



CHIEF OF THE NATIONAL GUARD BUREAU INSTRUCTION

NGB-J1-TCP
DISTRIBUTION: A

CNGBI 1400.25, Vol. 753
29 June 2020

NATIONAL GUARD TECHNICIAN AND CIVILIAN PERSONNEL ADVERSE ACTION APPEALS AND HEARING EXAMINER PROGRAM

References: See Enclosure F.

1. Purpose.

a. Chief of the National Guard Bureau Instruction (CNGBI) 1400.25A is composed of several volumes, each containing its own purpose. The purpose of the overall instruction is to establish policy and assign responsibilities for the National Guard (NG) Technician and Civilian Personnel Policy Division (TCP) in accordance with in accordance with references a through d.

b. Volume. This volume of CNGBI 1400.25A provides policy and procedures for the National Guard Technician and Civilian Personnel Adverse Action Appeals and Hearing Examiner Program in accordance with references a through f.

2. Cancellation. This instruction rescinds and replaces Technician Personnel Regulation (TPR) 752-1, 27 August 2010, "Adverse Action Appeals and the National Guard Hearing Examiner Program."

3. Applicability.

a. This instruction applies to all Title 32 National Guard dual status technicians employed under the provisions of reference a and Title 5 NG employees employed under the provisions of references b and c, except for technicians and civilians occupying time-limited temporary positions and those for which employment does not exceed the minimum performance in a consecutive 12-month period who are not employed at the end of the rating period.

b. This instruction does not apply to adverse action appeals to which the Merit Systems Protection Board, Equal Employment Opportunity Commission (EEOC) or U.S. Office of Special Council has jurisdiction. Merit System

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Protection Board jurisdiction can be found at the following website <<https://www.mspb.gov>>, EEOC jurisdiction can be found at <<https://www.eeoc.gov>>, and U.S. Office of Special Council jurisdiction can be found at <<https://osc.gov>>.

4. Policy. It is National Guard Bureau (NGB) policy that employees are afforded due process in adverse personnel actions that are not appealable to the Merit System Protection Board. The National Guard Bureau Hearing Examiner program is the mechanism for employees to appeal those adverse actions to The Adjutants General (TAG) through a neutral third party -- the hearing examiner.

5. Definitions. See Glossary.

6. Responsibilities. See Enclosure A.

7. Summary of Changes. This is the initial publication of CNGBI 1400.25, Vol. 753.

8. Releasability. This instruction is approved for public release; distribution is unlimited. It is available at <<https://www.ngbpmc.ng.mil/>>.

9. Effective Date. This instruction is effective upon publication and must be revised, reissued, canceled, or certified as current every five years.



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Enclosures:

- A -- Responsibilities
- B -- Staff Functions
- C -- Adverse Action Appeals
- D -- Administrative Hearing
- E -- NGB Hearing Examiner Program
- F -- References
- GL -- Glossary

ENCLOSURE A

RESPONSIBILITIES

1. Chief of the National Guard Bureau (CNGB). The CNGB:

a. Serves as the strategic focal point in developing, managing, and integrating employment of National Guard capabilities for the Office of the Secretary of Defense, the Joint Staff, and the Departments of the Army and Air Force in support of Combatant Commanders.

b. May program, appoint, employ, administer, detail, and assign persons employed in accordance with references a, b, c, g, and h within the NGB and the NG of States, Territories, and District of Columbia to implement the functions of the NGB and the mission of the NG. See reference d.

c. May designate TAGs referred to in Section 314 of Title 32 to appoint, employ, and administer the NG employees authorized by this Section. See reference e.

d. Coordinates departmental policies and programs for the employment and use of NG employees under Section 709 of Title 32, United States Code (U.S.C.) in accordance with reference a.

2. Manpower and Personnel Directorate (NGB-J1). NGB-J1 will:

a. Serve as the primary advisor to the CNGB on all employee and manpower matters in the NG. Provides oversight and has primary responsibility to the CNGB on human resource personnel program development, staffing, and execution of policies, plans, and programs concerning employment.

3. Chief, Technician Personnel Division (NGB-J1-TCP). NGB-J1-TCP will:

a. Serve as the primary advisor to the NGB-J1, commanders, staff, and operating officials on all matters pertaining to employees assigned to the State NG.

b. Develop, maintain, and revise the adverse action and Hearing Examiner (HE) program.

4. The Adjutants General (TAG). TAGs will:

a. Supplement and publish personnel management policies relating to employee programs and processes.

