

TA
MK
11/1/19
04 Nov 19

**ARTICLE 46
ADVERSE ACTIONS**

SECTION 1

- A. An adverse action, for the purpose of this Article, is defined as a removal, a suspension for more than 14 calendar days, a reduction in grade, a reduction in pay, based on performance and/or conduct and a furlough of 30 calendar days or less of an employee.
- B. Adverse actions will be taken only for such cause as will promote the efficiency of the service.
- C. If an adverse action is canceled, all documentation relative to that action will be removed from the employee's Official Personnel File (OPF), and from other unofficial supervisor's personnel files to the extent retention is not required by law, rule or regulation. Upon request from an employee, the EMPLOYER will provide confirmation that the documentation has been removed from the OPF and the supervisor's files,

SECTION 2

The Parties agree to the concept of progressive discipline. However, each situation warranting discipline must be evaluated individually and, in instances involving serious offenses, progressive discipline may not be appropriate. In order to determine the appropriate penalty for specific conduct or performance issues, the EMPLOYER will, subject to applicable law, rule, and regulation, consider the relevant factors as determined by governing law. At the time of this Agreement, those factors are articulated in Douglas v. Veterans Administration, 5 MSPB 313 (1981) [Link].

SECTION 3

- A. When the EMPLOYER issues an adverse action letter to an employee, the EMPLOYER may use any means of delivery deemed appropriate, including U.S. Mail or other document carrier, courier, hand delivery, or electronic delivery.
- B. An employee has a right to UNION representation at any examination of them by the EMPLOYER, in connection with an investigation, if the employee reasonably believes that the examination may result in adverse action against the employee and the employee so requests representation.
- C. The provisions of Section 7, Article 3 of this Agreement (Employee Rights) apply to examinations under this Article.

SECTION 4

- A. In all cases of proposed adverse action, except for emergency suspensions, furloughs, and actions taken in which there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the employee will be given written notice stating the specific reasons for the proposed action thirty (30) calendar days in advance of the action and informed of their right to reply to the proposed action. Any and all documents or any other evidence upon which an adverse action is based will be made available to the affected employee and his/her designated representative. This provision in no way limits the UNION's right to request information under 5 U.S.C. Section 7114. .
- B. In cases where an adverse action is proposed for reasons of off-duty misconduct, the EMPLOYER's written notification will also contain a statement of the nexus between the off-duty misconduct and the efficiency of the service. .
- C. An employee has the right to make an oral and/or written reply within 10 workdays of the employee's actual receipt of the letter of proposed action. If the employee elects to make an oral reply, a verbatim transcript of the oral reply will be prepared and provided to the employee or his or her UNION representative. The UNION will provide any proposed written corrections to the transcript within 3 days of receipt. The transcript may be prepared from a tape recording of the proceedings.
- D. The final decision in any sustained adverse action will normally be made by a higher-level management official than the official who issued the notice of proposed action. The final decision letter shall contain the EMPLOYER's findings with respect to each charge made against the employee in the notice of proposed action. The final decision will contain a statement of the employee's appeal rights as required by law.

SECTION 5

- A. As the EMPLOYER is exempt from the provisions of Title 5 of the United States Code, Chapter 43, adverse actions based on charges of unacceptable performance will be taken using the procedures of Title 5 of the United States Code, Chapter 75.
- B. When the EMPLOYER proposes an adverse action based on unacceptable performance of the employee, the EMPLOYER will rely on employee performance that occurred within one calendar year before the date of the proposal letter.

SECTION 6

- A. The UNION may appeal an agency decision on an adverse action directly to arbitration in accordance with Article 48 (Arbitration) of this Agreement.
- B. The burden of proof in any arbitration contesting an adverse action will be on the EMPLOYER and be by a preponderance of evidence.