



# UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES



## SUBJECT: Disciplinary and Adverse Actions

### Instruction 1010

(CHR)

JAN 30 2009

#### ABSTRACT

This Instruction provides the Uniformed Services University of the Health Sciences procedures and guidance on initiating disciplinary and adverse actions.

**A. Reissuance and Purpose.** This Instruction reissues USUHS Instruction 1010 and sets forth the procedures for initiating disciplinary and adverse actions in accordance with 5 USC, Chapter 75, and 5 CFR Part 752. It provides guidance to managers or supervisors contemplating action to manage the misconduct or inefficiency of an employee.

**B. References.** See *Enclosure 1*.

**C. Policy.**

1. When an employee's conduct or exhibited capabilities do not promote the efficiency of the federal service, officials will promptly initiate disciplinary or adverse actions as a means to correct deficiencies in employees' conduct in accordance with the procedures outlined herein. Discipline is not punitive; it should be progressive in nature and serve as a means to deter unsatisfactory conduct or behavior to promote the efficiency of the service. Officials are encouraged to use Alternative Dispute Resolution (ADR) methods to enhance communication and seek collaborative resolutions of concerns when appropriate.

2. Disciplinary or adverse actions may not be based on or undertaken because of political beliefs (except as required by law), race, color, religion, sex, age, national origin, marital status, or handicapping condition.

**D. Definitions.** See *Enclosure 2*.

**E. Applicability.**

1. This Instruction applies to all agency civilian employees, except for the following:

- a. Reemployed annuitants.
- b. An employee in the competitive service who is serving a probationary or trial period under an initial appointment.
- c. An employee in the competitive service who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less.
- d. An employee in the excepted service who is a nonpreference eligible and who has not completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less.
- e. An employee in the excepted service who is preference-eligible and who has not completed 1 year of current continuous service in the same or similar positions.
- f. An employee in the excepted service whose position has been determined to be of confidential, policy determining, policy-making, or policy-advocating character by the President, the Office of Personnel Management (OPM), or the head of an agency.
- g. An employee paid with nonappropriated funds.
- h. An employee whose appointment is

made by and with the advice and consent of the Senate.

i.eA Presidential appointee.eee

j.eA nonpreference eligible employeeeee who is serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service.

k.eA career appointee in the Senioreee Executive Service (SES) who has not completed a probationary period.

l.eA limited term or limited emergencyeee SES appointee not described as covered in reference (c).

2.eWhile the above employees are excludedeee from coverage under this Instruction, it does not preclude giving them oral admonishments or initiating appropriate disciplinary action when such actions are consistent with the procedures contained herein. However, when separation action is warranted, their appointments may be terminated without need for compliance with the procedures described in this Instruction.

3.eActions not covered by Enclosure 3,eee section C, of this Instruction includes:

a.eSuspensions of 14 days or less of aeee reemployed annuitant.

b.eeAn action imposed by the Meriteee Systems Protection Board (MSPB).

c.eThe reduction in grade of a supervisoreee or manager who has not completed the probationary period if such a reduction is to the grade held immediately before becoming a supervisor or manager.

d.eA reduction-in-force action.eee

e.ePerformance-based reduction in gradeeee or removal actions taken solely under provisions of unacceptable performance.

f. Suspension or removal taken in the interests of national security.

g. Actionseetakenunderea provisioneof statute,eootherthaneoneecodifiedine5 U.S.C., whicheeexemptseetheactionefromsubchapterI and/or II of reference (b).

h. An action that entitles an employeeetoeee grade retention and an action to terminate this

entitlement.

i.eA voluntary action by the employee.eee

j.eAction taken or directed by the Officeeee of Personnel Management (OPM).

k.eTermination of appointment on theeee expiration date specified as a basic condition of employment at the time the appointment was made.

l.eAction that terminates a temporary oreee term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the employee was informed that it was to be of limited duration.

m.eCancellation of a promotion to aeee position not classified prior to the promotion.

n.ePlacement of an employee serving oneee an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment.

o.eReduction of an employee's rate ofeee basic pay from a rate that is contrary to law or regulation.

p.eSeparations for suitability reasons.eee

q.eSeparation for performance or conducteee during probation or separation during probation based in whole or in part on pre-appointment reasons.

r.eDenial of a within-grade increase.eee

s.eA suspension action of 14 days or lesseee of an SES employee.

t.eRemoval or RIF action from an SESee position.

## **F. Responsibilities.**

1.eThe President, USUHSa is responsible for:eee ensuring that the agency policies and procedures for disciplinary and adverse actions are administered and implemented in accordance with established policies and regulations.

2.eCivilian Human Resources Directorateeee (CHR) is responsible for:

a.eProviding guidance and assistance toeee supervisors, managers, and employees on disciplinary and adverse action procedures.

b.eCounseling employees concerningeee



their rights, privileges, and standards of conduct.

c. Maintaining the official disciplinary and adverse action records.

3. Managers and Supervisors are responsible for:

a. Becoming aware of the requirements of this Instruction.

b. Coordinating all disciplinary and adverse actions with the CHR to ensure conformance with established laws and regulations.

c. Communicating requirements and expectations regarding standards of conduct and performance to employees.

d. Monitoring employee conduct and performance and initiating appropriate corrective action as required.

e. Ensuring that each case is processed promptly and discipline is uniformly applied.

4. Employees are responsible for:

a. Becoming aware of the agency's procedures on disciplinary and adverse actions and following the procedures of this Instruction.

b. Conducting themselves, both on and off duty, in a manner that will ensure their conduct does not reflect adversely on the agency.

c. Complying with the standards of conduct prescribed in reference (d).

d. Following agency policies, procedures, and work requirements.

e. Performing their job duties at an acceptable level and in a safe and reliable manner.

**G. Effective Date.** This Instruction is effective immediately.



Charles L. Rice, M.D.  
President

#### Enclosures

1. References
2. Definitions
3. Guidelines for Processing Disciplinary and Adverse Actions
4. Factors To Be Considered In Selecting The Appropriate Adverse Action "Douglas Factors"
5. Table of Offenses and Recommended Penalties
6. Sample Notices

**REFERENCES**

- (a) USUHS Instruction 1010,  
"Disciplinary and Adverse  
Actions," 13 September 1988  
(hereby canceled)
- (b) Title 5, United States Code (U.S.C.),  
Chapter 75
- (c) 5 Code of Federal Regulations  
(CFR), Part 752, "Adverse Actions,"  
January 1, 2005
- (d) 5 CFR, Part 432, "Performance-  
Based Reduction in Grade and  
Removal Actions," January 1, 2005
- (e) 5 CFR, Part 315, Subpart H,  
"Probation on Initial Appointment to  
a Competitive Service Position,"  
January 1, 2005
- (f) 5 CFR, Part 351, "Reduction in  
Force," January 1, 2005

## DEFINITIONS

**Adverse Action.** A term generally used in reference to an appealable disciplinary action, such as removal, suspension for more than 14 calendar days, indefinite suspension, reduction in grade or pay, or furlough without pay for 30 calendar days or less. An adverse action is appealable to the MSPB.

**Appropriate Penalty/Reasonable Remedy.** The terms are used interchangeably and refer to the corrective action determined to be appropriate after consideration of the facts of a case, the employee's response, and relevant "Douglas Factors" in Enclosure 4.

**Critical Element.** A work assignment or responsibility of an employee's job that is of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is unacceptable.

**Day.** Calendar day, unless otherwise specified.

**Deciding Official.** The official who issues a notice of final decision on an adverse or disciplinary action.

**Disciplinary Action.** Action taken to correct employee misconduct or other situations that interfere with effective work operations, resulting in a letter of reprimand or suspension of 14 calendar days or less. The action is made a matter of record in the employee's Official Personnel Folder (OPF).

**Drug Paraphernalia.** Equipment, products, or materials used, intended for use, or designed for use in injecting, ingesting, or otherwise introducing drugs into the human body in violation of the law.

**Excepted Service.** Some agencies are excluded from competitive civil service procedures. They have their own hiring system which establishes the evaluation criteria they use in filling their internal vacancies.

**Furlough.** Placing an employee in a temporary status without duties and pay because of lack of work or funds or for other non-disciplinary reasons.

**Grievable Action.** A disciplinary action that is grievable under the agency's administrative grievance procedures, such as a letter of reprimand or a suspension of 14 calendar days or less.

**Illegal (or Unlawful) Use or Possession of a Drug.** Use or possession of a drug without a valid medical prescription for which use or possession of that drug or controlled substance violates law or regulation.

**Indefinite Suspension.** Placing an employee in a temporary non-duty and non-pay status pending investigation, inquiry, or further agency action.

**Informal Disciplinary Action.** Minor corrective action taken that is not made a matter of record for inclusion in the employee's OPF, such as an oral admonishment or informal counseling or caution notice to an employee. These actions are neither grievable under the agency's administrative grievance procedures nor appealable to the Merit Systems Protection Board (MSPB).

**Letter of Caution/Counseling.** A non-disciplinary written notification issued by a superior to an employee concerning unacceptable conduct and warning the employee that disciplinary action may be taken unless the conduct improves.

**Letter of Leave Restriction or Requirement.** Written notification regarding conduct deficiencies, such as leave abuse or tardiness, which set forth requirements and procedures to be followed by an employee to avoid a future disciplinary action for similar deficient misconduct. This action is not grievable under the agency's administrative grievance procedures or appealable to the MSPB.

