APPENDIX DESIGNATION

Appendix A: Federal Circuit merits decision, *Reynolds v. Department of Justice*, No. 2025-1773, filed June 5, 2026. **Pet. App. 1a–7a.**

Appendix B: Federal Circuit order denying panel rehearing and rehearing en banc, *Reynolds v. Department of Justice*, No. 2025-1773, filed July 29, 2026. **Pet. App. 8a–9a.**

Appendix C: Merit Systems Protection Board Final Order, *Reynolds v. Department of Justice*, No. CH-0752-23-0078-I-2, dated March 20, 2025. **Pet. App. 10a–18a.**

Appendix D: Merit Systems Protection Board Initial Decision, *Reynolds v. Department of Justice*, No. CH-0752-23-0078-I-2, dated September 6, 2023. **Pet. App. 19a–40a.**

Appendix E: Kentucky Expungement Eligibility Certification and related Kentucky State Police and Administrative Office of the Courts criminal-history records concerning Petitioner, dated June 2026. **Pet. App. 41a–44a.**

Appendix F: Agency notice ending Petitioner's indefinite suspension without pay and placing Petitioner on paid administrative leave, effective May 22, 2023. **Pet. App. 45a–46a.**

Appendix G: Agency notice proposing Petitioner's indefinite suspension and final decision imposing the indefinite suspension. **Pet. App. 47a–54a.**

Appendix H: Pertinent statutory and regulatory provisions, including 5 U.S.C. §§ 5596, 7513(a), 7513(b)(1), and 7703(c), and 5 C.F.R. § 550.805. **Pet. App. 55a–57a.**

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

LANCE REYNOLDS,
Petitioner

v.

DEPARTMENT OF JUSTICE,
Respondent

2025-1773

Petition for review of the Merit Systems Protection Board in No. CH-0752-23-0078-I-2.

Decided: June 5, 2026

LANCE REYNOLDS, Annapolis, MD, pro se.

JANA MOSES, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for respondent. Also represented by ALBERT S. IAROSSI, PATRICIA M. MCCARTHY, BRETT SHUMATE; COLLEEN BERRY, Federal Bureau of Prisons, United States Department of Justice, Stockton, CA.

Before DYK and REYNA, *Circuit Judges*, and BISSOON, *Chief District Judge.*[1]

PER CURIAM.

Petitioner Lance Reynolds was an employee of the Department of Justice ("agency") employed as a Reentry Affairs Coordinator at United States Penitentiary Big Sandy in Kentucky, a law enforcement position. Mr. Reynolds, proceeding pro se, petitions for review of a Merit Systems Protection Board ("Board") decision upholding his indefinite suspension by the agency following his indictment for sexual abuse. We *affirm*.

BACKGROUND

Mr. Reynolds began service at the Big Sandy penitentiary in November 2019 as a Reentry Affairs Coordinator. In 2021, two other employees alleged to the agency that Mr. Reynolds had sexually assaulted them, and the Office of Inspector General ("OIG") at the Department of Justice opened an investigation. On July 8, 2022, a Kentucky grand jury indicted Mr. Reynolds based on his alleged conduct toward one coworker, charging him with Sexual Abuse in the Third Degree, a state misdemeanor offense with a maximum penalty of 90 days' imprisonment. *See* Ky. Rev. Stat. §§ 510.130(3), 532.090(2).

On July 12, 2022, in response to the indictment, the agency placed Mr. Reynolds on administrative leave with pay. On August 15, 2022, the agency informed Mr. Reynolds that it proposed to suspend him indefinitely without pay, and on October 14, 2022, the warden of the Big Sandy penitentiary informed Mr. Reynolds that he would be indefinitely suspended without pay. The warden cited "the

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[1] Honorable Cathy Bissoon, Chief District Judge, United States District Court for the Western District of Pennsylvania, sitting by designation.

extremely serious nature of the criminal charges against [Mr. Reynolds]" and determined that they outweighed the factors of his previous successful performance and prior military service. S. App'x 85.[2] The warden informed Mr. Reynolds that the suspension would "remain in effect until such time as there is a disposition of the charges against you, or there is sufficient evidence to either return you to duty or to support administrative action against you." S. App'x 86. Mr. Reynolds's indefinite suspension without pay began on October 20, 2022.

On May 8, 2023, a Kentucky court issued an order amending the sexual abuse charge against Mr. Reynolds to Harassment under Kentucky Rev. Stat. § 525.070(1)(a) and placing the amended charge on diversion, a deferral that would result in eventual dismissal subject to Mr. Reynolds's compliance with certain conditions. These conditions included that Mr. Reynolds would not commit new violations of law and that he would not contact or approach the complaining witness. On May 22, 2023, the agency ended Mr. Reynolds's indefinite suspension without pay, informing Mr. Reynolds that he would be placed on paid administrative leave until further notice. The OIG investigation was not completed until after the resolution of the criminal proceeding, consistent with the agency's usual practice.

Mr. Reynolds, then represented by counsel, appealed to the Board, challenging his indefinite suspension without pay and seeking back pay from the beginning of that suspension. Before the administrative judge, Mr. Reynolds represented that he did not contend that the indefinite suspension was improperly based on his indictment but argued that the agency should have cleared him to return to paid duty more promptly. The administrative judge found

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[2] Citations to "S. App'x" refer to the Corrected Supplemental Appendix filed by the respondent. Dkt. No. 41.

that the agency imposed the suspension for an authorized reason and that it "properly continued the suspension pending the outcome of the criminal proceeding against [Mr. Reynolds] when he entered into a diversion agreement" and issued an initial decision affirming the indefinite suspension on September 6, 2023. App'x 7.[3] The Board denied Mr. Reynolds's petition for review and affirmed the initial decision as the Board's final decision on March 20, 2025.

Mr. Reynolds, now pro se, timely petitions for review. We have jurisdiction under 28 U.S.C. § 1295(a)(9).

DISCUSSION

We may only set aside the Board's decision only if it is "(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 been followed; or (3) unsupported by substantial evidence." 5 U.S.C. § 7703(c). "We review the Board's legal decisions de novo and its findings of fact for substantial-evidence support." *Reyes v. Merit Sys. Prot. Bd.*, 159 F.4th 1356, 1359 (Fed. Cir. 2025).

On review, it is unclear what arguments Mr. Reynolds is making. In his informal opening brief, Mr. Reynolds appears to contend that the indefinite suspension was unjustified from the outset. In reply, he disavows this theory, stating it "is not" a "challenge to the initial imposition of an indefinite suspension" and argues as he did before the Board that the internal investigation should have been completed at an earlier date and that he should have been restored to paid leave status at an earlier date. Pet'r's Informal Reply Br. 1. While the former argument appears to

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[3] Citations to "App'x" refer to the Appendix filed by Mr. Reynolds. Dkt. No. 23.

have been waived before the Board, neither argument has merit.

First, the Board did not err in sustaining the imposition of the indefinite suspension. "[T]o sustain an indefinite suspension, the agency must establish by a preponderance of the evidence that it had reasonable cause to believe the employee committed a crime for which imprisonment may be imposed." *Pararas-Carayannis v. Dep't of Com.*, 9 F.3d 955, 957 (Fed. Cir. 1993) (footnotes omitted). "[A]n indictment for a crime for which a sentence of imprisonment may be imposed will, as a general rule, provide reasonable cause . . . ." *Henderson v. Dep't of Veterans Affs.*, 878 F.3d 1044, 1055 (Fed. Cir. 2017) (quoting *Richardson v. U.S. Customs Serv.*, 47 F.3d 415, 419 (Fed. Cir. 1995)). Additionally, the agency "must prove that the suspension would promote the efficiency of the service." *Pararas-Carayannis*, 9 F.3d at 957 (citing 5 U.S.C. § 7513(a)).

The agency's decision to suspend Mr. Reynolds based on the criminal charge finds ample support in our cases. *See Dunnington v. Dep't of Just.*, 956 F.2d 1151, 1157 (Fed. Cir. 1992) ("[A]n indictment following an investigation and grand jury proceedings[] would provide, absent special circumstances, more than enough evidence of possible misconduct to meet the threshold requirement of reasonable cause to suspend."); *Richardson*, 47 F.3d at 419 ("[W]hen the nature of the crime alleged relates to the employee's ability to perform his or her duties, an agency may summarily suspend the employee, without pay, pending the outcome of the criminal proceedings.").

