



Defense Health Agency **ADMINISTRATIVE INSTRUCTION**

NUMBER 029
May 24, 2018

J-1, HRD

SUBJECT: Disciplinary and Adverse Actions

References: See Enclosure 1.

1. **PURPOSE.** This Defense Health Agency-Administrative Instruction (DHA-AI), based on the authority of References (a) and (b), and in accordance with the guidance of References (c) through (g):

a. Establishes the Defense Health Agency's (DHA) procedures for taking disciplinary and adverse actions.

b. Issues a Table of Offenses and Penalties to use as a guide to selecting an appropriate penalty for actionable misconduct.

c. Cancels and reissues Reference (h).

2. **APPLICABILITY.** This DHA-AI applies to:

a. DHA federal civilians, excluding, the National Capital Region Medical Directorate activities (centers, clinics, and Medical Treatment Facilities), and all employees excluded based on appointment status and those employees excluded in References (d) and (e).

b. Bargaining unit employees who are also governed by the provisions of applicable Collective Bargaining Agreements (CBAs). In accordance with Reference (d), where this DHA-AI conflicts with the provision of an existing CBA, the provisions of the CBA will govern.

3. **POLICY IMPLEMENTATION.** It is DHA's policy, pursuant to Reference (d), that:

a. The objective of a disciplinary or adverse action is to promote "the efficiency of the service" by ensuring high standards of government service and maintaining public confidence in

the DoD. Disciplinary actions will be taken “only for such cause as will promote the efficiency of the service” and, when warranted, will be initiated promptly. The administration of disciplinary and adverse actions balances essential management decisions with employee rights established by law, regulation, policy, and/or a CBA. Actions are affected through due process that may include a notice of proposed action, an opportunity to respond to charges, a notice of the decision, and access to Appellate or grievance procedures. Management carries the obligation to prove the following by a preponderance of the evidence:

- (1) Reason for the disciplinary or adverse action;
- (2) Action promotes the efficiency of the service; and
- (3) The penalty is reasonable.

b. The authority to initiate disciplinary or adverse actions will be delegated to the lowest practical level of supervision consistent with good management practices. Normally, this authority is placed at the first level of supervision. Decisions to suspend, reduce in grade, or remove will normally be made by a management official at least one level higher than the supervisor who proposed the action unless the Proposing Official is the Secretary Defense. Prior to initiating an action, a supervisor will seek advice and assistance from Management Employee and Labor Relations (MELR) to ensure regulatory compliance and consistency of actions across DHA.

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

4. RESPONSIBILITIES. See Enclosure 2.


5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. **Not cleared for public release**. This DHA-AI is available to users with Common Access Card authorization on the DHA SharePoint site:
<http://www.health.mil/dhapublications>.

7. EFFECTIVE DATE. This DHA-AI:

a. Is effective upon signature.

b. Will expire 10 years from the date of signature if it has not been reissued or cancelled before this date in accordance with DHA-Procedural Instruction 5025.01 (Reference (c)).



R. C. BONO
VADM, MC, USN
Director

Enclosures

1. References
2. Responsibilities
3. Procedures
4. Offenses and Penalties

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5136.01, “Assistant Secretary of Defense for Health Affairs (ASD(HA)),” September 30, 2013, as amended
- (b) DoD Directive 5136.13, “Defense Health Agency (DHA),” September 30, 2013
- (c) DHA-Procedural Instruction 5025.01, “Publication System,” August 21, 2015
- (d) United States Code, Title 5
- (e) Code of Federal Regulations, Title 5
- (f) DoD Instruction 1400.25, Volume 431, “DoD Civilian Personnel Management System: Performance Management and Appraisal Program,” February 4, 2016
- (g) United States Code, Title 31, Section 1349
- (h) TRICARE Management Activity Administrative Instruction Number 029, “Disciplinary and Adverse Actions,” November 7, 2012 (hereby cancelled)

