

EMPLOYEE/MANAGEMENT RELATIONS

- 1. REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) procedures regarding employee/management relations.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains VA procedures on employee/management relations. The pages in this issuance replace the corresponding page numbers in VA Handbook 5021. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5021 that is maintained on the [Office of Human Resources Management Web site](#). Significant changes include:
 - a. Adds Appendices B, C, D, and E to Part I to clarify the officials authorized to propose and decide actions for title 5 and hybrid title 38 employees;
 - b. Requires that a summary of an oral reply heard by a designee instead of the deciding official be shared with the employee prior to a final decision being made;
 - c. Removes several references to appendices that are no longer published in this handbook; and
 - d. Clarifies that suspension penalties in Appendix I-A apply to calendar days rather than workdays.
- 3. RESPONSIBLE OFFICE:** The Employee Relations and Performance Management Service (051), Office of the Deputy Assistant Secretary for Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5021, Employee/Management Relations.
- 5. RESCISSIONS:** None

CERTIFIED BY:

/s/
LaVerne H. Council
Assistant Secretary for
Information and Technology

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
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Assistant Secretary for
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CONTENTS - CONTINUED

PARAGRAPH

PAGE

APPENDICES

I-A. TITLE 5 - TABLE OF EXAMPLES OF OFFENSES AND PENALTIES..... I-A-1
[I-B. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS – CO..... I-B-1
I-C. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS – VHA I-C-1
I-D. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS – VBA I-D-1
I-E. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS – NCA I-E-1]

6. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS

a. Administration Heads, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries, and field facility directors as appropriate, are responsible for designating in writing management officials who may propose and decide actions covered in this part, and for ensuring that supervisory employees under their jurisdiction are made aware of such designations. [Directors in VA Central Office (VACO) and field facility directors for Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA) are defined in appendices B, C, D, and E of this part.]

b. Officials who may issue admonishments and reprimands, and propose and decide suspensions of 14 calendar days or less, and adverse actions will be as follows [also see appendices B, C, D, and E for a more detailed reference chart by organization]:

(1) **Admonishment.** The official who may issue a letter of admonishment will normally be the employee's immediate supervisor or [above] in the supervisory line.

(2) **Reprimand.** The official who may issue a letter of reprimand to an employee must be [in the employee's supervisory line] at the division or service chief level [or above] in a field facility, or at the division chief level or above in Central Office.

(3) **Suspension of 14 Calendar Days or Less.** The official who may issue a letter of proposed suspension of 14 calendar days or less to an employee must be [in the employee's supervisory line] at the division or service chief level or above in a field facility, or at the division chief level or above in Central Office. A final decision on a proposed suspension of 14 calendar days or less will be made by the proposing official, or an official at any level in the supervisory line above the official who proposed the action. The Secretary or designee retains the authority to make the final decision on the suspension of employees occupying positions centralized to the Secretary.

(4) **Furloughs.** VA Handbook 5005, part IV, identifies officials who may propose and decide furloughs.

(5) **Adverse Action**

(a) **Proposed Adverse Actions.** The official who may issue a letter of proposed adverse action to an employee must be [in the employee's supervisory line] at the division or service chief level or above in a field facility, or at the division chief level or above in Central Office.

(b) **Decisions on Adverse Actions.** The official who may issue a letter of decision must be at [a higher level than the proposing official, and at or above] the director level in a field facility [(see definition for field facility director in appendices B, C, D, and E of this part),] or at [a level above the division chief level] in Central Office [provided that the higher level official is in the supervisory line.] The Secretary or designee retains the authority to make the final decision on adverse actions involving employees occupying positions centralized to the Secretary.

c. Actions resulting from a Central Office investigation, with the exception of those conducted by the Office of Inspector General (OIG), will be proposed and decided by officials in Central Office [as appropriate. Based on the circumstances of the case, actions may be proposed and decided by officials outside the employee's supervisory line in order to ensure no conflict of interest exists. When adverse actions are proposed and decided by officials outside the employee's supervisory chain, the concepts described in paragraph 6b(5) will be followed to determine the correct officials to propose and decide the action]. Such authority may be delegated on a case by case basis to the field facility Director. Actions based on OIG investigations may be taken at the field facility level in coordination with the appropriate organizational elements in Central Office.

d. Consistent with the restrictions provided in subparagraphs b and c above, field facility directors are responsible for designating officials who may propose and/or decide disciplinary and adverse actions.

**PART I
CHAPTER I**

(6) The right to reply to either the decision official or to someone with authority to recommend what the final decision should be;

(7) A written decision and the specific reasons supporting the decision at the earliest practicable date; and,

(8) The right to appeal the action under the VA grievance procedure or under the negotiated grievance procedure, as appropriate. There is no right of appeal to the Merit Systems Protection Board of a disciplinary suspension of 14 days or less.

d. Procedures

(1) **Preparation.** The appropriate supervisory official, with the assistance of the Human Resources Management office, will prepare and issue the advance notice of proposed suspension.

