



1st Theater Sustainment Command

FIRST TEAM!

Inspector General Newsletter

Whistleblower Reprisal (WBR)

Title 10 USC 1034 defines WBR as the act of taking (or threatening to take) an unfavorable personnel action, or withholding (or threatening to withhold) a favorable personnel action because a Service member made, prepared to make, or was thought to have made or prepared to make, a **protected communication (PC)**. Communication reasonably believed to be true made by the complainant to:

- Members of Congress (MOCs);
- Inspectors General (IGs);
- DOD audit, inspection, investigation, or law enforcement organizations;
- Any person or organization in the chain of command;
- Any other person designated pursuant regulations or established administrative procedures to receive such communications (e.g., Equal Opportunity, Safety Office, etc.); or
- As part of a court-martial proceeding, specifically, complaints of sexual assault or sexual harassment.

Key to this definition is the term “protected communication (PC).”

PC in terms of whistleblower reprisal is any lawful communication to an IG or MOC, **no matter the topic**.

Communication with the other referenced individuals or agencies, is only protected when presenting information regarding what the complainant reasonably believes to be a violation of statute, regulation, fraud, waste, abuse, dangers, threats, etc.

Whistleblower Reprisal (WBR) Elements of Proof

The **four elements of proof** and how an IG investigator uses each element to determine if an allegation should be substantiated or not substantiated.

- **Element 1. Protected Communication:** Did the complainant make, prepare to make, or was the complainant perceived to have made or preparing to make a PC (verbal, written, or electronic). The complainant does not have to actually make or prepare this PC, belief or perception that the complainant has done so, or prepared to do so, meets this element of proof. **(YES)**
- **Element 2. Personnel Action:** Was there an unfavorable personnel action, the threat of an unfavorable personnel action, the withholding of a favorable personnel action, or the threat of withholding a favorable personnel action? **(YES)**
- **Element 3. Knowledge:** Did the suspect of the WBR know about or perceive the PC made by the complainant before taking the personnel action. **(YES)**
- **Element 4. Causation:** Would the suspect have taken, threatened to take, withheld or threatened to withhold the same personnel action absent the PC made by the complainant? **(NO)**

For an investigator to substantiate an allegation, the answer to elements 1 through 3 must be “Yes,” and the answer to element 4 must be “No.”

Soldiers cannot, at any time, be prevented, restricted, or discouraged from communicating with an Inspector General or Members of Congress. Let the system work—do not act out of anger or try to take matters into your own hands. Taking or threatening to take actions such as flagging or negative counseling because of a Soldier’s protected communication is reprisal. Withholding or threatening to withhold actions such as awards or promotion because of a Soldiers protected communication is reprisal. If there are any questions regarding protected communication and personnel actions, it is best to contact an IG or JAG before taking action.

References:

- Title 10 USC 1034
- Department of Defense Directive 7050.06, “Military Whistleblower Protection.”



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