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THE LAW FIRM OF PUCKETT AND FARAJ, PC

March 22, 2010

Commander
172d Infantry Brigade
APO-AE 09114

Via: Brigade SJA, CPT Sullivan

Encl: (1) Character letters Cpl Nevarez Gonzalo
(2) SSG Aaron Jack
(3) SSG Edgar Angulo
(4) SSG Patrick Ullrich
(5) CIB Award Checklist
(6) Army Commendation Medal Recommendation

SUBJECT: Matters in rebuttal regarding separations under AR 635-200, Chap 14-12c in the case of PV1 Shane Colyer XXX-XX-4079

Dear Colonel Sinclair:

Before you is an important and a life affecting decision. It certainly is not as critical as leading soldiers into combat but to one of the soldiers, PV1 Shane Colyer, whom you have led in combat, it is one of the most important you'll ever make. The decision is to determine is whether you should discharge PV1 Colyer from the Army. I have been an infantry commander and recognize that disciplinary problems cause commanders and leaders to waste precious time that could be better invested in the welfare of those more deserving. I recognize, therefore, that your decision must consider whether PV1 Colyer a merely a disciplinary problem or a good Soldier who went through a rough period and is deserving of a second chance.

As I prepared to put this response together I sought evidence from Soldiers that know PV1 Colyer best, the members of his unit. I have attached some of their statements. Unfortunately, I was unable to obtain more because his company commander, Capt Brunais, and his First Sergeant intimidated and took punitive actions against member of the unit who agreed to provide statements in support of PV1 Colyer. Nonetheless, a few brave Soldiers ignored the threats and provided statements. I have also attached for your review a CIB Award criteria checklist for PV1 Colyer

PV1 Shane Colyer is your soldier. He is committed, loyal, dedicated, motivated, and a hard worker who went through a difficult period in his personal life that caused him to act out. He was punished for his misconduct. Since serving his punishment, his performance has been

exemplary as indicated by the enlisted leaders that oversee his day-to-day activities and performance. This is a soldier who belongs to you and the Army. He is trained, courageous, and willing to continue to serve. He deployed in combat and has a history of proven performance. If you discharge him, you will lose a trained young soldier with experience and the drive to apply that experience the next time he deploys. Sometimes you must discharge a Soldier who is a leadership challenge or a disciplinary problem. In PV1 Colyer's case his failure was temporary and directly connected to a serious personal family problem that few in the command knew about.

At the time when PV1 Colyer committed the misconduct that is the underlying basis for this separation, his wife Mrs. Debra Colyer was suffering from ovarian cancer. When he deployed she was undergoing chemo therapy to treat the cancer. The need to have information about his wife's condition caused him to violate the rule against personal cell phones. This is not offered as an excuse for the violation but in extenuation. There certainly were other means available to stay informed as to his wife's condition. Unfortunately, young Soldiers do not always make reasonable decisions. After the cell phone incident in early 2009, PV1 Colyer was informed that his wife's cancer was in remission. In late July or early August of the same year she informed him that the cancer had reappeared. It was at that time that he got into a verbal altercation with an NCO over tactical deployment of a team in a MOUT environment during a training exercise in Iraq. As you know Colonel, Soldiers will often disagree and in the field under the stress of an important decision. At the time of this incident, PV1 Colyer was a Specialist. The disagreement escalated into words followed by some shoving for which PV1 Colyer was charged with assault. The charge of assault may lead you to believe that he struck the NCO –Sgt Ullrich. He did not. They argued and PV1 Colyer pushed, then, Corporal Ullrich. SGT Ullrich has provided a statement supporting retention of PV1 Colyer because he understands that the incident was nothing more than a random incident.

PV1 Colyer wants to remain in the Army. He has indeed, committed misconduct. The commission of the misconduct is sufficient to subject him to administrative separation processing. The process is your opportunity to inquire into whether this Soldier should be separated or whether he should be retained. Not every Soldier who is processed should be separated. If that were the case, you would not be reading this letter nor have an opportunity to make a decision. Your inquiry must consider the totality of the evidence and the circumstances underlying the misconduct. It must also seek to determine whether PV1 Colyer's conduct will continue or cease. The evidence before you is that his substandard conduct has ceased. More importantly, his past misconduct can clearly be linked to the personal turmoil he suffered during his wife's failed battle with cancer.

The easy decision is to simply separate. You would ensure that the command will no longer have to deal with misconduct from PV1 Colyer. But such a decision does not require a commander to make it. It is the easy one and would have been simply written into the regulation: Misconduct = Separation. Yours is a complex decision that calls upon you to factor in matters such as this Soldier's service record including combat time (he is eligible for the CIB but it has been withheld because of this issue), personal problems such as his wife's battle with cancer, the circumstances and severity of the misconduct, and potential for future service. It is my sincere hope that when you consider all these factors you will conclude that PV1 Colyer's

misconduct is an anomaly precipitated by the problems in his personal life, that his totality of good and honorable service substantially outweighs his misconduct, and that he is deserving of an opportunity to complete his contract.

Based on the forgoing, PV1 Colyer, through his undersigned counsel respectfully requests retention in the Army until the completion of his contract. If you should decide that separation is appropriate, he respectfully requests an honorable characterization of service. His combat tours, his nearly four years of service, and the reasons for the misconduct provide sufficient extenuation to permit an honorable characterization of service.

Sincerely,



Waynam Faraj, Esq.