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, DHA. The Director, DHA, will oversee implementation of this DHA-AI.
2. CHIEF, HUMAN RESOURCES DIVISION (HRD). The Chief, HRD, will:
 - a. Ensure that employees are advised of their rights according to this DHA-AI.
 - b. Coordinate all formal disciplinary actions with MELR to ensure compliance with established laws and regulations.
 - c. Ensure each case is processed promptly and fairly, and that discipline is uniformly applied.
3. CHIEF, MELR/HRD. The Chief, MELR/HRD, will:
 - a. Provide advice and assistance to supervisory and management officials on disciplinary and adverse actions.
 - b. Counsel employees concerning their rights, privileges, and standards of conduct.
4. PROPOSING OFFICIAL. The Proposing Official will:
 - a. Compile, document, and analyze the facts concerning each potential disciplinary or adverse action.
 - b. Issue a notice of proposed disciplinary or adverse action.
5. DECIDING OFFICIAL. The Deciding Official will:
 - a. Review and consider all relevant material regarding a proposed action.
 - b. Issue a notice of the final decision on a disciplinary or adverse action.
6. SUPERVISORS. Supervisors will:
 - a. Conduct themselves to set a good example for their subordinate employees.

- b. Communicate their expectations regarding standards of conduct and performance to employees.
- c. Refer employees to the Employee Assistance Program, as needed.
- d. Consult with MELR prior to initiating action in accordance with this DHA-AI.
- e. Investigate when an employee is involved in an incident of misconduct.
- f. Determine if disciplinary action is warranted; and, if so, what action to take upon completing an investigation and reviewing the facts surrounding the incident.
- g. Document instances of misconduct, misconduct counseling sessions, etc.

7. EMPLOYEES. Employees will:

- a. Conduct themselves, on and off duty, appropriately to ensure that their conduct does not reflect adversely on DoD.
- b. Adhere to the work rules and directives provided by their supervisors.
- c. Comply with the standards of conduct prescribed in Reference (f).

ENCLOSURE 3

PROCEDURES

1. ADVERSE ACTIONS

a. Disciplinary. Actions that may be taken against an employee covered by this DHA-AI only for such cause as will promote the efficiency of the service. A cause must exist as a basis for disciplinary adverse action and will be determined on a case-by-case basis.

b. Administrative. Certain kinds of adverse actions are not considered disciplinary and/or punitive in nature, but are administrative actions taken to promote the efficiency of the service. (e.g., medical inability to perform the essential functions of a position, reductions in grade or pay as a result of classification actions or reorganization, and furloughs of 30 days or less).

c. Reduction in Grade or Pay. Reductions in grade or pay are subject to the procedural provisions of paragraph 6.d, except for reductions based upon unacceptable performance, which are subject to the provisions of paragraph 10 in accordance with References (d), (e), and (g).

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

2. DISCIPLINARY AND REMOVAL ACTIONS: GUIDELINES FOR SELECTING PENALTIES

a. General. When discipline is necessary, a wide variety of penalties may be applicable to the misconduct. In selecting a penalty, all facts and circumstances of the case will be considered. In determining the proper action, careful judgment must be used to ensure that the penalty is not out of proportion to the character of the offense (i.e., especially a first offense). The decision must ensure that penalties are imposed with consistency and equity throughout the organization. Past offenses may form the basis for proposing a higher penalty for subsequent offenses. The offenses need not be identical or even similar in nature.

b. Penalty Selection Factors. After reviewing all the evidence and using the Tables of Offenses and Penalties, the supervisor will recommend the appropriate penalty in consultation with servicing the MELR Advisor. The factors most commonly used in selecting the penalty are listed in paragraphs (1) through (12) below. Not all factors listed will be pertinent in each case. Additionally, the factors may serve as either mitigating or aggravating depending on the specifics of the action.

(1) The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities include the following: whether the offense was intentional, technical, inadvertent, committed maliciously for gain, or was frequently repeated.

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

(3) The employee's past disciplinary record.

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

(5) The effect of the offense on the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee's ability to perform assigned duties.