- b. Monitor the States' compliance with personnel guidelines, policies, and directives and report to NGB-J1 and the CNGB on program effectiveness.
- c. Establish an effective process to provide due process for affected employees under this instruction.

ENCLOSURE B

STAFF FUNCTIONS

1. State Human Resources Officer (HRO). The HRO should:
 - a. Provide oversight, administration, and management of the adverse action appeals program.
 - b. Provide guidance and direction to all managers and supervisors on conduct management responsibilities, rights, and obligations.
 - c. Assist supervisors and managers with the procedural aspects of an adverse action appeal.
 - d. Provide necessary training to managers and supervisors on the subject of this instruction.
 - e. Represent or advise TAG or TAG representative in adverse action appeals cases.
 - f. Provide general and procedural guidance and case information to the affected personnel.
 - g. Consult with the State Judge Advocate Office.
 - h. Maintain the official adverse action file.
2. The Manager and/or Supervisor. The Manager and/or supervisor should:
 - a. Practice and maintain discipline to reduce the need for formal adverse actions.
 - b. Ensure adverse actions taken are justified by facts and circumstances and are consistent with agency policy and the applicable labor agreement.
 - c. Ensure any adverse action appeals are coordinated with the HRO for procedural guidance.
3. Employees. Employees should initiate adverse action appeals.

ENCLOSURE C

ADVERSE ACTION APPEALS

1. General. There are two methods for appeal of an adverse action that is not appealable to the Merit Systems Protection Board. The first is an appellate review. The appellate review is a review of the adverse action by the State TAG without the involvement of a hearing examiner (HE). The second method of appeal is an administrative hearing. In an administrative hearing, a hearing examiner gathers and assesses the facts using an administrative hearing process and makes a written recommendation to TAG. In both cases of appeal, TAG makes the final decision on the matter.

2. Making an appeal. The employee subject to the adverse action, or his or her representative, may request one method of appeal only -- appellate review or administrative hearing. All requests for appeal will be made to the HRO and must be received within 20 calendar days of the delivery of the original decision. If an appeal request cannot be made within the 20 calendar days, a request to extend the time for making an appeal can be made through the HRO to TAG who may grant any extension warranted as TAG deems appropriate. Decisions on requests for extensions are not reviewable.

3. Appellate review. If the employee or his or her representative requests an appellate review, the following actions will take place. The HRO will provide TAG and the employee or his or her representative with the case file. The employee or his or her representative will provide TAG and the HRO with any written submissions they may wish to make. TAG will review all information provided and decide to either make the final decision based on the submissions or request that both parties make oral presentations. TAG will issue a final written decision.

a. Case File. The case file shall at a minimum consist of the proposed action letter, any written replies made by or on behalf of the employee, summaries of any oral replies made by the employee, the original decision, Douglas Factors analysis, and any other material (reports of investigation, relevant provisions of collective bargaining agreement or other documents) deemed necessary for an understanding of the appeal. The case file will be provided to the employee or his or her representative as soon as available, but in no event less than 10 calendar days before presentation to TAG for an appellate review.

b. Oral Presentations. The decision to have oral presentations during an appellate review is the sole discretion of TAG and not a matter of right. In those instances where oral presentations are determined to be necessary, both the employee and his or her representative, and the HRO and/or Staff Judge Advocate, will be present and allowed to dispute or expand on oral presentations made by the other party. If the opportunity to make an oral presentation is requested but denied, the final decision must state the facts and reasons for the denial.

c. Final Decision. The final decision will be made in writing by TAG and must answer the following:

- (1) Did the employee commit the charged offense?
- (2) Will some discipline, based on the proven offense, promote the efficiency of the service?
- (3) Is the penalty reasonable?

If an adverse action will be imposed on the employee, TAG may find the penalty determined in the original decision to be appropriate, may impose a lesser penalty with an explanation of why the other penalty was chosen, may enter into a last chance agreement, or stay the imposition of the penalty imposed by the original decision. A sample copy of a final decision is found in Appendix A to Enclosure E.

4. TAG Conflict. In the event TAG determines a conflict of interest exists, after consultation with SJA, TAG may delegate the authority to hear the appeal and to issue the final decision to the applicable Assistant Adjutant General within the State.

