

CHAPTER 17

**EMPLOYEE CORRECTIVE,
DISCIPLINARY AND
ADVERSE ACTION**

NOTE: This chapter should be read in conjunction with local activity instructions and with any negotiated agreements between your activity and an exclusively recognized labor organization. Contract language will take precedence over conflicting provisions in this manual. Areas of uncertainty should be discussed with the Human Resources Office.

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CORRECTIVE, DISCIPLINARY, AND ADVERSE ACTIONS

1. PURPOSE

- Discipline is to correct the employee's behavior at the lowest level and with the minimum penalty necessary to produce change.
- Discipline is to correct behavior not punish the employee.

2. POLICY

The DON's policy is to use discipline as a managerial tool to correct deficiencies in employee conduct and performance; as a deterrent to unacceptable conduct or behavior; and for correction of other situations that interfere with efficient operations. The objective is to promote the efficiency of the service by ensuring high standards of Government service and maintaining public confidence in the DON. Disciplinary and adverse actions (those actions that may be appealed to the Merit Systems Protection Board), including performance-based adverse actions, may be taken only for such cause as will promote the efficiency of the service.

3. DEFINITIONS

ADVERSE ACTION

Suspensions of 15 days or more, furloughs of 30 days or less, removals, and grade or pay reductions.

DAYS

Calendar days.

FURLOUGH FOR 30 DAYS OR LESS

The placing of an employee in a temporary status without duties and pay because of a lack of work or funds or other non-disciplinary reasons. **NOTE: Furlough in excess of 30 days is handled under reduction-in-force procedures. This does not apply to the placing of a permanent employee with a seasonal work schedule into non pay status.**

INITIAL PROBATIONARY PERIOD

Designated interval of time to determine whether employee is fit for becoming a permanent member of the Federal Civil Service.

LETTER OF CAUTION

A written warning that continued instances or patterns of unacceptable behavior or performance may lead to disciplinary action.

LETTER OF REQUIREMENT

A written work order that imposes requirements on an employee.

LETTER OF REPRIMAND

A written remedy by a supervisory official for an employee's improper conduct.

NEXUS

Relationship between employee conduct and the efficiency of the service.

ORAL ADMONISHMENT

A verbal correction by a supervisory official of an employee's improper conduct.

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PERFORMANCE IMPROVEMENT PLAN

A written plan to improve employee's performance

REDUCTION IN GRADE

A reduction to a lower classification grade level.

REDUCTION IN PAY

A reduction in the rate of basic pay fixed by law or administrative action for the position held by an employee.

REMOVAL

The involuntary separation of an employee from federal service for cause.

SUSPENSION

The placing of an employee in a temporary status without duties or pay for disciplinary reasons.

4. COVERAGE

In general, this section applies to competitive service employees who have completed a probationary or trial period and to employees in the excepted service who are preference eligible and have completed one year of current continuous service in the same or similar positions. Re-employed annuitants and individuals paid from non-appropriated funds are excluded from coverage. Temporary employees who have not completed one year of continuous employment under other than a temporary appointment are also excluded.

5. MANAGEMENT OBLIGATIONS TO EMPLOYEES

- Pay for time worked.
- Safe and healthy work site.
- Work site free of illegal discrimination, harassment, or hostility.
- Right to form, join, or participate in a union.
- Right to grieve, appeal, or complain

6. EMPLOYEE OBLIGATIONS TO MANAGEMENT

- Come to work.
- Obey written and unwritten rules.
- Be "ready, willing, and able to work".
- Work safely.
- Meet performance standards
- Give Information.
- Obey orders, unless illegal or hazardous.

7. MANAGEMENT RIGHTS

- Set rules or policies which are not arbitrary, capricious, nor an abuse of discretion or authority.
- Determine the mission, budget, organization, number of employees, and internal security practices.
- Hire, assign, direct, layoff, and retain employees
- Take employee disciplinary action, including suspend, remove, or reduce in grade or pay.
- Assign work, make determinations with respect to contracting out.
- Determine the personnel by which agency operations shall be conducted
- With respect to filling positions, make selections for appointments from among properly ranked and certified candidates for promotion or any other appropriate source.
- Take whatever actions may be necessary to carry out the agency mission during emergencies.

8. MANAGEMENT RESPONSIBILITIES TO EMPLOYEES SERVING PROBATIONARY PERIODS



- Immediate clear expectations.
- Detailed instructions.
- Provide required training.
- Monitor performance and conduct.
- **Contact HRO** as soon as a problem is perceived.

9. EXCLUSIONS

The following are **NOT** disciplinary actions:

- Letters of caution and letters of requirement.
- Denial of a within-grade increase.
- A reduction-in-force action.
- A voluntary action initiated by an employee.
- An action that entitles an employee to grade retention.
- An action that entitles an employee to salary retention.



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- Reduction to the most recent grade of a supervisor who has not satisfactorily completed the probationary period.
- An action initiated under authority of the Special Counsel or taken at the direction of the Merit Systems Protection Board.
- An action taken or directed by the Office of Personnel Management for suitability reasons.
- An action which terminates a term promotion at the completion of the project or a specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a position of equivalent grade and pay.
- Action that terminates a temporary promotion 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.

