

**VII. INDEX TO APPENDICES**

**APPENDIX A**



**DEPARTMENT OF DEFENSE  
WASHINGTON HEADQUARTERS SERVICES**  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155



**27 OCT 2015**

**MEMORANDUM FOR ELIZABETH AVILES -WYNKOOP**

**SUBJECT: Notice of Proposed Termination During Probationary Period**

The purpose of this memorandum is to notify you I am proposing (Proposal) to terminate you during your probationary period from the position of Program Analyst, GS-0343-13, Washington Headquarters Services (WHS), Enterprise IT Services Directorate (EITSD), Joint IT Service Provider Pentagon (JITSP), and from the Federal service. This action is being effectuated during your probationary period in accordance with 5 U.S.C. § 7511, 5 CFR § 315.802 and 5 CFR § 315.804, Reference (a) and Administrative Instruction 8, Reference (b) below, and will be effective no earlier than thirty (30) days from the date you receive this proposal notice.

You have been employed in your position since June 29, 2015, Reference (c). While you do have prior Federal civilian service; your current appointment requires you to serve a one-year probationary period. Your current probationary period ends on June 28, 2016.

The probationary period is used to determine an individual's fitness for continued employment in the Federal government. It is a set period of time in which an agency is responsible for assessing a candidate for a finalized appointment in the Federal civil service and for deciding either to continue or terminate the candidate's employment. Thus, the probationary period is the final stage of the assessment process under which a candidate's ability, knowledge and skills are observed and a final selection decision is made in light of those observations. Consistent with the notion that the probationary period is a part of the assessment process, "true probationers" have generally had limited pre-termination procedural rights and post-termination appeal rights as compared to employees with finalized appointments.

For the reasons stated below, I believe you are a true probationer with limited pre-termination procedural rights and post-termination appeal rights. Even though you are currently serving on a probationary period that ends on June 28, 2016, however, you may qualify as an "employee" with appeal rights under 5 U.S.C. Chapter 75.

In order to qualify as an "employee" with appeal rights, an individual in the competitive service must show that she either is not serving a probationary or trial period under an initial appointment or has completed one (1) year of current continuous service under an appointment

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Tab 4b Ref a

other than a temporary appointment limited to one (1) year or less. 5 U.S.C. § 7511(a)(1)(A), Reference (a).

“Current continuous service” means a period of employment or service immediately preceding an adverse action without a break in federal civilian employment of a workday. Military service cannot be added to civilian service to satisfy the current continuous service requirement of 5 U.S.C. § 7511 and thus to provide appeal rights as an “employee.”

An individual who has not served a full year under her appointment, or who has had a break in service, can show that she has completed the probationary period and so is no longer a probationer, by tacking on prior service if: (1) the prior service was rendered immediately preceding the probationary appointment; (2) it was performed in the same agency; (3) it was performed in the same line of work; and (4) it was completed with no more than one break in service of less than 30 days. 5 C.F.R. § 315.802(b), Reference (a). Alternatively, an individual in the competitive service can show that, while she may be a probationer, she is an “employee” with Chapter 75 appeal rights because immediately preceding the adverse action, she had completed at least one year of current continuous service under other than a temporary appointment limited to one (1) year or less. 5 U.S.C. § 7511(a)(1)(A)(ii), Reference (a).

I believe you are a true probationer with limited rights for the following reasons:

You first entered Federal service on temporary appointments as a GS-0322-03 Clerk Typist with the Department of Navy, Department of Commerce and the Department of Army from September 13, 1982 – April 3, 1983 (Reference (d) at pages 1 – 7). You then converted to a career conditional appointment on April 4, 1983 as a GS-0322-03 Clerk Typist with the Department of Army and your first initial probationary period began (Reference (d) at page 8). You had continuous service from April 4, 1983 – April 27, 1990 as a GS-0322-03 Clerk Typist and a GS-303-04 Work Order Clerk (Typing) with the Department of Army; a GS-1106-04 Procurement Clerk (Typing) with the Department of Navy; a GS-1102-05 through GS-1102-11 Contract Specialist with the Defense Mapping Agency, the Department of Navy, the Department of Agriculture and the General Services Administration (Reference (d) at pages 8 - 19). During this time you completed your first initial probationary period.

You then had a break in service for just under 13 years. From April 20, 2003 – January 7, 2009, you became a GS-1102-11 through GS-1102-12 Contract Specialist with the Department of the Interior and the Small Business Administration (Reference (d) at pages 20 – 23).

You then had another break in service for over 2½ years. From August 14, 2011 – September 30, 2014, you became a GS-1101-13 Contract Oversight Specialist with Housing and

Urban Development where you started and completed another initial probationary period (Reference (d) at pages 24 – 27).

You then had another break in service for nearly 9 months. On June 29, 2015, you entered your current position as a GS-0343-13 Program Analyst, where you started another initial probationary period (Reference (c)).

Your current duties as a Program Analyst are different than your previous duties as a Clerk Typist, Work Order Clerk (Typing), Procurement Clerk (Typing), Contract Specialist and Contract Oversight Specialist (Reference (e))<sup>1</sup>. For example, while your current duties as a GS-0343-13 Program Analyst include acting as a Contracting Officer's Representative, they also include evaluating Contractor employees' performances, reviewing programs, working with the budget, analyzing funds and conducting presentations and briefing. A Program Analyst has more varying duties than a Contract Specialist or a Contract Oversight Specialist.

Therefore, you have not completed one (1) year of current continuous service under an appointment other than a temporary appointment limited to one (1) year or less. Additionally, your prior service was not rendered immediately preceding the probationary appointment (you had a break in service for almost 9 months); your prior service was not performed in the same agency (you have never before worked for Washington Headquarters Services, Department of Defense); it was not performed in the same line of work (you are now a Program Analyst and your prior service was as a Clerk Typist, Work Order Clerk (Typing), Procurement Clerk (Typing), Contract Specialist and Contract Oversight Specialist); and your prior service was completed with more than one break in service of more than 30 days (you had 3 breaks in service for 13 years, 2½ years and 9 months, respectively).

For these reasons, I believe you are a true probationer and not an "employee" with appeal rights under 5 U.S.C. Chapter 75. Since I believe you to be a true probationer, as your supervisor, it is my responsibility to evaluate your conduct and perform an overall fitness for government service observation of you in order to reach a conclusion regarding whether or not you should be retained in government service. You have failed to demonstrate your qualifications for continued employment and therefore, I am proposing that you be terminated from Federal service during your probationary period, for the following reasons:

Since the commencement of my appointment as your supervisor, you have not recognized me as your supervisor or taken instruction from me. For example, on August 26,

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<sup>1</sup> Located at Reference (e) is your current Position Description (PD). You were hired as a Program Analyst at the GS-0343-13 level (Reference (c)).

2015, you left work early due to what you characterized as an emergency. When I instructed you by email that you should have let me know that you were leaving the office early because I was your supervisor and needed to know, you did not acknowledge your wrongdoing or agree to my reasonable request. Instead, you informed me that you had requested that my supervisor prove to you that I was, in fact, your supervisor by providing you with a copy of my SF-50 stating that I was your supervisor, Reference (f). My supervisory chain assigned me as your supervisor and agrees that I am your supervisor. Neither I nor my supervisory chain has to "prove" to you that I am your supervisor before you are required to follow my legitimate supervisory instructions. Your inappropriate response to my appropriate supervisory request was insubordination.

You have also exhibited conduct which negatively impacts the ability of our office to function effectively. Specifically, you have demonstrated a pattern of discourteous behavior towards contractors, fellow employees and management; repeatedly communicated issues outside of the appropriate EITSD chain of command; and continually berated the capabilities and experience of your fellow government employees, References (f), (g), (h) and (i). Your behavior is totally unacceptable.

On Thursday, August 13, 2015, I met with you and gave you documentation regarding specific observations and concerns pertaining to your inappropriate, overly aggressive, and unprofessional conduct, References (f), (g), (h) and (i). During our meeting, I reiterated that I wanted to assist you in improving your communication skills. I provided you information on the *Building and Retaining Customer Relationships* training course offered by WHS on Friday, September 25, 2015, Reference (g).

During this meeting, you stated you were concerned that I was conducting a "witch-hunt" against you. You also denied the validity of one of the incidents referenced in the documentation. You did not dispute the validity of any of the other incidents. You further stated you felt there was a double-standard in the workplace. I became concerned that, instead of concentrating on your own misconduct, you became defensive and upset that other employees were not also counseled with regard to their own inappropriate behavior and/or attitude. You followed up our conversation with an email, dated August 13, 2015, addressed to me and Jerry Russell, in which you attempted unsuccessfully to justify your unprofessional conduct, Reference (i).

In your email correspondence, you explicitly exhibit your disdain and utter disrespect for contractors; your opinion of the "unprofessional, crookedness, and unethical manner" by which contracts are handled; and your opinion regarding the incompetency of fellow employees and contractors. References (f), (g), (h) and (i). Your conduct is unprofessional and divisive to the workplace.

Further, you have consistently and inappropriately gone around and outside of your chain-of-command to communicate your frustrations, negative comments and/or demands by writing negative and inflammatory email to senior EITSD staff (at the SES level); despite being counseled on the proper procedures and protocol of the chain of command. Specifically, on Thursday, August 13, 2015, you sent an inappropriate email to Victor Shirley, Chief of Staff, requesting removal of a fellow employee's authority as Task Monitor, because she, "doesn't want to do her job", Reference (j). This "badmouthing" of contractors, your coworkers and supervisors is inappropriate, divisive and destructive to the office.

Similarly, on Thursday, August 27, 2015, you sent another inappropriate email to Mr. Shirley, instructing him on how to properly manage the performance of members of the EITSD Administration Team. Your "instructions" to Mr. Shirley were outside of the scope of your duties as a Program Analyst, Reference (k).

Your misconduct, as described above, will not be tolerated.

On August 28, 2015, before the *Building and Retaining Customer Relationships* training course mentioned above commenced, I placed you on paid Administrative Leave, Reference (h). Administrative leave is paid, non-duty time, that is not charged to your leave account. To date, you remain on Administrative Leave.

Despite my efforts to guide and counsel you, your conduct has not improved. Your conduct has not risen to the level necessary to retain you in your position. You have been previously counseled regarding your inappropriate and disrespectful behavior towards me, your other supervisors, contractors and employees; yet you continue to be discourteous and to engage in misconduct. You have not improved.

As a GS-13 Program Analyst, you are expected to exhibit professionalism and respect when communicating with management officials, contractors, employees, or any other person(s) you interact with while on duty. You have fallen short of these expectations and have engaged in misconduct and disrespect. As such, I have determined that your misconduct has negatively impacted office operations and our mission.

I have determined that you are not fit for continued employment in the Federal government because you have failed to demonstrate the appropriate ability, knowledge and skills to become a GS-0343-13 Program Analyst. Therefore, you have demonstrated that you are not a suitable candidate for retention beyond your probationary period. It is for these reasons I am proposing to terminate your employment during your probationary period. A decision on this proposal will not be effected less than 30 days after the proposal is issued. This action is being taken to promote the efficiency of the service.

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You have the right to reply to this proposal in person, in writing, or both, stating why this proposed action should not be taken. In your reply, you may also state why you believe you are not a probationary employee and/or why you are a probationer with “employee” status such that you are entitled to Chapter 75 appeal rights. You may submit affidavits and other documentary evidence to support your reply. Any reply should be made to Mr. Jerry H. Russell, Jr., Division Chief, Resource & Supplier Management, no later than ten (10) calendar days after receipt of this notice. You may schedule an appointment to reply in person at (571) 372-0110 or [jerry.h.russell.civ@mail.mil](mailto:jerry.h.russell.civ@mail.mil). If more time is needed for the preparation of your reply, you must request an extension in writing to Mr. Russell explaining why you need more time; an extension of time is not automatic and such a request will be considered based upon the justification provided. Your reply will be given full and fair consideration.

You will receive a written decision on this proposal as soon as possible after your reply is received. In the event you elect not to reply, a decision will be made on the evidence now available and a letter containing the decision will be issued to you. You will remain in a paid administrative leave status during the entire notice period. The decision on this proposed termination action will be effective no earlier than thirty (30) days from the date you receive this proposal notice.

You have the right to select an attorney or other representative to assist you in the preparation and presentation of your reply. However, you may not choose a member of the Washington Headquarters Services Human Resources Directorate staff; an agency Equal Employment Opportunity manager, counselor, investigator, or specialist; or anyone whose service as a representative would result in a conflict or apparent conflict of interest or position, conflict with the priority needs of the agency, or cause unreasonable costs to the Government. Any choice of representative or change in representative must be designated in writing; include your representative’s name, address, and phone number; be signed and dated by you; and be submitted to Mr. Russell. You must make all arrangements for and pay all costs associated with representation. Your representative, if an employee of the Washington Headquarters Services Human Resources Directorate-serviced area, may also request a reasonable amount of official time for these purposes if he or she is in a duty status. He or she must make arrangements for the use of official time for such purpose with his or her supervisor.

If you have any questions about your rights or procedures contained herein; or the material relied upon to support this proposed termination, you may contact Carene Reid of the WHS, Human Resources Directorate (HRD), Labor and Management Employee Relations Division, at (571) 372-4084 or [carene.d.reid.ctr@mail.mil](mailto:carene.d.reid.ctr@mail.mil).

If you are experiencing health or personal problems that may be impacting your job conduct or performance, I encourage you to contact the Employee Assistance Program (EAP) at (301) 677-7981. After hours, you may call 1-800-222-0364. The EAP has qualified counselors available to provide expert guidance and counseling. The EAP is a confidential, free and voluntary service. Your discussions with an EAP counselor will not be disclosed to anyone, including me, without your permission, and your participation will not be noted in your Official Personnel Folder (OPF).

You are asked to sign and date the Acknowledge Receipt copy of this memorandum. By doing so, you will not forfeit any of the rights mentioned herein. Your signature does not indicate your agreement or disagreement with this action. Your failure to sign will not void the content of the memorandum.

