

The DoD Times (Redacted)

NEWSLETTER

SATURDAY, 30TH AUGUST 2025

ISSUE 86.

UNSUBSTANTIATED COMPLAINTS AND THE RISK OF MISAPPLICATION





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Unsubstantiated Complaints and the Risk of Misapplication

I. Introduction:

In July 2025, the U.S. Army updated its policy to allow punishment for service members who knowingly file false or harassing complaints.¹ The policy also introduced a preliminary credibility assessment and removed automatic flags from the records of those under investigation.² These changes have been framed as efforts to protect due process and restore trust in a system often criticized as damaging to the wrongly accused.³

On its face, the policy is narrowly written. It seems to target only bad-faith reports and does not necessarily claim unsubstantiated complaints are false.⁴ Still, in a system known for investigative delays, conflicts of interest, and minimal transparency, that distinction may erode in practice.⁵ An unsubstantiated complaint may be treated as dishonest. This can be a peculiar problem when investigative failures, rather than deception, are what prevent a finding.⁶

Efforts to address false reports are legitimate.⁷ However, without reforming the process by which complaints are assessed, the risk of punishing good-faith complainants and experiencing an increased chilling effect grows.⁸ Structural weaknesses must be addressed first, and the same scrutiny applied to accusers must also extend to commands who retaliate or suppress allegations. Without procedural safeguards, even carefully worded reforms can have unjust effects. Unsubstantiated should never be treated synonymously with falsehood.⁹

II. The Recent Procedural Changes

The Army recently revised its investigative procedures under Army Regulation 15-6, the primary framework governing administrative fact-finding.¹⁰ The revisions introduced three major changes relevant to misconduct allegations: First, investigators



must now conduct a preliminary “credibility assessment” before initiating a full investigation.¹¹ Second, automatic flags previously imposed on the personnel files of accused service members during investigations, are no longer required.¹² Third, the Army formally authorized disciplinary action against complainants who knowingly make false allegations or submit complaints with the intent to harass.¹³ These revisions were introduced as part of a broader effort to protect due process, reduce harm from malicious or unfounded complaints, and ensure investigative resources are used responsibly.¹⁴ Yet, it is worth questioning whether such measures were necessary given Article 107 of the UCMJ already criminalizes false official statements, potentially rendering an additional administrative mechanism duplicative.¹⁵ The new policy explicitly limits punishment to instances of proven bad faith.¹⁶ However, the impact of these changes will depend not only on how they are written, but on how they are implemented within the Army’s existing investigative structure.

III. The Distinction Between Unsubstantiated and False

An unsubstantiated allegation is one unable to be verified or proven under the applicable evidentiary standard. It does not mean the allegation is false, only the available evidence does not support a definitive finding.¹⁷ By contrast, a false allegation is one the complainant knows to be untrue at the time it is made.¹⁸ The distinction is fundamental, both ethically and legally. Under military and civilian law alike, punishment for false reporting requires proof of mens rea: the mental state necessary to show a complainant acted with intent to deceive.¹⁹ Mere inaccuracy or evidentiary failure is not enough.

The Army’s July 2025 policy updates appear to respect the distinction between false and unsubstantiated complaints. Disciplinary action is limited to knowingly false reports or those submitted for the purpose of harassment.²⁰ However, there is a meaningful risk this line will begin to blur in practice over time, particularly in a system where many investigations result in inconclusive findings due to structural flaws.²¹ In such cases, unsubstantiated complaints may come to be viewed with undue suspicion, and the absence of proof may be misread as evidence of bad faith. This concern is not speculative; it reflects a long-standing tendency in administrative systems to equate failed cases with fabricated ones.²² There is also a persistent cultural tendency, both within and outside the military, to assume a complaint must have been fabricated if it cannot be proven.²³ This assumption is often reinforced by institutional defensiveness,



stigma, or the perceived reputational cost of acknowledging unresolved misconduct.²⁴ To preserve fairness, the Army must take great care to ensure “unsubstantiated” is never treated as a proxy for “false.” The evidentiary failure of an institution should not be weaponized against the person who chose to come forward. Institutional failures in evidence gathering and adjudication risk being passed off as proof of individual misconduct and recasting the burden of proof onto those who seek accountability.