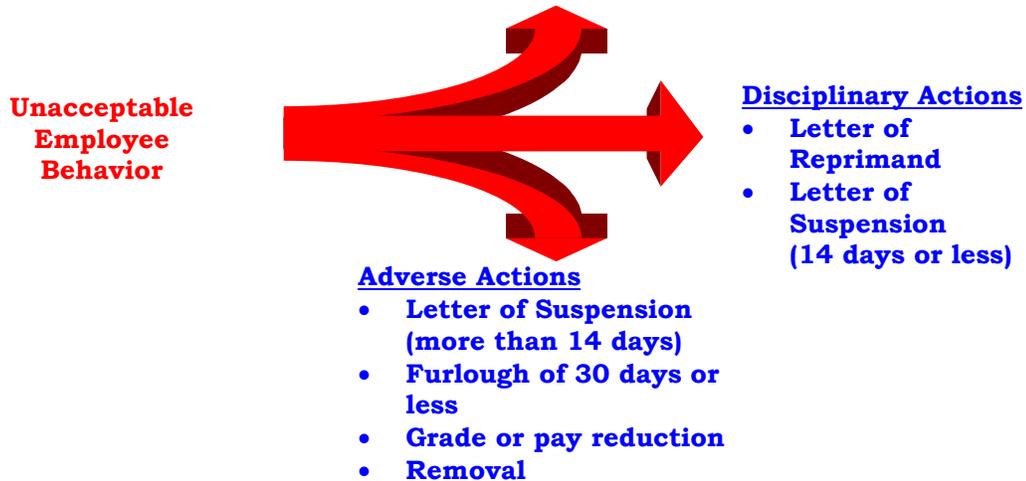
10. DELEGATION OF AUTHORITY

Managers and supervisors may effect actions as follows:

- First level supervisors may admonish employees orally, issue letters of caution, sign letters of reprimand; and issue notices of proposed suspension of 14 days or less.
- Higher level supervisors may effect the same actions as first level supervisors and issue decisions on proposed suspensions of 14 days or less. They may also issue notices of proposed suspensions of more than 14 days, proposed demotion actions and proposed removal actions. In cases where a department head is the first level supervisor, he or she may sign notices of proposed suspensions of any duration, demotion or removal.
- Deciding officials may extend the time the employee has to respond to the proposal and disallow the choice of an employee's representative.

11. REPRESENTATION

A union representative, an attorney, or other representative of their choice may represent employees when responding to proposed actions. Deciding officials may disallow an employee's choice of a representative if such representation would result in a conflict of interest or position, conflict with priority needs of the activity or would give rise to unreasonable costs to the government. An employee's disagreement with a determination to disallow a choice of representative will be resolved by a management official higher in position than the one who made the disputed determination. This final decision will be made within five workdays of notification by the employee of his or her disagreement with the initial determination.



12. GUIDANCE

a. Principles of Discipline

- Nexus. Must be shown.
 - Equitably applied across the organization.
 - Consistent penalties for similar offenses.
 - Administered Timely
 - Takes into account the Douglas Factors. See Appendix 17A.
 - Expect third party review of rationale.
- b. Contact a HRO staff member for advice before proceeding with any disciplinary action. The HRO staff member will review the action for merit and regulatory compliance and will prepare notices to employees. Corrective and/or disciplinary action will follow the applicable policies and procedures set forth in Navy guidance and other applicable laws and regulations, including 5 CFR, Part 752. Appendix 17B Guide for Determining Recommended Remedies for Scheduled Offenses applies the principles of the Douglas Factors and aids in the determination of an appropriate remedy. See Appendix 17C Schedule of Offenses and Recommended Remedies for the Navy's guidelines for remedies for various types of offenses.
- c. Mitigating, unusual, or aggravating circumstances will be considered in determining a proper disciplinary action. Such factors as the employee's position, length of service, and previous corrective action will be considered.

d. Possible Alternative Courses of Action

Not all instances of poor performance or misconduct warrant disciplinary action. In addition to the following items see Appendix 17D Alternative Discipline to explore other options available.

1) Employee Assistance Program (EAP)

Misconduct or poor performance may be caused by alcoholism, drug use, or other personal problems. Referral to the EAP and successful rehabilitation may preclude the need for disciplinary action. See the Employee Assistance Program section in Chapter 16 for specific procedures and information on referral.

2) Training or Explanation

If an employee is unaware of the appropriate performance or conduct, the supervisor should provide training or an explanation to correct the problem.

3) Voluntary Action by the Employee

An employee who is confronted by management with a potential disciplinary situation sometimes will voluntarily accept a lower grade, a reassignment, or resign in lieu of the disciplinary action. This is acceptable provided management has not coerced the employee into taking such an action. It is permissible to tell an employee that disciplinary or adverse action is contemplated and that if the employee voluntarily takes an action before a proposed disciplinary or adverse action is issued that no record of the misconduct will be made in the employee's Official Personnel Folder. It is not permissible to tell the employee that they must accept an action (e.g. resignation).