(2) **Review.** Before being given to the employee, the notice will be reviewed by the Human Resources Management Office for compliance with applicable statutes, regulations, labor management agreements, and VA policy. The Human Resources Management office should also review the evidence and, if indicated, make a recommendation to the proposing official concerning the propriety of the action.

(3) **Content of Proposed Notice.** The advance notice of proposed suspension must contain the following [(see [Office of Human Resources Management, Employee Relations](#) Web site for sample)]:

(a) the number of days that it is proposed that the employee be suspended;

(b) a statement of the specific reasons for the proposed action, including names, dates, places, and other data, sufficient to enable the employee to fully understand the reasons and to afford the employee a reasonable opportunity to respond to them;

(c) a statement that the employee has the right to be represented by an attorney or other representative;

(d) a statement that the employee has the right to reply orally or in writing, or both orally and in writing, and to submit affidavits and other documentary evidence in support of the reply;

(e) a statement of the amount of time the employee has to submit the reply or replies (time limits may vary according to applicable labor-management agreements, but in no event may be less than 24 hours).

(f) a statement informing the employee that the material relied upon to support the reasons for the proposed suspension will be made available to the employee and his/her representative upon request;

(g) a statement that if the employee has any questions about the reasons for the proposed suspension, he or she may contact the official who signed the proposed notice or the Human Resources Management office for further explanation;

**PART I
CHAPTER I**

made. The right to reply orally includes the right to be given a reasonable opportunity to make any plea which the employee believes might [influence] the final decision in his or her case. The employee's oral reply must not be restricted to matters dealing solely with the charges against him or her. The employee must be permitted to plead extenuating circumstances or make any other argument he or she deems proper.

(b) A written summary of the employee's oral reply must be made and placed in the evidence file. If a designee [hears] the oral reply, the [written] summary [of the reply must be provided to the employee. The employee must be given a reasonable period of time, generally not less than three work days, to review the written summary and respond to the accuracy of its content. Both the designee's written summary of the oral reply and the employee's response to the written summary will be included in the evidence file, and forwarded to the deciding official. The designee who hears the oral reply] may [include] a recommendation on the proposed action [but may not provide any supplementary information that was not contained in the evidence file or presented by the employee during the reply period].

(c) The employee may reply in writing to the notice in addition to making an oral reply or instead of an oral reply.

(d) An employee's failure to reply is not to be considered an admission of the charges. The burden of proof rests with management to support its reasons for the action.

(5) Arriving at a Final Decision on a Proposed Suspension

(a) The decision official will give full and impartial consideration to the employee's reply, if any, and all evidence of record. If the decision official finds one or more of the reasons in the advance notice sustained, he or she will give consideration to the table of examples of offenses and penalties in appendix A of this part in determining the appropriate penalty. This appendix also lists several factors to consider in arriving at a decision.

(b) A decision adverse to the employee must be based only on the reasons stated in the notice of proposed action. If none of the reasons are sustained, either in whole or in part, no penalty may be imposed, regardless of any past record cited in the notice.

(c) The penalty may not be more severe than that proposed in the notice of proposed action.

(d) If the notice of proposed suspension is determined to be procedurally defective, or if it is found that additional reasons other than those set forth should be considered or that the appropriate penalty should be more severe than that proposed, the notice of proposed suspension will be rescinded and a new notice of proposed action issued. The new notice will include a new advance notice period and another opportunity to reply orally or in writing, or both orally and in writing.

(6) Decision Notice

(a) The decision letter will be dated and signed by the appropriate decision official, and will be delivered to the employee prior to the effective date of the action.

(b) Before the decision is released to the employee, it will be reviewed by the Human Resources Management office for compliance with applicable statutes, OPM regulations, and VA policies. The Human Resources Management office will also review the merits of the case and any mitigating factors and, if indicated, advise the decision official concerning the propriety of the action.

(c) The decision letter will contain the following information [(see the [Office of Human Resources Management, Employee Relations](#) Web site for sample)]:

1. A statement that consideration has been given to all evidence developed, including the employee's reply. A written reply made by a representative on behalf of the employee is considered to be an employee's reply. If the employee replies both orally and in writing, both replies must be mentioned.
2. A statement of the decision official's determinations regarding what reasons, if any, in the advance notice were sustained and what reasons, if any, were not sustained.
3. If a record of prior disciplinary actions was cited in the advance notice, the decision will state whether the action takes the past record, as cited in the advance notice, into consideration in determining proper action.
4. A statement of the inclusive dates of the suspension.
5. A statement concerning the employee's rights to file a grievance, and the time limit within which it must be filed.
6. A statement advising the employee that a further explanation of his or her appeal rights may be obtained by consulting the Human Resources Management office.

(d) The guidelines in chapter 3, paragraph 13e of this part concerning delivery should be followed.

8. EXCEPTIONS TO 30 DAYS ADVANCE NOTICE

a. The 30-day advance notice period is not required where there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. Paragraph 14 of this chapter contains guidance concerning the crime provision, and the use of indefinite suspensions in conjunction with the crime provision.

b. The 30-day advance notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdown in equipment, acts of God (e.g., flood, tornado, etc.) or sudden emergencies requiring immediate curtailment of activities (see VA Handbook 5005, part IV, for further guidance).

