



DEPARTMENT OF THE NAVY  
OFFICE OF THE UNDER SECRETARY OF THE NAVY  
SECRETARIAT/HEADQUARTERS HUMAN RESOURCES OFFICE  
WASHINGTON, D.C. 20350-1000

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S/HHRO INSTRUCTION 12752.1

From: Director, Secretariat/Headquarters Human Resources  
Office

Subj: DISCIPLINARY AND ADVERSE ACTION PROCEDURES

Ref: (a) CPI 752  
(b) 5 C.F.R. Part 752

Encl: (1) Disciplinary and Adverse Action Procedures

1. Purpose. To set forth Department of the Navy (DON) and Secretariat/Headquarters Human Resources Office (S/HHRO) adverse action procedures and provide guidance in effecting disciplinary actions in accordance with the provisions of references (a) and (b).

2. Cancellation. S/HCPOINST 12752.1.

3. Background. This instruction has been revised to reflect the requirements of the Department of the Navy Drug-Free Workplace program, and the impact of recent appeal decisions concerning disciplinary and adverse actions. Definitions and responsibilities have been clarified, and the Guideline Schedule of Disciplinary Offenses and Recommended Remedies for Civilian Employees, Appendix C to enclosure (1), has been modified.

4. Scope. This instruction applies to all civilian employees serviced by S/HHRO except for the following:

- a. Individual appointed by the President.
- b. Career appointee in the Senior Executive Service (SES) serving a probationary period, or who was not covered by Section 7511 of Title 5, United States Code (U.S.C.), immediately before appointment to the SES.
- c. Limited term, or limited emergency SES appointee not described as a covered employee in Title 5 Code of Federal Regulations (CFR) 752.601.

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d. Individual in a statutorily excepted position that has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by the President, the Office of Personnel Management, or the Secretary of the Navy. (Excepted service appointee under Schedule C, Part 213 of Title 5 CFR.)

e. Reemployed annuitant.

f. Individual in the competitive service who is serving a probationary or trial period under an initial appointment.

g. Individual in the competitive service serving in an appointment that requires no probationary or trial period and who has completed less than 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less.

h. Preference eligible in the excepted service who has completed less than 1 year of current continuous service in the same or a similar position; and

i. Non-preference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion in the competitive service.

j. Non-preference eligible employee who has completed less than 2 years of current continuous service in an Executive agency under other than a temporary appointment limited to 2 years or less.

k. Individual who occupies a position in Schedule B of Title 5 CFR Part 213.

5. Action. Addressees should ensure that the provisions of this instruction are implemented and that the contents are made known to appropriate officials and employees under their direction.

  
JOHN H. La RAIA

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(See page 3)

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DISCIPLINARY AND ADVERSE ACTION PROCEDURES

1. Policy. Discipline is used as a managerial tool to correct deficiencies in employee conduct and performance, as a deterrent to unacceptable conduct or behavior (such as illegal drug use) and for correction of other situations which 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 Department of the Navy. Adverse actions, including performance-based adverse actions, may be taken under this instruction only for such cause as will promote the efficiency of the service. Appendix A contains definitions.

2. Applicability. The applicability of specific disciplinary and adverse actions depends on the type of appointment under which a person is serving. If you are unsure of how to determine an appointment type, contact the Employee Relations Branch. The following lists disciplinary and adverse actions along with applicable appointment types:

a. Oral admonishment, letters of caution and letters of reprimand:

(1) Career members of the Senior Executive Service.

(2) Individuals in the competitive service who are not serving probationary or trial periods under initial appointments in the same or similar positions.

(3) Individuals in the competitive service serving in appointments that require no probationary or trial period and who have completed one year of current continuous employment under other than temporary appointments limited to one year or less.

(4) Preference eligibles in the excepted service who have completed one year of current continuous service in the same or similar positions; and

(5) Non-preference eligibles in the excepted service:

(a) Who are not serving probationary or trial periods under initial appointments pending conversion to the competitive service; or

(b) Who have completed 2 years of current continuous service in an Executive agency under other than temporary appointments limited to 2 years or less.

(6) Individuals with competitive status who occupy positions in Schedule B of Title 5 CFR Part 213.

a. Suspensions of 14 days or less. Individuals listed in paragraph 2a(2), (3), (4), (5), and (6).

b. Suspensions of more than 14 days, reduction-in-grade or pay, furloughs for 30 days or less, and removals:

(1) Individuals listed in paragraph 2a(2), (3), (4), (5), and (6);

(2) Career members of the Senior Executive service (for suspensions over 14 days and removals only) who:

(a) Have completed the probationary period required by SES;

(b) Are not required to serve probationary periods in the SES; or

(c) If covered by the appointments held prior to entry into the SES.

3. Exclusions. This instruction does not apply to Non-Career Senior Executive Service members and Schedule C and Executive Schedule employees.

4. Policy Guidance

a. Employees are to be kept fully informed by their supervisors of the standards of performance and conduct expected of them, including the provisions of this instruction. Appendix B is a checklist that will assist supervisors in providing needed information to employees. Although it is specifically designed for new employees it is a valuable tool for supervisors to use in communicating clear expectations to all employees and ensuring that supervisory responsibilities are met. The use of this form may prevent the occurrence of problems.

b. Any disciplinary action demands the exercise of responsible judgment so that an employee will not be penalized out of proportion to the character of the offense. Supervisors are advised to choose the minimum disciplinary action that is likely to correct the improper behavior. Supervisors are encouraged to use Appendix C, a list of offenses and corresponding range of disciplinary remedies, when taking disciplinary action. Although the recommended remedies contained in Appendix C are not mandatory, supervisors should have good reasons for deviating from them. When deciding on what action to take against an offending employee, officials should consider all mitigating, unusual, or aggravating circumstances unique to each case. Appendix D outlines factors that should be considered. In no event will prohibited discrimination be exercised against an employee when deciding whether to take disciplinary action or in determining what action to take.

c. By federal regulation a disciplinary adverse action should be taken only for such cause as will promote the efficiency of the service.

5. Responsibilities

a. Activity Heads

(1) Ensure that all employees are apprised of disciplinary action policy, through such means as dissemination of this instruction, strongly encouraging attendance at

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supervisory and other types of training, activity newspapers, or the use of bulletin boards.

(2) Propose and decide disciplinary actions. Through issuance of this instruction, heads of activities redelegate their authority to issue letters of reprimand and to propose adverse actions to first-level supervisors in their organizations. Second-level supervisors are further delegated the authority to decide adverse actions proposed by first level supervisors. However, these delegations do not preclude said authorities from being exercised at higher levels in the organization when circumstances so warrant.

