

Cyber Excepted Service (CES) HR Elements Course

Lesson 7

Performance & Conduct Based Actions, Grievance, and Appeal Procedures



DoD CIO





Learning Objectives

- Define performance and conduct based actions
- List the procedural requirements for taking a performance or conduct based action
- Discuss the requirements for a within-grade increase (WGI) and the circumstances when to delay or withhold a WGI
- Procedural Requirements of Performance and Conduct based actions
- Explain and apply the Douglas Factors and the applicable agency Table of Penalties
- Discuss the grievance and appeal processes for performance and conduct based actions



Legal / Regulatory Framework

- 5 U.S.C. Ch. 43: Performance Appraisal
- 5 U.S.C. Ch. 75: Adverse Actions
- 5 CFR 430: Performance Management
- 5 CFR 432: Performance-Based Reduction in Grade and Removal Actions
- 5 CFR 752: Adverse Actions



Importance of Early Intervention

- Failure to take immediate action with employee issues could mean:

Damaging Office Morale

- Creates issues with other employees
- Projects image of ineffective leadership from supervisor

Disciplinary Issues

- Discipline issues are usually symptoms of performance or conduct issues



Early Intervention Is Key

- Feedback and assistance should be provided to employees early on, whenever there is a need for improvement or when there is a decline in performance
- Employee performance ratings are a primary factor in reduction in force procedures
- What actions should be taken?





