



DEPARTMENT OF THE ARMY

HEADQUARTERS, 2D INFANTRY DIVISION

BLDG 6500, UNIT #15041

APO AP 96271-5041

JUN 03 2021

EAID-CG

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Command Policy Letter #8 - Misconduct Allegation Withholding Policy

1. This policy letter supersedes all previous Misconduct Withholding policy letters. It remains in effect until rescinded or superseded.
2. Purpose. To prescribe the policy on withholding of authority to dispose of certain allegations of misconduct within the 2d Infantry Division (2ID).
3. Scope. This policy applies to all Soldiers assigned or attached to 2ID or under the jurisdiction of the 2ID General Courts-Martial Convening Authority (GCMCA).
4. Division-level Withholding. Under the provisions of RCM 306(a), I withhold authority to dispose of all allegations of misconduct committed by senior leaders (commissioned and warrant officers, and enlisted Soldiers in the pay grade of E-8 and above).
 - a. Subordinate commanders will provide an email notification to me (with a courtesy copy to the 2ID Staff Judge Advocate) within 24 hours of any credible allegation of senior leader misconduct.
 - b. The authorities withheld by this policy include disposing of courts-martial charges under the UCMJ; imposing Article 15 punishment; approving administrative reductions and separations; and issuing letters of concern or reprimand.
 - c. Subordinate commanders are authorized to initiate investigations into alleged senior leader misconduct that is not the purview of CID (e.g., sexual assault), and to approve or disapprove the investigation findings and recommendations.
 - d. Subordinate commanders retain all other authority, including conducting performance counseling; initiating preliminary inquiries or investigations; temporarily suspending personnel; relieving personnel from duties in accordance with AR 600-20 and AR 623-3, and preferring court-martial charges in accordance with RCM 307.
 - e. Brigade commanders will provide a disposition recommendation for each withheld case and must include input from the Company and Battalion commanders whenever possible. Disposition recommendations and requests for authority to dispose of cases

EAID-CG

SUBJECT: Command Policy Letter #8 - Misconduct Allegation Withholding Policy


will be sent by email or memorandum to the Commanding General, copying the 2ID Staff Judge Advocate in all cases.

5. SPCMCA-level Withholding. Additionally, authority to dispose of the following allegations is withheld to the SPCMCA: assault upon a person in the execution of law enforcement duties (Article 128, UCMJ); domestic violence (Article 128b, UCMJ); fraternization (Article 134, UCMJ); rape and sexual assault; rape and sexual assault of a child; other sexual misconduct (Article 120, 120b, and 120c, UCMJ); any allegation of racial discrimination, bigotry, sexism, sexual harassment, or acts of violence committed on the basis of the victim's perceived or actual race, color, religion, national origin, sexual orientation, gender, gender identity, or disability; and all crimes against Korean local nationals. These cases may be delegated to subordinate commanders on a case-by-case basis upon written request without a recommendation as to disposition.

6. Mandatory Initiation of Separation for Certain Offenses. In all cases where a Service-Member (SM) is the subject of a founded investigation related to any offense under Articles 120, 120b, 120c, domestic violence to include Article 128b, UCMJ, or a founded investigation of sexual harassment, the SM will be processed for separation IAW separation regulations. When commanders support retention, the retention authority is elevated and withheld to my level as GCMCA. This paragraph does not apply to SMs who are acquitted at trial by court-martial for all applicable offenses, who are found not guilty at non-judicial punishment proceedings, nor SMs retained by any court-martial empowered to adjudge a punitive discharge.

7. Subordinate commanders have the authority and discretion to dispose of offenses that are not withheld. No commander may direct or influence any subordinate commander to choose a particular disposition or recommendation for offenses not withheld.

8. The point of contact for this memorandum is MAJ Patrick G. Hoffman, Chief of Justice, Headquarters, 2d Infantry Division, at DSN 315-756-7425 or patrick.g.hoffman.mil@mail.mil.



DAVID A. LESPERANCE
Major General, USA
Commanding