

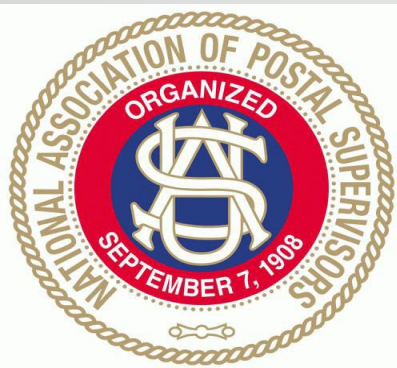


NAPS SOUTHEAST AREA TRAINING SEMINAR Savannah Georgia

SEPTEMBER 30, 2023

EAS Rights & Appeals
ELM 650 Appeals 101 Training

With
John Aceves





ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

ELM 651.1 Establishes procedures for:

- (a) Disciplinary Action against employees not subject collective bargaining (i.e. EAS).
- (b) Emergency action for conduct that normally warrants disciplinary action.
- (c) What is the current ELM version?

Answer ELM-53



ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

Representation: 651.2

- ▶ Free choice of representation
- ▶ Representative designated by employee/member
- ▶ Reasonable amount of official time to respond
- ▶ **10-Days** to Appeal



ELM 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.**



ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

ELM 665.3 Cooperation in Investigations

Employees must cooperate in any postal investigation, including Office of the Inspector General investigations.

What about Pre-Disciplinary
Interviews/Investigations (PDI's)

(AKA Pre-Determined Disciplinary)



ELM 650

Non-Bargaining Disciplinary, Grievance and Appeal Procedures

Is a FF/Pre-D Interview (PDI) an investigation?

- ▶ Interview is a meeting, consultation, talk, discussion, dialogue.
- ▶ Investigation is an inspection, search, inquiry, scrutiny, survey, examination, exploration.
- ▶ Basically, the same thing
- ▶ Adverse Effect may lead to Adverse Action.



“The First Call”

If you receive discipline, then what?

**Call your NAPS
Representative
Immediately!**

**Remember Appeal
Timelines
are Calander days**





NAPS Officer Action

From the First Call

- ▶ **Verify NAPS Membership – DCO/NAPS HQ**
- ▶ **Gather Member Information**
 - Name, address, phone #.
 - USPS Title, Office of Domicile.
- ▶ **Member signs “Request for Representation”**
 - Employee has free choice of representation.
 - Representative designated by employee.

National Association of Postal Supervisors

Request for Representation & Release Form

I, _____, a dues paying member in good standing with the National Association of Postal Supervisors, Branch _____, request disciplinary representation from NAPS Branch _____.

On (date) _____, 20____, I was issued discipline in the form of a _____

*(Letter of Warning--LOW, Letter of Warning in lieu of a seven (7) day suspension, Letter of Warning in lieu of a fourteen (14) day suspension, **adverse action -- removal, suspension of more than 14 days, furlough, or reduction in grade/pay.**)*

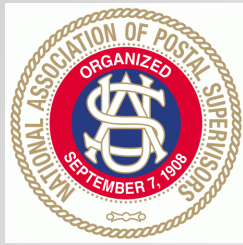
I understand that NAPS Branch _____ reserves the right to provide representation. I also understand that Branch _____ and their elected officers nor members are not paid employees of the NAPS organization nor are they legally bound to provide representation. I further understand that NAPS Branch _____ and its officers are not lawyers or legal advisors, and I will not hold them legally or financially responsible for the results that transpire from my disciplinary case.

I agree to cooperate fully with my NAPS representative by providing him/her with factual written statements and documentation to support my disciplinary appeal. If during my disciplinary appeal process, I provide my NAPS representative or any USPS official with false written and/or verbal statements or documentation; NAPS Branch _____ may exercise their right to withdraw their representation.

My request for NAPS Branch _____ representation is voluntary and is void of duress. I reserve the right and may *(verbally or in written form)*, at anytime during my appeal process, withdraw my request for representation from NAPS Branch _____

(Signature of NAPS Member)

(Date)



ELM 650

Non-Bargaining Disciplinary, Grievance and Appeal Procedures



Fact Finding Tips

- ▶ **Do Not** go alone – Bring a Rep (NAPS)
- ▶ Be professional
- ▶ Ask the reason for the FF/PDI
- ▶ Ask for a **copy of questions** to be asked
- ▶ Ask what are the charges (if any/known)
- ▶ Keep answers short & factual
- ▶ **DO NOT** speculate or elaborate
- ▶ If you don't recall – state, you don't recall, don't remember
- ▶ Ask for information that might help you remember
- ▶ Tell the truth – **DO NOT LIE** or **STRETCH THE TRUTH**



