

IN A GENERAL COURT-MARTIAL
 SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
 FORT BRAGG, NORTH CAROLINA

UNITED STATES)	Motion to Dismiss Charge I
)	and Its Specification
v.)	(Condonation of Desertion)
)	
SGT Robert B. Bergdahl)	
HHC, Special Troops Battalion)	
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	25 August 2017

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RELIEF SOUGHT

Sergeant Bergdahl moves to dismiss Charge I and its specification with prejudice. Because unauthorized absence is a lesser included offense (LIO) of desertion, they may be recast as a violation of Article 86, UCMJ. An evidentiary hearing is requested. Oral argument is requested.

BURDEN OF PERSUASION AND BURDEN OF PROOF

The defense, as moving party, has the burden of persuasion. Proof by a preponderance is required as to factual matters. RCM 905(c)(1).

FACTS

Sergeant Bergdahl is charged with single specifications under Articles 85 and 99, UCMJ. The charges were preferred on 25 March 2015 and referred on 14 December 2015. Other relevant facts are set forth below in the Argument section below.

WITNESSES AND EVIDENCE

The defense will offer in evidence the attachments to this motion and testimony from former Secretary of the Army John M. McHugh*, GEN Mark A. Milley*, GEN Curtis M. Scaparrotti, LTG(R) William T. Grisoli*, LTG(R) Perry L. Wiggins, LTG(R) Flora D. Darpino*, LTG Kenneth R. Dahl, COL Harrold McCracken, COL John A. Hamner and LTC Stephen A. Fabiano. They will testify on the matters listed below. (Asterisks indicate refusal to be interviewed.) Their testimony can be dispensed with if the government stipulates to the authenticity of the attached documents and that:

- SGT Bergdahl was found to be missing from his duty station in Afghanistan early on the morning of 30 June 2009.
- The Army knew SGT Bergdahl had left his unit voluntarily within days of his disappearance.
- Army records showed SGT Bergdahl's duty status first as DUSTWUN (duty status—whereabouts unknown) and then as "captured."
- From 30 June 2009 to 31 May 2014, SGT Bergdahl was held against his will by the Haqqani network, an enemy force, at divers places in Afghanistan and Pakistan.
- SGT Bergdahl was recovered by the United States on 31 May 2014 as part of a prisoner exchange.
- Effective 1745 hours on 31 May 2014, SGT Bergdahl's duty status was changed by eMILPO entry from "captured" to "present for duty."
- On 1 June 2014 SGT Bergdahl was reassigned from U.S. Army Alaska to U.S. Army South.
- On 14 July 2014 SGT Bergdahl was reassigned from U.S. Army South to U.S. Army North, which remains his permanent duty assignment.

- Upon completion of debriefing, initial medical and psychological attention, and the reintegration process, U.S. Army North, in consultation with the Army Staff, restored SGT Bergdahl to regular duty on 14 July 2014.
- SGT Bergdahl has performed regular duty at Ft. Sam Houston since 14 July 2014.
- By orders dated 9 January 2015 (effective 12 January 2015), SGT Bergdahl was “attached for administration” to U.S. Army Forces Command “for the general administration of military justice” under the authority of “Coordination between CG, US Army North and CG FORSCOM.”
- At the time SGT Bergdahl was restored to duty Army leadership in general and the responsible GCMCA–U.S. Army North–in particular suspected him of desertion.
- SGT Bergdahl has not been in pretrial confinement or restricted since his recovery.
- U.S. Army North has continued to keep SGT Bergdahl in a regular duty status even though it has known of his alleged desertion for over three years.

LEGAL AUTHORITY

1. Art. 22(a)(5), UCMJ
2. Art. 22(a)(8), UCMJ
3. Art. 22(a)(9), UCMJ
4. Art. 32, UCMJ
5. Art. 34, UCMJ
6. Art. 62, UCMJ
7. Art. 79, UCMJ
8. Art. 85, UCMJ
9. Art. 85(a)(1), UCMJ
10. Art. 86, UCMJ
11. Art. 99, UCMJ
12. Art. 99(3), UCMJ
13. RCM 905(c)(1)
14. RCM 907(b)(2)(D)(iii)
15. MCM ¶ 9.b.(1)(c)
16. MCM App. 12A
17. AR 15-6, Procedures for Administrative Investigations and Boards of Officers
18. AR 600-8-2, Suspension of Favorable Personnel Actions (Flag)
19. *United States v. Minor*, 1 C.M.A. 497, 4 C.M.R. 89 (1952)
20. *United States v. Pettis*, 12 M.J. 616 (N-M.C.M.R. 1981)

QUESTION PRESENTED

WHETHER CHARGE I AND ITS SPECIFICATION ARE BARRED BY THE DEFENSE OF CONSTRUCTIVE CONDONATION?

ARGUMENT

RCM 907(b)(2)(D)(iii) BARS CHARGE I AND ITS SPECIFICATION

Constructive condonation is a special defense to desertion. It is a complete defense to Charge I and its specification and requires that they be dismissed with prejudice.