Mr. Reynolds argues that the agency failed to demonstrate a nexus between his alleged conduct and the efficiency of the service. The agency and the Board identified ample nexus between the alleged conduct and the efficiency of the service—sexual misconduct that was "antithetical to [Mr. Reynolds's] role as a Federal law enforcement officer"

and that would "implicate [his] ability to perform [his] duties" requiring him to be "directly responsible for the supervision and correction of inmates." S. App'x 86. Moreover, the alleged conduct underlying the indictment was alleged to have occurred while Mr. Reynolds was on duty and involved a coworker.

Mr. Reynolds also argues that the Board failed to consider mitigating factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), supporting a lesser penalty. Mr. Reynolds raises that he (1) "[h]ad no prior discipline"; (2) "[w]as never arrested or convicted"; (3) "[d]enied the allegations throughout"; (4) "[u]ltimately had the case dismissed"; and (5) "[s]uffered several emotional, physical, and mental hardship from months without pay." Pet'r's Br. 9. However, except for his lack of prior discipline, these facts are not relevant under *Douglas*. *See Connor v. Dep't of Veterans Affs.*, 8 F.4th 1319, 1324 (Fed. Cir. 2021) (quoting *Douglas*, 5 M.S.P.R. at 305–06). As for Mr. Reynolds's lack of prior discipline and satisfactory work record, the deciding official explicitly recognized "that [his] performance has been at a successful level or higher" but found that fact to be outweighed by the seriousness of alleged misconduct. S. App'x 85. The Board did not err in determining that the deciding official "considered all relevant aggravating and mitigating factors in determining that an indefinite suspension was the appropriate penalty." App'x 9.

Second, Mr. Reynolds argues that the suspension should have been terminated earlier. An agency may suspend an employee "pending the outcome of criminal proceedings, but then the agency must terminate the suspension within a reasonable amount of time after resolution of the criminal charges." *Morrison v. Nat'l Sci. Found.*, 423 F.3d 1366, 1369 (Fed. Cir. 2005). The agency restored Mr. Reynolds to paid status fifteen days after entry of the diversion order. We see no error in the Board's determination that the agency had reasonable cause to

indefinitely suspend Mr. Reynolds until his criminal case was resolved, and Mr. Reynolds has not established that the agency should have terminated his suspension at an earlier date.

We have considered Mr. Reynolds's remaining arguments and find them unpersuasive.

AFFIRMED

COSTS

No costs.

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

LANCE REYNOLDS,
Petitioner

v.

DEPARTMENT OF JUSTICE,
Respondent

2025-1773

Petition for review of the Merit Systems Protection Board in No. CH-0752-23-0078-I-2.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*[1], and Bissoon, *Chief District Judge.*[2]

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[1] Circuit Judge Newman did not participate.

[2] Honorable Cathy Bissoon, Chief District Judge, United States District Court for the Western District of

PER CURIAM.

ORDER

Lance Reynolds filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

July 29, 2026
Date

Pennsylvania, sitting by designation, participated only in the decision on the petition for panel rehearing.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

LANCE REYNOLDS,
Appellant,

v.

DEPARTMENT OF JUSTICE,
Agency.

DOCKET NUMBER
CH-0752-23-0078-I-2

DATE: March 20, 2025

THIS FINAL ORDER IS NONPRECEDENTIAL[1]

Andrew Richard Young, Esquire, and Jacquelyn Trevino, Esquire, Houston, Texas, for the appellant.

Adam Eisenstein, Esquire, and Candice Geller, Washington, D.C., for the agency.

Colleen Berry, Stockton, California, for the agency.

BEFORE

Henry J. Kerner, Vice Chairman
Cathy A. Harris, Member

FINAL ORDER

The appellant has filed a petition for review of the initial decision, which affirmed his indefinite suspension. On petition for review, the appellant argues that the suspension did not promote the efficiency of the service and was

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

unreasonable because it was imposed in a discriminatory manner. Generally, we grant petitions such as this one only in the following circumstances: the initial decision contains erroneous findings of material fact; 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 administrative 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; or new and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115). After fully considering the filings in this appeal, we conclude that the petitioner has not established any basis under section 1201.115 for granting the petition for review. Therefore, we DENY the petition for review and AFFIRM the initial decision, which is now the Board's final decision. 5 C.F.R. § 1201.113(b).

NOTICE OF APPEAL RIGHTS[2]

You may obtain review of this final decision. 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 final decision, you should immediately review the law applicable to your claims and carefully follow all

[2] Since the issuance of the initial decision in this matter, the Board may have updated the notice of review rights included in final decisions. As indicated in the notice, the Board cannot advise which option is most appropriate in any matter.

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 of issuance of this decision. 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.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 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 you receive this decision. 5 U.S.C. § 7703(b)(2); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the district court no later than **30 calendar days** after your representative receives this decision. 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.

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 you receive this decision. 5 U.S.C. § 7702(b)(1). If you have a representative in this case, and your representative receives this decision before you do, then you must file with the EEOC no later than **30 calendar days** after your representative receives this decision.

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 either with the U.S. Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction.[3] The court of appeals must receive your petition for review within **60 days** of the date of issuance of this decision. 5 U.S.C. § 7703(b)(1)(B).

[3] The original statutory provision that provided for judicial review of certain whistleblower claims by any court of appeals of competent jurisdiction expired on December 27, 2017. The All Circuit Review Act, signed into law by the President on July 7, 2018, permanently allows appellants to file petitions for judicial review of MSPB decisions in certain whistleblower reprisal cases with the U.S. Court of Appeals for the Federal Circuit or any other circuit court of appeals of competent jurisdiction. The All Circuit Review Act is retroactive to November 26, 2017. Pub. L. No. 115-195, 132 Stat. 1510.

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.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 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.

FOR THE BOARD:

Gina K. Grippando

Gina K. Grippando
Clerk of the Board

Washington, D.C.

CERTIFICATE OF SERVICE

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

Appellant

Certified Mail — Lance Reynolds
5920 Federal Circle

Ashland, Kentucky 41102

Agency Representative

Electronic Service — Colleen Berry
Served on email address registered with MSPB

Agency Representative

Electronic Service — Adam Eisenstein
Served on email address registered with MSPB

Agency Representative

Electronic Service — Candice Geller
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Agency Representative

Electronic Service — Associate General Counsel
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Electronic Service — Jacquelyn Trevino
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03/20/2025
(Date)

Markita Bryant
Markita Bryant
Paralegal Specialist

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

LANCE REYNOLDS,
Appellant,

v.

DEPARTMENT OF JUSTICE,
Agency.

DOCKET NUMBER
CH-0752-23-0078-I-2

DATE: September 6, 2023

Andrew Richard Young, Houston, Texas, for the appellant.

Jacquelyn Trevino, Houston, Texas, for the appellant.

Adam Eisenstein, Washington, D.C., for the agency.

BEFORE
Jennifer Cassell
Administrative Judge

INITIAL DECISION

Lance Reynolds (appellant) timely refiled this appeal with the Merit Systems Protection Board (Board or MSPB) challenging the decision of the Department of Justice (agency or DOJ) to indefinitely suspend him without pay from his position as a Reentry Affairs Coordinator. Refiled Appeal File (RAF), Tab 1, Tab 5 at 1. The Board has jurisdiction over this appeal pursuant to 5 U.S.C. §§ 7511-7513, 7701(a). On August 7-8, 2023, I held the hearing requested by the appellant via Zoom for Government. RAF, Tabs 17, 19 (Hearing Recording (HR)).

For the following reasons, I AFFIRM the agency's indefinite suspension decision.

I. BACKGROUND

The parties stipulated to the following facts. HR, Administrative Judge Hearing Day 2 Opening Remarks. The appellant is a Reentry Affairs Coordinator, GS-0101-11, at the agency's United States Penitentiary Big Sandy in Inez, Kentucky (USP Big Sandy). He began this position on November 24, 2019. RAF, Tab 12 at 4, ¶ 1 (Parties Joint Stipulated Facts). As an agency employee at USP Big Sandy, the appellant was also a federal law enforcement officer. *Id.* at 4, ¶ 2.

On July 8, 2022, a grand jury in Martin County, Kentucky issued an indictment charging the appellant with Sexual Abuse in the Third (3rd) Degree. RAF, Tab 12 at 5, ¶ 3. The appellant was charged with violating Section 510.130 of the Kentucky Criminal Code, a Class B misdemeanor. *See id.* at 5, ¶ 4. Violations of this statute carry a maximum penalty of not more than 90 days imprisonment and a fine of not more than $250. *Id.* at 5, ¶ 5.

