HRDG 4752 - Disciplinary or Alternative Actions - Section H

Last Modified:

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Section H - How to Select a Disciplinary Penalty

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Choosing A Reasonable Penalty

Choosing a penalty that is reasonable and appropriate for the circumstances involved is very important, and all factors must be given careful consideration. If an action is appealable to the Merit Systems Protection Board (MSPB), the MSPB may mitigate the penalty if it is determined that the penalty is excessive, disproportionate to the sustained charges, arbitrary, capricious, or unreasonable.

Selecting a penalty demands responsible judgment so that an employee will not be penalized disproportionately to the character of the offense.

What Is Progressive Discipline?

If it is necessary to take disciplinary action, the penalty selected should be progressive in most cases. For example, if the employee previously had a letter of reprimand, it may be necessary to take more serious disciplinary action such as a suspension, reduction in grade/pay, or removal (dependent upon the circumstances involved). However, when there is a particularly serious offense or an offense bearing a statutory penalty (i.e., misuse of Government Owned Vehicle), it may not be appropriate to use progressive discipline.

What Are the Douglas Factors?

Before proposing or deciding a particular penalty, the proposal and Deciding Official must **always** consider the Douglas Factors which are the pertinent mitigating and aggravating factors in determining an appropriate penalty. The Douglas Factors are used by MSPB to evaluate the agency's choice of penalty. The Douglas Factors are:

1. Nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities; was the offense:
2. a. Intentional, technical, or inadvertent;
   b. Committed maliciously or for gain; or
   c. Frequently repeated.
3. Employee's job level and type of appointment:
4. a. Supervisory or fiduciary role (i.e., a position of confidence or trust);
   b. Contacts with the public;
   c. Prominence of position.
5. Past disciplinary record.
6. Past work record:
7. a. Length of service;
   b. Performance on the job;
   c. Ability to get along with fellow workers;
   d. Dependability.
8. Affect of offense on employee's ability to perform at a satisfactory level and on supervisor's confidence in employee's ability.
9. Consistency of penalty with those imposed on other employees for the same or similar offenses.
10. Consistency of penalty with any applicable table of penalties.
11. Notoriety of offense and its impact on the reputation of the agency.
12. Clarity with which the employee was on notice of rules violated and was warned of the conduct.
13. Potential for rehabilitation.
14. Mitigating circumstances:
15. a. Unusual job tensions;
    b. Personality problems;
    c. Mental impairment;
    d. Harassment;
    e. Bad faith, malice, provocation

Before imposing a penalty, the Deciding Official should always consider the USDA Table of Penalties as a **guide** for determining an appropriate penalty since this is a requirement under the Douglas Factors identified above. The USDA Table of Penalties **guide** is a valuable source in securing equitable treatment of employees within USDA. Agencies should consider the penalties suggested therein and normally apply them unless there appears to be substantial justification for deviating there from.

Table of Penalties

The Table of Penalties **guide** assists those responsible for disciplining employees in determining the appropriate penalty for the type of offense committed. However, it does not dictate penalties.

The USDA Table of Penalties **guide** attempts to promote greater uniformity in the application of discipline throughout USDA. Although the **guide** does not cover every possible offense, it presents generally accepted penalties of the more common offenses. Nevertheless, each case must be evaluated on its own merits. Any questions on selection of penalty should be addressed to your servicing Employee Relations Specialist. The following is a copy of the USDA Table of Penalties **guide**.

Chapter 751 - USDA Table of Disciplinary Penalties

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