

UNCLASSIFIED



# Recap of Day 1

UNCLASSIFIED



# Human Resources Development & Training

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## Agenda

- **Regulations**
- **HRD Responsibilities**
- **Supervisor Responsibilities**
- **Resources**



# Regulations

**Must be administered IAW**

- **Technician Personnel Regulation (TPR 400)**
- **Code of Federal Regulations (5 CFR 410 & 412)**
- **State Directive on Technician Training Program**
- **OPM Training Policy Handbook**
- **National Guard Technician Handbook**
- **Joint Travel Regulations (JTR)**



## Regulations

**TPR 400 includes the responsibilities of**

- **National Guard Bureau (NGB)**
- **The Adjutant General (TAG)**
- **Human Resources Officer (HRO)**
- **Human Resources Development Specialist (HRDS)**
- **Supervisor**



## HRD Responsibilities



- **Process SF182**
- **Process DTS/ DTS Reports/ Reconciliation**
- **GPC Holder (Air & Army Training Card - \$25,000 max)**
- **Maintain Training Records/ Update Education Data**
- **Present Training Material in NEO and NG Technician Management Course**
- **Course logistics (i.e. room reservations, material and class prep)**
- **Individual Development Plan/ Performance Improvement Plan Program Manager**
- **Maintain Annual Training Calendar**
- **Training Program Budget Manager**
- **Customer Service**



## HRD Responsibilities

### Training Program Budget Manager

- **Technician budget (Army) is managed by the Human Resource Development Section (HRDS)**
- **Technician budget (Air) is managed by respective Wing; typically rolled up with the O&M Funds**



## HRD Responsibilities



### Army DTS

- **Review Authorizations/ Vouchers**
- **Approving Official for Technician Travel**
- **Ensure Travel is compliant with travel regulations**
- **Vouchers must be submitted within 5 days of returning from travel**





# HRD Responsibilities



Army DTS

## Other Authorizations

The following are the additional authorizations that were selected based on the trip details. Enter comments to your Approving Official in the "Remarks" boxes provided.

↳ [View Unselected Authorizations For This Trip](#)

## Other Authorizations

	Other Authorization	Remarks	
1	OTHER (See remarks below)	OTHER (See remarks below) Objective cannot be satisfactorily accomplished less expensively by correspondence, teleconferencing, web-based communications, or other appropriate means	



Proceed to the following page:

Pre-Audit



Continue



# HRD Responsibilities



Army DTS

## Accounting Codes

Select the appropriate accounting code for this trip. If there are multiple accounting codes that are required for this trip, please select all that apply.

Start Date: 29-Oct-17 [Find Accounting Label](#)

End Date: 02-Nov-17 [Change Organization](#)

Accounting Label:  From DA180HIAHRO

Shared LOA:

Cross Org LOA:

### Selected Accounting Code(s)

To remove an accounting code that does not apply to this trip, select the remove link corresponding to the accounting label to be removed. **Please make sure the LOA's assigned have costs allocated to it.**

Accounting Label	Organization	View/Edit Acctg Code	Remove
18 G5 TECH TRNG	DA180HIAHRO	<a href="#">view/edit</a>	<a href="#">remove</a>



## HRD Responsibilities



### **Technician Travel:**

- **Travel in your civilian pay grade; not military rank/grade**
- **Cannot be directed to use Government lodging**
- **Single occupancy lodging only; no roommates**
- **Civilian DTS Profile (Army Guard members only)**

### **Government Credit Card:**

- **Required for DoD civilians**
- **Must use when traveling for lodging, airfare and car rental**



# Supervisor Responsibilities



## 6 Steps To Developing a Ideal Technician

- **Identify/assess training needs**
- **Select type of training to meet needs**
- **Develop Individual Development Plans (IDP)**
- **Request training attendance (SF 182)**
- **Ensure training attendance**
- **Evaluate training effectiveness**



# Supervisor Responsibilities



## Step 1 - Identify/assess training needs

- **Analyze performance & previous training**
- **Causes of performance problems**
  - **Organizational**
  - **Environmental**
  - **Motivational**
  - **Knowledge/skills deficiencies**



## Supervisor Responsibilities



### Step 2 - Select type of training to meet needs

- **Provide training resources aligned to personnel's duties**
- **Create a plan to include developmental training**



## Supervisor Responsibilities

### Step 3 - Develop the Individual Development Plan (IDP)

- **Process for determining and identifying and work experience, development, education, and other activities that contribute to improved job performance and self development of an employee**
- **Provides an opportunity to develop a strategy for achieving organizational and personal development goals**
- **Any personnel hired below target pay grade must have a IDP**



# Supervisor Responsibilities

## Step 3 - Develop the Individual Development Plan (IDP)

**PRIVACY ACT STATEMENT:** Section 4103 of Title 5 of U.S. Code authorizes collection of this information. The Individual Development Plan (IDP) information is used by supervisors, employees, and department managers to plan and/or schedule training, education, or other career development activities relevant to the position. The IDP is a functional tool for both the supervisor and employee. It provides a consistent and continual status of the employee's progress or lack thereof. Position requirements are identified and annotated. This form is used to justify an employee's progress within his/her probationary year. This form is also used to support and justify grade promotions and/or position reassignments. Changes to this IDP, within its Development Objectives are either short term (S/T) or long term (L/T) in nature. The IDP information is for official use only. **Attach additional pages if necessary. On each attached page, annotate the member's data as reflected in Blocks One Through Seven. For each entry, reference the applicable block title for the continued information.**

1. NAME		2. SSN	3. POSITION TITLE		4. PAY PLAN, SERIES, AND GRADE
5. INITIAL/UPDATE Initial		6. PERIOD COVERED		7. LAST UPDATED	
<b>8. DEVELOPMENT OBJECTIVES</b>					
8a. SHORT TERM OBJECTIVES (4-12 MONTHS)			8b. LONG TERM OBJECTIVES (1 YEAR +)		
<b>9. FORMAL TRAINING OBJECTIVES</b>					
9a. COURSE ID	9b. COURSE TITLE	9c. PROVIDER (PRINT NAME)		9d. DATE SCHEDULED OR PROPOSED	9e. DATE COMPLETED
<b>10. FORMAL EDUCATION</b>					
10a. DEGREE	10b. NAME OF PROGRAM	10c. PROVIDER (PRINT NAME)		10d. DATE SCHEDULED OR PROPOSED	10e. DATE COMPLETED
<b>11. ON THE JOB TRAINING (OJT)</b>					
11a. SELF OR GUIDED	11b. NAME OF SYSTEM OR TRAINING ITEM	11c. PROVIDER (PRINT NAME)		11d. DATE SCHEDULED OR PROPOSED	11e. DATE COMPLETED
Self					
Self					
Self					
Self					
Supervisor's Printed Name:		Signature:		Date:	
Employee's Printed Name:		Signature:		Date:	
HRO Coordinator/ HRDS Printed Name:		Signature:		Date:	





## Supervisor Responsibilities



### Step 4 – Request training attendance (Priorities)

- **Priority I.** Mandatory training that must be completed during the fiscal year in order to prevent an adverse impact on mission accomplishment.
- **Priority II.** Training required to produce skilled employees within career fields. It should be successfully completed within a specified time period, but may be delayed if funding is not available.
- **Priority III.** Training for an employee performing competently to increase his/her productivity.



## Supervisor Responsibilities



### Step 4 cont. – Technician Training

#### Requirements:

- **Must be relevant to current position description**
- **Training is within current fiscal year forecast**
- **Employee must be in technician status**
- **Employee must be on a Permanent or Indefinite Appointment**
- **Temporary Appointment:**
  - **Training must be a critical need (Priority 1-Statutory)**
  - **Written justification from Director**



# Supervisor Responsibilities



## Step 4 cont. – Technician Training

### Training NOT FUNDED through Federal Program:

- **Professional Military Education**
  - **MOS**
  - **AFCS**
  - **Officer Career Courses**
  - **Additional Functional Areas**
  
- **College courses relevant to a degree**
  
- **Certifications not required for current position**



## Supervisor Responsibilities

### Step 4 cont. – Authorization, Agreement, and Certification of Training (SF182)

After determining the priority of need,

- Complete an Standard Form 182 for any training over 8 hours
- Forward SF182 and supporting documentation (LOI, MOI, Course Scope) through organizational channels and then onto the HRDS for processing
- HRDS will verify the request with reviewing the annual spend plan
- HRDS will then approve/disapprove training request. HRDS will process training request (e.g. return approved SF 182)
- SF182 package must be approved **BEFORE** DTS Authorization is submitted for approval
- Submit to HRDS-J1 NLT 15-20 days and approved before DTS travel start date



## Supervisor Responsibilities

### Step 4 cont. – Authorization, Agreement, and Certification of Training (SF182)

#### Purpose of the SF182:

- **The Training Authorization Form (SF 182) is used for requesting, approving, and certifying payment for attendance at courses, meetings, conferences, seminars, and symposia**
- **Used in lieu of a contract**
- **Official form to support the obligation of federal funds**



## Supervisor Responsibilities

**Step 4 cont. – Authorization, Agreement, and Certification of Training (SF182)**

**References for the use of the SF182:**

- **OPM Training Policy Handbook**
- **5 CFR 410 Training**
- **5 CFR 412 Supervisory, Management and Executive Development**
- **Federal Acquisition Regulation Part 8 and 13**
- **Technician Personnel Regulation 400**



## Supervisor Responsibilities



### Step 5 – Ensure Training Attendance

- **Make a commitment to employee**
- **Release employees to attend training**
- **Ask for certificates of completion**
- **Enter course completion on Employee Record Brief (ERB)**
- **Self – Certify in DCPDS upon completion of training**



## Supervisor Responsibilities



### Step 6 – Evaluate training effectiveness

- **Supervisor and technician complete written evaluation of training**
- **Discuss how to apply skill and allow time to practice/apply them**
- **Evaluation for appraisal**





## Resources

- Professional Education Center (Air and Army Guard)

<https://www.pec.ng.mil/>

- GKO

<https://gko.ngb.army.mil/>

- Army Civilian Training, Education and Development System (ACTEDS)

<http://cpol.army.mil/library/train/catalog/>

- Graduate School USA

<http://www.graduateschool.edu/>

- Army Training Requirements & Resources System (ATRRS)

<https://www.atrrs.army.mil/atrrscc/search.aspx>



## Resources

- **Defense Acquisition University (DAU)**

<https://www.dau.mil/>

- **Office of Personnel Management (OPM)**

<https://www.opm.gov/>

- **Army e-Learning Program**

[https://www.dls.army.mil/Army\\_e-Learning.html](https://www.dls.army.mil/Army_e-Learning.html)

- **Air University**

<http://www.airuniversity.af.mil/>

- **Graduate School USA**

<http://www.graduateschool.edu/>



# Exercise





## Review

1. Which TPR covers the Technician Human Resources Development Program?

a. TPR 752

➔ b. TPR 400

c. TPR 430

d. TPR 303



## Review

2. When an employee is hired below target gate, they should have an IDP

True  False

3. Permanent employees are the first priority for obligation of training (travel) funds?

True  False



## Review

### 4. Define Priority 1 training.

**Mandatory training that must be completed during the fiscal year in order to prevent an adverse impact on mission accomplishment**



## Review

**5. Which form is submitted for Technician Training?**

**a. OPM 71**

**b. SF 52**

 **c. SF 182**

**d. Statement of Understanding (SOU)**



## Review



**6. Who pays for training, tuition, books, fees, etc?**

- a. HR Development Specialist**
- b. Supervisor**
- c. Employee**
- d. None of the Above**






## Review



**7. Training can be paid for up to what amount?**

**a. \$2,500**

**b. \$3,500**

 **c. \$ 25,000**

**d. \$10,000**



## Review

**8. Who determines, identifies, and nominates employees for training development?**

**a. Adjutant General**

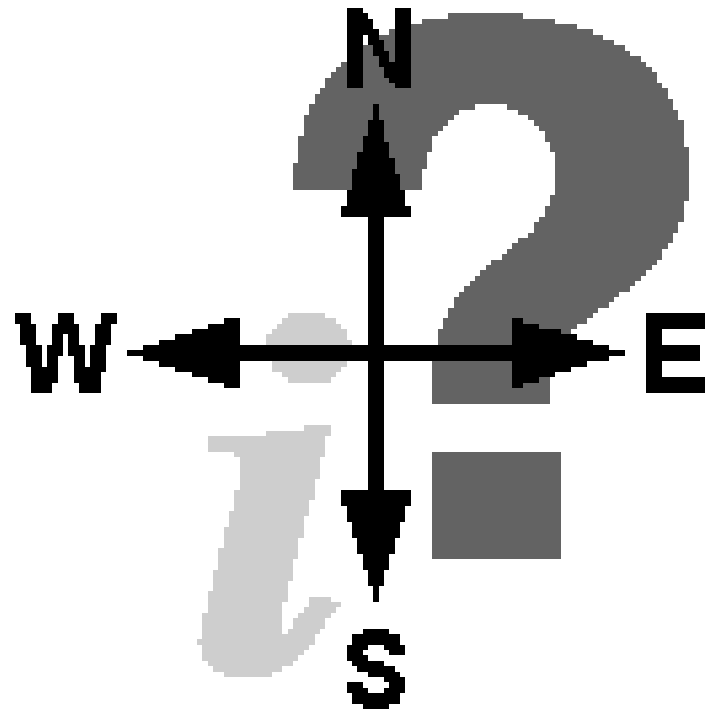
**b. HRO**

**c. HRDS**

 **d. Supervisor**



# Questions





# Performance Management

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**This briefing is**



# Agenda

- Performance Management
- Performance Appraisal Program
- MyPerformance - My Workplace Plan Familiarization
- Writing Effective Critical Elements
- Performance Improvement Plan (PIP)



## References

- Technician Personnel Regulation (TPR) 430
- Technician Personnel Regulation (TPR) 451
- Title 5, United States Code, 4301 – 4305
- Title 5, United States Code, 4511 – 4513
- Title 5, CFR, 430
- Title 5, CFR, 451
- DOD Instructions 1400.25, Vol430
- DOD Instructions 1400.25, Vol431
- OPM



# Performance Management

## Definition:

**A continuous systematic process of evaluating individual Technician performance against clearly stated performance standards.**



# Performance Management







# Performance Management



Performance management involves much more than just assigning ratings. It is a continuous cycle that involves:

- **Planning** work in advance so that expectations and goals can be set
- **Monitoring** progress and performance continually
- **Developing** the employee's ability to perform through training and work assignments
- **Rating** periodically to summarize performance
- **Rewarding** good performance



# Performance Management

- **Permanent Employee = 1 year of probation**
- **Non Supervisory to Supervisory = 1 year of probation**
- **New Title 5 Employees = 2 years of probation**
- **Indefinite/Temporary Employee = 0 Years of probation**

**\*NOTE: Temporary/Indefinite Technician time may count towards permanent probationary time if work is in the same line of work**

**<https://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/monitoring/supervisors-in-the-federal-government/>**



**10 MIN BREAK**





# Performance Appraisal System

## DoD MyPerformance Appraisal Program

- **TOP 10 Things To Know**
- **Training Modules**
- **Training Videos**

<http://dod.hawaii.gov/hro/technician-resources/hr-development/myperformance-training/>



# Performance Appraisal System



## The Current DOD System

- **One formal, semi-annual, documented counseling session with each technician**
- **The annual, official performance appraisal will be 1 April through 31 March with the appraisal year; Currently 1 October 2017 – 31 March 2018 awaiting on NBG guidance**
- **Requires second-level (or higher) supervisor review, input, and concurrence prior to your counseling & appraisals**
- **The performance plan is considered to be approved after higher-level review and the supervisor has communicated the plan to the employee in writing**



## Performance Appraisal System



- **Annual Appraisal Cycle: 1 April – 31 March**
- **HRD recommends at least 3 Critical Elements**
- **Mandatory Supervisory “Critical Element”**
- **Rating of Record: Level 1, Level 3, Level 5**
- **Mandatory Interim Review**
- **Self Assessment**
- **New NGB Form 430 (Performance Appraisal)**
- **MyPerformance accessed through My Biz and My Workplace**



## Performance Appraisal System



- **Level 5 - Outstanding**

The average score of all performance element ratings is 4.3 or greater, with no element being rated a “1”, resulting in an overall rating of record that is a “5”.
- **Level 3 - Fully Successful**

The average score of all performance element ratings is less than 4.3, with no element being rated a “1”, resulting in an overall rating of record that is a “3”.
- **Level 1 - Unacceptable**

Any performance element rated as a “1”.