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Carol A. Ensley  
Chief, Acquisition Management,  
Washington Headquarters Services  
Enterprise IT Standard Support and Services  
Joint IT Service Provider-Pentagon

Acknowledge Receipt:

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Signature

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Date



References:

- (a) 5 CFR § 315.804, Termination of probationers for unsatisfactory performance or conduct; 5 U.S.C. 7511 Removal, Suspension more than 14 days, Reduction in grade or pay, or furlough for 30 days or less; 5 CFR 315.802 Length of Probationary period, crediting service.
- (b) Administrative Instruction 8, Disciplinary and Adverse Actions dated May 7, 2008
- (c) Standard Form 50; Appointment Program Analyst (GS13)
- (d) Standard Forms 50 ( Prior Service)
- (e) Position Description (GS 12/13 Program Analyst)
- (f) Elizabeth Aviles-Wynkoop's Request for SF-50 for Supervisor, dated August 26, 2015
- (g) *Observations* Document
- (h) Administrative Leave Letter, dated August 28, 2015
- (i) Email from Elizabeth Aviles-Wynkoop to Carol Ensley and Jerry Russell, Jr., dated August 13, 2015
- (j) Email from Elizabeth Aviles-Wynkoop to Vincent Shirley, et.al., dated August 13, 2015
- (k) Email from Elizabeth Aviles-Wynkoop to Vincent Shirley, et.al., dated August 27, 2015

## **VII. INDEX TO APPENDICES**

### **APPENDIX B**



DEPARTMENT OF DEFENSE  
WASHINGTON HEADQUARTERS SERVICES  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155



04 JAN 2016

MEMORANDUM FOR ELIZABETH AVILES-WYNKOOP

Subject: NOTICE OF DECISION ON PROPOSED TERMINATION DURING  
PROBATIONARY PERIOD

In a memorandum dated October 27, 2015, your supervisor and Branch Chief, Carol Ensley, proposed your termination during your probationary period (Proposal) from your position of Program Analyst, GC-0343-13, Washington Headquarters Services (WHS), Enterprise IT Services Directorate (EITSD), Joint Service Provider (JSP) and from the Federal service. Reference (a). You received the proposal notice on or about November 6, 2015. Reference (a).

The Proposal informed you of your right to reply, orally and/or in writing, within 10 calendar-days of your receipt of the memorandum, which was November 16, 2015. On Friday, November 13, 2015, through your attorney, Bradley R. Marshall, you requested a 30-day extension of time to submit an oral and/or written reply to the proposed action. On November 17, 2015, I granted you an extension until November 23, 2015. On November 18, 2015, your attorney requested a second extension. I granted you the second extension of time to file your written reply not later than 4:00 p.m. on December 7, 2015 and an extension of time to file your oral reply not later than 4:00 p.m. on December 14, 2015. Your attorney and I agreed that your oral reply would take place on Monday, December 14, 2015 at 1:00 p.m. at the Pentagon. On Friday, December 11, 2015, at 12:18 p.m., you sent me an email informing me that you were looking for a new attorney and you requested a third extension of time to file your oral and written replies. I did not grant your third extension of time to file your oral and written replies and expected to see you for the oral reply on Monday, December 14, 2015 at 1:00 p.m., as previously agreed. Reference (b). On Monday, December 14, 2015, neither you nor your attorney appeared for the scheduled oral reply at 1:00 p.m. at the Pentagon. On Monday, December 14, 2015, at 2:17 p.m., you sent me an email stating that you could not attend the oral reply that day because of car trouble. You did not request an extension of time to present your oral reply at that time. Reference (c).

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Tab 4b

On Monday, December 14, 2015 at 1:47 p.m., you sent me your written reply. Reference (d). Even though your written reply was seven (7) days late, I still considered it in rendering my decision. You did not present an oral reply.

In your written reply, you did not dispute the fact that you are a true probationer. Also in your written reply, you claimed that you should not be terminated during your probationary period because the Human Resources Directorate never informed you as to whether or not you were in a Union; the agency did not provide you an opportunity to present your oral and/or written replies; I allegedly agreed to be your supervisor on August 14, 2015, instead of the proposing official; you did not get paid for overtime you worked and you did not receive a response to your request for overtime; you engaged in misconduct because you were new to the office; the proposing official and Mr. Victor Shirley told you that you were walking on thin ice and placed you on paid administrative leave; and you engaged in misconduct because you were just doing your job as a Contracting Officer Representative.

I find that you are a true probationer and that your claims that you should not be terminated during your probationary period to be without merit, for the following reasons:

#### **I. TRUE PROBATIONER STATUS**

As stated in the Proposal Notice, I find that you are a true probationer with limited pre-termination procedural rights and post-termination appeal rights because you have not completed one (1) year of current continuous service under an appointment other than a temporary appointment limited to one (1) year or less. Additionally, your prior service was not rendered immediately preceding the probationary appointment (you had a break in service for almost 9 months); your prior service was not performed in the same agency (you have never before worked for Washington Headquarters Services, Department of Defense); it was not performed in the same line of work (you are now a Program Analyst and your prior service was as a Clerk Typist, Work Order Clerk (Typing), Procurement Clerk (Typing), Contract Specialist and Contract Oversight Specialist); and your prior service was completed with more than one break in service of more than 30 days (you had 3 breaks in service for 13 years, 2½ years and 9 months, respectively). *See* Proposal Notice with References.

Additionally, since you have not disputed the fact that you are a true probationer, I find that you have admitted it.

For these reasons, I find that you are a true probationer and not an “employee” with appeal rights under 5 U.S.C. Chapter 75.

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## **II. MISCONDUCT**

In your written reply, you did not dispute the fact that any of the charged misconduct occurred, you merely provided the reasons you engaged in the misconduct. You did not dispute that you refused to recognize Ms. Carol Ensley, the proposing official, as your supervisor, when she was, in fact, your supervisor. You also did not dispute the fact that you did not follow Ms. Ensley's supervisory instructions, even though she was your supervisor. You did not dispute the fact that you were discourteous to contract employees, fellow employees and management. You did not dispute the fact that you inappropriately voiced your frustrations, negative comments and/or demands by writing negative and inflammatory email to senior EITSD staff, outside of your chain-of-command. You did not dispute the fact that you sent an inappropriate email to Mr. Shirley, the WHS/EITSD/JSP Chief of Staff. Since you did not dispute the misconduct charged in the Proposal Notice, I find that you engaged in the charged misconduct. Your excuses for engaging in the misconduct (as stated in your written reply) do not negate the fact that you engaged in the misconduct.

Regarding the remainder of the reasons for engaging in the charged misconduct that you raised in your written reply, I find them to be without merit. I had no knowledge of your request to the Human Resources Directorate (HRD) regarding your union status. Regardless, your request to HRD has no bearing on your misconduct. Your claim that you believed I was your supervisor instead of Ms. Ensley, does not absolve you of your acts of misconduct. In any event, I never informed you that I was your supervisor instead of Ms. Ensley. Your claim that Mr. Shirley and Ms. Ensley informed you that you were walking on thin ice and placed you on paid administrative leave, has no bearing on the fact that you engaged in the charged misconduct. In fact, if Mr. Shirley and Ms. Ensley did warn you that you had engaged in misconduct and needed to watch your step, that was a fair warning because you are probationer and subject to termination during your probationary period for engaging in misconduct. As stated above, it is clear that you were provided ample opportunity to present your oral and/or written replies. Finally, Ms. Ensley did issue you a memorandum responding to your request for payment for a total of 147 hours of overtime on December 18, 2015. Reference (e).

## **III. PENALTY**

Having sustained the charges against you, I now turn to the proposed penalty of termination.

As the Deciding Official, I carefully considered all of the evidence in this case, including the Proposal Notice; the material relied upon to support the proposal and your written reply. Even though you are a true probationer, I analyzed the penalty phase of this action in two ways –

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first as if you are a true probationer and second as if you were an “employee” with appeal rights under 5 U.S.C. Chapter 75.

Since you are a true probationer, I find the following regarding penalty: This organization is in need of someone who is consistently capable of completing the duties of your position, at the grade level of your position, on a reliable, timely, accurate and professional basis. Despite efforts to guide and counsel you, your improvement has not risen to the level necessary to retain you in your position. You have not demonstrated the ability to perform the essential functions of your position. It is for these reasons that I am terminating you during your probationary period. This action is being taken to promote the efficiency of the service.

Even assuming, *arguendo*, that you are an “employee” with appeal rights under 5 U.S.C. Chapter 75, I find that the penalty of removal is appropriate for the following reasons: In determining the appropriate penalty to impose for your misconduct, I considered the proposal letter, the supporting record of evidence, and all relevant *Douglas* factors. I considered the nature and seriousness of the offense as related to your position and responsibilities as a Program Analyst.

Since your hiring on June 29 2015, you have developed a severely negative working relationship with your supervisor, co-workers, and customers. This misconduct has created a hostile working environment within the Washington Headquarters Services (WHS), Enterprise Information Technology Services Directorate (EITSD), Joint Service Provider (JSP). This misconduct is also the cause for your supervisor, Ms. Carol Ensley, to place you on administrative leave on August 28 2015, only 44 business days after you began working for EITSD.

On October 27 2015, you were officially served a *Notice of Proposed Termination During Probationary Period* memorandum. This notice highlights several serious aggravating misconduct incidents of note, such as refusal to recognize your supervisor of record, Ms. Carol Ensley, as your supervisor. You were insubordinate when you challenged Ms. Ensley’s authority and refused to acknowledge Ms. Ensley’s supervisory requests. You engaged in repeated patterns of misconduct and discourteous behavior towards fellow contractors, co-workers, and management. This behavior is highlighted in several reference emails provided in the references attached to the *Notice of Proposed Termination During Probationary Period* memorandum issued to you. You engaged in divisive behavior with fellow WHS/EITSD/JSP co-workers-referring to them as “unprofessional, crooked, and unethical”. This is the cause for several WHS/EITSD/JSP employees to submit formal complaints to Ms. Ensley about your divisive behavior. As highlighted in the Proposal Notice, you communicated negative comments and/or demands by writing negative and inflammatory emails to senior EITSD staff (at the SES-level),

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despite the fact that you were counseled on the proper procedures and protocol of the chain of command. These are aggravating factors and are directly related to the performance of your job duties and responsibilities as a Program Analyst, and do not appear to be inadvertent. Ms. Ensley attempted to progressively counsel you regarding your misconduct, but she had no success.

I considered your job level and type of employment, including fiduciary role to be an aggravating factor. As a GS-0343-13 Program Analyst within WHS/EITSD/JSP, you have a responsibility to act as a Contracting Offer Representative (COR), evaluate contractor employee performance, review programs, collaborate with customers in developing budgets and spend plans, and conduct presentations and briefings. Due to the nature of this work, all WHS/EITSD/JSP Program Analysts, including you, are required to exhibit high standards of professional conduct in the day-to-day performance of your job duties and functions. As a result of your misconduct, I can no longer trust you to perform your duties and responsibilities as a GS-0343-13 Program Analyst and a COR. I also find it aggravating that you refused to recognize your supervisor as your supervisor. You appeared to believe that you had the right to select your own supervisor, which is incorrect and disturbing for a subordinate. I considered the clarity with which your supervisor placed you on notice that you were engaging in misconduct to be an aggravating factor. It is an aggravating factor that I do not believe you can be rehabilitated, since you do not believe you did anything wrong and you were not apologetic. I finally considered the fact that you have no disciplinary record and your length of total Federal service to be mitigating factors.

I considered the consistency of the penalty with that imposed upon other employees for the same offense and the adequacy of alternative sanctions to deter future misconduct. This penalty is consistent with Office of the Secretary of Defense Administrative Instruction Number 8, "Disciplinary and Adverse Actions," and its Table of Penalties which recommends the following first-offense penalties: Reprimand to a Removal for Insubordination; Reprimand to a Removal for Impertinence, insolence, disrespectful conduct towards a supervisor; and Reprimand to a Removal for Intimidating or aggressive behavior. Therefore, I find that the penalty of removal/termination would be the appropriate penalty even if you were not a true probationer. I find that no lesser sanction will deter future misconduct.

The effective date of this termination action is **JANUARY 4, 2016**.

#### **IV. RIGHTS**

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Since you are a true probationer, there are no direct appeal rights of this action to the U.S. Merit Systems Protection Board (MSPB) unless you allege that your termination was taken because of (1) discrimination based on partisan political reasons or marital status, or (2) conditions arising before appointment and the agency failed to follow required procedures. An appeal may also be based on discrimination because of race, color, religion, sex, national origin, handicapping condition, or age (provided that at the time of the alleged discriminatory action, you were at least 40 years of age), but only if it is raised in addition to partisan political reasons, marital status, or conditions arising before appointment and the agency failed to follow required procedures.

Your petition of appeal must be filed in writing any time during the period beginning with the day after the effective date of this termination, **JANUARY 4, 2016** through the 30<sup>th</sup> day after the effective date or during the period beginning with the day after the date of receipt of this termination, through the 30<sup>th</sup> day after the date of receipt, whichever is later. You do not need the Standard Form (SF-50), Notification of Personnel Action, relevant to the appealable action to file an appeal to the MSPB. You may not file your appeal before the effective date of the action. The appeal must be filed in writing with the MSPB. You may file at the following address:

Regional Director, Washington, D.C., Regional Office  
U.S. Merit Systems Protection Board  
1901 S. Bell Street  
Arlington, Virginia 22202  
(703) 756-6250

You may also file your appeal by facsimile at (703) 756-7112 or electronically at [www.mspb.gov](http://www.mspb.gov) using E-Appeal, the MSPB's Internet filing procedure. E-Appeal is an interactive application that follows an interview format. E-Appeal includes questions and answers, as well as other help links appropriate to each section of the interview.

If you elect to file an appeal, the Agency point of contact for MSPB correspondence is:

Mr. Steven Weiss  
Assistant General Counsel  
Washington Headquarters Services &  
Pentagon Force Protection Agency  
1155 Defense Pentagon  
Room 2E1035  
Washington, DC 20301-1155  
Phone: (703) 693-7374

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Fax: (703) 697-1068

E-mail: [steven.j.weiss2.civ@mail.mil](mailto:steven.j.weiss2.civ@mail.mil)

If you believe this personnel action was taken in retaliation for your alleged protected Whistleblowing activities under 5 U.S.C. § 2302(b)(8), you may file a complaint with the Office of Special Counsel (OSC) under 5 U.S.C. § 1214 which may be followed by an Individual Right of Action appeal filed with the MSPB under 5 U.S.C. § 1221.

You may obtain a copy of the MSPB rules and regulations and appeal form at [www.mspb.gov](http://www.mspb.gov). You may obtain a copy of the OCS's rules and regulations and appeal form at [www.osc.gov](http://www.osc.gov).

If you believe this action is based on unlawful discrimination, consistent with the provisions of 29 C.F.R. Part 1614, you have the right to file a complaint with your organization's EEO office. WHS's EEO office is the Office of Equal Employment Opportunity and Diversity, 4800 Mark Center Drive, Suite 03G19, Alexandria, Virginia, 571-372-0832. 29 CFR 1614.302(b) states that you may file a mixed case complaint with the agency's EEO office pursuant to 29 CFR Part 1614, or a mixed case appeal with the MSPB pursuant to 5CFR 1201.151, but not both. Since this action is one that may be appealed to the MSPB, you may choose (instead of filing a complaint with the EEO office) to raise discrimination with the MSPB as stated above, or under 29 C.F.R. 1614.302. The forum in which you file first (EEO or MSPB) is considered your election to proceed in that forum.

