

TECHNICAL ASSISTANCE – CORRECTIVE AND DISCIPLINARY ACTIONS

Prepared by the Division of Human Resources in the Department of Personnel & Administration in June 2004.

OVERVIEW

Terminating or otherwise disciplining a classified employee is sometimes appropriate and necessary. It is critical to understand how the system works and to do the background work necessary to present a viable and defensible case when corrective or disciplinary action is initiated. If the corrective/disciplinary process is not approached properly and an agency loses on an appeal, adverse consequences may occur. These include:

- adverse impact on the prospect of imposing further corrective/disciplinary actions against the same employee. An appointing authority may become apprehensive about taking future corrective/disciplinary actions and the employee may view such actions as harassment;
- large expenditure of time and money. This is particularly true if attorney fees are requested and awarded;
- ill will. An employee who returns to work after “winning” a disciplinary appeal is often embittered and may transfer these feelings to co-workers; and,
- embarrassment to the agency and possible exposure to public criticism.

One-time occurrences are seldom sufficient to warrant disciplinary action unless the act or conduct is extremely serious or flagrant. For most situations, an appointing authority will begin addressing a problem through informal discussions with the employee before proceeding to corrective or disciplinary action.

When administering corrective or disciplinary actions in a public jurisdiction, such as the state, certain elements are critical. These include:

- documentation;
- complying with due process and procedural requirements, including the need for a pre-termination meeting in which the employee must be given a chance to respond to the allegations and present mitigating information;
- progressive discipline. In most situations, corrective action will be imposed before discipline and a lesser discipline will often be imposed before termination;
- “punishment fits the crime.” The punishment imposed on the employee must be commensurate with the act. For example, an employee would not be terminated based on being late to work on one occasion;

- nexus. This is the connection between the employee's act and the impact it has on the employee's ability to perform duties or the adverse affect it has on the agency should the employee continue employment;
- employee status (e.g., probationary, certified). Length of state service should also be considered. However, this does not necessarily mean that a harsher punishment will be imposed against a shorter-term employee than a longer-term one. In fact, an appointing authority may elect to impose harsher punishment against a longer-term employee because of higher expectations that are placed on that individual due to length of service;
- remediation. In most cases, employees should be given an opportunity to improve before disciplinary action is imposed. However, this is not always true and an appointing authority may proceed immediately to disciplinary action if the employee's act is serious or flagrant enough to justify immediate discipline;
- equitable and consistent treatment. This does not mean that all employees must be treated the same but it means that similarly-situated employees should be. The same requirements are not necessarily imposed on an engineer as on a receptionist.

An employee's overall performance does not need to be unsatisfactory in order to impose corrective or disciplinary action. It is possible for an outstanding performer to receive a corrective or disciplinary action based on a single significant act or incident.

Documentation

Maintaining records of critical incidents, performance ratings and meetings held with all employees is an important management technique. Such documentation is also very helpful in supporting corrective and disciplinary actions. The following are some suggestions for maintaining documentation.

- Delineate clear performance objectives and specify what constitutes satisfactory performance. For example, a supervisor and employee might agree that "no more than two substandard complaints" will be received if an employee is to be considered satisfactory in the area of customer service. A greater number of substandard complaints would reflect unsatisfactory performance for which a performance improvement plan or corrective action is warranted.
- Adopt a monitoring system that allows instances of unsatisfactory performance to be recorded. One method is the "critical incident" method in which a manager records both good and bad performance examples, including the date and a brief description of what occurred. The critical incident method helps identify problem areas and may be used to assist employees in understanding performance

deficiencies. It also provides the manager with a concrete record of events leading to corrective or disciplinary action.

- Complete an interim performance evaluation. While all employees are required to be evaluated at least annually, an appointing authority has discretion to evaluate more frequently and should complete an interim evaluation when performance falls below expectations.

Other Suggestions

- Employees should be given up-to-date copies of their PDQs that show tasks and essential functions. This assists employees in clearly understanding the duties and responsibilities they are assigned.
- Performance planning is critical. Newly hired, promoted, or transferred employees should be provided a performance plan within 30 days of hire.
- Employees should be oriented to the rules governing outside employment, political activities, and any special agency rules concerning working hours, conduct on the job and office procedures. It is important that employees know what is expected in these areas because failure to comply with required conditions may result in corrective or disciplinary action.
- When appropriate, verbal counseling sessions with an employee should occur and the supervisor should document these sessions.
- Employees should be given written copies of any documents that are placed in their personnel files (e.g., records of counseling sessions, critical incidents, etc.). The only exception to this requirement is that employees are not provided copies of information received during the course of reference checks.

