

## 650 Nonbargaining Disciplinary, Grievance, and Appeal Procedures

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### 651 **Disciplinary and Emergency Procedures**

#### 651.1 **Scope**

Part 651 establishes procedures for (a) disciplinary action against nonprobationary employees who are not subject to the provisions of a collective bargaining agreement, and (b) emergency action for conduct that also normally warrants disciplinary action.

#### 651.2 **Representation**

Subject to prohibitions regarding Executive and Administrative Schedule (EAS)/Craft representation, employees have free choice of representation. Representatives designated by employees, if postal employees and if otherwise in a duty status, are granted a reasonable amount of official time to respond to notices of proposed disciplinary action, to prepare for and represent the employee at a hearing held in accordance with 652.24, and/or to represent an employee who has appealed a letter of warning or emergency placement in a nonduty status in accordance with 652.4. Employees covered under these provisions may request representation during investigative questioning if the employee has a reasonable belief disciplinary action may ensue.

#### 651.3 **Nondisciplinary Corrective Measures**

Accountable managers/supervisors are responsible for the direct day-to-day performance management of subordinates. The accountable manager/supervisor monitors subordinates' performance and provides appropriate resources, coaching, and feedback to subordinates. The manager/supervisor is responsible for leading the employee to a higher level of achievement. Performance improvement should be a shared concern and effort between manager and employee. Early dialogue and guidance are critical to achieving positive results and continuance of an effective manager/employee relationship.

#### 651.4 **Emergency Placement in Off-Duty Status**

An employee may be placed in an off-duty nonpay status immediately but remains on the rolls when he or she (a) exhibits characteristics of impairment due to alcohol, drugs or other intoxicant, (b) fails to observe safety rules, (c) fails to obey a direct order, (d) provides reason to be deemed potentially injurious to self or others, or (e) disrupts day-to-day postal operations in any other way. Placement in an off-duty nonpay status is confirmed in writing, stating the reasons and advising the employee that the action is appealable. The employee should be returned to duty after the cause for nonpay status ceases unless individual circumstances warrant otherwise. Use of these emergency procedures does not preclude disciplinary action based on the same conduct.

**651.5 Letters of Warning**

When warranted by the failure of nondisciplinary corrective measures or by the seriousness of the offense, a letter of warning may be issued. Letters of warning are usually issued by the employee's immediate supervisor. The written warning should contain (a) specific reasons for the letter and (b) a statement of applicable appeal rights. Letters of warning remain in the employee's official personnel folder (OPF) for a period of 2 calendar years unless otherwise resolved or cited in subsequent disciplinary action.

**651.6 Letters of Warning in Lieu of Time-Off Suspensions****651.61 Policy**

Letters of warning in lieu of time-off suspensions replace time-off suspensions for nonbargaining employees, except when required otherwise by statute, and except for employees in the Office of Inspector General, where time-off suspensions are an available form of discipline in addition to letters of warning in lieu of time-off suspensions. This policy does not preclude management from placing a nonbargaining employee in an indefinite nonpay, nonduty status when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.

**651.62 Implementation**

Letters of warning in lieu of time-off suspensions may be issued in lieu of either 7-day or 14-day time-off suspension only. Unless required by statute, suspensions of more than 14 days are prohibited except for indefinite suspensions referenced in 651.7. Letters of warning in lieu of time-off suspensions are equivalent to time-off suspensions as an element of past discipline and may be cited as such in future disciplinary actions.

**651.63 Notice**

Normally, the employee's immediate supervisor issues a proposed letter of warning in lieu of time-off suspension stating (a) specific and detailed reasons for the letter; (b) instructions for responding to it; (c) the right of the employee or representative to review all material relied upon in the action; and (d) when, where, and from whom the material is available.

**651.64 Response**

The employee and/or his or her representative may respond to the proposed letter of warning in lieu of time-off suspension in writing and/or in person to the deciding official (management at a higher level of authority than the individual who issued the proposed letter of warning in lieu of time-off suspension) within 10 calendar days of receipt.