(3) Disseminate to all civilian employees, at least annually, applicable information on Standards of Conduct prescribed in SECNAVINST 5370.2H.

b. Secretariat/Headquarters Human Resources Office (S/HHRO). Provides advice and guidance to employees and managers of serviced activities. Advice and guidance must be consistent with reference (a) and this instruction. The S/HHRO Employee Relations Branch maintains the disciplinary action records.

c. Supervisors

(1) Communicate to employees standards of conduct and expectations regarding conduct and performance.

(2) Set a good example by their own conduct.

(3) Monitor employee conduct and take or initiate corrective action as required.

(4) Refer employees to the Civilian Employee Assistance Program (CEAP) as appropriate under CPI 792 and S/HHROINST 12792.1A.

(5) Consult with the S/HHRO Employee Relations Branch before taking disciplinary action.

d. Employees

(1) Conduct themselves, both on and off duty, in a manner which will ensure that their conduct does not reflect adversely on the Department of the Navy.

(2) Comply with the standards of conduct prescribed in SECNAVINST 5370.2H.

(3) Follow on-the-job work rules, including reporting for work on time and in a condition which will permit safe and reliable performance of assigned duties.

(4) Perform their job duties at a fully successful level and in a safe and reliable manner.

Employees (in this context, supervisors are also employees) who fail to comply with paragraphs (1) through (4), above, may be subject to discipline under this instruction.

6. Alternative Courses of Action. While it is not good management practice to ignore instances of employee misconduct, all misconduct does not warrant disciplinary action. There are other forms of correction available.

a. Explanation or Training. If the employee is unaware of the proper behavior or conduct, further discussion of expectations or appropriate training may be sufficient to correct the problem. This alternative is frequently the most useful and appropriate when the employee is new or working in an unfamiliar environment. Appendix B can be used as an aid to counseling an employee.

b. Civilian Employee Assistance Program (CEAP). Generally it is in the best interest of the Department of the Navy to rehabilitate rather than remove an employee. If the supervisor has reason to believe that an employee's misconduct is caused by alcoholism, misuse of drugs, or other personal problems, the employee should be referred to the CEAP Administrator who is located in the S/HHRO Employee Relations Branch.

(1) When alcoholism and drug use or personal problems are causing misconduct, there are certain procedural requirements that must be met prior to or in conjunction with initiating disciplinary action. If the supervisor knows (or could reasonably be expected to know) that a problem exists, he/she is obligated to (a) refer the employee to the CEAP for assistance and (b) warn the employee that continued conduct problems may result in disciplinary action. This offer of assistance should be documented. If the employee refuses to obtain counseling, the supervisor may proceed with disciplinary action. However, in conjunction with offering assistance, if the employee acknowledges an alcohol, drug related or personal problem, reasonable accommodation should be provided, i.e., offer of rehabilitative assistance and the opportunity to take sick leave or other approved leave for treatment. However, the requirement to accommodate has limits. These may be met by a showing that the requisite reasonable accommodation would impose an undue hardship on the activity. See S/HHROINST 12792.1A for more information.

(2) If a case of suspected illegal drug use meets the test of reasonable suspicion which is defined as a belief based on specific objective facts and reasonable inferences drawn from those facts, an employee should be referred for reasonable suspicion testing under the provisions of the S/HHROINST 12792.3. See that instruction for more information.

c. Performance-based Actions. The provisions of this instruction deal primarily with incidents of employee misconduct. However, there are other situations concerning an employee's minimally successful or unacceptable performance which require corrective action. In cases where an employee is performing at the minimally successful level, denial of the within-grade increase may be the appropriate action. See S/HHRO Instruction 12431.1A for information. If performance becomes unacceptable, the employee may be demoted or removed under procedures outlined in the instruction covering actions based upon unacceptable performance. See S/HHROINST 12432.1A for information.

d. Voluntary Action by Employee. An employee who is confronted by management with a potential disciplinary situation sometimes will volunteer to accept a lower grade, a reassignment, or resign in lieu of disciplinary action. It is permissible to tell an employee that an adverse action is contemplated and that if he/she resigns before the proposed action is issued, no record of the contemplated action will be

made in the Official Personnel Folder. It is NOT permissible to tell an employee that he/she must resign or an adverse action will be proposed. This would constitute coercion and the resignation would be an involuntary separation that denies the employee due process and the rights applicable to disciplinary actions.

e. Letters of Requirement. In cases of sick or annual leave abuse, or excessive tardiness, a supervisor may wish to impose requirements on an individual that do not apply to the rest of the work force. This can be done by a letter of requirement which establishes the precise circumstances under which leave and lateness will be approved. Letters of requirement are not disciplinary actions but they are grievable.

f. Medical Examinations. Sometimes misconduct is the result of illness. In such instances, treating the illness, reassignment to a position which the employee can physically handle, or exploring disability retirement is preferable to effecting disciplinary action. One way that management has of determining whether illness is the cause of the misconduct is to request medical documentation and/or offer a medical examination to the employee. In very specific instances in which an employee occupies a position that has medical standards or physical requirements such as a Laborer, management may order the employee to report for a medical examination.

g. Disability Retirements. When an employee covered under the Civil Service Retirement System has five years or more of civilian service or an employee covered under the Federal Employment Retirement System, has 18 months or more of civilian service and asserts or documents impairment or disability the activity will provide information to him or her concerning disability retirement. An employee's application for disability retirement will not preclude or delay any other appropriate personnel action.

## 7. Special Disciplinary Situations

a. Indebtedness. Employees are expected to pay their just debts in a timely manner. If an employee's indebtedness is brought to a supervisor's attention, either by the employee or a creditor, the first step in dealing with the problem should be informal counseling by the supervisor. Such counseling may include referral to the CEAP. Formal disciplinary action should be initiated only when the employee fails to honor a just debt without good cause and the failure has an adverse effect on the

employee's performance or on the organization's ability to perform its assigned mission. Suspension is not normally an action used for indebtedness since a suspension might further reduce an employee's ability to pay the debt.

b. Leave Abuse. Leave Without Pay (LWOP) is an approved absence so disciplinary action is rarely justifiable based on this charge. If an employee is absent without permission, the absence should be charged to Absence Without Leave (AWOL). A charge of AWOL may be used to support a disciplinary action. An employee who is AWOL is not paid for the period of unapproved absence.

c. Leave with Pay During Notice Period. Under ordinary circumstances, employees will remain in a duty status in their regular positions during the advance notice period of a proposed disciplinary action. Other options, e.g., voluntary use of leave, reassignment, detail, etc., may be appropriate in a given situation. If all other options have been explored and found not feasible, an activity head may excuse an employee from duty, without charge to leave or loss of pay, during the notice period of that employee's removal or indefinite suspension effected under this instruction. Excused absence for this purpose should be used only in those rare circumstances where the 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 should be exercised to use the minimum amount of excused absence necessary in any individual situation.

