

OHIO NATIONAL GUARD

LABOR RELATIONS OFFICE CONDUCT MANAGEMENT STANDARD OPERATING PROCEDURES



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CONDUCT MANAGEMENT STANDARD OPERATING PROCEDURES

CHAPTER 1 EXECUTIVE OVERVIEW

1-1. PURPOSE. The Labor Relations Office (LRO), provides guidance about policy, responsibility, authority, and procedures for supervisor and employee interactions, disciplinary actions, adverse actions, collective bargaining agreements and all that it encompasses.

Note: This SOP is a resource tool to assist managers and supervisors, but **DOES NOT** replace regulations, instructions, policies, and approved Collective Bargaining Agreement. Managers and supervisors are reminded to contact the Labor Relations Specialist (LRS) any time a potential conduct issue occurs with an employee to discuss available options prior to any action.

1-2. APPLICABILITY. The provisions of this SOP are applicable to Ohio National Guard (OHNG) Employees (Title 5 National Guard Employees and Title 32 Dual Status Technicians) and their supervisors.

1-3. GENERAL.

- a. Supervisors are responsible for managing their workforce.
- b. The Collective Bargaining Agreement (CBA), between the Ohio National Guard (ONG) and the American Federation of Government Employees (AFGE) Local 3970, apply to Air and Army ONG Bargaining Unit Employees (BUEs). It is imperative you review the current CBA and how the articles of the CBA apply to your specific employee(s). The CBA is your rule book when it comes to processes for managing (BUEs). Refer to Article 3, Effect of Laws, Regulations and Other Provisions for application of laws, rules, regulations, instructions, manuals or directives that govern over BUEs. Refer to block #37 of the employee's SF 50 personnel action to verify if they are a BUE or Non-Bargaining Unit Employee (NBUE). Refer to Table 1, Bargaining Status Codes, for code descriptions.

Status Code	Description
NG5081	Air Bargaining Unit positions
NG5082	Army Bargaining Unit positions
7777	Temporary employees and Indefinite employees
8888	Non-Bargaining Unit positions

Table 1. Bargaining Unit Status Codes

c. Should discipline or adverse action be necessary, it will be in accordance with (IAW) Technician Personnel Regulation (OH TPR) 752, Discipline and Adverse Action (BUEs), CNGBI 1400.25 Vol. 752, National Guard Technician and Civilian Personnel Discipline and Adverse Action Program (NBUEs) or equivalent.

(1) All conduct related issues should be initiated first through the Human Resources Office (HRO) LRO.

(2) Templates for all issues will be made available to supervisors and/or proposing officials based on the details of the inquiry (see appendices).

d. Determining the appropriate Deciding Official:

(1) A deciding official for discipline and adverse actions per CBA and OH TPR 752 is the Supervisor's (proposing official's) first line leader (BUEs).

(2) A deciding official for Category 1 adverse actions per CNGBI 1400.25 Vol. 752 is the Supervisor's (proposing official's) first line leader (NBUEs).

(3) A deciding Official for Category 2 adverse actions must be, at a minimum, the first O6 or GS-14 in the Supervisor's (proposing official's) management chain (NBUEs).

1-4. OBJECTIVE. To provide continuity to the supervisors of OHNG Employees in regards to managing the force should discipline or adverse action become necessary.

1-5. RESPONSIBILITIES.

a. **Labor Relations Office (LRO) Responsibilities:**

(1) Provide procedural guidance and direction to all managers and supervisors on disciplinary responsibilities, rights, and obligations.

(2) Assist supervisors and managers with the procedural aspects of non-disciplinary, disciplinary and adverse actions before issuing any documentation to BUEs or NBUEs.

(3) Provide necessary training to managers and supervisors on the Discipline and Adverse Action Program.

(4) Provide general and procedural guidance and case information to the affected employee(s).

(5) Consult with the State Judge Advocate Office for legal advice on adverse actions, *Douglas* Factors, and proposed penalties.

(6) Ensure commanders or security professionals report derogatory information promptly (typically within 72 hours) to the appropriate adjudication facility through the Joint Personnel Adjudication System and assist commanders in determining whether the derogatory information warrants the suspension of access to classified information. Advise supervisors on procedures and policy relating to managing employees.

(7) If a supervisor inquires about a discipline option, the LRS will verify the following:

- (a) If they are a bargaining unit employee.
- (b) Gather as much information as possible.
- (c) Review the CBA for Weingarten Rights requirements.
- (d) Inform the supervisor of the requirement to notify the employee of the potential for discipline, if applicable.

(8) If information provided by the supervisor indicates a potential for discipline is warranted:

- (a) Refer the supervisor or manager to the OH TPR 752 (BUEs), CNGBI 1400.25 Vol. 752 (NBUEs) or equivalent.
- (b) Review the Table of Penalties and determine the most appropriate charge and penalty recommendations.
- (c) Verify whether the supervisor has had similar disciplinary problems with the employee in the past. If they have:
 - (i) What disciplinary action was imposed on the employee?
 - (ii) Does the employee have other discipline issues? If so, have the supervisor provide details and if any action was accomplished.

(9) Provide templates as appropriate and instruct the supervisor to provide draft(s) (based on examples provided by the LRS) with all supporting documentation regarding the rule(s) broken, any witness statements, etc.

(10) Coordinate with the Union as required.

b. Supervisor Responsibilities:

(1) The Supervisor should articulate work/office expectations clearly to employees as soon as possible. Contact LRS for guidance.

- (2) Actions that can be taken to avoid performance or conduct issues:
 - (a) Communicate clear performance standards and expectations.
 - (b) Provide regular and consistent feedback on performance.
 - (c) Reward and recognize good performance, informally and formally.
 - (d) Make full use of the probationary period for employees to observe performance and conduct. If applicable, refer to [Appendix X](#) for removal during probationary period guidance.
 - (e) Set the desired example by the manager's or supervisor's own conduct.
 - (f) Maintain a good work atmosphere.
 - (g) Ensure employees conform to all applicable standards of conduct.
 - (h) Maintain effective lines of communication with the HRO.

c. Deciding Official Responsibilities:

- (1) Deciding official will consider the merits of the proposal prior to issuing the agency decision letter. Contact LRS for guidance.
- (2) Deciding official will have to consider the following in order to make his or her decision:
 - (a) Did the employee do what was charged within the proposal?
 - (b) Will the proposed discipline, based on the proven misconduct, promote the efficiency of the service?
 - (c) Is the penalty reasonable and equitable?
- (3) Deciding official must address appeal rights within the decision letter. The following are appeal rights based on employee bargaining unit status:
 - (a) Category 1 Adverse Actions Appeals (Note: Listed in CBA as Disciplinary Actions, Article 11) Deciding official will:
 - (i) Issue agency decision
 - (ii) Inform the employee of his or her right to:

(A) Use the negotiated grievance procedures, if applicable, for BUEs or;

(B) Use the administrative grievance procedure, if applicable, for NBUEs.

(C) Request an administrative hearing, if applicable, through the NG Hearing Examiner program.

(D) Use of Appellate Review per CNGBI 1400.25 Vol. 753 and CBA Article 11.

(b) Category 2 Adverse Actions Appeals (Note: Listed in CBA as Adverse Actions, Article 12) – Deciding official will:

(i) Issue agency decision

(ii) Inform the employee (within the decision letter) of his or her right to:

(A) Use the administrative grievance procedure IAW the Administrative Grievance Plan (NBUE Only).

(B) Use the negotiated grievance procedures, if applicable, filed under the negotiated grievance procedure contained in the Collective Bargaining Agreement between the Ohio National Guard and AFGE Local 3970 (BUE Only).

(C) Appeal to the MSPB within 30 calendar days of the effective date of the action, if any, or within 30 calendar days after the date of receipt of the agency's decision, whichever is later.

Note: CBA lists Appellate Review and Administrative Hearing (these options are only available for disciplinary actions (CBA or CNGBI Category 1 adverse actions), which are no longer available for Category 2 adverse actions per CNGBI 1400.25 Vol. 752/753.

(4) Deciding official additional options:

(a) The deciding official may consider an Alternative Discipline Agreement (ADA) or Alternative Adverse Action Agreement (AAAA) in situations which the agency agrees to reduce, hold in abeyance, or forgo taking a proposed disciplinary or adverse action (excluding removals) against a technician or employee in exchange for the technician or employee's admitting wrongdoing and agreeing to conform to certain conduct expectations for a minimum of 12 months (disciplinary actions/Category 1 Adverse Actions) and a maximum of 24 month (Adverse Actions/Category 2 Adverse Actions) period of time depending on the severity of the offense. The

understanding is that if the technician or employee does not meet his or her obligation under the agreement, then the agency is free to reinstate the complete and original or adverse action (excluding removals). ADAs or AAAAs may be offered at the discretion of the deciding official and the decision to use or not use an ADA or AAAA may not be grieved. The following considerations apply when offering an ADA or AAAA:

(i) In the acceptance of an ADA or AAAA, the technician or employee shall waive their grievance and appeal rights in exchange for accepting the agreement and reduced, held in abeyance, or forgone disciplinary action.

(ii) Prior to offering a technician or employee an ADA or AAAA, the technician or employee will be afforded the right for union representation (BUE) and if desired by the technician or employee, the union will be given an opportunity to be present at any meeting in which the technician or employee is offered such an agreement.

(iii) ADA or AAAA terms must be clear, concise, and detailed.

(iv) ADA duration is typically not less than 12 months and no longer than 24 months unless an “actionable misconduct” occurs within the period. If misconduct occurs, the original decision will be reinstated.

(v) AAAA duration is 24 months unless an “actionable misconduct” occurs within the period. If misconduct occurs, the original decision will be reinstated.

(vi) Refer to [Appendix T](#) for ADA/AAAA example. Coordination with the HRO LRS is required prior to issuing an ADA or AAAA.

(b) The deciding official may consider a last-chance agreement (LCA) in lieu of removal in situations which the agency agrees to hold in abeyance or forgo taking a proposed removal action against a technician or employee in exchange for the technician or employee’s admitting wrongdoing and agreeing to conform to certain conduct expectations for a minimum of 12 months and a maximum of a 24 month period of time. The understanding is that if the technician or employee does not meet his or her obligation under the agreement, then the agency is free to reinstate the removal process. A LCA may be offered at the discretion of the deciding official and the decision to use or not use a LCA may not be grieved. The following considerations apply when offering a LCA:

(i) In the acceptance of an LCA, the technician or employee shall waive their grievance and appeal rights in exchange for accepting the agreement and held in abeyance or forgone removal action.

(ii) Prior to offering a technician or employee a LCA, the technician or employee will be afforded the right for union representation (BUE) and if desired by the technician or employee, the union will be given an opportunity to be present at any meeting in which the technician or employee is offered such an agreement.

(iii) LCA terms must be clear, concise, and detailed.

(iv) LCA duration is typically one to two years unless an “actionable misconduct” occurs within the period. The employee can be removed without further notice or process.

(v) Refer to [Appendix U](#) for LCA example. Coordination with the HRO LRS is required prior to issuing a LCA.

CHAPTER 2 NON-DISCIPLINARY, DISCIPLINARY AND ADVERSE ACTIONS

2-1. Non-Disciplinary Action Overview

a. **Counseling.** Where non-disciplinary action is appropriate, oral counseling may be suitable in the first instance.

Note: Recommend the supervisor do a Memorandum for Record (MFR) with the date of the counseling and summary of the discussion. The MFR should be kept in the supervisor’s local records so it is available in the future for reference of the discussion.

b. **Letter of Admonition (LOA).** If the minor misconduct continues or is repeated after counseling but non-disciplinary action is still appropriate, admonition is warranted. Supervisors and deciding officials are not required to issue an admonition before proposing adverse action. The penalty for an instance of misconduct should be tailored to the facts and circumstances. The admonition is written in the Supervisor's records. The employee must be allowed to write his or her reply to the facts and reasons stated by the supervisor in the LOA. If the employee replies orally, the supervisor will write a short summary of the reply. The supervisor will state the date on which the admonition and reply will be expunged (recommend no more than 1 year) absent continuation or repetition of the minor misconduct.

2-2. Disciplinary and Adverse Action Overview

a. **Letter of Reprimand (LOR).** A LOR is a disciplinary action but does not constitute an adverse action. May be used when counseling or admonishment is

ineffective or when the nature of the offense warrants a more serious and formal action. Refer to [Appendix A](#), [Appendix I](#) for BUE and [Appendix J](#) for NBUE. A LOR must, at a minimum, include the following:

(1) A description of the violation, offense, or action (referred to as the cause) in sufficient detail to show why the letter of reprimand is being issued. You must provide a "preponderance of the evidence" for imposing a disciplinary action. The burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

(2) The timeframe that the letter of reprimand will remain in effect in the employee's electronic Official Personnel Folder (eOPF) is typically more than 6 months, but less than two years.

(3) Repeated Behavior. Repetition of the same offense may warrant more severe disciplinary action, as indicated in the table of penalties (BUE - OH TPR 752, Discipline and Adverse Action, 19 September 2011, Appendix D; NBUE - CNGBI 1400.25 Vol. 752, Enclosure I).

b. **Category 1 Adverse Actions** (CBA lists as Disciplinary Action Article 11). Refer to [Appendix B](#) for BUE and [Appendix C](#) for NBUE.

(1) Involuntary Action processed as Suspensions of fourteen (14) calendar days or less

(2) Requires "The Big Three" (refer to [section 2-3](#)).

c. **Category 2 Adverse Actions** (CBA lists as Adverse Action Article 12). Refer to [Appendix D](#) for BUE and [Appendix E](#) for NBUE.

(1) Involuntary actions processed as Suspensions greater than fourteen (14) calendar days, Reductions in Grade/Pay or Removals.

(2) Requires "The Big Three" (refer to [section 2-3](#)).

2-3. "The Big 3" Rules for Disciplinary or Adverse Actions

a. There must be a rule (law, regulation, policy, workplace rule, etc.).

b. Must be able to show that the employee was aware of the rule.

c. Preponderance of the evidence must show that in spite of the employee's awareness of the rule, they violated the rule anyway.

Note: The action must be taken for reasons that promote the "efficiency of the service." The more serious the action, the more this factor must be considered.

Get HRO involved – Contact the Labor Relations Specialist to determine the appropriate type of action to propose and assistance with the preparation of the Proposed Action Letter.

2-4. Nexus. Connecting the Job and the Offense.

a. To implement a suspension, demotion, or removal for misconduct, the agency must be able to show that the action was “for such cause as will promote the efficiency of the service.” (5 U.S.C. §§ 7503; 7513).

b. Merit Systems Protection Board (MSPB) describes three (3) methods for establishing Nexus:

(1) A rebuttable presumption of nexus may arise in certain egregious circumstances

(2) The agency may show, by a preponderance of the evidence, that the misconduct presented has adversely affected the employee’s or co-workers’ job performance or the agency’s trust and confidence in the employee’s job performance

(3) The agency may show, by a preponderance of the evidence, that the misconduct interfered with or adversely affected the agency’s mission.

2-5. Weingarten Rights

a. Bargaining unit employees have the right to union representation when they are to participate in informal fact-finding or formal investigations into possible misconduct that could result in disciplinary actions.

b. This right is activated when:

(1) One or more agency representatives are examining (questioning) a bargaining unit employee in connection with an investigation.

(2) The employee reasonably believes that the examination may result in disciplinary action against the employee.

(3) The employee requests union representation.

c. Once all three conditions have been met, supervisors may generally not continue the examination without allowing the employee his or her requested representation. Specifically, the supervisor's options under these circumstances are:

(1) Grant the request and notify the union that a meeting to examine a bargaining unit employee is going to take place and that the employee has

requested union representation. If the union attends the meeting, it must be allowed to make relevant comments but cannot disrupt the meeting nor can it answer the questions posed to the employee

(2) Discontinue the interview and rely on evidence already available or information obtained from other sources

(3) Offer the employee a clear choice to:

(a) Continue the interview without representation

(b) Have no interview

d. BUEs **Do Not Have a Right** To Union Representation:

(1) During performance discussions

(2) When receiving work direction and guidance

(3) During informal complaints

(4) Concerning established policy information

(5) Job assignments

(6) In general, employees are not entitled to union representation during a counseling for either conduct or performance

2-6. Metz Factors: In a case where an alleged threat was part of the conduct issue, management must weigh the evidence to determine whether a “threat” has actually occurred.

a. Evidence of an employee’s intent in making a statement can show that the statement was or was not a threat.

b. Rumors, or fear based on rumors, cannot suffice to prove that an employee threatened anyone. Management should not, however, disregard subjective evidence of fear or intent.

c. Objective evidence typically bears the heaviest weight. Consult with the HRO.

d. The following are the five (5) Metz Factors to consider:

(1) Listener’s reactions.

(2) Listener’s apprehension of harm.

- (3) Speaker's intent.
- (4) Any conditional nature of the statements.
- (5) Attendant circumstances.

e. Example scenario: Two employees are discussing a situation where employee 1 received a LOR for missing too much work. Employee 1 tells employee 2 that he is really upset with the supervisor and during his angry rant, tells employee 2 that he will get back at the supervisor by slashing the supervisor's tires if the supervisor says anything else about missing work. Employee 1 is very animated and showing aggression. Employee 2 went to the supervisor and warned her about the conversation. The supervisor starts an initial investigation to determine if the potential threat is valid by conducting the following Metz Factor considerations:

- (1) Listener's reactions. Find out why employee 2 perceived it as a threat.
- (2) Listener's apprehension of harm. Does employee 2 believe it to be a genuine threat or just a "rant".
- (3) Speaker's intent. When questioned, employee 1 will provide context of the "rant" when talking with employee 2.
- (4) Any conditional nature of the statements. Yes, employee 1 made a conditional statement that he will slash the supervisor's tires if anything else is said about missing work.
- (5) Attendant circumstances. What was the situation in which employee 1 started the conversation with employee 2 e.g. on break, after work, etc.

Note: Active "threats" should be addressed immediately to avoid potential harm to an employee(s) and/or location in which the employee is allegedly making a potential threat. Contact LRS for guidance.

