











































**Table 1. Table of Offenses and Penalties**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
<b>1. AWOL or Failure to Follow Leave Procedures</b>	<p>A. Any absence from the regularly scheduled tour of duty that has not been authorized and for which pay must be denied; e.g., AWOL or any unauthorized absence, unauthorized early departures, unauthorized tardiness, or unauthorized absence from the work site during duty hours.</p> <p>B. AWOL more than 5 days in duration.</p> <p><b>C. Applicable to LEOs and other weapon carriers only:</b></p> <p>Failure to assume assigned post in a timely manner. Leaving assigned post without being properly relieved or authorized by a supervisor.</p>	<p>Written reprimand to 5-day suspension</p> <p>14-day suspension to removal</p> <p>Written reprimand to removal</p>	<p>5-day suspension to removal</p> <p>Removal</p> <p>5-day suspension to removal</p>	<p>14-day suspension to removal</p> <p>Removal</p>
<b>2. Failure to Follow Established Leave Procedures</b>	Failure to follow established leave procedures.	Written reprimand to 5-day suspension	1-day suspension to 5-day suspension	14-day suspension to removal
<b>3. Falsification, Fraud, or Misrepresentation</b>	Providing incorrect or inaccurate information; the information was material; the information was knowingly supplied; <b>and</b> the information was supplied with the intention to mislead, deceive, or defraud.	14-day suspension to removal	30-day suspension to removal	Removal

**Table 2. Table of Offenses and Penalties, Continued**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
<p><b>4. Lack of Candor or Truthfulness</b></p>	<p>A. Providing statement(s) (oral, written, or electronic) that are less than candid, truthful, accurate, or complete.</p> <p><b>B. Applicable to LEOs and other weapon carriers only:</b></p> <p>Providing statement(s) (oral, written, or electronic) that are less than candid, truthful, accurate, or complete.</p>	<p>Written reprimand to removal</p> <p>Removal</p>	<p>5-day suspension to removal</p>	<p>14-day suspension to removal</p>
<p><b>5. Failure or Delay in Carrying Out Written or Oral Regulations, Orders, Rules, Procedures, or Instructions</b></p>	<p>A. Violation where safety to persons or government property is not compromised.</p> <p>B. Violation where safety to persons, delay, or government property is compromised.</p> <p><b>C. Applicable to LEOs and other weapon carriers only:</b></p> <p>1. Failure to properly and timely respond to or answer radio, or other communications, including cell phones, pagers, Blackberries, or other communications equipment when required to have them on and tuned to the appropriate channel.</p> <p>2. Failure to carry department credentials on their persons at all times while carrying a government-issued firearm.</p> <p>3. Failure to provide name and badge number to any person requesting that information while on duty or acting in an official capacity (except when the withholding of this</p>	<p>Written reprimand to 5-day suspension</p> <p>5-day suspension to removal</p> <p>Written reprimand to removal</p> <p>Written reprimand to 14-day suspension</p> <p>Removal</p>	<p>5-day suspension to removal</p> <p>14-day suspension to removal</p> <p>5-day suspension to removal</p> <p>14-day suspension to removal</p>	<p>14-day suspension to removal</p> <p>Removal</p> <p>Removal</p> <p>Removal</p>

**Table 2. Table of Offenses and Penalties, Continued**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
	information is necessary for the performance of duty, authorized by a supervisor, or to protect the employees' safety or integrity).  4. Failure to obtain written approval before engaging in outside employment and in accordance with established policies and procedures.	Written Reprimand to removal	5-day suspension to removal	Removal
<b>6. Neglect or Careless Work Performance; Inattention to Duty</b>	A. Violation when safety to persons or government property is not compromised.  B. Violation when safety to persons or government property is compromised	Written reprimand to 5-day suspension  5-day suspension to removal	Written reprimand to 14-day suspension  14-day suspension to removal	14-day suspension to removal  30-day suspension to removal
<b>7. Failure to Perform Duties while Sleeping on Duty or Exhibiting a Sleep-Like State</b>	A. Violation when the employee occupies a position where safety of personnel or property is not comprised.  B. Violation when the employee occupies a position where safety of personnel is compromised.	Written reprimand to 5-day suspension  5-day suspension to removal	Written reprimand to 14-day suspension  14-day suspension to removal	14-day suspension to removal  30-day suspension to removal