d. Criminal Acts. Generally employees must be given 30 days advance notice prior to effecting an adverse action. However, the crime provision provides for an exception to the 30 days advance notice when there is reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment may be imposed. Judicial action is not required. The employee will be permitted to furnish affidavits and other documentary evidence in answer to a proposed action within no less than 7 days after receipt of the proposal. When the circumstances require immediate action, the supervisor may place the employee in a non-duty status with pay for such time as is necessary to effect the action. Supervisors who contemplate adverse action against an employee for a criminal act are cautioned to ensure that there is/exists a reasonable connection between the crime committed and the "efficiency of the service." Advice should be obtained from the S/HHRO Employee Relations Branch prior to initiating any action under the crime provision.

e. Indefinite Suspension. If there is good reason, such as an indictment, to believe that an employee is guilty of a crime, it is possible to place the employee on an indefinite suspension pending resolution of the matter. Though an indefinite suspension is of unspecified duration, the same rules apply as to any type of suspension. If it is expected that the indefinite suspension will last for more than 14 days, the employee must be given 30 days advance notice (7 days if the crime provision is invoked), and the employee has the right to appeal to the Merit Systems Protection Board (MSPB). "Emergency" suspensions without giving employees the proper notice period and appeal rights are not permitted.

f. Drug and Alcohol Abuse Offenses. Any employee who engages in misconduct involving drugs and/or alcohol will be disciplined according to Appendix C of this instruction. The following special situations apply.

(1) Voluntary Referral to the CEAP. An employee who voluntarily refers himself/herself to the CEAP as a user of illegal drugs under the "safe harbor" provision of S/HHRO Instruction 12792.3 will be exempt from disciplinary action for the admitted acts of illegal drug use, including possession incident to such use, provided the employee meets and complies with the following requirements:

(a) Voluntarily identifies himself/herself as an illegal user of drugs to a supervisor or other higher-level management official prior to being identified through other means.

(b) Obtains counseling and rehabilitation through the CEAP.

(c) Agrees to be tested by the activity as part of or as a follow-up to counseling and rehabilitation.

(d) Consents, in writing, to the release of all counseling and rehabilitation records related to illegal drug use to the appropriate management and CEAP officials.

(e) Thereafter refrains from illegal use of drugs.

All of these conditions must be documented in the agreement between the employee and the activity.

(2) Assertion of a Handicapping Condition in Reply to Proposed Action. Any employee who asserts a physical or mental

impairment (handicapping condition) in connection with drug or alcohol-related unacceptable performance or misconduct will be provided reasonable accommodation when the employee:

(a) Establishes by competent medical evidence that he or she is a qualified handicapped person, and

(b) Demonstrates that the unacceptable performance or misconduct is caused by the handicapping condition of alcoholism or drug dependency.

(3) Undue Hardship on an Activity. Reasonable accommodation is not required when it would impose an undue hardship on the operation of the program of the employee's activity, such as continuing an unreliable employee in a critical function or in duties which could affect the health or welfare of others.

(4) Conduct Which Takes an Employee Outside the Protection of the Rehabilitation Act. There are certain acts of misconduct which, when committed by an employee who is an alcoholic or drug addict, take that employee outside the scope of the protecting legislation because the misconduct renders that person not a "qualified handicapped individual." Egregious or notorious misconduct can, standing alone, disqualify a Federal employee from his/her position, when the misconduct hampers an employee's ability to perform duties, represent the agency, or strikes at the core of the job or the agency's mission.

(5) Trafficking. Trafficking in drugs is misconduct which does not normally entitle an employee to reasonable accommodation. Accordingly, an employee who traffics in drugs will be subject to remedies as provided for in Appendix C.

g. Other Statutory and Regulatory Offenses. For information concerning other offenses for which employees may be disciplined by removal, fine or imprisonment, including offenses which require minimum mandatory remedies (such as intentional misuse of government vehicles, Hatch Act violations, and giving gifts to superiors), see SECNAVINST 5370.2H and Part 735 of reference (b).

h. Senior Executive Service (SES) Actions

(1) Suspensions of SES employees of 14 days or less are prohibited by 5 CFR 752.601(b)(1).

(2) Suspensions of SES employees for more than 14 days, and removals of such employees from the civil service, may only be taken for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. Procedures applicable to such actions are described in Appendix C.

#### 8. Procedures for Effecting Disciplinary and Adverse Actions

a. Before initiating any disciplinary action, the S/HHRO Employee Relations Branch should be contacted for advice and assistance on procedural requirements. The Branch will advise management on selecting appropriate remedies and will assist in the preparation of, or review proposal and decision letters to ensure compliance with the regulations.

b. Before any type of disciplinary action may be initiated, determination must be made as to the facts of the incident(s) which occurred. The immediate supervisor is normally responsible for conducting an investigation, which should begin as soon as possible after learning of the incident(s). The investigation should include, as appropriate, the following: documented interviews with witnesses, examination and securing of pertinent documents, and documentation of any unusual conditions or special circumstances. The supervisor must inform the employee of the investigation and provide him/her with an opportunity to present his/her position in the matter. Outside information, such as arrest records and reports of an employee's previous employment or background, may be considered to the extent that they reflect adversely upon the suitability and fitness of the employee for continued employment. See Appendix E for a checklist to use in conducting fact-finding.

c. The supervisor must then weigh the evidence to determine what action, if any, is warranted. The recommended remedy should be the minimum action likely to correct the improper behavior and maintain employee discipline and morale. Disciplinary actions should be fair and just, i.e., a supervisor should impose similar remedies for similar offenses of employees similarly situated within the organization. Supervisors should review the factors contained in Appendices C and D in deciding on the appropriate remedy.

d. All cases of employee misconduct do not warrant formal disciplinary measures. In many instances, an informal action, such as an oral admonishment or letter of caution, will be sufficient to call the employee's attention to deficiencies in

his/her conduct and will serve to correct poor work habits. Oral admonishments or letters of caution may not be counted as a prior offense in determining a remedy under Appendix C, are not made a matter of record in the employee's Official Personnel Folder (OPF), and are neither grievable nor appealable.

e. Formal disciplinary actions range from letters of reprimand to removal depending upon the frequency and severity of the offense. Letters of reprimand are placed in the employee's OPF for a period of not less than 1 but no more than 2 years. Suspensions, reduction-in-grade or pay, furloughs for 30 days or less, and removals become a permanent part of the employee's OPF.

f. Appendix E is a checklist for supervisors to use when investigating an incident and determining (recommending) appropriate action.

g. Appendix F is a guide for a deciding official to use when hearing an employee's oral reply to a proposed action.

h. Appendix G is a checklist for a deciding official to use when reviewing a proposed disciplinary action and determining appropriate action.