Appointing Authority

Responsibility for administering corrective and disciplinary actions is vested with the appointing authority. An appointing authority is defined as:

- the head of a principal department, with respect to divisions ranking next below the department head and for employees of the department head's office;
- the head of a division that is expressly defined by law with respect to all employees within that division;
- the head of a division created by the head of a principal department with the approval of the Governor and in accordance with the Administrative Reorganization Act; and,

- the president of a college or university.

Delegation

An appointing authority may delegate responsibility for administering corrective and/or disciplinary actions. If such authority is delegated, an agency must establish a written document specifying the appointing authority for each individual employee in the area of corrective and disciplinary actions and make this information available to employees. Additional information about this topic may be found in the Technical Assistance for Chapter 1.

CORRECTIVE ACTIONS

Corrective actions do not adversely affect an employee's current base pay, status, or tenure and are often administered after previous informal discussions with an employee have failed to achieve the desired results. Some examples of causes for administering a corrective action are excessive absence or tardiness, unsatisfactory performance, failure to comply with agency rules, and excessive use of agency time or equipment for personal business. Corrective actions are intended to improve an employee's performance or behavior in a formal, systematic manner. They are also an early part of the progressive discipline process. A performance improvement plan is not a corrective action although it may become the basis for a corrective action if an employee's performance does not improve.

In the case of a certified employee, a corrective action should precede discipline unless the act is so serious or flagrant that immediate disciplinary action is appropriate. Trial service employees who are performing unsatisfactorily should be given either a performance improvement plan or a corrective action and a reasonable period of time to improve. A probationary employee is not entitled to a period of time to improve unsatisfactory performance and an appointing authority may elect to proceed immediately to disciplinary action.

The decision to administer a corrective or disciplinary action is based on:

- the nature, extent, seriousness and effect of the act, error, or omission;
- the type and frequency of the unsatisfactory behavior or acts;
- the period of time since a prior offense;
- previous performance evaluations;
- information obtained from the employee;
- any mitigating circumstances; and,

- the need for impartiality in dealing with similarly-situated employees.

Format

Corrective actions must be in writing and should contain a statement that “This is a corrective action pursuant to Personnel Board Rule R-6-8.” A corrective action must be signed by the appointing authority or delegate and contain the following elements:

- the areas of improvement (e.g., improve your typing speed and decrease the number of errors in submitted reports);
- the corrective actions the employee must take (e.g., there will be no more than one error per page on documents that are given to the supervisor for review);
- the time allotted to make the correction. The time should be reasonable and in accordance with the nature of the problem (e.g., within the next 30 days, typing will improve to meet the quality requirements specified in this corrective action and will remain at this level). **In certain situations, specifying a period of time to improve is not appropriate.** For example, a receptionist who is rude to a customer or a supervisor who intimidates a subordinate should be told that there will never be any further incidents of this type;
- the consequences the employee will face for failure to improve. Corrective actions should include a statement that “Failure to comply with this corrective action may result in further corrective and/or disciplinary action, up to and including termination.”
- a statement advising the employee of the right to submit a written explanation that must be attached to and kept with each copy of the corrective action; and,
- a statement advising the employee of the grievance process and the right to grieve a corrective action.

Meeting

The rules do not require that an appointing authority meet with an employee prior to administering a corrective action. However, such a meeting is recommended because it allows an appointing authority and employee an opportunity to discuss the problem in depth and to clarify corrective measures the employee must take. It also allows an opportunity for the appointing authority to obtain information that s/he may not have been aware of when the decision to impose corrective action was reached. For example, it is possible that an employee could advise an appointing authority that the reason for excessive tardiness is because of frequent blood tests. This information could certainly influence the appointing authority’s decision and may also raise family/medical leave and reasonable accommodation issues.

Removal Provisions

An appointing authority has discretion to remove a corrective action from an employee's personnel file at any time. A corrective action may also include a statement that the action will be removed from the personnel file after a specified period of time if the employee satisfactorily complies with the requirements of the corrective action. A removed corrective action may not be used for any subsequent personnel action. This means the previous corrective action may not even be used to show that the employee had knowledge there was a previous performance or behavior problem. For this reason, caution should be exercised in removing corrective actions. A corrective action must be removed from the personnel file if the action is rescinded or overturned by the Personnel Board or an appellate court.