Under RCM 907(b)(2)(D)(iii), “[p]rosecution is barred by”—

(iii) Constructive condonation of desertion established by unconditional restoration to duty without trial of a deserter by a general court-martial convening authority who knew of the desertion.

Breaking down the text prescribed by the President into its several components, the constructive condonation defense is available if (1) a GCMCA, (2) knowing of the accused’s desertion, (3) restored him to duty (4) unconditionally and (5) without trial. The facts set forth above satisfy these requirements.

1

U.S. Army North is a GCMCA

SGT Bergdahl was restored to duty by a GCMCA. He was and is assigned to Headquarters and Headquarters Battalion, a subordinate command of U.S. Army North. U.S. Army North (Fifth Army) is a statutory GCMCA. Art. 22(a)(5), UCMJ.

2

U.S. Army North suspected SGT Bergdahl of desertion

Sergeant Bergdahl was believed to have deserted as long ago as July 2009. At that time, MG (as he then was) Scaparrotti signed a grant of testimonial immunity noting that offense. That grant of immunity was unknown to SGT Bergdahl as he was in enemy hands until 2014. (It was not disclosed to the defense until 2016.) It demonstrates that the Army was aware of facts that could reasonably give rise to a charge of desertion.

Sergeant Bergdahl was recovered from captivity on 31 May 2014, in a prisoner exchange with the Taliban. On 16 June 2014, MG (as he then was) Dahl was appointed by the Director of the Army Staff, LTG Grisoli, to conduct an AR 15-6 investigation. Among other things, he was directed to investigate “[w]hether SGT Bergdahl intended to return to his post when he left COP Mest-Malak and whether his intent changed between the time he left COP Mest-Malak and the time he was captured.” Intent to remain away permanently is an element of “long” desertion. Art. 85(a)(1), UCMJ; MCM ¶ 9.b.(1)(c).

Sergeant Bergdahl’s debriefers were prepared to administer the warnings required by Art. 31(b), UCMJ. That provision requires that the member being questioned be advised of the offense(s) of which he or she is suspected.

After debriefing and necessary medical and psychological attention in Afghanistan and Germany, SGT Bergdahl was flown back to the United States for treatment at Brooke Army Medical Center, JBSA. Permanent Change of Station orders transferred him from 1st Battalion, 501st Parachute Infantry Regiment, Ft. Richardson, Alaska, to U.S. Army South. Thereafter he was reassigned to U.S. Army North, which knew or had reason to know that he was suspected of desertion.

U.S. Army North restored SGT Bergdahl to duty

U.S. Army North restored SGT Bergdahl to duty on 14 July 2014. Official spokespersons made it clear that he had been restored to normal duty. Pentagon press secretary RADM John Kirby, said: "He's an active-duty Army soldier, and just like any active-duty soldier, he's free to leave base." Anna Mulrine, *Bowe Bergdahl hires lawyer, investigators to question him in 'near future,'* Christian Science Monitor, 15 July 2014, <http://www.csmonitor.com/USA/Military/2014/0715/Bowe-Bergdahl-hires-lawyer-investigators-to-question-him-in-near-future>. Quoting a U.S. Army North spokesman, CNN reported:

Six weeks after he was released from Taliban captivity, Sgt. Bowe Bergdahl spent his first day of regular duty working at the headquarters of U.S. Army North in Texas, the army said Tuesday.

Bergdahl, like many soldiers at a new assignment, spent much of his day on Monday getting paperwork straightened out, spokesman Don Manuszewski said.

The 28-year-old soldier spent five years in the hands of Taliban militants after he disappeared in Afghanistan in June 2009. After he was released in May in exchange for five senior Taliban members held by the U.S. military, Bergdahl has undergone counseling and been given medical care at a hospital in San Antonio.

On Monday, he began his job with a unit responsible for homeland defense, civil support operations and security cooperation programs involving countries such as Canada, Mexico and the Bahamas. He will eventually be given a position commensurate with his rank of sergeant. The army spokesman has said that Bergdahl would be assigned a desk job.

Bergdahl lives on base, in a two-bedroom unit in non-commissioned officers quarters.

"He's just another soldier in the U.S. Army," Manuszewski said.

Martin Savidge & Steve Almasy, *Bowe Bergdahl Returns to Regular Duty*, CNN, 15 July 2014, <http://www.cnn.com/2014/07/15/us/bowe-bergdahl-duty/>.

“He's going to be doing soldier duties commensurate with his rank and qualifications,” said Don Manuszewski, a spokesman for Army North. “Like anybody else, he'll go through a period of training to go through our processes and procedures.” Sig Christenson, *Bergdahl takes job at Fort Sam Houston*, San Antonio Express-News, 15 July 2014, <http://www.mysanantonio.com/news/local/military/article/Bergdahl-takes-job-at-Fort-Sam-Houston-5620095.php>.

