Determining Appropriateness of Penalty Checklist for Deciding Officials: Analysis of Douglas Factors

Employee's Name:_____

Action Proposed and Date of Proposal:_____

Check one or more of the following:

[ ] The employee did not reply.

[ ] The employee replied in writing (attached).

[ ] The employee replied orally (Memorandum for Record signed by the employee is attached).

NOTICE

As the deciding official, you are responsible for considering all relevant "Douglas Factors" (listed below) in determining whether the proposed disciplinary action is appropriate.

Your analysis of the "Douglas Factors" will be considered part of the case file and you could be asked to testify regarding your analysis, should the employee appeal to a third party.

Be sure ALL information that you relied upon in making your determination regarding the appropriateness of the penalty is included in this analysis of the Douglas Factors.

INSTRUCTIONS

Each of the factors should be considered in light of the facts and circumstances presented in Notice of Proposed Adverse Action (and supporting documents) and in the technician's reply.

For each factor, you should annotate whether the factor has been considered as aggravating, mitigating, or has had no impact (was neutral) in your formulation of your final decision.

You can include a brief explanation for each factor you determine to be aggravating or mitigating—particularly with respect to those factors you consider "aggravating".

AGGRAVATING: to make more severe, intense, serious, worse or grave.
NEUTRAL: neither a contributing nor detracting factor; applicable
MITIGATING: to make less severe, intense

ANALYSIS OF DOUGLAS FACTORS

1. **Nature and seriousness of the offense:**

Nature of the offense (BRIEFLY Summarize what happened)-

Seriousness of the offense (Explain how serious and why so serious.)-

Aggravating_____ Neutral_____ Mitigating_____

Explanation:

2. **Employees job level and type of employment:**

- Employees Title, Series, Grade:_____
- Is employee a Supervisor? Yes___ No___
- Is special trust position? Yes___ No___
- Is public contact required by job & misconduct related? Yes___ No___
  e.g.: rude to customers
- Is misconduct directly related to job? Yes___ No___
  e.g.: supply clerk who steals supplies in his/her care

Aggravating_____ Neutral_____ Mitigating_____

Explanation:

3. Employee's past disciplinary record: [This ONLY includes documented discipline for which the employee received a written proposal notice, an opportunity to respond, and a decision letter; any disciplinary action taken against the employee should have been made an official record in the employees official personnel file. Memorandum's of record for the supervisor's personal use does not belong here.]

List all previous disciplinary actions considered:

Action Effected: Date:
Action Effected: Date:
Action Effected: Date:

Aggravating_____ Neutral_____ Mitigating_____

Explanation:

4. Employee's past work record:

- How long employee been with current organization? _____
- How long employee been with federal government? _____
- Ratings of last three performance appraisals?

  Last rating of record _____
  Year prior rating of record _____
  Two years prior rating of record _____

- Is performance currently acceptable? Yes___ No___
  (If no, need to provide documentation of counseling)

Aggravating_____ Neutral_____ Mitigating_____

Explanation:

5. Effect of the offense on the employee's ability to perform his/her job and effect on supervisor's confidence in the employee:

Did offense effect:

- The employee's ability to do job? Yes___ No___

e.g.: If employee was AWOL, (s) he could not perform job duties.

- Your confidence in employee's ability to do job? Yes___ No___
  e.g.: Employee responsible for approving leave but (s) he lied on his/her timecard.

- Your confidence in employee's ability to uphold org. mission? Yes___ No___

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

6. <u>Consistency of penalty with other employees' penalties for similar offenses:</u>

[ ] No other employee under your supervision has committed offenses similar to those alleged.

[ ] The penalty is similar to those given to other employees under your supervision.

[ ] The penalty is NOT consistent with other penalties; however, I feel a more severe or less severe penalty is appropriate. **This must be thoroughly explained.** (CAUTION! Disparate treatment often forms the basis for claims of discrimination.)

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

7. <u>Consistency with agency's Table of Penalties:</u> [The table is only a guide, but reasons for departing from it must be rational, well reasoned, and explained. CAUTION! Disparate treatment often forms the basis for claims of discrimination.]

The employee is being charged with _____.

[ ] This is a first offense.

[ ] This is a second offense.

[ ] This is a third offense.

Identify the most closely related charge in the table of penalties:

The table of penalties recommends _____ for a circle one: first, second, or third offense of _____.

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

8. Notoriety of the offense or its impact on the agency's reputation: [Adverse publicity or the possibility of adverse publicity outside the agency that could have a negative impact on the reputation of the agency or the agency's mission is a factor that may be considered to enhance a penalty.]

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

9. Clarity of notice to employee of unacceptable conduct: [Was the employee aware that their actions or behavior were inappropriate? How were they made aware (meeting, email, policy issuance, prior counseling, prior discipline, etc.)? Should they have known without being told? If so, why do you believe they should have known better?)

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

10. Potential for employee's rehabilitation: [There may be issues raised by the employee in his/her response, which lead you to believe this employee has high potential for rehabilitation. On the other hand, if the misconduct was clearly wrong and the employee should have known better, you may believe the potential for rehabilitation is low. Remorse or lack of remorse is often listed here as a show of rehabilitative potential.

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

11. Mitigating circumstances:

The following factors do not excuse the misconduct; however, they may encourage you to reduce (mitigate) the penalty:

The employee

- Was under unusual job stress? Yes___ No___
  e.g.: Contributed to employee's insubordination.
- Was experiencing personal problems? Yes___ No___
- Was provoked? Yes___ No___
  e.g.: Coworker threatened employee before employee punched coworker.
- Was apologetic? Yes___ No___
- Brought the misconduct to management's attention? Yes___ No___
  e.g.: Employee confessed that misuse of gov. credit card

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

12. Adequacy of alternative sanctions to deter misconduct:

[ ] I believe **no lesser** sanction will deter future misconduct.

[ ] I believe a **lesser** sanction will deter future misconduct.

[ ] I believe an **alternative** sanction is more appropriate.

Aggravating_____ **Neutral_____** **Mitigating_____**

Explanation:

Decision: After giving full and impartial consideration to the circumstances surrounding the proposed action, the evidence supporting the proposed action, the employee's reply (if reply provided), and factors above, I have decided to (check one of the following:)

( ) Sustain the action as proposed.
( ) Reduce the penalty to _____.
( ) Offer the employee an Alternative Sanction (Discuss options with HR).
( ) Cancel the proposed action in its entirety.

Additional Comments:

I (print name)_____ certify that all of the information I considered in determining the appropriateness of the proposed penalty has been annotated in my analysis of the Douglas Factors and that I have considered all relevant Douglas Factors.

_____ _____
Signature Date