On July 12, 2022, Warden Hector Joyner placed the appellant on administrative leave, with pay, until further notice. RAF, Tab 12 at 5, ¶ 6. On August 15, 2022, Associate Warden E.A. Earwin issued a proposal to indefinitely suspend the appellant. *Id.* at 5, ¶ 7. On approximately August 26, 2022, the appellant issued a written response to the proposed indefinite suspension. *Id.* at 5, ¶ 8. On October 14, 2022, Warden Joyner issued a decision to place the appellant on indefinite suspension, which became effective on October 20, 2022. *See id.* at 5, ¶ 9; IAF, Tab 9 at 16-17.

This refiled appeal challenging the indefinite suspension ensued.[1] RAF, Tab 1, Tab 5 at 1. Prior to the hearing, I notified the parties of the legal standards applicable to the appeal. RAF, Tab 11 at 4-5, Tab 6. I reserve additional factual findings for the analysis section below.

II. LEGAL STANDARDS

An agency's suspension of an employee without pay for more than 14 days is an "adverse action" appealable to the Board. 5 U.S.C. §§ 7512(2), 7513(d); 5 C.F.R. § 1201.3(a)(1); *Henderson v. Department of Veterans Affairs*, 123 M.S.P.R. 536, ¶ 5 (2016). The agency bears the burden of proving that an adverse action, such as an indefinite suspension, is supported by a preponderance of the evidence.[2] 5 C.F.R. § 1201.56(b)(1)(ii).

To sustain its indefinite suspension, the agency must show that: (1) it imposed the suspension for an authorized reason; (2) the suspension has an ascertainable end, i.e., a determinable condition subsequent that will bring the suspension to a conclusion; (3) the suspension bears a nexus to the efficiency of the service; and (4) the penalty is reasonable. *Henderson*, 123 M.S.P.R. 536, ¶ 5.

III. FINDINGS AND ANALYSIS

A. The Agency Proved the Validity of the Indefinite Suspension Action.

After fully considering the record evidence, I find the agency has met its burden of establishing by preponderant evidence that it imposed the suspension

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[1] On November 17, 2022, the appellant timely filed his initial appeal challenging the agency's indefinite suspension action. *Reynolds v. Department of Justice*, MSPB Docket No., CH-0752-23-0078-I-1, Initial Appeal File (IAF), Tab 1. With the parties' consent, I issued a January 18, 2023 Initial Decision (ID) dismissing that appeal without prejudice to the appellant's right to refile the appeal upon resolution of the criminal case, which was pending against him at that time. IAF, Tab 14. The appellant timely refiled this appeal pursuant to the refiling provisions set forth in the January 2023 ID. RAF, Tab 5 at 1.

[2] Preponderant evidence is the degree of relevant evidence that a reasonable person, considering the record as a whole, would need to find that a contested fact is more likely true than untrue. 5 C.F.R. § 1201.4(q).

for an authorized reason and that the suspension had an ascertainable end. I further find the agency proved nexus and that the penalty was reasonable.

1. The agency had reasonable cause to indefinitely suspend the appellant, and the suspension had an ascertainable end.

For the reasons that follow, I find the agency proved that it suspended the appellant for an authorized reason and that the suspension had an ascertainable end. One authorized circumstance for imposing an indefinite suspension is when an agency has reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment could be imposed. *Mattison v. Department of Veterans Affairs*, 123 M.S.P.R. 492, ¶ 5 (2016); *see Dunnington v. Department of Justice*, 956 F.2d 1151, 1155-56 (Fed. Cir. 1992). The suspension continues pending the outcome of the criminal proceeding or any subsequent agency action following the conclusion of the criminal process. *Hernandez v. Department of the Navy*, 120 M.S.P.R. 14, ¶ 6 (2013). Reasonable cause "is virtually synonymous with probable cause, which is necessary to support a grand jury indictment, i.e., probable cause to believe that a crime has been committed and that the accused has probably committed it." *Hernandez*, 120 M.S.P.R. 14, ¶ 7 (internal quotation marks and citation omitted). An arrest or an arrest warrant alone is an insufficient indication of reasonable cause. *Id.* A formal judicial determination following a preliminary hearing or an indictment following an investigation and grand jury proceedings is more than sufficient. *Id.*

Here, on July 8, 2022, a Kentucky grand jury issued an indictment charging the appellant with Sexual Abuse in the 3rd Degree, a Class B misdemeanor that carries a penalty of up to 90 days imprisonment. RAF, Tab 12 at 5, ¶¶ 3-5; IAF, Tab 9 at 35, 38-39. The indictment charged the appellant with knowingly and unlawfully subjecting a co-worker at USP Big Sandy to sexual contact without consent. IAF, Tab 9 at 35. Upon learning of the indictment, the agency placed the appellant on administrative leave with pay and began the process of indefinitely suspending him. IAF, Tab 9 at 32-33; HR, Testimony of Joshua Jackson (Human Resources Manager). The agency followed its standard indefinite suspension procedures, including issuing a proposal notice to the

appellant and affording him the opportunity to respond to the proposal, which identified the indictment as the basis for the indefinite suspension. HR, Jackson Testimony; RAF, Tab 12 at 5, ¶¶ 6-8; IAF, Tab 9 at 24-30. Thereafter, the agency placed the appellant on indefinite suspension without pay effective October 20, 2022. IAF, Tab 9 at 16-22; RAF, Tab 12 at 5, ¶ 9. The indefinite suspension decision stated that the actions described in the indictment were antithetical to the appellant's role as a federal law enforcement officer and explained that the suspension would remain in effect "until such time as there is a disposition of the charges against [him], or there is sufficient evidence to return [him] to duty or to support administrative action against [him]." IAF, Tab 9 at 20.

Six months later, on May 8, 2023, the Kentucky criminal court issued an Order in the appellant's case that constituted a final disposition of the criminal proceedings against him. RAF, Tab 10 at 15; HR, Lance Reynolds Testimony. The May 8, 2023 Order placed the Sexual Abuse in the 3rd Degree count on diversion for two years based on the following agreed-upon conditions: the appellant having no new violations of law; the appellant not having any direct or third-party communication with or being within 100 feet of the USP Big Sandy co-worker referenced in the indictment; and the appellant paying court costs. RAF, Tab 10 at 15. After learning of the diversion agreement, the agency ended the indefinite suspension and placed the appellant on paid administrative leave, effective May 22, 2023. HR, Jackson Testimony; HR, Reynolds Testimony; RAF, Tab 10 at 16-19.

The appellant does not dispute these facts, nor does he contend that the agency improperly based the indefinite suspension on the indictment. *See* RAF, Tab 12 at 5, ¶¶ 3-9 (parties joint stipulated facts); HR, Reynolds Testimony and Closing Remarks. Instead, the appellant argues that the agency should have placed him back in paid duty status when it had sufficient evidence to return him to work. HR, Appellant Closing Remarks. Specifically, the appellant argues that

the agency should have more quickly investigated the allegations levied against him by his co-worker and that such an investigation could have provided sufficient evidence to return him to duty sooner. *Id.* The agency acknowledges that USP Big Sandy referred two employees' allegations of sexual assault by the appellant for investigation to the Office of Internal Affairs (OIA) in September 2021. RAF, Tab 10 at 11-14. The OIA referred the matter to DOJ's Office of Inspector General, and the investigation was completed in July 2023, after conclusion of the appellant's criminal case. HR, Jackson Testimony.

Based on my thorough review and consideration of the record evidence, I find the agency appropriately investigated the allegations of sexual assault by the appellant and properly placed him on an indefinite suspension. Specifically, I find the agency proved by preponderant evidence that the grand jury's criminal indictment against the appellant gave the agency sufficient reasonable cause to believe the appellant had committed a crime for which he could be imprisoned. *See Dunnington*, 956 F.2d at 1157 (an indictment following grand jury proceeding provides more than enough evidence to meet the threshold requirement of reasonable cause to suspend). I further find the agency proved by preponderant evidence that it properly continued the suspension pending the outcome of the criminal proceeding against the appellant when he entered into a diversion agreement. *See Hernandez*, 120 M.S.P.R. 14, ¶ 6. I am unpersuaded by the appellant's argument that the agency's investigation could have provided "sufficient evidence" to return him to duty sooner, particularly where the internal investigation was completed after the conclusion of the criminal proceeding, which is the agency's standard practice. HR, Jackson Testimony.

