

In the United States Court of Federal Claims

MICHAEL J. FORBES, <i>pro se.</i>)	
)	
<i>Plaintiff,</i>)	No. 1:2024-cv-01953
)	
v.)	CROSS MOTION FOR JUDGEMENT UPON
)	THE ADMINISTRATIVE RECORD
THE UNITED STATES)	(Judge Hadji)
)	
<i>Defendant.</i>)	

1. As a non-probationary (or tenured) Senior Noncommissioned Officer with an unblemished service record, it is natural to expect the Plaintiff to bring this case, especially due to the lack of due process afforded him by the Defendant. The Plaintiff wishes that the evolved incident that grew from an unlawful order on November 29, 2022, which culminated in the Plaintiff's wrongful termination on November 30, 2024, be fully remediated. The central question of this case is, "Why was due process of law denied to the Plaintiff?" After all, the Plaintiff tirelessly brought multiple echeloned complaints to the Defendant, each one attempted to further inform the Defendant of the unlawful actions of the Plaintiff's Brigade Commander, et al., which grew into a cumulative set of actions that continued to manifest from that initial unlawful order and culminated in the Plaintiff's wrongful termination. Each of the Plaintiff's complaints was designed to allow the Defendant opportunity to acknowledge and remediate all of these actions.

2. The answer may rest in another question, "Why did the Plaintiff's many complaints go unheeded?" One possible reason is that our federal military's Chain-of Command differs from industry or civilian civil service in many ways; but one in particular stands out. A Brigade Commander's violations of laws and regulations can simultaneously implicate his Commanding General similar to the legal military doctrine of 'Command Responsibility' (doctrine that is designed to hold military commanders accountable for the unlawful conduct of their subordinates during war). This doctrinal concept inextricably links stages of what the Plaintiff endured from the Brigade Commander's unlawful order on November 29, 2022, through the General's permanent filing decision on August 10, 2023 (ECF 19-1, 000034), to his wrongful separation on November 30, 2024. Could there be an answer to this question?

THE BRIGADE COMMANDER'S INFORMAL INVESTIGATION

3. Informal investigations are exactly that, informal; and they reside within the Chain of Command. The Plaintiff's Chain-of-Command in this case was likely not unbiased, possibly due to Command Responsibility doctrine concept discussed above in relation to the Defendant's directives for Soldiers "to participate in a series of Human Performance and Wellness (HPW) assessments." (ECF 24 at B., p. 3) Applying this doctrinal concept to the primary responsibility that Commanders have when considering firing a 'classified civil servant,' which is for the agency to provide a basic and fair procedure to avoid a wrongful

termination based on incorrect information, leaves Commanders decisions ripe for scrutiny. Arbitrary and capricious decisions like launching an informal investigation, coupled with permanently filing a General Officer Memorandum of Reprimand (GOMOR) under the QMP's written structure, destroys any opportunity to accomplish that primary responsibility. In fact, the Command Responsibility doctrine concept is likely intended to hold superiors accountable for the actions of their subordinates, particularly in military and law enforcement contexts, which emphasizes a duty to prevent and punish unlawful acts. To wit, accountability requires the recording of the Plaintiff's allegations of wrongdoing. In contrast, restricting formal fair venues them to be heard, prevents any record and hence accountability.

4. In this case, holding someone to account was likely the focus of the Brigade Commander's informal 15-6 investigation that was performed and, moreover, oddly readjudicated the Plaintiff's previously rated performance achievements; two evaluation reports were completed that covered the time periods of nearly all of the hearsay allegations contained in the informal 15-6 investigation. This investigation culminated in a permanently filed GOMOR, which auto-triggered the Plaintiff's inclusion in the contrived and restrictive QMP Board. The QMP Board process restricts allegations of any other Soldiers' wrongdoing (ECF 34 at 3) and therefore created an environment conducive to shifting the culpability of the Commander's unlawful order on to the Plaintiff via the investigation; all without fair and unbiased challenge, let alone transparency. Concurrently, this process results in denying the Plaintiff's 'Loudermill rights' (otherwise known as due process of law, *cited when quoted*).