2-7. Douglas Factors. Refer to [Appendix H](#) for Douglas Factors Worksheet:

- a. A supervisor is responsible for ensuring that a disciplinary penalty is fair and reasonable. If a penalty is disproportionate to the alleged violation or is unreasonable, it is subject to being reduced or reversed even if the charges would otherwise be sustained. These factors provide valuable assistance to supervisors in making a penalty determination.
- b. Some of these twelve factors may not be pertinent in a particular case. Some factors may weigh in the employee's favor while other factors may constitute aggravating circumstances that support a harsher penalty. However, it is critical to

balance the relevant factors in each individual case and choose a reasonable penalty.

c. The CBA, Article 12, Adverse Actions (BUE) and CNGBI 1400.25 Vol. 752 (NBUE) require that agency proposals and decisions contain specific, detailed information demonstrating that an agency has considered all of the pertinent mitigating factors in a given case. However, a penalty determination will be entitled to greater deference if the proposal and especially the decision letter contain an evaluation of any mitigating circumstances. It is always better for the Agency to do its own mitigating analysis than to leave it to a third party. In regards to any aggravating factors, which may be relied upon to impose an enhanced penalty, these aggravating factors should be included in the proposed action letter. This is especially true for prior disciplinary actions. It is only fair to allow the employee to respond to these aggravating factors before a decision is made. Consideration of aggravating factors not communicated to the employee is dangerous and may result in a **procedural error and reversal of the disciplinary action**.

d. You are responsible for considering all relevant *Douglas Factors* (listed below) in determining an appropriate penalty. Your analysis of the *Douglas Factors* will be considered part of the case file, and you could be asked to testify regarding your analysis, should the employee appeal the decision. If called to testify, you may be required to testify that you did consider all of the factors and you may be asked about specific factors on cross-examination. Be sure to include all information that you relied upon in making your determination regarding the appropriateness of the penalty in your analysis.

e. **Twelve *Douglas Factors*:**

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

(a) The reason why this factor is first is simple - it is the most important. In determining the appropriate penalty, a supervisor should consider primarily the nature and seriousness of the misconduct and its relation to the employee's duties, position, and responsibilities. This *Douglas Factor* provides some guidance in determining the seriousness of an offense.

(b) In evaluating the seriousness of the misconduct, an offense is more severe if it was intentional rather than inadvertent and if it was frequently repeated rather than being an isolated incident. Misconduct is also considered more severe if it is done maliciously or for personal gain.

(c) The table of penalties, located in OH TPR 752 and CNGBI 1400.25 Vol. 752, provides some distinction regarding the severity of the misconduct. For example, sleeping on duty is a serious offense. However, it is considered more serious as provided in the table of penalties where

safety of personnel or property is endangered. Moreover, the seriousness of the offense is increased if the employee is involved in what might be described as “pre-meditated” sleeping on duty. What does that mean? If you discover an employee sleeping away from his/her duty station with the lights off, pillow in hand and blanket over body, this intentional action is much more egregious than an employee who just cannot keep his/her eyes open and falls asleep while on duty.

(d) There are other examples in the table of penalties that provide guidance in determining the seriousness of misconduct. Misconduct of a sexual nature is a serious offense. However, the severity is increased when the misconduct involves physical touching or promising benefits in exchange for sexual favors in comparison to telling a sexual joke or making a sexual remark inappropriate to the workplace. Sexual jokes are more serious if made directly to an employee rather than if overheard by an employee. The misconduct is even more grievous if the jokes were repeated after the offender was told that the behavior was offensive.

(e) The relationship of the misconduct to the employee’s job duties is another important consideration in determining the seriousness of an offense. Falsification of government documents is a serious offense because it relates to an employee’s reliability, veracity, trustworthiness, and ethical conduct. The misconduct is more serious if it relates “to the heart” of an employee’s duties and responsibilities. For example, if a Time and Attendance (T&A) Clerk was falsifying his/her time and attendance records and it resulted in more pay or less leave used, this misconduct is very serious. The fact that accurate time and attendance records are a critical element of the employee’s position, coupled with the fact that the misconduct resulted in personal gain, increases the gravity of this offense. The misconduct would be considered even more serious if the falsification was not an isolated incident, but reflected falsification over several pay periods.

(f) The supervisor deciding the appropriate penalty is in the best position to determine the seriousness of the offense and how the misconduct relates to the employees duties, position, and responsibilities. Remember, an offense is more serious if it is intentional, frequently repeated, committed maliciously, or for personal gain.

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

(a) This factor recognizes a relationship between the employee’s position and the misconduct. Factors considered are the employee’s job level and the type of employment which may include a supervisory or fiduciary role, contacts with the public, and prominence of the position.

(b) It is a well-recognized principle that a supervisor occupies a position of trust and responsibility and is held to a higher standard of conduct than non-supervisory employees. Supervisors should provide positive leadership and serve as a role model for their subordinates by demonstrating a commitment and sense of responsibility to their job and loyalty to the organization. The Ohio National Guard expects a supervisor to serve as a role model and not violate workplace rules. An employee's supervisory status must be considered in determining the penalty for other offenses as well.

(c) Higher ethical standards are not limited to supervisory positions. Employees who hold law enforcement or security positions are also held to higher ethical standards. For example, employees of the Internal Revenue Service are held to a higher standard of compliance with Federal tax laws. Employees who exercise discretion in regulating, contracting or otherwise conducting government business with private companies are subject to stricter limits in the areas of gifts, gratuities, and conflicting financial interests regarding the companies with which they conduct official business.

(d) An employee's contacts with the public as well as the prominence of his/her position are additional considerations, which should be evaluated in relationship with the misconduct. And we must not forget the important element of safety in many of our positions and any misconduct must be weighed against this critical agency mission.

(e) To summarize, the relationship between the employee's misconduct and the employee's position is an important consideration, which must be analyzed as part of the penalty determination.

(3) **Factor 3:** The employee's past disciplinary record. Note: To be considered, any past disciplinary action must have been a past action at the time the most recent conduct occurred.

(a) The *Douglas* criteria are sometimes referred to generally as mitigating factors. The consideration of past discipline, however, is an aggravating factor, i.e. mitigation in reverse.

(b) In order to use prior discipline as a basis to enhance a current penalty, three criteria must be met. First, the employee must have been informed of the action in writing; second, the employee must have been given an opportunity to dispute the action by having it reviewed, on the merits, by an authority different from the one that took the action; and third, the action must be a matter of record. In deciding to use prior discipline, individuals must be aware of the Gregory decision, which held that prior discipline that is the subject of an ongoing appeal may not be used to support an enhanced penalty.

(c) Once you've determined that a prior disciplinary action meets the requirements to be available for use, you will need to decide how much weight to give it. There are two major factors to consider here, temporal proximity (i.e. how recently did the prior discipline occur?) and the similarity of the offense. If the employee was disciplined 6 months ago for essentially the same misconduct as the current offense, a good argument can be made that an extra firm penalty is needed this time to achieve the desired change in behavior. On the other hand, if it's been many years since the prior discipline, it is much more difficult to make a convincing case for an enhanced penalty. We also must be mindful of labor agreements that might contain time limits for considering prior discipline.

(d) The same sort of assessment is needed concerning similarity of the offense. Persistent repetition of similar misconduct is more directly relevant to supporting a more severe disciplinary action. The first time an employee is formally disciplined is considered a first offense in the Table of Penalties. Continued misconduct involving subsequent violations of rules and regulations may be considered under the second and third offense columns. However, good judgment must be used to weigh prior discipline when choosing an appropriate penalty to correct the situation.

(e) If prior discipline is going to be used as an aggravating factor, it must be cited in the proposed action letter. Non-disciplinary actions such as counseling and admonition may be relied upon for imposing an enhance penalty and need to be cited as well in the proposed action letter.

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

(a) This factor is especially likely to prompt mitigation. An employee's length of service and prior work record must be evaluated and be balanced against the seriousness of the offense. An employee with many years of exemplary service and numerous commendations may deserve to have his/her penalty mitigated. However, the seriousness of the offense and an evaluation of other *Douglas* Factors may outweigh an employee's positive work record.

(b) An interesting dilemma sometimes occurs when an agency justifies a penalty in part due to what it believes is an employee's past poor performance, but the employee's appraisals demonstrate good or excellent performance. In this case, third parties favor relying upon official appraisals and agency contentions to the contrary are provided little weight in determining the reasonableness of the penalty. This is just one more example of the importance of documentation and communication of performance to employees.

(5) **Factor 5:** The effect of the offense on the employee's ability to perform his or her job at a satisfactory level and its effect on the supervisor's confidence in the employee's ability to perform assigned duties.

(a) The analysis of this factor involves much more than a supervisor's statement that he/she has lost confidence in the employee. Specific evidence/testimony as to why an employee can no longer be trusted is critical. Conclusionary and vague statements do not hold much weight with third parties. It is critical for the agency to articulate a relationship between the misconduct and the employee's position and responsibilities. We need to specifically state why there is an erosion of supervisory confidence. A supervisor cannot just say it, he/she has to prove it.

(b) There is a clear inter-relationship between this factor and Factor 2 – Employee's Position. For example, misconduct by a supervisor will undermine his/her ability to require subordinates to adhere to agency policies and regulations. A Time and Attendance (T&A) clerk falsifying T&A's or the theft of property by an employee entrusted with custody and control of the property are just two examples in which the misconduct would severely erode supervisory confidence.

(6) **Factor 6:** The consistency of the penalty with those imposed on other employees for the same or similar offenses.

(a) This factor is one of the more technically difficult to apply. One of the basic tenets of the administration of "just cause" is the even-handed application of discipline. However, the principle of "like penalties for like offenses" does not require perfect consistency. On the surface, many incidents of misconduct may seem to be similar. However, a thorough investigation and evaluation may lead to a determination that the misconduct was not substantially similar. And even if the circumstances surrounding the misconduct incident may be substantially similar, the penalty imposed may be different based upon an independent evaluation of the other *Douglas* Factors.

(b) Third parties look at these consistency factors differently. The Merit Systems Protection Board (MSPB) views "similarly situated" employees as employees working in the same unit and for the same supervisor. Arbitrators tend to look at the "equitable" nature of labor agreements and focus on the importance of treating employees the same.

(c) Remember that consistency of penalty with that imposed on other employees is only one *Douglas* Factor to apply. However, if the penalty is different for a similar incident of misconduct, specific reasons for the difference in penalty must be articulated.

(7) **Factor 7:** The consistency of the penalty with National Guard Bureau guidance regarding disciplinary actions.

(a) An important aspect of applying this factor is determining which penalty guide applies to the particular employee being disciplined. CNGBI 1400.25 Vol. 752, National Guard Technician and Civilian Personnel Discipline and Adverse Action Program, Enclosure I, Table of Penalties for Various Offenses effective 29 June 2020, covers all non-bargaining unit employees. Ohio Technician Personnel Regulation (OH TPR) 752, Discipline and Adverse Action, Appendix D, Table of Penalties for Various Offenses effective 19 September 2011, covers bargaining unit employees.

(b) If the particular offense at issue is not in the above referenced Table of Penalties for Various Offenses, you should review the guide for similar, related offenses. Don't force misconduct into a listed offense unless it accurately fits. Similar offenses can be used to guide penalty selection.

(c) Deviation from the guide is allowed, but going beyond or outside the penalty recommended in the table will be closely scrutinized. However, it may be appropriate based upon the facts of a specific case and/or application of other *Douglas* Factors to impose either a lesser or greater penalty as circumstances dictate.

(8) **Factor 8:** The notoriety of the offense and its impact on the reputation of the agency.

(a) A high profile agency like the ONG does not need any more media coverage of any employee's misconduct. The notoriety of an offense or its impact on the reputation on the ONG is usually directly related to the seriousness of the misconduct and/or prominence of the employee's position.

(b) This factor is one of the least significant of the *Douglas* Factors and is usually considered as aggravating. There are certain standards of behavior and conduct expected of ONG employees by our external and internal customers. When these expectations are not met as a result of an employee's misconduct, the reputation of the ONG may be tarnished. In these circumstances, appropriate analysis of this factor may result in considering a more severe penalty.

(9) **Factor 9:** The clarity with which the employee was on notice of any rules violated in committing the offense or any warning about the conduct in question.

(a) How well the supervisor informed an employee of the rule that was violated is a factor that may have to be considered in determining the penalty. Breaking an obscure rule will be viewed less harshly than breaking

one that is well publicized, and particularly one in which the employee was given specific notice. Non-disciplinary counseling and letters of expectations are methods to communicate what are the requirements of conduct in the workplace.

(b) Supervisors are required to encourage employees to review the Standards of Conduct, and are required to ensure that employees under their supervision review, at least once, the Government-wide Ethical Standards.

(c) Briefings and/or training on the Standards of Conduct to employees can be of assistance in evaluating this factor.

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

(a) Potential for rehabilitation can be a major aggravating and/or mitigating factor. An employee with a significant disciplinary record most likely would have poor potential for rehabilitation. However, an employee with no prior disciplinary record, good prior performance and job dedication would probably have good potential for rehabilitation.

(b) An employee's recognition of a personal problem that may negatively affect conduct weighs favorably in determining an employee's potential for rehabilitation. Willingness to seek counseling assistance through an Employee Assistance Program or any self-help activity to deal with an issue or problem such as an anger management problem or a family situation which is negatively affecting attendance are good indicators of a potential for rehabilitation. Simply put, recognizing one has a problem and doing something about it, are factors, which may influence mitigation.

(c) Mitigation means sometimes "you have to say you are sorry." Apologizing for misconduct usually helps. Recognizing a mistake and taking responsibility for one's misconduct are factors that are clearly mitigating. An employee's admission of wrongdoing on his/her own also constitutes a mitigating factor and the earlier the better for possible mitigation. There is no guarantee the truth will set an employee free, but it may result in reducing a penalty.

(d) Admitting wrongdoing, showing remorse and contrition, and getting assistance to deal with the misconduct are just several elements, which may result in mitigation. Conversely, an employee who never apologized, never admitted an error, is not remorseful, is unrepentant, and has been uncooperative, should not expect much mitigation under this factor.

(11) **Factor 11:** The mitigating circumstances surrounding the offense, such as unusual job tensions, personal problems, mental impairment, harassment or bad faith, malice, provocation on the part of others involved in the matter, or deployment-induced or combat-related stress.

(a) Unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in an incident are mitigating circumstances, which should be reviewed.

(b) Personal problems, which may place an employee under considerable stress, may be significant to warrant mitigation. The death of a spouse and a serious illness of family member are “life-shaking” events and are examples of such stressors. Specific evidence should be presented how the misconduct was directly related to the personal problems and the subsequent stress.

(c) Evidence that an employee’s medical condition played a part in the charged conduct is ordinarily entitled to considerable weight as a significant mitigating factor. An employee who falls asleep in the workplace after taking medication should not have this behavior excused, but the use of medication may be a reason for considering mitigation. However, an employee’s medical condition may not be sufficient in some cases to outweigh egregious acts of misconduct.

(d) Provocation may be considered in certain incidents. For example, a fight in the workplace. An employee who may have been provoked to fight may be due to some mitigating consideration for the misconduct rather than the aggressor.

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

(a) What needs to be done to deter the conduct in the future by the employee or others? This factor is listed last because this consideration should occur after a thorough analysis of all the other *Douglas* Factors. Penalty determinations should undergo thorough reasoning under the *Douglas* Factors. It is important to note a case was lost in another government agency when the deciding official stated the Agency’s zero tolerance policy on workplace violence required him to remove the employee from governmental service. He was introduced the “World of *Douglas*” by way of the Merit Systems Protection Board’s decision.

(b) The feasibility of other alternative sanctions can be greatly limited by other *Douglas* Factors. For example, an employee who has a significant disciplinary record and shows limited potential for rehabilitation should expect the worse. However, demotion to a non-supervisory position instead of a removal may be the appropriate penalty for a supervisor who failed to discharge his/her required supervisory responsibilities but had a good record in non-supervisory positions.

(c) The deciding official must be prepared to support a penalty and communicate why it is the appropriate penalty. Remember, making an

example of an employee is not an appropriate result of the disciplinary process. Applying these factors in determining the appropriate penalty is the objective.

2-8. Conduct vs Performance: It should be understood that some conduct issues could affect an employee's performance. In addition, some performance issues may seem like conduct, but may actually be a performance issue where training will eliminate the problem. **ALWAYS** consult with the Labor Relations Specialist when addressing a performance or conduct problem. Refer to [Appendix V](#) and [Appendix W](#) for additional information.

2-9. Information to Consider:

a. **Ex Parte Communication:** The Due Process Clause of the Fifth Amendment has been interpreted to require that before an agency may remove an employee per 5 USC Chapter 75, the agency must first notify the employee of the proposed action and basis for it, and the agency must afford the employee a meaningful opportunity to respond to the proposal. The proposed action letter must describe the agency's charge(s), the evidence underlying the charge(s), and any aggravating factors relied upon for the penalty imposed. Those requirements are violated when a deciding official considers information and subsequently renders his/her decision without the employee having first been notified that he would consider the information.

(1) The MSPB and courts label such information as ex parte, because the information is considered by the deciding official, but without the other party's notification and opportunity to respond.

(2) Commonly, the problematic ex parte information is actually communicated to the deciding official through individuals or in writing without the employee's knowledge, and is an actual "ex parte communication." However, the Board will apply the label of ex parte communication even when there was not necessarily a new communication of information, so long as the deciding official considered and factored information "personally known" to him/her without the employee's knowledge. Likewise, the Board will apply the label of ex parte communication where the deciding official draws inferences from the record that do not naturally flow from the agency's charges, but would instead seem to factor uncharged conduct against the employee.

b. **Stone Factors:** Factors to consider when determining whether an ex parte communication introduced new and material information, known as the Stone factors, include:

(1) Whether the information was merely cumulative;

(2) Whether the employee knew of and had an opportunity to respond to the information and;

- (3) Whether the ex parte communication would likely result in undue pressure upon the deciding official to rule in a particular manner.

Note: Reference to “Stone Factors” is located in [What is Due Process in Federal Civil Service Employment?](#)

CHAPTER 3

Proposed Action Letter

3-1. Proposed Action Letter Paragraph Contents (Refer to [Appendix K](#) and [Appendix M](#) for BUE and [Appendix L](#) and [Appendix N](#) for NBUE):

a. **Paragraph 1:** This paragraph will list the proposed action(s) (i.e. suspension for a period of # calendar days/# hours, reduction in grade/pay or removal) from his or her position (position information), in accordance with:

- (1) For Bargaining Unit Employee (BUE) - OH TPR 752, Discipline and Adverse Action, 19 September 2011, Appendix D, Table of Penalties for Various Offenses (cite specific charge(s) from the appendix).

- (2) For Non-Bargaining Unit Employee (NBUE) - CNGBI 1400.25 Vol. 752, National Guard Technician and Civilian Personnel Discipline and Adverse Action Program, 29 June 2020, Enclosure I, Table of Penalties for Various Offenses (cite specific charge(s) from the enclosure).

b. **Paragraph 2:** This paragraph must list the Cause for the action being taken.

- (1) Lists the offense(s) the employee is charged with to include who, what, when, and where

- (2) Must be more descriptive than stating an offense from the Table of Penalties

- (3) Cause cannot be an arrest, conviction, etc. Conduct that led to the arrest, conviction, etc. can be used

- (4) Standard of proof for upholding an administrative adverse action is “preponderance of the evidence”

c. **Paragraph 3:** This paragraph must list the Penalty being proposed.

- (1) Must be stated completely

- (2) Must be similar for offenses with like circumstances

- (3) Review "Table of Penalties" for a general guide for common offenses.
- (4) Variation is permissible provided it is equitable.

d. **Paragraph 4:** This paragraph must contain a Statement indicating the right to interview witnesses that agree to be interviewed voluntarily, and to review, copy, or receive the materials (documents, recordings, emails, reports of investigations, etc.) relevant to the cause for the action.