If you have any questions about your rights or procedures discussed herein, contact Carene Reid of the WHS, Human Resources Directorate (HRD), Labor and Management Employee Relations Division, at (571) 372-4084 or [carene.d.reid.ctr@mail.mil](mailto:carene.d.reid.ctr@mail.mil). Should you be unable to access any of the foregoing rules or regulations via the above websites, please contact Ms. Reid for assistance in obtaining a paper copy.

If you have questions regarding the effect of your separation on your federal benefits, please contact Mr. Maurice Hubbard of the WHS, HRD, Benefits Division at (571) 372-4113 or [maurice.a.hubbard.civ@mail.mil](mailto:maurice.a.hubbard.civ@mail.mil).

Page 7 of 8

WARNING:

This document requires protection and safeguarding because it may be subject to the Privacy Act of 1974.

You are asked to sign and date the Acknowledge Receipt copy of this memorandum. By doing so, you will not forfeit any of the rights mentioned herein. Your signature does not indicate your agreement or disagreement with this action. Your failure to sign will not void the content of the memorandum. However, since you have been on Administrative Leave since August 28, 2015, this memorandum is being mailed via USPS certified and regular mail, and the postal delivery receipt will be hereby used as acknowledgment of such receipt.

Jerry H. Russell  
Deputy Chief, Business Resource Center  
Joint Service Provider, formerly Enterprise IT Services Directorate  
Washington Headquarters Services

Acknowledge Receipt:

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Signature

---

Date

References:

- a. Notice of Proposed Removal, dated October 27, 2015 and Proof of Delivery Receipt
- b. Requests for Extension, dated November 13, November 18, 2015 and December 11, 2015 with agency response
- c. Elizabeth Aviles-Wynkoop Email Re: Oral Reply, dated December 14, 2015
- d. Elizabeth Aviles-Wynkoop's Written Reply, dated December 14, 2015

Page 8 of 8

WARNING:

This document requires protection and safeguarding because it may be subject to the Privacy Act of 1974.

**VII. INDEX TO APPENDICES**

**APPENDIX C**

**Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US) <elizabeth.aviles-wynkoop.civ@mail.mil>** 14-2015, 1:05 PM

to me

-----Original Message-----

From: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)  
Sent: Friday, August 14, 2015, 12:15 PM  
To: Russell, Jerry H Jr CIV (US); Ensley, Carol A CIV WHS EITSD (US)  
Cc: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)  
Subject: FW: Remarks made against me, Elizabeth Aviles-Wynkoop at JITSP

Thank you, Jerry for the clarification.

I'm here to serve the mission of the NEW JITSP and to advise, you and Carol, that no laws, are being broken, per the Federal Acquisition Regulation (FAR).

In the future, if there are any issues, I hope, we can address, the issues, first, face to face and not, by contacting, Labor Relations.

I'm an adult and I know my job. I would like, to be treated as a professional and I don't, have time to play games.

I'm trying, to support you both, as my supervisors but it causes me concern, when Federal Supervisors, listen to Contractors and don't even ask me, as a Federal Employee, what the issue was and if, the issue was truthful?

As you both know, I have you both cc, in ALL my emails and I have nothing, to hide with my work or my customer support.

I hope this issue is null and void.

I await, what you need me to do, to assist you with our NEW JITSP.

Thank you, for your time and attention, to this matter.  
Elizabeth

-----Original Message-----  
From: Russell, Jerry H Jr CIV (US)  
Sent: Friday, August 14, 2015, 11:58 AM  
To: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US); Ensley, Carol A CIV WHS EITSD (US)  
Subject: RE: Remarks made against me, Elizabeth Aviles-Wynkoop at JITSP

Elizabeth

My apologies for the confusion, hopefully this will clarify.

(1) There was a meeting with Labor Relations yesterday that I attended with Carol. The purpose of the meeting was to discuss Carol's observations as presented to you yesterday. I did not draft the paper and it was important that I attended as Carol's supervisor to discuss issues raised.

(2) For the record, I do not have any concerns with your performance and I'm very glad to have you as a part of the team. I know that Carol is as well.

Please consider this email a formal apology from me for any miscommunications that have occurred over the past day or so.

I do not have any intentions of further communications with LMER. In fact, LMER has stated that this is a matter between the first line supervisor and the employee and that I should not be involved unless required.

Jerry

Jerry H. Russell  
Resource & Supplier Management, WHS, EITSD  
Joint IT Service Provider Pentagon  
Comm: 571-372-0110; BB: 571-212-1041

-----Original Message-----

From: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)  
Sent: Friday, August 14, 2015 11:06 AM  
To: Ensley, Carol A CIV WHS EITSD (US); Russell, Jerry H Jr CIV (US)  
Cc: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)  
Subject: RE: Remarks made against me, Elizabeth Aviles-Wynkoop at JITSP  
Importance: High

Jerry, when you get a moment, if you can clarify Carol's remarks below, that you and her, did, meet with Labor Relations, regarding concerns that I addressed in my email last night?

I'm very confused on who isn't truthful and I need to have a healthy work environment with my supervisors.

Jerry, you expressed to me, this morning, that you don't operate this way and I need clarification on Carol's remarks below.

I await your response.

Thanks!  
Elizabeth

-----Original Message-----

From: Ensley, Carol A CIV WHS EITSD (US)  
Sent: Friday, August 14, 2015 11:00 AM  
To: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US); Russell, Jerry H Jr CIV (US)  
Subject: RE: Remarks made against me, Elizabeth Aviles-Wynkoop at JITSP

Thank you Elizabeth for letting me know your concerns.

Jerry and I met with Labor Relations as a team yesterday.

I did write the Observations without Jerry's input.

I will contact LMER and discuss the way forward with regard to the documentation provided yesterday.

VR

Carol A. Ensley  
Chief, Acquisition Management, WHS-EITSD  
Joint IT Service Provider-Pentagon  
703-697-8599  
[carol.a.ensley.civ@mail.mil](mailto:carol.a.ensley.civ@mail.mil)

-----Original Message-----

From: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)  
Sent: Friday, August 14, 2015 10:19 AM  
To: Ensley, Carol A CIV WHS EITSD (US); Russell, Jerry H Jr CIV (US)  
Cc: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)  
Subject: RE: Remarks made against me, Elizabeth Aviles-Wynkoop at JITSP  
Importance: High

Carol,

I spoke to Jerry this morning and he said, that he didn't tell you, to contact Labor Relations.

I want an apology, from you in writing and I also, want in writing, that ALL documents/paperwork, regarding the below issues, have been shredded, removed from

your computer, Labor Relations computer and destroyed, on the incidents, that you listed below, that were issues and concerns, to you.

I want in writing from you, that no further action or concerns are present.

Carol, since you now make me question your supervisory ethics, I don't want to be in a room alone with you.

I will work with you and be professional but with myself trusting you, this has been lost due to you going to Labor Relations on me.

I await the above in writing, to ensure, that I DON'T, need, to be worrying about Labor Relations.

Thank you for your time and attention to this matter.  
Elizabeth

-----Original Message-----

From: Ensley, Carol A CIV WHS EITSD (US)

Sent: Thursday, August 13, 2015 5:15 PM

To: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US); Russell, Jerry H Jr CIV (US)

Subject: RE: Remarks made against me, Elizabeth Aviles-Wynkoop at JITSP

Elizabeth:

I just spoke with Jerry and the contractors will be reporting to Crystal City in the morning.

VR

Carol A. Ensley

Chief, Acquisition Management, WHS-EITSD

Joint IT Service Provider-Pentagon

703-697-8599

[carol.a.ensley.civ@mail.mil](mailto:carol.a.ensley.civ@mail.mil)

## **VII. INDEX TO APPENDICES**

# **APPENDIX D**



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

ELIZABETH AVILES-WYNKOOP,  
Appellant,

DOCKET NUMBER  
DC-315H-16-0327-I-1

v.

DEPARTMENT OF DEFENSE,  
Agency.

DATE: September 14, 2016

**THIS ORDER IS NONPRECEDENTIAL<sup>1</sup>**

Nate Nelson, Petersburg, Virginia, for the appellant.

Jenifer J. Schall, Esquire, and Kevin Greenfield, Washington, D.C., for the agency.

**BEFORE**

Susan Tsui Grundmann, Chairman  
Mark A. Robbins, Member

**REMAND ORDER**

The appellant has filed a petition for review of the initial decision, which dismissed her termination appeal for lack of jurisdiction. For the reasons discussed below, we GRANT the appellant's petition for review, VACATE the

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<sup>1</sup> A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See 5 C.F.R. § 1201.117(c).

initial decision, and REMAND the case to the Washington Regional Office for further adjudication in accordance with this Order.

### **BACKGROUND**

On February 3, 2016, the appellant, a GS-13 Program Analyst in the competitive service, filed an appeal of her termination and requested a hearing. Initial Appeal File (IAF) Tab 1, Tab 5 at 12. She alleged that the agency improperly considered her to be a probationary employee, but that she was reinstated to the position under 5 C.F.R. § 315.401, and had previously completed a probationary period. IAF, Tab 1 at 3. The administrative judge set forth the law applicable to the question of Board jurisdiction over a probationary termination and ordered the appellant to file evidence and argument showing that the appeal was within the Board's jurisdiction. IAF, Tab 2. The agency moved to dismiss the appeal, arguing that the appellant was serving in a probationary period despite her prior Federal service and that the Board did not have jurisdiction over the appeal. IAF, Tab 5 at 4-9. The appellant responded to the agency's motion. IAF, Tab 11.

After considering the pleadings, the administrative judge dismissed the appeal for lack of jurisdiction, finding that the appellant was a probationary employee who did not have 1 year of current continuous service, and did not have any other service that could be "tacked" to her probationary period. IAF, Tab 12, Initial Decision (ID). The administrative judge did not hold the appellant's requested hearing on the jurisdictional issue.

The appellant has filed a petition for review of the initial decision. Petition for Review (PFR) File, Tab 1. She reiterates her assertions made below that she was reinstated to her position, had previously completed a probationary period, and, therefore, met the definition of employee under 5 U.S.C. § 7511(a)(1)(A)(i) because she was not serving a probationary period under an initial appointment at the time of her termination. *Id.* at 3-5. The agency has responded to the petition for review. PFR File, Tab 4.

## DISCUSSION OF ARGUMENTS ON REVIEW

The Board's jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule, or regulation. *Maddox v. Merit Systems Protection Board*, 759 F.2d 9, 10 (Fed. Cir. 1985). Whether an individual in the competitive service has the right to appeal an adverse action depends on whether she is an "employee" under 5 U.S.C. § 7511(a)(1)(A). *Walker v. Department of the Army*, 119 M.S.P.R. 391, ¶ 5 (2013). 5 U.S.C. § 7511(a)(1)(A) defines an employee as an individual in the competitive service who (i) is not serving a probationary period under an initial appointment, or (ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less. 5 U.S.C. § 7511(a)(1)(A). In an adverse action appeal, an appellant is entitled to a hearing on jurisdiction if she makes a nonfrivolous claim of Board jurisdiction, at which she must prove jurisdiction by preponderant evidence. *Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1344 (Fed. Cir. 2006) (en banc). Nonfrivolous allegations are allegations of fact that, if proven, could establish that the Board has jurisdiction over the matter at issue. *Walker*, 119 M.S.P.R. 391, ¶ 6 n.2.

The administrative judge correctly found that the appellant was not an "employee" under 5 U.S.C. § 7511(a)(1)(A)(ii).

The administrative judge correctly found that the appellant does not meet the definition of employee under 5 U.S.C. § 7511(a)(1)(A)(ii) because she lacked 1 year of current continuous service. ID at 4-5. "Current continuous service" means "a period of employment or service immediately preceding an adverse action without a break in Federal civilian employment of a workday." *Ellefson v. Department of the Army*, 98 M.S.P.R. 191, ¶ 14 (2005). The appellant resigned from her immediately previous Federal position, with the Department of Housing & Urban Development, effective September 30, 2014, and thus had a 9-month break in service prior to her June 29, 2015 appointment with the agency. IAF, Tab 5 at 82, 112. Therefore, the administrative judge correctly found that the

appellant did not meet the definition of an employee under 5 U.S.C. § 7511(a)(i)(A)(ii).

The appellant has raised a nonfrivolous allegation that she was an employee under 5 U.S.C. § 7511(a)(1)(A)(i).

An agency may appoint by reinstatement to a competitive-service position an individual who previously was employed under a career or career-conditional appointment. 5 C.F.R. § 315.401(a). Under 5 C.F.R. § 315.801, the first year of service of an employee who is given a career or career-conditional appointment in the competitive service is a probationary period when, among other things, the employee was reinstated under subpart D (5 C.F.R. § 315.401), unless during any period of service that affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment that did not require a probationary period. In other words, when an agency appoints an individual using reinstatement authority, the individual must serve a probationary period unless during any prior service that forms the current basis for the reinstatement, the individual completed probation or did not have to serve a probationary period. 5 C.F.R. §§ 315.401, 801(a).

The parties do not contest that the appellant was appointed to her position by reinstatement. PFR File, Tab 1 at 4, Tab 4 at 4. The Standard Form 50 (SF-50) documenting her appointment reflects that she was appointed by reinstatement under 5 C.F.R. § 315.401. IAF, Tab 5 at 83. Although “the SF-50 is not a legally operative document controlling on its face an employee’s status and rights,” it still can be considered as evidence when determining the nature of an action. *Grigsby v. Department of Commerce*, 729 F.2d 772, 776 (Fed. Cir. 1984). In sum, because the parties agree that the appellant was appointed by reinstatement and the record supports that conclusion, she is subject to the regulations at 5 C.F.R. § 315.801(a)(2) regarding probationary periods for individuals appointed through reinstatement.

The appellant argues on review, as she did below, that she previously completed a probationary period during a period affording a current basis for her reinstatement and, therefore, under 5 C.F.R. §§ 315.401 and 315.801(a)(2), she was not required to serve a probationary period with the agency. PFR File, Tab 1 at 4-5; IAF, Tab 1 at 4. The administrative judge did not address this argument, instead conducting an analysis under 5 C.F.R. § 315.802(b) to determine if the appellant's prior service could be "tacked" to her more recent agency service to find that she completed her current probationary period for jurisdictional purposes. ID at 4. However, any "tacking" analysis would be irrelevant if the appellant was not required to serve a probationary period with the agency because she completed a probationary period during a period affording a current basis for her reinstatement.

