



DCMA Manual 4201-02

MAINTAINING DISCIPLINE

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**Office of Primary
Responsibility**

Talent Management Capability

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Purpose: This Manual, in accordance with the authority in DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)", establishes policy and assigns responsibility for taking corrective actions against DCMA civilian employees in the competitive and excepted service. The public interest requires the maintenance of high standards of employee integrity, conduct, effectiveness, and service to the public. When such standards are not met, it is essential that prompt and just corrective action be taken.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This Manual applies to all DCMA activities unless higher-level regulations, policy, guidance, or agreements take precedence.

1.2. POLICY. It is DCMA policy that:

a. No action should be initiated until an examination of the facts and circumstances has been completed.

b. If a management official determines that an offense is minor, non-disciplinary corrective action should be accomplished through closer supervision, counseling, oral admonishment or Letter of Warning and Instruction (LOWI).

c. Formal disciplinary or adverse action will be taken only for just and sufficient cause for the purpose of correcting the offending employee's behavior, as this will promote the efficiency of the Federal service. In keeping with the concept of progressive discipline, actions and subsequent penalties imposed should be the minimum, in the judgment of the management official, which can reasonably be expected to correct and improve employee behavior and maintain discipline and morale among employees. It does not require any rigid application of a progression of penalties, but rather requires an evaluation of whether the application of the progression of lesser penalties to more harsh penalties is appropriate. In cases where repeated offenses occur, or a first offense of a particularly aggravated nature occurs, removal from the Federal service may be appropriate.

d. All actions will be taken without regard to race, color, religion, national origin, marital status, sex, gender, age or disability. Actions will not be taken against an employee to discourage the exercise of a protected right, in reprisal for exercising a protected right, or for reason of political affiliation (except as required by law).

e. This Manual will be executed in a safe, efficient, effective, and ethical manner.

SECTION 2: RESPONSIBILITIES

2.1. MANAGERS AND SUPERVISORS. Maintaining discipline is an inherent responsibility for employees in positions of leadership. Managers and supervisors are responsible for maintaining order and discipline in the work place on a day-to-day basis. Managers and supervisors have the responsibility of ensuring a business-like, professional working environment is maintained by establishing and maintaining effective discipline within their organization. They must explain conduct requirements, expectations, and standards their employees are expected to meet. They will keep employees informed of acceptable and appropriate conduct requirements. To fulfill their responsibilities, managers and supervisors will:

- a. Investigate circumstances concerning any misconduct relevant to the action and consider all available information.
- b. Ensure the action is fair, timely, and taken for just and sufficient cause, for the purpose of correcting the offending employee's behavior, as this will promote the efficiency of the Federal service.
- c. Ensure all actions are taken without regard to race, color, religion, national origin, marital status, sex, or age. Ensure no actions are taken against an employee for reason of political affiliation (except as required by law), nor for a physical disability with respect to any position.
- d. Ensure the servicing Human Resources Specialist (Labor/Employee Relations (LER)) is contacted for advice and guidance.

2.2. DIRECTOR, LABOR AND EMPLOYEE RELATIONS (LER) DIVISION, TOTAL FORCE LABOR (TFL). The Director, LER, TFL is responsible for supporting the Agency in implementing and administering viable and constructive labor and employee relations programs.

2.3. HUMAN RESOURCES SPECIALIST (LER). The Human Resources Specialist (LER) will:

- a. Advise and assist managers and supervisors in maintaining discipline in their organizations by providing technical and procedural advice and guidance to management in all non-disciplinary and disciplinary matters.
- b. Ensure proposed disciplinary actions are consistent with similar disciplinary actions taken for similar offenses.
- c. Ensure such actions conform to existing laws, rules, regulations, and prior judicial and appeal decisions.
- d. Ensure LER case documentation is complete and timely updates are made to management information systems.

e. Provide support to management by drafting letters involving disciplinary or adverse actions.

f. Provide support and guidance to management with regard to addressing employee performance or conduct issues.

g. Train or arrange training for managers and supervisors when identified or requested (except when mission priorities dictate otherwise).