Thus, I find the agency proved by preponderant evidence that it had reasonable cause to indefinitely suspend the appellant and the suspension had a determinable condition subsequent, specifically, the resolution of his criminal case, that brought the suspension to a conclusion.

2. The suspension promotes the efficiency of the service and was a reasonable penalty.

As explained below, I find the agency met its burden to prove that it took the indefinite suspension action for cause that promotes the efficiency of the service and that the penalty was reasonable. An agency must show the adverse action will promote the efficiency of the service. 5 U.S.C. § 7513(a). To show that the indefinite suspension promotes the efficiency of the service, the agency must establish a nexus between the appellant's "alleged acts of misconduct and the efficiency of the service." *Dunnington*, 956 F.2d at 1155 (citing *Hale v. Department of Transportation*, 772 F.2d 882, 885 (Fed. Cir. 1985)). As our reviewing court—the U.S. Court of Appeals for the Federal Circuit—has observed, "Courts have repeatedly held that where an employee's misconduct is contrary to the agency's mission, the agency need not present proof of a direct effect on the employee's job performance." *Allred v. Department of Health and Human Services*, 786 F.2d 1128, 1131 (Fed. Cir. 1986).

Here, the appellant was indicted for Sexual Abuse in the Third Degree, which is a serious crime punishable by up to 90 days imprisonment. IAF, Tab 9 at 35. Notably, the allegation underlying the indictment involved the appellant subjecting his co-worker to nonconsensual sexual contact while at work at the USP Big Sandy. *Id.*; HR, Jackson Testimony. Moreover, the agency's suspension decision noted the serious nature of the criminal charge, the higher standard of conduct expected of a federal law enforcement officer, and that the appellant's actions implicated his ability to perform his duties. IAF, Tab 9 at 19-20. As such, I find the agency established a nexus where the appellant was indicted for sexual abuse of a co-worker while on duty and such a serious criminal indictment is antithetical to his role as a federal law enforcement officer. *See Dunnington*, 956 F.2d at 1158 (upholding the Board's finding of nexus where, given the nature of the pending criminal charges, the appellant had lost the confidence of his supervisors and could not be trusted as a law enforcement

officer). For these reasons, I find that the agency proved by preponderant evidence a nexus between the appellant's criminal indictment and the efficiency of the service.

Furthermore, I find the suspension penalty was reasonable under the circumstances presented here. To support an indefinite suspension, the agency must establish that the penalty is reasonable. *Harding v. Department of Veterans Affairs*, 115 M.S.P.R. 284, ¶ 22 (2010). An agency may reasonably decide to suspend an employee based on pending criminal charges even though there has been no conviction. *Id.* (citing *Dunnington*, 956 F.2d at 1156–58). Considering the appellant's criminal indictment, the agency's evidence that management lost confidence in his ability to carry out the performance of his duties, and the unrefuted testimony that the agency could not finalize its internal investigation until the criminal proceedings concluded, I find that the agency reasonably decided to impose an indefinite suspension pending resolution of the criminal proceedings. IAF, Tab 9 at 19-20, 27, 35; HR, Jackson Testimony. Moreover, the suspension decision demonstrates that the deciding official considered all relevant aggravating and mitigating factors in determining that an indefinite suspension was the appropriate penalty, such as the seriousness of the criminal charge, the appellant's prior successful performance, and the appellant's written response, including his allegations that he had been subjected to discrimination and false statements by other staff members. IAF, Tab 9 at 19-20; *see Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). As such, I find the agency reasonably decided to impose an indefinite suspension.

Thus, the agency established a nexus between the conduct alleged in the appellant's indictment and the efficiency of the service and proved that the indefinite suspension did not exceed the limits of reasonableness. For the foregoing reasons, I sustain the agency's indefinite suspension action.

B. The Appellant Failed to Prove His Affirmative Defenses.

The appellant raised the affirmative defenses of discrimination on the basis of his age, disability, race, and sexual orientation. RAF, Tab 5 at 2. The appellant did not respond to the Board's affirmative defenses order, which notified the parties of the legal standards and burdens of proof as to these affirmative defenses. RAF, Tab 6. For the reasons explained below, I find the appellant failed to prove his affirmative defenses.

1. The appellant did not prove age and disability discrimination.

At the outset of this appeal, the appellant asserted that the agency discriminated against him on the basis of his disability and age. RAF, Tab 5 at 2. Prior to the hearing, the appellant submitted 15 pages of medical documentation, which stated only dates of his past medical appointments and provided no medical diagnoses, nor information regarding any medical conditions. RAF, Tab 12 at 7-21. Save for these records, the appellant submitted no other documentary evidence, testimonial evidence, or argument to support his allegation that the agency discriminated against him on the basis of a disability. Likewise, the appellant offered no testimony, nor any documentary evidence with respect to his age discrimination claim.

To the extent that the appellant has not abandoned these claims, I find he has fallen woefully short of his burden to prove age or disability discrimination due to the absence of any evidence supporting these claims. *See* 5 C.F.R. § 1201.56(b)(2)(i)(C) (the appellant bears the burden of proving by a preponderance of the evidence any affirmative defenses). Thus, I must deny these defenses.

2. The appellant did not prove race and sexual orientation discrimination.

The appellant also asserted that the agency discriminated against him as an openly gay, Black person. HR, Reynolds Testimony. The substantive standard for Title VII claims in the federal sector is set forth in 42 U.S.C. § 2000e-16,

which provides that all personnel actions affecting covered employees "shall be made free from any discrimination based on race, color, religion, sex, or national origin." *Pridgen v. Office of Management and Budget*, 2022 MSPB 31 , ¶ 20. Discrimination based on sexual orientation constitutes discrimination based on sex prohibited by 42 U.S.C. § 2000e-16. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1739-41 (2020). An appellant may receive injunctive, forward-looking relief if he shows that Title VII discrimination was a "motivating factor" in the employment action, that is, that prohibited discrimination played some part in the agency's indefinite suspension. *Pridgen*, 2022 MSPB 31, ¶ 22. To obtain the full relief under the statute, including status quo ante relief, he must show that such discrimination was a "but-for" cause of the employment outcome. *Id.*

The methods by which an appellant may prove a claim of discrimination under Title VII are: (1) direct evidence; (2) circumstantial evidence, which may include: (a) evidence of suspicious timing, ambiguous statements oral or written, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn, also known as "convincing mosaic"; (b) comparator evidence showing that employees similarly situated to the plaintiff, other than in the characteristic on which an employer is forbidden to base a difference in treatment, received systematically better treatment; (c) evidence that the agency's stated reason for its action is "unworthy of belief, a mere pretext for discrimination" (i.e., the burden-shifting standard under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973)); and (3) some combination of direct and indirect evidence. *Pridgen*, 2022 MSPB 31, ¶ 24. Each type of evidence may be sufficient by itself or together with other evidence. *Id.* Whatever theory of discrimination the appellant pursues and whatever evidence is introduced to support it, all the evidence must be examined as a whole to determine if the appellant has shown by a preponderance of the evidence that the prohibited consideration was either a motivating factor in or a but-for cause of the contested personnel action.

During the hearing, the appellant testified that the agency treated him more harshly than individuals of a different race and sexual orientation who were investigated for misconduct but were not placed on indefinite suspension. HR, Reynolds Testimony. Contrary to the appellant's contentions, the agency presented unrefuted evidence that there were no other employees who were *criminally indicted* but not suspended. HR, Jackson Testimony; Reynolds Testimony. To be similarly situated, comparators must have engaged in conduct similar to the appellant's without differentiating or mitigating circumstances. *See Pridgen,* 2022 MSPB 31, ¶ 27 (*citing Fox v. Department of the Army*, 120 M.S.P.R. 529, ¶ 37 (2014) (discussing the use of comparator evidence in connection with a disability discrimination claim)). Thus, I find the appellant failed to identify a similarly situated employee to support a disparate treatment discrimination claim. *Fox*, 120 M.S.P.R. 529, ¶ 37.

The appellant also testified that several of his co-workers and Warden Joyner were aware of his sexual orientation. However, other than testifying that agency employees knew his race and sexual orientation, the appellant offered no testimony or other evidence showing that the proposing or deciding officials made any comments or exhibited any behavior from which an inference of discriminatory intent might be drawn. HR, Reynolds Testimony. To the contrary, the appellant admitted that Associate Warden Earwin and Warden Joyner were supportive of him as a "person of color" and being "openly gay." *Id.* As such, I find the appellant failed to establish a prima facie case of discrimination. Finally, even if I found that the appellant had done so here, the agency has shown that the criminal indictment issued by the grand jury was a legitimate, nondiscriminatory reason for the indefinite suspension.

