



DISCIPLINE AND ADVERSE ACTIONS

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AFI 36-704, 22 July 1994, is supplemented as follows:

7.3.9. (Added) Commanders must maintain a constructive, disciplined work environment in which both management and employees recognize and carry out their responsibilities.

7.3.10. (Added) Necessary disciplinary action or adverse action is taken without regard to marital status, political affiliation, except as required by law, race, color, religion, sex, national origin, or age. Adverse action based on an employee's physical or mental handicap is not taken when the employee can effectively perform assigned duties.

7.3.11. (Added) Disciplinary action or adverse action is taken only when necessary and then promptly and equitably. The purpose of disciplinary action is to correct and rehabilitate the offender, if possible. Penalties must not be disproportionate to offenses and are applied as consistently as possible considering the particular circumstances of the causes for disciplinary action.

7.3.12. (Added) Disciplinary actions and adverse actions are personal matters and are carried out in private.

9.1.2.2. (Added) Neither should resignation be encouraged when there is substantial medical and other evidence about an employee's mental condition which casts doubts that the employee understands the voluntary alternatives involved. If management desires to separate the employee, it may initiate action to do so by disability retirement or by adverse action procedures, as appropriate.

33.1. A cause of action cannot support a disciplinary or adverse action, unless it is included in the appropriate notice.

ATTACHMENT 5

SPECIFIC DISCIPLINARY AND NONDISCIPLINARY SITUATIONS

A5.1. Substandard Performance of Duties. It is important to recognize the true character of a substandard performance problem. That requires a careful evaluation of the total circumstances surrounding the substandard work to determine whether the employee is responsible for the condition and can control the essentials of the problem. Appropriate corrective action is not necessarily disciplinary. A disciplinary action is appropriate when the causes of the substandard performance are within the employee's control and when it is expected that the disciplinary action can motivate a change in behavior or correct the substandard performance. Other situations may result in personnel actions, including adverse actions, but such actions should be identifiable as nondisciplinary.

A5.1.1. If the cause of the unacceptable work is personal to the employee, but is not in the employee's control, the situation is not disciplinary. For example, unacceptable performance caused by the employee's inability to perform no matter how hard the employee tries requires nondisciplinary treatment. An action based solely on unacceptable performance is processed under AFI 36-1001, if applicable.

A5.1.2. If the employee has the skills, knowledge, and capacity to perform well, and fails to do so, the situation is probably one which calls for disciplinary action to clearly inform the employee of management's concern and to motivate improvement through elimination of the causes of the substandard performance. Characteristic of these disciplinary situations are carelessness, negligence, refusal to perform, performance in a dilatory manner, loafing, or disregard for policy or procedure. An action which has a disciplinary component is processed under this document, as applicable.

A5.2. Medical Incapacity. An adverse action taken because an employee fails to meet medical standards for retention in the employee's position is nondisciplinary. Management has the authority and responsibility to make sure that employees meet medical standards, and employees are obligated to cooperate. Therefore, an employee can be disciplined (including removal) for refusal to take a mandatory medical examination.

A5.3. Functional Transfer. While failure to accompany a position in a functional transfer is both personal to the employee and within the employee's control, adverse actions in such cases are nondisciplinary.

A5.4. Failure To Apply For and Accept Return Assignment According To Overseas Employment Agreement. Failure to honor an overseas employment agreement by not applying for and accepting return assignment according to the terms of the agreement is a nondisciplinary basis for separation.

A5.5. Preappointment Considerations. Sometimes, after an employee is appointed, information is developed about the employee's conduct or health which raises a question as to the desirability of the employee's retention.

A5.5.1. When such information was fully disclosed and reviewed by the Air Force appointing officer or by the OPM before the employee's appointment, disciplinary action is not appropriate solely on the basis of such previously disclosed preappointment information.

