four years old, is suspect at best, given the complete inaccuracy of the supporting details he provided.

d. Two of the three supporting statements are of questionable veracity and the third was not in the official record of information considered in developing the charges against me (in addition to the factual errors in it).

4. With respect to the second specification for the charge of using abusive or offensive language, sub-paragraph (ii), I provide the following:

a. I do not deny that I use the term crack head. I use it as a term of endearment, a more friendly form of address than using everyone's last names. I use it to build camaraderie in what can be a very difficult and dangerous job. I have never used it to belittle or demean anyone and when I have been told it offends someone I stop using it with that person. Mr. Aviles, Mr. Buckler, Mr. Crouse, Mr. Hoffmann, Mr. McCullough and Ms. Stitely all state that they have never been offended by my use of the term, that it is very obvious it is used in a friendly, jovial way. Several of them have also noted that other individuals in the unit have adopted the same term for the same reasons I used it. Ms. Stitely noted in her statement that I have stopped using the term at all now.

b. While Mr. Ford recalls my use of the term, he also stated that when he told me it offended him and asked me to call him Mr. Ford, I did exactly as he asked. While Mr. Marks recalls I have called him a crack head in the past, what he did not recall was that I have not referred to him by that term since he told me not to. I also stopped referring to Mr. Versino by that term. It just happens that Mr. Versino has not realized I have stopped using the term altogether because he doesn't report for duty at the E Company area.

c. Mr. Pulliam recalls conversations during a 2005 convoy that no one else had any recollection of, even though the minimum number of personnel that would have been on any convoy is four. The only other part of his statement that was considered in

SUBJECT: Notice of Proposed Fourteen (14) Day Suspension  
2 Jul 07

this specification was "I have never seen Mr. Swinson talk to anybody who works for him without belittling them, or at least trying to." Not only is that a sweeping statement to make for someone who does not work for me, it is also clearly and strongly refuted by people who do work for and with me (as stated in 4.a. above). The obvious subjectivity of this statement, refuted in fact, and the lack of supporting statements from other convoy "victims" makes his statement suspect at best.

d. Mr. Gerber, alleged to be a victim in someone else's statement, said of the incident in his statement, "While at Camp Sibert, off duty, he spoke to me in an inappropriate manner (lots of curse words, though not cursing at me). I told him not to, he apologized, and he has not done so since.

e. While I meant no harm by my use of the word crack head, when I was told it offended someone, I stopped using it. After three people mentioned something to me about it, I stopped using the term altogether. Had I been using it intentionally to belittle or demean people as a matter of course, I would not have stopped using the term.

5. In summary on the second allegation, what statements were not refuted in fact are largely discounted when put into context with the complete situation. Although I never meant any harm by the use of the term crack head, I stopped using it when people let me know it offended them. In addition, though several statements indicated fear of retaliation or retribution as a reason for not speaking up, sometimes for many years, only one or two of those statements provided any reason to fear retaliation. My record of personnel actions (evaluations, training, TDY, overtime, promotions...) will provide objective support for my subjective statement that I never gave any of my subordinates or colleagues any cause to fear retaliation for letting me know they were offended, or for any other reason.

6. Thank you for your consideration in this matter.

  
Thomas R. Swinson

- 8 encls
1. Mr. Buckler's Statement
  2. Mr. Crouse's Statement
  3. Mr. Hoffmann's Statement
  4. Mr. Kirwan's Statement
  5. Mr. McCullough's Statement
  6. Ms. Stitely's Statement
  7. Mr. Young's Statement
  8. TDY Record



DEPARTMENT OF THE ARMY  
U.S. ARMY TECHNICAL ESCORT UNIT  
5183 BLACKHAWK ROAD  
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

REPLY TO  
ATTENTION OF:

AFCB-TE-ACO

18 June 07

MEMORANDUM FOR: Whom it may concern

SUBJECT: The word Crack Head

I have work with Mr. Swinson in the old Brave Company, at 22d CM BN (TE), for two years. He always used the word crack head to any one as a sociably comment. Mr. Swinson never use this word to belittle any one. It was used more in fun than anything else. Mr. Swinson always use this word with myself, and I never took offense with it. I have seen many people since I have known Mr. Swinson start using the word Crack Head as being comical, with this word, but never nothing in a derogatory meaning.