The Board addressed a situation similar to that presented by this appeal in *Abdullah v. Department of the Treasury*, 113 M.S.P.R. 99 (2009). The agency in that appeal terminated the appellant during what it believed was his probationary period, but the Board noted that the appellant might have been appointed to his position through reinstatement and, if that were the case and he met the criteria of 5 C.F.R. § 315.802(a)(2), then he met the statutory definition of an employee. *Id.*, ¶¶ 11-13. Because the record had not been developed regarding these issues, the Board in *Abdullah* remanded the appeal to further develop the record.<sup>2</sup> *Id.*, ¶ 14.

Here, the record is also not adequately developed to address the appellant's arguments. Therefore, we remand this appeal to the administrative judge to take

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<sup>2</sup> The agency argues that this appeal is controlled by the U.S. Court of Appeals for the Federal Circuit's decision in *Shelton v. Department of the Air Force*, 382 F.3d 1335 (Fed. Cir. 2004). We have considered the decision and find it inapposite. Unlike the case at bar, in *Shelton* there is no suggestion that the appellant was reinstated under the authority of 5 C.F.R. § 315.401. Although the court used the term "reinstatement" to describe the rehiring of the appellant to the same position 13 years after he departed, it appears that the court used the word in its common meaning and not as a term of art as used in the regulation.

additional evidence and argument regarding the nature of the appellant's appointment with the agency, what prior appointment(s) served as a basis for the appellant's reinstatement, and whether she completed a probationary period during the appointment(s). The administrative judge shall afford the appellant a hearing on these jurisdictional issues.

**ORDER**

For the reasons discussed above, we remand this case to the Washington Regional Office for further adjudication in accordance with this Remand Order.

FOR THE BOARD:

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Jennifer Everling  
Acting Clerk of the Board

Washington, D.C.

## **VII. INDEX TO APPENDICES**

# **APPENDIX E**

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WASHINGTON REGIONAL OFFICE**

ELIZABETH AVILES-WYNKOOP,  
Appellant,

DOCKET NUMBER  
DC-315H-16-0327-B-1

v.

DEPARTMENT OF DEFENSE,  
Agency.

DATE: September 26, 2016

**ORDER AND NOTICE OF JURISDICTIONAL HEARING, STATUS  
CONFERENCE, AND PREHEARING CONFERENCE**

The jurisdictional hearing in this appeal will be held:

Date: **December 9, 2016**

Time: **9:00 a.m.**

Location: U.S. Merit Systems Protection Board  
1901 South Bell Street, Suite 950  
Arlington, VA 22202-4802

If the appellant fails to appear without good cause, the appeal will be decided without a hearing. If the agency representative fails to appear, the hearing will, absent extraordinary circumstances, proceed as scheduled.

**STATUS CONFERENCE**

I will conduct a telephonic status conference on **October 5, 2016**, at **3:00 p.m.** The parties must be familiar with the facts and issues of the appeal and be prepared to discuss them. To join the conference, you must call **1-800-793-9878**, and at the prompt enter Participant Code **1234124**. During the conference, I will address discovery procedures and review settlement efforts.



NOTE: Since I will discuss settlement options during this conference, representatives must have the authority to settle this appeal or be able to reach the person with that authority on short notice. We may include that person in the conference discussions if I deem it necessary.

### **PREHEARING SUBMISSIONS**

I **ORDER** the agency and the appellant to file the following to be received in this office on or before **November 23, 2016:**

- (1) A statement of facts and issues (the appellant must include any and all defenses);
- (2) A list of all agreed upon material facts;
- (3) A list of witnesses with a detailed summary of the expected testimony of each witness showing that the testimony will tend to prove or disprove a fact significant to the case. Testimony that is irrelevant, immaterial, or unduly repetitious will be excluded. *See* 5 C.F.R. § 1201.41(b)(10). The summary should include each witness's first and last name, job title and work location if the witness is a federal employee, and relationship to the appellant and the facts at issue; and
- (4) A copy of exhibits accompanied by an index identifying the documents. You must separately mark for identification every document in the lower right hand corner. The appellant must mark exhibits by letter, the agency by number. Each exhibit exceeding 10 pages in length must be paginated. Documents previously submitted to the Board by either party are already a part of the record and are not to be offered as exhibits. **No binders or notebooks will be accepted.**

NOTE: In presenting evidence at the hearing, you will be limited by your prehearing submissions, except for good cause shown. For example, an unlisted

witness will usually not be permitted to testify, and hearing exhibits that were not reviewed during the prehearing conference will usually not be accepted into the record.

### **WITNESSES**

The agency must provide for the appearance of its employees who are approved as witnesses; thus no subpoenas for them are necessary. If necessary, I will assist you in arranging for the appearance of employees of any other Federal agency or individuals not employed by the federal government. This assistance may include ordering an agency to make the witness available or issuing a subpoena. To be timely, a motion for subpoena must be received in this office on or before **November 23, 2016**. The requesting party is responsible for serving the subpoena and for paying appropriate witness fees.

### **COMMUNICATIONS DURING HEARING**

Absent express approval from the administrative judge, no two-way communications devices may be operated and/or powered on in the hearing room; all cell phones, text devices, and all other two-way communications devices shall be powered off in the hearing room. Further, no cameras, recording devices, and/or transmitting devices may be operated, operational, and/or powered on in the hearing room. If the hearing is being held by telephone, the same rules apply, modified as appropriate to the circumstances. Failure to abide by these rules may result in the imposition of sanctions, up to and including removal of the offending individual from the hearing room or stopping the hearing. See 5 C.F.R. § 1201.43.

### **PREHEARING CONFERENCE**

I will conduct a telephonic prehearing conference on **November 30, 2016**, at **10:00 a.m.** Witness requests and hearing exhibits will be reviewed in detail and the facts and issues of the appeal that will be addressed at the hearing will be discussed. Unless otherwise specified, all discovery efforts will terminate on this

date. The parties must be prepared, as appropriate, to discuss settlement, to define the issues, and to reach stipulations of uncontested facts. To join the conference, you must call **1-800-793-9878**, and at the prompt enter Participant Code **1234124**.

NOTE: Since I will discuss settlement options during this conference, representatives must have the authority to settle this appeal or be able to reach the person with that authority on short notice. We may include that person in the conference discussions if I deem it necessary.

FOR THE BOARD:

\_\_\_\_\_/S/\_\_\_\_\_  
Andrew M. Dunnaville  
Administrative Judge

## CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

### Appellant

U.S. Mail                      Elizabeth Aviles-Wynkoop  
753 B Delaware Avenue SW  
Washington, DC 20024

### Appellant Representative

U.S. Mail                      Nate Nelson  
1709 Halcun Drive  
Petersburg, VA 23803

### Agency Representative

Electronic Mail              Jenifer J. Schall, Esq.  
Department of Defense  
WHS & PFPA Office of General Counsel  
1155 Defense Pentagon (Pentagon Rm. 2E1035)  
Washington, DC 20301-1155

Electronic Mail              Mr. Kevin Greenfield  
Department of Defense  
WHS/OGC  
1155 Defense Pentagon, Rm. 2E1035  
Washington, DC 20301

September 26, 2016  
(Date)

/s/  
Tonya Holman  
Paralegal Specialist

**VII. INDEX TO APPENDICES**

**APPENDIX F**

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WASHINGTON REGIONAL OFFICE**

ELIZABETH AVILES-WYNKOOP,  
Appellant,

DOCKET NUMBER  
DC-315H-16-0327-B-1

v.

DEPARTMENT OF DEFENSE,  
Agency.

DATE: January 12, 2017

**ORDER FINDING JURISDICTION**

On February 3, 2016, the appellant filed an appeal of the agency's action terminating her from her position with the Department of Defense Washington Headquarters Services (WHS or agency). Appeal File (AF), *Aviles-Wynkoop v. Department of Defense*, DC-315H-16-0327-I-1 (AF-I-1), Tab 1. For the following reasons, I find that the appellant has established Board jurisdiction over her appeal.

**BACKGROUND**

On June 29, 2015, the appellant was appointed to a Program Analyst, GS-0343-13 position at the Pentagon in Arlington, Virginia. AF-I-1, Tab 5 at 85. The appellant received a career conditional appointment by reinstatement. *Id.* See 5 C.F.R. § 315.402.

On October 27, 2015, the appellant was given notice that she would be terminated during her probationary period. AF-I-1, Tab 5 at 52. The notice stated that the appellant was being terminated for several reasons, including inappropriate conduct and discourteous behavior. *Id.* at 54-56. The appellant was terminated effective January 4, 2016. *Id.* at 13-20. The appellant filed the an

appeal with the Merit Systems Protection Board (Board) on February 3, 2016. AF-I-1, Tab 1.

An Initial Decision was issued on March 24, 2016. AF-I-1, Tab 12. The appellant subsequently filed a Petition for Review. AF-I-2, Tab 1. On September 14, 2016, the Board issued a Remand Order finding that the appellant raised a nonfrivolous allegation that she was appointed by reinstatement and was an employee under 5 U.S.C. § 7511(a)(1)(A)(i), and therefore was entitled to a jurisdictional hearing. *Id.* The Board remanded the appeal to determine whether the appellant previously completed a probationary period during a period affording a current basis for her reinstatement. *Id.* The appellant waived her right to a jurisdictional hearing, and a close of record conference was held on December 19, 2016. AF-B-1, Tab 10.

### ANALYSIS AND FINDING

The Board's jurisdiction is not plenary. It is limited to those matters over which it has been given jurisdiction by law, rule or regulation. *Maddox v. Merit Systems Protection Board*, 759 F.2d 9, 10 (Fed. Cir. 1985). It is well-established that the Board does not have jurisdiction over all actions that are alleged to be incorrect, and that the appellant has the burden of proving that the Board has jurisdiction over his appeal. *See* 5.C.F.R. § 1201.56(a)(2). *See also* *Marren v. Department of Justice*, 49 M.S.P.R. 45, 51 (1991). Whether the Board has appellate jurisdiction by statute in a termination or other adverse action depends on whether the appellant is a Federal employee as defined by 5 U.S.C. § 7511(a)(1). 5 U.S.C. § 7511(a)(1)(A) defines an employee as an individual in the competitive service who (i) is not serving a probationary period under an initial appointment, or (ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less. 5 U.S.C. § 7511(a)(1)(A).

An agency may appoint by reinstatement to a competitive-service position an individual who previously was employed under a career or career-conditional appointment. 5 C.F.R. § 315.401(a). Under 5 C.F.R. § 315.801, the first year of service of an employee who is given a career or career-conditional appointment in the competitive service is a probationary period when, among other things, the employee was reinstated under subpart D (5 C.F.R. § 315.401), unless during any period of service that affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment that did not require a probationary period. In other words, when an agency appoints an individual using reinstatement authority, the individual must serve a probationary period unless during any prior service that forms the current basis for the reinstatement, the individual completed probation or did not have to serve a probationary period. 5 C.F.R. §§ 315.401, 801(a).

In this case, the parties do not contest that the appellant was appointed to her position by reinstatement. *See* AF-B-1, Tab 1. The appellant's Form SF-50, Notification of Personnel Action, indicates that she was reinstated pursuant to 5 C.F.R. § 315.401. AF-B-1, Tab 9 at 18 – 20.

The appellant produced evidence to demonstrate that her initial appointment into Federal service was in 1982, and that she completed her service requirement for career tenure in 1985. *See* AF-B-1, Tabs 12, 13. In addition, the appellant produced evidence demonstrating that she worked as permanent, competitive service employee for the National Park Service in 2003, and held a permanent, competitive service position with the Department of Housing and Urban Development as recently as 2014. *See* AF, Tab 13.

The agency has argued that the appellant was required to serve a new probationary period with the agency in accordance with 5 C.F.R. §§ 315.401 and 801(a). According to the agency, because the appellant's initial position with the Federal government was not with the Department of Defense, and because she never previously held the position as a GS-043 Program Analyst, she is required



to complete a second probationary period. AF, Tab 11 at 5. 5 C.F.R. § 315.802(b) states that prior Federal civil service counts towards completion of probation when the prior service is in the same agency, and in the same line of work. However, I find that this analysis is irrelevant as the appellant was hired through reinstatement and completed a probationary period during a period affording a current basis for her reinstatement. Accordingly, the appellant has established Board jurisdiction in her appeal.

FOR THE BOARD:

\_\_\_\_\_/S/\_\_\_\_\_  
Andrew M. Dunnaville  
Administrative Judge

## CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

### Appellant

U.S. Mail Elizabeth Aviles-Wynkoop  
753 B Delaware Avenue SW  
Washington, DC 20024

### Appellant Representative

U.S. Mail Nate Nelson  
1709 Halcun Drive  
Petersburg, VA 23803

### Agency Representative

Electronic Mail Elizabeth E. Pavlick, Esq.  
Department of Defense  
Assistant General Counsel  
Pentagon Force Protection Agency  
1155 Defense Pentagon  
Rm. 2E1035  
Washington, DC 20301

January 12, 2017  
\_\_\_\_\_  
(Date)

/s/  
\_\_\_\_\_  
Latisha Clinton  
Paralegal Specialist

## **VII. INDEX TO APPENDICES**

# **APPENDIX G**

I, Carol A. Ensley, formerly Division Chief Acquisition Management, Washington Headquarters Services (WHS), Enterprise IT Standard Support Services (EITSD), Joint IT Service Provider-Pentagon (JSP), Department of Defense (DoD), hereby swear or affirm that the following statement is true and correct.

I held the position of Division Chief Acquisition Management, WHS, EITSD/JSP for two years, from 2014 until November of 2016. Per JSP leadership restructuring, I currently hold another position within JSP. I have 29 years of Federal service; supporting Pentagon/NCR Information Technology services the entire time. I have over 12 years of non-congruous supervisory experience; this includes supervisory experience with the Air Force, Army, OSD/AT&L, and OSD/WHS.

Mr. Russell and I were on the hiring panel that selected Ms. Aviles-Wynkoop for the Program Analyst position at EITSD in June of 2015. Ms. Aviles-Wynkoop was a strong candidate; she had many certifications related to the position. During the interview, Mr. Russell introduced me as the supervisor for the vacant position for which Ms. Aviles-Wynkoop was applying. Ms. Aviles-Wynkoop did not object to me being her supervisor during her interview.

Based on the hiring panel's recommendations, Ms. Aviles-Wynkoop was offered and accepted the Program Analyst position at EITSD/JSP, and she began work on June 29, 2015.

Shortly after she came on board, I took Ms. Aviles-Wynkoop to meetings with other EITSD/JSP personnel and with members of WHS's Acquisition Directorate. As Ms. Aviles-Wynkoop's supervisor, I introduced her at these meetings. She never expressed any concerns or objections. I also certified Ms. Aviles-Wynkoop's time cards and approved her leave. Ms. Aviles-Wynkoop did not object to me being her supervisor at that time.