ENCLOSURE D

ADMINISTRATIVE HEARING

1. Requesting an HE. When an administrative hearing has been selected, the HRO will request in writing from NGB-J1-Labor and Employee Relations Branch (NGB-J1-TCPL) the assignment of an HE. NGB-J1-TCPL will assign a qualified and impartial HE from a different State. A sample copy of a request for an HE is found in Appendix A of Enclosure E. Once NGB-J1-TCPL assigns an HE, the HRO will provide the name and contact information of the HE to the employee or his or her representative. NGB-J1-TCPL reserves the authority to decline assignment of an HE for cases that meet Merit Systems Protection Board jurisdictional requirements. See references e and f.
2. Preparation for the hearing. The selected HE is responsible for ensuring that his or her participation as an HE is permitted by their command. Once proper authorization to act as an HE is received, the HE will ensure that the following tasks are accomplished.
 - a. Written notification is given to the employee or his or her representative of the HE's selection.
 - b. All parties have good contact information for all other parties in the appeal.
 - c. Establish a mutually acceptable date, time, and place for the prehearing and hearing.
 - d. All parties are informed of the date, time, and location of the prehearing and hearing in writing, or by email.
 - e. The case file is provided to all parties at least 10 calendar days in advance of the prehearing, as well as all other documents either party is requesting the HE to consider.
 - f. A court reporter will be available for both the prehearing and hearing to provide a verbatim transcript.
 - g. Both parties exchange proposed witness lists.
 - h. Issues regarding witnesses (availability, unnecessary duplication, or relevancy) are resolved.
 - i. Management ensures the attendance of all witnesses that are members of the States full-time staff that are reasonably available and relevant.

j. Arrangements are provided if a full-time staff member is not reasonably available but his or her testimony is important to the case, for example via telephone, video conference, or affidavit.

k. Reasonable and relevant requests by the employee or his or her representative for documents or tangible evidence in control of the State are resolved prior to the prehearing. Requests for documents or tangible evidence not voluntarily provided by the State to the employee or his or her representative will be submitted to the HE for resolution. If the HE determines that the requested documents are relevant, reasonable as to scope, and not readily available from another source, the HE may require that such documents be produced.

3. Issues that may be decided prior to the prehearing conference.

a. A party, by written motion or request, may ask the HE to decide issues and to order relief or other action before the prehearing conference. Issues that may be raised and decided by motion or request include: if an error is harmful; if an error can be cured, and how; if evidence should be produced; if evidence is lost; if witnesses are available; if a representative should be disqualified; if material facts are undisputed or cannot be proved by the party having the burden of proof; and if settlement should be discussed. The HE may raise an issue and require the parties to address it in writing or at a conference, which may be held by telephone. The HE may determine whether any material facts are undisputed or cannot be proved by the party having the burden of proof. The HE will issue appropriate orders on procedural matters or recommendations to the TAG on issues decided.

b. If the HE requires legal support in issuing opinions or making rulings, he or she may utilize their State SJA or NGB-JA.

c. With the agreement of the parties, the use of virtual technology in conducting any aspect of the hearing is encouraged.

4. Prehearing conference. The prehearing conference is a meeting of all the parties involved in the hearing conducted prior to the actual hearing. The purpose of the conference is to resolve all prehearing issues not fully resolved by previous rulings; to fully explore settlement; to place in the record a statement of undisputed material facts and a statement of the specific issues and material facts on which evidence will be admitted at the hearing; to identify the witnesses who will be allowed to provide direct testimony, the issues, and material facts to which their testimony is relevant; to identify all exhibits that will be introduced and the issues and material facts to which they are relevant; and to inform the parties of procedures that the HE will use or require during the hearing. Hearings will normally be closed to the public, but if the employee or his or her representative requests an open hearing, the HE will determine

and set the procedures to be used for the conduct and attendance at the hearing by the public. The prehearing conference and the hearing must be recorded verbatim. In appropriate situations, a case may be submitted to mediation with agreement of all parties prior to proceeding to the hearing.

5. Hearing.

a. General. The principal function of the hearing is to place in the hearing record witness testimony, documents, and other tangible evidence relevant to the issues and material facts stated at the prehearing conference. The hearing is not a court of law and is not subject to the substantive and procedural rules that govern trials, but is an agency administrative hearing.

b. Issues to be decided at the hearing. Three issues are decided at the hearing and form the basis of the hearing examiner report (HER) to TAG.

(1) Did the employee commit the charged offense? This is a factual determination based upon the evidence presented using the preponderance of the evidence standard.

(2) Will some discipline, based on the proven offense, promote the efficiency of the service? This is a judgmental determination based on the record.