SECTION 3: PROCEDURES

3.1. ALLEGED EMPLOYEE MISCONDUCT. The supervisor should meet with the employee, normally within 5 calendar days of the supervisor observing and/or being made aware of employee misconduct to gather facts and evidence and obtain the employee's statement regarding the alleged misconduct and initiate further inquiry into the circumstances concerning the misconduct and obtain all available evidence.

a. If the employee is a Bargaining Unit Employee (BUE), the supervisor will advise the employee of their right to Union representation prior to taking any investigative statements. NOTE: Extensive investigations, uncooperative witnesses, unavailability of employees, etc., are acceptable reasons for a supervisor to delay their meeting to obtain the employee's statement and any corroborating information regarding the alleged misconduct.

b. If the employee refuses to make a statement, the supervisor must make a note of such and include it in their supporting documentation.

3.2. REQUEST FOR ADVICE AND ASSISTANCE.

a. Supervisors are required to request assistance and advice from their LER Specialist in situations involving employee misconduct. When either informal or formal disciplinary action is warranted, the supervisor will review the Table of Penalties (located on the Policy Resource Page for this Manual) and forward supporting documentation to their servicing LER Specialist, normally within 14 calendar days of obtaining the employee's statement and/or obtaining evidence necessary to support the alleged offense.

b. The servicing LER Specialist will advise supervisors and identify options for taking disciplinary action, including a review of the Table of Penalties, coordinate/consult with the appropriate counsel, if necessary, review the electronic Official Personnel File (eOPF), and advise and assist in fact-finding as required. LER will make required coordination with General Counsel (GC).

3.3. DETERMINING PROPER ACTION. Options include:

a. Informal Actions.

(1) Oral Admonishment. An oral admonishment is used for minor infractions of rules and/or policies. It is intended for those situations that do not merit formal action.

(2) Letter of Warning and Instruction (LOWI). A LOWI may be used to clarify procedure, issue specific instruction, or impose certain requirements in an attempt to correct a deficiency in performance or conduct before a disciplinary action becomes necessary. It is not a disciplinary action. It will fully explain what is required of the employee to correct the noted behavior.

b. Formal Actions.

(1) Reprimand. A reprimand is a written statement given to an employee for misconduct, including repeated minor infractions of rules and/or policies.

(2) Suspension of 14 calendar days or less. The placement of an employee, for the purpose of discipline, in a temporary nonpay and nonduty status. This action is grievable.

(3) Suspension for more than 14 calendar days. The placement of an employee, for the purpose of discipline, in a temporary nonpay and nonduty status. The employee can appeal to the Merit Systems Protection Board (MSPB), or file a complaint with the Equal Employment Opportunity Commission (EEOC), or the Office of Special Counsel (OSC).

(4) Removals. The removal from Federal service for disciplinary or performance based reasons and is an appealable action to the MSPB, EEOC, or OSC.

(5) Reduction in Grade and/or Pay. The permanent reduction of an employee's grade and pay for disciplinary or performance based reasons and is an appealable action to the MSPB, EEOC, or OSC.

(6) Letter of Discipline. A Letter of Discipline (LOD) may be issued in lieu of a suspension of 14 calendar days or less. An LOD carries the same weight as an actual suspension of 14 calendar days or less in determining penalties for future offenses; however, the employee's pay is not adversely impacted. The action is grievable.

3.4. DECISION TO TAKE DISCIPLINARY ACTIONS.

a. A supervisor should make a decision to propose a disciplinary action within 14 days of the matter being brought to their attention or completion of a management inquiry or full investigation, as applicable.

b. When a supervisor decides not to propose a disciplinary action, the case is closed.

c. When a supervisor decides to propose a disciplinary action, the following options will be considered and processes followed:

(1) Reprimand. The notice of proposed Letter of Reprimand (LOR) at a minimum will contain the following information:

(a) Advance written notice of at least 7 calendar days stating the nature and specific reason(s) for the proposed action. (A notice of proposed reprimand is not required for non-bargaining unit employees.)

(b) The employee may respond orally and/or in writing and may furnish affidavits or other documentary evidence in support of their response within 7 calendar days of their receipt of the notice of proposed reprimand. The employee has the right to respond to the Deciding Official (normally the second line supervisor) and may be represented by an attorney (at the

employee's expense) or other representative. The employee has the right to review the material relied upon in proposing the action.

