

**BONNEVILLE POWER ADMINISTRATION
HUMAN CAPITAL MANAGEMENT
Portland, Oregon**

PERSONNEL LETTER (PL): 432-1

DATE: November 10, 2008

SUBJECT: Taking Action Based on Unacceptable Performance

PURPOSE

- Provides the requirements and procedures for taking performance-based actions under the authority of 5 CFR, Part 432
- Clarify the scope of actions covered by this policy.
- Replaces Personnel Letter No. 432-1, dated December 5, 2007.

POLICY SUMMARY

This policy applies only to performance-based actions taken under the authority of 5 CFR, Part 432. When such authority is used to address an employee's "Unacceptable" performance, it is the responsibility of the supervisor or manager to give the employee a reasonable chance to improve his/her performance. If after a determined amount of time the performance has not improved to an acceptable level, supervisors and/or managers shall determine the appropriate, further action to be taken. Managers shall consult with Human Capital Management (HCM) Employee Relations staff prior to either placing an employee under a Performance Improvement Plan (PIP) or taking other actions based on Unacceptable performance.

Table of Contents

PURPOSE..... 1

POLICY SUMMARY..... 1

I. DEFINITIONS..... 3

II. COVERAGE 4

III. THE OPPORTUNITY TO DEMONSTRATE ACCEPTABLE PERFORMANCE 4

IV. DETERMINING APPROPRIATE ACTION BASED ON UNACCEPTABLE PERFORMANCE..... 6

V. ADVANCE NOTICE OF PROPOSED ACTION BASED ON UNACCEPTABLE PERFORMANCE..... 7

VI. ORAL REPLY 8

VII. EXTENSION OF ADVANCE NOTICE PERIOD..... 8

VIII. DECISION NOTICE..... 9

IX. DELIVERY OF PROPOSAL AND DECISION LETTERS 10

X. RELATIONSHIP OF UNACCEPTABLE PERFORMANCE TO OTHER PERSONNEL ACTIONS..... 10

XI. REFERENCES AND RELATED INFORMATION..... 12

I. DEFINITIONS

Acceptable Performance

Performance that meets an employee's performance standards at a level above the "Unacceptable" level in the critical elements.

Critical Element

A work requirement of a position consisting of one or more duties and responsibilities that significantly contributes toward accomplishing organizational goals and objectives and is of such importance that "Unacceptable" performance in this area would result in "Unacceptable" performance in the position as a whole.

Days

References to "days" in these procedures mean calendar days.

Deciding Official

The management official who decides on a proposed Reduction-in-Grade or removal, as noted in BPA Manual Chapter 400/700A. The Deciding Official is at a higher management level than the proposing official.

Opportunity to Demonstrate Acceptable Performance

A reasonable chance for the employee whose performance has been determined to be Unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s).

Performance-Based Action

Action to reduce-in-grade or to remove an employee based on Unacceptable performance. (Performance-based actions can be taken under procedures either in this policy or in Personnel Letter 752-1.)

Performance Improvement Plan (PIP)

The plan provided to employees to help them improve their performance in one or more critical elements in which performance has been determined to be "Unacceptable."

Performance Standard

A statement of the expectations or requirements established by management that must be met to be appraised at a particular rating level.

Proposing Official

The management official who proposes to reduce-in-grade or remove an employee from Federal service based on Unacceptable performance, as noted in BPA Manual Chapter 400/700A, Attachment B.

Rating Official

The individual, normally the immediate supervisor/manager, with the authority to appraise the performance of an employee. Typically, this is the first level supervisor/manager who has the authority to issue a PIP.

Reassignment

Change of an employee from one position to another without promotion or Reduction-in-Grade.

Reduction-in-Grade

The involuntary assignment of an employee to a position at a lower classification or job grading level.

Removal

The involuntary separation of an employee from employment with BPA and the Federal Civil Service.

Unacceptable Performance

Performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

II. COVERAGE

This policy applies only to performance-based actions taken under the authority of 5 CFR, Part 432. Performance-based actions can also be taken as a non-disciplinary adverse action based on inefficiency in performance, using 5 CFR, Part 752 authority, as described in Personnel Letter No. 752-1.