(6) The consistency of the penalty with those imposed upon other employees for the same or similar offenses.

(7) The consistency of the penalty with DHA's Table of Offenses and Penalties (see Enclosure 4).

(8) The notoriety of the offense or its impact upon the reputation of the Agency.

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

(10) The potential for the employee's rehabilitation.

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

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

3. THE TABLE OF OFFENSES AND PENALTIES. The Table of Offenses and Penalties, (see Enclosure 4), is a guide to discipline, not a rigid standard. Deviations in penalties are allowable based on the facts and circumstances of each case. It is a list of the infractions committed most frequently by employees, along with a suggested range of penalties for each infraction. The penalties are graduated in severity based on an employee's previous record of offenses.

4. INFORMAL DISCIPLINARY ACTIONS. Oral admonishments or written warnings are usually the first steps in executing an informal disciplinary action. These measures may be used for an offense that does not, by itself, warrant a reprimand but that will, if repeated, warrant

formal disciplinary action. In the case of an oral admonishment, the supervisor should make an informal record of the date of the discussion and the subjects covered. Reference to the admonishment or warning can be cited in any future action as evidence that the employee was on notice of the seriousness of the offense and possible future disciplinary action.

5. FORMAL DISCIPLINARY ACTIONS. Such actions consist of official reprimands, suspensions, changes to lower grade, and removals. Formal disciplinary action is usually initiated by the first-line supervisor of the employee being disciplined. Except for official reprimands, the final decision for formal disciplinary actions rests with the Deciding Official.

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

b. Suspensions, Change to Lower Grade, and Removals. A suspended employee will be placed in a non-duty and non-pay status for the period of the suspension. Suspension from a pay and duty status for misconduct or delinquency is generally imposed when an employee fails to improve his/her conduct after receiving informal discipline and/or being reprimanded. A Change to Lower Grade or Removal is usually reserved for the most serious offenses or when other actions have not served to correct the misconduct. The action selected depends on the seriousness of the offense. The amount of notice, right to reply and appeal rights depend upon the employee's appointment, bargaining unit status, and tenure.

6. REQUIREMENTS FOR DISCIPLINARY AND ADVERSE ACTIONS

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

b. Requirements for Official Reprimands

(1) Issuance of the Reprimand. The supervisory or management official taking action will:

(a) Notify the employee in writing of the reprimand. The written notification will:

1. Contain the reason, in detail, for the reprimand.

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

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

4. Contain a statement that a copy of the letter of reprimand will be placed in the employee's Official Personnel Folder (OPF) for a period not to exceed 2 years.

5. At their discretion, request expungement of these documents at an earlier date.

(b) Advise the employee of appeal rights.

(c) Coordinate all reprimands with MELR.

(2) Delivery and Recording of the Reprimand. The official taking action will deliver the reprimand to the employee and obtain written acknowledgment of receipt on a copy of the reprimand for placement in the employee's OPF. If the employee refuses to sign, the official will annotate on the memorandum, "Employee refused to sign," the date of refusal, and then forward to MELR for placement in the employee's OPF.

c. Requirements for Suspensions of 14 Days or Less

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

(a) Identify the proposed action.

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

(c) Inform the employee of his/her right to reply orally and/or in writing to the proposed action and identify the name of the Deciding Official.

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

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

(f) Indicate that a request for an extension of the time limit allowed for a reply will be considered by the Deciding Official. Inform the employee of his or her duty status during the notice period.

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

(h) Be signed by the Proposing Official.

(i) Be delivered to the employee by the Proposing Official.

(j) Be signed by the employee. If the employee refuses to sign, the official will annotate on the memorandum, "Employee refused to sign," the date of refusal, and then forward to MELR for placement in the employee's OPF.

(2) Standards for Issuance of Notice of Final Decision. After consideration of the employee's reply, if given, to the written notification of the proposed action, the notice of final decision must:

(a) Consider only the reasons specified in the notice of proposed action and specify the reasons for the decision.

(b) Indicate whether the employee replied to the notice and, if so, that his/her reply was considered.