  
Gregory A. Buckler  
Supply Tech, USA

28 June, 2007

To Whom It May Concern:

Mr. Swinson has been my immediate supervisor for 4 years, during this time I have never felt belittled or threatened by any means. I have worked with Mr. Swinson on many projects at the office and field sites and never seen him curse, threaten anyone in any manner. Mr. Swinson will joke at times with everybody when we are not engaged in serious work. When we are at work in the field he takes safety very serious and will not jeopardize no ones health or life. Mr. Swinson will joke in the morning and say "Good morning Crack Head" this in no way has ever made me feel uncomfortable, because I know as well as everybody that he is just joking. Mr. Swinson has a wealth of knowledge in the chemical field and can be approached for direction and answers. All of my fellow employs and my self know that Mr. Swinson is the most strict supervisor at E- Company so employees will not approached him for time off when they know he needs to keep a crew for emergency response or CARA.

In the incident involving Mr. Baldeo it was just a total misunderstanding. On that morning Mr. Swinson was joking with Mr. Baldeo and told him he was walking like he had a broken leg. Mr. Baldeo said no "My leg is not broken and no one can break it". Mr. Swinson said "anyone can break your leg by kicking it like we learned in Rules or Engagement class". At this time Mr. Baldeo said "Go ahead boss break my leg". Myself and Mr. Swinson left the room looked at one another and Mr. Swinson said "What was that all about". In my perspective it was a misunderstanding.

Mr. Dennis O. Crouse

*Dennis O. Crouse*

29 June 2007

TO WHOM IT MAY CONCERN

I've had the pleasure of knowing and working with Mr. Swinson since 1989. He is by far one of the most knowledgeable individual that I have met working in the chemical operations arena. He has provided both help and guidance to the Chemical Equipment Room over the years.

In garrison and on projects, I have not seen or heard Mr. Swinson use profanity or threaten any of his employees when addressing them.

Mr. Swinson will sometimes use unique phrases with his friends, jokingly, to get a smile or response and not to harass or belittle them.

He has always given 100% to support the Chemical Equipment Room and complete his missions. I enjoy working with him and would definitely continue to do so.

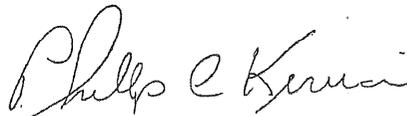
  
Joseph R. Hoffmann

2 July 2007

**TO WHOM IT MAY CONCERN**

I've known and worked with Mr. Swinson since 1989 as a Wage Leader of the 1<sup>st</sup> Division, Technical Escort Unit. I have found him to be a knowledgeable and proficient worker. He has become an excellent supervisor and has completed all his assigned missions in a professional manner. I have never heard him berate or use profanity while talking to the people in his section. In my eyes, Mr. Swinson has always been professional on the job assigned him and treated the people that worked for him the same.

He is definitely an asset to your organization and to lose him would be a mistake.



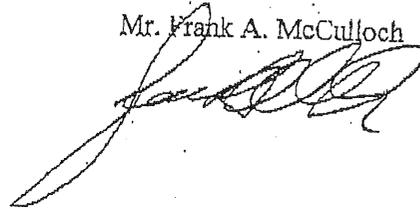
**Phillip C. Kirwan**

28 June 2007

To Whom It May Concern:

Mr. Tom Swinson isn't my immediate supervisor, although he has supervised me on many occasions. I have never seen nor witnessed Mr. Swinson threatening or belittling anyone. He is a joke able person but is serious when need be, he used to jokingly say "Good Morning Crackhead". Tom is the least approached supervisor in E co when a employee want time off, Tom understands that Eco has to maintain a readiness at all times for emergency responses and CARAs. I have never seen nor witnessed Tom lay hands nor touch anybody in a threatening manner. Tom is a very safety conscious person to the point I feel you have to gain Toms trust before he will let you work alone or unsupervised. I have never had any problems with Tom on or off duty. He is a very knowledgeable and professional employee and supervisor. It would be a tremendous loss to Eco and the 22d Chemical Battalion to loose him.