9. NOTICE OF PROPOSED ACTION

a. Before being released to the employee, the notice of proposed action will be reviewed, by the Human Resources Management office for compliance with applicable statutes, regulations, labor-management agreements, and VA policy. The Human Resources Management office will also review the evidence and, if indicated, provide guidance concerning the propriety of the action.

b. The advance notice of proposed action must contain the following information [(see the [Office of Human Resources Management, Employee Relations](#) Web site for sample)]:

(1) The nature of the action proposed (i.e., removal, length of suspension, demotion, etc.);

(2) A statement of the specific reasons for the proposed action, including names, dates, places, and other data, sufficient to enable the employee to fully understand the reasons and to afford the employee a fair opportunity to respond to them;

(3) A statement that the employee may be represented by an attorney or other representative;

(4) A statement that the employee has the right to reply orally or in writing, or both orally and in writing, and to submit affidavits and other documentary evidence in support of the reply;

(5) A statement of the amount of time the employee has to submit the reply, or replies. Time limits may vary according to applicable labor-management agreements, but in no event may it be less than 7 days;

(6) A statement that if the employee has any questions about the reasons for the proposed adverse action, he or she may contact the official who signed the advance notice or the Human Resources Management office for further explanation;

(7) A statement identifying the decision official;

(8) A statement that the employee's written reply should be submitted through supervisory channels to the decision official and that the decision official, or designee, will receive the employee's oral reply;

PART I

CHAPTER 3

11. EMPLOYEE'S REPLY

a. If the employee requests an opportunity to reply orally, the decision official will receive the employee's reply, or will designate a representative to receive it. The representative designated to receive the reply will be an official who has the authority to recommend what final decision should be made. The right to reply orally includes the right to be given reasonable opportunity to make any plea which the employee believes might influence the final decision in his or her case. The employee's oral reply must not be restricted to matters dealing solely with the charges against him or her. The employee must be permitted to plead extenuating circumstances or make any other arguments he or she deems proper. A written summary of the oral reply must be made and placed in the adverse action file. If a designee hears the oral reply, [the written] summary [of the reply must be provided to the employee. The employee must be given a reasonable period of time, generally not less than three work days, to review the written summary and respond to the accuracy of its content. Both the designee's written summary of the oral reply and the employee's response to the written summary will be included in the adverse action file, and forwarded to the deciding official. The designee who hears the oral reply] may include a recommendation on the proposed action [but may not provide any supplementary information that was not contained in the evidence file or presented by the employee during the reply period.]

b. The employee may reply in writing to the notice, in addition to making an oral reply or instead of an oral reply.

c. An employee's failure to reply is not to be considered an admission of the charges. The burden of proof rests with management to support its reasons for the action.

d. In making a reply, the employee may allege alcohol or drug abuse or some other disabling medical condition.

(1) If the employee alleges that a physical or mental condition or disability is causing the conduct or performance problems, the decision official will allow the employee a reasonable opportunity to supply medical documentation in order to assess the effect of the condition on the employee's performance or conduct. If the documentation is not sufficient or needs clarification, in limited instances a medical examination may be offered or ordered under the provisions of VA Handbook 5019. This documentation will assist in determining whether the employee has a disability for the purpose of considering reasonable accommodation. If the employee's unacceptable performance or conduct is unrelated to the nature of the disability, the employee is not a qualified employee with a disability and reasonable accommodation need not be considered.

(2) Reasonable accommodation will be afforded to the known physical or mental limitations of a qualified employee with a disability unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the Department. The type of accommodation will be specific to the individual circumstances. In determining whether an accommodation would impose an undue hardship on the operation of the agency, a number of factors should be considered, including but not limited to, the nature and cost of the accommodation, and the impact such accommodation would have on the workload of other employees.

PART I

CHAPTER 3

(3) When an employee with a disabling medical condition cannot be reasonably accommodated, management may, depending on the circumstances, wish to change its cause for action against the employee prior to making a final decision on the proposed adverse action. For example, if an employee whose removal has been proposed for misconduct, clearly demonstrates through medical evidence that there is a causal relationship between the actions on which the proposed removal is based and his or her medical condition, the notice of proposed removal for reasons of misconduct should be canceled and a new notice of proposed separation for disability issued, based on the medical evidence.

**PART I
CHAPTER 3**

rescinded and a new notice of proposed action issued. The notice will include a new advance notice period and another opportunity to reply orally or in writing, or both orally and in writing. If additional evidence becomes available to further support the charges in the advance notice, but does not necessarily provide a basis to alter the charges or the proposed penalty, the employee will be afforded the opportunity to respond to the new evidence before a final decision is made.

f. Officials involved in taking an adverse action against an employee should be aware of the prohibitions against improper "ex parte communications." The MSPB has held that agency officials may communicate with each other during the decision making process. However, it is improper for an interested party (e.g. supervisor, proposing official), to pressure the decision official into making an adverse decision. Such communications are improper, and might support reversal of the action on appeal.

