



## UNITED STATES MARINE CORPS

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StaO 12432.2

HRO

05 MAR 1999

### STATION ORDER 12432.2

From: Commander  
To: Distribution List

Subj: REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE  
PERFORMANCE

Ref: (a) CPI 432 (NOTAL)  
(b) 5 USC (NOTAL)  
(c) CPI 339 (NOTAL)  
(d) 29 CFR (NOTAL)

1. Purpose. To promulgate principles and prescribed procedures to be followed in effecting removals and reductions in grade based solely on unacceptable performance per reference (a).

2. Information. To increase the efficiency of the Federal Service, an employee who is unable to perform duties in a satisfactory manner will be removed or reduced in grade to a level wherein the employee can attain satisfactory performance.

a. Exclusions. The following actions are excluded from coverage under this Order:

(1) An action initiated under authority of the Special Counsel. (reference (b), 1206).

(2) An action taken in the interests of national security. (reference (b), 7532).

(3) An action taken under a provision of statute, other than one codified in reference (b), which excepts the action from the provisions of that reference.

(4) A reduction-in-force action.

(5) A voluntary action initiated by the employee.

(6) An adverse action for cause.

(7) An action which terminates a temporary promotion within a maximum of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted.

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(8) An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of 2 years, but not more than 5 years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay.

(9) A involuntary retirement because of disability.

(10) A termination per the terms specified at the time the appointment was made.

(11) An action against a re-employed annuitant.

(12) A reduction to the grade previously held by a supervisor or manager who has not satisfactorily completed the supervisory or managerial probationary period.

(13) 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 or who has not completed 1 year of current continuous employment in the same or similar positions.

(14) 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.

b. Delegation of Authority. The authority to propose or affect a reduction in grade and removal may be exercised by an official "acting" in the absence of the official to whom the respective authority is herein delegated, but may not be exercised "by direction." The following delegation of authority is established:

(1) Rating or Reviewing Official: Propose removals and reductions in grade.

(2) Section Head or equivalent (at least one level of supervision above the proposing official): Effect removals and reductions in grade.

c. Selecting the Appropriate Penalty. Supervisors will first contact the Human Resources Office to determine whether reassignment is feasible, prior to considering removal or reduction in grade. The determination to either remove or reduce the grade of an employee will be made for such cause "as will promote the efficiency of the service." The penalty assigned will be the minimum reasonably expected to correct the problem of work

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deficiencies. For example, if an employee who is exhibiting job performance deficiencies can reasonable be expected to perform the duties of the position (at the satisfactory level) at the lower grade, then reduction in grade would be the proper penalty rather than removal action. If however, this determination cannot reasonably be made, then removal would be the appropriate penalty. In arriving at the proper penalty, consideration should be given to:

- (1) The seriousness of the work deficiencies.
- (2) Employee's work history, character and potential.
- (3) Practice in similar cases with like circumstances.

d. Responsibility of First Line Supervisor

(1) The first line supervisor is responsible for observing each employee's job performance.

(2) The first line supervisor shall document all deficiencies of performance, such as each error or justifiable complaint brought against the employee.

(3) When the supervisor determines that an employee's level of performance has fallen to the Minimally Successful or Unacceptable performance level, the supervisor must contact the Employee Relations Division of the Human Resources Office as soon as possible for guidance and assistance as to what action will be taken against that employee.

e. Timing of Actions

(1) An employee may be reduced in grade or removed at any time during the performance appraisal cycle when the employee's performance in one or more critical elements of the job becomes unacceptable.

(2) An advance notice of proposed action may not be given until the employee has been informed of the unacceptable performance on the critical element(s) of the job and been given a reasonable time to demonstrate acceptable performance. The amount of time deemed reasonable may vary depending upon the complexity of the job; however, it should be consistent within similar job categories.

(3) No instance of unacceptable performance more than 1 year old at the time of the advance notice may be a basis for a proposed removal or reduction in grade.

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(4) The decision to retain, reduce in grade or remove must be made within 30 days after the expiration of the notice period.

(5) The decision on a notice of proposed action must be delivered to the employee before the effective date of the action.

### 3. Procedures

a. An employee whose job performance has fallen to the Minimally Successful or Unacceptable level shall be given a special progress review and will be issued a letter from the immediate supervisor.

(1) For an employee whose performance has fallen to the Minimally Successful level, the letter must:

(a) Include a statement that the level of performance has fallen to the Minimally Successful level; list the critical element(s) where performance has fallen below the Fully Successful level.

(b) List specific instances of the employee's Minimally Successful performance.

(c) Warn the employee that failure to improve performance to the Fully Successful level may result in withholding of a within-grade increase.

(2) For an employee whose performance has fallen to the Unacceptable level, the letter must:

(a) Include a statement that the level of the job performance has fallen to the Unacceptable level; list the critical elements where performance has fallen to below the acceptable (Minimally Successful) level.

(b) List specific instances of the employee's unacceptable performance.

(c) Include a stated time period within which the employee will be given an opportunity to demonstrate improved job performance. The supervisor must consult with the Employee Relations Division of the Human Resources Office to determine the time frame.

(d) Describe what constitutes job performance at the acceptable (Minimally Successful) level within the prescribed time period.

(e) Include a statement that the supervisor will assist the employee in helping the employee to improve job performance.

(f) Specify that, if at the completion of the stated time period, the employee has been unable to demonstrate job performance at the Minimally Successful level, then the employee must be reassigned or issued a letter of advance written notice to remove or reduce in grade.

b. An employee whose reduction in grade or removal is proposed is entitled to a 30 day advance written notice of the proposed action.

c. The employee shall be issued a letter of advance written notice which must include specific instances of unacceptable performance by the employee on which the proposed action is based. The letter should include:

(1) The critical element or elements of the employee's position involved in each instance of unacceptable performance.

