



Washington Headquarters Services

ADMINISTRATIVE INSTRUCTION

NUMBER 8
May 7, 2008

DA&M

SUBJECT: Disciplinary and Adverse Actions

- References:
- (a) Administrative Instruction Number 8, "Disciplinary and Adverse Actions," August 17, 1981 (hereby canceled)
 - (b) DoD Directive 5110.4, "Washington Headquarters Services (WHS)," October 19, 2001
 - (c) Chapters 43 and 75 and sections 1204(a)(2), 3103, 3105, 3321(a)(2), 3321(b), 4302, 5501, 7323-7325, 7351, 7513, 7521, and 7532 of title 5, United States Code
 - (d) Parts 213, 316, 351, 359, 430, 432, 731, 754, and 752 of title 5, Code of Federal Regulations
 - (e) through (k), see Enclosure 1

1. PURPOSE

This Administrative Instruction:

- 1.1. Reissues Reference (a) in accordance with the authority in Reference (b).
- 1.2. Updates established policy, guidance, and procedures for taking disciplinary and adverse actions consistent with References (c) and (d).
- 1.3. Issues an expanded and updated Table of Offenses and Penalties.

2. APPLICABILITY AND SCOPE

This Administrative Instruction applies to:

- 2.1. All organizational entities of the Office of the Secretary of Defense (OSD), the Office of the Chairman of the Joint Chiefs of Staff, the Joint Staff, the Defense Agencies, and DoD Field activities serviced by Washington Headquarters Services (WHS), Human Resources Directorate

(HRD), Labor and Management Employee Relations Division (LMER) (hereafter referred to as “WHS-serviced activities”).

2.2. All employees except those identified below and those specifically excluded in section 6 of this Instruction and in part 752 of Reference (d).

2.2.1. Reemployed annuitants in the competitive or excepted service.

2.2.2. Employees serving under temporary appointments with a definite time limit.

2.2.3. Employees serving a probationary or trial period, or who have completed less than 1 year of current continuous employment.

2.2.4. Preference eligibles who are in the excepted service with less than 1 year of current continuous employment.

2.2.5. Nonpreference eligibles who are in the excepted service with less than 2 years of current continuous service.

2.2.6. Employees appointed according to section 1601 of title 10, United States Code (U.S.C.) (Reference (e)), during a national emergency.

2.3. While excluded from coverage according to this Instruction, the employees listed in paragraph 2.2. may be admonished, warned, or reprimanded consistent with this Instruction. However, when separation is warranted, their appointments may be terminated without complying with the procedures outlined in this Instruction. Prior to taking action, the supervisor shall seek advice and assistance from LMER.

3. DEFINITIONS

Terms used in this Administrative Instruction are defined in Enclosure 2.

4. POLICY

4.1. According to section 7513 of Reference (c), the objective of a disciplinary or adverse action is to promote “the efficiency of the service” by ensuring high standards of Government service and maintaining public confidence in the Department of Defense. Disciplinary actions shall be taken “only for such cause as will promote the efficiency of the service” and, when warranted, shall be initiated promptly.

4.2. The administration of disciplinary and adverse actions balances essential management decisions with employee rights established by law, regulation, policy, and/or a collective bargaining agreement. Actions are effected through due process that may include a notice of proposed action, an opportunity to respond to charges, a notice of decision, and access to

appellate or grievance procedures. Management carries the obligation to prove the following by a preponderance of the evidence.

4.2.1. The reason for the disciplinary or adverse action.

4.2.2. That the action promotes the efficiency of the service.

4.2.3. That the penalty is reasonable.

4.3. The authority to initiate disciplinary or adverse actions shall be delegated to the lowest practical level of supervision consistent with good management practices. Normally this authority is placed at the first level of supervision. However, any supervisor at any level of supervision may initiate action consistent with this Instruction. Decisions to suspend, reduce in grade, or remove shall normally be made by a management official at least one level higher than the supervisor who proposed the action, unless the proposing official is the Secretary of Defense. Prior to initiating action, a supervisor shall seek advice and assistance from LMER to ensure regulatory compliance and consistency of actions across organizations.

4.4. In deciding whether to take disciplinary or adverse action, there shall be no discrimination against an employee for political beliefs, physical handicap, sex, race, religion, color, national origin, or age.

5. RESPONSIBILITIES

5.1. The Director, HRD, under the Director, WHS, shall:

5.1.1. Provide advice and assistance to supervisory and management officials on disciplinary and adverse actions.

5.1.2. Counsel employees concerning their rights, privileges, and standards of conduct.

5.2. The OSD Principal Staff Assistants shall:

5.2.1. Ensure that employees are advised of their rights according to this Instruction.

5.2.2. Coordinate all formal disciplinary actions with LMER to ensure conformance with established laws and regulations.

5.2.3. Ensure each case is processed promptly and fairly and that discipline is uniformly applied.

5.3. The Proposing Official shall:

5.3.1. Gather, document, and analyze the facts concerning each potential disciplinary or adverse action.

5.3.2. Issue a notice of proposed disciplinary or adverse action.

5.4. The Deciding Official shall:

5.4.1. Review and consider all relevant material regarding a proposed action.

5.4.2. Issue a notice of final decision on a disciplinary or adverse action.

5.5. Supervisors shall:

5.5.1. Conduct themselves so as to set a good example for their subordinate employees.

5.5.2. Communicate their expectations regarding standards of conduct and performance to employees.

5.5.3. Refer employees to the Employee Assistance Program (EAP) as necessary.

5.5.4. Consult with LMER prior to initiating action in accordance with this Instruction.

5.6. Employees shall:

5.6.1. Conduct themselves, both on and off duty, in a way that ensures their conduct does not reflect adversely on the Department of Defense.

5.6.2. Follow the work rules and directives provided by their supervisors.

5.6.3. Comply with the standards of conduct prescribed in DoD Directive 5500.7 (Reference (f)).

6. PROCEDURES

6.1. Adverse Actions

6.1.1. Disciplinary. Disciplinary adverse actions 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 a disciplinary adverse action. The nature of the cause shall be determined on a case-by-case basis.

6.1.2. Nondisciplinary. Certain kinds of adverse actions are considered nondisciplinary in nature (e.g., separation based on performance, failure to meet medical or other job requirements, reductions in grade or pay as a result of classification actions or reorganization, and furloughs of 30 days or less).

6.1.3. Reduction in Grade or Pay. Reductions in grade or pay are subject to the procedural provisions of paragraph 6.3.4. of this Instruction, with the exception of reductions based upon unacceptable performance, which are subject to the provisions of paragraph 6.6. in accordance with References (c), (d), and Administrative Instruction 63 (Reference (g)).

6.1.4. Furlough. A furlough is an adverse action according to part 752 of Reference (d) if it is for a period of 30 calendar days or less and is based on a decision of an appropriately designated management official. Military or similar furloughs required by law or regulation are not actions based on decisions of a management official. They are actions required by established facts and are not adverse actions. Furloughs for more than 30 calendar days are reduction-in-force actions.

6.2. Disciplinary and Removal Actions: Guidelines for Selecting Penalties

6.2.1. General. When discipline is necessary, a wide variety of penalties may be applicable to the misconduct. In selecting a penalty, all of the specific circumstances of the case shall be taken into account. In deciding what action to take, careful judgment must be used to ensure that the penalty is not out of proportion to the character of the offense, especially a first offense, and to ensure that penalties are imposed with consistency and equity throughout the organization. Past offenses may form the basis for proposing a higher penalty for subsequent offenses. The offenses need not be identical or even similar in nature.

6.2.2. Penalty Selection Factors. After reviewing all the evidence, the servicing Human Resources Specialist (Employee Relations/Labor Relations), LMER, will make recommendations regarding the appropriate penalty. The factors most commonly used in selecting the penalty are listed in paragraphs 6.2.2.1. through 6.2.2.12. Not all factors listed will be pertinent in each case. Additionally, the factors may serve as either mitigating or aggravating depending on the specifics of the action.

6.2.2.1. 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.

6.2.2.2. The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public, and prominence of the position.

6.2.2.3. The employee's past disciplinary record.

6.2.2.4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

6.2.2.5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties.

6.2.2.6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

6.2.2.7. Consistency of the penalty with any applicable agency table of penalties.

6.2.2.8. The notoriety of the offense or its impact upon the reputation of the agency.

6.2.2.9. The clarity with which the employee was on notice of any rules violated in committing the offense, and whether he or she had been warned about the conduct in question.

6.2.2.10. The potential for the employee's rehabilitation.

6.2.2.11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, or mental impairment, or harassment, bad faith, malice, or provocation on the part of others involved in the matter.

6.2.2.12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

6.2.3. Table of Offenses and Penalties. The Table of Offenses and Penalties at Enclosure 3 provides guidance on selecting appropriate penalties for typical offenses. Normally a progression of disciplinary measures is applied in an effort to correct an employee's conduct. A first offense normally does not warrant the removal of an employee. When appropriate action other than removal will correct an employee's conduct, a lesser action is the proper course of action.

6.2.4. Informal Disciplinary Actions. Oral admonishments or written warnings are usually the first step in constructive discipline. These measures may be used for an offense that does not, by itself, warrant a reprimand but that will, if repeated, warrant formal disciplinary action. In the case of an oral admonishment, the supervisor should make an informal record of the date of the discussion and the subjects covered. Reference to the admonishment can be cited in any future action as evidence that the employee was on notice of the seriousness of the offense and of possible future disciplinary action. The employee must be advised that an informal record is being kept and that the incident may be cited in future disciplinary action.

6.2.5. Formal Disciplinary Actions. Formal disciplinary actions consist of official reprimands, suspensions, and removals. Formal disciplinary action is usually initiated by the immediate supervisor of the employee being disciplined. The final decision for all disciplinary actions rests with the deciding official.

6.2.5.1. Reprimands. A reprimand is official discipline given to an employee in a formal letter for violation of a rule of conduct, law, regulation, official instruction, or particular responsibility. A reprimand also may be given for repeated minor offenses about which the employee is on clear notice that the conduct is unacceptable.

6.2.5.2. Suspensions and Removals. When an employee is suspended, he or she is not allowed to work or earn pay for a specified number of days. Suspension from a pay and duty status for misconduct or delinquency is generally imposed when an employee fails to improve his or her conduct after receiving informal discipline and/or being reprimanded. A removal is the strongest action and is usually reserved for the most serious offenses or when other actions have not served to correct the misconduct. The action selected depends on the seriousness of the offense. The amount of notice, right to reply, and appeal rights depend upon the employee's appointment, bargaining unit status, and tenure.

