**UNITED STATES OF AMERICA**
**MERIT SYSTEMS PROTECTION BOARD**

**2010 MSPB 98**

Docket No. AT-0752-08-0747-B-1

**Joe Lewis, Jr.,**

**Appellant,**

**v.**

**Department of Veterans Affairs,**

**Agency.**

May 28, 2010

Sarah Suszczyk, Alexandria, Virginia, for the appellant.

Alan E. Foster, Esquire, Nashville, Tennessee, for the agency.

**BEFORE**

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mary M. Rose, Member

## OPINION AND ORDER

¶1 This matter comes before the Board based on the appellant's petition for review (PFR) of a remand initial decision (RID) which affirmed the agency's removal action. For the following reasons, we GRANT the PFR under 5 C.F.R. § 1201.115(d), REVERSE the RID, and MITIGATE the removal penalty to a 30-day suspension.

## BACKGROUND

¶2 The appellant filed an appeal with the Board after the agency removed him from his position as a Health Technician based on a single charge of violating

Nursing Service Policy 118-7-2, Suicide and Homicide Observation. *Lewis v. Department of Veterans Affairs*, MSPB Docket No. AT-0752-08-0747-I-1, Initial Appeal File (IAF), Tab 1; *see* IAF, Tab 3, subtabs 4a (the removal SF-50), 4b (the agency's decision letter), 4f (the Notice of Proposed Removal), 4p (the agency's policy which, among other things, requires employees to provide one-to-one monitoring for potentially suicidal patients). After holding a hearing, the administrative judge issued an initial decision sustaining the charge, finding nexus between the charge and the efficiency of the service, and affirming the removal penalty. January 13, 2009 Hearing CD (January 13, 2009 HCD); IAF, Tab 17. The appellant filed a PFR. Petition for Review File, Tab 1.

¶3 The Board issued an Opinion and Order, finding that the administrative judge properly sustained the charge and concluding that there was a nexus between the charge and the efficiency of the service. *Lewis v. Department of Veterans Affairs*, 111 M.S.P.R. 388, ¶ 3 (2009) (MSPB Docket No. AT-0752-08-0747-B-1 (Remand File), Tab 1). *Id.*, ¶¶ 4-5. Comparing the facts to those in *Berkey v. U.S. Postal Service*, 38 M.S.P.R. 55, 56, 58 (1988), the Board concluded that the appellant submitted on PFR new evidence which he had requested during discovery, but which the agency failed to produce, regarding two employees who were charged with similar offenses but were not removed. It remanded the appeal so that the administrative judge "[could] take evidence and argument with respect to these two employees and the circumstances surrounding the agency's actions against them, and make a new penalty determination." *Lewis*, 111 M.S.P.R. 388, ¶¶ 4-5, 7-10.

¶4 On remand, the agency submitted documentation regarding two employees, Larry Brewer and Rickey Walker. Remand File, Tabs 7, 9; August 12, 2009 Hearing CD (August 12, 2009 HCD). The administrative judge concluded that Mr. Brewer was not a similarly-situated employee for the purposes of a disparate penalty analysis. RID at 3. Despite noting that there were similarities between the circumstances of the appellant's case and Mr. Walker's case, the

administrative judge also concluded that Mr. Walker was not a similarly-situated employee. *Id.* at 3-4. The administrative judge determined that the agency balanced the proper factors in its penalty determination and affirmed the removal. *Id.* at 4-5. The appellant filed a PFR of the RID, and the agency filed a response. Remand Petition for Review File, Tabs 2, 3.

## ANALYSIS

### Legal Standards Governing Penalty Determinations

¶5 The Board will review an agency-imposed penalty to determine if the agency considered all the relevant factors and exercised management discretion within tolerable limits of reasonableness. *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 306 (1981). The Board has articulated factors to be considered in determining the propriety of a penalty, such as the nature and seriousness of the offense, the employee's past disciplinary record, the supervisor's confidence in the employee's ability to perform his assigned duties, the consistency of the penalty with the agency's table of penalties, and the consistency of the penalty with those imposed on other employees for the same or similar offenses. *Gmitro v. Department of the Army*, 95 M.S.P.R. 89, ¶ 7 (2003) (citing *Douglas*, 5 M.S.P.R. at 305-06), *aff'd*, 111 F. App'x 610 (Fed. Cir. 2004). Not all of the factors will be pertinent in every instance, and so the relevant factors must be balanced in each case to arrive at the appropriate penalty. *Douglas*, 5 M.S.P.R. at 306. The appellant's allegation that the agency treated him disparately to another employee, without a claim of prohibited discrimination, is an allegation of disparate penalties to be proven by the appellant and considered by the Board in determining the reasonableness of the penalty, but it is not an affirmative defense. *Vargas v. U.S. Postal Service*, 83 M.S.P.R. 695, ¶ 9 (1999).