Since then, SGT Bergdahl has been assigned to Headquarters and Headquarters Battalion, U.S. Army North, where he has performed normal administrative duties. He has received favorable evaluations and a Good Conduct Medal.¹ His principal duty title is Executive Administrative NCO. According to his NCOER Counseling and Report Form, his daily duties are as follows:

Serves as a Human Resources NCO in the Office of the Secretary of the General Staff (SGS) for a Three Star Army Service Component Command consisting of 839 military and civilian personnel; processes and tracks staff actions for the command section; reviews administrative actions, consolidates reports, prepares reports and data; advises the SGS and other staff members on administrative activities. Responsible for distribution of supplies, office equipment and the operation and maintenance of the Main Conference Room and the Commanding General's Conference Room.

4

U.S. Army North restored SGT Bergdahl to duty unconditionally

Sergeant Bergdahl was restored to duty on 14 July 2014. That action was unconditional. He was neither placed in pretrial confinement nor put on restriction. It was not contingent on any action on his part. The only limitation placed on him at the time (by counseling statement separate from the Flag document) was that, for his own safety, he would have to travel with two “buddies” (other NCOs) when leaving Ft. Sam Houston. That arrangement, which has since been modified to permit him to leave the installation alone for short period, was not a “condition” on his restoration to duty within the meaning of RCM 907(b)(2)(D)(iii). It was not established for the purpose of preventing his escape and had no effect on either his assigned duties or his performance of those duties. Rather, it merely required him to notify his command of plans to leave the installation so it could make the necessary “buddy” arrangements.

¹ On 9 January 2015 (effective 12 January 2015), he was administratively assigned as well to HHC, Special Troops Battalion, U.S. Army Forces Command. A copy of those orders is attached. That assignment is solely for the purpose of possible disciplinary action. He has never been assigned any duties because of or in connection with that additional assignment.

Similarly, the Flag SGT Bergdahl's immediate commander at Ft. Sam Houston initiated is not a "condition" within the meaning of RCM 907(b)(2)(D)(iii). This is so for three reasons.

First, a Flag is a "suspension of favorable personnel actions." That is the title of the governing AR. A Soldier can be restored to duty and still be subject to a Flag. A Soldier who is subject to a Flag remains in a duty status. Moreover, the pendency of an investigation or a court-martial is not a "condition" to the Soldier's duty status. A Soldier may be awarded nonjudicial punishment or tried by a court-martial while in a regular duty status. During days when a court-martial is not in session, the accused (like other participants such as members or witnesses) simply performs his or her normal duty, subject only to the need to consult counsel and otherwise prepare for trial. Hence, there is no tension between being in a regular duty status and being in the military justice process.

But even if a Flag were, in principle, pertinent to whether the constructive condonation defense applies, SGT Bergdahl's immediate commander's stated purpose in initiating one was "to ensure the efficient and effective execution of all personnel actions in accordance with established Army policies and procedures." SGT Bergdahl's Flag does not achieve that purpose. For example, AR 600-8-2 ¶ 2-1a identifies as a potential purpose of a Flag as "to prevent and/or preclude . . . (2) Movement of a Soldier when it is in the best interests of the Army for the Soldier to remain in his or her current unit or at his or her current location until cleared of ongoing actions." That purpose is inapplicable since the Army has, for reasons that have never been revealed (and which we have been prevented from investigating), assigned SGT Bergdahl to FORSCOM for disciplinary purposes *while not changing his permanent duty station from Ft. Sam Houston to Ft. Bragg*. This arrangement has avoided the disruption of needed medical and psychological care (his providers being at Ft. Sam Houston), but raises serious questions about whether venue was manipulated through a bespoke DA choice of a GCMCA with which SGT Bergdahl has never had any substantive relationship. More to the point, flagging was in no way required in order to arrange his dual assignment.

Second, even if the Flag in theory qualified as an RCM 907(b)(2)(D)(iii) condition, that rule requires that it have been imposed *by a GCMCA*. The Flag, however, was imposed by SGT Bergdahl's field-grade battalion commander.² That is fatal. What is more, even if the battalion commander's initiation of the Flag could be imputed to the GCMCA, the stated reason was that a commander's investigation had been initiated: a Developmental Counseling Statement explained that the Flag was based on the fact that an AR 15-6 investigation had been initiated on 16 June 2014. Under AR 600-8-2 ¶ 2-4, however, the effective date of a Flag is not the date of initiation but the date of the circumstances requiring the Flag. The Flag was therefore effective as of 16 June 2014, when LTG Grisoli appointed MG Dahl to conduct the AR 15-6 investigation. As a result, it cannot be deemed a condition of a restoration that did not occur until a month *later*.

² Congress has not authorized Army battalion commanders to convene GCMs. Art. 22(a)(5), UCMJ. Nor has either the President or the Secretary of the Army exercised their power under Arts. 22(a)(8)-(9), UCMJ, to do so.