(c) Inform the employee of his/her appeal rights.

(d) Be signed by the Deciding Official.

(e) Be delivered to the employee on or before the effective date of the suspension.

(f) Be signed by the employee. If the employee refuses to sign, the official will annotate on the memorandum, "Employee refused to sign," the date of refusal, and then forward to MELR for placement in the employee's OPF.

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

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

(a) A minimum of 30 calendar days advance written notice stating the specific reasons for the proposed action. Unless the action is taken according to the crime provision set forth in paragraph 6.d(3) and Reference (d).

(b) A reasonable time, but not less than 10 calendar days, to answer orally and/or in writing (unless the action is taken in accordance with the crime provision set forth in Reference (d) and 6.d(3) (below), and to furnish affidavits and other documentary evidence in support of the answer.

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

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

(e) The advance notice must be:

1. Signed by the Proposing Official.

2. Delivered to the employee by the Proposing Official.

3. Signed by the employee. If the employee refuses to sign, the official will annotate on the memorandum, "Employee refused to sign," the date of refusal, and then forward to MELR for placement in the employee's OPF.

(2) Standards for Notice of Final Decision. After consideration of the employee's reply, if given, to the written notification of the proposed action, the notice of final decision must:

(a) Consider only the reasons specified in the notice of the final action and specify the reasons for the decision.

(b) Indicate whether the employee replied to the notice and, if so, that his/her reply was considered.

(c) Inform the employee of his/her appeal rights.

(d) Be signed by the Deciding Official.

(e) Be delivered to the employee on or before the effective date of the action.

(f) Be signed by the employee. If the employee refuses to sign, the official will annotate on the memorandum, "Employee refused to sign," the date of refusal, and then forward to MELR for placement in the employee's OPF.

(3) Other Considerations Crime Provision. The crime provision is used when the Agency has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed. According to this provision, an employee is required to furnish an answer, including affidavits and other documentary evidence, within 7 calendar days. Reasonable cause to believe is not established by the mere fact either of an arrest or an ongoing Agency investigation of possible criminal misconduct. A criminal indictment will

usually constitute reasonable cause. However, caution must be exercised before proposing an action according to the crime provision.

(4) Personal or Medical Considerations

(a) If a supervisor suspects that an employee has a personal or medical problem that is impacting on his/her conduct or performance, the employee will be encouraged to use Employee Assistance Program.

(b) If an employee responds to counseling or discipline by asserting a medical condition, the supervisor should request medical documentation. Following the review, the supervisor, with assistance from MELR, must decide how to proceed to support the assertion. It should be noted that if during the reply the employee asserts a medical condition and is seeking a Reasonable Accommodation, the supervisor must engage the employee in the interactive process, as defined by the Rehabilitation Act. The interactive process should begin immediately and be coordinated through the servicing Equal Employment Opportunity Office.

7. RECORDS OF DISCIPLINARY AND ADVERSE ACTIONS. MELR will maintain the official Agency files on all disciplinary and adverse actions. These files will be kept apart from the OPF. If the employee appeals an action to the Merit Systems Protection Board (MSPB), the record will be furnished to the employee and MSPB.

8. REQUIREMENTS FOR TRIAL AND PROBATIONARY EMPLOYEES

a. General. The requirement that all career DoD civilian employees serve a probationary period of 2 years provides protection against the retention of any person who, despite having passed preliminary tests, is found lacking in fitness and capacity for permanent government service. If an employee fails to demonstrate fully his/her fitness for continued employment, the supervisor should contact the MELR office to initiate action to terminate the employee.

b. Termination Action. When a termination action is based on deficiencies in performance or conduct after entrance on duty, the employee must be notified in writing of the reason he/she is being terminated and the effective date of the action. If the reason for the termination is based on the employee's conduct before employment, the employee must be provided:

- (1) An advance written notice stating the specific reason for the proposed action;
- (2) A right to reply;
- (3) A reasonable amount of time to submit a written response to the proposal and for furnishing affidavits in support of the response;
- (4) Consideration of any reply;

- (5) A written notice of the final decision at or before the effective date; and
- (6) A notice of the right to a procedural review of the action by MSPB.