6.3. Requirements for Disciplinary and Adverse Actions

6.3.1. General. Federal law and regulations mandate procedures which must be followed when taking a disciplinary or adverse action against an employee. Failure to adhere to these procedures may lead to reversal of an action upon appeal without consideration of the merits of the case. Before initiating a disciplinary or adverse action, the supervisor must investigate the incident and obtain witness statements, as appropriate, and any other documentation relating to the misconduct. This documentation should include a written or oral explanation from the employee. If the supervisor personally witnesses the misconduct, he or she should prepare a memorandum for the record summarizing the incident. All pertinent information gathered during the course of the investigation will be forwarded to LMER for review and preparation of the action.

6.3.2. Requirements for Official Reprimands

6.3.2.1. Issuance of the Reprimand. The supervisory or management official taking the action shall:

6.3.2.1.1. Notify the employee in writing of the reprimand. The written notification shall:

6.3.2.1.1.1. Contain the reason specifically and in detail for the reprimand.

6.3.2.1.1.2. Provide a warning that any recurrence of the misconduct may result in a more severe action.

6.3.2.1.1.3. If applicable, include reference to any past counseling or other attempts to correct the employee's behavior.

6.3.2.1.1.4. Contain a statement that a copy of the letter of reprimand will be placed in the employee's official personnel file (OPF) for a period not to exceed 2 years, or not to exceed the date upon which the employee leaves a WHS-serviced activity, whichever occurs first. Management officials are authorized to request expungement of these documents at an earlier date if desired.

6.3.2.1.2. Advise the employee of grievance rights according to Administrative Instruction 37 (Reference (h)) or a collective bargaining agreement.

6.3.2.1.3. Coordinate all reprimands with LMER.

6.3.2.2. Delivery and Recording of the Reprimand. The official taking the action shall personally deliver the reprimand to the employee, if possible, and shall obtain written acknowledgment of receipt on a copy of the reprimand for placement in the employee's OPF.

6.3.3. Requirements for Suspensions of 14 Days or Less

6.3.3.1. Coverage. For the purposes of this section, employee means:

6.3.3.1.1. An employee in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has 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.

6.3.3.1.2. A preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions.

6.3.3.1.3. An employee with competitive status who occupies a position under a Schedule B appointment.

6.3.3.2. Excluded Employees. This section does not apply to:

6.3.3.2.1. Employees serving a probationary or trial period.

6.3.3.2.2. Employees serving with less than 1 year of current continuous service. An employee serving under a temporary appointment pending establishment of a register or a special tenure appointment, or serving as a status quo employee, does not serve a probationary or trial period. During the first year of current continuous employment, however, the employee is not covered by part 752 of Reference (d).

6.3.3.2.3. Employees serving with temporary tenure. In the competitive service, an employee in a temporary appointment with a definite time limitation serves with temporary tenure and is not covered by Reference (d).

6.3.3.2.4. Employees serving under a limited executive assignment.

6.3.3.2.5. Reemployed annuitants.

6.3.3.2.6. Preference eligibles with less than 1 year of current continuous employment in the excepted service.

6.3.3.2.7. Employees whose appointment requires Senate confirmation.

6.3.3.2.8. Schedule B employees without competitive status.

6.3.3.2.9. Employees whose positions have been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character (Schedule C employees).

6.3.3.2.10. Employees appointed according to Reference (e) during a national emergency.

6.3.3.3. Standards for Issuance of Advance Notice. Except in emergency situations, the employee must be given at least 10 days advance written notice of the proposed suspension. The notice must:

6.3.3.3.1. Identify the proposed action.

6.3.3.3.2. State the reasons for the proposed suspension with specificity and sufficient detail to allow the employee to reply to the charge(s).

6.3.3.3.3. Inform the employee of his or her right to reply orally and/or in writing to the proposed action and identify the name of the deciding official.

6.3.3.3.4. Allow the employee a minimum of 10 calendar days to secure affidavits and/or other documentation and submit a written reply to the proposed action. A reasonable amount of official time shall be provided the employee for purposes of preparing a reply (this is usually hours, not days). The amount of time allowed depends on the facts and circumstances of the case and shall be sufficient to afford the employee an opportunity to review the material relied on to support the proposed action, to prepare a reply, and to secure affidavits.

6.3.3.3.5. Inform the employee of his or her right to be represented by an attorney or other representative and the right to review the material supporting the proposed suspension. An employee's choice of representative may be disallowed if such representation would result in a conflict of interest or position.

6.3.3.3.6. Indicate that a request for an extension of the time limit allowed for a reply shall be considered by the deciding official. Inform the employee of his or her duty status during the notice period.

6.3.3.3.7. Indicate that a final decision on the proposed action may not be made until after the employee's reply, if any, has been considered, or after the time allotted the employee to reply has expired.

6.3.3.4. Standards for Issuance of Notice of Final Decision. If, after consideration of the employee's reply to the written notification of the proposed suspension, it is decided that the suspension is warranted, the notice of final decision must:

6.3.3.4.1. Consider only the reasons specified in the notice of proposed action and specify the reasons for the decision.

6.3.3.4.2. Indicate whether or not the employee replied to the advance notice and, if so, that his or her reply was considered.

6.3.3.4.3. Inform the employee of his or her grievance rights in accordance with Reference (h).

6.3.3.4.4. Be signed by the deciding official.

6.3.3.4.5. Be delivered to the employee at or before the effective date of the suspension.

6.3.4. Requirements for Removals, Suspensions for More than 14 Days, Furlough Without Pay of 30 Days or Less, and Reductions in Grade or Pay

6.3.4.1. Coverage. For the purposes of this paragraph, employee means:

6.3.4.1.1. An employee in the competitive service who has completed a probationary or trial period.

6.3.4.1.2. An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous service in the same or similar positions under other than a temporary appointment limited to 1 year or less.

6.3.4.1.3. An employee in the excepted service who is a preference eligible and has completed 1 year of current continuous service in the same or similar positions.

6.3.4.1.4. An employee in the excepted service who is a nonpreference eligible who has 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.

6.3.4.1.5. An employee with competitive status who occupies a position in Schedule B of part 213 of Reference (d).

6.3.4.1.6. An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position.

6.3.4.2. Excluded Employees. This section does not apply to:

6.3.4.2.1. Employees whose appointment is made by the President with the advice and consent of the Senate.

6.3.4.2.2. Employees whose positions have been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the Office of Personnel

Management (OPM) for positions that are excepted from competitive service, or by the President or the head of a Federal agency for positions excepted from competitive service by statute.

6.3.4.3. Excluded Actions. This section does not apply to:

6.3.4.3.1. A suspension or removal taken in the interest of national security.

6.3.4.3.2. A reduction-in-force action.

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

6.3.4.3.4. A reduction in grade or removal based solely on unacceptable performance.

6.3.4.3.5. An involuntary retirement because of disability.

6.3.4.3.6. An action that entitles an employee to grade retention and an action to terminate this entitlement.

6.3.4.3.7. An action against a reemployed annuitant.

6.3.4.3.8. A reduction of an employee's rate of pay from a rate that is contrary to law or regulation to a rate required or permitted by law or regulation.

6.3.4.3.9. An action against a Presidential appointee.

6.3.4.3.10. An action initiated under the authority of the U.S. Special Counsel.

6.3.4.3.11. An action taken as provided by statute that excepts the action from Subchapter II of Chapter 75 of Reference (c).

6.3.4.3.12. A voluntary action initiated by the employee.

6.3.4.3.13. An action taken or directed by OPM for suitability reasons.

6.3.4.3.14. A termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.

6.3.4.3.15. An action that terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

6.3.4.3.16. An action that terminates a term promotion at the completion of the project, at a specified period, or at the end of a rotational assignment in excess of 2 years but not more than 5 years, and that returns the employee to the position from which promoted or to a position of equivalent grade and pay.

6.3.4.3.17. Cancellation of a promotion to a position not classified before the promotion.

6.3.4.3.18. Placement of an employee serving on an intermittent, part-time, or seasonal basis in a non-duty, non-pay status in accordance with conditions established at the time of appointment.

6.3.4.4. Standards for Issuance of Advance Notice. An employee against whom an action is proposed is entitled to:

6.3.4.4.1. A minimum of 30 days advance written notice stating the specific reasons for the proposed action.

6.3.4.4.2. A reasonable time, but not less than 10 days, to answer orally and/or in writing (unless the action is taken according to the crime provision set forth in paragraph 6.3.4.6.1), and to furnish affidavits and other documentary evidence in support of the answer.

6.3.4.4.3. Consideration of requests for extension of time to reply to the proposed action by the official designated to receive the response.

6.3.4.4.4. Representation by an attorney or other representative, and a reasonable amount of official time to review the supporting evidence.

6.3.4.5. Standards for Notice of Final Decision. A written decision shall be provided to the employee at the earliest practical date after the employee's reply, if any, has been received, or after expiration of the time allotted the employee to reply. The notice of decision shall be delivered to the employee at or before the time the action is made effective, and shall inform the employee of his or her appeal rights.

6.3.4.6. Other Considerations

6.3.4.6.1. Crime Provision. The crime provision is used when the agency has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed. According to this provision, an employee is required to furnish an answer, including affidavits and other documentary evidence, within 7 calendar days. Reasonable cause to believe is not established by the mere fact either of an arrest or an ongoing agency investigation of possible criminal misconduct. A criminal indictment will usually constitute reasonable cause. However, caution must be exercised before proposing an action according to the crime provision.

6.3.4.6.2. Status During Notice Period. Under ordinary circumstances, employees will remain in a duty status in their regular positions during the advance notice period. Other options (e.g., voluntary use of leave, reassignment, detail) may be appropriate in a given situation. If all other options have been explored and found not feasible, the employee may be excused from duty, without charge to leave or loss of pay, during the notice period. Excused absence for this purpose should be used only in those rare circumstances where retention of the employee in an active duty status during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize Government interests. Care shall be exercised to use the minimum amount of excused absence necessary in any individual situation.

6.3.4.6.3. Personal or Medical Considerations

6.3.4.6.3.1. If a supervisor suspects that an employee has a personal or medical problem that is impacting on his or her conduct or performance, the employee shall be encouraged to use EAP.

