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Appendix A Rehearing Denied  
T OF DEFENSE,  
Respondent

2022-1305

Petition for review of the Merit Systems  
Protection Board in No. DC-0752-21-0485-I-1.

Per Curium  
ORDER

Kathy Lynn Carter filed a petition for panel hearing  
upon consideration thereof, It is ordered that the  
petition for panel hearing is denied

FOR THE COURT

July 14, 2022

/s/Peter R. Marksteiner

Date Clerk of Court

Peter R. Marksteiner

NOTE: This disposition is nonprecedential.  
Appendix B Final Decision  
United States Court of Appeals for the Federal Circuit

KATHY LYNN CARTER,  
Petitioner

v.

DEPARTMENT OF DEFENSE,  
Respondent

2022-1305

Petition for review of the Merit Systems Protection  
Board in No.  
DC-0752-21-0485-I-1.

Decided: June 14, 2022

KATHY L. CARTER, Brandywine, MD, pro se.

ERIC JOHN SINGLEY, Commercial Litigation  
Branch, Civil Division, United States Department of  
Justice, Washington, DC, for respondent. Also  
represented by BRIAN M. BOYNTON, PATRICIA M.  
MCCARTHY, FRANKLIN E. WHITE, JR.

Before MOORE, Chief Judge, DYK and CHEN,  
Circuit Judges.

PER CURIAM.

Petitioner Kathy Lynn Carter appeals a decision by the Merit Systems Protection Board affirming the Department of Defense's (Defense) decision removing her from federal service for unauthorized absences and failure to follow instructions by refusing to perform telework during the novel coronavirus pandemic. *Carter v. Dep't of Def.*, No. DC- 0752-21-0485-I-1, 2021 WL 5080549 (M.S.P.B. Oct. 28, 2021) (Board Decision) (Appx. 5–31).<sup>1</sup> Ms. Carter requests reversal and reinstatement or adjustment of her retirement date. <sup>2</sup> *Pet. Br.* at 16. Because we conclude that the Board's decision is supported by substantial evidence and is not arbitrary, capricious, an abuse of discretion, or contrary to law, we affirm.

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1 "Appx." citations herein refer to the appendix filed concurrently with Petitioner's brief. Additionally, because the reported version of the Board's decision is not paginated, citations are to the version of the Board decision included in the appendix—e.g., Board Decision at 1 can be found at Appx. 5.

2 Prior to her removal, Ms. Carter submitted a request to retire, which Defense granted, and she retired effective June 3, 2021. Appx. 250.

## BACKGROUND

Before her removal, Ms. Carter was an Acquisition and Financial Support Specialist with Defense's Office of Net Assessment (ONA). Appx. 5; Appx. 250. In March 2020 and in response to the novel coronavirus pandemic, Ms. Carter was authorized for "Weather and Safety Leave." Appx. 214-15. Keith Walters, chief of staff for ONA, subsequently informed her that she could not remain on leave throughout the pandemic and arranged for her to telework—i.e., provided a laptop, network-access, a detailed outline of her duties and responsibilities, and necessary teleworking resources and training. Appx. 78-93; Appx. 215. Ms. Carter, however, did not respond to Mr. Walters nor otherwise attempt to telework. Appx. 215.

On December 8, 2020, Mr. Walters notified her that she needed to complete required telework training no later than December 15, 2020, explained that she was required to begin teleworking on January 4, 2021, and stated that she was permitted to take some of her "197 hours of use/lose leave" but was not authorized to take administrative leave. Appx. 94. Ms. Carter responded to Mr. Walters the same day, stating:

Please stop asking about telework. Talk with Col Regan (prior chief of staff), my supervisor and you, I am no longer interest in telework agreement. Do not schedule annual leave. I am already on weather and safety leave.

Appx. 207. The next day, Mr. Walters issued a written memorandum notifying her that, effective January 4, 2021, she would not be authorized for Weather and Safety Leave, and would be required to report for duty via telework on that date pursuant to Defense's continuity of operations plan. Appx. 119. The memorandum again instructed her to complete the required telework training and informed her that failure to follow the procedures outlined in the notice would result in disciplinary action up to and including removal.<sup>3</sup> Appx. 119–20.

Ms. Carter did not complete the required training or begin telework in accordance with Mr. Walters's memorandum email instructions. Appx. 204; Appx. 216. Consequently, Mr. Walters informed her on January 12, 2021, that she was absent without leave (AWOL), retroactive as of January 4, 2021, the date upon which she was to begin teleworking.<sup>4</sup> Appx. 204. Since Ms. Carter did not report for duty until February 4, 2021, her records reflected her AWOL status from January 4 through February 3, 2021. See Appx. 225; see also Appx. 105.

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<sup>3</sup> To the extent that Ms. Carter contends that she did not have prior notification of potential removal, see Pet. Br. at 10, the Walters memorandum provided such notice, see Appx. 119–20.

<sup>4</sup> To the extent that Ms. Carter contends that she was unaware that her AWOL status would be recorded, see Pet. Br. at 10, the record evidence indicates otherwise, see Appx. 204.

approval for leave and to complete required telework training. Appx. 214; Appx. 216–20. Ms. Carter On

follow instruction charges, with 23 supporting specifications corresponding to instructions to request April 7, 2021, Defense issued a “Notice of Proposed Removal” based on: (1) AWOL charges, with 21 supporting specifications corresponding to each day she did not report for telework duty, and (2) failure to provided a written response on April 15, 2021, Appx. 103–05, and Defense issued a final decision on May 21, 2021,<sup>5</sup> ordering her removal effective June 4, 2021, Appx. 223. Ms. Carter retired instead. Appx. 250.

On June 21, 2021, Ms. Carter appealed her removal to the Board. Board Decision at 1. On October 28, 2021, an administrative judge issued an initial decision on her appeal, which became the Board’s final decision when she did not petition for Board review within 35 days. See 5 C.F.R. § 1201.113; Board Decision at 20. The Board found that Defense proved all of the charged misconduct by a preponderance of the evidence. *Id.* at 6–15. The Board rejected Ms. Carter’s argument that Defense had no authority to compel her to telework, noting that Defense’s written policies provided the necessary authorization. *Id.* at 16. The Board also rejected Ms. Carter’s assertion

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<sup>5</sup> Defense subsequently amended its decision on May 24, 2021. Appx. 243.

that she did not receive notice to telework until communications about the telework requirement via memorandum, phone calls, and email “as she had no problem communicating with him using these February 3, 2021, as “in-credible.” Id. at 11. The Board found that it was “highly improbable” that Ms. Carter did not receive any of Mr. Walters many methods prior to December 8, 2020.” Id. at 11–12. Instead, the Board found it was “probable that [Ms. Carter] simply re- fused to engage in any further conversations or communications with [Mr. Walters] regarding telework.” Id.

The Board then concluded that Defense established the requisite nexus between Ms. Carter’s actions and efficiency of service. Id. at 17. The Board reasoned that her AWOL status, which “by its very nature, disrupts the efficiency of the service,” and “failure to follow instructions affect[ed] the agency’s ability to carry out its mission.” Id. Lastly, the Board reviewed Defense’s consideration of the Douglas factors,<sup>6</sup> and concluded that Defense did not abuse its discretion in removing her from federal service as the penalty for her conduct. Id. at 18–19. The Board, therefore, affirmed Ms. Carter’s removal. Id.

This appeal followed. We have jurisdiction pursuant to 5 U.S.C. § 7703(b)(1)(A) and 28 U.S.C. § 1295(a)(9).

<sup>6</sup> “Douglas factors” refers to the twelve factors articulated in *Douglas v. Veterans Admin.*, 5 M.S.P.B. 313 (1981), for an agency to consider when determining whether a penalty is appropriate



## DISCUSSION

### A

Our review of Board decisions is limited. *Whiteman v. Dep't of Transp.*, 688 F.3d 1336, 1340 (Fed. Cir. 2012). A final decision “(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having by the Board must be affirmed unless it is been followed; or (3) unsupported by substantial evidence.” 5 U.S.C. § 7703(c); see also *Bannister v. Dep't of Veterans Affs.*, 26 F.4th 1340, 1342 (Fed. Cir. 2022). We review the Board’s legal determinations de novo and its factual findings for substantial evidence. *Archuleta v. Hopper*, 786 F.3d 1340, 1346 (Fed. Cir. 2015).

An agency must establish three things when it takes an adverse action against an employee: (1) that, by a preponderance of the evidence, the charged conduct occurred; (2) that there is a nexus between the conduct and efficiency of the service; and (3) that the penalty imposed was reasonable. *Bryant v. Nat'l Sci. Found.*, 105 F.3d 1414, 1416 (Fed. Cir. 1997).

### B

Ms. Carter contends that Defense lacked legal authority to remove her for being AWOL from telework duty or for failing to follow instructions to telework because, under the Telework Enhancement Act, 5 U.S.C. §§ 6501 et seq. (TEA), she was not

eligible for and could not be compelled to telework. Pet. Br. at 9, 11–14. We disagree.

The TEA requires government agencies to establish telework policies, determine telework eligibility, notify agency employees of their eligibility, provide teleworking training to eligible employees, and treat teleworkers no differently than non-teleworkers. See 5 U.S.C. §§ 6502(a), 6503(a). Before eligible employees participate in telework, the agency must enter into a written telework agreement with the eligible employee that “outlines the specific work arrangement that is agreed to.” Id. § 6502(b). Such teleworking policies and agreements notwithstanding, the TEA also requires agencies to “incorporate telework into the continuity of operations plan of that agency,” id. § 6504(d)(1), “supersed[ing] any telework policy” “during any period that an executive agency is operating under a continuity of operations plan,” id. § 6504(d)(2).

The Board correctly noted that, under established Defense policy, Defense employees typically cannot be ordered to telework unless their duties are designated mission-critical. *Board Decision* at 9; see also Appx. 150, Dep’t of Defense, Instruction 1035.01, Telework Policy, Enclosure 3 § 2(f) (Apr. 7, 2020) (*Telework Policy*) (“Although use of telework is encouraged, employees cannot be ordered to telework, unless the employee’s duties are designated as mission-critical and the employee is required to report to an alternative worksite or the employee’s telework agreement addresses this requirement.”); U.S. Off. of

Pers. Mgmt., 2021 Guide to Telework and Remote Work in the Federal Government, at 14 (Nov. 2021) (“[T]he Act does not obligate an employee to participate in an agency telework program. Accordingly, employee participation in a telework program is voluntary.”).

Although Ms. Carter’s duties were not designated mission-critical, the Board correctly found that, in light of the novel coronavirus pandemic, Defense had authority to require her to telework pursuant to its continuity of operation (COOP) policies. Board Decision at 10–11, 16. Defense’s COOP policies “supersede the telework policy” and provide that employees not normally eligible for telework may nonetheless be required to telework during a pandemic:

*Employees who are telework-ready (i.e., approved and equipped for routine or situational telework) who are not able to report to their assigned office location due to a government closure from a natural or manmade emergency event (e.g., snow emergency, flood, hurricane, earthquake, wild fire, act of terrorism, pandemic) will telework each regularly scheduled work day during the emergency situation. Contingent upon supervisory approval, telework-ready employees may telework when government offices are open with the option for unscheduled telework when weather conditions make commuting hazardous, or*

similar circumstances compromise employee safety. During any period that a WHS-serviced Component is operating under the COOP plan, that plan will *supersede the telework policy and the provisions of the telework agreement.*

\* \* \*

In the event of a pandemic health crisis, employees with COOP responsibilities, Service members, and employees who do not have COOP responsibilities but are trained and equipped to telework may be asked to telework to prevent the spread of germs. These employees or Service members should telework on a regular basis to ensure their proficiency and telework's effectiveness in continuing operations. Employees or Service members in positions not typically eligible for telework should telework on a situational basis when feasible.

Dep't of Defense, Dir. of Admin. & Mgmt., Admin. Instruction 117, Telework Program, Enclosure 3 §§ 8(f), (g)(3) (Mar. 31, 2015) (emphasis added); see also Appx. 157–58, Telework Policy, Enclosure 3 § 3(i)(1)–(2) (“During any period that a Component is operating under the COOP plan, that plan shall supersede the telework policy and the provisions of the telework agreement. . . . In the event of a pandemic health crisis, . . . Employees or Service members in positions not typically eligible for telework should telework on a situational basis when feasible.”). Ms. Carter admits that the novel coronavirus pandemic affected

Defense's operations, Pet. Br. at 27, and she does not challenge the validity of Defense's COOP policies regarding emergency telework. Moreover, Defense's COOP policies are consistent with § 6504(d)(1) and (2) of the TEA.

The Board further observed that, consistent with agency policy, Defense initiated a continuity of operations plan in response to the novel coronavirus pandemic and provided Ms. Carter with the necessary equipment (i.e., laptop) and opportunities for training to work from her home (i.e., an approved location for Ms. Carter to perform work) so that she could telework on a situational basis. See Board Decision at 8–10, 16; see also Appx. 78–93; Appx. 168–69. After many months passed in which Ms. Carter declined requests to consider teleworking, she was instructed to commence telework on January 4, 2021, Appx. 119, and there is no dispute that she refused to and did not do so until February 4, 2021, Appx. 105. In view of this evidence, the Board's finding that Defense demonstrated by preponderance of evidence that Ms. Carter was AWOL from January 4 through February 3, 2021, and failed to follow instructions to report for telework duty was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Regarding nexus, our review is limited by statute to whether the Board's affirmance meets the statutory criteria. 5 U.S.C. § 7703(c). We hold in this case that it does.

An employee's AWOL status, "by its very nature, disrupts the efficiency of the service," and is therefore a proper basis for removal. See *Davis v. Veterans Admin.*, 792 F.2d 1111, 1113 (Fed. Cir. 1986) (holding that "any sustained charge of AWOL is inherently connected to the efficiency of the service"); see also *Bryant*, 105 F.3d at 1417 (noting that, since *Davis*, "both this court and the Board have routinely held that the nexus between the charged offense and the efficiency of the service is automatic when the charged offense is AWOL"). Additionally, there is a direct relationship between service efficiency and an agency's rules and regulations regarding attendance and authorized absences because an employee's failure to follow such instructions inherently affects the agency's ability to carry out its mission. Accordingly, the Board did not err in concluding that Defense established the requisite nexus between Ms. Carter's AWOL and failure to follow actions and the efficiency of the service. Board Decision at 17.

Lastly, we are satisfied that the removal penalty selected by Defense, as affirmed by the Board, was supported by substantial evidence and was not an abuse of discretion or violation of law. The record in this case establishes that both Defense and the Board properly considered the relevant aggravating factors based on Ms. Carter's failure to report for telework duty and mitigating factors based on her prior, satisfactory performance record. Board Decision at 18-19; Appx. 226 (Defense's consideration of Douglas factors). Moreover, Defense specifically "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,” noting that “[o]ther employees have been removed for AWOL and Failure or Delay in Carrying Out Written Regulations, Orders, Rules, Procedures, or Instructions.” Appx. 226. In view of this evidence, we cannot say that the Ms. Carter’s removal is so “outrageously disproportionate” to the offense as to constitute an abuse of discretion or violation of law. See *Yeschick v. Dep’t of Transp.*, 801 F.2d 383, 384–85 (Fed. Cir. 1986).

### C

Ms. Carter also argues that Defense failed to provide advance notice of disciplinary action pursuant to 5 U.S.C. § 7513(b)(1). Pet. Br. at 6–7, 9–10, 15–16. We disagree.

Pursuant to § 7513(b)(1), “[a]n employee against whom an action is proposed is entitled to” inter alia “at least 30 days’ advance written notice.” Since Ms. Carter received Defense’s Notice of Proposed Removal on April 7, 2021, Defense did not issue its final decision until May 24, 2021, and her removal was not effective until June 4, 2021, she received the required 30 days’ advance notice. Appx. 214;

Appx. 243. We therefore reject petitioner’s procedural argument.

## CONCLUSION

We have considered Ms. Carter's remaining arguments and do not find them persuasive. For the foregoing reasons, the Board did not err in affirming Defense's removal action against Ms. Carter. Accordingly, we affirm the Board's decision.

## AFFIRMED COSTS

No costs.



UNITED STATES OF AMERICA MERIT SYSTEMS  
PROTECTION BOARD WASHINGTON REGIONAL  
OFFICE

*Appendix C MSPB DOCKET NUMBER DC-  
0752-21-0485-I-1MSPB*

KATHY LYNN CARTER,  
Appellant,

DOCKET NUMBER DC-0752-21-0485-I-1

v.

DEPARTMENT OF DEFENSE,  
Agency.

DATE: October 28, 2021

Kathy Lynn Carter, Brandywine, Maryland, pro se.  
Kevin Greenfield, Esquire, Washington, D.C., for the  
agency.

BEFORE

Kasandra Robinson Styles Administrative Judge

## INITIAL DECISION INTRODUCTION

On June 21, 2021, Kathy Lynn Carter filed an appeal with the Board from the agency's action of removing her from the GS-1101-09 position of Acquisition and Financial Support Specialist with the agency's Office of Net Assessment (ONA) at the Pentagon in Washington, DC. See Appeal File (AF), Tab 1.