13. DECISION NOTICE

a. The decision letter will be dated and signed by the appropriate decision official and will be delivered to the employee prior to the effective date of the action.

b. Before being issued to the employee, the notice will be reviewed by the Human Resources Management Officer, or designee, for compliance with the procedural requirements of existing statutes, OPM regulations, MSPB decisions, applicable labor-management agreements and VA policies. Any comments the Human Resources Management office may have concerning the merits of the case and any mitigating factors will be presented to the decision official.

c. The letter of decision will contain the following information [(see the [Office of Human Resources Management, Employee Relations](#) Web site for sample)]:

(1) A statement that consideration has been given to all evidence developed, including the employee's reply. A written reply made by a representative in behalf of the employee is considered to be an employee's reply. If the employee replies both orally and in writing, both must be mentioned. The decision official should also make a statement regarding consideration that was given to the "Douglas" factors (see the sample letter on the [Office of Human Resources Management, Employee Relations](#) Website for suggested language).

(2) A statement of the decision official's determinations regarding what reasons, If any, in the advance notice were sustained and what reasons, if any, were not sustained.

(3) If a record of prior disciplinary actions was cited in the advance notice, a statement that the action takes the past record, as cited in advance notice, into consideration in determining proper action.

(4) A statement of the effective date, if the penalty imposed is a demotion or removal; or the inclusive dates, If the penalty is a suspension.

(5) A statement concerning the employee's appeal rights, including the right to file a complaint of discrimination (if appropriate), a grievance under the negotiated grievance procedure (if applicable) or an appeal to the appropriate MSPB Regional Office. Only one of the above options may be elected. An employee shall be deemed to have made an election to raise a matter under one of the procedures when the employee timely files an appeal with the MSPB, files a formal complaint of discrimination

(29 CFR 1614), or timely files a grievance in writing in accordance with the provisions of the labor-management agreement.

(6) The statement in the decision letter concerning appeal rights must include the time limit within which an appeal must be filed with MSPB, and the address of the appropriate MSPB Regional Office. Appeals to MSPB must be filed within 30 days of the effective date of the adverse action. Time limits for filing a grievance will be governed by the applicable negotiated grievance procedure.

(7) Indication that a copy of the MSPB regulations and appeal form is attached.

(8) A statement advising the employee that a further explanation of his or her appeal rights may be obtained by consulting the Human Resources Management office.

d. Non-preference eligible employees appointed under the authority of Schedule A or Schedule B who have completed 1 year, but less than 2 years, of current continuous service must be advised in the decision letter of the right to appeal an adverse action under the agency administrative appeal procedure (see chapter 2, part IV of this handbook and [[the Office of Human Resources Management, Employee Relations](#) Web site for sample]).

e. It is best to deliver a decision letter to the employee personally and to obtain his or her dated, written acknowledgment of receipt so as to show the date and fact of receipt. If the employee refuses to sign, this should be so noted on the acknowledgment copy. In those instances where the decision letter cannot be personally delivered to the employee, it should be sent by certified mail, return receipt requested, in order to establish that the letter was received. A copy should also be sent to the employee's last known home address of record by regular mail in the event the certified mail is not delivered and/or the employee fails to obtain it from the Postal Service after being notified to do so.

14. ADVERSE ACTIONS RELATED TO THE CRIME PROVISION

a. The "crime provision" of 5 U.S.C. 7513(b)(1) allows the 30 day advance written notice period of an adverse action to be shortened so that expeditious action may be taken when appropriate. This provision is concerned solely with the duration of the advance notice period and the opportunity to answer. It does not deal with the employee's duty status during the advance notice period or the merits of the action. All other procedures except the full 30 day advance notice period of an adverse action apply.

b. In order for this provision to be invoked in connection with an adverse action, there must be reasonable cause to believe that the employee has committed a crime for which a penalty of imprisonment may be imposed (see [[the Office of Human Resources Management, Employee Relations Website](#)] for further guidance in this area).

c. The crime provision may be used only in conjunction with a proposal to remove or suspend indefinitely. In those situations in which the retention of the employee in an active duty status would be inappropriate, but where management wishes to defer final judgment until completion of judicial proceedings, or where evidence to substantiate a removal is not yet available or usable, an indefinite suspension should be proposed. The prime benefits of the indefinite suspension are the expeditious removal of the employee from the premises with the retained option of either reinstating or removing the employee upon completion of the judicial proceedings or further investigation. Action should be taken

APPENDIX A. TITLE 5 - TABLE OF EXAMPLES OF OFFENSES AND PENALTIES

1. INSTRUCTIONS FOR USE OF TABLE

a. The range of penalties indicated in this table is to be used as a guide in administering discipline to help assure that like disciplinary action is taken for like offense.

b. The suspension penalties listed in the table are applicable to [calendar days] only.

(Caution: In title 5, U.S. Code, chapter 75, "Suspended for More than 14 days" is interpreted to express calendar days)

c. In using this table, consideration will be given to the following:

(1) The table is designed to be sufficiently broad to include most types of offenses, but is not intended to be an exhaustive listing of all offenses. For other offenses, appropriate penalties may be prescribed by disciplinary officials for application within their jurisdiction, consistent with the range of penalties for comparable offenses listed in the table.