ELM 650

Non-Bargaining Disciplinary, Grievance and Appeal Procedures

Prepare Evidence Package

- ✓ Reviewing material is not enough
- ✓ Request copies USPS evidence (documents) used to determine allegations/charges etc, Clock rings, SOPs, Form 50, Checklists, Scanning Reports, Dispatch logs, Collection Schedules, etc.)
- ✓ Request other evidence to assist in defense of allegations/charges.
- ✓ Label USPS evidence received (your choice)



ELM 650

Example of request for documentation

▶ NAPS is requesting all documentation used to determine the proposed discipline issued to Mr. #####, to include written instructions, training documents pertaining to the allegations, copies of "appropriate resources, coaching feedback documents pertaining to the issued proposed discipline.

A copy of the request for discipline document sent to the AZ/NM District labor relations. In the event requested documents are not received with the appellant's time period within the ELM section 652.4, NAPS is requesting a 10-day extension from the time such documents are received so an appeal as per ELM-652.4 can be fully afforded to Mr. ##### due process.

▶ *Thank you,*



ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

Evidence Package continued

- ✓ Copy of Discipline Issued
- ✓ Copies of any **live** Discipline (LOW, LOW 7/14, AA)
- ✓ Get signed witness statements
- ✓ Get written statement from member

Request Of Information Act

FOIA

It's Law

- ▶ Understanding the FOIA, Sources for Guidance Roles & Responsibilities FOIA Requests Resources. PUB 550, Handbook AS-353.



- ▶ (Separate training session)



ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

Prepare Written Appeal

- ✓ Understanding of Charges
- ✓ Understanding of Specifications
(dates, names, locations, times, etc.)
- ✓ Verify ELM References/violations / **DUE PROCESS**
- ✓ Defend or deny each charge (Explain/justify action)
- ✓ "Douglas Factors" later in presentation
(Service history, work performance, awards, disparage treatment, etc.)



ELM 650

Non-Bargaining Disciplinary, Grievance and Appeal Procedures

Prepare Written Appeal

- ✓ Address any Medical, Physical or Emotional Issues
- ✓ Refute allegations/charges with evidence, documents, statements
- ✓ Do not raise specific settlement in appeal letter
 - ✓ (i.e. Don't ask for Removal to be reduced to 14-day, there is no room to negotiate)
- ✓ **Request to "Rescind/Remove" and/or "Expunge" Discipline**



ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

Defense Measure

ELM 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 the 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.

ELM-721-Defense Measure

ELM 721.4 Supervisors and Managers

Supervisors and managers are responsible and accountable for:

- a. **Ensuring that employees under their supervision are trained in a timely manner to perform their assigned job tasks.**
- b. **Identifying employees' needs for improvement in their present jobs.**
- c. **Planning for their employees' training, in coordination with training systems available for their facilities.**
- d. **Following up after employees complete formal job training to ensure that they use newly acquired knowledge, skills, and abilities optimally and appropriately.**
- e. **Identifying and providing other training to meet the organization's and individual employees' needs.**
- f. Evaluating and supporting as appropriate employee requests to participate in self-development training opportunities.
- g. Providing employees with information and guidance on career growth.
- h. Documenting the outcomes and expectations of providing training, including the return on investment.

721.5 Employees

Employees are responsible for:

- a. Making effective use of training opportunities that management provides.
- b. Consulting with their supervisors and pursuing personal career goals to guide their own growth and development.
- c. Continuing throughout their careers to learn and improve their knowledge, skills, and abilities while sharing what they have learned with other employees



August 8, 2023

Board Memo 097-2023: 2023 March and May NAPS USPS Consultative Meeting Minutes

Executive Board,

NATIONAL ASSOCIATION OF POSTAL SUPERVISORS
NAPS/USPS March Consultative Meeting
In Conjunction with the 2023 NAPS Spring EB Meeting

03-30-09

Now that Labor Relations is a HQ function, what guidance if any, has Labor given to the field on issuing corrective action? Who is to write the action? Who reviews the proposed action to ensure it is properly prepared and issued?

Response: District Labor Relations is responsible for writing all 7-Day and 14-Day Suspensions as well as any Removals. The field should contact their District Labor Relations for any guidance on corrective action.

Representing supervisors, managers, and postmasters in the United States Postal Service

652.4 Other Appealable Actions

652.41 Coverage

Employees in EAS-17 and below, 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 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 10 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 seven 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, or Inspection Service 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.