Mr. Frank A. McCulloch



29 Jun 07

I have worked as an Admin Clerk and company supply person for B/E Company since 1995. I have known Mr. Swinson the entire time. Because I support the entire company, I interact with all of the supervisors and many of the Toxic Material Handlers and UXO personnel on a regular basis.

Mr. Swinson is the senior supervisor assigned to E Company. He possesses the characteristics of a role model first-line supervisor:

- arriving early, every day
- dressed appropriately for the day's mission
- very knowledgeable of the tasks to be completed
- employee safety is his #1 priority
- refuses to tolerate waste, fraud or abuse; pays close attention to detail
- uses and secures Government equipment and supplies as if his own
- a team player, willingly filling in where needed, to include attending Command and Staff or working in the warehouse/motor pool areas
- keeps his supervisor abreast of tasks completed and status of employees
- ensures that training certifications, medical certifications and any licenses are current, enabling team members to comply with their no-notice, worldwide response obligation. He schedules training accordingly, advises his team employees to prepare in advance and, mission dependent, does everything he can to get them to training.
- ensures that all employees have a safe and reliable mode of transportation home, particularly during inclement weather conditions
- if an employee becomes ill during the day or experiences POV mechanical failure, Mr. Swinson ensures that the employee is taken home, will not leave the post until he is sure of an "all clear" status
- remains late every evening to ensure that the building is secured
- Mr. Swinson is available after duty hours to assist employees with any personal issues or family emergencies that arise, and has done so on several occasions

I have watched Mr. Swinson interact with Mr. White, the other supervisors, his team members and other E Company members on a regular basis. He's never been belittling, demeaning or abusive towards any of them. For the most part, he is very jovial, always joking around with them to make them smile. When it comes time to do the mission, though, he gets down to business very quickly and it is very clear when he stops joking and starts expecting action.

He has used the term "crack head" for many years. He always used it affectionately, jokingly, as though it were a friendly nickname, and it was very obvious he meant no harm in using it. In fact, there are many other people in the company who also use the term, and use it in the same, friendly way. Lately, there have been a couple of people who did not like the term and I have noticed Mr. Swinson has stopped using it at all now; however, other people in the company still use the term.

Mr. Swinson earned the respect and admiration of his team members and colleagues when he was a member of the first team to deploy to Afghanistan shortly after 9/11. His dedication to duty and commitment to the unit are beyond reproach. His knowledge of the mission is unsurpassed.

Mr. Swinson is a very fair, caring and knowledgeable supervisor. He expects nothing more from his employees and co-workers than he is willing to provide himself. He takes pride in supporting the missions of Tech Escort and has done so for the 12 years I have known him. In speaking and working with him, it is clear that he has felt this way and maintained his dedicated work ethic for the 25 years he has been doing the technical escort mission.

I would have given a statement to this effect to MAJ Hyman during the interview process of this investigation; however, I was omitted from the employees interviewed.

Patricia Stitley



Dear Sirs/Ma'am

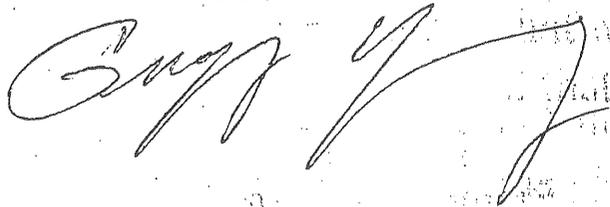
I'am writing this letter on behalf of a Mr Thomas Swinson. I have known this person since 1989. Since that time I have found out he has a vast knowledge of a lot of aspects that pertain to Chemical duties. Mr Swinson may have a tough exterior, but I believe he trys to be fair. He has his own way of doing things that work for him. I myself, am a man with a mind. I can perceive when somebody trys to disrespect me, or try to condescend me. If that were to happen with anybody, then I would tell that person to the side, if it happened the first time.