9. Procedures for Issuing a Letter of Reprimand. If the supervisor determines that the facts of the incident warrant issuance of a letter of reprimand, he/she should draft the letter to include:

- a. The specific reasons for its issuance;
- b. The employee's right to file a grievance under the Department of the Navy Administrative Grievance Procedure;
- c. The length of time that the letter will be made a part of the employee's Official Personnel Folder (generally 2 years from its issuance); and
- d. The length of time that the action may be counted as a prior offense (generally 2 years from its issuance).

10. Procedures for Suspensions for 14 days or less, and for Appealable Adverse Actions. The tables on the following three pages describe procedures for suspensions for 14 days or less and for appealable adverse actions. Appealable Adverse Actions include suspension for more than 14 days, reduction-in-grade or pay, furloughs for 30 days or less, and removals.

Suspensions for 14 days or less (Prohibited for SES members)	Appealable Adverse Actions
<p><b>STEP 1.</b> The immediate supervisor conducts the initial investigation and assembles a case file of all materials used to support the action.</p> <p><b>STEP 2.</b> If the disciplinary action appears warranted, he/she will prepare an advance written notice of the proposed action. The proposal must be issued at least 7 days in advance of any action and must contain:</p> <p>a. The specific reasons for the proposed action;</p> <p>b. The right of the employee to reply orally, in writing, or both within 7 calendar days to the official authorized to make the decision, by name and title (normally the second-level supervisor). The employee may request an extension of time to reply by submitting a written request to the deciding official, specifying the reason(s) why more time is needed.</p> <p>c. The right to representation by an attorney or any other willing individual</p> <p>d. The right of the employee or the representative to review the material relied upon to support the action;</p> <p>e. A reasonable amount of official time, if in a duty status, to answer orally and in writing to furnish affidavits and other documentary evidence in support of the answer, including any medical</p>	<p><b>STEP 1.</b> (same)</p> <p><b>STEP 2.</b> Proposal must be issued at least 30 days in advance of any action, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed (see Paragraph 7d).</p> <p>a. (same)</p> <p>b. The employee has 10 calendar days to reply, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed (see Paragraph 7d), in which case the employee has 7 calendar days to reply. SES members may be granted a hearing by the deciding official on a case-by-case basis in place of or in addition to a written and oral reply.</p> <p>c. (same)</p> <p>d. (same)</p> <p>e. (same)</p>

<p><b>Suspensions for 14 days or less (Prohibited for SES members)</b></p>	<p><b>Appealable Adverse Actions</b></p>
<p>condition alleged to have caused the reason(s) for the proposed action.</p> <p>The proposed notice will normally be delivered by the immediate supervisor. If the employee is not at work, the notice will be sent to the employee's last known address.</p> <p><b>STEP 3.</b> If the employee makes an oral reply, the official hearing the reply will prepare a summary report of the discussion. The employee will be furnished a copy of the summary report and will be allowed 1 day in which to submit any corrections or additions.</p> <p><b>STEP 4.</b> The deciding official considers the entire record, including any reply made. If medical documentation is supplied by the employee in reply to a proposed action, the deciding official may, if authorized, require a medical examination or, at his/her option, offer a medical examination following the procedures in CPI 339. The deciding official then issues a decision either to take the action as proposed, issue a lesser penalty, or issue no penalty. The deciding official must be in a higher position (normally, the second level supervisor) than the official who proposed the action. The decision letter must:</p> <p>a. consider only the reasons specified in the notice of proposed action;</p>	<p><b>STEP 3.</b> (same)</p> <p><b>STEP 4.</b> (same)</p> <p>a. (same)</p>

An employee's choice of representative may be disallowed if the representative functions would result in a conflict of interest with the representative's official duties as an employee, a conflict with the priority needs of the service, or would give rise to unreasonable costs to the Government. The official designated to hear the reply should make the determination to disallow a representative and should issue a written decision to the employee citing the reason(s) for disallowance. If the employee disagrees with this decision, he/she may submit a written request for review within 5 days to the next higher level within the chain-of-command. A final written decision will be issued by that official.

11. Maintenance of Records. The S/HHRO Employee Relations Branch will maintain official disciplinary records as required by reference (b). At the time that a Notice of Decision on a proposed suspension, reduction-in-grade, or removal action is issued, the deciding official should initiate a Standard Form 52 (SF-52), Request for Personnel Action, and forward it to the S/HHRO Employee Relations Branch which will effect the action.

APPENDIX A

DEFINITIONS

a. Appealable Adverse Action. Removal, suspension for more than 14 days, reduction-in-grade or pay, or furlough for 30 days or less. Such actions are appealable to the Merit Systems Protection Board (MSPB).

b. Current Continuous Employment. A period of employment or service immediately preceding an action under 5 CFR Part 752 in the same or similar positions without a break in Federal civilian employment of a work day.

c. Day. Calendar day.

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

e. Drugs. A controlled substance included in Schedules I-IV established by section 202 of the comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat 1256) as updated and republished under the provisions of that Act.

f. Furlough. 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.

g. Grievable Adverse Action. A letter of reprimand or a suspension for 14 days or less. Such actions may be grieved through the Administrative Grievance Procedure.

h. Handicapped Person. An individual who (1) has a physical or mental impairment that substantially limits 1 or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

i. Illegal (or unlawful) Use or Possession of a Drug. Use or possession of a drug without a valid medical prescription for the use of that drug or otherwise contrary to law or regulation.

j. Indefinite Suspension. The placing of an employee in a temporary status without duties and pay pending investigation,

inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the condition(s) set forth in the notice of action which may include the completion of any subsequent administrative action.

k. Letter of Caution. A written notice of warning or caution issued by a supervisor addressing an employee's improper conduct and informing the employee that a disciplinary action may be imposed unless conduct improves.

l. Letter of Reprimand. A grievable written notice of censure issued by a supervisor for an employee's improper conduct.

m. Letter of Requirement. Written notification issued by a supervisor to an employee concerning conduct deficiencies, such as sick leave abuse or tardiness, which sets forth requirements and procedures to be followed by the employee to avoid a future disciplinary action for similar deficient conduct.

n. Non-contestable Action. Either an oral admonishment or a Letter of Caution, (i.e., an action not recorded in an employee's Official Personnel Folder).

o. Oral Admonishment. An oral warning or caution given by a supervisor in an effort to correct an employee's improper conduct which informs the employee that a disciplinary action or letter of requirement may be imposed for continued deficiencies.

p. Qualified Handicapped Employee/Person. With respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of him/herself or others and who, depending upon the type of appointing authority being used: (1) meets the experience and/or education requirements (which may include passing a written test) of the position in question, or (2) meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

q. Reasonable Accommodation. Accommodation to an employee's physical or mental handicapping condition which will allow the employee to perform the essential duties of the position without endangering the health and safety of that employee or others and which will not impose an undue hardship on the activity.