4) Letter of Caution

This is a non-disciplinary letter cautioning an employee that continued instances of misconduct might lead to disciplinary action. **Contact HRO for further instruction.**

5) Letter of Requirement

Used to reinforce an existing policy or procedure. **Contact HRO for further instruction.**



13. DISCIPLINARY ACTIONS/ADVERSE ACTIONS

a. Steps When Approaching a Disciplinary Issue

- 1) Identify the problem and focus your attention on the problem itself.
- 2) Gather the facts and make sure that they are written down.
- 3) Observe representational rights of union members.
- 4) Ensure that you as a supervisor have communicated and enforced the rules.
- 5) Avoid disparate treatment to members of your work force.
- 6) Consider alternative disciplinary options. See Appendix 17D.

b. Difference Between Performance and Conduct

1) Performance

- Performance needs to be tied directly to a critical element of the position.
- The person must be failing to meet the performance standard for the critical element.
- The person must have had the necessary training to be successful including on-the-job training and assistance.

2) Conduct

- Ties to behavior that is not directly tied to a critical element in the performance standard.
- Relates more to behavior or actions on the job.
- The person must know what is expected and then fail to live up to those expectations.

c. Grievable/Appealable Actions

1) Grievable Actions

a) Letter of Requirement (Non-disciplinary action)

This type of letter tells an employee what is expected and places a requirement on that person to do something that may not be required of all the other employees in the work unit. **Contact HRO for further instruction.**

b) Letter of Reprimand

Reprimands an employee for something he or she has done. The Letter of Reprimand generally remains in the employee's Official Personnel File for up to two years. **Contact HRO for further instruction.**

c) Suspensions (14 days or less)

These are more serious than letter of reprimand. The employee does not get paid for the time they are suspended. Suspensions remain in the employee's file for the length of their Federal career and beyond. **Contact HRO for further instruction.**

2) Appealable Actions to the Merit Systems Protection Board

- Suspension of 15 days or more.
- Demotion
- Removal

3) Note: Actions that involved a mixture of issues including Equal Employment Opportunity concerns may have additional outside reviews. Such cases need to be discussed in detail with your HR advisor.



d. Disciplinary Procedures

1) Letter of Reprimand



- a) **Contact HRO for further instruction.**
- b) The least severe, formal disciplinary action.
- c) The letter specifies one or more reasons for its issuance, and states the following:
 - The employee's right to file a grievance.
 - That it may be counted as a prior offense when determining a disciplinary action for a future offense.
 - The length of time it will be retained.

2) Letter of Suspension of 14 days or less



- a) **Contact HRO for further instruction.**
- b) An advance written notice which must state the following:
 - The specific reason for the proposed action.
 - The name and title of the official designated to hear an oral reply and receive a written reply.
 - The amount of time the employee is permitted to respond orally and/or in writing.
 - The employee's right to review material relied upon to support the reason(s) given in the proposed suspension notice.
- c) A reasonable amount of official time for the employee to review the notice and supporting material, to prepare an answer, and to secure affidavits.
- d) Employee must be given at least 24 hours to answer orally and/or in writing and to furnish documentary evidence in support of the answer, including medical documentation related to the alleged misconduct.
- e) Employee has the right to be represented by an attorney, union representative, or other representative.
- f) Employee must be given a written decision at the earliest practicable date. That decision must specify the reason for the decision, consider any answer of the employee, be signed by an official higher than the one who proposed the suspension, give the employee's right to grieve, and be delivered to the employee on or before the effective date of the suspension.

3) Letter of Adverse Action



- a) Contact HRO for further instruction.

- b) Suspensions of 15 days or more, furloughs of 30 days or less, removals, and grade or pay reductions.
- c) At least 30 calendar days advance written notice stating the following:
 - The reason(s) for the proposed action.
 - Name and title of the official to hear and receive the employee's reply.
 - The amount of time permitted to respond.
 - The right to review documents relied upon to support the action.
- d) Employee must be given a reasonable amount of official time to review the notice and supporting material, to prepare an answer and to secure affidavits.
- e) Employee must be allowed at least seven calendar days to answer orally and/or in writing and to furnish affidavits and other documentary evidence (including medical documentation).
- f) Employee has right of representation by an attorney or other representative.
- g) Employee must receive a written decision that complies with the following:
 - Specifies the reason for the decision.
 - Considers any answer by the employee.
 - Considers any medical or other documentation.
 - Is signed by an official in a higher position than the supervisor who proposed the action.
 - Specifies the employee's right to appeal to the Merit Systems Protection Board (MSPB), including the time limit and address for filing an appeal to the MSPB, a copy of the MSPB regulations and a copy of, or access to, the MSPB appeal form.
 - Is delivered to the employee on or before the effective date of the action.

14. Non-Disciplinary Actions

- a. Non-disciplinary actions will not be placed in an employee's Official Personnel Folder. They are not counted as prior offenses when determining a remedial action for a future offense, although they may influence the selection of a remedy. Unless provided for by a negotiated agreement, these actions are not grievable.

b. Options Available

- Oral Admonishments
- Letter of Caution

15. RECORDS

- a. An official case file is maintained by the Human Resources Office for all **disciplinary** actions and **written, non-disciplinary** actions.
- b. Depending on the action taken, the following documents will be included in the record:
 - Documents supporting the action taken.
 - The proposed action notice.
 - The employee's written answer, if any.
 - A written summary of an employee's oral reply, if any.
 - The written decision notice.
 - The Notification of Personnel Action (SF-50) effecting the decision

REDUCTION IN GRADE OR REMOVAL FOR UNACCEPTABLE PERFORMANCE

1. PURPOSE

- a. General Schedule and Federal Wage System employees may be demoted or removed for unacceptable performance on one or more critical elements. Requirements and procedures for taking such actions are provided in this section. Actions based on unacceptable performance may be also taken following the requirements and procedures specified in the Corrective, Disciplinary and Adverse Actions section in this chapter.
- b. Management has the authority to reassign employees whose performance is unacceptable in their present position to a position at the same grade and pay without using the procedures in this chapter. Consult your HRO staff for guidance and assistance.