Number

The rules no longer specify the number of corrective actions that should be given prior to proceeding to discipline. This decision is discretionary with the appointing authority based on the circumstances of each individual situation. An appointing authority may elect to proceed immediately to disciplinary action if an employee fails to comply with the terms of a first corrective action or may choose to administer an additional corrective action(s).

Grievance Rights

An employee may grieve a corrective action, including a performance evaluation that results in corrective action. A performance evaluation that results in a performance improvement plan is not a corrective action and is not grievable. However, a performance rating that results in a performance improvement plan may be reviewed through the performance pay system dispute resolution process.

An employee who chooses to grieve a corrective action has the right to have a representative present at any step of the grievance process. Both the employee and the representative are expected to participate in the grievance discussion. An employee may also request mediation. If mediation is requested, the time lines for the grievance process are suspended while mediation is in process. If mediation is unsuccessful, the grievance continues to be processed.

Only the issues presented in the original written grievance are considered. Employees should not be permitted to raise additional issues at later steps of the grievance process.

An employee who is dissatisfied with the final agency grievance decision may petition the Personnel Board under the discretionary hearing provisions. The Board has discretion whether to grant a hearing to review the grievance. Employees must be notified of their right to petition the Personnel Board. The following is suggested language for notifying employees of the right to petition:

If you are not satisfied with this decision, you may petition the State Personnel Board. Rules, procedures and standard appeal forms are available at our agency personnel office. The petition for hearing must be in writing, signed by you or your representative, and must be mailed or hand delivered no later than 10 days after the date you receive this decision. A copy of your petition for hearing must also be provided to me. The Board's address is:

State Personnel Board
633 17th Street, Suite 1320
Denver, CO 80202

DISCIPLINARY ACTIONS

Disciplinary actions are administered for an offensive act or poor job performance and adversely affect an employee's current base pay, status, or tenure. Some examples of causes for administering a disciplinary action are theft, client or resident abuse, and ongoing unsatisfactory performance.

Reasons

The following are the reasons for administering disciplinary action.

- Failure to perform competently. If disciplinary action is taken for this reason, an appointing authority should be prepared to show in a subsequent appeal that:
 - there were performance standards;
 - the standards were reasonable;
 - the standards were communicated to the employee;
 - the standards were not met; and,
 - appropriate training was provided and the employee was given an opportunity to improve.

- Willful misconduct or violation of the personnel rules or agency rules or law that affect the ability to perform the job. If disciplinary action is taken for this reason, an appointing authority should be prepared to show in a subsequent appeal that:
 - the employee knew the rule or appropriate behavior;
 - the rule was reasonable;
 - the employee violated the rule or appropriate behavior; and,
 - the nexus between the employee's action and the potential or actual adverse impact on the agency and/or the employee's ability to perform the job.

Willful misconduct is not limited to violations of written or stated rules. It also includes violations of generally accepted standards. For example, it is not necessary that an agency have a written rule

prohibiting theft of state property in order to discipline an employee who is caught stealing.

- False statement of fact during the application for a state position. An employee may be disciplined even though this offense is not discovered for several months or years after the employee begins state employment.
- Willful failure to perform (insubordination), including failure to plan or evaluate performance in a timely manner, or inability to perform. This includes being charged with a felony or other offense involving moral turpitude, when such action or offense adversely affects the employee's ability or fitness to perform assigned duties, or has an adverse effect on the agency should the employee continue employment. If disciplinary action is taken for this reason, an appointing authority should be able to show in a subsequent appeal that:
 - the employee knew the duties;
 - the duties were reasonable; and,
 - the employee willfully failed to perform.
- Final conviction of a felony or other offense of moral turpitude that adversely affects the employee's ability to perform the job or has an adverse effect on the agency if employment is continued. Final conviction includes a no contest plea or acceptance of a deferred sentence. If disciplinary action is taken for this reason, an appointing authority should be able to show in a subsequent appeal that:
 - the conviction is final (an appealed conviction is not final until it is affirmed by an appellate court); and,
 - the nexus between the final conviction and the adverse impact on the agency should the employee continue employment.
- Final conviction of an offense of a Department of Human Services employee subject to the provisions of C.R.S. 27-1-110. This statute addresses direct care employees of the Department of Human Services who have been convicted of certain crimes and who have contact with vulnerable persons. Final conviction includes a no contest plea or acceptance of a deferred sentence. If a conviction is appealed, it is not final until affirmed by an appellate court.

