

ISSUES OF MERIT

Spring 2015

a publication of
the U.S. Merit Systems
Protection Board,
Office of Policy
and Evaluation

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Effective Performance Discussions: Don't Forget to Look Forward

Much of the guidance on performance evaluation focuses on measurement—developing standards of performance, evaluating performance against those standards, and documenting the results. Performance evaluations matter greatly to employees as a factor in pay decisions and as a lasting reflection of the organization's valuation of employees' work contributions. Thus, it is important that they be done carefully rather than casually.

Performance evaluations and performance discussions should not focus exclusively on the past. The purpose of performance evaluation—and the employee-supervisor discussion of an evaluation—is not merely to look back. It is also to look forward—to think about what should be done to sustain or improve performance. Indeed, one of OPM's warranty conditions for a performance management program is “commitment to... conscientious development of employees.” That look forward should include both *performance* (What results do we want?) and the *person* (What skills or support does the employee need to achieve those results?). The box to the right provides some questions that supervisors and employees might use to “look forward” during a performance discussion and guide

their actions after the formal appraisal has been signed and filed away.¹ ❖

¹ U.S. Office of Personnel Management, Reference Materials: Performance Management, “Warranty Conditions,” www.opm.gov/policy-data-oversight/performance-management/reference-materials/more-topics/warranty-conditions/.

Supervisor:

Performance Questions

- What do you see as your role in the office?
- What do you need from me and/or the agency to succeed?

Person Questions

- What skills would you like to improve or develop?
- What can I and/or the agency do to support your growth and development?

Employee:

Performance Questions

- What are the office's priorities?
- What contributions should I continue to make?
- What new roles could I take on?

Person Questions

- What strengths should I build on?
- What skills could I strengthen?
- How can I build new skills?
- How can I grow into new roles?

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DIRECTOR'S PERSPECTIVE

Behind the Whistleblower Numbers

At a House subcommittee hearing last September, a witness asserted that the success rate for whistleblowers before MSPB

Administrative Judges (AJs) is unreasonably low and that it may be inferred that AJs are biased in favor of the Government. Is there more to the story? I believe so, and here is why.

The Whistleblower Protection Act of 1989 prohibits retaliation against a Federal employee or applicant for Federal employment who discloses: a violation of law, rule, or regulation; a substantial and specific danger to public health or safety; an abuse of authority; a gross waste of funds; or gross mismanagement. The law was amended in 1994 and 2012, each time with the intention of strengthening protections for whistleblowers. The Office of Special Counsel (OSC) investigates complaints of whistleblower retaliation. When the complainant is not satisfied with the result before OSC, he or she may file an Individual Right of Action Appeal (IRA) with the MSPB against the agency involved. An AJ renders a decision based on evidence and argument presented by the parties, and either party may petition the three-member Board for review of the AJ's decision.

OSC achieved "136 favorable actions" on whistleblower retaliation complaints in FY 2014.¹ The table

¹ *FY 2014 Performance and Accountability Report*, at 10, available at: osc.gov.

below summarizes outcomes in the 305 IRA appeals that MSPB closed in FY 2014.²

Outcome		Appeals	
Dismissed (255 appeals)	No jurisdiction, untimely, or previously decided	144	47%
	Remedy not exhausted	17	6%
	Withdrawn	25	8%
	Settled	69	23%
Decided (50 appeals)	Corrective action ordered	10	3%
	No corrective action ordered	40	13%

Two things are noteworthy about these numbers. First, the individual obtained some measure of relief, either by negotiated resolution or binding decision, in 79 cases—26% of the IRA appeals closed by MSPB in FY 2014. Indeed, considering only the 119 IRA appeals in which the individual exhausted the OSC complaint process as required by law, filed the appeal on time, established jurisdiction, had not previously resolved the matter, and chose to continue with the litigation, the individual received some measure of relief in 79 cases, or over 66% of the time. Moreover, although MSPB does not track the contents of settlement agreements, many settlements include substantial relief. For example, OSC reported that an IRA appeal in which it was involved was settled with a \$360,000 payment to the individual and all negative references removed from the individual's personnel file.³

(continued, page 3)

² *Annual Performance Report and Plan for FY 2014 - 2016*, at 44-45, available at: mspb.gov.

³ *FY 2014 Performance and Accountability Report*, at 17, available at: osc.gov.