Note: Supervisor must notify witnesses that their statements will be made available to the employee involved in the proposed action.

e. **Paragraph 5:** This paragraph must contain a Statement indicating the employee's right to reply. Employee (or Representative) may reply in writing, orally or both. Oral replies should be documented, in a memorandum for record (MFR), by the Supervisor or Deciding Official and signed/dated by the employee or representative. Witnesses present should sign/date as well. This paragraph will provide the contact information of the deciding official to include email address and phone number.

(1) **BUEs**

(a) **Disciplinary Actions** (considered as suspensions of fourteen (14) calendar days or less per CBA), the employee will be afforded a minimum of seven (7) calendar days to reply.

(b) **In Adverse Actions** (considered as suspensions of more than fourteen (14) calendar days, reduction in grade/pay or removal per CBA) the employee will be afforded a minimum of fourteen (14) calendar days to reply.

(2) **NBUEs**

(a) **Category 1 Adverse Actions** (considered as suspensions of fourteen (14) calendar days or less per CNGBI 1400.25 Vol. 752), the employee will be afforded a minimum of seven (7) calendar days to reply.

(b) **Category 2 – Adverse Actions** (considered as suspensions of more than fourteen (14) calendar days, reduction in grade/pay or removal per CNGBI 1400.25 Vol. 752) the employee will be afforded a minimum of fourteen (14) calendar days to reply.

(3) The employee will be informed of the process for requesting extensions. For example: If you should require an extension to submit your reply, you must submit your request for extension in writing with justification to the deciding official for consideration. The right to reply is significant. If you feel the proposed adverse action is unwarranted, it is important that your reply contain

all reasons supporting this belief and/or any mitigating circumstances which refute aggravating circumstances as to why the proposed adverse action should not be effected.

(4) Timeframes will be specified and counted in calendar days. The day the action is presented or received is not counted. The next day begins the calculation of the time limit toward days to reply. The last day of the time limit to reply is counted unless it is a Saturday, a Sunday, a government holiday, or a day in which the employee is not regularly scheduled to work. In those cases, the last day of the time limit will be moved to the next regularly scheduled work day.

f. **Paragraph 6:** This paragraph must contain a Statement providing potential appeal options if the proposed action is sustained. Each of these options have potential limitations for their processes and you may only select one (1) option to appeal.

(1) **Disciplinary Actions Challenge Rights** (per CBA and/or Category 1 Adverse Actions Appeals (per CNGBI 1400.25, Vol. 752):

(a) **Administrative grievance procedure (NBUEs ONLY)** - Add the following paragraph: *If this proposal is sustained, you may have appeal rights through various processes including the administrative grievance procedure in accordance with the Administrative Grievance Plan.*

(b) **Negotiated grievance procedure (BUEs ONLY)** - Add the following paragraph: *If this proposal is sustained, you may have appeal rights through various processes including the negotiated grievance procedure in accordance with Article 13 of the Collective Bargaining Agreement.*

(c) **Appellate review.** In an appellate review, TAG will review the adverse action without the involvement of a hearing examiner (HE). The HRO will provide TAG and the employee or his or her representative with the case file. The employee or his or her representative will provide TAG and the HRO with any written submissions they may wish to make. TAG will review all information provided and decide to either make the final decision based on the submissions or request that both parties make oral presentations. TAG will issue a final written decision.

(d) **Administrative hearing.** In an administrative hearing, NGB appoints a hearing examiner from another State who will gather all available and relevant facts through the administrative hearing process. After the hearing process, the NGB hearing examiner will issue a report of findings and provide recommendations to TAG. In this method of appeal, the final decision on appeal is issued by TAG.

(2) **Adverse Actions Challenge Rights** (per CBA and/or Category 2 Adverse Actions Appeals (per CNGBI 1400.25, Vol. 752)

(a) **Administrative grievance procedure (NBUEs ONLY)** - Add the following paragraph: *If this proposal is sustained, you may have appeal rights through various processes including the administrative grievance procedure in accordance with the Administrative Grievance Plan.*

Note: Administrative grievance is not available for the removal of NBUEs.

(b) **Negotiated grievance procedure (BUEs ONLY)** - Add the following paragraph: *If this proposal is sustained, you may have appeal rights through various processes including the negotiated grievance procedure in accordance with Article 13 of the Collective Bargaining Agreement.*

(c) **Merit Systems Protection Board (MSPB).** If you chose to appeal to the MSPB, you must file within 30 calendar days after the effective date of the action. If an appeal is not filed within the 30 calendar day time limit, the appeal could be dismissed as untimely. More information regarding appeals to the MSPB can be found at www.mspb.gov. The MSPB website provides access to a copy of the MSPB regulations and a copy of Option Form 185, U.S. Merit Systems Protection Board Appeal Form. The appeal can be submitted online or mailed to U.S. Merit Systems Protection Board Central Regional Office 230 South Dearborn Street 31st Floor Chicago, IL 60604-1669. A copy of the form and regulations can also be obtained upon request from Labor Relations Specialist, Mrs. Cheryl Clark, at cheryl.l.clark.civ@mail.mil. If a decision is made to file an appeal with the MSPB, the employee should notify them that the agency contact for your appeal is: LTC Joseph Schwade, Chief Legal Counsel, Ohio Joint Force Headquarters, 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2789; e-mail: joseph.a.schwade.mil@mail.mil; tel.: 614-336-7263, fax: 614-336-7488.

g. **Paragraph 7:** This paragraph informs the employee of his or her right to be represented.

(a) Add the following paragraph for **NBUEs Only**: *You have the right to be accompanied, represented, and advised by an attorney or other representative of your choice, at your own expense. If you elect to have a representative, you must designate that person in writing.*

(b) Add the following paragraph for **BUEs Only**: *You have the right to union representation regarding this matter, it is solely your responsibility to make any arrangements necessary in relation to that representation. If you would like to arrange for union representation you may contact Mr. Dan Wayble at (740) 808-0933 or Mr. Shawn Rice at (304) 553-2743. If you elect to have a representative, you must designate that person in writing.*

h. **Paragraph 8:** This paragraph provides procedural assistance contact information. For example: If you require any procedural assistance in this matter, you may contact Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil. Mrs. Clark may provide you access to pertinent regulations and answer any questions relative to your rights. Mrs. Clark does not represent you legally in this case.

i. **Paragraph 9: Optional paragraph:** This paragraph provides information concerning the Employee Assistance Program. If it appears that a personal issue/problem may have contributed to the cause for the adverse action, employee assistance program information should be provided to the employee. You may not order a command-directed mental health evaluation for a civilian employee. Consult with the HRO before offering treatment options.

(1) T32 Technicians can use Military OneSource.

(2) T5 NG employees Contact HRO for additional guidance.

j. **Paragraph 10:** This paragraph lets the recipient know that no decision to suspend or otherwise discipline him/her has been made or will be made until the time limit of his/her reply has expired. Any reply he/she makes will be taken into consideration before a decision on discipline is reached. Whether or not he/she chooses to reply, a written decision of his/her case ultimately will be issued to him/her by the deciding official.

Note: Adverse actions must consider the *Douglas* Factors. The Proposing Official will complete a *Douglas* Factors Analysis Worksheet as referenced in OH TPR 752, Appendix F (BUEs) or CNGBI 1400.25 Vol. 752, Appendix A to Enclosure F, Fig. 7 (NBUEs) and explain the rationale for aggravating factors (consult HRO). Refer to [Enclosure H](#) for a fillable *Douglas* Factors worksheet.

CHAPTER 4

ORIGINAL DECISION LETTER (BUEs)/DECISION LETTER (NBUEs)

4-1. Original Decision Letter (BUEs)/Decision Letter (NBUEs) Paragraph Contents (Refer to [Appendix O](#) and [Appendix Q](#) for BUE and [Appendix P](#), [Appendix R](#) and [Appendix S](#) for NBUE):

a. **Paragraph 1:** State information from the Proposed Action Letter. For example: On Date, (insert supervisor name and rank if applicable), proposed that you be (suspended for #calendar days/# hours, reduced in grade/pay or removed) for (provide information from proposed action letter).

b. **Paragraph 2:** State your consideration. For example: I have carefully considered the reasons for the proposed suspension of # calendar days/# hours as

stated in the Proposed Action Letter and the evidence compiled in the material relied upon to propose the action.

c. State the specific reasons for the decision to include:

(1) Only the reasons specified in the proposed action letter.

Note: no additional issues can be introduced in the decision. If additional incidents have been identified and need to be considered, a new proposal will need to be issued. You must contact the LRS for guidance.

(2) A reference to the proposed action letter and the reason(s) you have sustained the proposed action.

(3) The employee's past disciplinary record, but only if it was relied upon in proposing the action and included in the proposed action letter.

d. **Paragraph 3:** If employee provides a reply, add the following paragraph: I have considered your reply(s) of date(s). In your reply(s), you raised the following points or issues (summarize the substance of the employee's reply(s)).

e. **Paragraph 4:** I find that the incidents described in the Proposed Action Letter are fully supported by a preponderance of the evidence, are sustained, and warrants your (suspension of #calendar days/# hours, reduction in grade/pay or removal).

(1) Add the following sentence for suspensions: *The effective date(s) of your suspension will be (include the first and last day of the suspension and the date and time the employee is to return to duty). This action is being taken to promote the efficiency of the service.*

(2) Add the following sentence for removals: *This action will be effective on date (note: this date cannot be effective sooner than the next workday after 30 calendar days from the proposed action letter). This action is being taken to promote the efficiency of the service.*

(3) If mitigated to a reprimand, insert the expiration date of the LOR. For example: This reprimand will be filed in your eOPF for no less than six (6) months and no more than two (2) years from the date of this decision. Tell the employee when the reprimand will be destroyed/expunged from eOPF.

f. **Paragraph 5:** This paragraph should list if you concur with the Proposing Official and the reasons for concurrence. For example: I concur with the Proposing Official that the *Douglas* Factors regarding the nature and seriousness of the offense, your prior misconduct (list prior misconduct), list how this behavior affects

the supervisory confidence, provide information if the employee was warned/notified previously about conduct and what was expected of the employee, and his or her potential for rehabilitation and if there are aggravating factors which led to the decision.

g. **Paragraph 6:** This paragraph provides HRO coordination information. For example: This letter was coordinated with the Ohio National Guard Human Resource Office, Labor Relations Specialist, Cheryl Clark, and will be placed in your Electronic Official Personnel File (eOPF). Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil. Please note that while she may answer your procedural questions, she is not your counsel in this matter.

h. **Paragraph 7: Disciplinary Actions (per CBA) and Category 1 Adverse Actions (per CNGBI 1400.25 Vol. 752) Challenge Rights.** For example: You have the right to appeal and/or challenge this original decision using one and only one of the following three (3) procedures (once a challenge is selected, you may not change to a different option):

(1) A negotiated grievance filed under the negotiated grievance procedure contained in the Collective Bargaining Agreement, Article 13, between the Ohio National Guard and AFGE Local 3970. (**BUEs Only**)

(2) An administrative grievance filed under the administrative grievance plan. (**NBUEs Only**), must be filed within fifteen (15) calendar days following the act or event in which the employee believes created the problem, or within 15 calendar days following the date the employee became aware of, (or reasonably should have become aware of) the act or event.

(3) **An administrative hearing.** In an administrative hearing, NGB will appoint a hearing examiner from another State who will gather all available and relevant facts through the administrative hearing process. After the hearing process, the NGB hearing examiner will issue a report of findings and recommendations to TAG. In this method of appeal, the final decision on appeal is issued by TAG.

(4) **Appellate review.** In an appellate review, TAG will review the adverse action without the involvement of a hearing examiner (HE). The HRO will provide TAG and the employee or his or her representative with the case file. The employee or his or her representative will provide TAG and the HRO with any written submissions they may wish to make. TAG will review all information provided and decide to either make the final decision based on the submissions or request that both parties make oral presentations. TAG will issue a final written decision.

i. **Paragraph 7: Adverse Actions (per CBA) and Category 2 Adverse Actions (per CNGBI 1400.25 Vol. 752) Challenge Rights.** For example: You have the right to appeal and/or challenge the original decision using one and only one of the

following two (2) procedures (once a challenge is selected, you may not change to a different option):

(1) A negotiated grievance filed under the negotiated grievance procedure contained in the Collective Bargaining Agreement between the Ohio National Guard and AFGE Local 3970. (**BUEs Only**)

(2) An administrative grievance filed under the administrative grievance plan. (**NBUEs Only**), must be filed within fifteen (15) calendar days following the act or event in which the employee believes created the problem, or within fifteen (15) calendar days following the date the employee became aware of, (or reasonably should have become aware of) the act or event.

Note: Administrative grievance is not an option for removal actions of NBUEs.

(3) An appeal to the Merit Systems Protection Board (MSPB) in accordance with applicable law(s) and regulation(s).

j. **Paragraph 8:** This paragraph provides notification to the employee that once he or she chooses an appeal option, he or she cannot change thereafter to a different procedure.

k. **Paragraph 9:** This paragraph provides information on the required time frames for filing the different types of appeals.

(1) The employee can appeal via an administrative hearing or appellate review (disciplinary actions or Category 1 adverse actions **only**) by sending a written notice to the HRO Labor Relations Specialist specifying which method of appeal is requested. This request must be postmarked no later than 20 calendar days after the date of the receipt of the original decision letter, or emailed to the HRO no later than 20 calendar days after the date of the receipt of the original decision letter. If a request for extension of the appeal period is requested, such request is directed to TAG and must be received within the aforesaid 20 calendar day period, and the reasons for the request must be included. TAG will decide if the request for extension will be granted.

(2) If the employee chooses to appeal to the MSPB (Adverse Actions (CBA Article 12) and/or Category 2 Adverse Actions (CNGBI 1400.25 Vol. 752) **only**), the employee must do so within **30 calendar days** after the effective date of the adverse action. If the employee does not file an appeal within the 30 calendar day time limit, the appeal could be dismissed as untimely. The employee may find more information regarding appeals to the MSPB at www.mspb.gov. The MSPB website provides access to a copy of the MSPB regulations and a copy of Option Form 185, U.S. Merit Systems Protection Board Appeal Form. The appeal can be submitted online or mailed to U.S. Merit Systems Protection Board Central Regional Office 230 South Dearborn Street 31st Floor Chicago, IL 60604-1669. A copy of the form and regulations

can also be obtained upon request from Labor Relations Specialist, Mrs. Cheryl Clark, at the HRO office. If the employee decides to file an appeal with the MSPB, he or she should notify them that the agency contact for his or her appeal is: LTC Joseph Schwade, Chief Legal Counsel, Ohio Joint Force Headquarters, 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2789; e-mail: joseph.a.schwade.mil@mail.mil; tel.: 614-336-7263, fax: 614-336-7488.

l. **Paragraph 10:** If requesting an appellate review or an administrative hearing, please contact Labor Relations Specialist, Cheryl Clark, for additional instructions as soon as possible. Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil.

m. **Paragraph 11:** Additional Information. Below is information about options the employee has in addition to the Adverse Action Challenge Rights. The information discusses his or her right to file a claim with the Office of Special Counsel and/or file a complaint with the Equal Employment Opportunity Commission.

(1) **U.S. Office of Special Counsel (OSC).** If you elect to seek corrective action by the OSC's Complaints Examining Unit (www.osc.gov/oscefile), your appeal will be limited to a determination as to whether the agency took one or more covered personnel actions against you in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 USC 2302(b). If OSC dismisses your claim, you may file an individual right of action appeal to the MSPB, but the MSPB will only adjudicate whether you proved that your protected disclosure was a contributing factor in the effected adverse action. The Whistleblower Disclosure Form, OSC-14, is available at the following web address <https://osc.gov/Pages/Resources-OSCFORMS.aspx>. The web address for an electronic filing of whistleblower disclosure with OSC is at <https://osc.gov/pages/file-complaint.aspx>.

(2) **U.S. Equal Employment Opportunity Commission (EEOC).** If you believe that this action was affected in a discriminatory manner, you have the right to file a complaint with the EEOC, consistent with the provisions of 5 USC 7121(d) and 29 CFR 1614.301 and 1614.302, found at www.eeoc.gov. If you elect to file an EEO complaint, you may contact the EO Office at (614) 336-7245. You must file a complaint of discrimination no later than 45 calendar days from the effective date of this action.

n. **Paragraph 12:** This paragraph provides HRO LRS contact information. For example: If the employee has questions concerning the action, he or she may contact, Labor Relations Specialist, Mrs. Cheryl Clark, at (614-336-7454), 2825 W. Dublin-Granville Road, Columbus, Ohio 43235-2789, or via email at cheryl.l.clark.civ@mail.mil.