**651.65 Decision**

The deciding official, after consideration of the facts of the case and the employee's response, issues a letter of decision after the expiration of the 10-calendar day period for reply, but no later than 30 calendar days following the receipt of the employee's response. The decision letter will advise the

employee that he or she may appeal in writing within 15 calendar days of receipt of the letter of decision.

651.66 **Retention**

Letters of warning in lieu of time-off suspensions remain in the employee's OPF for 2 years unless otherwise resolved or cited in subsequent disciplinary action.

651.7 **Adverse Actions**

651.71 **Definition**

Adverse actions are defined as discharges, suspensions of more than 14 days, furloughs for 30 days or less, and/or reductions in grade or pay.

651.72 **Policy**

Adverse action may be taken against an employee (a) because lesser measures have not resulted in the correction of deficiencies in behavior or performance, (b) because of the gravity of the offense, or (c) for nondisciplinary reasons, such as the correction of a position misranking.

651.73 **Notice**

Unless the circumstances of a particular case make it impractical, the employee's immediate supervisor issues a written notice of proposed adverse action. This notice includes (a) the action proposed, with specific and detailed reasons; (b) the instructions for responding to the notice; (c) a statement of the right of the employee or representative to review all material relied upon in proposing the action and when and where the material is available for review; and (d) the name of the official rendering the decision. The proposal also advises the employee that a reasonable amount of official time is allowed for the preparation and presentation of a reply if the employee is otherwise in a duty status and that the proposed action will be effected no sooner than 30 calendar days after the employee receives the notice.

651.74 **Response**

The employee or representative may respond to the notice of proposed adverse action in writing, in person, or both, to the deciding official or designee identified in the notice. The employee or representative may respond and present evidence, including affidavits, within 10 calendar days from receipt of the notice. The time limits for responding to a proposed adverse action may be extended by the deciding official or designee for reasonable cause.

651.75 **Decision**

The deciding official, who must be higher in authority than the proposing official, considers the employee's response and gives a written decision, including reasons for the decision, as soon as possible after the employee's time to respond has expired, but no later than 60 calendar days following the receipt of the employee's response. In field installations, the installation head or designee usually makes the decision. In other offices, the decision is made

by a branch manager or above. If the decision is to effect the adverse action or to modify it to a lesser penalty, the employee's appeal rights, including Merit Systems Protection Board (MSPB) appeal rights, if applicable, are stated.

#### 651.76 **Duty Status**

The employee, unless otherwise provided in 651.77, remains in a pay status, either on the job or on administrative leave, at the option of the employer, during the notice period. The notice period must be at least 30 calendar days, unless covered by 651.77. Discharged or indefinitely suspended employees who appeal remain on the rolls in a nonpay, nonduty status until the disposition of the case through the chosen appeal procedures. Normally, disposition of the case would be a final decision from the MSPB or a Step I decision in an administrative 650 appeal. In cases where the MSPB has mitigated an adverse action in an initial decision and the Postal Service files an appeal, the employee's status will be handled in accordance with MSPB regulations regarding interim relief.

#### 651.77 **Exceptions to Thirty-Day Notice**

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment may be imposed, the advance notice before effecting the adverse action may be reduced to no less than 7 calendar days. At the expiration of the reduced notice period, the decision is issued at once. If the decision is to suspend the employee indefinitely, the individual remains on the rolls in a nonpay, nonduty status pending a final decision or until the suspension is otherwise terminated. If the decision is to remove the employee, the individual remains on the rolls only if a timely appeal is filed.

### 652 **Appeal Procedures**

#### 652.1 **Scope**

Part 652 establishes appeal procedures for employees not subject to the provisions of a collective bargaining agreement. These procedures do not:

- a. Deprive an employee of the right to a remedy for an allegation of discrimination through equal employment opportunity procedures or
- b. Deprive a preference eligible or other entitled employee of the right to appeal an adverse action to the MSPB. When MSPB rights are exercised, the employee waives access to the appeal procedures in 652.2.