Reasonable accommodation may include referral to the Civilian Employee Assistance Program (CEAP) for diagnostic counseling and referral for treatment or rehabilitation or other assistance; and a reasonable opportunity to demonstrate minimally acceptable performance or conduct. A decision to provide reasonable accommodation does not preclude disciplinary action.

r. Removal. The involuntary separation of an employee from the activity and Federal Service except when taken as a reduction-in-force action.

s. Similar Positions. Positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be interchanged between the positions without significant training or undue interruption of the work.

t. Suspension. The placing of an employee in a temporary status without duties or pay for disciplinary reasons, including pending inquiry.

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

APPENDIX B

EMPLOYEE CHECKLIST FOR ORIENTATION

Name of Employee \_\_\_\_\_  
On-Board Date \_\_\_\_\_

The following items should be discussed with your new employee within his/her first week of employment:

I. Office Policy Date Discussed

- A. Hours of work \_\_\_\_\_
- B. Lunch Break \_\_\_\_\_
- C. Other breaks (cigarette, snack, etc.) \_\_\_\_\_
- D. Procedures for requesting leave \_\_\_\_\_

- 1. Sick leave may be requested by phoning \_\_\_\_\_ no later than \_\_\_\_\_.
- 2. Emergency annual leave may be requested by phoning \_\_\_\_\_ no later than \_\_\_\_\_.
- 3. Planned annual leave requests - orally/in writing Annual leave may be requested by asking \_\_\_\_\_ no later than \_\_\_\_\_ days in advance.

II. Organizational Structure

- A. Organizational chart \_\_\_\_\_
- B. Chain of Command \_\_\_\_\_
- C. Office mission \_\_\_\_\_
- D. Introduction to co-workers \_\_\_\_\_
- E. Who and where to go for assistance \_\_\_\_\_

III. Administrative Details

- A. Checked in with Security Office \_\_\_\_\_
- B. Name of Personnel Liaison \_\_\_\_\_
- C. Name of Timekeeper \_\_\_\_\_
- D. Security procedures \_\_\_\_\_
- E. Duties and responsibilities (ensure employee has a copy of his/her position description \_\_\_\_\_

- F. Building orientation - snack bar, restrooms, other applicable \_\_\_\_\_
- G. Safety and fire procedure \_\_\_\_\_
- H. Parking availability and procedures \_\_\_\_\_
- I. Building smoking policy \_\_\_\_\_
- J. Probationary period discussed, if applicable. \_\_\_\_\_

IV. Performance Cycle

- A. You are covered under the (PARS) performance appraisal system
- B. Your rating cycle runs from \_\_\_\_\_ to \_\_\_\_\_.
- C. You will be given your performance standards no later than \_\_\_\_\_.
- D. Call the S/HHRO Employee Relations Branch on (703) 614-2985 if you have a question about performance requirements.

V. Position Requirements

A. Go over the position description with the employee. Identify main tasks the employee will be responsible for and identify training requirement, i.e., secretary - task: word processing; training required: instruction in Word Perfect on the job with Word Perfect tutorial; management analysis - task: numerical analysis; training required: Formal course at OPM in statistical analysis; on-the-job training by reviewing existing analytical compilations.

1. Identify Tasks

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

2. Training Requirements

- | Formal Training | On-the-Job Training |
|-----------------|---------------------|
| a. _____        | _____               |
| b. _____        | _____               |
| c. _____        | _____               |
| d. _____        | _____               |

VI. Benefits Orientation Classes

A. These classes for new employees are held once a month at the Secretariat/Headquarters Human Resources Office at the Arlington Annex in Room 2634. Please Schedule your employee for the next class. Date of orientation class: \_\_\_\_\_.

VII. Signatures

A. Please sign to indicate that this information has been reviewed. The employee should retain the original of this form and a copy should be retained by the supervisor.

\_\_\_\_\_  
Employee's signature      date      \_\_\_\_\_  
Supervisor's signature      date

ANY TIME YOU HAVE A PERSONNEL QUESTION, PLEASE CALL S/HHRO.  
WE'RE GLAD TO BE OF SERVICE.

APPENDIX C  
GUIDELINE SCHEDULE OF DISCIPLINARY OFFENSES AND  
RECOMMENDED REMEDIES FOR CIVILIAN EMPLOYEES

1. This list is not intended to cover every possible type of offense. Remedies for offenses not listed will be determined consistent with the guidelines contained here.
2. Many of the items listed on this schedule combine several offenses in one statement connected by the word "OR". Use only the items which describe the employee's actual conduct and leave out the parts which do not apply.
3. Remedies for disciplinary offenses will, in general, range from the minimum to the maximum indicated. Depending on mitigating or aggravating factors, a remedy outside the general range may be imposed.
4. Suspension remedies on this schedule refer to calendar days.
5. Due to the nature of their positions, offenses by supervisors or managers may warrant more severe remedies than the same offense committed by a non-supervisory employee.
6. Although the schedule shows 10 days as the normal maximum suspension, a suspension of greater length may be imposed where the option of removal is also provided for that offense.
7. The schedule generally provides for a range of remedies, e.g., Reprimand to Removal, to provide flexibility in correcting conduct deficiencies. Selection of a reasonable remedy from such a broad range should be made with good judgment. Excessive, arbitrary or capricious remedies, and remedies selected without consideration of mitigating factors may be reversed by third parties if challenged and are contrary to Department of Navy policy.
8. All disciplinary actions are to be taken following the provisions of law.
9. Past Offenses
  - a. When used to select a range of remedies or remedy, a past offense must be described in sufficient detail to enable the employee to understand and respond to it. Past offenses may be used in determining a range of remedies or remedy when:

(1) The employee was disciplined in writing;

(2) The employee was provided the opportunity to dispute the action to a higher level; and

(3) The action was made a matter of record in the employee's Official Personnel Folder.

b. Any past 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. In considering past offenses in determining a remedy, the following limitations must be observed:

(1) A letter of reprimand may be counted as a prior offense provided it has not expired before the date of the proposed notice of adverse action in which it is cited;

(2) A suspension or reduction-in-grade or pay (if effected for disciplinary reasons) may be counted as a prior offense provided the effective date of the suspension or reduction-in-grade or pay is not more than 3 years before the date of the proposed adverse action in which it is cited;

c. The following actions may not be counted as past offenses for the purpose of selecting a higher range of remedies for a subsequent offense. However, if there is a range of remedy for the offense, i.e., reprimand to removal for the first offense of excessive unauthorized absence, actions discussed in paragraphs (1) and (2) may be considered in selecting the appropriate remedy within the range.