Is Mr Swinson a diplomat?... No. But you can learn something from his vast experiance and knowledge. I have worked with mr swinson a few times, he has never been ~~by~~ supervisor.

I respectfully submit this.

Gregory Young

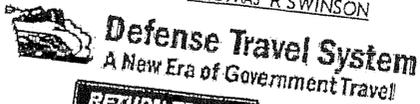
21 June 2007



Logged In As: THOMAS R SWINSON  
 Traveler Name: THOMAS R SWINSON

Document Name: DCBRISTOLTNO22706\_V01  
 Document Type: Voucher

Screen ID: 1022.1



[RETURN TO LIST](#)

[Itinerary](#)
[Travel](#)
[Expenses](#)
[Accounting](#)
[Additional Options](#)

[Non-Mileage](#)
[Mileage](#)
[Per Diem Entitlements](#)
[Substantia](#)

**PER DIEM ENTITLEMENTS**

Following is a list of per diem allowances for lodging and meals/incidentals for each day of your trip. The "edit" link allows you information (e.g., duty conditions, meals provided, etc.) for a specific date or date range. The "reset" link changes the per die to the default rates for that date and location.

[GSA State Tax Exemption Listing](#)

Date	Location	View	Reset	Ldg Cost	Ldg Allowed	MB/E Allowed	Per Diem Rate	Code
02/27/06	WYTHEVILLE, VA	<a href="#">View</a>	N/A	49.50	49.50 GOVCC- Individual	29.25 Personal	60 / 39	NONE
02/28/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/01/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/02/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/03/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/04/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/05/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/06/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/07/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/08/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/09/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/10/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/11/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE

					Individual			
03/12/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/13/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/14/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/15/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/16/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/17/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/18/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/19/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/20/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/21/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/22/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/23/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/24/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/25/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/26/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/27/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/28/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
03/29/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
					60.00	39.00		

03/30/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	GOVCC-Individual	Personal	60 / 39	NONE
03/31/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/01/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/02/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/03/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/04/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/05/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/06/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/07/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/08/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/09/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/10/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/11/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/12/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/13/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/14/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/15/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/16/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE
04/17/06	GADSDEN,AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC-Individual	39.00 Personal	60 / 39	NONE

04/18/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/19/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/20/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/21/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/22/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/23/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/24/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/25/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/26/06	GADSDEN, AL	<a href="#">View</a>	N/A	60.00	60.00 GOVCC- Individual	39.00 Personal	60 / 39	NONE
04/27/06	GADSDEN, AL	<a href="#">View</a>	N/A	0.00	0.00 GOVCC- Individual	29.25 Personal	60 / 39	NONE



Proceed to the following page:

Expense - Substantiating Re

06/14/07 TRAVEL VOUCHER | Voucher: [REDACTED]

PAGE 1 \*\* Read Privacy Act On Last Page \*\* | ADJ LEVEL: 1  
Auth. No: 0P588M

1) NAME: SWINSON, THOMAS R. SSN: [REDACTED]  
ADDR: [REDACTED] PHONE: [REDACTED]  
[REDACTED] MAIL CD:  
ORG: TECH ESCORT UNIT  
TITLE: C WS-10  
DUTY: ABERDEEN PROVING GND TZ: 6 SEC CLR:  
[REDACTED] CARD: CARD HOLDER  
HOURS: 8  
Tech Status NO Air Crew Status

2) FROM	TO	TA NUMBER	TA DATE	TRIP PURPOSE	TRIP TYPE
05/01/06	06/30/06	0P588M	06/30/06	SITE VISIT	AA-ROUTINE

3) GTR/TICKET NO	VALUE	CR	CLS	DATE	FROM	TO
------------------	-------	----	-----	------	------	----

4) ACCOUNTING CLASS CODE	TRIP 3	TRIP 2	TRIP 1	5) FINANCE OFFICE
06 TEU-2			7012.49	
019130^21^2006^2020^^^76^2023^^^^^^21T2^6GEA11S6^000000^^^0				
19130^^^^^^				