(2) This guide does not cover all offenses for which disciplinary penalties are expressly provided by law or Civil Service regulation.

(3) Offenses need not be identical in order to support progressively more severe disciplinary/ adverse action against an employee. For example, an employee who has received an admonishment for AWOL can receive a reprimand for sleeping on duty, and possibly be suspended or removed for a third offense unrelated to the two previous infractions.

(4) When an employee has committed a combination or series of offenses, a greater penalty than is listed for a single offense is appropriate.

(5) Where appropriate, demotion may be used in place of removal as provided in this chapter, except for the offense described in item 27 of the table.

(6) Disciplinary penalties will generally fall between the ranges indicated in the guide, but in unusual circumstances greater or lesser penalties may be imposed. In determining disciplinary action to be taken in a specific case, the following factors that will be considered as cited in Douglas v. VA, 5M.S.P.R.280 (1981). Remember that any of the Douglas factors may be either mitigating or aggravating. Each relevant factor must be addressed.

(7) The following are the twelve (12) Douglas factors:

(a) The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

**[APPENDIX B. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS FOR
CENTRAL OFFICE (CO)]**

1. CO includes the national level administrations of Veterans Affairs (VA), Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA).
2. Officials authorized to propose and decide actions identified in the table below are defined as follows:
 - a. Immediate Supervisor. The management official to whom the employee directly reports and who is responsible for assigning the employee's annual rating of record.
 - b. Division/Service Chief. The management official responsible for a division or service, which may include the supervision of other managers/supervisors.
 - c. Field Facility Director (Service Level Director). An SES management official who supervises a division/service in CO. Examples are as follows:
 - (1) CO: Deputy Assistant Secretary for Policy and Planning, Deputy Assistant Secretary for Human Resources and Administration
 - (2) VHA: Deputy Under Secretary for Health for Operations and Management, Deputy Under Secretary for Health for Policy and Services
 - (3) VBA: Deputy Under Secretary for Economic Opportunity, Deputy Under Secretary for Field Operations
 - (4) NCA: Deputy Under Secretary for Field Programs, Deputy Under Secretary for Management
3. Service Level Directors may re-delegate their authority for deciding adverse actions to a lower level official acting in their absence under certain circumstances. This delegation must be in writing and be included in the evidence file to show the delegation was authorized. The following constitutes circumstances when delegation is permissible:
 - a. the deciding official is on long-term leave, generally more than 30 calendar days, or
 - b. the position is vacant and another management official has been officially appointed as acting in that position.
4. Note 38 U.S.C. 713 allows for separate procedures for the removal and transfer of individuals in the Senior Executive Service (SES) or SES-equivalent employees. For further guidance on these procedures contact the Corporate Senior Executive Management Office (CSEMO).

VA CENTRAL OFFICE

Level of Disciplinary Action	Proposing Official	Deciding Official
Admonishment	None (unless prescribed by a Bargaining Unit Agreement)	Immediate Supervisor or above in the supervisory line
Reprimand	None (unless prescribed by a Bargaining Unit Agreement)	Division/Service Chief or above in the supervisory line
Suspension of 14 Days or Less	Division/Service Chief or above in the supervisory line	Proposing Official or above in the supervisory line The Secretary or designee retains the authority to make the final decision on the suspension of employees occupying positions centralized to the Secretary
Adverse Action	Division/Service Chief or above in the supervisory line	Service Level Director or above in the supervisory line who is at a higher level than the proposing official, and is at the SES or SES equivalent level The Secretary or designee retains the authority to make the final decision on adverse actions involving employees occupying positions centralized to the Secretary]

[APPENDIX C. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS FOR VETERANS HEALTH ADMINISTRATION (VHA) FIELD OFFICES

1. Officials authorized to propose and decide actions identified in the table below are defined as follows:

a. Immediate Supervisor. The management official to whom the employee directly reports and who is responsible for assigning the employee’s annual rating of record.

b. Division/Service Chief. The management official responsible for a division or service, which may include the supervision of other managers/supervisors.

c. Field Facility Director (Medical Center Director/VISN Network Director). An SES or SES equivalent management official who oversees a Medical Center or VISN Network office.

2. Medical Center Directors/VISN Network Directors may re-delegate their authority for deciding adverse actions to a lower level official acting in their absence under certain circumstances. This delegation must be in writing and be included in the evidence file to show the delegation was authorized. The following constitutes circumstances when delegation is permissible:

a. the deciding official is on long-term leave, generally more than 30 calendar days, or

b. the position is vacant and another management official has been officially appointed as acting in that position.

3. Note 38 U.S.C. 713 allows for separate procedures for the removal and transfer of individuals in the Senior Executive Service (SES) or SES-equivalent employees. For further guidance on these procedures contact the Corporate Senior Executive Management Office (CSEMO).

