



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

IN REPLY REFER TO:

5819.1
Ser 13/4CW12437.10
27 DEC 2010

From: Deputy Assistant Judge Advocate General (Administrative Law)
To: Commander, Naval Service Training Command

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE BY IC1 NIKKIA M. WOFFORD, USN

Ref: (a) Commander, NSTC ltr 5819 Ser RLSO MW/1940 of 29 Sep
10 w/encls
(b) JAGMAN, Chapter III
(c) BUPERSINST 1610.10B
(d) BUPERSINST 1430.16F

1. Reference (a) is returned to you for appropriate action in accordance with reference (b).

2. This office received reference (a), your final action on the complaint of wrongs filed by Complainant, against the Commanding Officer, Recruit Training Command, on 6 October 2010. Reference (a) is returned because it does not sufficiently address IT1 Wofford's specific complaints contained in her initial Article 138 submitted on 16 July 2010 and her rebuttal matters submitted on 2 September 2010. Section 0307(j) of reference (a) provides that, at a minimum, the report should include adequate facts to support the General Court Martial Convening Authority's (GCMCA's) conclusion and contain enough detail to afford Secretarial review.

3. IT1 Wofford alleges three separate wrongs in her initial complaint and her subsequent rebuttal matters: (1) the command's removal of her frocking and advancement recommendation were retaliation for her refusal of non-judicial punishment (NJP); (2) she has been treated unfairly by the command to include denial of her previously approved leave to be with her mother during surgery and a late response to her Article 138 letter; and (3) the command's unfair treatment of her has been based on discriminatory reasons.

4. Reference (a) does not address with specificity and detail the three separate wrongs delineated in paragraph 3 above. Reference (a) addresses generally the removal of the frocking and advancement recommendation in the context of IC1 Wofford's allegation that Commanding Officer, Recruit Training Command, did not personally review the matter. Although reference (a) states that the removal of the advancement recommendation was based on a "statutory or regulatory basis" and was not an abuse of discretion, arbitrary or capricious, unjust or discriminatory, the forwarding correspondence does not contain sufficient information or

Subj: COMPLAINT OF WRONGS UNDER ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE BY IC1 NIKKIA M. WOFFORD, USN

discussion to support this determination. Specifically, the following must be addressed to afford appropriate secretarial review of IT1 Wofford's complaint:

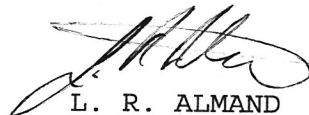
a. IT1 Wofford alleges the command's withdrawal of the advancement recommendation and defrocking was in response to her refusal of non-judicial punishment (NJP). If IT1 Wofford's statements about the meeting with the Command Master Chief (CMC) on 14 June 2010 are accurate, this allegation has merit. She alleges that the CMC threatened her and questioned her reason for requesting a court-martial. Further, the CMC allegedly stated that if she did not accept the NJP, he would "tell the CO to revoke my recommendation for advancement, remove my frocking, and that he was going to get me administratively separated due to a commission of a serious offense." Following the meeting, IT1 Wofford received administrative separation paperwork on 17 June 2010 and an adverse evaluation removing her recommendation for advancement on 22 June 2010. Subsequently, the command referred charges to a special court-martial. Those charges were then dismissed without prejudice and IT1 Wofford went before an administrative board on 24 November 2010. This sequence of events must be addressed by the GCMCA endorsement.

b. Reference (b) states that an adverse evaluation may not be "directed as punishment or used as an alternative to the proper disposition of misconduct under the Uniform Code of Military Justice." Section 721 of reference (c) further directs that the command may not use a withholding or withdrawing of a recommendation by a command may not be used "as punishment or used as an alternative action to the proper disposition of misconduct under the Uniform Code of Military Justice." The GCMCA endorsement must address why IT1 Wofford received the adverse evaluation after her refusal of NJP and her meeting with CMC, but prior to the final disposition of the charges.

c. The GCMCA endorsement must address IT1 Wofford's allegation that she has been treated unfairly during the process to include receiving a late response to her Article 138 complaint and denial of her leave.

d. Lastly, IT1 Wofford's rebuttal matters specifically allege discrimination based on her race citing a pattern in the command for such discrimination. The GCMCA's endorsement must address this matter.

5. My point of contact in this matter is LCDR Janelle M. Beal, JAGC, USN, who can be reached at (703) 614-7403.


L. R. ALMAND
Acting

Copy to:
IT1 Wofford