Suspension Pending a Final Conviction

An employee who is charged with a felony or other offense of moral turpitude that adversely affects the employee's ability to perform the job or has an adverse effect on the agency may be suspended indefinitely without pay pending a final conviction. However, the employee must be restored to the position and granted full pay, benefits and service credit if there is not a final conviction or if the charges are dismissed prior to trial. Department of Human Services employees who are charged with certain crimes and who have contact with vulnerable persons may be indefinitely suspended without pay pending

final disposition of the offense. A Board Rule 6-10 meeting (see discussion below) must be held prior to suspending an employee for this or any reason. Appointing authorities should carefully weigh imposing indefinite suspensions and instead should consider whether imposing a disciplinary action for willful failure or inability to perform may be a better approach for addressing such situations.

Administrative Leave

An appointing authority may place an employee on paid administrative leave during a period of investigation. Placing an employee on administrative leave during a period of investigation is not a disciplinary action and a Board Rule 6-10 meeting is not required. Reasons for placing an employee on administrative leave during a period of investigation include (1) when there is reason to believe that the employee's conduct may endanger the welfare of the agency, the agency's employees or the public; or, (2) when there is reason to believe that either the employee's conduct or presence may impair an investigation. Currently, there is not a limit on the length of time an employee may be placed on administrative leave during an investigation.

Before the Board Rule 6-10 Meeting

An appointing authority should conduct an appropriate investigation before a Board Rule 6-10 meeting is held. This may include talking to and requesting written statements from other employees when an incident is involved, reviewing supervisory documents and records, reviewing agency and state rules, etc. Additional guidance concerning the investigation process may be obtained from the Employment Section of the Department of Law.

Board Rule 6-10 Meetings

A Board Rule 6-10 meeting is a meeting between a certified employee and an appointing authority when the appointing authority is considering administering disciplinary action. During the meeting, the appointing authority presents information about the reasons for potential discipline and allows the employee an opportunity to admit or refute the information and to present information regarding mitigating circumstances. A Board Rule 6-10 meeting is not a formal hearing but, instead, is an opportunity for the employee and the appointing authority to meet and exchange information.

Probationary employees are not entitled to a Board Rule 6-10 meeting if disciplined for unsatisfactory performance. However, the appointing authority should have documentation that clearly demonstrates the reason for discipline was unsatisfactory performance. This information will be critical if the employee alleges discrimination or retaliation for disclosure of information and petitions the Personnel Board to review the action. A Board Rule 6-10 meeting must be held whenever disciplinary action against a trial service employee is contemplated. This includes reverting a trial service employee for unsatisfactory performance during the trial service period.

It is advisable to provide an employee with advance written notice of a Board Rule 6-10 meeting (see sample letter at the end of this document). The notice should advise the employee of the meeting and the right to have a representative present. While the notice does not need to include the specific charges, it is desirable that the employee be given some information about the reason discipline is contemplated.

The rules prohibit partial delegation when authority for conducting a Board Rule 6-10 meeting is delegated. The person holding the meeting must also decide if discipline will be imposed and impose the discipline.

Both the employee and the appointing authority are permitted one representative at a Board Rule 6-10 meeting. If either party wishes to have more than one additional party present at the meeting, the other party's consent should be obtained. All parties at a Board Rule 6-10 meeting are allowed to participate.

The rules do not discuss tape recording Board Rule 6-10 meetings. However, the Employment Law Section of the Attorney General's office strongly recommends that all such meetings be tape recorded because a later transcript of the meeting may be needed in a subsequent appeal.

The appointing authority should be open-minded and listen carefully and objectively to the employee's explanation and point of view. Information should never be presented in a way that gives an employee the impression that there is not a "reasonable chance to succeed." Instead, the employee must have an opportunity to convince the appointing authority not to impose discipline. In the Shumate case, the Court of Appeals overturned an employee's dismissal because the appointing authority had prepared a dismissal letter in advance of the meeting and presented it before any discussion was held with the employee.