2. DEFINITIONS

CRITICAL ELEMENT

A component of a position consisting of one or more duties and responsibilities related to organizational goals and objectives which is of such importance that unacceptable performance of the element would result in unacceptable performance in the position.

OPPORTUNITY PERIOD

A formally designated chance for the employee to meet the established minimum performance standards for the critical elements of the job, usually from 30 to 120 days.

REDUCTION-IN-GRADE

An involuntary demotion of an employee to a position at a lower classification or job grading level. An involuntary reduction-in-grade is always to the first step or entry salary level of the grade to which the employee is reduced.

UNACCEPTABLE PERFORMANCE

Unacceptable performance on any critical element of an employee's Performance Improvement Plan.

3. COVERAGE EXCLUSIONS

- Non-appropriated fund employees.
- Non-preference eligibles in the excepted service who have not completed two years in the same or a similar position.
- Preference eligibles (e.g., VRA) in the excepted service who have not completed one year of current continuous service in the same or a similar position.
- Employees in the competitive service serving probationary periods under an initial appointment.
- Supervisors or managers who have not completed the one-year supervisory probationary period and who are returned to the grade they previously held.



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- Employees returned within five years to the grade from which temporarily promoted.
- Employees reassigned from one position to another.
- Employees involved in a reduction-in-force action.
- Temporary employees.

4. DELEGATION OF AUTHORITY

- a. If performance becomes unacceptable at any time during the rating cycle, action should be started at that time.

Consult with your HRO for guidance.



- b. Unacceptable performance actions are taken as follows:

- 1) First level supervisors may issue performance warning notices and complete a special appraisal.
- 2) Higher level supervisors/managers may issue proposed demotion or removal letters. In cases where the first level supervisor is a department head, he or she may issue proposed demotion or removal letters.
- 3) Higher level supervisors/managers may issue decisions to demote or remove employees, extend the time employees have to respond to a proposed notice, disallow the choice of an employee's representative, and effect the same actions as previously identified in 1) and 2) above.

5. PROCEDURES

- a. After unsuccessful attempts have been made to correct a performance issue (See Chapter 10), the decision to proceed with an adverse action will be made.
- b. If an employee's performance is Unacceptable, one of the following performance-based actions may be initiated:

- Performance Warning Notice
- Performance Improvement Plan (PIP)

c. Performance Warning Notice/Performance Improvement Plan (PIP)

The supervisor issues a performance warning notice or a Performance Improvement Plan to the employee which identifies the critical element on which performance is unacceptable and the necessity to improve to a higher level, and provides the employee a reasonable opportunity period to demonstrate acceptable performance. The amount of time that is reasonable may vary depending upon the complexity of the job. Managers and supervisors must maintain documentation of specific deficiencies that occurred during the opportunity period.

d. Proposed Demotion/Removal

- 1) If performance does not improve to an acceptable level, the supervisor issues a proposed reduction-in-grade or removal notice to the employee.
- 2) Employee's Rights

- a) Thirty calendar days advance written notice that identifies specific instances of unacceptable performance and the critical element for which performance is considered unacceptable and specifies the proposed action.
- b) At least seven calendar days to respond orally and in writing to the proposed action.
- c) A reasonable amount of official time to prepare a reply.
- d) Representation by an attorney or other representative.
- e) A written decision within 30 days after the advance notice period expires that complies with the following:
 - Is received by the employee on or before the effective date of an action to demote or remove.
 - Identifies the instances of unacceptable performance.
 - Has been signed by a higher level official than the official who proposed the action. If the activity director signed the proposed notice, the next higher level of management in the chain of command must sign the decision notice.
 - States the right to appeal to the Merit Systems Protection Board (MSPB) or under the negotiated grievance procedure if applicable.
 - Provides the time limits for filing an appeal to the MSPB, the address of the MSPB office for filing the appeal, a copy of the MSPB regulations, and a copy of the MSPB's appeal form.
- e. If, after improving to an acceptable performance level during the opportunity period, the employee's performance in the same critical element(s) again becomes unacceptable within one year of the issuance of the performance warning notice, the employee's proposed demotion/removal may be initiated without issuance of a new performance warning letter.
- f. Prior to effecting a removal for unacceptable performance, deciding officials should consider reassignment or demotion as alternatives to removal.

6. SUPERVISOR RESPONSIBILITY

- a. If a performance problem is present, inform the employee that performance is unacceptable. Explain to the employee what action is needed to raise the level of performance to an acceptable level. Document the date of counseling and a summary of the items discussed. If counseling does not solve the performance problem, contact your HRO staff at any time for assistance with performance or conduct issues.
- b. Issue a performance warning notice if counseling and assistance are unsuccessful. The notice must specify the performance improvement period.
- c. Closely monitor and document performance during the improvement period.