APPENDIX A

Letter of Reprimand (LOR) for Bargaining Unit Employees (BUEs)				
Proposing Official (PO)	Employee Option(s)	Deciding Official (DO)	Employee Option(s)	Comments
Contact LRS for guidance	N/A	N/A	N/A	N/A
Create LOR	N/A	N/A	N/A	TPR 752 and CBA
Present to Employee; have Employee Sign acknowledging Receipt	No action required, but may reply and/or file a grievance through the negotiated grievance process	N/A	N/A	Contact Union for Negotiated Grievance Process
Retain for timeframe specified in the LOR	N/A	N/A	N/A	N/A
Send signed copy to LRS	N/A	N/A	N/A	N/A
Remove from folder after expiration; providing no repeat of action	N/A	N/A	N/A	N/A
Letter of Reprimand (LOR) for Non-Bargaining Unit Employees (NBUEs)				
Proposing Official (PO)	Employee Option(s)	Deciding Official (DO)	Employee Option(s)	Comments
Contact LRS for guidance	N/A	N/A	N/A	N/A
Create LOR	N/A	N/A	N/A	CNGBI 1400.25 Vol 752
Present to Employee; have Employee Sign acknowledging Receipt	No action required, but may reply and/or file a grievance through the administrative grievance process	N/A	N/A	Contact LRS for Administrative Grievance Process
Retain for timeframe specified in the LOR	N/A	N/A	N/A	N/A
Send signed copy to LRS	N/A	N/A	N/A	N/A
Remove from folder after expiration; providing no repeat of action	N/A	N/A	N/A	N/A

APPENDIX B

Disciplinary Action: Suspension of 14 Calendar Days or Less Bargaining Unit Employees (BUEs)				
Proposing Official (PO)	Employee Option(s)	Deciding Official (DO)	Employee Option(s)	Comments
Contact LRS for guidance	N/A	N/A	N/A	TPR 752 and CBA
Compile information including witness statements, if applicable	N/A	N/A	N/A	N/A
Create Proposed Action Letter	N/A	N/A	N/A	TPR 752, CBA and Proposed Action Letter template
Send to LRS for review	N/A	N/A	N/A	N/A
Present to Employee; have Employee Sign acknowledging Receipt	Sign Proposed Action Letter; has 7 calendar days to respond to D.O.	N/A	N/A	Employee can request Union assistance to prepare response
Send signed copy to LRS	N/A	N/A	N/A	N/A
Provide complete Proposed Discipline Action Package to Deciding Official	N/A	Receive Proposed Disciplinary Action package from P.O.	N/A	N/A
N/A	Provide response to D.O. within 7 calendar days after receipt of proposal	Review Disciplinary Action Package and Contact LRS for Guidance	N/A	TPR 752 and CBA
N/A	N/A	Review Employee response	N/A	If oral response, create MFR capturing statement; have employee sign and date
N/A	N/A	Render decision	N/A	Uphold Proposed Action, Reduce # of days, or dismiss
N/A	N/A	Prepare Original Decision Letter; send to LRS for review	N/A	Use Original Decision Letter template
N/A	N/A	Present to employee; have employee sign and date acknowledging receipt	Sign & date acknowledging receipt. Either comply with decision or file Disciplinary Action Challenge (Appeal)	Employee: Negotiated Grievance Process through Union or contact LRS for other options
N/A	N/A	Send signed copy to LRS	N/A	N/A
N/A	N/A	Provide copy to P.O. for record	Serve suspension; if applicable	N/A

APPENDIX C

Category 1 Adverse Action: Suspension of 14 Calendar Days or Less Non-Bargaining Employees (NBUEs)				
Proposing Official (PO)	Employee Option(s)	Deciding Official (DO)	Employee Option(s)	Comments
Contact LRS for guidance	N/A	N/A	N/A	CNGBI 1400.25 Vol 752
Compile information including witness statements, if applicable	N/A	N/A	N/A	N/A
Analyze and complete <i>Douglas</i> Factors worksheet	N/A	N/A	N/A	CNGBI 1400.25 Vol 752
Create Proposed Action Letter	N/A	N/A	N/A	CNGBI 1400.25 Vol 752; Proposed Action Letter template
Send to LRS for review	N/A	N/A	N/A	N/A
Present to Employee; have Employee Sign acknowledging Receipt	Sign & date acknowledging receipt; has 7 calendar days to respond to D.O.	N/A	N/A	Employee may contact LRS for procedural guidance
Send signed copy to LRS	N/A	N/A	N/A	N/A
Provide complete Proposed Category 1 Adverse Action Package to Deciding Official	N/A	Receive Proposed Category 1 Adverse Action package from P.O.	N/A	N/A
N/A	Provide response to D.O. within 7 calendar days after receipt of proposal	Review Category 1 Adverse Action Package and Contact LRS for Guidance	N/A	CNGBI 1400.25 Vol 752
N/A	N/A	Review Employee response; Review and complete <i>Douglas</i> Factors worksheet	N/A	If oral response, create MFR capturing statement; have employee sign and date
N/A	N/A	Render decision	N/A	Uphold Proposed Action, Reduce # of days, or dismiss
N/A	N/A	Prepare Decision Letter; send to LRS for review	N/A	Use Decision Letter template; Include <i>Douglas</i> Factors
N/A	N/A	Present to employee; have employee sign and date acknowledging receipt	Either comply with decision or file Adverse Action Challenge (Appeal)	Employee: Administrative Grievance Process or contact LRS for other options
N/A	N/A	Send signed copy to LRS	N/A	N/A
N/A	N/A	Provide copy to P.O. for record	Serve suspension; if applicable	N/A

APPENDIX D

Adverse Action: Suspension of more than 14 Calendar Days, Reduce Pay or Grade, or Removal - Bargaining Unit Employees (BUEs)				
Proposing Official (PO)	Employee Option(s)	Deciding Official (DO)	Employee Option(s)	Comments
Contact LRS for guidance	N/A	N/A	N/A	TPR 752 and CBA
Compile information including witness statements, if applicable	N/A	N/A	N/A	N/A
Analyze and complete <i>Douglas</i> Factors worksheet	N/A	N/A	N/A	TPR 752 and CBA
Create Proposed Action Letter	N/A	N/A	N/A	TPR 752, CBA, and Proposed Action Letter template
Send to LRS for review	N/A	N/A	N/A	N/A
Present to Employee; have Employee Sign acknowledging Receipt	Sign Proposed Action Letter; has 14 calendar days to respond to D.O.	N/A	N/A	Employee can request Union assistance to prepare response
Send signed copy to LRS	N/A	N/A	N/A	N/A
Provide complete Proposed Adverse Action Package to Deciding Official	N/A	Receive Proposed Adverse Action package from P.O.	N/A	Employee can request Union assistance to prepare response; TPR 752 & CBA
N/A	Provide response to D.O. within 14 calendar days after receipt of proposal	Review Adverse Action Package and Contact LRS for Guidance	N/A	N/A
N/A	N/A	Review Employee response; Review and complete <i>Douglas</i> Factors worksheet	N/A	If oral response, create MFR capturing statement; have employee sign and date
N/A	N/A	Render decision	N/A	Uphold Proposed Action, Reduce # of days, or dismiss
N/A	N/A	Prepare Original Decision Letter; send to LRS for review	N/A	Use Original Decision Letter template; Include <i>Douglas</i> Factors
N/A	N/A	Present to employee; have employee sign & date acknowledging receipt	Either comply with decision or file Adverse Action Challenge (Appeal)	Employee: Negotiated Grievance Process through Union or contact LRS for other options
N/A	N/A	Send signed copy to LRS	N/A	N/A
N/A	N/A	Provide copy to P.O. for record	Comply with decision rendered	N/A

APPENDIX E

Category 2 Adverse Actions: Suspension of more than 14 Calendar Days, Reduce Pay or Grade, or Removal - Non-Bargaining Unit Employees (NBUEs)				
Proposing Official (PO)	Employee Option(s)	Deciding Official (DO)	Employee Option(s)	Comments
Contact LRS for guidance	N/A	N/A	N/A	CNGBI 1400.25 Vol 752
Compile information including witness statements, if applicable	N/A	N/A	N/A	N/A
Analyze and complete <i>Douglas</i> Factors worksheet	N/A	N/A	N/A	CNGBI 1400.25 Vol 752
Create Proposed Action Letter	N/A	N/A	N/A	CNGBI 1400.25 Vol 752 and Proposed Action Letter template
Send to LRS for review	N/A	N/A	N/A	N/A
Present to Employee; have Employee Sign acknowledging Receipt	Sign Proposed Action; has 14 calendar days to respond to D.O.	N/A	N/A	Employee can contact LRS for procedural guidance
Send signed copy to LRS	N/A	N/A	N/A	N/A
Provide complete Proposed Cat 2 Adverse Action Package to Deciding Official	N/A	Receive Proposed Cat 2 Adverse Action package from P.O.	N/A	N/A
N/A	Provide response to D.O. within 14 calendar days after receipt of proposal	Review Cat 2 Adverse Action Package and Contact LRS for Guidance	N/A	CNGBI 1400.25 Vol 752
N/A	N/A	Review Employee response; Review and complete <i>Douglas</i> Factors worksheet	N/A	If oral response, create MFR capturing statement; have employee sign and date
N/A	N/A	Render decision	N/A	Uphold Proposed Action, may reduce penalty, if warranted
N/A	N/A	Prepare Decision Letter; send to LRS for review	N/A	Use Decision Letter template; Include <i>Douglas</i> Factors
N/A	N/A	Present to employee; have employee sign and date acknowledging receipt	Either comply with decision or file Adverse Action Challenge (Appeal)	Employee: Administrative Grievance Process or contact LRS for other options
N/A	N/A	Send signed copy to LRS	N/A	N/A
N/A	N/A	Provide copy to P.O. for record	N/A	N/A

APPENDIX F

CONDUCT MANAGEMENT DOCUMENTATION CHECK LIST

- Identify everyone present or involved by full name and title.
- Address the questions of who, what, when, where, and why (include date, time, exact location, and other pertinent details)
- Document specifics such as: "SGT Smith, Aircraft Mechanic, reported to work at 10 a.m. on 10 Jan 08, and did not call me prior to this time. His tour of duty is from 8 a.m. to 4:30 p.m. I witnessed John entering the building at 10 am..."
- Document specific observable behavior such as "he staggered or swayed in walking, slurred when speaking, and smelled of alcohol"
- Document exact quotations, if possible, and use quotation marks when quoting precisely what was said
- Document how the incident interfered with, delayed, or disrupted the efficiency of the work production, or affected the operations
- Document if witnesses were present and obtain a signed statement from them. Signed witness statements will be needed if a decision is made to propose a discipline or adverse action. It's best to get the statements while information is fresh in everyone's minds. The supervisor must notify the witnesses that their statements will be made available to the employee involved in the proposed action.
- Cite specifically how the employee would have known of the violated conduct and responsible regulations (i.e. prior written notices, verbal instructions, previous disciplinary action, training, bulletin board items, etc.)
- Document what the employee stated or alleged as an explanation, and state your analysis of why you believed or did not believe the employee
- State if the employee had any prior incidents of misconduct and provide all supporting documentation
- State any extenuating circumstances which may be involved (i.e., personal problems)
- Always document if you referred the employee to the Employee Assistance Program (EAP) and state how it was done (i.e., employee was given the name and telephone number of whom to call)

APPENDIX H

Douglas Factors Analysis Worksheet

Case Information

Employee's Name:

Date of Action:

(Last, First, Middle)

Proposed Action:

NOTICE TO PROPOSING OFFICIAL

You are responsible for considering all relevant *Douglas* Factors (listed below) in determining an appropriate penalty. Your analysis of the *Douglas* Factors will be considered part of the case file, and you could be asked to testify regarding your analysis, should the employee appeal the decision. If called to testify, you may be required to testify that you did consider all of the factors and you may be asked about specific factors on cross-examination. Be sure to include all information that you relied upon in making your determination regarding the appropriateness of the penalty in this analysis of the *Douglas* Factors.

INSTRUCTIONS

Each of the factors should be considered in light of the facts and circumstances presented in management's proposal letter (and supporting documents) and any response by the employee. For each factor, you should annotate whether the factor has been considered aggravating, mitigating, or having no impact (was neutral).

Write a brief explanation for each factor you determine to be aggravating or mitigating - particularly with respect to those factors you consider "aggravating."

The *Douglas* factors are not intended to be applied mechanically; irrelevant factors need not be considered, and it is not necessary to state that a factor was considered and found irrelevant. An agency is not required by *Douglas* to consider each and every factor, but only those that are relevant (*Malloy v. U.S. Postal Service.*).

Aggravating: to make more severe, intense, serious, worse, or grave.

Neutral: Neither a contributing nor detracting factor.

Mitigating: to make less severe, intense.

For procedural assistance contact Mrs. Cheryl Clark, HRO Labor Relations Specialist, at cheryl.l.clark.civ@mail.mil.

**Attached additional pages as required.*

Douglas Factors Analysis Worksheet

1. Nature and seriousness of the offense and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

Briefly Summarize what happened and explain how serious and why so serious

Comments:

Aggravating Neutral Mitigating

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

Employee's Title	Series	Grade

Is there anything about this employee's position that makes their actions particularly more or less serious? Yes No

Is the position held to a higher standard? (Supervisor, Fiduciary) Yes No

Does the employee have contact with the public? Yes No

Is the employee in a position of prominence? Yes No

Aggravating Neutral Mitigating

Comments:

Douglas Factors Analysis Worksheet

3. Employee's past disciplinary record.

This includes only documented discipline which the employee received a written proposal notice, an opportunity to respond and a decision letter. Memorandums of Record for the supervisor's personal use do not belong here.

List all previous disciplinary actions considered	Date

Aggravating Neutral Mitigating

Comments:

4. Employee's past work record.

Agency Length of Service

Current Organization

All Federal Service

Military Service

Performance

Is current performance acceptable? (If no, attach supporting documents) Yes No

Ratings of Last Three Performance Appraisals

Year	Rating

Aggravating Neutral Mitigating

Comments:

Douglas Factors Analysis Worksheet

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

Did the offense affect:

The employee's ability to do their job? Yes No

Your confidence in the ability of the employee to do their job? Yes No

Your confidence in the employee's ability to uphold the organization's mission? Yes No

Aggravating Neutral Mitigating

Comments:

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

Have other employee's under your supervision exhibited the same or similar conduct? Yes No

If so, were the penalties similar to those given to other employees? Yes No

If this penalty differs, you must thoroughly explain what it is about this situation that warrants a different penalty.

Aggravating Neutral Mitigating

Comments:

Douglas Factors Analysis Worksheet

7. Consistency with agency's Table of Penalties.

If the table of penalties address this conduct, is the proposed action consistent with the table? Yes No

If the table of penalties does not address this specific conduct, you must explain how this action is consistent with similar conduct and penalties addressed by the table. If there are multiple charges, explain your rationale for each charge in relation to the table of penalties.

Aggravating Neutral Mitigating

Comments:

8. The notoriety of the offense or its impact upon the reputation of the agency.

Is the general public aware of the conduct? Yes No

Does public knowledge of this conduct affect the agency's reputation? Yes No

Aggravating Neutral Mitigating

Comments:

Douglas Factors Analysis Worksheet

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

Were guidelines regarding this conduct given to the employee? Yes No

Was the employee counseled on similar conduct in the past? Yes No

Was the employee disciplined for similar conduct in the past? Yes No

Even when an employee is not on "formal notice" that possible disciplinary action could result from misconduct, an employee's misconduct will not be excused if "common sense should have forewarned" them.

Aggravating Neutral Mitigating

Comments:

10. Potential for the employee's rehabilitation.

Has the employee responded positively to warnings and discipline in the past? Yes No

Has the employee expressed remorse? Yes No

Has the employee sought treatment for a medical condition that played a part in the charged misconduct? Yes No

Aggravating Neutral Mitigating

Comments:

Douglas Factors Analysis Worksheet

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

List all possible mitigating factors including medical. If misconduct is extremely serious or egregious, mitigating is not appropriate despite any medical condition. If employee claims stress as a mitigating factor, they must explain or show how the misconduct was directly related to the stress.

Aggravating

Neutral

Mitigating

Comments:

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

Aggravating

Neutral

Mitigating

Comments:

Douglas Factors Analysis Worksheet

Additional Comments

By my signature below, under penalty of perjury, I hereby swear that I have considered the factors in the manner indicated herein when selecting a penalty in this case.

Proposing Official Signature

Date

Deciding Official

Employee Response (Check all that apply)

None

Written

Orally*

**If the employee responds orally, attach a short summary of the reply.*

By my signature below, under penalty of perjury, I hereby swear that I have considered the factors in the manner indicated herein when deciding the penalty in this case.

Deciding Official Signature

Date

APPENDIX I

UNIT/WING LEADERHEAD

OFFICE SYMBOL (if applicable)

Date

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Letter of Reprimand (BUEs Only)

1. This letter of reprimand is for your (*list misconduct*). In accordance with (IAW) OH TPR 752, Discipline and Adverse Action, 19 September 2011, Appendix D, Table of Penalties for Various Offenses, item (*number and nature of offense*).
2. (*Describe the exact occurrence in great detail to include dates, time, etc.*)
3. A repeat of this or similar conduct may result in more severe action being taken, such as suspension, change to a lower grade, or removal from employment.
4. This letter was coordinated with the Human Resource Office and will remain in your electronic Official Personnel File (eOPF) for a period of **one (1) year** from the date of signing. (*time limit can be 6 months - 2 years at supervisor's discretion*)
5. This letter may be grieved using the negotiated grievance procedure IAW Article 13 of the Collective Bargaining Agreement.
6. If you require any procedural assistance in this matter, you may contact Mrs. Cheryl Clark, Labor Relations Specialist at cheryl.l.clark.civ@mail.mil. She may provide you access to pertinent regulations, and answer any questions relative to your rights. She does not represent you legally in this case.

Encl(s) (if docs are provided)

1. Doc a (list # and doc name)
2. Doc b if more than 1 doc)

SUPERVISOR SIGNATURE BLOCK

(Rank, Branch)
(Position)

SUBJECT: Letter of Reprimand (BUEs Only)

I, (*print Name*), have received this letter of reprimand this _____ day of _____ month _____ year. My signing below is not agreement with the content, only acknowledgement that I have received the LOR. _____
Signature

Received this _____ day of _____ month _____ year, by the HRO for placement in the employee file of _____, for a period not to exceed _____.

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX J

Unit/Wing Letterhead

OFFICE SYMBOL (if applicable)

Date

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Letter of Reprimand (NBUEs Only)

1. This letter of reprimand is for your (*list misconduct*). In accordance with CNGBI 1400.25 Vol. 752, Enclosure I, Table of Penalties, item (*number and nature of offense*).
2. (*Describe the exact occurrence in great detail to include dates, time, etc.*)
3. A repeat of this or similar conduct may result in more severe action being taken, such as suspension, change to a lower grade, or removal from employment.
4. This letter was coordinated with the Human Resource Office and will remain in your electronic Official Personnel File (eOPF) for a period of **one (1) year** from the date of signing. (*time limit can be 6 months - 2 years at supervisor's discretion*)
5. This letter may be grieved using the administrative grievance procedure IAW the Administrative Grievance Plan.
6. If you require any procedural assistance in this matter, you may contact Mrs. Cheryl Clark, Labor Relations Specialist at cheryl.l.clark.civ@mail.mil. She may provide you access to pertinent regulations, and answer any questions relative to your rights. She does not represent you legally in this case.

Encl(s) (if docs are provided)

1. Doc a (list # and doc name)
2. Doc b if more than 1 doc)

SUPERVISOR SIGNATURE BLOCK

(Rank, Branch)
(Position)

SUBJECT: Letter of Reprimand (NBUEs Only)

I, (*print Name*), have received this letter of reprimand this _____ day of _____ month _____ year. My signing below is not agreement with the content, only acknowledgement that I have received a copy of the LOR _____.
Signature

Received this _____ day of _____ month _____ year, by the HRO for placement in the employee file of _____, for a period not to exceed _____.

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.i.clark.civ@mail.mil

APPENDIX K

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR: (RANK/SALUTATION, NAME)

SUBJECT: Proposed Action Letter (Disciplinary Action - BUEs Only)

1. This is notification that I propose to suspend you for a period of # calendar days/# hours (must be 14 calendar days or less) from your position as (insert position information), in accordance with OH TPR 752, Discipline and Adverse Action, 19 September 2011, Appendix D, Table of Penalties for Various Offenses, Item#, nature of offense, subcategory (cite specific charge(s) from the appendix).

2. Specifically, the following infraction(s) is/are (describe here the behavior that led to your request. Try to be as specific as you can with the "who, what, when and where" of each occurrence. This paragraph must list the Cause for the action being taken and lists the offense the employee is charged with to include who, what, when, and where. Refer to any documents that you may have that show the behavior, e.g. witness statements, policy, procedures, emails instructing the technician/employee, etc. Must be more descriptive than stating an offense from the Table of Penalties. Cause cannot be an arrest, conviction, etc. Conduct that led to the arrest, conviction, etc. can be used. Standard of proof for upholding an administrative adverse action is "preponderance of the evidence")

3. In arriving at an appropriate measure of discipline, I analyzed past disciplinary action(s) (i.e. counseling sessions, admonitions. This paragraph must list the Penalty being proposed. Must be stated completely. Must be similar for offenses with like circumstances. Review "Table of Penalties" for a general guide for common offenses. Variation is permissible as long as it is equitable). Below is a summary of misconduct that I have considered:

- a. The nature and seriousness of the above mentioned offenses and how they relate to your duties.
- b. Your prior misconduct to include (list prior conduct issues i.e. LOR, suspensions, etc.).
- c. Erosion of supervisory confidence in your ability to perform given tasks.