Ms. Aviles-Wynkoop objected to me being her supervisor in an email sent on approximately August 26, 2015. I do not know what prompted Ms. Aviles-Wynkoop to reject me as her supervisor. After August 26, 2015, Ms. Aviles-Wynkoop refused to take supervisory direction from me. I still continued to certify her timecards, as her supervisor.

Ms. Aviles-Wynkoop displayed a cantankerous attitude. Her office mates complained that she treated them in an abusive manner. When she talked to me and to others, she was abrasive and loud. She interrupted others, talked over others, and entered others' personal space when she disagreed with them. This behavior became physically threatening to staff members. Ms. Aviles-Wynkoop created a volatile and toxic work environment that made coworkers and customers very uncomfortable. Some of the employees and contractors feared that she may become violent because she quickly became angry and unpredictable. She was pushy, aggressive and she could not see anyone else's point of view. She appeared to believe that if she yelled louder than anyone else, that made her right. She was so forcefully convinced that she was absolutely right about everything, that anyone who disagreed with her was immediately discounted. After an incident with a contractor employee, she threatened twice to call the Pentagon Force Protection Agency police if she did not get her way.

One of my employees, who is former military and suffers from a combat related disability, came to see me in confidence in approximately July or August of 2015 because he was completely distraught. He said that he was extremely disturbed by Ms. Aviles-Wynkoop's behavior in the workplace and that she was aggravating his combat related disability. He said that if he was forced to interact with her further, he was worried that it might seriously impact his health and welfare.

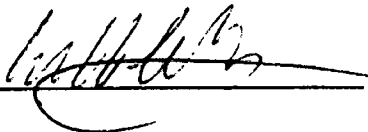
Several emails are provided to demonstrate the stress and confusion created by Ms. Aviles-Wynkoop's actions. In an email dated August 24, 2015 from Michael Gruden of the WHS Acquisition Directorate, he informs of a conflict between Ms. Aviles-Wynkoop, Mr. Gruden's staff, and the contractor. This email is a good example of the complaints I received from coworkers, contractors and customers related to Ms. Aviles-Wynkoop's inappropriate and destructive workplace behavior. In another email dated September 3, 2015, my staff expressed concerns that Ms. Aviles-Wynkoop would be returning to the office after her administrative leave.

The tension and fear caused by Ms. Aviles-Wynkoop finally became so serious and traumatizing to staff, that I made the decision to place Ms. Aviles-Wynkoop on paid administrative leave per coordination with WHS/HRD. We needed to remove her to reestablish control and create a safe, non-threatening work environment. On August 28, 2015, the date designated for me to give her the administrative leave letter, Jerry Russell made sure that no one else would be in the office except for me and Ms. Aviles-Wynkoop. I was left alone in the office to provide Ms. Aviles-Wynkoop with the letter. I was afraid to give Ms. Aviles-Wynkoop the administrative leave letter if I had to be alone with her. I not only feared for my physical safety, but I also wanted to make sure that if Ms. Aviles-Wynkoop exploded and had a medical emergency that someone trained to help would be present to call for medical assistance. Ms. Aviles-Wynkoop had a habit of getting very worked up during her numerous disagreements and altercations. I was fearful that she would have a heart attack or some other medical emergency. Mr. Victor Shirley and I contacted the Pentagon Force Protection Agency Police Directorate. We asked that two police officers be sent to accompany me as I handed Ms. Aviles-Wynkoop the administrative leave letter. When I finally presented Ms. Aviles-Wynkoop with the administrative leave letter, with the two police officers standing behind me, she refused to sign the letter as requested; she did not have a visible reaction or suffer from a medical emergency. Ms. Aviles-Wynkoop took the letter with instructions. Once Ms. Aviles-Wynkoop was escorted out of the office on administrative leave, I relaxed. I could also feel that the rest of the office relaxed, too. There was a collective sigh of relief in the office once she was gone.

After August 28, 2015, when I placed Ms. Aviles-Wynkoop on paid administrative leave, she never came back to the office.

I was the Proposing Official for the removal of Ms. Elizabeth Aviles-Wynkoop from the Federal service. I proposed her removal in October of 2015. My supervisor, Jerry H. Russell, Deputy Chief, Business Resource Center, EITSD/JSP, was the Deciding Official. Mr. Russell sustained the

charges in the proposal and upheld the penalty of removal. Ms. Aviles-Wynkoop remained on paid administrative leave from August 28, 2015 until her removal from Federal service on January 4, 2016.

Signed:  Date: 16 Mar 2017

I, Jerry H. Russell, Chief, Business Resource Center, Joint Service Provider, formerly Enterprise IT Services Directorate (EITSD), Washington Headquarters Services (WHS), Department of Defense (DoD), hereby swear or affirm that the following statement is true and correct:

I have held the position of Chief, Business Resource Center, Joint Service Provider (JSP), formerly EITSD, since October of 2016. Before that, at the time of the removal action in question, I was the Deputy Chief, Business Resource Center, EITSD. I have worked in WHS since 2007 and for the Federal government for 15 years, since 2002.

I was the Deciding Official for the removal of Ms. Elizabeth Aviles-Wynkoop from the Federal service, effective on January 4, 2016. My subordinate, Carol A. Ensley, Chief, Acquisition Management, WHS, EITSD/JSP, was the Proposing Official.

I was the Chair of the hiring panel that selected Ms. Aviles-Wynkoop for the Program Analyst position at EITSD in 2015. There were two additional members on the hiring panel, including Ms. Ensley. During the panel's interview of Ms. Aviles-Wynkoop, I informed her that if she were to be hired into the Program Analyst position, her supervisor would be Ms. Ensley. The consensus of the panel was to hire Ms. Aviles-Wynkoop because she had a technically sound background in contracting and we thought she could fill in some of the technical gaps that the EITSD team had at that time. Prior to coming to work for EITSD, Ms. Aviles-Wynkoop had a break in service from the Federal government for approximately 9 months. From August 2011 - September 2014, Ms. Aviles-Wynkoop worked for the Department of Housing and Urban Development (HUD). It is my understanding that she resigned from HUD, after which she had a 9-month break in service.

Ms. Aviles-Wynkoop began her employment with EITSD on June 29, 2015. On her first day in the office, I again instructed Ms. Aviles-Wynkoop that Ms. Ensley was her supervisor. I also took Ms. Aviles-Wynkoop around the office to meet her coworkers. When I introduced her to her coworkers, I informed them that Ms. Aviles-Wynkoop's supervisor was Ms. Ensley. There is no doubt in my mind that Ms. Aviles-Wynkoop knew that Ms. Ensley was her supervisor. Ms. Aviles-Wynkoop did not express any confusion regarding my instruction that Ms. Ensley was her first-line supervisor at that time.

In fact, at all times during Ms. Aviles-Wynkoop's very brief employment with EITSD, Ms. Ensley was her first-line supervisor, and I was her second-line supervisor. I never told Ms. Aviles-Wynkoop that I was her first-line supervisor and I never told Ms. Aviles-Wynkoop that she did not have to take direction from Ms. Ensley. In fact, it was abundantly clear that Ms. Aviles-Wynkoop had to take direction from Ms. Ensley because Ms. Ensley was her first-line supervisor. Ms. Ensley is a very good supervisor and has been able to get along with all of her subordinates, except for Ms. Aviles-Wynkoop. Ms. Ensley patiently tried to work with Ms. Aviles-Wynkoop to channel her negative energy into good work. Unfortunately, Ms. Aviles-Wynkoop continued to cause problems in EITSD with her negative energy.

Immediately after we hired Ms. Aviles-Wynkoop on June 29, 2015, she developed profoundly hostile and antagonistic relationships with her supervisor, co-workers and customers.

I believe that she created disruptive working conditions for the employees in our organization. So much so, that as described below, Ms. Ensley barred Ms. Aviles-Wynkoop from the workplace on August 28, 2015 and placed her on paid administrative leave because of the disruptions to Agency operations caused by Ms. Aviles-Wynkoop's behavior. By creating a disruptive and antagonistic work environment within her organization, Ms. Aviles-Wynkoop alienated virtually everyone. She alienated her supervisor when she refused to recognize Ms. Ensley's supervisory authority and was insubordinate to her. She alienated her fellow Federal employee coworkers, contractors with whom it was her job to work and our organization's management by engaging in misconduct and discourteous behavior. She is a bully. In one discourteous email exchange she had with a contract specialist in the WHS Acquisition Directorate, she challenged the contract specialist's experience. The contract specialist became upset and referred to Ms. Aviles-Wynkoop as "unprofessional and aggressive." Ms. Aviles-Wynkoop referred to her coworkers negatively and described them to management as "unprofessional, crooked, and unethical." Several of Ms. Aviles-Wynkoop's coworkers submitted complaints against her for her divisive workplace behavior. Ms. Ensley counseled Ms. Aviles-Wynkoop on the proper procedures and protocols for engaging her chain of command. Nevertheless, Ms. Aviles-Wynkoop engaged in communications of "negative comments and/or demands by writing negative and inflammatory emails to senior EITSD staff (at the SES level); despite being counseled on the proper procedures and protocol of the chain of command." Ms. Aviles-Wynkoop's misconduct and negative behavior were so frequently repeated that I believe her misconduct was intentional.

Employees were so distraught by Ms. Aviles-Wynkoop's behavior in the office that they informed me they were afraid to come into the office and they did not want to come to work. The August 2015 time period was shortly after the shooting at the Navy Yare and employees in EITSD stated that they were afraid that violence could also erupt in EITSD because of Ms. Aviles-Wynkoop. I received complaints from at least four Federal employees and two contractors about Ms. Aviles-Wynkoop. They all said that she was disrespectful and volatile. They told me that I needed to take action to remove her from the workplace before she became physically violent.

Ms. Aviles-Wynkoop's misconduct was also related to her job; she was rude to both customers and coworkers, which was especially egregious given the fact that she was in a position of special trust as the COR in our organization. Ms. Aviles-Wynkoop's misconduct negatively affected her current ability to do her job and negatively affected my confidence in her future ability to do her job. Her misconduct also negatively affected my confidence in her ability to uphold the organization's mission. Ms. Aviles-Wynkoop was not under unusual job stress, she was not provoked and she was not apologetic.

It is clear from the proposal notice and the materials relied upon to propose removal that Ms. Aviles-Wynkoop did not get along with the people with whom she was required to work to accomplish our organization's mission, she acted inappropriately by bad-mouthing colleagues, contractors and her supervisor, and she made inappropriate demands of her supervisor and the leaders in our organization. Ms. Aviles-Wynkoop was unprofessional and overly aggressive. Contractors sat in our EITSD space. Ms. Aviles-Wynkoop told them that they had to go and should not be sitting near the Federal employees in EITSD. She came into my office one day,



pointing her finger at me, and stated, aggressively, that she expected me to move the contractor employees out of the building because they should not be sitting with Federal employees. She threatened that she would go to the Pentagon Force Protection Agency Police Directorate to have the contractors physically removed from the office by police officers, if I did not do so. Eventually, I felt that I had no choice but to move the contractors out of the building for their own well-being because Ms. Aviles-Wynkoop was so rude and antagonistic toward them, until such time as we could determine the way in which we were going to proceed with Ms. Aviles-Wynkoop's employment. They were not working well with Ms. Aviles-Wynkoop and it was most expedient to move them immediately so that there was no mission failure. Ms. Aviles-Wynkoop had a habit of telling everyone, including the contractor employees, how to do their jobs. They did not want to work with her. She was also rude and bossy to her coworkers. She challenged and talked down to them, telling them that their work was not correct. Ms. Aviles-Wynkoop was not good for EITSD's image or morale.

On the day that Ms. Ensley was to present the paid Administrative Leave letter to Ms. Aviles-Wynkoop, discussed below, I manufactured a meeting to take place downstairs, out of the workplace, at the same time that Ms. Ensley was to present the letter to Ms. Aviles-Wynkoop. Since employees had expressed concern to me that Ms. Aviles-Wynkoop could become violent, I did not want them around when Ms. Ensley handed her a letter that could provoke her anger. Ms. Ensley also did not want to be alone with Ms. Aviles-Wynkoop when she was given this news, so Ms. Ensley enlisted the help of a Pentagon Force Protection Agency police officer to be present with her when she presented the letter to Ms. Aviles-Wynkoop.

After Ms. Aviles-Wynkoop was out of the office on Administrative Leave, the whole office visibly relaxed and we all became happier and more productive.

The most serious misconduct Ms. Aviles-Wynkoop engaged in that led to her removal from Federal service, was her failure to recognize her supervisor. As stated above, from the first day she began to work for EITSD, on June 29, 2015, Ms. Aviles-Wynkoop refused to recognize Ms. Ensley as her supervisor. Ms. Aviles-Wynkoop also refused to take instruction or accept work assignments from Ms. Ensley. Ms. Aviles-Wynkoop appeared to believe that she could choose her own supervisor, choose what she wanted to work on and choose to ignore Ms. Ensley and her supervisory direction. Against my specific instructions, Ms. Aviles-Wynkoop blind copied me on all of her email correspondence with Ms. Ensley. She also blind copied her SES chain of command. I asked her to stop doing that because Ms. Ensley was her supervisor and she did not need to copy her entire chain of command, but Ms. Aviles-Wynkoop would not stop doing so.

One day in August of 2015, Ms. Aviles-Wynkoop came to me and said that she wanted me to be her supervisor instead of Ms. Ensley. I clearly told Ms. Aviles-Wynkoop that I was not her supervisor; Ms. Ensley was her supervisor. Nevertheless, from that day forward, until she was removed from Federal service, Ms. Aviles-Wynkoop refused to even recognize Ms. Ensley. She did not talk to Ms. Ensley and she dropped Ms. Ensley from her emails. Ms. Aviles-Wynkoop began to send her emails only to me, as if I were her supervisor.

In that regard, the most serious incident of misconduct in which Ms. Aviles-Wynkoop engaged occurred on August 26, 2015, a mere 59 calendar days or 42 business days after she started to work at EITSD. On that day, Ms. Aviles-Wynkoop announced that she was leaving work early. Ms. Ensley instructed Ms. Aviles-Wynkoop to inform as to her why Ms. Aviles-Wynkoop was leaving work early. As the supervisor, Ms. Ensley not only had a need to know this information, she also had a duty to keep track of her employees. Instead of answering Ms. Ensley's reasonable instruction, however, Ms. Aviles-Wynkoop improperly demanded (in an email) that Ms. Ensley prove to Ms. Aviles-Wynkoop that she was her supervisor by submitting to Ms. Aviles-Wynkoop a copy of Ms. Ensley's Standard Form (SF) 50 stating that Ms. Ensley was Ms. Aviles-Wynkoop's supervisor. Only then would Ms. Aviles-Wynkoop deign to respond to Ms. Ensley's legitimate question. (The name of Ms. Aviles-Wynkoop's supervisor would not be on an SF-50.) Ms. Aviles-Wynkoop wrote in an email to Ms. Ensley:

[Ms. Ensley], I requested to see your SF50 that you are my supervisor, which no one has been able to furnish. I spoke to Jerry Russell and that's who I'm reporting to. Thanks! [Ms. Aviles-Wynkoop].

