

NAWCWDINST 12751.1
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13 Feb 2001

NAWCWD INSTRUCTION 12751.1

From: Commander, Naval Air Warfare Center Weapons Division

Subj: DISCIPLINARY/ADVERSE PERSONNEL ACTIONS

Ref: (a) CPI 752 OF 11 Nov 89

Encl: (1) Definitions of Terms
(2) Procedural Requirements for Taking Disciplinary Actions
(3) Schedule of Offenses and Recommended Remedies

1. Purpose. To establish policies and guidance on formal and informal disciplinary and adverse personnel actions at the Naval Air Warfare Center Weapons Division (NAWCWD). Actions from oral admonishments through removals are addressed in this instruction.
2. Cancellation. NAWCWPNSINST 12751.1.
3. Policy. NAWCWD policy is to promote workplace efficiency by taking prompt and appropriate disciplinary action to correct deficiencies in employee conduct and performance; to maintain discipline and morale among employees; and to correct situations that interfere with efficient operations. Enclosure (1) defines the terms used in this instruction; enclosure (2) addresses the procedures involved in specific types of disciplinary actions; and enclosure (3) defines many disciplinary offenses and gives the remedy ranges suggested by the Department of the Navy in reference (a).
4. Background. Consolidation has necessitated issuing a combined NAWCWD policy for all covered employees. Follow applicable provisions of contracts with labor organizations at each location.
5. Scope
 - a. Employees. This instruction applies to all NAWCWD employees, except:
 - (1) Individuals paid with non-appropriated funds
 - (2) Re-employed annuitants

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(3) Excepted service appointees under schedule C, part 213 of Title 5, Code of Federal Regulations (CFR)

(4) Individuals appointed by the President

(5) Individuals in a statutorily-excepted position that was determined to be confidential, policy-determining, policy-making, or policy-advocating character by the President, the U.S. Office of Personnel Management, or the Secretary of the Navy

(6) Career appointees in the Senior Executive Service (SES) serving a probationary period, or not covered by section 7511 of Title 5, United States Code (USC), immediately before appointment to the SES

(7) Limited term, or limited emergency SES appointees not described as a covered employee under CFR 752.601

b. Discipline and Adverse Actions. This instruction applies to non-disciplinary, disciplinary, and adverse actions. This includes oral admonishments, letters of caution, letters of requirement, and reprimands, suspensions, demotions, and removals. It does not include reduction-in-level as a result of downward migration under the Demonstration Project nor those actions excluded by reference (a), such as:

(1) A reduction-in-force action

(2) The reduction in grade level of a supervisor or a manager who did not satisfactorily complete the probationary period

(3) An action initiated under authority of the Special Counsel or taken at the direction of the Merit Systems Protection Board (MSPB)

(4) An action that entitles an employee to grade retention, and an action to terminate this entitlement

(5) A voluntary action initiated by the employee

(6) An action taken or directed by the Office of Personnel Management for suitability reasons

(7) Termination of appointment on or before the expiration date specified as a basic condition of employment at the time the appointment was made

(8) "Discharge" actions (e.g., removal of probationary and temporary employees)

(9) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation to a rate that is required or permitted by law or regulation

(10) An action against a re-employed annuitant

6. Forms. SF 50 (Rev. 7-91), Notification of Personnel Action, is available on the NAWCWD Web Page at: <http://mailfilerecords.nawcwd.navy.mil/> or at: http://hydra.gsa.gov/forms/pdf_files/sf50.pdf

7. Directive Responsibility. The Head, Human Resources Department, Code 730000E, is responsible for keeping this instruction current.

/s/
R. B. Ormsbee

DEFINITIONS OF TERMS

1. Adverse Action. A removal, a suspension of more than 14 days, an indefinite suspension, a reduction in pay or grade level, or a furlough of 30 days or less.
2. Appealable Action. An action that is appealable to the Merit Systems Protection Board, i.e., suspension of more than 14 calendar days, reduction in grade or pay for disciplinary reasons, or removal.
3. Crime Provision. Reasonable cause exists that the employee has committed a crime for which a sentence of imprisonment can be imposed; thus, a shortened notice period can be used for a proposed removal action.
4. Days. Calendar days.
5. Grievable Disciplinary Action. An action grievable under either a negotiated or an administrative grievance procedure, as applicable.
6. Letter of Caution. Written notification issued to an employee concerning unacceptable conduct, and warning an employee that a disciplinary action can be imposed unless the conduct improves.
7. Letter of Reprimand. Written disciplinary action issued to an employee based on specific unacceptable conduct or performance deficiencies.
8. Letter of Requirement. Written notification issued to an employee concerning conduct deficiencies, such as sick leave abuse or tardiness, that furnishes requirements and procedures the employee must follow to avoid a future disciplinary action for similar deficient conduct.
9. Nondisciplinary Action. Actions such as an oral admonishment or a letter of caution that are not grievable under the administrative grievance procedure, but can be grieved under the provisions of a negotiated grievance procedure.
10. Oral Admonishment. A verbal warning to the employee that a disciplinary action or a letter of requirement can be imposed for continued deficiencies (given to an employee concerning conduct deficiencies).
11. Removal. The involuntary separation of an employee from the Federal Service, except when taken as a reduction-in-force.
12. Suspension. Temporary placement of an employee in a status without duties or pay, for disciplinary reasons.