Third, the Flag has been in effect for an unreasonable period. An attachment to the counseling statement referred to above listed three examples of reasons a Flag would be lifted. The second of these was when “[t]he Soldier is flagged for pending court-martial or nonjudicial or administrative disciplinary action resulting from the adverse findings of the commander’s investigation.” MG Dahl submitted the final version of his report on 18 December 2014. The Army took final action on it on 22 December 2014. The Flag has therefore been *functus officio* for over two and one-half years. Under AR 600-8-2 ¶ 2-1 d, it should have been lifted within three working days after final action, *i.e.*, by 26 December 2014 (or, if the Army was not working that day, on 29 December 2014 at the latest). The investigation that triggered the Flag being long over, it is unfair to continue the Flag. For this reason and the others we have identified, the Flag is not a valid basis for finding that SGT Bergdahl’s restoration was conditional.

Since the Flag does not qualify as a “condition” for purposes of RCM 907(b)(2)(D)(iii), is there something else that does? The Article 32 investigating officer commented (Art. 32 Report at 6) that the existence of unresolved medical issues provides “a legitimate reason for delay.” His point was not well-taken. For one thing, medical reasons were not the basis for the Flag: this was an “L” Flag, as the form expressly indicates in § 10. A Flag can only be justified on the basis stated in it, not some other basis never asserted by the initiating commander. Nor, contrary to LTC Visger’s suggestion, is there some inconsistency between SGT Bergdahl’s invocation of the constructive condonation defense and his request that the GCMCA defer a disposition decision until medical issues were resolved. As it happens, the GCMCA referred the charges without waiting for resolution of SGT Bergdahl’s medical and psychological issues.³

5

U.S. Army North restored SGT Bergdahl to duty without trial

The “without trial” element of the constructive condonation defense has been satisfied. There is no legal requirement to conduct an AR 15-6 investigation before ordering that a preliminary hearing be conducted under Article 32, UCMJ. Moreover, U.S. Army North could have declined to restore SGT Bergdahl to regular duty while awaiting the results of MG Dahl’s investigation and action by some commander with respect to any charges that flowed from that investigation. Instead, it elected to restore SGT Bergdahl to what official spokespersons described as normal duties for a Soldier of his rank.

6

U.S. Army North has continued to keep SGT Bergdahl in a regular duty status even though it has known of his alleged desertion for over three years

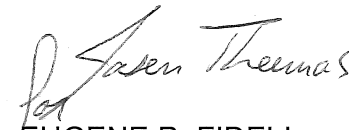
U.S. Army North has continued to keep SGT Bergdahl in a regular duty status even though it has known of his alleged desertion for over three years. Even if that command did not suspect him of desertion at the time it restored him to duty, at least by the time

³ SGT Bergdahl received a permanent profile on 25 June 2015. He has not been placed in the MEB/PEB process because of the pendency of the court-martial.

MG Dahl submitted his AR 15-6 report late in 2014, it was clearly on notice of the basis for such a charge. By continuing him in a regular duty status, performing duty like any other Soldier, for such a protracted period, it cannot in fairness be heard to claim that it has not condoned the alleged desertion.⁴

CONCLUSION

Charge I and its specification should be dismissed with prejudice. Since the constructive condonation defense applies solely to desertion, it is inapplicable to offenses under Article 86, UCMJ,⁵ which is an LIO of desertion. MCM App 12A. Charge I may therefore be recast to allege a simple AWOL.


EUGENE R. FIDELL

Civilian Defense Counsel

For

LTC FRANKLIN D. ROSENBLATT
MAJ OREN GLEICH
MAJ JASON D. THOMAS
CPT JENNIFER D. NORVELL
CPT NINA S. BANKS

P. SABIN WILLETT
CAITLIN M. SNYDACKER
CHRISTOPHER L. MELENDEZ

⁴ Additionally, the government cannot be heard to object that although U.S. Army North restored SGT Bergdahl to regular duty, it was *another* GCMCA-FORSCOM—that was chargeable with knowledge of his alleged desertion. To separate RCM 907(b)(2)(D)(iii)'s knowledge-of-desertion and restoration-to-duty prongs would permit the Army to evade a rule prescribed by the President by the simple expedient of subjecting a Soldier to different duty and disciplinary chains of command.

⁵ *United States v. Minor*, 1 C.M.A. 497, 498-99, 4 C.M.R. 89, 90, 92 (1952); *United States v. Pettis*, 12 M.J. 616, 619-20 (N-M.C.M.R. 1981).

CERTIFICATE OF SERVICE

I certify that I emailed the foregoing motion to the Court and Trial Counsel on 25 August 2017.

for Jason Thomas
EUGENE R. FIDELL

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY NORTH (FIFTH ARMY)
MILITARY PERSONNEL DIVISION
JBSA FORT SAM HOUSTON, TEXAS 78234-5018

ORDERS 009-700

09 JAN 2015

BERGDAHL BOWE R. [REDACTED] SGT
HQ, HSC ARNORTH (WJMHT0) FORT SAM HOUSTON, TEXAS 78234

YOU ARE ATTACHED OR RELEASED FROM ATTACHMENT AS SHOWN.