IV. Investigative Failure as a Structural Problem

The risk of misinterpreting unsubstantiated complaints cannot be separated from the condition of the investigative system itself. In many cases, complaints fail because the process charged with investigating them is unreliable rather than the allegations being false.²⁵ As detailed in the Watchdog Turned Lapdog report by the Walk the Talk Foundation, the military’s investigative apparatus suffers from a series of long-standing, systemic weaknesses routinely compromising both accuracy and fairness.²⁶

First, many investigations are conducted by personnel with little or no formal training.²⁷ Command-appointed investigating officers often receive no investigative instruction at all, while Inspectors General typically complete only a brief course.²⁸ The result is a process marked by inconsistency, procedural error, and a lack of investigative rigor.²⁹ Second, investigators frequently operate within the same chain of command or MOS community (military occupational specialty) as either the complainant or the subject of the complaint, creating obvious conflicts of interest. Oftentimes, an investigator may report to a superior who is named in the allegation or be otherwise embedded in the same chain of command or social circle as one or more people involved in the incident.³⁰

Third, investigations often take months or years to complete, with few if any consequences for delays.³¹ These long timelines generate harm by leaving both complainants and accused personnel in limbo, damaging careers, and contributing to morale and mental health crises. The Department of Defense’s own Suicide Event Report has found that nearly 30 percent of active service members who die by suicide were under investigation or facing administrative action at the time.³² Finally, procedural opacity intensifies the problem: complainants and subjects of investigations alike are often denied access to investigative findings, left out of the timeline, or blocked from correcting their records.³³ These failures increase the likelihood legitimate complaints



will be dismissed or discredited because the institution lacks the capacity to assess them properly rather than due to baselessness. When that happens, the risk is not only justice will be denied, but also the complainant will be punished for the system's own shortcomings.³⁴

V. Retaliation and the Risk of Misapplication

While the Army's revised procedures formally limit punishment to knowingly false or harassing complaints, there remains a substantial risk the policy will be misapplied, especially in environments where command culture already discourages reporting.³⁵ Within the military, the threat of both formal and informal retaliation is a well-documented barrier to raising complaints, especially against leadership.³⁶ Studies from both within the Department of Defense (DoD) and independent bodies have consistently recorded fear of reprisal as one of the leading reasons misconduct is not reported. In the 2023 DoD Workplace and Gender Relations Survey, more than 60% of service members who experienced sexual harassment or assault and did not report the incident(s) cited fear of retaliation, disbelief, and harm to their career among the primary reasons.³⁷ Service members who report misconduct frequently face social isolation, career damage, or direct reprisals from within their unit or chain of command.³⁸ A policy increasing the consequences for filing complaints, however narrowly framed, may reinforce those pressures and encourage silence.³⁹

Retaliation is often subtle, indirect, and difficult to challenge. A service member who files a complaint may be reassigned, denied leadership opportunities, receive poor performance evaluations, or be socially ostracized within their unit. These measures frequently occur without formal documentation, making them nearly impossible to prove or reverse.⁴⁰ If a complaint is ultimately deemed unsubstantiated, regardless of the reason, the revised policy creates an opportunity for commands to retroactively treat the allegation as "false" and initiate disciplinary action. Even if the letter of the regulation is followed, the pressure it creates may deter others from reporting, reinforcing a culture of silence.

In some cases, commands may not need to rely on the "new" policy itself to punish complainants. Service members who speak out often face a pattern of administrative retaliation: being written up for minor infractions, subjected to repeated investigations under vague or pretextual claims, or discouraged from accessing medical



care.⁴¹ These tactics, technically unrelated to the original report, can be just as punitive and isolating as formal disciplinary action related to the initial complaint. By selectively enforcing rules and controlling access to resources, command structures may retaliate while maintaining the appearance of procedural legitimacy. The new policy, even if not directly invoked, can give cover to these practices by framing the complainant as a potential bad actor.

This chilling effect is not theoretical. When complainants understand they may be punished if an investigation fails to substantiate their claim, the cost of speaking up rises, even for those acting in good faith. That risk is amplified in a system where procedural flaws, investigator bias, or lack of access to evidence may cause a valid complaint to fail. In such a context, the complainant must not only be right but must also trust the system to be competent, impartial, and transparent enough to recognize it.⁴² That trust may be, and is often, unwarranted.⁴³

The risk of misapplication is especially acute in the absence of independent oversight. Commanders retain significant discretion over how investigations are initiated, conducted, and interpreted.⁴⁴ In a unit already hostile to dissent or protective of its leadership, the policy could be selectively enforced by being invoked against disfavored or vulnerable complainants, while ignored in cases where retaliation flows from the top.⁴⁵ Enforcement, in such cases, reflects existing biases rather than objective standards. The result is a policy that may operate less as a safeguard against malicious reporting and more as a tool of command control.

VI. Preserving Fairness: Structural Safeguards and Command Accountability

To prevent the Army's revised policy from being misapplied, clear safeguards are needed to both preserve the distinction between "false" and "unsubstantiated" complaints, and to ensure those in positions of authority do not weaponize investigative outcomes. The policy's stated intent is to target only knowingly false or harassing reports.⁴⁶ If that boundary is to be upheld in practice, the surrounding structure must be designed to resist institutional bias, command pressure, and misuse of discretion.