ELM 650

Review Process

- ▶ May request Review within 15-days of STEP B decision
- ▶ Written Appeal for Review directed to Area HR Manager
- ▶ Give specific reasons for STEP B decision review
- ▶ Area Reviewing Official replies in writing
- ▶ States the disposition of the employee's request
- ▶ LOW may remain in eOPF up to 2-years
- ▶ The reply is final

Management Instruction

Letters of Warning in Lieu of Time-Off Suspensions

The purpose of this instruction is to establish procedures for the use of letters of warning in lieu of time-off suspensions for nonbargaining employees. This material obsoletes *Employee and Labor Relations Manual* (ELM) 651.5 and will be incorporated in a future revision of the ELM.

Policy

Letters of warning in lieu of time-off suspensions replace time-off suspensions for nonbargaining employees, except when required otherwise by statute. In addition, 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.

Implementation

This policy applies to all cases in which a suspension of a nonbargaining employee is contemplated but has not been initiated. The policy is not intended to be applied retroactively.

Procedures for issuing a proposed letter of warning in lieu of time-off suspension and a letter of decision are intended to be the same as those for issuing a time-off suspension. The letters may be issued in lieu of either a 7- or 14-day suspension only. Unless required by statute, suspensions of more than 14 days are prohibited except for indefinite suspensions referenced above.

Letters of warning in lieu of time-off suspension are equivalent to time-off suspensions as an element of past discipline and may be cited as such in future disciplinary actions.

Date 05/31/96
Effective 06/30/96
Number EL-650-96-3
Obsoletes N/A
Unit EEO Compliance and Appeals


Joseph J. Mahon
Vice President
Labor Relations

CONTENTS

Policy

Implementation

Preparing a Proposed Letter and a Letter of Decision

Appeal Procedures

Retention Procedures

Exhibit 1a

Instructions for Proposed Letter of Warning in Lieu of Time-Off Suspension

Exhibit 1b

Sample Proposed Letter of Warning in Lieu of Time-Off Suspension

Exhibit 2a

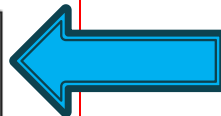
Instructions for Letter of Decision for Letter of Warning in Lieu of Time-Off Suspension

Exhibit 2b

Sample Letter of Decision for Letter of Warning in Lieu of Time-Off Suspension — Headquarters and Headquarters Field Units, Including Inspection Service

Exhibit 2c

Sample Letter of Decision for Letter of Warning in Lieu of Time-Off Suspension — Field Installations





ELM 650

LOW in Lieu of Time-Off Appeal 7 Day or 14 Day

- ▶ **651.64 Response (A-B)**
- ▶ 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. You must include the name and title of the deciding official in your response.
- ▶ Official issues “Letter of Decision” in 30 days–**651.64**
- ▶ Appeal Decision Letter within 15 days Area HR Manager **651.65**
- ▶ LOW in Lieu of Time Off Suspension remain in eOPF up to 2–years



ELM 651.6

LOW in Lieu of Time-Off Appeal

7 Day or 14 Day or Adverse Action

First Option – Request 650 Mediation

- Highly Recommended
- What gets 650 Mediation?
 - Letters of Warning in Lieu of Time-Off Suspensions and/or Time-off Suspensions
 - Adverse Action
- What happens at 650 Mediation?
- Let your Area VP know if mediation is denied



ELM 650

LOW in Lieu of Time-Off Appeal
7 Day or 14 Day

- ▶ **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.
- ▶ **Recommended** as this stops the calendar appeal clock until mediation is complete. Verbiage and form should be included in LOW in Lieu and/or Adverse Actions.



Request for ELM 650 Mediation

USPS Case Number (Completed by 650 Facilitator)

FMCS Case Number (Completed by 650 Facilitator)

I. Appellant/Requester Information

Appellant's Name (Last, First, MI)

Employee Identification Number

Home Telephone Number
()

Home Mailing Address (Include, City, State and ZIP+4)

Facility Where You Work (City, State, ZIP+4)

Position Title

Position Level

Office Telephone Number
()

Pay Location

Facility Finance Number

Duty Hours (Include AM/PM)

Off Days/Nights

II. Issuing Management Official Information

Name (Last, First, MI)

Job Title

Telephone Number
()

III. Type of Discipline Issued (Check One)

☐ LOW in Lieu of
7-Day Suspension☐ LOW in Lieu of
14-Day Suspension☐ Downgrade☐ Removal☐ Other (Specify)