¶6 To establish disparate penalties, the appellant must show that the charges and the circumstances surrounding the charged behavior are substantially similar. *Archuleta v. Department of the Air Force*, 16 M.S.P.R. 404, 407

(1983). Under the Board's recent precedent, establishing that the charges and the circumstances surrounding the charged behavior are substantially similar has included proof that the proffered comparator was in the same work unit, with the same supervisor, and was subjected to the same standards governing discipline. *Von Muller v. Department of Energy*, 101 M.S.P.R. 91, ¶ 22, *aff'd*, 204 F. App'x 17 (Fed. Cir. 2006); *Fearon v. Department of Labor*, 99 M.S.P.R. 428, ¶ 11 (2005); *Wentz v. U.S. Postal Service*, 91 M.S.P.R. 176, ¶ 22 (2002). *But see Williams v. Social Security Administration*, 586 F.3d 1365, 1368-39 (Fed. Cir. 2009). When an employee raises an allegation of disparate penalties in comparison to specified employees, the agency must prove a legitimate reason for the difference in treatment by a preponderance of the evidence before the penalty can be upheld. *See Lewis*, 111 M.S.P.R. 388, ¶ 8; *Woody v. General Services Administration*, 6 M.S.P.R. 486, 488 (1981).

The administrative judge's analysis of the disparate penalty issue

¶7 The appellant does not appear to challenge on PFR the administrative judge's finding that Mr. Brewer was not a similarly-situated employee, and we discern no error with that conclusion, particularly since the circumstances surrounding Mr. Brewer's case occurred over four years before the incident that gave rise to this appeal and the appellant has not alleged that the same proposing or deciding officials were involved. *See* Remand File, Tab 9, Exhibit 1-1 (the Reprimand letter that was issued to Mr. Brewer, noting that the offenses occurred on January 2, and January 7, 2004).

¶8 The administrative judge made the following determinations regarding the similarity of the circumstances between Mr. Walker's case and the appellant's case:

> Both the appellant and Mr. Walker were charged with leaving a patient unattended that was on one-to-one observation. RF, Tab 7, Ex. 2. [Then-Medical Center Director Patricia O.] Pittman was the deciding official in both cases. However, the proposing officials differed. . . . More importantly, Ms. Pittman never testified she

> sustained the charge as stated in Mr. Walker's proposal letter. Instead, Ms. Pittman testified that there were inconsistencies in the proof that gave her concern. Nor does the decision letter state that the charge was sustained.[1] RF, Tab 7, Ex. 2. Thus, I find that the charge as stated in Mr. Walker's proposed removal letter was not sustained. Ms. Pittman did sustain the reason stated in the appellant's notice of proposed removal. IAF, Tab 3, Subtab 4b. Consequently, Mr. Walker is not a similarly[-]situated employee when reviewing or making a penalty determination in the appellant's case.

RID at 3-4.

¶9 We discern no basis for the administrative judge's conclusion that Ms. Pittman did not sustain the charge against Mr. Walker or that she sustained a lesser included offense. Ms. Pittman issued two letters to Mr. Walker on January 23, 2009. The first letter, referencing the December 19, 2008 Notice of Proposed Removal, noted that the appellant provided a written reply and an oral response and indicated that a written counseling letter would be issued in lieu of removal. Remand File, Tab 9, exhibits 2-1, 2-2. The second letter was the Written Counseling Letter itself. *Id.*, exhibit 2-3. While neither letter used the term "sustain," the Notice of Proposed Removal contained a single charge of Violation of Nursing Service Policy 118-7-2, Suicide and Homicide Observation, *see id.*, exhibits 2-9, 2-10, and there was no indication that Ms. Pittman did *not* sustain the charged misconduct. Rather, it is obvious that Ms. Pittman sustained the charged misconduct; otherwise, there would be no basis upon which to issue the counseling letter which specifically referenced the same misconduct described in the proposal notice. *See id.*, exhibits 2-3, 2-9. Therefore, we conclude that Ms. Pittman sustained the single charge against Mr. Walker.