(c) The LOR must advise the employee that future misconduct may result in more severe disciplinary action and a copy of the letter will be placed in the employee's eOPF for a period up to 12 months. If the employee receives another disciplinary or adverse action for a similar or related offense within the 12 month period, the LOR will be retained in the eOPF for up to an additional 12 months.

(d) Decision to Reprimand. The decision to reprimand will contain, at a minimum, the following information:

1. A written decision notice from the Deciding Official (if appropriate) will indicate whether the proposed action will be effected, modified, withdrawn or held in abeyance.

2. The decision will contain information, if appropriate, regarding services or assistance (such as the Employee Assistance Program (EAP)) is available to the employee to help overcome the deficiency and avoid future recurrences. The employee will be informed regarding any specific action required on their part.

3. The LOR must contain a statement of the right to grieve the action under the appropriate procedure in accordance with (IAW) Subchapter 771, DoD Instruction 1400.25, "Administrative Grievance System (AGS)" for non-bargaining unit employees, or Article 30 of DCMA Collective Bargaining Agreement (CBA) for BUEs.

4. A warning that future misconduct may result in more severe disciplinary action. This warning will be included in all LORs.

(2) Suspension of 14 Calendar Days or Less. An employee against whom a suspension of 14 calendar days or less is proposed, is entitled to:

(a) Advance written notice of at least 14 calendar days stating the specific reason(s) for the proposed action.

(b) At least 10 calendar days to respond orally and/or in writing and to furnish materials to support their reply to the proposed notice to suspend. The employee has the right to reply to the Deciding Official and may be represented by an attorney or other representative at the employee's expense. The employee has the right to review material relied upon in proposing the action.

(c) A reasonable amount of time for reviewing the material relied upon to support the proposed action, and for preparing and/or presenting a written and/or oral reply. The amount of time granted to the employee and/or their DCMA representative will be documented using the Agency's current time and attendance system.

(d) Decision to Suspend. The decision to suspend will contain, at a minimum, the

following information:

1. The specific reason(s) for the decision, to include if the proposed action will be effected, modified, withdrawn or held in abeyance.

2. Information, if appropriate, regarding services or assistance (such as EAP) that is available to the employee to help overcome the deficiency and avoid future recurrences. The employee will be informed regarding any specific action required on their part.

3. The decision to suspend must contain a statement of the right to grieve the action under the appropriate procedure IAW Subchapter 771, DoD Instruction 1400.25, “Administrative Grievance System (AGS)” for non-bargaining unit employees, or Article 30 of DCMA CBA for BUEs.

(3) Letter of Discipline (LOD). An LOD may be used in lieu of regular, formal disciplinary actions for suspensions of 14 calendar days or less. The Deciding Official may elect to use an LOD in lieu of an actual suspension for a particular incident of misconduct. The use of an LOD for one employee or one incident of misconduct does not obligate the Agency to use an LOD for all such incidents or employees. The Deciding Official has full discretion to decide when it is appropriate to use an LOD in lieu of a regular disciplinary action. An LOD carries the same weight and the Agency process is the same as an actual suspension of 14 calendar days or less in determining penalties for future offenses. The LOD must contain the following:

(a) Description of the reasons for the action.

(b) Information that a copy of the LOD will be placed in the employee’s eOPF.

(c) The employee’s right to formally grieve an LOD using the appropriate procedure under the AGS for non-bargaining unit employees or the CBA for bargaining unit employees.

(4) Suspension for more than 14 calendar days, removals, and reductions in grade or pay taken for cause and not based solely on performance. These actions are subject to legal sufficiency review by the GC.

(a) An employee against whom a suspension for more than 14 calendar days, removal, reduction in grade or pay taken for cause and not based solely on performance is entitled to:

1. Advance written notice of at least 30 calendar days stating the specific reason(s) for the proposed action. The proposing official (normally the first line supervisor) is required to complete the Douglas Factors.

2. At least 20 calendar days to respond orally and/or in writing and furnish materials in support of the reply to the proposed action.

3. Representation by an attorney or other representative at the employee's expense.

4. The right to review material relied upon in proposing the action.

5. A reasonable amount of time for reviewing the material relied upon to support the proposed action and for preparing and/or presenting a written and/or oral reply. The amount of time granted to the employee and/or their DCMA representative will be documented using the Agency's current time and attendance system.