Managers are required to consult with the Employee Relations staff to determine which procedure is most appropriate for use.

III. THE OPPORTUNITY TO DEMONSTRATE ACCEPTABLE PERFORMANCE

At any time during the rating period when a Rating Official determines an employee's performance is "Unacceptable" in one or more critical elements in his/her performance plan, the Rating Official shall promptly initiate special efforts to bring about improvements. See Personnel Letters 430-1, Performance Appraisal, and 430-2, Performance Appraisal Program for Managers, for specific instructions on appraising performance, and BPA Manual Chapter 400/700A, Employee Relations Program, for BPA's policy on Unacceptable performance.

A. Resolving Performance Deficiencies Informally - When an employee's performance is initially determined to be deficient, the manager should attempt to assist the employee to improve their performance through informal counseling, unless in the manager's judgment, a formal Performance Improvement Plan (PIP) would be more appropriate. Counseling typically includes an identification of specific deficiencies and the improvements that are needed. It is highly recommended that the manager specifically identify the critical

elements in which performance is Unacceptable. If performance deficiencies are not corrected, management may reassign the employee to another position without further counseling and without issuing a PIP.

- B. Opportunity to Improve Performance** - If the employee's work remains "Unacceptable," the manager shall develop a PIP and present it to the employee in a formal counseling session, unless performance is being addressed under procedures in 5 CFR, Part 752.

Managers/supervisors must seek advice and assistance from the Employee Relations staff prior to establishing a PIP. If the PIP is issued close to the end of the employee's rating period, the manager may extend the employee's rating period as indicated in Personnel Letters 430-1, Performance Appraisal, and 430-2, Performance Appraisal Program for Managers.

- C. Contents of Performance Improvement Plans (PIPs)** - PIPs are highly individualized. The information listed below will be included in a PIP:

- 1. Identifying Information** - The employee's name, title, series, grade, and organizational location.
- 2. Length of Opportunity Period** - The specific period of time given the employee to demonstrate performance at an acceptable level. In determining a reasonable period of time to demonstrate this level of performance, consideration should be given to the complexities of the duties, length of experience in the position, prior performance record, training and any other relevant factors. The initial opportunity period may not be less than 90 calendar days and may subsequently be extended if the manager concludes additional time is required to adequately assess the employee's performance progress. If an extension of the opportunity period is made, this fact shall be communicated to the employee in writing. A notice to the employee proposing either to remove or reduce-in-grade based upon "Unacceptable" performance may not be issued before the opportunity period has expired.
- 3. Critical Elements and Deficiencies** - The critical element(s) and performance standard(s) in which the employee's performance is "Unacceptable" and a specific description of the deficiencies.
- 4. Actions Required to Improve** - Advice or guidance on what the employee must do to improve to an acceptable level of performance. Expectations should be clarified at this time, provided that the level of expectations required for successful performance is not set at a higher level than it was prior to the PIP, and the breadth of responsibilities is not increased beyond the breadth of expected duties that existed prior to the PIP.
- 5. Management Assistance** - The manager's commitment to work with the employee and provide assistance so that the employee might correct the performance deficiencies. Managers must be careful not to promise assistance in the improvement plan that cannot be provided. Assistance may include, but is not limited to, counseling, closer

supervision, special resources, training, more frequent performance reviews, memoranda written to the employee explaining on-going errors and how to correct them, assistance with organizing workload, and samples of successful work products. In providing assistance, it is important for the manager to not take on part of the employee's responsibilities or assign it to another employee. Such "stripping" of duties and responsibilities during the opportunity period does not enable the employee to demonstrate the ability to perform the entire job successfully.

6. **Potential Consequences of Failure to Improve** - The fact that failure to improve performance to an acceptable level (the level of performance required to be retained in the position) may result in reassignment, or a proposal to reduce-in-grade or to separate the employee from BPA.
7. **Documentation of Medical Condition** - The name of the official to contact if the employee desires consideration of a medical condition which may have contributed to the "Unacceptable" performance.