SUBJECT: Proposed Action Letter (Disciplinary Action - BUEs Only)

- d. Notification/warning about conduct and what was expected of you going forward.
- e. Your potential for your rehabilitation.

Optional statement - Your behavior is inconsistent with the conduct expected of (location) employees and it is clear that all of the previous measures emplaced upon you has not rectified the egregious behavior. You have made a deliberate decision to disregard the warnings and have refused to comply with the rules of the organization. It is therefore my proposal to remove you from your employment/ suspend you without pay.

4. The witnesses known to me are (names and positions). You are entitled to interview them and any other National Guard employee(s) or military members who may have relevant information if they are willing to be interviewed. You may arrange interviews on your own or with my assistance. I have enclosed all documents that I have relied upon for your use. (Note: the period for the employee to reply does not start until the supporting documents are made available to the employee)

5. You may reply to this letter orally, in writing, or both to the deciding official, (list the next level in the chain of command or the designated deciding official, his/her email, and phone number). You may also submit affidavits or other documentary evidence in support of your reply. You may also have access to any statements or other evidence used against you in this action. It is necessary that a memorandum be made of the principal points of any oral reply you may decide to make; therefore, you must inform the deciding official at the onset of any conversation regarding this matter that it is your intent to reply orally and on the record to the proposed action.

a. You will be afforded seven (7) calendar days from the date of the receipt of this letter to reply. The day of receipt is not counted, the next day begins the calculation of the time limit. The last day of the time limit is counted unless it is a Saturday, a Sunday, a government holiday, or a day in which the employee is not regularly scheduled to work. In those cases, the last day of the time limit will be moved to the next regularly scheduled work day.

b. If you should require an extension to submit your reply, you must submit your request for extension in writing with justification to the deciding official for consideration. The right to reply is significant. If you feel the proposed adverse action is unwarranted, it is important that your reply contain all reasons supporting this belief.

c. If needed, you may be granted a reasonable amount of excused absence to formulate a reply. Any request for administrative leave to prepare a reply must be coordinated with the undersigned.

6. If this proposal is sustained, you may have appeal rights through various processes including the negotiated grievance procedure in accordance with Article 13 of the

SUBJECT: Proposed Action Letter (Disciplinary Action - BUEs Only)

Collective Bargaining Agreement, an Administrative Hearing, or an Appellate Review. Each of these options have potential limitations for their processes and you may only select one (1) option to appeal.

7. You have the right to union representation to prepare your response regarding this matter, it is solely your responsibility to make any arrangements necessary in relation to that representation. If you would like to arrange for union representation you may contact Mr. Dan Wayble at (740) 808-0933 or Mr. Shawn Rice at (304) 553-2743. If you elect to have a representative, you must designate that person in writing.

8. If you require any procedural assistance in this matter, you may contact Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil. Mrs. Clark may provide you access to pertinent regulations and answer any questions relative to your rights. Mrs. Clark does not represent you legally in this case.

9. **Optional Paragraph - This paragraph provides information concerning the Employee Assistance Program. If it appears that a personal issue/problem may have contributed to the cause for the adverse action, employee assistance program information should be provided to the employee. You may not order a command-directed mental health evaluation for a civilian employee. Consult with the HRO before offering treatment. (T32 Technicians can use Military OneSource/T5 NG employees Contact HRO for additional guidance)**

10. No decision to suspend or otherwise discipline you has been made or will be made until the time limit of your reply has expired. Any reply you make will be taken into consideration before a decision on discipline is reached. Whether or not you choose to reply, a written decision of your case ultimately will be issued to you by the deciding official.

Encl(s) (if docs are provided)
1. Doc a (list # and doc name
2. Doc b if more than 1 doc)

SUPERVISOR SIGNATURE BLOCK
(Rank, Branch)
(Position)

I hereby acknowledge receipt of the Proposed Action Letter. My signature does not indicate concurrence or agreement with the letter.

Print Name & Signature

Date Signed

SUBJECT: Proposed Action Letter (Disciplinary Action - BUEs Only)

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX L

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR: (RANK/SALUTATION, NAME)

SUBJECT: Proposed Action Letter (Category 1 Adverse Action - NBUEs Only)

1. This is notification that I propose to suspend you for a period of # calendar days/# hours (must be 14 calendar days or less) from your position as (position information), in accordance with CNGBI 1400.25 Vol. 752, National Guard Technician and Civilian Personnel Discipline and Adverse Action Program, 29 June 2020, Enclosure I, Table of Penalties for Various Offenses, Item#, nature of offense, subcategory (cite specific charge(s) from the enclosure).

2. Specifically, the following infraction(s) is/are (describe here the behavior that led to your request. Try to be as specific as you can with the "who, what, when and where" of each occurrence. This paragraph must list the Cause for the action being taken and lists the offense the employee is charged with to include who, what, when, and where. Refer to any documents that you may have that show the behavior, e.g. witness statements, policy, procedures, emails instructing the tech, etc. Must be more descriptive than stating an offense from the Table of Penalties. Cause cannot be an arrest, conviction, etc. Conduct that led to the arrest, conviction, etc. can be used. Standard of proof for upholding an administrative adverse action is "preponderance of the evidence")

3. In arriving at an appropriate measure of discipline, I analyzed the twelve (12) Douglas Factors and past disciplinary action(s) (i.e. counseling sessions, admonitions. This paragraph must list the Penalty being proposed. Must be stated completely. Must be similar for offenses with like circumstances. Review "Table of Penalties" for a general guide for common offenses. Variation is permissible). Below is a summary of the Douglas Factors that I consider to be aggravating:

- a. The nature and seriousness of the above mentioned offenses and how they relate to your duties.
- b. Your prior misconduct to include (list prior conduct issues i.e. LOR, suspensions, etc.)
- c. Erosion of supervisory confidence in your ability to perform given tasks.

SUBJECT: Proposed Action Letter (Category 1 Adverse Action - NBUEs Only)

- d. Notification/warning about conduct and what was expected of you going forward.
- e. Your potential for your rehabilitation.

Optional statement - Your behavior is inconsistent with the conduct expected of (location) employees and it is clear that all of the previous measures emplaced upon you has not rectified the egregious behavior. You have made a deliberate decision to disregard the warnings and have refused to comply with the rules of the organization. It is therefore my proposal to remove you from employment/ suspend you without pay.

4. The witnesses known to me are (names and positions). You are entitled to interview them and any other National Guard employee(s) or military members who may have relevant information if they are willing to be interviewed. You may arrange interviews on your own or with my assistance. I have enclosed all documents that I have relied upon for your use. (Note: the period for the employee to reply does not start until the supporting documents are made available to the employee)

5. You may reply to this letter orally, in writing, or both to the deciding official, (list the next level in the chain of command or the designated deciding official, his/her email, and phone number). You may also submit affidavits or other documentary evidence in support of your reply. You may also have access to any statements or other evidence used against you in this action. It is necessary that a memorandum be made of the principal points of any oral reply you may decide to make; therefore, you must inform the deciding official at the onset of any conversation regarding this matter that it is your intent to reply orally and on the record to the proposed action.

a. You will be afforded seven (7) calendar days from the date of the receipt of this letter to reply. The day of receipt is not counted, the next day begins the calculation of the time limit. The last day of the time limit is counted unless it is a Saturday, a Sunday, a government holiday, or a day in which the employee is not regularly scheduled to work. In those cases, the last day of the time limit will be moved to the next regularly scheduled work day.

b. If you should require an extension to submit your reply, you must submit your request for extension in writing with justification to the deciding official for consideration. The right to reply is significant. If you feel the proposed adverse action is unwarranted, it is important that your reply contain all reasons supporting this belief.

c. If needed, you may be granted a reasonable amount of administrative leave to formulate a reply. Any request for administrative leave to prepare a reply must be coordinated with the undersigned.

6. If this proposal is sustained, you may have appeal rights through various processes including the administrative grievance procedure in accordance with the Administrative

SUBJECT: Proposed Action Letter (Category 1 Adverse Action - NBUEs Only)

Grievance Plan, an Administrative Hearing, or an Appellate Review. Each of these options have potential limitations for their processes and you may only select one (1) option to appeal.

7. You have the right to be accompanied, represented, and advised by an attorney or other representative of your choice, at your own expense. If you elect to have a representative, you must designate that person in writing.

8. If you require any procedural assistance in this matter, you may contact Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil. Mrs. Clark may provide you access to pertinent regulations and answer any questions relative to your rights. Mrs. Clark does not represent you legally in this case.

9. **Optional Paragraph - This paragraph provides information concerning the Employee Assistance Program. If it appears that a personal issue/problem may have contributed to the cause for the adverse action, employee assistance program information should be provided to the employee. You may not order a command-directed mental health evaluation for a civilian employee. Consult with the HRO before offering treatment. (T32 Technicians can use Military OneSource/T5 NG employees Contact HRO for additional guidance)**

10. No decision to suspend or otherwise discipline you has been made or will be made until the time limit of your reply has expired. Any reply you make will be taken into consideration before a decision on discipline is reached. Whether or not you choose to reply, a written decision of your case ultimately will be issued to you by the deciding official.

***Note: Adverse actions must consider the *Douglas* Factors. The Proposing official will complete a *Douglas* Factors Analysis Worksheet per CNGBI 1400.25 Vol. 752, Enclosure F, Fig. 7 (Appendix D) and explain the rationale for aggravating factors (consult HRO)**

Encl(s) (if docs are provided)
1. Doc a (list # and doc name
2. Doc b if more than 1 doc)

SUPERVISOR SIGNATURE BLOCK
(Rank, Branch)
(Position)

I hereby acknowledge receipt of the Proposed Action Letter. My signature does not indicate concurrence or agreement with the letter.

Print Name & Signature

Date Signed

SUBJECT: Proposed Action Letter (Category 1 Adverse Action - NBUEs Only)

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX M

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR: (RANK/SALUTATION, NAME)

SUBJECT: Proposed Action Letter (Adverse Action - BUEs Only)

1. This is notification that I propose to (suspend for a period of #calendar days/# hours/ reduce in pay/grade or remove) (suspensions of more than 14 calendar days only) you from your position as (position information), in accordance with OH TPR 752, Discipline and Adverse Action, 19 September 2011, Appendix D, Table of Penalties for Various Offenses, Item#, nature of offense, subcategory (cite specific charge(s) from the appendix).

2. Specifically, the following infraction(s) is/are (describe here the behavior that led to your request. Try to be as specific as you can with the "who, what, when and where" of each occurrence. This paragraph must list the Cause for the action being taken and lists the offense the employee is charged with to include who, what, when, and where. Refer to any documents that you may have that show the behavior, e.g. witness statements, policy, procedures, emails instructing the tech, etc. Must be more descriptive than stating an offense from the Table of Penalties. Cause cannot be an arrest, conviction, etc. Conduct that led to the arrest, conviction, etc. can be used. Standard of proof for upholding an administrative adverse action is "preponderance of the evidence")

3. In arriving at an appropriate measure of discipline, I analyzed the twelve (12) *Douglas* Factors and past disciplinary action(s) (i.e. counseling sessions, admonitions. This paragraph must list the Penalty being proposed. Must be stated completely. Must be similar for offenses with like circumstances. Review "Table of Penalties" for a general guide for common offenses. Variation is permissible). Below is a summary of the *Douglas* Factors that I consider to be aggravating:

a. The nature and seriousness of the above mentioned offenses and how they relate to your duties.

b. Your prior misconduct to include (list prior conduct issues i.e. LOR, suspensions, etc.)

c. Erosion of supervisory confidence in your ability to perform given tasks.

d. Notification/warning about conduct and what was expected of you going forward.

SUBJECT: Proposed Action Letter (Adverse Action - BUEs Only)

e. Your potential for your rehabilitation.

Optional statement - Your behavior is inconsistent with the conduct expected of (location) employees and it is clear that all of the previous measures emplaced upon you has not rectified the egregious behavior. You have made a deliberate decision to disregard the warnings and have refused to comply with the rules of the organization. It is therefore my proposal to remove you from your employment/ suspend you without pay.

4. The witnesses known to me are (names and positions). You are entitled to interview them and any other National Guard employee(s) or military members who may have relevant information if they are willing to be interviewed. You may arrange interviews on your own or with my assistance. I have enclosed all documents that I have relied upon for your use. (Note: the period for the employee to reply does not start until the supporting documents are made available to the employee)

5. You may reply to this letter orally, in writing, or both to the deciding official, (list the next level in the chain of command or the designated deciding official, his/her email, and phone number). You may also submit affidavits or other documentary evidence in support of your reply. You may also have access to any statements or other evidence used against you in this action. It is necessary that a memorandum be made of the principal points of any oral reply you may decide to make; therefore, you must inform the deciding official at the onset of any conversation regarding this matter that it is your intent to reply orally and on the record to the proposed action.

a. You will be afforded fourteen (14) calendar days from the date of the receipt of this letter to reply. The day of receipt is not counted, the next day begins the calculation of the time limit. The last day of the time limit is counted unless it is a Saturday, a Sunday, a government holiday, or a day in which the employee is not regularly scheduled to work. In those cases, the last day of the time limit will be moved to the next regularly scheduled work day.

b. If you should require an extension to submit your reply, you must submit your request for extension in writing with justification to the deciding official for consideration. The right to reply is significant. If you feel the proposed adverse action is unwarranted, it is important that your reply contain all reasons supporting this belief.

c. If needed, you may be granted a reasonable amount of administrative leave to formulate a reply. Any request for administrative leave to prepare a reply must be coordinated with the undersigned.

6. If this proposal is sustained, you may have two (2) methods of appeal rights from which to choose. Either the negotiated grievance procedure in accordance with Article 13 of the Collective Bargaining Agreement, or file an appeal through the Merit Systems

SUBJECT: Proposed Action Letter (Adverse Action - BUEs Only)

Protection Board (MSPB). Each of these options have potential limitations for their processes and you may only select one (1) option to appeal.

7. You have the right to union representation in preparing your response regarding this matter. It is solely your responsibility to make any arrangements necessary in relation to that representation. If you would like to arrange for union representation you may contact Mr. Dan Wayble at (740) 808-0933 or Mr. Shawn Rice at (304) 553-2743. If you elect to have a representative, you must designate that person in writing.

8. If you require any procedural assistance in this matter, you may contact Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil. Mrs. Clark may provide you access to pertinent regulations and answer any questions relative to your rights. Mrs. Clark does not represent you legally in this case.

9. **Optional Paragraph - This paragraph provides information concerning the Employee Assistance Program. If it appears that a personal issue/problem may have contributed to the cause for the adverse action, employee assistance program information should be provided to the employee. You may not order a command-directed mental health evaluation for a civilian employee. Consult with the HRO for options (T32 Technicians can use Military OneSource/T5 NG employees Contact HRO for additional guidance).**

10. No decision to suspend or otherwise discipline you has been made or will be made until the time limit of your reply has expired. Any reply you make will be taken into consideration before a decision on discipline is reached. Whether or not you choose to reply, a written decision of your case ultimately will be issued to you by the deciding official.

***Note: Adverse actions must consider the *Douglas* Factors. The Proposing official will complete a *Douglas* Factors Analysis Worksheet per OH TPR 752 and explain the rationale for aggravating factors (consult HRO)**

Encl(s) (if docs are provided)
1. Doc a (list # and doc name
2. Doc b if more than 1 doc)

SUPERVISOR SIGNATURE BLOCK
(Rank, Branch)
(Position)

I hereby acknowledge receipt of the Proposed Action Letter. My signature does not indicate concurrence or agreement with the letter.

Print Name & Signature

Date Signed

SUBJECT: Proposed Action Letter (Adverse Action - BUEs Only)

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX N

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR: (RANK/SALUTATION, NAME)

SUBJECT: Proposed Action Letter (Category 2 Adverse Action - NBUEs Only)

1. This is notification that I propose to (suspend for a period of #calendar days/# hours, reduce in pay/grade or remove) (suspensions of more than 14 calendar days only) you from your position as (position information), in accordance with CNGBI 1400.25 Vol. 752, National Guard Technician and Civilian Personnel Discipline and Adverse Action Program, 29 June 2020, Enclosure I, Table of Penalties for Various Offenses, Item#, nature of offense, subcategory (cite specific charge(s) from the enclosure).

2. Specifically, the following infractions are (describe here the behavior that led to your request. Try to be as specific as you can with the "who, what, when and where" of each occurrence. This paragraph must list the Cause for the action being taken and lists the offense the employee is charged with to include who, what, when, and where. Refer to any documents that you may have that show the behavior, e.g. witness statements, policy, procedures, emails instructing the tech, etc. Must be more descriptive than stating an offense from the Table of Penalties. Cause cannot be an arrest, conviction, etc. Conduct that led to the arrest, conviction, etc. can be used. Standard of proof for upholding an administrative adverse action is "preponderance of the evidence")

3. In arriving at an appropriate measure of discipline, I analyzed the twelve (12) *Douglas* Factors and past disciplinary action(s) (i.e. counseling sessions, admonitions. This paragraph must list the Penalty being proposed. Must be stated completely. Must be similar for offenses with like circumstances. Review "Table of Penalties" for a general guide for common offenses. Variation is permissible as long as it is equitable). Below is a summary of the *Douglas* Factors that I consider to be aggravating:

a. The nature and seriousness of the above mentioned offenses and how they relate to your duties.

b. Your prior misconduct to include (list prior conduct issues i.e. LOR, suspensions, etc.)

c. Erosion of supervisory confidence in your ability to perform given tasks.

d. Notification/warning about conduct and what was expected of you going forward.

SUBJECT: Proposed Action Letter (Category 2 Adverse Action - NBUEs Only)

e. Your potential for your rehabilitation.

Optional statement - Your behavior is inconsistent with the conduct expected of (location) employees and it is clear that all of the previous measures emplaced upon you has not rectified the egregious behavior. You have made a deliberate decision to disregard the warnings and have refused to comply with the rules of the organization. It is therefore my proposal to remove you from your employment/ suspend you without pay.

4. The witnesses known to me are (names and positions). You are entitled to interview them and any other National Guard employee(s) or military members who may have relevant information if they are willing to be interviewed. You may arrange interviews on your own or with my assistance. I have enclosed all documents that I have relied upon for your use. (Note: the period for the employee to reply does not start until the supporting documents are made available to the employee)

5. You may reply to this letter orally, in writing, or both to the deciding official, (list the next level in the chain of command or the designated deciding official, his/her email, and phone number). You may also submit affidavits or other documentary evidence in support of your reply. You may also have access to any statements or other evidence used against you in this action. It is necessary that a memorandum be made of the principal points of any oral reply you may decide to make; therefore, you must inform the deciding official at the onset of any conversation regarding this matter that it is your intent to reply orally and on the record to the proposed action.

a. You will be afforded fourteen (14) calendar days from the date of the receipt of this letter to reply. The day of receipt is not counted, the next day begins the calculation of the time limit. The last day of the time limit is counted unless it is a Saturday, a Sunday, a government holiday, or a day in which the employee is not regularly scheduled to work. In those cases, the last day of the time limit will be moved to the next regularly scheduled work day.

b. If you should require an extension to submit your reply, you must submit your request for extension in writing with justification to the deciding official for consideration. The right to reply is significant. If you feel the proposed adverse action is unwarranted, it is important that your reply contain all reasons supporting this belief.

c. If needed, you may be granted a reasonable amount of administrative leave to formulate a reply. Any request for administrative leave to prepare a reply must be coordinated with the undersigned.