The Board has jurisdiction over this appeal. See 5 U.S.C. §§ 7511(a)(1)(A), 7512, and 7513(d) (West 2007). This decision is based on the parties' written submissions because the appellant did not request a hearing. For the reasons further discussed below, the agency's removal action is **AFFIRMED**.

## BACKGROUND

The following facts are undisputed. Prior to the removal action at issue in this appeal, the appellant held the GS-1101-09 position of Acquisition and Financial Support Specialist with the agency's Office of Net Assessment (ONA) at the Pentagon in Washington, DC.

On April 7, 2021, the agency proposed the appellant's removal based on the charges of absent without leave (AWOL), with 21 supporting specifications and failure or delay in carrying out written regulations, orders, rules, procedures, or instructions with 23 supporting specifications. On April 15, 2021, the appellant filed a written reply to

the removal action. By letter dated May 21, 2021, the agency issued a final decision sustaining the removal action. On May 24, 2021, the agency issued an amended final decision, again sustaining the removal action. This notice stated the effective date of the removal action would be June 4, 2021. Prior to the effective date of the removal, the appellant submitted a request to retire. The agency issued an SF-50 noting the effective date of the retirement action was June 3, 2021, prior to the effective date of the removal action. AF, Tab 3.

#### JURISDICTION

On June 21, 2021, the appellant filed the instant appeal. AF, Tab 1. In her appeal, the appellant stated that she wanted the effective date of her retirement changed to August 1, 2021, but she was forced to change it to June 4, 2021. *Id.* Subsequently, the agency filed a motion to dismiss this appeal for lack of Board jurisdiction. AF, Tab 3. The agency argued that the Board lacks jurisdiction over this appeal because the appellant submitted a request to retire, which was effected on June 3, 2021, prior to the effective date of her removal. *Id.*

On August 3, 2021, I conducted a telephonic status conference with the parties. AF, Tab 7. During the conference I informed the parties that it appeared the Board had jurisdiction over the appeal pursuant to *Tizol-Coimbre v. U.S. Postal Service*, 70 M.S.P.R. 382, 284 (1996). In *Tizol-Coimbre*, the Board held that Congress intended to provide a right of appeal in situations where a removal has been effected,

regardless of the retirement status of the appellant. Thus, the Board has jurisdiction over an appeal of an employee who retires when faced with a decided removal against her, without regard to whether the date of the retirement falls on or before the effective date of the removal. *Id.* at 384. In the instant matter, the agency issued its decision to remove the appellant on May 24, 2021, with an effective date of June 4, 2021. Subsequently, the appellant submitted a request to retire, which the agency argues became effective on June 3, 2021, prior to the effective date of the removal. However, because the agency had already issued its decision to remove the appellant prior to her submission of her retirement request, I find the Board has jurisdiction over the agency's decision to remove the appellant from her position.

### **Burden of Proof**

The agency bears the burden of proving the charged conduct by a preponderance of the evidence. <sup>1</sup> 5 U.S.C.A. § 7701(c)(1)(B) (West 2007). The agency must further establish the existence of a nexus between the conduct and the efficiency of the service. 5 U.S.C.A. §7513(a) (West 2007); *Hayes v. Department of the Navy*, 727 F.2d 1535, 1539 (Fed. Cir. 1994). Finally, the agency must demonstrate that the penalty

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<sup>1</sup> A preponderance of the evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q) (2019).

imposed was within the bounds of reasonableness. Douglas v. Veterans Administration, 5 M.S.P.R. 280, 306-07 (1981).

#### ANALYSIS AND FINDINGS

The agency's removal action is based on the following background information:

In March 2020, at the onset of the Coronavirus pandemic, Ms. Tracy Whittlesey who was the Chief of Staff at the time, authorized you Weather and Safety Leave as a health and safety precaution. At that time, you did not have telework capabilities. Under

those I circumstance at that time Weather and Safety Leave was appropriate.

In June 2020, while I was while I was the Military Advisor to the Director, you and I discussed the Agency's efforts to reduce the number of employees utilizing Weather and Safety Leave and the requirement for you to telework as outlined in Administrative Instruction (AI) 117, "Telework Program", during the Continuity of Operations Plan (COOP), reference (a). At that time, you expressed your unwillingness to telework and you stated that you would remain on Weather and Safety Leave until the Agency reached phase three of the return to work plan. I explained to you that allowing you to remain on Weather and Safety Leave for the duration

of the pandemic or until the Agency entered phase three, was not conducive to the mission.

In July 2020, I made arrangements for you to receive a government laptop, access to the network and all programs necessary for you to perform your duties while teleworking. I provided you with a detailed work plan outlining your duties and responsibilities since your work assignments changed as a result of you working from home, reference (b).

In August 2020, you still had not logged onto your device to telework. However, on September 3, 2020, the Joint Service Provider (JSP) sent Security Manager Ms. Demaris Lawhorn a message notifying her that your access had been suspended because you placed an unauthorized thumb drive into your laptop on August 18, 2020, reference (c).

On November 16, 2020, I had a follow-up discussion with you regarding the requirement for you to telework. Once again, you stated that you would refuse to telework and that you would remain on Weather and Safety Leave until the Agency entered phase three of the return to work plan.

On November 20, 2020, you sent an email inquiring about the status of your request to restore your use or lose leave balance. I responded to your email by asking you to give me a call to clarify your request and to discuss the way ahead for you to begin telework. You never replied, reference (d).

On November 23 and 24, 2020, I sent you follow-up emails asking you to give me a call to discuss your plans for using your use or lose leave and to discuss the plan for you to begin telework. And just as before, you never replied, also reference (d).

On December 2, 2020, I sent you an email requesting to speak with you to discuss your use or lose leave balance of 197 hours, the requirement for you to telework and your work plan. The email also put you on notice that I was soon ending the approval for you to be on Weather and Safety Leave, reference (e).

On December 7, 2020, you sent me an email inquiring about the status of the weekly Net Call that you had attended since being out on Weather and Safety Leave. I replied to you with the weekly schedule of the Net Call, and inquired about your plans to start teleworking and using your excess leave. I also put you on notice that I was planning for you to begin telework on January 4, 2021. You replied, "Please stop asking about telework. Talk with Col Regan (prior chief of staff), my supervisor and you, I am no longer interest in telework agreement. Do not schedule annual leave. I am already on weather and safety leave", reference (f).

On December 10, 2020, I issued you a memorandum informing you that effective January 4, 2021, you would no longer be authorized Weather and Safety Leave and that you were required to report for duty via telework, reference (g). The memorandum also instructed you to access the iCompass Learning Management System to complete the required

training courses regarding telework procedures by December 20, 2020. I sent the notice to the same email address previously used to communicate since the start of the pandemic, reference (h). I also mailed the notice to your address of record in two separate packages to ensure delivery with a delivery date of December 16, 2020, (Attachments 1 and 2).

You did not complete the required training course for telework by the December 20, 2020, suspense date. On January 4, 2021, you attended the weekly Net Call, but you failed to report for duty thereafter.

On January 12, 2021, I sent you an email to inform you that you were placed in an AWOL status, reference (i). You did not respond to my email and you did not report for duty until February 4, 2021, (Attachment 3).

On January 29, 2021, even after being notified that you were in an AWOL status, you sent an email to Captain Taylor Allen and Colonel Andrew Drake requesting that Admin Leave be entered on your timecard from January 18-January 29, 2021, reference (j).

AF, Tab 13, Subtab 4b.

**CHARGE 1: Absent Without Leave (AWOL)**

Specification 1: On January 4, 2021, you were scheduled to report for duty via telework. You did not



report for duty as required. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for seven (7) hours.

Specification 2: On January 5, 2021, you were scheduled to report for duty via telework. You did not report for duty as required. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 3: On January 6, 2021, you were scheduled to report for duty via telework. You did not report for duty as required. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 4: On January 7, 2021, you were scheduled to report for duty via telework. You did not report for duty as required. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 5: On January 8, 2021, you were scheduled to report for duty via telework. You did not report for duty as required. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 6: On January 11, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for seven (7) hours.

Specification 7: On January 12, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 8: On January 13, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 9: On January 14, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 10: On January 15, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by

anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 11: On January 19, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for seven hours and fifteen minutes (7.25) hours.

Specification 12: On January 21, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 13: On January 22, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 14: On January 25, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for seven hours and fifteen minutes (7.25).

Specification 15: On January 26, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 16: On January 27, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. Id.

You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 17: On January 28, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 18: On January 29, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 19: On February 1, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by

anyone in your chain of command. As a result, you were AWOL for seven (7) hours.

Specification 20: On February 2, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

Specification 21: On February 3, 2021, you were scheduled to report for duty via telework. You did not report for duty as required of you. You did not have approved leave, nor was your absence authorized by anyone in your chain of command. As a result, you were AWOL for eight (8) hours.

*Id.*

The agency's documentary of record clearly supports the facts as stated in the background section of its proposal notice, also provided in this decision. See AF, Tab 13, Subtab 4b, Attachments. Thus, I find it undisputed that, while the appellant was initially placed on Weather and Safety (W&S) Leave in March 2020, ONA Chief of Staff Keith Walters informed her as early as June 2020 that she would not be permitted to remain on W&S Leave until the end of the pandemic. Mr. Walters made arrangements for the appellant to receive a laptop, access to the network and all programs necessary for her to perform her duties while teleworking. He also provided her with a detailed plan while teleworking.

AF, Tab 13, Subtab 4a at 117-130; Subtab 4b, Attachments at 239-251, 264. The appellant refused to return Mr. Walters calls, respond to his emails, or otherwise attempt to telework. Id. at 255-261. In fact, in an email dated December 8, 2020, the appellant stated:

Please stop asking about telework. Talk with Col Regan (prior chief of staff), my supervisor and you, I am no longer interest in telework agreement. Do not schedule annual leave. I am already on weather and safety leave.

AF, Tab 13, Subtab 4b at 260.

The next day, via written memorandum, Mr. Walters clearly informed the appellant that, effective January 4, 2021, she will no longer be authorized under W&S Leave and she would be required to telework. Id. at 262. Among other things, Mr. Walters informed her that her failure to adhere to the procedures outlined in the notice may result in disciplinary action up to and including removal from the Federal service. Id. at 263. Despite this warning, the appellant refused to telework and on January 12, 2021, Mr. Walters informed her that he had no other option but to place her in an AWOL status retroactive to January 4, 2021, the date upon which she was to begin teleworking. Id. at 265. Nevertheless, the appellant refused to return to duty by teleworking and went outside of her chain of command to request administrative leave. Id. at 266.

In her appeal, the appellant denied being absent for failing to report via telework because she believed the

agency's requirement for her to telework was improper pursuant to the Telework Enhancement Act, which provides that an agency may not compel an employee to telework even if the duties of the position make that employee eligible. AF, Tab 1 at 4. Additionally, DoD Instruction 1035.01(2)(f) provides that, while telework is encouraged, employees cannot be ordered to telework unless the employee's duties are designated as mission-critical. Her position was not designated as mission-critical. *Id.*

In March 2020, however, the agency ceased in person operations due to the COVID-19 pandemic. Although the appellant did not routinely telework, the Continuity of Operations Plan (COOP) and agency policy provided that she was required to do so.

Washington Headquarters Services, Administrative Instruction (AI) 117, Telework Program", reference (d), specifically states in part:

Employees who are telework-ready, (i.e , approved and equipped for routine or situational telework) who are not able to report to their assigned office location due to a government closure from a natural or manmade emergency event (e.g., snow emergency, flood, hurricane, earthquake, wild fire, act of terrorism, pandemic) will telework each regularly scheduled work day during the emergency situation. Contingent upon supervisory approval, telework-ready employees may telework when government

offices are open with the option for unscheduled telework when weather conditions make commuting hazardous, or similar circumstances compromise employee safety. During any period that a WHS-serviced Component is operating under the COOP plan, that plan will supersede the telework policy and the provisions of the telework agreement.” AI 117 also states, “Employees who are unable to work due to personal situations (e.g., injury, illness, or dependent care responsibilities) will request annual or sick leave as appropriate in accordance with the WHS-serviced Component’s procedures for requesting leave. AI 117 further states, “In the event of a pandemic health crisis, employees with COOP responsibilities, Service members, and employees who do not have COOP responsibilities but are trained and equipped to telework, may be asked to telework to prevent the spread of germs.

These employees or Service members should telework on a regular basis to ensure their proficiency and telework effectiveness in continuing operations. Employees or Service members in positions not typically eligible for telework should telework on a situational basis when feasible. These employees must have a signed DD Form 2946 in place. When an employee’s residence or other approved alternative worksite has been designated as a safe haven during an emergency, such as a



pandemic health crisis evacuation, the supervisor may assign any work necessary, as long as the employee has the skills to perform the assigned work, without regard to the employee's grade or pay band level. In cases where a safe haven is designated, a DD Form 2946 does not need to be in place.

AF, Tab 13, Subtab 4a at 117, 151.

In a response to an Order to Show Cause, the appellant claims that she did not receive notice to telework until February 3, 2021. AF, Tab 8 at 4. I simply find this claim incredible.<sup>2</sup> As stated earlier, on December 9, 2020, Mr. Walters notified the appellant via written memorandum that her W&S Leave eligibility would cease and she was ordered to begin telework on January 4, 2021. AF, Tab 13, Subtab 4b at 262. In an email dated January 12, 2021, Mr. Carter stated the following:

Hi Kathy,

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<sup>2</sup> To resolve credibility issues, an administrative judge must identify the factual questions in dispute, summarize the evidence on each disputed question, state which version she believes, and explain in detail why she found the chosen version more credible, considering such factors as: (1) the witness's opportunity and capacity to observe the event or act in question; (2) the witness's character; (3) any prior inconsistent statement by the witness; (4) a witness's bias, or lack of bias; (5) the contradiction of the witness's version of events by other evidence or its consistency with other evidence; (6) the inherent improbability of the witness's version of events; and (7) the witness's demeanor. *Hillen v. Department of the Army*, 35 M.S.P.R. 453, 458 (1987).

I am writing to notify you that I have been left with no other option but to place you on absent without leave status retroactive to January 4, the date upon which you were to begin teleworking. We are crediting you with 1 hour each on January 4 and January 11 for your participation in the Office's Net Call.

You have been unresponsive for several weeks to my messages offering guidance. You have been unresponsive, too, to messages from Erika Echeverry regarding functional requirements of the Acquisition Specialist, a position you have held for several years.

Id. at 265. Given the appellant's email on December 8, 2020, when she directed Mr. Walters not to discuss telework again, I find it probable that she simply refused to engage in any further conversations or communications with him regarding telework. Moreover, I find it highly improbable that she did not receive Mr. Walter's memorandum, phone calls, or emails as she had no problem communicating with him using these methods prior to December 8, 2020.

In order to prove a charge of AWOL, an agency must show by preponderant evidence that the employee was absent, and that her absence was not authorized or that her request for leave was properly denied. *Wesley v. U.S. Postal Service*, 94 M.S.P.R. 277, ¶ 19 (2003); *Cooke v. U.S. Postal Service*, 67 M.S.P.R. 401, 404, *aff'd*, 73 F.3d 380 (Fed. Cir. 1995) (Table). As a general rule, an agency's approval of leave for unscheduled absences precludes it from taking

adverse action on the basis of such absences. Wesley, 94 M.S.P.R. 277, 14.

The record demonstrates that the appellant was absent on the dates outlined in this charge because she refused to perform any of her duties via telework and she was not authorized to take W&S Leave or any other form of leave. I therefore find the agency has proven its AWOL charge by a preponderance of the evidence standard.

**CHARGE 2: Failure or Delay in Carrying Out Written Regulations, Orders, Rules, Procedures, or Instructions**

Specification 1: You failed to access the iCompass Learning Management System to complete the required telework training course by the December 20, 2020, suspense date. Your actions constitute failure to follow instructions.

Specification 2: On January 4, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 3: On January 5, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 4: On January 6, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 5: On January 7, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 6: On January 8, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 7: On January 11, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions. ...

Specification 8: On January 12, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 9: On January 13, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 10: On January 14, 2021, you failed to follow proper procedures to request

leave and have it approved. Your actions constitute failure to follow instructions.

Specification 11: On January 15, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 12: On January 19, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 13: On January 21, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 14: On January 22, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 15: On January 25, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 16: On January 26, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 17: On January 27, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 18: On January 28, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 19: On January 29, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 20: On February 1, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 21: On February 2, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 22: On February 3, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

Specification 23: On February 4, 2021, you failed to follow proper procedures to request leave and have it approved. Your actions constitute failure to follow instructions.

AF, Tab 13, Subtab 4b.

To prove a charge of failure to follow instructions, an agency must establish that the employee: (1) was given proper instructions, and (2) failed to follow the instructions, without regard to whether the failure was intentional or unintentional. *Hamilton v. U.S. Postal Service*, 71 M.S.P.R. 547, 555-56 (1996).

