



DEPARTMENT OF THE NAVY
SPACE AND NAVAL WARFARE SYSTEMS COMMAND
4301 PACIFIC HIGHWAY
SAN DIEGO, CA 92110-3127

SPAWARINST 12432.1B
SPAWAR 07-2
18 MARCH 1998

SPAWAR INSTRUCTION 12432.1B

From: Commander, Space and Naval Warfare Systems Command

Subj: REDUCTION IN GRADE AND REMOVAL ACTIONS BASED ON
UNACCEPTABLE PERFORMANCE

Ref: (a) 5 CFR 432 Part 432
(b) CPI 432
(c) CPI 430
(d) SPAWARINST 12752.1

1. Purpose. To publish Space and Naval Warfare Systems Command (SPAWAR) policy and procedures for effecting reduction in grade and removal actions based on unacceptable performance. This instruction does not preclude unacceptable performance actions processed under the provisions of reference (d).

2. Cancellation. SPAWARINST 12432.1A.

3. Definitions.

a. Critical Element. Any requirement of the job, which is sufficiently important, that inadequate performance of it outweighs acceptable or better performance in other noncritical aspects of the job.

b. Performance Standard. A written statement outlining the specific tasks and assignments an employee is expected to perform and the manners in which they are to be accomplished.

c. Opportunity to Demonstrate Acceptable Performance. A chance for the employee to show that the individual can meet established minimum performance standards for the critical elements of the job.

d. Reasonable Time. An amount of time, determined by management, which is commensurate with the duties and responsibilities of the employee's job which is sufficient to allow the employee to show whether or not the individual can meet minimum performance standards.

e. Reduction in Grade. The involuntary assignment of an employee to a position at a lower classification or job grading level. For purposes of this instruction, a reduction in grade is always to the first step or entry salary level of the grade to which the employee is reduced.

f. Removal. The involuntary separation of an employee from employment with an activity except when taken as a reduction-in-force action.

g. Unacceptable Performance. Any performance that fails to meet the standards established in one or more critical elements of the employee's position.

4. Background. References (a) and (b) provide procedures for effecting reduction in grade and removal actions based on unacceptable performance. This instruction details local application of the procedures for effecting reduction in grade and removal actions based on unacceptable performance.

5. Coverage. This instruction applies to all permanent SPAWAR and Program Executive Office for Space, Communications and Sensors (PEO-SCS) employees and all other employees provided personnel services by the Civilian Personnel Support Office (CPSO) except individuals in the Senior Executive Service (SES).

6. Exclusions. The following actions are excluded from coverage of this instruction:

a. An action initiated under the authority of the Special Counsel.

b. An action taken in the interest of national security.

c. A removal from the SES to a civil service position outside the SES.

d. A reduction-in-force action.

e. A voluntary action initiated by the employee.

f. Any adverse action taken under the provisions of 5 U.S.C. 7512 and 7513.

g. An action terminating a temporary position within a maximum of two years and returns the employee to the position from which he/she was temporarily promoted or reassigns or demotes an employee to a different position which is not at a lower level or pay than the position from which the employee was temporarily promoted.

h. An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of 2 years but not more than 5

years, and returns the employee to the position from which promoted or to a different position of equivalent level and pay.

- i. An involuntary retirement as a result of a disability.
- j. A termination per terms specified at the time the appointment was made.
- k. An action against a reemployed annuitant.
- l. A reduction to the level previously held by a supervisor or manager who has not completed the supervisory or managerial probationary period.
- m. The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed one year or appointment limited to one year or less.
- n. The reduction in grade or removal of an employee in the excepted service who has not completed one year of current continuous employment in the same or similar positions.
- o. Reduction in level based on the downward movement (migration) between classification levels because of failure to receive pay increases.

7. Responsibilities for SPAWAR Headquarters and SPAWAR Systems Centers (SSC).

a. Directorate/Department/Major Staff Office Heads. Directorate/Department/Major Staff Office Heads are responsible for assuring that their subordinate supervisors are knowledgeable in the principles and procedures of performance-based actions. They are responsible for coordinating the actions with the cognizant Personnel Management Advisor (PMA) and for taking actions within the scope of their delegated authority. The PEO assigns these responsibilities to the Deputy PEO, the Assistant Deputy PEO and the Program Managers.

b. All Supervisory Personnel. Immediate supervisors are responsible for establishing and communicating performance elements and standards to their employees, monitoring and documenting performance, and providing employees with an opportunity to improve their performance.

c. SSC CPSO. PMA's and employee relations specialists are responsible for advising and assisting supervisors and management officials in performance-based actions and for reviewing actions for conformance with regulations and procedures. They are also responsible for assisting employees against whom performance-based actions have been proposed or taken by advising them concerning their rights to reply to the charges and their rights to representation and appeal.

The SSC San Diego CPSO Employee/Labor Relations Office and the SSC Charleston CPSO Employee Relations Specialist will serve as the control point by coordinating actions, reviewing performance standards, maintaining necessary records, preparing the SPAWAR or PEO-SCS case for the Merit Systems Protection Board (MSPB) in consultation with the Office of Counsel, providing information and case file material to the affected employee upon the employee's request, preparing reports, and serving as the technical and/or representative in third party proceedings in cooperation with the Office of Counsel.

d. SPAWAR Office of Counsel and SPAWAR System Centers Offices of Counsel. The Office of Counsel is responsible for providing legal advice to supervisors and management officials in performance based actions. The Office of Counsel, with the assistance of the SSC CPSO, provides representation for the Command in third party proceedings, including proceedings before the Equal Employment Opportunity Commission, MSPB, and Federal courts.