Director's Perspective

(continued from page 2)

Second, in FY 2014 OSC achieved relief to the satisfaction of the whistleblower in nearly *three times* as many cases as MSPB decided on the merits. In IRA appeals before MSPB, agencies agreed to provide relief to the satisfaction of the individual in 69 cases—19 more than were decided on the merits. It is far-fetched to think that agencies agreed to provide relief that satisfied the whistleblowers, either before OSC or before MSPB, in the weakest retaliation cases. What appears to be happening is that the strongest retaliation cases are resolved at the OSC level; the remaining cases come to MSPB, and even then, in a significant number of cases, either the agency offers relief to the satisfaction of the whistleblower or MSPB grants corrective action. It also bears mention

that of the precedential decisions issued by the Board members in FY 2014 that involved whistleblower reprisal claims, the Board either granted relief or found the whistleblower's argument for additional examination of his or her case persuasive 62% of the time.

To be fair, the FY 2014 figures from OSC and MSPB were not available at the time of the September 2013 subcommittee hearing mentioned above. It is evident from these figures that the legal protections for whistleblowers are more effective than MSPB's detractors suggest they are. ❖

James Read

Director, Policy and Evaluation

4 Perceptions (and Realities) about Federal Adverse Actions

Perception 1:

It is impossible to fire a Federal employee.

Reality:

From FY 2000-2014, over 77,000 full-time, permanent, Federal employees were discharged as a result of performance and/or conduct issues.¹

Perception 2:

Agency leaders have no authority to serve as proposing or deciding officials in title 5 adverse actions.

Reality:

Title 5 empowers the *agency* to take an adverse action. If agency leadership chooses to delegate the proposal or decision authority to lower levels, then it cannot interfere with the decision-making process of those delegates. But, prior to the assigned decision-maker's involvement in a particular case, current statutes permit delegations to be abandoned or modified at will by the agency.²

¹ Analysis of data from U.S. Office of Personnel Management, Central Personnel Data File (CPDF), FY 2000-FY 2014.

² *Goeke v. Department of Justice*, 122 M.S.P.R. 69, ¶ 23 (2015); see *Boddie v. Department of the Navy*, 827 F.2d 1578, 1580 (Fed. Cir. 1987); *Ward v. U.S. Postal Service*, 634 F.3d 1274, 1279 (2011); 5 U.S.C. § 7513.

Perception 3:

There are no legal barriers to firing an employee in the private sector.

Reality:

Many of the laws that apply to removing employees in the Federal civil service also apply to private sector employment or have a similar counterpart, such as the Civil Rights Act of 1964 (Title VII – Equal Employment Opportunity), and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), both of which permit private sector employees to pursue litigation.³

Perception 4:

An agency must pay a salary to an employee who has been removed until any appeal has been resolved.

Reality:

An employee is not paid while appealing his/her removal to MSPB. If the action is found to have been unwarranted, then reinstatement and back pay may be awarded. But, there is no pay while removed.⁴ ❖

³ See 38 U.S.C. §§ 4301-4333 (USERRA); Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, § 706(e)-(g) (authorizing discrimination litigation in Federal courts).

⁴ See 5 U.S.C. § 5596 (b)(1)(A).

Agency Branding Emphasizes Competence

Federal agencies compete with the private sector and other Federal agencies for the attention and interest of potential job applicants. An important strategy in this competition for talent is to establish a compelling agency *brand*—a statement of “the essence of who you are, who you want to be and how you want people—in this case potential job seekers—to view you.”¹ Along these lines, MSPB has long advocated that Federal agencies use job announcements to distinguish themselves, marketing the agency as a place to work instead of simply describing the job.² As discussed below, it appears that many agencies have made the effort to market their brand.

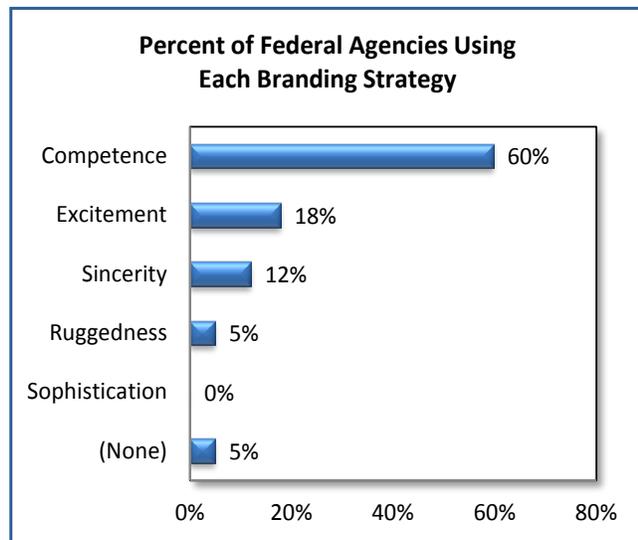
MSPB explored agency branding strategies using Aaker’s Brand Personality (ABP) scale,³ which is used often in market research to compare messaging strategies for products, services, and organizations. The ABP distinguishes between strategies that emphasize one of five attributes: *Competence*, *Excitement*, *Sincerity*, *Ruggedness* and *Sophistication*. We applied the ABP scale to a sample of 62 agency and sub-agency websites, focusing on pages which described each agency’s mission and priorities. The percentage of agencies emphasizing each branding strategy appears in the chart to the right.