#### 652.2 **Appeal of Adverse Actions**

#### 652.21 **Coverage**

Upon receipt of a letter of decision ordering an adverse action, the following employees may appeal:

- a. All nonprobationary EAS and PCES Level I employees and all employees of the Office of Inspector General.

- b. EAS, PCES Level I, and Office of Inspector General employees who have completed a minimum of 12 months of combined service, without a break of a workday, in positions in the same line of work in the Civil Service and the Postal Service — unless any part of this service followed a temporary appointment in the competitive service with a definite time limitation.

652.22 **Exclusion**

Officers (PCES Level II) are not covered by these procedures.

652.23 **Appeal to Step 1**

652.231 **Field Employees**

These employees may submit a written request for a hearing, or waiver of a hearing, within 15 calendar days of receipt of a letter of decision on an adverse action. This appeal is made to the Step 1 official (Headquarters vice president Labor Relations or designee). A copy of the appeal is sent by the appellant to the official taking the action, who forwards the case file to the Step 1 official.

652.232 **Headquarters, Headquarters Field Units, Inspection Service, and Office of Inspector General Employees**

These employees may submit a written request for a hearing, or waiver of a hearing, to the Step 1 official (vice presidents, chief inspector, inspector general, or designees) within 15 calendar days of receipt of a letter of decision on an adverse action. A copy is sent by the appellant to the official taking the action, who forwards the file to the Step 1 official.

652.233 **Exceptions**

In cases where a vice president or other officer reporting directly to the postmaster general (PMG) is the deciding official, the PMG or designee is the sole appellate official. These exceptions apply to both 652.231 and 652.232. In cases in the Office of Inspector General where an assistant inspector general or the deputy inspector general is the deciding official, the inspector general, or designee, is the sole appellate official.

652.24 **Hearings**

652.241 **Action If No Hearing Requested**

If the appellant does not request a hearing, the Step 1 official determines whether the issues on appeal can be decided on the record and on written submissions by the appellant and management. If the issues on appeal can be decided on the record and on written submissions, the Step 1 official will issue a final decision letter within 21 calendar days of receipt of the Step 1 appeal. If the appeal cannot be judged fairly without a hearing, the Step 1 official arranges for a hearing to be scheduled as described in 652.242.

652.242 **Action When Hearing Requested**

- a. If the appellant requests a hearing, a neutral hearing officer is assigned by the Step 1 official within 10 calendar days of receipt of a request for a hearing. The hearing is held as soon as possible, but no later than 75 calendar days from the date the hearing officer is assigned. The

hearing is usually conducted at the installation or office where the appellant is located. The hearing officer will provide the parties notice of the hearing schedule as soon as possible but in no event shall the employee receive less than 14 calendar days' notice of the hearing.

- b. Before the hearing, both management and the appellant will advise the hearing officer of their choice of representative witnesses and the nature of their testimony. All relevant documents and witness information, not already exchanged, will be exchanged between both parties as directed by the hearing officer.
- c. Conduct of the hearing is informal but consistent with the orderly presentation of the case. Testimony is given under oath or affirmation. While legal rules of evidence do not apply, testimony and evidence are held within reasonable bounds of relevancy. The appellant and the employer have the right (1) to be present at the hearing, (2) to be represented, (3) to present evidence and witnesses, and (4) to cross-examine the other party's witnesses. The appellant, if in a duty status, and his or her representative, if a postal employee in a duty status, are granted a reasonable amount of official time to prepare for the hearing. The appellant may choose self-representation.

652.243 **Management Obligation for Witnesses**

Management has an obligation to make available witnesses who are postal employees and approved by the hearing officer as having relevant testimony, unless it is administratively impractical to do so. In these cases, witnesses may be required by the hearing officer to answer written questions or testify via a alternative means.