PROCEDURAL REQUIREMENTS FOR TAKING DISCIPLINARY ACTIONS

1. Purpose. The following information defines the specific procedures for taking disciplinary actions. It assumes the supervisor has obtained the necessary information and has explored all options for dealing with the employee's actions. Because procedural violations can sometimes jeopardize otherwise sound managerial decisions to discipline, supervisors are required to consult with their Personnel Management Advisor for advice and assistance in determining the consistency of remedies when deciding the disciplinary action; appropriate wording of the charge; consideration of mitigating factors; and to ensure conformance with this instruction. To the extent possible, investigations preceding disciplinary actions should be conducted in an expeditious manner and actions should be taken promptly to correct employee deficiency in conduct or performance.
2. Categories of Discipline. The specific procedures to take to effect non-disciplinary and disciplinary actions depend on the category of the proposed action selected. The three categories of disciplinary actions are:
 - a. Non-disciplinary Actions. Includes oral admonishments and letters of caution.
 - b. Grievable Actions. Includes letters of reprimand, letters of requirement, suspensions up to 14 calendar days, and other actions as applicable according to collective bargaining agreements or the administrative grievance procedures.
 - c. Appealable Actions. An adverse action that includes suspensions of more than 14 calendar days, furlough of less than 30 days, reductions in grade or pay for disciplinary reasons, or removals. Adverse actions are generally taken when less severe disciplinary action fails to correct an employee's conduct. Depending on the gravity of the offense, however, adverse action can be initiated for a first offense. Adverse actions can be taken only for such cause as will promote the efficiency of the service.
3. Non-disciplinary Action Procedures
 - a. An oral admonishment will not be:
 - (1) Made a matter of record in an employee's Official Personnel Folder.
 - (2) Counted as a prior offense in subsequent actions when determining the appropriate remedy. However, it can be used to demonstrate a pattern of behavior.
 - b. A letter of caution will:
 - (1) State the reasons for its issuance.

(2) Specify that failure to correct the infraction can lead to disciplinary action.

(3) Not be made a matter of record in the employee's Official Personnel Folder.

(4) Not be counted as a prior offense when determining appropriate remedies for future disciplinary actions, but can be considered.

c. A letter of requirement will:

(1) State the reasons for its issuance.

(2) Include the specific requirement(s) the employee must meet, and the length of time a requirement is in effect.

(3) Specify that failure to meet a requirement can lead to disciplinary action.

(4) Include the employee's right to file an administrative or negotiated grievance, if appropriate.

(5) Not be made a matter of record in the employee's Official Personnel Folder.

(6) Not be counted as a prior offense when determining appropriate remedies for future disciplinary actions, but can be considered.

4. Disciplinary Action Procedures

a. A letter of reprimand will:

(1) State the reason for its issuance.

(2) Include the employee's right to file an administrative or negotiated grievance.

(3) Be made a matter of record in the employee's Official Personnel Folder for no less than 1 year and up to 2 years.

(4) Be counted as a prior offense for up to 2 years when determining a remedy for future disciplinary actions.

b. A suspension of 14 calendar days or less is processed as follows:

(1) Provide advance written notice that includes:

(a) The specific reasons for the proposed action.

(b) The name and title of the deciding official. This official will hear an oral reply or receive the written reply.

(c) The right of the employee or the employee's representative to review the material that supports the reasons given in the proposal.

(2) If the employee is otherwise in an active duty status, the employee is allowed a reasonable amount of official time to review the material used to support the proposal, prepare an answer, and secure affidavits.

(3) The employee is allowed 5 days to answer orally or in writing and to furnish affidavits and other documentary evidence in support of the answer. An extension can be granted, if appropriate. The official designated to accept the response will make the final decision regarding this request.

(4) An attorney or other representative is allowed to represent the employee.

(5) At the earliest practical date, a written decision is made that:

(a) Considers only the charges specified in the proposal.

(b) Considers any answer of the employee or the representative made to the designated official (including any documentation provided by the employee or representative).

(c) Specifies the reasons for the decision.

(d) Specifies the employee's right to file an administrative or negotiated grievance.

(e) States that the SF 50, Notification of Personnel Action, becomes a permanent part of the employee's Official Personnel Folder.