With respect to specification 1, the record demonstrates that via email on December 8, 2020, Mr. Walters directed the appellant to access the iCompass Learning Management System to complete a required training course by December 15, 2020. AF, Tab 13, Subtab 4b at 253. He later extended that date to December 20, 2020, via memorandum dated December 9, 2020. *Id.* at 262. Despite Mr. Walters' instruction, the appellant failed to follow it by completing the required training as directed.

With respect to specifications 2-23, I find the appellant failed to follow proper procedures to request leave and have it approved from January 4-February 4, 2021. The record demonstrates that the appellant refused to report for duty as instructed and she repeatedly failed to follow the instructions for requesting leave and to have leave approved as set

forth in Washington Headquarters Services Administrative Instruction 67, "Leave Administration," causing her to be carried in an AWOL status for nearly a month. AF, Tab 13, Subtab 4b at 269. Further Administrative Instruction 117 provides that leave must be requested and approved in advance of its use. A supervisor may deny leave that is not requested properly. AF, Tab 13, Subtab 4a at 151.

On January 29, 2021, the appellant went outside of her supervisory chain of command and requested, via email, that Captain Allen input her time as follows:

January 18 – 1 hour RG plus 7 hours Admin leave  
Jan 19 thru 22 – 15 min RG plus 7 hours 45 min Admin leave  
Jan 25 thru 29 – 15 min RG and 7 hours 45 min Admin leave (each day 8 hours).

AF, Tab 13, Subtab 4b at 266.

Subsequently, via email on March 22, 2021, over a month after being placed on AWOL, the appellant submitted a request to Mr. Walters to use 164.25 hours of accrued annual leave (use or lose) for pay periods 1-3, versus being placed in an AWOL status. AF, Tab 13, Subtab 4a at 177. Mr. Walters denied the appellant's request. Id.

I find it undisputed that the appellant was provided with instructions on how to properly request



leave and she failed to follow those instructions. I therefore find the agency has proven its failure to follow instructions charge by a preponderance of the evidence standard.

### AFFIRMATIVE DEFENSES

The appellant bears the burden of proving her affirmative defenses by preponderant evidence. 5 C.F.R. § 1201.56(b)(2) (2019). While the appellant did not address any affirmative defenses during the close of record conference on October 5, 2021, I note that, in her response to the Order to Show Cause and in her close of record brief the appellant raised a harmful error affirmative defense. See AF, Tabs 8, 15.

All of the appellant's harmful error arguments relate to telework. She essentially argues that the agency cannot prove its charges because she did not sign a telework agreement and the agency had no authority to force her to telework. Id.

To prove harmful procedural error, the appellant must prove that the agency committed an error in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. See 5 C.F.R. § 1201.56(c)(1) (2019). The burden is upon the appellant to show that the agency committed an error and that the error was harmful, i.e., that it caused substantial prejudice to her rights.

Harmful error under 5 U.S.C. § 7701(c)(2)(A) cannot be presumed; an agency error is harmful only where the record shows that the procedural error was likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. *Stephen v. Department of the Air Force*, 47 M.S.P.R. 672, 681, 685 (1991).

I find no error in the agency's actions and the appellant's claims are misplaced. As previously noted, during any period the agency is operating under a COOP, that plan will supersede the telework policy and the provisions of the telework agreement. Therefore, the agency did have the authority to require the appellant to telework in these circumstances. Consequently, I find the appellant has failed to show that the agency committed an error in the application of its procedures and she has therefore failed to establish her harmful error affirmative defense by preponderant evidence.

#### NEXUS AND PENALTY

An agency may take an adverse action against an employee only for such cause as will promote the efficiency of the service. See *Hatfield v. Department of the Interior*, 28 M.S.P.R. 673, 675 (1985). Absent such a showing of nexus, the action will fail. See *id.* at 675. An adverse action, such as the instant removal action, promotes efficiency of the service when the grounds for the action relate to either employee's ability to accomplish her duties satisfactorily or to

some other legitimate government interest. *Id.* The Board has held that AWOL, by its very nature, disrupts the efficiency of the service, and that it therefore is a proper basis for removal. See *Desiderio v. Department of the Navy*, 4 M.S.P.R. 84, 85 (1980). An agency has a right to have employees in attendance, see *Gieslerv. Department of Transportation*, 3 M.S.P.R. 277, 281 (1980), *aff'd sub nom, Geisler v. U.S. Merit Systems Protection Board*, 686 F.2d 844 (10th Cir. 1982), an agency is entitled to have employees respect its rules and regulations relating to attendance and procedures for authorized absence so that it can plan its work activities, see *Hubble v. Department of Justice*, 6 M.S.P.R. 659, 661 (1981). Furthermore, the employee has primary responsibility for requesting and supporting leave requests. See *Cresson v. Department of the Air Force*, 33 M.S.P.R. 178, 181-82 (1987).

Additionally, an appellant's failure to follow instructions affects the agency's ability to carry out its mission. See *Archerda v. Department of Defense*, 121 M.S.P.R. 314, ¶ 24 (2014); *Howarth v. U.S. Postal Service*, 77 M.S.P.R. 1, 7 (1997). Therefore, I find that the agency established the requisite nexus.

### Penalty

The Board will review an agency-imposed penalty to ensure the agency conscientiously considered relevant factors and reached a responsible balance within tolerable limits of reasonableness. *Douglas*, 5 M.S.P.R. at 306. If all charges are sustained, the

Board will review the penalty only to determine if the agency considered all relevant factors and exercised its discretion within tolerable limits of reasonableness. See *Stuhlmacher v. U.S. Postal Service*, 89 M.S.P.R. 272, ¶ 20 (2001). In doing so, the Board must give due weight to the agency's primary discretion in maintaining employee discipline and efficiency, recognizing the Board's function is not to displace management's responsibility, but to ensure that managerial judgment has been properly exercised. *Id.* Thus, the Board will correct the agency's penalty when all charges are sustained only to the extent necessary to bring it to the maximum penalty or to the outermost boundary of the range of reasonable penalties. *Id.*

With respect to his consideration of the Douglas factors, the deciding official, ONA Associate Director Andrew May provided the following:

In deciding the penalty, I considered many factors, including the nature of your misconduct, your job level, past discipline, the impact of your misconduct on the Agency, your length of time with the Agency, and past performance ratings.

In terms of the aggravating factors, I considered the fact that your misconduct involved twenty-one (21) separate specification of AWOL, and twenty-three (23) separate specifications of Failure or Delay in

employees for the same offense and the adequacy of alternative sanctions to deter future misconduct. Other employees have been removed for AWOL and Failure or Delay in Carrying Out Written Regulations, Orders, Rules, Procedures, or Instructions. Finally, in making my decision, I considered whether alternative sanctions other than removal from the Federal Service would deter you from similar actions in the future. Looking at the totality of the information available to me, I do not believe that a lesser penalty would deter future misconduct and impress upon you the seriousness of your offenses. For the reasons above, I have lost all confidence in your ability to perform the duties and responsibilities expected of an Acquisition and Financial Support Specialist, GS-1109-09. I am convinced that you do not have the essentials needed for possible rehabilitation.

AF, Tab 13, Subtab 4a.

The agency's charges are sustained; therefore, I cannot mitigate the agency's penalty absent a finding that the deciding official failed to consider any specific relevant mitigating factor or that the punishment of a removal is 'so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion.' *Parker v. U.S. Postal Service*, 819 F.2d 1113, 1116 (Fed. Cir. 1987). Thus, I cannot find that removal is unconscionable given the facts and circumstances presented here. I

therefore cannot find that the agency has abused its discretion in its penalty selection. Consequently, the agency's removal action must be AFFIRMED.

#### DECISION

The agency's removal action is AFFIRMED.

FOR THE BOARD:

\_\_\_\_\_/S/\_\_\_\_\_  
Kasandra Robinson Styles  
Administrative Judge

#### NOTICE TO APPELLANT

This initial decision will become final on December 2, 2021, unless a petition for review is filed by that date. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if you prove that you received this initial decision more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. If you are represented, the 30-day period begins to run upon either your receipt of the initial decision or its receipt by your representative, whichever comes first. You must establish the date on which you or your representative received it. The date on which the

## NOTICE OF LACK OF QUORUM

The Merit Systems Protection Board ordinarily is composed of three members, 5 U.S.C. § 1201, but currently there are no members in place. Because a majority vote of the Board is required to decide a case, see 5 C.F.R. § 1200.3(a), (e), the Board is unable to issue decisions on petitions for review filed with it at this time. See 5 U.S.C. § 1203. Thus, while parties may continue to file petitions for review during this period, no decisions will be issued until at least two members are appointed by the President and confirmed by the Senate. The lack of a quorum does not serve to extend the time limit for filing a petition or cross petition. Any party who files such a petition must comply with the time limits specified herein.

For alternative review options, please consult the section below titled "Notice of Appeal Rights," which sets forth other review options.

### Criteria for Granting a Petition or Cross Petition for Review

Pursuant to 5 C.F.R. § 1201.115, the Board normally will consider only issues raised in a timely filed petition or cross petition for review. Situations in which the Board may grant a petition or cross petition for review include, but are not limited to, a showing that:

(a) The initial decision contains erroneous findings of material fact. (1) Any alleged factual error must be material, meaning of sufficient weight to

warrant an outcome different from that of the initial decision. (2) A petitioner who alleges that the judge made erroneous findings of material fact must explain why the challenged factual determination is incorrect and identify specific evidence in the record that demonstrates the error. In reviewing a claim of an erroneous finding of fact, the Board will give deference to an administrative judge's credibility determinations when they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing.

(b) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The petitioner must explain how the error affected the outcome of the case.

(c) The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case.

(d) New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed.

As stated in 5 C.F.R. § 1201.114(h), a petition for review, a cross petition for review, or a response to a petition for review, whether computer generated,



typed, or handwritten, is limited to 30 pages or 7500 words, whichever is less. A reply to a response to a petition for review is limited to 15 pages or 3750 words, whichever is less. Computer generated and typed pleadings must use no less than 12 point typeface and 1-inch margins and must be double spaced and only use one side of a page. The length limitation is exclusive of any table of contents, table of authorities, attachments, and certificate of service. A request for leave to file a pleading that exceeds the limitations prescribed in this paragraph must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons for a waiver as well as the desired length of the pleading and are granted only in exceptional circumstances. The page and word limits set forth above are maximum limits. Parties are not expected or required to submit pleadings of the maximum length. Typically, a well-written petition for review is between 5 and 10 pages long.

If you file a petition or cross petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. A petition for review must be filed with the Clerk of the Board no later than the date this initial decision becomes final, or if this initial decision is received by you or your representative more than 5 days after the date of issuance, 30 days after the date you or your representative actually received the initial decision, whichever was first. If you claim that you and your representative both received this decision more than 5 days after its issuance, you have the burden to prove to the Board the earlier date of

receipt. You must also show that any delay in receiving the initial decision was not due to the deliberate evasion of receipt. You may meet your burden by filing evidence and argument, sworn or under penalty of perjury (see 5 C.F.R. Part 1201, Appendix 4) to support your claim. The date of filing by mail is determined by the postmark date. The date of filing by fax or by electronic filing is the date of submission. The date of filing by personal delivery is the date on which the Board receives the document. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. Your petition may be rejected and returned to you if you fail to provide a statement of how you served your petition on the other party. See 5 C.F.R. § 1201.4(j). If the petition is filed electronically, the online process itself will serve the petition on other e-filers. See 5 C.F.R. § 1201.14(j)(1). A cross petition for review must be filed within 25 days after the date of service of the petition for review.

#### NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

#### NOTICE OF APPEAL RIGHTS

You may obtain review of this initial decision only after it becomes final, as explained in the "Notice to Appellant" section above. 5 U.S.C. § 7703(a)(1). By statute, the nature of your claims determines the time

limit for seeking such review and the appropriate forum with which to file. 5 U.S.C. § 7703(b). Although we offer the following summary of available appeal rights, the Merit Systems Protection Board does not provide legal advice on which option is most appropriate for your situation and the rights described below do not represent a statement of how courts will rule regarding which cases fall within their jurisdiction. If you wish to seek review of this decision when it becomes final, you should immediately review the law applicable to your claims and carefully follow all filing time limits and requirements. Failure to file within the applicable time limit may result in the dismissal of your case by your chosen forum.

Please read carefully each of the three main possible choices of review below to decide which one applies to your particular case. If you have questions about whether a particular forum is the appropriate one to review your case, you should contact that forum for more information.

(1) Judicial review in general. As a general rule, an appellant seeking judicial review of a final Board order must file a petition for review with the U.S. Court of Appeals for the Federal Circuit, which must be received by the court within 60 calendar days of the date this decision becomes final. 5 U.S.C. § 7703(b)(1)(A).

If you submit a petition for review to the U.S. Court of Appeals for the Federal Circuit, you must submit your petition to the court at the following address:

U.S. Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, [www.ca9c.uscourts.gov](http://www.ca9c.uscourts.gov). Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

(2) Judicial or EEOC review of cases involving a claim of discrimination. This option applies to you only if you have claimed that you were affected by an action that is appealable to the Board and that such action was based, in whole or in part, on unlawful discrimination. If so, you may obtain judicial review of this decision—including a disposition of your discrimination claims—by filing a civil action with an appropriate U.S. district court (not the U.S. Court of Appeals for the Federal Circuit), within 30 calendar days after this decision becomes final under

the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(2); see *Perry v. Merit Systems Protection Board*, 582 U.S. \_\_\_\_ , 137 S. Ct. 1975 (2017). If the action involves a claim of discrimination based on race, color, religion, sex, national origin, or a disabling condition, you may be entitled to representation by a court-appointed lawyer and to waiver of any requirement of prepayment of fees, costs, or other security. See 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

Contact information for U.S. district courts can be found at their respective websites, which can be accessed through the link below:

[http://www.uscourts.gov/Court\\_Locator/CourtWebsites.aspx](http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx).

Alternatively, you may request review by the Equal Employment Opportunity Commission (EEOC) of your discrimination claims only, excluding all other issues. 5 U.S.C. § 7702(b)(1). You must file any such request with the EEOC's Office of Federal Operations within 30 calendar days after this decision becomes final as explained above. 5 U.S.C. § 7702(b)(1).

If you submit a request for review to the EEOC by regular U.S. mail, the address of the EEOC is:

Office of Federal Operations  
Equal Employment Opportunity Commission  
P.O. Box 77960  
Washington, D.C. 20013

If you submit a request for review to the EEOC via commercial delivery or by a method requiring a signature, it must be addressed to:

Office of Federal Operations  
Equal Employment Opportunity Commission 131 M  
Street, N.E.  
Suite 5SW12G  
Washington, D.C. 20507

(3) Judicial review pursuant to the Whistleblower Protection Enhancement Act of 2012. This option applies to you only if you have raised claims of reprisal for whistleblowing disclosures under 5 U.S.C. § 2302(b)(8) or other protected activities listed in 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D) If so, and your judicial petition for review “raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D),” then you may file a petition for judicial review with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction. The court of appeals must receive your petition for review within 60 days of the date this decision becomes final under the rules set out in the Notice to Appellant section, above. 5 U.S.C. § 7703(b)(1)(B).

If you submit a petition for judicial review to the U.S. Court of Appeals for the Federal Circuit, you

must submit your petition to the court at the following address:

U.S. Court of Appeals  
for the Federal Circuit  
717 Madison Place,  
N.W. Washington, D.C. 20439

Additional information about the U.S. Court of Appeals for the Federal Circuit is available at the court's website, [www.ca9c.uscourts.gov](http://www.ca9c.uscourts.gov). Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 10, and 11.

If you are interested in securing pro bono representation for an appeal to the U.S. Court of Appeals for the Federal Circuit, you may visit our website at <http://www.mspb.gov/probono> for information regarding pro bono representation for Merit Systems Protection Board appellants before the Federal Circuit. The Board neither endorses the services provided by any attorney nor warrants that any attorney will accept representation in a given case.

Contact information for the courts of appeals can be found at their respective websites, which can be accessed through the link below:

[http://www.uscourts.gov/Court\\_Locator/CourtWebsites.aspx](http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx)

United States Court of Appeal  
for the Federal Circuit

KATHY LYNN CARTER,  
Petitioner

Appendix D Notice on the Continuation of the National  
Emergency Concerning the Coronavirus Disease 2019  
(COVID-19) Pandemic FEBRUARY 18, 2022  
PRESIDENTIAL ACTIONS.

On March 13, 2020, by Proclamation 9994, the President declared a national emergency concerning the coronavirus disease 2019 (COVID-19) pandemic. The COVID-19 pandemic continues to cause significant risk to the public health and safety of the Nation. For this reason, the national emergency declared on March 13, 2020, and beginning March 1, 2020, must continue in effect beyond March 1, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Proclamation 9994 concerning the COVID-19 pandemic.

This notice shall be published in the Federal Register and transmitted to the Congress.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,  
February 18, 2022.



LII Federal Rules of Civil Procedure Rule 4.  
Summons

*Appendix E Fed. Rule of Civil Procedures Rule 4.  
Summons – No complaint filed and Service affidavit  
by District Court.*

(1) Affidavit Required. of receipt of Court order from  
District Court

(a) Contents; Amendments.

