

# **CHAPTER 1 DUE PROCESS**

## **101. PURPOSE**

This policy contains the guidance and procedures for processing disciplinary actions, involuntary reductions in grade or pay, furloughs of 30 days or less, and removal actions. All actions covered by this policy shall be processed in accordance with the procedures set forth Disciplinary and removal actions taken for conduct will be administered in accordance with FAA Order 3750.4, Conduct and Discipline and other applicable FAA policies in effect at the time of the action. This policy shall not apply to bargaining unit employees covered by a collective bargaining agreement as of April 1, 1996.

## **102. DEFINITIONS**

A. EMPLOYEE: A permanent employee of the FAA who is not serving a probationary or trial period.

B. EMPLOYER: Any element of management who exercises direct or indirect supervision over employees.

C. SUSPENSION: The placing of an employee in an involuntary nonduty and nonpay status for disciplinary reasons.

D. GRADE AND PAY: The grade level or rate of basic pay fixed by law or administrative action for the position held by employee.

E. DAY: Calendar day.

## **103. RIGHT TO SEEK ADVICE AND GUIDANCE**

An employee is entitled to communicate with and seek advice from:

A. The servicing Human Resource Management Division.

B. The Director of Civil Rights in Washington, D.C., or managers of Civil Rights staffs in the regions and centers or an officially designated equal employment opportunity counselor.

C. A supervisor or management official of higher rank than the employee's immediate supervisor who will provide counsel on the procedures of the case, but who will not review the merits.

#### **104. STANDARD FOR ACTION**

All actions covered by this policy will be taken only for such cause as will promote the efficiency of the service.

#### **105. COVERAGE**

The following actions are covered in this chapter: written reprimands; suspensions; reductions in grade and pay for conduct; furloughs of 30 days or less and removals based on conduct; reductions in grade and/or pay and removals based on unacceptable performance; and nondisciplinary removals.

#### **106. ACTIONS NOT COVERED**

A. A reduction in grade or pay of a supervisor or manager who has not completed a probationary period if such a reduction in grade or pay is to the grade and pay the employee held immediately before becoming a supervisor.

B. Terminations of employees in probationary/trial periods, other than supervisory/managerial probationary period.

C. Actions involving an appointive employee subject to Senate confirmation or whose position is in a policy-determining or advocating nature (including Schedule C employees).

D. Actions involving an employee whose position is downgraded as a result of reclassification and who has been granted grade and pay retention.

E. Actions involving an employee on a temporary appointment.

F. Termination of temporary promotions.

G. Actions involving reduction-in-force procedures.

H. Termination of reemployed annuitants.

I. Placement in a nonpay status as the result of a lapse of appropriation or action by Congress.

## **107. PROCEDURES**

### **A. FACTORS TO CONSIDER**

Supervisors are responsible for determining if corrective disciplinary action is warranted. Whether the action decided upon is formal or informal, the following principles should be observed in determining the severity of the discipline:

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, technical, or inadvertent; was committed maliciously or for gain; or was frequently repeated.
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee's past disciplinary record.
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.
6. Consistency of the penalty with penalties imposed upon other employees for the same or similar offenses.
7. Consistency of the penalty with any applicable FAA table of penalties.
8. The notoriety and/or egregiousness of the offense or its impact upon the reputation of the FAA.
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.
10. The employee's potential for rehabilitation.
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice, or provocation on the part of others involved in the matter.

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

NOTE: Not all factors apply in every case. Some of the factors may weigh in the employee's favor, while others may not or may even constitute aggravating circumstances. All factors must be considered and a responsible balance reached. The above factors do not apply to actions based on performance or nondisciplinary removals.

#### B. GENERAL NOTICE REQUIREMENTS:

All written notices of proposed disciplinary or removal action covered by this policy must be received by the employee in advance of the proposed effective date as noted below and will contain the following information:

1. The specific reason(s) for the proposed action. The reason(s) and specifications must be in sufficient detail for the employee to make a reply;
2. The employee's right to make an oral and/or written reply, the time limits to do so, and to whom the reply should be made;
3. The employee's right to representation (see section 107(D)); and
4. A copy of all of the material relied upon to support the proposed action unless otherwise prohibited by law.

#### C. ACTIONS:

1. **WRITTEN REPRIMAND:** No advance notice (written notice of proposed disciplinary action) is required. A decision to reprimand is signed by the deciding official, usually the immediate supervisor. The employee may file an oral and/or written reply within 15 days from receipt of the reprimand with the deciding official. If the reprimand is sustained after consideration of the reply, it will be placed in the official personnel folder (OPF) along with the employee's response. If no reply is made within these time limits, the reprimand will be placed in the employee's OPF for a period not to exceed 2 years.

2. **SUSPENSIONS:** The notice of proposed action will be in writing and signed by the deciding official. The employee will be given 15 days to reply either orally and/or in writing after receipt of the proposal letter, except as provided for in section 107(G). After receipt and consideration of the employee's reply, the deciding official will issue a final decision within 10

days. If no reply is made within the time limit, the deciding official will issue the final written decision.

