



TORII LEGAL ASSISTANCE

OFFICE OF THE STAFF JUDGE ADVOCATE



FAMILY MEMBER AND CIVILIAN EMPLOYEE MISCONDUCT ON OKINAWA

by
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What happens when a Family Member or Civilian Employee commits misconduct on Okinawa? Civilian and family member misconduct is very serious. Many years ago, an administrative hearing process was implemented by the Air Force and Marine Corps on Okinawa to effectively deal with this problem. The purpose of this article is to inform the reader about the process and procedures when a family member or a civilian employee commits or is suspected of committing misconduct on Okinawa.

Most individuals complete a tour on Okinawa without ever becoming involved in the disciplinary action process. Some of those who do become involved are unsure of the process itself and their rights. Others try to claim that since s/he is associated with the Army, *"The Air Force or Marines can't tell him/her what to do."*

It is a privilege to have access to and utilize the facilities of the various military installations on Okinawa. This privilege can be taken away when someone commits egregious or numerous acts of misconduct. Installation commanders are charged with maintaining good order and discipline and are responsible for the welfare of all people living on or using their installation as well as maintaining good relations with our host country and communities.

-- If an incident happens on Kadena Air Base or off base and appears on the 18th Security Forces Squadron's police blotter, the case will be adjudicated by the Kadena Disciplinary Action Program.

-- If an incident occurs on a Marine Corps installation or off base and was blotted by the Marine Corps Military Police, the case will be adjudicated by the Administrative Hearing Officer assigned to the Legal Services Support Section on Foster.

These established adjudication processes handle misconduct cases of civilian employees, local nationals, military retirees, and their family members, as well as the family members (adult and children) of Servicemembers. Informally, the adjudication processes are known as a family member and civilian personnel misconduct system; but, in reality, it is a much more inclusive program. The only SOFA personnel not governed by this system are military members, as their misconduct is covered by the pro-visions of the Uniform Code of Military Justice.

The Air Force and Marine Corps on Okinawa have published standards for their misconduct programs.

-- Air Force: 18 WGI 31-201; and,

-- Marine Corps: Marine Corps Bases Japan Order 5800.6C.

Although these administrative hearings are not criminal trials or a court of law, they are considered formal hearings and family members and civilian employees do face adjudication by assignment of administrative sanctions. The standard of proof is a preponderance of the evidence (more likely than not) that the person committed the misconduct. Since administrative sanctions are possible, the subjects of the incident are afforded certain rights--such as, the right to be present at the hearing; the right to be advised of the offense; the right against self-incrimination; the right to present relevant evidence to the hearing officer; and, the right to review redacted law-enforcement reports concerning the incident (please note that Kadena Air Base requires a FOIA request be filed at Reports and Analysis, 18th Security Forces Squadron, before release of these redacted reports). These hearings produce both a relatively swift and a fair standard of justice. Normally, due to the use of a matrix system, an Army family member committing an offense on Kadena will get the same sanctions as an Air Force/Navy/Marine Corps family member committing essentially the same offense (see further considerations below). Some families may be tempted to refuse to participate in the process. The choice of refusal will force the hearing officer to render a decision in their case in absentia, based on the available evidence--in other words, by their own choice; their voice (side of the story) on the matter at hand will not be heard.

The hearing process not only renders punishment in the form of sanctions for misconduct, but also attempts to identify ways to assist a family struggling with problems by referring them for help and/or specified counseling. Sanctions can include warnings (verbal, written, or both); curfews; and/or suspension of various privileges (driving/commissary/exchange); community service; no-contact orders; enrollment in the Youth Monitor Program (Kadena); direction to enroll in Adolescent Substance Abuse Counseling at the school; and, direction to continue Family Advocacy-recommended treatment. For the more serious cases or for repeat offenders, sanctions available to installation commanders are suspended barments, first; or, in the worst cases, barments (which will result in being barred from all military installations throughout Japan). Some family members decide not to comply with the sanctions. In these cases, a subsequent hearing will be scheduled to consider this additional misconduct. Each act of misconduct will move the family member closer to a barmment action.

The Army Chain of Command is kept aware of Army civilian personnel and family member misconduct which occurs on Okinawa and can initiate a command-directed, Early Return of Dependents Personnel Action (DA Form 4187 (withdrawal of command sponsorship and return to the United States); impose a barmment action; or, any other type of sanction within his/her authority. The Air Force or Marine hearing officer has the authority to impose these sanctions. The sanctions imposed are based on past experience with similar offenses by use of a sanction matrix (guideline); and, the information they have on hand regarding the amount of involvement the subject had in the particular case being heard. The hearing officer also takes into consideration the demeanor of the subject, the sponsor, or other family members present at his or her hearing. Poor behavior on the part of the subject at the hearing may be considered a further act of misconduct. Not acting with proper decorum and respect at a hearing may result in additional sanctions. The hearing process affords the subject an opportunity to present his or her side of the story. Not doing so means that a decision will be made based only upon the evidence at hand (usually the police report and/or

statements) without his or her input. Honesty is expected and, if the hearing officer discerns that a person is less than truthful, the outcome of the hearing could be more severe. In addition to the administrative proceedings, family members or civilian employees who commit criminal acts may also be criminally prosecuted by the Governments of Japan or the United States. Civilian employees are also subject to disciplinary actions imposed by their chain of command.

Although attorneys are not allowed to represent clients at these hearings (this is not a court of law), civilian employees and family members and their sponsors are encouraged to seek legal advice from the Army Legal Assistance Office on Torii Station. To consult with a Legal Assistance attorney, please call 644-4332 to schedule an appointment.