See Agency File, Tab 4c, Ref f, page 126 of 148. At no time did I inform Ms. Aviles-Wynkoop that she could report to me instead of Ms. Ensley.

This is blatant insubordination. Ms. Aviles-Wynkoop did not dispute the fact that she failed to comply with her supervisor's instructions. In fact, she cannot dispute that fact because her email is very clear and speaks for itself. That statement alone from Ms. Aviles-Wynkoop cemented in my mind that removal was the only penalty I could sustain because there was absolutely no potential for her rehabilitation and removing her from her position so obviously promoted the efficiency of the service. In my 15 years as a supervisor in the Federal service, it has been clear that a government employee, such as Ms. Aviles-Wynkoop, may not refuse to do work merely because of disagreements with management or her disagreement with her superiors as to the identity of her supervisor. The fact that Ms. Aviles-Wynkoop refused to recognize Ms. Ensley as her supervisor also meant that she refused to take direction from and refused to do work for Ms. Ensley. This is insubordination in its purest form. There was no excuse for Ms. Aviles-Wynkoop to ignore the clear purpose of the workplace as a place for doing work. Ms. Aviles-Wynkoop had no right to refuse to abide by legitimate supervisory authority, and her continued refusal to recognize Ms. Ensley's authority and to perform her assigned duties clearly justified a personnel action. My choice of the appropriate penalty of removal was a matter of agency discretion, and I chose to exercise that discretion given the serious nature of Ms. Aviles-Wynkoop's misconduct.

Ms. Aviles-Wynkoop's insubordination, alone, warranted removal from the Federal service. Ms. Aviles-Wynkoop's failure to recognize Ms. Ensley's authority as her supervisor seriously undermined management's ability to maintain employee efficiency and discipline, and EITSD should not be expected to exercise forbearance for such misconduct. Few other types of misconduct go so directly to the heart of maintaining the efficiency of the service. Ms. Aviles-Wynkoop had absolutely no right to refuse to abide by legitimate supervisory authority, but because she did to refuse to recognize Ms. Ensley as her supervisor, I was left with no choice but to remove her from Federal Service.

As the Deciding Official, it was clear to me that Ms. Aviles-Wynkoop never had a clear understanding that she was wrong in any respect and she did not comprehend that she had engaged in misconduct. Even during her written reply to the proposed removal, Ms. Aviles-Wynkoop continued to assert that I was her first-line supervisor and not Ms. Ensley. However, Ms. Aviles-Wynkoop's assertion that I was her first-line supervisor ignored the fact that she had reached the conclusion on her own that Ms. Ensley was not her supervisor. In her written reply, Ms. Aviles-Wynkoop stated:

From 17 August 2015 till 28 August 2015, Jerry H. Russell was my first line supervisor, who I reported to daily and had him in all my emails, keeping him in the loop of work issues, with myself being a Contracting Officer Representative (COR) and if I had to leave work early, Jerry H. Russell approved my leave. Jerry H. Russell agreed, to become my first line supervisor, due to Carol Ensley and her alleged allegations on 14 Aug 2015, which I addressed directly to Jerry H. Russell and Jerry H. Russell agreed that the alleged allegations from Carol Ensley would be null and void. If Jerry H. Russell didn't communicate my work and myself leaving work early, that was between Jerry H. Russell and Carol Ensley. Jerry H. Russell was and is still Carol Ensley's supervisor.

*See Agency File, Tab 4b, Ref d, page 50 of 148.* As I stated above, at no time did I become Ms. Aviles-Wynkoop's first-line supervisor. I never informed Ms. Aviles-Wynkoop that I was her first line supervisor and it was not my job to approve Ms. Aviles-Wynkoop's leave. Additionally, nothing stated by Ms. Ensley was "null and void." At all times during Ms. Aviles-Wynkoop's employment with EITSD, Ms. Ensley was her first-line supervisor and she approved Ms. Aviles-Wynkoop's leave, not I. I never approved Ms. Aviles-Wynkoop's leave.

Ms. Aviles-Wynkoop also engaged in a pattern of discourteous behavior towards contractors with whom she had to work in order to perform the duties of her position at EITSD. This misconduct also negatively impacted the agency's ability to function effectively.

On August 28, 2015, 61 calendar days or 44 business days after she started to work at EITSD, Ms. Ensley placed Ms. Aviles-Wynkoop on paid administrative leave. In order to maintain good order and business, it was imperative that Ms. Aviles-Wynkoop be removed from the office because she was so disruptive.

While it appeared to be Ms. Aviles-Wynkoop's first offense of misconduct while working for my organization, it was actually a multitude of offenses that occurred in a very limited period of time, which created severe disruption in the workplace. I believe that removal was the appropriate penalty to impose for Ms. Aviles-Wynkoop's misconduct. As stated above, Ms. Aviles-Wynkoop had only worked for my organization for 44 business days before Ms. Ensley felt compelled to have Ms. Aviles-Wynkoop removed from the workplace and place her on paid administrative leave. Ms. Aviles-Wynkoop had only worked for the Agency for a very short period of time. Because Ms. Aviles-Wynkoop was a short-term employee, it was clear after that short period of time -- only 44 business days on the job with EITSD -- that we could not allow Ms. Aviles-Wynkoop to continue to disrupt the workplace. We were left with no choice

but to propose and decide to remove her from Federal service. We could not keep someone so volatile and disruptive in the workplace and have work completed, and for this reason we had to place Ms. Aviles-Wynkoop on paid administrative leave after only 44 days. I found that there was absolutely no potential for Ms. Aviles-Wynkoop's rehabilitation and so I was compelled to remove her from Federal service. I believe, therefore, that it was appropriate to remove Ms. Aviles-Wynkoop for her insubordination and discourtesy because her misconduct was so serious and so egregious.

On October 27, 2015, Ms. Ensley proposed Ms. Aviles-Wynkoop's removal from Federal service. As stated above, I was the deciding official. In making my decision, I completed a Douglas Factors worksheet at the time I made my decision and it is attached to this sworn affidavit.

The Douglas Factors worksheet speaks to everything I considered and balanced when making my decision to remove Ms. Aviles-Wynkoop from Federal service. I considered the proposal notice, the materials relied upon to write the proposal notice, Ms. Aviles-Wynkoop's written reply and the Douglas Factors in making my decision. I considered the fact that Ms. Aviles-Wynkoop's misconduct was so egregious that Ms. Ensley placed her on paid administrative leave on August 28, 2015, a mere 44 days after she reported for duty. I considered it aggravating that Ms. Aviles-Wynkoop offended her supervisor when she refused to recognize her authority and embarrassed her in front of her supervisors. She engaged in the most blatant form of clear and express insubordination that I have ever encountered and she has never apologized or even recognized her misconduct. Ms. Aviles-Wynkoop exhibited conduct that negatively impacted the ability of EITSD to function effectively. The rationale for my decision to remove Ms. Aviles-Wynkoop is set forth in my January 4, 2016 decision letter. As stated in my decision letter, removal is within the range of penalties to impose for Ms. Aviles-Wynkoop's insubordination, disrespectful conduct towards your supervisor and intimidating and aggressive behavior. I believe the penalty of removal for Ms. Aviles-Wynkoop's misconduct is the appropriate penalty and I find that no lesser sanction could deter future misconduct.

Signed: RUSSELL JERRY HILTON JR. 1259828224

Digitally signed by  
RUSSELL JERRY HILTON JR. 1259828224  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=WHIS, cn=RUSSELL JERRY HILTON JR. 1259828224  
Date: 2017.03.08 15:22:00 -0500

Date: \_\_\_\_\_

RUSSELL.JERRY.HILT  
ON.JR.1259828224

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RUSSELL.JERRY.HILTONJR.1259828224  
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ou=WHS, cn=RUSSELL.JERRY.HILTONJR.1259828224  
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Signed:

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**ELIZABETH AVILES-WYNKOOP v. DEPARTMENT OF DEFENSE**

**Docket # DC-315H-16-0327-B-1**

**Executed Affidavit of Victor Shirley**

**Summary Page**

**Case Title :** ELIZABETH AVILES-WYNKOOP v. DEPARTMENT OF DEFENSE

**Docket Number :** DC-315H-16-0327-B-1

**Pleading Title :** Executed Affidavit of Victor Shirley

**Filer's Name :** Elizabeth E. Pavlick, Esq.

**Filer's Pleading Role :** Agency Representative

**Details about the supporting documentation**

| # | Title/ Description             | Mode of Delivery |
|---|--------------------------------|------------------|
| 1 | Affidavit of Victor O. Shirley | Uploaded         |

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ELIZABETH AVILES-WYNKOOP v. DEPARTMENT OF DEFENSE

Docket # DC-315H-16-0327-B-1

Executed Affidavit of Victor Shirley

Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

Enter Online

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2. Please enter text of your pleading.

Enclosed please find an executed affidavit of Victor O. Shirley, which was Attachment 3 to the Agency's Brief in Support of Removal of Appellant. No change were made to the attached affidavit, and it is being filed solely to provide an executed affidavit, as the signature of Mr. Shirley was inadvertently removed from the affidavit when it was uploaded to the MSPB website.

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3. Does your pleading assert facts that you know from your personal knowledge?

No

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I, Victor O. Shirley, Chief of Staff for Washington Headquarters Services (WHS), Enterprise IT Standard Support Services (EITSD), Joint IT Service Provider-Pentagon (JSP), Department of Defense (DoD), hereby swear or affirm that the following statement is true and correct.

I held the same position and title now as I did in 2015, when Ms. Aviles-Wynkoop worked in our office. I have held this position since 2013 and I have been a Federal employee (including my military service) for over 30 years. My position as Chief of Staff is non-supervisory and I act as an office manager and intermediary between leadership and the employees in EITSD/JSP. My job includes handling office personnel matters and organizational development.

Ms. Aviles-Wynkoop was only physically in the office from June 29, 2015 until August 28, 2015. During that time period, Carol Ensley was her first-line supervisor. It is hard for me to believe that Ms. Aviles-Wynkoop was only physically in our office for approximately two months because she caused so much stress and anxiety in the workplace that I thought she had been there much longer than two months.

In approximately July of 2015, at least three EITSD/JSP employees came to me in my official capacity as Chief of Staff in order to complain about Ms. Aviles-Wynkoop and the abusive manner in which she treated them. They also described Ms. Aviles-Wynkoop's treatment as threatening and confrontational. According to these employees, she was loud and communicated by yelling, which was very disconcerting. She was unpredictable, volatile and unreasonable in her reactions. She was a bully and unprofessional in her interactions with coworkers, customers and contractors.

I took complaints from these employees very seriously because I personally witnessed Ms. Aviles-Wynkoop's treatment of her coworkers in meetings and saw that her voice and demeanor were aggressive, very forceful, and unfriendly. I believe she created a hostile work environment in the workplace because her coworkers were fearful of her. She created a toxic environment for her coworkers, customers and supervisors. She was a loose cannon and her coworkers feared for their safety when they were around her. Some of the employees told me that they were scared that she was going to do something violent.

I also observed that Ms. Aviles-Wynkoop had no respect for her supervisor, Ms. Ensley. Ms. Aviles-Wynkoop did not respect anyone, if she thought she was smarter than they were.

I was not involved in Ms. Ensley's decision to place Ms. Aviles-Wynkoop on paid administrative leave on August 28, 2015, but I knew that it was going to happen that day. I also knew that Ms. Ensley was concerned enough about Ms. Aviles-Wynkoop's potential reaction to receiving the letter informing her that she had been placed on administrative leave that Ms. Ensley felt that she had to have two Pentagon Force Protection Agency police officers present when she handed Ms. Aviles-Wynkoop the letter. I asked Ms. Ensley's supervisor, Jerry Russell, to get as many of the employees out of the office as he could during the time that Ms. Ensley and the police officers were presenting Ms. Aviles-Wynkoop with the letter. I did not

want to take any chances that Ms. Aviles-Wynkoop would become angry and do something inappropriate.

The moment Ms. Aviles-Wynkoop was out of the office on administrative leave, several EITSD/JSP employees told me that they felt relief and that the whole office became more relaxed. Everyone in EITSD/JSP was much happier once Ms. Aviles-Wynkoop was gone.

Signed: SHIRLEY.VICTOR.O.J. R.1016831260 Date: 17 March 2017

Digitally signed by  
SHIRLEY.VICTOR.O.J.R.1016831260  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=WHS, cn=SHIRLEY.VICTOR.O.J.R.1016831260  
Date: 2017.03.17 10:11:42 -0400

## **Certificate Of Service**

e-Appeal has handled service of the assembled pleading to MSPB and the following Parties.

| Name & Address                        | Documents                            | Method of Service |
|---------------------------------------|--------------------------------------|-------------------|
| MSPB: Washington Regional Office      | Executed Affidavit of Victor Shirley | e-Appeal / e-Mail |
| Elizabeth Aviles-Wynkoop<br>Appellant | Executed Affidavit of Victor Shirley | e-Appeal / e-Mail |
| James Vietti<br>Agency Representative | Executed Affidavit of Victor Shirley | e-Appeal / e-Mail |

I agree to send a printed copy of the electronic pleading with attachments to non-e-filers by the end of next business day, as follows:

| Name & Address  | Documents                            | Method of Service |
|---|--------------------------------------|-------------------|
| Nate Nelson<br>Appellant Representative<br><br>1709 Halcun Drive<br>Petersburg, VA 23803<br>USA | Executed Affidavit of Victor Shirley | Fax               |

**VII. INDEX TO APPENDICES**

**APPENDIX H**

# FAX COVER SHEET

Nate Nelson, Appellant's Representative—Fax no 804-732-0770

To: Andrew M. Dunnaville, Administrative Judge

Subject: Appellant's close of the record submissions—Elizabeth Aviles  
Wynkoop, Appellant—Docket Number DC-315H-16-0327-B-1

Number of pages 16

Appellant's Representative Phone Number 804-720-6269

E-mail address ----natenelson@starpower.net

Date: December 30, 2016

RECEIVED MSPB  
2016 DEC 30 AM 10:32  
WFO

**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WASHINGTON REGIONAL OFFICE**

ELIZABETH A VILES-WYNKOOP  
Appellant

DOCKET NUMBER  
DC-315H-16-0327-B-1

v

DEPARTMENT OF DEFENSE  
Agency

Date: December 30, 2016

**APPELLANT'S BRIEF IN SUPPORT THAT THE APPELLANT  
WAS NOT A PROBATIONARY EMPLOYEE**

Now comes the appellant, to submit her close of the record submissions, as required by the last AJ order. It appears the agency is resting their entire case on a declaration by their account manager who has 28 years of government service. There is no question the account manager is probably a good employee. It is significant to note that the agency failed to list any special qualifications the account manager had obtained. Longevity does not grant any special qualifications.