(b) A Deciding Official will review and consider the information provided to the employee as part of the proposed discipline and the employee's response thereto.

1. Before making a decision, the Deciding Official will review the Table of Penalties and consider all mitigating and aggravating factors (Douglas Factors) prepared by the proposing official. Additionally, the Deciding Official must complete his/her own Douglas Factors before making a decision on the proposed action. The Douglas Factors are not required for performance, national security, failure to meet conditions of employment based actions, or terminations during the probationary period.

2. The Deciding Official will, within a reasonable amount of time, decide whether the proposed action will be effected, modified, withdrawn, or held in abeyance. In no case will the action taken be more severe than proposed.

3. The decision will state the findings with respect to each reason stated in the notice of proposed action.

4. Information, if appropriate, regarding services or assistance (such as EAP) is available to the employee to help overcome the deficiency and avoid future recurrences. The employee will be informed regarding any specific action required on their part.

5. The decision will inform the employee of their grievance rights IAW applicable law, regulation, policy and/or CBA.

3.5. STATUS OF EMPLOYEE DURING ADVANCE NOTICE.

a. Duty Status. Ordinarily the employee must be retained in a pay and duty status in their position during the period pending a decision on a proposed action unless placed on an indefinite suspension or administrative leave.

b. Detail, Leave, or Paid Non-Duty Status. During the advance notice period of a proposed adverse action, it may be necessary to remove the employee from the worksite. In those instances where it is determined that the employee's continued presence at work during the advance notice period might pose a threat to the employer or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the following

alternatives can be considered in consultation with LER and the approval of a DCMA Executive Director/Commander, or Regional Commander:

- (1) Detailing the employee to other duties where they are no longer a threat to safety, to the DCMA mission, or to Government property.
- (2) Allowing the employee to take leave (annual, sick (subject to specific reasons)), leave without pay, or telework as appropriate), or carrying the employee in an absent without leave status if they are absent from the worksite without requesting leave.
- (3) Curtailing the notice period in cases where the Agency can invoke Part 752.404(d) (1) of Title 5, Code of Federal Regulations (i.e., the “crime provision”). The 30 calendar day advance notice period is not required where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed and a suspension (including indefinite suspension without pay) or removal is being proposed. The advance notice period will not be less than 10 calendar days and the reply period will not be less than 7 calendar days.
- (4) If none of the above alternatives are available, place the employee in a paid, non-duty status (i.e., authorized absence for timekeeping purposes) during all or part of the advance notice period.

3.6. REASONABLE ACCOMMODATION. If an employee alleges that a physical or mental condition or disability is causing the conduct or performance problems, the Deciding Official must allow the employee a reasonable opportunity to supply administratively acceptable medical documentation in order to assess the effect of the condition on the employee’s performance or conduct. Medical documentation provided will be forwarded to Federal Occupational Health for review. In limited instances a medical examination may be offered or ordered under the provisions according to Part 339 of Title 5, Code of Federal Regulations. Such documentation will assist in determining whether the employee has a disability for the purpose of considering reasonable accommodation or whether the employee’s unacceptable performance or conduct is related to the nature of the disability.

3.7. RIGHT TO FILE A GRIEVANCE.

a. Reprimand. The employee may grieve a reprimand under the AGS procedure or under the Negotiated Grievance Procedure (NGP), as appropriate. Under the AGS procedure, the grievance must be submitted through supervisory channels not later than 15 calendar days after receipt of the reprimand. Grievances from bargaining unit employees must be filed IAW the provisions of the CBA for the appropriate steps and time limits. The CBA is located on the Resource Page for this Manual.

b. Suspension of 14 Calendar Days or Less. An employee has the right to grieve the action under the AGS procedure or under the NGP, as appropriate. Under the AGS procedure, the grievance must be submitted through supervisory channels not later than 15 calendar days after receipt of the decision notice. Grievances from the bargaining unit employees must be filed

IAW the provisions of the CBA.

c. Letter of Discipline. The employee may grieve the LOD under the AGS procedure or under the CBA, as appropriate. Under the AGS procedure, the grievance must be submitted through supervisory channels not later than 15 calendar days after receipt of the LOD. Grievances from bargaining unit employees must be filed IAW the provisions of the CBA procedure.

d. Suspension for More Than 14 Calendar Days, Removals, and Reductions in Grade or Pay Taken for Cause and Not Based Solely on Performance. An employee has the right to appeal an action to the MSPB or under an NGP, if the NGP covers appeals of adverse actions and the employee is a member of the bargaining unit or file a discrimination complaint IAW Part 1614 of Title 29, Code of Federal Regulations of the EEOC's regulations in those instances in which the employee has raised an allegation of discrimination during the advance notice period of the adverse action or if an employee believe the action taken is related to prior whistleblowing activity (making protected disclosures) an employee can file a complaint with the U.S. OSC.