IV. Representative Information

Name

Telephone Number
()

Duty Hours (Include AM/PM)

Off Days/Nights

Work Location (City, State, ZIP+4)

Position Title

Representative Organization

V. Request for Mediation (with Discipline Attached)

- 1) I, _____, am voluntarily requesting that the disciplinary action issued to me on _____ be mediated before a mediator appointed by the Federal Mediation and Conciliation Service.
- 2) I understand that by requesting mediation I am not forgoing any appeal rights granted by section 650 of the Employee and Labor Relations Manual (ELM). Rather, if mediation does not result in a resolution of the issue, I will still have the right to appeal the issuance of this discipline through the traditional appeal process afforded by section 650 of the ELM.
- 3) I understand that **this form (or written request) and a copy of the discipline** must be sent within **ten (10)** calendar days from my receipt of an applicable disciplinary action to the **ELM 650 Mediation Facilitator, Manager EEO Compliance and Appeals, located in my region. Employees at Postal Service Headquarters and Headquarters Filed Units and employees of the Inspection Service should notify the ELM 650 Facilitator at Postal Service Headquarters. The discipline must show the date it was received by me.** Additionally, I will notify the management official who issued the action and the appropriate District or Area Labor Relations office of my intention to participate in ELM 650 mediation.

VI. Privacy Act Statement and Rehabilitation Act Notice

Privacy Act Statement: Your information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. Collection is authorized by 39 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, we may not be able to process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service (USPS) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel. For more information regarding our privacy policies visit www.usps.com/privacypolicy.

Rehabilitation Act Notice: Under the Rehabilitation Act, medical information is confidential and may only be requested or disclosed in very limited circumstances. Medical documentation about the complainant's and possible comparison employees' medical conditions and work restrictions may be requested in connection with the investigation of an EEO complaint. Information about medical restrictions (but not medical conditions) obtained in the course of an EEO investigation may be disclosed to supervisors and managers who need to know about restrictions on the work or duties of the employee and about necessary accommodations. Supervisors and managers are not permitted to share such information with peers or subordinates or to discuss the information with those who have no need to know and whose requests for the information are not job-related and consistent with business necessity.

VII. Authorization

Appellant's Signature

Date



NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

National Headquarters

1727 KING STREET, SUITE 400

ALEXANDRIA, VA 22314-2753

**NAPS/USPS Consultative Meeting Minutes *in Conjunction with the*
Spring 2021 NAPS Executive Board Meeting
March 24, 2021 via Zoom**

0321-03

NAPS has been made aware that the paperwork provided at 650-Mediation when no agreement is reached and what is in the ELM are conflicting (See attachment).

In the attached agreement to mediate, NAPS notes that Form K says they can appeal by the traditional appeal, which is in writing/and or person. In comparison, Form L states that the appeal can only be in writing which follows the USPS ELM.

NAPS is requesting that the language to both Form L and Form K reflect the employee's opportunity to appeal both in writing and/or in-person if no resolution is reached in an ELM 650 Mediation. NAPS is further requesting that this opportunity be reflected in changes to USPS ELM 652.53 and ELM 652.54.

USPS ELM 652.53

Change From: 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.

Change To: If no resolution is reached between the employee and the proposing official as a result of the mediation, the employee may submit in the traditional written and/or verbal response to the proposed letter of warning in lieu of a time-off suspension within 10 calendar days of the mediation to the deciding official.

USPS ELM 652.54

Change From: 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.

Change To: If no resolution is reached between the employee and the proposing official as a result of the mediation, the employee may submit in the traditional written and/or verbal response to the proposed adverse action within 10 calendar days of the mediation to the deciding official.




ELM 650

LOW in Lieu of Time-Off Appeal

7 Day or 14 Day

NAPS contends that this affords the member the opportunity to personally demonstrate their value as a member of their management team by allowing them to meet with the deciding official.



Response: The mediation process is an alternative to the traditional appeal process. An employee has an opportunity to appeal verbally, with a mediator to the proposing official. If unresolved in mediation, the employee is still given an opportunity to submit a written appeal to the Deciding Official.

Form K has been revised, based on NAPS's input, to provide more clarity to the employee on options if no agreement is reached in mediation and to be consistent with the language in Form L and ELM 652.53 and 652.54.

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. 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, which must state:

- a. Specific and detailed reasons for the letter;
- b. Instructions for responding to it;
- c. Name and title of deciding official;
- d. The right of the employee or representative to review all material relied upon in the action; and
- e. 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. You must include the name and title of the deciding official in your response.