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- d. Deny any scheduled within-grade increase if performance is unacceptable. This must be done in accordance with the section on Within-Grade Increase Denial contained in this chapter.
- e. Assure a career ladder promotion or a Veteran's Readjustment Appointment conversion is not effected.

7. RECORDS

- a. When an action for unacceptable performance is taken, all documentation concerning a reduction-in-grade or removal will be available for review by the affected employee and the employee's representative.
- b. At a minimum, these records shall consist of the following:**
 - A copy of the notice of proposed action.
 - A copy of the employee's written answer, if any.
 - A summary of the employee's oral reply, if one was made.
 - A copy of the decision and the reasons for the action.
 - Copies of any specific documented deficiencies that occurred during the opportunity period provided to the employee to demonstrate acceptable performance.
 - A copy of the Performance Improvement Plan.
 - A copy of the Performance Warning Notice.

WITHIN-GRADE INCREASE (WGI) DENIAL

1. COVERAGE

This section applies to all permanent employees occupying a position classified and paid under either the General Schedule (GS) Pay System or under the Federal Wage System (FWS) who are paid at less than the top rate of the grade. (Information concerning basic eligibility and waiting periods for granting step increases may be found in the section on Granting Within Grade Increases in Chapter 8).

2. DELEGATION OF AUTHORITY

First level supervisors are delegated authority to grant or withhold a WGI. Department heads or second level supervisors are delegated the authority to reconsider a decision to withhold a WGI (negative determination).

3. WITHHOLDING A WGI

- a. A WGI will be withheld for employees whose rating of record is unacceptable.
- b. An employee whose last rating is unacceptable shall not receive a WGI unless the employee's performance has improved and has been sustained to an acceptable level. In this case, a new performance rating must be completed to support the granting of the WGI.
- c. If an employee's latest rating is acceptable, but performance has declined to unacceptable, a new rating must be completed prior to withholding the step increase.
- d. A written notice should be given to an employee within 30 days after completion of the period upon which denial of the WGI is based and specify the following:
 - The critical element where performance is unacceptable and the improvements necessary to support the granting of the WGI.
 - Examples of unacceptable performance on which the negative determination is based. A recitation of all instances is not required
 - The employee's right to request reconsideration, in writing, within 15 calendar days after receiving the notice.
 - The name and address of the official to whom the request for reconsideration may be submitted.

4. REQUESTS FOR RECONSIDERATION OF A NEGATIVE DETERMINATION

a. Employee Rights/Responsibilities for Requesting Reconsideration

- A reasonable amount of official time, if in a duty status, to review the material relied upon to make the negative determination and to prepare a response.
- Submit a written request for reconsideration, stating the reasons why a WGI is deserved.
- An oral presentation, if desired, before the reconsideration official.

- An opportunity to review the summary of the oral presentation and submit a written exception. Any written exception will be made a part of the reconsideration file.
- Be represented in requesting reconsideration. The reconsideration official may disallow any choice of representative which would result in a conflict of interest or appearance of conflict with that person's official position; would result in a conflict with the priority needs of the activity; or would give rise to unreasonable cost to the government.

b. **Reconsideration Official's Responsibilities**



- 1) Hearing/Receiving the timely reconsideration requests
- 2) Determining whether to reject reconsideration requests filed after the 15-day time limit. This time limit may be extended if the employee was not notified of the limit and was not otherwise aware of it, or if the employee was prevented by circumstances beyond their control from requesting reconsideration within the time limit.
- 3) Providing the employee with a written final decision granting or denying the reconsideration request no later than 30 days after receipt. This decision shall consider the written presentation, oral presentation, if one is made, and the results of any investigation.
- 4) Establishing a reconsideration file which will contain, at a minimum, copies of the following:
 - The WGI denial (negative determination) letter and supporting documentation.
 - The employee's written request for reconsideration.
 - Report of investigation, if one was made.
 - Written summary of any oral presentation made and, if submitted, a written exception to the summary by the employee or employee's representative.
 - The final activity decision on the request for reconsideration.

5. TIMING OF ACTION

- a. If a negative determination is reversed by the reconsideration official, the effective date of the WGI will be effective on the original due date.
 - b. When a WGI determination has been postponed, the employee will be informed in writing of the reason for the postponement, the length of time the rating period will be extended, and the performance requirements which must be met to be granted a WGI. If following the delay the rating of record supports granting the WGI, it will be retroactive to the original due date.
- c. Other conditions to remember when a WGI has been delayed:**
- 1) If an administrative error or oversight results in an employee with an acceptable level of performance not receiving a step increase on time, the WGI will be retroactive to the due date.

- 2) An employee's WGI determination shall be postponed at least 90 days when the employee does not have a rating of record for reasons such as the following:
- The employee has not been covered under an established Performance Improvement Plan for the minimum 90-day period and the employee has not received a rating of record in any position within 90 days before the end of the waiting period.
 - An employee is reduced in grade because of unacceptable performance to a position in which the employee is eligible for a WGI or will become eligible within 90 days.