(1) Oral admonishments and letters of caution or requirement.

(2) Letters of Reprimand that have expired before the date of the proposed written notice of adverse action.

(3) Reduction-in-grade or pay not effected for disciplinary reasons.

10. The S/HHRO Employee Relations Branch can provide advice and assistance with issues such as establishing the required nexus between off-duty misconduct and the efficiency of the service, appropriate wording of the charge(s), application of mitigating factor, consistency of remedies, etc., based on current case law. Activity heads, managers, and supervisors delegated authority to propose and/or decide disciplinary actions are encouraged to take advantage of such assistance to ensure conformance with this instruction and Department of the Navy and federal policy.

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<b><u>ATTENDANCE</u></b>			
Excessive unauthorized absence (more than 5 consecutive workdays)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Leaving job to which assigned or DON premises at any time during working hours without proper authorization	Reprimand to 5-day suspension	5 to 10-day suspension	10-day suspension to removal
Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime	Reprimand to 2-day suspension	1 to 5-day suspension	5-day suspension to removal
Unexcused tardiness	Reprimand	Reprimand to 1-day suspension	Reprimand to 2-day suspension
<b><u>CONDUCT</u></b>			
Unauthorized possession (including actual or attempted wrongful removal from its proper location) use, loss, or damage to government property or the property of others	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Criminal, dishonest, infamous or notoriously disgraceful conduct having an adverse effect on the efficiency of the service	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

<u>OFFENSE</u> CONDUCT (Continued)	<u>FIRST</u> <u>OFFENSE</u>	<u>SECOND</u> <u>OFFENSE</u>	<u>THIRD</u> <u>OFFENSE</u>
Disobedience to constituted authorities, or deliberate refusal or failure or delay in carrying out any proper order from any supervisor, including failure to follow local or higher level policy; insubordination	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Threatening or attempting to inflict bodily injury to another; fighting, engaging in dangerous horseplay; or resisting competent authority	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Disrespectful conduct; use of insulting, abusive or obscene language to or about other personnel	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Failure to carry or show proper identification on Navy premises as required by competent authority	Reprimand to 1-day suspension	1 to 2-day suspension	2 to 5-day suspension
Failure to honor just debts or legal obligation without good cause	Reprimand	Reprimand	Reprimand to removal
Falsification, misstatement or concealment of material fact in connection with any official record	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
False testimony or refusal to testify in an inquiry, investigation or other official proceeding	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

<u>OFFENSE</u> CONDUCT (Continued)	<u>FIRST</u> <u>OFFENSE</u>	<u>SECOND</u> <u>OFFENSE</u>	<u>THIRD</u> <u>OFFENSE</u>
Falsification (or aiding or assisting in falsification) of time and attendance records or claims against the government	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Knowingly making false or malicious statements with the intent to harm or destroy the reputation, authority, or official standing of individuals or organizations	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Unlawful gambling or betting during work hours	Reprimand to 2-day suspension	Reprimand to 5-day suspension	Reprimand to removal
Promotion of gambling on Navy premises	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Misuse of a government vehicle	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
<b><u>UNAUTHORIZED DISCLOSURE</u></b> <b><u>OR USE OF PROTECTED</u></b> <b><u>MATERIAL</u></b>			
Unauthorized disclosure or use of information or other protected material (e.g., records covered by the Privacy Act or under 42 CFR Part 2 (CEAP records))	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<b><u>DISCRIMINATION</u></b>			
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	5-day suspension to removal	10-day suspension to removal
Sexual Harassment	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
<b><u>SUBSTANCE ABUSE</u></b>			
*Reporting for duty under the influence of alcohol	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Unauthorized possession, sale or transfer of alcohol on duty	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Use, or being under the influence of alcohol on duty	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
*Unlawful use or possession of drugs or drug paraphernalia on or off duty	Reprimand to removal	Removal	

\*See paragraph 7(f)2 of this instruction.

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<b>SUBSTANCE ABUSE</b> (continued)			
* Unlawful distribution, sale, or transfer of drugs or drug paraphernalia on or off duty	Removal		
<b><u>DRUG TESTING</u></b>			
Refusal to provide a urine sample when required	Reprimand to removal	Removal	
Substituting, adulterating or otherwise tampering with a urine sample, testing equipment or related paraphernalia	Reprimand to removal	Removal	
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	5-day suspension to removal	10-day suspension to removal
<b><u>PERFORMANCE</u></b>			
Careless workmanship resulting in delay in production or spoilage or waste of materials	Reprimand to 5-day suspension	5 to 10-day suspension	10-day suspension to removal

\*See paragraph 7(f)2 of this instruction.

<u>OFFENSE</u> PERFORMANCE (Continued)	<u>FIRST</u> <u>OFFENSE</u>	<u>SECOND</u> <u>OFFENSE</u>	<u>THIRD</u> <u>OFFENSE</u>
Covering up or attempting to conceal defective work; removing or destroying same without permission	Reprimand to 2-day suspension	1 to 5-day suspension	5-day suspension to removal
Failure or delay in carrying out orders, work assignments or instructions	Reprimand to 2-day suspension	1 to 5-day suspension	5-day suspension to removal
Loafing; wasting time; inattention to duty	Reprimand to 2-day suspension	1 to 5-day suspension	5-day suspension to removal
Sleeping on duty	Reprimand to 2-day suspension	1 to 5-day suspension	10-day suspension to removal
Sleeping on duty where life or property is endangered	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
<u>SAFETY</u>			
Failure to observe precautions for personal safety, posted rules, signs, written or oral instructions or to use protective clothing or equipment	Reprimand to 2-day suspension	1 to 5-day suspension to removal	10-day suspension to removal

<u>OFFENSE</u> SAFETY (Continued)	<u>FIRST</u> <u>OFFENSE</u>	<u>SECOND</u> <u>OFFENSE</u>	<u>THIRD</u> <u>OFFENSE</u>
Violation of safety or traffic regulations on duty or on an installation (on or off duty):			
--Causing injury to self or others or damage to property or endangering the safety of self or others	Reprimand to removal	10-day suspension to removal	14-day suspension to removal
--No injury or property damage; not endangering the safety of self or others	Reprimand to 5-day suspension	5 to 10 day suspension to removal	10-day suspension to removal
Reckless driving or improper operation of motor vehicle:			
--Causing injury to self or others or damage to government property	Reprimand to removal	10 day suspension to removal	14-day suspension to removal
--No personal injury to self or others or damage to government property	Reprimand to 5-day suspension	5 to 10-day suspension	10-day suspension to removal
Endangering the safety or causing injury to personnel through carelessness	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to observe posted smoking prohibitions	Reprimand to 2-day suspension	1 to 5-day suspension	10-day suspension to removal