Having considered the record as a whole, I find that the appellant has not proven by preponderant evidence that his race or sexual orientation was a motivating factor or a but-for cause in the agency's indefinite suspension

decision. *See Pridgen*, 2022 MSPB 31, ¶¶ 30-33. Accordingly, I deny the appellant's affirmative defenses.

DECISION

For the foregoing reasons, the agency's action is AFFIRMED.

FOR THE BOARD: /S/
Jennifer Cassell
Administrative Judge

NOTICE TO PARTIES CONCERNING SETTLEMENT

The date that this initial decision becomes final, which is set forth below, is the last day that the parties may file a settlement agreement, but the administrative judge may vacate the initial decision in order to accept such an agreement into the record after that date. *See* 5 C.F.R. § 1201.112(a)(4).

NOTICE TO APPELLANT

This initial decision will become final on **October 11, 2023**, unless a petition for review is filed by that date.[3] 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 initial

[3] On August 4, 2023, MSPB announced the October 2, 2023 launch of the new e-Appeal and the planned downtime for the system transition. Due to this transition, MSPB will suspend the processing of all cases beginning on Saturday, September 9, 2023, through Friday, October 6, 2023. All filing and processing deadlines that fall during that period will be automatically extended by 28 calendar days. A copy of this announcement is available on the MSPB website at www.mspb.gov.

decision becomes final also controls when you can file a petition for review with one of the authorities discussed in the "Notice of Appeal Rights" section, below. The paragraphs that follow tell you how and when to file with the Board or one of those authorities. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review.

If the other party has already filed a timely petition for review, you may file a cross petition for review. Your petition or cross petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file it with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.
Washington, DC 20419

A petition or cross petition for review may be filed by mail, facsimile (fax), personal or commercial delivery, or electronic filing. A petition submitted by electronic filing must comply with the requirements of 5 C.F.R. § 1201.14, and may only be accomplished at the Board's e-Appeal website (https://e-appeal.mspb.gov).

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.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 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. 420 (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.

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.cafc.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's Rules of Practice, and Forms 5, 6, 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

CERTIFICATE OF SERVICE

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

Appellant

Electronic Mail — Lance Reynolds
5920 Federal Circle
Ashland, KY 41102

Appellant Representative

Electronic Mail — Andrew Richard Young
The Law Office of Aaron Wersing, Pllc
2656 S Loop W Suite 210
Houston, TX 77054

Electronic Mail — Jacquelyn Trevino
2656 South Loop Suite 210W
Houston, TX 77054

Agency Representative

Electronic Mail — Adam Eisenstein
Department of Justice
320 First St, NW
Room 252
Washington, DC 20534

Electronic Mail

Employment Law Branch
Bureau of Prisons/Federal Prison System
Associate General Counsel
Office of the General Counsel
320 First St., NW
Washington, DC 20534

September 6, 2023
(Date)

/s/
Pamela Z. Jackson
Supervisory Paralegal
Specialist

EXPUNGEMENT ELIGIBILITY CERTIFICATION NOTICE

Expungement certification expires 30 days from report date listed below.

Report Date: 06/24/2026

Name: REYNOLDS, LANCE **DOB: 02/24/1981**
Request ID: 66644927 **SSN: XXX-XX-5179**

This expungement certification contains 3 parts: (1) Certification Notice, (2) Kentucky State Police Criminal History Report and (3) Administrative Office of the Courts Criminal Record Report. The pages are sequentially numbered for authentication purposes.

Pursuant to KRS 431.079, the Administrative Office of the Courts and the Department of Kentucky State Police hereby certify that they have conducted a search of their respective criminal history repositories and that the subject identified above is or is not eligible for an expungement pursuant to KRS 431.076 or 431.078, for the charges listed below.

66575928 : : 000001 of 000004

Arrest Date: Case: Eligible
Charge:

******* END OF NOTICE *******

COMMONWEALTH OF KENTUCKY

Criminal Identification and Records Branch

Criminal Records Dissemination Section
1266 Louisville Road
Frankfort, KY 40601
Phone (502) 227-8700
ksp.backgroundchecks@ky.gov

Requesting Agency:
KENTUCKY STATE POLICE EXPUNGEMENT
1266 LOUISVILLE ROAD
FRANKFORT, KY 40601

Report Date: June 24, 2026

Subject of Criminal Record Check:

Name: REYNOLDS, LANCE

Search Type: Expungement

Criminal History Search Results:

A Criminal History record was NOT found on the above individual.

Sex Offender Registry Search Results:

The above individual is not currently listed on the Dru Sjodin National Sex Offender Public Website.

This response is based on a statewide search of CCH utilizing the name, date of birth, and Social Security number provided for the criminal record check subject.

Certified By: _____

The Kentucky State Police Criminal Records Section has conducted a search of the Kentucky Computerized Criminal History (CCH) Repository on the individual listed above. The Repository does not necessarily contain all arrest data, but only that which has been reported to the Kentucky CCH and is available for the dissemination under state and federal law.

66575928 : : 000002 of 000004

RECORDS UNIT
1001 VANDALAY DRIVE
FRANKFORT, KY 40601

LANCE REYNOLDS
2494 RIVA RD. #2203
ANNAPOLIS, MD 21401

66575928 : : 000003 of 000004

Administrative Office of the Courts

COURTNET Criminal History Record

AOC COURTNET DISPOSITION SYSTEM DISCLAIMER

Enclosed is a copy of information on cases you have had in Kentucky Courts. This **COURTNET** Disposition System record is being provided for your information. This request is generally made for **government housing, pre-employment searches, childcare workers, adoptions, or other purposes.**

This request was made by **LANCE REYNOLDS** and they have received a copy of this information. If you believe it contains any errors, or you have any questions, please feel free to contact us at **(502) 573-1682** or **(800) 928-6381**

The **Administrative Office of the Courts (AOC) CANNOT GUARANTEE** the accuracy of the attached information. If you believe there is an error contained in the record please contact Records Unit at (502) 573-1682.

Information received from **COURTNET** is subject to change, reprogramming, modifications of format and availability at the direction of the AOC, and may not at any particular moment reflect the true status of court cases due to ordinary limitations, delay or error in the system's operation.

The AOC disclaims any warranty as to the validity of the information obtained from **COURTNET**. **The recipient is solely responsible for verifying information received from COURTNET through the cross-referencing of the official court record.** The AOC shall not be liable to the recipient, or to any third party using the system or information obtained thereby, for any damages whatsoever arising out of this policy, or the use of **COURTNET**.