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[1] The administrative judge further stated: "It appears Ms. Pittman may have sustained a lesser included offense. The Board considers the sustaining of a lesser included offense not set forth in the proposal letter to be improper. *Greenough v. Department of the Army*, 73 M.S.P.R. 648, 654 (1997)." RID at 4 n.2.

¶10 There are several similarities between the circumstances of Mr. Walker's misconduct and the appellant's misconduct. Both were charged with identical misconduct, violation of Nursing Service Policy 118-7-2, and the same removal penalty was proposed for such misconduct. *See* IAF, Tab 3, subtab 4f (the appellant's proposal letter); Remand File, Tab 9, exhibits 2-9, 2-10 (Mr. Walker's proposal letter). Moreover, the appellant admitted in his testimony that he was assigned to Patient W, that Patient W had to be on one-to-one monitoring, and that he had to be at arms length while observing someone on one-to-one monitoring. January 13, 2009 HCD (appellant); *see* IAF, Tab 3, subtabs 4h at 1 (the appellant's April 3, 2008 fact finding meeting), 4i at 1 (the appellant's March 27, 2008 fact finding meeting). Likewise, Mr. Walker admitted that, at the time of his offense, he knew the patient that he was assigned to monitor had to be on one-to-one observation, he was aware of the protocol for suicidal patients, and he knew that one-to-one monitoring meant that he had to be within arms length of the patient.[2] Remand File, Tab 9, exhibits 2-14, 2-15 (October 31, 2008 Fact Finding Investigation), 2-16 (October 31, 2008 Fact Finding Investigation; Mr. Walker recalled for clarification). Mr. Walker's misconduct occurred approximately seven months after the appellant's misconduct. *See id.*, exhibit 2-3 (noting that Mr. Walker's misconduct occurred on October 31, 2008). Finally, the same agency official, Ms. Pittman, rendered the decisions in the appellant's case and Mr. Walker's case.

¶11 Although the nature of the misconduct itself was remarkably similar, we recognize that there are some differences in the circumstances of the appellant's misconduct and Mr. Walker's misconduct, namely that the appellant and Mr.

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[2] The patient who Mr. Walker was supposed to be observing was found unattended with a monitor cord wrapped around his neck, apparently trying to commit suicide. Remand File, Tab 9, Exhibit 2-3. Thus, the result of his misconduct appears to have been more serious than that in the appellant's case.

Walker did not work in the same work unit at the time of the misconduct,[3] the appellant has not alleged that he and Mr. Walker had the same supervisor, and there were different proposing officials. *See* IAF, Tab 3, subtab 4f at 2 (the proposing official in the appellant's case was Melissa Taylor, RN, Interim Associate Chief Nurse of Medicine); Remand File, Tab 9, exhibit 2-10 (the proposing official in Mr. Walker's case was Janet Campbell, DNP, ARNP-BC, Associate Chief Nurse for Ambulatory Care).

Under the circumstances presented in this appeal, we conclude that the appellant and Mr. Walker are similarly situated for disparate penalty analysis.

¶12 As discussed above, for the consistency of the penalty factor to be considered in a penalty determination, there must be a great deal of similarity, not only between the offense(s) committed by the appellant and a proposed comparator, but as to other factors, such as whether the employees were in the same work unit, had the same supervisor and/or deciding official, and whether the events occurred relatively close in time. In the past, the Board has considered some of these factors, such as whether the appellant and the comparator were in the same work unit, as outcome determinative; if the "comparator" was not in the same work unit, there could be no determination that disparate penalties were imposed. *See, e.g.*, *Von Muller*, 101 M.S.P.R. 91, ¶ 22 ("With the exception of Hoyle, who was also removed, no other target of the agency's investigation was in the appellant's work unit. . . . Thus, [deciding official] Norman had no obligation under *Douglas* to consider the consistency of the appellant's removal with other disciplinary actions arising from the investigation.").

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[3] Although both employees worked at the VA Medical Center in Memphis, Tennessee, the appellant's misconduct occurred when he was assigned to the Medical Intensive Care Unit, and Mr. Walker's misconduct occurred when he was assigned to the Emergency Department. *See* IAF, Tab 3, subtab 4f at 1 (the appellant's proposal letter); Remand File, Tab 9, exhibit 2-9 (Mr. Walker's proposal letter).