# Performance Appraisal System



## Log In

- **My Biz – All Technicians have a My Biz account. Think of it as “My Pay” for Personnel actions.**
- **My Workplace – All Supervisors will have a My Workplace account. Only those Supervisors that have Technicians as subordinates will need to access the My Workplace Application.**





# MyPerformance Overview

Login Help | Contact List | Frequently Asked Questions (FAQ)

**DCPDS PORTAL**

**Windows Security**  
Select a Certificate

	Issued DOD EMAIL CA-31 Valid From: 6/21/2015 to 6/21/2018
	Issued DOD CA-31 Valid From: 6/21/2015 to 6/21/2018 <a href="#">Click here to view certificate properties</a>

**Smart Card Access**

Click the login button below and select your non-email digital certificate.

**Smart Card Login**

First time Smart Card (CAC) user? [Register Here](#)

Returning Non-Smart Card (Non-CAC) User? Click the button below.

**Non-Smart Card Access**

First time Non-Smart Card (Non-CAC) user? [Register Here](#)  
Password problems? [Reset](#)

For technical problems, select the [Contact List](#) for your organization's computer support Help Desk.

**News and Info**  
Last updated January 11, 13:00 CDT

The Department of Defense (DoD) Civilian Personnel (CP) have to offer are represented by the U.S. Department of Defense (DoD) Civilian Personnel (CP) Association (CPA). The added value for employees who participate in a diverse workforce is the difference in the Department of Defense (DoD) Civilian Personnel (CP) Association (CPA). Thank you for all of your feedback and effort you took to let us know what was working for you and what needed improvement. Throughout the past year, and looking forward, we will continue to value your input to enhance MyBiz+.

**Attention CSU Users:** The CSU application and database will be decommissioned in the near future. Data has been transitioned to the Current Record Data Mart in CMIS. DLA/DLA customer CSU users will no longer have access to CSU as of June 30, 2016. This notice will be updated with dates for other agencies as they are announced.

**Component Help Desk Information**

If you are having problems accessing this site, please select [Contact List](#) to locate and directly contact your Component Help Desk.

For additional information, check out our [Frequently Asked Questions \(FAQ\)](#)



# MyPerformance Overview



Your Personnel Action for the 2016 General Pay Adjustment is available! You can go to the Personal or Position Detail tile and then select SF50 or NPA Personnel Actions.



Welcome, The Rater

The information is current as of 29-Jan-2016

## Notifications

Read / Unread	Title	Start Date
*	<a href="#">W4 Information Review</a>	23-Dec-2015

\* You have 1 unread notifications.

Home



★ [Provide Feedback](#)

[Manage My Views](#)

### Key Services

[Manage Key Services](#)

[MyPerformance](#)

[Manager Functions](#)

[Performance Management and Appraisal](#)

[Apply Action\(s\) to Multiple Employees](#)

### Last Personnel Action

Type of Action: Name Change from ARM Hgazzh,Upybozugs D

Effective Date: 10-Jul-2015

### Professional Development

**Education:**  
High school graduate or certificate of equivalency

**Training:**  
[CLB 024 \(DAU\) COST RISK ANALYSIS INTRODUCTION \(09-Feb-2015 - 09-Feb-2015\)](#)

**Certification/Licenses:**  
No Certificates/Licenses Available



# MyPerformance Overview



**MyPerformance Main Page**

**Warning:** This application is designed for sensitive unclassified personnel information only. Do NOT enter classified information in this system. Unauthorized release of classified information is a violation of law and may lead to prosecution.

From the Main Page, you can create, update and view employee Performance Plans; change the Rating Official and/or Higher Level Reviewer; view and print part or an entire plan after it is created; close a plan, and track the status of a plan.

You can also search for completed plans by selecting the "Show Completed Plans/Appraisals" link located at the bottom of this page.

To create a Performance Plan:

- Select "Choose a Plan Type"
- Select "Appraisal Plan Type"
- Select the "Go" button

To complete other actions described above:

- Select an option from the Action column
- Select the "Go" button

**Important:** To become familiar with the columns, select the "Need Help?" link.

**Plans/Appraisals In Progress**

**TIP** Only Employees that have a plan in progress are listed below.

Show Me: All Appraisals | Appraisal Year: ALL

Employee Name	Current Owner	Rating Official Name	Appraisal Year	Appraisal ID	Plan Approval Date	Type	Plan Status	Current Status	Action
EHRIS Aocxagc, Qxetbkcnl L	EHRIS Aocxagc, Qxetbkcnl L	EHRIS Arxskybxsayu, Pmkmtvay U	2016	74		DoD	Pending	Plan in Progress	View <input type="button" value="Go"/>

Select the link to search for Completed Plans.

MyPerformance Main Page | Provide Guest Feedback | MyBiz+ | Logout | Help | Diagnostics

### Create New Plan

DoD Performance Management Appraisal Program ▾

--Choose a Plan Type--

**DoD Performance Management Appraisal Program**

Defense Civilian Intelligence Personnel System

National Guard (Title 32)



# MyPerformance Overview



**DoD Performance Management Appraisal Program**

MyBiz+ FAQ Logout

**People in Hierarchy** [Return to Main Page](#)

The MyPerformance tool is only available to employees and supervisors whose position is covered by the new DoD Management Policy contained in DoDI 1400.25 Version 430, dated August 5, 2015, and whose organization is scheduled for immediate transition to the new performance program. [Need Help?](#)

[Expand All](#) | [Collapse All](#)

Focus Name	Occupational Code	Position Name	Organization	Performance Plan	Employee Details
EHRIS Awwskybcsayu, Pmlkmtway U					
EHRIS Aocxjagc, Qxebukcni L	0201.Human Resources Management (0201)	46X70.HUMAN RESOURCES SPECIALIST (PLACEMENT),2351839,AF09,APPR	AF PERSONNEL CTR,AF09R09F7H101	<a href="#">Create</a>	<a href="#">View</a>
EHRIS Bobvnh, Avztzjif	0201.Human Resources Management (0201)	9GD39.HUMAN RESOURCES SPECIALIST (RECRUITMENT & PLACEMENT),2376055,AF09,APPR	AF PERSONNEL CTR,AF09R09F7H101	<a href="#">Create</a>	<a href="#">View</a>

MyBiz+ FAQ Logout

**DoD Performance Management Appraisal Program**

MyBiz+ FAQ Logout

**Confirmation**

**Supervisory Commitment Statement**

I acknowledge my role as a supervisor is vital in fostering a fair, credible, and transparent performance system. It is important that I ensure performance elements are linked to organizational performance goals; establish open communication; monitor and evaluate employee performance; recognize and reward performance, and appropriately address deficient performance.

[Acknowledge](#)

MyBiz+ FAQ Logout



# MyPerformance Overview

Field	Description
*Appraisal Type	The Annual Appraisal – DoD option appears by default.
*Appraisal Period Start Date	The cycle start date defaults to 01-Apr-YYYY
*Appraisal Period End Date	The cycle end date defaults to 31-Mar-YYYY
Appraisal Effective Date	The appraisal effective date defaults to 01-Jun-YYYY
*Rating Official	This field is auto-populated based on information stored in the hierarchy
Higher Level Reviewer Name	This field is auto-populated based on information



# MyPerformance Overview

MyBto+ FAQ Logout

Create Performance Plan Cancel and Return to Main Page

[Need Help?](#)

**Employee Information**

Employee Name: EHRIS Bclbrvlt, Ayrtztlj  
[Show Employee Details](#)

**Setup Details**

\* Indicates required field.

\* Appraisal Type: Annual Appraisal - DoD

**TIP** The Appraisal Period Start Date represents the start of the employee's performance evaluation period under this plan. Please review and change this date, if necessary.

\* Appraisal Period Start Date: 01-Apr-2016

\* Appraisal Period End Date: 31-Mar-2017

Appraisal Effective Date: 01-Jun-2017

\* Rating Official Name: EHRIS Aemskybcsaryu, F

\* Higher Level Reviewer Name: EHRIS Auesqnu, Xozard

**Build New Plan**

MyBto+ FAQ Logout

[About this Page](#) [Privacy Statement](#)



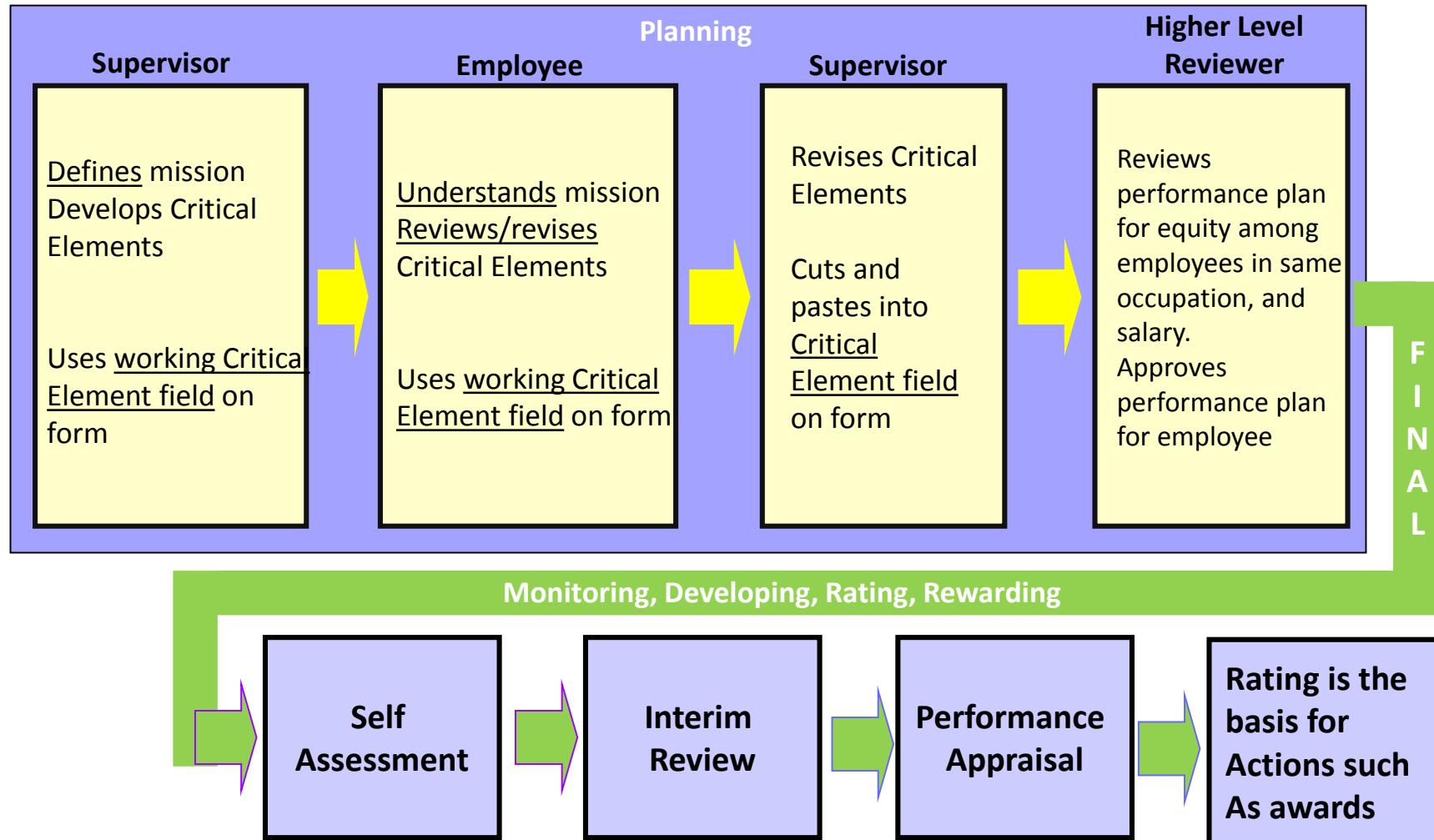
# Writing Effective Critical Elements

## Process Preparation

- **Analyze the position**
- **Assess what the key KSAs are**
- **Review/update the job standards**
- **Review/ensure accuracy of the position description**
- **Ensure critical elements are identified**



# Writing Effective Critical Elements







## Writing Effective Critical Elements

**Mission - an operation or duty assignment that is assigned by a higher headquarters.**

**Critical Element – an action that, if not accomplished to the specified standard, results in a serious adverse effect upon the organization’s mission accomplishment.**

**Each employee shall have their work assignments or responsibilities described in their performance plan as a critical element(s).**



# Writing Effective Critical Elements



**POSITION DESCRIPTION**

1. Agency Code: 70637000

2. Reason for Submission:  Redescription  New

3. Service:  Civil  Field

4. Impl. Office Location

5. Duty Station

6. OSM Cert #

7. Fair Labor Standards Act:  Not Applicable

8. Financial Statements Required:  None  Basic  Financial  Statements  Employment & Financial Statements

9. Subject to IA Action:  Yes  No

10. Position Status:  Competitive  Excepted (32 USC 706)  SES (Gen)  SES (CR)

11. Position is:  Supervisory  Non-Supervisory  Managerial  Neither

12. Sensitivity:  Non-Critical  Critical  Special

13. Classified/Graded by:  a. Office of Personnel Management  b. Dept. Bureau or Establishment  c. Second Level Review  d. First Level Review

Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
Surface Maintenance Mechanic	WG	5801	11	ml	6 Feb 06

14. Dept./Agency/Establishment - National Guard Bureau

a. First Subdivision - State Adjutant General

b. Second Subdivision - Joint Force Headquarters--State

c. Third Subdivision - Logistics Directorate (J-4)

d. Fourth Subdivision - Surface Maintenance Facility

e. Fifth Subdivision -

15. Employee Review. This is an accurate description of the major duties and responsibilities of my position.

16. Supervisory Certification. I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationship, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes related to appointment and payment of public funds. False or misleading statements may constitute violations of such statutes or their implementing regulations.

a. Typed Name and Title of Immediate Supervisor

b. Typed Name and Title of Higher-Level Supervisor/Manager (optional)

17. Classification/Job Grading Certification: I certify this position has been classified/graded as required by Title 5 USC, in conformance with USOPM published standards or, if no published standards apply directly, consistently with the most applicable standards.

18. Standards Used in Classifying/Grading Position: USOPM/JGS for: Introduction to the Federal Wage System Job Grading System, Sep 81; Heavy Mobile Equipment Mechanic, WG-5803, Jan 91; and Automotive Mechanic, WG-5823, Jun 90.

19. Signature: MYRA LOCKIE, Human Resources Specialist (Classification)

20. Date: 6 Feb 06

21. Information for Employees. The standards and information on their application are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or OPM. Information on classification/job grading appeals is available from the personnel office.

Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (P/D)										
b. Supervisor										
c. Classifier										

22. Remarks: Released from NGB-JL-TMC, CRA 06-1009, dated 6 Feb 06.

23. Description of Major Duties and Responsibilities (SEE ATTACHED)

OPTIONAL FORM 8 (Rev. 10-00) (GSA GEN. REG. 101-11.6) (GSA GEN. REG. 101-11.6) (GSA GEN. REG. 101-11.6) (GSA GEN. REG. 101-11.6)



## Writing Effective Critical Elements

- Information for your critical elements can be found in personnel's position descriptions.
- It describes the purpose of each positions.