(1) Contents. A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of  
the plaintiff's attorney or—if  
unrepresented—of the plaintiff;

(D) state the time within which the  
defendant must appear and defend;

(E) notify the defendant that a  
failure to appear and defend will  
result in a default judgment  
against the defendant for the relief  
demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) Amendments. The court may permit a  
summons to be amended.

(b) Issuance. On or after filing the  
complaint, the plaintiff may present a  
summons to the clerk for signature and seal.  
If the summons is properly completed, the  
clerk must sign, seal, and issue it to the

such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the

United States—to return the waiver;  
and

(G) be sent by first-class mail or  
other reliable means.

(2) Failure to Waive. If a  
defendant located within the  
United States fails, without  
good cause, to sign and return  
a waiver requested by a  
plaintiff located within the  
United States, the court must  
impose on the defendant:

(A) the expenses later incurred  
in making service; and

(B) the reasonable expenses,  
including attorney's fees, of any  
motion required to collect those  
service expenses.

(3) Time to Answer After a  
Waiver. A defendant who,  
before being served with  
process, timely returns a  
waiver need not serve an  
answer to the complaint until  
60 days after the request was  
sent—or until 90 days after it  
was sent to the defendant  
outside any judicial district of  
the United States.

(4) Results of Filing a Waiver.  
When the plaintiff files a  
waiver, proof of service is not  
required and these rules

apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by

appointment or by law to receive service of process.

(f) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt;  
or

(3) by other means not prohibited by international agreement, as the court orders.

(g) Serving a Minor or an Incompetent Person. A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.

(1) United States. To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought— or to an assistant United States attorney or clerical employee whom the United States attorney designates in

(whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) Extending Time. The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) Serving a Foreign, State, or Local Government.

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a



summons or like process on such a defendant.

(k) Territorial Limits of Effective Service.

(1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any

state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(l) Proving Service.

(1) Affidavit Required. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) Service Outside the United States. Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) Validity of Service; Amending Proof. Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) Time Limit for Service. *If a defendant is not served within 90 days after the complaint*

*is filed, the court*—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

*APPENDIX F July 17, 2020 EMAIL Ms. Whittlesey  
SUBJECT: Notification of Telework Assignment*

From: "Whittlesey, Tracy M CIV OSD ODNA (USA)"

Date: Jul 17, 2020 1:03 PM

Subject: Summary of Telework Call

To: "Carter, Kathy L CIV (USA)",K Carter

Cc: "Regan, Laura A Col USAF OSD ODNA (USA)", "Walters, Keith R LTC

USARMY OSD ODNA (USA)", "Der, Denise E CIV OSD ODNA (USA)"

Kathy,

It was great to catch-up earlier this week. I hope to see you on the call this afternoon.

We are looking forward to your transition back to the "virtual" office.

Below is a summary of our call. Please add/update anything I may have missed.

- This is a 90-day trial period to determine if we can transition your roles and responsibilities to a telework environment during COVID.
- The expectation is that you would return to the office once health and safety measures are in place.
- I believe this is phase 4 but please check the guidance in your area to be sure.
- Once we reach Phase 4, I anticipate that ONA will consider instituting situational telework across the organization.
- Assuming your telework agreement is extended past the trial period, you would have an opportunity to request situational telework.
- New hours for telework: 0800-1630
- There are a couple actions you will need to complete to get set-up on telework:
  - Complete and sign the telework agreement.
  - Review and acknowledge the telework plan.
  - Update your work schedule memo to reflect your schedule change from a gliding-non telework schedule to a regular-situational telework schedule
  - Update your schedule in DAI

Reference: Under Secretary of Defense for Personnel and Readiness Memorandum, "Civilian Duty Status and Use of Weather and Safety Leave during COVID-19 Pandemic," March 30, 2020 - Affirmative Defense APPX 109-202

**As the coronavirus disease 2019 (COVID-19) pandemic continues to present a risk to the DoD workforce,** balancing mission readiness and the safety of DoD employees remains a top priority. This memorandum provides supplemental guidance to the reference, and directions for DoD Components to develop plans to mitigate risk to the mission and safety of the workforce.

The continued need to grant weather and safety leave has diminished as DoD has made investments in technology and fully utilized human resources flexibilities. Supervisors should discuss plans to return to the workplace with employees who are on weather and safety leave or who are teleworking to some extent but who are not performing fully the essential functions of their positions. These discussions should include inquiring whether the employee needs any flexibilities or reasonable accommodations to return to the workplace. Should an employee request a flexibility or accommodation because of a medical condition, the supervisor needs to follow the

reasonable accommodation process under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 ("Rehabilitation Act").

In the limited instances where these tools are not practicable or deemed effective, DoD Components may, but are not required to, continue to provide weather and safety leave. DoD Components may require medical documentation in support of weather and safety leave to the extent consistent with the Rehabilitation Act, which prohibits seeking documentation for conditions that are obvious or already known. The use of weather and safety leave for child or dependent care remains prohibited.

DoD Components will provide an assessment of their use of weather and safety leave for appropriated and non-appropriated fund workforces to my point of contact below by October 26, 2020. Using the attached spreadsheet as a template, this assessment should use payroll data as a starting point to identify the extent of weather and safety leave use, excluding any use of weather and safety leave unrelated to COVID-19.

The second attachment to this memorandum updates the matrix included in the reference to incorporate additional leave categories

authorized under the Families First  
Coronavirus Response Act.

Should you have any questions, my point of  
contact is Mr. Allen Brooks, Technical  
Director, Defense Civilian Personnel Advisory  
Service, who may be reached at .

Matthew P. Donovan

Attachments: As stated

**DISTRIBUTION:**

Chief Management Officer of the Department  
of Defense Secretaries of the Military  
Departments

Chairman of the Joint Chiefs of Staff Under  
Secretaries of Defense

Chief of the National Guard Bureau

General Counsel of the Department of  
Defense. Director of Cost Assessment and  
Program Evaluation Inspector General of the  
Department of Defense Director of  
Operational Test and Evaluation

Chief Information Officer of the Department  
of Defense Assistant Secretary of Defense for  
Legislative Affairs Assistant to the Secretary  
of Defense for Public Affairs

**Director of Net Assessment**

DEC 9, 2020

Appendix H December 4, 2020 email Use/Lose  
Leave

From: Walters, Keith R CIV OSD ODNA (USA)

A78

Good evening. Capt. Tolosa informed me that you do not want to take your use/lose leave. Could you let me know why not?

I really need to talk to you about taking you off of administrative leave and initiating telework. Conditions—COVID, society's response, our office's mitigation--have evolved since Tracy discussed with you the reasons that admin leave was an acceptable option in March. Nearly six months into this crisis, I do not see administrative leave as an acceptable option. We are hitting our stride as an office with telework. We have the government-provided laptops/tablets to work. The acquisitions team is in need of your assistance. And, we have a telework plan that is designed specifically for you.

The immediate thing is that you are going to **lose 197 hours of leave** if you do not take it. The next step is that I am going to shortly end administrative leave, but I want to talk to you about your telework plan first. Please let me know if you have a free half-hour to talk, preferably tomorrow (Thursday, December 3).

Sincerely,  
Keith Walters  
Chief of Staff  
OSD, Office of Net Assessment

Dear Nikki-  
Kathy Carter Response  
To: Bullock-Taylor, Nakeshia Y CIV (USA)



From: May, Andrew D SES (USA)  
Sent: Tuesday, April 20, 2021 7:53 AM  
Bullock-Taylor, Nakeshia Y CIV (USA)  
FW: Response to **Informal** Notice of Proposed  
Removal -April 16, 2021  
1-20191213 - Signed by Director - Work Schedule and  
Telework Policy.pdf;  
2-DoDI 1035.01, \_Telework Policy,\_April 4, 2012;  
Incorporating Change 1 on April 7, 2020.pdf;  
Summary of Telework Call (23.3 KB); FW: Telework  
Documentation (1.20 MB); [Non- DoD Source] RE:  
Connective problem to CISCO n (14.0 KB); RE:  
Testing - Log On - Accessing (25.3 KB); RE: Request  
Approval of Leave of 164.25 Annual Leave (11.7 KB);

RE: MALANDRINO, GREGORY approved timecard  
for period 31-JAN-2021 - 13-FE... (9.11 KB); Appx

Governmentwide Dismissal and Closure  
Procedure.pdf; 5-G393A GS-1101-09

- Redescription Signed AM 10-10-2002 (Note - have  
not seen this PD).pdf; Summary of Telework Call  
(23.3 KB)

As mentioned, here is Ms. Carter's official response to  
the Notice. I acknowledged receipt back to Ms. Cart  
er shortly after getting it.

Thank you for all your help during this process.

- Andrew

From: Carter, Kathy L CIV (USA)  
Sent: Thursday, April 15, 2021 11:54 PM  
To: May, Andrew D SES (USA)  
Cc: Carter, Kathy L CIV (USA)  
April 15, 2021 MEMORANDUM FOR MR. ANDREW  
MAY, SUPERVISOR

SUBJECT: Response to Informal Notice of Proposed  
Removal

Enclosure (1) Net Assessment Policy, Dec 12, 2019

Enclosure (2) DoDI 1035.01, April 4, 2012, Change 1,  
Telework Policy

Enclosure (3) United States Office of Personnel  
Management, Governmentwide Dismissal and  
Closure Procedures, November 2018

Enclosure (4) Summer of Telework Call, July 17, 2020

Enclosure (5) G393A - Re-description Position  
Description, Dec 10, 2002

Enclosure (6) Resend Email- telework documentation,  
February 4, 2021

Enclosure (6) Connective Problems to CISCO,  
February 5, 2021

Enclosure (7) Testing-Log On Accessing, February 8,  
2021 APPX

Enclosure (8) Request Approval of Leave of 164.25  
hours, March 23, 2021 APPX

Enclosure (9) Gregory Malandrino-Approval timecard  
for period January 31 thru February 13, 2021 APPX

Reference (a) Title 5 Chapter I Office of Personnel Management (OPM), Subchapter B- Civil Service Regulations Part 630- absent and leave - Subpart P Weather and Safety Leave

CHARGE 1: Denied being Absent for failed to report to duty via telework.

CHARGE 2: Inconsistent with NA Office Telework Policy and Procedures-(enclosure 1) and Code Federal Regulation DoD Telework Policy-enclosures (2) and United States Office of Personnel Management, Governmentwide Dismissal and Closure Procedures, November 2018 Enclosure (3)

## BACKGROUND

On March 3, 2020, First NA All hand meeting regarding virus. Before, all hand meeting, I felt sick and requested leave for only one day. At the all-hand meeting, the number one priority was health and safety of employees.

On March 3, 2020, request additional and approved sick leave, admitted to the hospitalized for complication from diabetes from March 3-6, 2020 and March 9-13, 2020 (40 hours). Center for Disease Control and Prevention rate diabetes as Higher health risk under virus (Now Covid-19).

Monday March 13, 2020, reporting to worksite, Pentagon. Tracy Whittlesey, Chief of Staff called and state the office is closed because of virus. I was

authorized admin leave (Weather and Safety Leave) Enclosure (1), (2), (3) and (4). Position description is document not eligible for Telework Enclosure (5).

Start on March 24, 2020 and ended February 26, 2021, Mr. James Baker, Director and Tracy Whittlesey, Chief of Staff provide verbal instruction to report on Monday's report to Net Call and on Tuesday thru Friday daily COVID-19 symptom.

On July 17, 2020 summary of telework call. Telephone call with Tracy Whittlesey, Chief of Staff and Keith Walters, Military Advisor to the Director, we discussed a "90-day trial period to determine if we can transition your roles and responsibilities to a telework environment during COVID. The expectation is that you would return to the office once health and safety measures are in place. I believe this is phase 4 but please check the guidance in your area to be sure. Once we reach Phase 4, I anticipate that ONA will consider instituting situational telework across the organization. Assuming your telework agreement is extended past the trial period, you would have an opportunity to request situational telework." Enclosure (4).

I knew of was AWOL, check my bank statement only. I call the office and found out I it was not voluntary was place without my knowledge. Logged on to the government laptop best way I could which was. no has provide once sent any work Classified no productive.

Check my bank statement. Keith Walters, Chief of Staff changed the Telework from 90-day trial period to two years telework without any training.

Report to pentagon for couple of days without any training 6700 email and glad did any net submitted any work. lack of telework training. Reported every day.

**September 3, 2020, quarantine (higher health risk)**, declined report to the pentagon to pick up government telephone with WI-FI and sign telework agreement. Requested Telework documentation.

September 9, 2020, Chief of Staff, Col Laura Regan (military) email me the DD2946 form without duties and responsibility. Request work plan detailing outlining my duties and responsibilities. Chief of Staff inform Andrew May (Supervisor) regarding issue with telework. He was not aware and had a better understanding after speaking with me. Communicated with Andrew May (Supervisor) by telephone/email regarding no interest in change regular schedule official worksite.

Over a month. I remove from January 4 2021 thru February 4, 2021 was charged AWOL 164.25 hours. I attended Net call received credit and Monday thru Friday report any COVID symptom by text, to Capt. Gregery Paul (Drano) Malandrino.

No one notified at the weekly net call meeting regarding timecard was being charged AWOL. I thought I was on admin leave (Weather and Safety). I notice I was not receiving any leave earning statement. I was remove from weather and safety leave without my knowledge was place on AWOL until February 4, 2021. To get off AWOL I had to sign on to the laptop to get back on payroll and so I can continue to support NA.

To: 'K Carter'  
Cc: LAWHORN, DEMARIS J CTR OSD OONA  
Nakeshia Y CIV (USA  
Subject: RE: Connective problem to CISCO n

Kathy,

I sent guidance on December 8, 2020, nearly two full months ago to get set up on your systems. My orders, given on December 8, assumed that you had nearly a full month to get back onto your government systems before you were to begin teleworking on January 4.

You will have to bring your laptop to JSP on Monday, February 8. Coordinate with Ms. Dee and she will walk over to JSP with you so that JSP can update your system. The fact that you haven't turned your system on is the likely reason that your computer isn't working. Your computer has not received the updates. Ms. Dee is in the office on Monday. I am excusing you from Net Call on Monday, February 8 so that you can meet Ms. Dee at 12:00pm outside of 3A932. Bring your laptop and your government cellphone, in case there are any additional updates to make to that device, as well.

Ms. Dee is teleworking the rest of the week so it is imperative that you meet her on Monday, February 8.

Sincerely,  
Keith

From: K Carter  
To: Echeverry, Erika Monique S CIV OSD OONA (USA)  
Cc: LAWHORN, DEMARIS J CTR OSD OONA (USA)  
Sent: Thursday, February 4, 2021 12:54 PM  
Subject: [Non-DoD Source] Connective problem to CISCO n

JSP, having connectivity problems ticket number INC 2006596. Recommended to contact server provider. Can this could because of account was disable?

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

Appendix M AI 67 SUBJECT: Leave Administration, Appx 011 –

Director of Administration and Management

ADMINISTRATIVE INSTRUCTION

NUMBER 67 December 30, 2011 Incorporating Change 2, February 28, 2022

#### AWOL PROCEDURES

#### 1. UNEXCUSED ABSENCE CHARGED AS ABSENCE WITHOUT LEAVE (AWOL)

##### a. Appropriate Use of AWOL

(1) Any **unapproved absence** from duty (including leave that is **not approved pending submission of required documentation**) must be recorded in the timekeeping system as AWOL.

(2) If it is later determined that an absence without prior approval is excusable, the leave approving official may change the time charged as **AWOL to time charged to annual or sick leave or leave without pay (LWOP) as appropriate, if requested by the employee.**

b. Charging an Employee's Absence to AWOL. The leave approving official must annotate time charged as AWOL on the employee's time card or otherwise notify the **designated time keeping official in writing for processing in the timekeeping system.**

c. Impact of AWOL on Employee Pay, Benefits, or Other Eligibilities

(1) Time charged to AWOL is considered non-pay and non-duty time. Time charged as AWOL may affect employee benefits and entitlements.

(2) Charging an employee's time as **AWOL is not a disciplinary or adverse action** in and of itself; however, time appropriately charged to AWOL may serve as a **basis for initiating a disciplinary or adverse action**, up to and including an employee's removal from his or her position and from the Federal service

## 2. APPROVED ABSENCE CHARGED TO ACCRUED OR ADVANCED LEAVE

(4) Approving or Disapproving Requests to Use Annual Leave

(a) General



procedures, unless circumstances show that the employee was unable to adhere to the procedures. For example, the leave-approving official may disapprove an otherwise **acceptable request for emergency annual leave** if the request is received more than 2 hours after the start of the employee's tour of duty, unless circumstances show that a delay in requesting leave was unavoidable.

(4) Approving or Disapproving Requests to Use Sick Leave

4. If an employee requests sick leave and the leave approving official is aware the employee does not have a sufficient balance of sick leave to cover the period of absence for those purposes, the leave approving official is encouraged to ask the employee if he or she would like to be carried on annual leave or LWOP (as appropriate). LWOP is discretionary and should not routinely be granted unless there is good cause.

a. Administrative Leave

(1) Appropriate Use of Administrative Leave

(a) Administrative leave is an excused absence from duty without loss of pay or charge to an employee's personal leave (annual or sick leave) or LWOP. **Administrative leave is not an employee entitlement;** it is subject to supervisory discretion and should normally only be granted sparingly.