652.244 **Workhours Compensation**

Postal Service employees are compensated for any straight-time hours spent at the hearing that are part of their regularly scheduled workday if they are in a duty status at the time of the hearing. These employees include the appellant, the appellant's representative, and approved witnesses. Witnesses are not present at the hearing except when testifying, unless they are also acting as a representative. Only one Postal Service employee acting as a representative of the appellant will be compensated by the Postal Service.

652.245 **Noninterference Rule**

The appellant, representative, and witnesses shall not be subject to restraint, interference, coercion, discrimination, or reprisal.

652.246 **Transcript**

Normally, a court reporter or other qualified person will make a written transcript of the hearing proceedings. The hearing officer will arrange for the transcription. The office or installation initiating the adverse action will pay all costs of the transcription. If a written transcript cannot be obtained because of geographical remoteness or other unusual circumstances, an exception to the procedures must be authorized in advance by the Step 1 official.

652.247 **Attorney Fees**

Attorney fees are not applicable to appeals covered in 650.

652.25 **Post Hearing**652.251 **Hearing Officer Action**

The hearing officer prepares a proposed decision to include findings of fact and a determination whether the charge(s) is/are sustained. The hearing officer forwards the proposed decision, the transcript of the hearing, and all other records regarding the appeal to the Step 1 official within 30 calendar days following the hearing.

652.252 **Step 1 Official Action**

Upon receipt of the hearing officer's proposed decision, the Step 1 official reviews it and the case file to determine if the hearing officer's proposed decision will be accepted or rejected. The Step 1 official will determine if the hearing officer's proposed decision is supported by the facts of the case; is in accordance with postal regulations or with postal policy; and, in Office of Inspector General cases, complies with Office of Inspector General policy. If the Step 1 official determines the hearing officer's proposed decision is inconsistent with the facts of the case or is not in accordance with postal regulations or with postal policy and/or Office of Inspector General policy as applicable, the Step 1 official may reject the hearing officer's proposed decision and issue a final decision which is in accordance with the aforementioned criteria. The Step 1 official will issue a final decision letter either accepting or rejecting the hearing officer's proposed decision within 21 calendar days of receipt of the file. If the hearing officer's proposed decision is rejected by the Step 1 official, the final decision letter will provide explanations for rejecting of the hearing officer's proposed decision. The decision of the Step 1 official is the final decision, and there are no further appeal rights. The final decision letter will be transmitted to the employee with a copy to the employing office for any necessary implementation. A copy of the written transcript of the hearing will be enclosed with the final decision.

652.3 **Appeal of Letters of Warning in Lieu of Time-off Suspensions and/or Time-off Suspensions for Office of Inspector General Employees**652.31 **Procedure**

The employee may appeal the letter of decision in writing within 15 calendar days of receipt. If the employee is assigned to Headquarters or a Headquarters field unit or is in the Inspection Service, or if an area vice president is the deciding official in an action taken, the request is directed to the vice president of Labor Relations at the address shown in the letter of decision. If the employee is assigned to the Office of Inspector General, the request is to be directed to the inspector general, or designee, at the address shown in the letter of decision. If the employee is assigned to a field installation, the request is directed to the area Human Resources manager at the address shown in the letter of decision. The review of the appeal is based solely on the record, and there is no opportunity for the employee or his or her representative to meet with the reviewing official. The reviewing official issues a written decision, and there is no further right of administrative appeal.

**652.4 Other Appealable Actions****652.41 Coverage**

Employees in EAS-17 and below and Office of Inspector General Bands A, B, and C employees, regardless of length of service, may appeal letters of warning, emergency placement in a nonduty status, and other matters not covered by 652.2 by using the procedures in 652.42 through 652.44.

PCES Level I and EAS-18 and above employees and Office of Inspector General Band 1 and above employees have access to these procedures only to appeal discipline in the nature of a letter of warning and emergency placement in a nonduty status.