**FASCLASS: Search PDs**

**[https://acpol2.army.mil/fasclass/search\\_fs/search\\_fasclass.asp](https://acpol2.army.mil/fasclass/search_fs/search_fasclass.asp)**



## Writing Effective Critical Elements

- **Critical elements must be linked to the mission**
- **HRO recommends a minimum of 3 critical elements**
- **All supervisors have a supervisory mandatory critical element**
- **Critical elements must be in either the SMART or MARST format**



## Writing Effective Critical Elements

SMART is a framework for developing (and evaluating) Critical Elements

- **SPECIFIC**
- **MEASURABLE**
- **ALIGNED**
- **REALISTIC / RELEVANT**
- **TIMED**



## Writing Effective Critical Elements

### Specific

- Define an observable action, behavior, or achievement
- Link to a level of performance, frequency, percentage, or other number
- Are specific regarding the description of the result (not the activities to achieve that result)



# Writing Effective Critical Elements

## Measurable

- Provide a method to allow tracking, recording, and validation of quality of a specific behavior, action, or outcome
- Define:
  - Quantity (how many)
  - Time (how long)
  - Quality (how good)
  - Resources (how much)



# Writing Effective Critical Elements

## **Align**

- **A direct connection is made between the employee's work, unit's goal, and the organization's mission**
- **Critical Elements ensure all are working toward shared goals**
- **All critical elements in the organization pull in the same direction**
- **Managers/supervisors need understanding of their own goals, objectives and critical elements before they can work with their employees to establish theirs**





# Writing Effective Critical Elements

## Realistic

- **Realistic:** Goals and objectives achievable with the resources and personnel available, and within the available time
- **Relevant:** Goals and objectives are important to the employee & organization
- **Responsibility** must be appropriate to employee's grade



# Writing Effective Critical Elements



## Time

- **Established start and/or end dates are defined**
- **Specific dates (e.g., March 15) are preferred over relative descriptions of time (e.g., 6 months)**
- **Milestones can be included**

### Examples:

- ▶ **Specific Time – by December 10**
- ▶ **Relative to another event – 6 months after...**
- ▶ **Recurring – quarterly, bi-weekly**



# Writing Effective Critical Elements



## Rater's Responsibilities

- **Ensure employees attend training**
- **Develop critical elements aligned to the mission**
- **Communicate**
- **Provide Feedback to employees**
- **Foster and Reward excellent performance**
- **Address poor performance**



# Performance Improvement Plan



## Performance Improvement Plan (PIP)

- **Required with Level 1 performance**
- **Normally for 90-120 days, and identifies the deficiency and what must be done to attain a Level 3 rating**
- **Statement of Notice that performance is at best “Fully Successful”, for pay purposes**
- **Withholding of Within-Grade increase for which otherwise eligible**
- **Uncorrected unacceptable performance will result in reassignment, change to lower grade, or removal**



# Performance Improvement Plan

## Hawaii National Guard Performance Management Program Performance Improvement Plan (PIP)

EMPLOYEE NAME	Last	First	Middle Initial
POSITION TITLE	GRADE/STEP	RATING PERIOD	
	/	From	To
AGENCY/OFFICE	DATE COMPLETED		

Date Issued:

The employee named above is being given this *Performance Improvement Plan* because of the reason selected below:

- The employee's performance became deficient during the rating period.
- The employee received an annual performance rating of 1 - 'Unacceptable'

This *Performance Improvement Plan* provides the employee with, at least, 30 days\* and up to 90 days to improve his/her performance in the specific areas identified below. This 30 to 90-day period shall begin on \_\_\_\_\_ and end on \_\_\_\_\_.

After this period, a determination shall be made as to whether the employee has met the requirement of this *Performance Improvement Plan* and a written decision shall be issued.

If the employee fails to improve his/her job performance and/or meet required standards during the 30 to 90-day period\*, the employee may be **reassigned, removed, or demoted**.

**\*For an Initial PIP, the period for improvement will be no less than 90 days\***

WHAT?		HOW?		WHEN?
Deficient Competencies: <i>(Check only those that apply)</i>	Desired Outcome to Monitor:	Action Plan to Improve Performance	Results to Monitor/Measure:	Frequency of Monitoring:
<input type="checkbox"/> <b>Customer Service</b> - Demonstrates a commitment to working with customers, both internal and external. Works with customers to get information, assess needs, and resolve issues and concerns, and consistently acts with customer in mind.				



## Performance Improvement Plan

If performance improves to “Fully Successful”, a new rating may be given

- An acceptable performance rating requires granting a **Within-Grade Increase** which, as determined by the state, can be effective:
  - As of that time, or
  - Retroactive



## Performance Improvement Plan

A continuing “Unacceptable” rating requires the technician be:

- **Removed from employment in that position,**
- **Reduced in grade (in that position) to a level at which qualified & capable of acceptable performance, OR**
- **Reassigned to another position for which qualified & capable of acceptable performance**



## Performance Improvement Plan

**A Technician may appeal any performance appraisal or notice of rating or any single aspect of an appraisal/rating.**

### **Timeframes for filing appeals:**

- **Other than unacceptable ratings – within 30 calendar days of receiving the original copy of the appraisal**
- **Based on Unacceptable ratings – within 15 calendar days of receipt of written notice or original copy of appraisal**





# Performance Improvement Plan

## The Performance Appraisal Review and Appeals Board:

- **Established by the state Adjutant General**
- **Consists of members of equal or higher grade than appellant**
- **Cannot be in the appellant's chain of command**



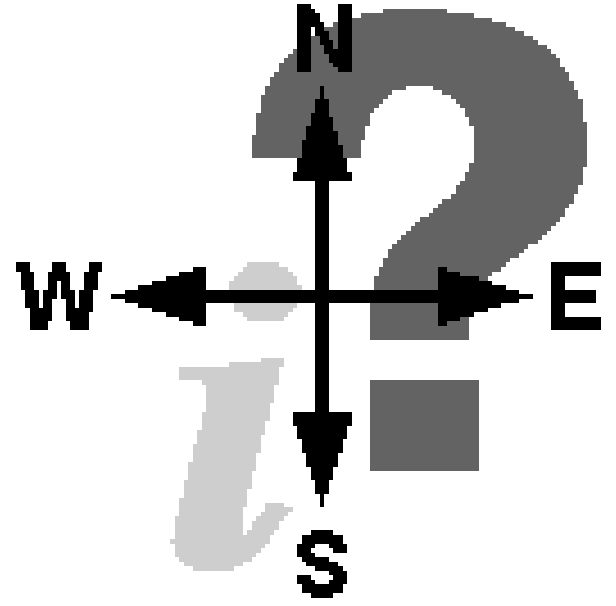
# Performance Improvement Plan

## The Performance Appraisal Review and Appeals Board:

- **Concerned only with the appeal--  
NOT the personnel action taken as a result of an unacceptable appraisal**
- **Submits decision within 15 calendar days**
- **The appellant is entitled to representation**
- **There are no appeal rights for this purpose beyond the Adjutant General**



# Questions





# Incentives Awards Program

MSgt Joey Mariano

HR Development

808-672-1248

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joey.c.mariano.mil@mail.mail

**This briefing is**



## Agenda

- **References**
- **FY 18 Schedule**
- **Types of Awards**
- **Supervisor Responsibilities**
- **Exercise**



## References

- **Technician Personnel Regulation (TPR) 451**
- **Hawaii Supplement to TPR 451 (DEC 2017)**



## FY18 Schedule (Tentative)

### FY18 HING Technician Awards Program

- TAG HING Technician Awards Program Policy, December 2017
- **1st Quarter Award Board Packets Due December 2017**
- 1<sup>st</sup> Quarter Review Board and Notice, January 2018
- **2nd Quarter Award Packets Due March 2018**
- 2nd Quarter Review Board and Notice, April 2018
- **3rd Quarter Award Packets Due May 2018**
- 3rd Quarter Review Board and Notice, June 2018
- **4th Quarter Award Packets Due August 2018**
- 4th Quarter Review Board and Notice, September 2018



## Types of Awards



- **Honorary Awards**
- **Suggestion and Invention Awards**
- **Special Act/Service Awards**
- **Performance Awards**
- **Service Awards**





## Honorary Awards

### Hawaii National Guard Level:

- Certificates of Achievement
- Letters of Appreciation or Commendation

### NGB Level:

- Presidents Award for Distinguished Federal Civilian Service
- Meritorious Civilian Service Award
- Secretary of Defense Award for Outstanding Public Service
- Decoration for Distinguished Civilian Service

For a listing of other Federal awards, please visit:

<https://www.opm.gov/policy-data-oversight/performance-management/awards-list/>



## SUGGESTION AND INVENTION AWARDS



- AIP – Army Suggestion Program

<https://asp.hqda.pentagon.mil/public/default.htm>

*\*Currently suspended until further notice*

- API – Airmen Powered by Innovation

<https://ipds.afpc.randolph.af.mil> or for more information, go to <https://my.af.mil> and enter “API” into search window



## **SPECIAL ACT / SERVICE AWARDS**



- **Time-Off Award for Special Act/Service**
- **On-The Spot Cash Awards/ Special Act / Special Service Cash Award**
  - **Based on an accomplishment**
    - **Can be for accomplishments on a specific date, or a specified timeframe**
  - **Submit on NGB 32 with remarks describing the special act or service**
  - **Can be given in addition to Performance Awards**
    - **i.e. (QSI, SSP, TOA for Performance)**



## Time-Off Award For Special Act / Service



- **All technicians are eligible**
  - **Temp tech appointment must exceed 90 days in order to use**
- **Will have a Table in the Hawaii Supplement to TPR 451 to identify an appropriate level of time off**
- **Maximum of 40 hours per award and 80 hours per leave year**



## **On-The-Spot and Special Act / Service Cash Award**

- **All technicians are eligible**
- **Will have Tables in the Hawaii Supplement to TPR 451 to determine appropriate level of award - can be awarded for either tangible or intangible benefits**
- **On-the-Spot & Special Act/ Service awards range from will be determined**
- **Cash awards are taxable income**



## PERFORMANCE AWARDS



- **Time Off Award for Performance**
- **Sustained Superior Performance**
- **Quality Step Increase**
  - **Based on the employee's Record of Rating for the most recent appraisal (not to exceed 1 year)**
  - **Submit on NGB 32 and attach Performance Appraisal**
  - **Only one Performance Award can be given for a specific appraisal period**



## Time-Off Award For Performance

- **Only Permanent and Indefinite technicians are eligible**
- **Will have a Table in the Hawaii Supplement to TPR 451 to identify an appropriate level of time off based on record of rating**
- **Maximum of 40 hours per award and 80 hours per leave year**



## Sustained Superior Performance

- **Only Permanent and Indefinite technicians are eligible**
- **Will have a Table in the Supplement to TPR 451 to identify an appropriate award amount**
- **A minimum of 52-weeks of continuous performance in the same grade and position (promotions or transfers to other positions will disqualify an employee from being eligible)**
  - **Leave without pay (LWOP) or Absent-US in excess of 30-days does not count towards the 52-week requirement**
- **If an employee has already received cumulative Time Off Awards for 40 hours or more for same appraisal period, they are disqualified from receiving an SSP**
- **NGB 32 must be signed by the 1<sup>st</sup> and 2<sup>nd</sup> level supervisors, the director / group commander, and must be approved and signed by HRO**





## Quality Step Increase (QSI)

- **Only GS Permanent and Indefinite technicians are eligible**
- **Must receive a rating of record of level 5**
- **Below Step 10**
- **Demonstrated high quality performance**
- **Be aware of when the employee's next regular step increase is due**



## Quality Step Increase (QSI) cont.

- **If an employee has already received cumulative Time Off Awards for 40 hours or more for same appraisal period, they are disqualified from receiving a QSI**
- **A minimum of 52-weeks of continuous performance in the same grade and position (promotions or transfers to other positions will disqualify an employee from being eligible)**
  - **Leave without pay (LWOP) or Absent-US in excess of 30-days does not count towards the 52-week requirement**
- **NGB 32 must be signed by the 1<sup>st</sup> and 2<sup>nd</sup> level supervisors, the director / group commander, and must be approved and signed by HRO**



## Length of Service Awards

- **Once an employee reaches 10 years of service as a technician, they become eligible**
- **Awarded in 5-year increments**
- **Each technician will receive a certificate of service and service pin**



## Supervisory Responsibilities



**Determine the appropriate awards for your employees**

- **Think about long-term strategy vs short-term satisfaction**
  - **A new employee is usually in a learning phase for the first year of a new position**
  - **A new-hire receives automatic step increases for the first few years**
  - **A Time-Off award may be more beneficial to a new employee**
- **Intent of the Incentive Awards Program: to motivate for increased productivity, efficiency and economy to drive overall improvement operations**
  - **Cannot be used to recognize work done in a military status**
  - **Cannot be used to provide additional compensation for it's own sake**
  - **Awards other than honorary will not be processed for technicians whose retirement has been finalized**



## Supervisory Responsibilities



- **Ensure timely submission of awards**
- **Provide all supporting documentations**
- **Exercise care in considering recognition**
- **Be thorough on the appraisal – take the award into consideration when writing the appraisal**



## Supervisory Responsibilities



### DCPDS NOAC

**840 - Individual Cash Award**

**846 - Individual Time Off Award**

**847 - Group Time Off Award**

**892 – Irregular Perf Pay (QSI)**



# Exercise





## Scenario 1

**You are Annie Kine’s immediate supervisor and you want to submit a request to give her an award for creating a packet for OWCP. The packet she created was initially to help her remember exactly what she needs to be done if someone was hurt on-the-job. After realizing how helpful the packet was, she began to share it with other supervisors and eventually with the Human Resources Office. On June 2, 2017 HRO decided to start giving that packet out at the supervisor’s course, and it is now used throughout the state.**

**Would this award be for performance, or for a specific act?  
Specific Act (Cash or Time Off)**

- **Additional Information for Annie:**
- **Address: 123 Military Lane, Honolulu, HI 96816**
- **Present Position: (Perm) Human Resources Assistant**
- **Grade & Step: GS 07-02**
- **Salary: \$39,052.00/yr**





## Scenario 2

**You are Jimmy Smith's immediate supervisor and appraisals have just been completed. You want to submit a request to give him an award for his excellent performance during the last appraisal period. Jimmy received a rating of 5 on his annual appraisal. The office experienced an unusual amount of turnover in personnel throughout the year and Jimmy was always willing to pick up additional duties to cover an empty position until it was filled. Jimmy also played a large part in training new employees who filled those positions. Jimmy voluntarily stayed late at the shop many times throughout the year to ensure the shop did not fall behind while short-staffed, resulting in earning over 50 hours of compensatory time.**

**Would this award be for performance, or for a specific act?  
Performance (SSP)**

- **Additional information for Jimmy:**
- **Address: 500 Soldier Lane, Kapolei, HI 96707**
- **Present Position: (Perm) Surface Maintenance Repairer**
- **Grade & Step: WG 08-04**
- **Salary: \$24.13/hr**



## Scenario 3



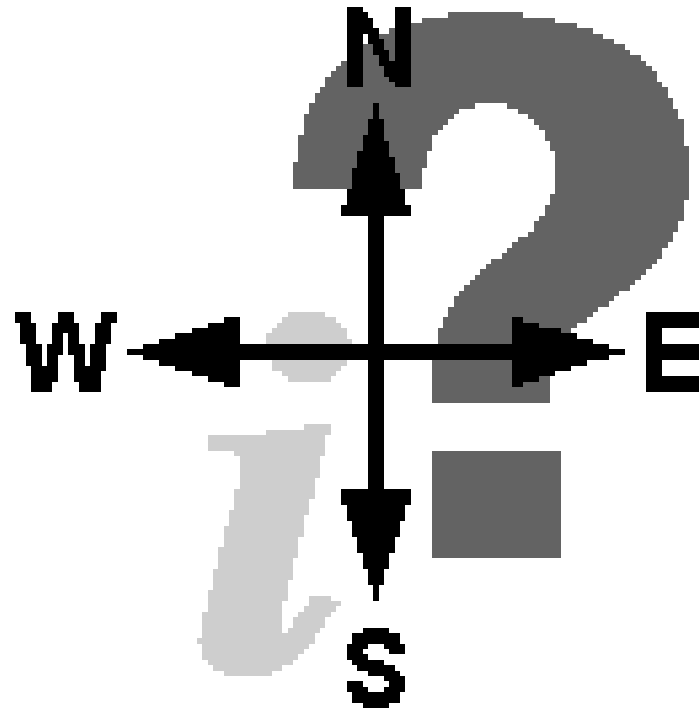
**You are Sam More's immediate supervisor and you want to submit a request to give him an award for passing a tough inspection on August 15, 2017. Sam was just hired this past April and has never gone through any type of inspection before. He played a primary role in making sure equipment and documentation were ready for the inspection for months in advance. You want to award him for not only the great end-results of the inspection, but also for his willingness to learn quickly what needed to be done to prepare.**

**Would this award be for performance, or for a specific act?  
Specific Act (Time-Off Service Award)**

- **Additional information for :**
- **Address: 432 Troop Drive, Aiea, HI 96701**
- **Present Position: (Temp) Supply Technician**
- **Grade & Step: GS 06-01**



