



ADMINISTRATIVE INSTRUCTION 122, VOLUME 1

DCIPS POLICIES IN WHS-SERVICED COMPONENTS: DISCIPLINARY, PERFORMANCE-BASED, AND ADVERSE ACTION PROCEDURES

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Purpose: This issuance is composed of several volumes, each containing its own purpose. In accordance with DoD Directive 5110.04 and DoD Instruction (DoDI) 5025.01:

- This administrative instruction implements policy, assigns responsibilities, and prescribes procedures for the Defense Civilian Intelligence Personnel System (DCIPS) as it applies to Washington Headquarters Services (WHS)-serviced Components in accordance with the authority in DoD Directive 1400.35 and Volume 2009 of DoDI 1400.25.
- This volume clarifies the procedures for taking a disciplinary, performance-based, or adverse action for DCIPS employees who occupy positions in WHS-serviced Components.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This volume:

a. Applies to OSD and those Defense Agencies, DoD Field Activities, and other Components of the DoD that receive human resources services from WHS and employ Defense Intelligence employees covered by DCIPS. These organizations are referred to collectively in this volume as “WHS-serviced Components.”

b. Does **not** apply to WHS-serviced Component employees who are:

(1) Members of the Defense Intelligence Senior Executive Service or who occupy Defense Intelligence Senior Level positions.

(2) Reemployed annuitants.

(3) Serving under temporary appointments.

(4) Non-preference eligibles serving a trial period, as defined by Volume 2005 of DoDI 1400.25, except where noted in this volume.

(5) Preference eligible employees with less than 1 year of current continuous employment, as defined by Section 752.402 of Title 5, Code of Federal Regulations.

c. Does **not** apply to the following types of actions:

(1) An adjustment-in-force action.

(2) An involuntary retirement due to disability.

(3) A reduction of an employee’s rate of pay from a rate that is contrary to law or regulation to a rate required or permitted by law or regulation.

(4) An action initiated under the authority of the U.S. Special Counsel.

(5) A voluntary action initiated by a request from the employee.

(6) An action taken or directed for suitability reasons.

(7) The expiration of an employee’s temporary or term appointment on the expiration date of the appointment.

1.2. POLICY.

a. In accordance with the policy in Volume 2009 of DoDI 1400.25, WHS-serviced Components with DCIPS employees will execute disciplinary, performance-based, and adverse actions equitably and impartially. All persons involved in these processes will be free from restraint, interference, coercion, discrimination, or reprisal.

b. The collection, use, maintenance, and dissemination of information under this volume must comply with DoDI 5400.11, DoD 5400.11-R, DoD Privacy Program issuances, and DoDI 5015.02 recordkeeping requirements.

SECTION 2: RESPONSIBILITIES

2.1. DIRECTOR, WHS.

Under the authority, direction, and control of the Director of Administration and Management, the Director, WHS oversees the implementation of the DCIPS for the WHS-serviced Components.

2.2. CHIEF HUMAN RESOURCES OFFICER (CHRO), HUMAN RESOURCES DIRECTORATE (HRD).

Under the authority, direction, and control of the Director, WHS, the CHRO, HRD:

- a. Provides overall advice and guidance on the implementation of DCIPS disciplinary, performance-based, or adverse actions procedures.
- b. Assigns responsibilities to the Assistant Director (AD), Labor Management and Employee Relations (LMER), for the administration of the DCIPS disciplinary administrative process.

2.3. AD, LMER.

Under the authority, direction, and control of the Director, WHS, through the CHRO, HRD, the AD, LMER:

- a. Assists supervisory and management officials with:
 - (1) Disciplinary, adverse, and performance-based actions, including the proper processes and procedures to be followed by managers and supervisors.
 - (2) The appeals process associated with the procedures in this volume.
- b. Pursuant to DoDI 5200.02 and DoD Manual 5200.02, coordinates all disciplinary actions with the appropriate security personnel to ensure that the underlying conduct is reported.

2.4. WHS-SERVICED COMPONENT HEADS.

The WHS-serviced Component heads:

- a. Require that their subordinates with supervisory responsibilities are trained and understand their roles and obligations to:
 - (1) Oversee and manage the performance and conduct of their employees.
 - (2) Take the appropriate disciplinary, adverse, or performance-based actions when the employees' conduct or performance falls below acceptable standards.

b. Coordinate with the CHRO, HRD and the servicing legal advisor on all disciplinary actions, adverse actions, or performance-based actions to ensure conformance with any applicable laws and regulations.