**Official Reprimand.** A written disciplinary action taken against an employee for unacceptable conduct and/or infraction of rules and regulations.

**Opportunity to Demonstrate Acceptable Performance.** A reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue. (This is also known as the Performance Improvement Plan or PIP.)

**Oral admonishment.** An oral notification given by a superior to an employee concerning conduct deficiencies and warning the employee that disciplinary or other administrative action may be taken for continued deficiencies.

**Preponderance of the Evidence.** The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

**Proposing Official.** The official who proposes the disciplinary or adverse action.

**Reasonable Time.** An amount of time commensurate with the duties and responsibilities of the employee's job which is sufficient to allow the employee to demonstrate whether or not the individual can meet the acceptable standard. The amount of time deemed reasonable may vary depending upon the complexity of the job; however, it should be consistent within similar job categories.

**Reduction in Grade.** The involuntary assignment of an employee to a position of lower classification or job grading level.

**Removal.** Involuntary separation of an employee from the Federal service based on the decision of an appropriately designated management official.



**Safe Harbor.** A provision of the Drug Free Workplace Program (DFWP) that gives an employee a one-time opportunity to voluntarily identify himself or herself as a user of illegal drugs, to willingly undertake counseling and, as necessary, rehabilitation. Safe harbor insulates the employee from discipline for these admitted, but otherwise unknown, past acts of illegal drug use. It does not protect the employee from discipline for admitting to drug trafficking or other drug-related offenses. Also, it does not insulate the employee from removal based on loss of security clearance.

**Suspension.** Placing an employee in a temporary non-duty and non-pay status for disciplinary reasons, including pending inquiry.

**Trafficking (drugs).** Unlawful manufacture, distribution, sale, or transfer of drugs and/or the unlawful possession of drugs with the intent to distribute, sell, or transfer.

**Unacceptable Performance.** Performance of an employee that fails to meet established standards in one or more critical elements of the employee's position.

## GUIDELINES FOR PROCESSING DISCIPLINARY AND ADVERSE ACTIONS

### **A. DISCIPLINARY AND ADVERSE ACTIONS**

#### **1. Selecting the Penalty**

a. General Guidelines. There are many disciplinary situations and a corresponding wide variety of penalties. In deciding what corrective action should be taken in a certain situation, responsible and careful judgment must be used to assure that the penalty is not out of proportion to the character of the offense, especially when confronting a first offense. Moreover, it is equally important to assure that penalties are imposed with consistency and equity. The Merit Systems Protection Board (MSPB) established guidelines or factors (referred to as the “Douglas Factors”) that agencies are to consider in selecting an appropriate penalty. These factors are listed in Enclosure 4. The use of Alternative Dispute Resolution (ADR) is also encouraged for resolution of any workplace dispute or concern. Managers and supervisors are encouraged to use ADR processes, such as mediation, whenever concerns regarding an employee’s conduct or performance occur and the employee agrees to participate in the process. Usually this occurs during the earliest stages of management intervention when the employee may only require redirection. When initiated by management the goal of ADR is for the parties involved to exchange information and develop appropriate collaborative methods to resolve or improve the work concerns. With this cooperative effort, communication can be enhanced between the parties and success can be achieved in improving the situation, which may reduce the need for disciplinary action.

b. Schedule Offenses and Penalties. Enclosures 5 provides guidance on the selection of appropriate disciplinary action for typical offenses. Normally, progressive

disciplinary action is applied in an effort to correct an employee's conduct. A single offense generally does not warrant the removal of an employee. When appropriate disciplinary action, other than removal, will correct an employee's conduct, such discipline becomes the proper course of action.

#### **2. Informal Disciplinary Actions.**

Informal disciplinary actions include oral or written admonishments and letters of caution/counseling. These are the first step in constructive discipline. They are initiated for an offense that does not in itself warrant an official reprimand, but which will, if repeated, warrant formal disciplinary action. These actions are not grievable under the agency’s administrative grievance procedures or appealable to the MSPB. Oral or written admonishments or letters of counseling/caution will not be counted as a prior offense under Enclosure 5. However, they may be considered in determining that the employee was clearly on notice that the behavior was inappropriate and in determining an appropriate remedy (within the range of the offense) should a subsequent offense later occur.

a. In the case of an oral admonishment, the supervisor will make an informal record of the date of the discussion and subjects covered. Admonishments for specific offenses may also be issued in memorandum form, but the memorandum will not be made part of the employee’s Official Personnel Folder (OPF).

b. A notice of counseling/caution or admonishment will state:

- (1) The reason(s) for issuance.
- (2) The action is neither grievable under the agency’s administrative grievance procedures nor appealable to MSPB.



(3) The letter will not be made a matter of record in the employee's OPF.

(4) The letter is being kept in his/her supervisor's file and may be cited in future disciplinary action.

c. A letter of leave restriction/requirement will state:

(1) The reason(s) for issuance.

(2) The specific requirement(s) the employee must meet.

(3) That failure to meet a requirement may lead to disciplinary action.

(4) The length of time a requirement is in effect.

(5) The action is neither grievable under the agency's administrative grievance procedures nor appealable to MSPB.

(6) The notice will not be made a matter of record in the employee's OPF.

### 3. Formal Disciplinary and Adverse Actions

a. General. A disciplinary or adverse action, including a performance-based adverse action, may be taken under this instruction only for such as will promote the efficiency of the service. A disciplinary or adverse action is normally initiated by the immediate supervisor or manager of an employee for misconduct or infractions of rules, procedures, policies, regulations, or law. Suspension or removal actions must be approved by a deciding official, or his/her designee. The deciding official must serve in a higher position than the official who proposed the action, unless the proposed action was initiated by the President, USUHS.

b. Disciplinary Actions. A letter of reprimand or suspension of 14 days or less. These actions may be grieved under the agency's administrative grievance procedures. The action is made a matter of record in the employee's Official Personnel Folder (OPF).

c. Adverse Actions. Removal, suspension

for more than 14 days, indefinite suspension, reduction in grade or pay, or furlough actions for 30 days or less. These actions may be appealed to the MSPB.

d. Performance-based action may be taken under Reference B or the provisions of unacceptable performance (Reference D). Before initiating a performance-based disciplinary action, the agency should consider the difference between the requirements of the two as they apply to the potential action.

## **B. NONDISCIPLINARY ADVERSE ACTIONS**

1. General. Adverse action may be taken against an employee covered by this Instruction only for "such cause as will promote the efficiency of the service." A just and substantial cause is necessary as a basis for an adverse action, and the action must be determined on the merits of each individual case. Certain kinds of adverse actions, however, are considered non-disciplinary in nature; for example, separation for inefficiency due to disability, reductions in grade or pay as a result of classification actions or reorganizations, and furloughs for 30 days or less.

2. Inefficiency. Regulations provide that an employee may be removed for inefficiency. However, removal action is to be undertaken only after exhausting all other available means of resolving the problem of inefficiency. Actions such as demotion, transfer, or reassignment will be considered before taking removal action under Enclosure 3, Section F of this Instruction.

3. Separation for Disability. Mental or physical disability may warrant removal under the provisions of this Instruction. However, certain procedural requirements must be satisfied before an employee can be separated for disability. When a Civil

Service Retirement System employee has 5 years or more of civilian service, or a Federal Employees Retirement System employee has 18 months or more of civilian service, and asserts or documents impairment or disability, the employee will be provided information concerning disability retirement. An employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. Any proposed removal of an employee for mental or physical disability must be brought to the immediate attention of a representative of the CHR, Workforce Relations Division.

**4.eReduction in Grade or Pay.eee**  
Reductions in grade or pay may constitute adverse actions and therefore are subject to the procedural provisions set forth in this Enclosure. This section does not apply to a reduction in grade or removal under Reference E or a reduction in force under Reference G.

**5.eFurlough.** A furlough is an adverseeee action under reference (c), if such furlough is for a period of 30 calendar days or less and is based on a decision of an appropriately designated management official. Military furloughs or similar furloughs required by law or regulation do not constitute actions based on decisions of a management official. Rather, they are actions required by established facts and are not adverse actions. Furloughs for more than 30 calendar days are reduction in force actions.

### **C. PROCEDURES FOR INITIATING DISCIPLINARY AND ADVERSE ACTIONS**

**1.eGeneral.** Federal law and regulationsee require that mandatory procedural steps beeee followed when taking a formal disciplinary or adverse actionagainstan employee.

Failure to follow these procedural requirements may lead to reversal of an action upon appeal without consideration of the merits of the case. The procedural requirements cited in this Instruction establish the minimum requirements necessary to initiate formal disciplinary or adverse actions.

**2.eOfficial Reprimands.** The appropriateeee management or supervisory official taking the action will notify the employee in writing of the reprimand. The notification will:

a.eState the reason(s) for issuance.eee  
b.eIndicate that a copy of theeee reprimand will be placed in the employee's Official Personnel Folder (OPF) for a period not to exceed one year.

c.eSpecify the right of the employeeeee to file a grievance under the agency's administrative grievance procedures.

d.eBe signed by the appropriateeee official.

e.eBe delivered to the employee.eee  
Written acknowledgment of receipt will be obtained on the copy of the reprimand, if possible.

f.eThis action is notan adverse actioneee and is notappealable to the MSPB.