# Questions





# Sexual Assault Prevention and Response (SAPR)

Technician Personnel Management Course

1LT Lehua Halemano  
Mr. Adrian Remington



# Agenda



- Why is this important?
- Defining Sexual Assault & Consent
- Applicable Laws
- SAPR Program
- Reporting
- Supervisor's Role
- Resources

UNCLASSIFIED



LET'S TALK ABOUT



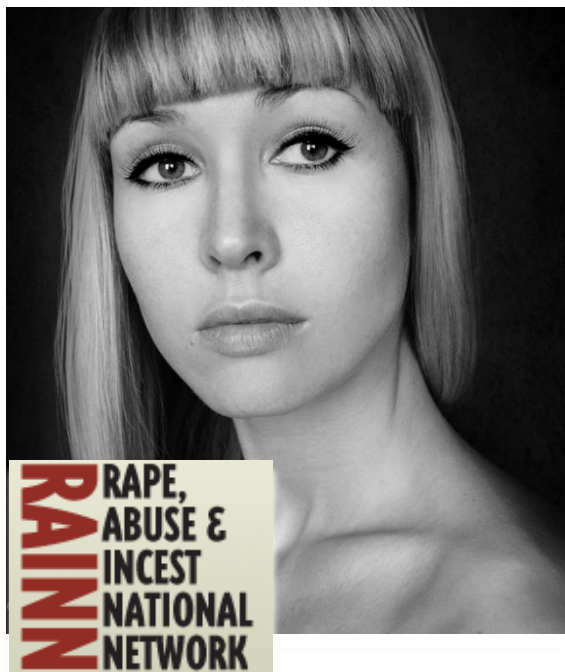
SEXUAL ASSAULT

IT AFFECTS US ALL

UNCLASSIFIED



Statistics help provide a “Why” to prevention and encourage us to **INTERVENE , ACT, & MOTIVATE!**



## EFFECTS OF RAPE

Survivors of Sexual Assault are:

- 2x more likely to suffer from depression
- Sexual abuse in any form can take many ways
- Every 107 seconds, another woman is sexually assaulted
- 6x more likely to suffer from PTSD
- American is sexually assaulted or attempted or completed rape in their lifetime
- 5x more likely to not be happy
- 26x more likely to abuse drugs
- 4x more likely to contemplate suicide



# The Adjutant General



*"I am firmly committed to supporting the implementation of the Sexual Assault Prevention and Response Program (SAPR). Sexual assault is a crime, demeans the value of others, and erodes the basic foundation of trust so vital to the success of a military organization and mission accomplishment. As a result, the Hawaii National Guard will do all that is possible to prevent sexual assault and effectively implement the Sexual Assault Prevention and Response (SAPR) Program."*

***Maj. Gen Arthur "Joe" Logan***

*The Adjutant General, HING*





# Defining Sexual Assault



- Sexual assault is a crime.
- According to the Department of Defense (DoD), the term “sexual assault” is defined as “intentional sexual contact, characterized by use of force, physical threats, or abuse of authority, or when the victim ***does not or cannot consent.***”
- Includes:
  - Rape
  - Nonconsensual sodomy (oral or anal sex)
  - Indecent assault (unwanted, inappropriate sexual contact or fondling) or attempts to commit these acts
- Can occur without regard to gender or spousal relationship or age of victim.



# State of Hawaii

## **HRS Section 707, Part V, Sexual Offenses:**

- 707-730 Sexual assault in the first degree – Class A Felony/ 25 Years in Prison
- 707-731 Sexual assault in the second degree – Class B Felony/10 Years in Prison
- 707-732 Sexual assault in the third degree – Class C Felony/ 5 Years in Prison
- 707-733 Sexual assault in the fourth degree – Misdemeanor/ 1 Year in Jail



# What is Consent?



- “Consent” shall not be deemed or construed to mean:
  - the failure of the victim to offer physical resistance.
- Consent is NOT given when a person uses:
  - force, threat of force
  - coercion
  - when the victim is asleep, incapacitated, or unconscious.



# Impact of Sexual Assault



- Fear
- Helplessness
- Loss of Meaning and Sustaining Beliefs
- Legitimacy and Validation
- Self-blame and Guilt
- Betrayal and Loss of Trust
- Shame
- Isolation and Alienation
- Diminished Sense of Self
- Anger and Rage
- Grief and Loss

Ref: The Victim's Perspective: Phenomenology of Rape



# SAPR Program



- Establishes SAPR policies and procedures for T32 Guard members
- ARNG SHARP and ANG SAPR programs
- Prevention – Training and awareness programs
- Investigation – Law enforcement and NGB OCI
- Accountability – Prosecutors, Commanders/TAG
- Advocacy – 24-hour, 7-day per week cross service joint response capability
- Assessment – program evaluation and trend analysis



# Reporting Options

- **Restricted Report**

- Reported to SARC/VA, Medical Personnel
- Medical and Advocacy Services Received
- No Investigation initiated
- Commander not notified

- **Unrestricted Report**

- Reported to Commander, Law Enforcement, SARC
- Medical Services Received
- Investigation Initiated



# National Guard SMs



- Eligible to file a Restricted or Unrestricted Report
- Eligible to receive timely access to SAPR advocacy services from a SARC and a SAPR VA, and the appropriate non-medical referrals, if requested
- Access to a Special Victims Counsel
- Reports of prior- to- military service sexual assault shall be handled in accordance with the procedures for Restricted and Unrestricted Reports outlined in this Instruction
- Reserve Component members can report at any time, and do not have to wait to be performing active service or be in inactive training to file their report.



# Contractors and Civilians

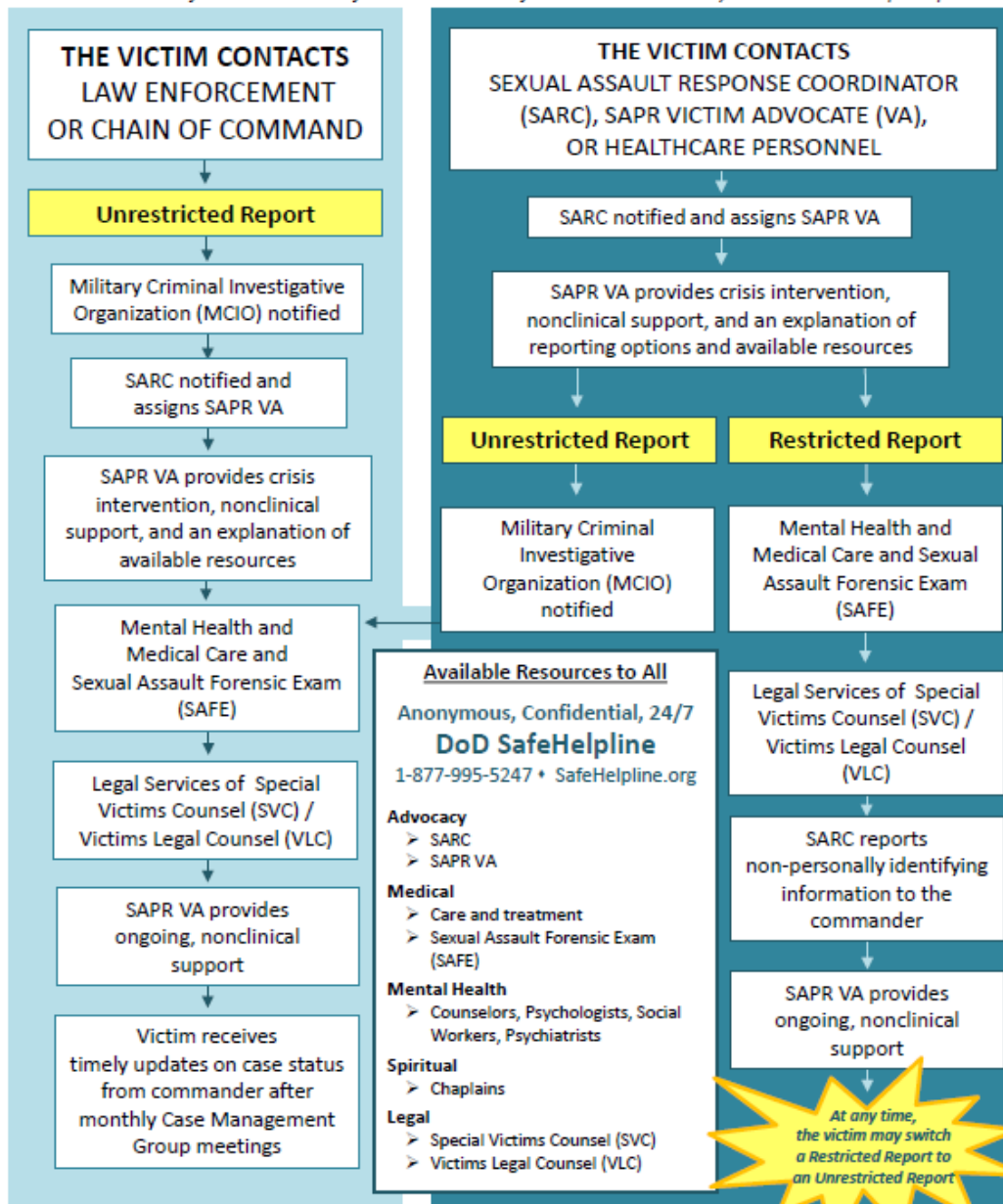


- Non-military individuals who are victims of sexual assault are only eligible for limited emergency care medical services at MTFs.
- Only eligible to file an Unrestricted Report
- LIMITED SAPR services to be defined as the assistance of a SARC and Victim Advocate (VA)
- These limited medical and SAPR services shall be provided to: (a) DoD civilian employees and their family dependents 18 years of age and older when they are stationed or performing duties OCONUS **and** eligible for treatment in the MHS at military installations or facilities OCONUS. These DoD civilian employees and their family dependents 18 years of age and older only have the **Unrestricted Reporting** option.



## Sexual Assault Response Report Flow Chart

Note: A victim who first contacts law enforcement or chain of command will have only the Unrestricted Report option.



NOTE: These steps are based on DoD Directives 6495.01, 1030.01, and Directive Type Memorandum 14-007, and DoD Instructions 6495.02 and 1030.2. The response procedures may vary by Service or installation but must still comply with the requirements in these policies.



# Supervisor Responsibilities



- Create a work environment free of sexual harassment. SH can lead to the more serious crime of sexual assault.
- Understand goals of the SAPR Program are to provide victim-centered care to anyone who discloses sexual assault in the National Guard workforce (Dual Status Techs and Civilian Techs)
- Know who the SARC/ VA are. Immediately refer any disclosures of sexual assault to a SARC/VA.
- If unsure if the disclosure is SA or SH, allow the SARC to make that determination and protect the victim's confidentiality.



# Not the Supervisor's Job



- Questioning the victim about the incident
- Determining whether its sexual assault or sexual harassment
- Conducting an investigation
- Informing individuals without an official, legitimate need to know



# Barriers to Reporting



- FEAR of harm
- Embarrassment
- Denial
- Co-occurring offenses (Alcohol or drug charges)
- Reputation
- Lack of knowledge
- Fear for career
- Fear that they will be blamed
- Fear that no one will believe them



# SAPR Program Relevancy to Technicians

- Competitive and Dual-Status Technicians
  - Technician state benefits as defined by state law
  - Healthcare Services available through Health Insurance and state Victims of Crime Compensation Act
  - SAPR Services for referrals and assistance
- SAPR personnel will assist in helping to determine available services and reporting options
- Administrative leave for Sexual Assault Victims; at TAG discretion



## Resources

**24-Hour HING SAPR Hotline**  
888-SAPR(7277)-101

**DoD Safe Helpline**  
(877) 995-5247

**Sex Abuse Treatment Center Hawaii,**  
Free-24/7  
808-995-5247



Questions?



# Summary



- Why is this important?
- Defining Sexual Assault & Consent
- Identifying Laws
- SAPR Program
- Reporting
- Supervisor's Role
- Resources





# SAPR Personnel



## **1LT Lehua Halemano**

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# State Equal Employment Manager

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# Agenda (41 Slides)



- EEO Policy
- Learning Objectives
- Civil Rights Laws
- Elements of a Complaint: Slide
  - Claims
  - Basis
- No Fear Act/Retaliation
- Complaint Processing
- Resources
- Point of Contact

Slide

3

4

5

6-7

8-12

13-29

30-32

33-39

40

41



# EEO Policy



- Equal Employment Opportunity is the right of all military personnel and civilians to be protected from discrimination in employment.
- All applicable federal EEO laws will be vigorously enforced
- Hawaii National Guard policy is to ensure equal employment opportunity, prohibit discrimination and harassment in all its forms, and promote diversity and inclusiveness in the workplace
- **Supervisors and managers** bear a special responsibility to ensure that work environments are free from discrimination and harassment of any kind



# Learning Objectives: Understand...



1. **Elements of a complaint** and protected classes
2. **Role** of a supervisor in providing equal employment opportunity
3. **What is covered** under the HING EEO program and EEO Commission
4. **HING No Fear** requirement and where to find information
5. significant stages in the federal sector **EEO complaint process**, including the **option of ADR**



# Civil Rights Laws



- Title VII, Civil Rights Act of 1964
- Americans with Disabilities Act of 1990
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967
- The Rehabilitation Act of 1973
- The Vietnam Era Veterans Readjustment Assistance Act of 1974
- The Civil Service Reform Act of 1978
- Civil Rights Act of 1991
- No fear Act of 2003



# Elements of a Complaint



# Elements of a Complaint



- Two basic elements required:
  1. Basis: Protected class (race, color, national origin, sex/gender, age, disability, religion, retaliation)
  2. Claim: sexual harassment, hostile work environment, denied benefit/opportunity (leave, promotion, positive evaluation, overtime opportunity, etc.)





# Claims



# Harassment Defined



- Harassment is unwelcome verbal or physical conduct based on race, color, religion, sex (regardless of whether it is of a sexual nature), sexual orientation, national origin, pregnancy, age, disability or retaliation that is sufficiently offensive to alter the conditions of the victim's employment.
- This standard is met when:
  - The conduct culminates in a tangible employment action, or
  - The conduct is sufficiently severe or pervasive as to create a hostile work environment



# Disparate Treatment



- Exists when similarly situated individuals are treated differently because of their membership in a protected class
- Shifting Burden: Once the above conditions are met, burden shifts to employer to articulate a legitimate, non-discriminatory reason for taking the action; and shifts back to complainant to argue pretext
- Complainant must establish that he or she:
  - Is a member of a protected class
  - He/she suffered some adverse action
  - A similarly situated individual outside of his/her class was treated more favorably



# Tangible Employment Action



- Definition: A management official's harassment that results in a significant change in an employee's (usually a subordinate's) employment or job status
- An agency is automatically liable for harassment by a management official that results in a tangible employment action regardless of whether upper management had knowledge of it
- Examples of tangible employment actions include but are not limited to:
  - hiring and firing
  - promotion or failure to promote
  - demotion
  - undesirable reassignment
  - work assignments
  - other actions



# Hostile Work Environment



- Anyone in the workplace can commit this type of harassment:
  - a supervisor or manager
  - co-worker
  - or even a non-employee
- To create a hostile environment, the conduct must rise to the level of being severe or pervasive
- The key issues are frequency and severity
  - The more severe the conduct, the less frequent it must be to rise to the level of a hostile environment
  - The less severe the conduct, the more frequently it must occur to constitute a hostile environment



# Basis



# Age/Disability/Genetic Information



## Protected Classes (Civilian Only)

- **Age Discrimination in Employment Act of 1967**: Prohibits discrimination on the basis of age against individuals 40 and over.
- **Americans with Disabilities Act of 1990**: Prohibits discrimination against a qualified individual with a disability.
- **Genetic Information Nondiscrimination Act of 2008**: It is illegal to discriminate against employees or applicants because of genetic information. (Ex. Family history of \_\_\_ medical condition)





## Reasonable Accommodation (Title VII)



- Agency is required to make a reasonable accommodation of a **KNOWN** mental or physical limitation of an otherwise **qualified individual with a disability** unless to do so would cause undue hardship.
- Accommodation encompasses:
  - Application process
  - Job performance
  - Benefits and privilege of employment
- Types of accommodation:
  - Making facilities accessible
  - Acquiring assistive devices
  - Modifying work schedules
  - Restructuring job
  - Permitting use of accrued leave and unpaid leave
  - Modifying exam/training material
  - Providing readers or interpreters
  - Reassigning to a vacant position



# National Origin and Race/Color



# Protected Classes (Title VII of the Civil Rights Act of 1964 )



**National Origin**: It is prohibited to discriminate on the basis of National origin; because of:

- Ethnicity
- Accent
- Appearance to be of a certain ethnic background
- Birthplace
- Ancestry
- Linguistic characteristics common to specific ethnic groups

**Race or Color**: It is prohibited to discriminate on the basis of race including color discrimination involves treating someone unfavorably because of:

- Complexion
- Immutable characteristics associated with race:
  - ✓ Skin color (can occur between persons of different or same ethnicity/race)
  - ✓ Hair texture
  - ✓ Facial features



# Examples: Race Discrimination



- Employment conditions which predominately affect one race unless the practice is job related and consistent with business necessity
  - A “no-beard” employment policy may discriminate against African-American men who have a pre-disposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job related.
- Be aware of accent discrimination, English fluency requirements and “English Only Rules”. Must be for “safe or efficient” operations sake.