The appellant's Representative is a Board-Certified Practitioner with 34 years' experience, is a certified administrative law instructor, has been a guest speaker at the AJ's annual conference, and was of 1 of the 9 lawyers and practitioners who were invited to help establish policy and rules for the Board. Therefore, it is significant to note that the agency's account manager has completely misinterpreted the law and regulations cited in her declaration statement. The types of jobs and the 9-month break in service does not have anything to do with this

case because the only authority the agency used was 5 C.F.R. ss 315.401 in reinstating the appellant. This is the major reason the case was remanded.

The agency continues to maintain the appellant was required to serve in a new probationary period after reinstatement to the position from which she was removed based exclusively on the “professional opinion of its Customer Account Manager.” That opinion is based in large part on the Customer Account Manager’s assessment of:

- The types of positions held previously on which the reinstatement is based,
- The nature of the work performed in the current position as compared to the appellant’s previous positions, and
- The length of the break in service between the appellant’s prior employment and her employment with the agency.

These issues have nothing to do with whether the appellant is an “employee” under 5 USC(a)(1)(A)(i), excluded from the requirement for a new probationary period, and thereby entitled to the procedural protections of an adverse action. As the Board stated in its remand decision:

An agency may appoint by reinstatement to a competitive-service position an individual who previously was employed under a career or career-conditional appointment. 5 C.F.R. § 315.401(a). Under 5 C.F.R. § 315.801, the first year of service of an employee who is given a career or career-conditional appointment in the competitive service is a probationary period when, among other things, the employee was reinstated under subpart D (5

C.F.R. § 315.401), unless during any period of service that affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment that did not require a probationary period. In other words, when an agency appoints an individual using reinstatement authority, the individual must serve a probationary period unless during any prior service that forms the current basis for the reinstatement, the individual completed probation or did not have to serve a probationary period. 5 C.F.R. §§ 315.401, 801(a).

In other words, if an individual is reinstated under the authority of 5 C.F.R. § 315.401, if the employee completed probation in a position previously held on which the reinstatement is based, then the employee need not serve a new probationary period. This statement is controlling without any reference to the type of work performed in the previous position or the length of a break in service. The opinions of the agency's Customer Account Manager cannot override the clear language of the regulation and the Board's order based on that regulation.

The only authority referenced by the agency in its Notification of Personnel Action by which it reinstated the appellant is 5 C.F.R. §§ 315.401. Therefore, the appellant was not required to serve a new probationary period if she had completed a probationary period in her previous position with a federal agency regardless of any service break or any difference in the line of work performed.

The agency does not dispute nor even address the appellant's ongoing claim that she completed a probationary period in her previous government positions. In fact, the agency appears to concede that the appellant completed probation previously



when its Customer Account Manager with 28 years of service and possessive of "significant knowledge of WHS HRD and the hiring process" erroneously states,

"Therefore, it is my professional opinion that Ms. Aviles-Wynkoop was required to serve a new probationary period and it makes no difference that she completed previous probationary periods in the Clerk Typist and Contract Specialist series. Her previous positions were not creditable towards the completion of a probationary period for a 0343 series position because it was not in the same 'line of work.'" - Declaration of Alice Bell dated December 9, 2016, paragraph 12.

It is clear that the agency did not have the authority to impose a new probationary period on the appellant as she has previously served probation in a prior position. The appellant asks that you find that she was removed without the procedural protections of 5 USC(a)(1)(A)(i), was misled by the proposal notice and decision letter into thinking that the agency was terminating her during probation, and that her due process rights have thereby been violated.

## **THE APPELLANT'S INITIAL APPOINTMENT INTO FEDERAL SERVICE WAS IN 1982**

The agency has either intentionally or incompetently confused the concept of an initial appointment with a re-appointment. It should be noted that a federal employee can only have one initial appointment into federal service. It is well documented that the appellant's initial appointment into federal service was in 1982. See appellant's exhibit A,

which is a SF 50 which states in block 45 "(the appellant) completed service requirement for career tenure from 9-13-82 to 9-13-85." The appellant served three consecutive years of service without a break in service. This was the initial appointment. The appellant should not have been required to do additional unnecessary initial appointments because this issue was fully satisfied in 1982. Just because an agency may erroneously misinterpret the law, rule, or regulation, this does not make it right, and the erroneous activity must be challenged in the interest of justice and equality. More significantly, it does not matter how many erroneous and incorrect SF forms the agency may have generated after the initial SF 50, the additional SF 50 forms were also incorrect and illegal because the re-appointment was exclusively done under 5 C.F.R. 315. 401(a).

The appellant was an individual in the competitive service. Various SF 50 forms from the small business administration, HUD, and other agencies have confirmed this fact (see attached SF 50). She was not serving an initial appointment into the competitive service when she was terminated from the agency. There has been no finding or evidence that she accepted a new probation period or the imposition of a new probation period was reasonable. When the agency initially hired the appellant under 5 C.F.R. 315.401, there was no discussion about the appellant serving a probationary period. The appellant was hired on 6-29-15. When the appellant received her first SF 50 on 7-29-15, she

immediately challenged the concept of the agency attempting to impose an additional probationary period. She sent the agency an e-mail on 7-29-15, stating "I should not be on probation since I have 18 years of service under CSRS as a federal employee." See appellant's exhibit B. It is now clear that the agency did not have the authority to impose a new probationary period on the appellant as she previously served a probation in two prior positions. The appellant also served an additional probationary period at her last agency HUD because the agency failed to inform the appellant she was serving a probationary period. The appellant also successfully completed the full 1 year probationary period. This is the appellant's exhibit C. The agency abused their authority by taking an unjustified personnel action that deprived the appellant from receiving her full due process rights under chapter 75.

**IF THE APPELLANT PREVAILS ON THE PROBATION ISSUE, THEN AS A MATTER OF LAW, SHE MUST BE IMMEDIATELY REINSTATED WITH BACK PAY, INTEREST, BENEFITS, AND REIMBURSEMENT FOR ATTORNEY FEES**

If the appellant is the prevailing party on the probationary issue, then she must be reinstated because her due process rights were violated under chapter 75, and she did not receive adequate notice of the charges. Once the appellant has been reinstated and it is confirmed that she is an

employee, then a hearing date should be established to hear the whistleblowing charges. The agency is not entitled to a trial to hear the merits of their proposed and removal letters because they grossly violated the appellant's due process rights. If due process is violated in a criminal or murder issue, then the charges must be dismissed as a matter of law. Federal employees have this same benefit. As stated earlier, the appellant served in many re-appointment positions that did not require an additional probationary period (see attached SF 50 forms). The agency rolled the dice and lost because they put their entire case into the "professional" opinion of its Customer Account Manager with 28 years of service. Again, longevity has its place, but it does not establish competence. The appellant has well exposed the errors of the agency's case, and the erroneous misinterpretation of the law and regulations by the agency. Although the Board cited the law in their remand about 5 C.F.R 301. 401(a), it is amazing the agency found a way to misinterpret this regulation. There can be little doubt that the agency was in the business of retaliating against the appellant for her whistleblowing activities. This will be proved at the next hearing. Very unfortunately, the agency has ruined any possibility for settlement because they tried to destroy the appellant by retaliation and reprisal because they intentionally and willfully archived her security clearance for the purpose of preventing her from working at other agencies. This was just plain mean spirited and vindictive. The appellant is determined to have

these agency officials referred to the special counsel for investigation and prosecution. The tax payers and the appellant are the victims of less than honorable agency officials who are entrenched and determined to continue their corrupt enterprise. In another hidden report, the appellant has been made aware of fraud and waste that totals more than 124 Billion dollars. It is now a fact that WHS has been connected to this waste. The appellant was terminated because she was trying to prevent some of this waste by holding the contractors accountable. Without proper third party intervention, this fraud, waste, and abuse of authority will continue until this country is bankrupt, and this could compromise our national security.

**THE APPELLANT IS RESPECTFULLY REQUESTING THAT  
THE AJ REVIEW HIS POSITION ABOUT GRANTING A  
HEARING ON THE MERITS OF THE CASE IF THE  
APPELLANT PREVAILS ON THE PROBATION ISSUE**

The appellant firmly believes that if the agency loses the probation issue, then they can't be granted a hearing on the merits of the case. According to long establish board law, all the appellant has to defend is the contents of the proposed removal and decision letters. The proposal and decision letters both state the appellant was a true probationary employee. Probationary employees are not entitled to due process rights under

chapter 75. The appellant is entitled to a full hearing on the affirmative defenses because she amended her appeal in a timely manner. If the appellant loses the probation issue, then she is not entitled to have a hearing. However, if the appellant is reinstated with all rights and benefits, then we could have a discussion about granting the agency a hearing on the merits of their case. This is only being presented to perhaps save time from additional litigation.

The appellant is respectfully requesting that the AJ rule the appellant was not a probationary employee, she immediately be reinstated with back pay and interest, all benefits to include her security clearance be fully restored, and she be reimbursed for all attorney fees.

Submitted by   
Nate Nelson, Appellant's Representative

+

**APPELLANT'S EXHIBIT-----A**

**SF 50 INDICATING APPELLANT COMPLETED INITIAL  
APPOINTMENT**

RECEIVED MSPB

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WPRO

# NOTIFICATION OF PERSONNEL ACTION

|   |  |                    |  |                     |  |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
|---|--|--------------------|--|---------------------|--|------------------|-------------------------------------|-----------------|--------------------------------------|---|--|--------------------|--|---------------------|--------------------------|----------------|--|------------------------|--|-----|--|
| 1. Last, First, Middle<br><b>ILES-WYNKOOP, ELIZABETH</b>  |  |                    |  |                     | 2. Social Security Number<br><b>069-60-8402</b>  |                  | 3. Date of Birth<br><b>06/05/61</b> |                 | 4. Effective Date<br><b>04/20/03</b> |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| <b>1ST ACTION</b>   |  |                    |  |                     | <b>SECOND ACTION</b>   |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 6-A. Nature of Action<br><b>0 REINS-CAREER</b>  |  |                    |  |                     | 6-A. Code  |                  | 6-B. Nature of Action               |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 6-D. Legal Authority<br><b>M REG 315.401</b>  |  |                    |  |                     | 6-C Code   |                  | 6-D. Legal Authority                |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 6-F. Legal Authority  |  |                    |  |                     | 6-E. Code  |                  | 6-F. Legal Authority                |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 7M: Position Title and Number   |  |                    |  |                     | 15. TO: Position Title and Number<br><b>CONTRACT SPECIALIST</b>  |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
|   |  |                    |  |                     | <b>3502</b>  |                  | <b>0000068</b>                      |                 | <b>CS4</b>                           |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 9. Occ. Code  |  | 10. Grade/Level    |  | 11. Step/Rate       |  | 12. Total Salary |                                     | 13. Pay Basis   |                                      | 16. Pay Plan                              |  | 17. Occ. Code      |  | 18. Grade/Level     |                          | 19. Step/Rate  |  | 20. Total Salary/Award |  | 21. |  |
| <b>GS</b>   |  | <b>1102</b>        |  | <b>11</b>           |  | <b>01</b>        |                                     | <b>\$ 48451</b> |                                      | <b>GS</b>                                 |  | <b>1102</b>        |  | <b>11</b>           |                          | <b>01</b>      |  | <b>\$ 48451</b>        |  |     |  |
| 20A. Basic Pay  |  | 20B. Locality Adj. |  | 20C. Adj. Basic Pay |  | 20D. Other Pay   |                                     |                 |                                      | 20A. Basic Pay                            |  | 20B. Locality Adj. |  | 20C. Adj. Basic Pay |                          | 20D. Other Pay |  |                        |  |     |  |
| <b>\$ 42976</b>   |  | <b>\$ 5475</b>     |  | <b>\$ 48451</b>     |  | <b>\$</b>        |                                     |                 |                                      | <b>\$ 42976</b>                           |  | <b>\$ 5475</b>     |  | <b>\$ 48451</b>     |                          | <b>\$</b>      |  |                        |  |     |  |
| 22. Name and Location of Position's Organization  |  |                    |  |                     | 22. Name and Location of Position's Organization<br><b>NATIONAL CAPITAL REGION<br/>NATIONAL CAPITAL PARKS-EAST<br/>ADMINISTRATIVE OFFICE<br/><br/>WASHINGTON, DC</b> |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| <b>EMPLOYEE DATA</b>  |  |                    |  |                     |  |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 24. Tenure  |  |                    |  |                     | 25. Agency Use   |                  |                                     |                 |                                      | 26. Veterans Preference                   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 1 - None<br>2 - 5-Polm<br>3 - 10-Point/Disability<br>4 - 10-Point/Compensable<br>5 - 10-Point Other<br>6 - 10-Point/Compensable/30% |  |                    |  |                     | 1 - None<br>2 - Conditional<br>3 - Indefinite  |                  |                                     |                 |                                      | F SEX                                     |  | YES X              |  |                     |                          |                |  |                        |  |     |  |
| 28. Consultant Indicator  |  |                    |  |                     | 29. Pay Rate Determination   |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 9 NOT APPLICABLE  |  |                    |  |                     | 0  |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 31. Service Comp. Date (Leave)  |  |                    |  |                     | 32. Work Schedule  |                  |                                     |                 |                                      | 33. Part-Time Hours (Biweekly Pay Period) |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 04/20/03  |  |                    |  |                     | F FULL-TIME  |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| <b>POSITION DATA</b>  |  |                    |  |                     |  |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 35. FLSA Category   |  |                    |  |                     | 36. Appropriation Code   |                  |                                     |                 |                                      | 37. Bargaining Unit                       |  |                    |  |                     |                          |                |  |                        |  |     |  |
| E - Exempt<br>N - Nonexempt   |  |                    |  |                     |  |                  |                                     |                 |                                      | 7777                                      |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 39. Duty Station (City - County - State or Overseas Location)   |  |                    |  |                     | WASHINGTON, DISTRICT OF COLUMBIA   |                  |                                     |                 |                                      |   |  |                    |  |                     |                          |                |  |                        |  |     |  |
| 41. VET-STAT  |  |                    |  |                     | 42. EDUC LVL   |                  |                                     |                 |                                      | 43. SUPV LVL                              |  |                    |  |                     | 44. POSITION SENSITIVITY |                |  |                        |  |     |  |
| X   |  |                    |  |                     | 04   |                  |                                     |                 |                                      | 8   |  |                    |  |                     | NONSENSITIVE/LOW RI      |                |  |                        |  |     |  |

POINTMENT AFFIDAVIT EXECUTED 04/21/03.  
COMPLETED SERVICE REQUIREMENT FOR CAREER TENURE FROM 09/13/82 TO 09/13/85.  
EDITABLE MILITARY SERVICE: NONE  
PREVIOUS RETIREMENT COVERAGE: PREVIOUSLY COVERED  
SELECTED FROM MPP CERT #NPS-NACE-03-01  
PERFORMANCE LEVEL IS GS-11  
DATED 03/26/03.