**3.eSuspension of 14 days or less.** Thiseee action entitles the affected employee to:

a.eAn advance written notice thateee includes:

(1)eThe specific reason(s) for theeee proposed action.

(2)eThe name and title of theeee official designated to render a decision on the proposed action.

(3)eThe right to reply orally, ineee writing, or both, to the proposed action.  
Except in emergency situations, an employee will be given at least 10 calendar days to reply to the proposed action and to secure and furnish affidavits or other

documentary evidence, including medical documentation to support any medical condition alleged to have caused the reason for the proposed action. A reasonable amount of official time will be provided to the employee for purposes of preparing a reply. The amount of time allowed depends on the facts and circumstances of the particular case and will be sufficient to afford the employee an opportunity to review the material relied upon to support the reasons in the notice and to prepare an answer.

(4) The right to be represented by an attorney or other representative and the right to review, or have a representative review, the material relied on to support the reason(s) for action given in the notice of proposed suspension.

(5) Delivery of the notice to the employee. Written acknowledgment of receipt will be obtained on a copy of the proposed suspension, if possible.

b. Notice of Final Decision on Proposed Suspension. A written decision will be provided at the earliest practical date after the employee's reply or after the time allotted to reply has expired. The notice will:

(1) Consider only the reason(s) specified in the proposed action.

(2) Consider any answer the employee and/or the employee's representative made to the deciding official, any medical or other documentation furnished.

(3) Specify the reason(s) for the decision, considering the appropriate "Douglas Factors" in Enclosure 4.

(4) Specify the employee's right to file a grievance under the agency administrative grievance procedures.

(5) Be signed by the deciding official.

(6) Be delivered to the employee on or before the effective date of the

suspension. Written acknowledgment of receipt will be obtained on a copy of the decision notice, if possible.

c. This action is not an adverse action and is not appealable to the MSPB.

4. Removal, Suspensions for More than 14 Days, Furlough Without Pay for 30 Days or Less, and Reductions in Grade or Pay. These are considered adverse actions.

Adverse actions may be taken, including a performance-based adverse action, under adverse action procedures only for such cause as will promote the efficiency of the service. These actions are appealable to the MSPB.

a. Standard for Action. An employee against whom an adverse action is proposed is entitled to:

(1) At least 30 calendar days advance written notice signed by the proposing official, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed or for furlough without pay due to unforeseeable circumstances. When the employee's whereabouts is unknown, the agency must show that it took intelligent and diligent steps to serve the notice in order to avoid a finding of harmful procedural error. In such instances, activities should send the notice via both certified and regular mail to the last known address that the employee provided to the agency.

(2) The specific reason(s) for the proposed action and any aggravating or mitigating factors considered in proposing the action. Material may not be used that cannot be disclosed to the employee or his/her designated representative or physician. If the action is a furlough, the notice must state the reason(s) for the furlough, and the basis for selecting the employee if all individuals in the employee's competitive level are not being



furloughed.

(3) A reasonable amount of time, but not less than 10 calendar days, to reply orally, in writing, or both, to the proposed action and to a secure and furnish affidavits or other documentary evidence, including medical documentation to support any medical condition alleged to have contributed to the reason for the proposed action.

(4) The name and title of the deciding official designated to hear the employee's reply and to render a decision on the proposed action.

(5) The right to be represented by an attorney or other representative.

(6) The right to a reasonable amount of official time to review, or have a representative review the material relied upon to support the reason(s) given in the notice and to prepare an answer, if the employee is in an active duty status.

b. Notice of Final Decision on Adverse Action. A written decision will be provided at the earliest practical date after the employee's reply or after the time allotted to reply has expired. The notice will:

(1) Consider only the reason(s) specified in the proposed action.

(2) Consider any answer the employee and/or the employee's representative made to the deciding official and any medical or other documentation furnished.

(3) Specify the reason(s) for the decision, considering the appropriate "Douglas Factors" in Enclosure 4.

(4) Specify the employee's right to appeal the action to the MSPB. Provide the time limit and address for filing an appeal to MSPB and a copy of the MSPB Appeal form. Current MSPB regulations and appeal forms can be downloaded from the MSPB website at <http://www.mspb.gov>.

(5) Be signed by the deciding official.

official.

(6) Be delivered on or before the effective date of the action. Written acknowledgment of receipt will be obtained on a copy of the decision notice, if possible.

#### 5. Duty Status During the Notice Period.

It is recommended that information about the employee's duty status be included in any notice of proposed action. Under ordinary circumstances, employees will remain in a duty status in their regular positions during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, or result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

a. Assign the employee to other duties (i.e., reassignment, detail) where he or she is no longer a threat to safety, the agency mission, or to Government property.

b. Explore leave flexibilities including approving the employee's voluntary request to take sick or annual leave or leave without pay, or charging "absence without approved leave (AWOL)" if the employee has been absent from the worksite without requesting leave.

c. Curtailing the notice period when the "crime provision" can be invoked.

d. Placing the employee in a paid, non-duty status for such time as is necessary to effect the action.

e. If all other options have been explored and found not to be feasible, an employee may be excused from duty, without charge to leave or loss of pay, during the notice period of that employee's removal or indefinite suspension. Excused absence for this purpose should be used only in those rare circumstances where no other

alternative is viable. Care should be exercised to use the minimum amount of excused absence necessary in any individual situation.

6. Extensions of Reply Period. An employee given an advance written notice may request additional time to respond orally and/or in writing. The designated deciding official will make the decision to grant or deny the request for an extension in his or her sole discretion.

7. Shortened Notice Period. Under the "crime provision" the required notice period may be shortened when there is a reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed. Judicial action is not required. An agency may effect such an action (including an indefinite suspension) in less than 30 days following the issuance of the advance written notice. In such cases, the employee may be required to furnish an answer to the proposed action, and any affidavits or other documentary evidence in support of the answer, within such time as under the circumstance would be reasonable, but not less than seven (7) days. When the circumstances require immediate action, an agency may place the employee in a non-duty status with pay for such time as is necessary to effect the action.

8. Medical Examinations. After reviewing medical documentation supplied by the employee in reply to a proposed action, the agency may, if authorized, require a medical examination or, at its option, offer a medical examination following established provisions of law.

9. Disallowance of an Employee's Choice of Representative.

a. The designated deciding official may determine to disallow an employee's

representative choice, if such representation would result in a conflict, or apparent conflict, of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government.

b. If the employee disagrees with the deciding official's determination to disallow his/her choice of representative, the employee may make a written request for reconsideration concerning this decision to the appropriate Dean, Vice President, or Activity Head within five (5) days after the date the employee was notified of the deciding official's decision. If the deciding official who rendered the denial reports to the President, USUHS, the request will be submitted to the President, USUHS, or his/her designee.

c. The appropriate designated official, or his/her designee, will review the request for reconsideration and render the final decision on the matter within seven (7) days after the date the request was received.

## **D. PROBATIONARY AND TRIAL EMPLOYEES**

1. General. Normally, individuals who are given a career or career-conditional appointment in the Federal service serve a one year probationary period during their first year of service. When an employee serving a probationary or trial period fails to demonstrate appropriate conduct, fitness, or qualifications for continued employment, management officials will initiate action to separate the employee from the Federal service. Management will consult with CHR before issuing the separation notice.

### **2. Removal Action.**

a. When removal action is initiated based on deficiencies in performance or conduct after entrance on duty, the employee must be notified in writing of the reason why he/she is being terminated and the effective date of the action.

b. If removal action is based on reasons regarding the employee's conduct before his/her appointment, the employee is entitled to:

(a) Advance written notice.  
(b) The specific reasons for the proposed removal.

(c) A reasonable amount of time, but not less than 10 calendar days, to reply orally, in writing, or both, to the proposed action and to a secure and furnish affidavits or other documentary evidence.

(d) A consideration of any reply.

(e) A written notice of the final decision.

(f) Be informed of the right to appeal the action to the MSPB. Provide the time limit and address for filing an appeal to the MSPB and a copy of the MSPB Appeal form.

(g) Delivery of the decision notice on or before the effective date of the action. Written acknowledgment of receipt will be obtained on a copy of the decision notice, if possible.

#### **E. DISCIPLINARY AND ADVERSE ACTION RECORDS**

1. As applicable, the record shall contain copies of:

a. The advance written notice of proposed action.

b. The employee's written answer, if any.

c. A written summary of the employee's oral reply, if an oral reply was made.

d. The written notice of decision.

e. Any order affecting the action.

f. Any evidence and supporting material.

g. The Notification of Personnel Action, Standard Form (SF) 50-B, effecting the decision.

2. If an employee appeals to the MSPB, the record shall be furnished to the employee and to the MSPB as directed in the MSPB's Acknowledgement Order.

3. Records shall be retained and disposed of according to established regulations. Records that may be required for further administrative or judicial litigation may be retained until no longer necessary.

#### **F. UNACCEPTABLE PERFORMANCE**

1. The adverse actions covered in this section are reductions in grade and removals based only on unacceptable performance, reference (e).

##### **2. Employees Excluded from this Section**

a. An employee in the competitive service serving a probationary or trial period under an initial appointment.

b. An employee in the competitive service serving in an appointment that requires no probationary or trial period and has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less.

c. A preference eligible employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar position(s).

d. Reemployed annuitants.

e. An employee occupying an excepted service position not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

f. Nonappropriated fund employees.

g. An employee in the Senior Executive Service (SES).

h. An employee appointed by the President with advice and consent of the Senate.

i. An employee outside the United States.