(3) Is the penalty appropriate? The penalty determined in the original decision will be sustained or denied in full and will not be modified by the HE. The original decision penalty will not be denied unless it is arbitrary, capricious, or otherwise unreasonable in light of the proven offense(s) as established at the hearing.

c. Conducting the hearing. The HE will direct the hearing in a manner that best facilitates the accomplishment of determining the issues in 5.b. above. The order of proceedings may be modified as required by the circumstances. The usual order of proceeding is as follows:

(1) The HE calls the hearing to order, identifies the nature of the hearing, names the participants, and provides other statements as required by the case.

(2) Management's representative provides an opening statement.

(3) The employee or his or her representative may make an opening statement after the management representative or at the opening of his or her case.

(4) Management will present witnesses and evidence subject to the right of cross examination by the other party.

(5) The employee or his or her representative makes his or her opening statement if reserved.

(6) The employee or his or her representative presents his or her witnesses and evidence subject to the right of cross examination by the other party.

(7) Any rebuttal evidence or witnesses are presented subject to the right of cross examination by the other party.

(8) A closing statement is made by management.

(9) A closing statement is made by the employee or his or her representative.

(10) The examiner closes and adjourns the hearing. If the employee requests that closing briefs be submitted in lieu of closing statements, the HE will set the time table, length, and method of delivery of the written submissions. If management requests that closing briefs be submitted in lieu of closing arguments and the employee objects, the HE must consider the request carefully with due regard to the effect that the delay would have on the employee.

d. Hearing Examiner Report (HER) of findings and recommendations. The HE will prepare a report of findings within 45 calendar days of receipt of the transcript of the hearing or post hearing briefs whichever is later. The transcript of the hearing or post hearing briefs will be provided to the HE and the employee or his or her representative at the same time. The original HER and the transcript or briefs are sent to TAG of the State, through the HRO, and a copy of the HER is sent to the employee or his or her representative and NGB-J1-TCPL. A copy of the report template is found in Appendix A to Enclosure E. The original HER and transcript is an official record of the State in which the appeal is filed and shall be maintained in accordance with the appropriate record retention schedule.

e. Final Decision. TAG will consider the HER and issue a final decision (normally within 15 calendar days) in the same format as provided in 5.b. above. If the final decision does not support the HE's findings and recommendations, the final decision must provide a rationale for the deviation from the HER. The HRO will provide NGB-J1-TCPL a copy of the final decision. The final decision is an official record of the State in which the appeal is filed and shall be maintained in accordance with the appropriate record retention schedule.

ENCLOSURE E

NGB HEARING EXAMINER PROGRAM

1. General. The NGB administrative hearing examiner program is established to provide TAGs with a cadre of qualified, impartial, and certified individuals who can conduct an adverse action appeal hearing and issue an HER. The HER is prepared to assist TAG in making decisions involving adverse actions for which the Merit Systems Protection Board lacks jurisdiction.

2. HE qualifications. An HE must be of sufficient grade, training, and experience to effectively render an HER to TAG in a manner that allows TAG to exercise sound decision making relative to adverse personnel actions. Hearing examiners must possess the following qualifications.

a. A full-time employee or on military orders of sufficient duration for case assignment.

b. Have been certified or recertified as an HE within the last four (4) years.

c. Possess three (3) years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work.

d. Be of the military grade of E-7 or above or be of a grade of GS-9 or above or a federal wage system equivalent.

e. Possess personal attributes essential to perform the duties of an HE (integrity, discretion, impartiality, reliability, resourcefulness, and emotional stability).

f. Understand the relationship between personnel administration and overall management concerns and principles of the organization.

3. HE nomination and qualification. NGB-J1-TCP will conduct a Hearing Examiner Certification course every other year. All participants in the Certification course must be nominated by their State. Obtain nomination information from NGB-J1-TCPL. Upon successful completion of the NGB HE Certification course, NGB-J1-TCPL will add the course graduate to the listing of current HEs.

4. HE re-certification. At least once every four (4) years, each HE must attend or instruct at an HE recertification course sponsored by the NGB to remain on the list of certified HEs.

5. Requesting an HE. The HRO will request an HE from NGB-J1-TCPL. The request form is found in Appendix A to this enclosure.

6. Use of an HE for other purpose. A State may request an HE to conduct another type of hearing such as a grievance hearing, performance appeal or similar hearing, or to conduct mediation. Such requests will be made directly to NGB-J1-TCPL. The request form is found in Appendix A of this enclosure.