VETERANS HEALTH ADMINISTRATION

Level of Disciplinary Action	Proposing Official	Deciding Official
Admonishment	None (unless prescribed by a Bargaining Unit Agreement)	Immediate Supervisor or above in the supervisory line
Reprimand	None (unless prescribed by a Bargaining Unit Agreement)	Division/Service Chief or above in the supervisory line
Suspension of 14 Days or Less	Division/Service Chief or above in the supervisory line	Proposing Official or above in the supervisory line

PART I

APPENDIX C

Adverse Action	Division/Service Chief or above in the supervisory line	Medical Center Director/VISN Network Director or above in the supervisory line who is at a higher level than the proposing official, and is at the SES or SES equivalent level]
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[APPENDIX D. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS FOR VETERANS BENEFIT ADMINISTRATION (VBA) FIELD OFFICES

1. Officials authorized to propose and decide actions identified in the table below are defined as follows:

a. Immediate Supervisor. The management official to whom the employee directly reports and who is responsible for assigning the employee’s annual rating of record.

b. Division/Service Chief. The management official responsible for a division or service, which may include the supervision of other managers/supervisors.

c. Field Facility Director (Regional Office Director). An SES or GS-15 management official who oversees a Regional Office.

2. Regional Office Directors may re-delegate their authority for deciding adverse actions to a lower level official acting in their absence under certain circumstances. This delegation must be in writing and be included in the evidence file to show the delegation was authorized. The following constitutes circumstances when delegation is permissible:

a. the deciding official is on long-term leave, generally more than 30 calendar days, or

b. the position is vacant and another management official has been officially appointed as acting in that position.

3. Note 38 U.S.C. 713 allows for separate procedures for the removal and transfer of individuals in the Senior Executive Service (SES). For further guidance on these procedures contact the Corporate Senior Executive Management Office (CSEMO).

VETERANS BENEFITS ADMINISTRATION

Level of Disciplinary Action	Proposing Official	Deciding Official
Admonishment	None (unless prescribed by a Bargaining Unit Agreement)	Immediate Supervisor or above in the supervisory line
Reprimand	None (unless prescribed by a Bargaining Unit Agreement)	Division/Service Chief or above in the supervisory line
Suspension of 14 Days or Less	Division/Service Chief or above in the supervisory line	Proposing Official or above in the supervisory line
Adverse Action	Division/Service Chief or above in the supervisory line	Regional Office Director or above in the supervisory line who is at a higher level than the proposing official, and is at the SES or GS-15 level]

[APPENDIX E. OFFICIALS AUTHORIZED TO PROPOSE AND DECIDE ACTIONS FOR NATIONAL CEMETERY ADMINISTRATION (NCA) FIELD OFFICES

1. Officials authorized to propose and decide actions identified in the table below are defined as follows:

a. Immediate Supervisor. The management official to whom the employee directly reports and who is responsible for assigning the employee’s annual rating of record.

b. Division/Service Chief. The management official responsible for a division or service, which may include the supervision of other managers/supervisors. For example, a foreman who supervises other foremen.

c. Field Facility Director (Cemetery Director). A GS-13 through 15 management official who oversees a National Cemetery. For Cemetery Directors below the level of GS-13, the Field Facility Director will be the Executive Director.

d. Executive Director. An SES management official who oversees a Network within NCA.

2. Cemetery Directors or Executive Directors may re-delegate their authority for deciding adverse actions to a lower level official acting in their absence under certain circumstances. This delegation must be in writing and be included in the evidence file to show the delegation was authorized. The following constitutes circumstances when delegation is permissible:

a. the deciding official is on long-term leave, generally more than 30 calendar days, or

b. the position is vacant and another management official has been officially appointed as acting in that position.

3. Note 38 U.S.C. 713 allows for separate procedures for the removal and transfer of individuals in the Senior Executive Service (SES). For further guidance on these procedures contact the Corporate Senior Executive Management Office (CSEMO).

NATIONAL CEMETERY ADMINISTRATION

Level of Disciplinary Action	Proposing Official	Deciding Official
Admonishment	None (unless prescribed by a Bargaining Unit Agreement)	Immediate Supervisor or above in the supervisory line
Reprimand	None (unless prescribed by a Bargaining Unit Agreement)	Division/Service Chief or above in the supervisory line
Suspension of 14 Days or Less	Division/Service Chief or above in the supervisory line	Proposing Official or above in the supervisory line

Adverse Action	Division/Service Chief or above in the supervisory line	Cemetery/Executive Director or above in the supervisory line who is at a higher level than the proposing official, and is at the GS-13 level or above]
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1. **Records.** All summary review board actions and associated proficiency reports are to be filed in the professional standards board folder whether or not the employee is separated or retained.

4. OTHER APPROPRIATE PENALTY ACTIONS

a. **General.** While the provisions of part II, this handbook, Disciplinary Procedures Under title 38, are not applicable to employees who have not completed the probationary period, in certain cases imposing a penalty action may be appropriate.

(1) These actions may be imposed during the probationary period to correct conduct deficiencies which are not serious enough to justify separation of an employee from the service.

(2) Penalty actions may be imposed as the result of a Professional Standards Board review of an employee's services or by supervisory officials independent of Board action if the employee's action(s) do not warrant peer review. Such actions may include Admonishments and Reprimands (see [[the Office of Human Resources Management, Employee Relations Website](#) for sample letters]). Such actions may be issued without proposal letters.

b. Approvals

(1) The facility Director may designate supervisory officials at or above the service chief level to approve actions for probationary employees.