**Table 2. Table of Offenses and Penalties, Continued**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
<b>8. Insubordination</b>	Willful and intentional refusal to obey an authorized order of a superior, who is either permanently assigned or in an acting capacity, which order the superior or acting supervisor is entitled to have obeyed.	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal
<b>9. Conduct Unbecoming a Federal Employee/Conduct Unbecoming a Supervisor</b>  May be based on conduct such as engaging in prohibited outside employment; discourtesy; alcohol and drug offenses; gambling offenses; discrimination, harassment, including sexual harassment, and retaliation (whether or not the conduct rises to the level of being unlawful); committing prohibited personnel practices, violations of the Hatch Act, and retaliation against whistleblowers; ethics violations.	Misconduct that discredits one's character, reputation, or credibility, or that is not in accordance with standards of conduct.	Written reprimand to removal	14-Day suspension to removal	Removal
<b>10. Discourtesy or Other Inappropriate Conduct</b>	Rude, impolite acts or remarks; disrespectful, inappropriate, offensive or abusive language or gestures; or similar misconduct.	Written reprimand to removal	5 to 14-day suspension to removal	14-day suspension to removal

**Table 2. Table of Offenses and Penalties, Continued**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
<b>11. Fighting or Creating a Disturbance</b>	A. Hitting, pushing, or other physical acts against another (without causing injury). Includes threatening another or intending to inflict injury.	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal
	B. Hitting, pushing, or other physical acts against another (inflicting injury).	14-day suspension to removal	30-day suspension to removal	Removal
	C. Intimidation, aggressive, harassing, or abusive conduct to others. Includes engaging in dangerous horseplay or rough-housing.	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal
<b>12. Unauthorized Taking, Possession, or Removal of Government Property or of Another Person's Personal Property</b>	Actual or attempted possession or carrying away of government property or the property of others or collusion with others to commit such acts.	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal
<b>13. Misappropriation or Other Contracting Violations</b>	A. Directing, expecting, or rendering services not covered by unauthorized appropriations.	Removal		
	B. Failure to deposit money accruing from lapsed salaries or from unused unauthorized appropriations for salaries into the Treasury.	Removal		
	C. Entering into an unauthorized procurement commitment or personal services contract.	Written reprimand to 14-day suspension	14-day suspension to removal	Removal
	D. Unauthorized disclosure of proprietary or source selection information regarding a procurement action.	14-day suspension to removal	Removal	



**Table 2. Table of Offenses and Penalties, Continued**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
<b>14. Failure to Carry, Show or Wear Government-issued Identification or Credentials</b>	<p>A. Failure of civilian employees to carry government-issued identification while on duty or failure to furnish.</p> <p>B. Misuse of official identification or investigative credentials or other DoD identification, including lending identification cards or badges or credentials to others.</p>	Written reprimand to 14-day suspension	14-day suspension to removal	Removal
<b>15. Mishandling Government Information or Documentation</b>	<p>A. Mishandling or failing to safeguard information or documentation that is restricted or otherwise generally prohibited.</p> <p>B. Mishandling or failing to safeguard information or documentation that is classified.</p>	Written reprimand to 3-day suspension  Written reprimand to removal	3-day suspension to removal	Removal
<b>16. Misuse or Abuse of Official Government Position</b>	Misuse of positions of authority for other than official purposes.	14-day suspension to removal	Removal	
<b>17. Misuse or Abuse of Government Property</b>	Using government, government-leased, or government-contracted property for other than official purposes.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
<b>18. Misuse or Abuse of Government Time, Property, Personnel, Information, Funds, or Leased Services</b>	<p>A. Includes the willful misuse of time, personnel, contractors, equipment, and vehicles, including, but not limited to: computers, e-mail, IT systems, wireless devices and services, faxes, telephones or mail.</p> <p>B. Willful misuse or authorizing the misuse of government vehicles for other than official purposes.</p>	5-day suspension to removal  30-day suspension to removal*	30-day suspension to removal  Removal	Removal