# HALFWAY BREAK



# Religion



# Religion (Title VII of the Civil Rights Act of 1964 )



- Title VII prohibits discrimination on the basis of religion.
- Organized religions such as: Buddhism, Christianity, Hinduism along with atheist, agnostic and others who have sincerely held religious, ethical or moral beliefs.
- Employees cannot be forced to participate in religious activity as condition of employment
- Agency has a duty of reasonable accommodation for sincerely held religious beliefs and practices unless to do so would cause an undue hardship.
- Undue hardship can mean significant cost or non-cost factors such as office disruption.



# Religious/Reasonable Accommodation (Title VII)



- Accommodations may include:
  - Granting leave for religious observances
  - Granting time and/or place to pray
  - Ability to wear religious garbs
  - Accommodating hairstyles/grooming habits
  - Honoring dietary requirements during meeting where meals are provided
  - Permitting time off during a mourning period for a deceased relative.





## Example

- Elaine, who is Roman Catholic, requested Good Friday off so that she could go to church. Andrew Also a Roman Catholic, denied her request, telling her that the church does not require Catholics refrain from work on Good Friday.



# Sex and Gender



# Sex/Gender (Title VII of the Civil Rights Act of 1964)



- **Sex/Gender:** Title VII prohibits discrimination on the basis of a person's sex/gender.
- Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is included.
- Sex Discrimination includes:
  - Disparate treatment based on sex
  - Harassment based on sex
  - Sexual harassment
  - Pregnancy discrimination
- Gender Discrimination include “sex stereotypes”
  - “Stop being a sissy”
  - “You should be more lady-like”



# Sexual Harassment



- Title VII prohibits both harassment and sexual harassment through continued interpretation by the EEOC.
- Unwelcome conduct on a protected basis constitutes unlawful harassment if it is sufficiently severe or pervasive to create an intimidating, hostile or offensive work environment.
- An agency is liable for harassment by co-workers if it knew or should have known of the misconduct, unless it can show that it took immediate and appropriate corrective action.



## EEOC.gov



- The Commission has taken the position that existing sex discrimination provisions in Title VII protect lesbian, gay, bisexual, and transgender (LGBT) applicants and employees against employment bias.
- The Commission has obtained approximately \$6.4 million in monetary relief for individuals, as well as numerous employer policy changes, in voluntary resolutions of LGBT discrimination charges under Title VII since data collection began in 2013.
- A growing number of court decisions have endorsed the Commission's interpretation of Title VII.



## Example

- John and Jim are at the department gym working out. They see Frank lifting weights and proceed to call him derogatory words regarding what they perceive as his lack of “manliness” and state that he and “his kind” should have their own locker room. This is not isolated. Frank has complained to the supervisor about other occasions where coworkers questioned his sexuality and state he was “too feminine” in his dress and body language.



# No Fear Act

# No Fear Act



- Prohibits discrimination and retaliation against federal workers for participating in the EEO process or whistle-blower activities
- Requires agencies to train employees and post statistical data on EEO complaints on agency's public website





# Retaliation

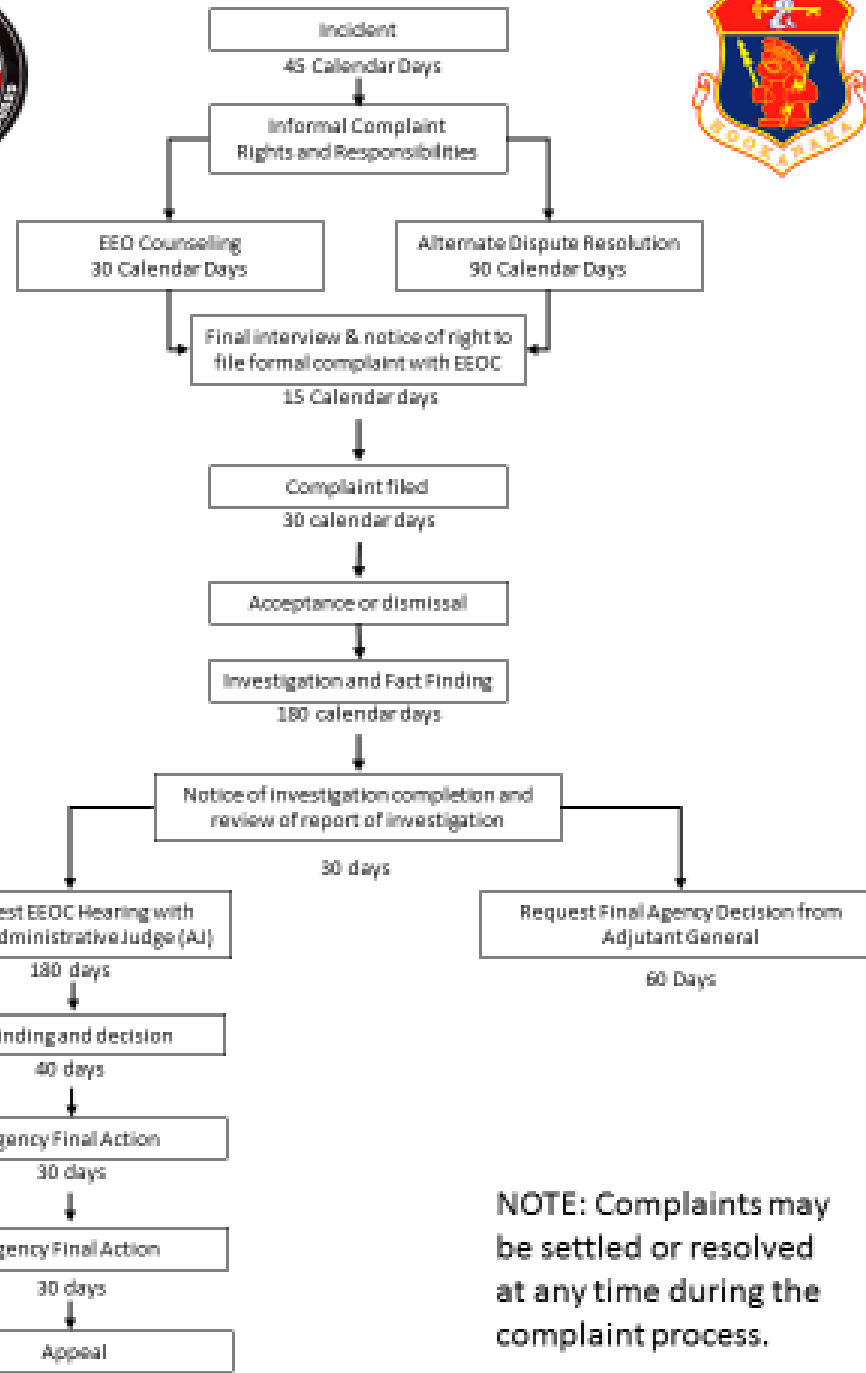


- Title VII, ADEA, EPA and the Rehab Act prohibit retaliation because an individual has engaged in protected activity
- EEOC looks at whether the agency action is reasonably likely to deter anyone from pursuing the EEO process.



# Complaint Processing

# Hawaii National Guard EEO Complain Process Flow Chart



**NOTE: Complaints may be settled or resolved at any time during the complaint process.**



# EEO Complaint Process



- The right to pursue a complaint of discrimination is established by law
- The discrimination complaint process consists of:
  - Informal Complaint process (EEO Counselor)
  - Alternate Dispute Resolution (ADR/Mediator)
  - Formal complaint (EEO Investigator)



# EEO Informal Complaint Process



- Acts of discrimination must be reported within 45 days of the incident
- The traditional EEO counseling process allows 30 Days for resolution of allegations.
- If you choose the alternate dispute resolution (ADR) process, it allows 90 days for resolution
- If no resolution is agreed upon after traditional counseling or ADR, the complainant has 15 days to file a complaint with the Equal Employment Opportunity Commission (EEOC)



# EEO Counselor



- The EEO Counselor provides an open channel through which employees or applicants may raise questions, discuss problems, and get answers.
- The counselor acts as a neutral party whose function is to make inquiries to uncover the facts



# EEO Formal Complaint Process



- Filing of formal complaint if matter has not been satisfactorily resolved at pre-complaint stage
- Investigation of complaints that meet procedural requirements
- **OPTION 1:** EEOC Hearing or immediate Final Agency Decision (FAD) from TAG
- Appeal of final Agency Decisions to the Equal Employment Opportunity Commission
- **OPTION 2:** File civil suit in appropriate Federal district court



# Alternate Dispute Resolution (ADR)



- Neutral third party, assists the disputing parties to achieve a mutually acceptable agreement
- The objective of the mediator is to bridge the gap in communication between the disputing parties and assist them in reaching a voluntary agreement of their own
- Resolutions reached during mediations are documented in settlement agreements
- If mediation is not successful, the complaint process would resume from the point it stopped





# Resources



- Equal Employment Opportunity Commission  
<https://www.eeoc.gov/>
- No Fear Act  
<https://www.opm.gov/information-management/no-fear-act/>
- Office of Diversity Management and Equal Opportunity  
<http://diversity.defense.gov/>
- Diversity Management and Equal Opportunity in the DoD  
<http://www.dtic.mil/whs/directives/corres/pdf/102002E.pdf>



# Point of Contact

EO and EEO Office	CPT Nate Masunari
EEO Manager	808-672-1316
Email	<a href="mailto:Nathan.k.masunari.mil@mail.mil">Nathan.k.masunari.mil@mail.mil</a>
Public Website	<a href="http://dod.hawaii.gov/seem/seem-manager/">http://dod.hawaii.gov/seem/seem-manager/</a>
Share Point Website	<a href="https://ngcaportal.ng.army.mil/sites/eo_eo/default.aspx">https://ngcaportal.ng.army.mil/sites/eo_eo/default.aspx</a>



# LEADERSHIP EVOLUTION:

The Dynamics of  
Maintaining Successful  
Workgroups





# AGENDA

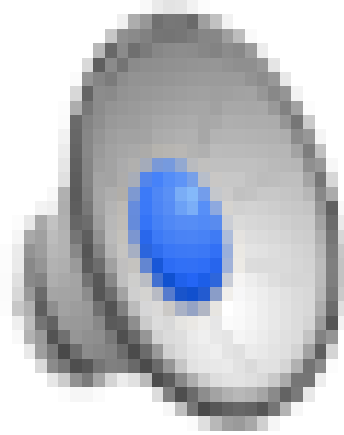
The following topics are covered:

- NGB Diversity and Inclusion Strategic Plan
- Diverse Organizations
- Definitions of Diversity
- The Dimensions of Diversity
- Diversity & Inclusion Leadership Competencies
- The Business Case

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# WORDS FROM GENERAL BARRY



UNCLASSIFIED



## DIVERSE ORGANIZATIONS

Behaviors of a diverse organization include:

- Reflecting commitment
- Creating systems and processes to manage diversity
- Knowing how to leverage the diversity they have
- Creating an effective and comfortable environment

A circular icon with a yellow background and a green border, containing a red silhouette of a person's head and shoulders.

# NGB DIVERSITY AND INCLUSION STRATEGIC PLAN

**Goal 1:** Enhance diversity and inclusion in all States, Territories, and the District of Columbia.

**Goal 2:** Ensure leaders at all levels champion diversity program priorities and understand what is required to achieve success.

**Goal 3:** Develop and increase diversity partnerships, both external and internal to NG.

**Goal 4:** Develop, mentor, and retain diverse talent reflective of the communities the NG serves.



# DEFINITIONS OF DIVERSITY AND INCLUSION

## **DoD – Diversity:**

The different characteristics and attributes of individuals.

## **National Guard – Diversity:**

Challenging people to maximize their potential by embracing and promoting each other's holistic characteristics. Diversity is tapping into the limitless talent of the diverse population to reach its full potential as America's standing militia.

## **National Guard – Inclusion:**

Inclusion fosters and builds organizational strength through a positive work environment that promotes and respects the differences and similarities – both visible and invisible. This is manifested when all individuals have equal access to opportunities, resources, and information to allow them to fully contribute individual strengths to collective military might.





# DIMENSIONS OF DIVERSITY

**Problem Solving Style**

**Personality**

**Attitudes**

**Life Experiences**

**Physical Ability**

**Culture**

**Race, Ethnicity**

**Competency**

**Gender**

**Foreign Language**

**Demographic Age**

**Global**

**Religion**

**Region, Deployed Experience**

**Marital Status**

**Geographic Origin**

**Sexual Orientation**

**Organization**

**Rated vs Non-Rated**

**Position Title**

**Combat vs Support**

**Skill Set: MOS AFSC and**



# DIVERSITY AND INCLUSION LEADERSHIP COMPETENCIES

## INTRAPERSONAL

- Self-Awareness
- Command Your Assumptions
- Emotional Awareness

## INTERPERSONAL

- Purposefully Communicate with Care
- Identify with, Connect with, and Enable Others
- Strategic Focus on Cultural Competencies
- Conflict-Resilient



## WHY IS DIVERSITY ESSENTIAL?

1. It's the right thing to do.
2. It is our organizational policy.
3. Demographics are rapidly changing.
4. It is essential to building a safe and productive work environment.
5. It directly impacts the ability to perform the mission.



## FIVE CONVERGING TRENDS

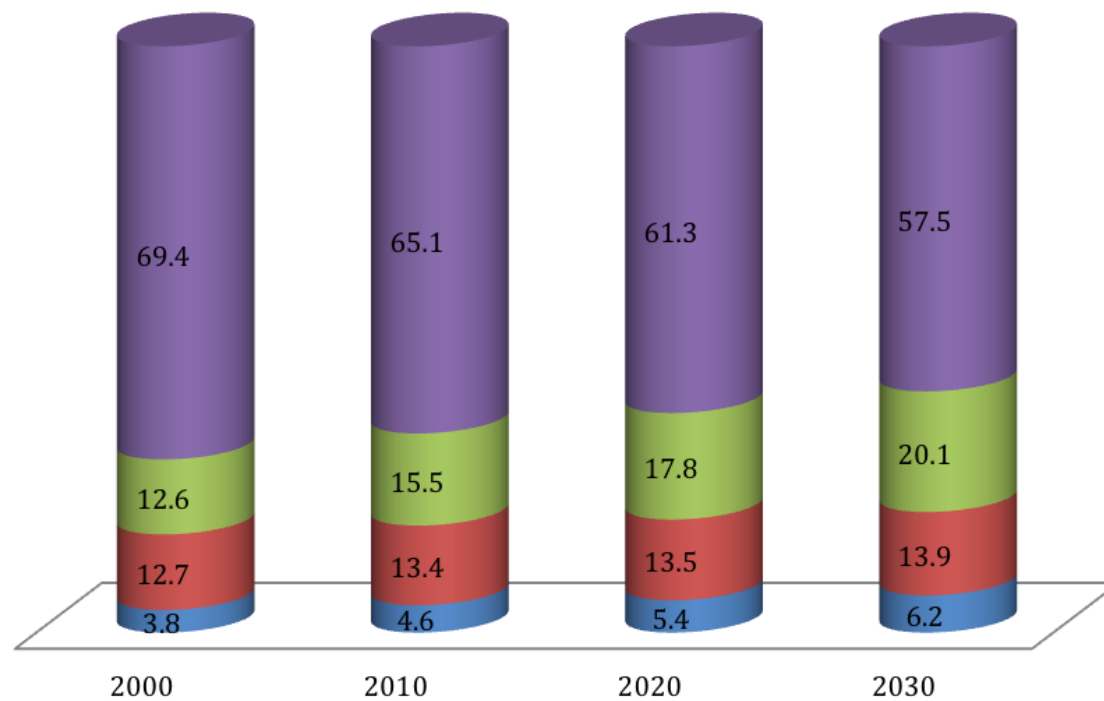
1. Changing U.S. demographics\*
2. Change in employee and consumer expectations
3. Utilization of technology
4. Increased global challenges
5. Organizations are changing



# FIVE CONVERGING TRENDS

## United States Demographics

■ Asian ■ African American ■ Hispanic ■ White





## DIVERSITY: A COMPETITIVE ADVANTAGE

- Utilization of Human Capital
- Reduced Interpersonal Conflict
- Enhanced Work Relationships
- Greater Innovation and Flexibility
- Improved Productivity
- Reduced Employee Turnover
- Improving Recruiting Opportunities



# DIVERSITY MISCONCEPTIONS

## What Diversity Is...

A business imperative – a competitive advantage

All of the dimensions of diversity that will help us succeed in a changing workplace and marketplace

An ongoing process designed to achieve sustainable improvements

Beyond race and gender to include a broad range of diversity dimensions

Removing all unreasonable biases or barriers to success

## What Diversity Is Not...

Just socially or morally driven

Just relating to legislation issues (e.g. EEO, affirmative action, ADA, etc.)