#### 4. APPROVING OR DISAPPROVING REQUESTS TO USE OR INVOKE FMLA LEAVE

##### a. General

(1) Approval or disapproval must be annotated on the OPM Form 71 or electronic equivalent submitted by the employee. A copy of the approved or disapproved OPM Form 71 or electronic equivalent should be provided to the employee and a copy should be kept by the leave-approving official. If approved, a copy should also be provided to the timekeeping official.

(2) The leave-approving official will promptly approve or disapprove an employee's request for leave. This will usually occur **within 10 workdays** of receiving an employee request or before the requested absence, whichever occurs first. However, unique circumstances may warrant delay in approval or disapproval.

##### b. Factors to Consider in Approving or Disapproving Requests to Use FMLA Leave

(1) A leave-approving official may require that a **request for FMLA leave be supported by administratively acceptable medical documentation.** An employee must provide the **written medical certification required, signed by the health care provider, no later than 15 calendar days after the**

**date of request.** If it is not practical to provide medical certification within 15 calendar days after the date requested, despite the employee's diligent, good-faith efforts, the employee will have up to 30 calendar days after the WHS-serviced Component requests such documentation to submit the medical certification. If the employee is unable to provide the requested medical certification before leave begins, or if the leave-approving official questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the leave-approving official shall grant provisional leave pending final written medical certification.

**(2) FMLA leave may not be delayed or denied when the need for it is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide 30 calendar days' notice of his or her need for leave.**

(3) If an employee requests to substitute accrued or donated paid leave for unpaid leave prior to the date the paid leave commences, a leave-approving official may not deny the request. Leave approving officials should follow the provisions of this AI for approval of advanced sick or annual leave to substitute for LWOP under FMLA.

c. Administratively Acceptable Medical Documentation

(1) Requirements

(a) Administratively acceptable medical documentation consists of a signed and dated original certificate from a licensed physician or other health care provider (as established by section 630.1202 of Reference (d)) on his or her letterhead that includes a statement with the following information:

1. The date the serious health condition commenced.
2. The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration, and whether the employee is presently incapacitated.
3. The likely duration and frequency of episodes of incapacity.
4. The appropriate medical facts within the knowledge of the employee's health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider.

(b) An employee must provide the written, signed medical certification by the health care provider no later than 15 calendar days after the date of request. If it is not practical to provide medical certification within 15 calendar days after the date requested, despite the employee's diligent, good-faith efforts, the employee will have up to 30 calendar days to submit medical certification.

**(2) Consequences of Failure to Provide Administratively Acceptable Medical Documentation**

(a) If the employee is unable to provide the requested medical certification before leave begins, or if the leave-approving official questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the leave approving official shall grant provisional leave pending final written medical certification.

(b) If, after the leave has commenced, the employee fails to provide the **requested medical certification**, the leave-approving official may:

- 1. Charge the employee as AWOL; or**
- 2. Allow the employee to request that the provisional leave be charged as LWOP or paid leave, as appropriate.**

**5. IMPACT OF FMLA LEAVE ON EMPLOYEE PAY, BENEFITS, OR OTHER ELIGIBILITIES**

a. An employee on FMLA leave is entitled to maintain health benefits coverage and must arrange to pay the employee's share of the premium while on family and medical leave or when he or she returns to work.

b. Upon **return from FMLA leave**, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment

**6. REQUIRED RECORD KEEPING.** WHS-serviced Component administrative personnel, as

designated by the Component Head, shall maintain records concerning the administration of FMLA and may be required to produce such information as necessary to evaluate the use of this entitlement. These records shall include:

- a. The employee's rate of basic pay.
- b. The occupational series for the employee's position.
- c. The number of hours of leave taken including any paid leave substituted for LWOP.
- d. The reason the FMLA leave was used.
- e. Any additional information that may be required by the OPM or the BWD Division, HRD, WHS.

## PART II. DEFINITIONS

disaster or emergency. **A major disaster or emergency, as declared by the President,** that results in severe adverse effects for a substantial number of employees (e.g., **loss of life** or property, serious injury, or mental illness because of a **direct threat to life or health**). essential functions. The fundamental duties of the employee's position.

**excused absence.** An authorized absence from duty **without loss of pay or charge to leave,** when the employee's absence is directly related to the agency's mission, officially sponsored by the agency head, determined to enhance the professional skills of the employee in his or her current position, and determined to be in the interest of the Department of

Employee Relations Division, via email at  
nakeshia.y.bullock.

Walters  
Chief of Staff

Attachments:

1. WHS Administrative Instruction, 117,  
"Telework Program", dated March 31, 2015
2. Work plan

#### EMPLOYEE ACKNOWLEDGEMENT

You are requested to sign and date the acknowledgement copy of this memorandum as evidence that you have received it. By doing so, you will not forfeit any of the rights mentioned in this memorandum. Your signature does not indicate your agreement or disagreement with this action. However, your failure to sign the acknowledgement copy will not void the contents of this memorandum.

Kathy L. Carter      Date

Title 5. Administrative Personnel  
Chapter II. MERIT SYSTEMS PROTECTION  
BOARD  
Part 1201. PRACTICES AND PROCEDURES  
Subpart C. Petitions for Review of Initial Decisions  
Subpart B. Procedures for Appellate Cases  
U.S. Code: Title 5

5 U.S. Code § 7513 - Cause and procedure ADVERSE ACTION- ABSENT MORE THAN 14 DAYS

(a) Under regulations prescribed by the **Office of Personnel Management**, an agency may take an action covered by this subchapter against an employee **only for such cause as will promote the efficiency of the service.**

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection

(b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof



when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any **supporting material**, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request. (Added Pub. L. 95-454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136.)

5 U.S. Code Part III - EMPLOYEES

Appendix G 5 U.S. Code Subpart G - Labor-Management and Employee Relations

Appendix F 5 U.S. Code § 7532 - Suspension and removal ADVERSE ACTIONS Subchapter IV - NATIONAL SECURITY

(a) Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the head of an agency may remove an employee suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable

in the interests of national security. The determination of the head of the agency is final.

(c) An employee suspended under subsection (a) of this section who—

- (1) has a permanent or indefinite appointment;
- (2) has completed his probationary or trial period; and
- (3) is a citizen of the United States; is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(D) a review of his case by the head of the agency or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the head of the agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 529.)

Appendix F 5 U.S. § Code § 5511 - **Withholding pay;**  
employees removed for cause

(a) Except as provided by subsection (b) of this section, the earned pay of an employee removed for cause may not be withheld or confiscated.

(b) If an employee indebted to the United States is removed for cause, the pay accruing to the employee shall be applied in whole or in part to the satisfaction of any claim or indebtedness due the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477.)

**Appendix F 5 CFR § 1201.64 - Official notice.**

Official notice is the Board's or judge's recognition of certain facts without requiring evidence to be introduced establishing those facts. The judge, on his or her own motion or on the motion of a party, may take official notice of matters of common knowledge or matters that can be verified. The parties may be given an opportunity to object to the taking of official notice. The taking of official notice of any fact satisfies a party's burden of proving that fact.

**AUTHORITY:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted. **SOURCE:** 54 FR 53504, Dec. 29, 1989, unless otherwise noted.

**CITE AS:** 5 CFR 1201.64

**Appendix E 5 CFR § 1201.56 - Burden and degree of proof.**

(a) Applicability. This section does not apply to the following types of appeals which are covered by § 1201.57:

(1) An individual right of action appeal under the Whistleblower Protection Act, 5 U.S.C. 1221;

(2) An appeal under the Veterans Employment Opportunities Act, 5 U.S.C. 3330a(d);

(3) An appeal under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4324, in which the appellant alleges **discrimination or retaliation in violation of 38 U.S.C. 4311**; and

(4) An appeal under 5 CFR 353.304, in which the appellant alleges a failure to restore, improper restoration of, or failure to return following a leave of absence.

(b) Burden and degree of proof -

(1) Agency. Under 5 U.S.C. 7701(c)(1), and subject to the exceptions stated in paragraph (c) of this section, the agency bears the burden of proof and its action must be sustained only if:

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence (as defined in § 1201.4(p)); or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence (as defined in § 1201.4(q)).

(2) Appellant. (i) The appellant has the burden of proof, by a preponderance of the evidence (as defined in § 1201.4(q)), with respect to:

(A) Issues of jurisdiction, except for cases in which the appellant asserts a violation of his right to reemployment following military duty under 38 U.S.C. 4312-4314;

(B) The **timeliness of the appeal**; and

**(C) Affirmative defenses.**

(ii) In appeals from reconsideration decisions of the Office of Personnel Management (OPM) involving retirement benefits, if the appellant filed the application, the appellant has the burden of proving, by a preponderance of the evidence (as defined in § 1201.4(q)), entitlement to the benefits. Where OPM proves by preponderant evidence an overpayment of benefits, an appellant may prove, by substantial evidence (as defined in § 1201.4(p)), eligibility for waiver or adjustment.

**(c) Affirmative defenses of the appellant.** Under 5 U.S.C. 7701(c)(2), the Board is required to reverse the action of the agency, even where the agency has met the evidentiary standard stated in paragraph (b) of this section, if the appellant:

- (1) Shows harmful error in the application of the agency's procedures in arriving at its decision (as defined in § 1201.4(r));
- (2) Shows that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or
- (3) Shows that the decision was not in accordance with law.

(d) Administrative judge. The administrative judge will inform the parties of the proof required as to the issues of jurisdiction, the timeliness of the appeal, and affirmative defenses.

[80 FR 4496, Jan. 28, 2015]

**AUTHORITY:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

Appendix H December 4, 2020 email Use/Lose Leave  
From: Walters, Keith R CIV OSD ODNA (USA)  
Sent: Friday, December 4, 2020 2:11 PM  
To: 'K Carter'  
Cc: Tolosa, Alistair D Capt USAF DTRA R AND D  
(USA); Drake, Andrew J Col USMC (USA); Carter,  
Kathy L CIV (USA)  
Subject: RE: Use/Lose Leave

Hi Kathy,

I left a voice message for your on your cell yesterday afternoon. I am available here on e-mail or via my cellphone at (626) 379-7092. Please give me a call so that Capt. Tolosa can put you in for an **accurate status in DAI**.

Thank you.  
Sincerely,  
Keith

From: Walters, Keith R CIV OSD ODNA (USA)  
Sent: Wednesday, December 2, 2020 7:42 PM  
To: 'K Carter'  
Cc: Tolosa, Alistair D Capt USAF DTRA R AND D  
(USA); Drake, Andrew J  
Col USMC (USA); Carter, Kathy L CIV (USA)  
Subject: Use/Lose Leave

Hi Kathy,

A106

Good evening. Capt. Tolosa informed me that you do not want to take your use/lose leave. Could you let me know why not?

I really need to talk to you about taking you off of administrative leave and initiating telework. Conditions—COVID, society's response, our office's mitigation--have evolved since Tracy discussed with you the reasons that admin leave was an acceptable option in March. Nearly six months into this crisis, I do not see administrative leave as an acceptable option. We are hitting our stride as an office with telework. We have the government-provided laptops/tablets to work. The acquisitions team is in need of your assistance. And, we have a telework plan that is designed specifically for you.

The immediate thing is that you are going to lose 197 hours of leave if you do not take it. The next step is that I am going to shortly end administrative leave, but I want to talk to you about your telework plan first. Please let me know if you have a free half-hour to talk, preferably tomorrow (Thursday, December 3).

Sincerely,  
Keith Walters  
Chief of Staff  
OSD, Office of Net Assessment

To:  
Subject: Attachments:

A107

Dear Nikki-

Kathy Response

To: Bullock-Taylor, Nakeshia Y CIV (USA)

From: May, Andrew D SES (USA)

Sent: Tuesday, April 20, 2021 7:53 AM

Bullock-Taylor, Nakeshia Y CIV (USA)

FW: Response to Informal Notice of Proposed Removal -April 16, 2021

1-20191213 - Signed by Director - Work Schedule and Telework Policy.pdf; 2-DoDI 1035.01, \_Telework Policy, \_ April 4, 2012; Incorporating Change 1 on April 7, 2020.pdf; Summary of Telework Call (23.3 KB); FW: Telework Documentation (1.20 MB); [Non- DoD Source] RE: Connective problem to CISCO n (14.0 KB); RE: Testing - Log On - Accessing (25.3 KB); RE: Request Approval of Leave of 164.25 Annual Leave (11.7 KB); RE: MALANDRINO, GREGORY approved timecard for period 31-JAN-2021 - 13-FE... (9.11 KB);

Governmentwide Dismissal and Closure Procedure.pdf; 5-G393A GS-1101-09

- Redescription Signed AM 10-10-2002 (Note - have not seen this PD).pdf; Summary of Telework Call (23.3 KB)

As mentioned, here is Ms. Carter's official response to the Notice. I acknowledged receipt back to Ms. Carter shortly after getting it.

A108



Thank you for all your help during this process.

- Andrew

From: Carter, Kathy L CIV (USA)  
Sent: Thursday, April 15, 2021 11:54 PM  
To: May, Andrew D SES (USA)  
Cc: Carter, Kathy L CIV (USA)

April 15, 2021 MEMORANDUM FOR MR. ANDREW  
MAY, SUPERVISOR

SUBJECT: Response to **Informal** Notice of Proposed  
Removal

Enclosure (1) Net Assessment Policy, Dec 12, 2019  
APPX

Enclosure (2) DoDI 1035.01, April 4, 2012, Change 1,  
Telework Policy APPX

Enclosure (3) United States Office of Personnel  
Management, Governmentwide Dismissal and  
Closure Procedures, November 2018

Enclosure (4) Summer of Telework Call, July 17, 2020  
Enclosure Appx (5) G393A - Re-description Position  
Description, Dec 10, 2002

Enclosure (6) Resend Email- telework documentation,  
February 4, 2021

Enclosure (6) Connective Problems to CISCO,  
February 5, 2021

Enclosure (7) Testing-Log On Accessing, February 8,  
2021

Enclosure (8) Request Approval of Leave of 164.25 hours, March 23, 2021

Enclosure (9) Gregory Malandrino-Approval timecard for period January 31 thru February 13, 2021 APPX

Reference (a) Title 5 Chapter I Office of Personnel Management (OPM), Subchapter B- Civil Service Regulations Part 630- absent and leave - Subpart P Weather and Safety Leave

CHARGE 1: Denied being Absent for failed to report to duty via telework.

CHARGE 2: Inconsistent with NA Office Telework Policy and Procedures-(enclosure 1) and Code Federal Regulation DoD Telework Policy-enclosures (2) and United States Office of Personnel Management, Governmentwide Dismissal and Closure Procedures, November 2018 Enclosure (3)

## BACKGROUND

On March 3, 2020, First NA All hand meeting regarding vims. Before, all hand meeting, I felt sick and requested leave for only one day. At the all-hand meeting, the number one priority was health and safety of employees.

On March 3, 2020, request additional and approved sick leave, admitted to the hospitalized for complication from diabetes from March 3-6, 2020 and March 9-13, 2020 (40 hours). Center for Disease

Control and Prevention rate diabetes as Higher health risk under virus (Now Covid-19).

Monday March 13, 2020, reporting to worksite, Pentagon. Tracy Whittlesey, Chief of Staff called and state the office is closed because of virus. I was authorized admin leave (Weather and Safety Leave). Enclosure (1), (2), (3) and (4). Position description is document not eligible for Telework Enclosure (5).

Start on March 24, 2020 and ended February 26, 2021, Mr. James Baker, Director and Tracy Whittlesey, Chief of Staff provide verbal instruction to report on Monday's report to Net Call and on Tuesday thru Friday daily COVID-19 symptom.

On July 17, 2020 summary of telework call. Telephone call with Tracy Whittlesey, Chief of Staff and Keith Walters, Military Advisor to the Director, we discussed a "90-day trial period to determine if we can transition your roles and responsibilities to a telework environment during COVID. The expectation is that you would return to the office once health and safety measures are in place. I believe this is phase 4 but please check the guidance in your area to be sure. Once we reach Phase 4, I anticipate that ONA will consider instituting situational telework across the organization. Assuming your telework agreement is extended past the trial period, you would have an opportunity to request situational telework." Enclosure (4).

I knew of was AWOL, check my back statement only. I call the office and found out I it was not voluntary was place without my knowledge. Logged on to the government laptop best way I could which

knowledge was place on AWOL until February 4, 2021. To get off AWOL I had to sign on to the laptop to get back on payroll and so I can continue to support NA.

February 4, 2021, Keith Walters, Chief of Staff  
- Resend to Hotmail and acknowledge receipt -  
Enclosure (6) Memorandum for Kathy L. Carter,  
Subject: Notification of Telework Agreement, Dated  
December 9, 2020, do not understand the detailed  
work plan outlining in my duties and responsibilities.  
No signed agreement.

Telework is Voluntary. Enclosure (1) (2) (3) and (4).