6.3.4.6.3.2. If an employee responds to counseling or discipline by asserting a medical condition, the supervisor should request medical documentation. LMER will prepare the request for medical information. When received, a DoD physician will review the information and interpret its significance. Following the review, the supervisor, with assistance from LMER, must decide how to proceed to support the assertion.

6.3.5. Records of Disciplinary and Adverse Actions. LMER shall maintain the official agency files on all disciplinary and adverse actions. These files shall be kept apart from the OPF. If the employee appeals an action to the Merit Systems Protection Board (MSPB), the record shall be furnished to the employee and MSPB.

6.4. Requirements for Trial and Probationary Employees

6.4.1. General. The requirement that all career Federal employees serve a probationary period of 1 year provides protection against the retention of any person who, in spite of having passed preliminary tests, is found lacking in fitness and capacity for permanent Government service. If an employee fails to demonstrate fully his or her fitness for continued employment, the supervisor must initiate action to separate the employee.

6.4.2. Discharge Action. When a discharge action is based on deficiencies in performance or conduct AFTER entrance on duty, the employee must be notified in writing of the reason he or she is being terminated and the effective date of the action. If the reason for the discharge is based on the employee's conduct BEFORE employment, the employee must be provided:

6.4.2.1. An advance written notice stating the specific reason for the proposed action.

6.4.2.2. A right to reply.

6.4.2.3. A reasonable amount of time to submit a written response to the proposal and for furnishing affidavits in support of the response.

6.4.2.4. Consideration of any reply.

6.4.2.5. A written notice of the final decision at or before the effective date.

6.4.2.6. A notice of the right to a procedural review of the action by MSPB.

6.5. Requirements for Excepted Service Employees

6.5.1. General. While the rights of employees serving in positions outside the competitive service generally are limited with regard to disciplinary adverse actions, some excepted employees have the same protection as competitive employees because of Veteran's preference or prior competitive status.

6.5.2. Disciplinary and Removal Actions. An excepted service employee with no protection according to law or regulation shall be given written notification of the proposed action before the effective date of the action. The written notification shall contain a brief statement of the reasons for the action and specify the effective date of the action.

6.6. Requirements for Adverse Actions Based Solely on Unacceptable Performance. This paragraph covers reductions in grade and removals based only on unacceptable performance according to section 4302 of Reference (c).

6.6.1. Excluded Employees. This section does not apply to:

6.6.1.1. Employees in the competitive service who are serving a probationary or trial period under an initial appointment.

6.6.1.2. Employees in the competitive service serving in appointments that require no probationary or trial period and who have 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.

6.6.1.3. Employees in the excepted service who have not completed 1 year of current continuous employment in the same or similar positions.

6.6.1.4. Employees outside the United States who are paid in accordance with local native-prevailing wage rates for the area in which employed.

6.6.1.5. Administrative law judges appointed according to section 3105 of Reference (c).

6.6.1.6. Individuals in the Senior Executive Service (SES).

6.6.1.7. Individuals appointed by the President.

6.6.1.8. Employees occupying Schedule C positions.

6.6.1.9. Reemployed annuitants.

6.6.1.10. Individuals occupying positions in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

6.6.1.11. Employees covered in accordance with the NSPS.

6.6.1.12. Employees appointed according to Reference (e) during a national emergency.

6.6.2. Excluded Actions. This section does not apply to:

6.6.2.1. The reduction in grade of a supervisor or manager who has not completed the probationary period according to section 3321(a)(2) of Reference (c), 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 in accordance with section 3321(b) of Reference (c).

6.6.2.2. 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.

6.6.2.3. 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 positions under other than a temporary appointment limited to 1 year or less.

6.6.2.4. 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.

6.6.2.5. Discharge of an employee in the competitive service who is serving a probationary or trial period under an initial appointment.

6.6.2.6. An action imposed by the Special Counsel, MSPB.

6.6.2.7. An action taken according to section 7521 of Reference (c) against an administrative law judge.

6.6.2.8. An action taken or directed by OPM according to part 731 (for suitability) or part 754 of Reference (d) in the interest of national security.

6.6.2.9. An action taken as provided by statute, other than one codified in Reference (c), which excepts the action from the provisions of Reference (c).

6.6.2.10. A removal from SES to a civil service position outside SES according to part 359 of Reference (d).

6.6.2.11. A reduction-in-force governed by part 351 of Reference (d).

6.6.2.12. A voluntary action by the employee.

6.6.2.13. A performance-based action taken according to part 752 of Reference (d).

6.6.2.14. 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 the position was to be of limited duration.

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

6.6.2.16. An involuntary retirement because of disability.

6.6.3. Timing of Actions

6.6.3.1. Prerequisites for Action. An employee may be reduced in grade or removed at any time during the performance appraisal cycle that performance in one or more critical elements of the job becomes unacceptable, but only after the employee has been given an opportunity to improve by placing him or her on a Performance Improvement Period (PIP). The PIP must advise the employee of the critical elements and performance standards in which his or her performance is unsatisfactory and be given a reasonable opportunity to demonstrate improvement. The employee must also be advised of the consequences of failing to improve and the type of assistance to be provided by the supervisor during the PIP. If the employee fails to meet minimally acceptable standards by the end of the PIP, action must be taken to remove, reduce in grade, or reassign.

6.6.3.2. Limitations on Action. The decision to reduce in grade or remove may be based only on those instances of unacceptable performance that occurred during the 1-year period ending on the date of notice of the proposed action. If, because of the employee's improved performance during the notice period, he or she is not reduced in grade or removed, and if his or her performance continues to be acceptable for 1 year from the date of the advance written notice, any entry or other notation of the unacceptable performance for which the action was proposed according to this section shall be removed from any WHS record relating to the employee.

6.6.4. Standards for Notice of Action. An employee whose reduction in grade or removal is proposed according to this section is entitled to:

6.6.4.1. A minimum of 30 days' advance written notice that identifies specific instances of unacceptable performance on which the proposed action is based and the critical elements of the employee's position in each instance of unacceptable performance.

6.6.4.2. A reasonable time to reply to the advance notice, orally and/or in writing. A request for additional time to reply to the proposed action shall be considered by the official designated to receive the response.

6.6.4.3. Representation by an attorney or other representative.

6.6.4.4. A written decision within 30 days after expiration of the notice period that:

6.6.4.4.1. Specifies the instances of unacceptable performance by the employee on which the action to reduce in grade or remove is based.

6.6.4.4.2. The deciding official has concurred.

6.6.4.4.3. Advises the employee of his or her appeal rights.

6.7. Requirements for Adverse Actions Based on a Combination of Misconduct and Unacceptable Performance. An action against an employee that is considered a combination of misconduct and unacceptable performance shall be reviewed in accordance with part 432 of Reference (d) prior to being processed according to part 752 of Reference (d). The provisions of section 4302 of Reference (c) shall not be used until a performance appraisal plan is approved.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE

This Administrative Instruction is effective immediately.



Michael L. Rhodes
Director
Washington Headquarters Services

Enclosures – 16

E1. References, continued

E2. Definitions

- E3. Table of Offenses and Penalties
- E4. Guidelines for Proposing Officials – Disciplinary and Adverse Actions
- E5. Guidelines for Deciding Officials – Disciplinary and Adverse Actions
- E6. Guidelines for Deciding Officials When Hearing an Employee Oral Response
- E7. Checklist for Deciding Officials
- E8. Sample Memorandum of Warning
- E9. Sample Notice of Requirements – Attendance
- E10. Sample Memorandum of Return to Duty – Medical
- E11. Sample Notice of Discharge During Probationary Period
- E12. Sample Letter of Reprimand
- E13. Sample Notice of Proposed Disciplinary Action – Suspension of 1-14 Days
- E14. Sample Notice of Decision on Proposed Disciplinary Action – Suspension of 1-14 Days
- E15. Sample Notice of Proposed Adverse Action – Suspension of 15 Days or More, Reduction in Grade, or Removal
- E16. Sample Notice of Decision on Proposed Adverse Action – Suspension of 15 Days or More, Reduction in Grade, or Removal

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 1601 of title 10, United States Code
- (f) DoD Directive 5500.7, "Standards of Conduct," August 30, 1993
- (g) Administrative Instruction Number 63, "Performance Appraisal Program for General Schedule, Federal Wage System, and Certain Other Employees," July 1, 1999
- (h) Administrative Instruction Number 37, "Employee Grievances," October 27, 2006
- (i) DoD Directive 5101.1, "DoD Executive Agent," September 3, 2002
- (j) Section 1349 of title 31, United States Code
- (k) Section 2071 of title 18, United States Code

E2. ENCLOSURE 2

DEFINITIONS

Unless otherwise noted, the following definitions only apply to this Administrative Instruction.

E2.1. Advance Notice. A written notice whose period of time is computed as follows: A calendar day is the 24-hour period between 12 midnight of one day and 12 midnight of the next. The day on which the notice is delivered is not counted. Saturday, Sunday, or a legal holiday is never counted as the last day.

E2.2. Adverse Action. A disciplinary or nondisciplinary removal, suspension of more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay taken for such cause as will promote the efficiency of the service.

E2.3. Bargaining Unit Employee. An employee included in an appropriate bargaining unit for which a labor organization has been granted exclusive recognition.

E2.4. Charge. The label or characterization of an offense; the reason stated in a notice of proposed action and in the final decision when the action is disciplinary.

E2.5. Critical Element. A component of the employee's job that is of such importance that performance below the minimum standard requires remedial action and may be the basis for reduction in grade, removal, or other corrective action without regard to performance on other components of the job.

E2.6. Day. A calendar day. The day a notice is delivered is not counted. If the last day of a notice period falls on a weekend or holiday, the last day of the notice period becomes the next business day following the weekend or holiday.

E2.7. Deciding Official. The official who issues a notice of final decision on a disciplinary or adverse action. The deciding official shall be of a higher level than the official who proposes the action, unless the proposing official is the Secretary of Defense.

E2.8. Formal Disciplinary Action. An action that is made a matter of record for inclusion in the employee's OPF, such as a reprimand or a suspension of 14 days or less.

E2.9. Furlough. A temporary non-duty and non-pay status of 30 days or less because of lack of work or funds, or for other nondisciplinary reasons.

E2.10. Harmful Error. An error by management in the application of its procedures that, if corrected or alleviated, might have resulted in a different conclusion.

E2.11. Indefinite Suspension. A temporary non-duty and non-pay status for disciplinary or other reasons, pending inquiry.