3. REDUCTIONS IN GRADE AND/OR PAY: The notice of proposed action will be in writing and signed by the deciding official and received by the employee at least 30 days in advance of proposed effective date. The employee will have 15 days to respond orally and/or in writing after receipt of the proposal letter. After receipt and consideration of the employee's reply, the deciding official will issue the final decision within 10 days. If no reply is made within the time limit, the deciding official will issue the final written decision.

4. REMOVALS: The notice of proposed action will be in writing and signed by the deciding official and received by the employee at least 30 days prior to the proposed effective date, except as provided in section 107(G). The employee will have 15 days to make an oral and/or written reply after receipt of the proposal letter. After receipt and consideration of the employee's reply, the deciding official will issue the final decision within 10 days. If no reply is made within these time limits, the deciding official will issue the final written decision.

5. FURLOUGHS: The notice of proposed action will be in writing and signed by the deciding official and received by the employee at least 30 days prior to the proposed effective date. The employee will have 15 days to make an oral and/or written reply after receipt of the proposal letter. After receipt and consideration of the employee's reply, the deciding official will issue the final decision within 10 days. (The above notice and time to reply limits may be shortened in the event that the FAA must furlough employees due to emergency conditions not within the FAA's control.)

#### D. REPRESENTATION:

An employee is entitled to have a representative or attorney of his/her choice to be present during the presentation of any reply to the deciding official, provided the attendance of the representative or attorney does not require a delay in the proceedings. The employee may also designate his/her representative to make the reply, on his/her behalf, to the deciding official. If the employee's representative is an FAA employee, he/she shall be charged excused absence if otherwise in a duty status to be present during the reply presentation; however, the request for representation by an FAA employee can be denied if either operational considerations or the nature of the requested representative's official duties presents a conflict. A decision to deny a request for representation by an FAA employee shall be made by the head of the requested representative's line of business/staff.

Travel for the employee's representative will not be paid by the FAA. Employees will be accommodated with schedule changes as necessary to perform their duties as representatives.

E. TIME TO REPLY:

The employee and/or his/her designee will be given an opportunity to make an oral and/or written reply within the time limits specified above and to furnish affidavits and other documentation in support of his/her reply. If the deciding official cannot receive the oral reply personally, he/she shall designate a management representative to receive the reply on behalf of the deciding official. If a designee hears the reply, a written summary of the oral response and a copy of any written reply will be forwarded to the deciding official. A copy of the summary will be provided to the employee or his/her representative. An employee who is otherwise in a paid duty status will be given up to 16 hours of excused absence to review the material relied upon and to prepare any reply to a proposed suspension, reduction in grade or pay, or removal. The timing of the grant of excused absence shall, to the maximum extent possible (but consistent with operational needs), be scheduled at the employee's convenience.

F. CONTENTS OF DECISION LETTER:

A final decision shall be issued on the proposed action after the employee has made his/her reply. If no reply is made, the decision shall be issued after the expiration of the designated reply period. The written decision will contain the following information:

1. The final decision on the proposed action and the effective date of the action, if appropriate.
2. The charge(s) that were sustained and that were not and the reason(s).
3. The employee's right to file an appeal as applicable, the time limits to file such an appeal, and to whom such an appeal must be filed.

G. EXCEPTIONS:

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment may be imposed or when by the employee's conduct his/her continued presence in the work place poses an imminent threat to employees and/or FAA property, the 30-day advance notice and 15-day response period specified above are not required. In such

cases, the employee will be given a shortened notice and reply period, but at least 7 days. The employee may be removed from the work site and placed in a non-duty pay status until the final decision is effected in such cases.

#### H. DELEGATION OF AUTHORITY TO DECIDE REMOVAL, REDUCTIONS IN GRADE OR PAY, SUSPENSIONS, AND FURLOUGHS FOR 30 DAYS OR LESS.

Such actions are initiated and decided by the same official known as the deciding official. That official is usually the employee's immediate supervisor, unless otherwise specified.

### **108. APPEALS**

A. Employees may appeal a written reprimand, denial of a within-grade increase, or a suspension of 14 days or less by filing a written formal grievance as provided by the FAA grievance procedure.

B. Employees may appeal suspensions of more than 14 days, reductions in grade or pay, furloughs of 30 days or less, and removals under FAA appeals procedures. Appeals will be filed in writing and will contain the specific relief requested.

### **109. RECORDS**

All records and documents on actions taken under this policy will be maintained in accordance with FAA rules and the Privacy Act. When an employee is given advance notice, the official who proposed the action establishes a disciplinary file. If the employee appeals, the file becomes the appeal file and a copy provided to the tri-party panel at the panel's request. The file shall contain the advance notice and any employee response, material relied on to support the notice, correspondence or notations of conversations with the employee, the written summary of an oral response, a copy of the final decision, and a copy of the employee's appeal.