

Performance-Based Actions

It is estimated that 20% of the workforce is responsible for 80% of the workload for the EMR Specialist. We are now ready to discuss some employees in that 20%. Just as pay-for-performance helps supervisors to reward exceptional performance, the concept also applies to dealing with poor performance. For the next lesson we will look at alternatives for dealing with poor performance. The formal requirements of the program are:

- Postponing/Withholding WGs
- Performance Improvement Plan
 - Reassignment, Demotion, or Removal
- Chapter 43 – ([5 USC §4301](#)) – Performance Improvement Period
- Chapter 75 – ([5 USC §7501](#)) – Adverse Actions

It looks like we are about to get the full and undivided attention of an employee. At this point, the employee's career could be in jeopardy. There are two options for the employee: (1) improve performance or (2) suffer the consequences.

Before we proceed, let's review a few procedures.

Supervisors should not wait until the end of the appraisal period to deal with the poor performance. Poor performance should be dealt with as it occurs. Since the supervisor is required to conduct progress reviews with employees, the confrontation should not come as a surprise. The counseling session should serve two purposes:

- a. To let the employee know in specific terms how performance is deficient, and
- b. To develop a course of action that will enable the employee to improve performance in the deficient areas.

The employee's specific deficiencies should be compared with the applicable standards in the work plan. The supervisor must then explain what the employee must do to meet the standards. A discussion with the employee is not sufficient. The supervisor should look to the root of the problem, i.e., will training help the employee meet standards? Is a medical problem or alcohol or drug abuse a cause? Is it merely a need for closer supervision? The employee must be given a time-table for improvement and be told the potential consequences of failure to meet the standards.

When an employee's performance falls to an unacceptable level, the "unacceptable" performance requires that an employee be reassigned, reduced in grade, or removed. Before these actions can be taken, however, the supervisor must inform the employee of the element for which performance is unacceptable, in what way it is unacceptable, and exactly what is required to bring it to an acceptable level. The employee is then provided an "opportunity period" to improve.



A rating of record (out of cycle rating) is recommended when performance is unacceptable and a new rating is issued when performance improves. Be sure to check when the next WGI is due because you do not want a WGI processed at the same time that the supervisor has placed the employee on a performance improvement plan but did not render a rating of record of less than acceptable performance.

Performance deficiencies may be documented through a number of avenues including the use of AF Form 860B, memos, written instructions clarifying expectations, or by providing on the job training to correct a deficiency.

When an employee's performance becomes unacceptable in one or more critical elements, the employee must be informed in writing that their performance is unacceptable and the elements which are unacceptable; how performance is unacceptable; and what the employee must do to remain in the position.

- The employee must have an actual opportunity to show improvement in the area of responsibility. A reasonable period is usually 30 to 60 days but may be longer depending on work cycle, level of duties and responsibilities.
- The supervisor must help the employee during the opportunity period. This may include closer supervision and counseling, monitoring of performance, personal demonstration, supervisory or peer coaching, frequent reporting, special assignments, and on-the-job training
- Counseling sessions must not be disparaging in nature. Must offer guidance or advice on how to improve work. Must warn of possibility of impending or contemplated actions. No "secret," negative record without meaningful opportunity to improve.

When a supervisor decides to issue a proposal to take an adverse action, the notice of proposal must cite specific instances of unacceptable performance: where, when, what and how the employee's job performance was deficient. It must tell the employee what the supervisor plans to do--either demote or remove.

MSPB has ruled that only the performance during the opportunity period must be shown to be unacceptable because this is the period relied upon to make the determination to take action ([Gary O. Wilson v. Department of the Navy, MSPB Docket No. SF04328410092, December 4, 1984](#)). If you include specific incidents of poor performance that occurred prior to the opportunity period, take care that you do not go back farther than one year from the decision to remove or demote.

If the employee improves performance to an acceptable level, no further action is required. If the employee does not improve performance, a final decision letter must be issued to the employee. It is not necessary to repeat all the "specifics" in the decision notice, but to merely make a direct reference to them. The specific, applicable appeal/grievance entitlements must be included in the letter. A reassignment is grievable, either through the Air Force or negotiated grievance procedure. A demotion or removal (adverse action) triggers the following entitlements:

- (1) Demotions and removals of a non-bargaining unit employee who is a preference eligible, or in the competitive service, are appealable to the MSPB.

(2) Demotions and removals of non-bargaining unit employees who are non-preference eligible in the excepted service are appealable to MSPB. Non-preference eligible Defense Civilian Intelligence Personnel System (DCIPS) employees may grieve when the employee is not terminated for national security reasons. See [AFI 36-1203](#), Para 13.

(3) Bargaining unit employees with access to negotiated grievance procedure may use it or appeal to MSPB, but not both.

(4) Final decision by reviewing official to withhold Within-grade increases are appealable to the MSPB.

If poor performance is identified earlier than the end of the performance appraisal period, it can be dealt with more effectively. One of the first things the supervisor needs to consider is whether a WGI is due. If one is due before the end of the formal appraisal rating period, a rating of record reflecting substandard performance must be rendered in order to withhold the pending WGI. But what if there isn't time to render a rating before the WGI is due?

[AFI 36-1001](#), Para. 6.4 explain the two conditions for postponement of a WGI as:

- (1) If the employee's performance is unacceptable and the employee has not been given a performance plan or other explanation of standards at least 30 days before the end of the WGI rating period.
- (2) If the employee has been reassigned or demoted because of unacceptable performance and is, or will be, eligible for a WGI within 60 days. Explain that this is a safeguard to prevent a pay increase that is not warranted.

There are three situations that cause a WGI to be withheld:

- (1) When the rating of record is acceptable and performance has deteriorated to unacceptable.
- (2) When the rating of record is unacceptable.
- (3) When the employee failed to demonstrate acceptable performance during the 90-day postponement period.

When a decision is made to withhold the WGI, the employee must be provided a Rating of Record (AF Form 860A) if not already provided. Second, a notice of decision to withhold the WGI must be prepared and given to the employee. A sample decision to withhold a WGI is at Figure 6-1, of [AFI 36-1001](#). This sample decision is designed for a situation where the rating of record was acceptable and performance has declined and is unacceptable on one or more critical elements.

If the supervisor denies the WGI or takes another adverse action, the employee can request reconsideration. If the reconsideration decision sustains the denial, recourse depends on whether or not the employee is covered by a collective bargaining agreement. Employees not covered have appeal rights to the Merit Systems Protection Board.

Covered employees must use any procedures prescribe by the negotiated grievance procedure.

Taking performance-based actions has proven to be a real challenge for EMR specialists, as well as the supervisors we advise. We need to be on top of performance problems before they even occur. We need to take a more proactive approach by contacting the supervisors of new employees who are in the 1st year probationary period to determine if there are any problems. It is much easier to remove an employee at that time. [OPM's website on performance management](#) is loaded with handy reference tool that will help you to assist your managers in the early stages of performance difficulties. You must remain current on new and significant changes in case law.