BATCH ID: 0004594875 MAILING **1** OF **1** **REQUEST ID:** 66644927



0101

BATCH ID: 0004594875 **REQUEST ID:** 66644927

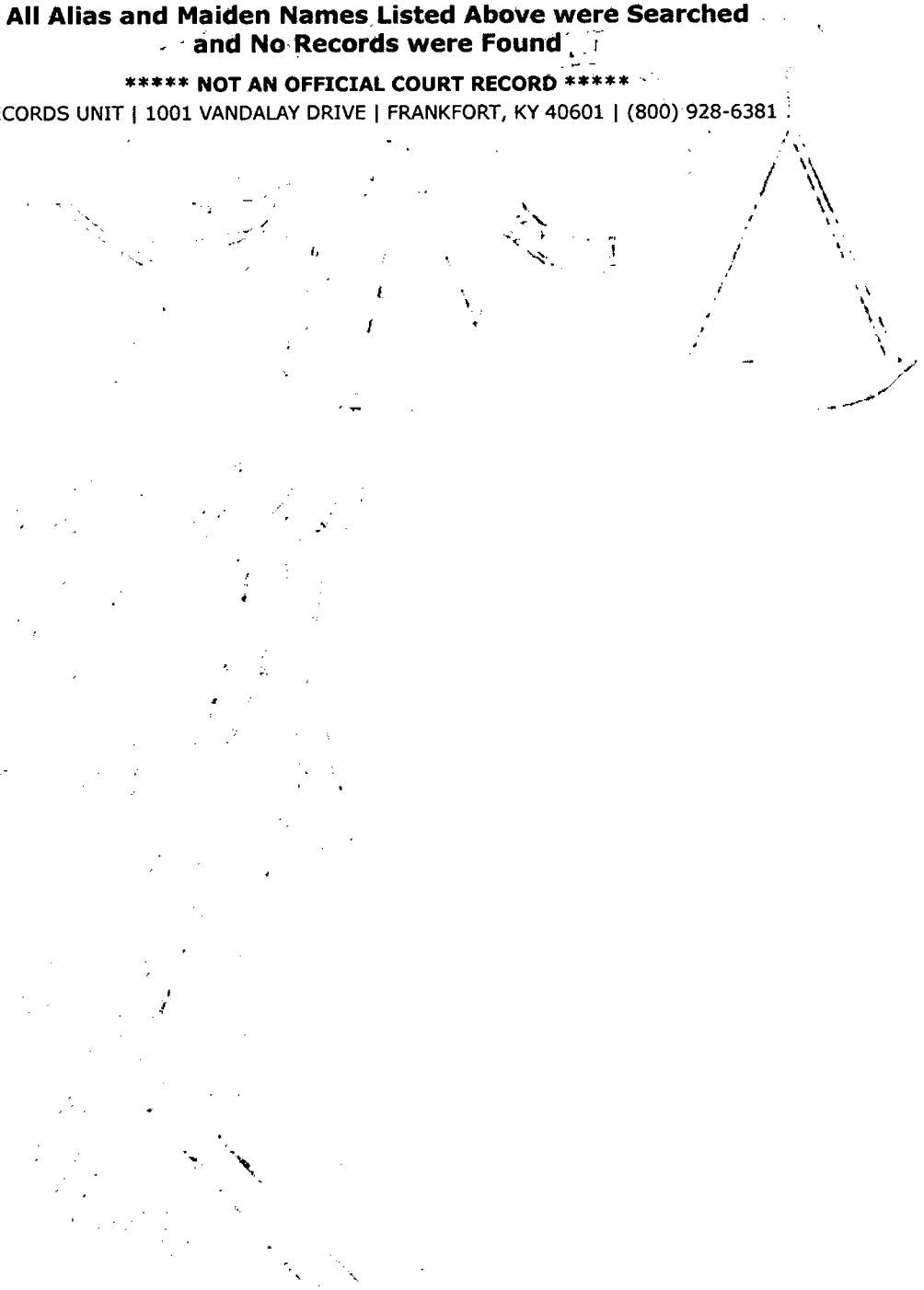
Request Information Provided	
Name: **REYNOLDS, LANCE**	
DOB: **2/24/1981**	DLN: **n/s**

All Information Provided Above Has Been Used To Fulfill Your Request
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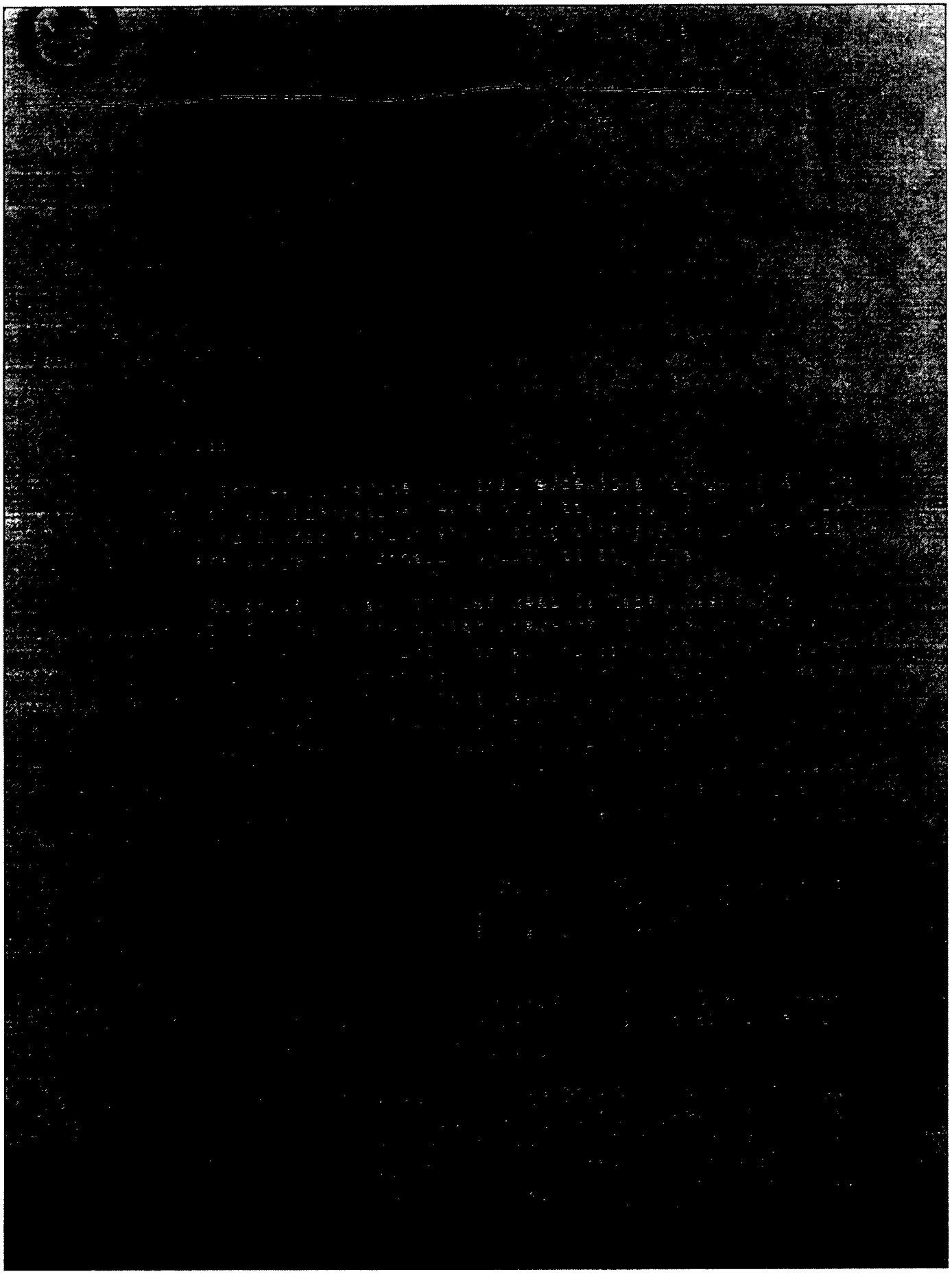
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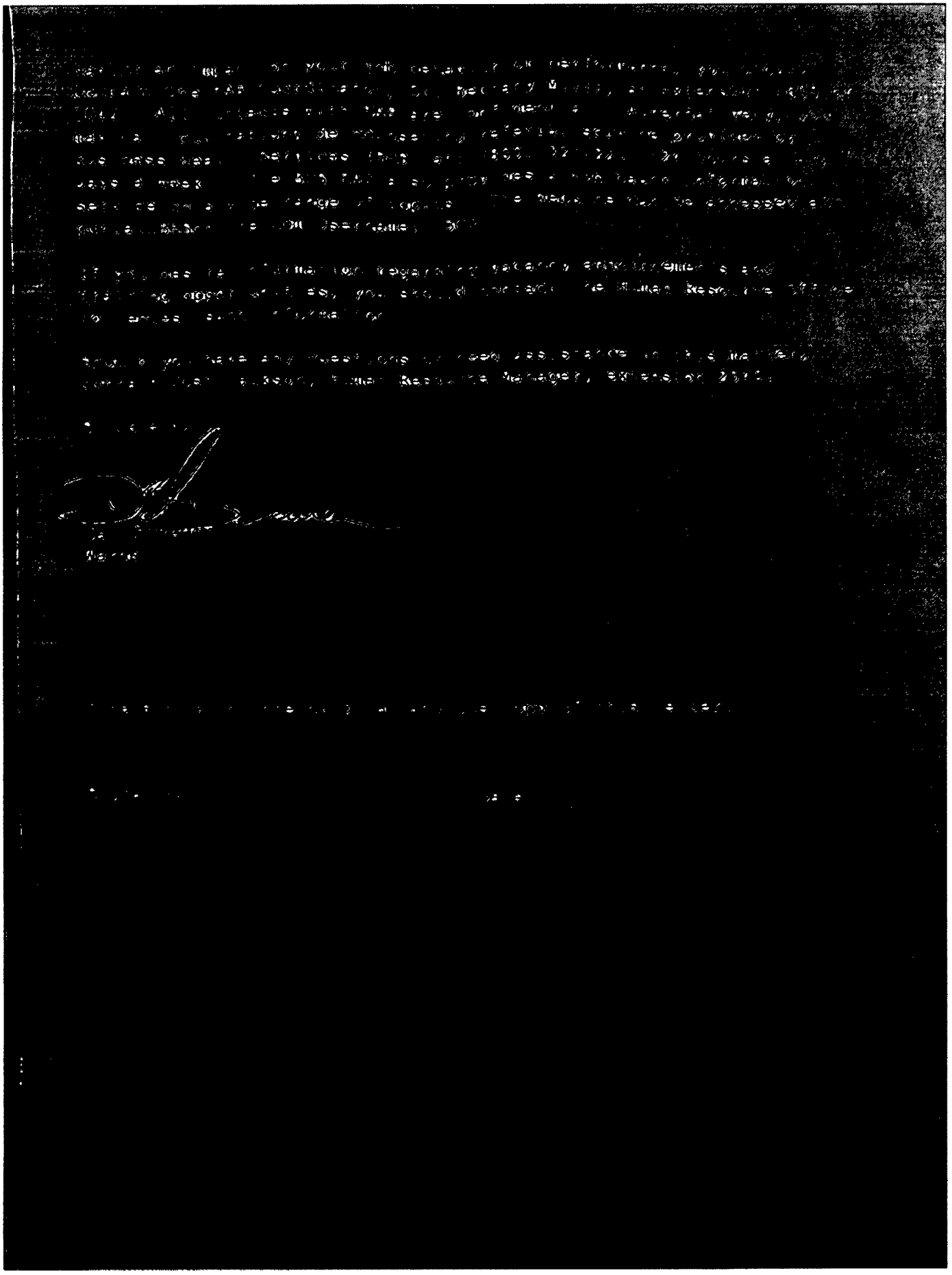
******* NOT AN OFFICIAL COURT RECORD *******