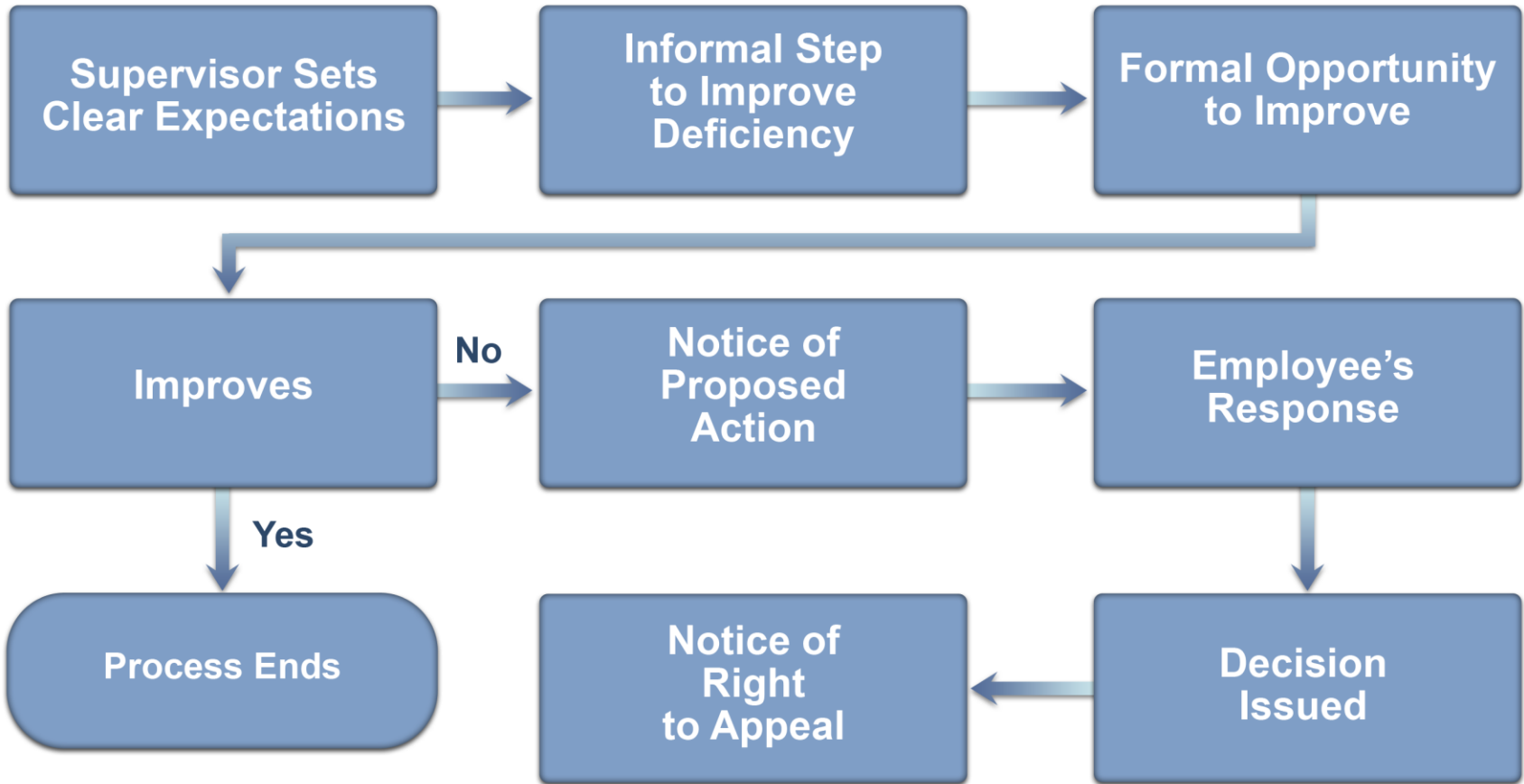
Performance-Based Actions

Actions taken by management to address:

- Poor Performance
 - As defined by OPM, is a broader and more general definition of employees who are **not performing up to the performance expectations of their supervisors and need some form of assistance** to reach their potential and expectations of management
- Unacceptable Performance
 - Performance of an employee who fails to meet established performance standards in one or more elements of his or her performance plan



Chapter 43: Performance-Based Actions





Agency Records

- When the action is taken, an agency must retain:
 - A copy of the notice of the proposed action
 - The employee's answer
 - The written notice
 - Any supporting material
- If the action is not taken, the agency does not retain records



Within-Grade Increase

- Employee performance is based on the most current rating of record
- When a WGI decision is not consistent with the employee's most recent rating of record, a more current rating of record must be prepared
- WGIs may be withheld if:
 - The employee's performance is less than "Fully Successful"
 - The employee is reassigned because of unacceptable performance and is eligible for a WGI prior to completing the minimum period of performance



Conduct-Based Actions

- What are they?
- What form do they take?
- What is the intent?
- What factors does management consider?

Begin by talking to Employee Relations



Why Conduct-Based Actions?

Acceptable Standards of Conduct

Employee

Motivate

Educate

Rehabilitate



Informal & Formal Actions

INFORMAL

- Verbal Warning/Admonition, Letter of Counseling, Letter of Instruction

Discipline: Any one or combination of actions imposed as a sanction or penalty after an official finding of misconduct. The intent of the penalty may be to correct or instruct. Action is taken for such cause to promote the efficiency of the service.