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.



ELM 650

LOW in Lieu of Time-Off Suspensions 7 Day or 14 Day
Mediation

What if you don't settle in 650 Mediation?

- ▶ Appeal in **10 days** of receipt to deciding official regarding the ***"no decision"*** received at the end of the mediation.
- ▶ Appeal in writing to Deciding Official. Generally, *there is no in person discussion with Deciding Official if mediated – ELM 652.54*)
- ▶ Deciding Official issues "Letter of Decision" no later than 30 days.
- ▶ Appeal Decision Letter within **15 days** Area HR Manager.
- ▶ Area appeal is based solely on record. No opportunity to meet with reviewing official. The Review decision is final.
- ▶ Discipline can remain in OPF up to 2-years. Contact Shared Services to have disciplined removed after timeframe. Submit PS Form 8043 to request removal of discipline.

Management Instruction

Procedures for Proposed Adverse Actions Against EAS Levels 18 and Above, Technical and Management Pay Bands, and PCES 01 Executives

Overview

This management instruction (MI) provides the required procedures for the following:

- Developing and finalizing notices of proposed adverse actions against Postal Service™ employees in the following groups:
 - Executive and Administrative Schedule (EAS) levels 18 and above.
 - Technical and Management Pay Bands.
 - Postal Career Executive Service (PCES) 01 executives.
- Required consultations when the Postal Service is placing an employee on administrative leave.

This MI does not apply to employees of the following:

- Inspection Service.
- Office of Inspector General.

Adverse Action Procedures

Definitions


All definitions are for the purpose of this MI.

Adverse actions — Removals; suspensions of more than 14 days; furloughs for 30 days or less; and reductions in grade, pay, or both.

Appropriate human resources or labor personnel — As defined below:

- a. For field employees, including district and area employees, the manager, Human Resources, or the manager, Labor Relations, for the appropriate district or area. Area Human Resource managers may establish procedures regarding the appropriate contacts for consultations in their area and districts.
- b. For headquarters and headquarters field units, the manager, Human Resources, Headquarters.

Date October 11, 2018
Effective Immediately Number
EL-380-2018-2
Obsoletes EL-380-2017-7 Unit
Labor Relations


Jeffrey C. Williamson
Chief Human Resources Officer and
Executive Vice President

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Designated legal counsels — As defined below:

- a. For field employees, including district and area employees, the appropriate field Managing Counsel or designee.
- b. For headquarters and headquarters field unit employees, the General Counsel or designee.

Initial Assessment and Draft

Before drafting the proposed adverse action, the proposing official must consult with appropriate human resources or labor personnel. During the consultation, the group must consider the following:

1. Whether the relevant facts supporting the action are substantiated; and
2. Whether the selected penalty is reasonable and warranted by the severity of the charges.

The proposing official is responsible for completing a draft notice of proposed adverse action in consultation with the appropriate human resources or labor personnel. The notice of proposed adverse action must have sufficient detail to provide the individual adequate notice of the facts supporting the charge or charges. The notice must include the following:

1. **A discussion of the appropriateness of the proposed penalty.** The penalty discussion must address both mitigating and aggravating factors that the proposing official took into account before selecting the penalty proposed in the notice. The proposing official must cite any prior disciplinary action he or she relied upon for the penalty assessment and attach a copy of the referenced action to the draft notice.
2. **The proper appeal rights** as set forth in section 650 of the *Employee and Labor Relations Manual*, including the option to mediate the proposed action instead of replying orally to the deciding official. In regards to appeal rights, the deciding official must include in the proposed notice the name and address of the appropriate officials to whom an employee must send the following:
 - a. A request for mediation.
 - b. An appeal.

The proposing official must send the final version of the draft to the appropriate human resources or labor personnel.

Legal Counsel Review and Recommendations

These are the steps of the legal counsel review and recommendations:

1. The appropriate human resources or labor personnel must submit to the designated legal counsel the following:
 - a. The draft notice of the proposed adverse action.
 - b. All documentation pertaining to that action.



December 7, 2022

POSTMASTERS
MANAGERS/SUPERVISORS CUSTOMER SERVICES
PLANT MANAGERS/MDOS/MMOS/SDOS/SMOS

SUBJECT: PROTOCOLS FOR PROPER DISCIPLINE HANDLING

To ensure proper handling of discipline in accordance with all National Agreements, Postal Regulations, and Management Instructions I have outlined the following:

- All discipline for EAS employees must be discussed with and requested through the District Labor Relations office, who will draft the discipline.