8. Delegation of Authority. Reference (c) permits the Commander, SPAWAR and the Program Executive Officer to redelegate authority to propose and effect performance-based actions to supervisors and managers to the extent deemed appropriate. At SPAWAR Headquarters and PEO-SCS, all First-Level supervisors and managers are delegated authority for proposing reduction-in-grade and removal actions based upon unacceptable performance. Second Level supervisors are delegated authority to effect performance-based reduction in grade and removal actions. This delegation of authority does not preclude a higher level supervisor from proposing/effecting actions. SPAWAR field activities may delegate the authority to take these types of actions to different levels.

9. Timing of Actions.

a. When an employee's performance falls below successful in one or more critical elements of the job, the supervisor should notify the employee in writing of the deficiencies and provide the employee with written performance standards defined at the minimally successful level.

b. Employees whose performance is rated as "unacceptable" must be given an opportunity to demonstrate acceptable performance as required by references (a), (b) and (c). If, at the conclusion of the "opportunity" period, the employee's performance continues to be "unacceptable", the employee must be either reduced in grade, reassigned, or removed.

c. An advance notice of proposed action may not be given to the employee until all the following actions have been completed.

(1) Issued written performance standards.

(2) Is performing one or more critical elements at the unacceptable level and has been informed of the unacceptable performance.

(3) Has been given a reasonable time to demonstrate acceptable performance. The amount of time deemed reasonable may vary depending upon the complexity of the job; however, it should be consistent within similar job categories.

d. No instance of unacceptable performance more than one year old at the time of the advance notice may be a basis for a proposed removal or reduction in grade.

e. The decision to retain, reduce in grade, or remove must be made within 30 days after the expiration of the notice period.

f. The decision on a notice of proposed action must be delivered (or reasonable efforts to deliver, e.g., mail to home address) to the employee before the effective date of the action.

10. Procedures.

a. At any time during the appraisal cycle (1 July through 30 June), if the employee is not meeting objectives, a special review will be conducted and a written performance appraisal may be made.

b. Failure to meet the minimally successful level for critical objective(s) constitutes unacceptable performance and may be used as a basis for removing the employee from the position. If the employee is not reassigned to another position of equal level/grade and pay, the individual shall be reduced in level/grade or removed.

c. An employee whose performance is unacceptable will be issued two letters of performance warning before an advance notice of proposed reduction in grade or removal. The first letter of warning must set written performance standards and allow the employee at least 90 days to perform under the established standards. It is recommended that this first letter of warning be issued when performance is considered minimally successful in one or more of the critical elements. The second letter of performance warning is issued if the employee's performance in one or more critical elements slips to unacceptable base on evaluation under the written performance standards. This second letter outlines deficient performance and allows the employee a reasonable time (not less than 30 days) to improve.

d. An employee whose reduction in grade or removal is proposed is entitled to:

(1) Thirty days advance written notice of the proposed action which identifies specific instances of unacceptable performance and the critical element(s) involved;

(2) A reasonable amount of official time to prepare an answer to the proposal;

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- (3) A reasonable amount of time, not less than 7 days, to reply orally and/or in writing;
- (4) Representation by an attorney or other representative; and
- (5) A written decision by the designated deciding official.

e. Employees in receipt of an advance notice may request additional time to respond orally and in writing. Such request must be made in writing and submitted to the designated deciding official.

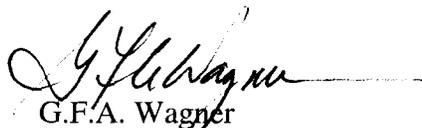
f. If the employee wishes consideration of a medical condition which may have contributed to the unacceptable performance, that employee shall be given a reasonable time to furnish medical documentation of the condition. Whenever possible, the employee shall supply this information at the time the performance warning is issued. If the employee offers such documentation after a proposed reduction in grade or removal has been issued, this information shall be supplied within the time limits allowed for a reply, whenever possible. After review of the medical documentation supplied by the employee, a medical examination may be required. If the employee has the minimum number of years for disability retirement, the PMA shall provide information concerning disability retirement. An employee's application for disability retirement shall not preclude or delay appropriate personnel action.

g. An employee's choice of representative may be disallowed if such representative would result in a conflict of interest or position, a conflict with the priority needs of the activity, or would give rise to unreasonable cost to the Government.

11. Records. CPSO's will maintain all records pertaining to an individual case.

12. Appeal Rights. An employee not serving a probationary period who is reduced in level/grade or removed for unacceptable performance may appeal the action to the MSPB. Employees serving on a probationary period may have limited appeal rights to the MSPB. Bargaining units may have grievance rights in lieu of MSPB appeal rights. Bargaining unit members should consult their collective bargaining agreement.

13. Action. The Human Resources Programs Office, Code 07-2 , is responsible for keeping this instruction current.


G.F.A. Wagner
Rear Admiral, U. S. Navy

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