(f) Is signed by an official in a higher position than the official who proposed the action (normally Level 3, but can be delegated to no lower than Level 4). In rare circumstances the Commander is the processing official and also can serve as the deciding official.

(g) Is delivered to the employee on or before the effective date of the suspension.

5. Adverse Action Procedures. An employee against whom an appealable disciplinary action is proposed is entitled to:

a. At least 30 days advance written notice (unless the "crime provision" is invoked) that states:

(1) The specific reasons for the proposed action.

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

(3) Ten days is allowed for the employee to answer orally or in writing. (An extension can be granted if appropriate.)

(4) The right of the employee or the employee's representative to review the material that supports the reasons given in the proposal.

b. If otherwise in an active duty status, a reasonable amount of official time to review the material relied on to support the proposal, to prepare an answer, and to secure affidavits.

c. At least 10 calendar days to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer. An extension can be granted, if appropriate. The official designated to accept the response will make a final decision regarding such a request.

d. Be represented by an attorney or other representative.

e. At the earliest practical date, a written decision that:

(1) Considers only the charges specified in the notice of proposed action.

(2) Considers any response (oral, written, and associated documentation) of the employee or the representative made to the designated official.

(3) Specifies the reasons for the decision.

(4) Is signed by an official in a higher position than the official who proposed the action (normally Level 3, but can be delegated to no lower than Level 4). In rare circumstances the Commander is the proposing official, and also can serve as the deciding official.

(5) Specifies the employee's appeal rights to the Merit Systems Protection Board; or, where allegations of discrimination were raised before issuance of the decision, the right to file an equal employment opportunity (EEO) complaint; or, when applicable, the right to file a grievance under a negotiated grievance procedure.

(6) States that the SF 50 (Rev. 7-91), Notification of Personnel Action, is a permanent part of the employee's Official Personnel Folder.

(7) Is delivered to the employee on or before the effective date of the action.

6. Disallowance of Representation. An employee's choice of an employee representative can be disallowed if that representative would result in a conflict of interest or position, would

conflict with the priority needs of NAWCWD, or would give rise to unreasonable costs to the Government. The terms of any applicable bargaining agreement govern representation for employees in a bargaining unit.

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

1. Instructions for Use

a. This schedule is not intended to cover every possible disciplinary offense. Remedies for offenses not listed are determined in a manner that is consistent with the schedules given in paragraph 4.

b. When specifying an offense not listed on the schedule, do not use terms such as “theft” or “fraud”, which require establishing the element of intent, unless the element of intent can be proven.

c. Many of the items listed on this schedule combine several offenses in one statement, connected by the word “or”. Use of the word “or” in a charge makes it nonspecific. Therefore, use only the items that describe the employee’s actual conduct and leave out the parts that do not apply.

d. Remedies for offenses normally should fall within the range shown in the schedule unless mitigating or aggravating factors justify a remedy outside the range. For example, remedies greater than those shown can be appropriate when an aggravated offense, frequent infractions, or simultaneous multiple offenses are established. Since ongoing Merit Systems Protection Board Decisions can impact this area, consult with the appropriate Personnel Management Advisor.

e. As noted in enclosure (1), the schedule of remedies refers to calendar days, not work days.

2. Past Offenses

a. When used to select a range of remedies or remedy, describe a past offense in sufficient detail to enable the employee to understand and respond to it. Use past offenses to determine a range of remedies or remedy when:

- (1) The employee was disciplined in writing
- (2) The employee was provided the opportunity to dispute the action to a higher level
- (3) The action was made a matter of record in the employee’s Official Personnel Folder

b. Any past offense can form the basis for proposing a remedy from the next higher range of remedies for a subsequent offense. The offenses need not be identical or similar.

c. The following actions are not counted as past offenses for determining a range of remedies (however, you can consider the actions stated in subparagraphs (1), (2), and (3) below when determining an appropriate remedy within a range for any subsequent offense):

(1) Oral admonishments and letters of caution or requirement

(2) Letters of reprimand dated more than 2 years before the date of any advance written notice required under this instruction

(3) Suspension actions dated more than 3 years before the date of any advance written notice required under this instruction

(4) Reductions in grade or pay not effected for disciplinary reasons

d. Due to the nature of their positions, offenses by supervisors or managers could warrant more severe remedies than the same offense committed by a non-supervisory employee.

3. Other Statutory and Regulatory Offenses. For information concerning other offenses for which employees can be disciplined by removal, fine, or imprisonment, including offenses that require minimum mandatory remedies (such as willful misuse of government vehicles, Hatch Act violations, and giving gifts to superiors), see SECNAVINST 5370.2J and Federal Personnel Manual (FPM), chapter 735.