If you have any questions, please contact Labor Relations at (602) 225-3943.

A handwritten signature in black ink, appearing to read "Marlene T. Benavidez", with a large, stylized flourish at the end.

Marlene T. Benavidez
A/Manager, Labor Relations

cc: Jeff Duba, Dir. Field LR
Lerene Wiley, HR Mgr.

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**

Normally, the employee's immediate supervisor issues a written notice of proposed adverse action. The Postal Service may substitute as the proposing official another supervisor or manager at the same or higher level as specified herein. Such a substitution may be made by any of the following: the vice president of Labor Relations; area vice president; and area manager, Human Resources. 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,

Appeal of Adverse Actions

▶ 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.

▶ *Request ADR/Mediation*

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. Normally, the deciding official is the supervisor or manager of the employee's immediate supervisor. The Postal Service may substitute as the deciding official another supervisor or manager. Such a substitution may be made by any of the following: the vice president of Labor Relations; area vice president; and area manager, Human Resources. 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.

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. Normally, the deciding official is the supervisor or manager of the employee's immediate supervisor. The Postal Service may substitute as the deciding official another supervisor or manager. Such a substitution may be made by any of the following: the vice president of Labor Relations; area vice president; and area manager, Human Resources. 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.



ELM 650

Adverse Action Appeal

Removals, Suspensions > 14 Days, Furloughs or Reduction in Grade

- ▶ Appeal in **10-days** of receipt
- ▶ Appeal in writing/person or both to Deciding Official
- ▶ Deciding Official gives written decision no later than **60 days**
- ▶ Employee rights stated in Letter of Decision
- ▶ Appeal to MSPB, ELM 650 Hearing, Area HR Manager
- ▶ Adverse Action: Recommend MSPB – Member's decision
- ▶ NAPS Disciplinary Defense Fund (DDF) may be available

NAPS Disciplinary Defense Fund Representation Request Form

DDF Applicant Name: _____

USPS EIN #: _____

Office: _____

NAPS Branch: _____

Work Phone: () _____

Home Phone: () _____

Date of Notice of Proposed Action or Notice of Debt Determination: _____

Date of Letter of Decision or Notice of Involuntary Offset: _____

I request representation from the NAPS Disciplinary Defense Fund (DDF). Representation will be provided by Labor Relations Admin Group, LLC. The representative provided may not be an attorney. DDF covers an initial Merit System Protection Board (MSPB) hearing or debt collection case. DDF also covers the following expenses: representative's fees, all travel, and up to \$1,000 of pre-approved evidentiary expenses. All DDF expenses are covered by NAPS headquarters for initial MSPB and debt collection cases. Member is not required to pre-fund or make a deposit of monies to receive DDF representation.

In the event the MSPB should award any payment for my legal fees, it is understood that the monies will be used to reimburse the NAPS DDF for funds expended for my representation by Labor Relations Admin Group, LLC to the extent possible under the award.

NOTE: I have been a member of NAPS since: Month _____ Year _____
If you have been a NAPS member less than 90 days from the date of the proposed action, you should supply a statement that you signed a NAPS membership application within 60 days of your promotion from the craft.

I understand that should I seek representation through any means other than the NAPS DDF at any time, I will, in effect, discharge the National Association of Postal Supervisors and Labor Relations Admin Group, LLC of any further obligation regarding my case. Furthermore, I understand that I will have to bear the cost and consequence of any outcome resulting from this action.

Signature of Member

Signature of Branch President

Printed Name of Member

Printed Name of Branch President

Date: _____

Date: _____

Send this signed form and a copy of the adverse action file by Priority Express Mail to:

Labor Relations Admin Group LLC
PO Box 25822
Brooklyn, NY 11202

A copy of this completed DDF Form MUST be sent to NAPS Executive Vice President at NAPS HQ

NAPS Headquarters
1727 King Street, STE 400
Alexandria VA 22314

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
- b. EAS, and PCES Level I 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.

22. Exclusion

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

23. Appeal to Step 1

231. Headquarters, Headquarters Field Units, and 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.

232. Inspection Service Employees

These employees may submit a written request for a hearing, or waiver of a hearing, to the Step 1 official (Chief Postal Inspector, or designee) 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.

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](#).

652.24 Hearings

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](#).