**652.42 Step A**

An employee or representative states the appeal in writing to the immediate supervisor within 10 calendar days of learning the appeal's cause. The employee or representative has the opportunity to discuss the appeal with the supervisor during this period. The supervisor gives a written decision within 5 calendar days after receipt of appeal. If this timeframe is impossible because of extenuating circumstances, the decision must explain the reason(s) for the delay.

**652.43 Step B**

A field employee or representative may submit a written appeal to the installation head within 7 calendar days after receipt of the Step A decision. (If the installation head is the immediate supervisor, appeals are made to the next higher level of management.) A Headquarters, Headquarters field unit, Inspection Service, or Office of Inspector General employee or representative may appeal within the same time limits to the next higher level of management (superior to the supervisor), at minimum a manager or above. The appeal must include the employee's name, title, grade, location, nature of appeal, and basis for appeal. Upon receipt of the appeal, the Step B official discusses the appeal with the employee or representative and renders a decision in writing within 10 calendar days after receipt of the appeal. Usually this decision is final.

**652.44 Review**

The employee or representative may request a review of the Step B decision. The request of an employee administratively responsible to the area vice president is directed to the area Human Resources manager. The request of a Headquarters, Headquarters field unit, or Inspection Service employee is sent to the vice president of Labor Relations, or designee, with a copy to the Step B official, who forwards the file to the reviewing official. If the employee is assigned to the Office of Inspector General, the request for review is to be directed to the inspector general or designee. The request is in writing and gives specific reasons why the employee believes the Step B decision should be reviewed. The request is made within 15 calendar days from receipt of the Step B decision. The reviewing official replies in writing and states the disposition of the employee's request. This reply is final.

**652.5 Alternative Dispute Resolution**

The Postal Service supports the use of the Alternative Dispute Resolution (ADR) process of mediation to address employee appeals relating to nonbargaining disciplinary actions. Participation in mediation by an appellant is voluntary.

**652.51 Exceptions**

Mediation may not be appropriate in cases where the charges involve egregious misconduct, criminal activity, repeated misconduct, inability to perform, and other conduct as determined by the Postal Service, or in the case of Office of Inspector General employees, the Office of Inspector General. Additionally, mediation may not be appropriate where the appeal concerns issues beyond the control of the Postal Service, or in the case of Office of Inspector General employees, the Office of Inspector General, such as the denial of Workers' Compensation benefits, retirement eligibility determinations, and similar matters adjudicated by other agencies. The determination of whether to grant mediation in a particular case is within the discretion of the Postal Service, or in the case of Office of Inspector General employees, the Office of Inspector General, and is not appealable.

**652.52 Mediation**

Mediation programs will be implemented by area offices under guidelines issued by the manager, National EEO Compliance and Appeals Programs. Mediation programs will be implemented by the Office of Workplace Enhancement at the Office of Inspector General.

**652.53 Mediation for Letters of Warning in Lieu of Time-off Suspensions and/or for Time-off Suspensions**

An employee issued a proposed letter of warning in lieu of a time-off suspension, or a time-off suspension in Office of Inspector General cases, may request mediation as an alternative to his/her right to respond to the deciding official as outlined in 651.64. If no resolution is reached between the employee and the proposing official as a result of the mediation, the employee may submit written responses to the proposed letter of warning in lieu of a time-off suspension within 10 calendar days of the mediation to the deciding official. The deciding official will issue a letter of decision regarding the proposed action in accordance with 651.65. The employee may appeal the decision pursuant to 652.31.

**652.54 Mediation for Adverse Actions**

An employee issued a written notice of proposed adverse action may request mediation as an alternative to the traditional written and/or verbal response to the deciding official as outlined in 651.74. If no resolution is reached between the employee and the proposing official as a result of the mediation, the employee may submit written responses to the proposed adverse action within 10 calendar days of the mediation to the deciding official. The deciding official will issue a letter of decision regarding the proposed action in accordance with 651.75. The employee may appeal the decision pursuant to the provisions outlined in 652.2, which will be outlined in the letter.

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