6. If this proposal is sustained, you may have two (2) methods of appeal rights from which to choose. Either the administrative grievance procedure in accordance with the Administrative Grievance Plan or file an appeal through the Merit Systems Protection

SUBJECT: Proposed Action Letter (Category 2 Adverse Action - NBUEs Only)

Board (MSPB). Each of these options have potential limitations for their processes and you may only select one (1) option to appeal.

7. You have the right to be accompanied, represented, and advised by an attorney or other representative of your choice, at your own expense. If you elect to have a representative, you must designate that person in writing.

8. If you require any procedural assistance in this matter, you may contact Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil. Mrs. Clark may provide you access to pertinent regulations and answer any questions relative to your rights. Mrs. Clark does not represent you legally in this case.

9. **Optional Paragraph - This paragraph provides information concerning the Employee Assistance Program. If it appears that a personal issue/problem may have contributed to the cause for the adverse action, employee assistance program information should be provided to the employee. You may not order a command-directed mental health evaluation for a civilian employee. Consult with the HRO before offering treatment. (T32 Technicians can use Military OneSource/T5 NG employees Contact HRO for additional guidance)**

10. No decision to suspend or otherwise discipline you has been made or will be made until the time limit of your reply has expired. Any reply you make will be taken into consideration before a decision on discipline is reached. Whether or not you choose to reply, a written decision of your case ultimately will be issued to you by the deciding official.

***Note: Adverse actions must consider the *Douglas* Factors. The Proposing official will complete a *Douglas* Factors Analysis Worksheet per CNGBI 1400.25 Vol. 752, Enclosure F, Fig. 7 (Appendix D) and explain the rationale for aggravating factors (consult HRO)**

Encl(s) (if docs are provided)
1. Doc a (list # and doc name
2. Doc b if more than 1 doc)

SUPERVISOR SIGNATURE BLOCK
(Rank, Branch)
(Position)

I hereby acknowledge receipt of the Proposed Action Letter. My signature does not indicate concurrence or agreement with the letter.

Print Name & Signature

Date Signed

SUBJECT: Proposed Action Letter (Category 2 Adverse Action - NBUEs Only)

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX O

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Original Decision Letter (For Suspensions of 14 calendar days or less - BUEs Only)

1. On Date, (insert supervisor name and rank if applicable), proposed that you be suspended for # calendar days/# hours for (provide information from proposed action letter).
2. I have carefully considered the reasons for the proposed suspension of # calendar days/# hours as stated in the Proposed Action Letter and the evidence compiled in the material relied upon to propose the action.
3. If employee provides a reply, add the following paragraph: I have considered your reply(s) of date(s). In your reply(s), you raised the following points or issues (summarize the substance of the employee's reply(s)).
4. I find that the incidents described in the Proposed Action Letter are fully supported by a preponderance of the evidence, are sustained, and warrants your suspension of #calendar days/# hours. The effective date(s) of your suspension will be (include the first and last day of the suspension and the date and time the employee is to return to duty). This action is being taken to promote the efficiency of the service.
5. I concur with the Proposing Official that your prior misconduct (list prior misconduct), list how this behavior affects the supervisory confidence, provide information if the employee was warned/notified previously about conduct and what was expected of the employee, and his or her potential for rehabilitation and if there are aggravating factors.

Specifically, I find that (list all factors leading to your decision and complete the *Douglas* Factors Worksheet provided by the proposing official).

Note: Additional incidents cannot be addressed if not listed in the proposed action. If additional incidents have been identified and need to be considered, a new proposal will need to be issued. You must contact the LRS for guidance.

SUBJECT: Original Decision Letter (For Suspensions of 14 calendar days or less (BUEs Only))

6. This letter was coordinated with the Ohio National Guard Human Resource Office, Labor Relations Specialist, Cheryl Clark, and will be placed in your Electronic Official Personnel File (eOPF). Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil. Please note that while she may answer your procedural questions, she is not your counsel in this matter.

7. Adverse Action Challenge Rights. You have the right to appeal and/or challenge this original decision using one (1) and only one (1) of the following three (3) procedures:

a. A negotiated grievance filed under the negotiated grievance procedure contained in the Collective Bargaining Agreement between the Ohio National Guard and AFGE Local 3970. You have the right to union representation regarding this matter. It is solely your responsibility to make any arrangements necessary in relation to that representation. If you would like to arrange for union representation you may contact Mr. Dan Wayble at (740) 808-0933 or Mr. Shawn Rice at (304) 553-2743. If you elect to have a representative, you must designate that person in writing.

b. An administrative hearing. In an administrative hearing, NGB will appoint a hearing examiner from another State who will gather all available and relevant facts through the administrative hearing process. After the hearing process, the NGB hearing examiner will issue a report of findings and recommendations to TAG. In this method of appeal, the final decision on appeal is issued by TAG.

c. An appellate review. In an appellate review, TAG will review the adverse action without the involvement of a hearing examiner (HE). The HRO will provide TAG and the employee or **his or her** representative with the case file. The employee or **his or her** representative will provide TAG and the HRO with any written submissions they may wish to make. TAG will review all information provided and decide to either make the final decision based on the submissions or request that both parties make oral presentations. TAG will issue a final written decision.

8. If you choose to appeal and/or challenge my decision, once you have elected one (1) of the three (3) procedures, you may not change thereafter to a different procedure.

9. You can appeal via an administrative hearing or appellate review by sending a written notice to the HRO Labor Relations Specialist (LRS) specifying which method of appeal is requested (see instructions in paragraph 10 below). This request must be postmarked no later than 20 calendar days after the date of your receipt of this original decision letter, or emailed to the HRO LRS no later than 20 calendar days after the date of your receipt of the original decision letter. If a request for extension of this appeal

SUBJECT: Original Decision Letter (For Suspensions of 14 calendar days or less - BUEs Only)

period is requested, such request is directed to TAG and must be received within the aforesaid 20 calendar day period, and the reasons for the request must be included. TAG will decide if the request for extension will be granted.

10. If requesting an appellate review or an administrative hearing, please contact Labor Relations Specialist, Cheryl Clark, for additional instructions as soon as possible. Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil.

11. Additional Information. The following appeal options are available in addition to your adverse action challenge rights:

f. **U.S. Office of Special Counsel (OSC).** If the employee elects to seek corrective action by the OSC's Complaints Examining Unit (www.osc.gov/oscefile), his/her appeal will be limited to a determination as to whether the agency took one or more covered personnel actions against him/her in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 USC 2302(b). If OSC dismisses his/her claim, he/she may file an individual right of action appeal to the MSPB, but the MSPB will only adjudicate whether he/she proved that his or her protected disclosure was a contributing factor in the effected adverse action. The Whistleblower Disclosure Form, OSC-14, is available at the following web address <https://osc.gov/Pages/Resources-OSCFORMS.aspx>. The web address for an electronic filing of whistleblower disclosure with OSC is at <https://osc.gov/pages/file-complaint.aspx>.

g. **U.S. Equal Employment Opportunity Commission (EEOC).** If the employee believes that this action was affected in a discriminatory manner, he/she has the right to file a complaint with the EEOC, consistent with the provisions of 5 USC 7121(d) and 29 CFR 1614.301 and 1614.302, found at www.eeoc.gov. If he/she elects to file an EEO complaint, he or she may contact the EO Office at (614) 336-7245. He/she must file a complaint of discrimination no later than forty-five (45) calendar days from the effective date of the action.

12. Should you have questions concerning this action, you may contact Mrs. Cheryl Clark at (614-336-7454), 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2789, or via email at cheryl.l.clark.civ@mail.mil.

Encl(s) (if docs are provided)
1. Doc a (list # and doc name)
2. Doc b if more than 1 doc)

DECIDING OFFICIAL'S SIG. BLOCK
(Rank, Branch)
(Position)

SUBJECT: Original Decision Letter (For Suspensions of 14 calendar days or less - BUEs Only)

ACKNOWLEDGE RECEIPT:

Print Name & Signature

Date Signed

Received this _____ day of _____ month _____ year, by the HRO for placement in the employee eOPF of _____.

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX P

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Decision Letter (For Suspensions of 14 calendar days or less - NBUEs Only)

1. On **Date**, (insert supervisor name and rank if applicable), proposed that you be suspended for **#** calendar days/**#** hours for (provide information from proposed action letter).
2. I have carefully considered the reasons for the proposed suspension of **#** calendar days/**#** hours as stated in the Proposed Action Letter, the evidence compiled in the material relied upon to propose the action, and the *Douglas* Factors.
3. If employee provides a reply, add the following paragraph: I have considered your reply(s) of date(s). In your reply(s), you raised the following points or issues (summarize the substance of the employee's reply(s)).
4. I find that the incidents described in the Proposed Action Letter are fully supported by a preponderance of the evidence, are sustained, and warrants your suspension of **#** calendar days/**#** hours. The effective date(s) of your suspension will be (include the first and last day of the suspension and the date and time the employee is to return to duty). This action is being taken to promote the efficiency of the service.
5. I concur with the Proposing Official that the *Douglas* Factors regarding the nature and seriousness of the offense, your prior misconduct (list prior misconduct), list how this behavior affects the supervisory confidence, provide information if the employee was warned/notified previously about conduct and what was expected of the employee, and his or her potential for rehabilitation and if there are aggravating factors which led to my decision.

Specifically, I find that list additional factors leading to your decision (only if it was presented in the proposal). If additional incidents have been identified and need to be considered, a new proposal will need to be issued. You must contact the LRS for guidance.

6. This letter was coordinated with the Ohio National Guard Human Resource Office, Labor Relations Specialist, Cheryl Clark, and will be placed in your Electronic Official

SUBJECT: Decision Letter (For Suspensions of 14 calendar days or less - NBUEs Only)

Personnel File (eOPF). Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil. Please note that while she may answer your procedural questions, she is not your counsel in this matter.

7. Adverse Action Challenge Rights. You have the right to appeal and/or challenge this original decision using one (1) and only one (1) of the following three (3) procedures:

a. An administrative grievance filed under the administrative grievance procedure. Administrative grievance must be filed with the HRO Labor Relations Specialist within fifteen (15) calendar days from the date the employee received the decision.

b. An administrative hearing. In an administrative hearing, NGB will appoint a hearing examiner from another State who will gather all available and relevant facts through the administrative hearing process. After the hearing process, the NGB hearing examiner will issue a report of findings and recommendations to TAG. In this method of appeal, the final decision on appeal is issued by TAG.

c. An appellate review. In an appellate review, TAG will review the adverse action without the involvement of a hearing examiner (HE). The HRO will provide TAG and the employee or **his or her** representative with the case file. The employee or **his or her** representative will provide TAG and the HRO with any written submissions they may wish to make. TAG will review all information provided and decide to either make the final decision based on the submissions or request that both parties make oral presentations. TAG will issue a final written decision.

8. If you choose to appeal and/or challenge my decision, once you have elected one (1) of the three (3) procedures, you may not change thereafter to a different procedure.

9. You can appeal via an administrative hearing or appellate review by sending a written notice to the HRO specifying which method of appeal is requested (see instructions in paragraph 10 below). This request must be postmarked no later than 20 calendar days after the date of your receipt of this original decision letter, or emailed to the HRO no later than 20 calendar days after the date of your receipt of the original decision letter. If a request for extension of this appeal period is requested, such request is directed to TAG and must be received within the aforesaid 20 calendar day period, and the reasons for the request must be included. TAG will decide if the request for extension will be granted.

10. If requesting an appellate review or an administrative hearing, please contact Labor Relations Specialist, Cheryl Clark, for additional instructions as soon as possible. Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil.

11. Additional Information. The following appeal options are available in addition to your adverse action challenge rights:

SUBJECT: Decision Letter (For Suspensions of 14 calendar days or less - NBUEs Only)

a. **U.S. Office of Special Counsel (OSC).** If the employee elects to seek corrective action by the OSC's Complaints Examining Unit (www.osc.gov/oscefile), his/her appeal will be limited to a determination as to whether the agency took one or more covered personnel actions against him/her in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 USC 2302(b). If OSC dismisses his/her claim, he/she may file an individual right of action appeal to the MSPB, but the MSPB will only adjudicate whether he/she proved that his or her protected disclosure was a contributing factor in the effected adverse action. The Whistleblower Disclosure Form, OSC-14, is available at the following web address <https://osc.gov/Pages/Resources-OSCForms.aspx>. The web address for an electronic filing of whistleblower disclosure with OSC is at <https://osc.gov/pages/file-complaint.aspx>.

b. **U.S. Equal Employment Opportunity Commission (EEOC).** If the employee believes that this action was affected in a discriminatory manner, he/she has the right to file a complaint with the EEOC, consistent with the provisions of 5 USC 7121(d) and 29 CFR 1614.301 and 1614.302, found at www.eeoc.gov. If he/she elects to file an EEO complaint, he or she may contact the EO Office at (614) 336-7245. He/she must file a complaint of discrimination no later than forty-five (45) calendar days from the effective date of the action.

12. Should you have questions concerning this action, you may contact Mrs. Cheryl Clark at (614-336-7454), 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2712, or via email at cheryl.l.clark.civ@mail.mil.

Encl(s) (if docs are provided)
1. Doc a (list # and doc name
2. Doc b if more than 1 doc)

DECIDING OFFICIAL'S SIG. BLOCK
(Rank, Branch)
(Position)

ACKNOWLEDGE RECEIPT:

Print Name & Signature

Date Signed

Received this _____ day of _____ month _____ year, by the HRO for placement in the employee eOPF of _____.

SUBJECT: Decision Letter (For Suspensions of 14 calendar days or less - NBUEs Only)

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX Q

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Original Decision Letter (For Suspensions of more than 14 calendar days, Reduction in Grade/Pay or Removal - BUEs Only)

1. On Date, (insert supervisor name and rank if applicable), proposed that you be (suspended for # calendar days/# hours, reduced in grade/pay or removed) for (provide information from proposed action letter).
2. I have carefully considered the reasons for the proposed (suspension of # calendar days/# hours, reduction in grade/pay and removal) as stated in the Proposed Action Letter, the evidence compiled in the material relied upon to propose the action, and the *Douglas* Factors.
3. If employee provides a reply, add the following paragraph: I have considered your reply(s) of date(s). In your reply(s), you raised the following points or issues (summarize the substance of the employee's reply(s)).
4. I find that the incidents described in the Proposed Action Letter are fully supported by a preponderance of the evidence, are sustained, and warrants your (suspension of # calendar days/# hours, reduction in grade/pay or removal). Add the following sentence for suspensions: The effective date(s) of your suspension will be (include the first and last day of the suspension and the date and time the employee is to return to duty). Add the following sentence for removals: This action will be effective on date (note: this date cannot be effective sooner than the next workday after 30 calendar days from the proposed action letter). This action is being taken to promote the efficiency of the service.
5. I concur with the Proposing Official that the *Douglas* Factors regarding the nature and seriousness of the offense, your prior misconduct (list prior misconduct), list how this behavior affects the supervisory confidence, provide information if the employee was warned/notified previously about conduct and what was expected of the employee, and his or her potential for rehabilitation and if there are aggravating factors which led to my decision.

SUBJECT: Original Decision Letter (For Suspensions of more than 14 calendar days, Reduction in Grade/Pay or Removal - BUEs Only)

Specifically, I find that **list additional factors leading to your decision (only if it was presented in the proposal)**. If additional incidents have been identified and need to be considered, a new proposal will need to be issued. You must contact the LRS for guidance.

6. This letter was coordinated with the Ohio National Guard Human Resource Office, Labor Relations Specialist, Cheryl Clark, and will be placed in your Electronic Official Personnel File (eOPF). Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil. Please note that while she may answer your procedural questions, she is not your counsel in this matter.

7. Adverse Action Challenge Rights. You have the right to appeal and/or challenge this original decision using one (1) and only one (1) of the following two (2) procedures:

a. A negotiated grievance filed under the negotiated grievance procedure contained in the Collective Bargaining Agreement between the Ohio National Guard and AFGE Local 3970. You have the right to union representation regarding this matter, it is solely your responsibility to make any arrangements necessary in relation to that representation. If you would like to arrange for union representation you may contact Mr. Dan Wayble at (740) 808-0933 or Mr. Shawn Rice at (304) 553-2743. If you elect to have a representative, you must designate that person in writing.

b. Merit Systems Protection Board (MSPB). You must appeal to the MSPB within 30 calendar days after the effective date of the action. If an appeal is not filed within the 30 calendar day time limit, the appeal could be dismissed as untimely. More information regarding appeals to the MSPB can be found at www.mspb.gov. The MSPB website provides access to a copy of the MSPB regulations and a copy of Option Form 185, U.S. Merit Systems Protection Board Appeal Form. The appeal can be submitted online or mailed to U.S. Merit Systems Protection Board Central Regional Office 230 South Dearborn Street 31st Floor Chicago, IL 60604-1669. A copy of the form and regulations can also be obtained upon request from Labor Relations Specialist, Mrs. Cheryl Clark, at Cheryl.l.clark.civ@mail.mil, If a decision is made to file an appeal with the MSPB, the employee should notify them that the agency contact for your appeal is: LTC Joseph Schwade, Chief Legal Counsel, Ohio Joint Force Headquarters, 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2789; e-mail: joseph.a.schwade.mil@mail.mil; tel.: 614-336-7263, fax: 614-336-7488.

8. If you choose to appeal and/or challenge my decision, once you have elected one (1) of the procedures, you may not change thereafter to a different procedure.

9. Additional Information. The following appeal options are available in addition to your adverse action challenge rights:

SUBJECT: Original Decision Letter (For Suspensions of more than 14 calendar days, Reduction in Grade/Pay or Removal - BUEs Only)

a. **U.S. Office of Special Counsel (OSC).** If the employee elects to seek corrective action by the OSC's Complaints Examining Unit (www.osc.gov/oscefile), his/her appeal will be limited to a determination as to whether the agency took one or more covered personnel actions against him/her in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 USC 2302(b). If OSC dismisses his/her claim, he/she may file an individual right of action appeal to the MSPB, but the MSPB will only adjudicate whether he/she proved that his or her protected disclosure was a contributing factor in the effected adverse action. The Whistleblower Disclosure Form, OSC-14, is available at the following web address <https://osc.gov/Pages/Resources-OSCFORMS.aspx>. The web address for an electronic filing of whistleblower disclosure with OSC is at <https://osc.gov/pages/file-complaint.aspx>.

b. **U.S. Equal Employment Opportunity Commission (EEOC).** If the employee believes that this action was affected in a discriminatory manner, he/she has the right to file a complaint with the EEOC, consistent with the provisions of 5 USC 7121(d) and 29 CFR 1614.301 and 1614.302, found at www.eeoc.gov. If he/she elects to file an EEO complaint, he or she may contact the EO Office at (614) 336-7245. He/she must file a complaint of discrimination no later than forty-five (45) calendar days from the effective date of the action.