QUALITATIVE MANAGEMENT PROGRAM (QMP)

5. The Defendant used the relatively recently introduced (circa 2012) QMP process to circumvent the vested interest that the Plaintiff had in his contract. By denying the Plaintiff's 17-plus year unblemished record and his demonstrated careful protection of his ownership interest in his duties to achieve such a record, the Defendant circumvented the Plaintiff's ability to defend his property interest in his contract and deprived him of fulfilling his contract. These rights have been designated as "Loudermill rights," after a Supreme Court decision that has, arguably, garnered it a significant level of doctrinal status in formal civil service disputes (*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)); a status held by other familiar rights. They are similar to *Garrity* (*Garrity v. New Jersey*, 385 U.S. 493 (1967)), *Kalkines* (*Kalkines v. United States*, 473 F.2d 1391 (Ct. Cl. 1973)) and *Weingarten Rights* (*NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975); 5 USC § 7114(a)(2)(B)). However, the Defendant did not publish Loudermill rights and refuted due process protections and property interest in their General Administrative Law Deskbook (ECF 34 at 10). To wit, the Defendant denied the Plaintiff the right to an active-duty Administrative Separation Board (a Loudermill Board) by using the contrived QMP process.

INFORMAL INVESTIGATION ENDING IN QMP

6. The Plaintiff complained to this Court that he was wrongfully separated at all costs via the QMP process that began with arbitrary and capricious Command decisions (launching informal investigations, and especially GOMOR recommendation, issuance and permanent filing); after all, Administrative Separation Boards are apropos and available if other, more-

balanced decisions were made. Regardless, the QMP process the Plaintiff endured: was based on an informal investigation; was furthered by a Brigade Commander's recommended General Officer Memorandum of Reprimand (GOMOR); was supported by the issuance and permanent filing of the recommended GOMOR and; was triggered, which further restricted his due process. After all, neither the informal investigation, the GOMOR rebuttal process, nor the QMP process (found in Army Regulation 635-200) provide Loudermill protections to a tenured Soldier with an unblemished record.

7. Though all Loudermill protections are important, the Plaintiff wishes to highlight two of those protections here. One is the requirement of a fair venue, and the other is an opportunity to tell the Plaintiff's "side of the story". The lack of a fair venue is likely due to the probable bias created by the aforementioned Command Responsibility concept, and the restrictions in filing appropriate evidence of the QMP Board's is found in Army Regulation 635-200 (ECF 34 at 3). Moreover, the Plaintiff was separated without the unbiased due-process of a "hearing 'at a meaningful time'" "to confront an accuser in front of the decisionmaker(sic)" "to present his side of the story" (Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)). This deprivation did not allow the Plaintiff to defend his vested interest in the property rights of his indefinite contract via due process of law. Yet, an Administrative Separation Board, also found in Army Regulation 635-200, could have accommodated his interest.

THE ADMINISTRATIVE RECORD

8. The government has submitted supplements (ECF 42) that totaled 1,895 pages after having previously filed the original 'certified and complete' Administrative Record, which totaled 1,705 pages; obviously, both submissions are for this same docketed wrongful termination case. These submissions create questions: "What was in the additional 290 pages of information in the second Administrative Record that the Defendant willfully withheld from this Court on April 9, 2025?" and also, "Why were significant amounts of information withheld from the original certified and complete Administrative Record (some of which is now docketed)?" Therefore, upon submission of the new information, it can be clearly inferred that the Defendant denied this Court full disclosure on April 9, 2025 as it did not provide a 'certified and complete' Administrative Record filing as typically required.
9. Separately, as evidenced by the Defendant's filing of a new scheduling order in lieu of a requested answer, the Defendant's behavior indicates it still wishes to eventually attempt to defend the Brigade Commander's and the Commanding General's actions as in compliance with their "requirement of exemplary conduct," 10 US § 7233 (ECF 34 at 32)). That said, the Defendant had no case to prosecute the Plaintiff formally or it likely would have, but it also may not have wanted the Plaintiff's allegations of invasive unlawful orders and violations of regulations to become formally documented in such venues.
10. Given all of this, the Defendant quietly changed the policy to ensure Commanders comply with the regulatory requirements of informed consent that is central to this case, but this occurred only after the Plaintiff complained to the Army Human Research Protection Office. (ECF 27 at 9, P., p. 13 & ECF 27.1 at Exhibit P, p. 13-15) and after he was notified of the

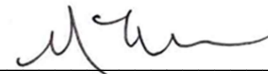
QMP Board's decision (ECF 19 at 001070-001071). The Defendant's failure to follow their own regulations not only resulted, in the Plaintiff's wrongful separation but also, in the Plaintiff only having received a "limited separation exam due to time till separation" (*thorough separation exams are required in Army Regulation 40-501*, ECF 27-2 at 90-98); neither of which are problems of the Plaintiff's making. Actions such as these examples only serve to support the Plaintiff's claims that the Defendant would do anything to separate the Plaintiff and do it at all costs.