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**

NAPS ADVERSE ADVOCATE

▶ Al Lum

Labor Relations
Admin Group LLC

▶ PO Box 25822
▶ Brooklyn, NY 11202
–5822

▶ Representatives in
various parts

□ Use Overnight Mail
to send the package

□ Al Lum

Office:
(347)–384–2519

Fax: (718) 425–9873
LRAG.PO@gmail.com

Provider for NAPS
Adverse Actions and
Debt Collections





USPS ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

Do you have expired discipline in your eOPF?

Use PS Form 8043 Request to Amend Electronic Official Personnel Folder complete this form to request that it be removed from your eOPF.

It must be provided to your District HR and possibly Area HR for fulfillment. It has to go to someone who has the access to your eOPF. Typically, that *is not your manager.*

Keep a copy and follow-up by looking in your eOPF. If it hasn't been removed contact your NAPS representative for assistance.

FYI

- ▶ On October 13, 1978, President Carter signed the Civil Service Reform Act of 1978 (CSRA) which provided for the creation of the Office of Personnel Management, the Federal Labor Relations Board, and the U.S. Merit Systems Protection Board (MSPB). The CSRA, which abolished the Civil Service Commission, represented the first comprehensive reform of civil service law since the Pendleton Act of 1883, which replaced the “spoils system” with a merit-based civil service system for Federal employment. The MSPB honors the Pendleton Act by displaying the date “1883” on its agency shield and logo.

“The Douglas Factors, *Determining the Penalty*”

It's Law



It's Law

Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419

“The Douglas Factors, *Determining the Penalty*”

- ▶ The Douglas factors originate from the case of **Douglas v. VA**, 5 MSPR 280, 5 MSPB313 (1981). In that case, the Merit Systems Protection Board (MSPB) set forth **12 factors** that should be considered when evaluating the reasonableness of a disciplinary penalty for a federal employee.



“The Douglas Factors, *Determining the Penalty*”

- ➔ (1) The nature and seriousness of the offense -- and its relation to the employee's duties, position, and responsibilities -- including whether the offense was intentional, technical, or inadvertent; was committed maliciously or for gain; or was frequently repeated.
- ➔ (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position




“The Douglas Factors, *Determining the Penalty*”



- 3) The employee's past disciplinary record.
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties.

“The Douglas Factors, *Determining the Penalty*”



- (6) Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- (7) Consistency of the penalty with any applicable agency table of penalties. 
- (8) The notoriety of the offense or its impact upon the reputation of the agency.
- (9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

“The Douglas Factors, *Determining the Penalty*”



- (10) The potential for the employee's rehabilitation.
- (11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, or harassment; or bad faith, malice or provocation on the part of others involved in the matter.
- (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

CONCLUSION

- ★ The Douglas factors are critical for federal employees facing a pending disciplinary action or for those at the MSPB on appeal. As a result, it is very important for a federal employee to argue all applicable Douglas factors, and provide documentary evidence (e.g. affidavits, performance ratings, SF-50s, letters of commendation) for the record. Douglas factor issues vary significantly from case to case and federal employees should consult with an attorney who is knowledgeable about these issues prior to responding to a proposed disciplinary action or filing an appeal with the MSPB.



QUIZ

- ▶ QUESTION: What MSPB form is used and submitted along with case file?
- ▶ ANSWER: MSPB form 185



PART 1 - Appellant and Agency Information

Everyone must complete Part 1.

Please type or print legibly.

1. Name (last, first, middle initial)

Last First M. Initial

Please list your first name as it appears in your official personnel records. For example, if your first name is "William" on your official personnel records, please list it that way on the appeal form, not "Bill" or "Willy."

2. Present address (number and street, city, state, and ZIP code)

You must promptly notify the Board in writing of any change in your mailing address while your appeal is pending.Address: City: State: ZIP Code:

3. Telephone numbers (include area code) and email address

You must promptly notify the Board in writing of any change in your telephone number(s) or email address while your appeal is pending.Cell: Home: Work: Fax: Email Address:

4. Name and address of the agency that took the action or made the decision you are appealing (include bureau or division, street address, city, state and ZIP code)

Agency Name: Bureau: Address: Phone Number: City: State: ZIP Code:

5. Your Federal employment status at the time of the action or decision you are appealing:

☐ Permanent ☐ Temporary ☐ Term
☐ Seasonal ☐ Applicant ☐ Retired
☐ None

6. Type of appointment (if applicable):

☐ Competitive ☐ Excepted
☐ Postal Service ☐ SES
☐ Other (describe):

7. Your position, title, grade, and duty station at the time of the action or decision you are appealing (if applicable):

Occupational Series or Cluster: Position Title:
Grade or Pay Band: Duty Station:

8. Are you entitled to veteran's preference?

See [5 U.S.C. § 2108](#).☐ Yes ☐ No

9. Length of Federal service (if applicable):

 Years Months

10. Were you serving a probationary, trial, or initial service period at the time of the action or decision you are appealing?