10. Should you have questions concerning this action, you may contact Mrs. Cheryl Clark at (614-336-7454), 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2712, or via email at cheryl.l.clark.civ@mail.mil.

Encl(s) (if docs are provided)
1. Doc a (list # and doc name)
2. Doc b if more than 1 doc)

DECIDING OFFICIAL'S SIG. BLOCK
(Rank, Branch)
(Position)

ACKNOWLEDGE RECEIPT:

Print Name & Signature

Date Signed

Received this _____ day of _____ month _____ year, by the HRO for placement in the employee eOPF of _____.

**SUBJECT: Original Decision Letter (For Suspensions of more than 14 calendar days,
Reduction in Grade/Pay or Removal - BUEs Only)**

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX R

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Decision Letter (For Suspensions of more than 14 calendar days, Reduction in Grade/Pay - NBUEs Only)

1. On Date, (insert supervisor name and rank if applicable), proposed that you be (suspended for # calendar days/# hours, reduced in grade/pay) for (provide information from proposed action letter).
2. I have carefully considered the reasons for the proposed (suspension of # calendar days/# hours, reduction in grade/pay) as stated in the Proposed Action Letter, the evidence compiled in the material relied upon to propose the action, and the *Douglas* Factors.
3. If employee provides a reply, add the following paragraph: I have considered your reply(s) of date(s). In your reply(s), you raised the following points or issues (summarize the substance of the employee's reply(s)).
4. I find that the incidents described in the Proposed Action Letter are fully supported by a preponderance of the evidence, are sustained, and warrants your suspension of # calendar days/# hours. The effective date(s) of your suspension will be (include the first and last day of the suspension and the date and time the employee is to return to duty). This action is being taken to promote the efficiency of the service.
5. I concur with the Proposing Official that the *Douglas* Factors regarding the nature and seriousness of the offense, your prior misconduct (list prior misconduct), list how this behavior affects the supervisory confidence, provide information if the employee was warned/notified previously about conduct and what was expected of the employee, and his or her potential for rehabilitation and if there are aggravating factors which led to my decision.

Specifically, I find that list additional factors leading to your decision (only if it was presented in the proposal). If additional incidents have been identified and need to be considered, a new proposal will need to be issued. You must contact the LRS for guidance.

SUBJECT: Decision Letter (For Suspensions of more than 14 calendar days, Reduction in Grade/Pay - NBUEs Only)

6. This letter was coordinated with the Ohio National Guard Human Resource Office, Labor Relations Specialist, Cheryl Clark, and will be placed in your Electronic Official Personnel File (eOPF). Mrs. Clark may be reached at cheryl.l.clark.civ@mail.mil. Please note that while she may answer your procedural questions, she is not your counsel in this matter.

7. Adverse Action Challenge Rights. You have the right to appeal and/or challenge this original decision using one (1) and only one (1) of the following two (2) procedures:

a. An administrative grievance filed under the administrative grievance procedure. Administrative grievance must be filed with the HRO Labor Relations Specialist within fifteen (15) calendar days from the date the employee received the decision.

b. Merit Systems Protection Board (MSPB). You must appeal to the MSPB within 30 calendar days after the effective date of the action. If an appeal is not filed within the 30 calendar day time limit, the appeal could be dismissed as untimely. More information regarding appeals to the MSPB can be found at www.mspb.gov. The MSPB website provides access to a copy of the MSPB regulations and a copy of Option Form 185, U.S. Merit Systems Protection Board Appeal Form. The appeal can be submitted online or mailed to the U.S. Merit Systems Protection Board Central Regional Office 230 South Dearborn Street 31st Floor Chicago, IL 60604-1669. A copy of the form and regulations can also be obtained upon request from Labor Relations Specialist, Mrs. Cheryl Clark, at Cheryl.l.clark.civ@mail.mil. If a decision is made to file an appeal with the MSPB, the employee should notify them that the agency contact for your appeal is: LTC Joseph Schwade, Chief Legal Counsel, Ohio Joint Force Headquarters, 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2789; e-mail: joseph.a.schwade.mil@mail.mil; tel.: 614-336-7263, fax: 614-336-7488.

8. If you choose to appeal and/or challenge my decision, once you have elected one (1) of the procedures, you may not change thereafter to a different procedure.

9. Additional Information. The following appeal options are available in addition to your adverse action challenge rights:

a. **U.S. Office of Special Counsel (OSC)**. If you elect to seek corrective action by the OSC's Complaints Examining Unit (www.osc.gov/oscefile), your appeal will be limited to a determination as to whether the agency took one or more covered personnel actions against you in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 USC 2302(b). If OSC dismisses your claim, you may file an individual right of action appeal to the MSPB, but the MSPB will only adjudicate whether you proved that your protected disclosure was a contributing factor in the effected adverse action. The Whistleblower Disclosure Form, OSC-14, is available at the following web address

SUBJECT: Decision Letter (For Suspensions of more than 14 calendar days, Reduction in Grade/Pay - NBUEs Only)

<https://osc.gov/Pages/Resources-OSCForms.aspx>. The web address for an electronic filing of whistleblower disclosure with OSC is at <https://osc.gov/pages/file-complaint.aspx>.

b. **U.S. Equal Employment Opportunity Commission (EEOC)**. If you believe that this action was affected in a discriminatory manner, you have the right to file a complaint with the EEOC, consistent with the provisions of 5 USC 7121(d) and 29 CFR 1614.301 and 1614.302, found at www.eeoc.gov. If you elect to file an EEO complaint, you may contact the EO Office at (614) 336-7245. You must file a complaint of discrimination no later than 45 calendar days from the effective date of this action.

10. Should you have questions concerning this action, you may contact Mrs. Cheryl Clark at (614-336-7454), 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2712, or via email at cheryl.l.clark.civ@mail.mil.

Encl(s) (if docs are provided)
1. Doc a (list # and doc name)
2. Doc b if more than 1 doc)

DECIDING OFFICIAL'S SIG. BLOCK
(Rank, Branch)
(Position)

ACKNOWLEDGE RECEIPT:

Print Name & Signature

Date Signed

Received this _____ day of _____ month _____ year, by the HRO for placement in the employee eOPF of _____.

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX S

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Decision Letter (Removal - NBUEs Only)

1. On **Date**, (insert supervisor name and rank if applicable), proposed that you be removed from National Guard employment for (provide information from proposed action letter)
2. I have carefully considered the reasons for your proposed removal as stated in the Proposed Action Letter, the evidence compiled in the material relied upon to propose the action, and the *Douglas* Factors.
3. If employee provides a reply, add the following paragraph: I have considered your reply(s) of date(s). In your reply(s), you raised the following points or issues (summarize the substance of the employee's reply(s)).
4. I find that the incidents described in the Proposed Action Letter are fully supported by a preponderance of the evidence, are sustained, and warrants your removal. The effective date of your removal will be **Date (removals cannot be sooner than the next workday after 30 calendar days from the proposed action letter)**. This action is being taken to promote the efficiency of the service.
5. I concur with the Proposing Official that the *Douglas* Factors regarding the nature and seriousness of the offense, your prior misconduct (list prior misconduct), list how this behavior affects the supervisory confidence, provide information if the employee was warned/notified previously about conduct and what was expected of the employee, and his or her potential for rehabilitation and if there are aggravating factors which led to my decision.

Specifically, I find that list additional factors leading to your decision (only if it was presented in the proposal). If additional incidents have been identified and need to be considered, a new proposal will need to be issued. You must contact the LRS for guidance.

6. This letter was coordinated with the Ohio National Guard Human Resource Office (Cheryl Clark) and will be placed in your Electronic Official Personnel File (eOPF). Mrs.

SUBJECT: Decision Letter (Removal - NBUEs Only)

Clark may be reached at cheryl.i.clark.civ@mail.mil. Please note that while she may answer your procedural questions, she is not your counsel in this matter.

7. Adverse Action Challenge Rights. You have the right to appeal and/or challenge this original decision by filing an appeal with the Merit Systems Protection Board (MSPB) in accordance with applicable laws and regulations.

8. If you choose to file an appeal with the MSPB you must do so within 30 calendar days after the effective date of your removal. If you do not file an appeal within the 30 calendar day time limit, the appeal could be dismissed as untimely. You may find more information regarding appeals to the MSPB at www.mspb.gov. The MSPB website provides access to a copy of the MSPB regulations and a copy of Option Form 185, U.S. Merit Systems Protection Board Appeal Form. The appeal can be submitted online or mailed to U.S. Merit Systems Protection Board Central Regional Office 230 South Dearborn Street 31st Floor Chicago, IL 60604-1669. A copy of the form and regulations can also be obtained upon request from Mrs. Cheryl Clark at the HRO office, her contact information can be found in paragraph 9. If you decide to file an appeal with the MSPB, you should notify them that the agency contact for your appeal is: LTC Joseph Schwade, Chief Legal Counsel, Ohio Joint Force Headquarters, 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2789; e-mail: joseph.a.schwade.mil@mail.mil; tel.: 614-336-7263, fax: 614-336-7488.

9. Additional Information. The following appeal options are available in addition to your adverse action challenge rights:

a. **U.S. Office of Special Counsel (OSC)**. If you elect to seek corrective action by the OSC's Complaints Examining Unit (www.osc.gov/oscefile), your appeal will be limited to a determination as to whether the agency took one or more covered personnel actions against you in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 USC 2302(b). If OSC dismisses your claim, you may file an individual right of action appeal with the MSPB, but the MSPB will only adjudicate whether you proved that your protected disclosure was a contributing factor in the effected adverse action. The Whistleblower Disclosure Form, OSC-14, is available at the following web address <https://osc.gov/Pages/Resources-OSCForms.aspx>. The web address for an electronic filing of whistleblower disclosure with OSC is at <https://osc.gov/pages/file-complaint.aspx>.

b. **U.S. Equal Employment Opportunity Commission (EEOC)**. If you believe that this action was affected in a discriminatory manner, you have the right to file a complaint with the EEOC, consistent with the provisions of 5 USC 7121(d) and 29 CFR 1614.301 and 1614.302, found at www.eeoc.gov. If you elect to file an EEO complaint, you may contact the EO Office at (614) 336-7245. You must file a complaint of discrimination no later than 45 calendar days from the effective date of this action.

SUBJECT: Decision Letter (Removal - NBUEs Only)

10. Should you have questions concerning this action, you may contact Mrs. Cheryl Clark at (614-336-7454), 2825 W. Dublin Granville Road, Columbus, Ohio 43235-2712, or via email at cheryl.l.clark.civ@mail.mil.

Encl(s) (if docs are provided)
1. Doc a (list # and doc name
2. Doc b if more than 1 doc)

DECIDING OFFICIAL'S SIG. BLOCK
(Rank, Branch)
(Position)

ACKNOWLEDGE RECEIPT:

Print Name & Signature

Date Signed

Received this _____ day of _____ month _____ year, by the HRO for placement in the employee eOPF of _____.

HRO – Labor Relations Specialist

Date Received

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX I

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Alternative [Discipline/Adverse] Action Agreement

1. This Employee Alternative [Discipline/Adverse] Action Agreement is entered into by and between [Employee Name], [employee position], [employee's pay plan, series & grade] and the [insert wing/unit], Ohio [Air or Army] National Guard on behalf of the Ohio Adjutant General's Department and its duly-authorized employees, officers and managers. These parties are hereinafter referred to as [employee name] and the Agency. _____ (employee initials)

2. [Employee's name] acknowledges [his or her] employment as a [position title], [Employee's pay plan, series & grade] with the Agency is at risk and is interested in taking the necessary steps to rehabilitate [his or her] behavior. _____ (employee initials)

3. By proposed action letter dated [enter date], [employee's name] was notified of a proposal to suspend [him or her] from [his or her] employee position under the provisions of [Technician Personnel Regulation (TPR) 752 (BUE) or Chief National Guard Bureau Instruction (CNGBI) 1400.25 Vol. 752 (NBUE)] for [list charge from proposed action letter. For example, failure to observe written regulations, insubordination, discourtesy, loafing, etc.] For these offenses [he or she] would be subject to a #calendar day/#hour suspension without pay. _____ (employee initials)

4. The parties, believing an alternate disposition of this action is appropriate and will promote the efficiency of the Service, and desiring to fully settle and resolve all matters in dispute, including the application of the "Douglas Factors", hereby agree as follows:

a. [Employee's name] voluntarily elects to accept alternative [disciplinary or adverse] action from the Agency. [Employee's name] fully admits to [list charge from proposed action letter. For example, failing to observe written regulations, insubordination, discourtesy, loafing, etc.]. _____ (employee initials)

b. [Employee's name] acknowledges by electing alternative [discipline or adverse] action [he or she] hereby voluntarily waives and relinquishes any and all rights to grieve or appeal this action. _____ (employee initials)

SUBJECT: Alternative [Discipline/Adverse Action] Agreement

c. [Employee's Name] fully understands and realizes the Agency could have imposed a #calendar day/#hour suspension without pay if [he or she] had not elected alternative [discipline or adverse action]. _____ (employee initials)

d. [Employee's Name] understands and agrees these multiple actions are considered [his or her] (Insert appropriate level e.g. first, second) offense in accordance with the Table of Penalties, [TPR 752, Table D-1 (BUE) or CNGBI 1400.25 Vol. 752, Enclosure I, Table 1 (NBUE)]. _____ (employee initials)

e. [Employee's Name] understands and agrees this Agreement will remain in [his or her] supervisor's local file and in the Labor Relations Specialist local file for a [1 year/12 month or 2-year/24 month] period from the date on which this agreement is signed. [Employee's Name] understands and agrees this action may be used for progressive discipline purposes for a period of [1 year/12 months or 2-years/24 months] after the date upon which this agreement is signed. _____ (employee initials)

f. The Agency agrees to reduce the original proposed #calendar day/# hour suspension without pay to a [#calendar day/#hour] suspension without pay. [Employee's Name] to serve a [#calendar day/# hour] suspension without pay. The suspension without pay will be served on [DD Month Year]. The Agency agrees to hold the reduced remaining [#calendar day(s)/#hours] suspension without pay in abeyance for a [1 year/12 month or 2-year/24 month] period from the date of this signature on this agreement if the following conditions are met (this paragraph may be modified depending on the situation): _____ (employee initials)

(1) [Employee's Name] agrees to admit to and apologize for [his or her] misconduct to the following individuals: (Insert personnel and/or section) (this will be completed by – Date). _____ (employee initials)

(2) [Employee's Name] shall maintain satisfactory conduct, punctuality, attendance and good general work habits and practices in accordance with existing [Air Force, Air National Guard, and Ohio Air National Guard or Army, Army National Guard] regulations and policy, as officially amended from time to time. _____ (employee initials)

(3) [Employee's Name] expressly understands and agrees if that at any time during the specified [1 year/12 month or 2-year/24 month] period after the signature date on this agreement, [Employee's Name] fails to abide by this agreement or engages in further misconduct, in addition to discipline for such misconduct, the remaining reduced #calendar day/#hour suspension without pay which is being held in abeyance will be immediately instituted. _____ (employee initials)

(4) [Employee's Name] acknowledges [he or she] has read and been provided the opportunity to review the terms of the agreement; and [he or she] fully understands and agrees to the terms stated herein. [Employee's Name] acknowledges the

SUBJECT: Alternative [Discipline/Adverse Action] Agreement

Agency's management officials have provided [him or her] the opportunity to have [his or her] questions concerning the agreement answered. _____ (employee initials)

(5) Both parties acknowledge they have had the opportunity to seek the advice of counsel and/or Union representation and they sign this agreement voluntarily and with full knowledge of its terms and conditions; that it is the entire understanding and agreement of the parties; and there are no provisions or agreements concerning this matter, which are not contained herein. The parties having signed this agreement, the same shall be considered fully executed on the date signed below. _____ (employee initials)

[Name (Signature Block)
Rank, Agency
Position]

_____ Date: _____
[Employee Name]/Signature

_____ Date: _____
Employee Representative Name/Signature [Union Representative AFGE Local #3970]

_____ Date: _____
HRO Representative Name/Signature

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.i.clark.civ@mail.mil

APPENDIX U

UNIT/WING LETTERHEAD

OFFICE SYMBOL (If applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Last Chance Agreement (for Removals only)

1. This Employee Last Chance Agreement is entered into by and between [Employee Name], [employee position], [employee's pay plan, series & grade] and the [insert wing/unit], Ohio [Air or Army] National Guard on behalf of the Ohio Adjutant General's Agency and its duly-authorized employees, officers and managers. These parties are hereinafter referred to as [employee name] and the Agency. _____ (employee initials)

2. However, as an alternative to removal, this LCA provides one last chance for [name of employee] to demonstrate that [he or she] can fulfill all of the conditions of employment. Therefore, the Ohio National Guard, mindful of its rights to remove [name of employee], agrees to place the Decision to Remove in abeyance. _____ (employee initials)

3. [Employee's name] acknowledges [his or her] employment as a [position title], [Employee's pay plan, series & grade] with the Agency is at risk and is interested in taking the necessary steps to rehabilitate [his or her] behavior. _____ (employee initials)

4. By proposed action letter dated [enter date], [employee's name] was notified of a proposal to remove [him or her] from [his or her] employee position under the provisions of [Technician Personnel Regulation (TPR) 752 (BUE) or Chief National Guard Bureau Instruction (CNGBI) 1400.25 Vol. 752 (NBUE)] for [list charge from proposed action letter. For example, failure to observe written regulations, insubordination, discourtesy, loafing, etc.] For these offenses [he or she] would be subject to removal. _____ (employee initials)

5. The parties, believing an alternate disposition of this action is appropriate and will promote the efficiency of the Service, and desiring to fully settle and resolve all matters in dispute, including the application of the "Douglas Factors", hereby agree as follows:

a. [Employee's name] acknowledges that the agency has evidence that, if not rebutted, is sufficient to prove [the charged misconduct] and waives [his or her] right to seek to rebut the evidence. _____ (employee initials)