Please acknowledge receipt. Sincerely,  
Kathy Carter  
OSD Net Assessment

Happy Connecting. Sent from my Sprint Tablet.  
From: "Walters, Keith R CIV  
Date: 2/5/2021 11:22 AM (GMT-05:00)  
To: K Carter  
Cc: "LAWHORN, DEMARIS J CTR OSD ODNA  
(USA)"  
Subject: Fwd: Connective problem to CISCO

Kathy,  
I got your voicemail. I'm prepping for  
management meeting. Third time sending this.

Ms. Dee is teleworking the rest of the week so it is imperative that you meet her on Monday, February 8.

Sincerely,  
Keith

From: K Carter  
To: Echeverry, Erika Monique S CIV OSD OONA (USA)  
Cc: LAWHORN, DEMARIS J CTR OSD OONA (USA)  
Sent: Thursday, February 4, 2021 12:54 PM  
Subject: [Non-DoD Source] Connective problem to CISCO n

JSP, having connectivity problems ticket number INC 2006596. Recommended to contact server provider. Can this could because of account was disable?

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

Appendix M AI 67 SUBJECT: Leave Administration, Appx 011 –

Director of Administration and Management

ADMINISTRATIVE INSTRUCTION

NUMBER 67 December 30, 2011 Incorporating Change 2, February 28, 2022

AWOL PROCEDURES

1. UNEXCUSED ABSENCE CHARGED AS ABSENCE WITHOUT LEAVE (AWOL)

a. Appropriate Use of AWOL

A115

(1) Any unapproved absence from duty (including leave that is not approved pending submission of required documentation) must be recorded in the timekeeping system as AWOL.

(2) If it is later determined that an absence without prior approval is excusable, the leave approving official may change the time charged as AWOL to time charged to annual or sick leave or leave without pay (LWOP) as appropriate, if requested by the employee.

b. Charging an Employee's Absence to AWOL The leave approving official must annotate time charged as AWOL on the employee's time card or otherwise notify the designated time keeping official in writing for processing in the timekeeping system.

c. Impact of AWOL on Employee Pay, Benefits, or Other Eligibilities.

(1) Time charged to AWOL is considered non-pay and non-duty time. Time charged as AWOL may affect employee benefits and entitlements.

(2) Charging an employee's time as AWOL is not a disciplinary or adverse action in and of itself; however, time appropriately charged to AWOL may serve as a basis for initiating a disciplinary or adverse action, up to and including an employee's removal from his or her position and from the Federal service

## 2. APPROVED ABSENCE CHARGED TO ACCRUED OR ADVANCED LEAVE

#### (4) Approving or Disapproving Requests to Use Annual Leave

##### (a) General

1. Approval or disapproval must be annotated on the OPM Form 71 or electronic equivalent submitted by the employee. A copy of the approved or disapproved OPM Form 71 or electronic equivalent should be provided to the employee and the leave-approving official. If approved, a copy should also be provided to the timekeeping official.

2. The leave-approving official will promptly approve or disapprove an employee's request for leave. This will normally occur within 10 workdays of receiving an employee request or before the requested absence, whichever occurs first. However, unique circumstances, such as requests for absence during peak vacation or holiday periods or periods of heavy workload, may warrant delay in approval or disapproval.

##### (b) Factors to Consider in Approving or Disapproving Accrued Leave

1. Leave-approving officials should approve or disapprove properly submitted annual leave requests based on whether the employee can be spared from his or her duties during the requested absence. With that said, consideration will be given to the potential of forfeiture of leave due to maximum annual leave carryover rules. Leave-approving officials will strive to ensure all employees are provided a reasonable opportunity to take annual leave throughout the leave year.

#### 4. APPROVING OR DISAPPROVING REQUESTS TO USE OR INVOKE FMLA LEAVE

##### a. General

(1) Approval or disapproval must be annotated on the OPM Form 71 or electronic equivalent submitted by the employee. A copy of the approved or disapproved OPM Form 71 or electronic equivalent should be provided to the employee and a copy should be kept by the leave-approving official. If approved, a copy should also be provided to the timekeeping official.

(2) The leave-approving official will promptly approve or disapprove an employee's request for leave. This will usually occur within 10 workdays of receiving an employee request or before the requested absence, whichever occurs first. However, unique circumstances may warrant delay in approval or disapproval.

##### b. Factors to Consider in Approving or Disapproving Requests to Use FMLA Leave

(1) A leave-approving official may require that a request for FMLA leave be supported by administratively acceptable medical documentation. An employee must provide the written medical certification required, signed by the health care provider, no later than 15 calendar days after the date of request. If it is not practical to provide medical certification within 15 calendar days after the date requested, despite the employee's diligent, good-faith efforts, the employee will have up to 30 calendar days after the WHS-serviced Component requests such documentation to submit the medical certification. If



2. The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration, and whether the employee is presently incapacitated.

3. The likely duration and frequency of episodes of incapacity.

4. The appropriate medical facts within the knowledge of the employee's health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider.

(b) An employee must provide the written, signed medical certification by the health care provider no later than 15 calendar days after the date of request. If it is not practical to provide medical certification within 15 calendar days after the date requested, despite the employee's diligent, good-faith efforts, the employee will have up to 30 calendar days to submit medical certification.

(2) Consequences of Failure to Provide Administratively Acceptable Medical Documentation

(a) If the employee is unable to provide the requested **medical certification before leave begins**, or if the leave-approving official questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the leave approving official shall grant provisional leave pending final written medical certification.

(b) If, after the leave has commenced, the employee fails to provide the requested medical certification, the leave-approving official may:

1. Charge the employee as AWOL; or
2. Allow the employee to request that the provisional leave be charged as LWOP or paid leave, as appropriate.

**5. IMPACT OF FMLA LEAVE ON EMPLOYEE PAY, BENEFITS, OR OTHER ELIGIBILITIES**

a. An employee on FMLA leave is entitled to maintain health benefits coverage and must arrange to pay the employee's share of the premium while on family and medical leave or when he or she returns to work.

b. Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment

**6. REQUIRED RECORD KEEPING.** WHS-serviced Component administrative personnel, as designated by the Component Head, shall maintain records concerning the administration of FMLA and may be required to produce such information as necessary to evaluate the use of this entitlement. These records shall include:

- a. The employee's rate of basic pay.
- b. The occupational series for the employee's position.
- c. The number of hours of leave taken including any paid leave substituted for LWOP.
- d. The reason the FMLA leave was used.

e. Any additional information that may be required by the OPM or the BWD Division, HRD, WHS.

## PART II. DEFINITIONS

**disaster or emergency.** A major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees (e.g., loss of life or property, serious injury, or mental illness because of a direct threat to life or health).

**essential functions.** The fundamental duties of the employee's position.

**excused absence.** An authorized absence from duty without loss of pay or charge to leave, when the employee's absence is directly related to the agency's mission, officially sponsored by the agency head, determined to enhance the professional skills of the employee in his or her current position, and determined to be in the interest of the Department of Defense

**incapacitation.** The inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

**intimidate, threaten, or coerce.** Includes promising to confer or conferring any benefit (e.g., an

**(6) A suspension or removal under 5 U.S.C. 7532;**

(7) Actions taken under any other provision of law which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(8) Action that entitles an employee to grade retention under part 536 of this chapter, and an action to terminate this entitlement;

(9) A voluntary action by the employee;

**(10) Action taken or directed by the Office of Personnel Management under part 731 of this chapter;**

(11) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(12) Action that terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the agency informed the employee that it was to be of limited duration;

(13) Cancellation of a promotion to a position not classified prior to the promotion;

(14) Placement of an employee serving on an intermittent or seasonal basis in a temporary nonduty, nonpay status in accordance with conditions established at the time of appointment;

(15) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation, including a reduction necessary to comply with the amendments made by Public

Law 108-411, regarding pay-setting under the General Schedule and Federal Wage System and regulations implementing those amendments; or

(16) An action taken under 5 U.S.C. 7515.

**(c) Employees covered.** This subpart covers:

(1) A career or career conditional employee in the competitive service who is not serving a probationary or trial period;

(2) An employee in the competitive service -

(i) Who is not serving a probationary or trial period under an initial appointment; or

(ii) Except as provided in section 1599e of title 10, United States Code, who has completed one year of current continuous service under other than a temporary appointment limited to one year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at section 105 of title 5, United States Code, the U.S. Postal Service, or the Postal Regulatory Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100-90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

**Current continuous employment** means a period of employment or service immediately preceding an adverse action without a break in Federal civilian employment of a workday.

**Day** means a calendar day.

**Furlough** means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

**Grade** means a level of classification under a position classification system.

**Indefinite suspension** means the placing of an employee in a temporary status **without duties and pay pending investigation**, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

**Pay** means the rate of basic pay fixed by law or administrative action for the position held by the employee, that is, the rate of pay before any deductions and exclusive of additional pay of any kind.

**Similar positions** means positions in which the duties performed are similar in nature and character

in pay or grade before a proposing official may propose removal, except as may be appropriate under applicable facts.

[74 FR 63532, Dec. 4, 2009, as amended at 85 FR 65986, Oct. 16, 2020]

Appendix K § 752.404 Procedures.

(a) Statutory entitlements. An employee against whom action is proposed under this subpart is **entitled to the procedures provided in 5 U.S.C. 7513(b).**

(b) Notice of proposed action.

(1) An employee against whom an action is proposed is **entitled to at least 30 days' advance written notice** unless there is an exception pursuant to paragraph (d) of this section. However, to the extent an agency in its **sole and exclusive discretion** deems practicable, agencies should limit a **written notice of an adverse action to the 30 days prescribed in section 7513(b)(1) of title 5, United States Code.** Advance notices of greater than 30 days must be reported to the Office of Personnel Management. The **notice must state the specific reason(s)** for the proposed action and inform the employee of his or her **right to review the material** which is relied on to support the reasons for action given in the notice. The notice must further include detailed information with respect to any right to appeal the action pursuant to section 1097(b)(2)(A) of Public Law 115-91, the forums in which the employee may file an appeal, and any limitations on the rights of the employee that would

apply because of the forum in which the employee decides to file.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposed action must state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(3) Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives:

(i) Assigning the employee to duties where he or she is no longer a threat to safety, the agency mission, or to Government property;

(ii) Allowing the employee to take leave, or carrying him or her in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented himself or herself from the worksite without requesting leave;



is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

(f) Agency review of medical information. When medical information is supplied by the employee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302 of this chapter. If the employee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) Agency decision.

(1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

of this section should not be construed to prevent agencies from taking corrective action, should it come to light, including during or after the issuance of an adverse personnel action that the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel record(s) to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. And an agency should report any agreements relating to the removal of such information as part of its annual report to the OPM Director required by section 6 of E.O. 13839. Documents subject to withdrawal or modification could include, for example, an SF-50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action or an employee performance appraisal.

(c) Corrective action based on discovery of material information prior to final agency action. When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may

come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency records. The requirements described in paragraph (a) of this section would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from Federal service.

[85 FR 65986, Oct. 16, 2020]

APPENDIX G October 19, 2020 Under Secretary of Defense

UNDER SECRETARY OF DEFENSE, PENTAGON  
WASHINGTON, PERSONNEL AND READINESS

OCT 19 2020

MEMORANDUM FOR SENIOR PENTAGON  
LEADERSHIP (SEE DISTRIBUTION) DEFENSE  
AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Continued Use of Weather and Safety  
Leave During the Coronavirus Disease 2019  
Pandemic

Reference: Under Secretary of Defense for Personnel  
and Readiness Memorandum, "Civilian Duty Status

A144

supervisor needs to follow the reasonable accommodation process under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 ("Rehabilitation Act").

In the limited instances where these tools are not practicable or deemed effective, DoD Components may, but are not required to, continue to provide weather and safety leave. DoD Components may **require medical documentation in support of weather and safety leave** to the extent consistent with the **Rehabilitation Act**, which prohibits seeking documentation for conditions that are obvious or already known. The use of weather and safety leave for child or dependent care remains prohibited.

DoD Components will provide an assessment of their use of weather and safety leave for appropriated and non-appropriated fund workforces to my point of contact below by October 26, 2020. Using the attached spreadsheet as a template, this assessment should use payroll data as a starting point to identify the extent of weather and safety leave use, excluding any use of weather and safety leave unrelated to COVID-19.

The second attachment to this memorandum updates the **matrix** included in the reference to incorporate additional leave categories authorized under the Families First Coronavirus Response Act.

Should you have any questions, my point of contact is Mr. Allen Brooks, Technical Director, Defense Civilian Personnel Advisory Service, who may be reached at .

Matthew P. Donovan

Have a great weekend.

Kathy

Sent from my Boost Mobile Phone.

On Jul 9, 2020 8:52 AM, "Der, Denise E CIV OSD ODNA (USA)" wrote:

FYSA I just spoke with Kathy on the phone and she isn't able to check her civ email just yet but she's hoping that'll be resolved tonight after she has an appointment for someone to come out to help with her internet. I forwarded her the original email as well as the obs/cmt one and have also included her here so she's tracking.

From: Whittlesey, Tracy M CIV OSD ODNA (USA)

Sent: Thursday, July 9, 2020 7:59 AM

To: Carter, Kathy L CIV (USA)

Cc: Walters, Keith R LTC USARMY OSD ODNA (USA); Der, Denise E CIV

OSD ODNA (USA) Eberle, William L IV 1st Lt USAF AFLCMC (USA)

Subject: Checking-In

Kathy,

Great to hear that you have your laptop and your email is working. I sent you a calendar invite for tomorrow morning so we can discuss your telework plan.

A148

Reminder that any IT issues/questions should be directed to JSP. However, if you need help accessing MSTeams or need web addresses (such as DAI) please reach out to Denise. She can help you find all the correct links.

I look forward to catching up tomorrow.  
TW

Appendix I December 9, 2020 Affirmative Defense Omitted notice to telework assignment August 8, 2021 Request to be restored 164,25 hours of loss pay by using the wrong leave code in time and attendance Attached Exhibit 1 through 11 - Appx 109-202  
Appendix J Email February 4, 2020 11:46 Telework Documentation Appx 109-210  
Walters, Keith R CIV OSD ODNA (USA) Thursday, February 4, 2021 11:46 AM K Carter  
Carter, Kathy L CIV (USA); Bullock-Taylor, Nakeshia Y CIV (USA) FW: Telework Documentation Carter,K\_Telwork-Notice\_Signed\_20201209.PDF;  
Attachrnt-1\_Admin Instruction 117.pdf;  
Attachrnt-2\_Carter\_Telework Plan-FINAL 20201208.pdf, CARTER-dd2946 \_Telework-Agreement\_20201210.pdf

Hi Ms. Carter,

A149

UNDER SECRETARY OF DEFENSE  
PERSONNEL AND READINESS

Appendix K February 4, 2021 - Email Subject Re:  
Payroll

From: K Carter

To: Walters, Keith R CIV OSD ODNA (USA)

Cc: Bullock-Taylor, Nakeshia Y CIV (USA)

Subject: RE: [Non-DoD Source] RE: Payroll

Date: Thursday, February 4, 2021 10:35:49 AM

OK 11:30

Happy Connecting. Sent from my Sprint Tablet.

From: "Walters, Keith R CIV OSD ODNA (USA)"

< Date: 2/4/2021 9:36 AM (GMT-05:00)

To: K Carter

Cc: "Bullock-Taylor, Nakeshia Y CIV (USA)"

Subject: RE: [Non-DoD Source] RE: Payroll

Kathy,

Dial-in information for the 1130 call:

Conference ID # Sincerely,

Keith

From: K Carter

Sent: Thursday, February 4, 2021 9:22 AM

To: Walters, Keith R CIV OSD ODNA (USA)

Cc: Bullock-Taylor, Nakeshia Y CIV (USA)

Subject: RE: [Non-DoD Source] RE: Payroll

A152

Keith and Nakeshia,  
Schedule the appointment at 11:00. Thanks  
Kathy  
Happy Connecting. Sent from my Sprint Tablet.

From: "Walters, Keith R CIV OSD ODNA (USA)"  
Date: 2/3/2021 4:30 PM (GMT-05:00)  
To: K Carter  
Cc: "Bullock-Taylor, Nakeshia Y CIV (USA)"  
Subject: RE: [Non-DoD Source] RE: Payroll  
Hi Kathy,

These are questions that we can and should discuss by phone. Ms. Bullock-Taylor will join us. What is your availability for tomorrow? I will send an MS Teams invitation.

Sincerely, Keith

From: K Carter  
Sent: Wednesday, February 3, 2021 3:05 PM  
To: Walters, Keith R CIV OSD ODNA (USA)  
Subject: [Non-DoD Source] RE: Payroll

Keith,

I received this email.  
What do I need to do get back on payroll?

Have not received any 2021 leave and earning statement.

A153



I briefly read the telework plan - not sure I understand all requirements for telework. As I stated before on telephone, no receipt of FEDEX package and email.

I don't recall discussion this summer regarding telework duties with Laura Regan, Denise Der, and by you.