☐ Yes ☐ No11. **HEARING:** You may have a right to a hearing before an administrative judge. If you elect not to have a hearing, the administrative judge will make a decision on the basis of the submissions of the parties. Do you want a hearing?☐ Yes ☐ No

652.4 Other Appealable Actions

652.41 Coverage

Employees in EAS-17 and below, 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 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 10 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 seven 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, or Inspection Service 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. 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.

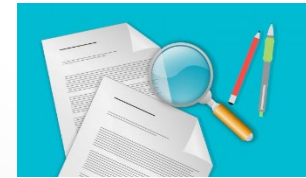
ELM 53 650 Nonbargaining Disciplinary, Grievance, and Appeal Procedures

Emergency Placement (EP) in Off-Duty Status

Letters of Warning and Grievances

652.4 Other Appealable Actions

NAPS Note: Follow the 3-Step ELM 650 Process and adhere to timelines when preparing and submitting a written appeal for a case involving Emergency Placement (EP).



3 Step Appeal Process

652.42 Step A: Initial Appeal -- **10** days to file from date Emergency Placement was implemented.

652.43 Step B: 7 days to appeal **STEP A** decision

652.44 Review: 15 days to appeal **STEP B** decision

NAPS Defense Strategy for Emergency Placement Appeal

DOUG A. TULINO
VICE PRESIDENT, LABOR RELATIONS



October 29, 2009

MANAGERS, HUMAN RESOURCES (AREA)

SUBJECT: Emergency Placement

In recent discussions with the management associations, the issue of placing non-bargaining employees in an off-duty status without pay on an emergency basis was discussed. The language relevant to this issue is outlined in Section 651.4 of the Employee and Labor Relations Manual (ELM). This section provides in pertinent part:

An employee may be placed in an off-duty nonpay status immediately but remains on the rolls when he or she (a) exhibits characteristics or 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.

Emergency placement in an off-duty status without pay is to be used in those instances where it is necessary to remove the employee from the premises immediately. This provision should not be utilized when it is more appropriate to use other corrective measures such as a normal suspension or indefinite suspension.

Where it is necessary to ensure that an employee does not have access to the work place for a period in excess of a few days, the employee may be placed on administrative leave. This is the appropriate measure to take in those situations where allegations of misconduct are being investigated and the nature of the misconduct makes it impractical to temporarily assign the employee to another work location. However, managers have the responsibility to periodically review the retention of an employee on administrative leave to ensure that continuation in this status is necessary. When additional options become available, such as having information available as a basis to place the employee on a regular or indefinite suspension, appropriate action should be initiated.

Doug A. Tulino

DOUG A. TULINO
VICE PRESIDENT, LABOR RELATIONS



March 19, 2014

MANAGERS, HUMAN RESOURCES (AREA)

SUBJECT: Emergency Placement

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Doug A. Tulino
















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 NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

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-  [Emergency Placement Letter_VP LR Tulino_3 19 2014](#)
-  [Temporary Involuntary Reassignments Letter_COO Brennan_8 24 2012](#)
-  [Temporary Involuntary Reassignments Letter_COO Williams_8 31 2015](#)
-  [Time Limit on Higher-Level Temporary Assignments_CHRO Williamson_9 30 2014](#)
-  [2015 Fleet Management \(VMF\) Organizational Changes Handout_5 19 2015](#)
-  [Summary of SWC Changes_11 2012](#)
-  [SWC Auto-Worksheet_USPS_2 2016](#)
-  [SWC Worksheet_6 13 2013](#)
-  [Listing of Non-Bargaining "Special Exempt" Positions_9 5 2014](#)
-  [Payment of FLSA Special Exempt Employees_VP LR Tulino_4 12 2012](#)
-  [Work Schedules FLSA-Exempt Non-Bargaining Employees_COO Brennan_4 25 2012](#)
-  [MCSO and MPOO Staffing Presentation_USPS_6 2015](#)
-  [Supervisors Use of Personal Vehicles While on Duty_Butler_3 12 2004.pdf](#)
-  [MI: Use of Government or Postal Owned or Leased Vehicles_VP DoC O'Reilly_12 23 2013](#)
-  [Reporting Relationships Involving Postal Spouses_COO Donahoe_5 22 2002](#)

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