The majority of agency websites we analyzed emphasize competence in the specialized knowledge needed to accomplish their missions (60%). While the missions themselves differ, these agencies want the public to recognize their commitment to performing their missions effectively. A smaller number of agencies emphasize how exciting their work can be (18%) and their fair and honest administration of the resources under their control (12%). Three agencies—including the U.S. Fish and Wildlife Service—emphasize the physically demanding aspects of work in their organizations.

Although the ABP framework worked well for examining general trends in agency website branding strategies, it was unable to classify three agencies. A

closer look at the language in these and other agency mission statements suggests that there are branding themes present in Federal missions which are not captured by the ABP scales. Across agencies, we found themes relating to: *Protection and Defense* (72% of agencies), *Health and Medical Care* (80%), and *Regulations and Enforcement* (50%). This finding highlights the distinctive nature of Federal agencies and reflects the fact that agency mission statements, while emphasizing competence, also showcase the different kinds of services that they provide to the public.

Federal agencies have been advised to create brands which are not only relevant to their missions



but which also help them differentiate themselves from other prospective employers.⁴ Most of the agencies we examined seem to be doing this correctly—emphasizing both their “specialty” in public service and the importance of performing this service at the highest standards of knowledge and ability. MSPB believes that agencies should continue attending to how they market themselves—particularly to the brand they communicate to potential job applicants in vacancy announcements. Applicants should see what kinds of competence an agency values and deems necessary for mission accomplishment. ❖

¹ Tim McManus of the Partnership for Public Service, as cited in: Fox, T. (February 21, 2014). Building a brand for your Federal agency. *The Washington Post*. (Accessed at: <http://www.washingtonpost.com/blogs/on-leadership/wp/2014/02/21/building-a-brand-for-your-federal-agency/>).

² U.S. MSPB. *Help wanted: A review of Federal vacancy announcements*, Washington, DC, (2003).

³ Aaker, J. (1997). Dimensions of brand personality. *Journal of Marketing Research*, 34(3), pp. 347-356. The text analytic version of the scale used in this research is described in: Opoku, R. Abratt, R. & Pitt, L. (2006). Communicating brand personality: Are the websites doing the talking? *Journal of Brand Management*, 14, pp. 20-39.

⁴ Tuutti, C. (September 28, 2012). Why branding matters—even in government. *Federal Computer Week*. (Accessed at: <http://fcw.com/articles/2012/09/28/agencies-employer-brand.aspx>).

Probationary Periods: A Missed Opportunity to Address Poor Performance

In its recently released report on poor performers in Government, the Government Accountability Office (GAO) recommended more effective use of the probationary period to identify and remove individuals who are unlikely to be good performers. GAO recommended that agencies consider doing more to ensure that supervisors have the opportunity to intercede before an individual completes a probationary period and that OPM and possibly Congress consider whether longer probationary periods might be appropriate for some positions.¹

MSPB's extensive research over the past decade supports these recommendations. In a 2009 survey, we asked proposing and deciding officials for adverse actions whether the individual in question demonstrated during the probationary period that he or she was a good employee. Only 56% of those with knowledge of the individual during that period agreed the individual had shown good signs at that time. Thus, it appears that some of these adverse actions could have been avoided by better use of the probationary period.

We also conducted a survey of supervisors of probationary employees, discussed in our 2005 report, *The Probationary Period: A Critical Assessment Opportunity*. Of those supervisors who admitted that they would not select the person again if they could do it over, more than half planned to keep the individual beyond the end of the probationary period, less than one-third stated they did not expect to retain the person, and the rest were unsure.² This data was one more indicator that the probationary period was not being used to separate some candidates who failed to show they were the right choice for the job at hand.