E2.12. Informal Disciplinary Action. An action taken by management to correct minor misconduct or delinquency. Informal disciplinary actions include counseling, oral admonishments, and written warnings and are not made a matter of record in the employee's OPF.

E2.13. Nexus. A reasonable connection of factual relationship between the reason(s) for a disciplinary action and the efficiency of the service.

E2.14. Oral Admonishment. A very specific discussion between a supervisor and employee to address minor misconduct, clarify expectations, and warn of progressively more severe disciplinary action when the intent of that discussion is to correct the misconduct without initiating more serious disciplinary or adverse action. An oral admonishment is an informal disciplinary measure and should be documented with a memorandum for the record.

E2.15. OSD Principal Staff Assistants. Defined in DoD Directive 5101.1 (Reference (i)).

E2.16. Penalty Selection Factors. The factors most commonly used in determining the appropriateness of a penalty include, but are not limited to: the seriousness of the offense, the employee's past disciplinary record, consistency with the table of penalties, consistency with penalties imposed on other employees, effect of the offense on the supervisor's confidence in the employee's ability to perform assigned duties, the employee's potential for rehabilitation, length of service, and past disciplinary record. (See paragraph 6.2. for further detail.)

E2.17. Preponderance of the Evidence. That degree of relevant evidence that a reasonable individual, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. The agency is required to prove actions taken according to part 752 of Reference (d) with a preponderance of the evidence.

E2.18. Proposing Official. The management official who proposes the action, normally (but not necessarily) the first-line supervisor.

E2.19. Reduction in Grade. The involuntary assignment of an employee to a position of lower classification or job-grading level.

E2.20. Removal. An involuntary separation of an employee from employment with an agency.

E2.21. Reprimand. A formal memorandum issued for employee misconduct. A letter of reprimand is the least severe formal disciplinary action. A copy is placed in the employee's OPF for a set period of time.

E2.22. Substantial Evidence. Such evidence that a reasonable individual might accept as adequate to support a conclusion. Substantial evidence is a lesser burden of proof than a preponderance of the evidence and is required to support inefficiency actions taken according to part 432 of Reference (d).

E2.23. Suspension. A temporary non-duty and non-pay status for disciplinary or other reasons, pending inquiry.

E2.24. Unacceptable Performance. Performance of an employee that fails to meet established standards in one or more critical elements of the employee's position.

E2.25. Written Warning. A very specific memorandum issued to an employee to address minor misconduct, clarify expectations, and warn of progressively more severe disciplinary action when the intent of issuing the memorandum is to correct the misconduct without initiating more serious formal disciplinary or adverse action. A written warning is an informal disciplinary measure and is considered to be more severe than an oral admonishment.

E3. ENCLOSURE 3

TABLE OF OFFENSES AND PENALTIES

E3.1. GENERAL

The Table of Offenses and Penalties at Table E3.T1. is intended for use as a guide to selecting an appropriate penalty for actionable misconduct. This table does not substitute for supervisory judgment and does not dictate penalties. Rather, this table provides a general framework within which supervisors exercise judgment on a case-by-case basis.

E3.2. OFFENSE COLUMN

The OFFENSE column is not intended to be an exhaustive listing. No attempt has been made to list every possible cause for disciplinary or adverse action. The fact that a specific offense is not listed does not mean a penalty cannot be imposed. Supervisors should compare a specific misconduct to the offenses described and use a cause of action that most closely describes the misconduct.

E3.3. PENALTY COLUMN

E3.3.1. The PENALTY column establishes a range of penalties from minimum to maximum for a specific type of offense. The penalty column is further divided into columns for FIRST OFFENSE, SECOND OFFENSE, and THIRD OFFENSE. The penalty range typically becomes more severe as offenses progress from first through third. Previous informal disciplinary actions are not counted as previous offenses for the purpose of penalty selection. To be considered a second or third offense, the subsequent misconduct does not have to be the same or similar as the first type of misconduct. For example, if an employee who previously was reprimanded for a first offense of absence without leave (AWOL) subsequently engages in insubordination, the penalty range would be derived from the second offense column for insubordination. Also, various factors can combine to either enhance or mitigate a penalty selection. For example, the presence of multiple charges would tend to enhance a penalty selection.

E3.3.2. A supervisor has a choice of severity of action ranging from no penalty, a range of informal disciplinary actions, to the maximum penalty stated in the range. When significant aggravating circumstances exist, the penalty range may be exceeded. For example, if the Table shows a 14-day suspension as a maximum penalty, the supervisor may determine no penalty is needed, or may issue an oral admonishment, a letter of warning, a reprimand, or a suspension of up to 14 days. Using this same example, the penalty could be greater than a 14-day suspension if there are significant aggravating circumstances. Deviation from the suggested penalties should be justified in the notice of proposed action and notice of decision. Whenever prior offenses are used to support a more severe penalty, those offenses shall be cited in the notice of proposed action. When a series of offenses have been committed and action could not have been taken on each before another was committed, a more severe penalty may be assessed for the combined offenses than would be appropriate for any one single offense.

E3.T1. Table of Offenses and Penalties

OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
E3.T1.1. <u>Attendance-Related Misconduct</u> . Penalty should correlate to the absence.			
E3.T1.1.1. AWOL from the regular scheduled tour of duty. Includes leaving work area without permission.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.1.2. Failure to follow established procedures to request leave.	Reprimand to 5-Day Suspension	1-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
E3.T1.1.3. Unexcused tardiness.	Reprimand	Reprimand to 5-Day Suspension	5-Day Suspension to Removal
E3.T1.1.4. Prolonged or extended period of AWOL.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.2. <u>Insubordination</u> . Refusal to obey an order that a superior is entitled to give and have obeyed.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.2.1. Impertinence, insolence, disrespectful conduct toward a supervisor.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.2.2. Delay in carrying out instructions, loafing. Failure or delay in carrying out work assignments or instructions in a reasonable time. Idleness or failure to work on assigned duties.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
E3.T1.3. <u>Fighting and/or creating a disturbance in the workplace</u> . Penalties may be enhanced if directed at a supervisor.			
E3.T1.3.1. Creating a disturbance causing an adverse impact on morale, production, or discipline. Penalty may be enhanced in relation to the disruption.	Reprimand to 5-Day Suspension	5-14 Day Suspension	14-Day Suspension to Removal
E3.T1.3.2. Threatening or attempting to inflict bodily harm.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
E3.T1.3.3. Hitting, pushing, or other acts against another, causing injury.	30-Day Suspension to Removal	Removal	
E3.T1.3.4. Hitting, pushing, or other acts against another, without causing injury.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
E3.T1.3.5. Intimidating or aggressive conduct.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal

OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
E3.T1.4. <u>Sleeping on Duty</u>			
E3.T1.4.1. Where safety of personnel or property is not endangered.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	14-Day Suspension to Removal
E3.T1.4.2. Where safety of personnel or property is endangered.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
E3.T1.5. <u>Discourtesy</u>			
E3.T1.5.1. Rude, impolite acts or remarks (non-discriminatory).	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
E3.T1.5.2. Use of offensive or abusive language, gestures, or similar conduct (non-discriminatory).	Reprimand to 14-Day Suspension	14-Day Suspension to Removal	30-Day Suspension to Removal
E3.T1.6. <u>Unauthorized Use, Possession, or Transfer of an Alcoholic Beverage</u>			
E3.T1.6.1. Unauthorized use, possession, or transfer of an alcoholic beverage on Government property while in a duty status.	Reprimand to 14-Day Suspension	14-Day Suspension to 30-Day Suspension	30-Day Suspension to Removal
E3.T1.6.2. Reporting to work or being under the influence of alcohol that interferes with proper performance of duty. (Removal for a first or subsequent offense may be warranted if personnel or property is endangered.)	Reprimand to Removal	30-Day Suspension to Removal	Removal
E3.T1.7. <u>Unauthorized Use and/or Possession of Illegal Drugs and/or Controlled Substances</u>			
E3.T1.7.1. Bringing illegal drugs and/or unauthorized controlled substances to a work area or onto Government property for personal use.	Removal		
E3.T1.7.2. Bringing illegal drugs and/or unauthorized controlled substances to a work area or onto Government property for distribution.	Removal		
E3.T1.7.3. Reporting to work under the influence of illegal drugs and/or unauthorized controlled substances.	Removal		
E3.T1.7.4. Testing positive under the Drug Free Workplace Program, providing an adulterated sample, failing to take a drug test, or failing to comply with testing procedures.	Removal		

OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
E3.T1.8. <u>Gambling</u>			
E3.T1.8.1. Participating in an unauthorized gambling activity while on Government property or in a duty status.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
E3.T1.8.2. Operating, assisting, or promoting an unauthorized gambling activity while on Government property while in a duty status, or while others are in a duty status.	14-Day Suspension to Removal	Removal	
E3.T1.9. <u>False Statements</u>			
E3.T1.9.1. Making or providing false statements, misrepresentations, or entitlement fraud. Includes falsifying information on a time card, leave form, travel voucher, or other documents for entitlements.	Reprimand to Removal	30-Day Suspension to Removal	Removal
E3.T1.9.2. Making or providing false statements or misrepresentation on documents pertaining to qualifications, or on any other official record.	Reprimand to Removal	30-Day Suspension to Removal	Removal
E3.T1.9.3. Making a false or malicious statement against coworkers, supervisors, subordinates, or Government officials.	Reprimand to Removal	30-Day Suspension to Removal	Removal
E3.T1.9.4. Misrepresentation, concealing, or withholding of a material fact. Includes perjury, making false sworn statements, and lying to a supervisor.	Reprimand to Removal	30-Day Suspension to Removal	Removal
E3.T1.10. <u>Unauthorized Taking and/or Possession of Others' Property.</u> Actual or attempted taking or carrying away of Government property or the property of others, or collusion with others to commit such acts.			
E3.T1.10.1. Where substantial value is not involved.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.10.2. Where substantial value is involved.	14-Day Suspension to Removal	Removal	
E3.T1.11. <u>Misuse or Abuse of Government Property, Employees, Contractors, or Processes</u>			
E3.T1.11.1. Using Government property, employees, or contractors for other than official purposes.	Reprimand to Removal	14-Day Suspension to Removal	Removal

OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
E3.T1.11.2. Loss of or damage to Government property, records, or information when the employee is entrusted to safeguard the property as a job requirement (e.g., cashier, warehouse worker, property book officer).	Reprimand to 14-Day Suspension	14-Day Suspension to Removal	30-Day Suspension to Removal
E3.T1.11.3. Misuse of Government credentials.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.11.4. Misuse of any Government-issued charge card (e.g., purchase charge cards, travel charge cards).	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.11.5. Unauthorized use of or failure to appropriately control use of Government Purchase Charge Card as a cardholder (approving official responsible for use or oversight of the card).	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.11.6. Misuse of Government computer, network, intranet, internet, e-mail, etc.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.11.7. Misuse of a Government vehicle. Willfully using or authorizing the use or misuse of a Government passenger motor vehicle or aircraft for other than official purposes. (See section 1349 of title 31 U.S.C. (Reference (j)).)	Minimum 30-Day Suspension to Removal	60-Day Suspension to Removal	Removal
E3.T1.11.8. Abuse of discretion, malfeasance, misfeasance, or non-feasance.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
E3.T1.12. <u>Failure to Follow Written Regulations, Orders, Rules, or Procedures</u>			
E3.T1.12.1. Violation where safety to persons or Government property is not compromised.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.12.2. Violation where safety to persons or Government property is compromised.	Reprimand to Removal	14-Day Suspension to Removal	Removal
E3.T1.13. <u>Conduct Unbecoming a Federal employee.</u> Includes off-duty misconduct if nexus is established.			
E3.T1.13.1. Immoral, indecent, illegal, or disgraceful conduct.	5-Day Suspension to Removal	14-Day Suspension to Removal	Removal
E3.T1.13.2. Soliciting or accepting anything of value or other benefit for financial gain.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal

OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
E3.T1.14. <u>Refusal to Cooperate or Testify, Interfering and/or Obstructing in Administrative Inquiries or Investigations</u>			
E3.T1.14.1. Refusal to cooperate or testify in an administrative inquiry or investigation.	5-Day Suspension to Removal	14-Day Suspension to Removal	Removal
E3.T1.14.2. Interference with, attempting to influence, or attempting to alter testimony of witnesses or participants.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
E3.T1.14.3. Attempting to impede an investigation or to influence investigating officials.	30-Day Suspension to Removal	Removal	
E3.T1.15. <u>Job Actions</u> . Participating in or promoting a strike, work stoppage, slow down, sick-out, or other action.	Removal		
E3.T1.16. <u>Delinquent Debt</u> . Failure or delay to honor valid debts where the agency mission or employee performance is affected (e.g., delinquent travel charge card account).	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	14-Day Suspension to Removal
E3.T1.17. <u>Sexual Misconduct</u> . Where sexual misconduct contributes to a hostile work environment, is quid pro quo, or involves deliberate or repeated offensive comments, gestures, or physical contact, removal may be warranted for a first offense.			
E3.T1.17.1. Involving a subordinate.	5-Day Suspension to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
E3.T1.17.2. Not involving a subordinate.	Reprimand to 30-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.18. <u>Discrimination Because of Race, Color, Religion, Age, Gender, National Origin, Handicapping Condition, Political Affiliation, or Marital Status</u> . Also, prohibited discriminatory practice in any aspect of employment (e.g., hiring, appraisal, development) and/or failure to prevent or curtail discrimination or prohibited practice of a subordinate when the supervisor knew, or should have known, of the discrimination.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal

OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
E3.T1.19. <u>Reprisal</u> . Intentional interference with or reprisal against an employee for exercising a right to grieve, appeal, or file a complaint through established procedures.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
E3.T1.20. <u>Failure to Comply with an Order from MSPB</u> . Finding by MSPB of refusal to comply with an order or finding of intentional violation of statute causing issuance of an Office of Special Counsel complaint. (See section 1204(a)(2) of Reference (c).)	Reprimand to Removal	30-Day Suspension to Removal	
E3.T1.21. <u>Misappropriation</u>			
E3.T1.21.1. Directing, expecting, or rendering services not covered by appropriations. (See section 3103 of Reference (c).)	Removal		
E3.T1.21.2. Failure to deposit into the Treasury money accruing from lapsed salaries or from unused appropriations for salaries. (See section 5501 of Reference (c).)	Removal		
E3.T1.22. <u>Prohibited Political Activity</u>			
E3.T1.22.1. Violation of prohibition against political contributions. (See section 7323 of Reference (c).)	Removal		
E3.T1.22.2. Violation of prohibition against campaigning or influencing elections. (See sections 7324 and 7325 of Reference (c).)	Removal		
E3.T1.23. <u>Soliciting</u> . Soliciting contributions for a gift for a superior, making a donation as a gift to a superior, accepting a gift from an employee receiving a lower salary. (See section 7351 of Reference (c).)	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
E3.T1.24. <u>National Security Action</u> . Violations of official security regulations. Actions against National Security. (See section 7532 of Reference (c).)	30-Day Suspension to Removal	Removal	
E3.F1.25. <u>Mutilating or Destroying a Public Record</u> . (See section 2071 of title 18 U.S.C. (Reference (k)).)	Removal		

E4. ENCLOSURE 4

GUIDELINES FOR PROPOSING OFFICIALS – DISCIPLINARY
AND ADVERSE ACTIONS

E4.1. The proposing official shall review the notice of proposed action to ensure that all facts are correct and supported by the evidence. Any substantive changes to the notice shall be coordinated with LMER.

E4.2. When issuing the notice of proposed action, the proposing official does not need to discuss the memorandum with the employee. The reason(s) for the proposal is/are articulated in the memorandum, as are the employee's due process rights and whom the employee is to contact regarding procedural questions.

E4.3. The proposing official shall:

E4.3.1. Sign and date the memorandum (printed on his or her office letterhead) and make one copy. (The original goes to the employee and the copy serves as a receipt acknowledgment copy.)

E4.3.2. Issue the original to the employee and request the employee to sign and date the receipt acknowledgment copy. If the employee chooses not to sign, the proposing official shall annotate, "Employee refused to sign," and sign and date the annotation.

E4.3.3. Make and keep a file copy of the receipt acknowledgment and send the copy signed by the employee to LMER.

E4.4. After the proposing official has issued the proposal notice, the initiative moves to the employee. The employee has the right to:

E4.4.1. Representation by either an attorney or other representative (with limitations).

E4.4.2. An opportunity to present a written and/or verbal reply to the deciding official within a specified reply period, usually 10 calendar days. The employee may request an extension to the reply period.

E4.4.3. A reasonable amount of official time to prepare and present a reply to the deciding official.

E4.4.4. A copy of the materials relied on to support the action.

E4.4.5. A written decision.

E4.5. The proposing official **MUST** avoid discussing the case with the deciding official. Such discussions can be ruled as improper ex parte communications, which can result in the agency's decision being reversed by a third party, which means the agency is ordered to provide a "make whole" remedy for the employee with back pay to cover the period of any uncompensated absence, if applicable.

E5. ENCLOSURE 5

GUIDELINES FOR DECIDING OFFICIALS – DISCIPLINARY
AND ADVERSE ACTIONS

E5.1. DECIDING OFFICIAL'S DECISION. The deciding official must render a decision on a proposed disciplinary action after considering all relevant evidence including the employee's reply. The official shall follow the guidance in this enclosure carefully to prevent procedural errors that might jeopardize the action if it is later reviewed. When the deciding official has made his or her decision, he or she must notify LMER by memorandum.

E5.2. EMPLOYEE REPLY

E5.2.1. The employee may reply to the deciding official in person, in writing, or both, and may furnish any evidence he or she wishes to support the reply. The proposal notice gave the employee 10 calendar days from the date he or she received it to reply. He or she may request more time to reply, but the request must be in writing and state the reasons for the request. The deciding official must inform the employee and LMER in writing of any decision to extend the reply period. The deciding official should call his or her servicing Human Resources Specialist with any questions about granting or denying an extension.

E5.2.2. In his or her reply, the employee may bring up any evidence or arguments that he or she feels might sway the decision in his or her favor. The deciding official shall not restrict the employee's reply. During a personal reply, the deciding official's role is to listen, not to make an on-the-spot decision, and to ask questions to clarify what the employee has said. Unless the employee brings it up, the deciding official shall not ask any questions or make comments about any incidents or events not mentioned in the notice of proposed disciplinary action.

E5.2.3. The employee may be accompanied by one representative when making a personal reply. The representative may be a relative, friend, co-worker, lawyer, union representative, or other person. A union officer or steward may only use official time to represent a bargaining unit member.

E5.2.4. The deciding official shall make a written summary of any personal reply, give a copy to the employee, and note the date and time the copy was provided. The employee has 2 workdays to review the summary and either sign it, attesting to its accuracy, or submit signed, written exceptions to it. If the employee fails to respond in the time allowed, the deciding official shall make a note to this effect on the summary.

E5.2.5. The deciding official shall avoid engaging in any improper ex parte communications concerning the proposed disciplinary action. Improper ex parte communications are private, undisclosed communications between agency decision makers and management personnel who are actively involved in the disciplinary action. The deciding official shall not discuss any incidents or offenses or previous disciplinary/adverse actions not mentioned in the notice. If

someone with a vested interest in the outcome of the case provides NEW information, the deciding official must let the employee rebut it before making a decision.

E5.3. MAKING THE DECISION

E5.3.1. The deciding official shall review the charge(s) and specification(s), the case file, and any reply from the employee to determine if the charge(s) is/are supported by a preponderance of the evidence. If supported, the deciding official shall then analyze the proposed penalty to determine its appropriateness. The deciding official may sustain the proposing official's proposal or may mitigate to a lesser penalty. The deciding official should take into account relevant factors such as the seriousness of the offense(s), the employee's past work record, the effect of the offense on the employee/employer relationship, the employee's potential for rehabilitation, and the consistency of the proposed penalty to penalties given other employees for similar offenses to determine the appropriateness of the penalty. Other relevant factors to consider to determine if the penalty is appropriate can be found in paragraph 6.2. of this Instruction. The decision shall be issued to the employee in writing.

E5.3.2. The deciding official must base his or her decision on some or all of the reasons given in the notice of proposed disciplinary action AND ON NO OTHER REASONS. This is a different consideration than that mentioned in paragraph 5.3.1.

E5.3.3. The decision must be to sustain, reduce, or cancel the proposed penalty, but not to increase it.

