

ELM 650
Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

EAS

Rights & Appeals



ELM 650

Non-Bargaining Disciplinary, Grievance
and Appeal Procedures

Who does NAPS Represent?

NAPS MEMBERS!

Unlike postal unions, NAPS does not represent non-members.

Sign up newly promoted EAS as soon as possible – NAPS Form 1187.

Disciplinary Defense Fund (DDF) is available 90-days after an EAS employees joins NAPS, ***unless*** joins within 60-days from being promoted from craft.



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Establishes procedures for:

(a) Disciplinary Action against employees not subject collective bargaining (i.e. EAS).

(b) Emergency action for conduct that normally warrants disciplinary action.



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ELM 665.3 Cooperation in Investigations

Employees must cooperate in any postal investigation,

- Investigated Interview (I & I)
- Office of the Inspector General (OIG) investigations.

Be cautious: Pre-Disciplinary Interview (PDI) is a “Fact Finding” action by USPS, not an Investigative Interview (I & I)



Pre-Disciplinary Interview (PDI) or Investigative Interview (I&I) Who do you call?

Your NAPS Representative

ELM 651.2 Representation

Subject to prohibitions regarding Executive and Administrative Schedule (EAS)/Craft representation, employees have free choice of representation. Representatives designated by employees, if postal employees and if otherwise in a duty status, are granted a reasonable amount of official time to respond to notices of proposed disciplinary action, to prepare for and represent the employee at a hearing held in accordance with 652.24, and/or to represent an employee who has appealed a letter of warning or emergency placement in a non-duty status in accordance with 652.4.

Employees covered under these provisions may request representation during investigative questioning if the employee has a reasonable belief disciplinary action may ensue.



Member directed to attend a PDI or I&I. Now what?

- **Do Not** go in alone – Bring NAPS Rep
- Be professional
- Ask the reason for the PDI
- Ask what are the charges
- Keep answers short & factual
- **DO NOT** speculate or elaborate
- If you don't recall – state you don't recall
- Ask for information that might help you remember
- Tell the truth – **DO NOT LIE!**
- PDI is “**fact finding**” -- not an investigation!



After PDI or I&I
Member receives discipline!
Now what?

Member's Action -- **1st Steps**

- Call your **NAPS Representative** immediately!
- Have copy of discipline ready for NAPS Representative.
- Date of receipt: 10-days to appeal – that includes weekends.



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EAS Representation

- Free choice of representation
- Representative designated by employee
- Reasonable amount of official time to respond



Action by NAPS Representative

1st Steps

Verify NAPS Membership - DCO/NAPS HQ

Gather Member Information

Name, address, non-postal email, personal phone #,
USPS Title/Level, Office of domicile

Member signs “Request for Representation”

- Employee has free choice of representation
- Representative designated by employee



Action by NAPS Representative

2nd Step

Designation of Representation (See NAPS.org)

Member signs Request for Representation

- I have requested the following US Postal Service employee to represent me in my appeal of an adverse action or grievance.
- I understand that my representative is not a lawyer and will act as my representative without pay and as a layman without legal training. If I decide that my case needs the service of a lawyer, I am free to engage a lawyer to assist me at my own expense.
- I understand that I may change representative at any time. If I decide to change representative, I agree that I must inform the above representative in writing.
- I understand that I am required to provide my representative with all information and documents that concern my case and to keep the representative informed of all deadlines and other procedural dates concerning my case and to keep the representative informed of all deadlines and other procedural dates.



Action by NAPS Representative

3rd Step

Prepare Evidence/Defense Package within 10-Days

- Reviewing material is not enough.
- Request copies of all information relied upon by the USPS to issue the discipline. Make copies.
- Request other information that may be relevant in defense of member's case (i.e. clock ring report, SOPs, Form 50, checklists, scanning reports, dispatch logs, collection schedules, etc.). Don't request more than necessary.
- Label USPS documents received.

RECEIVED



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Evidence Package continued . . .

- Copy of Discipline Issued
- Copies of any **live** Discipline
(LOW, LOW 7/14, Adverse Action)
- Get signed witness statements
- Get signed written statement from member.

I Colin Allomas hereby swear that on approximately 21st February Rachel Bettbridge rang me and during the course of this conversation she admitted to me that she had sent Kate Pave a number of text messages including one that said you need a bullet and one that said that Colin Allomas had told her Rachel Bettbridge that Kate Pave had sexually abused her daughter. She told me that she had sent numerous text messages that were intended to disturb and offend Kate Pave. Also she told me that she had made several phone calls to Kate Pave. Regarding the text saying I told her that Kate had abused her daughter, I advised Rachel that I had said no such thing. Rachel admitted to me that she had made the allegation up in order to offend and disturb the recipient, Kate Pave.
Sign Colin Allomas

This is the member's discipline -- they need to tell their story.