(2) The appropriate Network Director approves admonishments and reprimands for network employees, chiefs of staff and facility directors in their probationary periods. Appropriate officials at or above the service director level may approve admonishments and reprimands for VA Central Office employees in their probationary periods.

5. EMPLOYEE STATUS

a. **Status During Review.** In cases involving reviews under the provisions of this chapter, employees will be retained in a pay and active duty status in their current assignment. However, in those instances where it is determined that the employee's continued presence at the work site might pose a threat to employees or others, result in loss of or damage to Government property or otherwise jeopardize legitimate Government interests, the following alternatives may be considered:

(1) Detail the employee to another assignment;

(2) Allow the employee to take leave, or carry the employee as absent without leave if the employee has absented himself or herself from the work site without requesting leave;

(3) As a last resort, the employee may be placed in a paid non-duty status for a brief period pending a decision on whether a summary review is appropriate.

b. **Clinical Privileges.** At the initiation of a Summary Review board, careful consideration should be taken to determine whether a review of the employee's clinical privileges is also appropriate.

c. **Appointment of a Grievance Examiner From Outside VA Facility.** Decision officials should make every effort to appoint a local examiner to investigate an employee grievance. However, there may be instances where this is not practicable due to the nature of the grievance and/or the unavailability of an appropriate individual to act as the grievance examiner. Such grievances should be forwarded to the next higher organizational level for assignment of a grievance examiner. Referral of such requests should be minimized and must provide justifications as to why the grievance could not be handled by a grievance examiner appointed at the local level. Two copies of the grievance file will be included with the grievance. A copy of the grievance file will be maintained by the decision official. The grievant and his or her representative will be given a copy of the letter requesting appointment of a grievance examiner. An examiner will be appointed within 5 days after the request and required files are received. Grievance examiners will be authorized to visit the grievant's facility, if appropriate.

d. **Grievance Inquiry.** At the examiner's discretion, the grievance inquiry may consist of:

- (1) The securing of documentary evidence, including such technical advice as may be needed;
- (2) Personal or telephone interview (statements of witnesses obtained by the examiner should be under oath or affirmation, without a pledge of confidence);
- (3) A group meeting;
- (4) Hearing;
- (5) Any combination of the above.

e. **Hearings**

(1) Formal hearings should be limited to grievances involving complex matters or where important factual matters are in dispute. The decision to schedule a hearing is the prerogative of the examiner.

(2) If a hearing is held, the examiner will determine how the hearing will be recorded and will have a verbatim transcript or written summary of the hearing prepared, including all pertinent documents submitted and accepted by him or her. When the hearing is recorded verbatim, the facility Director where the hearing is being held will provide the hearing room and services for recording the transcript and will ensure that the transcript reaches the examiner within 10 days after the hearing is held. The examiner will make the transcript a part of the record of the proceedings. When the hearing is not recorded verbatim, a summary of pertinent portions of the testimony will be made by the examiner. In cases where the examiner travels to a different facility, the examiner may use the services of the grievant's facility or his or her own facility to record the summary, whichever the examiner deems appropriate. The summary will constitute the report of the hearing and is made a part of the record of the proceedings.

f. **Administering Oaths or Affirmations.** Examiners are authorized to administer oaths or affirmations for purposes of this part. (See [the [Office of Human Resources Management, Employee Relations](#) Website for sample].)

h. **Preparation of Examiner's Report.** After the employee and the employee's representative have been given an opportunity to review the grievance file, the examiner will prepare a report of findings and recommendations, and submit that report, with the grievance file, to the decision official. The examiner will also furnish the employee and the employee's representative with a copy of the report. Guidelines for the report are [on the [Office of Human Resources Management, Employee Relations](#) Website], which should be provided to individuals assigned as examiners.

i. **Time Limits for Examiner's Report and Central Office Technical Reviews.** The examiner will submit the report and the grievance file to the decision official within 30 days for grievance examiners appointed locally or 45 days for grievance examiners appointed by a higher organizational level, after receipt of written notification of appointment as the grievance examiner. Central Office will issue a technical review within 30 days of receipt of such a request from the decision official.

10. DECISION ON GRIEVANCES

a. **Action by Decision Official - Examiner's Report.** Upon receipt of the grievance examiner's report of findings and recommendations, the decision official will:

(1) Accept the examiner's recommendation and issue a written decision to the employee within 15 days after the recommendation is received. The employee's representative will also receive a copy of the decision;

(2) Grant the relief sought by the employee, issuing the decision without regard to the examiner's recommendation; or,

(3) If the decision official determines that the examiner's recommendations are unacceptable, he or she will forward the examiner's recommendations and a specific statement of the basis for objection, with the grievance file, to the next higher supervisory level above the decision official. The decision official will also furnish the employee and the employee's representative with a copy of the statement on which the referral is based. The higher level review official will consult with the Office of Human Resources Management [and Labor Relations] (051) and will render a final decision on the employee's grievance. Objections to the recommendations of the grievance examiner will be limited to the following grounds:

(a) The recommendations are contrary to law, regulation, or agency policy;

(b) The recommendations are not supported by the evidence; or,

(c) The recommendations would establish a precedent that would have a detrimental impact upon the efficient operation of VA.

b. **Higher Level Review.** In matters of judgment where the issues could have been decided more than one way, higher level review officials will not substitute their judgment for that of the grievance examiner, unless the examiner's recommendations fall into any of the three categories contained in subparagraph a(3) above.