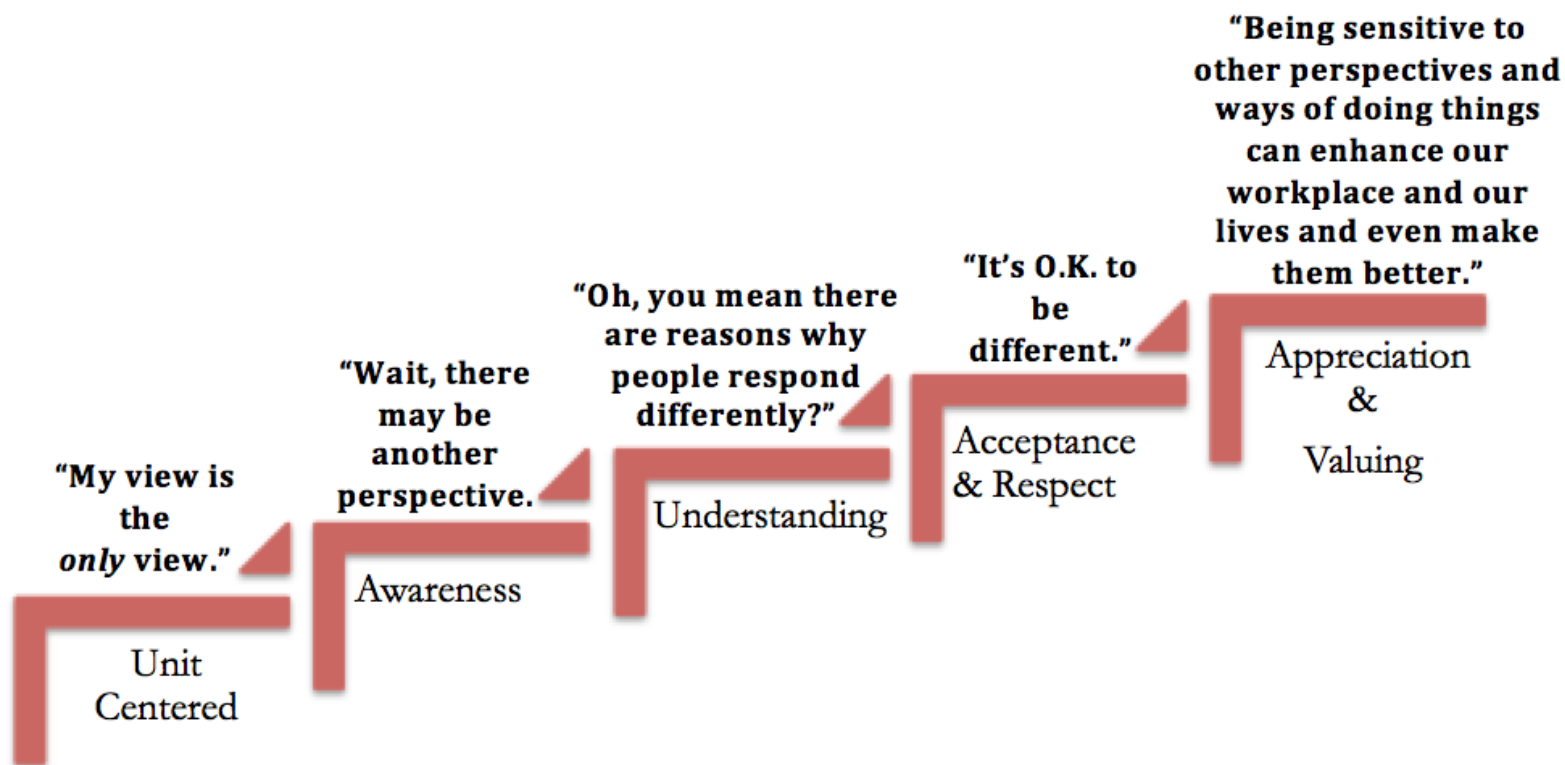
Just a program or event

Just race and gender

Just about the issues of discriminating against a “new group”



# DIVERSITY CONTINUUM







*What are the risks if we don't foster  
commitment to diversity?*



*What can you do to help foster diversity?*

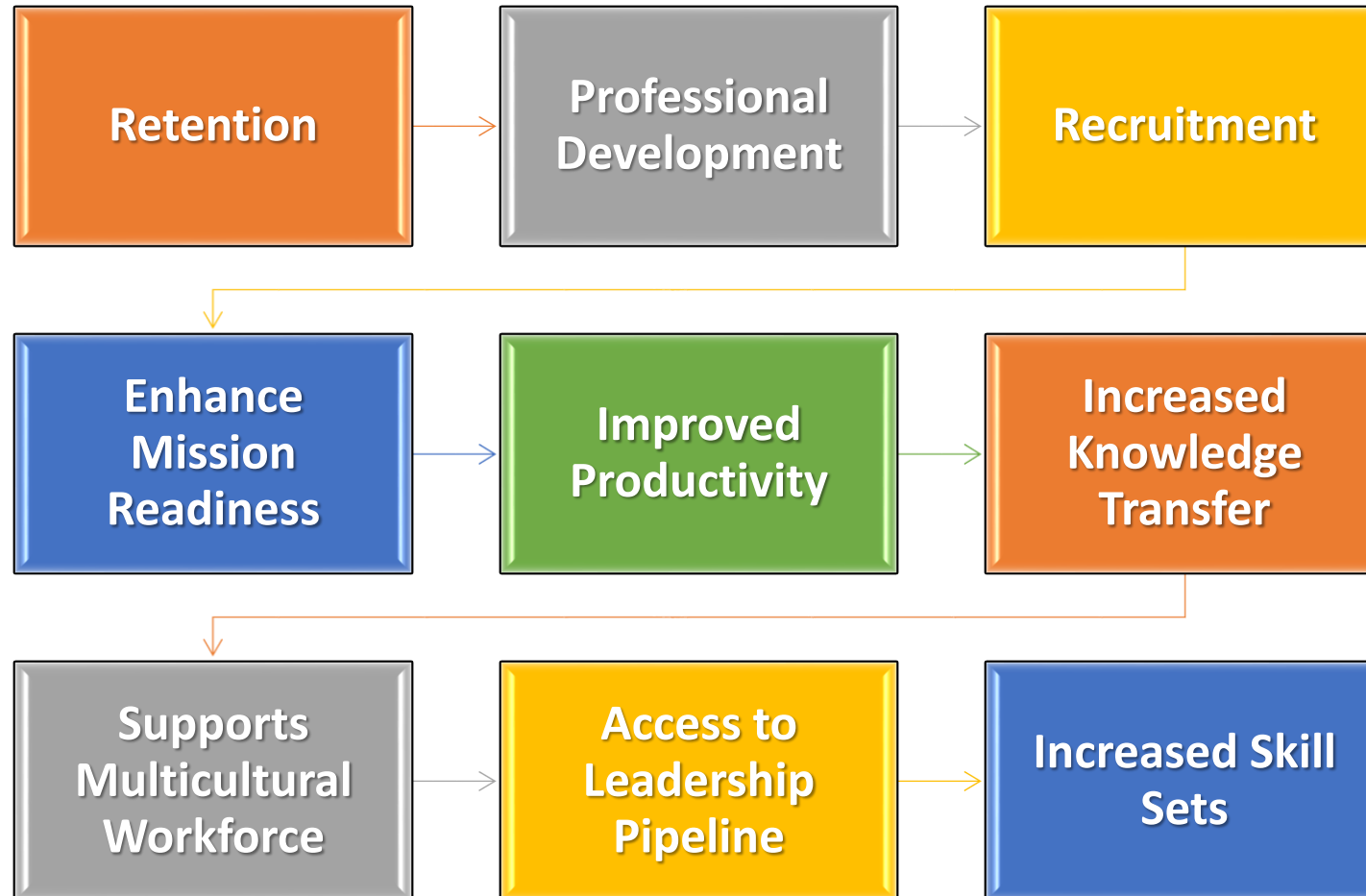


## MENTORING

- Teaches the mentee about task-specific issues
- Coaches the mentee on particular skills
- Facilitates the mentee's growth by sharing resources and networks
- Creates a safe learning environment for taking risks
- Focuses on the mentee's total development



# WHY DO ORGANIZATIONS NEED MENTORING





# QUESTION AND COMMENTS

Thank you for your participation!



# *Labor Relations/ Employee Conduct National Guard Technician Personnel*

*LTC Walter R. Ross, Jr.*

*Deputy Human Resources Officer*

*Email: walter.ross2.mil@mail.mil*

*Work phone: 808-844-6087*

*CW4 John K. Yim*

*Labor Relations Specialist*

*Email: john.k.yim4.mil@mail.mil*

*Office: 808-672-1555 / Mobile: 808-381-9280*



## *Agenda*

- *Union*
- *Non-Disciplinary and Voluntary Actions*
- *Adverse Actions*



## *Objectives*

- *Enhance efficiency of HING operations and the well being of HING federal employees. Supervisors will be able to differentiate between the regulations and actions required that fall under management of conduct – Discipline, Adverse Actions, Non-Disciplinary Actions, and Voluntary Action*
- *Determine appropriate actions to take, considering the requirements and results and the roles of other programs and agents such as , the Employee Assistance Program (EAP), the union, top management, etc*





## *Employee/Labor Relations Policy Directives*

- *5 USC Chapter 71, Labor-Management Relations*
- *CNGBI 1400.25, Vol. 715*
- *CNGBI 1400.25, Vol. 752*
- *CNGBI 1400.25, Vol. 753*
- *CNGBN 140X3, (New) Adverse Actions & Appeals*



## *5 USC 7102, Employee Rights*

- *Each employee shall have the right to form, join, or assist any labor organization, or refrain from any such activity*
- *To act for a labor organization in the capacity of a representative*
- *To engage in collective bargaining regarding conditions of employment as a representative*



## *Bargaining Unit Employee*

- *An employee included in the unit by virtue of their position*
- *Have the right to union representation in most employment matters*
- *Have the right to file grievances, complaints and unfair labor practices regarding conditions of employment*



## *BU Employee Discussions*

- *BU employees have the right to union representation in presenting grievances and unfair labor practices*
- *During formal discussions affecting conditions of employment*
- *During investigations*



## ***BU Employees Have No Right To Union Representation***

- ***During performance discussions***
- ***Receiving work direction and guidance***
- ***During informal complaints***
- ***Concerning established policy information***
- ***Job assignments***
- ***In general, employees are not entitled to union representation during a counseling for either conduct or performance***



## *5 USC 7106, Management Rights*

- *To determine the mission, budget, organization, number of employees, and internal security practices*
- *To hire, assign, direct, layoff, suspend, remove, reduce in grade or pay, or take other disciplinary action*
- *To assign work*
- *To make contracting out decisions*
- *To determine personnel for operations*
- *To select personnel from properly ranked and certified candidates – or any other appropriate source*
- *To take whatever actions necessary to carry out mission during emergencies*



# *Technician Personnel Regulations 715*

## *Non-Disciplinary Actions and Voluntary Actions*



## *Non-Disciplinary Actions – Not For Cause*

*Non-Disciplinary Actions – are management initiated; NOT for cause:*

- *Loss of military membership/loss of technician status*
- *Removal due to failure to meet requirements of the position*
- *Management-directed reassignment*
- *\*Enforced leave*
- *Furlough of 30-days or less*
- *Transfer of function*





## *Non-Disciplinary Actions – Not For Cause*

*Loss of Military Membership – Established by Technician Act of 1968 and P.L. 104-106 dates Feb '96*

- *Must be promptly separated from technician service*
- *Separation must occur as close to date of military separation as possible*
- *Should follow 30-day notice period, unless technician is probationary or temporary*



## *Non-Disciplinary Actions – Not For Cause*

### *Failure to Meet a Condition of Employment*

- *Compatible Military Assignment*
- *Failure to maintain military appointment requirement for position*
- *Failure to meet military rank required for position*
- *Failure to maintain flying status*
- *Failure to maintain a state driver's license*
- *Failure to maintain current qualifications as an aircrew member*
- *Failure to meet the physical standards required for an aircrew member*
- *Revocation of authorization to carry a firearm*
- *Failure to maintain security clearance*
- *Failure to remain qualified in the Personnel Reliability Program*
- *Failure to complete military training*
- *Physical inability to perform technician duties efficiently and/or safely*
- *Failure to maintain a compatible military assignment*
- *Failure to restore to technician status after 5 years of uniformed service*



## *Non-Disciplinary Actions – Not For Cause*

### *Management Directed Reassignment*

- *Management needs the technician's expertise/talents elsewhere*
- *Action is required to prevent an incompatible assignment or a grade inversion situation*
- *Action is required to eliminate or avoid disruption and conflict where personal disagreements are affecting work relationships*



## *Non-Disciplinary Actions – Not For Cause*

*Enforced Leave – management must have technician leave the work site when*

- *Not ready, willing and able to perform assigned duties*
- *Continued presence is highly undesirable or threatening*
- **Emergency situation** – *remove from work site and place in appropriate leave status. When emergency is resolved, discontinue enforced leave and offer choice of approved types of leave or LWOP*



## *Non-Disciplinary Actions – Not For Cause*

### *Furlough for 30 Days or Less (22 Workdays)*

- *Lack of work, funds, or unforeseeable circumstances such as breakdown in equipment, natural disasters, sabotage, or sudden emergencies requiring immediate curtailment of activities*
- *Collective bargaining obligations must be honored*
- *HRO is responsible for preparing and issuing written furlough notices*



## *Non-Disciplinary Actions – Not For Cause*

### *Transfer of Function*

- *TPR 351(reduction-in-force) establishes procedures*
- *HRO notification:*
  - *Explains why transfer of function is occurring*
  - *Provides effective date*
  - *Gives reasonable amount of time (10 calendar days) to accept or reject*
  - *Explain if offer rejected, constitutes a 30 day notice of termination*
  - *Provide benefit information if termination occurs*



## *Non-Disciplinary Actions – Not For Cause*

*IAW TPR 715, Voluntary Actions – are those that are initiated by the technician concerned*

- *Resignation*
- *Voluntary change to lower grade*
- *Optional retirement*
- *Abandonment of position*



## *Non-Disciplinary Actions – Not For Cause*

### *Resignations (Voluntary Actions)*

- *Technician makes decisions pertaining to notice, effective date, and time*
- *Not required to be written*
- *Supervisor completes SF 52*
- *Technician can withdraw resignation prior to effective time and date*
- *Management must honor withdrawal, unless position is to be abolished or is obligated*





## *Non-Disciplinary Actions – Not For Cause*

### *Voluntary Change to a Lower Grade (Voluntary Action)*

- *A voluntary, written request to be placed in a lower graded position without retained grade or pay*
- *Not in response to competitive advertisement*
- *Must meet qualifications for lower graded position*
- *Withdrawal requirements and conditions are the same as for Resignations*



## *Non-Disciplinary Actions – Not For Cause*

### *Optional Retirement (Voluntary Action)*

- *Encompasses same conditions and requirements as for resignations*
- *One exception is the request for optional retirement and/or its withdrawal must in writing*