Action: You are attached to: HQ USA FORSCOM (W3YBAA) Fort Bragg, North Carolina 28307
Effective Date: 12 January 2015
Period: Until officially released from attachment.
Purpose of Attachment: Attached for administration.
Accounting Classification: Not Applicable
Additional Instructions: (a) Soldier is attached for the general administration of military justice IAW AR 27-10.
Authority: Coordination between CG, US Army North and CG FORSCOM
FORMAT: 440

FOR THE COMMANDER:

* **OFFICIAL** *
* HQ USA ARNORTH 502 MPD *
* JBSA FORT SAM HOUSTON, TX *

EARNEST C. BRIDGES
Chief, Military Personnel Division

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DEVELOPMENTAL COUNSELING FORM
For use of this form, see FM 6-22; the proponent agency is TRADOC.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: 5 USC 301, Departmental Regulations; 10 USC 3013, Secretary of the Army.
PRINCIPAL PURPOSE: To assist leaders in conducting and recording counseling data pertaining to subordinates.
ROUTINE USES: The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems or records notices also apply to this system.
DISCLOSURE: Disclosure is voluntary.

PART I - ADMINISTRATIVE DATA

Name (Last, First, MI)	Rank/Grade	Date of Counseling
Bergdahl, Bowe	SGT	14 July 2014
Organization	Name and Title of Counselor	
HHBN, US ARMY NORTH, Fort Sam Houston, Texas	LTC Steve Fabiano, Battalion Commander	

PART II - BACKGROUND INFORMATION

Purpose of Counseling: (Leader states the reason for the counseling, e.g. Performance/Professional or Event-Oriented counseling, and includes the leader's facts and observations prior to the counseling.)

Initial Counseling

Safeguards to ensure and promote your health and welfare.

Initiation of suspension of favorable personnel action IAW AR 600-8-2

PART III - SUMMARY OF COUNSELING

Complete this section during or immediately subsequent to counseling.

Key Points of Discussion:

Welcome to United States Army North (USARNORTH) and the Guardian Battalion. Discussed: mission, assigned duties, expectations, living area provided, contact information for battle buddies, sponsors, and chain of command, first 48 hours.

Based not only on the information provided to me concerning your current state of health, but also on the negative perceptions that may exist in the general public, I have determined that it is necessary to implement a series of safeguards that are solely designed to ensure your health, safety, and general welfare. Specifically, while on the installation you will have complete, unhindered freedom of movement to conduct any activity that promotes your morale, health, and welfare. You have access to any religious, medical, recreational, educational, or other support facility on Fort Sam Houston. Furthermore, you are free to leave Fort Sam Houston at any time, for any reason; however, you may not leave the installation unless you are accompanied by two of your assigned battle buddies or sponsors. Should you find it necessary to leave Fort Sam Houston you must first notify one of your assigned battle buddies or sponsors. Upon your personal notification, two of your battle buddies will accompany you to any lawful destination off the installation.

As you know, an informal investigation conducted pursuant to Army Regulation 15-6 was initiated on 16 June 2014 to determine the facts and circumstances surrounding the events that led to your captivity. Army regulations require commanders to temporarily suspend favorable personnel actions when they initiate an investigation or inquiry related to a specific Soldier. However, this action is not initiated as punishment or restriction; instead, this is an administrative tool to ensure the efficient and effective execution of all personnel actions in accordance with established Army policies and procedures. The conditions upon which we will remove the flag, and the details of what the flag prohibits are attached on a separate document for your awareness and understanding. In addition, a copy of the flag (DA Form 268) is being provided to you today.

I will periodically reassess all available information to determine whether the aforementioned safeguards continue to be necessary to ensure your health, safety, and welfare. At a minimum, on a weekly basis, I will sit down with you and your chain of command to formally review the conditions that prompted me to implement these measures. My intent is that this will be a cooperative effort between you, the chain of command, and a host of other people who are all focused on ensuring your health, safety and welfare. Your input to this process is valued, but I will make decisions based on all of the inputs that I receive. Our first review will be conducted on 17 July.

OTHER INSTRUCTIONS

This form will be destroyed upon: reassignment (other than rehabilitative transfers), separation at ETS, or upon retirement. For separation requirements and notification of loss of benefits/consequences see local directives and AR 635-200.

Plan of Action (Outlines actions that the subordinate will do after the counseling session to reach the agreed upon goal(s). The actions must be specific enough to modify or maintain the subordinate's behavior and include a specified time line for implementation and assessment (Part IV below)

Session Closing: (The leader summarizes the key points of the session and checks if the subordinate understands the plan of action. The subordinate agrees/disagrees and provides remarks if appropriate.)

Individual counseled: I agree disagree with the information above.

