
DOUGLAS FACTORS

In the 1981 case of Douglas v. Veterans Administration, the Merit Systems Protection Board (MSPB) held that it is management's burden to show the reasonableness of the remedy by showing that appropriate consideration was given to each of the applicable factors set forth in the decision. When determining what adverse action to take or what penalty to impose on an employee, these Douglas factors must be taken into consideration.

Not all of these factors will be pertinent in every case. It is the agency's responsibility to determine which factors apply. Some may weigh in the employee's favor while other factors may constitute aggravating circumstances that support a harsher penalty. The agency should indicate in its decision letter which Douglas factors were considered when making its final decision.

These 12 factors apply to appealable adverse actions and are recommended for grievable adverse actions:

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 supervisors' confidence in the employee's work ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
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;

DOUGLAS FACTORS

11. 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; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Adverse actions may be appealed and reviewed by the Merit Systems Protection Board (MSPB). The Board reviews to determine whether the relevant aggravating and mitigating factors were considered. Agencies must prove charges by a preponderance of the evidence and show a connection between the charges and the efficiency of the service. If it is determined that an agency failed to consider such factors or the agency's judgment was unreasonable, the Board will specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.

<u>RELATED TOPICS</u>	<u>REFERENCES</u>
Disciplinary Actions Adverse Actions Employee Appeal Rights	5 MSPR 280 (1981), 81 FMSR 7037