6)NON-REIMBURSABLE EXPENSES -----				
TOTAL AMOUNT CLAIMED -----			7012.49	
ADVANCE OUTSTANDING -----	0.00			
ADVANCE APPLIED -----	3121.74		3121.74	
NET TO TRAVELER (GOVT) -----			3890.75	

Defense Travel System  
I certify that this voucher is true and correct to the best of my knowledge and belief, and that payment or credit has not been received by me. I hereby assign the United States

any right I may have against any parties in connection, with reimbursable transportation charges described above, purchased under cash payment procedures (41 CFR Part 301-10).

7) TRAVELER SIGNATURE DATE | DATE:

This voucher is approved. Long distance telephone calls, if any, are certified as necessary in the interest of the Government. (Note: If long distance telephone calls are included, the approving official must have been authorized in writing by the head of the department or agency to so certify (31 U.S.C. 680a)).

9) APPROVED,

DATE

06/14/07

TRAVEL VOUCHER

Voucher: [REDACTED]

PAGE 2

\*\* Read Privacy Act On Last Page \*\*

ADJ LEVEL: 1

SWINSON [REDACTED]

(11) ITINERARY AND TRANSPORTATION EXPENSES - TRIP NO 1

DATE	TIME	DEPARTED/ARRIVED	LOCATIONS	MODE	COST	DESCRIPTION
05/01/06		D-APG, MD				
05/01/06		A-GADSDEN, AL				
06/29/06		D-GADSDEN, AL				
06/29/06		A-WINCHESTER	(WINCHESTER C			
06/30/06		D-WINCHESTER	(WINCHESTER C			
06/30/06		A APG, MD				
TOTAL TRANSPORTATION EXPENSES					0.00	

(12) SUBSISTENCE AND OTHER REIMBURSABLE EXPENSES

DATE	ACTUAL LODGING	MEALS ALLOWED	M&IE B L D	P-DIEM RATE	OTHER EXPENSES	AMOUNT
05/01					Travel Agent Fee	18.19
05/01					Tickets-Personally Pr	143.30
06/30					Gasoline-Rental/Govt.	426.50
06/30					Parking - Terminal	36.00
06/30					Hotel Sales Tax	429.00
05/01	60.00	60.00	29.25	60/39		0.00
05/02	60.00	60.00	39.00	60/39		0.00
05/03	60.00	60.00	39.00	60/39		0.00
05/04	60.00	60.00	39.00	60/39		0.00
05/05	60.00	60.00	39.00	60/39		0.00
05/06	60.00	60.00	39.00	60/39		0.00
05/07	60.00	60.00	39.00	60/39		0.00
05/08	60.00	60.00	39.00	60/39		0.00
05/09	60.00	60.00	39.00	60/39		0.00
05/10	60.00	60.00	39.00	60/39		0.00
05/11	60.00	60.00	39.00	60/39		0.00
05/12	60.00	60.00	39.00	60/39		0.00
05/13	60.00	60.00	39.00	60/39		0.00
05/14	60.00	60.00	39.00	60/39		0.00
05/15	60.00	60.00	39.00	60/39		0.00
05/16	60.00	60.00	39.00	60/39		0.00
05/17	60.00	60.00	39.00	60/39		0.00

05/18	60.00	60.00	39.00	60/39	0.00
05/19	60.00	60.00	39.00	60/39	0.00
05/20	60.00	60.00	39.00	60/39	0.00
05/21	60.00	60.00	39.00	60/39	0.00
05/22	60.00	60.00	39.00	60/39	0.00
05/23	60.00	60.00	39.00	60/39	0.00
05/24	60.00	60.00	39.00	60/39	0.00

06/14/07 TRAVEL VOUCHER | Voucher:   
 | ADJ LEVEL: 1   
 PAGE 3 \*\* Read Privacy Act On Last Page \*\* | SWINSON