<u>OFFENSE</u>	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>SECURITY</u>			
Failure to safeguard classified material:			
--Security compromised	Reprimand to removal	14-day suspension to removal	Removal
--Security not compromised	Reprimand to 5-day suspension	5 to 10-day suspension	10-day suspension to removal
<u>PROHIBITED PERSONNEL PRACTICE</u>			
Committing a pro- hibited personnel practice (see 5 U.S.C. 2302)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

APPENDIX D  
CRITERIA FOR DETERMINING APPROPRIATE PENALTY/REMEDY

1. In the precedential case of Douglas v. Veterans Administration, the Merit Systems Protection Board established its authority to review remedies imposed by agencies in adverse action decisions.

2. The Board set out the following guidelines explaining the types of factors supervisors should consider in selecting a remedy:

a. 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;

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

c. The employee's past disciplinary record;

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

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

f. Consistency of the remedy with those imposed upon other employees for the same or similar offenses;

h. The notoriety of the offense and its impact upon the reputation of the agency;

i. 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;

j. Potential for the employee's rehabilitation;

k. 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; and

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

3. Not all of these factors apply in every case. Thus, supervisors must consider the relevant factors given the circumstances of each individual case, and strike a responsible balance within tolerable limits of reasonableness.

4. Supervisors may also consider other factors not listed above that they consider pertinent to their case.

APPENDIX E  
CHECKLIST FOR PROPOSING OFFICIALS  
(GENERALLY FIRST LEVEL SUPERVISORS)

An incident that seemingly portrays misconduct has been observed either by you or been reported to you. It's a good idea at the outset to contact the S/HHRO Employee Relations Branch for assistance. We will help you in your capacity as the first level supervisor to answer the questions listed below. They are the type of questions you might be asked under oath if the action is appealed to the Merit Systems Protection Board (MSPB) or another third party. Should the case be appealed to MSPB, Navy will be required to demonstrate that:

(1) There was a preponderance of evidence to substantiate the reasons and specifications identified in the proposal letter. Specifically, preponderance of evidence means that the matter asserted is more likely to be true than not true.

(2) A nexus (connection) between the adverse action effected and the efficiency of the service; and

(3) The adverse action effected was appropriate in light of any mitigating factors such as the employee's length of service, work performance record, and position within the organization.

1. What happened?
2. Where did it happen?
3. If appropriate, has a visual inspection been made of the work site?
4. Who was directly involved in the incident(s)?
5. Were there any witnesses to the incident(s)?
6. If yes to 5, who were they? (Interview and request statements from all witnesses - determine if there are any discrepancies among the statements - clarify why they exist.)

7. Has the employee been given any opportunity to tell you his/her side of the story? Yes No (If no, the employee should be interviewed. Summarize his/her response. You may request a written statement from the employee.)

8. Has the employee been previously disciplined for a similar incident? Yes No (Letters of caution and requirement are not considered discipline.)

9. If yes to 8, what was the basis for discipline; when was it taken? What type of action was taken?

10. Are you considering the employee's past disciplinary record? Yes No

11. Do you have any files on the employee? Yes No

12. If yes to 11, what information is contained in those files?

13. Is any of that information out of date, i.e., letters of reprimand past their life period? Yes No (If answer is yes, destroy the out of date information and do not consider it.)

14. Are you considering any information in your files, i.e., counseling notes, Civilian Employee Assistance Program (CEAP) referrals, etc...? Yes No

15. If yes to 14, what information are you considering?

16. Why are you considering using that information? (Make copies of all indicated documents to place in the case file.)

17. Have you considered mitigating factors such as the employee's length of service, past work performance record, and position within the organization? Yes No (If no, you should make those considerations before proposing any action. If there are special circumstances or unusual conditions, note and include in the case file. See Appendix D of this instruction for further information on factors to consider.)

18. Do you have any reason to believe that the employee has a substance abuse or other personal problem? If so, contact your CEAP Administrator in the S/HHRO Employee Relations Branch.

19. What action do you want to propose?

20. Is this proposed action consistent with actions taken against other employees for similar offenses? ( )Yes ( )No

21. What is the nexus (connection) between the proposed adverse action and "the efficiency of the service?"

22. Are there any adverse EEO implications? ( )Yes ( )No (If yes, explain.)

23. Have there been any allegations that you have violated rules, regulations, or laws? ( )Yes ( )No (If yes, explain.)

APPENDIX F  
GUIDE FOR RECEIVING AN EMPLOYEE'S ORAL REPLY  
TO A PROPOSED ACTION

You have been designated to receive an employee's personal reply to a proposed action against him/her. It is your responsibility to hear the employee's reply, to consider that reply and to make a decision concerning the disposition of the proposed action. The following guide has been prepared to acquaint you with your role in this process and to aid you in preparing for a personal reply session. Additionally, this guide has been designed to help you conduct an objective session and make a decision in light of full consideration of the reply.

PROPOSED ACTIONS AND YOUR ROLE

Proposed actions include: removals for misconduct, suspension, furlough without pay, and removal for unacceptable performance.

Prior to taking one of the above actions against an employee, the activity must give the employee advance written notice of the action proposed. A written proposal states specifically and in detail all reasons for the proposed action and it enumerates the employee's rights to representation, review and reply. The employee is entitled to a reasonable time (specified in the notice of the proposed action) in which to answer the charges in the proposed action. He/she may answer in writing, orally, or both. The written notice proposing the action will advise the employee that an official will be appointed to hear his/her reply. This official must have the authority either to make a decision on the proposed action or to effectively recommend what decision should be made. In order to prepare his/her answer, an employee has the right, on official time, to review the case file and secure affidavits to support his/her answer and to be represented by an individual of his/her choice.

The employee and his/her representative, if one has been elected, must be given reasonable opportunity to make any representations which they believe might sway the final decision-making. The U.S. Court of Claims in Washington vs. U.S. stated, "Congress knew as well as we do, that bureaucratic supervisors like other human beings, are susceptible to the effects of personal pleas." This right of personal reply must not be narrowly construed to give the singular impression that it means only rebuttal to the charges contained in the proposal.