Statements made during a Board Rule 6-10 meeting are not privileged. This means that an employee cannot admit to an act during the meeting and later claim that this admission cannot be used in a subsequent proceeding.

A decision should not be announced at the conclusion of the Board Rule 6-10 meeting. Instead, the appointing authority should advise the employee that all information will be carefully considered and the employee will be notified, in writing, of the decision. During the meeting, an employee may request an opportunity to present additional written information. Should this happen, the appointing authority should agree to keep the meeting open for a specified period of time to allow the employee this opportunity.

A representative from the agency human resources office often attends Board Rule 6-10 meetings and serves as a resource for both the appointing authority and employee during such meetings.

Alternate Board Rule 6-10 Process

The alternative process is used when reasonable efforts to meet with an employee fail. Under this process, an appointing authority notifies an employee in writing of the possible need to administer disciplinary action and the reasons for the action. The employee has 10 days from receipt of the notice to present information in writing. A dated return receipt from a mail carrier is conclusive proof that the employee has received notice and the 10-day response period begins on that date. Agencies may want to consider also sending the notice by regular mail. This is useful in situations in which an employee refuses to accept certified notice.

Actions After the Board Rule 6-10 Meeting

It is possible that information may be presented during the Board Rule 6-10 meeting that warrants further investigation. If this happens, the additional information should be reviewed and any necessary additional interviews with others having knowledge of the action conducted. It is also a good idea to review the employee's past employment record, including performance appraisals and other corrective or disciplinary actions, before making a decision.

Types of Disciplinary Actions

The following disciplinary actions may be considered:

- dismissal;
- suspension. Suspensions are limited to 30 days if imposed by an appointing authority, unless the suspension is based on an employee being charged with a felony or other offense involving moral turpitude. An administrative law judge or the Board may reverse a dismissal and substitute a disciplinary suspension for a period of time up to the time of the decision. Disciplinary suspensions of overtime-exempt employees must be imposed in one-week blocks of time;
- demotion;
- adjustment of pay to a lower rate in the pay grade; and,
- any other action that adversely affects current base pay, status, or tenure.

Notice of Disciplinary Action

An employee must be notified in writing of a disciplinary action no later than five days of the effective date of the discipline. The notice of disciplinary action must be sent by certified mail and may also be given to the employee. Agencies may want to consider also sending the notice by regular mail to address situations in which an employee refuses to accept a certified letter. The written notice of disciplinary action must state the action

taken, the specific charges giving rise to the action, matters considered by the appointing authority in reaching the decision to impose discipline (e.g., information presented during the Board Rule 6-10 meeting and other information that was considered), and inform the employee of the right to appeal the action to the State Personnel Board within 10 days of receipt of the notice. In the case of dismissal, the notice should also advise the employee whom to contact for COBRA and PERA information. The employee must also be advised of the right to submit a written statement that will be attached to the disciplinary action. A copy of a disciplinary action must be placed in the employee's personnel file.

All notice provisions apply to probationary employees who are terminated for unsatisfactory job performance.

Resignation in Lieu of Discipline

An appointing authority may enter into settlement discussions with an employee after a decision to impose discipline has been reached. An employee who chooses to resign in lieu of disciplinary action forfeits any appeal rights of the discipline. Any amount paid or benefit provided incident to termination of employment is an open record (24-72-202(4.5)).

Appeal Rights

Certified employees may appeal disciplinary actions to the Personnel Board within 10 days of the employee's receipt of notice of the discipline. A certified employee has a right to be granted a full hearing to review a disciplinary action. This includes employees in the Senior Executive Service.

A trial service employee is also granted a full hearing to review any disciplinary action, except reversion to the former certified class for unsatisfactory performance. Trial service employees may petition the Board to review a reversion based on unsatisfactory performance and the Board has discretion to grant a hearing.

A probationary employee does not have the right to appeal discipline for unsatisfactory performance unless the employee alleges violations of law or that the action was for reasons other than unsatisfactory performance (e.g., discrimination, whistleblower violation).

A disciplinary action will be upheld unless the Personnel Board finds that the appointing authority's action was arbitrary, capricious, or contrary to rule or law. The Board will not substitute its judgment for that of the appointing authority if the discipline imposed was within the range of alternatives available to a reasonable and prudent administrator.

The agency has the burden of proof in an appeal of a disciplinary action.