(12) SUBSISTENCE AND OTHER REIMBURSABLE EXPENSES (CONT'D)

DATE	ACTUAL LODGING	LODGING ALLOWED	MEALS B L D	M&IE ALLOW	P-DIEM RATE	OTHER EXPENSES	AMOUNT
05/25	60.00	60.00		39.00	60/39		0.00
05/26	60.00	60.00		39.00	60/39		0.00
05/27	60.00	60.00		39.00	60/39		0.00
05/28	60.00	60.00		39.00	60/39		0.00
05/29	60.00	60.00		39.00	60/39		0.00
05/30	60.00	60.00		39.00	60/39		0.00
05/31	60.00	60.00		39.00	60/39		0.00
06/01	60.00	60.00		39.00	60/39		0.00
06/02	60.00	60.00		39.00	60/39		0.00
06/03	60.00	60.00		39.00	60/39		0.00
06/04	60.00	60.00		39.00	60/39		0.00
06/05	60.00	60.00		39.00	60/39		0.00
06/06	60.00	60.00		39.00	60/39		0.00
06/07	60.00	60.00		39.00	60/39		0.00
06/08	60.00	60.00		39.00	60/39		0.00
06/09	60.00	60.00		39.00	60/39		0.00
06/10	60.00	60.00		39.00	60/39		0.00
06/11	60.00	60.00		39.00	60/39		0.00
06/12	60.00	60.00		39.00	60/39		0.00
06/13	60.00	60.00		39.00	60/39		0.00
06/14	60.00	60.00		39.00	60/39		0.00
06/15	60.00	60.00		39.00	60/39		0.00
06/16	60.00	60.00		39.00	60/39		0.00
06/17	60.00	60.00		39.00	60/39		0.00
06/18	60.00	60.00		39.00	60/39		0.00
06/19	60.00	60.00		39.00	60/39		0.00
06/20	60.00	60.00		39.00	60/39		0.00
06/21	60.00	60.00		39.00	60/39		0.00
06/22	60.00	60.00		39.00	60/39		0.00
06/23	60.00	60.00		39.00	60/39		0.00
06/24	60.00	60.00		39.00	60/39		0.00
06/25	60.00	60.00		39.00	60/39		0.00
06/26	60.00	60.00		39.00	60/39		0.00
06/27	60.00	60.00		39.00	60/39		0.00
06/28	60.00	60.00		39.00	60/39		0.00
06/29	60.00	60.00		39.00	60/39		0.00
06/30	0.00	0.00		29.25	60/39		0.00

Logged In As: THOMAS R SWINSON  
Traveler Name: THOMAS R SWINSON

Document Name: TSKNOXVILLETN070906\_V01  
Document Type: Voucher

Screen ID: 1042.1

Hel



**Defense Travel System**  
A New Era of Government Travel

**RETURN TO LIST**

**Itinerary** Travel Expenses Accounting Additional Options

**Trip Overview** Per Diem Locations

**Per Diem Locations**

**Trip Summary**

Per diem location(s)

Overall Starting Point: APG,MD  
Overall Start Date: 09-Jul-06

Location 1: KNOXVILLE,TN  
Arrival Date: 09-Jul-06  
Departure Date: 10-Jul-06

Location 2: GADSDEN,AL  
Arrival Date: 10-Jul-06  
Departure Date: 14-Jul-06

Overall End Point: APG, MD  
Overall End Date: 14-Jul-06

**Overall Starting Point**

Leave From: APG,MD  
Leave: 09-Jul-06

**Location 1: KNOXVILLE, TN**

Leave From: APG,MD  
TDY/TAD Loc: KNOXVILLE,TN  
Arrive: 09-Jul-06  
Leave: 10-Jul-06  
Carrier/Flight: Southwest Airlines (WN) 1333  
Conf/PNR: IFTTFR  
Depart: 10:35AM - 14-Jul-06 BHM-Birmingham, Al  
Arrive: 1:25PM - 14-Jul-06 BWI-Baltimore, Md (Balt. Int'l. Ap