IV. DETERMINING APPROPRIATE ACTION BASED ON UNACCEPTABLE PERFORMANCE

- A. **Improvement of Performance to An Acceptable Level** - If, at the end of the opportunity period the Rating Official determines the employee's performance has improved to an acceptable level, a letter should be issued informing the employee of this fact. If the employee's current rating-of-record is "Unacceptable" or if the annual rating had been postponed until the end of the opportunity period, a new rating of record should be issued. Ratings should be given based on the instructions in Personnel Letters 430-1 and 430-2. The employee has the responsibility to maintain the improved performance. If within a one year period following beginning of the PIP, the employee's performance becomes "Unacceptable" in a critical element for which an opportunity period was provided, he/she may be removed or reduced in grade without an additional opportunity to improve (see procedures, below.)
- B. **Failure to Improve to an Acceptable Level** - The Rating Official will discuss with the HCM Employee Relations staff the adequacy of the performance documentation that demonstrates the employee's performance is "Unacceptable." If sufficient evidence has been gathered to support a performance-based action, the manager should discuss his/her recommendation with the official having the delegated authority to propose an action under BPA Manual Chapter 400/700A, Employee Relations Program. After a determination has been made to propose that an employee be removed from the position occupied, consideration can be given to alternatives other than removal from government service or reduction-in-grade such as reassignment.

V. ADVANCE NOTICE OF PROPOSED ACTION BASED ON UNACCEPTABLE PERFORMANCE

An employee whose reduction-in-grade or removal is proposed under this authority is entitled to 30 days advance written notice of the proposed action.

A notice of proposed action based on Unacceptable performance should include:

- A.** A reference to the prior notification that the employee's performance was Unacceptable and to the PIP, including the opportunity given to improve that performance. Indicate employee's failure to perform at the level required for retention in the position.
- B.** A statement the notice is being issued in accordance with the provisions of 5 CFR, Part 432.
- C.** The specific action proposed, that is, removal or reduction-in-grade.
- D.** A statement that the proposed action may be effective at any time after 30 calendar days from the date of receipt of the proposed notice.
- E.** A list of critical elements for which performance is determined to be Unacceptable. For such critical element(s), the performance standard should be listed along with identifying the areas that the employee failed to meet and specific instances of Unacceptable performance. The proposal notice may include instances of Unacceptable performance that occurred before or after the opportunity period as long as those instances occurred during the 12 months before the date of the notice. However, it is essential that instances of Unacceptable performance that occurred during the employee's opportunity period be included.
- F.** A statement that the employee has a reasonable time in which to answer orally and in writing and to submit affidavits in support of such reply. It should include instructions for requesting an oral reply. A reasonable time for reply is considered to be 15 days from receipt of the proposed action letter. In instances where the employee requests a reasonable extension of time within this period to submit an oral or written reply, an extension may be granted for good reason shown. In determining whether an extension will be granted, consideration should be given to the procedural requirements of the Extension of Advance Notice Period section below.
- G.** The name of the official to contact if the employee desires consideration of a medical condition which may have contributed to the cause of the proposed Unacceptable performance action.
- H.** The name of the official to whom any written reply or request for an oral reply should be sent (usually the Deciding Official) and the address to which it should be sent; also note that if an oral reply is desired, state to whom the request for the oral reply should be sent.

- I. A statement that the employee has the right to be represented by an attorney or other representative.
- J. A statement concerning the employee's right to have or review the material relied on, and from whom it should be requested. The employee, upon request, will be furnished a copy of all or any part of the material, if the material has not already been provided as exhibits to the proposal letter. The supporting material available to the employee is that material on which the proposal was based (Specifically, relevant documentation of instances of Unacceptable performance).
- K. If the employee is on official duty status, the employee will be advised that a reasonable amount of official time should be provided to review the supporting material, to secure affidavits, to prepare the reply to the notice of proposed action, and the official from whom the official time should be requested.
- L. A statement that the final decision will not be effective until the 30-day advance notice has expired, and that any replies submitted will be given full consideration.
- M. A statement that the employee will be notified in writing of the final decision.
- N. A statement regarding the work status of the employee during the advance notice period.
- O. If desirable, the name of an official who the employee may contact (name or office) for clarification of procedures or review of regulations relating to actions based on Unacceptable performance.
- P. If desirable, a discussion of any information or issues that were considered by the proposing official in deciding to issue the proposal (for example, a description of the assistance that was provided during the PIP), any accommodations that were made to assist the employee in improving performance, and background information.