**Table 2. Table of Offenses and Penalties, Continued**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
	<p>C. Misuse of government-issued credit or travel card, including failure to timely file travel vouchers and failure to pay entire balance after receiving reimbursement; obtaining ATM advances that exceed expenditures; using card for personal expenses or personal travel.</p> <p><b>D. Applicable to LEOs and other weapon carriers only:</b></p> <p>1. Misuse of government credentials or position.</p> <p>2. Unauthorized use of law enforcement, equipment, resources, or application of techniques.</p>	<p>Written reprimand to removal</p> <p>Written reprimand to removal</p> <p><i>*Mandatory statutory minimum proposed penalty in accordance with Section 1349 of Title 31, U.S.C.)</i></p>	<p>5-day suspension to 30-day suspension</p> <p>5-day suspension to removal</p>	<p>60-day suspension to removal</p> <p>14-day suspension to removal</p>
<b>19. Loss of or Damage to Government Property</b>	Loss of or damage to government-owned or -leased property, records, or information, including the concealment, removal, mutilation, alteration, or destruction of government property.	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
<b>20. Improper Use of Weapons, Firearms, or Protective Gear</b>	<p>A. Unauthorized possession of a firearm or other weapon while in or on government-owned or -leased property.</p> <p><b>B. Applicable to LEOs and other weapon carriers only:</b></p> <p>1. Failure to properly carry, transport, store, or secure service weapon or firearm.</p> <p>2. Unauthorized discharge or failure to report unauthorized discharge of service weapon or firearm.</p>	<p>45-day suspension to removal</p> <p>3-day suspension to removal</p> <p>Written reprimand to removal</p>	<p>Removal</p> <p>14-day suspension to removal</p> <p>14-day suspension to removal</p>	<p>Removal</p> <p>10-day suspension to removal</p>

**Table 2. Table of Offenses and Penalties, Continued**

<u>Offense</u>	<u>Nature of Offense</u>	<u>First Offense Penalty</u>	<u>Second Offense Penalty</u>	<u>Third Offense Penalty</u>
	3. Possession of unauthorized weapon or firearm on government or government-leased property.  4. Possession of an unauthorized firearm while traveling aboard aircraft on official department travel.  5. Failure to wear appropriate protective body armor while engaged in field activities while in a duty status.	30-day suspension to removal  5-day suspension  Written reprimand	Removal  14-day suspension to removal  5-day suspension to removal	Removal  10-day suspension to removal
<b>21. Betting, Gambling, or Promoting Gambling</b>	Conducting or participating in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket while on government-owned or -leased property while in a duty status. This does not apply to activities necessitated by an employee's official duties such as charitable fund-raising or activities that are lawful while on personal time.	Written reprimand to 5-day suspension	14-day suspension to removal	14-day suspension to removal

## SECTION 7: COMPARISON OF ADMINISTRATIVE ACTIONS

Table 3 provides a comparison between common administrative actions taken for misconduct, including formal discipline and adverse actions, and actions taken for performance based reasons. Specific information and applicable references related to each type of action are identified for ease of understanding and clarity of application.

**Table 3. Comparison of Common Administrative Actions Taken for Cause**

	Misconduct-based Actions		Performance-based Actions	
	Formal Discipline	Adverse	In accordance with Chapter 75	In accordance with Chapter 43
	(1) Written reprimand  or  (2) Suspension for 14 days or less	(1) Suspension over 14 days,  (2) Reduction in grade or pay for cause, or  (3) Removal	(1) Suspension over 14 days,  (2) Reduction in grade or pay for cause, or  (3) Removal	(1) Reduction in grade or pay  or  (2) Removal
<b>References</b>	Subpart A of Part 752 of Title 5, CFR (for suspensions of 14 days or less)	Subpart D of Part 752 of Title 5, CFR	Subpart D of Part 752 of Title 5, CFR	Part 432 of Title 5, CFR
<b>Basis for Action</b>	Misconduct	Misconduct	E.g., the action involves both performance and conduct matters or issues such as security or safety would make a performance improvement period inappropriate.	Failure to meet minimum requirements of critical element in established performance plan.

**Table 4. Comparison of Common Administrative Actions Taken for Cause, Continued**

	Misconduct-based Actions		Performance-based Actions	
	Formal Discipline	Adverse	In accordance with Chapter 75	In accordance with Chapter 43
<b>Governmental Burden of Proof</b>	<p>Prove offenses in proposal notice by a preponderance of the evidence.</p> <p>Demonstrate that the action will promote the efficiency of the service and that the penalty imposed was reasonable.</p>	<p>Prove offenses in proposal notice by a preponderance of the evidence.</p> <p>Demonstrate that the action will promote the efficiency of the service and that the penalty imposed was reasonable.</p>	<p>Prove offenses in proposal notice by a preponderance of the evidence.</p> <p>Demonstrate that the action will promote the efficiency of the service and that the penalty imposed was reasonable.</p>	<p>Prove unacceptable performance by substantial evidence (lower evidentiary burden than preponderant).</p>
<b>Appeals</b>	Grievance Procedure	MSPB	MSPB	MSPB

