



DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEEO (690-700)

7 September 1995

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS
COMMANDERS, LABORATORIES
COMMANDERS, FIELD OPERATING ACTIVITIES
DIRECTORS AND CHIEFS OF SEPARATE OFFICES, HQUSACE
DIRECTOR, HECSA

SUBJECT: Guidance on Discipline for Discriminatory Actions

1. References:

- a. Memorandum, HQUSACE, CEEO, 22 August 1995, subject: Discipline for Discriminatory Actions.
- b. Title 29, Code of Federal Regulations, Part 1614, Federal Sector Equal Employment Opportunity, Section 1614.102(a)(6).
- c. AR 690-600, Equal Employment Opportunity Discrimination Complaints, Paragraph 1-4(6).
- d. AR 15-6, Procedure for Investigating Officers and Boards of Officers.
- e. AR 690-700, Chapter 751, Discipline.

2. Department of the Army and Corps of Engineers policy. It is Army policy to take appropriate disciplinary action against individuals who are responsible for discriminatory practices. In support of Army policy, the memorandum referenced at 1.a. established Corps policy on the use of investigations to determine culpability of individuals for discrimination and sexual harassment.

3. Relationship to the EEO complaint process. Discipline of culpable officials is not a part of the EEO complaint process. Discipline of culpable officials is not relief to aggrieved individuals because it cannot make aggrieved individuals whole. Accordingly, discipline of culpable officials must not be included in settlement discussions or settlement agreements.

4. Discipline for discrimination/sexual harassment. Violation of regulations or policies regarding discrimination and sexual harassment is a serious concern because it undercuts confidence in the leadership, loyalty to the organization, and the credibility of the Corps. When such violations are identified,

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supervisors should consider disciplinary action against the responsible individual(s). Disciplinary action should be considered regardless of whether a complaint was filed and regardless of whether there is a formal finding by an external authority. Penalties can be designed to correct behavior and problem situations, or they can be designed to impose punishment necessary to maintain discipline and morale among other employees. The facts of what happened and the degree of culpability of the responsible individual(s) are prime factors in determining the appropriate discipline.

5. Inadequacies of EEO complaint investigations. EEO complaint investigations focus on the culpability of the agency, and not on the culpability of individuals. Reports of investigation of formal EEO complaints often lack the details supervisors need to consider discipline. There is frequently a need for additional facts to be developed through an investigation such as defined in AR 15-6.

6. When there is a finding of discrimination. A finding of discrimination by the Secretary of the Army, the Equal Employment Opportunity Commission, the Merit Systems Protection Board or the courts indicates that violations were not recognized and corrected when the allegations were being considered at the local level. Therefore, it is mandatory that an investigation be conducted into the actions underlying the discrimination or harassment. The investigation will focus on the culpability of individuals for the discriminatory actions or decisions, but not on whether discrimination occurred. Any proposal to take disciplinary action should address the specific conduct or actions giving rise to the violation(s).

7. When there is not a complaint or a finding of discrimination. Sexual harassment and discrimination can be identified in the absence of a complaint and in the absence of a formal finding of discrimination. A supervisor can observe inappropriate touching or overhear inappropriate comments before an employee complains. A leader can resolve a discrimination problem through negotiated settlement before a case is elevated to HQDA or to an outside agency. If there is no finding by an external authority, and if there is a question as to whether a violation has occurred, the investigation should also address this issue.

8. If it isn't quite clear whether discrimination occurred. Well trained, intelligent lawyers can convincingly argue theories of discrimination and both sides of whether discrimination actually occurred. When considering disciplinary or adverse action, the proposing official should focus on the underlying

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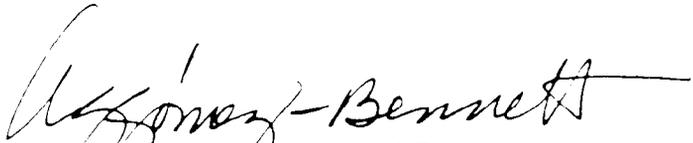
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conduct giving rise to the suspected violation. Accordingly, the underlying conduct may warrant discipline for offensive language or gestures rather than for discrimination, or for conduct unbecoming a Federal employee or failure to observe written rules rather than for sexual harassment.

9. Access to the records. When disciplinary action is proposed, only the material on which the proposed action is based should be available to the employee. This means that only pertinent parts of the results of the report of investigation and only pertinent parts of any EEO case file should be provided. The employee does not have a right to materials that do not pertain to the proposed discipline. In addition, the rights and privacy of others who may be named in unrelated materials should be protected.

10. Additional information is available from your EEO Officer, Human Resources Officer, and labor counselor. Point of contact in this office is John Sellmansberger, telephone (202) 761-0095.

FOR THE COMMANDER:



ANITA G. GOMEZ-BENNETT
Chief, Office of Equal
Employment Opportunity