E5.3.4. The decision must be sent to LMER by memorandum. In the memorandum, the deciding official shall state the specific reasons in the notice that were sustained by the evidence and what penalty, if any, shall be imposed. The decision must reflect the consideration given to aggravating and mitigating factors, and explain what weight aggravating factors were given in reaching the decision and choice of penalty. If the deciding official finds all the reasons sustained, a statement to this effect is sufficient. Similarly, if the deciding official sustains the penalty based on the justification for the penalty in the notice, a statement to this effect is sufficient. The deciding official shall include the original of any written reply, his or her summary of any personal reply, and any written exceptions to his or her summary that the employee submitted. The deciding official should also state the consideration given to specific elements of the employee's reply. When LMER receives the decision and attachments, LMER shall prepare a notice of decision to the employee for the deciding official's signature. The notice of decision shall include the employee's grievance rights. The deciding official shall not inform the employee of the decision except by the written notice of decision.

E6. ENCLOSURE 6

GUIDELINES FOR DECIDING OFFICIALS WHEN HEARING AN EMPLOYEE ORAL RESPONSE

When an employee avails himself or herself of the opportunity to present an oral reply, the deciding official shall:

E6.1. UNDERSTAND that this is the employee's opportunity to defend himself or herself; consider this in making the decision.

E6.2. NOT DEBATE the issues with the employee, discuss the relative merits of the case, or signal what the outcome might be. The deciding official is there to listen and obtain clarification, if needed. A discussion with the employee is appropriate ONLY if the employee raises exculpatory information but does not provide detail. In that case, the deciding official may ask questions and/or ask for documentation if the employee indicates there is proof of some fact he or she has not yet submitted.

E6.3. DOCUMENT the main points of the employee's presentation. If the employee admits to the offense, denies the facts, is remorseful, or requests mitigation, the deciding official shall include these statements in his or her notes. The notes shall capture the type of defense the employee is presenting.

E6.4. SAVE his or her notes. He or she will need them if the employee files a grievance or an appeal.

E6.5. DOCUMENT the oral reply; consider ALL replies an employee makes. If the employee gives an oral reply, it must be made part of the record. For example, if the employee stops a deciding official in the hall and mentions the proposed action, the official shall treat the employee's comments as a formal reply, write a memorandum summarizing the reply, and reference the memorandum in the decision.

E6.6. NOT restrict the employee's response. The employee shall be permitted to expand the discussion into any area he or she believes is relevant.

E6.7. IF the employee raises an issue of health (either mental or physical) as an excuse, explanation, or mitigating circumstance, INFORM the employee that it is his or her responsibility to provide medical documentation and to explain how the medical condition caused or is related to the misconduct or unsatisfactory performance. The deciding official shall ask the employee to articulate a reasonable accommodation and to explain how the accommodation would enable him or her to correct the behavior or performance.

E6.8. IF the employee raises an allegation of discrimination, ASK the employee to explain the basis (i.e., race, sex, age, color, religion, handicapping condition, or national origin) and to articulate why he or she believes the proposed action is discriminatory.

E7. ENCLOSURE 7

CHECKLIST FOR DECIDING OFFICIALS

CHECKLIST FOR DECIDING OFFICIALS – DISCIPLINARY AND ADVERSE ACTIONS

EMPLOYEE'S NAME: _____

NATURE and DATE OF PROPOSED ACTION : _____

CHECK APPROPRIATE STATEMENTS

- _____ Employee did not reply.
- _____ Employee replied in writing. (Attach the original reply.)
- _____ Employee replied orally. (Attach your notes and/or a summary of the reply; ensure you annotate the date of the reply.)
- _____ Employee alleged discrimination. (Provide details including the date these actions allegedly occurred and the basis; i.e., race, color, religion, sex, national origin, age, or handicapping condition.)
- _____ I have considered the factors outlined in the Checklist of Mitigating and Aggravating Circumstances. (Check ONLY IF action is based on misconduct. Attach a copy of xxxxxxxx.)
NOTE: Mitigating and aggravating circumstances are not relevant in a performance-based adverse action.

DECISION: After reviewing all the material relied upon and giving full and impartial consideration to the circumstances surrounding the proposed action and the employee's reply(ies), I have decided to:

- _____ Cancel the proposed action in its entirety.
- _____ Sustain the action as proposed.
- _____ Reduce the penalty to _____.

NOTE: Deciding officials cannot impose a more severe penalty than the one proposed. If additional facts come to light or the official feels strongly that a more severe penalty is warranted, the employee must be issued a new proposal and given additional time to reply, and the decision must be made by a higher level official.

NAME/TITLE AND SIGNATURE OF DECIDING OFFICIAL AND DATE

E8. ENCLOSURE 8

SAMPLE MEMORANDUM OF WARNING

MEMORANDUM FOR

SUBJECT: Memorandum of Warning

The purpose of this memorandum is to counsel and warn you concerning (e.g., failure to follow established written procedures).

Details supporting this memorandum of counseling and warning are as follows.

a. (All specifics, i.e., who, what, where, when, and how.)

Your failure to _____ has caused and created _____. Therefore, you are hereby on notice that it is your responsibility to _____. You are on further notice that any future failure to _____ will not be tolerated. You are warned that any future incident as described above will result in appropriate administrative action.

You are requested to sign and date the Acknowledge Receipt copy of this notice. Your signature does not indicate your agreement or disagreement with its content. Failure to sign will not void the content of this proposed action.

I am available to explain policies or procedures related to this matter in order to preclude future recurrences.

(Name)

(Title)

I acknowledge receipt of this notice.

Employee's Signature

Date

E9. ENCLOSURE 9

SAMPLE NOTICE OF REQUIREMENTS – ATTENDANCE

MEMORANDUM FOR

Subject: Notice of Requirements – Attendance

On several occasions I have discussed with you the detrimental effect your sporadic, frequent use of unscheduled leave has had on the efficiency of the _____ Office. I have advised you that your leave use makes it difficult to assign work to you when your attendance is irregular. Regular attendance is considered a part of your job, i.e., a condition of employment. Further, absences from duty must be requested and approved in advance in order to eliminate the adverse effect unscheduled absences have on the accomplishment of our mission and on the morale of your co-workers.

Your regular work schedule is Monday through Friday, from ____ a.m. to ____ p.m., with a 30-minute lunch break. Your lunch break must be taken between the hours of 11:30 a.m. and 1:00 p.m., daily, effective the beginning of the next pay period, _____. If more time is needed for lunch, you must request approval for additional time in advance from me or, in my absence, from _____.

In the event of absence due to illness:

a. You are to personally notify me at _____ not later than (enter time, usually within 2 hours of normal start time) a.m. on the first day of any absence due to illness and on each succeeding day you are ill, unless you provide a statement signed by your health care provider documenting the duration of your illness. In order to assess whether I should require you to contact me daily regarding your absences, I must have your original health care provider's statement before the end of your incapacitation period. If you choose to provide your documentation concerning your absence when you return to work, you must personally telephone me, or in my absence, _____, to report the circumstances that necessitate your absence and to request that you be placed in the appropriate leave status each day that you are absent due to illness. _____ can be reached at (enter phone number). If neither of us is available, you are to leave me a voice message explaining the nature of your illness and provide a telephone number where you can be reached. The fact that you leave such a message does not guarantee approval of your leave.

b. You are to present to me, on the first day of your return to duty after your absence due to illness, administratively acceptable medical documentation to support your absence. Administratively acceptable medical documentation is a statement signed by your health care provider certifying that you were incapacitated for work. The statement should be dated, and should provide the inclusive date(s) of the incapacitation period and the nature of your incapacitation. Conclusory statements and subjective medical information will not be considered administratively acceptable.

c. The requirements outlined above are applicable for absences due to illness regardless of the type of leave you request (e.g., sick, annual, leave without pay (LWOP)). Should you fail to follow these procedures or should a determination be made that your statement from your health care provider is not administratively acceptable, you will be subject to a charge of absence without leave (AWOL) and appropriate disciplinary action.

For routine requests for leave:

a. You are to request leave (i.e., sick, annual, LWOP, credit hours, or compensatory time) in advance for any routine medical appointments, including dental, optical, and family member medical appointments that require your absence from work. Your request to be absent must be made on OPM Form 71, "Application for Leave or Approved Absence," and be submitted to me at least 24 hours in advance of the scheduled appointment. Upon your return to work, you must provide me an original statement from your health care provider attesting to your presence for examination or treatment. The statement should be signed and dated and provide the time of your scheduled appointment and the amount of time spent at the facility.

b. If you request leave for family medical care (i.e., to provide care for a family member as a result of physical or mental illness, injury, pregnancy, or childbirth; or for medical, dental, or optical examination or treatment); for bereavement (i.e., to make arrangements necessitated by the death of a family member or to attend the funeral of a family member); or for required absence for adoption-related purposes, you must request leave at least 24 hours in advance utilizing OPM Form 71. In cases where advance approval is not possible, you must personally telephone me, or in my absence, _____, not later than ____ a.m. to report the circumstances necessitating your absence.

c. All requests for annual leave (or LWOP, compensatory time, credit hours, etc.) must be made on OPM Form 71 at least 24 hours in advance, except in the case of a bona fide emergency. I will determine whether the emergency justifies approval of leave. In my absence, _____ will make the determination. You will be required to bring in acceptable documentation supporting the necessity for emergency leave. This documentation should be submitted to me on the first day you return to work from leave. Telephone requests for emergency leave must be made by you personally by ____ a.m. If you are unable to reach me, you must contact _____. If neither of us can be reached, you must leave a message that includes a telephone number where you can be contacted. The fact that you leave such a message does not guarantee approval of your absence.

Should you fail to follow the procedures outlined above, should it be determined that your unscheduled absence is not a bona fide emergency, or should a determination be made that the documentation you present to support your request is not acceptable, you will be subject to a charge of AWOL and appropriate disciplinary action.

A copy of this memorandum will be retained in my file. However, this notice of requirements is not a disciplinary action and will not be made a matter of record in your Official Personnel Folder. It is issued with the intent of impressing upon you the detrimental effect your excessive leave has upon the efficient operation of this office. It is expected that this notice will

cause you to take corrective action on your own to improve your record of leave use and attendance.

I will review these requirements and your attendance record 6 months after you receive this memorandum. If your attendance has shown satisfactory improvement within this period, I will remove the memorandum from my file. If satisfactory improvement is not shown within the 6-month period, the contents of this memorandum shall continue until I determine that the restrictions are no longer needed.