## *Non-Disciplinary Actions – Not For Cause*

### *Abandonment of Position (Voluntary Action)*

- *Involves failure of a technician to report for work for a reasonable period of time, with supervisor unable to ascertain the technician's intention of returning*
- *Reasonable period of time has been defined by TPR as “usually 10 calendar days”, but that is not firm*



# *Technician Personnel Regulation 752*

## *Discipline and Adverse Actions*





## ***EMPLOYEE CONDUCT MANAGEMENT***

- *Guidance for dealing with poor workplace behavior*
- *Includes appendices with samples*
- *Assists in identifying specific issue in the Table of Penalties*
- *Helps to determine appropriate levels of action*
- *LRS must be consulted*



## ***EMPLOYEE CONDUCT MANAGEMENT***

*Creates a problem for:*

- *The Technician*
- *The Co-Workers*
- *The Supervisor(s)*
- *The General Organization*
- *The Technician's Family*



## ***EMPLOYEE CONDUCT MANAGEMENT***

***Discipline – Typically taken when a conduct-related incident occurs that warrants action by the supervisor; but less serious than adverse actions situations***

***Adverse Action – Typically taken by the supervisor for more serious conduct-related incidents; resulting in more severe action(s), such as downgrade or removal***



# *EMPLOYEE CONDUCT MANAGEMENT*

*The two parties who bear the most responsibility:*

- *The Technician – whose behavior/conduct must be appropriate for the workplace, and co-workers*
- *The Supervisor – who must ensure that the employee's conduct does not interfere with a productive work environment*





# ***EMPLOYEE CONDUCT MANAGEMENT***

## ***Common Errors:***

- ***Allowing the problem to continue too long before taking action***
- ***Failing to communicate rules and regulations to the employee***
- ***Basing discipline on personal anger***
- ***Procedural errors***
- ***Failing to fully investigate facts before taking action***
- ***Reassigning rather than correcting behavior***



# ***EMPLOYEE CONDUCT MANAGEMENT***

## ***Types of Discipline:***

- ***Oral/Written Counseling – discuss observations and improvement needed***
- ***Oral/Written Warning – advise possible disciplinary action if no improvement***

## ***Official Disciplinary Action:***

- ***Oral Admonishment – one way talk by supervisor***
- ***Letter of Reprimand – written description of conduct***



## *Progressive Action Correcting Poor Workplace Behavior*

- *Step 1 – Counseling (MFR)*
- *Step 2 – Admonition (technician allowed to reply)*
- *Step 3 – Letter of Reprimand (Adverse Action)*
- *Step 4 – Suspension without pay (Discipline)*
- *Step 5 – Removal from employment (Discipline)*

*NOTE: Additional steps can be included (more severe suspension, reduction in grade); Severity of the offense may allow for steps to be skipped*



## ***EMPLOYEE CONDUCT MANAGEMENT***

***Adverse Actions – taken when technician fails to respond to progressive discipline or when conduct is severe enough to bypass disciplinary action***

- ***Change to a Lower Grade***
- ***Suspension (1-30 calendar days)***
- ***Removal***

***Supervisor initiates all Adverse Actions***



# ***EMPLOYEE CONDUCT MANAGEMENT***

## ***Processing Adverse Actions:***

- ***HR Office involved; read related laws, regulations, and case precedents***
- ***Determine verifiable reason (cause); be able to support charges***
- ***Show how proposed action will “promote the efficiency of the service”***
- ***Determine type action to take; prepare notice of proposed adverse action***
- ***Issue proposed adverse action notice***



# ***EMPLOYEE CONDUCT MANAGEMENT***

## ***5-Step Adverse Action Process:***

- ***Step 1 – Notice of Adverse Action***
- ***Step 2 – Technician’s Reply***
- ***Step 3 – Decision Letter***
- ***Step 4 – Administrative Appeal***
- ***Step 5 – Final Decision***



## ***EMPLOYEE CONDUCT MANAGEMENT***

***Step 1 – Notice of Adverse Action: Supervisor with HRO guidance, prepares notice of proposed action***

- ***State what action is being proposed***
- ***State reasons for proposed action***
- ***Provide rationale for penalty section***
- ***Provide right to review materials (relied upon)***
- ***Give right to reply***
- ***Provide right to excused absence to prepare reply***
- ***Advise technician about next step***



## ***EMPLOYEE CONDUCT MANAGEMENT***

### ***Step 2 – Technician’s Reply***

- ***Can be written or oral***
- ***Must be given due consideration by deciding official***
- ***Technician cannot call witnesses during oral reply, but deciding official may interview persons suggested by the technician***





## ***EMPLOYEE CONDUCT MANAGEMENT***

### ***Step 3 – Deciding Official provides decision letter***

- ***State what action was decided upon***
- ***Include date action will be initiated***
- ***Reference the technician reply***
- ***Provide reasons for the decision***
- ***HR Office available for assistance***
- ***Provide appeal rights***



## *EMPLOYEE CONDUCT MANAGEMENT*

*Step 4 – Processing Administrative Appeals allows the appellant a choice of:*

- *Appellate Review*
- *Administrative Hearing*



## *EMPLOYEE CONDUCT MANAGEMENT*

### *Step 4 – Adverse Action Appeals*

- *An adverse action has been proposed, the technician has responded to the proposal, to the next level supervisor, who then upholds the proposed action*
- *What happens next – In the original decision memo, the technician is told an original decision can be appealed by requesting an appellate review or administrative hearing, but not both (TPR 752-1, para 2-1 & 2-2)*



# ***EMPLOYEE CONDUCT MANAGEMENT***

## ***Step 4 – Appellate Review***

***An appellate Review is conducted by the Adjutant General, without involvement of a Hearing Examiner***

- ***HRO Rep will go over the case with the TAG***
- ***TAG may ask to have further investigation***
- ***TAG may render an original decision, or set up a meeting with the technician/representative***
- ***Face-to-face meeting require ERS/LRS and/or SJA present as observers/technical advisors***
- ***The HRO office is responsible for creating a decision memorandum based on the TAG’s decision***



# *EMPLOYEE CONDUCT MANAGEMENT*

## *Step 4 – Administrative Hearing*

- *Appellate reviews are rare. Usually an Administrative Hearing is requested by the technician. The HRO will request a listing of Hearing Examiners from TNL*
- *The Hearing Examiner system was set up because of the laws requirement that actions (such as adverse) not go beyond the TAG, a need exists for someone to review the case who is in no way connected with the state (an honest broker) to provide a 3<sup>rd</sup> – party review*



## ***EMPLOYEE CONDUCT MANAGEMENT***

### ***Step 4 – Administrative Hearing (continued)***

- ***Most costs associated with the Administrative Hearing process are borne by the State***
- ***The Appellant, pays for any associated attorney fees, expert witness fees, or fees for witnesses not employed by the TAG in a full-time capacity***
- ***Most other services associated with the hearing are free to the appellant***



# ***EMPLOYEE CONDUCT MANAGEMENT***

## ***Step 5 – The Final Decision***

***Made by the State Adjutant General and must address***

- ***Are the charges accurate/real***
- ***Will discipline promote efficiency of the service***
- ***Is the selected penalty appropriate to the offense***
- ***Information on the corrective action***
- ***State IAW 32 USC 709, there is no further review***

***There is no appeal beyond the TAG!***



# ***EMPLOYEE CONDUCT MANAGEMENT***

## ***Additional Issues to Consider:***

- ***It is an appropriate role if the Union wants to represent the appellant***
- ***Must prove relationship between the offense and penalty***
- ***TAG may award attorney fees only if technician is the prevailing party (not required)***
- ***Annotate disciplinary actions on Supervisor's Brief or NGB Form 904-1***
- ***A need to contact the EAP Rep about the conduct***
- ***Did you consider informal mediation***





## *Common Supervisor Pitfalls*

- *Discipline*
  - *Discipline Promptly (Delay Looks Suspicious, Implies Misconduct is Tolerated to Peers, Allows Collateral Attacks, Allegations of Reprisal)*
  - *Discipline Appropriately = Tech v. AGR*
  - *Disparate Discipline Is Ok if Justified (i.e. experience level, pattern of misconduct, duty status, mitigating factors,..)*
- *Seek Legal and HR Advice ASAP (Ounce of Prevention)*
- *Don't Write/Email Anything You Would Not Say in Public*
- *Be Prepared to Defend The Action (IG, Union, Congressional, Press,...)*
- *Chaplain*
- *Psychological Health (Substance Abuse, ...)*



## *Exercise: Choose your charge*

- 1) *The technician refuses to cooperate with a security check at the front gate.*
- 2) *The technician forgets to lock his office door which could have resulted in confidential files being breached.*
- 3) *You observe about 100 pads of Post-It Notes in the back seat of a technician's personal vehicle. (your office is in constant short supply of Post-It notes no matter how many you order)*
- 4) *The technician is constantly texting, talking and gaming on his smart phone.*
- 5) *You receive a complaint about a technician who, after happy hour on Friday, was skinny dipping in a public pool. His uniform was on a lounge chair next to the pool when police arrived.*
- 6) *You discover a 54 inch high definition TV was charged then paid off in four installments on your technician's government charge card.*
- 7) *A group of technicians who are disgruntled about recent policy changes all call off sick on Monday.*
- 8) *The technician uses sick leave to golf 18 holes last Friday.*
- 9) *After a verbal altercation in the workplace one technician tells another technician that he will be sorry and he better watch his F- - - - - back.*



# *Questions*

UNCLASSIFIED

*National Guard Technician Personnel*



# **National Guard *Labor Relations***

UNCLASSIFIED

## *Bargaining Unit Exclusions - 5 USC 7112(b)*



- **Supervisory/Management Officials**
- **An employee engaged in personnel work in other than a purely clerical capacity**
- **Employees working in a confidential capacity for officials who formulate or execute general labor relations policy**
- **Employees engaged in intelligence, investigative or security work directly affecting national security**
- **Employees investigating or auditing work or conduct of other agency employees**
- **Professional employees in the same unit with non-professionals, unless a majority of the professionals vote for inclusion**

## *Definition of a Supervisor - 5 USC 7103*



**A supervisor is a person who is authorized, with respect to employees, to do or recommend at least one of the following:**

hire	promote	direct employees
transfer	furlough	suspend
assign	remove	reward
recall	lay-off	adjust grievances
discipline		



### Personnel Policies

- Merit Promotion/Hiring & Reduction In Force (RIF)/Furlough Procedures

### Personnel Practices & Working Conditions

- Parking assignments; picnics; employee lockers; location of coffee makers and microwave ovens; office space/design; type and placement of office furniture, etc

## *Non-Negotiable Management Rights - 5 USC 7106(a)*




- Determine mission, budget, organization, employee numbers and internal security
- Hire, direct, lay-off and retain employees
- Suspend, remove, reduce (grade/pay) or discipline employees



## *Non-Negotiable Management Rights - 5 USC 7106(a)*



- **Assign work, contract out and determine which personnel will perform operations**
- **Select and appoint employees**
- **Take necessary emergency actions**



## *Duty to Bargain - 5 USC 7106(b)*

- Nothing precludes management and the union from “Impact and Implementation” bargaining on:
  - *Procedures* which management will observe in exercising its rights
  - *Appropriate Arrangements* for employees adversely affected by management in exercising its rights



## *Negotiated Grievance Procedures*

### Coverage:

- **All employee grievances except those excluded by 5 USC 7121 (b) & (c) (no strike/work stoppage provisions) and/or 32 USC 709e (NG Technician Act provisions)**
- **Must provide for final and binding arbitration**
- **Must provide for settlement of questions or arbitration**



## *Negotiated Grievance Procedure - 5 USC 7121*

### Coverage (continued):

- Limits employees to either union or self representation
- Does NOT apply to people excluded from the bargaining unit



## *Management Unfair Labor Practices - 5 USC 7116(a)*

- Interference, restraint or coercion of an employee in the exercise of assured rights
- Encourage or discourage membership in a labor organization by discrimination with respect to conditions of employment
- Sponsor, control or otherwise assist a labor organization



## *Management Unfair Labor Practices*

- **Discipline or discriminate against an employee because the employee has filed a complaint or given testimony under 5 USC 7116**
- **Refuse to consult/negotiate**
- **Fail to cooperate in impasse procedures**
- **Enforce rules or regulations in conflict with a prior collective bargaining agreement**

# *Alternative Dispute Resolution (ADR)*



## Types of Mechanisms:

- **Joint Dispute Resolution Committees**
- **Internal Agency Third-Party Review**
- **Facilitation**
- **Mediation**





## *Alternative Dispute Resolution (ADR)*

### **Types of Mechanisms (continued):**

- **Fact-finding**
- **Advisory Arbitration**
- **Mediation – Arbitration**
- **Interest-Based (win-win) Bargaining**



## *ADR Mechanism Coverage*



- Grievances
- EEO cases/issues
- Hearing examiner cases
- Workplace problems
- ANY issue the parties agree to place under ADR
- ULP cases
- Contract interpretation disputes
- Bargaining disputes

## *Why Use ADR Mechanism?*



- Decrease litigation/ resolution costs (money/time/man-power)
- Increase consensual settlements
- Improve relationships



## *Why Use ADR Mechanism?*



- **Decrease formality**
- **Limit adversarial opportunities**
- **Facilitate future problem resolution**





## *What is a Formal Discussion? - 5 USC 7114(2)(A)*

A discussion which is...

- formal in nature
- between one or more representatives of the agency AND one or more bargaining unit employees or representative, AND
- related to any grievance or any personnel policy or practices or other general conditions of employment



## *Management Obligations - 5 USC 7117(d)(2)*

- **Notify the appropriate union representative of the meeting**
- **Afford union the opportunity to select its representative and to attend**
- **Allow the union representative to actively participate at the meeting**

## *There is no Formal Discussion When/If...*

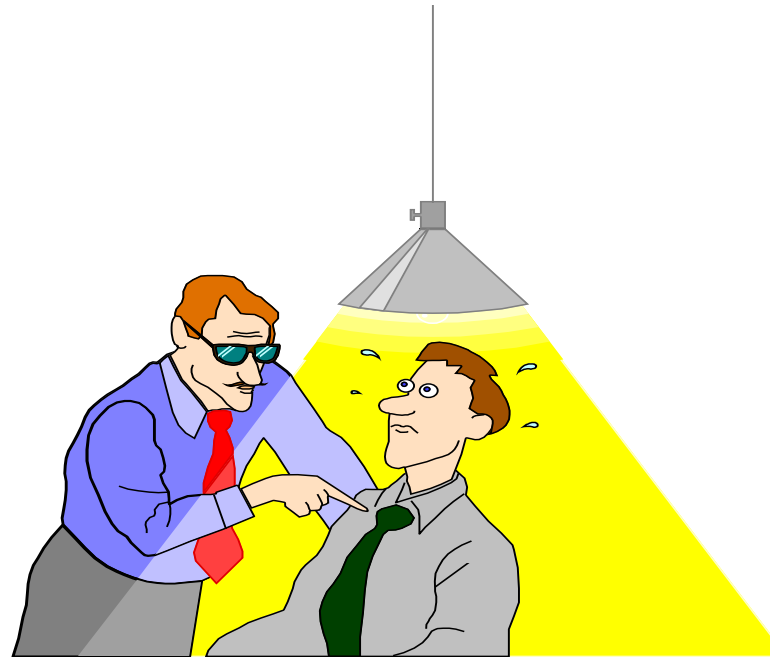


**Discussion is about and with an individual employee related to his/her:**

- **Personal problems**
- **Job performance**
- **Performance evaluation**
- **Oral reply to proposed disciplinary action(s)**

**During impromptu meetings on the shop floor**

# *Union Rights when Granted Exclusive Recognition*



**Investigating Interviews  
THE WEINGARTEN RIGHT  
(5 USC 7114(a)(2)(B))**

## *Union Rights when Granted Exclusive Recognition*



- **May negotiate agreements for all employees in the collective bargaining unit**
- **Responsible for representing the interests of all bargaining unit employees –member or NOT**
- **Must be given the opportunity to be represented at all formal management-employee discussion concerning grievances or other negotiable issues**





