

Topic

Personnel Actions (PAs)

This opinion discusses whether a negative official feedback constitutes a PA for purposes of Inspector General (IG) reprisal cases. In this case, Complainant alleged he was given a negative mid-term feedback in reprisal for making a protected communication (PC). The Investigating Officer (IO) identified the negative feedback as a PA. However, as we discuss below, the IO's determination was incorrect.

BACKGROUND

Complainant served as Superintendent of the Protocol Office at his installation. His supervisor was a civilian employee. The Supervisor had an aggressive personality and did not take feedback well. As a result, the protocol office struggled under the Supervisor's leadership. Complainant eventually complained about the Supervisor's leadership and performance to the Director of Staff. After the Supervisor learned about Complainant's statements to the Director of Staff, the Supervisor removed Complainant from all of his supervisory duties. In addition, Complainant received mid-term feedback from the Supervisor that included less-than-favorable markings and input. However, despite this feedback, Complainant's EPR contained nothing but top marks.

After Complainant was removed from his supervisory duties and given a negative mid-term feedback, he lodged a reprisal allegation with the base IG office. The IO conducted an investigation and concluded both actions of the Supervisor constituted unlawful reprisal.

LAW AND ANALYSIS

Personnel Actions (PA)

DoDD 7050.06, *Military Whistleblower Protection*, defines a PA as any action that affects or has the potential to affect the member's position or career.¹ In this case, Complainant claimed, and the IO agreed, that the removal of Complainant's supervisory duties and the negative mid-term feedback met the elements for unlawful reprisal. However, we find the IO was incorrect in finding the feedback constituted a PA for purposes of the reprisal analysis. First, the mid-term feedback did not impact Complainant in any way, as Complainant's next EPR was stellar. Second, a feedback form is not an official part of a member's personnel record, leading to the conclusion that a mid-term feedback is generally not regarded as a PA.² Third, a PA must have the potential to directly impact a member's position or career. In this case, the feedback form does not have such direct potential. At best, the form may be used to justify a future, negative performance

¹ See DoDD 7050.06, Part II.

² See Air Force Instruction 36-2406, paragraph 2.9.1.

rating. Actions that merely bolster the potential for a future unfavorable PA through secondary—or even tertiary—effects should not in themselves be considered PAs. It is more prudent to focus on the unfavorable PAs that directly apply. The alternative opens the aperture of actions deemed unfavorable PAs too far. For these reasons, we believe Complainant’s negative mid-term feedback did not constitute a PA.

CONCLUSION

In closing, in order to constitute a PA, an action must affect, or have the potential to affect, a service member’s position or career. In this case, the negative feedback had no such effect. As a result, the IO should have determined the negative feedback did not constitute a PA.

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