4. Range of Remedies

<u>OFFENSE</u>	<u>REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
a. <u>ALCOHOL ABUSE</u>			
Unauthorized possession, sale, or transfer of alcohol on duty or on a military ship, aircraft, or installation.	14-day suspension to removal	30-day suspension to removal	Removal
Use of, or being under the influence of alcohol on duty or on a military ship, aircraft, or installation.	14-day suspension to removal	30-day suspension to removal	Removal
<u>OFFENSE</u>	<u>REMEDIES</u>		

	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
b. <u>ATTENDANCE</u>			
Excessive unauthorized absence (more than 5 consecutive workdays).	Reprimand to removal	10-day suspension to removal	Removal
Leaving job to which assigned or Department of the Navy premises at any time during working hours without proper authorization.	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Unexcused tardiness.	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
c. <u>DISCRIMINATION</u>			
Discrimination against an employee or applicant based on race, color, religion, sex, handicap, national origin, or age, or any reprisal or retaliation action against a complainant, representative, witness, or other person involved in the EEO complaint process.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>OFFENSE</u>		<u>REMEDIES</u>	
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>

Sexual harassment.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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d. DRUG ABUSE

Unlawful use or possession of drugs or drug paraphernalia on- or off-duty.	Reprimand to removal	Removal	
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Unlawful distribution, sale, or transfer of drugs or drug paraphernalia on- or off-duty.	Removal		
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Unlawful use or possession of drugs or drug paraphernalia on a military ship or aircraft.	Removal		
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e. DRUG TESTING

Refusal to provide a urine sample when required.	Reprimand to removal	Removal	
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Substituting, adulterating or otherwise tampering with a urine sample, testing equipment, or related paraphernalia.	30-day suspension to removal	Removal	
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Attempted or actual falsification, misstatement or concealment of a material fact, record, correspondence, or other communication prepared in connection with the collection, handling, transportation, or testing of urine samples.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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OFFENSE

REMEDIES

FIRST
OFFENSE

SECOND
OFFENSE

THIRD
OFFENSE

f. MISCELLANEOUS OFFENSES

Betting, gambling, or its promotion on duty or on Department of the Navy premises.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Careless workmanship resulting in delay in production, or spoilage, or waste of materials.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Criminal, dishonest, infamous, or notoriously disgraceful conduct.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Disobedience to constituted authorities; deliberate refusal, failure, or delay in carrying out any proper order, work assignment, or instruction; insubordination, including failure to follow local or higher level policy.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Disrespectful conduct, use of insulting, abusive, or obscene language to or about other personnel.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Falsification, misstatement, or concealment of material fact in connection with any official record.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

OFFENSE

REMEDIES

FIRST OFFENSE

SECOND OFFENSE

THIRD OFFENSE

False testimony or refusal to testify in an inquiry investigation, or other	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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official proceeding.

Loafing; wasting time, inattention to duty, or sleeping on duty.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
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Making threats to other employees or supervisor, fighting, engaging in dangerous horseplay.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
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*Misuse of a government vehicle.	Reprimand to removal	30-day suspension to removal	Removal
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Reckless driving or improper operation of motor vehicle:

Causing personal injury to self or others or damage to government property.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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No personal injury to self or others or damage to government property.	Reprimand to 5-day suspension	Reprimand to 10-day suspension	14-day suspension to removal
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Unauthorized possession, use, loss, or damage to government property or the property of others.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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OFFENSE

REMEDIES

FIRST OFFENSE

SECOND OFFENSE

THIRD OFFENSE

g. PROHIBITED PERSONNEL PRACTICE

Committing a prohibited personnel practice (see 5 U.S.C. 2302).	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
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h. SAFETY

Failure to observe posted smoking prohibitions.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to use protective clothing or equipment.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

*31 U.S.C. 1349 (b) requires a minimum suspension of one month even for the first offense, if the misuse was willful; i.e., employee acted either with knowledge that the intended use would be characterized as unofficial or with reckless disregard of whether such use was unofficial.

Violation of safety or traffic Regulations on duty or on an installation (on-or off-duty):

Causing injury to self or others or damage to property, or endangering the safety of or endangering self or others.	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
No injury or property damage; not endangering the safety of self or others.	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal

OFFENSE

REMEDIES

FIRST OFFENSE

SECOND OFFENSE

THIRD OFFENSE

i. SECURITY

Failure to safeguard classified material:

Security compromised.	Reprimand	14-day to removal	Removal suspension
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			to removal
Security not compromised.	Reprimand to 5-day suspension	Reprimand to 14-day suspension	30-day suspension to removal
j. <u>UNAUTHORIZED DISCLO- SURE OR USE OF PRO- TECTED MATERIAL</u>			
Unauthorized disclosure or use of information or other protected material (e.g., records covered by the Privacy Act or under 42 CFR part 2, CEAP records).	Reprimand to removal	14-day suspension	30-day suspension