APPENDIX A TO ENCLOSURE E

SAMPLE NGB HEARING EXAMINER PROGRAM DOCUMENTS

[State Letterhead]
[Date]
MEMORANDUM FOR NGB-J1-TCPL, 111 South George Mason Drive Arlington, VA 22204
SUBJECT: Request for NGB Hearing Examiner
<ol style="list-style-type: none">1. The State of [State name] requests the services of a NGB Hearing Examiner for (an administrative hearing or to conduct another type of hearing such as a grievance hearing, performance appeal or similar hearing or to conduct mediation), for the case of [employee name, grade, position, nature of offense, and proposed penalty].2. Please assign a qualified and impartial certified Hearing Examiner to the undersigned at the above address.3. The State of [State name] understands that all expenses of the Hearing Examiner, excluding pay, are the responsibility of the State requesting such services.4. The State of [State name] also understands and agrees that it must maintain the Hearing Examiner Report, transcript, and final decision as its own official record.
[REQUESTING OFFICIAL] [Signature Block]
Enclosure: Case File (Mandatory)

Figure 1. Sample Request for NGB Hearing Examiner

[Letterhead of Hearing Examiner]
[Date]
MEMORANDUM THROUGH APPLICABLE STATE HRO
MEMORANDUM FOR APPLICABLE TAG
SUBJECT: Hearing Examiner Report (HER) [case name]
1. The following information is provided to close the above captioned case. a. date appointed: b. date(s) of hearing: c. date of closing brief: d. date of receipt of transcript or brief: e. date of delivery of HER: f. other method of closure (if applicable): g. other relevant matters (e.g., reason for delay or basis for settlement)
2. This case involved the following. a. offense(s) charged: b. original decision penalty: c. offenses sustained or denied: d. summary of HER or settlement agreement:
3. Additional information, if applicable: a. appellant representative: b. agency representative: c. applicable collective bargaining agreement information: d. what union was involved:
[HEARING EXAMINER] [Signature Block]
CF: Employee Employee Representative (if applicable) NGB-J1-TCPL

Figure 2. Hearing Examiner Report

[State Letterhead]

[Date]

MEMORANDUM FOR [Employee Name]

SUBJECT: Agency Final Decision

1. RE: Final decision of the appeal of [employee name]. In the matter of your appeal [case name and charge] after reviewing the file, submissions, and (testimony if any), I have decided to [(sustain the original decision and the penalty imposed) or (sustain the original decision and reduce the penalty) or (sustain the original decision and the penalty imposed, but stay such penalty per the attached last chance agreement or probation agreement) or (grant your appeal and restore you to the position and status you had before the original decision was issued).]

2. I base my decision upon the facts of the case as determined by [(the files and written submissions) (the files, written submissions testimony heard) or (based upon the report of findings and recommendations from the NGB hearing examiner)].

3. I conclude that the implementation of the penalty contained in the original decision (or in a reduced or stayed penalty) is based upon the cause stated in the original decision, that the adverse action will promote the efficiency of the service, and that the penalty is appropriate.

Or

3. I have decided to grant your appeal and direct the following actions to return you to position and status you had prior to the issuance of the original decision. [Identify all corrective action that must take place.]

4. My decision is final and no further appeals are authorized in this matter.

5. The facts, evidence, and reasons on which I base my disagreement with (the hearing examiner report) are as follows [state the facts, evidence, and reasons.] (This paragraph is inapplicable if the TAG agrees with the hearing examiner report.)

The Adjutant General

CF:

HRO

Employee Representative

Figure 3. Sample Final Decision by TAG

ENCLOSURE F

REFERENCES

PART I. REQUIRED

- a. 32 United States Code (U.S.C.), Section 709, “Technicians: Employment, Use, Status”
- b. 5 U.S.C. § 2102, “The Competitive Service”
- c. 5 U.S.C. § 2103, “The Excepted Service”
- d. 10 U.S.C. § 10503, “Functions of the National Guard: charter”
- e. 10 U.S.C. § 10508, “National Guard Bureau: General Provisions”
- f. Chief of the National Guard Bureau Memorandum, 16 February 2017, “Designation of the Adjutants General to Appoint, Employ, and Administer National Guard Employees”
- g. 5 U.S.C. § 1204, “Powers and Functions of the Merit Systems Protection Board”
- h. 5 U.S.C. § 2105, “Employee”
- i. 5 U.S.C. § 3101, “General Authority to Employ”
- j. 5 U.S.C. § 7103, “Definitions; Application”