9. REQUIREMENTS FOR EXCEPTED SERVICE EMPLOYEES

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

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

10. REQUIREMENTS FOR ADVERSE ACTIONS BASED SOLELY ON UNACCEPTABLE PERFORMANCE. This section covers reductions in grade and removals based only on unacceptable performance in accordance with Section 4302 of Reference (d).

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

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period, if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager.

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment.

(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less.

(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

(5) Termination of an employee in the competitive service who is serving a probationary or trial period under an initial appointment.

(6) An action imposed by the Special Counsel, MSPB.

(7) An action taken in accordance with Section 7521 of Reference (d) against an administrative law judge.

(8) An action taken or directed by Office of Personnel Management (OPM) in accordance with Part 731 (for suitability) or Part 754 of Reference (e) in the interest of national security.

(9) An action taken as provided by statute, other than one codified in Reference (e), which accepts the action from the provisions of Reference (e).

(10) A removal from Senior Executive Service to a civil service position outside Senior Executive Service in accordance with Part 359 of Reference (e).

(11) A reduction-in-force governed by Part 351 of Reference (e).

(12) A voluntary action by the employee.

(13) A performance-based action taken in accordance with Parts 430 and 432 of Reference (e).

(14) An action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the Agency informed the employee that the position was to be of limited duration.

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

(16) An involuntary retirement because of disability.

b. Timing of Actions

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

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

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

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

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

(3) Representation by an attorney or another representative; and

(4) A written decision within 30 calendar days after the expiration of the notice period that:

(a) Specifies the instances of unacceptable performance by the employee on which the action to reduce in grade or remove is based;

(b) The Deciding Official has concurred; and

(c) Advises the employee of his or her appeal rights.

11. REQUIREMENTS FOR ADVERSE ACTIONS BASED ON A COMBINATION OF MISCONDUCT AND UNACCEPTABLE PERFORMANCE. An action against an employee that is considered a combination of misconduct and unacceptable performance will be reviewed in accordance with Section 432 of Reference (d), and prior to being processed in accordance with Section 752 of Reference (d).

ENCLOSURE 4

OFFENSES AND PENALTIES

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

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

3. PENALTY COLUMN

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

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

Table. Table of Offenses and Penalties

Defense Health Agency			
TABLE OF OFFENSES AND PENALTIES			
OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
T1.1. Attendance-Related Misconduct. Penalty should correlate to the absence.			
T1.1.1. AWOL from the regularly scheduled tour of duty. Includes leaving work area without permission.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.1.2. Failure to follow established procedures to request leave.	Reprimand to 5-Day Suspension	1-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
T1.1.3. Unexcused tardiness.	Reprimand	Reprimand to 5-Day Suspension	5-Day Suspension to Removal
T1.1.4. Prolonged or extended period of AWOL.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.2. Insubordination			
T1.2.1. Refusal to obey an order that a superior is entitled to give and have obeyed.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.2.2. Impertinence, insolence, disrespectful conduct toward a supervisor.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.2.3. Delay in carrying out instructions, loafing. Failure or delay in carrying out work assignments or instructions in a reasonable time. Idleness or failure to work on assigned duties.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
T1.3. Fighting and/or creating a disturbance in the workplace. Penalties may be enhanced if directed at a supervisor.			
T1.3.1. Creating a disturbance causing an adverse impact on morale, production, or discipline. Penalty may be enhanced in relation to the disruption.	Reprimand to 5-Day Suspension	5-14 Day Suspension	14-Day Suspension to Removal
T1.3.2. Threatening or attempting to inflict bodily harm.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.3.3. Hitting, pushing, or other acts against another, causing injury.	30-Day Suspension to Removal		Removal
T1.3.4. Hitting, pushing, or other acts against another, without causing injury.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
T1.3.5. Intimidating or aggressive conduct.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.4. Sleeping on Duty			
T1.4.1. Where safety of personnel or property is not endangered.	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	14-Day Suspension to Removal
T1.4.2. Where safety of personnel or property is endangered.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.5. Discourtesy			
T1.5.1. Rude, impolite acts or remarks (non-discriminatory).	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
T1.5.2. Use of offensive or abusive language, gestures, or similar conduct (non-discriminatory).	Reprimand to 14-Day Suspension	14-Day Suspension to Removal	30-Day Suspension to Removal

