

NOTE TO REVIEWING AUTHORITY

This investigation inquired into allegations of misconduct, improper conduct, or inappropriate conduct,¹ and either SUBSTANTIATED or UNSUBSTANTIATED the allegations. The administrative standard used to reach a conclusion in an IG investigation is a preponderance-of-the-evidence.² Such a conclusion is the investigating officer's opinion as to whether or not the alleged conduct occurred. A SUBSTANTIATED or UNSUBSTANTIATED conclusion is not a finding of guilt or innocence for purposes of discipline or accountability. It may, however, have binding effect on whether or not the alleged misconduct is reported to higher authority as "adverse material" for purposes of promotions, assignments, and retirement.

One of the purposes of this investigation is to assist a reviewing/disciplinary authority determine the issue of accountability. This investigation considers only facts and evidence bearing directly on all allegations raised. This investigation does not attempt to weigh the relative egregiousness of each allegation; nor does it ignore allegations that could be considered relatively minor. Moreover, no attempt has been made to consider these issues in a broader context (e.g. – the subject's career performance). However, these considerations are certainly within the purview of the reviewing authority in making a determination in this case.

In actually imposing discipline, the relevant authority should bear in mind the standard of proof applicable in IG investigations and that a subject may not have had an opportunity to review the report of investigation. In this particular investigation, it should be noted that:

--The subject has/has-not been advised of his/her right to remain silent (Art 31, UCMJ, if applicable).

--The subject was/was-not advised of the allegations prior to IG interview:

--The subject has/has-not been afforded an opportunity to review a copy of the report of investigation or the underlying statements and documentary evidence upon which it is based. (If exceptions, list them).

--While the subject may have a fairly good idea of the allegations contained herein, he has/has-not been afforded an opportunity to review the list. Furthermore, he has/has-not been informed which ones were substantiated and which ones were not.

--The subject has/has-not been afforded an opportunity to confront the witnesses against him.

It should be noted that the subject is not entitled to the above due process privileges as a matter of right during the course of an IG investigation to this point. Failure to afford the subject the opportunities listed does not render the investigation defective. The reviewing/ disciplinary authority is free to extend the subject such privileges prior to holding the subject accountable. An SJA and, where civilians are involved, an OGC and the Office of Civilian Human Resources should be consulted prior to taking disciplinary or significant personnel action, since the subject may then be entitled to various rights that were not afforded during the investigation.

The reviewing/disciplinary authority is hereby permitted to provide the subject with an unredacted, for-official-use-only copy of the report of investigation, prior to taking action that might affect a right, privilege, or benefit of the subject based upon the report of investigation.³ If a copy is provided, the subject should be advised against taking any actions that could be viewed as reprisals against witnesses and/or complainants.

The purpose of the investigation and this note is to assist in arriving at a fair and just resolution of this matter. If the Investigating IG can be of further assistance, please contact _____ at (phone).

¹ Misconduct: Generally conduct undertaken with the knowledge the conduct violates a punitive standard set forth in a law, regulation, or order; or undertaken with willful disregard for that possibility. Not all misconduct requires knowledge or intent to constitute misconduct; ignorance of the law is not always a defense to misconduct. Improper conduct: Conduct that violates a directive, instruction, policy, regulation, rule, statute, or other standard without regard to whether directive, etc., is punitive, and without regard to knowledge, motive, or intent. Inappropriate conduct: Actions a reasonable person would consider likely to erode confidence in the integrity of the U.S. Navy, but that do not violate a specific standard.

² Preponderance of the evidence: Greater weight of credible evidence supports the conclusion. Also expressed as: More likely than not that the alleged event occurred or did not occur.

³ 5 U.S.C. § 552a(k)(2) limits access to the investigatory record to the extent it would reveal a "confidential" source.