SECTION 3: PROCEDURES

3.1. DISCIPLINARY ALTERNATIVES.

Disciplinary alternatives may include, but are not limited to, counseling sessions, oral admonishments, or written warnings. Disciplinary alternatives involve a supervisor or manager advising employees of their inappropriate actions and directing them to cease the addressed activity. These measures should be documented but are not retained in an employee's official personnel file (OPF).

a. In the case of a counseling session or oral admonishment, the supervisor or manager should make an informal record of the date of the discussion, who was present during the discussion, and the issues addressed.

b. Disciplinary alternatives may be referenced in any future action as evidence that the employee had been put on notice of the seriousness of the offense and that formal disciplinary action could result if additional offenses occur in the future.

3.2. REQUIREMENTS FOR ISSUING WRITTEN REPRIMANDS.

In coordination with LMER, a supervisor or manager will issue the employee a written reprimand, in the form of a formal letter, when the facts and circumstances surrounding the incident establish that discipline at the level of a reprimand is appropriate.

a. The written reprimand will:

(1) Include the specifics regarding the offense(s).

(2) Include a warning that any recurrence of the same or similar misconduct may result in discipline of a more severe nature.

(3) Reference any past disciplinary alternatives or other attempts to correct the employee's behavior.

(4) Include a statement that a copy of the written reprimand will be placed in the employee's OPF for a period not to exceed 2 years or when the employee departs the organization, whichever comes first. Management officials are authorized to consider removing a written reprimand from an employee's OPF in less than 2 years if the employee has sufficiently corrected the behavior and the written reprimand has served its purpose.

(5) Advise the employee of the employee's grievance rights in accordance with Volume 2014 of DoDI 1400.25.

b. The official taking the action will personally present the written reprimand to the employee, if possible, and will request the employee's written acknowledgement of receipt on a

copy of the reprimand for placement in the OPF. If the employee chooses not to sign, the official will annotate the copy with “Employee elected not to sign” and sign and date the annotation.

3.3. GENERAL REQUIREMENTS FOR SUSPENSIONS; REDUCTIONS IN BASE PAY, GRADE, AND WORK LEVEL; AND REMOVALS (NON-PERFORMANCE-BASED).

a. Disciplinary alternatives, reprimands, or suspensions for less than 14 days are not prerequisites for suspensions from duty without pay for more than 14 calendar days for misconduct. All disciplinary action will be corrective rather than punitive in nature.

b. LMER will work with managers and supervisors to determine who should serve as the proposing official (PO), deciding official (DO), and the appellate official (AO) for the proposed disciplinary action.

(1) Usually, a DO or AO is assigned to an organizational level higher than any employee involved in the grievance or having a direct interest in the matter being grieved. In appropriate circumstances, the Director of Administration and Management or WHS-serviced Component head may designate another official, either within or outside the WHS-serviced Component, to serve as the DO.

(2) An official may be so designated provided the official does not have a direct interest in the matter being grieved, regardless of whether that official is at a higher organizational level than the employee(s) involved in the grievance or having a direct interest in the matter being grieved. Examples of appropriate circumstances are where the DO otherwise would be the Secretary of Defense, the Deputy Secretary of Defense, or a WHS-serviced Component head.

c. LMER will prepare a draft notice of the proposed action. The notice of proposed action will:

(1) Include the specific reasons underlying the proposed action (e.g., who, what, when, or where) and the proposed action.

(2) Refer to the disciplinary alternatives and relevant “Douglas factors” in Paragraph 3.4. upon which the PO is relying to support the proposed action.

(3) Inform the employee of the employee’s right to reply orally, in writing, or both to the proposed action and to provide documentation in support of the employee’s reply within the amount of time specified in the proposed action notice.

(4) Include the DO or PO name and contact information.

(5) Inform the employee of the right to have a representative help prepare and present a reply to the proposed action notice at no cost to the DoD. An employee’s choice of representative may be disallowed if the representation would result in a conflict of interest or position. For example, the employee may not be represented by:

(a) A member of the WHS HRD staff;

(b) A DoD Equal Employment Opportunity manager, counselor, or investigator;

(c) A military or Federal civilian attorney; or

(d) Anyone else whose service as a representative would result in a conflict or apparent conflict of interest with that person's position or with DoD priority needs or would compromise classified government activities.