## *Union Rights When Granted Exclusive Recognition - 5 USC 7114*

**Must be given the opportunity to be present at any investigative examination of a unit employee, IF the employee...**

- **Reasonably believes the examination may result in disciplinary action,**

**AND**

- **Requests representation**



## *Use of Official Time - 5 USC 7131*

**Internal union business shall be conducted during the non-duty hours of the employees concerned**

**MUST approve for:**

**Collective Bargaining**

**FLRA Proceedings**

**MAY approve for:**

**Other representational  
activities**

**MAY NOT approve for:**

**Internal union business**

## *Past Practice - 5 USC 7117*



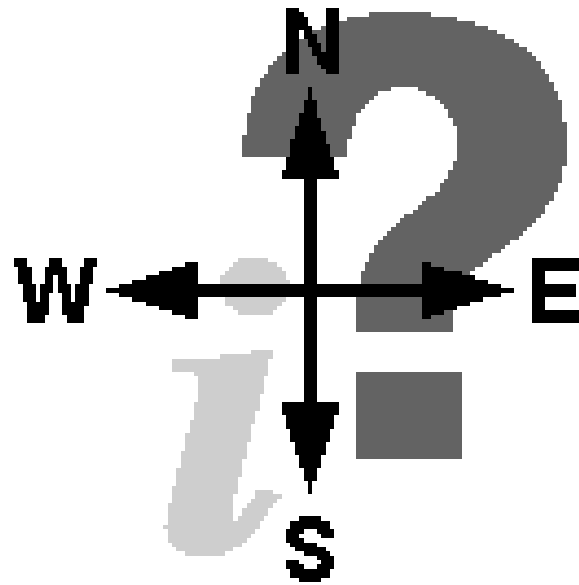
**Once the parties establish a practice it becomes a condition of employment and must be bargained**

**You do not have to bargain over the decision to change a practice which conflicts with law or a government-wide regulations**

- **Management is not free of the obligation to provide the union with advance notice of its intent to change what has been a condition of employment**
- **Management must also bargain on demand on bargain- able proposals which come back**



# What May I Clarify





## Technician Personnel Regulation 752

# ***MERIT SYSTEMS PROTECTION BOARD (MSPB)***

MAJ Lloyd Phelps II  
HING SJA  
672-1010  
lloyd.c.phelps4.mil@mail.mil

## Historical Background



- 1916 – National Defense Act:
  - Established “caretakers,” full-time employees that cared for “material, animals, and equipment” allocated to the National Guard
  - Provided federal funding for caretaker salaries
  - Provided that Service Secretaries would designate the person to employ caretakers
- 1965 – Maryland v. United States (Sup. Ct.) reversed the lower courts and held National Guard technicians were state employees for all purposes, including FTCA.
  - Decedents were passengers on an airliner which collided in May 1958 with a jet trainer assigned to the Maryland Air National Guard. The only survivor was the jet trainer pilot, whose negligence is not disputed. The pilot held a commission from the Governor of Maryland as an officer in the Maryland Air National Guard where he was a civilian Aircraft Maintenance Chief under 32 U.S.C. 709, a so-called "caretaker" of Guard property.



## NGTA 1969-2016

- **1969 National Guard Technician Act (NGTA)**
  - TAG final appeal authority for Adverse Actions (Suspensions, Terminations, RIF, Demotions)
  - Requires 30-day termination notice for non-temps, in a trial/probationary period
  - Scheduling of work belongs solely with the TAG
  - **Overtime pay** not allowed, but compensatory time is
- **RIP**



## 2017 NDAA, Section 512

- **Overturns prohibition on appeals beyond the TAG**
  - Previously:
    - NG techs could not appeal to the MSPB;
    - Case law severely limited EEOC and FLRA authority
- Allows technicians to appeal **adverse actions** that:
  - do not concern activity occurring while the member is **in a military pay status**, or
  - that does not concern **fitness for duty in the reserve components**.





## 2017 NDAA, Section 512 (Cont.)

- Applies to **ALL** technicians as of **23 DEC 2016**
- TAGs subject to MSPB and EEOC authority???
  - **EEOC** asserts jurisdiction over almost all personnel actions (**more expansive**)
  - **MSPB**
    - Termination/Removal
    - Suspension for more than 14 Days
    - Reduction in Grade/Pay
    - Furlough of 30 Days or more
  - **Both** Can Order
    - Reinstatement
    - Mitigation
    - Award damages (back pay and **attorney fees**)
  - **WHO PAYS???**



## Why Care???

### 2017 NDAA, Section 932

- (3) Administrative actions
  - (A) The **adjutant general** of the jurisdiction concerned **shall be considered the head of the agency** and the National Guard of the jurisdiction concerned **shall be considered the employing agency of the individual and the sole defendant** or respondent in any administrative action.
  - (B) The National Guard of the jurisdiction concerned **shall defend any administrative complaint, grievance, claim, or action, and shall promptly implement all aspects** of any final administrative order, judgment, or decision.



## Why Care???

2017 NDAA, Section 932 (Cont.)

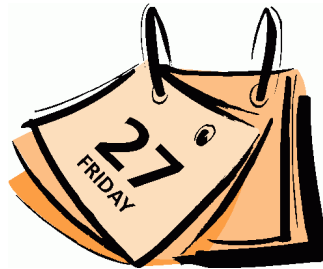
- **(3) Administrative actions (Continued)**
  - (C) In any civil action or proceeding brought in any court arising from an action under this section, the **United States shall be the sole defendant or respondent.**
  - (D) The **Attorney General of the United States shall defend** the United States in actions arising under this section described in subparagraph (C).
  - (E) **Any settlement, judgment, or costs** arising from an action described in subparagraph (A) or (C) **shall be paid from appropriated funds allocated to the National Guard of the jurisdiction concerned.**



## MSPB Jurisdiction

### MSPB Appealable Actions – 5 U.S.C. § 7512

- Removal
- Suspension for more than 14 days
- A reduction in grade
- A reduction in pay; and
- A furlough of 30 days or more





## Adverse Actions Pitfalls

- Proposing (Charging) Official:
  - Don't over investigate (**Time is the enemy, Collateral Attacks, Worker's Comp,...**)
  - Don't overcharge (**KISS**)
  - Nexus?
  - Don't Wait for a Criminal Conviction
  - Preponderance v. Reasonable Doubt
- Deciding Official Fails to Apply Douglas Factors



# Douglas Factors

- **The nature and seriousness of the offense**, the relation of the offense to the employee's duties, whether the offense was intentional or inadvertent, or whether or not the offense was committed for gain, with malice, or repeatedly.
- The **employee's job level and type of employment** – supervisory or fiduciary, contact with the public, prominence of the position;
- The employee's **past disciplinary record**
- **The employee's past work record**: length of service, quality of performance, and dependability
- **The effect of the offense upon the employee's ability to continuing performing at a satisfactory level**, and the effect on the supervisor's confidence in the employee after the misconduct;
- **The consistency of the penalty with those imposed upon other employees for the same or similar offenses.**
- **Consistency of the penalty with the Agency's Table of Penalties** (if any)
- **The notoriety of the offense** and the impact on the reputation of the Agency;
- **The clarity with which the employee was one notice of the rules violated in committing the offense**, including warnings about the conduct;
- **The potential for the employee's rehabilitation**
- **Mitigating circumstances** surrounding the commission of the offense (unusual job tensions, personality conflicts, bad faith issues, mental impairment, harassment, etc.) **The adequacy and effectiveness of alternative sanctions to deter such conduct**
- in the future by this employee or others.



## Douglas Factors

- All 12 Douglas Factors must be considered
- If any factor does not apply to offense charged simply notate “Not Applicable to the Charge.”



## CNGBN (Draft) v. TPR 752

NG TECHNICIAN ADVERSE ACTIONS AND APPEALS

- CNGBN (Draft) updates TPR 752 and 752.1:
  - TAG will issue the **final decision** ... on an appealable action **w/10 days** of receiving a request for administrative review ... or the report of a hearing examiner....
  - **Miltechs, after having exhausted the (administrative) procedures ... (and received TAG final decision), may file an appeal ...**
  - Miltechs must file ...with the **MSPB** ... **w/30 days** of receiving TAG's final decision..., or the effective date of the adverse action, whichever is later.
  - Miltechs may file (an)...**EO complaint** with the State on the basis of **race, color, national origin, religion or sex w/45 days** of receiving TAG's final decision, or the effective date of the adverse action, whichever is later.





## Timeliness (cont.)

- 5 C.F.R. § 1201.22(c): If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown
  - Good cause = the exercise of due diligence or ordinary prudence under the circumstances of the case
    - Board will consider the length of the delay; the reasonableness of the excuse; and whether he has presented evidence of the existence of circumstances beyond his control, unavoidable casualty, or misfortune
  - *See Rocio v. OPM*, 80 M.S.P.R. 518, ¶ 5 (1999)
  
- The judge will provide the party an opportunity to show why the appeal should not be dismissed as untimely.
  
- The appellant bears the burden of proving the timeliness of the appeal by preponderant evidence
  - *See* 5 C.F.R. § 1201.56(b)(2)(i)(B)



## Timeliness, cont.

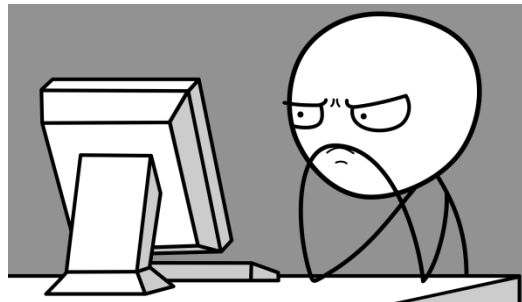
# Failure to provide notice of appeal rights in a decision letter

- An agency is responsible for providing an appellant notice of his right to file an appeal with the Board
- Failure to apprise an appellant of a right of appeal may constitute grounds for finding an untimely appeal timely filed for good cause
  - *See Ford v. U.S. Postal Service*, 82 M.S.P.R. 327, ¶ 9 (1999)
- In these circumstances, the Board will consider whether the appellant was diligent in filing an appeal after he learned of his right to do so



## e-Appeal System

- <https://e-appeal.mspb.gov/>
- Contains online repository of pleadings and orders filed in appeals
- System generated email when pleadings filed and orders issued
- Contains the electronic appeal file, which is the primary source of information the administrative judge will cite to in orders and in the initial decision





## Discovery

- 5 C.F.R. § 1201.71 – Purpose
  - Discovery is designed to enable a party to obtain relevant information needed to prepare the party's case.
  - The regulations are intended to provide a simple method of discovery.
  - The regulations will be interpreted and applied to avoid delay and facilitate adjudication.
  - The parties are expected to complete discovery with a minimum of Board intervention.
  - Discovery requests and responses should NOT be filed with the administrative judge unless part of a motion to compel





## Prehearing Conference and Hearings

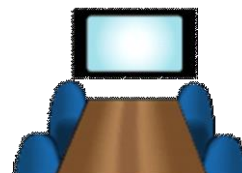
- **Prehearing Conference**
  - Usually set about 1 week prior to hearing
  - Parties must submit any agreed upon facts in advance, as well as requests to call witnesses and introduce exhibits not already in the record (i.e., not in the agency file)
    - Date for prehearing submissions set by administrative judge; usually due 2-3 days before prehearing conference
  - Administrative judge will approve witnesses; may rule on admissibility of exhibits at this time, or may address at the hearing
  - Final settlement efforts



# Hearing

- **Hearing**

- If issues of credibility are involved, will hold hearing in-person or via videoconference
- Telephonic hearings are disfavored
  - *See McGrath v. Department of Defense*, 64 M.S.P.R. 112, 115 (1994) (an appellant has a right to an in-person hearing and administrative judge may not order telephonic hearing over appellant's objection)
- Video-teleconference is commonly used and may be ordered over an appellant's objection
  - *See Koehler v. Department of the Air Force*, 99 M.S.P.R. 82, ¶¶ 11, 13-14 (2005) (use of videoconference hearing subject to abuse of discretion)
- Agency is typically responsible for arranging videoconference hearing location





# The Hearing

- Agency presents its case first because it bears the burden of proving the charge, nexus, and penalty (*see* 5 C.F.R. § 1201.58)
  - Administrative judge can order testimony out of order (5 C.F.R. § 1201.58(c))
- Typically joint witnesses (i.e. those called by both sides) will only testify once
- Witnesses subject to direct and cross examination; possible questioning by the administrative judge during the examination or when the parties have completed their examination
- Documents introduced
- Typically no opening statements; usually oral closing arguments, but administrative judge may allow for written closing arguments
- Court reporter present taking down testimony in audio recording, which is made part of the record
  - The parties may purchase a written transcript of the proceedings from the court reporter
- Record typically closes at the conclusion of the hearing, i.e., no further evidence taken or admitted
  - *See* 5 C.F.R. § 1201.59(a)





## The Initial Decision

- **Contains findings of fact and conclusions of law**
- **Will address the agency's charge and specifications (if any); nexus; and penalty determination**
- **Must include credibility findings and resolve factual disputes**
- **Will resolve any affirmative defenses**
- **If agency action is mitigated or overturned, may include an award of interim relief pending the initial decision becoming final following a Petition for Review filed with full Board**
- **Will include a date (35 days from date of issuance) when Petition for Review must be filed; otherwise, Initial Decision becomes Board's final decision, and appellant may file an appeal in U.S. Court of Appeals or U.S. District Court**
  - *See 5 C.F.R. 1201.114(e)*







## Beyond the Initial Decision

- Both the appellant and the agency have the right to file a Petition for Review with the full Board – see 5 C.F.R. § 1201.114-120
- Full Board may affirm, modify, or vacate and remand the appeal to the administrative judge
- If Board either affirms or modifies the initial decision, the appellant has option of seeking judicial review in U.S. Court of Appeals for the Federal Circuit; in U.S. District Court (for appeals involving claims of discrimination); or in any U.S. Court of Appeals of competent jurisdiction if the appeal involves an allegation of whistleblower reprisal
- The agency, however, has no right to seek judicial review in the federal courts without the Office of Personnel Management's (OPM) approval
  - With OPM approval, an agency can appeal a final Board decision to the U.S. Court of Appeals for the Federal Circuit on important issues of civil service law impacting the entire Federal workforce





## Settlement

- Settlement is highly encouraged and can be reached either while the initial appeal is with the administrative judge or while the case is with the full Board on Petition for Review



- A settlement is a contract between the parties
  - See *Young v. U.S. Postal Service*, 113 M.S.P.R. 609, ¶ 10 (2010)



## 4 Methods for Settlement

- **Party-driven settlement**
  - After the initial appeal is filed, the parties reach a settlement on their own terms
- **Administrative judge facilitates settlement**
  - Administrative judges will proactively raise the issue of settlement
  - Regulations permit the parties, on consent, to have ex parte (i.e. one-sided) conversations with the assigned administrative judge in furtherance of settlement
    - See 5 C.F.R. § 1201.41(c)(1)
  - Administrative judge serves as mediator
- **Informal referral of the appeal to another administrative judge for settlement only**
- **Mediation Appeals Program (MAP) mediator from HQ**



## Initial Decisions Based on Settlement

- Upon agreeing to settle the appeal, the parties should submit the agreement to the administrative judge along with a request to dismiss the appeal with prejudice
  - 5 C.F.R. § 1201.41(c)(2)
- Before dismissing an appeal as settled, the Board ensures:
  - The parties actually entered into a signed settlement
  - They understand its terms
  - They specified whether they want the agreement entered into the record for purposes of enforcement

*See Jimenez v. HHS, 70 M.S.P.R. 24, 26 (1996)*





## Enforcement of Settlement Agreements

- The parties have the option of entering the agreement into the record for purposes of enforcement, *i.e.*, in the event either party believes the other is not complying with the terms of the settlement, the party alleging noncompliance can file an appeal with the Board alleging noncompliance, *i.e.*, a Petition for Enforcement (PFE)
  - See 5 C.F.R. § 1201.181-183
  
- The Board will only entertain a PFE if the parties enter the agreement into the record for purposes of enforcement
  - See 5 C.F.R. § 1201.41(c)(2)(i)
  - Previously, the Board had required administrative judges to make findings that the underlying appeal was within the Board’s jurisdiction in order for a settlement to be entered into the record for enforcement purposes
  - The Board changed this approach in *Delorme v. Department of the Interior*, 124 M.S.P.R. 123, ¶ 14 (2017), provided the underlying appeal is a “colorable” Board appeal



# QUESTIONS?



"We only have a few rules around here,  
but we really enforce them."