

OpJAGAF 2018-2, PROTECTED COMMUNICATIONS, 18 January 2019

Protected Communications (PCs)

This opinion discusses to what extent reporting to someone outside your chain of command constitutes a PC. In this case, complainant exchanged text messages with her mentor seeking advice on what to do regarding a fellow Airman sleeping on duty as an Entry Controller. The Investigating Officer (IO) identified this conversation as a PC. However, as we discuss below, the IO's determination that this communication was a PC was incorrect.

BACKGROUND

Complainant was assigned to the Security Forces Squadron and worked as an Entry Controller. While working a 12-hour shift, a fellow Airman told complainant that he intended to sleep throughout their shift, and that complainant was only to wake him if "someone important" came to the gate. Subsequently, complainant exchanged text messages with her mentor seeking advice on what she should do in this situation. At this time, complainant's mentor was not in her chain of command, and complainant knew her mentor was not in her chain of command. Unbeknownst to complainant, the Area Supervisor above her mentor saw complainant's messages and relayed the content of the messages to the Flight Chief supervising complainant. Subsequently, the Airman who was sleeping on duty was apprehended and removed from his position. In addition, complainant received an LOC for using her cellphone to report the incident, rather than the unit radio as required.

LAW AND ANALYSIS

Protected Communications (PC)

In investigating allegations of reprisal, the IO must determine by the preponderance of the evidence that the complainant made a 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.¹

The Table in DoDD 7050.06, *Military Whistleblower Protection*, defines a PC as either any communication to a member of Congress or an IG, or any communication where the complainant communicates, or prepares to communicate, a reasonable belief identifying a violation of law or regulation; gross mismanagement of funds; abuse of authority; a substantial and specific danger to public health or safety; or a threat by another service member that indicates a determination or intent to kill or seriously harm a service member or civilian or cause damage to military, federal, or civilian property.²

¹ See Inspector General, Department of Defense, "Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints," dated 18 Apr 17.

² See DoDD 7050.06, Part II.

In this case, the IO found complainant's exchange of text messages with her mentor constituted a PC. However, complainant knew her mentor was not in her chain of command, and complainant testified she did not intend to complain when she contacted her mentor. Instead, she was simply seeking advice from a more senior Airman on how to handle a particular situation. As a result, the communication from complainant to her mentor did not "communicate...a reasonable belief identifying a violation of law or regulation [to] a person in the complainant's chain of command, or any other person authorized to receive such communications." For these reasons, the IO's conclusion that the text messages were PCs was incorrect.

CONCLUSION

In closing, in order to constitute a PC, the communication must be to a member of Congress, a member of an IG, a person in the complainant's chain of command, or any other person authorized to receive such communications. Complainant's mentor in this case was not in her chain of command and was not otherwise authorized to receive such communications. As a result, the communication was not a PC.

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