¶13 Our reviewing court has recently indicated that a more flexible approach is warranted under the circumstances presented by this appeal. In *Williams*, 586 F.3d at 1366, the court addressed a situation in which the agency removed Mr. Williams for his participation in an income tax fraud "sponsored by" another agency employee, Mr. Edwards. One of Mr. Williams' claims before the administrative judge was disparate treatment because the agency allegedly re-employed Mr. Edwards even though he (Mr. Edwards) was more culpable than the appellant. *Id.* The administrative judge rejected the appellant's disparate treatment claim in a footnote, stating: "[T]he testimony regarding Edwards[']s return to the workplace is not relevant because Edwards was not in the chain of command of this supervisor and therefore is not similarly situated for purposes of a claim of disparate treatment." *Id.* at 1368. The administrative judge upheld the removal and the Board affirmed the administrative judge's decision by Final Order. *Id*. at 1367.

¶14 On review, the court stated that the fact that the supervisor that testified did not directly supervise Mr. Edwards did not make his testimony regarding disparate treatment irrelevant:

> While the fact that two employees are supervised under different chains of command may sometimes justify different penalties, in this case the administrative judge has not explained, and the record does not reveal, why the different chains of command would justify the agency treating Edwards, the perpetrator of the tax fraud, more favorably than Williams, who merely had participated in it.

*Id.* at 1368-69. Because the factual record was not fully developed with respect to the agency's actions regarding Mr. Edwards's employment, the court remanded the appeal for further development of the record, for findings on this issue, and for reconsideration and redetermination of the penalty. *Id.* at 1369.

¶15 Consistent with the court's rationale in *Williams*, we hold that there must be enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to conclude that the agency treated similarly-

situated employees differently, but we will not have hard and fast rules regarding the "outcome determinative" nature of these factors.[4] To the extent that *Fearon* and other cases are inconsistent with this analysis, they are hereby modified.[5]

¶16 As applied to the instant case, we conclude that there is enough similarity between the nature of the misconduct and the other factors to lead to an inference that the agency treated similarly-situated employees differently. Because we conclude that the appellant and Mr. Walker are similarly situated, and thus, Mr. Walker is a proper comparator for disparate penalty analysis, the burden shifts to the agency to prove a legitimate explanation for the different treatment meted to the appellant and Mr. Walker. *Lewis*, 111 M.S.P.R. 388, ¶ 8; *Woody*, 6 M.S.P.R. at 488. We need not reopen the record because Ms. Pittman addressed this issue in her testimony at the remand hearing. She explained that the difference in penalties was due to certain mitigating factors in Mr. Walker's case, namely the factual inconsistencies in the circumstances surrounding his misconduct, the fact that he had no prior discipline, and her belief that he had not been trained on the one-to-one monitoring policy, having recently returned from a tour in Iraq. August 12, 2009 HCD (Pittman); *see* Remand File, Tab 9, exhibit 2-3 (Ms. Pittman further acknowledged in Mr. Walker's Written Counseling letter that the one-to-one monitoring procedures may have been "somewhat lax in the

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[4] Similarly, consistent with the court's rationale in *Williams*, factors such as whether an agency treated similarly-situated employees differently, whether the difference in treatment was knowing and intentional, whether an agency began levying a more severe penalty for a certain offense without giving notice of a change in policy, and whether an imposed penalty is appropriate for the sustained charge(s) are all relevant considerations but not outcome determinative nor threshold requirements in disparate penalty analysis under *Douglas*. To the extent that *Taylor v. Department of Veterans Affairs*, 112 M.S.P.R. 423 ¶ 11 (2009), *Quander v. Department of Justice*, 22 M.S.P.R. 419, 423 (1984), *aff'd*, 770 F.2d 180 (Fed. Cir. 1985) (Table) and other cases are inconsistent with this analysis, they also are hereby modified.

[5] This holding is not intended to modify *Spahn v. Department of Justice*, 93 M.S.P.R. 195 (2003), or any other cases that discuss whether employees are similarly situated under Title VII discrimination law.

Emergency Room" in the past, and she cited this as an additional reason for issuing Mr. Walker a written counseling instead of a removal). Conversely, she noted that the appellant had prior discipline. August 12, 2009 HCD (Pittman). Indeed, the record shows that the appellant was previously suspended for 14 days, from April 24, 2005, through May 7, 2005, based on four charges of misconduct, including two charges of disrespectful conduct, one charge of deliberate refusal to carry out a proper order, and one charge of absence without leave. *See* IAF, Tab 3, subtabs 4t (suspension decision letter), 4u (suspension proposal letter). These charges are not related to the charge at issue in this appeal.