RECORDS UNIT | 1001 VANDALAY DRIVE | FRANKFORT, KY 40601 | (800) 928-6381



66575928 : : 000004 of 000004





U.S. Department of Justice

Federal Bureau of Prisons

UNITED STATES PENITENTIARY BIG SANDY

1197 AIRPORT ROAD
INEZ, KY 41224

August 15, 2022

Lance Reynolds
Re-entry Affairs Coordinator
USP Big Sandy
Inez, KY 41224

This is notice that I propose you be suspended indefinitely without pay from your position as Re-entry Affairs Coordinator, GS-0101-11, at the United States Penitentiary, Big Sandy, no sooner than seven (7) calendar days from the date you receive this notice. This action is being proposed in accordance with 5 U.S.C. § 7513 and 5 C.F.R. § 752 subpart D, because I have reason to believe you may have committed a crime in violation of the criminal laws of the Commonwealth of Kentucky for which a sentence of imprisonment may be imposed. The shortened notice period authorized by 5 C.F.R. § 752.404(d) is applicable.

Specifically, on July 8, 2022, you were indicted in Martin County Circuit Court in the Commonwealth of Kentucky, for one count of Sexual Abuse in the Third (3rd) Degree, a class B Misdemeanor. A copy of the indictment, which more particularly describes the charge noted above, is enclosed for your review.

As you know, the United States Penitentiary Big Sandy, as a component of the Federal Bureau of Prisons, is responsible for the care, custody, and correction of individuals convicted or awaiting trial for violations of the criminal laws of the United States. As such, you are considered a law enforcement officer, and are expected to obey both the letter of the law and the spirit of the law. It is imperative to the maintenance of the public's trust and confidence in our ability to carry out our assigned mission that our employees possess the highest personal and professional standards. This means not only the avoidance of misconduct by our employees, but also the appearance of misconduct.

Based on the above, I no longer have trust or confidence in your abilities, nor would your retention in an active-duty status be in the best interest of the public, good morale, the orderly operation of the institution, or the efficiency of the service. Your suspension is warranted and in the efficiency of the service.

The Warden will make the final decision on this proposal. You may reply to the Warden orally, in writing, or both orally and in writing. You have seven (7) calendar days from the date you receive this notice to show reasons why this proposed suspension should not be effected. Your reply may include affidavits or other supporting documents. No final decision on this proposal will be made until after your reply, if any, is received and considered. Your present duty and pay status are not affected by this letter.

You have the right to a representative of your choice to assist you in the preparation and presentation of any reply you may wish to submit. You and your representative, if your representative is an employee of this institution, will be allowed a reasonable amount of official time to review the materials upon which this action is based and present a reply. If you do not receive a copy of the materials, contact the Human Resources Manager several hours in advance to schedule a time to review them during normal office hours.

If a decision is made to indefinitely suspend you, your suspension will remain in effect until such time as there is a disposition of the charges against you, or there is sufficient evidence to either return you to duty or to support an administrative action against you. Should subsequent administrative review and determination so warrant, a proposal may be made to remove you from your position and from the federal service, while you are in an indefinite suspension status. You are advised that a finding of not guilty during the criminal proceeding does not preclude the agency from taking administrative action if there is sufficient evidence for such an action. Pending a decision on this proposed suspension, you will remain in a non-duty pay status.

If the deciding official decides to impose the proposed penalty or a less severe one, you may at that time have rights to appeal the penalty. However, any such right to challenge the penalty will not exist until after you receive the written decision from the deciding official imposing the specific penalty. The applicable appeal rights will be provided in the decision letter.

You may have the right to appeal this decision under any of the following procedures:

- A grievance filed under the negotiated grievance procedures

- an appeal with the Merit Systems Protection Board (MSPB);

- a formal complaint under the Department of Justice Equal Employment Opportunity Commission complaint procedures (EEO); or

- a complaint with the Office of Special Counsel (OSC).

If you choose to appeal the final decision after it has been issued by the deciding official, you must elect to do so under only one procedure. You are considered to have made an election when you

timely file, in writing, a grievance, an appeal with the MSPB, a complaint with OSC, or a formal complaint with EEO. Please ensure you elect under which procedure you wish to proceed because, if you file under more than one procedure, the procedure under which you timely file first shall be considered to be your elected procedure.

If, after receiving the final decision of the deciding official, you elect to file a grievance under the negotiated grievance procedure, you must file, in writing, no later than forty (40) calendar days from the date you receive the final decision letter. You should file under Article 31 of the Master Agreement. A grievance form may be obtained at the appropriate time from any union steward.

Should the deciding official determine the proposed removal is warranted, you may appeal the penalty at that time to the Merit Systems Protection Board (MSPB). Any appeal to the MSPB must be filed within 30 calendar days after the effective date of the deciding official's written decision, or 30 calendar days after the date of your receipt of the deciding official's written decision, whichever is later. Information regarding such an appeal is available at www.mspb.gov.

If you believe that there has been unlawful discrimination against you, because of race, sex, color, religion, age, physical or mental disability, national origin, retaliation, parental status, genetic information, gender identity, or sexual orientation or based on retaliation for opposing discrimination or participating in any phase of the administrative or judicial complaint process, you may initiate the complaint process by contacting the EEO Counselor assigned to [institution] You must contact the EEO Counselor within 45 calendar days of the effective date of the action. If, after counseling, you wish to file a formal complaint, you may obtain a formal complaint form from the EEO Counselor and the complaint must be mailed no later than fifteen (15) calendar days after your receipt of the EEO Counselor's Notice of Final Interview to the following address: EEO Officer, Federal Bureau of Prisons, 320 First Street, N.W., Washington, DC 20534. The EEO counselor assigned to USP Big Sandy is John King, located at FMC Lexington. He can be contacted at 859-255-6812, extension 5458.

You may also choose to seek corrective action before the U.S. Office of Special Counsel (OSC) if you believe that this proposal or the penalty imposed constitutes a prohibited personnel practice (including retaliation for making a protected whistleblowing disclosure) as defined by 5 U.S.C. § 2302(b). Such an appeal will be limited to whether the action constitutes a prohibited personnel practice (including retaliation for making a protected whistleblowing disclosure) as defined by 5 U.S.C. § 2302(b). The procedures governing such complaints, and a list of prohibited personnel practices, are available at www.osc.gov.

Should you have any questions or need assistance in this matter, contact Josh Jackson, Human Resource Manager, at (606)433-2400, extension 2540.

Sincerely,

E. A. Earwin

E.A. Earwin
Associate Warden

I have received the original and one copy of this letter.