States paid in accordance with local national prevailing wage rates for the area in which employed.

j. ~~e~~ An employee excluded from coverage under other applicable law.

### 3. ~~e~~ Actions Excluded from this Section ~~e~~

a. ~~e~~ An action initiated under authority of the Special Counsel.

b. ~~e~~ An action taken in the interests of national security.

c. ~~e~~ An action taken under a provision of a statute, other than one codified 5 USC, which excepts the action from the provisions of 5 USC.

d. ~~e~~ A reduction-in-force action.

e. ~~e~~ A voluntary action initiated by the employee.

f. ~~e~~ An adverse action for cause.

g. ~~e~~ The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment.

h. ~~e~~ The reduction in grade of a supervisor or manager who has not completed the probationary period if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager.

i. ~~e~~ An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay if the agency informed the employee that it was to be of limited duration.

j. ~~e~~ The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less.

k. ~~e~~ The reduction in grade or removal

of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

l. ~~e~~ An involuntary retirement because of disability.

m. ~~e~~ A termination in accordance with terms specified as conditions of employment at the time the appointment was made.

n. ~~e~~ An action against a reemployed annuitant.

o. ~~e~~ A removal from the SES to a civilian service position outside the SES.

p. ~~e~~ An action imposed by the Merit Systems Protection Board (MSPB).

### 4. ~~e~~ Timing of Action ~~e~~

a. ~~e~~ Initiation. ~~e~~ An employee may be reduced in grade or removed at any time during the performance appraisal cycle when the employee's performance in one or more critical elements of the job becomes unacceptable. However, as a prerequisite to proposing adverse action, the employee must first be advised of his/her unacceptable performance on the critical element(s) of the job and provided supervisory assistance in correcting the identified deficiencies. An advance notice of proposed action may not be given until the employee has been advised, in writing, normally through a Performance Improvement Plan (PIP), of the unacceptable performance, the work requirements he/she must satisfy, and afforded a reasonable time to demonstrate acceptable performance. This reasonable opportunity period to demonstrate acceptable performance may not be less than 30 calendar days. The objective of the opportunity or PIP period is to provide the employee an opportunity to bring their performance up to the acceptable performance level. It also gives the employee's supervisor the opportunity to clearly express his/her expectations and the consequences of not meeting performance

expectations. If the employee fails to meet the minimally acceptable work standards established for the position during or within 1 year after the opportunity to demonstrate acceptable performance or PIP period, action to reassign, demote, or remove the employee may then be initiated.

b. Limitation. No instance of unacceptable performance more than 1 year old at the time action is proposed may be a basis for initiating a reduction in grade or a removal action.

c. The decision to retain, reduce in grade, or remove must be made within 30 days after the expiration of the advance notice period.

d. The decision on a notice of proposed action must be delivered to the employee on or before the effective date of the action.

#### 5. Addressing Unacceptable Performance

a. At any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements, the employee will be formally notified in writing. The Performance Improvement Plan (PIP) or notice of unacceptable performance must include:

- (1) The critical element(s) determined to be unacceptable.
- (2) The performance requirement(s) and "acceptable" standard that must be attained to demonstrate acceptable performance.
- (3) A reasonable opportunity to demonstrate acceptable performance, but not less than 30 days.
- (4) Assistance in improving performance which may include, but is not limited to, formal training, on-the-job training, counseling, close supervision, or other appropriate measures.
- (5) Notice that if the employee's performance in the identified critical

element(s) does not improve to and is sustained at the acceptable level, the employee will be subject to denial of within grade increase, reassignment, reduction in grade, or removal action.

b. If the employee performs acceptably for 1 year from the beginning date of the PIP or opportunity period, and then the employee's performance subsequently becomes unacceptable, a new notice of unacceptable performance or PIP must be initiated before proposing reduction in grade or removal action.

#### 6. Proposed Action Based on Unacceptable Performance

When an employee's performance does not improve despite attempts to correct it and reduction in grade or removal action is proposed, the employee is entitled to:

a. 30 days advance written notice that includes:

- (1) Specific instances of unacceptable performance on which the proposed action is based.
- (2) The critical element(s) of the employee's position involved in each instance of unacceptable performance.
- (3) A reasonable time, but not less than 7 calendar days, to reply to the advance notice, orally, in writing, or both. A request for additional time to reply to the proposed action will be considered by the designated deciding official.
- (4) The name and title of the designated deciding official that will hear any reply and make the decision on the proposed action.
- (5) The right to be represented by an attorney or other representative.
- (6) The right to a written decision.

#### 7. Extending the Notice Period

The deciding official may extend the advance notice period for a period not to exceed 30 days. The notice period may be

extended for the following reasons:

a. To obtain employee and/or to evaluate medical information when the employee has raised a medical issue in the answer to the proposed action.

b. To arrange for the employee's travel to make an oral reply to the designated official, or the travel of the designated official to hear the employee's oral reply.

c. To consider the employee's answer if an extension of the period has been granted because of the employee's illness or incapacity.

d. To consider reasonable accommodation of a handicapping condition.

e. To consider positions to which the employee might be reassigned or reduced in grade.

f. To comply with a stay ordered by the MSPB.

#### 8. Choice of Representative

The designated deciding official may determine to disallow an employee's representative choice, if such representation would result in a conflict, or apparent conflict, of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government. If the employee disagrees with the deciding official's determination to disallow his/her choice of representative, the employee may submit a written request for reconsideration concerning the decision as described in Enclosure 3, section C. 9 of this Instruction.

#### 9. Consideration of Medical Condition

If the employee would like the agency to consider any medical condition that may have contributed to his or her unacceptable performance, the employee will be allowed to furnish medical documentation concerning the condition. Whenever possible, the employee shall provide this

documentation at the time he/she is notified of their unacceptable performance. If the employee offers such documentation after the agency has proposed adverse action, he or she shall furnish this information within the time limits allowed for the reply, whenever possible. After reviewing the medical documentation submitted by the employee, the agency may require or offer a medical examination in accordance with regulations. The agency shall be aware of the affirmative obligations which require reasonable accommodation of a qualified disabled employee. If the employee has the required years of service under the Civil Service Retirement System or Federal Employees Retirement System, the employee will be provided information concerning disability retirement. An employee's application for disability retirement will not preclude or delay any other appropriate decision or personnel action.

#### 10. Decision on Proposed Action

Within 30 days after expiration of the notice period, the employee is entitled to a written decision that:

a. Specifies the instances of unacceptable performance by the employee on which the proposed action is based.

b. Considers any reply furnished by the employee, or the employee's representative, in response to the proposed action, including medical documentation.

c. Specifies the effective date of the action.

d. Specifies the employee's right to appeal the action to the MSPB. Provide the time limit and address for filing an appeal to MSPB and a copy of the MSPB Appeal form. Current MSPB regulations and appeal form can be downloaded from the MSPB website at <http://www.mspb.gov>.

e. Is signed by the designated deciding official.



f. Is delivered to the employee on or before the effective date of the action. Written acknowledgment of receipt will be obtained on a copy of the decision notice, if possible.

**11. Relationships to Adverse Actions**

An action taken against an employee that is considered a combination of misconduct and unacceptable performance is processed in accordance with reference (c), after having been reviewed in accordance with reference (e) and reference (c).

**12. Records**

a. All relevant documentation concerning reduction in grade or removal based on unacceptable performance will be retained and at a minimum will include:

- (1) A copy of the notice of proposed action.
- (2) A copy of the employee's oral

or written reply.

(3) A copy of the notice of decision.

(4) Copies of any supporting material including documentation regarding the opportunity period afforded the employee to demonstrate acceptable performance.

b. An employee who is demoted or reassigned due to unacceptable performance will retain the unacceptable rating of record.

c. If, because of performance improvement during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice, any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any agency record relating to the employee.

**FACTORS TO BE CONSIDERED IN SELECTING THE APPROPRIATE  
ADVERSE ACTION “DOUGLAS FACTORS”**

The Merit Systems Protection Board set forth guidelines or factors that agencies are to consider in selecting an appropriate penalty. The factors include:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee's past disciplinary record.
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
7. Consistency of the penalty with any applicable agency table of penalties.
8. The notoriety of the offense or its impact upon the reputation of the agency.
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
10. Potential for the employee's rehabilitation.
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

**TABLE OF OFFENSES AND RECOMMENDED PENALTIES**

A. This table is a guide to assist officials in selecting appropriate penalties. It does not replace sound supervisory judgment, and it does not dictate penalties. Supervisors are not restricted to using only offenses listed in the table. The table does not describe every type of misconduct or cause for disciplinary action. Discipline is not punitive in nature; it is expected to be progressive for subsequent offenses, and normally falls within the range shown in this Enclosure. Mitigating or aggravating factors can justify a remedy outside the range. For example, remedies greater than those shown can be appropriate when the facts of an aggravated offense, frequent infractions, or simultaneous multiple offenses are established.

B. The "Offense" column does not include every potential cause. In using this column, the supervisor compares the current cause of action to all of those described and uses those that relate to the situation to assist him/her in applying the general policy. By relating the nature and seriousness of the current offense to the fundamental character of those listed, the supervisor fits this offense into the general framework. If there is a directly applicable cause of action shown, it is the one used to guide further consideration. Some of the offenses listed in this table combine several offenses in one statement connected by the word "or." Use only the portion of the statement of offense that accurately describes the employee's conduct; leave out all parts that do not apply. In choosing an offense, it may be better to describe the offense, rather than select a charge from the schedule that does not accurately describe the offense, and then to refer to similar offenses in the schedule when selecting the penalty.