6. LEAVE WITHOUT PAY (LWOP) AND WGI's

A WGI may be delayed based on the amount of LWOP the employee has used in a specific year.

7. ACTIONS AFTER WITHHOLDING A WGI

When a WGI is withheld, it may be granted at any time after the employee has sustained an acceptable level of performance. Because a WGI is a permanent salary increase, the period of acceptable performance should be long enough to convince the supervisor the performance will not relapse below acceptable. A rating of record must be completed to support the WGI. The step increase will be granted on the first pay period following the effective date of the acceptable rating. At a minimum, the supervisor will determine whether an employee's performance warrants the granting of a denied step increase after each 52-week period following the original due date.

8. GRIEVANCE OR APPEAL RIGHTS

If the reconsideration official sustains the WGI denial, an employee has the right to appeal the decision to the MSPB, or under the applicable negotiated grievance procedure.

APPENDIX 17A DOUGLAS FACTORS FACTORS TO CONSIDER IN SELECTING AN APPROPRIATE PENALTY

- 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.
- The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
- The employee's past record.
- The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
- The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.
- Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- Consistency of the penalty with applicable agency table of penalties.
- The notoriety of the offense or its impact upon the reputation of the agency.
- The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
- Potential for the employee's rehabilitation.
- Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.
- The adequacy and effectiveness of alternative sanctions to defer such conduct in the future by the employee or others.

**APPENDIX 17B
GUIDE FOR DETERMINING
RECOMMENDED REMEDIES FOR SCHEDULED OFFENSES**

1. PURPOSE

- Aid deciding officials in evaluating the propriety of taking adverse actions.
- Provide an analytical tool to assist in arriving at a good decision.
- Provide a reference and record for documentation for future use.
- Provide rationale for decisions made.

2. INSTRUCTIONS

- a. Pages two through ten of this guide is a work sheet that may be used as an aid in preparing the decision letter. It should not be maintained in the case file. The deciding official should maintain it as part of his/her personal notes for reference at a future hearing.
- b. Many of these items are interrelated and may seem duplicative. Some may not be relevant at all to a particular case. Others, while they should be considered, may not carry great weight. Where clearly not relevant, put N/A. On all other points record your analysis of how this factor fits into your ultimate decision. At a very minimum, you should indicate that you at least considered a factor.
- c. Work Sheet Sections
 - 1) **Section 1: Employee Data**
 - 2) **Section 2: Employee and Representative Response**
Records the employee's response to the offense and the Deciding Official's analysis of that response.
 - 3) **Section 3: Analysis of the Employee Infraction**
Contains questions based on the Douglas Factors of the Merit System Protection Board to assist you in documenting case issues.
 - 4) **Section 4: Case Summary**
Records any discrimination issues raised, the Deciding Official's final decision and a justification summary for the decision.

SECTION 3: ANALYSIS OF THE EMPLOYEE INFRACTION

(NOTE: This section is adapted from the Douglas Factors of the Merit System Protection Board)

1. THE NATURE AND SERIOUSNESS OF THE OFFENSE

- What is the relationship between the offense and the employee's duties, position, and responsibilities?

- Describe how the offense was in any way deliberate or technical/inadvertent, malicious, or for gain, or repetitious?

2. EMPLOYEE JOB LEVEL AND TYPE OF EMPLOYMENT

- If the employee is a supervisor or manager, explain their role?

- If applicable, explain how the employee controls money or has contact with the public?

- What is the prominence of their position and their technical responsibility?

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- How does the offense (s) affect your confidence in the employee's ability to perform assigned duties?

6. CONSISTENCY OF PENALTY

- What discipline has been imposed on others in similar circumstances within the last three (3) years in the employee's work unit?

- If significantly different, why is this situation more or less serious?

- Although the Activity is not bound to maintain strict consistency, you may wish to discuss this area with your Human Resource Advisor if you discover other employees who have been similarly situated in the past yet lesser discipline has occurred.

7. RANGE OF PENALTIES PROVIDED IN SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

- Review the schedule of offenses and penalties contained in Appendix 17C.
- If the proposed action is above or below normal range, explain why?

8. NOTORIETY OF OFFENSE

To what degree does the notoriety of this offense adversely affect the activity's reputation within the work crew, the activity, and/or the community?

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9. CLARITY WITH WHICH THE EMPLOYEE WAS ON NOTICE OF ANY RULES THAT WERE VIOLATED

- There are many things employees are assumed to understand without having to be specifically told, i.e., you come to work when you are supposed to; do what the foreman says; you stay awake, etc.
- If applicable, explain why the employee knew or should have known this conduct was an offense against regulations?
- If applicable, explain how the employee had been corrected about similar conduct anytime before this offense (s)?
- If applicable, explain how any notice had been put out on this subject prior to the offense (s)?

10. POTENTIAL FOR THE EMPLOYEE'S REHABILITATION

a. Rehabilitation

- If applicable, explain how a **lesser** penalty could serve to correct the employee, even though the offense may be serious? (The Merit System Protection Board will look very closely at this if this is a first time offense.)
- If applicable, explain any relationship between what the employee did and his/her claim of drug or alcohol abuse?