If you have a problem that you believe is impacting your ability to maintain a regular work schedule, you may seek assistance from the Employee Assistance Program (EAP). Official time will be granted for an initial visit if you avail yourself of EAP. I assure that discussions with the counselor are private matters that will not be disclosed to anyone, including me, without your permission. An EAP Counselor may be reached at (703) 692-8917.

You are requested to sign and date the Acknowledge Receipt copy of this notice. Your signature does not indicate your agreement or disagreement with its content. Failure to sign will not void the content of this proposed action.

I am available at any time to discuss with you the content of this memorandum.

(Name)
(Title)

I acknowledge receipt of this notice.

Signature

Date

E10. ENCLOSURE 10

SAMPLE MEMORANDUM OF RETURN TO DUTY – MEDICAL

MEMORANDUM FOR

SUBJECT: Return to a Regular, Full-time Work Schedule

This memorandum concerns your failure to work a regular, full-time work schedule. You were diagnosed with the condition of _____ by letter dated _____. Your physician, Dr. _____, stated that your condition is _____. Since that time, you have been substantially absent from the workplace. Specifically, between the pay periods ending _____ and _____, you have used approximately ____ hours of annual leave, ____ hours of sick leave, ____ hours of leave without pay, and ____ hours of donated leave.

While your health remains a concern to me, your substantive, continuing absences are placing a burden on the remaining staff, as they and I have to perform the duties normally assigned to you as well as our own. In addition, your frequent absences make it difficult for me to manage the day-to-day work assignments for this organization. As such, your continuing absence has resulted in a disruption to the efficiency of the operations of this office. Based on the above, you are hereby directed to return to work on a regular, full-time basis not later than _____. If you are unable to return to work on a regular, full-time basis on _____, I need to know when you will be able to. In addition, if you are unable to return to work on a regular, full-time basis, I may have to initiate your removal from your position and the Federal service.

If you are unable to return to work because you have a serious health condition, you may be entitled to a total of 12 workweeks of unpaid leave in accordance with the Family and Medical Leave Act (FMLA). A fact sheet that explains FMLA is at Enclosure 1. If you plan to invoke your FMLA entitlement, your physician(s) must complete Form WH-380, "Certification of Health Care Provider (Family and Medical Leave Act of 1993)," at Enclosure 2. If you have any questions regarding any of the enclosures to this memorandum, please contact _____, Employee Relations Specialist, Human Resources Directorate, Labor Management and Employee Relations, at (703) ____-____.

I hope that all has gone well with your treatment and look forward to your return to a regular, full-time work schedule on _____.

Please sign and date the receipt acknowledgment copy of this correspondence and return it in the enclosed self-addressed envelope (Enclosure 3). Your signature does not mean that you agree or disagree with this letter. Failure to sign the receipt acknowledgment will not void its content.

AI 8, May 7, 2008

Sincerely,

(Supervisor Name)
(Title)

Enclosures:
As Stated

Acknowledge Receipt:

Signature

Date

E11. ENCLOSURE 11

SAMPLE NOTICE OF DISCHARGE DURING PROBATIONARY PERIOD

MEMORANDUM FOR

SUBJECT: Notice of Discharge During Probationary Period

The purpose of this memorandum is to notify you of the decision to discharge you during your probationary period from the position of _____ with the _____ and from the Federal service, effective close of business _____.

This action is supported by the following.

- a. (All specifics, i.e., who, what, where, when, and how.)

There are no appeal rights to this action unless you allege that your discharge was taken because of (1) partisan political reasons, (2) marital status, or (3) conditions arising before appointment, and that the action is based on improper procedure. An appeal may also be based on discrimination because of race, color, religion, sex, national origin, handicapping condition, or age (provided that at the time of the alleged discriminatory action, you were at least 40 years of age) but only if it is raised in addition to partisan political reasons, marital status, or improper procedure.

Your petition of appeal must be filed in writing anytime during the period beginning with the day after the effective date (i.e., _____) of the action being appealed until not later than 30 calendar days of the effective date. You may not file your appeal before the effective date of the action. The appeal must be filed in writing with the Merit Systems Protection Board (MSPB). You may file at the following address, or, as the MSPB has different geographical locations, a more appropriate address.

Chief, Washington, D.C., Regional Office
U.S. Merit Systems Protection Board
Skyline Place #2, 5203 Leesburg Pike, Suite 1109
Falls Church, VA 22041-3473

Your appeal must set forth your reason(s) for contesting this decision to discharge you with such proof and pertinent documents as you are able to submit. If you do not submit your appeal within the cited timeframe, it may be dismissed as untimely unless a good reason for the delay is shown. The administrative judge will provide an opportunity to show why the appeal should not be dismissed as untimely.

A copy of the MSPB appeal form is enclosed. Access to a copy of the MSPB rules and regulations is available by contacting _____ of the Washington Headquarters Services, Human Resources Directorate, Labor and Management Employee Relations Division. You may

contact _____ at (703) ____-____ to schedule an appointment. Should you decide to file an appeal, be sure to specify in Part II, Item 8, on the appeal form the following agency address.

Department of Defense
Washington Headquarters Services
Human Resources Directorate
Labor and Management Employee Relations Division
2521 S. Clark Street, Suite 5100
Arlington, VA 22202

You are asked to sign and date the Acknowledge Receipt copy of this memorandum. By doing so, you will not forfeit any of the rights mentioned herein. Your signature does not indicate your agreement or disagreement with this action. Your failure to sign will not void the content of the memorandum.

(Supervisor Name)
(Title)

Enclosures:
As Stated

Acknowledge Receipt:

Signature

Date

E12. ENCLOSURE 12
SAMPLE LETTER OF REPRIMAND

MEMORANDUM FOR

SUBJECT: Letter of Reprimand

The purpose of this memorandum is to advise you that I am officially reprimanding you for _____.

Details supporting this reprimand are as follows.

- a. (All specifics, i.e., who, what, where, when, and how.)

The incident(s) cited above reflect(s) behavior on your part that is totally unacceptable and will not be condoned. Therefore, this action is being taken to stress upon you the need for more responsible behavior on your part, and to emphasize the intolerance of this organization toward such misconduct as cited in the preceding paragraph(s). This reprimand is considered to be constructive and corrective in nature. The proposed penalty is consistent with Office of the Secretary of Defense Administrative Instruction No. 8, "Disciplinary and Adverse Actions."

A copy of this reprimand will be filed in your official personnel folder for a period not to exceed 2 years from the date you receive it.

You have the right to grieve this decision according to the agency administrative grievance procedure set forth in Office of the Secretary of Defense Administrative Instruction No. 37, "Employee Grievances." If you choose to grieve this action, you must submit your grievance in writing to the address below, for receipt no later than 15 calendar days after your receipt of this decision. Your grievance must identify you by name, title, grade, and organizational unit. You must state the exact nature of your grievance and the corrective or remedial action you are seeking.

Department of Defense
Washington Headquarters Services
Human Resources Directorate
Labor and Management Employee Relations Division
2521 S. Clark Street, Suite 5100
Arlington, VA 22202

You are entitled to represent yourself or you may choose as your representative an attorney or other representative to assist you in the preparation and presentation of your grievance. Your representative may not be a member of the Human Resources Directorate staff; an Equal Employment Opportunity manager, investigator counselor, or specialist; 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. You must make all arrangements for and pay all costs associated with representation. Any choice of representative or change in representative must be designated in writing and include your representative's name, address, and phone number; be signed and dated by you; and be submitted with your grievance. If your representative is an employee of the Washington Headquarters Services, Human Resources Directorate, Labor and Management Employee Relations Division (LMER) customer-serviced area, he or she is also entitled to official time to assist you in the presentation of your grievance, if he or she is in a duty status. He or she must make arrangements for the use of official time for this purpose with his or her supervisor.

You are not entitled to use Government resources, such as typing assistance, copy machines, typewriters, or word processing equipment; facsimile transmission equipment; or supplies and material, including letterhead or bond paper, envelopes, etc., in preparing your grievance. Furthermore, you are not entitled to official time to prepare (organize and reproduce materials, compose, type, etc.) your grievance. You are cautioned that use of any of these resources may result in the initiation of further disciplinary action against you.

You are entitled to a reasonable amount of official time to present your grievance if you are in a duty status. Arrangements for the use of any official time for this purpose must be made with your supervisor.

Should you desire additional information, _____ of LMER will provide you guidance relative to procedures and make pertinent regulations available for your review. If you and/or your representative wish to review this material, please call _____ at (703) ____-____ to schedule an appointment. You are entitled to a reasonable amount of official time to obtain such official information if you are in a duty status and request and schedule the time for this purpose in advance from your supervisor.

Please sign and date the Acknowledge Receipt copy of this decision. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of this notice.

(Supervisor Name)
(Title)

Acknowledge Receipt:

Signature

Date

E13. ENCLOSURE 13

SAMPLE NOTICE OF PROPOSED SUSPENSION OF 1-14 DAYS

MEMORANDUM FOR

SUBJECT: Notice of Proposed Suspension

The purpose of this memorandum is to advise you that I propose to suspend you from a duty and pay status from your position of _____ for ____ calendar days for _____.

Details supporting this proposed action are as follows.

a. (All specifics, i.e., who, what, where, when, and how.)

The incident cited above reflects behavior on your part that is totally unacceptable and will not be condoned. Therefore, this proposed action is being taken to stress upon you the need for more responsible behavior on your part, and to emphasize the intolerance of this organization toward such misconduct as cited above. This proposed suspension is considered to be constructive and corrective in nature and for such cause as to promote the efficiency of the service. The proposed penalty is consistent with Office of the Secretary of Defense Administrative Instruction No. 8, "Disciplinary and Adverse Actions."

You have the right to reply to this proposal in person, in writing, or both, stating why this proposed action should not be taken. You may submit affidavits and other documentary evidence to support your reply. Any reply should be made to _____ no later than 10 calendar days after you receive this notice. You may schedule an appointment to reply in person at _____. If more time is needed for the preparation of your reply, you must request an extension in writing from _____ explaining why you need more time within the stated time period. Your reply will be given full and fair consideration. Whether you reply or not, you will receive a written notice of final decision. You will remain in a duty status during the notice period, and any absence during this period will be charged appropriately.