¶17 Although Ms. Pittman's explanation could justify a harsher penalty for the appellant than for Mr. Walker, it does not justify the appellant's removal, as compared to the Written Counseling Letter that was issued to Mr. Walker, based on his virtually identical misconduct that occurred only seven months later. *See Williams*, 586 F.3d at 1368-69. We therefore conclude that the agency failed to prove a legitimate reason for the difference in treatment by a preponderance of the evidence, consistent with our prior Opinion and Order. *Lewis*, 111 M.S.P.R. 388, ¶ 8.

A 30-day suspension is the maximum penalty for the sustained misconduct.

¶18 Because we find that Ms. Pittman sustained the single charge against Mr. Walker, Mr. Walker is a proper comparator in this appeal, and the agency did not offer a legitimate explanation for the different penalties meted to the appellant and Mr. Walker, we vacate the RID with respect to its conclusion regarding Mr. Walker as a comparator and the penalty determination. *See Taylor v. Department of Veterans Affairs*, 112 M.S.P.R. 423, ¶¶ 12-13 (2009) (vacating the portion of the initial decision that affirmed the removal penalty and concluding that "a 30-day suspension is the maximum reasonable penalty given the penalties the agency imposed on the two comparative employees," *i.e.*, a 15-day suspension and a 30-day suspension, respectively). We need not remand the appeal for a penalty determination because the record is fully developed on this issue. Taking into

account all of the relevant *Douglas* factors, we further find that the maximum reasonable penalty for the appellant's misconduct is a 30-day suspension. *Cf. Murdock-Doughty v. Department of the Air Force*, 70 M.S.P.R. 119, 123-24 (1996) (concluding that a 45-day suspension, not removal, was an appropriate penalty for the appellant's misconduct, which included refusing to comply with proper orders related to patient care).

## ORDER

¶19 We ORDER the agency to cancel the appellant's removal, effective July 11, 2008, to restore the appellant to his former position, and to substitute for the removal a 30-day suspension. *See Kerr v. National Endowment for the Arts*, 726 F.2d 730 (Fed. Cir. 1984). The agency must complete this action no later than 20 days after the date of this decision.

¶20 We also ORDER the agency to pay the appellant the correct amount of back pay, interest on back pay, and other benefits under the Office of Personnel Management's regulations, no later than 60 calendar days after the date of this decision. We ORDER the appellant to cooperate in good faith in the agency's efforts to calculate the amount of back pay, interest, and benefits due, and to provide all necessary information the agency requests to help it carry out the Board's Order. If there is a dispute about the amount of back pay, interest due, and/or other benefits, we ORDER the agency to pay the appellant the undisputed amount no later than 60 calendar days after the date of this decision.

¶21 We further ORDER the agency to tell the appellant promptly in writing when it believes it has fully carried out the Board's Order and to describe the actions it took to carry out the Board's Order. The appellant, if not notified, should ask the agency about its progress. *See* 5 C.F.R. § 1201.181(b).

¶22 No later than 30 days after the agency tells the appellant that it has fully carried out the Board's Order, the appellant may file a petition for enforcement with the office that issued the initial decision in this appeal if the appellant

believes that the agency did not fully carry out the Board's Order. The petition should contain specific reasons why the appellant believes that the agency has not fully carried out the Board's Order, and should include the dates and results of any communications with the agency. 5 C.F.R. § 1201.182(a).

¶23 For agencies whose payroll is administered by either the National Finance Center of the Department of Agriculture (NFC) or the Defense Finance and Accounting Service (DFAS), two lists of the information and documentation necessary to process payments and adjustments resulting from a Board decision are attached. The agency is ORDERED to timely provide DFAS or NFC with all documentation necessary to process payments and adjustments resulting from the Board's decision in accordance with the attached lists so that payment can be made within the 60-day period set forth above.

¶24 This is the final decision of the Merit Systems Protection Board in this appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) (5 C.F.R. § 1201.113(c)).

## NOTICE TO THE APPELLANT REGARDING YOUR RIGHT TO REQUEST ATTORNEY FEES AND COSTS

You may be entitled to be paid by the agency for your reasonable attorney fees and costs. To be paid, you must meet the requirements set out at Title 5 of the United States Code (5 U.S.C.), sections 7701(g), 1221(g), or 1214(g). The regulations may be found at 5 C.F.R. § § 1201.201, 1201.202 and 1201.203. If you believe you meet these requirements, you must file a motion for attorney fees WITHIN 60 CALENDAR DAYS OF THE DATE OF THIS DECISION. You must file your attorney fees motion with the office that issued the initial decision on your appeal.

## NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law, as well as review the Board's regulations and other related material, at our website, http://www.mspb.gov. Additional information is available at the court's website, www.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, and 11.

FOR THE BOARD:

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William D. Spencer
Clerk of the Board
Washington, D.C.

# DFAS CHECKLIST

## INFORMATION REQUIRED BY DFAS IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT CASES OR AS ORDERED BY THE MERIT SYSTEMS PROTECTION BOARD

AS CHECKLIST: INFORMATION REQUIRED BY IN ORDER TO PROCESS PAYMENTS AGREED UPON IN SETTLEMENT CASES

## CIVILIAN PERSONNEL OFFICE MUST NOTIFY CIVILIAN PAYROLL OFFICE VIA COMMAND LETTER WITH THE FOLLOWING:

1. Statement if Unemployment Benefits are to be deducted, with dollar amount, address and POC to send.
2. Statement that employee was counseled concerning Health Benefits and TSP and the election forms if necessary.
3. Statement concerning entitlement to overtime, night differential, shift premium, Sunday Premium, etc, with number of hours and dates for each entitlement.
4. If Back Pay Settlement was prior to conversion to DCPS (Defense Civilian Pay System), a statement certifying any lump sum payment with number of hours and amount paid and/or any severance pay that was paid with dollar amount.
5. Statement if interest is payable with beginning date of accrual.
6. Corrected Time and Attendance if applicable.

## ATTACHMENTS TO THE LETTER SHOULD BE AS FOLLOWS:

1. Copy of Settlement Agreement and/or the MSPB Order.
2. Corrected or cancelled SF 50's.
3. Election forms for Health Benefits and/or TSP if applicable.
4. Statement certified to be accurate by the employee which includes:
   a. Outside earnings with copies of W2's or statement from employer.
   b. Statement that employee was ready, willing and able to work during the period.
   c. Statement of erroneous payments employee received such as; lump sum leave, severance pay, VERA/VSIP, retirement annuity payments (if applicable) and if employee withdrew Retirement Funds.
5. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.

USDA UNITED STATES DEPARTMENT OF AGRICULTURE

## NATIONAL FINANCE CENTER CHECKLIST FOR BACK PAY CASES

Below is the information/documentation required by National Finance Center to process payments/adjustments agreed on in Back Pay Cases (settlements, restorations) or as ordered by the Merit Systems Protection Board, EEOC, and courts**.**

1. Initiate and submit AD-343 (Payroll/Action Request) with clear and concise information describing what to do in accordance with decision.

2. The following information must be included on AD-343 for Restoration:

a. Employee name and social security number.
b. Detailed explanation of request.
c. Valid agency accounting.
d. Authorized signature (Table 63)
e. If interest is to be included.
f. Check mailing address.
g. Indicate if case is prior to conversion. Computations must be attached.
h. Indicate the amount of Severance and Lump Sum Annual Leave Payment to be collected. (if applicable)

### Attachments to AD-343

1. Provide pay entitlement to include Overtime, Night Differential, Shift Premium, Sunday Premium, etc. with number of hours and dates for each entitlement. (if applicable)

2. Copies of SF-50's (Personnel Actions) or list of salary adjustments/changes and amounts.

3. Outside earnings documentation statement from agency.

4. If employee received retirement annuity or unemployment, provide amount and address to return monies.

5. Provide forms for FEGLI, FEHBA, or TSP deductions. (if applicable)

6. If employee was unable to work during any or part of the period involved, certification of the type of leave to be charged and number of hours.

7. If employee retires at end of Restoration Period, provide hours of Lump Sum Annual Leave to be paid.

NOTE: If prior to conversion, agency must attach Computation Worksheet by Pay Period and required data in 1-7 above.

The following information must be included on AD-343 for Settlement Cases: (Lump Sum Payment, Correction to Promotion, Wage Grade Increase, FLSA, etc.)

a. Must provide same data as in 2, a-g above.
b. Prior to conversion computation must be provided.
c. Lump Sum amount of Settlement, and if taxable or non-taxable.

If you have any questions or require clarification on the above, please contact NFC's Payroll/Personnel Operations at 504-255-4630.