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Within 10 Days - Prepare Written Appeal

- State the understanding of charges
- State the understanding of specifications
(dates, names, locations, times, etc.)
- Verify ELM references/violations
- Address each charge (Explain/justify action)
- Discuss “Douglas Factors” (Service history, work performance, awards, disparage treatment, etc.)



Factors in Penalty Selection “The Douglas Factors”

1. The nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee’s past disciplinary record.
4. The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon the supervisor’s confidence in the employee’s ability to perform assigned duties.
6. The consistency of the penalty with those imposed upon other employees for the same offense in like or similar circumstances.



Factors in Penalty Selection

“The Douglas Factors”

7. The consistency of the penalty with agency guidance on disciplinary actions. (This FACTOR does NOT apply to USPS – only other Federal Agencies)
8. The notoriety of the offense or its impact upon the reputation of the agency.
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
10. The potential for the employee’s rehabilitation.
11. The mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Douglas v. Veterans Administration, 5 MSPR 280 (1981). , etc.)

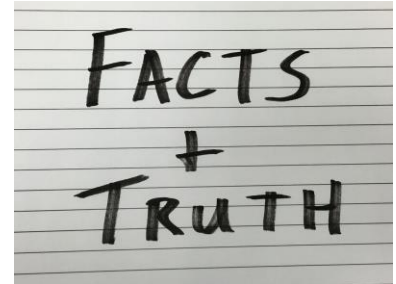


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Non-Bargaining Disciplinary, Grievance and Appeal Procedures

Prepare Written Appeal Continued . . .

- Address Medical, Physical or Emotional Issues
- Refute charges with evidence, documents, statements
- Do not raise specific settlement in appeal letter *(Don't ask for Removal to be reduced to 14-day, there is no room to negotiate).*
- Request to "Rescind" or "Expunge" the discipline



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Defense Measure

ELM 651.3 Nondisciplinary Corrective Measures

Accountable managers/supervisors are responsible for the direct day-to-day performance management of subordinates. The accountable manager/supervisor monitors subordinates' performance and provides appropriate resources, coaching, and feedback to the subordinates. The manager/supervisor is responsible for leading the employee to a higher level of achievement. Performance improvement should be a shared concern and effort between manager and employee. Early dialogue and guidance are critical to achieving positive results and continuance of an effective manager/employee relationship.



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Additional Defense Measure from ELM 721

ELM 721.4 Supervisors and Managers

Supervisors and managers are responsible and accountable for:

- a. Ensuring that employees under their supervision are trained in a timely manner to perform their assigned job tasks.
- b. Identifying employees' needs for improvement in their present jobs.
- c. Planning for their employees' training, in coordination with training systems available for their facilities.
- d. Following up after employees complete formal job training to ensure that they use newly acquired knowledge, skills, and abilities optimally and appropriately.
- e. Identifying and providing other training to meet the organization's and individual employees' needs.
- f. Evaluating and supporting as appropriate employee requests to participate in self-development training opportunities.
- g. Providing employees with information and guidance on career growth.
- h. Documenting the outcomes and expectations of providing training, including the return on investment.



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Additional Defense Measure from ELM 721

ELM 721.5 Employees

Employees are responsible for:

- a. Making effective use of training opportunities that management provides.

- b. Consulting with their supervisors and pursuing personal career goals to guide their own growth and development.

- c. Continuing throughout their careers to learn and improve their knowledge, skills, and abilities while sharing what they have learned with other employees.



ELM 650 STEP A Appeal

ELM 652.42 – OTM Section 8

Letters of Warning & Emergency Placement in a non-duty status (652.4) other matters are covered by 652.2

- Appeal in writing **AND** verbally to issuing supervisor or manager within 10 calendar days of receipt.
- May discuss case during appeal period.
- Written *USPS* **STEP A** decision to be received within 5 calendar days after receipt of appeal.
- Extenuating circumstances may delay response, request an extension and in your letter must explain reason for delay in appeal letter.



ELM 650 STEP B Appeal

ELM 652.43 – OTM Section 8

- After **STEP A** decision received, submit written appeal to next higher level manager within 7 calendar days. This is known as **STEP B** Appeal.
- Include a copy of all the documents you relied on to prepare the appeal.
- Schedule meeting to verbally discuss **STEP B** appeal.
- Include employee information and basis for appeal.
- **STEP B** Deciding Official may discuss appeal with parties.
- Deciding Official renders a written decision within 10-calendar days after receipt of STEP B appeal.
- Usually this decision is final – Except!