VI. ORAL REPLY

An employee has a right to reply personally to the proposed action. Refer to Personnel Letter 752-1, Appendix C, for oral reply procedures.

VII. EXTENSION OF ADVANCE NOTICE PERIOD

The Deciding Official may extend the advance notice period for a period not to exceed 30 days for a total of 60 days from the date the proposal notice was issued.

The advance notice period may be further extended without OPM approval for the following reasons:

- To obtain and/or evaluate medical information when the employee has raised a medical issue in the reply;
- To arrange for travel for the employee or the oral reply officer for the reply;
- To consider the employee's reply when the time to make the reply was extended at the employee's request;
- To consider reasonable accommodation of a disabling condition; or,
- To comply with a stay ordered by the Merit System Protection Board (MSPB) at the request of the Office of Special Counsel.

Extension for reasons other than those listed above shall be referred to OPM in keeping with instructions in 5 CFR, Part 432.

VIII. DECISION NOTICE

The letter of decision on the proposed action should generally be issued to the employee within 30 days after the date of expiration of the notice period. The final decision notice should include:

- A.** Reference to the proposed action based on Unacceptable performance indicating the date of the notice.
- B.** Reference to any and all replies made by the employee and a statement that these replies were considered; when no reply is made, the statement should reflect that fact.
- C.** A statement specifying the instances of Unacceptable performance by the employee on which the reduction-in-grade or removal is based.
- D.** A statement that indicates consideration was given to any medical documentation furnished by the employee.
- E.** The nature of the action to be effected.
- F.** The effective date of the action. The effective date must follow the employee's receipt of the decision notice.
- G.** Information about the employee's appeal and applicable grievance rights should be included with the letter, including time limits for filing. The address of the appropriate MSPB Office for filing an appeal, and the MSPB regulations should also be included.
- H.** If desirable, the name of the individual the employee may contact concerning appeal rights and procedures.

I. If applicable, a statement about the employee's option of applying for a retirement annuity:

- When the removal is based on reasons apparently caused by a medical condition; or,
- When the employee meets the age and service requirements for discontinued service retirement.

IX. DELIVERY OF PROPOSAL AND DECISION LETTERS

A. Proposal Letter (Advance Notice) Delivery - The burden-of-proof of delivery rests with BPA to establish that delivery and receipt of the advance notice was timely. The most desirable method is personal delivery of the notice to the employee. When this occurs, the employee acknowledges receipt by signing a copy of the notice showing date received. If the employee refuses to sign for receipt, the person delivering the notice verifies to the delivery by a statement to that effect, and signs the copy. Any witnesses to the refusal should also sign the copy. If necessary, the notice can be delivered by a process server or through certified mail (return receipt requested).

B. Final Written Decision - The decision notice must be delivered to the employee at or before the time the action becomes effective.

X. RELATIONSHIP OF UNACCEPTABLE PERFORMANCE TO OTHER PERSONNEL ACTIONS

A. Within-Range Increases (WRIs) - This term was previously known as within range increase (WRI). - To receive a WRI, in addition to meeting other requirements listed in 5 CFR, Part 531, an employee's performance must be at the acceptable-level-of-competence (ALOC). The ALOC equates to the "Meets Expectations" rating level under BPA's Performance Appraisal System. If the employee's performance is rated as "Unacceptable," his/her performance is not at the ALOC, and the WRI may not be granted.