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- If applicable, explain the circumstances and date the employee had been previously afforded an opportunity to correct a substance abuse through an offer of assistance

b. CLAIMS OF DRUG OR ALCOHOL DEPENDENCY

- 1) Contact your Human Resource Advisor immediately for advice on how such situations should be handled.
- 2) In order to be entitled to consideration for reasonable accommodation, it is not enough for the employee to claim that drugs or alcohol were in some way connected with his/her conduct.
- 3) The employee must establish/prove both of the following:
 - The abuse of the substance was the **direct** cause of the misconduct.
 - The employee suffers from a dependency to that substance.

11. MITIGATING FACTORS

- a. Examples of factors which might warrant mitigation include the following:
 - Unusual circumstances surrounding the offense
 - Unusual job tensions
 - Personality problems
 - Mental impairment
 - Harassment, bad faith, malice, or provocation by others
- b. List any area in your decision-making process that you consider mitigating to this case. If these are presented to you during this process, ensure that you give them due consideration.

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12. ALTERNATIVE SANCTIONS

- a. If applicable, explain why a penalty less than removal serves to correct the employee or the situation?

- b. Consult with your Human Resource Advisor if you wish to consider alternative options such as the following:
 - Suspensions for 30, 60, 90, etc. Days
 - Reduction in grade
 - Rehabilitation where the discipline is held in abeyance for a specified period of time

SECTION 4: CASE SUMMARY

1. EFFICIENCY OF THE SERVICE

- a. The ultimate justification is that the action is “necessary to promote the efficiency of the service”.
- b. Each of the factors (Douglas Factors) you have examined as a result of this guide have been identified by the Merit System Protection Board as part of the criteria measuring whether the action is warranted.
- c. Provide a brief summary explaining why you think the action taken will serve to promote the efficiency of the service. This will be the primary source for the rationale for the decision included in your decision letter.

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2. DISCRIMINATION ISSUE RAISED

The employee raised the issue of discrimination on the basis of race, color, religion, gender, sexual orientation, national origin, age, physical or mental disability, or prior equal employment opportunity (EEO) complaint involvement. He/she brought this matter to my attention on

_____ (date) on the basis of _____ (factor).

3. DECISION

After giving full and impartial consideration to the circumstances surrounding the proposed action, the employee's reply, and factors above, I have decided the following:
(check one of the following)

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

4. ADDITIONAL COMMENTS

DECIDING OFFICIAL _____

TITLE _____ DATE _____

DECIDING OFFICIAL SIGNATURE _____

APPENDIX 17C SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

1. INSTRUCTIONS FOR USE

This schedule is a guide. Remedies for offenses should normally fall within the range shown in the schedule unless mitigating or aggravating factors justify a remedy outside the range. For example, remedies greater than those shown can be appropriate when an aggravated offense, frequent infractions, or simultaneous multiple offenses are established. This guideline schedule is not intended to be a comprehensive listing of all offenses.

2. PRIOR OFFENSES

a. Any prior offense may form the basis for proposing a remedy from the next higher range of remedies for a subsequent offense. The offenses need not be identical or similar.

b. Limitations to Observe in Considering the Remedy

- Oral and written admonishments, letters of caution, and letters of requirement, may not be counted as prior offenses in determining a remedy.
- A letter of reprimand may be counted as a prior offense provided it is dated no more than two years before the date of the proposed notice of adverse action in which it is cited.
- Reductions in grade or pay taken for non-disciplinary reasons may not be counted as prior offenses in determining a remedy.
- In using prior offenses in determining a corrective action, the notice of proposed action should cite specifically the past offense in sufficient detail to allow the employee to respond. Past offenses may only be counted if the employee was disciplined in writing, the employee had the right to dispute the action to a higher level, and the action was made a matter of record in the Official Personnel Folder.

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES			
OFFENSE	RANGE OF REMEDIES		
	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
ALCOHOL ABUSE			
Unauthorized possession, sale or transfer of alcohol on duty or on a military ship, aircraft, submarine, activity, or command	Reprimand to removal	14-day suspension to removal	Removal
Use of, or being under the influence of alcohol on duty or on a military ship, aircraft, submarine, activity, or command	14-day suspension to removal	30-day suspension to removal	Removal
ATTENDANCE			
Unexcused tardiness	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
Leaving job to which assigned or navy premises at any time during working hours without proper authorization	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Excessive unauthorized absence (more than 5 consecutive workdays)	Reprimand to removal	10-day suspension to removal	Removal
DISCRIMINATION			
Discrimination against an employee or applicant based on race, color, religion, sex, handicap, national origin, or age, or any reprisal or retaliation action against a complainant, representative, witness, or other person involved in the EEO complaint process	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Discrimination based on sexual orientation			
Sexual harassment			