A5.5.2. If the information was not known or disclosed before appointment, disciplinary action may be taken for such cause as will promote the efficiency of the service. Generally, an employee who is serving under other than a temporary appointment may not be removed, unless the preappointment consideration

would have been material in preventing the employee's appointment. However, falsification of an employment application or preappointment information may be grounds for removal.

A5.6. Substance (Drug and Alcohol) Abuse. AFI 36-810, *Substance Abuse Prevention and Control*, established the procedures for offering rehabilitative assistance for substance abuse for self and supervisory referral in addition to establishing policy and procedures for the Air Force Civilian Drug Testing Program. Disciplinary and adverse actions related to Civilian Drug Testing are governed by the provisions of AFI 36-810, as well as this publication.

A5.6.1. The various rehabilitation and alcohol and drug abuse acts (29 USC 791 et seq., 42 USC 290dd-1, and 42 USC 290ee-1) were intended to provide assistance to individuals who, because of the long-term effects of their substance abuse addiction, have lost the ability to control their behavior. The acts were not intended to protect those who misuse alcohol or drugs occasionally.

A5.6.2. Circumstances where the employee claims addiction to alcohol or drugs; the employee must show a direct causal connection between the substance abuse addictive condition and the misconduct or poor performance on which a disciplinary or adverse action is based in order to be entitled to consideration for rehabilitative assistance as accommodation. To provide such rehabilitative assistance, the supervisor refers the employee for interview according to AFI 36-810.

A5.6.2.1. One referral of the employee for interview meets the Air Force obligation to provide reasonable accommodation. Therefore, disciplinary or adverse action is not contingent upon another referral for interview for misconduct or poor performance that occurs or is brought to the employee's attention after the date established for the initial interview.

A5.6.2.2. Demotion to a position for which the employee is qualified may constitute reasonable accommodation in cases when keeping an alcohol or drug addict in his or her position during rehabilitation might not be reasonable or might impose an undue hardship on management.

A5.6.2.3. Management may impose disciplinary or adverse action short of removal for any act of misconduct or poor performance while giving an employee the opportunity to rehabilitate.

A5.6.2.4. Certain acts of misconduct or poor performance attributed to an employee who is an alcohol or drug addict disqualify the handicapped employee from being able to perform the essential functions of his or her position. Employees whose acts of serious misconduct pose a risk to themselves or others may be subject to adverse action including removal even in the absence of an opportunity to rehabilitate.

A5.6.3. Circumstances regarding the use of illegal drugs: The supervisor is required to initiate disciplinary or adverse action, ranging from reprimand to removal, against an employee who is found to use illegal drugs unless the employee voluntarily identifies himself or herself during an appropriate notice period, obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

A5.7. Motor Vehicle Operator. Disciplinary and adverse actions against individuals assigned to operator and incidental operator positions must be applied according to applicable laws and regulations. The following grounds are among those constituting sufficient cause of action against operators and incidental operators:

A5.7.1. The employee is convicted of operating under the influence of narcotics.

A5.7.2. The employee is convicted of leaving the scene of an accident without making himself or herself known.

A5.7.3. A federal medical officer finds the employees fails to meet the required physical standards.

A5.7.4. The employee's state license is revoked.

A5.7.5. The employee's state license is suspended. The employee may be continued in his or her position not to exceed 45 days from the date of suspension of the state license, for operation on other than public highways. This is to permit continuance of an employee in a position for which a currently valid state license is required where it is probable that the employee will have his or her state license restored within the 45-day period. If it is apparent from the nature of the suspension that the state license is not likely to be restored within the 45 days, the employee should be immediately barred from the operation of a motor vehicle. Additional guidance is in 5 CFR 930, Subpart A.