**Location 2: GADSDEN,AL**

Leave From: KNOXVILLE, TN  
TDY/TAD Loc: GADSDEN,AL  
Arrive: 10-Jul-06  
Leave: 14-Jul-06

**Overall Ending Point**

Leave From: GADSDEN,AL  
Return Loc: APG, MD  
Arrive: 14-Jul-06

Proceed to the following page:

Travel - Air

**TAB H**



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

REPLY TO  
ATTENTION OF:

AFCB-CFT-CO

9 JULY 2007

MEMORANDUM FOR Mr. Thomas R. Swinson, 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 fourteen (14) day proposed suspension for threatening to inflict bodily harm without contact and use of abusive or offensive language.
2. Reference is made to the Notice of Proposed Suspension 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. You requested an extension of 30 days to your reply period and I granted an extension until 2 July 2007. Your written reply, dated 2 July 2007, was received by me on 2 July 2007. I have carefully considered the reasons contained in the notice of proposed suspension and your written reply, fully and impartially. I find the circumstances involving the charges of "threatening or attempting bodily harm without bodily contact" and the "use of abusive or offensive language, gestures, or similar conduct" as described in the notice of proposed suspension, 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 five (5) day suspension is the appropriate disciplinary action to correct your misconduct and promote the efficiency of the service.
4. Therefore, it is my decision that you be suspended from your position for a period of five (5) days, effective 16 JULY 2007. You should return to duty on 23 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 of the effective date of this action, a complaint of discrimination with the Equal Employment

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SUBJECT: Notice of Decision

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, 410-278-8987.

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:

 9 July 07  
SIGNATURE DATE

## CHECKLIST FOR DECIDING OFFICIALS

1. Employee's Name: Thomas R. Swinson

2. Action Proposed and Date of Proposal: Removal from Government service proposed by Ms. Charlene S. Jensen, Deputy to the Commander, 30 May 07.

3. Reply. Check on or more of the following: NA - proposal has not been conveyed to the employee pending coordination and concurrence with Deputy Director, TEU.

The employee did not reply

The employee replied in writing (original is attached)

The employee replied orally (original of MFR, signed by the employee, is attached).

### Douglas Factors

THE 12 DOUGLAS FACTORS: The following factors may weigh for, or against, the employee in determining the appropriateness of a penalty for misconduct. I have considered each of the following in reaching a final decision.

### FACTORS IN PENALTY SELECTION

#### Reference:

AR 690-70, Personnel Relations and Services (General), chapter 751, section A-2(b), and A-7(b)

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

#### Nature of offense:

a. Threatening or attempting bodily harm without bodily contact. "On or about 15 January 2007, you threatened Mr. Ray Baldeo, a subordinate employee, when you stated, "move now or I could break your legs." Mr. Anthony Pino recalls you cursing as you walked away from Mr. Baldeo and muttering that you "could break Mr. Baldeo's legs with no problem."

b. Use of abusive or offensive language, gestures, or similar conduct - Mr. Swinson has a long standing habit of calling individuals "crack head", and using the word "fuck". Additionally, he is accused of using vulgar language on a routine basis towards individuals.

Relation to employee's duties, position, and responsibilities: As a supervisor Mr. Swinson is responsible for maintaining the morale and readiness of his team. He is also responsible for maintaining the workplace in a professional manner; this includes minimizing the use of vulgar language and proper treatment of subordinates.

Seriousness of offense: As a supervisor of employees working in a toxic chemical environment it is imperative that the employees trust the integrity and judgment of their supervisor.

Intentional or malicious conduct: Mr. Swinson continues to act this way because he has been allowed to for so long that he believes it is acceptable behavior. He does not understand that he must treat everyone with respect and professionalism at all times. This leads to what he sees as "joking around" and "doing things in jest" such as calling people names as being acceptable. He does not realize that while some individuals may not be offended, that is not true of all individuals. Couple this with the fear that many of the employees have of Mr. Swinson and his power over them has lead to the continuing of the behavior. I do believe the belittling and harassing acts towards some employees is intentional with the intent of "breaking them" in order to either force them to conform or leave government service. For the most part these acts appear to be directed at retired military.