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES			
OFFENSES	RANGE OF REMEDIES		
	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
DRUG ABUSE			
Refusal to obtain counseling and rehabilitation after having been found to use illegal drugs	Reprimand to removal	Removal	
Unlawful use, being under the influence, or possession of drugs or drug paraphernalia on or off duty (Mandatory referral to EAP required)	14-day suspension to removal	Removal	
Unlawful use, being under the influence, or possession of drugs or drug paraphernalia on a military ship, aircraft, or submarine (Mandatory referral to EAP required)	30-day suspension to removal	Removal	
Unlawful distribution, sale, or transfer of drugs or drug paraphernalia on or off duty	Removal		
DRUG TESTING			
Attempted or actual falsification, misstatement or concealment of a material fact, record, correspondence or other communication prepared in connection with the collection, handling, transportation or testing of urine samples	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Failure to appear for testing when directed, without a deferral	Reprimand to removal	Removal	
Substituting, adulterating or otherwise tampering with a urine sample, testing equipment or related paraphernalia	14-day Suspension to removal	Removal	
Refusal to provide a urine sample when required			

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES					
OFFENSES	RANGE OF REMEDIES				
	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE		
MISCELLANEOUS OFFENSES					
Loafing; wasting time; inattention to duty; sleeping on duty	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal		
Discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period	Reprimand to 14-day suspension				
Excessive Discourteous conduct to the public within any one-year period or any other pattern of discourteous conduct.	Reprimand to 14-day suspension	7-Day suspension to 14-day suspension	14-day suspension to removal		
Betting, gambling, or the promotion thereof on duty or on Department of the Navy premises	Reprimand to removal				
Careless workmanship resulting in delay in production or spoilage or waste of materials					
Disobedience to constituted authorities; deliberate refusal or failure or delay in carrying out any proper order, work assignment or instruction; insubordination, including failure to follow local or higher level policy				5-day suspension to removal	10-day suspension to removal
Disrespectful conduct, use of insulting, abusive or obscene language to or about other personnel					
Misuse of Government sponsored travel charge card (e.g. use for unauthorized personal expenses, failure to pay charge card bill in a timely manner, or failure to use card for required expenses arising from official travel)					

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES			
OFFENSES	RANGE OF REMEDIES		
	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
MISCELLANEOUS OFFENSES (Continued)			
Criminal, dishonest, infamous or notoriously disgraceful conduct	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Falsification, misstatement, or concealment of material fact in connection with any official record			
False testimony or refusal to testify in an inquiry, investigation or other official proceeding			
Falsification (or aiding or assisting in falsification) of time and attendance records or claims against the government			
Making threats to other employees or to a supervisor; fighting; engaging in dangerous horseplay			
Misuse of government equipment (e.g. unauthorized use of electronic mail, internet, phones, or facsimile equipment)			
Unauthorized possession, loss, or damage to government property or the property of others			
Unauthorized use of or failure to appropriately monitor use of Government purchase card			
Misuse of a Government vehicle, (31 USC 1349 (b) requires a minimum suspension of 30 calendar days even for the first offense, if the misuse was willful, i.e., employee acted either with knowledge that the intended use would be characterized as unofficial or with reckless disregard of whether such use was unofficial.)	Reprimand to removal	30-day suspension to removal	Removal
Reckless driving or improper operation of motor vehicle with:			
No personal injury to self or others or damage to government property	Reprimand to 5-day suspension	Reprimand to 10-day suspension	14-day suspension to removal
Personal injury to self or others or damage to government property	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES			
OFFENSES	RANGE OF REMEDIES		
	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
PROHIBITED PERSONNEL PRACTICES			
Committing a prohibited personnel practice (See 5 USC 2302)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
SAFETY			
Failure to observe posted smoking prohibitions	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to use protective clothing or equipment			
Violation of safety or traffic regulations on duty or on an installation (on or off duty):			
* No injury or property damage; not endangering the safety of self or others	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
* Causing injury to self or others or damage to property or endangering the safety of self or others	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
SECURITY (Failure to safeguard classified material)			
Security not compromised	Reprimand to 5-day suspension	Reprimand to 14-day suspension	30-day suspension to removal
Security compromised	Reprimand to removal	14-day suspension to removal	Removal
UNAUTHORIZED DISCLOSURE OR USE OF PROTECTED MATERIAL			
Unauthorized disclosure or use of information or other protected material (e.g., records covered by the Privacy Act or under 42 CFR Part 2—EAP records)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

APPENDIX 17D ALTERNATIVE DISCIPLINE

1. Why Alternative Discipline Should Be Considered.

- To preserve the employee's loyalty to the organization and thereby assure continued productivity.
- To enhance rather than close the ability to communicate between the employee and supervisor.
- To create the circumstances that preserve morale, correct behavior, and at the same time enable the parties to move on with the work before them.

2. When Alternative Discipline Is An Option (Case-by-case decision).

- a. When management believes it will correct the misbehavior and at the same time send the appropriate message to the rest of the workforce.
- b. Not to be used when any of the following situations exist:
 - There is misconduct that warrants removal.
(You may consider Last Chance Agreements in these circumstances.)
 - There is criminal behavior involved.
 - The employee presents any kind of security threat to the workplace.
 - There is an issue of continued security clearance.

3. Creative solutions such as the following that deal with the underlying issues that led to the unacceptable behavior are encouraged.

- Suspensions that are served incrementally rather than consecutively.
- Attending a required training course on the employee's own time.
- Performing voluntary community service.
- Agreeing to counseling and following recommendations that arise from this.
- Suffering a paper suspension but not suffering loss of time and pay.
- LWOP in lieu of a suspension.
- Financial restitution.
- Researching and delivering a formal paper on a relevant topic.