C. The "Penalty" column generally provides the range of penalties within which the penalty to be assessed usually falls, and the maximum penalty that can be assessed for an offense of comparable nature. Selection of a reasonable penalty from the range should be made with sound judgment, including consideration of any appropriate "Douglas Factors" listed in Enclosure 4. Excessive, arbitrary or capricious penalties selected without consideration of mitigating factors may be reversed by third parties, if challenged. The supervisor has available to him/her a choice of severity of action ranging from no penalty at all to the maximum stated in the range. Thus, if the table shows reprimand as the maximum, the supervisor may determine that no penalty is needed, or may use either an oral admonishment, informal notice, or a reprimand. If suspension is the listed maximum, an admonishment, an informal notice, a reprimand or a suspension of any number of calendar days up to and including that shown in the table could be assessed. A maximum penalty of removal permits a choice of an admonishment, an informal notice, a reprimand, a suspension of any duration, or a removal.

D. The table does not cover every possible offense. When specifying an offense not listed in the schedule, be careful when using terms such as "theft" or "fraud," which require establishing the element of intent. These terms should only be used when the element of intent can be proven. Management officials should contact the CHR for assistance in framing appropriate charges.

E. Due to the nature of their positions, offenses committed by supervisors or managers may warrant more severe penalty than the same offense committed by a non-supervisory employee.



F. Past offenses. The second or third offense columns on the table may be used only when the employee has received a formal disciplinary action for a previous offense. The previous offense need not be identical or similar to the current offense. Informal disciplinary actions such as admonishments, counseling, or warnings are not counted as a past offense. However, supervisors may use prior informal discipline to document that an employee has been previously counseled or advised of past misconduct or rules or regulations.

**SELECTING THE PENALTY**

Use this table with tables that follow. It shows the interrelationships of the key factors in the disciplinary system but neither establishes additional procedural requirements nor automatically sets penalties.

Information on how a basic penalty was derived and on how favorable elements were considered need not be included in notices but must be available for subsequent use.		Information must be included in the notices of any consideration used to increase the severity of the basic penalty.	
1. Basic penalty is the one that would be used if there were no other considerations. It is based on:	2. Favorable elements are those considerations that lean toward the imposition of less severe penalties. Included are:	3. Unfavorable elements are considerations that tend to show a need for more severe action than is usually taken. Included are:	4. Penalty assessed results from weighing of favorable and unfavorable factors in relation to the offense.
<p>a. Offense</p> <p>(1) Character</p> <p>(2) Seriousness</p> <p>(3) Consequences</p> <p>b. Rehabilitative potential of penalty.</p> <p>c. Character of employee's position.</p>	<p>a. Situation</p> <p>(1) Possibility of genuine misunderstanding.</p> <p>(2) Enticements or provocations.</p> <p>(3) Culpabilities of others</p> <p>(4) Mitigating circumstances.</p> <p>b. Employee</p> <p>(1) Length of service.</p> <p>(2) Quality of work history.</p> <p>(3) Personal qualification.</p> <p>(4) Past contributions.</p> <p>(5) Record of cooperation.</p> <p>(6) Record of achievements.</p>	<p>a. Penalties for past offenses within:</p> <p>(1) Suspension - 3 years.</p> <p>(2) Reprimand - 2 years.</p> <p>b. Combination of offenses.</p> <p>c. Series of offenses.</p> <p>d. Character of other offenses.</p> <p>e. Recency of other offenses.</p> <p>f. Employee willfulness.</p>	<p>a. Proposed penalty is determined on the basis of all information available at time of institution of action and is specifically stated in notice of proposed action.</p> <p>b. Penalty decided upon is determined based on all available information including employee's reply to notice of proposed action. Give consideration to pleas for compassion. State penalty decided upon and effective date in notice of decision.</p>

**Enclosure 5  
Attachment**

Table of Offenses and Recommended Penalties for Employees  
of the Uniformed Services University of the Health Sciences

NOTE: This table is intended as a guide. It is not to be applied routinely and should be used in conjunction with the regulations cited as references.

OFFENSE	EXPLANATION	<u>PENALTY</u> (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Unauthorized absence of 8 hours or less, or repeated or unexcused tardiness.		Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
Unauthorized absence of more than 8 hours.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to request leave according to established procedures.		Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Failure to honor a valid denial of a leave request.		Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Falsifying (or assisting in falsifying) attendance records of oneself or another employee.		Reprimand to removal	10-day suspension to removal	14-day suspension to removal
Leaving the job or assigned work site during work hours without proper authorization.		Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
Disobedience to constituted authorities; refusal to carry out any proper order, work assignment, or instruction of a supervisor having responsibility for the work of the employee; insubordination.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal



**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Failure or delay in carrying out work assignments or instructions of a supervisor in a timely manner or by established deadlines.	Penalty for the fourth offense within a one-year period may be 14-day suspension to removal.	Reprimand to 3-day suspension	Reprimand to 5-day suspension	Reprimand to removal
Discourteous conduct (e.g., impolite acts or remarks).		Reprimand to 2-day suspension	Reprimand to 5-day suspension	5 to 10-day suspension
Rude or disrespectful conduct or remarks; use of abusive or offensive language or gestures; quarreling or inciting to quarrel; interfering with production of others; or engaging in boisterous horseplay that adversely affects production, discipline, or morale.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Threatening others; fighting, hitting, pushing or inflicting or attempting to inflict bodily harm on another; or physical resistance to competent authority.	In determining severity (to include removal for the first offense), consider the type of threat, provocation, extent of injuries, whether the action was defensive or aggressive in nature, or whether actions were directed at or committed by, a supervisor.	Reprimand to removal	10-day suspension to removal	14-day suspension to removal
Gambling or betting, or the promotion of gambling activities, during work hours or on Government property.		Reprimand to removal	3-day suspension to removal	10-day suspension to removal

**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Criminal, dishonest, infamous or notoriously disgraceful conduct.	Overt action constituting breaches of legal or social codes of a community which reflect unfavorably on the agency.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Loafing, wasting time, sleeping on duty, or inattention to duty.	Danger to safety of persons or damage to property is consideration in determining severity of the penalty.	Reprimand to 5-day suspension	Reprimand to 10-day suspension	10-day suspension to removal
Careless workmanship resulting in delay in production or spoilage or waste of materials.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Endangering the safety of, or causing injury to self, others, or research animals, or damage to Government property due to carelessness or failure to follow instructions or regulations.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Unauthorized possession of, misuse of, loss of, damage to, or willful destruction of Government property, records, or information.	In determining severity, consider extent of loss or damage and whether willfulness or intent is involved.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Misuse of a Government vehicle.	Regulations provide a minimum of 1 month suspension for an employee who willfully uses or authorizes the use of any Government-owned or leased motor vehicle or aircraft for other than official purposes.	Reprimand to removal	30-day suspension to removal	Removal

**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Reckless driving, improper operation of a Government vehicle, or violation of traffic regulations.	Causing <u>no</u> personal injury or damage to Government property.	Reprimand to 5-day suspension	Reprimand to 10-day suspension	14-day suspension to removal
Reckless driving, improper operation of a Government vehicle, or violation of traffic regulations	Causing personal injury to anyone or damage to Government property.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Misuse of Government computers or communication equipment, systems, networks, or services for other than official purposes (e.g., unauthorized use of electronic mail, Internet systems, telephones, or facsimile equipment).	In determining severity (to include removal for the first offense), consider if security or integrity of the system was compromised, or whether used to install, access, download, view, distribute, or listen to hate, lewd, or sexually explicit material, websites, or chat room activity.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Misuse of official Government credentials.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Actual or attempted taking or carrying away of Government funds or property (including salvage) or the property of others.	Penalty will be determined primarily by value of property, mitigating circumstances, and employee's explanation.	Reprimand to removal	10-day suspension to removal	14-day suspension to removal
Violation of security regulations or procedures.	Consider the extent to which security is compromised.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal



**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Violation of safety regulations, procedures, or practices.	Consider the extent of danger to safety of persons or property when determining severity of penalty.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to follow or to observe posted smoking prohibitions or regulations.		Reprimand to removal	Reprimand to removal	10-day suspension to removal
Failure to use or wear proper safety or protective clothing or equipment.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Refusal to testify or to cooperate in an inquiry, investigation, or other official proceeding.		Reprimand to removal	10-day suspension to removal	14-day suspension to removal
Obstructing or attempting to obstruct an investigation, or influencing or attempting to influence investigating officials, witnesses, or participants in an official investigation or proceeding.		Reprimand to removal	10-day suspension to removal	30-day suspension to removal
False statements or misrepresentation or concealment of material fact on any official document or during any official meeting or investigative proceeding.	When there is substantial evidence of misunderstanding and the falsification, concealment, or misrepresentation is not deliberate.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal

**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Deliberate misrepresentation; falsification, exaggeration, or concealment of a material fact in connection with any official document or action or withholding of material facts in connection with matters under official investigation.		Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Failure to honor valid debts or legal obligations.	In determining whether an offense has occurred, consider whether extenuating circumstances developed after the employee incurred the obligation and the employee's previous record.	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
Making false, unsubstantiated, or malicious statements against Government officials, supervisors, co-workers, or other individuals.	Making false, malicious, or unfounded statements or unauthorized disclosures against individual(s) with the intent to harm or damage the reputation, authority, or official standing of those concerned.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Discrimination against an individual(s) based on color, religion, sex, age, national origin, handicap, political affiliation, marital status, or sexual orientation, or any other status protected by law or regulation.	Consider circumstances and the effect on the person discriminated against. Includes failure to prevent or curtail discrimination of a subordinate when the supervisor knew of the discrimination.	Reprimand to removal	14-day suspension to removal	Removal

**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Sexual harassment.	Deliberate unsolicited verbal comments, gestures, or physical contact, which is unwelcome. In addition, implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary, or job of an employee is also sexual harassment.	Reprimand to removal	14-day suspension to removal	Removal
Making discriminatory, racial, or sexual jokes or gestures.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Interfering with, or reprisal or retaliation action against an employee for exercising a right to grieve, appeal, or file a complaint through established procedures; or for providing information to Government officials during an official investigation or proceeding.	In determining severity, determine if interference or reprisal against the individual was intentional or unintentional.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Committing a prohibited personnel practice.	In determining severity, consider whether willfulness or intent is involved.	Reprimand to removal	10-day suspension to removal	14-day suspension to removal
Improper or unauthorized disclosure or use of protected information or material covered by the Privacy Act or other Federal regulations related to personal privacy and disclosure.	In determining severity, consider whether willfulness or intent is involved.	Reprimand to removal	10-day suspension to removal	14-day suspension to removal



**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Gifts to supervisors or superior officials.	Soliciting contribution from other Government officials or employees for gifts or presents to those in superior official positions. Accepting gifts or presents offered or presented as contributions from persons in Government employment receiving lower salary.	Reprimand to 5-day suspension	Reprimand to removal	5-day suspension to removal
Misuse or unauthorized use of a Government Travel Charge Card (e.g., use for unauthorized personal or work related expenses).		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Misuse or unauthorized use or failure to appropriately control the use of a Government Purchase Card (e.g., IMPAC) as a cardholder or as an approving official responsible for the use and/or oversight of the card.		Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to pay Government Charge Card bill or debt in a timely manner or as specified by the agency.		Reprimand to removal	1-day suspension to removal	10-day suspension to removal
Unauthorized possession, sale, or transfer of alcohol while on duty or on Government property.		Reprimand to removal	5-day suspension to removal	14-day suspension to removal

**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Unauthorized possession or use of alcohol on duty, or reporting to work, or being under the influence of alcohol or intoxicants while on duty to a degree which would interfere with proper performance of duty, or would be a hazard to self or others.		Reprimand to removal	5-day suspension to removal	14-day suspension to removal
Unlawful or unauthorized possession, use, or being under the influence of drugs or controlled substances on or off duty.		5-day suspension to removal	Removal	
Unlawful or unauthorized distribution, sale, or transfer of drugs or controlled substances on or off duty.		14-day suspension to removal	Removal	
Unlawful or unauthorized possession of drug paraphernalia on or off duty.		Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Failure to appear for drug testing when directed, without a deferral.		Reprimand to removal	Removal	
Refusal to provide a urine sample when required.		5-day suspension to removal	Removal	
Substituting, adulterating or tampering with a urine sample, testing equipment or related supplies.		5-day suspension to removal	Removal	
Testing positive for illegal drugs.		5-suspension to removal	Removal	

**Enclosure 5  
Attachment**

OFFENSE	EXPLANATION	PENALTY (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral or written admonishment.)		
		OFFENSE		
		First	Second	Third
Refusal to obtain or to successfully complete counseling and rehabilitation after having been found to use illegal drugs.		Removal		
Attempted or actual falsification, misstatement or concealment of a material fact, records, correspondence, or other communication prepared in connection with the collection, handling, transportation, or testing of urine samples.		Reprimand to removal	14-day suspension to removal	Removal
Violation of other administrative rules or regulations not specifically mentioned herein.	Consider the employee's obligation to be aware of pertinent rules of regulations; the significance or frequency of violations; and the degree of adverse effect on production, morale, maintenance of discipline, external relationships or reputation of the agency.	Reprimand to removal	Reprimand to removal	Reprimand to removal



**SAMPLE NOTICE OF REPRIMAND**

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Reprimand

This is to officially reprimand you in writing for absence without approved leave (AWOL). You were counseled by (name) concerning your attendance record on September 1, \_\_\_\_\_. You subsequently were counseled by me on (date). Since (date), you have been AWOL on two occasions for a total of 16 hours. You did not obtain approval for these absences. Specifically, you were AWOL for 8 hours on (date) and (date) for failing to report for work as scheduled.

A copy of this memorandum will be filed in your Official Personnel Folder (OPF) for a period not to exceed one (1) year from the date you receive this memorandum.

You have the right to request a review of this action under the agency administrative grievance procedure (USUHS Instruction Number 1008, Subject: Employee Grievances). If you choose to grieve this action, you must submit your grievance in writing to the Director, Civilian Human Resources Directorate (CHR), Attention: Employee Relations Division, Room A1022, 4301 Jones Bridge Road, Bethesda, Maryland, 20814-4799, within 15 calendar days following the receipt of this memorandum. Your grievance must include your name, title, grade, and department. You must state the exact nature of your grievance and the corrective or remedial action that you are seeking.

You have the right to select a representative of your choice to assist you in the preparation and presentation of your grievance. However, the representative may not be a staff member of the CHR, the USUHS General Counsel Office, the Equal Employment Opportunity (EEO) Office, an EEO counselor, or anyone whose service as a representative would result in a conflict, or apparent conflict, of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government. Your choice of representative, or subsequent changes, must be designated in writing, signed, and dated by you. Such written, signed designation must be submitted with your grievance and must include your representative's name, address, and telephone number. Your representative, if an employee of USUHS or AFRRI, is entitled to official time to assist you in the presentation of your grievance, if he or she is in a duty status. Your representative must make arrangements for use of official time for this purpose with his/her supervisor.

Should you desire additional information regarding the administrative grievance process, contact the CHR, Employee Relations Division. A CHR staff member will provide you guidance relative to the grievance procedures. If you and/or your representative wish to review this material, contact the CHR to arrange an appointment. You are entitled to a reasonable amount of

**Enclosure 6**  
**Attachment 1**

time to obtain such official information, provided that you are in a duty status and request the time for this purpose in advance from your supervisor.

You are requested to sign and date the receipt acknowledgment copy of this memorandum. By signing, you will not forfeit any of the rights mentioned herein. Failure to sign will not void the content of this memorandum. Your signature does not mean that you agree or disagree with the content of this memorandum.

Signature and Title

Acknowledgment of Receipt: \_\_\_\_\_ Date: \_\_\_\_\_

**SAMPLE NOTICE OF PROPOSED SUSPENSION**  
**(14 DAYS OR LESS)**

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Proposed Suspension

This is to notify you that it is proposed to suspend you from duty and pay for 10 calendar days for absence without approved leave (AWOL). The specific details for proposing this action are as follows:

On (date), you did not report for duty as scheduled. Leave was neither requested nor approved for these two days. Therefore, you were carried in an AWOL status.

In proposing this suspension, I have considered the fact that you were issued a letter of reprimand on (date) for your first offense of AWOL.

You have the right to reply to this proposal. You may reply in person, in writing, or both, stating why this proposed action should not be taken. You may submit an affidavit or other documentary evidence in support of your reply. Mr./Ms. \_\_\_\_\_, Director, Finance Department, will serve as the deciding official regarding this action. Any reply should be made to Mr./Ms. \_\_\_\_\_, within 10 calendar days after your receipt of this memorandum. You may contact Mr./Ms. \_\_\_\_\_ at (301) \_\_\_\_\_. If additional time is required for the preparation of your reply, you must request an extension in writing, explaining why you need additional time from Mr./Ms. \_\_\_\_\_. Your request for extension must be submitted in writing within the 10-calendar day time limit (10 calendar days after your receipt of this memorandum), as stated above. Your reply will be given full and fair consideration. You will be given a written notice of final decision whether you reply or not. You will remain in a duty status during the notice period. Any absence(s) during this period will be charged appropriately.

You have the right to select a representative of your choice to assist you in the preparation and presentation of your reply. You may not choose staff members of the Civilian Human Resources Directorate (CHR), the Equal Employment Opportunity (EEO) Office, EEO counselor, USUHS General Counsel Office (OGC), or an investigator, or anyone whose service as a representative would result in a conflict, or apparent conflict, of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the government. Your choice of representative or subsequent changes must be designated in writing, signed, and dated by you and submitted to Mr./Ms. \_\_\_\_\_. Include your representative's name, address, and telephone number.

The material relied upon to support the reasons for this proposed action will be available for you and/or your representative upon request. You may request a reasonable amount of official time to prepare and present your reply, if you are in a duty status. Arrangements for the use of official time for this purpose must be coordinated with me. Your representative, if an



**Enclosure 6**  
**Attachment 2**

employee of USUHS or AFRRI, may also request a reasonable amount of official time for such purpose from his/her supervisor. If you and/or your representative wish to review the materials relied upon in proposing this action, contact me at (301) \_\_\_\_\_.

You are requested to sign and date the receipt acknowledgment copy of this memorandum. By signing, you will not forfeit any of the rights mentioned herein. Failure to sign will not void the content of this memorandum. Your signature does not mean that you agree or disagree with the content of this memorandum.

