

## Personnel Actions (PAs) in Inspector General (IG) Complaints Inquiries

This opinion discusses to what extent issuing a member a Letter of Reprimand (LOR) constitutes a personnel action (PA). This is based on a recent IG case where a member alleged the “desk drawer” LOR he received was in reprisal for a protected communication (PC) he made to the local IG office. While the Investigating Officer correctly concluded the LOR in this case did constitute a PA, his rationale for this conclusion was incorrect. As the legal review in this case correctly noted, an LOR by itself does not always constitute a PA. However, because the member’s LOR prevented him from receiving an end-of-tour decoration, it adversely affected his career and was properly determined to be a PA.

### **BACKGROUND**

Complainant, a National Guard member, was activated on Title 10 orders and deployed in early 2016. Complainant was initially assigned to the swing-shift of the Food Section, supporting on-base Dining Facilities (DFACs). Soon after his arrival, Complainant had a meeting with the Flight Superintendent, regarding Complainant’s dissatisfaction with leadership.

Complainant was eventually reassigned to a different shift due to conflicts with supervision. A short while later, Complainant failed to wear the proper duty uniform and refused to obey leadership’s orders to change into the correct uniform. Complainant then demanded to speak with the Chaplain rather than returning to the DFAC, leaving the DFAC unmanned during a dining period. One week later, Complainant filed a formal IG complaint. Later the same day, Complainant received an LOR for the incident involving wearing the incorrect uniform and refusing to obey his leadership’s orders. The LOR was intended to be a “desk drawer” LOR that was not going to be filed or forwarded to Complainant’s home station unit after the deployment. However, Complainant’s command determined Complainant was not eligible for an end-of-tour decoration due in part to the LOR.

### **LAW AND ANALYSIS**

#### **Personnel Actions (PA)**

In investigating allegations of reprisal, the IO must determine by the preponderance of the evidence that the complainant made a protected communication (PC), received an unfavorable personnel action (PA), that the responsible management official (RMO) knew of the PC, and that the RMO imposed the PA because of the PC.<sup>1</sup>

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<sup>1</sup> See Inspector General, Department of Defense, “Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints,” dated 18 Apr 17 (hereinafter “DOD/IG Guide”).

DoDD 7050.06, *Military Whistleblower Protection*, 17 April 2105, defines a PA as any action that affects or has the potential to affect the member's position or career.<sup>2</sup>

In this case, the IO found the LOR contained in the allegation was a PA but did not engage in any analysis to explain or support the finding. While an LOR *could* be a PA in a given situation,<sup>3</sup> it is erroneous to find an LOR is *ipso facto* a PA. An LOR without a UIF is not like nonjudicial punishment, requiring multiple levels of review, filing in personnel records, and other steps with clear career implications. Furthermore, in this case, the LOR was intended to be a “desk drawer” instrument, with no current or future career implications. However, as we noted in our legal review for this case, the LOR issued to the member did affect the member's career. Complainant's squadron commander testified that complainant was denied consideration for an end-of-tour decoration because of the receipt of the LOR. No one who received any paperwork during the deployment, regardless of the severity of the paperwork, received an end-of-tour decoration. As a result, the reason the LOR constitutes a PA in this case is not because it is an LOR, but because of its subsequent impact on Complainant being denied an end-of-tour decoration.

## **CONCLUSION**

In closing, we find that the LOR in this case constituted a PA. However, this was not simply because it was an LOR, but because it resulted in the subsequent denial of an end-of-tour decoration for the Complainant. We urge legal personnel at all levels to closely scrutinize cases where an LOR is alleged to be a PA, and examine to what extent, if any, the LOR actually affects the career of the complainant.

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<sup>2</sup> See DoDD 7050.06, Part II.

<sup>3</sup> See AFI 36-2907, *Unfavorable Information File (UIF) Program*, 26 Nov 14.