

Systems Access Violations -- Key Elements for an Effective Pre-Proposal Process

- **Open Communication**
- **Involvement of the Appropriate Parties**
- **Thorough Investigation**
- **Objective Consideration of All Pertinent Information**
- **Thorough Documentation**
- **Accountability and Consistency**

Checklist for Investigating Potential Systems Access Violations

DATA COLLECTION/INVESTIGATION

- ✓ Violations may be discovered in a number of ways, including:
 - Component/Regional Security Officer (CSO/RSO) routine reviews
 - Local management CIRP reviews or identification of other suspicious activity
 - Employee self reports
 - Employee reports of violations by other employees

- ✓ The first line supervisor/local management contacts the next level supervisor to discuss the case. The local office/component will contact the CSO/RSO.
 - NOTE: If regional policy does not call for CSO to coordinate with the Labor and Employees Relations (LERT) staff, then local management or the next level supervisor should contact LERT. In Headquarters, the first line supervisor or other official designated by management should contact Office of Labor-Management and Employee Relations (OLMER)

- ✓ Upon discovery of a possible violation, local/ component management initiates an In Process Working File to temporarily house all the material pertaining to the violation. This may ultimately include:
 - Evidence found by local management or by the CSO/RSO
 - Most recent Sanctions Acknowledgement Statement
 - Any interview notes
 - Documents pertaining to prior disciplinary actions

- ✓ An initial review/analysis is conducted by the CSO/RSO and LERT/OLMER in conjunction with management to determine if there is an issue that needs an official investigation. If not, the issue is closed out at this point.

- ✓ If warranted, the CSO/RSO begins an official investigation (i.e., pulled traffic, queried records, and investigated systems access). Any cases involving possible Category D violations should be referred to the OIG. Other cases where there is suspected fraudulent and/or criminal misconduct may also be referred to OIG.
- ✓ The CSO/RSO and LERT/OLMER collaborate, as necessary, to prepare questions for management's investigative interview with the employee. This is a Weingarten interview, and the employee, if he/she is a bargaining unit employee, is entitled to a Union representative if he/she requests. Questions may include:
 - According to information from CSO/RSO, you accessed (name of query) on (name of person). Why?
 - What is your relationship with (name of person)?
 - Did (name of person) ask you for that information?
 - If the answer is yes, why did he/she want that information?
 - Did you provide that information to (name of person)?
 - Did someone other than (name of person) ask you for information?
 - If the answer is yes, why did he/she want the information and what is your relationship to that person?
 - After you obtained the query, what did you do with the information?
 - Did you give the information to the person who requested it?
 - Did you give the information to anyone else?
 - What did they do with the information?
 - If no one asked you for the information why did you request it?
 - Did you provide any special treatment to the person (taking them out of line, etc.)?
- ✓ After the interview, the first-line management official/supervisor prepares a record of discussion summarizing the investigative interview and has the employee sign it. Once signed, the first-line management official sends the record of discussion to LERT/OLMER, along with any other evidence in the possession of the management official/supervisor.

ANALYSIS OF INFORMATION

- ✓ A management discussion involving local management and other appropriate parties, such as component/regional security officer, LERT/OLMER, is held to frame the issues, discuss any background information that surfaces during the investigations, and determine if any additional development is needed. During this discussion all parties involved will share their perspectives and opinions on the incident being analyzed.
- ✓ Issues to be considered include whether the case is a sanctions offense, the appropriate category of offense, comparable cases, and a supportable range of penalties that the proposing official will consider.

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APPENDIX 1- JUST CAUSE FACTORS

Under Article 23 of the AFGE-SSA contract, employees may only be disciplined or discharged for "just cause". To determine whether there is "just cause" for discipline, arbitrators have stated that several factors must be considered. These include, but are not limited to, the following:

- 1) whether the employee could be expected to know that his conduct would subject him to discipline;
- 2) whether the rule violated is reasonably related to the safe, efficient, and orderly operation of the enterprise;
- 3) whether the employer made a reasonable effort to discover and determine if the employee violated the rule;
- 4) whether the employer made a fair and objective investigation;
- 5) whether the burden of proof on the issue of guilt has been met;
- 6) whether the employer's action was non-discriminatory; and
- 7) whether the penalty is reasonably related to the seriousness of the offense and/or the employee's record with the employer.

- ✓ If the facts of the case demonstrate that the systems access was *inadvertent*, the decision will be made that the access did not constitute a sanctionable offense. For example, if an employee receives a list of SSN's to verify and one of those SSN's belongs to a coworker or relative, this would generally not constitute a Sanctions violation. However, the employees should notify his/her supervisor as soon as he/she becomes aware. On the other hand, if an employee claims to "forget" that looking up a relative is violation or enters the SSN of a relative because it was written on a piece of paper with no other information, these situations would NOT be considered "inadvertent" and would be violation of the policy.

DETERMINATION OF PENALTY

- ✓ After the management discussion, if the case is determined to be a sanctions offense, the proposing official, in consultation with LERT/OLMER, determines the appropriate penalty.
- ✓ Although required only at the deciding official level, it makes sense for the proposing official to also consider and document:
 - The "just cause" factors (Appendix 1) See attachment below.
 - The "Douglas factors" (Appendix 2) See attachment below.
- ✓ LERT/OLMER and the proposing official work together to draft a proposal notice.
- ✓ When final, the proposing manager releases the notice to the employee.
 - The original letter, with any appropriate attachments, is given to the employee.
 - The manager obtains a signature from the employee acknowledging receipt.
 - A copy is given to LERT/OLMER.
 - The In Process Working File and copy of the proposal notice is overnight expressed to the deciding official.

APPENDIX 2- DOUGLAS FACTORS

The Douglas factors are considered by arbitrators for most cases, regardless of the level of discipline given. Where arbitrators find that the Douglas factors have not been considered or management did not appear to give them appropriate weight, they tend to not sustain the Agency disciplinary action.

- 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;
- The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- The employee's past disciplinary record;
- The employee's past work record, including length of service, performance on the job, ability to get along with coworkers and dependability;
- 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 ability to perform assigned duties;
- Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- Consistency of the penalty with any applicable Agency table of penalties;
- The notoriety of the offense or its impact upon the reputation of the Agency;
- 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;
- Potential for the employee's rehabilitation;
- 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
- The adequacy and effectiveness of alternate sanctions to deter such misconduct in the future by the employee or others.