I have not received telephone call/voice by you since the last Net Call Feb 1, 2021 regarding **requesting replace use AWOL to annual leave.**

**Do we have NA telework policy?**

**Did not receive emailed** dated December 2, 2020 to reply regarding use or lose for end of 2020.

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

From: "Walters, Keith R CIV OSD ODNA (USA)"

Date: 2/3/2021 12:19 PM (GMT-05:00)

To: K Carter

Cc: "Bullock-Taylor, Nakeshia Y CIV (USA)" <Caution-mailto:

Subject: RE: Payroll

Kathy,

What other information do you need in addition to what we discussed this morning by phone?

I will be removing the Director from this thread. I am cc'ing Ms. Bullock-Taylor. For now, I will forward the attached, which includes again all of the information you need. We sent this via e-mail— to the same address I am writing to now—on December 10, 2020. We sent two FEDEX packages with hard copies, as well. We have delivery notification that they were, in fact, delivered to your home address. Included in that message is a detailed, 14-page plan that tells you how to telework and how to carry out the very same roles you were assigned in the office. This is the same plan that Laura Regan, Denise Der, and I talked you through by telephone last summer.

I am also attaching one of the earlier messages I sent you in early-December regarding using your use/lose leave. I sent that on December 2, 2020. You replied to neither of the messages that I am attaching to this message.

Sincerely, Keith

From: K Carter

Sent: Wednesday, February 3, 2021 11:30 AM

To: Baker, James H SES OSD ODNA (USA) <Caution- mailto: >; Walters, Keith R CIV OSD ODNA (USA)

Subject: [Non-DoD Source] RE: Payroll

A155

Mr. Baker / Keith,

Per this weekly net call, I am **requesting annual leave vice AWOL**. Call Keith several time with no response. Please reply.

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

From: K Carter

Date: 2/3/2021 10:30 AM (GMT-05:00)

To: "Walters, Keith R CIV OSD ODNA (USA)"

Subject: Payroll

Keith,

What I need to do get back on payroll? Have not received any 2021 leave and earning statement. Discuss, why put on AWOL?

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

Keith,

Sorry for not understanding the new net call phone schedule.

Please stop asking about telework. Talk with Col Regan (prior chief of staff), my supervisor and you, I am no longer interest in **telework agreement**. Do not schedule annual leave. I am already on weather and safety leave.

Thanks

Kathy

Happy Connecting. Sent from my Sprint Tablet.

From: "Walters, Keith R CIV OSD ODNA (USA)"

A156

Date: 12/7/2020 1:35 PM (GMT-05:00)  
To: K Carter  
Cc: "Tolosa, Alistair D Capt USAF DTRA R AND D (USA)"  
Subject: RE: No Net call this morning?

Hi Kathy,  
I've put this out in multiple NetCalls.  
For Battle Rhythm weeks 1 & 3, Net Call is on Monday at 0945.

For Battle Rhythm weeks 2 & 4, Net Call is on Wednesday at 0945. We are on a Week 2. The different weeks account for the different number of days that our Gold teams and Blue teams have in the office. I mentioned all of this at the last Net Call.

I'm still awaiting your response to my previous email messages to this Hotmail address regarding 1) plans to start telework and 2) using your use/lose leave.

I'm planning on you starting telework on Monday, January 4. We are having JSP restore your access to your government-issued laptop. You'll need to re-take your Cyber security training, though.

Sincerely,  
Keith

From: K Carter  
Sent: Monday, December 7, 2020 11:27 AM  
To: Walters, Keith R CIV OSD ODNA (USA)

A157

Subject: [Non-DoD Source] No Net call this morning?

Keith,

Did the Net call change this week?

Kathy

Happy Connecting. Sent from my Sprint Tablet.

Appendix L Email February 4, 2021 Subj: Connect problem to CISCO

From: "Walters, Keith R CIV OSD ODNA (USA)"

Date: 2/4/2021 5:43 PM

To: Echeverry, Erika Monique S CIV OSD ODNA (USA)

Subject: Re: [Non-DoD Source] RE: Connective problem to CISCO

Kathy,

These are rather trying times. The team has been teleworking for almost a year now. The flexibility means that you can get lunch or take a breather as you need. You will be at meetings you're supposed to attend. You will perform the duties assigned to you. You will work 8-hour days.

Sincerely,

Keith

From: "K Carter"

Date: Thursday, February 4, 2021 at 5:14:17 PM

To: "Echeverry, Erika Monique S CIV OSD ODNA (USA)"

Cc: "Walters, Keith R CIV OSD ODNA (USA)"

Subject: RE: [Non-DoD Source] RE: Connective problem to CISCO

Erica,

Today Meeting Keith told me flex work schedule.

What is the difference from flex work schedule and gliding schedule?

I talk with JSP he provides me assigned POC name and telephone number. Will call him at 6:30 tomorrow morning. JSP Stated they have 24 hours to respond.

Kathy Carter

From: "Echeverry, Erika Monique S CIV OSD ODNA (USA)"

Date: 2/4/2021 4:26 PM (GMT-05:00)

To: K Carter

Cc: "Walters, Keith R CIV OSD ODNA (USA)"

Subject: RE: [Non-DoD Source] RE: Connective problem to CISCO

Hi Kathy

I believe your current work schedule is a gliding schedule from 0630 to 1700, M-F. Recommend you call JSP to follow up on the tickets no later than 1700 today, and you should receive 6 hrs of regular pay since you started working at 1100. You are required to respond to this email providing us with the updated status that you receive from your phone call w/JSP for both tickets.

Additionally, please confirm you are tracking that you have an appointment on Monday with JSP/Dee Lawhorn.

Thank you.

Respectfully, Erika

From: K Carter <kat4049@hotmail.com>  
Sent: Thursday, February 4, 2021 3:41 PM  
To: Echeverry, Erika Monique S CIV OSD ODNA (USA)  
Cc: Walters, Keith R CIV OSD ODNA (USA)  
Subject: [Non-DoD Source]. RE: Connective problem to CISCO

Erika/Keith,

I Started working at 11:00 by telephone conference until now to log into government computer. Working with JSP in trouble shooting issues.

What will be the latest I can follow-up with JSP help desk to receive regular work hours?

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

From: "Echeverry, Erika Monique S CIV OSD ODNA (USA)"  
Date: 2/4/2021 2:24 PM (GMT-05:00)  
To: K Carter  
Cc: "Walters, Keith R CIV OSD ODNA (USA)"  
Subject: RE: Connective problem to CISCO

A160

Kathy, thanks.

Recommend you continue to follow up w/JSP if you do not hear back.

Respectfully, Erika

From: K Carter

Sent: Thursday, February 4, 2021 2:22 PM

To: Echeverry, Erika Monique S CIV OSD ODNA (USA)

Subject: [Non-DoD Source] RE: Connective problem to CISCO

Ericka,

Another JSP Inc 2006939 Trouble Shotting Hardware Issue.

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

Appendix M Email February 5, 2021 Subj: Reporting to work

From: K Carter

Sent: Friday, February 5, 2021 11:19 AM

To: Walters, Keith R CIV OSD ODNA (USA); Echeverry, Erika Monique S CIV OSD ODNA (USA);

LAWHORN, DEMARIS J CTR OSD ODNA (USA)

Subject: RE: [Non-DoD Source] RE: Reporting to Work

Keith,

A161



Left voice message on your cell.

Have not receive your email.

Kathy

Happy Connecting. Sent from my Sprint Tablet.

From: "Walters, Keith R CIV OSD ODNA (USA)"

Date: 2/5/2021 9:27 AM (GMT-05:00)

To: K Carter, "Echeverry, Erika Monique S CIV  
OSD ODNA (USA)"

"LAWHORN, DEMARIS J CTR OSD ODNA  
(USA)"

Subject: RE: [Non-DoD Source] RE: Reporting to  
Work

Kathy,

Check the e-mail instructions that I sent to  
you yesterday. All of the information you need is  
there. We cannot keep repeating simple guidance  
like this.

Sincerely,

Keith

From: K Carter

Sent: Friday, February 5, 2021 9:25 AM

To: Echeverry, Erika Monique S CIV OSD ODNA  
(USA)

A162

LAWHORN, DEMARIS J CTR OSD ODNA (USA)  
Walters, Keith R CIV  
OSD ODNA (USA)  
Subject: [Non-DoD Source] RE: Reporting to Work

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Erika,

Sorry, have not received two emails for tracking. Please provide appointment information for Monday with JSP.

How does this work?

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.  
From: "Echeverry, Erika Monique S CIV OSD ODNA (USA)"  
Date: 2/5/2021 9:08 AM (GMT-05:00)  
To: "LAWHORN, DEMARIS J CTR OSD ODNA (USA)"  
"Walters, Keith R CIV OSD ODNA (USA)"  
Subject: RE: Reporting to Work

Kathy, thanks for providing me with the ticket numbers. I have sent you two separate emails asking you to confirm that you are tracking your appointment on Monday with JSP.

Third official request: please confirm you are tracking your Monday appointment with JSP.

Thanks!

Respectfully, Erika  
(O) 703.692.3823  
(C) 571.232.2798

From: K Carter <kat4049@hotmail.com>  
Sent: Friday, February 5, 2021 9:01 AM  
To: Echeverry, Erika Monique S CIV OSD ODNA (USA);  
LAWHORN, DEMARIS J CTR OSD ODNA (USA)  
Walters, Keith R CIV  
OSD ODNA (USA)  
Subject: [Non-DoD Source] RE: Reporting to Work

Erika,  
JSP Computer ticket number:  
2/4/2021 - 1st - 2006596 (closed)  
2/4/2021 - 2nd - 2006939 (Open)  
Dee,  
Are you tracking JSP tickets? Please advise if you need additional information.  
Thanks  
Kathy Carter  
Happy Connecting. Sent from my Sprint Tablet.

A164

From: K Carter  
Date: 2/5/2021 6:34 AM (GMT-05:00)  
To: erikamonique.s.echeverry  
Subject: Reporting to Work

Good morning, Erika.  
Not sure the process for signing in without  
Computer access. Please advise.  
Kathy Carter  
Happy Connecting. Sent from my Sprint Tablet.

From: K Carter  
Sent: Thursday, April 8, 2021 11:21 PM  
To: Walters, Keith R LTC USARMY OSD  
ODNA (USA)  
Subject: RE: Keith, Please resend the  
question by pasting questions to this email.  
Thank  
Happy Connecting. Sent from my Sprint Tablet  
From: "Walters, Keith R LTC USARMY OSD  
ODNA (USA)"  
Date: 05/28/2020 9:58 AM (GMT-05:00)  
To: K Carter, Keith Walters  
Subject: RE: Keith, please resend the question by  
pasting questions to this email. Thank  
Kathy,

What do you want me to re-send? If you sent a  
response, I'll refresh the survey data and check  
again.

That is the e-mail address that I've been using.

Sincerely,  
Keith

From: K Carter  
Sent: Thursday, May 28, 2020 9:54 AM  
To: Keith Walters, Walters, Keith R LTC  
USARMY OSD ODNA (USA)

Subject: [Non-DoD Source] Keith Please resend the question by pasting questions to this email.  
Thank

Keith,

I was not aware that you did not receive my comments. No email or message received by you since the last message.

Can you resend or call me at. Please make sure you are using correct email.

Thanks

Kathy

Happy Connecting. Sent from my Sprint Tablet.

From: K Carter

Sent: Friday, July 10, 2020 10:21 AM

To: Whittlesey, Tracy M CIV OSD ODNA (USA)

Subject: Re: Phone Call - 0800 this morning?

Tracy,

I am still working on the connection. I will reply to your email once connected.

Thanks

A167

Kathy

On Jul 10, 2020 9:20 AM, "Whittlesey, Tracy M  
CIV OSD ODNA (USA)"

wrote:

Kathy,

We were scheduled for a call this morning at 0800.  
I sent an email and text. Confirming you are  
receiving the messages.

Thank you,

Tracy

From: K Carter

Sent: Monday, January 4, 2021 7:25 AM

To: Allen, T S CPT USARMY OSD ODNA  
(USA)

Cc: Walters, Keith R CIV OSD ODNA (USA);  
Drake, Andrew J Col USMC (USA)

Subject: RE: Timesheet 20 Dec 2020. - 2 Jan  
2021

Capt Allen,

Welcome onboard.

Thanks for responding. No Net call this pay  
period.

A168

Please correct 8 hours admin leave to 15 minutes each day on RG (regular) and adjustment to admin (weather and safety) 7:45 hours each.

Please call or email me if you don't understand or you have any questions.

Thanks

Kathy Carter

From: "Allen, T S CPT USARMY OSD ODNA (USA)"

Date: 1/3/2021 7:45 PM (GMT-05:00)

To: K Carter

Cc: "Walters, Keith R CIV OSD ODNA (USA)"  
"Drake, Andrew J Col USMC (USA)"

Subject: RE: Timesheet 20 Dec 2020. - 2 Jan 2021  
Ma'am,

Please see enclosed for what we submitted for you for the last two weeks. Alistair helped me with these, but any mistakes are mine. Let me know if you require any changes.

I can also be reached via MS Teams, or my cell

Thanks.

V/r,

A169



T.S.

From: Walters, Keith R CIV OSD ODNA (USA)  
Sent: Sunday, January 03, 2021 5:38 PM  
To: Drake, Andrew J Col USMC (USA)  
Cc: K Carter; Allen, T S CPT USARMY OSD ODNA (USA)  
Subject: RE: Timesheet 20 Dec 2020. - 2 Jan 2021  
Hi Andy and Kathy,

Happy New Year!

CPT Allen now does time sheet entries. I am cc'ing him. T.S., please take a look at Kathy's entries for the past two weeks.

Sincerely,

Keith

From: Drake, Andrew J Col USMC (USA)  
Sent: Sunday, January 3, 2021 12:28 PM  
To: Walters, Keith R CIV OSD ODNA (USA)  
Cc: K Carter  
Subject: FW: Timesheet 20 Dec 2020. - 2 Jan 2021

Kathy, happy New Year!

Chief, who is the new POC for timesheet entry?

A170

Andy

From: K Carter

Sent: Thursday, December 31, 2020 10:45 AM

To: Drake, Andrew J Col USMC (USA)

Subject: [Non-DoD Source] Timesheet 20 Dec 2020. - 2 Jan 2021

Col Drake

Happy holidays and thanks for all of your support.

I am aware that Alistair is no longer in the office to process my timesheet. Last pay period provided to Alistair.D.Tolosa. Was my timesheet process? Who is the new POC for timesheet entry?

Below is my schedule for this pay period.

1st week

21 -23 Dec 2020 -- 15 min and rest of day admin leave (Weather and safety leave). 24 - 25 Dec 2020 Holiday Leave.

2nd week

28-31 Dec 2020 15 min regular and rest of day admin leave (Weather and safety leave) 1st Jan 2021 Holiday Leave.

Kathy

A171

Nakeshia/Keith Walter's (NA Cheif of Staff),

Please provide point of contact by telephone to Net Assessment human resources and OPM for Net Assessment (NA) reference (Telework).

I contacted DFAS number on website number, stated I need to contact DFAS in NA. Please provide POC for DFAS in NA.

Requesting annual leave instead of Leave Without Pay at this time due to health insurance coverage. (Note Feb 1, 2021 Mr. Baker Ref Net Call to contact Chief of Staff Keith Walters regarding annual leave.)

Did you or Keith Walter's communicate with NA DOD office? If so, please provide name, telephone and email.

What law, regulation are you references regard leave without pay under reference AI 117? Pay period ending 2020 remover off - 5 U.S. Code § 6329c Weather and safety leave.

Jan 4th, 2021 on leave without pay except for regular leave weekly Net Call.

Sincerely  
Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

----- Original message -----

From: "Bullock-Taylor, Nakeshia Y CIV (USA)"

Date: 2/1/2021 8:12 AM (GMT-05:00)

A172

To: 'K Carter'  
Cc: "Walters, Keith R CIV OSD ODNA (USA)"  
Subject: RE: [NoNetn-DoD Source] Phase to Returning

Good Morning Ms. Carter,

The attached document is FOUO designated for employees of "OPM" to establish procedures for re-entering "OPM" facilities. You are an employee of the "Department of Defense." Therefore, any information within this document pertaining to telework or returning to the office does not apply to you. Furthermore, OPM has not issued any guidance that supersedes the Agency's AI 117.

As I have told you multiple times already, I strongly recommend that you refer to AI 117 when researching the policy regarding telework. I have attached it (again) for your convenience.

You have been instructed multiple times by your chain of command to begin situational telework and you have been given the necessary equipment and accesses. Therefore, you are not entitled to admin leave.

From: K Carter  
Sent: Friday, January 29, 2021 4:32 PM  
To: Bullock-Taylor, Nakeshia Y CIV (USA)  
Subject: [Non-DoD Source] Phase to Returning

A173

Nakeshia,

See attached current instructions.

This state encourage maximum telework. Need to correct my pay to admin.