ELM 650 Review Process

ELM 652.44 – OTM Section 8

- May request Review within **15-days** of ***STEP B*** decision.
- Written Appeal for Review directed to Area HR Manager.
- Give specific reasons for ***STEP B*** decision review.
- Area Reviewing Official replies in writing within 60 days.
- States the disposition of the employee's request.
- The reply is final.
- Discipline can remain in OPF up to 2-years. Contact Shared Services to have disciplined removed after timeframe. Submit PS Form 8043 to request removal of discipline.



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LOW in Lieu of Time-Off Appeal
7 Day or 14 Day or Adverse Action
ELM 652.5

First Option – Request 650 Mediation

- Highly Recommended.
- What gets 650 Mediation?
 - Letters of Warning in Lieu of Time-Off Suspensions and/or Time-off Suspensions
 - Adverse Action: Suspension over 14-days, downgrades and removals
 - Not always offered by USPS, subject to circumstances
- What happens at 650 Mediation?

ELM 650

LOW in Lieu of Time-Off Suspensions 7 Day or 14 Day

What if you don't settle in 650 Mediation?

- Appeal in 10 days of receipt to deciding official regarding the **“no decision”** received at the end of the mediation.
- Appeal in **writing** to Deciding Official. *There is no in person discussion with Deciding Official if mediated - ELM 652.54)*
- Deciding Official issues “Letter of Decision” no later than 30 days.
- Appeal Decision Letter within 15 days Area HR Manager.
- Area appeal is based solely on record. No opportunity to meet with reviewing official. The Review decision is final.
- Discipline can remain in OPF up to 2-years. Contact Shared Services to have disciplined removed after timeframe. Submit PS Form 8043 to request removal of discipline.



ELM 650

LOW in Lieu of Time-Off Appeal

7 Day or 14 Day

ELM 651.64 -651.66

What if the Member decides not to mediate the LOW in Lieu of Time Off?

- Appeal the Proposed Letter in writing and/or in person to the deciding official (next higher level manager) within 10-days of receipt of the letter.
- Follow the same documentation format as Step A.
- Deciding official issues letter of decision no later than 30-days after 10-day appeal deadline.
- Decision Letter – 15 days to file for a written Appeal for Review directed to Area HR Manager. Area appeal is based solely on record. No opportunity to meet with reviewing official. The Area review decision is final.



651.6 Letters of Warning in Lieu of Time–Off Suspensions

651.61 Policy

Letters of warning in lieu of time-off suspensions replace time-off suspensions for nonbargaining employees, except when required otherwise by statute. This policy does not preclude management from placing a nonbargaining employee in an indefinite nonpay, nonduty status when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.

651.62 Implementation

Letters of warning in lieu of time–off suspensions may be issued in lieu of either 7–day or 14–day time–off suspension only. Unless required by statute, suspensions of more than 14 days are prohibited except for indefinite suspensions referenced in 651.7. Letters of warning in lieu of time–off suspensions are equivalent to time–off suspensions as an element of past discipline and may be cited as such in future disciplinary actions.

651.63 Notice

Normally, the employee’s immediate supervisor issues a proposed letter of warning in lieu of time-off suspension, which must

651.64 Response

The employee and/or his or her representative may respond to the proposed letter of warning in lieu of time-off suspension in writing and/or in person to the deciding official (management at a higher level of authority than the individual who issued the proposed letter of warning in lieu of time-off suspension) within 10 calendar days of receipt. You must include the name and title of the deciding official in your response.

651.65 Decision

The deciding official, after consideration of the facts of the case and the employee’s response, issues a letter of decision after the expiration of the 10–calendar day period for reply, but no later than 30 calendar days following the receipt of the employee’s response. The decision letter will advise the employee that he or she may appeal in writing within 15 calendar days of receipt of the letter of decision.

651.66 Retention

Letters of warning in lieu of time–off suspensions remain in the employee’s OPF and/or eOPF for two years unless otherwise resolved or cited in subsequent disciplinary action.



USPS ELM 650

Adverse Action Appeal

Removals, Suspensions >14 Days, Furloughs or Reduction in Grade (ELM 652.2)

- Ask for Mediation (subject to USPS offering) No Decision at mediation -
- Appeal in 10-days of receipt in writing/person or both to Deciding Official *(Note: There is no in person discussion with Deciding Official if mediated - ELM 652.54)*
- Deciding official gives written decision no later than 60 days
- Employee rights stated in Letter of Decision
- Appeal to MSPB, ELM 650 Hearing, Area HR Manager
- Adverse Action: Recommend MSPB – Member’s decision
- NAPS Disciplinary Defense Fund (DDF) may be available



651.7 Adverse Actions

651.71 Definition

Adverse actions are defined as discharges, suspensions of more than 14 days, furloughs for 30 days or less, and/or reductions in grade or pay.