GAO is correct that inadequate communications with supervisors of probationers may also be an issue.³ In the survey for our 2008 report, *Federal Appointment Authorities: Cutting through the Confusion*, we asked

supervisors of newly hired individuals whether anyone had discussed with them the purpose of the trial or probationary period for the individual they selected. Thirty-one percent of the supervisors said this had not occurred, with another 3% unsure whether the discussion had taken place.

GAO recommended that agencies make use of automated human resources systems to inform supervisors that they have a probationer nearing the end of the probationary period so that "an affirmative decision" or other action may be taken.⁴ Our 2005 report recommended that supervisors be required to certify that the individual should become an employee.⁵ This was based on survey data that showed 69% of supervisors would prefer it if the supervisor was required to actively certify that the individual's conduct and performance are fully acceptable before conversion can occur. In contrast, only 5% of supervisors of probationers preferred a system where conversion to employee status is automatic if the supervisor does not act to remove the employee (the current system). Twenty-six percent favored a system in which conversion would not occur if the supervisor indicates there is a problem with the individual.⁶

GAO reported that Chief Human Capital Officers (CHCOs) informed them that for some positions, such as trainee positions or those involving complex projects, a longer probationary period may be appropriate.⁷ Our surveyed supervisors of probationers agreed. Sixty-five percent wanted bureaus/components to be able to determine the length of an employee's probationary period based upon the complexity of the job.⁸

MSPB's finalized research agenda for 2015 - 2018 includes a study of the incidence and consequences of poor performance in the civil service. While this study is only in the earliest planning stages, we hope we will soon be able to provide new data and insights to add to this important discussion. ❖

¹ GAO, *Improved Supervision and Better Use of Probationary Periods Are Needed to Address Substandard Employee Performance*, GAO-15-191 (Mar 9, 2015), pp. 30-31.

² MSPB, *The Probationary Period: A Critical Assessment Opportunity* (2005), pg. 7.

³ GAO pg. 11, 30.

⁴ GAO pg. 30.

⁵ MSPB pg. 15.

⁶ *Id.* pg. 14.

⁷ GAO pg. 13.

⁸ MSPB pg.18.

“Engineering” the Future: USACE’s Talent Aspirations Survey

Agency mission success begins with people: hiring and developing individuals who can effectively perform the agency’s current and future core functions. That requires an agency to develop ongoing awareness of: (1) positions that may become vacant or necessary; (2) the extent to which current employees are interested in—and competitive for—such positions; and (3) the need to hire external talent to bring in particular capabilities.

Succession planning, summarized to the right,¹ is a practice that can help agencies meet their future talent—and ultimately mission—requirements.

Spotlight: USACE’s Talent Aspirations Survey

A critical element of succession planning is taking a *talent inventory* or assessing workforce capabilities and career interests. One method that can aid development of a talent inventory is to survey current employees. The U.S. Army Corps of Engineers (USACE) designed and administered a brief Talent Aspirations Survey² to gauge the interest of their GS-14 and GS-15 employees in advancing to leadership positions. Survey items inquired about topics such as:

- Reasons for wanting to advance;
- Interest in leadership roles & responsibilities;
- Interest in leadership development activities;
- Reasons for not wanting to advance; and
- Willingness to relocate.

Participation in the survey was voluntary but expressly not anonymous so that USACE could follow up with individuals who might be interested in leadership development activities. In addition to supporting succession planning, the survey was also intended to help USACE identify any talent gaps.

USACE will use the survey to aid their *action plans*. For example, USACE plans to use survey responses coupled with 360^o assessments of employees interested in leadership roles to determine whether and how to revise the content of USACE training and development

¹ Information about workforce assessment and planning adapted from: Cascio & Aguinis (2005), *Applied Psychology in Human Resource Management*, Chapter 10: Strategic Workforce Planning, pp. 237-258, Pearson Prentice Hall, New Jersey.

² Information about USACE’s Talent Aspirations Survey was obtained from a presentation by Ms. Sue Engelhardt, Director of Human Resources, USACE, on December 2, 2014, at the Human Capital Management Group Conference, Alexandria, VA, and from a subsequent interview with Ms. Rebecca S. Thompson, Chief of USACE’s Human Resources Development Division.

Succession Planning “101”

What is succession planning?

Succession planning is an ongoing process of an agency: (1) analyzing future work and staffing needs; (2) ensuring its workforce has or can develop the capabilities necessary for success; and (3) identifying when it is necessary to hire external talent.

What are the key elements?

Agency leaders should evaluate (and reaffirm or update):

- The purpose and range of agency products or services, considering how public needs may change;
- Current and future agency goals, as well as the associated strategic plan and performance metrics; and
- Functional structure, including clear statements of how each function supports agency goals.