(2) If a hearing is held, the examiner will determine how the hearing will be recorded, and will have a verbatim transcript or written summary of the hearing prepared. The record will include all pertinent documents submitted and accepted by the examiner. The examiner will make the transcript a part of the record of the proceedings. When a verbatim transcript was not made, a summary of pertinent portions of the testimony will be made by the examiner. The summary will constitute the report of the hearing and is made a part of the record of the proceedings.

(3) The examiner's authority includes but is not limited to taking proper steps to expedite the hearing of evidence and ruling on all questions arising during the proceeding, such as admissibility of evidence and calling of witnesses.

(4) When the examiner determines that a verbatim transcript is required, the facility Director where the hearing is being held will provide the hearing room and services for preparing the transcript and will ensure that the transcript reaches the examiner within 10 days after the hearing is held.

(5) In cases where the examiner travels to a different facility, the examiner may use the services of the grievant's facility, the examiner's own facility, or both to prepare the summary, whichever the examiner deems appropriate.

d. **Administering Oaths or Affirmations.** For purposes of this part, examiners are authorized to administer oaths or affirmations to those individuals providing testimony relative to the grievance. (See [the [Office of Human Resources Management, Employee Relations](#) Web site for sample letters].)

e. **Preparation of Examiner's Report.** The examiner will prepare a report of findings and recommendations and submit that report with the grievance file to the decision official. The examiner will also furnish a copy of the report to the employee and the employee's representative. The examiner's report should include the rationale for the findings and recommendations.

f. **Time Limits for Examiner's Report.** Except in unusual cases, the time limit for submission of the report and the grievance file to the decision official is 30 days for local grievance examiners or 45 days for grievance examiners from outside the facility, after receipt of written notification of appointment as the grievance examiner.

13. DECISION ON A GRIEVANCE

a. **Action by Decision Official - Technical Review.** VA Central office technical reviews (paragraph 11a of this chapter) and the resulting recommendations will be forwarded to the formal grievance decision official, and will serve as the basis for the final decision. The decision official will issue the decision to the employee within 15 days after the technical review is received from VA Central office.

b. **Action by Decision Official - Examiner's Report.** Upon receipt of the grievance examiner's report of findings and recommendations, the decision official will accept, modify, or reject the examiner's recommendation(s) and issue a written decision to the employee within 15 days after the recommendation is received. The employee's representative will also receive a copy of the decision.

PART V

CHAPTER 1

e. **Exclusion of Individuals During Proceeding.** Prior to testifying, or if subject to recall, no witness will be permitted to hear the testimony being given by another witness unless the witness is the appellant, or is assisting in the representation of either party. In any event, the Chairperson of the Board will make the final determination on exclusion of individuals during any phase of the proceeding.

f. **Witnesses.** Both the appellant and management will have the right to call witnesses. The Chairperson will, on his/her own initiative, call such witnesses on behalf of the Board as the Chairperson deems necessary. The Chairperson has the final authority to determine the acceptability of any witness.

g. **Questioning of Witnesses.** The Chairperson will permit the parties to the case to ask questions of witnesses in order to ascertain all pertinent facts and is authorized to exclude irrelevant and/or unduly repetitious evidence. Both sides will have an opportunity to properly present and support their respective positions upon any question or matter presented to the Board for decision.

h. **Patients as Witnesses.** A patient, with the patient's consent, may be a witness provided there has been a medical determination that the patient has the capacity to testify and that the patient's appearance as a witness will not be detrimental to the patient's health and welfare.

i. **Oaths.** The Chairperson and Secretary of the Board shall have the authority to administer oaths or affirmations which will be made by all individuals giving testimony. (See [[the Office of Human Resources Management, Employee Relations](#) Web site for sample letters].)

j. **Record of Hearing**

(1) A verbatim record of the hearing proceedings will be prepared from written notes or mechanical recording and shall be maintained.

(a) Costs of transcription services will be borne by the facility where the appellant is or was employed. Contracts for transcription services will identify completion dates to ensure expeditious processing.

(b) The overnight receipt of transcripts is encouraged.

(c) If it would result in an undue burden or is otherwise impractical, the contract should provide for receipt within 2 weeks from the date on which the testimony occurred.

(2) The transcript will constitute part of the record.

(a) The record will be assembled by the Secretary of the Board, under the direction of the Chairperson, but the Board as a whole will be responsible for it.

(b) The record will be authenticated on VA Form 10-2543, Board Action, by the signature of all Board members and the technical advisor.

(3) The employee and/or his/her representative shall be provided a copy of the transcript of the formal hearing after authentication.