651.72 Policy

Adverse action may be taken against an employee:

1. Because lesser measures have not resulted in the correction of deficiencies in behavior or performance;
2. Because of the gravity of the offense; or
3. For nondisciplinary reasons, such as the correction of a position misranking.

651.73 Notice

Normally, the employee's immediate supervisor issues a written notice of proposed adverse action. The Postal Service may substitute as the proposing official another supervisor or manager at the same or higher level as specified herein. Such a substitution may be made by any of the following: the vice president of Labor Relations; area vice president; and area manager, Human Resources. The proposal also advises the employee that a reasonable amount of official time is allowed for the preparation and presentation of a reply, if the employee is otherwise in a duty status, and that the proposed action will be effected no sooner than 30 calendar days after the employee receives the notice.

651.74 Response

The employee or representative may respond to the notice of proposed adverse action in writing, in person, or both, to the deciding official or designee identified in the notice. The employee or representative may respond and present evidence, including affidavits, within 10 calendar days from receipt of the notice. The time limits for responding to a proposed adverse action may be extended by the deciding official or designee for reasonable cause.

651.75 Decision

The deciding official, who must be higher in authority than the proposing official, considers the employee's response and gives a written decision, including reasons for the decision, as soon as possible after the employee's time to respond has expired, but no later than 60 calendar days following the receipt of the employee's response. In field installations, the installation head or designee usually makes the decision. In other offices, the decision is made by a branch manager or above. Normally, the deciding official is the supervisor or manager of the employee's immediate supervisor. The Postal Service may substitute as the deciding official another supervisor or manager. Such a substitution may be made by any of the following: the vice president of Labor Relations; area vice president; and area manager, Human Resources. If the decision is to effect the adverse action or to modify it to a lesser penalty, the employee's appeal rights, including Merit Systems Protection Board (MSPB) appeal rights, if applicable, are stated.



Adverse Action Decision is Removal or Downgrade MSBP/650-Hearing

Elm 652.2-652.253 – OTM Section 11

- Contact Branch President immediately.
- Branch President sends completed DDF form and copy of DCO page with member name highlighted to NAPS Headquarters Executive Vice President and DDF Provider.
- Send appeal documents, including all appeal letters via Priority Mail Express to DDF Provider Al Lum at:

Labor Relations Admin Group (LRAG)
P.O. Box 25822
Brooklyn, NY 11202



ELM 650 – EAS Workplace/USPS Policy Matters

652.4 Other Appealable Actions

652.41 Coverage

Employees in EAS-17 and below, regardless of length of service, may appeal letters of warning, emergency placement in a nonduty status, and other matters not covered by [652.2](#) by using the procedures in [652.42](#) through [652.44](#).

PCES Level I, and EAS-18 and above employees have access to these procedures only to appeal discipline in the nature of a letter of warning and emergency placement in a nonduty status.

652.42 Step A

An employee or representative states the appeal in writing to the immediate supervisor within 10 calendar days of learning the appeal's cause. The employee or representative has the opportunity to discuss the appeal with the supervisor during this period. The supervisor gives a written decision within 10 calendar days after receipt of appeal. If this timeframe is impossible because of extenuating circumstances, the decision must explain the reason(s) for the delay.

652.43 Step B

A field employee or representative may submit a written appeal to the installation head within seven calendar days after receipt of the Step A decision. (If the installation head is the immediate supervisor, appeals are made to the next higher level of management.) A Headquarters, Headquarters field unit, or Inspection Service employee or representative may appeal within the same time limits to the next higher level of management (superior to the supervisor), at minimum, a manager or above. The appeal must include the employee's name, title, grade, location, nature of appeal, and basis for appeal. Upon receipt of the appeal, the Step B official discusses the appeal with the employee or representative and renders a decision in writing within 10 calendar days after receipt of the appeal. Usually this decision is final.

652.44 Review

The employee or representative may request a review of the Step B decision. The request of an employee administratively responsible to the area vice president is directed to the area Human Resources manager. The request of a Headquarters, Headquarters field unit, or Inspection Service employee is sent to the vice president of Labor Relations, or designee, with a copy to the Step B official, who forwards the file to the reviewing official. The request is in writing and gives specific reasons why the employee believes the Step B decision should be reviewed. The request is made within 15 calendar days from receipt of the Step B decision. The reviewing official replies in writing and states the disposition of the employee's request. This reply is final.



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Do you have expired discipline in your eOPF?

Use **PS Form 8043 Request to Amend Electronic Official Personnel Folder** complete this form to request that it be removed from your eOPF.

It must be provided to your District HR and possibly Area HR for fulfillment. It has to go to someone who has the access to your eOPF. Typically that is not your manager.

Keep a copy and follow-up by looking in your eOPF. If it hasn't been removed contact your NAPS Representative for assistance.

Thank You!



Questions?