3.8. RECORDS. The LER Specialist will retain all relevant documentation concerning disciplinary and adverse actions in a separate file and make it available for review by the affected employee or their representative. The documentation will also be submitted to Personnel Security for their records. All other files and documentation will be maintained in accordance with the Agency's record management policy and United States Code, "Privacy Act of 1974."

GLOSSARY

G.1. DEFINITIONS.

Administrative Grievance System. A type of formal review process at which an employee (normally, non-bargaining unit) may state his or her case and present any evidence to support the grievance.

Collective Bargaining Agreement. A written legal contract between an employer and a union representing the employees. The CBA is the result of an extensive negotiation process between the parties regarding conditions of employment.

Deciding Official. Impartially reviews all the evidence of record, gives full and impartial consideration to any reply the employee makes, and determines the validity of the proposed action. The deciding official makes the final decision on the proposed disciplinary action.

Douglas Factors. Douglas Factors are the 12 relevant factors established by the MSPB to determine the appropriate penalty for employees of the federal government that consider the relationship or "nexus" between the misconduct and the efficiency of the service.

Grievance. A complaint about a (real or perceived) wrong that causes resentment and maybe grounds for action.

Negotiated Grievance Procedure. A grievance procedure that is negotiated to provide a fair, equitable, and timely forum for review and resolution of employment-related matters. The NGP is defined in the contract or labor agreement.

Proposing Official. The management official who has the delegated authority to issue a notice of proposed disciplinary action.

Reduction in Grade. The involuntary assignment of an employee to a position at a lower classification level under a position classification system.

Reduction in Pay. An involuntary deduction in the rate of basic pay fixed by law or administrative action for the position held by the employee. Reduction in pay does not include the involuntary loss of any differentials such as standby pay, night work, overtime, hazardous duty, or holiday pay.

Removal. An involuntary separation based on the decision of a Service official exercising delegated authority that terminates the employer-employee relationship. Such action may be based on disciplinary (misconduct) or non-disciplinary (inability to perform one's job due to medical condition or lack of skill) reasons.

Reprimand. A severe, formal or official reproof taken in different forms in different legal systems. A reprimand may be a formal legal action issued by a government agency or professional governing board (e.g. medical board, bar counsel).

Suspension. Placement of an employee in a temporary nonpay status and nonduty status (or absence from duty) for disciplinary reasons or other reasons pending an inquiry. Placing an employee, for conduct reasons, in a temporary status without duties or pay.

G.2. ACRONYMS.

AGS	Administrative Grievance System
BUE	Bargaining Unit Employee
CBA	Collective Bargaining Agreement
EAP	Employee Assistance Program
e-OPF	Electronic Official Personnel Folder
GC	General Counsel
IAW	In Accordance With
LER	Labor Employee Relations
LOWI	Letter of Warning and Instruction
LOD	Letter of Discipline
LOR	Letter of Reprimand
MSPB	Merit Systems Protection Board
NGP	Negotiated Grievance Procedure
OSC	Office of Special Counsel
TF	Total Force
TFL	Total Force Labor

REFERENCES

Code of Federal Regulations, Title 5, Part 339
Code of Federal Regulations, Title 5, Part 752
Code of Federal Regulations, Title 29, Part 1614
DCMA Collective Bargaining Agreement (CBA), August 1, 2019
DCMA Instruction 809, "Records Management," May 2, 2009
DCMA Manual 4301-11, Volume 1, "Management Controls: Managers' Internal Control Program," June 24, 2019
DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," January 10, 2013
DoD Instruction 1400.25, Subchapter 771, "Administrative Grievance System (AGS)," December 26, 2013
United States Code, Title 10, Section 552a