Signature and Title

Acknowledgment of Receipt: \_\_\_\_\_ Date: \_\_\_\_\_

**SAMPLE NOTICE OF DECISION TO SUSPEND (14 DAYS OR LESS)**

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Decision on Proposed Suspension

This is to advise you of the decision to suspend you without pay from your position as a Materials Handler, WG-6907-4, for 10 calendar days, effective (date), for absence without approved leave (AWOL).

By memorandum dated (date), you received a proposal to suspend you for the above-cited charge. On (date), you replied in writing to the proposal notice. I have given full and careful consideration to the reasons for the proposed suspension, as described in the proposal notice, to the documentation supporting those reasons, and to your written reply. I also have considered (list any other mitigating and/or aggregating factors).

However, based upon the information compiled and the seriousness of your misconduct, I have decided that the charge, specified in the proposal notice, is supported by a preponderance of the evidence and warrant your suspension to promote the efficiency of the Federal service.

You will be suspended without pay for 10 calendar days, effective (date), for the period (dates). You are directed to return to work on (day), (date). A Standard Form 50-B, Notification of Personnel Action, effecting this action will be forwarded to you.

You have the right to request a review of this action under the agency administrative grievance procedure (USUHS Instruction Number 1008, Subject: Employee Grievance). If you choose to grieve this action, you must submit your grievance in writing to the Director, Civilian Human Resources Directorate (CHR), Attention: Employee Relations Division, Room A1022, 4301 Jones Bridge Road, Bethesda, Maryland, 20814-4799, within 15 calendar days after the effective date of this action. Your grievance must include your name, title, grade, and department. You must state the exact nature of your grievance and the corrective or remedial action you are seeking.

You have the right to select a representative of your choice to assist you in the preparation and presentation of your grievance. However, the representative may not be a staff member of the CHR; the USUHS General Counsel Office; the Equal Employment Opportunity (EEO) Office; an EEO counselor; or anyone whose service as a representative would result in a conflict, or apparent conflict, of interest or position; conflict with the priority needs of the agency; or cause unreasonable costs to the Government. Your choice of representative, or subsequent changes, must be designated in writing, signed, and dated by you. Such written, signed designation must be submitted with your grievance and must include your representative's name, address, and telephone number. Your representative, if an employee of USUHS or

**Enclosure 6**  
**Attachment 3**

AFRRI, is entitled to official time to assist you in the presentation of your grievance, if he or she is in a duty status. Your representative must make arrangements for use of official time for this purpose with his/her supervisor.

Should you desire additional information regarding the administrative grievance process, contact the CHR, Employee Relations Division. A CHR staff member will provide you guidance relative to the grievance procedures. If you and/or your representative wish to review this material, contact the CHR to arrange an appointment. You are entitled to a reasonable amount of time to obtain such official information, provided that you are in a duty status and request the time for this purpose in advance from your supervisor.

You are requested to sign and date the receipt acknowledgment copy of this memorandum. By signing, you will not forfeit any of the rights mentioned herein. Failure to sign will not void the content of this memorandum. Your signature does not mean that you agree or disagree with the content of this memorandum.

Signature and Title

Acknowledgment of Receipt: \_\_\_\_\_ Date: \_\_\_\_\_



**SAMPLE NOTICE OF PROPOSED REMOVAL OR SUSPENSION OVER 14 DAYS**

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Proposed Removal

This is to notify you that it is proposed to remove you from your position of Budget Analyst, GS-560-11, and the Federal service for absence without approved leave (AWOL). A decision will be effected not earlier than 30 calendar days from the date you receive this notice. The specific details for proposing this action are as follows:

On (date), you did not report for duty as scheduled. Leave was neither requested nor approved for these three days. Therefore, you were carried in an AWOL status for 24 hours.

In proposing this action, I have taken into consideration the letter of reprimand dated (date), received by you on (date), concerning two instances of AWOL, and your suspension, effective (date), for 10 calendar days for AWOL.

You have the right to reply to this proposal. You may reply in person, in writing, or both, stating why this proposed action should not be taken. You may submit an affidavit or other documentary evidence in support of your reply. Mr./Ms. \_\_\_\_\_, Director, Finance Department, will serve as the deciding official regarding this action. Any reply should be made to Mr./Ms. \_\_\_\_\_, within 10 calendar days after your receipt of this memorandum. You may contact Mr./Ms. \_\_\_\_\_ at (301) \_\_\_\_\_. If additional time is required for the preparation of your reply, you must request an extension in writing, explaining why you need additional time from Mr./Ms. \_\_\_\_\_. Your request for an extension must be submitted in writing within the 10 calendar day time limit (10 calendar days after your receipt of this memorandum), as stated above. Your reply will be given full and fair consideration. You will be given a written notice of final decision whether you reply or not. You will remain in a duty status during the notice period. Any absence(s) during this period will be charged appropriately.

You have the right to select a representative of your choice to assist you in the preparation and presentation of your reply. You may not choose staff members of the Civilian Human Resources Directorate (CHR), the Equal Employment Opportunity (EEO) Office, EEO counselor, USUHS General Counsel Office, or an investigator, or anyone whose service as a representative would result in a conflict, or apparent conflict, of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the government. Your choice of representative or subsequent changes must be designated in writing, signed, and dated by you and submitted to Mr./Ms. \_\_\_\_\_. Include your representative's name, address, and telephone number.

The material relied upon to support the reasons for this proposed action will be available for you and/or your representative upon request. You may request a reasonable amount of official time to prepare and present your reply, if you are in a duty status. Arrangements for the use of official time for this purpose must be coordinated with me. Your representative, if an employee of USUHS or AFRRI, may also request a reasonable amount of official time for such purpose from his/her supervisor. If you and/or your representative wish to review the materials relied upon in proposing this action, contact me at (301) \_\_\_\_\_.

You are requested to sign and date the receipt acknowledgment copy of this memorandum. By signing, you will not forfeit any of the rights mentioned herein. Failure to sign will not void the content of this memorandum. Your signature does not mean that you agree or disagree with the content of this memorandum.

Signature and Title

Acknowledgment of Receipt: \_\_\_\_\_ Date: \_\_\_\_\_

**SAMPLE NOTICE OF REMOVAL**

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Decision on Proposed Removal

This is to notify you of the decision to remove you from your position of Program Analyst, GS-343-11, and from the Federal service, effective close of business (date), for absence without leave (AWOL).

By memorandum dated (date), you were notified of the proposal to remove you from the Federal service for the above specified charge. On (date), you replied in writing to the proposed removal action. I have given full and careful consideration to the reasons for the proposed removal, as specified in the proposal notice, to the documentation supporting those reasons, and to your written reply. I also have considered (list any other mitigating and/or aggregating factors).

However, based upon the information compiled and the seriousness of your misconduct, I have decided that the charge, specified in the proposal notice, is supported by a preponderance of evidence and warrant your removal to promote the efficiency of the Federal service. A Standard Form 50, Notification of Personnel Action, effecting this action will be forwarded to you.

You may appeal this action to the Merit Systems Protection Board (MSPB). Your petition of appeal may be filed in writing anytime after the effective date of this action, but not later than 30 calendar days from the effective date. The appeal must be filed in writing with the Chief, Washington D.C. Regional Office of the U.S. Merit Systems Protection Board, 1800 Diagonal Road, Suite 205, Alexandria, Virginia 22314. A copy of the Merit Systems Protection Board's Appeal Form (with instructions) is attached.

You are requested to sign and date the receipt acknowledgment copy of this memorandum. By signing, you will not forfeit any of the rights mentioned herein. Failure to sign will not void the content of this memorandum. Your signature does not mean that you agree or disagree with the content of this memorandum.

Signature and Title

Attachment:

1. MSPB Appeal Form

Acknowledgment of Receipt: \_\_\_\_\_ Date: \_\_\_\_\_



## U.S. MERIT SYSTEMS PROTECTION BOARD



## APPEAL FORM

## INSTRUCTIONS

**GENERAL:** You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. 5 C.F.R. Parts 1201 and 1209. Your agency's personnel office will give you access to the regulations, and the Board will expect you to be familiar with them. You also should become familiar with the Board's key case law and controlling court decisions as they may affect your case. **You must tell the Board if you are raising an affirmative defense** (see Part IV), and **you are responsible for proving each defense you raise.**

**WHERE TO FILE AN APPEAL:** You must file your appeal with the Board's regional or field office which has responsibility for the geographic area in which you are employed. See 5 C.F.R. Part 1201, Appendix II.

**WHEN TO FILE AN APPEAL:** Your appeal must be filed during the period beginning with the day after the effective date of the action you are appealing and ending on the 30th day after the effective date. You may not file your appeal before the effective date of the action you are appealing. If you are appealing from a decision which does not set an effective date, you must file within 35 days of the date of the decision you are appealing. If your appeal date your is late, it may be dismissed as untimely. The date of the filing is the

appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, or the date of receipt if you personally deliver it to the regional or field office.

