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## Performance v. Conduct

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A general rule of thumb for assisting you with determining whether you are dealing with a conduct problem or a performance problem is two words: “Can’t vs. Won’t”. If the employee is attempting to perform his/her job to the best of his/her ability and just “can’t” do the work, it is more than likely a performance related problem. If the employee can do the work, but just “won’t” because he/she chooses not to, it is more than likely a conduct problem. For example if an inventory clerk continues to catalog items incorrectly, it could be because he does not understand the computer system (performance) or it could be he is coming to work late, leaving early, and not paying attention to his work (conduct). It is important to distinguish between these two types of actions because currently they are processed under very different procedures. Your servicing HRO will assist you in making this decision as in some cases it can be a fine line.

- **Conduct** – Discipline Process - problems involve the breaking of a rule, regulation, policy or direction.
  - EXAMPLE: Employee does not show up for work and/or does not call in (absent without leave (AWOL) or failure to follow leave procedures) - the behavior violates rules, regulations, policy, directions and/or a collective bargaining agreement (CBA), and therefore, is considered a conduct problem. These actions are a result of the employee’s chosen behavior.
- Discipline is meant to correct an employee’s conduct; the agency must be able to prove the employee has done something wrong. A suspicion or hearsay that an employee did something wrong is not enough.
  - Identify the problem. Was there a rule, regulation, requirement or order broken? Was the employee aware of the rule, regulation or requirement? Identify nexus – or logical connection, between the employee’s conduct and a negative impact on the work getting done.
  - In some instances, conduct outside work can also have a sufficiently adverse impact on the agency to justify corrective action (i.e. What if your employee gets a speeding ticket over the weekend and loses his license – can you charge misconduct? What if your employee was employed as a motor vehicle operator?).
  - Gather all the facts.
  - Be sure to get the employee’s side of the story. There might be a logical explanation for the alleged misconduct.

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- WEINGARTEN RIGHTS. A bargaining unit employee questioned in connection with an investigation believes disciplinary action may result, the employee can request representation.
- A non-bargaining unit employee is not afforded a right to have a representative during an investigation and is required to participate. If discipline results, he/she can respond and select a representative.
- Document the facts. You may need to get more information or you may not have enough information to warrant discipline.
- **Performance Problems** – Performing a job poorly.
  - **EXAMPLE:** A Senior Program Analyst turns out analytical writing full of grammatical errors and unsupported conclusions, plus his numbers do not add up.
- Performance problems may be dealt with through performance counseling, training, work plans, performance improvement plans, etc.
- In addition, progress reviews, feedback session, etc. should be used to COMMUNICATE performance issues on an on-going basis.
- Be sure to clearly document any of your counseling sessions, training, feedback, work plans, etc. If the performance does not improve, this documentation will become very important.
- If an employee’s performance drops to the unacceptable level in one or more core competencies or performance objectives, STOP and contact your local HRO for guidance. Do not complete a final rating before providing the employee an opportunity to improve his/her performance.

| <u>RELATED TOPICS</u> | <u>REFERENCES</u>              |
|-----------------------|--------------------------------|
| Disciplinary Actions  | <a href="#">5 CFR Part 752</a> |
| Weingarten Meetings   | <a href="#">5 CFR Part 432</a> |
| Douglas Factors       |                                |