A5.8. Misuse of Leave. Since management has the discretion to approve or deny most requests for leave, the general rule is that management may not take action based on an employee's use of approved leave, whether it be sick leave, annual leave, or leave without pay. Use of accrued sick leave in the absence of fraud or subterfuge, is an entitlement of every employee who is ill or incapacitated by injury, and an approval is contingent on submission of supporting evidence acceptable to management. The right of the employee to take sick leave for nonemergency examination is subject to requesting this leave in advance, with the approval of the proposed time subject to the need for the employee's services. When management approves an employee's request for leave, the approving official presumably makes a determination that the employee's presence on the job is not required. If management needs the employee's services, it may deny leave and if the employee does not report for duty, show the absence in the time and attendance reports as absence without leave (AWOL). Neither the denial of leave nor the time and attendance reporting entry of AWOL is punitive, and neither means that the employee has insufficient reason for requesting leave. Rather, they mean that the employee's presence is required and that the reason for requesting leave is not one for which leave must be approved. The employee's failure to honor the leave denial and the unauthorized absence may form the basis for disciplinary or adverse action.

A5.8.1. If management has in the past approved an employee's leave, but believes that the extent of the leave used is such that the employee is not on duty on a regular, full-time or part-time basis in a position which requires a regular, full-time or part-time employee, or if the employee has consistently failed to obtain advanced approval for leave, management has the opportunity to establish an appropriate record as part of a basis for further action by:

A5.8.1.1. Informing the employee that his or her attendance record is unsatisfactory and needs to be improved.

A5.8.1.2. Warning the employee that further sick leave will not be approved without sufficient medical documentation and that annual leave and leave without pay (LWOP) will be approved only if requested in advance and the employee's services are not essential during the period for which the leave is requested. **NOTE:** If the employee is then absent without prior approval or proper medical documentation, management may record the employee's absence as AWOL. Such unauthorized absence may serve as a basis for disciplinary or adverse action.

A5.8.2. Exception to the General Rule. Adverse action may be taken based on a record of excessive unscheduled LWOP when three criteria are met:

A5.8.2.1. The records shows that the employee was absent for compelling reasons beyond the employee's control so that management approval or disapproval was immaterial because the employee could not be on the job.

A5.8.2.2. The absence or absences continued beyond a reasonable time and the employee was warned that adverse action might be initiated unless the employee became available for duty on a regular, full-time or part-time basis.

A5.8.2.3. Management showed that the position needed to be filled by an employee available for duty on a regular, full-time, or part-time basis. **NOTE:** This exception would be applicable only under certain unusual circumstances such as the inability of an employee to return to duty or to work on a regular basis because of the continued effects of illness or injury (on- or off-the-job). Other circumstances may, in rare cases, meet these criteria. This exception would probably not apply, for example, to situations of repeated absences to attend to personal affairs or because of failure to obtain adequate transportation to work. These situations presumably are under the control of the employee and, therefore, are reasons to deny leave and record the absence as AWOL. Separation of an employee who is receiving employee's compensation after on-the-job injury would be handled as explained in 5 CFR 353.

A5.9. Off-Duty Misconduct. Because the Air Force does not interfere unnecessarily in the private affairs of its employees, care must be taken in citing an employee's off-duty misconduct as a cause of action. As in any other disciplinary or adverse action, there must be a nexus between the cause of action and the efficiency of the service.

A5.10. Arrest, Indictment, or Conviction for Criminal Offenses:

A5.10.1. Arrest. The fact that an employee was arrested for a crime is not by itself sufficient as a cause of action since the employee, in fact, may be innocent of the crime. However, the underlying misconduct which led to the arrest may be the basis for disciplinary action even though no later trial is held or the employee is acquitted.

A5.10.2. Criminal Indictment. Criminal indictment by itself is not sufficient as a cause of action, except for an indefinite suspension pending disposition of criminal action.

A5.10.3. Criminal Conviction. If the cause of action relied on for disciplinary action is criminal conviction, later acquittal of the employee or dismissal of the criminal charge could vacate the cause of the criminal charge could vacate the cause for management's administrative action. If the cause of action relied on is the employee's underlying the act of wrongdoing rather than the conviction, the administrative action generally will not be affected by the later court action on the criminal case.

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