First, adverse action against a complainant should never be based solely on the fact a complaint was unsubstantiated. Commanders and investigators must be required



to show affirmative evidence of *intent* to deceive or harass, consistent with the mens rea standard already embedded in both military and civilian law.⁴⁷ Mere failure to prove an allegation is not proof of misconduct and must never be treated as such.

Second, any investigation into potential false reporting should be conducted independently from the original chain of command and subject to automatic review by an external authority. This is particularly important in cases where leadership itself was the subject of the complaint. Independent review ensures findings are not shaped by internal pressures or used as pretext for retaliatory discipline.⁴⁸

Third, investigation reports should be required to document not only their findings, but also the reasons a complaint could not be substantiated. Whether due to lack of evidence, conflicting testimony, procedural flaws, or gaps in documentation, these distinctions matter. Without them, any unproven allegation may be interpreted as malicious, especially in a system already inclined to protect itself from scrutiny.⁴⁹

In addition to procedural reform, the Army must apply the principle of accountability to those in command. If subordinates are subject to discipline for dishonest reporting, commanders should face equivalent scrutiny for retaliatory behavior, investigatory interference, or abuse of authority. This includes initiating unnecessary or harassing investigations, blocking access to medical care or chaplain services, selectively enforcing minor rules, or undermining a complainant's credibility through unofficial channels.⁵⁰ These actions, though often difficult to prove, are deeply corrosive to both individual rights and institutional integrity.

Protecting the distinction between “unsubstantiated” and “false” is not simply a matter of technical accuracy. It is a question of trust. Without structural protections and mutual accountability, the policy may inadvertently serve as a shield for retaliation, rather than a safeguard for truth.

VII. Conclusion

The Army's updated procedures for handling misconduct allegations reflect a legitimate concern: false complaints can cause real harm, and the military has a duty to protect its personnel from malicious reporting. The revised policy is written with apparent care, limiting punishment to complaints made with clear intent to deceive or



harass. Unfortunately, even well-drafted policies are shaped by the systems that implement them. In this case, the surrounding structure raises serious concerns. In an investigative environment plagued by delays, conflicts of interest, and opaque procedures, the difference between an unsubstantiated complaint and a false one may be less a matter of fact than of institutional failure.

The concern is not with the policy's language, but with its potential to be misused. When leadership holds the power to interpret outcomes, appoint investigators, and manage the careers of both complainants and the accused, discretion becomes indistinguishable from control. Without meaningful oversight, commanders may use investigative results, or the absence of results, as tools of retaliation. Punishing service members for filing complaints that cannot be proven, even when made in good faith, risks silencing those most in need of protection.

To prevent these outcomes, reforms must go beyond punishing false reports. The Army should require documented findings explaining why a complaint could not be substantiated. It should prohibit adverse action based solely on the outcome of an investigation without separate proof of bad faith. Investigations into alleged false reporting must be conducted independently of the chain of command involved in the original complaint. Commanders who retaliate or interfere with investigations must face real consequences.

Rules alone do not ensure fairness. Integrity in enforcement depends on structure, transparency, and mutual accountability. Without those conditions, even the most carefully worded policy can become a tool of silence rather than a safeguard for truth.



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⁴⁴ Claire Simmons, *Military Investigations in Armed Conflict: Investigating Themselves?*, *Lieber Institute* (Sept. 9, 2024), <https://lieber.westpoint.edu/military-investigations-armed-conflict-investigating-themselves/> (explaining military investigators often lack sufficient standards of independence and impartiality, and commanders, who are embedded in institutional culture and structure, frequently lead investigations without external oversight, increasing the risk of misapplication).

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⁴⁷ See generally UCMJ art. 107, *supra* note 16 (reflecting intent is central in military law by requiring proof a false official statement was made "with intent to deceive" and "knowing it to be false" before punitive action may be imposed); 18 U.S.C. § 1001(a)(2) (2018) (a civilian federal statute requiring proof a materially false statement was made "knowingly and willfully" to the government, underscoring in civilian law, as in the military, intent is a prerequisite for punitive action).

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⁵⁰ See Kehrt, *supra* note 39; Guy D. McCardle, *Navy SEAL Keith Barry: A Tale of Injustice, Vindication, and a Call to Action*, *SOFREP* (Mar. 26, 2025), <https://sofrep.com/news/navy-seal-keith-barry-a-tale-of-injustice-vindication-and-a-call-to-action/> (describing how Senior Chief Keith Barry's wrongful conviction, rooted in undue command and JAG pressure, was later overturned. This underscores how senior leadership can subvert justice).