Leaders can then focus on workforce assessment and planning, to include:

- A *talent inventory* of internal capabilities such as employees’ competencies and career interests;
- *Workforce forecasting* to anticipate future talent needs;
- *Action plans* to meet anticipated future needs and mitigate talent gaps, such as plans to develop, redeploy, or hire individuals; and
- *Evaluation* of the workforce plan’s effectiveness, making mid-course adjustments if needed.

programs to better support competency development of future leaders. USACE also will incorporate summary results into a Corps-wide Strategic Communication Plan as well as tailored Strategic Implementation Plans for each division of the Corps. These efforts illustrate how an agency can realize the full value of an employee survey, along the lines discussed in MSPB’s article, “From Input to Impact: Using Survey Results.”³

Assessing individuals’ career aspirations and related developmental needs, as USACE has done, can support succession planning by providing insight into *who* is in the pipeline for leadership and other critical positions and *what* an agency can do to mitigate any talent gaps. ❖

³ U.S. MSPB, *From Input to Impact: Using Survey Results*, *Issues of Merit*, January 2012, p.5.

The Future of Position Classification: Not Only “What?” But “Who?”

The Federal Government’s General Schedule (GS) pay and classification system has been under fire from many observers for some time. For example, a recent Government Accountability Office (GAO) report noted that the Office of Personnel Management (OPM) needs to improve the design, management, and oversight of the Federal classification system.¹ Many critiques of Federal position classification focus on the “what”—what is wrong with the GS system and what system might pay Federal employees more appropriately. MSPB believes another aspect of position classification also deserves attention—*who* might administer future Federal classification systems? This is a significant consideration given a decrease in both the number of agency staff devoted to position classification and the number of OPM staff devoted to maintaining classification systems and overseeing agency classification programs.

Why does position classification matter? First, position classification is the foundation of hiring and pay for almost all positions in the Federal civil service. A position’s occupation and level drive selection criteria and shape the pool of potential applicants. Classification—pay system, occupational series, and grade level—also determines salary range. Second, the merit system principles call upon Federal agencies and Federal managers to provide equal pay for substantially equal work. Finally, the basis upon which a position may be graded in each of the GS grades is defined by statute.² For these reasons, Federal agencies have a continuing responsibility to classify positions accurately.

How have classification programs changed? The National Performance Review of the 1990’s aimed to reduce the number of human resources (HR) specialists in the Federal Government. It succeeded. A 1999 OPM report documented a 20% decrease in the number of HR specialists during the 1990’s.³ By the end of that decade, the number of classifiers had declined by almost 60% and classifiers comprised only 4% of all HR specialists, down from 15% at the beginning of the 1970’s.

Among the measures Federal agencies used to address the reduction in the number of position classification specialists were:

- Transitioning HR staff from specialists to generalists;
- Reducing or ceasing periodic review of position descriptions (PDs); and
- Developing standard PDs that managers could certify with little or no input from HR staff.

In 2011, an MSPB survey found that only 3% of Federal HR specialists reported spending more than half their time on classification, while 73% reported spending *no* time on classification. The 2014 GAO report found that OPM had only 6 full-time specialists maintaining classification standards, compared to 16 in 2001 and many more in the 1980’s. As a result, about 30% of white collar occupational standards used to classify jobs have not been updated since 1990; some have not been updated since the 1970’s. GAO also found that OPM has limited assurance that agencies are correctly classifying positions, as OPM has not reviewed agency position classification programs since the 1980’s.

Where do we go from here? To be sure, complaints about the position classification system were voiced prior to the reductions in HR staff in the 1990’s. Policymakers continue to debate, and Federal agencies continue to seek, alternatives to the GS pay and classification system. However, it is difficult to see how the existing system—or any plausible replacement—can function properly with such a loss of expertise and so little oversight. Therefore, Federal decision-makers contemplating better ways to pay Federal employees should consider:

- Who will administer and oversee the system that ties job duties to rates of pay? A new cadre of HR experts? Individual agencies or managers? An extra-governmental entity?
- What mandate and resources will OPM have to fulfill its role in a new pay or position classification system? ❖



¹ U.S. Government Accountability Office, *OPM Needs to Improve the Design, Management, and Oversight of the Federal Classification System*, GAO-14-677, July 2014.

² 5 U.S.C. § 5104.

³ U.S. Office of Personnel Management, *Federal Human Resources Employment Trends Part 1*, MSE-99-5, September 1999.



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Spring 2015

Volume 20 Issue 2

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