



OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

June 28, 2013

Incorporating Change 4, effective June 24, 2016

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
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ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Directive-type Memorandum (DTM) 13-006 – “Appealing Performance-Based and Adverse Actions Against Employees Covered by the Defense Civilian Intelligence Personnel System (DCIPS) in Organizations Serviced by Washington Headquarters Services (WHS)”

References: (a) DoD Directive 5105.53, “Director of Administration and Management,” February 26, 2008
(b) Sections 1610 of Title 10, United States Code
(c) DoD Directive 1400.35, “Defense Civilian Intelligence Personnel System (DCIPS),” September 24, 2007, as amended
(d) DoD Instruction 1400.25, V2009, “DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Disciplinary, Performance-Based, and Adverse Action Procedures,” May 20, 2012, as amended

Purpose. This DTM:

- In accordance with the authority in DoD Directive (DoDD) 5105.53 (Reference (a)), and pursuant to the requirements in Title 10, United States Code (Reference (b)), DoDD 1400.35 (Reference (c)), and Volume 2009 of DoD Instruction (DoDI) 1400.25 (Reference (d)), establishes responsibilities

and prescribes procedures for employees to file appeals of performance-based and adverse actions taken against them.

- Is effective June 28, 2013; it must be converted to a new administrative instruction. This DTM will expire effective ~~June 28~~ *December 28*, 2016.

Applicability. This DTM applies to OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, the DoD Field Activities, and all other organizational entities serviced by WHS with regard to DCIPS employees (referred to collectively in this DTM as “WHS-serviced Components”).

Policy. It is DoD policy, in accordance with Reference (d), that DCIPS employees in WHS-serviced Components have an appeals process readily available that provides for fair and impartial means of reconsideration of any performance-based or adverse actions taken against them, and that these employees shall be free from restraint, interference, coercion, discrimination, or reprisal in filing such an appeal. This appeals process applies to performance-based and adverse actions effected on or after the date of this DTM for DCIPS employees in WHS-serviced Components.

Responsibilities. See Attachment 1.

Procedures. See Attachment 2.

Releasability. **Unlimited.** This DTM is approved for public release and is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.



Michael L. Rhodes
Director of Administration and Management

Attachments:
As stated

ATTACHMENT 1

RESPONSIBILITIES

1. DIRECTOR, HUMAN RESOURCES DIRECTORATE (HRD). Under the authority, direction, and control of the Director, WHS, the Director, HRD:
 - a. Implements and administers the requirements and procedures of this DTM.
 - b. Maintains all records of appeals filed and established through these procedures (see Attachment 2).
 - c. Provides advice and assistance to the appellate official and appealing employee on the contents and interpretation of this guidance and appropriate provisions of laws and regulations.
 - d. Within 5 days of receipt, accepts an appeal as filed timely or rejects if not filed timely and advises the affected WHS-serviced Component of receipt of the appeal.
 - e. Rejects the appeal if it should be filed through other avenues, e.g., through the Equal Employment Opportunity Commission or the Office of Special Counsel.
 - f. Forwards the appeal to the appellate official.

2. GENERAL COUNSEL, WHS, AND PENTAGON FORCE PROTECTION AGENCY (PFPA). The General Counsel, WHS, and PFPA, provides advice and assistance to the appellate official and appealing employee on the legal interpretation and application of the statutes and regulations relevant to the appeal and the final determination on the appeal.

3. WHS-SERVICED COMPONENT. The WHS-serviced Component heads:
 - a. Ensure DCIPS employees subjected to an adverse or performance-based action are informed in decision memorandums identifying actions taken against the employees of their entitlements and obligations under this DTM.
 - b. Identify the appellate official according to the requirements in paragraph 1 of Attachment 2 in this DTM.
 - c. Approve requests from the appellate official for additional time to prepare a response to the employee unless the appellate official is at a higher organizational level, in which case approval should be sought within that organization.

d. Allow a reasonable amount of official duty time (but no more than 8 hours) for the employee (and the authorized representative, if any, for the employee if that person is employed in the same WHS-serviced Component and would otherwise be in a duty status) to present his or her appeal.

ATTACHMENT 2

PROCEDURES

1. DESIGNATION OF APPELLATE OFFICIAL. The appellate official is typically at least one organizational level above the deciding official in the WHS-serviced Component, unless the deciding official is the WHS-serviced Component head, in which case the appellate official should be the next senior official in the WHS-serviced Component head's chain of command. The appellate official may be at a peer level with the deciding official.

2. APPELLATE OFFICIAL. The appellate official:

a. Reviews the appeal, conducts any further inquiry, requests additionally required information or documents, and makes a determination on the appeal as to whether to affirm the WHS-serviced Component's action, reverse the action, or mitigate (i.e., lessen) the penalty imposed by the Component.

b. Provides to the employee a written response with the appeal decision within 45 days of the acceptance of the appeal.

c. Requests with justification additional time to render a determination, with justification not to exceed 90 days from the date the appeal is accepted.

3. CONTENTS OF APPEAL. The appeal must be in writing and submitted by the appealing employee to the Director, HRD, within 30 days of receiving the final decision from the deciding official and contain the following:

a. Name, address, and telephone number of the employee filing the appeal.

b. Name, address, and telephone number of the employee's representative, if any.

c. Employee's position title, series, and grade.

d. Employee's organizational entity to which assigned.

e. A clear statement of why the action against the employee was unfair, unreasonable, inequitable, or in violation of a statute or regulation, including sufficient detail to identify and clarify the matter being appealed (i.e., times, dates, names, places, and other pertinent data).

f. A specific statement of the relief sought that must be specifically applicable to the employee.

g. Copies of any documentation in the employee's possession relevant to the appeal, including a copy of the WHS-serviced Component's proposal letter and decision letter.

h. A statement from the employee certifying that all of the employee's statements and any attachments are true, complete, and correct to the best of the employee's knowledge and belief.

4. BURDEN OF PROOF. The burden of proof rests with the appealing employee to justify why the action taken against him or her should be dismissed, overturned, or revised.

5. RECORDS RETENTION. Official files and records of disciplinary and adverse actions of employees in WHS-serviced Components shall be maintained in the Labor, Management and Employee Relation Division, HRD, WHS, for 4 years, in accordance with the National Archives and Records Administration, General Records Schedule. These files shall be kept apart from the affected employee's official personnel folder (OPF).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DCIPS	Defense Civilian Intelligence Personnel System
DoDD	DoD Directive
DoDI	DoD Instruction
DTM	directive-type memorandum
HRD	Human Resources Directorate
OPF	official personnel folder
PFFA	Pentagon Force Protection Agency
WHS	Washington Headquarters Services

PART II. DEFINITIONS

These terms and their definitions are for the purpose of this DTM.

deciding official. The official who renders the final decision, excluding any subsequent appeal that may be filed, on the action (i.e., letter of reprimand, suspension, or removal) to be taken against an employees as an adverse or performance-based action based on a proposal made from a lower level official.

OPF. Defined on the Office of Personnel and Management website at:
<http://www.opm.gov/FAQs/Search.aspx?q=official%2bpersonnel%2bfolder>.

official duty time. Time that employees are officially designated to perform the duties of their position. These are typically prescribed days and hours during which employees are entitled to basic pay.