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

Type of employment: Mr. Swinson is a WS-14, Toxic Material Control Supervisor, with supervisory duties. Mr. Swinson is assigned as a Remediation and Restoration Team Leader.

Contacts with the public: Mr. Swinson routinely has contact with the public on remediation projects and emergency responses to Recovered Chemical Warfare Material. He additionally has routine contact with other DoD elements such as the USACE and Chemical Material Agency as well as government contractors.

Prominence of position: 22d Chemical Battalion civilian and military personnel are expected to set an example for other unit members and personnel external to the organization. As a Remediation and Restoration Team Leader Mr. Swinson is responsible for welfare of his subordinates and interacting with outside agencies and the public during incidents involving toxic chemical agents.

3. The employee's past disciplinary record.

Mr. Swinson has been previously disciplined for similar behavior. However, I discounted it in consideration of this proposal given its lack of recency.

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

Mr. Swinson has been employed with the Federal Government since \_\_\_\_\_. He has been assigned to US Army Technical Escort Unit, now 22d Chemical Battalion (TE). Mr. Swinson is felt to be abrasive, hard to work with, and "in your face." This description is from subordinates, peers, superiors and individuals outside the organization. He is known to speak his mind regardless of what others may think.

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.

This offense will severely hamper his ability to continue as a supervisor. His superiors and subordinates have lost trust and confidence in his abilities as a supervisor. His technical skills remain of value to the government, just not in a supervisory role.

6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses in like or similar circumstances. There has not been a similar offense since I have been in command.

7. The consistency of the penalty with the DA Table of Penalties pertaining to various offenses.

The offense, threatening to break Mr. Boldero's leg, is consistent with the Table of Penalties, A-2: Threatening or Attempting to Inflict Bodily Harm without Bodily Contact. First offense: Written reprimand to fourteen (14) day suspension. The offense, routinely use profane and derogatory language in reference to individuals and their work is consistent with the Table of Penalties, A-2: Use of abusive or offensive language, gestures, or similar conduct. First offense: Written reprimand to 10 day suspension.

Based on the facts presented, the employee's past performance history, and the seriousness of the offense a fourteen (14) day suspension was proposed.

8. The notoriety of the offense or its impact upon the reputation of the Department of the Army.

Mr. Swinson's behavior in public places with outside agency reflects poorly on Department of the Army.

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

Given Mr. Swinson's long tenure as a supervisor and the fact that these offenses do not meet even common decency, Mr. Swinson had to fully understand that this behavior was inappropriate. However, given that his behavior has either been overlooked or condoned for so long he believes it is acceptable and does not believe he has done anything wrong.

10. The potential for the employee's rehabilitation. Given the length of time Mr. Swinson has been a supervisor and his attitude towards his actions I do not believe he should remain in a supervisory position at this time. Given proper training in regards to: supervisor/employee relations; communications; and positive leadership he could be considered for a supervisory positions in the future.

11. The mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter. (Deciding official must consider this if the proposed action is removal).

Mr. Swinson's concerns about his wife's health are probably distracting to him at times and exacerbates his short temper.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Written Reprimands, and Oral Reprimands, and corrective training were considered but given the fact that they will not rebuild the trust and confidence of supervisors and subordinates they were discarded.

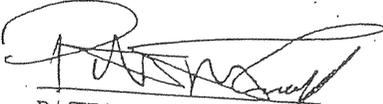
End of Douglas Factors

4. Decision: After giving full and impartial consideration to the circumstances surrounding the proposed action, the employee's reply (ies) and factors above, I have decided to (check one of the following:)

Cancel the proposed action in its entirety.

Sustain the action as proposed.

Reduce the penalty to a five day suspension and continue detail as assigned.

  
PATRICK R. TERRELL  
LTC, CM  
Commanding  
22d Chemical Battalion (TE)

9 JULY 2007  
Date