Individual counseled remarks:

Signature of Individual Counseled: _____ Date: _____

Leader Responsibilities: (Leader's responsibilities in implementing the plan of action.)

Signature of Counselor: _____ Date: 14 JULY 14

PART IV - ASSESSMENT OF THE PLAN OF ACTION

Assessment: (Did the plan of action achieve the desired results? This section is completed by both the leader and the individual counseled and provides useful information for follow-up counseling.)

Counselor: _____ Individual Counseled: _____ Date of Assessment: _____

Note: Both the counselor and the individual counseled should retain a record of the counseling.

Points covered in counseling session under the heading of 'discussed' in paragraph 1:

Mission of the Organization:

- Tri-fold provided
- My mission with respect to you: Ensure you get a smooth transition back to life in the Army

Assigned Duties:

- HSC Company
- SGS Office
- Day to day duties and responsibilities will vary, but will support the mission

Expectations of members of the Guardian Battalion:

- Provided a GUARDIANS sheet.
- My Vision: Resilient men and women of character who support and execute the USARNORTH mission and who set a positive example in the community.
- What is important to me: be professional, be a professional, relationships are everything, be good stewards of Army resources, figure out how to say yes (support with a shirt off your back mentality)

Unique Expectations:

- Work together on your status.
- Temper action with wisdom
- You need to communicate your wishes and feelings when it comes to your health, welfare and safety ... at the end of the day, I will need to make a decision. I need you to respect that decision in my role as your commander. This is a team effort. Lots of people are looking out for you.

Living Area:

- You have seen your barracks room, do you have any questions or issues at this time.

First 48 hours:

- Battle buddy in the adjoining room.
- If you want that to continue, please let me know.

All information below is available in Army Regulation AR 600-8-2 dated 23 October 2012

Examples of reasons for removal of a flag (Paragraph 2-9, page 10):

- The investigation results in no adverse findings against the Soldier.
- The Soldier is flagged for pending court-martial or nonjudicial or administrative disciplinary action resulting from the adverse findings of the commander's investigation.
- The commander decides to take no action against the Soldier.

Examples of actions prohibited by a flag (Chapter 3, page 14):

- Reenlistment, extension
- Reassignment
- Appearance before a semi-centralized promotion board
- Promotions in grade
- Recommendation for, and receipt of, individual awards and decorations
- Attendance at military or civilian schools
- Unqualified resignation, retirement, or discharge
- Advance or excess leave, unless granted as an exception to policy by commanders in accordance with AR
- 600-8-10
- Payment of enlistment bonus

Date: 14 JULY 14

Commander Initial 

Soldier Initials: _____

REPORT TO SUSPEND FAVORABLE PERSONNEL ACTIONS (FLAG)

For use of this form, see AR 600-8-2; the proponent agency is MILPERCEN.

SECTION I - ADMINISTRATIVE DATA

1. NAME (Last, First, MI) 2. SSN 3. RANK
 BERGDAHL, BOWE ROBERT [REDACTED] SGT

4. On Active Duty Not on Active Duty On ADT 5. ETS/ESA/MRD

6. UNIT ASSIGNED AND ARMY COMMAND 7. STATION (Geographical Location)
 WJMHT0 0000HQHSC ARNORTH 5TH ARMY / US ARMY NORTH FT SAM HOUSTON, TX

8. HR OFFICE CONTROLLING FLAGGING ACTION AND TELEPHONE NUMBER

9. THIS ACTION IS TO:
 Initiate a flag (Sections II and IV Only) Remove Flag (Sections III and IV Only)

SECTION II - INITIATE A FLAG

10. A FLAG IS INITIATED, EFFECTIVE 20140714 FOR THE FOLLOWING REASON:

<p>NON-TRANSFERABLE</p> <p><input type="checkbox"/> ADVERSE-ACTION (A)</p> <p><input type="checkbox"/> INVOLUNTARY SEPARATION/DISCHARGE-FIELD INITIATED (B)</p> <p><input type="checkbox"/> REMOVAL FROM SELECTION LIST - FIELD INITIATED (C)</p> <p><input type="checkbox"/> REFERRED-OER/RELIEF FOR CAUSE NCOER (D)</p> <p><input type="checkbox"/> SECURITY-VIOLATION (E)</p> <p><input type="checkbox"/> REMOVAL FROM SELECTION LIST - HEADQUARTERS DA INITIATED (F)</p> <p><input checked="" type="checkbox"/> COMMANDER'S INVESTIGATION (L)</p> <p><input type="checkbox"/> LAW ENFORCEMENT INVESTIGATION (M)</p> <p><input type="checkbox"/> CDR DECISION TO BLOCK AUTOMATIC PROMOTION TO PV2,PFC&SPC (P)</p> <p><input type="checkbox"/> NOT RECOMMENDED FOR AUTOMATIC PROMOTION TO 1LT/CW2 (T)</p> <p><input type="checkbox"/> DRUG ABUSE ADVERSE ACTION (U)</p> <p><input type="checkbox"/> ALCOHOL ABUSE ADVERSE ACTION (V)</p> <p><input type="checkbox"/> HQDA INITIATED INVOLUNTARY SEPARATION/DISCHARGE (W)</p> <p><input type="checkbox"/> OTHER (X), Remarks: _____</p>	<p>TRANSFERABLE</p> <p><input type="checkbox"/> PUNISHMENT PHASE(ADVERSE ACTION) (H), Date Complete: _____</p> <p><input type="checkbox"/> ARMY PHYSICAL FITNESS TEST FAILURE (J)</p> <p><input type="checkbox"/> ARMY BODY COMPOSITION PROGRAM (K)</p>
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SECTION III - REMOVE A FLAG