Signature: A Reynolds Date: 8/26/22

U.S. Department of Justice

Federal Bureau of Prisons

UNITED STATES PENITENTIARY BIG SANDY

1197 AIRPORT ROAD
INEZ, KY 41224

Sent via Fedex # 8158 0138 2170
USPS Certified # 7020 1810 0001 1691 8762
USPS First Class Mail

October 14, 2022

Lance Reynolds
Re-entry Affairs Coordinator
USP Big Sandy
Inez, KY 41224

On August 26, 2022, you were issued a notice which proposed you be suspended indefinitely without pay from your position of Re-entry Affairs Coordinator, GS-0101-11, at the United States Penitentiary Big Sandy, Kentucky, pending the resolution of current criminal charges against you and/or any administrative action for misconduct associated with these criminal charges. In making my decision, I have given full consideration to the proposal, to your written response dated August 26, 2022, and to the evidence contained in the adverse action file, which has been provided to you. You did not provide an oral reply for consideration.

In your written response you indicated that you were targeted and subjected to discrimination based upon false statements made by other staff members. You further deny any allegations of wrong-doing on your part and accuse the Bureau of Prisons, and the Office of Inspector General of conducting an ineffective investigation against you. You indicated that you were not allowed to state facts and were subjected to intimidation and coercion to be found guilty of a false complaint. You expressed concern for losing your job and livelihood and having a blemish on your record. You state you have lost trust and confidence in management to ensure you are treated fairly.

After careful consideration I find your indefinite suspension fully supported by the evidence in the adverse action file. In making my decision, I considered, among other factors, the mission of the Bureau of Prisons, which is to protect society by confining offenders in the controlled environments of prisons. I further considered the fact that your performance has been at a successful level or higher, as well as your prior military service. However, these factors alone do not outweigh the extremely serious nature of the criminal charges against you. As a Federal law enforcement officer, you are held to a higher standard of conduct and expected to obey both the spirit and the letter of the law. Furthermore, the Federal Bureau of Prisons is

responsible for the care, custody, and correction of individuals convicted of, or awaiting trial for, violations against the criminal laws of the United States. As a Correctional Worker, you are directly responsible for the supervision and correction of inmates. Your actions, as described in the indictment were antithetical to your role as a Federal law enforcement officer and implicate your ability to perform your duties as such. In light of the nature of the charges, I conclude that your presence in the institution would jeopardize the orderly running of the institution and is detrimental to the interest and mission of the Bureau of Prisons.

It is my decision that you be suspended indefinitely effective immediately upon receipt of this letter. Your suspension will remain in effect until such time as there is a disposition of the charges against you, or there is sufficient evidence to either return you to duty or to support administrative action against you. Should subsequent administrative review so warrant, a proposal may be made to remove you from your position and from Federal service while you are in indefinite suspension status. You are advised that a finding of not guilty does not preclude the agency from taking administrative action if there is sufficient evidence for such action. You are further advised a change to your plea; a finding of not guilty; or should the Court, at sentencing, elect not to impose a term of imprisonment shall not preclude the agency from taking administrative action. You are not permitted to access the United States Penitentiary without prior approval from the Human Resources Manager. Your suspension is warranted and in the interest of the efficiency of the service.

You have the right to appeal this decision under any of the following procedures:

- a grievance under the grievance procedure contained in the Master Agreement (negotiated grievance procedure);

- an appeal with the Merit Systems Protection Board (MSPB);

- a complaint filed with the Office of Special Counsel; or

- a formal complaint under the Department of Justice Equal Employment Opportunity Commission complaint procedures (EEO).

If you appeal this decision with the EEOC, MSPB, or pursuant to the Master Agreement, you must elect to do so under only <u>one</u> procedure. You are considered to have made an election when you timely file, in writing, a grievance under the Master Agreement, an appeal to the MSPB, or a formal complaint with EEO. Please ensure you elect under which procedure you wish to proceed because, if you file under more than one procedure, the procedure under which you timely file first shall be considered your elected procedure.

If you elect to file a grievance under the negotiated grievance procedure, you must file, in writing, no later than forty calendar days from the date you receive this letter. You should file under

Article 31 of the Master Agreement. A grievance form may be obtained from any union steward.

If you elect to file an appeal with the MSPB, you must file, in writing, no earlier than the day after, and no later than thirty calendar days from, the effective date of this action. The MSPB will automatically extend the time limit by an additional thirty calendar days (for a total of sixty calendar days) should the parties mutually agree, in writing, to attempt to resolve this dispute through an alternative dispute resolution (ADR) process. Along with the appeal you may submit any offers of proof, including affidavits. The address to which an appeal should be sent is: Merit Systems Protection Board, Central Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, IL 60604-1669. A copy of the MSPB regulations and an appeal form are available in the Human Resource Office or at www.mspb.gov. If you file an appeal with MSPB, the agency contact for the purpose of your appeal is:

Associate General Counsel
Employment Law Branch
Office of General Counsel
320 First St. N.W.
Washington, D.C. 20534
Phone: (202)307-2804
Fax: (202)307-6912
Email: BOP-OGC-EmploymentLaw-S@bop.gov

You may seek corrective action before the OSC only if you believe this decision is based on retaliation for making protected disclosures. However, if you do so, your appeal will be limited to whether the agency took one or more covered personnel actions against you in retaliation for making protected whistleblowing disclosures. You will be unable to otherwise challenge this action. A copy of the OSC regulations and complaint forms are available from the Human Resources Office or at www.osc.gov.

If you believe that there has been unlawful discrimination against you, because of race, sex, color, religion, age, physical or mental disability, national origin, parental status, genetic information, gender identity, sexual orientation or based on retaliation for opposing discrimination or participating in any phase of the administrative or judicial complaint process, you may initiate the complaint process by contacting the local EEO Counselor. You must contact the EEO Counselor within 45 calendar days of the effective date of the action The EEO counselor assigned to this facility is Daniel Beauchamp, he can be contacted at dbeauchamp@bop.gov or telephonically at (972) 730-8980. If, after counseling, you wish to file a formal complaint, you may obtain a formal complaint form from the EEO Counselor and the complaint must be mailed no later than fifteen (15) calendar days after your receipt of the EEO Counselor's Notice of Right to File a Discrimination Complaint to the following

address: EEO Officer, Federal Bureau of Prisons, 320 First Street, N.W., Washington, DC 20534.

If you believe this action constitutes a prohibited personnel action (including retaliation for making a protected whistleblowing disclosure), you may seek corrective action from the Office of Special Counsel (OSC) or file a grievance in accordance with the Master Agreement, but not both. However, your appeal will be limited to whether this action constitutes a prohibited personnel practice (including retaliation for making a protected whistleblowing disclosure.) The procedure under which you timely file first shall be considered your elected procedure. You may also file an individual right of action (IRA) appeal with the MSPB if you believe this action is being taken against you in retaliation for making a protected whistleblowing disclosure. However, you must first seek corrective action from OSC and receive notice of your right to appeal to the MSPB. The procedures governing such complaints, and a list of prohibited personnel practices, are available at www.osc.gov.

Should you have any questions or need assistance in this matter, contact Josh Jackson, Human Resource Manager, at extension 2540.

Sincerely,

H. Joyner
Warden

I have received the original and one copy of this letter.

Signature _____ Date _____

Appendix H

Pertinent Statutory and Regulatory Provisions

1. 5 U.S.C. § 5596. Back pay due to unjustified personnel action

The pertinent portion of 5 U.S.C. § 5596 provides:

(b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, or under chapter 11 of title I of the Foreign Service Act of 1980, shall be awarded in accordance with standards established under section 7701(g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall

be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

2. 5 U.S.C. § 7513. Cause and procedure

The pertinent portions of 5 U.S.C. § 7513 provide:

(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;

3. 5 U.S.C. § 7703. Judicial review of decisions of the Merit Systems Protection Board

The pertinent portion of 5 U.S.C. § 7703 provides:

(c) In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

(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 been followed; or

(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

4. 5 C.F.R. § 550.805. Back pay computations

The pertinent portions of 5 C.F.R. § 550.805 provide:

(a) When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due an employee—

(1) The employee shall be deemed to have performed service for the agency during the period covered by the corrective action; and

(2) The agency shall compute for the period covered by the corrective action the pay, allowances, and differentials the employee would have received if the unjustified or unwarranted personnel action had not occurred.

(b) No employee shall be granted more pay, allowances, and differentials under section 5596 of title 5, United States Code, and this subpart than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.