(6) Indicate that a written request for an extension of the time limit allowed for a reply will be considered but does not have to be agreed to, by the DO.

(7) Inform the employee of the employee's duty status during the notice period.

(8) Indicate that a final decision on the proposed action will not be made until after:

(a) The employee's reply, if any, has been considered; or

(b) After the time allotted to the employee to reply has expired, whichever occurs first.

d. The PO will:

(1) Review the notice of proposed action to ensure that it is complete and that all facts are correct and supported by the evidence. Any substantive changes to the notice will be coordinated with LMER.

(2) Sign and date the notice (printed on appropriate letterhead, if any) and make one copy. The original version of the notice and supporting documentation will be provided to the employee and the copy will document receipt by the employee.

(a) Copies may be provided electronically via official email or via a DoD-approved secure e-document delivery application. Use of electronic service must be documented. Digital signatures may be used.

(b) A digital signature is one that has been created by software that contains an authentication certificate and includes the individual's name, date, and time of signature.

(3) Issue the signed notice of proposed action and supporting documentation to the employee.

(4) Request the employee sign and date the receipt acknowledgement copy. If the employee chooses not to sign, the PO will annotate the copy with "Employee elected not to sign," and sign and date the annotation.

(5) Make and keep a file copy of the receipt acknowledgement and send the copy signed by the employee to LMER.

e. Employees may request a reasonable amount of duty time to prepare and present a reply, if otherwise in a duty status. Arrangements for the use of duty time for this purpose must be made with the PO along with the employee's immediate supervisor.

f. For suspensions of 14 calendar days or less, employees will have a minimum of 10 calendar days from the date they received the notice of proposed suspension in which to reply orally, in writing, or both.

g. For suspensions of more than 14 calendar days, indefinite suspensions, involuntary reductions in work level, pay or grade, and removals (non-performance-based):

(1) Employees will be provided a minimum of 30 calendar days' advance written notice of the proposed action.

(2) Employees will be given a reasonable amount of time, but no less than 10 calendar days, to answer orally, in writing, or both to the proposed action, at which time any documentation will be submitted in support of their reply.

(3) If the management of the WHS-serviced Component has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed, the notice period and reply period may be shortened to 7 days.

h. Under ordinary circumstances, employees will remain in a duty status in their regular positions during the notice period. In extraordinary circumstances, the employee may be excused from duty without charge to leave or loss of pay if their retention in an active duty status during the notice period may:

(1) Pose a threat to the employee or others;

(2) Result in loss of or damage to government property; or

(3) Otherwise jeopardize government interests.

i. The DO will:

(1) Hear any oral reply.

(2) If desired, request LMER attendance during the conduct of any oral replies. If a LMER representative attends the meeting, that representative should prepare a written summary and provide it to the DO for consideration.

(3) Avoid engaging in any private, undisclosed communications between agency or activity decision makers or other management personnel regarding the disciplinary action (also known as improper *ex parte* communications).

(4) Limit consideration of any incidents, offenses, or previous disciplinary or adverse actions to only those stated in the proposal notice.

(5) Consult with legal counsel if the employee claims to have a medical condition that is relevant to the disciplinary action being proposed.

(a) It is generally the employee's responsibility to submit any medical documentation that they believe should be considered.

(b) LMER will prepare any necessary requests for additional medical documentation.

(6) Consider the notice of proposed action, any written replies, any oral replies and summaries of such oral replies, and documentation provided by the employee in support of the reply to determine if the reasons for the proposed action are supported by a preponderance of the evidence.

(7) If the reasons for the proposed action are supported by a preponderance of the evidence, determine whether to sustain the penalty proposed by the PO or mitigate it to a lesser penalty.

(8) Inform LMER of the decision. LMER will prepare a decision notice to the employee for DO review and signature.

j. The decision notice will specify:

(1) The instances of unacceptable conduct or behavior upon which the decision is based, any penalty that will be imposed, and the effective date of the action.

(2) The employee's grievance rights in accordance with Volume 2014 of DoDI 1400.25.