You have the right to select an attorney or other representative to assist you in the preparation and presentation of your reply. However, you may not choose a member of the Washington Headquarters Services Human Resources Directorate staff; an agency Equal Employment Opportunity manager, counselor, investigator or specialist; 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. Any choice of representative or change in representative must be designated in writing; include your representative's name, address, and phone number; be signed and dated by you; and be submitted to _____. 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 made with me. You must make all arrangements for and pay all costs associated with representation. Your representative, if an employee of the Washington Headquarters Services

Human Resources Directorate-serviced area, may also request a reasonable amount of official time for these purposes if he or she is in a duty status. He or she must make arrangements for the use of official time for such purpose with his or her supervisor.

The material being relied upon to support the reasons for this proposed action, to include documents and applicable regulations, are available for review by you and/or your representative. If you and/or your representative wish to review the material, please contact me at _____ to schedule an appointment.

Please sign and date the Acknowledge Receipt copy of this memorandum. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of the memorandum.

I am available to explain policies or procedures related to this matter in order to preclude a recurrence.

(Supervisor Name)
(Title)

Acknowledge Receipt:

Signature

Date

E14. ENCLOSURE 14

SAMPLE NOTICE OF DECISION ON PROPOSED SUSPENSION OF 1-14 DAYS

MEMORANDUM FOR

SUBJECT: Notice of Decision on Proposed Suspension of (Number of) Days

On ____, you were advised of the proposal to suspend you from a duty and pay status for ____ calendar days for _____. By that same memorandum, you were advised that you had 10 days to reply orally, in writing, or both to the proposed action. You (did/did not) reply.

In making this decision, I have carefully and objectively reviewed the charge and specification in the Notice of Proposed Suspension, the supporting evidence in the record, and your written reply from the address below (if one was made).

(Address information included in the response if one was made.)

After full consideration of all the facts, I find that (Insert what was found and whether the incident occurred or did not occur. If a reply was made, discuss why it was/was not persuasive.). My review has led me to conclude that the charge(s) stated in the (date) Notice of Proposed Suspension (is(are)/is(are) not) supported by a preponderance of the evidence.

(In determining the appropriate penalty, write out the penalty factors considered.)

After careful deliberation of the above, I find that the severity of the incident and the possible repercussions outweigh the mitigating factors and a (number of days) suspension is warranted. This discipline is considered corrective in nature. Please note that any further misconduct on your part could result in more severe disciplinary action, up to and including your removal from Federal service.

You have the right to grieve this decision according to the agency administrative grievance procedures set forth in Office of the Secretary of Defense Administrative Instruction No. 37, "Employee Grievances." If you choose to grieve this action, you must submit your grievance in writing to the following address for receipt no later than 15 calendar days after your receipt of this decision. Your grievance must identify you by name, title, grade, and organizational unit. You must state the exact nature of your grievance and the corrective or remedial action you are seeking.

Director, Human Resources Directorate
Washington Headquarters Services
Attention: Labor and Management Employee Relations Division
2521 South Clark Street, Suite 5100
Arlington, VA 22202

You are entitled to a reasonable amount of official time to present your grievance if you are in a duty status. Arrangements for the use of any official time for this purpose must be made with your supervisor.

You are entitled to represent yourself or you may choose as your representative an attorney or other representative to assist you in the preparation and presentation of your grievance. Your representative may not be a member of the Human Resources Directorate staff; an Equal Employment Opportunity manager, investigator, counselor, or specialist; 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. You must make all arrangements for and pay all costs associated with representation. Any choice of representative must be designated in writing and include your representative's name, address, and phone number; be signed and dated by you; and be submitted with your grievance. Similarly, any change in representative must be submitted in writing to the Director, Human Resources Directorate, at the address listed above. The representative, if an employee of the Washington Headquarters Services Human Resources Directorate-serviced area, is also entitled to official time to assist you in the presentation of your grievance if he or she is in a duty status. He or she must make arrangements for the use of official time for this purpose with his or her supervisor.

You are not entitled to use Government resources, such as typing assistance, copy machines, typewriters, or word processing equipment; facsimile transmission equipment; or supplies and material, including letterhead or bond paper, envelopes, etc., in preparing your grievance. Furthermore, you are not entitled to official time to prepare (organize and reproduce materials, compose, type, etc.) your grievance. You are cautioned that use of any of these resources may result in the initiation of further disciplinary action against you.

Should you desire additional information, _____ of the Labor and Management Employee Relations Division, Human Resources Directorate, will provide you with guidance relative to procedures and make pertinent regulations available for your review. If you and/or your representative wish to review this material, please call _____ at (703) 699-____ to schedule an appointment. You are entitled to a reasonable amount of official time to obtain such official information if you are in a duty status and request and schedule the time for this purpose in advance from your supervisor.

Please sign and date the Acknowledge Receipt copy of this decision. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of this notice.

(Deciding Official Name)
(Title)

Acknowledge Receipt:

Signature

Date

E15. ENCLOSURE 15

SAMPLE NOTICE OF PROPOSED ADVERSE ACTION – SUSPENSION
OF 15 DAYS OR MORE, REDUCTION IN GRADE OR REMOVAL

MEMORANDUM FOR

SUBJECT: Notice of Proposed Suspension, Reduction in Grade or Removal

The purpose of this memorandum is to advise you that I propose to suspend you from a duty and pay status from your position of _____ for ____ calendar days for _____. A decision will be effected not earlier than 30 calendar days following your receipt of this notice.

Details supporting this proposed action are as follows.

- a. All specifics (i.e., who, what, where, when, and how.)

The incident cited above reflects behavior on your part that is totally unacceptable and will not be condoned. Therefore, this proposed action is being taken to stress upon you the need for more responsible behavior on your part, and to emphasize the intolerance of this organization toward such misconduct as cited above. This proposed suspension is considered to be constructive and corrective in nature and for such cause as to promote the efficiency of the service. The proposed penalty is consistent with the Office of the Secretary of Defense Administrative Instruction No. 8, "Disciplinary and Adverse Actions."

You have the right to reply to this proposal in person, in writing, or both, stating why this proposed action should not be taken. You may submit affidavits and other documentary evidence to support your reply. Any reply should be made to _____ no later than 10 calendar days after you receive this notice. You may schedule an appointment to reply in person at _____. If more time is needed for the preparation of your reply, you must request an extension in writing from _____ explaining why you need more time within the stated time period. Your reply will be given full and fair consideration. Whether or not you reply, you will receive a written notice of final decision. You will remain in a duty status during the notice period, and any absence during this period will be charged appropriately.

You have the right to select an attorney or other representative to assist you in the preparation and presentation of your reply. However, you may not choose a member of the Washington Headquarters Services Human Resources Directorate staff; an agency Equal Employment Opportunity manager, counselor, investigator, or specialist; 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. Any choice of representative or change in representative must be designated in writing; include your representative's name, address, and phone number; be signed and dated by you; and be submitted to _____. 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 made with me. You must make all arrangements for and pay all costs associated with representation. Your representative, if an employee of the Washington Headquarters Services Human Resources Directorate-serviced area, may also request a reasonable amount of official time for these purposes if he or she is in a duty status. He or she must make arrangements for the use of official time for such purpose with his or her supervisor.

The material being relied upon to support the reasons for this proposed action, to include documents and applicable regulations, are available for review by you and/or your representative. If you and/or your representative wish to review the material, please contact me at _____ to schedule an appointment.

Please sign and date the Acknowledge Receipt copy of this memorandum. Your signature does not indicate your agreement or disagreement with this action. Failure to sign will not void the content of the memorandum.

I am available to explain policies or procedures related to this matter in order to preclude a recurrence.

(Supervisor Name)
(Title)

Acknowledge Receipt:

Signature

Date

E16. ENCLOSURE 16

SAMPLE NOTICE OF DECISION ON PROPOSED ADVERSE ACTION – SUSPENSION
OF 15 DAYS, REDUCTION IN GRADE OR MORE OR REMOVAL

MEMORANDUM FOR

SUBJECT: Notice of Decision on Proposed _____

This is my decision on your proposed _____. By memorandum dated _____, and received by you on _____, you were informed of a proposal to _____ you from your position of _____, and the Federal service, for _____. By that same memorandum, you were advised that you had 10 days to reply orally, in writing, or both to the proposed action. You (did/did not reply).

In making this decision, I carefully and objectively reviewed the charge and specification in the Notice of Proposed Suspension, the supporting evidence in the record, and your written reply from the address below (if one was made).

(Address information included in the response if one was made.)

After full consideration of all the facts, I find that (Insert what was found and whether the incident occurred or did not occur. If a reply was made, discuss why it was/was not persuasive.) My review has led me to conclude that the charge(s) stated in the _____, Notice of Proposed Suspension, (is (are)/is (are) not) supported by a preponderance of the evidence.

(In determining the appropriate penalty, write out the penalty factors considered.)

After careful deliberation of the above, I find that the severity of the incident and the possible repercussions outweigh the mitigating factors and _____ is warranted.

You have the right to appeal this action to the Merit Systems Protection Board (MSPB). If you choose to appeal this action, your petition of appeal must be filed in writing anytime during the period beginning the day after the effective date of the action being appealed, but no later than 30 calendar days after the effective date of the action you are appealing. You may not file your appeal before the effective date. The appeal must be filed in writing with MSPB. You may file at the following address, or, as the MSPB has different geographical locations, a more appropriate address.

Chief, Washington, D.C., Regional Office
U.S. Merit Systems Protection Board
Skyline Place #2, 5203 Leesburg Pike, Suite 1109
Falls Church, VA 22041-3473

Your appeal must set forth your reason(s) for contesting this decision with such proof and pertinent documents as you are able to submit. If you do not submit your appeal within the cited timeframe, the administrative judge may dismiss it as untimely unless a good reason for the delay is shown. You will be provided the opportunity to show why the appeal should not be dismissed as untimely.

A copy of the MSPB Appeal Form, with instructions, is attached. Access to a copy of the MSPB rules and regulations is available at major libraries and on the Internet in many locations, such as www.mspb.gov. You may also obtain a copy by contacting _____ of the Washington Headquarters Services, Human Resources Directorate. You may contact him or her at (703) 699-____ to make an appointment. Should you decide to file an appeal, be sure to specify on the appeal form the following agency address.

Department of Defense
Washington Headquarters Services
Human Resources Directorate
Labor and Management Employee Relations Division
2521 S. Clark Street, Suite 5100
Arlington, VA 22202

Please sign and date the Acknowledge Receipt copy of this notice and return to me in the self-addressed stamped envelope. Your signature does not indicate your agreement or disagreement. Failure to sign will not void the content of this memorandum.

(Deciding Official Name)
(Title)

Acknowledge Receipt:

Signature

Date