THIS CASE

11. Giving notice to the Plaintiff's attempts to correct the deficiencies of the Defendant's original Administrative Record filed on April 9, 2025 (ECF 19), which was referenced in at least two filings (ECF 20 & ECF 27), the Plaintiff now notices that at least one of his requested supplements, his ASRB (Army Suitability Review Board) submission, has finally been filed on December 12, 2025 (ECF 27, para. 9, D.). And, it appears the Defendant still has not answered it.
12. Separately, given the QMP process does not provide *Loudermill* protections, the arbitrary and capricious use of QMP in lieu of an Administrative Separation Board should be legally prohibited. With respect to that Plaintiff opinion and given the myriad *prima facie* claims contained in the Plaintiff's complaint, coupled with the now-established misfiling of a certified and complete Administrative Record on April 9, 2025 (which teases an inference of contempt for this Court in this case), the Plaintiff brings forth the following motions.
13. Since the Defendant has now submitted two Administrative Records and added additional information that was not prior certified, the Plaintiff moves that ECF 42 be stricken, and regardless of that decision, further moves this Court to a Default Judgment in favor of the Plaintiff based on the current docket. Also, the Plaintiff moves to Compel the Defendant to provide the "1. [t]he names, ranks and units of the members of the QMP board meeting on April 15, 2024. 2. [t]he appointment Memo for this board," and 3. the notes of that QMP Board proceeding, which he has been denied thus far from the Defendant (see the only attachment). After 20 months since the QMP's decision and the ripening of this case, the Plaintiff has a right to know who adjudicated his wrongful termination and with what rationale. May the Court please forgive the Plaintiff's continued medieval metaphors, but the Plaintiff knows his hearsay accusers; after all, he worked with and for them. Yet, he *still* does not know anything about his career adjudicators/executioners; an Administrative Separation Board does not have this transparency issue either.

January 9, 2026

Date



Signature of Plaintiff

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Fayetteville, NC 28303

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TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Cleveland Board of Education v. Loudermill</i> , 470 U.S. 532 (1985)).....	2, 3
<i>Garrity v. New Jersey</i> , 385 U.S. 493 (1967).....	2
<i>Kalkines v. United States</i> , 473 F.2d 1391 (Ct. Cl. 1973).....	2
<i>NLRB v. J. Weingarten, Inc.</i> , 420 U.S. 251 (1975).....	2
LAWS	
5 USC § 7114(a)(2)(B), <i>Representation rights and duties</i>	2
10 US § 7233, <i>Exemplary Conduct</i>	3
US Army Regulations	
AR 40-501, <i>Standards of Medical Fitness</i> , June 27, 2019.....	4
AR 635-200, <i>Active Duty Enlisted Administrative Separations</i> , June 28, 202.....	3

Attachment



DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-1
300 ARMY PENTAGON
WASHINGTON, DC 20310-0300

December 19, 2025

Management Support Office

Mr. James M. Branum
c/o The Law Firm of James M. Branum
P.O. Box 134
Piedmont, OK 73078
girightslawyer@gmail.com.

Dear Mr. Branum;

This is in response to your Freedom of Information request submitted March 29, 2024, for the following information "1. The names, ranks and units of the members of the QMP board meeting on April 15, 2024. 2. The appointment Memo for this board. This request is made on behalf of my client, SFC Michael J. Forbes whose case is being heard before the QMP board". I have enclosed the request for your reference.

Your request has been misdirected to this office, therefore, it has been forwarded to the U.S. Army Human Resources Command in Fort Knox, KY, for their direct reply to you. Their contact information is;

U.S. Army Human Resources Command
Attention: Freedom of Information Office
1600 Spearhead Division Avenue
Fort Knox, KY 40122
usarmy.knox.hrc.mbx.foia@army.mil

If you have any questions regarding this action, please feel free to contact Ms. Nancy King, via email at nancy.b.king.civ@army.mil.

Sincerely,

A handwritten signature in black ink, reading "Steven R. Shappell", is located in the center of the page.

Enclosure

STEVEN R. SHAPPELL
Chief, Management Support Office