The employee may confess and ask for a lesser penalty (mitigation) or may explain extenuating circumstances which he/she believes will affect the final decision. His/her reply cannot be restricted to matters related to the activity's reasons for proposing the action; he/she must be given every opportunity to present any information he/she believes may influence the final decision.

Prior to proceeding with specific guidance related to preparing for, conducting of, or reporting a reply session, there is one guiding principle which must influence your behavior throughout the reply and decision process. Make certain that your manner during the process demonstrates that you have not made a final decision concerning the proposed action. That decision cannot be objectively reached until you have become familiar with the case, heard the reply, considered the appropriateness of the proposed action in light of the reply and recommend disposition. The quality of recommendation is directly proportional to your ability to withhold judgement until all the facts, contentions, and issues surrounding the proposed action are known and considered.

#### PREPARING FOR THE REPLY SESSION

Your first responsibility, when notified that you have been designated to hear an employee's reply to a proposed action, is to thoroughly familiarize yourself with the case and the charges against the employee. The proposing official should provide you with a copy of the proposal notice and the evidence he/she used to support it. It is advisable that the S/HHRO Employee Relations Branch who staffed the case be consulted during your initial review of the file. He/she can explain applicable regulations and clarify rationale which led to the charges and proposed action. Additionally, he/she can acquaint you with various alternative actions which could be appropriate under certain circumstances.

Your primary concern when making arrangements for the reply session is to select a time and place which affords privacy. The session should be scheduled in such a manner as to avoid interruption and no definite time limit should be applied to the length of the session.

### CONDUCTING THE REPLY SESSION

The manner in which you conduct the reply session is the key factor in meeting the requirement that an employee be given every opportunity to make any representation which he/she believes may affect the final decision on the proposed action. It is your skill in communication and human relations which will give the employee the unbiased platform upon which to present his/her side of the case. Your behavior and the impression you create are primary indicators to the employee that his/her side of the case will be considered prior to reaching a final decision. The following checklist has been compiled to help you; it is not inclusive, but sets forth considerations critical to an objective reply session. (It is strongly recommended that the Employee Relations Specialist processing the case be present during the reply session. He/she can answer questions concerning technical procedures, prepare a summary of the oral reply, and serve as a witness to the proceeding.)

1. Have the written notice of proposed action on hand during the reply session for reference.
2. Determine that any person accompanying the employee is a bonafide representative, selected by the employee. The name and organizational affiliation of the representative should be recorded to be included in the session report.
3. Explain the session's purpose and your role as the activity's representative to hear the oral reply. Stress the fact that all information provided by the employee will be considered prior to arriving at a final decision on the proposed action. (This is not a hearing, it is simply an occasion for the employee to personally reply to a proposed action.)
4. Invite the employee to explain his/her side of the case. Be an attentive listener; ask questions to clarify, not to dispute the employee's contentions, and give the employee as much latitude as he/she needs to present his/her point.
5. If any questions of fact arise during the employee's presentation, indicate that the matter will be investigated, resolved and considered prior to the final decision.
6. It is recommended that you take notes and repeat the employee's contentions to verify your initial understanding.

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7. When the employee and his/her representative have stated their side of the case, make sure that you have received their total reply and mutually agree to end the session.

8. Be certain it is understood that you have not reached a conclusion on the matter; that you will consider the reply and then reach a conclusion.

9. When the employee and his/her representative have left the area, you may either consolidate your notes and outline a summary of the session or request the Employee Relations Specialist to do so. All major points of the employee's presentation should be noted, including mitigating or extenuating circumstances. Affidavits supporting the employee's answer should be referenced for clarity. Any areas requiring investigation should be noted for action. The employees must be given the opportunity to review the summary, make changes, and sign it.

FURTHER ASSISTANCE IN MAKING A DECISION MAY BE FOUND IN APPENDIX G TO THIS INSTRUCTION.

APPENDIX G  
QUESTIONS FOR DECIDING OFFICIALS  
(GENERALLY SECOND LEVEL SUPERVISORS)

You will find it helpful in your role as a Deciding Official to take the time to carefully and accurately answer the questions listed below with the assistance of the S/HHRO Employee Relations Branch. They are the type of questions you might be asked under oath if the action is appealed to the Merit Systems Protection Board (MSPB) or another third party. Should the case be appealed to MSPB, Navy will be required to demonstrate that:

(1) There was a preponderance of evidence (i.e., the matter asserted is more likely to be true than not true) supporting the reasons and specifications identified in the proposal letter to substantiate effecting the adverse action;

(2) A nexus (connection) between the adverse action effected and the efficiency of the service; and

(3) The adverse action effected was appropriate in light of any mitigating factors such as the employee's length of service, work performance record, and position within the organization.

1. Have you read the entire case file? ( )Yes ( )No

2. What information contained in the case file have you considered? (Make a memo for the file identifying the information considered.)

3. Did the employee respond to the proposal letter in writing ( )Yes ( )No (If yes, provide the Employee Relations Specialist with a copy.)

4. Did the employee orally respond to the proposal letter? ( )Yes ( )No (if yes, ask the Employee Relations Specialist who attended the meeting to prepare a summary statement on what was said by all parties.)

5. Did you consider the employee's previous disciplinary record (if any)? ( )Yes ( )No

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6. Did you consider reasons other than those specified in the proposal letter in making your decision? ( )Yes ( )No
7. If yes to 6, what other reasons were considered? (at this point, check with the Employee Relations Specialist to determine whether a harmful error was committed.)
8. Did you consider information other than what was in the case file in making your decision? ( )Yes ( )No
9. If yes to 8, what other information was considered? (At this point, check with the Employee Relations Specialist to determine whether a harmful error was committed.)
10. What is your decision on this matter?
11. Did you make your decision only after the employee had a full opportunity to respond orally and in writing to the notice of proposed adverse action? ( )Yes ( )No (If no, explain.)
12. What is the nexus (connection) between effecting this adverse action and the efficiency of the service? (Explain.)
13. Are you aware of any other supervisor/manager in the employee's chain of command who, in his/her supervisory/managerial capacity, violated any rules, regulations, or laws? ( )Yes ( )No (If yes, explain.)
14. Have there been any allegations that a supervisor/manager, including yourself, violated rules, regulations, or laws? ( )Yes ( ) No (If yes, explain.)
15. Is (are) the charge(s) supported by the evidence? ( )Yes ( )No If no, the employee should not be disciplined. If yes, were any mitigating or extenuating circumstances presented by the employee or cited in the evidence that would support a lesser penalty than that proposed? See Appendix D of S/HHROINST 12752.1 for a list of the factors supervisors should consider in selecting a remedy. It is crucial to consider those factors before making your decision. If you answered no, the proposed penalty should stand.