Defense Health Agency			
TABLE OF OFFENSES AND PENALTIES			
OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
T1.6. Unauthorized Use, Possession, or Transfer of an Alcoholic Beverage			
T1.6.1. Unauthorized use, possession, or transfer of an alcoholic beverage on government property while in a duty status.	Reprimand to 14-Day Suspension	14-Day Suspension to 30-Day Suspension	30-Day Suspension to Removal
T1.6.2. Reporting to work or being under the influence of alcohol that interferes with the proper performance of duty. (Removal for a first or subsequent offense may be warranted if personnel or property is endangered.)	Reprimand to Removal	30-Day Suspension to Removal	Removal
T1.7. Unauthorized Use and/or Possession of Illegal Drugs and/or Controlled Substances			
T1.7.1. Bringing illegal drugs and/or unauthorized controlled substances to a work area or onto government property for personal use.	Removal		
T1.7.2. Bringing illegal drugs and/or unauthorized controlled substances to a work area or onto government property for distribution.	Removal		
T1.7.3. Reporting to work under the influence of illegal drugs and/or unauthorized controlled substances.	Removal		
T1.7.4. Testing positive under the Drug Free Workplace Program, providing an adulterated sample, failing to take a drug test, or failing to comply with testing procedures.	Removal		
T1.8. Gambling			
T1.8.1. Participating in an unauthorized gambling activity while on government property or in a duty status.	Reprimand to 5-Day Suspension	5-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal
T1.8.2. Operating, assisting, or promoting an unauthorized gambling activity while on government property while in a duty status, or while others are in a duty status.	14-Day Suspension to Removal		Removal
T1.9. False Statements			
T1.9.1. Making or providing false statements, misrepresentations, or entitlement fraud. Includes falsifying information on a time card, leave form, travel voucher, or other documents for entitlements.	Reprimand to Removal	30-Day Suspension to Removal	Removal
T1.9.2. Making or providing false statements or misrepresentation of documents pertaining to qualifications, or on any other official record.	Reprimand to Removal	30-Day Suspension to Removal	Removal
T1.9.3. Making a false or malicious statement against coworkers, supervisors, subordinates, or government officials.	Reprimand to Removal	30-Day Suspension to Removal	Removal
T1.9.4. Misrepresentation, concealing, or withholding of a material fact. Includes	Reprimand to Removal	30-Day Suspension to Removal	Removal

