

TOPIC

Multiple allegations of civil liberties violations raised through the Defense Hotline Program.

TEXT OF THE DECISION

The case includes three allegations of civil liberties violations. We concur with SAF/IQ's findings: Col X's actions were reasonable and within his authority as Mr. Doe's government supervisor to limit who was to receive Mr. Doe's advice; Contractors do not have unlimited access to government facilities. They are given access to those facilities that are required for them to complete their contractor duties; Col X did not abuse his authority by influencing a contractor to not hire Mr. Doe because he had no authority over the contractor's hiring process.

GUIDANCE

U.S. Constitution Amend. 1.

U.S. Constitution Amend. 5.

Article 97, UCMJ, *Unlawful Detention*

Article 134, UCMJ, *Conduct of a Nature to Bring Discredit on the Armed Forces*

DoDI 7050.01, *Defense Hotline Program*, 17 December 2007

AFI 90-301, *Inspector General Complaint Resolution*, 23 August 2011

ALLEGATION: 1

BACKGROUND

On or about April 2011, Col X, USAF, improperly restricted Mr. John Doe's freedom of speech, by stating he could not talk to senior leaders within the Department of Defense without approval, in violation of the 1st Amendment to the U.S. Constitution, (Freedom of Speech) and Article 134, UCMJ, *Conduct of a Nature to Bring Discredit on the Armed Forces*.

DISCUSSION

Col X told Mr. Doe not to talk to the government facility director, an Assistant Secretary of Defense, or the US Forces Japan (USFJ) leadership without being escorted. Additionally, Col X stated that if the government facility director or Assistant Secretary for Defense contacted Mr. Doe, he could answer their emails but needed to "cc" Col X. When working as a contractor for a government facility, certain limitations are placed on the contractor concerning freedom of speech when conducting official duties. Mr. Doe was paid to give advice within his area of expertise.

However there are limits placed on the contractor. According to the government facility program manager for this contract, the contractor was to provide advice to the Government lead (Military or Government Civilian) or whoever else the Government requested the contractor provide the information to. The contractors were not in charge, could not make policy for the government facility, and information provided by the contractor and other sources was then used by the Government Lead to determine the proper course of action. The contractor was not given unlimited access to leadership to express his point of view. The contractor was part of a bigger team that required the contractor, a Subject Matter Expert (SME), to provide advice to that team.

However, Col X could have violated Mr. Doe's freedom of speech if he directed Mr. Doe to not talk to these senior leaders if Mr. Doe had a personal relationship with them. Mr. Doe stated in testimony that he did communicate with these senior leaders. While he had "built a bond of trust," Mr. Doe did not have a personal relationship with any senior leaders and all the contacts with these senior leaders were job related.

Col X issued the restriction after he felt that Mr. Doe was overstepping his role as a contractor working for the government facility and had lost trust in his ability to work as a team member. Another contractor stated, "I had known and worked with [John Doe] for several years and thought he'd been doing a good job as the government facility ALNO [Assistant Liaison Officer]; but I had heard rumblings that there might be some problems. I have been with [John Doe] when he's gotten into yelling matches with the ROK officers he and the government facility LNO shared a workspace with. After contract award, I approached the government facility/SCC leadership and asked about [John Doe] (and the other incumbents), apparently during the nuclear reactor crisis, [John Doe] stepped on a few toes. Lt Col Y, who at the time was in charge of the government facility LNOs, told me that there had been some issues. Nothing so significant as to warrant [John Doe]'s relief, but perhaps he had gotten too far out in front of the Agency. Additionally, at the time, we had two contractors supporting the LNO office. I asked them about [John Doe] and was told the same thing. [John Doe] had ruffled some feathers with the government facility's Interagency partners."

Col X's actions were reasonable and within his authority as Mr. Doe's government supervisor to limit who was to receive Mr. Doe's advice.

FINDING: Not Substantiated

ALLEGATION: 2

On or about April 2011, Col X, USAF, improperly detained Mr. John Doe in quarters, in violation of the 5th Amendment of the U.S. Constitution (prohibits the federal government from depriving a citizen of life, liberty, or property without due process of law) and Article 97, UCMJ, Unlawful Detention.

DISCUSSION

Col X limited Mr. Doe's access to certain locations on the base after Mr. Doe was directed by Col X to return to base Z. According to the contract that covered Mr. Doe's employment with the

government facility (under “Access to Government Property and Facilities”), “The Contractor will be allowed unescorted access to the Headquarters, Defense Threat Reduction Agency complex on facility where work is being accomplished, consistent with Task Order requirements. Access to other government facilities will be granted as required.”

In testimony, Mr. Doe acknowledged that he was only restricted from going to the Headquarters building without an escort. He was not guarded and did not have to coordinate in advance if he left his room. Mr. Doe left his room to go to the shopette, pick up his plane ticket and drop off his gear and vehicle. He was escorted to the headquarters building to say goodbye to leadership. He stated he was very tired and choose to stay in his room most of the time to sleep.

Contractors do not have unlimited access to government facilities. They are given access to those facilities that are required for them to complete their contractor duties. Col X was within his authority to limit Mr. Doe’s access to certain facilities without escort after Mr. Doe was being sent back to Base Z.

FINDING: Not Substantiated

ALLEGATION: 3

On or about October 2011, Col X abused his authority by influencing a contractor to not hire Mr. John Doe in violation of AFI 90-301, *Inspector General Complaint Resolution*, 23 August 2011.

DISCUSSION

While there was discussion between military members and contract personnel about Mr. Doe, a more senior contractor employee, stated in an email dated 28 October 2013, that “No one in the government told us (me) to not hire [John Doe]. It would have made the transition much easier if we had kept [John Doe], but based on inputs from our team already supporting the LNO office, we decided to go with another individual....The government can’t tell us who to hire...although they can tell us when someone isn’t doing a good job/meeting the standards and we need to replace them.”

Therefore, Col X did not abuse his authority because he had no authority over the contractor’s hiring process.

FINDING: Not Substantiated

CONCLUSION

The framed allegations have been addressed and allege violations of law, regulation, or policy. SAF/IGQ complied with the Quality Standards for Hotline Inquiries in DoD Instruction 7050.01 in arriving at the findings, and the conclusions are supported by and consistent with the findings. The investigation complied with all applicable legal and administrative requirements. We concur with the SAF/IGQ's findings and conclusions that the allegations are **NOT SUBSTANTIATED.**

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