**HOW TO FILE AN APPEAL:** You may file your appeal by mail, by facsimile, by commercial overnight delivery, or by personal delivery. You must submit two copies of both your appeal **and** all attachments. You may supplement your response to any question on separate sheets of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on 8 1/2" x 11" paper. **Your appeal must contain your or your representative's signature in block 6. If it does not, your appeal will be rejected and returned to you. If your representative signs block 6, you must sign block 11 or submit a separate written designation of representative.**

**WHISTLEBLOWING APPEAL/STAY REQUEST:** If you believe the action you are appealing was threatened, proposed, taken, or not taken because of whistleblowing activities, **you must complete Part VII of this form. If you are requesting a stay, you must complete Part VIII of this form.**

**Privacy Act Statement:** This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The U.S. Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number, but providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection

Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to vary from 20 minutes to 1 hour, with an average of 30 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Office of Planning and Resource Management Services, Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419.

## Part I Appellant Identification

1. Name (last, first, middle initial)	2. Social Security Number
3. Present address (number and street, city, state, and ZIP code) <b>You must notify the Board of any change of address or telephone number while the appeal is pending with the MSPB.</b>	4. Home phone (include area code)
	5. Office phone (include area code)
6. I certify that all of the statements made in this appeal are true, complete, and correct to the best of my knowledge and belief.	Signature of appellant or designated representative      Date signed



### Part II Designation of Representative

7. You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney. You may change your designation of a representative at a later date, if you so desire, but **you must notify the Board promptly of any change**. Where circumstances require, a separate designation of representative may be submitted after the original filing. Include the information requested in blocks 7 through 11.

"I hereby designate \_\_\_\_\_ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. I understand that any limitation on this settlement authority must be filed in writing with the Board."

8. Representative's address (number and street, city, state, and ZIP code).	9. Representative's employer
	10.a) Representative's telephone number (include area code)
	10.b) Representative's facsimile number
	11. Appellant's signature <span style="float: right;">Date</span>

### Part III Appealed Action

12. Briefly describe the **agency action** you wish to appeal and attach the proposal letter and decision letter. If you are appealing a decision relating to the denial of retirement benefits, attach a copy of OPM's **reconsideration decision**. If the relevant SF-50 or its equivalent is available, send it now; however, do NOT delay filing your appeal because of it. You may submit the SF-50 when it becomes available. Later in the proceeding, you will be afforded an opportunity to submit detailed evidence in support of your appeal.

13. Name and address of the agency that took the action you are appealing (including bureau or other divisions, as well as street address, city, state and ZIP code)		14. Your position title and duty station at the time of the action appealed
15. Grade at time of the action appealed	16. Salary at the time of the action appealed \$ _____ per _____	17. Are you a veteran and/or entitled to the employment rights of a veteran? <input type="checkbox"/> Yes <input type="checkbox"/> No
18. Employment status at the time of the action appealed <input type="checkbox"/> Temporary <input type="checkbox"/> Applicant <input type="checkbox"/> Retired <input type="checkbox"/> Permanent <input type="checkbox"/> Term <input type="checkbox"/> Seasonal	19. If retired, date of retirement (month, day, year)	20. Type of service <input type="checkbox"/> Competitive <input type="checkbox"/> SES <input type="checkbox"/> Excepted <input type="checkbox"/> Postal Service <input type="checkbox"/> Foreign Service
21. Length of government service	22. Length of service with acting agency	23. Were you serving a probationary or trial period at the time of the action appealed? <input type="checkbox"/> Yes <input type="checkbox"/> No
24. Date you received written notice of the proposed action (month, day, year) (attach a copy)	25. Date you received the final decision notice (month, day, year) (attach a copy)	26. Effective date of the action appealed (month, day, year)

27. Explain briefly why you think the agency was wrong in taking this action.

28. Do you believe the penalty imposed by the agency was too harsh?

☐ Yes ☐ No

29. What action would you like the Board to take on this case (i.e., what remedy are you asking for)?

#### Part IV Appellant's Defenses

30.a) Do you believe the agency committed harmful procedural error(s)?

☐ Yes ☐ No

30.b) If so, what is (are) the error(s)?

30.c) Explain how you were harmed by the error(s).

31.a) Do you believe that the action you are appealing violated the law?

☐ Yes ☐ No

31.b) If so, what law?

31.c) How was it violated?

32.a) If you believe you were discriminated against by the agency, **in connection with the matter appealed**, because of your race, color, religion, sex, national origin, marital status, political affiliation, disability, or age, indicate so and explain why you believe it to be true.

32.b) Have you filed a **formal** discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal?

☐ Yes (attach a copy) ☐ No

32.c) If yes, place filed (agency, number and street, city, state, and ZIP code)

32.d) Date filed (month, day, year)

32.e) Has a decision been issued?

☐ Yes (attach a copy) ☐ No

**Enclosure 6**  
**Attachment 6**

33.a) Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement?  <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No	33.b) Date filed (month, day, year)
33.c) If yes, place filed (agency, number and street, city, state, and ZIP code)	33.d) Has a decision been issued?  <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No
	33.e) If yes, date issued (month, day, year)

**Part V Hearing**

34. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit, after providing you and the agency with an opportunity to submit additional documents.

**Do you want a hearing?**      ☐ Yes      ☐ No

If you choose to have a hearing, the Board will notify you where and when it is to be held.

**Part VI Reduction In Force**

**INSTRUCTIONS**

**Fill out this part only if you are appealing from a Reduction in Force.** Your agency's personnel office can furnish you with most of the information requested below.

35. Retention group and sub-group	36. Service computation date	37.a) Has your agency offered you another position rather than separating you?  <input type="checkbox"/> Yes <input type="checkbox"/> No
37.b) Title of position offered	37.c) Grade of position offered	37.d) Salary of position offered  \$                      per
37.e) Location of position offered		37.f) Did you accept this position?  <input type="checkbox"/> Yes <input type="checkbox"/> No
38. Explain why you think you should not have been affected by the Reduction In Force. (Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; the required number of days notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)		



**Part VII Whistleblowing Activity**

**INSTRUCTIONS**

**Complete Parts VII and VIII of this form only if you believe the action you are appealing is based on whistleblowing activities.**

39.a) Have you disclosed information that evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety?

☐ Yes (attach a copy or summary of disclosure) ☐ No

39.b) If yes, provide the name, title, and office address of the person to whom the disclosure was made

39.c) Date the disclosure was made (month, day, year)

40. If you believe the action you are appealing was... (please check appropriate box)

☐ Threatened

☐ Proposed

☐ Taken

☐ Not Taken

...because of a disclosure evidencing a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, provide:

a) a chronology of facts concerning the action appealed; and

b) explain why you believe the action was based on whistleblowing activity and attach a copy of any documentary evidence which supports your statement.

<p>41.a) Have you sought corrective action from the Office of Special Counsel concerning the action which you are appealing?</p> <p><input type="checkbox"/> <i>Yes (attach a copy of your request to the Office of Special Counsel for corrective action)</i>      <input type="checkbox"/> <i>No</i></p>	<p>41.b) If yes, date(s) filed (<i>month, day, year</i>)</p>
<p>41.c) Place filed (<i>location, number and street, city, state, and ZIP code</i>)</p>	
<p>42. Have you received a written notice of your right to file this appeal from the Office of Special Counsel?</p> <p><input type="checkbox"/> <i>Yes (attach a copy)</i>      <input type="checkbox"/> <i>No</i></p>	
<p>43.a) Have you already requested a stay from the Board of the action you are seeking to appeal?</p> <p><input type="checkbox"/> <i>Yes (attach a copy)</i>      <input type="checkbox"/> <i>No</i></p>	<p>43.b) If yes, date requested (<i>month, day, year</i>)</p>
<p>43.c) Place filed (<i>location, number and street, city, state, and ZIP code</i>)</p>	<p>43.d) Has there been a decision?</p> <p><input type="checkbox"/> <i>Yes (attach a copy)</i>      <input type="checkbox"/> <i>No</i></p>

### Part VIII Stay Request

#### INSTRUCTIONS

You may request a stay of a personnel action allegedly based on whistleblowing at any time after you become eligible to file an appeal with the Board under 5 C.F.R. 1209.5, but no later than the time limit set for the close of discovery in the appeal. The stay request may be filed prior to, simultaneous with, or after the filing of an appeal. When you file a stay request with the Board, you must

simultaneously serve it upon the agency's local servicing personnel office or the agency's designated representative. 5 C.F.R 1209.8.

If your stay request is being filed prior to filing an appeal with the Board, you must complete Parts I and II and items 41 through 43 above.

44. On separate sheets of paper, please provide the following. Please put your name and address at the top of each page.
- |  |   |
|--|---|
| <p>a. A chronology of facts, including a description of the disclosure and the action taken by the agency (unless you have already supplied this information in Part VII above).</p> <p>b. Evidence and/or argument demonstrating that the:</p> <p style="padding-left: 20px;">(1) action threatened, proposed, taken, or not taken is a personnel action, as defined in 5 C.F.R. 1209.4(a); and</p> <p style="padding-left: 20px;">(2) action complained of was based on whistleblowing, as defined in 5 C.F.R. 1209.4(b) (unless you have already supplied this information in Part VII above).</p> <p>c. Evidence and/or argument demonstrating that there is a</p> | <p style="padding-left: 20px;">substantial likelihood that you will prevail on the merits of your appeal of the personnel action.</p> <p>d. Documentary evidence that supports your stay request.</p> <p>e. Evidence and/or argument addressing how long the stay should remain in effect.</p> <p>f. Certificate of service specifying how and when the stay request was served on the agency.</p> <p>g. You <b>may</b> provide evidence and/or argument concerning whether a stay would impose extreme hardship on the agency.</p> |
|--|---|