APPLICANT EX

|  |  |  |                   |  |  |  |  |  |
|--|--|--|-------------------|--|--|--|--|--|
| 48. Personnel Office ID                          |  |  | 49. Approval Date |  |  | 50. Signature/Authentication and Title of Approving Official |  |  |
| 2902   |  |  | 04/07/03          |  |  | KATRINA L. ROBERTS<br>PERSONNEL OFFICER                      |  |  |
| IN10   |  |  |                   |  |  | 021151711  |  |  |
| 2 - OFF Copy - Long-Term Record - DO NOT DESTROY |  |  |                   |  |  |  |  |  |



**EMAIL INDICATING EMPLOYEE DID NOT AGREE TO A  
NEW PROBATIONARY PERIOD, AND SHE INFORMED THE  
AGENCY SHE WAS NOT A PROBATIONARY EMPLOYEE**

-----Original Message-----

From: Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)

Sent: Wednesday, July 29, 2015 4:25 PM

To: Burton, Keith L CIV WHS EITSD (US); Jackson, Tina M CIV WHS EITSD (US); Southall, Cynthia A CIV WHS HRD (US); Talcott, Lillie M CIV WHS HRD (US)

Cc: Ensley, Carol A CIV WHS EITSD (US); Russell, Jerry H Jr CIV (US); Aviles-Wynkoop, Elizabeth CIV WHS EITSD (US)

Subject: FW: SF50s for new hires

Importance: High

Hello.

I was looking at my SF50 and I noticed an error.

In block 24 it states that I'm conditional. I'm a permanent employee, which should have a code 1.

Can someone correct and get me the correct code for block 24.

Block 31 Service Comp Date is incorrect which reads: 06-29-2015.

Also, there is a note that I'm probation from Tenure II to then become Tenure I. I should NOT be on probation since I have 18 years under CSRS as a Federal Employee.

Please correct my SF50, to reflect exactly what my tenure is which is that I'm a permanent employee.

I await the corrected SF50.

Thanks!

Respectfully,

Elizabeth Aviles-Wynkoop

Office Number: 703-695-2819

APPELLANT (B)

**APPELLANT'S EXHIBIT-----C**

**SF 50 FROM HUD INDICATING THE APPELLANT ALSO COMPLETED AN ADDITIONAL PROBATIONARY PERIOD FOR 1 YEAR. THE APPELLANT ALSO WORKED FOR HUD 3 YEARS. THIS EXHIBIT IS MARKED AS C-1 AND C-2**

|   |                                 |                                  |   |  |   |  |   |   |                        |           |
|---|---------------------------------|----------------------------------|---|--|---|--|---|---|------------------------|-----------|
| 1. (Last, First, Middle)<br>S WYNGOP, ELIZABETH   |                                 |                                  |   | 2. Social Security Number<br>069-60-8402                                     |   | 3. Date of Birth<br>06/05/61                 |   | 4. Effective Date<br>09/30/14               |                        |           |
| FIRST ACTION  |                                 |                                  |   |  | SECOND ACTION   |  |   |   |                        |           |
| 5-B. Nature of Action<br>RESIGNATION  |                                 | 6-A. Code                        |   |  | 6-B. Nature of Action   |  |   |   |                        |           |
| 5-D. Legal Authority<br>REG 715.202   |                                 | 6-C. Code                        |   |  | 6-D. Legal Authority  |  |   |   |                        |           |
| 5-F. Legal Authority  |                                 | 6-E. Code                        |   |  | 6-F. Legal Authority  |  |   |   |                        |           |
| M: Position Title and Number<br>TRACT OVERSIGHT SPECIALST<br>682 HP0005   |                                 |                                  |   |  | 15. TO: Position Title and Number   |  |   |   |                        |           |
| 9. Occ. Code<br>1101  | 10. Grade or Level<br>13        | 11. Step or Rate<br>03           | 12. Total Salary<br>95,919.00   | 13. Pay Basis<br>PA  | 16. Pay Plan  | 17. Occ. Code                                | 18. Grade or Level                          | 19. Step or Rate                            | 20. Total Salary/Award | 21. Pay B |
| 12A. Basic Pay<br>7.00  | 12B. Locality Adj.<br>18,702.00 | 12C. Adj. Basic Pay<br>95,919.00 | 12D. Other Pay<br>.00   | 20A. Basic Pay   | 20B. Locality Adj.<br>.00   | 20C. Adj. Basic Pay                          | 20D. Other Pay<br>.00                       |   |                        |           |
| Name and Location of Position's Organization<br>SING AND URBAN DEVELOPMENT<br>D   |                                 |                                  |   |  | 22. Name and Location of Position's Organization<br><br>1B<br>HU 831116001001000000 PP 01 2015                                |  |   |   |                        |           |
| LOYER DATA  |                                 |                                  |   |  |   |  |   |   |                        |           |
| 23. Veterans Preference<br>1 - None<br>2 - 5 Percent<br>3 - 10 Percent/Disability<br>4 - 10 Percent/Compensable<br>5 - 10 Percent/Other<br>6 - 10 Percent/Compensable/30% |                                 |                                  |   | 24. Tenure<br>0 - None<br>1 - Permanent<br>2 - Conditional<br>3 - Indefinite |   | 25. Agency Use                               |   | 26. Veterans Preference for RIF<br>YES X NO |                        |           |
| 27. LI<br>BASIC-5X FAMILY   |                                 |                                  |   | 28. Annuitant Indicator<br>9 NOT APPLICABLE                                  |   | 29. Pay Rate Determinant<br>0 NOT APPLICABLE |   |   |                        |           |
| 30. Increment Plan<br>FICA & CIVIL SERVICE  |                                 |                                  | 31. Service Comp. Date (Leave)<br>01/27/98  |  | 32. Work Schedule<br>F FULL TIME  |  | 33. Part-Time Hours Per Biweekly Pay Period |   |                        |           |
| POSITION DATA   |                                 |                                  |   |  |   |  |   |   |                        |           |
| 34. Position Occupied<br>1 - Competitive Service<br>2 - Excepted Service<br>3 - SES General<br>4 - SES Career Reserved  |                                 |                                  | 35. FLSA Category<br>E E - Excepted<br>N - Nonexcepted  |  | 36. Appropriation Code  |  |   | 37. Bargaining Unit Status<br>1120          |                        |           |
| 38. Duty Station Code<br>0-001  |                                 |                                  | 39. Duty Station (City - County - State or Overseas Location)<br>WASHINGTON DIST OF COLUMBIA DC |  |   |  |   |   |                        |           |
| 40. Agency Data   |                                 | 41.                              | 42.   | 43.  | 44.   |  |   |   |                        |           |
| MAILING ADDRESS= PO BOX 7163 ALEXANDRIA VA 22307-0163   |                                 |                                  |   |  |   |  |   |   |                        |           |
| REASON FOR RESIGNATION: EMPLOYEE RESIGNING FOR PERSONAL REASONS<br>2-SUM PAYMENT TO BE MADE FOR ANY UNUSED ANNUAL LEAVE.  |                                 |                                  |   |  |   |  |   |   |                        |           |
| Employing Department or Agency<br>SING AND URBAN DEVELOPMENT  |                                 |                                  |   |  | 50. Signature/Authentication and Title of Approving Official<br>S/ BY: FELICIA A. PURIFOY<br>DIRECTOR, HUMAN CAPITAL SERVICES |  |   |   |                        |           |
| 45. Agency Code<br>3  | 48. Personnel Office ID<br>4400 |                                  | 49. Approval Date<br>10/01/14   |  |   |  |   |   |                        |           |

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APPELLANT (C)

# NOTIFICATION OF PERSONNEL ACTION

|   |  |  |  |   |  |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
|---|--|--|--|---|--|--------------------------------------|--|--------------------------------------|--|--|--|---|--|------------------------------|--|----------------------------|--|--|--|--------|--|
| 1. Name (Last, First, Middle)<br><b>VILES-WYNKOOP, ELIZABETH</b>  |  |  |  | 2. Social Security Number<br><b>069-60-8402</b> |  | 3. Date of Birth<br><b>06/05/61</b>  |  | 4. Effective Date<br><b>08/14/11</b> |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| <b>FIRST ACTION</b>   |  |  |  |   | <b>SECOND ACTION</b>   |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| 5-B. Nature of Action<br><b>CAREER APPT</b>   |  | 6-A. Code                              |  |   | 6-B. Nature of Action  |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| 5-D. Legal Authority<br><b>OPM DELE AGR CERT H</b>  |  | 6-C. Code                              |  |   | 6-D. Legal Authority   |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| 5-F. Legal Authority  |  | 6-E. Code                              |  |   | 6-F. Legal Authority   |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| 10. FROM: Position Title and Number   |  |  |  |   | 15. TO: Position Title and Number<br><b>CONTRACT OVERSIGHT SPECIALST<br/>65681682 HP0005</b>           |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| 9. Occ. Code  |  | 10. Grade/Level                        |  | 11. Step/Rate                                   |  | 12. Total Salary                     |  | 13. Pay Basis                        |  | 16. Pay Plan<br><b>GS</b>  |  | 17. Occ. Code<br><b>1101</b>            |  | 18. Grade/Level<br><b>13</b> |  | 19. Step/Rate<br><b>01</b> |  | 20. Total Salary/Award<br><b>89,033.00</b> |  | 21. P. |  |
| Basic Pay   |  | 12B. Locality Adj.<br><b>.00</b>       |  | 12C. Adj. Basic Pay                             |  | 12D. Other Pay<br><b>.00</b>         |  | 20A. Basic Pay<br><b>71,674.00</b>   |  | 20B. Locality Adj.<br><b>17,359.00</b>   |  | 20C. Adj. Basic Pay<br><b>89,033.00</b> |  | 20D. Other Pay<br><b>.00</b> |  |                            |  |  |  |        |  |
| 22. Name and Location of Position's Organization<br><b>HOUSING AND URBAN DEVELOPMENT<br/>PIH, IO<br/>PIH<br/><br/>HU 831116001001000000 PP 17 2011</b>  |  |  |  |   |  |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| <b>EMPLOYEE DATA</b>  |  |  |  |   | 24. Tenure<br><b>2</b> 0 - None 2 - Conditional<br>1 - Permanent 3 - Indefinite                        |                                      |  |                                      |  | 25. Agency Use   |  |   |  |                              | 26. Veterans Preference for<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                            |  |  |  |        |  |
| 27. EGLI<br><b>0 BASIC</b>  |  |  |  |   | 28. Annuitant Indicator<br><b>9 NOT APPLICABLE</b>   |                                      |  |                                      |  | 29. Pay Rate Determinant<br><b>0</b>   |  |   |  |                              |  |                            |  |  |  |        |  |
| 30. Retirement Plan<br><b>FICA &amp; CIVIL SERVICE</b>  |  |  |  |   | 31. Service Comp. Date (Leave)<br><b>08/14/11</b>  |                                      |  |                                      |  | 32. Work Schedule<br><b>F FULL TIME</b>  |  |   |  |                              | 33. Part-Time Hours Per<br>Biweekly<br>Pay Period  |                            |  |  |  |        |  |
| <b>POSITION DATA</b>  |  |  |  |   | 35. FLSA Category<br><b>E</b> E - Exempt<br>N - Nonexempt  |                                      |  |                                      |  | 36. Appropriation Code   |  |   |  |                              | 37. Bargaining Unit Status<br><b>1120</b>  |                            |  |  |  |        |  |
| 38. Duty Station Code<br><b>0010-001</b>  |  |  |  |   | 39. Duty Station (City - County - State or Overseas Location)<br><b>WASHINGTON DIST OF COLUMBIA DC</b> |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| 40. Agency Data   |  | 41.                                    |  | 42.   |  | 43.                                  |  | 44.                                  |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| Remarks<br><b>PF MAINTAINED BY HUD/PBRD<br/>1 7TH STREET, SW. RM 2135<br/>WASHINGTON, DC 20410.<br/>PREVIOUS RETIREMENT COVERAGE: COVERED.<br/>REDUITABLE MILITARY SERVICE: NONE.<br/>POINTMENT AFFIDAVIT EXECUTED 08/15/11.<br/>POSITION IS AT THE FULL PERFORMANCE LEVEL OR BAND.<br/>COMPLETED SERVICE REQUIREMENT FOR CAREER TENURE FROM 04/25/95<br/>1/26/98.<br/>YOU WILL BE IN TENURE GROUP II UNTIL YOU COMPLETE THE ONE-YEAR<br/>PROBATIONARY PERIOD THAT BEGAN 08/15/11.<br/>WHEN YOU WILL BE CHANGED BACK TO TENURE GROUP I.<br/>ELECTED FROM VACANCY ANNOUNCEMENT H11-MP-473383-VMZ<br/>AND OPM CERTIFICATE H-11-VAM-03740S0 DATED 6/20/11.</b> |  |  |  |   |  |                                      |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |
| 45. Employing Department or Agency<br><b>HOUSING AND URBAN DEVELOPMENT</b>  |  |  |  |   |  |                                      |  |                                      |  | 50. Signature/Authentication and Title of Approving Official<br><b>E/S BY: ALLISON R HOPKINS<br/>DIRECTOR, OFFICE OF HUMAN RESOURCES</b> |  |   |  |                              |  |                            |  |  |  |        |  |
| 46. Agency Code<br><b>HU 83</b>   |  | 48. Personnel Office ID<br><b>4400</b> |  |   |  | 49. Approval Date<br><b>08/16/11</b> |  |                                      |  |  |  |   |  |                              |  |                            |  |  |  |        |  |

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# CERTIFICATE OF SERVICE

I certify that a copy of the attached document was forwarded the parties on December 30, 2016, 2016 as indicated below:

Ms Elizabeth E Pavlick, Agency Counsel-----Faxed and mailed

Department of Defense

Assistant General Counsel

Pentagon Force Protection Agency

1155 Defense Pentagon

Rm 2E 1035

Washington, DC 20301

Date: December 30, 2016, 2016



Nate Nelson

1709 Halcun Drive

Petersburg, Va 23803

Phone 804-720-6269

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