SUBJECT: Last Chance Agreement (for Removals only)

b. [Employee's name] voluntarily elects to accept this Last Chance Agreement from the Agency. [Employee's name] fully admits to [list charge from proposed action letter. For example, failing to observe written regulations, insubordination, discourtesy, loafing, etc.]. _____ (employee initials)

c. [Employee's name] acknowledges by electing this Last Chance Agreement [he or she] hereby voluntarily waives and relinquishes any and all rights to grieve or appeal this action. _____ (employee initials)

d. [Employee's Name] fully understands and realizes the Agency could have imposed a removal if [he or she] had not elected to accept this Last Chance Agreement. _____ (employee initials)

e. [Employee's Name] understands and agrees that [this or these] action(s) [is or are] considered [his or her] (Insert appropriate level e.g. first, second) offense in accordance with the Table of Penalties, [TPR 752, Table D-1 (BUE) or CNGBI 1400.25 Vol. 752, Enclosure I, Table 1 (NBUE)]. _____ (employee initials)

f. [Employee's Name] understands and agrees this Agreement will remain in [his or her] supervisor's local file and in the Labor Relations Specialist local file for a 2-year/24 month period from the date on which this agreement is signed. _____ (employee initials)

g. [Employee's Name] agrees to admit to and apologize in writing for [his or her] misconduct to the following individuals: (Insert personnel and/or section) (this will be completed by – Date). _____ (employee initials)

h. [Employee's Name] shall maintain satisfactory conduct, punctuality, attendance and good general work habits and practices in accordance with existing [Air Force, Air National Guard, and Ohio Air National Guard or Army, Army National Guard] regulations and policy, as officially amended from time to time. _____ (employee initials)

i. [Employee's Name] expressly understands and agrees if that at any time during the specified 2-year/24 month period after the signature date on this agreement, [Employee's Name] fails to abide by this agreement or engages in further misconduct, the original decision of removal will be reinstated immediately. _____ (employee initials)

j. [Employee's Name] acknowledges [he or she] has read and been provided the opportunity to review the terms of the agreement; and [he or she] fully understands and agrees to the terms stated herein. [Employee's Name] acknowledges the Agency's management officials have provided [him or her] the opportunity to have [his or her] questions concerning this agreement answered. _____ (employee initials)

SUBJECT: Last Chance Agreement (for Removals only)

6. Both parties acknowledge they have had the opportunity to seek the advice of counsel and/or Union representation and they sign this agreement voluntarily and with full knowledge of its terms and conditions; that it is the entire understanding and agreement of the parties; and there are no provisions or agreements concerning this matter, which are not contained herein. The parties having signed this agreement, the same shall be considered fully executed on the date signed below. _____ (employee initials)

7. In the event the removal is reinstated, it is understood that the employee has agreed to waive all appeal rights to The Adjutant General of the State of Ohio National Guard to the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, and any grievance or arbitration process concerning any action reinstating the removal being held in abeyance, the terms and conditions of this Agreement will be upheld during the two-year period beginning at the time this Agreement was signed. _____ (employee initials)

8. By accepting this LCA, [name of employee] freely and voluntarily waives [his or her] right to personal recovery, including compensatory damages in any action brought against the United States, the State of Ohio, the National Guard, or their agents, concerning any action reinstating the removal action being held in abeyance, and taken within the two-year LCA period, as well as any alleged breach of terms of this Agreement. _____ (employee initials)

9. [Name of employee] further agrees not to initiate a lawsuit and waives all rights to personal recovery, including but not limited to compensatory damages, in any lawsuit brought against the Agency by either [name of employee] or the Equal Employment Opportunity Commission, or other type of equal employment opportunity complaint or any other civil and criminal litigation in any court or other administrative forum, for all acts, events, and circumstances out of or connected to events that brought this LCA, including, but not limited to actions brought under Title VII of the Civil Rights Acts of 1964 and 1991, as amended; the Rehabilitation Act of 1973, as amended; or any Federal or State regulation. _____ (employee initials)

10. This agreement provides that no monies, including attorney fees, will be paid by the Agency. _____ (employee initials)

[Name (Signature Block)
Rank, Agency
Position]

SUBJECT: Last Chance Agreement (for Removals only)

_____ Date: _____
[Employee Name]/Signature

_____ Date: _____
Employee Representative Name/Signature [Union Representative AFGE Local #3970]

_____ Date: _____
HRO Representative Name/Signature

SUBJECT: Last Chance Agreement

I, [name of employee], understand that I have lost my employment with the Ohio National Guard. I understand this last-chance agreement (LCA) means that I am being given one more chance and only this one chance to prove I will not engage in misconduct in order to keep my job. _____ (employee initials)

I understand that this means that if I engage in misconduct, I will be subject to being removed (by having this removal reinstated). I am signing this LCA of my own free will. _____ (employee initials)

_____ Date: _____
[Employee Name]/Signature

Note: Once presented and signed, scan and email to Mrs. Cheryl Clark, Labor Relations Specialist, cheryl.l.clark.civ@mail.mil

APPENDIX V

Performance vs. Conduct “Can’t do vs Won’t do”

Note: It should be understood that some conduct issues could affect an employee’s performance. In addition, some performance issues may seem like conduct, but may actually be a performance issue where training will eliminate the problem. **ALWAYS** consult with the Labor Relations Specialist when addressing a performance or conduct problem.

Performance – 5 USC 43	Conduct - 5 USC 75
<i>“Can’t do”</i>	<i>“Won’t do”</i>
Typically involves an inability to perform critical elements of the position at the fully successful level.	Typically involves breaking a known workplace rule (either written or unwritten), regulation, or standard of conduct.
<p>Examples include:</p> <ul style="list-style-type: none"> - Being late with assignments - Quality of work being minimally successful or unsatisfactory - Quantity of work being minimally successful or unsatisfactory - Work not being completed in a timely manner - Poor customer service knowledge and skills - Poor organizational skills - Incomplete work - Missing important deadlines 	<p>Examples include:</p> <ul style="list-style-type: none"> - Misuse of government equipment, vehicle, charge card, etc. - Time and leave abuse - Excessive tardiness, absenteeism - Travel voucher fraud - Sexual harassment - Working under the influence of drugs or alcohol - Disruptive/disorderly conduct or use of insulting, intimidating, or abusive language - Deliberately make false statements - Failure to comply with safety standards - Failure to delay in carrying out instructions - Refusal to follow a direct order - Falsification of government records or documents - Theft
<p><u>DoDI 1400.25 Vol 431</u>, DoD Civilian Personnel Management System: Performance Management and Appraisal Program</p> <p><u>CNGBI 1400.25 Vol 431</u>, National Guard Technician Performance Appraisal Program</p> <p><u>ONGJ1 1400.25 Vol 431</u>, ONG Technician Performance Management</p>	<p><u>CNGBI 1400.25 Vol 752</u>, National Guard Technician and Civilian Personnel Discipline and Adverse Action Program</p> <p><u>ONGTPR 752</u>, Ohio National Guard Technician Personnel Regulation – Conduct Management</p> <p><u>CBA</u> dated Oct 2018</p> <p><u>Conduct Management SOP</u></p>
<p>DoDI – Department of Defense Instruction</p> <p>CNGBI – Chief, National Guard Bureau Instruction</p> <p>ONGJ1 – Ohio National Guard J1</p>	<p>ONGTPR – Ohio National Guard Technician Personnel Regulation</p> <p>CBA – Collective Bargaining Agreement</p>

APPENDIX W

Performance vs. Conduct		
Description	Performance 5 USC Chapter 43	Conduct 5 USC Chapter 75
Critical Element	Agency <i>must</i> prove the performance deficiency is in a critical element	Agency is <i>not</i> required to prove the performance deficiency is in a critical element
Establishment of Performance Expectations	When the employee's performance in one or more critical elements is unacceptable, the employee will: (1) be notified of the deficiency; (2) be offered the agency's assistance to improve; and (3) be warned that continued poor performance could lead to a change to lower grade or removal. (This is commonly referred to as the PIP, an abbreviation for both performance improvement plan and also for performance improvement period.)	The extent to which an employee is on notice of the agency's expectations is a factor in determining the appropriateness of the penalty. Also, an agency cannot require that an employee perform better than the standards that have been communicated to the employee.
Decline Following Improvement	If the employee's performance improves during the PIP, and remains acceptable for 1 year, a new PIP is necessary before taking an action under this chapter for a recurrence of a decline performance.	A PIP is not required.
Efficiency of the Service	Agency is <i>not required</i> to prove that the personnel action will promote the efficiency of the service.	Agency <i>must</i> prove that the personnel action will promote the efficiency of the service.
Burden of Proof	Action must be supported by substantial evidence: that a reasonable person might find the evidence supports the agency's findings regarding the poor performance, even though other reasonable persons might disagree	Action must be supported by a preponderance of the evidence: that a reasonable person would find the evidence makes it more likely than not that the agency's findings regarding the poor performance are correct.
Advance Notice	The agency must provide a notice of proposed action 30 days before any action can be taken, and must provide the employee with a reasonable opportunity to reply before a decision is made on the proposal.	The agency must provide a notice of proposed action 30 days before any action can be taken, and must provide the employee with a reasonable opportunity to reply before a decision is made on the proposal.
Proposed Action Notice Content	The notice must state the specific instances of unacceptable performance that are the basis for the action and also the critical performance element involved.	The notice must state the specific instances of poor performance and/or conduct that are the basis for the action.

Performance vs. Conduct		
Description	Performance 5 USC Chapter 43	Conduct 5 USC Chapter 75
Deciding Official	A person higher in the chain of command than the person who proposed the action must concur.	A person higher in the chain of command than the person who proposed the action must concur.
Agency Decision	Agency must issue a final decision within an additional 30 days of the expiration of the 30 days advance notice period	Agency is under no particular time constraint, other than there cannot be a delay so extensive that it constitutes an error that harms the employee.
Penalty Mitigation	Once the agency meets the requirements to take an action, the MSPB cannot reduce the agency's penalty.	After finding that the agency meets the requirements to take a Chapter 75 action, the MSPB may reduce the agency's penalty for any action that involves suspension of more than 14 calendar days, change to lower grade/pay, or removal.
Douglas Factors	The Douglas factors are not used.	The agency must consider the relevant Douglas factors when reaching a decision on the appropriate penalty. Douglas Factors are defined in the Proposed Action and utilized as part of the agency decision.
Time Limits	Time limited to performance deficiencies occurring within the 1 year prior to the proposal notice.	No time limit for inclusion of "incident/charges."
Affirmative Defenses	The agency action will not be sustained if the employee was harmed by the agency's failure to follow procedures, if the agency decision was reached as a result of the commission of a prohibited personnel practice, or if the decision is otherwise not in accordance with the law.	The agency action will not be sustained if the employee was harmed by the agency's failure to follow procedures, if the agency decision was reached as a result of the commission of a prohibited personnel practice, or if the decision is otherwise not in accordance with the law.

APPENDIX X

REMOVAL DURING PROBATIONARY PERIOD

References: OHTPR 752, Chapter 4 c.
CNGBI 1400.25, Vol. 752, Encl H-4, 9.
ONGJI 1400.25, Vol. 431, Chapter 2-4

Newly hired Permanent and Indefinite NG Technicians and Employees are required to serve a 1-year probationary period. Temporary Employees do not serve a probationary period.

- You can remove your employee at any time during their probationary period if they are not performing at minimum Fully Successful Level 3, and/or has demonstrated deficiencies.
- A 30-day notice is NOT required.
- Supervisor must provide the employee with a written notice with a general conclusion about deficiencies, effective date of removal, and that they do not have the ability to grieve or appeal the removal.
- The notice of removal must be presented to the employee prior to the end of their probationary period.
- Supervisor must submit the following documents to HRO, Resources Branch:
 - Signed copy of the Notice of Removal during Probationary Period. Refer to [Appendix Y](#).
 - SF-52, Request for Personnel Action, (Action Requested: Removal during Probationary Period)

Contact The Labor Relations Specialist for guidance.

NOTE: A removal can occur at **any** time during a probationary period, however, *it is recommended* that supervisors considering removal, complete the necessary action **NO LATER THAN** one full pay period prior to the end of the probationary period. A notice of removal cannot be presented to the employee **after** the last full day of their probationary period.

APPENDIX Y

UNIT/WING LEADERHEAD

OFFICE SYMBOL (if applicable)

DATE

MEMORANDUM FOR (RANK/SALUTATION, NAME)

SUBJECT: Removal of Probationary Status Employee

1. This memorandum is to inform you that your services are no longer required for your position as (insert position title) in (insert duty location).

2. After consideration of your recent performance and/or conduct during the probationary period, it has been concluded that the interests of the service and this organization are best served by removing you from employment.

3. Your last day of employment will be (insert date DD Month YYYY)

4. The following provisions apply to a removal action during the one-year probationary period can be found in TPR 752 or CNGBI 1400.25, Vol 752:

a. The removal action must be completed within the probationary period.

b. Adverse action procedures contained in TPR 752 or CNGBI 1400.25, Vol 752 do not apply to discharge during the probationary period.

c. The employee has no appeal rights.

d. There is no statutory notice period.

5. POC for questions is the undersigned at (insert email address) or the Labor Relations Specialist, Mrs. Cheryl Clark at cheryl.l.clark.civ@mail.mil.

SUPERVISOR SIGNATURE BLOCK
(Rank, Branch)
(Position)

SUBJECT: Removal of Probationary Status Employee

I, (print Name), understand that I will be removed from NG Employee appointment effective (insert date).

(Insert Name) Signature

Date

APPENDIX Z

REFERENCES

- b. [CNGBI 1400.25, Vol 293](#), 25 July 2018, “National Guard Supervisor’s Employee Work Folder Program”
- c. [Collective Bargaining Agreement \(CBA\)](#), Revision #03 effective 26 October 2018
- c. [OH TPR 752](#), 19 September 2011, “Discipline and Adverse Action”
- d. [CNGBI 1400.25, Vol 752](#), 29 June 2020, “National Guard Technician and Civilian Personnel Discipline and Adverse Action Program”
- e. [TPR 752-1](#), 27 August 2010, “Adverse Action Appeals and the National Guard Hearing Examiner Program”
- f. [CNGBI 1400.25, Vol 753](#), 29 June 2020, “National Guard Technician and Civilian Personnel Adverse Action Appeals and Hearing Examiner Program”
- g. [5 U.S.C. Chapter 75](#), “Adverse Actions”
- h. [What is Due Process in Federal Civil Service Employment?](#) A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, May 2015
- i. [ONGJI 1400.25, Vol. 431](#), 4 May 2018, “Technician Performance Management Program”

APPENDIX AA

GLOSSARY/ACRONYMS

AWOL	Absent Without Leave
BUE	Bargaining Unit Employee
CBA	Collective Bargaining Agreement
CFR	Code of Federal Regulations
CNGBI	Chief of the National Guard Bureau Instruction
DCPDS	Defense Civilian Personnel Data System
EEOC	Equal Employment Opportunity Commission
EO	Executive Order
HRO	Human Resources Officer
IAW	In accordance with
JAG	Judge Advocate General
LCA	Last Chance Agreement
LRO	Labor Relations Office
LRS	Labor Relations Specialist
MSPB	Merit Systems Protection Board
NBUE	Non-Bargaining Unit Employee
NG	National Guard
NGB	National Guard Bureau

APPENDIX BB

DEFINITIONS

Absent Without Leave -- Absent from duty not authorized by the proper leave-approving official.

Adjudicative Guidelines -- Federal guidelines established for determining eligibility for access to classified information.

Administrative Grievances -- Individual or group complaints regarding work conditions, employment decisions, etc.

Adverse Action -- An official personnel action, usually taken for disciplinary reasons, that adversely affects an employee and is of a severity that a suspension, reduction in grade or status, or removal is warranted.

Cause -- The reason that the adverse action is being proposed.

Classified Information -- The Department of Defense Dictionary, Joint Publication 1-02, defines classified information as "Official information that has been determined to require, in the interests of national security, protection against unauthorized disclosure and has been so designated."

Collective Bargaining Agreement -- A written agreement between the agency and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

Days -- Calendar days.

Derogatory Information -- Information that reflects on the integrity or character of an individual, or circumstances suggesting that a person's ability to safeguard national security information may be impaired, that a person's access to classified or sensitive information clearly may not be in the best interest of national security, or that a person's activity may be in conflict with the personnel security standards or adjudicative guidelines.

Disciplinary Action -- Letter of reprimand or adverse action.

Douglas Factors -- Factors that management must weigh in deciding an appropriate course of action observing the principle of "like penalties for like offenses in like circumstances"

Egregious -- Actions or behaviors that are staggeringly bad, or obviously wrong, beyond any reasonable degree.

Grievance -- A request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction that is subject to the control of agency management and related to their employment.

Indefinite Suspension -- Placing an employee in a temporary status without duties and pay, and pending investigation, inquiry, or further agency action.

Letter of Reprimand -- A disciplinary action without an adverse action connected to it.

Metz Factors -- Named for the case *Metz v. Department of the Treasury*, these are a means for evaluating whether a threat has actually occurred, based on the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the remarks, and the circumstances surrounding the incident.

Misconduct -- An employee's failure to comply with a regulation, rule, requirement, order, or instruction.

National Guard Employees -- Title 32 military technician (dual status) excepted service employees and Title 5 National Guard excepted or competitive service employees within the State.

Negotiated Grievance -- Employees who are covered by a collective bargaining agreement may exercise their right to file a negotiated grievance. A grievance is a complaint of an employee or labor organization concerning a claimed violation or misapplication of the collective bargaining agreement or any law, rule, or regulations affecting conditions of employment.

Nexus -- A connection or link between conduct occurring away from the workplace or outside of the employee's duty day and the employee workforce. Where a nexus is alleged, it must be fully explained in the cause portion of the letter. There must be a clear nexus between efficiency of the service and the debt complaint.

Non-disciplinary Action -- Communication from a supervisor requiring an employee to stop or to not repeat misconduct that is an offense stated in OH TPR 752 and CNGBI 1400.25 Vol. 752 Table of Penalties for Various Offenses.

Preponderance of Evidence -- The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. A supervisor issuing a letter of reprimand must determine by a preponderance of the evidence that the facts supporting the issuance of the letter of reprimand are substantiated. Prior to serving a proposed action letter, a supervisor must develop the facts by a preponderance of the evidence that constitute cause for the adverse action.

Procedural Advice -- Technical assistance provided by a Human Resources Officer, usually the Labor Relations Specialist, to assist an employee with procedures regarding the adverse action process.

Range of Penalties -- Penalties graduated in severity based on whether the alleged offense is the first, second, or third and possibly depending on mitigating or aggravating factors impacting relative degrees of culpability (for example: employee A improperly appropriates \$5 from a coworker's wallet without permission to buy lunch and is given a short suspension, whereas employee B takes without permission \$1000 without permission from unit morale funds to pay for a family vacation and is removed at the first offense).

Rebuttable Presumption -- A particular rule of law that may be inferred from the existence of a given set of facts and that is conclusive absent contrary evidence.

Reportable Behavior -- Acts by persons with favorable national security Eligibility determinations that may not be consistent with the interests of national security.

Sexual Harassment -- Influencing, offering to influence, or threatening the career, pay, job, or work assignment of another person in exchange for sexual favors; or deliberate or repeated offensive comments, gestures, or physical contact of a sexual nature.

Supervisor -- In accordance with reference e, an individual employed full-time by an agency and having authority to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove employees; adjust their grievances; or effectively recommend such action. The performance of one or more of these duties qualifies an employee as a "supervisor" for labor relations purposes and excludes the employee from the bargaining unit.

Weingarten Rights -- The rights of a bargaining unit employee to have union Representation during an investigation when potential discipline may result.