FORMAL

- Reprimands, Adverse Actions, Appealable Adverse Actions



Standard for Action - Conduct

**An agency
may take
an adverse
action...**

**For such
cause as
will...**

**Promote
the
efficiency of
the service.**



Chapter 75: Adverse Actions

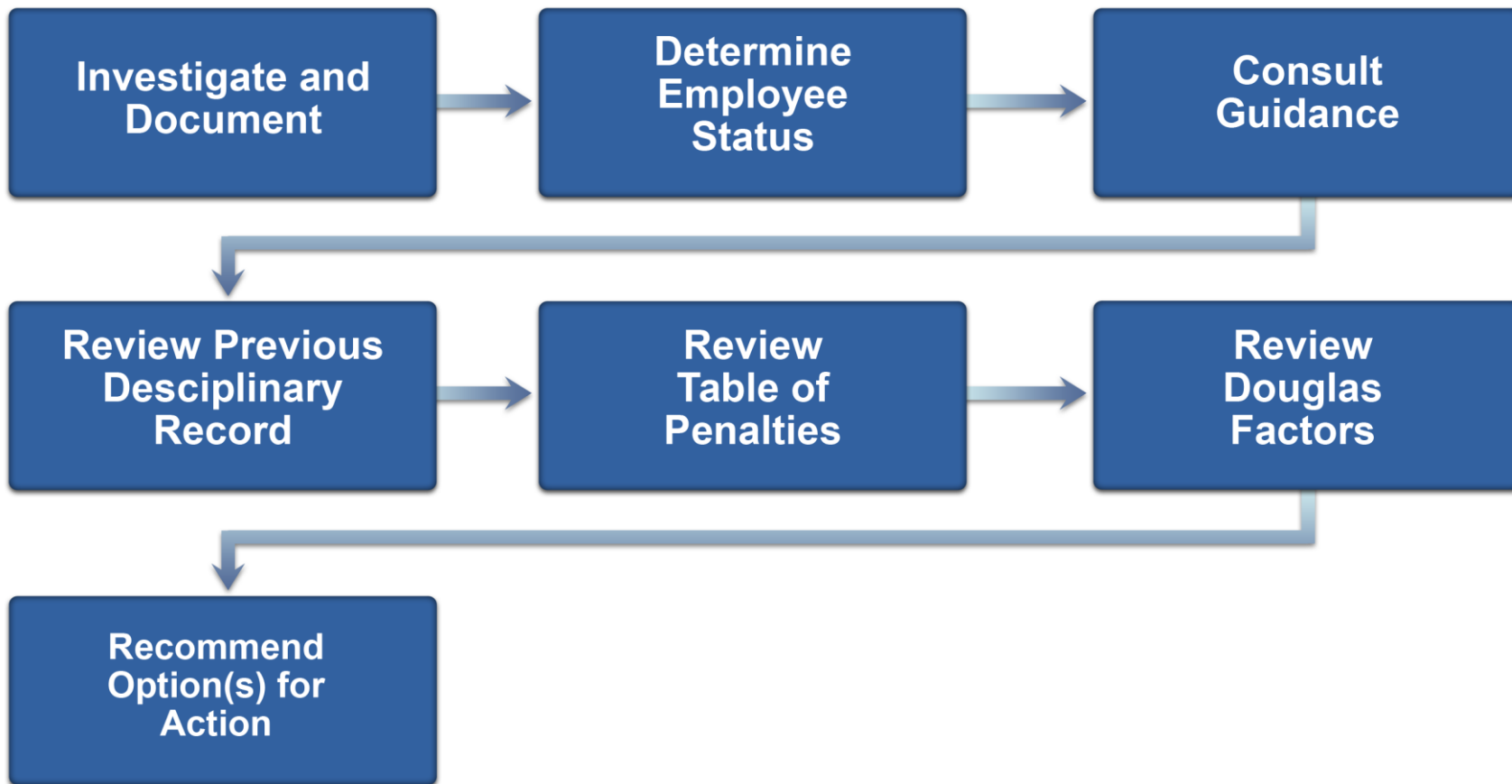




Table of Penalties

- Table of Penalties
 - Determines the most appropriate charges and penalties for behaviors or actions which warrant corrective/remedial action
 - Provides consistency of penalties for like offenses
 - Promotes progressive discipline
 - Differs according to Component



Douglas Factors

- Douglas Factors
 - Twelve issues to consider when determining the appropriate penalty for misconduct
 - Guide decision makers to fair and consistent decisions



Grievance and Appeal Processes

- Bargaining Unit Employees (BUEs) may file an appeal to the Merit Systems Protection Board (MSPB) or a grievance under their applicable collective bargaining agreement (CBA)
- Employees not represented by a union may file an appeal to the MSPB
- In limited circumstances, employees may file an administrative grievance
- Contact your Labor and Employee Relations Specialist to determine individual employee appeal rights



Lesson 7 Review

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