## SECTION 8: DOUGLAS FACTORS

a. The MSPB, in its *Douglas v. Veterans Administration* decision, established criteria that the deciding official must consider in determining an appropriate penalty to impose for an act of employee misconduct. Each factor should be considered in light of the facts and circumstances presented in the notice of proposed action, supporting documentation, and the employee’s reply. Not all of the *Douglas* factors may be applicable in each individual case.

b. Penalty selection is intended to be progressive and rehabilitative in nature, identifying the action that will be most effective in correcting the employee’s conduct. The disciplinary process may start with an informal action and proceed to more serious formal disciplinary or adverse actions based on repeated or more serious misconduct. Depending on the nature of the offense, however, removal may be appropriate even for a first offense.

c. The deciding official must sustain the action as proposed, reduce the penalty, offer the employee an alternative sanction, or cancel the proposed action in its entirety. The deciding official’s analysis of the *Douglas* factors is considered part of the case file. Table 5 contains the *Douglas* factors a deciding official may consider when reviewing a case for determination.

**Table 5. *Douglas* Factors Considered in Deciding Disciplinary Action**

<b><i>Douglas</i> Factors</b>
1. 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, or was committed maliciously or for gain, or was frequently repeated.
2. Employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. Employee’s past disciplinary record.
4. Employee’s past work record, including length of service, performance on the job, ability to get along with co-workers, and dependability.
5. Effect of the offense on the employee’s ability to perform at a satisfactory level and on the supervisor’s confidence in the employee’s ability to perform assigned duties.
6. Consistency of penalty imposed on other employees for the same or similar offenses.
7. Consistency with the Table of Penalties in Table 1.
8. Notoriety of the offense or its impact on the reputation of the DoD.
9. The clarity with which the employee was on notice of any rules violated in committing the offense, or had been warned about the conduct in question.
10. Potential for employee’s rehabilitation.
11. Mitigating circumstances surrounding the offense, such as unusual job tensions, mental impairment, harassment, or bad faith, malice, or provocation on the part of others.
12. Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

## GLOSSARY

### G.1. ACRONYMS.

ACRONYM	MEANING
AWOL	absence without leave
CFR	Code of Federal Regulations
EAP	Employee Assistance Program
HRD	Human Resources Directorate
HRD/LMER	Human Resources Directorate/Labor and Management Employee Relations
LEO	law enforcement officer
LMER	Labor and Management Employee Relations
MSPB	Merit Systems Protection Board
OPF	official personnel folder
PIP	performance improvement plan
U.S.C.	United States Code
WHS	Washington Headquarters Services

### G.2. DEFINITIONS. These terms and their definitions are for the purpose of this issuance.

**day.** A calendar day.

**Douglas factors.** Factors an agency must consider when determining an appropriate penalty for misconduct when taking an adverse action.

**furlough.** A temporary non-duty and non-pay status of 30 days or less that results from a lack of work or funds, or for other non-disciplinary reasons. A furlough is an adverse action, in accordance with Part 752 of Title 5, CFR, if it is for a period of 30 calendar days or less and is based on a decision of an appropriately designated management official. Furloughs for more than 30 calendar days are reduction-in-force actions.

**indefinite suspension.** An adverse action that consists of placing an employee in a temporary, non-duty and non-pay status.

**preponderance of the 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. The agency is required to prove actions taken in accordance with Part 752 of Title 5, CFR by a preponderance of the evidence.

**proposing official.** The management official who proposes an adverse action or performance-based adverse action.

**substantial evidence.** The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. “Substantial evidence” is a lower standard of proof than “preponderance of the evidence.” The agency must establish the factors required for a performance-based action under Part 432 of Title 5, CFR by substantial evidence.

**suspension.** A temporary non-duty and non-pay status for consecutive calendar days.



## REFERENCES

Administrative Instruction 37, “Employee Grievances,” October 27, 2006  
Code of Federal Regulations, Title 5  
DoD Manual 5200.02, “Procedures for the DoD Personnel Security Program (PSP),” April 3, 2017, as amended  
DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007  
DoD Directive 5110.04, “Washington Headquarters Services (WHS),” March 27, 2013  
DoD Instruction 5025.01, “DoD Issuances Program,” August 1, 2016, as amended  
DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019, as amended  
*Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (MSPB 1981)  
United States Code, Title 5  
United States Code, Title 10  
United States Code, Title 31, Section 1349  
Washington Headquarters Services Memorandum, “Administrative Changes to Administrative Instructions,” January 19, 2022