(3) The employee's appeal rights in accordance with Volume 2009 of DoDI 1400.25 and any WHS appeals guidance.

k. The decision notice must be delivered to the employee on or before the effective date of the action. The DO will work with LMER regarding the delivery of the decision notice to the employee. If desired, LMER will attend issuance meetings at the request of the DO.

l. Advance written notice and opportunity to respond are not required for furloughs without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

3.4. DETERMINING PENALTIES FOR DISCIPLINARY AND ADVERSE ACTIONS (NON-PERFORMANCE-BASED).

a. Supervisors or managers should use their professional judgment and discretion when using various types of discipline and must consider relevant aggravating or mitigating circumstances, including the "Douglas factors."

b. "Douglas factors" that must be considered in determining the severity of the discipline include but are not limited to:

(1) The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was:

- (a) Intentional, technical, or inadvertent;
- (b) Committed maliciously for gain; or
- (c) Frequently repeated.

(2) The employee's job level and type of employment, including a supervisory or fiduciary role; contacts with the public; or 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 on supervisor's or manager's confidence in the employee's work and ability to perform assigned duties.

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

(7) The notoriety of the offense or its impact on the reputation of the agency.

(8) The clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the inappropriateness of the conduct in question.

(9) The potential for the employee's rehabilitation.

(10) Mitigating circumstances surrounding the offense. Some examples of these may include:

- (a) Unusual job tensions;
- (b) Personality problems;
- (c) Mental impairment;
- (d) Harassment; or
- (e) Bad faith, malice, or provocation on the part of others involved in the matter.

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

3.5. PERFORMANCE-BASED ACTIONS.

a. An action proposing to remove an employee or reduce the employee's rate of basic pay, work level, or grade based on poor performance may be issued at any time during the performance appraisal cycle when the employee's performance in one or more critical elements of the job becomes unacceptable, after the supervisor has provided the employee with at least a 30 calendar day notice during which the employee will be afforded an opportunity to demonstrate an acceptable level of performance.

(1) As part of the opportunity to improve, the supervisor will specify in writing:

(a) The performance objectives and elements in which the employee's performance is unsatisfactory and the applicable performance standard related to the critical element in question.

(b) That the employee has a reasonable opportunity to demonstrate an acceptable level of performance and specify the timeframe (e.g., at least 30 calendar days) within which the employee must demonstrate acceptable performance.

(c) The type of assistance to be provided to the employee.

(d) The consequences to the employee of failure to meet an acceptable level of performance by the end of the specified timeframe.

(2) A proposed performance-based action will be based only on those instances of unacceptable performance that occurred during the 1-year period ending on the date of the notice of the proposed action.

b. When removing an employee, or reducing an employee's work level, base pay, or grade for performance reasons, the supervisory or management official taking the action will follow the procedures in Paragraph 3.3., adjusted, as appropriate, to meet these requirements:

(1) The written notice of proposed action will include a minimum of 30 calendar days' advance notice of the effective date of the proposed action.

(2) The notice of proposed action will identify the specific reasons for the proposed action and will cite the specific performance objectives and performance elements against which the employee's performance has been found to be unacceptable, along with specific instances of the employee's unacceptable performance.

(3) If the information provided supports the reason(s) for the proposed action, the DO will determine whether to sustain the penalty proposed by the PO or mitigate it to a lesser penalty, taking into account all relevant factors.

(4) If the employee's performance improves after given a reasonable opportunity to improve but later becomes unacceptable any time within the 1-year period after the end date of the opportunity to improve, a performance-based action may be initiated immediately, without providing a second opportunity to improve.

3.6. SPECIAL TERMINATION AUTHORITY IN THE INTEREST OF NATIONAL SECURITY.

WHS-serviced Components will follow the procedures in Enclosure 3 of Volume 2009 of DoDI 1400.25 for terminations in the interest of national security.

3.7. POST-EMPLOYMENT ASSISTANCE.

WHS-serviced Components will adhere to Volume 2009 of DoDI 1400.25 in cases where eligible employees request post-employment assistance as a result of their termination.

