

## CHAPTER 20

### DISCIPLINE AND ADVERSE ACTION

#### Section I - General

1-1. **General.** National Guard Bureau Technician Personnel Regulation (TPR) 752 is attached as Appendix 20A and contains the procedures that must be followed when taking disciplinary or adverse actions for National Guard technicians. Sample memos and timeline for actions in accordance with the TPR 752 and the Air and Army Contracts are at Appendix 20B.

1-2. **Contact Human Resources Office (HRO).** Supervisors are cautioned that before any disciplinary or adverse action may be taken against a technician, the incident must be:

- a. Discussed in detail with HRO and
- b. Obtain HRO approval before proceeding with any action.

1-3. **SF 52, Request for Personnel Action.** A SF 52 will be completed by the supervisor for Change to Lower Grade, Suspension, and Removal actions. See Chapter 4 of this manual for instructions and samples of 52's.

#### Section II - The Douglas Factors

2-1. **Purpose.** The Merit Systems Protection Board in its landmark decision, Douglas vs. Veterans Administration, 5 MSPR 280, established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. These twelve factors are commonly referred to as "Douglas Factors".

2-2. **Supervisor's Role.**

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.

b. A supervisor must balance the relevant factors in each individual case and chose a reasonable penalty. 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.

c. A supervisor must be able to defend his or her decision (based upon the criterion of reasonableness) upon final review by an outside arbiter or agency. The following Douglas Factors provide valuable assistance to supervisors in making a penalty determination.

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 technical or inadvertent, or 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 upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

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

7. The consistency of the penalty with the applicable agency table of penalties (which are not to be applied mechanically so that other factors are ignored);

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

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 questions;

10. The potential for employee's rehabilitation;

11. The 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; and

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