Thanks

Kathy

#### Appendix U.S OPM Governmentwide Dismissal and Closure Procedures NOVEMBER 2018 Appx 67-77

On December 23, 2016, Congress enacted the Act, which provides OPM with the authority to regulate certain types of leave, including a new type of leave called "weather and safety leave," previously granted as administrative leave or excused absence. OPM issued proposed regulations on July 13, 2017, and final regulations on April 10, 2018. (See 82 FR 32263 and 83 FR 15291, respectively.) OPM's regulations and Procedures make clear the circumstances in which weather and safety leave may be used.

#### Telework Policies and Procedures

Telework continues to play a significant role during emergency situations by enabling a greater number of Federal employees to work and supporting continuity of operations. Agencies should continue to promote and incorporate telework into their agency emergency planning so that employees will be able to telework effectively during emergency situations, thereby allowing

the Federal Government to maintain productivity and support their agency mission. OPM's weather and safety leave regulations emphasize the importance of telework in allowing employees to continue working during severe weather or other emergency situations . It is important to note that, as a result of the new Act, agencies will not be able to provide weather and safety leave to a telework program participant who is not prevented from working safely at an approved telework site during severe weather or other emergency situations. Generally, employees who are telework program participants will not receive weather and safety leave, since they are not usually prevented from performing work at an approved location due to a weather or other safety-related emergency. OPM regulations and these Procedures describe a few limited exceptions under which telework program participants may be granted weather and safety leave.

In addition, given recent agency actions to improve cybersecurity practices, we strongly encourage agencies to take steps to foster appropriate preparation by telework-ready employees so they are able to effectively telework and have access to agency IT systems and networks, as may be necessary, should an emergency or weather condition so warrant.

Washington, DC, Operating Status  
Announcements

In the Washington, DC, area, OPM-issued operating status announcements apply to employees working in all Executive agencies with offices located inside the "Washington Capital Beltway." In the event of an area-wide work disruption, agencies should avoid taking independent action because changes in the commuting hours of Federal employees can result in a dramatic disruption of the highway and mass transit systems. Following OPM's operating status announcements and policies will allow for coordination with municipal and regional officials, and will reduce disruption of the highway and transit systems. This will both reduce traffic congestion and result in treating affected employees as consistently as possible.

A. Weather and Safety Leave

On December 23, 2016, Congress enacted the Administrative Leave Act of 2016 (Act) (section 1138 of Public Law 114-328), which provides OPM with the authority to regulate certain types of leave, including a new type of leave called "weather and safety leave," previously granted as administrative leave or excused absence. OPM issued proposed regulations on July 13, 2017, and final regulations on April 10, 2018. (See 82 FR 32263 and 83 FR 15291.) OPM's regulations and Procedures make clear the circumstances in which weather and safety leave may be used.

The Act created four new categories of leave: administrative leave (5 U.S.C. 6329a), investigative leave (5 U.S.C. 6329b), notice leave (5 U.S.C. 6329b), and weather and safety leave (5 U.S.C. 6329c). In particular, 5 U.S.C. 6329c(b) provides Federal agencies with the authority to-

"approve the provision of leave under this section to an employee or a group of employees without loss of or reduction in the pay of the employee or employees, leave to which the employee or employees are otherwise entitled, or credit to the employee or employees for time or service only if the employee or group of employees is prevented from safely traveling to or performing work at an approved location due to-(1) an act of God; (2) a terrorist attack; or (3) another condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location."

Since the Act requires weather and safety leave to be applied on a Governmentwide basis, OPM is issuing these Governmentwide Dismissal and Closure Procedures (applicable to all Federal agencies in all locations) and discontinuing the procedures focused solely on the Washington, DC, area. The Governmentwide Procedures incorporate this new type of leave.

Operating status announcements issued by agencies must use the term "weather and safety leave" instead of administrative leave or excused



absence when an agency is approving an absence without charge to leave or loss in pay due to severe weather and other qualifying emergency situations covered by 5 U.S.C. 6329c.

Agencies should work with the administrators of their timekeeping and payroll systems to modify those systems so that use of weather and safety leave is properly recorded and reported (5 CFR 630.1607). Corresponding internal agency policies should also be updated, as appropriate, to ensure they are consistent with law, OPM regulations , and these Procedures.

"[The specified Federal offices at specified locations] are under SHELTER-IN-PLACE procedures and are CLOSED TO THE PUBLIC."  
Appx 77

Employees Located at Agency Worksite. All employees should follow their agency's emergency procedures for shelter-in-place. Employees should remain in their designated safe area until they are notified by agency officials that they may return to the office or leave the worksite.

Telework Employees performing telework (e.g., at home) are expected to continue working when there is a shelter-in-place incident at their regular office unless affected by the emergency or otherwise notified by their agencies.

Appendix N February 5, 2021 email Reporting to Work

From: "Echeverry, Erika Monique S CIV OSD ODNA (USA)"

Date: 2/5/2021 9:35 AM (GMT-05:00)

To: K Carter LAWHORN, DEMARIS J CTR OSD ODNA (USA) "Walters, Keith R CIV OSD ODNA (USA)"

Subject: RE: Reporting to Work

Erika,

Sorry, have not received two emails for tracking. Please provide appointment information for Monday with JSP.

How does this work?

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

Appendix Email February 5, 2021

From: "Echeverry, Erika Monique S CIV OSD ODNA (USA)"

Date: 2/5/2021 9:08 AM (GMT-05:00)

To: K Carter "LAWHORN, DEMARIS J CTR OSD ODNA (USA)" "Walters, Keith R CIV OSD ODNA (USA)"

Subject: RE: Reporting to Work

Kathy, thanks for providing me with the ticket numbers. I have sent you two separate emails asking you to confirm that you are tracking your appointment on Monday with JSP.

Third official request: please confirm you are tracking your Monday appointment with JSP.

Thanks!

Respectfully, Erika

From: K Carter <kat4049@hotmail.com>

Sent: Friday, February 5, 2021 9:01 AM

To: Echeverry, Erika Monique S CIV OSD ODNA (USA) erikamonique.s.echeverry.; LAWHORN, DEMARIS J CTR OSD ODNA (USA) demaris.j.lawhorn; Walters, Keith R CIV OSD ODNA (USA)

Subject: [Non-DoD Source] RE: Reporting to Work  
Erika,

JSP Computer ticket number:

2/4/2021 - 1st - 2006596 (closed)

2/4/2021 - 2nd - 2006939 (Open)

Dee,

Are you tracking JSP tickets? Please advise if you need additional information.

Thanks

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

----- Original message -----

From: K Carter <kat4049@hotmail.com>

Date: 2/5/2021 6:34 AM (GMT-05:00)

To: erikamonique.s.echeverry

Subject: Reporting to Work

Good morning, Erika.

A180

Not sure the process for signing in without  
Computer access.

Please advise.

Kathy Carter

Happy Connecting. Sent from my Sprint Tablet.

Appendix O email March 5, 2021 – Request for annual  
leave -denied Appx 100-102

Appendix P email March 5, 2021 Approve Timecard  
for period 31 Jan 2021-13 Feb 2021

From: Sent: To: Carter, Kathy L CIV (USA)

Sent: Friday, March 5, 2021 2:34 PM

Cc: Subject RE, GREGORY approved timecard for  
period 31-JAN-2021 - 13-FEB-2021

To: Carter, Kathy L CIV (USA)

From: Walters, Keith R CIV OSO ODNA (USA)

Sent: Friday, March 5, 2021 2:34 PM

Keith,

March 1, 2021 on Net Call I ask about  
request for annual leave Mr. Baker to contact you.  
I am sorry thought the annual leave was approved  
for the beginning of this pay period.

I am set for logging into Skype and MS  
Teams? Please provide instructions.

Kathy Carter

Net Assessment

Appendix L email March 5, 2021 Denied Annual  
leave - Approved Timecard for period 31-Jan-2021  
– 13 Feb 2021

From: Walters, Keith R CIV OSO ODNA (USA)  
Sent: Friday, March 5, 2021 2:34 PM  
To: Carter, Kathy L CIV (USA)  
Cc: Malandrino, Gregory Paul (Drano) CAPT  
USN OSD OONA (USA)  
Subject: RE: MALANDRINO, GREGORY  
approved timecard for period 31-JAN-2021 · 13-  
FEB-2021

Kathy,

I never approved leave. And you took a different  
route to input that leave, yourself. You had not  
checked in or telework, per the guidance I  
conveyed by phone, by e-mail, and in two  
packages sent to your residence via FEDEX.

We credited you with the hours you took to  
prepare for your Feb. 4 call with me and Nakeshia  
Bullock-Taylor of LMER.

You have not checked in on a daily basis for some  
time, either, per the instructions both Ms.  
Bullock-Taylor and I conveyed on Feb .4. We are  
still crediting you with a full 8 hours per day,  
since Feb. 4.

Keith

From: Carter, Kathy L CIV (USA)

A182

Sent: Friday, March 5, 2021 12:49 PM  
To: Walters, Keith R CIV OSD ODNA (USA)  
Cc: Malandrino, Gregory Paul (Drano) CAPT USN  
Subject: RE: MALANDRINO, GREGORY approved timecard for period 3-JAN-2021 - 13-FEB-2021

Keith,  
Why was my AL changed to AWOL? I requested AL and was approved.  
Kathy Carter  
OSDNA

From: Malandrino, Gregory Paul (Drano) CAPT USN OSD OONA {USA}  
Sent: Friday, March 5, 2021 12:45 PM To: Carter, Kathy L CIV (USA)  
Subject: RE: MALANDRINO, GREGORY approved timecard for period 31-JAN-2021 - 13-FEB-2021

Kathy,  
My role in the timecard approval process is review and then approval. I'm not in the portion of the discussion about specific status. If a question comes up, I engage to determine the proper path forward.

Please ask the Chief about why the change was made. I don't have those specifics.

V/ r,

A183

Greg

Greg "Drano" Malandrino, CAPT USN Navy  
Military Advisor  
Office of Net Assessment  
Office of the Secretary of Defense

From: Carter, Kathy L CIV (USA)  
Sent: Friday, March 05, 2021 9:22 AM  
To: Malandrino, Gregory Paul {Drano} CAPT  
USN OSD OONA (USA)  
Subject: RE: MALANDRINO, GREGORY  
approved timecard for period 31-JA N-2021 - 13-  
FEB-2021

Greg,  
Why was my timecard being changed to AWOL?  
Kathy Carter  
Net Assessment

From: Workflow Mailer  
Sent: Friday, March 5, 2021 9:10 AM  
To: Carter, Kathy L CIV (USA)  
Subject: FYI: MALANDRINO, GREGORY  
approved timecard for period 31-JAN-2021 - 13-  
FEB-2021

Notification Details:

Please log into DAI application using the to get  
more details.

A184

Appendix Harmful and violation of law AF  
"REPOSE ORDER TO SHOW CAUSE -  
Requesting to be Restored 164.25 hours of Loss of  
pay by using the Wrong leave code in time and  
attendance."

Regular work schedule (Non-Telework) Civil  
Servant Position description-not eligible to  
telework duties GS-1101-09 position of  
Acquisition and Financial Specialist with the  
Office of Net Assessment (ONA) at the Pentagon  
in Washington, DC -NOT Eligible to Telework -  
Exhibits (3) and (4). I am approved Regular  
Schedule NON- Telework. Request to restored  
position under current Chief of Staff Loss of pay  
164.25 Hours of AWOL from January 4, 2021  
through February 3, 2021 and annual leave  
restored removing me from weather and safety  
leave in time and attendance to eligibility to  
telework. Performance Exhibit (

March 13, 2020 until January 3, 2021, eligible for  
weather and safety leave when civilian employee  
- non-telework participant and are at higher risk  
of serious complication for COVID-19, Including  
older adults and individual with chronic health  
conditions. Exhibit (1) and (3). On February 3,  
2021, I receive notice to telework by email.

Agency Violated Laws, Policy and Prohibited  
Personnel Practices:

Harmful due process procedure errors: On  
January 4 thru February 3, 2021 I was ordered to  
telework and charged AWOL (military Leave) on



the same day for not reporting to telework. No receipt of formula notification being placed charged AWOL. Exhibit (2)

Harmful due process procedure errors: Inaccurate data posted in time and attendance by changed work schedule to eligible for telework and then charged 141 hours AWOL (Military Leave) and include Holiday Leave 24 Hours total of 164.25 loss of pay. Leave and earning statement shows correct leave for civilian. Exhibit (11)

Harmful due process procedure errors On February 3, 2021, no telework agreement approved and signed by Supervisor and employee. I contacted the office regarding why was I on AWOL (Military Leave - incorrect leave for civilian pay status with loss of pay)

Harmful due process procedure errors -On January 4, 2021 civilian Personnel Data System (DPDS) and the employee's eligibility was not updated in MyBiz Exhibit (3), (4) and (5)

Harmful due process procedure errors: On February 10, 2021 telework training certificate of completion for Cyber Awareness Challenge. Requirement is to Complete Telework Training. Employees authorized to telework and their supervisors will complete telework training before signing a DD Form 2946 and initiating a telework arrangement. Exhibit (9) and (10).

Harmful due process procedure errors: On February 10, 2021 telework training certificate of completion for Cyber Awareness Challenge. Requirement is to Complete Telework Training. Employees authorized to telework and their

supervisors will complete telework training before signing a DD Form 2946 and initiating a telework arrangement. Exhibit (9) and (10).

Harmful due process procedure errors: Agency procedure errored did not comply with telework policy under administrative instructions Exhibits (5), (7) and (9) for processing eligibility for telework in database.

Harmful due process procedure errors: Agency requirement a signed and approved DD Form 2946 must be in place before an employee is permitted to telework Exhibit (8)

Harmful due process procedure errors: Violation Telework Policies Exhibits (5)

(7) and (9) and. Law 5 USC Part III, Subpart D, Chapter 65 and 5 CFR, Chapter I - Office of Personnel Management subchapter B. Civilian Service Regulations Part 630- Absent and Leave Subpart P- Weather and Safety Leave. Harmful due process procedure errors: Prior to January 4, 2021 No supervisor did not approve telework agreement DD Form 2946. ESTABLISHING A TELEWORK ARRANGEMENT require an approved DD Form 2946 must be signed in place before an employee is permitted to telework and maintained by the supervisor. Exhibit (5), (7) and (9).

Harmful due process procedure errors: of Operations Plans (COOP). The Agency did not have telework agreement in placed COOP. The attached telework agreement is to establish

COOP. DD Form 2946 was not signed by employee. Exhibit (8) - non telework eligible.

I pray the court, to be restored 164.25 hours of Loss of pay by using the Military Leave code in time and attendance. Correct my leave and earning statement back to weather and safety leave.

#### CERTIFICATE OF SERVICE

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

#### Electronic Mail:

Agency Representative Kevin Greenfield  
Department of Defense Office of the General  
Counsel Washington Headquarters Service &  
Pentagon Force Protection Agency WHS/OGC  
1155 Defense Pentagon, Rm. 2E1035  
Washington, DC 20301-1155

Appendix R Date: \_MSPB Court Documents August 9, 2021 – Harmful Due Process and Violation of non telework laws See Appendix 109-202. Omitted from decision

Signed KATHY LYNN CARTER  
EXHIBIT(S)

Exhibit (1) Under Secretary of Defense, Personnel Readiness Subject: Civilian Duty Status and Use

of Safety Leave during COVID-19, Dated March 30, 2020

Exhibit (2) OSD NA Net Assessment Memorandum of Office of Net Assessment, Subject: Notification of Telework Assignment (Order) dated : December 9, 2020

Exhibit (3) Mybiz+ other Defense Civilian Personnel Data System (DCPDS) - Application, effective date 22 Feb 2017, NOT ELEGIBLE- Not Eligible for Telework- Position Name G393A.Acquisition & Financial Support Spec.

Exhibit (4) Position Redescription G393A.Acquisition & Financial Support Spec dated January 13, 2004. Note: Need to be updated to include telework eligibility.

Exhibit (5) OSD NA Net Assessment, Memorandum of Office of Net Assessment Employees Subject Work Schedule and Telework Policy, dated December 13, 2019 Notification of Telework Assignment

Exhibit (6) complete Award History for Kathy Lynn Carter

Exhibit (7) Department of Defense Instruction Number 1035.01, Subject: Telework Policy, dated April 4, 2012 incorporating change 1 effective

April 7, 2020 - 2. Telework Eligibility, Paragraph (f) employee cannot be order to telework

Exhibit (8) DD 2946 "Department of Defense Telework Agreement" Disclosure: Voluntary, 12. CONTINUITY OF OPERATIONS DURING EMERGENCY SITUATIONS- Signed only by Supervisor Mr. Andrew May signed Dec 10, 2020. No signature from employee Block 15.

Exhibit (9) Deputy Chief Management Officer Administrative Instruction Number 117 March 31, 2015 Subject Telework Program, 3. TELEWORK ELIBIBILITY, Par (a) General. (2) employees cannot be ordered to telework and completed training before eligible to telework.

Exhibit (10) Icompass Training Certification - DoD 2021 Cyber Awareness Challenge completion on Feb 10, 2021 - AWOL Military Leave. completed training before eligible to telework

Exhibit (11) Leave and earning statement showing Leave Without Pay (Civilian Leave) vice Absent without leave (AWOL) Military Leave