Defense Health Agency			
TABLE OF OFFENSES AND PENALTIES			
OFFENSE (CAUSE OF ACTION)	FIRST OFFENSE PENALTY	SECOND OFFENSE PENALTY	THIRD OFFENSE PENALTY
perjury, making false sworn statements, and lying to a supervisor.			
T1.10. Unauthorized Taking and/or Possession of Others' Property. Actual or attempted taking or carrying away of government property or the property of others, or collusion with others to commit such acts.			
T1.10.1. Where substantial value is not involved.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.10.2. Where substantial value is involved.	14-Day Suspension to Removal		Removal
T1.11. Misuse or Abuse of Government Property, Employees, Contractors, or Processes			
T1.11.1. Using government property, employees, or contractors for other than official purposes.	Reprimand to Removal	14-Day Suspension to Removal	Removal
T1.11.2. Loss of or damage to government property, records, or information when the employee is entrusted to safeguard the property as a job requirement (e.g., cashier, warehouse worker, property book officer).	Reprimand to 14-Day Suspension	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.11.3. Misuse of government credentials.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.4. Misuse of any government-issued charge card (e.g., purchase charge cards, travel charge cards).	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.5. Unauthorized use of or failure to appropriately control the use of Government Purchase Card as a cardholder (approving official responsible for use or oversight of the card).	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.6. Misuse of a government computer, network, intranet, internet, e-mail, etc.	Reprimand to Removal	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.11.7. Misuse of a government vehicle. Willfully using or authorizing the use or misuse of a government passenger motor vehicle or aircraft for other than official purposes. (See Section 1349 of Title 31 United States Code (Reference (g))).	Minimum 30-Day Suspension to Removal	60-Day Suspension to Removal	Removal
T1.11.8. Abuse of discretion, malfeasance, misfeasance, or non-feasance.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.12. Failure to Follow Written Regulations, Orders, Rules, or Procedures			
T1.12.1. Violation where safety to persons or government property is not compromised.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.12.2. Violation where safety to persons or government property is compromised.	Reprimand to Removal	14-Day Suspension to Removal	Removal
T1.13. Conduct Unbecoming a Federal employee. Includes off-duty misconduct if nexus is established.			
T1.13.1. Immoral, indecent, illegal, or disgraceful conduct.	5-Day Suspension to Removal	14-Day Suspension to Removal	Removal
T1.13.2. Soliciting or accepting anything of value or other benefit for financial gain.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal

T1.14. Refusal to Cooperate or Testify, Interfering and/or Obstructing in Administrative Inquiries or Investigations			
T1.14.1. Refusal to cooperate or testify in an administrative inquiry or investigation.	5-Day Suspension to Removal	14-Day Suspension to Removal	Removal
T1.14.2. Interference with, attempting to influence, or attempting to alter testimony of witnesses or participants.	14-Day Suspension to Removal	30-Day Suspension to Removal	Removal
T1.14.3. Attempting to impede an investigation or to influence investigating officials.	30-Day Suspension to Removal		Removal
T1.15. Job Actions. Participating in or promoting a strike, work stoppage, slow down, sick-out, or other action.	Removal		
T1.16. Delinquent Debt. Failure or delay to honor valid debts where the Agency mission or employee performance is affected (e.g., delinquent travel charge card account).	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	14-Day Suspension to Removal
T1.17. Sexual Misconduct. Where sexual misconduct contributes to a hostile work environment, is quid pro quo, or involves deliberate or repeated offensive comments, gestures, or physical contact, removal may be warranted for a first offense.			
T1.17.1. Involving a subordinate.	5-Day Suspension to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.17.2. Not involving a subordinate.	Reprimand to 30-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
T1.18. Discrimination Because of Race, Color, Religion, Age, Gender, National Origin, Handicapping Condition, Political Affiliation, or Marital Status. Also, prohibited discriminatory practice in any aspect of employment (e.g., hiring, appraisal, development) and/or failure to prevent or curtail discrimination or prohibited practice of a subordinate when the supervisor knew, or should have known, of the discrimination.	Reprimand to Removal	14-Day Suspension to Removal	30-Day Suspension to Removal
T1.19. Failure to follow appropriate standards for safeguarding Personally Identifiable Information and/or Protected Health Information (PII/PHI).			
T1.19.1. Unauthorized access, use or disclosure of PII or PHI (e.g., Included but not limited to: accessing PII/PHI for any purpose outside of treatment, payment or healthcare operations, including education; Mailing, emailing, or faxing PHI to the wrong address/patient; Improper disposal of PII/PHI; sharing PHI without authorization; Copying or changing PHI without authorization; improper use/disclosure for research activities).	Reprimand	Reprimand to 3-day suspension	Removal
T1.19.2. Failure to apply appropriate safeguards and/or failure to follow established Information Security policies and procedures when accessing, using or	Reprimand	Reprimand to 3-day suspension	Removal