Removal Provisions

A disciplinary action must be removed from an employee's personnel file if it is rescinded or overturned by the Personnel Board or an appellate court.

SUBSTANCE ABUSE

Colorado's substance abuse policy provides that the use of alcohol, other drugs or controlled substances resulting in job impairment is prohibited. The policy also prohibits the illegal possession, manufacture, use, sale, or transfer of a controlled substance on state property and during work hours. Violation of these provisions is cause for management intervention that may result in referral to mandatory treatment and/or corrective or disciplinary action including termination.

NOTE: The mandatory referral provisions under the substance abuse policy apply to this subject only. A manager cannot mandate intervention by the Colorado State Employees Assistance Program (CSEAP) for behavioral issues when drug or alcohol abuse is not involved.

Drug and alcohol problems should be considered in terms of performance. If performance is not impacted by an employee's use of alcohol or drugs outside work and the employee has not been charged with an offense that adversely affects the employee's ability or fitness to perform assigned duties, it is questionable whether a disciplinary action would be upheld if the only basis for the disciplinary action is drug or alcohol use that does not affect performance.

In most cases of drug and alcohol use that affect performance, an employee should be given a corrective action and an opportunity to improve performance. The corrective action might require the employee to attend alcohol or drug abuse treatment. But, in cases in which an employee's alcohol or drug use poses an immediate threat to others or adversely affects the employee's ability to perform duties, immediate disciplinary action may be imposed. For example, an appointing authority might proceed immediately to disciplinary action against an employee who drives a state vehicle while alcohol or drug impaired and causes an accident.

It is possible to take corrective or disciplinary action for off-duty drug or alcohol use if an employee is charged with a felony or other offense involving moral turpitude if the charge adversely affects the employee's ability to perform assigned duties or has an adverse effect on the agency if the employee continues employment. For example, a state patrol officer who is charged with illegal off-duty drug use may be corrected or disciplined if the agency can show that the charge adversely affects the employee's ability to perform duties or has an adverse impact on the agency. In this example, the agency could show that the drug abuse adversely affects the officer's ability to arrest suspected drug users or dealers or has an adverse effect on the agency's credibility in the community.

Mandatory treatment can be a condition of continued employment as long as the requirement for treatment is based on a performance problem. Mandatory treatment can be used in conjunction with a corrective action. However, an employee's failure to accept mandatory treatment must be considered in light of the effect the failure to accept the treatment has on the employee's performance.

In considering whether to take corrective or disciplinary action based on alcohol or drug abuse, it is important to consider the requirements of the Americans With Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and the Rehabilitation Act of 1973. Agencies should also consult with the Employment Section of the Attorney General's office when faced with a potential corrective or disciplinary action involving drug or alcohol use.

ADMINISTRATIVE DISCHARGE

Please refer to the Chapter 7 technical assistance that is available on the Internet for information about administrative discharge (e.g., layoff, termination based on exhaustion of paid leave).

LEGAL DECISIONS

The following are summaries of Personnel Board and administrative law judge decisions. While not binding, they may be persuasive in future appeals.

Probationary Employees Have Mandatory Right to Appeal Adverse Non-Disciplinary Actions (Court of Appeals Case 89CA1712)

Probationary employees have a mandatory right to a hearing before the State Personnel Board to review disciplinary action if the discipline is for any reason other than unsatisfactory performance. Thus, probationary employees have the right to appeal layoff and other non-disciplinary actions to the Personnel Board and will be granted a hearing to review the adverse action.

Trial Service Employees Entitled to Pre-Disciplinary Meeting and Progressive Discipline (Case 878-B-169)

A pre-disciplinary meeting must be held before reverting a trial service employee to the previously certified class. Trial service employees are also entitled to progressive discipline (e.g. corrective action before disciplinary action) before reversion for unsatisfactory performance.

Specific Rule Does Not Have to Be Violated in Case of Misconduct (Court of Appeals Case 890-B-141)

A specific agency rule does not have to be violated for an employee to be dismissed for willful misconduct. "Willful misconduct is not limited to violation of written or stated rules; rather it includes violations of generally accepted standards of performance and

violations of Colorado Statutes.” The Court specifically rejected the employee’s contention that violation of a specific rule must occur in order for an employee to be dismissed for willful misconduct.