11. A FLAG IS REMOVED, EFFECTIVE _____ FOR THE FOLLOWING REASON:

<p><input type="checkbox"/> FINAL-FAVORABLE REPORT (C)</p> <p><input type="checkbox"/> FINAL-UNFAVORABLE REPORT (D)</p>	<p><input type="checkbox"/> FINAL-OTHER REPORT (E)</p> <p><input type="checkbox"/> DELETE-ERRONEOUS FLAG (Z)</p>
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SECTION IV - AUTHENTICATION

DISTRIBUTION
 1 - Unit Commander 1 - Soldier 1 - HRC (only if Soldier is on a HQDA selection list)
 1 - S-1/MPD 1 - Commander, gaining unit (transfer flag only)

NAME, RANK, TITLE, AND ORGANIZATION SIGNATURE DATE

FABIANO, STEPHEN LTC *BN CDR* [REDACTED] 14 JULY 14

Bowe Bergdahl hires lawyer, investigators to question him in 'near future'

Sgt. Bowe Bergdahl, who is under investigation for the circumstances surrounding his capture by the Taliban, has reached out to Eugene Fidell, a full-time lecturer on military justice at Yale Law School.

By Anna Mulrine, Staff writer | JULY 15, 2014

Sgt. Bowe Bergdahl has reached out to a civilian attorney, though he has not yet been advised of his rights or spoken with Army investigators.

Sergeant Bergdahl, who at the end of May was released as part of a controversial prisoner exchange, remains under investigation for the circumstances surrounding his capture by the Taliban five years ago. But he is free to leave the base where he is currently assigned and is not under any restrictions in his movement.

“He’s an active-duty Army soldier, and just like any active-duty soldier, he’s free to leave base,” Rear Adm. John Kirby, Pentagon press secretary, said Tuesday.

Even so, Bergdahl has retained Eugene Fidell, who teaches military justice at Yale Law School in New Haven, Conn., to be his lawyer.

Mr. Fidell has been a full-time lecturer at Yale for the past five years, and he served in the US Coast Guard. He is the co-founder of the National Institute of Military Justice and heads the committee on military justice for the International Society for Military Law and the Law of War.

While investigators have not yet spoken with Bergdahl, that is expected to happen “sometime in the near future,” says Wayne Hall, a spokesman for the Army.

The investigation into Bergdahl’s disappearance was launched on June 16, and investigators generally have 60 days to complete their work. The probe is being led by Maj. Gen. Kenneth Dahl, who is now a deputy commanding general at Joint Base Lewis-McChord in Washington State.

Major General Dahl served as a commander in Afghanistan and has a master’s degree in social psychology.

Bergdahl has not yet been advised of his rights. “At this point, he has done nothing to warrant having his rights read to him,” Mr. Hall says.

He will be advised of his rights as part of the formal process of the investigation, when he meets with Dahl.

In the meantime, Bergdahl has completed the final phase of his reintegration after captivity and has returned “to regular duty,” according to an Army statement.

Bergdahl is currently assigned to Joint Base San Antonio-Fort Sam Houston, which will allow him to continue to receive

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The US Army provided this undated photo of Sgt. Bowe Bergdahl. (US Army/AP/File)

Bowe Bergdahl hires lawyer, investigators to question him in 'near fut... <https://www.csmonitor.com/layout/set/print/USA/Military/2014/0715...>
treatment at the nearby Army hospital.

US military officials declined to comment on reports that he has refused to speak to his parents since being released from captivity on May 31, citing “respect for his family, and his privacy wishes.”

In his new job, Bergdahl “will be doing some administrative tasks within the headquarters,” says Don Manuszewski, a spokesman at Joint Base San Antonio-Fort Sam Houston. “He’s currently going through in-processing, similar to when anybody else goes to a new job or new location, so he can start working and really get after it.”

The other soldiers are accepting him back into the fold, Mr. Manuszewski says.

