Merit Systems Protection Board

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Poor Performers Need to be Addressed through Performance Management

Poor performers are a serious concern for the Federal workforce, and one that the Government has historically had difficulties addressing. However, as explained in a recent report by the U.S. Merit Systems Protection Board (MSPB), *Addressing Poor Performance and the Law*, the biggest obstacle to addressing poor performers in the Federal Government is not created by a statute, but rather is simply a question of how supervisors manage the performance of their employees.

In the Civil Service Reform Act (CSRA) of 1978, Congress attempted to make it easier for supervisors to remove poor performers by lowering the burden of proof the agency had to meet. Under 5 U.S.C. Chapter 75, the agency had been required to prove that it was more likely than not that the employee was a poor performer. After the passage of the CSRA, agencies could still use Chapter 75, but they also were given the option to use Chapter 43, under which the agency only has to prove that a reasonable person could conclude that the employee had failed in one or more critical aspects of the job after being offered an opportunity to improve.

However, even with both sections of the law being used, agencies still encounter difficulties taking performance-based actions because the underlying challenge does not come from the level of the burden of proof. In order to take a performance-based adverse action under either chapter, an agency first must

engage in performance management. The agency is required to articulate a performance expectation, measure it, and document the extent to which the employee has met or failed to meet expectations. According to an MSPB survey of management officials, this is where the challenge lies in taking performance based actions.

More than half of the survey respondents reported that performance-based actions were more difficult to take than conduct-based actions. When asked why the respondents had reported that performance-based actions were difficult to take, the respondents stated that supervisors had difficulty creating standards for performance and documenting how well employees are meeting those standards. Because the difficulties encountered by supervisors originate in performance management, the solution to addressing poor performance resides there as well rather than in any particular changes to the law. Hiring good supervisors and training them to manage performance effectively is the Government's best opportunity to be able to address poor performing Federal employees, including the removal of poor performers when necessary.

The MSPB is an independent, quasi-judicial agency that protects Federal merit systems and the rights of individuals within those systems. To request a printed copy of the report, e-mail STUDIES@mspb.gov; call (202) 653-6772, extension 1350, or write: Merit Systems Protection Board, Office of Policy and Evaluation, 1615 M Street NW, Washington, DC 20419. The report may be downloaded from the Board's website at www.mspb.gov.