If performance is considered Unacceptable, even though the most current rating-of-record is at a higher level, a new rating-of-record must be prepared to support the decision to withhold the WRI. However, if an employee is due to receive his/her WRI during an opportunity period for improving "Unacceptable" performance as outlined in section III, *The Opportunity to Demonstrate Successful Performance*, the ALOC determination may be postponed until the end of the opportunity period. If the ALOC determination is postponed for this reason, the manager must notify the employee in writing (normally in the PIP) of the following: (1) the ALOC determination for granting the WRI has been postponed until the end of the opportunity-to-improve period; and, (2) if the employee demonstrates performance at the ALOC (specifically, at the "Meets Expectations" performance level) by the end of the opportunity period, the WRI will be granted retroactively to the original WGI due date. In all cases of Unacceptable performance, managers must seek the advice and assistance of the Employee Relations staff. In addition, they must ensure that any Unacceptable rating is communicated to the Human Capital Management office so that WRIs will not automatically be processed.

If the current rating-of-record is Unacceptable, the HCM will not process an otherwise due WRI unless a rating-of-record is assigned reflecting a “Meets Expectations” rating level. See Personnel Letter 531-1 for procedures for denying a WRI.

B. Promotions.

1. **Career Promotion** - An employee may not receive a career promotion if he/she has been rated as having Unacceptable performance. (Also note that, unlike WRIs, career promotions may not be effected retroactively).
2. **Merit Promotion** - BPA’s Merit Promotion plan requires candidates be appraised on the knowledge, skills, and abilities required for the position to be filled, rather than performance in the candidate’s present position. However, selecting officials should give due weight to the Unacceptable performance ratings of job applicants, as an indicator of the quality of prior experience, in making selection decisions.

C. Performance-Based Actions under 5 CFR, Part 752

Under some circumstances, it is more appropriate to take a non-disciplinary performance-based adverse action to deal with inefficiency in performance of duties. See Personnel Letter 752-1, and consult with the HCM Employee Relations staff to determine which procedures are more appropriate to use.

D. Probationary Periods

1. **New Employee Probationary Period** - If a new employee demonstrates Unacceptable performance during his/her probationary period, he/she does not possess the qualifications for continued employment and should be terminated. See Personnel Letter 315-2, Probationary or Trial Periods for New Employees. *Managers must ask for advice and assistance from the HCM Employee Relations staff before removing an employee during his/her probationary period.*
2. **Supervisory/Managerial Probationary Period** - If a new supervisor demonstrates Unacceptable performance in the supervisor critical element, he/she should not be retained in their supervisory or managerial position. Additional information is provided in Personnel Letter 315-1, Probationary Periods for New Managers and Supervisors. *Managers must seek advice and assistance from the HCM Employee Relations staff prior to removing an employee during his/her probationary period.*

XI. REFERENCES AND RELATED INFORMATION

A. Authorities

- 5 U.S.C., Chapter 43, Performance Appraisal
- 5 U.S.C., Chapter 77, Appeals
- 5 CFR, Part 430, Performance Management
- 5 CFR, Part 432, Performance-Based Reduction-in-Grade and Removal Actions
- 5 CFR, Part 1201, Practices and Procedures of the Merit Systems Protection Board
- BPAM Chapter 400/700, Employee Relations Program
- BPAM Chapter 400/430, Performance Appraisal

B. Related Information

- BPA Management Assistance Services (MAS) Handbook
- 5 U.S.C., Chapter 75, Adverse Actions
- 5 CFR, Part 752, Adverse Actions
- Personnel Letter 430-1, Performance Appraisal
- Personnel Letter 430-2, Performance Appraisal Program for Managers
- Personnel Letter 752-1, Discipline, Adverse Actions, and Alternative Discipline
- Personnel Letter 531-1, Requirements for Granting and Denying Within-Grade Increases
- Personnel Letter 315-1, Probationary Periods for New Managers and Supervisors
- Personnel Letter 315-2, Probationary or Trial Periods for New Employees
- Personnel Letter 293-3, Employee Relations Case Files

Roy Fox
Chief Human Capital Officer