Removed Corrective Action Cannot Be Used for Future Disciplinary Purposes (Case 98B097)

A corrective action that has been removed from an employee’s file cannot be used to establish that the employee was on notice of the need to correct matters or conduct addressed in the removed corrective action.

Party Instituting Discipline has the Burden of Proof (Case 901-B-166)

The party instituting a disciplinary action is the proponent of the order and has the burden of proof. “The general rule in a Personnel Board review of a disciplinary action of a certified state employee is that the burden of proof is on the terminating authority, not the employee. A certified state employee’s property interest in his employment may not be deprived without due process of law.”

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to Chapter 6 of the Personnel Board Rules and Director’s Administrative Procedures or contact your agency human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

Sample Notice of Board Rule 6-10 Meeting

Date

Dear:

I have received information that indicates the possible need to administer disciplinary action based on your frequent absences from work without approved leave.

In accordance with Personnel Board Rule 6-10, I have scheduled a meeting with you on (date, place and time) to present information about the reason for potential discipline and allow you an opportunity to respond. The purpose of this meeting is to exchange information and allow you to present any mitigating circumstances you would like me to consider before a final decision is made.

You have the right to have a representative of your choice present at this meeting. You may also provide me with any written and/or oral information that you would like me to consider.

Please let me know immediately if you have questions about this Board Rule 6-10 meeting.

Sincerely,

Appointing Authority

cc: Personnel File

Sample Corrective Action

Date

Dear:

This letter is a formal corrective action pursuant to Personnel Board Rule R-6-8.

As I have previously discussed with you verbally, you have been late to work on a number of different occasions. As you know, your work hours are 8:00 a.m. – 5:00 p.m. However, you have been late to work on the following dates:

Date

Time Arrived at Work

(Insert Discussion of Facts)

I expect you to immediately begin arriving at work on time on a regular basis and that your punctuality will improve within the next 30 days. You must be at your desk ready to work by 8:00 a.m. each day. If for some reason you are unavoidably detained, you must contact me no later than 8:15 a.m. on that same day. Should your punctuality not improve, I will consider taking further corrective and/or disciplinary action, up to and including termination.

You have the right to submit a written response to this corrective action, which will be attached to every copy of the corrective action. If you wish to protest this corrective action, you may initiate the grievance process. To do so, you must put your grievance in writing and give it to me no later than ten (10) calendar days after you receive this notice. Additional information concerning the grievance process is available from our agency human resources office. If you fail to pursue your grievance within this time limit, you will be deemed to have abandoned your grievance.

If your grievance alleges discrimination, you must file a copy of the grievance with the State Personnel Board no later than the tenth calendar day after you receive this corrective action. The State Personnel Board is located at 633 17th Street, Suite 1320, Denver, Colorado 80202.

I hope that this information is clear. Please contact me immediately if you have questions about any aspect of this corrective action.

Sincerely,

Appointing Authority

cc: Personnel File

Sample Corrective Action

Date

Dear:

This letter is a formal corrective action pursuant to Personnel Board Rule R-6-8.

As we discussed, I have received several complaints about your abrupt telephone manner with members of the public who contact our office for assistance. Specifically, I have been advised that you refuse to take messages when the person the caller asks for is not available. Instead, you tell the caller “you’re too busy to take a message and to call back some other time.”

In the future, I expect you to be pleasant and courteous in all of your dealings with the public. You are to respond to requests for assistance courteously and in a manner that conveys a positive image of our agency. If the person the caller wishes to speak with is unavailable, you are to state that you will be happy to take the caller’s name and telephone number. You are to further state that you will ask the person the caller wishes to speak with to return the call as soon as possible. Finally, you are expected to attend a telephone skills workshop next Monday, February 26, from 9:00 until 11:30 in Room 111 of this building.

A copy of this letter will be placed in your personnel file for the next twelve months. Should there be any other reports of discourtesy on the telephone, I will consider taking further corrective and/or disciplinary action, up to and including termination. If at the end of the twelve-month period we have received no further complaints about your telephone manner, this letter will be removed from your personnel file.*

*Note: If the corrective action is removed from the file, it cannot later be used for any reason. Caution is advised in removing a corrective action from a personnel file.

You have the right to submit a written response to this corrective action, which will be attached to every copy of the corrective action. If you wish to protest this corrective action, you may initiate the grievance process. To do so, you must put your grievance in writing and give it to me no later than ten (10) calendar days after you receive this notice. Additional information concerning the grievance process is available from our agency human resources office. If you fail to pursue your grievance within this time limit, you will be deemed to have abandoned your grievance.

