

Ask The Lawyer: What If You Are Being Punished For Blowing The Whistle?

By Mathew B. Tully

With Congress squeezing the Department of Defense's budget, you'd think military officials would warmly embrace any service member who reports an instance of fraud or waste. Unfortunately, that is not always the case. In fact, a new Government Accountability Office report shows that 66 percent of military whistleblower reprisal cases reviewed by the government watchdog agency related disclosures about violations of a law or regulation. Abuse of authority reports played into 44 percent of these reprisal cases in a representative sample.

While service members sometimes put their necks on the line when they expose wrongdoing, certain disclosures are protected by the Military Whistleblowers Protection Act of 1988. Under DoD Directive 7050.6, which implements this law, all members of the armed forces "shall be free to make protected communications." They likewise should be "free from reprisal," which can come in the form of poor performance reviews, disciplinary actions, transfers, or failures to promote.

If you blew the whistle and were given a poor performance evaluation, the first important task involves determining whether your disclosure was protected. Under DoD 7050.6, any lawful communication to a DoD or service's inspector general office is protected, as are communications to a member of Congress or a person in the chain of command. These communications must relate to a violation of law or regulation, gross mismanagement, gross waste of funds or resources, an abuse of authority or a specific and substantial danger to public safety or health.

The next important consideration is whether someone with knowledge of the protected communication retaliated against the whistleblower. Twelve percent of the military-wide whistleblower reprisal cases reviewed by GAO came from the Navy, which accounts for 17 percent of the military's manpower. Navy personnel have 60 days after learning of an adverse personnel action to report an incident of whistleblower reprisal to the DoD IG or Naval Inspector General.

Military whistleblowers who believe they have been subjected to retaliation should immediately contact a military law attorney. An attorney could help them prove to IG investigators that a disclosure was protected and that there was a link between the protected communication and the retaliatory action. By representing a whistleblower before the Board for Corrections of Naval Records, a lawyer could also help him or her clear a military personnel record if it was stained by a retaliatory action.

Mathew B. Tully is an Iraq War veteran and founding partner of the law firm Tully Rinckey

PLLC. E-mail questions to askthelawyer@fedattorney.com

. The information in this column is not intended as legal advice.