disclosing PHI to prevent impermissible use or disclosure of PII/PHI (e.g., Included but not limited to: leaving computer unattended and failing to logoff from an application containing PHI; failing to properly secure PHI whether in electronic media or in paper form; sharing username/password or using another person's username/password; Failing to encrypt PHI).			
T1.19.3. Using a patient's PHI for personal reasons rather than for legitimate business purposes; use or disclosure of PHI with the intent to sell or use the PHI for personal or financial gain or malicious harm; (obtaining PHI under false pretenses).	Removal		
T1.19.4. Failure to report known or suspected privacy related incident(s)/violation(s) or engaging in retaliatory acts towards an individual(s) for reporting a privacy related incidence(s)/violation(s) (in good faith).	Reprimand	Reprimand to 3-day suspension	Removal
T1.19.5. Failure to complete required Privacy Act and HIPAA training.	Reprimand	Reprimand to 3-day suspension	Disabling network access

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AWOL	absent without leave
CBA	Collective Bargaining Agreement
DHA	Defense Health Agency
DHA-AI	Defense Health Agency-Administrative Instruction
HRD	Human Resources Division
MELR	Management Employee and Labor Relations
MSPB	Merit Systems Protection Board
OPF	Official Personnel Folder
OPM	Office of Personnel Management
PHI	Protected Health Information
PII	Personally Identifiable Information
PIP	Performance Improvement Plan

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this DHA-AI.

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

adverse action. A disciplinary or non-disciplinary removal, suspension of more than 14 days; furlough without pay for 30 days or less; or reduction in grade or pay is taken for such cause as will promote the efficiency of the service.

bargaining unit employee. An employee included in an appropriate bargaining unit for which a labor organization has been granted exclusive recognition.

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

critical element. A component of the employee's job that is of such importance that performance below the minimum standard requires remedial action and may be the basis for a reduction in

grade, removal, or other corrective action without regard to performance on other components of the job.

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

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

formal disciplinary action. An action that is made a matter of record for inclusion in the employee's OPF, such as a reprimand or a suspension of 14 days or less.

furlough. A temporary non-duty and non-pay status of 30 days or less because of lack of work or funds, or for other non-disciplinary reasons.

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

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

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

preponderance of the evidence. The degree of relevant evidence that a reasonable individual, considering the record might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true. The Agency is required to prove actions taken in accordance with Section 752 of Reference (d) with a preponderance of the evidence.

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

reduction in grade. The involuntary assignment of an employee to a position of lower classification or job-grading level.

removal. An involuntary separation of an employee from employment with an Agency.

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

Schedules A, B, or C (of the excepted service). OPM provides excepted service hiring authorities to fill special jobs or to fill any job in unusual or special circumstances under “Schedules A, B, and C.” These excepted service authorities enable agencies to hire when it is not feasible or not practical to use traditional competitive hiring procedures, and can streamline hiring. Agencies may use any excepted service authority under Schedules A or B when it applies to a specific situation. Schedule A authorities describe special jobs and situations for which it is impractical to use standard qualification requirements and to rate applicants using traditional competitive procedures. Schedule B authorities also apply to jobs and situations for which it is impractical to rate applicants using competitive procedures. However, under Schedule B authorities, applicants must meet the qualification standards for the job. Only OPM can provide exceptions on a case-by-case basis under Schedule C for jobs having a confidential or policy-determining character. Schedule C appointees keep a confidential or policy-determining relationship to their supervisor and Agency head. Generally, the authority to fill a Schedule C job is revoked when the incumbent leaves and agencies need specific approval from OPM to establish or reestablish the position.

substantial evidence. Such evidence that a reasonable individual might accept as adequate to support a conclusion. Substantial evidence is a lesser burden of proof than a preponderance of the evidence.

suspension. A temporary non-duty and non-pay status for disciplinary or other reasons.

unacceptable performance. Performance of an employee that fails to meet established standards in one or more critical elements of the employee’s position.

written warning. A very specific memorandum issued to an employee to address minor misconduct, clarify expectations, and warn of progressively more severe disciplinary action when the intent of issuing the memorandum is to correct the misconduct without initiating more serious formal disciplinary or adverse action.