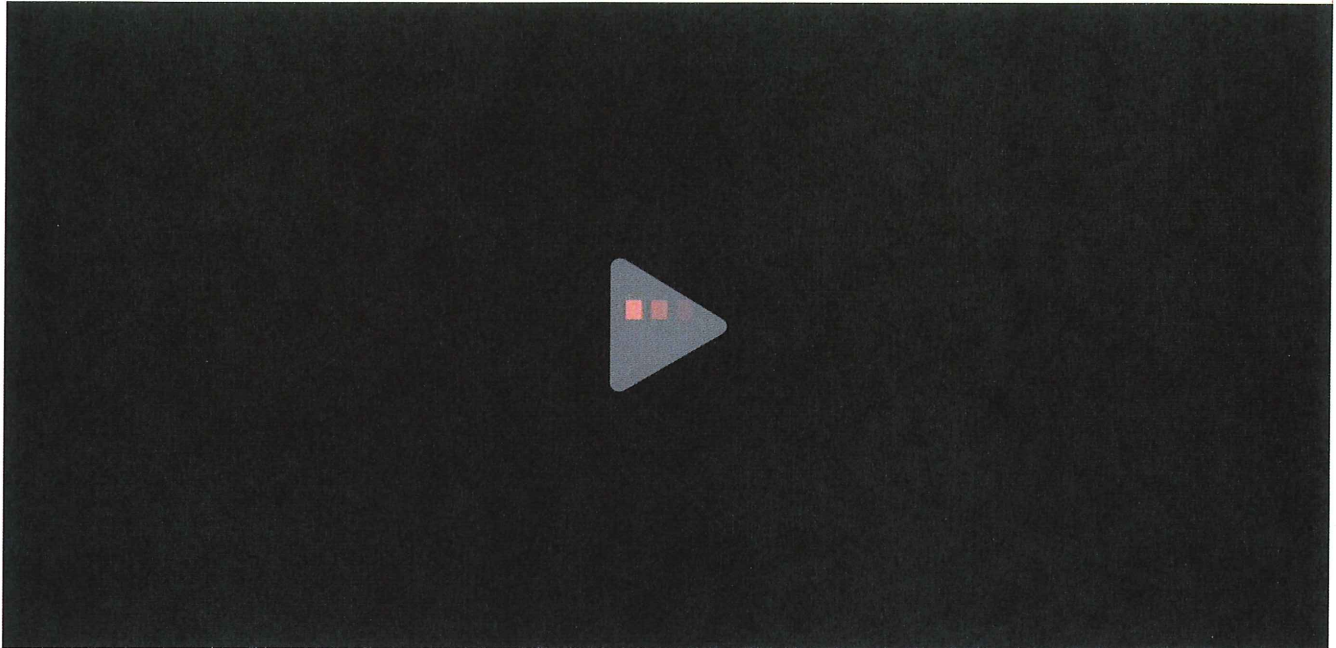
“We expect everybody that’s assigned to this command – or Army-wide – to be treated with dignity and respect,” he adds. “We just are soldiers, and he is part of the Army family – and we expect them to treat him that way.”

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Bowe Bergdahl returns to regular duty

By Martin Savidge and Steve Almasy, CNN

🕒 Updated 4:23 PM ET, Tue July 15, 2014



Bergdahl returning to active duty 01:43

Story highlights

The sergeant will work at the headquarters of a unit based in San Antonio

Much of his first day was spent dealing with paperwork

Army spokesman wouldn't say how much longer Bergdahl will serve

Bergdahl was captured after disappearing from his base in Afghanistan in 2009

Six weeks after he was released from Taliban captivity, Sgt. Bowe Bergdahl spent his first day of regular duty working at the headquarters of U.S. Army North in Texas, the army said Tuesday.

Bergdahl, like many soldiers at a new assignment, spent much of his day on Monday getting paperwork straightened out, spokesman Don Manuszewski said.

The 28-year-old soldier spent five years in the hands of Taliban militants after he disappeared in Afghanistan in June 2009. After he was released in May in exchange for five senior Taliban members held by the U.S. military, Bergdahl has undergone counseling and been given medical care at a hospital in San Antonio.

On Monday, he began his job with a unit responsible for homeland defense, civil support operations and security cooperation programs involving countries such as Canada, Mexico and the Bahamas. He will eventually be given a position commensurate with his rank of sergeant. The army spokesman has said that Bergdahl

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"He's just another soldier in the U.S. Army," Manuszewski said.

He has two soldiers who are helping him adjust to life at Fort Sam Houston in San Antonio.

[Bergdahl venturing off base, rubbing elbows with public](#)

Bergdahl was a private first class when he was captured and the Army extended his enlistment and twice promoted him on schedule while in captivity.

Manuszewski wouldn't say how much longer Bergdahl's enlistment would last.

The news of Bergdahl's freedom initially was met with jubilation, but it quickly turned as many called for an investigation into his disappearance and captivity. Some critics accused the soldier of deserting his comrades in war.

Manuszewski didn't comment on the investigation.

Bergdahl has yet to be interviewed by the officer investigating his case, Lt. Colonel Alayne Conway said last week.

[Army general to start investigating how, why Bergdahl left base](#)