(2) The name and title of the official designated to hear an oral reply and/or receive the written reply.

(3) The statement that the employee is allowed 15 days to answer orally and/or in writing.

(4) A statement that the employee may be represented by an attorney or other representative.

(5) The right of the employee or the employee's representative to review the material which is relied upon to support the reasons given in the notice.

(6) Specification of a reasonable amount of official time to prepare an answer to the advance notice, if the employee is otherwise in an active duty status.

d. The employee shall be issued a written decision at the earliest practical date before action shall be effective. The decision letter will:

(1) Specify the instances of unacceptable performance by the employee upon which the reduction in grade or removal is based (the same instances as stated in the letter of advance written notice).

(2) State that the decision was made considering the verbal or written response of the employee (if the employee did respond).

(3) Be signed by an official in a higher position than the official who proposed the action.

(4) Specify the employee's rights to appeal to the Merit Systems Protection Board (MSPB) and write, when applicable, to file a grievance under negotiated grievance procedures, but not both.

(5) Provide the time limits for filing an appeal to MSPB, the address of the appropriate Board office for filing the appeal, a copy of the Board's regulations and a copy of the Board's appeal form.

e. Activity heads are authorized to extend the notice period under paragraph 3c(3) above for not more than 30 days if the employee or the employee's representative requests an extension and outlines the reasons in writing. This authority may be delegated to department heads. Activity heads may extend the notice period under paragraph 3c(3) above, for not more than 30 days only with prior approval of the Office of Personnel Management (OPM). Activity heads are authorized to seek prior approval directly from the Workforce Effectiveness and Development Group, OPM, 1900 E. Street, N.W., Washington, DC 20415.

f. If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's 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 will be removed from any activity record relating to the employee.

g. If the employee wishes the activity to consider any medical condition which may contribute to the unacceptable performance, the employee will be given a reasonable time to furnish medical documentation (as defined in reference (c)) of the condition. Whenever possible, the employee will supply this information at the time the activity offers the opportunity to demonstrate acceptable performance. If the employee offers such documentation after the activity has proposed a reduction in grade or removal, the employee will supply the information within the time limits allowed for a reply. After its review of the medical documentation supplied by the employee, the activity may, if authorized, require a medical examination per the criteria and procedures of reference (c). If the employee has 5 years of service, the activity shall provide information concerning disability retirement. The activity shall be aware of the affirmative obligations of the provisions of reference (d), 1613.704, which require reasonable accommodation of a qualified handicapped employee. An employee's application for

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disability retirement shall not preclude or delay any other appropriate personnel action. Reference (e), Chap. 60 Sect. 6013.1-2, sets forth the basis under which an activity shall file an application for disability retirement on behalf of an employee.

4. Representation

a. An employee who has received advance notice of removal or reduction in grade is entitled to be represented by an attorney or other representative. The activity may disallow as an employee's representative:

(1) An individual whose activities as representative would cause a conflict of interest or position.

(2) An employee of the activity whose release from the official position would give rise to unreasonable costs, or whose priority of work assignments preclude the employee's release.

(3) An individual whose performance of representative duties would conflict with the terms of any applicable collective bargaining agreement.

b. An employee may grieve the decision to disallow the employee's choice of representative, in writing, to the official whose decision it was to disallow the choice of representative.

c. The decision on the grievance will be redelegated to another official higher than the level of the official who rendered the initial decision to disallow the representative.

d. The official charged with rendering a decision on the grievance must do so in writing to the grieving employee at the earliest practicable time.

5. Applicability

a. This Order applies to all Federal civil service employees with the exception of the following:

(1) An employee of a non appropriated fund instrumentality.

(2) An individual occupying a position not in the competitive service, excluded from coverage by regulations of the OPM.

b. Further, this Order applies to all appropriated fund civilian employees of the competitive service who are not serving a probationary or trial period under an initial appointment or who

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have completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less.

6. Records

a. When an action is effected, all relevant documentation concerning a reduction in grade or removal based on unacceptable performance shall be made available for review by the affected employee and the employee's representative. As a minimum, these records will consist of:

- (1) A copy of the notice of proposed action.
- (2) A copy of the employee's written answer, if any.
- (3) A summary of the employee's oral reply, if one was made.
- (4) A copy of the notice of decision and reasons therefore.
- (5) Copies of any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

b. The Human Resources Office shall maintain these records for 4 years after the action is effected, unless the action is appealed. If the action is appealed, the file shall be maintained for 4 years after the case is closed. If medical documentation is furnished by the employee, such information shall be maintained per paragraph 1-3d of reference (c).

7. Action

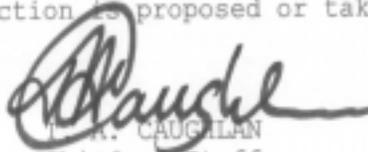
a. The immediate supervisor will maintain discipline and morale among employees supervised and will initiate or recommend a removal action or reduction in grade when warranted.

b. The Labor and Employee Relations Officer, Human Resources Office, will:

- (1) Provide technical advice and assistance to all levels of management regarding removal or reduction in grade actions.
- (2) Prepare all letters proposing or effecting such actions for the appropriate management official's signature.

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(3) Provide assistance on technical matters relating to the exercise of protective and appeal rights upon request of the employees against whom such action is proposed or taken.

  
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Chief of Staff

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