PART II. RELATED

- k. Code of Federal Regulations, Title 5, “Administrative Personnel,” Chapter II, “Merit Systems Protection Board”
- l. Chief of the National Guard Bureau (CNGB) Instruction 1400.25A, Vol 715, 29 June 2020, “National Guard Technician and Civilian Personnel Voluntary and Non-Disciplinary Actions Program”
- m. CNGB Instruction 1400.25 Vol 752, 29 June 2020, “National Guard Technician and Civilian Personnel Discipline and Adverse Action Program”

GLOSSARY

PART I. ACRONYMS

CFR	Code of Federal Regulations
CNGB	Chief, National Guard Bureau
CNGBI	Chief National Guard Bureau Instruction
EEOC	Equal Employment Opportunity Commission
HE	Hearing Examiner
HER	Hearing Examiner Report
HRO	Human Resources Office(r)
NG	National Guard
NGB	National Guard Bureau
NGB-J1	Manpower and Personnel Directorate
NGB-J1-TCP	Technician and Civilian Personnel Division
NGB-J1-TCPL	Labor and Employee Relations Branch
TAG	The Adjutant General
TPR	Technician Personnel Regulation
U.S.C.	United States Code

PART II. DEFINITIONS

Administrative hearing -- An administrative process in which a qualified and certified Hearing Examiner gathers and assesses the facts in an adverse action appeal and provides a written report of findings and recommendations to The Adjutant General for a final decision. The purpose of the process is to fully develop and put on the record the facts surrounding the case, and to assist The Adjutant General in the accomplishment of his or her statutorily mandated obligation to be the final appeal authority for adverse actions within the National Guard. The hearing is not a court of law and is not subject to the substantive and procedural rules that govern trials, but is more in the nature of an administrative hearing.

Adverse action -- An official personnel action, usually taken for employee misconduct or unacceptable performance, which adversely affects an employee and is of a severity that a suspension, reduction in grade or status, or removal is warranted.

Appellate review -- A review of the adverse action case file, and any additional written submissions, by the State Adjutant General without the involvement of a Hearing Examiner. The Adjutant General reviews all information provided and decides to either make a final decision based on the submissions or request that both parties make oral presentations to assist in making a final decision.

Case file -- Consists of the proposed action letter, any written replies made by or on behalf of the employee, summaries of any oral replies made by the employee, the original decision, and any other material (reports of investigation or other documents) deemed necessary for an understanding of the appeal. The case file will be provided to the employee or his or her representative as soon as available, but in no event less than 10 calendar days before any hearing, pre-hearing, or presentation to The Adjutant General for an appellate review.

Collective Bargaining Agreement -- A written agreement between the agency and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

Employee -- Title 32 Dual Service Excepted Service employees and Title 5 National Guard Excepted or Competitive Service employees. Persons employed in accordance with references a, b, c, g, and h. This definition is applicable only in this instruction.

Douglas Factors -- A number of factors that management must weigh in deciding an appropriate course of action. In determining the appropriate remedy, management must observe the principle of "like penalties for like offenses in like circumstance." This means penalties will be applied as consistently as possible. Management must establish the penalty selected does not clearly exceed the limits of reasonableness. A well-known Merit Systems Protection Board case (*Douglas v. Veterans Administration*) addressed this issue in detail.

Preponderance of evidence -- The greater weight of the evidence, sufficient to incline a fair and impartial mind to one side of the issue rather than the other. A supervisor issuing a letter of reprimand must determine by a preponderance of the evidence that the facts supporting the issuance of the letter of reprimand are substantiated. Prior to serving a proposed action letter, a supervisor must develop the facts by a preponderance of the evidence that constitute cause for the adverse action.

Procedural advice -- Technical assistance provided by a member of the Human Resource Office, usually the Labor Relations Specialist, to assist an employee with procedures regarding the adverse action process.

Representative -- an individual of the selectee's choice, chosen or delegated to act and speak for another individual.

Supervisor -- Under reference i, an individual employed full-time by an agency having authority to hire, direct, assign, promote, reward, transfer, furlough,

layoff, recall, suspend, discipline, or remove employees; adjust their grievances; or to effectively recommend such action. The performance of one or more of these duties qualifies an employee as a “supervisor” for labor relations purposes and excludes the employee from the bargaining unit.

State -- The 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

Technician -- Employees as defined in reference a.