If your grievance alleges discrimination, you must file a copy of the grievance with the State Personnel Board no later than the tenth calendar day after you receive this

corrective action. The State Personnel Board is located at 633 17th Street, Suite 1320, Denver, Colorado 80202.

I hope that this information is clear. Please contact me immediately if you have questions about any aspect of this corrective action.

Sincerely,

Appointing Authority

Sample Disciplinary Action

Date

Dear:

I have evaluated the evidence and information we discussed during the Board Rule 6-10 meeting held on (date). I have also reviewed the supplemental information you provided on (date). (or I gave you an opportunity to provide further information by (date) but have not received any submissions from you.) This letter is notice pursuant to Personnel Board Rule R-6-12 that I have decided to take disciplinary action. Your employment will be terminated as of close of business, Friday, March 2, 2001.

The specific charges concern your repeated tardiness and failure to report to work on a number of occasions. At our meeting last week, your supervisor documented a number of times when you were late to work and failed to appear several different times. These problems persisted even though similar behavior was the basis for a corrective action that was issued to you two months ago. At our Board Rule 6-10 meeting, you failed to provide any information to contradict the information that your supervisor presented nor did you present any mitigating reasons for your repeated tardiness and absences.

The Personnel Rules provide that disciplinary action may be taken against an employee for failure to perform competently. Your repeated tardiness and absences constitute failure to perform competently. Last month alone, you were late on eight different occasions and failed to report to work on three scheduled working days.

You may protest this action by filing an appeal under rules and procedures available from our personnel office. The personnel office also has standard appeal forms for your use. The appeal must be in writing, signed by you or your representative and must be mailed or delivered no later than the tenth calendar day after you receive this letter, addressed as follows:

State Personnel Board
633 17th Street, Suite 1320
Denver, CO 80202

State Personnel Director
1313 Sherman Street, 1st Floor
Denver, CO 80203

The ten-day deadline and these appeal procedures also apply to all charges of discrimination.

You should contact our personnel office for information about COBRA and PERA benefits to which you may be entitled.

I hope that this information is clear. Please contact me immediately if you have questions.

Sincerely,

Appointing Authority

cc: Personnel File

Sample Disciplinary Action

Date

Dear:

On (date), a Board Rule 6-10 meeting was held with you to discuss information concerning the accident in which you were involved while operating a state vehicle on official business. Specifically, you failed to stop at a stoplight and were hit broadside by a vehicle traveling in the opposite direction. The State Patrol gave you a citation for reckless driving after investigating the accident and obtaining information from two eye witnesses. This accident caused \$2,000 damage to the state vehicle and is the second accident you have been involved in while on state business this year.

After considering all of the information you presented during the Board Rule 6-10 meeting and reviewing your employment history with our department, including the other accident you were involved in this year, it is my decision that your conduct constitutes failure to perform competently. In view of the offense and after considering the mitigating circumstances you presented, it is my decision that your pay will be disciplinarily reduced from \$3,500 per month to \$3,200 per month for a three-month period, beginning April 1, 2001.

You may protest this action by filing an appeal under rules and procedures available from our personnel office. The personnel office also has standard appeal forms for your use. The appeal must be in writing, signed by you or your representative, and must be mailed or delivered no later than the tenth calendar day after you receive this letter, addressed as follows:

State Personnel Board
633 17th Street, Suite 1320
Denver, CO 80202

State Personnel Director
1313 Sherman Street, 1st Floor
Denver, CO 80203

The ten-day deadline and these appeal procedures also apply to any charges of discrimination.

I hope this information is clear. Please contact me immediately if you have any questions.

Sincerely,

Appointing Authority

cc: Personnel File

Sample Resignation in Lieu of Disciplinary Action

I, _____, hereby resign my position # _____ as a General Professional III, at the Department of _____, effective _____. This is a voluntary resignation in lieu of disciplinary action being taken against me. This resignation is irrevocable and I understand that it may not be withdrawn.

I understand that by resigning in lieu of disciplinary action, I am giving up any rights I may have to file an appeal of this resignation or the potential disciplinary action to the State Personnel Board.

Employee

Date

Appointing Authority

Date

Witness

Date