SECTION 4: APPEALING ADVERSE ACTIONS TAKEN AGAINST EMPLOYEES COVERED BY DCIPS

4.1. CONTENTS OF AN APPEAL.

Employees with appeal rights internal to their specific WHS-serviced Component in accordance with Volume 2009 of DoDI 1400.25 must submit any appeal in writing to the CHRO, HRD, within 15 calendar days of receiving the decision notice. The appeal must contain:

- a. The name, address, e-mail address, and telephone number of the employee filing the appeal.
- b. The name, address, e-mail address, and telephone number of the employee's representative, if any. The choice of a representative is subject to the limitations in Paragraph 3.3.c.(5).
- c. The employee's position, title, series, and grade.
- d. The organizational entity to which the employee is assigned.
- e. A clear statement of the reasons the employee believes the decision should be reversed or modified.
- f. Copies of the WHS-serviced Component's proposed action notice and the decision notice.

4.2. BURDEN OF PROOF.

The burden of proof rests with the appealing employee to justify why the action taken against them should be dismissed or modified in accordance with the standards in Volume 2009 of DoDI 1400.25.

4.3. PROCEDURES FOR ACCEPTING OR REJECTING AN APPEAL.

Within 10 business days of receipt of an appeal from an employee, LMER will accept an appeal as filed timely or reject it if it is not filed timely (within 15 calendar days of the employee's receipt of the decision notice), and advise the WHS-serviced Component of receipt of the appeal. LMER will:

- a. If it is not filed timely, return the appeal to the appealing employee.
- b. If it is filed timely, forward the appeal to the AO identified in the decision notice along with a copy of the material considered by the DO.

4.4. AO RESPONSIBILITIES.

a. The AO reviews the appeal and other forwarded materials and:

- (1) Affirms the WHS-serviced Component's action;
- (2) Reverses the action; or
- (3) Mitigates the penalty imposed by the WHS-serviced Component.

b. The AO will provide the employee a written decision either affirming the WHS or WHS-serviced Component's action; reversing the action; or mitigating the action. If the employee has appeal rights to the Merit Systems Protection Board pursuant to Part 752 of Title 5, Code of Federal Regulations, the AO's decision letter must include notice of the employee's appeal rights.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
AD	assistant director
AO	appellate official
CHRO	Chief Human Resources Officer
DCIPS	Defense Civilian Intelligence Personnel System
DO	deciding official
DoDI	DoD instruction
HRD	Human Resources Directorate
LMER	Labor Management and Employee Relations
OPF	official personnel file
PO	proposing official
WHS	Washington Headquarters Services

G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this volume.

TERM	DEFINITION
adverse action	Suspension of more than 14 calendar days (including indefinite suspensions); involuntary reductions in an employee's base pay, work level, or grade; removals; and furlough of 30 calendar days or less.
aggravating circumstances	Factors that would make an offense more serious or harmful such that a more significant penalty should be imposed than what would be appropriate absent these factors.

TERM	DEFINITION
notice period	A prescribed period given in advance of an action to be taken against an employee and calculated in calendar days, unless otherwise noted. The day a notice is delivered is not counted as part of the notice period. If the end of the notice period falls on a weekend or holiday, the last day of the notice period becomes the next business day based on the employee's established work schedule. A calendar day is the 24-hour period between midnight of one day and midnight of the next. Business days exclude Saturdays, Sundays, or legal holidays.
performance-based actions	Actions taken to address an employee whose performance has fallen below acceptable standards.
suspension	A form of official discipline given to an employee in which the employee is in a non-duty, non-pay status without the use of any type of leave for a specified number of days.

REFERENCES

- Code of Federal Regulations, Title 5, Part 752
- DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- DoD Directive 1400.35, “Defense Civilian Intelligence Personnel System (DCIPS),” September 24, 2007, as amended
- DoD Directive 5110.04, “Washington Headquarters Services (WHS),” March 27, 2013
- DoD Instruction 1400.25, Volume 2005, “DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Employment and Placement,” March 3, 2012, as amended
- DoD Instruction 1400.25, Volume 2009, “DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Disciplinary, Performance-Based, and Adverse Action Procedures,” May 20, 2012, as amended
- DoD Instruction 1400.25, Volume 2014, “DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Employee Grievance Procedures,” March 20, 2012
- DoD Instruction 5015.02, “DoD Records Management Program,” February 24, 2015, as amended
- DoD Instruction 5025.01, “DoD Issuances Program,” August 1, 2016, as amended
- DoD Instruction 5200.02, “DoD Personnel Security Program (PSP),” March 21, 2014, as amended
- DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019, as amended
- DoD Manual 5200.02, “Procedures for the DoD Personnel Security Program (PSP),” April 3, 2017, as amended